

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. ZARRABI,) OTA NO. 19064928
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 9, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings,
taken at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing at
1:04 p.m. and concluding at 2:50 p.m. on
Wednesday, October 9, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ NATASHA RALSTON
ALJ STEVEN KIM

For the Appellant: J. ZARRABI
DAVID J. ELBAZ-DECKEL

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE DEPARTMENT

SUNNY PALEY
STEPHEN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-28 were received into evidence at page 9.)

(Department's Exhibits A-H were received into evidence at page 9.)

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1 Cerritos, California; Wednesday, October 9, 2024

2 1:04 p.m.

3
4 JUDGE GEARY: Will the parties identify
5 themselves by stating their names and who they represent,
6 starting with the Appellant.

7 MR. ELBAZ-DECKEL: So my name is David
8 Elbaz-Deckel. I'm attorney for Appellant Jacob Zarrabi.
9 Sitting to my right is Appellant Jacob Zarrabi.

10 JUDGE GEARY: Thank you.

11 MS. PALEY: Sunny Paley, attorney with CDTFA.

12 MR. SMITH: Steven Smith, attorney with the
13 CDTFA.

14 MR. PARKER: Jason Parker, Chief of Headquarters
15 Operations Bureau with CDTFA.

16 JUDGE GEARY: Thank you everyone.

17 It's my understanding that the only witness today
18 will be Mr. Zarrabi.

19 Is that correct, Appellant?

20 MR. ELBAZ-DECKEL: Yes, that's correct.

21 JUDGE GEARY: All right. I'm hoping that your
22 voice is making it to the mic. I haven't received a
23 notice about that yet.

24 To provide some context for our discussion of the
25 issues to be decided, let me just state that Nu Print &

1 Graphics, LLC, or just Nu Print is how I will refer to it
2 often during this proceeding, formally did business in
3 California, and Respondent California Department of Tax
4 and Fee Administration seeks to hold Appellant Mr. Zarrabi
5 personally liable for the unpaid sales tax liabilities of
6 Nu Print for the period January 1, 2007, through
7 November 30th, 2010, under Revenue & Taxation Code
8 section 6829.

9 Do I have that audit period or liability period
10 correct?

11 MR. ELBAZ-DECKEL: You do. The primary period is
12 through December 31st, 2029 [sic]. There are two
13 prepayment penalties that are at issue for October and
14 November of 2010. One other correction, Nu Print &
15 Graphics, Inc., not Nu Print & Graphics, LLC.

16 JUDGE GEARY: Thank you.

17 MS. PALEY: And yes, that is the correct
18 liability period. And I would also note that we are
19 prepared to relieve prepayment penalties for fourth
20 quarter 2010. So that need not be addressed in the
21 hearing.

22 MR. ELBAZ-DECKEL: Thank you.

23 MS. PALEY: You're welcome.

24 JUDGE GEARY: Describe the penalties again.

25 MS. PALEY: The prepayment penalties for fourth

1 quarter 2010, they're approximately \$36.

2 JUDGE GEARY: Okay. The parties have identified
3 five issues. They are: One, whether Respondent timely
4 issued the Notice of Determination to Appellant; two,
5 whether Appellant is personally liable for Nu Print's
6 unpaid sales tax liabilities for the liability period,
7 pursuant to Revenue & Taxation Code 6829; three, whether
8 adjustments are warranted to Nu Print's tax liability;
9 four, whether the 10 percent negligence penalty imposed
10 against Nu Print was warranted; and five, finally, whether
11 Appellant is personally liable for the finality penalty
12 imposed on Nu Print.

13 Did I correctly identify the five issues?

14 MR. ELBAZ-DECKEL: That's correct, yes.

15 JUDGE GEARY: And Respondent?

16 MS. PALEY: Yes.

17 JUDGE GEARY: Thank you.

18 During the prehearing conference, the parties
19 reached a number of agreements that will serve to limit
20 the scope of the disputed sub-issues within some of the
21 broader issues just identified. Those agreements are
22 stated in OTA's Minutes and Orders issued following the
23 prehearing conference, and I will not list them here.

24 Let's talk about exhibits. The exhibits marked
25 for identification in this appeal consist of Appellant's

1 exhibits marked 1 through 29 for identification and
2 Respondent's exhibits marked A through I for
3 identification. Exhibits 29 and I, however, were late
4 submissions, and it's my understanding that Respondent
5 offered I in response to Appellant's offer of 29. And
6 it's also my understanding that Appellant objects to the
7 admission of Exhibit I and has agreed to withdraw his
8 Exhibit 29.

9 Is that right, Appellant?

10 MR. ELBAZ-DECKEL: That's correct.

11 JUDGE GEARY: Then it would be my conclusion from
12 that that Department will also withdraw its proposed
13 Exhibit I?

14 MS. PALEY: Yes. Thank you.

15 JUDGE GEARY: All right. The parties provided
16 copies of the exhibits to each other and to OTA, and OTA
17 staff incorporated all proposed exhibits into an
18 electronic binder, which should be in the possession of
19 the parties.

20 Has Appellant confirmed that Appellant's exhibits
21 incorporated into the binder are complete and are as
22 legible as the ones Appellant submitted?

23 MR. ELBAZ-DECKEL: We have, Judge Geary.

24 JUDGE GEARY: Thank you.

25 And has Respondent also done that?

1 MS. PALEY: Yes, thank you.

2 JUDGE GEARY: Good. The parties stated at the
3 prehearing conference that they have no objections to the
4 evidence proposed by the parties.

5 Is that still the case, Appellant?

6 MR. ELBAZ-DECKEL: Yes, that's correct.

7 JUDGE GEARY: Respondent?

8 MS. PALEY: Yes.

9 JUDGE GEARY: All of those exhibits are now
10 admitted into evidence.

11 (Appellant's Exhibits 1-28 were received
12 in evidence by the Administrative Law Judge.)

13 (Department's Exhibits A-H were received in
14 evidence by the Administrative Law Judge.)

15 JUDGE GEARY: A few comments about time
16 estimates. As discussed in the prehearing conference, it
17 was agreed that Appellant will have one hour for primary
18 argument and testimony from Mr. Zarrabi and 10 minutes for
19 final remarks.

20 And will that still be sufficient for you?

21 MR. ELBAZ-DECKEL: It may not be, Judge Geary.
22 We might need an additional 10 or 15 minutes. As we went
23 through our presentation, there's five issues we're
24 covering in great detail. So if we could have an
25 additional 15 minutes on the opening? And I don't think

1 on the back end, I don't think we're going to need more
2 than 10 minutes.

3 JUDGE GEARY: All right. Let's try to keep it
4 tight, but we'll be able to accommodate you, I think.

5 MR. ELBAZ-DECKEL: Thank you.

6 JUDGE GEARY: Respondent will have 30 minutes in
7 total for any questions it may have for the witness and
8 for its argument.

9 Is that adequate?

10 MS. PALEY: Yes, thank you.

11 JUDGE GEARY: Of course, there will also be time
12 allowed for questions from the Panel.

13 Any questions before we begin?

14 MR. ELBAZ-DECKEL: I had one clarification. I'd
15 like to make sure that we're all on the same page about
16 with regards to the stipulations in the Minutes and
17 Orders. There was a -- during the prehearing conference,
18 we agreed during that conversation that Appellant Zarrabi
19 was a responsible person during the period when the
20 business was open. I just wanted to make sure that -- it
21 wasn't clear we conceded the issue of responsible person
22 in general, because we -- as we brief, and as we'll
23 discuss here today, we don't believe Appellant Zarrabi
24 meets the definition of responsible person due to
25 subsequent activity post-closure of Nu Print.

1 JUDGE GEARY: Okay. Was that Respondent's
2 understanding of the agreement also?

3 MS. PALEY: Yes, thank you.

4 JUDGE GEARY: All right. Anything else?

5 MR. ELBAZ-DECKEL: No, sir.

6 JUDGE GEARY: Okay. Let me just ask you. Do you
7 plan on giving some opening and then having your client
8 give testimony, or what's your plan for opening comments
9 and testimony?

10 MR. ELBAZ-DECKEL: Appellant Zarrabi would like
11 to go ahead and read a pre-prepared discussion.
12 Throughout this whole process, he's always wanted to speak
13 his mind and give his opinion of what he believes what
14 really happened, and this is his opportunity. So he's
15 taken the time to go through and write something up for
16 us. And he's going to start, then I'll continue into
17 addressing the five issues, which we've just discussed.

18 JUDGE GEARY: Okay. We'll begin with
19 Mr. Zarrabi's testimony.

20 MR. ELBAZ-DECKEL: Right. And I was going to ask
21 you, does he need to be under oath?

22 JUDGE GEARY: Yes. I will administer an oath or
23 affirmation to him. I just wanted to make sure to figure
24 out how you were going to be doing the first part of your
25 argument and his testimony.

1 Mr. Zarrabi, would you please raise your right
2 hand.

3
4 J. ZARRABI,
5 produced as a witness, and having been first duly sworn by
6 the Administrative Law Judge, was examined, and testified
7 as follows:

8
9 JUDGE GEARY: Thank you. You may begin,
10 Mr. Zarrabi, whenever you're ready.

11
12 WITNESS TESTIMONY

13 MR. ZARRABI: Judges, thank you for allowing me
14 to speak with you today. It's really important that you
15 understand what has happened and what is going on through
16 when Nu Print closed.

17 THE STENOGRAPHER: Mr. Zarrabi, may I please ask
18 you to pull the mic closer to you.

19 Starting in 1989 I ran a printing business called
20 Nu Print & Graphics. It began as a sole proprietorship
21 and became a corporation 1996. In 2003, we opened the
22 wholesale printing plant in Glendale, California, in
23 addition to our retail and print design center in Studio
24 City. At our peak, we had about 25 employees and were
25 generally profitable. Since we were working with

1 neighbors -- neighborhood businesses and schools started
2 giving back to the local -- we started giving back to the
3 local community, including supporting the Carpenter Avenue
4 Elementary School where I met David who is with me today.

5 Throughout my years in business, I made sure that
6 we always paid our sales tax correctly and on time. Also,
7 Nu Print went through a Board of Equalization audit in
8 2001 that confirmed our process, with only minor
9 adjustments needed for use sales tax. I am certain we
10 also went through an earlier audit that resulted in no tax
11 at all, but I don't have any of those old records.
12 Unfortunately, during the recession of 2007, 2008, Nu
13 Print struggled to keep its door open, and as of
14 June 28 -- 2008, I had to close the Glendale plant. Also,
15 in February of 2010 when we were unable to pay the
16 creditors, I sold the remaining assets and closed the
17 Studio City operation.

18 In February of 2010, I called the Van Nuys
19 district office of the Board of Equalization to ask them
20 what I needed to do -- what we needed since I had closed
21 my business. Soon after I was contacted by Wendy Tran who
22 informed me that Nu Print was being audited. After
23 meeting with Ms. Tran, I explained that the business was
24 closed and promised to provide the information she needed.
25 She asked me for the Bill of Sales for the remaining

1 assets and some resale certificates, which I sent -- which
2 I had sent to her. I also sent her the new address where
3 we were storing our paperwork.

4 I need to stop here and tell you how challenging
5 this was for me that I was dealing with stress for closing
6 my business, creditors pursuing me, having no job or
7 income, and preparing for the birth of my fourth child,
8 Jayden, I had just moved all of Nu Print's records into
9 storage, and it was very hard to find the document
10 Ms. Tran was -- was looking for. Despite trying to
11 provide Ms. Tran with records she asked for, it was very
12 hard. However, when I provided Ms. Tran with the resale
13 certificates, she said, "Did you just make these up?"

14 Perhaps because I was not born in this country or
15 possibly because I have olive skin and an accent, I
16 realize it was going to be difficult to overcome the
17 prejudice I was facing. So it became -- so because of the
18 bookkeepers that were employed by Nu Print were no longer
19 available to help me, I reached out to Nu Print's CPA to
20 ask if they can assist me with the sale tax audit since I
21 was no match for Ms. Tran. However, even after I asked
22 the CPA firm to assist me, I still had trouble gathering
23 some of the documents Ms. Tran asked for.

24 As a result, Ms. Tran completed her audit based
25 on a review of Nu Print's bank accounts, bank statements,

1 and explained to our CPA firm that many of the amounts
2 from our bank statements were deposits I made from -- I'm
3 sorry.

4 I explained to our CPA that the -- many of the
5 amounts from the bank statements were deposits that I made
6 from my home equity line of credit. The CPA firm provided
7 the information, which I believe you have as part of the
8 evidence. However, I didn't think they cared. In an
9 effort to challenge the additional taxes Ms. Tran said I
10 was supposed to pay, the CPA firm had one of its staff
11 attempt to compile some of the records we had to break
12 down our sales. Unfortunately, at some point in the
13 process, I could no longer afford to pay the CPA firm, and
14 they stopped representing and returning my calls. I later
15 learned that they also stopped contacting the Board of
16 Equalization.

17 It was also around this time that the landlord of
18 Northridge location, without telling me, threw away all of
19 Nu Print's records because I had stopped paying rent, and
20 because he had someone taking that space. I believe, at
21 some point, the Board of Equalization used the record it
22 received from the CPA to adjust the original audit that
23 showed that Nu Print owed even more money. I guess they
24 were mad at the CPA for not showing up, and they also
25 imposed the penalty for negligence that they had not

1 originally imposed in the first audit, saying that I owed
2 even more.

3 Because the CPA firm wasn't communicating with me
4 and because the Board of Equalization was still sending
5 mail to the old Northridge address, which had been closed,
6 I had no idea that the audit has been concluded against me
7 until I received a letter in August of 2013 at my house --
8 at my home letting me know that the Board of Equalization
9 had issued an assessment against Nu Print. After
10 receiving this notice, I called David asking him if he
11 could help me. Although David agreed to do his best, I
12 know that the process was difficult because I had very
13 little information to provide to him. I provided him with
14 all the paperwork I had. What I know, to the best of my
15 knowledge, we spent several hours talking about Nu Print,
16 the audit, and the learning -- and learning more as we
17 started to get information from the Board of Equalization.

18 I know that an important issue in this case is
19 providing that I told Wendy Tran that I closed my business
20 when I first spoke to her. I'm certain that I told her
21 and sent her an email telling her that the business is
22 closed and faxed her the purchase and sales agreement for
23 the business. However, I also understand that the Board
24 of Equalization has not provided us with the email or fax
25 that I had provided Ms. Tran. As I said, all of my

1 records were lost when Nu Print was closed and the
2 Northridge landlord threw away Nu Print's records.

3 For the last 10 years, I have had sleepless
4 nights thinking about what this is going to do to my
5 family. It's unfair for the Board of Equalization to tell
6 me that I owe tax, that I know Nu Print never charged and
7 collected from its customers. I sincerely hope that you
8 understand my perspective and fairly consider my
9 testimony.

10 Thank you.

11 MR. ELBAZ-DECKEL: Jacob, are you done?

12 MR. ZARRABI: Yes.

13 MR. ELBAZ-DECKEL: Judges, would you like to ask
14 any questions of Appellant Zarrabi?

15 JUDGE GEARY: Thank you, Mr. Zarrabi.

16 First, I'd want to ask Respondent if they have
17 any questions for Mr. Zarrabi.

18 Respondent, any questions?

19 MS. PALEY: No, thank you.

20 JUDGE GEARY: All right. Now, I'll ask my
21 Co-Panelists.

22 Judge Kim, do you have any questions for
23 Mr. Zarrabi?

24 JUDGE KIM: Not at this time.

25 JUDGE GEARY: Judge Ralston, do you have any

1 questions?

2 JUDGE RALSTON: No questions. Thank you.

3 JUDGE GEARY: Mr. Zarrabi, I may have a couple of
4 questions. First, let me ask your representative
5 something.

6 Your arguments concerning the timeliness of the
7 notice, the service of the NOD, I take it will be based in
8 part on documents that are part of the evidentiary record
9 and in part upon the testimony that Mr. Zarrabi just gave?

10 MR. ELBAZ-DECKEL: Yes.

11 JUDGE GEARY: Then, Mr. Zarrabi, you said that
12 you told the auditor that the business had been closed,
13 and you also sent an email. Did you send more than one
14 email to any employee of BOE to inform them that the
15 business had been closed?

16 MR. ZARRABI: At the time, Ms. Tran was my
17 contact. So I'm sure I had sent her emails and -- you
18 know, just back and forth between us. I'm not sure.

19 JUDGE GEARY: Do you recall whether you copied
20 anyone else, your representative, the accountants who
21 represented you at one time, on these emails?

22 MR. ZARRABI: Yeah. As -- as I said, you know,
23 they weren't involved in the beginning with Ms. Tran. So
24 the only contact I had was at the beginning where I spoke
25 to Ms. Tran, and I told her that the -- the Nu Print was

1 closed, and I sent her all the paperwork that she needed.
2 The CPA came after.

3 JUDGE GEARY: Okay. Let me ask you a little bit
4 about what happened with your records and the landlord. I
5 take it you -- you had vacated the premises sometime
6 before the landlord disposed of your documents; is that
7 correct?

8 MR. ZARRABI: At the place that I had all my
9 records, all that was there was just the records. There
10 was no equipment, no -- anything else that I needed to
11 vacate. So it was just all paperwork of Nu Print that was
12 over there.

13 JUDGE GEARY: Was it the Studio City location?

14 MR. ZARRABI: No. Northridge.

15 JUDGE GEARY: Northridge.

16 MR. ZARRABI: Northridge location, yes.

17 JUDGE GARY: Okay. So there was no retail
18 operation or wholesale operation --

19 MR. ZARRABI: No.

20 JUDGE GEARY: -- going on there at the time? It
21 was empty --

22 MR. ZARRABI: Yes.

23 JUDGE GARY: -- I take it, except that it
24 contained your records?

25 MR. ZARRABI: Yes.

1 JUDGE GEARY: And were your computers or was your
2 computer also there?

3 MR. ZARRABI: No.

4 JUDGE GEARY: Didn't you have copies of the email
5 on your computer?

6 MR. ZARRABI: The only -- well, the emails that I
7 have is that the only email was my personal email that was
8 left. You know, all the computers and everything else was
9 included in the assets that were sold. So I didn't have
10 any -- any other computers. I mean, emails you can
11 have -- you can access from any computer. So that -- that
12 was only my personal that was left.

13 JUDGE GEARY: Okay. But you had a business email
14 that you used?

15 MR. ZARRABI: Yes.

16 JUDGE GEARY: And I'm sure it's referred to
17 somewhere in the documentary evidence. Did you check that
18 business email to see if you had --

19 MR. ZARRABI: Well --

20 JUDGE GEARY: -- let me finish before you begin
21 speaking.

22 Did you check to find out if you had copies of
23 any of the pertinent emails available to you there?

24 MR. ZARRABI: Yeah. Unfortunately, that email
25 does not exist anymore, and I couldn't access the Nu

1 Print's email address. So the only one that I had, it was
2 my personal, and I provided whatever that was in my
3 personal account.

4 JUDGE GEARY: How did you lose that email
5 address?

6 MR. ZARRABI: It was -- it was part of the
7 company's email. And since we didn't do any more business
8 with that email, so it -- it kind of, you know, I didn't
9 have any need for it. So it was through AOL that we had
10 to -- that you have to pay every month and -- to maintain.
11 So I no longer had that Nu Print email address.

12 JUDGE GEARY: Were you about to say it was
13 through aol.com?

14 MR. ZARRABI: Yeah.

15 JUDGE GEARY: And you paid for that email?

16 MR. ZARRABI: Yes.

17 JUDGE GEARY: And you stopped paying?

18 MR. ZARRABI: Yes.

19 JUDGE GEARY: And did you receive notification
20 from AOL that you were going to lose access to your
21 emails?

22 MR. ZARRABI: I think it's just an email access.
23 They don't send you any notification.

24 JUDGE GEARY: So you did not have any advance
25 notice that you were not going to be able to get into that

1 business email account after some certain date?

2 MR. ZARRABI: Yes, I had no none.

3 JUDGE GEARY: No notice?

4 MR. ZARRABI: No.

5 JUDGE GEARY: Okay. Thank you, Mr. Zarrabi.

6 Those are the only questions I have.

7 MR. ZARRABI: Okay.

8 JUDGE GEARY: Counsel, do you want to just move
9 into your argument or --

10 MR. ELBAZ-DECKEL: I think in the interest of
11 time, I think I should.

12 JUDGE GEARY: Okay. Go ahead.

13

14 PRESENTATION

15 MR. ELBAZ-DECKEL: So CDTFA, thank you for
16 waiving the prepayment penalty. It saves us a couple of
17 minutes.

18 OTA, as Judge Geary has pointed out, has asked us
19 to address five issues during this hearing. I'll address
20 them in the order presented in the Minutes and Orders.
21 And please, there's a lot here and going through it very
22 quickly. So if any of the parties need clarification or
23 want me to stop and explain, please tell me to do that,
24 and I'm happy to comply. So --

25 JUDGE GEARY: I would only ask you not speak too

1 quickly for our stenographer's benefit.

2 MR. ELBAZ-DECKEL: Thank you.

3 The first issue we would like to discuss is
4 whether CDTFA timely issued a Notice of Determination to
5 Appellants. Cal Rev & Tax Code section 6829(f) requires a
6 Notice of Deficiency Determination to have been mailed
7 within three years after the last date of the calendar
8 month following the quarterly period in which the Board
9 obtains knowledge -- I'm going stop here -- through its
10 audit or compliance activities, or by written
11 communicating by the business or its representative of
12 determination, dissolution, or abandonment of -- and
13 again, I'm stopping here to emphasize the business of the
14 corporation.

15 And the point in making that distinction is we're
16 not -- we don't need to show that the business terminated,
17 it's just the business of the corporation that which
18 required the holding of a seller's permit.

19 Again, I note here, there are two important parts
20 of the statute we've emphasized in our briefs. First,
21 that the requisite knowledge may be obtained by CDTFA's
22 audit or compliance activities --

23 JUDGE GEARY: Mr. Elbaz-Deckel, please slow down
24 a bit.

25 MR. ELBAZ-DECKEL: -- and second, that the

1 termination need not be of the corporation itself but
2 rather, the termination of the business of the
3 corporation. I believe it's uncontested that the
4 requirements of section 6829 were not met if CDTFA had no
5 knowledge of Nu Print's closing prior to October 1st,
6 2010.

7 As a point of a clarification, I may use the name
8 Board of Equalization or CDTFA, but they should be
9 generally -- but they should generally be considered
10 interchangeably during this discussion today.

11 We have emphasized throughout the CDTFA appeals
12 process that the requisite knowledge was conveyed to the
13 Board of Equalization starting first, when Appellant
14 called the Board of Equalization to first advise that he
15 was closing his business and, thereafter, at several times
16 during the audit process, all prior to October 1st, 2010.

17 The evidence provided includes the following:
18 First, Appellant's testimony here today where he advised
19 Board of Equalization in early 2010 that Nu Print had
20 closed and asked what he should do to close his permit;
21 second, Appellant's written declaration that he advised
22 BOE auditor Wendy Tran that Nu Print's assets sold and Nu
23 Print had closed.

24 If you could please reference Exhibit 4. Don't
25 need to do that now, but I'm going to give you citations

1 to the exhibits that you can validate later if you'd like,
2 but they all support the contentions that they stand for
3 in my discussion.

4 The third thing, the asset sale agreement itself,
5 which was delivered to Ms. Tran at her request after she
6 was told that the business was closed. That asset sale
7 agreement reference is Exhibit 2. If we could take a look
8 at that Exhibit 2 just ever so briefly -- and I have an
9 extra copy here. I want to make sure that everybody
10 understands that when Ms. Tran saw this, she looked at
11 what was being sold, and she saw that asset -- she saw the
12 provision that says, "Assets shall refer to all assets,
13 including the printing equipment that are owned solely by
14 seller, as well as telephone and facsimile numbers that
15 are being used" -- "that were being used by Nu Print to
16 conduct its business."

17 We emphasize that a reasonable person looking at
18 this document would have no question in identifying that
19 Nu Print was closed once this transaction took place. In
20 addition, please refer also to BOE auditor Wendy Tran's
21 March 11th, 2010, email to see her discussion of that Bill
22 of Sale. You can see that at Exhibit G, page 1.

23 Fourth, Wendy Tran's notation in B -- Wendy
24 Tran's notation in BOE activity log acknowledging that
25 there was a close out of Nu Print's business when she

1 documented on May 19th, 2010, well before the October 1st
2 relevance date here, that there was a sale of assets at
3 close out. I've spoken to several auditors that are
4 colleagues of mine and tried to get them to tell me what
5 it means when somebody says, "At close out." And they
6 said to me, that means the business is closed.

7 Again, Wendy writes, "Sales of assets at close
8 out." So when she wrote that, it's our opinion that she
9 had knowledge that Nu Print had been closed. While CDTFA
10 will argue that inferences may be drawn from subsequent
11 BOE activity that Ms. Tran did not know Nu Print was
12 closed, these inferences are inconsistent with the
13 evidence that shows that Ms. Tran was told about the
14 business being closed, asked for a copy of the asset sale
15 agreement, was given the asset sale agreement, and
16 acknowledged being given the asset sale agreement.

17 Again, the asset sale agreement was clear. The
18 agreement was for the sale of all of Nu Print's assets
19 used to conduct a retail print shop, including the
20 business's telephone and fax numbers. In the same way
21 that CDTFA has drawn inferences from subsequent activity,
22 Appellant has also advanced specific facts that support
23 its contention that Ms. Tran knew that Nu Print had
24 closed.

25 First, as Ms. Tran knew, Nu Print did not file a

1 tax return after the first quarter of 2010. Ordinarily,
2 an audit wouldn't be completed until the taxpayer's
3 account is current, meaning it didn't have any delinquent
4 returns.

5 Number two, if substantial exposure was
6 discovered during an existing audit, it's our experience
7 that an audit would be extended to cover subsequent open
8 periods, unless the auditor knew there was no reason to do
9 so, such as in this case where the business had closed.

10 Third, Appellant notified the BOE on
11 January 18th, 2011, that Nu Print was closed. And if you
12 look at the exhibit, it says, "Asked him why he did not
13 notify BOE that business closed." He said he did. That's
14 Exhibit 5. Also it's contained in Exhibit B, page 127.

15 While we understand that this communication
16 happened after September 30th, 2010, Appellant believes
17 that a high level of consideration should be attributed to
18 this statement, since it was made at a time when the issue
19 of personal liability was not considered. So this is not
20 Jacob saying after he gets hit with a dual determination,
21 hey, I told her. This is not us making up the facts.
22 This is him speaking, at the time things were taking
23 place, to a BOE representative and saying, I told you back
24 then, I told them -- told somebody that it closed.

25 Based on the above, we believed the BOE received

1 actual knowledge of Nu Print's closure prior to
2 October 1st, 2010. Of course, we wouldn't be here today
3 if we had a piece of paper we could hold up for you where
4 Appellant wrote the words, "Nu Print is closed." I wish
5 we did. With that said, implicit in the statute is that
6 the CDTFA may obtain knowledge of a business' termination
7 in different ways, including through the audit and
8 compliance process. Specific written notice, while
9 conclusive, is not required.

10 However, what CDTFA and Appellant don't agree on
11 is whether that paper that I was allegedly holding up, or
12 in this case a fax and an email exist. Since very early
13 on in the appeals process, Appellant has asserted that he
14 did communicate with the BOE that Nu Print has closed.
15 However, as Appellant just testified, Nu Print's records
16 were destroyed by his landlord. As a result, throughout
17 the appeals process, Appellant has been forced to
18 primarily rely on CDTFA's data to reconstruct the record
19 now before us.

20 Starting in 2013 Appellant requested -- in 2013,
21 Appellant requested copies of all of CDTFA's
22 documentation. Initially, limited information was
23 provided. As the CDTFA appeals process progressed,
24 additional requests relating to specifically
25 communications by and between the Board of Equalization

1 were requested. In some cases, and recently only at the
2 direction of OTA, CDTFA provided additional records.
3 However, as outlined in Appellant's brief, most recently
4 Appellant's March 24th Respondent -- response to
5 Respondent's additional briefing -- I'll slow down and say
6 that for the stenographer again -- response to
7 Respondent's additional briefing, CDTFA has not provided
8 all information.

9 Rather, as noted, it only provided, quote,
10 unquote -- and this is the disclosure office's words --
11 available records that were, quote, unquote, "maintained
12 by the CDTFA." CDTFA's disclosure office made it clear
13 that there are emails that are no longer maintained on
14 CDTFA's mail server. And I quote, "Please note, emails
15 that were no longer maintained in CDTFA's mail server, but
16 were saved in Nu Print & Graphics, Inc.'s, files were
17 included in the response." So if these documents were
18 available on the mail server, we were provided to them.
19 If they weren't on the mail server but provided in
20 another, they provided those to us. But they had already
21 been deleted during the normal document destruction
22 process -- which is what appeals officer Henry Chen had
23 told us -- we just can't get those old emails. They are
24 either destroyed or moved somewhere else or too expensive
25 to get those, we didn't get them.

1 I'm going to take a stop for myself here. I -- I
2 agree to sign on to help Appellant Zarrabi in 2013
3 thinking this would be something that was reasonable.
4 We'd find quickly that, you know, there were some missing
5 documents, and this would address the issue of notice and
6 we'd be done with this. Or we'd find there weren't, and
7 we'd agree there's a liability, and I'd tell him that he
8 should pay it. But each time we made a request of CDTFA,
9 it always seemed like we learned something new. New
10 documents were always produced throughout the appeals
11 process. I wish I had introduced the email chain. I did
12 not. I actually -- part of the email chain is actually
13 introduced as part of the evidence. I don't have the
14 citation to the exhibit number.

15 But it was like peeling back layers of an onion.
16 I'd ask a question. I'd get an answer, and it would refer
17 to a document. Oh, can I get that document? And we'd get
18 that document, and I'd read it. You know, we asked for
19 all the documents in possession of CDTFA in 2013, and it
20 was like pulling teeth every time try and get these
21 documents. It was extraordinarily frustrating. Maybe
22 some of them weren't material to the issue, but they were
23 material to the fact that we weren't getting everything
24 that we asked for.

25 As I prepared for the brief -- sorry. As I

1 prepared for this hearing, it also came to my attention
2 that records going to the substance of the audit findings
3 have also not been produced. I mean, these are
4 quintessential to how the auditor determines the liability
5 for Nu Print. Specifically, if you refer to Exhibit F,
6 page 547 -- and I want to validate that. I think we
7 should all look at that, and I am going to ask you to look
8 at Exhibit F, page 547. It might be page 545. In any
9 case, it will be either Exhibit F, pages 545 or 547.
10 There are no specific notations that say Mr. Zarrabi
11 brought in copies of March 29th invoices with resale
12 certificates.

13 JUDGE GEARY: It is page 547.

14 MR. ELBAZ-DECKEL: 547. Thank you.

15 In addition to this constituting a failure to
16 disclose, this also seems particularly curious since the
17 BOE in its briefs -- or the CDTFA in its briefs claim:
18 1, that no 2009 records were received; No. 2, assess
19 incremental taxes based on lack of records; and No. 3,
20 also asserted negligence penalties due to failure to
21 maintain and provide 2009 records. They had these
22 records. The evidence shows that they had these records,
23 and then they come back to us and say, well, we didn't.
24 That was the basis for the -- at least in part, that was
25 the basis for part of the assessment. And by the way,

1 because you didn't do this properly, we're asserting
2 negligence against you for the lack of maintaining these
3 records, which we gave them.

4 I'm sorry. I just -- this has been the
5 frustration that we've dealt with for the last -- and it's
6 been the last -- Jacob and I talked earlier. It's been
7 11 years that we've been dealing with this.

8 Okay. As result of CDTFA's noncompliance, we
9 have asked OTA to apply the rule set forth in Appeal of
10 Cookston. Specifically, that the failure of a party to
11 introduce evidence, which is within his control, gives
12 rise to the presumption that, if provided, it would be
13 unfavorable. The citation is 83-SBE-048. Cookston cites
14 Giddio versus Commissioner of Internal Revenue, 54 Tax
15 Court 1530 (1970). CDTFA attempts to distinguish Cookston
16 by arguing the same standard that applies to CDTFA should
17 apply to Appellants. However, this argument ignores the
18 plain language of Cookston, which calls for the
19 presumption when evidence is within the party's control.

20 As noted, and as CDTFA is well aware, Appellant's
21 records were destroyed by its landlords in 2010
22 unbeknownst to him. We told them that in 2013 when we
23 said we don't have anything. Please give us whatever you
24 have. And, again, Matthew Strong who was the collector at
25 the time, was very kind in providing some of the records

1 he have -- had, but it wasn't responsive to our 2013
2 request. The evidence Appellant has asked CDTFA to
3 produce was within CDTFA's control -- excuse me -- when
4 Appellant requested them in 2013. We're talking about
5 faxes and emails that are allegedly -- alleged to have
6 been just now destroyed or backed up somewhere else.

7 CDTFA should not be allowed to avoid production
8 and inrun the rule of law because the communications were
9 deleted by them as part of its normal document destruction
10 or backup processes during the course of this appeal.
11 Again, we asked. We asked. We asked and was told it's
12 too hard. It's too expensive. It can't be done. They
13 don't exist. And yet here, even two days ago we're still
14 finding records. CDTFA also argues -- and I'm going to
15 stop here. That was my Cookston discussion.

16 CDTFA also argues that the burden of proof in a
17 personal liability case is on the Appellant as to all
18 issue of fact and the standard of proof is by a
19 preponderance of the evidence. Though Appellant believes
20 it has satisfied this burden for the reasons we just
21 discussed, we disagree. The regulatory history of
22 Regulation 1702.5 -- provided as Exhibit 28 -- makes it
23 clear. BTC staff drafted amendments adding new
24 subdivision (d) to Regulation 170 -- that's the
25 presumption requirement -- presumption discussion --

1 1705 -- if regulatory history -- I'm so sorry.

2 BTC staff drafted amendments adding new
3 subdivision (d) to Regulation 1702.5 to provide that the
4 Board has the burden of proof -- burden to prove the
5 requirements for personal liability based upon a
6 preponderance of the evidence. They're basically saying
7 you can't just go ahead and willy-nilly use this statute
8 to go after people. You have to have more -- more than
9 ordinary to just go ahead and assert -- do a liability.
10 Applying this standard and shifting the presumption as set
11 forth in Appeal of Cookston to the available facts leads
12 to the conclusion that CDTFA knew prior to October 1st,
13 2010, that Nu Print's business had terminated. Therefore,
14 the requirement of section 6829(f) has not been satisfied.

15 Judges, that was a lot for me to read, and I'm
16 sure a lot for you digest. I'd like to stop here and ask
17 if I may provide any clarification.

18 JUDGE GEARY: I have a question.

19 MR. ELBAZ-DECKEL: Yes, sir.

20 JUDGE GEARY: The communications back and forth
21 requesting documents and responses indicating that those
22 documents are not available, are those communications all
23 part of our record already?

24 MR. ELBAZ-DECKEL: I would say not all of them,
25 because many of them were contained in emails between

1 myself and Henry Chen in the Appeals Bureau. But I think
2 there were many of them, including those at exhibit --
3 including many of those in the exhibits that as an email
4 chain that went through and discussed what I described
5 earlier, which was -- which records were actually
6 provided, only available records and only records that
7 were maintained by CDTFA. So yes, that -- that chain of
8 emails is definitely available, as are the requests from
9 2013, as are the requests from 2017 and 2018. So yes,
10 those are in there.

11 JUDGE GEARY: Okay. And in reviewing this file,
12 I noted that there were some contentions discussed
13 regarding whether or not the burden of proof on the issue
14 of timeliness should rest with Appellant or rest with
15 Respondent. And I'm hearing, kind of, a different nuanced
16 argument from you today involving failure to produce
17 records that were within the ability of Respondent to
18 produce. Does Appellant contend that perhaps its evidence
19 regarding the regulatory history of the statute and
20 regulation of 17 --

21 MR. ELBAZ-DECKEL: 02.5?

22 JUDGE GEARY: -- 02.5, or based on something
23 else? Does Appellant still contend that the burden of
24 proving timeliness is on Respondent?

25 MR. ELBAZ-DECKEL: Yes. We -- notwithstanding

1 the reading of 1702.5, if we look at the underlying --
2 because I think 17 -- as CDTFA pointed out in its brief,
3 it's not aware of any -- gosh, I'm going to misquote --
4 but to the effect of its not aware of any -- any
5 discussion about the standard for the notice requirement.

6 I -- I think we say look at the regulatory
7 history. Look at the purpose of 1702.5, you know,
8 holding -- this drastic measure of holding somebody
9 personally liable for their corporation's business.
10 Especially in this case where we're not -- and I'm going
11 to say this later, but we're not dealing with actual sales
12 at a counter but rather, what I refer to colloquially as a
13 jeopardy assessment because his records were -- you know,
14 he couldn't respond to the auditor and didn't. And,
15 again, maybe his fault for not doing a better job of -- of
16 keeping those at a place that the landlord wouldn't
17 destroy them.

18 But we're -- we're saying that if you look in
19 the -- in the big picture at what the regulatory history
20 underlying 1702.5 says, is it's not just this lower
21 standard where the burden is on the taxpayer. It -- it's
22 in general this higher standard that I just advanced for
23 you. And then combined that with the shifting of the
24 presumption that is called for in Cookston. You can then,
25 in our minds, get to the point where you see that all of

1 the stuff we've provided, these -- this hard evidence
2 related to the Bill of Sale and the statements and the
3 declarations and the allegations and the notations and the
4 closeout at -- and the sales at closeout language.

5 You get to the point where you can say, you know
6 what, given these -- given this burden of proof and given
7 the presumption that we are applying here, yeah, you're
8 right. This didn't happen timely, and 6829(f) isn't met.

9 JUDGE GEARY: Thank you. That's the only
10 question I have.

11 Judge Kim, did you have anything?

12 JUDGE KIM: No.

13 JUDGE GEARY: Judge Ralston?

14 JUDGE RALSTON: No, not at this time.

15 JUDGE GEARY: All right. You can proceed, if
16 you're ready.

17 MR. ELBAZ-DECKEL: Big breath. Thank you.

18 The next issue we would like to discuss is
19 whether Appellant is personally liable for Nu Print's
20 unpaid sales tax liability pursuant to Cal Rev & Tax Code
21 section 6829. Appellant believes the requirements set
22 forth in Cal Rev & Tax Code sections 6829 were not
23 satisfied, and that it was improper for the BOE to have
24 issued the Notice of Determination holding him liable for
25 the assessment of tax.

1 And by the way, I'm reading this because if we
2 haven't satisfied our burden on the notice issue, then we
3 believe we satisfy our notion -- our issue -- our
4 requirement here. And it was -- I'm sorry. Backing up a
5 second.

6 Appellant believes requirements set forth in Cal
7 Rev & Tax Code section 6829 were not satisfied, and that
8 it was improper for the BOE to have issued the Notice of
9 Determination holding him liable for the assessment of
10 tax, interest, and penalties previously assessed against
11 Nu Print.

12 JUDGE GEARY: Slow. Keep it slow please.

13 MR. ELBAZ-DECKEL: Yes. Thank you. I will do
14 that. Would you like me to repeat?

15 THE STENOGRAPHER: No. Thank you.

16 MR. ELBAZ-DECKEL: In analyzing this issue, it's
17 important to remember that CDTFA -- thank you.

18 It's important to remember that CDTFA has the
19 burden of proving all the elements by a preponderance of
20 the evidence standard. We will first discuss the 6829(b),
21 responsible person requirement. 6829(b) provides that an
22 officer shall be liable only for the taxes that became due
23 during the period he or she had control or duty to act for
24 the corporation. The evidence shows that Nu Print was
25 dissolved on September 16, 2011. That's Exhibit 10. And

1 the final determination on Nu Print's Notice of
2 Redetermination was not issued until January 31st, 2012.

3 It's also uncontested that the CDTFA erred and
4 mailed the Notice of Redetermination to the wrong address.
5 Please see Exhibit 12, Exhibit 13, and Exhibit 15.
6 Appellant has consistently represented he did not become
7 aware of Nu Print's liability until an August 14th, 2013,
8 discussion with BOE representative Matthew Strong in
9 response to Mr. Strong's August 9th, 2013, letter sent to
10 Appellant's home. The fact that CDTFA concedes in its
11 brief discussing its waiver of the finality penalty.

12 Since, number one, Appellant's duty to act for Nu
13 Print ceased once Nu Print dissolved, and the tax
14 liability did not become final until March 1st, 2012,
15 Appellant was not aware of the liability -- sorry -- and
16 additionally, Appellant was not aware of the liability
17 until August of 2013, the responsible person provision is
18 not satisfied. What we're saying is the corporation was
19 closed. Asset sale agreement said buyer takes all of the
20 obligations. We have no reasonable belief to believe that
21 there's anymore activity that Nu Print will conduct. We
22 close the corporation in September of 2011. Here,
23 something pops up that becomes official technically on
24 March 1st of 2012, and we find out about it in August of
25 2013. Well, by that point, we no longer have a duty to

1 act for the corporation. The responsible person
2 requirement at that point is not met.

3 We next discuss section 6829(c), tax
4 reimbursement requirements. As noted in section 6829(c),
5 personal liability may be imposed only if the board
6 establishes the corporation included tax reimbursement in
7 the selling price of tangible personal property sold in
8 the conduct of its business. In the facts at hand,
9 there's no dispute that Nu Print collected and remitted
10 sales tax on actual sales. Jacob told us that. Jacob has
11 always told us that, "I sell something. I collect tax. I
12 remit tax. I've been doing it for as long as Nu Print has
13 been in business."

14 He also has told us he has processes in place to
15 do that correctly and has always done so. Something that
16 the first audit that is in the record shows us. And
17 actually, Jacob just told us today and even he told me
18 yesterday, there was an earlier no change audit back in --

19 Jacob, when was your -- do you remember when the
20 first audit was -- first Nu Print audit was?

21 So it had to be before 4/01 because the last
22 audit was '01. So --

23 MR. ZARRABI: I'm not sure.

24 MR. ELBAZ-DECKEL: Okay. There was another one.
25 We don't have the records for it, but there was a third

1 audit that can be verified if that wants to be challenged.

2 BOE auditor Wendy Tran's own work related to the
3 first period of this audit, 2007, concludes likewise that
4 everything was hunky-dory. Whatever she has shows that
5 there was de minimis discrepancies. In the case now
6 before us, CDTFA argues that Appellant should be
7 responsible for sales tax that's arising from what is in
8 effect, again I say a jeopardy assessment. As I'll
9 discuss in a few minutes in addressing the next issue OTA
10 has asked Appellant to address, which is the -- is there
11 an adjustment to the calculation warranted. BOE auditor
12 Wendy Tran's work papers had enough errors as to prove
13 them unreliable. And again, we'll discuss that in just a
14 second.

15 In analyzing this issue, it's important to refer
16 back to the underlying purpose of 6829. And I'm going to
17 read this because it was particularly instructive to me.
18 This was a quote that's articulated by Board of
19 Equalization Tax Counsel Donald J. Hennessy. I believe it
20 was from the mid-80s. And I'm going to read slowly for
21 the stenographer.

22 JUDGE GEARY: Before you do this --

23 MR. ELBAZ-DECKEL: Yep.

24 JUDGE GEARY: It's 2:00 o'clock. I just wanted
25 to tell you.

1 MR. ELBAZ-DECKEL: Okay. We started at 1:07?

2 JUDGE GEARY: 1:05, roughly. But --

3 MR. ELBAZ-DECKEL: And so I will -- will I get
4 the additional 15 minutes?

5 JUDGE GEARY: You think that you're going to be
6 able to do with just 15 more minutes?

7 MR. ELBAZ-DECKEL: I'll read a little more
8 quickly. Yes. We don't have as much in the second period
9 as much as we do in the first one.

10 JUDGE GEARY: All right. Go ahead.

11 MR. ELBAZ-DECKEL: So the history of section 6829
12 is, of course, well known. Since our collection unit
13 believes corporate tax liability is a significant portion
14 of our un-collectables, we attempted to get a much
15 stronger statute than 6829. We failed. 6829 is full of
16 restrictions, one of which is subsection (c), the tax
17 reimbursement requirement, in which the legislature --
18 excuse me -- makes clear that personal liability may be
19 imposed on a corporate officer, only if the Board can
20 establish that the corporation had included or added tax
21 reimbursement. Only if the Board can establish that the
22 corporation had included or added tax reimbursement.

23 The legislative intent was to limit personal
24 liability to reimbursements collected from the buying
25 public. This is a variation on the old "involuntary

1 trust" theme from *Decorative Carpets v. State Board of*
2 *Equalization*, 58 Cal.2d 252. A taxpayer should not be
3 allowed to collect monies from the public under the guise
4 of taxes, and then not pay such taxes to the Board. That
5 far the legislature was willing to go, but no further.
6 That far our Board is willing to go, but no further. Our
7 staff must go no further.

8 Once again, Appellant concedes that Nu Print
9 collected sales tax in the ordinary course on its actual
10 sales. However, Appellant does not agree that CDTFA has
11 met its burden of showing that Nu Print collected tax on
12 sales that were extrapolated on audit, especially, after
13 reviewing only 17 invoices. All of this work, all of this
14 binder, 7,500 transactions, Wendy Tran only substantiated
15 17 invoices. As I just cited, the legislature did not
16 intend this result. While Appellant concurs that no
17 additional records are available due to Nu Print's closure
18 and destruction of its records, Appellant continues to
19 assert that the underlying assessment against Nu Print is
20 incorrect, and that the section 6829(c), tax reimbursement
21 requirement, has not been met.

22 We next discuss 6829(c), tax reimbursement
23 requirement -- willful requirement. I'm sorry. As just
24 touched on, because the legislature realized holding an
25 officer responsible for the debts of a corporation was a

1 drastic measure only to be applied in specific
2 circumstance, the provision of 6829(d) explained that
3 willfully fails to pay or cause to be paid means that the
4 failure was a result of intentional conscience and
5 voluntarily course of action. CDTFA has outlined that the
6 willful requirement is satisfied when a responsible
7 person: One, knew that taxes were due; two, knew the
8 corporation had funds available to pay those taxes; three,
9 had the authority or pay or cause those taxes to be paid;
10 and four, failed to pay or cause such taxes not to be
11 paid.

12 As has been contended throughout the appeals
13 process, Appellant believes taxes were properly reported
14 as filed. Again, given the historical process that Nu
15 Print had in place for tax compliance, which included a
16 bookkeeper who prepared Nu Prints returns for
17 approximately 10 years, Appellant had a reasonable belief
18 that the amounts reported on Nu Print's original return
19 were proper. A prior audit of Nu Print -- actually, two
20 prior audits we talked about -- produced de minimus
21 additional liability, and the current audit result --
22 audit resulted in almost no change in the amounts reported
23 for 2007. Thus, as to element one, Appellant had a
24 reasonable belief that tax was properly reported and did
25 not know that taxes were due.

1 As to element two, the availability of funds, the
2 final determination was not issued until well after Nu
3 Print had ceased operations and no longer had any funds.
4 It's also uncontested that due to CDTFA's error, the
5 Notice of Redetermination was mailed to the wrong address.
6 Appellant did not become aware of Nu Print's liability
7 until an August 14th discussion with BOE representative
8 Matthew Strong. Nu Print had hired a CPA to represent it
9 in the audit process, and having received no notice from
10 either the CPA or the BOE due to their error in mailing to
11 the wrong address that a final liability -- a final tax
12 liability had been determined, Appellant reasonably
13 concluded that the matter had been resolved with no change
14 from what was originally reported.

15 This was conceded by CDTFA in its own brief when
16 it adopted CDTFA Appeals Bureau's supplemental decision.
17 Reference Exhibit B, 26 to 29.

18 JUDGE GEARY: Just a reminder. When you're
19 reading, you tend to go faster. So try to keep the pace
20 slower.

21 MR. ELBAZ-DECKEL: Yes, Judge Geary.

22 As to element three, the liability for tax for
23 the 2007 to 2009 periods, did not arise until the decision
24 on the Notice of Redetermination became final on
25 March 2nd, 2012. And as just noted, due to CDTFA's error

1 and new Nu Print's CPA not communicating with Appellant,
2 Appellant did not even know a liability existed. At that
3 time, Nu Print was already dissolved, and Appellant no
4 longer had a duty to act on its behalf.

5 As to element four, Nu Print was dissolved and
6 had no money when Appellant learned that a liability
7 existed. See Exhibit B, pages 74 to 109, which are Nu
8 Print's bank statements. In addition, as set forth in
9 Exhibit F, pages 532 to 534, Appellant had been borrowing
10 money using his home equity line of credit and loaned
11 money to Nu Print, as Nu Print otherwise had no money to
12 continue operations.

13 In summary, Appellant believed he was properly
14 reporting at the time tax was due and further, did not
15 have funds when a final assessment was issued. Appellant
16 did not purposely avoid the payment of tax liability. A,
17 he simply did not know it existed; and then B, there
18 simply was no money to pay the tax that resulted from the
19 audit determination at the time the liability was
20 finalized.

21 In the interest of time, I'm going to keep going.

22 The next issue we would like to discuss is
23 whether adjustments are warranted to Nu Print's tax
24 liability. Appellant will demonstrate a few reasons why
25 adjustments are warranted. First, there were errors

1 demonstrated during the appeals process, at least one of
2 which CDTFA conceded when it adjusted Nu Print's tax
3 liability during the appeal. During the CDTFA appeals
4 process, Appellant coordinated with a former CDTFA auditor
5 who assisted in pointing out calculation errors that
6 resulted in CDTFA conceding the adjustment. That
7 adjustment is in Exhibit B, page 110 to 115.

8 The adjustment acknowledged that the original
9 audit work papers failed to consider discounts when
10 arriving at taxable sales. Appellant also pointed out
11 additional calculation errors, specifically, that taxable
12 sales should also have been reduced by returns and bad
13 debts that should have resulted in a total tax reduction
14 of \$8,654 versus what was calculated. That's laid out in
15 Exhibit 20. It's a little convoluted, and I wanted to go
16 through that, but we don't have time for that here today.
17 Please refer back to Exhibit 20. It's color coded. Not
18 only did this adjustment affect the actual basis
19 calculation for 2007 and 2008, but it also should have
20 impacted the extrapolation of error to 2009 where CDTFA
21 claim the auditor didn't have information. So it has a
22 compounding effect on the calculations.

23 Second, the BOE had records related to 2009 in
24 its possession, which CDTFA claimed in its brief that BOE
25 did not have. Again, this goes to records -- the

1 record -- providing a records issue we discussed earlier.
2 Contrary to CDTFA's assertion in Exhibit B, page 56, where
3 CDTFA alleges no records pertaining to 2009 were provided,
4 as discussed earlier, we recently identified the auditor
5 did, in fact, have information for 2009 but apparently
6 just chose not to use it or ignore it. Maybe it was
7 easier just to extrapolate than to use records that you
8 have. As noted earlier, Exhibit F, page 245 shows that
9 discussion.

10 Third, there was no attempt by the BOE audit
11 staff to explain the large discrepancy between 2007 and
12 2008. Appellant consulting CDTFA auditor was surprised by
13 the lack of comments explaining the substantial difference
14 between the 2007 and 2008 error rate. We're talking
15 3 percent versus approximately 72 percent. In her
16 opinion, given the large discrepancy, an audit should not
17 have been concluded without validating the source
18 documents and the calculations.

19 To further illustrate the inadequacy -- and I
20 think I did this yearly -- Exhibit F includes
21 approximately 300 pages, starting at page 107,
22 representing 7,500 transactions. It's literally almost a
23 full one of these notebooks right here. Again, of those
24 transactions, auditor Wendy Tran only tested 17 of those.
25 That's 17 out of 7,500, and those only covering October

1 and November of 2017. Based on those 17 transactions, she
2 concluded her analysis was correct. We just don't agree.

3 Fourth, given the above, Appellant proposed using
4 available records to recompute the 2009 tax.

5 Specifically, Appellant proposed an alternative
6 calculation using federal taxable income as a starting
7 point for all three years that would have resulted in a
8 reduction of the 2009 liability of \$141,000 in tax measure
9 or \$12,000 in tax. This is illustrated in Exhibit B on
10 page 34 and 35.

11 Again, I'm sorry. In the interest of time, I
12 think we need to keep moving.

13 Because sales journals were prepared by Nu
14 Print's CPA who failed to appear at the audit conference
15 and have not been available to assist with this
16 processing, and because Appellant's records were destroyed
17 by the Northridge landlord, Appellant has been unable to
18 confirm the amounts on CDTFA's audit work papers.

19 However, Appellant contends that the audit work papers
20 contain substantial error beyond what was just pointed out
21 given: One, that the CDTFA has already conceded that the
22 original audit work papers contained error; two, that the
23 auditor hid the fact that she had 2009 data but chose,
24 instead, to extrapolate a 2009 liability; three, that the
25 auditor failed to take any steps to validate the large

1 audit discrepancy; and four, that a proper means to
2 correct the 2009 liability was available, Appellant now
3 proposes as a compromise, that the tax liability be
4 revised consistent with the original audit based on bank
5 statement.

6 And you can please refer to Exhibit H.

7 Judge Long asked us to -- asked CDTFA to provide that, and
8 they did.

9 We say this is a compromise because the original
10 audit findings, which resulted in a \$34 -- \$35,000
11 liability, were based on bank statements that didn't
12 acknowledge the money that Appellant had been borrowing
13 using his home equity line and lending to Nu Print.

14 Okay. I now have to discuss negligence penalty
15 and finality penalty. I'd like to go to finality penalty
16 quickly, because I believe that's already been conceded.
17 So if we can go ahead and agree that the finality penalty
18 has been waived, but contingent upon if you determine that
19 Appellant Zarrabi is liable for tax, that he paid that tax
20 within 30 days of your final decision, I think we can skip
21 finality penalty.

22 JUDGE GEARY: That's the agreement that I read in
23 the record.

24 Isn't that correct?

25 MS. PALEY: Yes.

1 MR. ELBAZ-DECKEL: So then I have a
2 page-and-a-half to discuss the negligence penalty. Do I
3 have time?

4 JUDGE GEARY: Take it.

5 MR. ELBAZ-DECKEL: Thank you.

6 The next issue we would like to discuss is
7 whether the 10 percent negligence penalty was warranted.
8 As noted in CDTFA's brief dated, October 23rd, 2020,
9 citing CDTFA Appeals Bureau's supplemental decision dated,
10 May 2nd, 2019, CDTFA believes a negligence penalty is
11 warranted because: One, the amount of the liability
12 determined to be due on audit; two, that the taxpayer
13 failed to maintain records; and three, the taxpayer did
14 not provide any evidence of negligent representation.

15 Okay. Number one, as to the amount of the
16 liability, the Board of Equalization Audit Manual chapter
17 5, section 506.15 makes clear, field auditor should not
18 assume that a large audit deficiency for overpayment is
19 indicative of either negligence or intentional disregard.
20 The Audit Manual also provides a substantive increase or
21 comparable error percentage may be indicative of
22 negligence. However, it must be noted that a ratio of
23 understatement is not, in of itself, proof of negligence.
24 A ratio should be considered in conjunction with other
25 factors -- closing of a business, lost records -- to

1 determine whether negligence has occurred.

2 As the Audit Manual recognizes, the cause of
3 errors may result from procedural or operational problems
4 unrelated to negligence. For example, significant changes
5 in sales volume from a prior audit may cause errors that
6 result from staffing problems, rather than negligence.
7 That is citing section 507.45 of the Audit Manual. We've
8 got an operational problem here. The business was closed.
9 The records moved to storage. The records were destroyed
10 at some point.

11 I'm going to keep going.

12 As noted earlier, abatement of the negligence
13 penalty is warranted since Nu Print had a bona fide belief
14 that its returns as prepared were correct. As Appellant
15 testified, Nu Print had processes in place that he had
16 relied upon for years to properly collect end remit sales
17 tax. As also discussed above, the audit deficiency was
18 determined by referenced unsupported work papers, and a
19 CPA that failed to appear in support of those work papers
20 during the audit process. Remember, those were the CPA's
21 work papers, not Appellant's.

22 Number two, regarding the taxpayer failed to
23 maintain records. As to the maintenance of records, the
24 simple answer is that Nu Print sold its assets, closed,
25 and moved its records to a storage area in Northridge.

1 When Appellant could no longer pay the landlord where the
2 records were stored, the landlord disposed of the records
3 without telling Appellant. As I noted earlier, it's also
4 just come to our attention that 2009 records were
5 provided, but seemingly overlooked by BOE auditor Wendy
6 Tran.

7 As noted earlier, Exhibit F, page 245, shows that
8 Mr. Zarrabi brought in copies of March 2009 invoices with
9 resale certificates. Exhibit F, page 525, also
10 acknowledges receipt of March 2009 sales journals. It's
11 unclear why auditor -- and this is a little different than
12 what I said before. So I want to say this. It might be a
13 little hurtful, but I'm going to say it. It's unclear why
14 BOE auditor Wendy Tran did not reference these records
15 when preparing the redetermine audit find -- audit
16 findings, but instead chose to extrapolate 2009 findings.

17 However -- again, and I apologize if somebody's
18 feelings gets hurt. This may be explained by the failure
19 of BOE to locate audit files contained in a BOE share
20 folder. If you look at Exhibit G, page 5 to 7, what's --
21 there was some really harsh things said between the
22 supervisor and the auditor itself. I didn't think they
23 were treating Ms. Tran very nicely. I thought she was
24 under a tremendous amount of pressure. I'm not sure if
25 she was a new auditor at the time, but -- but they didn't

1 treat her very well. And there were things that were said
2 that if you look at Exhibit G, page 5 to 7, caused me
3 concern that she maybe pushed this audit through when she
4 otherwise wouldn't have. I'm going to let you come to
5 that conclusion, but that's my conclusion.

6 What's also concerning is specific instructions
7 from BOE audit supervisor Mable Wong to BOE auditor Wendy
8 Tran instructing Ms. Tran to, quote, unquote, "Delete
9 unnecessary files." Now those might be old versions of
10 work papers. Those very well may be the missing email
11 that we're looking for where Jacob said that Nu Print had
12 closed. Those might be anything. But Mabel Wong told
13 this auditor, "Delete that junk. Get it out of the share
14 folder. We don't want it there."

15 Moving on. As the negligent representation, Nu
16 Print CPA stopped representing it during the audit and
17 appeals process. As set forth in BOE transcript -- as set
18 forth in the BOE transcript, Exhibit 9, CPA firm failed to
19 respond to BOE requests, failed to appear at the audit
20 appeals conference, and failed to advise Appellant about
21 the final status of Nu Print's audit and appeal. And,
22 again, this is going to negligent representation.

23 CDTFAs conceded the lack of representation in its
24 brief discussing application of the finality penalty when
25 it noted that Nu Print did not receive timely notice of

1 the NOR, either from the BOE or from its CPA. In fact,
2 during Nu Print's initial audit, BOE concluded that a
3 negligence penalty was not warranted. See Exhibit F,
4 page 540. It wasn't until Nu Print's CPA failed to appear
5 during the redetermination of the audit findings, perhaps
6 because of the CPA's failure to appear, that BOE decided
7 to impose the negligence penitentiary. We -- we just
8 don't know. We can tell people were frustrated and
9 tempers were flaring. But rightly or wrongly, they --
10 they decided the second time that they are going to impose
11 a negligence penalty.

12 As also noted in CDTFA's brief in analyzing the
13 issue of negligence, one of the factors that must be
14 considered is whether or not the taxpayer has previously
15 been audited. Citing Audit Manuel section 0506.40, if a
16 taxpayer has previously been audited and repeats the same
17 type of errors from one audit period to the next, the
18 imposition of a negligence penalty is justified. As we
19 noted above, the errors noted in Nu Print's prior audit
20 were both de minimus -- we're talking about the 2001
21 audit -- were both de minimus and substantially unrelated
22 to the issues that gave rise to the current liability.

23 The Board's stated policy on penalties -- and now
24 I'm just citing a general provision. The Board's stated
25 policies on penalties is that whenever there is any doubt

1 as to whether the factual conditions warrant a penalty for
2 negligence of fraud, that doubt should be resolved in
3 favor of the taxpayer. See Board of Equalization Audit
4 Manuel section 501.05. In the facts at issue, we are
5 dealing with an assessment that was extrapolated on audit
6 based on records recompiled by a taxpayer representative
7 that ultimately never showed up at an appeals hearing.

8 Work papers are missing, the business is closed,
9 and data provided to BOE auditor Wendy Tran by Nu s
10 original -- by Appellant is -- I'm sorry -- by Nu Print's
11 CPA, is unfamiliar -- sorry, let me say that again -- and
12 data provided to BOE auditor Wendy Tran by Nu Print's CPA
13 is unfamiliar to Appellant. If ever there was a situation
14 where doubt should be resolved in favor of the taxpayer in
15 determining whether a negligence penalty should apply,
16 this should be that situation. Where the primary purpose
17 of imposing a negligence penalty is to discourage bad
18 behavior and encourage future compliance, affirming the
19 penalty in this instance makes no sense. Given the above,
20 a negligence warranty is not warranted.

21 Thank you.

22 JUDGE GEARY: Thank you.

23 How is our stenographer doing? Do you need a
24 break? How long? Five minutes?

25 THE STENOGRAPHER: Five minutes.

1 JUDGE GEARY: Five minutes. Let's take a
2 five-minute break. Make sure your microphones are turned
3 off, please.

4 (There is a pause in the proceedings.)

5 JUDGE GEARY: All right. Ms. Paley, are you
6 ready?

7 MS. PALEY: Yes. Thank you.

8 JUDGE GEARY: You may proceed.

9

10 PRESENTATION

11 MS. PALEY: Good afternoon.

12 At issue in this case is whether Appellant Jacob
13 Zarrabi is personally liable for the unpaid sales tax
14 liabilities of Nu Print & Graphics, Inc., for the period
15 January 1, 2007, to November 30, 2010, pursuant to
16 Revenue & Taxation Code Section 6829. Nu Print was a
17 California corporation that operated a print, copy,
18 package, and design store that began in 1996 at 3962
19 Laurel Canyon Boulevard in Studio City, California.
20 Appellant was the president and sole corporate officer of
21 the corporation owned by himself and his brother.

22 In 2009, an audit of Nu Print was initiated
23 following a Statewide Compliance and Outreach Program
24 visit, or SCOP, to the business at the Studio City
25 location; Exhibit F, SCOP Memo and Letter, pages 1413 to

1 1414. And when I refer to pages, I'm referring to binder
2 pages.

3 The initial August 19th, 2010, Field Billing
4 Order, Exhibit B-5, page 535, was issued based on excess
5 bank deposits compared to Nu Print's self-reported returns
6 showing an 18.72 percent understatement of taxable sales.
7 A Notice of Determination was issued to Nu Print on
8 October 6th, 2010, Exhibit F, page 1292, for approximately
9 \$34,000 in tax, a negligence penalty of about \$3,400, plus
10 interest. That same Notice of Determination also states
11 that upon termination, personal responsibility may apply
12 to a liability owed by Nu Print. Nu Print filed a
13 petition for redetermination.

14 Subsequently, Appellant's former accountant
15 provided sales journals for 2007 and 2008, as well as
16 incomplete sales invoices for 2006 and 2007. Based upon a
17 review of these records, an adjusted Field Billing Order,
18 dated February 10th, 2011, Exhibit F, page 879, was
19 prepared, which disclosed differences between taxable
20 sales as recorded in the records provided, and reported
21 taxable sales for the first two years of the determination
22 period. Nu Print had underreported taxable sales for 2007
23 and 2008 by just over \$707,000, an error rate of
24 40 percent. Since no records -- excuse me -- since
25 incomplete records for 2009 were provided, the 40 percent

1 error rate was applied to 2009 reported taxable sales to
2 arrive at the \$173,000 of additional taxable sales
3 unreported.

4 A 10 percent negligence penalty was recommended
5 because of the high percentage of error. Nu Print
6 underreported \$880,000 in taxable sales compared to
7 reported taxable sales of \$2.2 million. Pursuant to
8 Revenue & Taxation Code section 6563, the Department
9 issued a Notice of Increase letter to Nu Print on
10 May 31st, 2011, Exhibit H, page 1449, advising that its
11 tax liability had been increased to approximately \$74,000
12 per the adjusted Field Billing Order dated
13 February 10th, 2011, Exhibit F, page 879. On
14 January 22nd, 2014, the Department issued a Notice of
15 Determination, Exhibit C, page 588, to Appellant as a
16 responsible person for the same unpaid sales and use
17 taxes, plus interest and penalties of Nu Print, pursuant
18 to Revenue & Taxation Code section 6829. As discussed in
19 the supplemental, Exhibit B, page 418, a reaudit reduced
20 Nu Print's liability from an \$880,000 to \$864,000 measure,
21 Exhibit B-2, page 523.

22 Revenue & Taxation Code section 6829 and
23 Regulation 1702.5 provide that a person is personally
24 liable for the tax, penalties, and interest owed by a
25 business entity, here a corporation, if all the following

1 elements are met: One, the entity has been terminated
2 dissolved or abandoned; two, sales tax reimbursement was
3 collected on its sales of tangible personal property and
4 failed to remit the tax to the Department; three, the
5 person had control or supervision of, or was charged with
6 the responsibility for the filings of returns of the
7 payment of tax or was under a duty to act for the
8 corporation to comply with sales and use tax law; and
9 four, the person willfully failed to pay taxes due, or
10 willfully failed to cause such taxes to be paid.

11 The Department must prove the elements for 6829,
12 personal responsibility, by a preponderance of the
13 evidence, Regulation 1702.5 subdivision (d). That is, the
14 Department must establish that the circumstances it
15 asserts are more likely than not to be correct as cited in
16 the OTA precedential opinion, Appeal of AMG Care
17 Collective in 2020.

18 The four elements for imposition of personal
19 responsibility have been met:

20 One, termination. There is no dispute that the
21 business closed and ceased operation.

22 Two, collection of sales tax reimbursement. It
23 is undisputed that Nu Print collected sale tax
24 reimbursement on all reported taxable sales. The
25 Department has provided sales invoices demonstrating that

1 Nu Print separately itemized its customers' charges for
2 sales tax reimbursement; the dual Exhibit DE, pages 620
3 through 630, and Exhibit F, Audit Work Papers, pages 947
4 to 970, as well as the Nu Print sales journals, Exhibit F,
5 pages 971 through 1287.

6 Additionally, Nu Print reported on its sales and
7 use tax returns that sales tax reimbursement was included
8 in total gross receipts, the dual Exhibit DD, page 619,
9 and DE, pages 631 through 634. Appellant disputes that it
10 collected tax reimbursement on the audited understatement.
11 The evidence shows that it is more likely than not that
12 tax was collected on such, since the understated taxable
13 sales is based on review of the business' recorded taxable
14 sales in its sales journals, and the sales invoices that
15 show the business collected tax reimbursement on all
16 taxable sales, adjusted Field Billing Order, dated
17 February 10th, 2011, Exhibit F, page 879. There is no
18 evidence that Appellant made any taxable sales on which it
19 did not collect tax reimbursement, Exhibit F, page 939 to
20 941.

21 Three, responsible person. Appellant has
22 conceded that he was a responsible person for the period
23 that Nu Print was active. That is in the Minutes and
24 Orders. Appellant was the only person speaking on behalf
25 of Nu Print after the business was active and while

1 Department staff tried to collect payment from Nu Print.

2 Four, willfulness. In this case Appellant
3 willfully failed to pay or direct payment of the taxes at
4 issue. Appellant knew that taxes were not being paid.
5 Appellant also had the authority and duty to pay them and
6 had funds available but chose to use the money otherwise.
7 Regarding availability of the funds, according to the
8 appeals decision, Appellant conceded during the appeals
9 conference that Nu Print had sufficient funds to pay the
10 taxes at issue when due. Nu Print collected reimbursement
11 on their sales and otherwise was operational.

12 As demonstrated in the dual Exhibit D, page 597
13 in the quarterly breakdown of disbursement of funds, and
14 shown in the dual Exhibit DO, beginning at page 678,
15 Appellant paid wages of nearly \$2,055,000 to the City of
16 Los Angeles Department of Water and Power during the
17 liability period. Nu Print also sold equipment in
18 February 2010 to Nu Color Printing, Exhibit E-10, page
19 860, for \$12,000. For all the foregoing reasons, the
20 Department has established by a preponderance of evidence
21 that Appellant is personally responsible for Nu Print's
22 tax liability pursuant to Revenue & Taxation Code section
23 6829.

24 Throughout the appeals process, Appellant's
25 primary argument has been that the Notice of Determination

1 issued to Appellant on January 22nd, 2014, is not timely.
2 As we will discuss whether the Notice of Determination was
3 timely depends on when the Department learned of the
4 closure of the business. That is, when it received actual
5 knowledge. Revenue & Taxation Code section 6829
6 subdivision (f), requires that a Notice of Determination
7 be mailed within it three years after the last day of the
8 calendar month following the quarterly period in which the
9 Department obtains actual knowledge of the termination,
10 dissolution, or abandonment of the business.

11 The Notice of Determination is timely because the
12 evidence shows that the Department first learned of the
13 business closure on January 18th, 2011, when a department
14 staff member called Appellant, and Appellant informed
15 staff that the business had closed March 2010. A
16 contemporaneous record of this conversation is included in
17 the Automated Compliance Management System, or ACMS,
18 Exhibit at B-6 of the supplemental, page 540, and the dual
19 Exhibit DC, page 615. That ACMS record also indicates
20 that Appellant informed staff that he had already given
21 notice of the business closure, and that the Department
22 staff informed him that there was no record of such
23 purported notice.

24 Likewise, throughout this appeal process,
25 Appellant has claimed to have sent an email in March 2010

1 notifying the Department of the business closure. We
2 afforded Public Records Act treatment to comprehensively
3 search all of the Department's records. The results of
4 which are Exhibit G, beginning at binder page 1415. There
5 simply is no record of Appellant ever having sent the
6 Department an email stating that the business had closed.

7 In additional briefing, Appellant repeatedly
8 cited Cookston for the rule that failure of a party to
9 introduce evidence within its control gives rise to a
10 presumption that the evidence, if provided, would be
11 unfavorable to the party concealing the evidence.
12 Appellant's alleged email of March 2010 is not evidence
13 within the Department's control. To begin, the Department
14 simply does not possess such an email from Appellant.
15 Further, the contemporaneous evidence from 2010 indicates
16 the Department never received such an email because
17 Department auditors proceeded based on an understanding
18 that Nu Print's business was still active.

19 Examining the evidence chronologically, on
20 March 3rd, 2010, a BOE 345 change of address form was
21 received from Appellant, dated February 16th, 2010,
22 requesting a change to the business and mailing address to
23 8664 Lindley Ave, Northridge, California, Exhibit E-2,
24 page 706 to 707. Importantly, the form did not indicate
25 that Nu Print had closed its business but rather, that the

1 business was continuing at a different location. The
2 Integrated Revenue Information System, or pronounced IRIS,
3 also shows that the Department mailed Nu Print an updated
4 seller's permit with the new address.

5 If the Department had received such notice of
6 closure, this would not have been the corresponding course
7 of action. If the Department had been notified of the
8 termination during the active audit, as Appellant claims,
9 the seller's permit would have been closed. A week after
10 the updated seller's permit was issued, on March 11th,
11 2010, the auditor noted in a 414 Z entry, at Exhibit E-1,
12 page 699, that at the exit conference with Appellant,
13 quote, "He said he sold the F&E for \$12,000 by the time he
14 shut down the factory in Glendale in September of 20 --
15 September of 2008. He will provide the Bill of Sale. He
16 informed the auditor that the business changed the
17 address, effective 3/1/10," unquote. No mention of a
18 closure.

19 On May 20th, 2010, in the general audit comments,
20 the auditor again noted, quote, "Taxpayer is doing
21 business as printing, copying, and graphics design with
22 packaging service available," unquote, exhibit F, Audit
23 Work Papers, BOE-414-PG4, page 1405. The auditor believed
24 the business was still active at that time. When the
25 possibility of billing Appellant personally was raised

1 back in the Field Billing Order, dated August 19th, 2010,
2 Exhibit B-5, page 535, Department staff believed Appellant
3 could not be billed because Nu Print was still active.
4 The Department affirmatively did not know of the closure
5 and indicated, at that time, that a dual determination
6 was, quote, "Not feasible as it's an active corporation
7 and no suspension during the audit period," unquote. And
8 that's found specifically at page 538.

9 In the September 7th, 2010, Report of Discussion
10 of Audit Findings, or 836, Exhibit F, page 1337, under
11 general information, the Department notes that the, quote,
12 "Taxpayer moved to a smaller facility in Northridge during
13 February 2010," unquote. No mention of a closure. In
14 summary, the documentary evidence shows that the
15 Department's auditors believed Nu Print's business
16 remained active throughout the course of their audit. The
17 contemporaneous written record demonstrates that the
18 Department did not receive actual knowledge of the closure
19 until January 18th, 2011, during the ACMS memorialized
20 phone call by Department staff. And that's at Exhibit
21 B-6, page 540, and E-4, page 713. Therefore, the
22 Responsible Person Notice of Determination is timely and
23 valid.

24 Based the law and evidence provided, we ask that
25 you deny this appeal and hold Appellant responsible.

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Thank you.

JUDGE GEARY: Thank you, Respondent.

Before I turn the matter back over to Appellant for final comments, I just want to make sure that my fellow judges don't have any questions regarding the Respondent's position.

Judge Kim, anything for Respondent?

JUDGE KIM: Not at this time. Thank you, Judge.

JUDGE GEARY: Judge Ralston?

JUDGE RALSTON: Not at this time. Thank you.

JUDGE GEARY: Thank you.

Are you ready for your closing remarks?

MR. ELBAZ-DECKEL: Sure. I do have some questions that I wanted to ask. I have one particular question for Appellant Zarrabi.

Jacob, tell us why Wendy Tran asked for the Bill of Sale?

JUDGE GEARY: Before you answer that question, you're not asking your client to speculate regarding the motivation of Ms. Tran. You're asking him if she told him why she was asking the question? I'm trying to figure out what is it you're actually asking the witness.

MR. ELBAZ-DECKEL: Okay. So I'll withdraw that. I'm going to do this a different way.

JUDGE KIM: Make sure your mic is on.

1 MR. ELBAZ-DECKEL: Oh, it is not. Thank you.

2

3 CLOSING STATEMENT

4 MR. ELBAZ-DECKEL: Wendy Tran, would have no
5 reason to have asked for a --

6 MR. ZARRABI: A Bill of Sale.

7 MR. ELBAZ-DECKEL: -- a Bill of Sale if Jacob
8 didn't ask her -- didn't tell her in advance that the
9 business was closed. There's no reason to ask for a Bill
10 of Sale. Wendy Tran would not have gone ahead and
11 identify the account as having been closed out -- or sales
12 of transaction had closed out if she didn't know at that
13 time. CDTFA has pointed to a number of different -- what
14 I called inferences before that we should draw from the
15 record that were all cited here. That should lead us to
16 the conclusion that -- that they would like us to lead
17 them to the conclusion that BOE believed that Nu Print
18 still in the business of a retail print shop.

19 The evidence that we presented, we just don't
20 think warrants that. We had talked about Appeal of
21 Cookston because of all the lack of documentation that was
22 provided that continues not to be provided. We understand
23 that OTA made a request of the disclosure office to
24 provide information. We have in our earlier arguments
25 established that those disclosures were qualified,

1 suggesting as was told to us during the appeals process
2 earlier that the -- some of the information that we are
3 requesting is just -- it's gone. It's deleted in the
4 normal course.

5 I guess -- I don't know what CDTFA's normal
6 document destruction or email destruction process is, but
7 it's -- it's not there. It was as -- it would have been
8 as simple for the disclosure office to come back to us and
9 say, no, we gave you everything. And they didn't say
10 that. They said we only gave you what's available and
11 what is maintained. That's just troubling to me. It's
12 just -- it's the problem we've had for the last 11 years
13 as we've gone through this exercise.

14 The other thing that we take exception with is,
15 in analyzing the responsible person requirement, the
16 analysis was done in the context of the time period during
17 the audit, which was January 1st, 2007, through
18 December 31st, 2009. We've already, in our briefs, gone
19 ahead and discussed that. We -- we believe there were
20 substantial errors. Outside auditors believe there were
21 substantial errors. The CDTFA itself made a correction
22 reducing the taxable measure at issue. Again, documents
23 weren't used that were available and then later were cited
24 as not being available.

25 The inquiry -- I believe the legal inquiry under

1 the statute is to analyze this at this point that the
2 liability arose, not during the audit period. So as we
3 discussed -- as they just discussed, they looked at
4 January 1st, 2007, through 2009 and said did the taxpayer
5 have the money during that period? Did the taxpayer have
6 the control during that period? We conceded that earlier.
7 What we're saying is did those sales that were alleged to
8 have been made were not made. And if you are holding us,
9 you know, accountable for those sales, then you need to
10 judge us at the time that you determine that those sales
11 were, in fact, there, that that liability did arise --
12 arise. So from that perspective I think that's where we
13 would disagree with CDTFA in analyzing 6829 issue,
14 responsible person issue.

15 I -- I didn't hear a lot of argument about
16 negligence. We still feel there was so much going on, and
17 the taxpayer did everything he possibly could, both at the
18 time and -- and subsequent to that, to go ahead and make
19 sure that everything was done properly. He had some bad
20 situations with the CPA firm no longer representing him.
21 Reasonable reliance, we were working to see if we get the
22 negligence penalty applied, if it would be -- if there is
23 a tax liability to be determined.

24 I think that's really all we wanted to present
25 during our closing.

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JUDGE GEARY: Thank you.

This essentially concludes this hearing. Let me give some closing remarks.

The record is now closed.

The case is being submitted at this time.

Thanks to everybody who participated in this hearing. And in the coming weeks, my fellow judges and I will confer and review the evidence. We'll look at the issues, and OTA will draft a formal opinion and will send that opinion to the parties within 100 days of today's date.

For the benefit of people who are watching on OTA's YouTube channel, there will be a second hearing. I believe it's the final hearing on today's afternoon calendar. It will begin in about 15 minutes.

Thank you everybody.

(Proceedings adjourned at 2:50 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 5th day of November, 2024.

ERNALYN M. ALONZO
HEARING REPORTER