

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ROYAL KHYBER ENTERPRISES, INC.,) OTA NO. 20106813
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, May 9, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 9:32 a.m.
and concluding at 10:53 a.m. on Tuesday,
May 9, 2023, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ ANDREW KWEE
ALJ KEITH LONG

For the Appellant: ANTHONY AZAVEDO

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

RAVINDER SHARMA
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-15 were received at page 8.)

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

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Cerritos, California; Tuesday, May 9, 2023

9:30 a.m.

JUDGE GEARY: Now, let's start our record,
Ms. Alonzo, please.

Will the parties please begin by identifying
themselves by stating their names and who they represent
starting with the Appellants. And with if you would,
spell your names also.

MR. PURI: Arun Puri, A-r-u-n, Puri, P-u-r-i.

MR. AZAVEDO: My name is Anthony Azavedo.
A-n-t-h-o-n-y, Azavedo, A-z-a-v-e-d-o.

JUDGE GEARY: And Mr. Azavedo, could you also
introduce the person who is assisting with the IT?

MR. KAFLE: Amrit Kafle, A-m-r-i-t K-a-f-l-e.

JUDGE GEARY: Are you an employee of OTA?

MR. KAFLE: No, sir.

JUDGE GEARY: Okay. So you're working for
Mr. Azavedo. Thank you.

And will the Department please introduce the reps
today.

MR. SHARMA: Ravinder Sharma, hearing
representative, with CDTFA.

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

1 MR. BACCHUS: Chad Bacchus, Tax Counsel IV, with
2 CDTFA.

3 JUDGE GEARY: Thank you.

4 The reason I didn't have those gentlemen spell
5 their names is because they appear before us quite
6 regularly, and the court reporter knows how to spell their
7 names.

8 All right. The parties were supposed to disclose
9 witnesses, and Appellant did not disclose that they were
10 going to call anybody to testify today.

11 Mr. Azavedo, do you plan to have anybody testify
12 today?

13 MR. AZAVEDO: No.

14 JUDGE GEARY: Thank you.

15 Does Respondent plan to call any witnesses today?

16 MR. SHARMA: No. Department does not intend to
17 call anyone.

18 [Stenographer interruption]

19 JUDGE GEARY: I'm going to repeat that.
20 Mr. Azavedo, you are not going to call any witnesses
21 today; is that correct?

22 MR. AZAVEDO: That's correct.

23 JUDGE GEARY: Thank you.

24 And Department, you are not going to call any
25 witnesses today?

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

2 JUDGE GEARY: Thank you.

3 The exhibits that have been marked for
4 identification in this appeal consist of Appellant's
5 exhibits marked 1 through 16 for identification and
6 Respondent's exhibits marked A through F for
7 identification.

8 Questions first for Appellant about your
9 exhibits. There was no index submitted with the exhibits,
10 and my staff had to kind of guess about how to mark them.
11 So we marked each of the separate files that consist of
12 copies of exhibits -- as separate Exhibits 1 through 15.
13 So your Exhibits 1 through 15 are the 15 files that
14 contain roughly 143 copies of receipts. And then
15 Exhibit 16 appears to be a PowerPoint presentation that
16 was submitted with your other documents.

17 Let me ask. Mr. Azavedo, do you plan to use the
18 PowerPoint in your presentation today?

19 MR. AZAVEDO: Yes.

20 JUDGE GEARY: Okay. The Department's exhibits
21 marked A through F were attached to its opening brief in
22 this matter. Everybody should have the other party's
23 exhibits. And my staff incorporated all exhibits into a
24 hearing binder, and I believe the parties and my
25 colleagues here on the dais should all have those binders

1 before them.

2 The prehearing conference orders require that the
3 parties state objections to evidence in writing by
4 May 2nd. To my knowledge, OTA received no objections from
5 either party.

6 Will Respondent please confirm that it has no
7 objection to the admission of Appellant's Exhibits 1
8 through 16.

9 MR. SHARMA: Department has no objection. Thank
10 you.

11 JUDGE GEARY: Thank you.

12 And Mr. Azavedo, would you please confirm that
13 Appellant has no objection to the admission of
14 Respondent's Exhibits A through F.

15 MR. AZAVEDO: No, we don't.

16 JUDGE GEARY: Thank you.

17 All those exhibits are now admitted.

18 (Appellant's Exhibits 1-15 were received
19 in evidence by the Administrative Law Judge.)

20 (Department's Exhibits A-F were received in
21 evidence by the Administrative Law Judge.)

22 The issues to be decided in this appeal are as
23 follows:

24 Issue One are adjustments to the amount of
25 unreported taxable sales are warranted, and in that regard

1 the audit items included within that issue are unreported
2 taxable sales measured by \$234,758 and unreported taxable
3 mandatory tips of \$94,819.

4 The second issue whether adjustments to the
5 amount of excess tax reimbursement are warranted. And
6 included with that item are excess tax reimbursements on
7 redemption of restaurant.com certificates measured by
8 \$62,334 an excess tax reimbursement on redemption of
9groupon.com vouchers measured by \$64, 41.

10 Mr. Azavedo, do you agree that those are the
11 issues that you want OTA to address in this hearing?

12 MR. AZAVEDO: Yes.

13 JUDGE GEARY: Thank you.

14 And Respondent.

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

16 JUDGE GEARY: Thank you.

17 Mr. Azavedo, when we had our prehearing
18 conference, you weren't sure how much time Appellant would
19 require for its argument. Can you give me an estimate now
20 of how much time you will need to present your argument?

21 MR. AZAVEDO: 30 minutes maybe.

22 JUDGE GEARY: Thank you.

23 And at the time of the prehearing conference, I
24 believe Respondent indicated that it would need
25 approximately 30 minutes to present its argument.

1 Is that still your estimate?

2 MR. SHARMA: No. I think maybe around 20 minutes

3 or so.

4 JUDGE GEARY: Okay. Thank you. And when the

5 Department is -- the order of presentation is Mr. Azavedo

6 or Mr. Puri, however -- whoever is going to make the --

7 argument will have its main argument. It's approximately

8 30 minutes. After which, the Department will give its

9 only argument. And when the Department is done, I will

10 allow the Appellant another approximately 5 minutes for

11 any final comments it wishes to make.

12 Any questions from Appellants before we proceed

13 with arguments?

14 MR. AZAVEDO: No.

15 JUDGE GEARY: Thank you.

16 Any questions from Respondent?

17 MR. SHARMA: No questions. Thank you.

18 JUDGE GEARY: All right. Thank you.

19 Mr. Azavedo, will you be making the argument?

20 MR. AZAVEDO: We will be.

21 JUDGE GEARY: You will both be making it?

22 MR. AZAVEDO: Yes.

23 JUDGE GEARY: Okay. To the extent you are going

24 to inquire of Mr. Puri regarding facts, that would be

25 testimony. I assume you do not intend to do that?

1 MR. PURI: I'm sorry. Can you repeat?

2 JUDGE GEARY: Yes. Is it your intent to state
3 that certain facts exist that are not otherwise reflected
4 in the written documents? Are you going to describe
5 factual events.

6 MR. PURI: Probably.

7 JUDGE GEARY: Okay. That's testimony.

8 MR. PURI: Yes, sir.

9 JUDGE GEARY: And if you are going to state facts
10 under oath, you were supposed to disclose yourself as a
11 witness in this case, and you did not do that.

12 MR. PURI: Sorry. I didn't know that, but I can
13 do it now.

14 JUDGE GEARY: Well, you did just do it. You did
15 just disclose yourself as a potential witness. My
16 prehearing conference minutes and orders was pretty clear.
17 And I think we were pretty clear at the prehearing
18 conference that you were to identify any witnesses,
19 including yourself who would testify.

20 But let me turn to Respondent for a second.

21 With the testimony you intend to give, do you
22 still expect to be able to conclude in 30 minutes with
23 your primary argument?

24 MR. PURI: I think so.

25 JUDGE GEARY: All right. Let me ask Respondent.

1 Does Respondent have an objection to me allowing
2 Mr. Puri to offer some testimony today?

3 MR. SHARMA: Department has no objection. Thank
4 you.

5 JUDGE GEARY: All right. Given the fact that the
6 Department has no objection, I'm going to allow you to
7 testify.

8 MR. AZAVEDO: Thank you.

9 JUDGE GEARY: And let's -- I'm going to talk for
10 a second about how we're going to do this. But first I
11 wanted to ask you Mr. Puri, as part of your testimony will
12 you be stating what your connection is to Appellant, the
13 corporation?

14 MR. PURI: Yes, sir.

15 JUDGE GEARY: Okay. How -- Mr. Azavedo, how do
16 you want to do your presentation? Will you be asking
17 questions of Mr. Puri, or will Mr. Puri be actually making
18 statements on his own?

19 MR. AZAVEDO: He'll be making statements on his
20 own.

21 JUDGE GEARY: All right. Then what we'll do is
22 I'm going to administer an oath or affirmation to you,
23 Mr. Puri, and then I'll allow you two gentlemen to present
24 the arguments in any way you want. You do not have to do
25 a question and answer. If you wish to give a narrative

1 form presentation you can do that. Would you raise your
2 right hand for me, please.

3

4 A. PURI,

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

8

9 JUDGE GEARY: All right. Gentleman, you may
10 begin with your argument, testimony, whenever you're
11 ready.

12

13 PRESENTATION

14 MR. PURI: Responding to the -- my position in
15 the organization, this is a corporation. The ownership is
16 with my wife who is not present, but we don't need to.
17 And I'm husband, and I'm also the partner.

18 JUDGE GEARY: Can I interrupt to ask you what
19 your wife's name is?

20 MR. PURI: Urmil -- I'm sorry. I have some
21 problem with my voice because I present -- U-r-m-i-l.
22 Last name like mine, Puri, P-u-r-i.

23 JUDGE GEARY: Are you, Mr. Puri, identified on
24 the record with the Secretary of State as an officer,
25 owner, director of the corporation?

1 MR. PURI: Yes, sir.

2 JUDGE GEARY: All right. You gentleman may
3 proceed then. Go ahead.

4 MR. PURI: I'm going to try to make it simpler
5 and then I'll answer questions, whatever you may have.
6 What I'm reading it's been presented on the documents.
7 But what we're trying to do, I will read some of the
8 objection, then we want to present maybe 15, 20 minutes
9 pictures and the doc -- pictures and to prove what I'm
10 saying here.

11 JUDGE GEARY: Mr. Puri, can I ask you. Have you
12 made arrangements for your computer to be able to present
13 the pictures on our screen?

14 MR. KAFLE: Not yet, sir. So we just need a
15 connection to the --

16 JUDGE GEARY: That can't be done now.

17 MR. KAFLE: Okay.

18 JUDGE GEARY: Are the pictures --

19 MR. PURI: Has been sent.

20 JUDGE GEARY: -- exhibits that we already have?

21 MR. PURI: Yes, sir.

22 JUDGE GEARY: And were those the photographs that
23 were part of your --

24 MR. KAFLE: The PowerPoint presentation.

25 JUDGE GEARY: We'll be able to follow along with

1 that. You won't need to present them on the screen. Go
2 ahead.

3 MR. PURI: Thank you.

4 CDTFA assessed extra liability by estimating
5 based on sampling to a very short visit to my -- our
6 restaurant during a very short time. Such short visit
7 does not represent our -- my business volume or activities
8 during a three-year period. I'm willing to provide to OTA
9 full evidence, proof that the auditor calculations were
10 not fair for our type of business.

11 Just to add here, we'll be showing the pictures
12 to all that.

13 My restaurant is an upscale level, affluent area
14 and has tips gratuity paid by customers around plus
15 20 percent. Please allow me to provide together
16 supporting documents to the OTA. We would like to show
17 the pictures. Sorry.

18 JUDGE GEARY: Tell us what pictures you want us
19 to look at. Are you talking about the files that contain
20 copies of receipts?

21 MR. PURI: Files is not necessary for us to show,
22 but we'll go quickly on that one. But what we're trying
23 to prove is what is Royal Khyber? Where are they? What
24 kind of clients they have? Because the issue is the
25 gratuity that which CDTFA said is 10.2 percent tips or

1 gratuity. Our position is our gratuity is over 20 percent
2 by customers and clients. And we are trying to prove --
3 or our best to prove -- where we are and what people do.

4 So if you give us about 7 to 10 minutes to
5 produce it. I don't have to make any explanation on the
6 invoices. This is up. The invoices which we have sent
7 you probably, I don't know, 400 or some plus, and it shows
8 all in the year what were the customers, clients coming in
9 and having lunch, dinner, and what were their tips. The
10 whole issue is about the tips.

11 JUDGE GEARY: Do you want us -- my question is do
12 you want us now to make reference to the PowerPoint
13 presentation?

14 MR. PURI: Yes, sir. Now.

15 JUDGE GEARY: All right. Which is Exhibit 16.
16 And, Mr. Puri, are you going to be following along and
17 telling us what we're looking at?

18 MR. AZAVEDO: Yes.

19 MR. PURI: Can they see? Can they see it? They
20 can see the pictures?

21 MR. AZAVEDO: Not yet. Not yet.

22 MR. KAFLE: No, they haven't. They have already.

23 JUDGE GEARY: We will not be able to use this
24 screen because prior arrangements have to be made for
25 things like that, but we will be able to follow along

1 because we have copies in front of us.

2 MR. PURI: I'll try to speak a little quickly.
3 South Coast Plaza Mall. Royal Khyber Fine Indian Cuisine
4 is located in the South Coast Plaza Mall. It's an
5 original shopping mall in Costa Mesa, California. The
6 largest shopping center in the West Coast of the United
7 States. Its pre-Covid sale -- we're talking about the
8 mall -- was over \$1.5 billion annually for the highest in
9 the United States.

10 The South Coast Plaza Mall is the largest
11 shopping mall in the California and the fourth largest in
12 the United States. Renowned as the leading international
13 shopping destination, South Coast Plaza Mall is home to.

14 THE STENOGRAPHER: Mr. Puri, may I please ask you
15 to slow down.

16 MR. PURI: Oh, sorry. I didn't know you were
17 typing.

18 But repeating, South Coast Plaza Mall is home to
19 more than 280 prominent boutiques and critically acclaimed
20 restaurants/specialty food like Morton Steak House,
21 Antonello's, ANQI -- these are all located in the mall --
22 and Royal Khyber Fine Indian Cuisine, and other
23 restaurants, is the center of a vibrant business, arts,
24 and residential district that includes the adjacent, which
25 is the Segerstrom Center for the Arts, which is the second

1 highest in California and the Orange County Museum of Art.
2 We are trying to establish where we are located at.

3 Next, celebrating 55 years of quality, South
4 Coast Plaza Mall is the West Coast premium shopping
5 experiences with its proximity to the beaches and John
6 Wayne Airport in Santa Ana, which is about 7 minutes
7 drive, customized services and unparalleled collections of
8 top retailers from all over the world, Louis Vuitton,
9 Gucci, Hermes, Cartier, et cetera, et cetera.

10 Next, you may not be able to see it, but it's a
11 picture which shows pictures of Royal Khyber itself, Fine
12 Indian. And on the left-hand side, it shows the directory
13 of the South Coast Plaza Mall. In the directory which has
14 a lot of areas, but I only chose to show the restaurant
15 and specialty foods. It's listed there. There are 43
16 restaurants listed as part of the owners of the South
17 Coast Plaza Mall. So we are showing you the Royal Khyber.

18 Next picture. Recently -- we are all trying to
19 establish our customer base, what kind of people come and
20 what kind of people we serve, and those are the people who
21 pay us the gratuity -- one of the items is gratuity.

22 Then next page I'm looking at is a picture which
23 is all the time we get different kinds of credentials and
24 articles written on us. This was the latest one on
25 March 30th, 2023, last month. And it shows a picture of

1 the lady who wrote the article. She's a very-well known
2 writer -- restaurant food writer, Ms. Gretchen. And there
3 were -- she covered -- out of the 43 restaurants, which is
4 located in mall.

5 She just covered the international restaurant
6 people, which is 10 of them quickly, ANQI, which is
7 Vietnamese, Antonello's, Italian, Costa, Peruvian, and Din
8 Tai Fung is Taiwanese, Hamamori, Japanese, Knife Plate,
9 French, Paradise Dynasty, Chinese, Royal Khyber, Indian
10 food, Terrace, Filipino fusion, and then Spanish. And
11 this is the article we just received as recently as --
12 coming up.

13 Next line is going to be short little picture --
14 video -- a video. It explains the picture of the Royal
15 Khyber. And also, we going to try to tell that we did a
16 party in 2015 which is for another very famous law firm
17 called Latham & Watkins Law Firm. And we did their
18 Christmas party of December 9, 2016.

19 We can see all the food and the way we present
20 the food. The whole idea is, again, to tell us that we
21 are not usually having customer who is based 10 percent or
22 10.2 percent as they said. We have customers. I don't
23 have to explain what they pay to us, Latham & Watkins, but
24 you can check it out.

25 JUDGE GEARY: Mr. Puri?

1 MR. PURI: Yes.

2 JUDGE GEARY: Just so you know, there was no
3 video included with the documents you filed with OTA.
4 There are still photos only. So there will not be any
5 video in evidence.

6 MR. PURI: I understand, sir. The idea for me to
7 explain to the judges is that we are -- what kind of
8 customers we get. That's the whole issue.

9 JUDGE GEARY: I understand that.

10 MR. PURI: The whole issue is about that. The
11 issue is they're saying that the customers come there, and
12 they pay 10 percent tips gratuity. We are saying no, sir.
13 This is not right because right from the 2000, when I
14 started the restaurant until this day. And I'm going to
15 explain the real important issue after I finish this one,
16 if you please.

17 JUDGE GEARY: Yes. But let me -- I just want
18 to --

19 MR. PURI: Next video. I appreciate it.

20 JUDGE GEARY: Excuse me. I wanted you to
21 understand. You made reference to a video. There is no
22 video in evidence. It's all I wanted you to understand.
23 You can proceed with your presentation.

24 MR. PURI: What I'm looking at it's -- it is not
25 there?

1 JUDGE GEARY: It was not filed with OTA, correct.
2 MR. PURI: No. We filed it.
3 MR. KAFLE: Sir, it's in the PowerPoint
4 presentation. So whenever you hold your mouse over the
5 video, I mean, you can just see it once you play it.
6 MR. PURI: Oh, I'm sorry. I did not know that.
7 JUDGE GEARY: Is the still we are supposed to
8 hover over the one with the picture of Royal Khyber?
9 MR. KAFLE: Yes, sir. And you can see the play
10 button on the bottom, and you can just play it.
11 JUDGE GEARY: I can tell you that I cannot.
12 Judge Kwee, are you able to play that?
13 MR. PURI: I hope you are able to see. No. It
14 is difficult. Why didn't you just let them know?
15 JUDGE GEARY: Is your microphone on?
16 MR. PURI: Sorry. I was having difficulty seeing
17 what -- how they did. There's a little button where it
18 says Royal Khyber picture. I can describe if you allow
19 me.
20 JUDGE GEARY: That won't -- that won't be
21 necessary. I believe that you have it. I'm simply
22 indicating it's not in evidence, and it won't be in
23 evidence. So just proceed with your presentation and --
24 MR. AZAVEDO: Do you mind if he approaches the
25 bench?

1 JUDGE GEARY: To do what? To show us that?

2 MR. AZAVEDO: No.

3 JUDGE GEARY: Yes, I do mind.

4 MR. AZAVEDO: Okay.

5 JUDGE GEARY: We won't -- we're not going to be
6 able to see the video, so just continue with your
7 testimony.

8 MR. PURI: It is -- it is perfectly okay. We
9 just want to have the judges know that what kind of
10 restaurant we are operating.

11 Next line is again -- so I will go quickly -- our
12 Royal Khyber location, and the -- our capacity. We have
13 105 indoor-seating capacity. We have 120 people outdoor
14 seating capacity with a fountain and patio area. Total is
15 about 250 people. Again, high-end people. We have full
16 alcoholic bar, and we are licensed since 2000. Again,
17 that's -- I put in again picture on that one.

18 The next pictures are all four or five saying
19 what kind of other neighbors we have, like other
20 restaurants or other people from all over the world.
21 Because all it, again, trying to emphasize that we are not
22 a 10 percent gratuity restaurant. These are all related.
23 I'm just going fast. Okay. That's the end of the, so to
24 speak, video.

25 I'm -- I'll have the time still, about a few --

1 four more minutes. I will try to finish this.

2 Your Honor, additional comments are that after
3 receiving from OTA the prehearing conference minutes and
4 orders, this one, about 10 days ago. Dated which was --
5 sorry -- in about 11 --10 days ago after I received it, we
6 were disappointed to note that CDTFA once again number
7 one, ignored and neglected to consider American Express
8 credit card loan of \$20,000 that was added to the credit
9 card sales.

10 Number two, auditor automatic gratuity of -- I'm
11 going to say quickly all the numbers -- \$94,819, which was
12 estimated as 4.09 percent is very, very high. Please note
13 during this audit period, which was -- the period was for
14 2010 to 2013, 10 years ago, we did not have any POS system
15 those days. System in our restaurant -- therefore, we
16 were not able to charge any auto gratuity. It's important
17 thing to calculate on the whole issue. Once we did
18 install the POS system, which was on a November of 2013.

19 JUDGE GEARY: Did you say 2015?

20 MR. PURI: About 2013. Yes, sir. And I want to
21 repeat and said that the CDTFA was trying to analyze how
22 much we should be paying, but three years before, which
23 when we were there, and we had no POS system. But in 2013
24 onward we had a POS system, and we started calculating out
25 the gratuity which never exceeded more than 0.01

1 percent -- 0.01 at maximum. Repeating once again, CDTFA
2 did say that it was 4.09 percent, but --

3 THE STENOGRAPHER: I'm sorry to interrupt, but
4 can you repeat that last sentence again.

5 MR. ALVARAZ: Last sentence, say it again.

6 MR. PURI: Last sentence, the auto gratuity which
7 we started finding and calculating after we got the POS
8 system was 0.01 percent. And the CDTF claimed that auto
9 gratuity of \$94,819 was estimated by them on the basis of
10 4.09 percent, which actually should be almost
11 zero percent. However, there is no estimated auto
12 gratuity included there.

13 I appreciate listening to me and giving me a
14 time. Only thing left over if the CDTFA wants to know
15 what percentage gratuity we have been getting it, that's
16 why we presented almost 400 invoices at random to
17 calculate what was the people when they come there. And
18 when you see those, I can look at it. Actually, if I do
19 the -- if I do the 400 and divide by the number
20 approximated, it could be the gratuity is between
21 25.2 percent to 20.7 percent, but definitely not
22 10.2 percent. Taxes -- gratuity and -- what do you call
23 that? -- tips isn't that level. We are that kind of level
24 restaurant operating for the last 20 years.

25 Thank you very much for your time.

1 JUDGE GEARY: Thank you, Mr. Puri. Let me first
2 ask Respondent if it has any questions. Because you
3 testified to facts, Respondent and my colleagues are
4 allowed to ask you questions about what you testified to
5 and I will ask Respondent first.

6 Does Respondent have any questions?

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

9 JUDGE GEARY: All right. Judge Long, any
10 questions?

11 JUDGE LONG: Yes, I do have a couple of
12 questions. First, I just wanted to make it clear for
13 myself, at least. You had seating capacity of about 220
14 people. And then is the 250-seating capacity for parties,
15 is that in addition to 220, or is it if you close the
16 restaurant and had a party instead it was 250?

17 MR. PURI: Restaurant itself has two areas. When
18 you come to Royal Khyber, you enter into the door, and we
19 have an area where the bar is and everything is
20 approximately what I said is 105. Because if you look at
21 the -- which is registered by the City of Santa Ana,
22 saying capacity is 105 people.

23 Then we go outside and we have a beautiful
24 outside area -- with the pictures can show you if you ever
25 get a chance -- is the fountain and this and this and

1 where we do parties that can handle about 150 people. Can
2 actually it can be more than that. So together is
3 approximately what number you just said. I think I said
4 150 number, some -- some -- the number which I give it to
5 you.

6 JUDGE LONG: Okay. And then I just wanted to --
7 I'm going to use Exhibit 1 as an example, given the size
8 of your restaurant. I'm looking at Exhibit 1, and there's
9 five receipts for August 1st, 2016, and I notice they're
10 not in sequential order, that some of them are, you
11 know --

12 MR. PURI: What are you looking at, sir? I'm
13 sorry. I didn't --

14 JUDGE GEARY: Exhibit 1. If you look at it,
15 there's receipts --

16 MR. PURI: You know what --

17 JUDGE LONG: -- for August 1st, 2016.

18 MR. PURI: Can I -- can I tell you the exhibit
19 which we have been talking about -- is it our exhibit or
20 the one --

21 JUDGE GEARY: It is your Exhibit. And I
22 understand that you've been talking about Exhibit 16, but
23 I want to move on and discuss Exhibit 1.

24 MR. PURI: Honestly, I don't know the exhibit
25 number, whether it's 15, 16, and where is it?

1 JUDGE LONG: It's just the first pages of
2 exhibit --

3 MR. PURI: Oh, okay.

4 JUDGE LONG: -- it's -- it's --

5 MR. PURI: Okay. Okay. Go ahead.

6 JUDGE LONG: -- receipts for August 1st, 2016,
7 and they're not in sequential order, and it looks like
8 some are missing. And I just --

9 MR. PURI: Oh, it was this --

10 JUDGE LONG: Hi. I'm -- I'm trying to finish my
11 question. How -- given the size of the restaurant, how
12 can we tell from a relatively small sample of receipts
13 that the tip ratios that you've calculated here -- which I
14 also want to note don't match the numbers at the bottom of
15 the receipts that are prepopulated. How can we tell that
16 is actually representative of the business?

17 MR. PURI: Hello. Hello can you hear me? Can
18 you hear?

19 MR. ALVARAZ: You're on. You're on.

20 MR. PURI: Okay. Your Honor, the actual number
21 of invoices are approximately -- we do -- average we do
22 about 3,000 or so in those areas -- in those times per
23 month. This is for three years, which means 36 months.
24 36 months, I think. You multiple that. I have about 5
25 different boxes of maybe 15 to 20,000 receipts. We just

1 pulled out all -- just pulled it out and then started
2 calculating it. But these are not all the receipts.

3 JUDGE LONG: Okay. But I guess my point is that,
4 you know, again looking at the receipts you provided for
5 August 1st, 2016, you only provided 5. So how do I know,
6 for example, that this one where you've calculated
7 21.7 percent tip, Check Number 2084, how do I know that is
8 representative and not the other, you know, 2,995
9 receipts.

10 MR. PURI: The only thing I comment to you is
11 again, I prepared this one not picking up one. We just go
12 there, and it was prepared two years ago. I think maybe a
13 year-and-a-half ago when we presented it to the CDTFA
14 also. Your question, if I understand you, simply that
15 you're saying only 400 or something are here, how do you
16 know that represents 30,000 people who came and joined us;
17 is that correct?

18 JUDGE LONG: Correct. I mean, you could seat 105
19 people inside your restaurant at a time, and I only
20 have -- again, just looking at August 1st, 2016 -- 5. And
21 how would I confirm that that's representative of the
22 business?

23 MR. PURI: Okay. The right word is probably
24 "random sample". But let me, sir, with respect to all of
25 us, the purpose of us showing you the pictures of where

1 we're located, what kind of operation we do, and also
2 indicating a little video saying that we made a party in
3 2015. We had lots of parties since we started, but I had
4 a picture. We took pictures at that time with a law firm,
5 and you can see if they paid a bill and what can be the
6 gratuity they paid.

7 We're trying to establish what kind of tips and
8 gratuity we've been getting. That's my focus because the
9 whole case is based on that as I believe and understand.
10 The amount of money CDTFA is saying that we owe them this
11 and this and the last -- the three years period they did.
12 First of all, they were not there physically when that
13 time period, when it is 2010 to 2013. They came to our
14 restaurant to audit us first time was in 2014, three
15 years -- one-and-a-half years later, which is probably not
16 normal.

17 But when make our position here, they did not
18 take enough time. I'm going to repeat it this, so I do
19 not make a mistake. I said that the short visit of the
20 CDTFA represent my business volume or activities during
21 three years is not enough. I am willing to provide OTA
22 full evidence to prove of the auditor's calculation were
23 not fair for the type of business.

24 JUDGE LONG: I'm sorry. I'm actually going to
25 interpret because it's the second time or third time maybe

1 that you've said that you're willing to provide full
2 evidence. Have you not -- what prevented you from
3 providing that evidence during the audit, during your
4 appeals with CDTFA, or prior to today?

5 MR. PURI: Your Honor, everything we presented to
6 CDTFA in the last seven years because this is the seventh
7 year we are -- before we are sitting with you. We
8 presented to them, I don't know, thousands of papers of
9 this document for the last seven years. And I met them a
10 few times explaining the same thing. Why are you saying
11 I'm having a restaurant where the people come in, and they
12 pay you 10 percent tips?

13 We are saying no. We're located in a very
14 high-end area. When the customers come, it doesn't matter
15 what day or how many businesses are, we're in that range.
16 So please give us or you can ask us, it's not 20 percent.

17 JUDGE LONG: Okay. Thank you.

18 MR. PURI: I'm saying it's 20 percent or more
19 than plus 20 percent. And we're saying they did not pay
20 enough time to analyze and try to figure it out. Go to
21 the same places. What is Royal Khyber? What are the
22 other restaurants? And estimating, okay, your tips are
23 10.2 percent is not fair to our company.

24 JUDGE LONG: Okay. Thank you. I have no further
25 questions.

1 JUDGE GEARY: Thank you, Judge Long.

2 Judge Kwee, do you have any questions?

3 JUDGE KWEE: This is Judge Kwee. Yes, I did have
4 a couple of questions about when you were talking about
5 the automatic gratuities. If I understand correctly, were
6 you -- are you contending that the amounts of automatic
7 gratuities should have been 10 percent or higher than what
8 was included?

9 MR. PURI: I believe you're talking about
10 automatic gratuity; is that right?

11 MR. ALVARAZ: Right.

12 JUDGE KWEE: Yes. My question was, are you
13 saying that the amount of automatic gratuity should be
14 higher?

15 MR. PURI: Automatic gratuity should be a lot
16 lower.

17 JUDGE KWEE: Okay.

18 MR. PURI: They said 4.09 percent ours, because
19 they were estimating it. We don't -- never had the POS
20 system. Usually -- again, I'm not a tech guy. Maybe he
21 can help you. He's a CPA. When -- these are calculated
22 when you have proper system. When we -- when I bought in
23 2013 the POS system. The first time we started using it,
24 there was an area where we can put down automatic
25 gratuities.

1 So we came out to be 0.01. Let's call it for the
2 purpose of the discussion, zero automatic gratuity. So
3 but they said that it was -- so they were calculating that
4 it is also part of the sale, I believe that's what it is.
5 Automatic gratuity is part of the sales. And for rich --
6 okay. All right.

7 So I hope I am answering your question, but we
8 can clarify with -- Mr. Azavedo can explain to you a
9 little better. By the way, this word of automatic
10 gratuity and all that is CDTFA words. I did not have my
11 own words in any one of this. Everything is from them.

12 JUDGE KWEE: Okay. So you're saying that you
13 don't automatically add tips on checks paid by customers?

14 MR. PURI: We do not add tips in ourself.
15 Customer gives us the tips. The whole ball of wax is
16 about what kind of customer we have received. They come
17 in. Look at the invoices. If you look at the 400
18 invoices, you'll see the lines.

19 Can you just show to us again?

20 It starts with what the data is saying our
21 invoice or bill -- bill. And let us says the bottom,
22 that's what they -- how much they -- then there's the --
23 okay. Then you can see --

24 MR. ALVARAZ: They cannot see that.

25 MR. PURI: Oh, sorry. You cannot see, but at the

1 bottom it says amount total, next tip. It's all blank.
2 They have to --customer has to fill it out. Next line
3 is --

4 MR. ALVARAZ: Total.

5 MR. PURI: Total. And then it says suggested
6 tips 18 percent, 20 percent, 22 percent. Now, I think
7 it's -- so these are -- we do not pay our tips. Many --
8 sometimes the customers come in the money says tips are
9 zero. But it's very, very rare. So I'm saying it is both
10 sides. But our whole issue is about the tips. We do not
11 pay the tips to ourselves or tell the customer you pay it
12 to me. No.

13 JUDGE KWEE: Okay. And I believe that the
14 CDTFA's documents indicate for parties of six or more
15 there was a menu saying that tips were automatically
16 added.

17 MR. PURI: If you -- I'm going to go remember
18 from my memory. Okay. In the menus over the years, there
19 was a clause at that time -- maybe I think before they
20 started to do it -- that if you have party of six people
21 or more, they take the space. And at that time, they have
22 the option -- they have the privilege of paying the amount
23 they can say to us, can you add 18 percent? Or we ask
24 them, okay, what is your -- so that's the only time. I
25 beg your pardon. I should have report. That's the only

1 time we -- when we finish our ticket, we add them what
2 they tell us.

3 JUDGE KWEE: Okay. Thank you. I don't have any
4 further questions. I'm going to turn it over back to
5 Judge Geary.

6 JUDGE GEARY: Thank you, Judge Kwee.

7 I have a couple of questions. So to be clear,
8 there were circumstances where your menus, at least,
9 indicate that gratuities were mandatory for parties of six
10 or more?

11 MR. PURI: Wrong.

12 JUDGE GEARY: Okay. Is it your testimony that
13 there were never any mandatory gratuities charged to
14 customers during the audit period?

15 MR. PURI: That -- yes, correct. And also, just
16 to clarify, some menus -- I don't know on -- they have the
17 option to pay, but there's no mandatory. None. Period.

18 JUDGE GEARY: When Latham & Watkins had their
19 party at your restaurant, was Latham & Watkins -- I'm
20 assuming there were more than six people at that party;
21 correct?

22 MR. PURI: 129.

23 JUDGE GEARY: All right. Were they charged a
24 mandatory gratuity?

25 MR. PURI: No. They --

1 JUDGE GEARY: You've answered the question. To
2 move things along, just try to focus on the question that
3 I'm asking. Thank you. Did you say that your restaurant
4 issues 300 -- or 3,000 bills to customers per year or
5 receipts to customers per year?

6 MR. PURI: Not anymore. Not per year, sir, per
7 month.

8 JUDGE GEARY: Per month, I mean?

9 MR. PURI: Yeah. Not anymore. Because since
10 Covid, it has gone down to half of that.

11 JUDGE GEARY: But in 2010 to 2013 were you
12 issuing approximately 3,000 receipts per month to
13 customers?

14 MR. PURI: I don't honestly remember, but it was
15 a long year, but it should be very close. Because we were
16 having -- let me just -- I'm going to think out loud with
17 you -- an average on a weekly basis, we will have on the
18 weekend -- 150, 230, plus -- that's the 300 --

19 JUDGE GEARY: It's best not --

20 MR. PURI: -- between 2,000 and 2,500.

21 JUDGE GEARY: So 2,000 to 2,500 --

22 MR. PURI: Per month.

23 JUDGE GEARY: -- receipts issued to customers per
24 month. And a receipt could be for more than one customer;
25 correct?

1 MR. PURI: Yes, sir.

2 JUDGE GEARY: And you are talking about 2,000 to
3 2,500 receipts, not 2,000 to 2,500 people?

4 MR. PURI: Oh, no, no. No, no. Sorry. Sorry.
5 2,500 people, the receipts could be 50 or 100 or 200.

6 JUDGE GEARY: All right. So what you're saying
7 is that during the audit period, you believe your
8 restaurant served between 2,000 and 2,500 people per
9 month --

10 MR. PURI: Yes, sir. Average. Getting back to
11 the --

12 JUDGE GEARY: Let me just again ask you -- you've
13 answered the question. We have to move things along. And
14 you have boxes and boxes of receipts somewhere you said?

15 MR. PURI: Used to. We never kept them. Ten
16 years ago.

17 JUDGE GEARY: Well, you kept them to a point
18 because you have said you had boxes and boxes of them.
19 When did you have them?

20 MR. PURI: No. I was talking the period of when
21 they were auditing from 2010 to 2013, we don't have it.
22 If you see the receipts I sent you, they're all probably
23 dated 2015, 2016, 2017. But I didn't have the receipt of
24 that period which was the audit.

25 JUDGE GEARY: Okay. So --

1 MR. PURI: And they didn't have it either.

2 JUDGE GEARY: So during -- while the audit, that
3 we're here talking about, was going on, did you have
4 copies of all the receipts that you had issued during the
5 audit period?

6 MR. PURI: To the customer we have to give the
7 receipt every time the customer comes and leaves.

8 JUDGE GEARY: And you had them --

9 MR. PURI: Oh, no.

10 JUDGE GEARY: -- when the audit was happening?

11 MR. PURI: No. I'm sorry. I don't have it
12 anymore because we did not have. The audit started three
13 years later.

14 JUDGE GEARY: Okay. So when the audit was
15 happening -- and I'm going to ask you the question again.
16 Don't speak, please. Listen to the question. When the
17 audit was happening, did you have all receipts for sales
18 during the audit period?

19 MR. PURI: Those were not kept, but we provided
20 them to CDTFA these receipts which were happening during
21 the year when they were auditing, which is 2014 onwards.

22 JUDGE GEARY: Okay. So you did not have any of
23 receipts from the audit period when CDTFA said -- asked
24 you, please provide source documents or receipts for the
25 period of the audit? You had no receipts; isn't that

1 right?

2 MR. PURI: I -- I -- no, no. We had the
3 receipts, but we were not keeping it. See until the audit
4 started, we didn't know we needed any receipt because
5 after that when we just don't need it -- need them
6 ourselves. But we have record of sales how much we have
7 because my CPA was giving that. Answering your question,
8 sir, trying to answer. Maybe I'm mistaken. The receipts
9 we provided if -- I don't even remember when -- if we
10 provide them. If we provided to CDTFA, those receipts
11 will be from year 2014 onwards.

12 JUDGE GEARY: Okay. All right. So you --

13 MR. PURI: Because that's what they requested.

14 JUDGE GEARY: Okay. So are you saying when CDTFA
15 was doing its audit, it did not ask you for receipts from
16 the audit --

17 MR. PURI: They --

18 JUDGE GEARY: Excuse me. Please wait until the
19 question is done. They did not ask you for receipts from
20 the audit period?

21 MR. PURI: I don't remember if they asked me or
22 not, but what I can do is tell you that they did not
23 have -- they estimated all that because with the POS
24 system, we didn't have a POS system. After we have POS
25 system, receipts are available every time, every -- every

1 time. Before that, we didn't have a POS system.

2 JUDGE GEARY: Those are the only questions that I
3 have. Let me just ask my fellow judges.

4 Any questions, Judge Long?

5 Anything else, Judge Kwee?

6 JUDGE KWEE: I don't have any further questions.

7 Thank you.

8 JUDGE GEARY: Thank you.

9 You've included your initial argument.

10 Mr. Azavedo, did you have something to add?

11 MR. AZAVEDO: No, I didn't.

12 JUDGE GEARY: All right. Thank you.

13 MR. AZAVEDO: He covered it well. Thank you.

14 JUDGE GEARY: Okay. Thank you.

15 CDTFA, are you ready to give your argument?

16 MR. SHARMA: Yes, Judge. We are ready. Thank
17 you.

18 JUDGE GEARY: Madam Court Reporter, are you okay?

19 THE STENOGRAPHER: Yes, I am. Thank you.

20 JUDGE GEARY: All right. Go ahead.

21

22 PRESENTATION

23 MR. SHARMA: Appellant, a corporation, operated a
24 restaurant selling Indian-style food with sales of beer,
25 wine, and liquor since November, 1998. The Department

1 performed an audit examination for the period of
2 October 1, 2010, through September 30, 2013.

3 Records available for the audit: Federal income
4 tax returns for years 2011 to 2013, bank statements, and
5 1099-K data for the audit period, copies of sales receipts
6 and points of sales, daily sales summary reports for
7 April 29, 2014, to May 8, 2014, and June 1, 2014, to
8 September 30, 2014.

9 Appellant did not provide point of sales data
10 download, sales receipts, sales journals, purchase
11 invoices, or any purchase journals for the audit period.
12 Appellant did not provide any supporting worksheets for
13 quarterly sales and use tax returns. Due to lack of
14 detailed sales records or worksheets, the Department could
15 not verify the accuracy of reported amounts.

16 The Department compared Appellant's reported
17 gross receipts for federal income tax returns to reported
18 totals sales for sales and use tax returns and found
19 differences of around \$365,000 for the audit period;
20 Exhibit B, page 349. The Department also compared total
21 bank deposits with the reported sales for sales and use
22 tax returns and noted unexplained differences of \$260,000
23 for the audit period; Exhibit B, page 350.

24 Based on the above analysis, the Department
25 determined that Appellant's books and records were not

1 complete, not reliable, and inadequate for sales and use
2 tax purposes. So an indirect audit method was used to
3 verify the accuracy of reported amounts and to determine
4 unreported taxable sales. To verify the accuracy and
5 reasonableness of submitted daily sales reports, the
6 Department performed two observation tests.

7 First test was performed from 11:30 a.m. to
8 2:00 p.m. on May 8, 2014. And second test was performed
9 from 5:00 p.m. to 9:30 p.m. on March 4, 2015. Based on
10 the two observation tests, the Department determined that
11 submitted point of sales daily sales summary reports were
12 reasonable and acceptable.

13 The Department combined two observation tests and
14 daily sales summary reports from April 29, 2014, to May 8,
15 2014, and June 1, 2014, to September 30, 2014, to
16 determine mandatory credit tips ratio of 4.09 percent,
17 optional credit card tips ratio of 10.42 percent, and cash
18 sales ratio of 3.51 percent; Exhibit 8, page 54, Exhibit
19 B, pages 222 to 296. Just to be clear, that optional
20 credit card tips ratio is based on Appellant's own books
21 and records.

22 The Department used bank statements and 1099-K
23 data to determine total credit card sales of little more
24 than \$2.3 million for the audit period; Exhibit B,
25 page 297. The Department used these figures to determine

1 audited credit card sales of around \$1.98 million, cash
2 sales of around \$70,000 for the audit period; Exhibit A,
3 page 51.

4 During the audit process, the Department noted
5 that Appellant sold gift certificates through
6 restaurant.com and Groupon. Appellant recorded payments
7 from the sales of these gift certificates as other
8 tenders. The Department used Appellant's books and
9 records to determine taxable sales of around \$63,000 for
10 the audit period; Exhibit A, page 56.

11 Based on the above audit processes, the
12 Department calculated audited taxable sales of little more
13 than \$2.11 million for the audit period. After allowing
14 an adjustment for applicable sales tax rate, the
15 Department determined excess audited taxable sales of
16 around \$1.96 million. Appellant reported taxable sales of
17 around \$1.72 million resulting in unreported taxable sales
18 of around \$235,000 for the audit period; Exhibit A,
19 page 50.

20 The Department used credit card sales and
21 mandatory tips ratio to determine unreported mandatory
22 tips of around \$95,000 for the audit period; Exhibit A,
23 page 51. During the audit processes, the Department noted
24 that Appellant added sales tax reimbursement at the
25 selling price of gift certificates, which resulted in

1 excess tax reimbursement for sales related to the gift
2 certificates sold through restaurants.com and Groupon.

3 The Department used Appellant's books and records
4 and determined excess tax reimbursement of \$2,961 for
5 restaurant.com and \$3,042 for Groupon for the audit
6 period; Exhibit B, pages 345 to 348. The Department used
7 Appellant's estimated amount of self-consumption of \$185
8 per quarter to determine unreported self-consumption of
9 little more than \$2,000 subject to use tax for the audit
10 period; Exhibit B, page 344.

11 Based on the stated audit procedures, the
12 Department determined unreported taxable sales of around
13 \$235,000, unreported mandatory tips of \$95,000, unreported
14 self-consumption of \$2,000, and excess tax reimbursement
15 of \$6,003 for the audit period.

16 When the Department is not satisfied with the
17 amount of tax reported by the taxpayer, the Department may
18 determine the amount required to be paid based on any
19 information which is in its possession or may come into
20 its possession. In the case of an appeal, the Department
21 has a minimal initial burden of showing that its
22 determination was reasonable and rational. Once the
23 Department has met its initial burden, the burden of proof
24 shifts to the taxpayer to establish that a result
25 differing from the Department's determination is

1 warranted. Unsupported assertions are not sufficient to
2 satisfy a taxpayer's burden of proof.

3 The Department used Appellant's own records to
4 determine the audit liability. Doing so produced a
5 reasonable and rational determination. Appellant contends
6 that optional credit tips ratio should be around
7 22 percent. In support of its contention, Appellant
8 submitted 28 credit card sales receipts with its reply
9 brief dated May 6, 2021 and 447 credit card sales receipts
10 on April 24, 2023.

11 However, Appellant didn't provide any sales
12 summary reports on point-of-sale sales data pertaining to
13 these sales receipts. In the absence of complete sales
14 summary reports or point-of-sale sales data, the
15 Department could not verify the completeness and accuracy
16 of submitted sales receipts.

17 In reviewing Appellant's submission, the
18 Department made a few observations. First, after 475
19 sales receipts provided by Appellant for the period
20 May 2015 through December 2017, there were none with zero
21 tips or tips below 15 percent. Second, the Department
22 reviewed 2,904 sales receipts in the test period of
23 132 days and two observation tests. Of those sales
24 receipts, there were 792 with zero tips and 1,865 with
25 tips less than 18 percent. Third, 95 percent of

1 Appellant's sales receipts had tips over 18 percent,
2 whereas, only 36 percent of the sales receipts from the
3 Department's test period had tips over 18 percent.

4 Based on this review, it appears that Appellant
5 carefully selected which sales receipts it wanted to
6 include in its submission to the Office of Tax Appeals.
7 Instead of including all sales receipts from May 2015 to
8 December 2017. Therefore, the Department determined that
9 the submission is unverifiable, incomplete, and not
10 representative of its business activities during the audit
11 period.

12 Appellant contends that it did not charge any
13 mandatory tips during the audit period but did not provide
14 any documentary evidence, such as sales receipts, for the
15 audit period to support any adjustments for this
16 contention. Appellant contends that credit card sales
17 included credit card loans of \$20,000. Appellant didn't
18 provide any documentary evidence in support of its
19 contention. However, a review of bank deposit analysis
20 shows that audited credit card deposits are net of
21 non-restaurant sales of little more than \$159,000 for the
22 audit period; Exhibit B, pages 300 to 337.

23 Appellant contends that cash sales ratio was less
24 than 3 percent during the audit period. In response, the
25 Department submits that despite various requests Appellant

1 failed to provide any documentary evidence such as sales
2 receipts or sales journals to show that cash sales ratio
3 was less than 3 percent for the audit period. Appellant
4 contends that it collected correct amounts of sales tax
5 and there was no excess tax reimbursement during the audit
6 period. In response, the Department submits that its
7 review of Appellant's books and records revealed excess
8 tax reimbursement when sales included redemption of gift
9 certificates sold through restaurant.com and Groupon;
10 Exhibit B, pages 393 to 404.

11 Based on the foregoing, the Department has fully
12 explained the basis for deficiency and proved that the
13 determination was reasonable based on the available books
14 and records. Appellant has not met its burden to prove
15 otherwise. Therefore, the Department request the
16 Appellant's appeal be denied.

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

19 JUDGE GEARY: Thank you.

20 First, by way of explanation for Appellant,
21 because CDTFA did not offer any testimony, in other words
22 no one on behalf of CDTFA testified to any facts, the
23 Appellant is not allowed to question the person who
24 presented the argument on behalf of CDTFA. Had Appellant
25 not offered testimony, I would not have offered Respondent

1 an opportunity to question you, Mr. Puri.

2 Let me turn to Judge Long to see if he has any
3 questions for the Department.

4 JUDGE LONG: I just have a quick question about
5 the excess sales tax reimbursement. My understanding is
6 that the auditor found when Groupon or restaurant.com
7 sales were made, the full amount of the sale was input
8 into the POS system and then essentially the coupon or
9 redemption was -- reduced the sales price but the tax rate
10 was not readjusted. Is that, as my understanding,
11 correct?

12 MR. SHARMA: That's correct. Because in case of
13 restaurant.com, generally it's 40 percent of the
14 certificate is redeemed. And in the case of Groupon, it's
15 50 percent. But Appellant charged tax on the full price.
16 So by doing that, the way the audit is done, the audit is
17 done based on the payment received. So the balance is
18 excess reimbursement, which was allocated to the State.
19 That's correct.

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

22 JUDGE GEARY: Thank you, Judge Long.

23 Judge Kwee, do you have any questions?

24 JUDGE KWEE: Just one question for CDTFA. When
25 you were calculating the 4.09 percent automatic

1 gratuities, was that based on the observation test you
2 looked at where the tip amount was prefilled on the
3 receipt as opposed to where the customer wrote it in and
4 that's how you came up with the amount of automatic
5 gratuities?

6 MR. SHARMA: That is based on the observation
7 tests as well as Appellant's own records from the period
8 April 29, 2014, to May 8, 2014, and June 1, 2014, to
9 September 30, 2014. So where they automatically
10 calculated the tips, that is 4.09 percent.

11 JUDGE KWEE: Okay. Thank you. So my question, I
12 guess, to focus it was just in determining what was
13 automatically added as a gratuity, you looked at what was
14 prefilled on the receipt to determine that?

15 MR. SHARMA: That's correct.

16 JUDGE KWEE: Okay. Perfect. Thank you.

17 MR. SHARMA: Thank you.

18 JUDGE GEARY: Thank you, Judge Kwee.

19 As I indicated early on in this hearing, we allow
20 the Appellant the last word because the heavier burden
21 always falls on Appellant in cases like this. And if you,
22 Mr. Puri, or if you, Mr. Azavedo, would like to take five
23 minutes or so to give concluding remarks -- you're not
24 required to. But if you would like to, I'm happy to allow
25 that.

1 MR. AZAVEDO: I have not seen the Groupon
2 calculations, so I'm not able to respond.

3 JUDGE GEARY: Mr. Puri, do you wish to give any
4 concluding remarks?

5

6 CLOSING STATEMENT

7 MR. PURI: I am a little bit confused that if
8 everybody is clear that we did not have the
9 instrumentation, which is POS system in the old time, for
10 the period for which they have done all this. All the
11 data -- all the information they're saying is in 2014
12 onwards. Yes, at that time we gave them. There's -- if I
13 understand what they're saying, we did not provide them
14 anything for 2010, '11, '12, and '13. We had whatever we
15 had. We gave to them.

16 Secondly, there was a question about --
17 approximately you asked a question for Watkin and other
18 people. We just wanted to present -- and I'm not sure if
19 I clarified or made clear that the restaurant operation we
20 have. Well, let me compare it to today, people today. If
21 we go to the restaurant, nice restaurant, you know,
22 depending, and go and give them tips of 18, 20,
23 25 percent, whatever tip it may be. Those years we were
24 having, and there's records here, whatever, 2015 onwards,
25 I had kept the invoices.

1 We took some of them and put in there. It's
2 almost similar, except exactly not 22 percent. It used to
3 be 18 and 19. And I think I heard them saying that they
4 were 18 percent tips given to a lot of customers during
5 the period they were auditing. But where did the 10
6 percent come? How can they calculate? And the only
7 answer -- as a half intelligent man, if I can, is
8 estimate. What was the formula used for estimation? No
9 answer.

10 I had met the CDTFA at least for five or six
11 times in the last seven years discussing only this issue.
12 Show me where it is. Also, please tell me how did you
13 calculate 10.2 percent? This is -- this is -- I mean,
14 throwing dirt on my face that you are in an area -- Royal
15 Khyber is in an area where people come and take the money.
16 That is they had to say.

17 My only position is, Your Honor, is we are good
18 people. We are very proud of it. We do a great job. We
19 make everything good. People come and they are happy.
20 They provide -- I will never ask them to pay 18, 15, 16,
21 20 percent. They pay. Many of them will not pay.
22 Sometimes zero because they go and spend money on other
23 things. But this is the worse to me. It is the most
24 difficult part to accept. So my -- what is my own
25 judgement? They did not take enough time to analyze. I

1 don't know what their business is. I don't know what they
2 do, but they should analyze to check and see where are we.

3 Did they ever go across the street to see what
4 other restaurants are doing which is just like ours? They
5 would never find less than 18, 20 percent those days, and
6 we are in the same category. So where is the 10.2 percent
7 came?

8 JUDGE GEARY: Thank you, Mr. Puri.

9 I need to return to the Department for a
10 question. Did you have any actual receipts from the audit
11 period?

12 MR. SHARMA: No, we did not. Despite various
13 requests, Appellant didn't provide anything from the audit
14 period.

15 JUDGE GEARY: Okay. So when Judge Kwee asked you
16 if the tip amount was already filled in, you are referring
17 to the receipts during the test period, which were all
18 after the audit period; correct?

19 MR. SHARMA: That's correct.

20 JUDGE GEARY: All right. All right. Those are
21 the only questions I have. Thank you.

22 Thank you, Mr. Puri, for your concluding
23 comments.

24 Bear with me just a second. All right. The
25 parties, I take it, submit the matter? There's no further

1 argument, no further evidence?

2 You submit the matter, Mr. Puri and Mr. Azavedo?

3 MR. PURI: I'm not sure what the matter means?

4 JUDGE GEARY: What that means is you're ready to
5 give the matter to the Judges to decide now.

6 MR. PURI: Yes, Your Honor.

7 JUDGE GEARY: Thank you.

8 And Department submits the matter?

9 MR. SHARMA: Department does. Thank you, sir.

10 JUDGE GEAR: All right. This case is submitted
11 on May 9th, 2023, at 10:49 a.m. The record in this matter
12 is now closed, and this hearing is not concluded.

13 I want to mention that in the coming weeks the
14 panel of judges, the three of us here on the dais will be
15 meeting to consider the matter, and OTA will issue a
16 written opinion and deliver that opinion to the parties
17 within 100 days.

18 This concludes OTA's morning calendar. We will,
19 however, be reconvening this afternoon at 1:00 o'clock for
20 two other hearings.

21 And again, thank you everybody for your
22 participation this morning.

23 (Proceedings adjourned at 10:53 a.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 26th day
of May, 2023.

ERNALYN M. ALONZO
HEARING REPORTER