

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
GALLAGHER'S IRISH PUB, INC.,) OTA NO. 231014464
)
APPELLANT.)
)
_____)

Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 10:52 a.m. and concluding
at 12:45 p.m. on Tuesday, August 19, 2025,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ SUZANNE B. BROWN

Panel Members: HEARING OFFICER KIM WILSON
ALJ GREG TURNER

For the Appellant: KELLY ERBEN

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

NALAN SAMARAWICKREMA
CHAD BACCHUS
JASON PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-24 were received into evidence at page 9.)

(Department's Exhibits A-K were received into evidence at page 8.)

O P E N I N G S T A T E M E N T

	<u>P A G E</u>
By Ms. Erben	17
By Mr. Samarawickrema	44

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Ms. Erben	66

1 Sacramento, California; Tuesday, August 19, 2025

2 10:52 a.m.

3
4 JUDGE BROWN: We are on the record for the Appeal
5 of Gallagher's Irish Pub. This is OTA Case No. 231014464.
6 Today is Tuesday, August 19th, 2025. It is approximately
7 10:52 a.m.

8 I'm Suzanne Brown, and I am the lead panel member
9 for this case. My co-panelists today are Judge Greg
10 Turner and Hearing Officer Kim Wilson. Although I am the
11 lead for purposes of conducting this hearing today, all
12 three members of the panel are co-equal decision makers in
13 this process, and they are free to ask questions or
14 otherwise speak up at any time.

15 This hearing is before the Office of Tax Appeals
16 or OTA. OTA is not a court but is an independent appeals
17 body. OTA is staffed by tax experts and is independent
18 from the State's tax agencies, including CDTFA. Because
19 the Office of Tax Appeals is a separate agency from CDTFA,
20 arguments and evidence that were previously presented to
21 CDTFA are not necessarily part of the record before OTA,
22 unless they were directly submitted to OTA.

23 OTA's written opinion for this appeal will be
24 based upon the written arguments that the parties have
25 submitted to OTA previously, the exhibits that will be

1 admitted into evidence today, and the arguments presented
2 at the hearing today. As a reminder, the panel does not
3 engage in what's called ex parte communications, which
4 means that the panel does not speak to one party without
5 the other party present.

6 All right. There are various topics that I will
7 go through before we hear the parties presentations today.
8 Those conclude what the exhibits are going to be, witness
9 testimony, and other logistical things. And once I'm
10 done, I will ask if anyone has any questions about the
11 proceedings or if there is anything I didn't cover, and
12 I'll hear from you at that time.

13 First, I want to address the exhibits and --
14 actually, hold on. I'm going to grab my paper.

15 So we held a prehearing conference in this
16 matter, and I issued a document called prehearing
17 conference Minutes and Orders that summarized some of the
18 things that we talked about. There have been subsequent
19 submissions, and so we will cover all of that again before
20 I hear the parties presentation. At the prehearing
21 conference we discussed that the -- there was a deadline
22 to submit exhibits, and that was August 4th. And both
23 parties did submit timely exhibits prior to the deadline.

24 And now I will address each admission of each
25 party's exhibits. I'll just briefly remind everyone that

1 once a document is in evidence, either party can rely on
2 it. So it does not matter to the panel which party
3 submitted the document.

4 All right. I'm going to address CDTFA's exhibits
5 first. Appellant timely filed an objection to admission
6 of CDTFA's exhibits. CDTFA's exhibits are marked as
7 Exhibits A through K. Appellant's objection described
8 reasons why -- that I'm going to summarize here -- reasons
9 why Appellant does not agree with the statements and
10 findings in CDTFA's documents. However, that is not what
11 determines admissibility. Admissibility is specific to
12 the regulations that govern these proceedings, and those
13 are under California Code of Regulations Title 18. It's
14 Regulation section 30214 specifically. It specifies that
15 all timely and relevant evidence is admissible.

16 There are some exceptions to admissibility, but
17 none of them are relevant here, and none of them were
18 raised by Appellant, things like attorney/client
19 privilege, that's not an issue here. Appellant's
20 objections pertain to the weight that the panel members
21 should give to CDTFA's exhibits, and the panel members
22 will take these argument into account in considering and
23 evaluating what weight to give to the exhibits. But
24 Appellant does not raise any reason that the panel should
25 not admit the exhibits into evidence as part of the record

1 that the panel can look at.

2 The exhibits are relevant, and they were timely
3 submitted. And there's no basis to sustain Appellant's
4 objection to admission of these exhibits. Therefore,
5 CDTFA's -- or Appellant's objection to admission of
6 exhibit pages is overruled, and CDTFA's Exhibits A through
7 K are admitted into the record.

8 (Department's Exhibits A-K were received into
9 evidence by the Administrative Law Judge.)

10 JUDGE BROWN: All right. Next, I will address
11 Appellant's exhibits. Appellant submitted an updated
12 exhibit chart and some new exhibits, in addition to the
13 exhibits that Appellant has previously identified.
14 Appellant has marked them as Exhibits 1 through 23,
15 although there is no Exhibit 4. And I'll just briefly
16 summarize that these are a combination of approximately
17 145 pages of exhibits that Appellant submitted with its
18 December 23/January 2024 reply brief, plus additional
19 exhibits that Appellant submitted in anticipation of the
20 prehearing conference in July of 2025, plus additional
21 exhibits Appellant submitted on August 1st of 2025.

22 And then also I'll note that on August 8th,
23 Appellant's objection to exhibits had one page attached to
24 it at the end that appears to be a printout from CDTFA's
25 website. Appellant didn't mark that as an exhibit, but I

1 think we should mark it as an exhibit.

2 My first question is going to be whether CDTFA
3 has any objection to any of these documents being --
4 Appellant's exhibits being admitted into evidence.

5 MR. SAMARAWICKREMA: No, Judge.

6 JUDGE BROWN: Thank you.

7 All right. Before I admit Appellant's exhibits
8 into evidence, I want to label this one page that
9 Appellant had submitted on August 8th. It's a CDTFA
10 printout of -- it appears to show Appellant's payments.

11 Are we calling this Exhibit 4 or Exhibit 24?

12 MS. ERBEN: How about 24.

13 JUDGE BROWN: Twenty-four. Okay. Let's call
14 this Exhibit 24, and there's no objection from CDTFA. And
15 therefore, I will say that Appellant's Exhibits 1
16 through 24 are admitted, although there is no Exhibit 4.

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

19 JUDGE BROWN: Does anyone have anything further
20 to raise about the exhibits?

21 Oh, actually, I did have one thing I wanted to
22 mention. On Appellant's exhibit chart, Ms. Erben -- oh, I
23 just realized I think I forgot to have everyone identify
24 themselves for the record. I'm sorry.

25 Can I ask all the parties to identify themselves

1 for the record. I'll start with Ms. Erben for Appellant.

2 MS. ERBEN: My name is Kelly Erben, representing
3 Gallagher's Irish Pub, Inc.

4 JUDGE BROWN: Thank you.

5 And CDTFA.

6 MR. SAMARAWICKREMA: Nalan Samarawickrema,
7 hearing representative for CDTFA.

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

10 MR. BACCHUS: Chad Bacchus, attorney with CDTFA's
11 legal division.

12 JUDGE BROWN: Thank you, everyone.

13 I was saying, Ms. Erben, I wanted to ask. You
14 had marked document 19 of amended returns as 87 pages. I
15 don't have 87 pages. I wasn't sure if that was typo. I
16 mean, the document that contains is only 145 pages of
17 exhibits, and there's other documents. I counted
18 something like 48 pages.

19 MS. ERBEN: I'm not sure of the amended returns
20 that were -- were submitted to the CDTFA after
21 corrections. They're usually about three pages long. And
22 just over time with the files I've submitted, I'm not sure
23 which ones that I put in. But it should represent the
24 official final amended returns that are in the CDTFA
25 system. So I really couldn't tell you how many pages

1 there were.

2 JUDGE BROWN: All right. As I said, I counted
3 about 48 pages. So I'll just note that I think that that
4 number of 87 was not correct.

5 All right. I've admitted the exhibits from both
6 parties. Now, I was going to move on to confirming that,
7 as we discussed during the prehearing conference and
8 stated in my prehearing conference Minutes and Orders, the
9 issue is phrased as whether further adjustments to the
10 amount of unreported taxable sales are warranted. This
11 issue concerns the tax for the liability period of
12 April 4th, 2014, through March 31st, 2017, which is
13 covered by the Notice of Determination dated
14 April 11th, 2018.

15 I did raise a question during the prehearing
16 conference and put the parties on notice during the
17 Minutes and Orders to address the question of whether
18 Appellant has already paid the liability. And then in
19 response, Appellant in submitting filings after the
20 prehearing conference to OTA, which were forwarded to
21 CDTFA, raised questions about this, about whether, you
22 know, what Appellant needs to do. I did indicate that we
23 don't have a claim for refund, but any claim for refund
24 would need to be filed with CDTFA.

25 I guess I'll turn to CDTFA and say if they want

1 to address this briefly, whether Appellant would need to
2 file a claim for refund. Go ahead.

3 MR. BACCHUS: Yes. So we do show a payment in
4 July of 2023 from the sale of the business from escrow
5 that -- that covered the entire liability. So there's
6 currently zero balance on Gallagher's -- on Appellant's
7 account. A claim for refund has not been filed. But
8 because the payment was made pursuant to a Notice of
9 Determination that is not yet final, a claim for refund
10 can still be submitted, and it's six months had --
11 Appellant has up to six months after the Notice of
12 Determination goes file -- goes final to file that claim
13 for refund.

14 JUDGE BROWN: And I don't know whether CDTFA will
15 require Appellant to file a separate claim for refund at
16 this point, or whether CDTFA would treat some of the
17 filings already as a claim for refund, or if you cannot
18 say that I understand.

19 MR. BACCHUS: To be safe, it's always a good idea
20 to file an actual claim for refund, which we would be
21 happy to -- to email Appellant a blank copy of the claim
22 for refund form. But that's -- and, obviously, the claim
23 for refund is only in a situation where Appellant
24 prevails.

25 JUDGE BROWN: I understand.

1 Yes, Ms. Erben.

2 MS. ERBEN: Just a clarification that the payment
3 for the lien did not come out of escrow. It came
4 privately through me through my bank account before
5 escrow.

6 JUDGE BROWN. And, Judge Turner, you were going
7 to say something.

8 JUDGE TURNER: Has CDTFA issued refunds on this
9 account during the pendency of this appeal?

10 MR. PARKER: I did see some refund checks issued
11 to the taxpayer after the payments were made. I think it
12 was around a little over \$1,500 refund tax plus interest.

13 JUDGE TURNER: So then I guess I want to get to
14 this issue about the demand for a claim for refund to be
15 filed. You've issued refunds already on this account
16 during pendency of this appeal, but now you're saying that
17 the taxpayer is required to file a claim for refund in
18 order for you -- for them to - for you guys settle the
19 account. Should a balance be owed them at the end of this
20 hearing.

21 MR. PARKER: The overpayment -- so the tax amount
22 that was due, there was an overpayment. So tax wasn't due
23 for the extra amount. So that amount isn't applied to
24 tax. So that -- that amount can always be refunded to
25 taxpayers when they just make payments, and the tax

1 liability is less. We can refund that money without a
2 claim for refund. In this case, we determined that the
3 tax is this amount. So if they made an overpayment of
4 our -- the taxes that's determined, then they need to file
5 a claim to get that overpayment back.

6 JUDGE TURNER: So if the ultimate determination
7 is that the taxpayer has paid in more than they owed, then
8 you have the existing authority to refund that amount to
9 them in absence of a claim for refund? I'm trying to
10 understand the difference between when you are demanding a
11 claim for refund be filed and when not. Because you've
12 issued refunds already on this account, but there seems to
13 be a suggestion that a claim for refund be filed if the
14 consequence of this process results in taxpayer having
15 paid more than they actually owe.

16 MR. PARKER: I believe because it was an amount
17 that was either self-assessed or determined by the
18 Department at the time, the claim for refund needs to be
19 filed in order to refund the amount that was assessed.

20 JUDGE TURNER: Okay.

21 JUDGE BROWN: All right. Ms. Erben, you had
22 something that you wanted to add?

23 MS. ERBEN: A little bit of clarification on
24 that, I'm not quite following the back and forth here.
25 But I do have a letter from the State in literature where

1 they were correcting a district tax error, and that was
2 why one of the refunds was submitted.

3 JUDGE BROWN: All right. I think we can move on
4 at this point. Because I will note we're just dealing
5 with preliminary matters, and we have not started hearing
6 the parties' presentations yet. I just wanted to clear
7 that up before we began.

8 All right. I just want to briefly cover we
9 discussed at the prehearing conference that CDTFA is not
10 calling any witnesses, and Appellant is calling one
11 witness, and that is Ms. Erben.

12 And before we begin with your presentation, I am
13 going to swear you in as a witness, but we can hold on for
14 just a minute.

15 I'm going to briefly go over the time allocations
16 that we're looking at. Appellant requested up to
17 45 minutes, and that's fine. Once we hear Appellant's
18 presentation, we will -- may have questions for Ms. Erben
19 as a witness. CDTFA as the opposing party can ask
20 questions of the witness. The panel members may have
21 questions. Once we're done with questions for Appellant,
22 then we will hear CDTFA's presentation, which CDTFA has
23 estimated it will take about 30 minutes.

24 Is that still correct?

25 MR. SAMARAWICKREMA: Yes, Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE BROWN: Thank you.

All right. And then the panel may have questions for CDTFA or may have additional questions for Appellant. And then once both parties have completed those presentations, then Appellant will have time for a rebuttal of up to 10 minutes. I did not schedule a rebuttal from CDTFA, but if CDTFA has anything to add at the end, I'll allow time for that as well.

If at some point anyone needs a break, we could take a break of, like, 10 minutes or so, but we're not going to break for lunch. We're just going to go straight through.

MS. ERBEN: The stenographer may need a break.

JUDGE BROWN: The stenographer is certainly welcome to request a break at any time.

Okay. All right. Does anyone have any questions or other things to raise that I did not cover before I swear in Ms. Erben as a witness, and we hear Appellant's presentation?

Okay. If no one has anything further right now, then I'll say, Ms. Erben, I will swear you in as a witness, if you can raise your right hand.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K. ERBEN,

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

JUDGE BROWN: Thank you. All right. You can begin, and you have 45 minutes.

PRESENTATION

MS. ERBEN: Good morning, OTA and CDTFA.

Thank you for the opportunity to resolve this audit in person. I drove four hours to be here. I have moved after I sold the restaurant to a remote area of Trinity County. And because I don't trust my internet signal and computer not to freeze, I prefer to be here in person. I waited eight years to resolve this. I am certainly -- I've never been to Sacramento, and I'm not used to these big buildings and air conditioning and people in suits. Where I live bras are optional. So thank you again for this opportunity.

I'm going to tell you why the audit is wrong and no longer viable. One, the returns have been amended and are in the CDTFA system, and there is no difference between the recorded and reported values.

Two, all the taxes were paid in a timely manner;

1 first, second, and return payments for each quarter of
2 each year.

3 Three, amending the returns had no effect on the
4 taxes already paid. The taxes originally paid were
5 correct to begin with. Amending the returns just
6 corrected bookkeeper mistakes and misunderstandings for
7 corporate identity.

8 Four, the CDTFA audit department has used sales
9 on our federal returns that include sales of lodging as we
10 ran a hotel. With exception of two crossover situations
11 including in the use tax returns, any comparison of the
12 federal returns to the CDTFA returns will result in false
13 markups and cost of goods sold. The hotel lodging taxes,
14 the TOT, transient occupancy tax or simply the bed tax,
15 were collected at 12 percent and remitted to the county
16 and are not under the sales and use tax accounts.

17 Number five, the audit department has
18 manufactured a shelf test to support their assumption and
19 has made errors, including transcription errors, over
20 estimations of purchases and sales, has assigned taxes to
21 sales that did not exist, has unexplained error
22 percentages, and has used information from invoices beyond
23 the parameters of the audit period.

24 JUDGE BROWN: Ms. Erben, I'm actually going to
25 say you can go a little slower because again, our

1 stenographer needs to keep up.

2 MS. ERBEN: The audit department has, quote,
3 "attached" but does not, quote, "accept," the corrected
4 returns that would nullify the audit, which is against tax
5 code.

6 Seven, the audit department has used alternative
7 methods to calculate sales when 100 percent of my
8 invoices, sales receipts, computer reports were provided
9 again, against tax code.

10 Eight, audit department has ignored or denied my
11 proof on many occasions, saying that it would discredit
12 their numbers. Again, against tax code. They cannot
13 accept my documents as proof as it cancels their
14 arguments. Exhibit A, quote, "assignment activity
15 history," page 34, last entry dated 16 August 2023 from
16 Joanne Barry. The auditor, quote, "Sent email. I can't
17 recommend adjustments to the amounts per the D&R because
18 adjustments would put an alcohol markup below an
19 acceptable amount and below shelf test calculations," end
20 quote.

21 Number nine, the lien was paid to sell the
22 restaurant in July of 2023, but errors were made by the
23 audit department in not recognizing payment, holding up
24 the escrow with a secret hold, and sending a duplicate
25 invoice on an already paid tax bill on equipment. The

1 result is that I feel I am due to a full refund of the
2 lien payment plus interest as stated in Exhibit A,
3 page 100. And I'm going to skip that right now because
4 they've already conceded that we can do a refund.

5 Let's see. I'm going to show you how the CDTFA
6 created a false assumption and then manufactured proof of
7 their false assumption. Six major points to discuss.
8 Point number one the returns are corrected. There were
9 reporting errors by the bookkeeper on the original
10 quarterly returns that have been corrected and entered
11 into the CDTFA tax system; again, showing no taxes owed.
12 This is shown by Document No. 1. It's a chart that I
13 compiled showing taxes due versus tax payments derived
14 directly from the tax payments page on the CDTFA website,
15 Document 2.

16 The amended returns were accepted by the CDTFA
17 tax Department. Why can they not be accepted by the audit
18 department? The audit department are not looking at these
19 corrections as in Document No. 17, email from auditor
20 Joanne Barry, August 12th of 2023 on the use tax returns.
21 The email acknowledges the receipt of the returns, and
22 Ms. Barry relies and I, quote, "Your amended returns were
23 attached to the audit file but not accepted as filed
24 because there is an ongoing appeals case for those
25 periods. Any adjustments to the liabilities must go

1 through the appeals process," end quote.

2 Point number two, auditor's admission of the
3 lodging business in comparison of the federal to the
4 CDTFAs sales and use tax returns. Only in one portion of
5 the audit documents does the auditor Jamie Hata mention
6 that we operated a hotel. In most correspondence from the
7 audit group, they list Gallagher's Irish Pub, Inc., as
8 quote, "Business, Restaurants, and Full Bar," stated in
9 Exhibit B, page 102, February 26, 2019, prepared by Brian
10 Hock, H-o-c-k. Overlooked is that for three years we ran
11 a 34-room Victorian hotel that had lodging room sales
12 taxed at the 12 percent bed tax remitted to the county.
13 These lodging sales are not reported to the CDTFAs on the
14 quarterly returns with two procedural exceptions, as they
15 are not subject to the sales and use tax but the
16 12 percent bed tax.

17 They were reported on the California State
18 returns and federal income returns. Therefore, any
19 comparison of food and beverage sales on the POS, which is
20 our point of sales or computer reports, any comparison
21 between the POS reports and the quarterly sales tax
22 returns to the State or federal returns will yield false
23 data if the hotel lodgings are not backed out. There's no
24 way to compare apples to apples if one set of data
25 contains hotel lodgings and food and beverage, and the

1 other does not.

2 All tests performed by the CDTFA audit department
3 are wrong being due to lodging income being included in
4 the federal returns. The audit department has created a
5 shelf test overestimating our sales and purchases of
6 alcohol and taxed us on sales that we did not make on
7 alcohol that we did not purchase. They have not shown one
8 document or shred of evidence that any additional
9 purchases or sales were made. They have not isolated a
10 single invoice that is not already in my files. The
11 burden of proof is on the audit team, as I cannot prove
12 the negative nor produce invoices for sales that did not
13 happen or purchases that did not occur.

14 Exhibit Document 6, I prepared an Excel
15 spreadsheet of all of my alcohol purchases from all of my
16 invoices showing purchases of \$239,027, not the \$272,408
17 as the state estimates. That's an error of \$33,381. It
18 equates to a 27 percent error on their behalf.
19 Furthermore, if you just take that overage of the \$33,000
20 and multiple it back by an average drink cost of \$7, you
21 come right back to the \$234,000 bench mark that they think
22 is a difference in my sales. This overstatement of
23 purchases exactly mimics the assigned sales the State has
24 applied.

25 The State has not explained how the percentage of

1 alcohol errors are applied. I have asked repeatedly. I
2 was told to ignore the test on more than one occasion, and
3 the test is a backup and would not be used. In the first
4 phone hearing with Judge Dominic Jansen in January of
5 2023, he also suggested the alcohol test should be ignored
6 and wouldn't be used. It is being used, and my question
7 remains. How can you apply random errors to my finite
8 daily sales? The errors and assigned sales throw my
9 proportion of 20 percent alcohol sales and 80 percent food
10 sales month-to-month, year-to-year completely out the
11 window.

12 When asked why there are no food errors, they
13 replied it is too hard to calculate both from auditors
14 Jamie Hata and Joanne Barry. When I asked what
15 constitutes an error, I received no reply. Are they
16 honestly suggesting that we did not ring in \$234,000 worth
17 of alcohol drinks? And how would that apply to a
18 customer? Do they think we're giving away free alcohol?
19 The shelf test, which has many errors in it from
20 transcription to incorrect fourth quarter sales values, to
21 using the wrong tax rate on one quarter, to using markups
22 derived from the federal returns that contain lodging
23 sales, to using invoices out of the date range does not
24 make the test accurate.

25 As the liability -- assigned liability keeps

1 changing over time, originally \$393,000 in the first test
2 with a one-ounce pour, reduced to \$234,000 when a -- with
3 a one-and-a-half ounce pour. However, I did apply in 2018
4 that a majority of our cocktails have a two-ounce pour.
5 No corrections made for that. The current value is at
6 \$215,000 with credits given for a few gift certificate
7 sales and half of the overstatement of the fourth quarter
8 Scotia sales. The error percentages keep changing. It
9 seems to me that if there are physically existed errors,
10 the errors would persist in my sales and not fluctuate.

11 The assigned errors are not based on my sales or
12 receipts. It's just an algorithm created by the State
13 with my sales on one side and the proposed liability on
14 the other. Then they've asked computer to manufacture
15 errors so that they get this end result. They could
16 easily change the errors within the program by shorting
17 quarter one, figuring out what the shortage is and
18 applying a higher percentage to a later quarter. The
19 errors are not directly tied to sales. They're
20 manufactured and assigned. Also, the errors have gone as
21 high as 75 percent on any particular quarter from test
22 one, which I think is ridiculous.

23 Another interesting fact is that in the
24 literature and in the test, they state that the actual
25 difference between my reported and recorded sales is

1 \$178,000, but they keep using a figure of \$234,000, which
2 has now been reduced to \$215,000. I would like to know
3 what is the correct figures; the actual sales versus
4 reported \$177,000 or the \$234,000 that they created by
5 overestimating my alcohol sales.

6 Little brief history of Gallagher's and
7 Gallagher's Irish Pub to help you understand how the
8 errors occurred. Reed and Kathy Paden, P-a-d-e-n, created
9 Gallagher's in Old Town Eureka in January of 2005, with
10 their two minor children, Wes and Valerie. I was hired on
11 as a server from day one and remained until I sold the
12 restaurant in 2023. When Reed turned in 65 and retired in
13 January of 2014, he turned the restaurant over to his son
14 Wes, 21-years old, 66 percent equity as president and
15 myself 33 percent equity as secretary. In February of
16 2014, one month later, we acquired a three-year lease on
17 the Scotia Inn, a 34 gorgeous historic hotel room, a hotel
18 in the town of Scotia, 30 miles below our Eureka
19 restaurant, population 1,000.

20 Due to the difference in the service and quality
21 of operations -- a quality of service and operations, I
22 did not step foot in the Scotia location for an entire
23 year from January 1st, 2016, until second week of
24 January 2017 when I went down to collect our files in
25 inventory. The family had left weeks previous. They

1 actually left a cat in the lobby, and I still have the cat
2 to this day.

3 Wes Paden as president is unable and unwilling to
4 assist with the audit, even though he was a sole operator
5 of Scotia and president of the corporation. I've had no
6 contact with him for years and have had to handle the
7 entire audit by myself. When we incorporated, we kept the
8 same bookkeeper, Lauren Kinderknecht,
9 K-i-n-d-e-r-k-n-e-c-h-t, and CPA Terry Pontes,
10 P-o-n-t-e-s. Lauren managed our entire books, payroll
11 taxes, and reports. Terry prepared the federal and state
12 returns.

13 Number three, the bookkeeper errors. The
14 quarterly tax returns have been amended twice. When Reed
15 Paden retired, and Wes and I formed Gallagher's Irish Pub,
16 Inc., in 2014, Reed did not close his books or accounts
17 with any entity. The bookkeeper misunderstood the
18 corporate structure and thought that the Scotia Inn
19 component was solely Wes and I's venture, and that the
20 Eureka Gallagher's was still under Reed's ownership. Over
21 the course of the next four years, the bookkeeper
22 cross-referenced all accounts with the CDTF, the IRS, the
23 State of California, the EDD, and the unemployment
24 Department, among others. Also keep in mind that the
25 Scotia location is in a different tax district, and we

1 collect the bed taxes paid to the county.

2 In 2017 June and July, I was alerted by Julie
3 Spanay of the CDTFA of problems, and she helped me correct
4 the returns to show that the sales were under Gallagher's
5 Irish Pub only and assisted in closing Reed's accounts
6 with lots of advice and direction. And I truly thank her.
7 Also keep in mind that this was before online filing and
8 all calculations are hand-done by the bookkeeper and
9 hand-mailed. And to the best of his ability, the returns
10 had to be amended by hand, as they do not exist in edible
11 fashion in the CDTFA computer system. Ms. Spanay alerted
12 me that new computers were coming into the CDTFA with the
13 online filing, but she was not even taught the computer
14 code yet and was in training. So we continued with the
15 hand corrections, not knowing about the sales conflicts.
16 This oversight wasn't discovered until 2023 after proving
17 that there were no alcohol errors. The first corrections
18 were to ownership. The second, amending of the returns
19 included the corrections for the underreporting of the
20 nontaxable sales.

21 Point four, explaining the nontaxables. We had
22 several categories of nontaxables; deposits for weddings
23 and events. We have now resolved those issues, and
24 everyone agrees the deposits are not taxable. However,
25 once they were entered into the POS system and then later

1 refunded, you cannot back them out of the POS system. So
2 a note was given to the bookkeeper that that deposit has
3 been refunded.

4 The second category of nontaxables are the gift
5 certificates purchased. Again, no sale or service has
6 been exchanged therefore, no tax. I was asked by the
7 CDTEFA to give receipts of samples of gift certificates
8 sold. The auditor then performed another test to
9 calculate the gift certificate sales for the entire audit
10 period based on some of the samples I submitted. This is
11 nowhere near accurate. They selected 15 samples over a
12 narrow 12-day period out of 1,450 days of operation.
13 That's a very poor test. We had one particular customer,
14 an insurance agent named Paul Nicholas who has now passed
15 away. And he would support an entire restaurant for a
16 year buying all of his gift certificates for them, for his
17 customers for every event; birthdays, retirements,
18 everything, Christmas. Some days he would come in and
19 \$500 in a day. My point being, the gift certificate
20 credit is too low.

21 Now, the third and most important nontaxable
22 category we used was for personal loans or capital
23 infusions to the corporations. We were frequently short
24 of funds for payroll and taxes. And the quickest and most
25 economical way to get funds into the bank is to borrow

1 from our own credit cards, and we would document it
2 through the computer POS system. It's very common for
3 operators to supply their businesses with loans.

4 Restaurants have a very slim profit margin, if any.

5 And I watched recent OTA hearings where many
6 businesses have done as I have, documenting the loans
7 through the computer system. The audit department saying
8 that it is not plausible and it would throw off their
9 markup, does not cancel out the fact that the loans
10 occurred and were rung through our POS system with
11 receipts as proof. In Exhibit B, page 194, under
12 Petitioner's Contentions Number Four, quote, "The
13 petitioner contends business loans may have been included
14 with POS sales," end quote. False. I contend they are in
15 the POS system, and I have furnished receipts. Exhibit E,
16 254 through 263 are examples.

17 Each use of a credit card loan was wrong as
18 either a nontaxable, and on one or two occasions as
19 retail, where we accidentally taxed our own loan. Yes, I
20 did this. Exhibit E, page 259, shows a receipt where I
21 totaled loans in one day of \$5,500; most likely before a
22 payday or a tax payment was due. And rang it under retail
23 instead of nontaxable and charged myself \$492 in tax. I
24 asked the bookkeeper to back that out of the tax sales as
25 it was a loan. It cannot be corrected in the POS system.

1 Each credit card loan was rung separately, and
2 each receipt clearly states "Loan from Kelly with Kelly
3 Erben," with the credit card number, the date, et cetera;
4 Exhibit E, again, 254 through 263. I always print several
5 copies of the receipts and send one to the bookkeeper to
6 back the loans out of the sales as it was not a sale, but
7 a loan of capital infusion. He did so, and included them
8 as capital infusions and owner investments in our balance
9 sheets.

10 Exhibit A, called the Assignment Activity
11 History, page 34, dated August 16th, 2023, from Joanne
12 Barry, quote, "Gallagher's balance sheets showing owner
13 equity infusions," end quote; also, Exhibit J, page 448 to
14 452, Balance Sheets From Bookkeeper. At one point,
15 Ms. Barry stated that my name was not on the receipt and
16 cannot be accepted when it is clearly visible. I produced
17 credit card statements matching credit card numbers on the
18 receipts. The audit findings and determination letters
19 stating that it is not possible to run loans through the
20 POS is wrong. In fact, it was accomplished very easily
21 with a swipe of a credit card. My receipts are de facto
22 proof.

23 The audit department states that they cannot
24 accept my loans as nontaxables, as doing so would put
25 their markups beyond acceptable values. Exhibit E,

1 Decision, page 252, quote, "Based on the Department's
2 markup analysis, the capital contributions could not have
3 been included in the POS data used for the audit because
4 it would result in an unrealistically low markup. If
5 capital contributions were removed from the POS data
6 without verifying that they are included in the POS data,
7 the markup would even be lower. Based on the unreasonably
8 low markup, we find that it's unlikely that the capital
9 contributions were included in the POS data used for the
10 audit. If, however, they were included in the POS data,
11 there would likely be other sales not recorded to account
12 for the current make up. Accordingly, we find no basis
13 for the adjustment," end quote.

14 So are they saying my receipts are fake, or are
15 they saying we didn't ring in other sales? And how does
16 that relate to the customer? I'm going to give you some
17 alcohol and food, but I'm not going to bring you a receipt
18 because I have to hide sales from the tax people. And if
19 they're paying with a credit card, I have to furnish them
20 a receipt with food and beverage on it. I did ring my
21 loans -- ring in my loans through the POS system, and
22 their markups are wrong because they used the wrong data
23 to calculate them. My proof of loans cannot be discounted
24 by the audit department having unhappy numbers.

25 The CDTFA does not set prices or markups.

1 Competition and market set the price. Therefore, the
2 markups, which are cost of cost of goods sold divided by
3 the price, are arbitrary, not fixed for each item and can
4 fluctuate daily with the price of cost of goods sold. We
5 were one block away from a competing restaurant, and our
6 prices were the same to the penny. We were across the
7 street from another restaurant and diagonal from a bar,
8 and our beer and liquor prices were the same.

9 Point number four, hotel rooms; we ran a hotel.
10 Information that is missing on every audit document. As
11 they state, we are a restaurant and bar. On occasion,
12 hotel rooms were rung on the Harbortouch restaurant POS
13 system. This occurred for two reasons. First, the hotel
14 lobby lodging computer predated our lease, and we used
15 their program with their booking installed. The credit
16 card processing company, called Eureka Payments, had the
17 older model processing machine where you key in every
18 little component. The connection was also phone dial up.

19 At that time, our Eureka Payments terminal did
20 not honor American Express. If a customer came in to rent
21 a hotel room and had nothing but American Express, we did
22 not turn them away. We added in the 12 percent bed tax to
23 the room sale and took the credit card, with the guest's
24 permission, over to the restaurant computer and rang the
25 sale under nontaxable, because we had already included the

1 tax. We saved a copy of the receipt and alerted the
2 bookkeeper to the crossover. This is not illegal. We
3 provided a service and captured a sale and collected a
4 tax.

5 The second reason we used the restaurant POS
6 system on occasion was during storms when the phone line
7 would go out to the Eureka Payments processor. However,
8 the restaurant system would still be a line -- live. Or,
9 if offline, it could capture the payment and store it
10 until the full power returned or the lines were open. We
11 were in the redwoods and severe winter storms are common.
12 In addition and noted in documents with CDTFA, Scotia --
13 the town of Scotia was converting to PG&E, and
14 construction often interfered with power issues. There's
15 no law or code that requires us to use a certain computer
16 or software. We did the best we could to keep the records
17 straight and still accommodate the customer. The
18 bookkeeper was notified of any crossover.

19 I find that several times in communication with
20 CDTFA that room sales, as in hotel lodging rooms, were
21 confused with event room rentals which were taxed in our
22 system. If we did not ring the occasional hotels in the
23 restaurant computer under nontaxable, the computer would
24 be adding a use tax on top of the 12 percent bed tax, and
25 that would be overcharging the customer. In hindsight, we

1 should have had the POS computer company create a hotel
2 room sales in our restaurant POS system, but we just never
3 considered it.

4 Point five, errors in the audit and
5 recordkeeping. Now, the audit began at 8:00 a.m. on
6 August 19th, 2017, with Jamie Hata, H-a-t-a. It lasted
7 eight hours and was performed in front of customers, as we
8 needed access to the POS system, and I did not have an
9 office. Ten boxes of receipts and files were stacked by
10 the front door, first table where we were performing the
11 audit, and in the hallway to the restrooms.

12 Exhibit document 10 through 14; in many sections
13 of the correspondence and decisions and findings from the
14 CDTFA, it states I only supplied alcohol invoices for two
15 months. That is untrue. We supplied every single invoice
16 with backup files from the vendors and the original audit
17 shelf test list invoices from every quarter. I want to
18 state again that we have given every receipt, invoice, and
19 return. The only item missing from the audit, at that
20 time, was the unfinished 2016 federal returns, which again
21 includes lodging, so cannot be used to compare to the
22 CDTFA's returns unless the lodging is backed out.

23 So the audit lasted eight hours, and only after
24 many hours in did I have question as to why the auditor
25 Jamie Hata was only asking questions about alcohol. Why

1 was she not asking questions about food sales, which were
2 80 percent of our total sales? She also asked questions,
3 such as what are your drink prices? And I felt that odd
4 because you don't go into a store and ask what are your
5 food prices? I feel -- I feel that before the in-house
6 audit exam began, the audit department was predetermined
7 to focus only on alcohol. This was not an ex --
8 exploratory discovery, but it was a mission by the audit
9 department.

10 Ms. Hata had no experience with bar or
11 restaurant, which is fine. I took her behind the bar and
12 I explained to her the different glassware, the different
13 pours, the different makeup of drinks and cocktails;
14 details that would greatly impact testing calculations. I
15 do not believe the complex nature of cocktail variety.
16 Low versus high-end pours are accurately calculated or
17 weighted in the State's test. Again, Ms. Hata had full
18 access to every single invoice and receipt and every
19 single daily sale and physical form, and on the computer,
20 and in my journals. Ms. Hata verified I triple documented
21 by receipts. Again, Exhibit document 10 through 14,
22 photos of the daily receipts. And then sent in an
23 envelope, documented on the in front of envelope, bundled,
24 and boxed; also recorded into a journal.

25 Ms. Hata explained that she was sampling invoices

1 as she copied them, and that they would estimate my
2 purchases. I asked why would they do that? Why don't you
3 take all my invoices to prove my purchases? And she said
4 that it would take too long. Exhibit A, page 38,
5 11/7/2017 on the second entry it says quote, "Kelly also
6 said she showed me the 10 boxes of receipts and asked if I
7 needed to see them again. I emailed Kelly back saying I
8 did go through the box of receipts. However, it is too
9 time consuming to schedule every invoice," end quote. I
10 had every single receipt invoice. So it's not fair that
11 the State disregards them and creates what they think my
12 sales should be. My sales are what my sales are in the
13 POS reports.

14 I created a spreadsheet, as the State did not
15 have time to, of my alcohol invoices. And I inadvertently
16 sent Ms. Barry and incomplete copy missing one row. She
17 noticed that. And in Exhibit A, Assignment Activity
18 History, "Ms. Erben sent email that all invoices were not
19 accounted for on her spreadsheet and she will redo." I
20 sent her a corrected copy immediately. She also says that
21 her auditor's file proved that my files were missing, yet
22 they didn't have time to look at all my invoices. So how
23 do they know which ones are missing? They have never
24 provided any proof of a single invoice that was missing.
25 The State has no tolerance for minor errors, yet they make

1 many. As I also had the backup records from the vendors,
2 which also took two to acquire, as they replaced their
3 computers and there was a language incompatibility. And
4 now one of those major companies is leaving the state.

5 Document B, page 104, this is called Staff's
6 Position, quote, "Revenue & Taxation Code 6481, the
7 Board" -- "if not," quote, "The Board, if not satisfied
8 with the return or returns filed by a taxpayer, may
9 compute and determine the amount required to be paid upon
10 the basis of the facts contained in the return or returns
11 or upon the basis of information within its possession or
12 that may come into its possession. Where the Board
13 establishes a deficiency, the burden is upon the taxpayer
14 to explain any disparity between the books and records and
15 the results in the Board's audit. Riley B's, Inc., versus
16 State Board of Equalization 1976."

17 Well, the opposite is true. I have furnished
18 records. They cannot say that I did not. The CDTFA's
19 discounting and ignoring my records and attaching, but not
20 accepting them, is not an establishment of deficiency on
21 my part. I have proved with physical documentation every
22 single invoice, daily receipt, sales report, and returns
23 to show that no taxes are due. The State should not
24 determine or assign any sales, other than the true sales
25 documented in the POS records invoices. There are no

1 missing documents, nor missing sales. My record should
2 stand as facts.

3 Going onto document Exhibit B, pages 102
4 through 105, quote -- or under the Business Tax and Fee
5 Division Summary Analysis Petition for Redetermination,
6 February 26, 2019, they state my business as a restaurant
7 with full bar, no entry for hotel lodgings. The audit
8 department says a difference between the recorded and
9 reported is \$234,000 as stated on Exhibit 12B in the shelf
10 test, but they also say the difference is \$1,700 --
11 \$1,700 -- let me say this again -- \$178,000 as stated on
12 CDTFA Exhibit B, pages 228 on 12B. So in 12B, they state
13 it's \$234. And on 12B-2, they say the difference between
14 my sales reported and recorded is \$178,000. Now,
15 Figure 12B still contains a fourth quarter Scotia sales
16 error of \$32,000.

17 So which is it? And why hasn't the credit for
18 the overstatement of the fourth quarter Scotia sales been
19 fully given as a bi-weekly sales reports were provided to
20 prove that the Scotia total sales for fourth quarter 2016
21 were \$33,000 and not \$66,000, which is a duplicate of our
22 previous quarter. Either way, none of those figures
23 matters as the reports were corrected, and there is a zero
24 difference between reported and recorded. The State never
25 ran the test again with the corrected reports. If they

1 did, there would be no difference. So any credits they
2 apply or refunds they give me are irrelevant because
3 there's no difference. There are no credits needed at
4 this point.

5 Exhibit B, page 103, General Background. Again,
6 hotel lodging is not mentioned. In the list of provided
7 books and records, they say I provided invoices 7115 to
8 83115 for alcohol and 7117 to 73117. This is wrong. I
9 provided every alcohol invoice, plus backup registries
10 from the alcohol companies. The auditor used invoices
11 outside the audit period to compute markups; invoices from
12 7117 to 73117 are beyond the scope of the audit, which
13 ends in first quarter 2017; again inflating numbers. I've
14 supplied every possible record. It has been documented by
15 the auditor Jamie Hata that I triple document. I had the
16 daily PS sales report in the POS system. I took the
17 physical -- oh, I already covered that. Sorry.

18 I have supplied loan receipts, bank statements,
19 credit card statements to prove personal loans. I have
20 showed gratuities are taxed. Alcohol and food are taxed.
21 Room fees are taxed. And hotel lodging sales are taxed at
22 the 12 percent rate and paid to the county. I have
23 provided amended returns showing no difference in sales
24 between POS and quarterly returns. Since there is no
25 longer a difference between the reported and recorded, and

1 I have all my alcohol purchase receipts, I demand my that
2 my actual invoices be used as the true amount and not the
3 auditor's estimation. Physical receipts prove the auditor
4 wrong. Purchases were overstated by \$33,000.

5 In conclusion, I contend that my documents are
6 100 percent correct from the POS statements to the loan
7 receipts to the food and alcohol purchases. The State has
8 not compared apples to apples. The State has
9 overestimated alcohol purchases, has made errors in
10 calculations of markups, cost of goods sold averages, used
11 invoices outside of the audit period, and assigned sales
12 that did not happen, and completely ignored proven
13 documentation that they have in their exhibit. They have
14 never explained how their error markups occur in real
15 life. They can't explain why their markups would throw
16 out my consistent sales, 20 percent alcohol, 80 percent
17 food. And yet, they say they cannot accept our true
18 sales, our true invoices, reports, or markups as it puts
19 their markups in an unacceptable range.

20 The audit department has stalled -- stated that
21 they cannot accept my appeals returns, nor my documents,
22 as they prove that their tests and markups are low. I ask
23 that we stick with the truth and the facts and use my
24 physical receipts, invoices, and returns regardless of how
25 it makes the State's test results appear.

1 Now, many more difficulties arose out of this
2 audit. When I was selling the restaurant, closing was not
3 proceeding. Escrow was to be finished by July 31st or
4 earlier, as it started in early June and was to be 30
5 days; well before my liquor license was expiring. Due to
6 the problems with auditor Joanne Barry in the audit
7 department, closing was delayed until August 17th, and I
8 had to buy a new liquor license for \$1,000, as mine was
9 expiring on July 31st.

10 JUDGE BROWN: Ms. Erben, can I just generally --
11 can I interrupt for a moment and ask -- you just have a
12 minute left -- are you nearing the end of your
13 presentation?

14 MS. ERBEN: I am, yes.

15 JUDGE BROWN: Okay. I'll give you another couple
16 of minutes. Go ahead.

17 MS. ERBEN: Okay. Basically, escrow was not
18 closing, and we found out that Ms. Barry had put a secret
19 hold on the audit but not even told the escrow Department.
20 The lien had been paid the previous month, and she was not
21 aware for -- of it. She even blamed me for paying it to
22 the wrong account, even though it says on the invoice to
23 pay it to the audit department.

24 In conclusion, this -- oh, I was also double
25 billed for the tax sales on the tax equipment because,

1 again, the audit department did not realize that the tax
2 bill was already paid through the escrow department. I
3 was refunded the double payment.

4 In conclusion, the CDTFA audit is unwarranted,
5 and there's no longer any discrepancy between the POS
6 reports and the quarterly returns. The shelf test has
7 been proven inaccurate. The State has not relied on my
8 vast inventory of records and record keeping. They've
9 made transcription errors, duplicating POS returns, errors
10 in the scope of the business, neglecting lodging sales,
11 comparing reports with unequal categories, errors in
12 testing use by invoices beyond the scope of the audit,
13 ignoring evidence and volume of documents, suggesting that
14 I did not supply records, invalidating records, as it
15 makes their testing unreasonable, not giving full credits
16 for gift certificates, deposits, personal loans, and hotel
17 lodgings, and suggesting loans that are not in the POS
18 sales when they have been proven. They have not given one
19 document that would show extra sales or purchases. They
20 have not explained shelf tests. They have not explained
21 how errors are occurred.

22 Now, from watching the previous OTA hearings, I
23 know the CDTFA will now completely ignore all the evidence
24 I have provided and everything I have said, and they will
25 iterate their outdated reports and decisions, which are

1 full of errors as I have documented. They will just
2 rubber stamp the work of the auditor and proclaim it as
3 good, even though I have proven them wrong. They have no
4 evidence or discussion to address any of the issues I have
5 just explained.

6 I ask the OTA to be aware that I have well proved
7 my position, and the State is just now going to
8 regurgitate falsely derived figures. The State has made
9 it very difficult to do business in California, but I'm
10 very proud of myself for keeping all my records, and would
11 appreciate if the State would agree with me that my
12 records prove my case. Our taxes were paid correctly.
13 There are no missing sales, and that I am due a refund of
14 the lien paid in July of 2023 of \$25,625, plus interest
15 from that day forward.

16 I have brought with me 61 un-cashed paychecks
17 from my ownership at Gallagher's Irish Pub.

18 JUDGE BROWN: Ms. Erben, I'm going to --

19 MS. ERBEN: And I really appreciate a refund.
20 Thank you.

21 JUDGE BROWN: Okay. As I said, we are out of
22 time. And I will remind you that we are only going to
23 look at the documents that have been admitted into
24 evidence.

25 MS. ERBEN: Correct.

1 JUDGE BROWN: Okay. Thank you very much.

2 Now, I'm going to first ask if CDTFa has any
3 questions for Ms. Erben as a witness.

4 MR. SAMARAWICKREMA: No, Judge.

5 JUDGE BROWN: Thank you.

6 Next, I'm go to turn to my co-panelists and ask
7 if they have any questions for Appellant at this time.

8 Judge Turner, do you want to ask questions at
9 this time?

10 JUDGE TURNER: Not at this time, no. Thank you.

11 JUDGE BROWN: Okay. Hearing Officer Wilson, do
12 you want to ask questions at this time?

13 HEARING OFFICER WILSON: No. Thank you.

14 JUDGE BROWN: Okay. I think I'll hold my
15 questions as well until we hear both parties'
16 presentations. All right. So we can move on to CDTFa's
17 presentation, unless anyone wants to request a break.

18 Okay. I'll say, CDTFa, if you are ready to go
19 forward, you will have 30 minutes.

20 MR. SAMARAWICKREMA: Thank you, Judge.

21

22 PRESENTATION

23 MR. SAMARAWICKREMA: Appellant is a California
24 corporation that operated two restaurants with a full
25 service bar and provided catering sales located in hotels

1 in Eureka and Scotia, California. Appellant commenced
2 business operations on January 8, 2014, and closed its
3 Scotia location on January 31st, 2017, and sold its Eureka
4 location August 31, 2023. The Department audited
5 Appellant's business for periods April 1st, 2014, through
6 March 31, 2017. During the audit period, Appellant
7 reported total sales of around \$3.34 million and claimed
8 deductions for exempt food sales of around \$41,000,
9 resulting in reported taxable sale of around \$3.3 million;
10 and this is shown on Exhibit A, pages 37 and 38.

11 During our presentation, we will explain why the
12 Department rejected Appellant's reported taxable sales and
13 how the Department determined Appellant's unreported
14 taxable sales for the audit period. During the audit,
15 Appellant informed that it made sales through its POS
16 system and generated POS reports to prepare its sales and
17 use tax returns. Therefore, the Department analyzed
18 Appellant's available records and completed two
19 verification methods to verify the accuracy of Appellant's
20 reported taxable sales.

21 First, the Department analyzed Appellant's
22 federal income tax return for years 2014 and 2015 and
23 found that Appellant did not report all its sales listed
24 in the federal income tax returns. And when comparing
25 reported sales to cost of goods sold, the Department

1 calculated low overall reported book markup of around 118
2 percent or high overall reported food and liquor cost
3 percentage of around 46 percent.

4 Second, the Department reconciled Appellant's
5 sales reflected on its POS reports with reported total
6 sale and found that Appellant did not report all of its
7 sales listed on POS reports; and this information is shown
8 on Exhibit A, pages 70, 77, and 78. The Department also
9 determined that Appellant failed to apply the correct
10 sales tax rates to transactions at its Scotia location;
11 and this is shown on Exhibit A, page 68, and Exhibit G,
12 pages 323 to 340. Appellant was unable to explain the
13 reasons for federal income tax returns sales differences,
14 POS report sales differences, low reported book markups,
15 or high reported food and liquor cost percentages, and
16 application of inaccurate sales tax rates to transactions
17 at its Scotia location. Therefore, the Department used
18 Appellant's available POS reports, bank statements, and
19 available sales and purchase invoices to determine audited
20 taxable sales for the audit period.

21 Appellant provided its POS reports for both
22 locations, and those are shown on Exhibit G. The
23 Department analyzed available POS reports and noted sales
24 percentage, sales categories of food, beer, wine, liquor,
25 beverages, retail, service fees, taxable -- nontaxable

1 charges for banquet room fees, and mandatory gratuities.
2 During the audit field work, Appellant stated that claimed
3 nontaxable food sales were banquet room rental fees and
4 were related to food catering events. The Department
5 determined that charges by restaurants, hotels, and
6 similar establishments for the use of premises where
7 meals, food, or drinks are served are taxable, whether
8 charged separately or not.

9 Appellant also claim that it sold gift
10 certificates, and those sales are included in sales
11 reflected in POS reports. To support this, Appellant
12 provided its gift certificate sales for the period fourth
13 quarter 2015 through second quarter 2016. Based on those
14 gift certificate sales information, the Department
15 calculated gift certificate sales for the audit period.
16 These calculations are shown on Exhibit A, pages 64 and
17 67.

18 During the appeal conference, Appellant disputed
19 the sales figures for fourth quarter 2016 at the Scotia
20 location. Therefore, the Department relied on Appellant's
21 bank statements to determine the sales amount for that
22 period for that location; and this calculation is shown on
23 Exhibit A, page 69. Based on these analyses, the
24 Department calculated the recorded taxable sale of around
25 \$2.6 million for Eureka location, around \$935,000 for the

1 Scotia location, and gift certificate sales of around
2 \$3,100, resulting total recorded taxable sale of around
3 \$3.5 million for the audit period; and this is shown on
4 Exhibit A, page 62.

5 Recorded taxable sales were compared with the
6 reported taxable sale of around \$3.3 million to determine
7 unreported taxable sale of around \$215,000 for the audit
8 period; and this is shown on Exhibit A, page 62. To
9 verify the reasonableness of these recorded sales
10 reflected on Appellant's POS reports, the Department
11 analyzed Appellant's alcohol purchases, alcohol product
12 mix, and pricing policies. Using Appellant's alcohol
13 purchase information, the Department calculated alcohol
14 purchases for the audit period and alcohol purchase
15 percentages; and those calculations are shown on
16 Exhibit A, pages 58 through 60.

17 Then the Department compared the recorded alcohol
18 sale of around \$771,000 with alcohol purchase of around
19 \$272,000 and calculated recorded alcohol markup of around
20 229 percent for second quarter 2014 through fourth quarter
21 2014; 170 percent for year 2015, 208 percent for year
22 2016; 154 percent for first quarter 2017 and resulting in
23 an overall recorded alcohol markup of around 195 percent
24 for the audit period. The information required to
25 calculate these recorded markups are shown on Exhibit A,

1 page 52.

2 To verify the reasonableness of these recorded
3 markups, the Department conducted a shelf test using
4 Appellant's July 2017 alcohol selling prices, cost product
5 mix, and calculated audited alcohol markup of around 314
6 percent; and this is shown on Exhibit A, page 53
7 through 60. Although this audited alcohol markup
8 indicated that not all alcohol sales were recorded in
9 Appellant's POS reports, the Department accepted the
10 recorded alcohol sales reflected on Appellant's POS
11 reports, thereby, providing a benefit to Appellant. Had
12 the Department marked up Appellant's alcohol purchases,
13 the unreported taxable sales would have increased by
14 around \$235,000, changing the unreported taxable sales
15 from \$215,000 to \$450,000; and the information required to
16 calculate these amounts are shown on Exhibit A, pages 51,
17 52, and 62.

18 The audit calculation of unreported taxable
19 sales, based on Appellant's own POS reports and bank
20 statements were reasonable. Further, it benefits
21 Appellant because it was a lower of the differences
22 determined. When the Department is not satisfied with the
23 accuracy or the sales and use tax return filed, it may
24 rely upon any facts containing the return or upon any
25 information that comes into the Department's possession to

1 determine if any tax liability exists.

2 The taxpayer shall maintain and make available
3 for examination on request by the Department all records
4 necessary to determine the correct tax liability under the
5 sales and use tax laws and all records necessary for the
6 proper completion of the sales and use tax returns. When
7 a taxpayer challenges an audit of determination, the
8 Department has the burden to explain the basis for that
9 deficiency. When the Department's explanation appears
10 reasonable, the burden of proof shift to the taxpayer to
11 explain why the Department's asserted deficiency is not
12 right.

13 The audit calculation of unreported taxable
14 sales, based on the best available information, was
15 reasonable. Appellant did not agree with the audit
16 findings for the audit period. Appellant continuously
17 claim that it reported the sales tax that it collected,
18 and it's entitled for adjustments for hotel room sales and
19 non-sales capital contributions included in its POS
20 reports. Specifically, Appellant contends that its
21 secretary used her personal credit cards to infuse cash
22 into its Eureka location by charging it through the POS
23 system.

24 To support this contention, Appellant scheduled
25 around \$38,000 and provided credit card statement showing

1 some funds were transferred from Appellant's secretary
2 credit cards to Appellant's credit card sales processing
3 account. The Department analyzed Appellant's argument and
4 ultimately rejected it. Upon examination of those
5 documents, the Department noted that Appellant failed to
6 provide crucial information, such as its POS download with
7 all folders to determine whether those hotel room sales
8 and credit card transfers were, in fact, recorded in the
9 POS reports used for this audit.

10 Also, based on the Department's recorded food
11 markup analysis, the hotel room sales and non-sales
12 capital contributions could not have been included in the
13 POS date used for the audit because it could lead to
14 exceptionally low food markups. Appellant's recorded book
15 markup was considerably low. That is around 88 percent
16 from April 2014 through December 2014, and 72 percent for
17 year 2015, which translates to food cost percentage of
18 49 percent and 53 percent for those periods; and the
19 information required to calculate these percentages are
20 shown on Exhibit A, pages 52, 65, 68, and 77.

21 Also, there is a direct inconsistency between
22 Appellant's argument concerning the processing of hotel
23 room sales and capital contributions through it's POS
24 system and the sales tax amounts reflected in the Eureka
25 POS reports and the information required to verify; this

1 is shown on Exhibit A, page 65. Therefore, the Department
2 rejected Appellant's argument that its sales reflected in
3 its POS report included hotel room sales and non-sales
4 capital contributions.

5 However, it is possible to include these hotel
6 room sales and non-sales capital contributions in its
7 Eureka location bank account and credit card merchant
8 account, but the Department did not use Appellant's bank
9 deposits and credit card deposits to determine Appellant's
10 sale for this location. Appellant also assert that it
11 amended sales and use tax returns accurately reflect the
12 actual taxable sales after adjusting for hotel room sales,
13 non-capital sales contributions, even deposits and other
14 non-sales items for the audit period. Appellant failed to
15 provide documentary support to verify the accuracy of the
16 amounts reflected on those amended returns. However, the
17 Department's review of these amended returns reveals the
18 reported taxable sales of around \$3.4 million exceeding
19 the \$3.3 million originally reported.

20 Furthermore, a comparison of the taxable sales
21 reflected in Appellant amended returns of around
22 \$1.2 million to the cost of goods sold reflected in
23 Appellant's 2015 federal income tax return of around
24 \$600,000 resulted in the low overall book markup of around
25 108 percent or overall -- high overall food and liquor

1 cost percentage of 48 percent. This low markup and high
2 food and alcohol cost percentage resulted in the
3 Department's rejection of the amended sales amount.

4 Appellant also claim entitled to \$26,000 refund,
5 asserting an overpayment of tax with its first quarter
6 2017 return compared to the tax due amount; and this is
7 shown Appellant's Exhibit 1. The Department's review
8 found that this amount was not paid with the sales and use
9 tax return for that audit period but rather, around
10 \$28,000 were paid on July 6, 2023, to satisfy an audit
11 liability for this audit period. The Department
12 understands Appellant believed it reported sales tax
13 correctly and that this audit payment should be refunded.
14 However, the Department's records do not show a protective
15 claim for refund filed by Appellant on/or after
16 July 6, 2023, in connection with this payment.

17 As this payment was pursued to a Notice of
18 Determination and because the Notice of Determination is
19 not final, Appellant can still file a protective claim for
20 refund. A refund would only be granted if Appellant
21 prevails on its appeal. Based on the foregoing, the
22 Department determined the unreported taxable sales based
23 on the best available information. The evidence shows
24 that audit produced reasonable results. Appellant has not
25 provided any reasonable documentation or evidence to

1 support adjustment to audit finding. Therefore, the
2 Department requests the appeal be denied.

3 This concludes our presentation. We are
4 available to answer any questions the panel may have.
5 Thank you.

6 JUDGE BROWN: Thank you very much.

7 And now I will turn to my co-panelists.

8 Judge Turner, do you want to begin with questions
9 for CDTFA?

10 JUDGE TURNER: Yeah. Thank you. I want to
11 understand the Department just said you acknowledged that
12 the payment made in satisfaction of the lien is an
13 overpayment, and that it is simply matter of the Appellant
14 to file a claim for refund to be paid that back. Did I
15 understand that correctly?

16 MR. SAMARAWICKREMA: The \$1,500 the Department
17 paid is a -- the credit balance that was appearing on
18 the -- the account after the audit liability. So that
19 \$1,500 is refunded, but the -- the payment that Appellant
20 paid in 2023 is for the audit liability. So in order for
21 the Appellant to receive a refund, it is her
22 responsibility to file a protective claim. Yeah.

23 JUDGE TURNER: Okay. And that amount is
24 different than, if I understand what you are requesting,
25 which is \$25,000.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. ERBEN: It's \$25,625.

JUDGE TURNER: And that's -- you said that was a payment on the lien as well?

MS. ERBEN: The payment we made in -- in two portions a couple days apart totaled \$25,625. There was a limit of \$25,000 that we could transfer at one time out of the bank account. And so I did a second payment for the \$625. That's what the lien amount was at, on July 17th of 2023.

JUDGE TURNER: Great. Thank you.

Another question for the Department. In the context of evaluating the utilization of the POS system data, the markup method was used, as I understand your argument, as sort of a check. You made a couple of statements, the auditor made it as well about certain adjustments resulting in a markup that is in your estimation unreasonable, if I can understand your word correctly. What is that comparative based on? I want to understand how you came to the decision that a particular markup was either reasonable or unreasonable during the audit period.

MR. SAMARAWICKREMA: The Appellant's liquor percentage -- the liquor sales percentage is little less than the 20 percent. When you take the total sales, food is almost 80 percent, and the liquor was 20 percent. So

1 the Department used the liquor sales for both locations
2 and compared that to liquor purchases. Then the
3 Department calculated 154 for the first quarter 2017, 208
4 for 2016. And in order for us to verify the
5 reasonableness, we did a shelf test using taxpayer's
6 own --

7 MR. PARKER: Judge Turner, I just wanted to add
8 on, because I think you asked, like, how we determined the
9 markups were reasonable, or how we determined it was
10 unreasonable.

11 JUDGE TURNER: Correct.

12 MR. PARKER: And -- and so we did it based on our
13 knowledge of the industries and other audits that we've
14 done of similar type businesses. And so generally we
15 expect that food markup should be at least 200 percent or
16 somewhere around there. And then the bar, liquor, beer,
17 wine, that should be 300 plus. And even when we did the
18 shelf test using their pour size, we ended up coming out
19 with over a 300 percent markup. So we determined they
20 were low based on our experience, and the test actually
21 support that they were low.

22 JUDGE TURNER: In that context then, is that
23 experience relative to your statewide activities in audits
24 over a period of years, or is it something specific to the
25 area in which the taxpayer was operating? I just want to

1 make sure I understand the nature of that estimate. Is
2 it -- it is that. I understand, you know, how the, I
3 guess, the utilization by the Department, but I'm trying
4 to understand that number you just quoted me for food or
5 for alcohol, where that comes from.

6 MR. PARKER: Right. Well, there are -- I mean,
7 that is kind of like the -- our statewide audits --

8 JUDGE TURNER: Okay.

9 MR. PARKER: -- looking at certain things. But
10 then there's also industry averages that you can see on
11 research like, you know, in order for a business to be
12 profitable, they need to maintain certain cost levels,
13 which the cost levels are actually the markup in reverse.
14 So there's that. There's also the -- like I said, the
15 knowledge of our -- our -- of auditing other businesses in
16 the area. I know Eureka is not a large metropolitan area,
17 so they probably don't have a lot of audits of these type
18 of places.

19 But we have certain things that we're looking
20 for, and -- and that would be like a red flag that then we
21 need to look into this more. Not that it's obviously a
22 problem, but that's why we do a shelf test to see is what
23 they have recorded as their markup reflective of what we
24 expect them to be based on their cost prices and their
25 sales prices.

1 JUDGE TURNER: Thank you. I want to ask --
2 understand the treatment of the Appellant's alleged
3 payment for rooms through the POS system. Did I hear
4 correctly that you -- that the Department denied
5 recognition of any of the alleged charges for rooms that
6 were rung through the POS system? Did you deny all of
7 those or a percentage of those?

8 MR. SAMARAWICKREMA: Yeah. According to the POS
9 reports, the -- we discovered there are different
10 categories food, liquor, wine, that mandatory gratuities,
11 rentals, retails. But the Department did not see any room
12 rentals in their POS. And also, the -- we didn't -- based
13 on the audit, we did not got the -- not receive
14 Appellant's POS download to identify whether any room
15 rentals were -- were included. And even if you compare
16 the Appellant's POS report listing for Eureka location,
17 the tax collected amount is almost 8.5 compared to their
18 taxable sales that we determine is recorded sales. So it
19 cannot include room rentals or cash deposits into the POS.

20 Maybe it may include it in the bank statement or
21 credit card processing account, not -- not to the POS
22 account. Because the tax collected, according to the POS
23 report is 8.5. That's the tax rate for that location, and
24 it's clearly matches to the -- the applicable tax rate for
25 that location. So the taxpayer -- the cash deposits were

1 related to Eureka location.

2 JUDGE TURNER: That's all the questions I have at
3 the moment.

4 JUDGE BROWN: Thank you.

5 Hearing Officer Wilson, do you have questions at
6 this time?

7 HEARING OFFICER WILSON: I have got a question
8 for Appellant.

9 You mentioned that the deposits for the -- your
10 deposits for the events, I guess, were run through the
11 POS. Is there a way to void those transactions? No. In
12 a typical transaction in your restaurant/bar, if there was
13 a void, how would that show up in the POS system or would
14 it not?

15 MS. ERBEN: As far as event deposits go, if you
16 put a deposit down, say in check form, \$500 for a wedding,
17 and then a month later -- and we put it in the computer as
18 the deposit for the wedding and the name and the date,
19 that sales is finalized that night through the computer
20 system. You can't go back and edit it. So if you decide
21 a month later you're not going to do the wedding, we
22 refund you a check and tell the bookkeeper that that sales
23 was gone. You can't edit the POS after the fact.

24 HEARING OFFICER WILSON: So is there a way to
25 void transactions in the POS system?

1 MS. ERBEN: Oh, yes. In a daily fashion, yes.
2 Yes. Like if you make a mistake or you put something on
3 the customer's bill that belongs to another customer, yes,
4 you can do that. But once the sales are done for the day,
5 you can't get back into the record and make any changes.

6 HEARING OFFICER WILSON: Okay. And then so your
7 documentation for the deposit refunds are checks. Are
8 those in the record?

9 MS. ERBEN: That is one of the issues that we
10 have never discussed. My nontaxables do not have
11 subcategories, such gift certificate, POS loan, hotel
12 lodging -- what am I missing there? -- the loans, the
13 lodging, the gift certificates and the deposits. We
14 didn't have subcategories. So when you see on our POS
15 reports, it's just nontaxables. For them to back out
16 hotel sale or my POS loans or the gift certificates, it's
17 not declared on the nontaxable how those categories are.
18 So I have no idea how they did that.

19 HEARING OFFICER WILSON: Okay. So how did you
20 record your deposit reversals or cancellations?

21 MS. ERBEN: Verbally and written to the
22 bookkeeper. We would send him a copy and show him the
23 check. Well -- and he would actually, through the bank
24 statements, get a copy of the check. But we would just
25 notify him that they've canceled this event, and here's

1 the refund. A lot of wedding parties, they put deposits
2 down on multiple locations and venues, and then the bride
3 later suggests -- selects which one she wants and cancels
4 the other venues.

5 It's the same thing with reservations when I
6 worked in Las Vegas. Corporations for conventions would
7 call and make multiple bookings at different restaurants
8 and then cancel the one that the guest didn't choose,
9 leaving your restaurant empty because you had reserved a
10 reservation for a large group. So eventually we had to
11 put cancellation fees on deposits in Vegas, not on
12 deposits in Scotia.

13 HEARING OFFICER WILSON: Okay. So when the event
14 did take place, so you have the deposit a month or two in
15 advance, and then the -- how would you record the deposit
16 on the transaction when it occurred?

17 MS. ERBEN: Easy. We have the entire wedding
18 file, and we have -- saying that they have put a deposit
19 in. So again we go to the computer and just say, give
20 them in a payment that \$500 was already applied. And
21 then, of course, the tax stays on the final bill.

22 HEARING OFFICER WILSON: Okay. Those are my
23 questions. Thank you.

24 JUDGE BROWN: Thank you.

25 I believe I do have questions, if everyone would

1 just hold on for a minute. I'll start with a question for
2 Appellant.

3 I want to ask about some -- an exhibit from -- an
4 exhibit to the appeals decision that has some of your
5 documents, and that's Exhibit E. It's actually Exhibit 2
6 to the appeals decision. So it's -- you know, there were
7 exhibits attached to appeals decision, and it's Exhibit 2
8 of those. And you might be able to answer this without
9 looking. I don't know. But they look like receipts, but
10 I think they're printouts from your POS system that you
11 were using as example to show proof that you did make
12 these cash infusions, you know, you charged on your credit
13 card to make a loan to the business. And it shows for
14 example -- one second. I guess my question is, it shows
15 that there's tax on -- looks like -- I have in my notes it
16 showed net sales of \$5,504 plus taxes of \$495.

17 MS. ERBEN: Again, in my dissertation here, I
18 mentioned that I accidentally a couple of times rang my
19 own loan through retail instead of nontaxable, and I taxed
20 myself and cost myself \$492. So the State received extra
21 taxes.

22 JUDGE BROWN: Okay. So this is an example of --

23 MS. ERBEN: Of a mistake.

24 JUDGE BROWN: Of a mistake. Okay.

25 MS. ERBEN: Yes.

1 JUDGE BROWN: Okay. Then that was my question.
2 I think I also have a question for CDTFA.

3 Also, in the same section of the exhibits, the
4 attachment to the Appeals Bureau decision and also on
5 Exhibit 2, I was going to ask CDTFA these -- these three
6 receipt documents that Appellant provided that say
7 "Personal Loan Kelly." So it looks like they characterize
8 the type of charge as room fee.

9 MR. SAMARAWICKREMA: There's a page 251, the
10 \$1,500 was there too -- November 18, 2024 at 11:35 for
11 \$1,500. So that is the credit card receipt. It's not a
12 POS receipt.

13 JUDGE BROWN: I'm sorry.

14 MR. SAMARAWICKREMA: It's not a -- it's not a POS
15 receipt. It's a credit card receipt.

16 JUDGE BROWN: Okay.

17 MR. SAMARAWICKREMA: So, yeah. I mean, when the
18 client -- when the taxpayer use the -- their own credit
19 cards to transfer money to -- to the merchant account,
20 they run through the merchant account, but it didn't go to
21 a POS report -- POS system. So these -- these two
22 receipts are not POS receipts. Those are credit card
23 receipts.

24 JUDGE BROWN: I guess let me turn to Appellant
25 and see --

1 MS. ERBEN: They interject that -- that is a
2 receipt from the restaurant through the POS machine. It
3 says clearly Gallagher's Irish Pub and the address and all
4 that on the receipt.

5 JUDGE BROWN: What I think, if I understand CDTFA
6 is arguing is that this was charged on your credit card.
7 This is a credit card receipt.

8 MS. ERBEN: Yes.

9 JUDGE BROWN: But how do they know it was rung
10 through the POS system? Is that essentially --

11 MS. ERBEN: It's a receipt as if you came and
12 ordered halibut and chips and beer. You get a receipt
13 when we give you a ticket, an invoice, and we run your
14 card towards that sale, and we give you a receipt.

15 JUDGE BROWN: So you're saying when you rang up
16 these loans on your credit card, it automatically goes
17 through the POS system?

18 MS. ERBEN: I open up a ticket and title it "Loan
19 from Kelly's," and -- and then make an amount, and then
20 run the card through and print the receipt.

21 JUDGE BROWN: And so, CDTFA, if I understand your
22 argument is that you understand that Appellant, you know,
23 made this charge as a loan, but that you don't know it was
24 part of the POS numbers that the auditor considered. Is
25 that what you're saying?

1 MR. SAMARAWICKREMA: That's true, Judge. Yeah.
2 And if I -- if we had the POS download, we should have
3 traced this without any issue, like -- but in the POS
4 report, we didn't see these -- the special category. And
5 also these two particular receipts are not from the POS,
6 it's from the credit card machine. It specifically says
7 the tip and the total. It came from not the POS, it came
8 from the credit card machine.

9 MS. ERBEN: May I say something?

10 JUDGE BROWN: Yes. Go ahead.

11 MS. ERBEN: How can we get receipt from the
12 credit card if it wasn't rung through the computer. And
13 B, no, I did not have special subcategories, which in
14 hindsight would have been amazing. But I also furnished
15 the daily Z report or printout receipt that clearly shows
16 the -- the loan on there, although, again not in a
17 subcategory. So the receipt for the loans are on the
18 daily Z report.

19 MR. PARKER: Judge Brown, can I add something?

20 JUDGE BROWN: Yes.

21 MR. PARKER: So if you look at the POS report for
22 that quarter, it's on page -- let's see -- it's 291 in the
23 file. But it's 200 -- Bates Stamp 287, and it has all of
24 the revenue by class, which is what we used in determining
25 the taxable sales. There is a category that says house

1 account deposits. We did make an adjustment for that when
2 we input the information into our Excel spreadsheets. But
3 the taxable sales come from beer, beverages, food, liquor,
4 retail, wine, and then as discussed before, also in the
5 nontaxable. So we haven't seen that those amounts are in
6 the POS or that we treated them as taxable.

7 JUDGE BROWN: Okay. Thank you to both parties
8 for responding to my questions.

9 And if my co-panelists don't have any further
10 questions at this time, then I'll say that I believe we
11 can move on, and we will now hear Appellant's rebuttal if
12 Appellant is ready.

13 And if you have 10 minutes. And I will just
14 mention, this is to respond to any arguments or questions
15 and everything you've heard from CDTFA or whatever you've
16 said -- whatever has been said since we heard your opening
17 presentation. You don't have to repeat your opening
18 presentation.

19 MS. ERBEN: Correct.

20 JUDGE BROWN: Okay. Thank you.

21

22 CLOSING STATEMENT

23 MS. ERBEN: I'm sorry, but I -- I do have a
24 problem with the auditor's accent, and I couldn't hear the
25 majority of what was going on. But in the little snippets

1 that I did understand, again, the first thing he mentioned
2 was that we were a bar and restaurant, again, leaving out
3 lodging; a minor discrepancy. He says we sold in
4 August 31st. It was actually mid-August the 18th. He
5 used the words when he was talking about his data as
6 compared to what was originally reported, and my whole
7 point is that the reports were corrected and they're not
8 comparing anything to the corrected reports.

9 The numbers they did use, again, he clearly
10 overstated the purchase of the alcohols. They used their
11 figure for estimation of alcohol and not mine, and that
12 does create false markups. Isn't it possible, and it's
13 provable, that we were not profitable? Our federal
14 returns, so a deficit every year. I have un-cashed
15 paychecks. We have bounced checks. Isn't it possible
16 that our markups should not be compared to industry
17 standards, and can they not be substandard? So no, my
18 argument stands that they're going to stick with the
19 original data with no corrections with their
20 overestimations.

21 And I really don't have any further questions.

22 JUDGE BROWN: Thank you.

23 All right. If my co-panelists don't have any
24 further questions, then I think I can say that we can
25 conclude this proceeding. The evidence has been admitted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

We've heard witness testimony, and we've heard arguments from all parties. The record is now closed.

The panel will confer and will issue a written opinion within 100 days of today.

And that concludes this hearing, and I believe it also concludes the hearings for today. Hearings will resume tomorrow.

Thank you, everyone.

(Proceedings adjourned at 12:45 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 28th day of August, 2025.

ERNALYN M. ALONZO
HEARING REPORTER