

## BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF: )  
 )  
J. WILLERFORD, ) OTA NO. 18053157,  
 ) 19014253  
 )  
 APPELLANT. )  
 )

**CERTIFIED COPY**

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, July 20, 2022

Reported by:

SARAH M. TUMAN, RPR  
Hearing Reporter

Job No. :  
371230TA(C)

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6   J. WILLERFORD,                    )   OTA NO. 18053157,  
7                                    )                   19014253  
8                                    )   APPELLANT.   )  
9                                    )  
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15                   TRANSCRIPT OF PROCEEDINGS, taken at  
16                   400 R Street, Sacramento, California,  
17                   commencing at 1:08 p.m. and concluding  
18                   at 2:58 p.m. on Wednesday, July 20, 2022,  
19                   reported by Sarah M. Tuman, RPR, Hearing  
20                   Reporter in and for the State of California.  
21  
22  
23  
24  
25

1 APPEARANCES:

2  
3 Panel Lead: ALJ NATASHA RALSTON

4  
5 Panel Members: ALJ JOSHUA ALDRICH  
6 ALJ ANDREW KWEE

7  
8 For the Appellant: MITCHELL STRADFORD  
9 JOHN WILLERFORD

10 For the Respondent: STATE OF CALIFORNIA  
11 DEPARTMENT OF TAX AND FEE  
12 ADMINISTRATION

13 STEPHEN SMITH  
14 JASON PARKER  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 6)

(Department's Exhibits A-Y were received at page 7)

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Witness:	Direct	Cross	Redirect	Recross	
JOHN WILLERFORD	10				

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1 Sacramento, California; Wednesday, July 20, 2022

2 1:08 p.m.

3  
4 JUDGE RALSTON: We are now on the record in the  
5 Appeal of J. Willerford. I'm sorry. Yes, J. Willerford.

6 These matters are being heard before the Office  
7 of Tax Appeals. The OTA Case Numbers are 18053157 and  
8 19014253. Today's date is Wednesday, July 20th, 2022, and  
9 the time is approximately 1:08 p.m.

10 Today's hearing is being heard by a panel of  
11 three Administrative Law Judges. I am Judge Ralston, and  
12 I will be the lead judge. Judge Aldrich and Judge Kwee  
13 are the other members of this appeals panel. All three  
14 judges will meet after the hearing and produce a written  
15 decision as equal participants.

16 Although the lead judge will conduct the hearing,  
17 any judge on this panel may ask questions or otherwise  
18 participate to ensure that we have all the information  
19 needed and to decide this appeal.

20 I'm going to start with Appellant. Please state  
21 your name and who you represent for the record.

22 MR. STRADFORD: My name is Mitchell Stradford.  
23 I'm representing John Willerford, the Appellant.

24 JUDGE RALSTON: Thank you. And Mr. Willerford,  
25 if you could state your full name for the record.

1 MR. WILLERFORD: John Willerford.

2 JUDGE RALSTON: Thank you.

3 And for Respondent, CDTFA, please?

4 MR. SAMARAWICKREMA: Nalan Samarawickrema  
5 representing for the Department.

6 MR. PARKER: Jason Parker, chief of Headquarters  
7 Operations Bureau with the Department, and in the  
8 audience, we have Stephen Smith with our legal division.

9 JUDGE RALSTON: Thank you.

10 So the issues in this case are whether respondent  
11 has established with clear and convincing evidence that  
12 the understatements were due to fraud or an attempt to  
13 evade the payment of tax and whether adjustments are  
14 warranted to the audited measure unreported taxable sales.

15 There will be one witness today. Appellant  
16 intends to call Mr. Willerford, and he will testify under  
17 oath. And respondent does not intend to call any  
18 witnesses.

19 Appellant has submitted Exhibits 1 through 3 and  
20 Respondent has not raised any objections to Appellant's  
21 exhibits. Appellant's Exhibits 1 through 3 are admitted  
22 without objection.

23 (Appellant's Exhibit Nos. 1-3 were received in  
24 evidence by the Administrative Law Judge.)

25 JUDGE RALSTON: Respondent has submitted Exhibits

1 A through Y, and Appellant has not raised any objections.  
2 Respondent's Exhibits A through Y are admitted without  
3 objection.

4 (Department's Exhibit Nos. A-Y were received in  
5 evidence by the Administrative Law Judge.)

6 JUDGE RALSTON: This hearing is expected to last  
7 approximately 90 minutes. Appellant will have 30 minutes  
8 for their opening presentation and approximately 5 minutes  
9 for witness testimony.

10 I wanted to ask, are you going to give your  
11 presentation and then have Mr. Willerford testify?

12 MR. STRADFORD: I was going to make a brief  
13 introduction and then have Mr. Willerford testify and then  
14 finish off my presentation. And then, you know, if you  
15 have any questions for him, obviously, he'll be able to  
16 answer those.

17 JUDGE RALSTON: Okay. That's fine. You have  
18 about 35 minutes; so you can use that how you choose. I  
19 will swear him in before your presentation. And  
20 Respondent will have the opportunity to cross-examine the  
21 witness if they so choose. The panel members may also  
22 have questions.

23 Respondent will have 40 minutes for their  
24 presentation, and then Appellant will have approximately 5  
25 minutes for rebuttal. As noted, the panel may ask

1 questions at any time.

2 Does anyone have questions before we move on to  
3 the opening presentations?

4 Okay. Not seeing any questions, Mr. Willerford,  
5 I'm going to swear you in, now, since you'll be testifying  
6 under oath. If you would please raise your right-hand;  
7 and --

8  
9 JOHN WILLERFORD,  
10 called as a witness on behalf of the Appellant, having  
11 first been duly sworn by the Administrative Law Judge, was  
12 examined and testified as follows:

13  
14 MR. WILLERFORD: I do.

15 JUDGE RALSTON: Thank you. We are ready to  
16 proceed with Appellant's opening presentation.

17 Mr. Stradford, please begin when you're ready.

18 MR. STRADFORD: All right. Thank you, Judge  
19 Ralston.

20  
21 PRESENTATION

22  
23 MR. STRADFORD: The main issue in dispute on  
24 these two cases is whether or not the 25 percent penalty  
25 imposed for evasion, as defined by Revenue and Taxation



1 Code Section 6485, should be abated. Mr. Willerford did  
2 not intentionally evade the payment of taxes that were  
3 due, and CDTFA has failed to meet its evidentiary burden  
4 that he did so.

5 It is well settled that CDTFA is required to  
6 provide evidence of a clear and convincing nature that  
7 establishes both that Mr. Willerford knew what his tax  
8 obligation was and that he intentionally evaded that  
9 payment of taxes that were due. They have not met that  
10 burden.

11 Mr. Willerford either claimed a bad debt  
12 deduction on the sales tax returns or estimated one that  
13 was netted from the gross sales that were reported on the  
14 sales tax returns that were filed. The two audits at  
15 issue here do not account for any bad debts. The reason  
16 that the bad debts are not accounted for in the audit is  
17 that Mr. Willerford failed to maintain the proper  
18 documentation to support the claimed or netted deductions.

19 In our presentation, we will describe the  
20 evidence that supports that the bad debts were substantial  
21 and, when accounted for, will demonstrate that the  
22 liability asserted from the audits are substantially  
23 overstated because the liability overstates  
24 Mr. Willerford's actual obligation -- Mr. Willerford's  
25 actual obligation. It is impossible for CDTFA to prove

1 convincingly that he knew what taxes were due and that he  
2 evaded the payment of them.

3 Before I continue with the rest of my  
4 presentation, I would like to give Mr. Willerford an  
5 opportunity to discuss his background with the business,  
6 the predecessor account that the CDTFA references in its  
7 fraud memorandum, and the general overview of the business  
8 he operated as well as the types of customers and people  
9 he sees.

10 So, John, go ahead.

11  
12 DIRECT TESTIMONY

13  
14 MR. WILLERFORD: Kind of give you a just a little  
15 bit of a background of me. I -- before I ever got into  
16 the car business, I was a teacher -- just for PE and  
17 Health. That's it. And then I ended up getting into the  
18 car business because I was living in -- teaching in Oregon  
19 at the time.

20 And one of the colleges I was working for -- they  
21 fired their entire staff, leaving me without a job. I was  
22 just an assistant coach, but I -- that was teaching health  
23 at that time for the -- for the college, which brings me  
24 back down to Hemet, where my parents lived.

25 And I was without a job. And I applied for the

1 local teaching job, which I was -- was hired for the  
2 following fall. That would be in 1983 or -- is when I was  
3 let go up in Oregon. And then in 1984, I was hired to be  
4 a PE and health teacher. And then -- so that would start  
5 in the fall.

6 In the meantime, I was without a job. So I  
7 applied for several jobs, and I got hired as a -- just a  
8 salesman at a Toyota store in my town of Hemet. And  
9 that's how I ended up in the car business.

10 And what happened was, when they hired me, they  
11 asked me -- they called me and asked me to be a head  
12 coach. So I had agreed at that time to be the head coach,  
13 and I was still working at the Toyota dealership as a car  
14 salesman.

15 And at that point, the owner of the -- of the  
16 Toyota dealership asked me if I would reconsider, stay,  
17 and he wanted me as his manager. So nine months as a  
18 teacher salary wasn't as much as what they had offered me  
19 at the Toyota dealership for -- for nine months. The  
20 difference was money.

21 So I ended up not teaching, taking the job as  
22 a -- as a -- as a sales manager for a Toyota store at the  
23 time. And that's how I ended up in the car business.  
24 Then -- I'm looking at, just, some outlines I made -- it  
25 was brought to my attention through my attorney that the

1 State says, well, I was a -- I had an audit through a  
2 company called Norman Motors Incorporated.

3 So how I -- how I got to Norman Motors is just --  
4 I had a job at Toyota. Then I got hired to a -- a couple  
5 of years later, I got hired to be a sales manager for a  
6 Buick and Pontiac store. And across the street from that  
7 store was a used car dealership called Norman Automotive.

8 And then, a couple of years later, Lee Norman --  
9 asked me to go to lunch. And then he asked me to -- if I  
10 would be his kind of, like, a general manager in that  
11 store at that time. And he offered me more -- more money  
12 to run his store; so I ended up at Norman Motors.

13 So from Norman Motors, everything was going good,  
14 and that -- until he passed away in 1999. And his wife  
15 wanted me to shut the store down, which, yeah. Okay. I  
16 will. And it took a while to try to shut it down.

17 But meanwhile, she was negotiating with a company  
18 called the Gosch Auto Group, and they ended up buying out  
19 Norman Motors, keeping me employed. Except, the other  
20 employees that worked there -- most of them were  
21 collectors -- were all let go because Gosch Auto Group was  
22 running their collections through a company called Credit  
23 Acceptance. So that's how I ended up finding out about  
24 Credit Acceptance.

25 And that went on for about eight years. At no

1 time when I was running their -- I -- I did have a  
2 partnership because they made me the president -- they  
3 made me the president on that little corporation of Norman  
4 Motors Automotive, even though the lion's share of that  
5 company was owned by the Gosch Auto Group.

6 So with that being said, I was pulled into an  
7 audit. It ended up going to a hearing -- not like this,  
8 but a local hearing in the county that I reside in, which  
9 is Riverside County.

10 So at that hearing, of course, the Gosch Auto  
11 Group -- they brought in all their people that do all  
12 their paperwork. And they had accountants. They have  
13 office ladies that were accountants. I mean -- so I had  
14 to go because I was president.

15 So I -- I -- when I went to that hearing, I was  
16 just there to say, yes, I'm John Willerford, president of  
17 Norman Motors Incorporated. And I took a seat, very much  
18 like what we're in here, in the background. If they had  
19 any questions, they would ask me.

20 At that point, the hearing went -- went on  
21 without me saying a word because all the accountants did  
22 it. My whole point of this story is, at no time did I  
23 ever do the paperwork for any of the stores that I work  
24 for. They all had their own people they hired.

25 So -- so -- as far as doing the office work and

1 the paperwork, when I became Willerford Auto Sales  
2 Incorporated, that was my first time by myself in a car  
3 business. I had me -- I had two part-time helpers. And I  
4 kind of did everything thinking, okay. Well, I could do  
5 it. And that's what happened. And I think I did it  
6 for -- I don't know -- eight years?

7           So at that point, I -- at -- my thought was the  
8 paper -- the -- what do they call that? -- the -- the  
9 amount of the sales tax each month? -- I had to prepare.  
10 And I called several times to the local branch in  
11 Riverside at that time and -- trying to figure out how to  
12 do it because I was paperless.

13           And the biggest problem on that system was I  
14 couldn't figure it out most of the time. Because if you  
15 didn't have the proper numbers in there, it wouldn't go  
16 through. It would not ever go through. And I kept  
17 calling -- I don't know how many calls I made through a --  
18 to Riverside trying to figure out how to get this thing  
19 done.

20           What I didn't want to do is go without ever  
21 paying. I had to get it in because there was a big  
22 penalty on it. So anyway -- but I -- I would file every  
23 month -- or every quarter because they switched it later  
24 on. And -- but -- I had charge-offs. I had people  
25 skipping out with cars. I had people giving me their down

1 payment and not -- and not being good.

2 So -- that leads me to the situation I'm in  
3 today. I do appreciate that -- the opportunity. So I'm  
4 here to testify on my own behalf. I'd be happy to answer  
5 any questions, and that's about it.

6  
7 FURTHER PRESENTATION  
8

9 MR. STRADFORD: With that in mind, I'd like to  
10 kind of go through the evidence that the CDTFA has  
11 provided in support -- excuse me -- in support of its  
12 finding of fraud. CDTFA's fraud memorandum, which is  
13 dated February 1st, 2016 -- they cite the following as  
14 evidence to support the evasion penalty:

15 The first one is, the taxpayer's involved in the  
16 day-to-day business operations as he is the sole owner of  
17 the business. We dispute that -- the fact that the  
18 business was owned as a sole proprietorship is evidence  
19 of a knowledge of tax and intent to evade the payment.

20 Practically speaking, that would be for any  
21 business that operates as a sole proprietorship. So the  
22 fact that the ownership of the business was a sole  
23 proprietorship, basically, has, really, no bearing, in our  
24 opinion, on whether or not there was an intent to evade  
25 the payment of tax.

1           If anything, it's actually the opposite. Because  
2           it was a sole proprietorship, and he had several  
3           responsibilities for the business -- you know, buying,  
4           selling the cars, everything that goes into that -- that  
5           it's more likely to lead to a finding of negligence, if  
6           anything, because there were other responsibilities that  
7           he had to fulfill.

8           The second thing that is listed as evidence in  
9           the CDTFA's memorandum is that John served as president of  
10          Norman Automotive Incorporated, which was audited twice  
11          prior to these audits. As John mentioned, he -- he wasn't  
12          responsible for preparing or filing the sales tax returns  
13          for that business.

14          The majority of the ownership was Gosch Auto  
15          Group, which I don't know if any of you are familiar with  
16          the down-south area, but they probably own somewhere  
17          between 15 and 20 new car dealerships. They have a large  
18          accounting staff, probably dozens of people, that are  
19          involved with the paperwork of the business. They -- they  
20          were responsible for filing the returns during those audit  
21          periods.

22          So I -- I don't believe that those audits or his  
23          participation in an exit conference is evidence of his  
24          knowledge of the sales tax reporting requirements of his  
25          business.



1           Third, they mention that the prior audit  
2 percentage for the first case at issue here was only  
3 167 percent, whereas the current audit, or the -- the more  
4 recent one, was 922 percent. And they -- they reference  
5 that the prior audit -- the percentage was very much lower  
6 than those.

7           As I just mentioned, he wasn't involved with the  
8 accounting and reporting practices of Norman Automotive.  
9 So the fact that those audits have little or no liability,  
10 whereas these ones have some liability, again, it's not  
11 evidence of his knowledge or intent to evade the payment  
12 of tax.

13           The fourth item it lists, it says, "Per review of  
14 prior audit, it is shown the taxpayer had access to sales  
15 journals which were not presented for review. There was  
16 also evidence revealing taxpayer collects sales taxes as  
17 shown on sales contracts submitted for review during the  
18 prior audit."

19           First, we would note that for the second audit,  
20 Mr. Willerford wasn't really given an opportunity to  
21 provide his records. If you look at the 414Z notes on the  
22 account, you'll see that the auditor made, maybe, two  
23 points of contact and then moved forward with processing  
24 the audit based on the DMV data. Through the quasi-exit  
25 conference process, Mr. -- John indicated that he was

1 going to provide additional documents. The notes indicate  
2 he missed that meeting, and they just decided to move  
3 ahead with the billing.

4 So I don't think that -- especially if you look  
5 at the first audit, where there's a reconstructed sales  
6 journal based on numerous contracts that John provided --  
7 there was good faith effort to provide records in  
8 connection with the audit.

9 The second audit was just processed kind of,  
10 really, without his consent but also without giving him a  
11 fair opportunity to verify records.

12 Notably, CDTFA does have procedures for  
13 requesting records from taxpayers. In Regulation 1698.5,  
14 it requires that they issue an information document  
15 request with a 30-day deadline, a second information  
16 document request with a 15-day deadline, and a third,  
17 final demand prior to issuing a bill unless there's a -- a  
18 statute issue.

19 The auditor just disregarded those procedures for  
20 the second audit and just moved ahead with the billing.  
21 So the fact that although the second audit is based on  
22 third-party information, we don't believe that that  
23 supports a finding of him withholding records  
24 intentionally in some sort of effort to evade an actual  
25 audit.

1           The fifth item that's listed in the memorandum --  
2   that says, "Per conversation with Mr. Willerford, he  
3   stated that he files quarterly sales and use tax returns.  
4   This indicates that taxpayer was aware of the taxable  
5   measure amounts reported to the Board, which led to  
6   unreported measure of taxable sales."

7           Similarly with, like, operating the business as a  
8   sole proprietorship, the fact that he filed the returns is  
9   not evidence that they -- he knew they were wrong or that  
10   he intentionally evaded the payment of tax. It's just --  
11   it's really not evidence of that at all.

12           The -- the next one that's listed in the  
13   memorandum is taxable sales amounts reported to DMV based  
14   on the DMV data download are substantially higher than  
15   those reported to BOE throughout the audit period. So  
16   there's no dispute that the -- the sales that the DMV has  
17   based of the registration amounts are higher than what was  
18   reported.

19           First, we'd like to note that the DMV records  
20   themselves are -- are not evidence of John's knowledge of  
21   what the sales were. They're -- they're more third party  
22   record.

23           Secondly, there's no evidence to support that he  
24   had access to DMV reports like the CDTFA does as a  
25   government agency. So it's not as though he can pull

1 those reports himself and use them to file his returns.

2 And third, and most importantly, is that the DMV  
3 reports just list the total sales. They don't account for  
4 bad debts at all. So the true amount of taxes owed is the  
5 net of the DMV sales with the valid bad debts that were  
6 incurred.

7 So, the DMV reports themselves don't even  
8 reflect -- and I would -- as I'm going to discuss here in  
9 a minute, the audit doesn't reflect what he actually owes.  
10 So how that could be evidence that he knew what the  
11 liability is when the state doesn't even know what his  
12 liability is, is a little perplexing.

13 Regarding the bad debts in particular, the first  
14 thing that we'd like to note is that in the second audit  
15 in the DMV data, Credit Acceptance Corporation is listed  
16 as a lien holder for 242 of the 245 vehicle sales.

17 For the first audit, we -- we don't have that  
18 same information. But the auditor did include 40  
19 transactions that they obtained from DMV. They call it  
20 "CUTS," Consumer Use Tax Section. They made a request for  
21 additional information. There's 40 vehicles in that  
22 sample where the audit does contain the backup DMV forms.  
23 34 of those 40 vehicles were registered with Credit  
24 Acceptance Corporation.

25 The point being is that pretty much every vehicle

1 John sold was financed by Credit Acceptance Corporation.  
2 Credit Acceptance Corporation is a recourse financing  
3 company, which means that if the customer defaults on the  
4 loan, ultimately, they can go back to John and request  
5 payment for the balance on the account. They're kind  
6 of -- it's not a full recourse -- they're kind of like a  
7 hybrid.

8           So when he sells a car -- I think in my brief I  
9 said, like, a \$10,000 car. Let's just say they -- they'll  
10 advance him a portion of that, like, \$5,000 -- right? --  
11 and the other \$5,000 will be put into a pool for the  
12 customers to make payments on. The first \$5,000 is  
13 nonrecourse; so John gets to keep that no matter what.  
14 The second \$5,000 is subject to recourse eventually.

15           So the -- the reason this is important is  
16 because, with recourse financing, the reason it exists is  
17 because they finance people with terrible credit that are  
18 unlikely -- or they're not qualified to get a traditional  
19 loan at all; so all the interest rates are 25.99 percent.  
20 Typically, the cars are sold above market value. And the  
21 reason they're sold above market value is because the  
22 customer doesn't have another means of acquiring the car  
23 through kind of more traditional means.

24           And the reason that they don't -- the reason they  
25 aren't capable of acquiring the vehicle through

1 traditional means is because they're not creditworthy. So  
2 they're very likely to default on their loans, which is,  
3 you know, accounted for in the high interest rates in and  
4 of itself. So the -- the high interest rate and, like,  
5 the portion of the loan being subject to recourse is how  
6 they qualify for the cars.

7 As far as sales tax is concerned, the reason  
8 that's all very important is because it leads to a lot of  
9 defaults. So when there's a default on the loan, the  
10 taxpayer who originally accrued the sales tax on the  
11 retail sale is entitled to a bad debt. With a variety of  
12 computational adjustments; right?

13 So there's a loan. Then you have to compute what  
14 portion of the loan is subject to tax versus what's not.  
15 So for example, sales tax reimbursement is not part of the  
16 measure of the bad debt. Then you have to apply the  
17 payments. The payments have to be applied, first, to  
18 earned interest; then to a principal balance; and then, if  
19 the car's repossessed, then you would subtract the  
20 wholesale value from that remaining balance.

21 But the wholesale value can be adjusted based on  
22 any additional reconditioning costs that you apply to the  
23 car to increase its value. And then you subtract that  
24 from the loan balance, apply the taxable percentage, and  
25 then you come up with the taxable bad debt.

1           So it's a little bit complicated. It's not as  
2 simple as -- as the CDTFA's making it out to be. John  
3 registered for a permit. We gave him a publication called  
4 "Auto Dealers"; ergo, he knows how to compute bad debts.  
5 He knows, you know, exactly how to do that.

6           It -- it's just not that simple. Even for large  
7 dealerships with large accounting staffs, in my  
8 experience, the bad debts are often the focus of the  
9 audit, and there's often mistakes. It's just -- it's hard  
10 to do correctly without a significant amount of experience  
11 and knowledge.

12           And in this particular case, there's significant  
13 evidence that there was a lot of bad debts, which is why  
14 the audit reflects such a large liability. They're -- the  
15 audit in total -- both audits, I believe -- the total  
16 measure -- unreported measure is approximately  
17 \$2.8 million.

18           In terms of bad debts, we have some -- some  
19 evidence that a significant portion of that is  
20 attributable to bad debts.

21           So one of the things that we submitted is Exhibit  
22 No. 3, which is a statement from Credit Acceptance  
23 Corporation. The statement's dated after John went out of  
24 business. That's pretty obvious because there's no new  
25 accounts being financed on the statement.

1           The first figure that's pretty significant, with  
2       respect to the bad debts, is on line 24.

3           I don't know if you guys have it in front of you  
4       by chance. No? You do? Okay.

5           So line 24 is under a subheading called "Gross  
6       Collection Detail." So it's basically what it sounds  
7       like. It's what Credit Acceptance Corporation collected  
8       in total. Line 24 is labeled "Repo," which is short for  
9       repossession. And it listed total amount for repossession  
10      value that says applied to the accounts receivables is  
11      \$512,000 -- \$512,085.96.

12          So basically, that's people that defaulted on  
13      their loans and the bank repossessed their cars. The  
14      bank, in this case, being Credit Acceptance Corporation.  
15      Then they sold the cars at auction to the tune of \$512,000  
16      and applied that towards the loan balance.

17          In this particular case, what's -- what's  
18      relevant about that figure is that the value of the  
19      repossession is significantly less than the value of the  
20      outstanding loan balance on the car for a few reasons;  
21      right?

22          One, as I mentioned, the cars are sold above  
23      market value due to the customer's creditworthiness. Two,  
24      when they make payments, they're paying at 26 or  
25      25.99 percent; so a large portion of their payment is



1 going towards interest not principal. And -- and three,  
2 when a vehicle is repossessed, let's just say it's not,  
3 like, quote/unquote, "front-line ready" -- ready to be  
4 sold.

5           You know, a lot of times people are -- are pretty  
6 hard on their cars when they know they're about to be  
7 towed away. So with that in mind, the, you know, \$512,000  
8 represents somewhere between \$1.5 million to \$2 million in  
9 bad debts.

10           In fact, the next thing we're going to point to  
11 is that it's roughly \$1.5 million in bad debts prior to --  
12 to the whole cost of the sale being applied. At the  
13 bottom of the statement, you'll see there's a summary of  
14 the accounts receivable balance.

15           The first column is "R" in quotation marks and  
16 then "C" in quotation marks and then a total. If you look  
17 at the Credit Acceptance Corporation dealer agreement that  
18 we submitted as Exhibit 2, it describes what those stand  
19 for.

20           It says a receivable would be designated as an "R  
21 lot receivable" or a "C lot receivable" on the books and  
22 records of Credit Acceptance and will also be noted on the  
23 monthly dealer statement provided in accordance with  
24 Section 3.06 of this agreement.

25           All receivables are originally designated R lot

1 receivables. In the event the obligor fails to make  
2 payment in the preceding 90-days, or if an auction sale  
3 check is posted to obligor's account, the receivable  
4 becomes a C lot receivable. Once a receivable is  
5 designated a C lot receivable, it will remain a C lot  
6 receivable.

7           So when you look at the totals at the bottom, the  
8 C lot receivables are all basically bad debts, but their  
9 net of the wholesale value that was applied to them;  
10 right? So if you were to take that into account relative  
11 to the audit findings, the audit findings find that  
12 taxable sales are unreported by \$2.8 million, rounding.

13           There's a valid bad debt sitting right on the  
14 statement of a million dollars. So the amount of the  
15 understatement is significantly overstated in CDTFA's  
16 audits. It's pretty clear. In my opinion, it's beyond a  
17 reasonable doubt.

18           There's obviously -- the lender is a recourse  
19 lender. All the vehicles are sold through the recourse  
20 lender. The recourse lender statements shows numerous bad  
21 debts including the fact that they actually repossess cars  
22 and applied those to the receivable balance. So without a  
23 doubt, there are significant bad debts that the audit does  
24 not take into account at all. There is no allowance for  
25 bad debt in the audit.

1           On top of that, the audit says that he knew what  
2 he underreported and did it intentionally. But the audit  
3 itself is obviously wrong. How can you suggest that he  
4 intentionally underreported on his returns to this amount,  
5 applied the penalty to that amount, when we know that that  
6 amount is wrong? No one knows what the actual liability  
7 is because we don't have the right records to support the  
8 true bad debt deduction.

9           The appropriate penalty in this case is a  
10 negligence penalty -- a negligence for failing to maintain  
11 proper records with respect to the bad debt deduction that  
12 he incurred. There is no basis to suggest that he  
13 intentionally underreported his tax.

14           The only true evidence CDTFA presented, really,  
15 is that there is a large liability. There just simply  
16 isn't -- excuse me for a second.

17           On top of that, the CDTFA has the burden of proof  
18 here. We don't have to support that he didn't commit  
19 fraud; they have to prove that he did. And they are  
20 required to present evidence.

21           So not only have they failed to provide evidence  
22 that's clear and convincing -- that's what's required --  
23 but on top of that, we've provided evidence that directly  
24 refutes it. So I don't know. I don't see how you can  
25 conclude that there would be a finding that there's

1 evidence to support that John knew what the liability was,  
2 and he intentionally underreported it based on what's in  
3 the record.

4 Thank you.

5 JUDGE RALSTON: So does CDTFA have any questions  
6 for Mr. Willerford?

7 MR. SAMARAWICKREMA: No, we don't.

8 JUDGE RALSTON: I'm going to turn to my panel.

9 Judge Aldrich, did you have any questions?

10 JUDGE ALDRICH: Yes. I have a couple of  
11 questions, and Appellant or Appellant's counsel can decide  
12 who answers. But during your -- Appellant's testimony,  
13 you mentioned that you -- he ran a paperless system; is  
14 that correct?

15 MR. WILLERFORD: Yes -- sorry.

16 Yes. So when I went into business, I thought I  
17 was going to have to fill out the forms. So when I went  
18 into business, they had changed that, and they put in, I  
19 guess, a new system. So when I signed up, I was strictly  
20 paperless. They wouldn't do it any other way in Riverside  
21 County.

22 MR. STRADFORD: So you --

23 MR. WILLERFORD: "Paperless" meaning, I could  
24 only go onto a computer to do the taxes so it would get  
25 right to the Equalization.

1           MR. STRADFORD: John, can I --

2           MR. WILLERFORD: Oh. I'm -- I'm sorry.

3           MR. STRADFORD: Yeah. He's -- he's referring to  
4 how he filed returns with the BOE system at that time.

5           JUDGE ALDRICH: The BOE system?

6           MR. STRADFORD: Yeah. The BOE system is  
7 paperless -- is what he's referring to.

8           JUDGE ALDRICH: Okay.

9           MR. STRADFORD: So, you know, sometime around  
10 2010, or thereabouts, you know, BOE stopped using paper  
11 returns and made everyone file online.

12           So you can confirm if I'm speaking correctly,  
13 John, but that's my understanding.

14           MR. WILLERFORD: That's it, yes. That's correct.

15           JUDGE ALDRICH: So the dealer jacket system --  
16 was that paperless? Or --

17           MR. WILLERFORD: No. I have dealer -- I have all  
18 the -- I had everything -- I still have them. I have  
19 everything they ever asked me. That's why I was a little  
20 bit baffled about, like, I didn't give them all they  
21 wanted. I thought I did.

22           I mean, I didn't drive over. I hired someone to  
23 take all these contracts over and dropped them off at  
24 Riverside at the time. And I can't remember the auditor's  
25 name, but she called me, and she was missing -- she said

1 she was missing contracts. And I go, well, I have -- I  
2 gave them all to you.

3 So what happened is -- and I don't know if I'm  
4 doing this right -- she -- she was counting contracts -- I  
5 don't even know if my attorney knows this -- she was  
6 counting every contract I gave her. But then, she said  
7 she was missing some based on a form that -- when we take  
8 the car and get it registered, there's a form called  
9 "262" -- and based on that, she says, "Well, you  
10 registered these cars."

11 And I said, "Well, can you give me a couple?  
12 Just, for instance, and I'll go back and look at them?"

13 And these -- the ones that she was counting in  
14 there -- they were unwinds. I even -- I knew how to do an  
15 unwind with DMV. I just don't know how to do it, an  
16 unwind, with Board of Equalization. So in her account,  
17 she was counting ones that I got the car back, and I gave  
18 them back their money.

19 So I -- I've been baffled about this whole --  
20 this whole situation because I -- I don't believe the  
21 audit was completely right, in my opinion.

22 JUDGE ALDRICH: Okay. And you had mentioned that  
23 there was some sort of frustration about inputting numbers  
24 into that system.

25 MR. WILLERFORD: Yes.

1 JUDGE ALDRICH: I assume it's the BOE system  
2 you're referring to.

3 MR. WILLERFORD: Yes.

4 So every time I would go into -- to -- to  
5 prepare -- because I didn't have anybody to prepare -- I  
6 had to do it myself because I didn't have -- I don't have  
7 money that the big dealers have. So I thought I could do  
8 it myself. I mean, I always thought it was simple  
9 arithmetic, but it's not.

10 But in there is -- you -- there's a -- the first  
11 box you come to is -- is your -- your total liability on  
12 your -- on -- for that month on the cars that you sold.  
13 Okay? So I put that in there. And then, if we did get  
14 down payment -- because the -- the checks would bounce and  
15 stuff like that. So I really didn't know how to -- how  
16 to -- how to do it.

17 I mean -- it's not that I did not try to do it.  
18 I tried to do it every single month. Now, if I'm  
19 negligent and not doing it right, okay. I accept that.  
20 But there is no way I tried to fraud the State of  
21 California out of their bag of money. I did not do that.  
22 I didn't walk out of there with any money.

23 JUDGE ALDRICH: So in reference to the, I guess,  
24 second audit, there was some discussion regarding the DMV  
25 sales. Are there any specific sales in -- in the DMV data

1     that are disputed?

2             MR. STRADFORD: I would say, not to my -- not to  
3 my knowledge. I mean, typically speaking, the DMV data is  
4 a reliable source of information.

5             Basically, when they -- when a dealer registers a  
6 car, there's a table on how much the registration fees are  
7 based off the selling price of the car. So the dealer  
8 looks at it, puts in what the registration fees should be  
9 for audit purposes, they reverse -- they do it the  
10 opposite way, you know, they take the registration fee and  
11 convert it into selling price.

12            MR. WILLERFORD: Well --

13            MR. STRADFORD: I didn't check the -- I'm sorry,  
14 John. I'll let you in a second -- I would say I didn't  
15 check the data for, like, duplicate VINs and stuff like  
16 that. It's possible that they're in there.

17            I know in the first audit, they mentioned  
18 duplicate VINs, and some transactions were removed because  
19 they're bought back and resold. But in the second audit,  
20 I didn't see that. So I would say, for the most part, I  
21 don't have -- there's no material issues with it.

22            JUDGE ALDRICH: Okay. Thank you.

23            No further questions.

24            JUDGE RALSTON: Oh. I think Mr. Willerford  
25 wanted to respond to that question.



1 JUDGE ALDRICH: Oh. Did you want to respond?

2 MR. WILLERFORD: No.

3 JUDGE RALSTON: Judge Kwee, did you have any  
4 questions?

5 JUDGE KWEE: Hi. This is Judge Kwee.

6 I was curious. I think, at the beginning of the  
7 presentation, it was mentioned that you didn't charge-off  
8 any bad debts on the income tax returns. I guess that  
9 would be '9, '10 and '11? Is -- is -- is that accurate?  
10 That none of these amounts have ever been, even after the  
11 audit -- were charged off for income tax purposes?

12 MR. STRADFORD: I'll let John answer first, and  
13 then I'll give my two cents.

14 MR. WILLERFORD: I don't understand the question.

15 MR. STRADFORD: He's asking if you claimed bad  
16 debts on your income tax returns when you operated the  
17 business.

18 MR. WILLERFORD: No.

19 MR. STRADFORD: Based on my review, they -- they  
20 appeared to be handled in large part, is my recollection  
21 of my review, when I was --

22 JUDGE RALSTON: Could you repeat that? I didn't  
23 hear the first part.

24 MR. STRADFORD: My -- my -- wow. That's a lot  
25 louder.

1           My recollection, when I reviewed them, which has  
2       been some time ago, is that they -- they appeared to be  
3       netted at least in some form.

4           JUDGE KWEE:   And a quick clarification -- when  
5       you say it was netted, are you referring to the income tax  
6       returns was netted?  Or the sales and use taxes were  
7       netted?  Or both.

8           MR. STRADFORD:  Both.  So my recollection is that  
9       on the income tax returns, there's no specific deduction  
10      that's claimed for bad debts.  But that the total sales  
11      amount is net of some bad debts.

12          And on the sales tax returns, I remember  
13      specifically that it's inconsistent.  Some periods there  
14      is a claimed bad debt amount, and others there's not.  So  
15      the presumption would then be it was netted on those  
16      returns.

17          JUDGE RALSTON:  Okay.  And I wanted to go back --  
18      you were referring to your Exhibit 3, which was the line  
19      24 for repossessions on page -- I guess there's only one  
20      page -- on Exhibit 3.

21          And then I also saw a line 20, "Loss, Repo, and  
22      Legal Fees."  And I guess I'm just not understanding  
23      the -- what is your position on, then, for the amount of  
24      bad debts that you're claiming?  Are you claiming the line  
25      24 amounts?  Because I guess this doesn't --

1           MR. STRADFORD: My -- my position in terms of,  
2 like, the specific bad debt amount that should be allowed  
3 based off this statement would be the \$1,053,864.58, which  
4 is at the bottom. That's the outstanding AR balance.

5           JUDGE KWEE: I'm sorry. What line is that,  
6 again?

7           MR. STRADFORD: This is going to get complicated  
8 here for a second.

9           What I actually think this deduction should be,  
10 based off this statement, would be line C or -- excuse  
11 me -- at the very bottom under column C, it would be  
12 \$1,053,864.58. You would have to adjust that. I think  
13 you would adjust that downward to the tune of \$257,642,  
14 which is the repo and legal fees on line 20.

15           So the net of that would be approximately  
16 \$796,000 in measure. So with repossessions, in general,  
17 when you compute a bad debt -- say you repossess a car for  
18 a thousand dollars, and you pay the tow truck company \$200  
19 to -- to repossess it. In this statement, what it's  
20 reflecting is that, like, the thousand dollars that the  
21 car is worth is the \$512,000. And the \$200 fee you would  
22 pay to a tow truck driver is the repo and legal fees  
23 portion, which would be the \$257,642 figure on line 20.

24           So when they compute -- when they apply the  
25 repossession value in their records, they apply the net --

1 they take their fee for repossessing the car first, and  
2 then they apply the remaining balance to the receivable  
3 they have. So when you do a sales tax bad debt  
4 computation, you're not allowed to reduce the wholesale  
5 value by the cost of repossession.

6 So under -- under my example -- right? -- if you  
7 pay someone \$200 to repossess a car worth \$1,000, you  
8 don't get to say that car was worth \$800. You have to say  
9 that car was still worth \$1,000. And that's a  
10 consideration that you get that should be applied towards  
11 the loan balance.

12 But on this statement, Credit Acceptance  
13 Corporation is, like, not particularly concerned with  
14 computing the taxable bad debt for sales tax purposes.  
15 So -- they -- they net their fee for repossessing the cars  
16 first. Then whatever's left over, they apply towards the  
17 account balance.

18 So under my example, the \$200 is line 20. The  
19 \$1,000 that the car is worth is line 24. So if you were  
20 to compute what the bad debts should be after this  
21 statement, you would take the total receivable balance --  
22 well, the total uncollectible receivable balance -- you  
23 would reduce it by the \$257,642 that they never reduced it  
24 by because it never got applied to the account. And then  
25 after that, you would need, like, a sample -- you would

1 sample the transactions and apply a taxable percentage to  
2 the remaining balance.

3 For Mr. Willerford's business, he practically  
4 never sold optional warranties or gap contracts as a  
5 practical matter. So the taxable percentage would be  
6 right around, like, 90 percent. The contract balance  
7 includes tax. So you back out the tax, which is, like, 8  
8 and a half percent, and then, on average, probably like 2  
9 percent of his sales were nontaxable.

10 So if you want to compute a ballpark of the true  
11 bad debts, it would be \$1,053,864 minus the \$257,642 on  
12 line 20 times roughly 90 percent. And you'd compute a bad  
13 debt allowance in measure of approximately \$720,000.

14 That's assuming that none of the remaining AR  
15 balance, the \$179,352, didn't become uncollectible at some  
16 point -- that could have been a bad debt after the  
17 statement was produced.

18 JUDGE KWEE: Okay.

19 MR. STRADFORD: But, yeah. Pretty simple to file  
20 these returns.

21 JUDGE KWEE: So -- and just to make sure I'm  
22 understanding -- so you're saying that the line 24, for  
23 example -- those are amounts that were collected from  
24 Appellant because it was a recourse loan. So then this is  
25 being tallied as amounts that are debited to his account?

1           MR. STRADFORD: Yes. Because it's part of the  
2 gross collection detail; so it's part of the total  
3 collected on the accounts. So the 520- -- or the \$512,000  
4 figure -- I -- it -- it's the value of the repossessed  
5 vehicles that were sold at auction.

6           JUDGE KWEE: Okay. And I guess it's still  
7 showing a balance, though? Is that because he was -- he  
8 never paid it to the lender? He has an outstanding --

9           MR. STRADFORD: The -- what this represents --  
10 it's, like -- it's 732 loans that were issued by Credit  
11 Acceptance Corporation.

12          JUDGE KWEE: Okay. So --

13          MR. STRADFORD: So the balance is, like, the  
14 amounts that his customers still owe on their cars.

15          JUDGE KWEE: Okay. Okay. So --

16          MR. STRADFORD: This isn't his accounting. This  
17 is a statement from the bank that did all the financing  
18 for him.

19          JUDGE KWEE: Okay. And then the other aspect is  
20 that this is dated from 2017. So I understand that, you  
21 know, the loans would be paid off over terms. But I'm not  
22 seeing how to translate, you know, what's listed here  
23 specifically to the period at issue.

24                You know, like, does this cover only that period?  
25 Does it cover before and after? Like, how would I -- how

1 would we know?

2 MR. STRADFORD: It's -- it's a -- the totals on  
3 the right say, "inception of the date." So the business  
4 started in 2009. I think the first audit is actually from  
5 the start date of the business. So it's -- it's -- all  
6 the numbers on the right that I'm referencing are for the  
7 total operation of the business.

8 This statement is produced after the business  
9 closed. So, like, if you look on line 15 and it says,  
10 "New Accounts," and it says, "zero, zero, zero, zero,"  
11 because he didn't sell any new cars -- right? -- like,  
12 there's nothing more being added.

13 JUDGE KWEE: Okay. And so --

14 MR. STRADFORD: You see what I'm saying? On line  
15 16? -- excuse me. I misspoke -- on line 16 it says  
16 number -- it's in the subcategory, "Number of Accounts."

17 JUDGE KWEE: Right. There's no new --

18 MR. STRADFORD: Line 16, no new accounts.  
19 There's none. And then some of them are getting paid off  
20 or written off -- right? -- so it says paid off or  
21 cancelled accounts.

22 So there's a couple every month. And then, you  
23 know, that reduces the total number of active accounts,  
24 which at the time that this statement was produced in  
25 October of 2017, there's only 49 active accounts.

1           If you look at the -- at the bottom, column "R,"  
2       there's only 49 accounts with a total receivable balance  
3       of \$179,352.

4           JUDGE KWEE:   And the business end date -- that  
5       was in 2011 then?

6           MR. STRADFORD:   No.   The business end date was  
7       in, like, 2007 -- do you know, John, when you closed?  
8       2017-ish?

9           MR. WILLERFORD:   Yeah.   It closed -- I don't know  
10      the exact month, but it was in the beginning of 2016.

11          MR. STRADFORD:   Okay.   So 2016.

12          JUDGE KWEE:   I guess -- so what I was trying to  
13      get at is, I think the audit period was '9, '10, '11?

14          MR. STRADFORD:   The first one.

15          JUDGE KWEE:   Oh, okay.

16          MR. STRADFORD:   The second one is '12 -- a chunk  
17      of '12, '13, '14, '15.

18          JUDGE KWEE:   Oh, okay.   I get it.

19          MR. STRADFORD:   So this statement covers both  
20      audit periods.   I think that there's a year that no  
21      determination was issued, or maybe three quarters in  
22      between the two audits.

23               And then they didn't audit to close out.   So  
24      maybe like a quarter or two after the audit period -- that  
25      would -- this statement includes both audits, the



1 three-quarter gap in the middle, and a couple quarters  
2 after the second audit.

3 JUDGE KWEE: Got it. Thank you.

4 JUDGE RALSTON: I have a question for Mr.  
5 Willerford or for you, Mr. Stradford.

6 So I'm -- I know, Mr. Willerford, you stated  
7 during your testimony that you -- that you were unable to  
8 submit the bad debt records to CDTFA during the audit  
9 period. Do you still have those records? Like, could you  
10 submit them now?

11 MR. WILLERFORD: I'm not sure if we're on the  
12 same page. I'm not sure if the bad debts that you're  
13 talking about -- are you talking about on the accounts  
14 that I carried? Is that what she said?

15 MR. STRADFORD: She's talking about any loan that  
16 was held by a Credit Acceptance Corporation or by you.

17 MR. WILLERFORD: During -- during the audit? I  
18 mean --

19 JUDGE RALSTON: Right. The --

20 MR. WILLERFORD: I'm not -- I'm not understanding  
21 the question from you.

22 JUDGE RALSTON: Well, I guess my question is, do  
23 you -- we were talking about how it's your position that  
24 the audit likely is overstated because it doesn't account  
25 for bad debts and it's my understanding that that

1 documentation was not submitted during the audit.

2 So my question is, do you have those records? Or  
3 are there records that you would want to submit to CDTFA  
4 that could help your case? Do you still have those  
5 records? If we gave you time to provide them, could you  
6 provide them?

7 MR. WILLERFORD: Yeah. I have -- I have all the  
8 records. I'm not sure if we're talking about two -- we  
9 might be talking about two different things. I was  
10 talking about people and their down payment that wasn't  
11 good. Maybe -- maybe I misunderstood what you were --

12 JUDGE KWEE: Hi. This is Judge Kwee.

13 If I may --

14 MR. STRADFORD: Real quick -- oh, I'm sorry,  
15 Judge Kwee. Go ahead, Judge Kwee.

16 JUDGE KWEE: I think she's asking -- because you  
17 have Exhibit 3, page 1 -- but then I think what she was  
18 asking for is if there's more clarification which would  
19 specifically tie the, you know, amounts reported as  
20 taxable to CDTFA to this statement that you provided to,  
21 you know, fully support a bad debt deduction.

22 MR. STRADFORD: So let me -- I guess I'll ask  
23 John.

24 But in order to support a bad debt, typically,  
25 the documentation that CDTFA would want to review would

1 include the contract of the sale; a complete payment  
2 history; and then, you know, an account balance showing  
3 how the payments were applied to interest and principal;  
4 and then any supporting documentation related to a  
5 repossession of the vehicle.

6 John, do you have documents of that nature to  
7 support the vehicles that were written off?

8 MR. WILLERFORD: Like, by me? Or --

9 MR. STRADFORD: By Credit Acceptance Corporation.

10 MR. WILLERFORD: I have all the contracts, yes.

11 MR. STRADFORD: So I guess he has all of the  
12 contracts.

13 MR. WILLERFORD: But Credit Acceptance --

14 MR. STRADFORD: You don't have any Credit  
15 Acceptance?

16 MR. WILLERFORD: I have copies because Credit  
17 Acceptance gets the original. Is that what you mean?

18 MR. STRADFORD: The contracts, yes. But, like,  
19 additionally, they're going to want to verify the bad  
20 debts. They're going to want a history of the payments  
21 that those customers made towards their loans and how  
22 those payments were applied.

23 MR. WILLERFORD: No. I don't have that. That  
24 only comes from Credit Acceptance. They do all the  
25 collecting.

1 JUDGE RALSTON: I just want to clarify, then,  
2 with CDTFA.

3 What -- what documentation would you need to show  
4 bad debt deductions?

5 MR. SAMARAWICKREMA: The wholesale value at -- at  
6 the time of the repossession and payment history.

7 JUDGE RALSTON: Okay.

8 MR. SAMARAWICKREMA: And the -- the sales  
9 contract and whatever -- whatever the information that is  
10 required to compute the bad debt adjustment.

11 JUDGE RALSTON: Okay. And that's the information  
12 that -- that you wouldn't have? Like, the wholesale value  
13 of the vehicles, the payment history, and the sales  
14 contract?

15 MR. WILLERFORD: I don't have any of that. All I  
16 get -- I can't even get it, now, because I'm out of  
17 business with Credit Acceptance. So I'm -- I can't even  
18 log in to get these reports that you have in front of you.

19 No. So once the contract goes to them, they take  
20 care of it. They collect and do whatever you're looking  
21 at right there.

22 JUDGE RALSTON: And just to clarify, you were in  
23 business with contract -- sorry. I'm forgetting the name.  
24 What is the --

25 MR. STRADFORD: Credit Acceptance.

1 JUDGE RALSTON: Thank you.

2 You were in business with Credit Acceptance  
3 Corporation during just the second audit period? Or both?

4 MR. WILLERFORD: Both.

5 JUDGE RALSTON: Okay. Thank you.

6 MR. WILLERFORD: Yeah.

7 JUDGE RALSTON: Okay. I think that's all of my  
8 questions.

9 Check with my panel members. Did Judge Kwee or  
10 Judge Aldrich -- did either of you have any further  
11 questions?

12 Okay. Judge Aldrich, please.

13 JUDGE ALDRICH: Hi. This is for Appellant.

14 I guess I'm wondering -- you had mentioned that,  
15 you know, you knew how to do an unwind for the DMV, but  
16 you didn't know how to do an unwind for the Board of  
17 Equalization and that you had had these frustrating  
18 experiences entering these numbers to -- into the BOE's  
19 system.

20 I guess, did -- at any point, did you reach out  
21 to a CPA or bookkeeper or somebody to help you out?

22 MR. WILLERFORD: On the unwinds?

23 JUDGE ALDRICH: On filing.

24 MR. WILLERFORD: Yes. I reached out to the Gosch  
25 Auto Group, and they sent over a -- they sent over a -- an

1 accountant, one of their accountants that does their work.  
2 But see -- and the accountant -- it was a little bit  
3 different because they sell their contracts to a bank  
4 instantly. I'm not sure how that works, but they get all  
5 their money, everything, up front.

6 On my -- my part is -- through DMV right now.  
7 If -- if a person comes in, back then -- I don't know if  
8 they changed the law -- but if a person comes in and then  
9 they want to hop out of the contract or what not -- it  
10 might be a week or two weeks or whatever it is -- we would  
11 always go in and register the cars right away.

12 So we would pay for the registration and then --  
13 and then afterwards, we kept -- I kept all the contracts,  
14 my copies. And when the auditor asked for them, we -- we  
15 gave her everything we had. But included in that was some  
16 of the unwinds.

17 So my thought always has been, the contracts that  
18 I unwound -- I think you made a mention of maybe there was  
19 some in there with dual VIN numbers -- and so if they were  
20 being counted twice -- and that would really make my life  
21 a -- I always had -- I always had a -- if the client  
22 wanted out of the contract, I would let them out, you  
23 know, in the first 30 days.

24 JUDGE ALDRICH: So the Gosch Auto Group CPA or  
25 bookkeeper --

1 MR. WILLERFORD: No. He -- he --

2 JUDGE ALDRICH: Was that because --

3 MR. WILLERFORD: He didn't really know how to do  
4 that because, for this simple fact, their policy is they  
5 don't unwind nothing. If that person comes in and wants  
6 to get out of a contract -- they drove the car, went  
7 around the block and came back -- they're not going to let  
8 you out of your contract.

9 JUDGE ALDRICH: So my question is, I guess, was  
10 that during the first audit period? The second audit  
11 period? That you asked for help?

12 MR. WILLERFORD: Actually -- that was, actually,  
13 in the beginning.

14 JUDGE ALDRICH: In the beginning?

15 MR. WILLERFORD: Mm-hmm.

16 JUDGE ALDRICH: Okay.

17 MR. WILLERFORD: I think I'm on the same page.  
18 Yeah. That's what, I think -- and --

19 JUDGE ALDRICH: And then -- so we have the CAC  
20 lender, were you working with other lenders as well? Or  
21 is that the prominent --

22 MR. WILLERFORD: That was the only one that took  
23 our contracts.

24 JUDGE ALDRICH: Okay. No further questions.

25 MR. STRADFORD: I would just add in the second

1     audit, CAC is the lien holder in the DMV data on 242 of  
2     the 245 cars -- so 99 percent.

3             JUDGE RALSTON:   Thank you.

4             Judge Kwee, do you have any further questions?

5             JUDGE KWEE:   Not at this time.   Thank you.

6             JUDGE RALSTON:   Thank you.

7             Okay.   Mr. Samarawickrema, you have 40 minutes  
8     for your presentation.   Please begin with when you are  
9     ready.

10            MR. SAMARAWICKREMA:   Thank you, Judge.

11  
12                               PRESENTATION

13  
14            MR. SAMARAWICKREMA:   Appellant operated a used  
15     car dealership from February 1, 2009, to June 30, 2016, in  
16     Hemet, California.   Appellant sold vehicle at retail and  
17     wholesale.

18            Two audit periods are subject to this appeal.  
19     For easy reference, the Department is going to refer  
20     "first audit" for the audit period April 1st, 2009, to  
21     June 30, 2011, and refer "second audit" for the audit  
22     period April 1, 2012, through March 31, 2015.

23            During the first audit period, Appellant reported  
24     a little over \$900,000 as total sales and claimed little  
25     less than \$30,000 as nontaxable sales for resale and



1 claimed little less than \$30,000 as bad debts, resulting  
2 in reported taxable sale of around \$850,000. That will be  
3 on Exhibit A, pages 22 and 23.

4 During the second audit period, Appellant  
5 reported approximately \$375,000 as total sales and claimed  
6 little over \$220,000 as bad debts, resulting in reported  
7 taxable sale of around \$155,000. And that will be on  
8 Exhibit H, pages 17 and 18.

9 During our presentation, we will explain why the  
10 Department rejected Appellant's reported taxable sales,  
11 why the Department choose an indirect audit approach for  
12 the second audit period, how the Department estimated  
13 Appellant's unreported sales tax for both audit periods,  
14 and why the Department recommended a fraud penalty for  
15 both audit periods for this Appellant.

16 During both audits, Appellant failed to provide  
17 sufficient sales records. He did not provide complete  
18 Department of Motor Vehicle report of sales. Appellant  
19 did not provide complete copies of sales contracts,  
20 financing contracts, repossession documents, sales  
21 journals, sales summaries to support his reported total  
22 taxable and untaxable sales for both audit periods.

23 In addition, he failed to provide complete  
24 purchase information or purchase journals for both audit  
25 periods. Appellant was unable to explain how he reported

1 his sales on sales and use tax returns. Appellant was  
2 also unable to explain what sources he relied upon to find  
3 his sales and use tax returns.

4 The Department did not accept Appellant's  
5 reported taxable sales due to lack of reliable records and  
6 negative book markers. It was also determined that  
7 Appellant's report was such that sales could not be  
8 verified by a direct audit approach. Therefore, the  
9 Department determined sales used in DMV information,  
10 auction house purchase information, and available sales  
11 journals for the first audit period.

12 Appellant did not provide any books and records  
13 for the second audit period; and therefore, the Department  
14 determined sales using DMV information. For the second  
15 audit, the Department completed three verification methods  
16 to verify the reasonableness of Appellant's reported total  
17 and taxable sales:

18 First, Appellant did not provide all of his  
19 federal income tax return. Appellant only provided  
20 federal income tax returns for years 2009 and 2010.  
21 Therefore, the Department requested federal income tax  
22 return for the other years from the Franchise Tax Board  
23 and received Appellant's federal income tax return for the  
24 years 2012, 2013, 2014, and 2015. And that would be on  
25 Exhibit X.

1           The Department reviewed Appellant's available  
2 federal income tax returns and compared the federal income  
3 tax return sales with Appellant's reported total sale of  
4 around \$775,000 and calculated an overall difference of  
5 around \$2.2 million. And that would be on your Exhibit X,  
6 page 1.

7           The Department also compared reported total sale  
8 of around \$775,000 to the purchases of around  
9 \$1.6 million, reflected on Appellant's available federal  
10 income tax returns, and calculated an overall negative  
11 reported book markup of 53 percent. And that would be on  
12 your Exhibit X, page 3.

13           The total purchases of \$1.6 million is also more  
14 than two times larger than the reported total sale of  
15 \$775,000. In other words, this means that according to  
16 Appellant's reported sales, Appellant was losing money  
17 every time it made a sale. However, based on the analysis  
18 of available DMV and auction house purchase information,  
19 Appellant's overall retail markup was a little over  
20 88 percent. And that will be on your Exhibit P.

21           Second, Appellant provided sales journals for the  
22 first audit period. The Department noted that the sales  
23 tax for the first audit period of around \$189,000 recorded  
24 on sales journals did not match with the reported with the  
25 reported sales tax of \$75,000. Appellant's recorded sales

1 taxes is 153 percent higher than the amount reported for  
2 the first audit period. And that would be on your Exhibit  
3 A, pages 84 through 86.

4 Third, Appellant did not provide complete sales  
5 record for the first audit period. Also, Appellant did  
6 not provide any books and records for the second audit  
7 period. Therefore, the Department obtained Appellant's  
8 DMV information and that will be on your Exhibit B,  
9 Exhibit J, and Exhibit T.

10 The Department compared Appellant's reported  
11 taxable sale of \$1 million for both audit periods with  
12 estimated sale of \$3.5 million based on the DMV  
13 information and calculated an overall difference of  
14 \$2.5 million. And that will be on your Exhibit X, page 4.

15 The Department also compared Appellant's  
16 estimated sales based on DMV information with sales  
17 reflected on Appellant's available federal income tax  
18 returns. Appellant sold more than \$775,000 sales on his  
19 federal income tax return. And that would be on your  
20 Exhibit X, page 2.

21 Appellant was unable to explain the differences  
22 found in his federal income tax returns, sales journals,  
23 DMV information differences, and negative reported book  
24 markers. Therefore, the Department conducted further  
25 investigation by analyzing Appellant's sales journals, DMV

1 information, and auction house purchase information for  
2 the first audit period.

3 Appellant did not provide any books and records  
4 for the second audit period. Therefore, the Department  
5 conducted further investigation by analyzing the  
6 Appellant's DMV and auction house purchase information for  
7 the second audit period. The Department was able to  
8 obtain DMV information for both audit periods which  
9 included report of sales data and sorted this data by the  
10 dealer's license number.

11 This DMV information is based on the retail  
12 report of sale that Appellant submitted to DMV. The  
13 finding of the report of sale is presumptive evidence that  
14 the dealer who filed the report of sale is the person who  
15 actually made the sale. When the DMV received the report  
16 of sale, the actual selling price is converted to a  
17 two-digit alpha code, also known as "beta license fee  
18 code." And that would be Exhibit D, column 25.

19 Vehicle License Fee Codes are established in \$200  
20 increments. The Department converted this vehicle license  
21 fee code to dollar values and used lowest value in the  
22 vehicle license fee codes range to estimate the sales  
23 price. And that will be on Exhibit D and Exhibit U.

24 The Department analyzed DMV information and  
25 removed sale of the same makers appearing in the DMV

1 information more than once as duplicates and unwinds. For  
2 the first audit, due to incomplete records, the Department  
3 had to reconstruct Appellant's sales journals using DMV  
4 and auction house purchase information.

5 Specifically, the Department examined Appellant's  
6 sales journals and related reported -- report of sales  
7 slips and determined that Appellant recorded 293 retail  
8 sales during the audit period, totaling around \$2 million,  
9 with an average taxable sale price of around \$7,000. And  
10 that would be on your Exhibit A, pages 61 to 77.

11 The Department -- the Department compared the DMV  
12 data and auction house purchase information to Appellant's  
13 sales journals and report of sales slips, which disclosed  
14 34 unrecorded sales by Appellant. And that will be on  
15 your Exhibit A, pages 52 through 16.

16 The Department also obtained the vehicle history  
17 report for 34 vehicles, which disclosed selling price for  
18 the 33 of the 34 vehicles in the amount of around  
19 \$270,000. Based on the review of the 33 vehicle history  
20 reports, the Department noted that Appellant had  
21 transferred title of 33 vehicles to other individuals,  
22 which is evidence that Appellant sold those vehicles at  
23 return. And that will be on your Exhibit C.

24 With regard to the remaining vehicle for which  
25 the vehicle history report did not have a selling price,

1 the Department applied the average selling price of around  
2 \$7,000, as reflected in Appellant's sales journals. The  
3 Department then added the total selling price of the  
4 vehicle record in the sales journals of around \$2 million.

5 The total selling price for the vehicle disclosed  
6 in vehicle history report of around \$270,000, and the  
7 estimated selling price for the single remaining vehicle  
8 of around \$7,000, which resulted in total audited taxable  
9 sales around \$2.3 million for the first audit period. And  
10 that will be on your Exhibit A, page 49.

11 Audited taxable sales were compared with reported  
12 taxable sales of around \$850,000 to compute unreported  
13 taxable sales based on sales journals, vehicle history  
14 reports, DMV, and auction house information determined  
15 unreported taxable sale of around \$1.4 million for the  
16 first audit period. And that will be on your Exhibit A,  
17 page 49.

18 The Department then compared the unreported  
19 taxable sales with the reported taxable sale of around  
20 \$850,000 to compute the error rate of 167.8 percent for  
21 the first audit period. For the second audit period,  
22 Appellant did not provide any books and records.  
23 Therefore, the Department analyzed DMV information and  
24 removed sale of the same vehicle appearing in the DMV  
25 information more than once as duplicates and unwinds.

1           The Department then determined audited taxable  
2     sale of around \$1.6 million per DMV information. Audited  
3     taxable sales were compared with reported taxable sale of  
4     \$155,000 to determine unreported taxable sales based on  
5     DMV information of around \$1.4 million for the second  
6     audit period. And that will be on your Exhibit H, page  
7     43.

8           The Department then compared the unreported  
9     taxable sales with the reported taxable sale of \$155,000.  
10    To compute an error rate of a 922.2 percent for the second  
11    audit period. And that will be on your Exhibit H, page  
12    52.

13          Subsequently, the Department found that sale of  
14    around \$455,000 for 69 vehicles were missing from the DMV  
15    information for the second audit period. And that will be  
16    on your Exhibit H, page 68, and Exhibit O.

17          The Department concluded that including \$455,000  
18    would increase the unreported taxable sales by \$455,000  
19    from \$1.4 million to \$1.9 million for the second audit  
20    period. The Department did not include this 69 vehicles  
21    when determining sales for the second audit period. The  
22    audit calculation of unreported taxable sales based on  
23    Appellant's DMV information was reasonable and was in  
24    Appellant's favor.

25          In total, the Department determined unreported



1 taxable sale of around \$2.8 million for both audit  
2 periods. And that will be on your Exhibit A, page 44, and  
3 Exhibit H, page 43.

4 Appellant claimed that he's entitled to  
5 additional adjustments including unwinds, cancelled sales,  
6 and bad debts related to repossessions. As support,  
7 Appellant provided a monthly summary statement from Credit  
8 Acceptance for April 2017 to September 2017. And that  
9 would be on your Exhibit 3. This information is not  
10 within the audit periods.

11 The Department reviewed and analyzed this  
12 information and ultimately rejected it. Upon examination  
13 of Appellant's Exhibit 3, the Department ordered --  
14 Appellant did not provide any sales documents or data  
15 download with full folders to corroborate the figures  
16 listed in the monthly statements. Moreover, during the  
17 audit period, Appellant financed only 13 transactions.  
18 And that will be on Exhibit Q.

19 Appellant has not specified the amount of bad  
20 debt adjustments with reasonable supporting documents it  
21 seeks. For audit, the Department obtained Appellant's  
22 available income tax returns, and Appellant did not claim  
23 any bad debts on these returns. And that will be on your  
24 Exhibit A, page 79, and Exhibit X.

25 To date, Appellant has not provided any

1 verifiable evidence that it incurred bad debts on  
2 repossessed vehicles. As mentioned earlier, Appellant did  
3 not provide any repossession documents and the information  
4 that are necessary to compute bad debts for both audit  
5 periods.

6 The Department also adjusted for known unwinds  
7 and canceled sales. And Appellant did not provide any  
8 additional evidence for any additional adjustments.

9 The Department imposed a 25 percent fraud penalty  
10 for both audit periods. The Department also issued two  
11 separate memorandums recommending the imposition of fraud  
12 penalty for both audit periods. And that will be on your  
13 Exhibit D and Exhibit I.

14 Appellant claims that the Department has not  
15 shown specific acts, such as falsified records,  
16 demonstrating he intends to evade the tax. Appellant also  
17 argues the Department has not presented documentation and  
18 verifiable evidence of fraud.

19 The Department notes that circumstantial evidence  
20 may be relied upon in establishing fraud. Here, Appellant  
21 willfully and intentionally participated in an attempt to  
22 evade payment of tax due to the State. Appellant handled  
23 his business affairs in such a manner as to avoid  
24 recordkeeping of transactions and acts or statements,  
25 which could mislead or conceal, by not recording large

1 amount of actual sales. The Department found six  
2 indicators to support the evidence of fraud or the intent  
3 to evade taxes:

4 First, as mentioned earlier, the Department  
5 obtained DMV information for both audit periods. The  
6 Department noted that the estimated sale of around  
7 \$3.5 million for DMV information for both audit periods  
8 exceeded the reported taxable sales reported on the sales  
9 and use tax return of around \$1 million by \$2.5 million.  
10 And that will be on your Exhibit X, page 4.

11 This difference represented an error rate of  
12 249.26 percent. Thus Appellant reported on the sales and  
13 use tax returns were less than one-third of his DMV sales  
14 information for these two audit periods. Failure to  
15 report such a significant portion of Appellant's sales  
16 cannot be explained negligence or lack of business  
17 knowledge. The Department found a failure to report over  
18 \$555,000 in sales each year is evidence of fraud or the  
19 intent to evade taxes.

20 Second, the Department noted that there were  
21 large unexplained differences between Appellant's federal  
22 income tax return and sales and use tax returns, which  
23 represent an understatement of 278.26 percent, meaning  
24 Appellant reported less than 26 percent of his sales for  
25 these years. And that will be on your Exhibit X, page 1.

1 Appellant has not explained why sales information  
2 reported on his federal income tax return exceed total  
3 sales reported on the sales and use tax returns.

4 Third, the Department noted that the sales tax  
5 for the first audit period of around \$189,000 recorded on  
6 sales journals did not match with a reported sales tax of  
7 \$75,000. Appellant recorded sales tax was 153 percent  
8 higher than the amount reported for the first audit  
9 period. And that will be on your Exhibit A, pages 84  
10 through 86.

11 Appellant has not explained why recorded sales  
12 tax exceeded sales taxes reported on the sales and use tax  
13 use returns.

14 Fourth, the total understatement of \$1.4 million  
15 for the first audit period is a large, substantial  
16 deficiency representing an error rate of 167.8 percent  
17 when compared to reported tax sale of around \$850,000.  
18 And that will be on your Exhibit A, page 44.

19 Similarly, the total understatement of what  
20 \$1.4 million for the second audit period is a large,  
21 substantial deficiency representing an error rate of  
22 922.2 percent when compared to reported taxable sales of  
23 around \$155,000. And that will be on Exhibit H, page 43.

24 The quarterly percentage of errors exceed  
25 1,500 percent in nine different quarters of these audit

1 periods. And that would be on your Exhibit H, page 52.  
2 This shows that the errors are consistent throughout the  
3 audit periods. Further, Department finds that the  
4 percentages of errors are excessive and is compelling  
5 evidence of fraud or intent to evade taxes.

6 Specifically, Appellant reported little more than  
7 \$600 for second quarter, 2014, and \$2000 for fourth  
8 quarter, 2013. However, Appellant sold more than \$105,000  
9 in second quarter, 2014, and \$145,000 in fourth quarter,  
10 2013, in taxable sales for DMV sales records. And that  
11 will be on your Exhibit H, page 43.

12 Further, Appellant's reported taxable sales for  
13 the second audit period declined dramatically starting in  
14 the third quarter, 2013, while Appellant's percentage of  
15 error in reporting his taxable sales remain over 1,500  
16 percent for the subsequent quarters.

17 As the determination for the first audit period  
18 was made prior to third quarter, 2013, on April 3, 2013,  
19 the Department would have been aware -- I'm sorry -- the  
20 Appellant would have been aware of the issues in reporting  
21 his taxable sales before these returns were filed.  
22 However, Appellant continued to underreport his taxable  
23 sales throughout the remainder of the audit period. This  
24 is indicated in the average taxable sales Appellant  
25 reported. And that would be on your Exhibit H, page 43.

1           In the period April 1, 2012, through June 30,  
2           2013, Appellant reported taxable sale of around \$131,000,  
3           which average around \$26,000 per quarter. For the period  
4           July 1, 2013, to March 31, 2015, Appellant reported  
5           taxable sale of around \$23,000, which average around  
6           \$3,300 per quarter.

7           While Appellant's reported taxable sales in all  
8           quarterly periods in these audits are far lower than the  
9           taxable sales it reported to DMV, the Department finds  
10          that the drop in reportable taxable sales, starting third  
11          quarter, 2013, to be dramatic considering the Appellant  
12          had just received notification of the first audit  
13          findings.

14          Finally, Appellant had hired a tax consultant in  
15          April 2014 but continued to underreport his taxable sales  
16          after this date with percentage of errors of around  
17          17,000 percent in the second quarter, 2014; 2,900 percent  
18          in the third quarter, 2014; 2,300 percent in the fourth  
19          quarter, 2014; and 1,700 percent in the first quarter,  
20          2015.

21          The Department would have expected Appellant's  
22          reporting to improve once notified of his reporting errors  
23          in the first audit and after hiring tax consultants.  
24          However, Appellant's reported taxable sales continued to  
25          decrease during this time with no improvement in reporting

1 accuracy. The Department finds this is further evidence  
2 of fraud or intent to evade taxes.

3 Fifth, Appellant has not provided any records for  
4 the second audit period. Appellant acknowledged that he  
5 used motor vehicle dealership software to prepare sales  
6 contracts and that the dealership's software he used would  
7 correctly compute the sales tax amount and include that  
8 amount as sales tax reimbursement on the contract of  
9 sales. Appellant stated that he had these records  
10 earlier. The Department finds that Appellant's failure to  
11 provide any of his record for the second audit period is  
12 further evidence of fraud or intent to evade taxes.

13 In addition, Appellant has started -- I'm  
14 sorry -- Appellant has stated that he has record  
15 establishing that he incurred bad debts during the audit  
16 periods and that because of bad debt, a significant  
17 portion of tax reimbursement he was owed was never  
18 collected. However, Appellant has not provided the  
19 records.

20 Appellant's failure to provide documentation he  
21 states are in his possession gives rise to an inference  
22 that such documentation if submitted would negate  
23 Appellant's assertion in the second audit Appeal. Thus  
24 the Department finds that Appellant's failure to provide  
25 the records that he asserts are in his position further

1 support for the imposition of the fraud penalty.

2 Sixth, Appellant had knowledge regarding his  
3 responsibility to report his sales. Appellant was a sole  
4 owner and operator of the business throughout both the  
5 audit periods and was responsible for recording and  
6 reporting his sales and sales tax to the Department. And  
7 that will be on the Exhibit V.

8 Also, the evidence shows that, in general,  
9 Appellant collected sales tax reimbursement on his sales  
10 of tangible personal property and that he claimed various  
11 deductions including deductions for sales for resale and  
12 bad debts. Appellant was also -- Appellant was also the  
13 president of the used car dealership business, which  
14 previously operated at the same business location and was  
15 audited on two occasions, and which disclosed unreported  
16 taxable sales.

17 According to the audit report for the period  
18 ending December 31, 2005, the audit staff discussed the  
19 audit findings with Appellant. All of this evidence  
20 indicated that Appellant understood the difference between  
21 taxable and nontaxable sales, was aware that his retail  
22 sales were subject to tax, and knew of his obligation to  
23 accurately report his taxable sales.

24 When Appellant applied for seller's permit on  
25 February 11, 2009, and according to the Department notes



1 on February 18, 2009, the Department provided Appellant  
2 with forms and publications including Publication 51, the  
3 resource guide to tax products and services for small  
4 businesses, which explained that seller's permit holders  
5 are required to report their sales of tangible personal  
6 property. And that will be on your Exhibit Y.

7 Appellant also had knowledge regarding  
8 responsibility to maintain complete and accurate books and  
9 records and to ensure reported amounts of taxable sales  
10 were correct. Those same forms and publications informed  
11 Appellant of sales and use tax reporting requirements and  
12 instructed Appellant on how to accurately report sales and  
13 use tax liabilities.

14 Here, Appellant's total understatement of around  
15 \$2.8 million is a substantial deficiency representing an  
16 overall error rate of 283- -- 283.29 percent when compared  
17 to reported taxable sales of around \$1 million for both  
18 audit periods. The failure to record such a significant  
19 portion of Appellant's sales cannot be explained by  
20 negligence or lack of business knowledge.

21 For the previous account with a period ending  
22 December 31, 2005, Appellant reported taxable sales  
23 averaging around \$250,000 per quarter. And that will be  
24 on your Exhibit D, page 69.

25 The Department also notes that, for the period

1 January 2006 through December 2008, the business reported  
2 taxable sales averaging around \$310,000 per quarter. And  
3 that will be on your Exhibit A, page 83, and Exhibit D,  
4 page 70.

5 Based on a reconstruction of Appellant's records,  
6 the Department finds that Appellant's recorded taxable  
7 sales for the first audit average around \$225,000 per  
8 quarter in an amount similar to the average quarterly  
9 sales reported by the previous account. However,  
10 Appellant reported average quarterly sales -- \$95,000 for  
11 the first audit period and \$13,000 for the second audit  
12 period -- are significantly lower than the average  
13 quarterly sales reported during previous six years.

14 Failure to report such a significant portion of  
15 Appellant's sales cannot be explained by negligence or  
16 lack of business knowledge. The Department find the  
17 failure to report over \$550,000 in sales each year is  
18 evidence of fraud or the intent evade taxes.

19 Appellant had a continuous pattern of material  
20 understatements throughout these audit periods, but it  
21 could not provide a credible explanation for those large  
22 discrepancies. The Department believes that large  
23 recurring errors that happen without any explanation  
24 consistent with unlawful purpose constitutes strong  
25 evidence of fraud. Therefore, the Department concluded

1     that Appellant willfully disregarded his own actual  
2     taxable sale amounts and that his actions can only be  
3     described as fraudulent and as an act to intentionally  
4     evade the payment of tax for these audit periods.

5             The Department finds that there is clear and  
6     convincing evidence of fraud or intent to evade taxes for  
7     both audit periods and that the 25 percent fraud penalty  
8     was properly imposed for both audit periods. Thus the  
9     Department rejects Appellant's arguments.

10            Appellant has not provided any documentation to  
11     show that any of the unreported taxable sales determined  
12     in this audit did not occur. Appellant has not identified  
13     any errors in the Department's computation or provided any  
14     documentary evidence to establish more accurate  
15     determinations.

16            Therefore, for all of these reasons, the  
17     Department requests the appeals be denied.

18            This concludes our presentation, and we are  
19     available to answer any questions the panel may have.

20            Thank you.

21            JUDGE RALSTON: Thank you.

22            Going to check with my panel.

23            Judge Aldrich, did you have any questions for  
24     Respondent?

25            JUDGE ALDRICH: No questions for CDTFA.

1 JUDGE RALSTON: Thank you.

2 Judge Kwee, did you have any questions for  
3 Respondent?

4 JUDGE KWEE: I don't have -- sorry -- I don't  
5 have any questions. Thank you.

6 JUDGE RALSTON: Thank you.

7 Okay. We're moving on to Appellant's rebuttal.  
8 You have approximately five minutes.

9 MR. STRADFORD: I'll see if I can squeak it in.

10  
11 CLOSING ARGUMENT

12  
13 MR. STRADFORD: So a lot of discussion there  
14 about, primarily, the liability.

15 What the courts have said in regards to this is  
16 that the burden proving fraud is not sustained merely by  
17 establishing a deficiency. The failure to file a correct  
18 return does not constitute fraud. The mere omission from  
19 a tax return of items which should have been included does  
20 not show fraudulent intent.

21 If returns are filed, a deficiency necessarily  
22 arises from the understatement in the returns. An  
23 understatement may have resulted from ignorance, bad  
24 advice, an honest mistake, negligence, or  
25 misinterpretation of the law. None of which, in and of

1     itself, would constitute fraud.

2             In this case, basically, the Department's just  
3     relying upon the liability. If they had actual evidence  
4     of knowledge of underreporting, they wouldn't be throwing  
5     out that the -- John got publications when he registered  
6     for a permit. There's such a lack of evidence that  
7     they're grasping for straws. Like, literally every permit  
8     holder in the state, of which there are there 2 million,  
9     gets these publications when they register for a permit.  
10    In no way, shape, or form is it evidence of knowledge to  
11    attempt to defraud the State.

12            The -- the -- the Department has the burden of  
13    proof, and it's not just establishing a liability. With  
14    car dealerships in general, what they don't mention is  
15    that there's a unit within the CDTFA called "Return  
16    Analysis," and they issue, until the last couple of  
17    years -- they've issued 500 to a thousand bills a year to  
18    car dealers based on DMV data.

19            Literally millions of bills go out every month  
20    with no fraud penalties on them, based solely on DMV data.  
21    That's a fact. I helped set up the program when I was an  
22    auditor to the State. I know it exists. So to use the  
23    DMV data as evidence of fraud is, quite frankly,  
24    ridiculous.

25            It's literally -- John is the one who's getting

1 unfair treatment here, when there's deficiencies all the  
2 time with car dealerships. The deficiencies are so  
3 rampant that what they did is they have used car  
4 dealerships -- now, they pay the tax directly to DMV  
5 because there were issues with collection across the state  
6 for all sorts of dealerships.

7 So the fact that there's a liability here, and it  
8 ranges from quarter to quarter for high percentage of  
9 error, low percentage of error -- it's consistent.

10 First, you know, the liability itself is  
11 inaccurate. There for sure are bad debts. The statement  
12 shows, like, \$500,000 worth of repossessed cars. The  
13 audits don't account for any bad debts at all, zero. But  
14 we know they -- right? -- because this statement shows  
15 that there were vehicles that were repossessed.

16 So not only has the Department failed to meet its  
17 burden of proof with respect to a fraud penalty, but  
18 there's evidence that supports that the liability itself  
19 is overstated.

20 One of the conditions of fraud, generally, is  
21 that the person who commits it gets to keep the money they  
22 defrauded the State for. In this case, you're applying  
23 the penalty to tax amounts that were never even collected  
24 from customers because they were a bad debt. He never got  
25 all the money.

1           With those two things in mind, it's clear, in my  
2 opinion, that the fraud penalty should be abated.

3           And thank you for your time.

4           JUDGE RALSTON: Okay. Thank you.

5           Judge Aldrich, did you have a question for the  
6 Appellant?

7           JUDGE ALDRICH: Yes, just a quick question.

8           So there's a copy of the seller's permit  
9 application. I think it's Exhibit Y. It's 1,099 of the  
10 hearing binder if you're interested.

11           But on there, it says, "projected monthly gross  
12 sales of \$20,000" and then "projected monthly taxable  
13 sales of \$2,000." And so, I guess, I was wondering -- how  
14 did you make that determination between the gross -- gross  
15 sales and taxable sales when filling out that application?

16           MR. WILLERFORD: How did I -- okay. So you have  
17 the -- what'd you say? 20 and then the --

18           JUDGE ALDRICH: 20 and then 2.

19           MR. WILLERFORD: 20 and 2. But the 2 was what?

20           JUDGE ALDRICH: Taxable sales, monthly.

21           MR. WILLERFORD: How did I determine that?

22           JUDGE ALDRICH: Right.

23           MR. WILLERFORD: So what I did is, I was taking  
24 the --

25           MR. STRADFORD: This is -- this is when you

1 applied for a seller's permit.

2 MR. WILLERFORD: Oh.

3 MR. STRADFORD: When you opened the business, on  
4 the seller's permit application, they will ask you, "What  
5 are your estimated monthly sales?" and "What monthly sales  
6 do you think are taxable?" when you apply for a seller's  
7 permit.

8 MR. WILLERFORD: Oh. So I put 20 and 2?

9 JUDGE RALSTON: Excuse -- excuse me. Can you  
10 make sure your microphone is on so we can hear you?

11 MR. WILLERFORD: Oh, I'm sorry. Okay.

12 JUDGE RALSTON: No problem.

13 MR. WILLERFORD: So it was the first time I  
14 applied for a permit, ever. And so I was just kind of  
15 based on what we had done prior with the other companies I  
16 had worked for at that location. That's all.

17 JUDGE ALDRICH: Okay. Thank you.

18 JUDGE RALSTON: Okay.

19 Judge Kwee, did you have any questions for either  
20 party?

21 JUDGE KWEE: I don't have any further questions.  
22 Thank you.

23 JUDGE RALSTON: Okay. We are ready to conclude  
24 this hearing.

25 Today's hearing in the Appeal of Willerford is



1 now adjourned, and the record is closed. The judges will  
2 meet and decide your case later on, and we will send you a  
3 written opinion of our decision within a hundred days.

4 Thank you, everyone, for attending.

5 (Proceedings concluded at 2:58 p.m.)  
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1 REPORTER'S CERTIFICATION

2  
3 I, the undersigned, a Registered  
4 Professional Reporter of the State of California, do  
5 hereby certify:

6 That the foregoing proceedings were taken before  
7 me at the time and place herein set forth; that any  
8 witnesses in the foregoing proceedings, prior to  
9 testifying, were duly sworn; that a record of the  
10 proceedings was made by me using machine shorthand, which  
11 was thereafter transcribed under my direction; that the  
12 foregoing transcript is a true record of the testimony  
13 given.

14 Further, that if the foregoing pertains to the  
15 original transcript of a deposition in a federal case,  
16 before completion of the proceedings, review of the  
17 transcript [] was [x] was not requested.

18 I further certify I am neither financially  
19 interested in the action nor a relative or employee of any  
20 attorney or party to this action.

21 IN WITNESS WHEREOF, I have this date subscribed  
22 my name.

23 Dated: August 17, 2022

24 *Sarah Tuman*  
25

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