

HEARING
OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Franchise/

Income Tax Appeals Hearing of:

CHRISTOPHER RILEY BEEBE,

OTA Case No. 18083586

Appellant.

_____ /

STEVEN BATES,

OTA Case No. 18083587

Appellant.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, FEBRUARY 26, 2020

10:00 A.M.

OFFICE OF TAX APPEALS HEARINGS
HEARING ROOM
400 R STREET
SACRAMENTO, CALIFORNIA

Reported by Peter Petty

APPEARANCES

Panel Lead:

JEFF ANGEJA, ADMINISTRATIVE LAW JUDGE

Panel Members:

SUZANNE BROWN, ADMINISTRATIVE LAW JUDGE

ANDREW KWEE, ADMINISTRATIVE LAW JUDGE

For Appellants:

CHRISTOPHER BEEBE, TAXPAYER

STEVEN BATES, TAXPAYER

For Franchise Tax Board:

SUNNY PALEY, TAX COUNSEL

MONICA SILVA, TAX COUNSEL

RANDY SUAZO, HEARING REPRESENTATIVE

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(Exhibits pre-marked, described and retained by Administrative Law Judge.)	

1 WEDNESDAY, FEBRUARY 26, 2020 - 10:00 A.M.

2 ALJ ANGEJA: We're now on the record in the Office of
3 Tax Appeals oral hearings for the consolidated appeals of
4 Christopher Beebe and Steven Bates.

5 Am I pronouncing "Beebe" correctly?

6 MR. BEEBE: Yes.

7 ALJ ANGEJA: Thank you.

8 And those case numbers are 18083586 and 18083587,
9 respectively, and we are in Sacramento, California, and the
10 date is Wednesday, February 26, 2020, and the time is
11 10:00 o'clock.

12 My name is Jeff Angeja. I'm the lead administrative
13 law judge for this hearing. My fellow co-Panelists today are
14 Suzanne Brown and Andrew Klee.

15 And, Appellants, can I get you to identify yourselves
16 for the record.

17 MR. BEEBE: I'm Chris --

18 MR. BATES: Steve Bates.

19 ALJ ANGEJA: And you'll need to speak into the
20 microphone, too.

21 MR. BATES: Steve Bates.

22 MR. BEEBE: Chris Beebe.

23 ALJ ANGEJA: All right. Thank you.

24 And for CDTFA?

25 MS. PALEY: Sunny Paley and Monica Silva and Randy

1 Suazo.

2 ALJ ANGEJA: All right. And, Mr. Suazo, what's your
3 position at --

4 MR. SUAZO: Hearing representative.

5 ALJ ANGEJA: Hearing representative. Okay. Thank
6 you. All right.

7 And this appeal -- these appeals -- I'll stop now.
8 These are two consolidated appeals, so, where relevant, to
9 the extent the evidence is different or specific as to an
10 individual, we'll need to identify the individuals.

11 All right. Whether Appellants are personally
12 responsible pursuant to Revenue and Taxation Code Section
13 6829 for the unpaid tax liabilities of American Water
14 Technology for the fourth quarter of 2012 and the first
15 quarter of 2013. I do know there was an audit liability.
16 That's no longer at issue. It's been deleted from the
17 liability here, as we discussed in our pre-hearing
18 conference.

19 Do I have that issue correct?

20 MS. PALEY: Yes.

21 ALJ ANGEJA: Okay. For both sides.

22 And then, during our prehearing conference,
23 Appellants indicated that they wanted to admit Exhibit 1,
24 which was a 243-page zip folder, into evidence. That's been
25 provided by e-mail to the parties, as well as to OTA.

1 CDTFA has submitted Exhibits A through M for
2 admission into evidence. They've also exchanged those
3 documents.

4 At the prehearing conference, neither party had any
5 objection. Is that still the case?

6 MS. PALEY: Yes.

7 ALJ ANGEJA: Okay. Appellants, you've got to say yes
8 or no for the court --

9 MR. BEEBE: Yes.

10 ALJ ANGEJA: No objection?

11 MR. BEEBE: No objection.

12 ALJ ANGEJA: And no objection?

13 MR. BATES: No objection.

14 ALJ ANGEJA: All right. So I admit Appellants'
15 Exhibit 1 and CDTFA's Exhibits A through M into evidence.

16 And based on the prehearing conference, my
17 understanding is that neither party has any witnesses to
18 present, and, as we discussed, that means, if you're not a
19 witness, we don't put you under oath. You're just making
20 arguments, rather than giving testimony on which we could
21 base findings of fact. If that's still the case, fine. If
22 not, I can swear you in, if you'd like.

23 MR. BEEBE: (Indiscernible.)

24 ALJ ANGEJA: Okay. So neither party has any
25 witnesses, and then we agreed that we would begin with

1 Appellants' testimony and argument, not to exceed 40 minutes,
2 after which the Panel can ask questions, if they have any.
3 CDTFA would then make its presentation, not to exceed 40
4 minutes, and the Panel could again ask questions, and then we
5 would allow Appellants a five-to 10-minute rebuttal, if
6 necessary.

7 And if nobody has any other procedural questions, we
8 can begin. None? All right.

9 So, Appellants, I'll turn it over to you.

10 MR. BATES: So, basically, our assertion is that we
11 believe that the tax -- we paid in 2012-13, and we presented
12 at a previous hearing that the checks had been cut from our
13 firm accounting software. Because of the time line and
14 because of the legal conditions that we were put into as the
15 company closed, we were no longer officers of the company,
16 didn't have access to any additional information.

17 As this has morphed over time, we also found that we
18 had an employee that was at AWT that was in the process of
19 embezzling -- that person actually moved over to the company
20 where I currently work -- that they did, in fact -- we did
21 prove that they did embezzle at that point, and the patterns
22 of embezzlement going back to AWT, we believe, were already
23 occurring there, but none of this came to light until 2015
24 and on, as we actually spoke to another member of -- it was
25 Tax and Fee, I believe, is what it's called now.

1 MR. BATES: It's BOE.

2 MR. BEEBE: BOE at the time. And in their review of
3 our binder on that, that person saw the same pattern that we
4 saw. So, as we sit here today, we believe that, you know, at
5 the time, we paid it.

6 We also, at another juncture, put in that we have a
7 third party that's been contacting me for some time, though I
8 have no legal ability to follow through with it, notifying me
9 that there is an amount of money held by the state of
10 California that is very similar to one of the quarters'
11 payments. So we don't have the ability to say, "I am
12 American Water. I want to do this," because I'm not American
13 Water. So that's essentially the information we keep
14 bringing up in these conditions.

15 ALJ ANGEJA: Do you have anything else to add for
16 your presentation?

17 MR. BEEBE: No comment. It's pretty simple.

18 ALJ ANGEJA: Okay. Before I let the Panel ask
19 questions, we had asked, and did not reach a resolution in
20 the prehearing conference, if there would be any concessions.
21 I'll ask here now if you want to put them on the record,
22 since I didn't hear that they were disputed.

23 Section 6829 requires four elements to be
24 established. The first is that the company's business
25 operations ceased. I believe that's undisputed. I think

1 it's sometime in 2013. I don't have it in front of me at
2 this moment, but is that conceded, as to the --

3 MR. BATES: It's about that time.

4 ALJ ANGEJA: Go ahead.

5 MR. BATES: It's about that time.

6 ALJ ANGEJA: Right, so that we have the termination
7 date.

8 Element two is that sales tax reimbursement was
9 collected from the customers. Is that conceded?

10 MR. BATES: We did receive tax from customers.

11 ALJ ANGEJA: Okay. So it's fair to say that element
12 two is also conceded?

13 MR. BEEBE: Yes.

14 ALJ ANGEJA: Okay. Element three is that you are --
15 that the person who they seek to hold liable was responsible
16 for sales tax compliance, in layman's terms, basically, that
17 it was in the duty statement or the job description of the
18 person that they are seeking to hold liable, that it was
19 their job to incur it, a president, a CEO, those types of
20 positions, or someone whose actual day-to-day involvement
21 involves complying with sales and use tax compliance.

22 MR. BEEBE: That would have been the person we've
23 been talking about.

24 ALJ ANGEJA: But is that true as to both of you, and
25 is it fair to call it "conceded"?

1 MR. BATES: Yes.

2 MR. BEEBE: Yes.

3 ALJ ANGEJA: Okay. And as is usual for 6829 cases,
4 the dispute is usually with regard to willfulness, which
5 requires three subelements: knowledge, the authority, and
6 funds available. I know that that's in dispute, but I just
7 wanted to see if we could streamline this process, since I
8 didn't hear it disputed, and my review of the file seems to
9 show that it's undisputed. So we've got the three that
10 are --

11 MR. BATES: What's disputed is the "willful" part of
12 it.

13 ALJ ANGEJA: Okay. So, with that, do my Panelists
14 have any questions?

15 ALJ KWEE: Yes. Just checking if this on.

16 I'm just trying to understand the relationship of the
17 accountant. I understand that was a Ms. Ferkey?

18 MR. BEEBE: Correct.

19 ALJ KWEE: That was the one embezzling? Because I
20 thought the documentation showed her with a different
21 company, Beebe's Water.

22 MR. BEEBE: That's the one that I currently run. She
23 was the bookkeeper at American Water. When American Water
24 closed, she moved over to Beebe's Water Systems and became
25 the bookkeeper there.

1 ALJ KWEE: Okay.

2 MR. BEEBE: So, at the time, everything was great.
3 The pattern of and the actual embezzlement wasn't discovered
4 until early 2015, and she had been doing it all the way back
5 for the entire time she'd been employed at BWS. It was when
6 we looked back on that information and saw the pattern of how
7 she was doing it in our evaluation that we looked back and
8 said, "She was probably doing it there already, also."

9 MR. BATES: She was probably hatching the scheme, and
10 then put it into practice at Beebe's.

11 MR. BEEBE: That's how we -- and then you look
12 at -- the exact, same things were occurring there.

13 ALJ KWEE: Okay.

14 MR. BEEBE: Go ahead.

15 ALJ KWEE: Okay. And so when did she start working
16 first with American Water Technology?

17 MR. BEEBE: In the bookkeeping role?

18 MR. BATES: Probably 2010.

19 MR. BEEBE: 2011. No.

20 MR. BATES: '10 or '11.

21 MR. BEEBE: '10 or '11.

22 ALJ KWEE: Okay. So I think one of the issues in the
23 DNR had mentioned that that particular person didn't sign the
24 sales and use tax returns for the two quarters that are
25 remaining at issue, and I'm just wondering if you know why

1 was she, for example, not involved at that time, or why she
2 wouldn't have signed those two returns.

3 MR. BEEBE: I couldn't answer that. It's nine years
4 ago.

5 ALJ KWEE: Okay.

6 MR. BEEBE: I mean, if a document is presented --
7 because, if we were signing a check, sometimes what we found
8 was, especially -- when we would come in, we would sign it,
9 "Here, it's taken care of," and it wasn't taken care. It was
10 rifled (sic) around.

11 MR. BATES: Also, you might notice in that 240-page
12 binder that there was evidence of her starting other
13 accounts --

14 MR. BEEBE: Yes.

15 MR. BATES: -- in the same bank that we worked with,
16 and so, you know, there's all kinds of different ways of her
17 to move money around.

18 MR. BEEBE: That's basically what we think, as Steve
19 has said. She was developing the process then, and my
20 current accountant just basically said those kind of people,
21 they take their time to develop a process, and then, once
22 they can -- for all intents and purposes, as American Water
23 was closing, he and I had other roles that we were paying
24 more attention to.

25 ALJ KWEE: I think I understand the embezzlement

1 part, and I'm trying to correlate with how the embezzlement
2 impacted the willfulness aspect, because, if I understand
3 correctly, the company has paid their federal taxes. They
4 paid their other taxes. So I'm just wondering how you guys
5 thought that the sales taxes were being paid, and how the
6 embezzlement basically impacted the belief that the sales
7 taxes were timely being paid.

8 MR. BATES: Well, at the very end of the company,
9 Chris and I were in the field, cleaning up jobs and, you
10 know, closing things down, and Sabrina was in the office. We
11 did find -- you know, a couple years later, when we found out
12 this stuff was going on, we did find some cancelled -- or not
13 cancelled checks, but some check stubs in the accounting
14 system that our account had access to, and that's what we
15 were saying, "Okay. That makes sense," because what I
16 thought was paid, the check stub was there, but don't know if
17 it was ever, you know --

18 MR. BEEBE: The statement that we paid the taxes --
19 we went out of our way to pay known tax debt, to where we
20 went to the IRS to settle a tax condition. We went to them
21 and said, "Look. This is what's happening. The company is
22 closing. What do we owe you to make sure this is taken care
23 of?" We went out of our way on even other things with BOE,
24 to say, "This is what's happening. What do we need to do?"
25 It was us coming to the department, saying, "We need your

1 help to help us solve the problem." So it was not that we
2 were -- and this is why we say we can't sign "willful,"
3 because we willfully -- we were going out of our way to try
4 to get everything dealt with when we knew something was
5 closing. Basically, the stockholders basically said, "Close
6 it."

7 ALJ KWEE: Okay.

8 MR. BEEBE: It wasn't a surprise.

9 ALJ KWEE: So there was just one other thing. I
10 think you had mentioned that there was some money that
11 someone was contacting you about, and I wasn't entirely sure
12 I understood that. Were you saying that there are funds
13 available to pay, but you can't access it? I wasn't quite
14 understanding that argument.

15 MR. BEEBE: On a regular basis, I get a letter from
16 a -- they claim to be a legal -- what do you call it? -- a
17 law firm -- but they find monies that are held in public
18 trust, that are attributed to American Water Technology, with
19 me as the CEO listing as the last known contact, saying,
20 "Hey. There's \$5,000 that the state of California has of
21 American Water," or for some amount of money --

22 MR. BATES: Interest of (indiscernible).

23 MR. BEEBE: -- and it corresponds to at least the
24 December -- the fourth quarter 2012 amount. And I reached
25 out to say, "Hey. This is my situation." They said, "Well,

1 you need to find the person who has the legal authority to
2 collect for American Water." And he just recently passed
3 away.

4 ALJ BROWN: I do have some questions. Let me make
5 sure if this is on.

6 MR. BATES: Sounds like it.

7 ALJ BROWN: Okay. I'll pick up on what you were just
8 describing. I assume that you're describing the money held
9 by the State Controller's Office?

10 MR. BEEBE: I don't know the department. I don't
11 know how it's held. I just get -- about every other month or
12 so, I get a letter at my home residence saying, you know,
13 "There is an amount held in the name of American Water
14 Technology, Incorporated, and you were the CEO, so contact
15 us." I contacted the company. They said, "You are
16 not" -- because the corporation is closed, I don't have any
17 legal ownership of the corporation.

18 ALJ BROWN: I understand.

19 MR. BEEBE: Therefore, I can't touch it.

20 ALJ BROWN: Is there any evidence of that in the
21 record that you submitted?

22 MR. BEEBE: Yes. I think we sent that to you, too.

23 MR. BATES: Yes.

24 ALJ BROWN: Is that in the 243 pages?

25 MR. BEEBE: No. It's another separate document.

1 MR. BATES: No. Those were previously submitted at
2 our -- I think it was our November prehearing.

3 MR. BEEBE: Yes.

4 ALJ ANGEJA: You didn't submit any evidence of that
5 letter at that time, and, like we explained in the prehearing
6 conferences, we're separate. Office of Tax Appeals is a
7 separate agency from CDTFA. So that's part of what generated
8 the 243-page PDF submission most recently, is because you had
9 provided it to them long ago. This agency doesn't have it.

10 MR. BEEBE: (Indiscernible.)

11 ALJ ANGEJA: Right. So I don't recall that letter in
12 Exhibits A through M, I believe, that CDTFA has.

13 MR. BATES: You guys don't have it.

14 MS. PALEY: I believe -- and, again, forgive
15 me -- November of last year was a bit ago now, but I believe
16 you guys did e-mail it to --

17 MR. BEEBE: I think Claudia's got it.

18 MS. PALEY: -- to Claudia, because we received it
19 from Claudia.

20 ALJ ANGEJA: I'll try to find it, but keep going.

21 ALJ BROWN: Okay. I wanted to ask about the tax
22 returns that were filed for these two quarters at issue, and
23 it says that they were filed by Ms. Floyd.

24 MR. BEEBE: Marge Floyd.

25 ALJ BROWN: Yes. So I guess these were --

1 MR. BEEBE: She prepared them.

2 ALJ BROWN: Okay. And so they were non-remittance
3 returns, meaning they were filed and you said -- they were
4 filed saying that there was money owed, but it wasn't all
5 paid?

6 MR. BEEBE: No. Our claim is that Marge was the
7 preparer, so she went through and prepared the documents, and
8 she gave them to Sabrina. Sabrina would basically cut the
9 check, and one of us would sign it and send it off. So, if
10 she -- our assessment is -- the doubt that we now have is
11 that -- the check was cut. We signed it, believing it got
12 sent, and what she was doing was basically taking that amount
13 of money out and just clearing the check, so that, when we
14 did a bank statement, the monies would balance, but
15 everything was jumbled.

16 This is what she did at BWS. She would basically not
17 pay taxation, because it takes so long for different
18 government agencies to determine debt, and sending all the
19 documentation over time. She was basically covering her
20 tracks with, in our case, multiple sets of books, where she
21 was showing printouts and records of everything, but then we
22 were sitting there looking, going, "Everything looks great."
23 It took about two years, three years for all the agencies
24 finally to actually seize in to my personal bank account,
25 take some money out of my account. This is at BWS. That's

1 how she was doing it back there.

2 Going backwards, as the company American Water was
3 closing, the watchdogs weren't there, because we were running
4 around doing everything else, closing the company. We
5 believe she did the same thing there, where she was taking
6 cash out of the account, putting it into another bank account
7 that she had at the same bank, in her personal name, and
8 that's how we believe she was shuffling the money. So we
9 believe we cut the checks, is what I'm saying.

10 ALJ BROWN: I've looked at the 243 pages that you
11 submitted with your complaint to the Shasta County Sheriff.
12 Is there any evidence that you can point us to that supports
13 your belief of what you just described that you think
14 happened at AWT? What can we hang out hat on?

15 MR. BEEBE: Other than our assessment of it, no,
16 because I don't have access to the records any longer. Those
17 are records that are now -- I can't dig back in forensically
18 like I did with BWS (phonetic). That was an extremely
19 expensive endeavor. I can't get back into those books, and I
20 don't even know where the records are. That's unfortunate,
21 but we're eight years later, and that's part of the problem.

22 ALJ BROWN: Okay.

23 MR. BEEBE: And I suppose it speaks to our
24 willfulness. I mean, if the litmus test is three of four,
25 we've already lost the case. What I'm saying is that

1 willfulness is where we basically -- he and I are like --

2 ALJ BROWN: They have to meet all four. So, if they
3 don't meet one, then you would not be liable. It's not like
4 a -- it's not a majority.

5 MR. BEEBE: I thought was a (indiscernible) thing.

6 ALJ BROWN: No. So my understanding from what you've
7 just described is that, even though your accountant was
8 filing your returns electronically, you didn't make the
9 payments electronically?

10 MR. BEEBE: No. Most everything we did at the time,
11 we were always filing checks.

12 MR. BATES: "Electronically," like over the Internet?

13 MR. BEEBE: EFT?

14 ALJ BROWN: Yes, because I'm looking at your
15 electronic filing revenue record that is in the exhibits from
16 CDTFA.

17 MR. BEEBE: I'm sorry. I'm sorry. I do not
18 remember. I can't say that we were doing EFT at the time. I
19 remember checks being cut, but there were so many different
20 departments being announced.

21 ALJ BROWN: Well, it says the transmission date was
22 September 26th, 2013.

23 ALJ KWEE: Of the form. Of the form.

24 ALJ BROWN: On the form, it says this is the date
25 that Ms. Floyd filed the returns electronically.

1 MR. BEEBE: Okay.

2 ALJ BROWN: So --

3 MR. BATES: Filing electronically is not paying
4 electronically.

5 ALJ BROWN: That's what it says here.

6 MR. BATES: Yes.

7 ALJ BROWN: So is that what you're saying, that she
8 filed -- you filed the returns electronically?

9 MR. BEEBE: Marge would have gone through and created
10 the tax liability. She is my accountant now, and, basically,
11 she would have filed the document and delivered the document
12 to the office, and Sabrina -- the normal course of action
13 was, she would cut the checks on a check run, and then we
14 would sign them, one of the two.

15 ALJ BROWN: I think it's called "electronic funds
16 transmission," EFT. You didn't have that set up to file, to
17 pay electronically?

18 MR. BATES: I don't remember.

19 MR. BEEBE: I don't remember. We currently do,
20 because we have --

21 ALJ BROWN: Okay.

22 MR. BEEBE: -- but I couldn't tell you with
23 (indiscernible) absolutely.

24 ALJ BROWN: All right. I guess I also wanted to
25 ask -- I noticed in the decision from the appeals conference

1 that you had previously -- which you know was with a
2 different agency, was with CDTFA, not with us, but it does
3 say that you argued at that time that you had bad debts, and
4 that was part of why you think the funds were not paid, was
5 because you had contracts cancelled, and that you didn't
6 actually collect the sales tax liability for these contracts.

7 MR. BEEBE: I think our assessment was, we were just
8 describing the condition that we were in, not necessarily --

9 MR. BATES: Not knowing Sabrina's embezzlements.

10 MR. BEEBE: Yes. Some of this has all come to light
11 as we've been developing the condition. I think that meeting
12 was about two years ago.

13 ALJ BROWN: Let's see. The decision was issued in
14 December 2017, and the conference was in August 2017.

15 MR. BATES: That was in Redding, right?

16 MR. BEEBE: Yes. That was the Redding discussion.

17 ALJ BROWN: It doesn't say, but it's entirely
18 possible.

19 MR. BATES: I believe it was.

20 MR. BEEBE: I think what we were describing in a
21 statement to them was, this was the conditions that existed
22 at the time, and we were basically forced with trying to pay
23 off -- you know, find all the absolute creditors, such as the
24 state and the IRS.

25 ALJ BROWN: So --

1 MR. BEEBE: The description of the condition, not
2 necessarily absolute.

3 ALJ BROWN: All right. And I guess my question is,
4 was there any evidence that AWT wrote off those bad debts on
5 their income tax returns as uncollected bad debts?

6 MR. BEEBE: Not (indiscernible) our taxes
7 (indiscernible) write-off. You mean the statement of the
8 corporation?

9 ALJ BROWN: Yes, the corporation, whether AWT --

10 MR. BEEBE: We weren't there at the final time.

11 MR. BATES: I don't know.

12 MR. BEEBE: Yes. I don't know that answer.

13 ALJ BROWN: Okay.

14 MR. BEEBE: So, as a requirement of our bylaws for
15 the corporation, as the company closed, being in the CEO and
16 CFO position, and not having any financials, basically, all
17 the creditors began coming after us personally, and so the
18 net effect is we had to file bankruptcy for the business
19 debt.

20 The last shareholder, basically, he had financial
21 ability, and he basically controlled the closing of the
22 company and the final shutdown of it. The company existed
23 for the better part of a year afterwards, as it was allowed
24 to close down, and my belief was that his personal accountant
25 filed all that final --

1 MR. BATES: He just didn't do anything.

2 ALJ BROWN: And I'm sure this is in the record, so
3 I'm just asking so I don't have to look it up. What was the
4 date when you each left the corporation?

5 MR. BATES: It was September of --

6 MR. BEEBE: I think it was July. July of '13.

7 MR. BATES: It was July to September of '14.

8 MR. BEEBE: '13.

9 MR. BATES: It was '13?

10 MR. BEEBE: '13.

11 MR. BATES: Okay.

12 MR. BEEBE: June of '13. The report went July (sic).

13 ALJ BROWN: Okay. I know I'm taking a lot of time,
14 so I will say -- I'll stop my questions for now, so that we
15 can move on.

16 MR. BEEBE: Sorry about the ambiguity in some of our
17 answers. A lot of time has transpired, and some of it we
18 really want to forget.

19 ALJ ANGEJA: We did get that letter. It was October
20 31st, and I was looking in November, which is why I couldn't
21 find it. It also relates to a collection issue. I
22 understand that this is the unclaimed money that the company
23 keeps contacting you with. That doesn't impact our analysis
24 of the four elements under Section 6829. It may be that that
25 money is there or not. It would be a collection issue if

1 that money is there.

2 MR. BEEBE: I honestly would just love the fact that
3 you guys got -- if this was all paid in full, and we had sent
4 the checks, and the money is just in the wrong account, we're
5 happy, and we'll just put it behind us. I mean, that's kind
6 of our --

7 ALJ ANGEJA: But I just wanted to confirm. We did
8 get what you sent, and it also -- we won't be able to do
9 anything with that as it relates to the liability. Clearly
10 they may have some ability, but Office of Tax Appeals does
11 not.

12 MR. BATES: It supports the "willful" claim, right?

13 MR. BEEBE: Yes.

14 MR. BATES: Because it supports the fact that we
15 thought the money was --

16 MR. BEEBE: Sent.

17 MR. BATES: -- we sent.

18 ALJ ANGEJA: If there's a sum of money that's out
19 there, not knowing its source, I'm not going to say one way
20 or the other that it -- because it could have been unrelated
21 to sales tax payment, so it wouldn't affect the liability at
22 issue here.

23 So did you have any questions yet?

24 ALJ KWEE: No.

25 ALJ ANGEJA: Two quick questions. Who did sign those

1 tax returns? I realize they were electronically filed, the
2 two that are at issues for the court. I'm looking at you
3 because I saw it on the screen.

4 MR. BEEBE: Marge filed.

5 ALJ ANGEJA: Marge did. All right. What is her last
6 name? I'm sorry.

7 MR. BEEBE: Floyd, F-L-O-Y-D.

8 ALJ ANGEJA: Thank you. Ms. Floyd. And then, when
9 you were describing the process by which the sales taxes
10 would be paid, Ms. Ferkey would prepare a check for you to
11 sign. Who had -- rephrase that. Was it only the two of you
12 that had check-signing authority?

13 MR. BATES: Correct.

14 ALJ ANGEJA: Okay. And my last question for the
15 moment. Those two returns at issue, they were filed in
16 September of '13. They were late. So they weren't --

17 MR. BEEBE: Then Marge must have filed them --

18 ALJ ANGEJA: Well, my question is, they weren't filed
19 on time, right? So when you would have -- according to the
20 way you're explaining it, when you would have been presented
21 with a check to sign for sales and use tax purposes, it would
22 have been in September. Those returns would have been due
23 January 31st and April 30th. So they were already -- I'm
24 just trying to get a time line.

25 MR. BEEBE: Then we would not send -- that's new

1 information, unfortunately, for me. I wasn't aware of that,
2 because then we wouldn't have been able to sign, if we
3 weren't officers of the company.

4 MR. BATES: Officers of the company.

5 ALJ ANGEJA: Okay. Your termination date, the
6 earliest possible date, have we --

7 MR. BEEBE: The very last day would have been the
8 very end of June. We literally had to throw everything --
9 the company did not exist as of July 1st of 2013.

10 ALJ ANGEJA: Okay.

11 MR. BATES: As far as a functioning company.

12 ALJ ANGEJA: Okay. That is all I have for questions
13 at the moment. Do you have any follow-up or anything to say
14 before I turn it over to CDTFA? And you'll have a rebuttal
15 as well, so this isn't your last --

16 ALJ KWEE: No, no.

17 ALJ ANGEJA: Okay. So, CDTFA, we'll turn it over to
18 you for your argument.

19 MS. PALEY: As you're aware, four elements must be
20 proven by a preponderance of the evidence to impose personal
21 liability on an individual for unpaid tax of a corporation
22 under Section 6829 of the Revenue and Taxation Code: one,
23 termination of the business; two, the corporation collected
24 sales tax reimbursement; three, the person was responsible
25 for the paying of sales tax during the liability period; and

1 the person's failure to pay must have been willful.

2 Appellants are the former CEO and CFOs of American
3 Water Technology, the Redding corporation incorporated in
4 2004 that's shown in Exhibit M, the dual packets, Exhibit L.
5 They manufactured and installed water treatment systems for
6 state and county parks as well as residential locations.
7 What's at issue are two non-remittance returns, fourth
8 quarter 2012 and first quarter 2013.

9 In this case, as to the first element, that has now
10 been conceded. The second element, evidence of sales tax
11 reimbursement, likewise, has now been conceded as collected,
12 and it has also been conceded the third element, that the
13 Appellants were responsible for the corporation's payment of
14 sales and use tax.

15 As to the fourth element, failure to pay is willful
16 if the person had knowledge that the taxes were not being
17 paid, and had the authority and ability to pay the taxes, but
18 failed to do so. As you know, there's no evil intent or
19 motive required.

20 As to knowledge that Appellants knew that the taxes
21 at issue were not being paid, according to the ACMS notes, on
22 January 17th, 2013, Exhibit C, Mr. Bates spoke with CDTFA
23 staff about late prepayment for the fourth quarter 2012.
24 Additionally, CDTFA staff met with Mr. Bates on May 15th,
25 2013, and discussed American Water's late returns for fourth

1 quarter 2012 and first quarter '13, and this is found in
2 Exhibit D. This is evidence that Mr. Bates knew that the
3 American Water had taxes due, and did not make timely payment
4 of tax for the quarters at issue.

5 Additionally, on February 17th, 2015, in the dual
6 packets, Exhibit B, Mr. Bates stated that they had monthly
7 meetings where American Water's tax liabilities were
8 discussed. This evidence establishes that Mr. Bates knew
9 that the taxes at issue were not being paid.

10 Now turning to Mr. Beebe, as I just stated, according
11 to the ACMS notes, on February 17th, 2015, dual packets B,
12 Mr. Bates stated there were monthly meetings where American
13 Water's tax liabilities were discussed, and Mr. Beebe himself
14 acknowledged the monthly meetings in the dual packet, Exhibit
15 D, ACMS notes from February 9th, 2015. This is evidence of
16 Mr. Beebe's knowledge that the taxes at issues were not being
17 paid.

18 ALJ ANGEJA: If I could get you to slow down a little
19 bit. The court reporter's got to be able to get --

20 MS. PALEY: Yes. I apologize.

21 ALJ ANGEJA: And which exhibit was that one you just
22 referred to?

23 MS. PALEY: D as in dog. And as to both Appellants,
24 they each held corporate officer positions in the closely
25 held corporation, and, as the Panel is aware, CEOs and CFOs

1 are presumed to have broad implied and actual authority to do
2 all acts customarily connected with the business, including
3 ensuring compliance with sales and use tax law, even if that
4 responsibility is delegated to others. Additionally, there's
5 no evidence of any express limitations on Appellants' duties
6 or powers.

7 As to authority to pay the taxes, the dual packet
8 shows that, throughout the liability period, Appellants were
9 owners and executive officers. They signed power of attorney
10 forms and waivers, and both signed checks made to the
11 then-BOE. Those are found in the dual packets, L and M, and
12 they represented the company during the subsequent audit.

13 As to ability to pay the taxes, American Water had
14 funds available to pay the taxes, but instead used those
15 funds to pay other creditors. Utilizing the United States
16 federal income tax returns, dual packets Exhibit I, for 2011
17 to 2013 years, show reported cost of goods sold exceeding one
18 and a half million, and dual packet Exhibit V through Z
19 establishes that wages, suppliers, and landlords were paid.

20 Specifically, Exhibit K shows that American Water's
21 gross sales alone for first quarter 2013 were \$475,000, and,
22 as stated before, American Water collected sales tax
23 reimbursement on its taxable sales, so there were funds
24 available. I would also note, in dual II, it shows all the
25 deposits that were made on American Water's account, and

1 there is no corresponding payments, which would be reflected
2 had those payments actually been made. With respect --

3 ALJ ANGEJA: If I could stop you, those are deposits
4 made with CDTFA?

5 MS. PALEY: Yes.

6 ALJ ANGEJA: Because my head heard "bank accounts,"
7 but it's CDTFA?

8 MS. PALEY: Yes. I'm sorry. Deposits made.

9 With respect to Appellants' argument that Ms. Ferkey
10 embezzled, Appellants' exhibit, which is duplicative of the
11 Department's Exhibit H, includes documentation that pertained
12 to Sabrina Ferkey.

13 However, as noted in the Department's brief, there is
14 no evidence that Ms. Ferkey actually embezzled funds while
15 employed at American Water, and it is also notable that
16 Shasta County did not bring charges, even for the conduct at
17 Beebe's Water Systems. The documents provided by the
18 Appellants do not change the fact that they were responsible
19 for filing returns, the payment of tax, and had a duty to
20 act.

21 Regarding the unclaimed property issue, by law, CDTFA
22 cannot file a claim for unclaimed property in the name of a
23 taxpayer. However, we can and do receive offsets for unpaid
24 CDTFA debt once a taxpayer claim is processed by the State
25 Controller's Office.

1 Per CCP Section 1540, unclaimed property held by the
2 State Controller's Office may only be claimed by the owner,
3 his or her heirs, or his or her legal representative who had
4 a legal right to the property prior to its escheat. Thus the
5 office could likely file a claim with the State Controller's
6 Office, and it would be subject to an interagency offset.

7 Again, we do not have any evidence that the money
8 being held there in any way pertains to CDTFA or the BOE. In
9 reviewing the unclaimed property website, it appears to be
10 something reported by JPMorgan Chase Bank, but, other than
11 that, we do not have any information that it in some way
12 relates to us, though we certainly would be happy to receive
13 those funds.

14 Based on all the evidence provided, the Department
15 has met its burden of proving the four elements for imposing
16 personal liability to Appellants, and we continue to agree
17 with the conceded audit amount as set forth in the decisions,
18 and otherwise the appeal should be denied. Thank you.

19 ALJ ANGEJA: One quick housekeeping question. There
20 was a reference to an ACMS note on 1/17/13. What exhibit was
21 that? I didn't take fast enough notes.

22 MS. PALEY: Exhibit C.

23 ALJ ANGEJA: Okay. Thank you.

24 Questions?

25 ALJ KWEE: I guess one quick clarification for CDTFA.

1 Since you referred to something that wasn't in the record
2 before us, the Secretary of State's website for unclaimed
3 property, I assume that's what you were referring to, just to
4 clarify?

5 MS. PALEY: Yes.

6 ALJ KWEE: Okay. And so I just wanted to follow up
7 quickly on Judge Angeja's final line of questioning. I
8 think, for Appellants, you were saying that you didn't have
9 any -- you currently don't have any authority to act for the
10 corporation, for example, to claim property, but, along those
11 lines, I'm just curious, were you the owners of the
12 corporation, or was someone else the owners of the
13 corporation?

14 MR. BATES: We were owners.

15 MR. BEEBE: We were partial owners.

16 ALJ KWEE: Okay.

17 MR. BATES: We were partial owners.

18 ALJ KWEE: Okay. So, when you stopped being officers
19 of the corporation, was that because you resigned, or just
20 because that's when the corporation terminated?

21 MR. BATES: Pursuant to our bylaws, as soon as we
22 filed bankruptcy, we were --

23 MR. BEEBE: We had to surrender our shares.

24 MR. BATES: -- let go, and surrendered our shares in
25 the company.

1 ALJ KWEE: Okay. I see. And I'm sorry if you said
2 this earlier, but approximately what -- did you say that was
3 in July 1st of '13?

4 MR. BEEBE: It was the end of June.

5 ALJ KWEE: End of June. Okay. Got it. Thank you.

6 ALJ ANGEJA: Questions?

7 ALJ BROWN: I do have questions. I want to follow up
8 more about the evidence of knowledge that the taxes weren't
9 paid for each of the Appellants. For example, you referred
10 to the ACMS notes that show where -- I believe it's Mr. Bates
11 told the -- I guess it was BOE at the time, the BOE
12 employee -- that they held monthly meetings, and I don't
13 remember which note that was.

14 I guess, do we have -- is there any other evidence
15 corroborating this, given that, one, this is technically
16 hearsay, and, two, is there any evidence showing what the
17 Appellants supposedly discussed at the meetings?

18 MS. PALEY: It's Exhibit B of the dual packets.
19 Exhibit B is the February 17th, 2015, where they stated that
20 they had those monthly meetings. Additionally, though --

21 ALJ BROWN: I'm on Exhibit B.

22 MS. PALEY: Of the dual packet?

23 ALJ BROWN: Of the dual packet.

24 MS. PALEY: Yes.

25 ALJ BROWN: Which page am I looking at?

1 MS. PALEY: Unfortunately, I do not have the same
2 numerical --

3 ALJ BROWN: Okay. I have seen it. I saw it
4 previously when I looked through the record. I just don't
5 have it pulled up right now. So go ahead with what you were
6 explaining.

7 MS. PALEY: Something that I believe is, again, on
8 the fly here, adjusted, because there were concessions made,
9 so I had to --

10 ALJ BROWN: I understand.

11 MS. PALEY: -- adjust my presentation, but one of the
12 things I found of significance is that the corporation's
13 accountant, Ms. Floyd, indicated that both of the Appellants
14 handled the sales and use tax matters, and that's in the dual
15 packets, Exhibit E.

16 She also noted that, when she filed the electronic
17 401 ELF, that she reported those amounts to both Appellants
18 at the time. I would also note that there was a payment made
19 in September, September 23rd, prior to the filing of the
20 return on September 26th.

21 ALJ BROWN: Of 2013, you mean?

22 MS. PALEY: Yes.

23 ALJ BROWN: What payment are you referring to, and
24 how does that show knowledge of the unpaid taxes at issue?

25 MS. PALEY: Yes. Knowledge would be the time that

1 the returns were due, and that is captured within the ACMS
2 notes, when they are reaching out and specifically speak with
3 Mr. Bates that "We have not received the payments. We have
4 not received those filings," and that occurs during that time
5 period.

6 Regarding the actual responsibility, the fact that
7 they are making payments on outstanding debts even in
8 September is reflective of their responsibility and their
9 awareness that there was outstanding money owed in September.

10 ALJ BROWN: But outstanding money owed on a different
11 liability, not for the liability at issue.

12 MS. PALEY: Of the same. They made a --

13 ALJ BROWN: You're saying they made a payment on the
14 liability at issue here?

15 MS. PALEY: Yes. On September 23rd, 2013, there was
16 a \$21,842.64 payment.

17 ALJ BROWN: To CDTFA?

18 MS. PALEY: Yes.

19 UNIDENTIFIED SPEAKER: What was that amount, again?
20 I'm sorry.

21 MS. PALEY: Twenty-one thousand eighty hundred and
22 forty-two and 64 cents. And of that, \$18,815 was applied to
23 the liabilities at issue. The rest was attributed to second
24 quarter '13, which at that time was also due.

25 MS. SILVA: I think we were referencing that payment

1 in the sense that both Appellants were still involved in the
2 business at that time. You know, they say they left the
3 business, but then the returns were filed late. Payments
4 were made later.

5 But the knowledge with respect to when those returns
6 were due was based on the conversations at the time, the
7 meetings that they held, their corporate standing in the
8 company as CFOs and CEOs at the time the taxes were due.

9 There's nothing that says that they weren't the ones
10 in charge and should have been responsible for the sales and
11 use tax that's due. They know taxes are due each quarter.
12 So that's what we're talking about with respect to knowledge
13 at the time the taxes were due for each of the two quarters.
14 That's what we had argued.

15 ALJ BROWN: How do you know that both -- how do we
16 know that both Appellants had this knowledge?

17 MS. SILVA: Because you see the ACMS notes seem to be
18 mostly conversations with --

19 MS. PALEY: Yes.

20 MS. SILVA: And then the BOE employee, now CDTFA, I
21 understand, went to the business premises and spoke with Mr.
22 Bates. How do we know that Mr. Beebe had knowledge? There
23 are certainly more contacts documented with Mr. Bates.

24 However, we believe that the acknowledgment of both of them
25 that they had monthly meetings in which they discussed tax

1 liability attributes that to both of them, and then, given
2 the nature of their officer standing, that they had that
3 duty, and that they acknowledge that they coordinated that,
4 that they met with those things, and that they both addressed
5 those issues.

6 ALJ BROWN: Well, let me turn for a moment back to
7 Appellants, then, and say, is it correct that you were a
8 part -- that you had meetings each month to discuss the
9 liabilities of the corporation?

10 MR. BATES: That's correct.

11 MR. BEEBE: Yes. Up to a point, yes. After that,
12 no. But within the context of what you were referring to,
13 yes.

14 ALJ BROWN: And was tax liability one of the things
15 that was discussed?

16 MR. BEEBE: I can't give you a direct recollection of
17 every meeting. I don't think that -- as far as my
18 recollection, the quarters at hand were the discussion, with
19 outstanding taxation on two uncollected clients, as far as
20 which was the amount that they concede that we never
21 collected. That's where my attention and knowledge was, and
22 then we took the IRS debt. That was forefront in my mind.
23 So I couldn't tell you, now looking back on it, absolutely.
24 (Indiscernible.)

25 ALJ BROWN: Okay. I yield to my co-Panelists, who

1 may have other questions.

2 ALJ ANGEJA: Valid question. I'll ask one more time
3 if you wanted to be sworn in as a witness, so that what
4 you've just said would be evidence on which we could rely,
5 instead of argument. It's not required. I'm just throwing
6 that out there as a possibility.

7 MR. BEEBE: Can I ask you a legal question?

8 ALJ ANGEJA: Sure. I may not be able to answer.

9 MR. BEEBE: I know. I know. We've had that
10 conversation, too. I don't understand the value of being
11 sworn in versus not being sworn in.

12 ALJ ANGEJA: Only in that we can make a factual
13 finding based on sworn testimony, potentially. I'm not
14 saying we would or we would not, but we could.

15 MR. BEEBE: Sworn in and sworn out? In other words,
16 if you swear me in, then do I go back to being just somebody
17 arguing the point? Because being sworn in is a big idea.

18 ALJ ANGEJA: You could be sworn in and do both. If
19 you're making an argument, you're making an argument.
20 Factual statements we could rely on. If it's not sworn in,
21 we can't make factual findings based on what you've said. In
22 other words, if I swear that the light was red, but I'm not
23 under oath, then they can't say that the light was red, just
24 because I said so. Right? I don't know if that --

25 MR. BEEBE: If you swear to the fact that the light

1 was red --

2 ALJ ANGEJA: That's at least evidence, right, as
3 opposed to just being argument. We could make a factual
4 finding on -- the ultimate difference is that. If you want
5 us to make factual findings based on what you're saying here
6 today, that would need to be sworn in. Otherwise, we're
7 looking at documents, and what you're telling us the
8 documents mean.

9 MR. BEEBE: Okay.

10 MR. BATES: We're saying no.

11 ALJ ANGEJA: Okay. So they're saying no.

12 Do you have any other questions?

13 ALJ KWEE: No, I don't.

14 ALJ ANGEJA: So we offer you the opportunity for a
15 rebuttal, five to 10 minutes or so to respond to what CDTFA
16 has argued. It's not mandatory, but, if you'd like it, this
17 is your chance.

18 MR. BATES: The only comment that I'd like to make
19 is, there was a statement that --

20 ALJ ANGEJA: Into the microphone, please, if you
21 could. Thank you.

22 MR. BATES: -- statement that the DA, Shasta County
23 DA, did not take up the case on Sabrina Ferkey. Therefore,
24 there's no guilt --

25 MR. BEEBE: Prosecution.

1 MR. BATES: -- but that wasn't because the evidence
2 wasn't there. That's because the DA didn't want to take the
3 case. We can't force the DA to take those cases.

4 ALJ ANGEJA: Okay.

5 MR. BEEBE: The Sheriff's Department believed that
6 that was a strong case, and they presented it to the DA. The
7 DA's off-the-record comment -- again, this is me just saying
8 what was reported back to me -- was that the case wasn't
9 substantial enough for a case that would require the DA's
10 time and effort. They basically have a nondisclosed cap, if
11 you will, for a minimum before they'll proceed with
12 white-collar crimes.

13 ALJ ANGEJA: Okay. Does that conclude your rebuttal?

14 MR. BATES: I got nothing.

15 MR. BEEBE: We're good.

16 ALJ ANGEJA: All right. If no one has any additional
17 questions, then that will conclude the hearing. I will close
18 the record, and I thank each party for coming in today, and
19 following this hearing, my co-Panelists and I will discuss
20 the evidence and argument, and we will issue a written
21 opinion within 100 days of today's date. So thank you,
22 everybody, and this hearing is now closed.

23 (Whereupon the proceedings were

24 adjourned at 9:56 a.m.)

25 --oOo--