

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
BONGO'S INC.,) OTA NO. 240917431
)
)
) APPELLANT.
)
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_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, March 12, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ SUZANNE B. BROWN

Panel Members: ALJ JOSH ALDRICH
ALJ NATASHA RALSTON

For the Appellant: FARHANA HOSSAIN

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

NALAN SAMARAWICKREMA
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

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California; Thursday, March 12, 2026

12:59 p.m.

JUDGE BROWN: We will go on the record.

All right. And we are on the record for the Appeal of Bongo's Inc. This is OTA Case No. 240917431. Today is Thursday, March 12th, and it is approximately 12:59 p.m. We are holding this hearing electronically over Zoom with the agreement of all parties.

I will start by asking each of the participants to please state their names for the record, starting with CDTFA's representatives.

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

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

MR. BROOKS: Good afternoon. This is Christopher Brooks, attorney for CDTFA.

JUDGE BROWN: Thank you.

And I will ask Appellant's representative to identify herself as well.

MS. HOSSAIN: This is Farhana Hossain. I am from Bongo's.

JUDGE BROWN: Thank you.

My name is Suzanne Brown, and I am the lead

1 Administrative Law Judge or ALJ, for this case. My
2 co-panelists today are Administrative Law Judges, Josh
3 Aldrich and Natasha Ralston. Although I am the lead for
4 purposes of conducting the hearing today, all three panel
5 members are coequal decision makers in this process and
6 are free to ask questions or otherwise, speak up at any
7 time.

8 This hearing is before the Office of Tax Appeals,
9 which we refer to as OTA. OTA is on a court but is an
10 independent appeals body. OTA is staffed by tax experts
11 and is independent from the state's tax agencies,
12 including independent from CDTFA. Because OTA is a
13 separate agency from CDTFA, arguments and evidence that
14 were previously presented to CDTFA are not necessarily
15 part of the record before OTA, unless those arguments and
16 evidence have been submitted or presented to OTA.

17 OTA's written opinion for this appeal will be
18 based upon the briefs the parties have submitted to OTA,
19 the exhibits that will be admitted into evidence, and the
20 arguments presented at the hearing. As a reminder, the
21 panel does not engage in what's called ex parte
22 communications, meaning that the panel does not speak to
23 one party without the other party present.

24 We had a prehearing conference on this matter in
25 February, and I issued prehearing conference Minutes and

1 Orders. I'm just going to briefly revisit and summarize
2 the thing that -- some of the things that we talked about
3 during the prehearing conference before we proceed with
4 the presentations of the parties.

5 First, I want to just confirm the hearing issues
6 and the -- as I put in the prehearing conference Minutes
7 and Orders, there are three issues. The first one is
8 whether adjustments are warranted to the measure of
9 unreported taxable sales. The second one is whether the
10 40 percent penalty under Revenue & Taxation Code
11 section 6597 is warranted. And the third issue is whether
12 Appellant is entitled to interest relief pursuant to
13 Revenue & Taxation Code section 6593.5. I want to confirm
14 the issues, whether that's everyone's understanding of the
15 issues.

16 There's a couple of things that, in particular, I
17 want to clarify about Issue 2. CDTFA raised, before we
18 went on the record, that they want to clarify the penalty
19 amount. I also realized I should clarify that the penalty
20 is only, from my understanding, two quarters of the
21 liability period. First, I'll confirm that with CDTFA. I
22 should have put it in my Minutes and Orders, although I
23 think we discussed at the prehearing conference, that it's
24 only for the third -- the penalty under 6597 is only for
25 the third quarter of 2019 and the fourth quarter of 2021.

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Is that correct, CDTFA?

MR. PARKER: This is Jason Parker. That is correct.

JUDGE BROWN: Okay. And then, Mr. Parker, you had raised, before we went on the record, that you wanted to clarify that the amount is going to be recalculated.

MR. PARKER: That is correct. So, we noticed an error in the calculation. They calculated it on the estimated taxable sales based on the credit card ratio using the sales tax reimbursement amounts. We estimate the penalty amount will go down from almost \$5,909 down to approximately \$5,220. So, we don't have the exact amounts since we haven't put it into our system yet, and we will perform a reaudit after this hearing. So, obviously, we want to keep the record open so we can file that.

JUDGE BROWN: Okay. Thank you for clarifying that.

I then want to turn to Appellant's representative and say I just want to confirm that Appellant understands what the issues are that the first issue is about the measure of unreported taxable sales. The second issue is about this penalty, and the third issue is interest relief.

MS. HOSSAIN: Yes.

JUDGE BROWN: And I'll just also confirm that

1 Appellant received the Minutes and Orders that I issued
2 that summarized these issues that we talked about at the
3 prehearing conference; correct?

4 MS. HOSSAIN: That's right.

5 JUDGE BROWN: Okay. Thank you.

6 Also, we discussed, at the prehearing conference,
7 that I asked you to look at the wording of the penalty
8 just so you understood what it was and what we what we
9 were talking about. And you're nodding your head, so --

10 MS. HOSSAIN: Yeah. Yes.

11 JUDGE BROWN: So, I also just want to make sure
12 you understood that this penalty is not a fraud penalty.
13 So, you don't need to establish anything about that you
14 didn't -- that Appellant didn't intend to underpay, tax
15 for example. That's not part of what the analysis is that
16 we're looking for the penalty or for the main issue, the
17 measure of unreported taxable sales. Is that --

18 MS. HOSSAIN: Yes, I got it.

19 JUDGE BROWN: Okay. You understand. Okay.

20 Then if no one has any questions about the
21 issues -- oh, I guess I will say, CDTFA, I'll just confirm
22 that I've correctly summarized the issues at this point to
23 your understanding?

24 MR. SAMARAWICKREMA: This is Nalan
25 Samarawickrema. Yes, Judge.

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JUDGE BROWN: Okay. Thank you very much.

Then if no one has any questions about the issues, I'm going to move on to talking about the exhibits. CDTFA timely submitted proposed Exhibits A through J. We had Exhibits A through I at the time of the prehearing conference, and then CDTFA submitted Exhibit J, based on our discussions during the prehearing conference. And my office received it on February 20th and the deadline to submit exhibits was February 20th. And the deadline to submit exhibits was February 25th. So it was timely submitted.

We also -- I also set a deadline to object to admission of any exhibits. That deadline was March 5th, but OTA didn't receive any objection. So I'll just confirm with Appellants that Appellant received CDTFA's exhibits and is not raising any objection to those exhibits being admitted; is that correct?

MS. HOSSAIN: That's right. I don't have any objections on Exhibit J.

JUDGE BROWN: Thank you. Or the other exhibits that we previously discussed at the prehearing conference; correct?

MS. HOSSAIN: That's correct.

JUDGE BROWN: Okay. Thank you.

So, if there's no objection, I will admit CDTFA's

1 Exhibits A through J.

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

4 MS. HOSSAIN: Okay.

5 JUDGE BROWN: Okay. Now, Appellant submitted
6 briefs to OTA, which are part of the record, and the panel
7 will consider Appellant's arguments in those briefs. We
8 did not receive exhibits from Appellant directly.
9 Although, documents that the Appellant submitted to CDTFA
10 are part of the exhibits that I just admitted, like emails
11 and a request for relief of interest and penalty. So
12 those are in the record.

13 And I will emphasize that although Appellant
14 didn't submit its own exhibits, Appellant can rely on
15 CDTFA's exhibits that have just been admitted, including
16 all the documents that, Ms. Hossain, that you submitted
17 previously in your emails. They are part of the record
18 now. So, I don't have any exhibits from Appellant to
19 admit.

20 MS. HOSSAIN: That's right.

21 JUDGE BROWN: Right. Okay. Then since I've
22 covered the exhibits, I'm going to move on to talking
23 about whether we'll have a witness testimony today. We
24 discussed at the prehearing conference that CDTFA is not
25 presenting any witness testimony. CDTFA is just going to

1 making arguments.

2 We did also discuss, Ms. Hossain, whether you
3 would be testifying as a witness today, and I think you
4 said -- I listed you as a witness, and you were going to
5 consider it, whether you're going to be testifying or just
6 making arguments. If you wish to have your factual
7 statements considered as evidence, then I will swear you
8 in, and you can testify as well as making your arguments.
9 Are you going to be testifying today?

10 MS. HOSSAIN: Yes.

11 JUDGE BROWN: Okay. Very good. And CDTFA did
12 not raise any objection to that previously.

13 All right. So, I'm just going to go over the
14 time frame for our hearing today. And that will be, after
15 I swear in the witness, then Appellant's presentation, we
16 had a time estimate of about 20 minutes.

17 Is that still correct? Yes. Okay.

18 MS. HOSSAIN: Yes. That's right.

19 JUDGE BROWN: Okay. Thank you.

20 And then CDTFA indicated that its presentation
21 will take about 30 minutes.

22 Is that still correct?

23 MR. SAMARAWICKREMA: Yes, Judge.

24 JUDGE BROWN: Okay. And then during -- after
25 each party's presentation, the panel may have questions.

1 JUDGE BROWN: Thank you. You can begin with your
2 presentation. You have 20 minutes.

3 MS. HOSSAIN: Okay. Thank you so much.

4

5 PRESENTATION

6 MS. HOSSAIN: As we have discussed that we will
7 be talking about three points today, I'm going to start
8 from penalty. So, for the California Revenue & Taxation
9 Code, we have 6597. I was reviewing the Code as Judge was
10 requested and also reviewing the Excel. So according to
11 the Excel schedule 12B, yes, we were talking about two
12 quarters based on CDTFA, quarter Q3 '19 and quarter -- I
13 think the last one for Q4 '21. What I did in the
14 calculations, I see from the column S the credit card
15 sales ratio Q3 '19 is way off. It's really off. It's the
16 percentage is showing 35,000.

17 JUDGE BROWN: Can I interrupt? Which page in
18 particular are you referring to? You said schedule but --

19 MS. HOSSAIN: I don't have --

20 JUDGE BROWN: Sorry. Go ahead.

21 MS. HOSSAIN: I don't have the page number. I
22 opened up the CDTFA workbook, and workbook has 12B.

23 JUDGE BROWN: Okay. Just 12B. Thank you. Go
24 ahead.

25 MS. HOSSAIN: That's right. Yeah. So, for

1 quarter -- third quarter '19, I see the percentage is way
2 high. Everything else is within 100 and 150 ranges. So,
3 if I exclude that line because it's way high, I'm going to
4 come back to it later. If I add the 11 quarters -- the
5 remaining 11 quarters, the percentage I'm getting 99.91.
6 The reason some quarters are higher, and the reason
7 there's some quarters lower, as I discussed with the
8 auditor before, that in some quarters we were paying more.
9 And when we're realizing that in the second quarter versus
10 the following quarter, we were paying less.

11 But if you total that out, auditor accepted that.
12 He understand that this is our first audit. We were doing
13 it, and he advised that I should not do that going
14 forward. So, for that reason, Q4 '21 is not a flag here.
15 The only flag I'm seeing, Q3 '19. So, the Code 5 --
16 6597(e), I was reading if the person's failure to make a
17 timely remittance occurred only once over a three-year
18 period or once during the period in which the person was
19 engaged in business, whichever time period is shorter, it
20 should be waived. Since we're paying -- since we're
21 having the audit for three years and for the 11 quarters,
22 the total is matching.

23 For one quarter problem, sure this is something
24 that I missed. I was checking CDTFA website when I was
25 filing, and I was going all the payments that I was

1 making, and it didn't make sense to me why Q3 '19 is off.
2 It is way off. I believe this was overlooked by me, and I
3 missed paying. But every other quarter, if you check,
4 it's very reasonable numbers. If one quarter is low, the
5 other quarter is high, but the total average is
6 99.91 percent. So, the analysis or the comments we have
7 in the Excel, I believe it should be done in more depth
8 and thinking about different perspective as well. For
9 that reason, it's not a repetitive one, and it doesn't
10 show a pattern that we underpaid. For that reason, I
11 think 40 percent penalty would not be appropriate.

12 Now, I'm falling to the next point. I'm going to
13 talk about the interest -- interest relief, which I have
14 6593.5. I was checking CDTFA website to understand more
15 about the law and how it works. I would like to add it's
16 on file somewhere because it's 500 pages. I had been
17 through all the pages, but it has a lot of repetitive
18 information in there. So, somewhere in there auditor
19 asked me more time. So, there was a delay from the CDTFA.
20 In August 2022, he asked for an extension, and I signed
21 it. And that was still 2023. He asked for January 2023.

22 For the interest, there's a Mama Order. There
23 was issues that we were having. And in October and
24 November 2023, when we are talking Mama Order, and I was
25 trying to explain why it is different. CDTFA asked for

1 more information. CDTFA asked me to match Mama Order with
2 POS system. So, what I did, I opened up each and every
3 receipts that we are getting from our customers and going
4 through each items. The item is twice or three times.
5 And then the third party has a markup, and the markup is
6 not the same always. Some markups are more. Some were
7 having discounts. Some were specials.

8 So by that, I did the math. And then I showed it
9 to CDTFA how it matches. And every transaction was
10 matching with the POS system time, and the third-order
11 party time. The reason we have Mama Order, because we're
12 moving from one system to another system, and we haven't
13 integrated our third-party orders to our POS system yet.
14 So everybody -- anybody's ordering in third-party website,
15 UberEats, DoorDash, or Grubhub, somebody has to prepare
16 the order in the kitchen. So, we are just keying in in
17 our POS system so somebody can prepare the order, and then
18 we can deliver it. That was the purpose, and we showed
19 how it matches. And that was asked to us October and
20 November 2023.

21 So audit was going. They were asking the
22 questions. I was providing them evidence. So, it was not
23 really delaying for us. And any time they were asking for
24 any records, there was a Zoom call, there are vendors
25 invoices. We have CPA to prepare tax returns, POS

1 reports, anything auditor was asking, I was providing in a
2 timely manner. There wasn't any delay. There was nothing
3 that I was giving any hard to time to the auditor. He was
4 very nice to me as well. So, I believe our POS system
5 records and reports are largely consistent, and we were
6 very cooperative in providing all the documentation. And
7 audit analysis and additional request was taking longer
8 time. So we should be relieved from interest.

9 Now, if I'm talk -- coming back to the point
10 number one, that's the main point we are here today. If
11 I'm talking back about our restaurant, it's a small
12 family-run restaurant. My mom opened up the restaurant.
13 She's the chef over there. And we had -- we are two
14 sisters. We both are helping my mom. My dad is there.
15 My husband and my sister's husband is also there. We have
16 family friends. We have Kaiser Permanente specialist
17 doctors. They are our friends. You know, in the Bay Area
18 we have friends. And they are also helping whenever its
19 needed, because they all love my mom's food, and they
20 would like to see the restaurant success.

21 We want -- we were going through very hard time
22 during COVID time. It was difficult -- very difficult for
23 us to survive, especially, when we are seeing all the
24 restaurants are closing down. But with very minimum --
25 minimal labor, we were trying to survive. So, the

1 90 percent credit card ratio guideline, that was based on
2 Baker Tilly's wage analysis. It was in schedule 12(a)(4).
3 Our restaurant doesn't really fit into any standard
4 restaurant model. We believe we have a very unique
5 restaurant. None of us ever had any restaurant experience
6 before.

7 I remember when we first started our soft
8 opening, people are lining up outside, and I was so
9 nervous. I was in the kitchen. There are so many tickets
10 were coming, and I don't know where to start from. So as
11 time goes, we learned how to run the business and how we
12 can evolve our systems over time. We went to -- we were
13 not perfect. Now, we are pretty stable situation. But at
14 that moment, we are shopping for different POS system. We
15 are trying to figure out which one was cheaper for us,
16 reasonable. And also the data we want to get it's there.

17 I would like to mention about Q4 '19, Q4 '20, and
18 Q3 '21, we overpaid our taxes. So, we requested for
19 refund. That is in schedule A in the Excel. And that
20 refund was denied because audit was depending on projected
21 sales calculations. And there is a voided transaction.
22 So voided transaction, I think it has -- let me go
23 there -- yes. It's 12(a)(3)(B). It's saying we have
24 20 percent voided transactions. The 20 percent voided
25 transaction is basically coming from the Mama Orders. So

1 those are not really voided. Those are actual
2 transactions we were voiding in POS system to make sure we
3 don't have the duplicates in there. And normally, our
4 voided transactions may be 1 to 20 percent. We cannot
5 avoid that.

6 We have the no-cash policy in our system in our
7 restaurant. The reason is, it's a family business. And
8 whoever in the front, we don't want to distrust anybody.
9 So if we have everything credit card process, there is no
10 question asked to anybody. But, definitely it's not
11 100 percent accurate. Anything can happen. So, I was
12 saying maybe 1 to 2 percent are voided and maybe
13 misplaced, that we are not getting, you know, gross sales.
14 And when we are filing our tax returns, when we are
15 voiding the gross sales, that is the net of that bad
16 debts.

17 There was an undercover transaction happened.
18 That's the email I sent to you that should not be
19 presented. Because first of all, it happened outside of
20 the audit period. And the second reason is, it's a single
21 isolated transaction, and the transaction is very small.
22 We are not denying it didn't happened. Might have
23 happened.

24 When auditor was asking from us informations, we
25 had provided all the information, all the data for that

1 date. If we're intentionally were doing something, if I
2 knew, I might have just asked auditor that, or finding
3 excuses not to do that. We haven't done that. We didn't
4 even know that it happened. And that is the main reason
5 we are trying. It's a no-cash policy, so we can minimize
6 that procedure.

7 And I -- I would like to strongly say here that
8 single one transaction cannot definitely define the three
9 years of million dollar sales that we were having in the
10 restaurant. And as CDTFA already mentioned, there's an
11 error. They found it now. So, I was just thinking if I'm
12 not coming to this point, I don't know, maybe we have paid
13 that amount.

14 And there are another possible error I found in
15 Excel that's not a material error, but it is there. It's
16 on schedule 12 in the comment section. I believe it's a
17 typo from the data entry error. Instead of -- let me just
18 go there. Instead of they should be talking about Q4 '21,
19 they were saying Q4 '19. But I guess that's a typing
20 error from the data entry.

21 So overall my conclusion is our restaurant is a
22 very unique business model we are running as a family. We
23 are creating our own menus. This is the only Bengali
24 restaurant we have in the Bay Area. We bring fish from my
25 country. It takes long time to come here, but people are

1 craving for that fish. That's a very staple fish in our
2 country, and people are coming to our restaurant from
3 different states to eat the food.

4 And the POS system records, it's reliable and
5 consistent because we put a lot of time and effort to make
6 sure we can process everything systematically. The voided
7 transaction is very minimal, what happened. And I have
8 explained several times before that 1 or 2 percent can
9 happen. We cannot avoid that. But most of the cases, I
10 can say 99 percent they're accurate, and we can rely on
11 our POS system.

12 The overpaid quarters, they were excluded when
13 they were doing -- CDTFA was doing the calculations. The
14 quarters I mentioned, there are three quarters, 4Q '19,
15 Q4 '20, and Q3 '21, they were excluded when CDTFA was
16 calculating their percentages in the most cases, and I
17 believe they should be included. If we overpaid, that
18 should be included as well. As I just proved, it means
19 that just because we overpaid, we paid less in Q4 '21. So
20 Q4 '21 doesn't have anything that we paid less. So, for
21 the penalty section, that is already excluded.

22 I think that is all I have. Thank you. I don't
23 know if it's 20 minutes or more than that.

24 JUDGE BROWN: Okay. Thank you very much. We may
25 have questions for you now, and we also may have questions

1 for you after we hear CDTFAs presentation. Let me start
2 with a question that I mentioned during the prehearing
3 conference and put into the prehearing conference order.
4 You know that I'm curious about how did your customers
5 know about the no-cash policy?

6 MS. HOSSAIN: The customers we have in our
7 restaurant, they're all repeat customers. We all know
8 them. It's a small business. We have very small Bengali
9 community. It's definitely for them only. Other people,
10 they are rarely come into our restaurants. So, by word of
11 mouth and whenever they're coming, my mom is always there.
12 Our family other members are there. So, they're always
13 explaining that we are not taking cash. And most of the
14 time, they don't even offer cash. They like to pay by
15 credit card.

16 JUDGE BROWN: So it's just by word of mouth?

17 MS. HOSSAIN: It's just by word of mouth. We
18 have some signs before and printed out and written
19 somewhere. When the restaurant gets busy, it's easier for
20 them. But I tried to find some evidence from the Yelp
21 review or different pictures. There wasn't anything I
22 found, or that I can significantly show you that it's the
23 no-cash policy over there.

24 JUDGE BROWN: Okay. All right. Thank you. Oh,
25 I realized I -- before I turn to my co-panelists, I will

1 ask if CDTFA has any questions for the witness.

2 MS. HOSSAIN: Okay.

3 MR. SAMARAWICKREMA: This is Nalan
4 Samarawickrema. We don't have any questions for the
5 witness.

6 JUDGE BROWN: Okay. Thank you.

7 Then I will turn to my co-panelists.

8 Judge Ralston, do you have any questions at this
9 time?

10 JUDGE RALSTON: Yes. This is Judge Ralston.
11 Just a couple of quick questions. You said that the
12 returns were prepared by a CPA. Is that just the income
13 tax returns, or does that include the sales and use tax
14 returns?

15 MS. HOSSAIN: Income tax returns. Sales and use
16 tax returns are prepared by me.

17 JUDGE RALSTON: Okay. And with regard with the
18 no-cash policy, is that something that was -- when exactly
19 was that implemented? Since you opened, or at sometime
20 later?

21 MS. HOSSAIN: No. It's since we opened. So, we
22 opened -- when we opened, our restaurant was using
23 ShopKeep, and ShopKeep reports, they have some cash
24 transactions in there. That was -- that was showing on
25 the report. And later, when we were seeing the cash is

1 having a problematic thing for us, then we came up with
2 the plan that there is no-cash policy in the restaurant.
3 Because we were having some arguments between family
4 members, and we didn't want that.

5 JUDGE RALSTON: Okay. Thank you.

6 MS. HOSSAIN: You're welcome.

7 JUDGE BROWN: Thank you.

8 Then I will ask Judge Aldrich. Do you have any
9 questions at this time?

10 JUDGE ALDRICH: Hi. This is Judge Aldrich. I do
11 have a couple of questions. So, it sounds like the
12 uniqueness of the restaurant is the fact that it's
13 Bengali, and that it's family run. Are there any other
14 areas where you attribute it to being unique?

15 MS. HOSSAIN: I would say when we were creating
16 our menus for the restaurant, there wasn't any reference
17 that we can look for it. So, it's more like we were
18 guessing how -- when we were cooking something, what is
19 the material cost, how long it's taking. So, coming up
20 the menu, that was unique. Also, what should be for
21 appetizers, main course, and deserts, that's something
22 unique. We seen in other states they copied our menus and
23 came up with the same thing because they were seeing that
24 that items is popular. That item is running.

25 So, any other uniqueness? My mom is cooking.

1 She is the chef over there. That's the only reason we
2 wanted to open the restaurant because I heard if you
3 have -- hire chef, that's a huge problem. That is a huge
4 conflict. It happens in restaurants, but she's the owner
5 too. So, if she is the owner, and she is in the
6 restaurant, then she will be cooking because she's doing
7 it for herself.

8 JUDGE ALDRICH: Okay. As follow up, if I enter
9 the restaurant, will I be greeted by a hostess? Is it
10 where I purchase at the counter and then get a number and
11 wait for my order to arrive, and they bring it to me? So,
12 is it like is it fast casual? Is it fine dining? Is it
13 just casual? How would you describe that experience for a
14 customer?

15 MS. HOSSAIN: I would say it's a casual one,
16 definitely not fine dining. Yes, there is an entrance
17 area. Most of the time people are not there. They're all
18 working in the kitchen because we don't have somebody to
19 stay in the front. So, we have a bell system. So,
20 anybody enters in the kitchen, there's a bell rings, and
21 then somebody comes from the kitchen and greet that
22 person. If somebody -- he wants to dine-in or it's a
23 to-go -- now, it's mostly to-go. Before COVID the
24 scenario was different. And if there is any third-party
25 order, they provide that.

1 And yes, there is a number. We have, I think,
2 about 28 to 30 seating space inside. Outside people are
3 not sitting there anymore. But we have some spaces. We
4 give them a number then -- we don't give them a number.
5 Then we ask them to sit. They sit there first, and then
6 we bring the menu and give them the number, and we process
7 it.

8 JUDGE ALDRICH: Okay. And at the end of the meal
9 is when you would typically collect payment for dine-in?

10 MS. HOSSAIN: That's right.

11 JUDGE ALDRICH: And it's sort of like there are
12 designated waiters, but maybe not all the time depending
13 on how busy the kitchen is?

14 MS. HOSSAIN: That's right. Yes.

15 JUDGE ALDRICH: Okay. And were tips typically
16 paid on dine-in?

17 MS. HOSSAIN: I think that depends on the people.
18 But in our culture, it's not -- they're not very generous
19 about tips all the time. But some people are because they
20 see how hard we're working, and they're paying. Yes.

21 JUDGE ALDRICH: Okay. And how are tips typically
22 paid out? Were they paid out at the end of the day? End
23 of the shift?

24 MS. HOSSAIN: I need to think what they do. Yes,
25 that's paid out at the end of the shift when they're

1 closing. Then we calculate the tips, and then its paid
2 out.

3 JUDGE ALDRICH: Okay. In what form of payment
4 was that?

5 MS. HOSSAIN: If we receive the tips in cash,
6 then it's paid by cash. Otherwise, it will be going to
7 their paycheck.

8 JUDGE ALDRICH: Okay. And so going back to the
9 point of sale systems, my understanding is that there's
10 three different point of sales systems that the restaurant
11 was using during the liability period. Currently the
12 restaurant is using Toast. But prior to that, it used
13 ShopKeep from one quarter 2019 through fourth quarter
14 2020, and TouchBistro, four quarter 2020 through four
15 quarter 2021. Does that sound correct?

16 MS. HOSSAIN: That sounds right. Yes.

17 JUDGE ALDRICH: Okay. And I understand with
18 point of sale systems that there's often a software
19 component. But could you describe the hardware that comes
20 with each of those systems?

21 MS. HOSSAIN: Actually, my husband is part of
22 maintaining that. But so far I know overall it's a
23 high-level picture. ShopKeep -- TouchBistro -- no, Toast.
24 For Toast we have iPad. It came with that, and it -- it
25 has the hard -- hardware, and everything has to be

1 manually entered in there. It also has a keypad as
2 well -- I mean, iPad as well that we can take it to the
3 person when they're sitting, and we can take the order.
4 TouchBistro and ShopKeep, I believe they were the same.

5 JUDGE ALDRICH: Okay.

6 MS. HOSSAIN: I see what they -- it was
7 happening. It was a monitor kind of thing, and they're
8 typing on the orders in there. And I can -- since I do
9 the accounting, I can see in the back office everything
10 come in.

11 JUDGE ALDRICH: And when you were accepting cash,
12 was there a drawer or something like that where the cash
13 was kept, a kind of lock box, an envelope? I guess how
14 was it kept when it was kept?

15 MS. HOSSAIN: It was a drawer.

16 JUDGE ALDRICH: Okay.

17 MS. HOSSAIN: It was a drawer that had the
18 sections for each dollar amounts.

19 JUDGE ALDRICH: And did that drawer continue to
20 live at the restaurant through your adoption of Toast?

21 MS. HOSSAIN: That drawer was there, but cash was
22 collected every night. Cash was not kept in there, but
23 the drawer is there.

24 JUDGE ALDRICH: Okay.

25 MS. HOSSAIN: And the morning, my mom was taking

1 the cash home. And the morning, she was coming and
2 putting the cash in. And that's how we were as started
3 ShopKeep, with the beginning cash balance.

4 JUDGE ALDRICH: Okay. And but you changed to
5 TouchBistro, and you kept the same drawer in the same
6 spot?

7 MS. HOSSAIN: When we changed to TouchBistro, I
8 don't think we were receiving that much cash. But yes,
9 same drawer, same thing, same policy.

10 JUDGE ALDRICH: And the same true for Toast?

11 MS. HOSSAIN: It's true for Toast as well, yes.

12 JUDGE ALDRICH: Okay. And then during the -- for
13 the interest relief, you indicated that you worked well
14 with the department. You provided everything they asked.
15 For -- did you ever provide bank statements?

16 MS. HOSSAIN: That was not asked.

17 JUDGE ALDRICH: Okay. And then I think those are
18 all my questions. Thank you for your testimony.

19 I'm going to refer it back to Judge Brown.

20 MS. HOSSAIN: Thank you.

21 JUDGE BROWN: Thank you.

22 I thought of one more question I'll ask at this
23 point. I have seen multiple places in the evidence about
24 the term Mama Orders, and the witness -- you used it as
25 well during your testimony. It's my understanding that's

1 a phrase you created for your POS system.

2 MS. HOSSAIN: That's true.

3 JUDGE BROWN: Can you explain it to the panel?
4 What is it supposed to mean?

5 MS. HOSSAIN: Oh, it doesn't mean anything. It's
6 my mom's restaurant, so we say mama and order. We just
7 had to have some kind of name so we can separate it out
8 which one is duplicate.

9 JUDGE BROWN: I'm sorry. Which one is what? I
10 didn't hear.

11 MS. HOSSAIN: Which one is duplicate. Duplicate
12 means which one is coming from the third-party so we can
13 separate that out.

14 JUDGE BROWN: So, a Mama Order a third-party
15 order? Like a --

16 MS. HOSSAIN: That's right.

17 JUDGE BROWN: GrubHub or UberEats. That's what
18 you call --

19 MS. HOSSAIN: That's right.

20 JUDGE BROWN: -- A Mama Order?

21 MS. HOSSAIN: That's right.

22 JUDGE BROWN: So, why -- do you have an
23 understanding of why CDTFA found cash sales in the point
24 of sale transactions for 420 through 421 -- I'm sorry --
25 fourth quarter of 2020 through the fourth quarter of 2021?

1 Do you think --

2 MS. HOSSAIN: There should be. There can be some
3 cash transactions, but I believe those are very minimal.
4 I don't have the data in front of me right now, but I
5 believe it was only the ShopKeep. It was a little bit
6 higher, but after that it was going very low. Do you see
7 that in any of the pages where --

8 JUDGE BROWN: Yes. Let me see point you to --
9 for example, schedule 12A-3B.

10 MS. HOSSAIN: 12A --

11 JUDGE BROWN: This is a quarterly POS sales
12 report for TouchBistro.

13 MS. HOSSAIN: This is completely Mama Order, all
14 of them.

15 JUDGE BROWN: But do you see where it says cash
16 in column M?

17 MS. HOSSAIN: M.

18 JUDGE BROWN: It's a total \$1,109.17.

19 MS. HOSSAIN: That's right. Yes, I can see that.

20 JUDGE BROWN: So, are you saying that that's the
21 minimal amount that you were talking about, or are you
22 saying that is incorrect that that wasn't cash?

23 MS. HOSSAIN: No, I think that is correct. If
24 that is in the system, that is definitely correct, and
25 that is on the reports; and that I believe we paid tax on

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those as well.

JUDGE BROWN: Okay. And then same question for -- one second -- there's one more schedule like that.

MS. HOSSAIN: Okay.

JUDGE BROWN: Yes. It's schedule -- well, this one might not have as much relevance because this is 12A-3A. It's for the first quarter of 2019 through the fourth quarter of 2020. And my understanding is you changed to the no-cash policy sometime in 2020?

MS. HOSSAIN: That's right. Yeah. I believe so sometime in 2020. But if any cash are coming, they're recorded in the system. And that's coming -- that's not coming very often.

JUDGE BROWN: All right. Do you have that schedule, the page I was saying, schedule 12A-3A? It's a shop --

MS. HOSSAIN: Yeah, I have.

JUDGE BROWN: -- quarterly POS sales report for ShopKeep. If you look at --

MS. HOSSAIN: Column -- which column are you talking. It's said 12A-3A?

JUDGE BROWN: It's schedule 12A-3A, and it's column O that shows the cash sales.

MS. HOSSAIN: Cash sales. Yes.

JUDGE BROWN: It totals \$19,743.04, but it

1 decreases significantly once you get into 2020.

2 MS. HOSSAIN: That's right. Yes.

3 JUDGE BROWN: Okay. So, you're not disputing
4 these amounts that these were cash sales?

5 MS. HOSSAIN: No. These are cash sales, and
6 these, we paid tax for them already. Yeah.

7 JUDGE BROWN: All right. I think those are all
8 my questions that I have at this time. But as I said the
9 panel may have more questions after we hear from CDTF.

10 MS. HOSSAIN: Okay. Sounds good.

11 JUDGE BROWN: So, at this time, I'm going to say
12 that we are going to -- we're concluding Appellant's
13 presentation right now, and we will turn to CDTF.

14 And, CDTF, whenever you are ready, you have
15 30 minutes to make your presentation.

16 MR. SAMARAWICKREMA: All right. Thank you,
17 Judge.

18

19 PRESENTATION

20 MR. SAMARAWICKREMA: Appellant, a California
21 corporation, operates a restaurant in Fremont, California.
22 Appellant contracts with third-party for delivery
23 companies and sells food through these online platforms.
24 Appellant also provides catering services to their
25 website. The Department audited Appellant's business for

1 the period January 1st, 2019, through December 31st, 2021.
2 During the audit period, Appellant reported total and
3 taxable sale of around \$997,000; and this is shown on
4 Exhibit A, page 49.

5 During our presentation, we will explain why the
6 Department rejected Appellant's reported taxable sales;
7 why the Department used an indirect audit approach; how
8 the Department determined Appellant's unreported taxable
9 sales for the audit period; Why the Department recommended
10 a 40 percent penalty on unlimited sales tax reimbursement
11 collected; and whether the Department recommends relief of
12 interest for any periods.

13 During the audit, Appellant informed the
14 Department that they made sales to their point of sale
15 system and used point of sale information to prepare their
16 sales and use tax returns. However, Appellant failed to
17 provide complete POS information necessary to verify the
18 accuracy of the amounts reported on their sales and use
19 tax returns for the audit period. In addition, Appellant
20 did not provide complete purchase invoices or purchase
21 journals for the audit period.

22 The Department did not accept Appellant's
23 reported taxable sales due to lack of reliable reports,
24 inconsistent reported book markups, and high reported rent
25 ratios. The Department also determined that Appellant's

1 record was such, that sales could not be verified by a
2 direct audit approach. Therefore, the Department relied
3 upon an indirect audit approach using Appellant's credit
4 card sales ratio to determine audited taxable sales for
5 the audit period.

6 The Department completed four verification
7 methods to verify the accuracy of Appellant's reported
8 taxable sales. First, the Department reviewed Appellant's
9 federal income tax returns for years 2019 and 2020 and
10 compared the sales reflected on federal income tax returns
11 of around \$688,000 to the reported total sales for the
12 same period. The Department calculated an overall
13 difference of around \$55,000; and this calculation is
14 shown on Exhibit A, page 84. The Department also compared
15 reported total sales with the cost of goods sold reflected
16 on Appellant's federal income tax returns and calculated
17 reported book markup of around 66 percent for year 2019
18 and 145 percent for year 2020. And the information
19 required to calculate these markups are shown on
20 Exhibit A, page 84.

21 These reported book markups are comparatively low
22 and vary substantially between two years. The Department
23 expect book markups to exceed the reported markups and to
24 remain relatively consistent from year to year, unless
25 there is significant change in pricing, product mix, or

1 operating conditions.

2 Second, the Department compared reported total
3 sale of around \$633,000 to the rent of around \$145,000
4 reflected on Appellant's federal income tax return and
5 calculated an overall rent ratio of around 23 percent.
6 And the information required to calculate this rent ratio
7 is shown on Exhibit A, page 84. Based on the high rent
8 ratio, the Department determined that the Appellant did
9 not report all their sales on their sales and use tax
10 returns. Based on the experience of audit of similar
11 restaurant in Appellant's area, the Department expected to
12 see a lower rent ratio for this restaurant.

13 Third, the Department compared Appellant's
14 recorded sales and collected sales taxes with the amounts
15 reported for the audit period; and this is shown on
16 Exhibit A, pages 68 and 69. Appellant's records reflected
17 around \$1.1 million in sales. While only \$997,000 in
18 sales was reported resulting in around \$126,000 in
19 unreported sales for the audit period; and this is shown
20 on Exhibit A, pages 68 and 69. The Department also
21 determined that the Appellant collected around \$105,000 in
22 sales tax but reported only around \$94,000; and this is
23 shown on Exhibit A, pages 68 and 69. Food, the Department
24 compared the reported total sales to the recorded credit
25 card sales and calculated an overall credit card sales

1 ratio of around 112 percent for the audit period; and this
2 is shown on Exhibit A, pages 78 and 79.

3 This means that Appellant's reported total sales
4 were lower than the total credit card sales for the audit
5 period, indicating that Appellant did not report all
6 credit card sales during the audit periods. Therefore,
7 the Department considered this is to be an unacceptable
8 credit card sales ratio for this type of restaurant.
9 Appellant was unable to explain the discrepancies
10 identified in the federal income tax returns sales
11 information, differences between recorded and reported
12 sales, low and inconsistent reported book markups, high
13 credit card sales ratios, and elevated rent to sales
14 ratios.

15 Accordingly, the Department conducted further
16 investigation by analyzing Appellant's credit card sales,
17 credit card sales ratios, available POS reports, and
18 reported sales. Appellant did not provide complete POS
19 information that is necessary to verify the accuracy of
20 reported taxable sales for the audit periods. Therefore,
21 the Department requested Appellant to maintain complete
22 daily sales records for a period of two weeks from Friday,
23 August 5th, 2022, to Thursday August 18, 2022, and
24 thereafter, conducted one-day observation on Friday
25 August 19, 2022, to verify the completeness of the

1 two-week sales records.

2 Prior to observation day, the Department made a
3 control purchase on August 18, 2022, which Appellant later
4 voided when they submitted their sales records to the
5 Department; and this is shown on Exhibit A, pages 85
6 through 87. The Department also observed that the
7 Appellant refused to accept cash payments during the
8 observation day. This limited the Department's ability to
9 determine Appellant's actual credit card sales ratios and
10 credit card tip ratios. As such, the Department
11 determined that the recorded taxable sales on Appellant's
12 POS reports were not reliable, and the Department was
13 unable to determine Appellant's credit card sales ratios.

14 Accordingly, the Department used Appellant's
15 third-party delivery sales, credit card sales, credit card
16 sales percentage of 90 percent, recorded credit card tip
17 ratios, and applicable sales tax rates to determine
18 audited taxable sales of around \$1.2 million for the audit
19 period; and this is shown on Exhibit A, pages 54 and 78.
20 The Department then compared the audited taxable sales to
21 the reported taxable sales to calculate unreported taxable
22 sales for the audit period; and this is shown on
23 Exhibit A, page 54. The Department noted credit
24 differences for three quarters of the audit period.
25 However, Appellant did not provide any documentary support

1 to substantiate or adjust those credit differences.

2 Finally, the Department determined unreported
3 taxable sales of around \$218,000 for the audit period; and
4 this is shown on Exhibit A, page 54. The Department then
5 compared the unreported taxable sales with the reported
6 taxable sales of around \$997,000 to calculate the error
7 rate of around 22 percent for the audit period. Since
8 Appellant failed to provide their complete POS sales
9 information, the Department used the best available
10 information to determine the unreported taxable sales for
11 the audit period, the audit calculation of unreported
12 taxable sales based on the best available information were
13 reasonable.

14 When the Department is not satisfied with the
15 accuracy of the sales and use tax return filed, it may
16 rely upon my facts containing the return or upon any
17 information that comes into the Department's possession to
18 determine if any tax liability exist. A taxpayer shall
19 maintain and make available for examination on request by
20 the Department all records necessary to determine the
21 correct tax liability under the sales and use tax laws,
22 and all records necessary for the proper completion of the
23 sales and use tax returns.

24 When a taxpayer challenge an audit of
25 determination, the Department has the burden to explain

1 the basis for that deficiency. When the Department's
2 explanation appears reasonable, the burden of proof shift
3 to the taxpayer to explain why the Department's asserted
4 deficiency is not valid. Appellant does not agree with
5 the audit findings. Appellant contends that they had no
6 cash transaction at the restaurant during the audit period
7 and, therefore, that the 90 percent credit card sales
8 ratio is not reasonable.

9 In addition, Appellant contends that the
10 Department did not take into account voided transactions
11 on their POS system and provided in support a summary of
12 alleged voided transaction totaling around \$10,000 for the
13 period November 2020 through December 2020 based on their
14 POS records during appeal process. Appellant assert that
15 these alleged transactions represented third-party
16 delivery orders that customers either canceled or did not
17 pick up, or items that were out of stock. The
18 Department's position is that Appellant's contention that
19 they had no cash transaction is not credible. Appellant's
20 own POS records and the Department's controlled cash
21 purchase on Thursday August 18, 2022, show that Appellant
22 accepted cash, which they later voided on the sales
23 receipts submitted to the Department.

24 With respect to the alleged voided transaction,
25 the Department determined Appellant failed to reconcile

1 alleged voided transaction in their POS system totaling
2 around \$11,000, with voided third-party sales totaling
3 \$84,000, leaving around \$23,000 in voided sales that were
4 not identified as third-party sales for the period
5 November 2020 through December 2020. The Department
6 further contends that the voided sales are not relevant to
7 the audit because it relied solely on Appellant's recorded
8 credit card sales from their POS reports, which do not
9 include voided sales to calculate audited taxable sales
10 for the audit period.

11 For the first time, Appellant objects to the
12 Department's use of controlled cash purchase to verify the
13 completeness of Appellant's sales information. Appellant
14 did not provide complete sales information for the
15 Department to verify the accuracy of sales reported for
16 the audit period. Appellant's own federal income tax
17 returns, sales reports, and credit card sales demonstrate
18 that the Appellant failed to report their sales
19 accurately. Although Appellant was able to provide the
20 current sales record for two weeks and the time of audit
21 field work and, therefore, the Department performed a
22 controlled cash purchase solely to verify the completeness
23 of the two-week sales information and to assess the
24 reliability of Appellant's POS information for the audit
25 period.

1 Accordingly, the Department rejected Appellant's
2 objection to the use of the controlled cash purchase. The
3 Department recommends 40 percent penalty for third quarter
4 2019 and fourth quarter 2021. The Department compared
5 sales tax reimbursement collected of around \$9,600 for
6 third quarter 2019, and \$11,000 for fourth quarter 2021
7 with Appellant's reported sales tax reimbursement
8 collected of \$300 for third quarter 2019, and \$7,200 for
9 fourth quarter 2021 resulting in a difference of around
10 \$9,300 for third quarter 2019 and \$3,700 for fourth
11 quarter 2021. To date, Appellant failed to explain the
12 reasons for not reporting the sales tax collected for this
13 period.

14 The Department further found that Appellant's
15 president is an experienced businessperson who has been
16 involved in the business in 2016. The Department also
17 found that the Appellant's president demonstrated
18 substantial knowledge in operating and navigating through
19 Appellant's POS system and personally prepared Appellant's
20 sales and use tax returns for the audit period. According
21 to the sales receipt for the Department's controlled cash
22 purchase at Appellant's business on August 18, 2022,
23 Appellant added sales tax reimbursement to the selling
24 price of food as a separate line item; and this is shown
25 on Exhibit A, page 87.

1 The Department notes that the Appellant voided
2 this cash transaction when it submitted their sales
3 receipt to the Department. Appellant's POS records also
4 show amount of taxable sales Appellant made and the sales
5 tax reimbursement they collected. The Department finds
6 that the foregoing establish that the Appellant knowingly
7 collected sales tax reimbursement from customers that they
8 failed to timely remit to the Department for the audit
9 period. In addition, the unremitted sales tax
10 reimbursement of \$9,300 for third quarter 2019 and \$3,700
11 for fourth quarter 2021, averages more than \$1,000 per
12 month and exceeds 5 percent of Appellant's reported sales
13 tax reimbursement collected of around \$300 for third
14 quarter 2019 and \$7,200 for fourth quarter 2021; the two
15 threshold required by Revenue & Taxation Code section 6597
16 to impose a 40 percent penalty for these two periods.
17 Accordingly, the Department finds that the 40 percent
18 penalty was properly imposed.

19 Finally, the Appellant request relief from
20 interest for audit period due to alleged unreasonable
21 delays in processing the audit. The Department conducted
22 an analysis of this case, including the time spent during
23 the audit appeal and settlement process; and this is on
24 Exhibit J. Based on this review, the Department
25 recommends that no interest relief be granted. However,

1 the Department granted automatic interest relief for the
2 COVID-19 pandemic impacted months of March 2020 through
3 June 2020.

4 Based on the foregoing, the Department determine
5 the unreported taxable sales based on the best available
6 information. The evidence shows that audit produce
7 reasonable results. Appellant has not provided any
8 reasonable documentation or evidence to support adjustment
9 to the audit finding. Therefore, the Department request
10 appeal be denied.

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

14 JUDGE BROWN: Thank you very much,
15 Mr. Samarawickrema.

16 Let me start with a question that -- about some
17 wording that I found and that I hear in your argument as
18 well that CDTFA is pointing -- I understand, of course,
19 the undercover cash purchase that was voided prior to the
20 observation day as support for not relying on Appellant's
21 records. But it's my understanding that CDTFA is also
22 pointing to the refusal of the business to accept cash
23 payments on the day of the observation test. I understand
24 the argument that CDTFA is saying because Appellant didn't
25 accept cash payment on the day of the observation test,

1 CDTFA couldn't determine a credit card ratio for that day.
2 But my question is, doesn't the refusal to accept the cash
3 payment also support Appellant's position that it was a
4 cashless business at that point, that it was not accepting
5 cash transactions?

6 MR. SAMARAWICKREMA: This is Nalan
7 Samarawickrema. When the auditor went to do the
8 controlled purchases, the day before the observations,
9 Appellant accepted cash.

10 JUDGE BROWN: I understand that was the day
11 before.

12 MR. SAMARAWICKREMA: Yeah. Right.

13 JUDGE BROWN: So, on the day of the observation
14 test, I saw -- my understanding is Appellant refused to
15 accept a cash purchase. Now, is it CDTFA's position that
16 that refusal was not reflective of a no-cash policy
17 because Appellant knew that it was the observation test
18 day?

19 MR. SAMARAWICKREMA: Judge Brown, the day before
20 when the auditor went to the business and paid cash, they
21 accepted. And during the observation when the customers
22 tried to pay cash, they refused to accept. So, the
23 question is that do they have different policies on
24 different days? And that one we don't know whether they
25 had different policies on different days.

1 MR. PARKER: Judge Brown, I'd just like to add
2 that --

3 JUDGE BROWN: Yes.

4 MR. PARKER: -- you know, the observation test is
5 to determine their sales on a normal type of business day.
6 And so, by having them not have this refusal to accept
7 cash not on the observation test day and where we can go
8 pay with cash and we'd know that there were other
9 transactions with cash throughout the period. We know
10 there were lots of voided transactions. And then on the
11 observation tests day, they refused to accept cash, which
12 kind of doesn't allow us to really perform a true
13 observation test of what the business was doing. That is
14 why we did not accept the no-cash policy.

15 JUDGE BROWN: But I guess my question is, does
16 the refusal to accept the cash purchase on the observation
17 day support Appellant's position that it was a cashless
18 operation by that point?

19 MR. SAMARAWICKREMA: I mean, Judge Brown, the
20 taxpayer's own record for three quarters support
21 85 percent credit card ratio, but we only used 90 percent.
22 So, if you check -- give me one moment to pull the exact
23 page number.

24 JUDGE BROWN: Sure.

25 MR. PARKER: Judge Brown, I'll just add one other

1 thing. The Appellant obviously has no sign that they
2 don't accept cash. There's no indication that they don't
3 accept cash. They do get credit card tips, which they
4 indicated were paid out on paychecks, but they have not
5 provided any evidence of that. Not that I'm aware of
6 anytime we asked for that, but generally speaking, credit
7 card tips are paid out the same day in cash. And -- and
8 then also, you know, we have -- we looked at Yelp. We
9 didn't provide any information from Yelp, but there's no
10 indication in any review that they will not accept cash.
11 And so there's no indication ever anywhere on a website or
12 any posting or anything, that they had this no-cash
13 policy, except the date of our observation test.

14 JUDGE BROWN: Okay. Thank you.

15 I will turn to my co-panelists and ask if they
16 have any questions.

17 Judge Ralston, do you have any questions at this
18 time?

19 JUDGE RALSTON: No questions. Thank you.

20 JUDGE BROWN: Okay. Judge Aldrich, do you have
21 any questions at this time?

22 JUDGE ALDRICH: I have a quick question. So,
23 with respect to the credit card sales ratio, what, if any,
24 considerations were made to account for COVID-19? I guess
25 this liability period kind of spans the COVID period of --

1 so 2019 there isn't really a lock down or anything, but
2 towards 2021, it does seem like there was a push towards
3 cashless systems and things like that.

4 MR. SAMARAWICKREMA: Judge Aldrich, for 2020, the
5 fourth quarter we accepted the reported sales. And for
6 your question, did we make a special consideration for the
7 second quarter 2020 when we are using 90 percent? We did
8 not because the -- the -- when we analyze the Appellant's
9 wage information, and based on that estimate that we
10 derived, supports the 90 percent credit card ratio.

11 JUDGE ALDRICH: Okay. And then with respect to
12 the observation day, my understanding is that typically
13 there would be multiple observation days first when an
14 observation day is employed. Why is it sufficient to have
15 one observation day in this particular appeal?

16 MR. SAMARAWICKREMA: Judge Aldrich, we -- the
17 Department policy is using three days. If we're using the
18 observation estimate additional sales or estimate sales,
19 but for this audit, we -- the Department used a one-day
20 observation. The only object here of that one-day
21 observation to see whether the two-weeks information is
22 complete. And yeah, so that's the reason the Department
23 did not do three-day observation. Only objective was to
24 verify whether the taxpayer provided information is
25 reasonable. And the Department also did a controlled

1 purchases before the observation day to verify whether the
2 sales were complete.

3 JUDGE ALDRICH: Thank you. I think that
4 concludes my questions.

5 I'm going to refer it back to Judge Brown.

6 Thank you.

7 JUDGE BROWN: Thank you.

8 I think I don't have any further questions at
9 this time. So that means that we go back to Appellant,
10 and Appellant will have five minutes just to address
11 anything that has arisen in the discussion, in the
12 questioning, or CDTFA's presentation that Appellant wants
13 to reply to. You can proceed whenever you're ready,
14 Ms. Hossain.

15 MS. HOSSAIN: Thank you so much.

16

17 CLOSING STATEMENT

18 MS. HOSSAIN: I had been trying to write a lot
19 from the beginning. So, for a cost of goods, yeah, as I
20 mentioned the cost of goods sold there's a one item. It's
21 a fish item that's coming actually from Bangladesh. One
22 fish cost \$100. Our cost of goods sold is high,
23 definitely. And during COVID time, what happened it's --
24 it -- when we order the supplies from -- we order from
25 New York. They are coming from New York. And then we

1 order at least three times in a year, sometimes two. I
2 think during COVID time we did two because it was less
3 sales. We order a lot, and we keep it in the -- in as a
4 storage as inventory that will be used throughout the
5 year.

6 And we were having loss at that time, and I was
7 putting my own money to the business so we can cover the
8 period, and we can survive that time. Our cost of goods
9 sold is high because we already have the expenses of
10 buying all the items. They're in there, but we're not
11 getting revenue that much. That's one thing.

12 Rent ratio, rent is higher over there. We had to
13 have -- our restaurant is very small. Especially, people
14 in the kitchen and the storage area. We don't really have
15 a lot of space. So, we do have storage outside, and I was
16 adding that to the rent as well.

17 And I already explained the 112 percent that
18 CDTFA was talking about for two quarters. It's actually
19 one quarter, and I accept that we haven't paid that one
20 quarter. I see its missing in CDTFA website, but other
21 quarters are working okay. And if you just calculate
22 that, it's not 112 percent. That's already explained on
23 my penalty section.

24 Anything else? And I heard a couple of times
25 CDTFA said we haven't provided the actual information.

1 That is something I don't -- I mean, I don't recall at
2 this moment because any time they're asking questions, any
3 documents, any POS, because we were actually having a Zoom
4 call and the auditor downloaded every single reports from
5 the three system he needed. We downloaded together, and
6 then I provided all the documents to him right then after
7 our call. And after every time he was asking for vendors
8 invoices, for the fixed asset and everything to check if
9 we're paying vendor sales tax. And he confirmed in the
10 report that we did, and we had been providing reports.

11 We didn't have the PDF copy of our tax returns.
12 Our tax -- tax CPR -- CPA, he's sending us only paper
13 copies. We are keeping one and filing one. But we
14 requested the PDF copy just to -- we can send it out to
15 CDTFA. And also for Mama Order, I -- it was just so past
16 the time because we were asked to provide Mama Order
17 details in October and November 2023, and I was looking
18 for data in 2029 -- '19 -- sorry -- or '20. So, I have to
19 call them and get access to the data, and sometimes they
20 provided the list. And when I provided the report to the
21 CDTFA, I calculated all the calculation. I explained.
22 And I have a screenshot of where I get the data from so
23 they can follow my work that how I did it.

24 I personally is an accountant. This is what I do
25 in my personal life. So it's a habit, so I did it that

1 way. It was easy for them to understand and follow, I
2 believe. For the observation, yes we accepted. It was
3 definitely a very one-off, very small amount. I don't
4 even know if they came for many days and observed. There
5 is no way we can tell. If they're saying they did it,
6 then yes, we accept they did.

7 But most of our customers are very repeated
8 customers. And yes, we accept that we never really have a
9 formal signature. I asked my husband. He was actually in
10 management of all the logistics in the restaurants. I do
11 accounting. My mom is cooking. My sister is sales.
12 Something like that. We all have our roles. And we were
13 about to buy it, but he was saying everybody already
14 knows. It's -- it's like nothing to do. But we should
15 have had it, but we don't. But sometimes on and off we
16 have some paper. For example, any special we print it
17 out, and we hang it. And then paper doesn't go well, and
18 then it goes off. I tried myself to figure out if that
19 no-cash policy is written anywhere. But I said, customers
20 were not really willing to pay cash all the time. I don't
21 see that very often in our community that they are willing
22 to pay cash all the time. Most of the time it's credit
23 card ratios, credit card payments, and anything was coming
24 in cash.

25 We were not really focusing on which is cash,

1 which is credit card. It's reported in the system, and we
2 are filing based on the report I'm downloading from the
3 system and processing at the CDTFA website. So, I believe
4 our POS system is reliable. So, we should not be going
5 even the projections. What the CDTFA is doing, they're
6 projecting the whole scenario and guessing, comparing, and
7 coming up with the data, which is we don't -- we don't
8 agree.

9 Thank you.

10 JUDGE BROWN: Thank you very much.

11 Before we conclude the hearing, I think I need to
12 setup the timeline for when I can expect the information
13 from CDTFA about the reaudit. My understanding is I won't
14 be able to close the record until I get this information
15 from CDTFA; is that correct, Mr. Parker?

16 MR. PARKER: Right. That's correct. It
17 shouldn't take us more than 30 days. We'll try to get it
18 done within the next week or so. We don't think it should
19 be a complicated reaudit adjustment, and we'll be able to
20 send that out. So, if we -- If we have 30 days, we'll do
21 our best to get it done within 7.

22 JUDGE BROWN: Okay. Thank you very much.

23 And I just want to check with Appellant that you
24 understand that we're going to leave the record open so
25 CDTFA can recalculate the penalty. It's going to be

1 lower. I don't anticipate that there's going to be
2 anything that Appellant will need to respond to on this
3 particular point, but I'm just wondering if I should leave
4 the record open to allow Appellant to respond to anything
5 that CDTFA submits about this. Well, let me ask first.

6 Ms. Hossain, do you anticipate you're going to
7 want to respond to CDTFA's new calculations, or is that
8 premature for you to know?

9 MS. HOSSAIN: I already explained the calculation
10 several times. If you want me to write it down and
11 explain. That's relative to the penalty, I can -- I can
12 reply saying it.

13 JUDGE BROWN: I'll say I don't think -- I'm not
14 asking you to, but I'll leave the record open just in
15 case. As you heard CDTFA saying, they're saying that the
16 amounts they calculate is too high. They're going to
17 low -- it's going to be slightly lower. If for some
18 reason there's anything -- we've already heard your
19 argument about why the penalty is incorrect, and I
20 understand that, and that is in the record. And the
21 stenographer will -- you know, that will be in the
22 transcript as well.

23 This is just if you're going to have any response
24 to the new reduced -- you know, to the calculations of the
25 reduced amount. I will say I'll leave the record open

1 for -- I don't know. I guess I'll say 30 days after we
2 get this from CDTFA for you to submit anything. Will that
3 be sufficient?

4 MS. HOSSAIN: Yeah, I mean, that -- that
5 definitely should be sufficient. If you can lower the
6 time as well, but I appreciate it.

7 JUDGE BROWN: That's fine. I can do it -- I can
8 say 15 days, if that's enough time for your, if you want
9 the record to close sooner.

10 MS. HOSSAIN: Okay. Yeah, that's right. I can
11 do that.

12 JUDGE BROWN: Okay. So I'll say we're leaving
13 the record open for 30 days for CDTFA to resubmit a
14 reaudit, and then I -- and then after CDTFA submits the
15 reaudit, Appellant will have 15 days to submit any
16 response, and then we will close the record. And then the
17 judges will meet and decide the case based on the evidence
18 and the arguments and the applicable law, and we'll mail
19 both parties our written decision no later than 100 days
20 from the date the record closes after we receive this
21 additional briefing.

22 If no one has anything further, then I can say
23 that the hearing is now adjourned, and the next hearing
24 will begin shortly in a few minutes.

25 Thank you everyone for participating today. We

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are concluded.

(Proceedings concluded at 2:28 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 2nd day of April, 2026.

ERNALYN M. ALONZO
HEARING REPORTER