

IN THE MATTER OF THE APPEAL OF:)
) File No. 21027307
SAFAR & SAFAR BROTHERS, INC.,)
)
) APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS
Cerritos, California
Thursday, July 13, 2023

Job No. :
42731 OTA(B)

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
) File No. 21027307
SAFAR & SAFAR BROTHERS, INC.,)
)
) APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 1:00 p.m. and
concluding at 3:00 p.m. on Thursday,
July 13, 2023, reported by HANNA JENKIN,
Hearing Reporter.

1 APPEARANCES:

2 Panel Lead: ALJ MICHAEL GEARY

3
4 Panel Members: ALJ JOSHUA ALDRICH
5 ALJ SHERIENE RIDENOUR

6
7 For the Appellant: HARPEET DHALIWAL
8 AMANDA BUI

9 For the Department STATE OF CALIFORNIA
10 DEPARTMENT OF TAX AND
11 FEE ADMINISTRATION
12 NALAN SAMARAWICKREMA, HEARING REP.
13 DAMIAN ARMITAGE, HEARING REP.
14 JASON PARKER, HEARING REP.
15 CHRISTOPHER BROOKS, TAX COUNSEL
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 8)

(Respondent's Exhibits A-H were received at page 8)

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1 Cerritos, California, Thursday, July 13, 2023

2 1:00 p.m.

3
4
5 JUDGE GEARY: Now we'll have the parties identify
6 themselves beginning with the Appellant, both the
7 representative and Ms. Bui, is that correct?

8 MS. BUI: Yes, your Honor.

9 JUDGE GEARY: All right. Go ahead and introduce
10 yourselves.

11 MR. DHALIWAL: Your Honor my name is Harpeet Dhaliwal
12 besides being an owner and a shareholder of Safar and
13 Safar, Inc., I am the primary person who operated the Arco
14 Ampm since 2012.

15 JUDGE GEARY: Okay. Thank you. And you?

16 MS. BUI: Yes, your Honor. My name is Amanda Bui I'm
17 the president of the company, your Honor.

18 JUDGE GEARY: Okay. Thank you.

19 And for the California Department of Tax and Fee
20 Administration?

21 MR. SAMARAWICKREMA: Nalan Samarawickrema, hearing
22 representative for the Department.

23 MR. ARMITAGE: Damian Armitage, hearing representative
24 for the Department.

25 MR. PARKER: Jason Parker, Chief of Headquarters

1 Operations Bureau with the Department and we also have
2 Christopher Brooks, Tax Counsel with the Department in the
3 audience.

4 JUDGE GEARY: I see Mr. Brooks back there.

5 Is it Armitage?

6 MR. ARMITAGE: Armitage.

7 JUDGE GEARY: Can you spell both of your names,
8 please?

9 MR. ARMITAGE: Armitage. First name Damian --
10 D-A-M-I-A-N. Last name Armitage -- A-R-M-I-T-A-G-E.

11 JUDGE GEARY: And what is your title Mr. Armitage?

12 MR. ARMITAGE: For this hearing it's hearing
13 representative.

14 JUDGE GEARY: Okay. Thank you.

15 I'm going to talk a bit about the exhibits. The
16 exhibits marked for identification in this appeal consists
17 of Appellant's exhibits that OTA has marked, for
18 identification only so far, as Exhibits 1 through 5, and
19 Respondent's Exhibits that OTA has marked A through H for
20 identification only.

21 OTA incorporated these exhibits into a digital
22 hearing binder, and the parties should have received
23 notification that the binder was available for download
24 and hopefully have downloaded them.

25 I have a copy right now of the binder in front of

1 me and I expect that my co-panelists do and I hope that
2 the co-parties have a copy of the binders in front of
3 them.

4 Mr. Dhaliwal, will you be the one primarily to be
5 speaking at this hearing today?

6 MR. DHALIWAL: Yes, your Honor.

7 JUDGE GEARY: Did you have an opportunity to download
8 the binder? And have you reviewed it?

9 MR. DHALIWAL: Yes, your honor. I have a copy with
10 me.

11 JUDGE GEARY: And can you confirm that the binder
12 contains complete and legible copies of the documents that
13 Appellant wishes to submit to OTA.

14 MR. DHALIWAL: Yes, your Honor, we do.

15 JUDGE GEARY: Okay.

16 Let me ask CDTFA then, does Respondent have any
17 objection to the admission of Appellant's Exhibits 1
18 through 5?

19 MR. SAMARAWICKREMA: No, Judge.

20 JUDGE GEARY: And has Respondent reviewed the digital
21 hearing binder and satisfied itself that it contains the
22 complete and legible copies of the documents it wants OTA
23 to consider?

24 MR. SAMARAWICKREMA: Yes.

25 JUDGE GEARY: And does Appellant have any objection to

1 the admission of Respondent's Exhibits A through H?

2 MR. DHALIWAL: No, your Honor.

3 JUDGE GEARY: Those exhibits are all admitted, the
4 Appellant's Exhibits 1 through 5 and the Respondent's
5 Exhibits A through H.

6 (Appellant's Exhibits 1-5 were received in
7 evidence by the Administrative Law Judge.)

8 (Respondent's Exhibits A-H were received in
9 evidence by the Administrative Law Judge.)

10 JUDGE GEARY: The issue that we are here to address
11 today is whether further adjustments to the measure of
12 reported taxable sales of unreported taxable sales is
13 warranted, but more specifically as we discussed, I
14 believe at the pre hearing conference in this matter, it
15 is my understanding that the parties dispute the correct
16 tax treatment of a credit for overpaid diesel fuel excise
17 tax in the amount of \$197,077.

18 It is OTA's understanding that Appellant asserts
19 that it is entitled to have the credit applied to the net
20 deficiency, while Respondent argues that the credit must
21 be applied only to reduce recorded diesel fuel sales.

22 Let me ask Respondent first, have I correctly
23 identified the issue as you understand them?

24 MR. SAMARAWICKREMA: Yes, Judge.

25 JUDGE GEARY: Mr. Dhaliwal, have I correctly

1 understand the issue as you understand them?

2 MR. DHALIWAL: Yes, your Honor, but there is a slight
3 disparity.

4 JUDGE GEARY: All right. Go ahead.

5 MR. DHALIWAL: CDTFA gave us an initial audit of
6 \$26,000 and from then on it built up to 197. And what
7 they said was that they were basically disallowing the
8 credit for -- disallowing our deductions for the diesel
9 excise tax for three years. I will go -- I will go as we
10 go along, but that's precisely what we are going to
11 dispute.

12 JUDGE GEARY: All right. Explain to me how -- was the
13 was the increase -- are you disputing that amount? Is the
14 amount that you're disputing the \$197,077?

15 MR. DHALIWAL: Your Honor, if I can go over as I go
16 over and I'll refer to the exhibits, it will be more clear
17 rather than just my giving of summary.

18 JUDGE GEARY: Okay. So at some point, perhaps when
19 you're done with your presentation, I'll need to have a
20 better understanding and make sure that in your argument
21 you let me know exactly the amount that is in dispute, you
22 can describe it any way you want, but at some point let's
23 make sure we have the amount down, okay?

24 MR. DHALIWAL: Your Honor, that is precisely what I
25 want to do.

1 JUDGE GEARY: Great.

2 Appellant indicated at the prehearing conference
3 that it would require 60 to 90 minutes to present its
4 argument and testimony. I found that amount to be
5 probably much longer than Appellant would in fact need.

6 Mr. Dhaliwal, do you still estimate 60 to 90
7 minutes for your presentation?

8 MR. DHALIWAL: My estimation would probably be more
9 like 35 to 40, but when I said 60 to 90 I anticipated any
10 examination they would have for me.

11 JUDGE GEARY: Okay. And by "they" you mean the
12 Respondent?

13 MR. DHALIWAL: Yes, your Honor.

14 JUDGE GEARY: Do you intend to testify today?

15 MR. DHALIWAL: I intend to testify today.

16 JUDGE GEARY: And does Ms. Bui intend to testify
17 today?

18 MS. BUI: Your Honor, I would make some comments, but
19 all of the taxes and all of the -- relating to this was
20 handled by Mr. Dhaliwal, so he will be the main one
21 speaking, your Honor.

22 JUDGE GEARY: Okay. When you indicate, Ms. Bui, that
23 you will be making comments, what I need to find out
24 whether your comments will be in the nature of a
25 representing facts. If you plan to state facts in your

1 comments, representing to us that these are true facts
2 then that is in the nature of testimony, and I will allow
3 you to testify if that's what you're going to do, I'll
4 just need to make sure that I place you under oath if you
5 are going to testify.

6 MS. BUI: Yes, your Honor.

7 JUDGE GEARY: You will be testifying.

8 MS. BUI: Yes. Yes, your Honor.

9 JUDGE GEARY: Okay. And Mr. Dhaliwal, would you plan
10 on giving -- the order of your presentation, do you wish
11 to intermit your testimony with your argument and then
12 after you're done ask Ms. Bui questions? Is that your
13 plan? Or ask Ms. Bui to make a narrative statement?

14 MR. DHALIWAL: After I complete my testimony then Mrs.
15 Bui will give her testimony.

16 JUDGE GEARY: So right before we start with you, which
17 will be just momentarily, I'll administer an oath or
18 affirmation to both of you and you can proceed in that
19 fashion, is that acceptable?

20 MR. DHALIWAL: Yes, your Honor.

21 JUDGE GEARY: All right. Respondent indicated that
22 the prehearing conference said it would need approximately
23 30 minutes, is that still the estimate?

24 MR. SAMARAWICKREMA: Yes, Judge.

25 JUDGE GEARY: Thank you. When the Department is done

1 what's the only argument, when it uses that approximately
2 30 minutes for its presentation, I will turn back to you
3 Mr. Dhaliwal and you Ms. Bui and allow you approximately
4 five minutes for final closing comments or rebuttal, okay?

5 MR. DHALIWAL: Thank you, your Honor.

6 JUDGE GEARY: All right. I want you to be aware that
7 witnesses can be questioned by the Department. I don't
8 know whether the Department will have any questions, and
9 by the Department I mean CDTFA.

10 They can also be questioned by the judges. Any
11 of us who have questions of a witness can ask those
12 questions. Any of us up here in the dais can also direct
13 questions not of a factual nature to the person making the
14 argument if we have questions about the legal arguments
15 that the people are making.

16 You'll note that I am not going to be
17 administering an oath or affirmation to anybody at
18 Respondent's table and the reason why I am not doing that
19 is because no one at Respondent's table is testifying.
20 They are only arguing their case, they may be referring to
21 facts, but generally they will refer only to facts that
22 are already in evidence because it's part of the documents
23 I admitted just a few minutes ago.

24 Do you understand the difference?

25 MR. DHALIWAL: Yes, your Honor.

1 JUDGE GEARY: Okay. Mr. Dhaliwal, any questions
2 before we begin your presentation?

3 MR. DHALI WAL: No, your Honor.

4 JUDGE GEARY: Ms. Bui, any questions?

5 MR. SAMARAWICKREMA: No, your Honor.

6 JUDGE GEARY: Okay. Department, any questions?

7 MR. SAMARAWICKREMA: No, Judge.

8 JUDGE GEARY: Let me ask both you, Mr. Dhaliwal and
9 you, Ms. Bui to raise your right hands.

10
11 H. DHALI WAL,
12 Produced as a witness, and having been first duly sworn by
13 the Administrative Law Judge, was examined and testified
14 as follows:

15
16 A. BUI,
17 Produced as a witness, and having been first duly sworn by
18 the Administrative Law Judge, was examined and testified
19 as follows:

20 JUDGE GEARY: Thank you. Ms. Bui, make sure your
21 microphone is off if you're not talking.

22 I believe that you, Mr. Dhaliwal, are going to be
23 giving the presentation first. You may proceed when you
24 are ready.

25 ///

1 PRESENTATION

2 MR. DHALIWAL: Your Honor, I have operated Arco Ampm's
3 since the year 2006. I also have a master's degree in
4 computer science and I'm well-versed with spreadsheets and
5 I am very familiar with not necessarily accounting, but
6 very familiar with calculations.

7 I need to give a bit of history first as to the
8 entities of Safar and Safar brothers as to why -- how we
9 are connected to Safar and Safar brothers because neither
10 do I have the last name Safar, nor door is Amanda Bui have
11 the last name Safar.

12 We took over the business and the property in
13 June 2012 when the Safar brothers, especially mainly Mousa
14 Safar and Malaki Safar had defaulted on their sales tax of
15 about \$650,000. That was a figure given to us by that
16 time the State Board of Equalization. In addition to
17 that, they had also defaulted on \$224,000 in underground
18 storage tank fees.

19 When we took over we met with the State Board of
20 Equalization and they told us that based on an audit in
21 fact, Safar brothers had not even filed tax returns and
22 their basis was on just some figures they had. We did not
23 dispute these figures and we were well-aware when we
24 walked in that we owed roughly about \$874,000.

25 The gas station at that time was in foreclosure

1 and the previous owner, Mousa Safar, had not paid his loan
2 payments to the bank for about \$337,000.

3 I had a connection, because of my previous
4 experience, I had some connections with Arco Ampm and I
5 talked to them and essentially a conversation started
6 where they wanted me to come in and save the station
7 because otherwise they were going pull their flack and
8 they would lose that station, which was located at a very
9 busy corner.

10 We worked with the lender that we would take over
11 the loan, but he would not charge us for the \$337,000 that
12 were a backlog of the payments.

13 During that time when we took over, there were 14
14 employees, we kept all the 14 employees. But as soon as
15 we took over, within seven days, the State Board of
16 Equalization, especially a gentleman named Robert, was in
17 there wanting to put a keeper. Amanda Bui negotiated with
18 them that within three months we started paying \$5000, at
19 that time, the station was not even making money to pay
20 its own electric bill, leave alone anything else.

21 JUDGE GEARY: Mr. Dhaliwal, can I just ask you to slow
22 down just a little bit.

23 MR. DHALIWAL: Yes, your Honor.

24 JUDGE GEARY: Thank you.

25 MR. DHALIWAL: After that, at that time, although this

1 is not relating to the State Board of Equalization, we
2 found out that there was a lot of equipment that was not
3 working, vendors had not been paid, electric bills had not
4 been paid, but that is something we expected and that was
5 coming up close to another \$150,000.

6 Within about six to eight months, we renegotiated
7 with the State Board of Equalization and we were paying
8 \$18,000 a month to clear out the backlog.

9 Within one and a half year of us taking over some
10 time in December 2013, we had already paid the \$224,000 to
11 the State Board of Equalization for the underground
12 service tank fees. As such, for the first one and a half
13 year, essentially we were keeping the employees paid, we
14 were keeping the station afloat, but we had not made a
15 penny.

16 In the meantime, after about one year, the State
17 Board of Equalization started another audit and this was
18 again, relating to the period before June 2012. We met
19 them, we could not provide any documents, any tax returns
20 because the previous owners refused to provide them.

21 By then, we had already signed the franchise
22 agreements, we believe we had been \$874,000, but after the
23 audit, we found out that the liability instead of \$650,000
24 was an excess of \$1,000,000. We could not file an appeal
25 because we didn't have any documents to support our

1 position to appeal that. So as such, we just gulped it
2 down and said we would pay the \$1,000,000.

3 We caught up with all the payments, which
4 included payments to the vendors which were outstanding
5 \$43,000, the \$224,000 to the State Board of Equalization,
6 \$10,000 to the Air Quality Board because they had not even
7 got there permits for fuel for three years. Why they
8 didn't come down them? I have no idea. \$6,000 to the
9 IRS.

10 Both Amanda Bui and I worked tirelessly for
11 almost about three years without taking a single penny
12 because there was no money to be made. From June 2012 to
13 about May 2014, we did not take a single penny from the
14 gas station.

15 By June 2014 we were making monthly payments of
16 \$18,000 a month to clear up that backlog of over
17 \$1,000,000. In April, because the station had been in
18 foreclosure, no bank would refinance us, so we had to wait
19 six years before a bank would even consider refinancing
20 us.

21 In April 2018, we determined that a bank would
22 refinance us for the SBA loan. At that state, the
23 outstanding balance by 2018 from the over 1.25 million was
24 \$350,000, which means we had paid almost \$900,000 back to
25 the State Board of Equalization. I did not have 350,000,

1 so I borrowed that for my sister.

2 In May 2018, we paid the State Board of
3 Equalization \$350,000. There were 19 liens from different
4 periods that we did not dispute, we just paid the amount.
5 And as of May 30th, 2018, we had reduced that entire debt
6 to zero, when I say zero, we paid the State Board of
7 Equalization, we paid the vendors, everything was zero.
8 But on May 2018, I still owed my sister \$350,000 that I
9 had borrowed.

10 Did we make a mistake taking over the gas station
11 from Mousa Safar? Yes, I believe we did because we had
12 thought that we owed 874,000, but we did not shy away from
13 making those payments. We did pay almost 1.5 million.

14 Now how much does a gas station make? A good gas
15 station probably 250,000 a year. But if you just
16 calculate over seven years, we probably took home 15,
17 20,000 a year which was almost making minimum wage. But
18 we did not complain to the state board, there was never a
19 conversation of the state board to give us some kind of
20 relief or anything.

21 We happily paid because we believed that somebody
22 had stolen those taxes, we had taken the responsibility of
23 taking over, we saved the station. I had a very good name
24 Amanda Bui had a very good name with Arco, which is
25 something we liked.

1 Did we come to the tax court and ask for relief?
2 No, we did not. All this is documented with the State
3 Board of Equalization, although it does not live within
4 the purview of the state court.

5 At the time of refinance, we wanted to go away
6 from the name Safar and Safar because we believe that it
7 was going to bring a bad name. However, clearing the tax
8 liens took a long time and we spent almost a month, and we
9 reached a stage when we needed another month to month and
10 a half to even redo all the licenses in a different
11 company.

12 We met with a Latino lady from the Riverside
13 State Board Office and we asked her what the name carry
14 any kind of a -- would it be reflected on us. And she
15 said, "No. You've paid everything. You're zero as far as
16 we are concerned. Safar and Safar is good to go."

17 In May 2018, we were given assurances that since
18 there was no audit we were good to go and we could close
19 the loan.

20 May 2018, with all the toxic going on for six
21 years I ended up having open-heart surgery for an
22 operation that lasted nine hours, which included
23 replacement of my heart valve and also part of my aorta.
24 And I went believe it was attributed to the excessive
25 stress for about six years that I went through.

1 However, as soon as we close the loan in May
2 2018, I believe within a week or two, we were contacted by
3 a lady, a Stephanie Swilling, who is a business tax
4 specialist saying that she was opening an audit from the
5 period of July 2015 to May 2018. This was despite
6 assurances that we had been given by the Latino Lady,
7 whose name I do not remember, from the State Board Office
8 in Riverside that we were to go and everything was clear.

9 I was still recuperating from my heart surgery,
10 as such it took me about two to three months to provide
11 the documents for the next audit.

12 At that time, somewhere in -- I believe in August
13 2018, we were still paying roughly \$20,000 a month to my
14 sister as I had promised to pay her in the 15 months. On
15 August 28th, 2019 after about ten months of the audit,
16 Stephanie Swilling, who was a business tax specialist and
17 also she is a senior tax auditor, as per her e-mail, did
18 the audit and after the audit she sent an e-mail to me
19 saying she had completed the audit. I had a conversation
20 with her and she said the audit came to about \$26,100.

21 I spoke with my accountant and my accountant said
22 to go through a three year period. It would cost probably
23 cost me more than that money, so it's at the best thing
24 would be to just not challenge the audit, but just pay
25 that amount. I told Stephanie Swilling that I would be

1 very willing to pay that amount and clear that issue.

2 However, she said that she needed to have it
3 cleared to have this -- clarified by the review -- their
4 own tax review department.

5 If your Honor can go to Exhibit 1, page 5 and 6.
6 On page 5 at the very bottom, there's an e-mail from
7 Stephanie Swilling from CDTFA saying the audit for Safar
8 has gone to a review department and they need some
9 clarification.

10 Your Honor, if you go to page 6, the main
11 questions were, "Do you receive rebates of any kind?
12 Cigarettes? Soda?" And they asked us for an explanation.
13 There was some questions about frozen-dispense beverage
14 category.

15 And then the third -- this is the big issue, "You
16 provided the daily sales by department reports in which
17 you indicated the sales tax was included in the fuel, but
18 not the store sales. Our department needs clarification
19 as to whether or not the fuel sales included the diesel
20 excise tax. Would you be able to contact Arco and obtain
21 in writing an e-mail if the fuel sales on the daily sales
22 department reports, including the sales tax. From our
23 reviews and experience, meaning the tax department, they
24 have indicated the fuel sales may already be adjusted for
25 the diesel tax and therefore no deduction should be

1 taken."

2 I spoke with Stephanie Swilling and she said, "I
3 was told that Marathon Petroleum had already, from their
4 experience, had already taken that tax deduction for the
5 diesel excise tax." These were the main queries after she
6 gave a \$26,000 -- after she came to a conclusion that we
7 owed \$26,100.

8 Stephanie Swilling, who was a business tax expert
9 and an auditor spent ten months reviewing the tax returns
10 and producing the spreadsheet. She must have been with
11 experience, she must have been well-aware of the fuel
12 deductions. However, since the tax review apartment came
13 up with the query, we pursued it.

14 In less than one month, we were in arguments with
15 the tax review Department, and our arguments were mainly
16 only centered around the deductions for the diesel excise
17 tax.

18 I asked Stephanie Swilling -- I said, "Is this
19 the only thing that they are arguing about?" And she
20 said, "Yes. As for the rest, we are good to go." She
21 said, "As long as you provide clarification on the rebates
22 for the cigarettes and the icy," which she said would only
23 relate to maybe a few hundred, a few thousand dollars, but
24 the big issue is the diesel excise tax.

25 JUDGE GEARY: Can I interrupt you just for a second?

1 Mr. Dhaliwal, now you are referring to that number that I
2 referred to?

3 MR. DHALI WAL: Yes, your Honor.

4 JUDGE GEARY: Okay. Go ahead.

5 MR. DHALI WAL: On August 28th, Stephanie Swilling had
6 sent an e_mail to Amanda Bui stating that the outstanding
7 tax was \$26,168 and it would have to go through the review
8 department.

9 Your Honor, if you can go to page 3 and 4. It is
10 at the -- on page 4 at the very top, there is an e-mail
11 from Stephanie Swilling she said, "The tax is \$26,168 and
12 the interest is 2,460. No penalty has been applied.
13 Please keep in mind the audit still needs to go through
14 our review department which could take a month."

15 Then she said, "Some rebates are taxable. I need
16 to include an explanation to the review department if any
17 were received, what type." So your Honor, this is the
18 figure I'm talking about that after almost 10 to 12 months
19 of an audit and constant conversations with Ms. Swilling,
20 she came to a figure of 26,168.

21 Now, CDTFA has -- we provided an e-mail
22 conversation between a Melanie Do, who's a tax counsel for
23 CDTFA and a Ladon Caulton (phonetic) where Melanie Do
24 stated that the diesel excise taxes were removed on
25 December 19th, 2019 workspace.

1 If you can go to page 10 of Exhibit 2.

2 JUDGE GEARY: Mr. Dhaliwal, when you refer to page 10
3 of Exhibit 2, are you referring to the number of the page
4 in the center at the bottom?

5 MR. DHALIWAL: Yes, sir.

6 JUDGE GEARY: That's actually page 10 of the entire
7 package.

8 MR. DHALIWAL: Yes, your Honor.

9 JUDGE GEARY: Okay. I'm there go ahead.

10 MR. DHALIWAL: So in the middle of the page there's an
11 e-mail from Melanie Do to Mr. Caulton, I believe
12 Mr. Caulton -- somewhere in this Mr. Caulton is from I
13 don't know his position there, but it says BTFD. I don't
14 know what BTFD is -- responded, "On the above-referenced
15 case and in that you remove the diesel excise tax on
16 December 18th, 2019 audit work papers based on a go back
17 review from their supervisor. Can you submit the e-mail
18 you are basing from author representative from Marathon
19 Petroleum that clearly states the diesel excise tax is
20 already included in the diesel sales?"

21 Your Honor, I spoke with Mr. Caulton and he said
22 that he had -- he had got a letter from -- he had spoken
23 directly to Marathon. And Marathon Petroleum had said
24 that they took the diesel excise tax credit, I immediately
25 disputed that. And I said I would contact Marathon

1 Petroleum because as far as I'm concerned, Marathon
2 Petroleum had clearly told me they do not take any
3 exemptions which is left to the retailer.

4 Your Honor, if you go to the top of the page
5 number 10 -- actually, if you go to the previous page this
6 is an e-mail from Amanda Bui to Melanie Do and to a,
7 Mr. Ladon Caulton and it says, "Mrs. Do, both Harpeet and
8 I, along with Stephanie Swilling, the business tax
9 specialist," and as a matter of fact on that phone call
10 even Mr. Caulton was on the phone call.

11 While on the phone with Marathon Petroleum when
12 Marathon Petroleum conformed that any excise taxes or
13 other taxes were taken by the retailer and not Marathon.
14 So I asked Ms. Swilling, I said, "If that is the case then
15 my tax deductions are correct," and she said, "Yes, they
16 are correct."

17 So I asked her, I said, "In that case, it will go
18 back to the original \$26,188. She said, "I believe so,
19 but I do not make that decision, the tax review department
20 makes that decision." I again spoke with my accountant
21 and I told her that this was an issue. That the CDTFA Tax
22 Review Department was disputing as to whether I could take
23 the deductions or whether Marathon will take the
24 deduction.

25 And I was told that she does about 15 Arco Ampm's

1 and other gas stations, in every single one the retailer
2 takes a deduction. And she said -- I asked, I said, "Can
3 I get proof of that," she said, "I cannot give you those
4 tax returns, but they are not under audit. It seems that
5 CDTFA is singling you out. They are allowing those
6 deductions to everyone of those retailers except you."

7 Your honor, if you go to page 9 this is an e-mail
8 -- in the center of the page, this is an e-mail from
9 Melanie, "I am looking to see if BTFD," I believe BTFD was
10 the team that was working on the audit, "has evidence to
11 suggest otherwise, otherwise meaning as to suggest that
12 Marathon Petroleum had taken the tax deduction, also if
13 you have any written proof of the conversation, or the
14 excise tax was not included in the diesel sales, please
15 submit at your earliest convenience."

16 Your Honor, this brings me to the issue that
17 Amanda Bui, Ms. Swilling, and Mr. Caulton, we were all on
18 the same conference call with Marathon, and Marathon
19 clearly told not only us, but the business tax specialist
20 Stephanie Swilling and Mr. Caulton that they do not take
21 the deduction, the retailer does.

22 Despite that, Stephanie Swilling and Mr. Caulton
23 should have informed Melanie Do, but now we are being
24 asked if we had any record of the conversation.
25 Obviously, we did not recall the call because we expected

1 CDTFA to hold up their end and say that they were on the
2 call. However, we got the necessary letter after that.

3 Your honor, can you go to page 8 to continue with
4 this conversation? Amanda Bui sent an e-mail on November
5 28th saying, "Mrs. Do, I could not have recorded the
6 conversation and Marathon was not sent any e-mail
7 addresses. Also any follow up should have been done my
8 SBOE," meaning Mrs. Swilling and Mr. Caulton.

9 Also, we mentioned why is there a column in the
10 sales tax reduction and the sales tax return that we can
11 claim diesel excise taxes if Marathon is supposed to do
12 it? Why is the retailer even allowed on the form to claim
13 the diesel tax exemptions if the wholesaler is allowed to
14 do so?

15 Your Honor, they did not -- to this we got a
16 response. Now, on the same page if you go to the top
17 Melanie Do sent an e-mail to Amanda Bui and Mr. Caulton
18 saying, "Can you provide sample invoices from Marathon?"
19 What this shows is even despite our getting the CDTFA on a
20 phone call, despite Marathon telling Mrs. Swilling and
21 Mr. Caulton directly that it's left to the retailer to
22 take the deduction, they did not believe either Marathon
23 or us. Now they were asking us for invoices.

24 JUDGE GEARY: Mr. Dhaliwal, can I ask you a question?

25 MR. DHALIWAL: Yes, your Honor.

1 JUDGE GEARY: Just so I stay a little bit focused
2 here. Is it your belief that CDTFA has not allowed your
3 company a credit for that those overpayments?

4 MR. DHALIWAL: Your Honor, besides that we believe
5 that CDTFA has targeted us because Mrs. Swilling is a tax
6 specialist and she told me -- she didn't define how many
7 years, and she said, "Once I do it, it's just a review."

8 I believe we were targeted because of a previous
9 -- CDTFA thought we had a previous history of not paying
10 taxes, which were the old owners Mousa Safar and Safar
11 brothers. And they also knew that we don't argue, we paid
12 the 1.25 million.

13 So you have a business tax specialist who's
14 coming up with a spreadsheet, that spreadsheet took her
15 almost ten months. Now I'm being expected within a month
16 or two to understand, which I did, when I pointed out they
17 said -- at one time they said, "We are disallowing it."
18 Then we said they are allowing, if they did allow it then
19 why didn't it go past their only questions were the Icee
20 rebates and the diesel.

21 Why did it not go back to 26,188? I kept on
22 asking them. All they would refer to is the spreadsheet
23 with no clarity, but they kept on saying we have allowed
24 it.

25 When I talked to Mrs. Swilling again, she told me

1 the matter is no longer with me, it is with the tax review
2 department. And by, I believe, December or January --
3 December '20 or January '21 we were in a tax appeal
4 because we were constantly disputing and we were told that
5 this has to go to an appeal board.

6 JUDGE GEARY: Okay. Carry on.

7 MR. DHALIWAL: Your Honor, if you can go to page 16 --
8 page 16 at the bottom, at the very bottom there is an
9 e-mail on December 1, 2020. It says, "Thank you. I
10 noticed one of the invoices outside the liability period."

11 At that time, I spoke to Mrs. Swilling and she
12 said she agreed. She said, "The audit is beyond the
13 liability period right now." So I said, "What does that
14 mean? She said, "I'm out of it. You have to talk to the
15 tax review Department."

16 Then, your Honor, if you look at the next line it
17 says, "BTFD, please review," we provided the invoices from
18 Marathon as they asked us. "Please review the invoices
19 provided by taxpayer today and provide a response
20 including whether you need additional documentation,
21 supporting documentation to allow the credit for deduction
22 of the diesel excise tax of \$197,077," your Honor, that is
23 what we were disputing.

24 "If your response is negative, please provide
25 legal authority denying the credit and specific reasons

1 for denying. Note that your comment instates a phone
2 conference with Marathon Petroleum, the daily report,
3 include diesel excise tax which is contrary to your
4 finding." So they were already saying it's contrary to
5 the finding of the tax Review Department.

6 Below that it says, "To the taxpayer, in the
7 meantime please review the e-mail," which BTFD based on to
8 disallow the credit in the e-mail. "Craig Waters from BP
9 America confirmed that the diesel sales exclude -- state
10 diesel tax the customer does not need to deduct state
11 excise tax from the sales."

12 So basically, they are quoting a conversation
13 that I was not present on that basically, what they're
14 saying is that Marathon Petroleum took it and the retailer
15 does not need to take it. So I had to contact Marathon
16 again. We contacted -- we sent this letter through our
17 franchise to Marathon.

18 And, your Honor, if you can go to page 26. After
19 we spoke to Marathon, this is the e-mail we got from
20 Marathon -- from a Sala Ghana (phonetic) and it says,
21 "Tesoro remits a full \$0.36 per gallon diesel excise tax
22 on the invoice to the State of California. Tesoro remits
23 the full \$0.25 per gallon in a prepaid sales tax on
24 invoice to the State of California. We are not taking a
25 deduction against these amounts before remitting to

1 state."

2 This was contrary to the previous e-mail where
3 CDTFA claims they spoke to Marathon and Marathon had said
4 that they were taking the -- and then it said, "Feel free
5 to forward this e-mail to your contact at CDTFA and have
6 them reach out to me directly."

7 Obviously this shows that if Marathon is paying
8 those taxes directly, which includes excise tax and the
9 prepaid sales tax to the State of California and they are
10 not taking the deduction, we are entitled to take the
11 deduction for the diesel excise tax and the prepaid sales
12 tax. The prepaid sales tax is entirely separate appendix
13 on the tax return.

14 Despite this, I spoke with Stephanie Swilling and
15 asked her, I said, "Did you take this -- allow this
16 deduction?" And she said, "Yes, I did allow the
17 deductions and based on this that is why my figure came to
18 \$26,188."

19 Your Honor, on page 26 if you can go to the very
20 top, I sent an e-mail on December 2nd to Mr. Caulton and
21 also to Melanie Do and I said, "Please see the e-mail from
22 Marathon Petroleum that Tesoro remits \$0.36. There is a
23 reason I'm allowed the diesel tax exception. I have
24 already sent this letter to my accountant, and she says
25 the same thing. It appears the CDTFA is allowing the

1 exemption for the \$0.36 diesel excise tax for every gas
2 station and truck stop except Safar and Safar brothers."

3 At that time, I spoke to my accountant and she
4 was doing audits for even truck stops. And she told me,
5 "Mr. Dhaliwal truck stops do almost 700,000 gallons of
6 diesel a month and if they are not allowed this diesel tax
7 exemption, they would be losing money every month. All I
8 can tell you is, I cannot provide you the paperwork. No
9 truck stop would be doing business if CDTFA disallowed
10 this diesel tax exemption."

11 Your Honor, if you can go to page 15.

12 JUDGE GEARY: I should mention that you are at about
13 32 minutes so far.

14 MR. DHALIWAL: I'm sorry, your Honor?

15 JUDGE GEARY: You're at about 32 minutes.

16 MR. DHALIWAL: Yes, sir. I'll probably take another
17 10 to 15 minutes.

18 JUDGE GEARY: What page now?

19 MR. DHALIWAL: Page 15, your Honor.

20 At that stage, your Honor, this was on December 2
21 I was told my cases now in an appeal process because I was
22 appealing it. And you see the very beginning, "Please
23 note that the case is still an appeal process and I'm
24 waiting for your invoices and confirmation," your Honor
25 that was in December 2020.

1 Next thing I know, April 21 we got hit by COVID
2 and all communication with CDTFA ceased. During the
3 COVID, our sales fell dramatically almost by about --
4 store sales went down 35 percent and gas sales went down
5 almost 40 percent.

6 At that stage, we were not thinking of anything,
7 but we were thinking for almost seven years we had no
8 money and now nothing to do with the CDTFA we get hit and
9 again we are not making money.

10 Again, I had open heart surgery and I was a fine
11 candidate for losing my life, if I got caught by COVID.
12 Both of us used to go out to vendors, go out to the stores
13 to pick up stores, we did not lay off a single employee,
14 we received the PPP1 loaned the PPP2 loan and we survived
15 it, we managed to make just make enough money to make
16 payments on the houses. We also \$150,000 loan from the
17 EID from the state for EID and that is the reason why we
18 survived.

19 At the end of it, this continued I believe until
20 about '22 -- late '22. And then at that stage, the gas
21 volume still had not picked up, the vendors were still not
22 delivering, so we took another loan of \$350,000, which we
23 are paying.

24 Now Stephanie Swilling -- the issue is Stephanie
25 Swilling spent 10 months -- 10 to 12 months on this audit.

1 She went through every single facet. The e-mail shows
2 that all the e-mails are centered around just one issue,
3 the diesel tax exemption, which as you see up to the
4 appeal they were not allowed.

5 If Mrs. Swelling, who later became a business tax
6 auditor, if she didn't find it, if she allowed it, why is
7 the tax review department now targeting us? And despite
8 showing proof from Marathon Petroleum that we are allowed
9 then the next thing is they say, "Oh, no. You are allowed
10 the tax deduction, but there are other issues."

11 If there were other issues why is it that
12 Mrs. Stephanie Swilling didn't find those? After all she
13 spent 10 months and here we have a review department
14 spending less than one month. And while they are arguing
15 -- arguing the diesel tax exemption they're talking about
16 other issues.

17 We offered to pay in September 2019 -- 2018 --
18 2019 we offered to pay the \$26,000, which belonged to
19 \$197,000, which through no fault of ours, based on almost
20 four years of interest because of the COVID shutdown has
21 now ballooned to \$228,000.

22 It is obvious to me, your Honor, that CDTFA has
23 seen a history that we do pay, we paid the previous
24 owners, but stole the money, it was our mistake, but we
25 paid a 1.35 million, we believe they saw that we are for

1 better word, the suckers here.

2 For example in 2009, I was audited by the IRS and
3 they came up with a deficiency of \$85,000 from my previous
4 station. I went to tax court. I was again audit reviewed
5 and at the review which lasted about two hours, they found
6 that I had adequately provided all the documentation and
7 it went down to zero. There was no argument after that.

8 The CDTFA is different. Stephanie Swilling
9 again, knew what she was doing, as the tax review
10 department now saying that Stephanie Swilling, who did the
11 audit for almost 10 months, was wrong, she wrongly allowed
12 the deductions.

13 Even Marathon confirmed that we are allowed the
14 deductions, but then found there are other reasons. Even
15 if there are other reasons, the 197,000 should have gone
16 to a different figure. The figure that was disallowed
17 stated at 197, but the explanations changed. It was for
18 that reason we appealed it and we are here for the tax
19 court.

20 It is e-mail communications between CDTFA
21 officials confirm that they were bouncing around as to how
22 to disallow the diesel tax exemption. We did not select
23 the tax auditor, CDTFA did, we worked with her, we
24 provided all the documents, and based on that on 10 month
25 review she came up with a figure of 26,188.

1 We believe that for a three year tax period, that
2 is very low and we understand we make mistakes. I request
3 this court now to find judgment of my tax bill at \$26,188,
4 your Honor, as determined by their own tax specialist and
5 their own business tax auditor, who asked for Google is
6 still of working with them, and no interest after
7 September 2019 because any interest or penalties that
8 accrued after September 2019 are not because of us, it is
9 because of CDTFA taking their time and because of COVID.
10 COVID finished sometime in 2022, but it's taken CDTFA
11 almost one year to bring it to a tax court.

12 Again, yes, we made a mistake taking over the gas
13 station, but the main thing is that we made up the CDTFA
14 or the state board every single penny they were owed. We
15 did not dispute it at any time. What we are disputing now
16 is the figure that they came up with and they tried to
17 amend it after that. That is what we are disputing.

18 We had bad luck in the beginning, we didn't
19 complain. We had bad luck with COVID, we were not
20 complaining about that. We are still paying on the loan,
21 the PPP loans have been forgiven, but in the 11 years that
22 we have operated this gas station, we have probably made
23 money only for one year.

24 And now, as of the last 10 months or so that we
25 are making money, we are now facing a \$228,000 tax bill

1 which shows that if this tax bill is upheld, we will not
2 be making money for another year and a half. It is just
3 not fair to us as taxpayers who have paid almost 1.5
4 million.

5 We are willing to pay the 26,188 that Stephanie
6 Swilling. The question is how far will this go? We
7 believe we are being unfairly targeted, and I believe we
8 are being unfairly targeted because we had a previous
9 history of paying and not arguing with them.

10 Thank you, your Honor.

11 JUDGE GEARY: Thank you, Mr. Dhaliwal.

12 Ms. Bui, Do you still wish to make any comments?

13 MS. BUI: Just a quick one, your Honor. Five minutes,
14 your Honor.

15 JUDGE GEARY: How long?

16 MS. BUI: Just about two minutes, just really quick.

17 JUDGE GEARY: Go ahead.

18 MS. BUI: Your Honor, when we took over this gas
19 station we had to deal with every single people possible,
20 IRS, everybody, but what I found with all of the entities
21 that they were fair. They audited, we showed, they would
22 fine, and they let us go and they forgot about us because
23 we've been -- there's no other issue.

24 Whenever we dealt with an auditor with the IRS,
25 he's done, he gives a report, the management confirms that

1 we pay and that we move on. The same thing with AKMD, we
2 have their investigator assessed a payment, we agreed, we
3 entered into an agreement with the legal counsel, and we
4 moved on, we never had to hear back from them.

5 What frustrates me is we took over an Arco Ampm
6 that had employees working and they could not -- CDTFA
7 left the Safar brothers for years and we found out after
8 we came in that they were the biggest number one defaulter
9 in CDTFA. Why didn't they do the job beforehand?

10 We came in, we didn't know anything, we came in
11 we voluntary, we came to them and say, "We want to take
12 over this business, we will be responsible for our
13 agreement, so we would like to make payments." That's
14 what we did, they instead -- we volunteered and went in
15 and complied.

16 I'm a Vietnamese boat immigrant, I came in with
17 nothing on my back. And I went to school, I paid my
18 student loan, and I've been paying my debt. However, of
19 all the entities I had, environmental health, every
20 entity, the only entity --

21 What happened was in 2018 when we said -- we
22 talked to Leticia Gonzalez, we talked to Robert, I said,
23 "Are we done? All these liens I pull on title for the
24 property. Are we done Leticia, Ms. Gonzalez." She said,
25 "Yes. You are done." She sent me to some other lady who

1 made -- who cleared all the liens. And then I said,
2 "Fine. Since we're done, you've cleared us I'm gonna take
3 over the loan now and I will be respondent with the loan
4 for the lender."

5 However, when we -- unbeknownst to me, I just
6 paid all the liens cleared, I'm just being paid, I'm --
7 oh, you have another audit. I'm saying -- okay. That's
8 never happened, no other entities have just continued to
9 pound us, pound us, they just done, they go on even
10 Franchise Tax Board.

11 We had -- because of Safar, they didn't pay also,
12 we -- but this is my first time dealing with its entity
13 that doesn't seem to let us go. We cleared, few months
14 afterward they opened an audit.

15 Then we dealt with Stephanie Swilling, for 10 12
16 months we gave her everything she wanted, she issued a
17 report. We don't know her, we've never met her before.
18 We did what she asked, she gave a report like other
19 auditors and then we said, "Okay. Fine. We will agree."

20 When we said we about to pay and unbeknownst to
21 me she said, "Oh, no, no, no. This isn't the right
22 amount." So from 26,000 and change it went up to 199,000.
23 I don't understand.

24 There -- it seems like everybody has a different
25 version of tax liability. There should be only one

1 version of tax liability. We file our taxes, we pay, it
2 should not be -- Stephanie Swilling, who should be the
3 definitive person because she spent 10 to 12 months
4 looking at our records, reviewing our documents, she was
5 the one in the authority who did actually review, how is
6 it that she spent that much time, she gave us her findings
7 and the determination and suddenly here -- I don't know
8 who else came in and said, "Hey. No, you have to pay
9 199,000," and we have all this dispute, your Honor.

10 I feel that because I'm Asian, I'm female, and a
11 single mom, I'm an easy target to go after me on -- after.
12 I feel that when we took over Safar, we didn't know all
13 the problems, but once we got in, we stayed to our
14 commitment, we saved employees, we managed.

15 Even through COVID, we worked throughout COVID
16 even though everyone was at home, we didn't have that
17 luxury of staying home. We put our health at risk. We
18 work with anything, with all the governmental entities, we
19 give everything. But last minute they're saying, "No, no,
20 no, it goes to 199." And now in addition, we're being
21 charged interest on all that.

22 I -- what I request this court is CDTFA honor the
23 findings that its senior representative, senior auditor
24 had given to us and honor our statement at that time, we
25 would pay that amount at that time, and not suddenly after

1 all these times come in -- and a supervisor that we don't
2 know or some individual we don't know come in -- and have
3 a different assessment, a different opinion of what she or
4 he views as the tax liability.

5 So your Honors, we would like the amount to be
6 the amount that Stephanie Swilling had determined and I
7 believe at the end of 2018 or beginning of 2019 and that
8 we will agree to that, your Honor.

9 Thank you.

10 JUDGE GEARY: Thank you.

11 Oftentimes we defer questions to Appellants until
12 after the Department makes its presentation, but let me
13 check in with my co-panelist to see how they wish to
14 proceed.

15 Judge?

16 JUDGE ALDRICH: That's fine with me.

17 JUDGE RIDENOUR: Works for me too.

18 JUDGE GEARY: All right. So we will defer questions,
19 they may not have questions, but we won't address that
20 until after the Department gives its presentation.

21 CDTFA, you can proceed with your presentation
22 when you're ready.

23 MR. SAMARAWICKREMA: Thank you, Judge.

24 JUDGE GEARY: Let me just ask and make sure our
25 stenographer is okay.

1 Are you all right going forward?

2 (Brief off the record discussion.)

3 JUDGE GEARY: All right. CDTFA, would you like to
4 proceed?

5
6 PRESENTATION

7 MR. SAMARAWICKREMA: Thank you, Judge.

8 Appellant is a California corporation that
9 operates an Arco Ampm franchise gasoline station with a
10 minimart in Perris, California. Appellant sells both
11 gasoline and diesel fuel, taxable sales at the minimart,
12 include beer, wine, liquor, cigarettes, carbonated
13 beverages, hot prepared food, propane, and miscellaneous
14 taxable merchandise.

15 The Department audited Appellant's business for
16 the period of July 1st 2015 through June 30th, 2018.
17 During the audit period, Appellant reported around
18 \$40,000,000 as total sales and claimed various types of
19 deductions, resulting in reported taxable sale of around
20 8.5 million dollars and that will be on your Exhibit A,
21 pages 31 through 34.

22 Appellant also claimed around \$825,000 in prepaid
23 sales tax on purchases of gasoline and diesel, and that
24 will be on your Exhibit A, page 55.

25 During the audit, Appellant failed to provide

1 complete sales records. Appellant did not provide
2 complete sales invoices, or cash registers details, and
3 did not provide copies of credit card sales receipts for
4 the audit period.

5 In addition, Appellant failed to provide complete
6 purchase invoices or purchase journals for the audit
7 period. Appellant was unable to explain how it reported
8 its sales on its sales in use tax returns. Appellant was
9 also unable to explain what sources it relied upon to
10 complete its sales and use tax return.

11 The Department did not accept Appellant's report
12 of taxable sales due to lack of reliable records and
13 overall low reported book markups.

14 Since Appellant did not provide complete sales
15 records and could not explain how the returns were
16 prepared, the Department completed four verification
17 methods to verify the reasonableness of Appellant's
18 reported taxable sales.

19 First, as a retail of gasoline and diesel fuel,
20 Appellant was required to repay a portion of the sales tax
21 for each gallon of fuel Appellant purchased from his
22 suppliers. Then Appellant was required to report and
23 claim the prepaid sales tax on a Schedule G.

24 The Department completed Appellant's claimed
25 prepaid sales tax. With a prepaid sales tax out of

1 Appellant's gasoline and diesel windows reported to help
2 collected from Appellant and calculated some differences
3 for the audit period, and that will be on Exhibit A, page
4 55.

5 Second, the Department reviewed Appellant's
6 federal income tax returns and compared the gross receipt
7 to reflected on Appellant's federal income tax returns
8 with the total sales reported on sales and use tax returns
9 and calculated an overall difference of around \$4,000,000
10 for years 2015 through 2017, and that will be on your
11 Exhibit A, page 54.

12 The Department compared reported total sale of a
13 round \$40,000,000 to the cost of goods sold of around
14 \$39,000,000 reflected on the available federal income tax
15 returns and calculated an overall reported book markup of
16 around 2 percent.

17 Third, Appellant was able to provide daily sales
18 by department reports for the period January 1st, 2016 to
19 June 30th, 2018, but was unable to provide records for
20 July 1st, 2015 through December 31st, 2015.

21 The Department reviewed and analyzed Appellant's
22 available daily sales by department reports, and that will
23 be on your Exhibit A, page 53.

24 A comparison of sales reflected on Appellant's
25 daily sales by department reports with reported gasoline

1 sales, diesel sales, and minimart taxable sales show
2 material differences during the recorded period of January
3 1st, 2016 to June 30th, 2018 and that will be on Exhibit
4 A, page 43.

5 Fourth, the Department reviewed and analyzed
6 Appellant's available daily sales by department reports
7 and discovered that Appellants sold around stop 9.4
8 million gallons of gasoline, and one million gallons of
9 diesel for the recorded period, and that will be on
10 Exhibit A, page 51.

11 For that same period, the Department calculated
12 fuel selling prices based on Appellant's reported gasoline
13 and diesel sales and similarly calculated fuel selling
14 prices based on Appellant's recorded gasoline and diesel
15 sales, and that will be on Exhibit A, pages 48 and 50.

16 The Department noted that Appellant's selling
17 prices based on daily sales by department reports were
18 higher than the reported average gasoline and diesel
19 selling prices for the recorded period.

20 During the audit, Appellant failed to provide
21 complete sales records such as, sales invoices, cash
22 registry tips, and credit card sales receipts for the
23 audit period.

24 In addition, Appellant failed to provide purchase
25 invoices or purchase journals for the audit period.

1 Appellant was unable to explain the federal income tax
2 return sales differences, daily sales by department report
3 differences, low net income low, low reported book
4 markups, and low reported average selling prices of a
5 gallon of gasoline and diesel.

6 Therefore, the Department conducted for the
7 investigation by analyzing available daily sales by
8 department reports, and average weekly retail fuel prices
9 published by the US Department of Energy.

10 The Department analyzed the available daily sales
11 by department reports to determine the amount of
12 unreported sales for the recorded period, and then used
13 the percentage of error calculated for the recorded and
14 reported sales from first quarter 2016 to estimate
15 unreported sales for the unrecorded period of July 1st,
16 2015 through December 31st, 2015.

17 The Department determined gasoline sale of around
18 \$27,000,000 for the recorded period, And that will be on
19 Exhibit A, page 51.

20 Appellant informed the Department that these 27
21 million include sales tax reimbursements. The Department
22 therefore adjust a recorded gasoline sale of around
23 \$27,000,000 to remove sales tax reimbursement of around
24 \$1,000,000, resulting in recorded ex-tax taxable gasoline
25 sales of around \$26,000,000 for the same period, and that

1 will be on Exhibit A, page 43.

2 The Department used a percentage calculated for
3 the recorded and reported gasoline sales for first quarter
4 2016 to estimate unreported taxable gasoline sales for the
5 unrecorded period, and that will be on Exhibit A, page 40.

6 In total, the Department determined total
7 recorded gasoline sales of around \$32,000,000 for the
8 audit period, and that will be on Exhibit A, page 40.

9 The recorded gasoline sale of around \$32,000,000
10 were compared with the reported taxable gasoline sales of
11 around \$31,000,000 resulting in unreported taxable
12 gasoline sales of around \$1,000,000 for the audit period,
13 and that will be on Exhibit A, page 40.

14 Similarly, the Department used the available
15 daily sale by department to determine the recorded diesel
16 sale of around 2.7 million dollars for the recorded
17 period, and that will be on Exhibit A, page 51.

18 Appellant informed the Department this 2.7
19 million dollars include diesel excise tax reimbursement
20 and sales tax reimbursement. The Department therefore
21 adjusted the recorded diesel sale of around 2.7 million
22 dollars to remove diesel excise tax reimbursement of
23 around \$197,000, and sales tax reimbursement of around
24 \$243,000, resulting in recorded ex-tax taxable diesel sale
25 of around 2.2 million dollars, and that will be on Exhibit

1 A, page 41.

2 Again, the Department used the percentage of
3 error calculated for the recorded and reported diesel
4 sales for first quarter 2016 to estimate on reported
5 taxable diesel sales for the unrecorded period, and that
6 will be on Exhibit A, page 41.

7 In total, the Department determined total
8 recorded ex-tax diesel sale of around 2.7 million dollars
9 for the audit period, and that will be on Exhibit A, page
10 41.

11 The recorded diesel sale of around 2.7 million
12 dollars were compared to the reported taxable diesel sale
13 of around 2.9 million dollars, resulting in over-reported
14 taxable diesel sale of around \$216,000 for the audit
15 period, and that will be on Exhibit A, page 41.

16 The Department also use the available daily sales
17 by department reports and the first quarter 2016
18 percentage of error to determine the total recorded ex-tax
19 minimart taxable sale of around 4.7 million dollars for
20 the audit period, and that will be on Exhibit A, page 42.

21 The recorded minimart taxable sale of around 4.7
22 million dollars were compared to the reported minimart
23 taxable sale of around 2.6 million dollars, resulting in
24 unreported minimart taxable sales of around \$2,000,000 for
25 the audit period, and that will be on Exhibit A, page 42.

1 In total, the Department determined unreported
2 taxable sales of around 2.9 million dollars for the audit
3 period, and that will be on Exhibit A, page 36.

4 In addition, the Department noted that Appellant
5 claimed more gasoline and diesel prepayments then reported
6 by its vendors, and that will be on Exhibit A, pages 38
7 and 39.

8 Appellant did not provide its complete purchase
9 invoices to support its claimed prepayments and therefore,
10 over-claimed gasoline and diesel prepayments were
11 disallowed, and that will be on Exhibit A, pages 38 and
12 39.

13 When the Department is not satisfied with the
14 accuracy of the sales and use tax returns filed, it may
15 rely upon any facts contained in the return or upon any
16 information that comes into the Department's possession to
17 determine if any tax liability exists.

18 A taxpayer shall maintain and make available for
19 examination on request by the Department all records
20 necessary to determine the current tax liability under the
21 sales and use tax law and all records necessary for the
22 proper completion of the sales and use tax return.

23 When a taxpayer challenges a Notice of
24 Determination, the Department has the burden to explain
25 the basis for that deficiency. When the Department's

1 explanation appears reasonable, the burden of proof shifts
2 to the taxpayer to explain why the Departments asserted
3 deficiency is not valid.

4 To verify the reasonableness of the recorded
5 gasoline and diesel sales, the Department used the
6 alternative audit approach. This alternate audit approach
7 used the number of gallons of gasoline and diesel fuel an
8 audited sale price per gallon to determine audited fuel
9 sales.

10 The Department reviewed Appellant's daily sales
11 by department reports and calculated the quantity of
12 gasoline and diesel fuel Appellant sold. Those records
13 reflect that Appellant had sold around 9.4 million gallons
14 of gasoline in 1 million gallons of diesel to the
15 reported, and that will be on Exhibit A, page 51.

16 The Department obtained the average weekly retail
17 fuel prices from the weekly database published by the US
18 Department of Energy, and that will be on Exhibit A, page
19 49.

20 The Department of Energy serves gasoline stations
21 in various areas one day each week and determines an
22 average selling price for that week. Using the
23 corresponding average weekly prices the Department
24 determined a weighted average selling price for gasoline
25 for each quarterly period in the audit, and that will be

1 on Exhibit A, page 49.

2 The Department also used a calculated recorded
3 monthly selling price per gallon and converted the monthly
4 selling price to a quarterly basis for each grade of --
5 grade level of fuel and was then compared to the price
6 posted by the Department of Energy, and that will be on
7 Exhibit A, pages 48 and 50.

8 This information was used to determine the
9 audited quarterly selling price of a gallon of gasoline,
10 and that will be on Exhibit A, pages 48 and 50.

11 These audited selling prices of a gallon of
12 gasoline and the quantity of gasoline sold were used to
13 determine audited gasoline sales for the period January
14 1st, 2016 to June 30th, 2018, and that will be on Exhibit
15 A, page 49.

16 Audited gasoline sales were compared with a
17 recorded amounts and immaterial differences were noted,
18 and that will be on Exhibit A, page 49. Therefore, the
19 recorded gasoline and diesel sales amounts were accepted.

20 In preparation for this hearing, the Department
21 discovered a computational error in Exhibit A, page 47.
22 However, this computational error did not affect the
23 calculated unreported sales tax using Appellant's sales
24 records.

25 Appellant is claiming that it is entitled to tax

1 credit of around \$197,000. Appellant notes that the
2 Department adjusted recorded diesel fuel sales for the
3 recorded period by diesel excise tax reimbursement of
4 around \$197,000 to calculate recorded taxable diesel sales
5 for this period, but Appellant argues that the Department
6 should have applied the diesel fuel excise tax
7 reimbursement period of around \$197,000 as a tax credit to
8 offset the tax deficiency calculated in the audit.

9 In other words, Appellant argues that diesel fuel
10 excise tax reimbursement of around \$197,000 should be
11 subtracted from a sales tax liability, not just a
12 calculation of recorded ex-tax taxable diesel fuel sales.

13 As mentioned earlier, the Department adjusted the
14 recorded diesel fuel sale of around 2.7 million dollars to
15 remove diesel fuel excise tax reimbursement of around
16 \$197,000, and sales tax reimbursement of around \$243,000
17 to calculate recorded ex-tax taxable diesel fuel sales of
18 around 2.2 million dollars for the period January 1st,
19 2016 through June 30th, 2018, which the Department then
20 compared with reported taxable diesel sale of around 2.2
21 million dollars for the same quarters to calculate
22 over-reported taxable diesel sale of around \$184,000 for
23 the same period, and that will be on Exhibit A, page 41.

24 Appellant is not entitled to a tax credit of
25 \$197,000. The diesel fuel excise tax is reported and

1 remitted to the Department by the diesel fuel supplier and
2 not by diesel retailers, such as Appellant. The diesel
3 fuel taxable imposed a tax per gallon on the removal of
4 diesel fuel in this state for a terminal rack, or refinery
5 rack, or on the entry of diesel fuel into the state for
6 sales or use then.

7 Revenue and Taxation Code Section 60501 provides
8 a refund of the diesel fuel excise tax for diesel fuel
9 sold, only if the diesel fuel was sold for export outside
10 of California, sold to the United States Government, or sold
11 to a train operator. There are no other refunds allowable
12 for sale of clear diesel fuel under Revenue and Taxation
13 Code Section 60501.

14 The Department is unaware of any provision in the
15 sales and use tax law that would warrant an adjustment to
16 sales tax deficiency using diesel fuel excise tax. If
17 Appellant gross sales include diesel fuel and sales tax
18 reimbursement, Appellant must deduct those diesel fuel
19 excise tax reimbursement and sales tax reimbursement to
20 calculate its ex-tax diesel fuel sales.

21 As mentioned earlier, the Department correctly
22 determined Appellant's reported ex-tax diesel fuel sales
23 by deducting diesel fuel excise tax reimbursement and
24 sales tax reimbursement from his diesel fuel sale for the
25 audit period.

1 Appellant has not provided any reasonable
2 documentation or any evidence that supports an adjustment
3 to the audit finding. Therefore, for of these reasons,
4 the Department requests the op appeal be denied.

5 This concludes our presentation, we are available
6 to answer any questions the panel may have. Thank you.

7 JUDGE GEARY: Thank you. I should have asked
8 Respondent if it had any questions for the Appellants
9 representatives or the Appellants.

10 Does Respondent have any questions?

11 MR. SAMARAWICKREMA: No, Judge.

12 JUDGE GEARY: All right. Let me ask my co-panelists.

13 Judge Aldrich, do you have any questions for
14 either party before we allow the Appellant to give
15 concluding remarks?

16 JUDGE ALDRICH: I do not. Thank you.

17 JUDGE GEARY: And Judge Ridenour, do you have any
18 questions?

19 JUDGE RIDENOUR: I do not. Thank you very much.

20 JUDGE GEARY: I have some questions.

21 Mr. Dhaliwal, you talked about -- actually, both
22 Ms. Bui and you talked about having been informed by a
23 representative of Respondent that your liability was going
24 to be something in the range of \$26,300.

25 Is there anywhere within the exhibits, either the

1 exhibits offered by Appellant or the exhibits offered by
2 Respondent that indicates that amount? And more
3 importantly. How that's amount was calculated? Which
4 would probably require the various audited items be set
5 out, the deficiencies or credit set out, and the net being
6 something from the \$26,300 range.

7 MR. DHALIWAL: Yes, your Honor. This is in the
8 e-mails.

9 JUDGE GEARY: Is your mic on too? I should inquire.

10 MR. DHALIWAL: Yes, your Honor.

11 JUDGE GEARY: Okay.

12 MR. DHALIWAL: This is in the e-mail, I believe page 1
13 of Exhibit 4, this is an e-mail from Stephanie Swilling.

14 JUDGE GEARY: I see the amount on the e-mail of
15 \$26,168, but what I'm looking for primarily is the
16 calculation that led to that amount. Is there anything in
17 the e-mails or that you have seen in the Department's
18 exhibits that has that information?

19 MR. DHALIWAL: Your Honor, she just said she had gone
20 through a spreadsheet and we discussed the spreadsheet.
21 After that, she did not provide me the spreadsheet because
22 she said it's going to go to the tax review department all
23 she said was that that was the figure she has come to.

24 JUDGE GEARY: Okay. Thank you.

25 Now let me ask Respondent if it is aware of any

1 document contained within its exhibits, because I'm pretty
2 certain it's not in any of the Appellant's exhibits, that
3 contains a calculation that might have led Ms. Swilling to
4 the \$26,168 figure that we've been talking about.

5 MR. SAMARAWICKREMA: No, Judge.

6 JUDGE GEARY: You're not?

7 MR. SAMARAWICKREMA: No.

8 JUDGE RIDENOUR: Judge Geary, I believe Appellant
9 would like to --

10 JUDGE GEARY: Ms. Bui, yes?

11 MS. BUI: Yes, your Honor. I was not aware that it's
12 not in there. She did send us her work documents, papers
13 and I was surprised that it's not in there because that's
14 part of the state board paperwork. But she did send us
15 after it ended she sent us her work papers. I don't can't
16 understand it, but she did send us how calculated out, if
17 it's not available after this hearing, I can submit those
18 e-mails that she sent me and she had attached in her
19 e-mail her -- those are her work papers.

20 JUDGE GEARY: Thank you, Ms. Bui.

21 Let me ask the Respondent, if it is aware of
22 whether or not there exists within its files that have not
23 been submitted as exhibits in this matter, the
24 calculations that led Ms. Swilling to the \$26,168 figure.

25 MR. SAMARAWICKREMA: I didn't understand the question,

1 Judge.

2 JUDGE GEARY: Say again?

3 MR. SAMARAWICKREMA: I don't understand your question.

4 JUDGE GEARY: Do you have Ms. Swilling's work papers
5 that contain such a calculation, but have not been offered
6 into evidence?

7 MR. SAMARAWICKREMA: The Department submit all the
8 working papers, all the documents and our audit folders,
9 and those are the documents that we submitted as our
10 exhibits.

11 JUDGE GEARY: All right. And Ms. Bui I take it you're
12 asking for an opportunity to submit such document or
13 documents?

14 MS. BUI: Yes, your Honor. We don't know her findings
15 and after she completed, she would e-mail me and say,
16 "Amanda, here is the number and here are my work documents
17 and I can provide that to this panel.

18 JUDGE GEARY: Okay. I'm a little surprised that they
19 are not -- that this information is not contained in the
20 documents that Respondent has submitted since they've
21 indicated they've submitted all the work papers from their
22 files.

23 I will at the conclusion of our discussion today,
24 I won't close the record. At your request, I'll leave the
25 record open and allow you an opportunity to submit these

1 documents. I don't want to place any unnecessary
2 restrictions on what you do submit, but I'd like you to
3 submit only the documents that will elucidate for us on
4 the panel how she calculated that \$26,168 figure, okay?

5 MS. BUI: Yes, your Honor.

6 MR. DHALIWAL: Your Honor, can I just --

7 JUDGE GEARY: Hold on. Go ahead Mr. Dhaliwal.

8 MR. DHALIWAL: I do remember now because this happened
9 in 2019, we actually went to through a spreadsheet. I
10 believe as part of an e-mail, I will find that e-mail. I
11 had thought it was sufficient to provide this one, but I
12 didn't know the tax court would want that spreadsheet.

13 JUDGE GEARY: All right. Thank you.

14 Mr. Parker, did you have a question?

15 MR. PARKER: No. I was just going to provide some
16 additional information.

17 JUDGE GEARY: Go ahead.

18 MR. PARKER: Generally, we have many versions of
19 preliminary audit working paperworks that are not part of
20 our packages that are saved because they are preliminary
21 in nature, and they do go through a review process. So
22 the finalized audit working papers for the original audit
23 and the re-audit are in the record, which are the ones
24 that have gone through a review and have been approved.

25 JUDGE GEARY: I understand. And I'm not suggesting

1 that the Department or anybody has failed to disclose
2 information that that party deemed necessary. But in
3 order for us in the panel to assess the argument, if this
4 \$26,168 figure is the correct figure, we're going to need
5 to know how Ms. Swilling calculated it, recognizing that
6 it is not an approved calculation.

7 I think I had another question. Hold on.

8 I don't believe we had discussed at the
9 pre-hearing a request for a relief of interest, somebody
10 can correct me if I mistaken about that, but my
11 understanding is that Appellant, in addition to the other
12 relief, the reduction of the deficiency of the tax of
13 \$26,188, Appellant wish the panel to grant relief of
14 interest after September of 2019, did I correctly state
15 it?

16 MR. DHALIWAL: Yes, your Honor. That is based on the
17 deduction and what was the first audit.

18 JUDGE GEARY: And I take it your request specifically
19 -- and I need to know the specifics because I'll have to
20 set it out on the decision -- is that you're requesting
21 relief of any interest that accrued after September 30th,
22 2019?

23 MR. DHALIWAL: After -- what is the date here, your
24 Honor? After August 28th, 2019.

25 JUDGE GEARY: August, 28th. All right.

1 Respondent talked about a computational error in
2 its argument and indicated that it has no impact on the
3 calculated deficiency. Do you want to provide any
4 information to us about what the error was?

5 MR. SAMARAWICKREMA: Of course, yeah. Let's see.
6 Give me one minute. Page 47.

7 JUDGE GEARY: Page 47 of what?

8 MR. SAMARAWICKREMA: Yeah. Exhibit A.

9 JUDGE GEARY: Hold on a moment. And you're referring
10 to the Department's numbering, correct? Of the exhibit
11 itself?

12 MR. SAMARAWICKREMA: Yeah Bates No. 47.

13 JUDGE GEARY: It's Bates No -- your Bates No. 47. I
14 noticed that have one in the center and you have one off
15 to the right hand side, perhaps it's vice versa. So is it
16 your Bates No. 47 that I should be looking at?

17 MR. DHALIWAL: Yeah. That is Schedule R1-2LH.

18 JUDGE GEARY: Okay. Hold on a minute. It's very easy
19 for us to go our Bates number, but it's a little harder to
20 go to a party's separate Bates numbering. Okay. R1-12H,
21 I'm there.

22 MR. SAMARAWICKREMA: So the Column F, the computation
23 -- the formula is C minus D, minus E. Column D shows the
24 priced differential of minus, the right formula should be
25 C plus D, and minus E.

1 JUDGE GEARY: C plus D, minus E. And that is Column
2 F, correct?

3 MR. SAMARAWICKREMA: Yes.

4 JUDGE GEARY: And are you saying that the formula
5 indicated here is incorrect, but is the calculation in
6 fact also incorrect?

7 MR. SAMARAWICKREMA: The calculation is also incorrect
8 because when the Department calculated the price
9 differential, basically what the Department did, they just
10 used the recorded selling price and compared that to the
11 Department of Energy prices.

12 And they basically -- just looking at the
13 schedule, it appears the price differential should be less
14 than the price differential listed and Schedule 2LD.

15 JUDGE GEARY: What is the difference? You said it did
16 not make a difference. Did it make a difference in the
17 total for Column F?

18 MR. SAMARAWICKREMA: Yeah. The column F makes a
19 difference because the right formula should be C plus D,
20 minus E and this is just the secondary approach. The
21 Department used this approach to verify whether the
22 taxpayer's records were reasonable and we did the same
23 exercise for diesel and also gasoline.

24 Gasoline numbers like a little less than 30,000
25 difference, so when you have actual sales data and it is

1 our practice to use actual data, rather than estimating.

2 JUDGE GEARY: Okay.

3 MR. PARKER: Judge Geary, I would just like to add
4 that if I applied the formula correctly for Column J the
5 total amount it's currently 2,652,000 and change. It
6 would be reduced to 2,360,000, it's about a \$400,000
7 difference just based on the correct formula.

8 JUDGE GEARY: And as Mr. Sharma (sic) indicated, this
9 was more of a verifying type of analysis that you did?

10 MR. PARKER: That's correct. It's part of our
11 reasonableness test.

12 JUDGE GEARY: And was your conclusion -- I take it
13 from Mr. Sharma's argument that the Department's
14 conclusion unreasonableness would not have changed despite
15 the fact that it's \$400,000 difference.

16 MR. SAMARAWICKREMA: That's correct.

17 MR. PARKER: Yes. I would agree with that. The
18 taxpayer's recorded sales are a better representation of
19 the true sales.

20 JUDGE GEARY: All right.

21 Let me just make sure that my fellow judges have
22 no additional questions.

23 Judge Aldrich, did you have anything?

24 JUDGE ALDRICH: No further questions.

25 JUDGE GEARY: Judge Ridenour, did you have anything?

1 JUDGE RIDENOUR: No, thank you.

2 JUDGE GEARY: Judge Aldrich, you're referring to Form
3 735? Is that what you're asking me about? Okay.

4 Judge Aldrich wisely pointed out to me that a
5 request for relief of interest requires that you make a
6 formal written request.

7 I'm going to have to ask the Department,
8 taxpayers can simply submit the request originally to us
9 when we're at this point of the appeal, isn't that right
10 Mr. Sharma?

11 MR. SAMARAWICKREMA: Yes. And also CCS.

12 JUDGE GEARY: Yeah, of course.

13 It is called Form 735. It is still called Form
14 735, correct?

15 MR. SAMARAWICKREMA: Yes, Judge.

16 JUDGE GEARY: You can find it on CDTFA's website. It
17 is a pro forma document that allows a taxpayer to request,
18 I think, relief of penalties, and fees, and interest.
19 Different boxes get checked and you have to provide an
20 explanation.

21 As part of your post-hearing submission that
22 we're going to be talking about, you should also, in
23 addition to submitting the documents that we already
24 referred to, submit an original form of those -- of that
25 Form 735 and make sure you copy the Department on anything

1 you send to OTA.

2 MS. BUI: I just have one question. I just want to
3 confirm that there was just interest that was assessed,
4 but no penalty, correct? So I can fill out that form?

5 JUDGE GEARY: Mr. Sharma?

6 MR. SAMARAWICKREMA: No penalty. All right. I have
7 other questions. You still have your brief few minutes,
8 please, no more than five for concluding remarks, if you'd
9 like to take that time now you're welcome to it.

10 MR. DHALIWAL: Your Honor, I hate to say this, but
11 with this I think it's going to be about seven or eight
12 minutes.

13 JUDGE GEARY: Try to keep it to five, please.

14
15 CLOSING STATEMENT

16 MR. DHALIWAL: Your Honor, I'd like to start with page
17 47, the very form that they discussed they discussed. And
18 they discussed about Department of Energy selling price,
19 they came up with an average. Now, in Perris where we are
20 located Walmart prices are 4.09, my price is 4.49, Chevron
21 price is 5.29.

22 Now if I resell roughly 3.5 million gallons of
23 gas, so there is a differential between Walmart and 4.09
24 and Chevron at 5.29, that's almost over a dollar. 3.5
25 million gallons of gas would escalate to 3.5 million

1 dollar figure.

2 That is how much the difference is, for me alone,
3 for our gas station, compared to those prices, that figure
4 has to be based -- is almost \$1,000,000. They're taking
5 their average, they're looking out of the window, that is
6 not my price.

7 You look in LA the price is different, you look
8 in Sacramento the price is different, Perris is very
9 aggressive. At our intersection we almost have 7, 8 gas
10 stations, yet we sell about 3.5 million gallons because we
11 are amongst the lowest price gas. So that average when
12 you translate to 3.5 million gallons would have come to a
13 lot of difference.

14 Second thing, your Honor, is they say we failed
15 to provide invoices. I already stated in my testimony
16 that for the first 2, 3 months I was recovering from my
17 heart surgery. I did not provide the invoices, but after
18 that I did.

19 There was no e-mail communication that they have
20 provided that ever says that we did not provide invoices.
21 On the contrary, their invoices state we had provided
22 something called "sales by department." Those are the
23 exact sales that we pull from -- not from the website,
24 from our computers and just e-mail them directly, we don't
25 even provide it on paper.

1 We provided all the gas invoices and otherwise
2 there would have an e-mails galore that we have not
3 provided us, penalizing us or anything like that.

4 Then, your Honor, they talked about 9.4 million
5 gallons of gas sales in three years, divide that by three,
6 9.4 million gallons that is exactly what I'm talking
7 about, 3.2 million gallons of gasoline a year. That is
8 almost 300,000 gallons, that's exactly what I'm talking
9 about.

10 If you translate that to even to a \$0.20, a \$0.30
11 differential, that is \$600,000 difference, that does not
12 show up here. If they are looking outside the window and
13 they are seeing even 76 and Chevron where the gas price is
14 \$0.30 higher, as per their audit, they are accounting for
15 \$0.30 higher on 3 million gallons of gas. That alone
16 translates to over 1 million that they will be saying we
17 owe taxes on.

18 Then, let's just say we did not provide the
19 documents. And let's just say all this audit, Stephanie
20 Swilling would have found it. She would have found this
21 disparities, with all the disparities they've talked
22 about, they would have been a long e-mail saying, "This is
23 what I found different from January -- from June 2015 to
24 December 2015, January to June."

25 There were only three questions that went to the

1 tax review department, rebate, Icee, an excise tax. There
2 was no questions as to that we were short or we were over,
3 none at all. Obviously, what they are finding out since
4 we have come to tax court, they have to pad it somehow to
5 show it, but this alone shows that they are carrying on.

6 We do not pay taxes based on them looking outside
7 the window, we based it on our price sign. Which would
8 be, to give you an idea, today I'm at 4:49, my competitor
9 right across the intersection is 4.83, and the other
10 competitor is 4.92, almost a \$0.50 difference. I would
11 obviously pay less taxes.

12 They're talking about \$2,000,000 over three years
13 and underreported tax sales, over three years that
14 translates to about 700,000, you divide that by 9 million
15 gallons, that is exactly the differential when they look
16 outside the window in the average. I calculated, that
17 comes to about \$0.30 per gallon.

18 That would account for my -- I'm not
19 under-reporting I'm under-reporting as per their average
20 DOE price. I'm reporting as per my sales department. I
21 don't need to calculate, I just find out my sales, take
22 out my deductions, take out the prepaid sales tax which is
23 provided to me by Marathon, and I just all my accountant
24 does is --

25 The other thing also say is that as per today

1 they have no knowledge of CDTFA even allowing diesel
2 excise tax deduction.

3 Your Honor, in my report to you I can produce the
4 very same tax return that says that we are allowed, not
5 only that, I have recently as of last month, I have
6 received an e-mail from CDTFA where my accountant made a
7 mistake and she did not take that sales tax deduction --
8 diesel excise tax deduction.

9 I will provide that e-mail from CDTFA asking me
10 and telling me that I overpaid for my sales tax because I
11 did not pay the sales tax, the diesel excise tax
12 deduction.

13 They are now saying that there is no form, that
14 e-mail itself shows that -- from them saying in their form
15 which is an electronic form, I'm allowed to take the
16 diesel excise tax deduction.

17 Your Honor, prepaid taxes, I only pay the
18 difference between the prepaid taxes and my sales tax. As
19 such, according to them they said that my prepaid taxes
20 were different from what Marathon had provided.

21 I remember that when Stephanie Swilling actually
22 contacted Marathon and asked them for the prepaid taxes
23 they didn't believe us. So if there was any difference in
24 the prepaid taxes, which is normally the most substantial,
25 it would have been in that very same e-mail telling us

1 that we have not paid.

2 That's a very simple question, they have paid it,
3 and we have not reflected it, based on the number gallon.

4 So all I'm saying is, your Honor, that whatever
5 their disputes are now as to how the prices are calculated
6 that we under-report prepaid sales taxes or we
7 underreported our tax and anything, it is not reflected in
8 any of their own e-mails, any of their own -- there was no
9 evidence of any communication to us.

10 Today was the first time we are actually this.
11 Why is it today after five years after audit started? Why
12 is it the first time we were hearing? Why is there no
13 e-mail? No communication to us listing out exactly these
14 issues so that we had an opportunity to even answer to
15 this and provide evidence that we have paid?

16 Thank you, your Honor.

17 JUDGE GEARY: Thank you Mr. Dhaliwal. Let's talk
18 about --

19 MS. BUI: If I just -- you know, I just have less than
20 a minute.

21 JUDGE GEARY: You said that before.

22 MS. BUI: This is really quick. I apologize.

23 I just want to say that Ms. Swilling actually
24 looked at our real numbers. She got the numbers from --
25 we have a system that -- we are franchise, so everything

1 has to be reported to Tesoro or at that time -- or
2 Marathon.

3 So she asked us, we pulled that data from our
4 computer for this particular store, and we just sent it to
5 him -- to Ms. Swilling.

6 So what I'm hearing from after -- at this time is
7 that the -- after the numbers -- because as Mr. Dhaliwal
8 has just spoken, our price on our gas is really low, it's
9 not any near the average prices that are out there. So I
10 believe just from my -- just sitting here that after
11 Stephanie submitted her report, the numbers were not what
12 based on the average, so that's why they made an
13 adjustment.

14 So your Honor, I will submit those paperwork that
15 Ms. Swilling did and that will show that the number that
16 we did give the information that she requested or we gave
17 permission to directly request from Marathon and those are
18 the numbers that came to her determination \$26,000, your
19 Honor.

20 Thank you.

21 JUDGE GEARY: Okay. Thank you.

22 Let's talk about how much time we can allow for
23 you to submit two things. One is a document or documents
24 that shows how the auditor arrived at the \$26,000 and
25 change figure, and then the other document that I'm

1 allowing you an opportunity to submit is that Form 735 to
2 request relief of interest.

3 Can you do that? Are those documents -- well, I
4 know that the 735 is readily available on CDTFA's website.

5 Are the other documents in your file and easily
6 accessible to you?

7 MS. BUI: Yes, your honor. I just have to search her
8 name in which she was discussing and attach the e-mail and
9 her attachment that she sent to us.

10 JUDGE GEARY: Tell me how much time you need to
11 submit.

12 MR. DHALIWAL: By Tuesday, your Honor.

13 MS. BUI: -- we will just go home and pull it out.

14 JUDGE GEARY: I never thought I would say this, but
15 that's probably too short. I'm going to allow -- I'll
16 allow you two weeks. Let's see, 15 days from today which
17 should be on a Friday to submit those documents. I'm not
18 encouraging you to use all 15 days, if you could submit
19 them by Tuesday then that's fine.

20 And you should make sure that you send copies of
21 the documents that you send to me to the representative at
22 CDTFA that you've been dealing with, and then I will allow
23 CDTFA an opportunity.

24 I typically allow parties 30 days to respond to a
25 new submission. Since you are able to produce the

1 documents faster, I'm giving you 15 days probably more
2 than you need, but I still feel obligated to give the
3 opposing party, Respondent in this case, 30 days to
4 respond to whatever new documents you submit.

5 Please do not submit documents that are other
6 than those we're discussing here today. I want to focus
7 on two things, the 735 Form and exactly how that auditor
8 arrived the \$26,000 and change figure that she represented
9 to you as an unapproved -- as an unapproved liability
10 basically.

11 Any questions, Ms. Bui?

12 MS. BUI: No, your Honor. Thank you.

13 JUDGE GEARY: Mr. Dhaliwal, any questions?

14 MR. DHALIWAL: Your Honor, I'm simply concerned that
15 how do we prevent this further targeting, further
16 targeting by the CDTFA. I don't even know if it's within
17 the purview of this court.

18 JUDGE GEARY: Well, it's not, really. You know, we
19 are authorized by the statutes that created OTA and by the
20 regulations that govern what we do to use our expertise to
21 determine the correct liability, whether it's a deficiency
22 or a refund that somebody might be entitled to, we
23 authorize to deal with complaints of unfairness of the
24 type that you've described here.

25 And I will address that in my decision is all I

1 can do and I will probably give you in my decision some
2 ideas about who might be authorized to do that, but it is
3 not going to be us.

4 MR. DHALIWAL: Thank you, your Honor.

5 JUDGE GEARY: So that's the most I can offer. Any
6 other questions?

7 MR. DHALIWAL: No, your Honor, thank you.

8 JUDGE GEARY: Does Respondent have any questions about
9 what the OTA expects from it over the next 30 to 60 days?

10 MR. SAMARAWICKREMA: When the taxpayer verifies 735 we
11 will analyze it and if there's unreasonable delay, we will
12 provide that information.

13 JUDGE GEARY: And I realize that you're dealing with
14 -- we're going back to 2019 and CDTFA has to look about --
15 okay. Where was this file at that point, and it moved
16 through lots of different departments or bureaus, whatever
17 they're called, within your agency.

18 I'm assuming 30 days would be enough time for you
19 to do what you need to do with respect to a submitted 735.
20 Will it be enough also -- it's hard to anticipate what
21 other documents may be submitted, but will 30 days be
22 sufficient do you think?

23 MR. DHALIWAL: Yes, Judge.

24 JUDGE GEARY: Any other questions?

25 MR. SAMARAWICKREMA: No.

1 JUDGE GEARY: Okay. Then I will issue a brief
2 post-conference order that addresses those matters. I
3 believe this is our -- I'm looking to the back for some
4 guidance. I believe this is the last hearing on our
5 calendar for today, so I'm not gonna close the record.
6 I'm not gonna ask the parties to submit the matter, but I
7 will adjourn the proceedings.

8 We will not be coming back together for any more
9 hearing, but I'm leaving the record open as I indicated
10 and you will get a formal order to that effect.

11 Don't wait for the order to do what you need to
12 do to get the documents together, to submit them because
13 we're not always able to get the orders out within a few
14 days, sometimes it takes a little longer. All right.
15 Thank you --

16 MR. DHALIWAL: Thank you, your Honor.

17 JUDGE GEARY: Thank you all. This concludes this
18 hearing and OTA's hearings for today. Thank you.

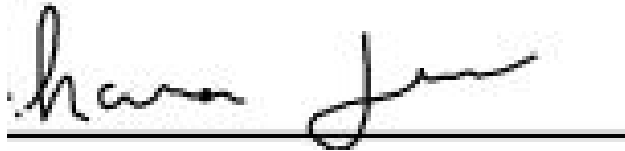
19 (Hearing adjourned at 3:00 p.m.)
20
21
22
23
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25

CERTIFICATE
OF
HEARING REPORTER

The undersigned hearing reporter does hereby certify:
That the foregoing was taken before me at the time and
place therein that any witnesses in the foregoing
proceedings were duly sworn; that a record was made of the
proceedings by me using a machine shorthand, recorded
stenographically, which was thereafter transcribed under
my direction.

I further certify I Amanda Bui neither financially
interested in the action nor a relative or employee of any
attorney or party to this action.

Dated July 13, 2023

A handwritten signature in cursive script, appearing to read 'Hanna Jenkin', is written over a solid horizontal line.

Hanna Jenkin

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