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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
R. ALBAHU,) OTA NO. 240716793
APPELLANT.)
_____)

Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 2:30 p.m. and concluding
at 3:22 p.m. on Wednesday, September 17, 2025,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ SHERIENE ANNE RIDENOUR

Panel Members: ALJ TERESA A. STANLEY
ALJ AMANDA VASSIGH

For the Appellant: R. ALBAHU

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

NALAN SAMARAWICKREMA
CHRISTOPHER BROOKS
JASON PARKER

Interpreter MONA JABER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received into evidence at page 7.)

(Department's Exhibits A-E were received into evidence during the prehearing conference.)

(Department's Exhibit F was received into evidence at page 8.)

OPENING STATEMENT

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Sacramento, California; Wednesday, September 17, 2025

2:30 p.m.

JUDGE RIDENOUR: We are opening the record in the Office of Tax Appeals oral hearing for the Appeal of Ramzie Albahu, Case No. 240716793. Today is September 17th, 2025, and the time is 2:30 p.m. The hearing is being held in Sacramento, California.

Today's hearing is being held by a three-person panel. My name is Sheriene Ridenour, and I am the lead judge. My co-panelists are Judge Stanley and Judge Vassigh.

Also with us remotely is Mona Jaber, who is an interpreter, who is available to interpret as needed from English to Arabic, and Arabic to English. Ms. Jaber was sworn in prior to going on the record.

Mr. Albahu, as previously discussed with OTA, Ms. Jaber is available remotely to interpret during this hearing. If you end up needing something translated, please say something, and it will be translated.

MR. ALBAHU: Thank you.

JUDGE RIDENOUR: For the record, will the parties please state their names and who they represent, starting with representatives for CDTFA.

MR. SAMARAWICKREMA: Nalan Samarawickrema,

1 hearing representative for CDTFA.

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

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

6 MR. ALBAHU: Ramzie Albahu, the owner of Pine &
7 Jones Market.

8 JUDGE RIDENOUR: Thank you very much.

9 As stated in my Minutes and Orders, dated
10 August 28, 2025, there are two issues in this appeal:
11 Whether adjustments to the disallowed claimed exempt sales
12 are warranted; and whether Appellant was negligent.

13 Since the prehearing conference, CDTFA conducted
14 a reaudit, which is labeled as Exhibit F. CDTFA states
15 that it discovered erroneously included sales tax
16 reimbursements in its calculation of Appellant's claimed
17 exempt sales, and the reaudit resulted in reduction of the
18 disallowed claimed exempt sales for liability period by
19 \$76,424, which reduces the tax at issue by \$6,523, plus
20 applicable interest, and the negligent penalty to
21 \$2,752.96.

22 CDTFA, can you please confirm if my understanding
23 as to the reaudit is correct.

24 MR. SAMARAWICKREMA: Yes, Judge.

25 JUDGE RIDENOUR: Perfect. Thank you.

1 As for exhibits, they are listed in the exhibit
2 log provided to the parties. During the prehearing
3 conference, CDTFA raised no objections to Appellants 1
4 through 8, and they are admitted into evidence.

5 (Appellant's Exhibits 1-8 were received into
6 evidence by the Administrative Law Judge.)

7 JUDGE RIDENOUR: Since the prehearing conference,
8 Appellant has submitted -- Exhibit 9?

9 MR. ALBAHU: Yes.

10 JUDGE RIDENOUR: CDTFA, do you have any
11 objections to Exhibit 9?

12 MR. BROOKS: Yes, we do. The exhibits are
13 definitely late. And also, there are no dates associated
14 with it, and the writing -- handwriting on it seems to
15 want us to believe that this was from a --

16 JUDGE RIDENOUR: I'm sorry. Mr. Brooks, can you
17 repeat that?

18 MR. BROOKS: Yes. The -- the handwriting on the
19 exhibit purports that it was from the Covid period, but
20 there's no date, otherwise, to associate it with that time
21 period.

22 JUDGE RIDENOUR: Mr. Albahu, do you have any
23 response to their objection?

24 MR. ALBAHU: No, Your Honor. I got them from my
25 phone. I went back to Covid time, and that's how I

1 printed them.

2 JUDGE RIDENOUR: Okay. I am going to allow them
3 as Exhibit 9, understanding that there was an objection,
4 and to remind the parties that the panel examines each
5 exhibit independently and gives the evidence the
6 appropriate weight when deciding this appeal. Okay.
7 Thank you.

8 During the prehearing conference, Appellant
9 raised no objections to CDTFA's A through E, and they were
10 admitted into evidence. Since the prehearing conference,
11 CDTFA submitted Exhibit F.

12 Mr. Albahu, do you have any objections to CDTFA's
13 Exhibit F?

14 MR. ALBAHU: No.

15 JUDGE RIDENOUR: Okay. CDTFA's Exhibit F is
16 hereby admitted into evidence.

17 (Department's Exhibit F was received into
18 evidence by the Administrative Law Judge.)

19 JUDGE RIDENOUR: As for witnesses, CDTFA
20 previously indicated it will not call any witness.
21 Appellant indicated he will be testifying today, and CDTFA
22 raised no objections. As such, Mr. Albahu will be sworn
23 in before Appellant's presentation, and there are no other
24 witnesses today.

25 As a reminder to the parties, we agreed that each

1 party will have 30 minutes to make their presentation, and
2 Appellant will have five minutes to provide closing
3 remarks. Each party is encouraged to monitor their own
4 time. Does anyone have any questions before we move on to
5 presentations?

6 Mr. Albahu?

7 MR. ALBAHU: I just need 10 minutes, Your Honor.
8 That's all.

9 JUDGE RIDENOUR: Okay.

10 MR. ALBAHU: Thank you.

11 JUDGE RIDENOUR: Thank you for letting me know.
12 If you decide you need longer, that's fine.

13 MR. ALBAHU: Thank you.

14 JUDGE RIDENOUR: CDTFA, any questions?

15 MR. SAMARAWICKREMA: No, Judge.

16 JUDGE RIDENOUR: All right. Before we proceed
17 Mr. Albahu, I need to place you under oath so that we can
18 consider your statements as testimony, and you will remain
19 under oath until the close of this hearing. Will you
20 please raise your right hand.

21

22 R. ALBAHU,

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

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JUDGE RIDENOUR: Thank you very much.

Okay. The time now is 2:35. When you are ready, please begin your presentation.

PRESENTATION

MR. ALBAHU: Good afternoon Your Honor.

My name is Ramzie Albahu. I'm the owner of Pine & Jones Market in San Francisco. I want to thank -- thank you for the opportunity to speak today. I come before you with respect for this process, and with the hope that I will be judged fairly based on the facts and circumstances of my case.

When I purchased the store in March 2019, it was almost the ground. The shelves were empty. The business had very little left in it. My family and I, we built it from scratch, working day and night to bring it back to life and to serve my community. During the audit period, my business faced extreme challenges. Soon after we reopened the COVID pandemic struck. Like many small business owners, I worked chiefly to keep the store open and provide essential goods. Most of what we sold during that time were nontaxable grocery, bread, milk, vegetables, frozen food, and all other essential items. Taxable products made up only a small portion of our sales.

1 Dispute that the CDTFA auditor relied only three
2 months of sales data from December 2022 through
3 February 2023. Those months were outside the audit
4 period, and they reflected a completely different time
5 after restrictions were lifted and business had returned
6 to normal. By applying those months across the entire
7 audit period, the auditor created inflated and unrealistic
8 estimate of my taxable sales.

9 Also, I want to mention the auditor, undercover,
10 visited my store on September 20th, 2022. She came in the
11 undercover, purchased a sandwich, and observed the store.
12 During that visit, she asked if the sandwiches were hot.
13 I, as the owner, told her the truth, that our sandwiches
14 were cold. The details are important because it shows
15 that the most of the sandwiches we sell are cold food
16 items, which are not nontaxable under California's law.

17 She also noted that the six fridges contained
18 alcohol and carbonated drinks, and she is correct. Those
19 are the taxable items. However, she concluded that about
20 75 percent of my store was taxable. That conclusion does
21 not make sense. My store has 28 coolers in total and only
22 six contain taxable items, such as alcohol and soda. The
23 rest are filled with noncarbonated drinks, frozen food,
24 deli products, and wide variety of nontaxable grocery.
25 And during COVID, the picture were even clearly, my store

1 only had two main aisles of shelves. One aisle in the
2 middle was stocked with produce, vegetables, and bread.
3 And the second aisle was filled with essential grocery
4 items. Items are not taxable. To say 75 percent of my
5 store was taxable, ignores the actual layout and the
6 product mix of my business during that time.

7 Second, the auditor did not account for the
8 COVID-19 restrictions and curfew that directly impacted my
9 store. From March 2020, San Francisco stay-at-home order
10 forced us to reduce operations dramatically. In
11 November 2020, statewide curfew was imposed. During those
12 times, my business was almost entirely limited to
13 essential food sales, which were nontaxable under
14 California law. In addition, my business in San Francisco
15 were required to close early, open late under city
16 restrictions, which further reduced customer's traffic and
17 taxable sales.

18 In June 2022, a flood destroyed original point of
19 sale system and records. I provided the old POS system to
20 the auditor, but she refused to use it. The flood also
21 damaged a lot of my inventory, shelves, and other parts of
22 my store. The disaster was something beyond my control,
23 and I did my best to recover and provide all the available
24 documentation.

25 The auditor failed to apply California

1 marketplace facility law. Most of my alcohol sales during
2 the audit period were not handled directly by me. They
3 were sold through marketplace facility, like Drizly and
4 others, who by law were responsible for collecting and
5 remitting the sales tax on those transactions. I had
6 nothing to do with the collecting or withholding the tax
7 money. Counting those sales, again in my audit, unfairly
8 inflates the liability because the tax was already
9 collected and remitted.

10 On top of that, there were mistakes and problems
11 in the audit. On April 11, 2023, the auditor issued three
12 different liability figures in a single day, ranging from
13 \$32,000 to over \$50,000, and then back to \$34,000. The
14 auditor admitted in writing there had been a calculation
15 mistake. Also, after the hearing, they sent me a letter.
16 It shows that they found mistakenly of \$72,000, and they
17 are going to deduct it from the \$399,000, after two years
18 of the hearing.

19 Finally, I want to address the extra penalty that
20 was added. I believe wholly unfair. At every stage, I
21 acted in good faith. I filed timely return. I provided
22 all the records. I had cooperated fully with CDTFA
23 dispute, delays caused by their auditor illness and
24 workload. My accounting -- my accountant prepared and
25 filed the returns based on the information available,

1 including my direct knowledge of the business during
2 COVID. I never intend to underreport or avoid my
3 obligations. My intention was always to comply with the
4 law.

5 Your Honor, I'm not asking for special treatment.
6 I'm simply asking for fairness. I ask that the extra
7 penalty be removed and that any liability recalculated
8 using accurately in the period that date that reflects the
9 true condition of my business, conditions that include
10 COVID restrictions, national disaster damage, the true
11 product mix of my store, and the marketplace facility
12 rules that were effected.

13 Thank you for my time in considering my case.

14 JUDGE RIDENOUR: Thank you very much.

15 CDTFA, do you have any questions for the witness?

16 MR. SAMARAWICKREMA: No, Judge.

17 JUDGE RIDENOUR: Thank you.

18 Judge Stanley, do you have any questions?

19 JUDGE STANLEY: Yes. I just wanted to follow up
20 on the new exhibit. Since you're now under oath,
21 Mr. Albahu, can you explain what the dates are on these
22 photos and how you accessed them?

23 MR. ALBAHU: Your Honor, you mean the photos I
24 just submitted?

25 JUDGE STANLEY: Yes.

1 MR. ALBAHU: Okay. So those are the dates
2 exactly when I bought the business. And after COVID hit,
3 I have them in 2020.

4 JUDGE STANLEY: So some of them are from when you
5 bought the business, and some are from when COVID hit?

6 MR. ALBAHU: These -- I bought the business in
7 March 2019, and in these pictures I found them online when
8 I posted the bread and milk in the 2020.

9 JUDGE STANLEY: Okay. The one that is dated, it
10 says August 6th. Does that sound right to you?

11 MR. ALBAHU: Which one?

12 JUDGE STANLEY: The deli photo, it says
13 August 6th on it.

14 MR. ALBAHU: Yes. That's another -- other
15 pictures of the deli just to show my store has a deli.

16 JUDGE STANLEY: Okay. And would that be
17 August 6th of 2020?

18 MR. ALBAHU: 2020. That is correct, Your Honor.

19 JUDGE STANLEY: Okay. Thank you. I don't have
20 any further questions.

21 MR. ALBAHU: Thank you.

22 JUDGE RIDENOUR: Judge Vassigh, do you have any
23 questions?

24 JUDGE VASSIGH: I do. Thank you. I just want to
25 clarify. You said that you pulled these photos from your

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website?

MR. ALBAHU: The picture on -- for the middle aisle of my business, I found it online that I posted when COVID hit just to show my neighbors that I have bread and all essential items. And that's how I found it in my phone. That's exactly when COVID started.

JUDGE VASSIGH: Which page would that be?

MR. ALBAHU: It's that middle aisle where it shows all the bread on it.

JUDGE VASSIGH: Would it be this? This is the second page.

MR. ALBAHU: Not -- not this one. But --

JUDGE VASSIGH: This one with the bread?

MR. ALBAHU: Yes, Your Honor.

JUDGE VASSIGH: Okay. So that would be page 3.

MR. ALBAHU: Thank you, Your Honor.

JUDGE VASSIGH: And you had posted that online to show people that you have --

MR. ALBAHU: That's correct, Your Honor.

JUDGE VASSIGH: Okay. I also want to check with you because I know CDTFA said that they offered to do a shelf test, and you declined. Can you explain?

MR. ALBAHU: That's correct, Your Honor. They asked me after the audit period, after COVID ended, everything changed in my store. So that's why I said no.

1 JUDGE VASSIGH: Okay. Thank you.

2 MR. ALBAHU: Thank you.

3 JUDGE RIDENOUR: So in July 2022, you experienced
4 a flood, and that damaged your POS system; is that
5 correct?

6 MR. ALBAHU: That's correct, Your Honor.

7 JUDGE RIDENOUR: Did you not have backups?

8 MR. ALBAHU: It has no backup. I bought the
9 store, and it was in it.

10 JUDGE RIDENOUR: Okay. And that's all my
11 questions for now.

12 MR. ALBAHU: Thank you, Your Honor.

13 JUDGE RIDENOUR: All right. CDTFA, when you're
14 ready, please begin your presentation. The time is 2:46.

15 MR. SAMARAWICKREMA: Thank you, Judge.

16

17 PRESENTATION

18 MR. SAMARAWICKREMA: Appellant is a sole
19 proprietor who owns and operates a convenience store in
20 San Francisco, California. The store sells various
21 taxable and nontaxable items, including liquor, beer,
22 wine, carbonated beverages, tobacco products,
23 miscellaneous taxable items, nontaxable grocery items, and
24 hot sandwiches from a deli counter. Appellant is also a
25 licensed California lottery retailer. In early 2020, the

1 Appellant became a marketplace seller of alcohol through
2 Drizly, a marketplace facilitator.

3 The Department audited Appellant's business for
4 the period of July 1st, 2019, through June 30th, 2022.
5 This is Appellant's first audit. During the audit period,
6 Appellant reported around \$3.9 million as total sales and
7 claimed deduction of around \$2.8 million consisting of
8 sale for resales of around \$55,000, nontaxable food
9 products of around \$2.3 million, sales tax reimbursement
10 of around \$86,000, and other deductions of around \$413,000
11 resulting in reported taxable sale of around \$1 million;
12 and this is shown on Exhibit F, page 19.

13 During our presentation, we will explain why the
14 Department disallowed some of Appellant's claimed
15 nontaxable sales; why the Department used an indirect
16 audit approach; how the Department determined Appellant's
17 overclaimed nontaxable sales for the audit period; and why
18 the Department recommended a negligence penalty for this
19 Appellant. During the audit, Appellant failed to provide
20 his complete sales records, such as POS download with all
21 folders, daily store reports and credit card sales
22 receipts to verify the accuracy of the amounts reflected
23 on Appellant's sales and use tax returns.

24 In addition, Appellant failed to provide complete
25 purchase invoices and purchase journals for the audit

1 period. Appellant was unable to explain how he reported
2 his sales on his sales and use tax returns. Appellant was
3 also unable to explain what sources he relied upon to file
4 his sales and use tax returns. Therefore, the Department
5 did not accept Appellant's reported taxable sales or his
6 claimed nontaxable sales.

7 Further, the Department determined that
8 Appellant's record was such that sales could not be
9 verified by a direct audit approach. The Department
10 completed three verification methods to verify the
11 accuracy of Appellant's reported and claimed nontaxable
12 sales. First, the Department reviewed Appellant's federal
13 income tax return for years 2020 and 2021; and this
14 information is shown on Exhibit F, page 42. The
15 Department reconciled around \$2.8 million in gross sales
16 reflected on his federal income tax returns with total
17 sales reported on its sales and use tax returns, and no
18 material differences were noted for the same period; and
19 these calculations are shown on Exhibit F, page 42.

20 The Department also compared those reported total
21 sales to the cost of goods sold of around \$2 million
22 reflected on Appellant's federal income tax returns and
23 calculated an overall total reported book markup of around
24 35 percent; and this markup calculation are shown on
25 Exhibit F, page 41. The Department however, could not

1 verify the reasonableness of the reported book markups
2 because Appellant did not provide supported documents,
3 such as his current sales prices, cost prices, and
4 purchase invoices or purchase journals.

5 Second, Appellant did not provide his credit card
6 sales for the audit period. Therefore, the Department
7 obtained Appellant's credit card sales for the period
8 July 2019 through June 2022 from the Department's internal
9 sources; and this information is shown on Exhibit F,
10 page 39. The Department compared the credit card sales to
11 the reported total sales and calculated an overall
12 quarterly credit card sales ratio of around 49 percent for
13 the audit period; and these calculations are shown on
14 Exhibit F, page 46.

15 During the audit field work, Appellant did not
16 provide the information required to determine his product
17 mix and understand his pricing policies. Based on
18 available information, the Department considered these
19 reported total book markup and reported credit card sales
20 ratio as reasonable for Appellant's type of business.
21 Therefore, the Department accepted Appellant's reported
22 total sales for the audit period.

23 Third, the Department then analyzed Appellant's
24 claimed nontaxable sales for the audit period. Appellant
25 claimed that he sold liquor as a marketplace seller

1 through Drizly, a marketplace facilitator. A marketplace
2 facilitator is a person, other than a delivery network
3 company. If they contract with marketplace sellers to
4 facilitate the sales of marketplace seller's product
5 through a marketplace operated by a person or a related
6 person for a fee or other consideration, and perform
7 certain activities directly or indirectly through related
8 persons.

9 Under the Marketplace Facilitator Act, effective
10 October 1st, 2019, marketplace facilitators in California
11 became responsible for collecting and remitting sales tax
12 on retail sales. The Department therefore, accepted
13 Appellant's marketplace facilitated sales as exempt.
14 Appellant provided marketplace facilitators three pictures
15 to support his sales made through the marketplace
16 facilitator for the period April 2020 through June 2022;
17 and this is shown on Exhibit B. Based on those three
18 pictures, the Department determined Appellant made around
19 \$1.7 million worth of sales through the marketplace
20 facilitator; and this is shown on Exhibit F, page 35.

21 The Department then removed Appellant's
22 marketplace facilitator sales from total sales and claimed
23 nontaxable sales to determine total store sales, and
24 claimed nontaxable sales to calculate store sales
25 percentages; and the information required to calculate

1 these store sales and store sales percentages are shown on
2 Exhibit F, page 34. The Department compared the store
3 claimed nontaxable sales with total store sales, and
4 calculated an overall nontaxable store sales percentage of
5 around 53 percent ranging from as low as 24 percent to as
6 high as of 64 percent for the audit period; and the
7 information required to calculate these percentages are
8 shown on Exhibit F, page 24.

9 The Department also analyzed available POS sales
10 summaries for store sales from December 2022 through
11 February 2023. Those records show that approximately
12 39 percent of Appellant's store sales were nontaxable
13 sales; and this calculation is shown on Exhibit F,
14 page 36.

15 When questioned about the disparity, Appellant
16 was unable to provide verifiable documents to support his
17 claimed nontaxable sales percentages. Therefore, the
18 Department conducted further investigation. The
19 Department scheduled the available store sales for the
20 period December 2022 through February 2023, and segregated
21 the product categories into the taxable and nontaxable
22 sales items; and this is shown on Exhibit F, page 37. The
23 Department then compared the nontaxable store sales to
24 total store sales and calculated an audited nontaxable
25 store sales percentage of around 39 percent; and this

1 calculation is on Exhibit F, page 36.

2 Appellant did not provide reliable documents to
3 demonstrate that his audited nontaxable store sales
4 percentage was more than 39 percent. Therefore, this was
5 the best available information to determine Appellant's
6 nontaxable store sales percentage. As mentioned earlier,
7 Appellant claimed that he sold liquor as a marketplace
8 seller through Drizly Marketplace Facilitator for the
9 period April 2020 through June 2022. Based on Appellant
10 provided marketplace facilitator three pictures, the
11 Department scheduled marketplace facilitator sale of
12 around \$1.7 million for the period April 2020 through June
13 2022; and this is shown on Exhibit F, page 35.

14 Marketplace facilitated sales of around \$1.7 million and
15 claimed sales tax reimbursement of around \$86,000 were
16 deducted from reported total sales to determine total
17 store sales of around \$2.1 million for the audit period;
18 and this is shown on Exhibit F, page 34.

19 The Department then applied the audited
20 nontaxable store sales percentage of around 39 percent to
21 the reported total store sales to determine an audited
22 nontaxable store sales amount of around \$820,000 for the
23 audit period; and this calculation is shown on Exhibit F,
24 page 34. Audited nontaxable store sales were compared
25 with the claimed nontaxable store sales of around

1 \$1.1 million to determine Appellant's overclaimed
2 nontaxable sales of around \$323,000 for the audit period;
3 and this is shown on Exhibit F, page 23. The Department
4 then compared the overclaimed nontaxable sales with the
5 reported taxable sales of around \$1 million to calculate
6 the error rate of around 32 percent for the audit period.

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

22 Since Appellant failed to provide necessary
23 records, the Department used the best available
24 information to determine the overclaimed nontaxable store
25 sales for the audit period. The audit calculation of

1 overclaimed nontaxable store sales, based on the best
2 available information was reasonable. Appellant claimed
3 there were calculation errors in the audit. Appellant
4 continues to contend that the sales during the -- during
5 and after the COVID-19 pandemic periods are not
6 representative of the periods prior to pandemic. However,
7 Appellant has not identified any errors in the
8 Department's calculation, nor provided any new document to
9 support any changes to the first three audit findings.

10 In preparation for this oral hearing, the
11 Department reviewed the first three audit findings and did
12 not find any errors. The Department also offered to
13 conduct a shelf test and perform purchase segregation to
14 reexamine the taxable and nontaxable sales percentages for
15 two quarters, one during, and another after pandemic; and
16 this is shown on Exhibit A, pages 21 and 22. However,
17 Appellant did not allow the Department to conduct a shelf
18 test and did not provide purchase invoices to perform
19 segregations. As result, the Department was not able to
20 gather additional complete facts about his pricing
21 policies and product mix. This also prevented the
22 Department from identifying his markup and product mix
23 during and after the pandemic.

24 Appellant has not provided any complete documents
25 of original entry, such as POS download with all folders,

1 and purchase invoices for any part of the audit period to
2 support his contentions, or disprove the Department's
3 calculation of audited nontaxable store sales for this
4 audit period. The audit calculation of overclaimed store
5 sales was based on the best available information. The
6 Department continues to find it reasonable.

7 Finally, the Department imposed a negligence
8 penalty based upon his determination that Appellant's
9 books and records were incomplete and inadequate for sales
10 and use tax purposes, and because Appellant failed to
11 accurately report his claim nontaxable store sales. In
12 analyzing the issue of negligence, one of the factors that
13 must be considered is whether the taxpayer has been
14 previously audited. A negligence is not generally
15 enforced when the taxpayer has not been previously
16 audited. Nevertheless, even in connection with the first
17 audit, imposition of a negligence penalty is warranted if
18 there is evidence establishing that any bookkeeping and
19 reporting errors cannot be attributable to the taxpayer's
20 good faith and reasonable belief that its bookkeeping and
21 reporting practices were in substantial compliance with
22 the requirement of the sales and use tax law or
23 regulations.

24 Relevant factors, such as general state of the
25 books and records and the Appellant's business's

1 experience must be considered. And when the evidence
2 clearly shows that the understatement is due to
3 negligence, then the penalty applies, even when the
4 Appellant has not been previously audited. Specifically,
5 the Department noted Appellant failed to provide complete
6 records for the audit period, and Appellant failed to
7 provide documents of original entry to support his
8 reported and claimed sales. Appellant's failure to
9 provide complete books and records for the audit period is
10 evidence of negligence.

11 In addition, the audit examination discloses
12 overclaimed nontaxable store sales of around \$323,000,
13 which, when compared with a reported taxable sales of
14 around \$1 million for the audit period, results in an
15 error rate of around 32 percent. This error rate is
16 additional evidence of negligence. Again, the Department
17 determined audited nontaxable store sales based upon the
18 best available information. While the Appellant did not
19 provide his complete books and records necessary for a
20 secondary audit method to calibrate these three audit
21 findings, the available evidence demonstrates that the
22 reaudit results are reasonable. Therefore, the Department
23 requests the appeal be denied.

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

1 Thank you.

2 JUDGE RIDENOUR: Thank you very much.

3 Judge Stanley, do you have any questions?

4 JUDGE STANLEY: Yes. I was just wondering
5 whether the Department, when imposing the negligence
6 penalty in particular, took into account the flood that
7 allegedly destroyed the company's records so that they
8 weren't available for the Department to audit.

9 MR. SAMARAWICKREMA: Judge Stanley, the
10 negligence for this particular audit, the negligence
11 penalty was determined because of the inaccurate
12 reporting. The -- there was a 38 percent error rate. So
13 for this audit, because of the inadequate -- the Appellant
14 failed to report the correct amount of taxes.

15 JUDGE STANLEY: Thank you.

16 JUDGE RIDENOUR: Judge Vassigh, do you have any
17 questions?

18 JUDGE VASSIGH: I do not at this time. Thank
19 you.

20 JUDGE RIDENOUR: Thank you.

21 I have a couple of questions. Would the CDTFA
22 please present its position as to taxpayer's argument that
23 75 percent of his taxable store sales is an overstatement
24 based on his number of coolers and the items he sold in
25 his store, please.

1 MR. SAMARAWICKREMA: The -- the Appellant did not
2 provide any documents to determine Appellant's taxable
3 sales. And Appellant installed a new POS system, and it
4 was listed -- that invoice was listed in Appellant's
5 exhibit. And Department only received the document from
6 the new POS system, and that was the reason that we used
7 the three months of -- after obtaining the new POS. So
8 based on that new POS records, 39 percent is the
9 nontaxable store sales percentage. And we also analyzed
10 their reporting, and that's the last quarter of the audit,
11 that is second quarter 2022. The claimed nontaxable store
12 percentages are little less than 25 percent. So we
13 believe -- it is our position that we identified the
14 correct nontaxable sales percentage for this audit.

15 JUDGE RIDENOUR: Thank you. And looking it at
16 the reaudit real quick, originally the disallowed credit
17 was of \$12,216, and it appears from the reaudit it was
18 changed to \$21,987. And I was hoping CDTFA could explain
19 the change.

20 MR. SAMARAWICKREMA: Yes, Judge. The Department
21 calculated the nontaxable store sales and compared that to
22 the claimed amount. In the original audit, the claimed
23 amount included sales tax, but the reaudit it -- it was a
24 calculation error. So in the reaudit, we correctly
25 removed the sales tax from the claimed store sales, and

1 compared them to the audited nontaxable sales.

2 JUDGE RIDENOUR: Thank you. And one more
3 question. If my memory serves me correct, for the audit
4 federal tax returns for 2020 and '21 were provided bank
5 statements from October 1st, 2019, through
6 June 30th, 2022, Drizly sales summaries from
7 October 1st, 2020 through June 30th, 2022, and point of
8 sale summaries from December 1st, 2022, through
9 February 28, 2023; is that correct?

10 MR. SAMARAWICKREMA: Yes, Judge.

11 JUDGE RIDENOUR: Great. Having said that, I
12 would like CDTFA's position as to the audit and Audit
13 Manual Section 407.05, please.

14 MR. SAMARAWICKREMA: The -- this audit the
15 Department used the federal income tax return, bank
16 statements, credit card percentage, and determined that
17 the total sales are correct, accepted. And the next step
18 was to identify whether the taxable sales are correct. So
19 the Department didn't have any supporting documents or
20 verify the -- whatever the taxpayer provided to verify the
21 accuracy of the claimed amount. So the only available
22 information the Department had at the time of the field
23 work is the sales reports from the new POS system. So
24 that's the only information we -- the Department had, and
25 we used that information to determine the nontaxable

1 percentage.

2 And we -- the Department provided Appellant the
3 opportunity to provide other documents, like purchase
4 information, to determine taxable and nontaxable purchase
5 ratios or -- and also to do a shelf test before and after
6 the pandemic. The Department did not get those
7 information, and this is the only information that we have
8 at this point to determine and identify the correct amount
9 of tax.

10 JUDGE RIDENOUR: Thank you. And I have one more
11 question. You said during the audit sales journals
12 weren't provided, purchase invoices. Can you please
13 repeat the list of the items requested that were not
14 provided?

15 MR. SAMARAWICKREMA: So requested or -- yeah.
16 All the documents we requested listed in our engagement
17 letter. That is page -- that's the last page of the
18 Exhibit A that -- I can give you the exact exhibit. Okay.
19 Hold on. Give me a moment.

20 JUDGE RIDENOUR: Thank you.

21 MR. SAMARAWICKREMA: That is Exhibit A. Oh,
22 sorry.

23 MR. PARKER: It's -- it's Exhibit A, page 62.

24 MR. SAMARAWICKREMA: And 63.

25 JUDGE RIDENOUR: All right. Hold on, please.

1 hardest times in our history. I acted in good faith. I
2 filed my taxes, and I always tried to do the right thing.
3 All I ask is to be judged fairly, not based on estimates
4 or mistakes but on the true reality of my business. I
5 want to essentially thank you, Your Honor, and also CDTFA
6 for listening to my case today. I truly appreciate the
7 time and attention both of you have given me.

8 Thank you for your time in considering my case.

9 JUDGE RIDENOUR: Thank you very much.

10 I'm going to ask my co-panelists if they have any
11 questions remaining for either party.

12 Judge Stanley, do you have any questions?

13 JUDGE STANLEY: Yes. I wanted to know about your
14 reporting process before the flood. How did you come up
15 with the numbers that you put onto the sales and use tax
16 reports?

17 MR. ALBAHU: Yeah. I was reporting quarterly,
18 Your Honor, to my accounting over the phone because we had
19 a POS system. So I was reporting every three months. I
20 was giving him the total sales and then the taxes. Based
21 on my knowledge, I was giving him everything that I know.
22 And based on that, he was paying taxes on my behalf.

23 JUDGE STANLEY: Okay. So you would pull POS
24 reports and provide that information to your accountant?

25 MR. ALBAHU: That's correct, Your Honor.

1 JUDGE STANLEY: Okay. And how were you recording
2 taxable sales after the flood then? Did you immediately
3 get a new POS system?

4 MR. ALBAHU: Yeah. We had a ring up -- like, an
5 old cash register at this time, and then we had a new one
6 because we had to install everything, all the items
7 because nothing was backing up. So I had a ring up cash
8 and a POS system on the side.

9 JUDGE STANLEY: Okay. And you would use reports
10 just from the POS system, or did you have some other kind
11 of report from the cash register?

12 MR. ALBAHU: The POS, the new one we installed.
13 I was giving him all those reports, and those are the
14 reports I provided to the CDTFA.

15 JUDGE STANLEY: Okay. Thank you.

16 MR. ALBAHU: Thank you.

17 JUDGE RIDENOUR: Judge Vassigh, do you have any
18 questions?

19 JUDGE VASSIGH: I do not. Thank you.

20 JUDGE RIDENOUR: One further question. So I
21 understand the shelf test was denied. Is there a reason,
22 having been upset with the way the audit was being
23 conducted and the information that you were unable to give
24 them because of the flood, was there a reason why you
25 didn't try to do a shelf test knowing that you had no

1 records to support what you were reporting?

2 MR. ALBAHU: Yeah. Your Honor, the only thing,
3 she wants to do a shelf test right after everything. I --
4 I changed the whole concept of my store. My whole aisles
5 changed from bread, milk, stuff to things are taxable. I
6 had a different layout in the store, and I didn't think
7 it's going to make sense to do a shelf test after audit
8 period. Thank you.

9 JUDGE RIDENOUR: Thank you very much.

10 All right. I want to thank everyone for
11 participating in today's hearing. If there's nothing
12 further, I'm now concluding the hearing.

13 The record is now closed.

14 And the panel will issue a written opinion of
15 OTA's decision within 100 days from today.

16 The hearing in the Appeal of Ramzie Albahu is now
17 closed, and we are off the record.

18 (Proceedings concluded at 3:22 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 1st day of October, 2025.

ERNALYN M. ALONZO
HEARING REPORTER