

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
H 3 LIQUORS, INC.,) OTA NO. 220911335
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, May 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 9:38 a.m. and concluding at 10:01 a.m. on
Thursday, May 23, 2024, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ SUZANNE BROWN
ALJ JOSHUA ALDRICH

For the Appellant: K. HONG
SUE AMICONE

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

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-F were received into evidence at page 10.)

(Department's Exhibits A-F were removed from evidence at page 13.)

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California; Thursday, May 23, 2024

9:38 a.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the Appeal H 3 Liquors, Case Number 220911335. The date is May 23rd, 2024, and the time is 9:38 a.m. My name is Josh Lambert and I'm the lead Administrative Law Judge for this hearing. And my Co-Panelists today are Judge Aldrich and Judge Brown.

CDTFA, could you please introduce yourselves for the record.

MR. SUAZO: This is Randy Suazo, Hearing Representative, CDTFA.

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

MR. BROOKS: Good morning. This is Christopher Brooks, attorney for CDTFA.

JUDGE LAMBERT: Thank you for attending this hearing.

And for Appellant H 3 Liquors, could you please introduce yourselves for the record.

MR. HONG: Kiet Hong.

MS. AMICONE: Sue Amicone.

JUDGE LAMBERT: Thank you for attending the

1 hearing as well.

2 So as agreed to by the parties, the issue is
3 whether Appellant has demonstrated that a reduction to the
4 amount of unreported taxable sales is warranted.

5 And in terms of exhibits, CDTFA provided Exhibits
6 A through F, and Appellant didn't provide any exhibits.

7 Ms. Amicone, did you have any objections to
8 CDTFA's exhibits?

9 MS. AMICONE: No. No objection.

10 JUDGE LAMBERT: Okay. Thanks.

11 MS. AMICONE: We never received -- we were
12 supposed to receive all kinds of paperwork when we had
13 that last meeting, exhibits and so forth, and we didn't
14 get anything.

15 JUDGE LAMBERT: Oh, really. Well --

16 MS. AMICONE: Well --

17 JUDGE LAMBERT: We did send the exhibits --

18 MS. AMICONE: We were supposed to get exhibits,
19 and it was supposed to be sent to us. So I mean we don't
20 have it. So not that we can't continue on, but I just
21 wanted to let you know that we don't have any of these
22 exhibits.

23 JUDGE LAMBERT: Okay. Does CDTFA --

24 MS. AMICONE: Mr. Hong didn't get a copy, and I
25 didn't either.

1 JUDGE LAMBERT: Okay. We had sent to exhibits
2 to --

3 CDTFA, did you receive the minutes and orders
4 from us?

5 MR. PARKER: This is Jason Parker. We --

6 MS. AMICONE: Yeah, usually by mail. We receive
7 everything by mail.

8 JUDGE LAMBERT: Ms. Amicone, just -- if everyone
9 could just speak one at a time so Ms. Alonzo can
10 transcribe.

11 MS. AMICONE: Sure.

12 JUDGE LAMBERT: Thanks.

13 Mr. Parker, what were you saying?

14 MR. PARKER: I'm saying we did receive the
15 minutes and orders and the -- all of the exhibits were in
16 an attached zip file as part of the email.

17 JUDGE LAMBERT: Okay. We had sent it to both
18 parties, so I'm not sure what happened.

19 But, Ms. Amicone, did you want to proceed though?

20 MS. AMICONE: Well, I don't see any reason why we
21 can't come to some kind of conclusion here, you know.
22 Because --

23 JUDGE LAMBERT: Okay.

24 MS. AMICONE: -- we kind of exhausted everything
25 at this point, and I don't see any reason to postpone it.

1 Do you?

2 JUDGE LAMBERT: Well, it's up to you. So we can
3 continue. That sounds fine, if that's what you want.

4 MS. AMICONE: Yeah. I think it would be a good
5 idea.

6 JUDGE LAMBERT: Okay. So Ms. Amicone, at this
7 time you can explain your position, and we'd agreed to
8 20 minutes. So if you wanted to present your case at this
9 time, you can proceed.

10

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PRESENTATION

12 MS. AMICONE: Well, we have a -- we've already
13 presented our case in the prior meeting. We have nothing
14 new to add. We are requesting that the markup ratio that
15 we've done is correct, and we should not have to be paying
16 an additional assessment. The issue, of course, is
17 reduction of sales tax, which you've imposed on us -- on
18 the store and Mr. Hong. So --

19 JUDGE LAMBERT: Okay. And also, Ms. Amicone,
20 just to clarify, the prior meeting was a conference. So
21 that wasn't something that was on the record that would
22 qualify.

23 MS. AMICONE: Right.

24 JUDGE LAMBERT: So if you could take the
25 opportunity to re-explain your position or any arguments

1 that you have --

2 MS. AMICONE: Well, our position --

3 JUDGE LAMBERT: -- at this time.

4 MS. AMICONE: -- was very simple. We considered
5 that we -- we --- that the -- that H 3 Liquors has
6 sufficiently in compliance and has marked up and paid the
7 proper sales tax. And we don't think that this -- and we
8 are requesting a reduction of your assessment.

9 Now, we were also supposed to get some exhibits
10 from you, but we didn't get any of that. And I don't know
11 where it went. Mr. Hong doesn't have it, and I don't have
12 it, but we were supposed to get these exhibits. So we
13 don't have any of that, but I don't see -- you know, the
14 issue is very plain. You know, you've -- you've assessed
15 a certain amount, and we feel that that's just excessive.

16 And we've proven that Mr. Hong did indeed assess
17 the proper sales tax according to the tapes and all of the
18 books that he provided and yet, you know, we're still
19 sitting here with this large debt. So we would like to
20 request a reduction.

21 JUDGE LAMBERT: Okay. Thank you, Ms. Amicone.

22 Well, if I didn't say it before, the exhibits are
23 now in the record for us to use to decide the case.

24 ///

25 ///

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

3 JUDGE LAMBERT: And at this time I'll turn to the
4 panel and ask if they have any questions.

5 Judge Aldrich, did you have any questions?

6 JUDGE ALDRICH: Yes, I had a question for the
7 Appellant.

8 Could you walk me through how you calculated the
9 markup that you're proposing?

10 MS. AMICONE: Well, that's for you.

11 MR. HONG: I would buy the product and then
12 markup it.

13 MS. AMICONE: Accordingly.

14 MR. HONG: Accordingly. You know, sometimes it
15 would be 10 percent above what I paid for it or 20
16 percent. It just depends, you know. It wasn't like a
17 certain, like, base percentage I would mark everything up
18 by. It would just be, like, whatever I would get it for
19 if I made enough. So that's why I don't get how this
20 market equation comes into it. Like, I'm supposed to mark
21 everything up according to what they want me to then I
22 would go out of business.

23 MS. AMICONE: That's true.

24 MR. HONG: So sometimes I would make money on
25 some products. Some products I wouldn't even make money.

1 Sometimes I'd lose money on it to bring customers in. So
2 there's -- there's -- it just depends on how much the
3 product would cost --

4 MS. AMICONE: -- provided -- provide --

5 MR. HONG: So it's not just like a simple --

6 MS. AMICONE: -- you provided --

7 MR. HONG: -- equation that I would use to mark
8 anything up.

9 MS. AMICONE: You provided all the sales tax --

10 JUDGE ALDRICH: Excuse me. I'm going to
11 interject right here. You need to speak one person at a
12 time. I think our stenographer is a having --

13 MS. AMICONE: Oh, I'm sorry. I'm sorry. I'll
14 shut up.

15 JUDGE ALDRICH: You'll be given the opportunity
16 to speak, but really try to keep it one person at a time,
17 if you could.

18 MS. AMICONE: Thank you.

19 JUDGE ALDRICH: Okay. So did you have a typical
20 loss leader? Like you said, like, sometimes you lost
21 money on an item, you know, to get people in the store.
22 What kind of product was that?

23 MR. HONG: It would -- it would just depend on
24 what -- sometimes it would be eggs. Sometimes it would be
25 milk or soda products. It just depends on what deals the

1 manufacturer or the supplier would run at the time. Or --
2 or a lot of stuff it would be like if -- if the -- if
3 there's expiration dates, I can't really mark it up so
4 much because I have to get it out of the store. So --

5 MS. AMICONE: But you don't have --

6 MR. HONG: No, I don't have like one specific
7 markup equation or anything like that. It's a -- it's a;
8 little family run store. So it's like, you know, like
9 products change all the time and stuff like that. So --
10 so it's kind of hard to say, you know. Just go by ear
11 most of the time.

12 JUDGE ALDRICH: Okay. So there wasn't a
13 projected range you were actively --

14 MR. HONG: No.

15 JUDGE ALDRICH: -- shooting for? Okay. I
16 think --

17 MR. HONG: No. No. There weren't none.

18 JUDGE ALDRICH: Thank you. I'm going to refer it
19 back to Judge Lambert.

20 JUDGE LAMBERT: This is Judge Lambert. Thanks.

21 And I think with the exhibits, we could just send
22 them out again after the hearing and keep the record open
23 and not enter them yet just to give Appellant the
24 opportunity to make sure they have a chance to review it
25 and if they have anything to add after the hearing.

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Ms. Amicone, does that sound okay?

MS. AMICONE: That sounds very good. Thank you for your consideration.

JUDGE LAMBERT: Okay. Great.

(Department's Exhibits A-F were removed from evidence by the Administrative Law Judge.)

JUDGE LAMBERT: Now, Judge Brown, did you have any questions?

JUDGE BROWN: I may have a question for Appellant. I don't know whether Appellant has ever looked at the audit work papers at some point that CDTFA produced, like, in the previous appeals conference maybe or at the meeting with the auditor. Did you receive the audit work papers?

MR. HONG: I believe I did, but it's been so long ago.

MS. AMICONE: No meeting with the auditor. He'd never had a meeting. Yeah.

MR. HONG: I've never had a meeting like at -- at, like, what meeting are you talking about? I had one -- I know -- I know he made a visit to the shop one time, and I was not present.

MS. AMICONE: -- talking about.

MR. HONG: Other than that, he was only in contact with the prior CPA I had that split on me. So

1 I -- I wasn't in contact with him until, like, the very
2 last, like, I guess, like, when we had an actual hearing
3 or something like that. And that's when I met up with
4 all -- all of them.

5 JUDGE BROWN: All right. Thank you. I'm asking
6 just as background because I had a question for you about
7 something that the auditor found, but I understand you
8 might not be able to answer it if you're not familiar
9 with -- with what the auditor did.

10 MR. HONG: Well, the situation -- well, the
11 situation was I was told by my CPA that he was going to
12 handle everything, don't worry about anything. So come to
13 find out he didn't do anything, and at the end he just
14 wanted to settle, and he just told me to go ahead and pay
15 it, and he couldn't, you know. So I was kind of in the
16 blue about everything -- in the dark about everything. So
17 that's -- that's where I'm coming from.

18 JUDGE BROWN: All right. I think I don't have
19 any further questions then. Thank you.

20 MS. AMICONE: You want to make a statement.

21 JUDGE LAMBERT: Okay.

22 MS. AMICONE: How did you count it.

23 JUDGE LAMBERT: Ms. Amicone, did you want to have
24 anything to add?

25 MS. AMICONE: No. I think that Mr. Hong can --

1 can probably give you all the procedures that he used in
2 calculation of the sales tax on the returns that were
3 submitted to you. We -- we still feel that it's been done
4 properly. He provided all of his records, and he had
5 extensive records. He had all the tapes. And the sales
6 tax, you know, that we remitted -- that was remitted to
7 you, it was collected by H 3 Liquors. And we feel further
8 assessments is not in order, and we would like to reduce
9 that. Now, I'm not saying that we should not come to some
10 kind of an agreement here but, you know, I'm not even --
11 how much are -- are we going at right now as far as owing
12 you?

13 JUDGE LAMBERT: Well, CDTFA would have to answer
14 that question in terms of what -- how much they owe -- how
15 much you may owe.

16 Mr. Suazo, did you have --

17 MS. AMICONE: We never found that out either.

18 JUDGE LAMBERT: Oh, okay. Did --

19 MS. AMICONE: I mean, I'm just telling you we're
20 kind of in the dark, you know. And -- so we don't even
21 know how much we're looking at right now.

22 JUDGE LAMBERT: Okay. Well, just as a reminder
23 the Office of Tax Appeals and CDTFA are different
24 agencies. So --

25 MS. AMICONE: Sure, I understand.

1 2016; schedule of weekly taxable self consumption items;
2 purchase invoices for June 2016; and vendor purchase
3 reports for the audit period; comparison of 2015, 2016,
4 and 2017 federal income tax return sales; sales and use
5 tax returns. Reported sales disclosed no differences.

6 An overall markup of 32.19 percent was noted;
7 Exhibit E, page 282. Appellant contends they reported
8 their taxable sales properly. Taxable purchases for
9 profit and loss statement for 2016 was almost equal to
10 taxable sales with a .0023 percent markup percentage;
11 Exhibit E, page 281. Nontaxable purchases of \$65,000,
12 Exhibit E, page 281, revealed a markup of over 245 percent
13 when compared to reported nontaxable sales of 270 --

14 MS. AMICONE: [INAUDIBLE]

15 JUDGE LAMBERT: Ms. Amicone, can you please let
16 CDTFA finish their presentation.

17 MS. AMICONE: Okay.

18 JUDGE LAMBERT: Okay. Thanks.

19 MR. SUAZO: Exhibit E, page 44. Based on the
20 markup analysis, reported taxable sales were impeached. A
21 purchase segregation was conducted for the month of June
22 2016; Exhibit E, pages 54 to 57. The auditor noted
23 purchases provided were incomplete and, therefore,
24 contacted known vendors to obtain Appellant's purchases
25 for the audit period. Based on purchase information

1 supplied by the vendors, Exhibit E, pages 59 through 277,
2 taxable purchases were obtained for the audit period on an
3 actual basis; Exhibit E, page 58.

4 Shelf tests were conducted to establish markups
5 on beer, wine, alcohol, and tobacco products. Carbonated
6 drinks and sundry items were estimated; Exhibit E, pages
7 49 through 53. Markups from various categories were
8 applied to the percentage of purchases for the purchase
9 segregation to compute a taxable weighted markup of
10 37.216 percent; Exhibit E, page 48. Vendor survey
11 purchases were reduced by self consumption, Exhibit E,
12 page 278, and pilferage to establish audited cost of goods
13 sold of around \$1.6 million. The taxable markup factor
14 was applied to the cost of goods sold to compute audited
15 taxable sales of around \$2.2 million for the audit period;
16 Exhibit E, page 47.

17 Audited taxable sales were compared to reported
18 taxable sales in differences noted and percentages of
19 errors computed; Exhibit E, page 47. Percentages of error
20 were applied to reported taxable sales to determine
21 unreported taxable sales of around \$850,000; Exhibit E,
22 page 46. Appellant contends amounts on the federal income
23 tax returns and the profit and loss statements are
24 correct. However, on the profit and loss for 2016.
25 Appellant has \$13,000 of cigarette purchases for 2016;

1 Exhibit E, page 281. While their purchases are over
2 \$117,000 of tobacco products just from Sam's Club alone
3 for 2016; Exhibit E, page 273.

4 This clearly shows that the Appellant's profit
5 and loss statement is not accurate, and they grossly
6 understated their taxable sales. The Appellant has not
7 provided documentation to support their contentions.
8 Therefore, the Department request that the appeal be
9 denied.

10 This concludes our presentation. I'm available
11 to answer any questions you may have.

12 MR. PARKER: Judge Lambert, before we go on, this
13 is Jason Parker. I wanted to just let the Appellant know
14 the audited tax that we assessed on the Notice of
15 Determination was \$84,708. The current balance of tax is
16 \$72,454. And the interest on that is currently at
17 \$39,157.47. So the balance is a little over \$111,000 on
18 the audit.

19 JUDGE LAMBERT: Thank you, Mr. Parker, and thank
20 you, Mr. Suazo.

21 And after the hearing, like I said, I'll be
22 sending out the exhibits too, which will have the Notice
23 of Determination in it.

24 So, Ms. Amicone, you could examine that and the
25 other documents also at that time. And we'll give you

1 time to respond if you have any issues or questions -- or
2 not questions -- but comments on it.

3 So, at this time, I'll turn to the panel to ask
4 if they have questions for CDTFA.

5 Judge Aldrich, did you have any questions?

6 JUDGE ALDRICH: No questions. Thank you.

7 JUDGE LAMBERT: Thanks.

8 And, Judge Brown, did you have any questions?

9 JUDGE BROWN: I don't think I have any questions
10 at this time. Thank you.

11 JUDGE LAMBERT: Okay. Thanks.

12 I have no questions at this time.

13 So, Ms. Amicone, if you want to make closing
14 remarks for five minutes, you could do so at this time.
15 Thanks.

16

17 CLOSING STATEMENT

18 MS. AMICONE: I waive that.

19 I just don't -- I'm just trying to -- I have
20 reviewed the paperwork. I still don't understand how this
21 could be such a large markup because he has complied with
22 all of the sales tax, and he has remitted the proper
23 amounts that he collected. I don't understand how this
24 could suddenly mushroomed to this large amount. And the
25 auditor was of not -- did not do a good audit. He did not

1 comply with our client, and our client didn't have any
2 idea what was even going on.

3 That's all I have to say.

4 JUDGE LAMBERT: Okay. Thank, you Ms. Amicone.

5 So if there's nothing further, I want to thank
6 both parties for appearing today. We're keeping the
7 record open to send exhibits to Appellant and give them an
8 opportunity to respond to the exhibits. And after that,
9 we'll close the record and make a decision on the matter
10 and issue an opinion based on the evidence in the record
11 as to whether there is any adjustment should be made.

12 So at this time I'll conclude the hearing, and I
13 want to thank everyone for attending. Thanks.

14 (Proceedings adjourned at 10:01 a.m.)

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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 20th day of June, 2024.

ERNALYN M. ALONZO
HEARING REPORTER