

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
NATHAN CHARLES LORTZ, ) OTA NO. 18011819  
)  
APPELLANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Fresno, California

Thursday, November 21, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
855 M Street, Suite 960, California, 93721,  
commencing at 10:45 a.m. and concluding  
at 12:21 p.m. on Thursday, November 21, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ SUZANNE BROWN

Panel Members: ALJ MICHAEL GEARY  
ALJ AMANDA VASSIGH

For the Appellant: NATHAN CHARLES LORTZ  
ROBERT H. BRUMFIELD

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
By: AMANDA JACOBS  
STEPHEN SMITH  
LISA RENATI

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I N D E X

OPENING STATEMENT

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By Ms. Jacobs 41

APPELLANT'S WITNESSES:

DIRECT

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Nathan Lortz 14 50, 63

E X H I B I T S

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By Mr. Brumfield 66

1                   Fresno, California; Thursday, November 21, 2019

2   10:45 a.m.

3

4                   JUDGE BROWN: We will go on the record.

5                   We are on the record in the appeal of Nathan  
6 Charles Lortz. This is OTA Case Number 18011819. We're  
7 in Fresno, California, on November 21st, 2019, and it is  
8 approximately 10:45 a.m.

9                   My name is Suzanne Brown, and I'm the lead  
10 Administrative Law Judge for this hearing. And my fellow  
11 co-panelists are Michael Geary and Amanda Vassigh.

12                   JUDGE GEARY: Good morning.

13                   JUDGE VASSIGH: Good morning.

14                   JUDGE BROWN: Okay. First, I will ask each party  
15 to identify everyone for the record. We can start with  
16 Appellant.

17                   Mr. Brumfield, can you identify yourself and your  
18 client?

19                   MR. BRUMFIELD: Yes. Robert Brumfield for  
20 Appellant Nathan Charles Lortz, and Mr. Lortz is to my  
21 left.

22                   JUDGE BROWN: Okay. And Respondent.

23                   MS. JACOBS: Amanda Jacobs for the California  
24 Department of Tax and Fee Administration.

25                   MR. SMITH: Steven Smith.

1 MS. RENATI: Lisa Renati.

2 JUDGE BROWN: Thank you. All right. I'm just  
3 going to briefly go over what the issues are in this case.  
4 They're the same as we confirmed during the prehearing  
5 conference, and the same as I confirmed during my -- in my  
6 minutes and orders that you should have all received.  
7 Okay. So I believe everyone knows that there are two  
8 issues in this appeal.

9 The first one is whether Appellant is personally  
10 liable under Revenue and Taxation Code Section 6829 for  
11 the unpaid liabilities of Lortz and Son Manufacturing  
12 Company for the periods of October 1st, 2009, through  
13 January 31st, 2010, and January 2nd, 2011, through  
14 July 31st, 2011.

15 And the second issue is whether there's  
16 reasonable cause to relieve the penalties imposed on Lortz  
17 and Son Manufacturing that were included in Appellant's  
18 liability under Revenue and Taxation Code Section 6829.  
19 I'm also just going to briefly confirm and -- and correct  
20 me if any of that was mistaken or if I left anything out,  
21 but I'm assuming that is all -- that was all correct  
22 recitation.

23 Yes?

24 MR. BRUMFIELD: I was going to say, the only  
25 thing when I was looking over my --

1 JUDGE BROWN: Oh, into the microphone.

2 MR. BRUMFIELD: Oh, sorry. When I was looking  
3 over my notes, I noticed you're also referencing Revenue  
4 and Taxation Code 6592 for relief from penalties. That  
5 was part of the discussion we had, and that wasn't  
6 specifically mentioned in the order. But maybe that's  
7 subsumed in the -- in -- in Item 2 that you recited. I'm  
8 not --

9 JUDGE BROWN: That's correct.

10 MR. BRUMFIELD: Okay.

11 JUDGE BROWN: That's the section, and I guess I  
12 just left it out for conciseness.

13 MR. BRUMFIELD: That's fine.

14 JUDGE BROWN: But yes, that's the basis for the  
15 relief of penalties is Section 6592.

16 MR. BRUMFIELD: Okay. Thank you.

17 JUDGE BROWN: Okay. And I'm just going to  
18 confirm in terms of what is -- which elements of 6829 are  
19 in dispute and which are conceded that we discussed during  
20 the prehearing conference, and I confirmed in my order  
21 that the elements that are in dispute are: Whether  
22 Appellant had control or supervision of or was charged  
23 with responsibility for the filing of returns or payment  
24 of tax or otherwise had a duty to act for the corporation  
25 in complying with the sales and use tax law.

1           We sometimes refer to that as for shorthand is  
2 Element Three or the Responsible Person Element. And  
3 willfulness is the other element in dispute. And then  
4 regarding willfulness, there are three components. And  
5 one of the them is conceded, that the component that's  
6 conceded is that Appellant had actual knowledge that the  
7 taxes were due but not being paid.

8           So the two remaining components of willfulness  
9 that are remaining in dispute are whether Appellant had  
10 the authority to pay the taxes or cause them to be paid;  
11 and whether Appellant had the ability to pay the taxes but  
12 chose not to do so. This is just confirming what we have  
13 already discussed. And if there's any corrections or  
14 questions, please let me know, otherwise, I will move on.

15           MS. JACOBS: Can we stipulate to the elements  
16 that we won't be discussing?

17           JUDGE BROWN: Yes.

18           MS. JACOBS: Okay.

19           JUDGE BROWN: And that's in my order that the  
20 first two elements are conceded. So the termination of  
21 the business is conceded, and that the corporation  
22 collected sales tax reimbursement is also conceded. And  
23 then knowledge is -- the knowledge component of  
24 willfulness is also conceded.

25           MR. BRUMFIELD: It's -- those, certainly, things



1 are all true. The only -- the only qualification I have  
2 is you'll hear Mr. Lortz testify a little bit about his  
3 time as the so-called president of the company. There  
4 were a lot of taxes that were being paid. So the phrase  
5 about taxes due not being paid is a bit broad.

6 JUDGE BROWN: I guess --

7 MR. BRUMFIELD: Because right before that period  
8 a lot of taxes were paid. There were installment  
9 agreements. There were a lot of things that were going  
10 on. And this is sort of like an abject statement, the  
11 taxes were not paid at all.

12 JUDGE BROWN: When I --

13 MR. BRUMFIELD: That's -- that's all.

14 JUDGE BROWN: The -- I will clarify that the  
15 issue that when I refer "to the taxes," it's the taxes  
16 that are in dispute in this case. The unpaid -- the taxes  
17 that were unpaid and thus are at issue.

18 MS. JACOBS: Correct.

19 JUDGE BROWN: Okay.

20 MR. BRUMFIELD: At least not being paid in full.

21 JUDGE BROWN: Right.

22 MR. BRUMFIELD: I'll give you that. Because in  
23 2011, for example, there were significant payments on some  
24 of the exhibits I received from the board, show in two  
25 months, well over \$100,000 in payments, for example. So

1 I -- I want to make that clear that it's not like someone  
2 just sitting there saying we're not paying it at all. But  
3 there's going to be testimony on that any ways.

4 JUDGE BROWN: Again, as I will clarify that when  
5 we are referring to the taxes that were not paid. It's  
6 only the unpaid portion. The paid portion is not in  
7 dispute.

8 MR. BRUMFIELD: Okay. Fair enough.

9 JUDGE BROWN: Okay. So next I want to move on  
10 to -- let's see. Oh, and I will also -- I -- I want to  
11 move on to the evidence. I just want to reiterate what we  
12 discussed at the prehearing conference that I want to  
13 remind the parties that one thing we do not need to  
14 address is what the -- whether Appellant's motive was  
15 whether he had any intention to defraud the State. We  
16 discussed this at the prehearing conference that that is  
17 not at issue.

18 And, Mr. Brumfield, you indicated you understood  
19 that under Regulation 1702.5(b)(2). I pointed you to it,  
20 I believe, that I don't -- we don't need to spend any  
21 time -- you don't need to spend any time establishing that  
22 Mr. Lortz didn't intend to defraud the State because  
23 that's not part of what we're looking at here.

24 MR. BRUMFIELD: No. I understand that in  
25 principal, yes.

1           JUDGE BROWN: Okay. All right. And then I want  
2 to move on to the exhibits. You should have received the  
3 evidence binder that my office distributed electronically,  
4 and that contained Respondent's Exhibits A through E.  
5 Initially, we sent out A through D, and then respondent  
6 submitted Exhibit E, subsequently.

7           Okay. We discussed it during the prehearing  
8 conference, Mr. Brumfield, you weren't -- we discussed  
9 whether you had an objection, and I said we would revisit  
10 it at the start of the hearing. Do you object to any of  
11 Respondent's Exhibits A through E being admitted into the  
12 record?

13           MR. BRUMFIELD: No, not admitted into the record.  
14 I recognize those are the business records of the  
15 Department. I think there are some items that I will  
16 comment on probably in closing as to going to the weight  
17 of the evidence but not as to the documents themselves.

18           JUDGE BROWN: Absolutely, the weight of the  
19 evidence is something that the panel will be considering,  
20 and it is perfectly appropriate for the parties to make  
21 arguments about the weight of the evidence. Okay. So  
22 with that, I will admit Respondent's Exhibits A through E  
23 into evidence.

24           (Department's Exhibits A-E were received  
25 in evidence by the Administrative Law Judge.)

1                   JUDGE BROWN: All right. And as we also  
2 discussed during the prehearing conference and I confirmed  
3 in my order, we will have only one witness today and that  
4 is Mr. Lortz who will be testifying. The Appellant has  
5 the option to testify in a question and answer format  
6 with -- Mr. Brumfield, you can ask him questions and he  
7 can respond, or he can testify in narrative format. Do  
8 you know which format you're going to be using?

9                   MR. BRUMFIELD: I was going to do question and  
10 answer.

11                   JUDGE BROWN: Okay. And I will -- before  
12 Mr. Lortz testifies, I will swear him in as a witness.  
13 Respondent is not calling any witnesses, but they will be  
14 making argument. And so the difference is that when the  
15 attorneys make arguments, they're not testifying under  
16 penalty of perjury. But when a witness testifies, it is  
17 under penalty of perjury, and that's considered evidence  
18 that the panel can consider.

19                   Okay. And then I'll just run through, briefly,  
20 what our time frame is and what we're looking at today.  
21 We're going to begin with Appellant's presentation. As we  
22 discussed, that will not exceed one hour. Mr. Brumfield,  
23 if you have excess -- in order to encourage you to be  
24 concise, if you have excess time at the end of the hour,  
25 you can save that for part of your rebuttal.

1 MR. BRUMFIELD: Okay. Thank you.

2 JUDGE BROWN: Okay. And do you also plan on  
3 making an opening statement?

4 MR. BRUMFIELD: No. I think we all know what the  
5 issues are and what the tax liability issue are. It's  
6 really a matter of, I think, evidence and argument at the  
7 end, quite frankly.

8 JUDGE BROWN: Okay. Thank you.

9 And then once Mr. Lortz has testified, CDTFA will  
10 be allowed to ask questions and the judges may also ask  
11 questions. Then CDTFA will make its presentation, and we  
12 discussed that it will not exceed 15 minutes. And then  
13 there will be -- there maybe questions for CDTFA. And  
14 then Appellant will have approximately 15 minutes to  
15 respond. And if anyone needs a break at any time, please  
16 let me know.

17 Okay. So I believe that we are ready to proceed  
18 then, with Mr. Lortz's testimony. Does anyone have any  
19 questions, or is there anything I need to address before  
20 we begin with Appellant's presentation?

21 MR. BRUMFIELD: No, I don't think so.

22 MS. JACOBS: No.

23 JUDGE BROWN: Okay. Mr. Lortz, if you would  
24 please stand and raise your right hand.

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NATHAN CHARLES LORTZ,

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

JUDGE BROWN: Appellant, you may begin.

MR. BRUMFIELD: Okay. Excuse me.

DIRECT EXAMINATION

BY MR. BRUMFIELD:

Q Mr. Lortz, when did you first become employed at Lortz and Son Manufacturing Company?

A Approximately 2002.

Q What was your age at that time?

A 27, I believe.

Q Okay. What was your position at the company when you first started?

A I was in sales.

Q And could you generally describe your duties?

A Bring in new orders, new business to the company.

Q How long did you stay in that position?

A As -- as a salesman -- as a title of salesman, to about 2007, 2008.

Q Okay. Did your duties as a salesman ever involve the handling of any finances for the company, whatsoever?

1           A    No.

2           Q    During this initial time frame working for the  
3   company, were you involved at all with any decisions  
4   concerning what vendors to pay or whether to pay certain  
5   taxes?

6           A    No. No.

7           Q    During this initial period of time, were you  
8   responsible for reviewing or signing any of the company's  
9   tax returns?

10          A    No, sir.

11          Q    When you started working at the company in 2002,  
12   do you recall the approximate sales volume of the company?

13          A    I believe it was about 4 -- about 4 to  
14   \$5 million.

15          Q    And when you transitioned out of your sales  
16   position in 2007 or 2008, do you recall what the  
17   approximate sales volume was then?

18          A    I believe 25 million.

19          Q    For the time frame you were a salesperson in 2002  
20   to approximately 2007, did the company have officers and a  
21   board of directors, to your knowledge?

22          A    I believe so, yes.

23          Q    Do you know who the officers were in that time  
24   frame?

25          A    Well, I know my father was the president of the

1 company, and I think Cynthia Schinnour was the CFO at that  
2 time. And then there was a group of guys that were the  
3 board of directors.

4 Q During this time frame, 2002 to 2007, were you  
5 ever an officer of the company?

6 A No.

7 Q During that same time frame, were you ever a  
8 director of the company who sat on the board of directors?

9 A No.

10 Q Do you know who the board of directors were in  
11 that time frame?

12 A I don't remember their names. No, sir.

13 Q Okay. Was your father one of them?

14 A Yes. Yes.

15 Q Was an individual named Mike Coffee one of them?

16 A I believe so.

17 Q I suggested a couple of names there. Do you  
18 remember any other names after --

19 A Steve Anderson.

20 Q Steve Anderson.

21 A And Dennis Birch.

22 Q Okay.

23 A And I believe John -- John Lake.

24 Q Okay. Thank you. During this time frame, 2002  
25 to 2007, were you ever responsible for monitoring or



1 directing payment of any sales taxes the company might  
2 have?

3 A No.

4 Q I understand that about 2007, you were asked to  
5 become an officer with the company; is that correct?

6 A I was -- I was told that they were naming me as  
7 the president. Yes, sir.

8 Q You were told that?

9 A Yes.

10 Q Who told you that?

11 A My father and Mike Coffee who was our vice  
12 president at the time. He was the vice president of the  
13 company at the time.

14 Q Were you told that the board of directors had  
15 actually appointed you to that office position?

16 A No.

17 Q Have you ever seen minutes of the board of  
18 directors where you were ever appointed to that office  
19 position?

20 A No.

21 Q What was your response to being told you were  
22 going to become president?

23 A Well, from -- I -- I mean I grew up in the  
24 company. My grandfather started the company in 1945, and  
25 I grew up sweeping the floors, welding, you know, learning

1 the business. And so it seemed odd to me. I mean, I was  
2 doing a -- I thought I was doing a good job in sales. And  
3 I said, "Why do you want me to become the president?"

4 They said, "Well, your dad is getting older. And  
5 when you're selling to bigger entities, that you'll  
6 have -- it's more clout. It's easier for you to close the  
7 deal if you're -- of you're the guy. If you're the  
8 president, then you can speak on behalf of the company in  
9 terms of closing that deal or committing the company to a  
10 sale."

11 Q I've seen various documents that are produced by  
12 the Department that indicate during the time that you were  
13 supposedly the president, your father was still chief  
14 executive officer. Were you aware of that?

15 A I mean, my dad was there every day. He ran -- he  
16 was -- it was his company, and he was the guy.

17 Q But were you aware of him acting as CEO?

18 A Yes. Yeah.

19 Q Did your father tell -- when he told you, you  
20 were going to be president, did he tell you he was going  
21 to remain as CEO which, at least legally, is the  
22 functional equivalent of being the pres -- a president  
23 too?

24 A Yes. Yeah.

25 Q Okay. Were you provided -- so you were -- when

1     you became -- when you were told you were becoming  
2     president, were you generally aware of the financial  
3     condition of the company?

4             A     No.

5             Q     Did any of the directors or other officers ever  
6     review with you any of the financial records of the  
7     company when you were told you were becoming president?

8             A     No. But that wasn't -- that wasn't my  
9     responsibility. My job was to bring in new orders, new  
10    work to the table.

11            Q     Did that remain your job when you were -- after  
12    the time you were told you were becoming president?

13            A     Yes.

14            Q     So when you became -- you were told you were  
15    becoming president, did your duties as an employee of the  
16    company materially change?

17            A     No.

18            Q     Did your salary increase?

19            A     No.

20            Q     So you still just ran the sales arm of the  
21    company even though you had been bestowed the title of  
22    president?

23            A     Sales and production. I -- I mean like I said, I  
24    grew up in the shop. So if there was a problem in  
25    production, then they would call me in to solve that

1 problem to figure out how to -- how to undue the problem.

2 Q When you became or when you were told you were  
3 becoming president, did the company have any issues  
4 regarding delinquent payment of sales taxes, to your  
5 knowledge?

6 A Not to my knowledge. No, sir.

7 Q Once you became president, did your father remain  
8 on the board of directors of the company?

9 A I believe so, yes.

10 Q Did Mr. Coffee remain on the board?

11 A Yes, sir.

12 Q How about Mr. Anderson?

13 A Yes, sir.

14 Q Mr. Birch as well?

15 A Yes, sir.

16 Q Was there another one I missed there?

17 A Mr. John Lake.

18 Q Oh, okay. John Lake. Yes. Thank you. They all  
19 remained on the board of directors after the time you were  
20 told you were becoming president?

21 A Hm-hm.

22 Q Is that a yes?

23 A Yes, sir. I'm sorry.

24 Q Okay. You were never -- were you ever appointed  
25 to be on the board of directors?

1 A No.

2 Q At some point in time, did the company experience  
3 some financial difficulties which led to some sales taxes  
4 not being paid or at least --

5 A Yes, sir.

6 Q Or not paid in full?

7 A Yes, sir.

8 Q Okay. Do you recall what year that was?

9 A I want to say 2000 -- late 2009, 2010, I believe.

10 Q Okay. So from the time that you were told you  
11 were becoming president, the company, to your knowledge,  
12 paid all of its sales taxes at least up until this late  
13 2009, 2010 time frame you're referencing?

14 A Yes, sir.

15 Q How did the issue of not paying -- not being able  
16 to pay the sales taxes in late 2009 to 2010 come up?

17 A Well, so at the -- I'm trying to remember to the  
18 best of my ability. The -- the company banked with  
19 Merrill Lynch out of Chicago for -- that -- they were our  
20 financing. They were our bank. And Merrill Lynch -- this  
21 was the beginning of the financial crisis, 2009, 2010.  
22 And Merrill Lynch, we no longer fit their model. I guess  
23 that's the best way to say that.

24 And so they gave us, I think it was 60 or 90 days  
25 to find another banking institution. And in about that

1 time, like our -- let's say our backlog of work orders to  
2 be completed and -- and build was -- averaged \$20 million.  
3 Kind of overnight our backlog went to maybe 5 or  
4 \$6 million. And though -- I mean, the writing --  
5 everything contracted. And so we -- we were starving for  
6 cash, basically.

7 And I know that our CFO who then became -- was a  
8 lady named Diana. We said that -- I believe it was her  
9 that said, "We're not going to be able to pay our state  
10 sales tax. That I'm going to have to make an agreement  
11 with the State of California. A payment plan with the  
12 State of California," at that time. And that's when I  
13 learned about it.

14 Q So was Diana Oei in charge of making the payment  
15 arrangement with the State of California?

16 A Yes.

17 Q Did you carry on any negotiations at all yourself  
18 personally with the State of California for sales taxes?

19 A No, sir.

20 Q Did you ever carry on any discussions at all with  
21 the State of California regarding negotiating payment of  
22 sales taxes?

23 A No, sir.

24 Q Were those functions always left with -- with  
25 Mrs. Oei during that time frame?

1 A Yes, sir.

2 Q Would she report back at some point that she had  
3 made an arrangement for payment or something like that?

4 A Yes. I -- I think that she -- because I remember  
5 signing some doc -- basically, the doc -- the payment plan  
6 document that she asked me to sign.

7 Q You don't -- since the -- we'll talk about the  
8 receivership in a little bit. But from the time the  
9 receivership case was filed in late 2011, have you had  
10 possession of any corporate records, financial or  
11 otherwise, at all?

12 A No, sir. I wasn't -- I wasn't part of the  
13 company at that time.

14 Q Were those turned over to the receiver?

15 A I believe so. Yeah. I -- I don't -- I assume  
16 so. I mean, that's -- yeah. The -- the -- if you could  
17 restate that? So the -- the documents of the company were  
18 turned over to the receiver?

19 Q Right.

20 A Yeah. I mean, they -- they had to be.

21 Q They were --

22 A I wasn't -- I was -- I can't put my hand on my  
23 heart and say that happened. I wasn't there when that  
24 happened, but I would assume. Logic would say that's what  
25 happened.

1           Q    Were any of the financial records or other  
2 records of the company ever returned to you after the  
3 receivership completed itself?

4           A    No.  I -- I had nothing to do with the closing of  
5 the business or the receivership.

6           Q    Now, on this installment or payment arrangement  
7 you were talking about in regard to the 2009 to 2010  
8 taxes, did Mrs. Oei report back to you that she had been  
9 able to reach an agreement with the Department?

10          A    Yeah.  Yes, I believe -- yes.

11          Q    Did she report back to you or was there a  
12 committee in place to deal with the company's financial  
13 issues at that time?

14          A    There -- there was a committee that we put  
15 together to -- basically a cash-flow committee.

16          Q    Who was on that committee?

17          A    So it was Diana Oei, Jean Dolk, who was the head  
18 of the customer service; Joe Granite, who was the head of  
19 the product value team, which was basically purchasing; my  
20 sister Amy.  And Mike Coffee would often sit in those  
21 meetings.  Periodically.  My father would sit in those  
22 meetings, but it was -- we wanted him to be there, but he  
23 wanted -- he didn't want to be there.

24          Q    Referring to your dad?

25          A    Yeah, sorry.  Yes.



1 Q When was that -- when did that committee start  
2 meeting? Meaning, was it in 2009 or sometime before that?

3 A I -- I believe it was about 2009.

4 Q That was when the cash crunch problem started  
5 coming up, you're referring to?

6 A Yes, sir.

7 Q What was the purpose of that committee?

8 A The purpose of the committee -- I -- I didn't  
9 have the financial background to navigate the company out  
10 of that water. And frankly, it wasn't, I think, my  
11 responsibility. But, like, I don't have the relationship  
12 with the vendors that we need to pay, and those vendors if  
13 you don't have constant communication, honest  
14 communication with those vendors, there's no way that  
15 you're going to move the company forward. And so we have  
16 to pay them something.

17 So it seemed logical that we would have the  
18 people that were -- that had those relationships would  
19 come to that meeting and say, "We have to pay Company X a  
20 \$1,000 or \$100,000 or whatever that was, in order for us  
21 to keep moving these other projects forward. So it just  
22 seemed that worked better 'cause there was -- there was so  
23 many things happening that not one person could control  
24 all of that at that time.

25 Q Were the issues of the delinquent sales taxes

1 discussed by the committee in 2009 to 2010 time frame?

2 A I don't recall them being discussed, other than  
3 knowing that we needed to allot, as Diana would put the  
4 cash flow projections -- the weekly cash flow projections  
5 together, that we would allot the money in there to -- to  
6 ensure that we were -- stayed current with those  
7 obligations.

8 Q Did the committee ever make an affirmative  
9 decision not to pay sales taxes?

10 A No. No, sir.

11 Q Did you ever direct Diana Oei not to pay the  
12 sales taxes?

13 A No, sir.

14 Q So Diana Oei was, again, handling all the  
15 discussions and negotiations for the 2009 to 2010 sales  
16 tax time frame and reporting those back to this cash-flow  
17 committee?

18 A Yes.

19 Q And what she reported back on the payment  
20 arrangements that she had reached was acceptable to the  
21 cash-flow committee?

22 A Yes. I mean, she was a part of that committee,  
23 so she understood what -- what needed to be done.

24 Q The other time frame at issue, Mr. Lortz, and I'm  
25 going to orient you as to time in regard to unpaid or

1 partially unpaid sales taxes, is the year 2011. Okay?

2 A Okay.

3 Q Were you aware of a -- was the cash-flow  
4 committee made aware of a sales tax payment problem in  
5 early 2011?

6 A Repeat that, please.

7 Q Was your cash-flow committee made aware of  
8 problems in regard to being able to pay the sales taxes in  
9 full in early 2011?

10 A Not that I remember.

11 Q Okay. Who within the -- had the committee's  
12 composition changed in 2011 at all?

13 A There was a gentleman -- it was really the  
14 company's attorney, but he was really my father's  
15 attorney, a guy named Ray Mullen had joined to help the  
16 committee. And I think that we had laid some people off.  
17 I think Joe Granite and maybe Jean Dolk were a couple of  
18 people that were laid off just because of the tightening.  
19 The business prospect was not getting any better.

20 Q Do you recall when Mr. Mullen first started  
21 advising this -- advising the company or this committee?

22 A No, sir. I don't. I believe that it was  
23 somewhere around 2000 -- late 2010, early 2011 is my best  
24 guess.

25 MR. BRUMFIELD: I just wanted to just -- for

1 purposes of the record, just to correct something in the  
2 original -- well, not the original -- the decision of  
3 recommendation that came out of the May 16, 2016,  
4 conference. There was a reference to Mr. Mullen being an  
5 accountant. Mr. Mullen was actually -- he's a business  
6 attorney in Bakersfield. So I just wanted you to know  
7 that he was not accounting assistance coming in. He was  
8 attorney assistance.

9 BY MR. BRUMFIELD:

10 Q Now, what was Mr. -- so Mr. Mullen would meet  
11 with the cash-flow committee?

12 A Yes, sir.

13 Q What was his role?

14 A Just as an advisor. That my father felt he could  
15 do a better job of potentially negotiating with some of  
16 the venders, et cetera, for extended payment terms.

17 Q In this 2011 time frame, was there a member of  
18 the committee that was dealing with the sales tax issues?

19 A I believe it was Diana Oei that would help.  
20 Yeah.

21 Q She was still with the company then?

22 A I believe so.

23 Q Okay. So she had been vested with full  
24 responsibility to discuss the issue of sales taxes with  
25 the Department and come up with payment arrangements in

1 2011?

2 A Yes. Yes, sir. I believe that's correct.

3 Q And during the time you were president, that was  
4 in regard to the sales taxes? That's the role she  
5 undertook?

6 A Yes.

7 Q What was Diana Oei's title with the company?  
8 What -- what position did she have? Do you remember?

9 A I know that she was hired as the controller. And  
10 I believe that her official title became -- shortly after  
11 that became CFO.

12 Q After the time this cash-flow committee was  
13 constituted, about how often did it meet?

14 A Once a week. Sometime -- sometimes, though, it  
15 could be a couple of times a week just depending on the  
16 severity of the cash flow.

17 Q But at least weekly?

18 A Yes, sir.

19 Q So the committee would discuss vendor or tax  
20 issues as the case may be?

21 A Mostly vendor issues, yes, sir.

22 Q The tax issues were, again, left to Ms. Oei?

23 A Yes. Other than -- as a correction -- other than  
24 we knew because the forecasting, you know, in the -- we  
25 would try to put money aside every week to make that

1 monthly payment. I believe it was a monthly payment. So  
2 we knew there was an obligation, and that X amount of  
3 dollars needed to be put towards taking care of that  
4 obligation.

5 Q The year 2011 was the company's, I think you  
6 described it as backlog, continuing to decrease?

7 A Yes.

8 Q By backlog, I would refer to that as -- well,  
9 it's not really work in progress, but the work that is  
10 going to be in progress?

11 A Yes, sir.

12 Q Okay. So the committee would make decisions as  
13 to payment of vendors; correct?

14 A Correct. Yes.

15 Q Did the committee make the decisions as to  
16 payment of sales taxes? Or, again, was that something  
17 that was left to Miss Oei to negotiate?

18 A To my memory, it was left to Mrs. Oei to  
19 negotiate because I mean we understood the severity of  
20 payment. It's like paying your power. You have to.  
21 There are certain things that absolutely had to be paid.  
22 The employee's electric, utilities, you know, things like  
23 that that we just had -- that were non-negotiable. And I  
24 believe that the sales tax was one of those things that  
25 was really non-negotiable.

1           Q    When the committee -- this cash-flow committee  
2           made a decision as to how a particular vendor was going to  
3           be handled, would it designate someone to deal with that  
4           particular vendor in that matter?

5           A    Whoever -- whoever had the relationship with that  
6           vendor, yes.  Yes, sir.

7           Q    In regards to payment of vendors, if the  
8           committee decided to proceed in a certain way, did you  
9           ever make a different decision and proceed in a different  
10          way?

11          A    Not to my memory, no, sir.

12          Q    So would it be fair to say that you felt you were  
13          bound to honor the decisions of the committee?

14          A    Absolutely.  I mean, if -- at the end of the day,  
15          I suppose that I could have said, no, pay Jim, not Jane or  
16          vice versa.  But I felt all along that if I -- if we  
17          weren't a team, if we didn't have a collective agreement,  
18          or if I didn't honor that collective agreement that that  
19          team spirit -- it was a difficult time for everybody, and  
20          that I would break that.  If I wanted to go left and they  
21          wanted to go right, then I would break that trust or that  
22          hard work that they were doing to try to salvage the  
23          company.

24          Q    Now, if you came to payment arrangement on sales  
25          taxes that required something to be signed, would Mrs. Oei

1 prepare the form and just ask you to sign it?

2 A To my memory, yes. Yes. I remember. I do  
3 remember signing those agreements.

4 Q You didn't personally prepare any of those forms,  
5 did you?

6 A No. No.

7 Q Mr. Lortz, were you ever -- had you ever been a  
8 shareholder of the company?

9 A No, sir.

10 Q Now, at some point in late 2011 -- I think the  
11 creditor was named Celtic or Celtic Capitol, something  
12 along those lines. They actually filed a case in the Kern  
13 County Superior Court to appoint a receiver; is that  
14 correct?

15 A Yes.

16 Q The appointment of -- was Mr. Mullen still  
17 representing the company at the time of this receivership  
18 case?

19 A Yes. Absolutely.

20 Q Did Mr. Mullen recommend that the company consent  
21 and not oppose the receivership?

22 A I -- I didn't -- I wasn't really a part of those  
23 discussions. But I believe if somebody would oppose it,  
24 it would have been him.

25 Q Who -- who was part of those discussions to your



1 knowledge?

2 A To my knowledge, it would have been my father and  
3 Mr. Mullen.

4 Q Did you have a chance to discuss with Mr. Mullen  
5 the payment of the company's bills that would happen  
6 through the receivership?

7 A Yeah. So when they told me that the company was  
8 going to effectively shut down, I knew that there was some  
9 employees that, you know, we have payroll that was coming  
10 up in a few days, right. And, you know, how did -- out of  
11 these employees -- I grew up with these people, you know.  
12 How do these -- not only -- and a lot of those people I'd  
13 worked with has 20-plus years, and it was -- it was a  
14 difficult time, you know.

15 And I said, "Well, you know, how are those people  
16 going to get paid?"

17 And he said through the receivership and that  
18 there would be a claim filed, and they would promptly get  
19 paid. And I -- I asked about -- and I -- I didn't know  
20 any of this, but Mark Hafner who was the CEO or maybe the  
21 president of Celtic Capital, him and I became I  
22 guess fairly good -- he would -- he acted like a father to  
23 me.

24 And he said, "Nathan," he goes, "this is going to  
25 get really rough for the company, you know, when the gates

1 close." He said, "You need to make sure that -- like," he  
2 goes, "I can see your books and there's sales tax." He  
3 goes, "You need to make sure that sales tax gets paid."

4 So I went to Mr. Mullen and I said, "Are we  
5 paying? How are we paying?" We didn't have enough cash,  
6 right, at that second to pay all outstanding sales tax.  
7 How is that getting paid?

8 And he said, "Don't worry. There's a million  
9 dollars' worth of receivables that will be collected. The  
10 assets of the company are valued at probably 4 to  
11 \$5 million. So you add up the debt versus the asset  
12 and -- and there would be more than enough money to pay  
13 those -- those sales tax."

14 Q So in summation, you believe, and Mr. Mullen told  
15 you, that any sales taxes that were owed by the company  
16 would be paid by the receivership?

17 A Yes. Yes, sir.

18 Q Do you have any recollection, as you sit here,  
19 how much was owed in sales taxes at the time the  
20 receivership case was filed?

21 A I -- I didn't know at the time. I mean, looking  
22 back through the documents that -- you know, when all of  
23 this tried to get settled, I think it was \$100,000.

24 Q Do you recall the approximate date that the  
25 company actually ceased operations?

1           A    October 2011.  Maybe October 10th, 2011.

2           Q    Okay.  So based upon the values of the  
3    receivables and the hard assets of the company, did you  
4    believe at the time the receivership case started, that  
5    those assets would be sufficient to pay all creditors of  
6    the company?

7           A    Yes.

8           Q    At some point -- I mean at any point, did you  
9    become aware that your father had received about \$500,000  
10   from the receivership case?

11          A    A couple years ago as we were going through this  
12   case, I had learned that -- that he received money, the  
13   leftover funds after all the -- everything was paid.

14          Q    In the receivership case, were the wage claims  
15   paid to the employees, to your knowledge?

16          A    To my knowledge, yes.

17          Q    In the receivership case, were there any sales  
18   taxes paid out to the Department?

19          A    I don't believe so, or I wouldn't be here.

20          Q    That's true, were you paid anything at all,  
21   Mr. Lortz, from the receivership case when it concluded?

22          A    No, sir.  It wasn't -- it wasn't my company.  It  
23   wasn't my money.  I didn't have rights to it.

24                MR. BRUMFIELD:  I have no further questions at  
25   this moment.

1 JUDGE BROWN: Okay. CDTF, do you want to ask  
2 questions of the witness?

3 MS. JACOBS: No questions, Your Honor.

4 JUDGE BROWN: Okay. Co-panelists, do you want to  
5 proceed with questions?

6 JUDGE GEARY: I don't at this time.

7 JUDGE VASSIGH: I do not have questions.

8 JUDGE BROWN: Okay. I have some questions.

9 MR. BRUMFIELD: Okay.

10 JUDGE BROWN: Mr. Lortz, I guess I want to ask  
11 some more about what authority you had vis-a-vis, the  
12 committee. I understand everything you've said, that the  
13 committee mostly making decisions about paying vendors.  
14 And you said that you knew you needed to set aside some  
15 money for the taxes.

16 MR. LORTZ: Yes, ma'am.

17 JUDGE BROWN: Okay. Can you explain to me what  
18 does that mean? And --

19 MR. LORTZ: So -- so, basically, I can't remember  
20 who created the Excel sheet that we had inbound revenue  
21 that we were collecting, you know, as we completed jobs as  
22 our customer paid us. And we had liabilities, which were  
23 lights and wages and taxes and all those things. And so,  
24 basically, we would try to do a forecast as long as we  
25 could, you know, 4, 6, 8, 10, 12 weeks, and knowing where

1 all of those things would populate.

2 So, for example, if we had an agreement with  
3 Joe's Steel Company, that we would pay them \$10,000 a  
4 month because we owed them a \$100,000, then we would  
5 populate that in one of the columns. So we would see what  
6 our weekly projection of inbound money and outbound money.  
7 And so a lot of times, you know, we -- the team did a  
8 really good job of balancing that. And so there was no  
9 decision ever had to be made.

10 It was just, okay. We forecasted this. The  
11 forecast is correct. We go on to the next week and the  
12 next week and the next week. And then if we see something  
13 in 4 to 6 weeks that is possibly a problem, okay. Well,  
14 we got to figure out how to renegotiate, or let Joe know,  
15 hey, we need one more week because this check that's  
16 supposed to come in for \$500,000 from our customer is  
17 delayed, isn't coming in or it wasn't sent when it was  
18 promised.

19 So there was little things like that that would  
20 move from week to week that -- that basically allowed Mrs.  
21 Oei to cut all the checks that needed to be cut for the  
22 company.

23 Does that answer your question?

24 JUDGE BROWN: Some -- well --

25 MR. BRUMFIELD: Sort of.

1           JUDGE BROWN: I guess I -- I wanted to figure out  
2 more about whether my under -- as we discussed at the  
3 beginning, you, you know, you -- you concede that you knew  
4 that there were taxes not being paid, that there were some  
5 taxes that were not being paid. And I'm trying to figure  
6 out, could you have gotten -- could you have exercised  
7 your authority as president to get those taxes paid?

8           MR. LORTZ: Well, my -- to my understanding,  
9 ma'am, Your Honor, it -- is that we -- those were the  
10 documents that I had signed. Those were the payment plans  
11 that we were paying the State of California. So -- and  
12 part of that is, okay, you have to stay current with your  
13 current taxes. But these taxes that are past due, we need  
14 to pay these back. And -- and those were what the  
15 documents that Mrs. Oei negotiated with the State of  
16 California that I had signed.

17           JUDGE BROWN: So you thought that that took care  
18 of all the payments of the taxes?

19           MR. LORTZ: Yes, ma'am. Yes, ma'am.

20           JUDGE BROWN: At what point did you learn that  
21 there were sales taxes -- there were some sales taxes that  
22 were not being paid? Had -- that were unpaid, that there  
23 were some sort of sales tax liability owed?

24           MR. LORTZ: Well, again, I thought that all the  
25 sales tax we had agreements to pay that. And so I only

1 became really, I guess, ultra-concerned with that when I  
2 knew the company was going to shut down and how do these  
3 sales taxes get paid? Because, again, I thought that we  
4 were current on the payment plan with the State that was  
5 previously agreed upon by Mrs. Oei.

6 JUDGE BROWN: Did you ever learn that the company  
7 was not keeping up with its payments on those sales tax --  
8 on those payment plans?

9 MR. LORTZ: No. I -- I thought that we were  
10 current until the day the company closed the doors.

11 JUDGE BROWN: I have some other questions but  
12 I -- I'll -- I'll ask Mr. Lortz and then I'll say your  
13 attorney may want to -- I don't know if you want to  
14 address it or your attorney wants to address it. It's  
15 more about something that I saw in the briefs that were  
16 filed. There was an argument in one of the briefs that  
17 said that Mr. Lortz by himself didn't have authority to --  
18 didn't have authority to pay more than anything beyond  
19 \$5,000. Was that -- is that correct?

20 MR. LORTZ: Yeah.

21 JUDGE BROWN: With -- with -- on your signature  
22 without --

23 MR. LORTZ: Right. I -- I can't. If the company  
24 had a million dollars to pay Joe Steel Company and that  
25 was approved and all of that, I could not sign that check.

1 I -- the only -- I could sign a check up to the amount of  
2 \$5,000, I believe. And after that then it needed -- it  
3 was two people had to sign it, myself and I think it was  
4 Mr. Coffee and/or Mrs. Oei.

5 JUDGE BROWN: Was that just unofficial procedure?  
6 Was that in the by-laws somewhere? Just the way --

7 MR. LORTZ: I -- I -- that's just the way I was  
8 told --

9 JUDGE BROWN: Okay.

10 MR. LORTZ: -- how it worked.

11 JUDGE BROWN: So then how did you have authority  
12 to sign the installment payment agreement, which was for  
13 more than \$5,000?

14 MR. LORTZ: That's a good question. I -- I mean,  
15 it said that -- Mrs. Oei brought the documents to me, and  
16 she said -- 'cause I knew that we were behind at let's say  
17 2009. I'm sorry it's been so long.

18 JUDGE BROWN: Sure.

19 MR. LORTZ: I might get days mixed up. But she  
20 says, "I've negotiated with the State of California  
21 because we're five or six days behind, and we're going to  
22 get further behind if we -- by what it looks like. You  
23 know, we just don't have the cash to pay this right now."  
24 And she said, "You just have to sign this to" -- basically  
25 it was an agreement. It wasn't a check. It was an



1 agreement to pay those taxes for the company -- on behalf  
2 of the company.

3 JUDGE BROWN: I think that is all I have at this  
4 time, if no one has anything further?

5 JUDGE GEARY: I just would like to indicate that  
6 I may have questions for the Appellant after the  
7 Department gives its presentation.

8 JUDGE BROWN: Okay. I understand. All right.  
9 Then if everyone is ready to go forward and no one needs a  
10 break, then I think we can go ahead and hear CDTFA's  
11 presentation.

12 MS. JACOBS: Okay. Thank you.

13

14 OPENING STATEMENT

15 MS. JACOBS: At the outset, as part of  
16 Appellant's argument addresses the July 2011 and beyond,  
17 we'd like to note that the July 2011 late pre-prepayment  
18 penalty along with the January 2010 failure to  
19 prepay-penalty are no longer in dispute because the  
20 Appeals Bureau recommended removal of those penalties.

21 As you're aware, four elements must be met for  
22 personal liability to attach under Section 6829 of the  
23 Revenue and Taxation Code. First, the corporation must be  
24 terminated. Second, the corporation must have collected  
25 sales tax reimbursement. Third, the person must have been

1 responsible for payment of sales and use tax. And fourth,  
2 the person's failure to pay must have been willful.

3 In this case, Appellant has conceded that there's  
4 no dispute as to the first two elements. Both parties  
5 agree that Lortz and Son closed in 2011, and that it  
6 collected sales tax reimbursement. As to the third  
7 element, whether Appellant was a person responsible for  
8 the corporation's payment of sales and use tax, there is  
9 ample evidence that Appellant was a person responsible for  
10 handling Lortz and Son's sales and use tax matter  
11 throughout the liability period.

12 Responsible person means any person having  
13 control or supervision of or who is charged with the  
14 responsibility for the filing of returns or the payment of  
15 tax, or who had a duty to act for the corporation in  
16 complying any provision of the sales and use tax law when  
17 the taxes became due.

18 In this case, we have evidence that the Appellant  
19 was listed as president in a board of director's meeting  
20 minutes from November 2007. Appellant is listed as the  
21 president and signed as president. That's Exhibit C,  
22 page 339. We also have ACMS notes from appeals conference  
23 in which Appellant stated he became president around April  
24 2007. And we have documentation in a financial summary on  
25 Exhibit C, pages 29 to 31, that the Appellant received

1 officer compensation of \$6,000 biweekly.

2 Now, that we've established Appellant was the  
3 president of Lortz and Son from 2007 through the close of  
4 business operations, we can talk about how he signed the  
5 following document as president of Lortz and Son.

6 Sales and use tax returns for the second quarter  
7 2007 and fourth quarter 2008 periods, that's Exhibit C,  
8 pages 84 to 85; and May 4th, 2010, installment payment  
9 agreement, Exhibit C, page 90; a June 16th, 2011  
10 installment payment agreement, Exhibit C, page 115; a  
11 June 1st, 2011 letter to the Department regarding the  
12 company's outstanding sales and use tax liabilities,  
13 Exhibit C, page 118; a September 30th, 2011 Union Bank  
14 Depositor's Agreement authorizing Appellant as a  
15 signatory, Exhibit E, page 5 through 6; a March 4th, 2010  
16 Power of Attorney authorization form, Exhibit C, page 87.

17 There's no argument or evidence that Appellant's  
18 duties changed during his time as president. Appellant  
19 has repeatedly told us that he was involved in a committee  
20 making weekly corporate financial decisions. It's in his  
21 opening brief, pages 7 through 8, Exhibit C, page 37. And  
22 during the May 16th, 2000, appeals conference, Appellant  
23 conceded that he had authority to make decisions regarding  
24 which liabilities to pay and did not pay the tax  
25 liabilities.

1           That's Exhibit D, pages 2 through 3. Appellant's  
2 role was confirmed in conversations the Department had  
3 with at least three former employees, each of whom  
4 described Appellant as participating in financial meetings  
5 and making decisions regarding who should be paid.  
6 Exhibit C, pages 44 to 48, Exhibit E, pages 23 through 27  
7 and page 29.

8           Based on our evidence, Appellant as president of  
9 Lortz and Son, was responsible for handling and had a duty  
10 to act with respect to sales and use tax matters.  
11 Appellant argues that he was appointed as president  
12 without any formal corporate action, and his title of  
13 president was not official because his father never really  
14 stepped down from running the business.

15           However, this argument is contrary to Appellant's  
16 own statements today that his father did not want to  
17 participate in the financial decisions, and that Appellant  
18 had authority to determine which creditors would be paid;  
19 Exhibit A, page 5, lines 8 through 17, and Exhibit D,  
20 pages 2 through 3, as well as statements from former  
21 employees that Appellant was the final word in making  
22 financial decisions for the company. You can find that at  
23 Exhibit C, page 48, and Exhibit E, pages 23 through 28.

24           As to the fourth element, whether Appellant's  
25 failure to pay was willful, the evidence establishes that

1 Appellant's failure to pay Lortz and Son's tax liabilities  
2 was willful. Failure to pay is willful if the person had  
3 knowledge that the taxes were not being paid and had the  
4 authority and ability to pay the taxes but failed to do  
5 so. As to knowledge, Appellant has conceded that  
6 Appellant was aware that Lortz and Son's taxes were not  
7 being paid.

8 As to the authority to pay taxes, the evidence  
9 shows that throughout the liability period, Appellant  
10 indeed had authority to pay. Exemplified of this evidence  
11 include Appellant's own admissions and statements of  
12 former employees that Appellant directed payments of the  
13 business' liabilities -- which I referenced above -- as  
14 well as Appellant's title as president, check-signing  
15 authority, involvement in the two installment payment  
16 agreements, and other communications with the Department  
17 regarding the sales and use tax liabilities -- the letter  
18 I referenced earlier -- showing that throughout the  
19 liability period, he had the authority to pay.

20 Exhibit E, pages 7 through 22, also show copies  
21 of the Union Bank business checks from March through  
22 September 2011 signed by Appellant only. At least five of  
23 which were over \$5,000, including one for \$27,000, which  
24 contradict Appellant's statements in his opening brief and  
25 today, that he was not authorized to sign checks exceeding

1     \$5,000, as well as the installment payment agreement which  
2     he referenced.

3             Appellant has argued that it's unfair to hold him  
4     personally liable because he was following the advice of  
5     the committee when he chose not to pay the corporation's  
6     tax liabilities. However, his decision to follow their  
7     advice does not relieve Appellant of his authority or duty  
8     as president to act on the sales and use tax liabilities.

9             Finally, as to the ability to pay taxes, the  
10     evidence shows that Lortz and Son had funds to pay the  
11     taxes but used those funds to pay other creditors instead.  
12     For example, the business' Union Bank account statement  
13     shows a balance of over \$286,000 on January 30th, 2010,  
14     the day before the fourth quarter 2009 taxes were due.  
15     And over \$1.6 million on February 6, 2010, two days after  
16     the January 2010 prepayment was due. It's Exhibit C,  
17     page 400.

18             Over \$3.9 million moved through the business  
19     account from February through April 2011 alone. It's  
20     Exhibit C, pages 125 to 147. Payments were made to two  
21     suppliers from fourth quarter '09 to second quarter 2011,  
22     totaling over \$439,000. It's Exhibit C, pages 76 to 82  
23     and 98 to 107. And an EDD wage summary shows that Lortz  
24     and Son paid over \$9.3 million in wages during this  
25     period, Exhibit C, page 112.

1           All of this evidence shows that there were  
2 available funds to pay Lortz and Son's tax liability, but  
3 the funds were paid to other creditors instead. Appellant  
4 implies that based on the installment payment agreement,  
5 he cannot be found willful. However, neither the  
6 regulation or statute provide the entering into an  
7 installment payment agreement discharges the responsible  
8 person from willfulness.

9           Furthermore, in this case Lortz and Son did not  
10 fully comply with the installment payment agreements.  
11 Based on all of the evidence provided here today, the  
12 Department has clearly met its burden of proving all  
13 elements of imposing personal liability to Appellant.

14           For these reasons we request that the appeal be  
15 denied. Thank you.

16           JUDGE BROWN: Panelists, do either of you want to  
17 ask questions of CDTFA?

18           JUDGE VASSIGH: I do not.

19           JUDGE GEARY: I don't have any questions for  
20 CDTFA. However, I think I will have questions for  
21 Appellant, but I want to give counsel an opportunity to  
22 elicit any additional factual information he may wish to  
23 on rebuttal. Before getting into an argument, if he  
24 intends to -- if he intends to elicit additional factual  
25 information, I will wait for him to do that before I ask

1 my questions. Otherwise, I'm prepared to ask now.

2 JUDGE BROWN: Okay. Actually, I have a question  
3 for CDTFA. I'm aware, of course, of third-party taxpayer  
4 confidentiality retirements. So I'm asking this with full  
5 awareness. But I wanted to ask about how much has been  
6 collected -- whether there's any amount that's been  
7 collected on this liability so far because the amount --  
8 we, essentially, will want to know the amount that's in  
9 dispute here.

10 MS. JACOBS: We're not aware that any of the  
11 liability in dispute has been collected.

12 JUDGE BROWN: Okay. So it's the full amount --

13 MS. JACOBS: Correct --

14 JUDGE BROWN: -- at this time.

15 MS. JACOBS: -- other than the two penalties that  
16 I mentioned at the top of my presentation.

17 JUDGE BROWN: Okay. All right.

18 MR. SMITH: Excuse me.

19 JUDGE BROWN: Go ahead.

20 MR. SMITH: May we make one additional point?

21 JUDGE BROWN: Yes. Go ahead.

22 MS. JACOBS: Okay. Appellant also referenced the  
23 receivership. And I'd just like to note that CDTFA did  
24 file a lien, but we're told by the receiver there was a  
25 superior lien. So we did not -- we pursued that, but we



1 were not able to collect in the receivership.

2 JUDGE BROWN: Go ahead.

3 JUDGE GEARY: For the Department, you were  
4 informed by the receiver that there was a superior lien.  
5 Did they identify who the superior lien holder was?

6 MS. JACOBS: Let me see. I believe, yeah, they  
7 did. In Exhibit C, pages 237 to 243, gives the response  
8 from the receiver in relationship to our lien. You can  
9 also find in Exhibit C -- I can reference you the pages if  
10 you would like -- our progression of pursuit in that lien.  
11 But I -- you know, we have lots of tools with which we use  
12 to collect, and that's one of them. But we were not able  
13 to collect through the receivership.

14 JUDGE GEARY: Were there multiple superior liens  
15 or just one superior lien?

16 MS. JACOBS: I believe just one superior lien.  
17 Let me -- do you mind if I look at that page and --

18 JUDGE GEARY: If you could just tell me who the  
19 company was so that I don't have to go through Exhibit C,  
20 I'll let you --

21 MS. JACOBS: It was not a company. It was the  
22 individual that the Appellant mentioned. It was Charles  
23 Lortz Sr. who was the superior lien.

24 JUDGE GEARY: Okay. Thank you.

25 MS. JACOBS: Or it's Charles Lortz Jr. My

1       apologies.

2                 JUDGE GEARY:   Thank you.

3                 MR. BRUMFIELD:   And just so the record is  
4       correct, actually, the superior lien holder is the people  
5       who filed the receivership case.  Which is if you looked  
6       it up with the current county docket, it's either Celtic  
7       Capital or something like that.  They had the number one  
8       lien position because I think they were receivable  
9       financiers.  So I understand they were basically a  
10      factoring company.

11                JUDGE BROWN:   All right.  Then at this time I  
12      will say that if Appellant has any questions about CDTFA's  
13      argument, you can ask questions.  And if not, you can  
14      proceed with your rebuttal.

15                MR. BRUMFIELD:   Well, it sounded like a pretty  
16      good closing argument to me from the CDTFA.  That's how I  
17      took it.  But I wanted to ask Mr. Lortz.  I just have a  
18      couple of questions.  No more than a couple of what came  
19      up in the CDTFA's presentation, if that's okay?  Okay.  
20      I'm getting a nod.  Okay.

21

22                                    REDIRECT EXAMINATION

23      BY MR. BRUMFIELD:

24                Q     Mr. Lortz, the CDTFA attorneys were talking about  
25      some checks that were written for over \$10,000.  And you

1 testified earlier that those -- or over \$5,000, those  
2 required second signature; is that correct?

3 A Correct.

4 Q Now -- -

5 MR. BRUMFIELD: You don't happen to have the page  
6 reference at hand, Counsel? I'm sorry.

7 MS. JACOBS: Let's see.

8 MR. BRUMFIELD: I had it open then I turned away  
9 from it.

10 MS. JACOBS: The many pages are 7 through 22 of  
11 Exhibit E.

12 MR. BRUMFIELD: Okay. Very good. Thank you.  
13 Thank you very much.

14 BY MR. BRUMFIELD:

15 Q Now, Mr. Lortz there are some checks here that  
16 are written for over \$5,000; correct?

17 A Yes.

18 Q What was your understanding as to the need for a  
19 second signature on those checks?

20 A Well, a lot of times I would get the checks  
21 first. Sometimes it was second, but I would sign them but  
22 knew that anything over \$5,000 had to be signed by Mike  
23 Coffee or Diana Oei.

24 Q Okay. So any check that's over that \$5,000  
25 amount, it was your understanding, at least that was

1 supposed to be, countersigned as well?

2 A Yeah. That's what I understood. Yes, sir.

3 MR. BRUMFIELD: I think that's the only -- I  
4 think it could be repetitive of my earlier questions to go  
5 into some of the other issues. I think I'll leave it at  
6 that.

7 JUDGE GEARY: Would this be a good time then for  
8 me to ask a few factual questions?

9 JUDGE BROWN: Go ahead.

10 JUDGE GEARY: Thank you.

11 Mr. Lortz, you started working as -- in sales for  
12 the company when you were 27; is that correct?

13 MR. LORTZ: Well, I mean, I think I was first  
14 employed by the company at 13 or 14 years old. But, yeah,  
15 it's -- and I worked out in the shop. But after, I think  
16 I came back to the company when I was 27.

17 JUDGE GEARY: What else did you do  
18 employment-wise prior to going to work for the company at  
19 age 27?

20 MR. LORTZ: I've worked in various jobs in, like,  
21 civil engineering, like, heavy earth moving, stuff like  
22 that.

23 JUDGE GEARY: Are you an engineer by education?

24 MR. LORTZ: No, sir.

25 JUDGE GEARY: Okay. So when you were appointed

1 as president of the company in 2007, did you ask your dad  
2 why he was appointing you?

3 MR. LORTZ: Yes, and I thought I responded to  
4 that in this hearing. But so how it was explained to me  
5 is that with the title of president, it would be easier  
6 for me to close -- engage with larger customers. Where if  
7 at the 11th hour of a discussion or negotiation of a  
8 contract, that I could say I went -- like, it was  
9 embarrassing to get all the way to the end of a meeting  
10 with a large customer, and them say, "Well, we want better  
11 payment terms," or "we want faster delivery," and me say,  
12 "well, I have to go back and ask my dad."

13 And so it was just more of a figure piece to say,  
14 you know, the -- I could close that deal with them, but  
15 they were -- they felt like the customers would respond  
16 better to that, that they were talking to the guy. It's  
17 like if you called Microsoft Tech support or if you call  
18 Microsoft Bill Gates, right? The difference of feeling  
19 like you have that direct connection to the company.

20 JUDGE GEARY: Were you the guy?

21 MR. LORTZ: I was the guy when it came to getting  
22 things done in sales or production. Obviously, we grew  
23 the company. We spent -- you know, I worked very hard to  
24 grow the company in bringing new orders to the business  
25 and improving efficiencies in the shop. I'm not an

1 accountant. I'm not a financial wiz. I'm just -- I grew  
2 up welding and working hard. And I wanted to take what my  
3 grandfather and father had worked their whole lives and --  
4 and finish it, you know, and keep growing it.

5 I have -- I have two young boys, you know. And  
6 the sad thing today is that number one, you know, we've  
7 lost the family business, you know. And that's a tragedy  
8 for California, right? If you talk about a company  
9 bringing \$30 million a year in tax base and a couple of  
10 hundred jobs, it's a big deal. It's a tragedy. And we  
11 did everything we could to keep the business afloat. But  
12 at the end of the day, I've got -- I'm just working for  
13 wages now.

14 I didn't -- I wasn't a shareholder. I didn't own  
15 the company. I didn't receive any benefit from the  
16 company, any of those things. And today I have a job,  
17 right, which I have no idea how I would pay off \$200,000.  
18 It'll destroy my family. I have two young boys that I'm  
19 trying to raise and -- and grow, and I don't -- I told --  
20 I told my attorney, you know, at the end of the day I  
21 don't think, like, ignorance is any defense. I really  
22 don't.

23 If -- did I get myself in a position where I  
24 shouldn't have been? Absolutely. But you guys talk  
25 about -- I listened to the counsel of the company. Our

1 attorney says, "Well, the sales tax will be taken care of.  
2 It'll be paid." Okay. So the receivership goes through,  
3 and I didn't have anything to do with that. But at the  
4 end of the day, my father walks away with \$500,000 and  
5 doesn't pay the sales tax. Why am I sitting here in front  
6 of this board? I wasn't the one that ended up with the  
7 money to afford to be able to pay this. It wasn't my  
8 company. Why -- why am -- why am I the person here?  
9 That's -- that's it.

10 JUDGE GEARY: Were you making \$6,000 biweekly  
11 when -- in your sales position too?

12 MR. LORTZ: Yes.

13 JUDGE GEARY: Your dad stayed on as CEO after you  
14 became president?

15 MR. LORTZ: Yeah, he was the same owner.

16 JUDGE GEARY: But at some point, I heard in your  
17 testimony and I read in some of the documents, your father  
18 was withdrawing from active involvement in management of  
19 the company?

20 MR. LORTZ: No. So my father -- it was my  
21 father's business. My father didn't like dealing with  
22 problems. My father liked building stuff in the shop and  
23 going to lunch with his friends. And so when there were  
24 problems -- and so, for example, in 2000 -- gosh, I  
25 apologize. In 2009, I went -- Diane -- we knew the

1 company was -- the backlog was shrinking. We're getting  
2 tight on cash flow.

3 I said to Diane, I said, "We need to come up with  
4 a plan. We can't just close our eyes and hope this is all  
5 going to get better." And so part of the plan that she  
6 came up with was a reduction of 30 percent of the  
7 employees.

8 So we took that plan to my father and said,  
9 "Look, this is what we have to do. If -- if we want to  
10 live -- we need to trim the tree, right, or the tree is  
11 going to die."

12 And he said, "I don't care." He said, "Run it  
13 until the wheels fall off. I'm not firing any employees."  
14 I respect that. I mean, he -- he had respect for his  
15 employees which you don't see a lot of today, but -- so I  
16 can't override him. I can't say, "Well, you're wrong." I  
17 guess I could have quit and left the business, but it's  
18 kind of hard to do in a family business.

19 JUDGE GEARY: As president you answer to him as  
20 the CEO?

21 MR. LORTZ: Yes, sir.

22 JUDGE GEARY: And did the people on the  
23 committee, they were inferior to you in the pecking order  
24 of management?

25 MR. LORTZ: Sure. I mean, I was the boss's kid.



1 So, yeah. Equal to or -- I mean, like Diana Oei -- well,  
2 yeah. Let me -- let me say this. Diana Oei reported  
3 directly to my father. You know, if you looked at an  
4 order chart, that reporting line didn't come to me. Jean  
5 Dolk or Joe Granite, the head of Product Value Team, I  
6 think he was equal to me. You know, we are on the same  
7 line as in the order chart, if that makes sense.

8 JUDGE GEARY: Thank you. Those were the only  
9 questions that I had.

10 JUDGE BROWN: Okay. I think I have a few  
11 follow-up questions. When we were discussing what the  
12 issues are, we confirmed at the beginning that Appellant  
13 concedes that he had knowledge that the taxes at issue  
14 were unpaid. But then that seems to contradict what  
15 Mr. Lortz's testimony was. Earlier, Mr. Lortz, it seemed  
16 to me like you were saying you didn't know that the taxes  
17 were unpaid.

18 MR. LORTZ: Well, I -- I knew that they were  
19 unpaid in the sense of -- that we were in a -- I believe  
20 we were in a payment plan to pay those unpaid taxes. So  
21 maybe that's just dicing the word up, or maybe I'm saying  
22 that wrong. But we wouldn't be in a payment plan if we  
23 had paid our taxes, I guess. So yes, in a sense I knew  
24 there was unpaid taxes.

25 I thought that we were taking the correct steps

1 to rectify that and had an agreement with the State of  
2 California. And, ultimately, at the end, I thought that  
3 the receivership would have to pay those taxes, that there  
4 was no -- that there was nothing more, I guess as you guys  
5 stated as a superior position, whatever that means.

6 What -- what can be higher than paying the State, right?

7 JUDGE BROWN: Okay. So your knowledge was just  
8 based on the fact that you knew that the company had  
9 entered into these installment payment agreements?

10 MR. LORTZ: Yes, ma'am. Yes.

11 JUDGE BROWN: Okay. Let me go back to CDTFA  
12 about the installment payment agreements.

13 MS. JACOBS: Yes.

14 JUDGE BROWN: Ms. Jacobs, you indicated that the  
15 company at different points did not comply with the  
16 installment payment agreements?

17 MS. JACOBS: Correct.

18 JUDGE BROWN: I'm sure it's in the evidence, but  
19 can you walk me through when there was noncompliance?

20 MS. JACOBS: Sure. So it's indicated in the  
21 letter -- let me find the page number. Apologies. It's  
22 indicated in the June 1st, 2011, letter, Exhibit C,  
23 page 118, that the first installment payment agreement was  
24 canceled because of a request not to make payment and a  
25 request to skip payment. So then that's when the

1 June 2011 installment payment agreement was entered into.

2 And there was -- can you hold on a second? Can I  
3 confer?

4 JUDGE BROWN: Sure. Sure. Yes.

5 MS. JACOBS: So there was a partial payment in  
6 July 2011 which the penalty itself is evidence of -- in  
7 which they paid \$304 instead of \$19,804. And then in --  
8 there were September and October payments that --

9 JUDGE BROWN: September and October of which  
10 year?

11 MS. JACOBS: September 2011 and October 2011  
12 payments that bounced, but those are outside of the  
13 liability period.

14 JUDGE BROWN: Right. I was just about to ask  
15 that.

16 MS. JACOBS: So we didn't, yeah, submit. We have  
17 evidence that it was not submitted because it's outside of  
18 the liability period. We're not asking for -- yeah.

19 JUDGE BROWN: So if outside of the liability  
20 period, I --

21 MS. JACOBS: I guess it's --

22 JUDGE BROWN: In terms of making my findings --

23 MS. JACOBS: Yeah. It's still related to the --  
24 it's related to those payments but --

25 JUDGE BROWN: What was the date of the

1 receivership?

2 MS. JACOBS: The date of the receivership, I  
3 believe, was October 19th, 2011, is when they entered into  
4 the receivership.

5 JUDGE BROWN: Okay. So you're saying it was a  
6 nonpayment that occurred before the receivership?

7 MS. JACOBS: Correct.

8 JUDGE BROWN: Okay.

9 MR. SMITH: If I may add, I believe the second  
10 installment payment agreement was entered into after any  
11 unpaid taxes or penalties that are still in dispute in  
12 this appeal. So I don't know how relevant that is.

13 JUDGE BROWN: Well, so I'm trying to narrow down  
14 what -- which exactly are the unpaid taxes that he was  
15 aware of at -- at where there was noncompliance with the  
16 IPA.

17 MS. JACOBS: So we have evidence -- I mean,  
18 Appellant's own admission that he participated in the  
19 weekly meetings of the corporate financials, including  
20 discussions on the sales and use tax liabilities. So I  
21 can point you to that evidence, which is the opening  
22 brief, pages 8 through 9; Exhibit A, pages 5 through 6;  
23 and Exhibit D, pages 2 through 3, as well as testimony of  
24 several former employees that stated that the Appellant  
25 was kept apprised of the sales and use tax liabilities, so

1 Exhibit C, pages 44 and 48, and Exhibit E, pages 23 to 27,  
2 and page 29.

3 It's also for responsible person liability. They  
4 had the duty the authority and ability when the taxes  
5 became due. So it's our position that an installment  
6 payment agreement does not discharge someone of  
7 willfulness.

8 JUDGE BROWN: So you're saying that -- and I do  
9 recall you made this agreement at the beginning, but I  
10 just want to confirm. You're saying that even if the  
11 company was in complete compliance with the IPAs -- with  
12 the IPA, that there could still be responsible person  
13 liability in this case because the IPA in of itself  
14 existed, and it wasn't paid off?

15 MR. SMITH: Yes. And we have the additional  
16 argument. You know, I think you're aware that the prior  
17 board treated an IPA as a get out of free card, but that's  
18 nowhere in law. It's not in regulation. It's not in the  
19 statute. And so we wouldn't concede that someone who  
20 complied with an IPA automatically couldn't be held  
21 responsible.

22 JUDGE BROWN: And I guess -- I understand that  
23 there's two prongs to this argument.

24 MS. JACOB: Right.

25 JUDGE BROWN: One is that what we were just

1 discussing and the other one is even so; you're arguing  
2 that there wasn't compliance with the IPA?

3 MS. JACOBS: Correct. Correct. That --

4 JUDGE BROWN: I want to make sure I'm covering  
5 all the bases here.

6 MS. JACOBS: Correct. Yeah. There were broken  
7 promises. Like the initial IPA, the May 2010 IPA, that  
8 was cancelled. That promise was canceled because of  
9 failure to make payments, which Appellant references in  
10 the June 1st -- I think it's the June 1st letter.

11 JUDGE BROWN: Okay. Let's see. I think those  
12 are all my questions at this time. Do my co-panelists  
13 have any further questions?

14 JUDGE GEARY: No.

15 JUDGE VASSIGH: I do not.

16 JUDGE BROWN: Okay. I'm trying to make sure I  
17 covered everything. Okay. Then I'm going to say,  
18 Mr. Brumfield, does Appellant -- I think you had indicated  
19 you wanted to make some additional argument or statements?

20 MR. BRUMFIELD: A couple of the exhibits that  
21 were raised by the Department's presentation, I just had  
22 a -- a couple of questions about to get on the record.  
23 Not a lawyer's couple. Just maybe four or five questions,  
24 if that's okay.

25 JUDGE BROWN: Okay. Go ahead.

1 FURTHER REDIRECT EXAMINATION

2 BY MR. BRUMFIELD:

3 Q Mr. Lortz, I'm looking at Exhibit C, page 115.  
4 It says 115 of 416 is how it's labeled, Installment  
5 Payment Agreement. It appears to me by your signature  
6 it's dated June 16 of 2011. Do you see that?

7 A Yes, sir.

8 Q Did you prepare any of the content of this  
9 agreement?

10 A No.

11 Q Who prepared this?

12 A Diana Oei.

13 Q I see a schedule of installment payments near the  
14 top. And it says, "I agree to make payments of \$5,000  
15 every other Friday, beginning July 1, 2011." Do you see  
16 that?

17 A Uh-huh.

18 Q Is that something that Ms. Oei had negotiated?

19 A Yes.

20 Q Had you negotiated that?

21 A No.

22 Q The handwriting on this, the signature is yours  
23 on this document?

24 A Yes, sir.

25 Q The handwriting, do you recognize who the

1 handwriting is?

2 A It's Diana Oei's.

3 Q And you didn't prepare any of the terms of the  
4 agreement or the schedule of payments portion?

5 A No, sir.

6 Q On page 118 of Exhibit C, there's a letter dated  
7 June 1, 2011, addressed to the State of California Board  
8 of Equalization to a Ms. Deanna Lorenzana. Do you see  
9 that?

10 A Yes, sir.

11 Q This appears to bear your signature; is that  
12 correct?

13 A Yes, sir.

14 Q Did you prepare this letter?

15 A No, sir.

16 Q Who prepared this letter?

17 A I believe it was Diana Oei.

18 Q It looks like it's talking -- near right above  
19 your signature about two paragraphs up -- it's talking  
20 about a payment arrangement for a balance of \$143,732.76.  
21 Do you see that?

22 A Yes, sir.

23 Q Is that something that you negotiated, this  
24 payment arrangement?

25 A No. It says right there. "Per your discussion



1 with Diana Qei."

2 Q And Diana had made -- had engaged in those  
3 discussions to your understanding?

4 A Yes, sir.

5 MR. BRUMFIELD: I think that's all I have.

6 JUDGE BROWN: Okay. Does anyone have anything  
7 further, then?

8 JUDGE GEARY: No.

9 JUDGE BROWN: No. All right. At this point we  
10 can conclude the hearing and close the record. I would  
11 like to thank everyone for --

12 MR. BRUMFIELD: Unless you want to have closing  
13 argument.

14 JUDGE BROWN: Oh.

15 MR. BRUMFIELD: And you may or may not. I don't  
16 know.

17 JUDGE BROWN: I guess I thought that everything  
18 was covered. If you have additional argument, I will --  
19 I'll hear it, but I thought we covered everything.

20 JUDGE GEARY: We -- I asked you to elicit your  
21 factual information, and then we would ask some additional  
22 questions, which we did. I have not yet heard any  
23 rebuttal argument from you, except maybe a few words as  
24 you were eliciting additional information from your  
25 client. So I think probably if you wanted to take a few

1 minutes in rebuttal, that we would allow that.

2 JUDGE BROWN: Yeah. I would allow that. I  
3 thought you had made your argument.

4 MR. BRUMFIELD: Well, in essence perhaps. I was  
5 thinking of more in terms of a trial presentation where  
6 people make closing arguments and someone responds. And  
7 CDTEFA's presentation was really just an argument. And so  
8 that's sort of was -- that's how I took it.

9 JUDGE BROWN: If you would like to make argument  
10 on rebuttal you can proceed.

11 MR. BRUMFIELD: Sure. I will try to keep it  
12 succinct though for everybody.

13 JUDGE BROWN: Okay.

14

15 REBUTTAL STATEMENT

16 MR. BRUMFIELD: First, of course, I want to thank  
17 the panel for being here today.

18 JUDGE BROWN: Oh, and I will just confirm. I  
19 rescind what I said about closing the record. We're still  
20 on the record.

21 MR. BRUMFIELD: That's right. Keep on -- keep on  
22 typing.

23 Thank you, panel, for being here today. There's  
24 a couple of matters I want to focus on. First, this is  
25 not a case where the company or my client, Nathan Lortz,

1 engaged in actions that equate to an abject failure to pay  
2 sales taxes. Throughout the periods in question, I think  
3 it's been made clear. The payments were being made.  
4 Regular open channels of communications were with the  
5 Department. Installment arrangements were made. Payments  
6 were made and so forth.

7 This is not a situation where the taxpayer, as is  
8 often a taxpayer in similar situations I have seen, and  
9 I'm sure you have seen, simply sticks their head in the  
10 sand and says, "Forget it. I'm not paying. I'm not  
11 communicating."

12 I have referenced the installment agreement at  
13 page 118 of Exhibit C. And at least in the records that  
14 we have, which are, unfortunately, only the ones that the  
15 Department can provide because Mr. Lortz does not have  
16 access to any financial records, nor do we know where they  
17 are. If you look at the bank statements on page 139 of  
18 Exhibit C and 146 of Exhibit C, they show significant  
19 payments being made. Those two months alone are about  
20 \$110,000 to the board -- to the Department.

21 So there's -- and one of the payments, \$56,000,  
22 was the exact amount that had been agreed to in a prior  
23 installment agreement. Now, I don't know what payments  
24 were made after that. Like I say, I don't have the bank  
25 statements.

1           I do want to comment on something that the  
2 Department brings up. They bring up some arguments in a  
3 brief that was filed. Arguments aren't evidence. Just as  
4 me saying here right now and arguing is not evidence.  
5 That's -- it's not admission of anything, and it shouldn't  
6 be taken that way. It is absolutely zero evidentiary  
7 value.

8           Now -- and I also want to discuss briefly the  
9 weight of the evidence. I know that you're not bound by  
10 specific hard rules of evidence as if we were in a  
11 California state trial court. I understand that. But I  
12 don't think that it's really appropriate for the OTA to  
13 base its decision on unsworn statements of Mike Coffee,  
14 who concludes his statement, when you read it, of "I got  
15 to get off the phone. I'm not filing anything. I'm done  
16 with this thing. I'm owed money," is in essence what he  
17 says or Diane Oei, or Jean Dolk or Cynthia Schinnour.

18           Now, as to the weight of the evidence, somebody  
19 saying something to an employee of the Department who then  
20 relays it and they're trying to take it at face value,  
21 that's quite frankly double hearsay. I mean, that's --  
22 these people aren't even submitting declarations. I mean,  
23 if they were submitting declarations, I might feel  
24 differently. Quite honestly, to not state the phrase in  
25 full, I think their statements are basically their own

1       CYA. There's no doubt about it. Testimony of Mr. Lortz  
2       makes that very clear.

3               Third, I don't know how to comment, and I'm not  
4       saying the State should have gone wild in the receivership  
5       case to try to collect money. That's not their  
6       obligation. I'm not going to say it is. I mean, I would  
7       have liked it if they did, but they don't have to. But I  
8       find that case a complete mystery as to why the receiver  
9       is paying employees who don't hold a secured lane, but not  
10      paying sales taxes, who don't have a secured lane, and  
11      then returns money to Mr. Lortz, but the order that was  
12      referenced says it's being returned to the company.

13              I -- it's -- it's baffling. The company had more  
14      than enough money to pay the sales taxes at hand, no fault  
15      of Mr. Lortz who is sitting here. I think we've covered  
16      some of the, you know, the elements of 6829. We  
17      certainly -- we've certainly gone through them. And I  
18      think that the committee involvement is telling what  
19      Mr. Lortz's actual role was in that committee and role as  
20      president. I think clearly, it does not establish any  
21      kind of willfulness, certainly, based upon how the company  
22      was setup to be operated and the payment of the taxes.

23              There's no intentional conscious or voluntary  
24      course of action not to pay the taxes in question. And I  
25      think Mr. Lortz is entitled somewhat, and I know the law

1 is tilted in the department's favor as to finding  
2 liability. But when you rely on a group of professionals,  
3 including the corporate lawyer and the longtime owner of  
4 the company and acting in compliance with that, that seems  
5 to me to be absolving right there. And that would be my  
6 reference probably to 18, Code of -- excuse me --  
7 California Code of Regulation 1702.5.

8 At the time -- and all these statues, the 6829  
9 and 1702.5, all reference not paying taxes at the  
10 termination or conclusion of the business. Mr. Lortz left  
11 the company in a position where those taxes should have  
12 been paid. You know, the receivership coming in is  
13 nothing more than almost another committee directing how  
14 things are going to get paid. I don't know what the  
15 receiver did. Quite frankly, I would have never consented  
16 to a receivership if someone would have asked me.

17 I would have said put this into Chapter 7 where  
18 taxes have a high priority and they're going to get paid,  
19 and Mr. Lortz wouldn't be sitting here. I think that was  
20 just terrible advice. But, obviously, those decisions  
21 were made eight years ago that we can't change. But we  
22 certainly can -- can look at the intent of Mr. Lortz and  
23 whether he even had control to be able to pay the taxes at  
24 that time, and he didn't.

25 I think on the 60 -- Revenue and Taxation Code

1 6592 issue which talks about the failure to make payment  
2 or file a return is due to reasonable cause and  
3 circumstances beyond Mr. Lortz's control. And occurred  
4 notwithstanding the exercise of ordinary care and absence  
5 of willful neglect. I think that's been made obvious by  
6 the testimony, which is uncontradicted by the way. And  
7 certainly uncon -- only thing contradicted by is double  
8 hearsay statements.

9 But there should definitely be relief from the  
10 penalties, absolutely under 6592. And we think that  
11 should tie over to the taxes as well. The responsible  
12 liabilities should not be found. Thank you.

13 JUDGE BROWN: Okay. All right. Now, does anyone  
14 have anything further?

15 MR. BRUMFIELD: Nope.

16 MR. SMITH: No.

17 JUDGE BROWN: Okay. All right. If no one has  
18 anything further, then I would -- at this point I will say  
19 that we can conclude the hearing and close the record.  
20 And I'd like to thank everyone for coming today.

21 Following the hearing, my co-panelists and I will  
22 discuss the evidence and arguments, and then we will issue  
23 a written opinion within 100 days of today's hearing.  
24 Thank you all very much.

25 The record is now closed.

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(Proceedings adjourned at 12:21 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 23rd day of December, 2019.

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