BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:	)
	)
SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE,	) CASE NO. 19034447
	)
APPELLANT.	)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, January 24, 2023

Reported by:

Maria Esquivel-Parkinson,
CSR No. 10621, RPR

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TRANSCRIPT OF PROCEEDINGS, taken at 400 R Street, Sacramento, California, commencing at 1:03 p.m. and concluding at 2:16 p.m. on Tuesday, January 24, 2023, reported by Maria Esquivel-Parkinson, CSR No. 10621, RPR, a Certified Shorthand Reporter in and for the State of California.

APPEARANCES:

PANEL MEMBERS:

Kenny Gast
Cheryl Akin
Eddy Lam

FOR THE APPELLANT:

Derick Brannan, Representative
Erin Eakes, Representative
Ian O'Connell, Representative

FOR THE FRANCHISE TAX BOARD:

Anthony Epolite, Tax Counsel
Irina Iskander Krasavtseva, Tax Counsel

I N D E X

E X H I B I T S

PRESENTATION

Sacramento, California; Tuesday, January 24, 2023

1:03 p.m.

ALJ GAST: This is Appeal of Southern Minnesota Beet Sugar Cooperative, OTA Case No. 19034447. Today's Tuesday, January 24th, 2023, and the time is approximately 1:03 p.m. My name is Kenny Gast. I'm the lead administrative law judge. And with me today are Judges Cheryl Akin and Eddy Lam.

At this point I'm going to ask the parties to please identify yourself by stating your first and last name for the record, beginning with Appellant.

MR. BRANNAN: My name is Derick Brannan. I'm with PricewaterhouseCoopers.

MS. EAKES: Erin Eakes, PricewaterhouseCoopers.

ALJ GAST: May I ask you please speak in the microphone. Thank you.

MR. O'CONNELL: Ian O'Connell with Southern Minnesota Beet Sugar Cooperative.

ALJ GAST: And for the Franchise Tax Board?

MR. BRANNAN: Anthony Epolite with the Franchise Tax Board.

MS. ISKANDER: Irina Iskander, Franchise Tax Board.

ALJ GAST: Thank you.

Okay. I'm going to restate the issues, the three issues that we have for this appeal. Sorry, they're a little bit lengthy.

The first issue is whether Appellant properly included in the combined reporting groups California apportionment percentage, its property payroll and sales related to business activities that permitted it to deduct certain farmer's cooperative income under Revenue and Taxation Code Section 24404.

The second issue is whether Appellant may deduct interest expense incurred to acquire Spreckels Sugars Company, a unitary entity, against its taxable nonmember income.

And the third issue is whether Appellant may deduct appreciation expense incurred from assets used to produce deductible income under Revenue and Taxation Code Section 24404 against its taxable nonmember income.

Now, to go over the exhibits, with respect to the evidentiary record, Appellant has provided Exhibits 1 through 5. And FTB did not object to the admissibility of these exhibits; therefore, these exhibits are entered into the record.

(Appellant's Exhibit Nos. 1 through 5 were admitted into evidence.)

ALJ GAST: And FTB provided Exhibits A through D. Appellant has not objected to the admissibility of these exhibits; therefore, these exhibits are entered into the record.

(FTB's Exhibits A through D were admitted into evidence.)

ALJ GAST: All right. With that we can now go to the parties' presentations, and I'll start with Appellant. You will have 30 minutes. If you need a little bit more time, you can use that; or if you'd feel free not to use the full 30 minutes, it's up to you. I have not, I'm just throwing it out there.

MR. BRANNAN: Fair enough.

ALJ GAST: Thank you.

MR. BRANNAN: Good afternoon, everybody, Judge Gast --

(Court reporter interrupts)

MR. BRANNAN: I will do my best. I move around a lot. Yes. How's that? Is that better? Okay.

ALJ GAST: Mr. Brannan, it bends. Yeah.

MR. BRANNAN: Yes.

ALJ GAST: There you go.

MR. BRANNAN: We'll do that. It's going to be hard because I need to look at my notes, otherwise it will be even less organized than normal. So thank you very much. Good afternoon, everybody, Judge Gast, Judge Akin, and Judge Lam, for your time this afternoon. And also my apologies. I did send in some I call them visual aids to help kind of guide my presentation. They look like this. I didn't get them in until yesterday, but I just want to make sure you all have them before I start because I will reference them throughout the presentation.

Okay. So to begin with, this case is about, you know, from our perspective, it's about holding the FTB accountable to the law. As you'll see, our case rests on what's in the statutes and what's in the regulations and not some contrived theory about what the FTB wants the answer to be. We want the FTB to follow the statutes passed by the Legislature as well as the FTB's own regulations.

Rather than follow the law, what the FTB does is advocate a the solution of convenience -- for them, not for the taxpayer -- and reliance on outdated case authorities and inconsistent agency positions which lack any persuasive legal support.

So I've realized that the issues may have been a little shorthand manner on Slide 2. And really, the determination of income and factors for a unitary business is the issue that we're going to spend most of our time on today. In addition to the allocation of interest expense and the treatment of depreciation expense for a cooperative, I think it's also important to note what's not at issue today. I may be stating the obvious, but these points play a role in how, you know, we suggest that the matter should be resolved today.

First of all, there's no questions as to Appellants SMBSC or Southern Minnesota Beet Sugar Cooperatives's qualifications as a cooperative under California law. Second, there is no issue. The FTB's already determined that Spreckels -- we'll refer to sometimes as the for-profit operation in California -- and SMBSC are part of the same unitary business. And it's that unitary determination that carries with it a certain, you know, conclusion that we are advocating as part of this appeal. And honestly, it's that unitary determination that the FTB really seeks to reject by carving out or rejecting use of the factors that are attributable to the cooperative's operations.

So just a brief factual overview. SMBSC is a -- it's a Minnesota cooperative cooperation headquartered in Renville, Minnesota. SMBSC manufactures products derived from sugar beets, including such things as refined sugar, liquid sugar, pulp pellets, and molasses. SMBSC only processes the sugar beets. Every member shareholder of that cooperative is actually a sugar beet grower. So you have the members that grow it and then you have the cooperative that processes.

The majority of SMBSC's income is considered income for or on behalf of its members, also known as patronage income, and it is allocable or deductible under 24404, you know, as part of the cooperative deduction rules in California.

In 2005, SMBSC acquired Spreckels. Spreckels' primary operations are in Brawley, California, Southern California. And like SMBSC, Spreckels is in the business of refining sugar, pulp, and molasses from sugar beets. Spreckels obtains 100 percent of its raw materials from local growers in California. In contrast to SMBSC, none of the Spreckels Sugar Company's income is patronage income. SMBSC generally funded the Spreckels acquisition with third-party debt, and the allocation of the interest from that debt is one of the issues in this case.

In addition to generating additional income of anywhere from five to $30 million a year for the years under consideration, the Spreckels acquisition enabled SMBSC to obtain additional sugar production allotments from the federal regulatory authorities. That -- those distribution rights actually were estimated to provide up to $9 million worth of benefit to the cooperative. As determined by Respondent, SMBSC and Spreckels are part of the same unitary business.

So focusing on the first issue, in spite of the FTB determination that there's a unitary business here, what the FTB wants to do without citation to any meaningful legal support is to exclude the factors attributable to the cooperative operations in Minnesota. And you can appreciate, you know, from the review of the briefs that including those procedures reduces the apportionment percentage in California, whereas excluding the procedures, as the FTB would want to do in this case, increases the apportionment percentage in California and obviously increases the income subject to tax.

The problem for the FTB, regardless of the theory that they want to put forward today, is that they don't have any legal support in their own statutes or regulations. But the key starting point is really at Slide 4 and it's the unitary method. That unitary determination carries with it certain consequences that the FTB seeks to ignore.

And there's a little quote here. It's from Chase Brass. There's any number of cases that basically hold the same thing with regard to the unitary method. "Unitary income is derived from the functioning of the business as a whole, to which the activities in the various states contribute; and by reason of such interrelated activities and the integrated overall enterprise, the business done within the state is not truly separate and distinct from the business done without the state." Well, why don't we start with that because it's really the background and the premise for everything that is supposed to go forward once we have that unitary determination.

The way that California sets up the determination of income and determination of the apportionment factors for a unitary business is set forth in its code, in the statutes, and in the regulations. The best description, also ironically cited by the FTB in this case, is from William Pearce, who's one of the drafters of the original version of UDITPA, and that's also cited on Slide 4.

As described, the Uniform Act assumes that the existing state legislation has defined the base of the tax and that the only remaining problem is the amount of the base that should be assigned to the particular taxing jurisdiction. Thus UDITPA does not deal with the problem of ascertaining the items used in computing income or the allowable items that expense.

So what's going on here? Mr. Pearce and the Code are setting up a two-step process. First, we establish the income. Second, under UDITPA we establish how that income is to be apportioned. There's a sequence to it, and it's established by the combined report regulations.

Also on Slide 5, what you see is consistent with Mr. Pearce's comment, consistent with the theory -- excuse me, total separate net income is the total net income from all sources of a member of a combined reporting group from its separate books of account as determined under the Revenue and Taxation Code -- emphasized in bold face -- before allocation and apportionment. So again, there's a two-step process. By design and by law, we first determine the income and then determine the manner in which the income shall be apportioned.

I appreciate that some of the references to the details of the statutes and the regs might be a bit tedious, but there's a point to this. The point to this is there is law in place that governs the outcome. And we want to follow the law. We want to follow the statutes. We want to follow UDITPA as far as the conclusion in this case. So we're going to walk through it because we think it's important and it's how this case ought to be resolved.

So looking at Slide 6. Referring to the statutes and the laws applicable to the case, Slide 6. The first entry: Combined reporting in general. Each taxpayer whose income and apportionment factor data are permitted or required to be included in a combined report shall -- mandatory language there -- shall report income in the manner provided by this regulation and, to the extent applicable, other regulations adopted under Section 25106.5. Specifically, the combined report regulations. The key here is that neither the taxpayer nor the agency in this case has discretion about how they move forward under these rules.

Also on Slide 6, net income means the gross income computed under Chapter 6 less the deductions allowed under this Article and Article 2, Article 2 commencing with Section 24401. The determination of net income for a cooperative is really no different from any other corporation such that net income equals gross income less allowed deductions.

On Slide 7, you see the key -- the relevant language. "Associations organized in whole or in part on a cooperative basis" -- like Southern Minnesota Beet Sugar Cooperative -- "shall be allowed deductions in computing taxable income for all member resulting from or arising out of activities for or with their members." It's a pretty straightforward statute.

Importantly for this case potentially is what's in the FTB's own regulation. "Cooperative associations are not exempt from tax under this part but are permitted a deduction." And the words matter here. This is, in fact, a legal proceeding. The words of the statutes, the words of the regulations matter. There is a difference between an exempt entity or exempt income and what is deductible income in this case that we're talking about under 24404.

So now we pause. In accordance with the applicable statutes and regulations, we have determined the income. This is what taxpayer did in this case. Followed the rules, determined their income. They deducted patronage dividends or income that was allocable to its members in SMBSC consistent with the rules. I don't believe there's any debate about whether that was proper or not.

So now what we have is we have the separate net income for Spreckels and we have the separate net income number for SMBSC. And we combine them, and that becomes the income base subject to apportionment. It's all in the rules. There's a recipe here. This is very straightforward.

Once we have the net income for that unitary business, the income must be allocated or apportioned in accordance with UDITPA as adopted by the California State Legislature. Neither the taxpayer nor the State has much choice in how this is done. The rules give us the answer. There's a recurring theme here. And again, there's a reason for this. We're relying on the book. We're relying on the code book.

So turning to Slide 8. Taxpayers earning income derived from or attributable sources both within and without the state shall determine California tax in accordance with UDITPA as codified beginning with California Revenue and Taxation Code Section 25120. The first step under UDITPA is to separate income into either business income or nonbusiness income. Once you've done that, nonbusiness income is allocable to the commercial domicile of the company. There is no nonbusiness income, but it's convenient as a reference point.

Business income is what's subject to apportion in accordance with the factors. Business income means income arising from transactions and activity in the regular course of the taxpayer's trade or business. In this matter, both parties agree, at least I think we do, that all of the income is business income subject to apportionment.

For taxable years beginning before January 1, 2013, all business income shall -- there's that word again, it's directive, it's mandatory -- shall be apportioned to the state by multiplying the business income by a fraction: The numerator, which is the property factor, plus the payroll factor, plus twice the sales factor and the denominator which is four for a factor apportionment. It's in the statute. That's what we're applying here.

Following the rules as established by the

Legislature and the FTB's own regulations, we get to a result. That's what the answer is here today. Based on the arguments presented by the FTB, there are no exceptions to this rule, or at least there's no authority for any exceptions to this rule. But I haven't seen anything in the statutes or in the code that says that the FTB or a taxpayer -- and remember, these are mandatory for both sides here -- can depart from that rule. Nonetheless, that's what the FTB wants to do. Appellant's case is that straightforward: Follow the rules, get to an answer, include the factors, we're done.

Now, the FTB raises a couple of points. And I'll try and get to them quickly, but the idea in their rebuttal is that for some reason because income is deductible under 24404, that somehow gives the FTB an excuse not to include factors that are attributable to the cooperative operations. Well, as we started with, the purpose of a unitary business or the recognition of a unitary business means that all aspects of that business contribute to the production of every dollar of income. So they can't just do that. They can't just make up an answer because they don't like it. And that's what's going on here. They don't have any legal support.

What you see throughout the briefs is vague reference to what the code says. Well, I've just walked through the relevant code sections. Happy to talk about them again. There's a reference to Chase Brass, an age-old decision. Conceptually, Chase Brass is probably fine. Transactions between members of the same unitary group do not give rise to economic benefit; therefore, we do not have factors attributable to that transaction. That's fine.

Problems with Chase Brass: Those facts aren't the facts of this case, one. Two, Chase Brass is a pre-UDITPA case. Pre-UDITPA cases dealt with different law. At the time the FTB had tremendous discretion. There's a list of eight or ten different factors, including any other factors that the agency wants to use to apportion income. That's not the law today so that case doesn't work. Pre-UDITPA cases don't matter. The concept may be fine on the facts of that case, but pre-UDITPA cases don't matter.

If you look at -- there's a holding in the New York Football Giant's case, and it specifically says that we have to reject pre-UDITPA findings and reevaluate the case under the new law. It's a unique case because it had the same facts under early law and then the same facts under the post-UDITPA law. And they reach different conclusions for a good reason. The law was different. We have to do the same thing here. We can't just blindly follow whatever we believe the teaching to be under Chase

Brass.

Lastly, you know, most important for our position is that the holding in Chase Brass is now embedded in the intercompany transaction regulations at 25106.5-1. So the FTB has already taken the piece of Chase Brass that they like and they put it in the regulations, and now part of the regulations don't apply to my client. They don't apply to a cooperative.

So we go to the fundamental provisions that I've just recited to you on income and apportionment factors. The FTB counsel avoids or does not reference specifically FTB Legal Ruling 2006-01. I feel kind of obligated to present it or reference it here because it's all we heard about through the audit was how 2006-01, which is entitled "Treatment of Factors for an Exempt Organization," or something like that. But what they do in 2006-01 is they say, well, if you're exempt and it's an exempt organization, we're not including any of that income in the apportionable income pot. And then they say, well, because of that, we're not going to include any factors. Well, that's fine. There's actually a statute that supports that outcome right now. (Telephone ringing)

Wow, that's poor form, isn't it? My apologies. So -- yeah. Of course, I lost my spot here.

According to the FTB, the exclusion is the result of the basic function of the UDITPA formula. And this is, again, in 2006-01, which seeks to assign net business income solely on the basis of those activities that gave rise to the income. Again, conceptually that's fine, but we need some law to support that. We need a statute. We need a regulation to support that, and we don't have it and the FTB doesn't have it.

The other interesting thing in 2006-01, the FTB then tosses in a footnote to the legal ruling indicating that the analysis, the same analysis, the exclusion of factors related to income that is not included in the tax base, the same analysis would apply regardless of whether the statute uses the term exempted, excluded, deducted, not recognized, et cetera. And what you have here is a really interesting statement by the FTB. What they're saying is, based on a theory without any legal support, they are going to exclude factors.

I give them credit though. The next sentence in the legal ruling says, "The conclusion is based upon the fact that these income amounts are related to activities excluded from net income subject to apportionment," but not the language used in the actual statute. So I love the FTB for that because what they're telling us is, yeah, we know we're not following the statute. Well, we can't let them do that.

Taxpayers open up their returns every year. Taxpayers try and decide how to prepare their return. They look to the rule book to do that. They get to an answer. And then they're subject to audit and they're hanging up. I mean, these years are ten years old. This is crazy. We should be able to follow the statute and the regs.

What the FTB's position really comes down to is they want to say, look, this amount goes into gross income and then there's a deduction. And once we deduct it, we're not going to treat it like income anymore. Well, if it's exempt income, there's a statute that covers it. If it's excludable income, there's a regulation or statute that covers it.

There is a statute that covers the patronage dividends deduction as well, and it's 24404. And there are any number of authorities that say that even though it's deductible, we still treat it as income. And once it's treated as income, then it gets factor representation. And that's really what this is -- you know, again, this is where we end up.

If we look at the appeal of CTI Holdings, the holding is very clear. Just because we're deducting something doesn't mean it loses its character as income. We can also look at any number of chief counsel rulings that the FTB has put out over the years. They're cited in the briefs. And the idea is once it's deducted -- most of these focus on Section 24402, not 24404. But at the end of the day, we're in the same Article 2 under "Special Deductions" and the treatment is the same. And if somebody can suggest why they should be treated differently, I'm all ears, but really it's the same special deduction.

The most telling argument to identify the flaw in the FTB's position is really a very simple one. The FTB routinely and taxpayers routinely will have multiple entities included in a combined report.

(Court reporter interrupts)

MR. BRANNAN: My apologies.

The FTB will routinely or a taxpayer will routinely include multiple entities in a combined report. What happens when one of these entities loses money or is subject to a net operating loss carryover that reduces income to zero? That's the same situation that we're dealing with here today. And the FTB would never be heard, nor could a taxpayer ever even think of prevailing on a case where we would take out those factors from a combined report. Yet the FTB wants to say because that income somehow isn't subject to tax, which again is contrary to all the authority that's out there, we should exclude the factors.

So I challenge the FTB to explain the legal basis for their ruling and I challenge this panel to hold the FTB accountable to the law. So I'll stop there. I'd like to cover the other two issues a little more quickly than I went through the first one. And, you know, I'm available for any questions that you may have on the first issue or I can continue.

ALJ GAST: Let me ask my panel members.

Are there any questions on the first issue? I'll start with Judge Akin.

ALJ AKIN: I'm going to hold my questions at this time.

ALJ GAST: Okay.

ALJ LAM: I don't have any questions for now.

ALJ GAST: Okay.

Yeah, why don't you finish your presentation --

MR. BRANNAN: Sure.

ALJ GAST: -- and then we'll see if we have any questions.

MR. BRANNAN: Great. Thank you.

ALJ GAST: Thank you.

MR. BRANNAN: So the next issue has to do with the allocation of interest expense incurred to acquire the for-profit business. The issue presented is really easily stated. It's just hard to solve, quite frankly. And the question is how much, if any, of the interest expense incurred to acquire Spreckels, a for-profit business, may be offset against taxable income generated by Spreckels.

Taxpayer's position is that because I acquired a for-profit enterprise, it was $50 million is what we paid for it give or take, that all of the interest expense ought to be allocable to the Spreckels acquisition. The FTB's position is, oh, wait, you've acknowledged in some of the IDR responses that the reason that you really wanted it was to get an increased allotment under the federal regulatory scheme. In other words, basically these allotments are based on consumption predictions by the federal government. And depending on how much you're growing and how much you're processing, you can get more of these allotments that allow you to sell more on the marketplace.

That's a true statement. That is part of the rationale for acquiring Spreckels. There's no question. And as a result, and there's a number in the briefs, you know, call it $9 million of benefit attributable to the increased allotment allowed to the cooperative based on the acquisition of Spreckels. But it's helpful to provide -- you know, we think at the end of the day that the answer to the case is going to revolve around the Zenith -- the appeal of Zenith, which talks about how to allocate and what evidentiary requirements we may have.

Context for Zenith is helpful, and that's what we've provided in Slide 9. If you look at the statement of the law under 24425, "No deduction shall be allowed for any amount otherwise allowable as a deduction which is allocable to one or more classes of income not included in the measure of tax imposed by this part."

What they're saying is pretty simple. If income is not included in the measure of tax, then any deduction that is allowed for expenses related to that income would constitute a double deduction. That's not what we're advocating for, but that's the reason for the rule. And although not referenced in the slide, Regulation 25120 basically says if there's a problem, let's come up with a fair method of allocation.

In Zenith, the FTB argued that all interest expense should be treated as an indirect expense -- and we're talking about indirect cost versus direct cost in the accounting terminology there -- but it's an indirect expense because the nature of it is that it cannot be allocated to a specific activity. That is kind of the definition of an indirect expense.

As an indirect expense, the FTB argued that the expense should be allocated between nondeductible and deductible income in accordance with longstanding precedent. And also on that slide, we get over into Slide 10, what you see is the precedent was a basic allocation formula consistent with the idea that we don't know exactly how the income -- or excuse me -- the proceeds of the loan are used because cash is fungible, money is fungible, and, therefore, we're not going to presume to know how the interest expense ought to be allocated.

So what they do is they come up with a method of allocation based on, say, gross income, based on revenue, some sort of equitable measure to split it up as opposed to engaging in the debate that we're about to have. Simple methodology.

But then Zenith talks about it, because this is a couple kind of evidentiary standards. Unless a taxpayer can establish its dominant purpose in a sufficiently direct relationship between the expense and the income, Respondent's allocation formula -- and again, what we're talking about here is that allocation based on income, some way to go between deductible and nondeductible -- Respondent's allocation formula will provide the best means to allocate interest expense between taxable and nontaxable activities. Okay. So we have the default mechanism, which is this allocation rule, some sort of proration.

Further on the slide, it's direct evidence of a purpose to purchase tax exempt obligations or -- the bracketed language -- or taxable investments exists where the proceeds of indebtedness are used for or are directly traceable to the purchase. See, this was the key in Zenith is that the taxpayer in that case didn't want to accept the allocation method because the taxpayer knew as a matter of certainty, or at least that's what the Zenith -- the board held in Zenith, they knew what the loan proceeds were used for. It wasn't a function where they dumped the cash into one account. They knew what the proceeds were used for and they knew that the loan was used to acquire a taxable activity or to generate a taxable transaction. And so the board concluded because of that connection that all of the interest expense could be offset or fully deductible against taxable income.

In this case, the same facts apply. There's no debate that under the law or under the facts that all of the loan proceeds in the related -- you know, were used to acquire Spreckels, roughly $50 million. They're still paying interest on it today. Once we know that that's what the money was used for, that really is the end of the inquiry. That would be Appellant's position in this case.

The FTB takes the exact opposite position. Because the purpose, according to the FTB, because a purpose which we own was to benefit the cooperative, all of that interest expense, the FTB suggests, needs to be allocated to the cooperative and so none of it is deductible against taxable income. In other words, no tax benefit for the cooperative, no tax benefit for the taxpayer in this case.

Well, that's -- that's fine. There's a couple of problems with, you know, candidly, with the all-or-nothing approach, even with the own approach that we're suggesting, although I like ours better than the FTB's. But all or nothing kind of ignores the fact that there can be multiple reasons for acquiring a business like Spreckels. You don't spend $50 million for one reason. You don't spend $50 million to benefit a cooperative when what you're acquiring, even for the years under consideration, generates as much as $30 million of income.

To ignore that is not being very realistic. It's the elephant in the room. We have a business over here. It's generating significant income for the unitary business, and the FTB wants to pretend it doesn't exist. You can't do that. It's not a single purpose. If it is, we have to trace it, because that's what Zenith tells us to do.

Here's the other problem with the FTB's theory. If we assume that all of Spreckels, that the only reason we acquired Spreckels was in order to gain these increased federal allotments in the marketplace, what's embedded in that statement is a conclusion that the only purpose of Spreckels is for the benefit of the members of the cooperative.

And what does that mean? That means that all of the Spreckels income is deductible under 24404 as for or for the benefit of the members of the cooperative. Because the FTB's extreme position really does mean that. It means that the only purpose of the acquisition was to gain the allotment.

Now, we're not advocating that. We acknowledge that's an unreasonable outcome here. The point is to illustrate how unreasonable the FTB's position is. At least we have direct tracing. I know where my money went. The FTB's position that it only operated to benefit the cooperative ignores the reality of a $50 million business sitting in California generating $30 million of income. You can't just pretend it doesn't exist.

Candidly, looking back at this, I think our position is still better than the FTB's position if it's an all-or-nothing approach. But given the multiple purposes, some sort of allocation formula based on, say, comparative revenues, comparative gross income -- we've actually suggested it in one of the footnotes -- but some sort of allocation method may be the better answer here. And I don't want to say that's a concession because you still like my answer better than the FTB's, but I think it kind of makes sense given the evidence that it's in -- that's in front of the panel today.

The last point, depreciation expense for a cooperative. The theory, you know, we -- we're on the last slide here. And what you have is a quote from United States vs. Lootie (phonetic). And the theory is sound. The theory is very fundamental that depreciation of an asset represents the gradual sale of that asset. And when a cooperative like SMBSC sells an asset in this case, it's going to generate by rule nonmember taxable income.

So if we accept the proposition that depreciation represents this gradual sale, then we ought to, we ought to get a deduction of that depreciation expense against taxable income in order to the ensure kind of a fair reflection of income from year to year. Taxpayers shouldn't have to wait until they sell that asset. It could be 10 or 20 years out or whenever they transition or dispose of that asset before there's some sort of recognition of that.

(Court reporter interrupts)

MR. BRANNAN: Taxpayers shouldn't have to wait 10 years or more for a recognition event to get the benefit of that gradual sale under the theory articulated by Lootie.

So that's all I have. If there are questions, certainly happy to respond to any questions.

And apologize for the pace of my speaking when I get a little carried away. Thank you.

ALJ GAST: Thank you, Mr. Brannan. I'm going to turn it over to the panel for questions. I might start because I have a few questions with the first issue.

MR. BRANNAN: Um-hum.

ALJ GAST: Just so I understand kind of the background, as I'm, you know, looking at the return that FTB provided for 2008, Southern Minnesota claims 86272 protection; is that correct?

MR. BRANNAN: I think we did. I'm not sure that's an issue any longer.

ALJ GAST: Okay. So just understanding the background that -- and I don't know if this is true for all of the years, but Spreckels was intrastate apportioned all of Southern Minnesota's taxable nonmember income and paid tax on that. Is that a correct assessment for 2008, '9, '10 and '11?

MR. BRANNAN: I think that the starting point for the discussion ought to be the FTB's protest schedules. And what the FTB did is they zeroed out member income and included nonmember income in the sales factor of the apportionment formula.

Now, I'm not sure if that's responding to your question or not, but I think the framework for the question may be helpful.

ALJ GAST: Yeah. I was just looking at the returns, and I saw that Southern Minnesota only paid $800 minimum tax for 2008 as a member of a two-member combined report.

MR. BRANNAN: Right.

ALJ GAST: All of the income was apportioned intrastated to Spreckels who paid tax.

MR. BRANNAN: Correct. I think --

ALJ GAST: Is that --

MR. BRANNAN: Yes.

ALJ GAST: Is that true for all the years?

MR. BRANNAN: Yes.

ALJ GAST: Okay. I just wanted to clarify that.

MR. BRANNAN: Yes.

ALJ GAST: My other question is, on the first issue, which kind of doesn't spill into the second issue but, you know, under the -- or second and third issues, which deal with 24425, you can't deduct expenses related to income not included in the measure of tax.

MR. BRANNAN: Um-hum.

ALJ GAST: And I think that means gross income. From Anaheim Union Water Co. vs. FTB, some of these cases that dealt with cooperatives. So if you agree with that premise, isn't Southern Minnesota's income not gross income? And if it's not gross income, why would it be included in the apportionment formula?

MR. BRANNAN: There's two things at work here.

ALJ GAST: Okay.

MR. BRANNAN: One, 24425 very specifically, it talks about -- I have to get to the terminology matter because, as I indicated, words matter. But it's included in the measure of tax as opposed to subject to tax. And included in the measure, what 24425 is getting at, and the authority speaks to this, is it's getting to a more practical financial accounting exercise. And it's solving a very difficult problem, which is: What do we do with these indirect expenses, these indirect costs? Because we don't know exactly where they went.

It's not engaged in kind of the semantics of whether it is included in the gross income number or not. It's a different exercise. Fair question. I mean, because I get the point. But it's really not concerned with the computation of gross or net income that is set forth in the statutes and the regs.

If you look at it on the other side, there are very, very precise definitions of what is gross income, what is net income, and then you get into the regs and there's all sorts of definitional provisions that deal with apportionment, separate net income, combined separate net income, et cetera, et cetera. But they really are dealing with kind of -- you know, with the proper level of extraction, if you will.

You're looking at it from different lenses. They are different concepts. But I appreciate that they're perilously close to kind of saying the same thing. But because the goal of the statute in 24425 is different financial accounting, more so than the apportionment rules, they really go to different things. So if that's responsive. They're just different.

ALJ GAST: Okay. Thank you. I'm going to turn it over to my panel members, if they have any questions.

Judge Akin?

ALJ AKIN: Yes. Can you hear me?

MR. BRANNAN: Yes.

ALJ AKIN: Am I coming through? Okay. I did have a question for you on the second issue, so the interest expense issue. And if we were going to look at doing some sort of allocation under Zenith, you know, I understand that the -- I think there's no dispute -- I'll wait for FTB's presentations before, you know, deciding this.

MR. BRANNAN: Um-hum.

ALJ AKIN: But I think there's no dispute that the interest expense was incurred to acquire Spreckels. And, you know, I do see that Spreckels generates taxable income, you know, and then also had the benefit of, you know, the increased allotments that increased the nontaxable income for Southern Beet.

So if we were going to do some sort of allocation, what would that allocation method be I guess?

MR. BRANNAN: The cases actually come up with some slightly different answers to that question. I think traditionally it would be gross income. We could suggest any number of, you know, factors -- not to misuse that term in this context -- but, you know, revenue. Relative revenues might make sense. You know, gross income, net income.

What's a little awkward about this business, candidly, is a commodity business like sugar, sometimes they make money and sometimes they don't. You know, the years that are front of us, we made some money. But it would be nice if there was a suggested formula to have something that might be enslated from the longward vicissitudes of the market, sorry, but -- right? I mean -- and revenue probably is a better measure at that point. But I -- something like that, something that would be an apples-to-apples comparison as between a cooperative and a -- you know, Spreckels or the for-profit side of the business. That's what we would suggest.

ALJ AKIN: Okay. Thank you. And just a note that, Franchise Tax Board, I do plan on asking you similar questions if you don't cover it in your presentation. I don't want you to think that I'm not going to give you an opportunity to be also respond, but I did want to hear probably your presentation first.

ALJ GAST: Okay. Judge Lam, do you have any questions?

ALJ LAM: I do not have any questions for now.

ALJ GAST: Okay. Why don't we turn it over to the Franchise Tax Board for your presentation. You will have 30 minutes as well. Please begin whenever you're ready.

MR. EPOLITE: Thank you. Good afternoon. My name is -- my name is Anthony Epolite, along with Irina Iskander. We represent the Franchise Tax Board in this matter.

Today's appeal involves a California taxpayer that is a combined group consisting of a Minnesota cooperative and California for-profit corporation, a noncooperative. Beet Sugar operates as a cooperative for the benefit of its members who are Minnesota farmers with the cooperative's primary purpose being cost reduction for its co-op members. A cooperative, therefore, does not seek to generate business profits and, for that reason, is treated very differently under federal and California law from a C corporation engaged in a for-profit business.

Under California law, all income produced for the benefit of co-op members is not included in the measure of tax. For California tax purposes, the measure of tax is calculated by adding apportionable business income and California allocable nonbusiness income. As such, a cooperative is different from typical C corporation. And the deduction allowed by Revenue and Taxation Code Section 24404 is a means of excluding otherwise taxable income from the tax base of the cooperative.

This is the distinct characteristic of cooperatives and is at the heart of this appeal. Thus income is eliminated from the tax base of the cooperative. Thus because income is eliminated from the tax base of the cooperative, it is appropriate to adjust the apportionment factors to remove the property, payroll, and sales which produce the income that was eliminated from the tax base. This is the context of this appeal and what makes this appeal different, a cooperative and a noncooperative in the same unitary group.

The cooperative's only for-profit income was dividend, interest, royalty, and other income for which factor representation is appropriate and which the FTB has allowed. As for Spreckels, this is a California corporation, and most of its activity was in California during each of these years. When a business operates in interstate commerce, it determines its California state income tax liability first by determining its apportionable business income. The business then calculates the appropriate apportionment formula to determine how much of that business income is apportioned to California.

We will begin our presentation following this same process. We will first discuss interest and depreciation expense as those issues relate to the determination of what is apportionable business income, and then we will address the primary issue in this case: Whether it is appropriate to provide factor representation for the property, payroll, and sales factors of the cooperative when income from the cooperative is not included in the tax base.

Regarding Appellant's claimed interest expense, Revenue and Taxation Code Section 24425 disallows deductions allocable to one or more classes of income not included in the measure of the tax. Under Great Western Financial, Section 24425 applies whenever income is eliminated from the measure of the tax under any authority or for any purpose to prevent a taxpayer from receiving a double benefit in deducting expenses incurred in the production of nontaxable income.

In 2005, the cooperative acquired Spreckels, incurring substantial debt for that acquisition. The cooperative acquired Spreckels to obtain the unused sugar allocations that Spreckels possessed. Sugar is a regulated commodity, and sugar allocations -- excuse me. The cooperative acquired Spreckels to obtain the unused sugar allocations that Spreckels possessed. Sugar is a regulated commodity, and sugar producers are limited in the amount that can be sold on the open market. Prior to 2005, the cooperative's allocations were fully maximized while Spreckels were not.

According to the federal agricultural code, sugar producers could utilize the unused allocations from another producer if the other producer was acquired. Primarily, all of the cooperative's activities related to the production of sugar which is sold on the open market. Accordingly, Spreckels was an attractive acquisition for the cooperative as acquiring Spreckels gave the cooperative the ability to sell additional sugar on the open market. As such, the interest expense incurred by the cooperative to acquire Spreckels is properly attributed to the activities of the cooperative to sell more sugar and make a profit for its members. This increased the amount of the cooperative's profit, all of which is removed from the tax base by Section 24404.

Appellant has admitted that the purchase of Spreckels was for the direct benefit of the cooperative. This was the dominant purpose of the acquisition under the

Zenith appeal. Because the cooperative's income is deducted pursuant to the operation of Revenue and Taxation Code Sections 24401 and 24404 and not included in the tax base, the interest expense is attributable to the deducted income. Necessarily, the purchase of Spreckels was to increase the market allocation of the cooperative leading to an increase in the cooperative's net income, which was not included in the measure of the tax.

Section 24425 denies a deduction of any amount otherwise allowable as a deduction if it is allocable to income not included in the measure of tax. Here the members' income relates to the processing and selling of sugar on the open market and was not included in the tax base. It therefore follows that the interest expense directly related to the members' income would be nondeductible. Moreover, to provide Appellant with a deduction for interest expense in this instance would result in a double benefit.

Regarding Appellant's claimed depreciation expense, Section 24425 is also applicable. All of the cooperative's depreciable assets were used in the business activity of the cooperative to generate member income which was eliminated from the tax base. At audit Appellant confirmed that its manufacturing assets were used exclusively at its Minnesota facility for the production of sugar and various byproducts.

Consistent with our discussion of interest expense, Section 24425 is operative whenever an expense is directly attributable to income eliminated from the tax base. The depreciation expense at issue is directly related to income of the cooperative, and that income was eliminated from the tax base. Therefore, as with the interest expense, this depreciation expense would also be nondeductible. As you can see, the nature of the cooperative's activities is critical in determining whether items of income and items of deduction are included in the tax base.

We now turn to our determination of the appropriate apportionment formula to decide how much of the taxpayer's business income is apportioned to California and included in the California tax base.

This appeal is rooted in Revenue and Taxation Code Section 24404, which provides a deduction for patronage dividends. After net income as defined by state law has been computed, UDITPA determines what portion of that net income is business income subject to apportionment and what portion is allocable to a specific state or states as nonbusiness income.

Once business income has been determined, UDITPA apportions it using only those factors that represent the activities that gave rise to the income that is being apportioned. Put another way, only the components of property, payroll, and sales that produced the business income subject to apportionment are properly included in the apportionment formula. Property, payroll, and sales related to activities that did not give rise to business income subject to apportionment are not included in the apportionment formula.

Under California law, all income produced for the benefit of co-op members is not included in the measure of tax. For California purposes, the measure of tax is calculated by adding apportionable business income and California allocable nonbusiness income. Thus because the cooperative's income is not included in the tax base, it is also not included in the apportionable business income of the combined group. For this reason, the apportionment formula calculated to apportion the group's business income should also not include the cooperative's receipts.

Matching income to factor representation is not a new position by the FTB. In fact, this logical approach has been utilized by the FTB and taxpayers for over 16 years. In 2006, the FTB issued Legal Ruling 2006-01, which clearly explains why factors should include gross receipts from only those activities which generate taxable income. While legal rulings issued are not equivalent to a statute or a regulation, the California Legislature has agreed with the underlying principle of Legal Ruling 2006-01 by extending the legal rulings expressly in underlying principle of legal ruling -- the California Legislature has agreed with the underlying principle of Legal Ruling 2006-01.

In 2015 the Legislature expressly endorsed Legal Ruling 2006-01 by extending the legal ruling's application to apportionment factors attributable to the income of qualified health care service plans excluded by Revenue and Taxation Code Section 24330. Section 1 of the related Act states, "It is the intent of the Legislature that Franchise Tax Board Legal Ruling 2006-01 (April 28, 2006) regarding the treatment of apportionment factors attributable to income exempt from income tax shall apply to apportionment factors attributable to the income of qualified health care service plans excluded by Section 24330 of the Revenue and Taxation Code as added by Section 4 of this Act."

By applying the FTB's position, the California Legislature reinforces Respondent's position presented today that it is not appropriate to provide factor representation for activities that do not generate taxable income.

In conclusion, for the many reasons discussed today, the OTA must deny the interest expense and depreciation deductions as well as reject Appellant's argument that it is -- that its apportionment factors should include activities that did not contribute to the calculation of apportionable business income. Thank you.

ALJ GAST: Thank you. Okay. With that I'm going to turn it over to my panel members to see if they have any questions. I'll start with Judge Akin.

ALJ AKIN: Thank you. I did want to give you the same opportunity to answer a similar question that I posed to Appellant. First, you know, I would like to ask whether there's any question or dispute that the interest expense at issue was used to acquire Spreckels.

MR. EPOLITE: Well, yes, it was used to acquire Spreckels, but for the benefit of the co-op members. So there was dominant purpose to that acquisition so there would be no purpose for the use of an allocation formula and the application of a formula because there was a dominant purpose. So there would be no reason to apply that formula in the Zenith appeal.

ALJ AKIN: Okay. Thank you. That actually answered my next question as well, which was going to be, you know, FTB's position on why an allocation like what was done in Zenith would not be appropriate here.

If I'm understanding you correctly, FTB's position is it's not applicable here because there was a dominant purpose and FTB's position is that that dominant purpose was to benefit the cooperative members by that increased allotment.

MR. EPOLITE: That's correct.

ALJ AKIN: Okay. Thank you.

MS. ISKANDER: If I may add to that?

ALJ AKIN: Yes.

MS. ISKANDER: I think the understanding -- we understand that the dominant purpose was in order to increase income that is excluded from apportionable business income. Just what we said, right? Of course, if facts come up that there is some portion of income that the debt generated that was included in apportionable business income -- which we don't have. We don't have those facts. So far the only facts that Appellants told us is that Hayes Packos (phonetic) is a profitable business. But the debt was not acquired in order to support Spreckels' business. That income that Spreckels generated would have been generated with or without the debt.

So if Appellant have showed us or can show us that, indeed, some of the debt was also incurred in order to increase Spreckels' income, for example if somehow Spreckels also got a greater allotment and could have sold more sugar because of some Minnesota allotments in California for example, then it would be reasonable to allocate the expense among activities that produce income that is included in apportionable business income and that is excluded from the apportionable business income.

ALJ AKIN: Understood. Okay. Thank you. That does answer my question on the interest issue. Thank you.

ALJ GAST: Okay. I'm going to turn it over to Judge Lam for questions.

ALJ LAM: Yeah. I have -- hello? Sorry.

I have a question for Appellant. What would you say is the dominant purpose in making the acquisition to acquire Spreckels?

MR. BRANNAN: I would say that the dominant purpose, as evidenced by the direct tracing, is the use of the funds. And we used the funds to acquire a for-profit business. So --

ALJ LAM: And --

MR. BRANNAN: Go ahead, please. I'm sorry.

ALJ LAM: And for that for-profit, did it produce any taxable income?

MR. BRANNAN: Spreckels did, yes, for the unitary business. Spreckels produced for these four years taxable income ranging from -- I have it here, but it's somewhere like 4 all the way up to like $29 and a half million for the last year under consideration.

(Court reporter interrupts)

MR. BRANNAN: $29 and a half million in the last year under consideration. So Spreckels generated income subject to tax. I mean, the -- the irony here is that what we're here to discuss is how to tax the income attributable to Spreckels. And, I mean, that's -- kind of speaks for itself I think.

ALJ LAM: True.

FTB, would you want to -- do you have any questions or did you -- I saw like a --

MR. EPOLITE: I was just going to further chime in regarding your question, to read from the financing document --

ALJ LAM: Okay.

MR. EPOLITE: -- regarding the motivation for --

ALJ LAM: Oh, yes. Please go ahead.

MR. EPOLITE: "Transaction summary: In order to obtain additional marketing allocation, enhance the overall profitability of the company, SMBSC is purchasing Imperial Sugar Company's California beet operations known as Holly Sugar Corporation for $15 million plus the value of the tangible working capital at closing. The Holly operations include sugar beet plants in Brawley; in Mendota, California; a distribution center in Tracy; sugar facility in Hamilton City; and seed operation known as Holly Hybrids. SMBSC plans to rationalize production or possibly close the Mendota plant transferring its marketing allocation of approximately 2.7 million CWTs for benefit of the" --

(Court reporter interrupts)

MR. EPOLITE: Sure.

-- "the Renville Minnesota plant. SMBSC plans to operate the more profitable Brawley plant just as it is. However, if the local growers or another company offer an attractive price, management will be a willing seller."

So as much as the plan to continue to operate that Brawley plant, they would have been willing to have sold that California plant. So the primary purpose was for the market allocation.

ALJ LAM: Thank you for that.

I do not have any further questions.

ALJ GAST: I have a quick -- a few questions.

Number one, that financing document you're referring to, that's not in the record.

MR. EPOLITE: No, it's not.

ALJ GAST: That was never provided. So I think the panel will consider those statements as argument and not evidence. So that's one point of clarification on that.

Number two, going back to Legal Ruling 2006-01 that you were talking about that you said the California

Legislature endorsed in 2015, do you have the Bill for that? Because that --

MR. EPOLITE: Yes.

ALJ GAST: I think it's Senate Bill 2, Medi-Cal. Is that correct?

MR. EPOLITE: Yes. It was during extraordinary session in 2016.

ALJ GAST: Okay. And specifically, you're referring to, when you were reading it, Section 1 talking about it's the intent of the Legislature that the Franchise Tax Board Legal Ruling 2006-01 regarding the treatment of apportionable factors, its one sentence, is that what you were referring to?

MS. ISKANDER: Yes. It is Section 1 that you just read.

ALJ GAST: Okay. It doesn't refer to the Legal Ruling anywhere else; correct?

MS. ISKANDER: I don't think so.

ALJ GAST: Okay.

MS. ISKANDER: That's the only way.

ALJ GAST: Okay. Okay. I don't think I have anymore questions at this time. I'm going to turn it over to Mr. Brannan for rebuttal. You have 20 minutes.

MR. BRANNAN: Thank you.

I guess a couple of points, and I'm trying to order them in my head before I speak. I think we'll start with the factor questions. That's the first one that we raised.

The reference to qualified health care service providers, the Bill, I haven't seen that. That's okay. It seems very clear to me that it's speaking directly to exempt income. We don't have exempt income here. In fact, exempt income has its own statute that we've already referenced. It's -- 23038 specifically excludes exempt entities, for example, from the combined report.

We don't -- we don't have any specific laws that say we're not going to give factor representation to deductible income under 24404 or any of those special deduction provisions. So I would characterize that as kind of a last gas. We don't have an issue with the treatment of exempt income or excludable income, which is, by statute, specifically carved out from gross income under 24301.

That's our whole point. There are statutes and regulations in place that govern the outcome of this case. The best the FTB's come to argue with is, well, it's kind of like exempt, it's kind of like excluded, it's kind of like nonbusiness, it's kind of like something. We just know that we don't want factors.

They really have provided zero, and I mean zero, authority to support it except for a presentation on unitary theory, which, by the way, ignores the fundamental premise for unitary theory, which is that all aspects of the business contribute equally to each of the dollar generated and subject to tax. They don't like that part. So that's why we're sticking with the law and we hope that you do as well in connection with that first issue.

So we'll talk a little bit more about the proper allocation of the interest expense. I guess I had assumed, and I think it's still true but always good to talk about these things, that there is no issue that we used the loan proceeds to acquire Spreckels. I hope that's not an issue. If it is, it would be news to me.

Yes, one of the purposes of acquiring Spreckels was to get the increased allotment in the market. We're not running from that. We're not ignoring that. It is an admission. It's in the record. That is true. But you can't take all of the acquisition and ignore the freestanding business that generates taxable income. That's just not a reasonable outcome. It's not a reasonable allocation under the regulation.

And the obvious point, and I think this is why it's always good to have your client with you here at table, is we didn't use all of the allotment attributable to Spreckels, you know, for the benefit of the cooperative.

We only used a portion of it. So it did, indeed, expand what the cooperative was able to put in the market, but we didn't use 100 percent of it. We used -- it varied from year to year, and it would be 30 or 40 percent or whatever. But so some of that allotment is still being used for Spreckels, their for-profit operations to sell into the marketplace.

So again, we have another reason why it's not a reasonable result to assume that the only benefit of the allocation -- or excuse me -- of the acquisition enured or accrued to the cooperative business. That's just not what happened. So I'm not denying the statement that one of the reasons that we acquired them was for that additional allotment and that the cooperative business sitting in Minnesota took advantage of that, but it doesn't mean that everything ought to be allocated that way. It's not a reasonable result under the reg.

So a little bit on -- I'll be brief. A little bit on the, you know, the usage of the money. The Zenith case says evidence of dominant purpose can be shown through direct tracing and use of the funds. We used the funds to acquire Spreckels. Taxable operations. I think that's easy.

We come here today -- and you can hear it in the original presentation -- we, by virtue of the position relying on the statutes and the regs, we do not want to be an unreasonable party here. We do not want to take an extreme position. I can put together the arguments that I used it to buy Spreckels and, therefore, it should all be -- any interest expense should be attributed or allocable to those for-profit operations. But I want to take an honest look at the facts and come up with a reasonable answer, and that's why I'm, you know, very clearly suggesting here some sort of allocation that makes sense. Because I think that's consistent with the rule. It's consistent with the purpose of the statute. And it makes sense for everybody. We've suggested that to the FTB as -- at the early parts of the audit, and it has never -- they've never been receptive to it, and that forces us to take a little more an extreme position.

So I think the right answer at the end of the day is some sort of allocation. But I think our answer, if you're going to go all or nothing, I think our answer is still far better than the FTB's because of the direct tracing language that's in the Zenith case.

I think that's it. Certainly, if there are any questions, happy to respond.

ALJ GAST: Thank you. I'm going to turn it over to my panel to see if they have any final questions. I'll start with Judge Akin.

ALJ AKIN: I don't think I have any additional questions. I do want to thank both parties for their presentations today.

ALJ GAST: And Judge Lam?

ALJ LAM: I do not have any further questions. Thank you.

ALJ GAST: I, as well, do not have any further questions. I think both parties did a great job presenting today. With that I'm going to ask the parties if there's anything else they'd like to tell us before I close the record. Any comments?

MR. BRANNAN: If I may just consult for just a second to make sure I'm not missing anything? My client is actually more important than I am.

ALJ GAST: Okay.

MR. BRANNAN: Thank you very much. It's a little harder to do that when everything is so visible. So thank you for the time.

ALJ GAST: So, Mr. Brannan, there's nothing else?

MR. BRANNAN: That's correct.

ALJ GAST: Okay.

MR. BRANNAN: My apologies. Nothing else.

ALJ GAST: Okay. And Franchise Tax Board?

MR. EPOLITE: We're good. Thank you.

ALJ GAST: Okay. Thank you.

Okay. With that this concludes the hearing. And I want to thank the parties, like I said, for their presentations.

This appeal will be decided based on the arguments and evidence presented. Our written opinion will be issued no later than 100 days from today. This case is submitted. The record is closed. And this concludes the hearing for today. And I believe we will start again tomorrow at 9:30 a.m. Thank you.

(Conclusion of the proceedings at 2:16 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

I, MARIA ESQUIVEL-PARKINSON, do hereby certify that I am a Certified Shorthand Reporter, and that at the times and places shown I recorded verbatim in shorthand writing all the proceedings in the following described action completely and correctly to the best of my ability:

LOCATION: OFFICE OF TAX APPEALS

CASE: In the Matter of the Appeal of Southern Minnesota Beet Sugar Cooperative

DATE: Tuesday, January 24, 2023

I further certify that my said shorthand notes have been transcribed into typewriting, and that the foregoing pages 1 through 55 constitute an accurate and complete transcript of all my shorthand writing for the dates and matter specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 10th day of February, 2023.

Maria Esquivel-Parkinson
CSR No. 10621, RPR