

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ROUTE 56 PLUS, LLC,) OTA NO. 240415807
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, June 17, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings,
taken at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing at
10:51 a.m. and concluding at 12:16 p.m. on
Tuesday, June 17, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA A. STANLEY

Panel Members: ALJ SHERIENE ANNE RIDENOUR
ALJ MICHAEL F. GEARY

For the Appellant: HAMID ASSAR
STEVE MATHER

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

SUNNY PALEY
STEPHEN SMITH
JEANINE CANDELARIA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 6.)

(Appellant's Exhibit 7 was received into evidence at page 7.)

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

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Cerritos, California; Tuesday, June 17, 2025

10:51 a.m.

JUDGE STANLEY: We're going on the record in the Appeal of Route 56 Plus, LLC, dba SC Car Zone, OTA Case No. 240415807. The date is June 17, 2025, and the time is 10:51 a.m. This hearing is being held in Cerritos, California.

I'm Judge Teresa Stanley. I'll be the lead for purposes of conducting this hearing. My co-panelists, Judge Sheriene Ridenour, Judge Michael Geary, and I are equal participants in deliberating and determining the outcome of this appeal.

I'm going to ask the parties to identify themselves and who they represent, starting with Appellant.

MR. S. MATHER: Good morning, Your Honor. Steve Mather, attorney for the Appellant. And I have with me Hamid Assar immediately to my right, a former officer of the company, and James Mather, also a representative for the Appellant.

JUDGE STANLEY: And CDTFA, please.

MS. PALEY: Sunny Paley, attorney with CDTFA.

MR. SMITH: Stephen Smith, attorney with CDTFA.

MS. CANDELARIA: Jeanine Candelaria, hearing

1 representative, CDTFA.

2 JUDGE STANLEY: Okay. Thank you.

3 As stated in the Minutes and Orders, the issues
4 to be decided in this appeal are: Whether CDTFA timely
5 issued the Notice of Determination; whether adjustments to
6 the tax liability for the period April 1st, 2012, through
7 June 30, 2014, are warranted; whether adjustments are
8 warranted for the excess sales tax reimbursement
9 collected; did CDTFA properly impose the 25 percent fraud
10 penalty; and did CDTFA properly impose the 40 percent
11 penalty on unremitted tax reimbursement collected but not
12 paid.

13 Mr. Mather, do you agree that these are the
14 issues?

15 MR. S. MATHER: Yes.

16 JUDGE STANLEY: And, Ms. Paley, do you agree?

17 MS. PALEY: Yes. Thank you.

18 JUDGE STANLEY: Okay. Appellant submitted
19 Exhibits 1 through 6 prior to the prehearing conference,
20 which are identical to CDTFA's Exhibits A through F.
21 CDTFA did -- Appellant did not -- no. CDTFA did not
22 object to the admissibility of these exhibits, and they're
23 admitted into evidence.

24 (Appellant's Exhibits 1-6 were received into
25 evidence by the Administrative Law Judge.)

1 Prior to the dates set forth in the Minutes and
2 Orders, Appellant submitted an additional declaration,
3 which is marked as Appellant's Exhibit 7, which is a
4 declaration of Mori Shariat signed under penalty of
5 perjury.

6 Ms. Paley, does CDTFA object to the admission of
7 this exhibit?

8 MS. PALEY: No. Thank you.

9 JUDGE STANLEY: And based on our rules for tax
10 appeals, does CDTFA want to have the opportunity to
11 propound questions of the witness?

12 MS. PALEY: No. Thank you.

13 JUDGE STANLEY: Okay. So Exhibit 7 is admitted
14 into evidence.

15 (Appellant's Exhibit 7 was received into
16 evidence by the Administrative Law Judge.)

17 JUDGE STANLEY: CDTFA submitted Exhibits A
18 though F. Appellant did not object to the admissibility
19 of those exhibits, and they're admitted into evidence.

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

22 JUDGE STANLEY: Excuse me. Okay. Mr. Mather, we
23 have the same issue with the exhibits that OTA did not
24 extract correctly. So we have recently extracted the
25 entire -- the complete files for CDTFA's Exhibits A

1 through F. Since you had not had time to review those
2 until recently, would you like to have more time after the
3 hearing to review the exhibits?

4 MR. S. MATHER: Yes, we would.

5 JUDGE STANLEY: Okay.

6 JUDGE GEARY: Judge Stanley, can I ask a question
7 about that.

8 Ms. Paley, did the Department serve those zip
9 files directly to Appellant?

10 MS. PALEY: They were uploaded via SAFE. And as
11 discussed at the prehearing conference, they are
12 voluminous, like thousands of pages, specifically, the
13 audit work papers. And it appeared that Appellant had
14 received those and that they were voluminous in their
15 record. Again, at the prehearing conference, we couldn't
16 tell what Ms. Stanley was looking at, other than her
17 number of pages was smaller than the thousands that we had
18 submitted. But, yes, it appears that whatever was
19 uploaded recently was the exact same that we had uploaded
20 originally.

21 MS. BERGIN: Hi. To answer your question --

22 JUDGE GEARY: Could you introduce yourself first?

23 MS. BERGIN: Yes. Pam Bergin, CDTEFA. We upload
24 our briefs via SAFE, and our understanding is that the OTA
25 then provides them to the taxpayers. We do not directly

1 send anything to the taxpayer.

2 JUDGE GEARY: Okay. Thank you.

3 MS. BERGIN: Thank you.

4 JUDGE GEARY: Thank you, Judge Stanley.

5 JUDGE STANLEY: Okay. So to clarify, Appellant
6 would only have seen what we extracted, which now includes
7 all the pages that CDTFA listed in its exhibit index.

8 Okay. Mr. Mather, you can proceed with your --
9 oh, nope. I have to swear in your witness.

10 Mr. Assar, can you please raise your right hand.

11

12 H. ASSAR,

13 produced as a witness, and having been first duly sworn by
14 the Administrative Law Judge, was examined, and testified
15 as follows:

16

17 JUDGE STANLEY: Thank you.

18 Okay. Mr. Mather, you can proceed with your
19 presentation and witness testimony.

20 MR. S. MATHER: Thank you.

21

22 PRESENTATION

23 MR. S. MATHER: As noted, there are a number of
24 issues in this case, but I'd like to focus my presentation
25 on just the one. The only reason that we're here today is

1 if the Department can establish fraud by clear and
2 convincing evidence. Based on the record in this case,
3 that is literally impossible.

4 The Department issued the Notice of Determination
5 long after the normal three-year period of limitations had
6 expired. The last period in the audit is the second
7 quarter of 2014. The statute of limitations, the normal
8 three years, would have expired at July 31st of 2017,
9 pursuant to Revenue & Taxation Code section 6487.

10 Instead, the Notice of Determination was issued on
11 July 24th, 2020, which was almost exactly three years
12 after the expiration of the normal statute of limitations.
13 No other exception applies, and so the Notice of
14 Determination can only be timely if the Department can
15 establish fraud by clear and convincing evidence. That's
16 what the Department asserts. They assert that there's
17 fraud, but there's no admissible evidence provided by the
18 Department to -- to support that determination.

19 Both parties agree that the Department's burden
20 is by clear and convincing evidence. In effect, the
21 Department's determination is presumed to be incorrect,
22 and Department must have substantial evidence to overcome
23 that presumption. Still to its essence, the Department
24 has two contentions in our case. The first was the
25 taxpayer was somehow charged -- or was charged with a

1 crime and somehow pled to something. This is simply
2 false. The criminal charge was filed. It was dropped
3 almost immediately, and it was replaced with a civil
4 complaint for which there was no admission whatsoever, and
5 a judgment was entered. So that element of the
6 Department's fraud determination is simply and
7 categorically false.

8 The second is that there was a very large
9 underreporting. The -- in our case, basically, the
10 Department did an audit by themselves. They seized the
11 records. They decided what the rules were. They didn't
12 bother to determine the taxpayer's accounting method.
13 They didn't understand. They didn't ever ask a question
14 why there was if -- why the taxpayer was doing what it was
15 doing. They did no bank deposits analysis, no federal
16 income tax return analysis. They just simply made an
17 assumption, followed that assumption and did this half
18 audit. So that can also not establish fraud by clear and
19 convincing evidence.

20 The Department's position is -- is summarized in
21 the fraud memo, dated April 14 of 2020. And still,
22 apparently, that's the Department's position to this day.
23 That memo is riddled with half-truths and outright
24 falsehoods. The -- there are a litany of false
25 representations in the fraud memo. The Department alleged

1 that on page 3 that were -- that the -- there had -- the
2 taxpayer continuously held sellers permits. In fact, the
3 audit period starts with the day the taxpayer was
4 informed.

5 The fraud memo says that Mr. Assar continuously
6 operated car dealerships for over 10 years. In fact, this
7 was his first car dealership. He had no prior experience.
8 He had worked in the restaurant business. A lot of
9 assumptions about see -- about receiving things in the
10 mail that are not proved. There are some evidence that
11 they correctly charged sales tax, which somehow indicates
12 fraud, which escapes me; and that there was the use of the
13 Desk Manager system, which is, as we will show, did not
14 accurately report the sales, at least on a timing basis.

15 For intent, the fraud memo also asserts to
16 Mr. Assar's 10 years in the car business, which is a
17 fiction; the underreported sales, which were not supported
18 based on the half audit; and the Desk Manager information,
19 which is not the correct information to determine when the
20 sales occurred. Again, for evasion, the Department -- the
21 Department's fraud memo says there was a substantial
22 deficiency, again, based on the half audit; and that
23 dollars were used by the taxpayer, Mr. Assar, for personal
24 gain, which is not proved in any -- in any respect.

25 So finally, the memo reaches a conclusion on

1 pages 7 and 8. Heavy on conclusion, not very heavy on
2 evidence. Again, knowledge -- knowledgeable and
3 experienced, that's not the case. The Desk Manager, which
4 is not the accurate. Large underreporting, not proved.
5 Charged with false returns, but the -- the complaint was
6 dropped as meritless by the district attorney. That the
7 stipulation and complaint was signed by Mr. Assar, the
8 complaint -- the compliant is not signed.

9 As part of the stipulation that the taxpayers
10 agreed that they engaged in unfair competition, no
11 admission whatsoever in the judgement and clearly not in
12 the stipulation which says exactly the opposite. False
13 statements to consumers at CDTFA. Again, it's included in
14 the complaint; not stipulated, not agreed, no admission,
15 no proof. They, again, alleged that they charged tax and
16 kept the -- and pocketed the proceeds, which is not proven
17 in any respect; and that restitution of \$750,000 was
18 ordered and paid and with no guarantee of a further audit.
19 But, again, the audit was not even announced to the
20 taxpayers for years after the conclusion of the
21 litigation.

22 So this is a fraud memo. It is fraud by the
23 Department. It is not fraud -- it's not proof of fraud by
24 clear and convincing or any evidence for that matter. So
25 the fraud memo doesn't hold up, which means the decision

1 and recommendation doesn't go, and the Department's
2 presentation today is out the window.

3 So then we can turn to the audit itself, which --
4 which I refer to as the half audit because it was never
5 really was an audit. So what it -- what there was, to --
6 to follow the chronology of events, is in October of 2014,
7 with no warning whatsoever, no attempt at an audit, the
8 Department exercised a search warrant on the home office
9 and accountant's office for the taxpayer. Didn't ask for
10 before, during, or after asked for no information
11 concerning to explain why the taxpayer's record showed
12 what they did, or the tax return showed what they did.

13 In September of 2016, the case was referred for
14 criminal prosecution. In January of 2018, there was a
15 criminal complaint filed alleging false sales tax returns
16 for 2013 and 2014. That was almost immediately dropped,
17 so presumably for insufficiency of evidence, which is
18 telling for our purposes. So in September of 2018, the
19 criminal complaint was officially dropped. There was a
20 new complaint for civil penalties and for equitable
21 relief, which alleged that there were some false
22 statements to customers and Board of Equalization. But,
23 at the same time, the proposed final judgement and
24 permanent injunction pursuant to stipulation was filed.
25 And a stipulation for entry of judgment was filed.

1 And notably, in the stipulation in paragraph 4,
2 it says the judgement is offered pursuant to a settlement
3 of certain disputed claims. A settlement, not -- not an
4 admission, not pleading guilty, not anything remotely like
5 an admission. Similarly, further in that -- in that same
6 photograph, it says nothing in this final judgment shall
7 be construed as an admission or denial by defendants of
8 any fact, issue of law, or violations of law alleged
9 generally or specially in the complaint.

10 So, at this point in the case, all we have is a
11 civil complaint. The taxpayer admits nothing, and the
12 Department is acting like there's a criminal conviction.
13 So -- and that's the basis of the fraud. It's just simply
14 false. So, in any event, in October of 2018 the judgement
15 is entered pursuant to the stipulation. Still the
16 Departments request no information. Doesn't conduct an
17 audit. In June of 2019, the records are returned to the
18 taxpayer. Again, no request for further information. No
19 mention of an audit. Finally in April -- on April 14th of
20 2020, we have this fraud memo, which is a fraud in itself.
21 Again, materially false.

22 To get the approval, presumably, to pursue a
23 fraud allegation, so the statute of limitations had not
24 lapsed years earlier. Again, though, still no request for
25 information. No -- no ask -- no asking for an

1 explanation. Finally, on -- on May 27th of 2020, the
2 Department issues the audit result, the proposed liability
3 resulting from the audit that didn't happen. So this is
4 just an assertion of an amount. They have -- again, they
5 offer an opportunity to respond. In this case, I was the
6 representative, and I responded.

7 I said you got nothing for fraud. There is zero
8 proof of fraud in this case. But instead, the Department
9 in characterizing the recommendation, based on our
10 conversation, says that -- that the taxpayer pled guilty
11 to Business and Profession Code violations. Just
12 categorically false. So, again, they're just hanging on
13 to this -- this issue that something happened in the
14 criminal case that's useful in our case, when, in fact,
15 nothing happened in the criminal case or the civil
16 litigation previously that has any proof, any probative
17 value, any proof of anything in our case.

18 And, finally, the Notice of Determination is
19 issued August 25th of 2020. And the taxpayer never had an
20 opportunity at any point in this process, and that's why
21 he's here today to explain a little bit of what was going
22 on. So something the Department apparently has never
23 cared about. So we have the audit with an assumption,
24 conclusion, no basis for fraud based on the criminal cases
25 or the civil litigation, no bank deposits analysis, no

1 federal income tax return analysis -- no federal income
2 tax return analysis, no secondary verification of any of
3 the assumed factors taken into account in the half audit.

4 So -- and even in our case, we have a -- a -- a
5 disregard of the rules of -- of the this body. There's no
6 specific allegations in the brief. All that they say in
7 the brief is we rely on the decision and recommendation,
8 which relies on the false fraud memo. So -- so that,
9 basically, is relying on nothing. They have no support,
10 no evidence at -- at this hearing supported by
11 declaration, no testimony, no documents, nothing by
12 declaration, fraud memos not by declaration. This -- this
13 is in violation of OTA Regulation 30214(f)(5), which says
14 that the material facts must be supported by declaration.

15 In this case, the -- the -- what we have in the
16 record in the case -- or at least until maybe -- maybe
17 Thursday, is we don't even have an audit report. What we
18 have is filed -- that was filed with the -- with the
19 CDTFA's brief, at least as it appears on the portal, is
20 the work papers for another taxpayer. So we got no audit
21 report, no audit, no fraud memo. We got nothing. So
22 based on this, it -- it's a slapdash case where the -- the
23 CDTFA has invested no time after the criminal. They just
24 came to conclusions. Didn't do an audit. Didn't offer
25 evidence. Don't have a record, and cannot in -- by any

1 means prove clear and convincing evidence of fraud.

2 And that concludes my remarks.

3 JUDGE STANLEY: Okay. You can proceed with
4 witness.

5 MR. S. MATHER: Thank you.

6

7 DIRECT EXAMINATION

8 BY MR. S. MATHER:

9 Q Mr. Assar, could you state your name and address?

10 A Hamid Assar, 2901 Harbor Boulevard, Costa Mesa,
11 California.

12 Q What is your educational background?

13 A High school.

14 Q So did you attend college at all?

15 A I took a couple of classes in college, and that's
16 it.

17 Q And where was that?

18 A Santa Monica College.

19 Q So what experience -- what work experience do you
20 have?

21 A Restaurant business, restaurant experience,
22 kitchens.

23 Q I'm sorry. Starting when?

24 A 1987 I started working in a restaurant as a
25 delivery boy, then kitchen. I started doing things in the

1 kitchen. I start buying produce, then moved to floor
2 area -- the dining area as a bus boy, waiter.

3 Q And how long did you stay working in the
4 restaurant business?

5 A Until 10 years ago.

6 Q So approximately 2012?

7 A Right -- yeah. Right before that.

8 Q So when did you first start in the car business?

9 A 2012.

10 Q And was -- was Route 56 the first car business
11 that you were involved with?

12 A Yes.

13 Q And who was -- who was involved with that
14 business? How did you get involved in that?

15 A Well, the gentleman I knew, Hamid Yazdani,
16 through my brother, we got involved. We became partner to
17 open the SC Car Zone. He was the guy with the -- he had
18 some experience, and we decided to open the dealership.

19 Q So what -- were you an owner?

20 A Yes.

21 Q And did you --

22 A Part owner.

23 Q Did you invest money at that time?

24 A Yes.

25 Q How much?

1 A I believe it was like \$350,000.

2 Q And what -- what did you do for the company?

3 A I was learning to buy cars, and doing
4 reconditioning on the cars, and writing checks for the
5 vendors and bills and --

6 Q So how did you -- what was the process for
7 writing a check? How did you know what check to write?

8 A Well, they would give me a bill or --

9 Q Who -- who would give you a bill?

10 A Mr. Yazdani would give me a bill, either from the
11 auction or utility bill, vendors bill. And, you know, I
12 just put them into the QuickBooks and print the check.

13 Q So you had a QuickBooks accounting system?

14 A Yes.

15 Q Had you had accounting training before this?

16 A No.

17 Q How about in the restaurant business? Have you
18 done any accounting in the restaurant business?

19 A None.

20 Q So how did you learn QuickBooks?

21 A Through a friend just to -- I didn't learn all
22 the way, but I just write a check, just to print a check.

23 Q Okay. Did you know how to post a check in the
24 accounting system as an expense or as a --

25 A No.

1 Q -- purchase?

2 A No.

3 Q Who did that?

4 A I was just printing the checks.

5 Q But who -- who -- I mean, at some point, the
6 company had accounting done?

7 A Yes.

8 Q Was that done by somebody in the company or
9 somebody outside the company?

10 A Outside company, ABM Financial. It's Mori
11 Shariat. He was doing our accounting.

12 Q So did he just basically get a list of checks,
13 and then he decided how to classify them?

14 A He would -- if he had question, he would ask
15 us -- ask me, and I would ask Mr. Yazdani. And yes, we
16 would tell him what it is.

17 Q Okay. So you basically just gave him a list of
18 checks?

19 A Yes. The bank statement, which the checks are
20 printed in the bank statement.

21 Q Okay. And how often do you give them -- did you
22 give Mori the bank statements?

23 A Every two or three months -- every three
24 months -- two or three months.

25 Q Now, could you describe the typical customer for

1 Route 56?

2 A Well, I wasn't involved in sales. I was just
3 focusing to buy cars and doing the reconditioning on the
4 vehicles.

5 Q So did you know what -- I mean, for example, did
6 you know what the credit profile was for the typical
7 customer?

8 A Very little. Very, you know, very little.

9 Q Did you have a bank that did all the financing or
10 a finance company?

11 A We had few banks, yes.

12 Q Do you know how the process worked to get the
13 bank -- the financing done?

14 A Back then, no. Very little. They send the
15 application in, you know.

16 Q Not you. Somebody --

17 A Not me. No.

18 Q Somebody else. How many employees were there at
19 Route 56 in 2013, for example?

20 A Two to three.

21 Q That's including you and Mr. Yazdani?

22 A No. It would be four or five, including us.

23 Q Okay. Two or three plus the two of you?

24 A Yes.

25 Q And did Mr. Yazdani work in the business --

1 A Yes.

2 Q -- on a -- on a more or less daily basis?

3 A Yes.

4 Q What were his responsibilities?

5 A His responsibilities was buying cars and doing
6 some accountings; just, you know, making sure that money
7 comes in, dealing with the banks and everything.

8 Q Did he handle sales?

9 A No.

10 Q So you had one or the other employees --

11 A Yes.

12 Q -- the salespeople?

13 A Yes.

14 JUDGE STANLEY: Mr. Assar, remember to wait until
15 he finishes the question before you answer.

16 MR. ASSAR: Sure.

17 BY MR. S. MATHER:

18 Q So were you -- pardon me.

19 Are you familiar with how the paperwork was done
20 on a sale transaction?

21 A No.

22 Q So do you -- were you familiar with how the
23 company got paid for cars?

24 A Can you ask that question --

25 Q Yeah.

1 A -- again, please?

2 Q Yeah. I mean, did -- did the customer typically
3 pay cash, or was there financing involved? And when did
4 the financing come in, if you know?

5 A Yes. There was cash. There was financing
6 involved. If there was financing, we would check our
7 account, and we would receive a fax and -- saying that,
8 you know, it's been funded. The deal has been funded. If
9 it was a cash deal, there was a check, and we would
10 deposit it into our account.

11 Q Okay. Are you aware of any times where you
12 collected money, either cash or a check, that was not
13 deposited to the bank?

14 A No. They were all deposited to the bank.

15 Q Did you handle the deposits?

16 A Yes.

17 Q And so you said that you received -- what did you
18 receive from the bank when the financing came through?

19 A A sheet saying that this deal, customer's name,
20 has been funded. And then a day later, the money was in
21 our account.

22 Q And so were you monitoring the bank account to
23 make sure the money really came in?

24 A Yes.

25 Q And when did you consider, in this process, that

1 the sale of the car had actually closed?

2 A When did I -- I'm sorry.

3 Q In your mind when was the sale done in -- in --
4 in a financing transaction?

5 A When we get paid.

6 Q So -- so do you know much, approximately, would
7 be collected up front in a typical transaction?

8 A It's all depends. Varies from \$500 to \$10,000.

9 Q So no set percentage?

10 A No.

11 Q So what did the -- what did you do then -- or
12 what did you report to the accountant when the sale closed
13 when you got the money from the financing company?

14 Well, let me rephrase that. So for reporting
15 sales, you have to -- did you report the sales tax or the
16 sales for sales tax purposes to your accountant?

17 A I would get this -- I would get the information
18 from Mr. Yazdani every three months, and I would write it
19 on a piece of paper, and I would fax it to Mori.

20 Q And was -- was that the time in which you would
21 fax him the bank statements also?

22 A I would send him the bank statements, yes.

23 Q At the same time, or was that at a different
24 schedule?

25 A Maybe different, day before.

1 Q So then Mori prepared the sales tax returns; is
2 that right?

3 A Yes.

4 Q And do you know what he used to prepare the sales
5 tax returns?

6 A No.

7 Q But he had the information for the sales that you
8 consider to be closed, and he also had the bank
9 information; correct?

10 A He had -- yes.

11 Q Did he ever call you to ask if -- why there
12 would -- was a difference between bank deposits and sales
13 that you recall?

14 A Maybe. I don't recall.

15 Q Would he have typically called you, or would he
16 have called Yazdani?

17 A He would call Yazdani or call me and -- to see
18 what he needs.

19 Q But did you understand that the sales reported on
20 the sheets that were provided and the bank deposits
21 reconciled?

22 A I don't know.

23 Q But --

24 A I wouldn't know.

25 Q Did you -- how did you -- how did you find Mori

1 for -- as your accountant?

2 A He -- he's the -- he was specialized in the car
3 business, and I knew him through my brother Mike. He was
4 doing his accounting, so I decided to hire him.

5 Q Now, were you aware of situations in which the
6 financing did not come through on car sales?

7 A Yes.

8 Q So what would happen on the Route 56 records in
9 that situation?

10 A If the financing doesn't go through, we have to
11 do an unwind.

12 Q And what's -- what's an unwind?

13 A We take the car back from the buyer. Sometimes
14 it takes few days. Sometimes it takes months because the
15 people -- the customers who had the really bad credit,
16 they knew that they couldn't get loan from the bank.
17 Sometimes they would go hide the car and not return it.
18 So we have to call the different company to -- to bring
19 the car back.

20 Q So had -- had the business promised that it would
21 get financing for these customers when they took
22 possession of the car?

23 A Yes, I believe.

24 Q But sometimes that wasn't possible?

25 A Yes.

1 Q And you -- you didn't take back cars if the -- or
2 strike that.

3 Did the company repossess cars if the customer
4 defaulted on the loan after the loan had been funded?

5 A We wouldn't take the car back if the car was
6 funded already.

7 Q You would not?

8 A No.

9 Q Okay. So when you took --

10 A Unless -- unless there's a -- something majors
11 happen -- something major happening to the car, like
12 transmission or engine problem.

13 Q So like a warrant sort of issue?

14 A Yes.

15 Q But -- so -- so when you took a car back, it was
16 because the financing didn't come through?

17 A I believe so.

18 Q And did you have any idea of how often that
19 happened, like, what percentage of the sales?

20 A 20 to 30, 20, 25 percent.

21 Q And what -- what did the company do with the cars
22 when they took it back?

23 A I -- we would try to resell the car. If we
24 couldn't, we would take it to the auction.

25 Q So how long did you typically take before you

1 send it to the auction?

2 A Well, it depends on how fast we got the car
3 but --

4 Q Right how long after you got the car back?

5 A Probably a week or two.

6 Q That you would try to sell before you send it to
7 the auction?

8 A Yes.

9 Q And did you collect tax if the sale was at the
10 auction?

11 A No.

12 Q Why not?

13 A It consider it as a wholesale. Wholesale don't
14 collect tax.

15 Q Now, had you been -- when you were in the
16 restaurant business, were you involve at all in the
17 reporting the sales tax for the restaurant?

18 A No.

19 Q So your first experience with sales tax was for
20 Route 56?

21 A Yes.

22 Q Now, do you know when the -- when in the -- in
23 the process of a sale that that car was registered with
24 DMV? So -- so if the seller -- let me -- let rephrase
25 that.

1 If the -- if the customer buys the car and they
2 take the car, when was it -- was it registered with DMV at
3 that point, at some later point, or never at all?

4 A Within a week. If we get within a week, they
5 would register the car.

6 Q So would that happen even if the financing hadn't
7 come through?

8 A Some we had to wait for the financing; some we
9 had to do it before the financing come through.

10 Q And do you -- do you know who -- who was
11 registered as the owner in that when it was reported to
12 DMV?

13 A The buyer.

14 Q So the buyer has only paid \$500, let's say, and
15 gets the register -- and the car is registered in their
16 name. Is that -- was that a problem for the company?

17 A We -- we were risking to hopefully get the rest
18 of the money from through bank, but sometimes it just
19 didn't go through.

20 Q And did you usually have trouble getting the cars
21 back or -- or the --

22 A Sometimes it was trouble, sometimes no.

23 Q Did you use a -- an outside company to chase
24 people down to get the cars back sometimes?

25 A Yes.

1 Q So do you know if -- let -- let's say the
2 situation where the --the deposit has been made, the
3 customer took the car, but the financing hasn't come in.
4 Do you know when, in that process, it's reported as a sale
5 on the list that you sent to Mori?

6 A When -- when we get paid for the car and they
7 register the car, when it's finished, and we send it Mori.

8 Q Okay. But sometimes you don't get paid until
9 after you register; right?

10 A Some of them, yeah.

11 Q Do you know -- do you report to Mori when it's
12 registered, or you report when the money comes in?

13 A Sometimes when we -- we report them when the
14 money is not in our account. We hope to get it. We hope
15 to get paid, but, unfortunately, sometimes it doesn't
16 happen.

17 Q Right. But -- but in terms of what Mori is
18 looking at, Mori is looking at the bank statements and the
19 reports of the sales. And if the money hasn't come in,
20 there's no bank deposit; right?

21 A Right.

22 Q So --

23 A But -- but there's a gap. Let's say in three
24 months we have like another 10, 15, 20 days to -- there's
25 always a gap. We -- we -- let's say from January to end

1 March we give him the report. On March still, we probably
2 get paid on April -- mid-April.

3 Q But --

4 A Which that considers as a --

5 Q So in that -- in that example -- I mean, do you
6 know if -- let's say that paperwork is done in March, but
7 the money doesn't come in April. That's two different
8 quarters. Do you know which quarter the list that went to
9 Mori would show that car?

10 A No.

11 Q Because you didn't do the list; right?

12 A No.

13 Q Did the list come off of the Desk Manager, or is
14 that Desk --

15 A Well --

16 Q Was it -- was it a computer-generated list, or
17 was it a list that was just -- just like a number?

18 A It was just a number that Mr. Yazdani gave me.

19 Q Okay. So how did you -- how did you discover
20 that the then Board of Equalization was examining the
21 activities of Route 56?

22 A We got raided at the business.

23 Q Did they raid your house?

24 A No.

25 Q So just -- just the business. And did they --

1 did they raid Mori's office?

2 A Yes.

3 Q Have you received any communication from the
4 Department before that that there was an audit?

5 A No.

6 Q So which -- what -- what records were left for
7 the business after that raid occurred?

8 A Well, they -- I believe they took three -- three
9 to four months of jackets -- dealer jackets and like
10 three, four -- four computers; something look that.

11 Q So you mentioned the deal --

12 A Four, five computers.

13 Q How -- how do the deal jackets work in terms of
14 the sales process? What gets -- what gets recorded on the
15 deal jacket?

16 A The contract is there, the sale contract, some
17 other papers that the customer signs.

18 Q So would there be a sale contract? Is that done
19 before the financing comes in?

20 A Yes.

21 Q So just because there's a sale contract doesn't
22 mean that you've gotten the money from the bank?

23 A Right.

24 Q So after the raid, did the -- did the Department
25 ask you for further information or explanation about the

1 company's records?

2 A No. They just came in and took two of the
3 computers, the jackets, whatever they thought that was
4 necessary, they took. I wasn't in the office, and I
5 believe Mr. Yazdani came in, like, maybe 20 minutes later
6 after they raided. They were there.

7 Q So what was the next thing that happened for the
8 audit from the Department? What -- what happened next?
9 When did you -- when did you know there was -- was more
10 still going on?

11 A Next was that they charged us with criminal.
12 They came to my house, and they handcuffed me. They took
13 me to jail.

14 Q And so that was how much longer after the raid?

15 A I think the first response we get from them that
16 we owe money to them.

17 Q No. I'm sorry. The time between the raid, which
18 was in 2014, when was the -- when did you get arrested?
19 Do you remember?

20 A I think it was three, four years, about three
21 years ago. I don't know.

22 Q Three years ago --

23 A I don't remember.

24 Q -- or three years later?

25 A Three years later. I'm sorry.

1 Q Okay. And then what happened with the criminal
2 case?

3 A Well, they took me to jail. Next day I got out
4 with bail, and then we hired Paul Meyer a criminal lawyer
5 and -- to take care of -- to see what's going on.

6 Q And so what happened with the criminal case.

7 A The criminal case was dropped.

8 Q Did you know why?

9 A I had no idea. The lawyers were just surprising.
10 Even them, they were -- they were surprised why we were
11 charged criminal.

12 Q When you say even them, what do you --

13 A The district attorney.

14 Q Okay. And so, was there another case that got
15 filed then?

16 A I think they dropped it to civil case.

17 Q Okay. And what happened in the civil case?

18 A We paid some money, and then we paid, like,
19 \$750,000. Then -- and my understanding was it's the end
20 of it. And a few years later they gave us -- they dropped
21 it to civil, and they gave us our jacket and said --

22 Q So did you go pick up the jackets yourself?

23 A Yes.

24 Q And -- and did they give you back the computers
25 then too?

1 A Yes.

2 Q But did you have -- you had new computers by
3 then, I guess?

4 A Yes.

5 Q So did you do anything with the old computers?

6 A I don't remember. We -- we didn't use them.

7 Maybe we used them, but we --

8 Q But they were --

9 A Maybe we used some of them.

10 Q They'd been seized for years --

11 A Yes.

12 Q -- at that point; right?

13 A Yes.

14 Q And did anybody at the Department tell you that
15 there was still an audit going?

16 A No.

17 Q They just gave you the records and didn't say
18 anything one way or the other?

19 A Yes.

20 Q So when did you find out that they weren't done
21 with you and there was more to be done?

22 A I think it was 2019 or 2020.

23 Q Was it --

24 A We -- we were --

25 Q -- before or after COVID? Do you remember?

1 A It was right around COVID. We received a letter
2 saying that we still owe this much.

3 Q So was that a -- that letter, was that an
4 invitation to start the audit, or was an information to
5 just tell you the audit was over?

6 A No, just to pay.

7 Q Just to pay?

8 A There was no audit.

9 Q Did you think it was a bill?

10 A Did I think what?

11 Q Did you think what you got was a bill?

12 A Yes.

13 Q So it didn't really ask you to explain anything
14 or provide anymore information?

15 A No.

16 Q And so up until this point, which is in May of
17 2020, the Department had never asked you to provide any
18 information or -- or any explanation of how your records
19 were kept; is that correct?

20 A Yes.

21 Q So when you say there was no audit, you mean they
22 never asked you for anything?

23 A They never asked me for anything.

24 Q Or even told you that there was an audit?

25 A No. Never said that.

1 Q Just seized your records?

2 A Yes.

3 Q Now, when you got the records back, what -- what
4 did you do with them?

5 A We had them for a few years, and then I believed
6 it was finished. I discussed it with my accountant, and
7 we -- we shred them.

8 Q So you talked to Mori, and he said it must be
9 over or --

10 A Well, Mori and Mr. Yazdani, and that they said
11 the case is finished. And it's been a long time, and we
12 shred it.

13 MR. S. MATHER: I have no further questions.

14 JUDGE STANLEY: Thank you.

15 Ms. Paley, do you have any questions for the
16 witness?

17 MS. PALEY: No. Thank you.

18 JUDGE STANLEY: Judge Geary, do you have
19 questions for the witness?

20 JUDGE GEARY: Yes, please.

21 Let me ask you first, are you referring to papers
22 you have in front of you for formulating your answers?

23 MR. ASSAR: No.

24 JUDGE GEARY: The papers you've looked down at?
25 Okay.

1 MR. ASSAR: No. This is --

2 MR. S. MATHER: No. I'm sorry, Your Honor. It's

3 just the fraud memo that --

4 JUDGE GEARY: Okay. I'd like to talk a little

5 bit about how you got first involved in the automobile

6 business. You -- you testified that you went into some

7 kind of a partnership with Mr. -- is it Yazdani? Is that

8 how you pronounce it?

9 MR. ASSAR: Yes, sir.

10 JUDGE GEARY: And how did you meet Mr. Yazdani?

11 MR. ASSAR: He was a family friend.

12 JUDGE GEARY: Okay. You were here in the

13 audience during the prior hearing; correct?

14 MR. ASSAR: Yes, sir.

15 JUDGE GEARY: And the gentleman who testified in

16 that hearing, what's your relationship to him?

17 MR. ASSAR: My brother.

18 JUDGE GEARY: Was Mr. Yazdani your brother's

19 friend?

20 MR. ASSAR: Yes, sir.

21 JUDGE GEARY: Okay. Did you know Mr. Yazdani

22 equally as your brother did.

23 MR. ASSAR: No, sir.

24 JUDGE GEARY: Whose idea was it that you go into

25 business with Mr. Yazdani?

1 MR. ASSAR: Us. It was me and him and my other
2 brother.

3 JUDGE GEARY: Okay. What did you know about
4 Mr. Yazdani's experience in the automobile business before
5 you went into business with him?

6 MR. ASSAR: I knew that he was in the car
7 business some years, some time. And so I decide to -- I
8 wanted to go into the car business. I didn't have
9 experience. So we decided to become a partner. He was
10 50 percent. I was 25, and my other brother, who was the
11 silent partner, was 25 percent.

12 JUDGE GEARY: What's your other brother's name?

13 MR. ASSAR: Ali Assar.

14 JUDGE GEARY: All right. So you decided to go
15 into business with Mr. Yazdani because you believed he had
16 experience in the car business; correct?

17 MR. ASSAR: Yes, sir.

18 JUDGE GEARY: And what information did you have
19 about how successful Mr. Yazdani had been in the car
20 business?

21 MR. ASSAR: Not -- nothing. Not a lot.

22 JUDGE GEARY: What can you tell me --

23 MR. ASSAR: I --

24 JUDGE GEARY: -- that caused you to invest
25 \$350,000 with Mr. Yazdani?

1 MR. ASSAR: I knew that he had experience, but it
2 successful I don't -- I -- he used to live in Dana Point,
3 and I believe, you know, he is successful.

4 JUDGE GEARY: Did Mr. Yazdani make any
5 representations to you regarding how much money you can
6 make in the car business?

7 MR. ASSAR: We -- we talked, yes. But I don't
8 exactly know how much it was.

9 JUDGE GEARY: Did your brother give you advice
10 about whether you should go into the car business with
11 Mr. Yazdani? That is the brother who appeared in the last
12 hearing.

13 MR. ASSAR: I -- did he -- I'm sorry. Repeat
14 that question?

15 JUDGE GEARY: Did your brother, who appeared in
16 the last hearing, give you any advice on whether you
17 should go into business with Mr. Yazdani?

18 MR. ASSAR: The advice is it's a lot of work,
19 just go in at 8:00 o'clock, leave at 8:00 o'clock.
20 There's a lot of work that needs for you to be -- for you
21 to learn.

22 JUDGE GEARY: Okay. Did he tell you that you
23 should expect to be successful and to make money in the
24 car business?

25 MR. ASSAR: He said you could. Yes, you can be.

1 JUDGE GEARY: And did you tell him that you were
2 going to invest \$350,000 in the car business?

3 MR. ASSAR: I don't remember.

4 JUDGE GEARY: The process of making sales -- you
5 weren't involved in the sales themselves were you?

6 MR. ASSAR: No, sir.

7 JUDGE GEARY: How did you learn about what
8 happened in the process of making sales at your company?

9 MR. ASSAR: Day by day I learned.

10 JUDGE GEARY: People would show you documents and
11 teach you what they were about?

12 MR. ASSAR: I would go through the jacket and
13 look. I would ask, yes.

14 JUDGE GEARY: We talked a little bit -- you
15 talked a little bit of deal jackets during your
16 examination by your attorney. I think you said the
17 contract would be in there and other documents signed by
18 the customer. What other documents were contained in the
19 deal jackets?

20 MR. ASSAR: The DMV forms.

21 JUDGE GEARY: Meaning report of sale forms?

22 MR. ASSAR: Yes.

23 JUDGE STANLEY: What else?

24 MR. ASSAR: Report of sale, the form for the
25 mileage, the -- I don't know all of it by the top of my

1 head.

2 JUDGE GEARY: How about purchase documents?

3 MR. ASSAR: Purchase contract, yes.

4 JUDGE GEARY: How about financing applications?

5 MR. ASSAR: Yes, financing application.

6 JUDGE GEARY: Anything else that you can think
7 of?

8 MR. ASSAR: If there's a warranty involved,
9 warranty forms.

10 JUDGE GEARY: Those would be warranties that your
11 company would extend to the purchaser?

12 MR. ASSAR: No we would purchase -- we would get
13 warranty from outside company.

14 JUDGE GEARY: It would be something you would
15 sell to the customer, a warranty?

16 MR. ASSAR: Yes.

17 JUDGE GEARY: All right. So a customer come in.
18 They'd look at a car and maybe drive a car, decide they
19 want to buy it. They would sit down with a salesperson
20 and execute documents. And your understanding is that
21 that customer would be asked to make a down payment, if
22 they wanted to purchase the car; is that right?

23 MR. ASSAR: Yes.

24 JUDGE GEARY: And who actually determined how
25 much of a down payment to take on a car?

1 MR. ASSAR: The finance guy.

2 JUDGE GEARY: Who was your finance guy?

3 MR. ASSAR: Brad Via.

4 JUDGE GEARY: So the salesperson would consult

5 with that person to find out how much would be required to

6 be paid down; correct?

7 MR. ASSAR: Yes.

8 JUDGE GEARY: All right. And did the finance guy

9 inform your salespeople that the down payment had to

10 include documentation fees?

11 MR. ASSAR: I believe so.

12 JUDGE GEARY: And would the finance guy also

13 inform the salesperson that the down payment would have to

14 include smog fees?

15 MR. ASSAR: I believe so.

16 JUDGE GEARY: And would he -- would your company

17 also collect the sales tax with the down payment?

18 MR. ASSAR: The total of the sales, that will be

19 including the sales tax.

20 JUDGE GEARY: Okay. But my question is whether

21 the down payment included the sales tax.

22 MR. ASSAR: This is -- this question it's -- if

23 the total contract is \$10,000 and we only getting \$500, we

24 haven't received everything.

25 JUDGE GEARY: I understand that. But whether or

1 not the sales contract specified -- specifies where the
2 down payment is going to be applied, wasn't your company
3 collecting sales tax as part of a down payment?

4 MR. ASSAR: Yes.

5 JUDGE GEARY: Every time; correct?

6 MR. ASSAR: Yes.

7 JUDGE GEARY: Okay. I think you testified that
8 you would give ABM -- that's your accountant's company;
9 correct?

10 MR. ASSAR: Yes.

11 JUDGE GEARY: You would give ABM bank statements
12 quarterly; is that right?

13 MR. ASSAR: Yes, sir.

14 JUDGE GEARY: And was that so that -- it was your
15 understanding that those documents were given to ABM so
16 that ABM could prepare your sales and use tax returns?

17 MR. ASSAR: Yes, sir.

18 JUDGE GEARY: And you also said something about
19 Mr. Yazdani giving you some information, which you would
20 write down and provide to your accountant; is that
21 correct?

22 MR. ASSAR: Mr. Yazdani would give me the
23 sales -- the tax -- the sales tax, how much it was, and I
24 would fax it to Mr. Mori.

25 JUDGE GEARY: Did you ever look at the

1 information that was available through your point-of-sale
2 system, your tracking system Desk Manager?

3 MR. ASSAR: No, sir.

4 JUDGE GEARY: Do you have any idea what reports
5 could be printed through or prepared through Desk Manager?

6 MR. ASSAR: No, sir.

7 JUDGE GEARY: Who handled Desk Manager for your
8 company?

9 MR. ASSAR: Mr. Yazdani was handling the Desk
10 Manager and the finance guy.

11 JUDGE GEARY: When your company was successful in
12 placing financing with an institution, what kind of
13 financing was it?

14 MR. ASSAR: Well, I don't know about successful.
15 But what kind of financing?

16 JUDGE GEARY: Yes. What kind of financing was it
17 when you were able to obtain finances for purchases. You
18 were able to obtain financing at times; weren't you?

19 MR. ASSAR: Through the bank.

20 JUDGE GEARY: Through the bank or through
21 whatever lending institution.

22 MR. ASSAR: Yes.

23 JUDGE GEARY: You were able to do that; correct?

24 MR. ASSAR: Myself or the --

25 JUDGE GEARY: The company.

1 MR. ASSAR: The company, yes.

2 JUDGE GEARY: Not all the time, but some of the
3 time?

4 MR. ASSAR: Yes.

5 JUDGE GEARY: All right. What kind of financing
6 was it? Do you understand what that --

7 MR. ASSAR: No.

8 JUDGE GEARY: -- question. Okay. Do you know
9 what recourse financing is?

10 MR. ASSAR: No.

11 JUDGE GEARY: Nonrecourse financing, do you know
12 what that is?

13 MR. ASSAR: No.

14 JUDGE GEARY: Those are all the questions I have.
15 Thank you.

16 MR. ASSAR: Thank you, sir.

17 JUDGE STANLEY: Judge Ridenour, do you have any
18 questions for the witness?

19 JUDGE RIDENOUR: Yes. Thank you.

20 JUDGE STANLEY: Oh, wait. Before you start, I
21 just need to clarify spellings so that our stenographer
22 can get it. You mentioned your other brother's name. Can
23 you spell that for her, please.

24 MR. ASSAR: Ali, A-l-i, Assar, A-s-s-a-r.

25 JUDGE STANLEY: And you also mentioned Brad

1 Villa. Can you spell that name?

2 MR. ASSAR: B-r-a-d. Last name is Via, V-i-a.

3 JUDGE STANLEY: Thank you.

4 Judge Ridenour. Sorry.

5 JUDGE RIDENOUR: So the ownership of the company
6 was yourself 25 percent, your brother Ali Assar 25
7 percent, and Mr. Yazdani 50 percent; is that correct?

8 MR. ASSAR: Yes, ma'am.

9 JUDGE RIDENOUR: Okay. And who were the
10 corporate officers of the company and their titles?

11 MR. ASSAR: I believe -- what -- what the titles?
12 I believe I was the manager. I don't recall.

13 JUDGE RIDENOUR: Mr. Mather, maybe during your
14 presentation after CDTFA, can you let me know who the
15 corporate officers were, as well as their titles. I'd
16 appreciate that. Okay.

17 Mr. Assar, you mentioned you weren't involved in
18 sales, as well as Mr. Yazdani was not involved in sales;
19 is that correct?

20 MR. ASSAR: He was he monitoring the sales.

21 JUDGE RIDENOUR: So he was supervising the sales?

22 MR. ASSAR: Yes.

23 JUDGE RIDENOUR: So who was in charge of
24 processing the unwinds?

25 MR. ASSAR: He was.

1 JUDGE RIDENOUR: Okay. Did you, yourself, ever
2 file any documentation within DMV?

3 MR. ASSAR: No.

4 JUDGE RIDENOUR: No. Okay. Those are all my
5 questions. Thank you.

6 MR. ASSAR: Thank you.

7 JUDGE STANLEY: Okay. Thank you.

8 I don't have any follow up questions. So we'll
9 turn it over to CDTFA.

10 And, Ms. Paley, you can start your presentation
11 when ready.

12 MS. PALEY: Thank you.

13 MR. S. MATHER: I -- I'm sorry. I have a one
14 follow-up question.

15 JUDGE STANLEY: I'm sorry. I should have asked
16 you that. Go ahead.

17

18 REDIRECT EXAMINATION

19 BY MR. S. MATHER:

20 Q We were -- we were talking about a hypothetical,
21 or you were, where there was a \$10,000 car with a \$500
22 down payment. Were you collect -- I mean, explain how you
23 allocated the \$500 of down payment. Was that processing
24 fees? Was it sales tax?

25 A No. It was part of the -- the total sales down

1 payment we collect, and the remaining will be financing.

2 Q Okay. So when did you really -- when did you
3 think you were collecting the sales tax?

4 A I believed when the sales tax was collected when
5 the deal got funded.

6 Q By the -- by the bank?

7 A By the bank.

8 Q And do you know if -- if there was a transaction
9 that was unwound and the customer had paid the \$500 down
10 payment, do they get -- what -- what did they get back?

11 A What -- whatever the down payment was, they get
12 it back, the \$500.

13 MR. S. MATHER: No further questions.

14 JUDGE STANLEY: Okay. Thank you.

15 Now, we'll turn to CDTFA.

16 Ms. Paley, you may begin.

17 MS. PALEY: Thank you. Just so that I may be
18 mindful. It's 11:55. Will I have the opportunity to
19 finish?

20 JUDGE STANLEY: I was just asking my co-panelists
21 if they are okay with going over. And I need to ask the
22 stenographer as well.

23 Are you okay with that?

24 JUDGE GEARY: I'm fine going over. We have
25 hearings beginning at 1:00 o'clock just to recognize.

1 JUDGE STANLEY: I realize that.

2 JUDGE GEARY: Okay.

3 JUDGE STANLEY: We're not going to go that far
4 over.

5 JUDGE GEARY: Okay.

6 JUDGE STANLEY: Yeah. You will have time.

7 MS. PALEY: Thank you.

8

9 PRESENTATION

10 MS. PALEY: Route 56 Plus, LLC, doing business as
11 SC Car Zone, operated a used car dealership in Costa Mesa
12 from 2012. Mr. Hamid Assar was the CEO, per California
13 Secretary of State records, and according to Schedule K of
14 the income tax filings, the ownership of Route 56 was
15 split. Mr. Assar was 25 percent over -- owner, Hamid
16 Yazdani 50 percent, and Ali Assar 25 percent. Those
17 records are contained within the Evasion memo, Exhibit C.

18 As a seller of used vehicles, Appellant operated
19 under a vehicle dealer license, and sales were reported to
20 the DMV. DMV records show that Appellant substantially
21 underreported taxable sales by over \$7.2 million for a
22 test period, 2012 to 2013. The understatement led to an
23 investigation. A search warrant was executed in 2014 that
24 produced Appellant's sales information reported in the
25 point-of-sale system, dealer jackets, and third-party

1 finance records.

2 The Department used Appellant's seized records
3 and the DMV records to perform an actual-basis audit and
4 found that Appellant had made 1,018 total sales
5 transactions, with selling prices totaling over
6 \$18 million for the liability period April 1st, 2012,
7 through June 30th, 2014, far exceeding Appellant's
8 reported taxable sales of \$6.4 million. The investigation
9 led to the criminal prosecution of Mr. Assar and
10 Mr. Yazdani and Mr. Michael Assar. The co-defendants were
11 originally charged with felony tax evasion. The case
12 ultimately resolved by stipulation for violation of the
13 Business and Professions Code sections 17200, Unfair
14 Business Practice, and 17500, False or Misleading
15 Advertising, as noted in the final judgment and permanent
16 injunction pursuant to stipulation and complaint for civil
17 penalties and equitable relief signed by the
18 co-defendants; Exhibit C, Evasion memo, Exhibit 17.

19 Specifically, Mr. Assar and Mr. Yazdani, under
20 penalty of perjury, admitted to making untrue or
21 misleading statements to CDTFA, and making false or
22 fraudulent returns with the intent to defeat and evade the
23 reporting assessment and payment of tax in violation of
24 Revenue & Taxation Code sections 7152 and 7153.5. The
25 co-defendants also conceded by the stipulation that

1 customers were being charged sales tax reimbursement on
2 the purchase price of the vehicle. And instead of
3 reporting and paying the collected tax reimbursement,
4 Appellant kept it as additional profit on the sale of the
5 vehicle. Pursuant to the Court's order and final
6 judgment, the co-defendants were ordered to pay \$750,000
7 in restitution; Exhibit C, Evasion memo, Exhibit 17,
8 page 4. However, the Court's ordered clearly and plainly
9 stated that the restitution did not relieve defendants of
10 their obligations to pay any taxes, interest, penalties,
11 or cost due.

12 If and when CDTFA is not satisfied with the
13 amount of tax reported on a person's returns, it may
14 compute and determine the tax required to be paid upon the
15 basis of any information within CDTFA's possession or that
16 may come into its possession, Revenue & Taxation Code
17 section 6481. In this case, a Notice of Determination,
18 Exhibit B, was issued July 24th, 2020, for just over
19 \$955,000 in tax, plus accrued interest and penalties,
20 approximately \$374,000. The NOD reflected Appellant's
21 restitution payment of \$751,000. As demonstrated in the
22 Department's Evasion Penalty Recommendation Memorandum,
23 Exhibit C, Appellant's \$11.5 million of understatement
24 were 178 percent for the period were due to fraud or
25 intent to evade sales tax -- sales and use tax law.

1 The evidence shows the Appellant had the
2 requisite knowledge of the sales and use tax law because
3 Mr. Assar and Mr. Yazdani combined have held five other
4 seller's permits, are expensed businesspersons who had
5 been in the used cars business for many years. They also
6 had been provided with the requisite regulations,
7 pamphlets, and publications, and attended mandatory dealer
8 education classes. And Appellants demonstrated knowledge
9 and understanding of the law by charging sales tax
10 reimbursement on the sales contracts. Appellants
11 intentionally evaded payment of tax that they were aware
12 was collected but chose to report and pay a significantly
13 lower amount. Appellants had access to and knowledge of
14 the correct amounts from the point-of-sale Desk Manager
15 software and contracts but repeatedly reported a fraction
16 of sales. Appellant collected and did not pay over
17 \$955,000 in sales tax over the 27-month period.

18 Fraud, as held by Bradford versus Commissioner in
19 1986, is intentional wrongdoing on the part of the
20 taxpayer with the specific intent to avoid a tax known to
21 be owing. Fraud must be established by clear and
22 convincing evidence. Fraud may not be presumed, but it's
23 rare to find direct evidence that fraud has occurred. So
24 it's often necessary to make the determination based on
25 circumstantial evidence.

1 As cited in the Office of Tax Appeals'
2 precedential opinion Appeal of ISIF Madfish Incorporated,
3 badges of fraud may include understatement of income,
4 inadequate records, failure to file tax returns,
5 implausible or inconsistent explanations of behavior,
6 concealment of assets, failure to cooperate with tax
7 authorities, lack of credibility on the taxpayer's
8 testimony, falsified records, a substantial discrepancy
9 between reported and reported amounts that cannot be
10 explained, and tax are tax reimbursement properly charged
11 evidencing knowledge of the requirements of the law but
12 not reported.

13 As stated in Madfish, a finding that any part of
14 a deficiency determination was due to fraud is sufficient
15 to suspend the statute of limitations to issue a
16 deficiency determination as to the entire reporting period
17 in which any part of the deficiency was due to fraud,
18 Madfish, page 9. Revenue & Taxation Code section 6485
19 imposes a 25 percent penalty if any part of a deficiency
20 determination was due to fraud or intent to evade the law
21 or authorized rules or regulations. The evidence before
22 us establishes that Appellant knowingly and consistently
23 understated their taxable sales and kept for their own use
24 over \$955,000 in sales tax reimbursement they collected.

25 Appellant argues that the determination is

1 incorrect, citing a lack of bank deposit analysis, and
2 that the determination is barred by the three-year statute
3 of limitations. However, examination of DMV records and
4 Appellant's seized business records to assess reported
5 taxable sales are the most reliable source of information
6 and audit methodology. Further, there is no statute of
7 limitations when the underreporting was a result of fraud
8 or intent to evade the payment of tax. Appellant
9 intentionally understated the tax liability so large and
10 consistently, that there is no other explanation besides
11 fraud. Additionally, we have of Appellant's own
12 admissions of wrongdoing and stipulation from the
13 Orange County case.

14 Additionally, Revenue & Taxation Code
15 section 6597 applies a 40 percent penalty for knowingly
16 collecting sales tax reimbursement and not remitting it to
17 the Department when the liability for unremitted tax
18 reimbursement averages \$1,000 or more a month for the
19 reporting period and exceeds 5 percent of the total tax
20 collected. As demonstrated in the Evasion Penalty memo,
21 page 6 in the audit work papers, Exhibit F, the evidence
22 shows that the requirements for imposition of the
23 40 percent penalty are met for the period. A 40 percent
24 penalty may be relieved pursuant to Revenue & Taxation
25 Code section 6597 subdivision (a)(2)(B), if the failure to

1 make a timely remittance of sale tax reimbursement is due
2 to a reasonable cause or circumstances beyond the person's
3 control, and occurred regardless of the person's exercise
4 of ordinary care, and in the absence of willful neglect.

5 Revenue & Taxation Code section 6597
6 subdivisions (b)(1)(A) through F, enumerate six examples
7 of reasonable cause or circumstances beyond the person's
8 control, none of which apply here. There is no evidence
9 of a credible explanation for Appellant's failure to
10 comply with the sales and use tax reporting requirements
11 and report the tax reimburse it had collected from its
12 customers. No showing of reasonable cause or
13 circumstances beyond their control. Also based on the
14 evidentiary record and law, there are no adjustments
15 warranted. The audited amount of tax due is based on what
16 the point of sale records, sales contracts, and DMV data
17 show Appellant collected in tax reimbursement from its
18 customers. Every vehicle sale included in the taxable
19 measure is itemized, including the date of the sale, the
20 vehicle identification number, and the sales price.
21 Duplicative transactions, repossessions, and nontaxable
22 sales were zeroed out. Schedule 12A-1 show that, in this
23 case, 67 were removed.

24 The measures are reasonable, grounded in fact,
25 and rest upon the most reliable of data available.

1 Appellant has not put forth any evidence to show that the
2 deficiency measures are incorrect. Appellant has
3 submitted the declaration of their accountant, Exhibit 7,
4 that claims to not have had the records since they were
5 seized by the Department. However, that does not explain
6 the lack of evidence to support their contentions, since
7 the seized records were returned to Appellant or their
8 representative in the year since; again, in Exhibit A,
9 Decision, Exhibit 2.

10 We submit to the panel that fraud has been
11 demonstrated by clear and convincing evidence, no
12 adjustments are warranted, and that the 25 and 40 percent
13 penalties should be upheld.

14 Thank you.

15 JUDGE STANLEY: Thank you.

16 Judge Geary, do you have any questions for the
17 Department?

18 JUDGE GEARY: No. Thank you.

19 JUDGE STANLEY: Judge Ridenour, do you have any
20 questions.

21 JUDGE RIDENOUR: Yes. I was hoping CDTFA could,
22 for this case as well, provide the DMV handbook and
23 information regarding unwinds, rollbacks, repossessions,
24 please.

25 MS. PALEY: Yes.

1 JUDGE RIDENOUR: Thank you. That is all.

2 JUDGE STANLEY: Okay. Mr. Mather, you can have
3 the final say.

4 MR. S. MATHER: Thank you. One question before I
5 go. I believe the Department indicated that they had the
6 statement of officers in the record in the case. So I
7 don't know of that addresses your question to me.

8 JUDGE RIDENOUR: Actually, I was going to ask
9 Mr. Assar some questions about that.

10 MR. S. MATHER: Oh, okay.

11 JUDGE RIDENOUR: I guess we can just go ahead and
12 do that. So on January 17th, 2012, an Articles of
13 Organization was filed with the Secretary of State
14 indicating one manager, and it was filed by a Carl,
15 C-a-r-l, middle initial F, last name Agren, A-g-r-e-n.
16 Can you tell me who Mr. Agren is?

17 MR. ASSAR: He was our lawyer who formed the LLC.

18 JUDGE RIDENOUR: Okay. And who was the one
19 manager referring to? It's not on the documentation.

20 MR. ASSAR: The manager for the LLC?

21 JUDGE RIDENOUR: Correct.

22 MR. ASSAR: Mr. Yazdani.

23 JUDGE RIDENOUR: Okay. And then thereafter on
24 March 28, 2016, Route 56 filed a Statement of Information
25 with the State of California, thereafter, naming yourself

1 as chief executive officer. And also, you filed it and
2 signed naming yourself chief executive officer, as well as
3 two other managers, a Hamid Assar, a Shahin Assar, and Ali
4 Assar. However, not all of them were indicated as owners
5 and/or having equity in the corporation. So can you
6 please explain the membership?

7 MR. ASSAR: The Shahin Assar is 40 percent
8 ownership and --

9 JUDGE RIDENOUR: I guess I was under the
10 impression that you had 25, Mr. Yazdani had 50, and
11 Mr. Ali Assar had 25. So I am --

12 MR. ASSAR: Okay. After the raid, Mr. Yazdani --

13 JUDGE RIDENOUR: I'm sorry. After the what?

14 MR. ASSAR: After the raid --

15 JUDGE RIDENOUR: Okay.

16 MR. ASSAR: -- they -- they raided our business.
17 Mr. Yazdani decided to leave the business. He -- he
18 wanted to be out. So I don't know the exact time.

19 JUDGE RIDENOUR: I see.

20 MR. ASSAR: Yeah.

21 JUDGE RIDENOUR: Thank you very much for
22 clarifying that.

23 MR. ASSAR: Sure.

24 JUDGE RIDENOUR: Thank you. No other questions.

25 JUDGE STANLEY: Okay. Back to Mr. Mather.

1 MR. S. MATHER: Thank you.

2

3 CLOSING STATEMENT

4 MR. S. MATHER: So again, we come back to the
5 same two points: The fraud memo, which is demonstrably
6 false, and the audit -- the half audit that's based on a
7 projection based on DMV records. No attempt to reconcile
8 to the bank deposits. No attempt to determine what was
9 actually collected. Just a computation of what they think
10 was collected based on what they think was registered with
11 the DMV. With respect to the -- the allegations
12 concerning the litigation, they're just simply false.

13 It just -- they're just basically asking you not
14 to read the papers because the stipulation could not be
15 more clear that it's not an admission of anything. There
16 was no admission of violations. There was an amount that
17 was a settlement of a civil matter, and that's all there
18 was. There -- there's nothing to be gleaned with respect
19 to the clear and convincing evidence of fraud from
20 allegations that are expressly not admitted. So, you
21 know, it's probably a -- just a measure of desperation is
22 that the Department knows they don't have anything else,
23 so they're trying to make something literally out of
24 nothing in that case. And, in any event, it's not nowhere
25 near the clear and convincing evidence.

1 Again, the Department lists the badges of fraud.
2 Again, none of those, except for their claimed consistent
3 omission or consistent understatement even applies in this
4 case. The fraud memo they rely on so heavily doesn't say
5 that collectively they have 10 years of experience. It
6 says Hamid Assar has 10 years of experience in the car
7 business. He had zero experience in the car business. So
8 there's just -- just rife with misstatements. And they're
9 still relying on this and, basically, trying to trick us
10 into thinking the fraud memo and the stipulation to the
11 judgment somehow proves something, and it simply does not.
12 And it certainly does not establish clear and convincing
13 evidence.

14 And that concludes my remarks.

15 JUDGE STANLEY: Okay. Thank you.

16 Judge Geary, do you have any final questions for
17 either party?

18 JUDGE GEARY: No.

19 JUDGE STANLEY: Judge Ridenour, do you have any
20 final questions?

21 JUDGE RIDENOUR: No. Thank you.

22 JUDGE STANLEY: And I do not either.

23 So we're going to hold the record open for two
24 purposes. One is to allow time for the Appellant to
25 review their revised exhibits. And the other is for CDTFA

1 to -- to inform the panel what the dealer's
2 responsibilities are with respect to rewinds,
3 repossessions, and rollbacks. So we'll hold the record
4 open for 15 days.

5 Is that acceptable, Mr. Mather?

6 MR. S. MATHER: Yeah. I'd like point of
7 clarification on that because -- yeah, the 15 days is
8 fine. But our -- our copy of the brief that we've had
9 until today, the brief exhibits for Route 56 had the audit
10 work papers for another taxpayer. I mean, are you -- are
11 you -- it's not a question of pages. It's a question of
12 the wrong taxpayer. So are -- are we to understand that
13 the OTA staff downloaded the exhibits from some other
14 filing into the Route 56 brief? Because what we have is
15 Plus West, and we don't have any Route 56 audit work
16 papers in the brief that I was -- I was provided through
17 the portal.

18 JUDGE STANLEY: Okay. Well, I reviewed the ones
19 that we extracted more recently, and they are the correct
20 documents. So do you need more time to review them since
21 you apparently reviewed Plus West twice?

22 MR. S. MATHER: I hardly to know what to say. I
23 mean, that -- that is a mistake that is so massive that
24 I -- I'm not even sure what to do with it. I mean, what
25 you're saying, oh, you know, here you go, on the day of

1 the hearing. This is what the brief should have been.
2 This is what should have been there. I -- I can't believe
3 that that's even what happened. I -- I just -- I just
4 don't -- I find that to be incredible that a different
5 taxpayer's information could have been loaded as the
6 attachments to the brief for Route 56. It just doesn't
7 seem possible to me.

8 JUDGE STANLEY: And I will say that I -- when I
9 reviewed the files initially, I don't remember seeing
10 another taxpayer's data. So I'm not sure what happened
11 and what you might have seen, but what I know --

12 MR. S. MATHER: I -- I saw what was in the
13 portal. I mean, what -- you know, that's what I get, you
14 know. And what was in the portal -- and I have it on a
15 thumb drive. I have it on my laptop is the Plus West work
16 papers in the Route 56 case, and no Route 56 work papers
17 whatsoever. And I -- just inconceivable to me that that's
18 just a clerical error.

19 JUDGE STANLEY: I'm sorry. That's not what I'm
20 seeing. But, in any event, I'm going to give you time.
21 If you need more than the 15 days because you think that
22 you didn't see the initial work papers for Route 56, I can
23 give you additional time.

24 MR. S. MATHER: All right. I -- I'll take the
25 15 days, you know. I think the work papers are largely

1 irrelevant.

2 JUDGE STANLEY: Okay. And, Ms. Paley, is that
3 acceptable to CDTFA, 15 days?

4 MS. PALEY: Yes.

5 JUDGE STANLEY: Okay. So following the
6 additional briefing, OTA will close the record, and we'll
7 issue a written opinion within 100 days thereafter.

8 I want to thank everybody for coming and
9 participating today.

10 OTA is now in recess, and the next appeal will
11 begin at 1:15 p.m.

12 (Proceedings concluded at 12:16 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
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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 2nd day
of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER