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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ICC COLLISION CENTERS 1, INC.,) OTA NO. 231014534
)
)
APPELLANT.)
)
_____)

Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 9:34 a.m.
and concluding at 12:09 p.m. on Tuesday,
February 11, 2025, 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 STEVEN KIM
ALJ TERESA A. STANLEY

For the Appellant: STEVEN MATHER

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA
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 Exhibit 1 was received into evidence at page 7.)

(Department's Exhibits A-K were received into evidence at page 8.)

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Cerritos, California; Tuesday, February 11, 2025

9:34 a.m.

JUDGE WONG: Let's go on the record.

This is the appeal of ICC Collision Centers 1, Incorporated, before the Office of Tax Appeals, OTA Case Number 231014534. Today is Tuesday, February 11th, 2025, and the time is 9:34 a.m. We are holding this hearing in Cerritos, California.

I am Andrew Wong, the lead Administrative Law Judge for this case. And with me today on today's panel are Judges, Steven Kim and Teresa Stanley.

And now individuals representing the Appellant, ICC Collision Centers 1, Incorporated, could you please introduce yourselves.

MR. S. MATHER: Steven Mather, representative for ICC 1.

MR. J. MATHER: James Mather, representative for ICC 1.

MR. HOJATI: Hamid Hojati, president of ICC 1.

JUDGE WONG: Thank you. Mr. Hojati, could you please spell your name for the record.

MR. HOJATI: It's H-o-j-a-t-i.

JUDGE WONG: Thank you.

All right. And individuals representing the

1 Respondent tax agency, the California Department of Tax
2 and Fee Administration or CDTFA, could you please
3 introduce yourselves.

4 MR. SAMARAWICKREMA: Nalan Samarawickrema,
5 Hearing Representative of CDTFA.

6 JUDGE WONG: Thank you.

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

9 MR. BROOKS: Christopher Brooks, attorney for
10 CDTFA.

11 JUDGE WONG: Okay. Thank you.

12 All right. I wanted to confirm the issues that
13 we will be going over today. We held a prehearing
14 conference on January 27th, 2025. And after that
15 prehearing conference, CDTFA performed a second reaudit.

16 Is that correct?

17 MR. SAMARAWICKREMA: Yes, Judge.

18 JUDGE WONG: Okay. And that lowered the taxable
19 measure by \$112,870 or from \$2,400,040 to \$2,291,170; is
20 that correct?

21 MR. SAMARAWICKREMA: Yes, Judge.

22 JUDGE WONG: Okay. And so the issues that we are
23 going to be covering today are: Number One, whether the
24 amount of unreported taxable sales should be further
25 reduced; and whether Appellant was negligent.

1 Mr. Mather, does that sound like an accurate
2 description of the issues?

3 MR. S. MATHER: It does.

4 JUDGE WONG: Okay. CDTFA?

5 MR. SAMARAWICKREMA: Yes, Judge.

6 JUDGE WONG: Okay. Thank you.

7 Mr. Mather, you've identified and submitted
8 proposed Exhibit 1. Did you have any other documents that
9 you wanted to submit for the record?

10 MR. S. MATHER: No.

11 JUDGE WONG: Okay. CDTFA, did you have any
12 objection? Did you receive a copy of Exhibit 1?

13 MR. SAMARAWICKREMA: Yes, Judge.

14 JUDGE WONG: And did you have any objections to
15 admitting this into the record?

16 MR. SAMARAWICKREMA: No, Judge.

17 JUDGE WONG: Okay. So Appellant's Exhibit 1 will
18 be admitted into the record as evidence.

19 (Appellant's Exhibit 1 was received
20 into evidence by the Administrative Law Judge.)

21 JUDGE WONG: And, CDTFA, you've identified and
22 identified proposed Exhibits A through K.

23 And, Mr. Mather, did you receive a copy of all
24 these exhibits?

25 MR. S. MATHER: I did.

1 JUDGE WONG: Did you have any objections to these
2 records?

3 MR. S. MATHER: No.

4 JUDGE WONG: Okay. So CDTFA's Exhibits A through
5 K will be admitted into the record as evidence.

6 (Department's Exhibits A-K were received into
7 evidence by the Administrative Law Judge.)

8 JUDGE WONG: Mr. Mather, you have identified and
9 proposed Mr. Hojati as a witness; is that correct?

10 MR. S. MATHER: Yes.

11 JUDGE WONG: Okay. And, CDTFA, you had no
12 objections; is that right?

13 MR. SAMARAWICKREMA: No objection, Judge.

14 JUDGE WONG: And you also have no witnesses;
15 correct?

16 MR. SAMARAWICKREMA: That's correct, Judge.

17 JUDGE WONG: Okay. At the appropriate time, I
18 will swear Mr. Hojati in, and we'll do that in a minute.

19 So it's anticipated this oral hearing will take
20 approximately 165 minutes.

21 Mr. Mather, you've asked for 120 minutes; is that
22 correct?

23 MR. S. MATHER: I have. I doubt that we'll need
24 that much.

25 JUDGE WONG: Okay. And you can divide that

1 between your main presentation and your closing however
2 you want. Do you have some idea how you want to do that?
3 Up on top or do you just want to play it by ear?

4 MR. S. MATHER: I don't think we're going to have
5 any trouble fitting it all in.

6 JUDGE WONG: Okay. All right. And, CDTFA,
7 you've asked for 30 minutes; is that correct?

8 MR. SAMARAWICKREMA: Yes, Judge.

9 JUDGE WONG: Okay. Depending on how long this
10 goes, we may break in the middle just to give people a
11 chance to stretch their legs and whatnot. Okay. I think
12 we are about ready to turn it over to Appellant for their
13 opening presentation. Are there any final questions from
14 the parties?

15 Mr. Mather?

16 MR. S. MATHER: No.

17 JUDGE WONG: Okay. CDTFA?

18 MR. SAMARAWICKREMA: No, Judge.

19 JUDGE WONG: Okay. All right. Mr. Mather,
20 please proceed with your presentation.

21 Oh, sorry. Let me swear in your witness.

22 Mr. Hojati, could you please -- I'm sorry.

23 Mr. Hojati, you'll be testifying?

24 MR. HOJATI: Yes.

25 JUDGE WONG: Okay. Could you please raise your

1 right hand.

2

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H. HOJATI,

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produced as a witness, and having been first duly sworn by

5

the Administrative Law Judge, was examined, and testified

6

as follows:

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8

JUDGE WONG: All right. Thank you.

9

All right. Mr. Mather, you have 120 minutes.

10

The floor is yours. Thank you.

11

MR. S. MATHER: Thank you, Your Honor.

12

13

PRESENTATION

14

MR. S. MATHER: I'm going to start with an

15

explanation of what our position is in the case, and then

16

I'm going to move on to testimony from Mr. Hojati.

17

So with respect to the explanation of our

18

position, there are a lot of pages in the record in this

19

case, but I think there's really -- you can pretty much

20

determine what the case is about from five of the pages.

21

You can determine the essence of the Department's position

22

on Exhibit B, pages 65 and 66. That's how they made

23

the -- how the Department made the determination. And

24

then the summary of our position, which I'll explain in

25

more detail, is in our Exhibit 1, which draws numbers from

1 Exhibit K, page 464 and Exhibit K, page 473. So those are
2 the five pages that, really, are all you need to -- to
3 know to really understand the fundamental nature of this
4 case.

5 Starting with the Department's position, so in
6 Exhibit B, page 66, the basis of the Department's position
7 is essentially presented in this computation. The records
8 for the taxpayer were not available during the audit
9 because the taxpayer's business had been sold. He hadn't
10 retained the -- hadn't retained the records or copies of
11 the records. And by the time the audit -- by the time the
12 audit was concluded, the records -- the taxpayer had
13 actually -- or Mr. Hojati had actually taken back the
14 business because the seller -- or the buyer defaulted, but
15 the records were not there anyway.

16 So we were -- we were operating basically from
17 estimates because of the lack of actual records. And so
18 Exhibit B, page 66, is the fundamental basis for how the
19 Department made their determination in the case. The
20 Department selected the 2018 year. On the first line
21 there, they -- they determined \$2,948,018 of parts
22 purchases based on the federal income tax return. And
23 that is a number from the federal income tax return. And
24 the federal income tax summary is on Exhibit K, page 473.
25 And if you look on line 13 of the 2018 tax year, you'll

1 see the \$2.9 million number. So that's where the --
2 that's where the fundamental number that the Department
3 based everything in the audit on.

4 The next is a markup of -- so that determined
5 what the parts purchases were according to the Department.
6 As we'll see later, that actually includes other things --
7 things other than parts purchases. And that's the
8 fundamental basis of the Department's error in the case.
9 So the Department took the \$2.9 million number and came up
10 with a 20 percent markup on parts, which we're fine with.
11 We have no -- we have no objection to the 20 percent
12 markup on parts. That was reasonable, but it's 20 percent
13 on the wrong number. So that's -- that's the essence of
14 the problem. That -- that determined a new audited
15 taxable sales, which was compared to the reported taxable
16 sales, and that resulted in a percentage of error factor
17 of 53.96 percent.

18 So turning to then page 65 of Exhibit B, that
19 53.96 error percentage was then applied to all of the
20 reported taxable sales to come up with the audit
21 adjustment. And then just for good measure, even though
22 the Department was told that the business had been sold,
23 they had seen that the sales were tailing off to nothing,
24 they, at least initially, decided that they would just add
25 on randomly a million dollars of additional taxable sales

1 for 2020, even though the business wasn't even operating
2 in 2020. So they had no sales, no books, no records, no
3 bank deposits, no income tax return, no nothing, but we'll
4 just add on a million dollars of taxable sale for the heck
5 of it.

6 Now, to their credit, I guess -- I mean, in the
7 appeals hearing -- the appeals, the Department conceded
8 that, yeah, maybe we shouldn't be taxing somebody when
9 they're not actually selling anything. So they conceded
10 the 2020 quarters, but I think it's still an illustration
11 of the care that went into this determination. It -- it
12 seems obvious, to me at least, that the Department was
13 picking and choosing numbers that they liked. They came
14 up with an error factor they liked to come up with a
15 number they liked, and they closed the audit, so whether
16 those numbers had anything to do with reality or not. So
17 that's the Department's determination.

18 So then I turn next to our Exhibit 1, which
19 compares -- or it basically is an analysis and
20 reconciliation of the numbers the Department has provided
21 in their latest submission, which was Exhibit K, I
22 believe, on page 464 and 474 -- I'm sorry -- 473. 473 is
23 just a rep -- just pulling the numbers off the federal
24 income tax returns. We have no objections to those
25 numbers. They were accurately transcribed. And 464 is

1 kind of the Department summary of some of the sales tax
2 returns.

3 So, essentially, we're looking at the sales tax
4 returns and the income tax returns and trying to make
5 sense out of the numbers; and that's what we believe our
6 Exhibit 1 does. So what we have presented in our
7 Exhibit 1 is we've got the three years that were the only
8 years remaining in the audit, since 2020 has now been
9 conceded. In our columns we have the sales tax returns
10 for the numbers -- or the years listed in the first
11 column. In the second column, sales per federal income
12 tax returns, which comes from Exhibit 473, Line 11. Then
13 we have gross sales per sales tax return, which comes from
14 Exhibit K, page 464, the third column. So if you look
15 there in the third column of the total sales column, the
16 numbers summarized at the bottom are the numbers that
17 we've put in our Exhibit 1. So far we are just taking
18 numbers from the Department's schedules.

19 Our next column, nontaxable labor per sales tax
20 return, again that takes -- that is actually the total of
21 Columns 4 and 5 in -- on page 464 of Exhibit K, which is
22 the nontaxable labor. And then Column 4 was obviously
23 items put in the wrong place because we did not have
24 nontaxable food sales in a auto collision business. So
25 that's the nontaxable labor. So that's, again, the

1 amounts per the sales tax return. So the Department is
2 not making any determinations there. They're just
3 transcribing the numbers from the sales tax returns.

4 So our Columns 1, 2, 3, and 4 in Exhibit 1 are
5 all numbers just from returns. So the first computation
6 that we just -- is our Column 5, which is percent
7 nontaxable labor per sales tax returns. So the -- and
8 what we have, very consistently in each of these years, is
9 we have about 60 to 60 -- 60 percent to two-thirds
10 nontaxable labor in our sales. Now, it's important to
11 understand that the numbers on our sales tax returns are
12 generated from a system -- a CCC1 system, I believe it
13 is -- that tracks all the activity, every repair job, in
14 the auto repair shop. So it's a -- it's a -- you know, if
15 we had it, it would have been nice, but that information
16 wasn't available to us by the time of the audit.

17 And, basically, every single -- every single sale
18 is tracked. It computes the sales tax on the taxable
19 parts, and it gets summarized. It's sent to the
20 accountant, and the accountant puts it on the sales tax
21 return. So everything in this process is coming from a
22 contemporaneous record that tracks each individual job.
23 So when we're saying -- when we're saying the amounts
24 reported on the sales tax return, that's actually from the
25 job jacket, if you will, which is maintained

1 electronically in the CCC1 system and is reported on the
2 sales tax return. So that is a summary or basically an
3 average, if you will, of every single job that was done by
4 the business in these periods. And that is what the
5 system generated, and it basically reflects a 60-something
6 percent labor factor, which makes sense.

7 You know, lots of jobs in a -- in a repair. In
8 the auto body repair, there's a lot of times a lot of
9 work. Not a -- sometimes almost no parts. So it's --
10 it's entirely expected and -- and, you know, this is the
11 result of our -- the number generated from our system from
12 literally hundreds and hundreds and hundreds of jobs. So
13 that's -- so Column 5, the percent nontaxable labor per
14 STR in the 60 percent, that's -- that's a very important
15 number in our case. Because that's a real number based on
16 real information, not a speculation.

17 So the next column, Estimated Taxable Sales Per
18 Sales Tax Returns Purchases, so that is Column 3, Gross
19 Sales Per Sales Tax Return minus Column 4, Nontaxable
20 Sales. So that -- that is our reported sales from parts.
21 In essence, the reported taxable sales, again, from the
22 sales tax returns. So then the next column over to
23 translate taxable sales with markup back to the cost of
24 those parts, then we have to discount it by the 20 percent
25 markup that the Department came up with, and we agree

1 with.

2 So and in column -- the 7th column, which is
3 purchases without 20 percent markup, that's just taking
4 Column 6 and reducing it by the 20 percent markup. So in
5 theory that column, purchases without 20 percent markup,
6 is the parts purchases. So that's -- if we're looking for
7 a good number, if we again go back to what the Department
8 did, they started with parts purchases multiplied by times
9 100 -- or did a 20 percent markup to determine taxable
10 sales. So we are -- we are applying the Department's
11 formula backwards to find out what we think the purchases
12 should be.

13 So what we do next then -- so -- so we have 2.3,
14 2.1, 1.4. Again, the business was sold in the latter --
15 in the second half of 2019. So that's why -- that's why
16 we have a decline in the numbers for 2019. So this is
17 what we contend is the parts purchases, is parts purchases
18 without 20 percent markup. So is there anything in the
19 record -- the next step, is there anything in the record
20 that would support that number? We know the Department
21 pulled a number off the federal income tax return, but we
22 actually have, as Exhibit F in the record at page 145 and
23 the total at page 283, the actual parts purchases journal.
24 It's one of the pieces that we were able to recover from
25 the records after Mr. Hojati took the business back.

1 So we have the actual purchases journal, and the
2 total purchase -- that purchases -- parts purchases is
3 \$2,252,716. And what we -- what we had done in the column
4 to the left of that is going through our methodology to
5 determine a real number for -- for taxable parts
6 purchases. We had -- our -- our formula came up with
7 \$2,158,000. So we're only -- we're only off by a very
8 small amount. So that to us, that we contend, is it
9 establishes that the parts purchases journal, Exhibit F,
10 is, in fact, a correct and reliable number. And we are
11 proving it, essentially with this formula, based on the
12 income -- the federal income tax return and the sales tax
13 returns.

14 So then the last column in that first row is
15 Purchases Per Federal Income Tax Return. And, again, on
16 it for 2018 we see the \$2,948,000 number, which is what
17 the Department used in Exhibit B, page 66. So that's the
18 number from the federal income tax return, but clearly
19 it's not the number from the purchases journal. And this
20 is the essence of the problem in the case, is that the
21 Department pulled the number from the purchases line of
22 the federal income tax return, which included things other
23 than parts. And we don't have the records, you know to
24 tie that out to the penny, but it becomes very clear that
25 we've got a dramatic difference between what the purchases

1 journals says, what the formula says, based on the -- on
2 the tax returns filed, and this number on the income tax
3 return. And so that number on the income tax return is
4 not a reliable number to use as the basis for your
5 determination of the error factor, which is what the
6 Department did.

7 So just as further proof of -- of how that
8 number -- that purchases from the federal income tax
9 return is not a good number to determine taxable parts
10 purchases, we did a reconciliation of the labor on the
11 next line down -- or the next set of columns down; still
12 on Exhibit 1. So we have the years in the first column,
13 the second column, sales per federal income tax return,
14 which is the same as the second column up above, and then
15 we have the nontaxable labor cost per federal income tax
16 return. So this, again, goes back to Exhibit K.

17 This time we're on Line 14, which is cost of
18 labor. And we have the amounts there on the income tax
19 return, which is \$1,058,000, \$1,179,000, \$2,478,000. So
20 those again -- so that -- those are numbers off the
21 federal income tax return. And then we compare that to
22 the next column, Nontaxable Labor Per Sales Tax Return,
23 which is the same numbers as in the column above, because
24 those are the numbers off of the sales tax return. And
25 this is the reported labor sales, if you will, the revenue

1 from the repair jobs that were attributable to labor,
2 again, reported from our CCC1 system to the sales tax
3 returns on a -- on a transactional basis by, you know,
4 every repair job summarized and reported.

5 So then we look at the difference there, the
6 final column markup per sales tax return and federal
7 income tax return to come up and try to see if that -- if
8 that's a reasonable number. And so for 2017 and 2018, we
9 have a markup of 320-something percent between, if we were
10 using the federal income tax return as the cost of labor
11 as a real number, versus what the sales of that labor was.
12 So -- and that's just a crazy number. That's ludicrous
13 because we have almost every job that we have in the shop
14 is an insurance repair. And insurance companies are not
15 allowing 320 percent markups on labor costs. In fact,
16 they're -- as Mr. Hojati will testify, they have a very --
17 a very low labor rate that makes the 300-something percent
18 markup on labor absurd.

19 So -- but for 2019, actually, looks probably
20 about right. So -- so in 2019 the labor cost from that --
21 from that federal income tax return with a 50 percent
22 markup probably gets us to a number that makes some sense.
23 So what does that tell us? What's the point of all these
24 numbers, right? I just threw these numbers from all these
25 different schedules. Well, the point is that the -- the

1 numbers that the Department relied on entirely is the
2 basis for their audit. The purchases number from the
3 federal income tax return clearly includes things that
4 were not taxable parts purchases. It's wrong as a
5 matter -- as that first row of numbers in our Exhibit 1
6 shows, it's wrong as a direct determination of what the
7 parts purchases was. It doesn't tie out to anything. It
8 doesn't really fit within the formula of anything
9 reported, or at least anything reported on a sales tax
10 return or in the purchases -- the one purchase journal
11 that we were able to find.

12 So it basically comes -- does not -- those
13 numbers are not reliable numbers, at least for 2017 and
14 2018 on the federal income tax return because they include
15 things other than parts purchases. And then what the
16 second cost -- the second row of number shows, is that
17 it's quite clear also that the cost of labor on those 2017
18 and 2018 federal income tax returns doesn't include all
19 the labor. It doesn't include maybe sublet, maybe other
20 types of non-parts nontaxable sales because that labor
21 number makes no sense for what the labor charge was on
22 these hundreds of individual jobs that form the basis for
23 the numbers on the sales tax return.

24 So our position, quite obviously, is that we need
25 to have -- we need to have numbers that make sense that

1 tie out to something in the record, versus the
2 Department's numbers, which are clearly based on line
3 items on the federal income tax return that include things
4 that the Department -- include things other than taxable
5 sales that the Department has erroneously included in
6 their taxable sales computation.

7 So that's the conclusion of my remarks. If you
8 have any questions, I'm happy to take them, or I can move
9 on to Mr. Hojati.

10 JUDGE WONG: Let me double check with my panel,
11 starting with Judge Stanley.

12 Did you have any questions for Mr. Mather
13 following his presentation?

14 JUDGE STANLEY: Yes, thank you.

15 I'm just trying to reconcile your chart because I
16 hadn't seen it before today. The nontaxable labor on the
17 lower column there per sales and use tax returns, are you
18 saying that that was what your client reported?

19 MR. S. MATHER: Correct. That -- those are the
20 numbers that appear on exhibit -- the Department's
21 Exhibit K, page 464, if you add together Columns 4 and 5.

22 JUDGE STANLEY: Oh, you have to add together
23 columns. Okay. That's why I missed it.

24 MR. S. MATHER: Yes. Because the ones in 4 got
25 misplaced.

1 JUDGE STANLEY: Okay. And so you're saying --
2 are you saying that what Appellant reported here is on
3 this sales and use tax returns is incorrect?

4 MR. S. MATHER: No. On the sales -- that --
5 that's a correct number. The numbers on page 464 of
6 Exhibit K, they're all generated from this accounting
7 system that tracks all the jobs and then summarizes the
8 numbers in them, and the amounts were transferred to the
9 sales tax return. So we're saying the sales tax return in
10 that respect is correct. Actually, we're saying the sales
11 tax return in every respect is correct.

12 JUDGE STANLEY: Okay. Just let me follow up
13 then. The other column, the labor cost for the federal
14 income tax returns, that was reported incorrectly?

15 MR. S. MATHER: Yes.

16 JUDGE STANLEY: Okay. And do you know how that
17 would have occurred?

18 MR. S. MATHER: Well, we believe that things --
19 well, it may be -- it may be a situation of kind of apples
20 and oranges is that if the federal income tax return --
21 there's a lot of things in a repair job for a car repair
22 that are labor or labor-like. One of the big ones is
23 what's generally referred to -- at least by this
24 taxpayer -- is sublet. It's that you send out a bumper to
25 be re-fabricated or something. So it's all -- that's

1 not -- none of that is taxable, but it is, you know, it is
2 not payroll, let's say.

3 So I think that -- our belief is that in this
4 cost of labor number, the only way to really be able to
5 reconcile the federal income tax return with the sales tax
6 return is that when -- when the accountant that was doing
7 the income tax return is just doing it because, you know,
8 these -- these distinctions between purchases and labor
9 have no consequence on the federal income tax return.
10 They're all parts of cost of goods sold, so he doesn't --
11 the accountant doesn't really care. So he's -- he's
12 treating these, kind of, third-party payments as purchases
13 and not labor. But for sales tax purposes, those are
14 nontaxable. They're service payments. They're not sale
15 of parts, which is the predominant -- you know, the
16 overwhelming majority of the taxable sales on a tax return
17 for a body shop.

18 So it's just a difference in classification, if
19 you will. And so what we're doing in Exhibit 1 is really
20 showing how, you know, in reconciling between the sales
21 tax return breakdown, which was an actual breakdown based
22 on what's taxable and what's not as generated through
23 this -- this system. You know, that -- those are the real
24 numbers.

25 The income tax return, which the Department

1 relied on, they don't care which category things are in.
2 And so there's no -- it doesn't matter to them whether
3 it's a taxable category or a nontaxable category in the
4 cost of goods sold on an income tax return because they're
5 both treated the same. And so the accountant just wasn't
6 paying any attention to grouping them on the income tax
7 return in a manner that's consistent with how they're
8 appropriately grouped on the sales tax return.

9 JUDGE STANLEY: Okay.

10 MR. S. MATHER: Are you following --

11 JUDGE STANLEY: I'm -- I'm following just fine.

12 MR. S. MATHER: Okay. Okay. Because I know --

13 JUDGE STANLEY: I think that's a good --

14 MR. S. MATHER: I know I'm being a little
15 difficult. So --

16 JUDGE STANLEY: It's a good explanation, but just
17 a little bit of follow up. Does this CCl system, could it
18 differentiate those costs?

19 MR. S. MATHER: It does differentiate. I mean,
20 it tracks every type of cost on each job and so --

21 JUDGE STANLEY: Okay. And --

22 MR. S. MATHER: -- you know, if it's a part, then
23 it adds the sales tax. And so that's -- that's what the
24 system does. And if it's a service, if it's a sublet, if
25 it's towing, if it's any third-party payment that's for a

1 service, then it's treated -- it's basically put in the
2 nontaxable category. So that's one of the primary things
3 that that system does is to segregate the -- the taxable
4 from the nontaxable.

5 JUDGE STANLEY: But it doesn't report that to the
6 accountant who prepares the federal income tax returns?

7 MR. S. MATHER: Well, he would have had access to
8 it. But, I mean, the summary of that, the sum total of
9 every job is summarized, and those total numbers are
10 provided to the accountant who then put them on the sales
11 tax return.

12 JUDGE STANLEY: Okay.

13 MR. S. MATHER: And that's where the sales tax
14 numbers come from fundamentally is the CCC1 system totals.

15 JUDGE STANLEY: Okay. And final question. Was
16 the CC1 system made available to CDTFA when they did their
17 audit?

18 MR. S. MATHER: That --that information, because
19 of the sale of the business, was not available to either
20 of us.

21 JUDGE STANLEY: But you since have -- or
22 Appellant has since gotten access back into the CC --

23 MR. S. MATHER: No. No, we still don't. I mean
24 we -- I'm -- I'm talking about the process. This is --
25 that's how the process was done at this time is the CCC1

1 generates the information. It goes to the accountant. It
2 gets put on the sales tax return.

3 JUDGE STANLEY: Somewhere you said you got CCC1
4 information to use to help build this chart; right?

5 MR. S. MATHER: No.

6 JUDGE STANLEY: No?

7 MR. S. MATHER: I'm sorry.

8 JUDGE STANLEY: Okay.

9 MR. S. MATHER: Let me -- let me -- I'll go back
10 over it again. So the numbers on the chart are,
11 essentially, almost every one of those is from either the
12 sales tax return or the federal income tax return.

13 JUDGE STANLEY: Okay. Sorry.

14 MR. S. MATHER: So that's where the numbers come
15 from. I was describing how the sales tax return -- the
16 numbers on the sales tax returns, which are on Exhibit K,
17 page 464, how those found their way to the sales tax
18 return.

19 JUDGE STANLEY: Okay.

20 MR. S. MATHER: When that business was operating
21 in 2017, '18, and '19 and it had the CCC1 system in place,
22 which we've lost -- the data from which we've lost
23 forever. But that was the process to generate the number
24 on the sales tax return.

25 JUDGE STANLEY: Okay. Much more clearer. Thank

1 you.

2 JUDGE WONG: Thank you.

3 Now I'll turn it over to Judge Kim, if he has any
4 questions for Appellant.

5 JUDGE KIM: Thank you.

6 So, Appellant, you were saying that the
7 nontaxable labor cost for the federal income tax return is
8 lower than that reported on the sales and use tax return
9 because it didn't include the sublet charges or the
10 subletting costs?

11 MR. S. MATHER: Right. Sublet is an example, and
12 we -- we actually have, for the same 2018 year, Exhibit G
13 in the record, is -- is the -- I'm not sure. I have a
14 note on pages, but it's the -- it's the general ledger --
15 it's the general ledger for the journal for sublets. So
16 you could see from Exhibit G, pages 284 to 312, I believe,
17 what the sublet charges look like. So those are, for that
18 year, we had -- I'm not sure. I didn't write down the
19 total too. I think it was 200-and-something thousand
20 dollars, which you look at -- and that's for 2018. You
21 look at the federal income tax return summary on page 473,
22 and, you know, it's obvious that sublet of
23 200-and-something thousand dollars isn't anywhere other
24 than it got thrown in with purchases.

25 It's not a separate line item, and all these

1 third-party charges, we contend, must have been included
2 in the purchase line because it's a payment to outside
3 party. I mean, that's not -- not crazy. Not a crazy
4 grouping for income tax purposes if you want your cost of
5 labor to tie out to your payroll tax return, for example.
6 That's probably more important when you're doing an income
7 tax return is to have your labor -- your total labor and
8 salary compared to your 941s because -- and so the labor
9 cost associated with the jobs clearly doesn't include the
10 sublet on the federal income tax return. And so, you
11 know, the obvious -- the only other place that it could be
12 is in the purchases.

13 JUDGE KIM: Okay. So if you add the amount in
14 the parts purchases journal and the sublet journal, that's
15 still leaves about \$400,000?

16 MR. S. MATHER: Yes.

17 JUDGE KIM: What's that difference from.

18 MR. S. MATHER: We're not sure. We didn't
19 have -- we didn't have even the complete general ledgers,
20 so we don't have all of that. But there are -- there are
21 substantial payments to third parties for other types of
22 services. There's towing. There's -- maybe Mr. Hojati
23 can explain that better. He knows. You know, he's spent
24 his life in the business.

25 So -- but, you know, that's -- that's an

1 illustration, I think, you know, for the one piece of
2 actual data -- actual -- actual records that we have is
3 that, you know, we have a purchases journal for parts for
4 2.2, and we have sublet with 200-something. And that 200
5 is not in -- you know, is -- is quite clearly the
6 difference -- part of the difference between the 2.2 and
7 the purchases journal and the 2.9 on the income tax --
8 federal income tax return.

9 JUDGE KIM: So the general ledgers look like they
10 were printed in January of 2023. Were there no other
11 journals that you had other than that?

12 MR. S. MATHER: We for -- and I don't even know
13 why, but that was all that we were able to retrieve.

14 JUDGE KIM: Okay. Thank you.

15 JUDGE WONG: Thank you.

16 I just want to -- I want to hold most of my
17 questions for after --

18 MR. S. MATHER: Okay.

19 JUDGE WONG: -- Mr. Hojati testifies. But I did
20 have a question regarding the example you used about the
21 sublet. So you mentioned that, for example, a bumper
22 was -- work on a bumper was farmed out. You used the word
23 "fabrication." So like they would have a bumper
24 fabricated? Is that what you're -- is the example you
25 were --

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MR. S. MATHER: Yeah.

JUDGE WONG: -- using?

MR. S. MATHER: I mean I -- I think that, you know, it -- it -- again, Mr. Hojati can explain this better, but sometimes there's parts that can be reconditioned and don't have to be purchased new. And there are people with specialized skills, like bumper people that can kind of recondition or refurbish a bumper that you can put back, which doesn't make it a taxable transaction. But, you know, it's a -- it's a payment to a third party for their process, in essence.

JUDGE WONG: And so on the sales and use tax returns, he claimed a deduction for that as nontaxable labor, but on the federal income tax returns, he claimed it as purchases. Is that kind of where the --

MR. S. MATHER: That's -- that's --

JUDGE WONG: -- difference --

MR. S. MATHER: Yeah. That's the difference --

JUDGE WONG: Okay.

MR. S. MATHER: -- that we -- that we say exist.

JUDGE WONG: Okay. And just to clarify on the federal income tax returns, are you arguing that he misclassified cost of labor as purchases? Or are you saying that he claimed in general cost of labor twice, once as the cost of labor or -- and once folded into

1 purchases?

2 MR. S. MATHER: No. What we're saying is that --
3 is that the cost of labor on the federal income tax return
4 is the payroll for technicians, essentially. So that's --
5 that's pure payroll. In the purchases line are the
6 purchases of the parts, the payments to third parties, the
7 sublets. You know, basically any -- anything other than
8 pure payroll got thrown into the purchases line, which
9 makes it not a reliable number to say, okay, these are the
10 just parts purchases -- just parts purchased. There's a
11 lot of things in there. And the -- the other things,
12 other than parts purchases are nontaxable.

13 JUDGE WONG: Got it. So misclassified but not
14 claiming double --

15 MR. S. MATHER: No. No. No. The total of the
16 two is correct. It's just the allocation between the
17 lines on the federal income tax return. It, you know,
18 essentially just to simplify it is that there's lots of
19 things on the purchases line on the federal income tax
20 return in addition to parts purchases. And so that's why
21 you can't use that line as the starting point for your
22 computation.

23 JUDGE WONG: Got it. Okay. Thank you. I'll now
24 let you examine your witness. You'll be subject to
25 cross-examination by CDTFA as well as questioning from the

1 panel, but I'll turn it back over to, Mr. Mather.

2 MR. S. MATHER: Thank you.

3 JUDGE WONG: Oh, sorry. Just a reminder we swore
4 you in at the beginning, and so you're still under oath,
5 Mr. Hojati.

6 MR. HOJATI: Yes.

7 JUDGE WONG: Thank you.

8

9 DIRECT EXAMINATION

10 BY MR. S. MATHER:

11 Q Mr. Hojati, could you describe your educational
12 background?

13 A I was graduated from California State University
14 with a bachelor's degree.

15 JUDGE WONG: Mr. Hojati, could you please pull
16 the mic closer to you and --

17 MR. HOJATI: Yeah.

18 JUDGE WONG: -- make sure that it's on. Thank
19 you. Sorry about that.

20 MR. HOJATI: Okay. I have a bachelor's degree of
21 the -- that's my educational background.

22 BY MR. S. MATHER:

23 Q And what -- what's your work history?

24 A The work history is Collision Center, and I'm
25 investing in real estate right now.

1 Q So when did you start in the auto collision
2 business?

3 A 40 years ago.

4 Q And what -- what was your first job?

5 A My first job was an estimator for somebody who
6 wants to -- he wanted to get retired. So, you know, I had
7 to buy the business, or basically I'd be without the job,
8 basically.

9 Q So when did you buy the first business that you
10 owned?

11 A Back in 2000. Back in 2000 I bought it. I
12 bought the business.

13 Q Okay. And where was that -- that business
14 located?

15 A That business was located in Culver City, L.A.

16 Q And from that initial purchase what -- what other
17 businesses have you owned in the collision?

18 A No, I didn't own anything. I was -- I was just
19 in the collision business.

20 Q And did you open other shops?

21 A Yes.

22 Q How many?

23 A I owned seven Collision Center. I got one in
24 Morena, and I got one in Hermosa Beach, and I got one in
25 Santa Monica, and I got one in -- I have one in Orange

1 County. ICC 1 is in Orange County.

2 Q So all these different locations, were they all
3 owned by ICC 1, or were they owned by other companies?

4 A It was owned by a different corporation. So it
5 was owned by me personally, and I was told by my attorney
6 to go have it separately.

7 Q So which location was ICC 1?

8 A ICC 1 was in Orange County.

9 Q And what -- what city?

10 A Santa Ana.

11 Q And what -- what role did you have with ICC 1?

12 A I was managing ICC 1. I had an estimator, shop
13 manager also. I wasn't doing much. I was just doing
14 financial for ICC 1.

15 Q And how big of a -- in let's 2017 to 2019, how
16 many repair jobs would you have in a particular year,
17 roughly?

18 A It varies. We had about 600 repairs done in one
19 location.

20 Q 600 repairs for the year?

21 A For the year, yes.

22 Q And big jobs and little jobs or mostly bigger?

23 A Yeah. Big job and little job, depending on how
24 the car is damaged or hit. So it was a big job and a
25 small job.

1 Q So what percentage would have been -- had
2 insurance companies involved in that?

3 A Ninety percent was the insurance.

4 Q And what was the other 10?

5 A The other 10 it was they would pay out of pocket,
6 and they wouldn't -- they didn't want that to be reported
7 to the insurance company.

8 Q So did those tend to be smaller?

9 A Yeah. Yeah. It was small.

10 Q And how did -- how did the work on the job get
11 tracked in ICC 1's accounting system during this time
12 period?

13 A So the estimate is written, and the estimate is
14 downloaded to CCC1, and CCC1 figures out how much parts we
15 purchase for the -- for the job and how much -- and how
16 much work we'd done on this job. So the job was -- it was
17 kind of complicated, but it was -- like, the parts, it
18 would track the parts, and it would track the sublet
19 report, and it would track the towing, and any and all the
20 costs, basically. It would track all the costs.

21 Q And how did that get input into this system? Was
22 there a bookkeeper or somebody that recorded that, or how
23 did it work?

24 A So the estimating system, it gets downloaded
25 automatically. It's interfaced with QuickBooks and

1 QuickBooks -- the accountant gets QuickBooks reports. So
2 everything is automatic. So it gets done by the
3 estimating. It gets done by interface, we call it,
4 interface with the estimating system. And it gets
5 downloaded to QuickBooks, and the accountant gets a
6 QuickBooks accounting.

7 Q And so let's say -- and I'm just -- if -- if the
8 estimator says there's some part is needed you have to
9 replace the bumper, and the estimator has an estimate of
10 how much it's going to cost, but then there's an actual
11 cost?

12 A Yes.

13 Q And who puts in the actual cost into the system?

14 A So the system puts it in, but we don't put the
15 actual cost in. So only a judgment call -- let's say a
16 bumper is damaged, we send it out and there is a cost for
17 that bumper. There's a cost for the outside vendor to --
18 to repair -- to repair that bumper. So I would say the
19 estimating system would come up with that cost and,
20 basically, it gets downloaded to the QuickBooks.

21 Q So does the insurance company look at the CCC1
22 estimate, or do they have to approve it? Or how are
23 does -- where -- how are they involved?

24 A Yeah. The insurance company has to approve it,
25 all the repairs, before we take it to the -- to the shop,

1 basically, to fix the car. So the insurance company has
2 to secure the payments so we know who is going to pay for
3 it; the insurance company or the customer. Usually, the
4 insurance company pays for it, and they're very regulated.
5 They're -- they don't raise the labor rate that much. I
6 mean, that's why I got out. And I got out in 2017, '18, I
7 think.

8 Q So the -- so the insurance company -- so does the
9 CCC1 system have a labor rate when it does its estimate,
10 or how does it --

11 A Well, CCC1 doesn't have it, but the estimating
12 system that we have has the judgment calls. Let's say the
13 quarter panel is damaged. You would estimate it takes
14 four hours for you to fix that quarter panel so -- or a
15 fender. So that's where -- where you can put the labor
16 in, four hours. You put in four hours for a quarter panel
17 or a fender and, basically, the estimate would come out
18 and -- that way.

19 Q Okay. So let's use a fender as an example.
20 That's probably a good one. So there might be some parts
21 that were damaged and the fender is dented and there's
22 labor to be done. So what's the breakdown that -- or
23 what's the estimate that the insurance company approves?

24 A The estimate could be a couple of thousand up to
25 \$15,000. So it all depends on the job. If it's just

1 we're talking about the fender, the labor time is four
2 hours. It's usually below a thousand dollars for a fender
3 to be repaired and to be painted, basically. And that's
4 what it takes.

5 Q So does the insurance company get the breakdown
6 that says, okay there's --

7 A Yeah.

8 Q -- fifty dollars of parts and \$200 of labor
9 and --

10 A Yeah. They negotiate all the sheets, and they
11 have an appraiser that's coming out. And the appraiser
12 writes the estimate, and that gets inputted into our
13 system, and that gets reported to the outside accountant
14 for sales tax.

15 Q So do you remember approximately what the labor
16 rate the insurance companies would approve during 2018,
17 that time frame?

18 A I believe it was \$40 as I remember. 2017 was a
19 low rate. Now they raised it, but it's \$65 right now. So
20 they didn't do it that much.

21 Q So if the insurance company is only going to pay
22 \$40 an hour, it's pretty hard to have a 300 percent markup
23 on the cost?

24 A I would say yes. Yeah.

25 Q And so the CCC1 system then you said was

1 downloaded to QuickBooks, and that information was what
2 was provided to the accountant?

3 A To the accountant, yes.

4 Q And the accountant prepared the sales tax
5 returns --

6 A The sales tax returns, yes.

7 Q -- based on -- based on that information from
8 CCC1?

9 A That's right.

10 Q And so the actual cost of the job, would that be
11 in the CCC1 or -- or is it more the estimate and what was
12 collected on the job?

13 A Well, there was an estimate that's done by CCC,
14 but there was a -- estimate gets downloaded to CCC1. And
15 once that's downloaded, it gets downloaded to QuickBooks.
16 So I'm telling you the process.

17 Q Okay. So the estimate that gets downloaded to
18 CCC1, is that the estimate from the insurance company, or
19 is that from somebody in --

20 A It's from the insurance company.

21 Q So the insurance company estimate gets downloaded
22 to CCC1?

23 A Right.

24 Q Then that work, whatever is approved, gets done.

25 A Gets done and then we download it to QuickBooks

1 and QuickBooks -- the accountant -- the outside accountant
2 gets the QuickBooks reports.

3 Q And so what gets downloaded to QuickBooks is what
4 gets paid then?

5 A Yeah. Yeah. It gets paid by --

6 Q So when the insurance company --

7 A -- the insurance company.

8 Q -- finally pays --

9 A Yeah.

10 Q -- at that breakdown --

11 A Breaks the amounts. Yeah.

12 Q -- gets transferred. Okay.

13 A Yes.

14 Q And that's the system that you had in place at
15 ICC 1 in 2017, '18, and '19?

16 A That's what I had, yes.

17 Q Okay. And who was the accountant that you were
18 using then?

19 A I think it was Jay Aurora. It is --

20 Q So he wouldn't get the CCC1 detail?

21 A No. No.

22 Q He just got the QuickBooks summary?

23 A QuickBooks summary, yes. And he would do our
24 sales taxes, basically. I didn't have anything to do with
25 it. So it was an outside accountant.

1 Q So there was -- there was nothing that you told
2 him to change on the sales tax return --

3 A No.

4 Q -- if you said, oh, it's too much tax, I won't
5 pay?

6 A No. No. No.

7 Q Okay. So you heard me refer to a general
8 ledger -- and you can look over there -- so Exhibit F in
9 the record.

10 A That's probably --

11 Q So this says it's parts --

12 A Okay.

13 Q -- on the first page, and it's got pages and
14 pages and pages and pages and pages. So in the system you
15 describe, what is this? Is this --

16 A This got to be something in QuickBooks. I have
17 no idea what this is.

18 Q Okay. So it's -- but it's pages and pages and
19 pages of parts by -- looks like by number. A part number
20 maybe?

21 A It's how much they pay for the parts, an RO
22 number that shows how many jobs we did for the month. It
23 shows our own number OEM means view parts --

24 JUDGE STANLEY: Mr. Hojati, you're not speaking
25 into your microphone --

1 MR. HOJATI: Oh, sorry.

2 JUDGE STANLEY: -- when you're looking at the
3 computer up close. You can pull the microphone --

4 MR. HOJATI: Yeah.

5 JUDGE STANLEY: -- down further if you need to.

6 MR. HOJATI: Okay. So --

7 BY MR. S. MATHER:

8 Q So after the date there's a number. It looks
9 like number maybe is the column, and that's a part number
10 or a --

11 A It's an invoice number.

12 Q Okay. And then next column is name, and it has a
13 six-digit number; and what's that?

14 A It's an RO number.

15 Q And what's RO mean?

16 A Repair number. Meaning we create an RO for every
17 job that comes in. So that's how we track in CCC1. We
18 track everything as far as what we purchase for the car.

19 Q I'm sorry. And you said OEM in the next column
20 means what?

21 A OEM means new parts. That means factory OEM.

22 Q Okay. And then there's a couple of columns over.
23 There's a debit which, I guess, looks like the amount --
24 is that the amount paid on that part?

25 A Yeah. That means we got a credit for -- it says

1 "credit." So we got a credit for \$100.

2 Q Well, I think the first column says "debit,"
3 which means --

4 A 231.

5 Q Yeah. So okay. That's -- that's basically the
6 listing of all of the parts?

7 A All the parts that we purchased, yes.

8 Q During -- and this is the general ledger for the
9 2018 year?

10 A Yes.

11 Q Okay. So does that then --does this information
12 come from the CCC system, or does it come because you
13 entered an invoice somewhere else?

14 A It comes from CCC, but it gets downloaded to
15 QuickBooks.

16 Q Okay. So the CCC system, if you buy a part, it
17 actually would have the invoice number --

18 A Yes.

19 Q -- for that purchase --

20 A Yes.

21 Q -- in the CCC?

22 A Yeah.

23 Q And so what's the difference between -- or maybe
24 there is no difference -- the CCC and the -- I think -- so
25 what's the connection between the RO and the CCC?

1 A The RO means we open the repair order for
2 everything that comes in through the door, and we track
3 it. We track the repair order by number. So it's usually
4 a six-digit number. That's how we track everything.

5 Q So the CCC system would have a repair order
6 that's like a folder, if you will, and then the parts
7 purchases under that repair order --

8 A Goes in the --

9 Q Yeah -- under the repair number in the CCC
10 system?

11 A Yes.

12 Q Okay. Now, I think you've heard in my opening
13 statement that the Department used a 20 percent markup on
14 parts purchases to estimate what the parts sales amount
15 was. Does that seem reasonable to you?

16 A Yeah. It seems reasonable because the insurance
17 companies do a markup on the parts for 20 percent only.

18 Q So 20 percent was typical for what the insurance
19 company would allow?

20 A It's typical, yes.

21 Q And the insurance company knew what the cost
22 was --

23 A Yes.

24 Q -- for part? Okay. And then in the Exhibit 1
25 that I was talking about before, one of the things that we

1 used to illustrate that there was more than labor on the
2 income tax return was that there was, for example in 2017,
3 a 322 percent markup on -- from the pure labor cost to the
4 nontaxable labor charge on the sales tax return. So is a
5 322 percent labor markup what the insurance companies
6 would allow?

7 A No. They wouldn't allow no more than 60 percent,
8 basically.

9 Q So -- and -- and they -- did you say they
10 actually had a labor rate that they would typically allow?

11 A Yeah. The labor rate was \$40 when I was in
12 business in 2017.

13 Q So \$40 an hour was what the insurance company
14 would allow on almost all of the jobs that you did?

15 A Yeah.

16 Q And what was your cost? What were you paying
17 technicians and people working in the shop, typically?

18 A I was paying them \$20 an hour. Right now I'm
19 paying them \$22. So 20 --

20 Q Okay. So that's not a 300 percent markup?

21 A No, it's not.

22 Q Now, let's take a look at Exhibit G. So this one
23 is another one of the general ledgers, and this one says
24 "sublet." So can you explain what sublet is?

25 A Sublet, when we do the -- it's part of the

1 estimates that we give out, but sublet means we give it to
2 somebody else to do the job. So --

3 Q What would be an example of that?

4 A One part is a good example, parts LAQ [sic]
5 parts.

6 Q What kind? I'm sorry. What kind of parts?

7 A We buy it used parts, for some insurance company
8 authorize used parts only.

9 Q Would sublet refurbish a part?

10 A No. No. They don't. They just repair whatever
11 we give them, whether it's a wheel or whether it's a
12 bumper, whether it's a --

13 Q So -- so just to put it in context of the
14 insurance company, you got a damaged wheel. And the
15 insurance company says, well, we're not going to pay for a
16 new one. Get it fixed.

17 A Get it fixed. And glass is another example for
18 sublet work. So they -- we don't do glass work at the
19 shop. We didn't used to, but that's a sublet item. So
20 whenever the glass company comes out, they give us an
21 invoice, and we pay for it. Let's say it's \$200, and we
22 pay for it. And we -- we only allow to markup the sublet
23 work 20 percent.

24 Q Okay. So in looking at this general ledger, I
25 see the same. So we have the same six-digit RO number;

1 right?

2 A Yes.

3 Q We have -- looks like invoice numbers in the
4 column to the left of that.

5 A Yeah. It's accounts. It says accounts payable.
6 So the payable person pays it. So --

7 Q Right. So it's got the payable, and it's got the
8 amounts. And then further to the left under the name
9 column, it has the RO number, it looks like. And then --

10 A Yeah. It's got the RO number. It's got --

11 Q And the left of that is the --

12 A The left of that is -- is -- it says sublet.

13 Q No. No. I'm sorry. Left of the RO column.

14 A Oh, the left is -- it's just a number. It's the
15 VIN number for the car.

16 Q Is it a VIN number, or is that an invoice number
17 from the --

18 A It's a -- it's --

19 Q Lots of different digits.

20 A It could be, yeah. It could be. I mean, I'm not
21 familiar with general ledger but --

22 Q Right. So you didn't spend much time with the
23 general ledgers?

24 A No, I didn't. No.

25 JUDGE WONG: Mr. Mather.

1 MR. S. MATHER: Yeah.

2 JUDGE WONG: You've used up about half your time,
3 just to let you know, and I think we'll probably be taking
4 a break at about 11:00. So just --

5 MR. S. MATHER: Okay. We should -- we should
6 finish up by 11:00.

7 JUDGE WONG: Okay. Thank you.

8 BY MR. S. MATHER:

9 Q So what other types of payments to third parties
10 would there be on various types of repair jobs?

11 A So it's glass work, towing, and sublet work. We
12 call it sublet when we give out a bumper to somebody to
13 repair it, and wheels, basically. When the wheel is
14 repairable, we send it out to repair, and we call that
15 invoice a sublet invoice.

16 Q Okay. So it's sublet when it's a third party
17 doing some kind of a --

18 A Repair.

19 Q -- repair --

20 A Yes.

21 Q -- on something?

22 A Yes.

23 Q And were towing expenses very significant or --

24 A Not very significant. But in a month we had like
25 \$6,000 billed from towing.

1 Q Okay. So that's maybe \$100,000 a year?

2 A Maybe, yeah.

3 Q And the sublet, I think this total is
4 200-and-something. Does that seem right?

5 A Sublet was more. It's 15 to \$20,000 a month
6 times 12; right?

7 Q Yeah. So that's \$200,000 --

8 A Yeah.

9 Q -- to 250 a year?

10 A Yeah. Yeah.

11 Q And -- and were there any other significant --

12 A The glass company was -- was something that we
13 would pay a sublet work also. So glass was something that
14 was damaged on the repair.

15 Q So was that repair to a glass, or was it new
16 glass? I mean, if you --

17 A New glass, yes.

18 Q New?

19 A It was an after-market glass.

20 Q Okay. If you got -- if it was approved for a new
21 part, a windshield. If the windshield was broken, is that
22 just something you purchased as a part and installed or --

23 A No, it would -- the glass company would invoice
24 us, and we would pay them, basically, for --

25 Q Like -- like a part; right? I mean, is it

1 different than a part? I mean, is it --

2 A It's different. Sublet work is different than
3 parts.

4 Q But does the glass company actually install the
5 window?

6 A Yes.

7 Q Oh, it did?

8 A Yes. Yeah.

9 Q It provided the windshield and then installed
10 it --

11 A Yes.

12 Q -- on the car?

13 A Yes, they did.

14 Q Okay. So you indicated that you sold the
15 business. When -- I believe that was maybe in late 2019?
16 Is --

17 A I sold the business to somebody, and they
18 couldn't --

19 Q So what?

20 A COVID came in, and they couldn't handle it.
21 So --

22 Q So -- so when you -- and we're talking about
23 ICC 1. Did you have still the other locations in 2019?

24 A No. No.

25 Q So they were gone before?

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A Yes.

Q So ICC 1 was the last?

A Yes.

Q And did you sell the company, or did you sell the assets? Do you remember?

A I see -- I sold the assets. I charged them for the lump sum fee of \$700,000. I sold them.

Q So all the assets?

A Yeah, all the assets.

Q So you didn't sell them the stocks of ICC 1?

A No.

Q You sold them all the assets?

A All the assets.

Q And they set up their own company --

A Yeah.

Q -- to buy it?

A They did.

Q And so that was in 2019. And so ICC 1 as a company, I guess, was out of business then. Is that --

A It was out of business, yes.

Q And did it ever -- as a company, did that corporation ever come back in business?

A Not ICC 1.

Q Okay. And so the buyer -- what was the name of the buyer?

1 A The name of the buyer was -- his name was Sam
2 Mirble.

3 Q And he purchased it, and then you said something
4 about Covid. So --

5 JUDGE WONG: Mr. Mather, sorry. Could you repeat
6 who the buyer was, or do you know the spelling of the
7 name, just for the record?

8 MR. HOJATI: I know his first name.

9 MR. S. MATHER: Sam.

10 MR. HOJATI: Sam. His last name is Mirble,
11 M-i-r-b-l-e, I think.

12 JUDGE WONG: Okay. Thank you.

13 MR. HOJATI: Thank you.

14 BY MR. S. MATHER:

15 Q Okay. So you sold the assets to Sam, and he
16 operated the business in the same location?

17 A In the same location for a couple of years, and
18 when COVID comes, he gave it back to me.

19 Q So he hadn't paid you all cash?

20 A No.

21 Q And so he --

22 A No. We agreed on a price, but he never paid cash
23 money.

24 Q And so did you have to sue him, or did he just
25 give up and say I'm done?

1 A If he didn't have money, so suing him -- it was
2 an extra cost for me. So I --

3 Q No. But I mean him. Did he fight you over
4 giving it back, or was he -- he was ready?

5 A No, he was ready. He was ready.

6 Q And he gave you his company at that point, or did
7 he just give the assets back?

8 A He gave the assets back.

9 Q And -- but you didn't put the assets in IC -- in
10 the old ICC 1 accounting?

11 A No. No, I didn't.

12 Q So it was in a different company?

13 A Yeah.

14 Q And what happened to the records of like the
15 ICC 1 records from before -- before you sold it in that.
16 Did he still have those, like the books and records?

17 A I didn't ask him, but he has the records
18 probably.

19 Q So you think he -- he does have the records from
20 ICC 1 in 2017?

21 A I didn't ask him, but I believe if I -- if I buy
22 a business, I would keep a record of it.

23 Q But you don't have those records?

24 A No, I don't have it.

25 Q And you didn't -- did you ask him for the records

1 for this case?

2 A He said he doesn't have it at the time, but I
3 didn't ask him for the record of this --

4 Q But you didn't ask him again?

5 A No.

6 Q But when you had the audit, did you ask him for
7 the records?

8 A No.

9 Q You asked him some other time?

10 A When the audit came over, it was 2017, right?

11 Q No. That was the year that was being audited,
12 but the audit started later?

13 A Okay. So, no. I -- I didn't have the records at
14 the time. So I gave it to the accountants. So I wouldn't
15 handle all the records myself. So the accountants -- we
16 had the outside accountant, and he would handle everything
17 himself.

18 Q Okay. So you personally didn't ask Sam for the
19 records?

20 A No, I --

21 Q But the Department asked for the records, and so
22 that would have been up to the accountant to ask Sam?

23 A Yeah. That would have been up to him, yes.

24 Q So you haven't personally seen any of the
25 records --

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A Not from him.

Q -- from ICC 1 before?

A No.

Q And you don't have them now?

A I don't have them, no.

Q And I think you said before the -- the accountant would never have had the CCC1 records; right?

A No, it doesn't. All he would get is the sales tax report from -- we had an inside bookkeeper, and we had the outside accountant. So he would get to get the sales tax reports. He would get the reports, and he would do the sales tax quarterly.

Q So he would get some kind of a summary?

A Yeah, he would get some kind of a summary for the month. Yes.

MR. S. MATHER: Okay. I don't have any more questions for Mr. Hojati.

JUDGE WONG: Thank you, Mr. Mather.

All right. We're going to turn it over to CDTFA for if they have any questions for Mr. Hojati.

MR. SAMARAWICKREMA: No questions, Judge.

JUDGE WONG: Okay. Thank you.

And I'm going to turn it over to my Co-Panelists to see if they have any questions for Mr. Hojati.

JUDGE WONG: Let's go off the record for just a

1 second.

2 (There is a pause in the proceedings.)

3 JUDGE WONG: Let's go back on the record.

4 I'm going to start with Judge Kim to see if he
5 has any questions for Mr. Hojati.

6 JUDGE KIM: I just wanted to clarify. When did
7 you sell the business?

8 MR. HOJATI: We sold the business to Sam back in
9 2021, I think. So --

10 JUDGE KIM: Didn't you say it was 2019?

11 MR. HOJATI: 2021 I sold the business. At 2019,
12 I got out of it. So --

13 JUDGE KIM: I'm sorry. I'm not quite
14 understanding. What do you mean? When did you sell the
15 assets to Sam Mirble?

16 MR. HOJATI: So I sold the assets to him in 2021.

17 JUDGE KIM: Okay. And when did you return to the
18 business then? Or when did you have that returned to you,
19 I guess?

20 MR. HOJATI: So when Sam couldn't handle it in
21 2000 -- I think the COVID was in 2020, '21, because -- I
22 could -- so the business was sold 2021. The asset was
23 sold to him also in 2020, '21.

24 JUDGE KIM: Okay. Are you still in contact with
25 Mr. Mirble?

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MR. HOJATI: No, I'm not.

JUDGE KIM: No. Okay. Thank you.

MR. HOJATI: He's out of my life.

JUDGE WONG: Thank you, Judge Kim.

Judge Stanley, did you have any questions for Mr. Hojati?

JUDGE STANLEY: I had questions about the QuickBooks because that's what the CPA --

MR. HOJATI: Yeah.

JUDGE STANLEY: You testified that the CPA used that instead of directly from the CC1 reports. Would that QuickBooks data be available then?

MR. HOJATI: It's not right now. So 2017, '18, I asked Sam, and he didn't have anything for QuickBooks. So we're using QuickBooks right now.

JUDGE STANLEY: But your accountant for the time period that you were operating the business, your accountant would have those records, right?

MR. HOJATI: I believe Steve submitted that -- no?

MR. S. MATHER: Yes.

MR. HOJATI: Some tax -- no.

JUDGE STANLEY: Okay. And just to clarify, would the QuickBooks contain the breakdown between what you consider sublets and what you consider parts?

1 MR. HOJATI: I think so, yes. Yeah.

2 JUDGE STANLEY: Okay. But that wasn't provided
3 at the audit to CDTFA either?

4 MR. HOJATI: So I couldn't get ahold of the
5 accountant, and I couldn't get ahold of Sam either. So
6 this was outside my scope. So I --I didn't ask for
7 QuickBooks data.

8 JUDGE STANLEY: Okay. Thank you.

9 JUDGE WONG: Thank you, Judge Stanley.

10 And I just had a few questions for Mr. Hojati --

11 MR. HOJATI: Yeah.

12 JUDGE WONG: -- before we take a break.

13 So the process of preparing the sales and use tax
14 returns and filing them, how did that occur? Did an
15 outside accountant prepare your sales and use tax returns?

16 MR. HOJATI: Yes, outside accountant.

17 JUDGE WONG: And then he would -- he or she would
18 give it to you to sign, or they would just file it
19 electronically?

20 MR. HOJATI: They would file it electronically.

21 JUDGE WONG: Did you ever review the sales and
22 use tax returns?

23 MR. HOJATI: No, I didn't.

24 JUDGE WONG: Okay. Because I noticed that for a
25 couple of quarters, the liability period, instead of

1 claiming nontaxable labor, it was claimed nontaxable food
2 sales.

3 Which, Mr. Mather, you had earlier pointed out
4 that was kind of odd for an auto collision repair center.
5 Do you know how that misreporting occurred? Or you're not
6 aware?

7 MR. HOJATI: I wasn't aware of any food.

8 JUDGE WONG: Okay. Okay. So is it fair to say
9 that was a mistake by the accountant?

10 MR. HOJATI: Yes.

11 JUDGE WONG: Okay. And you did not review any of
12 the -- just to go over this again, you did not review any
13 of the sales and use tax returns?

14 MR. HOJATI: No.

15 JUDGE WONG: Okay.

16 MR. HOJATI: No, I didn't.

17 JUDGE WONG: With regards to sales and use tax
18 returns, how did you know that those figures reported
19 there, the deductions the sales, how do you know those are
20 accurate?

21 MR. HOJATI: So I would trust my accountants with
22 QuickBooks data. So everything is electronic, so nothing
23 was funny to me. I mean --

24 JUDGE WONG: Okay. Thank you. That's all the
25 questions I have for now.

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Let's go off the record really quick.

(There is a pause in the proceedings.)

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

We're going to take a ten-minute break, and then we will reconvene at 11:10. Okay.

MR. S. MATHER: Your Honor, could I have a couple of redirect questions just to try to clarify something that came up from the Judges' questions?

JUDGE WONG: Sure. About how long do you need for that?

MR. S. MATHER: One minute.

JUDGE WONG: Okay. Go for it.

REDIRECT EXAMINATION

BY MR. S. MATHER:

Q Mr. Hojati, just to try to tie down when -- when the sale of the assets occurred, did you sell the assets before COVID?

A It was -- sorry. It was before the COVID, yes.

Q So the big COVID was March of 2020. That's when everything kind of shut down. You had already sold the assets by then?

A I already sold the assets, yes.

Q And then I think you testified before that Sam

1 ran the business for about two years?

2 A About two years, yes.

3 MR. S. MATHER: No further questions.

4 JUDGE WONG: All right. Thank you Mr. Mather.
5 Are you done with your main presentation? You still have
6 a rebuttal and closing after CDTFA. Are you done with
7 your main presentation, or do you have more to --

8 MR. S. MATHER: No. That's the end --

9 JUDGE WONG: Okay.

10 MR. S. MATHER: -- of the main presentation.

11 JUDGE WONG: All right. We'll take a break then,
12 and then we'll turn it over to CDTFA for their
13 presentation for 30 minutes, and then the balance of your
14 time, which is about 42 minutes, you can have for your
15 rebuttal and closing, and then we'll close it out. Okay.
16 So let us take a break. We'll come back at about 11 --
17 let's say 11:12.

18 And let's go off the record. Thank you.

19 (There is a pause in the proceedings.)

20 JUDGE WONG: Let's go back on the record.

21 And now we will turn it over to CDTFA for their
22 presentation.

23 You have 30 minutes.

24 MR. SAMARAWICKREMA: Thank you, Judge.

25 ///

1 During the audit, Appellant failed to provide
2 complete sales records. Appellant did not provide
3 complete documents of original entry, such as job jackets,
4 sales invoices, credit card sales receipts, sales
5 journals, or sales summaries to support its reported total
6 taxable and nontaxable sales for the audit period. In
7 addition, Appellant failed to provide any purchase
8 invoices or complete purchase journals for the audit
9 period. Appellant was unable to explain how it reported
10 its total taxable and nontaxable sales on its sales and
11 use tax returns. Appellant was also unable to explain
12 what sources it relied upon to complete its sales and use
13 tax returns.

14 The Department did not accept Appellant's
15 reported taxable sales due to lack of reliable records.
16 The Department also determined that Appellant did not
17 provide complete books and records that could be used to
18 verify its reported taxable sales for the audit period.
19 The Department completed three verification methods to
20 verify the reasonableness of Appellant's reported total
21 and taxable sales.

22 First, the Department analyzed reported taxable
23 sales for the following period, October 2017 through
24 December 2019; and this is shown on Exhibit A, pages 30
25 and 31. The Department compared the reported taxable

1 sales with total sales and calculated an overall taxable
2 sales percentage of around 30 percent ranging from as low
3 as 22 percent to as high as 43 percent for the same
4 period; and these calculations are shown on Exhibit A,
5 pages 30 and 31. Based on the analysis of audited taxable
6 sales for years 2017 and 2018, the audited taxable sales
7 percentage was around 50 percent; and this calculation is
8 on Exhibit K, page 471. The Department considered this
9 audited taxable sales percentage as reasonable for
10 Appellant's type of business.

11 Second, the Department reviewed Appellant's
12 federal income tax return for years 2017, 2018, and 2019;
13 and this information is on Exhibit A, page 33. The
14 Department reconciled sales reflected on Appellant's
15 federal income tax returns with total sales reported on
16 sales and use tax returns and calculated an overall
17 difference of around \$3.1 million for the same period; and
18 these differences are shown on Exhibit A, page 33. The
19 Department also compared the reported total sales,
20 including claimed exempt sales with the cost of goods
21 sold, including cost of labor and other costs reflected on
22 Appellant's federal income tax returns and noted
23 inconsistent reported book markups of around 60 percent
24 for year 2017, 71 percent for year 2018, and negative book
25 markup of around 7 percent for year 2019; and these

1 calculations are shown on Exhibit A, page 36.

2 Third, Appellant did not provide its credit card
3 sales information for the audit period. Therefore, the
4 Department obtained Appellant's credit card sales
5 information for the audit period from the Department's
6 internal sources; and this information is shown on
7 Exhibit A, pages 25 through 27. Appellant claim that it
8 sold its business in December 2019 and did not make any
9 sales for the period January 2020 through September 2020;
10 and this is shown on Exhibit B, page 60.

11 As a result, the Department compared the credit
12 card sales with the reported total sales and calculated an
13 overall reported credit card sales ratio of around
14 9 percent, ranging as low as 5 percent to as high as
15 17 percent for the period October 2017 through
16 December 2019; and these percentages are shown on
17 Exhibit A, page 24. Appellant was unable to explain the
18 reasons for the low reported taxable sales percentages,
19 federal income tax returns sales differences, and
20 inconsistent reported taxable book markups, including a
21 negative reporting book markup for year 2019. Appellant
22 also failed to provide current sales and purchase invoices
23 for the Department to conduct a shelf test to understand
24 it's pricing policies. Appellant also fail to provide any
25 of its purchase records for the audit period. Therefore,

1 the Department used the best available information to
2 determine audited taxable sales.

3 The Department used the purchases of around
4 \$6 million reflected on Appellant's 2017 and 2018 federal
5 income tax returns and a 20 percent markup to determine
6 Appellant's taxable sale of around \$7.2 million for years
7 2017 and 2018; and these calculations are on Exhibit K,
8 page 468. Audited taxable sales were compared with
9 reported taxable sales for the same period to determine
10 unreported taxable sales and error rates of around
11 46 percent for year 2017, 54 percent for year 2018, and a
12 combined error rate of around 50 percent; and these
13 calculations are on Exhibit A, page 468.

14 Appellant claimed that it sold the business in
15 December 2019 and did not have taxable sales for year
16 2020. Therefore, the Department applied the corresponding
17 error rates to the reported taxable sales, for the period
18 October 2017 through December 2019, to determine
19 unreported taxable sales of around 2.3 million; and these
20 calculations are on Exhibit K, page 467. In preparation
21 for this oral hearing, the Department conducted a second
22 reaudit and calculated the unreported total sales
23 percentage of around 16 percent using sales reflected on
24 Appellant's federal income tax return and sales and use
25 tax returns; and this calculation is shown on Exhibit K,

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page 473.

The Department also used the years 2017 and 2018 information to determine the audited taxable sales percentage of around 50 percent; and this calculation is on Exhibit K, page 471. The Department used audited unreported total sales percentages and audited taxable sales percentage of around 50 percent with a reported total sales to determine the audited taxable sale of around \$8.7 million for the period October 2017 through December 2019; and this calculations are on Exhibit K, page 417. Audited taxable sales were compared with reported taxable sales of around \$4.5 million to determine unreported taxable sale of around \$4.2 million for the same period' and these calculations are on Exhibit K, page 417.

The Department noted substantial discrepancies between audited and reported taxable sales using both audit methods. To give a benefit to Appellant, the Department assessed the unreported taxable sales of around \$2.3 million based on the cost-plus markup method, rather than the unreported taxable sales of around \$4.2 million based on the audited taxable sales ratio method; and these calculations are on Exhibit K, pages 467 and 470. The audit calculation of unreported taxable sales based on the cost-plus markup method was fair and reasonable. Further,

1 it benefit the Appellant because it was a lower of the
2 differences determined.

3 When the Department is not satisfied with the
4 accuracy of the sales and use tax return filed, it may
5 rely upon any facts containing the return or upon any
6 information that comes into the Department's possession to
7 determine if any tax liability exists. The taxpayer shall
8 maintain and make available for examination, upon request
9 by the Department, all records necessary to determine the
10 correct tax liability under the sales and use tax laws and
11 all records necessary for the proper completion of the
12 sales and use tax returns. When a taxpayer challenges a
13 Notice of Determination, the Department has the burden to
14 explain the basis for that deficiency. When the
15 Department's explanation appears reasonable, the burden of
16 proof shifts to the taxpayer to explain why the
17 Department's asserted deficiency is not valid.

18 Since Appellant failed to provide necessary
19 records, the Department used the best available
20 information to determine the unreported taxable sales for
21 the filing periods. The audit calculation of unreported
22 taxable sales, based upon the best available information,
23 was fair and reasonable. Appellant dispute the audit
24 liability and claims that the unreported taxable sales
25 should be reduced. In Appellant's view, any determination

1 based on cost of goods sold from its federal income tax
2 return is overstated since those cost of goods sold
3 include Appellant's purchases of services from
4 subcontract, which would not be marked up.

5 As support, Appellant provided federal income tax
6 returns for years 2017 through 2020, which include cost of
7 goods sold recorded therein that are allegedly more
8 representative of Appellant's business for the audit
9 period, including cost of labor and two schedules from its
10 general ledger for year 2018 showing recorded cost of
11 parts and cost of subcontract to labor respectively.
12 Appellant also claim that the two schedules reflects its
13 true cost of goods sold for year 2018, which are less than
14 the cost of goods sold recorded on its 2018 federal income
15 tax returns; and these are shown on Exhibit F and
16 Exhibit G.

17 The Department analyzed these arguments and
18 ultimately rejected them. Upon examination of these
19 documents, the Department noted that Appellant did not
20 provide any source documentation or any vendor information
21 to calibrate the figures listed in Appellant provided
22 general ledger relating to parts and sublet; and these are
23 on Exhibit F and Exhibit G. Both these journals did not
24 include cash purchases for year 2018; and this is shown on
25 Exhibit F and Exhibit G. Appellant also did not provide

1 any source documentation or any other information which
2 can be used to verify the information recorded in the
3 federal income tax returns.

4 Nevertheless, the Department requested
5 Appellant's federal income tax returns for years 2017
6 through 2020 from the Franchise Tax Board and received its
7 federal income tax returns for years 2017, 2018, and 2019.
8 The Department reviewed these federal income tax returns
9 for years 2017 and 2019; and these are shown on Exhibit K,
10 page 473. The Department compared the Appellant's
11 recorded purchases and cost of goods sold, including cost
12 of labor and other costs and calculated a purchase
13 percentage of around 69 percent for year 2017, 71 percent
14 for year 2018, and 27 percent for year 2019; and these
15 percentages are shown on Exhibit K, page 473.

16 The Department noted around \$7.4 million of sales
17 for year 2018 and \$8.4 million for year 2019; and these
18 amounts are shown on Exhibit K, page 473. There was an
19 increase of sale of around \$1 million from year 2018 to
20 2019, but the purchases decreased from around \$2.9 million
21 to \$1.5 million in 2019; and these amounts are shown on
22 Exhibit K, page 473. The Department also noted Appellant
23 reported around \$16,000 as other costs or the cost of
24 goods sold for year 2018, and it increased to around
25 \$1.7 million in 2019; and these amounts are shown on

1 Exhibit K, page 473.

2 Based on the salaries and wages reflected on
3 Appellant's federal income tax returns for years 2018 and
4 2019, it appears Appellant included its total salaries and
5 wages as part of his cost of goods sold for year 2019.
6 Appellant was unable to explain the reason for these
7 inconsistent recorded amounts in its 2019 federal income
8 tax return. Appellant also failed to provide purchase
9 invoices, vendor lists, vendor contact information, or any
10 of the information to verify the reasonableness of
11 Appellant's cost of goods sold, including part purchases,
12 cost of labor, and other costs reflected on its cost of
13 goods sold calculation of the federal income tax returns.

14 For all these reasons, the Department determined
15 that the purchases reflected on Appellant's 2019 federal
16 income tax returns are unreliable and unacceptable.
17 Therefore, the Department did not accept the purchases
18 reflected on Appellant's 2019 federal income tax returns.
19 Also, based on Appellant's Exhibit 1 and sales reflected
20 on federal income tax returns, it appears the nontaxable
21 sales percentage is around 39 percent, not 62 percent for
22 year 2017. And the nontaxable sales percentage is around
23 32 percent, not 66 percent for year 2018. This further
24 support that the Department's determination is not only
25 fair and reasonable but also benefits the Appellant.

1 Based on Appellant's testimony, it appears
2 Appellant's labor markup is around 100 percent and shows
3 that the Appellant overstated its claimed labor in its
4 sales and use tax returns. The audit calculation of
5 unreported taxable sales was based on the best available
6 information. The Department continues to find the audit
7 analysis to be fair and reasonable.

8 Finally, the Department imposed a negligence
9 penalty for this Appellant based upon the determination
10 that Appellant's books and records were incomplete and
11 inadequate for sales and use tax purposes, and because
12 Appellant failed to accurately report its taxable sales.
13 Appellant's president also operated in multiple locations
14 with different seller's permit through different entities.
15 Taxpayer shall maintain and make available for examination
16 on request by the Department all records necessary to
17 determine the correct tax liability under the sales and
18 use tax law and all records necessary for the proper
19 completion of the sales and use tax returns. Such reports
20 include but not limited to the normal books and records
21 maintained by the average prudent businessperson engaged
22 in the activity in question, job jackets, sales invoices,
23 credit card sales receipts, sales journals or sales
24 summaries. Failure to maintain and keep complete and
25 accurate records will be considered evidence of

1 negligence.

2 According to the prehearing conference statement,
3 Appellant contends that the negligence Appellant --
4 penalty should be deleted because its failure to provide
5 or maintain its books and records for the audit period was
6 due to its alleged sale of its business to a purchaser who
7 failed to maintain Appellant's books and records.

8 However, Appellant has not provided any verifiable
9 documentary evidence or other information which can be
10 used to verify the extent and the nature of the missing
11 information in this regard. In analyzing the issue of
12 negligence, one of the factors that must be considered is
13 whether the taxpayer has been previously audited.
14 Negligence penalty is not generally imposed when the
15 taxpayer has not been previously audited.

16 Nevertheless, even in connection with the first
17 audit, imposition of a negligence penalty is warranted if
18 there's evidence establishing that any bookkeeping and
19 reporting errors cannot be attributable to the taxpayer's
20 good faith, and a reasonable belief that its bookkeeping
21 and reporting practices were in substantial compliance
22 with the requirement of the sales and use tax law or
23 regulations. Relevant factors, such as the general state
24 of the books and records, and the Appellant's business
25 experience must be considered. And where the evidence

1 clearly shows that the understatement is due to
2 negligence, then the penalty applies even when the
3 Appellant has not been previously audited.

4 Specifically, the Department noted that Appellant
5 did not provide complete records for the audit period, and
6 Appellant failed to provide documents of original entry to
7 support its reported sales tax liability. As a result,
8 the Department had to calculate Appellant's taxable sales
9 based on the cost-plus markup method. In addition, the
10 audit examination disclosed unreported taxable sales of
11 around \$2.3 million, which when compared with the reported
12 taxable sales of around \$4.5 million for the audit period
13 resulted in an error rate of around 51 percent. This high
14 error rate is additional evidence of negligence.

15 In conclusion, when Appellant did not provide
16 complete source documentation, the Department was unable
17 to verify the accuracy of reported taxable sales using a
18 direct audit method. Therefore, an alternative audit
19 method was used to determine unreported taxable sales.
20 The Department determined the unreported taxable sales
21 based upon the best available information. The evidence
22 shows that the audit produced fair and reasonable results.
23 Appellant has not provided any reasonable documentation or
24 evidence to support an adjustment to the audit finding.
25 For all these reason the Department requests the appeal be

1 denied.

2 This concludes our presentation. We are
3 available to answer any questions the panel may have.
4 Thank you.

5 JUDGE WONG: Thank you, Mr. Samarawickrema.

6 I'll now turn to my co-panelists to see if they
7 have any questions for CDTFA, beginning with
8 Judge Stanley.

9 JUDGE STANLEY: I think I already answered the
10 one question that I had, so I don't have any additional.

11 JUDGE WONG: Thank you.

12 Judge Kim?

13 JUDGE KIM: No questions at this time.

14 JUDGE WONG: Thank you.

15 Let me just double check my notes to see if I
16 have any questions. Okay. I also have no questions at
17 this time.

18 So I will now turn it back over to Mr. Mather for
19 your rebuttal and closing. Please proceed.

20 MR. S. MATHER: Thank you.

21

22 CLOSING STATEMENT

23 MR. S. MATHER: Well, we just heard of how
24 excessively reasonable the Department was in this audit,
25 but let's take a closer look at that. Was it -- was it so

1 reasonable for the Department to charge a million dollars
2 of taxable sales for 2020 when the business wasn't even in
3 operation? That's part of that reasonable audit
4 determination. So I think the reasonableness pretty much
5 goes out the window when you look at that -- at that
6 factor alone.

7 Also, the entire -- the entire -- or the
8 justification for being reasonable in the audit seems to
9 be that there was a 50 percent -- the Department deemed
10 the 50 percent taxable ratio to be reasonable based
11 literally on nothing. I guess it's reasonable because
12 it's the Department's number. It's not based on anything
13 in the record in this case, other than the Department's
14 use of the wrong purchases number to come up with the
15 taxable percentage.

16 The Department also makes a comment that there's
17 a negative markup for 2019. And certainly, there's some
18 oddities in the federal income tax return for 2019, but
19 there's not a negative markup. If you look at Exhibit K,
20 page 473, there is -- for some reason that we don't
21 understand -- \$8.3 million of sales, and there's a
22 positive markup -- at least according to the federal
23 income tax return -- of 2.6 million. So that's not a
24 negative markup in my book. I mean, if you -- you know,
25 the Department can pick and choose numbers and come up

1 with -- with percentages and statistics that -- that are
2 nonsense, but if you're going to use the federal income
3 tax return to claim that there is a negative markup, then
4 you need to use the whole federal income tax return.

5 The Department also commented that the federal
6 income tax return for 2019 disclosed other costs and
7 didn't have anything on the salaries line. Well, it seems
8 quite obvious. I don't know for a fact, but it seems
9 quite obvious when we don't have other costs of that
10 magnitude in 2017 and 2018, but we do have salaries, it
11 looks like the salaries line got put on the other cost
12 line for 2019. That's a rational explanation, but not the
13 sinister explanation that the Department would choose to
14 use. And that also negates any question that there could
15 be a negative markup based on the sales on the sales tax
16 return. Because if that other cost amount is -- is, in
17 fact, the administrative salaries, which makes sense. I
18 mean, it doesn't make sense there's no administrative
19 salaries in the year the company was in business for at
20 least -- at least nine months. So then we're just looking
21 at the purchases number and the labor number and -- and
22 compared to these -- the sales on the sales tax return,
23 and it's a healthy positive markup. So there's no --
24 there's no negative markup in 2019 that gives the -- gives
25 the Department license to apply supposedly reasonable

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estimates.

As long as we're comparing the federal income tax returns to the sales tax returns and looking at Exhibit K, page 473, we note there's almost no difference between the reported sales, so for 2017 and 2018. There's a wild difference for 2019, which is clearly an error of some sort or an extraordinary item on the 2019 return for a business that's essentially only in business 9 or 10 months. Sales tax return number makes imminent sense when you look at the trend and look at the fact that it was only in business for part of the year in 2019.

So the federal income tax return is -- has a -- has an odd sales number, but the sales tax returns do not have an odd sales number. So all of the -- all of the numbers on the sales tax returns make perfect sense. And as we described in -- they're all the result of a process that just -- it starts with, essentially, source documents being input into CCC1 -- the CCC1 system, which is then downloaded into QuickBooks, which then goes on to the tax return -- or goes to the accountant to put on the tax return.

All of that -- all of those records existed. If -- if the audit commenced when the business was still in business and Mr. Hojati was still in possession of the records, all of those records would have been produced and

1 would have -- I believe would have fully supported the
2 numbers on the sales tax returns. But instead, we get to
3 the reasonable position of the Department to increase
4 sales by millions of dollars based on nothing and -- and
5 literally based on the misperception of -- of an amount on
6 the federal income tax return, and then a penalty because
7 we don't have the records.

8 So even though this -- this taxpayer is in its
9 first audit and it was a clear that there was a process
10 involved that was essentially entirely electronic that
11 resulted in the tax reporting on the returns with no -- no
12 intervention on -- on the part of the taxpayer, you know,
13 then we're looking at a negligence penalty on top of this
14 audit, which in itself is entirely a penalty based on the
15 quote, unquote, reasonable conclusions of the Department.

16 Also a suggestion of cash purchases, I don't even
17 know where that comes from that, you know, that somehow
18 the purchases excluded the cash purchase. There's no --
19 no evidence of a single cash purchase, nor would there be
20 in a business like this. There's no cash purchases.
21 There's almost no credit card sales. Those -- those are
22 not relevant points that make the Department's position
23 look reasonable. So really what this all comes down to is
24 what I -- what I indicated in my opening statement, is the
25 Department made a reasonable markup on parts and then

1 included -- then based it on a number that's not parts.
2 And that's why we have this markup. You know, you can
3 look at the ratios in any number of ways, but it all comes
4 back to basing their -- their initial determination on the
5 wrong number.

6 And that concludes our remarks.

7 JUDGE WONG: Thank you, Mr. Mather.

8 For the final time, I will now turn to my
9 co-panelists to see if they have any questions for either
10 party, beginning with Judge Stanley.

11 JUDGE STANLEY: I just have one clarification
12 question for CDTFA. I think, Mr. Samarawickrema, I think
13 that you said that you calculated as a verification method
14 to judge your results by you calculated a taxable sales
15 ratio or labor to parts? It was way at the beginning of
16 your statement.

17 MR. SAMARAWICKREMA: There is Exhibit K,
18 page 468. We compared audited taxable sales to the total
19 reported -- sorry. I'm sorry, the wrong page.

20 JUDGE STANLEY: Could it have been when you
21 mentioned Exhibit A, page 30 to 31?

22 MR. SAMARAWICKREMA: Yeah. Give me one moment,
23 please. There is Exhibit K, page 471. We compared the
24 audited taxable sales around \$3.7 million to the reported
25 \$7.1. And the audit, based on that, the audited taxable

1 percentage is 51.96. We did the same calculation for
2 2018. It came up to 47.4 percent. And also during the --
3 the Appellant's present testimony, he was referring, the
4 labor cost is \$20, but he charge \$40. So that is
5 100 percent markup on labor. And if you compare the
6 recorded labor in Appellant's Exhibit 1, and if we plug
7 the 100 percent labor markup and compare that to the
8 claimed amount, Appellant over claimed several million of
9 labor deduction too.

10 JUDGE STANLEY: Okay. Thank you. And when the
11 average of these comes out to 49.62, and I think you did
12 say that that is in line with what the Department would
13 have expected for this kind of business?

14 MR. SAMARAWICKREMA: The -- our estimate is very
15 low compared to -- we did two different approaches. We
16 used a taxable sales ratio method and also the markup
17 method. And if you check the page -- if you may check the
18 page -- same exhibit, Exhibit K, page 470, reported under
19 Column C. Reported total sale is \$15 million. And
20 according to the federal income tax return of 2017 and '18
21 and '19, the unreported \$3.1 million. So if you make that
22 adjustment under Column D, there is an unreported total
23 sale for the Department, \$2.9 million, almost \$3 million.
24 Then the total audited sales under Column F, and the
25 Department used the audited taxable sales percentage 51.96

1 for 2017 and 47.4 percent for 2018 and '19. Based on that
2 approach, understatement was \$4.2 million under Column G.
3 But in this audit we only determined \$2.2 million. There
4 is a benefit of almost \$2 million for the taxpayer.

5 JUDGE STANLEY: Okay. So the point I had
6 ultimately been getting to was where and how the
7 Department would have confirmed that that was a normal
8 sales ratio. But since you've done all the calculations
9 that you pointed to, I'm not sure it matters because it
10 wouldn't end up in Appellant's favor to make any
11 adjustments to that, right?

12 MR. SAMARAWICKREMA: No, Judge. The taxpayer did
13 not provide any information. According to the testimony,
14 taxpayer sold the business in 2021, if my memory is
15 correct, but based on the audit in 2019, and they -- the
16 Department did not receive any documents. During the
17 field work, we only -- the Department only had federal
18 income tax returns. And in the -- according to their 1099
19 information, even we didn't recommend any sales for 2020.
20 You know, taxpayer made sales according to their 1099, but
21 we never assessed that amount. According to page --
22 Exhibit D, page 24, listed the credit card sales for 2020.

23 JUDGE STANLEY: Okay. Thank you.

24 JUDGE WONG: Thank you, Judge Stanley.

25 Judge Kim?

1 JUDGE KIM: So I guess my question is for
2 Appellant. What happened to the records? I don't
3 understand why you don't have access to those anymore. I
4 think Mr. Hojati testified he sold the assets, which
5 presumably included the computers, that it has all the
6 information from the software system, and repeatedly said
7 everything was recorded by the system, exported directly
8 into QuickBooks. And I see there's the purchases and the
9 subletting journals that were provided, but why are there
10 no other records? That's the part I don't really
11 understand.

12 MR. S. MATHER: Well, I think the problem is
13 that -- that the audit -- Mr. Hojati was essentially
14 trying to retire and get out of the business. So
15 everything that went with the business was sold to Sam.
16 And the whole period during the audit, it was Sam. You
17 know, Sam was running this business, and we did make
18 requests to Sam and didn't get responses. And we made
19 requests to the accountant and didn't get responses. And
20 then when we -- when Mr. Hojati took the business back,
21 there were just bits and pieces. And that's -- and so we
22 provided in the appeal process the bits and pieces we
23 recovered, but the audit was over before -- before he got
24 the business back.

25 JUDGE KIM: Then do you have those records now?

1 MR. S. MATHER: We have the bits and pieces that
2 we provided. I mean, I don't -- we don't have the CCC1
3 records from, you know, the audit period, the years at
4 issue. And we don't have the QuickBooks from that, at
5 least not the complete QuickBooks.

6 JUDGE KIM: You got the assets back, which
7 include the computers, but you're saying it didn't include
8 all the records?

9 MR. S. MATHER: It didn't -- it didn't include
10 the records from year --

11 JUDGE KIM: Only the records that were submitted?

12 MR. S. MATHER: Yes. That's all we could -- I
13 mean, there might have been some other bits and pieces,
14 but they were even less relevant than the purchases
15 journal. So --

16 JUDGE STANLEY: Okay. Thank you.

17 JUDGE WONG: Thank you.

18 Just to follow up on Judge Kim's question.
19 Before you sold the business to Sam, why didn't you keep
20 records related to the time that you were operating the
21 business through to the end of 2019?

22 MR. S. MATHER: Right. Well, in hindsight
23 obviously that was not a wise decision. But like I said,
24 Mr. Hojati was getting out and hadn't been notified of the
25 audit yet. And so it didn't seem -- it didn't seem to be

1 important at the time.

2 JUDGE WONG: Okay. Just another question. An
3 issue raised by CDTFA was about the credit card sales, and
4 it looked like Appellant was continuing -- had -- was
5 continuing to make credit card sales through the first
6 quarter of 2020 and second quarter 2020. How -- what's
7 the explanation for that if he had sold the business at
8 the end of 2019 prior to the pandemic? Like, what's going
9 on there?

10 MR. S. MATHER: The only explanation that we
11 have -- and I don't know where this information came from.
12 But it -- it is likely Sam's sales, you know. Whatever
13 credit card relationships he had, he probably just kept.

14 JUDGE WONG: Got it. Okay. And then Mr. Hojati
15 had mentioned that he had other corporations that were
16 also running these other Auto Collision Centers. Is that
17 correct? So this not --

18 MR. S. MATHER: Correct.

19 JUDGE WONG: So this is not his only business.
20 Okay. And had he been audited for -- had he undergone a
21 sales and use tax record for other -- of other businesses
22 of -- are there like Auto Collision businesses prior to
23 the audit at issue, Mr. Hojati?

24 MR. HOJATI: No.

25 MR. S. MATHER: No, not that I recall.

1 JUDGE WONG: Okay. All right.

2 MR. PARKER: Judge Wong, can I add something to
3 that?

4 JUDGE WONG: Sure.

5 MR. PARKER: Mr. Hojati was a witness in a prior
6 OTA case for Platinum Equity Partners. We can get you the
7 case number. Let me see if I can find it real quick, but
8 that was a separate audit. He was the president of that
9 company. That company was audited from '04 to '07. We --
10 I think the hearing was in 2022.

11 MR. S. MATHER: Was that a sales tax? I --

12 MR. PARKER: It was a sales tax audit. The case
13 number is OTA case 18124089. Mr. Hojati was here as a
14 witness with Mr. Mather representing the Appellant.

15 JUDGE WONG: Okay. And I'll double check our
16 records. Was the opinion issued? Is that case final? Do
17 you -- I guess I --

18 MR. PARKER: That case is final.

19 JUDGE WONG: Okay.

20 MR. PARKER: I believe it went final in 2022 or
21 2023.

22 JUDGE WONG: Okay. So the opinion should be
23 public and published, and we can --

24 MR. PARKER: Correct.

25 JUDGE WONG: -- look on that. Okay.

1 MR. PARKER: And I downloaded the transcript from
2 the OTA website.

3 JUDGE WONG: Okay.

4 MR. PARKER: So it is on the public --

5 JUDGE WONG: Okay.

6 MR. PARKER: -- sphere.

7 JUDGE WONG: Okay.

8 MR. S. MATHER: I know we were here for a FTB
9 case. I guess -- I guess -- I mean, the record is the
10 record. I --

11 MR. SAMARAWICKREMA: Also, Judge, there are a
12 total of five audits prior to this under different
13 permits.

14 JUDGE WONG: Okay.

15 MR. SAMARAWICKREMA: I can give you the seller's
16 permit if you will -- if you want it.

17 JUDGE WONG: Okay. Yeah, I think that's not --
18 that's not necessary. Yeah, I just -- I just wanted to
19 get a general background of Mr. Hojati with regards to
20 sales and use tax audits and what not. Just one second.
21 Yeah. Yeah. I do believe that both Mr. Mather and
22 Mr. Hojati did seem familiar, so I believe we have had a
23 hearing regarding -- in the past. So anyway --

24 MR. S. MATHER: Like -- like I say. I know we
25 had an FTB hearing, but I -- I don't recall the OTA. But

1 I --

2 JUDGE WONG: Okay.

3 MR. S. MATHER: -- I could be -- could be
4 mistaken.

5 JUDGE WONG: Okay. In any case, this other case
6 Platinum Equity Partners it's final. If the opinion has
7 been published, it's on our OTA's website, and the
8 transcript is out there. We'll take a look and see if
9 it's relevant at all. But in any case, so I have no other
10 questions, and so I think we're going to conclude the
11 hearing.

12 So the record is closed. The case is submitted
13 today.

14 MR. S. MATHER: Well, could I --

15 JUDGE WONG: Oh, sorry.

16 MR. S. MATHER: -- could I just address a couple
17 of points --

18 JUDGE WONG: Sure.

19 MR. S. MATHER: -- that came up with the
20 questioning?

21 JUDGE WONG: Sure.

22 MR. S. MATHER: In the questioning to the
23 Department there was -- the Department referred to
24 Exhibit K -- pardon me -- page 471 for, I think it was the
25 taxable sales percentage. But again, that's all based --

1 I mean, that whole schedule is based on the purchases from
2 the federal income tax return, which we contend is the
3 wrong number. So it's not an independent verification.
4 It's just another -- another formula applied to the wrong
5 number.

6 The Department made an extraneous comment about
7 the labor markup on the sales tax return labor factor, but
8 the sales tax return we called it the labor factor. It's
9 obviously the nontaxable factor, which includes more than
10 just labor. So you can -- you can make that direct
11 comparison.

12 The Department also referred to Exhibit K,
13 page 473, as a basis for claiming that the discrepancy
14 between the federal income tax return and sales tax
15 returns was material. All of that is attributable to the
16 \$8.3 million income number on the federal income tax
17 return for 2019, which is a number that seems to just come
18 out of the blue. So it makes no sense in the context of
19 the business, no sense in the context of anything.
20 Certainly, no sense in the context of the reported sales
21 or the bank records or anything else that we have in the
22 case.

23 And with respect to 2019 or 2020 and the sale of
24 the business, again, you know, there are bank records.
25 There are some bank statements in the record. I can't

1 remember the exhibit number. You know, those show no
2 receipts, you know, at the tail end of 2019 as well, and
3 in despite of the fact that the Department chose to assert
4 a million dollars of taxable sales in 2020 for a closed
5 business. So again not -- not so reasonable.

6 JUDGE WONG: Thank you, Mr. Mather.

7 All right. And now we will conclude the hearing.
8 Now, we will close the record.

9 The case is submitted today. The panel will meet
10 and decide the case based on the exhibits presented and
11 admitted as evidence as well as Mr. Hojati's testimony.
12 And we will send both parties our written decision no
13 later than 100 days from today.

14 The oral hearing in this case is now adjourned.

15 And oral hearings will recommence tomorrow at
16 9:30 a.m.

17 Thank you to both the parties and the witness for
18 your presentation and time today.

19 Thank you.

20 And we're off the record, please.

21 (Proceedings adjourned at 12:09 p.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 3rd day of March, 2025.

ERNALYN M. ALONZO
HEARING REPORTER