BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	
SSB CHOICE, INC.,	OTA NO. 250521970
APPELLANT.	

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 14, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, SSB CHOICE, INC., APPELLANT.	OTA NO. 250521970

Transcript of Proceedings, taken at 12900 Park Plaza Drive, Suite 300, Cerritos, California, 90703, commencing at 9:10 a.m. and concluding at 10:41 a.m. on Wednesday, October 14, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ ANDREW WONG
Panel Members:	ALJ TERESA A. STANLEY ALJ STEVEN KIM
For the Appellant:	SOUBHI SABHAN RASHEED ALI
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
	RAVINDER SHARMA CHRISTOPHER BROOKS JASON PARKER

I N D E X

E X H I B I T S

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Cerritos, California; Wednesday, October 14, 2026

9:10 a.m.

JUDGE WONG: Let us go on the record.

This is the hearing in the Appeal of SSB Choice Incorporated before the Office of Tax Appeals, OTA Case No. 250521970. It's Wednesday, October 14th, 2026. The time is 9:10 a.m., and 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 Teresa Stanley and Steven Kim.

Will the people -- persons representing the Appellant SSB Incorporated please introduce yourselves.

MR. SABHAN: Soubhi Sabhan.

MR. ALI: Rasheed Ali.

JUDGE WONG: Good morning.

And representatives of the CDTFA, California Department of Tax and Fee Administration, could you please introduce yourselves.

MR. SHARMA: Good morning, Judge. Ravinder Sharma, 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 matters, including the issues that will be decided, the exhibits, potential witnesses, the time allocation, and things of that nature. So, we're considering one issue today: Whether the amount of unreported taxable sales should be further reduced.

Is that a correct statement of issues, Appellant?

MR. SABHAN: Actually, waive -- to waive the amount.

JUDGE WONG: Sorry. Could you --

MR. SABHAN: You said to me --

JUDGE WONG: -- explain a little bit more?

MR. SABHAN: No problem. So, you're saying that we're here because we want to reduce it?

JUDGE WONG: Yeah. Like, the issue we're deciding is whether the amount of unreported taxable sales should be reduced to -- it could be reduced to zero.

MR. SABHAN: Correct. That was what I was --

JUDGE WONG: Okay.

THE HEARING REPORTER: Okay. I need you all to please speak one at a time, please. That way I get it all.

MR. ALI: Let me clarify here.

JUDGE WONG: Okay. Go ahead.

MR. ALI: Yeah. The tax nontaxable should be reduced to match the -- the calculation on the test day, which is 26 percent.

JUDGE WONG: Okay. You'll have a chance to make that argument. I'm just asking what the question --

MR. ALI: Okay. Yeah.

JUDGE WONG: Could you just -- okay. Rule No. 1, back to rule No. 1. Let's me see. No. 2, please do not speak over each. Let's just wait until people are finished talking before someone else talks. Okay? Okay.

So, yes, we're just going over the issues. And so I phrased it as whether the amount of unreported taxable sales should be further reduced, including -- it includes it could be reduced to zero. Is that the issue we're deciding today?

MR. ALI: Yes, sir.

JUDGE WONG: Thank you.

CDTFA?

MR. SHARMA: That's correct. Thank you.

JUDGE WONG: Okay. So, we are going to talk about exhibits now.

Appellant, you have proposed and identified Exhibits 1 and 2, which were -- they were two purchase invoices from ST Distro, and these were from 2023. And today you have submitted an additional -- some additional

exhibits. Could you explain what those are?

MR. SABHAN: Yes. Good morning, Judge.

So, what happened is, in the past, we had a meeting with them, and they told me that, "If you bring me one invoice showing that you did buy candy before the date that we did the audit on you, we would definitely drop it for you."

So, it took me quite a bit of some time for me to remember that I did purchase from them. So, I ask them, "Can you print it out for me?" And they did print it out for me, and we submitted it to them. And they say, "This is not expected," -- I'm sorry -- "This is not accepted because it's handwritten."

Well, unfortunately, this is how they do it. So, I brought this today. This is like, one of the recent invoice that I purchase from them product. There's no candy in here, but it shows that this is how they do their invoices; and I paid it with my credit card on purpose so I could prove that I bought it legitimately from them. So, I just don't understand why would -- why would they not accept the invoices that I submitted to them.

JUDGE WONG: Okay. So, if I'm understanding you correctly, you're submitting these invoices, which are from September 2026, to show that the previous invoices that you submitted from 2023, that's routinely how this

business fills out its invoices?

MR. SABHAN: Correct. Because I remember the -- the manager, or the supervisor -- I can't remember exactly who -- when we had the meeting down in the State Board office, she straight up told me to my face. She said, "If you could find any invoice with candy on it before the date we did the audit on you, we will definitely waive it for you. And when I submit two invoices, not one -- she asked for one, but luckily I found two. Sorry. She either emailed him or called him on the phone saying, "Those are not accepted because it's handwritten."

Well, this is how they do. I can't really change their way or make it in the computer. This is how they do it since day number one, I've been dealing with them. I also have invoices from 2012, 2013 the same way.

JUDGE WONG: Okay. Thank you very much.

CDTFA, did you have any objections to proposed Exhibits 1 and 2 and then the proposed exhibit today, which I'll call Exhibit 3?

MR. SHARMA: Department has no objections since it has nothing to do with our findings. It is only to prove whatever they already submitted. So, Department has no objections.

Thank you.

JUDGE WONG: Thank you.

So, okay. Then we will admit Appellant's Exhibits 1 through 3 into the record as evidence.

(Appellant's Exhibits 1-3 were received into evidence by the Administrative Law Judge.)

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

CDTFA, no other exhibits?

MR. SHARMA: No other exhibits. Thank you.

JUDGE WONG: Okay. Appellant, did you have any objections to these proposed exhibits?

MR. ALI: Yes, as we stated in the -- our introductory -- introduction statement. The auditor from the Department --

THE HEARING REPORTER: Sir, may I please ask you to bring the microphone closer to you. Thank you.

MR. ALI: Okay. Is it okay now?

THE HEARING REPORTER: Yes.

MR. ALI: Okay. As we stated in our statement, the auditor has -- did the calculation based on the test -- shelf test. She has visited the facility two times in two different date using the 15 or 3 weeks, and she --

JUDGE WONG: Sorry, sir. I think you're making your argument as to why the -- the determined liability should be reduced. I'm just asking whether the records

that CDTFA has submitted as proposed exhibits, whether you object to them or not.

MR. ALI: No. We agree. So, we agree.

JUDGE WONG: Sorry. Could you repeat that?

MR. ALI: We are agreed to it.

JUDGE WONG: We are agreed? Okay. Thank you.

So, CDTFA's Exhibits A through F will be admitted into the record as evidence.

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

JUDGE WONG: The parties do not intend to call any witnesses. It's anticipated that this oral hearing will take approximately 75 minutes. Appellant will have 30 minutes total to make their presentation. You can divide that between your main presentation, and then a closing and rebuttal after CDTFA makes their presentation; but you can decide to divide that 30 minutes however you want.

CDTFA, you've asked for 25 minutes.

Is there any changes in this -- this time estimate?

I see Appellant shaking his head, so that's no.

MR. SABHAN: Maybe less than 35 minutes.

JUDGE WONG: Okay. 30 minutes. Okay.

CDTFA?

MR. SHARMA: Yeah. None more than 25 minutes.

Thank you, Judge.

JUDGE WONG: Okay. Okay. So, before we turn it over to Appellant for their main presentation, are there any final questions?

Appellant?

JUDGE WONG: You're shaking your head. It's a no, right?

MR. SABHAN: No.

JUDGE WONG: Okay. And then, CDTFA, any final questions?

MR. SHARMA: No questions. Thank you.

JUDGE WONG: Okay. All right. Appellant, please proceed with your presentation. You have 30 minutes.

MR. ALI: Okay. Thank you, Judge.

PRESENTATION

MR. ALI: The -- just a little bit of background. My client has a small store -- small store in City of Hesperia. It is a family business. He run the business by himself with little bit of assistance. He try to do his best to be in compliance. He do his taxes on time, file on time, pay it on time, and he has a record which is, from my understanding, is sufficient to recordkeeping since he cannot afford to have in-house keeper because the

business are very small.

And he get us cleared the auditor -- the auditor. He get audited for the period stated above, and we avail all the information that we have: The bank statement, the invoices, the purchases, we make interviews, and the auditor of the Department decide to go and do a shelf test in two consecutive days. It was on September 20th, 2023, and October 9, 2023. In those two tests, she found out the credit -- she estimated the credit versus cash, which is, I believe, 89 percent, and she agreed about 80 -- 85.75 percent for these two days. And she did that calculation and accepted that ratio.

And on -- on the issue of taxable versus nontaxable, the shelf test resulted in 26 percent. However, the Department reject that percentage, and say that this is not the right one; and the auditor make 2 percent, arguing that it is the -- it is a standard for the industry for that nature. We understand that if there is no shelf test, if there is no test, that the Department, according to internal regulation, could go and look for a third party.

But our concern is that the methodology is not consistent. So, the Department choose the result which is meet the government interest versus the -- which is the taxpayer interest. Which we consider that, I believe, it

is not consistent. And all the time those say that [INAUDIBLE] has to be accurate. The accuracy, we believe that as accurate as possible we believe that the test is considered as inaccurate on some part and not considered on the other part. And in the appeal conference with the Department my client present a case and they ask him to present just some invoice to show that he has an untaxable amount on untaxable products, which he did. Then the appeal said that this invoice, it cannot be represented to the audit arguing that it is the handwritten as Mr. Soubhi Sabhan explained to you. It was genuine invoices from a vendor, and the vendor is organized and you could see his address and his credential in this.

To sum up, we really would like to have a result of the audit represent the evidence that we submitted and it goes to the methodology of the Department of Tax and Fee Administration. I think the 26 percent is nontaxable, is representative for this specific case.

Thank you.

MR. SABHAN: Can I speak?

JUDGE WONG: Thank you.

Yes, please.

MR. SABHAN: The whole issue is the State Board did not believe that I am selling 26 percent of non-tax food. I tried to explain to them multiple times. I have

over 14 stores on my street. So, we have a very heavy competition. So, I always tried to do my best for me to do my work as how I want it to become successful. So, I always go and find things that no other stores around me with the same competition, they have it, so, I could keep bringing traffic.

When she came and monitored everything and asked me for receipts, every transaction, she saw that I was selling candy, but she did not -- sorry. She was shocked how much I'm selling candy, and she told me, "Normally, all smoke shops sell 2 percent."

I said, "My smoke shop does not have the same candy as what other smoke shops has." I told her, "Example, I sell beef jerky. My beef jerky is $17.99, $15.99. The smallest bag, it's like, $9.99 or $8.99." I can't remember. I told her, "I have a lot of exotic candy." She took pictures of them, so she could show it to her manage. One pack of chips, just because it's exotic, it was like, $8.99, $9.99. I also have example, Snicker candy, but it's not the same Snicker that you go buy it from the market for $1.49 or $1.99. Mine was $7.99. That was the market at that time. It was big on my TikTok. I did my study, and I brought it.

And when she came the first day, she told me, "I've never seen any other smoke shop doing that."

I said, "I just do my studies, and I always try to pass stuff inside my store that no other smoke shop has." And I will repeat that again. She took a picture of the cabinet. She took a picture of the chips bags. And also, I think she took a picture of the exotic drinks that I have inside the fridge. The second day, when she was at the shop, she was also monitoring everything, taking receipts, every receipt. You know, she was entering it into the computer. Just before she leaves -- because I'm curious. I've never been through this ever in my life -- I said, "Please explain to me with you being here in the store, what's going on, because I'm kind of nervous. It's my first time. I never want to be, you know, playing against the law. I never trying to hide any things."

As you see, I'm coming with no preparation. I don't have no paper, no statement. Because whatever I know from my work, I'm trying to give it to you guys. She said, "Yup. I -- I actually saw everything. The credit to ratio, it's perfect, but we need to talk to my manager."

That's when we had a meeting with her manager at the office, and she said, "We're not accepting this."

And I said, "But she did witness everything. It's not that, you know, I'm just telling you over the

phone that this is how much I'm selling. You send somebody to my store, and she sat" -- "she sat down inside the office" -- I'm sorry -- "inside my store 2 days, 8 hours a day. It was a full shift, and she witnessed everything. Why would you not accept it?"

She told me, "We need one invoice before June of this year or the year in the past. I have no problem. I will drop it for you."

And I said, "Okay. No problem."

And I kept going to all the vendors that I used to deal with. Luckily, I saw the manager of this store right here, and I was like, "I know I haven't been here in a long time" -- because sometimes I buy from a vendor, and then I disappear from him. I go to different vendor. Somebody has more product, if somebody has cheaper prices. So, I keep traveling from vendor to vendor. And luckily, he said, "Yeah. Let me check for you." And he checked, and he said, "Yeah, I have."

And I was like, "Okay. Can you please give me copies?" The same copies he give me, I send it to -- I can't remember what's her name. And she told Mr. Rasheed over the email that we're not accepting it. Why? Because it's handwritten, and that's why I just brought this latest invoice to show that this is how they do it.

And I have no -- anything else to say after this.

JUDGE WONG: Thank you very much. You still about 20 minutes for your rebuttal and closing.

So, all right. I will now turn to my co-panelists for questions for Appellant, beginning with Judge Kim.

JUDGE KIM: Yes, thank you.

I did have some questions. So, when did you begin to sell these food items: The jerky, chips, exotic candies, and the drinks?

MR. SABHAN: So, when I first start selling I would say more expensive candy, it was probably two years before the audit happened. I used -- I used to carry a lot of Alien because Alien was a big thing back in the day. I used to buy a lot of beef jerky from Costco. I used to buy first shape box of chocolate. I used to bring a lot of stuff until exotic candy came out in the same time almost, maybe -- maybe a year after, maybe six months. I can't really remember exactly, but long time.

JUDGE KIM: So, when you say two years, do you have a date -- an approximate date like, when you started selling the jerky?

MR. SABHAN: Even the warehouse where I buy my cigarette from, I used to buy it from them like six, seven years ago. So, exact date I really don't have, but I used to buy them from a lot of vendors.

JUDGE KIM: Okay. And for the exotic candies and stuff, you said about six months before the audit when -- when --

MR. SABHAN: No. No. Way before that.

JUDGE KIM: -- so --

MR. SABHAN: I will say about a year and a half, a year to year and a half. I'm not really sure 'cause it's been so long.

JUDGE KIM: Can you be more specific? What do you mean by a year and a half? Like, from what date?

MR. SABHAN: That I remember when she did the audit in my store, at least a year and a half to two years; around there. I'm not really sure. I could be wrong. It could be more. It could be less just because I never kept any record. And I think that what caused the problem between me and State Board because I thought in my head, again, I'm learning, and I'm always trying to do my best. Because it's candy non-tax, I don't think I kept them. So, when she came and asked me, "Hey, I want my" -- "I want the invoices for the candy," and I was like, "Oh, sometimes I used to buy them from the actual Alien jerky on the way to 'Vegas, and I used to bring them to the shop on my way coming back."

So, I really never kept them, but I always kept the taxable invoices inside my store. And I had to go

search and call a lot of people until I found out that, you know, the invoices that I submitted to them.

JUDGE KIM: So, other than those two invoices you submitted --

MR. SABHAN: I did show them. I did show them. We did submit -- no, actually, she saw inside the store. It was Costco, and it was Desert Star invoices.

JUDGE KIM: Okay. But other than those two purchase invoices dated April 2023 and June 2023, you -- you don't have any other purchase invoices within the audit period?

MR. SABHAN: I think we did submit to them. She's --

JUDGE KIM: For -- for the candies --

MR. SABHAN: Yeah.

JUDGE KIM: -- and the food items?

MR. SABHAN: Yeah. Yeah. And I was surprised when we had the Zoom meeting that they didn't even have the two invoices for 2023. And I think Mr. Rasheed resubmitted again, but I know I did show Veronica -- I think here name. I can't remember her name exactly, but she saw a Costco, and she did see one Desert Star.

JUDGE KIM: Okay. And so when CDTFA, they conducted a compliance inspection on January 31st, 2023, they noted that these items were not for sale at the

store?

MR. SABHAN: Not for sale.

JUDGE KIM: Like exotic food items were - were not being sold at that time?

MR. SABHAN: Can you please give me more details because I'm not -- I'm not understanding you.

JUDGE KIM: So, based on the file, CDTFA said they visited. It seems like they did an inspection of the business in January 2023.

MR. SABHAN: Okay. So, what happened when they came for inspection?

JUDGE KIM: And they noted that -- CDTFA noted that there were no nontaxable items for sale.

MR. SABHAN: I did explain that to them too. Not just -- not just nontax. There's a lot of taxable item was missing from the store. So, what happened is, November and December is a very busy time for us. So, of course, you know, it's our season basically, especially December. So, we sold a lot of stuff. Normally, for my shop, I don't restock until early February. Why? Because a lot of people come in. They buy, example, mod when -- when vape used to be illegal. A lot of people buy vape. They're like, you know what, my daughter likes this. I'm going to buy this. So, they used to buy a lot of stuff.

Once December is done, January to probably middle

of February, we're super dead. Because everybody spend their money, so it's not worth it for me to go purchase product, especially candy, and leave it on a shelf. Yeah, maybe I'll sell one, two, maybe half a box, but I don't want the expiration date to kind of, you know, get closer and closer. So, I always do my shopping for the taxable or nontaxable middle of February, end of February, just because we're slow in those month and a half, two.

MR. ALI: Can I add? Can I add?

JUDGE KIM: Sure.

MR. ALI: Yeah. Thank you. I understand CDTFA send somebody to some inspection for tobacco, and I believe, according to Mr. Soubhi, that time he spend less than an hour or an hour. And the store, I visited sometimes. It is they have storage behind. So, he check the compliance regarding tobacco and cigarette, and he went. I don't think that his observation is -- how to say -- was substantial because his mission was to look for the tobacco, not to see the taxable versus nontaxable and see the -- to do test.

I believe Angelica - I believe the auditor name is Angelica. The one she did the test and sit like, almost eight hours a day, and she recorded the taxable versus nontaxable and credit versus cash.

Thank you.

MR. SABHAN: Can I add one more thing?

JUDGE KIM: Yes. Go ahead. Sure.

MR. SABHAN: On that day when the inspection came in, I was actually outside the country. Because I know it's slow, it's my time for me to -- to do whatever I need to do. I remember my brother called me, and he said, "We have an inspection."

I said, "Yeah. No problem. Just give him whatever he ask you for. Just get the invoices and give it to him."

So, he did ask my brother for invoices for almost everything. And what I'm trying to add is, because I know it's a slow couple of months for us, that's when I took my little vacation, and I was outside the country because I know I'm not going to restock until probably the middle of February. Even -- even -- I was -- I don't know if he mention it also too, but I was low on a lot of stuff. There was empty shelves. Why? Because we sell them in Christmas as presents. People come by for their family and stuff like that. So, I just want to mention that oh, most I was outside the country, and I'm the one that I do the purchases. But again, because I know it's slow, I took advantage of the slow time, and I just took a vacation on that time.

JUDGE KIM: Okay. Earlier you said that you did

submit additional purchase invoices for the nontaxable items. Are those in the -- the record? Are those in the exhibits?

MR. SABHAN: It's -- it's been in a while, but I know for sure Angelica did see invoices inside my shop. But I know we submit the two invoices for June and April, I believe, for 2023, but I -- I can't remember if we send them the -- the invoices from other vendors. I -- I need to ask him for that.

MR. ALI: Yeah. There - there were nontaxable item included in the invoices, but the point is that she did not consider that invoices. She went for a test, and if that -- when the test come on February to the Department, she become the standard industry that do 2 percent or 1 percent. And as we stated that, the SSB is different. Like, Mr. Sabhan explained to you, that he try to make some difference on the area, and he has this item for nontaxable.

JUDGE KIM: Okay. So, I -- I don't see those other purchase invoices in the record, but you're saying you submitted them during the audit?

MR. ALI: It was submitted.

JUDGE KIM: And would you able to submit those again? Do you have those with you?

MR. ALI: I will get check, and then we submit

again if that requires.

JUDGE KIM: Okay. Thank you. I don't have any additional questions at this time.

JUDGE WONG: Thank you, Judge Kim.

Judge Stanley, any questions for Appellant?

JUDGE STANLEY: Yes. Thank you. I also have a couple of questions regarding the alleged nontaxable items. I think when you testified, Mr. Sabhan, I think you used the 26 percent. Where did you come up with that?

MR. SABHAN: According to my bookkeeper, and that's what Angelica said also too because she said normal stores only report 2 percent; you're at 24 or 25 percent, something like that.

MR. ALI: The 26 percent I was referring to, it is the test -- the shelf test done -- done by Angelica on September 20th and October 9 in 2023 during the audit time.

JUDGE STANLEY: Okay. So, for the shelf test, you're saying that 26 percent of the products on the shelf at the time the test was done were nontaxable?

MR. ALI: Correct, ma'am.

JUDGE STANLEY: Okay.

MR. ALI: And it is in her report.

JUDGE STANLEY: Okay. And an additional question, we do have the two observation tests, and they

both indicate that there are some exotic food items sold: Chips, candy, et cetera. However, the two days the percentage varies greatly. So, like on one of the days it was less than 10 percent, and the other day it was more than 20 percent. So, is there any way that we could confirm that there was an average amount of sales, or any -- anything like that?

MR. SABHAN: Your Honor, this is something I can't really control. Sometimes somebody walk in, buy $30, $40 worth of candy. Sometimes the same person will come inside the shop and don't buy any candy. That's something I can't really control. But normally, I was -- well, at that time when vape was allowed, I was selling crazy amount of candy just because I was the only smoke shop used to have a lot of exotic candy. And I know so many -- I gained so many customers from a lot of smoke shops just because their candy is normal. My candy is like what's on TikTok and what's going popular. So, I brought more customers.

And I tried to -- Angelica did not believe me. She told me straight up. She'd like, "I don't know. I do see that you're selling candy, and -- but this is" -- she didn't say like, straight fishy, but I felt it like she's telling me something fishy in here. And I was like, "Okay. Ms. Angelica, let me ask you one question. In

order for me to sell this amount of candy in front of your eyes, don't you think I need months and years for me to build those type of other clienteles? It's -- it's not gonna take one day or two days or five days or a month for me to have this kind of clienteles."

And not just -- not just only nontaxable, she witnessed big amounts of sale inside my store taxable, and she's like -- she used to always give me that, like, "Wow, I mean, you got big spender money people in here."

And I was like, "I worked hard for me to build those customers."

JUDGE STANLEY: Okay. And then the final question that I have is, there was an indication by CDTFA that they looked at your website and didn't find any nontaxable food items on there. Did you only sell those in store?

MR. SABHAN: I've been fighting that website for months and months. That does not belong to me. Somebody somehow attached their website to my address. I did fight it in Apple, but I couldn't fight it in Google or -- what's that other app?

MR. ALI: Yelp.

MR. SABHAN: Yelp -- or Yelp. Somebody has that website attached to my business, but that does not belong to me. I do not have a website. I was building a website

for, you know, the store. But if I'm not mistaken, a couple of years ago President Trump came out with the law, no more allowing nicotine or tobacco online. So, we did not launch it. We did not even continue working on it.

JUDGE STANLEY: Okay. So, you've never had a website?

MR. SABHAN: No. Never. Never.

JUDGE STANLEY: Okay. That's --

MR. SABHAN: No problem.

JUDGE STANLEY: That's my only questions. Thank you.

JUDGE WONG: Thank you, Judge Stanley.

I did have one or two questions. You had mentioned that the vendor that you had submitted these purchase invoices from, sometimes you switched vendors depending on price and product mix. So, did their stock of goods and the mix of products that you sold, especially the candy and nontaxable food, did it fluctuate over the course of a year?

MR. SABHAN: I'm sorry. Can you elaborate a little bit?

JUDGE WONG: Sure. Like, you had mentioned that sometimes after the holidays you were low on stock on certain things. And so, that's -- that would explain why there was fewer sales of this particular product or -- or

nontaxable products. Whereas, during the observation test, there were higher sales of candy. So, it seems like over the course of a year, some -- sometimes you're selling more nontaxable things, less nontaxable things. Is that fair to say?

MR. SABHAN: Again, I can't control the market. So, example, if today I make $1, tomorrow I might make 45 cents. The next day I might make $1.45. It depends on the customer's money situation. Sometimes I get a customer doesn't even have a penny in his pocket but uses his credit card. Sometimes they have money in their debit card, but their like, "No, I'm trying to pay my rent and all that. You know, I'll come back maybe next week when I get paid to get this for my wife or my daughter."

Again, I can't control the market. Sometimes I pick up more on -- on -- on the nontax. Sometimes it slows down. Sometimes it picks up twice as much than the past couple of days because it was slow. So, then boom, it picks up, super busy.

JUDGE WONG: Okay. I just ask --

MR. SABHAN: Yeah.

JUDGE WONG: -- because our decision kind of hinges on what the parties provide to us and what they are able to prove --

MR. SABHAN: Yeah. I understand.

JUDGE WONG: I'm sorry.

MR. SABHAN: I said I understand.

JUDGE WONG: Okay. So, yeah, if you could just let me finish. So, like, CDTFA has the burden of proof reasonable and rational -- to show that their determination is reasonable and rational if they make that burden of proof. If they carry that burden, then the burden shifts to you as the Appellant to show that there are changes that need to be made, and we can only make changes based on what you provide to us. And so I understand that the market changes. People's money situation changes. Unfortunately, what doesn't change is what you have to provide to us to show and prove your case, including documents, testimony, and what not.

So, I'm just wondering yeah, like going back to my original question. I guess the product mix changes, is that correct, throughout the year?

MR. SABHAN: Yes.

JUDGE WONG: Okay. And then you had mentioned -- okay. All right. That's all the questions I have for now. So --

MR. SABHAN: I -- I do want to ask you one thing. You said that they have a proof. She -- she came to the shop two days, and she witness that. Does that count as proof or no?

JUDGE WONG: So, basically, the Department -- CDTFA's burden of proof is to show that their determination is reasonable and rational, and that's a fairly low bar. And so, based on their observation, based on the records available, they're gonna ex --

MR. SABHAN: Sure.

JUDGE WONG: -- explain. They're gonna make their arguments. So -- but basically, their bar is reasonable and rational. Their determination must be reasonable and rational. And so, that's what they -- that's -- that's what their burden of proof is. That's what their responsibility is as far as proving this determination.

So, Judge Stanley had a question.

JUDGE STANLEY: You -- you talked about providing some invoices to CDTFA during the audit. Did you ever think to lookup the purchase invoices from the -- when you purchased in February, so that you could show that you had a large inventory, at least in the store?

MR. SABHAN: Can you ask me that question again? I'm sorry.

JUDGE STANLEY: So, when you purchase from one of your vendors -- you said you had several that you purchased from -- would you have records of those purchases, or would they have records of those purchases

that they could provide to you?

MR. SABHAN: I already answered Ms. Angelica, and I told her because they're nontax, I never thought that I need to keep those on record. So, example, I go to Costco, and I go buy chocolates; and especially on Halloween. They have a lot of big bags, you know, with the Halloween character and stuff like that. I used to just purchase it and put it in my shop because they're nontax. I also told her, when I used to go buy beef jerky, sometimes if I'm in Costco or Food for Less, I will see, you know, a good deal on -- on beef jerky. I would just buy me 10 bags or 15 bags. Or if it's a good price, I'll sometimes buy 20 bags and just put them on my rack and sell it.

So, these kind of stuff, it's been so old I never carry the receipts because I paid them from personal pocket or, example, my credit card. Again, that's something I learned it. I'm -- I'm not going to hide that. I never kept those receipts because I thought they're nontax, they're not important. But I did tell her that there is some actually -- actual candy that I purchased it from vendors, and that's when I provide whatever I provided to her.

JUDGE STANLEY: Okay. Thank you for clarifying that.

JUDGE WONG: All right. Thank you.

All right. We will now turn it over to CDTFA for their presentation. You have 25 minutes.

MR. SHARMA: Thank you, Judge.

PRESENTATION

MR. SHARMA: Appellant operates a smoke shop in Hesperia, California since October 2020. The Department performed an audit examination for the period of October 1, 2020, through June 30, 2023. Appellant reported total sales of around $2.6 million, claimed deductions of a little more than $500,000 resulting in reported taxable sales of $2.1 million for the audit period; Exhibit A, page 15. Appellant provided limited books and records, such as federal income tax returns for years 2020 to 2022, a few purchase invoices for 2021, and statements from two bank accounts from February 2021 to June 2023 and October 2020 to July 2021.

However, Appellant did not provide any point of sale sales data, sales receipts, sale journals, purchase journals, and income statements for the audit period. The Department obtained 1099-K data from its own resources. During the audit process, Appellant informed the Department that it used bank statements to prepare and file quarterly sales and use tax returns. However, due to

lack of sales records, the Department could not verify the accuracy of reported amounts. The Department compared reported taxable sales with cost of goods sold per federal income tax return, and arrived at a markup of approximately 3 percent for 2021 and 23 percent for 2022, with an average of 13 percent which appeared to be low for this type of business; Exhibit A, page 31.

Based on the analysis, the Department determined that Appellant's books and records were unreliable and inadequate for sales and use tax purposes. In the absence of reliable books and records, the Department decided to use an indirect audit method to verify the accuracy of reported amounts and to determine unreported taxable sales. Due to lack of purchase and sales records, the Department determined that credit card sales ratio method to be the most appropriate audit approach to verify the accuracy of reported amounts, and determined unreported taxable sales. On August 31, 2023, the Department requested Appellant retain two weeks of Z-tapes and end of the day is merchant summary reports for additional testing; Exhibit A, page 71.

Appellant failed to provide the requested Z-tapes and end of the day merchant summary reports for two weeks. The Department performed two observation tests; first on September 20, 2023, Wednesday, and second on October 9,

2023, Monday. During the observation tests, the Department noted that the Appellant claimed some food sales. However, based on the Department's prior visit to Appellant's business on January 31, 2023, it did not notice any food items for sale. To verify the accuracy of claimed nontaxable food sales, the Department asked Appellant to provide purchase invoices and sales receipts for food items for the audit period.

Despite various requests, Appellant failed to provide any Z-tapes, end of day merchant summary reports for the requested two weeks, or complete sets of purchase invoices and sales receipts for any specific period during the audit period. In the absence of any supporting documents, the Department rejected sales of food items as claimed during the observation test and during the audit period. However, the Department allowed an estimated 1 percent allowance for nontaxable food sales based on its experience with similar businesses and determined taxable credit card sales ratio of 87 percent; Exhibit A, page 21.

Due to expired statute of limitations, the Department deleted fourth quarter 2020 from the audit period and assessed the liability for period for first quarter 2021 to second quarter 2023. The Department used 1099-K data and determined credit card receipts of $2.1 million for first quarter 2021 to second quarter

2023; Exhibit A, page 9. The Department used credit card receipts of $2.1 million and credit card sales ratio of 87 percent to determine audited taxable sales of around $2.5 million. Appellant reported taxable sales of $1.9 million resulting in unreported taxable sales of around $630,000 for first quarter 2021 to second quarter 2023; Exhibit A, page 8.

When the Department is not satisfied with the amount of tax reported by the taxpayer, the Department may determine the amount required to be paid based on any information which is in its possession or may come into its possession. It is the taxpayer's responsibility to maintain and make available for examination on request all records necessary to determine the correct tax liability, including bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account. If the taxpayer's records are insufficient or proven unreliable, it is appropriate for the Department to compute and estimate the taxpayer's liability by alternative means.

The burden of proof is upon the taxpayer to prove all issues of fact by a preponderance of the evidence. The taxpayer must establish that the circumstances it asserts are more likely than not to be correct. In the case of an appeal, the Department has a minimal initial

burden of showing that its determination was reasonable and rational. Once the Department has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result different from the Department determination is warranted. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof.

Appellant contends that it had nontaxable sales of food items, around 26 percent, during the audit period and claims that it is supported by the observation test. In response, the Department requests that per Revenue & Taxation Code 60091, all of a retailer's gross receipts are presumed subject to sales tax until the contrary is established, and the retailer has the burden of proving otherwise. Despite various requests, Appellant did not provide any documentary evidence, such as purchase invoices and all sales receipts to support the claimed exempt food sales during the audit period. With its reply brief, dated August 22, 2025, Appellant submitted two purchase invoices dated April 10, 2023, and June 14, 2023; Exhibit 1 and 2. A review of these purchase invoices shows that these are the same two invoices which were submitted to the Department during the appeals process, and the Department has already rejected these documents as incomplete to determine the nontaxable food sales ratio during the audit period for various reasons.

First, Appellant has not provided any documentary evidence such as its point of sale sales summary reports, Z-tapes, sales journals, purchase invoices, purchase journals, or any verifiable documentation for a complete sales cycle that would allow the Department to accurately compute a nontaxable and taxable sales ratio for the audit period. Two purchase invoices are insufficient to determine nontaxable and taxable sales ratio for any cycle of the audit period.

Second, as stated earlier, during the Department's on-site inspection on January 31, 2023, its inspectors found no sales of nontaxable food products and minimal sales of water.

Third, the inspectors did not notice any food products stored in Appellant's business establishment.

Fourth, Appellant has not provided any documentary evidence to show that taxable credit sales ratio should be greater than 87 percent. In the absence of any documentary evidence, no adjustments are warranted for this contention.

Based on the foregoing, the Department has fully explained the basis for the deficiency and proved that the determination was reasonable based on the available books and records. Further, the Department has used an approved audit method to determine the deficiency. Therefore,

based on the evidence presented, the Department request that the Appellant's appeal be denied.

This concludes my presentation, and I'm available to answer any questions you may have. Thank you.

JUDGE WONG: Thank you.

All right. I will now turn to my co-panelists to see if they have any questions for CDTFA, beginning with Judge Kim.

JUDGE KIM: Yes. Thank you.

Appellant stated that they provided additional purchase invoices during the audit in addition to the two -- the two from April and June 2023. Did CDTFA receive any additional purchase invoices?

MR. SHARMA: The Department has received all the invoices which are attached to its response brief. And the two invoices which Appellant submitted are from Smoke Tokes and ST, Disto, LLC. During the audit period, they provided invoices from Accurate Merchandise, Inc., exhibit, pages 235 to 241; AM Global Distribution, pages 242 to 290; AMG Tobacco, Exhibit A, pages 291 to 294; Cali Sunrise Wholesale, Exhibit A, pages 295 to 299. Those are the only invoices the Department received, and those are attached to its response brief as Exhibit 1.

Thank you, Judge.

JUDGE KIM: Okay. And just to clarify, the two

purchase invoices from Smoke Distro, those were provided during CDTFA's appeals process?

MR. SHARMA: That is correct. And those are attached to its decision.

JUDGE KIM: Appellant also said that CDTFA took pictures during the observation test of the nontaxable items that were for sale.

MR. SHARMA: Yes, the Department did take the pictures, and some of them are attached to the response brief. But again, the Department's position is that, did the Appellant sell those candies and other stuff during the audit period? And based on its inspection during the January 31, 2023, the inspector did not notice any but a minimal sales of food items.

Thank you, Judge.

JUDGE KIM: Do you know where in the brief it was included?

MR. SHARMA: I'm sorry. Which one?

JUDGE KIM: The pictures? You said they were in the -- in the brief.

MR. SHARMA: Those are attached as pages. These are screenshots that's are attached.

THE HEARING REPORTER: I'm sorry. Can you say that again?

MR. SHARMA: Those are screenshots that are

attached.

JUDGE KIM: Screenshots?

MR. SHARMA: Yeah.

JUDGE KIM: Also, regarding the January 31st, 2023, inspection, is there -- was there like, some other -- are there some notes or additional documentation that came out of that inspection?

MR. SHARMA: Yes. The Department has a report. And if OTA wants it, and we can redact the confidential information, we can provide it to you.

JUDGE KIM: Okay. Thank you. I don't have any additional questions at this time.

JUDGE WONG: Thank you, Judge Kim.

Judge Stanley?

JUDGE STANLEY: Yes. So, it's the Department's position that even though they were okay with using the credit card ratio observed during the observation tests, they were not okay with using the sales of nontaxable sales observed during the observation test, both being outside of the audit period; is that correct?

MR. SHARMA: That is correct. Because due to the lack of records, the Department has no other option but to use the credit card sales ratio method. And based on the information or available records, the Department's position is that we don't know if there was those candies

and other stuff which was sold during the observation test were actually sold during the audit period.

Thank you, Judge.

JUDGE STANLEY: Okay. Thank you.

JUDGE WONG: Okay. Thank you, Judge Stanley.

Okay. I don't have any questions for CDTFA at this time.

So, we will now turn it back over to Appellant for their rebuttal and closing presentation. You have 20 minutes -- 21 minutes. This is your time to address anything the CDTFA presented, or anything else you want to add, or if you want to summarize your case.

MR. SABHAN: I just want to clarify one thing. He said I was operating the business since 2021 or 2020, because I've been there since -- since 2011, not 2020.

JUDGE WONG: Anything else?

MR. SABHAN: No, not at this moment.

JUDGE WONG: Okay. Thank you.

MR. ALI: Okay. I --

JUDGE WONG: Sorry. Go ahead. Were you about to say something or --

MR. ALI: No. I want to just ask questions and comments.

JUDGE WONG: Oh --

MR. ALI: But do you want to finish the --

JUDGE WONG: There is no -- you don't ask them questions. They don't ask you questions unless there's a witness. If you have a question for them, you could pose it to us, and if we -- if the panel thinks it's worthwhile to ask CDTFA, we can pose it to them.

MR. ALI: Thank you, Judge.

CLOSING STATEMENT

MR. ALI: Just this is -- I would like to say that I have been around for audit almost like 20 years. And my general observation that is the -- most of the people get hit with the audit is the small business. And all the time that they -- the real world is that the small business, they cannot afford and to keep record. And to keep a record you have to hire a professional bookkeeper on site and around and the -- all of the taxpayer. With this is small business they cannot do that due to the cash flow.

In this particular case, we agreed with the Department that the record that we give them, it is a bank statement, a receipt, invoices, purchase, and the 1099-K, which they get it from the IRS source. Our problem is that if the methodology that has been done under the audit, we strongly believe that it is not fair, and it is not a standard to the CDTFA standard audit.

Because in the absence of journal sale or point of sale, all the time the Department goes to the estimated way of doing calculation, and which the Department did. They estimated the credit card based on the observation day for two days, and it's two different times. And the auditor spent substantial time with the taxpayer interviewing him, waiting for the customer. Actually, she spend substantial time to know the nature of the business. Having said that, this is cannot be standard for similar industry of tobacco shop.

The tobacco shop which is owned by Mr. Sabhan is not like the other one. It has a different case as he explained to you. On the middle of the desert, he has to attract people with the candy and nontaxable item like food and other stuff, and he did that. The Department argue that one of the personnel has visited the place to -- to inspect for a tobacco guidance; and he went there, and he did the report. I have never been across that some person is going to do a job for inspecting tax -- tobacco and cigarette. He report on the sales report -- on the sales tax report audit. And simply because that his mission was to inspect the cigarette and tobacco.

And the time that he spent is not reliable. Because as explained by Mr. Sabhan, that he has -- he has

some inventory. It cannot be shown that day. That day may be that low nontaxable. If you cannot observe, you cannot just get to the store and observe, and that could be substantial for an audit of $2.5 million revenue.

So, the -- so, we -- we are concerned about the methodology of question to the audit, like, the tax liability. We request that the calculation to be recalculated based on the observation test. I know that is two different day, and it has to be the average. According to my calculation, it's 26 percent for nontaxable. And that has to be considered in the audit.

Thank you.

JUDGE WONG: Thank you very much.

Okay. I will turn to my co-panelists for the final time to see if they have any questions for either party.

Judge Kim?

JUDGE KIM: I did have one more question.

So, Appellant said that CDTFA conducted -- conducted a shelf test to determine a nontaxable ratio, and that was 20-something percent.

MR. ALI: Yes, sir.

JUDGE KIM: So, I want to ask CDTFA, was the shelf test conducted, because I'm not seeing it in the record.

MR. SHARMA: No. I think what they refer to as observation test, it's a -- it's observation test. I think they are calling it maybe shelf test. No, we never did any shelf test because we don't have enough information. Only thing the Department did is observation test two days of those.

Thank you.

JUDGE KIM: And can you respond to that?

MR. ALI: Yeah, that's correct. Maybe I -- I misuse the terminology. Because whenever get auditor, he don't want to do a shelf test. He went to the place, but he's right. It is observation test.

JUDGE KIM: Okay. So, based on the observation of sales, that's how you --

MR. ALI: Yes, sir.

JUDGE KIM: -- determine the percentage? Okay. Thank you.

JUDGE WONG: Thank you, Judge Kim.

Judge Stanley?

JUDGE STANLEY: Can you -- can either of you explain why, when the inspector came in January of 2023, there was no observed -- there was observed the water, but nothing else that would be nontaxable?

MR. SABHAN: I was outside the country, and I know we had candy because I know I've been selling beef

jerky. It doesn't have to be exotic candy. Exotic candy came late, but I used to sell a lot of chocolate that's $24.99, $25.99. I used to sell a lot of beef jerky. Big bag, it's like $29.99; a small bag, $17.99. So, when I was outside the country, maybe they sold out. Maybe they said -- maybe they had one. Maybe I have a box of candy somewhere.

I -- I wasn't over there, but I know for sure end of December our shop is very minimum on product because we sell a lot of stuff on Christmas as a presents. And I do not restock items that it's expensive or nontaxable that is expensive until maybe early February, middle of February, just because I know we get super slow. Not the cigarettes. Cigarettes, it's a daily thing. We sell a lot of cartons. We sell a lot of cigarettes. That one we never slow down on it. But, example, if a mod I have one piece, I'm not gonna go bring the other colors because I know I'm not going to be able to sell it until probably end of February.

JUDGE STANLEY: Okay. And you talked about starting -- to Judge Kim's questions, you couldn't respond exactly as to when you started selling this type of nontaxable product, but you said you've been open since 2011. So --

MR. SABHAN: Correct. Never sold candy.

JUDGE STANLEY: Pardon?

MR. SABHAN: One -- so, from 2011 to I think 2020, I never sold candy; yeah, maybe water, maybe sodas. But when the candy trend became super crazy on the media, that's when I started to bring them. And, of course, in 2011 to 2020, I used to sell here and there beef jerky, but not heavy. Because when I brought the exotic candy, that's what brought -- attract a lot of customers to my shop.

JUDGE STANLEY: Okay. And I'm going to ask you -- you have not been sworn in as a witness. And in order for us to consider everything you're telling us today, you would need to be sworn in under oath or affirmation, which Judge Wong can do, if you would like us to be able to consider your testimony.

MR. SABHAN: I'm swearing for like, if I was selling candy or not?

JUDGE STANLEY: Correct.

MR. SABHAN: Yeah.

JUDGE STANLEY: Okay. Judge Wong, would you mind swearing him in with retroactivity of what he's been testifying to.

JUDGE WONG: Sure. Absolutely. By swearing you in, you'll be subject to cross-examination by CDTFA if they so choose, meaning that they can ask you questions

directly about of your testimony or -- is that okay with you?

MR. SABHAN: I think he wants to add some --

JUDGE WONG: Certainly.

MR. ALI: Yes. I believe the discrepancy on certain date, it was related. He incorporated in 2020. He was as sole in the beginning, then he's incorporated in 2020. That's why -- that's why the Department has information from 2020.

JUDGE WONG: I see. So, prior to 2020, he was a sole proprietor.

MR. ALI: I believe so. Yeah.

JUDGE WONG: Okay. Thank you.

So, Mr. Sabhan, is it okay if I swear you in, and then you'll be subject to cross-examination?

MR. SABHAN: I have no problem, but can -- can you explain a little bit more about the swearing? I've never done this before. I just want to know what it is exactly.

JUDGE WONG: Sure. Absolutely. So, it's kind of like in a court where there's a witness, they're sworn in to either swear or affirm that they will be telling the truth, the whole truth, and nothing but the truth. And then they will testify as to facts, things that are in their personal knowledge that they -- that they know. And

as a result of their testimony -- as part of testimony, they're also subject to what's also called cross-examination. Meaning, the other party will be able to ask -- if they choose, they could ask them questions as to their recollection and memory of what they experienced firsthand or what they observed and things like that.

MR. SABHAN: And when you say the questions, what about a question I don't remember, and I already sweared [sic]?

JUDGE WONG: Sorry?

MR. SABHAN: Because I -- I don't want to answer -- I don't want to answer something I don't remember in the past.

JUDGE WONG: Then you can just say that, "I don't remember."

MR. SABHAN: Oh, okay.

JUDGE WONG: It's up to you. Like, yeah, we -- the questions -- yeah. If you don't remember, then just say don't remember. So, I just want to clarify that if you don't testify, if you're not sworn in and do not testify, then we'll still consider the arguments. But your statements that you made, the factual statements, like, what happened during the audit, where you were, what you saw, and that nature, those won't be considered evidence. So, we can't consider them as factual

statements.

MR. SABHAN: I just never done this before. I was asking questions.

JUDGE WONG: Sure. Basically, you have been actually speaking about what you've observed and what you've done in answering questions from the panel. It's just that you have not been sworn in as a witness, that what you're saying would -- that we can't consider what you're saying as a fact.

MR. SABHAN: That's fine. Can I ask a question?

JUDGE WONG: Sure.

MR. SABHAN: So, when I swear, could they swear also to say the truth and nothing but the truth?

JUDGE WONG: I think they are here just to argue. They don't have -- they weren't there. They weren't at -- they weren't the auditor there. So, they don't have the first-person experience of that. So, I'm guessing that's why they would not be sworn because they're not witnesses. They didn't --

MR. SABHAN: But they're represent -- they -- they're actually here for the people who came to my shop, because this is the second time happening to me. One time I got accused of me not paying taxes before I get into the LLC, and they took a lot of my product. And I did prove them, and then they took my product ad never reimbursement

me. And this is the second time.

So, if I want to swear, I would love for them to swear also too to say nothing but the truth because she was in the shop, and she saw anything. And I was surprise that they don't even have the invoices the one he just mentioned about the June 2023 and April 2023. So, I have no problem swearing, but I also wanted them to swear to say nothing but the truth.

JUDGE WONG: So, we'll get to the invoices in a minute. But so they're kind of like Mr. Ali. They're representing the CDTFA, the Department. To the extent that Mr. Ali wasn't -- he's just representing you, and he wasn't present at the audit. He doesn't run the business. I mean, I believe that they are -- they didn't -- they didn't have any firsthand experience with the audit. I mean, they didn't conduct the audit. So, they can't testify as to what happened during the audit.

MR. ALI: Can I ask questions?

JUDGE WONG: Sure.

MR. ALI: Thank you, Judge. I just want to understand. Last appeal office -- last appeal case I attended for me it was 2002. Since then, I haven't been to the appeal office. Just want to make sure, is this a regular procedure? Like we consider him as the witness, or he's a taxpayer?

JUDGE WONG: He can be both. He can be both a witness 'cause he -- if he is a taxpayer and he experienced things firsthand and can attest to that these things happen, he can be a witness, and he can also be the taxpayer. It's up to you, if you want to be sworn in or not, so that we give you option.

MR. ALI: Yeah. My concern is that, that mean with this swearing that his statement would be on equal footing with the statement of the Department? Or what is the weight of that statement if he --

JUDGE WONG: That -- that would be up to the panel to decide. But Judge Stanley would like to clarify.

JUDGE STANLEY: Since I'm the one that asked if he would be willing to be sworn in, the reason is -- is because you have provided a lot of information today that you -- you have your own knowledge of because you were there for the audit. You were there for the business. You knew you were out of the country when the inspector came, and -- and things like that that are -- give us helpful perspective for this case that are not in our file. So, if you're -- if you just are sworn in that everything you have said today is the truth, the whole truth, and nothing but the truth, then we can use those facts in our deliberation.

MR. SABHAN: Yes, Your Honor. It's just now I'm

thinking about it, I've already been here. I've already there before, and -- and I won my case, but they never reimburse me what I loss because did prove everything. And now this is the second situation within the same thing. So, I have no problem swearing. But also, when I swear, I want them to swear say nothing but the truth. Because Angelica -- well, Mr. -- Mr. Wong said they were not there inside the shop, but they're re -- they're actually talk for her. So, they're responsible for her. So, why -- why I'm the only one have to swear about the truth, but they don't want to swear about the truth?

JUDGE STANLEY: Can I just say that you don't have to.

MR. SABHAN: Okay.

JUDGE STANLEY: You don't have to, but everything that you've said today that's not in our record is not useful to us anymore. We can't consider that you were out of the country and that's maybe why they didn't find inventory we can't consider any of that. So, you don't have to be sworn in, they are not going to be sworn in because they don't -- they weren't there. You were there. So, you have the knowledge, and you facts that I think may be helpful to your case --

MR. SABHAN: Correct.

JUDGE STANLEY: -- but I can't use them if you

are -- if you not sworn in. And so, your answer is a yes or no, and it doesn't have anything to do with whether we swear them in.

MR. SABHAN: I see. It's just because it's swearing in the name of God is something very big for me, which is if I have to, I don't mind. But if you need proof that -- that I was outside the country, I have it.

JUDGE STANLEY: Okay. I don't think Judge Wong will use the word God. So --

JUDGE WONG: Also, we also can -- we use -- this is the exact way what you would be saying. You would -- let's see. Do you swear or affirm -- so you don't have to swear. You could affirm to tell the truth, the whole truth, and nothing but the truth. So, I cannot use the word swear. I could use the word affirm if that is more help -- if that works better?

MR. SABHAN: Yes.

JUDGE WONG: Okay.

MR. SABHAN: That's fine.

JUDGE WONG: Okay. All right. So, would you be willing to be sworn in or affirm the truth what you had -- the truth of what you had said at this hearing and be subject to cross-examination by CDTFA?

MR. SABHAN: I want to be super honest. I'm -- I'm super nervous. So, I'm not saying that you guys are

trying to put me in a trap, but I feel I'm in a trap.

JUDGE WONG: Okay.

MR. SABHAN: And -- and that's what scares me the most. It's like, okay, what about if you ask me a question and I didn't remember and I said it wrong and now it gonna be, you know, my responsibility. Same thing with them. There's a lot of stuff that they didn't even provide. They did not even know that we submit two invoices to them until the day we had Zoom. And they ask, "Could you please resend it to me?"

So again, why she did not send it to them? Why did she not show it to them?

MR. PARKER: Judge Wong, can I add something real quick?

JUDGE WONG: Sure.

MR. PARKER: If the taxpayer agrees to be sworn in or affirmed, that he tells nothing but the truth, we have no questions for cross-examination if that'll make him more comfortable.

JUDGE WONG: And -- and if -- if it makes you more comfortable, then we don't have to swear you in. Totally up to you.

MR. SABHAN: He's telling me you should swear because it's for our own good benefit. But, at the same time, I'm not saying nothing but the truth. Why would I

have to swear?

JUDGE WONG: Up to you, yes or no. Swear in or no, or affirm or no. It's up to you.

MR. SABHAN: Is -- is affirm the same as swearing?

JUDGE WONG: I'm not -- I -- I believe that we just use the word affirm that just -- that you are confirming that you are the telling the truth.

MR. SABHAN: Is affirm counting as the same as swearing?

JUDGE WONG: I'm not sure I can answer that. I mean --

MR. SABHAN: All I could say, everything I said is the truth, and I have nothing else to add.

JUDGE WONG: Okay. I appreciate that. Thank you.

Sure.

MR. ALI: Just for me, for general knowledge, is the swear in supposed to be before the hearing or after the hearing?

JUDGE WONG: In general, it would be before the hearing if we had noticed that you would providing witnesses, which is why I asked at the prehearing conference and also before this hearing started, whether you would have any witnesses. And -- but you indicated

that you had no witnesses at the prehearing conference --

MR. ALI: Yeah.

JUDGE WONG: -- and also at -- at the hearing today. So, that's why we didn't swear --

MR. ALI: Yeah. Well, but we didn't understand that the taxpayer would be a witness because he's a taxpayer. He's the -- he's appealing before the Department. That's what my understanding was. That if -- if -- if we should have known that he's a witness, then we could start with the -- in the beginning that he should swear or whatever procedure should be done. But after the fact, it seem to me, it makes him uncomfortable.

MR. SABHAN: That's right.

JUDGE STANLEY: If we -- if we just ask you, did you -- was everything you told the panel today the truth, the whole truth, and nothing but the truth --

MR. SABHAN: I have.

JUDGE STANLEY: -- would you be okay with answering yes to that?

MR. SABHAN: Yes. I have nothing to hide. That was everything, and Judge --

JUDGE STANLEY: Okay.

MR. SABHAN: -- and, Judge Stanley --

JUDGE STANLEY: I'll -- I'll just let it go back to Judge Wong. I don't want to step on his --

JUDGE WONG: Go ahead.

MR. SABHAN: The only reason I'm kind of having a wall in front of me for this whole thing, because the State Board told me straight in my face, "We need at least one invoice. Bring it to me, and we will drop this case for you."

And luckily, I found two, not one. And as, you know, State Board just said right now, they reject it. So that shows me that even if I sweared [sic], even if I made affirm, even if I said truth or not truth, they're not saying the truth. That's why if I want to swear, I have no problem to swear, but I would like for them to swear also too. Because why would they play with my emotions saying, "Well, bring me invoice, and we'll drop this for you." And then when I bring it, they say, "No, it's rejected."

Why would they give me lots of -- why -- why would they reduce the amount that I owe if they believe that this is how much tax that I need to pay because supposedly in their books, that I did not pay my tax the right way? Why would they take off $5,000 and then call -- call Mr. Rasheed again and say, "We'll drop another $5,000"?

Don't you think that they should say, no we don't believe you. This is how much you owe. This is how much

you need to pay.

JUDGE WONG: Okay. Thank you.

Let us take a five-minute break. The panel and I are going to discuss additional submissions from the parties, and then you can discuss whether you still want to have your statements considered testimony. And then we will be back in about five minutes.

Let's go off the record.

(There is a pause in the proceedings.)

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

Okay. So, Mr. Sabhan, did you have a discussion with your representative about the issue of testimony or not or --

MR. SABHAN: We didn't.

JUDGE WONG: Okay. That's fine. So, it's up to you whether you want to be affirmed that your -- what your statements today are the truth. CDTFA has indicated that they are not going to ask you any questions or cross-examine you. It's up to you totally, whether you want to do it or not.

MR. SABHAN: They already asked me a lot of questions in the past. I provide everything. I believe in your judgements. Everything I said is truth, and that's all I have to say today.

JUDGE WONG: Okay. I appreciate that. Thank you very much.

We will also be holding the record open, which means that we would like to see more documents from -- actually, both parties.

With respect to CDTFA, there was -- there was a report. A compliance inspection report from January 2023 that indicated that there was no food in the inventory that would be considered nontaxable.

Mr. Sharma, you had indicated that you could provide a copy of that report. We would like -- the panel would like to see that report. So, we would hold the record open to give you time to provide that.

MR. SHARMA: Sure. The Department will provide that. Thank you.

JUDGE WONG: Okay. And the, Mr. Sabhan, you had indicated that you could provide the purchase -- additional purchase invoices showing nontaxable sales that you had provided to the auditor. Could you also provide that to the panel.

MR. SABHAN: Everything that I found in the past about invoices I already submitted to them.

JUDGE WONG: Okay. Could you also submit it to us?

MR. SABHAN: Oh, yes. He will send it to you,

because I faxed it to him, and I'm pretty sure he will email it to you guys.

JUDGE WONG: Okay. How much time do you need to do that for both parties. Is 30 days okay?

We'll start with Mr. Sharma. Is 30 days okay?

MR. SHARMA: Yeah. That's fine. Thank you, Judge.

JUDGE WONG: Mr. Ali, is 30 days all right?

MR. ALI: Yes. Good enough. Thank you.

JUDGE WONG: Okay. So, what's going to happen is we're going to keep the record open, give the party -- each party 30 days to submit their additional submissions, additional documentation. I will issue what's called an order. It's just basically a document indicating what will be provided by the parties, what the panel is requesting, and the deadline to do that, which is 30 days. Then I will give the other party 30 days to respond to those -- to those submissions.

So, CDTFA will have a chance to respond to the additional documents you provide, and you'll have a chance to respond to the additional documents that CDTFA provides.

Does that make sense?

MR. SABHAN: Yes.

JUDGE WONG: Okay. So, 30 days to provide the

documents and then additional 30 days to comment on them. Okay.

All right. Just double checking with my panel. Any final questions?

JUDGE KIM: No questions.

JUDGE WONG: Judge Stanley? No questions.

Okay. That concludes the hearing today. We are keeping the evidentiary record open, and so be on the lookout for my post-hearing order. Once those deadlines are done, the 30 and 30, then the panel will meet and decide the case based on the exhibits presented and admitted as evidence. And then we'll send the parties our written decision no later than 100 days from the close of the record.

The oral hearing in this case is now adjourned.

Oral hearings will recommence online at 1:00 p.m.

I want to thank both parties for their presentation. Thank you.

We're off the record.

(Proceedings concluded at 10:41 a.m.)

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 3rd day of November, 2026.

_____
ERNALYN M. ALONZO
HEARING REPORTER