

STATE OF CALIFORNIA

CERTIFIED COPY

Tuesday, October 10, 2023

Job No. :
44374 OTA(C)

BEFORE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
) OTA CASE NOS.
OJOGHO AMERICAN ENTERPRISES, INC,) 18124124, 18042588
)
APPELLANT.)
_____)

TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 2:10 p.m. and
adjourning at 4:36 p.m. on Tuesday,
October 10, 2023, reported by Shelby K. Maaske,
Hearing Reporter.

1 APPEARANCES:

2
3 Panel Lead: Hon. Ovsep Akopchikyan

4
5 Panel Members: Hon. Natasha Ralston
6 Hon. Joshua Aldrich

7
8 For the Appellant: Christian Ojogho,
9 Taxpayer
10 Wilfred Aka, Attorney

11 For the Respondent: Nalan Samarwarickrema,
12 Hearing Representative
13 Christopher Brooks,
14 CDTFA Attorney
15 Jason Parker,
16 Hearing Representative
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I N D E X

E X H I B I T S

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1 Cerritos, California; Tuesday, October 10, 2023

2 2:10 p.m.

3
4
5 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: We are
6 going on the record in the consolidated appeal of Ojogho
7 American Enterprises, Inc., OTA Case Nos. 18124124 and
8 18042588. Today is Tuesday, October 10, 2023, and the
9 time is approximately 2:10 p.m. We are holding this
10 hearing in person at the Office of Tax Appeal's hearing
11 room in Cerritos, California.

12 This appeal is being heard by a panel of three
13 administrative law judges. My name is Ovsep Akopchikyan,
14 and I am the lead judge for purposes of conducting this
15 hearing. Judges Josh Aldrich and Natasha Ralston are the
16 other members of this panel. All three judges are equal
17 decision makers and may ask all of the questions we need
18 to make sure we have all of the information we need to
19 decide this appeal.

20 Now for introductions. Will the parties please
21 identify themselves by stating their name for the record,
22 beginning with Appellant.

23 MR. AKA: My name is Wilfred Aka, and I'm an
24 attorney.

25 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm having

1 trouble hearing you. Can you move the microphone closer
2 to you?

3 MR. AKA: My name is Wilfred Aka, and I'm an
4 attorney, and I'm also a CPA. And my experience, I
5 have --

6 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I don't
7 need your background. I just need you to introduce
8 yourself with respect to your name, and the other members
9 at the Taxpayer's desk. Thank you.

10 MR. OJOGHO: Christian Ojogho.

11 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,
12 Mr. Ojogho.

13 MR. CUTLER: My name is Martin Cutler.

14 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,
15 Mr. Cutler.

16 And for CDTFA?

17 MR. SAMARAWICKREMA: Nalan Samarawickrema for
18 CDTFA.

19 MR. PARKER: Jason Parker, chief of Headquarters
20 Operations Bureau with CDTFA.

21 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,
22 Mr. Parker.

23 MR. BROOKS: Christopher Brooks, attorney for
24 CDTFA.

25 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,

1 Mr. Brooks.

2 As discussed and agreed upon by the parties at
3 the pre-hearing conference in this appeal, there are two
4 issues on appeal. The first issue is whether the
5 adjustments in the amount of unreported taxable sales for
6 each audit period are warranted, and the second issue is
7 whether the negligence penalty for each audit period was
8 properly imposed.

9 With respect to the evidentiary record, CDTFA's
10 Exhibits A through W with an exhibit index dated
11 February 20, 2023, and Appellant did not object to the
12 admissibility of those exhibits. Therefore, all of
13 CDTFA's exhibits are entered into the record.

14 (CDTFA's exhibits were received in evidence.)

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Turning to
16 Appellant's exhibits. Appellant submitted Exhibits 1
17 through 16. Some of these exhibits are broken down
18 into -- I'm going to call them sub-exhibits -- and
19 labeled, for example, as Exhibit 1-A, Exhibit 1-B, Exhibit
20 1-C, and so on. In admitting 1 through 16 in the record,
21 we are also admitting all of the sub-exhibits. CDTFA did
22 not object to the admissibility of any exhibits,
23 therefore, all Appellant exhibits are entered into the
24 record.

25 (Appellant's exhibits were received in evidence.)

1 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: As agreed,
2 the hearing will begin with the Appellant's presentation,
3 including the testimony of Appellant's witnesses, for a
4 total of up to 60 minutes. CDTFA will have a total of 50
5 minutes to ask Appellant witnesses any questions and to
6 present its own position. Appellant will then have five
7 minutes for rebuttal and final statement.

8 Does anyone have any questions before I swear in
9 Mr. Ojogho and Mr. Cutler for their testimony? No
10 questions?

11 Mr. Ojogho and Mr. Cutler, will you please stand
12 and raise your right hand.

13 (The witnesses were sworn.)

14 MR. OJOGHO: Yes.

15 MR. CUTLER: Yes.

16 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.
17 You may be seated.

18 Mr. Ojogho, you have 60 minutes. Please proceed
19 when you are ready.

20 MR. AKA: Thank you, your Honor.

21
22 OPENING PRESENTATION

23 MR. AKA: I'm going to go in a reverse order in
24 order to come up with what we have in two cases. The two
25 issues before us today are the negligence penalty and

1 understated taxable sales based on information obtained in
2 1099(k). First, I object to the use of estimates to come
3 up with such a huge amount of money that is being owed
4 when there are available records to determine which is
5 taxable and which is not taxable.

6 I'll use that. I will put it up as 1099(k).
7 It's just a summary of sales that was processed by a
8 server, like, somebody that takes credit card/debit card.
9 So if those sales -- and they are all given by month. If
10 they're given by month, the available record should be --
11 these are the total sales that we determine -- it showed
12 us why these total sales are not taxable, rather than
13 approach it, Oh, you didn't report these, therefore,
14 everything that you have, we are going to allow you
15 whatever you have claimed as nontaxable.

16 We will allow it and then indicated based on
17 percentage that the rest should be taxable, and then you
18 come up with something of 100 and something understated
19 taxable sales. We have records for which the input for
20 which there are additional sales that has a detailed
21 issue. And I indicated -- for example, Amazon sales.

22 Amazon is not only a platform where you sell, it
23 also processes the credit cards. You put your sales. We
24 have an underlying record to show what Amazon -- Amazon
25 will give you by the minute, by the hour, and by the date

1 of every transaction, and it will give you the name of the
2 person and where the goods were shipped.

3 And I can tell the Panel that over 90 percent of
4 all intended sales never got into California in the first
5 instance. And then we have -- Amazon gives us a detailed
6 description of which person bought what -- what item they
7 bought, how much they paid, if it is in California, then
8 they will categorize it and it will summarize for each
9 period what the total sales are, what the sales to
10 California, which one is taxable, which one is not taxable
11 and the amount that Amazon collected.

12 Secondly, all the Amazon sales -- all of the
13 Amazon sales have been deposited in the various bank
14 accounts, and they can be traced month by month. All of
15 internet sales, we traced to the bank account month by
16 month, and that will tell you what was not there and
17 whether the sales were taxable or non-taxable. Because
18 the bottom line is, we are concerned about the taxable
19 amount.

20 And the next other thing that is very important
21 is that all of those sales that we deposited in the bank
22 accounts is not only one bank account, it's several bank
23 accounts. And all those sales belong to which company?
24 It can be traced in the record which company, and I'm now
25 going to tell you that. What we are here for today, as

1 your Honor indicated from the beginning, is Appellant's
2 appeal. Which is, Appellant is Ojogho American
3 Enterprises, Inc., with resale number ARSRAAAS 100-691613,
4 with the case ID, specifically for Ojogho American
5 Enterprise.

6 All of the sales that are accumulated that you
7 chose to accumulate -- that you chose to place the
8 emphasis on the 1099(k) belongs to at least four
9 different, distinct, separate entities. The entities are,
10 of course, one, Ojogho American Enterprises, and it has
11 its federal ID number, which is 20-3739791.

12 Another entity, which is not Ojogho American
13 Enterprises, it is Soccer Kingdom Unlimited, Inc., and the
14 federal ID number is 47 --

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Please
16 don't say federal ID numbers. This is broadcast live.

17 MR. AKA: That's fine, but I wanted to make sure
18 that your Honors understood these are separate entities,
19 and Ojogho Enterprises has nothing to do with --

20 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Is the tax
21 ID number in the record in any of the documents you
22 already submitted?

23 MR. AKA: Yes.

24 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Just refer
25 to the entity name and don't give the tax ID number,

1 please.

2 MR. AKA: Okay.

3 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

4 MR. AKA: Then another entity that -- all these
5 are combined together in 1099(k) is Soccer Shop USA.
6 Then, Mercy Ojogho is the sole proprietor which files its
7 own taxes with dba -- do you have a question?

8 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'll let
9 you finish then I'll ask. Sorry.

10 MR. AKA: Mercy Ojogho with dba Soccer Shop USA.
11 Okay. Each of those entities have different -- they are
12 on different address. Each of those entities have their
13 own bank account. The 1099(k) that was generated included
14 all these entities in the 1099(k) because they commonly
15 use one processor to process their credit and debt cards.

16 I would have -- to save time, I would have
17 wanted, if we would have had some sort of a stipulation as
18 to what the 1099(k) stands for. However, before I go
19 further, the thing that is associated with these, we show
20 in the record that we have presented that there are
21 several entities that had a lump sum.

22 The Department should be able to separate those
23 entities, and their concentration is on Ojogho American
24 Enterprises, those sales should be removed from Ojogho.
25 One of the things that would actually apply, which would

1 have made us to request for summary judgment on here, if
2 we still have time to make that, would be when these sales
3 are segregated into different companies.

4 The Department has the authority that they may go
5 back and prioritize the ones that don't have permits or
6 that are not under this audit, however, the period that we
7 are dealing with right now is between fourth quarter of
8 2008 to fourth quarter of 2014. They have the right to go
9 back up to eight years to do an audit or do whatever they
10 have to do, but the statute of limitation had already run
11 on those.

12 If this packet from today that is 2023, that can
13 only go back up to 2015, -- eight years to wherever we
14 are. So by statute of limitations, either way, the
15 Department cannot actually come in, commingle things that
16 are easily removable, and go back -- they can't go back by
17 statute of limitations. That's one point.

18 As I indicated from the beginning, over
19 90 percent of all internet and phone order sales are
20 exempt sales by way of an interstate commerce -- commerce
21 sales. By the audit, they are allowed all these,
22 themselves, that we are claiming on the return. This
23 Appellant wants them to go back and segregate those, come
24 down with what it is that belongs to Ojogho, and then we
25 can discuss whatever is taxable, if there's any, which we

1 know, there won't be that many, that are supposed to not
2 have been reported.

3 Now, I'm going to lay background information, so
4 I need to call on Martin to ask him some questions to
5 bring out the issues that he's going to bring out when
6 dealing with the 1099 -- the way it's reported and all of
7 that. That would have eliminated his testimony if we
8 stipulated on what that is contending in the 1099. Thank
9 you.

10 BY MR. AKA:

11 Q Martin?

12 A Yes.

13 Q When did you meet Mr. Ojogho?

14 A 1996.

15 Q On what circumstances did you meet him?

16 A We both played soccer together, so we met then.

17 Q And what is your profession?

18 A I'm a business consultant and an attorney. I'm
19 no longer practicing law.

20 Q When were you admitted to the BAR?

21 A 1989.

22 Q And from that time that you met Mr. Ojogho, who
23 was the president of Ojogho American Enterprises, did he
24 become your client?

25 A Yes, in, probably, about 1998.

1 Q On what basis do you represent him?

2 A I was his business attorney, and then also I gave
3 him a business consultation -- general business
4 consultation advice.

5 Q We need to focus on 2008 to 2014.

6 A Uh-huh.

7 Q Did you represent him during this period?

8 A As an attorney?

9 Q On any business?

10 A I did business consultation with him and I did
11 some legal representation as well.

12 Q Okay. When did your legal representation on this
13 business stop?

14 A Probably in December of 2013. And then after
15 that, I continued to do business consultations with him.

16 Q And did he consult you on sales transactions in
17 this business?

18 A Yes.

19 Q Are you aware of his cash sales and credit card
20 sales?

21 A Yes.

22 Q Were you familiar with summarization of sales and
23 as on the 1099(k)?

24 A Yes, I was.

25 Q Did 1099K(k) include all of the sales from this

1 Appellant?

2 A Yes.

3 Q Is a 1099(k) issued by a credit card processor?

4 A Yes, it is.

5 Q And, again, focusing on 2008 through 2014 sales,
6 you understand that that's the years that I'm focusing; is
7 that correct?

8 A Yes, I understand that.

9 Q Is this summarization of 1099(k) only limited to
10 a particular vendor?

11 A No.

12 Q The 1099(k) summarization, whether it was issued
13 by Amazon or Wells Fargo, who are the 1099 credit card
14 debt card processors that the Appellant used in this case,
15 which included credit card sales and all sales, did they
16 include credit card sales and all sales from this
17 Appellant?

18 A Yes, they would.

19 Q And whether it's in store or internet or on
20 Appellant's website or other web sites or sales from
21 Amazon or any other sales, as long as it is a credit card
22 or debt card sales transaction, would that be included in
23 the 1099(k)?

24 A Yes. To make it simple, yes. Whenever someone
25 buys something through a credit card, the credit card

1 processor service will send that 1099(k).

2 Q At the end of the year?

3 A At the end of the year, exactly.

4 Q Did you understand that the Appellant accepted
5 Visa, Master Card, American Express, and Discover?

6 A Yes.

7 Q Where does the credit card processor deposit all
8 the sales?

9 A Into the bank accounts.

10 Q Into one bank account or --

11 A No, multiple -- whatever bank account that's
12 chosen by the company, the credit card company deposits
13 that money into that account.

14 Q Depending on the company and the entity location
15 where those credit cards were processed; is that correct?

16 A Yes.

17 Q Does the credit card processor report all sales
18 in Visa, Master Card, American Express, and Discover?

19 A American Express does their own. So if you
20 charge something with American Express, they will make
21 their own report, otherwise, the processor will report all
22 of the other ones together.

23 Q Does American Express also deposit sales in
24 Appellant's bank accounts?

25 A Yes.

1 Q Were the sales on 1099(k) internet sales for
2 phone order sales, Amazon sales, international sales,
3 sales made in Mexico, sales made in Australia, sales in
4 other parts of the world?

5 A Yes, any place.

6 Q As long as they use credit card or debit card; is
7 that correct?

8 A That is absolutely correct.

9 Q To your knowledge, has the report of sales and
10 use tax return, the way that Appellant reports their sales
11 and use tax report, has it changed over these years?

12 A Not to my knowledge.

13 Q Excellent.

14 MR. AKA: No further questions from him.

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: You may
16 proceed with your presentation.

17 MR. AKA: Okay. I only have a few questions for
18 Christian.

19 BY MR. AKA:

20 Q Do you remember when the Ojogho American
21 Enterprises was incorporated in California?

22 A My recollection would be sometime around
23 6/20/2006.

24 Q 2005, to be more accurate?

25 A Yes, somewhere around there.

1 Q I'll go back. You are the president of the
2 corporation?

3 A Yes, I am.

4 Q And do you have shareholders?

5 A No, I am the only one.

6 Q Does Ojogho American Enterprises have a separate
7 bank account?

8 A Yes, I do have multiple bank accounts. One of
9 them happens to be one with Ojogho American Enterprises.

10 Q There are other entities, as I indicated in the
11 beginning, which are Soccer Kingdom Unlimited, A-1 Soccer
12 Warehouse, and Mercy Ojogho dba; is that correct?

13 A Yes, that would be correct.

14 Q Does each entity have to file taxes?

15 A Absolutely, they do.

16 Q These separate entities, were they formed in
17 order to deal with different types of sales in different
18 markets?

19 A Yes, indeed. As the business grew, there were
20 rooms to sell to Amazon customers, who we were able to
21 reach people around the world. We began to have different
22 reasons for different accounts, to be able to make it
23 easier. So if you bought something from A-1 Soccer, then
24 deposit of that money would go to the account that is
25 designated for that. And if it was for Soccer Shop USA,

1 vice versa.

2 Q And some of these companies transact business
3 that doesn't come into California; is that correct?

4 A Yes. Actually that became, believe it or not,
5 our bread and butter. And I was one of the very first --
6 I was one of the very first companies that started doing
7 business with Amazon when they first started. Amazon gave
8 us the privilege to sell on their platform. We are about
9 to sell to people from Kentucky, South Africa, New York,
10 and shop around the world.

11 So when the others would come in, there would be
12 some from Chico, California, San Francisco, San Diego --
13 these are cities that are in California, so somehow or
14 another, at the time, we were very privileged to ship to
15 these customers, and the ones that were outside of state
16 of California, we did not collect taxes from them.

17 Q Okay. Some of the -- two of those corporations,
18 do they -- they make sales in Japan?

19 A Yeah. Well, the way Amazon operates is they give
20 you -- if you are doing well with them, they would contact
21 you and say, Do you want to extend your business to, for
22 example, Japan, whereby, you will have the opportunity to
23 have what they call APA, you have a center where
24 Japanese -- it will be in Japan.

25 It will no longer be in English, they will be

1 able to buy your products and then from that warehouse in
2 Japan, they ship it, but the money would come to my bank
3 account here in California. To make a long story short,
4 at the end of the year, I would have a 1099(k) from
5 whatever sales that was made in Japan. And I have that
6 privilege along with Canada, Australia, Mexico, of course,
7 and I can tell you that each and every sale that went to
8 these countries, I did not collect taxes.

9 But in my 1099, it will not indicate that. It
10 was just how much I made. I might get, every two weeks,
11 like, \$20,000.00 from Mexico, and then when my 1099 comes,
12 I will have that combined with the other amounts to show
13 the total of how much Amazon is sending me.

14 Q Now, let's take -- are you familiar with 1099(k)?

15 A Well, you know, given the kind of person I work,
16 I do business, I look at it like this, and I hand it over
17 to my accountant or someone who knows. But as far as
18 seeing the paper that says 1099(k), yes.

19 Q And the 1099(k) is the summary of all of the
20 sales that were processed by a particular card processor,
21 and they list -- it's a summary and will tell you how much
22 total for the year, but they have boxes for every month in
23 which they list sales on each of those months. Those
24 sales are categorized by month, are the records available
25 that would tell you which sales went to where and what

1 location?

2 A Yes, absolutely. Every single sale we make, a
3 list is generated that describes the customer, the state,
4 the product, and purchase, and it also indicates if you
5 charge tax on that sale or not. So all of that
6 information trickles down to my bank account to where it's
7 recorded from the source of the 1099(k) -- you can
8 pinpoint it in my bank account that this is how this money
9 came and this is what you did to get that money. It has
10 pretty good details.

11 Q And those will tell you which -- wherever they
12 are deposited in the bank account, depending on the
13 company that processed that they used the credit card to
14 process?

15 A Absolutely. You might just see to -- not even a
16 nickel, to a penny. So it doesn't miss a mark. It comes
17 almost like -- it doesn't even give you an estimate, it
18 gives you an exact amount.

19 Q And the entities, those four entities that they
20 lumped together, all of them use a Wells Fargo bank
21 account; is that correct?

22 A Yeah, that would be correct. I have only dealt
23 with Wells Fargo banks, so to speak, I think the life of
24 my business has only been with them.

25 Q And each of them have separate bank accounts; is

1 that correct?

2 A That would be correct. I have, maybe, three or
3 four or five different accounts. The minimum, sometimes
4 the account number may change. Let's say someone got
5 ahold of my bank account and had some fraudulent issues, I
6 contact my bank and the number will change, but it will be
7 the same account.

8 Q I would ask again. Maybe the --

9 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm having
10 trouble hearing you, Mr. Aka.

11 MR. AKA: My microphone went off. It was maybe
12 something I did.

13 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: No
14 worries.

15 BY MR. AKA:

16 Q Okay. You have -- throughout all of this period,
17 you have, at the beginning, 2008, was Amazon one of your
18 credit card processors at that time?

19 A Yes, sir.

20 Q So between 2008 and 2014 that is in this audit,
21 how many credit card processors do you have?

22 A That's interesting. I want to say Amazon and
23 Wells Fargo, that's about it. I want to call American
24 Express to be different than those little ones, you can
25 add them, but it's just Amazon and Wells Fargo.

1 Q If somebody comes into the store or orders online
2 with American Express, American Express issues their own
3 amount that they processed for your store sales; is that
4 correct?

5 A Yes, there's no getting around those things, it's
6 automatic.

7 Q Did your credit card processors, did they deposit
8 all of the money in different companies' bank accounts?

9 A Yes.

10 Q Now I'm going to be specific. Did you have --
11 did you segregate in your record all of the credit card
12 sales as opposed to foot traffic? How would you know the
13 amount of foot traffic to your store as opposed to sales
14 that are done either by phone or by internet or from your
15 website or internet from Amazon?

16 A Yeah, we reconcile and balance the sheets after
17 every quarter, so, basically, that's what my accountant
18 does, or my bookkeeper. So they do separate, those
19 things -- we have it all separated.

20 Q And the way you report has not changed?

21 A No.

22 Q Now?

23 A Nothing has changed.

24 Q Now, if you use yesterday for an example, would
25 you know how many in-store foot sales, whether it's credit

1 card or something, as opposed to internet sales -- let's
2 use an example. Yesterday, you made a total sales
3 \$30,000.00, of that \$30,000.00, how many of them would be
4 somebody that walked into the store to purchase something,
5 whether they purchased by cash sales or credit card sales?
6 How much of it would be that they didn't walk into the
7 store, the sales, like, phone order, internet website,
8 Amazon or whatever platform you use, what would be the
9 percentage?

10 A Well, it's steadily -- unfortunately, with my
11 business, it steadily has been a tremendous decline of
12 walk-in customers. Every day, the internet is taking that
13 away from us. Sometimes we would come and stay and go
14 home. We only have one sale. So I would say about 10
15 percent -- about 10 percent of the money I make is, you
16 know, of sales is foot traffic in the store. The majority
17 is on line.

18 And, in fact, I closed two locations because of
19 this particular situation. And I'm getting up to close
20 two more unless something changes. But there isn't much
21 people coming in the shopping mall, it's all online.

22 Q And all of the records for your internet, phone
23 order, because they get deposited in your bank account --
24 all of the records from your internet, phone order, and
25 Amazon sales, they are all available?

1 A I have been begging the people here to please
2 look at it. I have it here. And to answer your question,
3 yes, it's available.

4 Q And let me narrow it to Amazon, because that's
5 the biggest internet sales which account for more than 90
6 percent of the sales; is that correct?

7 A Absolutely.

8 Q Do you get the report from Amazon that would
9 detail where those sales -- when those sales took place,
10 where they were shipped to, and the amount they paid, and
11 if Amazon collected sales tax, would you get a report that
12 lists all of those?

13 A Yes. Not only -- well, again, this is why Amazon
14 has become very much popular as the best platform to sell
15 your things. Not only to this, but if you log into your
16 account, it's incredible, there's no report you want that
17 you would not get, particularly how much sales tax you
18 generated from California. They will tell you to the last
19 penny how much sales you made in the state of California
20 and any state in particular.

21 So as I told you, they send it to me. If I log
22 in right now to my account, going back -- I think they
23 keep the records seven years, after that, it washes away.
24 Everything that I've done -- sales -- particularly the
25 ones that are tending to me charging tax to my customers,

1 will be there, give you the name of the customer, the date
2 they purchased, how much they purchased, what product they
3 purchased, how much they paid in shipping, and how much
4 you paid in your taxes.

5 Q Were these records made available to the
6 Department during the audit?

7 A Yes, yes, yes. The answer is yes. And what
8 hurts the most is I never got a chance to answer questions
9 pertaining to that because I don't believe that they took
10 the time to look at it.

11 Q Okay. Now, so when they -- it may not be at the
12 beginning when they were looking for the records, but at a
13 certain point in time, you provided all of those records
14 to them?

15 A Yes, yes. At a certain point, I did provide the
16 records to them, and there's been no follow up of
17 questions regarding anything that is not clear. Because
18 I've also contended that, yes, indeed, I'm making money
19 and that amount went to my bank account is very -- it was
20 lump sum, but I contended that in all that money that I
21 made, that I did not charge taxes for those.

22 And I had the feeling that either I wasn't
23 believed or they just never took the time to really look
24 into it, but rather with the 1099, I think they assumed
25 you made this much money, therefore, you owe us this much

1 in taxes, and I think that's part of what I'm trying to
2 clear up here today.

3 MR. AKA: I don't want to be on a tangent, but
4 the reason the area that I'm going on about deals with the
5 second part of the issue, dealing with negligence penalty
6 that is assessed in this case. But I will make a
7 summarization of what those are.

8 Okay. Nothing further for him. I may go back,
9 but I need to make additional comments. There's a change
10 in the Department policy regarding collection of sales tax
11 on internet sales, somewhere around, I believe, it's 2012
12 or 2014, where the internet processor, if they -- and they
13 have nexus to state of California, they would be
14 responsible for collecting the tax and reporting it to the
15 Department.

16 There was a time that it changed, I can be
17 specific if I pulled the specific law and time and date.
18 Now, the situation comes that as Ojogho American
19 Enterprises is a California corporation, there is no need
20 to have a nexus, it's Amazon that they have the issue of
21 nexus.

22 However, the law changed that if you have a
23 platform like Amazon doing it, they report all of the
24 sales to company like Ojogho American Enterprises and
25 shows them taxes that they that have collected, it becomes

1 the responsibility of Ojogho American Enterprises to
2 report those sales to the Department. Before, the law had
3 it that it was the -- the responsibility was on those
4 internet companies and they're responsible for reporting
5 those taxes becomes the nexus to the State of California.

6 Between these periods that this audit, even if
7 they collected tax for the State of California -- if they
8 collected sales tax -- I want to be specific. If they
9 collected sales tax for the State of California, Ojogho
10 American Enterprises would not be responsible for
11 reporting those because they would have reported it to the
12 Department, depending on if they have a nexus.

13 Again, just to buttress the fact, Amazon sales --
14 90 percent of Amazon sales, which he has summarized in
15 these records, belong to exempt sales because they were
16 internet sales. Now, going back to the second part of
17 the -- for the negligence penalty that we appended to the
18 record.

19 Appellant contends -- well, let me define what
20 negligence is.

21 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Mr. Aka, I
22 just wanted to let you know there is about 10 minutes left
23 in your presentation so that you can prioritize the
24 remainder of your time.

25 MR. AKA: Yes, thank you.

1 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

2 MR. AKA: Regular dictionary definition of
3 negligence defines negligence as a failure to take proper
4 care in doing something. Legal definition --

5 ADMINISTRATIVE LAW JUDGE ALDRICH: Mr. Aka,
6 could you repeat the dictionary name that you were
7 referencing?

8 MR. AKA: The dictionary definition of negligence
9 defines it as a failure to take proper care in doing
10 something. Legal definition defines it as a failure to
11 use reasonable care resulting in damage or injury to
12 another. And I say this, assuming that someone was
13 driving an automobile suddenly had a heart attack, hit
14 somebody, hit someone's vehicle and damaged it. The
15 question is, is this person negligent because someone's
16 vehicle got damaged? And the answer is no.

17 In this case, even in the Department's definition
18 of addition of negligence penalty, not just because of the
19 percentage, of which, here, the percentage was just an
20 estimate. They didn't go back by actually -- what the
21 actual audit results were. They estimated on whatever
22 they felt what it is.

23 However, as the president has said, these
24 different records were available, and that's what type of
25 record that an average prudent business person would

1 keep -- sales records, internet sales, taxable sales,
2 bank, and Appellant has those and those were provided to
3 the Department.

4 The fact that they used what we would refer to --
5 when I was working for the Department -- as a smoke out,
6 where you felt that taxpayer had not supplied you with
7 record, you just did an FBO or anything else, and then to
8 attract attention, does not warrant that there was no
9 negligence. All that is needed is good enough records to
10 be able to determine what taxable sales and what exempt
11 sales are from -- actually, what the taxable sales are.

12 It doesn't matter what your internet sales are.
13 Taxpayer has enough records for them to make that
14 determination. And even in their comment -- their comment
15 says because we have to use estimate in order to rest the
16 record, that's why we are put in negligence. That's not
17 the definition of negligence, either legal or ordinary
18 persons, and even the Department's definition of
19 negligence.

20 The taxpayer here has complied with whatever
21 requirements for books and records are supposed to be.
22 Now, as I say, and I'm concluding. All the sales as they
23 have it, because they made a projection on whatever period
24 that they have, all of the sales in that period can be
25 given, and whatever taxable sales can be extracted, and

1 whatever sales that belongs to Ojogho, should be the one
2 that we have focus on. Thank you.

3 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,
4 Mr. Aka. I'm going to turn it over to CDTFA to see if
5 they have any questions for either witness.

6 MR. SAMARAWICKREMA: No, Judge, we don't have any
7 questions.

8 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. And
9 I'm going to turn it over to the Panel members. Do you
10 have any questions at this time for Appellant? Judge
11 Aldrich, any questions?

12 ADMINISTRATIVE LAW JUDGE ALDRICH: Good
13 afternoon. Yes, I do have a few questions. My first
14 question is for Mr. Ojogho. Thank you for being here,
15 first of all. Mr. Aka had indicated that there were a few
16 other entities that were associated with Ojogho American
17 Enterprises; is that correct?

18 MR. OJOGHO: Yes. I have A-1 Soccer Warehouse.

19 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. Did
20 Ojogho American Enterprises own or control other entities?

21 MR. OJOGHO: What do you mean "control"? They're
22 just separate. They all had different --

23 ADMINISTRATIVE LAW JUDGE ALDRICH: The ability to
24 control what that company did.

25 MR. AKA: Can I respond? Entity does not.

1 Christian may, but not Ojogho American Enterprises.

2 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. So
3 Ojogho American Enterprises didn't control or own the
4 other entities that Mr. Aka was referencing?

5 MR. OJOGHO: No, not at all. Separate.

6 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And
7 then -- but Mr. Ojogho, did you own or control those other
8 entities?

9 MR. OJOGHO: I'm the president for these
10 entities.

11 MR. AKA: Yes. One of them is not -- he doesn't
12 own that.

13 MR. OJOGHO: With the exception of Soccer Kingdom
14 Unlimited.

15 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And
16 what relation, if any, is there between you and someone
17 with the first initial of the name A. Ojogho. The name
18 has a first initial that starts with an A. According to
19 the record, that person was a minor at the time, so I
20 don't want to mention the name.

21 MR. OJOGHO: That would be -- that would be,
22 like, a son.

23 ADMINISTRATIVE LAW JUDGE ALDRICH: Like a son or
24 a son?

25 MR. OJOGHO: A son.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: And then M.
2 Ojogho, similar question. Is there any relation between
3 you and that person?

4 MR. OJOGHO: Yes, like, mom -- mother.

5 ADMINISTRATIVE LAW JUDGE ALDRICH: So your
6 mother?

7 MR. OJOGHO: Yes.

8 ADMINISTRATIVE LAW JUDGE ALDRICH: All right. So
9 the next question is with respect to Amazon. In the
10 evidence, will I find a copy of the operating agreement
11 with Ojogho American Enterprises and Amazon that was in
12 effect? So that was during the liability period, so
13 that's between October 1, 2008, and December 31, 2014.

14 MR. OJOGHO: Repeat the question.

15 ADMINISTRATIVE LAW JUDGE ALDRICH: In the
16 evidence -- so there's submissions by both parties -- do
17 you know if I'll find an operating agreement or a contract
18 between Ojogho American Enterprises Incorporated and
19 Amazon?

20 MR. OJOGHO: I'm not sure. I'm not sure
21 whether -- my remote recollection, I'm not sure if we
22 included it, however, it is available.

23 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And if
24 given the opportunity to submit that operating agreement
25 or contract, we would request that.

1 MR. AKA: That would be fine.

2 ADMINISTRATIVE LAW JUDGE ALDRICH: Fine. And
3 with respect to the -- there was testimony from Mr. Ojogho
4 that you provided the Department with Amazon records
5 regarding the internet sales; is that correct?

6 MR. OJOGHO: Yes.

7 ADMINISTRATIVE LAW JUDGE ALDRICH: I do see in
8 your exhibit index that there are Amazon sales for 2012.
9 Are there other Amazon sales or exhibits representing
10 Amazon sales in your evidence?

11 MR. OJOGHO: I went as far as back as I could.
12 Because Amazon, like, you know -- some banks, you know,
13 when the years go back, things fall off. But I do have
14 from today going back as far back as -- I would say, all
15 of the years going back to, maybe, 2012 -- 2011 maybe.

16 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And
17 thank you. And I do see we have 2012, 2013, and 2014 in
18 the record.

19 MR. OJOGHO: Correct.

20 ADMINISTRATIVE LAW JUDGE ALDRICH: One more
21 question before we continue. So this is actually for
22 Mr. Aka. You had referenced that there was a change in
23 the law with respect to the marketplace sellers and who
24 owes that tax. Were you referring to South Dakota v.
25 Wayfair, commonly referred to as Wayfair, the 2018 Supreme

1 Court decision?

2 MR. AKA: Yes.

3 ADMINISTRATIVE LAW JUDGE ALDRICH: Is that the
4 one you are referring to?

5 MR. AKA: Yes.

6 ADMINISTRATIVE LAW JUDGE ALDRICH: That's all of
7 the questions I have at the moment. I will refer it back
8 to Judge Akopchikyan.

9 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.
10 Judge Ralston, any questions?

11 ADMINISTRATIVE LAW JUDGE RALSTON: I'm going to
12 hold off until after Respondent's presentation.

13 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm also
14 going to wait for any questions at this point, but I see
15 Mr. Aka has a comment, so I will go ahead and let him.

16 MR. AKA: I just wanted to clarify -- make a
17 clarification to the question that he asked.

18 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Go ahead.

19 MR. AKA: During those audit periods, the credit
20 card processor was Wells Fargo Bank. When Amazon -- even
21 if he has a website that is published there that will go
22 on the internet to buy stuff, the person that the credit
23 card company that was processing it, which they have on
24 their platform, would default to Wells Fargo.

25 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm not

1 sure I understand it. Can restate that again?

2 MR. AKA: He was asking for the record -- he was
3 asking where are the records that are referenced in the
4 records of Appellant for Amazon sales.

5 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay.

6 MR. AKA: I'm not saying, even if a sale was made
7 in Amazon on a prior year, like 2008, 2009, the credit
8 card processor at the time is Wells Fargo Bank, and all
9 Wells Fargo transactions, credit card processor, whether
10 internet or Amazon or any other place, are deposited into
11 the different companies' accounts who used the Wells Fargo
12 processor.

13 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

14 MR. AKA: Did you understand? Did that clarify?

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Yes, I
16 understand. Thank you.

17 We will turn it over to the CDTFA. You have
18 about 50 minutes for your presentation. Whenever you're
19 ready.

20 MR. SAMARAWICKREMA: 50 minutes?

21 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Yes.

22 MR. SAMARAWICKREMA: Okay. Thank you.

23
24 OPENING PRESENTATION

25 MR. SAMARAWICKREMA: Appellant operates as a

1 wholesale and a retailer of sporting goods in Los Angeles
2 and Van Nuys, California. Appellant sold its sporting
3 goods from four retail stores and online through the
4 internet. And that would be on your Exhibit A, pages 46
5 and 57.

6 Two audit periods are subject to this appeal.
7 For ease of referral, the Department is going to refer to
8 the audit period October 1, 2008, through December 31,
9 2011, as the first audit, and refer to the audit period
10 January 1, 2012, through December 31, 2014, as the second
11 audit.

12 During the first audit period, Appellant reported
13 a little over \$2 million as total sales, and claimed
14 almost \$946,000.00 as sales for resale, about \$830,000.00
15 as nontaxable sales in interstate and foreign commerce,
16 and a little less than \$20,000.00 as sales tax
17 reimbursement included in reported total sales resulting
18 in reported taxable sales of \$225,000.00. That would be
19 on your Exhibit A, pages 22 and 23.

20 During the second audit period, Appellant
21 reported around \$2.9 million total sales, and claimed a
22 little over \$1.3 million as sales for resale, a little
23 over \$1.2 as nontaxable sales interstate and foreign
24 commerce, and a little lower than \$26,000.00 as sales tax
25 reimbursement included and reported total sales resulting

1 in reported taxable sales of around \$293,000.00. And that
2 would be on your Exhibit G, pages 281 and 282.

3 During our presentation, we will explain why the
4 Department rejected Appellant's reported taxable sales for
5 both audit periods, why the Department used an indirect
6 audit approach, how the Department determined Appellant's
7 unreported sales tax for both audit periods, and why the
8 Department recommended a 10 percent negligence penalty for
9 both audit periods for this Appellant.

10 During both audits, Appellant did not provide
11 complete sales records for either audit periods.
12 Appellant failed to provide complete documents of original
13 entry such as its sales receipts, credit card sales
14 receipts, resale certificates, shipping documents, payment
15 information from its customers, sales journals, and sales
16 summaries to support its reported total taxable and
17 claimed nontaxable sales for both audit periods.

18 In addition, Appellant failed to provide complete
19 purchase information or purchase journals for both audit
20 periods. According to Appellant's website, sales tax
21 reimbursement was added to all sale orders mailed to
22 California destinations.

23 According to Appellant, in-store sales were
24 recorded on cash register Z tapes and signs which were
25 posted by the cash register stated that all customers

1 shall receive a sales receipt, but Appellant asserted that
2 the cash register Z tapes were not retail.

3 During the conference, however, Appellant
4 asserted that the total sales were recorded by hand. And
5 it further stated that it prepared one daily sales invoice
6 for each store. These sales invoices had a single sales
7 amount that represented the daily total sales amount.

8 These sales invoices were used to prepare sales
9 journals, and the sales journals were used to prepare the
10 sales summary journals, which, in turn, were used to
11 prepare sales and use tax return for each audit period.

12 While Appellant provided some of its financial
13 statements for some periods, Appellant did not provide any
14 daily sales invoices for both audit periods. And that
15 would be on your Exhibit K.

16 Appellant also did not provide complete sales
17 journals and summary sales journals for both audit
18 periods, and as a result, Appellant was unable to explain
19 how it reported its sales on its sales and use tax
20 returns. Specifically, what sources it relied upon to
21 file its sales and use tax returns.

22 The Department did not accept Appellant's
23 reported taxable sales due to lack of reliable records,
24 negative reported book markups, and high credit card sales
25 percentages. It was also determined that Appellant's

1 record was such that sales could not be verified by a
2 direct audit approach, therefore, the Department
3 determined sales used in Appellant's 2009 federal income
4 tax return for the first audit period and credit sales
5 ratio approach for the second audit period.

6 The Department completed six verification methods
7 to verify the reasonableness of Appellant's reported total
8 taxable sales and claimed nontaxable sales. First, the
9 Department analyzed Appellant's sales and use tax returns
10 for both audit periods. And that would be on your Exhibit
11 V, page 1284.

12 The Department noted low reported average daily
13 taxable sales of \$227.00, ranging from as low as \$137.00
14 to as high as \$372.00 for the period of October 1, 2008
15 through December 31, 2014. And that will be on your
16 Exhibit V, page 1284. The Department also compared the
17 reported total sales with the taxable sales for both audit
18 periods and calculated the reported taxable sales
19 percentage of around 11 percent, ranging from as low as 5
20 percent and as high as 42 percent. And that would be on
21 your Exhibit V, page 1284.

22 Based on the number of stores, locations of the
23 business, nature of the products, and the customer base,
24 the Department expected to see a higher average daily
25 taxable sales amount and a higher taxable sales percentage

1 than the reported amount and percentages. This average
2 daily taxable sales amounts and taxable sales percentage
3 were very low for these types of stores. Accordingly, the
4 Department did not accept Appellant's reported taxable
5 sales for both audit periods.

6 Second, the Department analyzed Appellant's
7 federal income tax return for both audit periods. And
8 that would be on your Exhibit V, page 1277. Appellant
9 filed a separate federal income tax return for Ojogho
10 American Enterprises, Inc., and A-1 Soccer Warehouse,
11 which was operating under a separate entity, however, for
12 sales and use tax reported purposes, even A-1 Soccer
13 Warehouse was identified as a branch location and reported
14 its sales through Appellant's sellers permit. And that
15 would be on your Exhibit G.

16 A-1 Soccer Warehouse's federal income tax returns
17 specifically state that the sales related to A-1 Soccer
18 Warehouse was reported in Ojogho's federal income tax
19 returns. And that will be on your Exhibit J, page 621.
20 Therefore, the Department used the information reported on
21 both income tax returns combined to calculate amounts
22 reported on federal income tax returns.

23 The Department reviewed Appellant's federal
24 income tax returns for years 2009, 2010, 2012, 2013, and
25 2014, and compared the gross sales reflected on

1 Appellant's federal income tax returns with Appellant's
2 reported total sales of around \$3.7 million for the same
3 period, and calculated a total difference of around
4 \$2.5 million. And that would be on your Exhibit V, page
5 1277.

6 The Department also compared the reported total
7 sales of around \$3.7 million to the purchases of around
8 \$3.6 million reflected on Appellant's available federal
9 income tax returns, and calculated an overall reported
10 book markup of around 3 percent, ranging from lowest,
11 negative 75 percent, to as high as 160 percent. And that
12 would be on your Exhibit B, page 1276.

13 To verify the accuracy or purchases recorded on
14 Appellant's income tax return for the second audit period,
15 the Department conducted a survey of Appellant's vendors.
16 And that would be on your Exhibit M. The Department found
17 that the purchase information from the vendors exceeded
18 Appellant's 2012, 2013, and 2014 recorded purchases by
19 around \$6.6 million. And that would be on your Exhibit M
20 and Exhibit V, page 1281.

21 The Department also noted that Appellant's
22 purchases from year 2013 and 2014 around \$7.2 million
23 recorded on the vendor purchase information did not match
24 with the purchases Appellant claimed on its federal income
25 tax returns of around \$944,000.00. And that would be on

1 your Exhibit V, page 1281.

2 Appellant failed to record more than 86 percent
3 of its purchases on his 2013 and 2014 federal income tax
4 returns. That would be on your Exhibit V, page 1281.
5 Thus, the Department determined that Appellant's federal
6 income tax returns for the second audit period was
7 incomplete and unreliable.

8 Using audit purchases, the Department
9 recalculated the Appellant's overall reported markup of
10 negative 63 percent for the second audit period. And that
11 would be on your Exhibit V, page 1275. The audited total
12 purchases of around \$7.8 million is also more than two
13 times larger than the reported total sales of around \$2.9
14 million for the second audit period. And that would be on
15 your Exhibit V, page 1275.

16 In other words, according to Appellant, reported
17 sales for the second audit period, Appellant was losing
18 money every time he made a sale. Based on his experience
19 in completing audits of similar businesses in Appellant's
20 area, the Department determined that this is an
21 unreasonable reported book markup for this business.
22 This is an indication that not all of Appellant's sales
23 transactions had been reported in its sales and use tax
24 returns.

25 Third, the Department conducted a bank

1 reconciliation and compared it to Appellant's available
2 bank deposits to his reported total sales. And that would
3 be on your Exhibit V, page 1282. From January 2009
4 through December 2013, Appellant deposited around \$6.6
5 million, but only reported total sales of around \$3.5
6 million. And that would be on your Exhibit V, page 1282.

7 Appellant deposited around \$3.1 million going to
8 his bank account, then reported as total sales for sales
9 and use tax return for the same period. And that would be
10 on your Exhibit B, page 1 through A-2. Appellant only
11 reported 46 percent of his bank deposits as sales for this
12 period. And that would be on your Exhibit B, page 1
13 through A-2.

14 Fourth, the Department compared the sales
15 reflected on Appellant's available profit and loss
16 statements with Appellant's reported total sales of around
17 \$2.8 million for the second audit period, and calculated
18 an overall difference of around \$145,000.00. And that
19 would be on your Exhibit V, page 1277.

20 Fifth, Appellant did not provide complete sales
21 information for the audit period, therefore, the
22 Department obtained Appellant's available credit card
23 sales information for the second audit period from his
24 internal sources. And that would be on your Exhibit V,
25 page 1283.

1 The Department did not include any credit card
2 sales relating to 458 South Alameda and 455 Staten Street
3 locations. And that would be on your Exhibit A, pages 46
4 and 57, and Exhibit H, pages 379 through 382.

5 The Department compared the reported total sales
6 to the credit card sales and calculated an overall credit
7 card sales of around 237 percent, ranging from as low as
8 94 percent and as high as 569 percent for the second audit
9 period. And that would be on your Exhibit V, page 1283.

10 Average credit card sales for this period is more
11 than twice the amount of the reported total sales. And
12 that would be on your Exhibit V, page 1283. This means
13 that not all of Appellant's cash and credit card sales
14 transactions had been reported in its sales and use tax
15 returns.

16 Sixth, on Appellant's sales and use tax returns
17 for both audit periods, Appellant claims sales to other
18 retailers of around \$2.3 million, and claimed sales of
19 interstate and foreign commerce of around \$2.1 million.
20 And that would be on your Exhibit V, page 1284. The
21 Appellant did not provide complete documentary evidence to
22 support claimed sales made to other retailer for resale
23 and claimed sales in interstate and foreign commerce.

24 The Department also compared the total claimed
25 exempt sales with the credit card sales and calculated an

1 overall claimed exempt ratio of around 52 percent, ranging
2 from as low as 15 percent to as high as 97 percent for the
3 second audit period. And that would be on your Exhibit G,
4 page 294.

5 The Department ordered unusually high claimed
6 exempt sales percentage for third quarter 2014 and fourth
7 quarter 2014. And that would be on your Exhibit G,
8 page 294. Therefore, the Department did not accept
9 claimed exempt sales for this period and determined the
10 exempt sales for third quarter 2014 and fourth quarter
11 2014. And that would be on your Exhibit G, page 294.

12 Appellant was unable to explain the reasons for
13 the low reported average daily taxable sales, low reported
14 taxable sale percentages, federal income tax returns sales
15 differences, bank deposit differences, profit and loss
16 statement sales difference, negative reported book
17 markups, high credit card sales percentages, and high
18 claimed exempt sales amounts.

19 Therefore, the Department conducted further
20 investigation by analyzing Appellant's federal income tax
21 return for the first audit period and credit card sales
22 and claimed exempt sales information for the second audit
23 period. For the first audit, the Department analyzed
24 Appellant's available federal income tax return for the
25 audit period. And that would be in your Exhibit B, pages

1 156 and 157.

2 The Department ordered that the gross receipts
3 reported on the 2009 federal income tax return were
4 41 percent greater than the gross receipts reported on the
5 2010 federal income tax return. And that would be on your
6 Exhibit B, page 156. Appellant asserted that the sales
7 decreased from 2009 to 2010 because of slowed economy.
8 However, the Department also noted that the total sales
9 reported on the profit and loss statement for the year
10 2010 exceeded total sales reported on the profit and loss
11 statement for year 2009 by around \$767,000.00. And that
12 would be on your Exhibit B, page 154.

13 Appellant did not provide an explanation for
14 these discrepancies. The Department used the Appellant's
15 provided bank statements for January 2009 through
16 December 2011 to compile bank deposits of around
17 \$481,000.00 for year 2009, and \$1.2 million for year 2010.
18 And that would be on your Exhibit B, page 160.

19 The Department also noted that total bank
20 deposits for year 2010 exceeded total bank deposits for
21 year 2009 by around \$768,000.00. And that would be on
22 your Exhibit B, page 160. The Department determined that
23 the bank deposits for year 2009 did not include all of the
24 proceeds from Appellant's sales for that year because
25 Appellant had asserted that its sales had actually

1 decreased from 2009 to 2010, and the amount of bank
2 deposits from year 2009 was less than year 2010. And that
3 would be on your Exhibit B, page 160

4 The Department does use the federal income tax
5 returns to determine Appellant's sales for the first audit
6 period. And that would be on your Exhibit B, page 29 and
7 Exhibit B, pages 156 and 157. However, since the gross
8 sales reported on Appellant's 2010 federal income tax
9 return was significantly lower than sales reported on the
10 2009 federal income tax return, the Department used the
11 sales reported on the federal income tax return for
12 Year 2009 to determine unreported taxable sales for the
13 first audit period. And that would be on your Exhibit A,
14 page 29, and Exhibit B, page 152.

15 The Department subtracted total sales reported of
16 the sales and use tax return for year 2009 of around
17 \$336,000.00 from gross receipts reported on the 2009
18 federal income tax return of around \$2.1 million to
19 calculate unreported total sales of around \$1.8 million.
20 And that would be on your Exhibit B, page 152.

21 Then the Department calculated the unreported
22 quarterly sales of around \$443,000.00. And that would be
23 on your Exhibit A, page 29. Appellant did not provide any
24 information to determine its exempt sales for resales and
25 sales in interstate and foreign commerce for the first

1 audit period. However, the Department allowed claimed
2 sales for resales and sales in interstate and foreign
3 commerce amounts to give a benefit for Appellant. And
4 that would be on your Exhibit A, page 29.

5 Appellant did not provide any documentary support
6 that any amount of unreported quarterly sales include any
7 additional nontaxable exempt sales for resales and sales
8 in interstate and foreign commerce. Therefore, the
9 Department determined that the unreported quarterly sales
10 as unreported taxable sales for the quarter. And that
11 will be on your Exhibit A, page 29.

12 In total, the Department determined unreported
13 taxable sales of around \$5.8 million for the first audit
14 period. And that would be on your Exhibit A, page 29.
15 Unreported taxable sales are compared with reported
16 taxable sales of around \$225,000.00 to calculate the error
17 rate of around 2,555 percent for the first audit period.

18 Appellant also did not provide complete books and
19 records for the second audit period, therefore, the
20 Department conducted further investigation by analyzing
21 Appellant's claimed exempt sales and credit card sales
22 information for the second audit period.

23 Appellant claimed around 86 percent of its credit
24 card sales as claimed exempt sales for the third quarter
25 of 2014, and 97 percent for fourth quarter 2014. And that

1 would be in your Exhibit G, page 294.

2 These are exceptionally high percentages when
3 compared to other quarters of the second audit period.
4 And that would be on your Exhibit G, page 294.
5 Appellant did not provide any reasonable documentary
6 information to support its claimed exempt sales for the
7 second audit period, however, the Department allowed
8 claimed exempt sales for the first ten quarters of the
9 second audit period to give a benefit for the Appellant.
10 And that would be on your Exhibit G, page 294.

11 To determine a reasonable exempt sales amount for
12 third quarter 2013 and fourth quarter 2014, the Department
13 determined an average exempt sales percentage of around
14 42 percent using credit card sales and claimed exempt
15 sales for the period of January 1, 2013 through June 30,
16 2014. And that would be on your Exhibit G, page 294.

17 The Department used the average exempt sales
18 percentage of 42 percent and credit card sales to
19 determine audited exempt sale of around \$344,000.00 for
20 the period of July 1st, 2014, through December 31, 2014.
21 And that would be on your Exhibit G, page 294.

22 In total, the Department determined that the
23 total allowed exempt sales of around \$2.1 million for the
24 second audit period. And that would be on your Exhibit G,
25 page 293. Appellant did not provide its complete sales

1 and credit card sales information to determine its credit
2 card sales percentage. The Department does determine a
3 conservative credit card sales to total sales percentage
4 of 90 percent based on its experience in auditing similar
5 businesses. And that would be on your Exhibit G,
6 page 293.

7 Appellant did not provide any details to
8 determine a higher credit card sales percentage for this
9 second audit period. During the field work, Appellant
10 failed to provide credit card merchant statements or
11 1099(k) forms to calculate its credit card sales for the
12 audit period, therefore, the Department obtained
13 Appellant's credit card sales information for the second
14 audit period from the Department's internal sources. And
15 that would be on your Exhibit G, page 295, and Exhibit H,
16 pages 379 through 382.

17 The Department's schedule is total credit card
18 sales of around \$6.8 million for the second audit period.
19 And that would be on your Exhibit G, page 293.
20 In order to give a benefit of around \$219,000.00 to
21 Appellant, the Department first subtracted the allowed
22 exempt sales of around \$2.1 million and applicable sales
23 tax reimbursement to calculate total audited taxable
24 credit card sales of around \$4.3 million for the second
25 audit period. And that would be on your Exhibit G,

1 page 293.

2 Then the Department used the audited taxable
3 credit card sales of around \$4.3 million and a 90 percent
4 credit card sales percentage to determine the audited
5 taxable sales of around \$4.8 million for the second audit
6 period. And that would be on your Exhibit G, page 293.

7 The Department then compared the audited taxable
8 sales with the reported taxable sales of around
9 \$293,000.00 to calculate unreported taxable sales of
10 around \$4.5 million for the second audit period. And that
11 would be on your Exhibit G, page 293.

12 The Department then compared the unreported
13 taxable sales with the reportable taxable sales of around
14 \$293,000.00 to calculate their error rate of around 10,500
15 percent to the second audit period. Had the Department
16 determined the total sales first based on total credit
17 card sales and 90 percent credit card sales percentage and
18 then deducted the allowed exempt sales on applicable sales
19 tax reimbursement of amount to determine the unreported
20 taxable sales for this audit period.

21 This would increase the unreported taxable sales
22 by around \$290,000.00 from \$4.5 million to \$4.7 million
23 for the second audit period. Therefore, the Department
24 finds that the estimated amount, especially in this second
25 audit, is not only reasonable, but benefits Appellant.

1 Ultimately, the Department used an audit
2 calculation which is the lowest deficiency measure to give
3 a benefit to Appellant. When the Department is not
4 satisfied with the accuracy of the sales and use tax
5 returns filed, it may rely upon any facts contained in the
6 returns or any information that comes into the
7 Department's possession to determine if any tax liability
8 exists.

9 Taxpayer will maintain and make available for
10 examination on request by the Department all records
11 necessary to determine the correct tax liability under the
12 sales and use tax laws, and all records necessary for the
13 proper completion of the sales and use tax returns. When
14 a taxpayer challenges a notice of determination, the
15 Department has the burden to explain the basis for that
16 deficiency.

17 When the Department's explanations appears
18 reasonable, the burden of proof shifts to the taxpayer to
19 explain why the Department asserted the deficiency is not
20 valid. The audit calculation of unreported taxable sales,
21 based on Appellant's available information, was fair and
22 reasonable.

23 In total, the Department determined unreported
24 taxable sales of around \$10.2 million for both audit
25 periods. And that would be on your Exhibit A, page 29,

1 and Exhibit G, page 290. For the first audit period,
2 Appellant argued in its opening brief that the gross sales
3 reported in its 2009 federal income tax return are
4 excessive. Appellant asserts that the gross receipts
5 reported on the amended 2009 federal income tax return
6 provided to the Department following the appeal conference
7 are accurate. That would be on Appellant Exhibits 1
8 through 16.

9 Appellant asserts that the Department had no
10 basis for computing audited taxable sales based on
11 estimates since records provided for the audit were
12 accurate. As support, Appellant provided bank statements
13 and canceled checks for year 2010, a list of wholesale
14 customers, UPS statements for the period September 1,
15 2010, through December 31, 2010, a credit card merchant
16 statement for year 2011, a copy of the amended 2009
17 federal income tax return for Ojogho American, and a copy
18 of the amended 2009 federal income tax return for A-1
19 Soccer Warehouse. And that would be on Appellant's
20 Exhibit 1 through 16.

21 The Department reviewed and analyzed this
22 information and ultimately rejected it. Upon examination
23 of Appellant's exhibits, the Department ordered that the
24 Appellant did not provide any statements or documents to
25 calculate its taxable sales for the first audit period.

1 Appellant has not provided a detailed sales report or cash
2 register Z tapes to support gross receipts reported on the
3 amended 2009 federal income tax returns.

4 More, the Department noted that the gross
5 receipts reported on its audited federal income tax
6 returns of around \$2.1 million exceeded gross receipts
7 reported on the amended 2009 federal income tax return by
8 around \$1.7 million. And that would be on your Exhibit A,
9 page 63.

10 The Department finds that the bank statements,
11 canceled checks, UPS statement, and the list of wholesale
12 customers did not adequately explain the difference found
13 between the 2009 and 2010 bank statements and federal
14 income tax returns. The Department attempted to perform
15 its own reasonableness analysis on the first audit it did,
16 however, Appellant did not provide complete books and
17 records relating to merchandise purchases for the first
18 audit period to verify the purchases.

19 The Department was unable to perform a shelf test
20 to determine Appellant's markup because Appellant did not
21 provide current merchandise sales and purchase invoices.
22 Thus, the Department is unable to use the markup method to
23 verify the reasonableness of audited taxable sales.

24 Here, the audit liability from the first audit
25 period was determined using gross receipts reported on

1 Appellant's 2009 federal income tax returns, and thus, the
2 Department finds that the audited taxable sales for the
3 first audit period is primarily based on Appellant's own
4 federal income tax return.

5 For the second audit period, Appellant also
6 argued in its opening brief that entire unreported taxable
7 sales for the second audit period should be canceled
8 because they are unreported sales brought to sales made by
9 a different entity, that Amazon.com should have interest
10 on the reporting the sales tax on sales Amazon.com made to
11 its website, and that's how Appellant's sales are exempt
12 sales in interstate and foreign commerce.

13 As support, Appellant provided some bank
14 statements and some federal income tax returns for another
15 entity. And that would be on Appellant's Exhibit 1
16 through 16. The Department reviewed and analyzed this
17 information and ultimately rejected it. Upon examination
18 of Appellant's exhibits, the Department ordered Appellant
19 did not provide any supporting documentation or evidence
20 that unreported taxable sales, in fact, made by another
21 entity.

22 The Department therefore objected Appellant's
23 contention that the unreported taxable sales were not made
24 by Appellant. Specifically, the Department ordered that
25 although several other entities were noted in the bank

1 records, each is related to Appellant with no transactions
2 existing between Appellant's entities.

3 The Department states that the 1099(k)
4 information considered from American Express, Amazon
5 Services, and Amazon Services International all indicate
6 that the payee of the sale was Appellant. That would be
7 on your Exhibit G, page 295, and Exhibit H, pages 379
8 through 383.

9 Therefore, the Department determined that this
10 makes Appellant the true retailer regardless that the
11 sales receipts were diverted to other accounts.
12 Concerning Appellant's assertion that Amazon.com is a true
13 seller based on the review of Amazon service website, the
14 Department found that prior to October 1, 2019, Amazon.com
15 is a markup platform provider for third-party sellers such
16 as Appellant.

17 Amazon is not the retailer under the sales and
18 use tax law for the transaction at issue, Appellant is.
19 The Department found third-party sellers can't resell
20 online, and seller's account with Amazon.com for a fee, as
21 Appellant did in this case, and that retailers can list
22 their product for sale at Amazon online platform, managing
23 and tracking sales and markup those products for customer
24 purchase products through the Amazon online platform from
25 for the seller such as Appellant.

1 Amazon processes the payment from the sale and
2 sends an electronically-generated invoice to the customer
3 on behalf of the seller, and Amazon then automatically
4 transfers the proceeds from the sales to the seller's bank
5 account.

6 Most notably, the Department found that Amazon's
7 agreement, in its website, specifically states that it is
8 the seller's responsibility to determine whether the sales
9 are subject to tax, and to collect, report, and remit the
10 tax to the State.

11 The Department holds that the Appellant has not
12 provided a contract or agreement indicating that Amazon is
13 a true retailer, and it's, therefore, responsible for
14 collecting and remitting sales tax reimbursement on the
15 sales at issue. There was no provision in the law at the
16 time of this transaction that made Amazon the retailer.

17 The Department knows that Amazon.com website
18 relating to Appellant showed sold by USA Soccer Shop and
19 Amazon which further states support that Appellant is a
20 true retailer. Thus, the Department found that Amazon was
21 just the markup platform provider for Appellant, and that
22 Appellant is a true retailer of the items sold and is the
23 party responsible for reporting the sales and for
24 remitting the taxes.

25 The Department also notes that the 1099(k)

1 information for years 2013 and 2014 did not include any of
2 the known sales made to Amazon. And that would be on your
3 Exhibit G, page 295, and Exhibit H, pages 379 through 382.
4 Had the Department estimated original sales through Amazon
5 using 2012 sales to Amazon sales information, this would
6 increase to unreported taxable sales by around \$4.4
7 million from \$4.5 million to \$8.8 million for the second
8 audit period. And that would be on your Exhibit G,
9 page 295 and Exhibit H, pages 379 through 382.

10 At this time, the Department will not assert an
11 increased account for the additional taxable sales of
12 about \$4.4 million for the second audit period. And that
13 will be on Exhibit G, page 295, and Exhibit H, pages 379
14 through 382. Therefore, the Department finds that the
15 estimated amount assessed in the second audit is not only
16 reasonable, but a benefit to Appellant.

17 Appellant's contention that some of the
18 unreported taxable sales brought into exempt sales in
19 interstate and foreign commerce. The Department found
20 Appellant did not identify or provide any evidence such as
21 sales invoices, payment information from its customers,
22 and related shipping documents to identify the specific
23 sales transactions and prove that Appellant's products
24 were delivered to an out-of-state destination.

25 As stated earlier, the Department accepted sales

1 in interstate and foreign commerce in its sales and use
2 tax returns, except for the last two quarters of the
3 second audit period, to determine unreported taxable sales
4 for the second audit period. And that would be on your
5 Exhibit G, page 293. Therefore, the Department rejected
6 these contentions.

7 Finally, the Department imposed a 10 percent
8 negligence penalty for both audit periods based on the
9 determination that Appellant's books and records were
10 incomplete and inaccurate for sales and use tax purposes,
11 and because Appellant failed to accurately report his
12 taxable sales.

13 The Department notes that Appellant's sole
14 corporate officer was predecessor of Appellant and was
15 previously audited for the period January 31, 1997 through
16 March 31, 2005, which also resulted in the determination
17 of unreported sales tax. This indicates that Appellant
18 had the experience and knowledge to sufficiently
19 understand its sales and use tax compliant obligations.

20 Specifically, the Department noted that Appellant
21 provided limited records for the audit period, and
22 Appellant failed to provide documents of original entry to
23 support its reported sales tax liability. As a result,
24 Appellant had to calculate Appellant's taxable sales based
25 upon the year 2009 federal income tax return for the first

1 audit period, and credit card sales ratio method for the
2 second audit period.

3 In addition, the audit examinations disclosed
4 unreported taxable sales of around \$10.2 million for both
5 audit periods, which, when compared with reported taxable
6 sales of around \$590,000.00 for both audit periods,
7 resulted in a combined error rate of around 1,900 percent.
8 This high error is additional evidence of negligence.

9 Appellant failed to provide complete documents of
10 original entry such as its sales receipts, credit card
11 sales receipts, shipping documents, payment information
12 from its customers, sales journals, and sales summaries to
13 support its reported total taxable and claimed nontaxable
14 sales for both audit periods.

15 In addition, Appellant failed to provide complete
16 purchase information or purchase journal for both audit
17 periods. Appellant failed to provide documentary evidence
18 to support its taxable sales for both audit periods.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Sorry to
20 interrupt. I just want to highlight that you have two
21 minutes left so you can prioritize your presentation.

22 MR. SAMARAWICKREMA: The Department was unable to
23 verify the accuracy of the reported sales tax for both
24 audit periods using the audit method, therefore, the
25 original audit methods was used to determine unreported

1 sales tax for both audit periods. Appellant has not
2 identified any errors in the Department's computations or
3 provided any documentary evidence to establish more
4 accurate determinations for both audit periods.
5 Therefore, for all of these reasons, the Department
6 requests that the appeal be denied. This concludes our
7 presentation. We are available to answer any questions
8 the Panel may have. Thank you.

9 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

10 We will go ahead and turn it over to Judge
11 Aldrich for questions.

12 ADMINISTRATIVE LAW JUDGE ALDRICH: This is Judge
13 Aldrich. So just a quick question for Mr. Ojogho. The
14 Department indicated that there was a predecessor entity
15 to Ojogho American Enterprises, Inc.; is that correct?

16 MR. OJOGHO: Can you repeat that? I don't think
17 I understand that.

18 ADMINISTRATIVE LAW JUDGE ALDRICH: So was there
19 a prior corporate entity or predecessor to Ojogho American
20 Enterprises, Inc.?

21 MR. OJOGHO: No.

22 MR. AKA: There's no other corporate entity that
23 preceded Ojogho American Enterprises. To clarify, he
24 operated as a sole proprietorship.

25 ADMINISTRATIVE LAW JUDGE ALDRICH: So the sole

1 proprietorship was the predecessor?

2 MR. AKA: It's not a predecessor. They are two
3 separate entities.

4 ADMINISTRATIVE LAW JUDGE ALDRICH: I understand.
5 And under the sole proprietorship, how many locations were
6 there? Are they the same locations as the locations under
7 Ojogho American Enterprises?

8 MR. OJOGHO: It depends on the year. I would
9 have to think. Things changed a few times.

10 MR. AKA: There's only one location that went
11 from Christian Ojogho when he incorporated.

12 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

13 MR. AKA: And that location is added --

14 ADMINISTRATIVE LAW JUDGE ALDRICH: Subsequent.

15 MR. AKA: When it was unincorporated.

16 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. And
17 then I was hoping to understand a little bit more about
18 the arrangements between Ojogho American Enterprises,
19 Inc., and Amazon. So during the liability periods -- so
20 2008 through 2014, when an order came in, was it being
21 sent out from one of your locations or location, or was
22 the product already at an Amazon warehouse?

23 MR. OJOGHO: Both, to be correct. There were
24 some that were already at Amazon warehouse. We called
25 those the APA, the ones they shipped on our behalf.

1 ADMINISTRATIVE LAW JUDGE ALDRICH: During the
2 liability period?

3 MR. OJOGHO: Yes.

4 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. So
5 there are two categories, some that originated from your
6 location and some that were coming from the Amazon
7 warehouse?

8 MR. OJOGHO: Correct.

9 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay. Thank
10 you. I don't have any further questions.

11 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.
12 Judge Ralston, any questions?

13 ADMINISTRATIVE LAW JUDGE RALSTON: No questions.
14 Thank you.

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

16 I do have a few questions just so I can better
17 understand the facts here. So my understanding of
18 Appellant's position is the 1099(k) was issued for all
19 operating entities, therefore, total names that you
20 identified -- I'm trying to understand why the 1099(k)
21 would be issued for four different entities. Is the
22 1099(k) generally issued for one tax ID number?

23 MR. AKA: No -- well, for the corporation.

24 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Is your
25 microphone on? I'm having trouble hearing you.

1 MR. AKA: For the corporation or for the
2 entities? The entities -- because of the cost, the
3 entities can piggyback on the credit card processor.
4 It's, like, for example, Wells Fargo, they have different
5 accounts, different entities, however, whatever that is
6 sold in one, they still use the same credit card
7 processor. However, in the record of the bank statement,
8 whatever that is sold by a particular entity by a
9 different location can be identified.

10 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. I'm
11 still having trouble understanding. So let's focus on
12 Amazon. You said 90 percent of the sales are from Amazon.
13 Do all four entities have a separate Amazon store, or is
14 it all Ojogho American Enterprises at one store on Amazon?

15 MR. AKA: It is an internet location. It's not,
16 like, a physical location.

17 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I
18 understand.

19 MR. AKA: Yeah.

20 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So when
21 somebody saw something on the internet -- Mr. Ojogho
22 pointed out that Amazon issues a statement that identifies
23 exactly what was shipped outside of the state and shipped
24 inside of the state. Does that summary sheet include
25 sales for all four entities?

1 MR. AKA: Correct.

2 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So all
3 four entities are operating under one Amazon store?

4 MR. AKA: On one credit card processor, not one
5 Amazon store. One is a platform and the other one is
6 accepting the credit card and debit card. Amazon happened
7 to be both as a platform and are the ones that operate --

8 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I know
9 what a 1099(k) looks like. I want to understand from a
10 factual perspective, if I go right now on Amazon during
11 the liability period and I went to look for a soccer
12 jersey and your item shows up, if I purchase that item,
13 which entity is that coming from?

14 MR. AKA: They have different internet sites for
15 these entities.

16 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Different
17 internet sites all under Amazon?

18 MR. AKA: All under Amazon.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So there
20 are four different stores or retailers on Amazon?

21 MR. AKA: It should be three of them. There's
22 one for Soccer Kingdom, there's one for Ojogho American
23 Enterprises, and there's one for A-1 Soccer.

24 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So total
25 of three, one of which you don't own; right?

1 MR. AKA: Mercy Ojogho.

2 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Soccer
3 Kingdom Unlimited, you said that's not your entity?

4 MR. OJOGHO: That's my mother's, Mercy Ojogho.

5 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. So
6 three stores, but the 1099(k) that we are looking at for
7 this used in this matter all relate to Ojogho American
8 Enterprises?

9 MR. AKA: No.

10 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So all
11 three rolled up into one 1099?

12 MR. AKA: Yes.

13 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Because
14 all three use the same credit card processors?

15 MR. AKA: Correct.

16 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: All three
17 have separate Amazon stores?

18 MR. AKA: Correct.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I think I
20 understand your position.

21 I do have a question for CDTFA. You indicated
22 that Appellant indicated they provided an Amazon summary
23 sheet, at least for the second audit period. Have you
24 seen that Amazon summary sheet indicating all of the sales
25 that they made?

1 MR. SAMARAWICKREMA: Judge, that is Exhibit N,
2 it's an Excel worksheet. That is all we have, pages 1106
3 to 1128, Exhibit N.

4 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. I'm
5 looking at that now. And this is what Appellant provided
6 to the Department?

7 MR. SAMARAWICKREMA: Yes, sir.

8 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. It
9 shows the date of the purchase and the time of the
10 purchase and the state it was shipped into, and the
11 customer's name. How did this correspond to your
12 analysis for the second audit period? Because you used
13 the bank deposits; right?

14 MR. SAMARAWICKREMA: Yes. Judge, if you check
15 page Exhibit H, page 330.

16 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: H, as in
17 Harry?

18 MR. SAMARAWICKREMA: Yes.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: 370?

20 MR. SAMARAWICKREMA: Yes. 370.

21 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm
22 looking at it now.

23 Mr. SAMARAWICKREMA: Those are the six account
24 names that Appellant was referring, and if you compare
25 this page 370 with pages 379 through 382 --

1 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm
2 looking at that.

3 MR. SAMARAWICKREMA: So the payee's name is only
4 the Appellant's name or the dba, Soccer Shop USA. And the
5 internet sales, like Amazon sales, were not taken into
6 account for the years 2013 and '14. And if you go to
7 pages 379, that lists the 1099(k) information. For only
8 2012, we have the Amazon sales, not for the other
9 two years.

10 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I guess my
11 question is, we have this Amazon summary sheet, right, and
12 it's not that comprehensive. I think it only covers a few
13 months.

14 MR. SAMARAWICKREMA: Right.

15 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I'm seeing
16 the first quarter in 2013.

17 MR. SAMARAWICKREMA: Right.

18 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: If we add
19 all of those sales up --

20 MR. SAMARAWICKREMA: In Amazon sales for
21 interstate sales was \$700,000.00 for 2012. 2012 is about
22 \$700,000.00 for the whole audit period. For the second
23 audit period, we gave \$2.1 million total exempt sales.

24 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. I
25 guess my question -- if I'm not being clear, and maybe

1 we're not understanding each other. The first quarter of
2 2013, I see a summary sheet, and we add all of these items
3 up. But for that first quarter, does that number match or
4 come close to total sales as reported by -- as shown in
5 the bank deposits?

6 MR. SAMARAWICKREMA: We don't have details, but
7 if you refer to the reported numbers for the first quarter
8 of 2012, it's \$115,000.00 exempt sales.

9 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: As
10 reported?

11 MR. SAMARAWICKREMA: As claimed, yes.

12 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I think
13 Judge Aldrich has a follow-up question.

14 ADMINISTRATIVE LAW JUDGE ALDRICH: This is for
15 Mr. Aka. So which of the entities had seller's permits in
16 California and which of them did not?

17 MR. AKA: Ojogho American Enterprises.

18 ADMINISTRATIVE LAW JUDGE ALDRICH: And so the
19 representative for CDTFA indicated that some of the sales
20 and use tax returns also included other entities
21 underneath the return; is that not accurate?

22 MR. AKA: That is not accurate.

23 ADMINISTRATIVE LAW JUDGE ALDRICH: Okay.

24 MR. AKA: I have a question. I mean, when you
25 guys finish, will I be given an opportunity to ask them

1 questions?

2 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Not an
3 opportunity, but you will have an opportunity to give a
4 closing statement.

5 MR. AKA: Not asking my questions?

6 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: No. If
7 you have any questions, you can ask us and we will see if
8 we can --

9 MR. AKA: Okay.

10 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I don't
11 have any questions at the time. We will keep the record
12 open in this case because of the issue with the follow-up
13 questions or request for information, including the Amazon
14 contract that was referenced by Judge Aldrich. And so
15 we'll address that in a minute. But at this point, I
16 don't have any other questions.

17 Judge Aldrich, do you have any other questions?

18 ADMINISTRATIVE LAW JUDGE ALDRICH: No.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Judge
20 Ralston?

21 ADMINISTRATIVE LAW JUDGE RALSTON: No.

22 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: So I think
23 we can proceed with your closing statement.

24 MR. AKA: Can I ask questions before I go?

25 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: What is

1 your question?

2 MR. AKA: I wanted to ask the Department if the
3 tax return is -- sales tax return is prepared and exempt
4 sales were not omitted out, would that tax return be
5 deficient?

6 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Is that
7 the only question you have?

8 MR. AKA: No.

9 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Go ahead.
10 Why don't you tell me all of your questions, and then if I
11 think it's something that we want to ask the Department,
12 then we will issue that in our initial briefing after the
13 hearing, but I'm not promising we will include those
14 questions. But go ahead and tell me what those are.

15 MR. AKA: The 1099(k) sales, did they try to
16 analyze what portion of that 1099 is exempt sales and what
17 portion is taxable sales? Because those records, we have
18 available.

19 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay.

20 MR. AKA: The day, if it's my understanding, he
21 indicated that there was no -- that he did not use the
22 markup method to determine any part of the additional
23 taxable sales. What was the percentage of taxable sales
24 underreported? Was is the percentage of it? Okay.

25 Now, they obtained an internal record, according

1 to what he said, of 1099(k). Was that the actual 1099(k),
2 or was that a summary of what the 1099(k)? Is that one
3 figure that they get, or does it list what those sales are
4 by the month -- by the months?

5 You also indicated that the taxpayer failed to
6 supply adequate records, and I'm wondering what purchase
7 records would do for determination since they didn't use
8 the percentage of error on the -- they didn't do the
9 markup. I wonder what the purchases would do for the
10 calculation of audited sales, and yet, they relied on cost
11 of goods sold as to what was an income tax return.

12 Now, does their record pick up taxes for the
13 three corporate entities for one, or was it just for
14 Ojogho American Enterprises, which is the one that is on
15 the audit?

16 And he made a comment which federal income tax
17 corporation did they use? There was an issue with the
18 cash register for a business that is more than -- as the
19 taxpayer testified, is less than 10 percent of foot sales
20 at the location, as far as Ojogho America Enterprises is
21 concerned, not any of the other businesses. The cash
22 register would be whatever the total sales that went into
23 the bank, and there is a summary of what they added to the
24 total sales that went into the bank.

25 My last question would be, nonreporting of exempt

1 sales, would that be a reason for deficiency and providing
2 records when there is nothing that those exempt sales --
3 there's no rule that makes it subject to tax? That's my
4 questions that I have.

5 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Okay. And
6 some of them are questions and some of them are, in part,
7 argument. You're making a point. We'll give you five
8 minutes to give your closing statement to the extent that
9 you want to address those questions in your closing
10 statement, feel free, otherwise, we will review and I'll
11 review the transcript, and we will issue some additional
12 briefing after this hearing and keep the record open.
13 Okay.

14 MR. AKA: Okay. What we have presented today are
15 three areas which makes the audit that they have done a
16 non-audit, they just did estimates when there are records
17 available to actually conduct in detail. The Amazon
18 record is there. Wells Fargo and Amazon, who had major
19 people that provided credit platform to the taxpayer,
20 including American Express. Which, when somebody uses
21 American Express, American Express sends that separately
22 from year to date. They use a credit facility for all of
23 that -- to do that.

24 Most of the sales are sales in interstate sales,
25 and most of those sales never got into California. They

1 have platforms, for example, as he testified to, in Japan.
2 It is even in that language -- Spanish, Mexico, South
3 American countries, Africa, Australia, European
4 countries -- they have platforms in those areas.

5 The shipment of those goods rests with Amazon or
6 whoever that platform is in which those sales were made.
7 Those were never being subject to California sales and use
8 tax. And more importantly, these 1099(k) are different --
9 it's different separate entities that file their tax
10 returns that operated independently, owned by different
11 people, and all of them were put into there, but they
12 decided that they wanted to put all of them -- I want to
13 know if there's any reason why they would remain different
14 entities for federal tax purposes, for state tax purposes,
15 these operations, they file both federal and state and pay
16 whatever tax that is due from those entities, so they
17 should and must remain separate from the company that is
18 being audited, which is Ojogho American Enterprises.

19 And as I said, there was a section that, at the
20 time when the law changed, making, not just -- it is not
21 making Amazon the retailer, if Amazon had nexus with
22 California on sales that they carried out for Ojogho
23 American Enterprises, Amazon -- right after the law
24 changed, they transmitted those sales, including the
25 taxes, to Ojogho American Enterprises, and Ojogho American

1 Enterprises were responsible, and they reported the
2 portion of those sales that belong to Ojogho American
3 Enterprises.

4 And lastly, the record, for even somebody that
5 has no recollection of what business is, to be able to
6 look at the record that was presented -- bank statements,
7 credit card statements, the deposits that went into bank,
8 the income tax returns that were prepared -- for them to
9 be able to adequately review the records, there is no
10 negligence.

11 The percentage -- their percentage of error,
12 which they have presented, are based on estimates and
13 cannot be a business for you to say you owe negligence
14 penalty. My client has not been negligent in providing
15 the record that is required for the audit. And I rest my
16 case.

17 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you,
18 Mr. Aka.

19 I will go to my Panel to see if anybody has any
20 final questions.

21 Judge Aldrich, any final questions?

22 ADMINISTRATIVE LAW JUDGE ALDRICH: No further
23 questions. Thank you.

24 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: Thank you.

25 Judge Ralston, any questions?

1 ADMINISTRATIVE LAW JUDGE RALSTON: No. Thank
2 you.

3 ADMINISTRATIVE LAW JUDGE AKOPCHIKYAN: I also
4 don't have any questions. Do you just have any questions
5 before we conclude for today? Hearing none, we are going
6 to go ahead and keep the record of this appeal open for
7 additional briefing. We will go ahead and issue an order
8 after this hearing addressing our next steps.

9 I want to thank the parties for their
10 presentation today, and Mr. Ojogho and Mr. Cutler, for
11 your testimony. This concludes the last hearing for
12 today. We will reconvene tomorrow morning at 9:30 a.m.
13 Thank you, everybody.

14 (The hearing adjourned at 4:36 p.m.)
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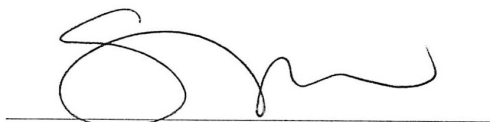
1 HEARING REPORTER'S CERTIFICATE

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

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

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

14 I have hereunto subscribed my name this 5th day
15 of November, 2023.

16
17
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19 

20 Shelby Maaske,
21 Hearing Reporter
22
23
24
25

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