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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF, )  
 )  
PAUL NEUFELD, ) OTA NO. 18083558  
 )  
 )  
 APPELLANT. )  
 )  
 \_\_\_\_\_ )

Transcript of Proceedings, taken at  
400 R Street, Sacramento, California, 95811,  
commencing at 10:00 a.m. and concluding  
at 10:27 a.m. on Tuesday, November 19, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ JEFF ANGEJA

Panel Members: ALJ ANDREW KWEE  
ALJ AMANDA VASSIGH

For the Appellant:

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
By: JARRETT NOBLE  
MONICA SILVA  
KEVIN HANKS

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I N D E X

E X H I B I T S

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

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1 Sacramento, California; Tuesday, November 19, 2019

2 10:00 a.m.

3

4 JUDGE ANGEJA: We're now on the record in the  
5 Office of Tax Appeals oral hearing for the appeal of Paul  
6 Neufeld. Case ID is 18083558. We're in Sacramento,  
7 California. The date is Tuesday, November 19th, and the  
8 time is approximately 10:00 a.m. November 19, 2019,  
9 obviously. My name is Jeff Angeja. I'm the lead  
10 Administrative Law Judge for this hearing. My fellow  
11 co-panelists today are Andrew Kwee and Amanda Vassigh.

12 Mr. Neufeld, could you please identify yourself  
13 for the record.

14 MR. NEUFELD: My name is Paul Neufeld.

15 JUDGE ANGEJA: All right. And for CDTFA, please  
16 identify yourselves for the record.

17 MR. NOBLE: Jarrett Noble.

18 JUDGE ANGEJA: You need to speak into the  
19 microphone, please.

20 MR. NOBLE: Jarrett Noble.

21 MS. SILVA: Monica Silva.

22 MS. HANKS: And Kevin Hanks.

23 JUDGE ANGEJA: All right. And as parties agreed  
24 during our prehearing conferences in this matter, this  
25 appeal involves one issue, which is whether Appellant is

1 personally liable under Revenue and Taxation Code Section  
2 6829 for the unpaid tax liabilities of California  
3 Retreaders Inc.

4 And during our prehearing conference, the parties  
5 agreed to the admission into evidence of Appellant's  
6 Exhibits 1 through 2. Those have been attached to your  
7 briefs. That's what you identified, and you didn't have  
8 anything further. Is that still correct?

9 MR. NEUFELD: Correct.

10 JUDGE ANGEJA: All right. CDTFA, had Exhibits A  
11 through D. Neither party had objections to the admission  
12 of any of these. You didn't object to A through D of  
13 CDTFA's exhibits.

14 If that's still correct, I will hereby admit  
15 those exhibits into the record.

16 (Appellant's Exhibits 1-2 were received  
17 in evidence by the administrative Law Judge.)  
18 (Department's Exhibits A-D were received in  
19 evidence by the Administrative Law Judge.)

20 JUDGE ANGEJA: And based on the prehearing  
21 conference, it's my understanding Mr. Neufeld will testify  
22 as a witness today --

23 MR. NEUFELD: Yes.

24 JUDGE ANGEJA: -- on his own behalf. And CDTFA  
25 has no witnesses. And we agreed during the prehearing

1 conference we will begin with Appellant's testimony and  
2 argument. It should not exceed 15 minutes. We don't have  
3 to be super strict. And CDTFA will be allowed to ask  
4 questions if they wish, as with the panel of judges.  
5 CDTFA will then make their presentation not to exceed  
6 15 minutes, and the co-panelists will be allowed to ask  
7 questions if they wish.

8 And with that, I can swear you in, and we can  
9 start. Mr. Neufeld, stand and please raise your right  
10 hand.

11

12

PAUL NEUFELD,

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

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JUDGE ANGEJA: All right. Thank you. And  
Mr. Neufeld, when you're ready, go ahead and begin. You  
just have to tell your story.

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MR. NEUFELD: Thank you for this opportunity.  
It's been a heavy burden for quite a while on my family.  
In 2005 I was approached by Matt Schoettler whose father  
owned California Retreaders -- but it wasn't called that,  
it was called Schoettler Tires at the time -- and he said  
his dad had bladder cancer and they wanted to know --

1 because he, the son, was going to take over the business  
2 -- wanted to know if I wanted to buy in.

3 I was a very successful salesperson for that  
4 company. I had done very well. I was very blessed. I  
5 talked -- my wife and I talked about it and we saw the  
6 opportunity to -- 'cause that business had about 100  
7 employees at the time, and we thought -- my background as  
8 a youth pastor and as a people person, I -- maybe some of  
9 you guys want to know. My e-mail is "Freddy67."

10 In the '90s when e-mail came out, I was the  
11 mascot for Fresno Falcons, just to give you background on  
12 who I am, a goofy. That's what I -- I love people. I  
13 love kids. So my wife and I talked about it and we  
14 thought it might be a wonderful opportunity for us to make  
15 a difference in people's lives. You know, people that  
16 didn't always have chance or a chance to have a job.

17 So we borrowed the maximum money, \$250,000, on my  
18 house. And I had almost \$300,000 that I managed to save  
19 up over my lifetime, and we borrowed \$100,000 from my  
20 mother-in-law. We put all of that into the business.  
21 Biggest mistake in my life not knowing what I was getting  
22 into. I'm not college educated, but a lot of people  
23 aren't. But I do know how to work. I get up every  
24 morning, 4 or 5 o'clock, and I know how to physically  
25 work.



1           This mess that I got into with this group of  
2 folks has cost me my health. It's cost me everything. In  
3 2014 my home went up for auction right before Christmas.  
4 It's hard to look at your kids and your wife in the face  
5 and say, "Yeah, your dad screwed up." I mean, it's for my  
6 business association, but you know what? It always works  
7 out. Life goes on, and we have American problems here in  
8 America. We don't have real problems in this country.

9           So buying into the Schoettler Company, Matt, who  
10 is my partner -- and there's another partner too named Tom  
11 Howard who also bought in, who was also screwed out of his  
12 \$250,000 that he put into the business. And he wouldn't  
13 have known any of this stuff. He was kind of a silent  
14 partner. He was informed of it. He got ripped off just  
15 like I did.

16           Matt agreed that my wife was going to work for  
17 him, 'cause my wife was a -- worked in offices. And she  
18 was going to help Matt out, run the retread shop. I was  
19 going to handle the sales department and all the sales.  
20 I'm a sales guy. That's what I do. I don't -- I'll help  
21 your tax issue out, but you guys probably -- I have no  
22 way. I don't know how to calculate sales tax. I've never  
23 done that. I don't understand how that gets done. It's  
24 not what I do, and I'm sure it's owed to you.

25           In 2009 we started having -- in '08 or '09 when

1 the economy went bad, things started getting really  
2 horrible. We started having major money problems with the  
3 company. We had blown through the money I had put into  
4 the company. Mr. Schoettler didn't put money in because  
5 it was his dad's company.

6 Prior to that -- I'll tell you a little bit of  
7 what else I did. I was able to get 52 at-risk youths or  
8 former felons work at my company, and that company is  
9 California Retreaders. And I came and spoke to your  
10 assembly twice about giving people a second chance. And I  
11 brought two of the guys up here with me, guys who have  
12 never had a suit. I went out and bought them a suit and  
13 brought them up here just to show other businesses, and  
14 anybody in here that owns a business, felons will make  
15 some of the best employees you could ever dream of having  
16 because nobody will give them a freaking chance.

17 Nobody gives them a chance. And that was my  
18 goal. If 52 -- this is what it's like to have a woman  
19 come into your office that's 40-years old and show you her  
20 driver's license for the first time because she's lived in  
21 a halfway house her life, and she's bawling. I mean,  
22 that's -- that's what this was all about for me, was  
23 making a difference. That's all I cared about.

24 When we bought in, we had no idea it was going to  
25 be this crazy. But what I didn't know is that when I

1 bought in, that he had his wife working for the company  
2 who never -- she didn't even know where the place was --  
3 his two kids. His brother worked for the company. His  
4 kids worked for the company. They're all making \$8,000 to  
5 \$10,000 a month, which is ridiculous. So I start throwing  
6 a fit, but I'm only 50 percent owner of this company.

7 We started having major money problems. We can't  
8 pay our bills. We bounced a whole payroll. You got 80  
9 people on payroll, and you bounce a payroll. That was one  
10 of the worse days in my life when I found that out and had  
11 to borrow money on my credit cards. I did everything I  
12 could to get these people paid. I don't know why the  
13 taxes weren't being paid except that there was usually no  
14 money to pay people where PG&E were -- they were making --  
15 we were making payments to PG&E.

16 And I became involved once everything started  
17 going haywire because my name is attached to everything.  
18 I'm getting phone calls from, like, the gasoline company,  
19 from people, hey, are you guys going to pay us? We can't  
20 sell you rubber. We can't do this. We owed Michelin \$3  
21 million at that point. In one of the -- in the Exhibit C  
22 of the main paperwork, it says, "Paul Neufeld was the Vice  
23 President, Secretary, CFO, and Director of the this small  
24 closely-held corporation.

25 We were doing almost a million dollars a month in

1 business. To me that's not small. Maybe that is small.  
2 I don't know. A million dollars a month is not a small  
3 closely-held corporation. It was closely held by the  
4 Schoettler family, which Mr. Schoettler still owns half  
5 of, the other side of the Schoettler business.

6 I signed, absolutely. I signed checks. People  
7 knew who I was. Absolutely, I had the authority to do  
8 that. But I didn't have the authority to go, "Hey, I'm  
9 not paying people this week," or, "not going to pay the  
10 rent." I wasn't doing all that. And to pay the tax  
11 liability, you know, the government should be the first to  
12 get paid. But I think people look at that and say, "Ah,  
13 they'll be all right."

14 So in 2009 I went to Michelin and said, "We have  
15 some serious problems here." Mr. Schoettler and I were  
16 not on speaking terms at that point. It was a bad deal.  
17 And I told Michelin who owned the rights, I talked -- we  
18 had a retread plant, truck tires. You bring a whole truck  
19 tire to the front and on -- put a new one on there. The  
20 environmental -- you can't open one of those right now.  
21 You can't get one opened because the environmental  
22 responsibility is so bad and so big.

23 It's like opening a waste plant. You just can't  
24 go do it. So we had one of them. There's only two in the  
25 State of California, is what this retread plant was. It

1 was a very difficult thing. If you started it now, it  
2 would probably be a process. It would probably be  
3 \$5 million to get permits and everything to get it done.  
4 It's not just something that overnight can be done.

5 Michelin knew all along and I found out  
6 afterwards, that Mr. Schoettler and I were not going to be  
7 able to keep the company going, you know. Neither one of  
8 us -- if you're doing \$10 million a year and you have zero  
9 dollars in your bank account to fund, you have no cash.  
10 And then most of our business was not a cash business any  
11 way.

12 We would bill customers and Michelin would give  
13 us credit back on our rubber that was purchased. So there  
14 is -- it was a very cash-poor business. When things went  
15 bad and we went to Michelin -- I went to Michelin and  
16 said, "Hey, I want out. I need to get out of this thing."

17 They said, "Hey, we got guys that we want to  
18 bring in, Jack's Tire and Oil." They are huge and very  
19 large. They are one of the largest retreaders in the  
20 country. They wanted to bring them in and buy the  
21 corporation. So they brought Jack's Tire in. And because  
22 Mr. Schoettler and I were not speaking and -- I started  
23 raising some questions about the illegality of what I felt  
24 they were doing when they purchased this thing.

25 If you look at the purchase agreements that's in

1 the documents, you'll see that in the escrow, they  
2 purchased a \$10 dollar company for \$55,000. And nobody  
3 finds that weird, and I'm flabbergasted at that. They  
4 paid \$55,000 to the escrow, is all they paid for a \$10  
5 million company. Trucks -- the building was 62,000 square  
6 feet, which was paid for separate. That wasn't part of  
7 this purchase. That's paid for separate.

8 The building was full of equipment, 15 computers.  
9 It's all on this on what they paid for in the escrow.  
10 \$55,000. And so the argument from the tax board was, hey,  
11 Mr. Paul, what makes you think they owed 55-grand for this  
12 business? What makes you think that they would have paid  
13 another dime of your -- he's supposed to take care of the  
14 tax liability. It was in the notes. The tax liability  
15 was in the escrow instructions. It's in -- it's in your  
16 paperwork that you have from the Office of Tax Appeals  
17 here that it was in there.

18 During the process of selling the business -- it  
19 was a room like this and more lawyers than there are here  
20 now in that room, and we're going around this table  
21 signing I don't know how many documents. Michelin was  
22 there. The banks were there. It was insane. And then  
23 all of a sudden it was brought to my attention, hey, they  
24 took out the tax of the -- the \$40,000 that you owe the  
25 State. They took it out. It's not in there. And it was

1 in there. You'll see that in the documents. It was in  
2 there and the day of, they take it out.

3 Stop. Stop the presses. That's when I went and  
4 talked to it Andrew Kache who was your guy in Fresno, who  
5 was a wonderful man. And what I understood from him --  
6 and call me naive because I didn't get it in writing, and  
7 I saw and read his response -- but when you have a company  
8 like a retread company that's operating in the same  
9 building doing the exact same thing with the exact same  
10 employees, they have to get a tax-use permit to continue  
11 doing that business.

12 And Andrew said they would not give them a tax  
13 permit or a use permit unless they paid that tax that was  
14 due, which was supposed to be in the escrow. But then now  
15 I found out while it was in writing, that's kind of not  
16 what he said. But that's what I understood him to say  
17 when I left that office was, "Mr. Neufeld they are not  
18 going to be able to continue that business until they  
19 satisfy this judgement -- this need."

20 I would have -- I would have just dropped my pen  
21 and sat in the corner and with the amount of money that  
22 was being charged per hour for signing those documents at  
23 that time, they would have had to wrote -- handwrote that  
24 in and paid that money if I would have thought that they  
25 would have done this to me and my family since then.

1           There's over -- on that escrow, there's over  
2     \$200,000 of assets just on that page, one page of escrow  
3     that they paid \$55,000 for. I mean, you got a truck that  
4     was a big semi-truck that's three years old. You've got  
5     pallet jacks. You've got these things called emblems.  
6     We've got over 300 of them, and it cost over \$100 a-piece.  
7     And somehow, they get away with paying \$55,000.

8           Because this -- when they started doing this  
9     stuff that they didn't want to pay the taxes, and they  
10    started narrowing the scope of what they wanted to pay for  
11    on paper, they took over the AR. They took over the AP.  
12    They took over everything at that point prior to -- this  
13    was in July, and the business wasn't sold until September.  
14    Prior to that, when all this stuff is going on I'm  
15    raising -- I'm the trunk monkey.

16           I don't know if you've ever seen a trunk monkey  
17    commercial. But he pops out of the truck and raises Cain  
18    when something goes wrong. His daughter is dating. The  
19    boy puts his arm around her and the monkey pops out. That  
20    was me. I was the trunk monkey. I was raising all these  
21    questions about just morals. I mean, it was morally wrong  
22    what was being done. And all of a sudden, okay, you're  
23    the bad guy. Put it all on him.

24           I had to sign over -- and it's in there. I had  
25    to sign over all -- in July of 2010, I signed over all my



1 50 percent shares of the company. I signed it over to  
2 Matt Schoettler because they only wanted to deal with Matt  
3 Schoettler. They wouldn't deal with me because I was  
4 causing too many headaches.

5 Now, during that time is when they negotiated all  
6 this stuff to pay \$55,000 for a company that's doing  
7 \$10 million a year. I didn't have any power to do that,  
8 because they had me -- they also -- in there you'll see  
9 where they basically threatened me to play ball. If I  
10 didn't play ball with them, they were going to make it to  
11 where I'd never have a job in the tire industry again,  
12 which is good riddance anyway.

13 I didn't -- at that time I was terrified. I had  
14 lost everything. I needed a job. I had no income.  
15 Nothing. So all these -- these -- I want to go through  
16 this, and I know that -- I apologize for bouncing over a  
17 lot. I'm nervous. I have chemo brain too. Since 2014  
18 I've come down with cancer. I've had -- I've been to  
19 Stanford 13 times for major surgery. So my brain does not  
20 work like it used to. I apologize. I'm doing my best.

21 But if you go to the responsible party under the  
22 documents that were provided by the office, all these  
23 exhibits -- Exhibit C it says, "Paul Neufeld was an  
24 agent." Yeah. My name is under Matt Schoettler. He was  
25 the primary. My name -- somehow the office came to think

1 that I was the president, but it was like the narrative  
2 was decided because I was the one that was the pain in the  
3 butt and the contact person.

4 There was only one phone call, according to all  
5 the evidence from the office where they called Matt  
6 Schoettler on April 23, 2013. They called him and asked  
7 him, "Hey, did you have anything to do with the tax  
8 stuff?"

9 And he said, "Nope. That was Paul's fault."

10 Of course, it's Paul's fault. Paul left. He's  
11 not there anymore. They always blame it on the guy that  
12 left. That's the -- it's the easy answer. I didn't -- I  
13 signed, yes. I absolutely signed checks. He, Matt  
14 Schoettler said he didn't ever sign checks. He told that  
15 to the office. I forget who was talking to him. It's a  
16 complete lie.

17 JUDGE ANGEJA: By "office," --

18 MR. NEUFELD: Yes.

19 JUDGE ANGEJA: -- you mean CDTFA?

20 MR. NEUFELD: Yes.

21 MR. NOBLE: Yes, this side of the table.

22 MR. NEUFELD: Sorry guys.

23 MR. NOBLE: No problem.

24 MR. NEUFELD: Every document that's listed there,  
25 yes, it has some -- most of them had my name on it, the

1 evidence that they use. They were all -- had Matt  
2 Schoettler as the primary contact, the primary person. I  
3 worked with Matt. You got my name on this because I got  
4 involved in trying to get you guys paid. That -- that  
5 was -- my whole -- I was trying to get you guys paid. He  
6 was a 50 percent partner, but it was his company. It was  
7 his dad's company. It's still his dad's company.

8 Then to show you the fraud that I believe they  
9 were perpetuating during this, after all this is done, I  
10 provided a copy of a bank statement. The day after the  
11 sale was done, they wrote Matt a check for \$125,000. I  
12 got nothing 'cause I was the bad guy. I was trying to get  
13 him to pay the bills. They got this guy to go along,  
14 write all this stuff, kept his mouth shut about --

15 You know, there's a thing that goes on in the  
16 tire industry. I would love to tell somebody off camera  
17 of how they -- the tire industry does not pay taxes on top  
18 of -- they pay excise tax. There's federal excise tax on  
19 everything, but they get around it. And they get around  
20 it very simply, and it is -- it's disgusting, and it's a  
21 lot of money. I'd be happy to share that with anybody  
22 when the cameras are off. I'd love to tell you where to  
23 look because it's rampant in the tire industry.

24 This stuff that went on, these exhibits that all  
25 have Mr. Schoettler's name on it just like my name, and I

1 knew about this at some point. Yes, I did know about it.  
2 I was trying to handle the sales and be the retail guy.  
3 Mr. Schoettler -- one of the things that's funny is some  
4 of the examples of the bills, the checks that were written  
5 or paid were -- are Shellnor, and there's the Empire  
6 Company. Those are both still Mr. Schoettler's business  
7 partners on the other side, and I find that humorous that  
8 those were examples that were given to be used.

9 I had check signing authority. I was an officer  
10 in the corporation. I knew about the tax liability. I'll  
11 help them out right now. They're probably saying, you're  
12 a moron for saying that, but it's a fact. I have nothing  
13 to hide. What I do not understand is why I'm the only one  
14 sitting here? Why is this put on me? Right now, I live  
15 on social security 100 percent because of my illness. I'm  
16 disabled. I live on \$2,300 a month. I don't know what to  
17 tell you guys. I have nothing. My home went to auction.  
18 My wife -- my 90-year-old mother-in-law, because we took  
19 all her money, now lives with us. My wife takes care of  
20 her full time.

21 I have never not paid a freaking bill in my life,  
22 and I had to go through bankruptcy because it's almost --  
23 I sit in this room with a bunch of people. Do you know  
24 how embarrassing that is? I've been working since I was  
25 14 years old. All I tried to do is make a difference in

1 this world, and make it a better place for people. I  
2 tried to hire the right people.

3 The Chief of Police in Fresno became a good  
4 friend of mine because I was putting bad guys to work. I  
5 had Norteños working next to some Sureños, with a Bulldog  
6 standing in the middle of them. They have another place.  
7 It just doesn't happen. But if you treat them right and  
8 you -- and doggone it, you guys want your money. I don't  
9 know what to tell you. It should have been paid in the  
10 escrow. I thought it was going to get paid. I did  
11 everything I could to get you guys paid in the escrow, and  
12 it didn't get paid.

13 And I believe it was fraudulent, and they were --  
14 had people going along with it. And why else would they  
15 have wrote out a \$125,000 check when it was done after the  
16 escrow was closed? It is -- any ways, I don't have much  
17 to say, guys. I just -- I don't think I should be sitting  
18 here by myself.

19 And I'm sorry you had to work so much on this  
20 'cause I guarantee you've worked more than the 40 grand  
21 that was owed that -- than is you guys' time. Money has  
22 been spent on this crap that should have been paid, but I  
23 don't know why I'm here alone, and I don't know how I'm  
24 going to pay you. I don't have that ability.

25 JUDGE ANGEJA: All right. I know it's an

1       unfortunate set of circumstances and nobody in this room  
2       likes this particular provision of the law, but we have  
3       got to enforce it.

4               MR. NEUFELD:   Yes, I get it.

5               JUDGE ANGEJA:  I have a question or two at the  
6       end.  I'd like them to be able to address why you're the  
7       only one sitting here now as to whether there's  
8       confidentiality restraints that would preclude them from  
9       telling us who else they have gone after.

10              MR. NEUFELD:  Okay.

11              JUDGE ANGEJA:  I'm kind of answering the question  
12       that I'm going to ask them.  Section 6829 imposes  
13       liability on anybody as to who all four elements are met,  
14       which means not necessarily the most responsible person,  
15       but anybody who meets that threshold.  It could be more  
16       than one.  It could be all of them.

17              So, okay.  That concludes your presentation?

18              MR. NEUFELD:  Yes, sir.

19              JUDGE ANGEJA:  Questions from my panel?

20              JUDGE KWEE:  Yeah.  I did have one question.  So  
21       as I understand it, the sales tax was collected on the  
22       sales.  And I'm just wondering why that wasn't admitted to  
23       the State at the time it was collected when --

24              MR. NEUFELD:  I -- I didn't do any of the  
25       accounting.  I don't know.

1 JUDGE KWEE: Okay. So you didn't have authority,  
2 or you just didn't know?

3 MR. NEUFELD: I didn't. That was Matt's part of  
4 the business. I was in the sales department, so I do not  
5 know. I believe, probably, because they felt they didn't  
6 have the money to pay. They were short on everything.

7 JUDGE KWEE: Okay. Thank you.

8 JUDGE VASSIGH: I don't have any questions right  
9 now.

10 JUDGE ANGEJA: CDTFA, would you like to begin  
11 your presentation?

12 MR. NOBLE: Yes.

13

14 OPENING STATEMENT

15 MR. NOBLE: California Retreaders operated  
16 Schoettler Tire in Fresno at the time the business  
17 terminated. California Retreaders had unpaid tax  
18 liabilities, and Appellant was held personally responsible  
19 for those tax liabilities plus accrued interest and  
20 penalties pursuant to Revenue and Taxation Code 6829.

21 I know that he kind of indicated that he conceded  
22 some of the elements in respect to 6829, and CDTFA has the  
23 affirmative burden to establish those. I'll go through  
24 them as briefly as possible.

25 Section 6829 provides that a person may be held

1 personally liable for the unpaid sales and use tax  
2 liabilities of the corporation so long as the following  
3 four elements are satisfied: The business operations must  
4 have terminated; the corporation must have collected sales  
5 tax reimbursement; the person must have been responsible  
6 for the sales and use tax matters of the corporation; and  
7 the person's failure to pay must have been willful.

8           With respect to termination pursuant to an asset  
9 purchase agreement, Exhibit A, pages 26 through 45,  
10 California Retreaders sold all assets as of  
11 September 24th, 2010. Accordingly, business operations of  
12 the corporation terminated on that date. Regards to  
13 whether California Retreaders collected tax reimbursement  
14 on its sales of tangible personal property, the audit  
15 report for the period ending September 2008, Exhibit C,  
16 page 37, provides that audit staff verified corporation  
17 collected tax reimbursement.

18           It was also confirmed the responsible  
19 questionnaire was completed by Appellant, Exhibit C,  
20 page 61, as responsible person. As for element three, the  
21 responsible person means any person having control or  
22 supervision was charged with the responsibility for filing  
23 of returns or payment of tax or who had the duty to act  
24 for the corporation in complying with any provision of the  
25 sales and use tax law when the taxes became due.



1                   According to CDTFA's automated Compliance  
2 Management System in CMS and a note dated April 23, 2013,  
3 Exhibit C, pages 47 through 49, Appellant confirmed that  
4 he was a person responsible for the sales and use-tax  
5 matters of the corporation. In addition, the seller's  
6 permit application dated November 2006, Exhibit C, pages  
7 54 through 55, list the Appellant as the vice president of  
8 California Retreaders.

9                   In a letter dated July 28th, 2008, Exhibit C,  
10 page 73, Appellant identified himself as the CEO of  
11 California Retreaders. Appellant also signed a voluntary  
12 petition for bankruptcy as president on March 14th, 2011,  
13 which can be found in Exhibit C, page 225. In a  
14 July 28th, 2008, letter, the Appellant signed as CEO that  
15 I just referred to. He states that he's attempting to  
16 make payments towards the corporation sales and use-tax  
17 liabilities.

18                   In addition, other ACMS notes can be found in  
19 Exhibit C, pages 238 through 245, indicates that there  
20 were numerous contacts with Appellant regarding the unpaid  
21 tax liabilities of California Retreaders throughout the  
22 period at issue. Appellant spoke with the Department on  
23 July 29th, 2008, October 15th, 2009, September 22nd, 2010,  
24 regarding the corporation sales and use tax liabilities.

25                   While we're sympathetic with the position he was

1 placed in with his partners, these contacts with CDTFA  
2 during the liability period are evidence that Appellant  
3 was directly involved with the sales and use-tax matter  
4 and compliance of California Retreaders and that he was a  
5 person responsible for the filing of returns and the  
6 payment of tax within the meaning of Section 6829.

7 As for the fourth element, willfulness, a  
8 person's failure to pay is considered willful if the  
9 person had knowledge that the taxes were not being paid,  
10 had the authority to pay the taxes, failed to do so. As  
11 to knowledge, the assignment contact history for the audit  
12 liability, Exhibit C, page 39, shows that the audit  
13 findings were discussed with Appellant and his wife on  
14 July 22nd, 2009. Accordingly, Appellant knew of the audit  
15 liability. Knew, like, no later than the State.

16 With respect to the non-remittance returns, ACMS  
17 contacts show that Appellant knew that the corporation  
18 consistently filed returns without timely paying the tax  
19 the corporation reported as due. ACMS note dated  
20 July 29th, 2008, which is Exhibit C, pages 238 through  
21 239, shows that Appellant spoke with the Department  
22 regarding outstanding sales and use tax liabilities  
23 totalling \$145,697.

24 On October 15th, 2009, Exhibit C, pages 240  
25 through 241, shows Appellant spoke with the Department

1 regarding an outstanding balance of \$153,931. During this  
2 call, the Department advised the Appellant that the return  
3 for the third quarter of 2009 was due, and Appellant  
4 informed the Department that there was no way the return  
5 could be filed with full remittance.

6 On September 22nd, 2010, Exhibit C, page 243  
7 through 245, Appellant again spoke with the Department and  
8 stated that he knew the corporation was in default with  
9 respect to the corporation's sales and use tax  
10 liabilities. Appellant's contacts with the Department  
11 establish that he knew the corporation was filing its  
12 returns without remitting the tax that it reported is due.

13 We also note that Appellant has provided no  
14 evidence to refute this knowledge and that this was a  
15 small closely held corporation and at all relevant times  
16 Appellant was a corporate officer. Appellant's position  
17 in the corporation is further evidence that he knew the  
18 corporation was not remitting tax at the time the returns  
19 were filed and as consistent with CDTFAs contacts with  
20 Appellant during liability periods. Accordingly, the  
21 evidence establishes that Appellant knew the unpaid tax  
22 liabilities on or about the due date of these returns.

23 As for authority, there's no dispute that  
24 Appellant had check-signing authority to pay the debts of  
25 California Retreaders as conceded by Appellant during the

1 appeals conference. And, again, Appellant has provided no  
2 evidence to refute that he had this authority.

3 Lastly, as for the ability to pay the taxes,  
4 corporation collected tax reimbursement from its  
5 customers, which establishes that the corporation had the  
6 funds available to pay its tax liabilities when due and  
7 instead, used the tax reimbursement it collected to pay  
8 others and not CDTFA. For example, throughout the  
9 liability period, payments were made to PG&E, Allied  
10 Insurance, and suppliers, such Dave's Tire and Elm Avenue  
11 Tire as shown in Exhibit C pages 78 through 221.

12 In addition, corporate bank statements for  
13 November 2009 through January 29, 2010, show withdrawals  
14 of approximately \$1,190,000. All this evidence shows that  
15 there were funds available to pay California Retreaders'  
16 liability, but the funds were used to pay others.  
17 Therefore, Appellant was willful in his failure to pay the  
18 tax liabilities of California Retreaders. I want to note  
19 that the willfulness prong does not require the finding of  
20 any evil motive or nefarious intent, and there's no  
21 implication here whatsoever.

22 With respect to Appellant's assertion that he was  
23 orally informed by a CDTFA employee that the purchaser of  
24 the business would be a sole liable party and that the  
25 Department is, therefore, stopped from collecting from him

1 to the extent he makes his argument. While the law  
2 provides for relief under specific instances and specific  
3 advice, the law does not provide a basis for relieving  
4 Appellant's liability on oral advice reportedly made by a  
5 CDTFA employee.

6 Lastly, with respect to any assertion that the  
7 sale of the business was constructed in a manner to reduce  
8 paying the corporation's tax liabilities, whether true or  
9 not, any conduct during the sale of a business or contract  
10 terms between the parties do not form a basis for relief  
11 from personal liability. As previously stated, the  
12 Department has clearly met its burden of proving all  
13 elements for imposing sole liability on Appellant.

14 There was also some penalties that were passed  
15 through in this liability. There was a penalty for --  
16 finale of penalty for the audit period that ended in  
17 September 2008. It was a late prepayment penalty for July  
18 in 2008 and various late quarterly payment penalties,  
19 including the fourth quarter of 2008, every quarter in  
20 2009, and second quarter of 2010. These penalties can be  
21 relieved if reasonable cause and circumstances beyond the  
22 person's control and in the absence of willful neglect has  
23 been established. In this case, the person would be  
24 California Retreaders.

25 Person seeking relief of the penalties must

1 provide a statement signed under penalty of perjury.  
2 Appellant did provide an unsigned statement which he  
3 states that the business was in debt from the moment he  
4 bought into the business, and that he might make concerted  
5 efforts to pay the company's bills.

6           However, the election to pay other creditors and  
7 bills of the corporation is not reasonable cause for  
8 failing to timely pay the tax liabilities at issue in this  
9 appeal. Accordingly, there is no basis to relieve the  
10 penalties incurred by California Retreaders.

11           However, I want to note that California  
12 Retreaders did incur a failure to pay by electronic funds  
13 transfer of \$32.18. This penalty does not have anything  
14 to do or relate to a failure to timely pay tax. So the  
15 Department concedes this penalty should be removed from  
16 the liability. Also finally, I just note that set forth  
17 in the CDTFA letter dated May 1st, 2018, which is  
18 Exhibit A, page 58, conceded interest from June 1st, 2016  
19 to April 30th, 2018. Otherwise this appeal should be  
20 denied.

21           JUDGE ANGEJA: That concludes your presentation?

22           MR. NOBLE: Yes.

23           JUDGE ANGEJA: Questions from my co-panelists?

24           JUDGE VASSIGH: No.

25           JUDGE KWEE: No further questions.

1           JUDGE ANGEJA: All right. I'll give you your  
2 opportunity for rebuttal now, and I have a closing  
3 question that I'll ask. Go ahead and you can respond to  
4 the items that they mentioned.

5

6

REBUTTAL STATEMENT

7           MR. NEUFELD: The knowledge of a tax problem was  
8 brought to me at different times. When the audit was  
9 done, if you read their own audit, it was brought to  
10 Linda's attention. It wasn't brought up to my attention.  
11 I wasn't in the office. I didn't pay the bills. I signed  
12 the checks when somebody needed to sign them. If  
13 Mr. Schoettler wasn't around, I signed them.

14           When the tax -- I don't know. I got between 100  
15 and 300 phone calls every day. And so I'm running around  
16 like a chicken with my head cut off. And somebody says,  
17 "Hey, you got to pay these taxes."

18           All right. I go yell at the office. Pay the  
19 stinking taxes. Well, once I got involved, I was kind of  
20 going, wait. What do we owe? Who owes what? Hey, pay  
21 these stinking taxes, you start telling them. Well then,  
22 they don't pay the taxes again, then I get another phone  
23 call. Hey pay the taxes, guys. What are you doing? I  
24 guess I'm the moron because I got involved. Now this all  
25 rests on my shoulders.

1           I don't know how to fill out a tax form. That's  
2 not what I did. That's not what I do. I don't know how  
3 to report quarterly taxes. I know it gets done. When you  
4 have two guys -- there was three -- but two guys primarily  
5 running a multimillion-dollar corporation, you have so  
6 many decisions that have to be fulfilled within the  
7 corporation as a president, vice president, secretary. I  
8 don't know. They put me down as this or they put me down  
9 as that, whatever that was.

10           But now I cleaned the toilets. I did whatever  
11 job needed to be done. I didn't -- I was not in the  
12 office paying the bills. I get it that it was owed. I  
13 did have check signing, but I did not realize that it was  
14 to that extent until we get to the end when we were  
15 selling the business. And then it was such a complete  
16 sham that it didn't get handled, I'm -- I'm like -- I sent  
17 the trunk monkey out raising Cain trying to get this  
18 handled because I didn't have the money. I lost  
19 everything I had in this corporation. Everything. I have  
20 no retirement. Nothing.

21           If -- if I would have been in the office and I  
22 would have known the taxes weren't getting paid to the  
23 extent they weren't getting paid, I would have not --  
24 there was a whole bunch of guys that wouldn't have gotten  
25 paid to write you guys a check. I mean, it's pretty easy



1 to write a \$40,000 check on a company that's writing  
2 checks for \$100,000 all the time.

3 It's not a big -- don't pay the fuel bill. If  
4 the business is going broke, don't pay the accountant. I  
5 mean, they -- don't pay the attorneys, whatever it is.  
6 I'm sitting here because I can't afford an attorney. And  
7 I -- no disrespect to attorneys, but you guys have all  
8 your place and we all need you. But this, all I can do is  
9 tell the truth. So all I have to say is that I didn't  
10 realize it was what it was.

11 Yes, I was a, quote, end quote, contact person  
12 because I got involved in it, but it wasn't my  
13 responsibility to pay this. This is not what I did. I  
14 was the sales guy. And here I am sitting in front of you,  
15 again, the dummy trying to make -- tell you guys what  
16 happened to make sure you get your money but -- any ways,  
17 so that's all I got to say.

18 JUDGE ANGEJA: All right. So my question doesn't  
19 necessarily go to the merits of this appeal. Have you  
20 contacted CDTFA regarding settlement options?

21 MR. NEUFELD: No.

22 JUDGE ANGEJA: Has he contacted you guys at all?  
23 OTA does not do settlement.

24 MR. NEUFELD: Okay.

25 JUDGE ANGEJA: And the only reason I'm mentioning

1 this, I'm not in any way indicating --

2 MR. NEUFELD: I get it. No. I understand.

3 JUDGE ANGEJA: -- merits or otherwise, but you're  
4 mentioning an inability to pay. Once there is a final  
5 liability that's one of the things they can take into  
6 account on the collection side, which has no bearing on  
7 what's at issue here.

8 MR. NEUFELD: I get it. I get it.

9 MR. NOBLE: That would be offers and comprise?

10 JUDGE ANGEJA: Yeah. Can you guys give him some  
11 information on that?

12 MR. NOBLE: Yeah, I will contact Mr. Neufeld.  
13 I'll e-mail.

14 MR. NEUFELD: I appreciate it.

15 JUDGE ANGEJA: And I'm not meaning to prejudice  
16 how to decide the case.

17 MR. NEUFELD: No, no, no. I get it.

18 JUDGE ANGEJA: I just want to make sure you  
19 get --

20 MR. NEUFELD: Give me some information. I  
21 appreciate that. Thank you.

22 JUDGE ANGEJA: Okay. If nobody has any further  
23 questions, then at this point I will close the record and  
24 conclude the hearing.

25 I want to thank each party for coming in today.

1 And following this hearing, my co-panelists and I will  
2 discuss the evidence and arguments, and we will issue a  
3 written opinion within 100 days. We'll try to be faster  
4 than that. With no further questions, thank you.

5 Off the record.

6 (Proceedings adjourned at 10:27 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 9th day of December, 2019.

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