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APPEARANCES:

Panel Lead: ALJ SUZANNE B. BROWN

Panel Members: ALJ STEVEN KIM
ALJ ANDREW WONG

For the Appellant: PAUL AZIR

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

NALAN SAMARAWICKREMA
JARRETT NOBLE
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits A-J were received into evidence at page 9.)

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California; Wednesday, May 21, 2025

10:58 a.m.

JUDGE BROWN: We are on the record for the Appeal of St. Tomas Market, Inc. This is OTA Case No. 231114755. Today is Wednesday, May 21st, 2025, and it is approximately 10:58 a.m. We are holding this hearing electronically over Zoom with the agreement of all parties.

First, I will start by asking each of the participants to please state their names for the record.

And I will start by asking CDTFA's representatives to identify themselves.

MR. SAMARAWICKREMA: This is Nalan Samarawickrema, Hearing Representative for CDTFA.

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

MR. NOBLE: And Jarrett Noble, attorney for -- also, with CDTFA.

JUDGE BROWN: Thank you.

And now I will ask Appellant's representative to please identify himself for the record.

MR. AZIR: Paul Azir for St. Tomas Market, doing business as Ramona Market. Thank you.

JUDGE BROWN: Thank you, everyone.

1 I am Suzanne Brown. I am the lead Administrative
2 Law Judge or ALJ for this case. My co-panelists today are
3 Judge Steven Kim and Judge Andrew Wong. Although, I am
4 the lead ALJ for purposes of conducting the hearing, all
5 three ALJs are co-equal decision makers in this process,
6 and they are free to ask questions or otherwise speak up
7 at any time.

8 This hearing is before the Office of Tax Appeals
9 or OTA. OTA is not a court but is an independent appeals
10 body. OTA is staffed by tax experts and is independent
11 from the state's tax agencies, including CDTFA. Because
12 OTA is a separate agency from CDTFA, arguments and
13 evidence that were previously presented to CDTFA are not
14 necessarily part of the record before OTA, unless those
15 documents had been submitted to us.

16 OTA's written opinion for this appeal will be
17 based upon the briefs the parties have submitted to OTA,
18 the exhibits that will be admitted into evidence, and the
19 arguments presented at the hearing today. As a reminder,
20 this panel does not engage in what's called ex parte
21 communications. Meaning, that the panel members do not
22 speak to one party without the other party present.

23 I'll just recap that we had a prehearing
24 conference back in April regarding this case, and I issued
25 a document called the Prehearing Conference Minutes and

1 Orders dated April 15th, 2025. And as we discussed at the
2 prehearing conference and was confirmed in my Minutes and
3 Orders, there are two issues for hearing today. The first
4 one is whether further adjustments to the amount of
5 unreported taxable sales are warranted, and the second
6 issue is whether the negligence penalty was properly
7 imposed.

8 First, I'll ask Appellant's representative,
9 Mr. Azir, would you say that's a correct statement of the
10 issues today?

11 MR. AZIR: Yes, Your Honor.

12 JUDGE BROWN: Okay. Thank you.

13 And, CDTFA, do you agree that's an --

14 MR. SAMARAWICKREMA: Yes.

15 JUDGE BROWN: -- accurate statement of the
16 issues?

17 MR. SAMARAWICKREMA: Yes, Judge. Sorry. Yes.

18 JUDGE BROWN: That's okay. Thank you.

19 Thank you, everyone.

20 Next, I want to talk about the exhibits. I did
21 receive exhibits from CDTFA that were timely submitted,
22 and we discussed these at the prehearing conference.
23 CDTFA has marked these as exhibits A through J.

24 I will just confirm, Appellant, Mr. Azir --
25 Appellant's representative, Appellant has no objection to

1 admission of these exhibits into evidence; is that
2 correct?

3 MR. AZIR: No objection, but probably, I need one
4 clarification from California Department of Tax and Fee in
5 Exhibit No. I.

6 JUDGE BROWN: Okay. What is your question about
7 Exhibit I?

8 MR. AZIR: Oh, okay. That's the same credit card
9 sales for 2021, and does that include the nontaxable
10 sales?

11 JUDGE BROWN: CDTFA, do you want to respond?

12 MR. SAMARAWICKREMA: It is a total credit card
13 sales.

14 MR. PARKER: Judge Brown, I can add a little bit
15 of clarification in the --

16 JUDGE BROWN: Sure.

17 MR. PARKER: I know we're not in argument yet,
18 but in the --

19 JUDGE BROWN: Right.

20 MR. PARKER: In the audit we estimated year 2021
21 credit card sales from the 1099-K forms. The schedule I
22 shows the actual 1099-K information for 2021, since we
23 received it after the audit was completed. That's --
24 that's the only information that's in there.

25 JUDGE BROWN: And I understand that CDTFA also

1 addressed that in its brief submitted, and I believe it's
2 Exhibit J.

3 MR. PARKER: That's correct.

4 JUDGE BROWN: Okay. All right.

5 Appellant, as I was saying, do you have any
6 objection to these documents being admitted into evidence?

7 MR. AZIR: No, I don't have any objection. But
8 as I like to it for the record, like, what the CDTFA said;
9 that's include that taxable are nontaxable.

10 JUDGE BROWN: Okay.

11 MR. AZIR: So I'd like the Court to know that's
12 included. But --

13 JUDGE BROWN: I will say why don't you address
14 that during your argument.

15 MR. AZIR: Thank you.

16 JUDGE BROWN: Okay. Thank you.

17 All right. So CDTFA's Exhibits A through J are
18 admitted into evidence.

19 (Department's Exhibits A-J were received into
20 evidence by the Administrative Law Judge.)

21 JUDGE BROWN: Now, Mr. Azir, we did not receive
22 any exhibits from Appellant; correct?

23 MR. AZIR: Yes, except the one we send it to
24 CDTFA, the ledger -- we didn't send it to the court. I'm
25 sorry. Maybe I have to send it to the court, but I

1 thought I send it to California Department of Tax and Fees
2 when we have the audit, which is --

3 JUDGE BROWN: Yes. I believe that is
4 incorporated in CDTFA's Exhibit D.

5 MR. AZIR: Okay.

6 JUDGE BROWN: If you want to look at Exhibit D to
7 make sure that's the document you're referring to?

8 MR. AZIR: Sure. Okay. Let me see. Exhibit D.
9 Exhibit D is page 253. 253.

10 JUDGE BROWN: The numbers maybe not exactly --
11 may not line up exactly with the -- oh, yeah. Okay. It
12 is 253. It's 256 in the PDF, but it's Bates Stamped as
13 253.

14 MR. AZIR: Yes, Your Honor.

15 JUDGE BROWN: Okay.

16 MR. AZIR: Thank you.

17 JUDGE BROWN: All right. So I will note that, as
18 I said, we did not receive any -- OTA did not receive any
19 exhibits from Appellant, but I understand that Appellant
20 submitted a document that is now Exhibit D.

21 I'll just remind you, Mr. Azir, you're free to
22 refer to any of the documents that have been admitted into
23 evidence, even if they came from CDTFA.

24 MR. AZIR: Thank you.

25 JUDGE BROWN: Okay. Thank you.

1 I've admitted the exhibits. Neither party
2 indicated they were going to be calling any witnesses, so
3 we will just be hearing arguments today. And as we
4 discussed in the prehearing conference, Appellant
5 estimated it will take approximately 25 minutes to make
6 its presentation; and then CDTFA will have approximately
7 30 minutes to make its presentation. There may be
8 questions from any of the panel members along the way or
9 after the presentations, and then we will allow Appellant
10 an extra 5 minutes at the end to make a rebuttal. If
11 anyone needs a break at any point, please speak up and say
12 so.

13 And I'll just confirm first with Appellant,
14 Mr. Azir, is that accurate that you think your
15 presentation will take about 25 minutes?

16 MR. AZIR: Yes. Yes.

17 JUDGE BROWN: Okay. And, CDTFA, I'll just
18 confirm. You think your presentation will take about
19 30 minutes?

20 MR. SAMARAWICKREMA: Yes, Judge.

21 JUDGE BROWN: Okay. Thank you.

22 All right. Does anyone have anything else to
23 raise before we begin with the presentations? If not,
24 then I will say we can proceed with Appellant's
25 presentation.

1 It's a small tiny supermarket for neighborhood.

2 So the CDTFA audit rely heavily on their
3 percentage based on projection from credit card sales,
4 which is -- we just mentioned it -- Exhibit I. Which is
5 include in Exhibit I taxable and nontaxable, plus includes
6 the sales tax. So in example, if one customer went to the
7 store and he or she bought fruit, vegetables, water, food,
8 chicken, milk, and buy a candy bar, and then they pay,
9 will include that nontaxable all the vegetable, fruit,
10 water, milk, and the candy bar will be taxable under
11 California law. And then they said this candy bar is a
12 dollar. So they collect a dollar and say the sales tax
13 is, an example, 9 percent. They collect 9 cents for candy
14 bar. So the credit card calculate -- calculate all of the
15 above, taxable, nontaxable, and sales tax. And that's why
16 I mentioned it again in Exhibit I that's the total.

17 And this one as a small business and a small
18 taxpayer and probably English is not first language for
19 him, he prepare a sales ledger. And as we see it in
20 Exhibit No. D, a copy of the ledgers book. And the ledger
21 books he get as he accurate, and he believes that's very
22 accurate and complete. If we look at Exhibit D, page 253
23 for one minute here, if the Court allows me, you will find
24 this one is complete. They have the date, and he has
25 taxable and nontaxable, and the date you find it there.

1 And he added up, which is accurate according to the
2 taxpayer. And this method used to make it complete for
3 calculating sales tax for California Department of Tax and
4 Fees.

5 And then we going for California Department of
6 Tax and Fee Regulation 19 -- 1698, taxpayer are required
7 to maintain accurate record for gross receipts and taxable
8 sales. And in this case, the taxpayer has done so by
9 presenting ledgers and complete ledgers for sales. It's a
10 common method for small business like this nature. Using
11 electronic or point of sale system, it can be pricey for
12 this business. And I'd like to explain to the Court, he's
13 most of the time he's one person in this store. It's a
14 very small store. It's not big. It's not large, and
15 it's -- it's relatively small.

16 And I see when the auditors did this one, they
17 said they didn't present the books, but they did present
18 all the bank statements. They did present all the sales
19 ledgers and they complied with CDTFA Regulation 1698. And
20 then the auditor said -- because he disagreed with this
21 ledgers, he went to use the credit card method, which we
22 mentioned it, it's Exhibit D. And as California
23 Department of Tax and Fee, all the parties agreed and
24 confirmed that's include all the gross receipts; include
25 taxable and nontaxable and the sales tax there.

1 So we like the Court force the sales ledgers,
2 since complete, and the California Department of Tax and
3 Fee didn't find any other evidence, can rely on, except
4 the credit card record, which doesn't present accurate
5 method to separate the taxable to nontaxable and the sales
6 tax. So this method the taxpayer totally disagree to use
7 it. And he is kind of disappointed why California
8 Department of Tax and Fee refuse it. And they didn't
9 provide any reason, except they said we don't accept it.
10 Plus, they said we're going to force the percentage of
11 this one. And each audit needs to be individually
12 evaluate. And since this business the name is, the name
13 is called Ramona Market and the fact they sell all the
14 other product as I mentioned it at the beginning we, can't
15 accept the percentage of credit card because it's not
16 accurate. It doesn't have details, and California
17 Department of Tax and Fee, they should use Exhibit I for
18 the ledgers and -- which showing what's taxable and
19 nontaxable, not just come with percentage. Because it's
20 very rare to find a small market available for
21 neighborhood at this time.

22 So respectfully, we request the Court recalculate
23 everything based on that ledgers and accurate record. And
24 these sales ledgers, according to the taxpayer, is
25 accurate 100 percent and matching with the number he

1 reported in the sales tax return, which is monthly
2 depositor quarterly filing. And with regard California
3 Department of Tax and Fee's using the credit card, because
4 it's not accurate and leave the accurate record for
5 ledgers. That's to cover the part number one for this
6 appeal.

7 Part number two, which is the penalty California
8 Tax and Fee posted on the taxpayer. As we see from
9 Exhibit I, the taxpayer has made a good-faith effort to
10 maintain accurate record and combine with California
11 complex sales tax rules and California estimate it. And
12 this one showing good faith, and we ask for the Court to
13 waive that penalties and use the accurate record for
14 general ledgers. And not because it's handwritten, it's
15 not accurate. Nothing said it's handwritten is not
16 accurate and electronic are point of sales accurate.
17 That's not accurate statement at all.

18 Handwritten stuff probably it's time consuming
19 method, but that doesn't mean not accurate. It mean in
20 his -- in the taxpayer's opinion, it's accurate 100
21 percent, and that's why he keep the record. That's why he
22 record it on a daily basis. That's why he recorded
23 between taxable and nontaxable for this documents. And we
24 ask the Office of Tax Appeal to recognize these facts and
25 issues and relieve the penalties and extra tax forced for

1 underreporting.

2 Thank you, Your Honor.

3 JUDGE BROWN: Thank you very much, Mr. Azir.

4 At this time, I'm going to ask my co-panelists
5 whether they have any questions for Appellant right now,
6 or whether they wish to hold their questions until after
7 we hear both presentations. First I will -- oh, hold on a
8 second.

9 I just got a message that we need to pause
10 because our stenographer lost her internet connection. So
11 I'm going to say if everyone can just wait a moment. We
12 will wait for her to rejoin the hearing.

13 Okay. We're going to take a five-minute break
14 while we wait for our stenographer. So OTA is going to
15 put everyone back in the waiting room of Zoom, and then
16 we'll bring you back in as soon in five minutes once our
17 stenographer is back with us.

18 So we're taking a five-minute break. It's 11:20.
19 We'll see you at 11:25 or so. Thank you.

20 (There was a pause in the proceedings.)

21 JUDGE BROWN: We are resuming the hearing.

22 And we had a short break because our stenographer
23 lost power, but she is back with us now. And she
24 requested that the very last part of Appellant's
25 presentation be repeated for her.

1 Ms. Alonzo, can you repeat back the last sentence
2 you had transcribed.

3 (The record was read by the stenographer.)

4 JUDGE BROWN: Mr. Azir, I think the last part
5 that the stenographer missed was your statement about the
6 negligence penalty.

7 MR. AZIR: That's correct, yes.

8 And we ask the Court to waive the penalty
9 according to the code 1698 -- 1698, yes.

10 JUDGE BROWN: And my -- Mr. Azir, in my notes I
11 have that you said that Exhibit I shows that Appellant
12 made a good-faith effort to maintain accurate records, and
13 that just because the ledger is handwritten doesn't mean
14 it's accurate; that it is time consuming but accurate. Is
15 that correct summary of the last part of what you said?

16 MR. AZIR: Yes, Your Honor.

17 JUDGE BROWN: Okay. Thank you.

18 MR. AZIR: Thank you.

19 JUDGE BROWN: And I believe that concludes the
20 first part of your presentation.

21 And as I was going to say that I was going to ask
22 if my co-panelists have any questions for Appellant before
23 we move on to hear CDTFAs' presentation.

24 Judge Kim, do you have any questions right now?

25 JUDGE KIM: Yeah. I just had one question for

1 Mr. Azir.

2 What kind of POS system did Appellant use to
3 record their sales?

4 MR. AZIR: They don't have point of sale system.

5 JUDGE KIM: They don't have one. So how did they
6 determine how much the tax was and which items were
7 taxable for -- for their transact for their sales?

8 MR. AZIR: They have register tape.

9 JUDGE KIM: They have a register?

10 MR. AZIR: Register tape, yes. They have a small
11 register in the store.

12 JUDGE KIM: And all the items were they
13 programmed into the register?

14 MR. AZIR: Yes. Yes. And at the end of the day,
15 he write down the total sales and total non -- taxable and
16 total nontaxable from that register and calculate the tax
17 based on this.

18 JUDGE KIM: And did he have any Z-tapes from
19 those registers?

20 MR. AZIR: I do have Z-tapes he provided to me.
21 I'm not sure including in this period or not. But he --
22 that's the summary for the Z-tape that the -- the sales
23 ledgers.

24 JUDGE KIM: So other than the handwritten
25 document, you don't have the actual source documents?

1 MR. AZIR: I do have. I don't know for this
2 period or not. But he did provide me the sales and sums
3 of the day -- each day of the -- what you call it? -- the
4 Z-tape, the total by the end of the day. And I have some,
5 yes.

6 JUDGE KIM: Okay. But none of those were
7 submitted for the audit or provided to OTA?

8 MR. AZIR: No. None of them submitted to the
9 audit because I -- I believe at this time the auditor
10 refused the sales ledgers, and they like to use the
11 percentage of credit card; based on the credit card.

12 JUDGE KIM: So you're saying you do have some
13 Z-tapes and other source documents?

14 MR. AZIR: I do. I do have some of them in -- in
15 my office here. But I didn't think -- I really -- I
16 didn't have a chance to look at for which period we have,
17 but I do have, yes. I have Z-tape, and I have the
18 register tape comes from his -- from his register.

19 JUDGE KIM: And that would be for part of the
20 liability period?

21 MR. AZIR: I don't know. I didn't check. I can
22 ask the client.

23 JUDGE KIM: Okay. Thank you.

24 MR. AZIR: Thanks.

25 JUDGE BROWN: All right. Thank you, Judge Kim.

1 Now, I will ask Judge Wong, if you have any
2 questions for Appellant at this time?

3 JUDGE WONG: Thank you. I just had one question.

4 Mr. Azir, you were representing the Appellant
5 during the audit; is that correct?

6 MR. AZIR: That's correct. I representing him
7 during the audit, but California Department of Tax and
8 Fee, they just open another audit. So I'm representing
9 him for the coming audit too.

10 JUDGE WONG: Okay. I know you're not under oath
11 or testifying, but I just want to ask. Do you recall
12 signing a waiver of the statute of limitations? There in
13 the record there indicates that there was a waiver
14 provided at the end of December 2021, I guess. Do you
15 recall signing one or not?

16 MR. AZIR: I -- I -- no recall.

17 JUDGE WONG: Okay.

18 I represent this client, another client and for
19 different periods, and it's really -- I can't say yes. I
20 can't say no.

21 JUDGE WONG: Okay. Sure. Thank you. That's all
22 the questions I had.

23 MR. AZIR: Thank you, Your Honor.

24 JUDGE BROWN: All right. Thank you.

25 I'm going to move on at this point to hear

1 CDTFA's presentation, but, Mr. Azir, we may have more
2 questions for you after that.

3 CDTFA, if you are ready, you can go ahead with
4 your presentation, and you have 30 minutes.

5 MR. SAMARAWICKREMA: Thank you, Judge.

6

7

PRESENTATION

8 MR. SAMARAWICKREMA: Appellant is a California
9 corporation that operates a supermarket in San Jacinto,
10 California, selling Mexican-style hot-prepared food, beer,
11 wine, carbonated beverages, tobacco products,
12 miscellaneous taxable items, and nontaxable grocery items.
13 Appellant is a California lottery retailer and also offers
14 MoneyGram and check cashing services. The Department
15 audited Appellant's business for the period of
16 October 1st, 2018, to September 30th, 2021. Appellant was
17 previously audited for the period, January 1st, 2015,
18 through March 31st, 2018. And the audit working papers
19 for the prior audit is shown on Exhibit H.

20 During the audit period, Appellant reported
21 around \$1 million as total sales and claimed nontaxable
22 food sales of around \$468,000 and claimed a deduction of
23 around \$40,000 for sales tax reimbursement included in the
24 reported total sales resulting in reported taxable sale of
25 around \$501,000. And this is shown on Exhibit B,

1 pages 101 and 102.

2 During our presentation, we will explain why the
3 Department rejected Appellant's reported taxable sales;
4 why the Department used an indirect audit approach; how
5 the Department determined Appellant's unreported taxable
6 sales for the audit period; and why the Department
7 recommended a negligence penalty for this Appellant.
8 During the audit, Appellant explained that they use daily
9 cash register Z-tapes to prepare handwritten sales
10 journals, which were forwarded to an outside tax preparer
11 to prepare the sales and use tax returns for the audit
12 period. Appellant provided their handwritten sales
13 journals for the period January 2019 to September 2021,
14 and these sales journals are on Exhibit D.

15 But during the audit, Appellant failed to provide
16 their completed sales records, such as cash register
17 Z-tapes, credit card sales receipts to verify the accuracy
18 of the amounts reflected on these sales journals. In
19 addition, Appellant failed to provide complete purchase
20 invoices and purchase journals for the audit period. Due
21 to the lack of reliable records, the Department did not
22 accept Appellant's reported taxable sales. The Department
23 also determined that Appellant's record was such that
24 taxable sales could not be verified by a direct audit
25 approach. Therefore, the Department used an indirect

1 audit approach to determine Appellant's taxable sales.

2 The Department completed four verification
3 methods to understand Appellant's reporting patterns and
4 verify the accuracy of reported taxable sales. First, the
5 Department analyzed reported taxable sales for the filing
6 periods, October 2018 to September 2021; and this is shown
7 on Exhibit D, pages 76 and 77. The Department compared
8 the reported taxable sales with total sales and calculated
9 an overall taxable sales percentage of around 52 percent,
10 ranging from as low as 42 percent to as high as 60 percent
11 for the same period. And these calculations are shown on
12 Exhibit A, page 76.

13 The Department also noted lower reported average
14 daily taxable sale of \$567, ranging from as low as \$316 to
15 as high as \$613 for the audit period; and these
16 calculations are shown on Exhibit A, page 76. In
17 contrast, based on the analyses of audited taxable sales
18 for the audit period, the calculated audited daily taxable
19 sales were \$922, which the Department determined to be a
20 more reasonable daily taxable sales than the reported
21 daily taxable sales; and these calculations are shown on
22 Exhibit D, page 77.

23 Second, the Department reviewed Appellant's
24 federal income tax return for years 2019 and 2020. And
25 this information is shown on Exhibit C and Exhibit B,

1 page 128. The Department reconciled sales reflected on
2 the Appellant's federal income tax return with total sales
3 reported on sales and use tax returns and calculated an
4 overall difference of around \$3 million for the same
5 period; and these differences are shown on Exhibit B,
6 page 128. Appellant claims that these differences include
7 check cashing amounts and MoneyGram transfers. However,
8 Appellant did not provide any verifiable documents or
9 evidence to support this.

10 The Department also noted Appellant did not
11 provide their purchase amounts for these two years to
12 calculate Appellant's reported markups; and this is shown
13 on Exhibit B, page 128, and Exhibit C. Based on the prior
14 audit working papers, it appears Appellant changed their
15 methods of reporting their purchases on their federal
16 income tax returns; and this is shown on Exhibit B,
17 page 128, and Exhibit H, page 402.

18 Third, Appellant did not provide their credit
19 card sales for the audit period. Therefore, the
20 Department obtained Appellant's credit card sales for the
21 audit period from the Department's internal sources; and
22 this information is shown on Exhibit A, pages 73
23 through 75, and Exhibit B, page 112. The Department
24 compared the credit card sales to the reported total sales
25 and calculated an overall quarterly credit card sales

1 ratio of around 92 percent, ranging from as low as
2 53 percent to as high as 125 percent for the audit period;
3 and these calculation shown on Exhibit A, page 78.

4 This is an indication that not all of Appellant's
5 cash and credit card sales transactions had been reported
6 in their sales and use tax return for the audit period.
7 Appellant was unable to explain the reason for low
8 reported taxable sales percentages, low reported average
9 daily taxable sales, and high reported credit card sales
10 percentages. Therefore, the Department concluded that
11 further investigation was warranted. The Department
12 decided to use an indirect audit approach to determine
13 Appellant's taxable sales for the audit period. However,
14 Appellant failed to provide complete sales and purchase
15 information to determine Appellant's credit card sales
16 percentages, nontaxable sales percentages, and markups.

17 Appellant also failed to provide its credit card
18 sales and purchase information for the audit period.
19 Therefore, the Department used the best available
20 information to determine audited taxable sales. So the
21 Department reviewed the prior audit and contacted
22 Appellant's known beer and soda vendors to obtain
23 purchases from the audit period; and this information is
24 shown on Exhibit B, pages 117 through 125. Based on the
25 prior audit purchase segregation, the Department

1 determined the beer and soda purchase percentage of around
2 70 percent; and this calculation is shown on Exhibit B,
3 pages 126 and 127.

4 The Department used available vendor purchase
5 information and prior audit purchase segregation
6 information to determine the audited taxable purchases of
7 around \$531,000 for the audit period; and these
8 calculations are shown on Exhibit B, page 116. The
9 Department also compared reported taxable sales of around
10 \$501,000 with the audited taxable purchases of around
11 \$531,000 and calculated an overall negative reported book
12 markup of a little less than 6 percent; and this
13 calculation is on Exhibit A, page 79. If the Department
14 were to accept this reported negative book markup, that
15 would mean Appellant was losing money every time it made
16 taxable sales. Accordingly, the Department did not accept
17 Appellant's reported taxable sales for the audit period.

18 Appellant did not provide sales and purchase
19 information to understand Appellant's pricing policies.
20 Therefore, the Department used the audited taxable
21 purchases of around \$531,000 and prior audit post markup
22 of around 59 percent to determine the audited taxable
23 sales of around \$846,000 for the audit period; and this
24 calculation is shown on Exhibit B, page 114. Audited
25 taxable sales were compared with reported sale of around

1 \$501,000 to determine unreported taxable sales of around
2 \$345,000 for the audit period; and these calculations are
3 on Exhibit B, pages 113 and 114.

4 To verify the reasonableness of audited taxable
5 sales based on cost plus markup audit approach, the
6 Department calculated the overall taxable credit card
7 sales percentages of around 178 percent, ranging from as
8 low as 118 percent to as high as 275 percent for the audit
9 period; and these calculations are shown on Exhibit B,
10 page 42. The Department also calculated overall post
11 audited taxable credit card sales percentage of around
12 71 percent using prior audit information for the period
13 January 2016 through March 2018; and these calculations
14 are shown on Exhibit B, page 110.

15 The Department noted that the calculated taxable
16 credit card sales for the current audit period was
17 substantially higher than or the prior audit taxable
18 credit card sales percentage of around 71 percent; and
19 these calculations are shown on Exhibit A, page 42. Based
20 on these taxable credit card sales percentages, the
21 Department determined that it is required to use the
22 taxable credit card sales approach to determine accurate
23 taxable sales for this Appellant for this audit period.
24 Therefore, the Department analyzed prior audit information
25 and determined audited taxable credit card sales

1 percentages for periods prior to COVID-19 pandemic and
2 periods during and after COVID-19 pandemic; and these
3 percentages are shown on Exhibit B, page 110.

4 Appellant did not provide any evidence to suggest
5 that they have a different taxable credit card sales
6 percentage for the audit period. During the audit field
7 work, Appellant failed to provide credit card merchant
8 statements or credit card sales information to calculate
9 their credit card sales for the audit period. Therefore,
10 the Department obtained Appellant's credit card sales
11 information for the period October 2018 through
12 December 2020 from its internal sources; and this is on
13 Exhibit B, page 112. At the time of the audit field work,
14 the Department did not have the credit card sales
15 information for the period January 2021 through
16 September 2021. Therefore, the Department used the 2020
17 average credit card sale to determine credit card sales
18 for the sales period January 2021 through September 2021;
19 and these calculations are shown on Exhibit A, page 42.

20 Then the Department used the total credit card
21 sales, audited taxable credit card sales percentages, and
22 unreported taxable sales based on the cost plus markup
23 method to determine additional taxable sales of around
24 \$165,000 for the audit period; and this is shown on
25 Exhibit A, page 42. In total, the Department determined

1 unreported taxable sales of around \$510,000; and this is
2 shown on Exhibit A, page 41. Unreported taxable sales
3 were compared with the reported taxable sales of around
4 \$501,000 to calculate the error rate of around 102 percent
5 for the audit period.

6 As mentioned earlier, the Department determined
7 the unreported taxable sales for the period January 2021
8 through September 2021 using average credit card sales
9 using the year 2020 credit card sales because Appellant's
10 credit card sales information for this period was not
11 available when the audit was conducted. The Department
12 now has acquired the credit card sales for this period and
13 analyzed this new information; and this credit card sales
14 information is on Exhibit A, pages 73 through 75. The
15 Department concluded that including actual credit card
16 sales in its analysis would increase the unreported
17 taxable sales by around \$39,000, from \$510,000 to \$549,000
18 for the audit period; and these calculations are on
19 Exhibit A, page 72. However, the Department is not
20 asserting any increase based on Appellant's actual credit
21 card sales information for this period. Therefore, the
22 Department determined that the estimated amount assessed
23 in this period is not only reasonable but also benefits
24 the Appellant.

25 When the Department is not satisfied with the

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

15 Since Appellant failed to provide necessary
16 records, the Department used the best available
17 information to determine the unreported taxable sales for
18 the audit period. The audit calculation of unreported
19 taxable sales based on the best available information was
20 reasonable. Appellant disagrees with the audit findings.
21 As support, Appellant provided the handwritten sales
22 records for the period January 1st, 2019, through
23 September 30th, 2021; and these sales records are on
24 Exhibit A, pages 44 through 70, and Exhibit D.

25 The Department analyzed Appellant's arguments and

1 ultimately rejected it upon examination of those sales
2 records. The Department noted that Appellant did not
3 provide any source documents or any of the information to
4 collaborate the figures listed on those sales records.
5 Nevertheless, the Department analyzed these sales records
6 and noted that the total sales recorded on these sales
7 records of around \$5.8 million are more than the total
8 sales reported on these sales and use tax returns of
9 around \$937 by around \$4.9 million for the period
10 January 2019 through September 2021; and these
11 calculations are shown on Exhibit A, page 44.
12 Furthermore, a comparison of the taxable recorded in the
13 sales record of around \$487,000 to the audited taxable
14 purchases of around \$497,000 resulted in a negative
15 taxable book markup of around 2 percent; and this
16 calculation is shown on Exhibit D, page 44.

17 Appellant also dispute the audited markup
18 percentage, taxable credit card percentage, and the credit
19 card sales using the audit. Appellant has not provided
20 any documents of original entry, such as cash register
21 Z-tapes, credit card sales receipts, purchase invoices for
22 any part of the audit period to support their contentions
23 or to disprove the Department's calculation of audited
24 taxable sales for this audit period. The audit
25 calculation of unreported taxable sales was based on the

1 best available information. The Department continues to
2 find it reasonable.

3 Finally, the Department imposed a negligence
4 penalty based upon its determination that Appellant's
5 books and records were incomplete and inadequate for sales
6 and use tax purposes, and because Appellant failed to
7 accurately report their taxable sales. Specifically, the
8 Department noted that Appellant failed to provide complete
9 records for the audit period, and Appellant failed to
10 provide documents of original entry to support their
11 reported taxable sales. Appellant's failure to provide
12 complete books and records for the audit period is
13 evidence of negligence. In addition, the audit
14 examination disclosed unreported taxable sales of around
15 \$510,000, which when compared with the reported taxable
16 sales of around \$501,000 for the audit period resulted in
17 an error rate of around 102 percent. This high error rate
18 is additional evidence of negligence.

19 Last, Appellant was previously audited for the
20 period January 2015 through March 2018, which also
21 resulted in a determination of unreported taxable sales.
22 This indicates that Appellant had the experience and
23 knowledge to sufficiently understand their sales and use
24 tax compliance obligations. In conclusion, since
25 Appellant did not provide complete books and records, the

1 Department was unable to verify the accuracy of reported
2 taxable sales using a direct audit method. Therefore, an
3 alternative audit method was used to determine unreported
4 taxable sales.

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

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

14 Thank you.

15 JUDGE BROWN: Thank you.

16 Now, I will turn to my co-panelists and ask if
17 they have any questions for CDTFA.

18 Judge Kim, why don't you can go first, if you
19 have any questions.

20 JUDGE KIM: I don't have any questions at this
21 time. Thank you.

22 JUDGE BROWN: Okay. Thank you.

23 And, Judge Wong, do you have any questions for
24 CDTFA at this time?

25 JUDGE WONG: I did have a couple of questions.

1 For Exhibit B, page 110, you had referenced that
2 in the exhibits. It's how the credit card sales ratio was
3 calculated, and I see mechanically how it was done and
4 math, and it resulted in 102.84 percent taxable credit
5 card sales ratio that was applied to, like, the latter
6 half of the liability period, I believe beginning second
7 quarter 2020. How is it possible for there to be a credit
8 card sales ratio above 100 percent? Because that -- I
9 mean, that means the credit card sales exceeded total
10 sales. And does it make a difference, I guess, based on
11 the credit card data that was acquired later?

12 Oh, Mr. Samarawickrema, you're muted.

13 MR. SAMARAWICKREMA: Sorry. Judge, we used the
14 taxable sales and compared it with the credit card ratio.
15 So if you -- if you go page 110 -- give me one minute. So
16 the -- based on the prior audit from January 2016 through
17 March 2018, the ratio is 71 percent. Then we give an
18 adjustment for the COVID, like a 20 percent adjustment,
19 and then when we calculate it -- when we calculate the
20 first quarter 2020. So the COVID happens in March. So
21 what we did, we weighted 71 percent and 102 percent and
22 came up to 81 percent for that particular quarter, first
23 quarter 2020.

24 So we have three -- three ratios. Reason, the
25 first two months of first quarter 2020 we use the

1 70 percent, that is for two months, and 102 percent for
2 its third month, and we took those totals and divide it by
3 three and came up with 81 percent, 81.46 in page 110. So
4 the reason we have more -- more is because we compare --
5 we didn't compare the credit card sales to the total
6 sales. We compared the credit card sales to the taxable
7 sales based on the prior audit.

8 MR. PARKER: Can I add one thing? This is Jason
9 Parker.

10 I did just want to mention that with credit card
11 sales, the 1099-K information includes any tax or tips.
12 If there's a -- you know, like restaurants typically have
13 tips. This place probably did not have tips. So the
14 credit card ratio could be above a 100 percent, but there
15 is still cash sales included in that. So for instance,
16 the 1099-K for fourth quarter of '20 was a little over
17 \$92,000, and the taxable sales that we ended up with the
18 102 percent was \$89,000. So it's less of the sales.

19 JUDGE WONG: Okay. Thank you.

20 Oh, and also my final question was about the
21 waiver that I asked Mr. Azir about earlier. I didn't see
22 a copy of that in the record.

23 Mr. Azir, seems to be waiving his arms.

24 But does CDTFA have a copy of that somewhere
25 available? I know there's references to it in the

1 decision. There's references to it in the log of audit
2 activity. I just didn't see the actual.

3 MR. SAMARAWICKREMA: Yeah. Exhibit A, page 28,
4 Judge.

5 JUDGE WONG: Okay. Thank you. Perfect. Great.
6 Thank you very much. That's all the questions I had.

7 JUDGE BROWN: All right. Thank you co-panelists.
8 At this time, I will say that I will proceed to
9 hear Appellant's rebuttal.

10 Mr. Azir, if you're ready, you can respond to any
11 of the presentations or questions or anything thus far.
12 You have five minutes.

13 MR. AZIR: Thank you, Your Honor.

14

15 CLOSING STATEMENT

16 MR. AZIR: I have here, since the last two
17 audits, the taxpayer start to use register tape and
18 reports daily sales as mentioned in Exhibit D -- and I'm
19 sorry -- Exhibit J. Let me get there. Yes. I'm sorry.
20 Exhibit -- the daily register, Exhibit D. And in
21 Exhibit C, what is the income tax return, you will find on
22 page 149 and page 202 the taxpayer is doing cash for --
23 cashing -- cash checks, and he does money order. And as
24 CDTFA agreed, it's a supermarket.

25 So impossible as a supermarket to use 100 percent

1 or higher than 100 percent of that credit card for
2 nontaxable -- for taxable only, which is absolutely --
3 it's not clear at all how come this -- the credit card
4 method is higher than -- it's more than 100 percent. And
5 even the Court -- the owner just mention it to him, and I
6 agreed. This one it -- it's -- it doesn't make any sense
7 when they're saying the credit card ratio is over
8 100 percent and ignoring and contradicting to themselves.
9 It's a supermarket. So how come supermarket collect
10 credit card more than 100 percent of the card or more
11 is -- is taxable.

12 So where are the sales of bread, food, milk,
13 anything nontaxable? And it's a supermarket. And the
14 name is explaining. And even the California Department of
15 Tax and Fee failed to provide which one they're comparing
16 to; they make that markup method very high like this.
17 This one is not a convenience store. It's a supermarket.
18 So if they have any other supermarket, they can provide it
19 for the same ratio would be reasonable. But they don't
20 provide any reasonable method we can rely on.

21 And that's very unclear method they did use it.
22 That's -- and they refuse to use the sales daily ledgers
23 and take it from the register tape, and not even that.
24 They provide all the bank statement. And it's very clear
25 in the bank statement the sales of food and MoneyGram.

1 And they have MoneyGram including in this, which is
2 absolutely wrong to have it in gross sales because
3 MoneyGram have a separate bank account for it. And they
4 have a separate bank account for lottery too. But
5 California Department of Tax and Fee they have this one in
6 the calculation and -- and including there and -- which is
7 not supposed to be. It's very clear, and it has been
8 provided by all evidence, it comes from MoneyGram, and it
9 comes from lottery, and it comes from cash to checks,
10 which is that's all the sales. He mentioned it, which
11 he's saying is about \$9 million, which impossible for this
12 place to sell that much.

13 And again -- back again to section 1698, the
14 taxpayer provide normal books for accounts, provides the
15 bills, provides the receipts, invoices, and cash register
16 ledgers. And they even provide the schedule in -- in the
17 tax return as we mention it in page 149 and page 201. And
18 this record, it should indicate that the taxpayer follow
19 the Code 1698, and should the Court please use the sales
20 ledgers. And if they need anymore documents, we may --can
21 provide it to the Court to rely on that sales ledgers.
22 And please waive any and all penalties at this time.

23 Thank you for everyone.

24 JUDGE BROWN: Thank you.

25 Before I move on to final questions, I'll ask if

1 CDTFA has anything that it wants to add in response to
2 Appellant's rebuttal.

3 MR. SAMARAWICKREMA: No, Judge.

4 JUDGE BROWN: Okay. Thank you.

5 Then I will ask my co-panelists if they have any
6 final questions.

7 Judge Kim?

8 JUDGE KIM: No final questions. Thank you.

9 JUDGE BROWN: Okay. And, Judge, Wong anything
10 further?

11 JUDGE WONG: Nothing further. Thank you.

12 JUDGE BROWN: Okay. Then I would like to say
13 thank you, everyone, for your presentations and for your
14 time today.

15 At this time, the record is closed, and the case
16 is submitted today.

17 The judges will meet and decide the case based on
18 the evidence, arguments, and applicable law. We will mail
19 both parties our written decision no later than 100 days
20 from the date the record closes, which is today.

21 This hearing is now adjourned, and this concludes
22 OTA's hearings for this morning. Hearings will resume
23 this afternoon, I believe, at 1:00 p.m.

24 Thank you, everyone. We are concluded.

25 (Proceedings adjourned at 12:14 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 10th day of June, 2025.

ERNALYN M. ALONZO
HEARING REPORTER