

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
PBM SERVICE, INC.,) OTA NO. 230914400
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APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, June 17, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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2 STATE OF CALIFORNIA

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14 Transcript of Proceedings, taken at
15 12900 Park Plaza Drive, Suite 300, Cerritos,
16 California, 90703, commencing at 2:00 p.m.
17 and concluding at 3:20 p.m. on Tuesday,
18 June 17, 2025, reported by Ernalyn M. Alonzo,
19 Hearing Reporter, in and for the State of
20 California.

1 APPEARANCES:

2

3 Panel Lead: ALJ SUZANNE B. BROWN

4 Panel Members: ALJ GREG TURNER
5 ALJ SHERIENE ANNE RIDENOUR

6 For the Appellant: JOHAN JANSSENS
7 CHRISTOPHER K. WONG

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

10 NALAN SAMARAWICKREMA
11 CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits A-Q were received into evidence at page 8.)

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

OPENING STATEMENT

By Mr. Wong 15

By Mr. Samarakern 25

By Mr. Samarakern 25

CLOSING STATEMENT

PAGE

By Mr. Wong 42

1 Cerritos, California; Tuesday, June 17, 2025

2 | 2:00 p.m.

3

4 JUDGE BROWN: Ms. Alonzo, we will go on the
5 record.

6 And we are on the record in the Appeal of PBM
7 Service, Inc., OTA Case No. 230914400. Today is Tuesday,
8 June 17th, 2025, and it is approximately 2:00 p.m.

9 I will start by asking each of the participants
10 here today to state their names for the record. And I
11 will start with CDTFA, if the representatives could each
12 identify themselves, please.

13 MR. SAMARAWICKREMA: Nalan Samarawickrema,
14 Hearing Representative for CDTFA.

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

17 MR. BROOKS: Christopher Brooks, attorney for
18 CDTFA.

19 JUDGE BROWN: Thank you.

20 And each of Appellant's representatives.

21 MR. WONG: Christopher Wong, a Representative for
22 PBM Services, Inc.

25 JUDGE BROWN: All right. Thank you, everyone.

1 And I'm Suzanne Brown, I am the lead
2 Administrative Law Judge or ALJ in this case. My
3 co-panelists today are Judge Sheriene Ridenour and
4 Judge Greg Turner. Although I am lead ALJ for purposes of
5 conducting this hearing, all three members of this panel
6 are coequal decision makers in this process and are free
7 to ask questions or speak up at any time.

8 This hearing is before the Office of Tax Appeals,
9 also known as OTA. OTA is not a court but is an
10 independent appeals body. OTA is staffed by tax experts
11 and is independent from the State's tax agencies, such as
12 CDTFA. Because OTA is separate from CDTFA, arguments and
13 evidence that were previously presented to CDTFA are not
14 necessarily part of the record before OTA, unless those
15 arguments and evidence have been submitted directly to
16 OTA. OTA's written opinion for this appeal will be based
17 upon the written arguments and briefings that the parties
18 have submitted to OTA, the exhibits that will be admitted
19 into evidence today, and the arguments and testimony
20 presented at the hearing today.

21 As a reminder, the panel does not engage in
22 what's called ex parte communications, meaning that the
23 panel members do not speak to one party without the other
24 party present.

25 I will just briefly recap that we had a

1 prehearing conference last month, and I issued prehearing
2 conference Minutes and Orders where we discussed the
3 logistics for the hearing today. As we discussed during
4 the prehearing conference and confirmed in the Minutes and
5 Orders, the issue today is whether any adjustments are
6 warranted to the taxable measure. And we confirmed that
7 both Audit Item 1 and Audit Item 2 are in dispute.

8 I just want to briefly address the exhibits
9 today, and then I will admit the documentary exhibits into
10 evidence. There was a 15-day deadline to submit exhibits;
11 15 days before the hearing, so it's June 2nd. And both
12 parties timely submitted proposed exhibits. Appellant
13 timely submitted exhibits on May 29th in a PDF document
14 that totaled 494 pages. Although, some of those were a
15 single page proceeding -- just a blank page marking what
16 the exhibit was.

17 Now, Appellant marked these exhibits as Exhibits
18 A through Q, although, there were some gaps in there. It
19 went from Exhibit N to Q without an O and a P in between.
20 And then Exhibit C and D were blank. So in total I
21 counted 13 exhibits, and I'm just confirming that there
22 were 13. Ordinarily, we do ask that Appellant -- the
23 taxpayer submits their exhibits marked numerically. But
24 because these were marked by letters, I don't want
25 everyone to be confused trying to figure out which of

1 Appellant's exhibits is No. 6 or whatever.

2 So I'll just say, if you're referring to
3 Appellant's exhibit -- if Appellant is referring to
4 Appellant's exhibits, you can use the letters that you had
5 used to mark them.

6 And I'll say to CDTFA, I'll know that if it's
7 come from Appellant, they're referring to their Exhibit E
8 or whatever it was. And if there's any question about
9 whose exhibit, which exhibit letter, whose exhibit it was,
10 we will clarify.

11 As I said, Appellant's exhibits were timely
12 submitted. I want to ask if CDTFA has any objection to
13 admitting Appellant's exhibits?

14 MR. SAMARAWICKREMA: No, Judge.

15 JUDGE BROWN: Okay. Appellant's Exhibits A
16 through Q are admitted.

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

19 JUDGE BROWN: And next I'll move on to CDTFA's
20 exhibits. CDTFA timely submitted its proposed exhibits
21 marked as A through I.

22 And I'll ask Appellant, is there any objection to
23 admitting CDTFA's Exhibits A through I into evidence?

24 MR. WONG: None.

25 MR. JANSSENS: No.

1 JUDGE BROWN: Okay. So CDTFA's Exhibits A
2 through I are admitted.

3 (Department's Exhibits A-I were received into
4 evidence by the Administrative Law Judge.)

5 JUDGE BROWN: Okay. So next I want to move on
6 and identify which witnesses will be testifying today.

7 During the prehearing conference, Mr. Wong, I
8 think you indicated that an interest in having both you
9 and Mr. Janssens were interested in testifying today. Is
10 that still your plan?

11 MR. WONG: Yeah. Because there was a --
12 sometimes where the auditor was there, and I was not. So
13 only he would know what happened.

14 JUDGE BROWN: Okay. So I will -- before we
15 begin, I will swear both of you in as witnesses. What
16 that does mean is that you are open to questions from
17 CDTFA. And they are not testifying, so they are just
18 making arguments. And you understand the difference
19 between witness testimony and argument. You are also free
20 to make arguments. And I will understand the difference
21 when you're making an argument. Even though you are under
22 oath, I understand that you're not citing a regulation to
23 me under oath necessarily, that you're doing the best you
24 can in making an accurate representation.

25 MR. WONG: Okay.

1 JUDGE BROWN: But I know the difference.

2 MR. WONG: Neither one of us are attorneys.

3 JUDGE BROWN: Okay. I understand.

4 MR. WONG: Please excuse us. Yeah.

5 JUDGE BROWN: All right. I'm just going to
6 briefly go over the timeline today. Each party has
7 requested 30 minutes to make its opening presentation, and
8 that will include the witness testimony from Appellant,
9 and CDTFA will have 30 minutes as well. The panel may
10 have questions for both parties, probably after both
11 parties have made their presentation, but I'll probably
12 check with my co-panelists if they have questions
13 immediately after the witness testimony. Once we've heard
14 both parties' presentations, then Appellant will have an
15 additional five minutes for rebuttal. And then once we've
16 taken all the evidence and arguments in the record, then
17 we close the record, and the written opinion will be
18 issued 100 days from the date that we close the record.
19 At some point, if someone needs a break, just please speak
20 up and say so.

21 I think I've covered all of the logistical
22 things. Does anyone have any questions before I swear in
23 witness, and we hear Appellant's presentation.

24 MR. WONG: Just one.

25 JUDGE BROWN: Yes.

1 MR. WONG: Did you say that Exhibit C and D were
2 blank?

3 JUDGE BROWN: I did not have any documents.

4 CDTFA is that what you got as well for C and D?

5 There was a blank -- there was an Exhibit C -- a
6 page marked Exhibit C, and there was a bookmark, but I did
7 not get any --

8 MR. WONG: So it should have been several items.

9 And D, the same thing. It should have been several items.

10 MR. PARKER: Yeah. Judge Brown, the file that we
11 have has the -- it just has the cover page, Exhibit C,
12 Exhibit D, and nothing after it.

13 JUDGE BROWN: All right. Can you identify what C
14 and D were?

15 MR. WONG: Yeah. C was -- Mr. Janssens prepares
16 a summary sheet every month to total the sales in order to
17 do the sales tax returns. So it should have been the
18 sales summary sheets. It should have been 13 quarters, so
19 it should have been 39 summary sheets. And attached to
20 the summary sheets were the invoices.

21 JUDGE BROWN: And these aren't part of Exhibit Q?
22 Because in exhibit Q there are invoices.

23 MR. WONG: Exhibit Q, I have got here is the
24 Notice of Determination from the CDTFA.

25 JUDGE BROWN: No. That's not what we have --

1 what I have for -- all right. Oh, I guess I take it back.
2 That was part of Exhibit Q, but there were a lot of
3 invoices in Exhibit Q, and there may -- I think summary
4 sheets as well.

5 MR. WONG: Well, we're in agreement on what C
6 says, right, the sales summary sheets?

7 JUDGE BROWN: No. C is just blank.

8 MR. WONG: Okay. That's what should have been
9 there.

10 JUDGE BROWN: All right. I'll tell you what. I
11 don't -- because the total PDF that I received is 494
12 pages.

13 MR. WONG: Sounds a little light, right? Because
14 we're talking about 13 quarters, invoices. Sounds a
15 little light.

16 JUDGE BROWN: All right.

17 MR. WONG: And you said D was blank also, right?

18 JUDGE BROWN: D was blank also.

19 MR. WONG: That -- that --

20 JUDGE BROWN: And I'm trying to figure out is if
21 the documents you submitted, C and D, if they're mixed in
22 with Exhibit Q.

23 MR. WONG: I don't think so.

24 JUDGE BROWN: I do have the NOD as Exhibit Q, and
25 then a lot of invoices and invoices, 2016 filing and

1 payment confirmations.

2 MR. WONG: Well, C should have been the summary
3 sheets and the invoices. D should have been the bank
4 statements.

5 JUDGE BROWN: All right.

6 MR. WONG: You know --

7 JUDGE BROWN: If you -- sorry.

8 MR. WONG: It may turn out that they're not
9 necessary, okay. But --

10 JUDGE BROWN: All right. I will say at the end
11 of your presentation --

12 MR. WONG: Okay.

13 JUDGE BROWN: I will ask whether you are still
14 going to want to submit those. And if you do, then I'll
15 ask CDTFA if it has objections to me holding the record
16 open to take those additional documents, and we'll go from
17 there.

18 MR. WONG: Okay. Because I'm pretty sure that he
19 did send them.

20 JUDGE BROWN: Okay.

21 MR. WONG: Yeah.

22 JUDGE BROWN: Like I said, I have 494 pages. So
23 it seems -- I -- agree that was a lot.

24 MR. WONG: If you remember, I questioned you on
25 whether you wanted everything or not.

1 JUDGE BROWN: I said that was -- I was not going
2 to tell you how to present your case.

3 MR. WONG: Exactly. That's exactly what you
4 said.

5 JUDGE BROWN: Yes. All right. Then I will say
6 we'll revisit it after I hear the presentations. You can
7 consult with Mr. Janssens and figure out whether you want
8 to submit those documents. And if so, then we'll have a
9 brief discussion about whether there's an objection and
10 dealing with the timelines for how long that would take.

11 Then if there's nothing further at this time, I
12 will say I'm going to swear in both witnesses. I will ask
13 you each to raise your own right hand.

14

15 J. JANSSENS,

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 C. WONG,

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 BROWN: Thank you.

3 JUDGE RIDENOUR: If I may real quick? Mr. Wong,
4 if you could please make sure your mic is on and --

5 MR. WONG: Oh, you're having a problem hearing
6 me?

7 JUDGE RIDENOUR: Yes, the stenographer is. And
8 then she sometimes reads lips, and you, many times, put
9 your hands in front of your mouth. So if you could please
10 refrain from doing that as well, we would appreciate it.

11 MR. WONG: Sorry. Okay.

12 JUDGE BROWN: You can begin.

14 | PRESENTATION

15 MR. WONG: I think the best way to approach this
16 is, you know, we made our best effort to resolve this at a
17 lower level. Unfortunately, we weren't successful, so
18 here we are. I think that, you know, presenting the facts
19 of the case would be the best way to approach this. All
20 of the facts are substantiated by exhibits, okay. And I
21 don't know whether you read the exhibits or, you know, how
22 deep you went into looking at the information presented.
23 Okay. So if I'm repeating myself, my apologies.

24 We will start by saying that the taxpayer
25 prepared the sales tax returns according to CDTFA

1 Regulation 1642. Okay. Which, basically, requires him to
2 prepare them on the accrual basis. So that's why he took
3 them directly off the sales invoices, which, unfortunately
4 aren't here. Okay. But be that as it may, okay, his
5 position is that the sales tax returns for the 13 quarters
6 in question were prepared correctly. Okay.

7 Now, when the CDTFA auditor came out to his place
8 of business, okay, all of these records were there
9 available to her; The sales tax returns, the sales
10 summaries, everything that she needed to tie the tax
11 returns -- to tie the invoices and other information
12 directly to the tax returns. She didn't look at any of
13 those. She took one quarter as her sample, okay. And she
14 was literally at his place of business for 20 minutes.
15 Okay. So, in other words, she had access to the
16 photocopier. I don't know how much you can photocopy in
17 20 minutes, but that was the extent of her first visit.
18 All of her work was done offsite, in-house. Okay.

19 Now, that being said, I just want to make a
20 comment which is also a fact. It took four years that the
21 CDTFA to audit this account. Okay. And the Notice of
22 Determination includes 20 percent interest, okay, which I
23 don't feel is the taxpayer's fault. Okay. That's just a
24 comment based on fact. Okay. Now, the moment that she
25 chose 1 quarter out of 13 automatically says that she's

1 going to be statistically sampling the population. Okay.

2 Now, 1 quarter out of 13 can be very -- can be
3 very misleading. I'll give you an example of why I say
4 that. Suppose the population was 13 human beings, okay,
5 and your objective is to obtain the average height of a
6 human being. Now, suppose this population includes adults
7 and children, which it should. Okay. Suppose she --
8 suppose she picks a sample of a 6-foot-5 guy. Okay. Is
9 that representative of the entire population? I don't
10 think so. So according to -- at the risk of getting into
11 an area that may or not may be too deep, Yamanes formula,
12 she should have taken all 13 quarters, okay, because the
13 population would be too small. All right.

14 Secondarily, exhibit -- there is an exhibit here
15 where she specifically identifies why she chose that
16 quarter. It was the second quarter of 2018, and she had
17 some explanation, like, everybody had access to that
18 information. It would be easy to reference, which to me
19 didn't make any sense. Okay. First of all, if she
20 specifically chose a quarter, that's not at random. Okay.
21 And, you know, I can only speculate as to why she chose
22 that quarter. I think she chose it because it had the
23 criteria that she wanted to see. Okay. But that's my
24 opinion.

25 In her report, which is designated by Exhibit G,

1 where I basically asked her all kinds of questions on her
2 report. I just wrote all over it. She answered none of
3 those questions. Okay. Basically, I was wondering why.
4 This is supposed to be determined by a statistical
5 approach. Why aren't the usual things in it, you know,
6 like the state of level of confidence or the variance or
7 the standard deviation or the mean? Okay. None of that.
8 All right. How seriously can I take this approach if she
9 won't answer those questions. All right.

10 On top of that, there were two corrections made
11 by the CDTFA. The first of which was for \$1,000, which
12 reduced the sales tax liability. I'm not going to go into
13 all kind of numbers, okay, because that's -- doesn't serve
14 my purpose here. The second adjustment was \$15,000.
15 Okay. I thought to myself, how much confidence can you
16 have when the CDTFA is making adjustments on its own
17 audit. All right.

18 So that being said, this very, very rarely
19 parallels Office of Tax Appeals case. And that case
20 number is 21017152. Okay. And that would be Exhibit I.
21 Okay. And you can see where it says, "Audit Methodology
22 Arbitrary." Now, what does that mean? Okay. The auditor
23 was inconsistent in the method that she was using. One
24 minute she was using the bank statements. The next minute
25 she was using the corporate tax returns. The next minute

1 she was using the general ledger. Okay.

2 In other words, there's no consistency. And,
3 basically, what this OTA case is saying is that you chose
4 whatever method would yield the highest sales tax. Okay.
5 And I believe this to be the case here. All right. And
6 the two errors alone puts serious doubt, you know, on --
7 on how relative and valid her findings were. Okay.
8 Thirty percent of the tax, boom, just like that. What
9 else is wrong in that report? All right.

10 The next fact has to deal with a subsequent
11 audit. Okay. Another audit was assigned. Okay. The
12 auditor came out. Okay. It's the same taxpayer, the same
13 vendors, the same customers. Okay. The same everything.
14 All right. The second audit resulted in a no change.
15 Okay. When I asked the first auditor why do you think
16 there was such a big discrepancy in your findings, her
17 response was -- and there's an exhibit here to back this
18 up; this email from her. Her response was, "Oh, I didn't
19 do the audit, so I -- I -- I can't answer that question."

20 And I basically said, "Well, you're both CDTFA
21 auditors, aren't you? You're both trained the same way,
22 aren't you? You both use the same methodology, don't you?
23 Okay. Why can't you give me some sort of answer as to why
24 there's such a big discrepancy?"

25 Okay. So that didn't sit well. That didn't sit

1 well at all. Okay.

2 And the last item is based on an exhibit, which I
3 do have to support the Office of Tax Appeals questions to
4 the CDTFA as to why the extension to original waiver was
5 not signed. Okay. Basically, you know, implying that if
6 it's not signed, the statute of limitations has expired on
7 this case. You have an exhibit with a response from the
8 CDTFA. The original waiver is signed by both the taxpayer
9 and the CDTFA. The extension to the original waiver is
10 not signed by the CDTFA. Okay. So those -- those are the
11 facts of the case, and that's -- you know, I seriously
12 doubt the validity of this report. Okay. Especially, in
13 light of the fact that the auditor had at her disposal all
14 of the documents necessary to verify the amounts in the
15 sales tax returns, and she simply doesn't -- didn't use
16 it. Okay.

17 And I believe she didn't use it because she had
18 her own set of criteria. Okay. She was there 20 minutes.
19 I believe she had her own audit plan before she even got
20 to the taxpayer's place of business. All right. And
21 that -- that would be the facts of the case as far as we
22 see it. In my conclusion, you know, I'll -- I'll
23 elaborate a little bit further in what should be done.

24 JUDGE BROWN: I'm sorry. You mean your
25 conclusion --

1 MR. WONG: Well, we're going to have a
2 five-minute conclusion, right? Or --

3 JUDGE BROWN: Well, that's after CD --

4 MR. WONG: Well, we'll --

5 JUDGE BROWN: Give me everything that you -- give
6 us all of your arguments now. Your five minutes is for a
7 rebuttal --

8 MR. WONG: And so you want --

9 JUDGE BROWN: -- sort of to respond to --

10 MR. WONG: Oh, to them.

11 JUDGE BROWN: -- things that they raised.

12 MR. WONG: To them. Okay.

13 JUDGE BROWN: Yes.

14 MR. WONG: All right. Well, I guess what you --
15 I guess in the legal sense you would call this what, a
16 closing argument?

17 I've already said that I believe that her -- her
18 motive was to generate the highest sales tax liability
19 possible. And she didn't -- at the risk of being
20 repetitive, she didn't look at the documents -- they were
21 right in front of her -- to verify the sales tax returns.
22 She picked a quarter that was not totally at random, okay,
23 and gave some excuse as to why she chose it, which didn't
24 make any sense to me at the time, and it still doesn't.

25 Her sample size is not valid for the reasons I've

1 already given. Okay. It's too small. And I gave the
2 example of the six-foot-fight individual, okay, standing
3 alongside a two-foot-one adolescent. Her errors, the two
4 errors that she corrected represent over 30 percent of the
5 liability. Okay. That's a little high. Okay. And last
6 but not least, the waiver. The extension to the original
7 waiver was not signed, which means the statute of
8 limitations had expired. Okay. And this assessment is no
9 longer enforceable.

10 Okay. Now I'm done.

11 JUDGE BROWN: Okay. Thank you.

12 And, Mr. Janssens, are you going --

13 Is Mr. Janssens going to be testifying or making
14 any argument as well?

15 MR. WONG: He might if he's -- if -- 'cause I
16 said, I wasn't there the whole time the auditor was there.
17 So if there's something that I missed, okay, he might --
18 he might say something.

19 JUDGE BROWN: Okay. Mr. Janssens, do you have
20 anything you want to add to Appellant's presentation?

21 MR. JANSSENS: Officially, the way that I thought
22 about it when she did the audit, you know, kind of what
23 it's on.

24 JUDGE BROWN: I'm not sure whether the
25 stenographer can hear you.

1 MR. JANSSENS: Hello. Yeah.

2 JUDGE BROWN: You can just pull it closer to you
3 right if --

4 MR. JANSSENS: Okay.

5 JUDGE BROWN: -- if it's easier than leaning in.
6 Go ahead.

7 MR. JANSSENS: Disappointed in the part of the
8 audit, how she pretend to do it, you know. She was not --
9 not that long there. She was only, like, 20, maybe
10 25 minutes in the whole total of time present. She looked
11 at a quarter. She took numbers of the bank statements,
12 and that was basically it. The second auditor was
13 actually -- when she was doing the auditing -- at my
14 office around about five-and-a-half hours.

15 MR. WONG: I forgot to say that, you know.

16 MR. JANSSENS: And that's eventually when you get
17 a letter that says how much you -- you need to pay up.
18 You know, I go like, it doesn't make sense. She didn't
19 even do an audit. There's nothing that I've -- I could
20 say, you know, like she did it correct. Nothing
21 whatsoever compared to the second one.

22 MR. WONG: Your Honor --

23 MR. JANSSENS: And that's where I rest my case.

24 MR. WONG: -- if I may say one more thing?

25 JUDGE BROWN: Go ahead.

1 MR. WONG: I question the second -- this is
2 hearsay, of course, but I'm going to say it anyway. I
3 question the second auditor as to why there was such a big
4 discrepancy between the first audit and the second audit.
5 She came out with no change. The first audit came out
6 with, you know, \$40,000 or whatever it was. And she just
7 looked at me and says, "I know why," but that was all she
8 was willing to say.

9 Yeah. Her exact words was, "I know what she
10 did." Okay.

11 JUDGE BROWN: Okay. And is that all of
12 Appellant's presentation for right now?

13 MR. WONG: For right now.

14 JUDGE BROWN: Okay. Thank you very much.

15 I will just briefly just turn to my co-panelists
16 and see if they have any question.

17 Actually, first, I'll turn to CDTFA and say,
18 CDTFA, do you have any questions for the witnesses?

19 MR. SAMARAWICKREMA: No, Judge.

20 JUDGE BROWN: Thank you.

21 Now, I'll turn to my co-panelists and ask if they
22 have any questions at this time, or if they want to hold
23 their questions until after we hear both presentations.

24 Judge Turner?

25 JUDGE TURNER: I'll wait. Thanks.

1 JUDGE BROWN: Judge Ridenour?

2 JUDGE RIDENOUR: I'll also wait. Thank you.

3 JUDGE BROWN: Okay. So we're going to go ahead
4 and hear CDTFA's presentation, and then we may have
5 questions for one or both parties.

6 MR. WONG: Okay.

7 JUDGE BROWN: Okay. CDTFA, you can begin, if
8 you're ready. You can begin whenever you're ready, and
9 I'll say you have 30 minutes like we discussed.

10 MR. SAMARAWICKREMA: Thank you, Judge.

11

12 PRESENTATION

13 MR. SAMARAWICKREMA: Appellant is a California
14 corporation that operates a mobile repair service business
15 that cleans and maintains paint booths for auto body
16 repair service stations in Murrieta, California.
17 Appellant was issued a seller's permit with an effective
18 start date of July 26, 2013. The Department audited
19 Appellant's business for the period of July 1st, 2015,
20 through September 30th, 2018. This is Appellant's first
21 audit. During the audit period, Appellant reported around
22 \$844,000 as total sales, claimed nontaxable labor of
23 around \$565,000, and claimed deduction of around \$22,000
24 for sales tax reimbursement included in reported total
25 sales. This resulted in reported taxable sale of around

1 \$257,000. This is shown on Exhibit A, page 34.

2 During our presentation, we will explain why the
3 Department rejected Appellant's reported taxable sales;
4 why the Department used an indirect audit approach; how
5 the Department determined Appellant's unreported taxable
6 sales for the audit period. During the audit, Appellant
7 explained that it used its sales invoices to prepare its
8 quarterly worksheets, and these worksheets were used to
9 report sales on its sales and use tax return. However,
10 Appellant failed to provide complete worksheets for the
11 audit period.

12 During the audit, Appellant failed to provide
13 complete sales records, such as sales invoices, credit
14 card sales receipts, payment information from its
15 customers, sales journals, and sales summaries to support
16 its reported total taxable and nontaxable sales for the
17 audit period. In addition, Appellant failed to provide
18 complete purchase invoices or purchase journals. Due to
19 Appellant's negative reported book markups and its lack of
20 reliable records, the Department did not accept
21 Appellant's reported total and taxable sales. The
22 Department also determined that Appellant's records were
23 such, that taxable sales could not be verified by a direct
24 audit approach. Therefore, the Department used indirect
25 audit approach to determine Appellant's taxable sales.

1 The Department completed three verification
2 methods to verify the accuracy of Appellant's reported
3 total and taxable sales. First, the Department analyzed
4 reported taxable sales for the filing periods, July 2015
5 through September 2018; and this is shown on Exhibit A,
6 page 16. The Department compared the reported taxable
7 sales with reported total sales and calculated an overall
8 taxable sales percentage of around 31 percent, ranging
9 from as low as 18 percent to as high as 49 percent for the
10 same period; and these calculations are shown on
11 Exhibit A, page 60.

12 In contrast, the ratio of audited taxable sales
13 to audited total sales for the audit period produced an
14 audited taxable sales percentage of around 41 percent,
15 which the Department determined to be a more reasonable
16 taxable percentage than the reported taxable sales
17 percentage; and these calculations are shown on Exhibit A,
18 pages 57 and 60.

1 report almost 40 percent of his recorded sales on its
2 federal income tax return for these periods; and the
3 information required to calculate this percentage is shown
4 on Exhibit A, page 59.

5 The Department also compared reported taxable
6 sale of around \$221,000 to part purchases of around
7 \$409,000 reflected on Appellant's income and expense
8 statements and calculated overall negative reported book
9 markup of around 46 percent. This calculation is shown on
10 Exhibit A, page 59. If the Department were to accept
11 these reported negative book markup, that would mean
12 Appellant was losing money every time it sold parts.
13 Accordingly, the Department did not accept Appellant's
14 reported taxable sales for the audit period. In fact,
15 based on the analysis of available selling prices and
16 relevant costs for second quarter 2018, the audited
17 taxable markup was around 45 percent; and this calculation
18 is shown on Exhibit A, pages 44 through 49.

19 Third, the Department compared Appellant's
20 reported total sale of around \$844,000 with the bank
21 deposits of around \$1.4 million and calculated an overall
22 difference of around \$550,000 for the audit period; and
23 the information required to calculate this amount is shown
24 on Exhibit A, pages 34 and 55. Thus, only 61 percent of
25 bank deposits were reported as sales for the audit period.

1 Appellant was unable to explain the reason for sales
2 differences, bank deposit differences, negative reported
3 book markups, and low reported taxable sales percentages.
4 Therefore, the Department conducted further investigation.

5 The Department decided to use cost-plus markup
6 method as an indirect audit approach to determine
7 Appellant's taxable sales for the audit period. The
8 Department used the purchases of around \$433,000 reflected
9 on Appellant's income and expense statement for the audit
10 period; and this is shown on Exhibit B, page 100. To
11 understand Appellant's pricing policies, the Department
12 performed shelf test using available sales and purchase
13 invoices of second quarter 2018 to calculate audited
14 markup of around 45 percent; and this calculation is shown
15 on Exhibit A, page 47.

16 The Department also noted that Appellant added a
17 separate charge in its sales invoices for its overhead
18 cost using service calls to drive to its customers'
19 location; and this is shown on Exhibit A, pages 44
20 through 48. Based on available sales invoices for second
21 quarter 2018, the Department determined the taxable
22 overhead charge of around 2 percent; and this calculation
23 is shown on Exhibit A, page 46. Appellant did not provide
24 reliable documents to demonstrate that its markup was
25 lower than 45 percent, or its taxable overhead percentage

1 is lower than the calculated percentage. Therefore, this
2 was the best available information to determine
3 Appellant's audited markup and audited taxable overhead
4 percentage.

5 Then the Department used the inventories
6 available for sale of around \$433,000 and applied the
7 audited markup factor to determine audited taxable sale of
8 around \$627,000 for the audit period. This is shown on
9 Exhibit B, page 93. Audited taxable sales were compared
10 with reported taxable sales to determine unreported
11 taxable sales of around \$375,000 with corresponding error
12 rates for the audit period; and these calculations are
13 shown on Exhibit B, page 93. In addition, to give a
14 benefit to Appellant, the Department used the total bank
15 deposits for the audit period and audited taxable overhead
16 percentage of around 2 percent to determine unreported
17 taxable overhead charge of around \$26,000 for the audit
18 period; and these calculations are shown on Exhibit A,
19 page 50.

20 In total, the Department determined unreported
21 taxable sale of around \$396,000 for the audit period; and
22 this is shown on Exhibit A, page 41. Unreported taxable
23 sales were compared with reported taxable sales of around
24 \$257,000 to calculate the error rate of around 154 percent
25 for the audit period. Had the Department calculated the

1 audited taxable overhead percentage using taxable overhead
2 charges and total taxable amount and apply that taxable
3 overhead charge to the audited taxable sales instead of
4 Appellant's bank deposits, then the unreported taxable
5 sales would have increased by around \$14,000, from
6 \$396,000 to \$410,000 for the audit period; and this is
7 shown on Exhibit A, pages 27 and 51. Therefore, the
8 Department finds that the estimated amount, as is in this
9 audit, is not only reasonable but also benefits the
10 Appellant.

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

1 Since Appellant failed to provide necessary
2 records, the Department used the best available
3 information to determine the unreported taxable sales for
4 the audit period. The audit calculation of unreported
5 taxable sales based on the best available information was
6 reasonable. On May 29th, 2025, Appellant provided 332
7 sales invoices and some other documents for the audit
8 period, but Appellant did not provide any of its purchase
9 invoices. The Department reviewed and analyzed this
10 information and ultimately rejected them. Upon
11 examination of Appellant's sales invoices, the Department
12 noted that some of the sales invoices did not have sales
13 invoice dates, and some invoice totals were adjusted. And
14 some of the sales invoices are shown on Appellant's
15 exhibit pages 154, 221, 222, 255, 353, 425, 448, 477.
16 Also, based on sequence of sales invoice numbers,
17 Appellant used 422 sales invoices but only provided 332
18 sales invoices, and he did not provide 90 sales invoices.
19 Appellant failed to provide little over 21 percent of its
20 sales invoices.

21 Nevertheless, the Department analyzed these sales
22 invoices and noted the taxable sales recorded on those
23 sales invoices of around \$257,000. A comparison of around
24 \$257,000 in taxable sales recorded in Appellant's sales
25 invoices to the recorded purchases for income and expense

1 statement of around \$433,000, resulting in the negative
2 taxable book markup of around 41 percent. Based on these
3 analyses, the Department determined that the sales
4 invoices provided by Appellant were unreliable and,
5 therefore, will not accept them.

6 Appellant cites OTA case in its argument, which
7 is an OTA opinion for a different business, for a
8 different audit period with different set of facts.
9 Opinion made on different set of facts, different audit
10 procedures in a different business are not evidence that
11 have no procedural value in this appeal. Appellant has
12 not established how it references to a subsequent audit
13 for periods of the liability period could be used to
14 verify a different result here.

15 Accordingly, the Department determined the
16 unreported taxable sales based upon the best available
17 information. The evidence shows that the audit produced
18 reasonable results. Therefore, the Department request the
19 appeal be denied.

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

22 Thank you.

23 JUDGE BROWN: Thank you very much.

24 I will turn to my co-panelists first and see if
25 they have questions for either party.

1 I'll start with Judge Turner.

2 JUDGE TURNER: Yeah. So I want to start with
3 gross receipts. The Appellant included in their exhibits,
4 Exhibit E, their 2017 1120S for PBM Service, Inc., and
5 they reported gross receipts of \$98,000. But if I recall
6 in the audit work papers, CDTFA identified for the same
7 tax year reported gross receipts on the tax return of
8 \$438,000. I want to understand the difference between
9 those two.

10 I'm asking both of you the same question.

11 The tax return you submitted, Appellant, on
12 Exhibit E, was that the return you submitted to the
13 federal government? So \$98,000 in receipts for 2017,
14 whereas, CDTFA's reporting in the audit work papers
15 \$438,000 in gross receipts; and it seems like a sizable
16 distinction. Can we reconcile --

17 MR. WONG: I --

18 JUDGE TURNER: Go ahead, please.

19 MR. WONG: I have no explanation.

20 JUDGE TURNER: Fair enough.

21 MR. WONG: Your Honor, it's because I have no
22 idea how they arrived at that number.

23 JUDGE TURNER: Fair enough. So let's --

24 MR. WONG: And --

25 JUDGE TURNER: I'll --

1 THE STENOGRAPHER: I need both of you guys to
2 speak one at a time because I can't --

3 MR. WONG: Sorry. Sorry.

4 THE STENOGRAPHER: -- have the overlap.

5 And when you speak, please turn on your
6 microphone, otherwise I can't pick it up.

7 MR. WONG: Sorry.

8 JUDGE TURNER: Sorry.

9 MR. WONG: Sorry.

10 MR. SAMARAWICKREMA: Judge Turner, that's the --
11 the number that we received during the audit from the
12 taxpayer's federal income tax return.

13 MR. WONG: I didn't catch his response.

14 JUDGE TURNER: I believe he said it was supplied
15 by the taxpayer during the audit.

16 MR. WONG: What was supplied?

17 JUDGE TURNER: The gross receipts reported to the
18 federal government for 2017.

19 MR. WONG: You mean for the tax return?

20 JUDGE TURNER: Yes.

21 MR. WONG: Yeah. Yeah. We supplied the tax
22 return.

23 JUDGE TURNER: I guess I'm trying to understand
24 this. Do you guys understand that there's a discrepancy?

25 MR. WONG: Yes, I understand that.

1 JUDGE TURNER: The return that the taxpayer
2 submitted with their exhibits, Exhibit E, says -- it's an
3 1120S return. It reports \$98,000 in gross receipts. The
4 audit work papers, I believe from CDTFA, identified
5 \$438,064 in gross receipts. I want to understand the
6 distinction. Were you provided a different return, or was
7 there some other source document that you have that
8 number.

9 MR. SAMARAWICKREMA: The Exhibit A, page 59.

10 JUDGE TURNER: Fifty-nine. What am I looking at?

11 MR. SAMARAWICKREMA: Yeah. So the page 59,
12 Exhibit A, listed 2015 federal income -- according to the
13 federal income tax return, total sale is \$466,574, 2016
14 federal income tax return, line 11, \$451,294.

15 MR. WONG: I think you guys have the years mixed
16 up.

17 MR. SAMARAWICKREMA: And 2017 it listed at
18 \$438,064. So we think the \$98,000 is not -- is not
19 consistent with the other two years. And it is our
20 position that the number we listed in page 59 is the
21 correct amount for 2017. That is \$438,064.

22 MR. PARKER: Judge Turner, can I add one thing?

23 From my understanding, the information -- the
24 gross receipts for 2017 were transcribed from our internal
25 system that contains gross receipts reported to Franchise

1 Tax Board. So that's where we got the amount. It doesn't
2 appear that those were provided by the taxpayer during the
3 audit.

4 MR. WONG: Your Honor --

5 JUDGE RIDENOUR: Mr. Wong, I will interrupt.

6 This isn't an open conversation.

7 MR. WONG: Oh, I'm sorry.

8 JUDGE RIDENOUR: When one side of the party is
9 speaking, please be respectful of that and/or the panel,
10 until you are asked a question or for clarification. The
11 interruption is disrespectful.

12 MR. WONG: I'm sorry.

13 JUDGE RIDENOUR: Thank you.

14 MR. WONG: I did say we weren't attorney. So --

15 JUDGE RIDENOUR: All right. No, I understand
16 that --

17 MR. WONG: Yes. Okay.

18 JUDGE RIDENOUR: -- but still. Thank you.

19 JUDGE BROWN: All right. CDTFA, I don't know if
20 you had completed your response. You were saying that
21 this information from the federal income tax return is
22 that CDTFA obtained these numbers directly from the IRS,
23 not from Appellant. That's where you were.

24 MR. PARKER: It's from the Franchise Tax Board
25 information.

1 JUDGE BROWN: I'm sorry. Franchise Tax Board.

2 MR. PARKER: But I'm currently looking in our
3 system, and it shows that amount for the 2017 filing
4 period gross receipts.

5 JUDGE TURNER: Thank you. Another question.

6 Can I go?

7 JUDGE BROWN: Yes, go ahead.

8 JUDGE TURNER: Same question. So there is a --
9 CDTFA, if I understand, the write up correctly relied on
10 bank deposits as the basis for establishing gross
11 receipts. There's a slight discrepancy between bank
12 deposits and the federal income tax return reporting gross
13 receipts as the CDTFA had recorded them. What was the
14 decision-making factor between using gross receipts from
15 the federal returns versus using bank deposits?

16 MR. SAMARAWICKREMA: Judge, the federal income
17 tax return, the Appellant reported the actual sales. So
18 the -- it is based on the audit working papers, we
19 determined that the federal income tax return report the
20 correct amount of gross receipts.

21 JUDGE TURNER: I -- so I missed. You're saying I
22 was in error in saying that you relied on the bank
23 deposits to establish gross receipts. I thought you made
24 that point in testimony as well.

25 MR. SAMARAWICKREMA: What I -- what we said was

1 in order to verify the reasonableness of Appellant's
2 reported sales, we compared the reported sales to the bank
3 deposit, and we saw some differences, \$550,000. And also,
4 we compared federal income tax return differences. And --
5 and -- at the end, we used a markup method to -- to
6 estimate additional taxable for sales.

7 JUDGE TURNER: Thank you.

8 MR. SAMARAWICKREMA: Yeah.

9 JUDGE TURNER: I'm good.

10 JUDGE BROWN: All right. Mr. Wong, you had
11 indicated you wanted to -- you had a response to what
12 CDTFA was saying regarding the gross receipts for 2017.
13 Do you want to respond now?

14 MR. WONG: Well, I was the -- the tax, those are
15 for the tax returns that were filed. Okay. And if
16 there's a discrepancy, I don't know what the -- why the
17 discrepancy.

18 Your Honor, you said that there's \$400,000 and
19 the tax return says \$98,000. Did -- did he explain why
20 there's the difference?

21 JUDGE TURNER: I think the CDTFA's response was
22 that they are basing it off of information that they
23 received from the Franchise Tax Board. This is a federal
24 return. I don't know. We'll look in the record. If you
25 have a -- if you have --

1 MR. WONG: Well, I never gave them the state
2 return.

3 JUDGE TURNER: They would have access to that,
4 though.

5 MR. WONG: CDTFA. Okay.

6 JUDGE BROWN: If there's a page in either your
7 evidence or CDTFA's evidence that you want to point us to
8 that you think that rebuts --

9 MR. WONG: Well, I will make the remarks is I
10 don't have the state return here, but that's not right.
11 It should be what the federal returns say.

12 JUDGE BROWN: All right. Well, you -- what we
13 have in front of is the documents in evidence. So, like I
14 said, if you want to point us to a page in the evidence
15 that you think rebuts their argument, we --

16 MR. WONG: The only think I could do is -- is
17 produce the state return, which I wasn't expecting them to
18 have. I can produce the state return, and it does not say
19 \$400,000. My understanding is he's saying the Franchise
20 Tax Board said it's \$400,000 for 2017. The federal return
21 says \$98,000. I'm saying no. The state returns say
22 \$98,000 as well.

23 JUDGE BROWN: Okay. And I'll say, CDTFA, is
24 there any other page, other than page 59, in your exhibits
25 that you want to point us to?

1 MR. SAMARAWICKREMA: Judge Brown, we -- the
2 Department used the markup method. We use the purchases
3 and completed a shelf test and came up with an audited
4 markup and markup. So the total sales reported in the
5 federal income tax return for 2017 doesn't make a
6 difference.

7 JUDGE BROWN: Okay. Thank you.

8 And I'm going to Judge Ridenour and ask if she
9 would like to ask any questions of either party.

10 JUDGE RIDENOUR: No questions. Thank you.

11 JUDGE BROWN: Give me just a moment.

12 I do want to ask CDTFA if you have a response to
13 Appellant's argument regarding the subsequent no change
14 audit. Do you have any -- is there anything you want us
15 to consider about, you know, about why it might be that --
16 or why -- you know, why it is that the subsequent audit
17 was a no change audit, but this audit resulted in
18 liability?

25 MR. PARKER: Also, Judge Brown, I did review the

1 subsequent audit working papers, and it appeared that the
2 taxpayer started paying tax on purchases in the subsequent
3 periods. So if any -- there could be a tax paid purchases
4 resold. And I think they determined that it wasn't
5 worthwhile to continue to pursue the audit further. They
6 did a no opinion warranted audit. In our audit, we didn't
7 have the same set of facts. So our -- our audit is
8 slightly different.

9 JUDGE BROWN: All right. I don't think I have
10 anything further at this time. So unless my co-panelists
11 have anything, I will say that we can now proceed to
12 Appellant's rebuttal. And as we discussed, Appellant will
13 have five minutes. And then after that, we will discuss
14 whether there's any additional evidence, documents that
15 Appellant wants to submit that may have been inadvertently
16 omitted.

17

18 CLOSING STATEMENT

19 MR. WONG: Okay. Well, the first thing that I
20 want to say is he -- he made the statement that the sales
21 invoices and the sales summary were not provided.

22 THE STENOGRAPHER: Mr. Wong, please bring your
23 microphone closer to you.

24 MR. WONG: Yeah. It made the statement that the
25 sales invoices and sales summary they were not provided.

1 They were provided. She didn't just look at them. Okay.
2 So that's a misstatement.

3 The second of all, he mentioned several items on
4 the engagement letter that he claimed that we didn't
5 provide. We told the auditor they don't exist. We don't
6 have a purchase journal. Okay. The things that he
7 mentioned, they don't exist. We told her that. Okay.
8 It's -- it's not a huge -- it's not General Motors. Okay.
9 He just -- you know, he has a haphazard way of recording
10 things. He makes schedules, okay, and he's not that
11 sophisticated. All right.

12 Second of all, I would like to ask the CDTFA a
13 question, if you don't mind, just an illustrative
14 question. Are you guys okay with that?

15 JUDGE BROWN: I'm going to say why don't you
16 direct your question to the panel.

17 MR. WONG: Okay.

18 JUDGE BROWN: Like, you can sort of say it as
19 rhetorical question --

20 MR. WONG: Okay.

21 JUDGE BROWN: -- and then I'll consider whether
22 it's a question that I want to pose to CDTFA.

23 MR. WONG: Okay.

24 JUDGE BROWN: Otherwise, we'll just take it as
25 part of your argument.

1 MR. WONG: It's just a theoretical question,
2 okay, that could --

3 JUDGE BROWN: Go ahead.

4 MR. WONG: -- that could explain a lot of the
5 numbers that he threw us in the last 10 minutes or so.

6 JUDGE BROWN: All right.

7 MR. WONG: Okay. Let's take some easy numbers.

8 Let's take sales of 100 -100. Okay. Now, cash basis
9 versus accrual. The audit was done on a cash basis. I'm
10 trying to explain maybe some of the differences in the
11 percentages that he had. Let's say the sales were \$100.
12 We collected -- the business collected \$100, but they did
13 not pay the cost of goods sold on that until the
14 subsequent period. So the gross profit is going to be
15 100 percent. As opposed to if they paid it, the gross
16 profit would 50 percent, right. Okay.

17 So all of these numbers he's spewing out are --
18 are a question of a matching revenue. All right. It can
19 easily explained, all right, the cost of goods sold. He
20 just assumed that everything in there were purchases that
21 are directly related to the invoices. That's not true.
22 Okay. There was a lot of things in there that weren't
23 associated with the sales invoices; overhead, for example,
24 direct labor. Okay. You know, Workers' Compensation is
25 in there. Okay. That's not directly related to sales.

1 It shouldn't be included in the gross profit. So that's a
2 flaw that I've noticed in his presentation.

3 All right. And -- and just the nature of trying
4 to compare a cash-basis records to accrual-basis records,
5 you're going to get timing differences. All right. And
6 you're going to get percentages like he's come out with.
7 All right. What I think the biggest mistake here was, the
8 auditor had at her disposal all of the information
9 necessary to verify the numbers on the tax return, but she
10 had a preconceived agenda. She was there 20 minutes. She
11 photocopied one quarter. She may have photocopied the
12 bank statements, and that was it. She didn't verify
13 anything. Okay. So that's our position. It's the
14 procedural -- procedurally this is a train wreck. Okay.

15 JUDGE BROWN: All right. I'll say -- I'll give
16 CDTFA an opportunity to respond if they wish to make any
17 response regarding the argument that Appellant just made,
18 such as cash basis versus accrual basis and how -- does
19 the -- do the audit methods account for that?

20 MR. SAMARAWICKREMA: Appellant did not maintain
21 accounts receivable ledger or accounts receivable, and it
22 was not provided to the Department. And the -- we --
23 based on the 322 sales invoices -- 300 -- sorry -- 332
24 sales invoices, most of the sales invoices have some
25 notations, and the payments were received within that

1 month. And the sales invoices didn't have 20 -- the
2 Department did not receive 21 percent of their sales
3 invoices. And the sales invoices that -- that for 2016,
4 the total came up with \$393,000, in the federal income tax
5 return \$451,000. So \$160,000 is the difference. \$160,000
6 is accrual and cash difference, so that's what we'd like
7 to know too.

8 So there's a difference between 2016 sales
9 invoice total \$393,347. Federal income tax return number
10 for that year 2016, \$451,294. And 2017, federal income
11 tax return is \$438,064, and invoices total came up to
12 \$458,405. This is excluding 21 percent of their total
13 sales invoices. So our estimate is based on the best
14 available information that we had at the time of the field
15 work.

16 And had the Department had the accounts,
17 receivables, then we -- we had the opportunity to analyze
18 opening accounts receivable and ending accounts
19 receivables and make some adjustments, but we -- the
20 Department didn't have that information. So we used the
21 best available information at the time of field work to
22 identify the correct amount of tax for this Appellant.

23 MR. PARKER: Also, Judge Brown --

24 JUDGE BROWN: Yes.

25 MR. PARKER: -- could I just add something real

1 quick.

2 The Appellant's representative makes a very
3 extreme example of cash versus accrual. Over a three-year
4 period, there obviously could be some timing differences,
5 and usually are between cash and accrual basis. You know,
6 we use the best available information. Most timing
7 differences kind of work themselves out anyway over that
8 long of a period. If there are inventory adjustments or
9 things like that are on an accrual basis, usually we
10 change the cost of goods sold based on inventory
11 adjustments, which are based on the accrual basis.

12 He made an argument regarding the purchases that
13 include things like labor and other items like that. On
14 our schedule 12B-1 -- I'll have to get the exhibit number
15 for you. It has the purchases that from the statement of
16 income and expenses and the accounts that we used, and it
17 lists direct labor on there and freight and shipping on
18 there. But we did not include those two accounts as
19 accounts that we marked up as part of our taxable part of
20 sales. So we did not include labor as he just indicated
21 would have been in the cost of goods sold.

22 And I'll find the exhibit here in just a second.

23 JUDGE BROWN: Thank you.

24 I will say we'll give CDTFA a chance to give us
25 that page number.

1 But, otherwise, Appellant, you can continue with
2 your closing argument. I think you got about two minutes
3 left.

4 MR. WONG: Okay. Well, the CDTFA has said that
5 we didn't provide them with accounts receivable. If you
6 look at the engagement letter, they never asked for it.

7 Second of all, he made the remark that in the
8 subsequent audit, okay, that the taxpayer quote, unquote,
9 "Changed the way he did things." He didn't change
10 anything. It's the same business, same procedure, same
11 customer, same vendor, same everything. He didn't change
12 anything. Okay.

13 And as far as my closing argument goes, I think
14 I've already indicated what I think should be done. Okay.
15 The taxpayer has correctly prepared the sales tax returns
16 according to CDTFA Regulation 1642. He prepared them on
17 an accrual basis. Okay. We feel that the auditor's
18 report cannot be relied upon for the various reasons that
19 we stated; the errors; the fact that she didn't pick the
20 sample at random; the fact that she didn't state any known
21 statistical methods, you know, like the level of
22 confidence, the mean, the variance, et cetera. None of
23 that was mentioned. Okay.

24 And plus the fact that the OTA sent the CDTFA a
25 letter asking why a waiver of extension was not filed.

1 Okay. Their response came back with it still not signed.
2 Okay. So as far as we're concerned, the statute of
3 limitations has expired. Okay. This assessment is no
4 longer enforceable.

5 JUDGE BROWN: Okay. Thank you.

6 Mr. Parker, you were going to give us a page
7 number. I'm sure I can find 12B-1 eventually, but if you
8 have one handy --

9 MR. PARKER: I do, Judge Brown. It's in
10 Exhibit B. It's Bates Stamped page No. 100.

11 JUDGE BROWN: All right. Then I believe I've
12 heard all the arguments from both parties. I did say at
13 the end I would revisit if Appellant had additional pages
14 that were inadvertently omitted. Ordinarily, I'm very
15 strict about holding parties to the deadline of submitting
16 their exhibits 15 days in advance. However, I do have
17 some indication, given that currently there were some
18 pages missing.

19 I want to ask very specifically, what pages were
20 Exhibits C and D that are missing?

21 MR. WONG: Well C is important. Like I said, it
22 has the 39 sales summaries that total up the sales
23 invoices. C had a copy of the sales summaries and the
24 invoices, which is a lot. Okay. So it is important.
25 Okay. And D, the bank statements, well, that's -- that's

1 easy enough to do again. It's 39 bank statements. So,
2 you know, that can be photocopied and sent again. But
3 if -- I believe that when Mr. Janssens sent this --

4 They -- they confirmed it was sent, right?

5 MR. JANSSENS: Sure.

6 MR. WONG: Yeah. They confirmed it was sent.

7 JUDGE BROWN: All right. So you're saying
8 sales -- Exhibit C is sales summaries, and Exhibit D is
9 bank statements. And you're saying that these were
10 provided to the auditor --

11 MR. WONG: They were.

12 JUDGE BROWN: -- previously.

13 MR. WONG: They were. It was all there.

14 JUDGE BROWN: Okay. Well, let me turn to CDTFA
15 and ask first, does CDTFA have any objection to
16 Appellant's submitting these documents following the
17 hearing? Obviously, there would be time for CDTFA to
18 respond. I'd like your position.

19 MR. SAMARAWICKREMA: Judge Brown, we already have
20 the bank statement information listed in Exhibit B,
21 page 115.

22 JUDGE BROWN: Okay. Hold on. Let me get there.
23 And you mean Bates Stamped page 115.

24 MR. SAMARAWICKREMA: Yes, Judge.

25 JUDGE BROWN: Okay. And I'll ask Appellant,

1 you're saying -- we're looking at CDTFA's Bates Stamped
2 page 115. I think this is Exhibit B, and it is
3 schedule 12E-1.

4 MR. WONG: Okay. Exhibit B is the CDTFA
5 Regulation 1642. Is that it?

6 JUDGE BROWN: No. No. It's not the regulation.
7 We're talking about the original audit work papers.

8 MR. WONG: Oh, okay.

9 JUDGE BROWN: It's a schedule summarizing what
10 the bank deposits are.

11 MR. WONG: Okay.

12 JUDGE BROWN: Okay. So there a reason why we
13 would need the bank statements?

14 MR. WONG: Actually. I looked at that. It's
15 right.

16 JUDGE BROWN: Okay. So you don't --

17 MR. WONG: It's right.

18 JUDGE BROWN: -- have a dispute.

19 MR. WONG: It's right.

20 JUDGE BROWN: Okay. If you don't disagree with
21 the schedule, then that's a lot easier to look at the
22 schedule rather than have the panel go through the bank
23 statements themselves.

24 MR. WONG: Well, you know, I did have one more
25 remark, and I'm glad I looked at my notes. If you don't

1 mind?

2 JUDGE BROWN: All right. Go ahead.

3 MR. WONG: You know, the total deposit on the
4 bank statements also includes --

5 THE STENOGRAPHER: Mr. Wong, please bring the
6 microphone closer to you.

7 MR. WONG: I know you're going to shoot me after
8 this, aren't you? Yeah. Okay.

9 It does not include -- on occasion, every
10 business contributes money to the business. Okay. In
11 other words, a shareholder loan. We were never asked
12 that. It was automatically assumed, you know, that the
13 bank statements out. Well, that's the total, and here's
14 your unreported sales. Well, what you're doing is you're
15 reporting unreported sales based on monies the shareholder
16 has loaned the business. Nowhere in the notes or the work
17 papers that question ever asked.

18 JUDGE RIDENOUR: Well, then, Mr. Wong, I'm going
19 to interrupt. I'm asking you. Was there a shareholder?

20 MR. WONG: Yes.

21 JUDGE RIDENOUR: And did you --

22 MR. WONG: Substantially.

23 JUDGE RIDENOUR: -- provide proof?

24 MR. WONG: We didn't bring it with us, no. We
25 can.

1 JUDGE RIDENOUR: So, Mr. Wong, you are upset with
2 the audit, which I understand. However, you have yet to
3 really provide documentation to show another adjustment is
4 warranted instead of the fact of showing us this
5 shareholder loan agreement, et cetera. That's what the
6 panel would like to look at and see. So it's up to the
7 lead what the documentation we will accept at this point,
8 but therein lies the crux of showing us documentation that
9 actually gives us a better number, if there is such a
10 thing.

11 MR. WONG: I think I -- in my entire
12 presentation, I haven't spewed out any numbers
13 correctly -- correct? Because the validity of the audit
14 is what's in question here.

15 JUDGE RIDENOUR: Okay. Thank you.

16 JUDGE BROWN: All right. I'm just focused at the
17 moment on any exhibits that need to be submitted that were
18 inadvertently omitted. I think we don't Exhibit D, the
19 bank statements because you don't dispute the numbers in
20 the schedule that -- bank deposits that's in the audit
21 work papers. So my only question is whether we need the
22 sales summaries that you are referring.

23 And I'm going to ask CDTFA whether -- well, first
24 off. Is the response going to be the same? Are those
25 numbers already contained in the audit work papers?

1 MR. SAMARAWICKREMA: Yes, Judge Brown. And if
2 you check Exhibit B, page 111, at the time of the field
3 work. Page 111.

4 JUDGE BROWN: All right. 111 schedule 12D,
5 Summary Taxable Sales Source Worksheets?

6 MR. SAMARAWICKREMA: Yes, Judge. So in that
7 worksheet, at the time of the field work, the Department
8 did not receive third quarter 2015, fourth quarter 2015,
9 first quarter 2016, and the third quarter 2018. But
10 taxpayer's May 29th exhibits include first quarter 2016
11 sales summary and also third quarter 2018 sales summary.

12 JUDGE BROWN: Are you referring to Exhibit Q?

13 MR. SAMARAWICKREMA: Exhibit 12D. Oh, yeah. I'm
14 sorry. Yes, Q. Appellant's Exhibit Q.

15 MR. PARKER: Yeah, Judge Brown, in Exhibit Q
16 there are approximately 360 pages of invoices, and the
17 filing confirmation of return, and the sales summary. So
18 I think that the Appellant's information is already there,
19 if the bank statements aren't needed. It doesn't seem
20 like there is anything additional that needs to be
21 provided.

22 JUDGE BROWN: Yeah. I tend to agree. That's
23 what I thought when I saw that C and D were blank. My
24 suspicion was that --

25 MR. WONG: It's in there already. It's

1 different --

2 JUDGE BROWN: -- because there was so much in --

3 MR. WONG: Yeah.

4 JUDGE BROWN: --not -- there was some much in
5 queue --

6 MR. WONG: So you do have it? You do have it?

7 JUDGE BROWN: I think I do. So I'm going to say
8 I think we have all of Appellant's exhibits.

9 MR. WONG: Okay.

10 JUDGE BROWN: All right. Then I can say that
11 since we have all of the Appellant's exhibits, I've
12 admitted exhibits from both parties. We've heard the
13 arguments and testimony of both parties. Unless anyone
14 has anything further, I'm going to say we can close the
15 record.

16 And as I indicated that now the record is closed,
17 that means that the panel will meet and confer and decide
18 the case based on the evidence, arguments, and applicable
19 law. And we will mail both parties our written opinion no
20 later than 100 days from the date the record closes, which
21 is today.

22 So we completed the hearing. We are now
23 adjourned.

24 And the next and final hearing for today will
25 begin in a few minutes.

1 Thank you everyone.
2 We are off the record.
3 (Proceedings concluded at 3:20 p.m.)
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HEARING REPORTER'S CERTIFICATE

I, Ernalyyn M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was
6 taken before me at the time and place set forth, that the
7 testimony and proceedings were reported stenographically
8 by me and later transcribed by computer-aided
9 transcription under my direction and supervision, that the
10 foregoing is a true record of the testimony and
11 proceedings taken at that time.

12 I further certify that I am in no way interested
13 in the outcome of said action.

14 I have hereunto subscribed my name this 7th day
15 of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER