

1 APPEARANCES:

2
3 Panel Lead: JOSH ALDRICH

4
5 Panel Members: KIM WILSON
6 KEITH T. LONG

7
8 For the Appellant: ANDRE VAN DER VALK
9 LINDA VAN DER VALK

10 Panel Respondent: NALAN SAMARAWICKREMA
11 JASON PARKER
12 CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

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1 Sacramento, California; Thursday, February 19, 2026

2 9:30 a.m.

3
4
5 JUDGE ALDRICH: This is Judge Aldrich. We're
6 opening the record in the consolidated appeals of
7 Jalidat, Incorporated, doing business as Texaco before
8 the Office of Tax Appeals, OTA Case Nos. 18093749 and
9 240516251.

10 Today's date is February 19th, 2026 and it is
11 approximately 9:30 a.m. The hearing is being live
12 streamed on OTA's YouTube channel. This hearing is
13 being heard by a panel of three. My name is Jeff
14 Aldrich, I'm the lead administrative law judge for
15 purposes of conducting the hearing.

16 I'm joined by Hearing Officer Ken Wilson and
17 Administrative Law Judge Keith Long. We three are
18 co-equal decision makers. As such, during the hearing,
19 panel members may ask questions or otherwise participate
20 to ensure that we have all the information needed to
21 decide this appeal -- these appeals, excuse me.

22 After the conclusion of the hearing, we will
23 deliberate and decide the issues presented. As a
24 reminder the Office of Tax Appeals is not a court, it is
25 an independent appeals body. The panel does not engage

1 in ex parte communications. Our opinion, we base off
2 the party's submissions, the evidence, the relevant law,
3 and the arguments we hear. So everyone knows, we've
4 read the party's submissions and we're looking forward
5 to hearing your arguments today. Who is present for
6 Appellant.

7 MR. VAN DER VALK: My name is Andre Van der
8 Valk, I am the CEO. The account that was we're talking
9 about is referred to in multiple times --

10 JUDGE ALDRICH: Mr. Van der Valk, excuse the
11 interruption, but could you bring the mic the a bit
12 closer to you.

13 MR. VAN DER VALK: Yes. The mic. Can you
14 hear me now?

15 JUDGE ALDRICH: Could you lift it up a little
16 to the top. How about now?

17 MR. VAN DER VALK: Can you hear me now?

18 JUDGE ALDRICH: Is that better? Thank you.

19 MR. VAN DER VALK: Okay. I may have to
20 shuffle a little bit, but my name is Andre Van der Valk.
21 The account that we're talking about has been identified
22 as a Texaco, as a Chevron, and at one time as a shell,
23 and there's reasons for that.

24 I am the CEO and the person responsible for
25 every piece of paper that I've given you over the last

1 two decades. That's how old the account is, or at least
2 the audits and the appeals. My wife is sitting next to
3 me, we've been in the same house for over fifty years,
4 we've been married for 56 years, we'll be 57 years.

5 At this point, she sometimes tells me what I
6 need to hear or maybe reiterate and things like that.
7 And I want to, if I can, open the meeting with saying
8 that I don't have anything to hide, this is not a case
9 of where --

10 JUDGE ALDRICH: So Mr. Van der Valk, right now
11 I'm just asking for the names.

12 MR. VAN DER VALK: And I appreciate that.

13 JUDGE ALDRICH: Okay.

14 MR. VAN DER VALK: I do have some stories to
15 tell. Thank you.

16 JUDGE ALDRICH: Okay. Ms. Van der Valk.

17 MS. VAN DER VALK: Linda Van der Valk.

18 JUDGE ALDRICH: Thank you. And for
19 Respondent, for CDTFA, California Department of Tax and
20 Fee Administration, which I may refer to as CDTFA.

21 MR. SAMARAWICKREMA: Nalan Samarawickrema,
22 hearing representative for CDTFA.

23 MR. PARKER: Jason Parker, Chief of
24 Headquarter Operations Bureau with CDTFA.

25 MR. BROOKS: Good morning. Chris Brooks,

1 attorney for CDTFA.

2 JUDGE ALDRICH: Thank you. So with respect to
3 the issues, there's two appeals before OTA each with a
4 respective liability period. The first liability period
5 is April 1st, 2004 through March 31st, 2007, which I'll
6 refer to as Liability Period 1.

7 The second liability period is January 1st,
8 2010 through December 31st, 2012, which I may refer to
9 as Liability Period 2. For Liability Period 1, there
10 are four issues:

11 One, whether Appellant has shown that further
12 adjustments are warranted to the audited difference
13 between recorded and reported taxable sales.

14 Two, whether Appellant has shown further
15 adjustments are warranted to the audited understatement
16 of reported taxable mini mart sales.

17 Three, whether Appellant has established that
18 its sales of propane are exempt.

19 Four, whether the negligence penalty was
20 properly imposed.

21 For Liability Period 2, the issues to be
22 decided are as follows:

23 One, whether Appellant has shown that
24 adjustments are warranted to the audited difference
25 between recorded and reported taxable gasoline sales,

1 taxable diesel fuel sales, taxable minimarket sales, and
2 sales of propane.

3 Issue two for Liability Period 2, whether
4 Appellant has shown that adjustments are warranted to
5 unreported taxable cigarette rebates. And three,
6 whether the negligence penalty was properly imposed.

7 Mr. Van der Valk, is that a correct?

8 MR. VAN DER VALK: That's a good assessment.
9 Yes.

10 JUDGE ALDRICH: Okay.

11 And Mr. Samarawickrema, is that your
12 understanding of the issues?

13 MR. SAMARAWICKREMA: Yes, Judge.

14 JUDGE ALDRICH: Okay. I do have some
15 questions with respect to issue three of Liability
16 Period 1. And I'll go ahead and close those. Mr. Van
17 der Valk, you may want to address that during your
18 opening presentation, but -- one second.

19 So on March 11th, 2024, the Office of Tax
20 Appeals received an additional brief from Appellant's
21 counsel wherein Counsel responded to seven questions
22 that were originally posed in the form of an A, B, or
23 additional brief request.

24 In those questions, one of the things that was
25 conceded was that the sales of propane were not exempt.

1 Is that still -- do you still concede that you or do you
2 dispute the sales of propane being exempt.

3 MR. VAN DER VALK: That may need a somewhat
4 explanation, if you care to hear it, I'll be more than
5 glad. I don't have to refer to it, I know which you --
6 which items that you're talking about.

7 What happened, there was additional audits,
8 three and four I call them, that were taken and at that
9 particular point in time, it was the same auditor that
10 had done the first audit, and I had mentioned to him
11 that, "Look, you've already figured all of this out.
12 Here's the thing I did not collect sales tax on those --
13 on the --"

14 JUDGE ALDRICH: Propane sales.

15 MR. VAN DER VALK: On the propane sales. I
16 said, "But I'll concede to this audit and I will start,
17 and the reason why is I'm collecting now." I said I got
18 -- you know, okay, I'm collecting the sales tax now for
19 this third and fourth audit, I will pay that.

20 JUDGE ALDRICH: So --

21 MR. VAN DER VALK: And at that point -- but
22 I'm open, I think that in this particular case it's a
23 minor part of what -- you know, of what this is all
24 about. And I would like to hear what the -- at that
25 time, what the BOE, if you don't collect any sales tax

1 and you're on the understanding, and that's what the
2 understanding was, that a 30 gallon tank, which is what
3 the --

4 JUDGE ALDRICH: So Mr. Van der Valk, you're
5 welcome to address that during your presentation.

6 MR. VAN DER VALK: Okay.

7 JUDGE ALDRICH: I was just hoping to have some
8 clarification there. Did you have a question Ms.
9 Hearing Officer Wilson?

10 JUDGE WILSON: No.

11 MR. VAN DER VALK: That's what the concession
12 was -- was during the third or fourth audit.

13 JUDGE ALDRICH: Okay. Thank you. And at this
14 time I'm going to turn to the exhibits. So as been
15 memorialized in our Office of Tax Appeals January 23rd,
16 2026 minutes and orders pre-arraigned conference,
17 Mr. Van der Valk, you indicated that you were having
18 trouble opening a CDTFA or respondents submission.

19 And in response, I indicated that we would be
20 sending you a hard copy as well as a CD with a PDF of
21 that submission. Did you receive the hardy copy and or
22 CD.

23 MR. VAN DER VALK: Yes, I received both.
24 Thank you, Judge.

25 JUDGE ALDRICH: Okay. I just want to make

1 sure that you have everything to proceed.

2 MR. VAN DER VALK: Well, if I can add to that,
3 maybe. 895 pages is what I received, and I went through
4 every one of them over the last two weeks because I
5 received them with very little time.

6 JUDGE ALDRICH: Okay. And let me just double
7 check something. So I have -- my understanding is what
8 was sent to you was double sided but the page count that
9 I have is 900 pages.

10 MR. VAN DER VALK: Eight hundred ninety-five.

11 JUDGE ALDRICH: Eight hundred ninety-five.

12 MR. VAN DER VALK: Is what I received,
13 double-sided. I'm looking at the last -- I don't -- I
14 think somebody rounded it off or the count may be off.

15 JUDGE ALDRICH: I think you might be referring
16 to the number -- the Bates stamp number at the bottom,
17 which is 895.

18 MR. VAN DER VALK: Yes.

19 JUDGE ALDRICH: Okay. All right. So that's
20 in order. So Respondent, they submitted Exhibits A
21 through P which were -- which was the file that was sent
22 to you in hard copy and the CD format. Do you have any
23 objection to admitting those documents into evidence?

24 MR. VAN DER VALK: None whatsoever.

25 JUDGE ALDRICH: Okay. And Appellant submitted

1 Exhibits labeled as A through G which we'll relabel and
2 refer to as Exhibits 1 through 7 just so we can keep
3 Respondent's and Appellant's Exhibits separately
4 identified. One will be the overview; 2, the audits; 3,
5 highlights; 4, Jalidat, 76 Ocean, Inc.; 5, fleet cards;
6 6, sales tax/rack; and, 7, car-lock model.

7 Respondent, Mr. Samarawickrema, do you have
8 any objections to admitting Appellant's Exhibits in into
9 evidence?

10 MR. SAMARAWICKREMA: We have no objection,
11 Judge.

12 JUDGE ALDRICH: Okay. Hearing no objection,
13 Exhibits A through P and 1 through 7 are admitted into
14 evidence.

15 (Appellant's Exhibits 1 through 7 were
16 admitted into evidence.)

17 (Department's Exhibits A through P were
18 admitted into evidence.)

19 JUDGE ALDRICH: Now, I want to talk a little
20 bit about how we expect this hearing to run. So we'll
21 proceed as follows: Appellant's opening presentation
22 including testimony. We allotted 120 for Appellant's
23 opening. Then we'll move on to Respondent's combined
24 opening and closing for 60 minutes. And then, finally,
25 Appellant will have a five to 10 minutes for closing

1 remarks or rebuttal.

2 I've also have allotted time for question from
3 the panel members. And if you need additional time, you
4 can make that request. Regarding witness testimony,
5 Mr. Van der Valk, you indicated that you were going to
6 be providing testimony.

7 MR. VAN DER VALK: That's correct.

8 JUDGE ALDRICH: And is Ms. Linda van der
9 Valk providing testimony today?

10 MR. VAN DER VALK: To the extent that she was
11 present at a board meeting of the BOE in 2015, she was
12 there when certain commitments were made by people -- or
13 the representatives of the BOE at the time.

14 JUDGE ALDRICH: So if she -- if she plans on
15 testifying, now would be the time to be sworn in. If you
16 change your mind later in the presentation, you can make
17 the question. Okay.

18 MR. VAN DER VALK: I think my wife's
19 hesitation is only to the extent that she doesn't want
20 to be sitting outside if she's providing any witness
21 testimony, that's not what we're all about. That's the
22 only reason why she's apprehensive. She was at meeting
23 when commitments were made by people within the BOE as
24 to what was going to happen.

25 JUDGE ALDRICH: Okay.

1 MR. VAN DER VALK: That's a strong part of
2 my -- what has transpired since -- that's 10 years ago
3 now, 11 to the day.

4 JUDGE ALDRICH: So we operate a little bit
5 informally than some other legal forums. She wouldn't
6 have to be outside during the oral hearing. Does that
7 change your answer, Ms. Van der Valk?

8 MS. VAN DER VALK: Yes. Yes, I'll be sworn
9 in.

10 JUDGE ALDRICH: Okay. Mr. Van der Valk, could
11 you raise your right-hand?

12
13 ANDRE VAN DER VALK,
14 Having been first duly sworn by The Administrative Law
15 Judge, were examined and testified as follows:

16 MR. VAN DER VALK: I do.

17 JUDGE ALDRICH: Thank you both. You'll remain
18 under oath until the conclusion of the hearing. Okay?

19 MR. VAN DER VALK: Thank you.

20 JUDGE ALDRICH: So just a reminder, we're the
21 only hearing on calendar for today, but I ask that the
22 witnesses make a constructive use of time. That is, the
23 testimony should be relevant to the issues and
24 extraneous information or extra information should be
25 omitted.

1 Both parties, including the witnesses, should
2 understand that we have read the briefs and we have all
3 the evidence available to us.

4 Does either party have a question before we
5 move on to presentations?

6 MR. VAN DER VALK: I don't believe so, no.

7 JUDGE ALDRICH: Okay. Mr. Samarawickrema?

8 MR. SAMARAWICKREMA: No, Judge.

9 JUDGE ALDRICH: All right. So at this time,
10 Mr. Van der Valk, the floor is yours to proceed with
11 your presentation.

12
13 PRESENTATION

14 MR. VAN DER VALK: Thank you, Your Honor, and
15 thank you for accuracy and your tolerance with the way
16 -- I want to transpose to everybody back to the '60s
17 when we were in infancy in terms of computers and things
18 like this.

19 Also, it was me who graduated from high
20 school, I was drafted in the U.S. Army, served in
21 Vietnam as a combat veteran for 13 months. And I
22 mention this because one of my last assignments were the
23 flying into Laos and Cambodia. I had a top secret
24 clearance, and we were delivering money in large volumes
25 in what, at that time, was a case that was probably this

1 big to this size.

2 I mention that because despite that I was 20
3 years old, an E-5 buck sergeant, and we were being fired
4 upon until we settled in those areas. And I'm not
5 jeopardizing what was a top secret clearance because I
6 never had an exit in term of releasing that.

7 The reason I mention that is because all that
8 cash, all that money, 20 years old, it would've been
9 easy to skim off the top. All I had was two pilots,
10 myself, a second lieutenant, and the two door gunners.
11 I never took a dollar off of that. I've raised my kids,
12 my grand kids, to reflect the same things.

13 All the way, when I got out -- I started in
14 1965 with the Union Oil. When I got out, I went right
15 back on a Saturday and went back to work on a Monday
16 morning, and they hired me back in.

17 I had every marketing position, retail, with
18 Union Oil prior to 1989, starting from a C-salesman,
19 working out on the service station when I was 18, all
20 the way when I left in 1989, every position. In that
21 position, I also met somebody by the name of Norm Rice
22 (phonetic).

23 Norm Rice and I went back when I was the
24 operations manager of approximately 1,700 stations, and
25 he wanted to have -- they had a new problem and they

1 were requesting volumes of sales or purchases from the
2 oil company. This would have been back in the early
3 eighties.

4 And I mention it because Norm Rice and I
5 reached an agreement, when I was in that position with
6 the oil company, of providing the information necessary
7 that they still use to this day and that is volume,
8 gasoline volume on a net basis.

9 And we provided it in lieu of -- he said I
10 could get a subpoena. I said, "You're going to get a
11 subpoena for each location that you're asking about?"
12 And obviously, the intent was to keep -- during the
13 auditing process, to keep it simple and so I conceded
14 and said, "We'll go ahead and we'll deal with that."

15 I take it now to when I left Union Oil in
16 1989, I went into business for myself, I had some
17 opportunities to pick up some locations, I was in a
18 growth mode and that's what you're seeing, what you're
19 seeing a growth mode when -- I had a service station
20 right next to your Van Nuys office, and I met -- re-met,
21 I should say, a number of people including the Norm Rice
22 as the chief auditor in the Van Nuys branch.

23 Among that, there was also -- I had good
24 coffee, I had the things where auditors would spend time
25 with me and everything. I pulled Norm Rice aside. I

1 said, "Norm, I've got an opportunity with an outfit
2 called Fuelman. They're willing to go ahead and provide
3 me the credit card or the credit ways of selling to a
4 commercial account and this was something new that
5 nobody had seen yet. I have the tickets that are here."

6 And I showed him the tickets and I said, "Want
7 I'm going to do is, there's three copies here, the first
8 copy goes to the customer, the last copy, was a hard
9 copy, goes to Fuelman and then I get reimbursed for
10 the." I said, "The question is how do I deal with
11 this."

12 At that time, and continuing, I am identified
13 as an SG account, they think that I have a retail
14 business out there that is -- that somehow identifies
15 with an SG which is basically a non-attendant service
16 station and Fuelman, Fleet Car, all of them now,
17 everybody, "Oh, yeah, this is -- you probably are
18 carrying, working for this State, a voyager card. No
19 problems, no nothing."

20 But at that particular point in time, we
21 didn't have the computerization, and I have examples of
22 that. We had a real simplistic system. Norm at that
23 time said, "What are you doing?" And I said, Well,
24 here's -- and I explained to him the three copies and I
25 said, "Then I carry it, I carry the items in my -- in my

1 -- the charge items, on a daily basis. I go ahead and I
2 carry it under my accounts receivable. When they pay,
3 it reduces my accounts receivable end of story."

4 He says, "That sounds realistic." That -- you
5 know, okay. That was my connection. Now, I have been
6 referred to as being -- you know, the penalties that --
7 and everything else that I didn't receive notification
8 or communications with the BOE people were non-existent.

9 I didn't have to, they walked to me and I
10 talked to them and I got a great reputation all the way
11 along with all of the individuals who have done my
12 audits, the collections people who as a result of those
13 audits, and that's another story, but what happened was
14 I considered that to be my goal.

15 Unfortunately, Norm Rice passed away June of
16 2021, otherwise I would have used him as a witness to
17 say, "Norm, didn't we have that?" I did get a -- and
18 it's in my notes, and you've captured it also, I had a
19 good friend that I worked with that said, "Yes, that was
20 the understanding, that you carried it as accounts
21 receivable and that we would pay you."

22 I wasn't satisfied with that whole system. I
23 left them after roughly -- it entices both the first and
24 the second audit, but that's my source. I mentioned to
25 you about where I go and what I do. I'm very open, I'm

1 very open as far as any of the information that I have,
2 that I share.

3 So the first thing that I look at is that what
4 is the connection between all of these audits? And the
5 fact of the matter is, is that still to this day, I just
6 had an audit last year, and the same thing.

7 If I don't -- if I don't sign the form that
8 gives an extension, then they're going to go ahead and
9 estimate and they're going to use the prior percent of
10 error as the quote. And in every case, that was used,
11 that -- on the second audit, the third audit, the fourth
12 audit, until I corrected the third and fourth audit and
13 said, "No, I gave you the information and I'm not -- you
14 know, I'm not signing it."

15 And then in the end, I did sign that, and it
16 was a major difference. And so that prior percentage of
17 error is very harmful, and, especially, it should never
18 get to that point because part of your rules at that
19 time -- and this is coming from, again, my association
20 with good people within the BOE and now CDTFA -- is that
21 it indicates that the next audit should not take place
22 until the first audit is resolved -- and may be wrong on
23 the resolved part of it -- but the fact is, is that I
24 should never have gone into the second audit.

25 There's a third audit that took place, and the

1 third audit -- it's actually not the third audit, the --
2 on the second audit, because of my reluctance to sign
3 the form to the extend the time, that particular audit,
4 the auditor decided to go head and open up another
5 account, guess what, under an SG account, then he
6 referred to it saying that I should have been --

7 JUDGE ALDRICH: Mr. Van der Valk.

8 MR. VAN DER VALK: -- explain that means that
9 it's -- if you're -- it's another entity that I don't
10 fall under, but I -- continually, there's a mix up
11 between BOE, CDTFA to this day as far as the
12 identification of an account that actually is a card
13 lock account.

14 And the minute you're identified as a card
15 lock account, for one, based on the auditors that I've
16 spoken to, you're automatically suspicious.

17 JUDGE ALDRICH: Mr. Van der Valk, you refer to
18 first, second, third, fourth audit, so there are only
19 two audits currently before us. Which in those series
20 are the two audits that you're referring to? So is
21 the --

22 MR. VAN DER VALK: On the second audit. I'm
23 sorry. And thank you for clarifying that. On the
24 second audit for same period of time. There's a
25 third --

1 JUDGE ALDRICH: What period of time is that?

2 MR. VAN DER VALK: 76 -- that was the second.
3 Yeah. It was the 2010 -- January 1st, 2010, to December
4 31st, 2012.

5 JUDGE ALDRICH: So when you refer to the first
6 audit, that's the 2004 through 2007?

7 MR. VAN DER VALK: Yes.

8 JUDGE ALDRICH: Okay. And the second audit is
9 the second liability period we've identified as January
10 1st, 2010 through December 31st, 2012?

11 MR. VAN DER VALK: Correct.

12 JUDGE ALDRICH: Okay.

13 MR. VAN DER VALK: And what I'm -- what I'm
14 referring to is that there was a completely separate
15 entity that the auditor created, which is in excess of
16 \$700,000 in liability now, and it's called 76
17 Ocean -- completely different number. We were still
18 trying to collect on that entity.

19 And if you take a look at the break down of
20 that, you can see, and it's identified -- it's
21 identified on my -- that's okay, 25 and 26 under my
22 submission. That's the page numbers. Okay. And it
23 says, sales account and tax use number and it has the
24 017803647. But there's another account number --

25 JUDGE ALDRICH: That looks like it's Exhibit

1 D, which we labeled as Exhibit 4, correct?

2 MR. VAN DER VALK: Yeah. The individual --

3 JUDGE ALDRICH: It's the top of the page,
4 says, Jalidat, Incorporated, 76 Ocean, Incorporated.

5 MR. VAN DER VALK: That's it.

6 JUDGE ALDRICH: Okay.

7 MR. VAN DER VALK: Yes. Okay. If you look --
8 if you look at that, it says, period beginning -- under
9 the second paragraph, if I can call it that, it says, 1
10 January 2010, and then 31 December 2012. That's for the
11 account number of the -- of Jalidat. And it says final
12 billing \$1,856,225.42.

13 JUDGE ALDRICH: I guess I'm not sure what the
14 relevance of the Ocean 76 is when these two appeals only
15 involve Jalidat and the four locations.

16 MR. VAN DER VALK: Except that for that same
17 period of time, you continued to try and collect for
18 that same period under the 76 --

19 JUDGE ALDRICH: You mean CDTFA --

20 MR. VAN DER VALK: -- Ocean.

21 JUDGE ALDRICH: -- to collect.

22 MR. VAN DER VALK: Yes. Well, it started out
23 with BOE and now CDTFA for \$690,000. You're collecting
24 \$690,596.11. And it's like a hidden account. Wait a
25 minute, why are you -- and it even -- it even showed up

1 under your top 500 list which prevented me -- this
2 direct influence on second audit.

3 And the -- my statement is this, is that the
4 auditor decided upon himself to go ahead and set up a
5 new account for the same period of time.

6 At same token, I'm indicating, "Wait a minute,
7 what are you doing?" You're billing -- it's a big part
8 of what I'm contesting. Not only for that reason, but
9 how can you eliminate that? Nobody wants to address
10 that.

11 And to this day, I'm still getting collection
12 notices. And I get notices to my bank that says that,
13 you know, they're looking for money and they're
14 basically -- a notice of levy was as recently as
15 February 27th, 2025.

16 If this is something new, I'd like to at least
17 -- and that's the reason why I provided the information
18 to the -- you know, in the system to indicate, "Hey,
19 this is not acceptable."

20 As far as I'm concerned, from a business
21 standpoint, how could you be collecting something for
22 the same period of time and, you know, it happens to be
23 a different amounts of money that was paid originally
24 through the account -- the Jalidat account.

25 To this day, the only function it has is

1 paying the sales tax on an every three month basis.
2 It's flawless right now except for the two audits.
3 Everything is paid because at one time I didn't have the
4 funds.

5 In fact, as recently as last year, the reason
6 why I'm not represented by counsel right now is I
7 couldn't afford the \$52,000 that I was paying all of
8 last year every month. That was every month in a
9 collection process because I realized that what is
10 happening is this collection -- right now there's no
11 change.

12 If you disagree with an audit or if you go in
13 an audit and you haven't signed that form, they will go
14 with my "prior percentage of error," and that happened
15 in the second audit. And there was no billing under a
16 different account.

17 I was identified in the first place as
18 a -- they thought I was a card lock and that signifies,
19 like I said to this day, the auditors out there, "Oh,
20 they're not getting the Norm Rice model of volumes on SG
21 accounts, you know, or card lock accounts."

22 They're not getting that on a regular, nor are
23 they identifying. You know, they go out and they audit
24 me, and I have had, for two decades now, a cloud hanging
25 over me, but they're not going out there to find out

1 what's going on with sales as it is today, which is
2 through the credit cards such as Voyager and all of the
3 other accounts.

4 Again, I remind you, this was in its infancy.
5 I was in a growing spurt, I was doing lots of volume.
6 And unfortunately, there wasn't a technology available,
7 you'll see some invoices in there in my submissions,
8 and it's -- I believe it was in your submissions also.
9 When you look at it, it's like an adding machine tape.
10 That was the extent of it.

11 So again, looking at -- trying to keep things
12 simple and looking at -- and I appreciate the fact that
13 you wanted to address certain items, I think this is a
14 big part of where we're at. The other part of where
15 we're at, is that if you take a look at the first audit,
16 and I'm skipping around between them, but they're all
17 consistent.

18 If you look at the first audit, you went back
19 and corrected the first audit. Now, that's not in your
20 collection process or your identification. That number
21 does not show up, but there was a \$1,300,000 difference.

22 JUDGE ALDRICH: Mr. Van der Valk, when you
23 indicate you went back and corrected it, are you
24 referring to -- I believe you're referring to Respondent
25 revised it; is that correct?

1 MR. VAN DER VALK: I --

2 JUDGE ALDRICH: So the Office of Tax Appeals
3 is independent of any tax agency. We set up -- we're
4 set apart. Okay.

5 MR. VAN DER VALK: And I may have
6 confused -- and I'm skipping around which I try not to
7 but, you know, the amount of pages that I received,
8 there's some consistency as to what's transpired, and
9 that is my identification as an account that I'm not, a
10 card lock account.

11 And I'm identifying the fact that to this day
12 you are not auditing the large credit card firms that
13 probably represent forty percent of my business now, the
14 Voyager, the new Fuelman, because Fuelman went broke and
15 then they were bought by somebody else, and all of the
16 other entities that you -- by your own records and that
17 I received.

18 It shows that you're not doing a very good
19 audit of using the volumes because you're not getting
20 the accurate volumes from those SG accounts or from the
21 cardlock accounts.

22 And so I'm looking and saying, why -- in fact,
23 they identified and said that we -- in the papers that
24 were submitted to me, there is a reference there
25 about -- that they went back and tried to get the

1 information.

2 They communicated with Fuelman, Fuelman gave
3 them some things relative to an ARCO station, this,
4 that. That was not my account. And so a lot of
5 inaccuracies in this thing.

6 Can I break down each and every one of them?
7 Absolutely. It's not as easy as it is in posting and
8 saying that these are the highlights.

9 And I was going go back -- you probably had
10 three or four different pages that was my -- would have
11 been my opening remarks but I thought it was important
12 to identify. But on Page 82 -- starting on a Page 82
13 and 83, you -- and I'll give you a second to go to it.

14 JUDGE ALDRICH: Mr. Van der Valk, are you
15 referring to Respondent's submission, page 83?

16 MR. VAN DER VALK: Yes. Yes.

17 JUDGE ALDRICH: With the Bates Stamp 83?

18 MR. VAN DER VALK: Eighty-two and
19 eighty-three.

20 JUDGE ALDRICH: Okay. I'm there.

21 MR. VAN DER VALK: Okay. What I was referring
22 to, and this was posted at least three and four times in
23 the different -- you obviously picked up -- somebody
24 picked up this, it was under different pages also.

25 But it goes back to what I've -- what I've

1 basically have so far covered, but it's the inaccuracy.
2 I accept Fuelman as a commercial customer alternative to
3 the credit card. At one time, I had six Texaco
4 stations -- this is on Page 275, the first paragraph --
5 and I represented almost sixty percent of branded sales
6 in the San Fernando Valley.

7 In the audit years, sales to Fuelman were
8 deducted from gross sales as Fuelman pays their sales
9 taxes and bills customers. Payments by Fuelman were
10 weekly.

11 As with credit card receipts, the information
12 was on hand for six months and then destroyed. And
13 that's standard for the industry to this day, that hard
14 copies because of the attempt to take the credit card
15 numbers and all pertinent information and use them for
16 other uses.

17 So to this day, you keep any credit card or
18 anything that has a credit card number on it, or the
19 last four, and I shred them but that's the standard. So
20 that's why I don't have that proof. But I'm going to
21 continue.

22 I now find out the State does not directly
23 process confirmation from any of the third party
24 wholesale vendors, including Fuelman, CFN, Rider
25 Express, Fleet One, Voyager and Pacific Pride. I know

1 in the startup period of this process, double sales tax
2 were paid by myself and the process company.

3 I extend that now to do today, I had Amazon go
4 to one of my modern stations, all the technology is
5 there, and the new dispensers and everything else.
6 Amazon wanted the 30 cent discount.

7 And I said, "okay. It's worth the business.
8 Let's go for it." They could not -- the credit card
9 company could not handle the 30 cents. If you -- if a
10 customer has a -- with one of the other cards has a
11 contract, they basically, the dollars roll back.

12 So if you have a 10 cent discount, for
13 instance, and your company has signed up, and I'm sure
14 that the State Board of Equalization or the CDTFA, I'm
15 sure that their credit cards, they have -- it could be a
16 6 cent discount, and you'll see it.

17 It will roll up, it kicks out a nice
18 computerized report that the State acknowledges is fine.
19 But on the 30 cents a gallon, I sold them or almost a
20 year at 30 cents a gallon and I was told by the credit
21 card company that the CDTFA could not process that, I
22 would have to hand do it. Now, this is two decades ago.

23 Because it shows up, that 30 cents a gallon
24 shows up that a large -- one of the largest retail, as
25 far as I'm concerned they have retail, wholesale,

1 however you want to identify them, but it cannot
2 identify the 30 cents a gallon on a roll back basis. I
3 have that technology now but I have to report it as a
4 charge back. So, you know, as a charge back, that's tax
5 included price, so that opens up a full door.

6 But the fact of the matter is, and the people
7 who I talk to, because I got -- again I've rekindled my
8 connections, and you don't -- you don't have a process
9 to be able to go after those accounts and say, "Okay.
10 Are you double taxing?" Who's the end user, because the
11 end user should be paying the sales tax on the amount of
12 money that goes through that Voyager or now through the
13 Fuelman, not at the time, we're talking two decades ago.
14 But now that should be rolled back right at the pump.

15 And I was told, like I said, as recently as a
16 year ago, "Oh, no we can't do that." By the credit card
17 company and by my sources with CDTFA. Does that open
18 another question? Absolutely.

19 You're trying to get the little guy who is
20 saying that right now you're probably collecting sales
21 tax twice, once from me and once from the person who
22 bills you. That's the only they can -- they can do it
23 that I've -- excuse me. I've included a copy of what if
24 should be, the billing.

25 The billing should be when they buy through a

1 retail station like myself, it should be through the end
2 user. That end user should be receiving a bill for
3 that, for that -- but you don't have a process to be
4 able to go back and -- then.

5 And here, I've been fighting it and looking
6 at, you know, this is a multitude of information. I go
7 back to this -- what I was trying to accomplish with
8 this, going back on July 3rd, 2008, was to remedy the
9 situation before the 2015 meeting that we had with the
10 BOE.

11 And if I'm not skipping around a little bit
12 too quick for you, but there were two people there at
13 the -- this was the 2015 board meeting. One of the last
14 ones in fact, it could have been the last one.

15 And the people that were sitting there, one is
16 a judge now or he may not be, the other one was actually
17 a director of the BOE, subsequently, not then, he was
18 representing the BOE. And when I brought up the
19 fueling, it was embarrassing because nobody knew except
20 for Senator Runner at that time. He said, what -- you
21 know, "Can you explain that to me."

22 And I did and it was like -- from the two
23 representatives that were there, it was like we don't --
24 they didn't know who Fuelman, what the process was, what
25 these sales were all about, and here I am, I'm trying to

1 basically run, not only that location with my auditors
2 next door, but just I was in a growth mode. I was
3 opening stations that Texaco was willing to let the
4 lease go on, and I was starting do it -- do it in a
5 right way. But I go back again to what's transpired
6 since then.

7 And between the inaccuracies, between
8 duplication, I was pleased that I found one item that
9 was as a -- and I'm not skipping around, but this is a
10 letter on 382, this would be your submittal on the
11 CDTFA. And let me finish and I apologize, I'm throwing
12 you a lot of things.

13 But at that 2015 board meeting, Senator
14 Runner, as was sitting there and the two people that
15 represented the BOE, had no clue, had no clue as to what
16 was -- what I was talking about with Fuelman and how the
17 process worked.

18 And so at that particular time, Senator Runner
19 got on his laptop and he said, "Well, here's Fuelman
20 here." You can't -- you know, you don't -- we'll get
21 into it.

22 And then he promise at that time was that they
23 would go head, and at that time, the second audit was
24 also in process, and I said, you know, I would like to
25 have that -- there's some confusion because I closed the

1 station, you were still delivering to one of the
2 stations that I closed.

3 But I said, "Can you go ahead and put these
4 two together?" "We'll get back to you, Andre. We'll
5 make -- we'll figure this out." And this was in front
6 of my wife, myself, they were sitting next to us, was
7 closer than this.

8 And I -- remarkable, since I went back, and on
9 your 382, this was an instruction -- this is 382, and it
10 actually starts on 381 on your submittals. This was a
11 letter to CFN, it said -- I'm sorry, 381 is from CFN and
12 it shows what the letter from the State Board of
13 Equalization was from December 7th, 1994.

14 I don't know if you've had a chance to review
15 this, but it was a letter that was sent to Mr. John
16 (indiscernible) director of Commercial Fueling Network.
17 Again, it's 382 that I'm referring to.

18 And it says, "As you know, there's been
19 considerable discussion regarding the correct
20 applications of sales tax to sales of fuel made through
21 fuelling networks." Now, this -- again, I remind you,
22 this is significantly five years before -- somebody
23 could have told me this, what, a decade before 1994, it
24 would have been 10 years from the 2004.

25 But basically, it says, from the state board,

1 from your legal channels, that there's considerable
2 discussions regarding the correct application of sales
3 tax to sales of fuel made through fueling networks.

4 On August 23rd, 1994, I wrote to your
5 attorney, Mr. Gary Herman, "Set forth the board's
6 position regarding the sales tax application, the
7 fuelling network type sales made by out-of-state foreign
8 participants through interstate host or in-state host
9 facilities.

10 I'm now writing to you more fully to discuss
11 the sale tax application to fuelling network type sales.
12 This discussion will include an explanation of the tax
13 application to fueling network type sales by in-state as
14 well as out-of-state foreign participants to an in-state
15 host facilities."

16 He goes on, but he's basically indicating what
17 the rules are for what would have been or what should
18 have been showing up, and obviously Norm Rice didn't
19 have it, because I'm reading it to -- this was 1994, so
20 we can say three decades later, end of story.

21 It shows you how CFN should be traded --
22 treated rather. It also would've at least given us some
23 basis in saying, "Well, what he's saying is that as a
24 retailer, yeah, you're not the same as what you've been
25 identified as."

1 And that's continuous. There's a continual
2 problem of identifying me as a -- as a wrong type of a
3 business. Are you -- I'm assuming that you know what
4 I'm referring to.

5 JUDGE ALDRICH: You can direct your commented
6 or questions to me.

7 MR. VAN DER VALK: I'm sorry.

8 JUDGE ALDRICH: No problem.

9 MR. VAN DER VALK: I apologize. It's
10 something that should -- that I believe slipped through
11 the cracks and the field didn't get it. Field meaning
12 that the audit people at the station in Van -- my
13 station in Van Nuys, and your office right door.

14 So I look back and then we go back to the
15 first audit. And the final re-audit results, and I
16 believe that what you were talking about was that this
17 was a note from my attorney to myself and she says,
18 "Andre, Cheryl asked me to provide you with an update of
19 the current state -- of the case status.

20 First, on the earliest audit, as you know,
21 Karen was able --" talk about Karen is the CPA that was
22 hired in order to -- and this was an ex-BOE auditor.
23 She now works as a CPA in the San Fernando Valley where
24 actually -- yeah, in the valley area.

25 It says, "First on the earliest audit, as you

1 know Karen," that's the CPA, "was able to identify a
2 major discrepancy with one quarter and the CDTFA
3 conceded that her conclusion was correct.
4 Unfortunately, they only adjusted the one quarter, not
5 the entirety of the quarters under the audit.

6 This will be the foundation of our argument
7 once the hearing is scheduled, but until then, we're in a
8 holding pattern." And then the other note that I
9 received, and I went ahead and passed on, was that, "We
10 also added the following paragraph at the end of the
11 brief to address the negligent penalty. Regarding --"

12 And this is what she says, "Regarding proposed
13 negligence penalty, given that the understatement was
14 only 13%, and the complexity of the underlying
15 calculations, we respectfully that the negligent penalty
16 be abated in full."

17 The reason why I could not afford, last year,
18 to stay in business, because the collection efforts was
19 such that if I didn't pay the \$52,000 a month, I would
20 be out of business.

21 One of my questions that I would really like
22 to ask is that, how many people -- put yourself in my
23 shoes, how many people are not that fortunate to either
24 have the background and afford it too. This is a five
25 million dollar case, I don't make that much.

1 Right now, I -- you know, my personal
2 attributes are my VA amount, the Social Security, Linda
3 gets her social security, and my retirement from '76,
4 that's it.

5 I take a nominal sum, I'm not in my growth
6 periods. My two sons operate the locations now but I am
7 still involved with the taxation because of today and
8 what we're talking about.

9 I would like to know, how many -- how many
10 people are out there, and I'm considered to be an expert
11 in terms of testimony in terms of my -- in the service
12 station business or in the fueling business.

13 As we are today, I continue doing that, I'm in
14 touch with reality which is the street on what happen
15 pricing is and what's going on. How many people were
16 driven out of business because they couldn't deal with
17 \$52,000 a month?

18 So I had to make a decision, I could not and I
19 don't -- you know, I could not afford legal presentation
20 plus paying the CDTFA what collections determined were
21 now and then, right there, they were due and payable.
22 And so at this particular point, I'm completely clear
23 that I'm representing Jalidat Inc., as the president.

24 Where do I go from here? I would probably add
25 it all up and say, where do we go with this? I would

1 like your assistance, and I see the questions that you
2 asked me at least in a positive position of trying to
3 make something that's workable. And that's all I've
4 been trying to do.

5 Since 2015 and the board meeting, that's all
6 I've been trying to do, is to get an audience with
7 somebody and I realize the OTA was -- I believe, it was
8 in the 2018, somewhere around there. You know, and I
9 welcome it. This is the first opportunity that I've
10 had.

11 To go back to business, I wrote on the
12 presentation, I said, "Only last year, I was forced to
13 drop Counsel as the business could not support legal
14 expenses and pay offsetting charges demanded by the
15 CDTFA collection efforts.

16 Those charges have been paid in full including
17 interest, personalities and other charges. In good
18 faith, there was never a thought of Jalidat Inc., or
19 myself not paying collected sales tax from the public.

20 If I can, I'd like to go back to the -- to the
21 liability for Period 1, to your fourth items and three
22 items on the second audit and maybe talk about some of
23 the, you know, some of the thoughts on that one. Okay.

24 Whether the Appellant has shown that further
25 adjustments are audited difference between recorded and

1 reporting taxable sales, I have and you've conceded it.
2 And that was to take it from the million and three
3 difference. And if you look back, you did only one
4 quarter of 2007.

5 Why would that -- you know, if this was an
6 audit, you would then use those numbers under your prior
7 percentage of error and you would immediately hit it for
8 the three year audit. Well, that would eliminate most
9 of the charges that you're trying to gather from me. So
10 I don't know why you can't accept that as a base and
11 then go forth on that.

12 And then the second part of it is that I'm
13 asking that Fuelman and the amounts that are dedicated,
14 you know, the Fuelman, the amounts -- the dollar amounts
15 that I've written down, they may be pencil, but they
16 were given to the auditor at the time.

17 I ask you to accept those numbers because you
18 have to accept the fact that why -- how would I make up
19 the name or relay the information about what auditors
20 reminded me of and that was, "Oh, yeah that sounds
21 good."

22 And that was, again, use these invoices and
23 the problem is, is that after six months, and of course
24 the auditor or the audit was four years later. So those
25 were not -- you know, we didn't have those available at

1 that particular point in time.

2 If I can, I will -- there's some deductions
3 that I made under that same premise. And I printed --
4 this is an ARCO station -- I mean a shell station. It
5 shows cash price and it shows the credit card price and
6 there's typically 10 cents difference, that's the
7 standard.

8 The only reason I'm holding this is because I
9 verbalized it. But this is representative of last week,
10 this is this picture was taken. What I have done, and
11 there's several indications that wasn't acceptable but,
12 at the time, we were at the tail end of having cash
13 credit.

14 The problem was that cash credit was not on
15 the computer, and so I used the dollar amounts between
16 the cash credit which was reflected in the charged
17 credit and I deducted those off of the sales.

18 Basically, that's the hand way of doing it.
19 The same way as I would do it today for Amazon. Amazon,
20 it shows that I did it as a charge back and I'd be
21 sitting here explaining to you what a charge back and
22 why that happened. So things haven't changed that much.

23 The reason why is because cash credit came
24 back. Back in the -- in the early parts of 2000's, when
25 this audit was done, cash credit, nobody was doing it

1 anymore, it fell out of flavor. There was no way --
2 plus the technology was changing to where there were
3 other ways of doing it and was actually showing up in
4 the paperwork. That's my only reason for doing this.

5 In terms of the overall system, in determining
6 things, the complexity has to be challenged of how you
7 deal in the collection of taxes. Your -- one of your
8 counterparts up here, I included a statement that was
9 made from them, but one of your -- it was actually a
10 chamber of commerce that said that all taxes are
11 collected at the rack. He's wrong.

12 All taxes are not collected at the rack.
13 Taxes are collected at the -- at the time of the sales.
14 Now, there may be some adjustments as I referred to, but
15 they're done at the time of the sale and they are
16 deducted, today, with the -- with the prepay. And that
17 has been, you know, for sometime.

18 Now, picture this, my average payments are
19 somewhere today, because of the higher price for three
20 months for four stations, are almost \$200,000 for three
21 months per quarter. So you go, "Wait a minute, you mean
22 that's the difference between your sales tax and, you
23 know, what the prepay?" "Yeah, it is." And you go
24 there's something wrong.

25 You cannot -- the complexity -- I don't know

1 why you don't bill at the rack for your sales tax for
2 the approximate amount of whatever it has been or
3 whatever the case may be.

4 From day one, I've said that, and that was
5 back in the seventies because they started the sales tax
6 in the eighties, on gasoline. And you go -- and I may
7 be wrong a few months on that but not too much. "Why
8 aren't you collecting taxes?"

9 That works better for me because I know my
10 competition up the street that happens to be an
11 independent. He's 60 cents a gallon cheaper than me.
12 How could that be? I'll let you determine how that can
13 be, but at this stage of the game, we're not on the same
14 level.

15 You know, I'm not talking about even your
16 collections, you know, from that, I'm talking about
17 myself who has the -- and you've seen it. There is the
18 largest amount -- and I hate to say in the San Fernando
19 Valley, but in the Los Angeles basin, it's the largest
20 fuel market in the United States, it has been.

21 And no to Bay Area, but -- and I'm teasing on
22 that, but on the complexity of sales taxes, there's a
23 three and a half difference between my station in Simi
24 Valley and the station on Wilshire Boulevard, Santa
25 Monica. Three and a half percent difference.

1 Your sales tax audits and everything, you
2 can't -- the complexity of here is what it is and add it
3 up could be corrected over night by collecting sales
4 tax, all taxes, at the rack it would satisfy me who has
5 a competitor up the street.

6 If you've noticed why there's so many
7 independents lately, it's because they figured it out.
8 "Hey, I can be 60 cents a gallon cheaper and pick up a
9 lot of volume."

10 And then if I put it on a net basis, and all
11 I'm saying on that because there were adjustments on
12 that, if you look at the net basis, all I do is I don't
13 provide you the volumes, that's all, and where it
14 reflects is on the profit.

15 That's why sometimes you'll have an audit
16 where the difference, and that was one of the audits,
17 the difference between net and gross instead from -- and
18 I received an engineer's calculation of product
19 expansion, the hot fuel versus the -- you know, it's
20 significant.

21 It's \$200 to \$300 during the summertime on one
22 load of fuel and gasoline. And so if I don't provide
23 you the gallons, it's real simple, it's reflected as net
24 gallons. That means that I have more in the gross
25 gallons to sell for and it's reflected in my

1 profitability.

2 Perfectly legitimate, I just don't provide you
3 gasoline volumes, that's all. All of this can be
4 handled. If somebody takes a direction and say, you
5 know what, he's looking at a \$5 million penalty or you
6 know, we've penalized him.

7 We've already admitted that the first audit
8 has been changed and we have allowed that change, it
9 needs to be re-corrected. But when you really get down
10 to it, if I can walk away a saying that, and that's why
11 I gave you a little bit about my background is that,
12 maybe this guy's got something to say.

13 In addition, and I don't want bore anybody or
14 whatever else, somehow my wife has been great. Like I
15 said, three kids, healthy, seven grand kids, healthy,
16 nurse is one of them, the other one is a school teacher,
17 and the next one is attending Arizona State and he'll be
18 up there working as a server and things like that, I
19 think his minor is going change probably, but we're
20 happy with that.

21 We're happy with that, but there's a drive in
22 and it started in combat, and it pertains to this day.
23 And that drive has provided a distinct feel good feeling
24 during the Northridge earthquake when I went after and
25 helped and found the sixth person that didn't make it,

1 we were digging with spoons.

2 What am I doing there? And then it also
3 helped when I was driving down the freeway coming home
4 at 3:30 in the afternoon and a Chatsworth had a train
5 wreck, 25 people died. I was helping pull people out at
6 that particular point and made sure that the triage
7 never stopped.

8 By the time that I left, it was 10 o'clock at
9 night or something like that. I'm the guy who stops
10 when I see an accident and there's a need to do
11 something. I'm the guy who that stops and says, "You
12 know, I'm here. Whatever the outcome is, I'm with you.
13 I'm going to try and work something out."

14 But by the same token, I'm also a fighter and
15 that fight is at me right now, but it's in a productive
16 way. There's some major, major issues on how with
17 collect sales tax -- sale tax through service station,
18 and I'm reflecting that.

19 It could be handled if somebody decides that,
20 "Hey, there is a better way." You don't have to second
21 guess what the prices are going to be for the next year.
22 Especially right now, take a look at the last time.

23 And I'm probably addressing that to the tax
24 agency, but look at the last time that you figured out
25 what the prepay should be and how it's handled, and how

1 it's handled with the commercial accounts that I've
2 identified that I used these 20 years ago.

3 Getting back to the four stations that I have,
4 and I mentioned that I have three and a half percent
5 difference in sales tax between one and the other.
6 There are -- for any one locations, there are four
7 different tax structures if you include the sales tax,
8 the gas tax and the diesel tax.

9 The diesel tax is another thing that I pride
10 myself. I contacted -- because diesel tax we overpaid
11 and at that time it was \$58,000 and that would have been
12 the fourth quarter of 2024. They acknowledge it, they
13 corrected it, when I called back, I had to -- I was
14 talking to some technicians up in the -- I have names,
15 places, times, but they corrected it.

16 Nine months it took the CDTFA in order to put
17 that out in the general public that said, "Oh, by the
18 way, if you submitted this on this and this, you
19 neglected to have the diesel credit."

20 Like I said, for my numbers, that was \$58,000.
21 So when they did issue the credit finally three months
22 later. Now mind you, the public didn't hear that until
23 eight months later and it was like, "Oh, yeah."

24 You know, any way three months later, I
25 received that credit, it was banked to the oldest item,

1 which is supposed to be not happening. You know, the
2 oldest item it was a direct -- it should have been -- it
3 should have been credited to that particular quarter and
4 that's -- you know, I did the additional form or I had
5 my CPA do it and everything.

6 But what do they do? They credited the first
7 audit. That sentence was -- and I was told by
8 management, "We can't -- it's already been posted. We
9 can't do anything about it."

10 You're going to find between the two accounts
11 there's been \$300,000 dollars that has been collected to
12 something that should have been set aside until we
13 reached this point today. I tried to off set and then
14 incurred penalties, interest, and some other charges
15 along that.

16 So I point to you some of the things that I
17 saw and probably have -- don't have all of the
18 information, but one of the things that strikes me the
19 most is how easy it can be in order to change this and
20 that's the direction that I would be going but hopefully
21 we can work something out.

22 And I thank you. I thank you for your
23 patience. And as my son was -- we had some construction
24 going on in one of the stations, but the contractor
25 said, "Your dad's got a lot of stories to tell." And I

1 said, "Yeah. I've lived them. Proud of them."

2 I thank you very much.

3 She mentioned a good point. The questions --
4 the additional questions that are on there, would you
5 like to go through those? Probably should. The four
6 questions on Period 1 and the three questions -- I've
7 kind of --

8 JUDGE ALDRICH: Did you finish your
9 statements?

10 MR. VAN DER VALK: I've kind of skipped around
11 a little bit.

12 JUDGE ALDRICH: Sure.

13 MR. VAN DER VALK: Okay. All right. So the
14 one -- Number 1, I've responded. Further adjustments, I
15 mentioned this, the adjustment for this being the
16 adjustment that I made on the credit versus cash.

17 And then the hot fill that I mentioned, the
18 hot fuel that I mention that I got somebody -- I think
19 it was about 15 pages of engineering, you know -- an
20 engineering explanation of hot -- that wasn't my intent.
21 My intent was the adjustment.

22 All I would've had to do is just to leave out
23 the volumes. And Number 3, what Appellant established
24 that as propanes are exempt, absolutely agree. At this
25 particular point I am charging for sales tax and it's

1 paid on an every three months basis. So if a --

2 JUDGE ALDRICH: So --

3 MR. VAN DER VALK: -- customer comes in,
4 whether they are getting fuel in a -- you know, in a
5 truck, in a catering truck, or whether they're getting a
6 five gallon, they're getting charged sales tax.

7 JUDGE ALDRICH: So for the Liability Period 1,
8 are you still arguing that that propane should be
9 exempt?

10 MS. VAN DER VALK: I didn't collect it.

11 JUDGE ALDRICH: I understand there's a
12 difference from charging and collecting it versus
13 whether or not you have some sort of basis in the
14 statute or regulation for its exemption.

15 MR. VAN DER VALK: It's in there. It's in my
16 submittals, the actual regulation. And what happened
17 was it was actually through the oil company. The oil
18 company had us fill out a form and that's what it was
19 based on.

20 I'm looking for a resolution on an overall
21 basis, recognizing that, okay, I've corrected it, you
22 know, going forward and I think in good faith I've paid
23 a whole lot more. At this particular point, I'm over --
24 between legal fees and fees that I've paid to the CDTFA
25 for penalties, this, that, for offsetting thing, I'm

1 over a million dollars in cost.

2 And so I'm looking at this, if that's what it
3 takes to resolve the other issues, or if it's just, you
4 know, you want to address that issue by itself which is
5 apparently, what you want to do. I think we could -- we
6 can safely say I didn't collect it. But -- you know,
7 the fund from the consumer.

8 The profits may have been there but I didn't
9 collect that. But every other thing that I've paid
10 since I have -- this is the taxes, I think this
11 particular account goes back 35 years, everything is
12 paid except for the items that I was not aware of.

13 And I was told that this was the proper way of
14 doing it by the same people. You know, my team of
15 auditors in the Van Nuys office.

16 JUDGE ALDRICH: You were told orally or in
17 writing?

18 MR. VAN DER VALK: Always orally, over a cup
19 of coffee, as they got their break and they would go on
20 a coffee break. You know, "What's going on Andre?" I
21 tell them, I'm an open book.

22 JUDGE ALDRICH: Okay. Let me see.

23 MR. VAN DER VALK: On market sales,
24 cigarettes, you know, that's what comprises the majority
25 at that time and there was no rebate. The rebate that

1 they referred to is not -- is not the rebate is not the
2 rebate they're thinking. The rebate is actually
3 gasoline volume rebate that the oil companies paid at
4 that time.

5 But it's insignificant, I'm looking at the
6 total picture. And my strongest point is your
7 acknowledgement that the first -- on the first audit,
8 that the first --

9 JUDGE ALDRICH: First quarter.

10 MR. VAN DER VALK: Yeah. That you
11 acknowledged that last quarter, you know, was wrong and
12 you went ahead and you re-calculated. Well, what
13 happened to the other? And I have notes here that says
14 that, you know, basically under you would do an audit
15 that way under your premise on the liability -- you
16 know, under the prior percentage of error rule. You
17 would use that for the whole audit.

18 And I've got counsel that agrees with me that
19 -- in fact, they highlighted it, you know, that's one of
20 the first things I need to look at. So -- and then the
21 negligent penalty, I've explained that. That if I
22 didn't reach -- because the main -- the key thing they
23 said, and I think if I didn't reach out for counsel or
24 for ideas or for -- from the auditors next door, that
25 was my source. And this could have been early nineties.

1 JUDGE ALDRICH: Anything else to add with
2 respect to the second liability period.

3 MR. VAN DER VALK: The second liability, and I
4 have it written in bold letter, is the prior percentage
5 of error. There's a number of references to that. That
6 because I did sign the forms, that they're going to base
7 it on the prior audit.

8 And then they did the same thing to the future
9 audits, that comment was the same. And then, like I
10 said, which -- the double billing to the 76 Ocean, which
11 was the corporate name of the Wilshire station.

12 That taxes were paid through Jalidat and
13 there's duplication of that, that I identified under the
14 names, you have that.

15 You have copies of that already in there, that
16 76 Ocean is attempting to collect or the CDTFA to this
17 day on 76 Ocean. In fact that really strikes me as
18 being -- if I was trying to do that in the corporate
19 world, I'd get nailed right off the bat. How can you
20 collect for the same items, same periods? Doesn't make
21 sense.

22 JUDGE ALDRICH: Does that concludes your
23 opening?

24 MR. VAN DER VALK: Yes.

25 JUDGE ALDRICH: Okay.

1 MR. VAN DER VALK: Thank you very much.

2 JUDGE ALDRICH: Thank you.

3 So I think at this time, we're going to take
4 a brief recess for about 10 minutes, go off the record
5 and we'll resume at 11 o'clock. Okay.

6 (Off the record.)

7 JUDGE ALDRICH: All right. Welcome back
8 everyone. Thanks for short recess. I believe we
9 concluded Appellant's opening. And so at this time I'm
10 going to ask Respondent or CDTFA if they have any
11 questions for the witness.

12 MR. SAMARAWICKREMA: We don't have -- we don't
13 have any questions, Judge.

14 JUDGE ALDRICH: Okay. At this time I'm going
15 to refer to the panel members. Judge Long, did you have
16 any questions for Appellant?

17 JUDGE LONG: No questions. Thank you.

18 JUDGE ALDRICH: And Hearing Officer Wilson?

19 JUDGE WILSON: No questions at this time.

20 Thank you.

21 JUDGE ALDRICH: All right. So we'll move on
22 to the combined opening and closing for Respondent.

23

24 PRESENTATION

25 MR. SAMARAWICKREMA: Thank you, Judge.

1 Appellant, a California cooperation operated
2 four gas stations --

3 JUDGE ALDRICH: Mr. Samarawickrema, sorry to
4 bug you, but could you get that mic a little bit closer
5 to you?

6 MR. SAMARAWICKREMA: Yeah.

7 Appellant, a California corporation operated
8 four gas stations with minimarkets in the cities of
9 Tarzana, North Hills, Santa Paula and Simi Valley
10 California. Appellant sold gasoline and diesel at all
11 four locations.

12 Appellant also offered car wash service at the
13 North Valley and Simi locations. And propane sales at
14 the North Hills location. Appellant seized business
15 operations of the Tarzana locations on June 30th, 2011,
16 but continues to operate the remaining three locations.

17 Two audit periods are subject to this appeal.
18 For easy reference, the Department is going to refer to
19 the audit period April 1st, 2004 to March 31st 2007 as
20 the first audit, and refer to the audit period January
21 1st, 2010 to December 31st, 2012 as the second audit.

22 During to the first audit period, Appellant
23 reported around \$45 million as sales and claimed various
24 types of deductions resulting in reported taxable sales
25 of around \$37 million, and this is shown on Exhibit B,

1 Pages 107 and 108.

2 During the second audit period, Appellant
3 reported around \$37 million as total sales and claimed
4 various types of deductions resulting in reported
5 taxable sale of around \$28 million. And this is shown
6 on Exhibit G, Pages 546 and 547.

7 During our presentation, we will explain; why
8 the Department rejected Appellant's reported taxable
9 sales and part of claim deductions for both audit
10 periods, why the Department used an indirect audit
11 approach to determine minimarket taxable sales, how the
12 Department determined Appellant's unreported taxable
13 sales and the seller claim exempt sales for both audit
14 periods, and why the Department recommended negligence
15 penalty for both audit periods for Appellant.

16 According to Appellant, they use their sales
17 details from their source documents to prepare monthly
18 sales reports for each location to prepare Appellant's
19 sales reports, federal income tax returns, and profit
20 and loss statements for the first audit period.

21 These sales report include; minimarket taxable
22 sales, fuel sales, and the number of gallon of fuel
23 sold. For the second audit period, Appellant claim they
24 used their sales detail from their source document to
25 prepare financial statements, and these statement were

1 used to prepare the sales annual tax returns.

2 The information provided did show how
3 Appellant derived their reported sales, taxable sales,
4 and exempt sale for the audit period. Based on the
5 records available at the time of audit field work, the
6 Department determined that Appellant's books and records
7 were incomplete for sales annual tax purpose for the
8 second audit period.

9 For both audits, Appellant failed to provide
10 complete POs download or PO sales records necessary to
11 verify the accuracy of the amounts reflected on their
12 sales annual tax returns.

13 The Department did not accept Appellant's
14 reported taxable sales for both audit periods due to
15 unusual reporting practices, recorded and reported sales
16 differences, and low minimarket taxable book markups.

17 Therefore, the Department determined
18 Appellant's taxable sales using Appellant's available
19 monthly sales reports and other available record for the
20 first audit period, and financial statements and other
21 available record for the first audit, and financial
22 statements and other available records for the second
23 audit period.

24 During audit field work for both audits, the
25 Department completed six verification methods to

1 understand Appellant's reporting practices and verify
2 their accuracy of Appellant's reported total sales,
3 taxable sales, claim exempt sales, and tax credit.

4 First, for each audit period, the Department
5 compared the recorded total sales reflected on
6 Appellant's federal income tax returns to Appellant's
7 reported total sales for the period January 2004 through
8 December 2006.

9 Appellant's federal income tax returns
10 reflected around \$54 million in sales while reported
11 total sales were around \$43 million resulting in an
12 overall difference of around \$11 million, and this is
13 shown in Exhibit B, Page 141.

14 Similarly, the second audit period,
15 Appellant's federal income tax returns reflected around
16 \$44 million in sales while reported total sales were
17 around \$37 million dollars resulting in an overall
18 difference of around \$7 million and this is shown on
19 Exhibit K, Page 701.

20 The Department noted that Appellant's federal
21 income tax return sales during the second audit
22 substantially matched the total sales reflected in it's
23 profit and loss statement for all four locations and
24 this are shown on Exhibit K, Page 699.

25 Second, for both audit periods, the Department

1 compared the recorded taxable sales reflected on
2 Appellant sales records to reported taxable sales. For
3 the first audit, Appellant recorded taxable sale of
4 around \$52 million while reported taxable sale of around
5 \$37 million resulting in an overall taxable sales
6 difference of around \$15 million and this is shown on
7 Exhibit B, Page 121.

8 For the second audit, Appellant recorded
9 taxable sale of around \$42 million while reported
10 taxable sale of around \$28 million resulting in an
11 overall difference of around \$13 million and this is
12 shown on Exhibit K, Page 665.

13 Third, the Department compiled recorded cost
14 of purchases of taxable merchandise for first quarter
15 2007 by category for each store for the first audit
16 period, and this is shown on Exhibit B, Pages 133
17 through 137. Based on this information and the recorded
18 minimarket sales, the Department calculated an overall
19 minimarket reported book markup of around 20 percent for
20 first quarter 2007, and this is shown on Exhibit B, Page
21 139.

22 However, based on short shelf test, the weight
23 of audited, minimarket markup was around 63 percent and
24 this calculation is shown on Exhibit B, Page 132. For
25 the second audit, the Department examined the available

1 monthly sales reports for Appellant's minimarket sales
2 and determined taxable sales ratio of around 72 percent
3 for North Hill location, 63 percent for Santa Paula and
4 50% for Simi Valley, and no such records to determine
5 the taxable sales ratio for Tarzana location.

6 The Department noted that the Appellant's
7 first audit disclosed taxable sales of ratio of around
8 74 percent for North Hills, 57 percent for Santa Paula,
9 and 63 percent for Simi Valley, and 60 percent for
10 Tarzana. And this is shown on Exhibit K, Page 674.

11 Fourth, Appellant made taxable propane sales
12 at their North Hill location. The Department noted the
13 Appellant claimed this taxable propane sale of around
14 \$1.2 million for the first audit period and \$950,000 for
15 second audit period as exempt sale. And this is shown
16 on Exhibit B, Page 126 and Exhibit K, Pages 676 through
17 680.

18 Fifth, Appellant's Simi Valley location
19 participated in cigarette rebate programs while the
20 other three locations did not. Based on the available
21 contracts and sales records, the Department found that
22 these amounts received from the distributors represented
23 taxable rebates because they require a selling price
24 reduction equivalent to the amount of the rebate.
25 Appellant failed to report their taxable cigarette

1 rebates for both audit periods.

2 Sixth, Appellant claimed credit for prepaid
3 sales tax for gasoline of around \$81,000. However, in
4 comparison, Appellant's vendors reported to have
5 collected from Appellant only around \$801,000 of such
6 prepaid taxes for the second audit period. And this is
7 shown on Exhibit K, Page 622.

8 Similarly Appellant claim credits for prepaid
9 sales tax for diesel of around \$250,000. And in
10 comparison, the vendors reported to have collected only
11 \$209,000 for the audit -- for this audit period. And
12 this is shown on Exhibit K, Page 634.

13 Appellant was unable to explain the reason for
14 these unusual reporting practices therefore the
15 Department conducted further investigations by analyzing
16 available sales records for both audit periods to
17 determine unreported taxable sales and over claimed
18 exempt sales.

19 For the first audit period, Appellant failed
20 to provide their complete POs records that are necessary
21 to verify the accuracy Appellant's reported taxable
22 sales and claimed nontaxable sales.

23 However, Appellant provided federal income tax
24 return for the years 2004 through 2006, monthly sale and
25 expenditure reports, cash register tapes, sales invoices

1 and purchases invoices. The Department compared the
2 sale of -- Appellant's federal income tax return to the
3 sales reported on Appellant's sales annual tax returns
4 and identified material sales different. And these
5 differences are shown on Exhibit B, Page 141.

6 In reconciling these differences, the
7 Department reviewed Appellant's monthly sales and
8 expenditure reports and determined Appellant had
9 recorded taxable fuel sale of around \$52 million but
10 only reported around \$37 million on their sales annual
11 tax returns during the first audit period. And this is
12 shown on Exhibit D, Page 17.

13 Appellant did not report their fuel sale of
14 around \$15.4 million for the first audit period and this
15 is shown on Exhibit D, Page 17. Appellant contends that
16 the amount of sales tax should be based on the number of
17 gallons of fuel sold, adjusted for expansion that occurs
18 when the fuel warms. Appellant also contends that the
19 difference between recorded and reported fuel sales
20 represent sales for resale to other vendors of fuel.

21 In addition, Appellant contend that an
22 adjustment is warranted for fees charged by credit card
23 companies. The amount of sales tax is computed on the
24 amount of Appellant sales with no adjustments for
25 changes in the volume of gas. There is neither an

1 exclusion nor an exemption related to fuel expansion.
2 Moreover, in this case, the deficiencies based on
3 Appellant's own recorded sales and therefore any
4 assertion regarding expansion of gasoline lack merit.

5 Appellant has provided no documentation
6 showing fuel sale for resale during the audit period to
7 support their contention that the sale at issue were for
8 resales. Further, Appellant did not register as a
9 wholesaler of fuel until September 1st, 2008.

10 And there is no evidence that Appellant
11 accounted for or reported any fuel sales for resales
12 prior to that date nor is an adjustment warranted for
13 bank imposed credit card charges since Appellant's gross
14 sales included the total amount of retail sales with no
15 deductions for cost of doing business.

16 To understand product mix of Appellant's
17 minimarket, the Department compiled recorded cost of
18 purchases of taxable merchandise for first quarter 2007
19 by category for each store. And this is shown on
20 Exhibit B, Pages 133 through 137.

21 Based on this information, and the recorded
22 minimarket sales, and cost of purchases, the Department
23 calculated an overall minimarket book markup of around
24 20 percent for first quarter 2007. And this is shown on
25 Exhibit B, Page 131.

1 To verify the reasonableness of these recorded
2 markup, the Department performed a short shelf test on
3 most popular taxable items using available sales and
4 purchase invoices to calculate the audited weighted
5 markup and individual item markup. And these
6 calculation are shown on Exhibit B, Page 132.

7 Appellant did not provide reliable documents
8 to determine that their weighted taxable markup was
9 lower than 63 percent. Therefore this was the best
10 available information to determine Appellant's audited
11 weighted markup for their minimarkets. Then the
12 Department used these audited weighted markup results
13 and Appellant's taxable minimarkets purchases to
14 determine accurate minimarket taxable sales.

15 Therefore, the Department used first quarter
16 2007 cost of goods sold and audited individual item
17 markup to determine audited taxable markup sales --
18 market sales for first quarter 2007. And this is shown
19 on Exhibit D, Page 13.

20 Audited taxable markup -- market sales were
21 compared with a recorded taxable sales to determine
22 unrecorded market taxable sale percentage of around 19
23 percent and this is shown on Exhibit A, Page 13. Then
24 the Department used the recorded market taxable sales
25 and the unrecorded market taxable sales percentage to

1 determine under reported minimarket taxable sale of
2 around \$378,000 for his audit period. And this is shown
3 on Exhibit D, Page 12.

4 During the appeal process, Appellant contends
5 that the pilferage allowance should be increased stating
6 that they fired the store manager after discovering that
7 the manager had stolen over \$60,000 over the prior year.
8 Appellant claims that the manager's theft primarily
9 represented theft of cigarettes.

10 Appellant has provided no documentation of the
11 \$60,000 loss due to theft. Since Appellant failed to
12 provide documents to demonstrate that the pilferage
13 allowance should have been higher, the Department finds
14 no pilferage allowance is warranted.

15 The Department also noted that the Appellant
16 failed to report around \$1.2 million in sale of liquid
17 propane as taxable sales but claim those sales as exempt
18 sales. These propane sale were assessed in this audit
19 and this is shown on Exhibit B, Page 142. During the
20 appeal process, Appellant contended that it is unfair to
21 charge Appellant for a tax that was not collected.

22 Appellant's failure to collect tax
23 reimbursement from their customers does not alter
24 Appellant's ultimate liability for the tax which is
25 imposed on Appellant for the privilege of selling

1 propane and other tangible personal property.

2 Therefore, the Department finds no adjustment relating
3 to these argument is warranted.

4 In total, the Department determined unreported
5 taxable sale of around \$16.5 million for the first audit
6 period and this calculation is shown on Exhibit A, Page
7 16. The Department then compared the total unreported
8 taxable sales with the reported taxable sale of around
9 \$37 million to calculate the error rate of around 45
10 percent for the first audit period.

11 For the second audit period, Appellant failed
12 to provide their POs download or complete POs reports
13 that are required to verify the accuracy of Appellant's
14 reported taxable sales and claimed nontaxable sales.

15 Therefore, the Department conducted further
16 investigation by analyzing Appellant's available profit
17 and loss statement for the second audit period.

18 Using Appellant's profit and loss statement,
19 the Department noted Appellant recorded gross gasoline
20 sale of around \$35 million for the four business
21 locations for this audit period. And this is shown on
22 Exhibit K, Pages 676 through 680.

23 Also, while the profit and loss statements
24 also reflected non-taxable gasoline sales for resale
25 purposes. The Department found that the available

1 information could not be used to verify the extent and
2 nature of any sales recorded as being nontaxable.

3 Accordingly, the Department compared the
4 recorded gasoline sales with reported gasoline sales to
5 determine unreported gasoline sale of around \$10 million
6 for the second audit period. And this is shown on
7 Exhibit K, Page 665.

8 Additionally, the profit and loss statement
9 also reflected recorded gross diesel sale of around \$4.3
10 million for the four locations. And this is shown on
11 Exhibit K, Pages 676 through 680. The Department
12 compared the recorded diesel sales with reported diesel
13 sales to determine unreported diesel sale of around \$1.6
14 million for this audit period. And this is shown on
15 Exhibit K, Page 665.

16 Appellant disputes about the unreported
17 taxable gasoline and diesel fuel and claim that the
18 difference represent sales for resales. However,
19 Appellant has not provided any documentation showing
20 fuel sold for resale during the audit period to support
21 their contention that the sales at issue were for resale
22 therefore the Department rejected this argument.

23 Appellant's profit and loss statement
24 reflected recorded propane sale of \$958,000 and recorded
25 minimarket sale of around \$2.4 million for his audit

1 period. And this is shown on Exhibit K, Page 676
2 through 680.

3 Based on the available monthly sale reports
4 for Appellant's market sales, the Department calculated
5 taxable sales ration of around 72 percent for North Hill
6 location, 63 percent for Santa Paula, and 50% for Simi
7 Valley. No records were available to determine the
8 taxable sales ratio for Tarzana location.

9 The Department also noted that the first audit
10 disclosed taxable sales ratio of around 74 percent for
11 North Hills, 57 percent for Santa Paula, 63 percent for
12 Simi Valley and 60 percent for Tarzana. And this is
13 shown on Exhibit K, Page 674.

14 Therefore, based on the first audit, the
15 Department estimated 63 percent taxable sales percentage
16 for Santa Paula, Simi Valley, and Tarzana locations.
17 And this is shown on Exhibit K, Page 674.

18 Based on these taxable sale percentages, the
19 Department calculated audited minimarket taxable sale of
20 around \$1.6 million for this audit period. And this is
21 shown on Exhibit K, Page 674.

22 The Department has compared the audited
23 taxable market sales and propane sales with reported
24 taxable market sales to determine unreported taxable
25 market sales including propane sale of around \$1.6

1 million for this audit period. And this is shown on
2 Exhibit K, Page 665.

3 During the appeal process, Appellant disputes
4 the unreported taxable minimarket sale and propane sales
5 but has not provided a specific basis for their dispute
6 or any additional evidence or information to
7 substantiate errors or adjustment in this regard.
8 Accordingly, the Department finds that the Appellant has
9 not established a basis for which it can order any
10 adjustments.

11 Based on the foregoing, the Department finds
12 that no adjustments are warranted to the unreported
13 minimarket taxable sales, including propane sales for
14 the second audit period.

15 Appellant's Simi Valley location participated
16 in cigarette rebate programs while the other three
17 stations did not. The Department examined Appellant's
18 contracts with cigarette distributors and found that
19 some of the amounts received from the distributors
20 represented taxable rebate income because the
21 distributors required a selling price reduction equal to
22 the amount of the rebate.

23 Appellant failed to report their taxable
24 cigarette rebate for this audit period, therefore, the
25 Department determined unreported taxable cigarette

1 rebate of around \$57,000 for this audit period. And
2 this is shown on Exhibit K, Page 696.

3 During the Appeal process, Appellant disputes
4 the unreported taxable cigarette rebate for the second
5 audit period but has not provides a specific basis for
6 their dispute or any additional evidence or information
7 to substantiate errors or adjustment in this regard.

8 Accordingly, the Department finds that the
9 Appellant has not established a basis for which it can
10 order any adjustments. Based on the forgoing, the
11 Department finds that no adjustments are warranted to
12 the unreported taxable cigarette rebates for the second
13 audit period.

14 In total, the Department determined unreported
15 taxable sale of around \$30 million for the second audit
16 period. And this calculation is shown on Exhibit K,
17 Page 665.

18 The Department then compared the total
19 unreported taxable sale of around \$13 million with a
20 reported of taxable sale of around \$28 million to
21 calculate the error rate of around 47 percent for the
22 second audit period.

23 When the Department is not satisfied with the
24 accuracy or the sales annual return file, it may rely
25 upon any facts contained in the return or upon any

1 information that comes into the Department's position to
2 determine if any tax liability exists.

3 A taxpayer shall maintain and make available
4 for examination on request by the Department all records
5 necessary to determine the correct tax liability under
6 the sales annuals tax laws and all records necessary for
7 the proper completion of the sale annuals tax returns.

8 When a taxpayer challenge in a notice of
9 determination, the Department has the burden to explain
10 the basis for that deficiency. When the Department
11 explanation appears reasonable, the burden of proof
12 shift to the taxpayer to explain why the Department
13 asserted deficiency is not valid.

14 Since Appellant failed to provide the
15 available POs records for audit period, the Department
16 used the best available information to determine the
17 unreported taxable sales and over claimed exempt sale
18 for both audit periods. The audit calculation of
19 unreported taxable sales and over claim exempt sales
20 based on the best available information was reasonable.

21 Finally, the Department properly imposed the
22 negligence penalty for both audit periods, based on the
23 substantial understatements and the Appellant's errors
24 in preparing their sales annual tax return.

25 Appellant significantly understated their fuel

1 sales and propane sales during both audit periods. The
2 total error rate for the first audit period was around
3 45 percent, and for the second audit period around 47
4 percent.

5 Error rates of this magnitude demonstrate a
6 failure to exercise ordinary care in reporting sales tax
7 liabilities and support the imposition of the negligence
8 penalty.

9 Appellant has not provided any reasonable
10 documentation or evidence to support adjustment for both
11 audit periods. Therefore, for all of these reasons, the
12 Department request the appeals be denied.

13 This concludes our presentation. We are
14 available to answer any questions the panel may have.
15 Thank you.

16 JUDGE ALDRICH: Thank you Mr. Samarawickrema.

17 I do have a few questions for you. So one of
18 the arguments that Appellant raised is that Respondent
19 made an adjustment to first quarter of '07 and that that
20 should be -- that change should be projected to the rest
21 of the audit period. Why should or should that not
22 happen?

23 So if it helps, I believe there was a
24 submission from CDTFA dated June 27th, 2024, which
25 explains the adjustments.

1 MR. SAMARAWICKREMA: If you may, refer to Page
2 14 of Exhibit A. The Appellant provided the detailed
3 sales information for the first quarter 2017 and it
4 specifically says tax is included but not the other
5 quarters. The Page 14, Exhibit D. So there's a reason
6 that we didn't project it because he specifically that
7 tax was not included.

8 JUDGE ALDRICH: Okay. And for the other
9 quarters of that audit period or Liability Period 1,
10 there's no other evidence to suggest that sales tax was
11 included?

12 MR. SAMARAWICKREMA: That's correct judge.

13 JUDGE ALDRICH: Okay. All right. Another
14 question for Respondent. Appellant has raised the Norm
15 Rice model in briefing and I guess my question to
16 Respondent, was Norm Rice model used to compute any
17 portion of the audit?

18 MR. SAMARAWICKREMA: Based on the audit
19 report, the Department used the taxpayer's own records
20 to determine unreported taxable sales.

21 JUDGE ALDRICH: So the understatement was
22 calculated using records, the difference between
23 recorded and reported?

24 MR. SAMARAWICKREMA: That's correct, Judge.

25 JUDGE ALDRICH: Okay. And it does look like,

1 however, the Norm Rice model was used to compute
2 expected fuel sales but the Department didn't rely on
3 that in producing the under statement; is that correct?

4 MR. SAMARAWICKREMA: That's correct. And the
5 -- we only use that to determine the -- to a
6 reasonableness or the accuracy of the recorded sales.

7 JUDGE ALDRICH: Okay. And Appellant raised
8 some questions about the Ocean 76, and I guess my
9 understanding is that Ocean 76 wasn't petitioned from --
10 I don't know if there's a decision or if it went final
11 already, but I presume that it has since it is in
12 collections. Is that Ocean 76 a different location than
13 the four locations that involved audit period one -- or
14 Liability Period 1 and 2?

15 MR. SAMARAWICKREMA: That location is a
16 separate -- you know, registered under a different
17 entity and the audit period for that location is same as
18 the second audit period, that is January 1st, 2010
19 through December 31st, 2012. And those sales related to
20 that Santa Monica location is not part of this audit.

21 JUDGE ALDRICH: Okay. And in the briefing,
22 there's reference to a Sepulveda location or Roscoe
23 location, that's the same as the North Hills location;
24 is that correct?

25 MR. SAMARAWICKREMA: Yes, Judge.

1 JUDGE ALDRICH: There's just three different
2 names so I just want to make sure that I'm referring to
3 the one location under the correct name.

4 Appellant, if you's care to respond to that
5 same question?

6 MR. VAN DER VALK: They're the same.

7 JUDGE ALDRICH: Okay. And then with respect
8 to the liquefied petroleum gas, is the Department aware
9 of any exemption in the revenue taxation code that
10 provides for either an exempt or partially exempt sales
11 for food trucks?

12 MR. SAMARAWICKREMA: Can you repeat the
13 question, Judge?

14 JUDGE ALDRICH: To the Department's knowledge,
15 is there a revenue and taxation code section or a
16 corresponding regulation that exempts sales of liquid
17 petroleum, i.e., propane to food trucks if that's above
18 a certain size tank?

19 MR. SAMARAWICKREMA: No.

20 JUDGE ALDRICH: Okay. My understanding is
21 that Revenue and Taxation Code 6353 provides an
22 exemption but that's to qualified residents or a
23 qualified person using it in harvesting agricultural
24 products.

25 Mr. Van der Valk, is there a code section you

1 can point me to with respect to the potential exemption
2 for propane sales?

3 MR. VAN DER VALK: If I'm not -- if I'm not --
4 I believe that's the same code that also talks about in
5 the process food preparation. It's not just
6 agriculture.

7 JUDGE ALDRICH: Do you think the preparation
8 is in the Revenue and Taxation Code or the regulation?

9 MR. VAN DER VALK: In the Revenue and Taxation
10 Code.

11 JUDGE ALDRICH: Because I have it in front of
12 me and food preparation doesn't appear.

13 MR. VAN DER VALK: Your Honor?

14 JUDGE ALDRICH: Yes.

15 MR. VAN DER VALK: What was the date of that?

16 JUDGE ALDRICH: So the Stats brought it into
17 effect in 1972, there's been some changes but none of
18 those changes include food or food preparation.

19 MR. VAN DER VALK: Is it distinctly --
20 distinctly, and that could have been right around, I
21 would say, the 1990, '99, somewhere around there. Just
22 before the 2004.

23 JUDGE ALDRICH: Okay. And I guess I'd point
24 out that there's a court case called Standard Oil
25 Company of California, the State Board of Equalization

1 (1974) 39 Cal.App.3d 765, and if you would pull up that
2 -- I guess the highlight of it is that delivery of
3 liquid petroleum by hose from vendor's tank truck to
4 bio-storage tank is not exempt.

5 That's like another area that you might look
6 at, but food doesn't appear to be in that code section.
7 So I guess if there's another one that you'd like to
8 direct the panel to, that'd be helpful.

9 MR. VAN DER VALK: It would be in the third
10 and fourth audit because that's when I went ahead and
11 said, okay, you know, I've collected since then. I'm
12 starting -- and that would be Audit Number 3, I have
13 that.

14 JUDGE ALDRICH: Okay. I think I understand.
15 I guess I'm going to refer to the panel to see if they
16 have any questions.

17 Hearing Officer Wilson?

18 JUDGE WILSON: I do have a question for the
19 Department. The Appellant mentioned the prior audit
20 percentage, I did note on Schedule 12(d) which is Page
21 -- Bates stamp 674, that there is a percentage per prior
22 audit. Was that percentage used in the audit?

23 MR. SAMARAWICKREMA: That is for the second
24 audit period to determine the minimarket taxable sales.

25 So it's from the first audit, the Department

1 calculated -- they audited minimart sales -- taxable
2 minimart sales to the total and used that percentage to
3 determine audited taxable minimart sales for the second
4 location -- I mean second audit period. The Department
5 used those percentages, yes, for the minimart.

6 JUDGE WILSON: Okay. I thought it was just a
7 comparison of what was calculates to the prior audit; is
8 that not correct?

9 MR. SAMARAWICKREMA: For the second audit
10 period, the Department calculated for the three
11 locations and the Department did not have the
12 information to calculate for the Tarzana location and
13 the North Paula location was 63 percent based on --
14 based on the second audit information.

15 And for the other two, Simi Valley was less,
16 50%, if I'm correct.

17 So basically for Santa Paula location Simi
18 Valley location and the Tarzana, we -- the Department
19 used 63 percent from the first audit period, the taxable
20 percentage to determine taxable minimart sale for the
21 second audit period for those three locations.

22 JUDGE WILSON: Okay. Thank you. That's all I
23 had.

24 MR. PARKER: Hearing Officer Wilson, I just
25 wanted to clarify one thing and I'll do my best to find

1 the page number in the exhibits, but the 63 percent was
2 actually calculated on 12(j)(3), and that was what was
3 carried forward.

4 So it appears that we used that calculation to
5 determine the 63 percent that we applied to the other
6 three similar locations. And we used the 72 percent on
7 12(d) for the -- let me get to it. For the North Hills
8 location. And it was just a comparison, so it wasn't --
9 we didn't apply the prior audit percentage or the prior
10 audit taxable ratio to this audit, it was a comparison.

11 JUDGE WILSON: Thank you.

12 JUDGE ALDRICH: Judge Long?

13 JUDGE LONG: No questions. Thank you.

14 JUDGE ALDRICH: Okay. Do you have a question
15 ma'am?

16 MS. VAN DER VALK: (Indiscernible).

17 JUDGE ALDRICH: Sure.

18 MS. VAN DER VALK: As far as the \$60,000
19 cigarettes that were gone, we're a family. And the
20 young man that did this also had two small kids, so we
21 just fired him.

22 We didn't file a police report or anything.
23 It's just how -- he had been with us probably about 10,
24 12 years, had a young family, so the decision was just
25 to fire him. We didn't file charges.

1 JUDGE ALDRICH: Thank you.

2 At this time, I'd like to give you the
3 opportunity to provide a rebuttal or closing statement
4 of 5 to 10 minutes.

5
6 CLOSING STATEMENT

7 MR. VAN DER VALK: Thank you, Your Honor.

8 I paid attention to all that was said by the
9 representatives from the CDTFA, and it's all documented,
10 it's all -- you know, what they did and what had been
11 done, and quite frankly it was -- it was gone over prior
12 to me leaving counsel last year. That was all -- I know
13 what we're talking about, and basically if you take a
14 look at the big picture, we from day one were identified
15 as a card lock in multiple locations.

16 And that identity and how to treat that was
17 not referred back to the December 16th, 1994 letter by
18 your counsel, that indicated on how to treat Mr. William
19 Dunn, assistant principal tax auditor, it's 382, 383,
20 and 384.

21 And I state that that comment that I -- that I
22 indicated that was used, is the prior percentage of
23 error. It's all over the place in that second audit,
24 and it was in practicality used on the first audit and
25 the review audit.

1 How can you be sitting there and cover this
2 and look at it, and recognize that there's
3 inconsistencies plus there are contraries? How do you
4 take that first -- that last quarter, it was the first
5 quarter of 2007, and not extrapolate that among the
6 prior audits? That goes against any of the audit
7 principle that they use.

8 So the premise still today with the auditors,
9 is that, "Welcome to the audit. Oh, well, we don't use
10 that. You know, in the past and everything else." You
11 know, and then they go ahead and they use -- if you
12 don't -- you know, they don't have time right now,
13 auditors. They don't have time. They want you to sign
14 that form.

15 If you don't sign that form, guess what, it's
16 going to go ahead, it's going to go into -- the form I'm
17 talking about is the extension. If you don't file an
18 extension form, I will guarantee you that the auditor is
19 going to use the prior percentage of error. There's no
20 doubt about it.

21 If you don't pay it, still to this day, then
22 guess what, you're going to have to come up with the
23 money. That's the solution. You have to come up with
24 it plus, you know, whatever interest and this and this
25 and that. Well, wait a minute, you know, I don't have

1 that kind of money. I don't make that kind of money and
2 so I had to offset.

3 Well, guess what, that opens up Pandora's box
4 where you're either going to do what collections says,
5 and that's what happened last year, or you make some
6 major changes and that's what -- that's what happened.
7 So that is still true today.

8 As recently as last year, when I had an audit
9 from the Ventura office, I reminded them, "Wait a
10 minute, I still have two audits. One was resolved. I
11 still have two audits in the past. What would you do?"

12 "Well, if you don't sign this form then we'll
13 give you a week to come up with everything." And I
14 said, "Okay. I came up with everything." But
15 meanwhile, guess what model they use on the volumes? It
16 was the same thing, it was the Norm Rice model, that's
17 how they good it.

18 What's ironic about it is that all through
19 this, guess who -- now I have Chevron, 76, and Valeros,
20 that's the presentation right now. All three of them,
21 guess what they do, they provided you the volumes that
22 you -- that had been purchased.

23 Why? Because they realized there's
24 inconsistencies in the CDTFA. And so if I go into an
25 audit now, I can produce a form that's put out that's

1 based on the Norm Rice model. And that's strictly
2 volume and dollars paid in. And then they even show a
3 prepaid on that. All I was trying to do was to
4 highlight there's -- there's lack of consistency from
5 day one.

6 As far as the calculations, I differ any one
7 of these gentlemen representing the CDTFA to tell me how
8 to charge diesel fuel and what the resulting state taxes
9 are and the resulting profits to the operator.

10 I will guarantee you that if you do that with
11 dealers, 10 dealers, you can sit them down and say,
12 "Okay. Figure out the diesel margin and figure out what
13 the sales tax is on it." And you're going to get 10
14 different answers.

15 What does that tell me? That tells me that
16 something is wrong with the system, and that's what you
17 are seeing right here. Something wrong with the system
18 but somebody having the fortitude to carry it forth and
19 yet questioning -- I had to take pill because I have
20 high blood pressure because I had open heart surgery,
21 six way bypass in 2013. I made that meeting in 2015
22 before the BOE board.

23 I was still hurting, but somehow I was anxious
24 to get it together. That's why I'm so emotional, attach
25 to this case. At the level of dollars that it

1 represents, which could have been handled in 2015. For
2 some odd reason, it wasn't, that's it.

3 Meanwhile, you mention that the 76 Ocean is
4 petition, I'm not -- maybe a fancy word to me but the 76
5 Ocean, I was told by the collections person not to worry
6 about it, that that's not an issue and I said, "Wait a
7 minute, you know I'm still getting letters."

8 So I don't know if that means it's in petition
9 or what. But it does have an impact on what transpired
10 on the second audit. Because you're trying to collect
11 moneys -- and I highlighted it in red but you're trying
12 to collect moneys from two different source that were
13 reported in the original audit through Jolidat.

14 And the reason why I have Jolidat doing --
15 there were some fancy numbers, you hear \$3 million, \$6
16 million, \$30 million, \$40 million, you know we're
17 dealing with gasoline but today -- today where we're
18 heading back down to over \$5 a gallon and they're basing
19 like it was \$3.50 or \$4 in terms of what they're
20 collecting as far as prepay is concerned.

21 It's still occurring, nobody is taking the
22 time to look at it, and instead of looking what, you
23 know, this case is all about, and I'm sure I'm not the
24 only one. There's other cases out there. And if you
25 look at it, and like I said, that a fancy term for that,

1 it's in petition, I can show them the documents that
2 say, "No, you actually tried to clean it out of my --
3 out of my business account last year. Here it is.
4 Boom." And it was late last year.

5 Finally, the audit represented a lot of
6 numbers that said that they were similar locations.
7 Absolutely not, the Roscoe location, my wife mentioned
8 about firing and we had -- you know, that's a big
9 decision.

10 My attrition among employees, I have 30
11 employees roughly in four stations, and my average
12 employees has been there for 13 years. So we don't have
13 major turnover too much, and it's a major disappointment
14 and it hurts you when something goes wrong.

15 Small bearing, and all of a sudden it's been
16 brought up, it's been brought up about me, you know --
17 about us letting somebody go. He was selling cigarettes
18 and dealing with propane on the side without writing it
19 up. It was as simple as that. We caught it, we did it.

20 And so as far as the similar location, it's
21 kiosk. How can you compare a kiosk with heavy cigarette
22 sales and a low margin with no rebate to a food mart in
23 Simi Valley that sells a lot of product, including the
24 largest -- the largest sale of vending machines is
25 Aquafina. Aquafina is made -- it's made by Pepsi Cola

1 -- I mean, yeah, Pepsi Cola.

2 Who would think that it out sells any of their
3 other products and it's the biggest name in terms of
4 water sales on there. It's nontaxable. That's what's
5 being sold out of locations such as Simi Valley.
6 They'll go ahead and they'll get fuel and then they'll
7 go ahead and get water.

8 I know the business, Your Honor. I know the
9 business well. There was no mention, it was never
10 brought up, but there was that 1994 letter from the
11 State Board to the commercial fueling network, that says
12 it all.

13 And that was in 1994, I was a guy then. And
14 that letter was never referred to in any of the audits
15 that I have had. You know, had that letter gone out and
16 if it still goes out to the auditors, saying "Hey, look
17 this is a reminder."

18 Hanging on to that one, that my recommendation
19 or my, call it, accusation is and it's based on merit,
20 is that you're not getting number from the end user that
21 is charging, I will guarantee that if I can get a
22 Voyager card, I will trace it back and I will show you
23 that the end user is not being billed the sales tax that
24 is at the pump.

25 Why would I say that if I didn't think that

1 was true or if I didn't have the basis that that was
2 true? In my reflection upon what I said was going on at
3 the Simi Valley location now, which was the actual
4 charge for 30 cents a gallon, and it cannot go -- it's
5 being shown as a credit card fees. I'm sorry, charge
6 backs, as charge backs. I'm still marking hand
7 calculations.

8 So it just -- I leave it at that. I
9 appreciate my time here. I thank you, it was exciting
10 making it up here yesterday between snow and hail and
11 water, we love Tahoe but we're not used to going up here
12 in the middle of February.

13 But we need the rain and I'm glad we're here,
14 I share with you my enthusiasm of having a large account
15 like this being look at. And I appreciate that. My
16 wife and I appreciate it. I thank you very much.

17 JUDGE ALDRICH: Thank you. And thank you for
18 your time.

19 One moment.

20 Well, I want to thank everyone for their time.
21 We're ready to conclude the hearing. The record is
22 closed.

23 (The proceeding concluded at 12:04 p.m.)
24
25

1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand,
10 which was thereafter transcribed under my direction;
11 that the foregoing transcript is a true record of the
12 testimony given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript [] was [] was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of
19 any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: March 16, 2026

23 

24 Certified Shorthand Reporter
25 For the State of California

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