

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
N. JAMALI,) OTA NO. 21047595
)
 Appellant.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, September 21, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 10:29 a.m. on
Thursday, September 21, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ NATASHA RALSTON
ALJ ANDREW KWEE

For the Appellant: ROBERT GOLDSTEIN

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

NALAN SAMARAWICKREMA
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-46 were received at page 8.)
(Department's Exhibits A-E, J-N were received at page 8.)

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California; Thursday, September 21, 2023

9:30 a.m.

JUDGE LONG: We're opening the record in the Appeal of Jamali. The OTA Case Number is 21047595. This matter is being held before the Office of Tax Appeals. Today's date is September 21st, 2023, and the time is approximately 9:30 a.m. This hearing is being convened electronically.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Keith Long, and I will be the lead Administrative Law Judge. Judge Andrew Kwee and Judge Natasha Ralston are the other members of this tax appeals panel. All three judges will meet after this hearing and produce a written decision as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all of the information needed to decide this appeal.

Also present is a stenographer, Ms. Alonzo, who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speaks one at a time and does not speak over each other. Also, speak clearly and loudly. When needed, Ms. Alonzo will stop the hearing process and ask for clarification. After the hearing,

1 Ms. Alonzo will produce the official hearing transcript
2 which will be available on the Office of Tax Appeals
3 website.

4 The Office of Tax Appeals is an independent and
5 neutral agency. It's not a tax court. All three Judges
6 are coequal decision makers, and we can all ask questions
7 at any time. I'd like to offer a few reminders to help
8 the process run as smoothly as possible. Please ensure
9 your microphone is not needed when you speak, otherwise
10 your voice will not be picked up on the live stream. And
11 also please mute your microphone when you're not speaking
12 to avoid feedback and other interferences.

13 As a reminder, these proceedings are broadcast
14 live and anything said today and any information shared
15 today is publicly viewable on the live stream.

16 For the record, will the parties please state
17 their names and who they represent, starting with the
18 representatives for CDTFA.

19 MR. SAMARAWICKREMA: Nalan Samarawickrema,
20 Hearing Representative for the CDTFA.

21 MR. PARKER: This is Jason Parker, Chief of
22 Headquarters Operations Bureau with CDTFA.

23 MR. BROOKS: Good morning. This is Christopher
24 Brooks, attorney for CDTFA.

25 JUDGE LONG: Thank you.

1 And for Appellant.

2 MR. GOLDSTEIN: Hi. This is Rob Goldstein
3 appearing on behalf of Appellant.

4 JUDGE LONG: Thank you. At the prehearing
5 conference, it was undecided whether Appellant wanted to
6 testify as a witness. Witness testimony given under oath
7 may be considered as evidence. However, CDTFA is given
8 the opportunity to cross-examine any witness.

9 Mr. Goldstein, I understand that Mr. Jamali is
10 not here. I assume that he did not want to testify as a
11 witness; is that correct?

12 MR. GOLDSTEIN: Yeah. I spoke with him
13 yesterday. He thought it was okay to proceed without him,
14 but he may appear. But I don't really think that he --
15 you know, that the oral will add too much.

16 JUDGE LONG: Okay. Thank you.

17 With respect to exhibits, following our
18 prehearing conference, CDTFA provided a revised exhibit
19 index consisting of Exhibits A through E. CDTFA's
20 exhibits now are as follows: Exhibit A, Audit Working
21 Papers and related documents; Exhibit B, Notice of
22 Determination; Exhibit C, Late Petition For
23 Redetermination; Exhibit D, Appeals Bureau Decision; and
24 Exhibit E, the Department's Response to Appellant's
25 Opening Brief.

1 CDTFA's exhibits were previously identified as
2 Exhibits J through N. At the prehearing conference,
3 Appellant did not have any objections to these exhibits.

4 Mr. Goldstein, could you confirm whether there
5 are any objections to CDTFA's exhibits?

6 MR. GOLDSTEIN: No objection.

7 JUDGE LONG: Thank you.

8 Additionally, Appellant's exhibits were
9 identified in an exhibit index at the prehearing
10 conference as Exhibits 1 through 46. At the prehearing
11 conference, CDTFA had no objections to the exhibits.

12 Could CDTFA please confirm whether there are any
13 objections at this time.

14 MR. SAMARAWICKREMA: This is Nalan
15 Samarawickrema. No objections.

16 JUDGE LONG: Thank you.

17 There's one issue in this appeal -- or the
18 exhibits are admitted without objection.

19 (Appellant's Exhibits 1-46 were received
20 in evidence by the Administrative Law Judge.)

21 (Department's Exhibits A-E, J-N were received
22 in evidence by the Administrative Law Judge.)

23 JUDGE LONG: There is one issue in this appeal,
24 it is whether any reduction to the measure of unreported
25 taxable sales of auto parts is warranted.

Time estimate for today's hearing is approximately 80 minutes with the taxpayer's opening presentation beginning at 30 minutes. OTA will hold its questions until after CDTFA has given its 30-minute presentation today. And we are ready to proceed with Mr. Goldstein.

Mr. Goldstein, you have 30 minutes whenever
you're ready.

MR. GOLDSTEIN: Okay. Thank you, Your Honor. I don't think I'll need that long.

PRESENTATION

MR. GOLDSTEIN: There's really three points to raise, and all of this is supported by the exhibits. So CDTFA uses approximately 40 percent. A little bit higher than 40 percent is their -- they are basically saying that for every -- for every dollar of sale, 40 percent of that sale is -- or gross income we should say. I don't want to call it sale because labor is not necessarily a sale. But for every dollar of income, approximately 40 percent is subject to sales tax.

The problem with that methodology is it's quite arbitrary and it goes to the documents presented in the exhibits, which are mainly two things. One, as the exhibits show, a lot of his work is doing smog checks,

1 which is strictly labor. There are considerable amount of
2 sales that are simply smog checks and inspections,
3 especially, for Lyft and Uber vehicles and things of that
4 nature that needs to just have the labor done. There's
5 zero, literally, zero percent of those sales that are
6 applied to sales tax.

7 Further, again, as the exhibit show, there's also
8 quite a few times where he'll just bill for storage fees,
9 meaning, just charging to have the vehicle on the lot at
10 the repair shop. Again, there is zero sales tax that's
11 subjected, and that's from the exhibits themselves.
12 That's sometimes thousands of dollars in storage fees.
13 So, basically, you have two significant parts of his
14 business in which there is zero sales tax due. So to get
15 to 40 percent, as the marker for every dollar earned, that
16 40 percent has to go to -- you know, is subject to sales
17 tax.

18 I mean, basically, what the CDTFA would need to
19 show is that approximately 70 percent or 80 percent of
20 total sales is subject to sales tax because you have all
21 these services performed that have no sales tax
22 whatsoever. Further, if you just look at the invoices
23 themselves, the invoices themselves confirm that labor is
24 more than 60 percent of the charges. So we have
25 significant services that are not subject to sales tax

1 whatsoever, and then from the receipts with sales tax,
2 it's not 40 percent.

3 So to come up with the 40 percent as being
4 subject to sales tax is simply not based upon any reality
5 or any of the actual sales or invoices. You know, we
6 think a better marker is probably going to be around
7 15 percent if we're weighing it properly, but for
8 concession purposes, you know, we'll go 20, 25 percent,
9 somewhere in that neighborhood, not 40 percent. And
10 that's really all I have to state. Again, the invoices
11 are here. I was provided with some more invoices
12 yesterday, but I don't know if it's too late for
13 consideration to be provided after the hearing. But if
14 so, I can provide those after the hearing.

15 JUDGE LONG: Okay. Thank you. With respect to
16 those invoices, was there anything that was preventing
17 Mr. Jamali from providing them prior to yesterday?

18 MR. GOLDSTEIN: Not that I'm aware of. You know,
19 I don't know. I think someone helped him figure out what
20 to provide, but I can only go with what I received
21 yesterday and state that I have it.

22 JUDGE LONG: I understand. Okay. So, obviously,
23 my minutes and orders from our prehearing conference set a
24 due date for new exhibits, so we're not going to accept
25 those exhibits today as they are untimely. Thank you.

1 Does that conclude your presentation?

2 MR. GOLDSTEIN: It does. I would like,
3 obviously, time for rebuttal if -- you know, depending on
4 what's presented on the other side.

5 JUDGE LONG: Okay. Thank you. CDTFA, are you
6 ready to begin your presentation?

7 MR. SAMARAWICKREMA: This is Nalan
8 Samarawickrema. Yes, Judge.

9 JUDGE LONG: Okay. You have 30 minutes.

10 MR. SAMARAWICKREMA: Thank you.

11

12 PRESENTATION

13 MR. SAMARAWICKREMA: Appellant is a sole
14 proprietorship that operates an auto repair shop in South
15 San Francisco, California. The Department audited
16 Appellant's business from the period of January 1st, 2015,
17 through December 31st, 2017. During the audit period,
18 Appellant reported around \$1.4 million as total sales and
19 claimed various types of deductions resulting in reported
20 taxable sales of around \$442,000. And that will be on
21 your Exhibit D, page 41.

22 During our presentation, we will explain why the
23 Department rejected Appellant's reported taxable sales,
24 why the Department used an indirect audit approach, how
25 the Department determined Appellant's unreported sales tax

1 for the audit period, and why the Department recommended a
2 10 percent negligence and finality penalty.

3 Appellant explained that he recorded his sales
4 using handwritten sales invoices and compiles total sales
5 with sales tax included by adding up all sales from bank
6 statements and transcribing them onto handwritten monthly
7 sales journals to report total sales to the Department.
8 Appellant then deducts nontaxable repair or installation
9 labor and sales tax reimbursement included in total sales
10 to report taxable sales for the audit period. But during
11 the audit, Appellant failed to provide complete sales
12 reports. Appellant did not provide complete sales
13 documents of original entry, such as sales invoices,
14 including insurance billing invoices, towing and storage
15 service invoices, vehicle inspection invoices, vehicle
16 repair job folder, sales journals, and bank statements for
17 the audit period.

18 In addition, Appellant failed to provide complete
19 purchase invoices and purchase journals for the audit
20 period. Due to lack of reliable records and negative
21 reported taxable book markups, the Department did not
22 accept Appellant's reported taxable sales. The Department
23 also determined that Appellant's records were such that
24 taxable sales could not be verified by a direct audit
25 approach. Therefore, the Department used an indirect

1 audit approach to estimate Appellant's taxable sales. The
2 Department completed four verification methods to verify
3 the reasonableness of Appellant's reported total and
4 taxable sales.

5 First, Appellant did not provide its credit card
6 sales for the audit period. Therefore, the Department
7 obtained Appellant's credit card sales for the audit
8 period from the Department's internal sources. And that
9 will be on your Exhibit D, page 58. The Department
10 compared the credit card sales with reported total sales
11 and calculated an overall credit card sales ratio of
12 around 20 percent for the audit period. And that will be
13 on your Exhibit D, page 57. The Department viewed this as
14 a reasonable credit card sales ratio for this business.

15 Second, the Department compared total sales
16 reflected on federal income tax returns with a reported
17 total sales and no differences were noted for the audit
18 period. And that will be on your Exhibit D, page 105.
19 The Department also compared reported total sales of
20 around \$1.4 million to the purchases of around \$749,000
21 reflected on Appellant's federal income tax returns and
22 calculated an overall total reported book markup of around
23 89 percent. And that will be on your Exhibit D, page 59.
24 Accordingly, the Department considered this reported total
25 book markup and reported credit card sales ratio as

1 reasonable for Appellant's type of business. Therefore,
2 the Department accepted Appellant's reported total sales
3 for the audit period.

4 Third, the Department analyzed reported taxable
5 sales for the audit period and noted that Appellant on
6 average only reported around 17 percent of total sales as
7 Appellant's taxable sales. And that will be on your
8 Exhibit D, page 60. Based on Appellant's business, the
9 Department expected to see a higher taxable sales
10 percentage than the reported taxable sales percentage.
11 However, based on the analysis of available sales invoices
12 for third quarter 2016 and second quarter 2017, the
13 audited taxable sales percentage was around 42 percent.
14 And that will be on your Exhibit D, pages 47 through 49.
15 The Department considered this audited taxable sales
16 percentage as reasonable for Appellant's type of business.

17 Fourth, the Department compared reported taxable
18 sales of around \$242,000 to the purchases of around
19 \$749,000 reflected on Appellant's federal income taxes
20 returns and calculated an overall negative reported
21 taxable book markup of around 16 percent. And that will
22 be on your Exhibit D, page 59. However, based on the
23 analysis of available selling prices and related cost for
24 third quarter 2016 and second quarter 2017, the audited
25 markup was around 43 percent. And that will be on your

1 Exhibit D, pages 53 and 54.

2 Appellant was unable to explain the reason for
3 low average taxable sales percentages and negative
4 reported taxable book markups. Therefore, the Department
5 conducted further investigation by analyzing Appellant's
6 purchase information, pricing policies, and available
7 sales invoices. To give a benefit to Appellant, the
8 Department used the provided bank statements and canceled
9 check images for year 2016 as a test period to obtain
10 total parts purchased. The Department did not use
11 purchases reflected on federal income tax returns because
12 Appellant stated that all auto parts purchased during the
13 audit period were made by using credit cards and checks.
14 And because purchases reflected around federal income tax
15 return included non-auto parts, such as supplies and
16 labor.

17 Based on 2016 bank statements, the Department
18 calculated parts purchases of around \$232,000. And that
19 will be on your Exhibit D, pages 81 to 100. Since
20 Appellant did not provide his credit card statements, the
21 Department could not determine the amount of parts
22 purchases Appellant made by credit cards. Therefore, the
23 audited parts purchases of around \$232,000 based solely on
24 bank statements and canceled check images for the benefit
25 of the Appellant by using a lower parts purchase amount

1 than the actual parts purchase amount.

2 To understand Appellant's pricing policies, the
3 Department performed shelf tests using available sales and
4 purchase invoices of third quarter 2016 and second quarter
5 2017 to calculate audited markup of around 43 percent.
6 And that will be on your Exhibit D, pages 53 through 55.
7 Appellant did not provide reliable evidence to demonstrate
8 that his markup was lower than 43 percent. Therefore, the
9 Department determined that it used the best available
10 information to determine Appellant's audited markup. Then
11 the Department used the parts purchases of around \$232,000
12 and audited markup factor to determine audited taxable
13 sales of around \$331,000 for the year 2016. And that will
14 be on your Exhibit D, page 52.

15 Audited taxable sales were compared to reported
16 taxable sales for the same period to determine unreported
17 taxable sales of around \$227,000 and correspond error rate
18 of around 218 percent. And that will be on your
19 Exhibit D, page 52. Then the Department applied a
20 218 percent error rate to the reported taxable sales to
21 determine unreported taxable sales of around \$528,000 for
22 the audit period. And that will be on your Exhibit D,
23 page 51. The Department also scheduled the available
24 sales invoices for third quarter 2016 and second quarter
25 2017 to segregate the total amount into nontaxable labor,

1 nontaxable parts, taxable parts, and sales tax
2 reimbursement collected. And that will be on your
3 Exhibit D, pages 47 through 50.

4 The Department then compared the taxable sales to
5 total sales and calculated an audited sales percentage of
6 around 42 percent. And that will be on your Exhibit D,
7 pages 47 through 50. The Department applied the audited
8 taxable sales percentage of around 42 percent to the
9 reported total sales to determine the audited taxable
10 sales of around \$590,000 for the audit period. And that
11 will be on your Exhibit D, page 45. Audited taxable sales
12 were compared with reported taxable sales of around
13 \$242,000 to determine unreported taxable sales of around
14 \$348,000 for the audit period. And that will be on your
15 Exhibit D, page 45.

16 The Department noted substantial discrepancies
17 between audited and reported taxable sales using both
18 audit methods. To give a benefit to Appellant, the
19 Department assist the unreported taxable sales of around
20 \$340,000 based on the audited taxable sales ratio method,
21 rather than the unreported taxable sales of around
22 \$528,000 based on the cost plus markup audit method. And
23 that will be on your Exhibit D, pages 45 and 51. The
24 Department then compared the unreported taxable sales
25 based on the audited taxable sales ratio method with the

1 reported taxable sales of around \$242,000 to calculate the
2 error rate of around 143 percent for the audit period.

3 The audit calculation of unreported taxable sales
4 based on the audited taxable sales ratio method was
5 reasonable and was in Appellant's favor since it was the
6 lowest of the differences determined. Ultimately, the
7 Department used an audit method which yielded the lowest
8 deficiency measure to give a benefit to the Appellant.
9 When the Department is not satisfied with the accuracy of
10 the sales and use tax returns filed, it may rely upon any
11 facts contained in the return or upon any information that
12 comes into the Department's position to determine if any
13 tax liability exists. Taxpayer shall maintain and make
14 available for examination on request by the Department or
15 records necessary to determine the correct tax liability
16 under the sales and use tax laws and all records necessary
17 for the proper completion of the sales and use tax
18 returns.

19 When a taxpayer challenges a Notice of
20 Determination, the Department has the burden to explain
21 the basis for that deficiency. When the Department
22 explanation appears reasonable, the burden of proof shifts
23 to the taxpayer to explain why the Department asserted
24 deficiencies are not valid. The audit calculation of
25 unreported taxable sales based on the best available

1 information was reasonable. Appellant disputed the audit
2 liability claiming that his taxable sales percentage is
3 not around 42 percent. As support, Appellant provided
4 various documents. And that will be on Appellant's
5 Exhibit 1 to -- Exhibit 46.

6 The Department reviewed and analyzed this
7 information but ultimately determined that the information
8 did not support a reduction to the tax liability because
9 Appellant failed to provide any information to explain how
10 this information relates to Appellant's purchases for year
11 2016 and second quarter 2017, or how it related to
12 Appellant's sales invoices for third quarter 2016 and
13 second quarter 2017. Appellant did not provide reliable
14 evidence to demonstrate that his audited taxable sales
15 percentage was lower than 42 percent. Therefore, the
16 Department determined it used the best available
17 information to determine Appellant's audited taxable sales
18 percentage.

19 The Department imposed a negligence penalty based
20 upon its determination that Appellant's books and records
21 were incomplete and inadequate for sales and use tax
22 purposes and because Appellant failed to accurately report
23 its taxable sales. Specifically, the Department noted
24 that Appellant provided limited records for the audit
25 period, and Appellant failed to provide documents of

1 original entry to support its reported sales tax
2 liability.

3 Additionally, because this is not Appellant's
4 first audit, the Department asserts that Appellant has
5 knowledge that source documents are required to be
6 retained and provided to the Department for examination
7 during every sales and use tax audit. The Department also
8 find that Appellant repeated the recordkeeping errors and
9 reporting errors found in prior audits, which is further
10 evidence of negligence. As a result, the Department had
11 to calculate Appellant's taxable sales based on the
12 audited taxable sales ratio method.

13 In addition, the audit examination disclosed
14 unreported taxable sales of around \$348,000, which when
15 compared with reported taxable sales of around \$242,000
16 for the audit period resulted in an error rate of around
17 143 percent. This high error rate is additional evidence
18 of negligence.

19 Finally, the Department imposed a finality
20 penalty because the determination became final on
21 March 11th, 2020, and Appellant did not file a timely
22 petition for redetermination and did not make full
23 payments towards the determination prior to this day.
24 However, the Department really recommends waiving the
25 finality penalty if Appellant pays the full liability

1 within 30 days from the date of the Notice of
2 Redetermination.

3 In conclusion, when Appellant did not provide
4 source documentation, the Department was unable to verify
5 the accuracy of reported sales tax using a direct audit
6 method. Therefore, an alternative audit method was used
7 to determine unreported sales tax. Accordingly, the
8 Department determined the unreported sales tax based upon
9 the best available information, the evidence shows that
10 the audit produced fair and reasonable results. Appellant
11 has not provided any reasonable documentation or evidence
12 to support an adjustment to the audit finding. Therefore,
13 the Department requests the appeal be denied.

14 This concludes our presentation. We are
15 available to answer any question the Panel may have.
16 Thank you.

17 JUDGE LONG: Thank you.

18 Before we move onto Mr. Goldstein's rebuttal, I
19 have questions, and I'm sure my co-Panelists have
20 questions as well. I'd like to begin with questions for
21 Mr. Goldstein.

22 Mr. Goldstein, first, I just want to make sure
23 that we are on the same page with respect to what you are
24 asserting because the ratios are pretty close. When
25 Appellant is disputing the markup, is he disputing the

1 markup on purchases that was calculated from the 2016 bank
2 statements, or are you disputing the 41.66 percent taxable
3 sales ratio that was calculated from the block test of --

4 MR. GOLDSTEIN: The latter, the 41.66 percent.

5 JUDGE LONG: Okay. All right. So I just want to
6 make sure that I was clear with respect to that. And then
7 in review of Appellant's exhibits, it looks like none of
8 the invoices are estimates that were provided by Appellant
9 for the oral hearing actually pertain to the two quarters
10 of the block test, 3Q '16 and 2Q '17. How should OTA
11 evaluate these exhibits when considering whether the
12 taxable sales percentage for the block test be reduced?

13 MR. GOLDSTEIN: Well I --

14 JUDGE LONG: Mr. Goldstein, I think we lost you.
15 No. I'm sorry. You're -- Mr. Goldstein, can you hear me?

16 Okay. Ms. Alonzo, we're going to go off the
17 record for five minutes.

18 (There is a pause in the proceedings.)

19 JUDGE LONG: Okay. So we are ready to go back on
20 the record, and so we are reopening the record.

21 Mr. Goldstein, if you could please begin your
22 answer again from the beginning. And the little bit that
23 we were able to hear when we were off the record, it
24 sounded like you were moving too quickly. So if you could
25 just slow down your presentation just a little bit so that

1 we can make sure we have an accurate transcript, that will
2 be very helpful.

3 MR. GOLDSTEIN: Okay. Thank you.

4 Yeah, the point I was attempting to make was that
5 the receipts here are meant to show that these two
6 quarters don't capture enough, or hardly any, of the work
7 that's just done that's just labor only, which is again
8 storage fees and allotted smog checks and vehicle
9 inspection checks for Uber and Lyft drivers and for just
10 vehicles overall that need that work. So the point was
11 simply that the invoices here are to provide, while they
12 are outside of these two quarters, it's to show that these
13 two quarters don't capture those types of labor charges
14 exclusively sufficiently. And that if you include this,
15 then it would reduce the 41.66 percent used because you
16 would have invoices with strictly labor and zero parts at
17 all.

18 JUDGE LONG: Thank you. And then just to be
19 clear, there's no dispute with respect to these exhibits
20 that they are not complete sets of invoices with respect
21 to the quarters that they belong too, right?

22 MR. GOLDSTEIN: Correct. Correct. There just --
23 it was samplings to supplement the two quarters on
24 pages -- represented on pages 47, 48, and 49 of the audit
25 period. When you look at 47, 48, and 49, you will see I

1 think there's just one -- potentially one vehicle
2 inspection included in there and maybe -- and maybe a
3 little bit of storage. But it doesn't -- it doesn't state
4 the nature of the work on these -- on pages 47 through 49.
5 So these invoices that I provided were to show that yes,
6 there are storage services where it's, you know, \$2,000,
7 \$3,000, \$4,000 for -- of income that has no labor -- oh,
8 sorry -- no -- it's not subject to sales tax whatsoever.

9 JUDGE LONG: Okay. Thank you.

10 I'd just like to turn to my co-Panelists to see
11 if they have any questions for Appellant.

12 Judge Ralston, do you have any questions?

13 JUDGE RALSTON: Not at this time. Thank you.

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

16 JUDGE KWEE: Hi. This is Judge Kwee. Yes, I did
17 have a question or two. So I'd like to go back to the 46
18 invoices that were provided for 2018. And I'm wondering
19 by providing these invoices with, you know, like the
20 nontaxable storage and towing fees, is the taxpayer's
21 argument -- and this is for Mr. Goldstein. Is the
22 taxpayer's argument that the two-block test periods in the
23 audit, the '16, and '17, that they're not representative
24 because the taxpayer changed their business model at some
25 point during the audit period to start doing towing

1 services and vehicle inspections? Or are you more arguing
2 that the block tests invoices were incomplete and that
3 additional invoices should have been considered that
4 weren't and you just don't have, like, a complete set for
5 the 2-quarter '17 and 3-quarter '16?

6 MR. GOLDSTEIN: Well, my take -- and just so you
7 know, there are other years included in with these
8 invoices. There are some '16 and some '17 I believe.
9 Yeah, '16 and '17, so it's just not '18 within my
10 exhibits. I -- I -- the purpose of the exhibits is to
11 basically say look, if you just take two quarters and try
12 to extrapolate that times, you know, six and say, well,
13 gee, that's going to be enough of a -- those two quarters,
14 you know, what is that? It's not even 20 percent of the
15 audit period, right?

16 That -- that represents a sufficient enough
17 sample to extrapolate over three years. I'm saying I
18 don't think that's correct. I think we need to consider
19 that, you know, those two quarters, you know, did not
20 capture for whatever reason, but didn't capture the
21 storage fees sufficiently or the vehicle inspection work.
22 So what I'm saying is we need to broaden our horizon, so
23 to speak, and look at that type of work. These invoices
24 say, hey, even though it may not have been captured in the
25 two quarters, it needs to be captured throughout, you

1 know, through the audit period itself.

2 JUDGE KWEE: Okay. This is Judge Kwee. Thank
3 you. So there isn't -- the taxpayer's business model
4 didn't change during the audit period. It's just that
5 these two quarters didn't reflect the overall audit period
6 is the taxpayer's contention?

7 MR. GOLDSTEIN: Yeah, with respect to that type
8 of service. And it's service only, you know what I mean.
9 There's no sales tax whatsoever in those transactions --
10 those types of transactions.

11 JUDGE KWEE: Okay. And just to be clear, for the
12 two quarters, the second quarter '17 and the third quarter
13 '16 that were examined, were those -- the documents
14 provided, were they a complete set of records of
15 invoices -- customer invoices, or was there any issue that
16 potentially it was an incomplete or partial set that was
17 provided to CDTFA?

18 MR. GOLDSTEIN: You know, I cannot personally
19 state that. I wasn't involved in the audit at that point
20 in time. So I don't have firsthand knowledge to answer
21 that question.

22 JUDGE KWEE: Okay. Thank you.

23 This is Judge Kwee. I'll just turn it over to
24 CDTFA if you wanted to respond to any of the questions
25 that I had asked the taxpayer representative, if you want

1 to. You don't have to if you don't have anything to add.

2 MR. SAMARAWICKREMA: This is Nalan
3 Samarawickrema. The question is whether our Department
4 estimate is reasonable. If you compare the purchases that
5 we determined based on the bank statements, total amount
6 is almost \$232,000. Based on the audited taxable ratio
7 for that year, audited sales amount is \$216,000, you know,
8 \$15,000 less than the cost. And it's the Department's
9 position that the estimate we have using taxable ratio
10 methods are very reasonable and fair.

11 Even based on this taxable ratio method, we
12 didn't even estimate the total cost of the purchases. And
13 that purchase doesn't include the purchases that the
14 Appellant made using his credit cards. So we -- we it is
15 our position that the estimate that we have using taxable
16 ratio method is very fair and reasonable.

17 MR. PARKER: And this is Jason Parker. I just
18 wanted to add on to that as well. What Mr. Samarawickrema
19 was talking about, you can see the audited taxable sales
20 that we used on Exhibit A, page 45 and the purchase on
21 Exhibit A, page 52. One thing I did want to mention, you
22 asked about whether all invoices were provided for the two
23 periods of the test quarters. On Exhibit A, page 50 in
24 the comments, the total -- there's a comment note that
25 discusses the fact that not all job folders were provided

1 to us for examination because the total amount of the
2 sales ends up being \$91,000 when compared to the \$144,000
3 for 2nd quarter '17.

4 So not all were provided. But like
5 Mr. Samarawickrema showed, the amount that we even came up
6 with as the audited taxable sales is less than the
7 purchases on the bank statement for 2016. And based on
8 our markup test, the audited sales should have been
9 significantly higher than that. So we allowed an audited
10 taxable sale below their purchases even though we know
11 that their sales of those parts are much higher than their
12 purchase price.

13 That's it.

14 JUDGE KWEE: Thank you, Mr. Parker.

15 This is Judge Kwee. I don't have any further
16 questions, so I'll turn it back to the lead judge.

17 JUDGE LONG: Thank you.

18 I did have one question with respect -- for CDTFA
19 with respect to Audit Schedule 1R-12A. So it looks like
20 1Q '15 reported total sales are listed at \$99,973, and the
21 audited taxable sales were \$43,137. But when the
22 calculation -- when I reviewed the calculation by applying
23 the 41.66 percent taxable sales rate, it looks like
24 audited taxable sales should be \$41,649. I understand
25 that in some of these calculations there's a -- there are

1 rounding differences, but this is a difference of
2 approximately \$1,500. And for context when I looked at
3 all of the other calculations on 1R-12A, the differences
4 were between \$5 and \$10. Can CDTFA answer to that
5 apparent discrepancy?

6 MR. PARKER: Judge Long, this is Jason Parker.
7 I'll answer that question. I'm looking at the audit
8 working papers right now, and it appears that the formula
9 for that in the Excel working papers wasn't applied
10 correctly. And so it had an actual typed-in amount. And
11 when the formula is applied, it ends up I think -- I
12 forget the amount you said, but I show about \$41,653 as
13 the calculated amount. It's probably within some rounding
14 differences, not sure exactly the amount you showed.

15 JUDGE LONG: Okay. So then I just want to make
16 sure, does CDTFA then concede to a reduction with respect
17 to that quarter?

18 MR. PARKER: Yes.

19 JUDGE LONG: Okay. Thank you. I have no further
20 questions.

21 Judge Ralston, do you have any questions for
22 CDTFA?

23 JUDGE RALSTON: No questions. Thank you.

24 JUDGE LONG: Judge Kwee, do you have any
25 questions for CDTFA?

1 JUDGE KWEE: This is Judge Kwee. Could we get
2 the CDTFA to confirm in writing the amount of the
3 concession then, or did you just want to state on -- did
4 you want to state now what the dollar amount is so that we
5 can note it in the opinion?

6 MR. PARKER: Are you asking about the difference?

7 JUDGE KWEE: The 1 quarter of -- I think you were
8 asking about 1-Quarter '15.

9 MR. PARKER: Yeah. Give me just one second.

10 So because the 41.66 percent, we actually used
11 the calculation from the R1-12A-1, so what is displayed is
12 slightly different. But I come up with a difference of
13 \$1,484 in measure. So the amount when we apply it in the
14 Excel working papers goes down to \$41,653. So it's about
15 a \$5 difference in measure.

16 JUDGE KWEE: Okay. I don't have any further
17 questions then.

18 JUDGE LONG: Mr. Goldstein, are you there?
19 Mr. Goldstein, we can't hear. You're muted again.

20 MR. GOLDSTEIN: Sorry. I just had another audio
21 issue, but I'm back.

22 JUDGE LONG: Okay. Were you able to hear CDTFA's
23 response to the questions?

24 MR. GOLDSTEIN: Yes. I just missed the last
25 probably 20 seconds.

1 JUDGE LONG: Okay. So with respect to audited
2 taxable sales for 1-Q '15, CDTFA conceded to a reduction
3 from had \$43,137 to \$41,653. That will also change the
4 unreported taxable sales, but that's just the calculation
5 for audited taxable sales. And that will be noted in our
6 decision, okay. Or opinion.

7 MR. GOLDSTEIN: Thank you.

8 JUDGE LONG: All right. If there are no further
9 questions from Judge Kwee, I would like to turn it back to
10 Mr. Goldstein for a rebuttal.

11 Mr. Goldstein, you requested 10 minutes.
12 However, you did not use all of your time during your
13 presentation. Do you need longer than 10 minutes?

14 MR. GOLDSTEIN: No. I'm actually okay, Your
15 Honor. I have nothing further to add at this point. I
16 think I've said everything I wanted to say.

17 JUDGE LONG: Okay. Well, then we are ready to
18 conclude the hearing.

19 Are my co-Panelists ready to close this appeal?

20 JUDGE KWEE: Yes.

21 JUDGE RALSTON: Yes.

22 JUDGE LONG: Then this case is submitted on
23 Thursday, September 21st, 2023. Thank you everyone for
24 coming today.

25 The ALJs will meet and decide your case later on,

1 and we will send a written opinion of our decision within
2 100 days of today. Today's hearing in the Appeal of
3 Jamali is now adjourned.

4 And the next hearing will resume at 1:00 p.m.
5 thank you everyone.

6 (Proceedings adjourned at 10:29 a.m.)

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

I have hereunto subscribed my name this 27th day
of November, 2023.

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HEARING REPORTER