

BEFORE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF: )  
J. SAMTANI, ) OTA CASE NO. 21067978  
APPELLANT. )  
\_\_\_\_\_ )

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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 11, 2023

Reported by:

SHELBY K. MAASKE  
Hearing Reporter

Job No.:  
44375 OTA(B)

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TRANSCRIPT OF PROCEEDINGS, taken at  
12900 Park Plaza Drive, Suite 300, Cerritos,  
California, commencing at 1:17 p.m. and  
concluding at 2:00 p.m. on Wednesday,  
October 11, 2023, reported by Shelby K. Maaske,  
Hearing Reporter.

1 APPEARANCES:

2  
3 Panel Lead: Hon. Andrew Wong

4  
5 Panel Members: Hon. Suzanne Brown  
6 Hon. Kenneth Gast

7  
8 For the Appellant: J. Samtani, Taxpayer  
Michelle Sehwan

9  
10 For the Respondent: Nalan Samarawickrema  
11 Hearing Representative

12 Christopher Brooks  
13 Attorney

14 Jason Parker  
15 Hearing Representative

I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 7)

(CDTFA's Exhibits were received at page 8)

1 Cerritos, California; Wednesday, October 11, 2023

2 1:17 p.m.

3  
4  
5 ADMINISTRATIVE LAW JUDGE WONG: On the record.  
6 This is the appeal of Samtani for the Office of Tax  
7 Appeals. This is OTA Case No. 21067979. Today is  
8 Wednesday, October 11, 2023. The time is 1:17 p.m. We  
9 are holding this hearing in person in Cerritos,  
10 California.

11 I am Lead Administrative Law Judge Andrew Wong,  
12 and with me today are Judges Suzanne Brown and Kenneth  
13 Gast. And the individuals representing the Appellant,  
14 Mr. Samtani, could you please introduce yourselves.

15 MR. SAMTANI: I did not hear.

16 ADMINISTRATIVE LAW JUDGE WONG: What did you not  
17 hear?

18 MR. SAMTANI: What was the question?

19 ADMINISTRATIVE LAW JUDGE WONG: Please introduce  
20 yourselves for the record.

21 MR. SAMTANI: My name is John Samtani.

22 ADMINISTRATIVE LAW JUDGE WONG: Thank you.  
23 Please introduce yourself.

24 MS. SEHWANI: My name is Michelle Sehwani.

25 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

1           And the individuals representing the Respondent  
2 tax agency, California Department of Tax and Fee  
3 Administration, or CDTFA, could you please introduce  
4 yourselves.

5           MR. SAMARAWICKREMA: Nalan Samarawickrema,  
6 hearing representative for the CDTFA.

7           MR. PARKER: Jason Parker, chief of Headquarters  
8 Operations Bureau with CDTFA.

9           MR. BROOKS: Christopher Brooks, attorney for  
10 CDTFA.

11           ADMINISTRATIVE LAW JUDGE WONG: Thank you.

12           We are considering two issues today. The first  
13 issue is whether the amount of unreported taxable sales  
14 should be further reduced, and the second issue is whether  
15 Appellant was negligent. Is that a correct statement of  
16 the issues, Mr. Samtani?

17           MR. SAMTANI: Yes.

18           ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.  
19 And CDTFA, is that a correct statement?

20           MR. SAMARAWICKREMA: Yes, Judge.

21           ADMINISTRATIVE LAW JUDGE WONG: Thank you.

22           We will go over exhibits. Mr. Samtani has  
23 proposed Exhibits 1 through 6 as evidence, which consists  
24 of bank records and medical records; is that correct,  
25 Mr. Samtani?

1           MR. SAMTANI: I did not understand. Could you  
2 speak a little louder?

3           ADMINISTRATIVE LAW JUDGE WONG: Sure. You  
4 produced some documents that you submitted to us -- bank  
5 records and medical records; is that correct?

6           MR. SAMTANI: Yes.

7           ADMINISTRATIVE LAW JUDGE WONG: We have organized  
8 and labeled those as Exhibits 1 through 6. Okay?

9           MR. SAMTANI: Yes.

10          ADMINISTRATIVE LAW JUDGE WONG: Did you have any  
11 other documents that you wanted to submit?

12          MR. SAMTANI: No, not that I know of.

13          ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.  
14 CDTFA, did you have any objections to the  
15 documents submitted by Mr. Samtani?

16          MR. SAMARAWICKREMA: No, Judge.

17          ADMINISTRATIVE LAW JUDGE WONG: Thank you.  
18 So Appellant's Exhibit 1 through 6 are admitted  
19 into the record as evidence.

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

21          ADMINISTRATIVE LAW JUDGE WONG: CDTFA has  
22 identified and submitted proposed Exhibits A through H as  
23 evidence. And CDTFA, you had no other documents to  
24 submit?

25          MR. SAMARAWICKREMA: No other documents.

1 ADMINISTRATIVE LAW JUDGE WONG: Mr. Samtani, did  
2 you have any objections to the documents that CDTFA  
3 submitted to the record?

4 MR. SAMTANI: No.

5 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.  
6 CDTFA's Exhibits A through H will be admitted  
7 into the record as evidence.

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

9 ADMINISTRATIVE LAW JUDGE WONG: Mr. Samtani, do  
10 you have any witnesses today, or will you be testifying as  
11 a witness today?

12 MR. SAMTANI: I just have my daughter with me.  
13 She's taking care of me now because of my poor health.

14 ADMINISTRATIVE LAW JUDGE WONG: Okay. Would  
15 there be any testimony today, any description of the facts  
16 as far as what happened, by yourself?

17 MR. SAMTANI: I did not understand.

18 ADMINISTRATIVE LAW JUDGE WONG: Will you be  
19 talking, like, explaining what happened during the audit  
20 or during the liability period at issue? Will you be  
21 talking about that at all?

22 MR. SAMTANI: About the business?

23 ADMINISTRATIVE LAW JUDGE WONG: Yes.

24 MR. SAMTANI: Yes. It's been about five years  
25 since it closed, the business. The rents were going up so

1 I had to give it up.

2 ADMINISTRATIVE LAW JUDGE WONG: Sorry,  
3 Mr. Samtani. I'm just asking whether you will be  
4 testifying or just be making arguments regarding your  
5 case.

6 MR. SAMTANI: No.

7 ADMINISTRATIVE LAW JUDGE WONG: Okay. If you do,  
8 we can cross that bridge when we get to it.

9 CDTFA, you have no witnesses; is that correct?

10 MR. SAMARAWICKREMA: No witnesses.

11 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.

12 It was anticipated that this oral hearing will  
13 take approximately 65 minutes.

14 Mr. Samtani, you've asked for 20 minutes, and  
15 CDTFA has asked for 30 minutes, and then 15 minutes -- I  
16 budgeted 15 minutes for questions and preliminary matters.  
17 One thing I should mention. We will start with  
18 Mr. Samtani, you will make your argument -- your  
19 presentation, and then we will turn it over to CDTFA to  
20 make their presentation, and then we will turn it over to  
21 you for the last word -- your closing statement and  
22 rebuttal, and that's the order it will go. Does that make  
23 sense? We will start with you, and go to CDTFA, and then  
24 you will have the last word.

25 MS. SEHWANI: May I explain to him? It might be

1 easier.

2 ADMINISTRATIVE LAW JUDGE WONG: Yes. Okay. All  
3 right. So we will just let -- Mr. Samtani, it's your turn  
4 to make your presentation. You have 20 minutes, and you  
5 may begin.

6 MR. SAMTANI: Explain the situation, right?

7 MS. SEHWANI: Because there's a tax liability.  
8 You have to explain why this wasn't paid or what is  
9 happening. So speak in the microphone.

10  
11 OPENING PRESENTATION

12 MR. SAMTANI: Yes. The business was going down.  
13 We had to give it up. I had to declare bankruptcy --  
14 close it. I used to have a business, almost 50 years, in  
15 Hollywood, California. As the years went by, things were  
16 going downhill so I had to give it up. I paid all my  
17 bills all the time, except these balances that I had to  
18 pay.

19 I was taking it out all from my life insurance.  
20 I have got zero on my life insurance since I used all of  
21 the funds to pay my bills. I've been retired and a little  
22 bit disabled -- unable to function properly. I have my  
23 daughter who helps me a lot. And whatever money we are  
24 getting from social security, for me and my wife, is not  
25 even enough to survive.

1 I have my children help me and my friends help  
2 me. And at the moment, I don't have any extra funds. My  
3 checking account, every month, balance is \$20.00, \$30.00,  
4 that's it, because I have to pay most of my payments. At  
5 present, I still owe almost \$1,000.00 for the electric  
6 bill because I'm unable to pay full. I have no extra  
7 funds. I think that's about it.

8 ADMINISTRATIVE LAW JUDGE WONG: Thank you,  
9 Mr. Samtani. I will now turn it over to my co-panelists  
10 for any questions they may have for you, starting with  
11 Judge Gast.

12 ADMINISTRATIVE LAW JUDGE GAST: This is Judge  
13 Gast. I do not have any questions. Thank you.

14 ADMINISTRATIVE LAW JUDGE WONG: Judge Brown?

15 ADMINISTRATIVE LAW JUDGE BROWN: Just briefly.

16 Mr. Samtani, do you want to try and explain to us  
17 why you think that this tax liability amount is  
18 incorrect -- why the amount that the tax agency calculated  
19 is wrong?

20 MR. SAMTANI: I did not hear it very well. Could  
21 you go louder?

22 ADMINISTRATIVE LAW JUDGE BROWN: Sure. Do you  
23 want to try to explain to us why this tax liability amount  
24 is incorrect? Why the tax agency -- why their calculation  
25 is wrong?

1           MR. SAMTANI: Yes. Because whatever taxes there  
2 were, I was paying, and I don't understand why. Much of  
3 the merchandise were shipped to different states,  
4 overseas, so I feel that I don't have to pay any taxes on  
5 local sales.

6           The local sales were delivered to us. I was  
7 paying -- almost 50 years I've been paying my taxes. I'm  
8 running under same business name, same owner, same  
9 everything.

10          ADMINISTRATIVE LAW JUDGE BROWN: But you  
11 indicated that you don't have the records of the shipments  
12 overseas; correct?

13          MR. SAMTANI: Yes. What happened about six years  
14 ago, we had, in our building, upstairs, a big water leak  
15 with a lot of damages, a lot of our paperwork and  
16 everything were all destroyed. So I don't have --  
17 whatever I had left, I'd given to a gentleman who had come  
18 to my business, several times. Whatever I had, I gave it  
19 to him. He saw what I have.

20          ADMINISTRATIVE LAW JUDGE BROWN: I don't have  
21 anything further right now. Thank you.

22          MR. SAMTANI: You are welcome.

23          ADMINISTRATIVE LAW JUDGE WONG: I had a question  
24 or two, Mr. Samtani. How much of your business -- how  
25 much did you sell to other states or overseas versus how

1 much you sold in California? Do you know how much by  
2 percentage?

3 MR. SAMTANI: I cannot recall in the past so many  
4 years ago. I'm 83 years old. I forget a lot. A lot of  
5 my customers from overseas used to come here and buy, and  
6 I used to ship them.

7 ADMINISTRATIVE LAW JUDGE WONG: Did you have  
8 walk-in customers?

9 MR. SAMTANI: Yes.

10 ADMINISTRATIVE LAW JUDGE WONG: Could you  
11 describe a little bit about the store -- where it was  
12 located, what it sold, who the clients were?

13 MR. SAMTANI: About the store? What? How do you  
14 want me to describe?

15 ADMINISTRATIVE LAW JUDGE WONG: Where was it and  
16 what type of customers did it have?

17 MR. SAMTANI: It was --

18 ADMINISTRATIVE LAW JUDGE WONG: Where was your  
19 store?

20 MR. SAMTANI: The store?

21 ADMINISTRATIVE LAW JUDGE WONG: Yes.

22 MR. SAMTANI: It was on Hollywood Boulevard.  
23 Very good location. Just two blocks away from the Chinese  
24 Grauman Theater.

25 ADMINISTRATIVE LAW JUDGE WONG: What did you

1 sell?

2 MR. SAMTANI: Souvenirs, gift items, jewelry,  
3 shells, baskets imported from the Philippines, clothing,  
4 Indian decorations, Indian outfits. We are a big store.

5 ADMINISTRATIVE LAW JUDGE WONG: Do you have an  
6 idea of how much you sold to people in the store versus  
7 how many people you had to mail things to them?

8 MR. SAMTANI: Every day was different. Some days  
9 were very good. Before the holiday, always good. Like,  
10 before Christmas -- before Halloween, we used to sell  
11 costumes and jewelry and accessories to the customers, but  
12 it was never even -- and like I say, there was getting to  
13 be more competition.

14 Rents were just -- from 2000, it went up to  
15 \$8,000.00. My landlord wouldn't budge to go down. I  
16 finally had to tell him I cannot afford it anymore. I  
17 have to just close the business, sell out. I gave a lot  
18 of merchandise to the Salvation Army. I donated to the  
19 poor and all that. So I have no idea. And like I told  
20 you, a lot of my paperwork -- the sales slips and  
21 everything -- were all destroyed because of the bad water  
22 damage.

23 MS. SEHWANI: May I explain to him the question?  
24 I think you wanted to see what percentage was being sold  
25 out of state versus his -- did he answer your question? I

1 don't know if he quite did.

2 ADMINISTRATIVE LAW JUDGE WONG: I think he  
3 answered it, but if you think it would be helpful to  
4 explain to him the question, please do.

5 MR. SAMTANI: I used to travel -- I used to  
6 travel to the gift shows -- Denver, Chicago, and New York,  
7 big orders, come back to Los Angeles and start shipping  
8 them out to out of state. And according to my knowledge,  
9 anything being shipped out of state, no tax is supposed to  
10 be paid, only the local sales I was collecting taxes. But  
11 I'm not having complete records because of that water  
12 damage.

13 ADMINISTRATIVE LAW JUDGE WONG: That was my next  
14 question, about records. Okay. I appreciate the answer.  
15 I have no further questions at this time.

16 MR. SAMTANI: Thank you.

17 ADMINISTRATIVE LAW JUDGE WONG: We will turn it  
18 over to CDTFA for their presentation. You have  
19 30 minutes. Please proceed.

20 MR. SAMARAWICKREMA: Thank you, Judge.

21  
22 OPENING PRESENTATION

23 MR. SAMARAWICKREMA: Appellant is a sole  
24 proprietorship that operated, as he has told, selling  
25 souvenirs, collectibles, and vintage items on Hollywood

1 Boulevard in the city of Hollywood, California, from July  
2 1, 1970 through June 30, 2017.

3 The Department audited Appellant's business for  
4 the period of January 1st, 2009, through December 31,  
5 2011. During the audit period, Appellant reported around  
6 \$159,000.00 as total sales, and claimed various types of  
7 deductions, resulting in reported taxable sales of around  
8 \$2,300.00. And that would be on your Exhibit A, pages 21  
9 and 22.

10 During our presentation, we will explain why the  
11 Department rejected Appellant's reported taxable sales,  
12 why the Department used an indirect audit approach, how  
13 the Department determined Appellant's unreported sales tax  
14 for the audit period, and why the Department recommended a  
15 10 percent negligence penalty.

16 During the audit, Appellant failed to provide  
17 complete sales records. Appellant did not provide  
18 complete sales documents of original entry such as sales  
19 invoices, credit card sales receipts, resale certificates,  
20 post office shipping documents, and sales journals to  
21 support his total and taxable sales for the audit period.

22 In addition, Appellant failed to provide company  
23 purchasing invoices and purchase journals for the audit  
24 period. As a result, Appellant was unable to explain how  
25 he reported his sales on his sales and use tax returns,

1 specifically what sources he relied upon to complete his  
2 sales and use tax returns.

3 Due to the lack of reliable reports, low average  
4 taxable sales, low average net income, high reported rent  
5 ratios, and high reported credit card sales ratios, the  
6 Department did not accept Appellant's reported taxable  
7 sales.

8 The Department also determined that Appellant's  
9 record was such that taxable sales could not be verified  
10 by a direct audit approach, therefore, the Department used  
11 an indirect audit approach to determine Appellant's  
12 taxable sales.

13 The Department completed four verification  
14 methods to verify the reasonableness of Appellant's  
15 reported total and taxable sales. First, the Department  
16 analyzed reported taxable sales for the audit period, and  
17 the Appellant only reported around 1 percent, or \$2.00 per  
18 day, as his taxable sales. And that would be on your  
19 Exhibit A, page 44.

20 Based on Appellant's business, the Department  
21 expected to see higher average taxable sales and a greater  
22 taxable sales percentage that Appellant reported. Second,  
23 the Department reviewed Appellant's federal income tax  
24 return for the audit period, and noted average recorded  
25 net losses of around \$4,500.00 for these years. And that

1 would be on your Exhibit A, page 40. This is an  
2 indication that not all of Appellant's sales transactions  
3 had been reported in his federal income tax returns for  
4 these years.

5 Third, the Department compared rent expenses of  
6 around \$100,000.00, reflected on Appellant's federal  
7 income tax returns, which reported total sales of around  
8 \$158,000.00, and calculated an overall rent ratio of  
9 around 63 percent. And that would be on your Exhibit A,  
10 page 40. This is an indication that not all of  
11 Appellant's sales transactions had been reported in its  
12 sales and use tax returns.

13 Fourth, Appellant did not provide his credit card  
14 sales for the audit period, therefore, the Department  
15 obtained Appellant's credit card sales for the audit  
16 period from Appellant's bank statements. And that would  
17 be on your exhibit A, page 45.

18 The Department compared the reported total sales  
19 to the credit card sales and calculated an overall credit  
20 card sales ratio of around 76 percent for the audit  
21 period. And that would be on your Exhibit A, page 45.

22 The Department viewed this as a high credit card  
23 sales ratio for a store selling souvenirs, collectables,  
24 and vintage items in a busy tourist area of Hollywood  
25 Boulevard in the city of Hollywood.

1 Appellant was unable to explain the reason for  
2 low average taxable sales percentages, average net losses,  
3 high rent ratios, and high credit card sales percentages,  
4 therefore, the Department conducted further investigation  
5 by analyzing Appellant's bank statements, credit card  
6 sales, and credit card sales percentages.

7 Appellant did not provide information required to  
8 determine Appellant's credit card sales percentage for the  
9 audit period. Based on Appellant's customer base,  
10 location of the business, items sold, and selling prices,  
11 the Department determined that Appellant's credit card  
12 sales percentage was very low for this business.

13 However, to give a benefit to Appellant, the  
14 Department determined a very conservative credit card  
15 sales ratio of 50 percent. Appellant did not provide any  
16 information to determine the high credit card sales  
17 percentage.

18 Appellant did not provide complete sales records  
19 for the audit period, therefore, the Department examined  
20 the Appellant's bank statements and determined credit card  
21 sales of around \$161,000.00 for the audit period. And  
22 that would be on your Exhibit A, pages 37 through 39.

23 The Department reviewed personal credit card  
24 transaction receipts provided by Appellant and determined  
25 that personal credit card transactions totaling around

1 \$41,000.00 were included in the credit card transactions  
2 for the audit period. And that would be on your Exhibit  
3 A, pages 32 through 36.

4 Based on this information, the Department  
5 calculated audited credit card sales of around  
6 \$120,000.00, after deducting the personal credit card  
7 transaction of around \$41,000.00 for the audit period.  
8 And that would be on your Exhibit A, pages 13 through 39.

9 The Department used the audited credit card sales  
10 of around \$120,000.00 and credit card sales ratio of  
11 50 percent to determine audited total sales of around  
12 \$240,000.00 for the audit period. And that would be on  
13 your Exhibit A, pages 37 through 39.

14 Appellant claimed around \$10,000.00 for his  
15 sales, and around \$145,000.00 as his sales in interstate  
16 and foreign commerce. And that would be on your Exhibit  
17 A, page 27. Appellant did not provide any information to  
18 support his claims sales for resales, or his sales of  
19 interstate and foreign commerce for the audit, therefore,  
20 the Department examined the 57 available sales invoices  
21 for year 2011 to calculate average sale of around \$400.00  
22 per invoice. That would be on your Exhibit A, page 43,  
23 and Exhibit C, pages 309 through 311.

24 The Department ordered that main sales invoices  
25 Appellant claimed to be sales in interstate and foreign

1 commerce are clearly labeled as cash sales delivered to  
2 the customers at the store with no shipping charges.  
3 Since Appellant provided 17 post office shipping receipts  
4 from the year 2011 showing merchandises being shipped to  
5 an out-of-state destination, the Department accepted 17  
6 interstate and foreign commerce sales transactions  
7 occurred in the year 2011. And that would be on your  
8 Exhibit C, pages 340 through 345.

9 The Department multiplied the average sales  
10 invoice of around \$400.00 by 17 transactions to calculate  
11 audited interstate and foreign commerce sales of around  
12 \$7,100.00 for year 2011, and then divide the \$7,100.00 by  
13 the claimed interstate and foreign commerce sales for year  
14 2011 of around \$68,000.00 to calculate audited interstate  
15 and commerce sale percentage of around 10 percent. And  
16 that would be on your Exhibit A, page 43.

17 Appellant did not provide any other reliable  
18 evidence to calculate his audited interstate and foreign  
19 commerce sales percentage, therefore, this calculation  
20 constituted the best available information to determine  
21 Appellant's audited interstate and foreign commerce sale  
22 percentage.

23 The Department multiplied the claimed interstate  
24 and foreign commerce sales of around \$145,000.00 by  
25 audited interstate and foreign commerce sales percentage

1 of around 10 percent to calculate audited interstate and  
2 foreign commerce sales of around \$15,000.00 for the audit  
3 period. And that will be on your Exhibit A, page 42.

4 Then the Department compared the audited total  
5 sales of around \$240,000.00 with audited interstate and  
6 foreign commerce sales of around \$15,000.00 to determine  
7 audited taxable sales including sales tax reimbursement of  
8 around \$225,000.00 for the audit period. And that would  
9 be on your Exhibit A, page 37 through 39.

10 The Department used the audited taxable sales  
11 including sales tax reimbursement of around \$225,000.00,  
12 and the applicable sales tax rate factors to determine  
13 audited taxable sales of around \$206,000.00 for the audit  
14 period. And that would be on your Exhibit A, pages 37  
15 through 39.

16 Audited taxable sales were compared with reported  
17 taxable sales of around \$2,300.00 to determine unreported  
18 taxable sales of around \$204,000.00 for the audit period.  
19 And that would be on your Exhibit A, pages 37 through 39.

20 The Department then compared the unreported  
21 taxable sales with the reported taxable sales of around  
22 \$2,300.00 to calculate the error rate of around  
23 8,700 percent for the audit period. When the Department  
24 is not satisfied with the accuracy of the sales and use  
25 tax return filed, it may rely upon any facts contained in

1 the return or upon any information that comes into the  
2 Department's possession to determine if any tax liability  
3 exists.

4 The taxpayer shall maintain and make available  
5 for examination on request by the Department the records  
6 necessary to determine the correct tax liability under the  
7 sales and use tax laws and all records necessary for the  
8 proper completion of the sales and use tax returns.

9 When a taxpayer challenges a notice of  
10 determination, the Department has the burden to explain  
11 the basis for that deficiency. When the Department's  
12 explanation appears reasonable, the burden of proof shifts  
13 to the taxpayer to explain why the Department asserted  
14 deficiencies not valid.

15 The audited calculation of unreported taxable  
16 sales was based on the best available information and was  
17 fair and reasonable. Appellant disputed the audit  
18 liability claim in that most of the merchandise was  
19 shipped to an out-of-state destination, but he does not  
20 have any additional post office shipping receipts or any  
21 other documentary evidence that he can use to support his  
22 contention, therefore, the Department rejected the  
23 Appellant's argument.

24 The Department imposed a negligence penalty based  
25 upon his determination that Appellant's books and records

1 were incomplete and inadequate for sales and use tax  
2 purposes, and because Appellant failed to accurately  
3 report his taxable sales.

4           Specifically, the Department ordered the  
5 Appellant provide limited records for the audit period,  
6 and the Appellant failed to provide documents of original  
7 entry to support his reported sales tax liability. As a  
8 result, the Department had to calculate Appellant's  
9 taxable sales based on the best available information.

10           In addition, the audit examination disclosed  
11 unreported taxable sales of around \$204,000.00, which,  
12 when compared with reported tax sales of around \$2,300.00  
13 for the audit period, resulted in an error rate of around  
14 8,700 percent. This high error rate is additional  
15 evidence of negligence.

16           In conclusion, when Appellant did not provide  
17 complete source documentation, the Department was unable  
18 to verify the accuracy of the reported sales tax using a  
19 direct audit method. Therefore, an alternate audit method  
20 was used to determine unreported sales tax. Accordingly,  
21 the Department determined the unreported sales tax based  
22 upon the best available information.

23           Appellant has not provided any reasonable  
24 documentation or any reasons to support an adjustment to  
25 the audit findings, therefore, the Department requests

1 that the appeal be denied. This concludes our  
2 presentation. We are available to answer any questions  
3 the Panel may have. Thank you.

4 ADMINISTRATIVE LAW JUDGE WONG: Thank you,  
5 Mr. Samarawickrema. I'll now turn to my co-panelists for  
6 any questions they may have, starting with Judge Gast.

7 ADMINISTRATIVE LAW JUDGE GAST: I don't have any  
8 questions. Thank you.

9 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

10 Judge Brown, do you have any questions?

11 ADMINISTRATIVE LAW JUDGE BROWN: Just briefly for  
12 CDTFA. I noticed in the Assignment Activity History, the  
13 414-Z document, it mentions that the auditor asked  
14 Appellant for insurance claim paperwork supporting -- to  
15 support Appellant's explanation and the reason why he  
16 didn't have the documents was because of water damage.

17 I couldn't find anything in the exhibits  
18 indicating whether Appellant ever provided that insurance  
19 claim paperwork. I don't know if it exists or if I missed  
20 it. I thought I would ask. Do you know whether that was  
21 ever submitted to the Department?

22 MR. SAMARAWICKREMA: All of the documents that we  
23 have included were the documents that we received. In my  
24 understanding, the water damage happened after we  
25 completed the audit.

1 ADMINISTRATIVE LAW JUDGE BROWN: All right.  
2 Thank you.

3 ADMINISTRATIVE LAW JUDGE WONG: Thank you, Judge  
4 Brown.

5 I have a couple questions for CDTFA. I'm going  
6 to refer to an exhibit, and I believe it is page 159 of  
7 the PDF, it's also 414-Z. I'll give you a moment to  
8 locate that.

9 MR. SAMARAWICKREMA: Yes, I have it.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay. Exhibit A,  
11 page 11 of the that document. So in the entries,  
12 specifically as to July 31, 2012, there's an entry that  
13 talks about Mr. Samtani's claim about the water damage, so  
14 it does seem to indicate that he made the claim of water  
15 damage sometime during the audit. So just following up on  
16 Judge Brown's question, do you know if he ever  
17 substantiated the water damage claim?

18 MR. SAMARAWICKREMA: Judge, we reviewed the audit  
19 for them and we did not see any documents to support that.

20 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.  
21 And just one other question regarding an entry,  
22 June 17, 2013, slightly further down the page. There's a  
23 sentence in the middle of that entry -- and I'm going to  
24 quote. It says, "Moreover, Mr. Samtani said credit should  
25 be about 50 percent of his total sales in each year." Do

1 you know what the auditor was referring to? Is that  
2 referring to credit card sales ratio, or is that referring  
3 to something else?

4 MR. SAMARAWICKREMA: Judge, can you repeat the  
5 date, please?

6 ADMINISTRATIVE LAW JUDGE WONG: Sure. June 17,  
7 2013. It's about two thirds down on the page.

8 MR. SAMARAWICKREMA: It appears that 50 percent  
9 of the sales were sales made to out-of-state customers.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay. So when  
11 you say credit, it's talking about 50 percent of his sales  
12 were out of state?

13 MR. SAMARAWICKREMA: Yes.

14 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.  
15 I have no further questions at this time. I will now turn  
16 it back to Mr. Samtani for your closing remarks. If you  
17 had anything you wanted to express, you have 17 minutes to  
18 do so.

19 MR. SAMTANI: Maybe I had not mentioned, but when  
20 I was doing the Denver, Colorado show in the 80s, the last  
21 day of the show, when we were leaving the convention  
22 center, four of us vendors or exhibitors were held up at  
23 gunpoint. Whatever sales I had of my jewelry, cash,  
24 orders -- everything was taken away.

25 It was published in the local Denver Times. I

1 lost a lot over there. I came back to Los Angeles and I  
2 could not pay my mortgage. My house was confiscated.  
3 Overnight, we were driven out of our home, and I had to  
4 stay with relatives. We did not get our stuff until after  
5 three or four months.

6 I had to pay the storage and then they gave us  
7 our merchandise back. I lost a lot that year. That's one  
8 of my business downfalls. I was also borrowing a lot of  
9 money on our credit cards. Me and my wife owed a lot to  
10 the credit card because we had to pay our bills. So aside  
11 from taking out all the money -- all of the money I had in  
12 my life insurance, also, our credit cards, I was using  
13 that money to pay my bills, and that's why I had to close  
14 the business and just give up everything. And I think  
15 that's all I have to say.

16 ADMINISTRATIVE LAW JUDGE WONG: Thank you,  
17 Mr. Samtani.

18 I'll now turn it over to my co-panelists for the  
19 final time for any questions they may have for either  
20 party, starting with Judge Gast.

21 ADMINISTRATIVE LAW JUDGE GAST: I don't have any  
22 questions. Thank you both for your presentations.

23 ADMINISTRATIVE LAW JUDGE WONG: Judge Brown?

24 ADMINISTRATIVE LAW JUDGE BROWN: I just have one  
25 question. Mr. Samtani, what you were just describing,

1     that incident, what year did that occur?

2             MR. SAMTANI:   What year?

3             ADMINISTRATIVE LAW JUDGE BROWN:   What year was  
4     that when you were describing that you lost merchandise?

5             MR. SAMTANI:   I think that was in the 80s.  I  
6     don't recall so well.  But I think I might be having the  
7     newspaper clipping, if I'm not mistaken.  Aside from that,  
8     I don't have any other recall all of these years.

9             ADMINISTRATIVE LAW JUDGE BROWN:   But it wasn't  
10    the time period that we are looking at now for the  
11    liability period; correct?

12            MR. SAMTANI:   No.  This is the past.

13            ADMINISTRATIVE LAW JUDGE BROWN:   Okay.  Thank  
14    you.

15            MR. SAMTANI:   Thank you.

16            ADMINISTRATIVE LAW JUDGE WONG:   Thank you, Judge  
17    Brown.

18            I have one last question for Mr. Samtani.  CDTFA  
19    is imposing a negligence penalty on you for not keeping  
20    adequate records and errors in reporting your sales and  
21    use taxes.  Could you please address or comment on the  
22    negligence penalty?

23            MR. SAMTANI:   I did not understand very well.

24            ADMINISTRATIVE LAW JUDGE WONG:   So they are  
25    imposing a negligence penalty on you for recordkeeping and

1 reporting your sales taxes. Did you have any comment on  
2 that?

3 MR. SAMTANI: Like I said, it's so hard because  
4 all of the paperwork was gone in the water damage. We  
5 were closed for almost a month. The landlord, of course,  
6 helped us clean up the place -- send people -- because it  
7 was their fault.

8 The pipes -- it's an old, antique Hollywood  
9 building that I was renting on Hollywood Boulevard. The  
10 pipes all busted overnight. It was a weekend. When we  
11 came the next day, water all over the place. The landlord  
12 said don't worry, we will help you clean up the place.  
13 They did help us, but that one whole month, we did not do  
14 any business also. So all those records were gone. I  
15 could not get them. They were all wet.

16 ADMINISTRATIVE LAW JUDGE WONG: Thank you,  
17 Mr. Samtani.

18 MR. SAMTANI: Okay.

19 ADMINISTRATIVE LAW JUDGE WONG: Okay. This will  
20 conclude the hearing. The record is closed, and the case  
21 is submitted today. The judges will meet and decide the  
22 case based on the exhibits presented and admitted as  
23 evidence. We will send both parties our written decision  
24 no later than 100 days from today. The oral hearing is  
25 now adjourned. Thank you. We'll go off the record.

(The hearing was adjourned at 2:00 p.m.)

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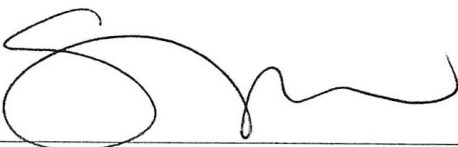
1 HEARING REPORTER'S CERTIFICATE

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

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

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

14 I have hereunto subscribed my name this 25th day  
15 of October, 2023.

16  
17  
18   
19 \_\_\_\_\_  
20 Shelby Maaske,  
21 Hearing Reporter  
22  
23  
24  
25

|  |  |  |  |
|--|--|--|--|
| <hr/>                                    | <b>10</b> 16:15 21:15<br>22:1          | <b>345</b> 21:8                                      | <b>accepted</b> 21:5   |
| <b>\$</b>                                | <b>100</b> 30:24                       | <b>36</b> 20:3                                       | <b>accessories</b><br>14:11  |
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| <b>\$10,000.00</b> 20:14                 | <b>13</b> 20:8                         | <b>39</b> 19:22 20:8,13<br>22:9,15,19                | <b>accuracy</b> 22:24<br>24:18   |
| <b>\$100,000.00</b> 18:6                 | <b>15</b> 9:15,16                      | <hr/>  | <b>accurately</b> 24:2   |
| <b>\$120,000.00</b> 20:6,<br>10          | <b>159</b> 26:6                        | <b>4</b>   | <b>Activity</b> 25:12  |
| <b>\$145,000.00</b><br>20:15 21:24       | <b>17</b> 21:3,5,10 26:22<br>27:6,17   | <b>40</b> 18:1,10                                    | <b>addition</b> 16:22<br>24:10   |
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