

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEALS OF,)	
)	
4JR ENTERPRISES,)	OTA NO. 20096662
HIGH FIVE ENTERPRISES,)	20096663
JR FUELING,)	20096664
)	
APPELLANTS.)	
)	
_____)	

TRANSCRIPT OF CONSOLIDATED PROCEEDINGS

Cerritos, California

Tuesday, February 13, 2024

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 APPEALS OF,)	
)	
4JR ENTERPRISES,)	OTA NO. 20096662
HIGH FIVE ENTERPRISES,)	20096663
JR FUELING,)	20096664
)	
APPELLANTS.)	
)	
_____)	

Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 90703, commencing at 2:03 p.m.
and concluding at 4:21 p.m. on Tuesday,
February 13, 2024, 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 MICHAEL GEARY

Panel Members: ALJ KEITH LONG
ALJ JOSHUA LAMBERT

For the Appellants: AKSEL BAGHERI

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

RANDY SUAZO
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

(Appellants' Exhibits 1-10 were received at page 8.)
(Department's Exhibits A-F were received at page 8.)

OPENING STATEMENT

	<u>PAGE</u>
By Mr. Bagheri	58
By Mr. Suazo	67

<u>APPELLANTS'</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
R. Rabadi	15		35	
A. Rabadi	40			

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Bagheri	83

1 Cerritos, California; Tuesday, February 13, 2024

2 2:03 p.m.

3
4 JUDGE GEARY: Ms. Alonzo, could we start our
5 record, please.

6 Will the representatives please identify
7 themselves by stating their names and who they represent
8 beginning with the Appellants.

9 MR. BAGHERI: Aksel Bagheri for Appellants, Your
10 Honor.

11 JUDGE GEARY: Thank you, Mr. Bagheri.

12 And for Respondent.

13 MR. SUAZO: Randy Suazo, CDTFA, Hearing
14 Representative.

15 MR. PARKER: Jason Parker, Chief of Headquarters
16 Operations Bureau with CDTFA.

17 MR. BROOKS: Christopher Brooks, Tax Counsel for
18 CDTFA.

19 JUDGE GEARY: Thank you.

20 The parties have submitted evidence that they
21 plan to offer today, and that proposed evidence has been
22 marked for identification and compiled into an electronic
23 hearing binder, with the exception of one item of evidence
24 that we'll discuss in a moment. And on February 8th, my
25 office notified the parties that the binder was available

1 for download, and the parties had been previously ordered
2 to review the binder when it was available and make sure
3 that it contained all the evidence that each plan to offer
4 into evidence at the hearing.

5 Appellants submitted Exhibits marked 1 through 9
6 for identification, the total of approximately 20 --
7 2,782 pages. And I believe that Appellants requested
8 those exhibits and one more, which I will discuss in a
9 moment, be admitted in all three cases that I've
10 identified earlier.

11 Is that right, Mr. Aksel?

12 MR. BAGHERI: That is right, Your Honor.

13 JUDGE GEARY: Thank you.

14 Have Appellants reviewed the binder to make sure
15 that it contains all of their proposed evidence that has
16 been included in the binder?

17 MR. BAGHERI: Yes, it does, Your Honor.

18 JUDGE GEARY: Okay. And today Appellants
19 submitted one additional document, which is a
20 September 25th, 2019, memorandum from the petitions
21 section at the Department from a tax auditor, and it
22 references 4JR Enterprises, Inc.

23 And, Mr. Aksel, you'd like us to add this as your
24 Exhibit 10; is that correct?

25 MR. BAGHERI: Yes, Your Honor. It is. The

1 existence of it is cited in Respondent's brief in the
2 decision, and it's something that the Department has
3 presumably seen. We don't think it would be prejudicial
4 to the Government to admit this exhibit at this time since
5 it was cited to in their opening brief, which incorporated
6 the Appeal Bureau auditor's decision.

7 JUDGE GEARY: Mr. Aksel, can you tell me how long
8 you've had this document?

9 MR. BAGHERI: I've had this document for a very
10 long time. I inadvertently thought it was included in the
11 binder until preparing for this case. It's a very
12 voluminous binder. There's another exhibit that looks a
13 lot like it, and I inadvertently missed it until late last
14 night.

15 JUDGE GEARY: Okay. Thank you.

16 Mr. Suazo, does CDTFA have an objection to the
17 admission of Exhibit 10 -- excuse me -- Exhibit 10, yes,
18 for Appellants?

19 MR. SUAZO: No objection.

20 JUDGE GEARY: All right. Does CDTFA have any
21 objections to Appellants' Exhibits 1 through 9?

22 MR. SUAZO: No objection.

23 JUDGE GEARY: All right. Those -- your Exhibits
24 1 through 10 for Appellants are admitted.

25 ///

1 (Appellants' Exhibits 1-10 were received
2 in evidence by the Administrative Law Judge.)
3 Respondent submitted six exhibits for each of the
4 three appeals. Those documents total just over
5 2,100 pages, and they have been marked Exhibits A through
6 F for identification in each appeal. They are different
7 sets of exhibits for each appeal.

8 Has Respondent confirmed that all of the exhibits
9 that OTA included in the electronic binder contain legible
10 copies of the exhibits it seeks to admit today?

11 MR. SUAZO: Yes.

12 JUDGE GEARY: And it's all okay?

13 MR. SUAZO: Yes.

14 JUDGE GEARY: Thank you.

15 Do Appellants have any objections to Respondent's
16 proposed evidence?

17 MR. BAGHERI: No objections, Your Honor.

18 JUDGE GEARY: Then Respondent's Exhibits A
19 through F are admitted in each of the three appeals that
20 we are here to talk about today.

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

23 JUDGE GEARY: Respondents -- excuse me --
24 Appellants have disclosed the intent to call three
25 witnesses today. I only see two people that I don't

1 recognize in the audience.

2 Mr. Bagheri, is it just going to be two
3 witnesses?

4 MR. BAGHERI: Yes, Your Honor. The third was
5 here and checked in, but she had to go pick up her kids
6 from school is what I understand.

7 JUDGE GEARY: Okay. And can you just introduce
8 the two that you have here who will be testifying.

9 MR. BAGHERI: Yes. This is Mr. Ahed Rabadi. He
10 is the owner of the gas stations, the businesses of the
11 Appellants. And this is Roda Rabadi, Ahed's sister and an
12 operator of the gas stations.

13 JUDGE GEARY: Thank you.

14 Welcome. You are both going to be testifying
15 today. So what I'm going to do -- you won't be testifying
16 right now. Mr. Bagheri will let you know when it's time
17 for that, but I'm going to administer an oath or
18 affirmation to both of you right now. You do not need to
19 stand up, but if you would please raise your right hands.

20

21 R. RABADI,

22 produced as a witness, and having been first duly sworn by
23 the Administrative Law Judge, was examined, and testified
24 as follows:

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

A. RABADI,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE GEARY: Before we talk about the issues, I'm going to briefly summarize the facts as OTA understands them because it will make the issues make more sense. It's OTA's understanding that the parties agree that Respondent issued Notices of Determination to Appellants for the periods for which the audits were originally planned -- and it's a different time period for each of the three Appellants -- and that with respect to the originally planned audit periods, those NODs were timely.

For 4JR, the period was April 1st, 2013, through March 31st, 2016. For High Five, the period was July 1st, 2013, through June 30th, 2016. And for JR Fueling, the time that the audit period was April 1st, 2013, through March 31st, 2016.

Have I accurately stated those facts Mr. Bagheri?

MR. BAGHERI: Yes, you have, Your Honor.

JUDGE GEARY: All right. And Mr. Suazo?

MR. SUAZO: Yes, that's correct.

JUDGE GEARY: Thank you.

1 The NODs were all filed within the three-year
2 statute of limitations, that typically applies to these
3 cases, as extended by agreements between Appellants and
4 Respondent. Those are typically called waivers, and there
5 are some in the file. Before issuing the NODs, however,
6 Respondent cited to expand the liability periods back to
7 January 1st, 2010 for 4JR and High Five and back to
8 September 3rd, 2010, for JR Fueling. Those expanded
9 periods were beyond the three-year statute of limitations
10 as extended by agreement, and the NODs are untimely for
11 those periods unless there is clear and convincing
12 evidence of fraud.

13 I should mention here that fraud includes acts or
14 omissions done with the intent to evade the sales and use
15 tax law or authorized rules and regulations. Respondent
16 asserts that there was fraud by all Appellants, and it
17 applied a 25 percent fraud penalty to the entire liability
18 period of each Appellant. If clear and convincing
19 evidence does not establish fraud for at least some part
20 of every reporting period -- and typically those are
21 quarters -- for which the NODs were not otherwise timely,
22 the liabilities for those periods will be barred by the
23 statute of limitations.

24 These potentially barred periods, just to remind
25 everybody, are January 10, 2010, through March 31st, 2013

1 for 4JR, January 1, 2010, through June 30th, 2013, for
2 High Five, and September 3rd, 2010, through March 31st,
3 2013, for JR Fueling.

4 Are you in agreement Mr. Aksel?

5 MR. BAGHERI: Yes, Your Honor.

6 JUDGE GEARY: All right. Mr. Suazo?

7 MR. SUAZO: In agreement.

8 JUDGE GEARY: Thank you.

9 All right. With that context in mind, it's been
10 agreed by the parties that the issues to be decided by the
11 Panel are as follows: The first is whether adjustments to
12 the disputed measures of unreported taxable sales are
13 warranted. And there are various measures, and I'll talk
14 about those in a second. The second is whether clear and
15 convincing evidence establishes fraud sufficient to avoid
16 the bar of the statute of limitations and the imposition
17 of the fraud penalty. And while I stated those as first
18 and second, they will not necessarily be discussed in that
19 order when opinions are issued, and we will be issuing
20 separate opinions, of course, in each of the appeals.

21 I have a question for, Mr. Bagheri, before we go
22 beyond this part of the discussion. And that is that it's
23 OTA's understanding that gasoline and diesel fuel taxes
24 and the fraud penalty are all that are disputed currently;
25 is that correct?

1 MR. BAGHERI: There was another issue regarding
2 whether excise tax is taxable for fuel sales.

3 JUDGE GEARY: And I think we agreed that that
4 would be included. And the Department, I believe, agreed
5 that we would cover that under one of these issues.

6 Is that right, Mr. Suazo?

7 MR. SUAZO: Yes, it is.

8 JUDGE GEARY: Okay. With that correction, you
9 agree? In other words, the mini-mart sales are not at
10 issue. There was something about propanes no longer at
11 issue; correct?

12 MR. BAGHERI: That's correct, Your Honor.

13 JUDGE GEARY: Okay. All right. Time estimates,
14 we talked about it at the prehearing conference.
15 Appellants requested two hours to present their arguments
16 and evidence. We now have two witnesses instead of three
17 that had been planned at that time.

18 Does that bring your estimate down somewhat,
19 Mr. Bagheri?

20 MR. BAGHERI: It does, Your Honor.

21 JUDGE GEARY: To what?

22 MR. BAGHERI: One hour 45 minutes.

23 JUDGE GEARY: All right. Thank you.

24 I believe that Respondent was asking 30 minutes
25 for argument and something less than 10 minutes for each

1 witness.

2 Mr. Suazo, is that still Respondent's estimate?

3 MR. SUAZO: That is still the estimate.

4 JUDGE GEARY: Thank you.

5 All right. We're about ready to go.

6 Any questions before we proceed with statements
7 and witness testimony, Mr. Bagheri?

8 MR. BAGHERI: No, Your Honor.

9 JUDGE GEARY: Mr. Suazo?

10 MR. SUAZO: No questions.

11 JUDGE GEARY: Okay. Mr. Bagheri, because you
12 have two witnesses, if would like to give a very brief
13 opening, you can. I don't think any of us here on the
14 dais need you to do that because you're going to be, I
15 presume, offering your testimony first.

16 MR. BAGHERI: Yes. And among the testimony I
17 just want to highlight certain exhibits for the dais.

18 JUDGE GEARY: Okay. You can do that. And which
19 witness are you going to call first?

20 MR. BAGHERI: I'm going to call Roda Rabadi
21 first.

22 JUDGE GEARY: All right. You may proceed
23 whenever you're ready. What I suggest we do --

24 Yes. Thank you.

25 I was going to suggest you put the microphone

1 right in front of Ms. Rabadi.

2 And remember speak right into it. If you turn to
3 your -- the representative for Appellants to answer the
4 question, as you can see my voice fades. Try not to do
5 that. Try to aim your mouth at the microphone while
6 you're speaking. Okay.

7 MS. Rabadi: Okay.

8 JUDGE GEARY: Thank you.

9 Go ahead, Mr. Bagheri.

10

11 DIRECT EXAMINATION

12 BY MR. BAGHERI:

13 Q Hello, Roda.

14 A Hello.

15 Q Roda, can you please explain, from the years 2010
16 through 2016, what relation did you have to 4JR
17 Enterprises, High Five Enterprises, and JR Fueling?

18 A I was working for the three corporations and
19 trying to help run the business.

20 Q Okay. And what were your day-to-day
21 responsibilities and duties?

22 A Managing the business in day-to-day transactions.

23 Q Okay. And as part of your duties, did that
24 include causing the tax returns of the business to be
25 filed?

1 A Yes.

2 Q And how did you go about that?

3 A We had a bookkeeper, and normally he does our
4 books. And I will -- anything that comes in or all the
5 reports that we have, I would pick up and then drop off at
6 his office, John Humphrey, the bookkeeper.

7 Q Yes. His name is, again? What was it?

8 A John Humphrey.

9 Q Was John an employee of any of these entities?

10 A No, he was not. He's our bookkeeper.

11 Q Okay. Does he run his separately established
12 business?

13 A Yes, he does.

14 Q Does he have his own clientele that you know of?

15 A Yes, he has his own clientele.

16 Q Okay. And so now it became time to file tax
17 runs. Did he file FTB tax returns?

18 A Yeah, he filed all our tax returns.

19 Q Federal tax returns?

20 A Federal, yes.

21 Q And sales and use tax returns?

22 A Sales and use tax too.

23 Q Okay. So when it comes time for him to prepare
24 the books, the accounting, and then prepare the returns,
25 how does that go again? Do you take what you believe he

1 needs, or what goes on?

2 A I would give him -- he would ask for the monthly
3 bank statements and the cancelled checks, and I would pick
4 up them monthly and hand it to John Humphrey.

5 Q Okay. So he would do this monthly?

6 A I give it to him monthly. Of how often he files
7 it, to be honest with you, I don't recall. But this is on
8 monthly basis I give him whatever I have. Everything I
9 give him.

10 Q Okay.

11 A And that's --

12 Q Did you email it to him?

13 A No. I will pick up the paperwork, the bank
14 statement, and I would drop off at his office.

15 Q Is his office close by?

16 A Yes. It's very close by to our office to -- to
17 my station.

18 Q It's close by to where you operate from?

19 A Correct. Close to the gas stations.

20 Q Is there a certain office that you are at most or
21 gas station?

22 A No, because I visit the stations all time, so
23 it's -- and he's in the Valley. I'm in the Valley, so it
24 was not a problem going to his office.

25 Q Okay. And he would ask for bank statements and

1 cancelled checks?

2 A That is correct.

3 Q What else would he ask for, or would he ask for
4 anything else?

5 A Whatever he would ask for, if there are any
6 documents that he needs, I would give it to him. And
7 sometimes because he's actually our bookkeeper, he would
8 call or he would get it himself on our behalf.

9 Q Okay. So he had some kind of access to certain
10 records?

11 A Yes. He had access.

12 Q Can you explain and elaborate?

13 A For example, if he needs to file any taxes or any
14 sales tax, he had access to the website where he could
15 file it directly from there.

16 Q Did he have access to bank accounts, logins,
17 electronic access?

18 A Not to bank accounts. That's why I gave him the
19 bank accounts on monthly basis all my bank statements.

20 Q Okay. And you personally, do you have any formal
21 tax education?

22 A To correct that, if he did have access to bank
23 accounts, not to my knowledge. I would not, you know --

24 Q Well, wouldn't you have to give him access and a
25 password?

1 A I would think so. I probably do not recall, but
2 I don't think he has it. But I don't recall. This is
3 like 12 years ago.

4 Q Okay. What's your formal tax education?

5 A I do not have any education in taxes.

6 Q Okay. What's your highest level of education?

7 A I went to Valley College for two years, and that
8 is it. That's my highest level.

9 Q Do you recall taking any tax courses there?

10 A None.

11 Q Do you have any informal education of tax?

12 A No.

13 Q I believe you were involved in a prior audit
14 related to these entities?

15 A The cigarette audit?

16 Q Yes.

17 A Correct.

18 Q Okay. Do you recall how long ago that was
19 before --

20 A Gosh, I don't remember the year on the top of my
21 head.

22 JUDGE GEARY: Mr. Bagheri, what did the witness
23 call it? The what audit?

24 MR. BAGHERI: The cigarette audit.

25 JUDGE GEARY: Okay.

1 BY MR. BAGHERI:

2 Q Do you recall if that audit was about sales and
3 use tax and how to tax the gasoline sales?

4 A I do not recall it. I -- John dealt with most of
5 it, John Humphrey, and I don't remember what it's -- no.
6 It's got to be regarding the cigarettes. The cigarettes
7 is, I think -- you want to re-ask the question again?

8 Q Yes. Do you recall if that prior audit -- not
9 the most recent one that we're here for today. But the
10 prior audit, did it -- did you learn anything about how to
11 tax the fuel sales of the businesses?

12 A No, I did not learn anything from that audit.
13 And it -- yeah. No.

14 Q Okay. And you were running the business
15 day-to-day. You were managing the business. Why is that?
16 You don't own the business do you?

17 A No, I do not own it.

18 Q Why were you the one that was charged with so
19 much responsibility of the business?

20 A My brother Ahed, he was hardly at work, at the
21 station. So I managed it.

22 Q How do you get compensated from the business?

23 A I am on payroll. I get a paycheck.

24 Q Besides that compensation, do you take --

25 A No.

1 Q -- any other draws or any other money from the
2 business?

3 A No. I am on payroll just like any employee.

4 Q Okay. I just want to get into a little bit about
5 the -- some of the stations that were closed during this
6 time period from 2010 to 2016. Can you explain how
7 certain locations were closed, where those locations were,
8 and around the time that those locations closed?

9 A Okay. Oh, one of them it was in Mission Hills,
10 and that location closed due to -- we kept losing money.
11 And the rent was way too high, and we could not afford to
12 run the business, and we just send the keys back to the
13 landlord.

14 Q Okay. That was the Mission Hills address?

15 A Yes.

16 Q What other locations, if any, were closed during
17 that time period?

18 A It's the -- which one. We closed the Temple City
19 location too. It's -- it kept -- we were not making -- it
20 stayed negative, negative, negative. So we he ended up
21 giving, like, also the keys back to the landlord.

22 Q Okay. As I look through some of your bank
23 accounts for these entities, I saw a lot of transfers from
24 one account to another. Why were there so many transfers
25 throughout the audit period?

1 A The transfers, they would be to -- to cover
2 whatever is -- it would be coming that day. If one
3 account has money and the withdrawal from a different
4 account and there's no money in it, so the withdrawal
5 would have -- we would have to withdraw it from another
6 account to cover. They cover each other.

7 Q And were those transfers being kept track of as
8 intercompany transfers of related entities? Because they
9 are separate entities, correct, some of the transfers from
10 one account to another?

11 A I -- to be honest with you, no. I do not have a
12 record of the transfers.

13 Q Would the bookkeeper or accountant keep a record
14 of those transfers?

15 A I do not know. He has the bank statements. I'm
16 not sure whether he does.

17 MR. BAGHERI: Okay. That will conclude my
18 examination of this witness.

19 JUDGE GEARY: Thank you, Mr. Aksel.

20 Does Respondent have any questions for this
21 witness?

22 MR. SUAZO: No questions.

23 JUDGE GEARY: I'm going to ask my fellow Judges
24 if they have any questions.

25 Judge Long, do have any questions?

1 JUDGE LONG: I do have just one question real
2 quickly. I just wanted to confirm. According to CDTFA's
3 Exhibit F, Ms. Rabadi, you are the corporate secretary
4 through at least 2013; is that correct?

5 MS. Rabadi: I do not recall.

6 JUDGE LONG: Okay. And with respect to the
7 day-to-day operation of the business, were you at gas
8 station locations or a central office? And if you are at
9 gas station locations, how did you decide which location
10 to go to on any given day?

11 MS. Rabadi: I did not decide which location to
12 go into. I mean, normally, it's just I would visit them.
13 If I did not visit one yesterday, that means I have to
14 visit the other one the following day to make sure
15 employees are, you know, are performing, if I have to meet
16 salespeople. So it's from day-to-day it's different.
17 Sometimes stuff comes up, things happen. Employee get
18 robbed. Things take place. Someone doesn't show up to
19 work, and that's where the schedule normally -- it's very
20 hard to set a schedule for gas stations, to be honest with
21 you. Because you do not know what's happening on that
22 day.

23 So -- and that's where I would take it every
24 morning and see what is happening, if I need to go here or
25 there, or if something is taking place. But I would have

1 to visit them. It doesn't mean every single day I have to
2 be at the same location. But I have to visit them whether
3 every day. Every other day I have to be there.

4 JUDGE LONG: Okay. But you were involved then
5 with each of the locations?

6 MS. Rabadi: Yeah, I was involved with all the
7 locations.

8 JUDGE LONG: Okay. Thank you.

9 MS. Rabadi: You're welcome.

10 MR. BAGHERI: Your Honor, can I please -- I
11 spotted part of my examination that I omitted. Can I
12 recall the witness for a little more testimony?

13 JUDGE GEARY: Why don't you just wait until the
14 Judges ask whatever questions they have, and I'll turn it
15 back over to you. Is that all right?

16 Judge Lambert, do you have any questions?

17 JUDGE LAMBERT: I have no questions. Thanks.

18 JUDGE GEARY: I have a few questions. For how
19 long -- or perhaps you could tell me this. When did you
20 first start working as the manager of the -- these
21 businesses?

22 MS. Rabadi: When I start working with my
23 brother.

24 JUDGE GEARY: When was that?

25 THE WITNESS: Gosh, it's back, I think, in 1998.

1 JUDGE GEARY: All right. And Mr. Hum -- is it
2 Humphrey or Humphreys?

3 MS. Rabadi: Humphrey.

4 JUDGE GEARY: Humphrey. Is he still the
5 bookkeeper for these companies?

6 MS. Rabadi: Yes, he is.

7 JUDGE GEARY: For all them?

8 MS. Rabadi: Correct.

9 JUDGE GEARY: And for all, at least the time
10 we're that we're here talking about 2010 through 2016, he's
11 been the bookkeeper for all those companies?

12 MS. Rabadi: Correct.

13 JUDGE GEARY: Is he a CPA? Do you know?

14 MS. Rabadi: I don't think so. He's a
15 bookkeeper.

16 JUDGE GEARY: Okay. I'm going to ask you to kind
17 of run through your management routine. I mean, you've
18 explained that you can't always make it into every
19 location every day, but you -- I gather you try to get to
20 every location at least every other day. So when you come
21 in into your office -- well, let me ask you this. The
22 office you referred to, is the office contained within one
23 of the retail locations that we're talking about?

24 MS. Rabadi: Some locations they have a small
25 office.

1 JUDGE GEARY: How about your main office?

2 MS. Rabadi: And I had a main office for a little
3 bit, for a short time.

4 JUDGE GEARY: So mostly you use the offices in
5 the locations or at home? Is that what you do?

6 MS. Rabadi: Yeah. It's, you know, when I am at
7 the station it's by the cash -- with the cashier behind
8 the cash register. It's, you know, does need I go sit in
9 an office.

10 JUDGE GEARY: Okay. All right. So you start
11 your day in the morning. Is the first thing you do try to
12 figure out what your plan is going to be for the day,
13 where you're going to visit, and what you're going to do
14 when you're there?

15 MS. Rabadi: Mostly true. Yes.

16 JUDGE GEARY: How do you make sure that the
17 employees show up when they're supposed to?

18 MS. Rabadi: Sometimes when I -- you call the
19 station and no one picks up, you know there's no one
20 there.

21 JUDGE GEARY: It's too late then isn't it?

22 MS. Rabadi: Yeah.

23 JUDGE GEARY: Okay.

24 MS. Rabadi: So you run to the station to open
25 up.

1 JUDGE GEARY: Okay. When you go to a location,
2 typically, what are you're -- you said you're going there
3 to talk to employees. What else are you going there to
4 do?

5 MS. Rabadi: What I mean, you know, you go in.
6 They know you're there. You're present. You make sure
7 it's there. A delivery shows up. The salesperson who is
8 supposed to come, he is there. If -- you just do your
9 daily work and just make sure things are going well, and
10 then you take off to the next location.

11 JUDGE GEARY: Okay. And did you personally take
12 receipt of all deliveries, or were employees allowed to do
13 that?

14 MS. Rabadi: The employees would do that.

15 JUDGE GEARY: And when an employee takes receipt
16 of a delivery, the employee would take paperwork related
17 to that delivery; correct?

18 MS. Rabadi: Correct.

19 JUDGE GEARY: What are they supposed to do with
20 paperwork like that?

21 MS. Rabadi: They put it in a place in a drawer
22 for me. And those receipts, I ended up -- would end up
23 taking them to my bookkeeper because he does the books. I
24 give it to him.

25 JUDGE GEARY: Okay. In addition to bank

1 statements, which you said you delivered to the
2 bookkeeper, and cancelled checks, which you said you
3 delivered to him, you also deliver to him receipts showing
4 purchases by the companies.

5 MS. Rabadi: Correct.

6 JUDGE GEARY: All right. In 2010 -- let's go to
7 the earliest date in 2010 that's at issue, and I think
8 that's January of 2010. Did these businesses use point of
9 sale systems?

10 MS. Rabadi: I believe it was point of sale,
11 yeah. Correct. Yes.

12 JUDGE GEARY: As part of your duties when you go
13 into a particular location, would you run a report on the
14 point of sale systems to see what sales have been and how
15 much money has been taken in?

16 MS. Rabadi: The shift -- I do not run it. The
17 employees when they break the shift, the reports comes up.
18 Correct.

19 JUDGE GEARY: So at the end of each shift the --
20 whoever the employee is that's in charge during that
21 shift, they would go to the POS system and run a report
22 that would show sales. What else would it show?

23 MS. Rabadi: It shows all the sales they did for
24 the day.

25 JUDGE GEARY: Would it show amount of cash?

1 MS. Rabadi: And the amount of cash.

2 JUDGE GEARY: And the amount of credit card
3 sales?

4 MS. Rabadi: And the credit card sales.

5 JUDGE GEARY: All right. And when the employee
6 does this, runs the report at the end of the shift, I bet
7 they put that report in the same drawer, and you pick it
8 up with the rest of the stuff -- or in the same box; is
9 that right?

10 MS. Rabadi: Yes.

11 JUDGE GEARY: Where the invoices from deliveries
12 go?

13 MS. Rabadi: I do not pick up those paperwork
14 daily. They sit there sometimes.

15 JUDGE GEARY: For how long?

16 MS. Rabadi: It depends how -- what's going on,
17 what's taking place, because I had even -- sometimes
18 employees they will pick them up and drop them off for me
19 at the bookkeeper.

20 JUDGE GEARY: Okay. Did Mr. Humphrey tell you,
21 like, I'd like to have these at least once a month or once
22 a week, or once every six months? Anything like that?

23 MS. Rabadi: No. I think he just get -- no.

24 JUDGE GEARY: You just made sure he had them all?

25 MS. Rabadi: Yeah, because he has -- what do you

1 call it -- a Manila folder. He drops each station its own
2 paperwork in there just so we do not lose the paperwork.
3 It's all in there.

4 JUDGE GEARY: Do you know when sales and use tax
5 returns are due?

6 MS. Rabadi: No.

7 JUDGE GEARY: All right. Let's suppose that a
8 sales and use tax return is due on January 31st for the
9 last quarter of the prior year. Would Mr. Humphrey make
10 sure that he had all of your POS reports and all of your
11 purchase invoices by the time he filed that return, if you
12 know?

13 MS. Rabadi: I -- I do not know.

14 JUDGE GEARY: Did you ever concern yourself with
15 making sure he had all those reports by the date the
16 return was due?

17 MS. Rabadi: No. I -- it's just we know the guy
18 for a long time, and we just did not -- I did not question
19 his work.

20 JUDGE GEARY: So you figured, if he needed them,
21 he'd let me know?

22 MS. Rabadi: Correct.

23 JUDGE GEARY: Okay. So once you -- or once these
24 records, the purchase invoices, the bank statements, the
25 cancelled checks, and the POS reports were delivered, you

1 left it up to Mr. Humphrey to use that data to prepare tax
2 returns?

3 MS. Rabadi: Yes.

4 JUDGE GEARY: And I'm concerned with sales and
5 use tax returns. I understand he also filed your income
6 tax returns. Did you sign the returns?

7 MS. Rabadi: The tax?

8 JUDGE GEARY: The sales and use tax returns.

9 MS. Rabadi: No.

10 JUDGE GEARY: Did he file them electronically, if
11 you know?

12 MS. Rabadi: I -- I would think so. To be honest
13 with you, I do not remember. But I think because he -- he
14 does have access to the website on our account.

15 JUDGE GEARY: Okay. Meaning he'd have your pass
16 code, and he could --

17 MS. Rabadi: Correct.

18 JUDGE GEARY: He could do things like make
19 electronic payments and file returns?

20 MS. Rabadi: Correct.

21 JUDGE GEARY: Did he make tax payments on behalf
22 of the companies? That is, did Mr. Humphrey make tax
23 payments on behalf of the companies that we're here to
24 talk about?

25 MS. Rabadi: Yeah, he would. He's the only one

1 that could file our taxes and make tax payments.

2 JUDGE GEARY: Okay. How did he get the money to
3 make tax payments? Did he have access to your bank
4 accounts so that he could make those payments.

5 MS. Rabadi: Yes.

6 JUDGE GEARY: Bear with me a moment. I have a
7 computer that shuts off periodically right at the
8 inopportune time.

9 All right. Do you know what Mr. Humphrey did
10 with the records of these companies, the records that he
11 relied upon to produce sales and use tax returns after the
12 returns were filed?

13 MS. Rabadi: He give me some records. And the
14 records he gave me it was too much paperwork. I went
15 ahead and I rented a storage room with a friend of mine.
16 So the paperwork for the stations, he gave it back to me.
17 They were in his office where -- were like filling up his
18 office. He says, "Roda, come pick up your paperwork.
19 It's filling up my office."

20 I had a friend, and I told him I need to bring my
21 paperwork, and I don't know what do with it. And he says,
22 "I'm renting a storage room if you want to share it with
23 me. You could put our stuff in there, and I put mine."

24 And I said fine. And then one day later on, he
25 called me up and he says, Roda I'm going -- if you're

1 going to takeover the storage room or if you -- no. I'm
2 sorry. He's going to go to the storage room. He's
3 gonna -- what do you call it -- shred his stuff. So I'm
4 not sure how the conversation went, but something into
5 like he went in there. And he brought a company. I think
6 it's called Shred It, and he had the receipt. And I gave
7 it actually to the first guy I met -- his name is Jason --
8 when I went in Glendale.

9 JUDGE GEARY: You're talking about the first guy
10 that works for Respondent, CDTFA, that you met or the
11 Board of Equalization, it would have been back then,
12 probably?

13 MS. Rabadi: When -- initially, the audit came
14 in. It came in by a guy by the name of Jason in Glendale.

15 JUDGE GEARY: Okay. All right. That answers my
16 question.

17 MS. Rabadi: So my friend went to shred his
18 paperwork, and then I guess he took off. And the people
19 who are there to do the shredding, they shred everything.
20 They shred my paperwork and his. So he came back and he
21 says, "Roda your stuff is shredded."

22 I said, "What?"

23 He says, "It's shredded."

24 So --

25 JUDGE GEARY: When did you discover this? Was it

1 after the audit began?

2 MS. Rabadi: No, no, no. He actually shred it --
3 no, after the audit. It was shredded before the audit.

4 JUDGE GEARY: When did you learn about it? Did
5 you learn about it before the audit also?

6 MS. Rabadi: Before the audit.

7 JUDGE GEARY: Okay.

8 MS. Rabadi: And that's when they asked for it.
9 I said, oh, my God, what do I do? And that's when I went
10 and showed them the receipt that the stuff was shredded.
11 I had no -- no paperwork to bring over.

12 JUDGE GEARY: Okay. The prior audit that we
13 talked about, you referred to it as the cigarette audit.
14 Is that the only prior audit that any of these companies
15 have had before the ones that we're here to talk about?

16 MS. Rabadi: That I am aware of.

17 JUDGE GEARY: All right. Now, those are my
18 questions. Thank you.

19 MS. Rabadi: You're very welcome.

20 JUDGE GEARY: But I think Mr. Bagheri has some
21 additional questions. And when he's through, I'll ask my
22 fellow Judges and Respondent if they have any more.

23 Go ahead, Mr. Bagheri.

24 MR. BAGHERI: Thank you, Your Honor.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. BAGHERI:

3 Q Part of the questions I wanted to ask you, Roda,
4 is can you please explain how you get paid from credit
5 card swipes from customers? And when I say you, I mean
6 the businesses.

7 A Company. The credit card when they get swiped
8 through the customer, my understanding is, for example, we
9 had -- the brand is 76 -- it goes to what the -- the --
10 what do you call them -- the jobbers [sic] -- the 76, and
11 then they turn around, and they deposit the money into our
12 account.

13 Q Okay. It sounds like the merchant services --

14 A Merchant.

15 Q -- are provided by 76?

16 A Correct. Merchant services. Yeah, that's --
17 yea.

18 Q 76 is a brand name. Do you recall what the name
19 of the merchant is or the company that handles the credit
20 card swipes?

21 A No, I don't recall that. But I know they are 76
22 who they use. I'm not sure.

23 Q If I said ConocoPhillips, does that remind you?

24 A Yeah. ConocoPhillips it's -- that's the same as
25 76.

1 Q Okay. And how do deliveries work with -- is it
2 the merchant that provides deposits? Is it also the
3 entity that's providing the fuel and inventory for the gas
4 stations?

5 A Correct. It's done by -- they changed their
6 names a couple of times, ConocoPhillips, 76, Phillips,
7 yeah. Yeah, they give the -- they process the credit
8 card, and they deliver the gas.

9 Q Okay. Do you get every credit card swipe? Or
10 every time that a customer pays for fuel, does it always
11 get deposited into a bank account?

12 A You mean --

13 Q For every dollar that's --

14 A Yeah, it's -- what do you call it? The credit
15 card goes through credit card, and the cash goes to the
16 bank, yes.

17 Q When there's a fuel delivery, at the time of
18 delivery, do you always pay the full amount of the invoice
19 from ConocoPhillips?

20 A That was also the bookkeeper involvement. My
21 understanding is the fuel delivery when it comes in, they
22 will minus the credit card, what is the purchase -- no,
23 what is the sale, and they debit the remaining on the
24 checking account. For example, we have a gas delivery,
25 \$30,000, that day we did credit card for \$10,000, they end

1 up taking the remaining, which is the \$20,000, out of the
2 checking account.

3 Q So if a customer is -- let's say for the month --
4 charge \$100,000 on their credit cards, what you're saying
5 is you might see a deposit into a bank account that's less
6 than \$100,000?

7 A Correct.

8 Q And that's due to the inventory being delivered,
9 and so there's some kind of offset?

10 A That is correct.

11 MR. BAGHERI: Okay. That concludes my
12 examination of Roda.

13 JUDGE GEARY: Thank you, Mr. Bagheri.

14 Mr. Suazo, any questions?

15 MR. SUAZO: No questions.

16 JUDGE GEARY: Judge Long?

17 JUDGE LONG: Yes, just one. Thank you. With
18 respect to the offsets -- the offset amounts that
19 ConocoPhillips takes, there's no dispute even though the
20 money doesn't go into a bank account but instead gets paid
21 to ConocoPhillips. The amounts that are charged to
22 customer credit cards and withdrawn are offset by
23 ConocoPhillips, those are still sales amounts; correct?

24 MR. BAGHERI: Yes, they are.

25 JUDGE LONG: Okay. That's my only question.

1 Thank you.

2 JUDGE GEARY: Judge Lambert, anything?

3 JUDGE LAMBERT: No questions. Thanks.

4 JUDGE GEARY: I have couple of questions, maybe.
5 You referred to ConocoPhillips being one of your merchant
6 service providers. I take it a lot of people who come to
7 a 76 station use a 76 credit card?

8 MS. Rabadi: Yes.

9 JUDGE GEARY: And ConocoPhillips process those
10 credit card payments?

11 MS. Rabadi: They process their 76 card plus any
12 card that comes in. They are the merchant too. They do
13 VISA, MasterCard, every card.

14 JUDGE GEARY: You anticipated my question.
15 That's exactly what I was going to ask you. And just to
16 make sure I understand how it worked, if at the time at --
17 let me withdraw that.

18 When a gas delivery is made, you don't have to
19 pay the driver who bring the gas in; right?

20 MS. Rabadi: No.

21 JUDGE GEARY: Okay. ConocoPhillips would bill
22 the companies for whom the deliveries were made -- what?
23 Monthly, maybe?

24 MS. Rabadi: No. They would bill it on probably
25 every three days, every five days.

1 JUDGE GEARY: Okay. And, if at the time a bill
2 was going out, they looked on their merchant services
3 bookkeeping and saw oh, this company we owe this company
4 \$10,000, and I'm about to bill them 20, they would make
5 the setoff -- the offset adjustment. And it would be
6 reflected, I take it, in some fashion on a document sent
7 to you so that you know -- meaning, you, meaning the
8 Appellants -- that yes, you had \$10,000 in sales, but we
9 kept the money and applied it towards your bill; correct?

10 MS. Rabadi: Correct.

11 JUDGE GEARY: Okay.

12 MS. Rabadi: Yeah. If the gas invoice 30, the
13 credit card charges 10, and then they will charge us the
14 \$20,000, the difference.

15 JUDGE GEARY: All right. Thank you.

16 MS. Rabadi: You're welcome.

17 JUDGE GEARY: Those are my only questions.

18 Mr. Bagheri, anything else?

19 MR. BAGHERI: Not as far as examination of this
20 witness.

21 JUDGE GEARY: Yeah. That's what I meant. Thanks
22 very much. Are you ready to call your next witness?

23 MR. BAGHERI: Yes, Your Honor. I'm ready.

24 JUDGE GEARY: Please do.

25 And if you wouldn't mind either changing seats,

1 or if you want to sit back there behind, you can do that.

2 MR. BAGHERI: Why don't you just switch seats.

3 MS. Rabadi: Oh, okay. May I leave, or I need
4 you to stay?

5 MR. BAGHERI: I just need you to stay just a bit
6 longer.

7 MS. Rabadi: Okay.

8 JUDGE GEARY: You can just pull the microphone
9 over towards you if you want.

10 MR. RABADI: Oh, yeah.

11 JUDGE GEARY: Sure get comfortable there. Just
12 make sure it's close to you when you're speaking.

13 MS. Rabadi: It's close enough?

14 JUDGE GEARY: Yeah. So far so good.

15 Mr. Bagheri, go ahead.

16

17 DIRECT EXAMINATION

18 BY MR. BAGHERI:

19 Q Hi, Mr. Rabadi. Thanks for being here.

20 A You're welcome.

21 Q Mr. Rabadi, can you explain to me, from the years
22 2010 through 2016, your involvement with the entities here
23 that we're talking about today?

24 A You know, I, between those years, I had a
25 problem. I don't know. My voice too high. I had issue.

1 I have a problem, personal problem with my divorce. And,
2 you know, I kind of lost interest of the whole operation
3 that I stopped doing what I was supposed to do. So I kind
4 of relied on my staff, my employees, to do everything. So
5 I stopped doing, you know, what I used to do before.

6 Q Okay. When was your divorce? You mentioned went
7 through a divorce.

8 A Yeah. I did go through a divorce. It was, you
9 know, it took a long time divorce. It finalized, like --
10 like, almost, like, 2008 -- end of 2008 '09. And, you
11 know, drag it because I have three kids, so there's a lot
12 of issues, a lot of problem with the whole thing, even
13 afterwards.

14 Q Did you have minor children with your ex-spouse?

15 A Yeah, three kids.

16 Q Three kids?

17 A Yeah.

18 Q In 2010 how old were the kids?

19 A Six. They are almost like two years apart. The
20 oldest was about six.

21 Q Okay. Did they --

22 THE STENOGRAPHER: Did you say the oldest or --

23 MR. RABADI: Youngest. Youngest. Six. Yeah.

24 THE STENOGRAPHER: Can you maybe slow down just a
25 little bit?

1 MR. RABADI: Oh, I'm sorry. Okay.

2 JUDGE GEARY: And if you wouldn't mind trying --
3 yeah. Slow down when you speak.

4 MR. RABADI: Okay.

5 JUDGE GEARY: And try to speak as clearly as you
6 can. All right?

7 MS. Rabadi: I'll try.

8 JUDGE GEARY: All right. Thank you.

9 BY MR. BAGHERI:

10 Q Okay. Mr. Rabadi, during that time, did your --
11 in 2010, did your minor children live with you?

12 A No. Part-time.

13 Q They lived with you part-time?

14 A Yeah. Well, we had 50/50 visitation.

15 Q Okay. And so suddenly you find yourself as a
16 single father. And earlier you said you lost interest in
17 the businesses?

18 A Right. Because the family issues, so I didn't
19 care that much about the business what was going on. So I
20 tried to pay attention to the kids and the family and try
21 to put my life back together.

22 Q Okay. And during that time, you understood that
23 Roda Rabadi, your sister, was going to be operating the
24 gas stations?

25 A Yeah, she, plus other employees, you know, other

1 staff employees.

2 Q Did you have other managers other than Roda?

3 A Well, we -- no. I used to have like, you know,
4 some kind of assistant manager per location, you know.
5 Then they don't do -- they only do certain type of work.
6 Then I got others -- other people do other work. And also
7 she kind of manage, running around going to make sure
8 everybody doing their job.

9 Q Okay. And would you get updates from Roda about
10 the business operations?

11 A You know, I was asking a lot of questions, and
12 they probably trying to show everything under control.
13 And I seeing not much, and I wasn't -- you know, I wasn't
14 didn't asking any -- a lot of question -- any question or
15 many question unless there is a problem when they call.
16 And that's how it worked for years.

17 Q How often do you -- would you go to business
18 locations?

19 A I used to go some of them almost like I do my
20 routes, but at that time maybe once every other week maybe
21 visit one location.

22 Q You would visit a location maybe once every other
23 week?

24 A Yeah.

25 Q So --

1 A I was not going, you know. I was not going. And
2 even if I visit, I just like stop by for a couple of
3 minutes, and I leave. Not do -- not do any paperwork or,
4 you know, or caring about what the business is doing.

5 Q And at the same time, also you knew that some of
6 the businesses were closing down?

7 A I make -- I make those decisions because couple
8 of them -- because rent is too high. So I just said so
9 really close them down because of that reason. And
10 some -- because they're losing money anyway. But when the
11 lease is up, I just don't renew the lease because no sense
12 of, you know, renew something and not making any money on
13 it.

14 Q Okay. So you had some sense of the financials of
15 the business and how they were doing it in order to make a
16 decision to close the business?

17 A Some -- well, because when -- when you know the
18 lease has gone up to certain amount and the address does
19 not make that kind of money to pay rent for -- high rent
20 for locations not pumping a lot of gas or not making a lot
21 of profit.

22 Q Would you be personally getting the information
23 about how the businesses were doing, or would you rely on
24 Roda for some of --

25 A Rely on the, you know, what's in the bank and

1 what's being told by your staff.

2 JUDGE LAMBERT: Excuse me. Could you please talk
3 a slower?

4 MR. RABADI: Okay. I'm sorry. It's my bad
5 habit.

6 JUDGE LAMBERT: Okay. Thanks.

7 MR. RABADI: It's -- it's like, you know, when
8 you run into a problem paying bills and no money in the
9 bank, you know the business is not doing well.

10 BY MR. BAGHERI:

11 Q Okay. And during this time, you said your
12 divorce took a toll on you. Can you explain a little more
13 about how it personally affected you?

14 A Well, it does affects you emotionally, you know.
15 You -- if you've been married for a while, you got kids,
16 and things happen that way, it just -- it just does not
17 sit too well with some people. And this is, you know, it
18 did not sit very me well as losing my family, losing this.
19 So I could care less about anything else.

20 Q Was it a contentious divorce?

21 A Well at the end, yes. It's -- it's my decision
22 to make that decision at the end. It's just not -- it
23 didn't -- it's just never meant to be.

24 MR. BAGHERI: Okay. I think that concludes my
25 examination of this witness.

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

JUDGE GEARY: Thank you.

Mr. Suazo, do you have any questions for this witness?

MR. SUAZO: No questions.

JUDGE GEARY: Judge Long, any questions for this witness?

JUDGE LONG: Yes, just a few. Thank you.

I just wanted to verify the tax returns that were included for all three businesses with CDTFA's Exhibit F. They indicate that you were 100 percent owner of all three businesses; is that correct?

MR. RABADI: Yes, that's correct. Yes.

JUDGE LONG: And did you retain ownership through the period when you were going through your family problems.

MR. RABADI: Yes. Yes.

JUDGE LONG: Okay. And then it also indicates that you -- sorry. I want to make sure I have my wording correctly real quickly -- devoted 100 percent of your employment time to business; is that correct? Or were there other employment --

MR. RABADI: What -- I mean, what we were talking before the divorce or after or --

JUDGE LONG: Sure. Well, with respect to your employment at -- I suppose during -- throughout this

1 liability period, is it -- with respect to your
2 employment. I understand you had other things going on.
3 You weren't always at your job.

4 MR. RABADI: Right. I -- yeah.

5 JUDGE LONG: But you weren't at other employments
6 throughout that period?

7 MR. RABADI: No, I did not have other employment.
8 No. I just -- that's the only thing I had. But, you
9 know, I wasn't paying much attention to what I have
10 because of personal issues.

11 JUDGE LONG: Gotcha. All right. And so with
12 respect to -- because I understand that you also have
13 Exhibits 7, which are the declarations from former
14 employees. But as the owner, how did the management
15 structure work with respect to the business typically and
16 throughout the period of time when you're going through
17 your divorce? Did Ms. Rabadi and other managers report to
18 you directly with respect to how the business was going?

19 MR. RABADI: Not really. I mean, it's not -- I
20 mean, I -- I do not have like meetings with them as if
21 that's what you refer. I had the corporations. I mean, I
22 don't know if that's what you mean. They have -- I have a
23 different corporation, and I used to get paid salary from
24 the corporations. Is that -- I don't know if that's what
25 you're trying --

1 JUDGE LONG: Yeah. I guess I'm trying to
2 understand is how did you find out the things that were
3 going -- I understand that you didn't necessarily care
4 about --

5 MR. RABADI: But about what things? Sorry.

6 JUDGE LONG: How did you find out what was going
7 on at the business -- businesses during this time, during
8 the liability period?

9 MR. RABADI: I wouldn't know 100 percent what was
10 going on, just, you know, just like figures is what they
11 tell me, you know, this, that. I mean, just by talking to
12 me. So once in a while, because I had other -- other
13 staff. Even some of them, they were not even in the
14 country, they were doing some of the paperwork. Or not
15 the paperwork, just, you know, some of the stuff, you
16 know, it's within the business. Because I had one guy
17 went to school, and he was the tech -- the technician.
18 Sometimes he could fix problem on the pumps over -- over
19 the phone to reset the system. Do this. Do that. So
20 like -- so he doesn't have to be local to, you know, to
21 can to tap and, you know, trying to fix some of the
22 issues.

23 JUDGE LONG: Okay. Thank you. I don't have any
24 further questions.

25 JUDGE GEARY: Judge Lambert, questions?

1 JUDGE LAMBERT: I have no questions. Thanks.

2 JUDGE GEARY: Mr. Rabadi, you said your divorce
3 was finalized in 2008 or 2009?

4 MR. RABADI: End of 2000 -- end of 2008,
5 beginning of 2009.

6 JUDGE GEARY: Okay. And you indicated that you
7 lost interest in your businesses and that you weren't as
8 involved then, but you were watching the money; weren't
9 you?

10 MR. RABADI: Not really. I lost interest of
11 everything, not just the -- the businesses, the entire
12 life.

13 JUDGE GEARY: So you did not pay -- how did you
14 receive money from your businesses?

15 MR. RABADI: I do get checks as well as the
16 president of the company.

17 JUDGE GEARY: You paid a salary as the president?

18 MR. RABADI: Yes.

19 JUDGE GEARY: Who signed the checks?

20 MR. RABADI: Well, actually, it's my signature,
21 but it's also set up by my bookkeeper. He writes the
22 checks for me and my staff.

23 JUDGE GEARY: And stamps them or something?

24 MR. RABADI: Yes. It's automatically, you know,
25 that it's like yes on -- or it's like on, you know, on his

1 computer where he writes the checks out, my signature on
2 there. He signs it.

3 JUDGE GEARY: Okay. So would you say that
4 Mr. Humphrey was the person who really had most
5 information about purchases and sales at these various
6 locations?

7 MR. RABADI: Not really. I mean, he --

8 JUDGE GEARY: Who did have it mostly?

9 MR. RABADI: I mean, he does the most, but it's
10 not like, you know, he's working for me. He have, I don't
11 know, maybe 40, 50, 60 accounts. So, I mean, if he dig
12 down to it, he probably could find that, the information.
13 But for him to memorize everything top of his head, no,
14 because he have other businesses he run taxes just for
15 them. So he does own bookkeeping office. He writes the
16 payroll, you know.

17 My -- my staff would give him at the end of the
18 month the paperwork that we have. And he -- every weekly
19 he does write checks for the staffs by giving them the
20 hour weekly. And all the books, all the paperwork he
21 gets. He's supposed to get once a month to be able to
22 compute everything. So if you probably ask him, he could
23 go down to my file. He would tell you if I made money I
24 or lost money. Or, you know, if you ask the question
25 where did this check went to, he probably would find that.

1 Yeah, because he have the record. But does not
2 necessarily means he, you know, he knows all. That's it.

3 JUDGE GEARY: Would he call you if he had a
4 question?

5 MR. RABADI: If he -- if he have a question,
6 first he call the office, normally. I barely talk to him,
7 because, you know, he could find out. He'd been being
8 doing my books for a long time, and he knows our -- you
9 know, the system works. And he finds paperwork in his
10 paperwork. But if he stuck to a question, then he'll call
11 my staff. In case if he had no answer, he ask my staff to
12 see if I provide him the answer.

13 JUDGE GEARY: Early on in your sister's testimony
14 she was asked about and provided testimony regarding the
15 closure of the Mission Hills and the Temple City
16 locations. You heard that testimony; right?

17 MR. RABADI: Yes. Yes.

18 JUDGE GEARY: Did she decide to close those
19 businesses?

20 MR. RABADI: No.

21 JUDGE GEARY: You decided that?

22 MR. RABADI: Right.

23 JUDGE GEARY: Okay. Based on what?

24 MR. RABADI: Well, lease coming up and business
25 bad. Okay. It's, you know, like, it's close it down.

1 JUDGE GEARY: How did you know business was bad?

2 MR. RABADI: Because, I mean, I'm being told
3 business is down from them.

4 JUDGE GEARY: Excuse me. Did you say you were
5 told that?

6 MR. RABADI: Yeah. Like, you know, it's, like,
7 you know, with my staff with business is down. It's bad.
8 It's bad.

9 JUDGE GEARY: Would your staff be more likely
10 than your sister to tell you?

11 MR. RABADI: The staff is being my sister.

12 JUDGE GEARY: Oh.

13 MR. RABADI: You know, my sister and, you know,
14 and her help -- her helper, you know.

15 JUDGE GEARY: Okay.

16 MR. RABADI: But they would not make my -- the
17 staff does not make a decision or either my sister.

18 JUDGE GEARY: Okay. You made those?

19 MR. RABADI: I make decision accordingly to, you
20 know, what's I've been told, you know, that we not making
21 money. I mean, the business is not good. So, you know,
22 which I already knew. Especially at that time, a lot of
23 stations is closing down because a lot of changes with the
24 oil companies.

25 JUDGE GEARY: Did each of the Appellants, each of

1 the companies, have it's own separate bank account?

2 MR. RABADI: It's yes and no. There's a mother
3 account for each corporation. And if -- to make it easier
4 for the bookkeeper, everything go into one lo -- to each
5 location. But at the end, they -- they all end up in the
6 mother location for -- for the main account.

7 JUDGE GEARY: So, I think I'm not sure I
8 understand. The mother location that you refer to --

9 MR. RABADI: For each corporation, main account.

10 THE STENOGRAPHER: Please do not step on each
11 other.

12 MR. RABADI: I'm sorry.

13 THE STENOGRAPHER: One at a time, please. Wait
14 until he's done asking you the question, and then you can
15 answer. Thank you.

16 JUDGE GEARY: I apologize.

17 All right. The mother account, was that the --
18 did you say each corporation had an account like that?

19 MR. RABADI: Yes.

20 JUDGE GEARY: All right. And did each
21 corporation have some other account also?

22 MR. RABADI: For each corporation, yeah. The
23 main account, which is the mother account, then
24 sub-account to be able to do the paper or to show where
25 everything goes, in and out. But at the end of the day,

1 they all go into one account.

2 JUDGE GEARY: Do they start off in the mother
3 account and then get divided to some of the other
4 accounts?

5 MR. RABADI: The opposite.

6 JUDGE GEARY: They start off in lower accounts
7 and then go up to the higher account?

8 MR. RABADI: Because what's back in each account
9 to be able to tell what location it goes into that
10 account, and at the end what ends up in the main account.

11 JUDGE GEARY: Okay. And your companies recently
12 submitted a lot of bank statements. Are you aware of that
13 in this appeal?

14 MR. RABADI: I don't know what you say by a lot
15 of bank statements.

16 JUDGE GEARY: They were, I believe --

17 Mr. Bagheri, were they -- are you representing
18 that those statements were all of the bank statements for
19 all of these Appellants covering what, the 2010 and 2011,
20 or was it 2011 and 2012? Which was it?

21 MR. BAGHERI: Yes. 2011 was sort of a test year
22 that the auditors really focused on. And I have provided
23 for 2011 and 2012 the bank statements to --

24 JUDGE GEARY: Complete bank statements?

25 MR. BAGHERI: Yes. And I represent that these

1 are all the bank statements because they have deposits
2 from all the merchants. And when you look at all
3 transfers between the accounts, you don't see any transfer
4 to any other account that's not included.

5 JUDGE GEARY: Okay. Mr. Rabadi, did you look
6 over any of these documents that were provided to us and
7 to CDTFA, the bank statements that Mr. Bagheri just
8 referred to?

9 MR. RABADI: Even if I would look into them, I
10 was not -- you know, it's not my expertise to go into
11 details as how is the business paperwork because I -- it's
12 not my -- it's not my thing. I do not -- I do not like
13 computers. To do not operate on them. I just -- like, I
14 do -- I do field work. I don't do no paperwork or
15 anything. I'm not that type of person to be able to do
16 that.

17 JUDGE GEARY: You have your sister to do that for
18 you; right?

19 MR. RABADI: You know, my sister and whoever
20 helping her, yeah. But --

21 JUDGE GEARY: Okay. So you were not involved in
22 providing these statements to Mr. Bagheri?

23 MR. RABADI: No.

24 JUDGE GEARY: Okay.

25 MR. RABADI: My signed the -- I'm sorry. My

1 signed documents, he told me sign here. I sign and I give
2 to him. So this is -- but, you know, for me to go and --
3 to look into details, I'm not that type of person.

4 JUDGE GEARY: Okay. Mr. Bagheri, how is it that
5 you came by all these bank statements?

6 MR. BAGHERI: I got them from Ms. Rabadi.

7 JUDGE GEARY: Okay. I may be mistaken, but
8 weren't there requests for bank statements in the course
9 of the audit, and some -- some were produced and not all
10 of them? Is that what happened?

11 MR. BAGHERI: I wasn't representing the taxpayers
12 during the audit. I represented them after the audit. My
13 understanding is from reading the admin file and other
14 things about the history of the case is that, yes,
15 there -- there were certain records that could have been
16 provided that weren't earlier on.

17 JUDGE GEARY: And were these other bank
18 statements, that had not been provided previously, in your
19 possession for a period of months or years before you
20 provided them?

21 MR. BAGHERI: No, they were not.

22 JUDGE GEARY: Okay. So you got them recently
23 from Ms. Rabadi?

24 MR. BAGHERI: No. I -- I got them -- provided
25 them to the -- for this case, I believe I had provided

1 those with the opening brief.

2 JUDGE GEARY: The same records that are at your
3 Exhibit 2, I think? The large exhibit with all the bank
4 statements?

5 MR. BAGHERI: Yes. I think I provided that in
6 June of 2023.

7 JUDGE GEARY: Okay. Those are all the questions
8 that I have for Mr. Rabadi.

9 Let me just open it up to make sure the
10 Department has anything else for Mr. Rabadi.

11 Any other questions for this witness?

12 MR. SUAZO: No questions.

13 JUDGE GEARY: Judge Lambert?

14 JUDGE LAMBERT: No question.

15 JUDGE GEARY: Judge Long?

16 JUDGE LONG: No questions. Thanks.

17 JUDGE GEARY: All right. Did you have anything
18 else for your witness, Mr. Bagheri?

19 MR. BAGHERI: Not for my witness, Your Honor, but
20 if I may, you know, highlight some exhibits and make an
21 argument?

22 JUDGE GEARY: Absolutely. Are you ready to give
23 your --

24 Well, first, let me ask my stenographer if she
25 needs a break.

1 THE STENOGRAPHER: I do not. Thank you.

2 JUDGE GEARY: All right. What do estimate for
3 your argument -- your first argument?

4 MR. BAGHERI: I estimate 25 minutes.

5 JUDGE GEARY: Okay. You may proceed when you're
6 ready.

7

8 PRESENTATION

9 MR. BAGHERI: Your Honors, thanks for having me.
10 Today I just first want to thank you for putting this case
11 back on a hearing calendar. I apologize for that, for not
12 responding to a hearing notice. I really appreciate it,
13 and apologize for any convenience that may have caused.

14 So our my primary reason to be here today is the
15 fraud penalty. And Respondent has to prove fraud with
16 clear and convincing evidence. Fraud or intent to evade
17 must be established by clear and convincing evidence.
18 Fraud is intentional wrongdoing on the part of the
19 taxpayer with the specific intent to avoid tax known to be
20 the owing. Persuasive authority also goes as far as
21 saying fraud is never presumed or imputed and should not
22 be found in circumstances which create, at most, only
23 suspicion. The U.S. Tax Court and the Tenth Circuit
24 Appeal -- Appellate Court in federal cases have cited that
25 authority.

1 Here, the fraud penalty we believe was sustained
2 under false pretenses. The audit bureau -- the Appeal
3 Bureau auditor believed that all bank deposits -- all
4 deposits from the merchant sales were being deposited into
5 the bank accounts. The Appeal Bureau auditor did not know
6 about the offsets that ConocoPhillips takes as they bring
7 in inventory. So there was an assumption made in the
8 decision that the taxpayer was egregious because they
9 should have known, based on their tax deposits, that they
10 were grossly underreporting the tax. And the Appeal
11 Bureau auditor's decision on page 3495 cites that, if we
12 can please go to page 3495 of the binder.

13 One of the reasons -- and it appears to me to be
14 a main reason that fraud was sustained -- is in this
15 paragraph that starts, "Also as presented in BTFD's
16 September 15th, 2019, response memorandum, BTFD compiled
17 total bank deposits for year 2011 of \$17,227,426,
18 \$6.5 million in cash and \$10.7 million in credit card
19 sales," and I'm paraphrasing. "Yet, petitioner reported
20 total sales of only \$12.1 million for 2011 on its sales
21 and use tax returns. Thus, petitioner's respond --
22 reported total sales that the large discrepancy between
23 bank deposits and reported total sales is additional
24 evidence of fraud."

25 At the time of the Appeal Bureau auditor's

1 decision, I believe the Appeal Bureau auditor was not
2 aware of these offsets. It's something that even I
3 missed, and it was discovered later and first presented in
4 my reply brief. The examiner missed it. The Bureau
5 auditor missed it. I missed it for a long time. And I
6 posit that it's something that perhaps maybe even the
7 preparer missed, if the preparer was reporting gross sales
8 using the bank deposits.

9 So if gross sales were reported using bank
10 statements in the total deposits, we come up with a number
11 that's very close to what was reported. And that might be
12 evidence of a plausible explanation of how this was
13 negligently done wrong, not fraudulently. So it provides
14 a plausible explanation as to negate the intent element of
15 fraud. If I can demonstrate further, if -- so the bank
16 deposits analysis that the Appeal Bureau auditor relied on
17 was sort of a lazy -- if I may use the word -- bank
18 deposits analysis. It included all of the cash deposits
19 and then assumed that the 1099-Ks from the merchants added
20 to the cash deposits would have equaled total deposits.

21 So if we can now go to Exhibit 10, which I
22 entered into evidence today, the memorandum that the
23 Appeal Bureau auditor cites states, "Auditor reviewed the
24 bank statements analysis provided by POA. Provided bank
25 deposits per statements is less than the total deposits

1 per representative's schedule. Total deposits for 2011
2 per statements provided of \$24 million, while
3 representative's total deposits of \$34 million, consisting
4 of cash of \$9.5 million plus \$25 million in credit card
5 sales."

6 Now, if we go exhibit -- Exhibit 5, starting on
7 page 2719 of the binder, we find here a -- if we could go
8 one page before 2718, it's a summary of every 1099-K
9 received from merchants. And then if we continue
10 scrolling down, it's a summary of a facsimile faxed to me
11 by a revenue officer from the IRS. It's all 19 pages of
12 the revenue officer's facsimile if you look at the
13 top-right corner. And my summary -- it could be
14 checked -- summarizes those 1099-Ks from the merchants.
15 So if we look at my summary for 4JR 2011, we see that all
16 of these merchants had \$25 million of sales reported for
17 all credit cards swipes done by 4JR. But in reality, not
18 all of the ConocoPhillips swipes would end up in bank
19 accounts.

20 Now, to demonstrate that, if we can go to
21 Exhibit 4, starting at 2694. And I have given you a more
22 legible copy of this exhibit because I noticed that the
23 scan was -- it wasn't as legible as I'd liked, but I
24 provided a carbon copy of a more legible version today.
25 It really does start at 2693. I'm sorry. The table of

1 contents is one page off on the binder.

2 But if we look at page 2693 of the binder, we see
3 from Phillips 66 Company, a EFT detail information for 4JR
4 Enterprises. It shows a delivery of \$23,904 of inventory,
5 Carb Pre 91 Ethanol 10 BRD. And then that is offset by a
6 credit card transaction minus \$3,595.54. That offset will
7 never be deposited into a bank account. However, on other
8 EFT receipts, for example, the one on page 2696, we see a
9 credit card transaction of -- and the detail comes right
10 after. It includes transactions of all kinds of cards,
11 including MasterCard, VISA, AMMEX, and all of that. So
12 what Ms. Rabadi stated earlier that they handle all credit
13 cards swipes is in that detail.

14 So if we look at page 2696, we see credit card
15 sales of \$3,980.97 for the date 3/17/17. That transaction
16 we do see a deposit of the same exact dollar figure on the
17 bank statement. The bank statement is contained in the
18 same exhibit, if we can scroll down to bank statement -- I
19 apologize. If we scroll down to page 2713, we see the
20 deposit from Phillips 66 on 3/20/17 for the same dollar
21 amount and cents, \$3,980.97. This example is different
22 from the prior detail. The prior detail, if you look, you
23 will not see that deposit in the month of March. But any
24 EFT detail that has a negative number and no offset will
25 be deposited into the bank account.

1 It is my suspicion that the preparer probably
2 used the bank accounts assuming that it includes credit
3 card deposits and cash deposits and reported the sales and
4 use tax figures in that manner. Now, this was all a long
5 time ago, and it's, you know, it's not certain that that's
6 what happened, but that's one plausible explanation as to
7 how this could have been done negligently, rather than
8 fraudulently. Because it does negate the concern of the
9 Appeal Bureau auditor about how the taxpayer can be so off
10 from the reported amount.

11 Now, the same memorandum states -- and this is
12 one of the most egregious instances that the memorandum
13 cites to, the September 15, 2019, memorandum, Exhibit 10.
14 It says that total deposits for 2011, per statements
15 provided, of \$24 million. So our actual deposits are
16 \$24 million of the \$34 million that one might think was
17 deposited into the bank account. What was reported was
18 much less than that. But if you take out what you can
19 assume was some -- first of all, the \$24 million collected
20 and deposited would have included sales tax that was
21 collected. So presumably the preparer, if they backed out
22 the sales tax and backed out some other nontaxable items,
23 would get to a number that's close to what was reported.

24 And we're here today, and we admit that there
25 were underreportings. It's just the fraud element that

1 we're trying to negate today. A lot of this is spelled
2 out better in my reply brief. It's maybe more articulate
3 than what I could convey today. But I'm asking this dais
4 to go back and consider that as plausible explanation of
5 underreporting.

6 That combined with the -- of the testimony from
7 the witnesses today of the, sort of, separation from the
8 reporting and the person who had the most interest to gain
9 from any underreporting is, sort of, two steps removed.
10 And what's important here is that there is an independent
11 accountant bookkeeper who is running his own business.
12 Mr. Rabadi testified that he might have about 50 different
13 clients. If -- you know, he's getting information from
14 Roda and not reporting the correct amount. Roda and Ahed
15 would have just relied on his expertise to report the
16 correct amount. But he would have had no incentive to
17 cheat and underreport. If anything, he would put his own
18 business in jeopardy for doing so.

19 So it seem like there may have been some kind of
20 loss in translation, assuming that the bookkeeper did not
21 know about these offsets. It was missed by a lot of tax
22 professionals that had intimate knowledge of this case,
23 and perhaps it was missed by the preparer.

24 And that concludes my argument today. I think I
25 don't intend to get into the -- whether there was

1 incorrect reporting of the tax. That's in my briefing.
2 So I'll leave it at that, and today I'll -- I'm just
3 focusing on the fraud assessment.

4 JUDGE GEARY: Thank you.

5 Before I turn it over to the Department and
6 before I give our stenographer and all of us a brief
7 break, I want to just ask you, does your reply brief go
8 through all of the analysis and all of the math and give
9 us a result that is the number that is achieved, if all
10 these offsets are taken into consideration?

11 MR. BAGHERI: Well, we believe the offsets are
12 taxable as Mr. Long asked.

13 JUDGE GEARY: So your position would be that it's
14 the offsets that should constitute the measure?

15 MR. BAGHERI: Yes, the offsets should be part of
16 the measure.

17 JUDGE GEARY: Okay.

18 MR. BAGHERI: But the offsets may explain how
19 there was underreporting negating only the element of
20 fraud, not the underreporting itself.

21 JUDGE GEARY: But you're not prepared to concede
22 the measure?

23 MR. BAGHERI: No. There are other things that I
24 bring up about the measure that it's based on an estimate.
25 And I understand if there are inadequate books and records

1 that the Department can estimate a measure, and they have
2 a pretty liberal authority to do so. But what I am trying
3 to argue here today is the fraud element of all of this
4 and that the -- it's a plausible explanation of how there
5 was an underreporting that appears to be large.

6 JUDGE GEARY: All right. Thank you, Mr. Bagheri.

7 Before we take our break, I am going to find out
8 from you, Mr. Suazo, are you going to have any questions
9 for Mr. Bagheri about what his position is? Are you going
10 to be prepared today because I know that you haven't had a
11 whole lot of time to analyze the bank records to get into
12 what the bank records show and what they don't show in
13 your argument?

14 MR. SUAZO: I talk a little bit about it.

15 JUDGE GEARY: Okay.

16 MR. SUAZO: But, basically, I mean, I can talk
17 forever. But it's like you --

18 JUDGE GEARY: Please don't do that.

19 MR. SUAZO: You really need to see it to see
20 what's going on.

21 JUDGE GEARY: See the bank records?

22 MR. SUAZO: See the whole audit, including the
23 bank records.

24 JUDGE GEARY: All right.

25 MR. SAUZO: Okay.

1 JUDGE GEARY: How much time are you estimating
2 for your closing?

3 MR. SAUZO: Like 20 minutes.

4 JUDGE GEARY: Okay. And five minutes for you on
5 final concluding remarks?

6 MR. BAGHERI: Yes, Your Honor. That's my
7 estimate.

8 JUDGE GEARY: All right. It is 3:29, 3:30. Can
9 we come back at quarter to 4:00? Is that okay with
10 everybody, 15 minutes? Great. Let's do that. Let's go
11 off the record, and we'll return at 3:45.

12 (There is a pause in the proceedings.)

13 JUDGE GEARY: We can begin the record again,
14 please.

15 Mr. Suazo, you may proceed when you're ready.

16

17 PRESENTATION

18 MR. SUAZO: The Appellants are three
19 corporations, 4JR Enterprises, Inc., High Five
20 Enterprises, Inc., and JR Fueling, Inc., which operated a
21 total of 14 gas stations with mini-marts in the greater
22 Los Angeles region. Mr. Ahed Rabadi has been president of
23 all three Appellants since the seller's permits were
24 obtained. Ms. Roda Rabadi was the corporate secretary for
25 all three Appellants through 2013 and is now the manager

1 for all three Enterprises.

2 The only records Appellants provided during the
3 audit process were federal income tax returns and about
4 one month of sales reports from August and September 2016.
5 For 4JR Enterprises, Appellant provided federal income tax
6 returns for 2013, 2014, and 2015, and then provided
7 33 days of sales reports. For High Five Enterprises,
8 Appellant provided federal income tax returns for just
9 2013 and 2014 and provided 33 days of sales reports.
10 Similarly, for JR Fueling, Appellant only provided federal
11 income tax returns for 2013 and 2014 and provided just
12 31 days of sales reports.

13 Appellants sales records are entered mainly onto
14 a ConocoPhillips or Shell electronic point of sale, EPOS,
15 software sales system. Appellant claims that,
16 essentially, all its records were mistakenly destroyed in
17 February of 2016, just prior to the first contact by the
18 Department in April 2016. Appellant has provided no proof
19 of had their claim. Because the Appellant failed to
20 provide adequate records for each of these three entities,
21 the Department was unable to use a direct audit method to
22 test and verify the accuracy of the Appellants' reported
23 taxable sales. Therefore, the Department used an
24 alternative method to establish Appellants' taxable sales.

25 Fuel sales were determined in the same manner for

1 all three entities. Audited taxable fuel sales were
2 calculated using the Appellants' actual gallons of fuel
3 purchased and applying estimated prices based on quarterly
4 average per gallon. A markup approach was not used to
5 establish audited fuel sales. First, the Department
6 established purchases of gasoline and diesel in gallons
7 based on the prepaid sales tax reported by the Appellant's
8 suppliers and claimed by the Appellant on Schedule G of
9 its sales and use tax returns.

10 Specifically, the quarterly prepaid sales tax
11 were divided by the prepayment sales tax rate to establish
12 audited quarterly purchases of fuel and gallons. Exhibits
13 are as follows: For JR Enterprises Exhibit E, pages 2930
14 and 3232, diesel pages, 2930 and 3268; High Five,
15 Exhibit E, pages 3573 and 3753, diesel pages 3573 and
16 3807; JR Fueling, Exhibit E, page 4225. Then using the
17 Appellants' 2016 sales reports, the Department calculated
18 the regular, mid-grade, and premium gasoline sales
19 percentages to be used for weighting of sales for each
20 entity. Exhibits are as follows: 4JR Enterprises,
21 Exhibit E, pages 3175 and 3231; High Five, Exhibit E,
22 pages 3733 and 3752; and JR Fueling, Exhibit E, page 4220.

23 The Department obtained per gallon selling price
24 information from Appellants' gas stations for the period
25 from first quarter 2010 through fourth quarter 2015 from

1 Oil Price Information Service, often referred to as OPUS.
2 OPUS is a company that collects and provides actual sales
3 prices for specific gas stations in question. Prices
4 obtained from OPUS are for diesel and regular grade gas
5 only. Exhibits are as follows: 4JR Enterprises,
6 Exhibit E, page 3105 through 3174, pages 3178
7 through 3230, and diesel, pages 3244 through 3267; High
8 Five, Exhibit E, pages 3636 through 3732, pages 3737
9 through 3751, and diesel pages 3760 through 3785; and JR
10 Fueling, Exhibit E, page 4066 through 4205.

11 OPUS selling prices were averaged to a quarterly
12 basis. To account for midrange and premium per gallon
13 prices 10 cents and 20 cents were added respectively to
14 the unleaded regular price to determine selling prices.
15 The sales percentages of these three types of gas were
16 applied to quarterly per gallon selling prices to
17 establish an overall weighted selling price per gallon of
18 gas. Exhibits are as follows: For 4JR Enterprises,
19 Exhibit E, pages 3104 and 3177; High Five, Exhibit E,
20 pages 3634 and 3736; and JR Fueling, Exhibit E, page 4065.
21 No adjustment was made for diesel gallon selling prices.

22 The Department computed audited taxable sales of
23 fuel for the audit period by multiplying the weighted per
24 gallon sales prices, net of sales tax, by the actual
25 gallons of fuel purchased. Exhibits are as follows: For

1 4JR Enterprises, Exhibit E, pages 3102, 3103, and 3176,
2 and for diesel pages 3,238 and 3240; High Five
3 Enterprises, Exhibit E, pages 3634 and 3735, and for
4 diesel, pages 3756 and 3758; JR Fueling, Exhibit E,
5 page 4063.

6 The audited taxable fuel sales were compared to
7 reported taxable fuel sales and differences were noted and
8 assessed. For 4JR Enterprises, \$37.7 million in gasoline
9 sales and \$261,000 in diesel sales were underreported.
10 For High Five Enterprises, \$24.9 million in gasoline sales
11 and \$1.3 million in diesel sales were unreported. And for
12 JR Fueling, \$5.8 million in gas sales were underreported.
13 Exhibits are as follows: For 4JR Enterprises, Exhibit E,
14 page 3100, and diesel, 3237; High Five, Exhibit E,
15 page 3632 and diesel, page 3755; and JR Fueling, Exhibit,
16 E, page 4063.

17 The Department reasonably accounted for price
18 changes throughout the audit period. Further, Appellant
19 has provided no better sales price information, which can
20 be used to calculate more accurate gasoline sales prices
21 per gallon during the audit period. Mini-mart sales are
22 based on the 33-day sales reports provided for the five
23 remaining 4JR Enterprise locations, five remaining High
24 Five Enterprise locations, and 31 days of sales reports
25 provided for the two JR Fueling locations. Taxable

1 mini-mart sales were used to compute taxable mini-mart
2 quarterly sales. The taxable quarterly sales for each
3 entity were applied back through the audit period on a
4 flat rate projection to determine the mini-mart sales.

5 Adjustments were made for locations that closed.
6 The audited taxable mini-mart sales were compared to
7 reported taxable mini-mart sales. Differences were noted
8 and assessed. For 4JR Enterprises, \$4.6 million in
9 mini-mart taxable sales were underreported. For High Five
10 Enterprises, \$2.8 million in mini-mart taxable sales were
11 underreported. And for JR Fueling, \$159,000 in mini-mart
12 taxable sales were under reported. Exhibits are as
13 follows: For 4JR Enterprises, Exhibit A, page 2841 and
14 2853, Exhibit D, page 2893, and Exhibit E, page 3293; High
15 Five, Exhibit A, pages 3487 and 3497, Exhibit D,
16 page 3537, Exhibit E, pages 3831 through 3833; and JR
17 Fueling, Exhibit A, pages 3968, 3969, 3980, Exhibit D,
18 pages 4016 through 4018, Exhibit E, page 4224.

19 In addition, each Appellant's propane sales were
20 also divided from the provided sales reports. Average
21 daily sales were extrapolated to quarterly amounts, which
22 were assessed. Exhibits are as follows: 4JR Enterprises,
23 Exhibit E, pages 3303 through 3306; High Five, Exhibit E,
24 pages 3839 through 3842; for JR Fueling, no assessment was
25 made on propane because sales of propane only occurred

1 during the last quarter of the audit period, and they were
2 immaterial.

3 Unreported cigarette tax rebates were also
4 assessed for 4JR Enterprises and High Five Enterprises.
5 Exhibits are as follows: 4JR Enterprises, Exhibit E,
6 pages 3307 and 3308; High Five, Exhibit E, pages 3843 and
7 3844. The amount assessed was determined on yearly actual
8 payments for taxable rebates received and adjusted to
9 quarterly amounts. Taxable rebates income was not
10 assessed on JR Fueling as no taxable rebate information
11 was noted.

12 Credits were allowed for underreported prepaid
13 fuel taxes for all three entities. The amounts were
14 \$11,000 against the prepaid tax amount of \$1.8 million
15 reported in prepaid taxes for JR -- for 4JR Enterprises,
16 Exhibit E, page 2930. \$6,000 against the prepaid tax
17 amount of \$1.4 million for High Five, Exhibit E,
18 page 3573. And \$1,000 against the prepaid amount of
19 \$383,000 for JR Fueling, Exhibit E, page 4046. The
20 percentages of error for each Appellant were well below a
21 1 percent error rate on the credits allowed, basically,
22 saying that they were reporting that fine.

23 The fraud penalty. The Department imposed a
24 25 percent fraud penalty. A fraud memorandum with
25 exhibits attached were processed for each Appellant.

1 Exhibits are as follows: 4JR Enterprises, Exhibit F; High
2 Five Enterprises, Exhibit F; JR Fueling, Exhibit F. The
3 memorandum establishes that Appellant was knowledgeable
4 concerning the requirements to charge, collect, and
5 properly remit sales tax reimbursement under the sales and
6 use tax law. Moreover, the memorandum establishes that
7 the Appellants -- that Appellants' failure to accurately
8 remit sales tax reimbursement it collected was due to an
9 intent to evade payment of sales tax.

10 Evidence of Appellants' knowledge includes --
11 excuse me for one minute -- one -- number one, as standard
12 procedure, when the Department issues resale permits, the
13 permit holder is given literature on filing sales and use
14 tax returns. The permit holder also receives tax
15 pamphlets described in the application of tax to a
16 specific industry when first obtaining a seller's permit.
17 Further, taxpayers regularly receive updates when tax
18 changes occur. Appellant would have been privy to this
19 information. So, Appellant had adequate information to
20 know sales tax reimbursement needed to be collected on
21 taxable sales and subsequently remitted to the Department.

22 Two, Appellants' president has had extensive
23 experience on operating numerous other gas station
24 businesses. Specifically, he has been engaged in retail
25 sales for at least 30 years. He was previously involved

1 as either a sole owner or corporate officer with 11 other
2 gasoline station locations operating under nine different
3 seller's permits, each of which began operating prior to
4 the permits in question for this hearing.

5 Further, several of those businesses associated
6 with his other seller's permit have had other prior
7 audits. Based on CDTFA records, he was involved with
8 maintaining Appellants' seller's permit and addressing
9 sales and use tax issues. Therefore, the Department
10 concludes the corporate president is fully knowledgeable
11 concerning the recordkeeping and reporting requirements of
12 CDTFA. Exhibits are as follows: Exhibit F, all entities.

13 Three, Appellants' corporate secretary manager
14 for the three Appellants was assigned power of attorney to
15 represent Appellants for the audit. She was a primary
16 contact person for all three Appellants during the audit
17 process. She has monitored sales and use tax returns as
18 evidence by correspondence to the Department concerning
19 prepaid credits and other issues. Exhibits are as
20 follows: 4JR Enterprises, Exhibit F, pages 3462 and 3463;
21 High Five, Exhibit F, pages 3948 and 3949.

22 Four, the Department's field observation to the
23 Appellants' locations at the time of the audit were
24 confirmed Appellants' pumps displayed signage stating that
25 all prices include applicable sales tax reimbursement as

1 required by Regulation 1598. Exhibits are as follows:
2 4JR Enterprises, Exhibit F, pages 3374 and 3375; High
3 Five, Exhibit F, pages 3889 and 3890; and JR Fueling,
4 Exhibit F, pages 4258 and 4259.

5 Appellants -- number five, Appellants' accounting
6 system produced detailed sales records, such as sales in
7 gallons and dollars of each graded gasoline, sales tax
8 collected for mini-mart, along with cash and credit sales
9 amounts. Exhibits are as follows: 4JR Enterprises,
10 Exhibit F, pages 3387 through 3426; High Five, Exhibit F,
11 pages 3906 through 3925; and JR Fueling, Exhibit F, pages
12 4269 through 4873. These detailed records were available
13 to Appellant during the audit period.

14 During the appeals process -- number six, during
15 the appeals process, the Appellant provided two years of
16 bank statements and compared the amounts to reported
17 sales. Based on Appellant's own analysis, millions of
18 dollars in sales were underreported, Appellant's Exhibit
19 6, pages 2739 and 2740. The credit card sales by
20 themselves were over \$3.5 million higher in 2011 and
21 \$2.4 million higher in 2012 than reported total sales of
22 the combined three entities. The Appellant knew that the
23 sales and use tax returns were incorrect.

24 It should be noted that reviewing the bank
25 deposit analysis, the Appellant did not account for cash

1 payouts to vendors, employees, or cash withdrawals by the
2 corporate officers themselves. It should also be noted
3 that the bank statements were provided -- that no bank
4 statements were provided for April 2012, and no adjustment
5 was made by the Appellants to account for the April 2012
6 cash deposits, Exhibit 1, pages 1242 through 1245. In
7 addition, it is unknown if the bank accounts provided are
8 the only bank accounts associated with the Appellant.

9 Number seven, comparison of prepaid gas and
10 diesel fuel purchases disclose that the Appellants'
11 reported amounts are less than 1 percent of the audited
12 amount. Appellant was well aware of how to report sales
13 and use tax returns, evidence of intent to evade. One,
14 although Appellant knowingly and intentionally collected
15 sales tax reimbursement on all sales of gasoline and
16 propane and all taxable -- in its taxable mini-mart sales,
17 they failed to report all of these taxable sales or remit
18 all of the collected sales tax reimbursement to the state.

19 Two, analysis of reported average selling prices
20 per gallon disclosed Appellant reported approximately \$1
21 less per gallon than its own sales prices established by
22 OPUS. The exhibits are as follows: 4JR Enterprises,
23 Exhibit F, page 3375; High Five, Exhibit F, page 3890; and
24 JR Fueling, Exhibit F, page 4259.

25 Number three, although Appellant knew the need

1 and requirement to keep reasonable business records, they
2 failed to provide virtually any records to support how
3 they ran the business or how they calculated their retail
4 sales for sales and use tax purposes.

5 Number four, despite Appellant having an
6 effective accounting system, the Department finds no
7 evidence that the Appellant used sales records, the POS
8 system produced, to report on its sales and use tax
9 returns. Therefore, we find the inability of the
10 Appellants to clearly demonstrate how reported sales and
11 use tax purposes returns during the audit period is
12 evidence of fraud.

13 Number five, Appellants had substantial
14 discrepancies between the audited reported taxable sales
15 of \$43 million with a percentage of error of 40 percent
16 for 4JR Enterprises, Exhibit D, page 2890; \$30 million
17 with a percentage of error of 44 percent for High Five
18 Enterprises, Exhibit D, page 3534; and \$6 million with a
19 percentage of error of 33 percent for JR Fueling,
20 Exhibit D, page 4015. The Department submits that this
21 cannot be explained as simply being an honest mistake or
22 being due to mere negligence, especially, when the audited
23 percentage of error for prepaid tax is less than
24 1 percent.

25 Number six, Appellant has demonstrated a

1 consistent pattern of substantially underreporting that
2 continued for every quarter throughout the entire audit
3 period. This is an indication of Appellant's intent to
4 evade the payment of taxes. Each of the these factors
5 show that the Appellant willfully intended to evade
6 payment of the tax. Together, they provide clear and
7 convincing evidence that Appellants had the intent to
8 evade taxes.

9 The audit was extended due to the evasion that
10 was committed by the Appellant. The Department maintains
11 that the extension of the audit period should remain as
12 the Appellant evaded the tax. This is supported by one,
13 Appellant charged and collected sales tax reimbursements
14 from its customers. However, the Appellants consistently
15 and systematically failed to report a material portion of
16 these sales throughout the audit period with a significant
17 understated error ratio for all three entities. This
18 large error ratio is evidence of fraud.

19 Two, Appellant's corporate officer had three
20 years of experience for sales tax. Three, given the
21 corporate officer's extensive experiences, it is clear
22 that he knew the requirements of the law and the
23 obligations to properly report tax liabilities. But
24 instead, Appellant willfully disregarded the law for its
25 own benefit. This is evidence of fraud. Four, the

1 Appellant did not provide even the most basic record to
2 support amounts it reported. General ledgers, which are
3 usually maintained electronically either by the Appellant
4 and/or their accountant were not provided to review
5 recorded revenue, cost of goods sold, and expenses. Five,
6 the Appellant's actions reveal that it was aware of its
7 understating of revenue, yet, decided to understate the
8 sales amounts anyway.

9 There is clear and convincing evidence that
10 Appellants' president is an experienced businessperson.
11 Appellants' president had knowledge taxes were due.
12 Appellants' president willfully attempted to evade taxes
13 collected, and Appellants' president intentionally failed
14 to provide records and report all tax amounts due. Since
15 fraud can be going back as far as September 3rd, 2010, for
16 JR Fueling, and as far back as January 1st, 2010, for 4JR
17 Enterprises and High Five Enterprises, Appellants are
18 liable for underpayments and penalties for those periods
19 through the end of the applicable audit periods.

20 The Appellants could not provide any credible
21 explanation showing the failure to remit the sales tax was
22 due to reasonable care or circumstances beyond the
23 Appellants' control, and occurred notwithstanding the
24 exercise of ordinary care and the absence of willful
25 neglect. The Appellant collected sales tax from the

1 customer knowingly, and the transactions were recorded in
2 the POS system, but the Appellant failed to remit the
3 sales tax collected.

4 In addition, when reporting sales tax, the
5 Appellant had to know using bank deposits would not
6 explain how the Appellant was able to put down how many
7 gallons of gasoline was sold, how much sales were for the
8 mini-mart, how much exempt sales were for the mini-mart,
9 how much lotto sales were, and so on and so forth. The
10 Appellant does not seem to have reported off of the bank
11 statements.

12 This concludes my presentation. I'm available to
13 answer any questions you may have.

14 JUDGE GEARY: Thank you, Mr. Suazo.

15 Just for an explanation for Mr. Bagheri and his
16 clients, Mr. Suazo did not testify. That's why he's not
17 subject to questioning by us on factual matters. However,
18 we can ask questions of Mr. Suazo if we have some
19 questions about his representation or the legal theories
20 that they are asserting.

21 Judge Long, do you have any questions for
22 Mr. Suazo?

23 JUDGE LONG: Yes, I do.

24 Mr. Suazo, given Appellants' testimony today and
25 your presentation, a lot was said about Appellants'

1 president, and I understand that. However, because the
2 penalty is imposed on Appellant rather than Appellant's
3 president, I just want to clarify. Is it CDTFA -- sorry.
4 If OTA comes to the determination that Appellants'
5 president was indeed a passive owner that was not
6 responsible or not part of the day-to-day operations of
7 the business during the liability period, is it CDTFA's
8 position that there's still sufficient evidence to make a
9 finding of fraud in this case?

10 MR. SUAZO: That's our position.

11 JUDGE LONG: Okay. Thank you. No further
12 questions.

13 JUDGE GEARY: Judge Lambert, do you have
14 anything?

15 JUDGE LAMBERT: Yeah, I just had one question.

16 I was just wondering. I don't know if you said
17 it, but the Appellant was talking about a shredding, like,
18 invoice or a receipt that was given. Does CDTFA have
19 that?

20 MR. SUAZO: No.

21 JUDGE LAMBERT: Okay.

22 MR. SUAZO: And the other thing is, even if they
23 were shredded, there's other electronic stuff that, you
24 know, either the accountant or they would have had. We
25 never received any of that. And they are also dealing

1 with Phillips Conoco and Shell. There's reports that
2 would normally get sent to them or that they could ask
3 Phillips Conoco or Shell. Never got that either.

4 JUDGE LAMBERT: Okay. Thank you.

5 JUDGE GEARY: All right. Thank you, Mr. Suazo.

6 Mr. Bagheri, I can give you five minutes if you
7 would like to get some concluding remarks.

8

9 CLOSING STATEMENT

10 MR. BAGHERI: Yes. Based on Mr. Suazo's
11 description of why a fraud penalty should be assessed,
12 I'll start first with what he said most recently about
13 information taxpayers could have gotten from
14 ConocoPhillips and other electronic information that they
15 could have gotten.

16 While the 1099-Ks do demonstrate virtually every
17 sale that's made, including tax that's collected, both the
18 sales tax and excise tax, so that information the
19 government had. The taxpayer did at some point provide
20 bank statements to show that cash -- and large amounts of
21 cash were being deposited into those bank statements. In
22 the meantime, those bank statements were continuously
23 getting overdrawn, and there were transfers that had to be
24 made from bank account to bank account.

25 There's no indication of any other bank account

1 that's owned by the entities. So all of the bank accounts
2 are in the record. And looking back at the bank accounts
3 and looking at actual deposits into the bank accounts
4 after accounting for the offsets that ConocoPhillips
5 takes, if you look at those actual bank deposits, then
6 these error ratios become a lot less than what Respondent
7 cited to today.

8 Respondent cited error ratios of between 30 and
9 40 percent. He cited large numbers, millions of dollars
10 in underreporting. But when there are million dollars in
11 sales -- millions of dollars in sales, those numbers are
12 going to be large, even at a 30 to 40 percent error ratio.
13 So we're not -- we're talking about error ratios that are
14 less than 100 percent. We're talking about error ratios
15 that are less than 50 percent. And the difference could
16 be explained by the potential offsets and the way that the
17 tax preparer may have reported the gross taxable sales.

18 Also, Respondent has relied on an indirect method
19 of proof. We understand due to the lack of information
20 Respondent was forced to rely on an indirect method -- an
21 alternative method of proof. They didn't rely on bank
22 deposits. They instead, relied on OPUS information about
23 how much gasoline was sold at the specific locations and
24 the volume of gasoline that -- of fuel that the taxpayers
25 purchased. However, in allocating the average weighted

1 gasoline sales price per OPUS, they just allocated
2 50 percent to the weighted -- the average weighted
3 gasoline selling price in Los Angeles and 50 percent to
4 the average weighting -- weighted gasoline selling price
5 in Ventura, rather than specifically looking at each gas
6 station and the volume that it sold. So they just did a
7 50 -- 50 allocation.

8 And again, the estimated -- the alternative
9 method used to estimate the tax doesn't have to be
10 completely accurate. But if it is an estimation, that's
11 another indication that perhaps if they are wrong to any
12 degree, then that also brings the error ratio down and
13 negates the element of fraud. So it's not a direct method
14 that they found to come up with a taxable sales, it's an
15 indirect alternative method. That also brings into
16 question whether the numbers and the deficiency cited by
17 Respondent are entirely accurate.

18 Again, Appellants here today focused on fraud,
19 and our argument to the dais is that considering the
20 offsets that were never considered before at the Appeal
21 Bureau auditor level, perhaps the analysis of fraud may be
22 different after this tribunal's review.

23 JUDGE GEARY: Thank you, Mr. Bagheri.

24 And thank you, Mr. Suazo.

25 The parties submit the matter?

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

Mr. Bagheri?

MR. BAGHERI: Yes.

JUDGE GEARY: Mr. Suazo?

MR. SAUZO: Yes.

JUDGE GEARY: Thank you.

The case is submitted February 13th. It's
4:21 p.m. The record is now closed.

Thank you, everyone, for participating. In the
coming weeks, the Panel will meet to discuss the evidence
and the issues, and OTA will write a formal opinion and
send copies of that opinion to everybody involved within
100 days of today's date.

This hearing is now concluded.

This also concludes OTA's afternoon calendar, so
the stream can be stopped.

Again, thank you all for being here today.

(Proceedings adjourned at 4:21 p.m.)

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, Ernalyne 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 4th day
of March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER