

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
T. KIM,) OTA NO. 240415796
)
)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, August 12, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ GREG TURNER

Panel Members: ALJ MICHAEL F. GEARY
ALJ KEITH T. LONG

For the Appellant: T. KIM
MIN SUN CHO

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

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

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

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

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

| | <u>P A G E</u> |
|---------------|----------------|
| By Mr. Cho | 17 |
| By Mr. Sharma | 29 |

A P P E L L A N T ' S
W I T N E S S E S :

| | <u>D I R E C T</u> | <u>C R O S S</u> | <u>R E D I R E C T</u> | <u>R E C R O S S</u> |
|------------|--------------------|------------------|------------------------|----------------------|
| K. Salazar | 12 | | | |

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

| | <u>P A G E</u> |
|------------|----------------|
| By Mr. Cho | 35 |

1 Cerritos, California; Tuesday, August 12, 2025

2 1:26 p.m.

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4
5 JUDGE TURNER: If we can go on the record then.

6 This is the Appeal of T. Kim dba D&K Milk Palace.
7 OTA Case No. 240415796. The date is August 12, 2025, and
8 the time is 1:26 p.m. We are located here in Cerritos,
9 California.

10 And as I mentioned, my name is Judge Turner. I'm
11 the lead for purposes of conducting the hearing. My
12 co-panelists are Judge Long to my right, Judge Geary to my
13 left, are equal participants in -- is it not on? Okay. I
14 apologize. Thank you, sir. Where am I at?

15 We're equal participants in determining the
16 outcome of the appeal. As we get started, if we could
17 have the parties introduce themselves.

18 I'll begin with the Appellant, if you could
19 introduce yourself for the record. Sir, Mr. Cho, could
20 you introduce yourself for the record.

21 MR. CHO: Yes. My name is Min Cho, and then
22 representative for taxpayer D&K Milk and T. Kim.

23 JUDGE TURNER: Thank you.

24 And for Respondent.

25 MR. SHARMA: Ravinder Sharma, hearing

1 representative for CDTFA. Thank you.

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

4 MR. BROOKS: Christopher Brooks, attorney for
5 CDTFA.

6 JUDGE TURNER: Thank you.

7 Our issues today are twofold, whether further
8 adjustments to the unreported taxable sales are warranted.
9 I will say, as we've talked about at the prehearing
10 conference, that really boils down to two sub-issues, one
11 of which is whether sales were conducted on a tax included
12 basis. The other was the application of the markup method
13 for the audit. And then the second issue is the
14 application of the negligence penalty.

15 Does everyone agree that those are the issues
16 before us today?

17 MR. CHO: Yes, sir.

18 JUDGE TURNER: Said any of them okay for you?

19 MR. SHARMA: That is correct. Thank you.

20 JUDGE TURNER: Excellent. Yeah. Okay. Before
21 we proceed with the rest of the hearing, we need to talk a
22 little bit about exhibits. It's a little -- I'll admit
23 there's a little bit of confusion in terms of the
24 exhibits, but I'm going to go through it today. You let
25 me know if you have any questions or objections.

1 So at the prehearing conference, we discussed
2 Appellant's Exhibits 1 through 7 that were submitted with
3 their reply brief. And I believe there were no objections
4 by CDTFA at the time to those exhibits being introduced.
5 So I'm going to include those in the record, unless there
6 is any objection from the Department.

7 MR. SHARMA: The Department has no objection.
8 Thank you.

9 JUDGE TURNER: Thank you, sir.

10 (Appellant's Exhibits 1-7 were received into
11 evidence by the Administrative Law Judge.)

12 JUDGE TURNER: We also discussed CDTFA's -- and
13 those will be number -- I apologize. Those will be
14 numbered reply briefs Exhibits 1 through 7. That'll make
15 sense in just a second. We also discussed CDTFA's
16 Exhibits A through E, and there was no objection by the
17 taxpayer at the time.

18 For those exhibits, do you have any objection to
19 us including those in the record?

20 MR. CHO: No objection.

21 JUDGE TURNER: And those will be admitted into
22 the record.

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

25 JUDGE TURNER: Now, in addition, we have the

1 taxpayer requested -- we talked about this at the
2 prehearing conference -- to include some expository
3 exhibits for the hearing today. He submitted those last
4 week. I presume the Department was provided a copy of
5 those. Was there any objection to those documents that
6 he's going to be presenting today?

7 MR. SHARMA: The Department has no objection
8 today.

9 JUDGE TURNER: Okay. Is it just the
10 clarification, exhibits -- we're going to call these
11 Exhibits 1 through 10. And first Exhibit 1 through 8 are
12 just expository of evidence in the record. However,
13 there's two photographs that were attached, and I want to
14 make sure the Department has no objection to us including
15 those in the record as well.

16 MR. SHARMA: The Department has no objection.
17 Thank you.

18 JUDGE TURNER: Thank you. Thank you so much.

19 And then finally, in the Appellant's opening
20 brief there were exhibits attached to that brief as well.
21 I presume the Department has seen those and -- but I want
22 to make sure Department has no objection to inclusion.
23 Those were largely CDTFAs -- if you look at the exhibits --
24 CDTFAs' documents, but they're also photographs like are
25 being presented today in that record. I want to make sure

1 CDTFA has any objection including those in the record.

2 MR. SHARMA: The Department has no objection to
3 those either. Thank you.

4 JUDGE TURNER: Thank you for that.

5 So when we -- if -- if we can please, when we're
6 referring to exhibits, be certain to identify that they're
7 either CDTFA's Exhibits A. Through E, or if they are
8 Appellant's Exhibits 1 through 10 of the ones that will be
9 presented today, or specifically refer to the reply brief
10 or the opening brief exhibits. And, hopefully, I don't
11 suspect we'll get into some of those other exhibits, but I
12 want to make sure for the record that everyone is clear
13 about what is put into the record.

14 Any questions?

15 MR. CHO: No question.

16 MR. SHARMA: No question. Thank you.

17 JUDGE TURNER: Thanks. I appreciate sticking
18 with me through this. Okay.

19 Appellant, you had -- are you intending to bring
20 witness? We talked about you having a witness today at
21 the prehearing conference. Are you still intending to
22 bring forth a witness today?

23 MR. CHO: Yes.

24 JUDGE TURNER: Okay. When it's time, then you
25 will introduce your witness, and we'll have to put them

1 under oath, and then proceed with their testimony. I'll
2 get to that in just a second. Okay.

3 MR. CHO: Your Honor, I have a procedure matter.
4 So I didn't know the -- the witness is very pregnant.

5 JUDGE TURNER: Oh.

6 MR. CHO: And then it's due -- the baby is due
7 next probably couple of weeks.

8 JUDGE TURNER: Okay.

9 MR. CHO: So is it possible to examine witness
10 first and then go through the other one?

11 JUDGE TURNER: I have no objection. Department?

12 MR. SHARMA: The Department has no objection
13 either. Thank you.

14 JUDGE TURNER: Okay. I have no objection
15 whatsoever. I'll do that in just a second. Let me just
16 get through my introductory comments, and then we'll get
17 to doing the presentation.

18 So as we talked about at the prehearing
19 conference, you'll have 60 minutes for your presentation,
20 10 minutes for your witness. We can do those in whatever
21 order you wish.

22 The Department, you requested 30 minutes for your
23 reply, and then you'll get 10 minutes to close.

24 The panel may ask questions at the end of each
25 presentation. They may wait until the end, which is

1 just -- it depends on the hearing, whether they have
2 questions now or at the end.

3 All right. So any questions before we get going?

4 MR. CHO: No questions.

5 JUDGE TURNER: All right. So, Mr. Cho, you have
6 10 minutes for your witness and 60 minutes for your
7 presentation. So if you would introduce witness, have
8 them come, and I'll have them take the oath.

9 MR. CHO: Okay. Ms. Kaylee, would you just
10 stand.

11 MS. SALAZAR: Just stand here?

12 JUDGE TURNER: No. No. Please have a seat.
13 Make sure your mic is, unlike me that forgot to turn their
14 mic on. There should be a little green button down there
15 on the mic.

16 MS. SALAZAR: There you go.

17 JUDGE TURNER: Please state your name for the
18 record.

19 MS. SALAZAR: Kaylee Michelle Salazar.

20 JUDGE TURNER: And can you raise your right hand
21 for me please.

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K. SALAZAR,

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

JUDGE TURNER: Excellent. You can proceed with your testimony.

Mr. Cho, you can either ask her questions --

MR. CHO: Sure.

JUDGE TURNER: -- or she can present her testimony directly. Entirely up to you.

DIRECT EXAMINATION

BY MR. CHO:

Q I'll just, if I can please turn to you, then it's going to be very simple ones.

A Okay.

Q Clearly -- state very clearly and simple?

A Yeah.

Q And so Judge can hear and understand it.

A Okay. And I'm a customer there.

Q Okay.

A So I was local.

Q So number two, how long have you been a regular customer for the store?

1 A For 10 years.

2 Q Okay. Long time. And what kind of product do
3 you buy?

4 A I buy cigarettes, beer, or/and food.

5 Q And during your visit to store, did you observe
6 any signage indicating the sales tax included in the price
7 of the items being sold?

8 A Yeah.

9 Q And then please describe in detail exact wording.

10 A They're posted on the shelves -- the product
11 shelves and their windows. So it's pretty clear.

12 Q What's the wording? Do you remember?

13 A Usually on the -- where the cigarettes are, they
14 have their prices, and it says, "Sale tax included." And
15 then for their beer same thing. For their other products,
16 is the same thing.

17 Q Where were they located and were attached?

18 A Under windows. Under product shelves.

19 Q Okay. Were the signage clearly visible to you?

20 A Yeah.

21 Q Did you understand what it mean by -- what it
22 meant by the "out the door" or "sales tax included?"

23 A Yes.

24 Q What is it? Then explain what you understand
25 sales tax included or the out the door?

1 A Oh, that the product that I buy is already --
2 the -- the tax is already included with it. So it's
3 already a set price.

4 Q Okay. During which years that you observe such
5 signage in the store?

6 A It's been there for years, since I remember.

7 Q Okay. Does it mean that you saw in the year 9 --
8 2021?

9 A Yes.

10 Q How about 2022?

11 A Yeah.

12 MR. CHO: Would you show the Exhibit 9, so that
13 the judge -- all the judges can see.

14 BY MR. CHO:

15 Q Okay. That's -- that's the No. 9. This beer,
16 did you see that type of signage in this photo?

17 A Yeah.

18 Q Looks like beer?

19 THE STENOGRAPHER: I'm sorry. Ma'am, I need a
20 verbal yes or no.

21 MS. SALAZAR: Oh, yes. Sorry.

22 THE STENOGRAPHER: Thank you.

23 BY MR. CHO:

24 Q And then other one, Exhibit No 10. There are
25 various signage inside of those. And then did you see

1 this type of photo as well?

2 A Yes.

3 Q To your knowledge, this signage picture
4 consistent with the ones you have seen at the store?

5 A Yes.

6 Q Okay. Finally, do you know any other customer
7 that you think saw this type of signage in the store?

8 A Yeah. It's very visible.

9 Q Like what? Who?

10 A Well, usually it's locally. So a lot of my
11 neighbors go there, and they told me the same thing, like,
12 oh, it's the same signs. And so, yeah.

13 Q Okay. No --

14 A It's very visible.

15 MR. CHO: Okay. No further, Your Honor.

16 JUDGE TURNER: Thank you.

17 Panel members any questions for the witness.

18 JUDGE LONG: No questions. Thank you.

19 JUDGE TURNER: Judge Geary?

20 JUDGE GEARY: Yes. What's was your last name
21 again?

22 MS. SALAZAR: Salazar.

23 JUDGE GEARY: Ms. Salazar, you said it's on the
24 beer. It's on the cigarettes, and it's on other products.
25 We've seen photos, I think, of beer and cigarettes. Is it

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on the milk?

MS. SALAZAR: On the milk?

JUDGE GEARY: Yes.

MS. SALAZAR: Well, usually there's like a little post on the sign where the refrigerator is at. So it says, "Tax included," so plus tax. So I would assume that's already taxed.

JUDGE GEARY: So there were signs on the refrigerators where the milk was held. Okay. What other kind of products were you referring to besides beer and --

MS. SALAZAR: Because I buy food from there, so it's -- for me, it's the same thing I always buy.

JUDGE GEARY: Okay. Thank you.

MS. SALAZAR: You're welcome.

JUDGE GEARY: Those are my only questions.

JUDGE TURNER: Department, do you have any questions for the witness?

MR. SHARMA: Department has no question. Thank you, Judge.

JUDGE TURNER: Thank you for your testimony.

MS. SALAZAR: Thank you.

MR. CHO: I ask again, Your Honor, she's going to be dismissed because the -- feel uncomfortable for the baby is inside.

JUDGE TURNER: She absolutely can be dismissed.

1 MR. CHO: Oh, okay.

2 MS. SALAZAR: Thank you.

3 JUDGE TURNER: Yes. Thank you for your time.

4 Mr. Cho, you have 60 minutes to present your case
5 in chief.

6 MR. CHO: Sure.

7

8 PRESENTATION

9 MR. CHO: I start with issue number one. Let
10 me -- good afternoon, Your Honor. I -- I'm a tax attorney
11 or so a CPA. I never seen strange case like this for my
12 entire career. The strange enough, but also very
13 technically defective. Not because tax underreporting or
14 taxpayer's mistake, but because of the auditor's own error
15 and mistake. It took four years, still not fixed. All
16 this made error, and then reviewer even didn't detect it.
17 So that's why it took four years.

18 So I say very be careful in presenting this my
19 very technical complexity in the presentation, but to
20 someone it's easy to understand. But others, very
21 difficult for them to understand. So that's why I will go
22 over one by one, and I hope that they will understand this
23 time what's wrong with it. Their calculation there,
24 probably like middle school algebra, but still don't
25 understand. But we really need to understand for the tax

1 Department to be go forward. This -- we don't repeat this
2 kind of mistake forever.

3 Okay. Issue number one --

4 Mr. Kim, would you please show Exhibit Number 1.
5 Move forward. Just kind of little bit small letter --
6 font, but hopefully --

7 There are three kind of distinctive markups to --
8 by the auditor. One, individual markup for each
9 merchandise. And then the other one, average markup for
10 the merchandise in kind. And then third one, that's what
11 the final markup average -- weighted average markup for
12 the store. So we chose -- we agree to do that this way as
13 alternative methodology. So due to COVID and the lack of
14 some of the data, that's why we chose to. So three
15 markups, then each -- each one is little bit complicating,
16 first one.

17 Then we can show the next one, Exhibit Number 2.
18 The auditor, David Portillo, requested all the data from
19 the customers. So customer presented whole lot of data
20 sheets, something like this one this, or this one is the
21 original one. And then I summarized one line, by that in
22 the one line in the poster. So Marlboro, the typical
23 Marlboro Red, the box. So taxpayer A -- and so sales tax
24 included sales price, as you see in the witness. And then
25 B is the sales tax not included in purchase price.

1 Because of the, that one was the same as auditor had found
2 it.

3 So now the axiom -- method axiom for the markup
4 is to compare each side the equivalent of the element,
5 each side. So you use tax included the sales prices --
6 selling prices. You have to tax include the purchase
7 prices. You don't include the -- the sales price --
8 selling price without -- without tax. Then you have to
9 choose purchase price without taxes.

10 But show the -- another one, Exhibit 3.

11 JUDGE GEARY: Mr. Cho?

12 MR. CHO: Yes, sir.

13 JUDGE GEARY: Do you want the judges to see
14 these? Because if you do, you need to aim it at us.

15 MR. CHO: Oh, sorry.

16 JUDGE GEARY: Thank you.

17 MR. CHO: So exhibit -- let me see. Oh, maybe I
18 can see. Can I go over there?

19 JUDGE TURNER: We're not going to be able to
20 hear --

21 MR. CHO: I cannot see.

22 JUDGE TURNER: We're not going to be able to hear
23 you. We have -- maybe if you could just put it straight
24 against the wall because we need you to be able to testify
25 into the microphone.

1 MR. CHO: Maybe two spot -- they know already.
2 So they're very familiar with the process. So --

3 JUDGE TURNER: But we need you to be able to be
4 on the microphone.

5 MR. CHO: The auditor selected --

6 JUDGE TURNER: Sir.

7 MR. CHO: -- a purchase price --

8 JUDGE TURNER: Sir, I need you to be on the
9 microphone. So --

10 MR. CHO: Sorry.

11 JUDGE TURNER: It's okay. Just take the display
12 and put it flat against the wall. We'll try to strain to
13 see it. That way you can still testify from the
14 microphone so we can be sure to -- yeah. I think that --
15 can you still see it, Judge Geary.

16 JUDGE GEARY: Yes.

17 JUDGE TURNER: I think that works. So that
18 way -- we need you to testify through the microphone so
19 that you can be heard by the live stream.

20 MR. CHO: Oh, yes. I can't -- okay. Let me try.
21 I'll try my best.

22 JUDGE TURNER: Would you like to sit on this
23 microphone here so you can see a little bit better too?
24 So you know what you're pointing at.

25 MR. CHO: Okay.

1 JUDGE TURNER: Good call.

2 MR. CHO: Maybe I could wear my glasses. Okay.

3 Auditor did a trick. Actually, I call it trick.
4 I'm sorry about that. Trick. Auditor selected a purchase
5 price without tax included as numerator. And then --

6 THE STENOGRAPHER: Sir, please move your
7 microphone closer.

8 JUDGE TURNER: Yeah. Make sure it's turned on
9 too. Is the green light on?

10 MR. CHO: Let me see. Yes.

11 JUDGE TURNER: Perfect. All right.

12 MR. CHO: So auditor chose a purchase price
13 without sales tax included as a numerator, Column I. And
14 then I is individual tobacco prices, and then it goes
15 to H. That's the box. You have 10 of it; so 1 dollar, 10
16 dollars each of them. And you got 10 cigarettes, and then
17 it's going to be \$100 right there. So that's tax
18 included. Then -- but he selected a selling price with
19 the tax included, column G. Column G was only prices, and
20 then go to H as denominator.

21 So formula is gross profit divide by the purchase
22 price. So when you calculate gross profit, that's going
23 to be selling prices on minus, then purchase prices. So
24 there is 10 percent distortion over there, at least
25 10 percent. Why you should -- this not equally the

1 comparable. The purchase price tax -- tax not included,
2 and then selling price tax included. So that if that's
3 true, the taxpayer entitled to refund almost 10 percent of
4 the whole what they had paid so far. That's a huge
5 amount.

6 Then let me show the another one, the correct
7 one, number four. This is the correct one. The auditor
8 calculate by this distortion. Maybe the trick.

9 JUDGE TURNER: Back on the microphone. Sorry.
10 I'm just trying to make sure that we get a good record
11 here.

12 MR. CHO: Then we calculate that way using the
13 axiom, the markup formula. The Marlboro, the in kind turn
14 out to be 7.48 percent, rather than 15, 16, 17. So that
15 distort everything after -- afterwards; the average mark
16 ups and then weighted average markup, the overall markup
17 of the store. So I can -- I can stop over here to -- to
18 more explain to another the poster, because that explains
19 more the step-by-step how to arrive the tax liability.
20 But that one, we can stop over here because it's an
21 obvious error. And so even they're doubling the tax. I
22 don't know why. I don't know why tax auditor doing this
23 and then not fixing it. Probably to inflate the tax
24 liability.

25 The shop is a low -- low income community. They

1 always pay tax like this Kaylee. And then price very
2 competitive. There is huge another market is by big Shell
3 station over there. And then they have to sell it very
4 cheap price for the -- the 20 years -- 10 years. And the
5 COVID period, and then they're selling less than -- than
6 expected. So that's a real markup, a truly real markup.
7 The selling tobacco doesn't get 17, 18 percent because of
8 they have rebate. Rebate is almost like a 7, 8, sometime
9 10 percent. They're limited with the rebate, not selling
10 this one. The owner -- the company, the Marlboro and any
11 other major brand, they have a rebate.

12 So they're selling gas and other things, foods,
13 but major is a gas -- a gas station. So some of the
14 auditor think that oh, speculate. Oh, you guys have a
15 high markup, which is not true at all. That's the major
16 focal point of this mistake in error. Maybe he's do the
17 trick intentionally. That's not fair. Why pick up those
18 two different numbers by unfairly? One is tax included,
19 and the other one is not tax included in.

20 And then to maybe show in the hearing, I'll go --
21 I want to go to the tax segregation, the mistake. Okay.
22 Okay. That's more technical in this one. Let's do --
23 what numbers -- Exhibit Number 6. This goes more
24 technicality of the axiom. This is about tax. How to
25 calculate taxable ratio. Why is taxable ratio so

1 important? That's the -- that's directly arrived the
2 overall markup to the -- to the store. But taxpayer, when
3 they collect the average, mean -- the weighted average
4 means that this relativity.

5 So you have a bundle of the purchase items A, B,
6 C, D. For example, A has a higher markup, like foods.
7 Then B has a lower markup, like tobacco. Then you have to
8 congregate the bundle every products. We call it
9 congregate. But when you have to -- when you have to
10 segregate, you have to congregate first. Segregate A, B,
11 C, D, and then he found out all the bunch of the bundles.
12 And then they try to congregate to get the taxable
13 ratio -- segregation ratio. Then he chose one
14 advantageous to him. That's not fair. Why? The -- the
15 original bundle was composed of the four items, tobacco
16 and then beers, even alcohol. And then taxable some of
17 the drink, and then taxable the items, the other
18 miscellaneous items. That was original his bundle.

19 And then right before the closing, he informed
20 us, oh, we found another one that's taxable purchases.
21 Okay. What is it? And I asked -- actually, formal the
22 CPA asked. Then we found some of the additional purchases
23 from the Harbor Distribution and then Downey Wholesale.
24 Okay. We investigate. Then Harbor Distribution is a
25 whole fake. One-million dollars for additional purchase

1 was a fake. So I said that, you know, this not can -- can
2 be -- not can be done. Why you doing that? He didn't
3 know that this was maybe duplicate. So we turn out to be
4 almost \$100,000 additional taxation from him. So we found
5 it, the error.

6 And then we -- another one he said the down --
7 Downey Wholesale. So we investigate. Okay. We found
8 some of unreported the taxable purchases. So we agree.
9 So we are about pay tax at that time. Then when you found
10 the Downey Wholesale purchases, then this is another
11 bundle. So we need to make sure that this is very, very
12 technical point. You found another bundle of the
13 purchase, you have to add them up. So segregation, to do
14 that to the weighted average, you have -- you have to the
15 mark it up to -- to congregate all those things. Why did
16 the tobacco, as we said, very low margin. But major
17 purchase of the Downey Wholesale is the tobacco. That
18 means that they reduced. They will not decrease overall
19 markups under the -- all the total markets.

20 So I said that we fair to add all those the
21 congregate all those purchases. You're not fair. You
22 just select very good to you but omit those something bad
23 to you. So we just add them up, then makes up another
24 change of the average markup. So Exhibit Number 7 we add
25 them up. In column number 4 it's going to be Downey

1 addition to the taxable ratio. That's whole lot change
2 all the original taxable ratio. So taxable ratio
3 multiplied by each the markups gives you a weighted
4 average ratios, weighted average markup.

5 So that's a natural logical and then procedural
6 process of the worksheet. So we come up with almost
7 one half -- more than one half of the original markup he
8 intended to -- to charge it. So that makes up the another
9 the error rate a low less than 69 percent of the error,
10 right, compared to 129. So we, Your Honor, we -- to make
11 it short -- in then the story shortcut, then we request --
12 we request total abatement or adjustment to incorporate
13 into the our tax assessment. So this is not only for the
14 technical error, it's actual error. Now, everyone laugh
15 it. This actual error is -- is the basic. The middle
16 school -- the formulas, axiom means that already
17 established. No question. So why don't they -- they
18 didn't fix it? I really don't understand until now.

19 So, Your Honor, adjustment due to axiom error.
20 This is obvious. So to -- to those errors, we have to fix
21 it. And then finally, as witness says already the
22 testified, they watch the sales prices. So I hope that
23 every -- this is not usual cases. Maybe they -- they
24 fully understood it before but didn't fix it. I call it
25 there's a very offensive audit. It's like window tax in

1 19 -- the early 19th centuries. They just speculate it.
2 Oh, you guys rich. You have to pay tax. Then I heard it
3 this very vile this statement from the auditors. That's
4 not true. They're -- they're not -- they aren't rich.
5 They're very poor.

6 So that's why we have to adjust at least \$100,000
7 and maximum. We calculate, Your Honor, so we -- we have a
8 calculation already, but we want to talk to the Department
9 what -- whose calculation more correct. So we -- we can
10 have our own version of calculating tax liability. We use
11 actually AI everything. So this tax calculator is
12 automatic. You cannot hide something, some on hidden
13 formula to the -- the demonstrous [sic] worksheet over
14 there. We -- expert like -- sorry. Expert really hard to
15 find that because 40 pages of our worksheet, it's very
16 hard to find it. We are lucky enough we found it. So if
17 not, taxpayer no way to -- not to avoid the tax \$200,000,
18 \$300,000. Actually, there was \$300,000 reduced to the now
19 \$150,000. I hope that we can pay the -- the optimal tax
20 around \$40,000, \$50,000.

21 I think that some of the -- in the report we
22 found it. That's a natural mistake some of the -- to the
23 taxpayer. Natural to the taxpayers. So, Your Honor, I
24 really request the -- all those negligence and any other
25 penalty has to be waived as -- as is a tenement to some

1 kind of the fraudulent calculation. So every the
2 negligence penalty -- penalties, and then other penalty of
3 everything has to be removed.

4 So that's my opening brief, sir. Your Honor, I
5 really appreciate the opportunity on this, if now the
6 taxpayer will have to pay all those unfounded taxes. No
7 further, Your Honor. That's my opening brief.

8 JUDGE TURNER: Thank you.

9 Panel, do you have any questions?

10 JUDGE GEARY: No.

11 JUDGE LONG: No questions. Thank you.

12 JUDGE TURNER: I do have a question for you,
13 Mr. Cho. On your Exhibit 8, it's identified as tax
14 liability. And you identified your error rate as
15 55 percent that's developed on, as we've discussed, with
16 your markup methodology. Is that -- would you concede
17 that that is a basis for a liability in this context? Or
18 are you simply illustrating the error with respect to the
19 Department's calculation?

20 MR. CHO: Yes, Your Honor. We -- we found the
21 some of them the report purchases, so we're willing to pay
22 some of those.

23 JUDGE TURNER: Got it. So that markup method
24 applied correctly on your numbers is satisfactory from
25 taxpayer?

1 MR. CHO: Very close to that error rate.

2 JUDGE TURNER: Understood. Thank you for your
3 testimony.

4 We'll move on to the Department.

5 You have 30 minutes.

6 MR. SHARMA: Thank you, Judge.

7

8 PRESENTATION

9 MR. SHARMA: Appellant operated a gasoline
10 station with a minimart, since January 2011. This appeal
11 is related to the sales of minimart only. The Department
12 performed an audit examination for the period
13 January 1, 2018, through December 31, 2020. Appellant
14 provided limited books and records, such as federal income
15 tax returns for years 2018 to 2020; bank statements for
16 the audit period; monthly sales journals for January 2018
17 through September 2020; point of sales daily sales reports
18 for third quarter 2020 and fourth quarter 2020; general
19 ledgers for first quarter 2018 through third quarter 2020;
20 and purchase invoices for first quarter 2018 and second
21 quarter 2018.

22 Appellant did not provide any sales receipts or
23 point of sales data for the audit period. The Department
24 performed vendor survey from main vendors. Appellant
25 reported total sales of around \$7.2 million but reported

1 taxable sales of \$1.3 million for minimart; Exhibit A,
2 page 11. The Department's analysis of reported taxable
3 sales for sales and use tax returns and taxable purchases
4 for journal ledgers revealed markup of negative 27 percent
5 for 2018, 2 percent for 2019, and negative 15 percent for
6 first quarter 2020 to third quarter 2020. Similar
7 analysis related to nontaxable food sales revealed markup
8 of 22 percent for 2018, 71 percent for 2019, and
9 138 percent for first quarter 2020 through third quarter
10 2020; Exhibit A, page 2020.

11 Negative markup for taxable sales means
12 Appellant's reported taxable sales were less than the
13 taxable purchases. Bank deposits analysis also revealed
14 significant unexplained differences; Exhibit A, page 90.
15 Based on this analysis, the Department determined that
16 Appellant's books and records for minimart were unreliable
17 and inadequate for sales and use tax purposes. The
18 Department used indirect audit method to verify the
19 accuracy of reported taxable sales of minimart.

20 Due to COVID, Appellant was requested to assist
21 with the shelf test. Appellant conducted its own shelf
22 test and provided it to the Department. The Department
23 reviewed the shelf test and calculated markup of around
24 29 percent for beer, 44 percent for carbonated drinks,
25 82 percent for miscellaneous taxable items, and 16 percent

1 for cigarette and tobacco products, resulting in weighted
2 markup of around 26 percent; Exhibit A, pages 54 to 58.

3 During the appeals process, Appellant objected to
4 the use of weighted markup of 26 percent. To address
5 Appellant's objection, the Department used individual
6 markups for each taxable category to determine audited
7 taxable sales for minimart. The Department used
8 Appellant's general ledgers and vendor survey to determine
9 audited taxable purchases of a little more than
10 \$2.2 million for the audit period; Exhibit A, page 17 and
11 18.

12 The Department used audited taxable purchases of
13 \$2.2 million, allowed pilferage of 1 percent, and applied
14 the markup factors to determine audited taxable sales of
15 \$2.8 million for the audit period. Appellant reported
16 taxable sales of \$1.3 million, resulting in unreported
17 taxable sales of a little more than \$1.5 million for the
18 audit period; Exhibit A, pages 1 through 16. Appellant
19 contends that markup calculations are wrong because sales
20 price provided by Appellant included sales tax. In
21 support of its contention, Appellant provided 13
22 affidavits dated April 2022 claimed to be from its
23 customers stating that sales price for various items
24 include sales tax; Exhibit A, pages 1002 to 1014.

25 Appellant has submitted various undated

1 photographs of price signs, which include the phrase "Out
2 the door," next to the certain beer prices, and "tax
3 included" next to cigarettes prices; Exhibit E, pages 1080
4 to 1084. In response, the Department submits that at the
5 time of submission of the shelf test, Appellant informed
6 the Department that all selling prices are ex tax;
7 Exhibit A, page 975. In addition, the Department made two
8 unannounced purchases on June 28, 2021, and March 1, 2022.
9 Both these purchases show no sales tax charged and have no
10 statement that sales tax prices tax included; Exhibit A,
11 pages 956 to 958.

12 During the visits, the Department did not see any
13 notice showing that selling prices are tax included as
14 required by Regulation 1700. Further, witness
15 specifically stated that she has seen these signs during
16 2021 and 2022. And the testimony did not establish that
17 selling price were sales tax included during the audit
18 period. Critically, despite various requests, Appellant
19 failed to provide any point of sales data or sales
20 receipts to show that selling prices that tax included
21 during the audit period. Due to lack of sufficient
22 documentary evidence, the Department rejected Appellant's
23 contentions as unsupported and unverifiable. For details
24 and comments, please refer to Exhibit E, pages 1071, 1122,
25 and 1123. No adjustments warranted for this contention.

1 When the Department is not satisfied with the
2 amount of tax reported by the taxpayer, the Department may
3 determine the amount required to be paid based on any
4 information which is in its possession or may come into
5 its possession. It is the taxpayer's responsibility to
6 maintain and make available for examination on requests
7 all records necessary to determine the correct tax
8 liability, including bills, receipts, invoices, or other
9 documents of original entry supporting the entries in the
10 books of account. If a taxpayer's records are
11 insufficient or are proven unreliable, it is appropriate
12 for the Department to compute and estimate that taxpayer's
13 liability by alternative means.

14 The burden of proof is upon the taxpayer to prove
15 all issues of fact by a preponderance of evidence. The
16 taxpayer must establish that the circumstances it asserts
17 are more likely than not to be correct. In the case of an
18 appeal, the Department has a minimal initial burden of
19 showing that its determination was reasonable and
20 rational. Once the Department has met its initial burden,
21 the burden of proof shifts to the taxpayer to establish
22 that a result differing from the Department's
23 determination is warranted. Unsupported assertions are
24 not sufficient to satisfy a taxpayer's burden of proof.

25 The Department used Appellant's provided books

1 and records and third-party information to determine the
2 audit liability. Doing so produced a reasonable and
3 rational determination. The Department assessed 10
4 percent negligence penalty for the audit period. Audited
5 taxable purchases of \$2.2 million exceeds reported taxable
6 sales of \$1.3 million by almost \$1 million. Unreported
7 taxable measures for minimart is 123 percent of the
8 reported taxable sales, which is due to negligence in
9 maintaining and providing necessary books and records as
10 required and mandated by Revenue & Taxation Code 7053 and
11 7054, and Regulation 1698.

12 The understatement cannot be attributed to a bona
13 fide and reasonable belief that the bookkeeping and
14 reporting practices were sufficiently compliant with the
15 requirements of the sales and use tax law. Therefore,
16 Appellant was negligent, and the penalty should be upheld.
17 Based on the foregoing, the Department has fully explained
18 the basis for the deficiency and proved that the
19 determination was reasonable based on the available books
20 and records. Further, the Department has used approved
21 audit methods to determine the deficiency. Therefore,
22 based on the evidence presented, the Department requests
23 that Appellant's appeal be denied.

24 This concludes my presentation, and I'm available
25 to answer any question you may have. Thank you.

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JUDGE TURNER: Thank you.

Questions from the panel? Judge Long?

JUDGE LONG: No questions. Thank you.

JUDGE TURNER: Judge Geary?

JUDGE GEARY: No questions.

JUDGE TURNER: I have a question for the Department. Is it the Department's position -- well, I'll ask afterwards.

Mr. Cho, we agreed -- said that you would get 10 minutes and reply. You have 10 minutes.

CLOSING STATEMENT

MR. CHO: Yes. Before the closing remarks, I really unhappy about they still not touch the issue at all. We're not disputing anything. We just disputing their error. Never touch they error, what -- what they made, error and then mistake. That's the important point of this special the hearings. They never touched so far. We not even not talking about the content of this -- this audit. We -- mistake and then error.

Secondly, they have no evidence to -- okay. The statute of limitations in New York. I didn't say that. It doesn't exist. They said that. They only order statement they approve, no photos everything. They only stated. And then they said that they still met the

1 initial burden of showing. No shift the burden of the
2 showing, and anything the burden of the responsibility
3 shift to there, not to the taxpayer. Because they fail to
4 show initial burden of proof.

5 You cannot assess tax without evidence, only by
6 formula, even though 1656.1 it says that this outside
7 posted sign is visible. Then we met the requirement
8 already, and then regulation 17002. There are no
9 evidence, no record, and then just a speculation. Then
10 charge it, and then you guys have to pay it. And then
11 they -- we continue to pay every month \$2,000 until two or
12 three years. That's unlawful taking because this tax is
13 not right, and then they want us to pay. That's the
14 violation of the Fifth Amendment as well too by a
15 government.

16 We not prove they just didn't show initial burden
17 of proof, even not preponderance of the proof. Where is
18 the proof? Where is the photo that you didn't see that?
19 Only statement. How come? We -- we understand they lie.
20 Maybe others lie to inflate. Even though we all -- you
21 never miss it. You can -- there are very high security
22 areas and gunman over there. Then everybody has to hurry
23 up. Why is it the whole invoice price, ex tax included?
24 To convenient for those customers.

25 If you stay there, level line up only on for the

1 small corridor, you have to hurry up and then pay. You
2 cannot charge \$10.95. You have no time to change another
3 penny and dimes. Ten dollars, okay. That's the final
4 price go out. That's the final price, tax included. As a
5 CPA, and then you got all the whole numbers, and then
6 retroactively calculate by \$10 divide by 1.095, and it
7 come up with a 91 -9.91 sales price, and then rest of
8 those is the sales tax. They paid it for the long, long
9 time. That's a practice.

10 Everything what they said is not right. It is
11 not reality. They out of touch of reality. We cannot pay
12 tax like this anymore. Yes, as any -- anyway, no
13 evidence, no proof, no photos, and then we cannot -- we
14 cannot accept it any penalty either.

15 No further, Your Honor.

16 JUDGE TURNER: Thank you.

17 Questions?

18 JUDGE LONG: No questions. Thank you.

19 JUDGE TURNER: I have a question for both of you.
20 Is recognizing that both sides are applying the markup
21 method, is our delta in the two approaches, whether or not
22 the taxpayer's selling on a tax included basis or not. So
23 I guess I'll start with the Department.

24 In your calculation of the markup method, is the
25 delta for what the Department's number is versus what the

1 Appellant's is that they're arguing they sold on a
2 tax-included basis. Therefore, you included sales tax in
3 the markup method. Is that the delta that we're dealing
4 with here?

5 MR. SHARMA: That is correct. Because the
6 selling prices Appellant provided to the Department, it
7 clearly they stated to us that it is ex tax. When the
8 shelf test was done, when the markup was high, then the
9 Appellant start changing all these things. They said
10 there is tax included. And Department made two
11 unannounced visits and noted that those prices were not
12 tax included.

13 And the second thing, the worksheet which is
14 prepared by the Appellant, it compute -- it's adding the
15 sales tax back to the purchase price. But the Department
16 calculation is you take the selling price and take the
17 purchase price and the gross profit divided by the
18 purchase cost and then calculated by the markup test.

19 And the second part of the calculation is, which
20 is the purchases they're using. They're using \$1.3
21 million as general ledger. The Department, based on the
22 vendor survey -- they already impeached those records.
23 Based on the vendor survey, it's \$2.2 million, not
24 \$1.3 million. And the Department has used that purchases.
25 And Department, because Appellant objected to the weighted

1 average markup, we use the individual markup for each and
2 every item. So the weighted markup is not part of the
3 equation.

4 JUDGE TURNER: Same question to you then. Is it
5 your view that the delta between your approach to the
6 markup method and the Department's is because of the
7 tax-included price?

8 MR. CHO: That's one thing, and there are also
9 two mistakes.

10 JUDGE TURNER: Okay.

11 MR. CHO: Yes, that's the one thing. You already
12 this against the truth. Already testified the by witness
13 that all the prices say tax included.

14 JUDGE TURNER: Understood.

15 MR. CHO: Yeah, that's not true.

16 JUDGE TURNER: Thank you.

17 Okay. Any questions before we -- okay.

18 I've got another one for the Department, I guess.
19 In respect to the tax included price, the determination
20 made a comment about the lack of notification by a poster
21 or by individual reference on the advertised price of the
22 lack of a indication that things -- that the items were
23 sold on a tax-included price. Is it the Department's
24 position that that the absence of that notification
25 precludes something from being sold on a tax-included

1 price?

2 MR. SHARMA: The Department position is that
3 because for the Appellant have those prices sales tax
4 included, there has to be some kind of evidence. They
5 have not provided any sales receipts, no POS data, nothing
6 during the audit period to show that was the case. And
7 Regulation 1700(a)(2)(C), it clearly states, it shall be
8 presumed that the property, the gross receipts from the
9 sales, which is subject to the sales tax, is sold at a
10 price which includes tax reimbursement, if the retailer
11 posts in his or her premises, or includes a price tag or
12 in an advertisement, whichever is applicable, one of the
13 following notices: All prices of taxable items include
14 sales tax reimbursement computed to the nearest mill. The
15 second, the price of this item includes sales tax
16 reimbursement computed to the nearest mill. That's the
17 requirement of the Regulation is.

18 JUDGE TURNER: So that -- but that requirement --
19 I guess my question then is that you're right. It says
20 with respect to the creation of the presumption. The lack
21 of it though, I'm trying to understand what the
22 Department's position is in the absence of such a
23 notification, absence of an advertisement, for example.
24 Is it the Department's position that if that is absent,
25 that there is no basis for establishing it's a

1 tax-included price; something being sold for a
2 tax-included price?

3 MR. SHARMA: That is the one issue. And the
4 other one is based on all the other evidence, Department's
5 unannounced visits, Department's purchases, and every
6 undated photograph submitted, which is after the fact. So
7 those all factors combined together, Department position
8 is that.

9 JUDGE TURNER: Understood.

10 MR. SHARMA: Thank you.

11 JUDGE TURNER: Understood. Thank you so much.

12 MR. CHO: Your Honor, the 15 -- 1656 Section 3
13 exception clearly state that that's sort of the
14 exception -- exceptional the tax reimbursement has to be
15 posted. That's the exception go by independently. Now,
16 except A and B says clearly state that we can do that for
17 taxable reimbursement by posting visibly those signage.
18 That's very interesting custom, every other state as well.
19 And then we Google its what's -- what one mean by the
20 out-of-door tax included. Out-of-door means that --
21 everyone knows that. That's the tax included. So why
22 only go by A and B? C is also exception, the independent
23 exceptions.

24 JUDGE TURNER: Thank you.

25 All right. So with that, we're going to close

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the record of the hearing. The case is now submitted on August 12th, 2025.

The record is closed.

Thank you, everyone, for participating today.

The judges, we will meet in deliberation and decide the case. We will issue a written opinion within 100 days.

Today's hearing in the Appeal of T. Kim dba D&K Milk Palace is now concluded.

(Proceedings concluded at 2:25 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 20th day of August, 2025.

ERNALYN M. ALONZO
HEARING REPORTER