BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	
CRANE S, S, & S LLC,	OTA NO. 231014526
APPELLANT.	

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, July 22, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, CRANE S, S, & S LLC, APPELLANT.	OTA NO. 231014526

Transcript of Electronic Proceedings, taken in the State of California, commencing at 9:06 a.m. and concluding at 10:18 a.m. on Wednesday, July 22, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	HEARING OFFICER KIM WILSON
Panel Members:	ALJ JOSH ALDRICH ALJ NATASHA RALSTON
For the Appellant:	BRYAN CRANE
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION NALAN SAMARAWICKREMA CHRISTOPHER BROOKS JASON PARKER

I N D E X

E X H I B I T S

(Appellant's Exhibits 1 was received into evidence at page 14.)

(Appellant's Exhibits 2 was received into evidence at page 15.)

(Department's Exhibits A-J were received into evidence at page 15.)

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California; Wednesday, July 22, 2026

9:06 a.m.

HEARING OFFICER WILSON: We are going on the record.

This is the appeal of Crane S, S, & S LLC, OTA case No. 231014526. The date is July 22nd, 2026, and the time is 9:06 a.m. This hearing is being held in Sacramento, California.

I am Hearing Officer Kim Wilson. I will be the lead for the purposes of conducting this hearing. My co-panelists are Administrative Law Judges Josh Aldrich and Natasha Ralston. We are equal participants in deliberating and determining the outcome of this appeal. I'm going to ask the parties to identify themselves for the record and who they represent, starting with appellant.

MR. CRANE: Bryan Crane for Crane S, S, & S LLC.

HEARING OFFICER WILSON: Thank you.

MR. SAMARAWICKREMA: Nalan Samarawickrema, Hearing Representative for CDTFA.

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

MR. BROOKS: Good morning. I'm Christopher Brooks, attorney for CDTFA.

HEARING OFFICER WILSON: Thank you.

Just a note, the Notice of Panel that was sent to the parties identified Administrative Law Judge Keith long as a member of this panel. However, due to a scheduling conflict, he's unavailable.

Does Appellant have any objection to the substitution of Judge Long with Judge Aldrich?

MR. CRANE: No.

HEARING OFFICER WILSON: Thank you.

And CDTFA?

MR. SAMARAWICKREMA: No.

HEARING OFFICER WILSON: Thank you.

All right. Next, we'll go over the issues for this appeal. As stated in the Minutes and Orders, the issue to be decided in this appeal is whether adjustments to the disallowed claimed exempt food sales are warranted.

Next, we will discuss the exhibits. Okay. We received some this morning and some earlier.

Department, have you had a chance to see what was provided today?

MR. PARKER: I don't see that I've received it. Was it by email?

HEARING OFFICER WILSON: Looks like they're gonna send that to you now.

MR. PARKER: Thank you.

HEARING OFFICER WILSON: We'll go over the previously supplied exhibits. On July 6th, 2026, Appellant submitted a letter from his POS provider. On July 7th, Appellant provided a supplement -- supplemental exhibit submission detailing issues in Appellant's proposed Exhibits A through I. We did not receive any documentation with that letter. And the following are the Appellant's proposed exhibits: A is the POS provider letter. B and C describe CDTFA's audit workpapers, which are in CDTFA's Exhibit A. D describes correspondence with CDTFA.

Let's see. I note that there aren't any emails or letters in the file during the audit examination, only during the appeals process.

Mr. Crane, are you referring to CDTFA's Exhibit A, pages 1635 to 57, assignment activity history?

MR. CRANE: I'm -- I'm not sure exactly which one. The CDTFA, they provided almost 5,000 pages. So, what I provided there should have been an attachment. It had everything on it, but there's nothing.

HEARING OFFICER WILSON: Nothing was attached with that submission.

MR. CRANE: Okay. And yeah, I'm not prepared to do anything different right now. I don't have any of that in front of me. So, I guess whatever we have there we'll

just work with, if it's -- if it's be feasible. If it's not feasible, then we'll just go on with what we have today and move forward that way.

HEARING OFFICER WILSON: Okay. Proposed Exhibit E is the petition for reconsideration, which is CDTFA's Exhibit E. F describes the POS reports generated during the audit period, which were transcribed by CDTFA in Exhibit A on schedule 12B-1A. Proposed Exhibit G describes POS configuration documentation and supporting materials relating to the operation of Appellant's Adelo POS system.

I did not see this in the record. Does the July 6th provider letter cover that --

MR. CRANE: The provider letter covers that, as well as the one we sent in this morning. It goes back to the original when the audit was first taking place where there was information extracted. But even though it was in black and white on the point of sale, it was different on the reports they extracted from my hard drive. So, that was what today's letter did as -- as well as the last one, yes.

HEARING OFFICER WILSON: Okay. Let's see.

Exhibit -- proposed Exhibit H describes chronologically of significant events occurring during the audit and appeals process.

I didn't see this in the record. May be it's covered by the assignment activity history in CDTFA's? Maybe? You're not sure.

MR. CRANE: I'm not sure. I apologize.

HEARING OFFICER WILSON: Okay. And then proposed Exhibit I describes additional documentation relating to Appellant's business operations during the audit period.

I didn't see this in the record either.

On July 9th, Appellant submitted a detailed letter explaining Exhibits 1 through 9. However, no documentation was submitted with this letter. In fact, it appears to be arguments.

MR. CRANE: Yeah, I mean --

HEARING OFFICER WILSON: Maybe just a position --

MR. CRANE: Yeah, they're --

HEARING OFFICER WILSON: -- statement?

MR. CRANE: Yeah.

HEARING OFFICER WILSON: Okay. So, let me check with CDTFA.

Have you received the -- this morning's submission?

MR. SAMARAWICKREMA: Yes, Judge. We just received it.

HEARING OFFICER WILSON: And does it appear to be new information?

MR. SAMARAWICKREMA: Let me -- can we have like five minutes?

HEARING OFFICER WILSON: Five minutes?

MR. SAMARAWICKREMA: Yeah.

HEARING OFFICER WILSON: Okay. We'll go off the record for five minutes.

(There is a pause in the proceedings.)

HEARING OFFICER WILSON: Did you want to double check to see if there were attachments to your email?

MR. CRANE: If there were, I -- I just looked at my phone. They're on my computer, so it must -- the files must have been too big to go through.

HEARING OFFICER WILSON: Okay.

MR. CRANE: So, unfortunately --

HEARING OFFICER WILSON: Okay. Thank you.

MR. CRANE: Sorry about that.

HEARING OFFICER WILSON: All right. And we'll -- we'll go back off the record additional five minutes for the Department.

(There is a pause in the proceedings.)

HEARING OFFICER WILSON: All right. We are back on the record.

Let me ask the Department.

Is the submitted information new information that was not previously in the record or in your files?

MR. SAMARAWICKREMA: It appears, yeah.

HEARING OFFICER WILSON: It's on there.

MR. SAMARAWICKREMA: Yeah.

HEARING OFFICER WILSON: Okay.

MR. SAMARAWICKREMA: Only the audit summary that I didn't -- the Appellant summary is based on the information is already.

HEARING OFFICER WILSON: Okay.

MR. PARKER: Hearing Officer Wilson, one of the files appears to be a limited amount of data that we may have had in the audit, but we haven't verified that, comparing it to the data to see if it's the exact same data that we use. It was only 745 lines or so, where our data -- the full data set has tens and thousands of line items.

HEARING OFFICER WILSON: Okay. Thank you.

Mr. Crane, the POS data is that --

MR. CRANE: So, that -- that was directly emailed to my POS guy from me from James Audal, the original auditor. So, that was -- both the attachments were from James to me with his findings that were -- that were his findings. And then my point of sale guy tore them apart because there is the hard drive he extracted, which has a different type of reporting than the point of sale.

This goes back to when James was telling me that

I wasn't charging for dine-ins versus take-outs. This -- this shows that there was, for the 700 or so tickets, that there was that many dine-ins and that many take-outs; where originally the argument was is the point of sale did not ever do dine-ins, which we have.

HEARING OFFICER WILSON: Okay.

MR. CRANE: So, but this -- this information wasn't from -- this wasn't me or my point of sale guy. This was the emails from James, not my point of sale guy. So, this was the CDTFA information sent to me from my hard drives, and we responded to that.

HEARING OFFICER WILSON: Okay. So, the Department should have that?

MR. CRANE: Yes.

HEARING OFFICER WILSON: Okay. Mr. Crane, is there anything in your proposed exhibits that wasn't already in the workpapers or --

MR. CRANE: Everything -- everything of my exhibits was in the workpapers, and that's the problem. It was such big files. We had to move it around. But if -- if they -- if they need it, the email was sent to me on 9/22 of '20 from James --

HEARING OFFICER WILSON: Okay.

MR. CRANE: -- if that would help out their records.

HEARING OFFICER WILSON: All right. So, it appears that the -- the only exhibit that isn't already in the record is the POS provider letter. So -- that the --

MR. CRANE: Yes, to the one from today.

HEARING OFFICER WILSON: Not the one from July 7th submission?

MR. CRANE: My apologies. That was in too, but I got a receipt saying that was accepted. Today's was the new one.

HEARING OFFICER WILSON: Okay.

MR. CRANE: Okay.

HEARING OFFICER WILSON: Just to be on the safe side, we'll leave the record open so you can resubmit your proposed exhibits. We'll let the Department look at them. Just reminder that if it's already in the record --

MR. CRANE: The majority -- 99.9 percent of it was in the record. It was just things that I was going to talk about today and just have those like, you know, being able to reference those.

HEARING OFFICER WILSON: Okay.

MR. CRANE: Sorry. This is my first time. So --

HEARING OFFICER WILSON: No problem.

All right. We'll go ahead and admit the POS provider letter from July 6th, 2026, as Exhibit 1. And then the POS information email today we'll label

Exhibit 2.

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

MR. SAMARAWICKREMA: The -- Judge, the summary that's listed as "Sales By Order Type Report for 2026" that -- it appears that taxpayer agreed between dine-in and take-out. And the information we have from the taxpayer, the POS data listed in Exhibit B. But in that POS information, there's no segregation between dine-in and take-out. So, this is new information, that summary sheet.

HEARING OFFICER WILSON: Okay. Does the Department have any objections to Exhibit 1 and 2?

MR. SAMARAWICKREMA: Yeah. It is not complete, and it's not timely, and it's not complete. The way the taxpayer -- the exhibit we have the total sales listed as $313,000 from July 22nd, 2025, through July 21st, 2026. We don't have any back-up information or the source information to -- to verify the accuracy of this calculation.

HEARING OFFICER WILSON: Okay. Okay. I'm going to admit the Exhibit 2, and if you need additional time to verify it, we'll hold the record open for you to do that and provide a response.

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(Appellant's Exhibit 2 were received into evidence by the Administrative Law Judge.)

HEARING OFFICER WILSON: Next, we'll go to the Department's exhibits. The Department submitted Exhibits A through J. Appellant did not have any objections to these exhibits at the prehearing conference.

Is that still your position?

MR. CRANE: Yes.

HEARING OFFICER WILSON: Thank you.

Therefore, Exhibits A through J are admitted into evidence.

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

HEARING OFFICER WILSON: Mr. Crane, you indicated during the prehearing conference that you were not sure about testifying. If you're not sworn in as the witness, OTA cannot consider your statements as testimony, and it has no evidentiary weight. If you wish to have your factual testimony considered as evidence, you will need to be sworn in as a witness. Do you want to be sworn in as a witness?

MR. CRANE: Yeah. That's fine.

HEARING OFFICER WILSON: Okay. Thank you.

And, CDTFA, do you have any objections to Mr. Crane being a witness?

MR. SAMARAWICKREMA: No, Judge.

HEARING OFFICER WILSON: Thank you.

All right. Mr. Crane, you requested 45 minutes for your presentation. Is that still an accurate timeline?

MR. CRANE: It's gonna be -- it's gonna be a little bit shorter than that. I did have a question. They can ask me questions. Am I allowed to ask them questions?

HEARING OFFICER WILSON: The Department is not going to testify. So you cannot --

MR. CRANE: So, they can't.

HEARING OFFICER WILSON: -- ask questions.

MR. CRANE: Okay.

HEARING OFFICER WILSON: If you have any questions, you can ask the panel. And if we choose, we can ask the Department to clarify.

MR. CRANE: Okay. Perfect. Thank you.

HEARING OFFICER WILSON: All right. So, before we begin, I need to place you under oath so we can consider your statements as testimony, and you will remain under oath for the duration of the hearing. Please raise your right hand.

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B. CRANE,

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

HEARING OFFICER WILSON: Thank you. All right. You may begin your presentation when you're ready.

PRESENTATION

MR. CRANE: Good morning, members of the hearing panel. As you know my name is Bryan Crane, and thank you for allowing me the opportunity to present my appeal.

This case is much narrower than it may appear. It's not a case involving hidden income. It is not a case involving unreported gross receipts. It is not a case involving false books or missing deposits. The Department accepted my reported total gross sales after reviewing my financial records. The only issue before this panel is whether the Department established a greater percentage of those accepted sales should have been classified as taxable.

Throughout this audit, I cooperated with every request that was reasonably possible. I produced bank statements, credit card statements, federal income tax returns, purchase invoices, profit and loss, and every

point of sale record that remained available. Before I was ever notified that an audit were to occur, two of my three stores had been sold. Consequently, those point of sale records were no longer within my position or control.

The business I operated is different from many sandwich restaurants. My locations primarily served in business parks. Most of my business occurred during weekday lunch hours, and the majority of my food sales consisted of cold food sandwiches prepared to go. A significant portion of my business involved --

JUDGE ALDRICH: Mr. Crane, sorry to interject. Can you slow it down a little bit.

MR. CRANE: I'm sorry. All right. Do you want me to start up or just go? Okay.

My locations primarily served business parks. Most of my business occurred during the weekday lunch hours. The majority of my food sales consisted of cold sandwiches prepared to go. A significant portion of my business involved cold catering. These characteristics naturally produced a lower taxable percentage than businesses with larger dine-in operations. The program -- the point of sale was programmed to distinguish taxable and nontaxable transactions and automatically calculate sales tax when required.

I filed my sales tax returns using those records

and reported and remitted the sales tax actually calculated and collected through the system. The Department ultimately rejected these records and instead, estimated my taxable sales using unrelated comparison businesses. I respectfully submit that the evidence does not establish that those comparison businesses more accurately reflect my operations than records generated by my own business. I respectfully request that the panel carefully evaluate whether the Department demonstrated that its reconstructed taxable percentage more accurately reflected my business than my exact business records.

Thank you.

HEARING OFFICER WILSON: That concludes your presentation?

MR. CRANE: That was, like, my opening.

HEARING OFFICER WILSON: Okay.

MR. CRANE: So, I don't know what -- what -- how can I go back. Do I talk about my undisputed facts and all that stuff or --

HEARING OFFICER WILSON: However, you want to present your case.

MR. CRANE: Okay. Tell me to slow down or stop if I'm going the wrong way.

So, the statements of my case is that the Department accepted my gross sales. The dispute concerns

only the percentage of those accepted sales it should have classified as taxable. The undisputed facts are: There was three sandwich shops that operated during the audit period. Two stores sold before audit notification. Bank statements were produced. Credit card statements were produced. Federal income tax returns were produced. Purchase invoices were produced. Profit and loss was produced, and all point of sale records available were produced. Again, the Department accepted my reported gross sales.

I was in business parks, as I already discussed; did a majority of catering, a lot for different -- CAL FIRE and stuff like that. Everything had to be cold. Some of the issues presented, you know, is how they came up with their reconstructed taxable sales. I'm -- whether the selected comparison businesses reasonably reflect my operations, 'cause I'm still unaware of those. And I have maintained my dispute that the Department's determination of the additional sales as not being classified as taxable, I report remit my sales tax again, through the point of sale system.

And again, if I -- if I would know who they compared us to, it -- it might be able to help out this moving forward. And as far as my current location, at the tax percent they're telling me I should be at, you know,

if I have 7 to 10 customers dine-in out of 150 a day, I mean, it's -- it just kind of proves my point.

And I guess that is the beginning of my opening for now.

HEARING OFFICER WILSON: Okay. If there's anything further you would like to say, or you can hold --

MR. CRANE: I do have -- I do have questions. Can I -- can I ask you guys the questions to see if you guys can ask them or --

HEARING OFFICER WILSON: Let's hold off, and let's see what the panel has. Maybe we can --

MR. CRANE: Answer them through that. Okay. Thank you.

HEARING OFFICER WILSON: Yeah. First, we'll go over to CDTFA to see if they have any questions for Appellant.

MR. SAMARAWICKREMA: We don't have any questions.

HEARING OFFICER WILSON: Okay. Next, we'll ask -- have panel questions.

Judge Ralston, do you have any questions for Appellant?

JUDGE RALSTON: Not at this time. Thank you.

HEARING OFFICER WILSON: Thank you.

And Judge Aldrich, any questions at this time?

JUDGE ALDRICH: Sure. I have a couple of

questions.

Could you describe the seating arrangements at each of the locations? I think there's like a Santa Rosa, Petaluma, North of Petaluma, South?

MR. CRANE: So, the seating arrangements in the stores, Santa Rosa being the largest seating arrangement, also being the least in sales at the times. It was a huge ginormous size space. It was triple the size of the rest. So, there was, I would say -- going back in memory -- 15 2-tops, and then 2 big community tables. The Petaluma -- both location stores probably have -- well Petaluma North has less than 8 tables and chairs -- or less than 8 tables. And the current one that I own probably has 12 to 15 tables. They're just in there so it doesn't look like an empty cafeteria.

People -- when I request -- or when I said that if you guys -- if they wanted to do a -- come look at the place or not, you know, they were able to see who were sitting at the tables, and who wasn't. I mean, the -- the employees use them for breaks more than customers do.

JUDGE ALDRICH: Then with respect to seating, could you describe the outside seating?

MR. CRANE: Outside seating at all three locations was common area. So, it was used by all the building or all the businesses in the complex.

JUDGE ALDRICH: And -- but how many seats do they accommodate?

MR. CRANE: Santa Rosa had five outdoor tables. Petaluma had five outdoor tables, Petaluma North; and Petaluma South has five outdoor tables.

JUDGE ALDRICH: Okay. And the restaurant name is Bianchini's. I'm probably butchering that, but --

MR. CRANE: It's Bianchini's, but it's -- it's -- so, Bianchini's is the same which is Bianchini's Sandwich and Salad Market, which I think the whole market is the key in the name of this business. It's not, you know, a restaurant.

JUDGE ALDRICH: And were there typical things, like, Italian beef or hot -- hot beef sandwiches?

MR. CRANE: So, at the time of the audit, I had 14 specialty sandwiches; 25 or 30 percent of them being hot, the rest being cold. Since the audit, we have added 6 more sandwiches to the menu, as well as a special, and multiple soups of the day. The 6 new items that we had added are all hot sandwiches. Soups are obviously hot, et cetera, et cetera. At the time, it was more cold sandwiches. We didn't slice meat. We didn't sell meat to go. It was cold sandwiches and cold salads.

JUDGE ALDRICH: And did any of the cold sandwiches include, like, a panini press or --

MR. CRANE: We did have panini presses, but I mean, currently right now I might get one or two a day.

JUDGE ALDRICH: Okay. All right. Thank you.

HEARING OFFICER WILSON: Thank you.

I did have a question. For catering sales, how did you record those sales?

MR. CRANE: They were in the point of sale.

HEARING OFFICER WILSON: So, was there --

MR. CRANE: So, it was like cold sandwich platters, cold salads. If they did individual hot, we did them individually but the numbers -- like, when CAL FIRE would call, they'd tell me to bring out X amount to the workers. But then the people who were sitting in the trailers, you know, they got to cherry pick. So, if they wanted, you know, hot Reuben, or if they wanted a hot roast beef, we'd give them that. But everything would be logged into the system on how -- what it was sold as.

HEARING OFFICER WILSON: Okay. So your catering sales were both hot and cold --

MR. CRANE: The catering sales were -- I mean, if it was -- if it was requested hot, but most caterings wanted cold platters and cold salads --

HEARING OFFICER WILSON: Okay.

MR. CRANE: -- because it sits in there. You can't have something hot sitting in a platter for a long

time. It gets soggy.

HEARING OFFICER WILSON: Okay. And did you have any kind of contract with CAL FIRE or any other large clients?

MR. CRANE: I mean, I had -- not verbatim a contract. I had -- it was word of mouth handshake, you know, Kaiser, Sutter, all the dermatology offices. I mean, CAL FIRE, Sonoma Sheriff, Santa Rosa Highway Patrol. I mean, all -- or [UNINTELLIGIBLE] highway patrol, all of them. I mean, I can go on and on. I had -- back then we were catering beyond -- I had three vans at the time. We were catering.

HEARING OFFICER WILSON: Okay. There was another question I had in regards to the POS system. It looks like the Department had transcribed for second quarter '18 to second quarter '19 on schedule 12B, recorded sales tax from the POS system. And they compared it to your reported taxable sales and found that reported sales tax was understated. Is -- was there a difference between the information that the -- the Department had and the reports that you used to file the returns?

MR. CRANE: So, the Department, when they extracted the hard drive -- and this was -- this went from multiple auditors and multiple managers, and that's what's kind of the thing. In the beginning, they were calling

things to-goes that were dine-ins, and dine-ins that were to-goes. They were calling hots colds, colds hot. And I continued to go over this relentlessly with them. So when they came up with these numbers, even though we sent them the actual reports from the POS, they said they wouldn't accept it.

And at the time I did have an attorney. The attorney was going through it, and we were just kind of at a stalemate because it's -- we're giving them documentation that I'm -- to this day use to submit my taxes, my tax returns, everything for the business, along with the other two delis. They are still on the same systems. You know, I requested them to go look at the other two delis that I sold. I have no affiliation with them whatsoever. I'd accept the fact that I know the owners of them, but everything is done the same.

These reports, you know, you can go onto it and go to, you know, go into your little drop downs, go to other, go to tax one report. It tells you your report. If you want a breakdown of everything, it gives you a breakdown of everything. So, any the -- any difference of information was self-created by them, which I went over.

I mean, just one that really sticks in my head is James Audal was adamant that my turkey cranberry salad sandwich was hot, and I said, it's not. And, you know, he

kept sending me these reports until I finally sent him enough information back saying, "Hey, you can't classify this as hot. It's a cold sandwich."

HEARING OFFICER WILSON: Okay.

MR. CRANE: So --

HEARING OFFICER WILSON: Another question. When you added new items to your menu, how did you get those into your POS system?

MR. CRANE: Enter -- you enter them into the POS. So, you just go menu setup, type in the name. So, we do it by number, so 15 through 20. And then it says taxable, and you click the tax one button. You -- you click, if it's hot, tax for off-premise, that case for on-premise because it's hot. It does everything for you.

HEARING OFFICER WILSON: Okay.

MR. CRANE: But you have to click the buttons, and -- and they were all clicked 'cause I went through it. They spent quite some time at my office extracting my hard drive going through stuff. He'd ask me for a picture, a screen shot. I sent it to him immediately of any question he had with regards to any of that.

HEARING OFFICER WILSON: Okay. And for the cold food items that were for dine-in how -- how was that recorded?

MR. CRANE: They're dine-in taxable. So, dine-in

is taxed no matter what. So, the second you push the dine-in button, which they were arguing that I didn't have, it does tax on everything.

HEARING OFFICER WILSON: Okay. So, that your employee would -- they'd order a sandwich, and your employee would say okay, you're --

MR. CRANE: This is for here.

HEARING OFFICER WILSON: -- getting a salad, and then they'd push the salad button. And then the --

MR. CRANE: So, the way ours work is we're kind of backwards. We -- you start off an order, and then -- so, order here if you're getting sandwiches, salad bar is in front of you. So come in for those sandwich, put the bag up. They make it or whatever. They go to the front. Whoever is at the register is supposed say, "Is this for here or to go?" They say what it is, and they push dine-in or take-out. The person then -- that screen changes obviously because of tax. So, it goes to a dine-in screen, or it goes to a take-out screen. And then the total is calculated with tax or without tax.

HEARING OFFICER WILSON: Okay. Great. Thank you.

MR. CRANE: Thank you.

HEARING OFFICER WILSON: All right. We'll move on to the agency's presentation. As I said earlier, the

agency is not presenting any witness and only argue the appeal. So, they'll not be testifying.

Mr. Samarawickrema, you requested 30 minutes for your presentation. You may begin when you're ready.

MR. SAMARAWICKREMA: Thank you.

PRESENTATION

MR. SAMARAWICKREMA: Appellant is a California limited liability company that operated three sandwich shops, two in Petaluma, California, and the third shop in Santa Rosa, California. Appellant closed the north Petaluma sandwich shop during the audit period, and the Santa Rosa location on October 1st, 2019. Appellant only has one active location in Petaluma, California. The Department audited Appellant's business for periods July 1st, 2016, through June 30th, 2019. During the audit period, Appellant reported total sale of around $4.5 million and claimed various deductions, including exempt food sales of around $3.8 million, resulting in reported taxable sale of around $709,000; and this is shown on Exhibit A, page 65.

During our presentation, we will explain why the Department rejected Appellant's reported taxable sales and part of its claimed exempt food sales; why the Department used an indirect audit approach; and how the Department

determined Appellant's disallowed claimed exempt food sales for the audit period. During the audit, Appellant informed the Department that they made sales through its POS system and generated POS reports to prepare its sales and use tax returns. But during the audit, Appellant failed to provide complete POS downloads necessary to verify the accuracy of the amounts reflected on its sales and use tax returns for the audit period.

Appellant did not provide complete sales documents of original entry, such as sales invoices, credit card sales receipts, detailed exempt food sale for the audit period. In addition, Appellant failed to provide complete purchase invoices and purchase journals for the audit period. Due to the lack of reliable records, the Department did not accept Appellant's reported taxable sales and claimed exempt food sales.

The Department also determined that Appellant's record was such, that taxable sales and claimed exempt food sales could not be verified by a direct audit approach. Therefore, the Department used an indirect audit approach to determine Appellant's taxable and nontaxable sales. The Department completed four verification methods to understand Appellant's reporting practices and to verify the accuracy of Appellant's reported taxable sales and claimed exempt food sales.

First, Appellant provided its federal income tax returns for the period 2016 through 2018; and this information is shown on Exhibit A, page 1328. The Department compared the sales reflected on federal income tax returns to the reported total sale of around $5 million and calculated an overall difference of around $483,000 for the same period; and this calculation is shown on Exhibit A, page 1328. The Department also compared reported total sale of around $5 million to the purchases of around $2 million reflected on Appellant's federal income tax returns and calculated an overall total reported book markup of around 143 percent for the same period, which is low for this type of business. It nevertheless accepted this low reported markup and did not make any upward adjustments; and this is shown on Exhibit A, page 1327.

Second, the Department compared the reported total sales to the sales reflected on profit and loss statement of around $4.9 million and calculated an overall difference of around $343,000 for the period January 2017 through June 2019; and this calculation is shown on Exhibit A, page 1322.

Third, the Department analyzed reported taxable sales for the audit period and noted that the Appellant on average only reported around 16 percent of total sales as

Appellant's taxable sales; and this calculation is shown on Exhibit A, page 65. Based on Appellant's business, the Department expected to see a higher taxable sales percentage than the reported taxable sales percentage.

Fourth, as mentioned earlier, Appellant used a POS system to record and report sales to the Department. Appellant failed to provide its complete POS sales download, including all folders to verify the accuracy of sales reflected on its sales and use tax returns. However, Appellant did submit POS download for the active location for the audit period; and this is shown on Exhibit B. Upon review, the Department analyzed the provided sales information and determined that the recorded taxable sales percentage of around 23 percent for this location; and this is shown on Exhibit A, page 1321.

The Department also noted Appellant program some of the taxable items as nontaxable. Also, the Department compared the recorded and reported taxable sales tax and found material differences; and these calculations are shown on Exhibit A, pages 78 and 79. These discrepancies demonstrate that Appellant failed to maintain complete and accurate records and did not report all its taxable sales for the audit period.

Appellant was unable to explain the reasons for federal income tax returns and profit and loss statements

differences, recorded and reported taxable sales and sales tax differences for the active location, and low reported taxable sales percentages. Therefore, the Department used Appellant's reported taxable sales, claimed exempt food sales amount, and best available information to determine unreported taxable sales or over-claimed exempt food sales for the audit period.

As mentioned earlier, Appellant failed to record some of its taxable sales through its POS system. Appellant also refused to allow observation test; and this is shown on Exhibit A, pages 41, 42, 58, and 76. This limited the Department's ability to gather additional facts about how Appellant actually conducted daily sales at each active location. It also prevented the Department from determining any potential variance in Appellant's actual taxable sales for different days and times of the week. Therefore, the Department reviewed two comparable businesses to determine a reasonable taxable sales percentage for Appellant's business.

One comparable business operates a single location, while the other operates two locations. Both businesses are located in close proximity to Appellant's business locations and engage in substantially similar business operations. The reported total sales and taxable sales for the two comparable businesses, as well as for

Appellant, are summarized on Exhibit A, page 75. The first comparable business operates Monday through Friday from 7:00 a.m. to 4:30 p.m., while the second comparable business operates seven days a week from 7:00 a.m. to 3:00 p.m.

After evaluating the available information, the Department determined that the taxable sales percentages reported by these comparable businesses constitute the best available information for estimating Appellant's taxable sales percentage. The Department relied on this method because Appellant refused to permit the Department to conduct at least three complete site observations, thereby preventing the Department from obtaining more direct evidence regarding Appellant's taxable sales percentage.

Based on the information available, the Department calculated a taxable sales ratio of around 38 percent for this Appellant; and this calculation is shown on Exhibit A, page 75. Then the Department used this taxable sales percentage and reported total sales to determine the audited taxable sales of around $1.7 million for the audit period; and this calculation is shown Exhibit A, page 72. Audited taxable sales were compared with reported taxable sales of around $709,000 to determine over-claimed exempt food sales of around

$1 million for the audit period; and this is shown on Exhibit A, page 72.

The Department then compared the over-claimed exempt food sales for the audit period with the reported taxable sales of around $709,000 to calculate the error rate of around 145 percent for the audit period. Since Appellant did not record its taxable sales correctly, the Department used the best available information to determine the over-claimed exempt food sales for the audit period. The audit calculation of over-claimed exempt food sales, based on the best available information, were reasonable.

When the Department is not satisfied with the accuracy of the sales and use tax return filed, it may rely upon any facts containing the return or upon any information that comes into the Department's possession to determine if any tax liability exists. Taxpayer shall maintain and make available for examination on request by the Department all records necessary to determine the correct tax liability under the sales and use tax laws and all records necessary for the proper completion of the sales and use tax returns. When a taxpayer challenge a Notice of Determination, the Department has the burden to explain the basis for that deficiency. When the Department's explanation appears reasonable, the burden of

proof shift to the taxpayer to explain why the Department's asserted deficiency is not valid.

Appellant did not agree with the audit findings for the audit period. Appellant continuously claimed that they reported the sales tax collected. As support, Appellant provided statement from his POS provider. As mentioned earlier, Appellant only provided the POS download for one location. And based on this POS data, it was determined Appellant did not report all its recorded taxable sales and did not charge sales tax on some taxable sales and therefore, the Department rejected Appellant's reported and recorded taxable sales.

Regarding Appellant's claim that they rejected the use of unidentified businesses to establish an industry average, when it goes directly against the actual POS data, the Department notes that the Appellant only provided POS data for one location, which the Department found to be unreliable. Without adequate books and records being made available by Appellant, the Department establish audited taxable sales based on other information as provided by Revenue & Taxation Code section 6481.

While Appellant asserts its taxable percentage is low because they were located near business parks and vast majority of his customers ordered its food to go and the vast majority of those orders were cold food, Appellant

has not provided verifiable documentation to support its position. Moreover, Appellant increased its percentage of reported taxable sales from 16 percent during the audit period to 41 percent in 2021, which collaborates that the audited taxable sales percentage of 38 percent is representative for the audit period. Accordingly, the Department rejected Appellant's argument.

This morning Appellant provided a summary of his sales reflecting dine-in sales percentage of less than 1 percent. The Department review summary but rejected this information because Appellant failed to provide verifiable documentation sufficient to substantiate the accuracy of amounts reflected therein. As mentioned earlier, Appellant refused to allow observation test. This limited the Department's ability to gather additional facts about how Appellant actually conducted daily sales at the active location. It also prevented the Department from determining any potential variance in Appellant's actual taxable sales over different days and times of the week. Therefore, the Department had no choice but to determine Appellant's taxable sales percentage based on the best available information.

Based on the foregoing, the Department determined the over-claimed exempt food sales based upon the best available information. The evidence shows the audit

produced reasonable results. Appellant has not provided any verifiable documentation or evidence to support adjustments to audit finding. Therefore, the Department request appeal be denied.

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

HEARING OFFICER WILSON: Thank you.

Judge Ralston, do you have any questions for the Department?

JUDGE RALSTON: No questions. Thank you.

HEARING OFFICER WILSON: Judge Aldrich, do you have questions for the Department?

JUDGE ALDRICH: According to CDTFA's presentation, there were items in Appellant's POS system that were mis-categorized as nontaxable when they should have categorized as taxable. Could you tell me what those items were?

MR. SAMARAWICKREMA: There's Exhibit A, page 1321. The -- based on the active location recorded taxable percentages, 22.7 percent, but that percentage doesn't include dine-in sales. So, the dine-in sales were categorized as nontaxable in the POS system.

JUDGE ALDRICH: So, it wasn't like a specific sandwich? Or it was that the dine-in sales wasn't

accurately recorded in the POS system according to the --

MR. SAMARAWICKREMA: The -- based on the available information, based on the download -- that is that complete download that we received is listed as Exhibit B, and that information doesn't have information to determine which one is taxable, which one -- but only thing based on the discussion the dine-in sales were categorized as nontaxable.

JUDGE ALDRICH: Okay. Thank you. I'll refer it back to Hearing Officer Wilson.

HEARING OFFICER WILSON: All right. Thank you.

The initial findings were 32 percent approximately, and then the Department added 6 percent for that dine-in error; is that correct?

MR. SAMARAWICKREMA: The taxable percentage of 38 -- 38 percent was derived from two comparable businesses. And also, in 2021, the taxpayer self-reported 41 percent as taxable sales, and the Department -- it's the Department's position that the 38 -- 38 percent taxable percentage is reasonable for taxpayer's business.

HEARING OFFICER WILSON: Okay. I was looking at the assignment activity history, and it did mention the 32 percent and the 6 percent added. Let me see if I can find that page for you.

MR. SAMARAWICKREMA: Yeah. So, the 6 percent.

Then the -- the final estimate -- final estimate is 38 percent. So, the Department determined the two similar company -- the two similar businesses give the -- the reasonable estimate, and it's justifiable based on the taxpayer's own reporting for 2021.

HEARING OFFICER WILSON: Okay. Thank you.

MR. SAMARAWICKREMA: And also, the recorded federal income tax return the -- the Appellant reported sales were less than the sales reflected in the federal income tax return. But when you're calculating the -- the taxable sales of the over-claimed exempt food sales, the Department used a lower number by -- by taking the reported number instead of federal income tax return. If the Department used federal income tax return number to estimate, then the -- the additional taxable sales or the over-claimed exempt food sale is $200,000. That is more -- $200,000 more than what we have in the audit.

HEARING OFFICER WILSON: Okay. So, looking at the workpapers 12A-1, the industry peers, I noticed that one of the -- or that both of the businesses had cold catering trays. Is that -- is that why they were deemed similar, based on the descriptions? Or was there anything that Appellant had that the other two didn't or vice versa?

MR. SAMARAWICKREMA: The one location is -- I

mean, the one company has only one location, and the other company has two locations, and the taxpayer has three locations. And the operating hours are close. I mean, the -- the taxpayer's operating hours are Monday through Friday 10:00 to 4:00, but these two comparables start at 7:00 o'clock. So, but based on what we have, this is the closest two businesses that we have.

And the reason the Department used two similar businesses is because the taxpayer refused for us to do three observations to identify the reasonable or the taxpayer's own taxable sales percentage. But when we analyze 2021, the reported taxable percentage is 41 percent. So, it is the Department's position 30 -- 38 percent we deprived from these two similar businesses is reasonable.

HEARING OFFICER WILSON: Okay. Thank you.

We'll go ahead. And, Mr. Crane, if you would like to have a closing or provide any other information that you didn't provide in your opening, you have time to do that now.

MR. CRANE: Am I allowed -- can I discuss what they've said and then ask you guys questions?

HEARING OFFICER WILSON: Sure. You can provide --

MR. CRANE: Okay. So first and foremost, whoever

they compared us to opening at 7:00 a.m., from 7:00 to 10:00 is breakfast. Breakfast is hot. No one is selling sandwiches at 7:00 to 10:00 a.m. in my business. So, I -- that's one of the main reasons I was curious about who they're comparing me to. I open at 10:00 o'clock, and we don't start selling stuff until 11:30, 12:00. So, yes, my open hours were 10:00, but breakfast is all taxable for the most part. That's -- that's what I'd like to discuss with that.

The original 38 percent -- the 32 plus the 6 that was a great point that you brought up because the original auditor came with that, and they canceled that and re-did their audit a different way and came up with the same exact number. As far as what he's telling him we did in 2021, yes, he's accurate. I added 6 hot sandwiches. I added Petaluma food tax. Yeah, I added DoorDash. I added Grubhub. I added Uber EATS. So, I'm paying tax on all that food. They -- they tax all of that, and I pay that. So, that is why my tax is higher.

My -- the first question I do have, if you guys will accept it is, would we agree the Department accepted my gross reported sales?

HEARING OFFICER WILSON: I'm sorry. Could you repeat that.

MR. CRANE: Would you agree that the Department

accepted my reported gross sales?

HEARING OFFICER WILSON: That's --

MR. CRANE: That's the first question.

HEARING OFFICER WILSON: Okay.

MR. CRANE: If -- I don't know if you ask them or if that's something you just don't answer?

HEARING OFFICER WILSON: It -- it appears from the workpapers that that is correct.

MR. CRANE: Okay. And then the only dispute concerns are the taxable percentage, and that's what I'm gathering from the workpapers?

HEARING OFFICER WILSON: Yes.

MR. CRANE: Okay. I'm still trying to understand why the original methodology was changed to come with the same outcome. And I know you asked that question to him as well. So, I can't quite understand it, which brings me to my next question. Why is the evidence demonstrated the replacement methodology being more accurate than the first one which came up with the same answer? He's explained how the other businesses were selected, but I don't feel that they should even be in the same ring.

And then, Judge Aldrich, you asked if they can identify one transaction that should have been taxed, but they can't; and they have all my documentation. They can't give me one item that was improperly done. Did they

perform an observation test? When I -- at the time I had an attorney and at the time it was COVID, and I said to the attorney is it even worth it? No one is coming -- no one comes in.

I had one store in a business park that was empty. If they wanted -- they can come in. It would have been to my benefit, except for the fact that I added six more hot sandwiches. But if they would have came in during COVID it would have been to my benefit 100 percent. And -- and then I guess I can do my closing?

HEARING OFFICER WILSON: Yes.

CLOSING STATEMENT

MR. CRANE: Okay. Sounding like I'm repeating myself, but they did accept my gross sales. The assessment is based solely on the determination that a greater percentage of those accepted sales should have been taxable. I respectfully submit the Department has not established that its reconstructed taxable percentage more accurately reflected my business than the original business records I supplied, which was everything I had; sales invoices, credit card. Every single thing they asked for they got, except for the two point of sales from the stores that were sold because I didn't have those. I reported and remitted the sales tax actually calculated

and collected through my point of sale system. Again, the Department has not identified one specific transaction that was improperly reported.

I respectfully request that the Notice of Determination be reversed, and thank you.

HEARING OFFICER WILSON: All right. Thank you. We'll go ahead and have final panel questions.

Judge Ralston, any final questions?

JUDGE RALSTON: No questions. Thank you.

HEARING OFFICER WILSON: All right. Go ahead.

MR. CRANE: I'm sorry. And just for the records -- and this is in the system -- the dine-in and take-out is a setup as gas pump, yes and gas pump no. And those are in their working records from day one. And that was in the email that was sent today from the point of sale guy. So, it always did say dine-in take-out, gas pump yes, gas pump no.

HEARING OFFICER WILSON: Okay. Thank you.

Judge Aldrich, any final questions?

JUDGE ALDRICH: No final questions. Thank you.

HEARING OFFICER WILSON: All right. Mr. Crane, I did notice that the data you provided there was transactions beginning at 9:30, is that -- was that an anomaly or is that --

MR. CRANE: If there was any transactions at

9:30, we have a guy who comes in every morning while we're prepping and he pays for his food at one so he can just walk in and grab it and not wait in line. So, if there's an earlier transaction, which yeah, there wouldn't be many, or it could have been a catering thing. It could have been an employee. It could have been a neighboring businessperson coming in and just asking if they can get food ahead of time. But we didn't sell breakfast. We just started doing breakfast at the new location, but we still don't open at7:00. We still open at 10:00.

HEARING OFFICER WILSON: Okay. Thank you for clarifying that.

MR. CRANE: Thank you.

HEARING OFFICER WILSON: All right. Let me ask the Department. Do you need additional time to review the Exhibit 2, or is your position that it's unverifiable?

MR. SAMARAWICKREMA: I think we -- we reviewed the information, and we -- we don't need any additional time.

HEARING OFFICER WILSON: Okay.

MR. SAMARAWICKREMA: Yeah.

HEARING OFFICER WILSON: Thank you.

So, we'll go ahead and close the record for evidence.

I want to thank everybody for participating

today. The panel will meet and deliberate and decide your case. We will issue a written opinion within 100 days. This concludes today's hearing for the appeal of Crane S, S, & S LLC, and it is now concluded.

And we are off the record.

(Proceedings concluded at 10:18 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 17th day of August, 2026.

_____
ERNALYN M. ALONZO
HEARING REPORTER