

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. KAMIES,) OTA NO. 221212039
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, December 5, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 9:31 a.m. and concluding
at 10:21 a.m. on Tuesday, December 5, 2023,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ SUZANNE BROWN
ALJ KEITH LONG

For the Appellant: MIKE FIGUEROA

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

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 8.)
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1 Cerritos, California; Tuesday, December 5, 2023

2 9:31 a.m.

3
4 JUDGE RALSTON: We are opening the record for the
5 hearing, Appeal of Kamies, Office of Tax Appeals Case No.
6 221212039. Today's date is December 5th, 2023, and the
7 time is approximately 9:31 a.m.

8 My name is Natasha Ralston, and I am the lead
9 Administrative Law Judge who will be conducting the
10 hearing for this case. We will have Judge Brown and Judge
11 Long. The Office of Tax Appeals is not a court but is an
12 independent appeals body, which is staffed by tax experts
13 and is independent of any tax agency.

14 As I mentioned, the hearing is being live
15 streamed to the public and is being recorded. The
16 transcript and the video will be part of the public record
17 and will be posted on the Office of Tax Appeals website.

18 Also present is stenographer, Ms. Alonzo, who is
19 reporting this hearing verbatim. To ensure we have an
20 accurate record, we ask that everyone speaks one at a time
21 and does not speak over each other. Also, speak clearly
22 and loudly. When needed, Ms. Alonzo will stop the hearing
23 process and ask for clarification. After the hearing,
24 Ms. Alonzo will produce the official hearing transcript,
25 which will be available on the Office of Tax Appeals

1 website.

2 Okay. So we held the prehearing conference in
3 this matter on October 24th, 2023. Subsequent to that
4 conference, Appellant submitted -- well, sorry. Let me go
5 back.

6 I'm going to ask the parties to introduce
7 themselves for the record, but if we can start with
8 Respondent CDTFA.

9 MR. SUAZO: Randy Suazo, Hearing Representative
10 CDTFA.

11 MR. PARKER: Jason Parker, Chief of Headquarters
12 Operations Bureau with CDTFA.

13 MR. BROOKS: Good morning. Christopher Brooks,
14 tax counsel -- staff counsel for CDTFA.

15 JUDGE RALSTON: Thank you.

16 And for the taxpayer.

17 MR. FIGUEROA: Mike Figueroa.

18 JUDGE RALSTON: Okay. Thank you.

19 So subsequent to the prehearing conference, the
20 Appellant submitted Exhibits 1 through 4.

21 Mr. Suazo, did you receive those exhibits and
22 have a chance to review them?

23 MR. SUAZO: Yes. But I think the bank statements
24 weren't included.

25 JUDGE RALSTON: Okay.

1 MR. SUAZO: Exhibit 4, yeah, it says to be
2 continued.

3 JUDGE RALSTON: Right. So is -- did you -- so,
4 Mr. Figueroa, you submitted some exhibits, and you
5 mentioned that you might be submitting some of the bank
6 statements. Did you submit everything that you intended
7 to submit already?

8 MR. FIGUEROA: Yes. Except for the bank
9 statements we, since it's an old case, went to storage to
10 go look for them and I just could not find them. There
11 was no time for me to get to the bank to ask them to give
12 this to us. So that's the only piece. That's why it said
13 to be continued.

14 JUDGE RALSTON: Okay. So right now, we just have
15 the Exhibits 1 through 3.

16 MR. FIGUEROA: Correct.

17 JUDGE RALSTON: When you speak, could you please
18 turn on your microphone? You should see the green light
19 when it's on.

20 MR. FIGUEROA: Okay.

21 JUDGE RALSTON: Okay. Thank you. Yeah, just
22 because we're recording. I can hear you just fine, but
23 for the recording they need it.

24 Okay. So we have the Exhibits 1 through 3 that
25 you are able to submit. And then you, CDTF, you received

1 them. Did you have any objections to the submitted
2 exhibits?

3 MR. SUAZO: No objections.

4 JUDGE RALSTON: Okay. Thank you.

5 So Appellant's Exhibits 1 through 3 are admitted
6 without objection.

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

9 The Respondent CDTFA has submitted Exhibits A
10 through E. And, Mr. Figueroa, you stated at the
11 prehearing conference, I believe, you had no objections to
12 their exhibits. So Respondents Exhibits A through E will
13 be admitted without objection.

14 (Department's Exhibits A-E were received in
15 evidence by the Administrative Law Judge.)

16 And neither party intends to call any witnesses.
17 Is that still correct?

18 MR. FIGUEROA: Correct.

19 MR. SUAZO: No witnesses.

20 JUDGE RALSTON: Okay. Thank you.

21 So the Appellant will have 15 minutes to present
22 their case. Respondent will have 15 minutes to represent
23 their case, and Appellant will have five minutes for
24 rebuttal. The Panel may have questions for either party
25 at any time.

1 Does anyone have any questions before we move on
2 to the opening presentations?

3 MR. FIGUEROA: No.

4 MR. SUAZO: No questions.

5 JUDGE RALSTON: Okay. Thank you.

6 So, Mr. Figueroa, you have approximately
7 15 minutes. So please begin when you're ready.

8

9 PRESENTATION

10 MR. FIGUEROA: Okay. Well, basically, there's
11 only two pieces that I'm -- that we're objecting to the
12 audit. The first -- the main one is -- has to do with
13 credit cards. We believe that the business or the
14 restaurant accepts more than 80 percent of credit cards.
15 That's what one of the exhibits is, is they -- they have
16 more than 90 percent of their business is -- is credit
17 cards versus cash. And the reason being that we believe
18 this is not only the credit card receipts, but this
19 particular -- the restaurant is not open on Sundays for
20 the simple reason is that they're -- they are in, like, an
21 industrial place, and that's one of the exhibits.

22 I -- I went out there and took pictures of where
23 they're at. The complex they're in has over 200 units and
24 so, therefore, there's no residence around there. So most
25 of the people that go, go during lunch time, and they pay

1 with credit card versus cash. I was never presented how
2 80 percent came about in the audit. I was just told that
3 that's -- you know, that that's what they were -- that
4 that's what they were going to use and -- and I really
5 didn't have much of a choice. So that's why I've
6 challenged that.

7 And then the second thing has to do with the --
8 oh, it has to do with the negligence. I believe she --
9 she wasn't negligent. She -- she hired somebody to do her
10 work, like most people do. You know, like, everybody
11 hires somebody to do their taxes and they, you know,
12 they -- most people, you know, take it that whoever is
13 preparing the taxes is doing a correct job. And so,
14 therefore, she had a CPA that was doing her sales tax.
15 But, unfortunately, she found out that he was not
16 including the liquor.

17 And so when the audit came about the audit was in
18 process when I came about. She decided to change the
19 person that was going to be doing her account, and that's
20 when she came to me, and that's when I reopened the audit
21 because the liquor was not included. And so we opened it
22 up, went about it. We knew we had to pay. There was no
23 question about that. There was no question about the
24 audit. I included the audit. And so I feel she wasn't
25 totally negligent.

1 She was relying on somebody who is an expert on
2 performing what she was paying him for. And when she
3 found out that he was not doing a good job or a wrong job,
4 that's where I came in, and she hired me and that's where
5 we -- we continued. And from that point on, you know, we
6 have been including the liquor and everything else that
7 pertains to -- to the normal course of action. So I feel
8 that -- that she was relate -- I mean, she was relying on
9 someone to do their job correctly, and it didn't happen.

10 So that's -- that's where -- that's where we are
11 at. And this has been going on for years already. I
12 think, if I'm not mistaken, probably four or five years.
13 And those are the only two issues that I have always, you
14 know, appealed on, the 80 percent of the credit cards that
15 was given to me and then the negligence.

16 JUDGE RALSTON: Okay. Does that conclude your
17 presentation?

18 MR. FIGUEROA: Yes. Yes.

19 JUDGE RALSTON: Thank you.

20 I'm going to check in with my Panel members.

21 Judge Long, did you have any questions for the
22 Appellant?

23 JUDGE LONG: Yes, I have some questions. I just
24 wanted to turn our attention to Exhibit 1, the credit card
25 ratio that was calculated. How were the food and bar

1 totals calculated? Where do those figures come from?

2 MR. FIGUEROA: Those figures come from the --
3 from the receipts.

4 JUDGE LONG: Okay.

5 MR. FIGUEROA: And those receipts -- and those
6 receipts, unfortunately, like I said, I couldn't -- I
7 couldn't get the bank statements. But those receipts
8 match the bank statement for a period I have on there,
9 October '16. So I just got all the receipts for everyday
10 except Sundays. And we added up, you know, what the
11 charges were and took the percentage according to what
12 we -- to what was submitted for all the food and liquor.

13 JUDGE LONG: And were those provided to CDTFA
14 during the audit?

15 MR. FIGUEROA: Pardon?

16 JUDGE LONG: Were those provided to --

17 MR. FIGUEROA: Yes.

18 JUDGE LONG: -- CDTFA during the audit?

19 MR. FIGUEROA: Yes. Yes. As a matter of fact,
20 we provided -- we provided the three year's worth of
21 receipts. But as the audit was going, I was told to just
22 to concentrate on October '16. So I did, but, you know,
23 we do have the receipts for those three years that they've
24 been audited.

25 JUDGE LONG: Okay. And then for the credit cards

1 sales, I see the notation that it includes tips.

2 MR. FIGUEROA: Yes.

3 JUDGE LONG: It looks like tip reaudit
4 16 percent. Is that --

5 MR. FIGUEROA: Yes.

6 JUDGE LONG: -- in dispute?

7 MR. FIGUEROA: Yes. No.

8 JUDGE LONG: No.

9 MR. FIGUEROA: That is not in dispute.

10 JUDGE LONG: And then do the cash sales on
11 Exhibit 1 also include tip?

12 MR. FIGUEROA: Yes.

13 JUDGE LONG: They do.

14 MR. FIGUEROA: Uh-huh.

15 JUDGE LONG: Okay. And then do the cash and the
16 credit card sales include the sales tax reimbursement that
17 was collected by the taxpayer? Or is this without sales
18 tax?

19 MR. FIGUEROA: No. Only -- only the -- the
20 liquor includes sales tax. So we subtract the sales tax
21 from the liquor.

22 JUDGE LONG: Okay. And then regarding the
23 Exhibit 2, the credit cards sales data for October 2016,
24 it looks like those numbers match up with the credit card
25 totals. Do you have similar documentation for November

1 and December 2016, the other two months in Exhibit 1?

2 MR. FIGUEROA: Yes, we do. I do. I mean, I --
3 I -- they're not in here, but we -- I do have them in the
4 office.

5 JUDGE LONG: Okay. Why weren't those submitted?

6 MR. FIGUEROA: Because when we -- when I started
7 the whole appeal and everything, I was told to just
8 concentrate on one month out of the -- that particular
9 quarter. So that's why I submitted only October. Since
10 the beginning of all this, it's -- we've only had one
11 month that I was -- that I was told to just concentrate on
12 that month, so I did.

13 JUDGE LONG: Okay. And then -- I guess then,
14 with respect to -- if we just focus on October, why
15 weren't the cash receipts submitted for October 2016?

16 MR. FIGUEROA: There is no cash receipts. That's
17 just it.

18 JUDGE LONG: Okay.

19 MR. FIGUEROA: You know, she deposits some. She
20 gets the cash, and she deposits some in the bank, and
21 that's about it. You know, she doesn't -- she doesn't
22 ring it up or anything like that.

23 JUDGE LONG: Gotcha. And so then these amounts,
24 if we had the bank statement, they would match?

25 MR. FIGUEROA: Right.

1 JUDGE LONG: Okay. The deposits?

2 MR. FIGUEROA: They would. They would.

3 JUDGE LONG: Okay.

4 MR. FIGUEROA: At one time, we did have the bank
5 statement, and they were -- I thought the audit was done,
6 and so we put them back in storage. And right now the
7 storage is like -- I was there late last night trying to
8 see where, you know, if I could find them, but just could
9 not just find them. So I didn't have enough time to -- or
10 call Monique and -- or Ms. Kamies and say, hey, can you
11 get to the bank and see if we can get '16 done, you know,
12 the bank statements on that.

13 So -- but they do match. I mean, since the
14 audit -- like I said, this audit has been going on for
15 four or five years. I mean, all these receipts for the
16 three years, they all match the bank statements. It
17 was -- it wasn't anything that was out of the ordinary or
18 anything. So the only -- like I said, the only thing I
19 objected is, when the audit came out, the final paperwork,
20 you know, the auditor deemed that it was 80 percent. And
21 I said, well, how did you arrive to that? And he really
22 didn't give me an answer. He says, well, that's the
23 standard. That's what he said. It's the standard.

24 And -- I said but I'm showing you all the
25 receipts and bank statements. I said, you know, it

1 doesn't come out. It doesn't come out to 80 percent. It
2 comes out to more. And like I said before, that's the
3 reason she doesn't open on Sundays because she doesn't
4 get -- you know, she gets most of -- her traffic there
5 is -- it's an industrial place. There's a hotel there.
6 There's just industrial buildings.

7 So people just come in and pay with credit card,
8 you know. They don't come in and pay with cash. If they
9 were a neighborhood, I could -- I could understand that.
10 But that's -- that's the big reason she doesn't open on
11 Sundays because she -- there's nobody working in those
12 areas on Sundays, so she has no business on there.

13 JUDGE LONG: Okay. Thank you. I don't have any
14 further questions.

15 JUDGE RALSTON: Thank you, Judge Long.

16 I just had a couple of follow-up questions. Who
17 told you to just focus on October? Was it the Appellant
18 or --

19 MR. FIGUEROA: Yes.

20 JUDGE RALSTON: Okay. And then --

21 MR. FIGUEROA: No. No. It wasn't -- are you --
22 when you're saying the Appellant, you're talking about
23 Ms. Kamies?

24 JUDGE RALSTON: Yes.

25 MR. FIGUEROA: No. No. It was before we got to

1 here, when I was objecting to that, I wasn't told by
2 somebody. Somebody in the -- well, I still call you guys
3 the Sales Tax Division. I was told to just pick one
4 month -- one month out of the quarter. So I -- so they
5 said once you get October, and that's what I concentrated,
6 you know.

7 If they would have been said I want -- we want
8 the three quarters -- I mean, the three months, I would
9 have done it easily because we've got all the receipts in
10 the office. But they said just concentrate in one month
11 out of the -- for what you're appealing, just concentrate
12 on one month out of the quarter. So I said okay. So
13 that's where I'm at.

14 JUDGE RALSTON: Okay. Thank you.

15 Judge Brown, did you have any questions?

16 JUDGE BROWN: Maybe just one or two.

17 MR. FIGUEROA: Okay.

18 JUDGE BROWN: I just want to walk through and
19 make sure I understand your explanation, Mr. Figueroa,
20 regarding the Exhibit 1 and 2 that we were -- that you
21 were just talking about. You said that Exhibit 1 -- and
22 you want to look at to make sure we're talking about the
23 same thing.

24 MR. FIGUEROA: Yes.

25 JUDGE BROWN: You're saying that Exhibit 1 is --

1 if we ask you what the source of that information is, you
2 say it's based on the receipts in Exhibit 2 --

3 MR. FIGUEROA: Correct.

4 JUDGE BROWN: -- or it's based on --

5 MR. FIGUEROA: The receipts that are -- they
6 are -- which are attached in -- yes, Exhibit 2. Correct.

7 JUDGE BROWN: Okay. So how would you we --

8 MR. FIGUEROA: Oh, okay. Go ahead.

9 JUDGE BROWN: No. Go ahead. Sorry.

10 MR. FIGUEROA: No. No. I just --

11 JUDGE BROWN: I cut you off.

12 MR. FIGUEROA: I just noticed the exhibits. I --
13 I do have -- okay. All those receipts that are there
14 are -- the receipts in Exhibit 2 are for the three months.
15 I mean, they got October, November, and December on there.

16 JUDGE BROWN: And so you're saying that you went
17 through and added up all the numbers in Exhibit 2, and
18 that's how we get Exhibit 1?

19 MR. FIGUEROA: Right.

20 JUDGE BROWN: Okay.

21 MR. FIGUEROA: For each month, right. Correctly.
22 And those receipts at one time, when I had the bank
23 statements because the auditor did ask for the bank
24 statements, all those receipts that you see in Exhibit 2
25 match the bank statement because we wanted to make sure

1 that we were going the right way.

2 JUDGE BROWN: So that ties into my next question
3 is, how would we know if the information in exhibit -- in
4 these exhibits are comprehensive? How do we know whether
5 it includes all of the sales?

6 MR. FIGUEROA: Well, if you notice on the
7 receipts, they've got all the dates. We've got all the
8 dates on here on Exhibit 2. All the dates are there,
9 except Sundays are blank. So you would find a receipt for
10 each of those days in Exhibit 2.

11 JUDGE BROWN: And how would we know that there
12 weren't other sales that didn't get caught, you know,
13 didn't get captured in this snap-shot of the three months?

14 MR. FIGUEROA: Well, if you notice the totals
15 there are the totals that we -- that we used to calculate
16 the taxes, and then it shows what was credit cards. And
17 the total on Exhibit 1 is what we used to pay the sales
18 tax.

19 JUDGE BROWN: Well --

20 MR. FIGUEROA: So that is -- that is what all the
21 sales that happened, and then the next column is the
22 credit cards. So if -- if that 70 through -- if you look
23 at October the sales for that month were \$73,000, which
24 match. Of course, again, I don't have the bank
25 statements. And out of those sales \$69,000 was credit

1 cards and the rest was cash.

2 JUDGE BROWN: Well, I had a question about
3 something you said when you were answering a question
4 earlier where you said there's no cash receipts.

5 MR. FIGUEROA: Right. But there's -- but this
6 money was -- is what was deposited in the bank.

7 JUDGE BROWN: And you said that Ms. Kamies
8 doesn't ring up the cash sales. You said --

9 MR. FIGUEROA: No. That's why we don't have any
10 receipts. I mean, she just -- she just gets them and
11 deposits them in the -- so, you know, and this was what
12 was reported to pay the sales tax on that. It's -- it's
13 all based on the bank statement, really.

14 JUDGE BROWN: I don't have any further questions.
15 Thank you.

16 JUDGE RALSTON: Thank you, Judge Brown.

17 Judge Long, did you have any-follow up questions?

18 JUDGE LONG: I do. I wanted to clarify some
19 answers that you gave regarding Exhibit 2. You mentioned
20 that Exhibit 2 includes November and December. But I
21 scrolled through what I have for Exhibit 2, and they're
22 dated at the top of each page. And it looks like the
23 final page that I have is October 31st. I don't have
24 November and December. Did you intend to submit the
25 November and December numbers?

1 MR. FIGUEROA: You mean the receipts?

2 JUDGE LONG: Yeah.

3 MR. FIGUEROA: Because the numbers on are on
4 Exhibit 1. Yeah, I did intend. But I think it was so big
5 I probably just did not -- yeah. Yes. The answer to your
6 question is yes.

7 JUDGE LONG: Okay.

8 MR. FIGUEROA: I intended to but, you know, I
9 just I guess didn't make copies of them and send them in.

10 JUDGE LONG: Okay. And then -- I'm sorry. I got
11 a little confused regarding an answer that you provided to
12 my colleague here regarding the totals and how the sales
13 are -- the food and bar sales are supported by Exhibit 2.
14 So clearly going through Exhibit 2, they have AX, VI,
15 and --

16 (Phone interruption.)

17 MR. FIGUEROA: Sorry. Let me turn this off.
18 Okay. I'm sorry.

19 JUDGE LONG: So going through Exhibit 2, they
20 clearly all have the AX, VI, and MC indicators that these
21 are credit card charges with no cash sales in here.

22 MR. FIGUEROA: Right.

23 JUDGE LONG: So is it just that the -- so what
24 I'm asking is, are these food and bar totals that are in
25 Columns 1 and 2 of Exhibit 1? Are those just credit card

1 sales?

2 MR. FIGUEROA: No. If you notice, it's got food,
3 bar, and it's got a total. If you notice that if you add
4 the food and the bar across, it does not equal \$1,316.
5 That means that there was cash in there.

6 JUDGE LONG: Right.

7 MR. FIGUEROA: Okay. And we got that number from
8 the bank statement. That was the money that was either --
9 it was either credit cards or cash that got in there.
10 Okay. So in the last column is what was credit cards.
11 Okay. And the other total column is -- is what -- and the
12 credit cards you might see that it's kind of skewed
13 because they don't get the money, you know, the same day
14 that they use the credit cards. They get it like the next
15 day and all that.

16 That's why if you look at 10/1, the total sales,
17 but the credit cards were \$1,502, which is more than the
18 sales were, and that's -- that's because of the skew of
19 the last day of the month, and they got the credit on the
20 first of the month. But what was deposited on that day
21 was the 13 -- or what was charged that day was the
22 \$1,360.25, which includes cash in there. So all the
23 columns that way are include cash. Okay. But there is no
24 receipt for the cash. She just gets the cash and deposits
25 it in the bank.

1 JUDGE LONG: Okay. Thank you. I think that
2 clears things up for me.

3 JUDGE RALSTON: Thank you, Judge Long.

4 Mr. Suazo, you have approximately 15 minutes, and
5 you can begin when you're ready.

6

7 PRESENTATION

8 MR. SUAZO: Okay. Monique Kamies is the owner of
9 an Irish bar and restaurant located in Costa Mesa. It is
10 open Monday through Saturday and closed on Sundays. Audit
11 period is from January 2014 through December 2016.
12 Appellant did claim a small amount of exempt food sales
13 and sales for resale, and also included deductions for
14 sales with sales tax included; Exhibit E, page 99.

15 The Department's review included sales journals
16 for the audit period, Z-tapes, which are cash register
17 tapes for December 2016, and 1099 credit card information
18 obtained from the Franchise Tax Board for the period from
19 January 2014 through December 2016. No documentation was
20 provided to support the exemptions claimed. Therefore,
21 exemptions were disallowed and all sales were considered
22 taxable. 1099 credit card transactions totaled
23 \$2.3 million for the audit period; Exhibit D, page 78.
24 Appellant reported only \$824,000 in sales for the period;
25 Exhibit E, page 98.

1 Based on the discrepancy, an alternative method
2 was used to derive taxable sales. After adjustments were
3 made for tips and tax included and the 1099 credit card
4 reports, the credit card sales amounted to around
5 \$1.8 million; Exhibit D, page 77. Because the Appellant
6 provided no viable information as to the amount of cash
7 sales transactions that occurred, the Department used a
8 conservative estimate of 20 percent cash sales. This was
9 based on similar businesses on Exhibit D, page 76. The
10 20 percent was applied to audited credit card sales to
11 compute taxable sales of over \$2.2 million; Exhibit D,
12 page 76.

13 The \$2.2 million was compared to the reported
14 \$824,000 in taxable sales, and the difference of almost
15 \$1.4 million was assessed as unreported taxable sales;
16 Exhibit D, page 75. The percentage of error on reported
17 taxable sales is over 169 percent. Analysis of the
18 December 2016 summer register tapes disclosed that 752 of
19 the 2,226 ring ups listed on register tapes were for zero
20 dollar sales. Appellant explained that transactions
21 listed as no sales recorded every time the register opens;
22 Exhibit D, page 63. This amounted to 33.8 percent of
23 total ring ups.

24 When an average of the credit cards sales was
25 applied to the amount of zero ring up sales, cash sales

1 were computed to be \$21,000 for the month, and the cash
2 ratio was over 30 percent; Exhibit D, pages 81 and 82.
3 Based on the analysis, the estimated 20 percent cash sales
4 ratio used in the audit to project cash sales is deemed
5 very conservative and benefits the Appellant.

6 In addition, the Appellant had claimed that
7 16.90 percent of the credit card comprised of tips.
8 Normally on tips, tips are paid out of cash sales that
9 occurred on that day. So, basically, you're already at
10 84 percent as credit card, and then he's saying that he
11 deposits another 10 percent into the bank. Therefore,
12 realistically after today's hearing, the credit card was
13 probably 75 percent and the cash was probably 25 percent.
14 Again, showing that the 20 percent used in the audit is
15 very conservative.

16 Negligence penalty of 10 percent has been added.
17 Appellant failed to maintain adequate books and records.
18 Appellant failed to provide documentation to support
19 claimed exempt sales. Unreported sales are material at
20 over \$1.3 million. The percentage of error is
21 169 percent. The 1099 credit card sales alone amounted to
22 \$1.8 million in sales. Appellant reported only \$824,000
23 in sales. This is almost a \$1 million difference of
24 unreported sales by itself.

25 In addition, the taxpayer has also claimed that

1 most of the sales occurred during lunch. However, looking
2 at Exhibit I believe 1, that he just turned in or that he
3 submitted, 70 percent -- roughly 71.73 percent of all
4 sales are for bar sales. Normally, bar sales would not
5 occur during lunchtime when people are still working. So
6 there's a little discrepancy there on what he's claiming
7 versus what's actually occurring based on his own records
8 because most bar sales are going to be taking place after
9 people are off work.

10 So this concludes my presentation. I'm available
11 to answer any questions you may have.

12 JUDGE RALSTON: Okay. Thank you.

13 I'm going to check in with my Panel to see if
14 there are any questions.

15 Judge Brown, did you have any questions?

16 JUDGE BROWN: I think I do have one or two
17 questions. Thank you.

18 I wanted to ask about the reference in the
19 reaudit work papers to the similar restaurant in Costa
20 Mesa where you derived the 80 percent ratio. The reaudit
21 work papers in the comments say, "Please see exhibit
22 schedule for further reference," but I couldn't find what
23 they were referring to.

24 MR. SUAZO: Yeah. It was not included in there
25 by mistake. But there's five bars showing -- I think it

1 totals 79.94 percent.

2 JUDGE BROWN: And those are bars and restaurants?

3 MR. SUAZO: Yeah. He has it listed as business
4 locations. I'm assuming that they are bars since that's
5 what they're looking at.

6 JUDGE BROWN: Would we expect a difference
7 between --

8 MR. SUAZO: Normally bars are actually lower than
9 that. They're anywhere from -- I mean, historically, they
10 are probably around 50 percent and --

11 JUDGE BROWN: 50 percent credit cards?

12 MR. SUAZO: 50 percent credit card and 50 percent
13 cash at this time period. However, after Covid,
14 everything has changed.

15 JUDGE BROWN: Right.

16 MR. SUAZO: Okay. And then, again, if you
17 look -- if you gave them 16 percent credit cards, again,
18 credit cards are normally paid out of the cash that's
19 being paid in hand. So you're already at 85 percent. And
20 then he says he deposits 10 percent in cash to the bank.
21 That would put you at 75 percent credit card, 25 percent
22 cash based on his own computations.

23 JUDGE BROWN: And I guess I wanted to ask as well
24 about imposing the negligence penalty for a first-time
25 audit. I understand your explanation earlier about that

1 just using the -- comparing the 1099 data to reported
2 sales there's a big discrepancy. I wanted to ask
3 whether -- when I look at the audit work papers, there's
4 also references to taxpayer not providing the records.
5 But I understand there was an expiring statute, and so
6 maybe taxpayer didn't have time to provide the records.

7 MR. SUAZO: But he could have provided one during
8 the appeal, and he --

9 JUDGE BROWN: This is -- this is my question.

10 MR. SUAZO: Yes.

11 JUDGE BROWN: Is the negligence penalty being --
12 are you considering what the taxpayer provided in terms of
13 these records initially or based on everything that
14 taxpayer has provided?

15 MR. SUAZO: Based on everything taxpayer has
16 provided because he could have -- we still have no
17 purchase invoices. We can't do a markup process unless --
18 because he's never given us any type of purchase invoices.

19 MR. PARKER: Also, Judge Brown, with the large
20 discrepancy just between what the taxpayer was depositing
21 into their bank account from just the credit card sales
22 alone and only reporting 40 percent of that or somewhere
23 around there, that to me negligence as well. Because they
24 should have known that their sales were much greater than
25 what they were even reporting.

1 JUDGE BROWN: And do you know whether there was
2 any consideration of doing an observation test to
3 determine the credit card ratio? I know you don't have
4 to, but that's what I've often seen for restaurants.

5 MR. SUAZO: I think in the case because you did
6 have the expiring statute, it wasn't put on the table. If
7 the taxpayer would have been cooperative, then maybe it
8 might have been a different story. However, based on the
9 facts that were given and the situation that occurred --

10 JUDGE BROWN: I think those are all my questions
11 right now. Thank you.

12 JUDGE RALSTON: Thank you, Judge Brown.

13 Judge Long, did you have any questions?

14 JUDGE LONG: Yeah, just one regarding some of
15 your answers about the negligence penalty. What it sounds
16 like to me is that the negligence penalty was imposed
17 regarding -- at the audit based on lack of documentation,
18 and I understand that the large discrepancy between the
19 1099-K as well. But it also sounds like, you know, based
20 solely on your answers that there's a sort of continued
21 negligence penalty as if they are continued to be
22 penalized based on what occurred on appeal. Correct me if
23 I am wrong, but that's --

24 MR. SUAZO: I don't think that's the case.

25 JUDGE LONG: I think you should take a moment to

1 clarify your answer.

2 MR. PARKER: Can you repeat the question?

3 JUDGE LONG: Yeah.

4 MR. PARKER: I'm not sure I fully understand it.

5 JUDGE LONG: Yeah. Well, because what happened
6 at the appeal and at the reaudit occurred after the
7 negligence penalty was imposed, right? But my
8 understanding is that the answer -- and I don't have the
9 transcript in front of me. But I believe you said if the
10 taxpayer had been cooperative things would have been
11 different. It sounds like you essentially continued to
12 penalize the taxpayer at the reaudit and appeals. Is
13 that -- am I misunderstanding your answers?

14 MR. SUAZO: I believe so. Because, basically, if
15 the taxpayer would have had the records available, okay,
16 then I don't think the negligence penalty may have come
17 up. I mean, it still might have come up because of the
18 percentage error.

19 JUDGE LONG: I'm sorry. But the negligence
20 penalty had been imposed already at the time of the
21 reaudit and the appeal.

22 MR. SUAZO: And, again, because no records were
23 provided. He didn't give -- there was no purchase amounts
24 or purchase invoices provided. It was difficult. I
25 believe if you look 414 -Z comments to get certain data.

1 And when it was asked at the appeals, it still hadn't come
2 up yet.

3 JUDGE LONG: Okay. Thank you. I don't have any
4 further questions.

5 MR. PARKER: And, Judge Long, I just want to add
6 one point of clarification. When we were talking about
7 not being cooperative, it was in the realm of we asked for
8 a waiver. We were asking for records. Things weren't
9 being provided. That has nothing to do with whether there
10 was negligence in reporting the amounts. The negligence
11 penalty applies to how much they reported, not necessarily
12 the things that transpired before we issued the billing.

13 MR. SUAZO: Yes. Because if you look, there
14 was -- the request for records was on November 21st, 2016
15 and they had time to get the records.

16 JUDGE LONG: Okay. Thank you.

17 MR. SUAZO: And they were not forth coming.

18 JUDGE RALSTON: Thank you.

19 Excuse me. If we were to hold the record open,
20 would you be able to provide the missing schedule that
21 Judge Brown was referring to?

22 MR. SUAZO: Yes.

23 JUDGE RALSTON: Thank you.

24 Okay. It looks like we are ready to move on,
25 Mr. Figueroa, to your rebuttal. So you have

1 approximately, I believe, five minutes to respond.

2

3 CLOSING STATEMENT

4 MR. FIGUEROA: Okay. First of all, during the
5 audit, we were never asked for any purchase documents.
6 Okay. I've been doing with the sales tax for over
7 20 years, and I'm going through some audits right now. In
8 this particular case, I never was asked for any purchase
9 documents. So it's not correct on them saying we were not
10 cooperative. We provided everything that they asked for
11 when the auditor came in. He asked for the bank
12 statements, the tax return, and any receipts that we had,
13 and we provided all of that.

14 As far as they had mentioned something about how
15 many times the cash register was being opened, and we
16 explained to them. And we said you can even go talk to
17 the employees. But one of the employees was using the
18 cash register -- as silly as it may seem -- using it to
19 store paper clips and everything else. And the auditor
20 asked me, and I went to go ask him why the cash register
21 was being opened and no sales, no sales, no sales. And
22 that's what, you know, what was told to me from the actual
23 employee that was doing it. And, you know, I thought to
24 myself well that's silly.

25 And about the not reporting those 1099s that he's

1 talking about, especially I know which ones they are, the
2 American Express. Okay. But that wasn't -- she gave it
3 to the person who was doing her books. He told her.
4 Exactly what he told her, he said oh, I'm not including
5 the liquor. You don't have to include the liquor. That's
6 what he told her. So she believed him until she started
7 asking other people, and they're saying are you crazy.
8 And that's where I came in.

9 The audit was almost at a close, and I requested
10 to reopen it. And any extensions that we had to sign, I
11 signed them all. There is no -- we were as cooperative as
12 we could be, and we had everything that they had asked
13 for. That's why -- and I'm not disputing that she did not
14 include the American Express. We're not disputing that.
15 That's why we gave a \$60,000 up front, you know, as good
16 faith. We're not disputing that she did not include the
17 American Express 1099. That's not the dispute.

18 My only dispute is -- is the credit card
19 reference, you know. And that's -- that's what I'm
20 disputing. And the negligence I'm disputing is because
21 she didn't -- she wasn't being informed by her CPA. And
22 he told her, oh, you don't have to include the liquor. So
23 she's going to believe him. He's the one that's doing her
24 account. She's going to believe him. When she found out
25 different, that's when she fired him, and I came on board.

1 And like I said, we're not disputing the
2 difference. We're not disputing that at all okay. And --
3 and the tips -- I mean, the tips, the first time the audit
4 came the tips were only at 10 percent. We were able to
5 prove that it was more than 10 percent. That's how we
6 came about 16 percent. Okay. So we're not disputing.
7 The only thing we're disputing right now is the
8 negligence. Because like I said, as soon as she found out
9 that he was not doing it correctly, she fired him. And
10 then that's when I came aboard and reopened the audit on
11 that -- on that basis, and we provided everything that the
12 auditor asked for.

13 I don't know how many times he came to the
14 office, and we gave him everything we had. And never ever
15 were we ever asked for purchase orders. We have all
16 the purchase orders of all the purchases that she bought,
17 whether it be liquor, food. I mean, that's how we -- I do
18 her taxes. So that's how we come about with numbers. We
19 don't come up with numbers just to put it on the tax
20 return. We-- we have -- we have the bank statements,
21 which she charges everything, and we have purchase, you
22 know, receipts that correspond to the purchases. But
23 nobody ever asked us, and nobody said we're going to do
24 the markup. So it wasn't -- it wasn't that we're not
25 co -- that didn't -- weren't -- we didn't have them and

1 we're not cooperative, but it never was asked of us on
2 that one. So -- so that's -- that's -- that's -- all.

3 JUDGE RALSTON: Okay. Thank you.

4 I have a question for you. If we were to give
5 you additional time, could you provide the bank records.

6 MR. FIGUEROA: Sure. I would -- I would have
7 to -- yeah. I would have to go to the bank and get them
8 to print out that. And if you're looking for purchase
9 orders, we could, you know. But, yeah, I could -- we
10 could.

11 JUDGE RALSTON: Okay. Thank you.

12 I'm going to check in with my co-Panelists to see
13 if there are any additional questions.

14 Judge Brown?

15 JUDGE BROWN: I don't have anything further at
16 this time. Thank you.

17 JUDGE RALSTON: Thank you.

18 And, Judge Long, did you have any additional
19 questions?

20 JUDGE LONG: No questions at this time. Thank
21 you.

22 JUDGE RALSTON: Thank you.

23 So we are ready to go ahead and conclude this
24 hearing. We are going to keep the record open to allow
25 both parties to submit the additional documentation.

1 We'll send out a letter specifying what we -- the
2 documentation that we are asking for, which will be the
3 bank statements from the Appellant and the missing
4 schedule from the Respondent. We will -- I'm wondering
5 with you having to go to the bank to get the documents
6 printed and with the holidays coming up, I'm thinking
7 approximately 45 days. But we'll specify in the letter,
8 and then both parties will be given the opportunity to
9 respond to what the other party submits. So does that
10 make sense?

11 MR. FIGUEROA: Yes. Now, on the bank statements,
12 would you like the whole three years.

13 JUDGE RALSTON: Yeah we'll specify. We'll send
14 out a letter and we'll have everything specified and just
15 so you can just follow that. You know, I want to make
16 sure I look at my notes again and put in everything
17 correctly. So we're going to keep this record open after
18 we receive the additional documents and your responses.
19 Then we will go ahead and close the record and issue our
20 opinion after that.

21 So we're going to go ahead and conclude the
22 hearing in the Appeal of Kamies.

23 And the hearings will resume -- that concludes
24 the morning session, and our oral hearings will resume at
25 1:00 p.m. for our other cases today.

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MR. FIGUEROA: Okay.

JUDGE RALSTON: Okay. Thank you everyone for
attending.

(Proceedings adjourned at 10:21 a.m.)

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