

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
KIM BROTHERS WORLD WIDE, ) OTA NO. 241218331  
 )  
 )  
 APPELLANT. )  
 )  
 )  
 \_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, March 10, 2026

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Panel Lead: HEARING OFFICER KIM WILSON

Panel Members: ALJ KATRINE SHELTON  
ALJ STEVEN KIM

For the Appellant: J. KIM  
MARC BRANDEIS

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received into evidence at page 6.)

(Department's Exhibits A-J were received into evidence at page 6.)

O P E N I N G   S T A T E M E N T

|                       | <u>P A G E</u> |
|-----------------------|----------------|
| By Mr. Brandeis       | 7              |
| By Mr. Samarawickrema | 20             |

C L O S I N G   S T A T E M E N T

|                 | <u>P A G E</u> |
|-----------------|----------------|
| By Mr. Brandeis | 28             |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Cerritos, California; Tuesday, March 10, 2026

9:38 a.m.

HEARING OFFICER WILSON: We are going on the record.

This is the Appeal of Kim Brothers World Wide DBA the Blue Door Bar. OTA Case No. 241218331. The date is March 10, 2026, and the time is 9:38 a.m. This hearing is being held in Cerritos, California. I am Hearing Officer Kim Wilson. My co-panelists are Administrative Law Judges Katrine Shelton and Steven Kim. I will be the lead for purposes of conducting this hearing. However, we are equal participants in deliberating and determining the outcome of this appeal.

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

MR. BRANDEIS: My name is Mark Brandeis, CPA. I'm the taxpayer's authorized representative, and to my right is James Kim the Appellant.

HEARING OFFICER WILSON: Thank you.

And CDTFA.

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

MR. PARKER: Jason Parker, Chief of Headquarters

1 Operations Bureau with CDTFA.

2 MR. BROOKS: Good morning. Christopher Brooks,  
3 attorney for CDTFA.

4 HEARING OFFICER WILSON: Thank you.

5 As stated in the Minutes and Orders, the issue to  
6 be decided in this appeal is whether further adjustments  
7 to the reaudited measure of taxable sales are warranted.

8 Appellant submitted one exhibit. CDTFA did not  
9 object to the admissibility of this exhibit. Therefore,  
10 Exhibit 1 is admitted into evidence.

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

13 HEARING OFFICER WILSON: CDTFA submitted  
14 Exhibits A through J. Appellant did not object to the  
15 admissibility of these exhibits. Therefore, A through J  
16 are admitted into evidence.

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

19 HEARING OFFICER WILSON: Appellant indicated,  
20 during the prehearing conference, that they will not be  
21 calling any witnesses to testify.

22 Is that still correct, Mr. Brandeis?

23 MR. BRANDEIS: That's correct.

24 HEARING OFFICER WILSON: Thank you. Mr. Brandeis  
25 you will have 30 minutes for your presentation. You may

1 proceed when you are ready.

2 MR. BRANDEIS: Thank you.

3

4 PRESENTATION

5 MR. BRANDEIS: So petitioner is a California  
6 corporation doing business as the Blue Door Bar in  
7 Fullerton, California, on Euclid Street. The Blue Door  
8 Bar is your typical neighborhood dive bar. They are  
9 operating in a working class neighborhood. Their taxable  
10 sales include beer, both bottle and draft, cocktails,  
11 carbonated beverages, and a small amount of apparel,  
12 shirts, hats, and things of that nature. Petitioner also  
13 has nontaxable sales, which mainly consist of California  
14 lottery tickets and bar games, like pool, darts, and that  
15 nature. During the audit period in question, operating  
16 hours were from 11:00 a.m. to 2:00 a.m. Monday through  
17 Saturday, and 10:00 a.m. to 2:00 a.m. on Sunday. And  
18 during football season, they opened at 10:00 a.m.

19 This case initially started as an inquiry from  
20 Sacramento that sent the letter to the taxpayer, Exhibit 1  
21 that we provided, indicating that there was a problem with  
22 the markup in 2019 and requesting that the petitioner  
23 amend their returns. That's when Mr. Kim contacted me.  
24 We had a meeting, and we looked at what -- what had  
25 occurred in 2019. And we didn't see any problems with the

1 reporting, so we declined to amend the return. Upon  
2 notifying Sacramento that we would not be amending the  
3 returns, they referred the case to the district office for  
4 an audit.

5 At the beginning of the audit, we cooperated in  
6 every way. We provided income tax returns, bank  
7 statements, 1099-K forms. We downloaded and provided the  
8 POS data. We provided detailed purchases that the auditor  
9 requested for March of 2022. We provided sample photos of  
10 the menu. There's additional records that were provided  
11 later. I'll get into that. At a later date, we did  
12 provide a bar fact sheet and also, a very detailed  
13 purchases record for the year -- the entire year of 2021.  
14 In addition to the records that were provided, the  
15 Department circulated the taxpayer's alcohol vendors and  
16 also subpoenaed the POS data from Clover. The taxpayer  
17 uses the Clover POS system to record their sales.

18 Pardon me.

19 There was a brief discussion about their prices.  
20 The petitioner has both discounted sales and happy hour  
21 prices. There are no cover charges at the Blue Door Bar.  
22 Taxable items are sold with sales tax reimbursement  
23 included in the retail selling price; not added to the  
24 retail selling price, but included. And petitioner, when  
25 he filed his sales and use tax return, he netted the

1 nontaxable sales. That is the lotto and the games  
2 revenue, and also sales tax reimbursement from the gross  
3 receipts. So gross receipts reported were net taxable  
4 sales.

5 Petitioner evaluates their prices at the  
6 beginning of every year. Generally, he'll raise his  
7 prices a little bit at the beginning every year. However,  
8 this inquiry covers 2020, so during COVID. He -- after  
9 the reopening, he reevaluated his prices because  
10 inflation, as we recall, was at 40-year high. And so  
11 prices were adjusted when he reopened the first time  
12 during 2020. Keep in mind there were -- there were two  
13 shutdowns -- state mandated shutdowns for bars during --  
14 during 2020. The price changes were included in the POS  
15 data obtained by the Department from Clover.

16 Petitioner is also the -- many of the clientele  
17 at the Blue Door Bar are of law enforcement first  
18 responders. The petitioner himself is a former law  
19 enforcement agent. He worked as a federal agent for the  
20 postal service. He was actually a -- a federal agent for  
21 the postal service while this inquiry was going on. He  
22 retired in 2022. Just to say something about that, people  
23 that work as federal agents, federal law enforcement go  
24 through a rigorous vetting process before they can be  
25 hired to work for the federal government. These are the

1 folks that have, generally speaking, the highest  
2 integrity. Doing something like cheating on your taxes  
3 could -- could result in -- in losing his -- his job as a  
4 federal agent. So just to put that out there.

5 The other is that the petitioner owns the  
6 building and the land upon which it sits. So he has  
7 somewhat of an advantage against other bar owners who  
8 might be lessees. He doesn't have annual rent increases  
9 or things of that nature. And so for -- therefore, he's  
10 able -- because of the -- it is a dive bar, it's in a very  
11 much of a working class neighbor. He -- his prices are  
12 generally lower than maybe other bars -- other typical  
13 bars. At any rate, the Department, when they began their  
14 audit, the auditor, I think, was influenced by the -- the  
15 referral of the case from Sacramento. She was under the  
16 belief -- and I think she came into the audit instead of  
17 being impartial, I think she came into the audit with the  
18 belief that there was something wrong, because Sacramento  
19 told her that something was wrong. This sort of set the  
20 tone for -- for how the audit was conducted.

21 The -- the Department came to this conclusion by  
22 looking at the reported markup off of the federal income  
23 tax returns, which they declared were too low. Markup for  
24 2019 was 226 percent, for 2021 it 181 percent, for 2020 it  
25 was 250 percent. This is documented on audit

1 Schedule 12D; also in Appeals Bureau's decision, page 3,  
2 line 1. The auditor informed us that they expected book  
3 markups of 280 to 340 percent. Not for a bar like this,  
4 but that's what they expected.

5 At any rate, you can't really -- so Mr. Kim --  
6 let's talk about small business here. Mr. Kim, when he  
7 prepares for a meeting with his CPA to file his income tax  
8 returns, he compiles the information for the CPA. This is  
9 how it's generally done. CPAs, when they're preparing  
10 income tax returns are charging a fee to prepare the  
11 return. If a taxpayer just brings a box full of records,  
12 that would be a separate fee; probably more than the cost  
13 of preparing the return. So generally speaking, in small  
14 business taxpayers, they come to the accountant with  
15 numbers that they compiled. Well, that's what happened  
16 here. Mr. Kim compiled the numbers himself.

17 He's not an accountant. He's a cop. He doesn't  
18 know what goes into cost of goods sold. So when he  
19 prepared the cost of goods sold number, he threw things  
20 into cost of goods sold that really didn't belong there;  
21 things like consumable supplies, cleaning supplies and  
22 things like that. There were other things in cost of  
23 goods sold that didn't belong there. But also, because  
24 he's not an accountant, he didn't maintain. He didn't  
25 keep a -- the worksheet that he -- he had originally used

1 when he prepared the cost of goods sold number. So we  
2 didn't have that.

3 But I told the Department that the reason -- that  
4 there's a strong possibility that cost of goods included  
5 things that didn't belong in there, which would affect the  
6 markup if you're just going off the income tax returns.  
7 This case has a long history, so I'm trying to condense  
8 it. But the bottom line is we -- the auditor focused on  
9 the markup. She initially wanted to base it off of a one  
10 month March 2022. Those that understand auditing, when  
11 you pick a -- the smaller the -- the test base, the more  
12 likely that the test base may not yield an accurate  
13 result. So what we suggested is that we look at one full  
14 year. Again, the larger the test base, the less likely  
15 you're going to end up with an inaccurate result.

16 So we agreed with the Department. The year 2021  
17 would be examined in detail. I scheduled a meeting. He  
18 brought in all his records. We spent the whole day  
19 going -- segregating every invoice, every purchase, every  
20 receipt into a schedule. We scanned every document, and  
21 we then calculated the markup. And sure as -- sure  
22 enough, we concluded that the -- there were items that  
23 were included in the cost of goods sold that didn't belong  
24 there. We provided all that information to the  
25 Department. The auditor evaluated it. She circulated

1 vendors. So she doesn't take our word for it, which is  
2 what an auditor does. Her job is to verify.

3 She contacted the vendors directly. She got  
4 purchase information from them, and it -- and it matched.  
5 It was fine with what we provided. And when you did that  
6 and you -- and -- and -- and you start to back away the  
7 things that the Audit Manual instructs the auditors to  
8 back away, such as spoilage and waste, self-consumption,  
9 and so forth. 2020 -- 2021 comes within the 10 percent  
10 tolerance that the Audit Manual spells out. The audit  
11 should have ended there. We did a one-year sample out of  
12 a three-year audit period. We did a one-year sample test,  
13 and it came within the tolerance.

14 But instead, what they decided to do -- because  
15 again, I think they were influenced by this opinion  
16 from -- from somebody in Sacramento. They decided to  
17 project that into the other two years. Well, even when  
18 you do that 2019 falls out of the audit. It's within the  
19 10 percent tolerance, but 2020 doesn't. Well, what  
20 happened in 2020? What happened that would cause the  
21 markup to -- to be skewed in 2020? Well, COVID, of  
22 course. And bars were -- were impacted by COVID more than  
23 any other business. The -- there was the shutdown in  
24 March, then they reopened. I don't know exactly what time  
25 they reopened. And then they had a second shutdown. I

1 think it was in July. And then they had another reopen.

2 Well, imagine that you're trying to -- to -- you  
3 have to shutdown. You have to layoff your employees.  
4 This is extremely disruptive to the business. And then  
5 what does he do with all the beer and inventory in his  
6 walk-in freezer? To save money -- so if you look at the  
7 largest cost of a business, it's -- of a bar, the largest  
8 expense is going to be cost of goods sold. Well, he's not  
9 going to buy anymore inventory, so that cost goes to zero.

10 The next largest cost is going to be labor.  
11 Well, all the employees are --are laid off during the  
12 shutdown. So he has no labor. The third largest cost is  
13 going to be electricity. The electricity to power that  
14 walk-in freezer is very expensive. So to save money what  
15 did he do? He shutdown the -- the walk-in freezer. The  
16 problem with that is beer, although it can be stored at  
17 room temperature, it last much longer if it's  
18 refrigerated. If you look online, they recommend that you  
19 refrigerate it -- keep it -- keep it -- no --  
20 un-refrigerated no more than 30 days, otherwise it  
21 starts -- the taste starts to -- to go stale. They say  
22 that by -- between three months and six months the beer  
23 will become stale.

24 So we didn't know how long the shutdown was going  
25 to last. He shut -- he shutdown the refrigerators.

1 Unfortunately what he didn't do is also leave the door  
2 open and put a blower fan. And so what happened is the  
3 refrigerator with the door shut, the moisture from the  
4 refrigerator and heat from -- from no air conditioning and  
5 no refrigeration, mold spread inside the refrigerator --  
6 the walk-in refrigerator; and he had to discard all that  
7 inventory. Even if there was a reopen the next week, he  
8 couldn't sell -- sell that inventory. It's covered in  
9 mold.

10 So all these things skewed the markup for 2020.  
11 We've explained this to the Department. And even if you  
12 look at the results, we're covering 12 periods. The audit  
13 covers 12 periods, and 9 of the 12 periods is a no change.  
14 The only periods that have where they're saying the markup  
15 isn't high enough is during the 2020 period. Then there  
16 even came the question of whether he did shut down the  
17 refrigerators. We provided -- at the Appeals Bureau  
18 level, we provided a copy of the -- of his electric bill.  
19 And you can see on the electric bill he typically consumes  
20 about 5,300 kilowatts per month of electricity. During  
21 the COVID period, it goes down to about 1,700 kilowatts  
22 provided.

23 Well, it's not going to go to zero because he's  
24 got to leave the electricity on to run the alarm system,  
25 leave lights on so that -- again, this is a working class

1 neighborhood. You don't want it -- the place burglarized.  
2 You don't want squatters breaking in. So he had -- you  
3 can't -- you're not going to get the electric bill down to  
4 zero. But it -- a 70 percent drop. What would explain a  
5 70 percent drop in the electric bill? Those walk-in  
6 refrigerators which consume the lion share of the  
7 electricity.

8 I mean, there's no other -- what other  
9 documentation could we provide that shows that inventory  
10 was discarded? There's no form to fill out. It's -- it's  
11 one of the harder things to prove. So, therefore, when  
12 they did the markup for 2020, they should have should have  
13 given us a larger spoilage allowance. What did they give  
14 us? Three percent. That's nothing. He had to throw away  
15 all the inventory for -- for -- that -- that he had stored  
16 for the -- the last purchase cycle. It's much more than  
17 3 percent. If they had they given us that, I think 2020,  
18 this would have been a no change.

19 At any rate, the Audit Manual requires, when you  
20 use an indirect audit approach, such as this, that you  
21 back it up with a secondary method. She did that. She  
22 did have a secondary method. She had the cash to credit  
23 card ratio, which was noted on Schedule 12 A-B6. The cash  
24 to credit card ratio -- just for those that don't -- is  
25 a -- is a measure between the sales that were reported

1 from credit cards sales versus cash sales. It's one of  
2 the most easily verifiable methods because you can get the  
3 credit card sales information from the merchant card  
4 processors.

5 The cash sales would be the difference between  
6 the sales reported by the merchant card processor and the  
7 reported sales. It has to be cash. During the audit  
8 period, the 2019, he had a 56 percent credit card ratio.  
9 In 2020, the credit card ratio went -- increased slightly  
10 to 60 percent, from 56 to 60 percent. And from 2021, it  
11 went to 62 percent. Well, I would actually expect it  
12 to -- the credit card ratio to slightly increase. Because  
13 again, if you recall during COVID, the government was  
14 telling us that handling cash was one way of spreading  
15 COVID, and they wanted to go to contactless systems. So  
16 we had a slight increase in -- in credit card sales, which  
17 would be expected.

18 I think if you add the -- the Department's  
19 alleged under -- that has to be cash sales. It can't --  
20 you can't hide the credit card sales, so it has to be cash  
21 sales. That would actually have reduced the credit card  
22 ratio, and he would probably be the only bar in California  
23 that took more cash instead of less cash in 2020 versus  
24 the prior year. The bottom line is that secondary method  
25 does not support the first method. It just doesn't.

1           In addition to that, again, we provided the POS  
2 data to the Department. The auditor subpoenaed Clover.  
3 Again, she has right to verify. Don't take our word for  
4 it. We could have manipulated the data. So -- so let's  
5 get it from the source. She did that. She -- she  
6 obtained the POS data from Clover, and she compared the  
7 Clover data to what we provided. Guess what? It matched.  
8 It matched. In all material respects, it matched. You  
9 can go look at 12F for that, Schedule 12F.

10           Then the auditor concluded that the data that she  
11 got from Clover showed that there were some -- as she  
12 called them -- removed items from the data. Well, the  
13 removed items were simply voided transactions. Every bar,  
14 every restaurant, every business is gonna occasionally  
15 have to void an item. A customer who walked out without  
16 paying. A customer that says their drink was not prepared  
17 correctly, and they want a refund. This just happens in  
18 business. And when you -- and -- and so on  
19 Schedule 12F-1, she scheduled all the removed items and  
20 calculated a ratio of the removed items to the non-removed  
21 items. And guess what? There's no change.

22           It's -- every year throughout the audit is  
23 materially the same. So the no change periods, '19  
24 through '21, the removed items are essentially the same as  
25 during 2020. So the only conclusion, since the POS data

1 matches, is that he would have to be making cash sales not  
2 rung up in the POS system ever. I mean, that would be  
3 fraud. There's no fraud allegation here. The POS data  
4 matches. The -- the returned item -- the removed items  
5 ratio is -- sits around 6 percent throughout the audit  
6 period. I would expect that if you're -- if you have a  
7 period that's a change period and you're alleging that  
8 there's removed items, that you would have a higher  
9 removed item ratio. That doesn't exist here.

10 There's really no evidence. Zero evidence for  
11 supporting impeaching the records in the first place.  
12 None. The markups based on a -- a thorough one-year test  
13 fall within line for 2021 and 2019. The only period is  
14 2020 where it's slightly off for reasons that we've  
15 already discussed. She circulated the vendors to verify  
16 the accuracy and completeness of that cost of goods sold  
17 markup. That was fine. She subpoenaed Clover to get the  
18 data and compared it to what we provided her. It matched.  
19 The removed items ratio is essentially unchanged from 2019  
20 through 2021. There's no evidence here. No secondary  
21 method. Her secondary -- she doesn't have a secondary  
22 method that backs up the first. That's an Audit Manual  
23 requirement.

24 This should have been a no change audit. The  
25 Department has -- had dragged Mr. Kim through the ringer

1 for five years. This should have been a no change audit,  
2 and that's what we're asking for today.

3 Thank you.

4 HEARING OFFICER WILSON: Thank you.

5 Judge Shelton, do you have any questions for  
6 Appellant?

7 JUDGE SHELTON: No questions at this time. Thank  
8 you.

9 HEARING OFFICER WILSON: And, Judge Kim, do you  
10 have any questions for Appellant?

11 JUDGE KIM: I don't have any questions right now.  
12 Thank you.

13 HEARING OFFICER WILSON: Thank you.

14 We'll go ahead and move to the Department. CDTFA  
15 requested 30 minutes.

16 You can begin your presentation when you're  
17 ready. Thank you.

18 MR. SAMARAWICKREMA: Thank you.

19

20 PRESENTATION

21 MR. SAMARAWICKREMA: Appellant is a California  
22 corporation doing business as the Blue Door Bar, a full  
23 service bar in Fullerton, California. Appellant makes  
24 taxable sale of liquor, beer, wine, carbonated beverage,  
25 and apparel, such as shirts, sweaters, and hats.

1 Appellant is also a California lottery retailer. The  
2 Department audited Appellant's business for periods  
3 April 1st, 2019, through March 31st, 2022. During the  
4 audit period, Appellant reported total and taxable sale of  
5 around \$1.9 million; and this is shown on Exhibit A,  
6 page 48.

7 During our presentation, we will explain why the  
8 Department rejected Appellant's reported taxable sales;  
9 why the Department used an indirect audit approach; and  
10 how the Department determined Appellant's unreported  
11 taxable sales for year 2020. During the audit, Appellant  
12 informed the Department that they made sales through their  
13 point of sale system and generated quarterly point of  
14 sales reports to prepare their sales and use tax returns.  
15 Due to unusual recording practices and low reported book  
16 markups, the Department did not accept Appellant's  
17 reported taxable sales. The Department completed four  
18 verification methods to understand Appellant's reporting  
19 practices and verify the accuracy of Appellant's reported  
20 taxable sales.

21 First, the Department obtained Appellant's  
22 federal income tax return from its internal sources for  
23 years 2019 and 2020. Appellant provided their federal  
24 income tax return for year 2021. This information is  
25 shown on Exhibit A, page 120, and Exhibit F. The

1 Department analyzed these federal income tax returns and  
2 noted Appellant's reported total sales were not sufficient  
3 to cover the operating expenses; and this is shown on  
4 Exhibit A, page 120.

5 The Department also compared reported taxable  
6 sales of around \$1.9 million to the purchases of around  
7 \$628,000 reflected on Appellant's federal income tax  
8 returns and calculated an overall total reported book  
9 markup of around 199 percent for the period January 2019  
10 through December 2021, which is low for this type of  
11 business. And the information required to calculate this  
12 markup is shown on Exhibit A, page 120. Accordingly, the  
13 Department did not accept Appellant reported taxable  
14 sales. In fact, based on the analysis available, sales  
15 and purchase information for March 2022 the audited  
16 weighted markup was around 272 percent; and that is shown  
17 on Exhibit A, page 67.

18 Second, the Department compared reported total  
19 sale of around \$1.9 million to the range of around  
20 \$228,000 reflected on Appellant's federal income tax  
21 returns and calculated a rent ratio of 12 percent for year  
22 2019, 21 percent for year 2020, and 9 percent for 2021.  
23 And the information required to calculate these rent  
24 ratios are shown on Exhibit A, page 120. Based on these  
25 rent ratios, the Department determined that Appellant did

1 not report all their sales on their sales and use tax  
2 returns.

3 Third, Appellant did not provide Appellant's  
4 complete POS sales download with all folders to verify the  
5 accuracy of reported taxable sales for the audit period.  
6 Therefore, the Department obtained Appellant's POS sales  
7 data directly from their POS provider. Based on this POS  
8 data, the Department discovered some sales items totaling  
9 around \$105,000 were removed from the Appellant's POS  
10 system; and this is shown on Exhibit A, page 134. This  
11 indicates that not all of Appellant's sales transactions  
12 were reported on their sales and use tax returns.

13 Fourth, according to Appellant's sales records,  
14 sale of around \$9,000 were recorded for second quarter  
15 2020. However, Appellant did not report any sales for  
16 this period; and this is shown on Exhibit A, pages 48 and  
17 112. Appellant was unable to explain with reasonable  
18 evidence for low reported markups, high reported rent  
19 ratios, and sales discrepancies on POS sales data.  
20 Therefore, the Department used Appellant's available  
21 federal income tax returns, purchase invoices, and sales  
22 information to determine unreported taxable sales.  
23 Appellant did not provide complete purchase information  
24 for the audit period. Therefore, to determine purchases  
25 available for sales, the Department contacted Appellant's

1 merchandise vendors to obtain purchase information. Some  
2 vendors responded with the purchase information; and this  
3 information is shown on Exhibit A, pages 196 through 202.

4 Since the Department did not receive complete  
5 purchase information from Appellant's vendors, the  
6 Department used Appellant's purchases reflected on  
7 Appellant's federal income tax returns. Appellant argue  
8 that those purchase amounts include supplies, mixers, and  
9 delivery charges. As support, Appellant provided detailed  
10 information to determine mixture, supplies, and delivery  
11 charge percentage of around 10 percent; and this is shown  
12 on Exhibit A, pages 122 through 132. Based on this  
13 information, the Department determined the purchases of  
14 around \$562,000; and this is shown on Exhibit A, page 117.

15 The Department also allow adjustment for  
16 pilferage of 2 percent for years 2019 and 2021, and  
17 3 percent for 2020, and sale consumption adjustment of  
18 2 percent to determine Appellant's purchases available for  
19 sale of around \$539,000 for the period January 2019  
20 through December 2021. And this is shown on Exhibit A,  
21 page 117. These purchases available for sales were  
22 compared with the reported taxable sales to calculate  
23 reported book markups of around 245 percent for 2019,  
24 201 percent for 2020, and 271 percent for 2021; and these  
25 calculations are shown on Exhibit A, page 117.

1           To verify the reasonableness of these reported  
2 book markups and to understand Appellant's product mix,  
3 pricing policies, and sales patterns during regular and  
4 happy hour, the Department analyzed Appellant's available  
5 purchase invoices and point of sale sales data for the  
6 period March 1st, 2022, through March 7, 2022. And this  
7 is shown on Exhibit A, pages 67 through 108, and pages 140  
8 through 195. Based on this information, the Department  
9 determined Appellant's audited weighted markup of around  
10 272 percent; and this is shown on Exhibit A, page 63.  
11 Based on these audited weighted markup and reported book  
12 markups, the Department accepted the reported sale for  
13 years 2019 and 2021. However, due to low markup for year  
14 2020, the Department determined it required to markup  
15 Appellant's purchases available for sale to calculate  
16 Appellant's audited taxable sales for 2020. And this is  
17 shown on Exhibit A, pages 63 and 117.

18           For the year 2020, the Department used the  
19 purchases available for sale of around \$112,000 and  
20 audited weighted markup of around \$272,000 to determine  
21 audited taxable sale of around \$415,000; and this is shown  
22 on Exhibit A, page 63. Audited taxable sales were  
23 compared with reported taxable sales of around \$336,000 to  
24 determine unreported taxable sales of around \$79,000 for  
25 the period January 2020 through December 2020. And this

1 is shown on Exhibit A, page 58.

2 In addition to unreported taxable sales of around  
3 \$79,000, the Department also assessed unreported  
4 self-consume purchases subject to use tax of \$11,000; and  
5 this is shown on Exhibit A, page 115. In total, the  
6 Department determined unreported taxable sales of around  
7 \$93,000 for the audit period. And this is shown on  
8 Exhibit A, page 54. Since Appellant had inconsistent  
9 reported markups, rent ratios, and removed taxable items  
10 from their POS system, the Department used the best  
11 available information to determine the unreported taxable  
12 sales. When the Department is not satisfied with the  
13 accuracy of the sales and use tax returns filed, it may  
14 rely upon any facts contained in the return or upon any  
15 information that comes into the Department's possession to  
16 determine if any tax liability exists.

17 A taxpayer shall maintain and make available for  
18 examination, on request by the Department, all records  
19 necessary to determine the correct tax liability under the  
20 sales and use tax laws and all records necessary for the  
21 proper completion of the sales and use tax returns. When  
22 a taxpayer challenge an audit of determination, the  
23 Department has the burden to explain the basis for that  
24 deficiency. When the Department's explanation appears  
25 reasonable, the burden of proof shift to the taxpayer to

1 explain why the Department's asserted deficiency is not  
2 valid.

3 Appellant did not agree with the audit findings,  
4 and asserted that the Department's audit approach failed  
5 to account for significant spoilage and waste of  
6 perishable resale inventory during the COVID-19 pandemic  
7 period, thereby, overstating unreported taxable sales for  
8 2020. Appellant also claimed their utility charges were  
9 low during the year 2020. However, Appellant did not  
10 provide verifiable documents, such as purchase records,  
11 and utility bills from periods before, during, and  
12 immediately following the reopening of the business after  
13 COVID-19 closures to substantiate claim of spoilage or  
14 loss in excess of amounts allowed by the Department.  
15 Accordingly, the Department rejected this argument.

16 Based on the foregoing, the Department determined  
17 the unreported taxable sales based on the best available  
18 information. The evidence shows the audit produced  
19 reasonable results. Appellant has not provided any  
20 reasonable documentation or evidence to support an  
21 adjustment to the audit finding. Therefore, the  
22 Department request appeal be denied.

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

25 Thank you.

1 HEARING OFFICER WILSON: Thank you.

2 Judge Shelton, do you have any questions for the  
3 Department?

4 JUDGE SHELTON: No questions at this time.

5 HEARING OFFICER WILSON: Thank you.

6 And, Judge Kim, do you have any questions for the  
7 Department?

8 JUDGE KIM: Not at this time. Thank you.

9 HEARING OFFICER WILSON: I do not have any  
10 questions either.

11 Mr. Brandeis, you have five minutes for a closing  
12 statement or a rebuttal, and you can proceed when you're  
13 ready.

14 MR. BRANDEIS: Thank you.

15

16 CLOSING STATEMENT

17 MR. BRANDEIS: Well, let me just start by saying  
18 that, again reiterating, we have a 12 quarter -- an audit  
19 of 12 quarters. Nine of the 12 quarters the Department  
20 has accepted the reported amounts. Only three quarters,  
21 all within 2020, they're not accepting because they feel  
22 the markup is too low. For reasons that we've already  
23 explained, because of the -- the spoilage of inventory  
24 after the shutdown started and -- and the mold infestation  
25 walk-in refrigeration unit. He didn't know how long

1 the -- the shutdown was going to last, but he couldn't  
2 sell that inventory after it was infested with mold.

3           Regarding the test basis, initially, the auditor,  
4 as I mentioned, wanted March 2022. I always felt that  
5 that was too short of a -- of a test base. And we later  
6 agreed to look at 2021. We provided those records in  
7 detail -- scheduled and in detail, and properly segregated  
8 the items that belong in cost of goods sold from items  
9 that didn't belong in cost of goods sold. The Department  
10 accepted those. They even circulated vendors. So they  
11 had no evidence from circulating vendors that the  
12 information that we provided was not accurate. And as a  
13 result, 2021 fell out of the audit.

14           They should have he ended the audit there. They  
15 should have ended the audit there. That would have been  
16 entirely within board policy under their cut-off  
17 techniques. But no, they decided that they wanted to  
18 project. And even when they project, 2019 falls out of  
19 the audit as a no change. Low and behold, 2020 doesn't  
20 for obvious reasons. No secondary method. Actually, let  
21 me take that back. They do have a secondary method, the  
22 cash to credit card ratio. The problem is it doesn't  
23 support their conclusion. It doesn't support their  
24 conclusion. They never state anywhere in -- in the audit  
25 that the secondary method, the cash to credit card ratio,

1 does support their conclusion, and it doesn't.

2 They subpoenaed Clover. They got the data. They  
3 say that they wanted to verify. How do they know that the  
4 data we provided hasn't been manipulated? They got it  
5 directly from Clover. And what we provided and what they  
6 compared, to the sales record from Clover matches. The  
7 only thing that we didn't provide when we did the  
8 download -- and I don't -- I'm a P -- an IT specialist.  
9 We didn't get them the void file, but those aren't sales  
10 any way. When somebody walks out without paying, that's  
11 not a sale. When somebody says I'm not paying for this  
12 drink; it wasn't prepared correctly. That's not a sale.  
13 True, those all records are fair game, but they got them  
14 from Clover.

15 And, again, when you compare the removed items,  
16 that they're calling it, as a ratio of all items included  
17 in the audit, it's about 6 percent consistently throughout  
18 the audit, including the no change periods. So wouldn't  
19 you expect if the -- if there was abuse of the -- of the  
20 void file, that you would have a higher -- a significantly  
21 higher ratio. It doesn't exist. Nothing that they've  
22 done suggest that the record should have been impeached.  
23 Nothing. They were influenced by a CDTEFA employee in  
24 Sacramento who alleged, without doing any real analysis,  
25 that -- that 2019 was underreported. And when we refused

1 to amend the return -- because we knew it was right. We  
2 went back and looked at all the sales reports and -- and  
3 there was nothing wrong, the taxpayer rightly refused to  
4 amend the return, which kicked off this audit and this  
5 five-year ordeal.

6 That's all I have.

7 HEARING OFFICER WILSON: Thank you.

8 Final questions from the panel.

9 Judge Shelton?

10 JUDGE SHELTON: Nothing from me at this point.

11 Thank you.

12 HEARING OFFICER WILSON: Thank you.

13 And, Judge Kim?

14 JUDGE KIM: Just a quick question for Appellant.

15 Regarding the inventory that was -- that you got rid of  
16 for spoilage, did you keep a list of the inventory?

17 MR. BRANDEIS: I didn't know Mr. Kim then.

18 Mr. Kim is not an auditor. He's not an accountant. He's  
19 not a lawyer. He's just a small business owner and a --  
20 well, at that time, he was working as a -- a full-time  
21 federal agent as a postal inspector. He didn't anticipate  
22 that he was going to face an inquisition from the state.  
23 So no, he didn't -- he didn't adequately document what was  
24 discarded. And I would submit, I -- I -- I was an auditor  
25 for seven years. I've been -- for the CDTFA -- well, back

1 when it was the Board of Equalization. This is very  
2 typical of small business owners. It -- documenting what  
3 you're discarding, I've never seen a taxpayer do that.  
4 Never.

5 JUDGE KIM: Okay. And does Appellant have the  
6 purchase invoices leading up to the time when he discarded  
7 the inventory?

8 MR. BRANDEIS: He doesn't have the 2020 purchase  
9 invoices. That was a chaotic time. That's why we, with  
10 the Department, we agreed to examine 2021, and that's what  
11 we did. We provided all the purchase invoices for 2021.  
12 But they did circulate vendors for the entire audit  
13 period. So the Department has a list from the vendors of  
14 what was purchased.

15 JUDGE KIM: Okay. Thank you.

16 HEARING OFFICER WILSON: I don't have any  
17 questions. So we will go ahead and conclude.

18 Thank you, everyone, for participating today.  
19 The panel will meet to deliberate and decide your case.  
20 We will issue a written opinion within 100 days. Today's  
21 hearing in the Appeal of Kim Brothers Worldwide is now  
22 concluded, and we are now off the record.

23 (Proceedings concluded at 10:25 a.m.)

24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 19th day of March, 2026.

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