

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
M. ATAYA, ) OTA NO. 18012044  
H. ATAYA, ) OTA NO. 18011868  
 )  
 )  
 ) APPELLANT. )  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, December 17, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Suite 300, Cerritos,  
California, 90703, commencing at 9:15 a.m.  
and concluding at 10:35 a.m., on Thursday,  
December 17, 2020, reported by  
Ernaly M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ ANDREW KWEE  
ALJ NATASHA RALSTON

For the Appellant: GARY KIMZEY

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION

KIM WILSON  
STEPHEN SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 6.)  
(Department's Exhibits were received at page 6.)

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1 Cerritos, California; Thursday, December 17, 2020

2 9:15 a.m.

3

4 JUDGE LONG: We are now going on the record.

5 This hearing is for the appeals of Maher Rashid  
6 Ataya and Houssam Rachid Ataya, OTA Case Numbers 18012044,  
7 18011868. It is Thursday, December 17th, 2020,  
8 approximately 9:15 a.m.

9 This appeal was intended to be heard in  
10 Sacramento, California. I'm lead Administrative Law Judge  
11 Keith Long; and with me today is Judge Natasha Ralston and  
12 Judge Andrew Kwee, who will be hearing the matter this  
13 morning. I am the lead ALJ, meaning I'll be conducting  
14 the proceedings. But my Co-Panelists and I are equal  
15 participants, and we will be reviewing the evidence,  
16 asking questions, and reaching a determination in this  
17 case.

18 Beginning with Mr. Kimzey, will the parties  
19 please state and spell your names and who you represent  
20 for the record.

21 MR. KIMZEY: This is Gary Kimzey. Last name is  
22 K-I-M-Z-E-Y. I'm representing both of the Petitioner,  
23 Maher Ataya and Houssam Ataya, in this matter.

24 JUDGE LONG: Thank you. This is Judge Long.

25 Will CDTFA please state and spell your names.

1 MS. WILSON: This is Kim Wilson, K-I-M  
2 W-I-L-S-O-N, representing CDTFA.

3 MR. SMITH: And I'm Stephen Smith, S-T-E-P-H-E-N,  
4 Smith S-M-I-T-H, also representing CDTFA.

5 JUDGE LONG: Thank you. This is Judge Long.

6 There are three issues on appeal this morning.  
7 First, whether any reductions to the measure of unreported  
8 taxable sales are warranted; second, whether CDTFA has  
9 established with clear and convincing evidence that the  
10 understatements were due to fraud or an intent to evade  
11 the payment of tax; and third, whether CDTFA has  
12 established a basis for imposing the 40 percent penalty  
13 for failure to remit sales tax reimbursement collected on  
14 H. Ataya.

15 Taxpayer has submitted Exhibits 1 through 2 which  
16 are admitted into evidence with no objections.

17 (Appellant's Exhibits 1-2 were received  
18 in evidence by the Administrative Law Judge.)

19 CDTFA has admitted exhibits A through L, which  
20 are admitted into the record with no objections.

21 (Department's Exhibits A-L were received in  
22 evidence by the Administrative Law Judge.)

23 Mr. Kimzey, we will begin with your opening  
24 presentation, and you have 15 minutes whenever you're  
25 ready.

1           MR. KIMZEY: Okay. This is Gary Kimzey, and my  
2 presentation will apply to both of these cases at the same  
3 time. They are basically the same for each one. And --  
4 can you hear me okay?

5           JUDGE LONG: Mr. Kimzey, you're a little muffled.  
6 Can you maybe move back from your microphone a little bit?

7           MR. KIMZEY: (INDISCERNIBLE) better?

8           JUDGE LONG: It's a little better for me. Let me  
9 just check with my Co-Panelists. Can you hear him okay?

10          Ms. Alonzo, can you hear him okay?

11          Okay. You're still a little muffled.

12          MR. KIMZEY: How about now? I guess

13 (INDISCERNIBLE). Is that any better.

14          JUDGE LONG: Ms. Alonzo says yes. I vote yes as  
15 well. Do either of my Panelists need to -- okay. It  
16 looks like we're good.

17          Mr. Kimzey, you may proceed.

18          MR. KIMZEY: Okay. I want to reiterate that this  
19 is for both the clients. My -- my statement apply to both  
20 of them equally. (INDISCERNIBLE) saying for each of them.  
21 I'll start with unreported taxable sales. The  
22 (INDISCERNIBLE) for the most part derived from  
23 (INDISCERNIBLE) report of sale.

24          JUDGE LONG: MR. KIMZEY, your -- your sound is  
25 not good. Ms. Alonzo can't understand you, and actually

1       whether we can -- whether I can as it changes back and  
2       forth. Is there any way that you can call in using the  
3       "Call Me" feature on your Webex to -- to have it call you  
4       and change to a phone audio? We'll still be able to see  
5       you, but we'll be able to hear you over the phone.

6               MR. KIMZEY: Okay. (INDISCERNIBLE).

7               JUDGE LONG: You should be able to see on the  
8       bottom of your screen an ellipsis. You click on it, and  
9       then you click "switch audio", and you'll see an option  
10      that says, "Call Me", and then you input your phone  
11      number. Don't say your phone number here because, again,  
12      this will be live-streamed on the internet. There's also  
13      an audio and video tab up at the top of the screen, which  
14      has a switch audio function.

15              MR. KIMZEY: All right so I (INDISCERNIBLE).

16              JUDGE LONG: Until we get this connection issue  
17      resolved, we're going to just go off the record for a  
18      moment.

19                      (There is a pause in the proceedings.)

20              JUDGE LONG: Let's start from the beginning with  
21      your presentation, and we'll start. You have 15 minutes  
22      okay.

23              MR. KIMZEY: Let me ask you a question here.  
24      When I need to mute myself, I still need to use the icon  
25      at the bottom of the video?



1           JUDGE LONG: Yes, that's correct. And so we'll  
2 go back on the record now, and you'll have your full  
3 15 minutes.

4

5

PRESENTATION

6           MR. KIMZEY: Okay. This is Gary Kimzey. And my  
7 information I'm giving today will apply to both of these  
8 petitioners equally. I'll start the with the unreported  
9 taxable sales. Audited taxable sales are for the most  
10 part derived from scheduling all of the DMV report of sale  
11 forms with the DMV and also the vehicle sales contracts  
12 that may have been written by the taxpayer during the  
13 audit period.

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And we believe that included in these schedules  
are many transactions -- I'm going to say, because I'll  
give you the exact number later -- but many transactions  
that were never completed or consummated between the  
taxpayer and the potential customer. And the reason we  
believe this is because, like many used car dealers that  
we experience today, that the taxpayers would in my cases  
go ahead and complete a report of sale form, which is the  
DMV 51 Form and maybe even a vehicle transfer form, which  
is the DMV 262 Form, they would prepare these prematurely.

And they may also start writing out a sales  
contract and -- but our contention is that the presence of

1 any of these forms that are prepared by the taxpayers  
2 don't prove that a sale ultimately took place. We found  
3 out over the years that it's common practice for used car  
4 dealers to prematurely complete these forms in their  
5 offices, the report of sale form and the vehicle sales --  
6 the vehicle transfer form, as soon as customers express  
7 some interest in a particular vehicle.

8 And this would be when they may want to take the  
9 car for a test drive or when the dealer wants to run a  
10 credit check and maybe start a contract of sale. This  
11 doesn't mean a sale took place, but this is the initial  
12 documents that used car dealers will commonly prepare.  
13 And apparently they prepare these early in the -- in the  
14 meeting with a potential customer because they feel it's  
15 more likely -- they feel a customer will more likely end  
16 up purchasing a vehicle after she -- he or she drives the  
17 vehicle or actually takes the vehicle off of the lot for  
18 some reason.

19 And we -- we don't believe or consider that the  
20 two DMV forms, 51 and the 262 should be considered as  
21 evidence that a sale has taken place. These are  
22 preliminary forms that -- preliminary sales forms that  
23 don't demonstrate the sale ultimately took place. But  
24 many of the cases in the audit, these are the only forms  
25 that are available. And the audit staff has taken them as

1 proof that a sale actually took place. And as you know,  
2 as a sale doesn't take place until there's a transfer of  
3 position or title or possession for a consideration.

4 These documents, the vehicle transfer form or the  
5 report of sale, doesn't indicate that any consideration  
6 was ever transferred. And we've -- we felt all along that  
7 the best evidence that a sale actually takes place  
8 would -- would be that the vehicle was actually registered  
9 by DMV to the customer. This would mean that the  
10 petitioners receive some consideration from the customer,  
11 and the vehicle registration fees were actually paid.  
12 Because if they're not paid, the registration doesn't take  
13 place even though a report of sale may be sent off to DMV.

14 And so our feeling is without evidence that a  
15 vehicle was registered to a particular customer, we don't  
16 see how the audit staff can say that a sale actually took  
17 place. There's no proof of consideration unless the  
18 vehicle is actually registered. In our reply to the audit  
19 staff's response to our opening brief, we requested that  
20 the audit staff furnish DMV history reports on certain of  
21 these vehicles that, at that point, had not been shown  
22 that they were really registered to a customer.

23 And, again, if the registration history report  
24 doesn't show that a vehicle was ever registered to the  
25 particular customer, then there's no way the sale took

1 place. It could not have taken place because the vehicle  
2 wasn't registered to that them -- that customer. The  
3 audit staff seems to be taking a position that, in many of  
4 these cases, that if a report of sale or vehicle transfer  
5 form, or even a sales contract is prepared, then that's  
6 enough evidence to show that a sale took place. It's not,  
7 because still there's no proof of consideration until that  
8 vehicle is registered.

9 We would have furnished these DMV history reports  
10 if we had access to them. We don't. And -- and  
11 apparently CDTFA does have access to these reports because  
12 they've -- they've given us information to show that the  
13 vehicle was registered to a particular customer. And  
14 on -- on those particular vehicles that -- it's been  
15 showed that they've been registered we accept that, and we  
16 agree that there was a sale.

17 And in this -- and as a result of this hearing, a  
18 vehicle -- if it's been proven that a vehicle was  
19 registered, then we would agree with that. But if it  
20 can't be shown, based on DMV records that it was  
21 registered, then we -- we contend that a sale never took  
22 place.

23 Now, as far as the numbers are concerned with  
24 Maher Ataya, there's still six vehicles listed in the --  
25 with CDTFA's response to our additional schedule that

1 there's still been no registration history shown for that  
2 particular vehicle, or they've indicated they could not  
3 find where the vehicle had been registered. So for those  
4 we contend that they should be deleted from the audit, no  
5 proof of consideration, no proof that a sale actually took  
6 place.

7 And for the Houssam Ataya petition, there's 11  
8 vehicles with no registration shown. And that' with the  
9 latest information that's been -- or the latest evidence  
10 that's been presented by CDTFA. If you'd like, I can name  
11 those customers off to you -- for you, if you want me to  
12 do that.

13 JUDGE LONG: Those sales are listed in the  
14 exhibit; correct?

15 MR. KIMZEY: Yes.

16 JUDGE LONG: I'm sorry. This is Judge Long. I  
17 don't think that we necessarily need to list the  
18 customers' names that purchased those vehicles --

19 MR. KIMZEY: Okay.

20 JUDGE LONG: -- in this forum, but we -- I  
21 will -- we'll make sure to review it in the exhibit.

22 MR. KIMZEY: It would be all the customers that  
23 CDTFA has not given us any information that the vehicle  
24 was actually registered to that customer. Okay.

25 Now, I'd like to move on to the fraud penalty

1 and -- or all the penalties that have been applied to --  
2 to these accounts. As a matter of background information,  
3 both of these petitioners have no background, knowledge,  
4 or experience in matters of bookkeeping or accounting.  
5 And they -- and they only know the used car business from  
6 the point of -- from an aspect of sales and purchasing --  
7 the sales and purchasing side of that business.

8           There's many transactions that are going through  
9 these businesses every month, and in hindsight both  
10 petitioners should have office staff that were  
11 knowledgeable in accounting procedures or proper  
12 governmental reporting obligations. But they did not  
13 employ anyone in the office with experience or knowledge  
14 of these -- of these things during the audit period. One  
15 of the -- one of the things involved with these -- with  
16 the fraud penalty is that the audit staff is relying  
17 basically on circumstantial evidence of fraud or  
18 deliberate attempt to evade payment of the tax.

19           However, there's no record or indications that  
20 the accounting records were falsified in any way, or that  
21 there were more than one set of records, or that there was  
22 a deliberate attempt to evade payment of the tax. And the  
23 audit staff is also considering, quote, "recorded, sales",  
24 end quote, as being their tally of vehicle sales amount  
25 from reported books or reported sales reports. Even

1     though, based on our evidence presented, we think those  
2     numbers are overstated quite a bit.

3             We believe the deficiency in both of these audits  
4     can be explained mostly by the fact that both of the  
5     petitioners did not keep all of the proper documentation  
6     and transaction files, deal jackets, that would  
7     demonstrate that many of the transactions that the audit  
8     staff is considering taxable were not consummated sales,  
9     and that could include unwinds or repossessions, that  
10    there were many. Because in many cases the businesses  
11    were acting as the legal owner. They would carry the  
12    paper, the loans, on these documents.

13            And the other factor responsible for the  
14    underreporting was the fact that both petitioners did not  
15    employ office staff or accounting staff that had proper  
16    knowledge and experience to accurately and properly  
17    prepare the sales tax returns. There's no question  
18    I've -- I've talked with some of the office staff, and  
19    they had very little experience in doing this at all. And  
20    both of these businesses are high-volume businesses.

21            There wasn't a whole lot of control on inventory.  
22    So if a car was sold, the office staff would have to rely  
23    on the sales documentation in many cases to -- to see that  
24    a sale had actually taken place. And we believe that  
25    these factors are probably indications of, at the most,

1 negligence in reporting properly but doesn't rise to the  
2 level of fraud. Based on this, we don't see any  
3 deliberate attempt by the petitioners to deprive the State  
4 of tax legally due.

5 We concede that both of the petitioners may have  
6 been negligent in record keeping or possibly even  
7 reporting the proper amount of tax, but this would not  
8 necessarily indicate fraud. For these reasons, we would  
9 be able to accept a 10 percent negligent penalty in both  
10 of these cases, but we don't think fraud or deliberate  
11 attempt to underpay the tax penalties should apply at all.

12 And that concludes my opening statements.

13 JUDGE LONG: This Judge Long. Thank you,  
14 Mr. Kimzey.

15 CDTFA -- or sorry. CDTFA, before we continue  
16 with your presentation, I'd like to open to my Panel of  
17 Judges if they have any questions.

18 We'll start with Judge Ralston. Do you have any  
19 questions? Judge Ralston?

20 JUDGE RALSTON: No. I don't have any questions.  
21 Thank you.

22 JUDGE LONG: Judge Kwee, do you have any  
23 questions?

24 JUDGE KWEE: Yes. I'd just like to get a  
25 clarification on the Appellant's position for the



1     overstatement. I'm just curious, or I just wanted to  
2     clarify. Is the contention that the overstatement is  
3     because the Appellant was billing out DMV forms, but they  
4     didn't actually complete those sales? Or are they saying  
5     that they did make sales, but they are entitled to a bad  
6     debt deduction because of repossessions after nonpayment  
7     by the purchaser? Or is it a combination of those  
8     scenarios? I believe you're muted, Mr. Kimzey.

9             MR. KIMZEY: This is Gary Kimzey. And it -- it's  
10     a combination of both. We believe that the preparing --  
11     the preparation of these initial documents or preliminary  
12     documents don't always mean that a sale took place. When  
13     a sale does take place then, yes, the preliminary  
14     documents would be, along with the consideration that's  
15     received, evidence that a sale took place.

16             But without any evidence of consideration,  
17     meaning that we believe a consideration would be evidence  
18     if -- if the vehicle is actually registered to that  
19     customer. But when all we have, when all the -- when all  
20     the evidence that has been presented is a copy of a report  
21     of sale that was prepared or a copy of a vehicle transfer  
22     form or even a contract of sale, that doesn't prove that  
23     any consideration was ever received. And there's only --  
24     in those cases we wouldn't have any evidence that  
25     consideration was received.

1           Now, if -- if the vehicle is registered, okay,  
2           then a sale took place. There could be a bad debt  
3           circumstance later on in that process, but we haven't --  
4           we don't have the records to show that, unless, it's been  
5           a repossession situation. Those have already been --  
6           those have already been taken care of in the audit. The  
7           audit staff has made some concessions on some of the  
8           repossessions, and we accept those.

9           And also in those cases that they pointed out,  
10          they wanted to find out if there was any refund of a down  
11          payment. We could find no evidence of a refund of any of  
12          those down payments, but there would still be a  
13          repossession loss that could be calculated. I hope that  
14          answers your question.

15          We -- we think that in the -- in the cases that  
16          we are -- that we feel should be deleted is because there  
17          were no -- there's no evidence presented to show that they  
18          were ever registered at DMV. And our contentions -- we  
19          contend that if there's no registration, that's evidence  
20          of no consideration.

21          JUDGE KWEE: Thank you, Mr. Kimzey. This is  
22          Judge Kwee. Judge Long, do you mind if I just -- it's not  
23          a question at this point if I just ask CDTFA if they could  
24          consider addressing two points during their opening  
25          presentation?

1           JUDGE LONG: Sure. That's okay.

2           JUDGE KWEE: Okay. Hi. So for CDTFA, I realize  
3 you haven't done your open presentation yet, but I was  
4 just wondering if CDTFA could consider addressing those  
5 two concerns that were raised. The first was whether the  
6 audit liability was calculated based on, I guess, DMV  
7 forms that were filled out but not filed with DMV, versus  
8 DMV forms that were actually filed with DMV.

9           And then the second was whether the taxpayer  
10 established or had evidence of bad debt deductions. And  
11 if bad debt deductions were not given, what additional  
12 information CDTFA would have been looking for to allow  
13 those bad debt deductions.

14           That was just my comments. That was all I had.  
15 Thank you.

16           JUDGE LONG: Okay. Thank you, Judge Kwee.

17           This is Judge Long. I do have a few questions as  
18 well. First, with respect to the audit measure,  
19 Mr. Kimzey, the Exhibit 1, page 4, which deals with  
20 M. Ataya's audit measure suggest that the taxable measure  
21 should be reduced by \$259,281. I know that there have  
22 been some other concessions in the reply briefs  
23 afterwards. I just wanted to verify -- because based on  
24 your statements here today, I'm a little unsure. Is the  
25 entire audit measure in dispute, the \$3,364,000, or is it

1 simply limited to the transactions that were included in  
2 that schedule?

3 MR. KIMZEY: It would be just the transactions  
4 included in our schedule. Did you hear that?

5 JUDGE LONG: Yes. Thank you, sir.

6 MR. KIMZEY: Oh, okay.

7 JUDGE LONG: I was trying to type to make sure I  
8 had everything down. My keyboard is very loud. So I keep  
9 it on mute. Okay.

10 And then with respect to the fraud penalty  
11 with -- regarding M. Ataya, his business was actually  
12 audited two times before. Was someone other than him  
13 handling the audit during those times? Did Appellant have  
14 a bookkeeping staff for those other audits?

15 MR. KIMZEY: My understanding, they had -- they  
16 had the same kind of bookkeeping staff or the same --  
17 bookkeeping staff with the same types of experience and  
18 knowledge, which was next to none. My -- one of my  
19 first -- some of the first advice that I gave him was you  
20 have to hire somebody here that knows what they're doing,  
21 number one. And you're going to have to pay for it. You  
22 can't -- you can't have somebody in the office paying them  
23 eight bucks an hour to do this work. Can't be done.

24 In fact, they wanted me to do it, and I -- I said  
25 no. No. You couldn't -- you couldn't afford what I would

1 have to charge for doing that. Just too much. The volume  
2 is too much, and you have to have the experience and  
3 knowledge to be able to report properly. They just didn't  
4 have that, ever. They do now apparently.

5 JUDGE LONG: Thank you. This is Judge Long. And  
6 with respect -- and also with respect to the fraud  
7 penalty, it appears that there were books and records  
8 available and they were being stored at H. Ataya's  
9 business. At least that's where the DOJ found them. Why  
10 weren't those provided to the auditor, and why were they  
11 being stored at a different business?

12 MR. KIMZEY: Say that again. And -- and are you  
13 saying that the M. -- I didn't hear if you said M. Ataya  
14 or H. Ataya.

15 JUDGE LONG: Sure. Let me -- to be clear, it  
16 appears that M. Ataya's books were located by the  
17 Department of Justice at H. Ataya's business. And I'm  
18 wondering why weren't those provided to the auditor for  
19 the audit. And also, why were they being stored at a  
20 different business? Why were they being stored at  
21 H. Ataya's business?

22 MR. KIMZEY: I -- I wouldn't know unless I knew  
23 which records they were. Were they current records, or  
24 records from prior, maybe three years back or two years  
25 back? I don't know.

1 JUDGE LONG: Sorry. Mr. Kimzey, they appear to  
2 be the records that CDTFA based its audit for the current  
3 audit period we're on.

4 MR. KIMZEY: I can't answer that. I don't know  
5 the answer.

6 JUDGE LONG: Okay. Thank you. I do not have any  
7 more questions, and we will move forward to CDTFA's  
8 presentation, and CDTFA has 30 minutes.

9 If you could please begin when you're ready.  
10

11 PRESENTATION

12 MS. WILSON: Okay. This is Kim Wilson. First, I  
13 will discuss the audit of Houssam Ataya, and then I will  
14 discuss the audit of Maher Ataya.

15 Houssam Ataya a sole proprietor operated a used  
16 car dealer doing business as Ataya's Motors from  
17 May 1st, 2006, through September 30th, 2015. Houssam  
18 operated two locations in Sacramento during the entire  
19 audit period. And a third location in Roseville was  
20 operated from October 4, 2007 to November 4, 2007. The  
21 audit being appealed covers the time period of  
22 May 1st, 2006, through June 30th, 2008.

23 During the audit period, Houssam filed sales and  
24 use tax returns reporting total sales of \$2,538,540,  
25 claiming deductions of \$1,686,720 for nontaxable sales for

1 resale resulting in reported taxable sales of \$851,820. A  
2 search warrant was executed on June 4th, 2008, by the  
3 CDTFA, DOJ, DMV, and EDD. Evidence seized consist mainly  
4 of sales contracts showing the selling price, smog and  
5 document fees, and the tax charge and collected, DMV  
6 vehicle vessel transfer forms, and the DMV report of  
7 sales.

8 All the seized records were scheduled to  
9 determine the selling prices and the amount of tax charged  
10 and collected but not remitted to the State of California.  
11 There was a total of \$5,931,489 in taxable sales contracts  
12 during the period from June 9, 2006 through June 30, 2008.  
13 Houssam only reported taxable sales of \$851,820 for the  
14 entire audit period.

15 As indicated in the audit work papers, Exhibit I,  
16 it was determined that Houssam had \$5,790,661 in  
17 unreported taxable sales. The 25 percent evasion penalty  
18 has been applied to entire audit period. In lieu of the  
19 25 percent penalty, the 40 percent penalty for unremitted  
20 tax collected has been applied to that portion of the  
21 audit.

22 Exhibit F shows the evasion penalty  
23 recommendation in which the Investigations Bureau assessed  
24 a 25 percent fraud penalty based on unreported taxable  
25 measure of \$1,635,482, because it determined that Houssam

1 consistently and systematically failed to report a  
2 substantial portion of his taxable sales, and the huge  
3 understatement could not be attributed to a simple error,  
4 negligence, or oversight.

5 The evidence shows that Houssam had been in  
6 business since 2004. He had previously worked for his  
7 brother's car dealership. As a DMV dealer he was required  
8 to attend DMV education classes that covered compliance  
9 with sales and use tax laws, and he was charging and  
10 collecting sales tax reimbursement as noted in the sales  
11 contracts. Thus, we find that petitioner had sufficient  
12 knowledge to correctly report his taxable sales, but he  
13 consistently and substantially underreported his tax  
14 liabilities.

15 The unreported taxable sales amount of \$5,790,669  
16 is significant and represents a very large error ratio of  
17 over 596 percent, which is compelling evidence of fraud.  
18 Therefore, we find that there is clear and convincing  
19 evidence that petitioner willfully attempted to evade  
20 taxes that he owed and knew were due and that the fraud  
21 penalty applies.

22 Investigations Bureaus assessed the 40 percent  
23 penalty based on the measure of \$3,444,187 attributable to  
24 collected sales tax reimbursement that Houssam failed to  
25 remit for the period January 1, 2007 through



1 June 30th, 2008. Houssam has provided no explanation or  
2 specific contention as to why the 40 percent penalty  
3 should not apply. Houssam's sales contract show that he  
4 added sales tax reimbursement as a separate charge on  
5 taxable sales. Thus, it is undisputed that he knowingly  
6 charged and collected sales tax reimbursement.

7 Houssam has not shown that there are any errors  
8 with the sales contracts or recorded sales tax or  
9 explained why he only reported 17 percent of his total  
10 collected sales tax reimbursement. Collected by  
11 unremitted sales tax reimbursement was between 63 and 89  
12 percent of total collected sales tax reimbursement over  
13 the span of six quarters, which is compelling evidence  
14 that Houssam consistently and systematically failed to  
15 remit a substantial portion of the sales tax reimbursement  
16 that he collected from his customers.

17 Collected but unremitted tax average \$14,802 per  
18 month, which clearly exceeds the \$1,000 per month  
19 required, and substantially exceeded 5 percent of the  
20 total collected sales tax reimbursement. Thus, we find  
21 that all of the requirements for the imposition of the 40  
22 percent penalty have been met.

23 The Department has reviewed the Appellant's  
24 schedule of -- question transactions and documentation  
25 provided in the opening brief; Exhibit 4. After verifying

1 Department of Motor Vehicle information, the Department  
2 has concluded that documentation filed with the DMV is a  
3 reliable source that validates the sale. Per Audit Manual  
4 Section 0607.30, the filing of a dealer's report of sale  
5 will be presumptive evidence that the dealer who filed the  
6 report made the sale.

7 On some of the questioned transactions, the  
8 Department has requested additional documentation from  
9 Appellant, but has not received any to date. The  
10 Department notes that some adjustments are warranted based  
11 on Appellant's documentation submitted in the opening  
12 brief. However, the Department is unable to determine  
13 whether down payments were refunded on the repossessions.

14 Appellant question 28 transactions out of 506  
15 total transaction in the audit or 5.5 percent. The 28  
16 transactions shown on Exhibit 4 amount to \$297,104 of the  
17 \$5,931,489 total sales or 5 percent. The Department found  
18 that the adjustments to 9 transactions totaling in \$60,866  
19 in sales is warranted as indicated in Exhibit D and L.

20 Appellant contends additional --

21 JUDGE LONG: Ms. Wilson?

22 MS. WILSON: Yes.

23 JUDGE LONG: I'm sorry to interpret. Can you say  
24 that number one more time?

25 MS. WILSON: Sure. The concession, right? The

1 adjustments to the nine transactions totaling \$60,866 in  
2 sales is warranted, as indicated in Exhibit D and L.

3 Appellant contends additional adjustments to some  
4 of these transactions is warranted for down payments and  
5 refunded on the repossession. But the Department cannot  
6 make additional deductions because there's no record that  
7 these down payments were refunded. As indicated in  
8 Exhibit 6, Appellant now agrees that 7 transactions that  
9 had been questioned totally \$78,058 in sales are valid  
10 sales. 12 transactions totaling \$125,295 in sales remain  
11 in dispute. Please refer to Exhibit D and L for the  
12 detailed list and documentation to support each questioned  
13 item.

14 The Department relied on sales contracts, a DMV  
15 copy of ROS, and vehicle transfer forms to determine that  
16 the transactions are valid sales. In addition, on some  
17 transactions the following documentation was used when  
18 available. In a history report, DMV filed copies of  
19 registration cards, DMV applications for title transfer,  
20 documents, and copies of receipts for payment. Appellant  
21 contends the sales were not completed because the  
22 Department has not provided evidence of the vehicle's  
23 identification number in the DMV data base.

24 For all questioned transactions, the Department  
25 requested VIN history. However, since the request was

1 made 10 years after the sales occurred, transactions were  
2 so old some VIN results were not found in the database.  
3 The Department contacted the DMV to question why we didn't  
4 get results back, and the DMV investigator, Gary  
5 Constantino, stated that VIN numbers do fall out of the  
6 system if they become inactive.

7 For example, if someone stops registering them,  
8 the vehicles are totaled, vehicles are registered out of  
9 state, et cetera. Also, VINs fall out of DMV system after  
10 five years of inactivity. So there would be no  
11 registration renewals. This does not mean that the  
12 transactions did not occur, only we no long have access to  
13 the DMV VIN history records. Furthermore, there's no  
14 evidence on the dealer copies of the DMV forms that  
15 Houssam voided the transactions. In fact, the bottom  
16 portion of the ROS form was removed to be placed in the  
17 vehicle, which would only be done after a sale is  
18 complete.

19 Appellant reported net taxable sales for the  
20 audit period of \$851,820. Taking into consideration the  
21 very small adjustments that are warranted, the error rate  
22 still significantly indicates fraud, does not constitute  
23 negligence. The taxable balance reported compared to the  
24 underreported is nearly six-times below the actual amount  
25 of sales, an error rate of 589 percent.

1           Based on the evidence presented, the Department  
2           concedes an adjustment of \$60,866, but does not recommend  
3           any further adjustment. This concludes the presentation  
4           for Houssam Ataya.

5           I will now present the Department's facts and  
6           position for the related account, Maher Ataya. Maher  
7           Ataya, a sole proprietor, operated as a used car dealer  
8           doing business as Ataya's Auto Sales at various locations  
9           in Sacramento County since July 1st, 1992. The seller's  
10          permit remains active.

11          During the audit period of October 1st, 2003,  
12          through September 30th, 2006, Maher operated at three  
13          Sacramento County locations. Maher had two prior deficit  
14          audits. They used alternative audit approaches since  
15          records were not provided. During the current audit  
16          period being appealed, Maher filed sales and use tax  
17          returns reporting total sales of \$3,178,710, claiming  
18          deductions of \$2,391,564 for nontaxable sales for resale,  
19          resulting in reported taxable sales of \$787,146.

20          The Sacramento field office contacted Maher for  
21          audit, refer to Exhibit H, the original audit working  
22          papers. Maher was not able to substantiate his method of  
23          reporting and could not provide any records because he  
24          stated the records were stolen. The auditor was able to  
25          obtain --

1 JUDGE LONG: Ms. Wilson?

2 MS. WILSON: Yes.

3 JUDGE LONG: I'm sorry to interrupt.

4 Mr. Kimzey, can you hear everything that's going  
5 on? Mr. Kimzey can you hear us?

6 Okay. It looks like Mr. Kimzey is having  
7 connection issues. So we're going to go off the record.

8 (There is a pause in the proceedings.)

9 JUDGE LONG: We are going to go back on the  
10 record right now.

11 Ms. Wilson, go ahead.

12 MS. WILSON: Okay. So I'll just start Maher's  
13 presentation over, if that works for everyone?

14 JUDGE LONG: That's great. Thank you.

15 MS. WILSON: Okay. So Maher Ataya is a sole  
16 proprietor, operated a used car dealer doing business as  
17 Ataya's Auto Sales at various locations in Sacramento  
18 County since July 1st, 1992. The seller's permit remains  
19 active. During the audit period of October 1, 2003,  
20 through September 30th, 2006, Maher operated at three  
21 Sacramento County locations. Maher had two prior deficit  
22 audits that used alternative audit approaches since  
23 records were not provided.

24 During the current audit period being appealed,  
25 Maher filed sales and use tax returns reporting total

1 sales --

2 JUDGE LONG: Mr. Kimzey, you lost us again? Hold  
3 on. Mr. Kimzey? Okay. Looks like we're have some  
4 problems. We're going to go off the record.

5 (There is a pause in the proceedings.)

6 JUDGE LONG: We're going back on the record.

7 And, Ms. Wilson, please proceed.

8 MS. WILSON: Okay. During the current audit  
9 period being appealed, Maher filed sales and use tax  
10 returns reporting total sales of \$3,178,710, claiming  
11 deductions of \$2,391,564 for nontaxable sales for resale,  
12 resulting in reported taxable sales of \$787,146. The  
13 Sacramento field office contacted Maher for audit; refer  
14 to Exhibit H.

15 Maher was not able to substantiate his method of  
16 reporting and could not provide any records because he  
17 stated that the records were stolen. The auditor was able  
18 to obtain information from several auto auctions regarding  
19 vehicles that were purchased or sold by Maher at these  
20 auto auctions. Based on the information obtained, the  
21 original audit established under -- unreported taxable  
22 sales of \$1,300,838 by applying the markup established in  
23 the prior audit to vehicle purchases obtained through the  
24 auto auctions.

25 The auditor reviewed the federal income tax

1 returns and noted that there were -- there were not any  
2 bad debt expensed on the returns and, therefore, concluded  
3 that there were no bad debts that could be claimed as the  
4 deduction. As a result of a search warrant at Houssam's  
5 business location on June 4, 2018, books and records of  
6 both Houssam and Maher were seized.

7 The records seized included deal jackets with  
8 sales contracts, DMV ROS, and vehicle transfer forms. The  
9 auditor received data from our consumer use tax section  
10 with additional sales reported to DMV through ROS and  
11 vehicle transfer forms. Based on these records, the  
12 Investigations Bureau performed a reaudit; Exhibit G. By  
13 comparing taxable sales from the seized contracts of  
14 \$4,151,367 with reported taxable sales of \$787,146 to  
15 compute unreported taxable sales of \$3,364,221.

16 Maher claimed deductions for sales for resale.  
17 After reviewing the seized records, there were no evidence  
18 of resale certificates received. However, there were some  
19 sales made to other dealers, and those sales were not  
20 included in the taxable sales of the audit. The  
21 Investigations Bureau replaced the 10 percent negligence  
22 penalty with a 25 percent fraud penalty in the reaudit;  
23 Exhibit E, Recommendation For Evasion of Penalty.

24 Because it was determined that Maher consistently  
25 and systematically failed to report a material portion of



1 his taxable sales, and the huge understatement cannot be  
2 attributed to a simple error, negligence, or oversight.  
3 We note that Maher collected sales tax reimbursement on  
4 his audited taxable sales, but did not remit the tax to  
5 CDTFA. But the 40 percent penalty cannot be applied  
6 because the audit period ended in 2006, and the 40 percent  
7 penalty became operative in 2007.

8 The evidence shows that petitioner has been in  
9 business since 1992. He's been previously audited twice.  
10 He was required to attend DMV dealer education classes  
11 that covered compliance with sales and use tax laws, and  
12 he was charging and collecting sales tax reimbursement as  
13 evidenced on the sales contracts. Thus, we find that  
14 petitioner had sufficient knowledge to correctly report  
15 the taxable sales, but he consistently and substantially  
16 underreported his taxable liabilities.

17 The unreported taxable sales amount of \$3,364,221  
18 is significant and represents a very large error ratio of  
19 427 percent, which is compelling evidence of fraud.  
20 Intent to evade the payment of tax is evidenced by  
21 consistent underreporting, failure to provide records to  
22 the auditor in the past audits. Maher told the Sacramento  
23 field auditor that the records had been stolen.

24 The complete records, specifically the vehicle  
25 sales contracts, became available when they were seized.

1 And we believe that petitioner refuse to provide his  
2 complete books and records to conceal that he was  
3 understating his sales. The Investigations Bureau  
4 concludes that the evidence indicates that Maher intended  
5 to defraud the State of California by grossly  
6 underreporting sales and use tax collected from retail  
7 customers and, therefore, the 25 percent fraud penalty  
8 should be upheld.

9 Appellant has questioned 30 transactions out of  
10 499 total sales. The questioned transactions represent  
11 about 6 percent of the transactions measured by number and  
12 sales volume. Of the 30 items, the Department agrees that  
13 10 transactions warrant adjustments totaling \$70,706 in  
14 taxable measure as indicated in Exhibit C. The Department  
15 is generously allowing repossessions, even though  
16 Appellant has not claimed a deduction for bad debt  
17 expenses on their income tax returns per Regulation 1642  
18 requirements.

19 Of the 30 questioned transactions, Appellant now  
20 agrees that 14 sales are valid, per Exhibit 5, and 9 sales  
21 require adjustments. Appellant disagrees with 7  
22 transactions based on the claim that the Department does  
23 not have DMV proof of these transactions. The disagreed  
24 transactions total \$48,558 or only 1.19 percent of the  
25 audited taxable sales, less adjusted, conceded.

1           The Department relied on sales contracts,  
2 microfiche DMV copy of ROS, and vehicle transfer forms to  
3 determine that the transactions are valid sales. On one  
4 transaction the evidence is the dealer's copy of the ROS  
5 with the bottom portion removed. The bottom portion  
6 contains the registration information that is placed in  
7 the vehicle as a temporary notice until the DMV can set  
8 the registration to the owner, and is only placed in the  
9 car when the sale has been complete.

10           In the interest of time, we have explained in  
11 general terms why further adjustments are not warranted.  
12 To explain each individual transaction would be time  
13 consuming. However, we are prepared to discuss any  
14 specific disputed transaction the Panel wishes. Based on  
15 the evidence presented, the Department concedes an  
16 adjustment of \$70,706, but does not recommend any further  
17 adjustments.

18           This concludes our presentation.

19           JUDGE LONG: Thank you, Ms. Wilson.

20           At this time I'd like to open it to my Panel for  
21 questions. Judge Ralston, do you have any questions?  
22 Judge Ralston, you are on mute.

23           JUDGE RALSTON: I apologize. No, I don't have  
24 any questions. Thank you.

25           JUDGE LONG: This is Judge Long. Judge Kwee, do

1 you have any questions?

2 JUDGE KWEE: Yes, I do have a couple of questions  
3 for CDTFA. So I just wanted to clarify the concessions.  
4 So one was the \$60,866 and the other was the \$70,706. And  
5 these are measure, right? So not tax?

6 MS. WILSON: This is Kim Wilson. That is  
7 correct.

8 JUDGE KWEE: Does CDTFA have an amount for the  
9 tax that's conceded?

10 MS. WILSON: We have not calculated that amount.

11 JUDGE KWEE: Okay. And another question. Does  
12 the concession relate to periods subject to fraud penalty,  
13 25 percent, or subject to the 40 percent penalty, or is it  
14 a mix of both?

15 MS. WILSON: I'm not certain if they -- I believe  
16 that the transactions that Mr. Kimzey provided were a  
17 combination of all the schedules. So I'm sure there's  
18 some transactions that have both the 40 and 25 percent  
19 penalties that apply.

20 JUDGE KWEE: Okay. This is Judge Kwee. So we  
21 don't know the amount of concession for the 40 percent  
22 penalty versus the 25 percent penalty, but it would be a  
23 concession related to those items; is that correct?

24 MS. WILSON: Right. It would be in proportion to  
25 the measure reduced.

1           JUDGE KWEE: Okay. Got it. And I -- just to  
2 understand the backgrounds. Does CDTFA know -- because  
3 the taxpayer was saying that they filled out the forms for  
4 transactions, which were not finalized, perhaps because  
5 the taxpayer walked off and didn't purchase the vehicle.  
6 But then, I guess, DMV had or CDTFA had still obtained  
7 those forms. And I'm just wondering, is there a  
8 requirement that the taxpayer -- does CDTFA if there's a  
9 requirement that the taxpayer has to maintain DMV forms  
10 for transactions which are not filled out? I'm just  
11 curious why they would still have that in their business  
12 if there was a transaction that was not completed. Or do  
13 you have a position?

14           MS. WILSON: Well, I would assume that in their  
15 dealer jacket, if a transaction was not completed that  
16 they would have voided the sales contract. But that was  
17 not evident in any of the records that we observed. So  
18 I'm not sure why they don't agree with the DMV records  
19 being valid, especially, since we have copies from the DMV  
20 in addition to what was seized from the taxpayers.

21           JUDGE KWEE: Okay. And I'm also curious with  
22 respect -- you had mentioned that -- well, yeah. I guess  
23 just to make sure I'm understanding it. So then some of  
24 the records were seized from the brothers' business and  
25 then preliminary determination was calculated based on the

1 records that were obtained. But then CDTFA also contacted  
2 DMV to verify the transactions that were seized with what  
3 was on the DMV's records, but the DMV didn't have complete  
4 records for older transactions after 5 or 10 years. So  
5 I'm wondering with respect to the transactions that you  
6 were able to verify, were adjustments made for  
7 discrepancies? Or for the most part, were the  
8 transactions that were verified consistent with what CDTFA  
9 calculated from the records that were seized?

10 MS. WILSON: So this is Kim. So yes, we did make  
11 adjustments. If there was -- if the audit schedule said  
12 the contract's amount was for \$15,000 but then the DMV  
13 report showed that it was only \$14,000, then we would make  
14 an adjustment based on the actual documentation in the --  
15 that we received.

16 JUDGE KWEE: This is Judge Kwee. So I guess the  
17 reason I was asking that is because for the transactions  
18 in which you weren't able to verify with DMV records, I --  
19 I guess to the extent, was there any, like, projection of  
20 the error? Like, you know, if it was determined that  
21 there were errors made with the records that you were able  
22 to verify, was any consideration given to account for the  
23 fact that the documents that you projected that didn't  
24 have verification might also have errors? Or was that --  
25 I mean --

1 MS. WILSON: So this is Kim Wilson. Based on the  
2 questioned transactions, there was only a couple of  
3 adjustments for the contract price being the wrong amount.  
4 So it was a small portion, and it's not something we would  
5 project since we have actual records. All the documents  
6 are there. They can be verified.

7 JUDGE KWEE: Okay. And this is Judge Kwee. Just  
8 do you have an idea of the scope of the, I guess, the  
9 amount of transactions which were able to be verified with  
10 DMV records as opposed to the ones which were not able to  
11 be verified. I understand it seems to be the ones that  
12 are disputed were the ones that were not verified with DMV  
13 source documents.

14 MS. WILSON: So this is Kim Wilson. We do have  
15 DMV documentation for all of the transactions. It's just  
16 not the VIN history on all of them. So we believe that  
17 the 262, the DMV vehicle vessel transfer form, and the ROS  
18 forms as I stated earlier are evidence of a valid sale.  
19 And when they are filed with DMV, that's a third-party  
20 record so it becomes reliable evidence.

21 JUDGE KWEE: This is Judge Kwee. So just to  
22 clarify, so you did verify and obtain a copy of the report  
23 of sales and its 262-Form with DMV for every transaction.  
24 Is that --

25 MS. WILSON: Most of the transactions. Not every

1 transaction but we do have most of them. You can -- in  
2 the exhibit, all of the documentation we found on the  
3 question transactions is provided. So you can tell on the  
4 exhibit of the ROS form, it will say DMV copy. And then  
5 some of the forms are, like, got a black background which  
6 is the microfiche copy from the DMV. So if -- if you  
7 would like to go over any of the transactions, I'm happy  
8 to do that for you.

9 JUDGE KWEE: Okay. I think at this point I think  
10 I'll turn it over to my co-Panelists to see if they have  
11 any further questions. Thank you.

12 JUDGE LONG: This is Judge Long. Judge Kwee,  
13 thank you.

14 Ms. Wilson, I just want to make sure that I am  
15 clear with respect to the conceded reductions or the  
16 recommended reductions. Does that include the adjustments  
17 for where they are noted on the schedule, adjustment due  
18 to repossession, need proof of down payment? Is that a  
19 partial adjustment or is that not a recommended  
20 adjustment?

21 MS. WILSON: This is Ms. Wilson. Basically, what  
22 I've done is I calculated the reduction, not including any  
23 refunds of the down payment.

24 JUDGE LONG: Okay. So just to be specific --  
25 hold on. Sorry. In Exhibit C there's a transaction. It



1 says, "9/17/2004 adjustment due to repossession. TP needs  
2 proof of refund of down payment." The down payment was a  
3 \$1,000, allegedly. Would that adjustment be \$2,095 then  
4 or just no adjustment at all? Ms. Wilson?

5 MS. WILSON: Sorry. Let me just check my notes  
6 real quick on that transaction. Okay. So for that  
7 transaction there was an adjustment of \$3,829. So if  
8 that -- that is not including the down payment being  
9 refunded.

10 JUDGE LONG: Okay. Thank you. We are going to  
11 keep the record open following this hearing to give CDTFA  
12 some time. We would like to have a total of the  
13 adjustments with a list -- with a schedule of the  
14 transactions as they apply to the different penalty  
15 periods. So the amount that the 25 percent penalty  
16 period -- I'm sorry can someone mute. Sorry -- the amount  
17 of the reduction for the 25 percent penalty period for H.  
18 Ataya and the amount for the 40 percent period for H.  
19 Ataya.

20 And we will provide you with 15 days to do that.  
21 We are going to -- I have no further questions for now.  
22 We're going to move on to Appellant's closing  
23 presentation.

24 Which, Mr. Kimzey, you requested 15 minutes. If  
25 you would like to begin when you're ready.

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CLOSING STATEMENT

MR. KIMZEY: Okay. This is Gary Kimzey. I would just like to add a little bit more information for that last transaction that was being discussed, Item Number 4. The customer's name is Latoya Daniel, as I understand it. Just -- just so we can make the record complete, the \$3,000 down payment was not refunded because of the -- the vehicle was repossessed. \$3,000 down payment was not refunded because of the poor condition that the vehicle was in when they received it back. So that's why the \$3,000 was not refunded. But -- and the repossession calculation, the value of the vehicle on repossession has to be considered. All right.

I listened to CDTFA's response or opening statement, and they indicated that DMV records for registration records were not attainable in some of the cases because of time periods involved. However, they were able get registration records from throughout the audit period. And the transactions that we questioned or requested DMV registration records for, most of them were towards the end of the audit period.

But I'm not -- I don't understand the explanation of why some of the registration records were available, and some of them were not throughout the audit period. And again, our feeling is that if there's no

1 registration for that particular transaction, that  
2 signifies that more than likely consideration was not --  
3 not received for those vehicles. If there's no  
4 consideration, there's no sale.

5 The other thing is the petitioners, it was their  
6 procedure to start these preliminary documents --  
7 preparing these preliminary documents on every potential  
8 sale. Now, according to CDTFA, all of these  
9 preliminary -- or all of the reported sales that were  
10 written up are considered a taxable sales. But we know  
11 that they were writing up these report of sales even if  
12 transactions didn't -- were not completed. But there's no  
13 allowance for that in the audit at all because the auditor  
14 was going by transcripts of all reported sales.

15 And I assume that they -- they did see that --  
16 these reported sales were pre-numbered. So I'm sure they  
17 accounted for every report of sale based on the  
18 pre-numbering of a report of sale. And that would mean  
19 that 100 percent of the reported sales that were ever  
20 written resulted in a completed sale. It's just not the  
21 case and to -- what we believe is that the best evidence  
22 of a completed sale is the fact that a registration was  
23 completed on that document.

24 So there's, in my records, there's about 17  
25 vehicle sales between the two accounts that no

1 registration documents were presented at all. So we feel  
2 that those were probably at least 17 that they wrote up a  
3 report of sale but didn't complete the sale.

4 The other thing I wanted to say was that CDTFA  
5 indicated that in the deal jackets that they reviewed,  
6 they found no contracts that were voided -- shown as  
7 voided. Well, just because they didn't void the contract  
8 doesn't mean that the sale did not go through. So we  
9 that -- can't rely on that. And I think that's all I have  
10 at this time.

11 JUDGE LONG: This is Judge Long. Thank you,  
12 Mr. Kimzey.

13 Before we move on, I want to check with the  
14 Panel. Do we have any questions, Judge Ralston?

15 JUDGE RALSTON: Yes, I have a question for  
16 Mr. Kimzey. Who prepared the registration information?  
17 How was that completed if the sale was valid?

18 MR. KIMZEY: This is Gary Kimzey. The report of  
19 sale documents would have been completed by a registered  
20 car deal -- a used car deal -- salesman that would work at  
21 the business. It would have been the taxpayer themselves,  
22 or it could have been one of their licensed salespersons  
23 that would prepare those.

24 JUDGE RALSTON: Okay. And then is it the  
25 Appellant's business that would prepare the registration

1 information and forward that onto the DMV?

2 MR. KIMZEY: Yes. At some point, more than  
3 likely very soon after the report of sale document was  
4 prepared, it would have forwarded on to DMV, even though a  
5 sale may not finally be completed. You know, that could  
6 have been a lack of funding -- a lack of funding for the  
7 sale by the customer. Customer decides they don't want  
8 the car after driving it. They couldn't agree on a  
9 selling price. It could be a number of things for a sale  
10 not going through.

11 JUDGE RALSTON: Okay. Thank you.

12 JUDGE LONG: This is Judge Long. Judge Kwee, do  
13 you have any questions?

14 JUDGE KWEE: I think I'm good at this time.  
15 Thank you.

16 JUDGE LONG: Thank you. This Judge Long.

17 I also do not have any more questions. Thank  
18 you, Mr. Kimzey. We have the information you provided  
19 today. Is there anything else that you would like to tell  
20 us before we conclude the case?

21 MR. KIMZEY: No. I think that's it.

22 JUDGE LONG: Thank you, Mr. Kimzey.

23 And CDTFEA, as I mentioned earlier, we're going to  
24 hold the record open for you to submit specific numbers  
25 with respect to the 25 percent and 40 percent penalty

1 periods. Is 15 percent -- or is 15 days sufficient time  
2 for you?

3 MS. WILSON: This is Ms. Wilson. That should be  
4 sufficient.

5 JUDGE LONG: Great. Thank you.

6 This concludes the hearing. The Judges will meet  
7 and decide the case based on the documents and testimony  
8 presented and admitted as evidence today, as well as the  
9 briefs that were submitted after. Thank you for your  
10 participation. The hearing is now of adjourned.

11 (Proceedings adjourned at 10:35 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne 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 25th day of January, 2021.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER