

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
SHERVIN ENTERPRISE, INC.,                   ) OTA NO. 20086474  
   )  
                    APPELLANT.                )  
   )  
   )

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, August 9, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California,  
91401, commencing at 1:00 p.m. and concluding  
at 1:31 p.m. on Wednesday, August 9, 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 SUZANNE BROWN  
ALJ ANDREW WONG

For the Appellant: FARZIN LAJEVARDI

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
RANDY SUAZO  
CHRISTOPHER BROOKS  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 8.)  
(Department's Exhibits A-G were received at page 7.)  
(Department's Exhibits H & I were received at page 9.)

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1 Cerritos, California; Wednesday, August 9, 2023

2 1:00 p.m.

3  
4 JUDGE LONG: All right. We're opening the record  
5 in the Appeal of Shervin Enterprise, Inc., OTA Case Number  
6 20086474. This matter is being held before the Office of  
7 Tax Appeals. Today's date is August 9th, 2023, and the  
8 time is approximately 1:00 p.m. This hearing is being  
9 convened in Cerritos, California.

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 Suzanne Brown and Judge Andrew Wong 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 For the record, will the parties please state  
21 their name and who they represent, starting with  
22 Appellant.

23 Okay. I'm going to actually ask you to move the  
24 microphone way closer to you. You can see I kind of lean  
25 into it. Make sure the green light is on.

1 MR. LAJEVARDI: It's on now? Yeah.

2 JUDGE LONG: Try again with your name, please?

3 MR. LAJEVARDI: Farzin Lajevardi, president of  
4 Shervin Enterprises, Inc.

5 JUDGE LONG: Much better. Thank you.

6 And for CDTFA?

7 MR. SUAZO: Randy Suazo, Hearing Representative,  
8 CDTFA.

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

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

13 JUDGE LONG: Thank you.

14 Moving on with the contents of the oral hearing,  
15 my understanding is that today there are no witnesses in  
16 this appeal.

17 Mr. Lajevardi, you previously stated that you did  
18 not want to appear as a witness. And just as a reminder,  
19 that means that anything you say today will be considered  
20 argument as opposed to evidence. If you would like to  
21 provide testimony instead, we can do that, and you'd be --  
22 we would just have you sworn in as a witness, and then we  
23 can consider your presentation to be testimony instead.

24 What would you like to do?

25 MR. LAJEVARDI: Sure, I would like to be sworn

1 in.

2 JUDGE LONG: Okay. Thank you. Go ahead and  
3 raise your right hand.

4

5 F. LAJEVARDI,

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

9

10 JUDGE LONG: Okay. Thank you.

11 The exhibits for this appeal consist of CDTFA  
12 Exhibits A through G. At the prehearing conference  
13 Appellant did not have any no objections to CDTFA's  
14 exhibits, and they are admitted.

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

17 Appellant did not submit any exhibits for this  
18 appeal.

19 Mr. Lajevardi, had you intended to submit  
20 exhibits?

21 MR. LAJEVARDI: I have submitted our sales report  
22 for the period of 2014, '15, '16, and it has the breakdown  
23 of all our sales, that it was computerized. And  
24 literally, that was what we were based on, you know, the  
25 audit that was getting performed on.

1 JUDGE LONG: That's the documentation that's in  
2 the briefing?

3 MR. LAJEVARDI: Yes.

4 JUDGE LONG: And you wanted to refer to that as  
5 an exhibit today?

6 MR. LAJEVARDI: Please.

7 JUDGE LONG: Okay. I do have to ask CDTFA if  
8 they have any objections to that.

9 CDTFA, do you have any objections to including  
10 that as an exhibit? It was previously submitted.

11 MR. SUAZO: No objection.

12 JUDGE LONG: Okay. Then the sales reports will  
13 be admitted, and we will refer to them as Exhibit 1.

14 (Appellant's Exhibit 1 was received in  
15 evidence by the Administrative Law Judge.)

16 JUDGE LONG: There's one issue in this appeal.  
17 It is whether any further reduction to the measure of  
18 unreported taxable parts sales is warranted. At the  
19 prehearing conference it was confirmed that the measure of  
20 unreported taxable sales of automobiles is not in dispute.

21 I anticipate this hearing being approximately one  
22 hour.

23 Mr. Lajevardi, you requested 20 minutes to make  
24 your opening presentation and testimony, and then we have  
25 CDTFA will make a 30-minute presentation. And finally, we



1 have 10 minutes reserved for Appellant's final statement.

2 Does anyone have any questions before we move on?

3 Mr. Lajevardi, do you have any questions?

4 MR. LAJEVARDI: No.

5 JUDGE LONG: CDTFA?

6 MR. SUAZO: On the exhibits we added two  
7 additional exhibits, H and I. It's in the binder.

8 JUDGE LONG: My apologies.

9 Mr. Lajevardi, do you have any objections to  
10 Exhibits H and I?

11 MR. LAJEVARDI: No. That's -- although they're  
12 not in the period of the audit, they presented, you know,  
13 some other evidence, but I have no problem.

14 JUDGE LONG: Okay. Exhibits H and I will be  
15 admitted without objection.

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

18 JUDGE LONG: Mr. Lajevardi, you have 20 minutes  
19 to make your opening presentation. You may begin when you  
20 are ready.

21

22 PRESENTATION

23 MR. LAJEVARDI: Yes. First of all, thank you for  
24 having this opportunity to be here today to present my  
25 case against the audit findings.

1 I started Shervin Enterprises, DBA Auto Care  
2 Experts almost 30 years ago. And from mid-1990s I was one  
3 of the only automotive repair facilities that had a  
4 computerized system because of our large size and for  
5 accuracy and preventing, you know, the theft of employees  
6 or internal and externals and everything. We used CPAs  
7 and accounting firms to do our filings and doing the  
8 things. We did not do any of our taxes or things  
9 ourselves.

10 When we got the notice for the audit, we were  
11 surprised when we asked to see what is the basis on the  
12 audit and the stuff. They -- the Department of CDTFA  
13 presented that they have the model of all the auto repair  
14 shops in California have to have a model of their sales to  
15 50 percent parts and 50 percent labor. And we just  
16 applied that formula to the numbers presented, and if it's  
17 under that model, you're guilty and you have to pay.

18 And I was pretty much surprised on that because  
19 as we know automotive repair facilities are from oil  
20 change to body shop to mechanic shop and specialty shops.  
21 They are all different, and you can't just have one cookie  
22 cutter. It's not like the McDonalds, you know, you're  
23 buying coffee and burgers from them.

24 To apply that code initially, they presented us  
25 with thousands and thousands of dollars in penalties.

1 When we asked to sit down and look at the paperwork, then  
2 all of a sudden, the numbers dropped dramatically also.  
3 But the mentality that the CDTFA has, it's just -- I  
4 believe in most businesses in California is to draw a  
5 guilty until it's proven innocent. That's why they come  
6 in with a big hammer and see how much they can push it  
7 down.

8 But we have our sales report as I attached to the  
9 exhibits that I presented, that it has the breakdown of  
10 all the parts, labor, sales tax, and everything that we  
11 collected. And it was, you know, given to the sales tax  
12 people. But they chose to just take a various small  
13 amount of numbers each year and make that one a -- I can't  
14 say formal or whatever, and they took a percentage of the  
15 parts and labor instead of going through those three years  
16 audit that they wanted and applied to the whole year.

17 And they said if the percentage of your parts and  
18 labor is at 30 percent, then the rest of the whole three  
19 years has to be 30 percent. If it's off that number,  
20 we're going to penalize you. Now, I don't agree with that  
21 because our shop was a specialty shop, and we had a ton of  
22 labor and different invoices and the stuff on. And the  
23 report is available. Just going and picking up ten days  
24 on each of those three years and just making an example  
25 and penalizing us for that is just -- it's unfair. And we

1 don't agree with it.

2 And the other thing I have to mention, as a  
3 business we collect the sales tax of people coming into  
4 your businesses, and we all know that 95 percent or more  
5 of people they all use credit cards. They swipe their  
6 cards paying their bill that is included in the sales tax,  
7 and we get hit by a 3 percent deduction. And we get it in  
8 our bank, and we turn around and give the full amount to  
9 the CDTFA.

10 If you look at it, in the last 30 years I've been  
11 in business, I've given to CDTFA over \$20,000 in extra  
12 money that I did not even collect that they collected from  
13 us. That's why in each end they are benefitting from our  
14 business that, you know, they're getting more money that  
15 we did not even collect from them.

16 As far as use car sales, we did have a license  
17 for used cars. And as you can see in that three years,  
18 the '14, '15, and '16, almost 13 cars were sold. Regular  
19 used car dealers, they sell 13 cars a day or 13 cars a  
20 week or more. We did 13 cars the whole three years on it.  
21 And we did use a company -- because we are not a pro on  
22 it, we did use a company that went to the, DMV, did all  
23 the paperwork and registration and everything for us.  
24 They paid for the fees and submitted their bill with their  
25 charge fees to do it, and we just cut them a check.

1           It was literally a mistake on our part because we  
2       were not familiar that the sales tax was separate from  
3       those fees. That is it kind of like flew away from us,  
4       and we take full responsibility for that. But that was  
5       just an honest mistake in those 13 cars in that three-year  
6       period. Now, I notice on the report that they just added,  
7       they have the car sales report from 2007 all the way to  
8       2019. They are presenting a 12-year sales report that it  
9       concluded like -- I don't know -- 40, 50 cars in 12 years  
10      that we sold.

11           But just mainly I -- we did use a fully  
12      computerized shop as far as purchasing, invoicing,  
13      collecting money, and submitting that it was all done by  
14      CPAs, accountings, and everything. There was nothing done  
15      in-house on it, and they are all, you know, collected.  
16      And we just don't think the audit went fairly and -- as  
17      far as they did not want to look at the three years that  
18      they requested to do an audit by just sampling those ten  
19      days of each year. We don't think it's fair to us to --

20           And nevertheless, the amount that I ended up  
21      paying for it in the last few -- in 2019, 2019 I had a  
22      potential buyer in my business that he came up. And I  
23      literally wanted to continue that audit, and go on it.  
24      But I was not able to sell my business unless I paid that  
25      fine. And then I was told that you just have to pay those

1 fines and then appeal it. That's why I did pay it.

2 Otherwise, I would have still continued and wanted to --  
3 to continue with an audit to get to the bottom of it.

4 But this is all I have. Thank you very much for  
5 giving the opportunity to explain.

6 JUDGE LONG: Thank you.

7 Does CDTFA have any questions for Mr. Lajevardi?

8 MR. SUAZO: No questions.

9 JUDGE LONG: Okay. Thank you.

10 Before we go on, I do have a couple of questions.  
11 So with respect to the audit, you discussed the 50 percent  
12 model. My understanding is that the reaudit though, the  
13 ratio of parts sales was actually closer to 28 percent,  
14 which is what the, you know, the final -- or CDTFA's  
15 determination is now based on. Do you dispute that the  
16 parts sales ratio should be even lower than 28 percent?

17 MR. LAJEVARDI: Well, I believe that the ratio  
18 that they chose the 28 percent is based on that 10-day  
19 audit that they did. It's not based on the whole  
20 three-year audit.

21 JUDGE LONG: Did you have a set -- a complete set  
22 of books and records for all three years that were the  
23 same or similar to the ten days for each year?

24 MR. LAJEVARDI: I had all the thing presented to  
25 them, and they said because they cannot go through the

1 whole three years, they're just going to pick those areas  
2 that they like to do, and they are going to take a sample  
3 and figure out what percentage is for those ten days. And  
4 they're going to apply that ten day's percentage through  
5 the whole three-year. That's how they came up with that  
6 percentage.

7 JUDGE LONG: Okay. I understand.

8 Before we move onto CDTFA's presentation, I'm  
9 just going to ask my co-Panelists if they have any  
10 questions.

11 Judge Brown, do you have any questions?

12 JUDGE BROWN: I don't think I have any questions  
13 at this time. Thank you.

14 JUDGE LONG: Judge Wong, do you have any  
15 questions?

16 JUDGE WONG: Just one question about how was a  
17 sample selected within those three years? Did they -- did  
18 you cooperate with them in choosing those, or did they  
19 just choose them?

20 MR. LAJEVARDI: CDTFA wanted to -- they told us  
21 they're going to give us the dates of -- they wanted the  
22 range and just asked us to present those samples to them  
23 or the invoices to them. They chose those dates.

24 JUDGE WONG: Okay. Thank you. No other  
25 questions at this time.

1 JUDGE LONG: Thank you.

2 And CDTFA, you have 30 minutes. You may begin  
3 when you're ready.

4

5 PRESENTATION

6 MR. SUAZO: Appellant is a corporation operating  
7 an auto repair and body shop. Appellant also sells used  
8 cars. The audit period is April 1st, 2014, through  
9 March 31st, 2017. Records reviewed include federal income  
10 tax returns for 2014 and 2015, bank deposits from  
11 April 2014 through December 2016, and the sales report for  
12 the audit period.

13 After the appeals conference, Appellant provided  
14 limited sales invoices, preliminary estimates on repair  
15 jobs by Appellant, and insurance estimates for repair jobs  
16 were provided to conduct block testing; Exhibit A, page 6.  
17 Comparison of federal income tax returns to sales and use  
18 tax returns for 2014 and 2015 disclosed some differences;  
19 Exhibit E, page 30. Comparison of reported taxable sales  
20 of parts to recorded federal income tax returns cost of  
21 goods sold for 2014 and 2015 disclosed markups of negative  
22 25 percent and negative 34 percent for the two years;  
23 Exhibit E, page 29. Comparison of reported total sales to  
24 bank deposits for the period from April 2014 through  
25 December 2016 revealed an unexplained difference of almost



1       \$96,000; Exhibit E, page 27.

2               Regarding the Appellant's car sales, the  
3       Department reviewed Department of Motor Vehicle data which  
4       disclosed Appellant sold 15 cars for around \$38,000 during  
5       the audit period. Appellant did not report these taxable  
6       vehicle sales. So the Department assessed the sales in  
7       the audit; Exhibit E, page 20.

8               Regarding Appellant's auto repairs, a review of  
9       Appellant's reporting for the audit period showed the  
10       Appellant reported exactly 20 percent of total sales as  
11       taxable for the first 11 quarters of the audit period;  
12       Exhibit G, page 2 and Exhibit F, page 2. Once the auditor  
13       began the audit field work, the taxable percentage of  
14       total sales went up to 30 percent. Review of Appellant's  
15       prior and post reporting of total and taxable sales  
16       revealed the Appellant had reported exactly 40 percent of  
17       total sales as taxable for the period from second quarter  
18       2010 through third quarter 2011.

19               And after commencement of the audit field work,  
20       the percentage of taxable sales to total sales varied an  
21       average of close to 25 percent until the Appellant closed  
22       out the permit in the first quarter of 2019; Exhibit F,  
23       page 2. The auditor conducted four block tests to  
24       determine the correct percentage of taxable sales to  
25       reported sales; Exhibit D, page 17. Review of invoices

1 during the test period revealed the Appellant had not  
2 properly stated the dollar value of the parts used on the  
3 sales report; Exhibit A, pages 8 and 9.

4 Examples of the parts sale not included in the  
5 sales reports are included in the decision; Exhibit A,  
6 pages 14 through 101. Based on the results of the test,  
7 the auditor determined that 28.84 percent of total sales  
8 involved taxable sales; Exhibit D, page 17. The auditor  
9 applied the 28.84 percent to recorded total sales for  
10 Appellant's sales report to compute \$668,000 in total  
11 sales; Exhibit D, page 14. The audited taxable sales were  
12 compared to reported taxable sales, and a difference of  
13 \$181,000 was assessed as unreported taxable sales;  
14 Exhibit D, page 13.

15 As a reasonableness test, the Department applied  
16 the markup computed on the block test of 59.33 percent;  
17 Exhibit D, page 17, to the adjusted cost of goods sold for  
18 2014 through 2016 and computed taxable sales to be just  
19 over \$790,000 as discussed in the California Department of  
20 Tax and Fee Administration's opening brief dated  
21 November 20th, 2020. When compared to reported taxable  
22 sales of \$478,000, the unreported taxable sales amount to  
23 \$313,000. The resulting liability using this approach is  
24 \$122,000 more than the \$181,000 assessed in the reaudit  
25 findings.

1           The Department conducted a second audit of the  
2           Appellant from the second quarter of 2017 through first  
3           quarter 2019, i.e., the close out. The Department  
4           calculated the taxable markup by comparing cost of goods  
5           sold for the federal income tax returns for 2017 and 2018;  
6           Exhibit H, page 53, to Appellant's taxable sales recorded  
7           in its sales reports for the April 2017 through  
8           December 2018 period, plus its reported taxable sales for  
9           the sales and use tax returns of the first quarter of  
10          2017. Therefore, we have complete 2017 and 2018 taxable  
11          sales. That's on Exhibit H, page 3.

12           This disclose that the taxable markup was more  
13          than 50 percent; Exhibit H, page 2. Therefore, the  
14          audited assessment for this audit again, appears to be  
15          very conservative. Appellant contends that the cost of  
16          goods sold is overstated because purchases applicable to  
17          restoring used cars to salable condition is included.  
18          Sales of vehicles in the preceding audit equaled only  
19          \$22,300. Using the 20 percent markup factor, this would  
20          mean that the cost of goods sold for the vehicles would  
21          only amount to around \$19,000; Exhibit I, page 2.

22           Federal income tax returns do not show a buildup  
23          of inventory. Appellant does not state what the inventory  
24          level was at the beginning of the audit period. There is  
25          no beginning or any inventory listed on the federal income

1 tax returns. There is no documentation to support that a  
2 physical inventory was taken from a third party as well.  
3 Appellant has not provided documentation that supports any  
4 further changes to the audit findings. Therefore, the  
5 Department requests the Appellant's appeal be denied.

6 This concludes my presentation. I'm available to  
7 answer any questions you may have.

8 JUDGE LONG: Thank you.

9 Judge Brown, do you have any questions?

10 JUDGE BROWN: One second. No, I don't think I  
11 have any questions right now. Thank you.

12 JUDGE LONG: Judge Wong, do you have any  
13 questions?

14 JUDGE WONG: No questions. Thank you.

15 JUDGE LONG: Okay. Thank you.

16 I think we're ready to move onto Appellant's  
17 closing statement.

18 Mr. Lajevardi, you requested ten minutes. You  
19 may begin when you're ready.

20 MR. LAJEVARDI: Yes, if I may just say something?

21 JUDGE LONG: Sir? I'm sorry to interrupt, but I  
22 want to make sure you speak into the microphone so that  
23 the live stream can pick it up.

24 MR. LAJEVARDI: Yes, sir. Yes, sir.

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10                   A bunch of the stuff was accidentally put on the  
11 parts list, and those got redone. And each year there  
12 were close to \$200,000 that it got corrected on the  
13 federal tax, that it was given to CDTFA. They were  
14 referring to initial before the correction because our CPA  
15 in accounting they wrongly attached those on the wrong  
16 categories.

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1           And we still had some classic cars that --  
2           actually, there's almost \$100,000 worth of parts that has  
3           in it that it hasn't been sold in it, that those parts  
4           are -- you can put them as like an inventory. If you  
5           purchase a part and you haven't resell it, you still can  
6           write-off the parts that you bought. But until you resell  
7           that product, you're not liable to pay the sales tax on  
8           it. That's why they're referring to no inventory or  
9           something. It's just no other repair shop every year puts  
10          an inventory list and deducts it from the -- their income.

11           Or I wasn't told on it since I'm not a  
12          professional CPA or an accountant or a tax person or an  
13          attorney like the CDTFA has, that's why I don't know what  
14          the law is. But whenever the last 30 years declared how  
15          much inventory we had or how much parts were in cars or  
16          different things on, that it hasn't been sold on.

17           That's -- I just wanted to add that. Thank you.

18          JUDGE LONG: Thank you.

19           I just want to check with my co-Panelists if we  
20          are ready to close the record.

21          Judge Wong, are you ready?

22          JUDGE WONG: Yes.

23          JUDGE LONG: Judge Brown?

24          JUDGE BROWN: Yes, thank you.

25          JUDGE LONG: Okay. Thank you.

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We are ready to close the record and conclude  
this hearing. This case is submitted on Wednesday,  
August 9th, 2022.

The record is now closed. Today's hearing in  
Shervin Enterprise, Inc., is now adjourned.

(Proceedings adjourned at 1:31 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 21st day of August, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER