

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. ZEPEDA,) OTA NO. 220610514
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, September 21, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. ZEPEDA,) OTA NO. 220610514
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 3:18 p.m. and concluding at 4:25 p.m. on
Thursday, September 21, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ LAUREN KATAGIHARA

Panel Members: ALJ JOSHUA LAMBERT
ALJ MIKE LE

For the Appellant: M. ZEPEDA
ABEL MORENO

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

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 10.)
(Department's Exhibits A-H were received at page 10.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Moreno	11
By Mr. Sharma	21

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Moreno	28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Thursday, September 21, 2023
3:18 p.m.

JUDGE KATAGIHARA: Let's go on the record.

We're opening the record in the Appeal of Miguel Carlos Aceves Zepeda before the Office of Tax Appeals. This is OTA Case No. 220610514. Today is Thursday, September 21st, 2023, and the time is 3:18 p.m. We're holding this hearing electronically with the agreement of all the parties.

I'd like to begin by asking the parties to please identify themselves by stating their names for the record. Let's begin with Appellant.

MR. MORENO: Abel Moreno.

MR. ZEPEDA: Miguel Aceves Zepeda.

JUDGE KATAGIHARA: And who is here for the Respondent?

MR. SHARMA: Ravinder Sharma, CDTFA. Thank you.

MR. PARKER: Jason Parker with CDTFA.

MR. BROOKS: Christopher Brooks, attorney for CDTFA.

JUDGE KATAGIHARA: I am Lauren Katagihara, the lead Administrative Law Judge for this case. And with me today are Judges Josh Lambert and Judge Mike Le. We're the panel hearing and deciding the case. The parties made

1 no objections to the panel at the prehearing conference.
2 Will the parties please confirm that this is still the
3 case.

4 Appellant?

5 MR. MORENO: Yes.

6 JUDGE KATAGIHARA: Respondent.

7 MR. SHARMA: This is Ravinder Sharma. That's
8 correct. Thank you.

9 JUDGE KATAGIHARA: Thank you.

10 At the prehearing conference Respondent agreed to
11 email Appellant's representative a copy of or a link to
12 the CDTFA 735 Request For Relief of Interest form, and if
13 available, the Statute of Limitations Waiver form the
14 Appellant alleges to have signed in 2019.

15 Respondent, did you provide either or both of
16 those documents to Appellant?

17 MR. SHARMA: This is Ravinder Sharma. Yes, I
18 emailed the 735 and link to the form to Mr. Moreno. And I
19 did speak with him on the same day, explained to him that
20 we don't have any waivers for 2019, whatsoever. So I
21 explained to him the situation, and we don't have any
22 copy. And he understood that, and he said would let the
23 Judges know at the time of this hearing whether he still
24 wants to have this argument or not.

25 Thank you.

1 JUDGE KATAGIHARA: Thank you.

2 Appellant, did you receive the 735 form?

3 MR. MORENO: I did. I think the confusion was
4 that this was one case at one point, and the Department
5 broke it up into three different cases. And I think
6 that's where the confusion came as to what was signed for
7 which one. So he did provide the information, and we did
8 kind of agreed that it was -- there's multiple cases going
9 on. So with regards to this case, that did not apply.

10 JUDGE KATAGIHARA: Okay. So just to confirm, the
11 2019 waiver does not apply and the CDTFA 735 Request For
12 Interest Relief does not apply?

13 MR. MORENO: So the interest relief, we -- I
14 mean, we will seek depending on the time, given how much
15 time has elapsed since the original audit to now. But
16 the -- in terms of the -- the waiver of the statute of
17 limitations, we will not bring that up.

18 JUDGE KATAGIHARA: Okay. So the 735 form was due
19 to OTA earlier this month, and without a denial or deemed
20 denial of that request by CDTFA, OTA does not have
21 jurisdiction over a request for interest relief.

22 Does Respondent have any objection to a late
23 submission of the 731 form?

24 MR. SHARMA: This is Ravinder Sharma. The only
25 thing we request is, if Appellant files right now, we need

1 some time to review. And we specifically request the
2 Appellant to state the specific time periods and the
3 reasons why the Appellant is claiming interest relief.

4 Thank you.

5 JUDGE KATAGIHARA: Understood.

6 I will give Respondent an opportunity to submit a
7 post-hearing brief to address a request for interest
8 relief. So I will give Appellant until October 23rd,
9 2023, to provide the CDTFA 735 form to both OTA and CDTFA.

10 Mr. Moreno, if you would like to state your --
11 actually, I would like you state Appellant's case
12 regarding the request for interest relief today and
13 include the specific time period, if you know it, for
14 which you believe interest relief is justified. And if
15 Respondent does not -- is not prepared, obviously, to
16 speak to that issue today, I understand and you can do so
17 in your post-hearing briefing.

18 Okay. So it looks like the issues are the same
19 as we discussed at the prehearing conference, which are:
20 One, whether further adjustments to the measure of
21 unreported taxable sales are warranted; two, whether the
22 negligence penalty was properly imposed; and three,
23 whether interest relief is warranted.

24 Then will the parties please confirm that they
25 continue to agree with these stated issues.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Appellant?

MR. MORENO: Yes.

JUDGE KATAGIHARA: Respondent?

MR. SHARMA: This is Ravinder Sharma. That is correct. Thank you.

JUDGE KATAGIHARA: Thank you.

And at the prehearing conference the following concessions or stipulation were also made: One, that the liability period covered by the Notices of Determination at issue in the appeal is February 1st, 2013, to June 30th, 2017; and two, that Appellant agrees with CDTFA's audit methodology used in the audit and only disputes the cost of labor CDTFA used to determine the markup of parts. Appellant specifically concedes the cost of labor CDTFA used to determine the markup of tires.

Will the parties please confirm that these concessions or stipulations are correct.

MR. MORENO: Abel Moreno. Yes, they are.

JUDGE KATAGIHARA: Thank you.

Respondent?

MR. SHARMA: This is Ravinder Sharma. That is correct. Thank you.

JUDGE KATAGIHARA: Thank you.

Pursuant to the minutes and orders issued after the prehearing conference, the parties had until

1 September 1st to submit exhibits. Appellant has proposed
2 Exhibits 1 through 3.

3 Respondent, do you have any objections to
4 Appellant's exhibits?

5 MR. SHARMA: This is Ravinder Sharma. No
6 objection. Thank you.

7 JUDGE KATAGIHARA: Thank you.

8 Respondent has proposed Exhibits A through H.

9 Appellant, do you have any objections to
10 Respondent's exhibits?

11 MR. MORENO: No, I do not.

12 JUDGE KATAGIHARA: Thank you.

13 Since there are no objections, all of the
14 exhibits will be admitted into the record as evidence.

15 (Appellant's Exhibits 1-3 were received
16 in evidence by the Administrative Law Judge.)

17 (Department's Exhibits A-H were received in
18 evidence by the Administrative Law Judge.)

19 JUDGE LE: I'm sorry. Let me just interject
20 right her. I just want to confirm, Lead Judge, whether or
21 not we're on the record right now?

22 JUDGE KATAGIHARA: Yes.

23 JUDGE LE: Yeah. Okay. Thank you.

24 JUDGE KATAGIHARA: Thank you.

25 I'm sorry. Where were we?

1 Will Appellant please confirm on the record that
2 they do not intend to call any witnesses?

3 MR. MORENO: Abel Moreno. Correct. We do not
4 intend to call any witnesses.

5 JUDGE KATAGIHARA: Thank you. Will Respondent
6 also please confirm on the record that they do not intend
7 to call any witnesses.

8 MR. SHARMA: This is Ravinder Sharma. Department
9 does not intend to call any witnesses. Thank you.

10 JUDGE KATAGIHARA: Thank you.

11 Okay. We're ready for Appellant's presentation.
12 You can proceed. You have 45 minutes.

13

14 PRESENTATION

15 MR. MORENO: Good afternoon. Thank you very
16 much.

17 So at the heart of the matter is regarding
18 Mr. Zepeda's audit, is whether the right cost of labor was
19 appropriate, right. I would start with the Exhibit A as
20 to kind of denote the argument that we're going to make.
21 So when we first started this audit with the CDTFA, it was
22 what they -- well, a new auditor that was not an expert in
23 this industry, and so we provided with them a series of
24 invoices or books that are in Exhibit 3. These are
25 invoices that Mr. Zepeda, you know, charged for services

1 that he provided for the repair of -- diesel repair and
2 also tires, right.

3 We agree with them as regards to the cost of the
4 labor, with regards to tire as that is not labor
5 intensive, and we -- it does not take a substantial amount
6 of time. Where the difference came to pass and where the
7 majority of the measure that's been generated by the
8 Department is with regards to the labor rate on some of
9 the bigger jobs, right. We're talking about diesel trucks
10 that weigh over 13, 14, 15,000 pounds when they are
11 loaded, and the installation of brakes, engine overhauls,
12 and, you know, heavy labor-intensive jobs of that nature.

13 The disagreement came to be as to how the labor
14 rate was going to be calculated. The auditor asked for
15 the W-2s, asked for Mr. Zepeda's personal tax return, and
16 basically took the W-2s, averaged them out, and then said
17 this is what the cost of labor is. We disagreed with
18 that, right. We disagreed with that labor. That's where
19 the \$17-an-hour rate came from. And so we basically
20 explained to her that the labor rate is not a rate of what
21 you're paying the employees. It's basically the rate that
22 you're going to charge to cover the cost associated with
23 running a business.

24 She did not understand that. She said no, no.
25 It's what you're paying your employees. I said, at

1 \$17-an-hour, we're not even going to be able cover the
2 other expenses associated with this, right. But the
3 supervisor at the point agreed with her, right. And so
4 what we provide in Exhibit 1 was basically, look, this is
5 what the industry calls for, right. The industry calls
6 for -- and this is not our saying. It's AAA, which is a
7 known advocate for the auto consumer is that the labor
8 rate would be between \$47 and \$128 an hour, right.

9 And so what Mr. Aceves Zepeda was charging in
10 these invoices was not something that was out of the
11 normal. It was actually within the industry average.
12 They disagreed. And so they said, no, it's \$17-an-hour.
13 Well, using that \$17-an-hour that created and exorbitant
14 amount of measure to Mr. Zepeda, which we believe is not
15 right, right. It's not -- it doesn't take into account
16 any of the operating expenses that it takes to run the
17 business. It doesn't take into account any -- you know,
18 if you're only going measure the labor that's direct
19 labor, how is he supposed to cover the repairs in the
20 building, the power on the -- the electricity to run the
21 power tools, the other expenses that are necessary to
22 operate and produce that job?

23 For the past four years -- five years that we've
24 been going through this audit, nobody has ever said why,
25 right. Why such a low labor rate, when if you look at

1 Exhibit 3, there's -- it's comparable. Direct competition
2 is charging \$70-an-hour for labor, and they're on
3 questioning that. They're not -- they're putting him at a
4 direct disadvantage with the direct competitors. And so
5 that -- we believe that creates an un-equitable
6 environment for Mr. Zepeda, right. And so he's basically
7 being given a rate that no other -- no other person that
8 does the same job -- the same type of job would be given
9 that lower rate.

10 And we've asked on multiple occasions, what is
11 the justification for a \$17-an-hour rate when a direct
12 competitor that is three miles away is charging
13 \$100-an-hour of labor rate for the same exact job that
14 Mr. Zepeda is producing. They don't -- they don't say
15 anything. They just say that's what the measure is, and
16 that's what the auditor said. And so we've been to two
17 other appeals, and we've brought the same point up and
18 nobody has gone on the record in saying why they believe
19 that a \$17-an-hour rate is supposed to cover basically
20 over \$200,000 in operating expenses that he's reported.
21 And to my knowledge, they've never questioned whether
22 that's inflating or deflating. But \$17-an-hour doesn't
23 cover that. Or even \$27-an-hour, which is what they
24 proposed at one point, doesn't cover even half of the
25 expenses that it takes to run the business, right.

1 And so our only -- our appeal basically is that
2 the measures have been artificially inflated by using such
3 a low labor rate because, obviously, once this -- there's
4 been another audit that was completed for a separate
5 business, Mr. Zepeda was audited by various agencies,
6 different agencies, and nobody came close to that kind of
7 measure or even -- I mean, not even close to that measure.
8 So we believe -- and the heart of our appeal is that the
9 labor rate has been artificially inflated by the use of
10 low labor rate, right. We do not believe that the rate
11 they're using conforms to the industry average, conforms
12 to similar taxpayers that are paying -- that are -- that
13 do the exact same job as him, right. And the Department
14 accepts a higher rate of labor for the same exact same
15 job, right. For the exact same, you know, the exact same
16 kind of service, right.

17 So we believe that that's how the Department, you
18 know, artificially inflated the measure because the
19 auditor at the time that concluded this didn't have the
20 expertise to even know what -- how to calculate that,
21 right. And to us, what we've been asking for is look at
22 his operating expenses and divide that by \$2,008 --
23 \$2,080, and that is how much money he will need to cover
24 the expenses plus whatever profit it is. And that's what
25 Exhibit A is about, right. That's not our word. That's

1 the industry average, right. That's what the industry
2 calls for, right.

3 If you look at Exhibit A, you know, it directly
4 says what you're paying the -- what the labor rate is not
5 what you're paying the mechanic. It is the cost of
6 running the business. It is the cost of running an
7 operation. And so in our opinion, \$17-an-hour does not
8 even cover basics of running the operation. It barely
9 covers the employees and the tax associated to that. So
10 how are we supposed to cover the rest of the expenses?
11 And that's where we believe that the audit is
12 fundamentally flawed and that it's basically increasing
13 the measure by using artificially low labor rate. And
14 that is the heart of our appeal.

15 You know, we're not going to take -- we're not
16 arguing the methodology and stuff. We -- that's an
17 inappropriate measure, but it's all -- but the way they're
18 calculating it, the way that they are choosing to do such
19 a low labor rate is inflating the measure so large, right.
20 That is inflating the amount. I don't think throughout
21 this whole process its been ever argued within the
22 Department that there is going to be some tax owed, right.
23 But -- but basically, we would go through the case, and
24 then they would stop, right. Because apparently the
25 auditor on this case didn't -- left the Department.

1 And so the heart of our appeal with regards to
2 the interest is that we last talked to them in 2020 right
3 before the pandemic. In January of 2020 we spoke. We had
4 a meeting with the supervisor, and they sat on the case
5 until late 2021, right. And so we didn't hear anything
6 back. They didn't tell us anything. We didn't -- and
7 then finally they scheduled one appeals conference in
8 2021, right, which we went through this whole thing about,
9 you know, what the -- what the measure would be. Again,
10 we brought up the labor rate. They said that's what it
11 is, and that's what we're sticking with, right.

12 And so what I've always wanted to know is, what
13 does the Department say the calculation for the labor rate
14 is. Because in Publication 25, which they give out to all
15 repair shops, and say this is the guide which you will
16 operate under. They say that the labor on the
17 installation of used cars is nontaxable, but they don't
18 provide you how to -- that calculation, right. So the
19 Department is not going to provide you the calculation,
20 then you have to go to the industry you're operating in.
21 And, again, we believe that he is given an artificially
22 low rate that other taxpayers are not paying, are not
23 being given, right.

24 I can guarantee you that if you go to a Chevy
25 dealership, if you go to Jiffy Lube, if you go to any

1 other, you know, car service repair, the labor rate is not
2 \$17-an-hour. And the Department is not going after them
3 for deficiencies because of that labor rate, right.
4 They're accepting the 60s, the 50s, the \$70-an-hour. And,
5 again, our position is why is he being -- why is he being,
6 basically, discriminated against with regards to the labor
7 rate, right. Is it because he's a small business owner,
8 or is it because he doesn't have, you know, lawyers galore
9 to fight this out? Nobody has been able explain this,
10 right. And nobody has ever been able to explain to me how
11 they justify such a low labor rate when it flies in
12 comparison to what his competitors and what people in the
13 industry are charging but yet, they're sticking by an
14 \$17-an-hour rate, right.

15 So we do not believe that this is fair. We don't
16 think this is equitable towards the taxpayer. And we do
17 believe that this is causing an artificial inflation of
18 the number, and that's at the heart of the matter, right.
19 Again, as I explained, our appeal is in regards to the
20 interest, right. And, again, they sat on this case. They
21 had everything they wanted from us in 2020, and they sat
22 on this case for almost two years. And then they're now
23 coming and saying, oh, now we get to the appeals and now
24 we're here almost at the end of '23, right, when we have
25 basically been sitting around waiting to see what the

1 outcome was going to be of these matters, right.

2 And so that are the two components of our appeal,
3 and that is what we've arguing and what we've not been
4 able to be given an answer. Again, the invoice we
5 provided clearly shows what he's charging for labor. And
6 so the Department basically kicked out that labor and
7 said, no, we don't think we're going to honor that. We're
8 going to come up with our own number, right. And their
9 own number was basically saying this is what you paid
10 employees, and this is what we're going to use as a labor
11 rate, which is incorrect. It doesn't conform to the
12 industry at all, right.

13 So, again, we believe that they are basically
14 applying a standard to Mr. Zepeda that no another similar
15 type of business is being -- that standard is being
16 applied to. They're not saying, hey, what you pay your
17 employees and what have for profit, that's the labor rate.
18 It is not correct. It's not correct. And, again, that's
19 why we believe that the measure is artificially inflated
20 to the level that it is and why it's causing such a big
21 number that he's going to owe. Again, as we explained
22 before, we're not arguing that he's not going to owe any
23 tax.

24 We know, based upon the work papers, that the
25 original tax preparer did not prepare the return, right.

1 We don't argue that, right. But we do believe that the
2 measure that they came to using that is artificially
3 inflated by such a low labor rate, and that's basically
4 our case in a nutshell.

5 JUDGE KATAGIHARA: Mr. Moreno, I want to follow
6 up with you then on your concession about the cost of
7 labor. So it sounds like you agree with the \$17.50 being
8 Mr. Zepeda's cost, but you don't agree with CDTFA's,
9 essentially, is the markup of that cost, what they are
10 attributing to how much you charge for labor?

11 MR. MORENO: We don't agree that that measure
12 includes all the appropriate costs that should be in that
13 measure. The measure that they're using is saying that
14 that's the cost of labor, but it doesn't -- but it doesn't
15 conform to the industry standard of the labor rate is not
16 what you're paying employees, which is what we show in
17 Exhibit 1 -- sorry -- Exhibit A, that the labor rate for a
18 car industry is not what you pay your employees. It's
19 what you pay your employees plus the cost to run the
20 operation and the profit that you're trying to generate.
21 That is -- that is how you would generate the income is by
22 basically charging a labor rate to capture cost and
23 profit.

24 JUDGE KATAGIHARA: Okay. So you disagree with
25 the charge of the labor rate to the customer, but you

1 agree that Mr. Zepeda paid his employees \$17.50 an hour
2 for the labor?

3 MR. MORENO: Correct.

4 JUDGE KATAGIHARA: Okay. Thank you.

5 Judge Lambert, do you have any questions for the
6 Appellant?

7 JUDGE LAMBERT: This is Judge Lambert. I don't
8 have any questions at this time. Thanks.

9 JUDGE KATAGIHARA: Judge Le, do you have
10 questions for the Appellant at this time?

11 JUDGE LE: This is Judge Le. No questions at
12 this time. Thank you.

13 JUDGE KATAGIHARA: Thank you.

14 Respondent, you can proceed with your
15 presentation. You have 60 minutes.

16 MR. SHARMA: Thank you.

17

18 PRESENTATION

19 MR. SHARMA: This is Ravinder Sharma.

20 Appellant obtained a retail and repair shop for
21 sales of new and used tires and auto parts in Delano,
22 California, since February 2013. The Department performed
23 an audit examination for the period of February 1, 2013,
24 through June 30th, 2017. Appellant reported total sales
25 of little more than \$1.5 million, claimed a deduction of

1 \$938,000 for nontaxable labor, and deduction of \$11,000
2 for sales tax, resulting in reported taxable sales of
3 around \$590,000 for the audit period; Exhibit A, page 14
4 and 15.

5 Records available for the audit: Federal income
6 tax returns for years 2013 and 2014; profit and loss
7 statements for January 2016 through June 2016; QuickBooks
8 reports for purchases from January 2014 to March 2017;
9 some purchase invoices and sales invoices for May 2016 and
10 June 2016; and job worksheets for November 4th, 2017,
11 through November 11, 2017. However, Appellant did not
12 provide all sales invoices, sales summary reports, sales
13 journals, all purchase invoices, all purchase journals for
14 the audit period. Due to lack of sales records, the
15 Department could not verify the accuracy of reported
16 amounts. The analysis of Appellant's reported total sales
17 for sales and use tax returns and reported gross receipts
18 for federal income tax returns revealed significant
19 unexplained differences for 2014; Exhibit B, page 103.

20 The Department compared reported taxable sales
21 with recorded purchases per profit and loss statements and
22 noted that recorded purchases of approximately \$717,000
23 was significantly higher than reported taxable sales of
24 \$516,000 for 2015 and 2016, resulting in negative markup
25 of 21 percent; Exhibit B, page 102. Based on these

1 analyses, the Department determined that Appellant's books
2 and records were not reliable and adequate for sales and
3 use tax purposes. In the absence of reliable books and
4 records, the Department used an indirect audit method to
5 verify the accuracy of reported amounts and to determine
6 unreported taxable sales.

7 The Department conducted a shelf test using
8 Appellant's sales invoices, job worksheets, and other
9 available information for November 4th, 2017, through
10 November 11th, 2017. The shelf test resulted in the
11 markup of approximately 46 percent for parts and
12 17 percent for tires; Exhibit A, page 26 and 27. The
13 Department used QuickBooks reports and determined parts
14 purchases of little more than \$330,000 for February 1,
15 2013, to December 31, 2016; Exhibit A, page 33. The
16 Department used vendor surveys and QuickBooks reports to
17 determine tire purchases of around \$1.5 million for
18 February 1, 2013, through December 31, 2016; Exhibit A,
19 page 31 and 32.

20 For parts, the Department used total purchase of
21 \$330,000, adjust for inventory, allowed a pilferage of
22 2 percent, and applied a markup of 46 percent to determine
23 audited taxable parts sales of around \$448,000 for
24 February 1, 2013, to December 31, 2016; Exhibit A,
25 page 21. For tires, the Department used total purchases

1 of \$1.5 million, adjusted for inventory, allowed a
2 pilferage of 2 percent, and applied a markup of 17 percent
3 to determine audited taxable tire sales of \$1.6 million
4 for February 1, 2013, to December 31, 2016; Exhibit A,
5 page 21.

6 Based on these audit processes, the Department
7 determined audited taxable sales of little more than
8 \$2 million for February 1, 2013, to December 31, 2016.
9 Appellant reported taxable sales of \$453,000 resulting in
10 unreported taxable sales of \$1.6 million for February 1,
11 2013, to December 31, 2016, with an error rate of around
12 261 percent for 2013, 400 percent for 2014, 535 percent
13 for 2015, and 257 percent for 2016; Exhibit A, page 21.

14 Due to lack of books and records for 2017, the
15 Department used an error rate of 257 percent to determine
16 unreported taxable sales for January 1, 2017, through
17 June 30, 2017. The Department applied the error rates to
18 the reported taxable sales of \$590,000 to determine
19 unreported taxable sales of \$1.9 million for the audit
20 period; Exhibit A, page 18. When the Department is not
21 satisfied with the amount of tax reported by the taxpayer,
22 the Department may determine the amount required to be
23 paid based on any information it has in its possession or
24 may come into its possession.

25 In the case of FNRP, the Department has a minimum

1 initial burden of showing that its determination was
2 reasonable and rational. Once the Department has met its
3 initial burden, the burden of proof shifts to the taxpayer
4 to establish that a result different from the Department's
5 determination is warranted. Unsupported assertions are
6 not sufficient to satisfy a taxpayer's burden of proof.
7 The Department used Appellant's provided books and
8 records, third party vendor surveys, and other available
9 information to determine the audit liability. Doing so
10 produced a reasonable and rational determination.

11 Without any documentary evidence, Appellant
12 contends that the Department had used lower labor rate for
13 its markup calculations. In response, the Department
14 submits that it used Appellant's books and records for
15 November 4, 2017, to November 11, 2017, to calculate a
16 markup of 46 percent for parts and 17 percent for tires.
17 During the prehearing conference on August 16, 2023,
18 Appellant conceded to the markup of 17 percent for tires.
19 Office of Tax Appeals minutes and orders dated August 17,
20 2023, mentions hourly labor rate of \$17.50 as the cost of
21 labor associated with the markup of parts.

22 The Department wants to clarify that audited
23 average hourly labor cost is determined to be \$27-per-hour
24 not \$17.50. The hourly rate ranges from \$17.21-per-hour
25 and \$45-per-hour. Please refer to Department's additional

1 brief dated, December 19, 2022, Exhibit H, pages 226 to
2 238. As of now, Appellant has not provided any
3 documentary evidence to show that markup of parts should
4 be lower than 46 percent. In response to Exhibits 1
5 through 3, the Department submits that it examined all
6 documents and have already adjusted cost of goods sold for
7 nontaxable supply items; Exhibit A, page 33.

8 No further adjustments are warranted for cost of
9 goods sold. Further, the Department reviewed Appellant's
10 worksheets and sales invoices in support of its markup
11 calculation of 24 percent to 28 percent and rejected the
12 same as inconclusive and unsupported. For detailed
13 comments, please refer to Appeals Bureau decision dated,
14 August 26, 2021; Exhibit F, pages 200 to 203. No
15 adjustments are warranted for the markup.

16 Based on the foregoing, the Department has fully
17 explained the basis for the deficiency and established
18 that the determination was reasonable based on the
19 available books and records. Further, the Department has
20 used approved audit methods to determine the deficiency.
21 Appellant has not met his burden to prove otherwise. Even
22 though this is Appellant's first audit, the Department
23 assessed a 10 percent negligence penalty because of the
24 high percentage of understatement and the lack of records.
25 Appellant's unreported taxable measure is 327 percent of

1 the reported taxable sales. And Appellant failed to
2 maintain and provide necessary books and records as
3 required by Revenue & Taxation Code 700053 and 700054 and
4 Regulation 1698.

5 The understatement cannot be attributed to a bona
6 fide and a reasonable relief that the bookkeeping and
7 reporting practices were sufficiently compliant with the
8 requirements of sales and use tax law. Therefore,
9 Appellant was negligent, and the penalty should be upheld.
10 Based on the evidence presented, the Department request
11 that Appellant's appeal be denied.

12 This concludes my presentation, and I'm available
13 to answer any question you may have. Thank you.

14 JUDGE KATAGIHARA: Thank you.

15 Before we move onto Appellant's rebuttal and
16 closing remarks, I'd like to give my co-Panelists the
17 opportunity to ask any questions they may have.

18 Judge Lambert, do you have any questions?

19 JUDGE LAMBERT: This is Judge Lambert. I don't
20 have any questions. Thanks.

21 JUDGE KATAGIHARA: Judge Le?

22 JUDGE LE: This is Judge Le. No questions at
23 this time. Thank you.

24 JUDGE KATAGIHARA: Thank you.

25 Mr. Sharma, will you please do me the favor of

1 confirming your percentages of errors that you calculated
2 for each year. I notice that Schedule 12A in your opening
3 brief had listed different numbers. So I'd just like to
4 get confirmation of those.

5 MR. SHARMA: This is Ravinder Sharma. Error
6 rates is around -- we rounded it off, 261 percent for
7 2013, 400 percent for 2014, 535 percent for 2015, and
8 257 percent for 2016. And the Department used the lower
9 error rate, which is 257 percent for 2017 to give the
10 benefits to Appellant.

11 Thank you.

12 JUDGE KATAGIHARA: Thank you very much.

13 Those are all the questions that I have.

14 So, Appellant, you can proceed with your rebuttal
15 and closing arguments. You have 15 minutes.

16 Mr. Moreno, you may be on mute.

17 MR. MORENO: Can you hear me now? Okay. Thank
18 you very much.

19

20 CLOSING STATEMENT

21 MR. MORENO: So I believe the Respondent kind of
22 just in a nutshell kind of incapsulated what our issue had
23 been with this audit. They always go back to the
24 47 percent because they're saying that he sold parts, but
25 they completely ignore the installation part. They say,

1 oh, you made -- they're taking the parts and saying you're
2 making money, 47 percent, off the sale of the parts, which
3 is incorrect, right. Mr. Aceves Zepeda is making his
4 revenue by installing the part, and that's the part they
5 completely ignore, right. They say, oh, well, the invoice
6 is not conclusive.

7 Well, it says -- the invoice says we're going
8 install breaks on a semi, right. So and -- or we're going
9 to change the water line on this semi, right. And so they
10 say, oh, well, it's only \$47 -- it's only going to be
11 \$17-an-hour, right, or \$27 as he explained is for the
12 total. \$27-an-hour annualized, that is \$56,000. That is
13 not a -- that is not a reasonable amount of labor rate to
14 cover the expenses, to cover everything that's associated
15 with that job, the power -- the power they use it, the
16 depreciation, the supplies, the office supplies. It
17 doesn't incapsulate all that, right.

18 And that has been our argument with the
19 Department for the past five years is that they just
20 ignore the installation part. Had they given -- had they
21 said, okay, the markup on the parts is 15 percent,
22 17 percent, we wouldn't be here, right. It's this, oh,
23 we're gonna -- it's 50 percent. He's not making his
24 revenue by selling the part. He's making his revenue by
25 installing the part. The client comes in and says, okay,

1 here's this -- my truck, right. It's a freight liner. It
2 needs new brakes, right.

3 So he says, okay, well, our -- the cost is this,
4 and we're going to -- and I believe what they said is, it
5 was negative because he wasn't charging enough for markup.
6 And that's probably true because we agree with the
7 Department going forward that we would apply a larger
8 markup on the parts to -- for the taxable measure in '17,
9 '18, '19, '20 going forward, which is why we've not seen
10 another audit, right. So I believe that we worked with
11 the Department to try create a better measure that they
12 would -- that they could do. But what they don't do in
13 this audit is they totally forget or ignore the
14 installation part, right.

15 He is not an auto part seller. He is an auto --
16 a diesel repair mechanic who is basically installing parts
17 onto -- so he has -- he has two components, right. It's
18 the selling of the tire, which has a 17-percent markup,
19 which we agree. It's a reasonable measure. 17 percent is
20 a reasonable measure for the tire service. We don't
21 disagree with that, right. It's reasonable to us. So --
22 but when they get to the auto part, they say, oh, no,
23 you're selling parts. I said okay. Well, what about the
24 installation of the parts? Oh, well, that's only worth
25 \$17.50 -- or \$27.50-an-hour, when the direct competitors

1 that are engaging that same business are charging \$70,
2 \$100, \$150-an-hour for the installation of the part,
3 right.

4 They don't give Mr. Aceves that, right. They say
5 oh, no, you're selling the part. But that's not where the
6 revenue or the transaction is coming from. It's that
7 the -- so they say, okay, well, we're going to apply this
8 \$27-an-hour rate job by \$3. You get \$60. But if you look
9 at the transaction, right, it's like someone brings a big
10 freight liner truck, right. There's 200-pound tires, you
11 know, 150-pound drums that they are pulling off, hammering
12 off, and install the breaks. And they say, well that --
13 the component of all of that is not \$27-an-hour. That's
14 just actually incorrect.

15 And there's this narrative that they've been
16 saying for a long time that I frankly do not -- do not
17 agree with, and I don't think it's appropriate. They're
18 saying that his books were not good. But yet, they were
19 provided with QuickBooks reports. They were provided with
20 every report, right. And other Departments have come in
21 and have not every restraining order right turn and other
22 Departments come in and have not come to that same
23 conclusion, right. We've had IRS audits. We've had FTB
24 audits, and they used the books, right.

25 So when they say that they asked for all the

1 records, they did not. The auditor in this case came in
2 and asked for months at a time and said here, we're going
3 to give you this report, give us these invoices. I
4 provided -- I provided a book which is a backup to the
5 general ledger, right. They did not go through every
6 single book, and they didn't ask for every single book,
7 right. It's this narrative that they've been saying --
8 that has been coming out from the bottom of, oh, the books
9 are wrong, so we're going to come up with our own measure.

10 I disagree with that. We have -- we have boxes
11 and boxes and boxes of books. And I told her, I'll add it
12 up for you and tell the total by month and you can compare
13 their bank records. She did not want to do that. She
14 goes, we're going to go with our own measure, right, and
15 we're going to go with what we're doing. So I said fine.

16 But as the numbers kept getting bigger and
17 bigger, I said, you know, I don't think you're doing this
18 right, right. So I don't buy this notion that the books
19 are incorrect or that they were grossly miscalculated.
20 Because to say that is to say that three other Departments
21 came in and were totally wrong. And we don't think that's
22 right. But we believe there is a -- basically a
23 misunderstanding of what Mr. Zepeda's business is, right.
24 They keep saying he's selling parts, but they totally
25 ignore the installation other part, right.

1 They didn't even stratify the sales by, okay,
2 what's the percentage of part installation versus the
3 percentage of the tire sales. I asked them, can we did
4 that? They said no. So they don't stratify any of it,
5 right, because it's two different business lines. And on
6 the QuickBooks reports that they provided, it clearly
7 shows this is what was for parts, for labor, and it shows
8 the labor. But they've never wanted to reconcile it.
9 They just said, oh, well, we can't use this. So the books
10 and records are wrong.

11 But yet, other Departments came and looked at the
12 same records, looked at the backup, looked at the
13 invoices, right, and said that -- and they didn't say, oh,
14 none of these books are right, right. That is what we
15 fundamentally disagree with the Department and that
16 characterization of Mr. Aceves' books, right. And,
17 obviously, you know, we've doing this audit for the past
18 five, six years. And so to characterize that as a
19 justification for them saying, oh, well, you know, you're
20 selling parts at 42 percent, right. That is not what the
21 invoice says, right. That's not what the transaction is,
22 and that is not a correct characterization of Mr. Aceves'
23 business is.

24 He's not -- he is not in the business of selling
25 parts to make profit. He's in the business of installing

1 parts, right, and selling tires. Again, we don't disagree
2 with the 17 percent markup on the tires because that's
3 about right. That's about right for that industry, but we
4 wholeheartedly disagree that's basically buying the parts,
5 you know, increasing it by 50 percent and generating a
6 profit. That's not what's happening, right.

7 He is installing the part, and there is no
8 consideration for the installation, right. There is no
9 consideration for that labor rate to install that part.
10 And -- and a large portion of these invoices that they use
11 in the measure are for diesel -- are for diesel trucks,
12 right. That's where the big numbers come from. But
13 they're saying is that, oh, well, the part -- the part is
14 50 percent of it, and we're going to give you, you know, a
15 30 percent labor off the invoice, which fills the invoice
16 from being, you know, basically, 40 percent taxable to
17 basically 70, 80 percent taxable, right, or -- or -- and
18 that's what we understand.

19 They -- they ignore the whole installation of the
20 part and say that he's making or deriving a profit from
21 the sale of the part, which is it's not accurate. That's
22 not what's happening. And so they then say well, based
23 upon this, we're going to give you \$27-an-hour rate, which
24 is grossly lower than anybody else performing the exact
25 same job, right. And so when they say, oh, well, you're

1 not giving us the measure, I've given them the measure.
2 I've given them the expenses. They have the P&Ls. All
3 they would have to do is the divide the P&L expenses by
4 \$2,080, and that tells you how much rate has to be derived
5 to pay the cost of the business, the operating expense.

6 To me that's not a hard thing to do, right. And
7 if you go year by year it fluctuates between 40 to 47
8 to -- just all the costs associated with the business,
9 right. And then you add the profit component, it would be
10 somewhere around, you know, \$50 to \$60 an hour fluctuating
11 through the years. And when I explained it to them, they
12 said no, we're not going to do with that. So they ignore
13 the whole part about the installation of the part. They
14 talk to you about the sale of the part, and they are
15 selling the part, but they completely ignore the material
16 fact that they have to install the part onto the truck.
17 And they discount that to produce a higher measure, right.

18 And so, again, we just don't agree with the fact
19 they were provided QuickBooks reports. They were provided
20 with the -- which I have shown in Exhibit 3 -- are the
21 sales invoices that are the backup for that -- for that
22 general ledger, right. There are daily sales. That
23 general ledger is backed up by little books, and they
24 don't see it that way. They say, oh, well, we're just --
25 we're not going to go with that. But they cannot tell you

1 they ever reconciled the total of those books to what the
2 general ledger says, right.

3 They've never done that, and I told them I would
4 do it myself, and I'll show you what the variances are in
5 those books compared to what's on the P&L. They've never
6 agreed to that, right. So -- so we went this calculation,
7 but to me is, like, you keep ignoring the fact that he's
8 installing the part. And so that you're not selling the
9 part. You're installing the part. So what's the rate of
10 the installation of that part? And that is at the heart
11 of the argument, right.

12 If you have a diesel truck that's 15,000 pounds
13 loaded, what's it going to -- what kind of cost goes into
14 doing that job? It's everything. It's power,
15 electricity, and it's -- and it's all those costs that are
16 needed to operate the business, the tools, everything, and
17 they ignore that. They've never took that into
18 consideration. And, again, we believe that they are
19 taking the invoice and factually misrepresenting what the
20 transaction actually is. The transaction is that they're
21 installing the part onto a truck, and he's an auto repair
22 shop, basically.

23 But they're saying, oh, no, he's a -- he's
24 selling parts. He's a -- he's basically selling this part
25 and it's 40 -- it's 50 percent. That's just not true.

1 That's not factual, and that's not what the invoice shows.
2 And that's not what any of the transactions that we
3 provided shows, but that's the characterization that the
4 Department has made, and we just fundamentally disagree
5 with the that characterization of the books and also of
6 the -- what the actual transaction is, right. Again, we
7 believe that the invoices provide a labor amount for the
8 installation of the part and what we charged for the part,
9 right.

10 They are -- they are discounting that and saying,
11 oh, well, we're going to add a 50 percent markup to the
12 parts and then basically do away with the labor as if it
13 doesn't matter, but it does. Because that installation of
14 the part is the reason the part is even there. And
15 Mr. Aceves did not have to install these parts. He
16 wouldn't buy them, right. So -- so he basically buys the
17 part to put it onto the truck, and putting it onto the
18 truck makes this transaction worth what it is, you know.

19 That's why you can change the water pump and
20 charge, you know, \$1,000 for that. It's not because the
21 part is worth \$1,000 or because it's worth \$40. It's
22 probably worth \$100, and you're paying \$100 to basically
23 take the car -- take the diesel apart from the front and
24 put it back together, right. But the Department just
25 ignores that and doesn't give no value to that and says,

1 well, you're a dealer of parts, so it's 50 percent.

2 And if they would have given us a substantially
3 lower markup on them, we wouldn't be here. But it's this
4 50 percent, you know, markup on parts that distorts the
5 number completely. And they are able to say well, it
6 doesn't -- it doesn't have any -- you know, it's so off
7 because you've distorted what the transaction actually is.
8 And that's been our appeal the whole time, and that has
9 been our argument this whole time with the Department
10 and -- that they see him as a seller of the parts, and we
11 see him as the installer of the part and basically an auto
12 repair shop basically installing these parts. And that is
13 the disagreement, right, is the rate as an auto repair
14 shop or a diesel mechanic shop what that labor rate is,
15 and we don't believe it's \$27-an-hour.

16 And we do not believe that even if you took a
17 conservative approach and took his -- if you took his
18 operating expenses, divide it by \$2,080, it wouldn't be
19 \$27-an-hour. It would be closer to \$40 to \$50-an-hour,
20 right. And so -- and that's what they completely just
21 ignore and say, oh, well, the books are no good. Well, I
22 don't -- I don't buy that. I don't believe that, and
23 nobody here was here when the audit -- I don't believe the
24 audit officer is even here anymore. Because I believe
25 that they asked the Department, which we were told

1 subsequently, because we tried to call him in into a
2 hearing to see how they calculated it, and they were -- we
3 were told that they are no longer with the Department.

4 So, you know, so we're left with, you know,
5 trying to explain what happened when nobody is around that
6 did the audit to tell you what happened. And so that, I
7 guess, is our frustration, and that's our, you know,
8 rebuttal to them in regards to why the measure is so high
9 in that regards is because we believe they fundamentally
10 changed the transaction from making it a dealer of parts
11 when he's actually the installer of the part, right. That
12 is what he's charging. That's what it needs to be with
13 labor rate.

14 JUDGE KATAGIHARA: Okay. This is
15 Judge Katagihara.

16 Mr. Zepeda, I know that your exhibit to our
17 invoices that for the most part separately states labor
18 from parts. Are all of Mr. Zepeda's invoices for the
19 liability period, we're they separately stated, the labor
20 from the parts? Or is it just this period time that you
21 provided to CDTFA?

22 MR. MORENO: Yes. He said that they were all the
23 same. They were all separately stated since those books
24 were -- he has always done the books the same away. He
25 shows the labor rate, and he shows the parts.

1 JUDGE KATAGIHARA: Okay. So and so were all of
2 those invoices provided to CDTFA for the audit period
3 during the audit?

4 MR. MORENO: So we asked them. To this day we
5 still have all the boxes in our office with stacks and
6 stacks of these books.

7 JUDGE KATAGIHARA: But were they provided to
8 CDTFA.

9 MR. MORENO: Yes. Yes. She came into our
10 office, and she sat down, and she picked the books that
11 she wanted.

12 JUDGE KATAGIHARA: Okay. Then, Respondent, I'm
13 going to ask if you can speak to these invoices and why
14 they weren't considered or, if they were, why you didn't
15 use the average labor rate shown on the invoices.

16 MR. SHARMA: This is Ravinder Sharma. So
17 whatever documents Appellant provided, the Department has
18 reviewed that. And as to the invoices, which is
19 Exhibit 2, if you look at the Exhibit D, pages 220 to 222,
20 the Department has analyzed all these documents and finds
21 a lot of discrepancies. They could not perform the markup
22 test. Some of them were like there was no cost available.
23 Even though the selling price was available, there was no
24 cost available.

25 The other one was Appellant said -- basically,

1 included some tire invoices in his calculation of 24
2 percent. So Department has basically worked with those
3 invoices and tried to come up with the markup. And if the
4 Department analysis is correct, the notes are if they used
5 based on whatever information is available for the
6 Department, whether the cost was available or the sale
7 price was available, and if the Department tried to use
8 \$80 labor, whatever the Appellant claimed, then the markup
9 went to 65 percent. That's the reason Department say
10 those documents were inconclusive and un-supportive of 24
11 percent.

12 And also, there were some purchase invoices
13 submitted but there was no corresponding sales invoices
14 available. So Department could not perform any reasonable
15 verification of Appellant's markup calculation of 24 to 28
16 percent. That's why the comments -- detailed comments are
17 in the Appeals Bureau Decision. And there is an analysis
18 performed, which is Exhibit D, pages 220 through 222 which
19 details out what the information Department looked at
20 that, and why the Department could not verify the accuracy
21 of the 24 percent or 28 percent markup calculation.

22 I hope that answered your question, Judge.

23 JUDGE LE: I'm sorry. Yeah. I believe you're
24 muted.

25 JUDGE KATAGIHARA: All right. Thank you,

1 Judge Le.

2 Respondent, for the invoices that include
3 something, like, repair of tires, was that incorporated in
4 the parts section or in the tire sales section? Or were
5 tire sales, was just for a sale of a tire and not for
6 repair of any tires?

7 MR. SHARMA: This is Ravinder Sharma. That was
8 included in Appellant's markup calculation of claimed 24
9 to 28 percent. So if we go to page 220, there is -- I
10 think in blue -- those are the Department's remarks.
11 They're saying this is tire invoices. So then because
12 what Appellant did is combine everything to come up with
13 the markup of 24 percent, whereas, the Department
14 segregated the markup for tires and parts.

15 So when the Department tried to come up with the
16 markup of parts based on the similar information,
17 Department could not do that because there was not enough
18 information available. And whatever information was
19 available, it did not support the markup of calculation of
20 24 percent.

21 JUDGE KATAGIHARA: Okay. Thank you.

22 I do not have any other questions for the
23 parties.

24 Judge Le, do you have any other questions?

25 JUDGE LE: Yes. This is my first question to

1 Appellant. So just confirm here, what do you believe the
2 labor rate per hour is for Appellant?

3 MR. MORENO: Conservatively speaking,
4 \$55-an-hour. That would be a fair rate for that time
5 period.

6 JUDGE LE: This is Judge Le. Thank you. And
7 looking at the invoices, is there a way to determine the
8 hourly rate just based on the invoices you provided in
9 Exhibit 2?

10 MR. MORENO: And based on that, no. Just -- it
11 would just set a clearer component. And so I believe in
12 the audit report they had a separately -- say separate out
13 how many hours were per job. And that's what we were --
14 what we did in that job. And so we originally said that
15 his original labor rate for these repairs was \$80-an-hour.
16 So the thing with the Department was we spoke to a
17 supervisor. They said okay, well, you have negative
18 sales, right. It's a negative -- it's a negative sales
19 rate.

20 And I said well, the issue -- and then we spoke
21 to Mr. Zepeda. He said, well, I'm not really marking up
22 the price because I'm -- I'm charging the labor rate to
23 install that. So the Department said, well, you can't do
24 that, right. So this is where the negative ratio comes
25 from. I said, well, you've got to up sell something. You

1 got to add 10 percent, 20 percent, 30 percent.

2 So subsequent to that, we agree that we would
3 increase it by -- I believe it was -- we agree that he
4 would increase it by 28 percent over the invoice price to
5 accommodate this, and the rest of it would be a labor
6 component, right. So during the audit period, there
7 wasn't a markup per se because he wasn't charging one.
8 And so -- and so the Department said, well, that can't
9 happen because you're a dealer of parts, and you've got to
10 charge something for the part.

11 So basically at that point, post -- I believe it
12 was 2017, we agreed that we would -- we would mark it up
13 28 percent, right. But then when -- that was what we
14 agreed with the Department. But then subsequent to this
15 audit, they came in and said, oh, it's 46 percent after
16 whatever. That doesn't seem -- that doesn't conform to
17 the meeting we just had two months ago. So -- so that was
18 kind of where the -- that negative -- negative sale came
19 from was from that conversation because that's what he was
20 charging, right.

21 But, again, if we want to be conservative, I'm
22 giving this \$55 to \$60-an-hour average as a conservative
23 estimate, but he was actually charging \$80-an-hour at that
24 time. But the Department thought that was too high
25 because it was producing a negative sale. And we

1 explained that it was because he was not charging -- he
2 was basically charging the cost of the price of the part.
3 And subsequent to that, we agreed to add a 28 percent
4 markup on the price, and they agreed to that. But when
5 they issued the audit, they came in 47 percent, and we
6 didn't understand why.

7 JUDGE LE: This is Judge Le. Thank you.

8 Let me now turn to Respondent.

9 Respondent, on your worksheet, that's labeled as
10 Bates Stamp 238. I'll give you a moment to get there.

11 MR. SHARMA: This is Ravinder Sharma. Yes,
12 Judge.

13 JUDGE LE: Okay. Thank you. For the columns
14 that are labeled C through F, and that's labeled "Job
15 Worksheets," the numbers that are in those columns, are
16 those numbers that you received from Appellant?

17 MR. SHARMA: That's correct because that is based
18 on job worksheets. Because job worksheets was the only
19 document to show how many hours was spent on a specific
20 job. So these are all the information the Department
21 obtained from the job worksheets provided by the
22 Appellant.

23 JUDGE LE: This is Judge Le. Thank you.

24 MR. SHARMA: Thank you.

25 JUDGE LE: And on the last -- in column A, there

1 are invoice numbers. Are those invoice numbers part of
2 the OTA's records, those invoices themselves?

3 MR. SHARMA: This is Ravinder Sharma. I think so
4 because I have not compared the Exhibit 2. I'm assuming
5 some of these invoices should be over there. But I have
6 not compared each and every invoice. But these are the
7 invoices for the period in November 4th, to November 11th,
8 2017, which were provided by the Appellant, along with the
9 job worksheets.

10 JUDGE LE: This is Judge Le. Thank you.

11 MR. SHARMA: Thank you.

12 JUDGE LE: Actually, this is Judge Le. Sorry.
13 Just some follow up. Do you know where those invoices
14 are? Is there a Bates Stamp you can point to in the
15 records?

16 MR. MORENO: Judge Le?

17 JUDGE LE: I'm sorry. Go ahead.

18 MR. MORENO: I believe the exhibit that we did
19 show you, I believe those were the invoices that we
20 provided to them that match that spreadsheet. Because
21 they gave you the spreadsheet, but they didn't give you
22 the invoice. So I did put it in there that those were the
23 ones that we provided previously to them.

24 JUDGE LE: This is Judge Le. It's just -- are
25 you referring to the invoices in Exhibit 2?

1 MR. MORENO: Yes.

2 JUDGE LE: So the number on the invoices on
3 Exhibit 2 don't match the invoice number that's on page
4 238. That's why I'm asking.

5 MR. MORENO: Okay. Well, we gave them two sets
6 of invoices. There were two different test periods. So I
7 provided, I think, the latest one of all of the invoices
8 that we gave them in that period. So I mean, there were
9 two sets of data that they used. And so one was on the
10 original reaudit, and then there was a reaudit to the
11 reaudit. And so there were two separate sets of invoices
12 that they analyzed, and that's on the spreadsheet. So
13 I'll go back and look, but they did omit the original
14 invoices provided to them.

15 JUDGE LE: Okay. Just to confirm right now, it
16 sounds like the invoices that are mentioned on this page
17 is not part of OTA's records then. Is that what I'm
18 hearing, Respondent?

19 MR. SHARMA: This is Ravinder Sharma. I'm sorry,
20 Judge Le. What was your question?

21 JUDGE LE: So the invoices that are listed on
22 page 238, the invoices numbers, we don't have the
23 invoices, I believe. And I'm just asking to confirm
24 whether or not it's already part of exhibit that
25 Respondent submitted.

1 MR. SHARMA: I'm not sure if those are included
2 as part of the exhibit because those are the ones that the
3 auditor examined while the auditor was in the field. And
4 to answer your question, these invoice numbers are for a
5 different period as compared to the exhibit not submitted
6 by Appellant. So this is for November the 4th to
7 November 11, 2017. So I have to check with the field
8 office. We have the copies of that, or maybe the auditors
9 that looked at it in the field and never copied them too.

10 JUDGE LE: This is Judge Le. Thank you. I may
11 ask this question as part of post-hearing briefing. So
12 thank you. That's all the questions I have.

13 MR. SHARMA: Thank you.

14 MR. PARKER: Can I add on real quick. I was just
15 going to say that I looked through the exhibits real
16 quick, and we do not have photocopies of those invoices.
17 And generally speaking, when we do audits, we transcribe
18 information from the taxpayer's records. We generally
19 don't take photocopies of all their records to have. So
20 these were probably transcribed information from the
21 invoices. So we probably don't have copies of them in our
22 files.

23 That's all I wanted to add. Thank you.

24 JUDGE LE: This is Judge Le. Thank you.

25 JUDGE KATAGIHARA: Judge Lambert, do you have any

1 final questions for the parties?

2 JUDGE LAMBERT: This is Judge Lambert. I don't
3 have any questions. Thanks.

4 JUDGE KATAGIHARA: Okay. As we previously
5 discussed, Appellant is ordered to provide the CDTFA 735
6 form and any relevant evidence to OTA and Respondent no
7 later than October 23rd. Respondent will then have an
8 opportunity to submit a post-hearing brief. So we will
9 leave the record open until briefing is complete. OTA
10 will submit an order with the pertinent specifics.

11 Appellant, do you have any questions?

12 MR. MORENO: We do not.

13 JUDGE KATAGIHARA: Respondent, do you have any
14 questions?

15 MR. SHARMA: This is Ravinder Sharma. Department
16 has no questions. Thank you.

17 JUDGE KATAGIHARA: I'd like to thank both of the
18 parties for their time today.

19 This concludes our hearing and OTA's last hearing
20 for today. The Office of Tax Appeals will resume its
21 hearings tomorrow, September 22nd at 9:30 a.m.

22 Thank you everyone for your time today. You may
23 now exit the meeting.

24 (Proceedings adjourned at 4:25 p.m.)
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

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

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

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

ERNALYN M. ALONZO
HEARING REPORTER