

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)	
)	
PAMACO, INC.,)	OTA NO. 21037380
M. PASVEER and M. PASVEER,)	21037405
)	
APPELLANTS.)	
)	
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, February 12, 2025

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
9:50 a.m. and concluding at 2:04 p.m. on
Wednesday, February 12, 2025, reported by
Ernalyne M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ HUY "MIKE" LE

Panel Members: ALJ JOSH LAMBERT
ALJ TERESA A. STANLEY

For the Appellants: M. PASVEER
ELAINE SERRAO
MARK LOBB

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

KASEY LEWALLEN
MATT MILLER

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-33 were received into evidence in the Minutes and Orders.)

(Appellants' Exhibits 34-51 were received into evidence at page 7.)

(Department's Exhibits A-O were received into evidence in the Minutes and Orders.)

(Department's Exhibits P-R were received into evidence at page 7.)

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By Ms. Serrao 108

1 Cerritos, California; Wednesday, February 12, 2025

2 9:50 a.m.

3
4 JUDGE LE: Let's go on the record.

5 We are opening record in consolidated Appeals of
6 PaMaCo, Inc., and Pasveer. This matter is being held
7 before the Office of Tax Appeals. OTA Case Numbers are
8 21037380 and 21037405. Today's date is Wednesday,
9 February 12, 2025. The time is 9:50 a.m. This hearing is
10 being held in person in Cerritos, California.

11 Today's hearing is being heard about a panel of
12 three Administrative Law Judges. My name is Mike Le, and
13 I will be the lead judge. Judge Josh Lambert and
14 Judge Teresa Stanley are the other members of the this tax
15 appeals panel. All three judges will meet after the
16 hearing and produce a written opinion as equal
17 participants. Although the lead judge will conduct the
18 hearing, any judge on this panel may ask questions or
19 otherwise participate to ensure we have everything needed
20 to decide this appeal.

21 Now, for the parties introductions for the
22 record, will the parties please state their names and who
23 they represent, starting with Respondent.

24 MR. MILLER: Matthew Miller for Respondent
25 Franchise Tax Board.

1 MR. LEWALLEN: Kasey Lewallen for Respondent
2 Franchise Tax Board.

3 JUDGE LE: Thank you.

4 And turning to Appellants.

5 MR. LOBB: Mark Lobb on behalf of the Appellants
6 and taxpayers.

7 MS. SERRAO: Elaine Serrao on behalf of the
8 Appellants and taxpayers.

9 MR. PASVEER: Marinus Pasveer, the Appellant.

10 MR. LOBB: And, Judge Le, also in court is our
11 expert Anthony Ghosn who is sitting behind me.

12 JUDGE LE: Thank you.

13 Let's move on to my Minutes and Orders. As
14 discussed with the parties at the prehearing conference on
15 January 27, 2025, and noted in my Minutes and Orders,
16 there are three issues in this appeal. The first is
17 whether Appellants' transactions lacked economic
18 substance. The second is whether the noneconomic
19 substance transaction penalty under R&TC section 19774 was
20 properly imposed. The third is whether the interest-based
21 penalty under R&TC Section 19777 was properly imposed.

22 In this appeal, as mentioned earlier, Respondent
23 has agreed to abate interest for the period April 7, 2017,
24 through July 25th, 2019. Appellant will not be making any
25 arguments regarding additional abatement of interest for

1 additional periods.

2 Appellant's Exhibits 1 through 33 were entered
3 into the record in my Minutes and Orders. After the
4 prehearing conference, Appellant submitted Exhibits 34
5 through 51. Respondent did not object to those exhibits
6 by the deadline notated in my Minutes and Orders, so
7 Exhibits 34 through 51 are entered into the record.

8 (Appellant's Exhibits 34-51 were received
9 into evidence by the Administrative Law Judge.)

10 JUDGE LE: Turning to Respondent's exhibits,
11 Respondent's Exhibits A through O were entered into the
12 record in my Minutes and Orders. After the prehearing
13 conference and at this hearing, Respondent submitted
14 Exhibits P and Q and also R. Appellants did not object to
15 Exhibits P and Q. So those are admitted into the record,
16 and Exhibit R is also admitted into the record.

17 (Department's Exhibits P-R were received into
18 evidence by the Administrative Law Judge.)

19 JUDGE LE: At this hearing, the following
20 individuals will testify, M. Pasveer and Anthony Ghosn.

21 This hearing will begin with Appellants'
22 presentation and witness testimony for up to one hour and
23 thirty minutes total. And also, Appellants stated that
24 they would not be calling Steve Tweedlie as a witness.

25 Let me check the parties for comments.

1 Respondent, any questions or comments before we
2 begin with Appellants' presentation?

3 MR. LEWALLEN: No.

4 JUDGE LE: Okay. And turning to Appellants, any
5 questions or comments before we swear-in the witnesses?

6 MR. LOBB: The only comment that I have is with
7 respect to the newly admitted exhibit. At some point, I
8 would like to take a break so I can look at it and confer
9 with my client concerning that exhibit because we haven't
10 had a chance to do that yet.

11 JUDGE LE: I see. So you would like to take a
12 break so you can look at it, and then -- is that something
13 you want to talk about during your presentation?

14 MR. LOBB: I don't know. Because, again, it was
15 given to us right before we came into the room. So I
16 don't know much about the document, and do not know what
17 point it is that they're going to try to make relative to
18 that document.

19 JUDGE LE: Okay. How about this? I'll take a
20 break after Respondent presents. That way it gives you
21 the opportunity to hear what they have to say about the
22 exhibits. And that way you have time to look at the
23 document and see what points you would like to make in
24 regards to it.

25 MR. LOBB: Okay. Very good. Thank you.

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JUDGE LE: Thank you.

MR. MILLER: Judge Le, may I suggest something?

We would likely use that exhibit in our cross-examination of Mr. Pasveer. So it might be best if they're able to consult before he testifies.

JUDGE LE: Okay. In that case, yeah. In that case, we'll take a break. How long would you need? Would five minutes be enough?

MR. LOBB: Five minutes is fine.

JUDGE LE: Okay. So we'll go ahead and go off the record.

(There is a pause in the proceedings.)

JUDGE LE: Okay. Let's go back on the record. Appellants, have you had time to review the exhibit?

MR. LOBB: Yes, Judge, we have.

JUDGE LE: Okay. Are you ready to proceed?

MR. LOBB: Yes, we are.

JUDGE LE: Okay. In that case, Mr. Pasveer and Mr. Ghosn, will you both raise your right hand.

Let's start with Mr. Pasveer.

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M. PASVEER,

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

JUDGE LE: Thank you.

And turning to Mr. Ghosn.

A. GHOSN,

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

JUDGE LE: Thank you.

Okay. Appellants, you have the floor. You may begin when ready.

MR. LOBB: Okay. Thank you very much. Thank you Panel.

PRESENTATION

MR. LOBB: I have a few comments to start then we'll call our witnesses. I will not rehash all of the details that have been briefed. I -- I take it that you have all of that and have access to it. So I think it's a waste of time to hash through that. There are a few

1 points that I would like to make to sort of accentuate
2 issues that will be discussing today through the
3 testimony. And one of those issues is that 10 years later
4 we're in this room, and we're talking about installment
5 sale to an irrevocable trust. And that's what has always
6 been at issue here.

7 The backdrop to all of that is the reporting.
8 And with respect to the reporting the question being, was
9 this transaction entered into for the sole purposes of
10 avoiding paying tax. I'm going to go through the
11 transaction a little bit piece by piece right now, and I
12 won't take long -- a long time doing it, but I'll show you
13 how that argument falls apart immediately. And the fact
14 is, at the end of the day, not only was tax not avoided
15 but more tax will be paid at the end of the day. So, if
16 anything, it was a counter to any concept of trying to
17 avoid tax.

18 So every day in the world of estate planning,
19 attorneys fund assets into -- when I started practicing
20 law, it was limited partnerships. Now it's limited
21 liability companies. And then there's a process of doing
22 an installment sale of that asset to a trust, an
23 irrevocable trust. And it's done for the purposes of
24 lessening the estate tax burden when the grantor dies.
25 This happens every single day in this country, and it's

1 been happening for a long, long time. And there's a whole
2 industry of estate planning where there are installment
3 sales to trusts.

4 When you make an installment sale to a trust, you
5 create what's called an estate freeze. And what you're
6 doing is you're getting assets out of your estate for the
7 purposes of freezing them for estate tax purposes. When
8 the grantor dies and the 706 return is filed, that 706
9 return is going to show whatever is left on the
10 installment note in the estate. And out of the estate is
11 whatever asset was sold into that irrevocable trust.
12 Again, this has been happening for a very long time. It
13 took the IRS a very short period of time to look at what
14 happened here and give no change, and that's what
15 happened. And then years and years and years passed, and
16 we're sitting in this room now talking about what took the
17 IRS a very short period of time to resolve.

18 Now, we'll talk about why that is, and why the
19 IRS had such a short period of time to make a decision
20 that there would be a no change. But let's go into what
21 happened here. What happened was a very valuable asset is
22 now in an irrevocable trust. It's in a trust that has a
23 37 percent compressed tax bracket after the first 14 -- I
24 think it's now almost \$15,000 in income. So there is no
25 tax efficiency there whatsoever with that compressed tax

1 bracket.

2 On the installment sale side of things, you have
3 an interest payment that gets paid to the taxpayer from
4 the trust for the sale of the asset. That tax obligation
5 did not exist before that transaction occurred. So you
6 have created tax when -- when that installment note is
7 paid taxes picked up, and there are two taxes that are
8 picked up. From the state level, this is a very poignant
9 issue that -- that must be considered; and that is there's
10 no difference here between -- at the state level between
11 capital gains and ordinary income. So when there's an
12 expense deduction taken -- in this case, by the entity
13 PaMaCo -- and making a royalty payment to -- in this case
14 MPIP, which was the LLC that was sold -- there's an
15 expense deduction. And the Respondent points that that is
16 tax advantageous to that entity.

17 Who owns PaMaCo? It's the taxpayers, the
18 individuals, and Mr. Pasveer is sitting here. But
19 ultimately, when there's a payment on the note, that tax
20 is picked up. And here it was paid. So the tax didn't go
21 away. It just got paid in a different place. What we do
22 know is there's a very valuable asset now in an
23 irrevocable trust, and that, from an estate planning
24 standpoint, that's the goal of this type of planning.

25 Now, I'm not saying that everyone in the tax

1 world is in love with installment sales to irrevocable
2 trusts. In this last administration, through the Build
3 Back Better Act, there was a proposal to eliminate the
4 ability of taxpayers to do this type of transaction. That
5 law was never put in place. It didn't happen. In April
6 of last year, I believe it was Senator Elizabeth Warren,
7 again proposed that the tax policy going into this year
8 would include an elimination of estate freezes for estate
9 tax purposes. Again, that policy is -- proposal is off
10 the table at this point. So we're still in a world of
11 being able to do installment sales to these trusts.

12 Now, let's unpack what we're dealing with here.
13 We're dealing with intangible assets. So, obviously,
14 normally we think in term of, okay, dad funds a piece of
15 real estate into a limited liable company, sells a
16 minority interest, takes a discount and has that into an
17 irrevocable trust to get the estate freeze. We think of
18 real property, but here they were intangible assets.
19 There were two intangible assets. One of them was a trade
20 secret, and the other one was a customer list. The
21 taxpayer will testify today that he never signed a
22 noncompete with any of these companies. Meaning that
23 these assets, for all intents and purposes, were the
24 assets of the taxpayer.

25 We've cited law on this issue going back to

1 Martin Ice Cream, which was the original Tax Court case
2 that -- that sort of spawned this -- this whole idea that
3 intangibles can be held by the owners of the employees of
4 a company if there's no noncompete. There was no
5 noncompete here. There were two third -- third-party
6 evaluations performed. There was one in the initial
7 stages of the planning and the funding of the asset into
8 MPIP for the installment sale. And there was another one
9 that -- that we had performed by Mr. Ghosn, who will
10 testify today before this hearing for a few reasons. One
11 is we couldn't find the old valuator. The other reason is
12 we wanted to have a fresh set of eyes on the valuation
13 process here.

14 So the number that was used -- the original
15 number of just over \$10 million -- was not made up out of
16 thin air. A third-party valuation expert was paid and
17 performed that -- that evaluation. We then had another
18 one performed. And what you're going to hear from
19 Mr. Ghosn is that Mark Pasveer's group of companies
20 functioned at a higher level than his competitors. That's
21 the secret sauce. That's -- that's the trade secret.
22 That's what pushes his company to be more competitive in
23 the marketplace and to make a premium profit in his
24 industry; and that is, in part, what was sold.

25 The other part of what was sold was a customer

1 list. The customer list and the trade secret to this day
2 remain. They are used. They're in MPIP, and they provide
3 very valuable asset for the group of companies that are
4 paying licensing fees to PaMaCo, which is ultimately paid
5 to MPIP. So what does that mean at the end of the day
6 from a tax standpoint? What that means is that to the
7 extent that Mark Pasveer decides at some point that he
8 would like to retire and sell his company, no buyer on
9 this Earth is going to buy his company without buying that
10 intangible asset or those intangible assets held by MPIP.

11 It's not going to happen, and they're going to
12 look at the valuation reports and their due diligence.
13 They're going to have their own valuations performed, and
14 there's going to be an allocation. And just like in
15 Martin Ice Cream, there was -- there was an allocation,
16 and that allocation was done at the time of sale. They
17 didn't even have the asset isolated. They did their own
18 allocation at the time of sale. This asset was isolated
19 in 2010. So we know what it is, and we know where it is,
20 and we know it has a value.

21 We also note that when the buyer comes in, the
22 buyer wants Mark Pasveer. The buyer is going to say I'm
23 going to buy the assets out of MPIP, and I'm going to want
24 a noncompete with Mark Pasveer. Because if they don't
25 have two things, he can go down the street, set up a

1 competing company, and undercut everything that that buyer
2 wanted to do. This happens every day all over the
3 country. It's a very standard thing. I've seen it happen
4 over and over in my 35 years as an attorney where you have
5 a roll-up. And -- and the situation would be rolling up
6 the intangible assets out of MPIP into the bigger
7 transaction and a check is written.

8 Now, when that check is written, that check is
9 going to be an allocation towards that trust. That trust
10 is an irrevocable trust and, again, after the first
11 \$14,000 -- I forget. It gets indexed that maybe it's --
12 it's just under \$15,000 of income. It hits a 37 percent
13 compressed tax bracket for federal taxes. Is that a win
14 for the taxpayer? I don't think it's a win. All the tax
15 is picked up, and it's on the total value of that asset.
16 He has isolated a very valuable asset in that trust.

17 The note -- and by the way, the taxpayer will
18 testify today. He has continued paying on the note
19 picking up all the tax to this day from the date of audit.
20 And he's not been taking the expense deduction. So
21 someone who is trying to avoid tax does not do that.
22 They're picking up tax at two different levels because of
23 this audit. They're not getting any benefit from the
24 structure whatsoever. And even more so, they're going to
25 get hit a third time when they sell because that note is

1 getting paid down.

2 The note will be zero. The amortization will not
3 pick up any income. It's not going to offset anything,
4 and they'll get a big check for 10 or 15 or 20 million to
5 the extent that that asset has risen in value and to that
6 trust. It's in an estate plan. It will settle for his
7 two daughters, and that will be something that they have.
8 It's a part of their family legacy for those two daughters
9 in the trust, not out of the trust, not in the estate. So
10 it's a phenomenal estate planning tool. Again, it's been
11 used all over this country continuously.

12 Now, I -- I read the Respondent's brief, and I
13 have a couple of comments on that, and then we'll get
14 started with the testimony.

15 One item is this. There was a gentleman named
16 Larry Stevens. And Larry held himself out to be a CPA,
17 and he was ultimately hired by Mr. Pasveer to do tax
18 returns for him. Ultimately, what we found out -- and
19 also, Larry Stevens was -- was used as the independent
20 trustee, initially. The taxpayer is going to testify that
21 ultimately, he found out that Mr. Stevens was not, in
22 fact, a CPA. He had been -- had been making
23 misrepresentations to people, and he was filing the
24 returns. But, ultimately, Mr. Stevens went to jail for
25 some investment scheme that he was involved with.

1 That investment scheme had nothing to do with the
2 planning that took place here. It had nothing to do with
3 his conduct as the fiduciary. Conceivably and thank
4 goodness that this came to light to -- to Mr. Pasveer so
5 he could get rid of Larry Stevens because, obviously, he
6 was not a trustworthy individual. You would not want him
7 as a fiduciary. But it has nothing to do with why we are
8 here today. What happened with that gentleman is a red
9 herring.

10 The other thing that I would like to point out is
11 that aside from not following the guidance for the FTB and
12 adapting what the IRS did, relative to the IRS audit, the
13 Franchise Tax Board, after 10 years, has not spent time
14 with Mr. Pasveer to understand his industry or what he
15 does or what that secret sauce is, such that he has an
16 intangible asset that's very valuable and something that
17 he can do estate planning with. The IRS went to
18 Mr. Pasveer's office, met with him on two occasions, spoke
19 with him on the phone. We allowed it all to happen
20 because we all -- we understood that there was nothing to
21 see here. And shortly after they met with him, they did
22 the no change, and it was over with.

23 Ten years in they've not met with him. They've
24 not asked these questions. And I -- I think that after
25 they hear his testimony today, they'll agree that this is

1 legitimate. It does not eliminate tax, and it is a
2 phenomenal estate plan, and it's also asset protection.
3 Because if something happens to one of the group of
4 companies by way of a liability, those intangibles are
5 protected in an irrevocable trust.

6 So on that, I will submit my opening, and then we
7 can call witnesses. Any -- any questions before we start?

8 JUDGE LE: Let me turn to the panel.

9 Judge Lambert, any questions at this time?

10 JUDGE LAMBERT: I don't have any questions at
11 this time.

12 JUDGE LE: Okay. And, Judge Stanley, any
13 questions?

14 JUDGE STANLEY: No questions yet.

15 JUDGE LE: Okay. No questions for me either. So
16 please proceed with your witnesses testimony.

17 MR. LOBB: Okay. So the Appellant will call
18 Mark Pasveer.

19

20 DIRECT EXAMINATION

21 BY MR. LOBB:

22 Q Mr. Pasveer, can you please provide counsel and
23 the panel with a brief overview of your personal
24 background and your business background?

25 A Sure. Obviously, my name is -- I'm Mark Pasveer.

1 You will probably have seen in the original documents that
2 on the tax returns, et cetera, it is Marinus Pasveer. I
3 am originally born in the Netherlands. We have a custom.
4 It's customary there that when your parents send out
5 your -- your announcement cards, "We have a son Marinus,
6 and we name him Mark." So that's why you will continue to
7 see those two names crisscross everywhere on all these
8 documents.

9 Anyway, so to that story I'm originally from
10 Europe. I attended college there. I attended -- was able
11 get -- find employ with a business in the Netherlands
12 where I'm from, that at that time was performing
13 significant landmark type projects all over the world.
14 And at a very early age, I was able to go through the
15 ranks and had opportunities to be stationed through that
16 company at various parts of the world. I started off
17 in -- within Europe, and Germany, and London, Germany, and
18 England. Later on, our travels took me to Asia, Kuala
19 Lumpur, Singapore, are brief stop in Dubai for a number of
20 years. And then in 2020 we landed in United States still
21 for -- or sorry -- in 2000 we arrived in the United
22 States. This is still all for that same company.

23 As I was working for that company, I got a -- a
24 very -- very detailed exposure to -- how to setup
25 entities; how to grow companies; how to protect yourself

1 from -- from the imminent risks that exist in -- in
2 construction. We always say the question is not if, but
3 only when you're gonna get sued one day for things that
4 are -- that maybe within but most of the time are outside
5 of your control. So it was a very important part for us
6 to as we -- as I was working for that company to -- to
7 follow that strategy.

8 Back in 2005, I came at a -- at a time and age
9 that I honestly was ready for a next chapter, and I
10 started establishing my own company. Early -- from the
11 onset, as -- as I had learned in my experience, I -- the
12 first company that I established was PaMaCo. PaMaCo
13 stands for "Pasveer Management Company." That was the
14 first company I established. And I did that for the
15 purpose of making that strictly a management company.
16 I -- I followed the -- the steps that I -- that I had
17 learned and that had been proven successful by setting
18 operating entities that were working in different segments
19 of the market. International Consulting Services was one
20 of those. Exterior Cladding Systems was one of those.
21 And there have been a number of entities that we have
22 established that are each operating in their -- in their
23 own unique segment.

24 Yet, with a very -- with a very unique skill set
25 but without really any tangible assets in that entity.

1 All the tangible assets were held in PaMaCo. And, again,
2 the reason for that, at that time, as we started off this
3 process, was to protect our assets.

4 Q Why don't we -- so we started out with personal
5 and education, and thank you for that. You are married;
6 correct?

7 A I -- I am married. I'm sorry. I got carried
8 away there.

9 Q You've been waiting for 10 years.

10 A Yeah. Yeah. Yeah. So yes, I am married. My
11 wife originally from the -- from the Netherlands. She
12 has -- I'm lucky enough that she has joined me on all of
13 those travels. Our daughters were born in -- the oldest
14 one was born in the Netherlands. The youngest was born in
15 Malaysia. They are now 28 and 26. They have their own
16 lives as educators. And yeah, that is --

17 Q Okay. And you have a grandchild?

18 A I -- I -- last year became grandparents, yes. A
19 different dimension of continuing on in life, I can say.
20 Yup.

21 Q Okay. And how long have you been in the
22 construction industry?

23 A I have been in the construction industry since,
24 literally, I got out of college. My earlier explanation
25 of how I joined that large company that worked

1 internationally, that had happened right out of college.

2 Q And what was that job?

3 A I started off as a project manager, and the
4 company was called Permasteelisa. They are still around
5 and are one of the largest companies in their field in
6 the -- in the world. I started off as project manager
7 and -- and worked myself up at a rather young age at an --
8 to an executive management level.

9 Q Okay. And then moving forward, with respect to
10 PaMaCo, you mentioned that it was one of the first
11 companies that you set up, and you set it up as a
12 management company. When you set that company up, were
13 you working with professionals in the United States?

14 A Yes. I mean, we -- well, in -- in
15 professionals -- is the question related to the
16 professionals in the field of the company or --

17 Q Well, no. I'm -- I'm going more towards
18 attorneys, financial planners, CPAs. Did you have
19 professionals that were guiding you at the time that you
20 were setting up, for instance, PaMaCo?

21 A No, not at first. Not at first. I -- I had
22 enough business knowledge to set up the initial structure.
23 I would say more detailed financial planning was something
24 that -- that came at a later point, but it was not our
25 initial take. We were honestly -- at that time, 2005, our

1 main focus was establish companies and start generating
2 revenue and income.

3 Q So you set up PaMaCo, and you set it up as a
4 management company, and that was before you were meeting
5 with other professionals, such as financial planners;
6 correct?

7 A Absolutely.

8 Q At some point, did you start bringing planners,
9 such as financial planners, into your life for consulting
10 purposes?

11 A Yes. It -- it has been an evolving process.
12 Obviously, today you establish a company you're not --
13 your revenue start like with every other company. You
14 know, first year is and every year is -- is hard work, but
15 the intent is to -- to start making money. And only until
16 the point that you start generating serious revenue,
17 that's when I became aware, okay, this is taking on a
18 different dimension. All in the good sense. However,
19 this is going to require involvement from -- from some
20 professionals to start looking at proper life insurance,
21 health insurance, other type of insurances. We weren't
22 really -- so we had an -- an -- a financial adviser,
23 Mr. Strom that helped us establish a will and testament.
24 That is -- those were the items that we -- that we started
25 to think of as we were developing our group of companies.

1 Q Okay. And at some point, did Mr. Strom introduce
2 you to other professionals?

3 A Yes. Mr. Strom, as -- as the group of companies
4 and -- and the extent of work we were performing was
5 increasing, we were introduced to Larry Stevens as a CPA,
6 and this was 2008, 2009. And as we -- again, as the
7 companies evolved and business activity increased, we
8 were -- we had asked Mr. Strom to -- to see how we could,
9 you know, start working on a next-level financial planning
10 for both the companies and -- and me as an individual and
11 our family. And -- and that is how -- and I would say in
12 2009 and 2010 we were introduced to -- to the company --
13 or actually the company that -- that you worked for
14 Lobb & Cliff at the time, Lobb & Plewe now. But that's
15 how the involvement of professionals came to exist.

16 Q Okay. So you met Mr. Strom for financial
17 planning, and then he introduced you to Lobb & Cliff and
18 to Mr. Stevens; is that correct?

19 A Correct. The exact sequence I don't know, but it
20 was all within a relative short time frame.

21 Q Okay. And who did you work with at Lobb & Cliff?

22 A At Lobb & Cliff, I worked Erica Peterson and Sam
23 Lockhart. Those were two -- my two main points of
24 contact.

25 Q Did Mr. Strom tell you why he was introducing you

1 to Larry Stevens and Lobb & Cliff?

2 A In his opinion, they were people that were
3 reputable in the industry and that had a record of
4 satisfied clients, which is always my -- was always my
5 gauge. You know, is there other clients that are happy
6 with their performance, and I got acknowledgment on that.

7 Q Did you ever tell -- let's start with Larry
8 Stevens. Did you hire Mr. Stevens so that you can avoid
9 paying taxes?

10 A No. I hired Mr. Stevens as a -- as a CPA,
11 nothing more and nothing that -- nothing more and nothing
12 less. I mean, we had our own accountant in our -- in our
13 company, but we had -- you know, as the company was
14 growing, there was always the necessity to submit
15 accountants' reports, CPA letters. And so that is why we
16 went to a -- that's why we hired Mr. Stevens to help us
17 with our year-end reporting and to be our CPA on record in
18 the event that -- for instance, if we bid on a large
19 project, we were always required to submit financials.
20 And of course it looks better if that comes from a CPA
21 than from a person that just tax -- that is just a tax --
22 that is just preparing tax returns. So that was our
23 reason for involving Mr. Stevens in our -- in our
24 companies.

25 Q And then at one point you hired Erica Peterson

1 and -- what was the other attorney's name?

2 A Sam Lockhart.

3 Q And you hired them to represent you; is that
4 correct?

5 A Yes.

6 Q Did you ever tell them that -- that you were
7 hiring them so that you could avoid paying your taxes?

8 A No. The -- their primary -- as I said, this has
9 been an evolving --

10 JUDGE LE: If I can interject? To the extent
11 that you're mentioning names that were not included in
12 your list of names, if you can spell those names?

13 MR. LOBB: Erica, E-r-i-k-a, Peterson,
14 P-e-t-e-r-s-o-n and Sam Lockhart, L-o-c-k-h-a-r-t.

15 JUDGE LE: Okay. Thank you.

16 MR. PASVEER: I believe their names are in all of
17 the --

18 MR. LOBB: In the documents.

19 MR. PASVEER: -- in the documents --

20 MR. LOBB: Correct.

21 MR. PASVEER: -- as being the authors of some of
22 the documents. Sorry. I lost my train of thought.

23 BY MR. LOBB:

24 Q We're going back to the reason why you're hiring
25 these professionals. And I just want to make it clear

1 that you were hiring them for what purpose? To consult
2 for what purpose?

3 A Fair enough. Yes. I'm back on the rails. Our
4 primary purpose, as I said, the company was growing. We
5 were taking on projects. You know, some of those projects
6 were rather large, and we felt that at that point in time
7 we needed to improve our asset protection. We wanted to
8 start, really, our estate planning which we really hadn't
9 done until that time. And -- and, you know, in one of --
10 one of the -- one of my eye-opening meetings with the --
11 with the team, with Erika and Sam was that, you know,
12 don't wait with estate planning until it's too late.

13 In other words, don't wait with estate planning
14 until you're 50, but start it when you're 35 or 40 or
15 earlier if you can. And -- and that was -- that was the
16 primary purpose: Estate planning, asset protection, and
17 succession planning for our growing group of companies.

18 Q And again, at the time that you're meeting these
19 professionals, PaMaCo already existed; correct?

20 A PaMaCo already existed, yes.

21 Q And did you have other companies that you had
22 created before you met with these professionals?

23 A Yes, several -- several operating companies. We
24 had also started to divert into real estate development.
25 Again, one of our early lessons was to not mix and mingle

1 different real estate. So we had a lot of different LLC
2 that were each similar asset LLCs that were holding real
3 estate; real estate, whether that was ground-up
4 development, or whether that was a single-family residence
5 or multiple-family residence. So we had all of these
6 LLCs. We also had some operating companies that were
7 established just to execute one project.

8 So these companies were established. They --
9 they performed the project, and they are winding down
10 several years later. So there -- there was definitely a
11 group of companies in existence at the time that we
12 started to meet with -- with Erika and Sam from
13 Lobb & Cliff. Otherwise, honestly, we would have probably
14 not gotten to that point.

15 Q Okay. At some point, did you create a company
16 called M-P-I-P LLC?

17 A Yes. We had -- that company was the result of my
18 discussions with the professionals on establishing a
19 planning and a structure that would help us address those
20 three items that we mentioned earlier: Asset protection,
21 succession planning, and estate management. And MPIP was
22 an -- was an integral part of that as it was going to
23 capture the intellectual property. I think you used the
24 term "secret sauce," which I think is a little bit
25 disrespectful for my intellectual property.

1 But it is to say that with my experience that I
2 have gained over the years working in all facets of
3 construction at different continents, that I had a certain
4 amount of knowledge that -- that had proven to be very
5 useful and successful. And -- and in the discussions that
6 we had with the professionals, it was opted to -- to
7 capture that in MPIP. MPIP stands for Mark Pasveer,
8 Marinus Pasveer Intellectual Property.

9 Q Okay. Before I go any further, I want to ask
10 you, at any point in time ever, have you ever signed a
11 noncompete agreement between yourself and any of your
12 companies?

13 A No. I have not.

14 Q Let's go back to MPIP. Did you -- did anyone
15 ever tell you that by creating this entity and -- and
16 capitalizing your intellectual property into MPIP that you
17 could avoid paying taxes?

18 A No. I -- I was not told that. We did discuss
19 the tax structure on how it would -- what the ultimate
20 plan was with the -- with the structure. But it was
21 clarified and confirmed that this -- that the payment of
22 taxes would occur through various entities. Still land on
23 my personal return, which it has been and continues to do
24 through this day.

25 But certainly not -- there -- there has no -- not

1 been a -- a tax avoidance. There would have been -- there
2 would be estate tax benefits at some point down the road.
3 That was clearly discussed. And frankly, estate planning
4 was an essential part of this structure.

5 Q And ultimately, you caused a trust to be created;
6 is that correct?

7 A That is correct.

8 Q And we refer to that trust -- if I use the
9 terminology "Children's Trust," does -- does that ring a
10 bell?

11 A Yes, given that the -- my two daughters are the
12 beneficiary of that trust. And again, as part of the
13 input and discussions with the professionals, this was
14 determined to be a very effective and safe way of
15 preserving and maintaining wealth for a generation beyond
16 me. Which as I got older gets -- as you get older gets a
17 new dimension, you know. Even if you're a grandparent
18 now, you think of your children's children. And so that
19 was the intent and purpose of the trust.

20 Q Ultimately, you -- or someone made a decision to
21 have Larry Stevens, the CPA, as the independent trustee;
22 is that correct?

23 A Yes. We have -- you know, my wife and I have
24 moved here. We are the only ones of our family that we --
25 that are residing in the United States. And at that time

1 with the Children's Trust, we were looking for an
2 independent qualified person that could handle that
3 responsibility. Little did I know of Mr. Steven's dark
4 side, if you can call it that way, that was exposed five
5 years later. But that was our reason for assigning
6 Mr. Stevens as the trustee. And again, that's -- that's
7 what he was.

8 Q Did Mr. Stevens ever tell you he was a CPA?

9 A Yes. It's -- actually, I still remember. It
10 was -- it was on his email signature.

11 Q Okay. And you believed him?

12 A I had no reason not to. He was professional.
13 The tax returns, as far as I could see, were done orderly,
14 timely. I went to visit him at his office just to make
15 sure, you know, with -- similar as I went to the
16 Lobb & Cliff or Lobb & Plewe office. I want to always
17 have a feel for the people I'm dealing with. And I found
18 a real office, real people. No reason to -- to believe
19 any -- any different.

20 Q Now, at some point, you found out that something
21 was awry with Mr. Stevens; is that correct?

22 A That is correct. We were -- we were notified by
23 Citibank. Or actually, the way it went, Citibank, which
24 where the trust account was established at the time, had
25 sent notices to Larry Stevens that -- literally, I still

1 remember. It was a one-paragraph letter that says, "Your
2 account will be closed, and a check will be mailed." And
3 that caught us, really, by surprise. Luckily, Mr. Stevens
4 forwarded that letter to us. And so we -- we had still no
5 idea what was going on.

6 So we reached out to Citibank and say, "What is
7 happening here? We have -- we have six, seven, eight
8 companies with you guys. How can you just close an
9 account on us?"

10 And we had a good relation with the -- with the
11 manager from Citibank. And they told us, "Look, we can't
12 give you much detail. The only thing that we can tell you
13 is that it is related to the signee of the Children's
14 Trust," which could only be one person, Larry Stevens.

15 So at that time, we -- our suspicion started to
16 raise. We -- well, what we do in modern day, we start --
17 we start Googling, and we start to learn. And we see some
18 rumors on the internet of -- of investment schemes that
19 people are not happy with Larry Stevens. And after -- you
20 know, after several weeks or months, we -- we thought that
21 it was prudent to not take any risks. And we had asked
22 Mr. Stevens to resign because we started to get a bad
23 taste of -- of everything that was going around.

24 Q And did he resign?

25 A He did.

1 Q And again, you're not related to Mr. Stevens?

2 A I'm not.

3 Q And did he ever -- was he ever an employee of
4 yours?

5 A No.

6 Q And you ultimately hired Mr. Phang to be the
7 independent trustee; is that correct?

8 A Yes. That is correct.

9 Q And at one point in time, did you sell a company
10 to Mr. Phang called Exterior Cladding Systems, Inc.?

11 A I did on/or about 2020. I don't know the exact
12 year.

13 Q And counsel this morning provided us with a
14 filing from the Secretary of State, and it has the
15 identity of Exterior Cladding at -- one of the documents
16 has them at your office address; is that correct?

17 A Right. 431 Leroy Drive was a -- is a building
18 that we, at that time, owned. And the company that was
19 sold was essentially paying rent to us, was using our
20 building.

21 Q And another document was provided by counsel, and
22 it shows a different address. Is that the address that
23 the company now is operating out of, to your knowledge?

24 A Correct.

25 Q Okay. And are you related to Mr. Phang?

1 A No, I'm not.

2 Q And is he an employee of yours?

3 A No.

4 Q Okay. Let's -- I know I'm jumping around a
5 little bit, but let's go back to MPIP. Do you know what
6 assets are held in MPIP?

7 A Yes. MPIP -- the assets in MPIP are -- you know,
8 consist of two main two main buckets. One is a
9 proprietary, very technical knowledge of systems
10 procedures and -- and management of complex projects. The
11 second bucket would -- or is the -- our client list. My
12 client list that I have been developing and growing over
13 the years of my career. And that client list includes a
14 variety of contractors, architects, developers,
15 manufacturers at various continents that we have continued
16 doing business with through this day.

17 Q And the -- the trade secret that you referred to
18 and the customer list, did you cause that to be
19 capitalized in MPIP in 2010?

20 A Correct. Yes, I did.

21 Q And is that customer list and the trade secret,
22 are those items still in MPIP, to your knowledge?

23 A Yes.

24 Q So the customer list is still intact?

25 A Absolutely.

1 Q And the trade secret is still being used?

2 A Correct.

3 Q Okay. Now, in -- early on in the planning
4 process, did you hire a valuator to place a value on MPIP
5 or the assets inside of MPIP?

6 A Yes. That was part of the strategic planning
7 that we involved the professionals with, like -- and that
8 included a valuator, correct.

9 Q Did you ever speak to the valuator?

10 A Yes, I did. We spoke to the valuator. We
11 provided a detailed list of trade secrets, as well as
12 financial documents for -- for years prior to the
13 valuation.

14 Q What types of documents did you provide the
15 valuator?

16 A They were profit and loss and balance sheet
17 statements of the companies operating at that time. There
18 were also very technical descriptions of certain processes
19 and procedures. For instance, we were -- we had a very
20 detailed quality control procedure very specific to our
21 trade and industry that helped us to be very successful.
22 Another example was -- and -- and the backup documents
23 are -- are hundreds of pages that -- that were -- that I
24 had developed over -- over the many years.

25 Another aspect of that -- of those trade secrets

1 were our ability to combine products that are being
2 utilized in the industry and -- and different continents.
3 If -- if I can spend one minute on that, the European
4 building products are considered superior in the world's
5 construction industry. There's a greater level of
6 accuracy, detail, quality, longevity. Whereas on the flip
7 side, some of the building products that come from -- that
8 are manufactured in Asia tend to have less of a good
9 reputation and -- and do show some occasional quality
10 concerns.

11 We had developed a system whereby we could
12 utilize the European products with small adaptations that
13 we had discussed with those European manufacturers so
14 that -- so that their product could become very useful on
15 the U.S. market and -- and be sold as a superior product
16 for a superior price. Likewise, we took the same approach
17 from -- from Asia and -- sorry, quick backtrack.

18 On those products that came from Europe, we have
19 been involved in -- in many -- many large-scale projects.
20 One example is the Disney Concert Hall in Downtown L.A.; A
21 very, very unique project where we applied some of those
22 techniques.

23 I was going back to the -- to the -- to the flip
24 side, if you want to call it that, on Asia where -- where
25 there is quality concern. So we ended up making

1 adjustment to the systems and processes so that we could
2 take the advantage of using those products and applying
3 them into the U.S. market. You cannot just take a product
4 from another country and use it here. There -- there is a
5 process that you need to go through to make that system
6 adaptable. That is one example that we had detailed
7 processes and procedures outlined in our intellectual
8 property statement.

9 MR. LOBB: Judge Le, we have reached a point in
10 the testimony concerning the trade secret that we can go
11 on a little bit, but we're somewhat not comfortable with
12 this being -- going out to the public with all of the
13 items that -- that he has as trade secrets in MPIP.
14 I'm -- I'm wondering if you have a process for continuing
15 with testimony without it going to the public? Or if at
16 some point, you want us to truncate the testimony? I'm
17 unsure of how this is handled in -- in other matters.

18 JUDGE LE: So typically, the parties should have
19 let us know ahead of time if they wanted a closed hearing
20 for a portion of the testimony. Let me -- give me a
21 moment to confer --

22 MR. LOBB: Thank you.

23 JUDGE LE: -- to see if that's possible.

24 MR. LOBB: Thank you.

25 JUDGE LE: Okay. Let's go ahead and take a

1 five-minute break recess.

2 We'll go off the record.

3 (There is a pause in the proceedings.)

4 JUDGE LE: Okay. Let's go back on the record.

5 Per OTA's regulations, a request for a closed
6 hearing was supposed to be submitted 15 days before the
7 hearing. Given that, we will not be having a closed
8 hearing today. In regards to the trade secrets, you are
9 free to give an abbreviated version of your testimony.
10 After the hearing, we will allow Appellants to submit a
11 post-hearing briefing and declaration that includes the
12 testimony that Appellants want to say in regards to the
13 trade secrets. We will also ask Appellant to explain why
14 that testimony should be sealed, per OTA's regulations.

15 If OTA grants Appellants' request to seal the
16 record, then we will keep that in the record. But if OTA
17 takes a look at the declaration and Appellants' request
18 and the term is that it did not meet the criteria to be
19 sealed, then we will remove it from the record.
20 Respondent will have the opportunity to respond to
21 Appellants' declaration and the opportunity to ask
22 questions in regards to the declaration.

23 Appellants, any questions or comments?

24 MR. LOBB: I want to thank you, Judge Le and the
25 panel, for allowing us to do that. It's very much

1 appreciated, and we have discussed truncating the
2 testimony today just to give you a flavor for the trade
3 secret that exists. He's already started into that, so we
4 thank you.

5 JUDGE LE: Okay. Turning to Franchise Tax Board,
6 any questions or comments?

7 MR. MILLER: Yeah, just one question, Judge Le.

8 JUDGE LE: Yes.

9 MR. MILLER: You mentioned first, you'd give and
10 opportunity for additional briefing and a declaration; and
11 then second, you said you could submit the declaration
12 later. Is it simply going to be a declaration they're
13 submitting, you're allowing? Or is there going to be
14 additional briefing?

15 JUDGE LE: It would be the declaration, plus
16 briefing on why it should be sealed.

17 MR. MILLER: Oh, the briefing is only to the
18 issue of why it should be sealed then?

19 JUDGE LE: Yes.

20 MR. MILLER: Thank you.

21 JUDGE LE: Thank you.

22 And with that, I believe that resolved that
23 issue. Please proceed with an abbreviated testimony
24 regarding the trade secrets.

25 MR. LOBB: Thank you very much.

1 BY MR. LOBB:

2 Q So, Mr. Pasveer, before we took a break, you were
3 talking about intellectual property concerning certain
4 processes in what you experienced in Europe and in Asia.
5 Let's provide a little more testimony in that regard, and
6 then we'll move on to some other issues.

7 A Yeah. I mean, these -- the -- the product
8 adjustment to make it suitable for the -- for specific
9 segments in the U.S. market is -- is what was covered
10 under those two prior, call it umbrellas of, you know,
11 materials from Europe, materials from Asia.

12 Several other items, in an abbreviated version,
13 in today's market you may have heard the term "modular
14 construction." That was something we already had
15 implemented in 2007, 2008, 2009, essentially,
16 prefabricating components to an extreme large intent, and
17 doing that under very strict conditions; quality
18 procedures, having certification of those products before
19 it reaches a job site. So we had a -- we had a process in
20 place for that well before it became common knowledge.
21 And so, while that in and by itself is no longer a trade
22 secret now, but it was a trade secret then.

23 Other aspects of our intellectual property was
24 how we had specific management bonus structures set up to
25 incentivize our -- our workforce to -- to help us achieve

1 the -- the best outcome for the company. And those --
2 those were split up in -- in different -- in different
3 scenarios that we had learned over the years had -- had
4 worked very well and -- and proven to be valuable.

5 Other aspects of the intellectual property
6 consisted of our material management systems. You know,
7 being in construction, there is a lot of moving parts on
8 any given -- on any given time, on any given project. We
9 had written proprietary software that we had developed
10 that would allow us to track location of materials
11 essential for -- for sequential installation on a -- on a
12 project site. Again, that was something that others
13 have -- have developed at a later time, but we were
14 definitely well advanced of our time at that time.

15 Q Okay. I know you have many other items, but we
16 will -- we will handle that post -- post --

17 A Okay. Thank you.

18 Q Now, we were talking about the valuator and the
19 information you provided the valuator. Do you recall the
20 name of the valuator?

21 A I do not recall the name. I recall the company.
22 It was Avalon -- Avalon Consulting, if I'm not mistaken.
23 I don't know by heart the name of the -- of the person.

24 Q Okay. Avalon Advisors and Associates.

25 A Avalon Advisors, yes.

1 Q And so you provided information. You had
2 conversations with valuator; is that correct?

3 A Correct.

4 Q Did you know this valuator before the valuation
5 was performed?

6 A No. I did no prior history of ever being in
7 contact with him, no.

8 Q So you had never worked with Avalon Advisers or
9 the valuator before this valuation on MPIP was performed?

10 A Correct.

11 Q Okay. Ultimately, a valuation was performed. Do
12 you recall reviewing the valuation report?

13 A Yes. I -- I do recall reviewing the valuation
14 report. And, again, I had no -- relied on -- on the
15 professional in that field as far as the outcome of that
16 report is concerned.

17 Q You didn't tell the valuator how -- what number
18 they should come up with in the valuation, did you?

19 A No, I did not.

20 Q Do you know if anyone ever did that?

21 A No. It is -- from what I understand in talking
22 to the valuator, it is a very complex process. I'm not --
23 I'm not privy to how those numbers are derived.

24 Q Okay. Now, with respect to the IRS audit, did
25 you ever meet with the auditor?

1 A Yes. We met at the -- we met with the auditor at
2 our -- at our office, and we were able to, you know, in
3 summary, walk him through the steps following on -- on how
4 the companies were established; which company was doing
5 what; why we had these different entities that were
6 operating in these different fields; and for what purpose.
7 And that included MPIP. I do remember as part of the
8 meetings and subsequent information request and meetings
9 thereafter that were substantial amount of -- of documents
10 requested and provided that showed the entire history from
11 almost the same audit -- essentially, the same audit
12 period here, even though the IRS audit period was -- was,
13 I think, only one or two years.

14 But it covered -- the documents provided covered
15 the exact same transaction that are under audit here
16 today. And we were able to demonstrate that that those
17 transactions ended up showing up on our personal tax
18 returns and -- and us -- me as individual -- me and my
19 wife as individuals paying tax over that.

20 Q How many times did you meet with the IRS auditor?

21 A I recall two times at our -- at our office and
22 one or two phone calls.

23 Q How long did the meetings last?

24 A Hour, hour and a half.

25 Q Okay. And -- and ultimately, you received a no

1 change from the IRS; is that correct?

2 A No change on -- on PaMaCo. No change on MPIP.
3 No change on personal, correct.

4 Q Okay. Now, at one point you hired Anthony Ghosn
5 to provide a valuation; is that correct?

6 A That is correct.

7 Q And did you tell Anthony -- did you tell him what
8 number you wanted him to come up with by way of the
9 valuation?

10 A No, we did not. We wanted this to be an
11 individual as -- again, in my layman's term, if I go to
12 the doctor, I want a second opinion. In my view, that
13 was -- that was this; somebody reconfirm if what we
14 assumed was correct.

15 Q Did you ever speak with Mr. Ghosn?

16 A Yes. We had several conversations. Mr. Ghosn
17 asking us clarification on -- on -- on the documents that
18 were the same documents that were the basis of valuation
19 of the -- of the one from Avalon Advisers.

20 Q And did you provide Mr. Ghosn with the same
21 information that was provided to Avalon Advisers?

22 A Yes. It was the same exact package.

23 Q And when you spoke with him, you provided the
24 same information to him that you provided Avalon; is that
25 correct?

1 A Correct.

2 Q Okay. Now, since the FTB audit began, have you
3 continued to pay principle and interest on the promissory
4 note?

5 A Yes, we have. That is -- it is an obligation of
6 the -- that the Children's Trust has to make payments,
7 principle and interest payments, and we have been
8 continuing those payments ever since the implementation of
9 the structure through last year. And we are set to
10 make -- to report the same payments this year. So in
11 short, principle and interest payments have been made
12 beyond the audit period without taking any expense.

13 Q And how much has been paid in principle since the
14 audit began?

15 A Approximately one and a half million.

16 Q And how much in interest?

17 A Approximately a million.

18 Q And did you report all of that income on your
19 personal tax returns?

20 A Yes, we have.

21 Q When you say "we make the payments" --

22 A Right.

23 Q -- who is making the payments?

24 A Well, it's a joint tax return, my wife and I. So
25 we -- when I say "we," I mean -- I mean, I make the

1 payments. Although in our household, my wife writes the
2 check. So --

3 Q Okay. You're talking about paying tax. What I'm
4 asking you is the trust. Who from the trust is making the
5 payments on the promissory note to you and your wife
6 personally? Is that the trustee?

7 | A The trustee, yes.

8 Q Okay. And that's Mr. Phang?

9	A That is correct.
---	--------------------

10 Q Have you ever taken -- other than payments of
11 principle and interest, have you taken, personally, any
12 assets out of the Children's Trust?

13 | A No.

14 MR. LOBB: Okay. Those are all the questions I
15 have for the taxpayer.

16 JUDGE LE: Thank you.

17 At this time, let me ask Franchise Tax Board if
18 they have any questions for the taxpayer.

19 MR. MILLER: Yes, we do.

20 JUDGE LE: Please proceed.

21 MR. MILLER: Thank you. Thank you. Sorry for
22 the delay in pulling up my document.

23 | *///*

24 | ///

25 | ///

1 CROSS-EXAMINATION

2 BY MR. MILLER:

3 Q Good morning, Mr. Pasveer. Thank you very much
4 for being here. It's a little awkward to be asking you
5 questions without looking at you, so you'll forgive the
6 setup. But I just have a few questions for you today.

7 A Sure.

8 Q First, on June 29th, 2010, you executed an
9 agreement that purported to assign your interest in
10 certain intangible assets to MPI -- to MPIC [sic], LLC;
11 correct?

12 A Correct.

13 Q You both signed and countersigned that licensing
14 agreement. First you signed it as the assignor of the
15 assets, and second, you countersigned it in your capacity
16 as manager of MPIC [sic], LLC, as the assignee of the
17 assets; correct?

18 A Correct.

19 Q I'm sorry. I misspoke. I said MPIC. It's MPIP,
20 for the record.

21 One day later on June 30th, 2010, MPIP, LLC,
22 entered into a licensing agreement with PaMaCo
23 Incorporated, by which MPIP, LLC, leased the intangible
24 assets that you had assigned to the LLC to PaMaCo in
25 exchange for royalty fees; correct?

1 A Yeah. I'm not sure about all the technical
2 terms, but in -- in broad terms, I -- I think I follow
3 your understanding of the sequencing of the transaction.
4 And so far I think that's correct.

5 MR. LOBB: If I may, Judge Le, if -- maybe it
6 would speed things along if you refer exhibits for the --
7 for the taxpayer to review as he's going through these
8 documents. It's been 15 years.

9 JUDGE LE: Okay.

10 MR. MILLER: I'm happy to refer to exhibits.

11 JUDGE LE: Thank you.

12 BY MR. MILLER:

13 Q This is in Exhibit F, page 2. It indicates the
14 date. And I think that page also indicates the general
15 provisions of the contract. I can repeat the question if
16 that's helpful as well.

17 A Yeah. So far as -- as I mentioned, I -- I
18 confirm the sequencing of documents -- of documents we
19 generated as you stated.

20 Q Thank you. The next question is, you both signed
21 and countersigned that licensing agreement. First, you
22 signed it in your capacity as manager of MPIP, LLC, the
23 licensor. And second, you countersigned it as the
24 president of PaMaCo Incorporated, the licensee; correct?

25 A Correct.

1 Q One day later on July 1st, 2010, you and
2 Mrs. Pasveer settled the Pasveer's Children's Trust with
3 an initial contribution of one dollar; correct?

4 A I don't know the exact numbers, but yes, I do
5 acknowledge the sequencing of-- of events and the trust
6 being executed.

7 Q Sure. And if it's helpful for you to review,
8 this is Exhibit G. Page 1 of Exhibit G indicates the
9 date. Page 4 indicates the contribution amount.

10 A Yep. Confirmed.

11 Q Thank you. You and Mrs. Pasveer appointed as
12 trustee of the Pasveer's Children's Trust, as you already
13 stated in your testimony today, Lawrence Stevens; correct?

14 A Correct.

15 JUDGE STANLEY: Can I just --

16 MR. MILLER: Yeah.

17 JUDGE STANLEY: -- stop you for one second?

18 MR. MILLER: Please.

19 JUDGE STANLEY: Our stenographer isn't
20 necessarily picking up your voice. You need to put the
21 microphone up closer. Thank you.

22 MR. MILLER: Judge Stanley, were you referring to
23 me or the witness?

24 JUDGE STANLEY: The witness.

25 MR. MILLER: Okay. Thank you.

1 BY MR. MILLER:

2 Q Next question. Mr. Pasveer, on that same day,
3 July 1st, 2010, you and Mrs. Pasveer executed a sales
4 agreement whereby you and Mrs. Pasveer sold 99 percent of
5 your membership interest in MPIP, LLC, to the Pasveer's
6 Children's Trust in exchange for a promissory note in the
7 amount of \$10,700,000; correct?

8 A Correct.

9 Q And for the record, that's Exhibit J I'm
10 referring to. And on October 8, 2010, three months and
11 seven days after you and Mrs. Pasveer sold your 99 percent
12 membership interest in MPIP, LLC, to the Pasveer's
13 Children's Trust for \$10,700,000, you obtained a valuation
14 of MPIP, LLC, from John Bates; correct? This is
15 Exhibit K.

16 A I follow your dates. I see the date here on the
17 report, although, I do believe that this report in a draft
18 form, it existed way before this date but --

19 Q And have you provided the Office of Tax Appeals a
20 copy of any drafts of this report?

21 A Not my knowledge, honestly. I'm not sure what
22 documents have been provided, but the sequencing -- the
23 sequence of events was that first evaluation was derived.
24 I understand what you are saying with the dates on a piece
25 of paper. But perhaps we can go back to old records to

1 see when the engagement was -- was initiated. But my
2 point is that I -- I again confirm your dates, but to my
3 knowledge the evaluation existed well before the sales
4 transaction.

5 Q Okay. Thank you. I'm moving on to my next
6 question. In his opening statement today, your attorney
7 stated that there are two intangible assets in the trust,
8 a trade secret and a customer list. However, Mr. Bates'
9 report identifies 12 separate intangible assets that were
10 subject of his evaluation -- of his valuation dated
11 October 8th, 2010; correct? Again, this is exhibit K.

12 A Yeah. I understand. Let's put it this way. I
13 think the statement of Mr. Lobb of two items in the IP, I
14 call them two buckets. One, a project list, and one trade
15 secrets, whereby the trade secret bucket is unpacked in
16 several other items, and that those are the items that are
17 referred to in the valuation report.

18 Q Thank you. In Mr. Bates' report, he lists the
19 principle sources of his information for his report was
20 his interview with you. And also, you supplied copies of
21 internally prepared lists and descriptions of identifiable
22 intangible assets, organizational structure, current
23 financial information, and a 24-month operational
24 forecast; correct? That's on page 4 of Exhibit K.

25 A Yes. I don't remember the exact details, but in

1 general terms, yes, that is correct.

2 Q Okay. And you've never provided the Office of
3 Tax Appeals copies of the documents you provided to
4 Mr. Bates that were the principle sources of information
5 for his report; correct?

6 A I honestly would not know. I'm not sure if
7 the -- I believe the issue was that not necessarily was
8 the valuation the issue of the audit but rather, whether
9 or not this was a legitimate transaction. So I believe
10 that -- I'm not sure if the question was ever asked to
11 provide this information or if it was ever put in
12 question.

13 MR. MILLER: Okay. Thank you. And I think
14 that's all of our questions.

15 Thank you Judge, Le.

16 JUDGE LE: Thank you.

17 Let me turn to the panel.

18 Judge Lambert, any questions for the witness at
19 this time?

20 JUDGE LAMBERT: I have no questions. Thanks.

21 JUDGE LE: Judge Stanley, any questions at this
22 time?

23 JUDGE STANLEY: I would just like to get a little
24 bit of a better idea. I know you're talking generally
25 about the things that are in the -- that are included in

1 the trade secret bucket, but do you -- when you utilize
2 those systems, do you still maintain them as propriety
3 systems so that you're managing a project and tracking
4 material flow, for example, or are you leasing them or
5 selling them to other companies to utilize them?

6 MR. PASVEER: Well, that is -- I -- so initially,
7 the structure was established as I said for -- for
8 multiple purpose asset planning, asset protection, et
9 cetera. So initially, we -- we have utilized these --
10 these intellectual properties within our own -- only
11 within our own entities. Planning -- planning of this
12 nature is not something that -- that is a long-term
13 process. Establishing a structure and -- and bearing the
14 fruits of that structure is not something that happens
15 overnight. There is -- and, you know, realistically,
16 there's decades that it takes for that to -- to realize
17 the asset planning -- or the asset planning for that.

18 Now, at one point in time, we discussed the
19 opportunity of selling those, all or portion, of those
20 intellectual property. However, since the audit in 2015
21 occurred, everything has come to a full stop. And so,
22 during our initial years of -- of further growing,
23 developing the companies, again, we -- we were not yet
24 ready when I -- when I was in the prime -- or am still --
25 I would still consider myself in the prime. I was in the

1 prime of conducting business. I wasn't necessarily
2 thinking of selling intellectual property or a portion
3 thereof. It could potentially become a point of -- of a
4 thought process later on but that, for obvious reasons,
5 has never materialized today.

6 I -- I'm not sure if I 100 percent answered your
7 question.

8 JUDGE STANLEY: No. I think you're saying you --
9 I think what you're saying, if I'm understanding you
10 correctly, is that you do maintain these and use them
11 within your own companies --

12 MR. PASVEER: Correct.

13 JUDGE STANLEY: -- that you don't provide these.

14 MR. PASVEER: This --

15 JUDGE STANLEY: And parts of the process --

16 MR. PASVEER: No.

17 JUDGE STANLEY: -- is to other people to use
18 themselves?

19 MR. PASVEER: That is -- that is correct.

20 JUDGE STANLEY: Okay.

21 MR. PASVEER: These -- these are -- this
22 information is used within our own group only.

23 JUDGE STANLEY: Thank you.

24 JUDGE LE: Thank you, Judge Stanley. Does that
25 end all your questions for right now?

1 Okay. Appellants, you can continue on with your
2 presentation.

3 MR. LOBB: Yes.

4 MR. MILLER: Your Honor, may I say something?

5 JUDGE LE: Yes.

6 MR. MILLER: I beg your pardon. I said I was
7 done with my questions. I'd had one more question I
8 failed to ask. With your permission, could I ask one more
9 question of Mr. Pasveer?

10 JUDGE LE: You may proceed.

11 MR. MILLER: Thank you.

12 BY MR. MILLER:

13 Q Earlier in your testimony today, Mr. Pasveer, you
14 mentioned you had an interest and a need to develop an
15 estate plan. Other than the documents relating to the
16 Pasveer's Children's Trust, you've not provided the Office
17 of Tax Appeals any other documents relating to any other
18 aspects of your estate planning; correct?

19 A That is correct. And again, my -- my answer --
20 the first answer to your question is no. To my knowledge,
21 I don't think we have provided that. However, there is no
22 secret in providing any additional other information,
23 whether it is wills, testaments, things of that nature
24 that were -- that -- that exist in advance of this
25 intellectual property. And again, I don't think the --

1 the information was ever requested because it was never
2 part of the -- of the audit of the -- of the subject that
3 was under audit.

4 MR. MILLER: Thank you so much for your testimony
5 today. No more questions.

6 JUDGE LE: Thank you.

7 Appellants, you may go ahead and proceed.

8 MR. LOBB: Thank you, Judge Le.

9 The Appellant would like to call Anthony Ghosn
10 for testimony.

11 Judge Le, did we swear in this witness? I forget
12 if he was out.

13 JUDGE LE: We did.

14 MR. LOBB: Okay.

15

16 DIRECT EXAMINATION

17 BY MR. LOBB:

18 Q Mr. Ghosn, please state and spell your name for
19 the record?

20 A Hello. Good morning. My name is Anthony Ghosin.
21 That's G -- sorry. Anthony Ghosin, G-h-o-s-n, middle
22 initial Elias. Anthony Elias Ghosin.

23 Q And Mr. Ghosin, what's your profession?

24 A I have a -- run a practice called Dynamic
25 Performance Metrics. It focuses on internal audit

1 services for private and public companies, and business
2 valuation of -- for which we do both enterprise valuations
3 and intangible asset valuations.

4 Q And can you give us a rundown of your education,
5 please?

6 A Sure. Of course. My formal education starts at
7 the University of Washington with an economics degree, a
8 bachelors -- BA in economics. And upon graduating, I
9 happened to work in the project build design world of the
10 hospitality industry for almost 20 years. In that
11 capacity, I advanced up through supervisory roles,
12 executive roles in various companies. And at that time, I
13 went back to school and earned an MBA from Claremont
14 Graduate University and, at the same time, several
15 certificates, one from Oxford University and one from
16 Wharton. And those were both global marketing, global
17 logistics courses that were quite valuable to me.

18 And since then, in 20 -- in 2009, I specifically
19 kind of pivoted away from internal audit and focused much
20 more on business valuation and joined the ACA, Association
21 of -- of ASA, Association Society of Auditors for ongoing
22 professional trading. CPE once a year, I do several
23 courses.

24 There's a USPAP qualification, Unified Standards
25 of Professional Practice of Appraisal and that -- every

1 two years is a refresher for the standards, the
2 procedures, and the -- some of the details that should be
3 in a business valuation and other corner case issues where
4 hypothetical conditions could be used, other kinds of more
5 exotic approaches to evaluation when necessary. And that
6 keeps me current and -- with the ability to sign reports
7 and submit to any regulatory body or any professional law
8 firm, CPA firm that is requiring that information.

9 Q What certifications do you hold?

10 A The USPAP certification. I also hold a --
11 not back in 2010, but I hold a Certified Patent Evaluation
12 certification, and the USPAP certification was the two
13 actual certs that are -- that rotate and require CPE to
14 maintain.

15 Q Mr. Ghosin, what professional organizations do
16 you belong to?

17 JUDGE LE: Excuse me, if I can interject. I
18 understand that Appellant has already submitted Anthony
19 Ghosin's credentials and education. The FTB was given an
20 opportunity to object, if they objected to the credentials
21 and education. They have not. Okay. In that case,
22 please -- there's -- I don't see a need to go into detail
23 regarding his education and credentials since it's not at
24 issue here.

25 MR. LOBB: Thank you, Judge Le.

1 JUDGE LE: Thank you.

2 BY MR. LOBB:

3 Q You were hired to provide a valuation, is that
4 correct, on behalf of MPIP?

5 A Yes.

6 Q Did you actually provide such a valuation?

7 A We did.

8 Q Okay. And it's been marked as Exhibit 33. I see
9 that you have it in front of you. You don't need to look
10 at it right now.

11 A Okay.

12 Q Let's just go through your testimony.

13 A Of course.

14 Q What information was provided to you, such that
15 you could provide a valuation of MPIP?

16 A Well, in our engagement letter, as all of our
17 engagement letters state, we require certain documents
18 from the -- from the party, subject client, which involves
19 financials that cover the period in which we're talking
20 about and at least two to three years prior. And in some
21 cases, when we're looking back, when we're retro, we can
22 ask for periods beyond 2010, which we did in this case.

23 We also conduct interviews with the client -- the
24 subject client, subject assets owners. And at that point,
25 we're trying to get a feel for both quantitative and

1 qualitative aspects of the entity, or in -- or in this
2 case, intangible assets. How are they used? How they are
3 identified? How are they protected? And there's a --
4 full page in going into that in this report that goes into
5 that more.

6 Q Did you actually meet with Mr. Pasveer?

7 A Several times over the phone, telephonic
8 meetings, yes.

9 Q And approximately how much time did you spend in
10 meeting with Mr. Pasveer before rendering your valuation
11 report?

12 A Oh, at least five hours.

13 Q Before you prepared your valuation report, did
14 you review the report from Avalon Advisors, which had been
15 done in 2010?

16 A I knew that Avalon Advisers had issued a report
17 and at some time, I was expecting to see it. But as a
18 normal practice, I don't look at numbers by another
19 valuation expert until I've come to my own conclusion. So
20 yes, I looked at it but not prior to the -- to our
21 conclusion.

22 Q Okay. So your report was independent of Avalon.
23 Is that a correct statement?

24 A Absolutely. Yes. That is a very important part
25 of the kind of work we do is that it's independent and

1 that we can demonstrate that.

2 Q Okay. If you go to page 14 of Exhibit 33, there
3 is a listing of items. What are those items?

4 A These are the high-level statements of
5 the value -- of the assets themselves. The aspect of
6 the -- what we're calling in use. And I'll explain that
7 more. But these go into what Mr. Pasveer was talking
8 about earlier in his testimony. Some of the details in
9 MPIP. I can go into some examples, but on page 14 there
10 they are. And that -- that ties to -- well, I'm sorry.

11 Q Yeah. You don't need to go through the details
12 listed there.

13 A Yes.

14 Q I just want to confirm that that page 14 was
15 relevant to your valuation. And when you were going to
16 say "it ties to," did it ultimately tie to the valuation
17 that was rendered?

18 A Yes. Ultimately, that is what that's tying to
19 and --

20 Q In what way?

21 A -- that gives us the assurance that -- that it
22 ties out. If we find out variances or large gaps, then
23 we're coming back to this -- to the client to ask
24 questions.

25 Q Okay. So ultimately, in reviewing the

1 documentation that was provided to you and in your --
2 through your interviews with Mr. Pasveer, did you
3 ultimately render an opinion of value as to MPIP and the
4 assets held by MPIP?

5 A We did.

6 Q And what is that value?

7 A That value is, as stated on page 2 and also in
8 detail in a later table, is \$9,736,000 and change. It's
9 rounded on page 2. It's detailed on -- I know it's here.
10 It's detailed on page 12 with the actual final number
11 \$9,735,852. \$9,735,852 as the valuation on 9/30 of 2010
12 for MPIC value of intangible assets.

13 Q In rendering your value of opinion, did you
14 determine that MPIP as a result of the intangible assets
15 that it held performed above the industry standard?

16 A We did. We found substantial margins over
17 market, and that's one of the first steps we take in
18 establishing a royalty rate for any entity that's -- that
19 has IP intellectual property and claiming that it's
20 valuable in their operation. Well, then we look at the
21 net profits of the organization and compare it to market
22 trends at the same level. In this case, EBITAH was a good
23 example. So we look at -- can we go the document? Can we
24 go to the page that goes through that?

25 Q Yes. Are you talking about the schedule?

1 A On page 15 that's what we're doing here. It's a
2 process that establishes the industry profit margins. You
3 can see here at 5.14 percent compared to the royalty of
4 profits -- well, the net profits of the subject assets of
5 19 plus -- 19 percent plus. So there's a great variance
6 there over market of 13.9 percent. That gives us the
7 first indication there's value that's available that's in
8 this company. Where is it? What is it? What's doing --
9 what's generating that additional free cash flow?

10 At 14 percent, we certainly can't assign a
11 14 percent royalty rate to -- to access these -- this
12 bundle of IP. We established an 8.673 rate that we
13 thought was appropriate for the use of those assets. And
14 on --

15 Q So you discounted the rate; is that correct? You
16 came up with a very high rate, but you discounted it?

17 A Well, we discounted it several times. That's the
18 first discount, yes. And is it discretionary? Yes,
19 that's a professional discretion on my part, applying that
20 8.63 percent rate. We -- there's no way that you would --
21 that we would see or could -- could justify the full
22 margin over that. So that's the -- the dog -- or that's
23 the rate that we had chose. And then that produces a
24 royalty rate that we run over a 20-year period. These are
25 long lived intangible assets that's not a depreciation

1 schedule. That's the actual life of the asset.

2 And on page 17 we demonstrate that in a table
3 attempting to show what we mean here. It's called a
4 "Revenue Road Map." And this is the first year of
5 royalties that we had determined that 19 -- a
6 million-nine, but it was late in that year. So we went to
7 the very next year, which increases by a small percentage
8 of two-million-sixty. And then we run that over a 20-year
9 period with -- with a small increase -- price increase
10 of -- of -- that the industry market report tells us is
11 the industry standard for annual increases.

12 Then the critical part here is to see what
13 happens when we come down to the net -- new client list
14 and revenues for new client lists. What we're trying to
15 demonstrate here is that over time the content of the --
16 of the IP itself is shifting. New clients come and go.
17 New technology comes and goes. And this is basically
18 saying, from the top line you can see 100 percent --
19 100 percent allocation. It starts to trail off all the
20 way down to zero in year '20. The net -- new client list
21 ramps up to 100 percent. So what this is demonstrating
22 in -- in a concise model is the content shifts. It
23 changes. It's designed to do that. It's designed to roll
24 and grow and add additional value. The prices are
25 increasing. Certainly, we should expect additional value,

1 and this is a table form trying to demonstrate that.

2 So that's -- the next set of discounts is the
3 discounting of -- of those royalty payments. Every year
4 for 20 years produces a net value that we add up, and that
5 is one of the valuation calculations and two additional
6 valuation calculations. One is called a terminal point.
7 We take the same information and stretch it out forever,
8 not a 20-year life cycle, a for-life cycle. And what that
9 is demonstrating is that's a method that we use to make
10 sure capturing all the value on the tails. If you
11 envision a bell curve, if you will, the center is -- is --
12 the center of the bell curve is the tallest. It's a
13 regular bell curve.

14 What the terminal rate does is after about 38, 40
15 years, additional years incremental is so infinitesimal
16 that over about a 40-year period, we capture all the value
17 of that company if it were to diminish all of its assets.
18 So that's what that's saying. That's a different
19 calculation, a separate calculation. And then third,
20 we've got as seen in --

21 Q Mr. Ghosin, I -- the report has been entered into
22 evidence, and what I'm going to do at this point is I'm
23 going to end my questioning because the report is in
24 evidence. And if you -- if the panel has questions -- I'm
25 sure Counsel might have question, then we'll leave it to

1 that.

2 A Okay.

3 MR. LOBB: Is that -- Judge Le, is that fine?

4 JUDGE LE: That's fine.

5 MR. LOBB: Okay.

6 JUDGE LE: Thank you.

7 MR. LOBB: Thank you, Mr. Ghosin.

8 MR. GHOSIN: Thank you.

9 JUDGE LE: Turning to the Franchise Tax Board,
10 any questions for this witness?

11 MR. MILLER: Yes. Thank you, Judge Le. Just a
12 couple.

13

14 CROSS-EXAMINATION

15 BY MR. MILLER:

16 Q Mr. Ghosn, I'm pronouncing your name correctly;
17 correct?

18 A It's Ghosin.

19 Q Ghosin. Thank you. I didn't want to
20 mispronounce it. Thank you for clarifying. Okay. Just a
21 couple of questions for you today.

22 A Yes, sir.

23 Q First, your report was prepared in 2021, 11 years
24 after the transactions at issue in this appeal; correct?

25 A Yes, sir.

1 Q And then second, you didn't counsel or advise
2 Mr. or Mrs. Pasveer or PaMaCo Incorporated regarding the
3 transactions at issue in this appeal at any time during
4 2010; correct?

5 A I'm -- I'm sorry. I'm not quite clear.

6 Q Sure.

7 A Did we advise them on --

8 Q Yes. The transactions at issue here took place
9 in 2010. So during 2010, I want to confirm that you did
10 not --

11 A I see.

12 Q -- advise them during 2010 regarding those
13 transactions?

14 A That is correct. We did not.

15 Q Thank you. And thank you for helping me clarify
16 my question. In --

17 A And if I can add to that --

18 Q Sure.

19 A -- because it's an important time to add it. We
20 make sure that we go back and get -- obtain reports --
21 industry reports for which this report is built on, in the
22 time, of the time of the actual date of value. So like,
23 the industry report that's in here, you can see it's dated
24 2010. And everything else that requires us to go back and
25 obtain whatever information we're looking for, we have.

1 So it's all relevant to that period of 2010.

2 Q Okay. Thank you. In your report -- and for
3 reference, it's Exhibit 33, page 10 -- you list as your
4 sources of information for your report as the following:
5 Industry reports from the Ibis World economic reporting
6 database, financial statements from the operating
7 companies, including some special purpose entities,
8 industry reports from evaluationresources.com on economic
9 outlook for five years, client customer database and
10 functionality, client interviews, professional service
11 provider interviews with legal advisors at Lobb & Plewe,
12 LLP, and lastly, the NYU Stern School of Business Weighted
13 Average Cost of Capital Annual Publication; is that
14 correct?

15 A Yes. Those are the sources that we used.

16 Q Great. And as confirmed by Mr. Pasveer's
17 testimony today, you recall he indicated in the report
18 from Avalon the appraisal -- the appraiser who conducted
19 the appraisal in 2010; and this is at Exhibit K at page 4.
20 Mr. Pasveer confirmed that he had supplied Avalon copies
21 of internally prepared list and descriptions of
22 identifiable and intangible assets, organizational
23 structure, 24-month operational forecast. Notably, in
24 your report, you don't list any -- you don't indicate that
25 Mr. Pasveer ever supplied you copies of internally lists

1 or descriptions of identifiable intangible assets;
2 correct?

3 A I don't know if I could actually agree with that
4 as a yes.

5 Q Okay.

6 A He did provide -- he did provide -- he did
7 provide information. I mean, it's in our work papers of
8 the financial conditions. You could see what we put
9 together on -- on page 18. Those subsets -- those
10 entities make up the revenues. They make up the cost of
11 goods sold. So that was provided to us.

12 Q Okay. It just wasn't listed on your sources of
13 information on page 10.

14 A I see. Yeah.

15 Q Okay. Thank you.

16 A Sure.

17 MR. MILLER: That's all. Thank you so much.

18 JUDGE LE: Thank you.

19 Let me turn to the panel.

20 Judge Lambert, any questions for Mr. Ghosin?

21 JUDGE LAMBERT: Hi. Yeah. I just had one
22 question.

23 MR. GHOSIN: Yes, sir.

24 JUDGE LAMBERT: I was looking at the report and
25 was just noticing, but I was just -- if you could clarify,

1 did you look at income from before 2010, actual income, or
2 did you just project the 2000 income forward?

3 MR. GHOSIN: Sorry. No, we looked at -- sorry.
4 No. We looked at one year prior, and that's listed in
5 the -- on page --

6 JUDGE LAMBERT: Oh, okay. I see 2009.

7 MR. GHOSIN: See that. Yeah.

8 JUDGE LAMBERT: Okay. And --

9 MR. GHOSIN: And that -- that's 2009, 2010. And
10 then we were in a position to say well, what did 2011 look
11 like. And so that's -- that's an estimate 2011. 2010
12 obviously, is there. The -- the adjustments we make to
13 those numbers are shown at the bottom. And in this case,
14 2009, 2010 was producing a discrepancy between EBITAH, and
15 EBIT numbers in 2009 was considerably lower than it is in
16 2010. A valuation professional will take that and say,
17 well, we want to make sure we're collecting, gathering as
18 much free cash flow as we're allowed to. So we added
19 these together and divided them by two and came up with a
20 net number that makes sense.

21 So in other words, we're giving -- giving some
22 profit away here to come up with the \$6,725,000. Now, in
23 our actual royalty rate assessment, we take those two and
24 weight-- it's a weighted average. Other than that, that's
25 what that is. I think it's probably appropriate to say on

1 page 13 are the capital charges that bring them, the
2 intangible assets, into any project that Mr. Pasveer adds
3 these -- this IP to. And these are the capital charges
4 that would go on that entity's cost PNL. So we end up
5 with a net value, net of capital charges to put this
6 intellectual property into the entity that it's going to
7 work at.

8 And those are the three value calculations. You
9 can see that weighted average on page 13 is the exact same
10 number \$9,735,852. That goes onto the data sheet and into
11 the description and final conclusion. So that's -- it's a
12 pretty good overview of how that's brought about.

13 JUDGE LAMBERT: Okay. Thank you. I appreciate
14 it.

15 MR. GHOSIN: You're welcome.

16 JUDGE LAMBERT: That's all --

17 MR. GHOSIN: Of course. Yes.

18 JUDGE LAMBERT: That's all I had.

19 JUDGE LE: Thank you, Judge Lambert.

20 Judge Stanley, any questions at this time?

21 JUDGE LE: Yes. First for the record, can you
22 say what EBIT is? If you use acronyms our --

23 MR. GHOSIN: I'm sorry.

24 JUDGE STANLEY: Our receptionist -- we'll just
25 get --

MR. GHOSIN: EBIT is not heard or not used as much as EBITAH, but it's "Earnings Before Interest and Tax."

JUDGE STANLEY: Thank you. And then my real question is why did you select -- or did your client select a valuation date of September 30th, 2010, instead of July 1st, 2010 when the trust was created?

MR. GHOSIN: That's a -- that's a date that was given to me as -- well, I knew it had to be somewhere in late 2010. So the month end of September is what was given to me. There was no reason other than that that I know of.

JUDGE STANLEY: Okay. Thank you.

MR. GHOSIN: You're welcome.

JUDGE LE: Thank you, Judge Stanley.

Does this conclude Appellants' presentation?

MR. LOBB: It does.

JUDGE LE: Thank you.

MR. LOBB: Yes, it does.

JUDGE LE: Thank you.

Okay. At this time, we're going to go ahead and take a recess for one hour. We're going to go off the record. Please mute the mic. We will return at one 1:00 p.m.

(Lunch break.)

1 JUDGE LE: At this time, let's go back on the
2 record.

3 I would like to provide reminders to the parties
4 to please try to directly talk into your microphone.
5 Sometimes when a party are looking at documents or looking
6 left and right, they're not talking directly into the
7 microphone. It makes it sometimes hard to hear. So
8 please try to talk directly into your microphone.

9 Before recess Appellants' presentation had
10 concluded, and so now we're turning to the FTB's
11 presentation.

12 You may begin when you're ready.

13 MR. LEWALLEN: Thank you.

14

15 PRESENTATION

16 MR. LEWALLEN: In 2010, Appellants Marinus and
17 Mirjam Pasveer and PaMaCo, Inc., devised and abusive tax
18 avoidance transaction commonly known as an installment
19 sale bogus optional basis transaction or an iBOB for
20 short. As described by the IRS in the United States
21 Government Accountability Office, in an iBOB, the taxpayer
22 uses a network of entities they own or control to
23 artificially increase an assets basis to reduce or
24 eliminate capital gains taxes when the asset is sold. In
25 a simplified example provided by the Government

1 Accountability Office, the players in the scheme commonly
2 include a taxpayer who is 100 percent owner of an LLC that
3 owns a single capital asset. If the taxpayer were to sell
4 the asset to an independent third party on the open
5 market, the taxpayer would pay the difference on the --
6 between the amount realized and the adjusted basis or the
7 gain.

8 In the iBOB, the taxpayer instead creates a new
9 entity that they control, such as a family trust. The
10 taxpayer transfers to the trust 99 percent of their
11 interest in the LLC and a single capital asset in
12 fictitious installment sale. By doing this, the LLC can
13 make an election under Internal Revenue Code section 754,
14 734(b) and 743(b). The LLC can elect to step-up the basis
15 in its asset for the new partner, the family trust, so
16 that trust share in the LLC's basis -- in the LLC's basis
17 rises from the original basis to whatever the trust paid.
18 The installment payments are typically never made, or if
19 they are, -- yes.

20 JUDGE LE: If you can slow down while you are
21 reading?

22 MR. LEWALLEN: Correct. Got it.

23 The installments from the trust to the taxpayer
24 are typically never made. Or if they are, the other terms
25 of the sale are not enforced because the transactions are

1 not at arm's length as all parties are owned or controlled
2 by the same taxpayer. By artificially raising the basis
3 in the asset, the taxpayer effectively lowers or even
4 eliminates any capital gains taxes upon the ultimate sale
5 of the asset to an independent third party. All the
6 taxpayer had to do was create entities they controlled and
7 manipulate asset ownership among the entities. In this
8 case, Appellants used a similar scheme to artificially
9 increase the basis of purported assets through a
10 fictitious installment sale like the preceding example.
11 Appellants further used a series of bogus licensing fee in
12 corresponding deductions for the same purported assets
13 among a network of entities owned or controlled by
14 Mr. And Mrs. Pasveer.

15 Today I will explain how Appellants created this
16 abusive tax avoidance scheme to offset \$3,529,787 in
17 income and manufactured a circular flow of money wherein
18 Appellants essentially leased purported intangible assets
19 to themselves. The evidence will demonstrate that the
20 fictitious installment sale and lease of purported assets
21 lacked valid business purpose and economic substance and
22 should, therefore, be disregarded for income tax purposes.

23 I will begin by introducing the players in this
24 iBOB, Mr. and Mrs. Pasveer, PaMaCo, which I will refer to
25 as the S corp, MPIP, LLC, which I will refer to as the

1 LLC, and Pasveer's Children's Trust, which I will refer to
2 as the trust. I will explain the timeline of the
3 transactions at issue which will highlight the tax
4 avoidance purpose of the transactions. I will then
5 discuss the relevant law and analysis showing that the
6 transactions at issue lack economic substance, should be
7 disallowed, and that the penalties imposed should be
8 upheld.

9 For the years in question, tax years 2010, 2011,
10 2012, 2013, and 2014, the S corp was wholly owned by
11 Mr. Pasveer who also served as the CEO. The company
12 mainly received consulting service income from the
13 entities directly or indirectly owned by Mr. Pasveer,
14 otherwise known as the Pasveer Group of Companies.
15 Appellants allege that at some point, Mr. Pasveer created
16 intangible assets or trade secrets. On June 29th, 2010,
17 Mr. Pasveer assigned these purported intangibles to the
18 LLC for a 100 percent membership interest. The agreement
19 was signed by Mr. Pasveer as a signor, and Mr. Pasveer as
20 the manager for the LLC.

21 The purported intangibles included financial
22 control in reporting services, profit and cash flow
23 management and investment services, client database and
24 evaluation, and others. As set forth in FTB's Exhibit A,
25 the LLC stated, "The purported intangibles incurred zero

1 development costs and had no accompanying title or patent
2 before or after contribution to the LLC." The LLC was
3 formed the same day Mr. Pasveer assigned the purported
4 intangibles.

5 In its tax filings, the LLC describes itself as
6 being in the management service business. However,
7 Appellants have conceded that the LLC does not provide any
8 management services. This is found in FTB's Exhibit E.
9 The only income the LLC reported was from the S corp
10 pursuant to a royalty agreement, which was entered into
11 the same day the LLC was formed. Under the terms of the
12 royalty agreement, the LLC leased the purported
13 intangibles to the S corp for an initial signing bonus of
14 \$710,000 plus annual payment of \$1 million. The royalty
15 agreement was signed by Mr. Pasveer, the manager of LLC,
16 the licensor and Mr. Pasveer as president of the S corp,
17 the licensee.

18 On July 1st, 2010, Mr. and Mrs. Pasveer settled
19 the irrevocable Pasveer's Children's Trust with an initial
20 minimal contribution. On the same day,
21 Mr. and Mrs. Pasveer sold their 99 percent of their
22 interest in the LLC to the trust for \$10,700,000 in an
23 alleged installment sale in exchange for a promissory
24 note. The note initially named the trust as the maker and
25 the LLC as the holder of the note, which provided that the

1 trust would pay the principle of \$10.7 million no later
2 than June 30th, 2025, at an interest rate of 3.28 percent.

3 The note was later modified on January 1st, 2013,
4 naming Mr. and Mrs. Pasveer as the holder of the note and
5 reducing the interest rate to 0.87 percent. The trust
6 made zero principle payments on the note in 2010, 2011, or
7 2012. The trust made its first principle payment in 2013
8 and its second principle payment in 2014. As result of
9 this alleged installment sale, the LLC made IRC
10 section 754, 734(b), and 743(b) elections to adjust the
11 basis of the LLC's property for tax year ending
12 December 31st, 2010. The LLC reported a step-up in basis
13 of \$10.7 million. On October 8th, 2010, over three months
14 after Mr. and Mrs. Pasveer allegedly sold the 99 percent
15 interest in the LLC to the trust, Mr. and Mrs. Pasveer
16 obtained a valuation opinion of the fair market value of
17 the LLC.

18 The report claims to access the fair market value
19 of the LLC, including its single asset, the purported
20 intangibles, as \$10.7 million. The analyst who prepared
21 the appraisal interviewed Mr. Pasveer who purportedly
22 supplied copies of internally prepared lists and
23 descriptions of intangible assets, the organizational
24 structure of the company, financial information, and a
25 24-month operational forecast. Notably, these documents

1 have never been provided to FTB or OTA. Because the
2 appraisal was done months after the LLC interest was sold
3 to the trust, the report does not indicate how the
4 purchase price of \$10.7 million was determined at the time
5 of sale on June 30th, 2010.

6 Furthermore, even though the report gives a
7 valuation of only the LLC, the report considers the value
8 of the whole Pasveer Group of Companies owned directly and
9 indirectly by Mr. Pasveer -- Mr. and Mrs. Pasveer. The
10 report also based its valuation on the assumption that the
11 LLC would provide management services and receive payments
12 from all companies in the group. However, the LLC never
13 provided services or received income from any entities,
14 other than the S corp for the licensing fees.

15 So to summarize the events of 2010, on June 29th
16 the Pasveers formed the LLC and assigned purported
17 intangibles to the LLC in exchange for a 100 percent
18 membership interest. In other words, Mr. and Mrs. Pasveer
19 assigned purported intangibles to themselves. The next
20 day Mr. and Mrs. Pasveer arranged a licensing agreement
21 between the LLC and the S corp. In other words, they
22 licensed the purported intangibles to themselves. On
23 July 1st, Mr. and Mrs. Pasveer created the trust and
24 supposedly sold 99 percent of their interest in the LLC to
25 the trust. In other words, they sold the LLC to

1 themselves.

2 The valuation report for the LLC was completed on
3 October 8th, 2010, over three months after the alleged
4 sale was consummated. As a result of these transactions,
5 Mr. and Mrs. Pasveer, the S corp, the LLC, and the trust
6 created a circular flow of money, which can be summarized
7 as follows: The S corp paid licensing fees to the LLC and
8 claimed the deductions for these fees. The LLC reported
9 the licensing fees as income, which it offset with
10 corresponding and nearly identical amortization
11 deductions. And the trust received income as 99 percent
12 member of the LLC, which it then paid to
13 Mr. and Mrs. Pasveer as alleged payments on the promissory
14 note.

15 FTB has disallowed the alleged sale of the LLC
16 interest to the trust and has also disallowed the S corp's
17 reported licensing fee expense deductions. FTB's
18 disallowance of the S corp's deductions resulting --
19 resulted in corresponding increase to the Pasveer's
20 flow-through income from the S corp. This formed the
21 basis for the Notices of Proposed Assessment and
22 subsequent Notices of Action at issue here.

23 The first issue here is whether FTB properly
24 disallowed these transactions because they lacked economic
25 substance in a nontax business purpose. As set forth in

1 United States Supreme Court Case, Gregory versus
2 Helvering, while taxpayers are generally allowed to
3 structure their business transactions in a manner that it
4 considers the effective taxes, the taxpayer does not have
5 the right to avoid taxes by structuring transactions
6 lacking in economic substance. The economic substance
7 doctrine is a judicial doctrine that prevents taxpayers
8 from subverting the legislative purpose of the tax code by
9 engaging in transactions that are fictitious or lack
10 economic reality to simply reap a tax benefit.

11 The Ninth Circuit Case, Casebeer versus
12 Commissioner, established a two-prong test to determine --
13 or to decide whether a transaction has economic substance.
14 The first is a subjective business inquiry into the
15 taxpayer's stated motives for engaging in the
16 transactions. And the second is an objective economic
17 substance analysis of the business and practical effects
18 of engaging in the transactions. In the Appeal of Alyn,
19 the California State Board of Equalization confirmed that
20 the factor set forth in Casebeer apply for California
21 income tax purposes. And the Office of Tax Appeals
22 adopted the two-part test in Appeal of La Rosa Capital
23 Resource, Inc., and Appeal of Gatewood Corporation.

24 In examining the first prong, the subjective
25 business purpose test, Appellants stated purpose for the

1 transfer of the purported intangibles to the LLC, the
2 licensing deal between the S corp and the LLC, and the
3 sale of the Pasveer's interest in the LLC to the trust was
4 for estate planning purposes, and that these transactions
5 reflect, quote, "Textbook estate planning techniques," end
6 quote; and that's in their brief. However, much like the
7 transactions at issue, Appellants' argument is circular.
8 It presumes mere estate planning purposes are sufficient
9 to pass the business-purpose prong.

10 Appellants have not cited any controlling legal
11 authority that has sound -- found similarly structured
12 transactions to have a legitimate purpose. And they have
13 also cited no controlling legal authorities supporting
14 their assertion that estate planning for personal finances
15 can be legitimate purpose to satisfy the business purpose
16 test. The LLC itself lacks business purpose. It had no
17 business activity during the years in question whatsoever,
18 and Appellants conceded that the LLC does not provide
19 management services. The only income the LLC received was
20 from the S corp from the licensing agreement.

21 The purported sale of the LLC interest to the
22 trust lacked business purpose. There's no documentation
23 contemporaneous with the sale that justifies the sale
24 price of \$10.7 million. Rather, it wasn't until
25 October 8th, 2010, that a valuation report conveniently

1 valued the LLC and its single asset at the same time with
2 the same exact price that the trust paid
3 Mr. and Mrs. Pasveer months earlier. Now, we did hear
4 that there are potentially drafts of that document, but
5 we've never been provided with those. The only copy that
6 we have is October 8th, 2010.

7 There are also no patents or other intellectual
8 property documents associated with alleged assets. And
9 the only documentation of these purported intangibles
10 Appellants provided to FTB consist of lists describing the
11 service and purported knowledge that Mr. Pasveer
12 accumulated during his career. It is doubtful whether
13 these intangibles even existed, let alone whether they
14 were legitimately valued at \$10.7 million. The trust
15 lacked business purpose. It maintained nominal assets
16 during all taxable years at issue, and at no point had
17 sufficient capital to purchase the LLC interest from Mr.
18 and Mrs. Pasveer. The trust had no business activity or
19 transactions, other than the so-called purchase. The
20 trust's only funds were the distributions from the LLC,
21 which the LLC received from the S corp.

22 The timeline of these transactions lack business
23 purpose. Within the span of three days,
24 Mr. and Mrs. Pasveer created the LLC, transferred the
25 purported intangibles, created the licensing agreement,

1 created the trust, and sold their interest in the LLC to
2 the trust. Based on the foregoing, there were no nontax
3 business purposes for these transactions. The S corp paid
4 licensing fees to the LLC, which then paid the trust,
5 which then paid Mr. and Mrs. Pasveer. These transactions
6 were merely a mechanism for Appellants to pay themselves
7 and claim bogus deductions to offset income. Therefore,
8 they fail the subjective business purpose prong of the
9 economic substance analysis.

10 The second prong of the economic substance
11 doctrine considers the objective economic substance
12 analysis of the business and practical effects of engaging
13 in the transactions. Courts have used different measures
14 to determine the economic substance of a transaction, such
15 as the legitimate or realistic possibility for a pretax
16 profit. This was held in the Second Circuit Court of
17 Appeals Case Gilman versus Commissioner, in whether the
18 taxpayer has shown that the transaction resulted in a
19 meaningful and appreciable enhancement in the taxpayer's
20 net economic position, other than the tax consideration.
21 And this was held in the U.S. Supreme Court Case in
22 Knetsch versus United States.

23 In considering the possibility for a pretax
24 profit, there must be a reasonable expectation that nontax
25 benefits will meet or exceed transaction cost. As held in

1 the Knetsch case, offsetting legal obligations or circular
2 cash flows may affectively eliminate any real economic
3 significance of the transaction. Here the purported sale
4 of an LLC interest allegedly worth \$10.7 million did not
5 provide a nontax economic profit. It was just a means to
6 a tax avoidance end. Appellants allege that
7 Mr. and Mrs. Pasveer profited from their structure, and
8 that the LLC will profit from the royalty agreement.
9 However, Appellants seem to forget that the \$10.7 million
10 purported gain was offset with the S corp's licensing fee
11 expense deductions, which reduced the past year's flow
12 through income from the S corp. This offsetting legal
13 obligation and circular cash flow affectively eliminated
14 any real economic significance of the transaction.

15 As for Appellants' argument that the LLC will
16 profit from its licensing activities, let me remind you
17 that the LLC reported zero income during the taxable years
18 at issue other than the licensing fees it received from
19 the S corp. The questionable existence of the purported
20 intangibles also cast doubt on the possibility of profit,
21 as no reasonable person can expect profit on the sale of
22 fictitious assets.

23 Next, we examine whether there was any meaningful
24 enhancement of Appellants' economic position due to the
25 transactions at issue. In this case, Mr. Pasveer was the

1 sole shareholder of the S corp, and Mr. and Mrs. Pasveer
2 were sole members of the LLC before the purported sale of
3 their interest to the trust. Mr. Pasveer signed his own
4 name on behalf of both parties on the royalty agreement
5 between the LLC and the S corp. Appellants claim that the
6 trust was independent because it was managed by a trustee.
7 However, the original trustee was Lawrence Stevens, the
8 accountant and return preparer for the Appellants in the
9 Pasveer Group of Companies. As set forth in FTB's
10 Exhibit M, Mr. and Mrs. Pasveer stated that they relied on
11 the advice of Mr. Stevens in the creation of the trust and
12 the purported sale of the Pasveers' interest in the LLC to
13 the trust. Following Mr. Steven's resignation from the
14 trustee position, the Pasveers appointed Sovan Phang as a
15 trustee.

16 However, we know now that Mr. Phang is or now --
17 is or has been employed by Exterior Cladding Systems,
18 Incorporated, one of the constituent entities of the
19 Pasveer Group of Companies during the years at issue.
20 That Mr. and Mrs. Pasveer appointed Mr. Stevens, the
21 architect they used to construct this whole scheme, and
22 Mr. Phang, yet another member of the Pasveer extended
23 corporate family, exposes that the trust was likely never
24 to be independent.

25 The Pasveers were also able to decide when and

1 how the trust would make payments on the promissory note.
2 They modified the note to reduce the interest rate from
3 3.28 percent to 0.87 percent. The trust made zero
4 principle payments on the promissory note in 2010, 2011,
5 or 2012, and incurred no late-payment penalties. The
6 trust is therefore, nothing but a straw man controlled by
7 Mr. and Mrs. Pasveer allowing them to funnel money through
8 their network of controlled entities back to themselves.
9 Based on the foregoing, the transaction at issue fail both
10 the subjective business purpose and objective economic
11 substance prongs of the economic substance analysis.

12 Office of Tax Appeals has requested that the
13 parties address whether IRS ruling -- Revenue Ruling
14 202414 applies here, and whether the economic substance
15 doctrine applies to transactions involving trusts.
16 Through a series of examples involving related entities,
17 Revenue Ruling 202414 essentially states that certain
18 basis-shifting transactions between partnerships and
19 related entities do not have economic substance as defined
20 under Internal Revenue Code section 7701 subdivision (o).
21 In each of the examples provided in the ruling, the
22 related parties exploit disparities between inside and
23 outside basis by first creating and then capitalizing on
24 the disparity by either transferring a partnership
25 interest in a nonrecognition reorganization transaction or

1 distributing property to a partner, after which the
2 partnership claims the basis adjustment. The ruling
3 states that the resulting inflated basis adjustment does
4 not change the economic position of the related parties
5 and only increases the depreciation deductions or reduces
6 gain upon future sale of the property involved.

7 As you may already notice, strikingly similar
8 facts are present in this appeal, related parties, the
9 apparent shuffling of property among them, artificial
10 basis increases, bogus deductions, and the almost certain
11 reduction or elimination of gain upon the future sale of
12 property. In this case, of course, we have the additional
13 facts that the taxpayers generated the bogus deductions by
14 licensing intangible assets to themselves, and the looming
15 question of whether these assets existed in the first
16 place.

17 As for whether the economic substance doctrine
18 applies to transactions involving trusts, the IRS has
19 identified several types of abusive trust schemes, both
20 foreign and domestic. And Courts have applied the
21 economic substance doctrine to transactions involving
22 trusts. In one example, in the Ninth Circuit Case
23 Zmuda versus Commissioner, the Court applied the economic
24 substance doctrine to transactions involving, not just
25 one, but three trusts. The taxpayers served as trustees

1 of one trust, which in turn acted as a trustee for a
2 second and third trust.

3 The taxpayers transferred income-producing
4 property into the second trust in exchange for
5 certificates of beneficial interest, which they sold to
6 the third trust. The second trust loaned money to the
7 taxpayers in exchange for promissory notes, which were
8 then gifted to the taxpayers, resulting in approximately
9 \$21,000 in alleged tax-free income. The Court found that
10 the taxpayers had complete control over the trust
11 property, and the trust engaged in no trade or business
12 and that the transaction lacked economic substance. In
13 the precedential OTA Case Appeal of La Rosa Capital
14 Resource, Incorporated, this Body upheld a noneconomic
15 substance transaction penalty to a transaction that
16 purportedly sought to combine two existing trusts and
17 avoid estate taxes. But OTA found that there was no
18 profit seeking motive or economic substance in the
19 transaction. Clearly, tax consequences of a transaction
20 depend on the substance and not form. And the economic
21 reality of a transaction is independent of the types of
22 parties involved in the transaction, including trusts.

23 The next issue in this case is whether Appellants
24 have established that the noneconomic substance
25 transaction or nest penalty, under Revenue & Taxation Code

1 section 19774, was improperly imposed. The nest penalty
2 adds 40 percent of the amount of nest understatement. In
3 this case, the NPA included the nest penalty based on the
4 determination that Appellants' purpose for the licensing
5 of purported intangibles from the LLC to the S corp, the
6 alleged sale of 99 percent of the interest in the LLC to
7 the trust, and the LLC's step-up in basis of \$10.7 million
8 were solely for tax avoidance purposes. As previously
9 discussed, there is significant evidence showing that the
10 steps taken in these transactions lacked any real business
11 purpose. Rather, the purpose was the generation of
12 deductions that offset \$3,529,787 of the Pasveers'
13 flow-throw income from the S corp. Therefore, the nest
14 penalty was properly imposed.

15 For the interest-based penalty, if a taxpayer has
16 a deficiency attributable to an abusive tax avoidance
17 transaction and has been contacted by FTB regarding such
18 transaction, section 19777 imposes a penalty equal to
19 100 percent of the interest payable. As with the nest
20 penalty, FTB properly imposed the interest-based penalty
21 because the transactions at issue lacked economic
22 substance. Appellants were notified during audit that
23 these transactions lacked business purpose, and that the
24 only anticipated tax benefit was tax avoidance. For these
25 reasons, FTB properly imposed the 100 interest-based

1 penalty.

2 Lastly, Appellants argue that their federal audit
3 for 2013 is dispositive here and rely on 16.1 --
4 section 16.1 of FTB's Manual of Audit Procedures, which
5 state that, quote, "If the IRS has examined and changed or
6 no changed an issue, we will not pursue it unless there's
7 clear information to show that the IRS was wrong. This is
8 a rare event," end quote.

9 However, Appellants ignore section 1.1 of the
10 same manual, which clearly states that the manual is
11 provided for the guidance of audit staff, are not
12 authoritative, and may neither be cited to support an
13 audit position, nor relied upon by a taxpayer. Instead,
14 the manual is a resource for understanding audit
15 procedures and guidelines. Section 16.1 also contemplates
16 explicitly that the IRS may be wrong. But more
17 importantly, Appellants' argument begs the question that
18 the IRS had already examined these transactions before FTB
19 did. In fact, FTB first contacted Appellants about audit
20 selection on February 26th, 2015. Whereas, the IRS did
21 not make contact with them until June 22nd, 2015, and
22 November 18th, 2015, as identified in Appellants'
23 Exhibits 12 and 14.

24 Furthermore, FTB's audit findings predate the
25 IRS' notices of no change audits. FTB issued its audit

1 findings to the Pasveers on March 2nd, 2016, whereas the
2 IRS issued its no change audit on March 31st, 2016, as
3 identified in Appellants' Exhibit 21. For PaMaCo, FTB
4 issued its audit findings on March 2nd, 2016, and the IRS
5 issued its no change audit to PaMaCo on
6 November 18th, 2016, as forth in Appellants' Exhibit 22.
7 Therefore, not only did FTB initiate its own audit before
8 the IRS, FTB issued its audit findings before the IRS
9 issued its no change audit letters to the Pasveers and
10 PaMaCo. As a reminder, section 16.1 states that
11 generally, FTB will not pursue and issue if the IRS,
12 quote, "Has examined," end quote, an issue. Clearly, the
13 IRS had not examined the issue when FTB began its audit.
14 At most, it appears the audits were conducted
15 concurrently. But even if the IRS had already examined
16 all transactions at issue, section 16.1 clearly
17 contemplates that the IRS may, in fact, be wrong. And
18 while this may be a rare event, it's not impossible or an
19 unimaginable event.

20 Here, the IRS did not perform a full audit of the
21 returns of taxable years at issue, nor did it provide any
22 analysis of the transactions at issue. It merely issued
23 no change audit letters to Appellants for 2013 after FTB
24 had already completed its analysis for of the transactions
25 for 2010 through 2014. Therefore, FTB is not bound by the

1 IRS' no change audit letters.

2 In conclusion, Appellants have failed to show
3 that the transactions at issue have economic substance.
4 Appellants insist that they followed textbook estate
5 planning techniques, when they really followed a textbook
6 basis-shifting tax scheme. Therefore, FTB request that
7 OTA sustain the notices of action issued for 2010 through
8 2014.

9 Thank you.

10 JUDGE LE: Thank you for your presentation. Let
11 me turn to the panel.

12 Judge Lambert, any questions for Respondent?

13 JUDGE LAMBERT: Hi. I had one question. Just
14 to, like, confirm or just to clarify, finding noneconomic
15 substance -- that the transaction lacks economic substance
16 under Issue One, looking at case law, is that the same as
17 finding a noneconomic substance transaction under the nest
18 penalty under R&TC section 19774? So basically, if you
19 find there's no economic substance under Issue One, does
20 that mean that the nest penalty applies in terms of
21 noneconomic substance; so they're basically the same?

22 MR. MILLER: Can I ask for clarification on that
23 question, Judge Lambert?

24 JUDGE LAMBERT: Yeah. Under R&TC section
25 19774 --

1 MR. MILLER: Yeah.

2 JUDGE LAMBERT: Sorry.

3 MR. MILLER: No. It's okay. My question was
4 when you refer to Issue One, are you referring to prong
5 one of the economic substance doctrine or --

6 JUDGE LAMBERT: Yeah, just the economic substance
7 portion of it, I mean.

8 MR. MILLER: That's -- okay. The second prong.
9 Okay.

10 JUDGE LAMBERT: Yeah.

11 MR. MILLER: Well, the economic substance
12 doctrine, in order for a finding of economic substance --
13 of noneconomic substance, either prong can be faulty. So
14 even if a prong is met, if they don't meet both prongs,
15 then a finding can be found for -- that a transaction
16 lacked economic substance. And for any transaction that
17 lacks economic substance, the nest penalty can be applied.

18 Does that answer your question?

19 JUDGE LAMBERT: Yeah. So basically, you find
20 noneconomic substance in that prong, the nest penalty, and
21 that portion would be applicable because the analysis
22 would be the same?

23 MR. MILLER: I'm still not sure if I understand
24 your question. If we -- a finding of noneconomic
25 substance can be found by either prong failing. So if it

1 lacks a business purpose or economic effect, then a
2 determination of -- that it lacked economic substance can
3 be made.

4 JUDGE LAMBERT: Okay. So there's the business
5 purpose portion in --

6 MR. MILLER: Correct.

7 JUDGE LAMBERT: -- that maybe one where it's
8 different? Okay. Okay. Thanks. That was my question.

9 JUDGE LE: Thank you, Judge Lambert.

10 Judge Stanley, any question for Respondent?

11 JUDGE STANLEY: Yes. It just raised more of a
12 question without answering it, in my mind anyway. So what
13 he's -- what I think Judge Lambert was trying to
14 differentiate is, if you find that it fails under the
15 business purpose test, then it is a finding of lack of
16 economic substance, is what you're saying, which means
17 that the nest penalty would necessarily apply?

18 MR. MILLER: It could apply, yes. If -- if the
19 OTA finds noneconomic substance, then the nest penalty
20 will apply, yes.

21 JUDGE STANLEY: And you're saying that under
22 either prong, if it fails, that we are making a finding of
23 noneconomic substance.

24 MR. MILLER: Well, it's your finding to make.
25 But I would argue --

1 JUDGE STANLEY: Well --

2 MR. MILLER: -- for that, yes.

3 JUDGE STANLEY: No.

4 MR. MILLER: Yeah.

5 JUDGE STANLEY: I'm just looking for your
6 position. If we make a finding under either prong, you're
7 still saying that we're make a finding of noneconomic
8 substance.

9 MR. MILLER: I think I agree with your statement.

10 JUDGE STANLEY: Okay. I am going to hold
11 questions because I think that Mr. Lobb might respond and
12 provide the other information that I was interested in.

13 JUDGE LE: Okay. Thank you, Judge Stanley.

14 I do have a few questions right now. You
15 mentioned iBOB. Can you tell me again what that stands
16 for.

17 MR. LEWALLEN: Installment sale or -- yeah.
18 "Installment Sale Bogus Optional Basis Transaction."

19 JUDGE LE: Okay. And was this concept mentioned
20 in FTB's briefs?

21 MR. LEWALLEN: It was mentioned in our audit
22 issue presentation sheets that were provided to the
23 taxpayer. I'm not sure if it was mentioned in the brief.

24 JUDGE LE: Thank you. Let me ask this separate
25 question. In regards to interest concession that FTB

1 made. I just want to be clear on what that applies to.

2 MR. LEWALLEN: Okay.

3 JUDGE LE: So FTB's concession to abate interest
4 for the period April 7th, 2017, through July 25th, 2019,
5 this applies both PaMaCo and the Pasveer?

6 MR. LEWALLEN: Correct.

7 JUDGE LE: Okay. Second, there are two items
8 that relate to interest, and that's first, the 100 percent
9 interest-based penalty; and second, that's interest under
10 19101. Does that make sense?

11 MR. LEWALLEN: Just the interest that has
12 accrued?

13 JUDGE LE: Yeah.

14 MR. LEWALLEN: Yeah. Correct.

15 JUDGE LE: Okay. So which interest is your
16 concession -- does your concession apply to?

17 MR. LEWALLEN: So we're conceding the interest
18 for that specific period. So my understanding -- and
19 please correct me -- is that interest will be relieved for
20 that period, and there would be no corresponding
21 interest-based penalty for that period.

22 MR. MILLER: I think that's right. And to be
23 clear, one is an interest, and one is a penalty.

24 JUDGE LE: Okay.

25 MR. MILLER: So there's two -- it's not two

1 interests. It's one is an interest, and one is an
2 interest or a penalty based on the interest.

3 JUDGE LE: Okay. So to the extent that there was
4 interest-based penalty running during those periods, then
5 you're conceding the 1 percent interest-based penalty?

6 MR. MILLER: Yes.

7 MR. LEWALLEN: Yes.

8 JUDGE LE: Okay. I guess the way I understand
9 it, the interest-based penalty it runs from the return due
10 date to when the NPA was issued.

11 MR. MILLER: Correct.

12 JUDGE LE: So I think in this case the NPAs were
13 issued in 2016?

14 MR. MILLER: Yes. The penalty is actually on the
15 NPA. It shows the amount.

16 JUDGE LE: Yeah.

17 MR. MILLER: So -- yes. Any abatement of
18 interest after that date would not be affected, or the
19 interest penalty would not be affected by that. So I
20 think for this abatement period you're right.

21 JUDGE LE: Okay.

22 MR. MILLER: It would not be reduced.

23 JUDGE LE: Okay. I understand. So FTB --

24 MR. MILLER: I hope we clarified that. Sorry
25 about that.

1 JUDGE LE: Okay. So FTB is conceding to abate
2 the interest as the interest that's under 19101, not the
3 interest-based penalty, because the interest-based penalty
4 wasn't running at the time.

5 MR. MILLER: Correct.

6 MR. LEWALLEN: Correct.

7 JUDGE LE: Okay. Thank you. Okay. That's all
8 the questions I have right now.

9 Let's turn it to Appellants for their closing
10 statements.

11 MR. LOBB: Sure. So thank you, Judge Le. I'm
12 going to comment on some of the presentation that was just
13 made, and then Elaine Serrao will comment on Revenue
14 Ruling 202414, if that's okay.

15 JUDGE LE: Okay.

16 MR. LOBB: Okay.

17

18 CLOSING STATEMENT

19 MR. LOBB: So I was quite surprised that there's
20 some argument being made that this is an BOB [sic]
21 transaction. Because if you read about these BOB
22 transactions, the fact pattern is completely different.
23 And as was evident in the testimony that was -- that was
24 somewhat ignored here was Counsel immediately went into
25 that under this transaction, it reduces or eliminates cap

1 gains when sold, those cap gains occurred on day one when
2 the sale took place because it was a non-grantor trust.
3 There was only one way to report this. There was not
4 another way to report this. You had to report the sale
5 and pick up the gain.

6 Now, it's an installment sale, but that doesn't
7 mean cap gains go away. You pick them up, and you're
8 gonna pick up -- you're gonna pick up that cap gain twice.
9 You're gonna to pick it up the first time when you do the
10 sale, which is what happened here on the installment sale.
11 You're gonna pick it up again when that trust -- if that
12 trust ever sells that asset. So the cap gains don't go
13 away.

14 He then said that installment payments are never
15 made on these -- on these BOB transactions here. The
16 testimony that we have is that the installment payments
17 have been made all the way through today's date. And, as
18 a matter of fact, since the audit period started, there
19 has been no expense deduction taken by PaMaCo. They pay
20 taxes, and the taxes have been made on the installment
21 sale to the taxpayer. And that has continued through
22 today's date. So these facts that support a BOB
23 transaction, they don't exist here at all.

24 Counsel shows up today and gives us a piece of
25 paper that shows that one of the independent trustees,

1 Sovan Phang, owns a company called Exterior Cladding. And
2 Counsel says in his closing that that shows that he's an
3 employee of Mark Pasveer. Mark Pasveer specifically
4 testified that he's not an employee, that he sold this
5 company to this gentleman. The gentleman was renting from
6 him, and then he since moved to a different facility.
7 There's -- that's -- the fact that is in evidence right
8 now is completely contrary to what Counsel just read off
9 his piece of paper.

10 Going into -- Counsel says it's a related party
11 transaction. And if you go into -- and Elaine will talk
12 about this on Revenue Ruling 202414. And also in regards
13 to these BOB transactions, they talk about related party
14 transactions and related partnerships. Here, you have a
15 non-grantor trust that under the Internal Revenue Code is
16 specifically an unrelated party. And that's why you pick
17 up the gain on day one when the sale transaction takes
18 place. Counsel infers that, if in a year a payment is not
19 made on promissory note that that somehow that makes a
20 transaction wrong or inappropriate. Now, this happens all
21 the time on installment sales. But what we know is that
22 payments have since been made, and they continue to be
23 made to the tune of millions of dollars, and the gain has
24 been picked up.

25 So taxes are being paid and I -- when -- when I

1 hear the argument that this is a BOB transaction, or I
2 hear the argument that no taxes are being paid, or that
3 there is no substance to the transaction, I'm bewildered.
4 I was sitting here shaking my head listening to that
5 because the facts are completely the opposite. Taxes have
6 been made. And, as a matter of fact, at the end of the
7 day, Mr. Pasveer will pay more in taxes than had this
8 never happened. But what he is going to have, at the end
9 of the day, is an estate plan, for his daughters, that
10 holds a very valuable asset that when he -- his 706 return
11 is -- is filed, the appreciation and the value of the
12 assets in that trust will be out of his estate. That's
13 why people do estate planning of this nature. There are
14 thousands and thousands of these trusts in this country
15 and -- for this very purpose. This type of installment
16 sale happens all the time.

17 Counsel seems to be confused on the concept of
18 intangible assets. He says there's no intangible asset
19 because there's no patent. Intangible assets come in many
20 forms. You have intellectual property consisting of
21 copyrights, trade secrets, patents, and trademarks. And
22 then you have intangible assets, such as vendor lists,
23 which is what was in the Martin Ice Cream case, or a
24 customer list that we cite in the brief in the Howard
25 case. But in the Howard case, the Tax Court disallowed

1 the allocation of the goodwill because there was a
2 noncompete in place. Here, there's a not a noncompete.
3 So the customer list can remain the asset of the
4 individual as opposed to the entity. And that's what we
5 have here, and that's what the testimony was.

6 One other point, and I somewhat understand the
7 confusion by Counsel on the structure, and that was that
8 PaMaCo was the hub entity for the payments coming through
9 on the royalties and the management fees. That was
10 PaMaCo, and that was testified to by Mr. Pasveer. PaMaCo
11 was the one to collect those monies and then pay them on
12 the licensing arrangement with MPIP; and so that was the
13 structure.

14 If there's something to be said for taxes here,
15 it's that because of the amortization there was a
16 deferral. That's the one thing that -- that could be
17 said, was the benefit to the taxpayer here. It wasn't an
18 elimination. It was a deferral because the amortization
19 offsetting that income coming through, ultimately, the
20 taxpayer picks up the tax when the payment on the
21 installment note is made. So there is a deferral, but
22 what happened here is very interesting. The taxpayer
23 deferred income into higher tax rates because over time
24 and over the years the -- the affective tax rates in the
25 State of California have gone up. Had he paid all of the

1 tax and not done the installment sale, he would have
2 picked up a lower marginal rate.

3 As far as the documentation that Counsel says was
4 not provided, for an example, I think he was inferring
5 that earlier that we did not provide the irrevocable
6 living trust, the whole estate plan of Mr. Pasveer, and
7 some other documents that conceivably the valuation expert
8 had. We provided documents with respect to every category
9 that was requested. Today there were some requests that
10 came through that, honestly, we didn't realize they had
11 ever wanted or asked for or necessarily needed. I don't
12 really know why some of the documents that he's
13 complaining about were necessary for any part of the
14 analysis here. Their analysis is very clear this is a BOB
15 transaction, and there was no taxes paid; which is just
16 obviously not the point, and those documents would never
17 get them past that issue.

18 So the documents don't lend to anything on their
19 analysis, in particular the entire estate plan. I don't
20 really know where that comes into play. I -- I think if
21 situations where there are deferrals, there are deferrals
22 all the time, and deferrals aren't always good. So if you
23 receive a deferral on the payment of tax, in fact,
24 sometimes it can be quite harmful. If you, for instance,
25 do not do a Roth IRA or -- or you don't do a Roth 401(k),

1 you're deferring into the future, and we don't know what
2 the tax rates are going to be in the future.

3 So I don't really know what can be said about an
4 argument that there's no economic substance because
5 there's a deferral. Because that's basically the argument
6 at this point, and that's an argument that I don't think
7 falls within any of the case law as far as economic
8 substance. It -- it just doesn't support that type of
9 claim.

10 There's a minor point I'm gonna make, and then
11 I'll -- I'll turn this over to Elaine.

12 The IRS examination was not really concurrent.
13 Yes, the FTB did start, but then they stopped. The IRS
14 then completed their examination, and then the FTB started
15 their examination; and then low and behold 10 years later
16 here we are. But the IRS did close their examination and
17 provided the no change a very long time ago. I understand
18 that they can decide that the IRS was wrong, which they've
19 done and they're moving forward but -- but the -- I -- I
20 don't think we need to wrestle with who -- who completed
21 their examination first. The IRS has been done for a very
22 long time.

23 And then the BOB issue too I found surprising
24 because it's not in their brief and I -- to me it just
25 seems like grabbing at straws at this point because the

1 BOB transaction talks about related party transactions,
2 and that's specifically not what we have here.

3 So on that note, I'll -- I'll turn it over to
4 Elaine to discuss 202414, and think maybe something on the
5 nest -- the application of the nest penalties.

6 MS. SERRAO: With respect to Revenue Ruling 24 --
7 2024-14, it presents three scenarios which are
8 inapplicable to the instant matter. In scenario number
9 one, there's a nonrecognition transfer pursuant to 730 --
10 or excuse me -- 721, which allows for the basis shifting.
11 And scenario number two and three, it's -- the basis
12 shifting is a reflection -- is a result of 731 current and
13 liquidating distributions. All three of which are
14 nonrecognition events.

15 With respect to the instant matter, yes,
16 Mr. Pasveer capitalized the intellectual property into
17 MPIP, which is a 721 nonrecognition transaction, but we do
18 have a subsequent sale which is where tax has been
19 recognized to the Children's Trust. So the application of
20 2024-14 is again, inapplicable, specifically, because each
21 scenario the basis shifted as a result of nonrecognition
22 transactions, as opposed to here where we've got a sale
23 pursuant to a third-party valuation establishing the sales
24 price, which allowed for the 754 election.

25 JUDGE LE: Thank you. And now are you also

1 planning to discuss the nest penalty?

2 MS. SERRAO: No.

3 JUDGE LE: No. Okay.

4 With that, does end your closing remarks?

5 MR. LOBB: Yes, it does. Thank you.

6 JUDGE LE: Thank you.

7 Let me turn to the panel one last time for final
8 questions.

9 Judge Lambert, any final questions for either
10 party?

11 JUDGE LAMBERT: I had one question for Appellant.
12 Just going off of what FTB said on the profit purpose, I
13 was just wanting to ask or have clarified what other than
14 tax, you know, effects, what the difference would have
15 been for PaMaCo and business in general if they had not --
16 if there had been no creation of the trust or transfer of
17 the IP? How would it have made a difference for the
18 business?

19 MR. LOBB: For the business, the conglomerate
20 business or PaMaCo or MPIP?

21 JUDGE LAMBERT: Yeah. Not MPIP, because I think
22 that was one that was created. But just if their
23 licensing the IP to PaMaCo which, you know, is related to
24 all the other business, the business in general, how would
25 it -- how did it make a difference for, you know, just

1 business in -- like what -- like if -- if it had not been
2 done in the first place, or what difference did it make,
3 exactly?

4 MR. LOBB: Well, it -- it makes a huge difference
5 in a -- in a lot of different ways, and let's start
6 with -- let's start with there being a corporate asset.
7 So we know from Tax Court cases, in particular -- and I've
8 mentioned Martin, but there's many other cases that we had
9 cited -- where it's recognized that MPIP -- neither MPIP
10 nor any of the conglomerate entities owned the
11 intangibles. Those were owned by Mark Pasveer. So PaMaCo
12 and -- and the other entities had no right to use the
13 customer list, and they had no right to use the
14 intellectual property. By signing a contract, by entering
15 into a licensing and royalty arrangement, that entity now
16 has contractual right to use those assets, okay -- and
17 enforcement rights from an intellectual property
18 standpoint under the licensing agreement, the trademark
19 specifically.

20 So now it has a contractual right, and that helps
21 the business of PaMaCo. Otherwise, what would happen is
22 you would have a scenario where PaMaCo was not really
23 entitled to any of it whatsoever. But it's important in
24 the context of asset protection because now we know,
25 and -- and we've heard the testimony that in the

1 construction industry, litigation is -- is rampant; and
2 it's a concern of people involved in that industry. That
3 is why Mr. Pasveer early on was creating entities.

4 If one of the entities went down, those assets
5 would not be held in that entity. They're held in MPIP,
6 and there's a licensing arrangement. So there's the
7 ability to break that contract and sever that relationship
8 with debtor entity and continue on in business, which is a
9 very, very valuable thing. And, by the way, this happens
10 across the entire world all the time. And normally, you
11 see it in bigger companies. So bigger companies typically
12 will house their intellectual property outside of the main
13 operating entity for tax reasons, but also for asset
14 protection purposes and enforcement reasons.

15 So there is a -- a lot of reasoning behind doing
16 this that is completely un-tax related. But then again, I
17 want to go back to the point that -- and this didn't
18 really help anything tax-wise. There may have been a
19 deferral, but that deferral ultimately did not eliminate
20 tax, number one. And number two, it deferred tax into a
21 higher tax regimen.

22 JUDGE LAMBERT: Okay. Thank you. I appreciate
23 it.

24 MR. LOBB: Thank you.

25 JUDGE LE: Judge Stanley, any final questions for

1 either party?

2 JUDGE STANLEY: Yes. Also for Appellant, and it
3 ties into what Judge Lambert just asked.

4 We have gotten over the course of these many
5 hours and with all the briefing, that there's a major
6 disagreement on the tax ramifications of these
7 transactions. But there's been little said on the reasons
8 for the -- for the structure of the non -- the business
9 purposes for structuring it the way it was done. I think
10 the briefing and the testimony both said that it was for
11 the purpose of estate planning, asset protection, and
12 succession planning. And you just explained a little bit
13 about the asset protection part, and I get the estate
14 planning part. But I'm not -- I'm not really
15 understanding how this whole structure is for succession
16 planning, for example, because the businesses are not in
17 the trust, just the trade secret is.

18 MR. LOBB: So I'm very glad that you asked that
19 because I'm sort of passionate about this part of the
20 planning that goes on. So on the succession end of it --
21 and my profession is representing closely held companies
22 and their owners, and I -- I've done it my entire career.
23 When they reach the point of selling their company -- when
24 I started practice, I worked for a bigger firm that --
25 that represented international companies that were more

1 focused on the development of their intangible assets and
2 their intellectual property.

3 When I started my own firm, I -- I started
4 representing people like Mr. Pasveer who really have
5 latent intellectual property in their companies, and they
6 don't know how to display it. For instance, when we reach
7 a point of succession, and we're going to go out to a
8 third party and sell it, what closely held owners of
9 businesses always say is, "Well, I make good money because
10 I work really hard."

11 Well, you work really hard, but Mr. Ghosn
12 testified earlier that he not only works really hard, but
13 there is a surprising difference between Mr. Pasveer's
14 entities by way of performance in the marketplace compared
15 to his competitors. That's called a trade secret. That's
16 called we're doing something different, and that's why we
17 perform so well. So when you do structuring like this and
18 whenever you do a transaction, private equity companies
19 have seen this a million times, this type of structuring.
20 They're used to it, and they do the roll-up.

21 There's one of three ways they go about doing
22 this on a sale transaction. I've been referring to a
23 roll-up, but sometimes they'll do a direct purchase from
24 that Children's Trust of, either the LLC, or they'll
25 purchase the assets straight out of the LLC. What this

1 does that's so unique, is it puts an emphasis on that
2 intellectual property, that intangible asset, and those
3 trade secrets. And so in due diligence they ask for, you
4 know, these valuation reports, and you put them in the
5 portal for due diligence, or they'll go and get their own.
6 But since you very specifically isolated these assets --
7 just like a big company would do -- it draws attention to
8 the fact that you perform at a very high level because of
9 these trade secrets. There's something there that they
10 want.

11 Now, if you're an attorney in private practice,
12 it's a horrible business because it's all goodwill, right.
13 When you -- when you leave, your clients go away. They
14 don't necessarily go to the new firm. This is a
15 consulting business and very much like, you know, when an
16 attorney wants to retire, their succession plan is another
17 law firm or other attorneys, and you need to hang out for
18 a little bit and deliver the clientele. Here, again, if
19 someone buys this company, on the succession end when Mark
20 decides he wants to retire, what's going to happen is
21 there's going to be an earn out, and there's going to be a
22 delivery of these intangible assets.

23 And what they'll do when the deal is negotiated
24 on the succession plan is, they'll say you're going to
25 have a five-year earn out, and we're going to bench mark

1 this customer list. And if it performs at this level,
2 you're gonna get paid this. If it's here, you're gonna
3 get this, and if it's here you're gonna get that. But
4 it's very directed towards this MPIP entity and the assets
5 inside of it, and it's an integral part of his estate
6 plan. The fact that he's identified it now is a lot
7 better than, for instance, what happened in Martin Ice
8 Cream.

9 In Martin Ice Cream, there was a simply the sell
10 of the business and an allocation of the vendor
11 relationship on a tax form. And the server said, hold on.
12 What is this? We don't understand what you're doing.
13 Here, he's already done the allocation. There's already
14 been a valuation. It's already been paid for in the
15 structure, or he's still paying for it. He's been paying
16 for it all these years, but it's there. It's
17 identifiable, and it's something that can be marketed so
18 that he can retire sooner. He can explain it to people.
19 He can show it to them, and it's something that in their
20 minds looks more like a intangible asset; something that's
21 real.

22 So it's a great question. And as you can see,
23 I'm quite passionate about this part of the planning that
24 goes on with succession planning.

25 JUDGE STANLEY: Okay. And just one other

1 probably far easier question. When did you say that
2 Exterior Cladding System was sold?

3 MR. PASVEER: I believe this was somewhere --
4 somewhere 2019 or '20.

5 JUDGE STANLEY: That's all. Thank you.

6 MR. LOBB: Okay. Thank you.

7 JUDGE LE: Thank you, Judge Stanley.

8 I do have one question for Appellant.

9 Since Appellant didn't make any arguments
10 regarding the nest penalty and adequate disclosure, is
11 Appellant still pursuing that argument?

12 MS. SERRAO: Our argument is that there is no
13 nest transaction therefore, no nest penalty will apply.

14 JUDGE LE: Okay. But you're not arguing that the
15 20 percent should apply?

16 MS. SERRAO: No.

17 JUDGE LE: Okay. Thank you.

18 Judge Stanley has one more question.

19 JUDGE STANLEY: I was going to follow up on that
20 date. I heard somebody do this in another case. Being
21 that the pandemic came about in early 2020, does that
22 refresh your memory as to when it was sold? Was it sold
23 during pandemic or before pandemic?

24 MR. PASVEER: It was -- it was probably during.
25 I would have to look up the exact date. Yeah.

1 JUDGE STANLEY: Okay. Thank you.

2 JUDGE LE: Okay. And with that, let me just
3 check to see if the parties have any final remarks before
4 we end this hearing.

5 Franchise Tax Board, any final remarks?

6 MR. LEWALLEN: No.

7 JUDGE LE: Thank you.

8 And Appellants, any final remarks?

9 MS. SERRAO: Just one remark, Judge Le.

10 We've heard testimony that Mr. Pasveer has been
11 continuing to pay -- or continuing to report the capital
12 gain on his own 1040 from payments made from the
13 Children's Trust to he and his wife individually. While
14 only tax years 2010 through 2014 have opened by the FTB,
15 tax years 2015 through 2023 have remained closed. The FTB
16 is perfectly happy to accept Mr. Pasveer's payment of the
17 capital gain with respect to the payments made from the
18 Children's Trust. If some sort of nest transaction were
19 to be found, we'd hope that any sort of payments would be
20 applied against the deficiency from the Children's Trust
21 to Mr. Pasveer as to where -- with respect to the capital
22 gain picked up.

23 JUDGE LE: Thank you. Does that conclude any
24 final remarks Appellants may have?

25 MS. SERRAO: Yes.

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JUDGE LE: Thank you.

MR. MILLER: Judge Le, may I ask one question --

JUDGE LE: Yes.

MR. MILLER: -- please?

You're going to set an issue and order regarding the declaration and then the timeline for asking questions or whatnot?

JUDGE LE: Yes, I will.

MR. MILLER: Thank you.

JUDGE LE: Okay. So with that, thank you everyone for coming in today.

The record will be held open for additional briefing. I will issue a post-hearing order which will outline the timeline regarding when Appellant will submit the declaration regarding the trade secret and Appellants' response.

Again, thank you for coming in today. Today's hearing in the Appeal of PaMaCo, Inc., and Pasveer is now adjourned. This concludes all of our oral hearing matters for today. Thank you and goodbye.

(Proceedings adjourned at 2:04 p.m.)

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