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APPEARANCES:

Panel Lead:	ALJ JOSH ALDRICH
Panel Members:	ALJ KEITH T. LONG HEARING OFFICER KIM WILSON
For the Appellant:	GERALD J. DONNINI II RAVI KUMARASWAMY SRIDHAR PANCHUMARTHI
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION NALAN SAMARAWICKREMA STEPHEN SMITH JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-20 were received into evidence in the Minutes and Orders.)

(Department's Exhibits A-N were received into evidence in the Minutes and Orders.)

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Cerritos, California; Tuesday, June 17, 2025

3:30 p.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in the Appeal of SABSV, Incorporated, doing business as Anand Bhavan before the Office of Tax Appeals, OTA Case No. 21088505. Today's date is Tuesday, June 17th, 2025, and it's approximately 3:30. This hearing is being conducted in Cerritos, California, and is being live streamed on OTA's YouTube channel.

This hearing is being heard by a panel of three. My name is Josh Aldrich. I'm the lead judge for purposes of conducting the hearing. I'm joined by Judge Keith Long and Hearing Officer Kim Wilson. We three are co-equal decision makers. As such, during the hearing, panel members may ask questions of the parties or otherwise participate to ensure we have all the information needed to decide this appeal. After the conclusion of the hearing, we will deliberate and decide the issues presented.

As a reminder, the Office of Tax Appeals is not a court but an independent appeals body. We do not engage in ex parte communication with either party, and our opinion will be based on the parties' arguments, the evidence, and the relevant law. We have read the parties'

1 submissions, and we are looking forward to hearing the
2 arguments today.

3 Who is present for Appellant?

4 MR. DONNINI: Thank you, Your Honor.

5 Gerald Donnini and I'm joined with the owner of Appellant.

6 He's on the far right, Ravi Kumar.

7 MR. KUMARASWAMY: Ravi Kumaraswamy.

8 MR. DONNINI: I'm sorry about.

9 MR. KUMARASWAMY: Ravi Kumaraswamy.

10 JUDGE ALDRICH: Could you spell your name.

11 MR. KUMARASWAMY: Ravi Kumaraswamy.

12 MR. DONNINI: Here, switch the -- here.

13 MR. KUMARASWAMY: Could you hear me, sir?

14 JUDGE ALDRICH: I hear you. Thank you.

15 MR. KUMARASWAMY: I'm sorry.

16 JUDGE ALDRICH: Much better.

17 MR. KUMARASWAMY: Ravi Kumaraswamy.

18 JUDGE ALDRICH: Could you spell it, please.

19 MR. KUMARASWAMY: R-a-v-i, first name. Last name
20 is K-u-m-a-r-a-s-w-a-m-y. Sorry for the last name.

21 JUDGE ALDRICH: Does that work?

22 THE STENOGRAPHER: Yes.

23 MR. KUMARASWAMY: Yeah. Thank you, sir.

24 JUDGE ALDRICH: And the other gentleman to your
25 right?

1 MR. PANCHUMARTHI: May name is Sridhar
2 Panchumarthi. I'm the CPA and representative.

3 MR. DONNINI: Probably going to need a spelling
4 with that also.

5 MR. PANCHUMARTHI: Yeah. My -- Sridhar,
6 S-r-i-d-h-a-r. First name is Sridhar. Last name is
7 Panchumarthi, P-a-n-c-h-u-m-a-r-t-h-i.

8 JUDGE ALDRICH: Thank you, sir.

9 And who do we have for CDTFA or Respondent?

10 MR. SAMARAWICKREMA: Nalan Samarawickrema,
11 Hearing Representative for CDTFA.

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

14 MR. SMITH: Steve Smith, attorney with CDTFA.

15 JUDGE ALDRICH: Thank you.

16 So the issues to be decided are as follows:
17 Whether adjustments are warranted to the measure of
18 unreported taxable sales for the liability period 1, which
19 spans October 1st, 2014, through September 30th, 2017.
20 The second issue is whether further adjustments are
21 warranted to the measure of unreported taxable sales for
22 liability period 2, which spans October 1st, 2017, through
23 September 30th, 2019.

24 Mr. Donnini, do these issue statements correctly
25 summarize the issues before us?

1 MR. DONNINI: That's correct, Your Honor.

2 JUDGE ALDRICH: And Mr. Samarawickrema?

3 MR. SAMARAWICKREMA: Yes, Judge.

4 JUDGE ALDRICH: Thank you.

5 Next, we're going to address exhibits. For the
6 Respondent or CDTFA, CDTFA's exhibits are identified
7 alphabetically as Exhibits A through I. They were
8 previously submitted prior to the prehearing conference,
9 and they were admitted into evidence pursuant to the
10 May 20th Minutes and Orders. For Appellant, prior to the
11 prehearing conference, Appellant submitted or identified
12 Exhibits A through M. Appellant was asked to update those
13 exhibits numerically. And then in a June 3rd submission,
14 I received updated exhibits labeled numerically 2
15 through 8.

16 So I just wanted to go over some of those
17 exhibits real quick because there's more exhibits than A
18 through M then 2 through 8. So were there some
19 duplicative exhibits or --

20 MR. DONNINI: I'm not sure what happened,
21 Your Honor. I'm showing Exhibits 1 through 20.

22 JUDGE ALDRICH: Okay.

23 MR. DONNINI: And I thought that was --

24 JUDGE ALDRICH: And then the same -- were you
25 just relabeling them?

1 MR. DONNINI: Correct.

2 JUDGE ALDRICH: Okay. That's fine. Then because
3 A through M were labeled as 1 through 20 were also
4 admitted pursuant to the May 20th Minutes and Orders.

5 Mr. Samarawickrema, did you have a question?

6 MR. SAMARAWICKREMA: Yeah. Our exhibits are A
7 through N.

8 JUDGE ALDRICH: A through N.

9 MR. DONNINI: Your Honor, if I may? I think
10 there's another -- so it was -- I believe it was A through
11 M originally, and then there was, like, a supplemental
12 authorities or something.

13 JUDGE ALDRICH: Right.

14 MR. DONNINI: So that could have been N. But then
15 the other issue was -- you asked that -- I forget what
16 letters they were, but I think it was like L or something.
17 Those -- there were two Ls. So you asked us to renumber
18 those, like, 7 or 8 or whatever the relatable number was.

19 JUDGE ALDRICH: Right.

20 MR. DONNINI: And I think when we renumbered
21 everything it was 1 through 20.

22 JUDGE ALDRICH: Does that clarify your position,
23 or are you referring to CDTEFA's exhibits being through N,
24 not through I?

25 MR. SAMARAWICKREMA: Yeah. That is our Exhibit A

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through N.

MR. DONNINI: Oh, I'm sorry. Sorry.

JUDGE ALDRICH: Okay.

MR. PARKER: Yeah. Judge Aldrich, the Minutes and Orders identify CDTFAs exhibits as A through N.

JUDGE ALDRICH: Okay. All right. Thank you for that, and the record should reflect that A through N are admitted -- or were admitted on the May 20th Minutes and Orders.

MR. DONNINI: Your Honor, to clarify, do I need to resubmit 1 through 20 or --

JUDGE ALDRICH: If there hasn't been any substantive change to them, I don't see why.

MR. DONNINI: Okay.

JUDGE ALDRICH: But just for purposes of referencing today, it's more helpful to have you reference Exhibit 1, et cetera.

And so another point of order on the exhibits, I received a three-page document prior to the hearing.

CDTFA, did you receive a copy of that?

MR. SAMARAWICKREMA: Yes, Judge.

JUDGE ALDRICH: Okay. And for clarification purposes, Mr. Donnini, is this, like, a demonstrative aid? Is this evidence? What are we offering this for?

MR. DONNINI: I believe it was a demonstrative.

1 So relying on our calculations of the audit, we just redid
2 the calculations.

3 JUDGE ALDRICH: Okay.

4 MR. DONNINI: So I think it is a demonstrative.
5 And to be transparent, we just provided it to everybody.

6 JUDGE ALDRICH: Okay. And, CDTFA, did you have
7 any objections to it being introduced as demonstrative?

8 MR. SAMARAWICKREMA: No, Judge.

9 JUDGE ALDRICH: Okay. All right.

10 MR. DONNINI: So I guess that would be 21 or
11 whatever.

12 JUDGE ALDRICH: Yeah. That's fine. We can label
13 it 21, but if it's technically demonstrative and it's not
14 evidence, it more in the nature of argument, similar to
15 the points of authority that were submitted. Okay.
16 Anything further on the exhibits, Mr. Donnini?

17 MR. DONNINI: No, sir.

18 JUDGE ALDRICH: Okay. All right. So as
19 discussed during the prehearing conference, we planned for
20 the hearing to proceed as follows: Appellant's
21 presentation will include witness testimony, and we
22 allotted 60 minutes for that. We'll follow that with
23 CDTFA's combined opening and closing presentation for
24 approximately 40 minutes. I've also allotted 5 to 10
25 minutes for the panel for questions, and then

1 approximately 10 minutes for closing remarks or rebuttal.
2 If you don't need all your time, feel free to waive it or
3 reserve for your closing.

4 With respect to witnesses, were you still
5 planning on having Mr. Kumar and Mr. Panch --

6 MR. PANCHUMARTHI: Panchumarthi.

7 JUDGE ALDRICH: Panchumarthi?

8 MR. PANCHUMARTHI: Yeah. Panchumarthi.

9 JUDGE ALDRICH: -- provide witness testimony.

10 MR. DONNINI: Yes, sir.

11 JUDGE ALDRICH: Okay. So, at this time, I'm
12 going to go ahead and ask to swear you in. If you could
13 both raise your right hands.

14

15 R. KUMAR,

16 produced as a witness, and having been first duly sworn by
17 the Administrative Law Judge, was examined, and testified
18 as follows:

19

20 S. PANCHUMARTHI,

21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined, and testified
23 as follows:

24

25 JUDGE ALDRICH: I received two verbal yeses.

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You got that?

THE STENOGRAPHER: Yes, Judge.

JUDGE ALDRICH: Thank you.

All right. So at this time, I think we're ready to transition over to presentations.

Mr. Donnini, are you ready to proceed?

MR. DONNINI: Yes, sir.

PRESENTATION

MR. DONNINI: Good afternoon. And thank you, Your Honors. My name is Gery Donnini. And thank you for the opportunity to present the appeal here today.

This case involves approximately \$1.5 million of assessed sales, which translates to about \$120,000 of sales tax for the first audit period and about \$25,000 of sales tax for the second period. And the issue in this case just isn't about the amount of tax due but also, how CDTFA got to that number. And they got there by incorrectly applying California sales tax laws in treating nontaxable sales, like employee tips and frozen food to go as taxable.

Now, the goal of any audit -- as I'm sure the panel is aware -- should be accuracy and impartiality, not maximizing the amount of liability. But in CDTFA's own auditor's words, they admitted their aim was to increase

1 and maximize the amount due in this case. In so doing,
2 the Department discredited extensive evidence provided by
3 the taxpayer and made several unreasonable assumptions
4 along the way.

5 Now, I'd like to just provide a brief high-level
6 summary of the case. As Judge Aldrich mentioned before,
7 the first audit period covered periods Q4 2014 through Q3
8 2017. And during that period, just for our numbers, the
9 taxpayer reported roughly \$2 million in taxable sales.
10 CDTFA, however, concluded that the taxpayer underreported
11 taxable sales by more than a million dollars. So, in
12 other words, CDTFA contends that the business should have
13 reported just over \$3 million. They only reported about
14 \$2 million and assessed the difference. And that
15 underreported or error rate, if you work the math all the
16 way through, comes out to be about a 55 percent error
17 underreported rate for period 1.

18 Now, for the second period, CDTFA initially
19 claimed \$400,000 of unreported taxable sales. And I
20 believe that was later reduced to about \$250,000, which
21 resulted in a much lower discrepancy; and results in an
22 error rate of about a little bit less than 20 percent for
23 the second period. I'd just look to point out that
24 we're -- we're talking about the same business operating
25 in the same way with no material change during the two

1 audit periods. So the obvious question for me is, how did
2 underreporting drop from 55 percent in Period 1 to under
3 20 percent in back-to-back subsequent audit periods? That
4 inconsistency alone suggests fundamental flaw in the
5 Department's approach to period No. 1.

6 Now, the central issue in this case is the
7 application of CDTFA's 80/80 rule as it's called, which
8 treats food sales as taxable if: One, over 80 percent of
9 the gross receipts of a business come from food; and then
10 two, over 80 percent of those food sales are taxable food
11 sales. Now, this is an exception to the general rule that
12 food sales are nontaxable. So CDTFA, arguably, bears the
13 burden of proving the 80/80 rule. But let's just put that
14 aside -- burdens of proof aside. The evidence actually
15 points in the opposite direction in this case; even the
16 evidence that exist from CDTFA itself. And what I mean by
17 that is, during the audit, the auditor conducted two
18 separate site tests at the business' location.

19 During the first site test, she observed about a
20 26 percent exempt sales ratio. Then on the second site
21 test, the exempt sales ratio was actually a little bit
22 higher. It was around 33-and-a-half percent. If you
23 combine those two site tests that the auditor performed,
24 the average was about 30 percent in exempt sales during
25 that first audit period. Now, like I mentioned under that

1 80/80 rule, taxable food must exceed 80 percent of total
2 food sales for it to apply. But here, as I just
3 referenced, it was about 70 percent. Therefore, based on
4 the site visits done by the auditor, the 80/80 rule
5 shouldn't apply in this case.

6 Despite this, CDTFA dismissed its own observation
7 in its final decision. They claim the site tests were
8 invalid because they only spent two days, not the three
9 days required in the Audit Manual. But that decision was
10 made by CDTFA. That wasn't a decision made by the
11 taxpayer. It's not reasonable to discard two consistent
12 well-documented observations simply because the Department
13 chose not to conduct a third site visit. Simply put, the
14 evidence suggests that the Department didn't like the
15 results of the site tests and decided to ignore them.

16 Now, the auditor's observations are not the only
17 evidence supporting a 30 percent exempt sales rate.
18 During the audit and on the appeal and then subsequent to
19 the final decision as part of this appeal, the taxpayer
20 submitted its voluminous documentation, including
21 affidavits and supply records showing regular sales of
22 frozen food items to go; and that's Exhibits 1 through 4,
23 really. I'd like to just touch on Exhibit 4, which is an
24 affidavit showing that the frozen food was sold from the
25 beginning of audit period No. 1, all the way through the

1 end of the second audit period.

2 The taxpayer also provided source-level data,
3 like, POS system data, which included monthly and daily
4 reports. And they provided at least two quarterly sales
5 logs showing exempt sales during the audit period; and
6 those sales logs can be found in Exhibit 10. And the POS
7 data, the monthly and daily reports, can be found at
8 Exhibits 12 through 14. Taxpayer also provided extensive
9 bank statements and bank reconciliations during the
10 period; and those could be found at Exhibit 16 and 17. So
11 the point is they provided a lot of records showing the
12 exempt sales, in addition to the site test performed by
13 the auditor.

14 Now, even CDTFA acknowledges some exempt sales in
15 audit period 2. And it appears they kind of conceded a
16 10 percent credit for that period, yet they gave zero
17 credit, no credit for period 1. Again, the business
18 didn't fundamentally change between the two periods. And
19 if 10 percent exempt sales were recognized in the second
20 period, then, at a minimum, that same credit should apply
21 to the first period. A more accurate number supported by
22 the site tests and the documentation in the record is
23 really closer to 30 percent; but let's just apply that
24 10 percent to what the auditor did.

25 And to put that in practical terms, if the

1 auditor is saying that the correct sales figure is about
2 \$3 million, 10 percent of that, which would have been the
3 exempt sales found in period No. 2, that would be a
4 \$300,000 reduction in taxable measure, which translate to
5 about \$30,000 reduction for period 1. That would be the
6 absolute minimum reduction applicable in this case for
7 period 1, \$30,000.

8 Now, the second major flaw in the audit is
9 CDTFA's treatment of nontaxable tips. As, Your Honors,
10 are aware, tips are not taxable; but the Department failed
11 to adjustment its calculations accordingly. Once again,
12 CDTFA's own site test showed tips made up approximately
13 9 percent of gross receipts. And that figure is
14 consistent with what we would expect in this kind of
15 business, especially, since cold food items to go tend to
16 generate little or no tips. It's going to be something
17 less than 15 percent, if you think of it that way.

18 Instead of fairly and impartially applying the
19 tax law, it unreasonably discarded its own observations
20 yet again on this point, claiming two days of tip data was
21 insufficient because they didn't meet the three-day
22 standard. Again, totally at the Department's selection,
23 not the taxpayer's decision. A 9 percent tip ratio is
24 also entirely consistent with the documentation provided
25 and with industry norms. Ignoring tips altogether is

1 CDTFA did for both periods. It's not only unreasonable,
2 but it's unsupported by the record. Now, just like exempt
3 food sales, applying a 10 percent -- roughly it was only
4 9 percent, but we'll just call it 10 for round numbers --
5 adjustment for the nontaxable tips would, again, reduce
6 period 1 by an additional \$30,000, and it would reduce
7 period 2 by about \$17,000.

8 So looking at this case from a high-level
9 perspective just on these two points alone, exempt food
10 sales and tips, substantial reductions are appropriate
11 here. Again, the proper amount of exempt frozen food
12 sales to go is really about 30 percent. But at a bare
13 minimum, it really should be at least 10 percent based on
14 the Department's findings in period No. 2. So that
15 warrants a \$30,000 reduction for audit period No. 1 and an
16 additional \$30,000 reduction for the tips. So there
17 should be at least a \$60,000 reduction with respect to
18 period 1.

19 For period 2, I'm not 100 percent sure, but it
20 appears that they adjusted that for the 10 percent exempt
21 sales already, which reduced the tax, I believe, from
22 \$40,000 to about \$25,000. So the exempt sales, at a
23 minimum, is dealt with period 2, even though it really
24 should be higher than that. But then they didn't reduce
25 for tips, so that would be another \$17,000 reduction on

1 period 2.

2 In conclusion, this appeal is more about -- is
3 more than just a tax liability issue. It's about
4 fundamental fairness and a correct application of the law.
5 CDTFA applied the 80/80 rule without adequate support.
6 They dismissed its own test results when it didn't help
7 its own case. They ignored credible evidence of exempt
8 sales and nontaxable tips that are throughout the record.
9 And they inconsistently treated two audit periods for the
10 same business with the same business model.

11 At the conclusion of the testimony and after
12 reviewing the evidence, we respectfully request the OTA
13 reject the -- CDTFA's use of the 80/80 rule in this case.
14 We request that OTA recognize a 30 percent exempt sales
15 ration as supported by the record, or a minimum of
16 10 percent for period 1 as it was already conceded in
17 period 2. We ask that the panel deduct nontaxable tips
18 from the taxable measure for both periods, and those
19 adjustments result in eliminating or reducing the
20 assessment significantly.

21 And with that, I'd like to shift, with the
22 panel's permission, to testimony by Mr. Ravi the owner of
23 the taxpayer. Again, with the panel's permission, just in
24 the sake of time, if it's okay, I'd just like to ask him
25 some questions to kind of steer him through it.

1 JUDGE ALDRICH: Yeah. Questions and answers are
2 fine.

3

4 DIRECT EXAMINATION

5 BY MR. DONNINI:

6 Q Good afternoon, Ravi.

7 A Good afternoon, sir.

8 MR. KUMAR: Good afternoon, everybody. Do you
9 all hear me?

10 JUDGE ALDRICH: Yeah. If you could bring it a
11 little closer.

12 MR. KUMAR: Okay. I'm sorry. Okay.

13 MR. DONNINI: You guys could switch -- maybe
14 switch seats.

15 MR. KUMAR: That's fine. I can talk. Yeah.
16 Hope everybody can hear me, right? Great. Yeah. Go
17 ahead, Mr. Gery.

18 MR. DONNINI: Thank you.

19 BY MR. DONNINI:

20 Q So if you can, Ravi, can you just explain your
21 business to the panel during the audit period?

22 A I'm a little emotional, but let me try to
23 control. So basically, when I started this business, I
24 started with a lot of dreams of establishing a big brand,
25 you know, different business models, and -- and - and

1 create a lot of jobs and, you know, being a big community
2 contributor. Everything was, you know, well. So I was
3 focusing on expansion of, you know, this brand. My main,
4 you know, business model out here is like, you know, in
5 this restaurant like, you know, I have also created a
6 brand for the -- the, you know, the takeout the frozen
7 food sales. Like, you know, because, you know, that was
8 getting very popular, you know, in Indian community at
9 this time.

10 And ours is one of the unique authentic South
11 Indian type of, you know, food. Which was -- which was in
12 a very high demand, which was not available in every other
13 places. So I hired one of the -- the top-notch chef from,
14 you know, India, who was a big supporter hand to us like,
15 you know, with this -- with his help, you know. I tried
16 to, you know, like float that model into the market. So,
17 basically, that food how it, you know, we prepare the
18 fresh food, and then they -- there is a process to thaw
19 it. And the like, you know, we -- we, you know, cool it
20 and freeze it. Then we sell it to the customer.

21 So it's not like, you know, ready to eatable
22 form. Customer has to take home and then reheat or
23 reprocess and eat it. They are like in a different types
24 like of another food of -- you know, which we are going to
25 selling it. As far as, you know, my knowledge, you know,

1 at that time, my CPA told me, like you know, if -- if it's
2 anything like, you know, it's food which is not in eatable
3 condition, no need to charge it -- to charge tax.

4 So we have also configured the system this way
5 like, you know, not to charge tax. That's all like, you
6 know, I know of. Just like, you know, my floor manager is
7 the one like, you know, who was handling it. So then come
8 this audit is where like, you know, I, you know, come to
9 know that there are certain like, you know, new rules and
10 regulations like, you know, out here. So I worked with
11 the auditor, Ms. Sharon, very closely. The only thing is,
12 when the audit started, I had to go to India for a -- for,
13 you know, a family reason. I stayed there for close like,
14 you know, two-and-a-half months. The audit kind of like,
15 you know, got delayed but with her permission only like,
16 you know. So she did, you know, end up giving me the
17 time.

18 When I came back, we started working on the
19 audit -- audit. And then we, you know, provided all the
20 necessary, you know, documents, but some of the documents
21 I was not able to get on time. Like, some 1099s are
22 missing. Some bank statements are missing. But like, you
23 know, but majority were able to like give it. So they
24 conducted the site test, you know. They -- and everything
25 was like, you know, going okay. I didn't even know like,

1 you know, until when the assessment came in like, you
2 know, this is going to be blown out to me. All I heard is
3 like, you know, Ms. --

4 JUDGE ALDRICH: If you could just slow it down at
5 times.

6 MR. KUMARASWAMY: I'm sorry, sir.

7 JUDGE ALDRICH: No. No problem. But I just want
8 to make sure --

9 MR. KUMARASWAMY: Yeah. Okay.

10 JUDGE ALDRICH: -- our stenographer can capture
11 it all.

12 MR. KUMARASWAMY: My apologies. I'm sorry, you
13 know. Okay.

14 All I -- all I heard from auditor Ms. Sharon is
15 like, you know, our supervisor was very upset because of
16 the fact the audit got, you know, delayed. In fact, like,
17 you know, during the audit, they also noticed like, you
18 know, there is another brand called Papa Murphy, which is
19 not at all related to this, you know, audit thing. But
20 then that is also similar to the frozen food concept only.
21 There is no tax being charged like, you know, but that
22 entity is completely different.

23 So I'm just saying like, you know, when during
24 that period of time like when I was exploring this option
25 to make it a big, you know, brand for my product; that's

1 when like, you know, I even took that franchisee just to
2 explore, you know, one of those things. But coming back
3 to, you know, this -- this audit, so site tests were done
4 and then, you know, after the fact like, you know, when
5 the assessment like came in, and I was blown out.

6 I wanted to point out one of the email from
7 Ms. Sharon like, you know, maybe --

8 BY MR. DONNINI:

9 Q Yeah, I just want to make sure that the record is
10 clear, if that's okay, Ravi.

11 A Yes, sir.

12 Q So you mentioned kind of at the beginning --
13 please tell me if this is not what you said, but I think
14 what you were saying is there was like a restaurant
15 business where you served customers hot food; is that
16 right?

17 A Yeah. Yeah.

18 Q And then there was a separate part of the
19 business where you sold cold food?

20 A Yeah. So when -- so, you know, customer when
21 they come in like, you know, they do eat the food. And
22 then like, you know, they also take out -- take out like,
23 you know, these frozen foods. In the system like, you
24 know, we have it -- we have configured a way like, you
25 know, okay, whatever they eat -- eat on the floor, it's

1 taxable.

2 Whatever they don't eat, which is basically a
3 frozen food not ready -- ready to eatable at home, that is
4 nontaxable. That's how it's configured. We were told by
5 the system that's the only way like, you know, we can do
6 it. I'm not too technical, so that's all, you know, I
7 can -- I can say for that. Yeah.

8 Q Okay. Thank you. And the frozen food that you
9 sold there was a contention that this didn't occur before
10 a certain period of time. When did you start selling
11 frozen food?

12 A Right -- right from the beginning. So I'm not
13 sure like, you know, how that contention being made.
14 Yeah, is already at the time.

15 Q But in the beginning -

16 A Yeah.

17 Q -- what year that was or --

18 A '14 I think like, you know.

19 Q 2014?

20 A Yeah. Yeah.

21 Q Okay.

22 A And I also wanted to point out Ms. Sharon's
23 email. So hopefully we can --

24 Q Yeah. Yeah. We'll talk about that in a second.
25 Sure. When somebody bought cold food to go from the

1 restaurant, I'll call it. How was it packaged for them to
2 take it home?

3 A It's a special package like -- which used like,
4 you know, some -- some kind of like -- kind of containers.
5 And we gave a list of containers purchased also. They are
6 also kind of like, you know, my previous, you know, CPA
7 did a calculation that goes in line with the total
8 nontaxable sales like, you know -- you know, corresponds
9 to nontaxable sales. That's a special container like, you
10 know, which we pack it, and then, you know, freeze it
11 here.

12 Q What about hot food? How is that --

13 A That's a plate, a regular like --

14 Q It just goes on a plate to -- just like in a
15 restaurant?

16 A Stainless --

17 THE STENOGRAPHER: I need you two to stop talking
18 over each other.

19 MR. DONNINI: I'm sorry.

20 THE STENOGRAPHER: It's hard enough trying get it
21 when --

22 MR. DONNINI: I understand that.

23 MR. KUMARASWAMY: My apologies. My apologies,
24 ma'am. Sorry.

25 MR. DONNINI: Okay.

1 THE STENOGRAPHER: Thank you.

2 BY MR. DONNINI:

3 Q I was just asking -- I'm sorry -- about how the
4 customer received their hot food?

5 A Yeah. It's a stainless steel plate like, you
6 know. So it's like a little plate like, yeah. It's a
7 washable plate. Yeah.

8 Q Really, throughout the record and in Exhibit 2,
9 you provided a lot of purchase data regarding -- it looked
10 like aluminum pans. You guys were buying a lot of
11 aluminum pans. Was the purpose of that to show that that
12 was to package the cold frozen food?

13 A Yeah.

14 Q Now, during the audit period, do you have any --
15 any idea what the percentage of your frozen food sales to
16 go was?

17 A Approximately around like, you know, it's 28 to
18 like 35 percent like, you know. That's a range. Like,
19 you know, my floor manager is the one like, you know, who
20 use to report to me like, you know, that's a range like,
21 you know. Unfortunately, he was not able to keep track
22 of, you know, separate sales between this and that.
23 Sometime he kept. Sometime I couldn't force it, and I was
24 just like, you know, focusing on the, you know, the
25 business operation expansion. So --

1 Q Okay. And would that percentage be the same for
2 the older audit periods?

3 A Yes. Yeah.

4 Q Prior to 2017?

5 A Yeah.

6 Q Is it possible at all that you had zero percent
7 cold food sales to go during the audit period?

8 A I don't think so. We were all the time we were
9 doing it. Yeah.

10 Q You mentioned the audit a little bit. You were
11 working with CDTFA, I guess, on the audit. Did you
12 provide the records they requested?

13 A Yes. Whatever, like, I had it, like, I did, you
14 know, I provided, you know, within my hands. Yeah. So as
15 I said, like some 1099, some bank statements like, you
16 know, missing. And then later I provided everything.
17 Yeah.

18 Q And then talk to me about the site test. Do you
19 remember the site tests that were referenced in the
20 record?

21 A Yeah. Yeah. I didn't put that, but I was not on
22 the site on and off. Like, you know, my floor manager is
23 like, you know, handling it. And if I'm correct, like,
24 you know, auditor stayed throughout the day, and she
25 picked up all the tickets. And -- and later like, you

1 know, when she presented in the Excel, only I saw that
2 one.

3 Q Do you remember the results of the site test?

4 A Yeah. Yeah. I think one was some 33 percent.
5 I'm not sure like, you know. I do remember the dates --
6 nine -- nine -- some September 28-something, and the other
7 is like January 24-something. One was 33, other one was
8 25 or 26 like that. And then average was 29.77 that I
9 remember. Yeah.

10 Q One of the contentions of the case was they only
11 did two site tests and not -- not three site tests. Was
12 that your decision that they only did two site tests?

13 A No, it's Department. I didn't even know that
14 three tests is needed until, you know, later part of the
15 time. Yeah.

16 Q Had they have asked, would you have allowed a
17 third site test?

18 A Yeah, absolutely.

19 Q Okay. I'd like to look real quick at Exhibit 9.
20 I'm not sure if you have it. I'll try to put the books
21 here. Can you -- can you see that okay?

22 A Oh, yeah. You want me to read that one or --

23 Q Yeah. I have some notes here, so I'll do my best
24 to summarize. But on Exhibit 9 it appears to be an email
25 from Ms. Sharon to your representative, I guess. And I'm

1 going to summarize for the sake of time. But my reading
2 is it basically says that the supervisor is not accepting
3 the site test and that Yelp doesn't have information about
4 the restaurant before 2017. So they're not allowing
5 exempt sales. And she goes on in the -- in the circled
6 area there to say that she has a difference of opinions
7 from her supervisor on the audit, and she's used site
8 tests on many audits, and she's looking to -- at the bank
9 statements to, quote, "Pursue a higher tax liability."

10 Is that your recollection of what happened during
11 the audit?

12 A Yeah. This email I remember. But this email I
13 came to know only through the other representative. So he
14 only asked for it. I think like, so they had some
15 conversation so after reading this email. With the due
16 respect to the Department, you know, like I think, you
17 know, I will leave it to the previous representative on
18 this one. Yeah.

19 Q In her comment there that Yelp didn't have frozen
20 food sales before 2017, did you sell frozen food before --

21 A Yeah.

22 Q Okay.

23 A It was just not there, I think. Yeah.

24 Q How does it make you feel to hear from an auditor
25 that the State is trying to pursue with the highest

1 liability possible?

2 A That's one other thing like, you know, where I
3 might take like 2 minutes, and I'm -- I'm extremely -- I
4 was demotivated. Me being a, you know, an honest taxpayer
5 on time. I was paying sales tax, payroll tax, income tax,
6 everything on time. And then I was just focusing on
7 business expansion. I always kept, like, KFC [sic] form
8 as my, you know, as a mentor to succeed in the life, you
9 know. One day I thought I'll do it like, you know. But
10 when this assessment came in like, you know, I felt like,
11 you know, there's no way I can succeed, you know, with
12 this thing. I -- I have no idea like, you know, when will
13 I hit again -- you know, like get hit.

14 And my family got extremely like, you know,
15 upset. They don't want me to pursue, and then, you know,
16 we had a lot like personal issues, emotions, all these
17 things. And then I ended up like, you know, closing the
18 business. Then I got hit with the COVID, like, and all
19 those things happened subsequently. So right now I don't
20 even have any intention of, you know, thinking about this
21 line. Yeah.

22 Q Thanks for sharing that. On Exhibit 10, are you
23 familiar with what -- what you see here as Exhibit 10?

24 A Yeah. I think this was given by my floor
25 manager. So I shared it -- shared it with them at that

1 point in time.

2 Q Okay.

3 A So, I --

4 Q And to you what does this -- what does this show
5 to the panel?

6 A Yeah.

7 Q Can you explain what this means?

8 A So this is where like, you know, sometime they
9 maintain when they request like, you know, can you keep
10 track of separate sales. Like, they maintain sometime
11 they don't like, and I couldn't force them like, you know.
12 It's very hard to go for the same price. I was relying on
13 the system, you know, whatever it say. Yeah.

14 Q So it has taxable sales and exempt sales?

15 THE STENOGRAPHER: I'm sorry. What was that
16 answer.

17 MR. DONNINI: You have to -- to give a verbal --

18 MR. KUMARASWAMY: Oh, I'm sorry. So what I meant
19 to say like, you know --

20 THE STENOGRAPHER: Okay. I just want to know
21 what you said last.

22 MR. KUMARASWAMY: I'm sorry. Yeah. This was
23 given by the floor manager. So I just, you know, decided
24 to do that.

25 BY MR. DONNINI:

1 Q I think my question was the report, is it
2 accurate that it shows both taxable and exempt sales on
3 the report there?

4 A Yeah. Yeah.

5 Q Did -- okay. And I'm sorry. Did we clear, these
6 reports came from your floor manager?

7 A Yeah.

8 Q Okay. I'd like to talk about the tips issue a
9 little bit. I believe the paperwork in the record shows
10 about a 9 percent tip ratio. Is that consistent with your
11 understanding of the business?

12 A It was, yeah, around that time.

13 Q Yeah. Okay.

14 A Now, it's reduced. Like, now, this is whatever
15 I'm getting from the industry. It's not the standard, I
16 think like, you know. Yeah.

17 Q Were these tips optional from the customers'
18 perspective?

19 A Yes, it was.

20 Q Were the tips that were collected, were they paid
21 to the employees?

22 A Yeah. It was part of this payroll -- this
23 salary. Yeah.

24 Q And that's the case for the first audit period
25 and the second one?

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A Yeah.

Q Now, if we use the correct exempt sales and tip ratios, do you have any idea what the correct liability would be?

A I don't know.

Q You don't know? In closing, do you have anything else you'd like to add for the panel?

A Maybe I step back the question which ask like, you know, I think today one document we shared it, and I think that I said like, you know, that's kind of correspondence with the -- the revised percentage of error I think. So that kind of, you know, says close enough to impact like, you know, maybe a couple of thousand overpaid I think like to answer that. Yeah. I just recollect to my -- yeah.

Q Okay. So are you clarifying your answer from before you did a calculation? Is that what you're saying?

A Yeah. It was done with previous accountant, but then that's where like today we shared it with you, right.

Q Can you -- I believe it's the --

JUDGE ALDRICH: Hold on. Could you move that microphone back to you.

MR. KUMARASWAMY: Sorry. Sorry.

JUDGE ALDRICH: Yeah. Thank you.

MR. DONNINI: Am I okay? I know I'm kind of

1 talking --

2 JUDGE ALDRICH: Sideway.

3 MR. DONNINI: -- sideways. Yeah.

4 BY MR. DONNINI:

5 Q What was I asking? The calculations that you
6 did, I believe those were in the demonstrative that we
7 were talking --

8 A Yeah. Demonstrative and --

9 Q Can you just walk us through what you did for
10 your calculation?

11 A That was done by the previous accountant only.
12 So basically, what she has explained me is --

13 Q Ravi, I'm sorry to interrupt you.

14 A I -- I'm sorry. I'm -- I'm -- my apologies, sir,
15 third time. Okay. So what she explained is like, you
16 know, the -- just the POE, percentage of error, I think
17 she just adjusted based on our expectation, like, 29.77,
18 she recalculated; trust all -- all the numbers from their
19 Department.

20 Q Okay. And what was the result of that
21 calculation?

22 A It says negative \$4,442-something. Yeah.

23 Q Okay. So that would mean there would be
24 virtually nothing new?

25 A Yeah. Yeah. That's it.

1 Q Okay. I think that's all the questions I had.
2 If there's anything you'd like to add the panel, Ravi, the
3 floor is yours for a minute or two.

4 A No. I wish this -- this thing has been, you
5 know, haunting my, you know, personal life in a very big
6 way. I -- I wish I, you know, get out of this, like, move
7 on with my life. I came to this country, you know,
8 succeed in a much better way and -- and prove myself, and
9 then serve back the community, create more jobs. But this
10 one issue, it's kind of like, you know, push me down in
11 a -- basically, I drained, you know. Both into like, you
12 know, a lot of personal issues. Anyway, that's all equity
13 basis. I know that's nothing to do with this one, but I
14 hope, you know, I get another opportunity to, you know,
15 work with the community.

16 That's all. Thank you, sir.

17 Q Thank you, sir.

18 A Yeah. Yeah.

19 MR. DONNINI: If the panel doesn't mind, how am I
20 doing on time? I'm trying to be respectful.

21 JUDGE ALDRICH: I think you have some additional
22 time.

23 MR. DONNINI: I think I -- is 10 minutes okay for
24 the second witness?

25 JUDGE ALDRICH: Yeah. That's fine.

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MR. DONNINI: Okay. Thank you.

DIRECT EXAMINATION

BY MR. DONNINI:

Q Good afternoon, sir.

A Good afternoon.

Q I'd like to -- I guess let me just back up a step. Can you briefly explain your background to the panel?

A Yeah. I'm a CPA -- practicing CPA in Menlo Park, California, and I take care of small businesses; like I said, sales tax audits and income taxes, filing tax returns, and all those things. I'm represented my clients to sales tax department previously when doing the audit and after the audit.

Q And what's your relationship to this business?

A So after the -- along with this, they -- he have another couple of audits also there. Like, I'm representing other -- not this case and other two -- two cases. So in -- inline with that, I -- I reviewed this documentation, and they were -- as a part of the previous other two audits.

Q So you reviewed the files related to this audit?

A Yes.

Q And when did you do that? Do you remember?

1 A Yeah. We are doing, like, last one year onwards,
2 like --

3 Q About a year?

4 A Yeah. Yeah. We are going through, like, on and
5 off. It's not, like, a continuously. So we are reviewing
6 based on the information, based on the timings.

7 Q I'd like to direct your attention to Exhibit
8 No. 2. I'm sorry the papers came out there. There you
9 go. First of all, did you prepare this schedule or this
10 report?

11 A No.

12 Q Okay. Did you review it?

13 A Yes, just reviewed it because I'm not in that
14 audit period at all. This -- this is -- I -- I see this
15 information maybe year-end reports.

16 Q Okay. And can you explain what this exhibit
17 means for the panel, please?

18 A Yeah. This -- this is like a regular audit
19 procedure that CDTFA does, based on the information
20 provided by the client and everything; and that's what I
21 noticed in this information.

22 Q Okay. And based on this report, what -- what do
23 you see as far as the exempt sales percentage?

24 A Yeah. Basically when I -- when I -- the site
25 test is happened based, this based on the each number

1 of -- the auditor followed ticket numbers. And she
2 audited all the ticket numbers, and he -- he verified how
3 much each ticket has collected the sales taxes, not
4 collect the sales taxes, the differences are there. Based
5 on that, she come to conclusion around like -- based on
6 the two audits, come to around 30 percent.

7 Q What about your review of the records. Did
8 you -- do you have an opinion as to what the correct
9 exempt sales percentage should be?

10 A It should be the same way what the auditor did as
11 a physical test. Yeah. But what I thought is like a
12 basically this. The supervisor -- it's not a common
13 practice every other restaurants normally does. This is
14 for unique -- unique situation for particularly his
15 business. That's why there -- the 80/80 are like other
16 rules applied by the CDTFA, the supervisor or something.
17 But that's why, like, there is a difference of opinion
18 between the physical test.

19 They see all the process, and then they see the
20 physically. They can verify physically, but it's not a
21 common practice to the supervisor. Maybe they have it. I
22 don't. Based on the communication when I reviewed these
23 things, the mails and all those things, that's what I
24 thought, like, there is miscommunication or like a
25 misunderstanding of the regular business. Yes, like

1 normal -- normal at that restaurant. Nobody sells like
2 cold food at all. So maybe that is the reason this all
3 came up.

4 Q So the frozen food in a restaurant like this
5 would be unusual?

6 A Unusual, yes.

7 Q I understand.

8 A Yeah.

9 Q Okay. To determine that exempt ratio of
10 30 percent, what are you basing it off of? What did you
11 look at to determine it should be --

12 A Based on the audited findings; based on that,
13 because I'm not there in the time. Like, based on the
14 audited findings and the each individual ticket. She
15 audited, and then one ticket because come -- somebody
16 comes for like -- if he comes with the frozen food, so
17 there is no sale tax -- sales tax. If he comes with the
18 only for eating places, he comes in for eat -- for dine
19 in, then 100 percent sales tax, I noticed. If they come
20 up -- the person came for a dine in and then take away the
21 frozen food, I can see the difference between the sales
22 tax percentages collected and due. That, she clearly
23 mentioned in that audit report.

24 Q I switched gears to Exhibits 19 and 20. Is
25 this -- is this what you're talking about?

1 A Yeah.

2 Q Okay. Can you explain -- it's the first page on
3 Exhibit 19. Explain to me what you were just talking
4 about?

5 A Yeah. That's what, like, she -- she took the --
6 all the reference and the ticket number, then what is the
7 each ticket sale -- sales and the total sales; and then
8 including taxes how much it is going to be; how much taxes
9 charged, and how much collected; and how much need to be
10 collected. That's what the -- the total layout is about.
11 So if somebody is doing, like, something, mistake, or
12 something like that. So if either you shouldn't collect.
13 Forcefully they are doing in the system, then what happens
14 is, like, if you're not going to collect zero or, like,
15 collect fully.

16 But I see in the audit report there is some --
17 either some of -- if customer buying frozen food, then no
18 tax. If customer eat it fully, then they're paying fully
19 tax. And there is some other statements that we noticed
20 that people bought, eat, and like dine in, and the frozen
21 food, there is a differentiation on the sales tax to
22 collectible and actually collected. So that -- that --
23 that gives me, like, based on my audits and previous
24 things, there is a -- frozen food sales is also there.

25 Q Okay. And that's based on Exhibit 19, what the

1 auditor did during her site visit?

2 A Yes.

3 Q Okay. Understood. Did you review anything else
4 during your review?

5 A Yeah. Based on -- on -- based on this one,
6 general practice, I gone through the total material, and I
7 see that there is a flyer, some of the flyers. But I
8 don't know, like, they're selling from beginning or
9 ending. I don't know the dates. Based on the audit,
10 there is a possible that it's not, like, there is cold
11 food sold sales is there. That is what I can determine.
12 And then based on her calculation, the percentage should
13 be around 30 percent.

14 Q Understood. When you say frozen food wasn't
15 there specifically -- if I can have you look at -- I
16 believe it's Exhibit 12. Did you review this document --

17 A Yes.

18 Q -- as part of the -- okay. Can you explain to
19 the panel what you meant by that?

20 A Yeah. In this -- in this, when you see that,
21 like, every -- every customer see tax eligible speaking
22 collect sales tax to the customer, if they're avoiding any
23 sales tax, generally speaking, that they will collect the
24 sales tax from the customer, and then they're not paying
25 to Department.

1 If here, if we can see by -- by this monthly or
2 daily statements here, so the total amount they collected,
3 how much is gross receipts, and then how much is the tax
4 and tips and everything, is bifurcated. But the tax
5 collected and the sales is -- there is a difference. It
6 should be more than what they are supposed to collect.
7 And that's why, based on their site test with this each
8 ticket number and this, it resembles the same way like
9 they have a cold food.

10 Q Do you know why a business like this company
11 would not just list frozen food, say, on their receipts?

12 A It -- it is like a settings in the system; maybe
13 they don't -- they know, they don't know, or like even it
14 is possible. I don't know.

15 Q Right.

16 A Yeah. Maybe they are -- maybe they put that
17 taxable; some items taxable; some items nontaxable. They
18 can do that in the system at the POS or something. They
19 can do that. This food is like zero tax. This food is
20 this tax.

21 Q Okay.

22 A But I don't know, like, you can categorize the
23 food into frozen food and non-frozen food.

24 Q But you can tell what the frozen food sales were
25 based on Exhibit 12?

1 A Yeah. There is. Like, if -- if this the -- this
2 is the -- from the report system, because if there is a
3 collected, then it should be like 100 percent. It is 9
4 percent. It has to be related to that.

5 Q Okay. And that can be verified through, say, a
6 site test?

7 A Yes.

8 Q Yeah. If you don't mind just flipping to page --
9 or sorry -- Exhibit 13, rather?

10 A It's the same thing.

11 Q It's the same thing?

12 A Same things but it's a smaller sample days and
13 months.

14 Q And what about Exhibit 14?

15 A Yeah. These are like similar, but like a -- it's
16 a monthly period. Some -- some of them are like days --
17 couple of days or something like that.

18 Q The same pattern could be followed?

19 A Yeah.

20 Q Okay. Based on your review, just for clarity,
21 again, do you believe exempt sales should have been
22 removed from the audit results?

23 A I believe, based on the audit and everything.
24 But that's what -- that's what I'm saying. Like, the
25 basic miscommunicate [sic] -- misunderstanding of the

1 business is, like, this kind of things you never normally
2 see in other locations. Maybe they are resistant to
3 accept those things. I don't know. Based on the
4 communication with the previous emails from the auditor to
5 Ravi, and after reviewing, that's what I got to
6 conclusion. But it's up to --

7 Q Okay.

8 A Yeah.

9 Q Thank you. Before we conclude, is there anything
10 else you would like to add for the panel?

11 A Yeah. That's -- that's what it is. Generally
12 speaking, this is not usual practice. That's what I
13 noticed based on the previous audit reports or like
14 information submitted to the Department. But
15 information -- because of the normal, any other
16 restaurants, they don't sell cold food in the restaurant.
17 Because, normally, if you go to grocery store, you find
18 freezer, and we can buy the frozen food, and we are not
19 paying sales taxes on that.

20 There is lot of Indian foods came. Even if you
21 go to Indian stores, there is a lot of frozen food
22 available; same thing what he is selling, at least dosas
23 and all these things, roti, parathas, and all those
24 things, we are -- they're not collecting any sales tax,
25 but it's in the store. But it's -- it's unusual for the

1 restaurant businesses. That's what I noticed.

2 MR. DONNINI: Thank you very much for your time.

3 With that, I believe we conclude, unless, of
4 course -- oh, sorry -- unless the panel has any questions
5 for us.

6 JUDGE ALDRICH: Okay. Thank you. First, I'm
7 going to open the cross to CDTFA, if they'd like to ask
8 any questions of the witnesses.

9 MR. SAMARAWICKREMA: No, Judge.

10 JUDGE ALDRICH: Okay. And, Judge Long, did you
11 have any questions?

12 JUDGE LONG: I did.

13 Regarding the tip's percentage and tips ratio, my
14 understanding is that -- I -- I can see the revised POE,
15 and my understanding is that your position is that the
16 tips should be reduced from the amounts reported in the
17 federal income tax return?

18 MR. DONNINI: I believe that's correct. It -- so
19 to clarify, I think what they did, effectively -- what
20 CDTFA did, effectively, was take the federal returns minus
21 the sales tax returns. There were a couple of periods I
22 don't think they used federal returns, if I'm not
23 mistaking. But to your point, it should be whatever they
24 came up with is the total gross sales number. That should
25 be reduced by 9, 10 percent, whatever it is.

1 JUDGE LONG: Okay. And then with respect to
2 that, so 12 -- audit work paper schedule 12B-1, the
3 reasonableness test, shows that the credit card sales
4 alone are significantly more than the federal income tax
5 returns by about \$700,000. And when they did that test,
6 they did -- even when they reduced the credit card sales
7 by the 9.07 percent tip rate and the sales tax rate, so
8 you have the ex tips, ex credit -- ex tax, that still
9 outpaces the federal income tax reporting by about
10 \$200,000. Is there an explanation for the difference
11 between the gross receipts reported in the federal income
12 returns and the amount of credit card sales?

13 MR. DONNINI: I don't know the answer to that,
14 Your Honor. Let me think about that. I know on the bank
15 statements that they included shareholder transfers, and
16 it's possible the federal return could have included the
17 bank statement figure. But I don't know that for a fact.
18 And I would think that the Department, whatever they came
19 up with as gross sales, they accepted that as the -- I
20 guess I'm a little bit confused by the question.

21 JUDGE LONG: My thing is this, is that the 1099-K
22 is typically considered a reliable source of information.
23 And the credit card sales, less tips and less tax is --

24 MR. DONNINI: Credit card sales less tips, less
25 tax. Okay.

1 JUDGE LONG: -- you know, almost \$3 million after
2 the credit card ratio is applied. That is about \$200,000
3 more --

4 MR. DONNINI: Right.

5 JUDGE LONG: -- than what was reported on the
6 federal income tax return. And I guess, if I'm going to
7 consider that the federal income tax return should be
8 reduced by additional amounts, the sales tax and the tips,
9 I have to understand how there were more credit card sales
10 than what was reported on the income tax return.

11 MR. DONNINI: I'll take a look at that, Your
12 Honor. My understanding was the issue was the difference
13 between the Department's audited sales figure -- which
14 we'll just call it \$23 million for the first audit period,
15 versus the \$2 million on the sales tax returns. And that
16 difference was the tips and the exempt sales.

17 JUDGE LONG: Yes. And I understand that, but,
18 you know --

19 MR. DONNINI: There's another \$200,000 --

20 JUDGE LONG: -- typically speaking, and if you
21 look at the audit work papers, schedule 12B is the
22 reasonableness test, which the CDTFA is using to support
23 the reasonableness of the audit method that they ended up
24 using. So that's why I am curious about the discrepancy.

25 MR. DONNINI: Yeah. If just being totally

1 honest, didn't look at it from that respective. It still
2 seems like, though, even if it's reduced from the higher
3 number, I think what you're saying is there's still
4 another \$200,000 discrepancy --

5 JUDGE LONG: Right.

6 MR. DONNINI: -- which seems a lot lower than the
7 \$120,000 that was assessed. But, you know, it just
8 doesn't seem like \$120,000 makes any sense, even if --
9 even if there is another \$200,000 that I just wasn't aware
10 of.

11 JUDGE LONG: Okay. Thank you. No more
12 questions.

13 JUDGE ALDRICH: Thank you.

14 CDTF, are you ready to proceed with your
15 combined presentation?

16 MR. SAMARAWICKREMA: Yes, Judge.

17

18 PRESENTATION

19 MR. SAMARAWICKREMA: Appellant is a California
20 limited liability company that operated two separate
21 restaurants, an Indian restaurant in Sunnyvale, and Papa
22 Murphy franchise that was not part of the audit
23 assessment. Appellant obtained a seller's permit with an
24 effective start date of October 1st, 2014, which closed
25 effective date of September 30th, 2019.

1 The Indian restaurant was operated seven days a
2 week, Monday through Thursday from 8:30 a.m. to
3 10:00 p.m., and Friday through Sunday from 8:30 a.m. to
4 10:30 p.m. The Indian restaurant had a seating capacity
5 for around 78 people. Two audit periods are subject to
6 this appeal. Both audits deal with unreported taxable
7 sales relating to the Indian restaurant.

8 For easy reference, the Department is going to
9 refer to the audit period October 1st, 2014 to
10 September 30th, 2017, as a first audit; and refer to the
11 audit period October 1st, 2017, through September 30th,
12 2019, as a second audit. During the first audit period,
13 Appellant reported taxable sale of around \$2 million; and
14 this is shown on Exhibit A, page 25. During the second
15 audit period, Appellant reported taxable sale of around
16 \$1.3 million, excluding furniture and equipment sale of
17 around \$19,000; and this is shown on Exhibit D, page 164.

18 During our presentation, we will explain why the
19 Department rejected Appellant's reported total and taxable
20 sales for both audit periods; and how the Department
21 determined Appellant's unreported taxable sales for both
22 audit periods for this Appellant. For both audits,
23 Appellant informed the Department that they prepared the
24 sales and use tax returns based on their monthly sales
25 records for the restaurant, and sales from the Papa

1 Murphy's were not included in the sales reported for the
2 sales and use tax returns.

3 For the first audit, Appellant provided their
4 federal income tax returns for years 2014 through 2016,
5 bank statement for year 2017, and some sales records for
6 third quarter 2017. For the second audit, Appellant
7 provided federal income tax return for years 2017 and
8 2018, profit and loss statement for the period
9 January 2017 through September 2019, bank statement for
10 this audit period, and food sales report per their general
11 ledger for first quarter 2018 through third quarter 2019.

12 However, Appellant did not provide complete
13 documents of original entry, such as POS download with all
14 folders, or guest receipts, credit card sales receipts,
15 frozen food sales receipts, bulk food sales receipts, cash
16 reward information, resales information, other non-sales
17 information, complete sales, journals, and sales summaries
18 to verify the accuracy of their reported sales for both
19 audit periods. In addition, Appellant failed to provide
20 complete purchase information or purchase journals for
21 both audit periods. Due to the lack of reliable records,
22 the Department did not accept Appellant's reported taxable
23 sales for both audit periods, except January 2019 through
24 September 2019.

25 The Department completed five verification

1 methods to understand Appellant's reporting patterns and
2 verify the accuracy of Appellant's reported total and
3 taxable sales. First, the Department reviewed Appellant's
4 federal income tax returns; and this information is shown
5 on Exhibit K, page 371. Appellant had around \$5 million
6 on Appellant's federal income tax returns but only
7 reported \$3 million as total sales. Thus, Appellant
8 failed to report around 40 percent of their recorded sales
9 on their federal income tax returns for these periods.
10 And the information required to calculate this percentage
11 is shown on Exhibit K, page 371.

12 The Department also compared reported total sales
13 of around \$3 million to the cost of goods sold of around
14 \$1.3 million reflected on Appellant's federal income tax
15 returns and calculated an overall total reported book
16 markup of around 124 percent, which is low for this type
17 of business. And this overall reported book markup is
18 shown on Exhibit K, page 372. Accordingly, the Department
19 did not accept Appellant's reported total sales for both
20 audit periods. In fact, based on the analysis of sales
21 reflected on Appellant's federal income tax returns, the
22 audited markup was around 276 percent, which the
23 Department determined to be a more reasonable markup than
24 the reported book markup.

25 Second, the Department compared reported total

1 sale of around \$3 million to the range of around \$738,000
2 reflected on Appellant's federal income tax returns and
3 calculated an overall rent ratio of around 25 percent for
4 the period October 2014 through December 2018; and this
5 calculation is on Exhibit K, page 373. Based on this high
6 rent ratio, the Department determined that Appellant did
7 not report all their sales on their sales and use tax
8 returns. In comparison, using the sales reflected on
9 Appellant's federal income tax returns, the overall rent
10 ratio is reflected at around 15 percent, which is also a
11 high rent ratio for this type of business. However, the
12 Department determined that this rent ratio is a reasonable
13 rent ratio compared to reported rent ratio.

14 Third, the Department conducted a bank
15 reconciliation comparing Appellant's bank deposits to
16 their reported sales for the period October 2017 through
17 September 2019. And this reconciliation is shown on
18 Exhibit F, page 239. Appellant had around \$1.9 million
19 bank deposits on Appellant's bank statements but only
20 reported around \$1.3 million as total sales. Appellant
21 only reported little less than 70 percent of their bank
22 deposits as sales for the same period.

23 Fourth, Appellant did not provide complete sale
24 information for both audit periods. Therefore, the
25 Department obtained Appellant's credit card sales

1 information from his internal sources; and this
2 information is on Exhibit K, pages 374 through 377. The
3 Department compared the credit card sales with reported
4 total sales and calculated an overall credit card sales
5 ratio of around 128 percent, ranging from as low as
6 91 percent to as high as 156 percent for both audit
7 periods; and these calculations are on Exhibit K, pages
8 376 and 377. The credit card sales for both audit periods
9 are more than the amount of the reported total sales.
10 This is an indication that not all of Appellant's cash and
11 credit card sales transactions had been reported on their
12 sales and use tax returns.

13 Fifth, the Department conducted its Statewide
14 Compliance and Outreach Program, also known as SCOP field
15 visit on Appellant's business on Wednesday, May 10, 2017.
16 And the inspection details are on Exhibit A, pages 97 and
17 98. The Department noted that Appellant included three
18 frozen food items to their menu shortly after the
19 Department visited Appellant's restaurant on
20 May 10th, 2017; and this information is on Exhibit F,
21 pages 262 through 292. The Department notes that
22 Appellant's original menu before the Department's SCOP
23 visit did not include a frozen food page; and this is
24 shown on Exhibit F, pages 262 through 274.

25 The Department also conducted two site

1 observation tests on Thursday, September 28th, 2017, and
2 Wednesday January 24th, 2018. Based on the site
3 observation tests, the noted that Appellant's staff
4 members did not charge sales tax on some of their taxable
5 sales. Appellant did not provide their POS download with
6 all folders to analyze Appellant's taxable and nontaxable
7 sales items. Therefore, based on these two observation
8 tests, the Department determined that over 80 percent of
9 Appellant's sales were from food products, and over 80
10 percent were taxable food products as sale of hot food
11 products or consumed on the premises of the seller.

12 Appellant was unable to explain the reason for
13 the sales differences in federal income tax returns, bank
14 deposits differences, low reported markups, high reported
15 rent ratios, and high reported credit card sales ratios.
16 Therefore, the Department conducted further investigation
17 by analyzing Appellant's federal income tax returns and
18 credit card sales information for the first audit period.
19 The Department used a general ledger, bank statements,
20 federal income tax returns, and profit and loss statement
21 for the second audit period.

22 For the first audit, to understand Appellant's
23 operating activities and to verify the accuracy of the
24 sales reflected on Appellant's federal income tax returns,
25 the Department completed two site observations; and this

1 is shown on Exhibit A, pages 71 through 84. As mentioned
2 earlier, during site observation, the Department noted
3 that Appellant did not charge sales taxes on some of their
4 taxable sales transactions, and noted inconsistent cash
5 sales transactions; and this is shown on Exhibit N, pages
6 543 and 544.

7 Appellant did not provide their POS download with
8 all folders to analyze Appellant's taxable and nontaxable
9 food sales items. Therefore, based on site observations
10 and menus before and after SCOP visit, the Department
11 determined Appellant falls under the 80/80 rule; and also
12 determined Appellant's credit card sales percentage of
13 around 94 percent and credit card percentage of around
14 94 percent and credit card tip percentage of around 9
15 percent. Appellant failed to provide credit card merchant
16 statements or 1099-K forms to establish credit card sales
17 for the period October 2014 through December 2016.

18 However, Appellant provided the credit card sales
19 information for the period January 2017 through
20 September 2017. Therefore, the Department obtained
21 Appellant's credit card sales information for the period
22 October 2014 through December 2016 from it's internal
23 sources; and these are on Exhibit A, pages 64 through 70.
24 Then the Department used a total credit card sale of
25 around \$3.3 million, audited credit card tip percentage of

1 around 9 percent, audited credit card sales percentage of
2 around 94 percent, and applicable sales tax rate factors
3 to estimate total sale of around \$2.9 million for the
4 audit period; and these calculations are shown on
5 Exhibit A, pages 64 through 66.

6 These estimated sales were in line with the sales
7 reflected on Appellant's federal income tax returns; and
8 these estimates are shown on Exhibit A, page 62.

9 Therefore, the Department accepted Appellant's sales
10 reflected on their federal income tax returns. Since
11 Appellant only added frozen food items to their menu after
12 SCOP field visit, and they failed to provide their POS
13 downloads with all folders for similar sales records to
14 determine nontaxable food sales or any other information
15 to support any other non-sales amount, the Department
16 determined that sales reflected on Appellant's federal
17 income tax return for years 2014 through 2016 were taxable
18 sales.

19 At the time of audit field work for the first
20 audit, the Department did not have Appellant's federal
21 income tax return for year 2017. Therefore, the
22 Department compared the sales reflected on Appellant's
23 federal income tax returns after adjusting for applicable
24 sales tax reimbursement of around \$2.5 million, with a
25 reported taxable sale of around \$1.6 million to determine

1 unreported taxable sales of around \$927,000, and overall
2 error rate of around 58 percent for the period
3 October 2014 through December 2016; and these calculations
4 are on Exhibit A, page 61.

5 Then the Department used the reported taxable
6 sales and corresponding error rates to determine
7 unreported taxable sale of around \$1.2 million for the
8 first audit period; and these calculations are shown on
9 Exhibit A, page 60. The Department then compared the
10 total unreported taxable sales with a reported taxable
11 sale of around \$2 million to calculate the error rate of
12 around 58 percent for the first audit period. As
13 mentioned earlier, the Department determined the
14 unreported taxable sale for the period January 2017
15 through September 2017 using the overall error rate of
16 around 58 percent because Appellant's 2017 federal income
17 tax return was not available when the audit was conducted.

18 The Department now has the federal income tax
19 return for year 2017 and analyzed this 2017 federal income
20 tax return. The Department concluded that including
21 actual sales reflected on Appellant's 2017 federal income
22 tax return with a 10 percent adjustment for frozen food
23 sales in its analysis would increase the unreported
24 taxable sales by around \$700,000. And the information
25 required to calculate this amount is shown on Exhibit A,

1 page 60, and Exhibit D.

2 However, the Department is not asserting an
3 increase based on Appellant's 2017 federal income tax
4 return for the first audit period. Therefore, the
5 Department determined that the estimated amount, as is in
6 the first audit, is not only reasonable but also benefit
7 the Appellant. As stated earlier, the second -- for the
8 second audit, Appellant provided federal income tax return
9 for years 2017 and 2018, profit and loss statement for the
10 period January 2017 through September 2019, bank statement
11 for this audit period, and food sales report per their
12 general ledger for first quarter 2018 through second
13 quarter 2019. Therefore, the Department conducted further
14 investigation by analyzing Appellant-provided information
15 for the second audit.

16 The Department analyzed Appellant's food sales
17 general ledger for the period January 2018 through June
18 2019 and calculated a combined recorded credit card sales
19 percentage of around 94 percent using both credit card
20 sales and third-party delivery sales, instead of credit
21 card sales percentage of around 91 percent to give a
22 benefit to the Appellant; and this calculation is shown on
23 Exhibit F, page 231. These recorded credit card sales
24 percentages were in line with the credit card sales
25 percentages observed during site observations; and this is

1 shown on Exhibit A, pages 71 through 84.

2 The Department used Appellant's bank statements
3 to determine credit card sales deposits and third-party
4 delivery sales for the fourth quarter 2017; and this
5 calculation is shown on Exhibit F, page 230. Then the
6 Department used a credit card sales deposits, third-party
7 delivery sales, and combined recorded credit card sales
8 ratio of around 94 percent to determine audited total
9 sales for fourth quarter 2017. The Department used the
10 sales reflected on Appellant's federal income tax return
11 and sales reflected on profit and loss statement for the
12 period January 2019 through September 2019; and this is
13 shown on Exhibit D, page 182.

14 Appellant also provided their bank statements to
15 support their cash rewards, pre-sales, tips, and other
16 non-sales information for the period January 2018 through
17 September 2019; and this is shown on Exhibit D, page 183,
18 and Exhibit F, pages 232 through 234. Then the Department
19 used this information to determine audited total sale of
20 around \$1.8 million for this audit period; and this is
21 shown on Exhibit D, page 182. Appellant informed that
22 they sold frozen food but failed to provide their POS
23 download with all folders to support frozen food sales for
24 the second audit period. Appellant also informed that
25 these frozen food sales accounted around 25 percent of

1 their total sales.

2 Appellant did not provide any documentary support
3 to support this argument. Therefore, to give a benefit to
4 Appellant, the Department allow 10 percent adjustment for
5 frozen food sales without any documentary evidence, and
6 determined audited taxable sale of around \$1.6 million for
7 the second audit period; and this is shown on Exhibit D,
8 page 182. Audited taxable sales were compared with
9 reported taxable sale of around \$1.3 million and calculate
10 error rate of around 26 percent for fourth quarter 2017,
11 28 percent for year 2018, and a negative 1 percent for the
12 period January 2019 through September 2019; and these
13 error rates are shown on Exhibit E, page 182. Respective
14 error rates and reported taxable sales were used to
15 determine unreported taxable sale of around \$257,000 for
16 the period October 2017 through December 2018; and these
17 calculations are shown on Exhibit D, pages 180 and 181.
18 The Department then compared the total unreported taxable
19 sales with reported taxable sale of around \$1.3 million to
20 calculate the error rate of around 19 percent for the
21 second audit period.

22 In preparation for this oral hearing, the
23 Department has discovered that it allow an additional
24 adjustment of \$6,000 for resale and other -- sources other
25 than sales, and this adjustment benefit the Appellant; and

1 this is shown on Exhibit D, page 183, and Exhibit F, pages
2 233 and 234. Correcting this adjustment will increase the
3 liability for the second audit period by around \$5,000
4 from \$257,000 to \$262,000; and the information required to
5 calculate this amount is shown on Exhibit D, page 183, and
6 Exhibit F, pages 233 and 234. however, the Department is
7 not asserting an increase based on this newly discovered
8 adjustment. Therefore, the Department determined that the
9 estimated amount assessed in the second audit period is
10 not only reasonable but also benefit Appellant.

11 In total, the Department determined unreported
12 taxable sale of around \$1.4 million for both audit
13 periods. The Department then compared the total
14 unreported taxable sales for both audit periods with a
15 reported taxable sale of around \$3.4 million to calculate
16 the combined error rate of around 43 percent for both
17 audit periods. Since Appellant failed to provide their
18 POS download and the related folders for both audit
19 periods, the Department used the best available
20 information to determine the unreported taxable sales for
21 both audit periods. The audit calculation of unreported
22 taxable sales, based on the best available information,
23 was reasonable. Appellant did not agree with the audit
24 finding for both audit periods. Appellant contends that
25 the Department's use gross receipts from Appellant's

1 federal income tax return to establish Appellant's
2 unreported taxable sales caused an overstatement of their
3 taxable sales, because Appellant alleged that the
4 Department erroneously assessed nontaxable food sales in
5 the taxable measure.

6 Appellant argues that the Department should have
7 made adjustments for tips, sales tax included, and other
8 income for the first audit period like it did for the
9 second audit period. As support, Appellant provided
10 self-construction -- self-constructed spreadsheet to claim
11 wholesales, resales, cash rewards, and refunds; and this
12 is shown on Appellant's Exhibit 1. Here, however, the
13 Department already reduced the taxable sales by accounting
14 for any sales tax included and a 10 percent adjustment for
15 frozen food sales when determining taxable sale for the
16 period October 2017 through September 2019.

17 Further, the Department finds that Appellant has
18 neither provided source document for the reported amounts
19 on their federal income tax returns, no documentation to
20 support their claimed amounts. Appellant provided no
21 documentation for their alleged tips, sales tax included,
22 wholesales, refunds, and cash refunds for the first audit.
23 Therefore, the Department did not account for additional
24 sales tax included and more than 10 percent adjustment for
25 frozen food sales without supporting documents to

1 Appellant's benefit. Appellant has been given multiple
2 opportunities to provide their POS download with all
3 folders or similar sales document to support their
4 contentions.

5 Further, the Department finds a self-constructed
6 spreadsheet is not sufficient evidence of Appellant's
7 wholesale or resales, cash rewards, and refunds.
8 Therefore, the Department finds these documents do not
9 support Appellant's contentions. Appellant claimed that
10 the Department did not apply the sales and use tax law
11 uniformly in conducting the first audit and the second
12 audit. There's no requirement to employ the same audit
13 method across audits. Rather, under section 6481, the
14 Department may compute and determine the amount of tax
15 required to be paid on the basis of any information within
16 its possession or that may come into its possession.

17 As mentioned earlier, Appellant provided
18 different types of record in each audit. The Department
19 used audit methods consistent with the method of reporting
20 and the records that Appellant provided in each audit.
21 Accordingly, the Department was justified in this decision
22 to use separate audit methods to determine the taxable
23 sales in each audit. Appellant also contends that there
24 is taxable sales are overstated because around 30 percent
25 of their total sales during the both audit periods

1 consistent of nontaxable frozen food items and other
2 nontaxable items.

3 During appeal process, as support Appellant
4 submitted their audit calculations, purchase invoices to
5 support purchases of aluminum food containers, frozen food
6 offer coupons and flyers, a screen shot of Google.com
7 search results a page of their menu, a letter from a
8 former employee, and monthly sales report for third
9 quarter 2017 and fourth quarter 2017 based on information
10 provided by the their floor managers. Regarding the menu
11 page Appellant provided that shows frozen food items that
12 the Appellant claimed they sold during audit periods; and
13 this is shown on Appellant's Exhibit 2.

14 The Department noted that Appellant added three
15 frozen food items to their menu shortly after SCOP visited
16 Appellant's restaurant around May 10, 2017; and this menu
17 is shown on Exhibit A, page 96, Exhibit L, page 516. The
18 Department notes that the Appellant's original menu before
19 the SCOP visit did not include the frozen food page.

20 Also, the Department notes that the majority of
21 Appellant's customers' photographs of Appellant's menu on
22 Yelp.com do not include a frozen page, frozen food
23 section, or significant sale ever frozen food items; and
24 this is shown on Exhibit L, pages 517 through 522.

25 The Department also did not find Appellant's

1 alleged frozen food menu on yelp.com. Further, the frozen
2 food page of the menu alone neither proves that Appellant
3 is not subject to the 80/80 rule. Therefore, the
4 Department finds Appellant's argument that the frozen food
5 page in their menu support their contention that
6 30 percent of their total sales consist of frozen food
7 sales and other non-sales item to lack merit. Appellant's
8 purchase invoices, frozen food coupons, former employees'
9 letter, May 10th, 2021 Google.com search results, and the
10 sales records for third quarter 2017 and fourth quarter
11 2017 do not support their contentions.

12 Regarding Appellant's contention that the
13 Department's audit staff did not agree with the audit
14 staff's supervisor's recommendation and recommended a
15 different audit method to be used to determine Appellant's
16 unreported taxable sales for the first audit period,
17 Appellant provided some email correspondence between audit
18 staff and Appellant's previous representative; and these
19 emails are shown on Appellant's Exhibit 9. These
20 arguments do not establish that the Department's ultimate
21 determination was unreasonable or lacked any rational
22 basis.

23 The Department concluded that it properly
24 determined Appellant's unreported taxable sales by
25 utilizing Appellant's own records, and that the

1 Department's determination was reasonable. Accordingly,
2 the Department determined the unreported taxable sales for
3 both audit periods based upon the best available
4 information. The evidence shows that the audits produced
5 reasonable results. Appellant has not provided any
6 reasonable documentation or evidence to support adjustment
7 to audit findings. Therefore, for all of these reasons,
8 the Department requests the appeal be denied.

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

11 Thank you.

12 JUDGE ALDRICH: Thank you.

13 I do have a question. I believe Mr. Donnini made
14 the argument that the Department has the burden of
15 establishing that the 80/80 rule applies. I was wondering
16 if the CDTFB had a response?

17 MR. SAMARAWICKREMA: The -- based on the site
18 observations, the Department determined that the taxpayer
19 did not charge tax on taxable sales. And the schedule
20 also listed the tax due on actual taxable sales and the
21 tax collected. So if you compare the -- the taxable sales
22 based on the tax due, the taxable sales percentage is more
23 than 90 percent based on the site observations. So based
24 on that information and based on the menu, when we -- we
25 determine that the Appellant added --

1 JUDGE ALDRICH: The question was less of how the
2 Department arrived at that conclusion and more of like who
3 has -- which party has the burden of establishing it.

4 MR. SAMARAWICKREMA: The -- the -- all the sales
5 are subject to sales tax, unless the taxpayer has support
6 to prove that, you know, some sales are exempt. So
7 taxpayer did not maintain proper records to support exempt
8 sales. And based on the site observation and based on the
9 menus before and after the SCOP visit, based on those
10 information, we determined that the taxpayer falls under
11 the 80/80 rule.

12 JUDGE ALDRICH: Okay. Thank you.

13 For Appellant, you indicated that frozen food
14 sales was a big part of the business. What was the most
15 commonly sold or most popular frozen dish?

16 MR. DONNINI: Mr. Ravi, do you care to answer
17 that?

18 MR. KUMARASWAMY: Yeah. Some --

19 JUDGE ALDRICH: A little closer. Sorry.

20 MR. KUMARASWAMY: Sorry, sir. My apologies.
21 Sabjis were -- different type of sabjis were very, you
22 know, popular.

23 JUDGE ALDRICH: Could you briefly explain what a
24 sabji is?

25 MR. KUMARASWAMY: Like, example, like, paneer,

1 butter masala, chana, like that. Like, you know, so those
2 are all, you know, side dishes, you know, for the main
3 one. And then parotta is another item. Okay. Those are
4 examples.

5 JUDGE ALDRICH: And how much would a typical
6 sabji cost?

7 MR. KUMARASWAMY: It ranges from \$9 like, you
8 know, 13, \$14.

9 JUDGE ALDRICH: Okay.

10 MR. KUMARASWAMY: Yeah.

11 JUDGE ALDRICH: All right.

12 MR. KUMARASWAMY: Also sizes also matters. Yeah.

13 JUDGE ALDRICH: Excuse me?

14 MR. KUMARASWAMY: Also, size also matters. So --

15 JUDGE ALDRICH: Okay.

16 MR. KUMARASWAMY: -- average. Yeah. Can I add
17 one more point?

18 JUDGE ALDRICH: Sure.

19 MR. KUMARASWAMY: Like, you know, also, so the
20 model which I, you know, wanted to do it, now in today's
21 world it's very, very like, you know, popular. If you go
22 to any grocery store, this type of food is very common. A
23 lot of restaurants selling to that grocery store itself.
24 And then brand also created now. What I wanted to do, I
25 failed. But then now it's successful. Yeah. I answered

1 the question.

2 JUDGE ALDRICH: Okay. Thank you.

3 Judge Long, did you have any questions for either
4 party?

5 JUDGE LONG: No further questions. Thank you.

6 JUDGE ALDRICH: And Hearing Officer Wilson?

7 HEARING OFFICER WILSON: No questions. Thanks.

8 JUDGE ALDRICH: Okay. So we'll turn it over to
9 Mr. Donnini to do a rebuttal or a conclusion, a closing
10 statement.

11 MR. DONNINI: Sure. Thank you, Your Honor. I'll
12 do my best to keep it brief.

13

14 CLOSING STATEMENT

15 MR. DONNINI: I -- I think the record kind of
16 speaks for itself. There -- there were clearly exempt
17 sales going on, particularly, in audit period 1. The
18 record is full of evidence of that. I don't think the
19 Department is giving an objective look at the evidence in
20 the record. They purchased a ton of aluminum pans, which
21 only makes sense to buy those if you're selling cold food
22 to go. Those wouldn't be used for hot prepared food in
23 the restaurant.

24 The POS data, the sales data -- the sales log,
25 rather, all support the exempt sales ratio. And most

1 notably, the site test by the auditor. I'm still not sure
2 why that was ignored. The stated reason in the final
3 decision was that they can't rely on it because they
4 didn't do a third day. It was purely their decision not
5 to do a third day. The two other days showed the 80/80
6 rule did not apply.

7 So I guess in summary, I would just say that
8 observation test showed -- I'm sorry. One more quick
9 thing that I forgot to add was the Department, again,
10 today makes the point that there was close to a 60 percent
11 error ratio for the first audit period and under a
12 20 percent error ratio for the second audit period.
13 That -- that tells me something is going on here. I heard
14 from the taxpayer representative nothing materially
15 changed during the business during either period. They
16 were selling cold food and hot food for both periods. So,
17 clearly, the Department is doing something wrong with
18 respect to period 1. It shouldn't be such a drastic
19 difference when nothing materially changed from the
20 business.

21 So I think, really, my main points that were
22 hopefully made here today dealt with CDTFA's observation
23 tests that both showed about a 70 percent taxable ration
24 for their food sales, which again falls below the 80/80
25 rule. Tips are not taxable. And despite evidence of at

1 least 9 percent tips, it appears to me that CDTFA taxed
2 them. It's clear that cold food to go is exempt and was
3 sold by the business during both audit periods. And CDTFA
4 later admitted that, and they should have given at least
5 the same credit for the second audit for the first period.
6 But based on the evidence, it should have been more in the
7 line of around 30 percent.

8 I just like -- I would also like to add that when
9 CDTFA's own auditor disagrees with the method and the
10 assessment, and the taxpayer provides evidence that was
11 never fairly or impartially considered, we ask this panel
12 to take a second and objective look at the evidence and
13 the testimony here today. This is what OTA exist for, not
14 just to review numbers but to ensure fairness,
15 consistency, and lawful application of the sales tax laws
16 in the state. Therefore, we ask the panel to reduce the
17 sales tax liability to reflect the true real taxable sales
18 numbers based on the actual business conducted, not on
19 inflated assessments and assumptions made by the
20 Department.

21 Thank you for your time, and if you have any
22 further questions, I'd be happy to do my best to answer
23 them.

24 JUDGE ALDRICH: Well, thank you, everyone. We're
25 ready to conclude the hearing. The record is now closed,

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and the panel will meet and decide the case based on the admitted evidence and the arguments presented today. We will send both parties our written decision no later than 100 days.

And OTA hearings will resume tomorrow at 9:35.

Thank you, everyone.

(Proceedings concluded at 5:11 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 9th day of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER