

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
RUZBEHJON, INC.,) OTA NO. 18011986,
) 1801204
)
 APPELLANT.)
)
 _____)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, February 19, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: Hon. MICHAEL GEARY

Panel Members: Hon. JEFFREY MARGOLIS
Hon. NGUYEN DANG

For the Appellant: ROOZBEH FARAHANIPOUR,
Taxpayer

For the Respondent: State of California
Franchise Tax Board
By: MENGJUN HE
MONICA SILVA
LISA RENATI

TAX COUNSEL
Legal Division
P.O. Box 1720
Rancho Cordova, CA 95741
916-845-2498

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(Appellant's Exhibits were received at page 9.)

(Franchise Tax Board's Exhibits were received at 10.)

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Los Angeles, California; Tuesday, February 19, 2019

9:00 a.m.

ADMINISTRATIVE LAW JUDGE GEARY: Let's start the record now, please, Ms. Alonzo.

Again, my name is Michael Geary. I'm the lead judge in the case. Thank you all for coming here to our office to conduct this hearing. I'm joined up here by my fellow Judges Margolis and Dang. We are the panel. While I am lead, we all have equal responsibility for deliberating and deciding the issues that you present to us for decision in this case.

I should mention that we are a separate agency. We're not part of California Department of Tax and Fee Administration. They have their own appeal process, which I believe the Appellant went through. And when that appeal process concludes, if it concludes in a manner that the taxpayer is unhappy with, they have a right to appeal to the Office of Tax Appeals. And that's what brought the Appellant to us today.

Let's begin by having the participants identify themselves, starting with you, please, the representative for the Appellant.

MR. FARAHANIPOUR: Thank you, Your Honors, to make this opportunity. My name is Roozbeh Farahanipour.

1 I'm owner and president of Ruzbehjon, Inc.

2 ADMINISTRATIVE LAW JUDGE GEARY: Thank you. And
3 will the Department's representatives please identify
4 themselves.

5 MS. HE: Mengjun He with the California
6 Department of Tax and Fee Administration.

7 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.

8 MS. SILVA: Monica Silva, also with CDTFA.

9 MS. RENATI: And Lisa Renati from CDTFA.

10 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.
11 We're here to take evidence, if you have any evidence to
12 offer, and to hear your argument about the issues
13 presented. Generally speaking, based on information I
14 received of the file and from our prehearing conference,
15 the Department contends the Appellant is liable for the
16 unpaid liabilities of a company called Sanierp -- if I
17 pronounce that correctly -- Sanierp and Sanierp, which
18 operated a restaurant in the Los Angeles area somewhere.
19 And alleges that the Appellant is responsible for those
20 liabilities pursuant to Revenue and Taxation Code 6811 and
21 6812.

22 It further contends that the Appellant, which has
23 filed a claim for refund in this case is not entitled to a
24 refund, even if it is found not to be liable as a
25 successor. Because, according to the Department, the

1 claim is barred by the statutes of limitation.

2 The Appellant contends that it is not liable as
3 the successor to Sanierp and Sanierp, and that it is --
4 also claims that it's entitled to a refund of the \$5,000
5 it previously paid towards those liabilities. It also
6 claims that if it is found to be liable to any extent,
7 that it is entitled to interest relief.

8 Mr. Farahanipour, have I correctly stated the
9 issues that you understand are to be presented to the
10 panel?

11 MR. FARAHANIPOUR: Yes, Your Honor.

12 ADMINISTRATIVE LAW JUDGE GEARY: And Department,
13 have I correctly stated the issues?

14 MS. HE: Yes.

15 ADMINISTRATIVE LAW JUDGE GEARY: All right.
16 Thank you.

17 It's also my understanding, based upon
18 information received at the prehearing conference, that
19 the parties agreed that the underlying liability of
20 Sanierp and Sanierp totaled \$39,418.16 in tax, a penalty
21 of \$3,862.50. That penalty, however, the Department has
22 already agreed should be deleted from the liability and
23 accrued interest, which I don't know the amount, and it's
24 not important for our purposes at this point.

25 The parties also agree at the prehearing

1 conference that the issues I will be addressing are:

2 Is Appellant liable as a successor for the unpaid
3 liabilities of Sanierp and Sanierp?

4 The second issue is, if it is liable for any of
5 those liabilities, is it en entitled to any interest
6 relief.

7 And the third issue is whether or not Appellant's
8 claim for refund is barred by the statute of limitations.
9 We get to the issue, of course, if it is found that the
10 Appellant is not liable for the liabilities of Sanierp and
11 Sanierp.

12 The Department has offered 17 exhibits into
13 evidence, which have been mark for identification A
14 through Q. Those exhibits were provided I believe to
15 Mr. Farahanipour.

16 Mr. Farahanipour, have you seen those exhibits?

17 MR. FARAHANIPOUR: Yes.

18 ADMINISTRATIVE LAW JUDGE GEARY: Okay. And do
19 you have any question about the content of those exhibits?

20 MR. FARAHANIPOUR: No.

21 ADMINISTRATIVE LAW JUDGE GEARY: And do you have
22 any reason -- can you think of any reason why the panel
23 should not consider those exhibits as evidence in this
24 case?

25 MR. FARAHANIPOUR: No.

1 ADMINISTRATIVE LAW JUDGE GEARY: All right. Does
2 the panel have any questions about those exhibits before I
3 admit?

4 ADMINISTRATIVE LAW JUDGE MARGOLIS: No.

5 ADMINISTRATIVE LAW JUDGE GEARY: I'm going to
6 admit Department's evidence into evidence. So exhibits
7 marked for identification A through Q offered by the
8 Department are now admitted into evidence.

9 (Department's Exhibits A-Q were received
10 in evidence by the Administrative Law Judge.)

11 The Appellant has offered three documents into
12 evidence. They have been marked for identification as
13 Exhibits 1 through 3. And the Department, have you seen
14 Mr. Farahanipour's exhibits?

15 MS. HE: Yes, we have.

16 ADMINISTRATIVE LAW JUDGE GEARY: And any
17 questions about the content that you wish to have
18 addressed now?

19 MS. HE: No questions.

20 ADMINISTRATIVE LAW JUDGE GEARY: Any objections
21 to the admission of those exhibits into evidence?

22 MS. HE: No objections.

23 ADMINISTRATIVE LAW JUDGE GEARY:
24 Mr. Farahanipour, your exhibits -- the Appellant's
25 exhibits are admitted into evidence also.

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

3 MR. FARAHANIPOUR: Thank you.

4 ADMINISTRATIVE LAW JUDGE GEARY: We have a court
5 reporter. Ms. Alonzo, is taking down everything that's
6 said in this room with her stenotype machine, if that's
7 the correct name of that machine. To help her make a
8 clear record and to help all of us, in case we have
9 occasion to read that record later, understand what she
10 records, we need to speak clearly and slowly.

11 I will try to speak more slowly also. You need
12 to not interrupt somebody, so that there's only one person
13 talking at a time. And it's best not to engage in side
14 conversations in a voice loud enough to hear because she
15 has to record what she hears, technically.

16 I don't think you'll be doing that, but there are
17 three people sitting at the Department's table. That
18 caution was more for them.

19 When we spoke at the prehearing conference,
20 Mr. Farahanipour, you indicated that you might wish to
21 offer evidence as -- in the form of your own testimony.
22 Do you still wish to do that?

23 MR. FARAHANIPOUR: That's in the document I
24 already provided. That's the judgment of the Court, and
25 overruled my motion by the judge. And Department Tax and

1 Fee or Board of Equalization letter to Mr. Mod stated
2 appear 2016, I already provided.

3 ADMINISTRATIVE LAW JUDGE GEARY: Those have been
4 admitted, but I thought perhaps, in the course of your
5 argument, you might make some factual statements that you
6 wish to be considered as testimony. And to do that, the
7 best way to do that is for me to administer an oath or
8 affirmation for you before you give your argument.

9 And that way any factual statements you say in
10 the course of your argument would be considered testimony.
11 Do you understand?

12 MR. FARAHANIPOUR: Yes, I do.

13 ADMINISTRATIVE LAW JUDGE GEARY: Do you have any
14 objection to me administering an oath or affirmation to
15 you?

16 MR. FARAHANIPOUR: No.

17 ADMINISTRATIVE LAW JUDGE GEARY: All right. Then
18 let's do that. If you wouldn't mind standing and raising
19 your right hand.

20 ROOZBEH FARAHANIPOUR,
21 produced as a witness by and on behalf of himself, and
22 having been first duly sworn by the Administrative Law
23 Judge, was examined and testified as follows:

24
25 THE WITNESS: I do.

1 ADMINISTRATIVE LAW JUDGE GEARY: Thank you. Feel
2 free to sit. The oath has been administered. We
3 discussed time limits when we were having our prehearing
4 conference. I believe I indicated you would have
5 15 minutes to present your initial argument. If you find
6 you're going a little bit over, don't worry about that.
7 Try to keep track of your time, and I will probably try to
8 remind you as you're approaching the end of that 15
9 minutes.

10 When you're done giving your argument, the judges
11 may have some questions for you. I may have questions.
12 To the extent you give factual testimony in your closing
13 argument, I would allow the Department's representative to
14 ask questions also. When that's done, Department will
15 have 15 minutes for its argument. When they are done, or
16 when she is done, then you will have a five-minute
17 rebuttal. Okay?

18 MR. FARAHANIPOUR: Thank you.

19 ADMINISTRATIVE LAW JUDGE GEARY: All right. Now,
20 you can proceed. Just tell your story however you want to
21 do it. You do not have to stand. If you wish to sit and
22 give your first argument, whatever you're comfortable
23 doing is fine.

24 MR. FARAHANIPOUR: Thank you. First of all,
25 thank you again for giving me this opportunity to present

1 my case here on behalf of a -- as one small business owner
2 in Los Angeles. And also regardless of the result of this
3 appeal, I want thank the Department of Tax and Fee and
4 Board of Equalization for their service. That's because
5 of them we can't operate our city in our state.

6 And also I would like to make sure I reserve my
7 right. If I'm not happy with the result, I can take my
8 case to actual court to pursue that. That's the thing.
9 And also I'm not -- not native English speaker. If I have
10 my grammar error or not finding the right vocabulary, I
11 apologize in advance.

12 I came to United States in 2001 as an immigrant.
13 I start by working -- I came as political asylum from
14 Iran. I had issue there. I think I have execution
15 judgment. I came here. I start working here totally
16 different career. I was a law student, actually, in my
17 country, but couldn't finish if for the same reason. I
18 was a journalist.

19 I came here to start my career as a working at a
20 restaurant, Westwood Boulevard. Same as chain right now
21 I'm working. Until -- to make my living, that's -- rather
22 to make my own living my work instead of getting grant
23 from the different Departments. On 2009 after 9 years in
24 this country, I find the opportunity, with no experience,
25 to get engaged with a small business. I take over the

1 business, and I open my own business. Which I take over
2 the Delphi Greek at that time. And that was my
3 experience.

4 I understand that's someone not knowing the law,
5 that's their own responsibility that's I think what really
6 it is. But it's put me in a huge trouble and issues with
7 the previous owner. The restaurant was belong to the dead
8 person and not John Moudakis and so and so. Three times
9 he changed the contract. We went through all of them, and
10 at the end we did end up to the actual court.

11 And during the time, even file a claim on the
12 labor law -- labor court for me, and we constantly did. I
13 have to get -- hired three different counsels to counsel
14 all the cases. We went to actual court, and that takes
15 two or three days. Two days is actual court. One is
16 preparation. And it cost me hundred-thousand dollars for
17 entire process.

18 At the court we dismissed the judgment of the
19 labor commissioner. We upside down some of my cost. And
20 on the case of the liability of the Sanierp to Board of
21 Equalization and Department of Tax and Fee, at that time
22 Board of Equalization, I was never denied that. But I
23 believe because we have a settlement or paid the \$5,000 in
24 the installment to the Board of Equalization, I believe
25 that the court judge find out I'm not to pay.

1 I'm not entitled to pay that, and the judge
2 offset the money that the Moudakis owed me. The court
3 find out that he owes me for the damages for the different
4 thing. The judge offset those things, and they find out I
5 have to pay almost \$30,000. The exact amount that is in
6 the documents. And he ordered me to pay this money to
7 John Moudakis.

8 Because on the contract, same contract that's
9 over and over on different documents, many documents from
10 Board of Equalization, myself, and Mr. Moudakis' case, and
11 also court. Everybody talk about December 3rd, 2009,
12 documents, and I think everybody, all of the parties agree
13 on that documents, the final documents.

14 I asked my lawyer to file a motion to the court
15 and ask the court, this money is belong to Board of
16 Equalization and IRS? Does that belong to Mr. Moudakis?
17 Let us to pay this money. The judge directly ordered us
18 to pay this money to directly to the Board of Equalization
19 and IRS, and not Mr. Moudakis. The evidence is here. The
20 document you have it in the file.

21 Unfortunately the court or maybe fortunately. I
22 don't know. The court is overrule my -- cancel motions,
23 and asked us. I'm not liable for that. Mr. Moudakis is
24 liable for that. I need to pay him, and he pay to the
25 Board of Equalization. And even at the time before when

1 we start the case with Mr. Moudakis, I deposit entire
2 money to the court account, the account they provided to
3 me, and we get that money back. We gave it during the
4 time -- I'm sorry. Sorry.

5 I was communicating with the Board of
6 Equalization step by step, and even did -- even one of the
7 agent or officer, I don't know. It was one of the staff
8 members contact my lawyers, and I beginning in contact
9 with them. I provide all of the evidence. I fully
10 cooperate with them in any level and any stage they ask
11 for. I'm happy to do so, because I think citizen needs to
12 cooperate with the government agency to run the city in
13 our state.

14 Anyhow, the judge was not agree with us. He
15 ordered to pay to Mr. Moudakis. The Moudakis pay to the
16 board. I asked the board. I send all of the copy and
17 documentation. And even I said I have 30 days. I'm going
18 to wait 30 days. I gave them all the information. The
19 bank account is supposed to deposit the money and all the
20 information and asked them, if you want to levy money or
21 you want to put a lien on that or anything you want to do,
22 you can do that.

23 And until later after we finalize the case and
24 pay the money, they notify me they couldn't do that.
25 Including on the hearing we have with Board of

1 Equalization. Mr. Cho he was here I think. And I provide
2 him and other agent all of the evidence copy of the check
3 Mr. Moudakis get from me during the time and all of the
4 evidence I have, I provided to them. And I assume so I
5 did my responsibility and job done at that point.

6 Unfortunate after recommendation from Mr. Cho
7 came, I realize the Board of Equalization decided to keep
8 me liable for the debts. And during this times I
9 received -- I wasn't one of the party of the case, and
10 usually all the parties receive copy of the documentation.
11 On the document dated April 15, the Board of Equalization
12 issued recommendation for Mr. Moudakis, send a copy to me
13 as well. And on that document very clear the Board of
14 Equalization and I think Mr. Cho find out that
15 Mr. Moudakis is solely responsible for this debts.

16 And one of the reason was the court order issued
17 by the judge. I never denied this debts. I always
18 cooperate with all the government agencies and government
19 offices and, of course, the court of law in any levels if
20 I needed to. But that was unfortunate they try to keep me
21 liable. They don't know that when I took over this
22 business in 2009, Delphi was in the loss.

23 They didn't generate tax money for the
24 government, for the state, country or city. And even they
25 couldn't pay the employees labor and wages. And after

1 almost ten years I am happy. I'm proudly I pay my taxes
2 almost on time, sometimes a few days here and there. And
3 every quarter and every year almost I have a good shape,
4 and I generate more taxes for the government. And also
5 now I have at least 11 people employed by me.

6 And all, again, I under the payroll I pay to the
7 EDD and many other things. I did all the things I could
8 do to help myself, my families, and my community, and also
9 help the people who run our society. In other hand, at
10 the same time, in 2015 I become a president of the West
11 Los Angeles Chamber of Commerce as well. I'm sitting on
12 the Board of the California Restaurant Association.

13 I'm more in committee in many different ways.
14 Even I host many times events for at least four members of
15 Board of Equalization. I never discuss my case with them
16 because I try to go everything through legal roads. I had
17 many, more than ones I had a chance to work with the --
18 our current State Treasurer Fiona Ma. I worked with
19 Mr. Jerome Harten even he supervise my case. I'm working
20 with him. Hopefully I have another workshop with him
21 soon. And with Diane Harkey and also Betty Yee our great
22 Controller actually.

23 But in none of the occasion I discuss my case
24 with them because I try to keep everything separate. The
25 thing I'm really unhappy the way they process the case.

1 The Board of Equalization unfortunate they have ruling,
2 double standard on everything. In one hand they try to
3 keep the statute open for the debt and liability of the
4 money owed that is owed by Sanierp and Sanierp. But for
5 the portion I already pay to them, they try to -- the
6 \$5,000 say statute is over, you're not entitled to
7 deduction refund.

8 So I believe everybody in this country they obey
9 the law and believe the court of law is the last road,
10 including our president, President Trump. Even the court
11 disagree with his decision, he obey the law and court of
12 law. But Board of Equalization try to not obey the court
13 of the law, even including in many documents. The
14 documents I provided to them.

15 And also on their own rule and regulation on
16 their appeal hearing, any time they issued a deadline, if
17 they past the deadline they didn't accept any
18 recommendation or additional document from me. But in
19 couple of occasion, including the last time, seven months
20 after their own deadline, they change the recommendation
21 based on new evidence they received from the Department of
22 Tax and Fee and Board of Equalization.

23 I think that's all of the citizens and all of the
24 people on both party should be equally treated by that
25 each Department in front of court of law or appeal

1 process. And if the Board of Equalization sitting as a
2 judge and decided and try to say what's both party said,
3 if the deadline is for me, it should be the time for them
4 as well. That's the thing I'm not happy with. And during
5 the time of the almost all that -- the legal time for the
6 last argument about, you know, interest.

7 During the time I communicate with them if the
8 Board of Equalization assume they are not wants to obey
9 the court of law or they think that's a totally separate
10 issue is not belong to them, why they postpone all the
11 time the hearing and waiting for the result of the court?
12 And in one period I think one year and a half -- I think
13 actually that was Mr. Cho I assume, that was appeal
14 counsel, and I respect him. I think he is very grateful
15 and help me a lot during the process, all the time
16 responsive. But that's it. He was off of the case for
17 year and a half, and case get postponed and bring it back
18 to the case.

19 And now they claim first of all, I believe I'm
20 not liable for this debts. But still they said you are
21 liable for the interest. If the Board of Equalization
22 waiting for the result of the court, why they are not
23 accept the court's result? If they believe they are not
24 supposed to wait for the court, why they postpone the case
25 to create more debt for the either parties; me or other

1 party?

2 If they want to collect the debts, and they are
3 not waiting, and they think they are not party, they
4 should wait for the court, or why wait few years to see
5 the court result? And in either cases, I think that's the
6 interest should be off the table and -- because that's
7 something waiting for the legal process. And portion of
8 it because the lack of staff changing the structure of
9 Board of Equalization, the appeal judge was off of the
10 case, and for many different things that happen during the
11 time.

12 And \$5,000 I mention that's double standard.
13 They cannot keep statute open for one part and close
14 statute for other part. And for entire process, I think
15 that's their own recommendation to Mr. Moudakis. And more
16 than that court order, and also even I clearly and legally
17 file a motion to pay the money to Board of Equalization,
18 and judge deny it.

19 Why I have to pay double money? Mr. Moudakis
20 collect the money from the taxpayer one time and collect
21 the taxpayer's money from me second time, and still I have
22 to pay for the third time to the Board of Equalization. I
23 think it's not fair.

24 That's my argument. I don't want to keep the
25 time. If any question, I will be happy to answer.

1 ADMINISTRATIVE LAW JUDGE GEARY: If you don't
2 mine, I have a couple of questions, and my co-panelist may
3 also. Just to try to summarize, you bought the restaurant
4 in 2009; correct?

5 MR. FARAHANIPOUR: Yes.

6 ADMINISTRATIVE LAW JUDGE GEARY: There were a
7 couple of different -- at least a couple of different
8 contracts for the purchase. The initial one was \$5,000,
9 and then some time later -- about a month or so later, I
10 think there was another one for about \$96,000. Is that --

11 MR. FARAHANIPOUR: Kind of because that's
12 calculated dates plus other assets.

13 ADMINISTRATIVE LAW JUDGE GEARY: Yes. You
14 were -- pursuant to that second contract, you were to
15 assume responsibilities for certain debts --

16 MR. FARAHANIPOUR: Yes.

17 ADMINISTRATIVE LAW JUDGE GEARY: -- including --
18 I think it was referred to as a \$44,000 debt to the Board
19 of Equalization. Then your relationship with Mr. Moudakis
20 or who was apparently connected with this --

21 MR. FARAHANIPOUR: Sanierp and Sanierp.

22 ADMINISTRATIVE LAW JUDGE GEARY: -- Sanierp and
23 Sanierp. Your relationship with them broke down. There
24 was a dispute about whether he complied with the contract.
25 You ended up in court. We've seen the court documents.

1 You've submitted those. You -- you paid him \$30,000,
2 tried to get the court to order him to pay it to the BOE,
3 or to let you pay it directly to BOE and the court
4 refused. Is that all correct so far?

5 MR. FARAHANIPOUR: Yes, Your Honor. The reason
6 they came with \$30,000 because the judge order portion of
7 it in my favor and offset down from the total debt of 50
8 or \$60,000.

9 ADMINISTRATIVE LAW JUDGE GEARY: Okay. And you
10 received a copy of the, what's called a decision and
11 recommendation, that was issued to Mr. Moudakis. Are you
12 saying that the Department mailed that copy to you?

13 MR. FARAHANIPOUR: Yes.

14 ADMINISTRATIVE LAW JUDGE GEARY: That's how you
15 got it. And you feel that the person who wrote that,
16 Mr. Cho -- by the way he's had nothing to do with your
17 case while it's been ongoing here. You feel that he
18 indicated in that decision and recommendation that
19 Mr. Moudakis was solely liable?

20 MR. FARAHANIPOUR: It's on his document.

21 ADMINISTRATIVE LAW JUDGE GEARY: Does it use that
22 word "solely liable?"

23 MR. FARAHANIPOUR: Yes.

24 ADMINISTRATIVE LAW JUDGE GEARY: All right.
25 We'll see that then when we read that document. So you

1 don't dispute the amount that was due; right?

2 MR. FARAHANIPOUR: No.

3 ADMINISTRATIVE LAW JUDGE GEARY: And you paid
4 \$5,000 of it pursuant to the initial determination that
5 was issued against you; correct?

6 MR. FARAHANIPOUR: Yes.

7 ADMINISTRATIVE LAW JUDGE GEARY: And then you had
8 to pay \$30,000, approximately, to Mr. Moudakis that he was
9 supposed to pay to BOE?

10 MR. FARAHANIPOUR: I paid \$50,000 but after
11 offset my debt from John Moudakis all things, my debts end
12 up to \$30,000 plus --

13 ADMINISTRATIVE LAW JUDGE GEARY: \$30,000?

14 MR. FARAHANIPOUR: \$30,000 plus the interest I
15 paid. I provide that a copy of the check to Board of
16 Equalization. See?

17 ADMINISTRATIVE LAW JUDGE GEARY: Okay. For
18 relief of interest, you feel there was delay by the Board
19 of Equalization or the Department or both?

20 MR. FARAHANIPOUR: Portion of it, and portion of
21 it that was because of the court. They're waiting for the
22 court.

23 ADMINISTRATIVE LAW JUDGE GEARY: So do you
24 know what -- do you have a -- can you tell us for what
25 period you are requesting relief of interest? Is there a

1 particular period of what you would characterizes as
2 unreasonable delay?

3 MR. FARAHANIPOUR: First of all at during the
4 time of the court at the end, the judge decide how much,
5 actually, after everything I owe Mr. Moudakis, during the
6 time I think that the judge find out how much money we
7 should pay for these contracts, including the interest.
8 Because everything came together and interest was
9 separate.

10 I paid separate check for the interest. That
11 was, I think, less than \$2,000, if I'm not mistaken. And
12 after that, we back to appeal hearings. We have couple of
13 the conferences or phone interview. And then Mr. Cho, I
14 assume, they get off the case for the period of time, more
15 than a year. And then he come back and pursue the case,
16 and we find out the recommendation.

17 And even another time that's delayed by the
18 Department, when deadline 45 days of the submitting any
19 document about objection, recommendation. Over seven
20 months after the Board of Equalization came with the new
21 document and new suggestion to Mr. Cho, and Mr. Cho wrote
22 his own deadline after seven months. And he take that
23 recommendation, take that suggestion and issued a new
24 recommendation.

25 So during this times all delay by the Board of

1 Equalization, not me. At any time they send me hearing or
2 call me or e-mail me, I was ready for them include any
3 time. I never delayed anything the Board of Equalization.

4 ADMINISTRATIVE LAW JUDGE GEARY: So I'm trying to
5 get a handle on a period of time now that you claim --
6 during which you claim there was unreasonable delay by the
7 Department or the BOE, its predecessor. And you mentioned
8 a year, and you've mentioned seven months. Is there a
9 total of 19 months for which you're claiming interest, or
10 is it a different period?

11 MR. FARAHANIPOUR: 19 months from Board of
12 Equalization, and the rest that was a time we been in the
13 court. That's it, the court of law between me and
14 Mr. Moudakis. And the Board of Equalization waiting for
15 the results. If they thought they should pursue the case,
16 why waiting court order or judge recommendation if it came
17 up? If they think someone or me responsible, and they
18 don't want to wait for court order, why they delay the
19 case? It create more debt for the responsible party.
20 That's in this case they think it's me.

21 ADMINISTRATIVE LAW JUDGE GEARY: Can you tell me
22 specifically from -- from one particular date to another
23 or for more than one period, can you give me that kind of
24 information today?

25 MR. FARAHANIPOUR: Sure. Ever since --

1 ADMINISTRATIVE LAW JUDGE GEARY: If you need some
2 time to figure that out, you can be looking at that issue.
3 But if you can let me know before we conclude this
4 hearing.

5 MR. FARAHANIPOUR: I'm going to give it to you.

6 ADMINISTRATIVE LAW JUDGE GEARY: Okay. Good.

7 MR. FARAHANIPOUR: I start court and lawsuit and
8 legal argument against Moudakis on 2010 and the court
9 issue --

10 ADMINISTRATIVE LAW JUDGE GEARY: When in 2010?

11 MR. FARAHANIPOUR: The court issued the
12 recommendation on 2014. So that's four years -- four
13 years and half on the court, year and a half when Mr. Cho
14 was off the case. He knows better than me how many months
15 exactly was about the case. And also seven months at the
16 final recommendation they change.

17 ADMINISTRATIVE LAW JUDGE GEARY: So now you've
18 indicated something between 2010 and 2014, four years, and
19 additional time thereafter?

20 MR. FARAHANIPOUR: Yes. One year and a half the
21 period of time appeal judge or appeal person at the Board
22 of Equalization was off the case. That was almost a year
23 and a half, plus seven months at the end of the process.
24 That was almost two years -- two years and a half and four
25 years. That's six and a half.

1 ADMINISTRATIVE LAW JUDGE GEARY: But you can't
2 give me specific dates yet?

3 MR. FARAHANIPOUR: Not yet. I can calculate.

4 ADMINISTRATIVE LAW JUDGE GEARY: Okay. All
5 right. Those are all the questions I have. I think
6 probably a good way to approach this would be to let my
7 co-panelist ask questions, if they have any. Then I'll
8 turn to the Department to see if they have any questions
9 for you. All right.

10 MR. FARAHANIPOUR: Okay.

11 ADMINISTRATIVE LAW JUDGE MARGOLIS: Thanks for
12 coming here. By the way I just want to emphasis that,
13 although, Mr. Cho is now is here today, he's not
14 participating in any way in this decision.

15 MR. FARAHANIPOUR: I understand.

16 ADMINISTRATIVE LAW JUDGE MARGOLIS: Do you recall
17 when you were first contacted by the Board of Equalization
18 about possibly being liable for these debts?

19 MR. FARAHANIPOUR: I think I was the person walk
20 in the Board of Equalization when I went to get the
21 seller's permit. When I went to get a seller's permit, I
22 realize that was the time to provide the \$5,000 contract,
23 and at that time I was not financially able to pay them.
24 I asked them if -- even I don't remember who was their tax
25 specialist there, but they help me to fill out some

1 paperwork. At that time I was not familiar with these
2 things. And I put it on the installment. I pay --

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: So you first
4 became aware of possibly having -- about them pursuing
5 personal liability? Pretty much when you acquired the
6 business right away?

7 MR. FARAHANIPOUR: Yes. And she told me, "You
8 should go through the escrow." I remember exactly the
9 wording of her. She said, "You should go through escrow
10 or least came here." At that time that was my bad, and
11 I'm liable for that. I take it.

12 ADMINISTRATIVE LAW JUDGE MARGOLIS: And believe
13 me. I understand how, you know, I can understand why it
14 would seem very unfair to you, what's happened here.
15 Because apparently the money you paid to Mr. Moudakis to
16 pay the taxes weren't paid over, otherwise we wouldn't be
17 here.

18 When did you -- there seems to be some dispute on
19 the documents I've seen about when you first went to the
20 Board of Equalization and told -- and asked them to get
21 involved in trying to collect from the money you're going
22 to pay into the court. I know we have evidence that you
23 went to court on a certain date, and after the judgment
24 came out you made a motion after the judgment to pay the
25 amount directly to the tax authorities.

1 But I believe that the board said in it some of
2 its paperwork that you only came to them after you had
3 made the payment. I'm not sure if that's the case, but do
4 you recall when you first got the board involved and said,
5 "I am having to make this payment in court to
6 Mr. Moudakis. Can you please seize the money or take it
7 or something?"

8 MR. FARAHANIPOUR: In sometime 2010 I talked to
9 the people at the Board of Equalization and told them we
10 are getting -- first, I received a new letter from the
11 Board of Equalization, if I correctly recall. Yes.
12 That's I'm liability for the \$30,000 more. I called the
13 person who gave me the clearance the first time.

14 I talked to him. He told me that's the -- as
15 much as he remember I had a clearance, and then he opened
16 the file. He realized what happened. He refer to me to
17 somebody in Sacramento. I called them, and I told them
18 I'm getting engaged in the court and we are going to
19 the -- hiring a lawyer to sue Mr. Moudakis and different
20 cases. And actually Mr. Moudakis sue me, but that was a
21 couple of the cases we counsel it all together.

22 I told them this is the case number, and I asked
23 them a couple of times if they can present in court. When
24 we get closer to the trial, I talked to them more closely.
25 And even they contacted my lawyer as well and give them

1 all of the deadline and ask them to come. I told
2 them my -- I deposit the money in the court. The money is
3 in the account. If you want, you can come. If I'm
4 liable, you can take the money from the court account. If
5 not, at least Mr. Moudakis is there. You can get some
6 kind of judgment or levy from his account.

7 ADMINISTRATIVE LAW JUDGE MARGOLIS: So you
8 definitely remember telling them before you put the money
9 into the account that --

10 MR. FARAHANIPOUR: Many times. More than once.

11 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. I'm
12 sorry. I didn't quite follow your argument about there's
13 some sort of double standard with respect to the \$5,000
14 that you paid. Maybe you can explain that?

15 MR. FARAHANIPOUR: Sure. Because the \$5,000 is
16 part of the total debts and \$44,000 the rest of the debt
17 to the Board of Equalization. And I paid only \$5,000 to
18 the Board of Equalization. And total debts judge
19 calculated, I paid \$30,000 after offset from the money
20 Mr. Moudakis owes me. I pay it to the -- by the court's
21 order.

22 So I paid \$5,000 more than the money the judge
23 calculated. I ask them refund me money because I already
24 paid the total debt to the Board of Equalization. That
25 was the portion I was liable for. And the Board of

1 Equalization came and they said the statute for the refund
2 is over.

3 If the statute for refund is over, why are they
4 still continuing to try to collect the rest of the money?
5 That's the one case, one money, one part, everything in
6 there. If I overpaid, I'm entitled to get refund.

7 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. So you
8 think that the board told you overpaid that \$5,000? Is
9 that what you're saying?

10 MR. FARAHANIPOUR: No, no. The judge -- the
11 recommendation by the court that was after offset all of
12 the money Moudakis owed me, \$30,000. That's portion of
13 the money should be from the \$50,000. And I paid in total
14 of the \$30,000 in one check and different check, \$2,000
15 for the interest or less than \$2,000. And then when I
16 paid entire money, I also paid \$5,000 prior to that. So
17 that was overpaid, and I request refund for that \$5,000.
18 And they said statute for that \$5,000 is over.

19 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. And
20 how much total did you pay Moudakis for the business at
21 the end of the day?

22 MR. FARAHANIPOUR: I paid him one time \$5,000.

23 ADMINISTRATIVE LAW JUDGE GEARY: \$5,000 right
24 away.

25 MR. FARAHANIPOUR: And one time I paid him

1 \$7,500 -- \$8,500 as a cash advance; \$10,000 in two
2 cashier's checks, and \$9,000 and \$1,000 in cash and money
3 that's came on the December 3rd contracts. That's
4 everybody refer to, and that's include it. Plus \$50,000
5 judge order me to pay Mr. Moudakis, minus the \$13,000
6 damages and false claim on the permitted and other things
7 I have to repay and recollect them. So that's \$30,000
8 plus all the money and damages the judge order me to pay
9 into the account.

10 ADMINISTRATIVE LAW JUDGE GEARY: So \$5,000,
11 \$8,500, \$10,000, \$9,000, plus \$50,000 in the judgement,
12 less \$13,000 in offsets.

13 MR. FARAHANIPOUR: Plus \$13,000 in offset because
14 total judgment \$50,000, and \$1,000 in cash.

15 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. Thank
16 you. I don't think I have any more questions for you.

17 ADMINISTRATIVE LAW JUDGE DANG: So my question
18 for you is I want to make sure I'm understanding your
19 arguments on appeal here correctly with regarding
20 successor liability. Is it that you're arguing that
21 successor liability was properly imposed? You had
22 mentioned that you paid the \$5,000 under the belief that
23 you were liable because you had purchased the business.

24 MR. FARAHANIPOUR: Yes, Your Honor.

25 ADMINISTRATIVE LAW JUDGE DANG: But you're saying

1 that you don't owe the remaining portion because you made
2 it available to CDTFA?

3 MR. FARAHANIPOUR: No. First I paid \$5,000. I
4 assume liability, then the other contracts and letter from
5 the Board of Equalization. And also I went to the court
6 with Mr. Moudakis on December 3rd contract. I became
7 liable for the -- almost \$50,000 minus my money I paid. I
8 was liable for \$30,000 more, and judge ordered me to pay
9 the rest to Moudakis. I file the motion. This money is
10 belong to the Board of Equalization because in the
11 judgment, judge clearly mention that money belong to
12 the -- you owe to the board and IRS.

13 We ask the judge to pay to the IRS and Board of
14 Equalization. Judge overruled that. They said no. We
15 are not find. That between you and board. You're not
16 liable for that. Mr. Moudakis is liable to for that. You
17 need to pay to Mr. Moudakis, and Mr. Moudakis needs to pay
18 them.

19 ADMINISTRATIVE LAW JUDGE DANG: So you're saying
20 in essence that you shouldn't have to pay again?

21 MR. FARAHANIPOUR: For the third time, no.

22 ADMINISTRATIVE LAW JUDGE DANG: No. Okay.
23 That's understandable. But as far as the imposition, you
24 would owe these taxes because you purchase this business.
25 You're not disputing that?

1 MR. FARAHANIPOUR: No.

2 ADMINISTRATIVE LAW JUDGE DAN: Okay. Thank you.
3 And my final question is regarding the -- your request for
4 relief of interest, I took a look at the original claim
5 for refund -- I'm sorry -- the request for relief of
6 interest. It seemed that you had requested relief of all
7 interest. Is that the case here?

8 MR. FARAHANIPOUR: Yes.

9 ADMINISTRATIVE LAW JUDGE DANG: You're looking
10 for all interest that's accrued thus far to be relieved?

11 MR. FARAHANIPOUR: Yes. Because for almost four
12 years -- more than four years that was during the court
13 and legal process, and board agrees to wait for legal
14 process and wait for the outcome. Unfortunate outcome
15 came, and they did not accept it. That's not my fault.
16 We comply with the report of that.

17 And after that, that was an appeal process. And
18 portion of the appeal process, they had head of the appeal
19 panel was off of the case. That's more than a year, plus
20 the time seven months delay for the recommendation because
21 another suggestion came from Board of Equalization out of
22 the deadline they have.

23 ADMINISTRATIVE LAW JUDGE DANG: Any interest that
24 would have accrued -- I don't know if this is the case
25 here. But if there was any interest that had accrued

1 prior to you filing your appeal, are you also seeking
2 relief of that interest, or just interest from the date
3 you filed your appeal?

4 MR. FARAHANIPOUR: Just the date from the appeal.

5 ADMINISTRATIVE LAW JUDGE DANG: To the present
6 day if it's still accruing?

7 MR. FARAHANIPOUR: (Witness nods head).

8 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
9 That's all the questions that I have.

10 ADMINISTRATIVE LAW JUDGE GEARY: First,
11 Department, do you have any questions you wish to ask of
12 the witness?

13 MS. HE: No questions.

14 ADMINISTRATIVE LAW JUDGE GEARY: All right. Are
15 you ready to give your closing?

16 MS. HE: Yes.

17 ADMINISTRATIVE LAW JUDGE GEARY: Proceed when you
18 are ready.

19

20 CLOSING STATEMENT

21 MS. HE: Yes. Thank you. On the three issues on
22 appeal, the evidence on the record establishes that
23 apparent Ruzbejon, Inc., is liable as the successor from
24 Sanierp Sanierp's unpaid liabilities. And there's no
25 basis for interest relief, and Appellant's claim for

1 refund was untimely.

2 First on the issue No. 1, the successor
3 liability, we just heard from the Appellant that he can
4 say that through the issue of successor liability here,
5 but just out of abundance of caution we'll just go through
6 the elements and put our case forward here.

7 So first issue, the successor liability, as
8 detailed from the March 13th, 2012, Notice of Successor
9 Liability, the law is clear that pursuant to California
10 Revenue and Taxation Code Sections 6811, 6812 and the
11 regulation 1702, the purchaser of a business or stock of
12 goods is personally liable for seller's unpaid sales and
13 use tax liabilities to the extent of the purchase price,
14 if the purchaser fails to withhold a sufficient purchase
15 price to cover those liabilities. Unless the purchaser
16 either obtains a tax clearance certificate from the
17 Department, or make a written request to the Department,
18 or fails to get a timely response.

19 Here's the brief -- additional briefing and
20 numerous hearing exhibits, the Department has established
21 all the requirements necessary for imposing the successor
22 liability as determined here.

23 First, as we give the office pre-conference
24 minute order, Appellant concedes that at the time of the
25 sale of the business to Appellant, the seller had unpaid

1 sales and use tax liabilities as was given to Appellant
2 through the notice of successor liability here.

3 Second, the Department has proved that the
4 Appellant purchased Sanierp's business. And again, this
5 much has just be admitted by the Appellant. The evidence
6 that the Department has provided includes, Exhibits C and
7 K. Those are agreements between the parties showing the
8 purchase and sale of Sanierp's business for a total
9 consideration not less than the liability assuming
10 payment.

11 Exhibit B and D, showing that seller, Sanierp,
12 reported closing out his business and the seller's permit
13 on October 31st, of '09, and selling his business on
14 November 1st of '09, and that the purchaser, Appellant,
15 applied for a seller's permit at the same location with a
16 start date of November 1st, of '09.

17 Exhibit E, Appellant's own corporate tax return
18 reported \$34,000 paid for goodwill, the business on
19 November 1st of '09. Exhibits F through J, documenting
20 Appellant's own actions and statements. Those before the
21 Department and in civil court, consistent with Appellant's
22 own acknowledgment of its status as the successor of
23 Sanierp.

24 Third, Appellant does not dispute that Appellant
25 held a withhold amount sufficient from the purchase price

1 to cover Sanierp's sales and use tax liabilities, or to
2 request a tax current certificate from the Department.
3 With the above, because Appellant purchase the business
4 from Sanierp, a seller with outstanding liability to the
5 Department, and because Appellant held a request that tax
6 certificate from the Department, and then felt it's a
7 statutory of limited duty and the sales and use tax law to
8 withhold an amount from the purchase price sufficient to
9 cover the tax liability of the seller.

10 Appellant is probably held liable here as a
11 successor for Sanierp's unpaid liabilities. While
12 Appellant makes various arguments on appeal,
13 unfortunately, none of them has any bearing on the legal
14 requirements for imposing successor liability.

15 First, again, the record has no indication that
16 the Appellant disputes the imposition of the successor
17 liability here. And the only pertinent argument we heard
18 is that John Moudakis did not own Sanierp or did have sole
19 incentive to Appellant. But the simple truth is that
20 Appellant bought Sanierp's business, assumed Sanierp's
21 various liabilities, has been operating the business since
22 then without any legal ownership at all.

23 Second, the Department notes that Mr. Moudakis
24 the authority of Sanierp is well documented in Appellant's
25 own Exhibit 3, the DNR, which includes discussions of

1 Mr. Moudakis applying for the seller's permanent as its
2 president, Mr. Moudakis signing off Sanierp's corporate
3 tax returns and corporate checks. And above all,
4 Mr. Moudakis admitting, against his own interest, to the
5 Department that he was the responsible person for Sanierp.

6 While the Department does not dispute Appellant
7 paid the assumed sales tax liabilities through the civil
8 court to John Moudakis, the fact remain that the liability
9 Sanierp ordered to the Department is still unpaid. And
10 unfortunately the civil court there overruled Appellant's
11 effort to try to pay the Department at the last minute
12 when the judgment was coming down against the Appellant.

13 When you look, actually, at the Appellant's
14 exhibits, exhibit -- I believe it's Exhibit 2, page 1,
15 line 6 from the bottom. As to the second issue, no
16 evidence was admitted that it would allow the court to
17 conclude that defendant could be liable for the taxes owed
18 by Moudakis and his company to either the IRS or the Board
19 of Equalization.

20 So unfortunately, even though, as you know, the
21 successor liability notice here was issued by the
22 Department in 2012, that's about a three years before
23 court issue that finding there. Somehow the court did not
24 have the benefit or did not have the evidence of the
25 Department's third notice of a successor liability before

1 it. So that's probably why the court overruled the
2 Appellant's motion to ask the court to allow him to pay
3 the Department directly.

4 And also we note, while the Appellant's Exhibit 1
5 on the court's findings of fact would suggest there was a
6 partnership operating the business right up to Sanierp and
7 Sanierp being closed out. That's still consistent with
8 our finding that Ruzbejon, Inc., the Appellant, which is a
9 restaurant business, from Sanierp. This is because the
10 joint venture agreement is specifically set.

11 That's our Exhibit K, page 45, quote, "The
12 business is to be conducted and the name Ruzbejon, Inc.,
13 located at 1383 Westwood Boulevard, Westwood, California,
14 90024," end quote. That address was Ruzbejon, Inc.'s,
15 current business address, and it was the seller's business
16 address.

17 So even though there may be any partnership that
18 had existed before, that would have been operated as
19 Ruzbejon, Inc. So that was also corroborated by the
20 Secretary of State's records showing Mr. Moudakis and the
21 Appellant's president here as co-directors of Ruzbejon,
22 Inc., upon Appellant's initial incorporation. And also
23 the Department's records show Ruzbejon, Inc., has remained
24 the legal business owner since the day right after the
25 seller, Sanierp, and all the way up to date.

1 Therefore, Appellant is the successor of Sanierp
2 regardless how it started out to operate the business.
3 Since none of the Appellant's arguments is legally
4 relevant, Appellant has failed to prove error in the
5 Department's successor liability determination. Appellant
6 is therefore liable as the successor to Sanierp's unpaid
7 liabilities.

8 Next on issue No. 2, whether Appellant is
9 entitled to relief of any of the interest based on
10 unreasonable error or delay by Department employee. And
11 the law the imposition of the interest is mandatory, and
12 interest only relieved in only very narrow circumstances.
13 As relevant here, one of the narrow circumstances as
14 provided Revenue and Taxation Code Section 6593.5 is when
15 the failure to make a timely return or payment due to
16 unreasonable error or delay by a Department employee.

17 To would be legible for relief based on
18 Section 6593.5, no significant aspect of the error or
19 delay can be attributed to an act or failure to act by the
20 taxpayer. Also person request from legal interest must
21 file with the Department statement signed under penalty of
22 perjury setting forth the facts which he or she basis the
23 claim for relief.

24 So in this issue Appellant has the burden to
25 establish reasonable error or delay. However, as shown in

1 Exhibit L -- that's page 49 of the Department's exhibit
2 package -- "All Appellant in their request for interest
3 relief, you already agreed the relationship between myself
4 or my company with John Moudakis or Sanierp Sanierp," end
5 quote.

6 But the known relationship, in fact, is not
7 relevant here. Appellant's argument does not establish
8 any unreasonable error of delay by the Department. As to
9 the arguments the Appellant just brought up, about the
10 abating interest based on the court-related postponement
11 between 2010 and 2014, first we note the case was actually
12 actively processed all the way up until 2014 when
13 Appellant itself requested for his postponement.

14 That's shown by the Department's Exhibit M, pages
15 50 and 54 of the Department's exhibit package. That shows
16 Appellant sought postponement on May the 4th, 2014 and
17 again in October 2014, when account was then pending civil
18 suit. And the civil case was not over until
19 February 2015. But as you can see, on March 4th of 2015,
20 the appeal was put back on active status and assigned for
21 conference again to be held on June 11, 2015.

22 So for the only period when the case was in
23 active status, it was caused by Appellant's own request
24 for postponement due to the civil action. The Department
25 put on the record that the Department did not postpone the

1 case because of the civil action. It's because Appellant
2 asked for the postponement to await for the decision
3 before he wants to resume the appeal before the
4 Department.

5 And then we have Exhibit P and Exhibit N.
6 Exhibit P, the DNR on pages 10 and 14, that's the -- pages
7 84 to 88 of the exhibit package. It examines the entire
8 duration of this period before you period by period, and
9 finds no unreasonable error or delay.

10 Then exhibit N we have the e-mail analysis from
11 the Department's board of proceeding divisions, the
12 district office involved, and the petition section on the
13 respective process and periods. And again that analysis
14 reveals no unreasonable error or delay. The Department
15 submits the time lines are accurate.

16 And since the Appellant fails to point any
17 unreasonable error or delay by the Department in process
18 of this case, this issue to this case should be denied.
19 Lastly, whether Appellant's August 6, 2015, claim for
20 refund is untimely and the statute of limitation for the
21 \$5,000 the Appellant paid for entirely, within
22 July 22, 2010 and the July 10 of 2011 towards the second
23 notice of successor liability, which was final on May 7,
24 2010.

25 And the Revenue and Taxation Code sections 6902,

1 a claim for refund is timely filed within three years from
2 the last day of the month following the close of the
3 quarterly period for which the overpayment was made; or
4 filed within six months after the date of determination
5 becomes final if the overpayment was made pursuant to that
6 determination; or within six months from the date of
7 overpayment if the payment is voluntary.

8 Here Appellant alleging its claim for refund,
9 quote, "Already paid in total amount the judge ordered.
10 So this money was over payment," end quote.

11 But that payment the judge ordered was not to the
12 Department. It was to John Moudakis, and thus no other
13 payment with the Department to warrant any refund.
14 Additionally, Appellant cannot establish that its claim
15 for refund is timely and the section 6902. First, under
16 the three years statute of limitation, based on return,
17 the April 7, 2010 notice of successor liability -- that
18 was the second notice of successor liability on which the
19 Appellant made the payment -- that represents liability
20 that the seller, Sanierp, approved from January 1st of '08
21 to October 31st of '09.

22 So well over three years have passed since
23 January 31, of '09. That was the last day of the month's
24 quarterly, the close of the quarterly period of the first
25 quarter of '09. Therefore, the August 6, 2015, claim for

1 refund is not timely and meets the three-year statute of
2 limitation period.

3 The next period is six months from the date of a
4 finalized NOD. Here again, the payment was made towards
5 the second notice of successor liability. That was dated
6 April 7, 2010. It was final without protest on May
7 7, 2010. And then the refund claim here was dated 2015.
8 Again, more than six months after the finality date of the
9 determination passed. Therefore, the claim for refund was
10 not timely in that time period either.

11 And lastly, the refund including time date, even
12 if it was filed within six months of the date of the
13 claimed overpayment, here the last payment was made
14 July 10, 2011; so six months from that. That's early
15 2012. Again, the refund claim was dated 2015. So that
16 was approximately four years after the last payment was
17 made.

18 So Appellant's claim for refund was untimely and
19 any applicable statute of limitation, therefore,
20 Appellant's claim for refund expired. In conclusion, the
21 Department has properly established Appellant's successor
22 liability, and the Appellant has failed to meet its burden
23 of proof on all three issues. Appellant's appeal,
24 therefore, should be denied. Thank you.

25 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.

1 Judges any questions for the Department before I allow the
2 Appellant to do his closing?

3 ADMINISTRATIVE LAW JUDGE MARGOLIS: I have some
4 questions.

5 Ms. He, the \$34,000 goodwill you said that was
6 reflected in -- I think you said Exhibit B. I didn't see
7 that.

8 MS. HE: That's Exhibit E, page 7 of the overall
9 exhibit package.

10 ADMINISTRATIVE LAW JUDGE MARGOLIS: I have
11 Exhibit E as being page -- oh, I got it.

12 MS. HE: Yeah. We only included that one
13 relevant page from the package.

14 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. And
15 this relates to the business that he purchased from
16 Mr. Moudakis. It doesn't say that.

17 MS. HE: Yes. As far as the Department could
18 tell, Ruzbejon, Inc., had only one business. That's the
19 restaurant business at this location.

20 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. I have
21 a couple of more questions. So what about -- why didn't
22 the board take any action when Mr. Farahanipour notified
23 them that, you know, he was about to pay his liabilities
24 over to the court, and the court is going to release the
25 payments to Mr. Moudakis? Why didn't the board intervene

1 at that point?

2 MS. HE: There was no action the Department could
3 take at that point. Number one, the Department was not a
4 party to the civil suit. So we have no jurisdiction,
5 really, to overrule or to ask the court to do it a
6 different way. And then more importantly, Mr. Moudakis
7 was still being the responsible person at the time
8 actively, and there was no final liability on
9 Mr. John Moudakis for us to pursue any connection action.

10 ADMINISTRATIVE LAW JUDGE MARGOLIS: So you don't
11 deny what -- what the taxpayer said today about him trying
12 to contact the Department before the date that the
13 payments released to Mr. Moudakis, do you?

14 MS. HE: As I discussed in the DNR, actually,
15 when he tried to contact the Department about the
16 payments, I believe we -- the DNR said that was about one
17 or two months after he already posted the judgment with
18 the civil court. So it was not before. That was my
19 understanding. He did do that but not before he made the
20 payment to the court.

21 ADMINISTRATIVE LAW JUDGE MARGOLIS: Right. So we
22 have a conflict on that statement. Do you recall the
23 names of the people you dealt with at the time?

24 MR. FARAHANIPOUR: Yes. That's one of them
25 that -- most of them that's under e-mail communication,

1 first of all. That's -- I don't have all the e-mails
2 here, but Mr. Cho is one of them. And before when the
3 court issued the judgment, I notified the board. I forgot
4 the name of the agent here, but this agent actively talked
5 to my lawyer and myself. I told them that's -- we gonna
6 do that. And I told them I'm going to delay as much as I
7 can.

8 I get the money from my deposit on the account,
9 and I supposed to deposit the check to Mr. Moudakis
10 account. And I give them information, the account number,
11 30 days before I deposit check to their accounts. And
12 they even though, because of the delay, I pay a little
13 more interest to Mr. Moudakis, but that was okay. And I
14 try to cooperate as much as I can with the Board of
15 Equalization on this case.

16 ADMINISTRATIVE LAW JUDGE MARGOLIS: Do you have
17 more information you want to give?

18 MS. HE: I have the -- not exact date but the
19 exact months based on our end of the records. So the
20 Appellant's present here paid the court order -- court
21 order funds to the seller in June of 2015 -- July of 2015.
22 And then in August of 2015, he informed the Department of
23 that. That's based on my end of the records.

24 ADMINISTRATIVE LAW JUDGE GEARY: And according
25 to -- and I think the decision recommendation was issued

1 in the appeal of Mr. Moudakis on April 15, 2016.

2 MS. HE: That's correct.

3 ADMINISTRATIVE LAW JUDGE GEARY: And did that go
4 final 30 days? I mean, was there any request for
5 reconsideration or anything?

6 MS. HE: That indeed go final, but that's a year
7 after --

8 ADMINISTRATIVE LAW JUDGE GEARY: Yes.

9 MS. HE: -- the court action here.

10 ADMINISTRATIVE LAW JUDGE GEARY: Understood.

11 ADMINISTRATIVE LAW JUDGE MARGOLIS: What where
12 were you reading from there, the information that you're
13 relying on?

14 MS. HE: I basically composed a timeline myself
15 based on the DNR discussion of the events and also the
16 e-mails, which is already submitted into evidence. I
17 believe that's exhibit -- yeah, Exhibit G. So it's the
18 same information there. I just put it in a more visible
19 for myself. Not G. Sorry. Exhibit N.

20 MS. SILVA: Pardon me. Exhibit N.

21 ADMINISTRATIVE LAW JUDGE MARGOLIS: The other
22 questions I have for you, Ms. He, are how much interest --
23 how much taxes and interest are still owed here? I mean,
24 he was originally set up with, I believe, a \$43,000 tax
25 liability; is that correct? What was the original amount?

1 MS. HE: I believe the total tax initially was
2 \$39,000-something with change, and then plus tax -- plus
3 interest and penalty. And then we dropped the penalty
4 because there was no common ownership between the
5 Appellant and the seller. The interest, of course, is
6 continuing to accrue since we issued the notice of
7 successor liability. But the tax, because Appellant
8 already pay the \$5,000, so the tax dropped from
9 39-something to 34-something now.

10 ADMINISTRATIVE LAW JUDGE GEARY: Yeah. It should
11 start at \$39,418.16. It should now be \$34,518.16, if
12 there's been no agreements towards tax.

13 MS. HE: Yeah. That's what was asserted in the
14 notice of successor liability.

15 ADMINISTRATIVE LAW JUDGE MARGOLIS: And is the
16 taxpayer being charged interest on the tax liability even
17 before the period -- even before he received his notice of
18 successor liability?

19 MS. HE: To the extent of the purchase price,
20 yeah, the total. So the notice of determination and break
21 down -- most of the interest at issue here was accrued
22 after we issued the notice of successor liability.

23 ADMINISTRATIVE LAW JUDGE DANG: The interest
24 that's accruing on this successor liability on the primary
25 account that's being doled through to him?

1 MS. HE: Partially, yeah. So there was -- as the
2 statute provided, we can bill all the way up to the extent
3 for full-purchase price. So seller at the time owed, I
4 think total with interest and taxes, 40 -- I don't have
5 exact number. I believe it's 43-something with interest
6 and penalty, everything together. So we basically bill
7 the taxpayer at the time. Billed the Appellant at the
8 time to the full extent what Sanierp owed the Department.
9 Because that was the less than the total purchase
10 consideration for that contract.

11 MS. SILVA: So that would have included some
12 amount of interest. And now on this successor liability
13 interest has accrued.

14 ADMINISTRATIVE LAW JUDGE DANG: Separate from
15 the -- on the secondary account?

16 MS. SILVA: On the 34, correct. Yeah, on the
17 amount billed.

18 ADMINISTRATIVE LAW JUDGE DANG: So if we were to
19 find unreasonable error or delay, the relief of interest
20 would apply only to the secondary account?

21 MS. HE: That's correct. Unless the Appellant
22 can point to any error or delay in Sanierp's liability in
23 the Department's processing or billing the seller,
24 Sanierp, which was not case. I think the DNR address that
25 too.

1 ADMINISTRATIVE LAW JUDGE DANG: So in essence,
2 any relief that could be found for the interest that was
3 included in the NOSL, would have to be with respect to the
4 primary account?

5 MS. SILVA: No. Relief of interest.

6 MS. HE: No.

7 ADMINISTRATIVE LAW JUDGE DANG: Was interest not
8 included in the NOSL regarding to the primary's liability?

9 MS. HE: Yeah. So there was a portion of the
10 seller's interest that accrued before they sell the
11 business that passed on to Appellant. But then when the
12 Appellant was billed separately as a successor, the
13 interest started to accrue on this account as well. So he
14 was basically held liable for those portions of the
15 interest all the way from the date the notice of
16 determination was issues.

17 ADMINISTRATIVE LAW JUDGE DANG: Okay.

18 ADMINISTRATIVE LAW JUDGE MARGOLIS: So at the
19 time that this lawsuit was going on, there was a dispute
20 over how Mr. Farahanipour was going to pay amounts of a
21 tax obligation he assumed to the person who was -- so that
22 person can pay it over to the tax authorities. Your
23 position is you couldn't come in there, even though both
24 parties had an agreement there to pay the money over to
25 the tax agency? You couldn't come in and do something?

1 MS. HE: The Department can only initiate a
2 collection action or finalize the liability. While the
3 appeal is still going on, the liability is not final. So
4 we cannot collect -- we cannot take any collection action.
5 We cannot attach bank accounts. We cannot levy bank
6 accounts or do any of those things.

7 MS. SILVA: Because there's no final
8 determination of liability.

9 ADMINISTRATIVE LAW JUDGE MARGOLIS: Could you
10 have reached an agreement with Mr. Farahanipour and say,
11 "If you sign this, then we can come in and take this money
12 and apply it to your liability so you won't have to pay it
13 over to Mr. Moudakis?"

14 MS. HE: It's not so much about an agreement with
15 Mr. Farahanipour. It's about John Moudakis, because the
16 judgment was awarded to Mr. John Moudakis. At the time
17 the responsible liability determination was still going
18 on. So unless Mr. Moudakis dropped the -- when we billed
19 it, he did not petition at all and let that go final. We
20 cannot do anything.

21 ADMINISTRATIVE LAW JUDGE MARGOLIS: But if he had
22 paid the liability over to the Board of Equalization, then
23 he wouldn't have owed anything to Mr. Moudakis because he
24 would have told the court that, "I have already paid this
25 liability."

1 MS. HE: Judge Margolis, let me clarify a little
2 bit. I think -- we cannot take forceful collection action
3 against either of the parties. But there's nothing on the
4 books against them paying voluntarily on non-finalized
5 liability. They can pay it. You have a certain right.
6 Had Mr. Moudakis paid before the judgement -- pay the BOE
7 the liability and then presented proof to the court, then
8 the judge would not say in the order that there's no proof
9 because he failed to satisfy his obligation to pay those
10 assumed liability.

11 Or on the other hand if there's information of
12 evidence presented to the court that Appellant was
13 actually being pursued for more than the \$5,000, then the
14 court would not have said there's no evidence admitted,
15 that without that, the court conclude defendant could be
16 liable for the taxes owed by the seller. The very notice
17 of successor liability is the issue here. That was the
18 evidence that he could be held liable.

19 So, therefore, there are a lot of different
20 scenarios that could have happened that would, you know,
21 prevent this kind of situation here. If any of those
22 things had happened, we would not have been here. He
23 could have paid the tax to the board a long time ago
24 before the civil court or before the judgment.

25 Or he could have presented evidence to the court

1 that the Department was still actively pursuing him
2 despite the initial \$5,000 notice of successor liability.
3 There was another additional notice of successor liability
4 still pending.

5 So if that was in the court records, I don't
6 think the judge would just say, "No. You cannot BOE. You
7 have to pay the defendant."

8 That would not make sense to us.

9 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. Thank
10 you. I have nothing further.

11 ADMINISTRATIVE LAW JUDGE GEARY: Would you like
12 to give a final closing? You can have five minutes if you
13 wish to rebut the Department's arguments.

14 MR. FARAHANIPOUR: Yes. Please.

15 ADMINISTRATIVE LAW JUDGE GEARY: All right.

16

17 CLOSING STATEMENT

18 MR. FARAHANIPOUR: First of all, that's the money
19 we're talking about under the liability. I supposed to
20 pay to the board. I deposit to the court's account almost
21 in 2011 or early 2012. That's before the judgment. I
22 deposit \$50,000 to the court account. So the money was
23 disputed. I already secure it in the court account. That
24 was not in my pocket or bank account.

25 And second, if the Board of Equalization, or the

1 Department of Tax and Fee now, they believe they are not
2 party of the interest, why they wait few years until the
3 judgment comes up? If they think we are not party of
4 interest, why they postpone even my request or other
5 party's request? Why they postpone the case if they think
6 they are not party of interest of this civil lawsuit? Why
7 do they think they are not part of this case? Why they
8 postpone it even if they think they're not part of it?

9 And also on the \$5,000 refund, that is still they
10 believe the Board of Equalization is statute of limitation
11 of my voluntary payment or my duties to pay their money, I
12 believe I owe the board, either statute is over; that's
13 part of the total debts of the \$44,000 or \$39,000 they
14 believe, the money is still pending. The statute is not
15 over.

16 The account is not clear as they just mentioned.
17 It's still not finalized, and we are not paid. And so the
18 statute of limitation is not over because the account is
19 not closed yet. And just for the clearance, if you may, I
20 read portion of the judgment?

21 ADMINISTRATIVE LAW JUDGE GEARY: Yes.

22 MR. FARAHANIPOUR: Thank you. On page of the
23 court order on page 5 on the bottom of the page, "With
24 respect to the agreement to the Board of Equalization and
25 the IRS liabilities, Mr. Moudakis, Roozbeh Farahanipour

1 has never paid them, and that he now owes us substantially
2 more money to those agencies. Farahanipour maintains that
3 Moudakis was obligated to provide him final statement from
4 each agencies of the amount owed before he was obligated
5 to make any payments. In addition, Farahanipour contends,
6 in fact, settled the Board of Equalization claim with the
7 payment of the \$5,000."

8 And then they came to the -- my testimony and
9 some of Farahanipour's testimony. I try not to keep the
10 time from your panel. And on page 7, the court mentioned
11 board on the middle of the paragraph, first see
12 Exhibit 112. However, that the payment did not resolve
13 the liability of Moudakis and Farahanipour agree to pay up
14 to 45 -- the \$4,000 to the board for sales and use tax.

15 In fact, complete Exhibit 4, which is
16 May 2, 2014, invoice Mr. Moudakis from board of -- board
17 establish that liability of Moudakis grow to \$55,000, and
18 as a result of Farahanipour failure to pay down portion of
19 the agree to pay Mr. Moudakis. And then the court also
20 finds as admit, that the Farahanipour prepare to pay the
21 IRS obligation to pay the same agreement. In court reject
22 the Farahanipour testimony that it was any agreement on
23 which Moudakis would provide some sort of the final
24 statement from the IRS, and that's on final --

25 ADMINISTRATIVE LAW JUDGE GEARY: You have about a

1 minute left.

2 MR. FARAHANIPOUR: I'm sorry.

3 ADMINISTRATIVE LAW JUDGE GEARY: About a minute
4 left.

5 MR. FARAHANIPOUR: Okay. That's on the end on
6 the page 14. They mention that the court comes with the
7 upside down \$37,976 entitled to Moudakis. And on my other
8 documents on my motion, I file to the court. The court
9 overruled. As a second issue, no evidence was admit to
10 allow the court to conclude that defendant could be liable
11 for the tax owed by Mr. Moudakis and his company to either
12 IRS or State of the Board of Equalization. Accordingly,
13 Moudakis is entitled to judgement for total awarded to the
14 court. And last, I know I'm a little over minutes, but I
15 just mention on document April 15, 2016, issued by
16 Mr. Cho, I think.

17 ADMINISTRATIVE LAW JUDGE GEARY: Exhibit 3.

18 MR. FARAHANIPOUR: Exhibit 3 on page 5, line 11
19 to line 19, and also on page 6, on line 21, "The board
20 issue the responsible person on the liability." That's
21 entire page and next page on line 19 through line 23.
22 Exactly the Board of Equalization continue to page 8.
23 They issue the liability is belonging to Mr. Moudakis.

24 And on the last three lines on page 10, they
25 clearly mention with all of their own tax section

1 establish the petitioner is personally liable for Sanierp
2 liabilities, period January 1st through October 30, '09.
3 That means Mr. Moudakis. This document created by the
4 Board of Equalization, not me.

5 Thank you for the time, and thank you for
6 listening to me.

7 ADMINISTRATIVE LAW JUDGE GEARY: You're welcome.
8 That's actually Keith Long who authored that document, not
9 Mr. Cho.

10 MR. FARAHANIPOUR: Okay. I'm sorry.

11 ADMINISTRATIVE LAW JUDGE GEARY: Thank you for
12 participating. Thank you for coming and participating to
13 both parties and representative. We appreciate it. This
14 concludes the evidentiary portion of the appeal.

15 We've taken in, in effect, testimony from you
16 Mr. Farahanipour, and your arguments and the Department's
17 arguments, we admitted all the exhibits. I'm closing the
18 record now. And my fellow judges and I, over the next
19 period of month or two, will decide the issues. And
20 within 100 days of today's date, you can expect to
21 receive -- both of you can expect to receive a written
22 decision on your appeal.

23 MR. FARAHANIPOUR: Thank you.

24 ADMINISTRATIVE LAW JUDGE GEARY: Thank you very
25 much. This concludes the hearing.

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(Proceedings adjourned at 1:36 P.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 13th day of March, 2019.

ERNALYN M. ALONZO
HEARING REPORTER