BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
E. SHAMAM and E. SHAMAM,) OTA NO. 231014474
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APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, May 13, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 12900 Park Plaza Drive, Suite 300, Cerritos, California, 90703, commencing at 10:30 a.m. and concluding at 11:29 a.m. on Wednesday, May 13, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ GREG TURNER
Panel Members:	ALJ AMANDA VASSIGH ALJ KENNETH GAST
For the Appellant:	E. SHAMAM STEVEN MATHER JAMES MATHER
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD PETER KWOK CHARLES TSAI

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received into evidence at page 6.)

(Department's Exhibits A-I were received into evidence at page 7.)

OPENING STATEMENT

CLOSING STATEMENT

Cerritos, California; Wednesday, May 13, 2026

10:30 a.m.

JUDGE TURNER: Okay. We are going on the record.

This is the Appeal of Shamam, OTA case number is 231014474. Today's date is Wednesday May 23rd. It's approximately 10:30 a.m. The hearing is being held in Cerritos, California.

I am Judge Turner, and I'll be the lead for purpose of conducting the hearing. My co-panelists are Judge Gast and Judge Vassigh. We are equal participants in deliberating and determining the outcome of the appeal.

If I can have the parties introduce themselves, beginning with Appellant.

MR. S. MATHER: Good morning, Your Honors. Steve Mather for the Appellant.

MR. J. MATHER: James Mather for the Appellant.

MS. SHAMAM: Evelyn Shamam.

JUDGE TURNER: Thank you. Welcome.

MR. KWOK: Good morning, Judges. Peter Kwok for Respondent Franchise Tax Board.

MR. TSAI: Good morning, Judges. Charles Tsai, also for Respondent.

JUDGE TURNER: Excellent. Welcome.

Let's see. The issue today to be decided in this appeal is whether Appellants have shown they're entitled to a refund on the basis of a duplicate of sales from 2016 that were included as gross receipts for both 2016 and 2017.

Is that everyone's understanding of the issue before us today?

MR. S. MATHER: Yes.

MR. KWOK: Yes, Judge Turner.

JUDGE TURNER: Excellent. Briefed exhibits, Appellant submitted Exhibits 1 through 10 I believe within the last two weeks.

Has FTB had an opportunity to review those exhibits, and do they have any objection to their entry into the record?

MR. KWOK: No objections.

JUDGE TURNER: Excellent. We will enter those Exhibits 1 through 10 into the Record.

(Appellant's Exhibits 1-10 were received into evidence by the Administrative Law Judge.)

JUDGE TURNER: Respondents submitted Exhibits A through I, which Appellant had not previously objected to entering into the record.

Do you have any objection to those being entered into the record now?

MR. S. MATHER: Still no objection.

JUDGE TURNER: Excellent. Then those will be entered into the record.

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

JUDGE TURNER: Witnesses, I understand Appellant intends to have a witness testify today.

MR. S. MATHER: Yes. Evelyn Shamam.

JUDGE TURNER: Excellent. I will swear you in prior to testimony, if that's okay.

Excellent. Well, okay. That's all I have for now. Let's start with the Appellants' presentation.

Ms. Shamam, I'm going to swear you in. If you please raise your right hand for me, please.

E. SHAMAM,

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

JUDGE TURNER: Excellent. You were sworn in.

With that, Appellant you had requested 75 minutes for your affirmative presentation. I will give the floor to you, and then we'll go to Franchise Tax Board.

MR. S. MATHER: Thank you, Your Honor. I -- I don't think we'll need the full 75 minutes.

JUDGE TURNER: Perfect.

PRESENTATION

MR. S. MATHER: This is a case in which the Franchise Tax Board won't take yes for an answer. The Franchise Tax Board says the taxpayer must be on the cash method of accounting. This is -- this is an issue concerning the reported sales on the tax return. Franchise Tax Board says the taxpayer must be on the cash basis method of accounting. We say yes. The Franchise Tax Board said that their Exhibit G, which corresponds to our Exhibit 8, which is an un-redacted version. Franchise Tax Board Exhibit G is the cash deposits from sales in 2017. We agree.

The Franchise Tax Board says that on the tax return there was reported $11,293,866 of sales, and the cash basis deposits based on the Franchise Tax Board Exhibit G is $11,001,309, which is a reduction of $292,557. We agree. The Franchise Tax Board acknowledges that the deposits that are listed in this Exhibit G include the collected sales tax. We agree. The Franchise Tax Board also acknowledges that the taxpayer paid sales tax for 2017 of $362,880 that were included in those deposits that are not sales. We agree.

So, based on the math, we have a $292,557,000 reduction from the difference between what was reported and what the Franchise Tax Board's cash basis determination was, plus the sales tax amount of $362,880 that was paid for 2017. So, there's a total reduction, according to the Franchise Tax Board's theory in this case of $655,437. We agree. It's not the amount that we claim. We agree with that amount for the purpose of this hearing.

So, after all of these yeses from the Franchise Tax Board, the Franchise Tax Board in this hearing just appears to be no. No, not the cash basis. That -- that one -- even though that was the position in the brief, that's not the Franchise Tax Board's position. No admission that Exhibit G to the Franchise Tax Board's brief are the sales deposits for 2017. They said it, now they don't. No reduction of the -- no reduction of the reported income according to the Franchise Tax Board, even though they have agreed to the components of the reduction and no refund of any amount. But yet, there's still no reason if it's just Franchise Tax Board says no.

So, it's helpful to understand the chronology of this case. So, there was an IRS audit of the taxpayer. The taxpayer is a schedule C business on the 10 -- on the individual return of the Shamams. The IRS audited the Shamams' individual return and specifically audited this

Schedule C business. The IRS audited the sales amount and did that by means of a bank deposits analysis. So, the IRS determination was the sales should be equal to the bank deposits minus any amounts that are not sales. So, IRS did that reconciliation based on the bank deposits and determined that for 2016 the amount reported by the taxpayer actually matched -- or reasonably matched the bank deposits with those adjusting items. We know that happened based on Exhibit 5 -- you know, Appellants' Exhibit 5 in evidence, which is the audit work papers of the IRS for 2016, the year before our case, for 2016 on the, you know, the bank deposits equaling the reported sales.

So, the next thing that happened is that the representative for the taxpayer, who is not us at the time, looked at the 2017 return and realized that the amount reported for 2017 was overstated based on the amount that the IRS had utilized with the bank deposits method for 2016. So, the -- the representative then prepared an amended return, making adjustments to the reported sales for 2017 using a method that the representative understood was the correct method, but was not the bank deposits. So, the representative computed the reduction of reported sales and filed an amended IRS return Form 1040X. That's Exhibit 2 in -- in Appellants' exhibits.

That 1040X reduced the sales by $919,830 and requested a tax refund of $391,475 from IRS. So, IRS allowed the amended return, probably because it was mirroring the -- the method that was used in the 2016 audit. There had been correspondence with the IRS concerning the amended return. That correspondence -- or at least partial copies of the correspondence appear in Appellants' Exhibit 3 and pages 1 through 4. After this review by the IRS, the IRS adjusted the refund down by $335, but then allowed a refund to the Appellant of $391,140. We know this because it's -- it's in a -- in a statement from the IRS at Appellants' Exhibit 3, page 5.

So, the representative also filed an amended return with Franchise Tax Board reducing income or reported sales by the same amount on a 540X. The Franchise Tax Board audited that 540X extensively. We were, again, not involved in the audit at that time, but I have a box full of documents that was exchanged in the audit. So, at the end of the audit, the Franchise Tax Board allowed no refund, even though the method was the same as what the IRS established in 2016. It was that same method -- or a version of that method was applied in 2017. The Franchise Tax Board in this proceeding has admitted that the cash basis method is the appropriate method, and has admitted what the receipts are. Nevertheless, the Franchise Tax Board disallowed the entire refund claim on the theory of no. Just no.

So, let's take a step back to see how this discrepancy and the sales -- the reported sales arose in the first place. Evelyn is sitting next to me, will explain their accounting system in more detail, but I can provide an overview.

The taxpayer used an estimating and inventory and tracking system called CCC, which is common device used for auto body shops, which is what the taxpayer is. If often comes up in sales tax cases. There's an interesting crossover of the sales tax and the income tax in this case. But the CCC system is one of the most widely used systems in the auto body business. For the taxpayer, most of the jobs had multiple payments over a span of weeks or months for a job, sometimes with a job receiving payments being started in one year and ending in the next year with the final payment, the final settlement with the -- typically with the insurance company.

The -- the method that the taxpayer had used in reporting the sales tax and in reporting the income tax was that, according to this CCC system, they would get to the end of the job, there would be a closing process internally that once the car went out and the payment was received, that -- that job number, that RO number would be close off the CCC system, which would generate an amount that was reported as the entire sale for that job. So, if a job had been worked for four weeks in 2016 and closed in the first week of January of 2017, there may have been two or three progress payments along the way. But when the method of accounting that was used by the taxpayer at the time was that it would be income when the job was closed on the CCC system.

The IRS audit didn't accept that method. The IRS audit, as I said, started with a bank deposits analysis. So, they looked at the deposits that were in the bank account, and then they reconciled that to the reported sales on the tax return. And for 2016, there were -- there were nontaxable items that had been deposited, such as there were some loans, there were some transfers from other accounts, and those got reconciled. IRS determined that there was no adjustment, as I said in Exhibit 5, to the reported sales. So, in the -- for that year, the bank deposits basically matched the reported year.

But for our year, the -- the deposits that represent sales are the amount that is reflected in FTB's Exhibit G and our Exhibit 8. And that -- what that is another report from the system that generated all of the deposits that were sales during the course of the year.

So, the Franchise Tax Board takes -- takes the position, okay, you're a cash basis taxpayer. That means the deposits that are made during the year is your income for the year. The deposits that are sales are your income. And again, we accept that for the purpose of this appeal. We acknowledge that that is the appropriate measure of the income for 2017.

For 2016, it matched. For 2017, it doesn't match. So, there's a difference between the CCC income and the deposits in 2017. And the Franchise Tax Board -- that's what the purpose of our amended return was, was to remove some of the deposits that shouldn't -- or some of the amounts that were reported as sales on CCC for 2017 that weren't really income in 2017. So, that was the purpose of the amended return. And again -- you know, not to harp on this -- the Franchise Tax Board says, okay, no, you're on a pure cash method, not this hybrid method that you were using by reporting income based on when a sale was closed on CCC. You have to report based on deposits. And that is Franchise Tax Board's Exhibit C, the sales deposits for 2017.

So -- so, we have that amount. And that's a million -- let's see -- a million -- almost a million dollars. So, it's 290 -- 290 and -- let's see if the number is right -- $292,557. Less than what we reported on the return already, according to the method Franchise Tax Board says we should follow, and the evidence of the sales receipts that Franchise Tax Board has adopted. So -- but within those deposits are sales tax -- sales tax collected. It's the total deposit from the customer, you know, over the course of the year.

And so, to -- as a way to illustrate that this is actually not a different report, it's only reporting the nontax amount. It's actually kind of hard to trace this, but the documents that we have submitted show that the sales tax is actually included in Franchise Tax Board's Exhibit G. And we can do this by referring to our Exhibit A, which is, again, the same as Franchise Tax Board's Exhibit G -- 8. Did I say that? -- 8, which is the same as Franchise Tax Board's Exhibit G without the redactions. And we had to take out the redactions so you could trace the names of the customers between the two reports that matter in this case.

So, if we compare our Exhibit 8 with our Exhibit 9, which is the CCC sales report for the fourth quarter of 2017, then we can find -- we can see the deposits that were made that include sales tax. And it's not as easy as you think, because as I mentioned, there are multiple deposits on most jobs leading up to the final closing. So, what we have to do to match this exactly is we have to find a job or a number of jobs that have one payment. And there aren't that many jobs that had one payment. So -- but we were able -- we were able to find six of them, at least as an illustration.

And so, the six that we have -- just again, to illustrate this point -- is on our Exhibit 8, page 48. The first one is on December 8th of 2017, there is a deposit for Bill Amata of $5,508.88. So, that turned out to be a one-payment job. So -- and you can see that by referencing our Exhibit 9, page 8. There is a Bill Amata. And you see on the right column the same deposit amount of $5,508.88. And from the breakdown on this CCC report, you can tell that it includes $159.12 of sales tax. So, the deposit on Exhibit 8 includes sales tax as it's shown on Exhibit 9.

Okay. The second example, again, on Exhibit 8, page 48. On December 7 there's a deposit for Karim Joret, J-o-r-e-t, of $4,028.99. So, referring to our Exhibit 9 on page 9, the very first line; there again, is the Karin Joret deposit, $4,028.99, includes sales tax collected of $159.68. So, there's the second example.

So, a third example is on Exhibit 8, pages 49. There are three deposits, actually, on December 13th and 15 for Andrew Kronfeld, K-r-o-n-f-e-l-d. There's $900.00, $10,105.75, and the $6,017.78. That totals $17,000 --

$17,023.53. So, those three deposits total $17,023.53. If we look at Exhibit 9, page 10, again, for Andrew Kronfeld, the fourth line down, the total deposit -- or total job amount is $17,02.53 includes sales tax of $780.52. So, the amount generated by the system shows that the deposit on Exhibit 8 includes the sales tax.

There are a couple of other exhibits or examples that I will do. On page 51 of Exhibit 8, the very last item, Dana Rosencrance had a deposit of $3,853.14. And again, you compare that to Exhibit 9, page 15, the third line down for Dana Rosencrance. Same deposit amount -- or total job amount of $3,853.14, which includes $80.81 of collected sales tax. The fifth example is again, on page 51 of Exhibit 8, about 10 or 12 lines up for Christopher Young, a deposit of $4,900.28. And then if you turn to Exhibit 9, page 20, again, for December 28th, Christopher Young about halfway down the page, a job closing for $4,900.28, including $92.78 of collected sales tax.

And finally, on Exhibit 9, page -- I'm sorry -- on Exhibit 8, page 51, the very first item for Lea Davis again, a deposit of $2,207.28, which corresponds with exhibit -- oh, sorry. That -- that's part of the deposit. The next -- if you turn to the prior page, page 50, there's also a deposit for Lea Davis at the second to the last line of $1,721.24. The total of those two deposits is $3,928.52. So, you turn to Exhibit 9, page 6, the fourth -- fifth line down, Lea Davis again. The total job amount $3,928.52, which includes $213.59 of collected sales tax.

So -- so, what's the point of that all that again? Well, it illustrates that the deposits on Exhibit 8, which match the CCC total amount collected and reported, includes -- the deposit amounts include the collected sales tax. So, our -- our $11,100,000 number that's the total on FTB's Exhibit G includes sales tax deposits. So, how do we then know what the sales tax collected was? So, for that we turn to exhibit -- let's see -- exhibit -- I'm sorry -- Exhibit 9 -- no, Exhibit 10 -- our Exhibit 10, which is the sales tax -- the four sales tax returns that were filed by the taxpayer. And the total -- the total sales tax collected and reported and paid for 2017 is $362,880 on the sales tax returns.

So, again to repeat what our position is in this case is we -- we have a difference between the reported sales on the tax return and Franchise Tax Board's Exhibit G, which is the cash basis sales. That difference is $292,557. That's a reduction of our gross sales. And the other reduction is the sales tax collected of

$362,880, which is reported on the sales tax return, which is the total for the four quarters.

And as we showed in that little exercise, that is the amount that was -- of sales tax that was deposited in Franchise Tax Board's Exhibit G. The deposits included the collected sales tax. The total collected sales tax for the year is the $362,880. So, that means that there should be a total reduction, according to Franchise Tax Board's theory in this case, of $655,437, which is not the reduction that we claimed. It is less than the reduction we claimed. But, again, for the purpose of this hearing, that is the amount that we are seeking as a reduction of the income, and that the taxpayer is entitled to a refund based on that reduction and income.

So, that concludes my part of the presentation, and I'll turn to -- unless there are questions now, I'll turn to Ms. Shamam for her testimony.

JUDGE TURNER: We'll wait for her testimony first before I go to questions.

MR. S. MATHER: Okay.

JUDGE TURNER: But just be on notice that as a witness, you'll be subject to questions from the FTB as well. Just be prepared. So, you may present.

MR. S. MATHER: Thank you.

JUDGE TURNER: Yeah.

DIRECT EXAMINATION

BY MR. S. MATHER:

Q Ms. Shamam, what's your professional background?

A I've always worked. I have a high school diploma, one year of college, and I worked in accounting. I've learned through the years to be a bookkeeper.

Q And did you take any classes to learn?

A I did. I took Excel classes, QuickBooks, accounting classes.

Q And what is Eli's Collision Repair?

A We're an auto body collision repair facility. We do not do mechanical, but we do the body part of the car repair.

Q And is there -- during 2016 and 2017, how many shops did you have?

A We had three.

Q What was the entity structure for those three?

A The shop -- this shop is a sole proprietorship with me as the owner. The other two shops are S corps.

Q So their sales were reported on different tax returns?

A Correct.

Q Okay. And who is Eli?

A Eli is my husband. He's the one that started the first shop back in 1977. It was a gas station and eventually became a body shop.

Q And what was the location of the shop that's on your personal return?

A 8435 West 3rd Street, L.A. 99048.

Q Okay. And do you have a -- how do you refer to that shop?

A Shop One.

Q Shop One. Okay. So, we'll -- we'll go with that. So only Shop One was reported on your personal income tax return; correct?

A Correct.

Q And then the sales tax returns that we have as Exhibit 10, that's just for Shop One; correct?

A Correct.

Q Okay. And during 2016 and 2017, who prepared the income tax returns for Shop One?

A A company called CBIZ.

Q And who prepared the sales tax returns?

A I did.

Q So, that Exhibit 10, the sales tax return printouts, those were returns prepared by you?

A Yes.

Q And how did you prepare -- where did you get the numbers for those returns?

A I print out a report from our estimating system

CCC, and that shows the breakdown of taxable items, nontaxable items, sales tax, and the gross sales. That gets -- that should match what's been exported into QuickBooks.

Q Okay. And so, is the sales tax return prepared from the CCC report or from something in QuickBooks?

A I prepare it from the CCC report.

Q Okay. And we have as Exhibit 9 in our case the quarterly sales report. I think it's the 5500 report or something like that?

A That is -- that's it, 5500.

Q Okay. So, that's the quarterly sales report on CCC?

A Correct.

Q And that's what you used to prepare the sales tax returns?

A Yes.

Q So -- and I believe in our case they do -- the numbers do match, the fourth quarter to the fourth quarter. Now, so you mentioned the QuickBooks. What -- how does the QuickBooks factor in if you use the CCC?

A It can be off because sometimes things do not export correctly into the accounting system on taxable and nontaxable items. Sometimes that gets screwed.

Q Okay. But -- so, let me -- let me ask another question. So, if you -- to prepare your personal tax returns or like the general ledger or the profit and loss for Shop One, how -- how is that done?

A That is done from QuickBooks.

Q Okay. So how does the information get into the QuickBooks then?

A From CCC, the sales are done through CCC. The expenses, like paying the vendor bills are done through QuickBooks.

Q Okay.

A The -- the vendor bills are posted in CCC. They're exported to QuickBooks, and then we pay them from QuickBooks.

Q So when -- for on the sales side, when is the sale exported to QuickBooks?

A When there's final negotiation with the insurance company, and the repairs are complete.

Q So, what happens on the CCC side when all of those things occur?

A We close the sale, and we export it.

Q And is the export done manually, or is it done once a year, or is it automatic? How is that?

A We do it continually through the year weekly, because in order to keep track. Because you also make payments monthly to the sales tax. So, we still do it monthly, and then we balance it all out on quarter.

Q Okay. So -- so, just take me through this. So, if you close a sale on CCC and -- and what type of entry is done on CCC? I mean --

A It's just a matter of pushing the right buttons and noting the date.

Q Okay. So, you have a date, which is a closing date for CCC?

A Correct. Correct.

Q And when does that sale then get entered on the QuickBooks?

A By that closing date.

Q At the same time, or is it done weekly or monthly or annually or --

A It doesn't matter. It goes by the closing date. So, even if I export it a month later, the closing date is when the invoice will show in QuickBooks as the closing date.

Q All right. So, at some point, periodically you go through the closings on CCC and put those onto the QuickBooks?

A Correct.

Q Okay. And that's manually?

A Yes. It's a manual to get it exported.

Q Okay. So then -- and then -- so now you have the

QuickBooks report, and that's the profit and loss. And it has the income, as we just discussed, and expenses. What -- what gets on the tax return? Is it the QuickBooks amount or --

A Yes.

Q How did that happen?

A I give the balance sheet and P&L to my accountant.

Q And that's the QuickBooks balance sheet?

A Correct.

Q Okay. And so, you know, in this case there's a question of -- of when, you know, the timing of deposits on jobs versus when the CCC system closes and you transfer it to QuickBooks. Why are there differences in those?

A It depends on the -- the extent of the repair. If it's a small repair, the insurance -- and it's going through insurance, the insurance pays us. It might just be one or two payments. The insurance company will come out and see what's -- they'll do a preliminary estimate. They'll give us a payment, typically, on what they see. And then we get permission and authorization to tear down the car. We do a tear down, and we write a new estimate. We supplement -- we send the supplement to the insurance company, and that's where the negotiation comes in; parts, labor. Does it need to be sent to the dealership for any sublet work, suspension, or reset codes. So, by the end of the repair, you have a bigger bill than in the beginning. So, typically, we'll get another payment from the insurance company.

The way things have been going, it sometimes takes longer for the insurance company to come out. So, a job that maybe would normally take a month could take two or three months, especially, if we have to send it to the dealership to get work done there. And so, you're towing it back and forth, you're waiting on them. And then at the end I had need to submit all these final bills to the insurance company. And when they come back to us with a negotiated figure, a final amount, then we can release the car.

We don't necessarily wait to get the check, and we can release the car to the customer if we know that we have a final supplement from the insurance company. So, let's say a job starts in November, and we've received one or two payments along the way, but we won't release the car until January or February in the following year.

Q Okay. And so that January date is when it gets closed on CCC?

A And the sale is reported.

Q And that means that it gets -- when you say the sale is reported, it's when it's reported to CDTFA. It's

also when it's exported to QuickBooks?
A Correct.
Q And so that sale -- that sale is going -- which -- which year is that sale going to be reported?
A The following year.
Q The following, even though there have been --
A Deposits.
Q -- two or three deposits the year before?
A Correct.
Q Okay. So, now I'm showing you a few pages of what's Exhibit A, and this is the account quick report for 2017 for Shop One. So, what's -- what's reflected on this?
A You have the date of the deposit, the check number, the customer's name, and the repair order number, and the amount deposited.
Q And so is this every sales deposit for the year? I mean, every deposit for a job?
A Right. All the checks would be entered into CCC, and those checks are exported into QuickBooks. And that's where we do the deposit from.
Q Okay. So, this would reconcile to the bank account?
A Check. Absolutely.
Q Yeah. And I went through that exercise before.

Is it your understanding that these deposits include whatever sales tax was paid?

A Yes, it does because they don't separate -- they don't send us a separate check for sales tax.

Q Right. So, this matches the deposits -- the total deposits for the year --

A Correct.

Q -- that were related to jobs?

A Yes.

Q Okay.

MR. S. MATHER: Can I have one minute?

JUDGE TURNER: Of course.

MR. S. MATHER: I have no further questions for Ms. Shamam, and that's the end of our presentation.

JUDGE TURNER: Excellent. Thank you very much.

Franchise Tax Board, do you have any questions of the witness?

MR. KWOK: No, not at this time, Judge Turner.

JUDGE TURNER: Panel members, Judge Vassigh, do you have any questions for the witness?

JUDGE VASSIGH: I do not. Thank you.

JUDGE TURNER: Judge Gast, do you have any questions of the witness?

JUDGE GAST: I do not as well. Thanks.

JUDGE TURNER: Okay. And I'll open it up --

sorry -- one more time to see if there are any questions for the Appellant on their entire testimony, Judge Vassigh?

JUDGE VASSIGH: I do not.

JUDGE TURNER: Judge Gast, questions?

JUDGE GAST: I do not as well.

JUDGE TURNER: I don't either. Thank you for your testimony.

I'll give it to the Franchise Tax Board.

You've requested 15 minutes is what I had on my record?

MR. KWOK: That's correct.

JUDGE TURNER: Excellent. Please proceed.

MR. KWOK: Thank you.

PRESENTATION

MR. KWOK: Good morning, Judges. As we all know the issue today is whether or not Appellants have carried their burden to show that the Respondent's denial of their 2017 refund claim was in error or not. Now, it appears to me that Appellants have prevented -- has presented five different arguments in an effort to show that FTB's denial was in error.

And we'll start with -- we'll start with Appellants' reliance on -- on Respondent's opening brief.

Appellants would have the panel believe that FTB took a position on what Appellants' gross sale should be for the 2017 tax year. However, the truth of the matter is FTB never took a position on what the gross receipt should be. We never stated a figure, but we simply said three different things. We said Appellants failed -- number one, Appellants failed to provide sufficient documentation. Number two, during audit, Appellant submitted a QuickBooks report that conflicted with Appellants' position. And number three, as a general matter of law, cash basis taxpayers are required to report income in the year of receipt.

Now, if we look at the paragraph that Appellants are relying on, on -- I believe it's page 5 of our opening brief. If you don't mind, I'll read this verbatim. We said, "Appellants reported 2017 gross receipts in the amount of $11.3 million on their original 2017 federal Schedule C. Appellants claim that this amount was overstated but have failed to provide sufficient documentation substantiating the claim." That's one. That's us saying, basically, you got -- that Appellants failed to substantiate the claim.

Number two, we go on to say, "During audit, Appellants provided an accounts Quick report showing $11 million approximately in deposits during 2017." This information conflicts with Appellants' claim that it only had $10.3 million in Schedule C gross receipts. That's number two of us basically saying the information that the Appellants provided conflicts with the account -- with the QuickBooks report.

And then lastly, we state, "As cash basis taxpayers, Appellants are generally required to report income in the tax year they receive it." So, based on this paragraph from our opening brief, we never stated what the gross receipts should be. So, there really is -- isn't anything for Appellants to agree with or not.

Secondly, Appellants argue that it was due to the 2016 IRS audit that led to their discovery that they over reported in 2017. Somehow, they would like us to believe there were some sort of error or some sort of education in 2016 that led them to realize, "Oh, hey, we over reported our gross sales in 2017." However, if we turn to Appellants' Exhibit 5, page 1, this is a copy of the IRS agent's findings for the 2016 return. The IRS agent stated, "The taxpayer has reported all gross income -- all gross receipts. No unreported income was found." She goes on to say that, "The taxpayer has strong internal control. We reconciled the sales tax information, and we did not find the variance."

From my -- from my reading of this 2016 audit report, it sounds like the gross receipts reported for 2016 was fine. There was no adjustments made. There was no changes made. And yet, somehow Appellants learn something from this to say to themselves, hey, we over reported for 2017. Appellants go on to say that -- they mention real briefly that the IRS accepted Appellants' 2017 amended return, and the FTB should accept it as well.

However, the 2017 gross sales was never audited. The IRS just simply accepted the amended return without any examination. And as we all know, California is not obligated to follow any federal determination that it believes to be in error. But, in this case, there was no federal determination to even begin with. The IRS simply accepted the return.

The fourth argument Appellants make is that, hey, they paid sales tax in the amount of $362,000 during the 2017 tax year. And I believe that's Exhibit 9 of -- of Appellants' exhibits. If we look at the sales tax record, the Appellants would love -- would have us just cherry-pick the amount of sales tax that they paid, which is 306 -- approximately $362,000. However, they reported gross sales of $11.8 million on these very same sales tax returns.

If we subtract $362,000 from the $11.8 million of gross sales that they reported on their sales tax return, that leaves us with $11.4 million of gross sales, which is $100,000 more than they reported on their original tax return. So, it would be -- it would be -- it would seem a little strange that they want us to rely on the sales tax return to give them credit for sales tax paid, but they don't want us to rely on it to -- to determine what the amount of gross sales were in 2017.

And lastly, Appellants present six examples today. Six examples that this is our first time hearing about. These six examples were never briefed. And I'm sure, you know, these are six out of thousands of transactions. But the question, I guess, remains. Do these six examples carry Appellants' burden of proof to show that Respondent's denial of the claim was in error.

So, at the end of the day, the FTB is -- is faced with a 2016 audit -- IRS audit that doesn't support the claim for refund. The 2017 QuickBooks reports doesn't support the claim for refund. And the Appellants' own 2017 sales tax returns don't support the claim for refund. So, for all these reasons, we ask that the OTA sustain FTB's denial of the refund claim.

JUDGE TURNER: Thank you for your presentation.

Panel members, questions?

Judge Vassigh?

JUDGE VASSIGH: I don't have questions at this time. Thank you.

JUDGE TURNER: Judge Gast?

JUDGE GAST: I do not have questions as well.

JUDGE TURNER: I'm going to wait.

Mr. Mather, you have 10 minutes to present a closing, and I'll have some questions after that.

Thank you, FTB, for your testimony.

MR. S. MATHER: Thank you.

CLOSING STATEMENT

MR. S. MATHER: I consider the FTB's position in this case to be almost astonishing. If you look at the FTB's brief, they -- in addition to the passage read by Mr. Kwok, the -- there's extended discussion of why the taxpayer is not eligible to use this hybrid method of accounting that is reflected in the CCC system. So, the Franchise Tax Board absolutely positively determined, if they determined anything, that we had to report on the cash basis.

There's no dispute that I've seen from anybody, because the FTB included it as their Exhibit G to their brief, that Exhibit G and our Exhibit 8 reflect the sales deposited in 2017. As -- as Ms. Shamam explained, there can be multiple payments in one year; the -- the job closed on CCC the next year; CCC reports -- reported all of the income in the following year, but there were the deposits. Franchise Tax Board -- Franchise Tax Board says you can't do that. You have to report based on deposits. We say yes. Fine. Okay. That's $292,000 less than what we did report by everybody's acknowledgment.

The only other issue then is -- is there sales tax included in those deposits, because that's just a listing of deposits for -- on -- on sales, you know, jobs that constituted sales. And the purpose of the example was to find some of these -- some of these cases where there was a single payment, which is what you really needed to be able to see that sales tax was included in the deposit. And that's what those six examples were from exhibits that Franchise Tax Board has seen, but they obviously hadn't heard the explanation before today.

So, the only -- the only point of that is to establish that the deposit list, our Exhibit 8, includes sales tax deposited; you know, sales tax collected in that deposit. So, then what's the point of the sales tax returns that we submitted, which shows the sales tax we paid for 2017. Okay. The sales aren't going to match. The sales tax return is not going to match the deposits as we explained because the sales tax returns were prepared based on the CCC system that Franchise Tax Board says we can't use.

So, we say fine. We won't use the CCC system, but then they can't complain that the impermissible method used on the sales tax return doesn't match the method that Franchise Tax Board says we have to use, which is the deposits. So, the only real relevance of the sales tax return is to show how much on Exhibit 8 and the total deposits that were made on jobs for the year, how much of those deposits were sales tax because everybody acknowledges the sales tax isn't sales. So, the collected sales tax was the $362,000. Those two components, again, are our -- are the basis for the claim.

So, now with respect to the IRS audit. So, the IRS audit, as you can tell from reading the work papers, was based on a bank deposit analysis. So, IRS in that audit didn't have the equivalent of Exhibit 8. They didn't -- you know, maybe they wouldn't have used it if they did. They started with the total deposits in the bank account. They eliminated the nontaxable -- the nontaxable amounts, and they compared it to the amount that was reported on the return for 2016 and found no -- no difference. So, whether you get at it the way we got at it, or whether you got it by the bank deposits analysis, the bank deposits reconciled with the reported sales for 2016.

They don't for 2017. That's the difference.

That was the realization is that we looked at Exhibit 8 for 2017, saw those deposits, saw there was a material difference between what had been reported and what was the total deposits from sales for the year. So, that was what started the amended return process, and we claimed a certain amount. As I said before on multiple occasions, we are -- we are agreeing with the Franchise Tax Board that we're cash basis, that the deposits on Exhibit 8 as the cash basis income minus the sales tax. It's that simple.

Franchise Tax Board can say no, no, no. We didn't -- we didn't do anything. We didn't -- we just said no. You know, we didn't -- you know, we -- we say no after an audit that lasted for weeks and made several determinations, no about our brief, the position in our brief, and that our no is entitled to the presumption of correctness. Well, what -- what kind of determination is that? A determination of no when they have adopted a method, the cash basis method that says we should have reported because we -- we were on the cash basis method before and never applied to change the method. Like I say, extended discussion of how that -- you know, how we're stuck with the cash basis. And again, we're fine with that. That's Exhibit 8. You know, that's $292,000 right there that's less than what we reported based on what the Franchise Tax Board says we have to do.

So, again, just to summarize, you know, that there's two components of our claim today; the reduction, the difference between the amount reported on the return, which was the CCC amount, which corresponds to the sales tax reported sales that Franchise Tax Board says we can't use, and the cash deposits in Exhibit 8 that Franchise Tax Board says we have to use. That's one component.

The other component is the deposited sales tax collected, which the sales tax returns, Exhibit 10, show the amount for 2017. So, in our mind, you know -- and obviously, we're in disagreement with this. In our mind, our claim today follows what the Franchise Tax Board said we had to do. And they say "Oh, no. We didn't say you had to do anything. We just said no, and that we're entitled to a presumption of correctness for no with no reason." And we submit that the record in this case does not support that position.

And that concludes my remarks.

JUDGE TURNER: Thank you for your testifying.

One more time, questions?

JUDGE VASSIGH: I do have a question for Franchise Tax Board.

Mr. Kwok, can you respond to Appellants' argument about the accounting method used. And if using a cash basis accounting method, is collected sales tax concluded in those Exhibit G deposits?

MR. KWOK: I'm sorry, Judge Vassigh. That -- that last part of your question, are you asking if sales tax was concluded in Exhibit G?

JUDGE VASSIGH: I think that is part of what Appellant is arguing. So, I just want to know what FTB's response to that part of the argument is.

MR. KWOK: To be honest, we're not -- we're not 100 percent sure either. There doesn't seem to be a breakdown. So, we're not 100 percent sure either. But to answer the first part of your question, I think you're asking if technically -- if the Appellant was required to use a cash method? Is that what --

JUDGE VASSIGH: If I'm understanding Mr. Mather's argument correctly, Mr. Mather is saying that the CCC system used a cash basis method; is that correct Mr. Mather?

MR. S. MATHER: It -- it used what we refer to as the hybrid method. So, it was based on the closing date of the sale, not on the deposit date.

JUDGE VASSIGH: Okay. Thank you.

So, Mr. Kwok, what I'm asking you is, did Appellants change their accounting method, and you can respond to that?

MR. KWOK: It's not 100 percent clear to us what method they were using, but we did state it in our opening brief that they -- they were required to use a cash method. And again, this is not something we forced upon them. This is an election that they made on their Schedule C by checking a box that says cash method. So, based on their election to use a cash method, we can only presume that they are going by the cash method for their -- for their accounting.

JUDGE VASSIGH: Thank you, Mr. Kwok.

JUDGE TURNER: Judge Gast?

JUDGE GAST: Yeah. I have a question for Mr. Mather. Just so I understand from a high level here, you are arguing taxpayer -- Appellants are arguing that the gross receipts on Schedule C were overstated for 2017 tax year by $919,830; is that correct?

MR. S. MATHER: That -- that's what the claim asserted, but we are not -- we are no longer asserting that.

JUDGE GAST: So, what was the number exactly?

MR. S. MATHER: So, our -- our number -- our number is the two components. The difference between the cash deposits and the CCC, which is $292,557, plus the collected sales tax that were included in the cash -- in the deposit schedule $362,880. So, the total is $655,437.

That's the reduction we're claiming now.

JUDGE GAST: That first number comes from Exhibit 9, the $11 million number?

MR. S. MATHER: Correct.

JUDGE GAST: Minus --

MR. S. MATHER: Oh, I'm sorry. It's Exhibit 8.

JUDGE GAST: Eight. Okay.

MR. S. MATHER: The total on the last page of Exhibit 8.

JUDGE GAST: Okay. Got that. And you're comparing that to Exhibit 9?

MR. S. MATHER: Well, we're -- we're comparing that to the amount of reduction and income that was -- no. I'm -- I'm sorry strike that.

It's the -- the amount of sales reported on the original return.

JUDGE GAST: Okay. So, that difference is one component, and the other difference is the sales taxes that were apparently included on the return as gross receipts?

MR. S. MATHER: Included in Exhibit 8 -- in Exhibit 8 total.

JUDGE GAST: Okay. Okay. I don't have any further questions. Thank you.

JUDGE TURNER: I have a question for the

Franchise Tax Board. If we accept that the examples, at least, reflect sales tax was actually deposited, if the taxpayer is on a cash basis accounting method, would you agree or not that it is proper to exclude those for purposes of calculating their taxable income -- exclude the sales tax deposit, I guess. Is that an example of where the actual deposit wouldn't reflect what is taxable income to the taxpayer?

MR. KWOK: As long as the sales tax collected and paid corresponds to the actual gross sales, yes, we would agree it would be proper.

JUDGE TURNER: So, I guess, and then you had indicated that you hadn't seen previously the taxpayer's reconciliation. And I think what the taxpayer is arguing that there are examples that there isn't necessarily a reconciliation. Does the FTB need more time to examine the record to at least make an adjustment as to the examples that -- that seem to identify that sales tax was included in the bank deposit?

MR. KWOK: Well, this is something that we've been asking for since -- since early on in this whole process is for substantiation, and we just haven't seen it yet. So, if there's -- it's our belief that the taxpayers haven't met their burden today. And, in fact, as we heard Mr. Mather say, they're conceding on their original claim for refund, but they'll just go with a lower number because they believe we're going to be amenable to it.

JUDGE TURNER: Fair enough. That's all the questions I have then.

Let's see. Well, I guess that brings us to the close of our hearing, unless my panel members have any additional questions. We're going to close the record for this hearing now.

The case is submitted. It's May 13, 2026. We're going to close the record.

Thank you all for participating today.

We will meet and deliberate and decide the, case, and then we'll issue an opinion within 100 days.

OTA will stand in adjournment until 1:00 o'clock when we have our next hearing.

And with that, please stop the live stream, and we are adjourned. Thank you.

(Proceedings concluded at 11:29 a.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 8th day of June, 2026.

____
ERNALYN M. ALONZO
HEARING REPORTER