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APPEARANCES:

Panel Lead: HEARING OFFICER KIM WILSON

Panel Members: ALJ SUZANNE B. BROWN  
ALJ JOSH LAMBERT

For the Appellant: LUSY BRUTYAN  
COLIN SHANAHAN  
HAYK BOHOLYAN  
KRISTINA GRIGORYAN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
NALAN SAMARAWICKREMA  
STEPHEN SMITH  
JASON PARKER

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I N D E X

E X H I B I T S

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

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

	<u>PAGE</u>
By Ms. Brutyan	9
By Mr. Samarawickrema	23

W I T N E S S T E S T I M O N Y

	<u>PAGE</u>
By Mr. Boholyan	18
By Ms. Grigoryan	20

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

	<u>PAGE</u>
By Ms. Brutyan	39
By Mr. Shanahan	41

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California; Tuesday, February 10, 2026

1:06 p.m.

HEARING OFFICER WILSON: We are going on the record.

This is the Appeal of Artsakh Group Incorporated, OTA Case No. 241218234. The date is February 10, 2026, and the time is 1:06 p.m. This hearing is being held electronically with the agreement of the parties.

I am Hearing Officer Kim Wilson. I will be the lead for the purpose of conducting this hearing. My co-panelists Judge Suzanne Brown and Judge Josh Lambert and I are equal participants in deliberating and determining the outcome of this appeal.

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

Ms. Brutyan?

MS. BRUTYAN: Hello. I'm Lusy Brutyan, Respondent.

MR. SHANAHAN: I'm Colin Shanahan for Artsakh Group, Petitioner.

HEARING OFFICER WILSON: Okay.

MS. BRUTYAN: And we have two witnesses.

HEARING OFFICER WILSON: Okay.

1 MS. GRIGORYAN: Hi. I'm Kristina Grigoryan. I'm  
2 the floor manager.

3 MR. BOHOLYAN: Hi. I'm Hayk Boholyan. I'm  
4 general manager of Khinkali House.

5 HEARING OFFICER WILSON: Thank you.

6 And for CDTFA.

7 MR. SAMARAWICKREMA: I'm Nalan Samarawickrema,  
8 hearing representative for CDTFA.

9 MR. PARKER: I'm Jason Parker, Chief of  
10 Headquarters Operations Bureau with CDTFA.

11 MR. SMITH: And I'm Stephen Smith, an attorney  
12 with CDTFA.

13 HEARING OFFICER WILSON: Thank you.

14 As stated in the Minutes and Orders, the issue to  
15 be decided in this appeal is: Whether adjustments are  
16 warranted to the measure of unreported taxable sales;  
17 whether adjustments are warranted to the measure of  
18 disallowed claimed nontaxable sales of food products; and,  
19 whether adjustments are warranted to the measure of  
20 disallowed claimed nontaxable room rental income.

21 Appellant, is that the issues that you see for  
22 the appeal?

23 MS. BRUTYAN: Yes. True.

24 HEARING OFFICER WILSON: Thank you.

25 And CDTFA?

1 MR. SAMARAWICKREMA: This is Nalan  
2 Samarawickrema. Yes, those are the issues. Thank you.

3 HEARING OFFICER WILSON: Thank you.

4 One -- let me just double back. Okay.

5 Ms. Brutyan, I just wanted to clarify that I  
6 think you said for Respondent. Is that -- did you mean  
7 Appellant?

8 MS. BRUTYAN: Appellant. Sorry. Yes.

9 HEARING OFFICER WILSON: Okay. Okay. Just to  
10 clarify that for the record.

11 For -- we're going to go over the exhibits now.  
12 Appellant submitted Exhibits 1 through 6, and CDTFA did  
13 not have any objections to the admissibility of these  
14 exhibits. OTA received Mr. Ornelas's declaration on  
15 1/30/26.

16 Has CDTFA had a chance to review the declaration?

17 MR. SAMARAWICKREMA: Yes, and we have no  
18 objections.

19 HEARING OFFICER WILSON: Great. Thank you.

20 So we will label that as Exhibit 7, which is  
21 shown in the exhibit binder.

22 Next, CDTFA submitted Exhibits A through L.  
23 Appellant did not object to the admissibility of these  
24 exhibits. Therefore, A through L are admitted into  
25 evidence.

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

3 HEARING OFFICER WILSON: Appellant indicated  
4 during the prehearing conference they will be calling  
5 witnesses to testify, and that was -- sorry if I  
6 mispronounce the names -- Hayk Boholyan and Kristina  
7 Grigoryan; is that correct?

8 MS. BRUTYAN: Yes, that's correct.

9 MR. SHANAHAN: Yes.

10 HEARING OFFICER WILSON: And CDTFAs did not have  
11 any objections.

12 Is that still the case, Mr. Samarawickrema?

13 MR. SAMARAWICKREMA: Yes. No objection.

14 HEARING OFFICER WILSON: Great. Thank you.

15 Appellant requested 30 minutes for their  
16 presentation. Before we begin with Appellant's  
17 presentation, I need to place Mr. Boholyan and  
18 Ms. Grigoryan under oath so we can consider their  
19 statements as testimony; and they will remain under oath  
20 until the close of this hearing. So if you could both  
21 raise your right hand.

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HAYK BOHOLYAN,

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

KRISTINA GRIGORYAN,

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

HEARING OFFICER WILSON: Thank you.

All right. Ms. Brutyan, you may have the witness testify in a narrative or ask specific questions. You can proceed when you're ready.

MS. BRUTYAN: Can I do it after my presentation?

HEARING OFFICER WILSON: Yes.

MS. BRUTYAN: Thank you.

HEARING OFFICER WILSON: Please begin.

MS. BRUTYAN: Sure.

PRESENTATION

MS. BRUTYAN: Good afternoon. Thank you for the opportunity to present our position.

This case involves dumpling restaurant whose signature items are dumplings and blinchik, which are

1 rolled dumplings made of very thin dough. Those products  
2 are labor intensive and highly quality sensitive. The  
3 restaurant uses high-grade ingredients, including grade  
4 Level 1 meat and clean butter purchased from Costco. In  
5 compliance with Department of Public Health requirements,  
6 seasoned or marinated dumpling filling, the meat is  
7 prepared fresh each day and cannot be frozen if unused.  
8 Any leftover seasoned dumpling filling meat must be  
9 discarded. This practice increased food cost and waste  
10 and directly effects the markup, but it reflects safe  
11 operation and commitment to food quality.

12 When the audit was originally first opened, the  
13 accountant who was in charge of filing quarterly sales and  
14 use tax returns provided monthly POS sales summary reports  
15 for the entire audit period; which clearly showed total  
16 monthly sales, taxable sales and nontaxable sales, to-go  
17 sales, tips, and other related information. The  
18 accountant used the POS monthly reports to prepare and  
19 file quarterly returns. However, the auditor did not rely  
20 on those reports in their entirety. Instead, the auditor  
21 relied only on sales statistics portion of the report and  
22 ignored the recorded total monthly sales and payment data  
23 for the same periods. The auditor relied solely on the  
24 calculation that produced the higher number. The POS  
25 statistics are estimates and were used selectively, rather

1 than complete and accurate measure of actual sales.

2 According to taxpayer and the accountant, the  
3 statistic section of the POS report is neither reliable  
4 nor accurate because the POS system was inherited from the  
5 prior ownership, and the data is inconsistent with daily  
6 and monthly recorded sales. I would like to address now  
7 number -- Issue No. 1, gross sales and selected use of POS  
8 report. As shown on Appellant's Exhibit 1, page 5, audit  
9 working paper 12H-1, column Z, the total additional  
10 taxable sales were calculating using POS receipt sales  
11 statistics portion by multiplying the total sales count by  
12 the average order price. However, those same POS reports  
13 also contained other relevant data, including the total  
14 number of guests and average price per guest as shown on  
15 the same working paper 12H-1, column AB. According to the  
16 audit working paper, using total sales multiplied by  
17 average order price resulted in calculated sales of  
18 \$5,875,892 as shown in column Z. However, using the  
19 number of guests multiplied by the average price per guest  
20 resulted in calculated sales of \$5,261,326 as shown in  
21 column AB.

22 Both calculations came from the same POS report,  
23 yet they produced materially different results. The  
24 auditor did not explain why one calculation was more  
25 reliable than the other. Instead, it relied exclusively

1 on the calculation that produced the higher sales figure  
2 as shown on the same Exhibit 1, worksheet 12H --

3 HEARING OFFICER WILSON: It looks like your  
4 screen frozen, and we can't hear what you're saying, so  
5 we'll just pause until we can get them back.

6 Yeah. Let's go off the record for a few minutes  
7 until their audio and video is back online.

8 Yeah, if you want to turn off your cameras while  
9 we're waiting, that -- that would be great.

10 (There is a pause in the proceedings.)

11 HEARING OFFICER WILSON: We're going to go back  
12 on the record.

13 Ms. Brutyan, it looks like you cut out right  
14 about the sentence, "The auditor did not explain why one  
15 calculation was more reliable than the other." So if you  
16 could start from there?

17 MS. BRUTYAN: Of course.

18 The auditor did not explain why one calculation  
19 was more reliable than the other. Instead, it relied  
20 exclusively on the calculation that produced the higher  
21 sales figure as shown on the same Exhibit 1, worksheet  
22 12H-1. Auditors comment, I quote, "No explanation could  
23 be given for the difference. Auditor will use the highest  
24 amount as the audited gross sales. See schedule 12H."

25 As result, the POS sales statistics were not

1 considered in their entirety and were used selectively to  
2 support the Department's position, rather than to  
3 reflect an accurate measures of actual sale. The business  
4 bank account statements, business profit and loss  
5 statements, 1099-K data was provided for the entire audit  
6 period as part of the audit evidence but failed to  
7 substantiate the Department's position and determination  
8 to increase gross sales.

9 The Department relies heavily on markup,  
10 asserting that taxpayers reported 122 percent markup is  
11 low compared to industry average and prior owner's markup.  
12 We disagree with that conclusion. First, the taxpayer has  
13 no knowledge of any prior audit or markup under the  
14 previous owner and had no involvement in this business --  
15 in that business. Prior owner's data should not be used  
16 to evaluate this audit period.

17 Second, when the taxpayer took over the business,  
18 there were numerous customer complaints regarding food  
19 quality. Due to the loss of clients and loss of revenue,  
20 the restaurant was sold. When the new CEO purchased and  
21 took over the business, made significant operational  
22 changes, including using higher quality meat, strictly  
23 complying with the health regulation, and discarding  
24 unused seasoned dumpling filling meat, rather than  
25 freezing, defrosting, and reusing it. Those decisions

1 improved quality but reduced markup. Despite significant  
2 improvements in food quality, prices remained unchanged  
3 throughout the audit period to attract more customers. A  
4 lower markup does not indicate on the reported sales.

5 Third, markup is not uniform across the  
6 restaurant industry. Fast-food restaurant, casual dining  
7 establishments, and specialty restaurants operate under  
8 different cost structure. This restaurant falls in  
9 between, and 122 percent markup does not indicate  
10 operating with a loss or underreporting sales. Therefore,  
11 the Department's reasoning for using the POS report  
12 partially, such as sales statistic portion, and for  
13 increasing gross receipts mainly due to lower markup  
14 compared to Department's markup industry statistics is not  
15 supported. COVID-19 is critical to understand this audit  
16 period. In 2020 and 2021, indoor dining was largely  
17 prohibited. Later, only outdoor dining was permitted with  
18 strict spacing requirements. This restaurant has a small  
19 patio with eight tables, but during COVID restrictions  
20 only four tables could be used. It was economically  
21 feasible to staff the restaurant for such limited dining  
22 service, so the business shifted primarily to-go orders.

23 For dumplings and blinchik, quality is the key.  
24 Hot dumplings do not travel well and quickly become soggy  
25 and unappealing. For that reason, most to-go orders were

1 sold frozen so customers could boil and prepare them at  
2 home. Frozen dumplings are nontaxable. During this same  
3 period, most nearby offices were closed or working from  
4 home. And customers working from home, overwhelmingly,  
5 ordered frozen products for home consumption. This  
6 explains the increase in nontaxable sales.

7 I would like to now address Issue No. 2, the  
8 Nontaxable Sales Percentage. When the taxpayer appealed,  
9 we provided what the Department and the appeals requested.  
10 This included monthly nontaxable to-go reports from  
11 March 2020 through the first quarter of 2021, as well as  
12 daily POS reports for the two-week test period from  
13 September 1st through September 15th, 2021. Despite  
14 providing the requested additional POS, reports, the  
15 Department did not adjust the disallowed nontaxable sales.  
16 The Department acknowledged that a significant portion of  
17 restaurant sales during COVID consisted of frozen or  
18 uncooked dumplings and allowed a 50 percent nontaxable  
19 allocation, but only for limited periods; specifically,  
20 March, May, June, and December of 2020, and also  
21 January 2021.

22 From the beginning of the ownership, the POS  
23 system to-go category was used only for nontaxable frozen  
24 sales. Only all frozen and cold foods nontaxable items  
25 were listed under to-go order. All taxable sales, whether

1 dine in or hot to-go were quoted as taxable. Therefore,  
2 during the appeal, the taxpayer provided monthly POS to-go  
3 detailed report from January 2020 through September of  
4 2021. Please refer to Appellant Exhibit No. 4.

5 However, as demonstrated by the attached POS  
6 invoices, the same operating conditions that existed  
7 during those months continued throughout COVID period,  
8 indoor dining restrictions, limited outdoor seating,  
9 office closures, and customer demand for frozen dumplings  
10 did not end in January of 2021. The nature of the product  
11 did not change. Customer ordering behavior did not  
12 change, and the restaurant's POS coding did not change.  
13 Frozen dumplings and blinchik remain the primary to-go  
14 items, because they preserved quality intended for home  
15 preparation. Based on the POS invoices and daily  
16 transaction data, the Department did not address the  
17 reason for not allowing 50 percent of sales to be  
18 nontaxable for the entire COVID-19 period from March 1st,  
19 2020, through September 1st, 2021, not just for selected  
20 months.

21 The Department's partial allowance confirms that  
22 frozen nontaxable sales were valid and significant.  
23 Limiting that allowance to only certain months does not  
24 reflect the continuous operation condition during COVID  
25 audited period from March 2020 through September 2021.

1 Given COVID-19 restrictions, from March 2020 through  
2 September 2021 and based on the POS data provided,  
3 including to-go order detailed monthly reports and daily  
4 POS reports for the two-week test period from  
5 September 1st through September 15, 2021, there's no  
6 sufficient evidence to -- there is -- there is sufficient  
7 evidence to allow at least 50 percent nontaxable sales  
8 from March 1st, 2020, through September 1st, 2021.

9 I would like to briefly address Issue No. 3,  
10 Nontaxable Rent Fees Received From Priority Events. The  
11 restaurant has both an outdoor patio area and indoor  
12 private room. In 2018, the taxpayer earned nontaxable  
13 rental income from renting those spaces for private  
14 events. The outdoor patio was primarily rented for  
15 daytime events, such as birthday parties and baby showers.  
16 For those events, the party organizers brought their own  
17 catering service, as dumplings were not preferred finger  
18 food option for those types of gatherings. The rental  
19 fees charged covered only to use of that space and did not  
20 include any food or beverage provided by the restaurant.  
21 As shown in Appellant Exhibit 6, the taxpayer provided  
22 written contracts and documentation verifying the rental  
23 agreements and the contracted -- contracted amounts.  
24 Those documents clearly show that the charges were for the  
25 space rental only, and did not include food or drink.

1 Accordingly this income was properly reported as  
2 nontaxable sales.

3 In summary, the audit adjustments are based on  
4 selected use of POS data, assumptions about markup that do  
5 not reflect this business, and insufficient consideration  
6 of COVID-related operational realities. The taxpayer  
7 provided sufficient POS data, business bank statements,  
8 1099-K records, profit and loss statements, and other  
9 supporting documentation for the audit period, all which  
10 substantiate the reported gross sales, nontaxable to-go  
11 orders, and nontaxable rental income and fees received  
12 from private events. For those reasons, we respectfully  
13 request that the Office of Tax Appeals reverse the audited  
14 gross receipt adjustments, allow nontaxable to-go orders  
15 from March 1st, 2020, through September 1st, 2021, and  
16 nontaxable rental income as originally reported.

17 Thank you.

18 And now I would like to, if it's okay, for the  
19 witness to provide their testimony.

20 HEARING OFFICER WILSON: Yes, go ahead.

21 MS. BRUTYAN: Hayk, go ahead.

22

23 WITNESS TESTIMONY

24 MR. BOHOLYAN: Yeah. Hi, again. My name is Hayk  
25 Boholyan, and I'm one of managers of Khinkali House. I

1 also worked for the businesses under the prior ownership.  
2 When I started working at Khinkali House, our point of  
3 sale system already has a to-go button. This button was  
4 used only for nontaxable to-go orders. And it's applied  
5 just set -- you know, for a set of menu items; mainly  
6 uncooked or frozen dumplings and blinchiks.

7 As a manager, so I'm also responsible for  
8 purchasing ingredients for the kitchen. Under the  
9 previous management, the quality of the meat used for  
10 dumplings was lower. The new owner upgraded meat to  
11 Grade 1, which typically -- I'm sorry -- which typically  
12 increased cost by about 20, 25 percent. Even after  
13 quality improvements, the menu prices remains the same and  
14 did not change until sometimes 2022. Throughout  
15 operation, only high-quality products were used. Supplies  
16 were purchased from reputable vendors, including Costco  
17 and primary food distributors, you know, such as Green  
18 Ranch Foods, Sysco, the Fantis Foods, and -- but other  
19 established suppliers, but ensuring consistent quality  
20 standards.

21 Regarding the 2018 timeline, I can confirm that  
22 the private room and patio area were rented out for  
23 several private events, which included for own private  
24 catering. And during the COVID-19 pandemic from  
25 March 2020, so through the end of 2021, we faced many

1 dine-in restriction, so which caused it high increase in  
2 our to-go orders for frozen uncooked dumplings and  
3 blinchiks.

4 Okay. Thank you.

5 MS. BRUTYAN: Kristina.

6

7

WITNESS TESTIMONY

8 MS. GRIGORYAN: Yes. Hello, everyone. My name  
9 is Kristina Grigoryan, and I am the floor manager at  
10 Khinkali House. I have been working here as of  
11 January 2018. As the floor manager at Khinkali House, I  
12 am responsible for ensuring compliance with all meat  
13 handling and kitchen safety regulations. This includes  
14 verifying proper storage temperatures, ensuring meats are  
15 labeled and dated correctly, and monitoring food rotation  
16 practices. To ensure safety and quality, I can confirm  
17 that unused marinated meat gets discarded the following  
18 day.

19 As part of my duties, I handle all customer  
20 complaints and service-related issues. This includes  
21 addressing food quality concerns, resolving billing or  
22 order discrepancies, offering refunds or replacements when  
23 appropriate, and documenting recurring issues to improve  
24 service standards. During COVID-19, in-door dining was  
25 subject to multiple restrictions, including six-foot table

1 spacing, mandatory mask requirements, and curfews. This  
2 limitations led to significant decline in dine-in traffic,  
3 a loss of overall business volume, and a substantial shift  
4 towards to-go orders for uncooked dumplings and blinchik.  
5 Therefore, from March 2020 through the end of 2021, the  
6 to-go uncooked frozen nontaxable sales increased  
7 significantly.

8           Additionally, I'm responsible for managing  
9 billing and processing payments for all vendor invoices.  
10 Based on my oversight, I can confirm that the meat and  
11 other food products purchased during this period were of  
12 notably higher quality, which resulted in increased  
13 expenses and higher operational costs for the business.

14           Thank you.

15           HEARING OFFICER WILSON: Thank you.

16           Ms. Brutyan, does that include your opening  
17 argument --

18           MS. BRUTYAN: Yes.

19           HEARING OFFICER WILSON: -- and -- okay. Great.

20           MS. BRUTYAN: Thank you.

21           HEARING OFFICER WILSON: We'll go ahead and move  
22 over to CDTFa to see if they have any questions for any of  
23 the witnesses.

24           MR. SAMARAWICKREMA: This is Nalan  
25 Samarawickrema. We don't have any questions for the

1 witnesses.

2 HEARING OFFICER WILSON: Okay. Thank you.

3 Judge Lambert, do you have any questions for the  
4 witnesses?

5 JUDGE LAMBERT: This is Judge Lambert. I have no  
6 questions right now. Thanks.

7 HEARING OFFICER WILSON: Thank you.

8 And Judge Brown?

9 JUDGE BROWN: I may just have one question,  
10 whether it's for the witnesses or Appellant's  
11 representative. I'll leave it up to them.

12 My question is, looking at the menus that we  
13 have, it's not -- I don't see anything on the menus that  
14 distinguish the hot dumpling order from cold dumpling  
15 order, and I was wondering how did customers convey that  
16 they wanted to order cold dumplings -- cold frozen  
17 dumplings versus hot dumplings. Is there a different menu  
18 that they were using?

19 MS. BRUTYAN: Yes. I believe we did provide --  
20 during COVID, a lot of things changed, but I believe the  
21 Department has the old menu. And we did provide sample of  
22 other menus as well, which did include -- did give you  
23 option for cold and hot dumplings. It should be one of  
24 the exhibits from Respondent. I can go ahead and take a  
25 look.

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JUDGE BROWN: That's okay. I'll --

MS. BRUTYAN: I'll do that right now.

JUDGE BROWN: Okay. I was going to say --

MS. BRUTYAN: Yeah. It's one of the -- yeah.

JUDGE BROWN: I'm sorry. Go ahead.

MS. BRUTYAN: Yes. It was one of the information  
that --

JUDGE BROWN: I'll say --

MS. BRUTYAN: -- I presented in the --

JUDGE BROWN: Okay. I'll say then I'll wait and  
I'll hear from Respondent on this. Thank you. I don't  
have any further questions right now.

HEARING OFFICER WILSON: Thank you.

We'll go ahead and move over to CDTFA's  
presentation. The agency is not presenting any witnesses  
and will only argue the appeal, so they will not be  
testifying under oath or affirmation. The CDTFA requested  
30 minutes for their presentation.

And you may begin when you're ready.

MR. SAMARAWICKREMA: Okay. Thank you.

PRESENTATION

MR. SAMARAWICKREMA: Appellant is a California  
corporation that operates a restaurant with a full service  
bar in Glendale, California. The Department audited

1 Appellant's business for the periods October 1st, 2018,  
2 through September 30th, 2021. During the audit period,  
3 Appellant reported total sale of around \$5 million and  
4 claimed deduction of around \$2.7 million, which consisted  
5 of exempt food sales of around \$2.1 million, other  
6 deduction for nontaxable, tip of around \$266,000, other  
7 deductions for nontaxable, rental income of around  
8 \$81,000, and sales tax reimbursement included in total  
9 sale of around \$235,000 resulting in reported taxable sale  
10 of around \$2.3 million. This is shown on Exhibit B,  
11 page 28.

12           During our presentation we will explain why the  
13 Department rejected Appellant's reported taxable sales and  
14 part of claimed exempt sales, why the Department used an  
15 indirect audit approach, and how the Department determined  
16 Appellant's unreported taxable sales and overclaimed  
17 nontaxable sales for the audit period for this Appellant.  
18 During the audit, Appellant informed the Department that  
19 they made sales through their POS system and generated POS  
20 reports to prepare their sales and use tax returns. But  
21 during the audit, Appellant failed to provide complete POS  
22 download necessary to verify the accuracy of the amounts  
23 reflected on their POS reports for the audit period.  
24 Appellant did not provide complete sales documents of  
25 original entry, such as sales invoices, credit card sales

1 receipts, detailed exempt food sales, tips, and rental  
2 income information for the audit period.

3 In addition, Appellant failed to provide complete  
4 purchase invoices and purchase journals for the audit  
5 period. Due to the lack of reliable records, the  
6 Department did not accept Appellant's reported taxable  
7 sales and claimed exempt sales. The Department also  
8 determined that Appellant's record was such that taxable  
9 sales and claimed exempt sales would not be verified by a  
10 direct audit approach. Therefore, the Department used an  
11 indirect audit approach to determine Appellant's taxable  
12 and nontaxable sales. The Department completed five  
13 verification methods to understand Appellant's reporting  
14 patterns and verify the accuracy of Appellant's reported  
15 taxable sales and claimed nontaxable items.

16 First, Appellant provided their federal income  
17 tax returns for the period July 2018 through December  
18 2020; and this information is shown on Exhibit C, page 74.  
19 The Department compared reported total sales of around  
20 \$3.2 million to the cost of goods sold of around  
21 \$1.4 million reflected on Appellant's income tax returns,  
22 and calculated an overall total reported book markup of  
23 around 122 percent for the same period, which is low for  
24 this type of business; and this is shown on Exhibit C,  
25 page 72. Accordingly, the Department did not accept

1 Appellant's reported total sale for the audit period.

2 In fact, based on the analysis of audited sales  
3 for the period, from July 2019 through December 2020, the  
4 post-audited markup was around 189 percent. While the  
5 Department determined that the post-audited markup was low  
6 for a restaurant with a full service bar, it,  
7 nevertheless, accepted this low post-audited markup and  
8 did not make any upward adjustments. And the information  
9 required to calculate this post-audited markup is shown on  
10 Exhibit C, pages 10, 13, and 72.

11 Second, the Appellant did not provide complete  
12 sales information for the audit period. As a result, the  
13 Department obtained the Appellant's credit card sales  
14 information from its internal sources; and this  
15 information is shown on Exhibit C, pages 70, and 71. The  
16 Department compared these credit card sales with the  
17 reported total sales and calculated an overall credit card  
18 sales ratio around 93 percent, ranging from as low as  
19 92 percent, to as high as 96 percent for the period  
20 October 2018 through December 2020. And information  
21 required to calculate these reported credit card sales  
22 ratios are shown on Exhibit C, pages 70 and 71.

23 In addition, Appellant did not deposit any cash  
24 sales into their bank accounts for 16 months and deposited  
25 only \$76,000 during the remaining 20 months of the audit

1 period, which averages to \$126 per day; and these findings  
2 are shown on Exhibit C, pages 55 through 59. Based on  
3 these findings, the Department determined that the credit  
4 card sales ratios are high for this type of business.  
5 This indicates that not all of Appellant's cash sales  
6 transactions were reported on their sales and use tax  
7 returns.

8 In contrast, based on the audited total sales  
9 information, the calculated post-audited credit card sales  
10 ratio was around 85 percent for the period from July 2019  
11 through December 2020. While the Department determined  
12 that the post-audited credit card sales ratio was high for  
13 this restaurant, it nevertheless accepted this high  
14 post-audited credit card sales ratio and did not make any  
15 upward adjustments. And the information required to  
16 calculate this post-audited credit card sales ratio is  
17 shown on Exhibit C, pages 9, 70, and 71.

18 Third, Appellant failed to provide complete POS  
19 download, including all folders for the audit period.  
20 However, Appellant did submit monthly POS sales summary  
21 reports for the audit period, which are included as  
22 Exhibit D. Upon review, the Department analyzed the  
23 available monthly POS sales summary report and determined  
24 that the transaction counts and average sales price per  
25 order reflected on these summaries did not reconcile with

1 the total sales amounts recorded on the monthly reports.  
2 These discrepancies demonstrate that the Appellant failed  
3 to maintain complete and accurate reports, and did not  
4 report all their total sales for the audit period.

5 Fourth, based on Appellant's monthly POS sales  
6 summaries and third-party delivery sales information, the  
7 Department noted that the Appellant did not report their  
8 third-party delivery sales for the audit period.

9 Fifth, the Department analyzed reported taxable  
10 sales for the audit period and noted that Appellant, on  
11 average, only reported around 52 percent of total sales as  
12 Appellant's taxable sales; and this calculation is shown  
13 on Exhibit C, page 42. Based on Appellant's business, the  
14 Department expected to see a higher taxable sales  
15 percentage and the reported taxable sales percentage.  
16 However, based on the analyses of audited total and  
17 taxable sales information for the period July 2019 through  
18 December 2020, the post-audited taxable sales percentage  
19 was around 85 percent; and the information required to  
20 calculate this percentage is shown on Exhibit B, pages 28  
21 and 29.

22 The Department determined this post-audited  
23 taxable sales ratio was low for this restaurant. It,  
24 nevertheless, accepted this low post-audited taxable sales  
25 ratio and did not make any adjustments. Appellant was

1       unable to explain the reasons for low reported book  
2       markup, high reported credit card sales percentages, sales  
3       discrepancies on monthly POS summary reports, and low  
4       taxable sales percentages. Therefore, the Department used  
5       Appellant's claimed exempt sales amounts, available  
6       monthly POS summary reports, third-party delivery sales  
7       information, and bank statements to determine unreported  
8       taxable sales and overclaimed exempt sales for the audit  
9       period.

10               As mentioned earlier, Appellant failed to provide  
11       their POS download, including all folders necessary to  
12       verify the accuracy of reported total taxable and claimed  
13       exempt items. Therefore, the Department used the  
14       transaction count and average sale price per order  
15       reflected on monthly POS sales summary reports to  
16       determine audited total sale of around \$5.9 million for  
17       the audit period; and this calculation is shown on  
18       Exhibit C, page 11. Audited total sales were compared  
19       with the reported total sale of around \$4.8 million to  
20       determine unreported taxable sales of around \$1.1 million  
21       for the audit period; and this is shown on Exhibit C,  
22       page 11.

23               To determine the unreported taxable third-party  
24       delivery sales, the Department reviewed the available  
25       monthly POS sales summary reports, Form 1099-K, and the

1 bank statements and found Appellant did not record the  
2 third-party delivery sales on their POS system, nor did  
3 Appellant record these sales amount on their sales and use  
4 tax returns; and this is shown on Exhibit C, pages 30  
5 to 45. Therefore, the Department assessed the unreported  
6 third-party delivery sale of around \$84,000 based on  
7 Form 1099-K and the bank statement for the period October  
8 2018 through March 2021; and this is shown on Exhibit C,  
9 page 30.

10 Additionally, due to lack of supported  
11 documentation, the Department disallowed the claimed  
12 nontaxable sale of around \$1.5 million, the claimed  
13 nontaxable rental income of around \$81,000, and the  
14 claimed nontaxable tips of around \$40,000 for the audit  
15 period; and these are shown on Exhibit B, pages 30 through  
16 32, and Exhibit C, page 50. In total, the Department  
17 determined unreported taxable sales and overclaimed exempt  
18 sale of around \$2.8 million for the audit period; and this  
19 is shown on Exhibit B, page 29. The Department then  
20 compared the total unreported taxable sales and disallowed  
21 overclaimed exempt sale for the audit period with a  
22 reported taxable sale of around \$2.3 million to calculate  
23 the error rate of around 122 percent for the audit period.

24 HEARING OFFICER WILSON: Excuse me just one  
25 second. I did notice that Ms. Brutyan is not on the call

1 anymore. And so if we could pause while they try to  
2 reconnect, we'll go off the record until they reconnect.  
3 You can turn of your videos and mute.

4 Thank you.

5 (There is a pause in the proceedings.)

6 HEARING OFFICER WILSON: We'll go back on the  
7 record.

8 Mr. Samarawickrema, you can continue.

9 Ms. Brutyan -- sorry -- do you need to have him  
10 go back a few sentences or --

11 MS. BRUTYAN: Yes, please.

12 HEARING OFFICER WILSON: -- I'm not sure when you  
13 dropped off. What was the last you heard?

14 MS BRUTYAN: I think if he goes back two  
15 sentences, I should be fine.

16 HEARING OFFICER WILSON: Okay.

17 MR. SAMARAWICKREMA: In total, the Department  
18 determined unreported taxable sales and overclaimed exempt  
19 sales of around \$2.8 million for the audit period; and  
20 this is shown on Exhibit B, page 29. The Department then  
21 compared the total unreported taxable sales and disallowed  
22 overclaimed exempt sales for the audit period with a --

23 HEARING OFFICER WILSON: Mr. Samarawickrema, I  
24 just want to double check on our Hearing Reporter. I'm  
25 not sure if she's back online yet.

1 MR. SAMARAWICKREMA: All right.

2 HEARING OFFICER WILSON: Yes. Okay.

3 MR. SAMARAWICKREMA: Okay.

4 HEARING OFFICER WILSON: Should we back up? No.  
5 We're good. Okay.

6 Please continue.

7 MR. SAMARAWICKREMA: In total, the Department  
8 determined unreported taxable sales and overclaimed exempt  
9 sale of around \$2.8 million for the audit period; and this  
10 is shown on Exhibit B, page 29. The Department then  
11 compared the total unreported taxable sales and disallowed  
12 overclaimed exempt sales for the audit period with a  
13 reported taxable sale of around \$2.3 million to calculate  
14 the error rate of around 122 percent for the audit period.  
15 Since Appellant failed to provide the available POS  
16 download, including all folders for the audit period, the  
17 Department used the best available information to  
18 determine the unreported taxable sales and overclaimed  
19 exempt sales for the audit period. The audit calculation  
20 of unreported taxable sales and overclaimed exempt sales,  
21 based on the best available information, was reasonable.

22 When the Department is not satisfied with the  
23 accuracy of the sales and use tax return file, it may rely  
24 upon any facts contained in the return or upon any  
25 information that comes into the Department's possession to

1 determine if any tax liability exist. Taxpayer shall  
2 maintain and make available for examination, on request by  
3 the Department, all records necessary to determine the  
4 correct tax liability under the sales and use tax laws and  
5 all records necessary for the proper completion of the  
6 sales and use tax returns.

7           When a taxpayer challenges a Notice of  
8 Determination, the Department has the burden to explain  
9 the basis for their deficiency. When the Department's  
10 explanation appears reasonable, the burden of proof shifts  
11 to the taxpayer to explain why the Department's asserted  
12 deficiency is not valid. Appellant did not agree with the  
13 audit finding for the audit period. Appellant  
14 continuously claim that the POS reports are unreliable,  
15 and the Department relied on the POS summary report sales  
16 statistics, rather than more accurate POS daily or monthly  
17 sales recap report.

18           Appellant also argue that the Department used  
19 transaction counts and average sales price per order  
20 instead of total number of guests and average sales price  
21 per guest reflected on monthly POS sales summary reports  
22 to determine audited total sales. Had the Department used  
23 the total number of guests and average sales price of  
24 guests reflected in monthly POS sales summary reports to  
25 determine audited total sales, the post-audited markup

1 would have reduced from 189 percent to 154 percent. And  
2 post-audited credit card sales percentage would have  
3 increased from 85 percent to 97 percent for the period  
4 July 2019 through December 2020. And the information  
5 required to calculate these percentages are shown on  
6 Exhibit C, pages 9, 10, 13, 67, 71, and 72. Based on this  
7 information, it is the Department's position that it used  
8 the best available information to determine most  
9 reasonable estimate of Appellant's total sales and,  
10 therefore, rightfully rejected the Appellant's argument.

11 Appellant also contended that the low cash sales  
12 percentage is due to COVID-19 pandemic, and that the  
13 markup is low because Appellant used high quality  
14 ingredients. Appellant also contended that the claimed  
15 nontaxable foods are frozen uncooked items, and the  
16 claimed rental income are private event rooms rented out  
17 to customers. As support, Appellant provided various  
18 documents to support their contentions, but Appellant  
19 failed to provide their POS download with folders and any  
20 payment information for any part of the audit period to  
21 verify the accuracy of the amounts reflected on those  
22 documents. Therefore, the Department did not accept those  
23 documents.

24 As mentioned earlier, Appellant's overall  
25 reported book markup was low for a restaurant which serves

1 alcohol. Based on the POS reports provided by Appellant,  
2 the recorded cash sales percentage was consistently low  
3 prior to, during, and following the COVID-19 pandemic.  
4 The total sales based on the transaction count and average  
5 sales price per order reflected on monthly POS sales  
6 summary reports are more than the total sales recorded on  
7 the Appellant's provided monthly POS sales summary  
8 reports. The cold food sales to-go represent around 48  
9 percent of the total sales, which is unreasonably high.  
10 Based on Appellant's menu, most menu items are served hot,  
11 and there are no frozen food items on the menu. And this  
12 is shown on Exhibit C, page 75.

13 Appellant has table links through their POS  
14 system. However, Appellant has not provided any  
15 transaction level information for any part of the audit  
16 period to identify the accuracy or the sales reflected on  
17 Appellant provided nontaxable sales records. In the  
18 absence of Appellant's download with all folders, the  
19 Department notes that it already allowed 30 percent of  
20 recorded all food to-go sales as exempt food sales for the  
21 audit period. For the period from March 2020 through  
22 June 2020, and December 2020 through January 2021, the  
23 Department increased these allowance to 50 percent. These  
24 percentages were determined to provide a benefit to the  
25 Appellant.

1           Appellant provided the summary POS report for the  
2 nontaxable sales; and this is shown on Appellant's  
3 Exhibit 4. However, the Department disregarded the  
4 information. The Department notes Appellant did not  
5 provide any daily detailed transactional POS reports, nor  
6 did Appellant provide the POS data download even though  
7 Appellant has access to the information, for the period  
8 after June 2020, to establish that all claimed nontaxable  
9 food sales are not subject to sales tax. Accordingly, the  
10 Department finds Appellant's arguments on this issue lack  
11 merit.

12           Regarding Appellant's contention of the impact  
13 from the COVID-19 pandemic, the Department notes Appellant  
14 has provided daily detailed POS reports to support their  
15 taxable and nontaxable sales during the audit period, nor  
16 during the pandemic. The Department also notes the  
17 Department has already provided an allowance of 30 percent  
18 or 50 percent in its computation, even though Appellant  
19 did not provide detailed records to support the actual  
20 claimed exempt food sales during the audit period, nor  
21 support which of their sales were taxable or nontaxable.  
22 Additionally, Appellant did not provide any detailed  
23 transactional reports to support that an adjustment is  
24 warranted to any of the period within the audit.  
25 Accordingly, the Department has already provided an

1 allowance in its computation, and the Department has no  
2 basis upon which to order an adjustment to this argument.

3           Regarding Appellant's contentions concerning the  
4 claimed rental income, Appellant has not provided no  
5 verifiable documentary evidence to support their  
6 contention. In general, charges for the rental of  
7 restaurant premises are taxable because they are  
8 ordinarily connected to the sale of food and beverages,  
9 rather than a standalone rental space. Accordingly, the  
10 Department finds that there's no basis to make any  
11 adjustment to this issue.

12           Based on the foregoing, the Department determined  
13 the unreported taxable sales and overclaimed exempt sales,  
14 based upon the best available information, the evidence  
15 shows that audit produced reasonable results. Appellant  
16 has not provided any reasonable documentation or evidence  
17 to support the adjustment to the audit finding.  
18 Therefore, the Department request the appeal be denied.

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

21           Thank you.

22           HEARING OFFICER WILSON: Thank you.

23           We'll start with Judge Lambert.

24           Do you have any questions for CDTFAs?

25           JUDGE LAMBERT: This is Judge Lambert. I don't

1 have any questions. Thanks.

2 HEARING OFFICER WILSON: Thank you.

3 And, Judge Brown, do you have any questions for  
4 CDTFA?

5 JUDGE BROWN: I guess I'll just pick up on my --  
6 the question I was asking Appellant. I'll ask CDTFA about  
7 the menus. I see that if -- if -- let me get a page  
8 number here. One second. The menus in evidence -- CDTFA  
9 just referred to Exhibit C, page 75. And that, I believe,  
10 was like a Grubhub menu. Oh, actually, it's page 75 of  
11 the binder.

12 MR. SAMARAWICKREMA: Judge Brown, it is --

13 JUDGE BROWN: Yes.

14 MR. SAMARAWICKREMA: -- Exhibit C, page 75 and  
15 also, Exhibit H, page 14. The binder page number is 865.

16 JUDGE BROWN: Yes. I see that. So in page 865,  
17 it does show cold food, you know, that the dumplings can  
18 be ordered as cold food, but then I didn't see that on the  
19 Grubhub menu. And I was just going to ask, just can you  
20 explain to me, were the customers able -- using Grubhub or  
21 similar third-party services, were they -- was there a way  
22 for them to order the dumplings frozen? Is that apparent  
23 in the menu, and I'm missing it?

24 MR. SAMARAWICKREMA: Judge Brown, where it says  
25 third-party delivery sales, it only came up to \$85,000,

1 roughly, \$84,364. Even if we assume all that \$24,000 is  
2 dumpling -- cold dumpling, there's only \$85,000.

3 JUDGE BROWN: All right. So not a major  
4 component of the measure is what you're telling me?

5 MR. SAMARAWICKREMA: Based on the -- we only have  
6 two menus that we listed within our exhibits or -- based  
7 on that, that's correct.

8 JUDGE BROWN: Okay. That answers my question.  
9 Thank you. I don't have any further questions right now.

10 HEARING OFFICER WILSON: Thank you.

11 I don't have any questions. So we'll go ahead  
12 and go to Appellant.

13 If you would like to make a final statement or a  
14 rebuttal to CDTFA's presentation, you have 5 minutes.

15

16 CLOSING STATEMENT

17 MS. BRUTYAN: Yes. There is a menu on  
18 Respondent's page 847, and the menu does give option for  
19 cold dumplings. It's their actual dine-in and to-go menu.

20 In addition, the Department kept mentioning the  
21 daily transaction report, POS report was not presented,  
22 and we did provide information, page 847. Respondent's  
23 documentation, 847, we provided invoice which shows the  
24 taxpayer, after COVID, there was a huge crash because  
25 there was power outage. There was a system issue, so they

1 had to reset their POS system, do a lot of repairs. And  
2 we did provide invoice showing that there was a lot of  
3 repairs done. That's the reason. It's not that the  
4 taxpayer refused to provide or did not provide the  
5 documents. It was beyond their control. It was crashed,  
6 their system.

7 Therefore, we presented everything that the  
8 accountant had. The accountant filed the returns based on  
9 monthly sales transaction reports, which we presented. We  
10 provided test period, which we had it in our possession  
11 for that two-week test period. Unfortunately, we didn't  
12 have entire audit period detail report due to this crash.  
13 However, the Department had bank statements, 1099-Ks,  
14 profit and loss statements, tax returns, everything to  
15 support that there was no underreporting.

16 In addition, according to the Department, they're  
17 saying that the markup is too low. If we take into  
18 consideration of restaurant business with full bar, again,  
19 during the COVID, there was no -- there was no bar service  
20 even allowed. So just depending on their statistics that  
21 they should have higher markup is not going to be  
22 sufficient in this case because we need to consider  
23 COVID-19 restrictions.

24 And cash, during COVID we all knew that cash was  
25 not as primary payment source because of the safety of

1 employees and due to the infection spread. That's why  
2 mostly they had credit cards. However, the taxpayer  
3 reported \$5,048,132 million total sales, out of which the  
4 credit card was only \$3,494,000. So the taxpayer did  
5 report sufficient other payment source. It doesn't show  
6 during COVID it could be significant on the reporting.  
7 Again, the Department keeps mentioning about markup, but  
8 the markup was not, you know, if they consider 154 percent  
9 markup due to COVID is not going to be out of ordering,  
10 because they did not even have full bar service.

11 Do you have any questions, Colin?

12 MR. SHANAHAN: Well, I just wanted to say the  
13 Department made a lot of assertions about Appellant not  
14 providing information, and I would argue that that was  
15 untrue. We did provide copious amounts of information.  
16 About the rental of the party spaces in the restaurant,  
17 the Department said we provided no documentation. That's  
18 simply untrue. We provided contracts for the rentals.  
19 And, you know, for them to represent that we provided  
20 nothing is a little disingenuous in our position.  
21 Additionally, we did provide daily audit and POS printouts  
22 for the two-week test period that we were requested. So  
23 we provided documentations. So any assertion that we  
24 provided or the Appellant provided nothing is simply  
25 untrue.

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HEARING OFFICER WILSON: Thank you. Does that conclude your rebuttal?

MS. BRUTYAN: Yes.

HEARING OFFICER WILSON: All right. Great. We'll go one more time through the panel to see if anybody has any questions.

Judge Lambert, any questions for either party?

JUDGE LAMBERT: I have no questions. Thank you.

HEARING OFFICER WILSON: Thank you.

And, Judge Brown, do you have questions for either party?

JUDGE BROWN: I don't think so, no. Thank you.

HEARING OFFICER WILSON: All right. Thank you.

All right. Hearing no more questions, we'll go ahead and close.

So today's hearing in the Appeal of Artsakh Group, Inc., is concluded, and we are off the record.

(Proceedings concluded at 2:20 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 24th day of February, 2026.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER