

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
Y and G EMPIRE, INC.,) OTA NO. 230513210
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 18, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:35 a.m. and concluding at 11:50 a.m.
on Wednesday, December 18, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ MICHAEL F. GEARY
ALJ KIM WILSON

For the Appellant: PAUL AZIR

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

NALAN SAMARAWICKREMA
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-G were received into evidence at page 7.)

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California; Wednesday, December 18, 2024

10:35 a.m.

JUDGE WONG: Let's go on the record.

This is the Appeal of Y and G Empire Incorporated, before the Office of Tax Appeals, OTA Case No. 230814072 [sic]. Is that right? In any case, we'll correct that if it's incorrect.

Today is Wednesday, December 18th, 2024, and the time is 10:35 a.m., and we're holding this hearing online via Zoom.

I'm lead Administrative Law Judge Andrew Wong, and with me today are Judge Michael F. Geary and Hearing Officer Kim Wilson.

Individuals representing the Appellant, the taxpayer, please introduce yourself.

I believe you're muted.

I'm sorry. We cannot hear you.

MR. AZIR: Can you hear me now?

JUDGE WONG: Yes. There we go. Thank you.

MR. AZIR: Good morning, Your Honor. My name is Paul Azir for Y and G Empire, Inc.

JUDGE WONG: Thank you.

And individuals representing the Respondent, tax agency, the California Department of Tax and Fee

1 Administration, CDTFA, could you please introduce
2 yourselves.

3 MR. SAMARAWICKREMA: I'm Nalan Samarawickrema,
4 Hearing Representative for the CDTFA.

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

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

9 JUDGE WONG: Good morning. Thank you.

10 We are considering two issues today. Issue No. 1
11 is whether the amount of unreported taxable sales should
12 be further reduced; and Issue No. 2 is whether Appellant
13 was negligent.

14 Mr. Azir, is that an accurate statement of the
15 issues?

16 MR. AZIR: Yes, Your Honor.

17 JUDGE WONG: Thank you.

18 CDTFA?

19 MR. SAMARAWICKREMA: This is Nalan
20 Samarawickrema. Yes, Judge.

21 JUDGE WONG: Thank you.

22 Appellant, you have -- or -- sorry. Mr. Azir,
23 you did not submit or identify any proposed exhibits. So
24 you have no exhibits today; is that correct?

25 MR. AZIR: That's correct, Your Honor.

1 JUDGE WONG: Okay. And CDTFA has identified and
2 submitted proposed Exhibits A through G as evidence.

3 CDTFA, did you have any other documents to
4 submit?

5 MR. SAMARAWICKREMA: This is Nalan
6 Samarawickrema. No, Judge.

7 JUDGE WONG: Okay. Thank you.

8 Mr. Azir, did you have any objections to CDTFA's
9 proposed Exhibits A through G?

10 MR. AZIR: I don't have any objection, but we I
11 did -- we disagree with them peacefully.

12 JUDGE WONG: Got it. You can address that in
13 your arguments.

14 But hearing no objection to the evidence, the
15 exhibits, CDTFA's Exhibits A through G will be admitted
16 into the record.

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

19 JUDGE WONG: All right. Mr. Azir, you have no
20 witnesses today; is that correct?

21 MR. AZIR: That's correct.

22 JUDGE WONG: And CDTFA has no witnesses; right?

23 MR. SAMARAWICKREMA: This is Nalan
24 Samarawickrema. Yes, Judge.

25 JUDGE WONG: Okay. This hearing is going to take

1 approximately 75 minutes.

2 Mr. Azir, you've asked for 30 minutes. Do you
3 know how you want to divide that between your main
4 presentation and your closing? Or did you just want to
5 play it by ear?

6 MR. AZIR: Probably main presentation will
7 take -- probably I will take less than 30 minutes, but I
8 don't like to waste the Court's time. So main
9 presentation probably will take 15, 20 minutes and then
10 the closing after CDTFA's statement.

11 JUDGE WONG: Okay. I'll just divide it 20 and
12 10, and we'll just go from there.

13 And, CDTFA, you've asked for 30 minutes; is that
14 correct?

15 MR. SAMARAWICKREMA: This is Nalan
16 Samarawickrema. Yes, Judge.

17 JUDGE WONG: Okay. Are there any questions from
18 either party?

19 Mr. Azir, any final questions before you proceed?

20 MR. AZIR: No further questions.

21 JUDGE WONG: Okay. CDTFA, any final questions?

22 MR. SAMARAWICKREMA: No, Judge.

23 JUDGE WONG: All right. Mr. Azir, please proceed
24 with your presentation. You have, say, 20 minutes.

25 ///

1 with the method, ignore the lottery sales and the lottery
2 revenue and consider this one as taxable, and it comes
3 with the liability higher.

4 And if California Department of Tax and Fee
5 Administration request from California Lottery and the
6 same day have sales under California Lottery. And that
7 portion of the lottery and the food cause the difference
8 in the Form 1099, and this one supposed to be subtract and
9 nontaxable, so allowed the taxpayer reduce the sales tax
10 liability for it. And plus it's illegal to ask from
11 customers to collect sales tax on lottery because that's
12 not accurate and not legal. Same thing for some food, and
13 they did not hold back any sales tax on food or either
14 lottery. And if they subtract it and include the number
15 from 1099, it showed equal what's the taxpayer report.

16 And Issue No. 2 is the penalties they enforce it,
17 California Department of Tax and Fee Administration
18 ignoring the portion of lottery and food. And this one
19 should be no penalties for that two reasons. And
20 peacefully we ask the appeal to make it zero liability for
21 sales tax and return the money because California
22 Department of Tax and Fee take the money through the
23 escrow, and it's probably the wholesale the price for the
24 business because the business has been sold.

25 And they are really -- no sales tax was collected

1 on the lottery and not supposed to, and no sales tax was
2 reported, which is not supposed to, and we don't know why
3 California Department of Tax and Fee ignoring that on all
4 the calculation and all the reports. So we ask the
5 appeal -- Tax Appeal to review and waive the penalties.

6 Thank you.

7 JUDGE WONG: Thank you, Mr. Azir, for your
8 presentation. I'll reserve the balance of your time for
9 your rebuttal and closing. You have still about 25
10 minutes. All right. I will now turn to my Co-Panelists
11 for questions that they might have for you, Mr. Azir,
12 starting with Hearing Officer Wilson.

13 HEARING OFFICER WILSON: I do not have any
14 questions at this time.

15 JUDGE WONG: Okay. Thank you.

16 Judge Geary?

17 JUDGE GEARY: No questions yet.

18 JUDGE WONG: All right. Thank you.

19 I just have one quick question for Mr. Azir.

20 Can you use credit cards to buy lottery tickets?

21 Do you know how they --

22 MR. AZIR: According the taxpayer, the owner,
23 they accept the credit cards to buy lotteries.

24 JUDGE WONG: Okay.

25 MR. AZIR: Because they try to make the sales

1 higher. And, especially, it's very hard to separate
2 lottery to non-lottery. So to answer, yes.

3 JUDGE WONG: Thank you. I don't have any further
4 questions at this time.

5 Okay. We will now turn it over to CDTFA for
6 their presentation. You have 30 minutes. Thank you.

7 MR. SAMARAWICKREMA: Thank you, Judge.

8

9

PRESENTATION

10 MR. SAMARAWICKREMA: Appellant is a California
11 corporation that operated two retail smoke shops in Downey
12 and Bellflower, California. Selling cigarettes, cigars,
13 and other tobacco-related items. Appellant sold the
14 Downey location on March 5th, 2021. The Department
15 audited Appellant's business for the period of
16 July 1st, 2017, through March 31st, 2021. This is
17 Appellant's first audit. During the audit period,
18 Appellant reported around \$1.5 million as total taxable
19 sales, and this is shown on Exhibit A, page 62. During
20 our presentation, we will explain why the Department
21 rejected Appellant's reported taxable sales; why the
22 Department used an indirect audit approach; how the
23 Department determined Appellant's unreported taxable sales
24 for the audit period; and why the Department recommended
25 negligence penalty for this Appellant.

1 During the audit, Appellant explained that their
2 accountant prepared their sales and use tax returns using
3 bank statements. But during the audit, Appellant failed
4 to provide complete bank statements and sales records.
5 Appellant did not provide complete sales documents of
6 original entry, such as sales invoices, credit card sales
7 receipts, detailed sales journals, and sales tax working
8 papers for the audit period. In addition, Appellant
9 failed to provide complete purchase invoices and purchase
10 journals for the audit period.

11 Due to the lack of reliable reports, the
12 Department did not accept Appellant's reported taxable
13 sales. The Department also determined that Appellant's
14 records were such that taxable sales could not be verified
15 by a direct audit approach. Therefore, the Department
16 used an indirect audit approach to determine Appellant's
17 taxable sales. The Department completed four verification
18 methods to understand Appellant's reporting patterns and
19 verified the reasonableness of Appellant's reported
20 taxable sales.

21 First, the Department analyzed reported taxable
22 sales for the audit period, and noted that Appellant on
23 average reported around 55 percent of taxable sales for
24 Downey location and 45 percent for Bellflower location;
25 and these calculations are on Exhibit A, page 64.

1 Appellant did not provide any other documentary evidence
2 to determine different sales percentages for these two
3 locations.

4 Second, although Appellant used bank statements
5 to report their sales for sales and use tax return for the
6 audit period, failed to provide those records. Appellant
7 did not provide any bank statements for Bellflower
8 location for the audit period. And Appellant did not
9 provide bank statements for Downey location for the period
10 July 2017 through December 2018, and January 2020 through
11 March 2021. And this information is shown on Exhibit A,
12 pages 81 through 83. Therefore, the Department did not
13 have the required bank statements to verify Appellant's
14 reported sale for the audit period. However, the
15 Department compared Appellant's reported total sales,
16 including sales tax for Downey location of around \$213,000
17 with a bank deposit of around \$343,000 and calculated an
18 overall difference of around \$130,000 for year 2019. And
19 the information required to calculate these amounts are
20 shown on Exhibit A, pages 64 and 81. Appellant only
21 reported around 62 percent of their Downey location bank
22 deposits as sales for the year 2019.

23 Third, Appellant did not provide their credit
24 card sales for the audit period. Therefore, the
25 Department obtained Appellant's credit card sales for both

1 locations for the audit period from the Department's
2 internal sources. And this information is shown on
3 Exhibit G, page 157. The Department compared the credit
4 card sales information with reported sales for each
5 location, and calculated a credit card to total sales
6 ratio of around 95 percent for Downey location and
7 86 percent for Bellflower location. And these credit card
8 sales percentages are shown on Exhibit G, pages 151 and
9 155.

10 Based on his experience, the Department
11 determined both of these credit card sales percentages are
12 high for these types of businesses. This supports that
13 Appellant did not report some of their cash sales. Based
14 on available credit card sales information, the Department
15 concluded that Appellant did not report the actual sales
16 for reporting purposes. Based on Appellant's provided
17 bank statements, the Department determined audited credit
18 card sales percentage of around 65 percent, which the
19 Department determined to be a more reasonable credit card
20 sales percentage. And this calculation is shown on
21 Exhibit A, page 83.

22 Fourth, the Department reviewed Appellant's
23 federal income tax return for years 2017, 2018, and 2019,
24 and this information is on Exhibit A, page 95. The
25 Department compared the gross sales reflected on the

1 federal income tax return with total sales reported on
2 sales and use tax returns and calculated an overall
3 difference of around \$189,000 for the same period, and
4 these differences are shown on Exhibit A, page 95. The
5 Department noted average recorded net profit of around
6 \$9,000, ranging from as low as \$800 to as high as \$17,000
7 for these years. And these are shown on Exhibit A,
8 page 95.

9 The Department also compared the available credit
10 card sales information with sales reflected on Appellant's
11 federal income tax return for the same period and
12 calculated an average credit card sales percentage of
13 around 80 percent, ranging from as low as 76 percent to as
14 high as 84 percent. And the information required to
15 calculate these percentages are shown on Exhibit A,
16 page 95 and Exhibit G, page 157. Based on Appellant's
17 available bank statements, the Department determined these
18 credit card sales percentages are high for their
19 businesses. These are indications that not all
20 Appellant's sales transactions had been reported in their
21 federal income tax return for these years. Therefore, the
22 Department did not accept the sales reflected on
23 Appellant's federal income tax return as Appellant's
24 actual total sales for these periods.

25 Appellant was unable to explain the reason for

1 their low net profits, federal income tax return sales
2 differences, bank deposit differences, and high credit
3 card sales percentages. Therefore, the Department
4 conducted further investigation by analyzing Appellant's
5 available federal income tax returns, bank statements, and
6 credit card sales information. The Department used a
7 direct audit approach to determine unreported taxable
8 sales of around \$165,000 based on the sales differences
9 between the sales reflected on Appellant's federal income
10 tax returns and sales and use tax return for the period
11 July 2017 through December 2019. And this is shown on
12 Exhibit A, pages 78 through 80.

13 These sales differences were allocated to each
14 location using reported sales percentages, and these are
15 shown on Exhibit A, page 79. As mentioned earlier, the
16 Department did not accept the sales reflected on
17 Appellant's federal income tax returns as actual sales for
18 these periods. Appellant did not provide any sales
19 information for the audit period. However, Appellant
20 provided their bank statements for Downey location for
21 year 2019, and this information is on Exhibit A, page 82.
22 Therefore, the Department used the available bank
23 statements to determine the audited credit card sales
24 percentage of around 65 percent, and this calculation is
25 on Exhibit A, page 83.

1 Appellant did not provide any evidence, such as
2 that they have a different credit card sales percentage
3 for other periods in the audit. Appellant also did not
4 provide any evidence, such as that they have a different
5 credit card sales percentage for Bellflower location, or
6 that their credit card sales percentage is more than this
7 audited credit card sales percentage for Downey and
8 Bellflower locations. As mentioned previously, during the
9 fieldwork, Appellant failed to provide credit card
10 merchant statements or 1099-K forms to calculate their
11 credit card sales for both locations for the audit period.
12 Therefore, the Department obtained Appellant's credit card
13 sales information for both locations for the period
14 July 2017 through December 2020 from the Department's
15 internal sources. And this information is shown on
16 Exhibit A, page 77.

17 At the time of the audit fieldwork, the
18 Department did not have the credit card sales information
19 for first quarter 2021. Therefore, the Department used
20 the 2020 error rate to determine unreported sales for
21 first quarter 2021. Then the Department used the total
22 credit card sales for both locations and the audited
23 credit card sales ratio of around 65 percent and the
24 applicable sales tax rate factors to determine audited
25 taxable sales of around \$1 million for Downey location and

1 around \$730,000 for Bellflower location for the period
2 July 2017 through December 2020. And these calculations
3 are shown on Exhibit A, pages 69 and 74.

4 The Department then compared the audited taxable
5 sales derived from credit card sales approach with the
6 respective reported taxable sales, federal income tax
7 return sales differences, and average error rate of year
8 2020 for each location to calculate unreported taxable
9 sales of around \$244,000 for Downey location and around
10 \$117,000 for Bellflower location for the audit period; and
11 these calculations are shown on Exhibit A, pages 67 and
12 72. In total, the Department determined unreported
13 taxable sales of around \$525,000 for the audit period, and
14 these calculations are shown on Exhibit A, page 65.
15 Unreported taxable sales were compared with the reported
16 taxable sales of around \$1.5 million to calculate the
17 error rate of around 38 percent for the audit period.

18 As mentioned earlier, the Department determined
19 the unreported taxable sales for the period
20 January 1st, 2021, through March 31st, 2021, using the
21 percentage of error from year 2020 because Appellant's
22 credit card sales information for this period was not
23 available when the audit was conducted. The Department
24 now has acquired the credit card sales for this period and
25 analyzed this new information. The Department concluded

1 that including actual credit card sales in its analysis
2 would increase the unreported taxable sales by around
3 \$25,000 from \$525,000 to \$555,000 for the audit period;
4 and these calculations are shown on Exhibit G, page 147.

5 However, the Department is not asserting an
6 increase based on Appellant's actual credit card sales
7 information for this period. Therefore, the Department
8 determined that the estimated amount assessed in the audit
9 for this period is not only reasonable but also benefits
10 the Appellant. When the Department is not satisfied with
11 the accuracy of the sales and use tax return filed, it may
12 rely upon any facts contained in the return or upon any
13 information that comes into the Department's position to
14 determine if any tax liability exist. A taxpayer shall
15 maintain and make available for examination, upon request
16 by the Department, all records necessary to determine the
17 correct tax liability under the sales and use tax laws and
18 all records necessary for the proper completion of the
19 sales and use tax returns.

20 When a taxpayer challenges an audit of
21 determination, the Department has the burden to explain
22 the basis for that deficiency. When the Department's
23 explanation appears reasonable, the burden of proof shifts
24 to the taxpayer to explain why the Department's asserted
25 deficiencies are not valid.

1 The audit calculation of unreported taxable
2 sales, based on the best available information, was fair
3 and reasonable. Appellant disagrees with the audit
4 finding and contends that their credit card sales include
5 lottery and exempt food sales. Appellant has not provided
6 any source documents demonstrating that sales reported on
7 Form 1099-K actually include sales of lottery and exempt
8 food sales. Appellant has not provided any purchase
9 invoices to show purchases of food for sale at these
10 locations. The audit calculation of unreported taxable
11 sales based on the best available information, the
12 Department continues to find it fair and reasonable.

13 Finally, the Department imposed a negligence
14 penalty based upon its determination that Appellant's
15 books and records were incomplete and inaccurate for sales
16 and use tax purposes, and because Appellant failed to
17 accurately report their taxable sales. As mentioned
18 earlier, this is Appellant's first audit. In analyzing
19 the issue of negligence, one of the factors that must be
20 considered is whether the taxpayer has been previously
21 audited. A negligence penalty is not generally imposed
22 when the taxpayer has not been previously audited.
23 Nevertheless, even in connection with the first audit,
24 imposition of a negligence penalty is warranted if there's
25 evidence establishing that any bookkeeping and reporting

1 errors cannot be attributable to the taxpayer's good faith
2 and reasonable belief that its bookkeeping and reporting
3 practices were in substantial compliance with the
4 requirement of the sales and use tax law or regulation.

5 Relevant factors, such as general state of the
6 books and records and the Appellant's business experience
7 must be considered when the evidence clearly shows that
8 the understatement is due to negligence. Then the penalty
9 applies, even when the Appellant has not been previously
10 audited. Specifically, the Department noted that
11 Appellant failed to provide complete records for the audit
12 period, and Appellant failed to provide documents of
13 original entry to support their reported taxable sales.
14 As a result, the Department had to determine Appellant's
15 taxable sales based upon the best available information.

16 In addition, the audit examination disclosed
17 underreported taxable sales of around \$525,000, which when
18 compared with the reported taxable sales of around
19 \$1.5 million for the audit period resulted in an error
20 rate of around 38 percent. This high error rate is
21 additional evidence of negligence. In conclusion, since
22 Appellant did not provide complete source documentation,
23 the Department was unable to verify the accuracy of
24 reported taxable sales using a direct audit method.
25 Therefore, an alternative audit method was used to

1 determine unreported taxable sales.

2 Accordingly, the Department determined the
3 unreported taxable sales, based upon the best available
4 information, the evidence shows that the audit produced
5 fair and reasonable results. Appellant has not provided
6 any reasonable documentation or evidence to support an
7 adjustment to the audit finding. Therefore, the
8 Department request the appeal be denied.

9 This concludes our presentation. We are
10 available to answer any questions the panel may have.

11 Thank you.

12 JUDGE WONG: Thank you, Mr. Samarawickrema.

13 I will now turn to my Co-Panelists to see if they
14 have any questions for CDTFA, beginning with Hearing
15 Officer Wilson.

16 HEARING OFFICER WILSON: I do not have any
17 questions. Thank you.

18 JUDGE WONG: Thank you.

19 Judge Geary, do you have any questions for CDTFA?

20 JUDGE GEARY: I do not. Thank you.

21 JUDGE WONG: Thank you.

22 I also do not have any questions for CDTFA.

23 I just want to clarify this is OTA Case
24 No. 230513210. I believe I gave the wrong case number at
25 the beginning of the stream, so just to correct that.

1 All right. We will now turn it back over to
2 Mr. Azir for your rebuttal and closing remarks. You have
3 25 minutes. Thank you.

4
5 CLOSING STATEMENT

6 MR. AZIR: Hello.

7 California Department of Tax and Fee is saying
8 they don't have record from bank statement and, on the
9 other hand, they said the calculation in the bank
10 statement, it doesn't match the income tax return, which
11 is doesn't make so much sense. Because if they don't have
12 the bank statement, how do they do the calculation on this
13 one? And during the audit, the taxpayer provide some bank
14 statement because the auditor did sampling. As California
15 Tax and Fee's request as sampling, not the whole thing.

16 And the other thing the taxpayer, as California
17 Department of Tax and Fee Administration said, it was in
18 escrow at this time, and they take all the money; all the
19 money, even over the liability of the taxes determined.
20 And they didn't return the request, if even the taxpayer
21 request it. That is second thing.

22 Third thing -- third item in the list here, when
23 they saying they determine on average business in the
24 area, which is each business need to be evaluated
25 individually regarding to the lottery. And California

1 Department of Tax and Fee they have access to all the
2 lottery sales, and they are aware of the sales of the
3 lottery in this location, Downey and the other location
4 too, and Bellflower. And as they know it, and we provide
5 them the license and the sales from California Lottery,
6 they ignore it, and they said it's not in there.

7 And in the 1090 -- in Form 1099-K, they don't
8 provide the itemized like that. They are not -- the law
9 don't allow them to provide the itemize it between the
10 lottery and food and cigarette -- or, I mean, cigarette
11 accessories. But it's very reasonable and -- to see the
12 store selling lottery, accepting credit card, and
13 processing that, and food too, some food like juice, milk,
14 and water. And -- and several times the taxpayer discuss
15 it with the Department to subtract the sales of the
16 lottery when they provide the total sales from California
17 Lottery. It's showing sales for this location, and they
18 simply they can use the same percentage they use it for
19 cash to credit card. Why they didn't use this one, and
20 they are aware of the place who make -- lottery. They
21 using credit card for lottery sales.

22 And then in -- in the percentage, taxpayer
23 disagree with that percentage has been using between
24 credit card and cash. Because each location is totally
25 different, and my understand this one in high-end area,

1 which is the percentage for cash is way less than the
2 credit card. Which is come with -- California Department
3 of Tax and Fee come with unreasonable percentage there.

4 And about the penalty and we requesting to waive
5 the penalty, this place was under sale. And the new buyer
6 collected the information to do the due diligence for the
7 store before he -- he or she buying the store. And that's
8 why causing its -- the availability for documents wasn't
9 available at this time period. But they did provide a lot
10 of documents, and I believe the auditor used the
11 percent -- the sampling, one or two months, to evaluate
12 the audit.

13 And then they come with the percentage, which is
14 peacefully we disagree with the percentage, and we like to
15 subtract all the lottery revenue from taxable amount as
16 the law allows -- as the sales tax law allows it. In the
17 documents exhibit provided by California Department of Tax
18 and Fee, the audit working paper and related documents,
19 page 1 to -- 1 or 3, the calculation is based on the favor
20 of California Department of Tax and Fee Administration,
21 not in -- in reasonable amount. And when they did
22 analysis for Form 1099-K, which California Tax and Fee has
23 all the 1099-K, they ignore the sales tax. I'm sorry.
24 They force the sales tax on lottery intentionally, if even
25 they have all the forms 1099 from lottery too. And it's

1 not using here, which is fairly to be used and subtract
2 from that.

3 So we asking from all the Judges, please allow
4 the deductions for the lottery and food to be allowed.
5 And please waive the penalties according to the business
6 was in the period of due diligence, and they didn't
7 provide all the documents for this reasons because the
8 buyer has -- at this time has the documents.

9 Thank you.

10 JUDGE WONG: Thank you, Mr. Azir. Okay.

11 For the final time, I will turn to my
12 Co-Panelists to see if they have any questions for either
13 party, beginning with Hearing Officer Wilson.

14 HEARING OFFICER WILSON: Yes. So you're saying
15 that the IRS has your records currently and has, since the
16 audit started. Is that what you're saying?

17 MR. AZIR: The -- the buyer has. The new buyer,
18 because the store has sold, has the records.

19 HEARING OFFICER WILSON: And you don't have
20 access to the records anymore?

21 MR. AZIR: Personally, I don't have access to the
22 records. And the owner of them, they give them the sales
23 record, because in the period of due diligence they have
24 it before they buying the store.

25 HEARING OFFICER WILSON: Okay. So the store was

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sold in 2021?

MR. AZIR: In 2021, my understand, yes.

HEARING OFFICER WILSON: Yeah. And so it's 2024, and they still have the records?

MR. AZIR: The buyer keep the record. I believe that's what they said. The new buyer, so they are the seller. The buyer has the record.

HEARING OFFICER WILSON: Okay.

MR. AZIR: I did request it from him several times, but he doesn't respond because the sale is over at this time.

HEARING OFFICER WILSON: Okay. Do you have any documentation from the State Lottery that you could provide to show that you had lottery sales?

MR. AZIR: I believe we can request that from State Lottery.

HEARING OFFICER WILSON: And you hadn't thought to do that prior?

MR. AZIR: I can check my record, but when I -- I can provide it to you.

HEARING OFFICER WILSON: And in addition to -- you mentioned you had food sales; right?

MR. AZIR: We have some food sales, yes, like water, milk --

HEARING OFFICER WILSON: So which -- which

1 vendors did they use to purchase food?

2 MR. AZIR: I can -- I don't know the name. I can
3 check with them, and I will give it back, if you allowed
4 me. I can check the name of the vendors.

5 HEARING OFFICER WILSON: Okay. So all of that
6 information could have gotten from, either your vendors or
7 the lottery directly, and you --

8 MR. AZIR: California Department of Tax and Fee,
9 they have the lottery documents. During the audit, they
10 request it, and they have it.

11 HEARING OFFICER WILSON: Okay. CDTFA is that an
12 accurate statement?

13 MR. SAMARAWICKREMA: This is Nalan
14 Samarawickrema. No, it's not an accurate statement. For
15 the audit, the Exhibit A, page 59, under the verification
16 comments, the source of documents, source of data, we only
17 receive federal income tax return for 2017, '18, and '19,
18 bank statement for Downey location for 2019. And
19 September 2019 purchase invoices only listed four vendors.

20 HEARING OFFICER WILSON: Okay. And the purchase
21 invoices for 2019, none of those included lottery or food
22 purchases?

23 MR. SAMARAWICKREMA: Only four vendors. No, it's
24 not included, and we -- in our reply brief, we requested
25 Appellant to provide if there's any exempt food purchases

1 that they have, or to provide any document to support that
2 the 1099 information include any lottery sales or exempt
3 food sales. You know, as of today we -- we don't have
4 that information.

5 HEARING OFFICER WILSON: Okay. Thank you.

6 MR. SAMARAWICKREMA: Also, you know, like it's
7 very -- you know, if the taxpayer provided, then we, you
8 know, we should have -- we will have verified the
9 reasonableness of those taxpayer's request. But as of
10 today, we don't have that information.

11 HEARING OFFICER WILSON: Okay. Thank you. I
12 don't have any further questions. Thank you.

13 MR. AZIR: Your Honor, do you want me to send you
14 the lottery documents at this time, or you are not
15 requesting that? I have the lottery in front of me one
16 here.

17 JUDGE WONG: Let me -- let's hold off on that
18 question really quick. We'll finish up panelist
19 questions, and then I will have a conversation with my
20 Co-Panelists, and we'll discuss that.

21 Judge Geary, did you have any questions for
22 either party?

23 JUDGE GEARY: I do not. Thank you.

24 JUDGE WONG: Okay. I did not have any questions
25 either. So what we are going to do, we're going to take a

1 brief five-minute recess break. I'm going to have a
2 conversation with my Co-Panelists, and then we're going to
3 discuss these additional documents -- potential additional
4 documents.

5 Okay. So if you guys could mute yourselves,
6 close off your camera, and then I think we'll be going to
7 a waiting room. Thank you.

8 We'll be back at -- let's say 11:30.

9 Let's go off the record please. Thank you.

10 (There is a pause in the proceedings.)

11 JUDGE WONG: All right. Let's go back on the
12 record.

13 All right. So my Co-Panelists and I have
14 discussed regarding additional records that Appellant may
15 be able to provide. First question is for CDTFA.

16 If Appellant were able to provide records
17 substantiating nontaxable food sales and lottery sales
18 during the audit period, would there -- would CDTFA be
19 able take that into account and make adjustments
20 accordingly or --

21 MR. SAMARAWICKREMA: This is Nalan
22 Samarawickrema. So if it is lotto sales, if the taxpayer
23 provide documents to support that the credit card sales
24 include lotto sales, yeah, we will have a look. But, you
25 know, just giving the lotto sales amount for the audit

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period as in --

JUDGE WONG: Right.

MR. SAMARAWICKREMA: -- help us to -- to make an adjustment for lotto sales part and for nontaxable food -- the taxpayer sold nontaxable food, yeah, then we will consider and revisit the audit.

JUDGE WONG: Okay. Thank you.

JUDGE GEARY: Judge Wong?

JUDGE WONG: Yes.

JUDGE GEARY: May I ask a question of the Department, please?

JUDGE WONG: Sure. Absolutely.

JUDGE GEARY: Did the audit include an analysis to determine credit card purchase percentage?

MR. SAMARAWICKREMA: Credit card purchase percentage -- I mean, the purchase credit card percentage or credit card sales percentage.

JUDGE GEARY: Credit card sales. Excuse me. Credit card sales ratio of -- the percentage of sales that were paid for with credit cards. It did, didn't it?

MR. SAMARAWICKREMA: Yes, Judge. We used bank deposits for 2019. So, you know, originally before that we -- that the Department used 50 percent credit card ratio. But after that, you know, we use 65 percent based on the bank deposits to give a benefit for the taxpayer.

1 You know, most of the time, we didn't have enough
2 information to see or determine that all the cash was
3 deposited into the bank. But based on 2019, we determined
4 the credit card ratio is 65, based on the bank deposits.

5 JUDGE GEARY: And if the Appellant was able to
6 produce reliable records concerning lotto sales during the
7 audit period, wouldn't the Department be able to use the
8 credit card percentage that the Department calculated and
9 relied upon?

10 MR. SAMARAWICKREMA: Yeah. If the taxpayer
11 provide documents, yes. But the other question is that,
12 you know -- you know, like when a person is -- if a
13 customer comes and pay for lotto by using a credit card, I
14 don't think we will see the lotto sales in the bank
15 deposits.

16 JUDGE GEARY: I'm not suggesting you would. I'm
17 suggesting that the -- I'm asking whether or not the
18 Department can simply use the credit card sales ratio that
19 it calculated and apply that to total lottery sales, if
20 the Appellant is able to produce reliable records showing
21 that number.

22 MR. SAMARAWICKREMA: Yeah. It -- you know, like,
23 without seeing the information, it's really hard to answer
24 that question. If it is reasonable documentation and if
25 we have enough information to determine, you know, the --

1 some lotto sales were included in -- in the credit card
2 ratio calculation, yes, we will -- we will revisit the
3 audit.

4 JUDGE GEARY: Okay. I think that's probably as
5 far as I'm going to be able to get on this area,
6 Judge Wong. Thank you.

7 JUDGE WONG: Thank you.

8 Mr. Azir, so there were two locations. Appellant
9 had two locations, one in Bellflower and one in Downey.
10 At the end of the audit period, in March 2021 Downey
11 location was sold. Is the Bellflower location still
12 operating?

13 MR. AZIR: My understand, the Bellflower store
14 sold too.

15 JUDGE WONG: I see. Okay. Do you know when that
16 was sold?

17 MR. AZIR: I think sometimes in 2023 or '22.

18 JUDGE WONG: Okay.

19 MR. AZIR: I can check exactly time if the Court
20 want it.

21 JUDGE WONG: But eventually it was sold too? So
22 Appellant --

23 MR. AZIR: It -- yeah. It is sold. It's sold
24 in --

25 JUDGE WONG: Okay.

1 MR. AZIR: -- either 2023 or 2022.

2 JUDGE WONG: Okay. Can Appellant produce records
3 from the audit or the liability period substantiating
4 nontaxable food sales or lottery sales?

5 MR. AZIR: I -- well I -- I have -- I have here
6 in my record the lottery from California Lottery for 2021.
7 The document is in front of me here.

8 JUDGE WONG: Sales that Appellant made from 2021
9 is that --

10 MR. AZIR: The record exactly I have from
11 California Lottery, it's showing that commission for
12 lottery and commission for scratch ticket. And this one,
13 they said, "For you're federal taxpayer and tax ID number
14 was an above address for -- by February 15th, 2020."

15 JUDGE WONG: So --

16 MR. AZIR: That's for earning commission for
17 2020, which is the period of the audit.

18 JUDGE WONG: From that number, can you somehow do
19 an analysis and figure out how much commission -- what the
20 sale -- what, basically, the lotto sales were made total,
21 and how much --

22 MR. AZIR: Yes.

23 JUDGE WONG: -- based on commission?

24 MR. AZIR: Yes, we can. I believe there's a
25 certain percentage California use it for lottery

1 commission, which I believe it's 5 or 6 percent.

2 JUDGE WONG: Okay. If you can --

3 MR. AZIR: That's for all the -- everything. I
4 can -- I can get this information.

5 JUDGE WONG: Okay.

6 MR. AZIR: And then --

7 JUDGE WONG: If you can substantiate that
8 commission percentage and do an analysis, we'll keep the
9 record open. Or if you -- better yet, if you have more
10 direct evidence of lotto sales as oppose to the -- I mean,
11 I guess commission is some evidence. Do you also have
12 any -- or your -- does your client have any evidence of
13 non -- purchases of nontaxable goods from the --

14 MR. AZIR: Food and --

15 JUDGE WONG: Yeah.

16 MR. AZIR: -- and the snacks and all -- I will
17 ask them. I will ask them at this period. But what I'm
18 telling the Court what I have in my hand as of now --

19 JUDGE WONG: Okay.

20 MR. AZIR: -- the lottery documents. I will ask
21 him for the food and the -- the vendors for the food.

22 JUDGE WONG: Okay. Hearing Officer Wilson, did
23 you want to chime in on the records issue?

24 JUDGE GEARY: While Hearing Officer Wilson is
25 thinking, may I ask the Appellant's representative a

1 question --

2 JUDGE WONG: Sure.

3 JUDGE GEARY: -- or two? Thank you.

4 Mr. Azir, you're making reference -- I think
5 looking at your computer screen, you made reference to
6 something you have that documents commissions earned by
7 the Appellant for 2020. Is that what you said?

8 MR. AZIR: Yes, Your Honor.

9 JUDGE GEARY: And if Judge Wong ultimately
10 decides to allow the Appellant an opportunity to gather
11 and provide additional documents, will you also look for
12 records of lottery sales for the entire liability period
13 that's at issue here, not just 2020?

14 MR. AZIR: I will request it from the taxpayer to
15 contact the California Lottery.

16 JUDGE GEARY: And as Judge Wong indicated, if
17 there is a document that can be obtained from the
18 California Lottery that would actually state the total
19 lottery sales as opposed to commissions, of course, that
20 would be more direct evidence of actual lottery sales.
21 But if you're client can only obtain documentation of
22 commissions earned, then we will need some kind of
23 verifiable evidence about what that commission was so that
24 we can work backwards from the commission to the lottery
25 sales. Do you understand that?

1 MR. AZIR: Yes. Yes. And so number one, I will
2 request from my client to have it the results from '19 for
3 the whole period for the audit from California Lottery,
4 and showing the total sales comes directly from California
5 Lottery, if we can available. If it's not, I will provide
6 what I have, and I will provide analysis, the percentage
7 for the commission, showing the sales -- the lottery sales
8 based on the commission.

9 JUDGE GEARY: All right. Thank you, Judge Wong.

10 JUDGE WONG: Sure.

11 MR. AZIR: Thank you.

12 JUDGE WONG: Do you have any -- does your client
13 have any point of sales records showing what portions of
14 lottery sales were paid by credit card?

15 MR. AZIR: I will request that but, at some
16 point, because the place sold, the new buyer has majority
17 of the record for point of sale for the due diligence
18 period. But I will request it.

19 JUDGE WONG: Okay.

20 MR. AZIR: Thank you.

21 JUDGE WONG: How long do you think you'll need to
22 produce those additional documents and the analysis?

23 MR. AZIR: Probably 30 to 45 days --

24 JUDGE WONG: Okay.

25 MR. AZIR: -- for the Court to allow me.

1 JUDGE WONG: Sure. Okay. Yeah. I think that's
2 what we'll be doing, since we do have some holidays
3 between now and -- we'll set a 45-day deadline for
4 Appellant, then give CDTFA 45 days to respond. And then I
5 will issue an order laying out types of documents that we
6 are requesting and laying out the deadlines after this
7 hearing concludes.

8 Do my Co-Panelists have anything else they would
9 want to chime in on?

10 Hearing Officer Wilson, anything?

11 HEARING OFFICER WILSON: Yeah. I just wanted to
12 reiterate that the Department will need to see that the
13 lottery was paid by credit card for them to reduce the
14 credit card. So if you're able to get the lottery
15 information, we will -- they would probably need
16 additional information to show that the transactions were
17 credit card versus cash transactions. The same would go
18 with any food purchases, if you have them. Right. If
19 you're able to get your vendor invoices that show that you
20 purchased nontaxable food items, then that would be
21 helpful. That's all I had to add.

22 JUDGE WONG: Thank you.

23 Does that make sense, Mr. Azir?

24 MR. AZIR: Yes. I will request from him for the
25 vendors for food, if he has any invoices available. And I

1 will request from him if he can show anything taxable -- I
2 mean, percentage for credit card to -- has been collected
3 by -- lottery has been collected by credit card.

4 JUDGE WONG: Okay. Judge Geary, anything else
5 you would like to add?

6 JUDGE GEARY: No, nothing else. Thank you.

7 JUDGE WONG: Okay. All right. So thank you
8 everyone for your presentations.

9 We are going to keep the record open to allow
10 Appellant an opportunity to provide additional
11 information, documents and evidence. And then we will
12 also give CDTFA an opportunity to respond once -- if
13 CDTFA -- sorry -- if Appellant provides that information
14 and analysis. So be on the lookout for that order
15 following this hearing laying out the deadline and the
16 documents requested.

17 All right. This concludes the hearing. And so
18 we appreciate everyone's presentation today. We're going
19 to end the oral hearing in this case, and the next hearing
20 will commence at 1:00 p.m.

21 Thank you everybody.

22 (Proceedings adjourned at 11:50 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 2nd day of January, 2025.

ERNALYN M. ALONZO
HEARING REPORTER