

## BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
                                                       )  
S. EICHLER,                                         ) OTA NO. 18032551  
                                                       )  
                    APPELLANT.                    )  
                                                       )  
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## TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, August 25, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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S. EICHLER, ) OTA NO. 18032551  
APPELLANT. )  
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Transcript of Virtual Proceedings,  
taken in the State of California, commencing  
at 1:10 p.m. and concluding at 1:48 p.m. on  
Wednesday, August 25, 2021, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SHERIENE RIDENOUR

Panel Members: ALJ JOSHUA LAMBERT  
ALJ SUZANNE BROWN

For the Appellant: S. EICHLER

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
COURTNEY DANIELS  
STEPHEN SMITH  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were previously admitted into evidence at the prehearing conference.)

(Department's Exhibits A-D were previously admitted into evidence at the prehearing conference.)

P R E S E N T A T I O N

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California; Wednesday, August 25, 2021

1:10 p.m.

JUDGE RIDENOUR: We are opening the record in the Office of Tax Appeals oral hearing for the Appeal of Steven Eichler, OTA Case Number 18032551. Today's date is Wednesday, August 25th, 2021, and the time is 1:10 p.m. This hearing is being conducted electronically with the agreement of the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Sheriene Ridenour, and I am the lead judge. Judge Suzanne Brown and Josh Lambert are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a decision as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

For the record, will the parties please state your names and who you represent, starting with the representatives for CDTFA.

MS. DANIELS: Courtney Daniels representing the Department CDTFA. Thanks.

MR. SMITH: This is Stephen Smith with CDTFA.

1 MR. PARKER: And this Jason Parker with CDTFA.

2 JUDGE RIDENOUR: Mr. Eichler, please introduce  
3 yourself.

4 MR. EICHLER: Sure. Steven Eichler representing  
5 myself.

6 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
7 you.

8 As discussed and agreed upon by the parties at a  
9 prehearing conference on August 4th, 2021, and as stated  
10 in my minutes and orders dated August 25th, 2021, there's  
11 are three issues in this appeal.

12 They are whether Appellant is personally liable  
13 under Revenue & Taxation Code Section 6829 for Hausewise,  
14 LLC's unpaid sales and use tax liabilities for the  
15 liability period of July 1st, 2008, through  
16 June 30th, 2009; whether relief of the penalties asserted  
17 against Hausewise is warranted; and whether relief of  
18 interest is warranted.

19 In addition, the following facts are agreed upon  
20 by the parties. Hausewise ceased to occupy its Menlo Park  
21 offices and showroom at the end of February 2009 and made  
22 its final sales of tangible personal property during the  
23 third quarter of 2009. Appellant filed Hausewise's  
24 returns for first quarter 2008, second quarter of 2008,  
25 first quarter of 2009, second quarter of 2009, and third

1       quarter of 2009.

2               Appellant knew Hausewise filed its first quarter  
3       of 2009 and second quarter of 2009 without remittance.  
4       Hausewise failed to file timely returns for third quarter  
5       of 2008 and fourth quarter of 2008. At all times  
6       Mr. Eichler was a managing member of Hausewise who had the  
7       responsibility for the filing of returns and the payment  
8       of tax for Hausewise.

9               Specifically, as to the elements for personal  
10      liability under Revenue & Taxation Code 6829 the following  
11      has been agreed: Hausewise's business terminated during  
12      third quarter of 2009. Hausewise collected sales tax  
13      reimbursement on its sales of tangible personal property  
14      during the audit period. Appellant was the person  
15      responsible for Hausewise's sales and use tax compliance  
16      during the audit period.

17              As such, of the four elements required for  
18      personal liability under Revenue & Taxation Code 6829, the  
19      remaining element in dispute is whether Appellant  
20      willfully failed to pay taxes due from Hausewise, or  
21      willfully failed to cause such taxes to be paid during the  
22      liability period.

23              And as for exhibits, each party's exhibits were  
24      listed in the exhibit log, which was attached in the  
25      minutes and orders, as well as copies emailed to the

1 parties after the prehearing conference. During the  
2 prehearing conference, neither party raised objections to  
3 the other's exhibits. As such, pursuant to my minutes and  
4 orders, Appellant's 1 through 5 were admitted into the  
5 record, and CDTFA's Exhibits A through D were admitted  
6 into the record.

7 After issuance of the minutes and orders in  
8 response to Appellant's request for relief from penalties  
9 and interest, CDTFA by response dated August 20th, 2021,  
10 agreed to remove the finality penalty. Thus, leaving the  
11 failure to file penalties for third quarter of 2008,  
12 fourth quarter of 2008, and late payment penalties for  
13 first quarter of 2009 and second quarter of 2009 at issue.

14 Mr. Eichler indicated that he will be testifying  
15 today. As such, he will be sworn in before his  
16 presentation. There are no other witnesses today. As a  
17 reminder to the parties, during our prehearing conference,  
18 we decided that the parties will each have 15 minutes to  
19 make their arguments, starting with Mr. Eichler. Then  
20 Mr. Eichler will have five minutes to provide a closing  
21 argument if he chooses.

22 Does anyone have any questions today before we  
23 move on to the presentations?

24 Mr. Eichler?

25 MR. EICHLER: I do not. Thank you.



1 JUDGE RIDENOUR: Ms. Daniels for CDTFA? This is  
2 Judge Ridenour.

3 MS. DANIELS: No questions at this time.

4 JUDGE RIDENOUR: Okay. Great.

5 This is Judge Ridenour. We are ready to proceed  
6 with Mr. Eichler's presentation.

7 However, first, I need to take your oath so that  
8 we may consider your statements as testimony. And you  
9 will remain under oath until the closing of this hearing.  
10 Please raise your right hand.

11

12 S. EICHLER,

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

16

17 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
18 you. When you're ready, Mr. Eichler, please begin your  
19 presentation.

20 MR. EICHLER: Okay. Should I be saying my name  
21 before every time I speak, or how would you like that  
22 done?

23 JUDGE RIDENOUR: No, no. This is your  
24 presentation, so this is your whole time. Just go ahead  
25 and just --

1 MR. EICHLER: Thank you.

2 JUDGE RIDENOUR: Thank you for clarifying.

3 MR. EICHLER: Okay. I did watch some videos. So  
4 I did see people do that every single time.

5

6 PRESENTATION

7 MR. EICHLER: Anyway. As I said, I apologize.  
8 It's been a crazy day already. I -- I think what I'd like  
9 to do in this presentation is, given what Judge Ridenour,  
10 you know, and we all have already agreed is that mistakes  
11 happen. I don't think anybody is in disagreement about  
12 that. And hindsight is wonderful in that manner to see  
13 that. And I think that because of that and because, you  
14 know, the fact that I believe that I am a very honest  
15 person and have a lot of integrity, why I went the way I  
16 did was to try to come up with a settlement approach.

17 Now, I do -- I do will say and admit I understand  
18 from our prehearing conference that the settlement  
19 agreement that I did sign, in of itself, is not  
20 necessarily admissible -- or whatever the right word is --  
21 for this particular hearing, other than I would like to  
22 reference to it as an example of me trying to solve a  
23 problem and trying to work with the situation as best as I  
24 possibly could to try to rectify it.

25 And, therefore, I think that where I wish to

1 spend my time in this 15 minutes and most likely less, is  
2 just to hopefully express, demonstrate, present the fact  
3 that nothing that occurred was deliberate, was willful.  
4 There was no money that went into my hands whatsoever or  
5 distributed to me in any manner whatsoever. I did not  
6 benefit in any way from -- from the events.

7 The mistakes were errors -- excuse me -- again,  
8 were not deliberate or willful. And, you know, I tried to  
9 do the right thing, whatever that -- whatever that  
10 portends to be. The economic stress and duress and  
11 financial duress that occurred in 2008 out of this  
12 calamity, which is one that I wish I could completely  
13 erase from my world and never have happened, you know, was  
14 just unbearable. Absolutely unbearable. And, you know,  
15 it's in -- it's in all the documents. I'm not going to  
16 belabor it. It's like going through PTSD. You know, I  
17 lost a home. I went bankrupt. I went broke. I mean, it  
18 was just the worst of all -- of calamities that I think  
19 anyone should ever go through.

20 If you look -- and again, I understand the  
21 boundaries of the hearing. But if one were to look back  
22 at my relationship with what was then the Board of  
23 Equalization, you know, my returns for this business, the  
24 one that we're talking about, for ones prior, for ones  
25 after, whatever that role existed has always been stellar.

1 Of course, I never had the experience of going through the  
2 financial calamity that I went through in 2008, 2009 and,  
3 frankly, well into, you know, 2015 and even to today.

4 That was just off the charts. And I know we all  
5 know that just from history. The, you know, again, to  
6 come back to the fact I tried to settle. I tried to do  
7 something where I could come up with an answer, a  
8 solution, a resolution that we could all work with. And  
9 by "we all" at that time it was the State Board of  
10 Equalization, which then became a very much longer name  
11 and which we abbreviate now to CDTFA. You know, I tried.  
12 I really did. I went through a handful of people.

13 But that economic and financial duress continued.  
14 I mean, I can give you examples of conversations that I  
15 had with representatives of the CDTFA who would say things  
16 to me like -- and I quote. I wrote this down in 2016 that  
17 her manager looked at my address and assumes it is a  
18 \$3 million home. So there's no reason to settle. And I'm  
19 like, first of all, it wasn't my home. And second of all,  
20 if anybody knows how to use Zillow or any of the  
21 technological tools and, obviously, if we could turn the  
22 clock backwards, would know that there's no way in heck  
23 that -- that the home that I lived in was a \$3 million  
24 home.

25 But at the end of the day also was, what bearing

1 did that necessarily -- I mean, I understand that -- I  
2 shouldn't -- I should be careful. I understand the  
3 optics, but that's not something that she should have been  
4 telling me, I don't think. I mean, that to me was  
5 unnecessary economic and financial duress in my view.  
6 Even to this day I don't have the financial resources to  
7 pay, you know, to pay the kind of numbers that you all are  
8 talking about.

9 I want to do something. Again, I -- I realize  
10 this is my testimony. I want to do something. I want to  
11 make amends. That's just who I am. But I did not go out  
12 in any deliberate manner and say, hey, I'm just not going  
13 to pay these guys, and I'm going to go buy something or do  
14 something or save my house from foreclosure, which was  
15 completely impossible to do any way. Even having reached  
16 out to our then attorney general who is now in a much  
17 better office. You know, I tried so many things to solve  
18 problems, and it was the financial and economic duress and  
19 depth of this was insurmountable. Completely  
20 insurmountable.

21 I -- I think that's all I want to say. I want to  
22 be respectful of all your time, and I don't want to go on  
23 and on and probably say the same thing over and over. And  
24 I'll stop there.

25 Thank you.

1 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
2 you, Mr. Eichler.

3 CDTFA, do you have any questions for Mr. Eichler  
4 as a witness?

5 MS. DANIELS: We don't have any questions for  
6 Mr. Eichler at this time.

7 JUDGE RIDENOUR: This is Judge Ridenour.

8 Judge Brown, do you have my questions?

9 JUDGE BROWN: This is Judge Brown. I don't have  
10 any questions at this time.

11 JUDGE RIDENOUR: This is Judge Ridenour.  
12 Judge Lambert, do you have any questions?

13 JUDGE LAMBERT: This is Judge Lambert. No  
14 questions at this time. Thanks.

15 JUDGE RIDENOUR: This is Judge Ridenour. I also  
16 do not have any questions at this time. Thank you,  
17 Mr. Eichler.

18 MR. EICHLER: Thank you.

19 JUDGE RIDENOUR: CDTFA, when you're ready,  
20 Ms. Daniels, you may please begin your presentation.

21

22 PRESENTATION

23 MS. DANIELS: All right. This is Courtney  
24 Daniels. Good afternoon, everyone.

25 Appellant's unpaid liabilities at issue originate

1 from a Notice of Determination that was dated  
2 June 18th, 2010, which was issued to Hausewise, herein  
3 after referred to as the company, for the third and fourth  
4 quarters of 2008, which the company failed to file returns  
5 for, and for filing non-remittance returns for the first  
6 and second quarters of 2009.

7 As you're aware, four elements must be met for  
8 personal liability to attach under Section 6829 of the  
9 Revenue & Taxation Code. First, the corporation must be  
10 terminated. Second, the corporation must have collected  
11 sales tax reimbursement. Third, the person must have been  
12 responsible for the payment of sales and use tax. And  
13 fourth, the person's failure to pay must have been  
14 willful. As Appellant has conceded the first three  
15 elements, our presentation will only focus on the last  
16 element, which is willfulness.

17 The evidence establishes that Appellant's failure  
18 to pay the company's tax liabilities was willful. Per  
19 Regulation 1702.5 subdivision (b)(2), willfulness means a  
20 voluntary, conscience, and intentional course of action,  
21 but it does not require bad purpose or motive. A  
22 responsible person willfully fails to pay taxes if the  
23 Department can establish that the responsible person had;  
24 first, actual knowledge that the taxes were due but not  
25 being paid; second, authority to pay the tax or cause them

1 to be paid when the taxes became due, and when the  
2 responsible had actual knowledge that the taxes were due;  
3 and third, the ability to pay the taxes but chose not to  
4 do so.

5 We will address each element and term. So the  
6 first requirement is knowledge, which means the person  
7 knew the taxes were not being paid on or after the date  
8 that the taxes came due. Appellant has conceded that he  
9 filed the company's returns for the first and second  
10 quarters for 2009, which are provided at Exhibit C-2,  
11 pages 1 through 4. Appellant also conceded that he filed  
12 returns for the first and second quarters of 2008 and the  
13 third quarter of 2009. See Exhibit D, pages 39  
14 through 47.

15 Additionally, Appellant stated that he was aware  
16 that the first and second 2009 quarter returns were filed  
17 without remittance. Therefore, Appellant clearly knew  
18 that taxes were due but not paid for the first and second  
19 quarters of 2009. As to the remaining quarters at issue,  
20 the third and fourth quarters of 2008, for which no  
21 returns were filed and no taxes paid, there's no dispute  
22 that Appellant was the person responsible for ensuring the  
23 company's filing for quarterly returns at such time.

24 Appellant affirmed this in his own statements to  
25 the Department which are memorialized in the ACMS entry



1     dated September 24th, 2008, at Exhibit A, page 13, where  
2     he told the Department -- or sorry. It's Exhibit, D,  
3     page 13, where he told a Department staff during a  
4     telephone conversation, that he was the sole person  
5     responsible for running the business. In light of this  
6     ACMS entry, as well as Appellant's history of active  
7     involvement in the filing of the company's tax returns, it  
8     is highly unlikely that the Appellant was unaware that the  
9     company had unpaid taxes for the third and fourth quarters  
10    of 2008 at the time that he failed to file those two  
11    returns.

12           As to the second element, authority. The  
13    responsible person must have authority to pay the taxes or  
14    cause them to be paid on the date the taxes became due,  
15    and when the responsible person had actual knowledge the  
16    taxes were due but not paid. Appellant has conceded that  
17    he had authority to pay the company's sales tax  
18    liabilities throughout the liability period, which is  
19    documented with an agreed facts portion of this Court's  
20    minutes of the prehearing conference. His authority is  
21    also apparent, given his past payments of the company's  
22    tax liabilities, and his statement that he was the sole  
23    person responsible for running the business. Again at  
24    Exhibit D, page 13.

25           As to the final requirement for willfulness, the

1 responsible person must have had the ability to pay the  
2 taxes but chose not to do so at the time that the  
3 responsible person had actual knowledge taxes were due.  
4 Appellant had sufficient funds available to pay the taxes  
5 when they became due but chose not to. Records from the  
6 company's suppliers show that the company made payments to  
7 the following suppliers during that liability period.

8 First, the company paid Riggs a total of \$8,000.  
9 And that was between February 3rd, 2009, and  
10 March 13th, 2009. And those documents are available at  
11 Exhibit D, pages 176 through 184. Second, the company  
12 paid Decorative Plumbing approximately \$43,112. And those  
13 payments were made between August 12th, 2008, and  
14 May 13th, 2009. And those documents are available at  
15 Exhibit D, pages 72 through 74. Finally, it made payments  
16 to a company called Hajoca totally approximately \$13,801.  
17 And that was from August 20th, 2008, through  
18 March 20th, 2009. And you can see Exhibit D, pages 185  
19 through 193 for that documentation.

20 Additionally, there is no dispute that during the  
21 liability period the company collected tax reimbursement  
22 from its customers on its taxable sales of tangible  
23 personal property. And, therefore, the company had those  
24 collected funds on hand by which to pay its tax. Based on  
25 the foregoing, the company had available funds with which

1 to pay the taxes it owed during the liability period, but  
2 it failed to do so choosing to pay others instead.

3 Based on the foregoing, Appellant willfully  
4 failed to pay or cause the payment of the company's sales  
5 tax liabilities for the liability period and is, thus,  
6 personally liable as the responsible person for the  
7 company's sales tax liabilities for the liability period.

8 As to Appellant's request for relief of penalties  
9 and interest, as stated earlier, the Department has  
10 removed the Notice of Determination finality payment from  
11 Appellant's assessment. However, Appellant has failed to  
12 show good cause for relief from Appellant's penalties  
13 pertaining to the company's failure to file tax returns  
14 for the third and fourth quarter of 2008, the late payment  
15 penalties for the first and second quarter of 2009, and  
16 applicable interest.

17 Revenue & Tax Code Section 6592 governs the  
18 standard for relief from both failure to file and failure  
19 to pay penalties. It allows for relief only where the  
20 failure to file or pay was, quote, "Due to reasonable  
21 cause and circumstances beyond a person's control and  
22 occurred notwithstanding the exercise of ordinary care and  
23 in the absence of willful neglect," end quote.

24 Here Appellant has not provided any reasons  
25 concerning either his failure to file the company's third

1 and fourth quarter 2008 returns, or for failing to pay the  
2 taxes for the first and second quarter of 2009 that would  
3 amount to a circumstance beyond his control. The evidence  
4 shows that Appellant filed returns for the company prior  
5 to and subsequent to the third and fourth quarters of  
6 2008. Therefore, the argument that Appellant was unaware  
7 of his failure does not suffice as an event beyond his  
8 control.

9 Moreover, to the extent that Appellant argues  
10 that the downturn in the economy and/or issues of the  
11 company's business income prevented him from filing and  
12 paying these taxes, this argument is unavailing since  
13 Appellant collected sales tax reimbursement for the sales  
14 during these periods. Therefore, had Appellant exercised  
15 ordinary care, those funds would have been set aside and  
16 remitted to the State. Accordingly, Appellant has not  
17 provided a basis for relief under Section 6592.

18 As to Appellant's request for relief from  
19 interest, Appellant has alleged the delays in the  
20 settlement process impacted the amount of interest due.  
21 Revenue & Tax Code 6593.5 subdivision (a) does allow for  
22 relief of all, or any part of the interest imposed where  
23 the failure to pay tax is due in whole or in part to an  
24 unreasonable error or delay by an employee of the  
25 Department acting in his or her official capacity.

1           However, subsection (b) of the statute requires  
2       that no significant aspect of the error or delay may be  
3       attributable to the taxpayer for relief to be granted.  
4       Here, there were no delays that were attributed to the  
5       Department's Settlement Bureau or to any other Department  
6       employee. Appellant entered into settlement negotiations  
7       on three different occasions, and each time the parties  
8       were unable to reach a settlement agreement. It was  
9       Appellant's request to delay the hearing in this matter  
10      because his requests to enter into settlement continuously  
11      attributed to the delays in this case proceeding.  
12      Therefore, he does not qualify for relief under Section  
13      6593.5.

14           In conclusion, the evidence shows that Appellant  
15      is liable pursuant to Section 6829 of the Revenue & Tax  
16      Code because one, the company terminated its business in  
17      2009; two, the company collected sales tax reimbursement;  
18      three, Appellant was responsible for the company's payment  
19      of sales and use tax; and four, Appellant's failure to pay  
20      was willful. Aside from the Department's concession as to  
21      the Notice of Determination finality payment, Appellant  
22      has failed to provide a basis for relief from the assessed  
23      penalties and interest. Therefore, we ask this panel to  
24      affirm the decision and recommendation in this matter.

25           Thank you.

1 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
2 you, Ms. Daniels.

3 Judge Brown, do you have any questions?

4 JUDGE BROWN: Thank you. This is Judge Brown. I  
5 do have a question for CDTFA, and it pertains to the  
6 request for relief of interest. And I'll preface my  
7 question with the caveat that I'm not asking about  
8 anything that's confidential because I know that  
9 settlement negotiations may be confidential. But I'm  
10 asking about the timeline. First, Ms. Daniels, can you  
11 tell us what are CDTFA's standard timeframes for  
12 settlement negotiations, if there are any standard time  
13 frames?

14 MS. DANIELS: My understanding is it depends.  
15 Jason, do you have a better idea as to what the standard  
16 is -- to what the standard time is?

17 MR. SMITH: This is Stephen Smith. I don't think  
18 that there are standard timelines for settlement  
19 negotiations.

20 JUDGE BROWN: This is Judge Brown. Thank you.  
21 Then I'll be more specific. Is there a standard timeframe  
22 for processing a settlement agreement after a taxpayer has  
23 signed a settlement agreement with CDTFA?

24 MR. SMITH: I -- I don't know that there would be  
25 a standard timeframe for that.

1 JUDGE BROWN: All right. Is there -- this is  
2 Judge Brown again. Is there a reason why the Settlement  
3 Bureau -- if you can tell me, is there a reason why the  
4 Settlement Bureau would need a taxpayer to sign a new  
5 settlement agreement after the taxpayer has already signed  
6 a settlement agreement?

7 MR. SMITH: We -- we can't really answer the nuts  
8 and bolts of what happened between the settlement officer  
9 and --

10 JUDGE BROWN: And this is Judge Brown. As I said  
11 I'm not asking for anything confidential. So I'm asking  
12 if you, you know -- I'm only asking for what you can tell  
13 me. I guess I would say -- I guess I'll ask were there  
14 any unexplained absences of work on this file for, you  
15 know, for any of the time periods that we're looking at  
16 that for relief of interest?

17 MR. SMITH: We can't really speak to anything  
18 beyond the time periods that it was in settlement. And I  
19 think that's set forth in the reply brief that we  
20 submitted to the office, to the panel, a week or two ago.

21 JUDGE BROWN: Then that's all my questions for  
22 right now. Thank you.

23 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
24 you, Judge Brown.

25 Judge Lambert, do you have any questions?

1 JUDGE LAMBERT: This is Judge Lambert, I don't  
2 have any questions, thanks.

3 JUDGE RIDENOUR: This is Judge Ridenour, I  
4 actually do have a question. I understand, again,  
5 settlement is a confidential process. I looked and  
6 between the date that the taxpayer submitted the sign --  
7 this is, again, to interest relief -- between the date  
8 that the taxpayer signed and submitted the settlement  
9 agreement, to the date that he received an email from the  
10 individual he was working with in the Settlement Bureau,  
11 was 339 days, approximately 11 months and 4 days. And in  
12 response to interest abatement, CDTFA brought up Section  
13 2(b), no significant error or delays attributed to an act  
14 or failure to act by a taxpayer. Which I understand there  
15 was some delay on the part of the taxpayer wanting -- this  
16 was the second revision. After hearing back in November  
17 there was some communicating between CDTFA and the  
18 taxpayer.

19 However, those 339 days, CDTFA, would you say  
20 that any act -- was there any failure or any -- was  
21 there -- would you say that 2(b) would appropriate to say  
22 that between those 339 days would be applicable for that  
23 period?

24 MR. SMITH: We're not prepared to speak about  
25 what was happening within the Settlement Bureau during the



1 time period between those two emails.

2 JUDGE RIDENOUR: Thank you very much. Those are  
3 all the questions I have for CDTFA. This is  
4 Judge Ridenour.

5 Mr. Eichler, if you like, you may make a brief  
6 closing statement in response to CDTFA's argument or  
7 further address any of the questions asked by the panel,  
8 but it is not required. Would you like to make a final  
9 statement?

10 MR. EICHLER: Yeah. I would like to at least  
11 make a few comments to close, if I may.

12 JUDGE RIDENOUR: Okay.

13

14 CLOSING STATEMENT

15 MR. EICHLER: So I'm trying to digest all the  
16 things that Ms. Daniels presented. And, again, this is an  
17 overwhelming amount of information. And, again, that is  
18 what you do and all the rules, regs, codes, and that.  
19 It's not what I do. So sometimes understanding all that  
20 is not easy.

21 But having said that, I do want to add to -- the  
22 information is when I got, which I believe was in the  
23 latter part of 2009, about missing the quarter -- Q1 and  
24 Q2 at that time of 2009, that, you know, the turmoil was,  
25 again, so severe. But I was advised to report, even if

1     you could not pay, that it was most important to report  
2     the information as you knew it. And that was, again, the  
3     reason for putting those in.

4             Otherwise, I might not have done those as well.  
5     Not to say that's right, but I'm just saying because of  
6     that call and that conversation that I had with -- I think  
7     it was still the State Board of Equalization then --  
8     that's why I did those and got those calls -- you know,  
9     got those in there; so trying to catch up, trying to get  
10    out of -- out of the mess.

11            You know, the other thing. I -- I heard a word  
12    of conscious in there about was -- what is the taxpayer's  
13    conscious that those were due? At the time, no. At the  
14    time of Q3, Q4 of 2008, obviously, even into 2009 because  
15    I took a phone call to say, oh, something is missing.  
16    There was no conscious ability to even -- I -- it was just  
17    as I said. The economic duress and the financial duress  
18    were so, so credibly bad, for lack of a better word. It  
19    wasn't even there.

20            And then by the time this came around again --  
21    I'm trying to remember. You know, I was called. I was  
22    asked to come talk. I did that willingly. I was trying,  
23    again, to be honest and have integrity and go through the  
24    steps with them as they saw it at the time up in San  
25    Francisco. I remember sitting there and doing that

1 with -- with three pairs of eyes asking questions and  
2 looking at me, and here I am still in this financial mess.  
3 But I did it. You know, I went in there, and I'm trying  
4 to do the right thing. And, again, and I will come back  
5 to that settlement agreement. I signed it. I did.

6 I was also told by, not only by the then legal  
7 counsel that I had -- which cost me fortune, which --  
8 whatever. And a fortune to me by the way is not  
9 necessarily a huge sum of money. The -- and I was also  
10 advised by, I think, all of at least three of the other  
11 representatives of Settlement Bureau -- if that's what  
12 it's called correctly -- that even once you sign an  
13 agreement, it could take 6 to 12 months for it to be  
14 signed and returned and approved.

15 So I mean, November -- you know, November --  
16 November was still within that -- or December, November  
17 was still within that window as to what had been told to  
18 me was, you know, a period in which it could take for that  
19 to be approved and signed. And every time I asked a  
20 question -- well, not every time. Many times I would ask  
21 questions of the person with whom I was speaking, and I  
22 either wouldn't get an answer, or I wouldn't get a direct  
23 answer, or I would get some kind of answer, like, oh, we  
24 can't tell you that because it's legal advice, when all I  
25 was asking for was, could you tell me what code? What

1 section can I go look at to understand what I'm working  
2 with here?

3 But I would also get the answer, sorry, we can't  
4 tell you that. And that to me is not transparency. And I  
5 know that, you know, that's the word that gets bantered  
6 around a fair amount within the CDTFA and even then, the  
7 State Board of Equalization world. And -- and I think --  
8 I'd like to think that I was doing the same thing. I was  
9 just trying to understand. And I still couldn't get  
10 questions answered.

11 So I'm going to stop there because I -- I --  
12 again, I don't -- I want to be mindful of all your time.  
13 I know this -- it is what it is, but I'm just going to  
14 leave it at that.

15 JUDGE RIDENOUR: This is Judge Ridenour. Thank  
16 you, Mr. Eichler.

17 I'm going to ask my co-panelists if they have any  
18 final questions of either party.

19 Judge Brown, do you have any questions?

20 JUDGE BROWN: I don't have any more questions.  
21 Thank you.

22 JUDGE RIDENOUR: Thank you.

23 This is Judge Ridenour. Judge Lambert, do you  
24 have any questions?

25 JUDGE LAMBERT: This is Judge Lambert. Well, I

1       guess I can ask CDTFA or -- you know, not talking about  
2       what happened in settlement but, you know, would it be  
3       typical to be leaving and entering the settlement  
4       negotiations or entering settlement, you know, three time?  
5       Is that typical or what?

6               MR. SMITH: I believe that it's uncommon. It  
7       would be initiated by the taxpayer.

8               JUDGE LAMBERT: Okay. Thanks. I think that's  
9       all the questions I have. Thank you.

10              JUDGE RIDENOUR: This is Judge Ridenour. I just  
11       have a couple of questions for you, Mr. Eichler, real  
12       quick. The funds that you used during the liability period  
13       to pay the vendors, do you concede that you did use the  
14       available funds at the time to pay the vendors instead of  
15       paying your taxes?

16              MR. EICHLER: At that time I was getting calls  
17       from -- the vendors had already turned to collection. And  
18       the kinds of calls that I was getting -- well, first of  
19       all, not having ever experienced those kinds of calls  
20       were, again, go to that financial and economic duress.  
21       They were threatening. They were harsh. They were  
22       abrasive. They were abusive. And they were as if you're  
23       life depended on it was the way, you know, that they were  
24       being, you know, presented to me.

25              I didn't have any clue. I mean, this is

1       shameless, and I hate to admit this. I had no clue what  
2       money was what. In other words, if it was there, and they  
3       were saying, you know, I need something. Can you pay  
4       this? Can you do it right now? Can you wire it? Can  
5       you, you know, whatever. It was -- it was reactionary and  
6       not conscious.

7               So to answer your question, obviously,  
8       truthfully, again, hindsight is 2020. Clearly the money  
9       not having been segregated between different accounts  
10      holding, you know, funds for different reasons, which,  
11      believe me, I do now. I mean, I wish I could go on a  
12      train -- on a -- on a -- you know, it's kind of like I  
13      wish I could go train people now on how not to do things  
14      or how to do things, of course, by virtue about having not  
15      done things. It's clearly, you know, was done not well.

16             So I have to answer your question honestly. Yes.  
17      I mean, I have to believe, again, sitting here, what,  
18      11 -- 12 years -- 12, 13 years later that because the  
19      money was all there that some of it had to be. I can't --  
20      I can't disingenuously say no.

21             JUDGE RIDENOUR: Mr. Eichler, I understand it was  
22      a really hard period, and I appreciate your honesty. And,  
23      you know, obviously, the panel and I still need to discuss  
24      this. And I do know however we decide does not take into  
25      account -- I mean, does take into account. You know,

1       like, we understand. And --

2               MR. EICHLER: I do.

3               JUDGE RIDENOUR: You know, please know that. We,  
4       obviously, have not discussed this, and we have no idea  
5       how we will decide. But please know that. Okay.

6               Again, I want to thank everyone for participating  
7       today. If there's nothing further, I am now concluding  
8       the hearing. At this point the case is now closed, and  
9       the case is now submitted. The judges will meet and  
10      decide your case later on, and we will issue a written  
11      opinion of our decision within 100 days after the record  
12      is closed from today.

13              Today's hearing in the Appeal of Steven Eichler  
14      is now adjourned, and the next hearing will resume in --  
15      at -- about 2:00, 2:05, 2:10.

16              All right. Thank you everybody and have a good  
17      one.

18              (Proceedings adjourned at 1:48 p.m.)

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