BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	)	
	)	
R. HANNA,	)	OTA NO. 240215299
TOBACCO & MORE, INC.,	)	240215300
	)	
APPELLANT.	)	
	)	
	)	

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, August 11, 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 9:45 a.m. and concluding at 1:34 p.m. on Tuesday, August 11, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ ANDREW WONG
Panel Members:	ALJ NATASHA RALSTON ALJ STEVEN KIM
For the Appellant:	R. HANNA AKSEL BAGHERI
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

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(Department's Exhibits A-X were received into evidence at page 10.)

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Cerritos, California; Tuesday, August 11, 2026

9:45 a.m.

JUDGE WONG: Let us go on the record.

These are the Appeals of Hanna and Tobacco & More Incorporated before the Office of Tax Appeals OTA Case Nos. 240215299 and 240215300. It's Tuesday August 11th, 2026, and the time is 9:45 a.m. We're holding this hearing in Cerritos, California.

I'm Andrew Wong the lead member of the three-member panel hearing this case, and with me are Administrative Law Judges Natasha Ralston and Steven Kim.

Let us introduce the parties, starting with Appellant.

MR. BAGHERI: Aksel Bagheri, representative for Appellant.

JUDGE WONG: Hello.

MR. BAGHERI: Hello.

MR. HANNA: Rami Hanna.

MR. BAGHERI: Push the mic.

MR. HANNA: Rami Hanna, Tobacco & More.

JUDGE WONG: Good afternoon.

And those representing CDTFA, could you please introduce yourselves.

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.

JUDGE WONG: Good morning. All right. We're gonna go over a few logistic matters. We're gonna go over the issues, exhibits, proposed witnesses, and then we're just gonna verify the time allocation, and just the order of presentations today.

So, we're considering two issues today. Issue number one is whether the determined liability should be further reduced; and the second issue is whether Appellant committed fraud.

Mr. Bagheri, is that a correct statement of the issues?

MR. BAGHERI: That's right, Your Honor.

JUDGE WONG: Thank you.

CDTFA?

MR. SAMARAWICKREMA: Yes, Judge, it's correct.

JUDGE WONG: Okay. Now, let's talk about exhibits -- proposed exhibits. All right. So, the exhibit submission deadline was July 27, 2026, and after that -- so at that time, I believe Appellant submitted Exhibits 1 through 27, and then on six other occasions

after that deadline you submitted 10 more exhibits, if I'm not mistaken. So, 37 exhibits total; is that correct?

MR. BAGHERI: That's right, Your Honor.

JUDGE WONG: Okay. Did CDTFA have any objections?

MR. BROOKS: Yes, Your Honor. Yes, we do. I'm sorry.

MR. PARKER: Judge Wong, is that just for -- through Exhibit 27, or is that all exhibits?

JUDGE WONG: Let's go 1 through 27. Do you have any objections to those?

MR. PARKER: We have no objection to those exhibits.

JUDGE WONG: Okay. And then Exhibits 28 through 37, any objections?

MR. BROOKS: Yes, we object -- we object to all those. We've looked at them briefly. They don't appear to be very relevant, but they are late. It hasn't provided us an opportunity to fully look at them.

JUDGE WONG: Okay. Do you have a response, Mr. Bagheri?

MR. BAGHERI: Yes, Your Honor. Can I go through the exhibits individually to --

JUDGE WONG: Briefly. Briefly. Sure.

MR. BAGHERI: So, many of these exhibits would

have been exhibits that Respondent has had before and has had an opportunity to see. The most germane exhibit, the most important one is Exhibit 32, and that's a response from a vendor that came late on August 5th, 2025. It's something that both Respondent and Appellant have been asking for from the vendor for years, and we're able to get it after many attempts on August 5th, 2026.

JUDGE WONG: Okay. Thank you.

I think I'm going to allow even -- even the late exhibits in, but I'm going to provide CDTFA an opportunity to provide a written response to them after the hearing, so they have a chance to examine them and then provide a response to that. Okay.

So, Appellant's Exhibits 1 through 37 will be admitted into the record as evidence, and CDTFA will have a chance to address those.

(Appellant's Exhibits 1-37 were received into evidence by the Administrative Law Judge.)

JUDGE WONG: CDTFA, has identified and submitted proposed Exhibits A through X as evidence.

CDTFA, no other exhibits; is that correct?

MR. SAMARAWICKREMA: Yes, Judge. No exhibits.

JUDGE WONG: Okay.

MR. SAMARAWICKREMA: Nothing further.

JUDGE WONG: And, Mr. Bagheri, you had objections

to Exhibits R, S, and V. Could you briefly summarize those objections?

MR. BAGHERI: Yes. I would object that they're hearsay. I understand that there's an exception to hearsay for business records, but the exhibits -- I want to just put an objection on record because they don't prove what I believe the proponent is entering them for, and that the purchases were actually made because they do not align with bank statements. There's no foundation for them. The custodian of record isn't here to address the exhibits, and we don't believe that they're authentic. And for those reasons we object.

JUDGE WONG: Thank you.

CDTFA, do you have a response?

MR. SAMARAWICKREMA: Yeah. The -- these documents -- these documents were part of the audit folder, and these were exchanged between the department and Appellant during appeal process. And the -- the purchases were received directly from the vendors because Appellant did not provide any record for the first audit period and some incomplete record for the second audit period. And we -- we believe these records are required, and these are the only available information the Department had at the time of the audit.

JUDGE WONG: Okay. Thank you.

Mr. Bagheri, your objection is noted, but I will also note that the rules of evidence don't actually apply to a hearing like this. We're not a -- we're not like a superior court or a trial court, we're a court of law. So, and I do believe, even though they might be hearsay, they do fall in the business records exceptions to the extent that the relevance will accord them the weight that they deserve. So, I'm going to overrule the objection and allow CDTFA's Exhibits A through X into the record.

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

JUDGE WONG: Okay. Let talk about witnesses.

Mr. Bagheri, you have two witnesses; is that correct?

MR. BAGHERI: Yes, Your Honor.

JUDGE WONG: Okay. Mr. Hanna and then also a Mr. Dean Alkalla CPA?

MR. ALKALLA: Yes, sir.

JUDGE WONG: Oh, hello.

Okay. So no other witnesses; is that right?

MR. BAGHERI: No, Your Honor.

JUDGE WONG: Okay. I will swear in the witnesses when I turn it over to you for your presentation.

And then, CDTFA, you have -- do you have any objections? I didn't receive any objections to the

witnesses; is that correct?

MR. SAMARAWICKREMA: No --

JUDGE WONG: Okay.

MR. SAMARAWICKREMA: -- objection. Yeah.

JUDGE WONG: And CDTFA has no witnesses; is that right?

MR. SAMARAWICKREMA: That's correct, Judge.

JUDGE WONG: Okay. Let's go over the time allocation. It's estimated that this hearing will take approximately four hours.

Appellant, you've asked for approximately three hours, and then CDTFA has asked for one hour.

Mr. Bagheri, is that accurate?

MR. BAGHERI: Yes, Your Honor.

JUDGE WONG: Okay. And then -- okay.

Let's go off the record really quick, just a second.

(There is a pause in the proceedings.)

JUDGE WONG: Let's go back on the record, 9:54.

Just note for the record that the parties have no objection to going through lunch, but if you need a -- a break, just let me know.

Okay. All right. Any final questions before we begin, Mr. Bagheri?

MR. BAGHERI: No, Your Honor.

JUDGE WONG: CDTFA?

MR. SAMARAWICKREMA: No, Judge.

JUDGE WONG: Okay. I will turn it over to Mr. Bagheri.

Before I do that, let me swear in the witnesses.

Mr. Hanna and Mr. Alkalla could you please raise your right hand.

R. HANNA,

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

D. ALKALLA,

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

JUDGE WONG: Okay. Thank you very much.

Mr. Bagheri, you have 180 minutes, however you want to divide that between an opening presentation, witness testimony, and then if you want to save anything for a rebuttal and closing, it's up to you.

MR. BAGHERI: Okay.

JUDGE WONG: The floor is yours.

PRESENTATION

MR. BAGHERI: Thank you, Your Honors.

Your Honors, Appellant understands that it is the -- it is the taxpayer's responsibility to maintain and make available for examination all records necessary to determine the correct tax liability, including receipts, invoices, and other documents of original entry supporting entries in its books and accounts. Appellant also understands that Respondent has a minimal initial burden of showing a determination was reasonable and rational, and that once Respondent has met its burden, then the burden of proof shifts to the taxpayer to establish a result differing from Respondent's determination. However, regarding the applicable burden to prove a fact in dispute between the taxpayer and the Respondent, both the taxpayer and Respondent must prove a fact by a preponderance of the evidence, under California Code of Regulations Title 18 section 30219, with the initial burden of proof upon the Appellant as to all issues of fact.

Here, in order for Respondent to meet its prima facia case and its initial minimum burden to prove that its determination is correct based on a markup of purchases, one thing needs to be true; that the purchases were made of the cost of goods sold being marked up. If

the purchases were not made, then how can the markup method of said purchases be reasonable and rational to come up with prima facia determination?

Today, Appellant will prove that the purchase summaries from vendors used in Respondent's markup analysis did not reflect real world purchases of inventory and that it would be impossible, based on both direct evidence and circumstantial evidence, for those purchases to have been made. Appellant asks, Your Honors, to make a factual determination that Appellant has carried its burden that the purchases were not made by a preponderance of the evidence and, therefore, the markup method to determine sales does not meet its initial burden. After all, how can markup method prove tax be -- the markup method be reasonable and rational if it is relying upon purchase summaries that are unreliable?

Appellant will establish, by documentation and other evidence, that it is more likely than not that the purchases -- that a majority of purchases from vendors responses from Cartons 2 Go, Inc., and U.S. Wholesalers were not made in the real world, and, therefore, Respondent has not met its initial burden. Because of the difficulty inherent in proving the negative, when a tax agency determines that a taxpayer received unreported income, the agency must offer some substantive evidence

showing that the taxpayer received income before the agency may rely upon the presumption of correctness; the premise that the presumption of correctness applies only if the determinations and assessments are supported by minimal factual foundation.

Here, the factual foundation would be whether the purchases were made or if a significant part of the purchases were made. Appellant alleges that he was new to the country moving here in 2011, and that he agreed to a -- a scheme where the wholesalers would send invoices to a manufacturer in order to get rebates for both the manufacturer and the retailer. And -- however, those purchases weren't really made in the real world. There's no exchange of monies for inventory. This is a position that Appellant has had before my involvement when he was represented by Dean Alkalla. He's been maintaining this allegation all along. And then Appellant was also charged a fraud assessment. And for the fraud assessment, Respondent must prove by clear and convincing evidence that the element of fraud is highly probable; and so Respondent must show with clear and convincing evidence that the purchases were made.

Here, it's not just that Appellant is arguing verbally that the purchases in Respondent's cost of goods sold and its markup method were not made, but there is

substantial evidence to show that it is more likely than not that roughly 90 percent of the purchases were never made. Appellant has offered its main operating account, a Bank of America account at Exhibits 5 and 33. Appellant has offered personal accounts for Wells Fargo ending 8420 and 8897 at Exhibit 6. Appellant has offered his spouse's bank accounts; a Bank of America account belonging to his spouse. Appellant has offered a Wells Fargo business checking account ending 7692 at Exhibit 36.

Appellant has also produced credit card statements the audit period for an American Express credit card account, a Capital One credit card account, a Wells Fargo credit card account, two Chase Slate credit card accounts, two Discover credit card accounts, all to prove that the purchases were not made. Those accounts are in Exhibits 7, 8, 14, 16, 24, 25, 26, and 27. Appellant also included a credit report dated April 20, 2022, to show that there were no other credit cards from which the purchases could have been made. Essentially, Appellant produced all of its bank accounts, related bank accounts, his spouse's bank accounts, business bank accounts, and credit card accounts all to prove that these purchases were not made by electronic means or by check.

During the Appeals Bureau conference, Respondent responded in a letter dated June 6, 2023, to appeals

conference auditor Clare Liu stating, "It is reasonable to believe" -- and this is Exhibit 37, so we could all --

JUDGE WONG: That's the memorandum dated June 6th, 2023?

MR. BAGHERI: Yes.

JUDGE WONG: Okay.

MR. BAGHERI: So, at the -- towards the bottom of the memorandum it says -- in -- in the final paragraph in the first page starting with the last sentence, "It is reasonable to" -- "well, Mr. Hanna claims he was involved in a scam to defraud the cigarette manufacturers. During our analysis of the cleared checks, none were seen to be written to his supposed coconspirators that could be associated with Cartons 2 Go, Inc., and U.S. Wholesalers Outlet, Inc. It is reasonable to believe that Mr. Hanna might have used cash more often than he's willing to admit. Mr. Bagheri states, "All known bank and credit card statements were provided. The Department has no way of knowing if other accounts, domestic or foreign, exist in his name or possibly other names."

We know from Appellant's Exhibit 2 and Exhibit 3 and Exhibit 32 and Exhibit 33 and the summary at Exhibit 35 combine to show that Cartons 2 Go, Inc., invoices purporting to be paid by check were simply not paid from any account that has been produced. And, at

this time if we can all move to Exhibit 32 -- well, Exhibit 31 is meant to show the foundation for Exhibit 32. It's my email to Cartons 2 Go, and it shows that these invoices were produced on August 5th, 2026, when I spoke to someone new at Cartons 2 Go. Exhibit 32 starting at Bates Stamped 2715. If you look at the bottom of these invoices, they state whether they're made by check or made by cash.

So, starting at Bates Stamp 2715, we see a large purchase of $13,256.25 paid by check. We go to the next page, and there's a large invoice paid by cash. We go to the next page, another invoice paid by cash, and so on and so on. My Exhibit 35 is a summary of -- I'm -- I'm sorry. Yes, Exhibit 35, we could go to that now, is a summary of all of the invoices that say they were paid by check or paid by cash. There's just one error here that I really want to note. It's the invoice dated January 23rd, 2019, for $17,631.30 at Exhibit 32, Bates Stamped 2722, that was actually paid by cash as well according to the invoice. So, for example, for the month of January we have --

JUDGE WONG: Sorry. Quick question.

MR. BAGHERI: Yeah.

JUDGE WONG: It -- on the -- on Exhibit 35, it is saying it is in the cash column. Do you mean it should be paid by check or --

MR. BAGHERI: It was paid by check, if you look at that --

JUDGE WONG: Okay.

MR. BAGHERI: -- actual invoice --

JUDGE WONG: Okay.

MR. BAGHERI: -- and that was a typo or an -- or an error that was --

JUDGE WONG: Got it. Thank you.

MR. BAGHERI: -- caught today. So, that belongs in the check column. And if we were to add the $17,631.30 to the $29,067.33, we would come up $46,698.63 that the invoices purport were written by check. Now, looking through all of the bank statements just in the four months of 2019, Cartons 2 Go invoices that Appellant was finally able to get on August 5th, 2026, show $26,698.62 paid in checks for January 2019. Forty-four thousand, five-hundred-thirty-three dollars and twenty-two cents ($44,533.22) of invoices paid by check in February of 2019, $39,681.44 of invoices paid by check in 2019, and $18,193.85 of invoices paid in April of 2019. These are Cartons 2 Go's records. So, they allege in total in those four months that $149,107.13 were paid by check out of the $502,128.85 in total purchases from January 19th, through April 19th.

Now, let's take a look at the actual bank

statements of the main operating account that is writing some checks to Cartons 2 Go, Inc., at Exhibit 33. When we look at Exhibit 33, Bates Stamped 2771, it has only $9,389.15 of checks written to Cartons 2 Go, Inc., compared to the $46,698 that the invoices allege. At Exhibit 33 Bates Stamped 2779, there's zero dollars of checks written to Cartons 2 Go for February of 2019 compared to the $44,533.22 of alleged invoices paid by check in February of 2019. At Exhibit 33 Bates Stamped 2787, there was only $2,836.63 of checks written to Cartons 2 Go compared to the $39,681.44 alleged invoices paid by check in March of 2019.

And lastly, Exhibit 33, Bates Stamped 2797, there was only $4,240.46 of invoices paid by check in April 2019 compared to the alleged $18,193 paid by check on the alleged invoices from Cartons 2 Go, Inc. In total from this account, there was $16,466.24 of checks written to Cartons 2 Go from the January 2019 through April 2019 period. There are some checks written out of Rami's personal account from Wells Fargo ending 878420 and 8897 at Exhibit 6. These total $5,628.87 for January through April of 2019. There was no checks written from Rami Hanna's wife's accounts to Cartons 2 Go. And lastly, the last account where checks could have been written from, there was $11,492.43 of combined checks written in that

period. So out of the $149,107.13 of alleged checks written from taxpayer's accounts, taxpayer's bank accounts show that only $33,587.54 of checks were actually written to carton -- Cartons 2 Go.

Now, Respondents will tell you, well, that's just because there's another bank account that we don't know of; and I'd like to address that allegation now. First, the invoices themselves and the summary of Cartons 2 Go show that these monies are paid cash on demand or check on demand. There is no running total of accounts receivable where one can say that there is a balance accruing with the vendor. And when you look at the checks that are written, they don't match the underlying invoices. Respondent argues that Appellant might have other undisclosed accounts foreign or domestic. If true, there would be transfers in and out of the current accounts that Respondent cannot identify. There would likely be transfers in and out of those alleged undisclosed accounts.

Next, we know that the Franchise Tax Board operates the financial institution record match program under California Revenue & Taxation Code section 19266. This system runs automated quarterly data matches with hundreds of financial institutions doing business in California to uncover checking, saving, and money market

accounts tied to a specific taxpayer identification number or social security number. The CDTFA coordinates closely with the FTB during collections and deep audits to pull asset, location, data, flag records. I've been doing this for 15 years. There's been many occasions where I've been called out about an undisclosed account. I've been told on many occasions and in many audits that there was additional undisclosed account after responding to a document request, which results in me asking my client about it. Oftentimes there are obscure accounts that were opened and not often utilized and, therefore, the client forgot about them.

Surely, the CDTFA would know about a domestic account with hundreds of thousands or better yet, millions of dollars flowing in and out of such account. Cash sales would have had to be deposited into this unknown account in order for the $149,107 in purchases to be made by check. Any cash deposits into any account in the United States, for making all these check purchases, would have surely caused currency transaction reports and suspicious activity reports to have been filed. One cannot just deposit that kind of cash without being flagged. The banks would have surely been detected by the financial institution records match system. Moreover, there would have been federal audits of the taxpayer if there was

large deposits of cash in an unknown account due to currency transaction reports. Large cash deposits into any bank account would have triggered the currency transaction reports or suspicious activity reports, even if the taxpayer tried to structure it under $10,000. All banks follow this regulation. No banks would have forgone this regulation.

The recently acquired account transcripts at Exhibit 28, which were obtained on June 28th, 2026, show no audits or examinations for the years 2016 through 2021. Are we to believe that the taxpayer is depositing all this cash into an unknown account to pay invoices by check and not being audited by the federal government? Are we to believe that all this cash is being deposited into an unknown account and the accounts are not appearing in the financial institution's records match database kept by the State of California?

Coming back to my argument from Respondent, I quote, "The Department has no way of knowing if other bank accounts, domestic or foreign, exist in his name or possibly others." I'll focus on the domestic side of the argument. Now, let's break down whether or not Rami Hanna had foreign accounts to buy $6 million of cigarettes from. Are we to assume that Mr. Hanna constantly flies with millions of dollars of cash to foreign countries or even

foreign states in the United States to make cigarette purchases from? Based on the small sample of January to April 2019, we just went through, he would have had to be flying almost weekly to be able to make those check purchases from a foreign account.

It's unfathomable to think that there is a foreign account being used to buy cigarettes by check when the accounts would need cash deposits from the sales to maintain the check purchases. The allegation that there are these secret accounts demonstrate the senior auditor's unfamiliarity with both the domestic and world banking systems and the safeguards put in place to ensure that government entities know about major cash deposits. You can't make a purchase by check without a deposit into an account. So, where are all these alleged check purchases from the vendor Cartons 2 Go coming from? Moreover, for the hundreds of thousands of alleged cash purchases, all of these vendors, Cartons 2 Go, U.S. Wholesalers, and so on, would have had to file Form 8300s for cash received in business. The Form 8300s mandate that the seller get identification from a payer of cash and report a Form 8300. Cartons 2 Go, Inc., would have had thousands of reporting violations that would carry potential penalties that were the greater of $27,290 or 100 percent of the amount of cash received in the transaction up to a

maximum of $109,000 per violation in the year 2019 for intentional violations for not filing Form 8300s.

Moreover, the Form 8300s would have had to have been reported to the taxpayer for currency transaction reports as long as they were not suspicious activity reports, which are not reported -- which were not reported to the taxpayer. Respondent's reaudit working to -- papers and related documents state at Exhibit D, page 20 -- 122, "Without documentation supporting sales for resale, I recommend that no changes be made to the audit." Mr. Alkalla's forced explanation of the unrecorded purchases were stated that Mr. Hanna was working with the tobacco company representatives to manipulate the purchase records to increase the amount of rebates received is highly unlikely. It is doubtful that representatives from major companies would be a party to this sort of scheme.

This scheme would involve many people in the company, not only from the sales Department, but also in the accounting Department where company accounts for sales and inventory are being sold. There would have been -- there would have to be a total lack of internal controls for this type of scheme to work. Therefore, we're accepting the vendor confirmations and do not recommend a change of the audit methodology.

It seems that Respondent believes that the vendors, such as Cartons 2 Go, Inc., and U.S. Wholesalers, Inc., are above board and above any scheme that could have gone undetected with internal controls. Well, if the vendors were as above board as Respondent assumes, then they would have issued Form 8300s from my clients, which would have undoubtedly led to audits and examinations that never happened.

JUDGE WONG: Sorry, Mr. Bagheri.

MR. BAGHERI: Yes.

JUDGE WONG: Where was that quote that you were quoting from? Exhibit D page --

MR. BAGHERI: One-twenty-two.

JUDGE WONG: One-twenty-two of the PDF, or is it the Bates Stamp No. 120?

MR. BAGHERI: I believe that was the Bates Stamp, Your Honor.

JUDGE WONG: Okay.

MR. BAGHERI: The way I got Respondent's exhibits was through two documents. Is that right? Or was there one document?

JUDGE WONG: CDTFA, could you address that?

MR. SAMARAWICKREMA: The Exhibit A through L related to the first audit period. That is -- that is 573 pages. Then for the second audit period, Exhibit M

through X, so there are two -- two exhibits.

JUDGE WONG: So, two documents you submitted?

MR. SAMARAWICKREMA: Yes, Judge.

JUDGE WONG: Okay. Thank you.

So, I believe there was -- there were two PDFs that they submitted both on --

MR. BAGHERI: Yes.

JUDGE WONG: -- July 15th.

MR. BAGHERI: I'm seeing this quote as part of a document that's attached to final audit results. And then there's the report that accompanies the final audit results, and it's on Respondent's Bates Stamp 122.

JUDGE WONG: Okay. That's fine. Thank you.

MR. BAGHERI: And it's around the middle of the page, that quote.

MR. SAMARAWICKREMA: That is 836.

JUDGE WONG: Eight hundred thirty-six?

MR. SAMARAWICKREMA: No. The audit discussion report --

JUDGE WONG: Oh, okay.

MR. SAMARAWICKREMA: -- issued by the principal.

JUDGE WONG: And which page was that?

MR. SAMARAWICKREMA: That is pages 110 through 138. That includes the summary, and 836, CDTFA 836. Again, you --

JUDGE WONG: Oh, CDTFA 836 is the -- is the -- okay. What page is it?

MR. SAMARAWICKREMA: Okay. Let's see. One-ten -- okay. That is page start from 118.

JUDGE WONG: Hundred --

MR. SAMARAWICKREMA: Bates Stamp.

JUDGE WONG: Bates Stamp 118?

MR. SAMARAWICKREMA: Yeah.

JUDGE WONG: Okay. Okay. Got it. Thanks. Please proceed.

MR. BAGHERI: Yes. So, these alleged other bank accounts that the Department has no way of knowing about, according to the Department for Respondent, I should say.

I'm sorry that I switched pronouns with Department and Respondent.

But so when Respondent is provided by evidence like this that shows that, you know, certain checks that come from vendor invoices aren't being paid, which they were showed initially through Exhibits 2 and 3, which is a much smaller sample but, nonetheless, that was another example of invoices purportedly paid by check that were not coming out of a bank account. Appellant's response is, "You know, you must have other bank accounts that you're not disclosing."

But how can Appellant prove that there are no

other bank accounts other than what's been provided? Does Appellant have to go to every major bank in the United States and prove it doesn't have an account? Again, one has to understand that the major cash deposits into a domestics bank account would cause currency transaction reports. Major cash purchases from vendors would have caused Form 8300s to be filed. The banks do not operate without creating currency transaction reports. And if the invoice sample says that there was $150,000 of checks written from an account over a four-month span, then surely the alleged secret account would have been known.

In order to further show that these purchases were made, one has to think about the overall logistics of going to these vendors and making purported cash sales because Respondent argues that these purchases were made by check and cash and that they're not sure to what extent. So, let's now assume that purchases are made by cash. Another convincing point of contention brought to the Department's attention was the fact that many of the vendor purchases happened -- all happened on the same date from different vendors that are cities apart from each other. U.S. Wholesalers, Inc., located at 103 East Third Street, Los Angeles, California, was 31.1 miles away from Cartons 2 Go at 914 Foothill Boulevard in La Verne on the shortest route. Sam's Club, at 1301 South Lone Hill

Avenue, Glendora, California, 91740, is 29 miles away from U.S. Wholesalers, Inc., located in L.A. And, Your Honor, these mileages I have looked out, so I'm asking you to take judicial notice, but they could be easily verified by the addresses.

Cartons 2 Go, Inc., in La Verne is 3.2 miles away from Sam's Club in Glendora. Cartons 2 Go, Inc., is 13.2 miles away from Tobacco & More in West Covina. Sam's Club is 8 miles away from Tobacco & More, Inc., in West Covina. And finally, U.S. Wholesalers is 19.3 miles away from Tobacco & More, Inc., in West Covina. The very vendor purchases being used by Respondent with the summaries would mean that Rami Hanna would have to be all over town buying cigarettes for millions in cash and checks during the audit period while also selling cigarettes in millions in cash to consumers.

Appellant took a random sample of invoices at Exhibit 34. Appellant made a summary from the vendor purchases. Green highlights show purchases made on the same day from Sam's Club and Cartons 2 Go. Yellow highlights show purchases made on the same day from U.S. Wholesalers and Sam's Club. Blue highlights show purchases made on the same day from U.S. Wholesalers and Cartons 2 Go. And finally, a teal highlight shows purchases made on the same day from all three vendors on

the same day. Rami Hanna had a one-man operation. Imagine the sheer scope and time consuming effort of having to make thousands -- hundreds of thousands of dollars in purchases on a monthly basis from three different vendors then having to sell hundreds of thousands of dollars a month in cigarette sales.

Us tax professionals working in sales and use tax have seen point of sales records where there is $2 million of sales in one year, such as the alleged sales made in 2019. Such POS records have hundreds of dollars of transactions per day to sustain that level of sales. Unfortunately, the records are not time stamped by exact time to show that Rami couldn't have been at two places at the same exact time, but the magnitude of both the onerous amount of purchases and the onerous amount of sales in purported cash, would be nearly impossible for one person. And the fact that Rami -- Rami Hanna began driving Uber starting in the year 2018, and the rate of purchases in sales becomes even more unlikely. At Exhibit 10 Appellant offers Uber earning statements for fiscal year 2018, 2019, year 2020 -- excuse me. Just a moment to get to the exhibit, Your Honor -- Your Honors. I'm sorry.

Okay. The Uber exhibit, beginning in Exhibit 10 Bates Stamp 1226, shows 4,496 miles driven in the fiscal year 2018 through 2019. I believe that fiscal year ends

September 30, 2019. For 2020, Rami Hanna drove 4,658 miles. And for 2021, Rami worked Uber driving 18,874 miles. By that time it seems like he's driving a lot of Uber and this now segues into the lifestyle argument regarding further proof that these purchases were not paid. So, if we were to take Respondent's numbers to be correct, and their markup method to be correct, the total sales in the year 2019, the total additional audited sales minus the cost of goods sold would assume that Rami Hanna made close to $400,000 of untaxed net profit in the year 2019.

So, in relation to that, the record shows that Rami Hanna started having to drive Uber part-time while making that kind of money doesn't seem to be in touch with reality. The Uber driving occurred before the audit. One doesn't just start driving Uber if they're making that kind of money. Furthermore, the record itself when you look through the credit card statements that have been produced, Rami is accruing larger and larger credit card debt throughout the audit period. And then the credit report at Exhibit 2, if we can turn to that, starts showing defaults on credit cards. The first four pages of Exhibit 1 were inadvertently admitted but if we start, for example, from Bates Stamp 10 on Exhibit 1 -- I'm sorry. That's Exhibit 1, not 2. So, Bates Stamp 9 and 10 on the

credit report shows a Bank of America credit card with a balance of $8,463 as of 4/13/2022. It has a credit limit of $7,000. And when you scroll a bit down, it shows that taxpayer started become -- becoming delinquent on the credit cards starting in March of 2020. By the end of 2020, he's 150 days delinquent. By the beginning of 2021, 180 days -- and this is rampant throughout the credit -- the credit report. It shows a person who is financially struggling. It does not show a person that's making $400,000 of untaxed net profit in the year 2019.

To the contrary, Mr. Hanna is starting to drive Uber and amounting credit card debt. His lifestyle, his net worth is actually diminishing, not increasing. And Respondent's numbers would allege that these types of profits were made for years on end. It just doesn't add up to Mr. Rami Hanna's lifestyle and his financial circumstances. Also, when we look through the credit card statements -- and they're searchable -- we'll see many, many purchases made at discount stores such as the 99 Cent Store, Goodwill. For example, at Exhibit 8, Bates Stamp 1010, we see purchases made at the 99 Cent Store and Goodwill. And again, this type of behavior preaudit is rampant throughout the record. If we look at the credit card statements, we see that Rami Hanna is living a very meager lifestyle. Once I start examining him, I'll get a

little bit more into that, but these are objective records that are showing the way that Rami Hanna is living, having to drive Uber, having to make purchases on credit card. Surely, if there was this much cash floating around, he would at least be making purchases of clothing and small items in cash, but that is not happening.

It is just -- these -- these allegations of the audited taxable sales do not coincide with reality. Mr. Hanna would not have that type of cash and not spend it, at least on the most basic things. These were arguments that were presented to the Department time and time again. We practically -- I want to use the word "begged" the senior auditor and the audit principal to verify that the purchases were made by using their investigative powers during the audit. Given at Government Code section 15613 the Board may issue subpoenas for the attendance of witnesses or the production of books, records, accounts, and papers before it; its secretary, any of its members or any representative designed by it. Such subpoenas shall be signed by a member of the Board or its secretary and may be served by any person. Government Code section 15618 says the Board may examine as a Board individually or through its staff, the books and accounts and papers of all persons required to report to it or having knowledge

of the affairs of those required so to report.

So, from the investigative period through the Appeals Bureau audit, Appellant virtually has no way other than asking the vendors to provide the records on their end; has no way of getting those records because they aren't Appellant's books and records. Check deposits would have been the third-party's books and records. All Respondent had to do during the investigation, which Appellant asked it to do, was go verify that some of these check deposits were actually made into the vendors accounts. If they had just done that, we wouldn't be here today. It would have been taken care of a long time ago.

Appellant, other than asking the third party to produce records, doesn't have that luxury until an OTA panel allows a subpoena. And so, what we're saying is that every taxpayer would then end up having to appear before the OTA just to be able to get those records in the first place. And so, when we're talking about the burden of production for the minute foundation of the markup method and proving that these purchases were made during the audit period. All throughout the Appeals Bureau, process, Appellant cannot get those records. Respondent can, and they were asked to again and again to do that, and they finally obliged during the Appeals Bureau process by simply sending a letter to the vendors asking for more

information than they had before.

They asked for the method of payment and a sampling of invoices, and both vendors did not reply. And those exhibits are entered. So, in Exhibits 12 and 13, you'll find that during the examination period, the audit period, the attempts of Appellant asking Respondent Jesus Salazar and Dina Hay. Jesus Salazar is the audit principal, asking them to follow up on the vendor purchases. And then once that didn't happen, Appellant had to make a record of the request to show that Appellant was asking. So, at Exhibit 12 in an email dated April 25, 2022, there's an email to Mr. Salazar and Ms. Hay asking -- verifying that they were unwilling to pursue the matter further to verify the purchases were actually made.

And then at Exhibit 29, during the Appeals Bureau process, Brian Allen did finally furnish information to vendor under Government Code section 15618, and there are corresponding emails asking for more information on those vendor summaries asking for actual invoices and asking for the method of payments that were made for the vendor summaries because otherwise, the vendor summaries do not tell us how those purchases were made. It's no more than an Excel sheet of purported purchases. And so when asked, the vendors didn't reply, but Respondent did not follow up to issue a subpoena or to see whether those checks were

actually deposited that the purchase summaries and the purchase invoices say.

So, from our end, there's -- there's two sides to a transaction where money is exchanged. From our end, we've shown Respondent that we're not making these purchases from our bank accounts. The other side of that transaction is a third party, and the only way to know if those purchases were actually made would be the deposit items of that third party and their bank statements. So other than that, we have our proof. We have our proof that the purchases weren't made. We have the circumstantial evidence about Rami Hanna not being able to be at all these places at the same time while making hundreds of sales a day. We have the added evidence that the cash -- no cash is being spent on the most minimum basic living expenses and that the net worth of Appellant is diminishing. All of that stuff is -- is presented to Respondent, and we ask Respondent please just follow up and see if these purchases were made. We could resolve this case. That was not done.

Regarding also whether schemes involving manufacturers exist or not, there are two exhibits we entered, one exhibit actually at Exhibit 19. It's an article, and then the underlying civil case between R.J. Reynolds Tobacco Company versus a slew of wholesalers

and retailers regarding a rebate scheme. So, that was put just to show that these schemes do exist and manufacturers are taken advantage of it. It's -- it's like when -- you know, it's common knowledge. People were sending invoices to Google, and Google was just paying them 'cause they're such a large corporation. That could happen.

Lastly, there's a discrepancy between the Walmart purchases that Respondent has come up with for the year 2019 and a response made to Appellant for the same Walmart purchases for the year 2019. This discrepancy was noted during the Appeals Bureau process. When we had asked -- or Mr. Hanna had originally asked Sam's Club to provide it with purchase invoices, there was $84,000 of purchases made from -- in the year 2019 from Sam's Club, which is commensurate to the actual outlays of money from the bank accounts. However, when Respondent asked the same from Sam's Club, somehow they got a response from Walmart showing $500,000 or so of purchases in 2019. So, that's just a discrepancy of us receiving different information than Respondent and really no explanation as to why those purchases are different. Our purchase invoices are in Exhibit 30.

The Appellant's request for information from Sam's Club is in emails showing Mr. Hanna's attempt to request information from Sam's Club. It shows who

responded from Sam's Club with their name and account information and other things, the member number, for Sam's Club and that Exhibit 30 shows $84,000 and change in purchases. But Respondent's response from Walmart, which is the parent company of Sam's Club, shows a different number. We don't -- we don't know what the discrepancy is, but the bank accounts support our evidence over the Respondent's. Respondent's Sam's Club purchases are found at Exhibit 23. So, we're not contesting any other year of purchases for Sam's Club except for that one year where there's a discrepancy between our information that we received from Sam's Club and what Respondent got.

Now, when we issued the subpoena to Walmart, they came back with the same number that Respondent had. But that still doesn't explain the discrepancy of why we got a different number the first time we requested it.

JUDGE WONG: So, Mr. Bagheri --

MR. BAGHERI: Yeah.

JUDGE WONG: -- just to clarify, the second time you asked for information from Walmart, what was the number? And -- and that information coincided with what Respondent received?

MR. BAGHERI: That's correct, Your Honor.

JUDGE WONG: Okay.

MR. BAGHERI: So, admittedly, that second request

corresponded with what Respondent received when they requested the information. But there's still a discrepancy as to why -- and we've noted the emails requesting that information. We have a screenshot and everything. We got a different number the first time we requested it.

JUDGE WONG: Thanks.

MR. BAGHERI: And the reason that very year was requested is because it looked like an anomaly. It looked out of tune with the other years. And so we requested that specific year from Sam's Club and -- and got a different number.

Lastly, the 1099-K merchant sales. Exhibit 11 shows 1099-K information from all the merchant service companies from 2012 through 2020. We also retrieved wage and income transcripts from the IRS that reflect vendor merchant sales transactions. And when you look at the 1099-Ks for merchants, the total audited sales after the markup method absolutely dwarfs the 1099-Ks. The 1099-Ks amount to -- in some years -- roughly 5 percent of total purchases. So, Respondent is absolutely saying that 95 percent of the sales happened in cash and only 5 percent with credit card transactions. When comparing the 1099-Ks to the markup method, it shows another discrepancy.

And lastly, the bank deposits analysis; Respondent came up with a detailed bank deposits analysis showing all the transfers in and out of accounts, and the bank deposits analysis showed only a $67,000 discrepancy between what we reported and what the bank deposits came up with for the whole audit period. So, all of these other things, other than the markup method, all of these other things are showing that these purchases weren't made from the 1099-Ks; to the bank deposits, to the fact that Rami Hanna would have to be at different vendors on the same day rolling around with tens of thousands, if not hundreds of thousands of dollars in cash, while also making these purchases -- I mean, while also making the sales in cash. It -- it just doesn't seem to add up.

And the most important fact showing that the purchases were not made are the checks. The checks from the bank accounts do not match up with the vendor invoices. I think that is the most telling thing, the vendor is producing invoices that say they were paid by check when they weren't. They simply weren't. They don't come out of our accounts. Where are those checks? They are not in the record.

At this time, I want to introduce and examine my witness Rami Hanna.

DIRECT EXAMINATION

BY MR. BAGHERI:

Q Hello, Rami.

A Yes, sir.

Q Rami, I'm gonna ask you some questions, and I want you to be completely truthful. I want you to understand that making allegations regarding manufacturers that are creating fake invoices, if not true, you would be perjuring in this court. And also, you might be subject to some kind of malicious prosecution, either civilly or criminally. So, I need you to be completely forthcoming. In the year 2019, did you make roughly $1.6 million in credit card -- in cigarette purchases?

A No, sir. Never.

Q If you were to guess monthly and estimate how much in cigarette purchases were you making monthly?

A Divide this number by -- by 12 months? It's -- it's not -- it's just no small smoke shop can do this sales in one year. And if I do, like, why I drive Uber like, after I closing?

Q But just answer the -- the specific questions.

A Okay. No --

Q Don't -- don't explain it?

A I'm sorry.

JUDGE WONG: Could you also speak into the mic?

MR. HANNA: Yeah.

JUDGE WONG: Thank you.

MR. HANNA: Yeah. Sure.

BY MR. BAGHERI:

Q Okay. Rami, what year did you immigrate to the United States?

A 2011.

Q Do you remember what month?

A I'm not remember what --

Q Where did you emigrate from?

A Egypt.

Q Okay. And when did you start a -- what business did you conduct when you first --

A Yeah. I came working like as a station, like, a cashier. I work in a smoke shop too as a cashier. Then I start business in 2012. I think buy a small store just opening. I has no idea, like, how things is going on, and immediately I -- I hire a tax expert to -- to do like the how thing -- like, how -- how I handle this. I just want to --

Q Okay.

A Yeah.

Q So, you started the cigarette operation. What address was it at? It was a retail store a brick and mortar?

A First one was at 2648. It was -- this in West Covina. I stay there like a year then they cancel. They -- they raise up the rent, and by the time the lease finish, I move to the 120 North Vincent, West Covina.

Q When did you move there?

A I moved there 2016, I think.

Q Okay.

A Twenty-fifteen or '16.

Q Do you recall the square footage? What's the address of the place exactly?

A Two-six-four-eight -- I forget it one -- Workman -- Workman. Two-six-four-eight East Workman Avenue, West Covina.

Q That was the first shop or the second one?

A First.

Q Okay. When -- how about the second shop?

A 120 North Vincent, West Covina.

Q Okay. And that was 2016 that you moved there?

A Twenty-sixteen.

Q Okay.

A Yeah.

Q How many square footage was your shop?

A Both are similar, I think like 936, 940 square feet.

[INAUDIBLE]

MR. BAGHERI: Oh, I'm sorry. Dean needs to use the restroom.

JUDGE WONG: Sure. He can -- sorry. Let's go off the record really quick.

(There is a pause in the proceedings.)

JUDGE WONG: Let's go back on the record.

BY MR. BAGHERI:

Q Rami, did you have any employees?

A No. I work myself.

Q Did you have any help of anyone you're paying under the table? This is very important. Please be truthful.

A No, sir. No.

Q During the audit, did any auditor visit the store?

A Yeah, Mr. Brian. He visits the store.

Q How many times did he visit the store?

A I think two times or three times. Two times, maybe three times.

Q When he came to the store what did he ask for?

A He -- he come, I think, to how's the inventory I have. It wasn't that much at the time. And then he said it's randomly audit. I need to know your record and stuff like how -- and he stays to see how's the flow of customers coming and go. It wasn't anyone just, by this

time, actually walk into the store, I think. Then --

Q Did he ask for bank records?

A I -- I remember he asked for invoices first and then bank records.

Q Okay.

A Yeah.

JUDGE WONG: Sorry. Can you repeat the person who came just for the record.

MR. HANNA: Mr. Brian. Mr. Brian.

MR. BAGHERI: I believe that's Brian Allen, Senior Tax Auditor.

JUDGE WONG: Great. Thank you.

BY MR. BAGHERI:

Q At any point, did Mr. Allen ask for something and you said, "No, I'm not going to give that to you?"

A No. Never. I -- I try to give him anything he ask for.

Q So, he came to the shop three times, and all three times you met with him and -- and spoke to him?

A Yeah.

Q You answered his questions?

A Yes.

Q On all three visits?

A Yes.

Q He asked for invoices?

A He asked for invoices.

Q Did you give him invoices?

A I give him some invoices what is available stores, and I ask, I'm sorry if some are not here. I may be go to vendor or Mr. Dean office. Maybe he has some. Like, I do not like, miss any invoices to be wrong. Look, I don't want to hide anything. I said I'll give you everything.

Q Did you give him bank statements?

A Bank statements I think I email it to him. I'm not sure. I'm not remember if by hand or by email, but I give it to him.

Q Okay. So, what else did he ask for?

A He -- he just ask for invoices, and he said I gonna audit your store for everything, invoices and bank statements.

Q Okay.

A Yeah.

Q From the three visits, do you recall -- let start with the first visit. How long was he there for?

A I think like 15 to 20 minutes.

Q How about the second visit?

A He didn't stay for long, like -- yeah. I don't think -- I -- I think the same. But the --

Q The third visit?

A The third actually I'm not remember. Maybe it was first to receiving papers and the list I'm not sure. The third I actually not remember, but the -- the first two was like 15 to 20 minutes, I think.

Q And any questions he asked you, you answered?

A Any question he asked me, I understand I ask -- I -- I answer.

Q Okay.

A Okay.

Q Would you say you were being cooperative?

A Collaborative [sic] means?

Q Doing what he told you and what he wanted?

A Yeah. I do what he -- whatever he asked me I do. Yeah.

Q Okay. Again, how many square foot is the West Covina office?

A I think 940 or 60, something like this.

Q Okay. At the time of audit, can you tell me what car you were driving?

A Kia Optima 2015.

Q Okay. I believe that appears on your credit report at Exhibit 1. What other -- were there any other cars?

A Yeah. I think by this time my wife, she has a -- a Prius 2010, Toyota Prius 2010.

Q A 2010 Prius. And this is in the year -- what year did the audit start? Do you remember?

A I -- I think 2020.

Q Twenty-twenty?

A Twenty-twenty, yeah.

Q Okay. Let me ask a little bit about your relationships with your vendors. Who were you buying cigarettes from throughout the entire audit period? Name all of your vendors.

A So I -- I buy from Cartons 2 Go, U.S. Wholesale and Sam's Club.

Q Any other vendors?

A There are. I give Mr. Brian, I think, few invoices for. Do you know the -- not cigarette accessories -- like glass something like this. I -- I give it also to him. But this such $300 or $400. I -- that's what I remember. But the major is Sam's Club and Cartons 2 Go and U.S. Wholesale.

Q So those are the major --

A Yeah.

Q Is there any other vendors you would have bought maybe more than $20,000 --

A No, no.

Q -- from for the year?

A No.

Q $10,000?

A No, not that. It only like $500, $700 if somebody has the accessories of the smoke shop.

Q Does Sonics Imports sound like a --

A Yeah. Sonics Imports.

Q How much did you buy from them?

A Eleven-hundred dollars, $700, something like that.

Q Is this a month or a year you're talking about?

A Maybe like every three months, or something like this. It's -- it's not exceed so far I remember like $4,000 a year or $3,000 a year.

Q Okay.

A Yeah.

Q So your main --

JUDGE WONG: Sorry to interrupt. Mr. Hanna, could you turn the mic --

MR. HANNA: Yeah.

JUDGE WONG: Turn it a little towards the left 'cause you're talking towards --

MR. HANNA: Oh, okay.

JUDGE WONG: Mr. [INAUDIBLE].

MR. HANNA: I'm sorry. I showed it to you.

JUDGE WONG: No. That's fine.

MR. HANNA: I'm sorry.

JUDGE WONG: That's fine. We just need for the record -- we need to pick up what you're saying. So, thank you.

BY MR. BAGHERI:

Q Okay. The -- the vendors, when you walk into -- let's pick one -- Cartons 2 Go, Inc.

A Yes.

Q Are they allowed to sell cigarettes to me?

A You should have tobacco license.

Q A tobacco license. Okay. What else do you need when you go to buy cigarettes?

A A seller number. Like, at the beginning to open account with them you have to give them tobacco license and seller permit.

Q Okay. Now, so when you go back there to buy more cigarettes another time, do -- do they ask for the same information?

A No, no. No.

Q What do they ask for?

A The store name. Like, when I go shopping and I get what I need, then I go to the cashier, and then he ask, "What is the store name"?

I say, "Tobacco & More."

Q And that's it? That's all you need?

A Then when he open the screen, the seller of the

store's name is Tobacco & More. He said, "Which one? What address?"

Then I -- I said, "120 North Vincent."

Then he start to open the invoice.

Q Okay. So, if I knew that you have a relationship with Cartons 2 Go, I could just walk in there, and they don't ask for I.D. --

A No I.D.

Q I could just say, "Oh, I'm from --

A They don't ask for I.D. Like they verify by the address. You -- you should see the name of the -- the store, and then they ask you for the address. If you said the address, then they open the invoice for you.

Q How about a specific member number did they ask for?

A There are no -- I'm not sure if there are member number. I don't have like, member number card like Sam's Club or something like this. It just by store name and the store address.

Q How can they verify that it's you making the purchases? What if --

A I --

Q -- I go in there and try to buy?

A I think by time maybe they know my face this is for Tobacco & More, but if -- if someone says Tobacco &

More then he said the address, then he verify the address and he can buy. You not show them I.D. or -- or member number or anything like this.

Q Is it the same salesman all the time?

A There are -- no. There are few of them. There are like four or five rotated.

Q So they became familiar with you overtime?

A I think, yeah. Like, by the time I going to buy my store needs, you know, like, "Oh, this Rami for Tobacco & More."

But a lot of times they ask which address because when they open Tobacco & More, there are a lot of stores Tobacco & More.

Q Okay. So did they, at any point, oh, the other day so-and-so or someone was here to buy for Tobacco & More?

A No. I -- I'm only the one to go to buy for myself. Yeah.

Q Now, during my opening presentation, I was talking about a cigarette scheme to get rebates from manufacturers. This is something that the audit report says was your statement before I was involved. Can you explain what -- what's going on?

A Yeah. As a beginning, when I open, this is the true what exactly happened. I wasn't know anything about

the business or the -- the trade or anything about it. I just learning. I want to buy something to sell it in my store to make profit to my family. By the time I going to them buying stuff to the store, one time they asking me how 'bout you sell to us. I said, "how?"

Like, I'm telling you, Mr. Judge, the story real.

And they said, "You can because we gonna -- you gonna take a rebate. You're gonna take the rebate of the program."

I said, "How? Like, if I didn't buy, then" -- I -- I did some purchases at Sam's Club, and sell it to them. This is a fact it happened sometimes then I stopped.

And they said, "Oh, no. You don't have to buy and sell it or do anything. We gonna make some invoices to you. The rebate comes to you without anything. They have -- you don't have to come or buy. You don't have to come and buy and sell or do anything. You just -- you just can get the rebate."

At the point, I -- I wasn't know how much invoices they make -- how many invoices they make, when they make invoices. There are invoice, I think, in the exhibit with Mr. Salazar, they are patient. The store was closed in 2000 in the COVID by the state. The store closed and Mr. Salazar found invoices made in this day. I

think maybe you have it. So I wasn't know anything about how is this -- how does he do this process. Rather than I know -- I know there are some rebate comes to me. When I asked Mr. Dean, the CPA, about rebate, I said, "There are deposit come to my bank from the companies rebate, but I didn't do -- I didn't do any purchase or sell anything, Mr. Dean."

He said, "Any deposit to your bank account should be income to you, and you should pay income tax on it."

I said, "Yes. Sure."

And I found the companies give 1099 by the money I received every year, give it to the CPA because I want to do the right. I want to do if this is income and yeah, I want to pay the income for it. That's -- that's all the story what I am. So when the audit start, I really surprised with the numbers. It comes from those wholesaler. I don't -- I don't have no such idea. It's like they have invoices. I went to there. I said, "Show me the invoices. Where is the invoices?"

He said, "No. We already deal with the -- we send it already," a summary or something.

We try to -- to say like, how I get this invoices? How we did all of this? Like, I -- I didn't track or know or what -- what is -- what are the numbers we doing.

Q When you went in that day, did you get any invoices?

A They don't -- no. I -- they didn't give me any invoices when I go to the Cartons 2 Go. And they just said they would deal -- they will send if some -- I mean, government ask, they will send it? I said I want to see like what you -- because the numbers is shocked me. I didn't buy all -- any all these numbers. I didn't pay you anything. I didn't get out from your store was inventory. I didn't take anything. Like, I didn't buy. I didn't give you money.

He said, "It is what it is," and he -- he didn't talk that much. He was a different person when the audit start, and he don't want to -- and they cancel any to deal with me but I need my right. I need them to see the invoices. And likely in August 5th, Mr. Salazar get some invoices which it says it pays by check. I'm not kind of man who has, like, a lot of bank accounts. Thank is God to make it verify easy. And I support all my bank accounts my credit cards, my checks statement, my -- I wish if I can tell you how -- how cash I have everyday in my life in states here to tell you like $400,000 I use to make a profit from nothing.

Q Now, when you found out that the CDTFA is getting what you purport to be, you know, these purchases that

were never made, why aren't you suing the vendors or trying to get information from them?

A That gonna cost a lot of money, and I believe I am -- I didn't do anything wrong, and I -- I think it gonna be solve it early because there are no such hiding or -- I -- I said the truth. I -- the truth. Yeah --

Q Did you consult any attorneys about --

A I didn't -- no. I didn't have -- and I can't afford to go like superior court. I think it can be solve it before going suing and opening a lot of big case like this.

Q So, when did you hire Dean to represent you for the audit?

A Yeah. Once Mr. Brian came to the store he said audit, so I don't understand how this thing is going. Immediately I informed Mr. Dean, and they visit him at the office to talk. That was in 2021, but I'm not sure what month in 2021.

Q Do you know when the audit started?

A I think August 2020.

Q So you didn't hire --

A I didn't hire.

Q -- Mr. Alkalla until --

A Mr. Alkalla, at this time, was CPA to the business account by this time. I told him. He said,

"Yeah. We're gonna prepare what with we need for him, but it takes time to get together" --

Q Did you hire Mr. Alkalla before or after you found out about these invoices?

A I -- Mr. Alkalla was a tax preparer to the business before, and until the audit was going, and I mean I don't hire him when the audit happen. He was the one. He was catching the taxes to the store during -- before the audit and during the audit. It just a normal action when it comes Mr. Brian to us. I just said Mr. Dean to send anything he need.

Q Well, okay. Mr. Alkalla prepares your returns and files taxes, but he doesn't normally represent you for audits. Audits are special occasions. When -- did you hire him separately for --

A No, I -- because I wasn't understand how big is this or I think the audit, he -- he need to ask him questions. That's why I didn't go to attorneys or -- or anything. I wasn't know like I need attorney by this time.

Q Okay. And then so it was through Brian Allen directly or through Dean that you found out about these invoices -- these invoices that you purport that were not --

A The most available invoices I have never been

seen until this moment.

Q And -- and I should say actually purchase summaries. So there were vendor confirmation. There were summaries that --

A There were summaries I never seen it in my life. I didn't pay it. I didn't buy it. I didn't carry the inventory. I -- I didn't have any -- I know there are rebate. That's -- that's only what I know. But invoices, inventories, money, checks is this I -- I never deal with it.

Q Okay.

A I don't have a storage to -- to have all this stuff [INAUDIBLE].

Q So, now you -- U.S. Wholesalers?

A Yes.

Q Did they also create fake invoices?

A Yes. Yes, they do.

Q You're telling me there's two vendors are doing this?

A Yeah. I think most of wholesaler do something. They know the rebate programs -- the retailer or one like me as a new business was a no. But looks -- they giving me feeling it's something regular people do need to increase their income and such -- when I felt like I'm not involved or buy or carry or give them money, and I felt

its income, I said okay. If it's income, I have to pay income tax return. I did, but I never take sales tax, or -- or sell it in my store, or buy it, or -- or buy from those. It was $200,000 a month or something. This never happen.

Q Okay. How about Sam's Club and Walmart, did they also participate in a scheme?

A No. No. Sam's Club at the -- at the beginning Sam's Club the high invoices was in 2019, I guess something like this. This -- these by this time, I buying a few boxes from Sam's Club. This is the beginning of the story, and I sell it to the wholesale. They said if you do this then you get the rebate. Then they said to stop. And then I said okay. I stop. Then they say okay. Now, you don't have to go or do anything. The rebate comes to you. We're gonna make invoices as you buy from us. Then the company will know that you buy from us. We give you the rebate. I said yeah. Such -- yeah, it's fine. So, Sam's Club --

Q Do you know what you were doing was wrong?

A I don't -- I don't ever know if -- if I do -- if I think it's wrong, I better do Uber full time rather than doing anything wrong.

Q So you just thought that rebates comes to you --

A It -- it's yeah --

Q -- and some --

A I thought it's rebate company. This is a business. The -- the program of the companies giving -- incentive or something like this. The only thing you have to be careful this money comes to you, you have to pay income tax for it, which is I did.

Q In 2014 you had $11,592 of rebates. In 2015 you had $85,781 of rebates. In 2016 you had $241,071 of rebates. In 2017, you had $107,973 in rebates. In 2017 you had -- I'm sorry. That's 2017 you had $107,973 in rebates. In 2018, $38,894 in rebates. In 2019, $63,918 in rebates. So, you believe you just entitled to that money?

A This money deposited to my business account from the cigarettes company based on the invoices they made. And I didn't hide it. I -- it comes every year with 1099. I give it to the CPA to file income tax for it, but I never know at the back of this number there are a lot of invoices by my name. I don't know the amount that they -- the -- how -- how they come up with this numbers. I never see it. I never see the invoices or just -- or just buy it.

Q With going back to U.S. Wholesalers, when you walked in to buy cigarettes, earlier you said with Cartons 2 Go they asked for an address and the store name

after the first time that you provide them your seller's permit and tobacco license? With U.S. Wholesalers when you go to buy cigarettes subsequent times, what do they ask for?

A The store name and the store address too.

Q That's it?

A Yeah.

Q Same with U.S. Wholesalers?

A Yeah. No I.D. or -- or -- there are no such a number -- member number or something.

Q When you found out about these invoices, did you ever send correspondence to Cartons 2 Go and U.S. Wholesalers other than going in person asking for information?

A Yeah. I emailed them to -- to give me -- to provide me with the invoices what -- what they did. Like, I want to see it. I want to see like where is this at, how I paid, how I -- how it take, what I take from, what actually I buy from you with this money.

Q Did they respond?

A They don't respond. They never --

Q How many times did you --

A -- respond.

Q -- try?

A Three or four times.

Q Okay. Yeah. What merchant card services are you dealing with, or do you deal with --

A The -- the --

Q -- during the audit period. I'm sorry.

A The credit card? The machine.

Q Yes.

A The name of it, I -- I forget the name, but I have the -- they giving me every year how much is this machine take, like, credit card. But I have the -- I have the paper, but I'm not sure the name of -- I'm not remember the name.

Q Okay. Now, when you are reporting your total gross sales, how do you come up with that number?

A Can you ask again?

Q When you're going to report your total gross sales either on a --

A Yeah.

Q -- a tax return -- an income tax return, or a sales and use tax return, how are you coming up with these numbers?

A Yeah. I'm not coming with this numbers. I send the business account what the money from the credit card goes to and the cash goes to gives this information to the -- Mr. Dean. And then he -- he make the -- the sales tax for -- sometimes was monthly. Sometimes it was every

three months. Then he said you owe to the state this much of money. I have to pay it, and then I paid it immediately.

Q Okay. And you said earlier you also give him 1099 miscellaneous for the rebate?

A Anything comes to me I give it to the --

Q And those are coming from Phillip Morris?

A Phillip Morris, yeah.

Q Okay. So you would give that to Dean?

A Yeah.

Q And --

A Mr. Dean said this is considered -- the -- the money comes; those company considered income. He include it as my income tax.

Q Is it included in your sales and use tax returns, the rebates?

A I don't know how he do it actually, but I show it to him. I don't know exactly how he deals with the money come from the companies, rather than I know it's income. But I don't know what is related this to the sales tax. I don't know like, how this is related to sales.

Q So, Mr. Alkalla saw you getting these rebates, right?

A Yeah.

Q Did he ask how you're getting these rebates?

A No, he don't ask.

Q He just said that they're income, you have to report them?

A He -- he this company -- is this money come from? I said rebate, separate companies. He said that consider to be income tax return but --

Q Okay.

A He didn't mention it sales tax number.

Q Okay.

JUDGE WONG: Mr. Bagheri, you've used up 90 minutes. You have 90 minutes left of your time.

MR. BAGHERI: Okay. Thanks for the update, Your Honor.

Okay. At this point I think -- would I be able to recall Mr. Hanna if I thought of anything.

JUDGE WONG: Sure.

MR. BAGHERI: Okay. At this time, I can stop examining Mr. Hanna and begin examining Dean Alkalla.

JUDGE WONG: Before you do that, we're gonna ask CDTFA if they have -- like, to ask Mr. Hanna of any questions on cross-examination?

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

JUDGE WONG: Okay. And then I'm gonna turn to my co-panelists to see if they have any questions for

Mr. Hanna, starting with Judge Ralston.

JUDGE RALSTON: Yes, I do have a question.

So you, with regard to the rebates, you would receive like, a direct deposit or you would receive the income directly from the cigarette manufacturer; correct?

MR. HANNA: Yes.

JUDGE RALSTON: So, what is the benefit to the vendor under this system? Why would they make up these invoices if the rebate goes to you and not to them?

MR. HANNA: Yeah. That question is come like, I think like why they do this by the time -- like why do they want to give me like incentive. The manufacturing like Phillip Morris or something, they make programs for both retailer and wholesaler. Then I'm not sure what are the percentage they take when they making invoices as a real sale. I try to do sales. I didn't ask them actually, but they taking something like bonus but not rebate. After, I try to ask people. They taking -- I'm not sure to be honest, but it is a bonus or something name incentive or sales incentive, something like this. And you, Your Honor, can check.

JUDGE RALSTON: Thank you. That's -- that's all my question. Maybe Mr. -- is it Alkalla?

MR. ALKALLA: Yeah.

JUDGE RALSTON: When -- maybe after you testify,

I might ask you again. Thank you.

JUDGE WONG: Thank you, Judge Ralston.

Judge Kim?

JUDGE KIM: I'll hold my questions until later. Thank you.

JUDGE WONG: Thank you. I'll also hold my questions until later.

So, back to you Mr. Bagheri.

MR. BAGHERI: Thank you, Your Honors.

Mr. Alkalla, if I can have you sit here so you could be close to the mic.

MR. ALKALLA: Hello.

JUDGE WONG: Hi. Just a reminder, you're still under oath. Thank you.

MR. ALKALLA: Okay.

DIRECT EXAMINATION

BY MR. BAGHERI:

Q Mr. Alkalla, prior to today, have I spoken to you about what to testify to today?

A You just told me that there is a law -- there is court and ask me to come to the court.

Q Okay. Did I ask --

JUDGE WONG: Mr. Alkalla. I'm sorry. Can you just pull the mic closer to your mouth.

MR. ALKALLA: Sure.

JUDGE WONG: Thank you.

MR. ALKALLA: You asked me to come to the court on August 11th, and I say that I may not be able because I'm an old man. But then you insist because you said my testimony is very important for the case.

BY MR. BAGHERI:

Q Okay. Were you paid any money to testify today?

A No.

Q Were you paid for any accommodation --

A No.

Q -- to come here today?

A No.

Q You weren't given any money for -- for a ride or a --

A I love money. I buy -- you know, I'm an accountant. If I'm working at my office, I'll make a thousand dollars every two hours.

Q Yeah. So were you paid for at least the ride to come here today?

A No.

Q No. Okay. All right. Thanks for that. And again, we haven't spoken before about what to say today?

A No. No. Nothing.

Q Okay. So do you recall how long you were

Mr. Hanna's -- were you just his preparer for tax returns, or did you also keep an accounting of his books and records?

A We didn't do accounting, but we did tax preparation for him income tax. And I believe I represent him in the -- in the income tax audit, and it was no change in that period of time where he's in trouble.

Q Really, there was an income tax audit?

A Yes.

Q Oh, the transcripts don't show an income trans -- unless?

A He still owes me $500.

Q Okay. So do you remember when you met Mr. Hanna?

A Maybe 2015, something like that.

Q Okay. And around that time did you start preparing his tax?

A Yes.

Q Did you do his income tax returns?

A I did the income tax returns for him, for his corporation, and for his individual tax return.

Q For both the corporation and the individual?

A Yes.

Q How about sales and use tax returns?

A And sales and use tax, yes.

Q Okay. And when you were preparing these returns,

what did you ask for?

A Bank statements.

Q Okay. You asked for bank statements for what purpose?

A For -- to calculate the income.

Q So, you were calculating the gross receipts based on the bank statements?

A That's correct.

Q Okay. Mr. Hanna said earlier he also furnished 1099 miscellaneous and 1099-Ks to you. Did you remember receiving them?

A Yeah. If -- if there is 1099, that mean they were a deposit in the bank statement.

Q Okay.

A I mean, we use it only to categorize an item on the income tax return, not on the sales tax return.

Q Okay. So when you were working off of the bank accounts to come up with the gross sales, were you doing an accounting of trying to see what the gross --

A We didn't do accounting -- detail accounting, no. His -- he doesn't pay.

Q Okay. So, you mean you would look at the bank statements to come up with a gross receipts?

A That's correct.

Q Okay. And when -- did you remember seeing 1099

miscellaneous from Phillip Morris?

A I don't recall. I don't recall.

Q Do you recall anything about rebates?

A I know the story of rebate, and it's not the first client that I have this story since I -- I work with the Boards for long time. I know some other people they have this scam from the -- from the manufacturer like your question. And what happened that the salesman -- the cigarette salesman divided the rebate between him and the -- the buyer exactly. That -- that exactly what happened. So, it's not the benefit of him like he believe that they deposit the money in his bank. But the salesman is the -- the culprit, and he the one who induced, not him only.

I -- I know some other people that they have the same situation. So, there was only paper -- paperwork. There was no transfer of tangible personal property to the client and sales tax. The first rule they taught us, sales tax apply on retail sale of tangible personal property for the privilege of doing business in the State of California.

Q When the rebates are coming in, are they direct deposits from the manufacturer?

A I have no idea. I -- I -- I never pay attention to the -- to the retail. I -- I use just to take the

deposit line and calculate the sales tax and the income tax. I didn't do -- and it's very simple. He's a small guy for me, very small. I mean, it's not that big amount of money to -- to play with. He have rent, telephone expense, some supply, and the cost of sale based on the reverse markup. Let's put it that way.

MR. BAGHERI: Okay. I think that's my only questions for you. Thank you for being here.

MR. ALKALLA: My pleasure.

MR. BAGHERI: I know it was difficult for you to get here.

MR. ALKALLA: Thank you, Your Honors. Thank you.

JUDGE WONG: Thank you. Just one moment. Does CDTFA have any questions for Mr. Alkalla?

MR. SAMARAWICKREMA: No, Judge.

JUDGE WONG: Okay. And then to my co-panelists.

Judge Ralston, any questions?

JUDGE RALSTON: No. He answered my question during his testimony.

JUDGE WONG: Okay.

MR. ALKALLA: All right. Thank you.

JUDGE WONG: Judge Kim?

Oh, sorry. We're not quite done.

Judge Kim, do you have any questions for Mr. Alkalla?

JUDGE KIM: No questions. Thank you.

JUDGE WONG: Okay. And I don't have any questions either. So, okay.

MR. BAGHERI: Is he free to go?

JUDGE WONG: Yes, he's -- he's released.

MR. BAGHERI: Okay. Mr. Alkalla, if you need to go --

MR. ALKALLA: Thank you, Your Honor.

JUDGE WONG: Thank you.

All right, Mr. Bagheri.

MR. BAGHERI: Okay. So as, Your Honors, know there -- this case isn't just about a markup and an amount of additional tax owed for additional gross receipts, but there's also a fraud penalty in this case. And we don't believe that Respondent is anywhere close to having met the burden to prove that there was fraud here. Mr. Hanna, as you just heard, went to a tax professional, gave him the documents the tax professional asked for, and the tax professional prepares his returns. It even seems like the professional had some ideas about what sales and use tax is. As he said just today in testimony that they're retail sales of tangible goods. So, it seems like as far as what was reported on any tax return, definitely, Mr. Hanna's tax professional was reporting those numbers.

Mr. Hanna has testified that he gave what the tax

professional asked for. Mr. Hanna testified today that he completely cooperated with the examination. There doesn't seem to be any non-cooperation or manipulation with the examination. And, furthermore, I think you know the added burden for fraud to the Respondent to prove that these purchases were made. I think that the factual -- the factual determination wouldn't just be upon the preponderance of the evidence -- I mean -- I'm sorry. The burden of proof would be clear and convincing evidence. Therefore, Your Honors, should have clear and convincing evidence that the purchases were made. So, again, the -- the added burden for fraud doesn't seem to be prevalent in this case, and Appellant asked, Your Honors, to reconsider the fraud assessment. And for now I think that Appellant has presented its case.

Would I be able to respond to Respondent?

JUDGE WONG: Yeah. You'll have a closing and rebuttal. So, after they make their presentation, you can use that time after to make a closing presentation and provide a rebuttal.

MR. BAGHERI: My closing presentation, is it only confined to the points they make or --

JUDGE WONG: No. You can make --

MR. BAGHERI: Okay.

JUDGE WONG: -- whatever points you would like.

So --

MR. BAGHERI: Thank you, Your Honors. So, at this time Appellant is done presenting it's preliminary part of its case.

JUDGE WONG: Okay. Thank you.

So, right now I think it's a good time to take a break, just a little one, maybe 15 minutes. And then after the break we will turn it over to CDTFA for their presentation. Actually, let just make it 20. It's 12 o'clock we'll come back. Okay. So it's 11:40 right now.

Let's go off the record for a break until 12:00. Thank you.

(There is a pause in the proceedings.

JUDGE WONG: All right. Let's go back on the record. It is 12 o'clock.

And now we will turn it over to CDTFA for your presentation. You've asked for an hour, so please proceed.

MR. SAMARAWICKREMA: Thank you, Judge.

PRESENTATION

MR. SAMARAWICKREMA: Appellant began operating a smoke shop on November 1st, 2012, in West Covina California; first, as a sole proprietorship and later as a

California corporation using the same DBA. During the audit, the Department discovered that the Appellant had incorporated as a California corporation on March 29, 2016. However, Appellant failed to notify the Department of the change in business entity and continued to operate and report their sales under the sole proprietor seller's permit. Upon discovering the change in business entity, the Department closed the sole proprietor seller's permit and issued a new seller's permit to the corporation. Accordingly, the audit period was divided between the two business entities based on the respective period during which each entity operated the business. Thus, these appeal was in two separate entities and two corresponding audit periods.

For easy reference, the Department is going to refer to the first audit for the audit period November 1st, 2012, through March 31st, 2016, and refer to the second audit for the audit period April 1st, 2016, through June 15, 2021. During the first audit period, Appellant reported a little over $910,000 as total sales and claimed little over $41,000 as nontaxable food sales and claimed little over $72,000 as sales tax reimbursement included in total sales resulting in reported taxable sale of around $801,000; and this is shown on Exhibit A, page 29. During the second audit period, Appellant

reported a little over $1 million as total sales and claimed deduction of little less than $89,000, which were comprised of sales tax reimbursement included in total sale of around $28,000 nontaxable food sale of around $47,000 and other deductions of around $13,000, resulting in reported taxable sale of around $877,000; and this is shown on Exhibit M, page 613.

During our presentation, we will explain why the Department rejected Appellant's reported taxable sales, why the Department use an indirect audit approach for both audit periods, how the Department determined Appellant's unreported taxable sales for both audit periods, and why the Department recommended a fraud penalty for both audit periods and finality penalty for the second audit period. During both audits, Appellant explained that they prepared a sales report from the cash register Z-tapes and provided the sales report to the accountant who then prepared the sales and use tax returns based on those sales reports. However, today, for the first time, Appellant's accountant claim that he used bank statements to report sales to the Department. But during both audits, Appellant failed to provide those sales records. Appellant did not provide any books and records for the first audit period. For the second audit period, Appellant did not provide complete sales documents of original entry, such as cash register

Z-tapes with summary sales reports, credit card sales receipts, and nontaxable food sales information.

In addition, Appellant failed to provide complete purchase invoices and purchase journals for both audit period. The Department did not accept Appellant's reported taxable sales due to lack of reliable records and negative reported book markups for both audit periods. It was also determined that Appellant's record was such that sales could not be verified by a direct audit approach. Therefore, the Department use an indirect audit approach to determine Appellant's taxable sales.

The Department completed five verification methods to understand Appellant's reporting practices and to verify the accuracy of Appellant's reported total and taxable sales for both audit periods. First, the Department analyzed Appellant's reported taxable sales for both audit periods and noted average daily reported taxable sale of $527, ranging from as low as $37 to as high as $1,452; and the information required to calculate these amounts are shown on Exhibit A, page 29 and Exhibit A, page 613. Based on the store's capacity, location, customer base, and the number of days open for business, the Department view this as a low daily taxable sale for this business. Based on the audit of taxable sales, Appellant's average daily taxable sales were

$3,120; and the information required to calculate this amount is shown on Exhibit A, page 29 and 30, and Exhibit M, pages 300 -- 613 and 614.

Second, Appellant failed to provide their federal income tax returns and therefore, the Department obtained Appellant's federal income tax returns from the Franchise Tax Board for the years 2016 through 2019. The Department reviewed Appellant's available federal income tax returns and compared the federal income tax returns gross receipts with Appellant's reported total sale of around $867,000 and calculated an overall difference of around $222,000; and this is shown on Exhibit O, page 855. The Department also compared reported total sale of around $867,000 to the purchases of around $779,000 reflected on Appellant's available federal income tax returns and calculated a reported book markup of negative 8 percent for 2016, negative 1 percent for 2017, 43 percent for 2018, and 50 percent for 2019 resulting in an overall combined reported markup for four years of around 11 percent; and the information required to calculate these markups are shown on Exhibit O, page 855.

Third, Appellant did not provide complete purchase records to verify the purchase amounts reflected in Appellant's federal income tax returns. To verify the accuracy of purchases reflected in the federal income tax

return, the Department conducted a vendor survey of Appellant's vendors using known information. While the Department was not able to obtain purchase information from all of Appellant's vendors, the Department found that the purchase information from the vendors that Respondent exceeded Appellant's recorded purchases reflected on federal income tax returns by around $1.2 million for 2016, $550,000 for 2017, $755,000 for 2018, by $1.5 million for 2019; and this is shown on Exhibit B, page 900.

In total, the Department noted that the Appellant's actual purchases for the years 2016 through 2019 of around $4.9 million did not match with the purchases Appellant claimed on their federal income tax return of around $779,000; and this is shown on Exhibit B, page 900. Appellant failed to record more than 84 percent of their purchases on their 2016 through 2019 federal income tax returns; and the information required to calculate these amounts and percentages are shown on Exhibit B, page 900. Thus, the Department determined that Appellant's federal income tax returns were incomplete and unreliable.

Using the purchase information received from Appellant's known vendors, the Department recalculated Appellant's overall reported markup of negative 83 percent

for the period January 2016 through December 2019; and this is shown on Exhibit B, page 901. This means that Appellant was losing money every time they made a sale. As mentioned earlier, because of negative markups, the Department rejected Appellant's reported total and taxable sale for both audit periods.

Fourth, Appellant did not provide complete sales information for both audit periods. Therefore, the Department obtained the Appellant's 1099-K information from his internal sources; and this information is shown on Exhibit C, pages 183, and Exhibit O, page 850. Based on the available Form 1099 miscellaneous and bank statements, cigarette rebates may have been excluded from the taxable sales reported on the sales and use tax returns.

Fifth, today Appellant claim that they used bank statements to report sales. The Department reviewed Appellant's bank statements for the second audit period; and this is shown on Exhibit O, pages 851 through 854. Based on Appellant's bank statements, it appears Appellant did not deposit all their cash sales into their bank accounts; and this is shown on Exhibit O, page 851. Appellant was unable to explain the reasons for their low reported daily taxable sales amounts, negative reported book markups, federal income tax returns sales

differences, low cash deposits, unreported cigarette rebates, and unrecorded merchandise purchases for both audit periods. Appellant did not provide any books and records for the first audit period and failed to provide complete books and records for second audit period. Therefore, the Department conducted further investigation by analyzing Appellant's reported taxable sales, federal income tax returns, and vendor information for both audit periods.

Appellant failed to provide complete purchase information and sales information for the Department to conduct a purchase segregation to understand Appellant's product mix and conduct a shelf test to understand Appellant's pricing policies. Therefore, the Department used an estimated markup of 20 percent to determine taxable sales for both audit periods; and this is shown on Exhibit A, page 32, and Exhibit M, page 617. Appellant failed to provide their complete current cash register Z-tapes and purchase invoices to demonstrate that their taxable markup was less than 20 percent. Therefore, the Department determined that 20 percent markup was a very conservative markup to determine Appellant's taxable sales for both audit periods. Appellant also failed to provide complete books and records to verify the accuracy of the purchases reflected in their federal income tax returns.

Therefore, the Department contacted the Appellant's known vendors and obtained purchase information for the period April 2015 through December 2019; and this is shown on Exhibit J and Exhibit B.

This purchase information was adjusted with available opening and ending inventory amounts with 1 percent adjustment for nontaxable purchase items and pilferage to calculate a cost of goods sold available for sale for the period April 2015 through December 2019; and this is shown on Exhibit A, page 33, and Exhibit M, page 618. Based on this information, the Department determined Appellant's unreported taxable sales using the cost plus markup method. For the first audit period, Appellant had around $2.1 million of unreported taxable sales. And for the second audit period, Appellant had around $5.3 million of unreported taxable sales; and these calculations are shown on Exhibit A, page 31, and Exhibit M, page 616.

The Department also used the available Form 1099 miscellaneous and bank statements to calculate unreported cigarette rebates of around $146,000 for the first audit period and $640,000 for the second audit period; and these calculations are shown on Exhibit C, page 183, and Exhibit O, page 849. In total, the Department determined the unreported taxable sales of around $2.3 million for

the first audit period and around $6 million for the second audit period; and this is shown on Exhibit A, page 30, and Exhibit M, page 640. The unreported taxable sales were compared to the reported taxable sales to calculate the error rate of around 283 percent for the audit period, and 682 percent for the second audit period, and resulting in an overall error rate of 492 percent for both the audit periods.

Since Appellant failed to provide their sales and purchase records, the Department used a best available information to determine the unreported taxable sales for both audit periods. The audit calculation of unreported taxable sales were reasonable because the Department applied conservative taxable markup of 20 percent to determine taxable sales, and the total purchases using this audit may not include all of Appellant's purchases. According to Appellant's bank and credit card statements, seven new vendors were found. Purchases from these vendors were not included in these audits. And this is shown on Exhibit S, page 1182.

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, upon 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 shifts to the taxpayer to explain why the Department's asserted deficiency is not valid.

During the appeal process, Appellant contends that the unreported taxable sales based on the markup methods are wrong because the purchase amount obtained from vendors are incorrect and overstated. Specifically, Appellant contends Appellant fell for a scheme to generate rebates from the cigarette manufacturers. However, the Department relied on the incorrect invoices obtained from the vendors. Appellant also listed three indirect audit methods as --

JUDGE WONG: Mr. Samarawickrema, could you pull the mic a little bit up. Yes. Perfect. Thank you.

MR. SAMARAWICKREMA: Sorry. Yeah.

Appellant also listed three indirect audit methods as proof of their contention: The lack of bank account deposits; the Form 1099-K credit card to cash

sales ratio analysis; and Appellant's lifestyle. There are discrepancies between the amount of Sam's Club purchases and Appellant received directly from Sam's Club and the amount of the Walmart purchases the Department received from Walmart. Appellant's main contention is that the Department improperly used the worse error ratio for second quarter 2015 through first quarter 2016, and projected it to the entire first audit period, even though the Sam's Club information shows no purchase from November 1st, 2012, through April 17, 2015.

The Department used a markup method and assumed that all inventory bought was sold in the same quarters of 2015 and first quarter 2016 instead of using the markup method Appellant contends to use, a 50 percent cash to credit card sales ratio based on Form 1099-K, to establish the audit finding. As support, Appellant provided Sam's Club purchases Appellant received from Sam's Club for January 2013 through March 2016 for the first audit period, and for January 2019 through December 2019 for the second audit period. Appellant also provided various bank statements with canceled checks, credit card statements, some purchase invoices, and various other records for the second audit period.

Regarding Appellant's contention that the Appellant fell for a scheme to generate rebates from the

cigarette manufacturers, the Department notes Appellant did not provide documentary evidence, such as sales contracts, and arguments to support Appellant's contention for the scheme of generating rebates from cigarette manufacturers. Accordingly, the Department rejected these contentions. Appellant's argument of the overstated purchase amount obtained from Sam's Club, the Department asserts Appellant did not provide any books and records for review during both audit periods, and therefore, the Department had to obtain and rely on the total merchandise purchases from Appellant's known vendors and use an indirect audit method to determine Appellant's audited taxable sales.

Upon review, the Department notes Appellant provided the report of total merchandise purchases of around $950,000 obtained from Sam's Club, while the Department provided the report of total merchandise purchases of around $966,000 obtained from Walmart Global Investigation for the period of second quarter 2015 through first quarter 2016. Further, the Department notes that the two reports have a difference of $16,000, representing around 2 percent of the total purchases obtained by the Department, which is very close to the other report.

For the second audit period, Appellant provided

the report of total merchandise purchase of around $85,000 obtained from Sam's Club, while the Department provided the report of total merchandise purchases of around $533,000 obtained from Walmart Global Investigation for 2019. The Department also notes the two reports have a difference of around $448,000 representing around 84 percent of the total purchases obtained by the Department. Further, the Department notes Appellant received cigarette rebates of $84,000 and $131,000 for 2018 and 2019 respectively, while Appellant purchased merchandise from all known vendors of $903,000 and $1.7 million for 2018 and 2019 respectively. Additionally, the increase rebate income supports the increase in purchases. Since Appellant has not provided a different amount of purchases or explanation from Walmart Global Investigation to justify an adjustment, the Department rejected this argument.

In response to Appellant's contention of using the worse ratio for projection, the Department asserts that the Appellant did not provide a list of all-known vendors. Thus, the Department does not know who all their vendors were, and Appellant's vendors could have changed over the years. The sales and use tax return reported sales for the audit periods. Thus, Appellant made purchases for those periods as well. And thus, it is

reasonable to assume that the Appellant had other vendors that are unknown to the Department. The Department uses the only ratio available to calculate the audited purchases and sales; the method of projection using the available ratio in accordance with the Department's audit procedures. The Department also noted that the purchases alone exceeded the reported taxable sales by around $470,000 for second quarter 2015 through fourth quarter 2015, and Form 1099 miscellaneous for cigarette rebates supports the purchases associated with Sam's Club.

Appellant failed to provide source document, such as sales invoices and purchase invoices and accounting records for review during audits, nor has Appellant provided a list of all-known vendors for the Department to verify Appellant's merchandise purchases. Therefore, the Department used the only ratio available, purchases of merchandise obtained from Appellant's known vendors to determine the audited cost of goods sold. Additionally, although the Sam's Club purchase reports show no purchases for the period November 2012 through March 2015, the Department notes Appellant reported sales on their sales and use tax returns as confirmed with the credit card sales reported by their merchants on their 1099-K reports throughout the audit period indicating Appellant must have been making purchases of merchandise from other unknown

vendors in order to make sales throughout the audit periods.

In addition, if adequate records are not available to reflect cost of sales for the audit periods, representative periods may be selected to determine sales. The results of these periods can be projected to all periods on the percentage of error basis. Thus, in absence of records, the method of projection using the available ratio is a standard audit procedure. Therefore, the Department is justified in using the ratio available and projecting it into the entire period to establish the audited sales. Accordingly, the Department rejected this argument. Regarding Appellant's contention that the Department used a markup method and assumed all inventory bought was sold in the same quarter. Meaning, no inventory adjustments are allowed. The Department notes Appellant failed to provide an inventory reconciliation worksheet, beginning and ending physical inventory counts taken for each reporting periods, or any other inventory information to support an inventory adjustment for the first audit period.

Also, upon review of the 2016 federal income tax return for the corporation, the Department notes there was zero beginning inventory for second quarter 2016. This indicates zero ending inventory for the first quarter 2016

reporting period for the sole proprietorship in this audit. In addition, even Appellant maintain consistent physical inventory counts, the beginning inventory and ending inventory would offset each other. Therefore, based on the absence of records, the Department used the best available information and rejected Appellant's argument.

Lastly, concerning Appellant's contention to use a 50 percent credit card to cash ratio based on 1099 information instead of using the markup method, the Department asserts that the credit card sales ratio does not account for the unrecorded purchases. The Department also assert a material amount of unrecorded purchases were found. So, the markup method was the best available audit method to determine Appellant's sales. Therefore, the Department rejected this argument.

The Department impose a 25 percent fraud penalty for both audit periods. The Department also issued two separate memorandums recommending the imposition of fraud penalty for both audit periods; and this is shown on Exhibit D and Exhibit B. The Department must establish fraud or intent to evade by clear and convincing evidence using direct or circumstantial evidence. Badges of fraud include understatement of income, inadequate records, failure to cooperate with tax authorities, and lack of

credible credibility in the taxpayer's testimony. While the mere omission of reported income is not sufficient to find fraud, repeated understatements in successive years, together with the other circumstances showing intent to conceal are sufficient to find fraud.

Here, Appellant willfully and intentionally participated in an attempt to evade payment of tax due to the state. Appellant handled their business affairs in such a manner as to avoid recordkeeping of transactions and acts or statements which could mislead or conceal by not recording large amounts of actual sales and purchases. The Department found five indicators to support the evidence of fraud or the intent to evade taxes.

First, as mentioned earlier, the Department obtained Appellant's vendor information for the periods April 2015 through December 2019. Those records showed purchases of around $4.9 million for the period January 2016 through December 2019, which exceeded the purchases reflected in Appellant's federal income tax return of around $779,000; and this is shown on Exhibit B, page 900. These unrecorded purchases represent 530 percent of Appellant's recorded purchases reflected on Appellant's federal income tax return; and the information required to calculate this percentage is shown on Exhibit B, page 900. Failure to report such a significant

portion of Appellant's purchases cannot be explained by negligence or a lack of business knowledge. The Department finds the failure to record over $4.1 million in purchases for four years is evidence of fraud or the intent to evade taxes.

Furthermore, the Department notes that to explain the different [INAUDIBLE] by the vendor purchases, the Appellant made a series of misleading statements. First, Appellant denied that they made the purchases, and then Appellant stated it was working with the tobacco company to increase the cigarette rebates. And Appellant stated the purchases was sale for resales. However, Appellant provided no sales invoices or resale certificates to support the sales for resales. This is all supports of evidence of fraud.

Second, the Department noted that the estimated sale of around $9.9 million per cost plus markup method for both audit period exceeded the reported taxable sales reported on the sales and use tax return of around $1.7 million by $8.2 million. And this information is shown on Exhibit A, page 30, and Exhibit M, page 614. The difference represents an error rate of 492 percent. Thus, sales Appellant reported under sales and use tax return were less than 20 percent of their audited taxable sales for these two audit periods. Failure to report such a

significant portion of Appellant's sales cannot be explained by negligence or lack of business knowledge. The Department finds the failure to report over $8.2 million for both audit periods is evidence of fraud or the intent to evade taxes.

Third, the Department noted that there were large unexplained differences between Appellant's federal income tax returns and audited taxable sales, which represent an understatement of 80 percent. Meaning, Appellant reported only about 20 percent of their sales in their federal income tax return for these years, and the information required to calculate these percentages are shown on Exhibit A, page 29, and Exhibit M, pages 613 and 614, and Exhibit O, page 855. Appellant has not explained with verifiable information why sales reported on their federal income tax returns are less than the audited taxable sales.

Fourth, the total understatement of around $2.3 million for the first audit period is substantial deficiency representing an error rate of 283 percent when compared to reported taxable sale of around $801,000; and this is shown on Exhibit A, page 30. Similarly, the total understatement of around $6 million for the second audit period is a much larger deficiency representing an error rate of 682 percent when compared to reported taxable sale

of around $877,000. This is shown on Exhibit M, page 614. The quarterly percentage of errors exceeded 500 percent in 14 different quarters of these audit periods; and this is shown on Exhibit M, page 615.

Further, the Department finds that the percentages of errors are excessive and is compelling evidence of fraud or intent to evade taxes. Specifically, Appellant reported little more than $50,000 for second quarter 2016, whereas, the Department cost plus markup method determine taxable sale of around $425,000 for the same period. Likewise, Appellant reported around $75,000 for the first quarter 2019 compared to the audited taxable sale of around $634,000, $55,000 for second quarter 2019 compared to $571,000, and only $3,300 for third quarter 2020 compared to audited taxable sale of around $170,000. This is shown on Exhibit M, pages 613 and 614. These substantial discrepancies demonstrate that Appellant significantly understated their sales during audit periods.

Fifth, Appellant had knowledge regarding their responsibility to report their sales. Appellant was a sole owner and operator of the business throughout both audit periods and was responsible for recording and reporting their sales and sales taxes to the Department. Also, the evidence shows that, in general, Appellant

collected sales tax reimbursement on their sales of tangible personal property, and that they claimed various deductions, including deduction for sales tax reimbursement included in total sales, nontaxable food sales, and other deductions. When Appellant applied for their seller's permit, the Department provided Appellant with forms and publications, including publication 51, "The Resource Guide to Tax Products and Services For Small Businesses," which explain that seller's permit holders are required to report on their sales of tangible personal property.

Appellant also had knowledge regarding responsibility to maintain complete and accurate books and records and to ensure reported amount of taxable sales were correct. Those same forms and publications informed Appellant of sales and use tax reporting requirements and instructed Appellant on how to accurately report sales and use tax liabilities. Here, Appellant's total understatement of around $8.2 million is a substantial deficiency representing an overall error rate of 492 percent when compared to the reported taxable sale of around $1.7 million for both audit periods. The failure to record such a significant portion of Appellant's sales cannot be explained by negligence or lack of business knowledge. Appellant had a continuous pattern of material

understatements throughout these audit periods but failed to provide credible explanations for those large discrepancies.

The Department believes that the repeated large errors without any explanation consistent with the lawful purpose is strong evidence of fraud. Therefore, the Department concluded that the Appellant willfully disregard their own actual purchases and taxable sales amounts and that their actions could only be described as fraudulent and as an act to intentionally evade the payment of tax for these audit periods. The Department finds that there's a clear and convincing evidence of fraud or intent to evade taxes for both audit periods and the 25 percent fraud penalty was properly imposed for both audit periods.

Finally, the Department impose a finality penalty for the second audit because the determination became final on April 25th, 2022, and Appellant did not file a timely petition for redetermination and did not make full payments to the determination prior to this date. However, the Department will recommend waiving the finality penalty if Appellant pays the full liability within 30 days from the date of the Notice of Redetermination.

In conclusion, when Appellant did not provide

complete source documentation, the Department was unable to verify the accuracy of reported taxable sales using a direct audit method. Therefore, alternative audit methods were used to determine unreported taxable sales for both audit periods. Accordingly, the Department determined the unreported taxable sales based on the best available information. The evidence shows that the audit produced reasonable results. Appellant has not provided any documentation to show that any of the unreported taxable sales determine in these audits did not occur. Appellant has not identified any errors in the Department's computation or provided any documentary evidence to establish more accurate determinations. Therefore, for all these reasons, the Department requests the appeal be denied.

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

Thank you.

JUDGE WONG: Thank you, CDTFA. I'll turn to my co-panelists to see if they have any questions, starting with Judge Ralston.

JUDGE RALSTON: No questions. Thank you.

JUDGE WONG: Judge Kim?

JUDGE KIM: No questions for CDTFA. Thank you.

JUDGE WONG: Thank you.

I did have one question. Could you address Appellant's lifestyle argument regarding, you know, driving for Uber, the credit report showing overdue -- past due accounts?

MR. SAMARAWICKREMA: The -- during the audit, Appellant failed to provide any sales and the purchase information for the first audit period. For the second audit period, they failed to provide complete purchase and sales information. So, the only available information the -- the Department had to contact the vendors, and vendors were contacted two times during the field -- field work time -- during the field work and also during the appeal process. And the Sam's Club provide the same amount, same information both times. So the Department determined those are -- the vendor purchase information is the best available information to determine the unreported taxable sales for the audit period.

In order to calculate the Appellant's lifestyle, the Department did not have any information, and basically the Department used the cost plus markup method by identifying the taxpayer's actual purchases to determine the sales for both audit periods.

MR. PARKER: Judge Wong, I just wanted to add something. The Appellant's attorney did argue that there was $1.8 million of additional sales in 2019 using the

markup method. The cost on that would be $1.5 million. So there's $300,000 in potentially cash additional income that may have been available to the Appellant. Now, we know that there were plenty of cash payments made when purchasing items. We know that there's unknown vendors that probably had cash purchases as well.

The Appellant claims to have not paid anyone under the table for working there. However, it appears that being open 12 hours a day and also being able to drive Uber and also being able to go and purchase cigarettes and other products at a few different wholesalers, it doesn't seem likely that all the expenses are actually reported on the income tax returns. So, the additional -- it may have been available to him. The $300,000 disappears quickly when you're paying cash out to a lot of different options and -- so [INAUDIBLE] still maintain a likelihood with his family.

Thank you.

JUDGE WONG: Thank you.

All right I had no other questions for CDTFA. So, now we will turn it back to Appellant for rebuttal and closing.

Mr. Bagheri, please go ahead.

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MR. BAGHERI: Yeah. Since it's just fresh in my mind and Mr. Allen just argued, that with the net cash that was earned from the $1.8 million of purchases that he said we have around $300,000 of cash to spend. And then he said we don't know about other -- other vendors, so you might have paid that cash to other vendors. Well, if we paid that cash to other vendors, we would have had even more a net profit. So that doesn't make sense. Because if we're paying other vendors with that cash, we're selling that product, so there'd be more than $300,000.

And then he's just assuming that the $300,000 was used to pay other expenses, like another worker or something like that. But who -- who would be working this hard to make no profit at all if all of that is true? I mean, you start driving Uber because you need a second job. You need additional income to support even a basic lifestyle. I want this panel, when they have time, I'm -- I'm asking respectfully, time with the exhibits to just go through the credit card statements, the bank statements to get an idea because they speak to us. Get an idea of how Mr. Hanna was living, you know, with a 2010 Prius with, you know, a Kia, a very meager lifestyle that is not reflected with $8.2 million of additional sales going on.

And again, the Respondent's contentions would be

that these sales are happening in cash. Because we have the 1099-K information, right. We know how much of these sales happened in electronic format by customers swiping a card. So, their contention is the difference, the delta, is all made in cash. So, there's supposedly, you know, all this cash floating around, not making its way into bank statements, which by the very invoices from Cartons 2 Go show there was just in a four-month period $150,000 of checks written to that company.

Look, we -- going back to the audit and what was happening, I want to point to Exhibit 13 Bates Stamp 1249. It's an email from Jesus Salazar, and it says, "Hope you are well. It is time for us to attempt to resolve the audit or submit for billing. See attached emails. On January 13, 2022, Dean emailed me a sample of invoices which he contends were fake invoices. However, each invoice indicates it was paid. Notwithstanding on January 14th, 2022, I responded that he should provide me a copy of each fake invoice, not just the sample. However, it would be more efficient to request the report of all purchases along with proof of payment from the vendors. I'm available to discuss at the following dates and hours."

I'm not going into that. But so then I call Mr. Salazar. I'm like, "Oh, okay. So you saw that the

sample invoices were paid by check or, you know, how were they paid? Can you tell me?"

And goes like, "No, the -- the invoices say that they were paid."

I'm like, "Is that what you meant by saying each invoice indicates it was paid?"

He's like, "Yeah. The invoices say they were paid."

And then I told him, "Well, if they're fake invoices, that you are not gonna say, 'Hi, I'm an invoice that wasn't paid. I'm fake;' right?"

The invoices are gonna say that they're paid, but where were they paid from? That's the question, right. It -- where were they -- where did this money come from, not just the cash, but the checks? We have the vendors telling us that there are check purchases that don't exist. Those check purchases don't exist. And Respondent's response is that there must be another bank account that you have, but in reality that would not be possible. All Respondent had to do was follow up just a little bit and ask these vendors, "Well, here are your check payments or your summary. Can you give me a few check deposits, or let's do a sampling or a -- something that can show us that these purchases were made when we're bringing this information to the Department. But it seems

like the Department wanted to do just enough, get the summaries that don't tell us how they're paid and say, "Okay. We're gonna do a markup method off of these summaries," which the summary is nothing more. It doesn't give you more information than the date, the invoice, an amount, and a payment supposedly. It doesn't tell you how it's paid whether cash or check. We were able to get that information later on August 5th, 2026, but we had some of those early invoices that were fake that were produced to them.

Now, going back to something also that Respondent mentioned about Sam's Club purchases not being available 'till after April 2015. That was another point of contention. We told them look, the Sam's Club response on page -- Exhibit 23, starting at Bates Stamp 1923 shows all the Sam's card -- Sam's Club purchases. Okay. We're not disputing Sam's Club purchases for any period that their summaries exist for except for 2019. We're saying there's a discrepancy in 2019. We've asked Sam's Club and Walmart to explain the discrepancy. They -- they don't, and they can't.

The -- the error ratio for the markup method was taken for periods that there are invoices for in 2015 and then projected backwards to periods where clearly there aren't Sam's Club purchases. Sam's Club, in fact, has

some purchases for 2013. So, we definitely know that there's a gap starting from 2013 where there is -- are no Sam's Club purchases. It's not that Sam's Club didn't have the records, it's there were no purchases from Sam's Club. So how are you gonna use an error ratio for a period of time where we're buying a lot of inventory from Sam's Club and then project that backwards? Now, Respondent says well, you didn't give us your -- all of your known vendors. I want to turn to Mr. Rami again.

REDIRECT EXAMINATION

BY MR. BAGHERI:

Q Brian Allen, you met with him three times; right?

A Yes.

Q Did he ever ask you about who your vendors are?

A No. I wanted to -- I want to -- I will get to this question back. But if the Mr. George give me a chance, I want to tell something about the respectively the attorney for the state. He said he failed to respond -- to response. He committed fraud, and he failed to response to provide accounts and stuff. I just respectively want to answer. How I provide something I don't have. Like, you want me provide you with the invoices was $8.6 million. What I don't have to show you? Like I know everything. I have until now a box full of Z

receipt and credit card machine receipt collecting the dust just waiting for somebody to ask me to provide it, and nobody ask me for this.

For the third point, he said he never come with any explanation about what this like this. What more explanation we can come with more than what we -- what we provide. Like, how -- how Starbucks if you audit Mr. Attorney Starbucks for five years their sales will be little more $8.6 million. For a smoke shop he believe it's real sales happen. And I swear to God, I don't know that it's something wrong. I don't know even about he talking about the account book. I don't know like I have to write everything. I just was counting about invoices, bank account, and the machine and the credit card.

The that was I know, and the -- I'm sorry. I didn't -- I didn't mean to hide it. I never have something to hide. I didn't fail to response. I give you what all I have. And I ask Mr. Dean to give him anything accountable to them because I don't want do anything wrong from the beginning.

Q Just to finish what I was saying --

A Yes, sorry.

Q -- again. You know, it's just human nature to spend money, especially this type of money $8.2 million of additional taxable sales. I get it. A lot of that is

spent back on cigarettes, so there's a margin you can only spend. But it's just not there. It's not happening with lifestyle with Uber, with the voluminous nature of having to even operate that kind of entity with the distance between the vendors, and most importantly, all of our books and records that we have, every last bank account, every credit card statement, his wife's credit card bank statements to show that these purchases aren't being made.

We can't prove a negative. We can't go to every bank and say, "Do I have an account with you," right? So at some point, we're asking the Department just to do a little more. They're the ones relying on the purchases to do the markup method. It's their evidence, right. It's their evidence that they're relying on. We're just saying confirm that they happened. Just go little bit further. You have the investigative powers. Do it.

And we can't expect every taxpayer to have to get before the OTA and then get subpoena power to then do it for them. Because if that's the case, all of these cases will end up before this panel, right, where a taxpayer is saying I didn't make those purchases. I don't know why they have a summary that doesn't reflect any of my bank accounts. And it just -- you know, there's not enough money coming in and out of bank accounts to make that type of purchase. And so it -- what if the Department is

dealing with an indigent taxpayer or a taxpayer that's not represented? They're just gonna say, "Well, these summaries are gospel, and we're not gonna ignore them, whatever, even though you are presenting credible evidence that seems to suggest that really they're not being paid. We're just gonna rest on our laurels and just, you know, this summary is gospel."

What can we do on our side? Here's every bank account. Here's every card statement. You could see these checks that the invoices that say they were paid by check were not paid by checks. So, where is that coming from? Where are those checks being written from? And that's kind of what -- I mean, at the very least there can't be fraud if -- if they're basing their fraud assessment on this discrepancy that they're using an indirect method to get to these inflated numbers to then say there's fraud, right?

Because a lot of what the Respondent just explained was, for example, "Oh, we don't see these deposits in the bank statements." Well, that's assuming that there really was purchases that were sold. Yeah, of course, they're not gonna be in the bank account. By the way, the Respondent's bank deposit analysis for the second audit period came up with a discrepancy of only $65,820 for the whole audit period; and that also included

deposits of rebates. So, I'm not sure if the suitors are reporting rebates, but Dean is not here anymore to ask him. But that's not a big discrepancy between what's reported and, of course, it's a big discrepancy if you assume that these purchases were really made and sold. But the record just doesn't reflect that. It'd be an impossibility.

We're dealing with an auditor who assumed that there's maybe foreign accounts, right. So that shows kind of almost a bias of how could there be foreign accounts? How can we fly this money out to a foreign nation or even to a foreign state and then use that account to buy cigarettes? It -- it's just not possible but it shows the mind frame of the auditors to refuse to investigate further and to then assess fraud. It's because they just -- it -- you know, it's -- it's a wild allegation to say that we had a foreign account being used to make these purchases.

As far as Z-tapes go, if I could turn back to Mr. Hanna.

MR. HANNA: Yeah.

RE-REDIRECT EXAMINATION

BY MR. BAGHERI:

Q Did Brian Allen ask for Z-tapes?

A No. He ask for the invoices. Then later, after some time, he asked for bank -- bank statement.

Q Okay. So, Mr. Allen is leading the audit, right? He's telling you what he wants from you?

A He's the one he start contacting me.

Q Yeah. You're only going to respond with what you have --

A Yeah.

Q -- to give to him?

A Yeah, you know I --

Q So, he never asked for Z-tapes?

A I remember one thing, and you can ask him. I said if you want to go -- because I have little office inside. I said, if you want -- and he come. I said if you want come to the office to see anything like any paper maybe he said no. Just give me what you have. So what I have, I give it to him.

Q So you gave access to your store --

A I -- I tell him you can come inside --

Q Come inside --

A But he said no --

Q Take what you need?

A Yeah. Yeah. I don't hide anything.

MR. BAGHERI: Okay. I'll conclude with that.

JUDGE WONG: Thank you.

CDTFA, did you have any questions on cross-examination for Mr. Hanna?

MR. SAMARAWICKREMA: No, Judge.

JUDGE WONG: Thank you.

Judge Ralston, did you have any further questions for Mr. Hanna.

JUDGE RALSTON: No questions. Thank you.

JUDGE WONG: Judge Kim?

JUDGE KIM: I just had a question about this -- the rebate program. I'm hoping to understand a little bit more about how it works. So, the amount that Appellant received in rebates, like how much sales of cigarettes would that correspond to? Are you able to answer that question?

MR. BAGHERI: I'm not sure if they actually correspond to real world sales, or if it's just, documents, and information being sent to the manufacturer.

JUDGE KIM: Right. But he --

MR. BAGHERI: I'm not sure.

JUDGE KIM: So, the amount that he received in rebates, if these were not all real sales, then how much would have had to have been sold to get that amount of rebate?

MR. BAGHERI: Oh, okay. I -- I --

MR. HANNA: I really don't know, honestly, and I

swear at the beginning to get this money how much he should make a sales. Like, I wasn't know this month how much I can get. Like, I don't know until the money deposited to my account and if it's $6,000, or $7,000, or $8,000 I really -- I swear I don't know how it's calculated; but I tell you they have a program. They said if you sell kind -- like a new cigarette, they always come with a new cigarette. They said this one may be $3 rebate. This one $2. This one $1. I know, but I don't know the whole process and how much to get $6,000 a month or $7,000 a month how much they have to -- to do as a invoice.

MR. BAGHERI: You did have actual real sales that got rebates, right?

MR. HANNA: Not real --

MR. BAGHERI: Well, no. I'm -- I'm saying your store dealt sometimes and got actual rebates it's entitled to. Like, real sales from real sales --

MR. HANNA: Some, yeah -- I have.

MR. BAGHERI: -- like he just mentioned.

MR. HANNA: Yeah, I have real sales.

MR. BAGHERI: That get rebates?

MR. HANNA: It get rebates. Yeah.

MR. BAGHERI: Okay and --

MR. HANNA: And --

MR. BAGHERI: Do you have an idea of --

MR. HANNA: How much exactly, I don't know. Like, it's based on their invoices what they made.

JUDGE KIM: So was there anything that you did on your part? Any documents you had to submit or anything you had to sign in order to --

MR. HANNA: I don't really know, Mr. Judge.

JUDGE KIM: -- those rebates?

MR. HANNA: I didn't have any agreement with them or such any written thing or anything. But I said, and I said at the beginning, "I know I will get rebate based on what they asking me, that they gonna do invoices, you'll get a rebate. I said okay, I'll get rebate, but didn't know how much they make this invoices to get that much of money.

JUDGE KIM: So, you didn't -- you weren't involved in any discussion, or you didn't submit anything to the manufacturer yourself? You're saying that the vendors handled all -- all that.

MR. HANNA: No, sir.

MR. BAGHERI: No, sir, what are you answering? If you had involvement or if the vendors because it was --

MR. HANNA: I -- I didn't tell the manufacturer. I'm sorry if I misunderstand that question. I didn't -- you mean, I tell the manufacturers that the wholesale

doing this? This was your question?

JUDGE KIM: No. So you had rebates that you applied for yourself that you submitted yourself or --

MR. HANNA: No.

JUDGE KIM: All the rebates you received --

MR. HANNA: All the rebates from the wholesale. The wholesale report it to the manufacturer. The manufacturer deposit to my business account.

JUDGE KIM: So, all -- any rebate that you received that was reported on the 1099 was you weren't involved in any of that. You just got the money, but the vendor is the one who applied for those rebates?

MR. HANNA: Yeah.

JUDGE KIM: Okay. And -- okay. Thank you.

JUDGE WONG: Judge Ralston?

JUDGE RALSTON: Yes, so how did you keep track of your sales in your store.

MR. HANNA: Yeah, I have a -- a regular machine. At the end of the day, it give like receipt, this cigarette this carton sold us. It has it itemized. And then it says at the end of the report this credit card money you get, this cash you get today because everything is a thing. So, this one whom I rely, like how much I sell today, and I usually keeping it. I -- I have a box full of Z and the credit card machine. I'm not sure what

here actually, but I was keeping one shoe boxes just in case.

Nobody ask me about it, but my sales daily it's between $1,100 to $2,000, $1,500 sometimes, $700. That's -- that's my daily, and I can support this if someone asking me. I will give it, but I --I actually still have it if you want to review it.

JUDGE RALSTON: Okay. So, you're saying that you have the receipts for the individual sales, as well as a summary from the end of the day?

MR. HANNA: The report it comes from the machine its summary. Like, suppose I sell pack of cigarette now, then I do pack cigarette. Then after one pack. Then the report -- the report at the end, it say 10 pack of cigarettes, 2 cartons, 10 sodas. It gives me the -- the total of what I sold.

JUDGE RALSTON: Okay. So you're saying that you -- you have --

MR. HANNA: I have.

JUDGE RALSTON: -- those totals?

MR. HANNA: I have. Yeah.

JUDGE RALSTON: And you also have the --

MR. HANNA: Credit card machine receipts.

JUDGE RALSTON: -- but the individual -- so you just -- so you have the -- okay.

MR. HANNA: Yeah.

JUDGE RALSTON: Okay. Thank you.

MR. HANNA: Thank you.

JUDGE WONG: So, why -- just following up on that question. Why didn't you produce them at the -- during the audit, during the appeals, before CDTFA?

MR. HANNA: Okay. I believe they thought because the credit card machine its daily report. By the end of the year, the credit card machine say how much I made every day. So, I thought the count on the total of the credit card machine report note day-by-day because of their time or something, but I still keeping it. And I remember I think I still have Z report. It -- just I checked a few days ago kind of the ink kinda go away a little bit because it has five years, but it still the numbers I think it there.

But no one ask me to provide it. I thought it's not needed, as they need the whole bank account, checks, invoices. And I'm waiting someone to ask me to provide it, but I -- I really didn't hide it or nobody asked me to provide it.

MR. BAGHERI: If I can add on one thing to that?

JUDGE WONG: Sure.

MR. BAGHERI: I could envision -- and I don't know if this would have been the case, but even had he had

given those, if the Department believes that there are purchases not being reported. You know, they're -- they're gonna say, "Well, you could have taken out certain reports or sold inventory that didn't go through your cash register or something like that." So, it seems like the CDTFA's entire audit is predicated on the markup of the purchases which we're trying to disprove. But providing that evidence, I mean, you could even have a POS system, and -- and they could say well "No. Then you must have sold inventory that didn't go through the system." But is there any way to -- I -- I know this is a big ask but keep the record open for him to produce this?

JUDGE WONG: So, let me turn to CDTFA really quick.

Would CDTFA, if -- if Appellant produces these books and records, would you be willing to take a look at them?

MR. SAMARAWICKREMA: The exhibit page, our Bate No. 190 listed all their documentation that we requested, including cash register Z-tapes. That is page 190. To date, Appellant did not provide any information for the first audit period but some information for the second. And federal income tax return from 2016 through 2019, the purchases listed in the federal income tax return is 700 almost $80,000. And based on the vendors we have almost

$5 million. So, Appellant didn't identify what purchases that they never -- that they didn't make. They're just stating that the purchases -- that the purchases that we -- the Department receive is not accurate.

So, like based on the federal income tax return, based on the bank statements, it is the Department's position that the taxpayer's books and records were incomplete, and inaccurate, and the markups were negative. Without -- without reviewing the information, we -- we don't know what type of new information that the Department will receive. And we give the Appellant did not provide any information for the first audit period, and they only, from the day one, they basically complain that the purchases that we received is not accurate. And that's the only information the Department have, and we use the best information to estimate the sales for the Department.

MR. PARKER: Judge Wong, I just wanted to add something to that as well. Because he's talking about the Z-tapes and usually we look at Z-tapes in addition to the sales summaries, the monthly sales summaries, those types of things; and we double check to make sure that the information provided on the Z-tapes transfers to the sales summaries. And the -- all the information can be verified. We generally are not a taxpayer's bookkeeper.

So, we don't actually do bookkeeping services, and -- and want to review every single Z-tape to see what the amounts total up to.

I believe in this case I know the taxpayer just indicated that his Z-tapes indicated $1,100 to $1,500 to $2,000 per day. If -- if we use the $1,100 per day as the low, the number of days during these two audit periods, it's still like $3.5 million in sales where he only reported I think about $1.8 million or $1.6 million in taxable sales during the two audit periods. So, it's still potentially significantly more than what he reported, and we would still rely on the purchases that we have, as Mr. Samarawickrema has explained, that that is the best evidence for our audit.

JUDGE WONG: Okay. Thank you. Let's take a five-minute break. I'm gonna talk to my co-panelists and then we will be back. So, right now it is 1:24. Let's take a break until 1:30.

Let's go off the record please. Thanks.

(There is a pause in the proceedings.)

JUDGE WONG: All right. Let's go back on the record. It's 1:30 p.m.

After speaking with my co-panelists, and since we are holding the record open anyway to have CDTFA provide comments on the late-provided exhibits from Appellant, we

will ask Appellant to provide the Z-tapes from the liability periods, but also include an analysis and summary. Like, if you just dump a bunch of documents on CDTFA and us like, we're not gonna sift through them and try to figure out what's going. So, does -- that -- that clear?

MR. BAGHERI: Yes, Your Honor. Yes.

JUDGE WONG: Okay. So, we will -- after your concluding remarks, we'll talk about the timeline for providing those, and then CDTFA's analysis for all the late filed exhibits and what not.

But I'm going to turn it back now to Appellant for your rebuttal -- continue your rebuttal and closing. So it's all you, Mr. Bagheri.

MR. BAGHERI: Thank you, Your Honor.

I think -- I think that's it. I can't think of anything else. But I just want to thank the panel and all the parties for their time and effort. I know a lot of time and effort went into the audit and into the -- into your -- this entire process with the OTA.

JUDGE WONG: All right. Thank you.

I will turn for the final time to my co-panelists to see if they have any questions for either party, beginning with Judge Ralston.

JUDGE RALSTON: No question. Thank you.

JUDGE WONG: Judge Kim?

JUDGE KIM: No further questions.

JUDGE WONG: Okay. I also had no further questions.

So, let us talk about the timeline because, Appellant, you will be the first to provide the Z-tapes and an analysis summary. So how much time do you need to provide that? 30 days? Is that all right?

MR. BAGHERI: Yes, I believe that's more than adequate.

JUDGE WONG: Okay.

MR. BAGHERI: Rami.

MR. HANNA: Yes, I can I have it immediately. Yeah, 30 days is fine until -- if I need -- if I need you make summary of it, provide it to the paper, I can do.

JUDGE WONG: Yes. PDF similar, searchable if possible. So -- and that will be Exhibit 38, I'm assuming.

Okay. And then, CDTFA, how much time would you like once Appellant has provided all the exhibits? Did you need to provide response to proposed Exhibit 28 -- I'm sorry -- Exhibits 28 through 38, now I think we're talking about.

MR. SAMARAWICKREMA: Thirty days, Judge.

JUDGE WONG: Okay. Thirty, 30. All right. That

works. So, we are holding the record open. I will be issuing a post-hearing order just summarizing the proposed submissions from both sides. So, be on the lookout for that, and it will include deadlines. So, we will be holding the record open for that. Okay. Then once the record is closed, then we will send the parties our written decision no later than 100 days from the record closing.

All right. That concludes this hearing. The oral hearing in this case is now adjourned.

Oral hearings will recommence online on Thursday at 9:00 a.m.

Thank you, both --- both sides, for your presentations. Thank the witness for their testimony.

And we are now off the record.

(Proceedings concluded at 1:34 p.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 18th day of September, 2026.

_____

ERNALYN M. ALONZO
HEARING REPORTER