

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
V. RODRIGUEZ,) OTA NO. 240716649
)
)
) APPELLANT.
)
)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, January 13, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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 ANDREW WONG
Panel Members:	HEARING OFFICER KIM WILSON ALJ JOSH ALDRICH
For the Appellant:	MARITZA RODRIGUEZ
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION AMANDA JACOBS CARY HUXSOLL 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 Exhibit 1 was received into evidence at page 7.)

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

P R E S E N T A T I O N

	<u>P A G E</u>
By Ms. Rodriguez	9
By Ms. Jacobs	27

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

	<u>P A G E</u>
By Ms. Rodriguez	38

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

California; Tuesday, January 13, 2026

1:03 p.m.

JUDGE WONG: We are going to go on the record.

This is the Appeal of Rodriguez before the Office of Tax Appeals, OTA Case No. 240716649. It is Tuesday, January 13th, 2016, and the time is 1:03 p.m., and we are holding this hearing online via ZOOM. I'm Andrew Wong, the lead member of the three-member panel hearing this case, and with me are Hearing Officer Kim Wilson and Administrative Law Judge Josh Aldrich.

Will the individuals representing the Appellant Rodriguez, please introduce yourselves.

MS. RODRIGUEZ: My name is Maritza Rodriguez, and I am the wife of the Appellant, Viviano Rodriguez.

JUDGE WONG: Thank you.

And individuals representing the Respondent tax agency, the California Department of Tax and Fee Administration, also known as CDTFA, could you please introduce yourselves.

MS. JACOBS: My name is Amanda Jacobs. I'm an attorney with the Department's legal division.

MR. HUXSOLL: Carry Huxsoll, also with the Department's legal division.

MR. PARKER: I'm Jason Parker, Chief of

1 Headquarters Operations Bureau with CDTFA.

2 JUDGE WONG: Thank you.

3 We're going to go over the issues, the exhibits,
4 and then the time allocation before we turn it over to the
5 parties. So first, we are considering two issues today.
6 Issue number one is whether the amount of unreported
7 taxable sales, which CDTFA based on disallowed claimed
8 nontaxable sales of animal feed should be further reduced.
9 And issue number two is whether relief for reliance on
10 CDTFA's advice is warranted under Revenue & Taxation Code
11 section 6596.

12 Ms. Rodriguez, is that a correct statement of the
13 issues?

14 MS. RODRIGUEZ: Yes. It's like -- this is very
15 complex because it's depend -- I mean, it's true I relied
16 on them, but --

17 JUDGE WONG: You'll have a chance to explain
18 it --

19 MS. RODRIGUEZ: Okay. Okay.

20 JUDGE WONG: -- but -- but --

21 MS. RODRIGUEZ: Yes. So it's true, but it's
22 like -- it's like so co-dependent. It's like so many
23 issues. But yes --

24 JUDGE WONG: It --

25 MS. RODRIGUEZ: Yes.

1 JUDGE WONG: You'll have a chance to impact that,
2 but is that the question before the panel?

3 MS. RODRIGUEZ: It is.

4 JUDGE WONG: The two questions?

5 MS. RODRIGUEZ: Yes.

6 JUDGE WONG: Thank you.

7 Okay. CDTFA, is that a correct statement of the
8 issues today?

9 MS. JACOBS: Yes, that's our understanding.

10 JUDGE WONG: Okay. Let us go over the exhibits.
11 Appellant has identified and submitted proposed Exhibits 1
12 through 38; is that correct, Ms. Rodriguez?

13 MS. RODRIGUEZ: Correct.

14 JUDGE WONG: Okay. And you had no other exhibits
15 today; correct?

16 MS. RODRIGUEZ: No.

17 JUDGE WONG: Okay. And, CDTFA, you have no
18 formal objections to those exhibits; is that correct?

19 MS. JACOBS: Correct.

20 JUDGE WONG: Okay. So Appellant's Exhibits 1
21 through 38 will be admitted into the record as evidence.

22 (Appellant's Exhibit 1 was received into
23 evidence by the Administrative Law Judge.)

24 JUDGE WONG: And CDTFA has identified and
25 submitted proposed Exhibits A through J as evidence. No

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

offer proposed exhibits.

Is that correct, CDTFA?

MS. JACOBS: That's correct.

JUDGE WONG: Okay. And, Ms. Rodriguez, did you have any objection to these proceeds exhibits from CDTFA?

MS. RODRIGUEZ: No.

JUDGE WONG: Okay. So CDTFA's Exhibits A through J will be admitted into the record as evidence.

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

JUDGE WONG: And neither party intends to call any witnesses. And so finally we'll talk about time allocation. It's anticipated this oral hearing will take approximately 75 minutes.

Ms. Rodriguez, you've asked for 30 minutes for your presentation to encompass your main presentation and then also, a rebuttal and closing. And then in the middle of that will be CDTFA's presentation.

And you've asked for 30 minutes; is that correct?

MS. RODRIGUEZ: Correct.

JUDGE WONG: Okay. CDTFA, is that right?

MS. JACOBS: That sounds right.

JUDGE WONG: Okay. All right. Let's see. Any final questions?

Ms. Rodriguez, any final questions before we turn

1 it over to you?

2 MS. RODRIGUEZ: No. I'll just start. It's okay.

3 JUDGE WONG: Okay. CDTFA, do you have any final
4 questions?

5 MS. JACOBS: No. Thank you.

6 JUDGE WONG: Okay. All right. Ms. Rodriguez,
7 you have 30 minutes. The floor is yours.

8

9 PRESENTATION

10 MS. RODRIGUEZ: Okay. So good afternoon, Your
11 Honors.

12 Because this assessment rest entirely on a
13 projected taxable ratio that wax derived by using a
14 non-random block sample, this appeal can be decided on a
15 single narrow ground, and it turns on causation. This
16 assessment did not arise from failure of my records or
17 reporting. It -- it arose entirely from CDTFA's own
18 actions. So CDTFA's assessment rest entirely on a
19 non-random block sample that was both procedurally
20 invalid, and it was legally distorted by CDTFA's own
21 errors.

22 The sole purpose of the block sample was to
23 generate a taxable ratio to produce the liability for the
24 assessment. And during this block sample period, CDTFA
25 incorrectly treated exempt animal feed, which was alfalfa,

1 sold for goats and sheep, as taxable. The legal error
2 occurred inside the sample period, and it directly caused
3 the inflation of the taxable ratio. Once that ratio
4 fails, there's no evidentiary basis for any projection of
5 the assessment. Compounding this defect, CDTFA did not
6 execute the sampling form -- the agreement Forms 472 until
7 after the sampling had already been completed and
8 incorporated into the audit working papers.

9 So CDTFA's own procedure required that the
10 agreement be executed before the sampling begins in order
11 to establish the scope, the method, and the validity of
12 the sample. Because this agreement was executed after the
13 fact, CDTFA itself caused the evidentiary defect that
14 invalidated the sample, and with it, the assessment.
15 These defects were not caused by my records or my conduct.
16 They were entirely caused by CDTFA. So first, as I
17 mentioned, CDTFA presented the sampling agreement to me
18 only after the sampling had already been completed. The
19 sample period was September of 2019, and I was furnished
20 the sample agreement until December of 2019. This timing
21 is shown in CDTFA's own record as Exhibit 2.

22 That's not a technicality. The agreement, as I
23 mentioned, just defines the scope, the method, and the
24 validity of the sample. Without this agreement that was
25 executed in advance, the sample lacks the authorization.

1 CDTFA's own failure to follow its own procedures cause the
2 assessment to rest on this invalid evidence. Also, CDTFA
3 selected the block sample, which is a non-representative
4 sample period during which the auditor incorrectly treated
5 alfalfa as taxable. That period is reflected in
6 Exhibit 1. The auditor here justified that treatment by
7 asserting that goats and sheep do not eat alfalfa. That
8 assertion appears in CDTFA's own records, submitted in
9 Exhibit 3. That statement is incorrect.

10 CDTFA's own published guidance classifies hay,
11 including alfalfa, as animal feed, and it recognizes that
12 its consumed by both food animals and non-food animals.
13 Goats and sheep are undisputedly food animals. That
14 guidance appears in Publication 66, submitted as
15 Exhibit 4. And there's no statute, no regulation, no
16 annotation that excludes alfalfa fed to goats and sheep
17 from the feed exemption. So CDTFA's position here,
18 therefore, depends not on the law, but on a non-statutory
19 factual belief that may not -- a belief that used to
20 narrow that exemption that the law does not narrow. So
21 when the statutory and regulatory framework does not
22 clearly impose a tax, CDTFA is not -- sorry -- CDTFA may
23 not resolve a claimed ambiguity by internal belief or
24 interpretation of their own internal belief.

25 So by applying this false taxability rule into

1 our block -- block sample period, CDTFA caused the taxable
2 ratio to be artificially inflated, and that ratio is
3 exhibited -- is documented in Exhibit 7. This sample was
4 distorted by agency error, and it's not representative,
5 and it cannot support an assessment. CDTFA's own later
6 audit confirms that conclusion, and it also isolates
7 causation. So five years after my first audit, I was
8 audited again by CDTFA. This time, the auditor at CDTFA
9 properly executed the sampling agreement in advance and
10 used proper statistical sampling, and it correctly treated
11 alfalfa as exempt feed for goats and sheep. And it found
12 my records as suitable and compliant. And the results
13 from my last audit are documented in Exhibit 14.

14 So this contrast is decisive. It shows that when
15 CDTFA removes its own errors, no similar assessment is
16 resulted, confirming that the first assessment was caused
17 entirely by CDTFA's actions and not my conduct. Because
18 CDTFA incorrectly instructed me that alfalfa was taxable,
19 I was required to separately state I collect sales tax
20 reimbursement on exempt feed for three years. So for
21 three years, I wrongly taxed all my customers because I
22 relied on CDTFA's instruction. Again -- and this is
23 exhibit -- is documented in Exhibit 7 -- CDTFA now claim
24 that I voluntary elected to charge reimbursement under --
25 they quote -- Civil Code section 1656.1 and Regulation

1 1700 subdivision (a) (1).

2 That argument is legally unsustainable because
3 that provision is only when a retailer voluntarily chooses
4 separately to charge the reimbursement. I made no
5 voluntary choice. I was told that alfalfa, when feed to
6 sheep and goats, is taxable. CDTFA misrepresented the
7 law, and then they caused the reimbursement to be charged.
8 Later, when CDTFA acknowledged the taxability error in
9 December of 2022, then I asked for permission to refund my
10 customers. CDTFA refused. That refusal is documented in
11 Exhibit 8-1 and 8-2. This causal chain is clear, and it's
12 undisputed. CDTFA misstated the law. They required the
13 reimbursement, then they blocked the refunds to my
14 customers, and then they used those consequences of its
15 own errors against me.

16 Finally, this outcome was predetermined during
17 the audit and again during the appeal. CDTFA supervisor
18 stated that I was required to maintain a fixed taxable
19 rate percentage ratio, that those statements are in
20 Exhibit 9. There is no authority for predetermined
21 taxable ratio. The audit conclusion must be based on
22 records and not targets. That confirms that the
23 assessment was outcome driven, rather than evidence
24 driven; and that CDTFA's internal directives caused the
25 assessment independent of the record.

1 In sum, this case turns on causation. The
2 assessment did not result from deficiency in my records or
3 my reporting. It resulted from CDTFA's own actions and
4 invalid sampling agreement, legally incorrect taxability
5 rules that applied inside an invalid block sample that was
6 not statistically representative. It forced reimbursement
7 based on that error, and a supervisor imposed taxable
8 ratio. Once those CDTFA created causal errors are
9 removed, there is no law for evidentiary basis for any of
10 the assessments. For that reason, I respectfully request
11 full relief.

12 Thank you, Your Honor.

13 JUDGE WONG: Thank you, Ms. Rodriguez.

14 I will now turn to my panelists to see if they
15 have any questions for Ms. Rodriguez, starting with
16 Judge Aldrich.

17 JUDGE ALDRICH: Good afternoon, Ms. Rodriguez.
18 From the review of the record, it looks like CDTFA
19 examined a few of the quarters and found that there were
20 duplicates in the POS system. And the duplicates were, I
21 guess, were attributed to an issue with the POS system or
22 Appellant's use of it. Could you explain what quarters
23 had those duplicates and which did not?

24 MS. RODRIGUEZ: Okay. The test period did not
25 have it, which that's what they used for the block sample.

1 That did not have that. The entire years that they were
2 auditing had that duplicate because there is -- that was
3 for internal purposes. So in the past, staff would
4 unfortunately steal from us. Because QuickBooks point of
5 sale, if you want to return an item, you could just click,
6 like, return, return, and insert your credit card. So our
7 staff members, after a couple of years, we noticed that
8 they were creating returns and inserting their own credit
9 cards. So then we were losing out by staff stealing from
10 us.

11 So then when we hired new staff, we did not allow
12 them to reprint, return, nothing at all. If there was a
13 return, they had to create a new ticket -- a new ticket,
14 and then they printed out that new ticket and then clicked
15 on held. QuickBooks point of sale has an icon or a
16 section where it's called "held invoices." All the held
17 invoices for all the years were right there for them to
18 review. CDTFA did not like the format because she says
19 it -- it was time stamped, but she said it didn't have a
20 receipt number because it didn't generate a receipt
21 number. It just generated the date, the time, and it says
22 held because it wasn't counted as a sale.

23 She could have tested 30 days, just like the last
24 audit for CDTFA had me reprint 600 receipts individually.
25 I had to reprint 600 receipts. This last auditor could

1 have asked me to print 600 receipts, and she could have --

2 JUDGE ALDRICH: Okay.

3 MS. RODRIGUEZ: -- but she didn't.

4 JUDGE ALDRICH: So how did you know to change
5 that duplicate system so that September didn't have
6 duplicates?

7 MS. RODRIGUEZ: I was not allowed to. She told
8 me, "Do not do that."

9 JUDGE ALDRICH: So the auditor instructed you not
10 to do the --

11 MS. RODRIGUEZ: Yes.

12 JUDGE ALDRICH: -- duplicate system? Okay.

13 MS. RODRIGUEZ: She said, "Do not do that." So
14 the reason my husband cannot be here today is because now
15 only my husband or I are able to ring up sales. Before,
16 anybody could ring up sales. After this nightmare that
17 we're having, now it's just him or I. So somebody has to
18 be in that business, him or me, or a sale cannot be rung
19 up.

20 JUDGE ALDRICH: Okay. And then I was also
21 curious a little bit about the alfalfa sales. It looks
22 like some of the alfalfa -- I think it's Alfalfa No. 1,
23 which were bales that were being sold at a loss for a few
24 of the quarters. For September 2019, was it being sold at
25 a loss for that month?

1 MS. RODRIGUEZ: No.

2 JUDGE ALDRICH: Okay. All right. And then what
3 was the change? Was there a change in that pricing or a
4 procedure? Or, like, why was it being sold for a loss in
5 September?

6 MS. RODRIGUEZ: Oh, no. No. No. As I stated,
7 so alfalfa is a commodity. Prices fluctuate every time we
8 get a load. The price -- every week there's a price
9 change in alfalfa. So when alfalfa -- so we often -- we
10 always try to keep it competitive. So, basically, if our
11 price that week was \$14.99, and we look up there's -- I
12 can't say the name. But if you lookup, there's a certain
13 place where they post the prices. We lookup their price,
14 and we want to be competitive with them, then we keep our
15 price at the same price, even though we're losing \$0.30,
16 \$0.40, \$0.50, \$0.70, \$1.00. So then that's when we sell
17 it on a loss. Because our alfalfa is what gets our
18 customers to come in. So our percentage is like 2,
19 3 percent margin, but that's our loss leader.

20 JUDGE ALDRICH: Okay. So you're using the
21 alfalfa as a loss --

22 MS. RODRIGUEZ: Yes.

23 JUDGE ALDRICH: -- leader --

24 MS. RODRIGUEZ: Yes.

25 JUDGE ALDRICH: -- to bring customers in --

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. RODRIGUEZ: Yes.

JUDGE ALDRICH: -- even if you didn't make that much profit on it. And then I guess the other question I had on the alfalfa is, like, how long does alfalfa stay saleable? So I imagine bails have somewhat of a shelf life.

MS. RODRIGUEZ: Oh, no. So see, alfalfa is harvested two or three times a year, depending on what farm. So they're harvested, and they're barn-stored. So they're kept at a barn. So --

JUDGE ALDRICH: Okay.

MS. RODRIGUEZ: -- you can have them --

JUDGE ALDRICH: So long-term storage is fine?

MS. RODRIGUEZ: Yes. Yes.

JUDGE ALDRICH: Okay. All right. Well, those are my questions. Thank you, Ms. Rodriguez.

Back to you Judge Wong.

JUDGE WONG: Thank you.

Hearing Officer Wilson, do you have any questions for Ms. Rodriguez?

HEARING OFFICER WILSON: I don't have any questions at this time.

JUDGE WONG: Thank you.

Ms. Rodriguez, I did have a few questions that I wanted to follow up on; mainly from some arguments from

1 your briefing.

2 MS. RODRIGUEZ: Okay.

3 JUDGE WONG: You had mentioned about -- there's
4 an issue about the appeals conference being recorded and a
5 missing recording.

6 MS. RODRIGUEZ: Yes.

7 JUDGE WONG: Could you expand a little bit about
8 what your argument is there?

9 MS. RODRIGUEZ: Okay. So my appeal conference
10 was held during the COVID era, and -- and it was
11 understandably that Ms. Escobedo, the previous tax
12 counsel, had recorded it. Because when we were going --
13 again, when I would call her because I -- she told me,
14 "You email me, I have to respond to everybody. But if you
15 call me then, you know, we could have conversations."

16 So then I would call her, and I would say, "Hey,
17 you know, you're not addressing this, or you're not
18 addressing that." Then I would tell her, "Can you please
19 go back to the recording," and she would agree. Okay.
20 And then she would call me back. Okay. So it was
21 acknowledged that it was recorded. Again, everything was
22 recorded during that era, so it was recorded. And I know
23 it was recorded because when I would tell her, "Can
24 you" -- because she would say, "Oh, my boss said no."

25 I said, "Well, have your boss listen to the

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

conference."

And then she would call me back, and she said, "No. Well, my boss said this." So it was confirmed that it was recorded.

Is your question --

JUDGE WONG: So let me focus my question a little bit. So then how does the fact that whether there's a recording or not affect the liability at issue?

MS. RODRIGUEZ: Okay. Because you could hear the -- not the auditor -- the supervising auditor state clearly what no statute, no regulation, or annotation states. She claimed alfalfa cannot be fed to sheep and goats because alfalfa is too expensive. Alfalfa cannot be fed to sheep and goats because sheep and goats do not eat a lot. Therefore, alfalfa is taxable and does not apply to the exemption. And I wanted everyone to hear that --

JUDGE WONG: Okay.

MS. RODRIGUEZ: -- because he said. I mean, many times in my emails I submitted, she says, "Bermuda grass is only for horses. This is only for horses."

But during that conference, she continued to give multiple reasons that CDTFA has publications have never stated as a rule. It was her interpretation. That's why I wanted them. I wanted OTA to hear this recording.

JUDGE WONG: Okay. And then -- but wasn't there

1 also -- okay. So then my follow-up question to that is,
2 wasn't there a reaudit, and then there were -- that was
3 done after the initial decision, and then there two
4 subsequent supplemental decisions from the Appeals Bureau.
5 Did the reaudit and readdress these issues? Didn't the --

6 MS. RODRIGUEZ: No.

7 JUDGE WONG: Okay.

8 MS. RODRIGUEZ: Not at all. The reaudit only --
9 okay. So, in 2022, the Board said, "Okay. Goats and
10 sheep do eat alfalfa," in 2022. The reaudit was for fish
11 because the supervisor said, "Fish are non-food animals."
12 She said, "Quails are non-food animal." She said, "Duck
13 eggs are non-food animal. Ducks can -- the eggs are not
14 for human consumption. And pigeon." So those were other
15 for -- and rabbit, because I saw rabbit feed also for
16 people who eat rabbits. And she said all those were not
17 non-food animals.

18 The reaudit only covered fish, rabbit, quail, and
19 duck.

20 JUDGE WONG: Okay.

21 MS. RODRIGUEZ: Now, it did not touch alfalfa.

22 JUDGE WONG: Okay.

23 MS. RODRIGUEZ: Oh, and it covered -- it actually
24 reaudit the veterinary department because I had -- in the
25 veterinary department, I have no replacer for goats and

1 sheep and salt and dewormers for goats and sheep. And she
2 said everything taxable. So the reaudit did reaudit for
3 the veterinary department for medicines for goats and
4 sheep and meal replacers.

5 JUDGE WONG: Okay. Thank you. Another question
6 I had with regards to some arguments in the briefing. You
7 had talk about emails from a subsequent audit -- a current
8 auditor talking about statements made in cross.

9 MS. RODRIGUEZ: Yeah.

10 JUDGE WONG: Could you expand on -- explain your
11 argument there and how it relates to the liability in this
12 case?

13 MS. RODRIGUEZ: Okay. Because on my second
14 audit, he was requesting that I submit information from
15 QuickBooks Financial, which we do not use. And he says,
16 "Yes, cross mentions that you use QuickBooks Financial."
17 I don't use that. And other statements he made that was
18 on cross was not reliable. And that's why I wanted OTA to
19 see that whomever was putting information on cross was
20 putting incorrect information.

21 JUDGE WONG: Okay.

22 MS. RODRIGUEZ: And he wanted -- he was requiring
23 me of those reports, but I don't have those reports
24 because I don't use QuickBooks Financial, just QuickBooks
25 point of sale.

1 JUDGE WONG: Okay. And then how does that relate
2 to what you're asking for in this audit, the liability?
3 How does that affect the liability here?

4 MS. RODRIGUEZ: It affects it because they have a
5 narrative, and everything that they submitted in the
6 cross was -- every -- okay. They're focusing on --
7 they're focusing on my health receipts as being
8 unsupported or unreported sales. That's what their
9 narrative is. They're ignoring everything else that
10 happened where, for three years, over \$300,000 I charged
11 in sales tax for alfalfa incorrectly. So their narrative
12 is just unreported sales, unreported sales, and it's only
13 unreported because they failed to review my health
14 receipts because the supervising auditor states because of
15 time constraints.

16 Yet, here we are seven years later still working
17 on this audit. She could have pulled up and tested, and
18 she didn't. Well, she didn't test that. They didn't test
19 anything because nothing was statistical. Everything was
20 a block sample. Nothing was statistical. Like I said,
21 this last audit over 600 receipts she had me print. The
22 last audit had four receipts on record.

23 JUDGE WONG: Okay. Thank you. And then my final
24 question is, in the briefing, you're asking for a
25 reaudit -- I guess a second reaudit. So if a second

1 reaudit done was done, what would it show? Like, in --
2 from your perspective, what would this reaudit --

3 MS. RODRIGUEZ: I'm not -- well -- well, it's not
4 my reaudit. Again, if you would just review Exhibit 14,
5 which is my second audit, that is what was supposed to be
6 done the first time. If -- if you re -- so the first --
7 this last -- the test that they used, I was told alfalfa
8 is taxable. So if you reaudit again, it's going to be the
9 same result as my last audit. So I don't even -- I'm just
10 requesting for full relief because it doesn't make sense.
11 I don't understand how they would do it because they
12 already did it for my second audit.

13 JUDGE WONG: Got it. Okay. So you're asking for
14 the liability to be reduced to zero?

15 MS. RODRIGUEZ: Right.

16 JUDGE WONG: Okay. Judge Aldrich had another
17 question.

18 MS. RODRIGUEZ: Yes.

19 JUDGE ALDRICH: So my understanding is that one
20 of the issues is reliance on advice argument. Is there a
21 specific piece of writing that we should be looking to
22 that you were relying upon?

23 MS. RODRIGUEZ: Well, yes. It's the failure
24 of -- get back to me in Exhibit 3. Yes, Exhibit 3, it's
25 my email dated September 20th, 2019. And the auditor had

1 told me to make sure I get everything in writing. So I
2 had so many -- well, not -- it was actually, basically,
3 two questions. When they're telling me that goats and
4 sheep do not eat alfalfa in this specific email, I told
5 her, "You told me that you should get everything in
6 writing. Please write confirm this, or write a separate
7 statement telling me that this is what you're telling me.
8 Because you're telling me that according to you and your
9 co-works, alfalfa is taxable when it's fed to sheep and
10 goats."

11 Again, there's no statute, no regulation, no
12 annotation contrary to what she is saying. So I wanted
13 her to write it because I was reading Publication 66,
14 which says it is. She was saying it's not. So I said,
15 "Write it to me. Write it. Write me in a form where I
16 have that reliance."

17 She didn't. Later on, Exhibit 11, the
18 supervising auditor confirms that she did not respond to
19 my written request because she said it was complex.

20 JUDGE ALDRICH: So with respect to
21 Publication 66, I guess I was wondering when Appellant
22 kind of became aware of Publication 66, if you happen to
23 have an idea there?

24 MS. RODRIGUEZ: Yes. The copy that I furnished
25 to them is dated 2004.

1 JUDGE ALDRICH: Okay. And do you understand what
2 an exemption certificate is?

3 MS. RODRIGUEZ: I do, and I was using the
4 alternative certificate to the exemption certificate;
5 because in 2004 the person who gave me this at the West
6 Covina office, when it was at the West Covina office, gave
7 me the booklet. I have a customer database of the people
8 who are exempted from goats and sheep feeding alfalfa, and
9 then I insert that message. The reason I inserted as
10 "Bill Two" where it says it as exempt. Every one of my
11 receipts where a customer request the exemption, it says,
12 "Bill Two," and it says, "Exemption." The reason I did
13 that was because a person who gave me this at the West
14 Covina office says that I could use a rubber stamp. But
15 the rubber stamp is not traceable to an auditor.

16 The alternative certificate states that you can
17 rubber stamp it. That can never be traced. So in order
18 to protect my business, I have a customer database, which
19 CDTFA rejected. My customer database, when you click on
20 it, it tells you if that person is exempt or not. The
21 receipt tells you the exemption. So all they could have
22 done is gone to QuickBooks point of sale, customer
23 database, looked at the notes where it says "Exemption
24 1587." They could have also pulled reports on -- under
25 the customer, which was Exemption 1587, and it told you

1 exactly how many transactions were under 1587 and the
2 amount.

3 JUDGE ALDRICH: Okay.

4 MS. RODRIGUEZ: So I used the alternative
5 certificate. I do not use a paper. The supervising
6 auditor also told me that I could never use an alternative
7 to a certificate, but there's nowhere in Publication 66
8 that deprived me of not using it. Again, CDTFA is telling
9 me you could use a rubber stamp. So I don't know how that
10 is.

11 JUDGE ALDRICH: All right. Thank you very much.
12 Back to Judge Wong.

13 JUDGE WONG: All right. Thank you.

14 We'll now turn it over to CDTFA for their
15 presentation.

16 You have 30 minutes. Thank you.

17 MS. JACOBS: Thank you.

18

19 PRESENTATION

20 MS. JACOBS: This appeal relates to the audit of
21 Viviano Rodriguez, a sole proprietor doing business as
22 Generation West, for the liability period of
23 January 1st, 2016, through June 30th, 2019, during which
24 time, Appellant operated an animal feed and supply
25 business in El Monte, California. For the liability

1 period, Appellant reported total sales of \$11,870,521 and
2 claimed deductions of \$5,470,349, and that included sales
3 for resale, exempt sales of feed for food animals, and
4 nontaxable labor. This resulted in reported taxable sales
5 of \$5,617,172.

6 During the audit, the Department examined
7 Appellant's claimed sales of feed for food animals for
8 fourth quarter 2018 and later for September 2019, which
9 disclosed unreported -- unsupported claimed exempt sales.
10 Appellant did not maintain exemption certificates and did
11 not collect tax on claimed sales of feed used both to feed
12 food animals and to feed non-food animals being held for
13 sale in a regular course of business; see Exhibit F,
14 page 190. After reviewing Appellant's federal income tax
15 returns, the Department found the overall markup to be
16 unreasonably low. The Department also determined that the
17 point of sale or POS reports for liability period were
18 unreliable because they included duplicate sales entries,
19 and that the taxable sales ratios computed were low for
20 the industry; see Exhibit F, pages 190 and 4017 and 4018.

21 Therefore, the Department used a test period of
22 September 2019 to calculate a taxable sales ratio of 66.57
23 percent. It selected this period, the September 2019
24 period, because Appellant had begun collecting exemption
25 certificates at that time and had rectified the point of

1 sales entry issues; see Exhibit F, page 191. The
2 Department allowed the following as exempt before
3 calculating the taxable sales ratio: Sales for which
4 Appellant had provided in exemption certificate; all
5 recorded exempt poultry sales; sales of feed in small
6 units; and sales the Department otherwise determined were
7 exempt under Regulation 1587.

8 The Department then applied the taxable sales
9 ratio calculated from the test period to total sales for
10 the liability period to determine the audited taxable
11 sales, which is consistent with established procedures for
12 the use of a test period to calculate audited taxable
13 sales; see the Department's Audit Manual sections 0405.20.
14 At the appeals conference, the Department recommended
15 allowing reduction to the liability of \$1,198.70 for
16 exempt sales of rabbit feet. After the Appeals Bureau
17 decision, the Department conducted a reaudit, which
18 lowered the taxable sales ratio to 65.99 percent and
19 reduced unreported taxable sales to \$3,518,082 by allowing
20 as exempt sales of specific products, which are feed for
21 pigeons and fish, as well as reducing the recorded
22 veterinary exempt sales ration; see Exhibit G, page 4148.

23 The issues in this case are: One, whether the
24 amount of unreported taxable sales, which the Department
25 based on disallowed claimed nontaxable sales of animal

1 feed, should be further reduced; and two, whether
2 Appellant is entitled to relief pursuant to Revenue &
3 Taxation Code section 6596. In a case of an appeal, the
4 Department has a minimal initial burden of showing that
5 its determination was reasonable and rational. Once it
6 has met its initial burden, the burden of proof shifts to
7 the taxpayer, in this case Appellant, to establish that a
8 different result is warranted; see Appeal of TFCG
9 Incorporated 2019 OTA 389-P. Appellant then has the burden
10 to prove all issues of fact by a preponderance of the
11 evidence. That is, that the circumstances they assert are
12 more likely than not to be correct; see Regulation 30219
13 subdivision (a). Unsupported assertions are not
14 sufficient to satisfy a taxpayer's burden of proof; see
15 Appeal of TFCG.

16 As previously stated, the Department used
17 recognized audit procedures to appropriately compute
18 unreported taxable sales for the liability period, and its
19 determination was reasonable and rational. Consequently,
20 the burden of proof shifts to Appellant to provide
21 evidence that adjustments are warranted. We will discuss
22 Appellant's contentions in turn. Appellant states that
23 the auditor treated alfalfa sales as taxable, inflating
24 the taxable percentage under the incorrect premise that
25 goats and sheep do not eat alfalfa. As you know,

1 California imposes sales tax on a retailer's gross
2 receipts from the retail sale of tangible personal
3 property or TPP in California, unless the sale is
4 specifically exempt or excluded from taxation by statute;
5 see Revenue & Taxation Code sections 6012 and 6051.

6 A sale includes any transfer of title or
7 possession in any manner or by any means, whatever, of TPP
8 for a consideration; Section 6006 subdivision (a). The
9 sales tax is imposed on the retailer who may collect
10 reimbursement from their customer if the contract of sale
11 so provides; Civil Code 1656.1 and Regulation 1700. It is
12 presumed that all gross receipts are subject to tax,
13 unless until the contrary is established, and the burden
14 is on the taxpayer to rebut this presumption; see
15 Regulation 1667 subdivision(a). As relevant here,
16 Revenue & Taxation Code section 6358 subdivisions (a)
17 and(b), exempt from sales tax a retailer's gross receipts
18 from the sale of, quote, -- excuse me -- "any form of
19 animal life of a kind the products of which ordinarily
20 constitute food for human consumption," end quote, and,
21 quote, "feed for any form of animal life the products of
22 which ordinarily constitute food for human consumption, or
23 are to be sold in the regular course of business," end
24 quote.

25 When a retailer sells feed of a kind customarily

1 used, both to feed food animals and to feed non-food
2 animals, which is then purchased for food animals or feed
3 purchased for non-food animals being held for sale in the
4 regular course of business, the retailer should take a
5 timely exemption certificate in good faith from the
6 purchaser to support the claimed exempt sales of feed;
7 Regulations 1587 subdivision (d)(1) and 1667
8 subdivisions (a) and(B)(1).

9 As relevant here, alfalfa can be used as feed for
10 food or non-food animals; see Publication 66, page 2.
11 Thus, the retailer, in this case Appellant, must take a
12 timely exemption certificate to be relieved of tax
13 liability on the sale. This is true, even if most of the
14 retailer's sales of a particular product are made for food
15 animals; See annotation 110.0370, and that's
16 July 14th, 1981. Regardless of what may or be may not
17 have been said by an auditor at the appeals conference,
18 the evidence in the audit work papers shows that the
19 Department properly allowed as exempt all sales of alfalfa
20 in small units, as well as sales supported by proper
21 exemption certificates.

22 Thus, any alleged misstatements regarding the
23 percentage of animal consumption of alfalfa had no bearing
24 on the audit findings for the test period, because the
25 Department properly applied section 6358 and Regulation

1 1587 to determine the taxability of Appellant's alfalfa
2 sales. Because Appellant has not provided any records
3 substantiate further adjustments to its taxable alfalfa
4 sales for the test period, no adjustment to such sales are
5 warranted.

6 Appellant asserts that the first auditor
7 misinstructed Appellant regarding the proper taking of
8 exemption certificates. A retailer is relieved of
9 liability for sales tax, if the retailer takes in good
10 faith from the purchaser a timely exemption certificate;
11 regulation 1667 subdivision (a). An exemption certificate
12 should be complete with the information specified in
13 Regulation 1587 subdivision (d) (1), including the
14 purchaser's name and address, to constitute adequate
15 support for a claimed exemption. Invoices for sales
16 claimed as exempt should specify the names of the
17 purchasers to relate them to the exemption certificates;
18 see Regulation 1587 subdivision (d) (3).

19 However, under Regulation 1587
20 subdivision (d) (1), a retailer does not need to obtain an
21 exemption certificate for the following three type of
22 sales: One sales of feed of a kind ordinarily used only
23 in the production of meat, dairy, or poultry products for
24 human consumption; two, sales of small units, two standard
25 sacks of grain and/or four bails of hay or less, a feed of

1 a kind customarily used, either for food production or
2 other purposes; or three, sales of feed specifically
3 labeled as feed for food animals by the manufacturer.

4 It had been Appellant's practice, during the
5 liability period, to enter, quote, "Customer request
6 Regulation 1587," end quote, on the receipt of customers
7 who specified that their feed purchases were for food
8 animals; Exhibit F, pages 1151 to 1153. However,
9 Appellant never obtained an exemption certificate from the
10 customers during the liability period. Appellant contends
11 that they came to the Department's West Covina office in
12 2003 and were orally informed by compliance staff that
13 this noting on the receipt was adequate; Exhibit F.
14 Page 4130. This alleged interaction could not be
15 verified. As previously stated, Regulation 1587 requires
16 the names and addresses of the purchasers to be on the
17 certificate to constitute adequate support, and
18 Appellant's receipts did not satisfy these requirements.

19 Appellant also, apparently, misunderstands the
20 Department's publication "Tax Tips For Agriculture
21 Industry," page 3. Although, the publication discusses
22 exemption certificate alternatives by printing or stamping
23 directly on the actual invoice, it still requires that the
24 buyer, quote, "Complete the required information at the
25 time of sale," end quote. It is advised that even

1 retailers who use separate exemption certificates should
2 include the name and address of the buyer on the invoice
3 or receipt; see Appellant's Exhibit, page VR00134.

4 Appellant asserts that the auditor's assertion
5 that alfalfa was taxable caused Appellant to
6 inappropriately collect tax on exempt alfalfa for three
7 years. However, this is one of the factors in why the
8 September 2019 test period was selected. Because, at that
9 time, at the advice of the Department, Appellant had begun
10 collecting proper exemption certificates. Therefore, in
11 calculating the taxable sales ration for that quarter and
12 applying it to the entire liability period, exempt sales
13 should have accounted for. Had the Department used a test
14 period within the liability period, there would have been
15 no valid exemption certificates, and Appellant's taxable
16 sales ration would have been higher.

17 Appellant has requested relief under Revenue &
18 Taxation Code section 6596 because they relied in good
19 faith on CDTFA's incorrect oral and written advice
20 regarding alfalfa taxability and exemption documentation
21 requirements. If a person's failure to make a timely
22 return or payment is due to the person's reasonable
23 reliance on written advice from the Department, the person
24 may be relieved of any sales or use taxes imposed;
25 section 6596 subdivision (a).

1 The person's failure to make a timely return or
2 payment is considered to be due to reasonable reliance on
3 written advice from the Department, only if the following
4 four conditions are satisfied: One, the person requested
5 in writing that the Department advise them whether a
6 particular activity or transaction is subject to tax and
7 fully described in the request the specific facts and
8 circumstances of the activity or transaction; two, the
9 Department responded in writing to the person regarding
10 the written request or advice stating whether or not the
11 described activity or transaction is subject to tax;
12 three, any reasonable reliance on the Department's written
13 advice, a person did not charge or collect sales tax
14 reimbursement or use tax for the described activity or
15 transaction, and the person did not pay a use tax on the
16 storage, use, or other consumption in the state of
17 tangible personal property; and four, the liability for
18 the taxes must apply to a particular activity or
19 transaction which occurred before the Department sends the
20 person written notice rescinding or modifying the advice
21 given, and before a change in statutory or constitutional
22 law a change in the Department's regulations, or a
23 financial decision of a court which renders the
24 Department's earlier written advise no longer valid;
25 section 6596 subdivisions (b) (1) through 4.

1 A person seeking relief under section 6596 is
2 required to file a statement signed under penalty of
3 perjury setting forth the facts on which the claim for
4 relief is based, and including a copy of the Department's
5 written advice; 6596 subdivision C. However, there is no
6 dispute that the Department never provided written advice
7 to Appellant of the kind purported, which is required for
8 relief pursuant to 6596 subdivision (b) (2). Therefore,
9 Appellant is not entitled to relief under section 6596.
10 Furthermore, the alleged advice, which Appellant relied
11 on, was purportedly provided by the Department during the
12 course of the audit and thus, after the liability period.
13 Therefore, even if such advice had been provided in
14 writing, it could not form the basis for section 6596
15 relief.

16 In summary, the Department has met its minimal
17 initial burden of showing that its determination was
18 reasonable and rational. Appellant has not met its burden
19 to provide further evidence that adjustments are
20 warranted. For these reasons, we request that the appeal
21 be denied.

22 Thank you.

23 JUDGE WONG: Thank you, CDTFA.

24 I'll now turn to my Co-Panelists to see if they
25 have any questions for CDTFA, starting with Judge Aldrich.

1 JUDGE ALDRICH: Hi. This the Judge Aldrich. I
2 have no questions. Thank you.

3 JUDGE WONG: Hearing Officer Wilson, do you have
4 any questions for CDTFA?

5 HEARING OFFICER WILSON: I don't have any
6 questions for CDTFA. Thanks.

7 JUDGE WONG: Okay. Let me just double check if I
8 have any questions. Okay. I don't have any questions at
9 this time, but I may circle back at the end after
10 Appellant's rebuttal and concluding remarks.

11 Ms. Rodriguez, at this time, you have about 20
12 minutes for a rebuttal and closing. So I will turn it
13 over to you.

14

15 CLOSING STATEMENT

16 MS. RODRIGUEZ: Okay. Well, one, since the
17 beginning of this audit, I have never been told how they
18 derived with that 66 percent taxable ratio if they never
19 did any statistical sampling. I asked and asked. I don't
20 know how they came up with that, without even creating any
21 statistical testing. I want to know that. Two,
22 Ms. Jacobs says that it's -- the 2019 test is reliable
23 because I collected. So since they did not allow me to
24 use the alternative certificates, they refused my customer
25 database. How is that representative if they did not

1 allow me collect certificates for people who were
2 purchasing feed for alfalfa for goats and sheep?

3 And -- I mean, there's so much here, everything
4 she was saying. So I guess my main rebuttal is, without
5 statistical testing, how could they come up with that
6 assessment. That's my main point because I have so many
7 other questions because it wasn't just alfalfa. It was
8 oats. It was barley, as you saw in my exhibits that I
9 provided. It was different grains that they didn't allow
10 us to be exempt, even though the sacks specifically say
11 it's for non-food animals. But I guess the main thing I
12 would like for them to respond to is how they came up with
13 that percentage without performing any statistical
14 sampling. It was all judgement.

15 That's all.

16 JUDGE WONG: Sorry. This is Judge Wong. So this
17 is not exactly kind of a back and forth where the --

18 MS. RODRIGUEZ: Okay.

19 JUDGE WONG: -- parties ask each other questions.
20 You could present the questions to the panel, and the
21 panel could --

22 MS. RODRIGUEZ: Okay.

23 JUDGE WONG: -- ask CDTF. This time is for you
24 to make your points -- not ask questions -- make your
25 points about --

1 MS. RODRIGUEZ: Okay.

2 JUDGE WONG: -- what the weakness of their case
3 are, the strengths of your case. Things like that. So --

4 MS. RODRIGUEZ: Okay. So the weakness here is
5 not one statistical test was performed during my audit. I
6 reviewed my last audit, and it's extremely different to my
7 first audit. I guess that's my question. I mean, that's
8 what -- I have no idea how this could have occurred
9 without statistical testing. And it's not deficiency from
10 what I have, it's just what they did. It resulted from
11 them not accepting my customer database. It resulted from
12 them not allowing me to collect the certificates that I
13 needed to collect because they told me that alfalfa was
14 not exempt for sheep and goats. So I didn't collect the
15 certificates that I needed because they did not allow me
16 to collect them.

17 I'm sorry. I'm like really confused here. So
18 that's the weakness that I see in their case. There's no
19 statistical sampling, them not allowing me to do certain
20 things that CDTFA regulation -- there's no regulations or
21 statutes or annotations for. That's what I see in their
22 weakness, that they -- the auditors told me to do
23 something that was not backed up by regulation.
24 Everything that the auditor -- supervising auditor
25 instructing me to do was based on their judgment, their

1 own interpretation, not based on CDTFA regulations.

2 I'm sorry. That's all I have to say right now,
3 but then I have more questions for the panel.

4 JUDGE WONG: Okay. All right. Before we get to
5 those, let me just turn to my panel to see if they have
6 any questions for Ms. Rodriguez, starting with
7 Judge Aldrich.

8 JUDGE ALDRICH: This is Judge Aldrich. I do not
9 have any questions for Ms. Rodriguez.

10 JUDGE WONG: Hearing Officer Wilson?

11 HEARING OFFICER WILSON: Yeah, I do have some
12 questions.

13 Ms. Rodriguez, in your Exhibit 14, which is the
14 subsequent audit, there's on page 20, I think it is, is
15 the -- it's the auditor's comments at the bottom of the
16 schedule. Do you see it says, "Auditor used a random
17 number generator?"

18 MS. RODRIGUEZ: Yes.

19 HEARING OFFICER WILSON: So that's not really a
20 statistical sample. It's -- what the auditor did, is they
21 chose a block. So if you look at the second column, it
22 says 12/31/22. Those are -- that's the sample period that
23 they chose, right. That's the fourth quarter of '22. And
24 then if you also look at the first column, all the dates
25 are in October of '22. So it's not really -- a

1 statistical sample would be your whole population. And
2 then it would -- then they could use a random number
3 generator to pick from the population, but this is still a
4 block test.

5 MS. RODRIGUEZ: Yeah. No. That's -- could I
6 answer?

7 HEARING OFFICER WILSON: I just wanted to point
8 out that it's not a statistical sample.

9 MS. RODRIGUEZ: Well, I -- I understand that.
10 But see -- can I answer or I'm no supposed to answer right
11 now. Sorry. I don't know if it's my turn. Could I
12 answer something or no?

13 HEARING OFFICER WILSON: That's fine. Go ahead.

14 MS. RODRIGUEZ: Okay. So what I'm referring to
15 is, this did not occur in my last audit. What they did
16 was they judgmental sample, and they extrapolated my
17 percentage, if I understand correctly, from my merchant
18 credit card transaction. I -- they never -- nothing that
19 was required of me in the second audit was required of me
20 in the first audit. Everything she downloaded or asked me
21 to furnish to her were summary reports, not transaction --
22 individual transactions. She did not test every
23 transaction like the last one tested. It was a summary
24 report. That -- that was what my question was.

25 HEARING OFFICER WILSON: No. I understand what

1 you're saying. All right. Let's go and look at CDTFA's
2 exhibits. This is Exhibit G, which is -- sorry --
3 Exhibit F, page 4125.

4 MS. RODRIGUEZ: I don't have internet on that
5 laptop that I'm using for exhibits. I only have my
6 exhibits. I can't pull that one up. I only have internet
7 on the laptop that I'm using for --

8 HEARING OFFICER WILSON: Okay. I'll describe the
9 page then. It's the audit work paper Schedule 12G-1, and
10 it was the fourth quarter '18 test. And in one of the
11 columns the auditor's comment is -- it says, "Per
12 discussion with Ms. Rodriguez on 9/3/19," and it goes
13 through each item and determines what percentage is for
14 horse versus goat or other animals. Do you recall that?

15 MS. RODRIGUEZ: Yeah, I recall that, and that's
16 the exhibit that I have where it's I said I cannot recall
17 when -- I cannot remember when I said 85 percent. I have
18 that email, September 4th, 2019, in my exhibits.

19 HEARING OFFICER WILSON: Okay.

20 MS. RODRIGUEZ: Yeah. I never said that. That's
21 what I'm saying. Where did they come up with this, if
22 my -- if my email says contrary to that?

23 HEARING OFFICER WILSON: Okay. So these
24 percentages were -- are not accurate?

25 MS. RODRIGUEZ: Yeah.

1 HEARING OFFICER WILSON: Do you have a better --

2 MS. RODRIGUEZ: Yeah. Yeah. So, yes. In that
3 email, September -- Wednesday, September 2019 in my
4 exhibits, it states specifically that it was 50/50. It
5 says, "I do not recall saying 85 percent of horses. It
6 could not be 85 since we sell a lot of feed for goats and
7 sheep since we have many customers who raise sheep and
8 goats for sales for meat and goats, as well as customers
9 who have dairy goats." It says I did not say that. But
10 again, it's their narrative alfalfa is not for goats and
11 sheep, but my -- I have that exhibit. It's page 132.

12 HEARING OFFICER WILSON: Okay. Can we go to
13 page -- you said you don't have the exhibits for --

14 MS. RODRIGUEZ: I have mine.

15 HEARING OFFICER WILSON: -- Respondent.

16 MS. RODRIGUEZ: Yes.

17 HEARING OFFICER WILSON: Okay. Well, this is
18 also in the audit work papers. It's the second test
19 period.

20 For those following along, it's page 4018 12-F.

21 And this is the calculation where they came up
22 with the 66 percent taxable ratio. And I'm looking at the
23 livestock category. It shows that the nontaxable sales
24 versus the total sales was approximately 36 percent. So
25 you're saying that that needs to be a higher amount?

1 MS. RODRIGUEZ: No. They said it was 60. Well,
2 it was actually 77 percent, the quarter of the audit, the
3 taxable sales the total taxable sales. So what my problem
4 here is, that during this test period is not
5 representative because in this period alfalfa was not
6 allowed for goats and sheep. They used this percentage
7 for the entire liability. In 2022 in December, the -- the
8 Board admitted or conceded to the fact that alfalfa is for
9 goats and sheet. The reaudit had to occur here. They
10 didn't do a reaudit here. They did a reaudit only for
11 rabbit and fish and pigeons. That's my question. This is
12 does --

13 HEARING OFFICER WILSON: Does --

14 MS. RODRIGUEZ: -- not the correct one.

15 HEARING OFFICER WILSON: Sorry. So on this
16 schedule, it has all of your departments, which come up to
17 the 66 percent.

18 MS. RODRIGUEZ: Yes.

19 HEARING OFFICER WILSON: But I was asking
20 specifically for the livestock since that is --

21 MS. RODRIGUEZ: But --

22 HEARING OFFICER WILSON: It looks like on the
23 schedule there is poultry and livestock were the
24 nontaxable sales --

25 MS. RODRIGUEZ: Correct.

1 HEARING OFFICER WILSON: -- and everything else
2 was considered taxable, I guess, except for some small
3 veterinary ones that were in the reaudit; correct?

4 MS. RODRIGUEZ: Correct.

5 HEARING OFFICER WILSON: So I guess what I was
6 asking was, if we look at the numbers just for livestock,
7 it comes out to about 36 percent nontaxable. And your
8 contention is that it should be 50 percent?

9 MS. RODRIGUEZ: 50 percent of that taxable,
10 half-and-half. So half of the bails of alfalfa are -- for
11 food animal half are not. That's what I'm saying in my
12 email in September, not 50 percent total. So my alfalfa,
13 I'm telling her half of it is for food animals, half of it
14 is not for food animals of the alfalfa. That's what I'm
15 telling her in an email because she said 85 percent.
16 Where did you get that number? That's what my email is
17 saying.

18 HEARING OFFICER WILSON: Okay. That was my
19 question. Thank you.

20 JUDGE WONG: Thank you.

21 All right. Let me see if I have any questions.
22 I did have a question for CDTFA.

23 Was there -- did CDTFA, the auditor, offer to
24 expand the test, the period? Am I recalling that
25 correctly? Could you --

1 MS. JACOBS: Yes. There's an email between the
2 auditor and Appellant on December 18th, 2019, in which the
3 auditor offered to perform an additional test, but
4 Appellant replied that they concurred with the audit
5 findings. That's Exhibit C, page 177.

6 JUDGE WONG: Okay. And then, if I recall
7 correctly, Appellant explained that the reason why she did
8 that was to -- she concurred as a result of auditor's
9 guidance, I believe, to try to get into OIC, offer and
10 compromise.

11 Ms. Rodriguez, did you recall making that
12 argument?

13 MS. RODRIGUEZ: Oh, yes. She told me -- so it
14 was the same auditor, that she's the one that introduced
15 me to section 6596. She's the one. Because it -- the
16 decision were made by the supervising auditor, not by the
17 auditor. The auditor understood that alfalfa is for goats
18 and sheep. She's the one that introduced me in that email
19 -- I think September -- December 18th. She introduced me
20 to section 6596. She told me concur so I could put you
21 into that section. And after she called me, she said,
22 "No, my supervisor and auditor says cannot do that, but I
23 could put you in OIC."

24 Then she gives me a phone number for a person in
25 OIC. And I called OIC, and she says no, not looking at my

1 case, explaining -- but she knew who I was. She said,
2 "You do not qualify for that." But it was section 6596.
3 It's in that email where she introduces me to that because
4 she says I could qualify for that because I charged tax
5 for products I shouldn't have charged tax, the alfalfa.
6 But she introduced me to that.

7 I was no -- I -- I don't know about -- anything
8 about this. She introduced me to that one, and it's in
9 her email, if you -- I have that in my exhibits her email.
10 It's actually introducing me to that, that I could apply
11 for that.

12 JUDGE WONG: Okay. So let me just see if I could
13 summarize. CDTFA offered to expand the test period, but
14 you declined, or you said you -- you contended that you
15 agreed to the results to try to get into OIC?

16 MS. RODRIGUEZ: Under 6596, yes. So she told me,
17 "If you concur, we end the audit, and I'll put you into
18 that program." The auditor assumed that I was going to
19 get relief because she knew it was wrong. So that's why
20 here email shows me that I could apply for sections 6596.

21 JUDGE WONG: Okay. CDTFA, did you want to
22 address that claim by taxpayer that -- that they did
23 not -- they concurred to the audit in order to get into
24 6596 and OIC and therefore, did not want to expand the
25 test period?

1 MS. JACOBS: In looking at the email on page 177,
2 I -- it is not clear to me how Appellant's contentions
3 line up with what's said in that email. So,
4 unfortunately, we don't -- we're not able to address --
5 oh, Mr. Huxsoll?

6 MR. HUXSOLL: Though the email also discusses all
7 sorts of procedures for appealing a liability and moving
8 forward and offers and compromise are often a step that
9 Appellant might take for a final liability, or they can
10 obviously appeal or settle, so it wasn't accept this and
11 you're immediately in offers and compromise. It exists,
12 but, like, this is just guidance to the taxpayer's to what
13 next steps are. So it's not clear that the concurrence
14 has to do simply with encouragement by the auditor to get
15 into that program just based on the written record.

16 JUDGE WONG: Okay. Thank you.

17 All right. I did not have any further questions
18 for the parties. Did parties have any -- any questions
19 from where we go from here?

20 Ms. Rodriguez, you had mentioned that you had
21 some things you wanted to ask?

22 MS. RODRIGUEZ: Well, yes, a lot of things. One,
23 when they -- they claimed that they gave me -- cause I
24 had -- I have three sets of audit working papers. The
25 first audit working paper did not give me the exemption of

1 the small -- sales of six or more or sales in small units.
2 They didn't give me that until the auditor went over at
3 the principal -- over the supervising auditor, and she
4 talked to the audit principal. The audit principal
5 allowed her to give me the exemption of six or less. It
6 was him, because supervising auditor said no. So she went
7 to her principal auditor, and she said, "Okay. He said
8 yes, you could give her the exemption."

9 But how did they do that if they don't have my
10 receipts. They never asked for, like, a detailed report
11 where it's going to summarize those receipts of six or
12 less. Like, I don't know where they came up with that
13 figure as well. It just -- they just, from one day to
14 another, she came up with a different figure. She reduced
15 the liability without reviewing my records of six or less.
16 And then, what was six or less, four bails and two sacks?
17 Well, in the city, most people don't use bails. They use
18 in sacks.

19 So the -- the alfalfa comes in sacked feed. It's
20 sacked pallets. It's in a sack. It's in a bag. I don't
21 what she used or how she used. I don't know how they came
22 up with that. Again, that's my questions. How did they
23 come up with that? She never supplied that to me during
24 the whole audit the -- the audit appeal. I asked for that
25 information, and nobody gave me that information. So I

1 don't know how they came up with that calculation either.

2 So there's two calculations here that I have an
3 issue. One, that the six or the less without verifying my
4 individual transactions. They never ever asked for the
5 reaudit after they conceded. So they conceded that
6 alfalfa is for sheep and goats, but no reaudit. That's
7 the other thing I don't understand. Why wouldn't they
8 reaudit -- as for a reaudit there? December 2022, they
9 said oh, yes, alfalfa is for sheep and goats but yet, no
10 reaudit.

11 JUDGE WONG: Okay. Did you have any other -- so
12 like I said, this is not really a question and answer
13 period between you and CDTFA, but --

14 MS. RODRIGUEZ: Okay.

15 JUDGE WONG: I mean --

16 MS. RODRIGUEZ: Well, those are all the questions
17 I have because I just received, like, that number with --
18 I guess I'm basing it on my last audit. It was so
19 detailed, like, hundreds and pages and hours and hours.
20 They came to download like so many reports. It was -- my
21 last audit was so detailed, that I'm comparing the last
22 audit to the previous audit, because the previous audit
23 was just one time we went. One time she downloaded my
24 reports, and that was it.

25 This last audit it took close to two years. And

1 it -- because it was like endless reports and reports, and
2 we need this. And they did so many transaction level
3 sampling that that's why it's really odd to me that the
4 last auditor didn't do that. So I don't know where they
5 got their figures from. I was --

6 JUDGE WONG: So the --

7 MS. RODRIGUEZ: I'm sorry. And why --

8 JUDGE WONG: So specific -- sorry. Go ahead. Go
9 ahead.

10 MS. RODRIGUEZ: And, I mean, just how they got
11 their figures, and why this reaudit wasn't asked for. And
12 then the whole annotations, if you see in -- and the final
13 audit working paper how they keep on adding regulations
14 and annotations that -- that alfalfa is for horses, and
15 that alfalfa is not a food animal -- I mean, and horses
16 are not a food animal. It's just like they totally --
17 they're totally ignoring my whole -- the whole audit, the
18 whole appeal.

19 And CDTFA ignored the fact of sheep is for --
20 that alfalfa is not to be fed to sheep and goats. This
21 is -- I mean, they -- they ignored everything. They
22 ignored everything. And even to today, they keep on
23 ignoring it, and they haven't said why they did the
24 reaudit. They haven't said how they came up with that six
25 or less number. And they haven't justified why it's okay

1 for me to overtax my customers over \$300,000 over three
2 years. Why is that all okay that they forced that
3 reimbursement on my customers?

4 JUDGE WONG: Okay. Thank you, Ms. Rodriguez. My
5 understanding is that a lot of the explanation was in the
6 reaudit working papers. It should have summarized in the
7 decision -- the supplemental decision -- the second
8 supplemental decision. I think some of the answers are in
9 there.

10 But I will give CDTFA, if they want the
11 opportunity, to clarify the six and under with respect to
12 the -- I guess it's the minimum -- could you kind of recap
13 your question, Ms. Rodriguez, with regards to the six and
14 under --

15 MS. RODRIGUEZ: Okay.

16 JUDGE WONG: Hang on. Sorry.

17 MS. RODRIGUEZ: So my first -- the first audit
18 working papers, the supervising auditor did not apply the
19 exemption where it says that I don't need to ask for a
20 certificate if the purchaser purchases six or less. It
21 says four bails or/and two sacks of grain. Again, bails
22 of alfalfa, bails of hay, how did they come up with the
23 total deduction, if they didn't examine my transactions
24 individually.

25 There -- I don't -- QuickBooks does not generate

1 the report. And I know that because on my last audit they
2 requested that, and QuickBooks does not generate a total
3 number based on four, or two, or six, or less. So how did
4 they come up with that.

5 JUDGE WONG: Okay. Thank you, Ms. Rodriguez. I
6 think -- I guess what -- how did CDTFA apply what's in the
7 statute, in the law, the exemption and how they apply it
8 to the case of the business itself. I guess that's the --

9 MS. RODRIGUEZ: Yes.

10 JUDGE WONG: -- question.

11 CDTFA, did you have a response?

12 MR. PARKER: Yeah. This is Jason Parker.

13 Thanks, Judge Wong.

14 So if you look at page 4289, it's the start of
15 the test of the sales of livestock. We have all the
16 transactions sorted by the description of the type of
17 item. So this starts -- if you look at line 30, it's for
18 alfalfa No. 1, there's three quantities, three bails of
19 alfalfa, and it's in the exempt column, 4,350 is the
20 total. If you look at line 32, it's six bails, but they
21 had exemption certificate on file. So we allowed that as
22 an exempt sale. If you look at line 34, there are seven
23 bails. That was allowed as an exempt sale.

24 And then if you look at line 39, there's seven
25 bails; and no exemption certificate on file that could we

1 match up to a receipt. So that one was determined to be
2 taxable. That's \$101.50. And then there are other types
3 of items. Hold on a second. I was trying to scroll
4 through my working papers because there's sacks. So if
5 you look at page -- let's go with page 4325. This is
6 alfalfa pellets. So those, from my understanding, come
7 in -- so they allowed up to four as well in that category
8 as well.

9 But I know there are others that -- so we did
10 allow the small sales. And we did allow anything where an
11 exemption certificate was on file. And it's all in
12 these -- these Schedule R112-F. It goes from page 4289 to
13 4386.

14 MS. RODRIGUEZ: No. Could I respond or no? No.
15 Because my report -- my point of sale does not generate
16 that.

17 JUDGE WONG: Okay. So I know you don't have
18 CDTFA's exhibits, but later on after the hearing is
19 over --

20 MS. RODRIGUEZ: Okay.

21 JUDGE WONG: -- there will a YouTube recording of
22 this online, and there will be a transcript published on
23 our website later. You can go through it, and maybe you
24 could follow and see what the CDTFA is referencing in
25 their exhibits. And then afterwards, you could see what

1 they're talking about. Okay.

2 MS. RODRIGUEZ: But because -- I just know
3 because it does not -- because when we did this,
4 QuickBooks does not allow that. So the only thing that I
5 assume she's doing is getting the summary report, but it's
6 not going to give you a total because we tried. It does
7 not give you that. She's not -- okay. I'll just review
8 it, but my QuickBooks point of sale does not give you
9 transaction, the total. It'll give you a total. For
10 instance, let's say it says four and two, but it doesn't
11 give you the amount of that -- of that receipt. It does
12 not give you that. It gives you the total amount of the
13 receipt as a whole.

14 JUDGE WONG: Okay.

15 MS. RODRIGUEZ: All right.

16 JUDGE WONG: Okay. We'll just leave it at that.

17 All right. I want to -- all right. That's going
18 to conclude the hearing. I want to thank both parties for
19 their presentations today.

20 Ms. Rodriguez, I know this has been a long
21 process. You had mentioned it's taken seven years. All
22 right. So I realize that with -- sometimes without
23 experts or people who are not experts in tax law, this
24 process can be difficult. So I appreciate your patience,
25 and so this will conclude -- but so just thank you.

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

And thank you for both parties for your presentations today.

This concludes the hearing. The evidentiary record is closed, and this case is submitted today. The panel will meet and decide the case based on the exhibits presented and admitted as evidence, and we will send the parties our written decision no later than 100 days from today.

The oral hearing in this case is now adjourned. The next oral hearing will begin at 2:35. So I want to thank you again.

All right. Let's go off the record.

(Proceedings concluded at 2:16 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 5th day of February, 2026.

ERNALYN M. ALONZO
HEARING REPORTER