

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
BRIAN STEVE DOLIVEK,) OTA NO. 231114784
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, May 21, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:06 p.m. and concluding at 1:56 p.m. on
Wednesday, May 21, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ STEVEN KIM

Panel Members: ALJ TERESA A. STANLEY
ALJ NATASHA RALSTON

For the Appellant: BRIAN STEVE DOLIVEK

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

JENNIFER BARRY
JARRETT NOBLE
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received into evidence at page 7.)

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

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California; Wednesday, May 21, 2025

1:06 p.m.

JUDGE KIM: Okay. So now we are going on the record.

This is the Appeal of B. Dolivek, OTA Case No. 231114784. The date is May 21st, 2025, and the time is 1:06 p.m. This hearing is being held electronically with the agreement of both parties.

I am Judge Steven Kim. I will be the lead ALJ for purposes of conducting this hearing. My co-panelists, Judge Teresa Stanley and Judge Natasha Ralston, and I are equal participants in deliberating and determining the outcome of this appeal.

Parties, I just want to start with a quick introduction. Can you please state your name and who you represent and your title, starting with Respondent CDTFA.

MS. BARRY: Jennifer Barry, attorney with the California Department of Tax and Fee Administration. Attorney -- sorry.

MR. NOBLE: Jarrett Noble, attorney for -- with the Department as well. Thank you.

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

JUDGE KIM: Thank you.

1 And for Appellant. Mr. Dolivek, can you just
2 state your name.

3 MR. DOLIVEK: Yeah. Brian Dolivek.

4 JUDGE KIM: As stated in my Minutes and Orders,
5 the issues to be decided in this appeal are: Whether any
6 adjustment is warranted to the measure of unreported
7 taxable sales; whether any additional interest relief from
8 tax is warranted due to reasonable reliance on written
9 advice from CDTFA; and whether any additional relief is
10 warranted.

11 Mr. Dolivek, is that -- do you agree that those
12 are the issues in this case?

13 MR. DOLIVEK: That is correct. I had some
14 written advice that was misleading in my opinion, and
15 that's what I would like to go over today. And also, I
16 did some research on my own as far as what's taxable and
17 nontaxable when I spoke with an individual at the tax
18 opinion experts Department up in Sacramento.

19 JUDGE KIM: Okay. And, Respondent, are these the
20 issues to your understanding?

21 MS. BARRY: Yes, those are the issues as we
22 understand them.

23 JUDGE KIM: Great. Thank you.

24 Appellant submitted Exhibits 1, a Notice of
25 Redetermination and some other documents that are already

1 included in CDTFA's exhibits. CDTFA did not object to the
2 admissibility of this exhibit. So Exhibit 1 is now
3 admitted into evidence.

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

6 JUDGE KIM: Also, we didn't discuss at the
7 prehearing conference, but Mr. Dolivek submitted four
8 invoices with his additional briefing on April 29th, 2024.

9 Does CDTFA have any objections regarding the
10 admissibility of these documents?

11 MS. BARRY: No objections.

12 JUDGE KIM: Great. Then those invoices will be
13 admitted as Exhibit 2.

14 (Appellant's Exhibit 2 was received into
15 evidence by the Administrative Law Judge.)

16 JUDGE KIM: CDTFA submitted Exhibits A through E.
17 Appellant did not object to the admissibility of these
18 exhibits. So Exhibits A through E are now admitted into
19 evidence.

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

22 JUDGE KIM: Mr. Dolivek, you indicated during the
23 prehearing conference that you intend to testify as a
24 witness. Is that still the case?

25 MR. DOLIVEK: That is correct, Your Honor.

1 JUDGE KIM: Okay. And CDTFA did not raise any
2 objections.

3 Before we begin your presentation, Mr. Dolivek, I
4 need to place you under oath so that we can consider your
5 statements as testimony, and you will remain under oath
6 until the close of this hearing.

7 MR. DOLIVEK: Thank you.

8 JUDGE KIM: So if you could please raise your
9 right hand.

10

11 B. DOLIVEK,
12 produced as a witness, and having been first duly sworn by
13 the Administrative Law Judge, was examined, and testified
14 as follows:

15

16 JUDGE KIM: Thank you.

17 MR. DOLIVEK: You're welcome.

18 JUDGE KIM: Okay. Mr. Dolivek, you will have
19 15 minutes for your presentation, and you may begin when
20 you're ready.

21

22 PRESENTATION

23 MR. DOLIVEK: Okay. So back in 2008, we received
24 a letter from, at that time it was the Board of
25 Equalization. And I'm just going to read this -- and I

1 believe you have copies of this here -- stating that we
2 needed to get a seller's permit for our type of business
3 on there. So this letter was generated on our company's
4 behalf that was sent over to, at that time the California
5 Board of Equalization. And I'm just going to read through
6 that, and then I'll read back the response letter that we
7 received. And then I'll go into some further details on
8 other investigation stuff that I found out through the
9 opinions experts up in Sacramento.

10 So the letter that we submitted was Beverlee's
11 Bartending Services, a full service staffing agency. When
12 clients are planning a party, they call Beverlee's
13 Bartending Service for bartenders or servers. We charge
14 an hourly fee for each bartender or server we send to each
15 event. At Beverlee's Bartending Service, we offer
16 additional services, which is a procurement service.
17 Procurement is when a client does not know what a bar
18 should consist of. For a small fee, we arrange for a
19 liquor store to deliver and order of all bar supplies
20 needed for the event.

21 And then I just give examples on there; liquor,
22 beer, wine, napkins, and so on. The liquor store then
23 bills Beverlee's Bartending Service. Then we pass the
24 charge onto our client's invoice. When Beverlee's
25 Bartending Service books a party that is using the

1 procurement service, we put on their invoice an estimated
2 charge for the purpose of -- to determine a deposit to our
3 clients. Our customers are only billed for what supplies
4 they use and what is -- whatever is leftover that is
5 opened. The liquor store picks up any of the products
6 that's not leftover -- excuse me -- that's not opened at
7 each event and then bills Beverlee's Bartending Service
8 for that. Clients do not use our procurement service
9 supply of their own goods for all our staff to use.

10 All of our bartenders and servers are hired as
11 contract labor. My question to the Board of Equalization,
12 do we need a seller's permit for labor services? We do
13 not sell any tangible goods. And at that time in 2008,
14 they were contract labor, but then laws changed. So all
15 our staff are now considered employees and that's been for
16 several years on there. So the response I received from
17 Ms. Virginia Galang was an exempt for sale for resale
18 takes place when the liquor and supplies pass title from
19 supplier to you. A retail sale takes place when you bill
20 your customers for the same liquor and supplies to your
21 client, since the title of possession was transferred.
22 This is the case, regardless of the fact that the amount
23 you're charging your client is the same as your cost.

24 Contrary to your letter, we consider you
25 seller -- as seller of tangible personal property. The

1 fact you're making sales of tangible personal property in
2 California requires you to obtain a seller's permit.
3 Further, if you have a client to whom you're bartending
4 services only without providing any tangible personal
5 property, your charges for the services are exempt. If
6 you have a client to whom you're selling liquor and
7 supplies, along with bartending services, all charges,
8 including those for the liquor and supplies, as well as
9 bartending, are taxable. You may purchase a, you know,
10 liquor through a retail certificate. That's separate
11 because out -- at that time, we did not have a liquor
12 license to do all that. So we had to go through a store
13 that had the proper licensing.

14 So in the letter here of written advice, I do
15 mention in the letter that we wrote that we provide
16 bartending and serving staff. And then the response is
17 only addressing the bartender stating that, basically, if
18 we're providing any tangible personal property, which
19 would be supplies from the liquor store at the time, that
20 that would become, you know, transfer of tangible personal
21 property, and that would be taxable.

22 So when I had the original audit, Sean was my
23 auditor. He exempted tax from any of the invoices that
24 did not have tangible personal property on there, but he
25 continued to say that I owed tax for any invoices that

1 were just servers-based, or if they had servers on the
2 invoice. What I find a little misleading in the response
3 from Ms. Galang is that she never mentioned the serving
4 staff. So the way we took it as, it was only addressed
5 for the bartenders because of bar supplies. And I feel
6 like it's a little misleading because it should have been
7 addressed that if you're providing bar supplies, all
8 bartenders and service and the entire invoice would be
9 taxable.

10 So I do feel that was a little -- a little bit
11 misleading because we do mention that we have servers as
12 well, which is obviously bussing dishes, serving buffets,
13 you know, doing things of that sort that a server would do
14 at a private event or a client's home on there. And that
15 was never addressed in the letter that was a response of
16 Ms. Galang. It was only about bartending services. So we
17 took it as any invoices that had servers on it. If it
18 just had servers by itself or it had servers and
19 bartenders, that that was exempt from tax. It was never
20 clarified in the response letter. So we took it as just
21 bartending.

22 So when Sean did the audit, he did charge tax to
23 me saying it was delinquent tax, or whatever you guys
24 classify that as, that that was all taxable items, and
25 that would have to be paid. And that's a big chunk of the

1 balance that they're saying that I owe, was any invoices
2 that had servers on it. And, again, it was not addressed
3 in response letters. So we didn't know that that was
4 taxable because there was no tangible personal property
5 tied into service because we're not technically -- when I
6 say we're not a catering company, meaning that we don't
7 provide cook or furnish food for our customers. It's just
8 literally labor services of staffing on there. So I do
9 feel like the written advice was misleading, and that in
10 the long end we were, you know, punished by being fined
11 and penalized with interest and so on, and penalties for
12 any of the invoices that had servers on it that was not
13 taxed. And, again, it wasn't specified in this letter.
14 So I thought that was very misleading.

15 And then upon, you know, research as this went
16 through the audit process, I contacted a gentleman named
17 Eric at the tax opinions experts department up in
18 Sacramento and explained my situation. I explained I was
19 going through an audit, and he pointed out a -- it's
20 annotation 550.08381603 subdivision (i)(1). And that
21 states in there that -- it's under caterers, and it
22 states: Definition, the term caterer as used in this
23 regulation means a person engaged in the business of
24 serving meals, food, or drinks on the premises of a
25 customer or on the premises implied by the customer.

1 Meaning, I assume like a rental facility, including --
2 yeah. It does say, including a premise leased by a
3 customer from a person other than the caterer. But it
4 does include employees hired by the customer by the hour
5 or the day.

6 And what Eric explained to me is, since we're a
7 service company and we charge our clients by the hour,
8 that we were exempt from tax, unless we had personal
9 tangible property on the invoice as Ms. Galang's letter
10 states. But what he was explaining to me, if we are
11 sending out just servers on an invoice, or servers with
12 bartenders, there is -- with no personal tangible personal
13 property, that that exempt from tax. And that's under --
14 again, the definition term caterer as used under the 1603
15 subdivision (i)(1). And I believe I submitted a copy of
16 that as well. If not, obviously, that can be found on the
17 website for the CDTFA on there. And I did call around to
18 get quotes of other companies that do the exact same thing
19 that we -- of the services that we provide. And if you
20 notice on those quotes, not any of these other service
21 companies or staffing companies are putting tax on the
22 bills.

23 I did notify Sean that there's many companies out
24 there that provide the same service that do not charge
25 tax. And his comment was, "Well, we can't target

1 everybody," or something in that terms. I can't recall.
2 That was many years ago on there. And, you know, to this
3 day, if you call around, all these companies do the same
4 thing. There's a company in L.A. that's been offered
5 many, many years, which is a very huge company. And to
6 this day, they still don't charge tax on any of their
7 server -- services that they offer as far as bartending
8 service and staffing service for any servers or bus boys
9 or whatever they're offering that do not have tangible
10 personal property in their invoices.

11 And, again, comparing to other companies doesn't
12 mean that it's wrong or right if they're doing it. The
13 point is that I feel like I'm being targeted because this
14 started in 2018. It is now 2025, and all these companies
15 are still doing services without paying tax. And I
16 believe that they're probably going up under the
17 definition 1603 subdivision (i)(1). Because, again, they
18 are charging an hourly basis just like we do. And I think
19 that's how they're probably getting away with it. I'm not
20 sure. I'm just using my own knowledge and research that
21 I've done of my own investigation on there, but I feel
22 like I'm being targeted. Because any of these companies
23 you call -- there's literally hundreds on the internet
24 nowadays all over -- and none of them are charging tax on
25 service-based type services; same services that we

1 provide.

2 The only difference is we do provide a
3 procurement service. And, again, I did put tax on all
4 those invoices and -- and Sean, my auditor, did see all
5 that. So I feel like the no audit was not accurate and
6 fair due to the written advice in not specializing -- or
7 mentioning the server aspect of it; so a little
8 misleading. And also, when it comes down the subdivision
9 (i)(1) under 1603 stating if customers are hiring
10 employees by the hour or day that it's basically exempt
11 from tax.

12 JUDGE KIM: Okay. Did you have anything else to
13 add, Mr. Dolivek?

14 MR. DOLIVEK: No. That's -- that's pretty much
15 it right there. I just wanted to state the facts of the
16 response letter and from the annotation 550.0838, 1603
17 subdivision (i)(1) on there. So that would be my two
18 things stating that the written advice I feel was
19 misleading. And, again, the -- since we're a staffing
20 service, again, technically we're not a caterer.

21 I know California classifies us as a caterer
22 because we're touching food and drinks, but technically
23 we're not providing food and meals and charging for that
24 kind of service. It's literally labor, staffing services.
25 And, again, we do charge our clients by the hour.

1 JUDGE KIM: Okay. And regarding the issue of
2 whether any additional interest relief is warranted, did
3 you have any -- did you have anything specific to that?
4 Or are you just arguing that if the tax is not -- if
5 you're not liable for the tax, you're not liable for
6 interest as well?

7 MR. DOLIVEK: Yeah. No. I would argue that the
8 tax and all the -- you know, this is delayed many,
9 obviously, years due to COVID. And then the delay of
10 getting into this point to appeal this at your office,
11 obviously, inquired a lot of interest and fees. So I
12 definitely would like to have all that in consideration of
13 alleviating all this extra tax that I'm being -- you know,
14 in your court with you guys here today is -- again, I feel
15 like I was misled from the written advice letter.

16 And then also, when it comes down to the servers
17 where he's charged me tax on several invoices. And, you
18 know, they, I believe, audited three quarters, if I'm not
19 mistaken, but he -- I guess the process is they go back
20 three years. So they do a percentage of -- I can't recall
21 what you call it -- but it's a percentage of -- I honestly
22 can't recall. They are over a three-year period. So
23 that's how they came up with the tax and saying that I
24 owed on this.

25 So yes, I'm looking for relief of the tax bill

1 that I'm being sent from the CDTFA.

2 JUDGE KIM: Okay. Thank you.

3 MR. DOLIVEK: You're welcome.

4 JUDGE KIM: Does my co-panelists Judge Stanley or
5 Judge Ralston, did you have any questions for Mr. Dolivek
6 at this time?

7 JUDGE STANLEY: This is Judge Stanley speaking.
8 Thank you for your presentation. I don't have any
9 questions at this time.

10 JUDGE RALSTON: This is Judge Ralston. No
11 questions at this time.

12 JUDGE KIM: And, CDTFA, did you have any
13 questions for Mr. Dolivek as a witness?

14 MS. BARRY: No questions at this time.

15 JUDGE KIM: Okay. Then let's move onto CDTFA's
16 presentation. Respondent is not presenting any witnesses
17 and will only be arguing the appeal.

18 You've requested 20 minutes for your
19 presentation, and you may begin when you're ready.

20

21 PRESENTATION

22 MS. BARRY: Liability in this case stems from an
23 audit of Appellant's business for the period fourth
24 quarter 2014 through third quarter 2017. During the
25 liability period, Appellant operated a full-service party

1 planning, staffing, and equipment rental company as a sole
2 proprietor, doing business as Beverlee's in Thousand Oaks,
3 California.

4 The Department issued a Notice of Determination
5 for the liability period in the amount of \$10,493 in tax,
6 plus applicable interest on January 10th, 2022. That
7 consisted of unreported taxable sales measuring 113 --
8 approximately \$113,000. Upon audit, Appellant provided
9 incomplete records, including among others, sales invoices
10 for the first quarter 2016 and third quarter 2017. These
11 invoices are available within Exhibit C. Since
12 Appellant's records were incomplete, the Department was
13 required to utilize an indirect audit approach by
14 projecting errors from the sample period consisting of
15 first quarter 2016 and third quarter 2017 to compute
16 Appellant's audited taxable sales for the liability
17 period.

18 Accordingly, the Department compared Appellant's
19 recorded sales to those quarters to -- in those quarters
20 to Appellant's reported taxable sales for the same periods
21 and found error rates of 195.57 percent for first quarter
22 2016 and 209.36 percent for third quarter 2017. These
23 findings are detailed on schedule 12A-1 of the audit work
24 papers, which are available within Exhibit C.

25 Additionally, as will be discussed in more detail

1 shortly, during the audit, the Department determined that
2 Appellant treated bartending and waitstaff services where
3 he did not provide tangible personal property as
4 nontaxable transactions, even though those transactions
5 are taxable. However, the Department also determined that
6 Appellant reasonably relied on the Department's erroneous
7 written advice during the liability period and was
8 entitled to relief, pursuant to Revenue & Taxation Code
9 section 6596. Accordingly, the Department determined that
10 34.49 percent of Appellant's taxable sales for first
11 quarter 2016 and 26.6 percent of Appellant's taxable sales
12 for third quarter 2017 were services for which Appellant
13 was entitled to relief. The calculations for this relief
14 may be found on schedules 12A-3, 12A-4, and 12A-5 of the
15 audit work papers, which are available within Exhibit C.

16 The Department then applied the percentage of
17 error it calculated for first quarter 2016 to all periods,
18 except for third quarter 2017, and it applied the
19 percentage of error it calculated for third quarter 2017,
20 only to that quarter, to compute audited taxable sales of
21 \$347,989 for the liability period. The Department then
22 allowed the Revenue & Taxation Code section 6596 relief in
23 the form of an offset to the audited taxable sales by
24 reducing the audited taxable sales it calculated by 34.49
25 percent for all periods, except for third quarter 2017,

1 and by 26.63 percent for third quarter 2017. This reduced
2 the audited taxable sales to \$230,569. Finally, the
3 Department subtracted Appellant's reported taxable sales
4 for the liability period from the audited taxable sales to
5 determine unreported taxable sales of approximately
6 \$113,000.

7 Revenue & Taxation Code section 6051 imposes
8 sales tax on a retailer's sales in the state of tangible
9 personal property measured by the retailer's gross
10 receipts, unless the sale is specifically exempt from
11 taxation by statute. Under Revenue & Taxation Code
12 section 6091, all of a retailer's gross receipts are
13 presumed subject to tax, unless the retailer can prove
14 otherwise. When the Department is not satisfied with the
15 accuracy of the tax returns filed, Revenue & Taxation Code
16 section 6481 provides that the Department may base its
17 determination of the tax upon facts contained in the
18 return or upon any information that comes within its
19 possession.

20 Further, under Revenue & Taxation Code
21 section 6481, when it is determined that a taxpayer's
22 records are insufficient or are proven unreliable, it is
23 appropriate for the Department to compute and estimate the
24 taxpayer's liability by alternative means. As set forth
25 in Regulation 30219, where the Department's determination

1 is reasonable, the burden of proof is upon Appellant to
2 prove all issues of fact by a preponderance of the
3 evidence. Appellant must establish by documentation or
4 other evidence that the circumstances he asserts are more
5 likely than not correct.

6 Appellant has disputed two specific invoices that
7 were included within the sample period. First, Appellant
8 disputed the Department's determination that Appellant's
9 sale of a photo booth package in the amount of \$695 during
10 the first quarter of 2016, as reflected on invoice
11 no. 5154, is taxable. Revenue & Taxation Code
12 section 6012 establishes that mandatory services are
13 regarded as part of the sale of tangible personal property
14 and, therefore, those services are taxable.

15 Based on information on that invoice and that
16 Appellant has provide to the Department, the photo booth
17 package included two mandatory attendants, as well as
18 tangible personal property in the form of physical prints
19 and photos -- physical prints of photos and a photo CD.
20 Thus, the entire charge for the photo booth, including the
21 cost of the mandatory attendants, are subject to tax.
22 Appellant has not provided any evidence to establish that
23 adjustments are warranted to this determination and,
24 therefore, no adjustments are warranted.

25 Appellant also asserts that \$200 -- I'm sorry --

1 \$2,184 in sales of food, equipment, and supplies that are
2 reflected on invoice no. 5442, which occurred during third
3 quarter 2017 are not taxable because he paid tax on those
4 purchases. Under Regulation 1603 subdivision (i)
5 paragraph (3), tax applies to the entire charge made by
6 caterers for serving meals, food, and drink, inclusive of
7 charges for food, the use of dishes, silverware, glasses,
8 chairs, tables, and other supplies used in connection with
9 serving meals and for the labor of serving the meals,
10 whether performed by the caterer, the caterer's employees,
11 or subcontractors. Since invoice no. 5442 was comprise of
12 food, supplies, and equipment used in connection with
13 serving meals in Appellant's capacity as a caterer, it was
14 a taxable sale. Therefore, Appellant is liable for tax on
15 this sale.

16 We further note that even if Appellant was
17 correct in his argument that he -- he has not provided
18 documentary evidence to substantiate his payment of tax
19 upon his purchases for these items, nor did he follow the
20 procedures required to claim a credit for tax paid
21 purchases resold, pursuant to Regulation 1701. Therefore,
22 no adjustments are warranted based on this contention.

23 As mentioned earlier, in its examination of
24 Appellant's invoices for first quarter 2016 and third
25 quarter 2017, the Department removed sales in the audit

1 where Appellant provided bartending services, but the
2 tangible personal property, such as alcohol, was provided
3 by third parties due to Appellant's reliance on erroneous
4 written advice provided by the Department. As set forth
5 in Regulation 1603 subdivision (i) paragraph (3)
6 subparagraph (A), these transactions are taxable, even in
7 cases where tangible personal property is not sold as part
8 of the transaction.

9 During the audit, Appellant provided the
10 Department a copy of a letter issued by the Department
11 dated April 18th, 2008. A copy of this letter is
12 available within Exhibit C. Specifically, the letter
13 stated that the transactions that involve the provision of
14 bartending services only, without providing tangible
15 personal property, were exempt from taxation. The
16 Department determined that this letter constituted
17 erroneous written advice pursuant to Revenue & Taxation
18 Code section 6596, which Appellant had reasonably relied
19 upon during the liability period. Accordingly, the
20 Department determined that Appellant was entitled to
21 relief for those transactions in which Appellant only
22 provided bartending staff without also providing tangible
23 personal property.

24 The Department also extended the relief to
25 include transactions in which Appellant only provided

1 waitstaff without also providing tangible personal
2 property. Pursuant to this determination, the Department
3 removed invoices from the sample period where Appellant
4 only provided bartending or waitstaff services. As noted
5 earlier, these calculations are shown on schedules 112A-3,
6 12A-4, and 12A-5 of the audit work papers available within
7 Exhibit C. Specifically, for first quarter 2016, the
8 transactions for which relief was granted is shown on
9 schedule 12A-4 in column Y. And for third quarter 2017,
10 on schedule 12A-5, column AC -- capital A-C.

11 Also -- as also discussed earlier, the Department
12 applied relief to the remainder of the liability period,
13 aside from third quarter 2017, in the form of an offset to
14 the audited taxable sales based on the offset it
15 determined for the first quarter 2016 of 34.49 percent.
16 And for third quarter 2017, the Department applied the
17 offset of 26.63 percent that it calculated on an actual
18 basis. Since Appellant did not provide complete records,
19 the Department's utilization of a sample test period was
20 reasonable and rational. And the Department has already
21 provided Appellant relief for the invoices on which
22 Appellant provided bartending or waitstaff services
23 without the sale of tangible personal property.

24 Moreover, the Department applied the most
25 favorable error rate and relief to 11 of the 12 quarters

1 of the liability period to estimate Appellant's unreported
2 taxable sales. Therefore, Appellant bears the burden of
3 proof to show that adjustments are warranted here. Though
4 Appellant asserts that the Department has not accounted
5 for some nontaxable invoices, Appellant has not identified
6 any invoice or invoices within the sample that he believes
7 should have been but was not included within the relief
8 provided. Therefore, no further reductions are warranted
9 based on Appellant's prior reliance on erroneous written
10 advice.

11 To the extent that Appellant asserts that some of
12 his charges for bartending and waitstaff services are not
13 subject to tax to Regulation -- pursuant to Regulation
14 1603 subdivision (i) paragraph (1), as explained by
15 annotation 550.0838, we first note that the term "caterer"
16 as -- is defined as relevant here, to mean a person
17 engaged in the business of serving meals, food, or drinks
18 on the premises of/or supplied by the customer, but does
19 not include employees hired by the customer by the hour or
20 day. Annotation 550.0838 makes clear that the reference
21 to hourly employees in Regulation 1603 is to hourly
22 employees hired by the customer and is not a reference to
23 the caterer's hourly or daily employees.

24 It is undisputed that Appellant is a caterer, and
25 that he provides bartending and waitstaff services as part

1 of his services. Though the bartending and waitstaff
2 services that Appellant -- I'm sorry. Though the
3 bartending and waitstaff that Appellant employees may be
4 hired by the day or hour, it is Appellant, not his
5 customers, that hires those employees to work at his
6 customer's events. Therefore, the exclusion for employees
7 hired by the customer by the hour or day does not apply to
8 Appellant, and the remaining provisions relating to the
9 application of tax in the case of a caterer applies to
10 Appellant's businesses -- business.

11 As previously mentioned, under Regulation 1603,
12 tax applies to the entire charge made by a caterer. And
13 as we discussed in detail, Appellant has already been
14 provided relief from invoices within the sample period
15 that include only bartending or waitstaff services. Thus,
16 tax applies to the remaining invoices. Here, again,
17 Appellant has not identified any particular invoice or
18 invoices within the sample period for which adjustments
19 are warranted, and he has not, therefore, met his burden
20 of proof.

21 Finally, Appellant has requested interest relief
22 for the period fourth quarter 2014 through third quarter
23 2017 contending that there were unreasonable delays by
24 Department employees in completing the audit. A copy of
25 this request may be found on page 30 of Exhibit A. Though

1 Appellant did not specify any other dates, the Department
2 presumed in Appellant's favor that he was also requesting
3 interest relief for the periods during which the audit was
4 ongoing until the issuance of the Notice of Determination.

5 The Department granted relief of interest for the
6 period March 1, 2018, through September 30th, 2018, and
7 the period July 1, 2020, through December 31, 2021.

8 Additionally, the Department automatically granted relief
9 of interest for the period March 1, 2020, through

10 June 30th, 2020, consistent with government --

11 Governor Newsom's executive orders in response to the
12 COVID-19 pandemic. The Department denied Appellant's
13 request for relief for the remaining periods.

14 Revenue & Taxation Code section 6482 requires a
15 deficiency determination to bear interest from the last
16 day of the month following a quarterly period for which
17 the amount or any portion thereof should have been
18 remitted, until the date of payment. The imposition of
19 interest is mandatory, and Revenue & Taxation Code section
20 6593.5 provides for relief of interest only under very
21 narrow circumstances, including among others, an
22 unreasonable error or delay by a Department employee in
23 his or her official capacity. Under Revenue & Taxation
24 Code section 6593.5, when a taxpayer requests interest
25 relief due to an unreasonable error or delay by a

1 Department employee, relief is appropriate only when no
2 significant aspect of the error or delay can be attributed
3 to any act or failure by the tax -- failure to act by the
4 taxpayer.

5 With regard to the liability period of first
6 quarter 2014 through third quarter 2017, Revenue &
7 Taxation Code section 6482 requires the amount of the
8 deficiency determination to bear interest from the last
9 day of the month following the quarterly period for which
10 the amount or any portion thereof should have been
11 remitted, until the date of payment. Thus, Appellant is
12 not entitled to relief for the accrual interest during the
13 liability period itself. Additionally, during the
14 remaining periods, the Department's record show that the
15 Department -- that Department employees diligently worked
16 on the audit and made frequent contact with Appellant.
17 During this period, any delays were the result of
18 Appellant rescheduling, or not attending appointments with
19 Department staff, and extensions of time requested by
20 Appellant to provide supporting documentation.

21 Thus, a significant aspect of any delay during
22 these periods can be attributed to an act or failure to
23 act by the taxpayer. Accordingly, Appellant is not
24 entitled to any additional relief beyond the periods
25 already granted by the Department.

1 Thank you.

2 JUDGE KIM: Thank you, Ms. Barry. So I just want
3 to clarify. The Department has already granted relief for
4 invoices that showed only -- not only -- for invoices
5 without any sale of tangible personal property, but not
6 only for just bartending services but also waitstaff
7 services as well?

8 MR. NOBLE: Yeah.

9 MS. BARRY: Yes, that is correct.

10 MR. NOBLE: Yeah. And just to be clear, it's not
11 necessarily we have granted relief for transfers of TPP
12 where they didn't provide it. We just took what they
13 provided and granted relief on bartender charges and
14 waitstaff charges. We still maintain that any transfer of
15 TPP where Appellant had possession of it and then created
16 an event is taxable, but it was removed from the audit.

17 JUDGE KIM: Thank you. And for those
18 transactions are you -- is the Department making a
19 distinction between waitstaff and caterers?

20 MR. NOBLE: No. We're -- we're not making a
21 distinction. I think what the Department did was suggest
22 that they provided advice on bartenders, and they extended
23 that to waitstaff during the audit period because the
24 advice was similar.

25 JUDGE KIM: Okay. I'm going to ask my panel

1 members if they have any questions for Respondent.

2 Judge Stanley.

3 JUDGE STANLEY: This is Judge Stanley speaking.

4 Just to follow up on the last question. So if we look at
5 the first invoice attached to the decision, it's got
6 bartenders, servers, and the photo booth and a scrap book.
7 So when you're saying that you gave relief for charges,
8 that you would have given relief for just the bartender
9 services and the server services, not for the TPP; is that
10 correct?

11 MS. BARRY: Only where there were no -- was no
12 TPP transferred. That invoice that you're referring to is
13 the specific one regarding the photo booth that was
14 objected to during the appeals process.

15 JUDGE STANLEY: Okay. So --

16 MS. BARRY: The other -- sorry. Go ahead.

17 JUDGE STANLEY: I was going to clarify. So the
18 entire amount in this particular receipt would have been
19 considered taxable?

20 MS. BARRY: Yes.

21 JUDGE STANLEY: Okay. That's all.

22 MS. BARRY: The entirety of the invoices are
23 also -- that were provided are available within Exhibit C.
24 There's two files, one for each of those two quarters.

25 JUDGE STANLEY: Okay. Thank you.

1 JUDGE KIM: Judge Ralston, do you have any
2 questions for Respondent CDTFA?

3 JUDGE RALSTON: No questions. Thank you.

4 JUDGE KIM: I just want to clarify something with
5 Mr. Dolivek. You didn't mention it in your presentation,
6 but are you still arguing that those two invoices,
7 invoice 5154, that's the one including the photo booth
8 package, and invoice 5442, including some equipment and --
9 and food supplies. Are you still disputing those invoices
10 as well?

11 MR. DOLIVEK: What I'm disputing, the photo booth
12 was from an outside company. So there's companies that we
13 work with, and the client asked me if we could just put it
14 all on one bill, in which we did do on there. And at the
15 time that that was generated, the photo booth company
16 assured me there's no tax on the services as a photo
17 booth. And I did call down to tax opinions expert
18 department on there, and they told me that was a gray area
19 between photography services and photo booth. It wasn't
20 really clear on there. So I'm not disputing that was on
21 the invoice on there.

22 And, again, that was not services that we
23 provide. Yes, it was on my invoice just to be reimbursed
24 myself from the client to pay the photo booth company that
25 was subcontracted on there. And then as far as the

1 invoice relating to equipment that was purchased and food
2 supplies, that was the client asked the day that we
3 arrived if we can go pick up the food for her, and we just
4 put it on a credit card. We did pay tax at the local
5 grocery store, which was -- I believe it was Albertsons,
6 if I'm not mistaken. I can't recall the store -- it's
7 been so many years -- on there.

8 And then as far as equipment, we purchased from
9 Chef's Toys. We did pay tax on that. And I believe I did
10 submit some receipts to Sean. I can't recall what
11 receipts were submitted on there back -- you know, back in
12 whatever the date was, 2020 or '19. I believe that was
13 prior to COVID, and when I was meeting with Sean on there.
14 So I'm not disputing that those were on the invoices, but
15 tax was definitely paid on any equipment that was
16 purchased from Chef's Toys because we did not have a
17 resale license for that kind of equipment. And when we
18 went to the grocery store, obviously, we just purchased
19 from the grocery store and reimbursed ourselves for that.
20 So I'm not disputing those were on the invoice.

21 Off that subject, though, and you may get to this
22 in a moment. I am disputing that they're saying I got
23 relief of tax for any waitstaff and services. Because
24 Sean made it very clear to me he was not exempting tax for
25 any of the waitstaff. He said only the bartending service

1 that did not have personal -- tangible personal property
2 on there. So I --

3 JUDGE KIM: I'm going to stop you for a second,
4 Mr. Dolivek. You did ask for some time to make a rebuttal
5 or final statement.

6 MR. DOLIVEK: Yeah.

7 JUDGE KIM: So you have five minutes, and you --
8 yeah. You can begin now.

9 MR. DOLIVEK: Yeah. I'm sorry.

10 JUDGE KIM: You can begin with your rebuttal.

11 MR. DOLIVEK: Okay. Got you.

12

13 CLOSING STATEMENT

14 MR. DOLIVEK: So taking those two invoices, one
15 for the photo booth and one for the equipment that was
16 purchased on there, like I said, I'm not disputing that on
17 there. I just -- I -- I -- like I said. I know I paid
18 tax on equipment like I stated just a moment ago. And
19 from my understanding, photo booths were not taxable, at
20 least at the time that took place. I'm not sure if that
21 changed. But, again, back when Sean was auditing it, he
22 did specifically say to me he was not relieving any liable
23 tax for waitstaff because the letter did not state
24 waitstaff, only stated bartenders.

25 So my question now is, if they're charging me all

1 this tax for those two invoices, if they're saying I have
2 to pay tax for the equipment and supplies that were
3 purchased and the photo booth on there, that seems like a
4 high dollar amount of tax. I'd have to pay for two
5 invoices on there. And, again, I don't know how they do
6 the percentage of error over the quarters for the three
7 years. But, again, I can't believe that tax was added to
8 that kind of liability just for those two invoices on
9 there. And, again, I -- I don't have any record of them
10 giving me credit for any tax liability for service. I
11 just recall Sean said he's going by the letter, and the
12 letter only stated bartending services.

13 JUDGE KIM: Okay. Thank you.

14 CDTFA, did you have any questions for
15 Mr. Dolivek?

16 MS. BARRY: No questions at this time. Thank
17 you.

18 JUDGE KIM: Okay. So, Mr. Dolivek, you stated
19 that there are additional invoices where you were not --
20 or where you believe that there were only services and no
21 tangible personal property sold. Do you have those
22 invoices, or do you know which invoices they are?

23 MR. DOLIVEK: I'm sure I can pull them up. I'm
24 sure the CDTFA has all those. I submitted all the
25 invoices. And to go back to them saying I didn't have

1 proper records, I submitted every invoice for the quarters
2 I was being audited on for any events that we did or
3 clients we worked with.

4 So as far as whatever records I had, I did submit
5 to them. So the comment of having insufficient records, I
6 don't know what they considered sufficient because I
7 literally submitted every invoice stating exactly what the
8 services were on there. And that's where they got their
9 information from. It was only from the invoices that I
10 submitted, and they have all that in their possession at
11 the time we did the audit. And I believe they still have
12 copies of all those invoices. And, again, I'm just going
13 from the auditor's word to me that the letter stated from
14 the CD -- from at that time the State Board of
15 Equalization. It was only for bartending services, and he
16 was not going to exempt tax from any of the waitstaff
17 services. And I recall that as clear as daylight.

18 And I can -- I'm sure I can go through all those
19 invoices from back in that period, and we can probably run
20 all the calculations to determine if he did or not; but I
21 know he's clearly made it clear. He certainly made it
22 clear that the letter stated only bartending services, and
23 that's all he was going to address from that letter
24 because -- and, again, I can't see two invoices, if you
25 saying those are taxable for a photo booth that was

1 subcontracted, and some supplies and purchases that
2 were -- tax were already paid.

3 And, again, I do believe I submitted a couple of
4 the receipts. I can't recall 100 percent, but I believe I
5 did submit some receipts to Sean. And, again, the
6 Department should have those receipts, if I did, on there.
7 But like I said, I'm -- I'm 100 percent sure Sean said
8 that to me that he's not reliving any tax liability for
9 any waitstaff services. That was verbally to me. He told
10 me that.

11 JUDGE KIM: Okay. I believe that was during the
12 audit. CDTFA, do you -- I believe they stated --

13 MR. NOBLE: We have a bit of a response. I would
14 just say that pursuant to 60006 subdivision (d), the
15 furnishing, preparing, and serving of food or beverages
16 for consideration is defined as a sale. So if the
17 Department previously advised Appellant that bartending
18 services where the customer provided TPP was not subject
19 to tax, that was relieved because it was erroneous
20 advice. And if the Department took other invoices that
21 involved waitstaff with the same similar circumstances and
22 removed them, that was the benefit -- to the benefit of
23 taxpayer.

24 Irrespective, if you are taking TPP from a
25 customer involving food beverage and such and transforming

1 those to serve them at an event, they are subject to tax.
2 The Department has removed any bartending services that
3 related to that; and to my knowledge, from looking at the
4 work papers, also waitstaff involving events to that.
5 They have not pointed out any other specific invoices
6 involving those facts that warranted erroneous advice and
7 relief pursuant to 6596. Therefore, there is no reason to
8 recommend further reductions.

9 MR. PARKER: This is Jason Parker. Judge Kim, I
10 just wanted to add on a couple of things for some
11 clarification. I just wanted to give you a line item in
12 the audit. On Exhibit C, the audit working papers, the
13 schedule is 12A-5. The line number reference is 17. The
14 invoice number is 5424. What we scheduled in the audit
15 was \$840 for wait-server staff. That's the only thing on
16 the invoice. There's a column -- under column AC,
17 "Qualifies for Written Advice," we adjusted \$840. So we
18 have adjusted waitstaff when that's the only charge on the
19 invoice, similar to what we did for bartending services.

20 The other item, "Tax Paid Purchases Resold," if
21 you look at column AA on the same schedule, there's a
22 column labeled "Allowable Credit." The first one on the
23 list is line 14. There was \$176 under the disposable
24 column, which is column T. We adjusted for that since
25 they already paid tax on that amount already. And there's

1 comments to that effect in the audit.

2 And there's other examples like this as well. I
3 just don't want to go through them all due to the limited
4 time.

5 JUDGE KIM: Thank you.

6 MR. DOLIVEK: Can I make a comment to that?

7 JUDGE KIM: Sure.

8 MR. DOLIVEK: Okay. So if they're saying they
9 relieved all the tax for all the bartenders and servers
10 that had no tangible personal property in the invoices,
11 and they're claiming these two invoices with the photo
12 booth and the one for supplies, you know, equipment
13 ordered and supplies, how did the tax bill get so high?
14 Because all the other invoices, from my recollection, that
15 had tangible personal property on there, tax was paid to
16 the Department. So how did we get such a high tax bill
17 based off those two invoices?

18 And, again, I knew they do percentage of error,
19 and they do they do their calculations to get it over a
20 three-year period. But if I was relieved tax on all those
21 invoices that had waitstaff on it, how is the tax
22 liability so high because the Department is not denying
23 that I didn't pay tax on all the invoices that had
24 tangible personal property on it. Obviously, tax was
25 collected. Tax was paid for those invoices.

1 So I would like to see a breakdown of what I'm
2 being charged all this liability that they're saying I
3 owe, if I have been relieved or granted, you know, relief
4 of tax from any waitstaff server invoice. And, again,
5 verbally from the auditor, Sean said to me that the letter
6 states that for bartending services only and not waitstaff
7 services. And I'm not quite sure what graph they're
8 looking at. I don't believe I have copies of those. And
9 I don't understand exactly where they're coming up with
10 all this tax. Because, again, tax was paid on invoices
11 that had tangible personal property.

12 JUDGE KIM: Okay. Thank you.

13 MR. DOLIVEK: You're welcome. Thank you.

14 JUDGE KIM: I just clarify on the invoice with
15 the photo booth. You said you subcontracted that. So you
16 hired the photo booth, and you paid the photo booth?

17 MR. DOLIVEK: So the photo booth company is --
18 the name of that company -- I'm not sure if they're in
19 business today. It's called Cameo Photo Booth. They were
20 contracted for the event. The client wanted all -- wanted
21 to know if all of the services could just be on one bill.
22 Again, I think it was maybe for tax purposes for them, and
23 I said that's not a problem. And then we went ahead and
24 billed them for that, and I paid the photo booth company.
25 And, again, when I spoke with the tax opinion's experts

1 regarding the photo booth, he did say that was like a gray
2 area because photography was taxable, but there was no
3 clear definition on a photo booth.

4 And to this date, this has nothing to do with our
5 case. But every photo booth I've researched does not
6 charge tax on their invoice. And, again, that has nothing
7 to do with this case. It doesn't mean they're right, or
8 they're wrong but -- and, again, there was no definition
9 answer from tax opinion experts on the photo booth charges
10 if that's taxable or not. The only category that fell
11 under was photography, and the photography met more like a
12 photographer showing up at a wedding or event from the
13 explanation I got from that expert's opinion.

14 JUDGE KIM: Okay. Thank you.

15 MR. DOLIVEK: You're welcome.

16 JUDGE KIM: Judge Stanley or Judge Ralston, do
17 you have any final questions?

18 JUDGE STANLEY: This is Judge Stanley speaking.
19 I do not.

20 JUDGE RALSTON: This is Judge Ralston. No
21 questions. Thank you.

22 JUDGE KIM: Okay. Thank you.

23 All right. Okay. So this case will be submitted
24 today on May 21st, 2025. The record is now closed.

25 Thank you, everyone, for participating today.

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MR. DOLIVEK: Thank you.

JUDGE KIM: The Judges will meet to deliberate and decide your case, and we will issue a written opinion within 100 days of closing the record today.

So today's hearing in the Appeal of Dolivek is now concluded.

This hearing is adjourned, and this concludes the hearing calendar for today.

There are more hearings on the calendar for tomorrow. So hearings will resume tomorrow at 11:00 a.m.

Okay. Thank you, everyone.

(Proceedings adjourned at 1:56 p.m.)

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the State of California, do hereby certify:

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I further certify that I am in no way interested
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I have hereunto subscribed my name this 10th day
of June, 2025.

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