

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

**R. RAMOS,
dba La Tiendita Market, Boneyard, and
Café Del Sol**) OTA Case No.: 241218173
) CDTFA Case ID: 4-613-310
)
)
)
)**OPINION**

Representing the Parties:

For Appellant:

R. Ramos
Joseph Swift, Representative

For Respondent:

Nalan Samarawickrema, Hearing Rep.
Christopher Brooks, Attorney
Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, R. Ramos (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on January 26, 2023. The NOD is for tax of \$378,222, plus applicable interest, and a negligence penalty of \$37,822.19 for the period April 1, 2019, through March 31, 2022 (liability period).¹ Prior to this appeal, CDTFA completed a reaudit, which reduced the measure of unreported taxable sales by \$2,740,826 from \$4,880,276 to \$2,139,450. The reaudit results will reduce the tax, interest, and corresponding penalty.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Steven Kim, and Keith T. Long held an oral hearing for this matter in Cerritos, California on May 12, 2026. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

¹ CDTFA timely issued the NOD because on June 17, 2022, appellant signed a waiver of the otherwise applicable three-year statute of limitations for the period April 1, 2019, through September 30, 2019, which allowed CDTFA until January 31, 2023, to issue an NOD. (See R&TC, §§ 6487(a), 6488.)

ISSUE

Whether further reductions to the measure of unreported taxable sales are warranted.

FACTUAL FINDINGS

1. Appellant, a sole proprietor, operated the following three restaurants during the liability period: La Tiendita Market in San Clemente, which began operations on January 1, 2006, and closed on July 7, 2019; Boneyard in Dana Point, which began operations on July 6, 2007, and closed on November 14, 2022; and Café Del Sol in San Clemente, which began operation on July 6, 2007.² Appellant's seller's permit was issued on January 1, 2006, and closed on November 14, 2022.
2. CDTFA initiated an audit of the liability period. CDTFA previously audited appellant for the period January 1, 2008, through December 31, 2010, which resulted in a deficiency measure. CDTFA also audited the period January 1, 2011, through December 31, 2013, and issued a "No Opinion Warranted" report.³
3. During the liability period, appellant filed sales and use tax returns reporting total sales of \$4,079,975 and claiming deductions for nontaxable sales of food products of \$1,924,766, which resulted in taxable sales of \$2,155,209.
4. Appellant did not provide a complete set of books and records for the audit. Instead, appellant provided the following: federal income tax returns for 2019 through 2021; Boneyard Revenue Summary report for the period January 1, 2019, through December 31, 2023; and Shift Summary reports for the period January 1, 2019, through December 31, 2021; bank statements for all three locations for the liability period; and

² It appears that Boneyard was also known as Café Del Sol At Doheny.

³ When an auditor determines an account that has been selected for audit requires no further review, they will issue a No Opinion Warranted (NOW) recommendation. A NOW recommendation does not result from an audit, as the auditor may not have examined all of the transactions of a business. Generally, for a NOW recommendation, the auditor does not prepare any additional audit workpapers, comments, or other written information.

purchase invoices for 2021 and 2022.⁴ CDTFA also obtained appellant's Form 1099-K data for the first quarter of 2019 (1Q19) through 4Q21.⁵

5. Upon audit, CDTFA compared the gross receipts that appellant reported on his federal income tax returns to the gross receipts excluding tax that appellant reported on his sales and use tax returns for 2019 through 2021 and found immaterial differences.
6. CDTFA also compared the gross receipts that appellant reported on his federal income tax returns to the corresponding cost of goods sold (COGS) to compute book markups⁶ of 79.58 percent for La Tiendita during 2019, 58.33 percent for Boneyard during the period 2019 through 2021, and 47.63 percent for Café Del Sol during the period 2019 through 2021, which results in a combined markup for all three restaurants of 54.50 percent. Appellant did not provide a complete set of books and records for CDTFA to verify COGS. CDTFA also concluded that the markups were low for this type of business and that further examination was warranted.
7. CDTFA scheduled the credit card sales reported in appellant's 1099-K data (excluding tax, tips, and exempt sales) of \$3,018,259 and found that appellant's credit card sales exceeded reported taxable sales by \$719,047. CDTFA also calculated a ratio of credit card sales for each location to total sales for the three combined locations. For 2Q19, CDTFA found that 27.27 percent of appellant's credit card sales occurred at La Tiendita, 21.11 percent of appellant's credit card sales occurred at Boneyard, and 51.62 percent of appellant's credit card sales occurred at Café Del Sol. For the remainder of the

⁴ On appeal, there is a dispute as to whether appellant provided purchase invoices. Appellant initially raised this issue during CDTFA's internal appeals process, but CDTFA's decision does not address it. OTA notes that the audit workpapers clearly state that appellant provided purchase invoices for 2021 and 2022. It is unclear whether the purchase invoices for those years are complete because the audit workpapers state "Taxpayer did provide purchase invoices for some periods for the 3 locations, however purchases are not summarized." Even if the purchase invoices for 2021 and 2022 were complete, OTA notes that there is no indication that appellant provided purchase invoices for 2019 or 2020. As such, the purchase invoices are incomplete for the liability period. Moreover, during his appeal to OTA, appellant claimed to have a complete set of purchase invoices but did not provide them.

⁵ Form 1099-K is an IRS form titled, "Payment Card and Third Party Network Transactions," which shows the monthly and annual amounts paid to a merchant by a bank, credit card company, or third-party network, during a given time period. Form 1099-K data includes payments made by electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

⁶ "Markup" is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is \$0.70 and it charges customers \$1.00, the markup is \$0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent ($0.30 \div 0.70 = 0.42857$). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records.

liability period, CDTFA concluded that 58.81 percent of appellant's credit card sales occurred at Boneyard and 41.19 percent of appellant's credit card sales occurred at Café Del Sol.

8. CDTFA concluded that La Tiendita made exempt sales of cold food to go. To calculate estimated exempt cold food sales for La Tiendita, CDTFA used a cold food sales ratio of 46.94 percent, which it calculated in the prior audit for the period January 1, 2011, through December 31, 2013. CDTFA reduced total credit card bank deposits for 2Q19 of \$238,745 by the credit card sales rate of 27.27 percent and a tip ratio of 1 percent to compute sales net of tips of \$64,471. CDTFA then applied the exempt sales rate of 46.94 percent to calculate exempt sales of \$34,203. CDTFA then reduced the remaining amount by the sales tax rate to calculate La Tiendita's taxable sales of \$31,743 of \$31,743.
9. CDTFA used appellant's bank statements to create a schedule of quarterly credit card deposits for each restaurant during the liability period. CDTFA reduced the sales by an estimate of tips and exempt sales.
10. To calculate estimated tips, CDTFA used appellant's Boneyard Revenue Summary report to compile recorded credit card tips, which it then compared to the total sales that appellant recorded in the report. Overall, CDTFA calculated a 1 percent (rounded) estimate for tips.
11. To calculate estimated exempt sales for Boneyard, CDTFA used the Boneyard Shift Summary reports for the period 1Q19 through 4Q21 and compiled total shift sales.
 - a. During 2019, appellant recorded in the Boneyard Shift Summary reports total sales of \$301,425, which includes cold food sales of \$81,283. CDTFA divided \$81,283 by four to find average quarterly cold food sales of \$20,321. CDTFA multiplied appellant's average quarterly cold food sales by three quarters to compute cold food sales of \$60,962 for the period 2Q19 through 4Q19. CDTFA divided appellant's cold food sales for the period 2Q19 through 4Q19 by the total sales (excluding tax, service fees, and tips) that appellant recorded in its Boneyard Revenue Summary reports for 2019 to calculate a cold food sales ratio of 12.65 percent.⁷

⁷ There is no explanation in the audit workpapers for the reason that CDTFA calculated the cold food sales ratio by comparing cold food sales for three quarters to total sales for the entire year (four quarters).

- b. During 2020, appellant recorded in the Boneyard Shift Summary reports total sales of \$516,634, which includes cold food sales of \$149,115. CDTFA divided \$149,115 by four to find average quarterly cold food sales of \$37,279. CDTFA multiplied appellant's average quarterly cold food sales by three quarters and divided the resulting \$111,836 by the total sales (excluding tax, service fees, and tip) that appellant recorded in its Boneyard Revenue Summary Report for 2020 to calculate a cold food sales ratio of 14.36 percent.
- c. During 2021, appellant recorded in the Boneyard Shift Summary reports total sales of \$601,802, which includes cold food sales of \$145,391. CDTFA divided \$145,391 by four to find average quarterly cold food sales of \$36,348. CDTFA multiplied appellant's average quarterly food sales by three quarters and divided the resulting \$109,043 by the total sales (excluding tax, service fees, and tip) that appellant recorded in its Boneyard Revenue Summary report for 2019 to calculate a cold food sales ratio of 11.65 percent.

The audit workpapers identify Boneyard as Café Del Sol for the purpose of the exempt sales calculation. The audit workpapers state that not all of the cold food was sold to go because only one of the Café Del Sol locations [i.e., Boneyard] was on the beach. The audit workpapers state that appellant lacked documents, but the above cold food sales ratios were intended to give appellant the benefit of the doubt. CDTFA allowed a reduction for exempt cold food sales to Boneyard and did not allow any such reduction to the other location [Café Del Sol]. The audit workpapers also state that the Boneyard location did not qualify for the 80/80 rule.⁸

- 12. CDTFA compared appellant's total credit card bank deposits (including tax and tip) to appellant's total bank deposits for the liability period to calculate an overall credit card sales ratio of 73.35 percent. CDTFA applied the 73.35 percent credit card ratio to appellant's total credit card deposits (excluding tax, tip, and exempt sales) of \$3,653,180 to project audited taxable sales of \$4,980,478 for the liability period, which when compared to reported taxable sales revealed unreported taxable sales of \$2,825,268. (Audit item 2).

⁸ The general rule is that a sale of cold food to-go is exempt from tax. (Cal. Code Regs., tit. 18, § 1603(c)(1)(B).) However, there is a special "80/80 rule" under which a sale of cold food to-go in a form suitable for consumption on the retailer's premises (e.g., a cold sandwich) is subject to tax. This rule applies when more than 80 percent of a retailer's gross receipts are from sale of food products, and over 80 percent of the retailer's sales of food are otherwise subject to tax. (R&TC, 6359(d)(6); Cal. Code Regs., tit. 18, § 1603(c)(1)(A), (c)(3).)

13. CDTFA used the results of the credit card sales projection and the COGS reported on appellant's federal income tax returns to calculate the audited markups. CDTFA noted that the markups resulting from the credit card sales projection method were too low for this type of business. Based on this, CDTFA concluded that further examination was warranted.
14. CDTFA calculated the additional taxable measure as follows: first, CDTFA calculated adjusted COGS of \$614,013 for the period 2Q19 through 4Q19,⁹ \$778,458 for 2020, and \$957,953 for 2021, by reducing the COGS that appellant reported on its federal income tax returns for each year by two percent for self-consumed merchandise and two percent for pilferage. CDTFA applied a markup factor of 2.8151¹⁰ to adjusted COGS to calculate audited taxable sales of \$1,728,508 for the period 2Q19 through 4Q19, \$2,191,437 for 2020, and \$2,696,733 for 2021. CDTFA subtracted appellant's reported taxable sales and unreported taxable sales included in audit item 2 for each period to compute unreported taxable sales of \$677,022 for 2Q19 through 4Q19, \$610,065 for 2020, and \$706,056 for 2021.
15. Appellant's unreported taxable sales represented error rates of 119.12 percent for the period 2Q19 through 4Q19, 89.8 percent for 2020, and 84.62 percent for 2021. CDTFA applied these error rates to reported taxable sales for each quarter of the liability period to calculate unreported taxable sales based on the markup method of \$2,055,007 (Audit item 1).¹¹
16. CDTFA issued the aforementioned NOD for \$378,222, plus applicable interest. CDTFA also imposed a negligence penalty of \$37,822.19 based on appellant's failure to maintain a complete set of books and records and reporting errors that were similar to those found in the prior audit.¹²
17. Appellant filed a timely petition for redetermination disputing the NOD.

⁹ To calculate adjusted COGS for the period 2Q19 through 4Q19, CDTFA used the COGS reported on appellant's federal income tax returns for 2019 and divided by four to calculate average quarterly COGS. CDTFA then used average quarterly COGS for three quarters.

¹⁰ The markup factor is based on a 181.51 percent markup rate. CDTFA calculated the markup rate based on cash register receipts from the period 1Q12, that appellant provided for CDTFA's prior audit of the period ending December 31, 2010.

¹¹ For 1Q22, CDTFA used the 2021 error rate of 84.62 percent.

¹² On appeal, appellant has not raised any argument or provided evidence regarding the negligence penalty. Therefore, OTA considers it not in dispute and will not discuss it further.

18. On June 24, 2024, CDTFA issued a decision ordering a reaudit to: (1) reduce the taxable measure based on CDTFA's concessions (described below); and (2) correct computation errors. CDTFA otherwise denied appellant's petition for redetermination.
19. CDTFA performed a reaudit based on its concession that transcription errors in the audit workpapers created the appearance that appellant's credit card bank deposits exceeded the credit card sales recorded in appellant's 1099-K data.
20. For the reaudit, CDTFA revised audit item 2 as follows: CDTFA recalculated its credit card sales projection by scheduling the credit card sales (excluding tax, tips, and exempt transactions) recorded in appellant's 1099-K data for each quarter. CDTFA then applied a credit card sales ratio of 81.39 percent,¹³ which is based on audits of similar businesses, to appellant's 1099-K data to compute audited taxable sales of \$3,885,247. This reduced the measure of audit item 2 by \$1,095,231 from \$2,825,269 to \$1,730,038.
21. CDTFA also revised audit item 1 as follows: CDTFA reduced the markup factor from 2.8151 to 2.0154.¹⁴ CDTFA applied the revised markup factor to adjusted COGs as calculated in the original audit. This resulted in audited taxable sales of \$1,080,896 for 2Q19 through 4Q19, \$1,343,609 for 2020, and \$1,705,649 for 2021. CDTFA reduced audited taxable sales by the deficiency measure from audit item 2 for each period and compared the result to reported taxable sales to calculate error rates of 27.61 percent for 2Q19 to 4Q19, 10.65 percent for 2020, and 19.85 percent for 2021. CDTFA applied the error rates to each quarter of the liability period to calculate unreported taxable sales of \$409,412.¹⁵
22. Additionally, the reaudit workpapers acknowledge that CDTFA made mathematical errors in its calculation of the cold food sales ratio for Boneyard. CDTFA corrected the mathematical errors to compute a cold food sales ratio of 21.42 percent for 2Q19 through 4Q19, 21.13 percent for 2020, and 17.19 percent for 2021. However, CDTFA declined to apply the revised cold food sales ratio stating that the original amounts "appear reasonable for [appellant's] type of business." The audit workpapers do not provide any explanation for how CDTFA came to this conclusion.

¹³ In other words, CDTFA increased the audited credit card sales ratio by 8.04 percent, from 73.35 percent to 81.39 percent. This benefits appellant as it reduces the measure of unreported taxable sales.

¹⁴ The reduced markup factor is based on the markup calculated by CDTFA during the audit of the period ending December 31, 2013.

¹⁵ For 1Q22, CDTFA applied the 2021 error rate of 19.85 to calculate unreported taxable sales.

23. In total, the reaudit reduced the deficiency measure by \$2,740,826, from \$4,880,276 to \$2,139,450. This reduced the tax by \$212,416, from \$378,222 to \$165,806. CDTFA also reduced the negligence penalty to \$16,580.
24. This timely appeal followed.
25. At the oral hearing, appellant provided the following testimony:
 - The Boneyard location was subject to closures during the COVID-19 pandemic because it was located on a public beach.
 - The COVID-19 pandemic affected business operations. Café Del Sol converted to a drive-thru only business, and only accepted credit and debit cards. Appellant provided all of the merchant credit card account statements for the liability period to CDTFA.
 - During the COVID-19 pandemic, Café Del Sol sold mostly cold food such as acai bowls and fruit. Café Del Sol's sales of other food products slowed during the pandemic.
 - The audited markup ratio would have required much higher prices than those charged at appellant's businesses.

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant did not provide a complete set of books and records for the audit. For example, appellant did not provide a general ledger, cash register receipts, or a complete set of purchase invoices. During the audit, a comparison of gross receipts to the COGS reported on appellant's federal income tax returns revealed a markup that CDTFA considered to be too low for this type of business. Furthermore, CDTFA could not verify the COGS because appellant failed to provide a complete set of purchase invoices. Next, a comparison of the credit card sales recorded in appellant's 1099-K data to appellant's sales and use tax returns revealed that appellant's credit card sales exceeded appellant's reported taxable sales by \$719,057. Given these discrepancies, it was reasonable for CDTFA to conclude that appellant had underreported his taxable sales.

When CDTFA cannot compute taxable sales from appellant's records, it is appropriate to use an indirect audit method. (See *Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.) To calculate the taxable measure, CDTFA used two indirect audit methods. First, CDTFA used appellant's bank statements for each quarter to calculate a credit card sales ratio of 73.35 percent, which it applied to appellant's total credit card deposits (excluding tax, tips, and exempt sales). However, upon reviewing the result CDTFA concluded that the achieved markup (that is, the audited taxable sales compared to the COGS reported on appellant's return) was too low for this type of business. As such, CDTFA used the markup method to calculate additional taxable sales. For this portion of the audit, CDTFA used the markup found during the prior audit of appellant for the period ending December 31, 2010. Considering the incomplete set of books and records and the unexplained discrepancies, it was reasonable and rational for CDTFA to use appellant's own records (i.e., bank statements) and the prior audit results to calculate the taxable measure.

Upon reaudit, CDTFA acknowledged that transcription errors in the audit workpapers gave the appearance that appellant's credit card bank deposits were greater than the credit card sales reported in appellant's 1099-K data. Therefore, CDTFA recalculated the measure of audit item 2 by using appellant's 1099-K data and a revised credit card sales ratio, which CDTFA obtained from audits of similar businesses. For audit item 1, CDTFA reduced the markup rate based on information obtained during the audit period ending December 2013. Additionally, CDTFA corrected several mathematical errors. The net effect of these revisions was a reduction of the taxable measure.

However, CDTFA declined to implement mathematical corrections to the cold food sales ratio. Here, OTA finds no dispute that appellant made exempt sales of cold food. Additionally, there is no dispute that, during the audit, CDTFA miscalculated the cold food sales ratio, which

is based on appellant's books and records. CDTFA has not provided any explanation to support its finding that the improperly calculated exempt cold food sales ratio is appropriate. As such, OTA finds that CDTFA's unqualified refusal to correct its mathematical error is unreasonable. Accordingly, OTA concludes that adjustments to the audit measure are warranted as follows: recalculate Boneyard's taxable sales using the cold food sales ratio of 21.42 percent for 2Q19 through 4Q19, 21.13 percent for 1Q20 through 4Q20, and 17.19 percent for 1Q21 through 1Q22.

Other than the foregoing ordered changes, CDTFA used recognized audit methods, which considering the incomplete set of books and records, are both reasonable and rational. (*Appeal of Amaya*, 2021-OTA-328P.) Therefore, the burden of proof shifts to appellant to show that further adjustments are warranted.

On appeal, appellant contends that further reductions to the taxable measure are warranted. First, appellant contends that using both the markup method and the credit card sales projection results in a "double" counting of sales. Appellant argues that the use of "multiple speculative estimates" does not increase the audit's reliability. With respect to the markup method, appellant contends that the audit shows unrealistic markups that exceed seating availability or open periods.

Appellant also argues that its business operations changed after the prior audits. Appellant argues that these changes include the closure of La Tiendita. Appellant also contends that the COVID-19 pandemic affected the business requiring closures of the Boneyard location and a conversion to drive-thru only for Café Del Sol. Appellant also asserts that the Boneyard was a seasonal business because of its location, and therefore Boneyard made most of its sales during certain quarters. Finally, appellant argues that the COGS used during the audit are incorrect and that it can establish a significantly different COGS amount.

As discussed above, CDTFA used both the markup method and a credit card sales projection to calculate the measure of unreported taxable sales. However, CDTFA did not include audit item 2 (unreported taxable sales based on the credit card projection) in its computation of audit item 1 (unreported taxable sales based on the markup method). Nor did CDTFA add a markup amount to audit item 2. Instead, CDTFA removed the measure of unreported taxable sales based on the credit card projection from the measure of unreported taxable sales based on the markup method. Thus, audit item 1 does not include any of the sales represented by audit item 2. The result of the two audit items is the same as if CDTFA only used the markup method to calculate unreported taxable sales.

Next, CDTFA used appellant's own books and records to calculate the cold food sales ratio. During the oral hearing, appellant testified that his cold food sales increased during the COVID-19 pandemic. However, appellant has not provided evidence that the cold food sales recorded in the Boneyard Shift Summary Reports were inaccurate. Thus, OTA finds no reason to change the cold food sales ratio other than to correct the mathematical errors discussed above.

As to COGS, CDTFA used the COGS that appellant reported on his federal income tax returns for 2019, 2020, and 2021. On appeal, appellant provided his own calculation of COGS for 2019 through 2022. However, despite appellant's contention that he has purchase invoices to support his position, appellant has not actually provided any such invoices or other original documents during this appeal to support the asserted COGs. Appellant also has not provided any substantiating documentation to show that the COGS reported on his federal income tax returns are incorrect. Therefore, CDTFA finds no basis to make adjustments based on this contention.

Finally, there does not appear to be any dispute that during the COVID-19 pandemic, businesses faced intermittent closures. There also does not appear to be any dispute that Boneyard was a seasonal business. However, the audit methods employed by CDTFA are not affected by appellant's closures. Instead, the markup method used a markup factor that CDTFA computed in a prior audit of appellant and the COGS that appellant reported on his federal income tax returns to project total sales. Similarly, the credit card sales projection uses the credit card sales reported on appellant's 1099-K and a credit card sales ratio that CDTFA found during audits of similar businesses to project audited taxable sales. In both cases, the COGS and the 1099-K data account for closures because both the COGS and appellant's credit card sales would decrease whenever a closure occurred. As found above, CDTFA's use of the markup method and the credit card sales ratio are reasonable and rational. Accordingly, OTA finds no basis to make adjustments to the taxable measure based on this contention.

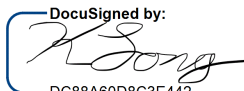
In summary, OTA finds that adjustments are warranted to the taxable measure. CDTFA must implement the cold food sales ratio calculated for Boneyard during the reaudit of 21.42 percent for 2Q19 through 4Q19, 21.13 percent for 1Q20 through 4Q20, and 17.19 percent for 1Q21 through 1Q22 to redetermine the tax. Otherwise, appellant has failed to show that further reductions are warranted.

HOLDING

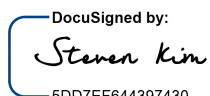
Further reductions to the measure of taxable sales are warranted.

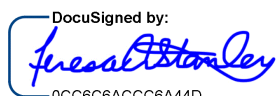
DISPOSITION

Apply the cold food ratio for Boneyard that CDTFA calculated during the reaudit of 21.42 percent for 2Q19 through 4Q19, 21.13 percent for 1Q20 through 4Q20, and 17.19 percent for 1Q21 through 1Q22 and redetermine the tax. OTA otherwise sustains CDTFA's action.

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Keith T. Long
Administrative Law Judge

We concur:

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Steven Kim
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/10/2026