

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
NTENSE INC., ) OTA NO. 220610522  
 )  
 )  
 APPELLANT. )  
 )  
 )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, February 23, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:51 p.m. and concluding at 2:48 p.m. on  
Friday, February 23, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ JOSHUA LAMBERT
Panel Members:	ALJ MICHAEL GEARY ALJ SHERIENE RIDENOUR
For the Appellant:	IMAD HARARAH
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE DEPARTMENT  NALAN SAMARAWICKREMA CHRISTOPHER BROOKS JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received into evidence at page 6.)

(Department's Exhibits A-I were received into evidence at page 7.)

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California; Friday, February 23, 2024

1:51 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the Appeal of NTENSE, Inc., Case No. 220610522. The date is February 23rd, 2024, and the time is 1:51 p.m.

My name is Josh Lambert, and I'm the lead Administrative Law Judge for this hearing. And my Co-Panelist for today are Judge Geary and Judge Ridenour.

CDTFA, could you please introduce yourselves for the record.

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

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

JUDGE LAMBERT: And, Mr. Brooks, can you hear us? I don't believe that we have Mr. Brooks here possibly.

CDTFA, can we still proceed?

MR. PARKER: Yes. We had him here. We'll make sure he gets back on.

JUDGE LAMBERT: Okay. Thanks.

And for, Appellant, can you please introduce yourself for the record.

1 MR. HARARAH: Yes, Judge. Imad Hararah. I'm  
2 representing NTENSE, Inc., regarding the matter.

3 JUDGE LAMBERT: Thank you all for attending.

4 As agreed to by the parties, the issues are  
5 whether adjustments to the amount of unreported taxable  
6 sales are warranted, and whether Appellant is entitled to  
7 interest relief. And the second issue is based on the  
8 receipt of an interest relief request that was received  
9 from Appellant, and CDTFA will be discussing interest  
10 relief in its presentation also.

11 Appellant provides Exhibits 1 through 7. The  
12 last one is the request for interest relief. And CDTFA  
13 provides Exhibits A through I. The last exhibit is a  
14 timeline for the audit.

15 Were there any objections to the exhibits, CDTFA?

16 MR. SAMARAWICKREMA: This is Nalan  
17 Samarawickrema. We don't have any objections.

18 JUDGE LAMBERT: Thanks.

19 And for Appellant, Mr. Hararah, were there any  
20 objections to the exhibits?

21 MR. HARARAH: No objections, Your Honor.

22 JUDGE LAMBERT: Okay. Thanks.

23 That evidence is now in the record.

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

1 (Department's Exhibits A-I were received in  
2 evidence by the Administrative Law Judge.)

3 JUDGE LAMBERT: So at this time, Mr. Hararah,  
4 this will be your opportunity to explain your position.  
5 As discussed, you would have 30 minutes. So you can  
6 proceed when you're ready. Thanks.

7 MR. HARARAH: All right. Thank you,  
8 Judge Lambert.

9

10 PRESENTATION

11 MR. HARARAH: The issue that I'll be presenting  
12 here is an issue, actually, of the CDTFA, and a  
13 credibility issue using the markup method in contrast to  
14 the auditor actually bearing hours on the case as well.  
15 So the issue that we have the trouble -- the trouble  
16 agreeing to is how the CDTFA is using an indirect method,  
17 based on the markup method, to increase the taxpayer's  
18 taxable sales when all books and records clearly reflect  
19 the taxpayer's taxable sales amount, while at the same  
20 time, also burying her hours to use this indirect method  
21 to collect additional taxes.

22 The issue that I have is how can we rely on the  
23 agent's and the CDTFA's work papers when there's clearly a  
24 credibility issue on hand here. I'd like to start off  
25 first, and the reason I bring this up is the auditor,

1 going back to when the audit started, met with the  
2 taxpayer. Initially, I was not involved in the case. She  
3 came to the taxpayer's business operations only once. She  
4 conducted a sample size using the markup method and the  
5 taxpayer's cost of goods invoices, purchase invoices.

6 If we refer back to those purchase invoices, she  
7 only sampled less than a month's work of November 2017.  
8 And if we refer to my exhibit, exhibit -- I can tell you  
9 which exhibit that's referencing right now for me. Excuse  
10 me. Exhibit 5 in her work papers, page 14 of my file,  
11 there's only about 66 sales in here. After the fact, we  
12 asked the auditor how many hours she put on the case, and  
13 she indicated 72 hours. We didn't agree with the markup  
14 method from that point on. We requested the case to go to  
15 appeals.

16 We provided all the information to her, including  
17 the taxpayer's, I should say, accounting system that he  
18 uses, and the auditor initially did not want to review  
19 that system. She only wanted to use the indirect method  
20 based on sampling the invoices. Now, when we asked for  
21 this to go to the Office of Appeals, she then -- we worked  
22 out an arrangement where we would increase the sample size  
23 to 4 months. That sample size was from, I believe,  
24 October 2017 through January 2018.

25 She -- the auditor once again came to the



1 taxpayer's residence -- excuse me -- business. She did  
2 not conduct the audit throughout the business location.  
3 It was agreed to that we with provide boxes of the  
4 invoices for her to increase her sample size, which we  
5 did, which, again, constituted those 4 months.

6 Now, here's the issue that we have here and where  
7 the credibility lies. When we provide -- when we asked  
8 her about how many hours she put in for 4 months of work,  
9 which included around over 700, I guess, sample size of  
10 sales in the Excel worksheet that she did, she indicated  
11 only 33 hours of work. So the issue that we're having  
12 here is how does 1 day's of work, aside from all the  
13 pre-audit work that may have been conducted, 1 day's of  
14 work is 8 hours. How can that include 72 hours of time?  
15 So the issue that we're having is how does 72 hours of  
16 time using an indirect method where there's no credibility  
17 now, how does that equate to 32 hours of work of 4 months  
18 of sampling over 700 hours.

19 Clearly, Judges -- and this is what we would hope  
20 for you to find too -- is there is a credibility issue  
21 here. Had we -- how can one -- how can the public accept  
22 an increase of tax in using an indirect method while  
23 avoiding and negating all the actual books and records  
24 just to bury hours on a case that clearly were not worked  
25 on? How do we expect the public to agree to these, I

1 guess, frivolous taxes in essence.

2 If you go to my Exhibit 1 -- excuse me --  
3 Exhibit 2, we've substantiated where -- and this does not  
4 come from me -- I'm not actually the one that's indicating  
5 how many hours should be on a case or not. This clearly  
6 comes from an email directly from the agent herself, 72  
7 hours -- of 75 hours of time. Our Exhibit 4, Judges,  
8 details what was actually picked up during her second time  
9 to come to the business location to sample a size during  
10 appeals. And you'll notice that in this exhibit,  
11 Exhibit 3 -- excuse me -- there's a receipt where it  
12 indicates these 4 months have been sampled.

13 Our Exhibit 4 -- excuse me -- I'm looking at it  
14 here. Our Exhibit 4 during appeals shows that she booked,  
15 again, 35 hours on the -- 33 hours on this case. Now,  
16 during the appeals and the appeals findings analysis in  
17 the CDTFA's exhibit, the appeals officer indicated that  
18 the Appellant or the taxpayer, the representative, thinks  
19 that it was appropriate -- that 72 hours of time, again,  
20 was included on the bookings. We do not think what time  
21 it was. Again, based on the emails received from the  
22 agent or the auditor in this case, was how many hours was  
23 booked on the time, and there's clearly an issue here.

24 Now, the other issue that we're having and why  
25 this markup method shouldn't be used is that initially

1 during the first meeting with the auditor, again, she  
2 refused to look at the P -- I guess for lack of better  
3 terms -- the POS system that the taxpayer uses. She  
4 automatically wanted to do an indirect method. However,  
5 when she looked at the bank statements, all the bank  
6 statements clearly reflected the income that was received.  
7 There wasn't any over deposits or anything of that nature.

8 All of her books and records clearly reflected  
9 income -- excuse me -- the client's tax -- the taxpayer's  
10 records clearly reflected income, which proves that there  
11 shouldn't be an indirect method to use as a markup method.  
12 Furthermore, to assume that just because the industry  
13 standard uses a 50 percent markup method, doesn't  
14 necessarily mean that the taxpayer's business operations  
15 are based on a 50 percent markup method as well.

16 This whole audit has been established just so  
17 that there's an issue of hours being buried on the case.  
18 Now, also during the Respondent's opening statement, they  
19 had indicated that we did not provide the -- clearly the  
20 books and records that clearly reflect income. However,  
21 if you refer to Exhibit 1 that was presented, you'll  
22 notice that the agent herself -- and I've highlighted this  
23 where she would recommended -- where she would recommend a  
24 penalty or not, indicates that the taxpayer cooperated and  
25 provided the requested books and records for the audit.

1           So to the public, to me, to the taxpayer, we've  
2           been in compliance with the audit from the beginning. We  
3           provided all books and records. But, again, there's an  
4           issue here of burying hours to show that work was  
5           performed when work was not performed. There's an issue  
6           with this audit. There's an issue with the credibility.  
7           This audit is frivolously done.

8           Now, if you go refer to page 6 of my -- excuse  
9           me -- Exhibit 6 of my file, you'll -- and you compare from  
10          Exhibit 1 where she has only sampled, I guess, 66 sales or  
11          66 invoices versus the Exhibit 6, pages 15 through 25,  
12          there was a ton more sampling that was conducted. And it  
13          was, again, 33 hours were booked on the case. And I keep  
14          emphasizing this because we're having a hard time of  
15          credibility here. How can one accept an indirect method  
16          using the markup while refusing to look at the actual POS  
17          system records and still burying hours. We can't  
18          comprehend that.

19          So I'm pretty much done with my argument, but I  
20          just want to conclude here, Judges, with a statement. The  
21          taxpayer is astonished that the CDTFA argues an incorrect  
22          method just to collect tax based on a so-called markup  
23          method -- again, this is an indirect method -- and books  
24          hours on a case that logically do not appear to have been  
25          perform. Again, 72 hours for 1 day's worth. I assume

1       there is no preaudit.

2               I don't think the CDTFA would agree that, let's  
3 say, the difference between the 72 and the 8 is preaudit  
4 work. And the communication that I've had personally with  
5 the auditor, after not agreeing with, did not constitute  
6 an additional 40 to 50 hours of work. The client's taxes  
7 and the findings of the audit certainly do not warrant the  
8 amount of time the auditor claims were necessary to  
9 complete. We're unable to comprehend the amount of time  
10 booked to this audit reasonably comply with the scope of  
11 the audit.

12               Again, this whole audit has been done to bury  
13 hours, specifically, using the markup method, again,  
14 credibility. Judges, we ask how can you accept an  
15 indirect method from the CDTFA when they themselves are  
16 burying hours and basically not utilizing the public's  
17 funds in an honest and fair way. Just as the public must  
18 be held accountable for their tax obligations, it is  
19 equally important for the CDTFA to comply with the same  
20 standards of due professional care and compliance with  
21 professional standards to ensure that taxpayers are  
22 protected and that these audit proceedings occur fairly.

23               The taxpayer should not agree to a markup method  
24 when we've tried to bring up this issue between the  
25 auditor, their supervisor, and the principal auditor we

1 previously discussed this case with. It seems that  
2 burying hours against the general public's expense as we  
3 have evidenced here. We stress and ask how the CDTFA  
4 asked for additional taxes from the Appellant when, in  
5 fact, their own auditors, management, and staff are  
6 booking hours to a case that have not been, in fact,  
7 performed.

8           Again, if you refer to all of the exhibits that  
9 we have made available, based on the work performed, based  
10 on the auditor's Excel documents, those hours do not  
11 establish the audit that was performed. To even consider  
12 a markup just to collect additional taxes, while burying  
13 hours on a case when actually not performed and without  
14 considering the totality of the taxpayer's records, is not  
15 in the best of the CDTFA's effective tax administration.  
16 As such, we respectfully request the Office of Tax Appeals  
17 to abate any taxes and interest associated with this  
18 audit, as it appears independence and fairness have been  
19 impaired throughout this whole proceeding.

20           Aside from this, based on the interest abatement  
21 and based on the evidence provided and based on the  
22 CDTFA's agreeing with reducing some of the interest that  
23 was previously assessed, we've pointed out, clearly, that  
24 there were errors in the timing and handling of this case.  
25 So from beginning to end, there's a lot of mix-ups here to

1 me, to the taxpayer, and to the public's interest.  
2 Credibility has been totally lost during this audit.

3 That's all I have today for you, Judges.  
4 Hopefully we can resolve this matter.

5 JUDGE LAMBERT: Thank you. Thank you,  
6 Mr. Hararah.

7 I'll now turn to the panel to ask if they have  
8 any questions.

9 Judge Geary, did you have any questions?

10 JUDGE GEARY: I do not at this time. Thank you.

11 JUDGE LAMBERT: Thank you.

12 And, Judge Ridenour, did you have any questions?

13 JUDGE RIDENOUR: I also do not have any questions  
14 at this time. Thank you.

15 JUDGE LAMBERT: Thanks.

16 I had a question just based on -- Mr. Hararah,  
17 based on what I was reading in the briefs that there was  
18 arguments related to this certain Worldpac invoices that  
19 you stated that CDTFA said were not provided. And maybe  
20 you could just explain that point. And also are these  
21 invoices something that you have now and could provide, or  
22 are they not available?

23 MR. HARARAH: No. They are -- we have -- we  
24 did -- excuse me, Judge. We did provide them to the  
25 auditor. And, again, this whole case is based on

1       credibility. We provided every single invoice, which we  
2       still have, that I can go get back from the taxpayer of  
3       all the Worldpac invoices, every single one of them. The  
4       auditor, when I brought this issue up in appeals, for  
5       whatever lack of reason, decided to overlook these  
6       invoices. She did have these invoices in her hand.

7               And, again, this brings me back to the notion of  
8       credibility here from the agent not wanting to look at the  
9       POS system, clearly outright refusing to look at the POS  
10      system where it details all of these -- the taxpayer's --  
11      the Appellant's customers, those invoices, what he  
12      receives to them, are all input on a system, which clearly  
13      stipulates what repairs were issued, what purchases  
14      were -- excuse me -- what repairs and labor were done to  
15      each car, the amount of sales tax collected based on the  
16      amount of parts purchased and later resold to the  
17      customer.

18              What the taxpayer does -- and this is an issue  
19      that I tried to bring up in appeals as well -- is that the  
20      way he makes his money is based on the labor and not the  
21      sales tax -- or not the purchases. He does not markup his  
22      purchases so that he can entice the customers and have  
23      repeat customers to compete with other dealerships that  
24      are around the area as well.

25              So going back to your question, Judge Lambert, we



1 do have those invoices. We can provide those if  
2 necessary. But, again, to me, to the taxpayer at this  
3 point, we do not see it being fruitful because there is a  
4 credibility issue here with this whole audit from the  
5 beginning.

6 JUDGE LAMBERT: Okay. Thank you, Mr. Hararah.

7 MR. HARARAH: Of course.

8 JUDGE LAMBERT: At this time I'd like to move on  
9 to CDTFA's presentation for 30 minutes.

10 Mr. Samarawickrema, if you want to proceed when  
11 you're ready.

12 MR. SAMARAWICKREMA: Thank you, Judge.

13

14 PRESENTATION

15 MR. SAMARAWICKREMA: This is Nalan  
16 Samarawickrema.

17 Appellant is a California corporation that  
18 operates an auto repair shop with a smog testing station  
19 in San Francisco, California. Appellant provides vehicle  
20 repair services, sells related automobile parts and  
21 accessories, and performs smog check services.

22 The Department audited Appellant's business for  
23 the period of April 1st, 2016, through March 31st, 2019.  
24 During the audit period, Appellant reported around  
25 \$920,000 as total taxable sales. But Appellant's sales

1 and use tax returns did not report any of its nontaxable  
2 sales under the last quarter of the audit period. And  
3 that would be on your Exhibit A, page 38.

4           During our presentation, we will explain why the  
5 Department rejected Appellant's reported taxable sales,  
6 why the Department used an indirect audit approach, and  
7 how the Department determined Appellant's unreported  
8 taxable sales for the audit period.

9           During the audit, Appellant explained that he  
10 prepared its sales and use tax returns using sales  
11 worksheets which summarize sales by days, months, and  
12 quarters based on sales invoices generated from his auto  
13 parts point of sale system. But during the audit,  
14 Appellant failed to provide complete sales records.  
15 Appellant did not provide complete sales documents of  
16 original entry, such as POS download with old folders,  
17 sales invoices, credit card sales receipts, vehicle repair  
18 job folders, and detailed sales journals for the audit  
19 period. In addition, Appellant failed to provide complete  
20 purchase invoices and purchase journals for the audit  
21 period.

22           Due to the lack of reliable records and the low  
23 reported taxable book markup of 20 percent, the Department  
24 did not accept Appellant's reported taxable sales. The  
25 Department also determined that Appellant's record was

1 such that taxable sales could not be verified by a direct  
2 audit approach. Therefore, the Department used an  
3 indirect audit approach to determine Appellant's taxable  
4 sales. The Department completed four verification methods  
5 to verify the reasonableness of Appellant's recorded and  
6 reported total and taxable sales.

7 First, the Department compared reported taxable  
8 sales of around \$638,000 to the cost of goods sold of  
9 around \$532,000 reflected on Appellant's federal income  
10 tax returns and calculated an overall total reported book  
11 markup of around 20 percent, which is low for this type of  
12 business; and that will be on your Exhibit A, page 43. In  
13 fact, based on the analysis of available selling prices  
14 and related cost for November 2017, the audited markup was  
15 around 51 percent; and that will be on your Exhibit D,  
16 page 41.

17 Second, the Department reviewed Appellant's sales  
18 worksheets and determined that around 48 percent of all  
19 sales were recorded as taxable for the audit period. And  
20 that will be on your Exhibit D, page 46, and Exhibit D.

21 Third, Appellant used sales worksheets, which  
22 summarize sales by days, months, and quarters based on  
23 sales invoices generated from his auto parts point of sale  
24 system. The recorded sales and sales tax reflected on  
25 Appellant's sales worksheets did not match to the reported

1 taxable sales and sales tax for first quarter 2017, second  
2 quarter 2017, second quarter 2018, and fourth quarter  
3 2018. And that will be on your Exhibit A, page 42.

4 The Department also spot tested the sales invoice  
5 numbers reflected on Appellant's monthly sales worksheets,  
6 and that will be on your Exhibit D. Based on the sequence  
7 of sales invoice numbers, Appellant did not record all its  
8 sales invoices in its monthly sales worksheets. On  
9 average, Appellant had 110 missing sales invoices a month  
10 in its monthly sales worksheets ranging from as low as 42  
11 missing sales invoices for December 2016, to as high as  
12 232 missing sales invoices for February 2019. And that  
13 will be on your Exhibit D. The Department also found some  
14 POS sales invoices were issued out of sequential order for  
15 25 months of the audit period without explanation, and  
16 that will not on your Exhibit D.

17 Based on these analyses, the Department concludes  
18 there are strong indications that all sales transactions  
19 completed through Appellant's POS system were not recorded  
20 in Appellant's monthly sales worksheets. Therefore, the  
21 Department determined that these sales worksheets are  
22 unreliable and unacceptable to use to determine taxable  
23 sales for the audit period. And that will be on your  
24 Exhibit D.

25 Fourth, Appellant did not provide its credit

1 cards sales for the audit period. Therefore, the  
2 Department obtained Appellant's available credit cards  
3 sales from the Department's internal sources. And that  
4 will be on your Exhibit A, pages 48 through 50. Although,  
5 we were able to obtain records for years 2016, 2017, and  
6 2019, Appellant's 2018 credit card sales were not  
7 available for the Department. The Department compared the  
8 available credit card sales information with sales  
9 reflected on Appellant's sales worksheets for those same  
10 periods and calculated a credit card to total sales ratio  
11 of around 98 percent. And that will be on your Exhibit A,  
12 page 47.

13 This overall credit card sales ratio is high for  
14 this type of business, and this appears that Appellant did  
15 not record some of its cash sales. Based on available  
16 credit card sales information, the Department concluded  
17 that Appellant did not record its actual sales for  
18 reporting purposes. Appellant was unable to explain the  
19 reason for missing sales invoices, low reported book  
20 markup, recorded and reported taxable sales differences,  
21 and high credit card sales percentage. Therefore, the  
22 Department conducted further investigation by analyzing  
23 Appellant's purchases, cost of goods sold information,  
24 pricing policies, and available sales and purchase  
25 invoices.

1           The Department used the lower of cost of goods  
2 sold for purchases reflected on Appellant's federal income  
3 tax return to determine audited taxable sales which  
4 benefit Appellant. And that will be on your Exhibit A,  
5 page 40. Therefore, the Department used cost of goods  
6 sold reflected on Appellant's federal income tax return  
7 for year 2017 and purchases for year 2018 to determine  
8 audited taxable sales. And that will be on your  
9 Exhibit A, pages 40 and 44. Then the Department adjusted  
10 for supply and tool purchases to determine audited parts  
11 available for sale of around \$495,000 for years 2017 and  
12 2018. And that will be on your Exhibit A, page 40, and  
13 Exhibit C.

14           To understand Appellant's pricing policies, the  
15 Department performed shelf tests using available sales and  
16 purchase invoices from November 2017 to calculate audited  
17 markup of around 51 percent. And that will be on your  
18 Exhibit D, page 41. Appellant did not provide reliable  
19 documents to demonstrate that its markup was lower than  
20 51 percent. Therefore, this was the best available  
21 information to determine Appellant's audited markup. Then  
22 the Department used the cost of goods sold and purchases  
23 available for auto parts sale of around \$495,000 and  
24 applied the audited markup factor to determine audited  
25 taxable sales of around \$745,000 for years 2017 and 2018.

1 And that will be on your Exhibit A, page 40.

2 Audited taxable sales were compared to reported  
3 taxable sales for the same period to determine unreported  
4 taxable sales of around \$107,000 with corresponding error  
5 rates. And that will be on your Exhibit A, page 40. Then  
6 the Department applied the corresponding error rates to  
7 reported taxable sales to determine unreported taxable  
8 sales of around \$159,000 for the audit period. And that  
9 will be on your Exhibit A, page 39.

10 Had the Department use the cost of goods sold  
11 reflected on Appellant's 2018 federal income tax return  
12 instead of purchases, then the unreported taxable sales  
13 would have increased by around \$20,000 from \$159,000 to  
14 \$178,000 for the audit period. And that will be on your  
15 Exhibit A, page 52. Therefore, the Department finds that  
16 the estimated amount assessed in this audit is not only  
17 reasonable but also benefit Appellant.

18 When the Department is not satisfied with the  
19 accuracy or the sales and use tax return filed, it may  
20 rely upon any facts contained in the return or upon any  
21 information that comes into the Department's possession to  
22 determine if any tax liability exists. A taxpayer shall  
23 maintain and make available for examination on request by  
24 the Department all records necessary to determine the  
25 correct tax liability under the sales and use tax laws,

1 and all records necessary for the proper completion of the  
2 sales and use tax returns.

3 When a taxpayer challenges a Notice of  
4 Determination, the Department has the burden to explain  
5 the basis for that deficiency. When the Department's  
6 explanation appears reasonable, the burden of proof shifts  
7 to the taxpayer to explain why the Department's asserted  
8 deficiency is not right. The audit calculation of  
9 unreported taxable sales, based on the best available  
10 information, was fair and reasonable.

11 Appellant disagrees with the Department's use of  
12 an indirect audit method to project sales for the audit  
13 period and continues to claim that its sales worksheets  
14 are complete and reliable. Appellant contends there were  
15 no differences noted between his federal income tax  
16 returns and sales worksheets and believe it's a clear  
17 indication that it had reported all the sales it made  
18 during the audit period to the Department.

19 According to Appellant's petition, opening brief,  
20 and reply brief, Appellant also contends the audited  
21 markup includes type of merchandise, which are not part of  
22 its normal course of business and should be excluded since  
23 it was those items. Finally, Appellant asserts its markup  
24 is roughly around 20 percent because it charges a higher  
25 rate for labor. As support, Appellant provided copies of



1 sales invoices, purchase invoices, and sales tax  
2 worksheets for fourth quarter 2017 and January 2018. The  
3 Department reviewed and analyzed this information but  
4 ultimately determined that those documents did not support  
5 reduction to the tax liability.

6 As previously mentioned, Appellant did not  
7 provide complete source documents for sales and purchases  
8 for the audit period and, therefore, the Department used  
9 an indirect audit method to determine unreported taxable  
10 sales for the audit period. Specifically, the Department  
11 was unable to validate Appellant's sales worksheets  
12 because Appellant did not provide its actual POS download  
13 with all folders for the audit period. However, the  
14 Department traced January 2018, sales invoices to the  
15 January 2018 sales worksheets and found 10 sales invoices  
16 that were not recorded on Appellant's sales worksheets.  
17 Those omitted sales invoices reflected around \$3,000 in  
18 total sales and around \$1,600 in taxable sales. And that  
19 will be on your Exhibit G, pages 215 and 218.

20 The Department also spot tested sales invoices  
21 for fourth quarter 2017 in sequential order. And that  
22 will be on your Exhibit H, pages 292 through 300. The  
23 Department found 298 missing sales invoices in the 11,000  
24 invoice number series. Another 43 sales invoices were  
25 issued out of sequential order without explanation. And

1 that will be on your Exhibit H, pages 292 through 300.  
2 Thus, based on these analyses, the Department concludes  
3 they're a strong indication that not all sales  
4 transactions were included and recorded in the sales  
5 worksheets Appellant used to preparer its sale and use tax  
6 returns.

7           Regarding Appellant's assertion that its markup  
8 is around 20 percent, since it charged a higher rate for  
9 labor, Appellant failed to provide any document to support  
10 this contention. And that will be on your Exhibit D,  
11 page 51. The Department examined Appellant's  
12 post-conference record for fourth quarter 2017 and noted  
13 that the audited markup was around 59 percent. And that  
14 will be on your Exhibit G, pages 222 through 227.  
15 Although, the post-conference markup of 59 percent using 1  
16 quarter is higher than audited markup of 51 percent using  
17 1 month, the Department does not recommend increasing the  
18 audited markup to reflect the 59 percent. And that will  
19 be on your Exhibit G, pages 222 and 227.

20           And the Department used the audited markup of  
21 59 percent reflected in Appellant's fourth quarter 2017  
22 sales and purchase invoices, then the unreported taxable  
23 sales would have increased by around \$81,000 from \$159,000  
24 to \$240,000 for the audit period. And that will be on  
25 your Exhibit A, page 54 and 55.

1           Appellant's other argument regarding audit hours  
2 spent during the audit and appeals process only provide  
3 Appellant's perception on quantity of physical work  
4 product. These arguments do not establish that the  
5 Department's ultimate determination was unreasonable or  
6 lack any rational basis. For example, Appellant does not  
7 dispute the sufficiency of the evidence the Department  
8 used to determine Appellant's total taxable sales nor the  
9 actual calculation of the audit liability. The audit  
10 calculation of unreported taxable sales based on the cost  
11 plus markup approach was reasonable and was in Appellant's  
12 favor since it was the lowest of the differences  
13 determined.

14           Finally, Appellant is requesting relief of  
15 interest for the audit period due to unreasonable delays  
16 in processing of this audit. The Department performed an  
17 analysis of the case and the specific time spent during  
18 the audit appeals and settlement process. And that will  
19 be on your Exhibit I. Pursuant to the review, the  
20 Department recommends relief of interest for the month  
21 October 2019, May 2020, July 2020, August 2020, and  
22 September 2020 for a total of 5 months. In addition to  
23 these months, the Department also granted an automatic  
24 interest relief for the COVID-19 impacted months,  
25 March 2020, April 2020, and June 2020.

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

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

16           JUDGE LAMBERT: Thank you, Mr. Samarawickrema.  
17 I'll turn to the Panel now to ask if they have  
18 any questions.

19           Judge Geary, did you have any questions?

20           JUDGE GEARY: I do not. Thank you.

21           JUDGE LAMBERT: Thanks.

22           And, Judge Ridenour, did you have any questions?

23           JUDGE RIDENOUR: No questions. Thank you.

24           JUDGE LAMBERT: Thanks.

25           Okay. I had a question or two for CDTF. Just

1 can you clarify the interest? You said that CDTFA decided  
2 to relieve interest. Is that previously decided, or is  
3 that based on the current interest relief request?

4 MR. SAMARAWICKREMA: This is Nalan  
5 Samarawickrema. The COVID impacted periods were  
6 automatically relieved, but other months were considered  
7 after the Appellant file its request for relief of  
8 interest.

9 JUDGE LAMBERT: Okay. Maybe after the hearing  
10 would it possible for you to send in, like, a statement  
11 with the interest relief. Actually, you can just repeat  
12 it here again, and I could make --

13 MR. SAMARAWICKREMA: Oh, yeah. So October 2019,  
14 May 2020, July 2020, August 2020, and September 2020,  
15 March 2020, April 2020, and June 2020, total 8 months,  
16 including the COVID effected -- automatic interest relief  
17 for COVID-19 impacted months.

18 MR. PARKER: This is Jason Parker. I just wanted  
19 to add the COVID impacted periods have already been  
20 relieved for all taxpayers. So that's already part of  
21 the -- there is no interest for those periods on the  
22 account. All of this information is in Exhibit I as well.  
23 And so for the periods where it shows no activity, those  
24 are the months that we are granting.

25 JUDGE LAMBERT: Okay. And maybe it might be

1 helpful to get the dollar amounts of the interest that's  
2 being relieved. Perhaps I could -- if there's interest  
3 being relieved, I could ask for just a statement after the  
4 hearing that could give dollar amounts and then the  
5 periods just so we're clear on the relief granted.

6 MR. PARKER: This is Jason Parker. We can do  
7 that. The one thing I will say, if there are adjustments  
8 to the tax liability, obviously, the interest relief would  
9 change as well. So, typically, we only indicate the  
10 months of interest relief and not the dollar amount.

11 JUDGE LAMBERT: Okay. That makes sense. So the  
12 one -- the interest that we're looking at that's related  
13 to this current request is March 2020, April 2020, and  
14 June 2020?

15 MR. SAMARAWICKREMA: And we also allowed  
16 October 2019 and July 2020 through September 2020.

17 JUDGE LAMBERT: Okay. Maybe I'll still ask for a  
18 statement just to confirm to make it clear the interest  
19 that's being relieved according to the relief request  
20 versus interest that never accrued because of COVID, I  
21 think you said, just to get it in writing. That might be  
22 helpful for us.

23 MR. SAMARAWICKREMA: Judge, if we send the  
24 revised exhibit index and the Exhibit I, it specifically  
25 included the months that we are going to relieve in our

1 email. But the only thing that we added is the COVID  
2 affected period.

3 JUDGE LAMBERT: Okay.

4 MR. SAMARAWICKREMA: In the email it specifically  
5 says we are allowing 5 months.

6 JUDGE LAMBERT: Okay.

7 MR. SAMARAWICKREMA: And it include COVID  
8 affected periods in addition to those 5 months.

9 JUDGE LAMBERT: Okay. Okay. Thanks.

10 I had a question in term of the statement that  
11 Mr. Hararah brought up in terms of -- it was made by an  
12 auditor, I think, that the taxpayer provided requested  
13 books and records and no penalty was -- a certain penalty  
14 was imposed. But I think the decision -- CDTFA's decision  
15 said that some documents were not provided, like invoices  
16 from Worldpac. Maybe if you wanted to address that  
17 statement in the audit file?

18 MR. SAMARAWICKREMA: Regarding the purchases from  
19 that vendor, that statement came during the appeal  
20 process. The taxpayer did not provide -- taxpayer  
21 provided the documents that was available to them at the  
22 time, but the only thing it was not complete and reliable.  
23 And when the Department reviewed Appellant's sales  
24 worksheet, you know, we see so many invoices were missing,  
25 average like 110 invoices per month. And even the

1 taxpayer included that purchase information, it doesn't  
2 help to reduce the tax liability because the markup was  
3 high.

4 During the appeal conference, you know, they  
5 provided all purchase information, fourth quarter 2019,  
6 yeah, but that markup was 59 percent. And but we use  
7 51 percent. So even if he had that January missing  
8 purchase invoice, it doesn't reduce the liability.

9 MR. HARARAH: Judge Lambert, can I say something.  
10 Can I hop in here? Is that permissible?

11 JUDGE LAMBERT: Yeah. You can take a moment to  
12 respond. Sure.

13 MR. HARARAH: Thank you. If you look at the  
14 Respondent's Exhibit I directly as well, it's been argued  
15 today that we didn't provide the actual source documents  
16 itself. It's not that we did not provide the actual  
17 source documents. When the auditor came to -- on-site at  
18 the business location, she did not want to look at the  
19 actual POS system. That's the issue that we're having.  
20 And so she wanted somehow to use an indirect method,  
21 again, to bury hours.

22 If you look at the Respondent's Exhibit I, on  
23 June 4th, 2019, she clearly requested only the income tax  
24 returns, which were provided. She reconciled the bank  
25 statements. And in her notes, she indicates that there



1 aren't any issues with the bank statements, the purchase  
2 ledger, which was provided, sales invoices, which were  
3 provided, and the purchase invoices -- excuse me --  
4 purchase invoices for a fourth quarter 2017 test period.  
5 She did not actually request any source POS system.  
6 Again, we have a POS system. It's not a legitimate POS  
7 system as a restaurant POS system, but that's where the  
8 taxpayer keeps track of all the sales and everything like  
9 that.

10 So we do have a credibility issue here.  
11 Automatically on-site when the auditor came to the  
12 business location, in her head she wanted to use a markup  
13 method, and I've seen this many times before. The only  
14 reason why they want to use a markup method is  
15 unfortunately to bury hours. This is the credibility  
16 issue that I'm having here. Even let's assume -- let's  
17 assume even that CDTFA's income tax calculation is  
18 correct, it's not, but let's assume it is. How can the  
19 CDTFA ask for additional taxes when they themselves are  
20 not genuinely putting in the best public interest this  
21 situation?

22 To me, just I can't. I -- I don't understand.  
23 We can't comprehend that. And, again, going to the  
24 Respondent's issue claiming that source documents were not  
25 provided. And if you look at my Exhibit 2 again -- and I

1       thank you again for bringing this up, Judge Lambert -- she  
2       clearly indicates that all books and records were  
3       provided. She looked at everything that she wanted to  
4       look at, but there are, again, some documents that she  
5       refused to look at because it would have technically made  
6       our -- everybody's life easier on this case.

7               And, again, we provided all of the purchases  
8       invoices during the appeals process, 4 quarters worth --  
9       excuse me -- 4 month's worth of it. And, again, booking  
10      33 hours verse 1 month in her sample size here, fourth  
11      quarter 2017, 75 hours, again, does not make any sense.  
12      We have definitely a credibility issue here. And to be  
13      honest, it's almost as if it's taxpayer theft as well  
14      here.

15             So I hope that with -- while you're reviewing  
16      this whole process, we -- I just hope that you and the  
17      rest of the Judges keep that in mind as well.

18             JUDGE LAMBERT: Okay. Thank you. On the  
19      interest issue, yeah, I don't know if we had the email  
20      uploaded. I'll try to find it, but I'll just look at the  
21      Exhibit I that you're referring to and try, you know, to  
22      try to figure it out. I just was making sure. I just  
23      want to make sure that we get it correct because it seems  
24      like there's two types of interest being relieved. And  
25      that should be fine.

1           And I believe, Judge Ridenour, did you have a  
2 question that you wanted to ask?

3           JUDGE RIDENOUR: Yes. Thank you.

4           Taxpayer, I have a question. You talk about the  
5 POS items, but I don't recall them ever being provided to  
6 OTA to show error in the CDTFA's markup. So I'm kind of,  
7 like, waiting for something to show error, but it does not  
8 look like you provided anything to OTA. I just want to  
9 clarify that for the record.

10           MR. HARARAH: Well, the reason -- we can provide  
11 it. But the reason why it wasn't provided because, again,  
12 to my understanding, this whole credibility just went out  
13 the window. To -- to -- from my standpoint, if there's a  
14 credibility with the agents, the auditors who the CDTFA  
15 employs, to look in the best interest of public tax  
16 administration, and when we have an issue with their  
17 practices themselves, then this whole case should be just  
18 technically thrown out, from my opinion. But if it's  
19 something that the OTA and, Judge, you request, we can  
20 provide that.

21           JUDGE RIDENOUR: Thank you.

22           MR. HARARAH: No problem. Thank you.

23           JUDGE LAMBERT: Okay. Thank you.

24           And, Mr. Hararah, if you want to take 5 minutes  
25 to make closing remarks you could do so at this time.

1 Thanks.

2 MR. HARARAH: Thank you. Thank you  
3 Judge Lambert.

4

5 CLOSING STATEMENT

6 MR HARARAH: In conclusion, based on the evidence  
7 that we've provided, we believe that the taxpayer's  
8 taxable sales as originally reported clearly reflect all  
9 sales tax collected and remitted to the CDTFA. Should the  
10 CDTFA think otherwise, it is not in the best interest of  
11 the CDTFA to do so as proven here when, in fact, their own  
12 auditor and even their supervisor -- because we went to  
13 through the supervisor stage to bring this to their  
14 attention -- putting hours on a case that were no -- that  
15 were -- have not actually performed, is an issue, a  
16 credibility issue.

17 And we ask that this audit entirely just -- and  
18 all the taxes, be abated, including any interest because  
19 as discussed before, we have an issue with the CDTFA's  
20 credibility in the situation. They -- if severe -- we're  
21 not -- we're not looking at a couple of hours, 5 maybe 10  
22 hours. We're looking at close to 45 to 50 hours of excess  
23 time that have been billed on a case without any work that  
24 shows it was performed.

25 So we just hope, Judges, that you see what we're

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seeing here and provide a resolution or solution to this case beneficial for the taxpayer.

Thank you.

JUDGE LAMBERT: Thank you very much, Mr. Hararah.

So if there's nothing further, I'm going to conclude this hearing.

And I want to thank both parties for appearing today.

We will issue a written opinion within 100 days.

And thank you. The record is now closed.

(Proceedings adjourned at 2:48 p.m.)

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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 19th day of March, 2024.

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