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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. GORDON,) OTA NO. 230814024
APPELLANT.)
_____)

Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing
at 1:06 p.m. and concluding at 2:27 p.m.
on Tuesday, September 9, 2025, reported
by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA A. STANLEY

Panel Members: ALJ JOSH LAMBERT
ALJ NATASHA RALSTON

For the Appellant: M. GORDON
JEFFREY HAMILTON

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

AMANDA JACOBS
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 7.)

(Appellant's Exhibits 7-9 were received into evidence at page 12.)

(Department's Exhibits A-I were received into evidence at page 7.)

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Cerritos, California; Tuesday, September 9, 2025

10:00 a.m.

JUDGE STANLEY: We're going on the record in the Appeal of Gordon, Office of Tax Appeals Case No. 230814024. The date is September 9th, 2025, and the time is 1:06 p.m. The location is Cerritos, California.

Once again, I'm Judge Teresa Stanley, and I will be the lead for purposes of conducting this hearing. My co-panelists, Judge Lambert, Judge Ralston, and I are equal participants in deliberating and deciding the outcome of this appeal.

I'm going to ask the parties to identify themselves for the record and who they represent, starting with Appellant, please.

MR. GORDON: Matthew Gordon.

MR. HAMILTON: Jeffrey Hamilton, representing Matthew Gordon.

JUDGE STANLEY: And CDTFA.

MS. JACOBS: Amanda Jacobs, attorney with the Legal Division for the Department.

MR. BACCHUS: Chad Bacchus, attorney for CDTFA.

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

JUDGE STANLEY: Okay. Thank you.

1 As stated in the Minutes and Orders, the issue to
2 be decided in this appeal is whether Appellant Mr. Gordon
3 is personally liable for the unpaid sales tax liabilities
4 of M & L Smith, Inc., pursuant to Revenue & Taxation Code
5 section 6829.

6 Mr. Hamilton, do you agree that that's the issue
7 here today?

8 MR. HAMILTON: Yes, I do.

9 JUDGE STANLEY: And, Ms. Jacobs, do you agree?

10 MS. JACOBS: We do. Thanks.

11 JUDGE STANLEY: Okay. And at the prehearing
12 conference, we had just a couple of stipulations. The
13 parties agree that the business M & L Smith, Inc.,
14 terminated, and that M & L Smith, Inc., collected sales
15 tax reimbursement during the period at issue, which is
16 July 1st, 2009, through February 12th, 2011.

17 Mr. Hamilton, do you still agree with that?

18 MR. HAMILTON: Yes, we do.

19 JUDGE STANLEY: And, Ms. Jacobs, does the
20 Department agree?

21 MS. JACOBS: Yes.

22 JUDGE STANLEY: Okay. Appellant submitted some
23 exhibits that were attached to the opening brief and that
24 were identified in the Minutes and Orders, but I never
25 received the requested index list from Appellant. So what

1 I'm going to do here today is indicate that the exhibits
2 that were listed in the Minutes and Orders will be
3 numbered as Exhibits 1 through 5, Appellant's 1 through 5.
4 And the brief also had attached a copy of the entire
5 protest with the State Board of Equalization, which was
6 CDTFA's predecessor. And that protest included Exhibits
7 A. Through J. So I'm going to mark that entire protest as
8 Appellant's Exhibit 6.

9 CDTFA didn't object to any of the exhibits that
10 were attached with the briefings, so Exhibits 1 through 6
11 are admitted into evidence.

12 (Appellant's Exhibits 1-6 were received into
13 evidence by the Administrative Law Judge.)

14 JUDGE STANLEY: CDTFA submitted Exhibits A
15 through I. Appellant did not object to the admissibility
16 of those exhibits, and Exhibits A through I are admitted
17 into evidence.

18 (Department's Exhibits A-I were received into
19 evidence by the Administrative Law Judge.)

20 JUDGE STANLEY: So I have a note that we are
21 having both Mr. Gordon and Mr. Hamilton testify under oath
22 or affirmation today.

23 MR. HAMILTON: That's correct.

24 JUDGE STANLEY: Okay. So before we begin
25 Appellant's presentation, I need to place you both under

1 oath so we can consider your statements as evidence. Will
2 you please raise your right hands.

3

4 M. GORDON,

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

8

9 J. HAMILTON,

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

13

14 JUDGE STANLEY: Thank you.

15 Okay. Mr. Hamilton, you can have yourself and
16 Mr. Gordon testify in the narrative. You can ask
17 questions of Mr. Gordon if you want, however it's easiest
18 for you to present to the panel.

19 Ms. Jacobs.

20 MS. JACOBS: Sorry to interrupt. We have a
21 question. What -- for Appellant's opening brief, there
22 are various -- there's a cover page that has 1 through 10,
23 and we were just wondering which of those items related to
24 the six exhibits. We're just trying to make sure we know
25 which exhibits will be referred to.

1 JUDGE STANLEY: Okay. Good question. I'm going
2 to pause for a second and take a look at it.

3 MS. JACOBS: Okay. Thank you. Apologies.

4 JUDGE STANLEY: No apologies necessary. It was
5 the perfect time to stop.

6 Is there a title on that page that maybe I can
7 search for?

8 MS. JACOBS: So for what we have, the opening
9 brief is 494 pages, and this is the document I have. And
10 the initial page, the very first page, has dark black
11 blocks that have numbers 1 through 10. And then the
12 second page is 1 through 10, but there's no marks. So it
13 says, "1, Protest Cover Letter, 2, Power of Attorney."
14 I'm not sure if that's the document you have.

15 JUDGE STANLEY: Okay. So I can see that some of
16 these on this list are not actual exhibits, which is
17 probably why I did not include them. For example, the
18 first one, the power of attorney, is not going to be an
19 exhibit. Protest cover letter wouldn't be an exhibit, and
20 OTA reference letter wouldn't be an exhibit. So rather
21 than saying what is not in exhibit, I think I will just
22 list off the ones that have is 1 through 5.

23 So there were some declarations that were
24 submitted that I marked as Exhibit 1; a voluntary
25 surrender agreement marked as Exhibit 2; a deposition of

1 Lily Harvey that was Exhibit 3; a supplemental submissions
2 that I marked as Exhibit 4; and protest documents,
3 including -- well, they're protest documents that are
4 listed as Exhibit 5, but the entire protest, with its
5 attached exhibits, are Exhibit 6.

6 Mr. Hamilton, is there anything that I've left
7 off that list?

8 MR. HAMILTON: One thing that I want to make sure
9 that we had, was the copy of the signature stamp that was
10 under the statement of facts and exhibits section, that
11 document.

12 JUDGE STANLEY: Okay. I believe the signature
13 stamp is included in CDTFA's exhibits.

14 Am I correct, Ms. Jacobs?

15 I see many references to it. My problem right
16 now is that we have a file with all the documents
17 combined, so we have to search out to get to specific
18 ones.

19 Mr. Hamilton?

20 MR. HAMILTON: So one other thing. I don't
21 remember if you mentioned, but the temporary restraining
22 order and foreclosure documents also would be listed as an
23 exhibit. That's also in that same package.

24 JUDGE STANLEY: Okay. Since we don't need to
25 spend our afternoon with me searching the files, let me

1 just mark the signature stamp as Exhibit 7; the
2 restraining order as Exhibit 8; and the foreclosure as
3 Exhibit 9. And I do remember seeing those because I know
4 they're important for your case.

5 Ms. Jacobs, does the Department object to those
6 three exhibits?

7 MS. JACOBS: We do not. Although, I don't
8 believe that the signature -- I'm not sure if the
9 signature stamp is included in our exhibit. It's not our
10 piece of evidence. So that would be up to the Appellant.
11 Could you repeat what 5 and 6 are again? Apologies. I
12 missed those two.

13 JUDGE STANLEY: Five says protest documents. And
14 I think those were attached to the opening brief, but
15 there was also the entire protest which probably has some
16 overlap. So the entire protest with the State Board of
17 Equalization, including Exhibits A through J are marked as
18 Exhibit 6. So I'll add the signature stamp and the
19 restraining order and the foreclosure documents as
20 Exhibits 7, 8, and 9.

21 And, Ms. Jacobs, the Department doesn't object to
22 those?

23 MS. JACOBS: We do not. Thank you.

24 JUDGE STANLEY: Okay. So Exhibits 7, 8, and 9
25 are also admitted into evidence at this time.

1 (Appellant's Exhibits 7-9 were received into
2 evidence by the Administrative Law Judge.)

3 JUDGE STANLEY: And thanks for stopping me before
4 I moved along too far.

5 Okay. So, Mr. Hamilton, you requested 45 minutes
6 for your presentation, including testimony, and you may
7 begin when you're ready.

8 MR. HAMILTON: Okay. Thank you.

9

10 PRESENTATION

11 MR. HAMILTON: So I've really, kind of, broken my
12 protest during my time into different sections. So I'd
13 like to kind of go over the different point here. And
14 then towards end, I'll turn my time over to Mr. Gordon to,
15 kind of, fill in any blank statement he might find
16 relevant.

17 So the first thing I want to talk about is the --
18 the ownership of the company. So Matthew Gordon was in
19 real estate, and he bought Aztec Appliance as a real
20 estate investment and installed Mike Webb as the general
21 manager to run the business and have all the authority of
22 everything. The original Statement of Information shows
23 that Matthew Gordon was the president, secretary, and
24 treasurer of everything.

25 However, subsequent Statement of Informations

1 were done electronically by -- by Michael Webb. And even
2 though he was listed as president, secretary, and
3 treasurer on the subsequent filings, Michael Webb was on
4 the bank signature card, and he was also signing returns
5 as corporate secretary. So there's conflicting
6 information about what the Statement of Information shows
7 and what the Michael Webb was actually doing, showing as
8 corporate secretary. But I do want to kind of point out
9 that Matthew Gordon was the owner of the company in name
10 only and didn't run the day-to-day operations, and that
11 was, again, assigned to Michael Webb.

12 The second points that I'd like to kind of go
13 into is the responsibilities and duties of the officer.
14 So Mike Webb was responsible for all sales tax returns,
15 payroll, payroll taxes, accounts payable. Michael Webb
16 also periodically reviewed the accounts payable and
17 discussed them with outside accountants, such as Sam
18 Hyder. Michael Webb was also responsible for bills would
19 be paid and prepared checks accordingly. And as evidenced
20 by the signature stamp, he would sign the checks with the
21 signature stamp. So Matthew Gordon did not sign checks.
22 That was all done by Michael Webb.

23 Michael Webb failed to disclose to Matthew Gordon
24 the checks necessary to pay all of the expenses, including
25 outstanding liabilities to the BOE -- or CDTFA, as it is

1 now. And testimonies of witnesses, which have been
2 provided in our protest, such as the Rangel Declaration,
3 shows that Michael Webb had the authority to make these
4 decisions and unilateral control in paying sales tax.
5 Michael Webb was responsible for submitting sales tax
6 returns until responsibility was then transferred to Marco
7 Rangel, CPA of Blackrock in September of 2010 to file the
8 CDTFA returns.

9 Michael Webb provided all access codes and
10 passwords to Rangel. I'd like to point out that those
11 were never provided to Matthew Gordon. He never had any
12 codes or passwords to be able to file the tax returns.
13 And in some of the legal analysis that I provided
14 regarding Brady, as far as responsible persons go, Brady
15 bankruptcy case, he was found not to be responsible
16 person; as it was his duty to organize and conduct sales
17 at road shows, which led him to be out of the office for
18 extended periods of time. Furthermore, he did not control
19 payments to creditors. Even though the taxpayer was a
20 signer on the accounts, the records demonstrated that it
21 was the other party that cleared all checks, either
22 verbally or in writing.

23 And this is -- and the same case with Matthew
24 Gordon, he was not there at the office. He didn't even
25 have an office there at the location. So he did not -- he

1 did not clear any of those checks, either verbally or in
2 writing. That was all done by Michael Webb. Many cases
3 in which courts have held the individuals that have signed
4 or cosigned checks were not responsible persons. In
5 Roggeman versus the U.S., controller signed the checks
6 as -- yes. Oh, sorry. Sorry about that.

7 So basically that the controller signed the
8 checks as an accommodation, but did not control the
9 ultimate disbursement of the funds. The 8th Circuit case
10 in Barton versus the U.S., held that the test for
11 determining whether a person is responsible party is their
12 actual paying authority, not their title or not nominal
13 functions. Again, in this case with Matthew Gordon, he
14 was a president but did not have the tax paying authority,
15 as he didn't have all the codes and passwords and was not
16 trained to prepare sales tax returns.

17 In Harris Bank versus American National Bank and
18 Trust Company, the court found that a president of the
19 corporation was not liable based on the decision of the
20 following: One, he was never advised of the tax liability
21 by consultant who was deliberately concealing from him;
22 two, he was financially unsophisticated; three, he had a
23 heavy travel schedule, which kept him out of the city and
24 country for many days; four, his office was removed from
25 the financial records of the company; and five, he was not

1 in the loop on financial matters.

2 So this follows the rule in Kalb versus U.S.,
3 that upon learning of the unpaid taxes, the responsible
4 must perform their duties to investigate and correct. And
5 finally, in the case of responsibility in Melendez-Benitez
6 versus the United States, the court established a standard
7 of who the responsible person would be as it relates to
8 liabilities: One, officer or member of the board of
9 directions -- and again, I refer back to Michael Webb
10 being corporate secretary and acting as a corporate
11 secretary; two, owns shares or possesses entrepreneurial
12 stake in the company, as a general manager would; three,
13 active in management of day-to-day affairs of the company;
14 four, has the ability to hire and fire employees; five,
15 makes decisions regarding which, when, and what order
16 outstanding debts and taxes will be paid; six, exercises
17 control over daily bank accounts and disbursement records;
18 and seven, has check signing authority. As again, I point
19 out, Michael Webb meets, kind of, all those above --
20 those.

21 And then another point to our presentation would
22 be control and who had control of the company, and who had
23 control of the accounts. So I'd like to point out that
24 Matthew Gordon did not have unlimited access or control to
25 bank accounts to be able to pay liabilities. The company

1 never had online banking, and the restraining order that
2 was placed in July of 2010, prevented Matthew Gordon from
3 going onto premises.

4 And then as evidenced by the signature stamp that
5 I referenced to earlier, Matthew Gordon did not have
6 control over what checks and what payments were paid. In
7 the January 2022 -- January 22, 2014, Notice of Proposed
8 Determination, the BOE asserting the 6829 liability
9 confirms that GE had control over the business. And these
10 facts were undisputed, referencing to page 3 of that
11 Notice of Proposed Determination. GE had control over the
12 inventory in the latter part of the third quarter.

13 Yeah, I would actually like to back up and -- and
14 say GE had a forbearance agreement as -- as in January of
15 20 -- 2009. And then in July of 2010, they foreclosed on
16 the inventory. And October of 2010, they foreclosed on
17 the business itself. So the business and inventory was
18 both foreclosed on and owned by GE by the end of -- or
19 part of the third quarter of 2010 through the fourth
20 quarter of 2010 and through the first quarter of 2011.

21 Also, under the control aspect, Michael Webb had
22 complete control over the payroll and paid family members
23 who are not employed by Aztec Appliance. He leased a car
24 through the business and took a large salary. And in
25 reference to American Biomaterials Corporation misfeasance

1 by an employer, employee or agent can constitute
2 reasonable cause of the taxpayer can establish that the
3 company was disabled from timely complying with the
4 statutes. The court found that reasonable cause does
5 exist in similar circumstances.

6 And case law in Snyder versus the U.S.
7 demonstrates that the failure of an officer to be in
8 control of the financial affairs, the corporation
9 demonstrates a lack of control. Lending institutions and
10 creditors who supply funds to a business may exercise
11 controls over such a business that may ultimately render
12 the third party responsible -- third parties responsible
13 for collecting and paying taxes. In such cases, the law
14 settles that creditors who safeguard their security
15 interest can be responsible parties, under IRC 6672. And
16 in Girard Trust Corn Exchange Bank versus U.S. and Werner
17 versus U.S., in this case, GE seized collateral under the
18 security agreement in 2009 and seized funds in AA's,
19 account, which rendered the company powerless to comply
20 with responsibilities. GE conducted sales of AA equipment
21 and kept the proceeds.

22 And, at this time, I'd also like to point out
23 that with the finance and agreement that GE had, the
24 company was paying \$1.75 for every dollar that they sold,
25 plus 23 percent interest. And that's also included in our

1 documents and protest as well.

2 And then finally, with a willfulness portion of
3 our presentation, we would like to point out the willful
4 contact has the same meaning for both Revenue & Taxation
5 Code 6859 and IRC section 6672. Cases exonerate officers
6 from liability do not oppose the penalty for the mere
7 failure to see that a known tax deficiency is paid --
8 delinquency is paid. Cline versus U.S., officer of a
9 trucking company was not involved in day-to-day
10 operations. While he knew that the trust fund taxes had
11 not been paid, his failure to see that they were paid did
12 not amount to willfulness. Matthew Gordon could not act
13 willful -- willfully, as he did not possess the requisite
14 knowledge or control over AA's finances. And the element
15 to willfulness also does not exist in Honey versus United
16 States.

17 So from our portion of it, you know, the main
18 things for us is that one, Matthew Gordon didn't have the
19 responsibility as -- as the owner as was given to Mike
20 Webb. And in some of the affidavits by the employees, we
21 have the deposition of Lil Harvey and Gene McNabb saying
22 that they worked directly with Mike Webb on everything.
23 And there is another one from Rokko Romero, who is also
24 included in there, that would say that -- that Mike
25 would -- Mike Webb would signature stamp the checks to be

1 issued that day, and then he would take those checks to
2 purchasing on the other side of the building to Ms. --
3 Ms. Lil Harvey's office. And then Lil Harvey was a store
4 manager and responsible for purchasing and sales. And in
5 that affidavit, he does say that his supervisor and
6 superior at the time was Mike Webb general manager.

7 And, again, just to reiterate the control portion
8 of it, one thing that I think we stand very solidly on is
9 the foreclosure of the business and the inventory, that
10 the -- at that point in July 2010, when GE took full
11 control of the inventory, they determined how everything
12 was sold, where it was sold, when it was sold. And the
13 proceeds didn't go to Matthew Gordon. GE was running it
14 through the company through -- through Aztec until they
15 sold everything through -- R&B?

16 MR. GORDON: Yeah. They sold the company then to
17 R&B.

18 MR. HAMILTON: Okay. So then until they sold the
19 company to R&B. Correct.

20 JUDGE STANLEY: Can you speak into the microphone
21 please when you talk so that our stenographer can catch
22 it.

23 MR. GORDON: Yes, I'm sorry. They sold the
24 company to R&B, that was GE, after they foreclosed.

25 MR. HAMILTON: And so again, pointing out the --

1 those orders and foreclosures that we submitted for
2 evidence showing that Matthew Gordon didn't have control
3 from 2010, I would like, actually, to backtrack a little
4 bit because I know there was a little bit of discussion
5 about whether Matthew Gordon was aware of the liabilities.
6 It wasn't until February of 2010 when he was trying to
7 sell the company that they brought in an independent audit
8 company and found out that there was liabilities that
9 hadn't been paid and tax returns that hadn't been filed,
10 of which then Michael Webb went back to and -- and
11 filed -- filed returns and was trying to make arrangements
12 with the BOE, at the time, to resolve the situation.

13 So he wasn't aware until February of 2010 of
14 those liabilities, and then he made several, kind of,
15 attempts in between to try to, as any reasonable person
16 would -- would be try to resolve those liabilities. But I
17 would like to point out that he still didn't maintain
18 control over the finances or the day-to-day activities.
19 He was just trying to kind of get out from underneath
20 that -- that liability.

21 And, at this time, I'd like to turn the time over
22 to Matthew Gordon to, kind of, testify in, kind of, his
23 timeline and aspect of it.

24

25

WITNESS TESTIMONY

1 MR. GORDON: Hi. I just wanted to follow kind of
2 a linear recapitulation of Jeff's comments that in January
3 of 2009 Aztec was in forbearance. And that meant that
4 \$1.75 for every dollar worth of merchandise that was
5 purchased, plus 23.04 percent interest, and that they
6 controlled the bank account directly. And Jeff showed me
7 records of this, how the money would be taken via ACH.
8 They obviously controlled what the company could have and
9 did have.

10 And then in July of 2010, they owned the
11 inventory directly and had rights without rent -- it says
12 in the document -- to retail the appliances and -- or
13 merchandise as Jeff was calling it -- through the
14 business. And so the business had nothing to sell, nor
15 did it have any sales directly as -- because the inventory
16 was being sold off by GE. And then in October of 2010,
17 Aztec foreclosed on the physical company itself. And
18 until they could make the sale to consolidate the
19 appliance business on the West Coast they were doing to
20 R&B, they kept the company open.

21 I think they had their own -- they must have had
22 their own bank account because Aztec's bank accounts were
23 closed. And they put a restraining order on me 'cause I
24 wanted to know what was going on. And so they said if I
25 came down there, you know, I'd be in trouble because of

1 this restraining order. So I really wasn't able to get
2 any information. And also -- let's see -- my own
3 objectives were small infield developer, and I was able to
4 purchase the business in a leveraged manner for selling it
5 and doing -- and developing the site because it was in
6 Downtown San Diego. And it was during the sale that we
7 discovered this problem with the sales taxes and whatever
8 else that made the buyers go away and feel uncomfortable,
9 and I lost everything.

10 Thank you.

11 JUDGE STANLEY: Okay. Does that conclude the
12 presentation, Mr. Hamilton?

13 MR. HAMILTON: Yes, it is. We turn the time over
14 to the State.

15 JUDGE STANLEY: Okay. Ms. Jacobs, does the
16 Department have any questions for either of these
17 witnesses?

18 MS. JACOBS: No. Thank you.

19 JUDGE STANLEY: Judge Lambert, do you have any
20 questions for any witness?

21 JUDGE LAMBERT: This is Judge Lambert. I just
22 wanted to ask a couple of questions. In the briefs, it
23 looks like it's saying that Mr. Gordon filed some returns.
24 Is that true, and is that contradictory to argument that
25 Webb had all the control on that?

1 MR. HAMILTON: Matthew Gordon did not file any
2 returns. There are some electronic returns on there that
3 have his name on it, but he did not possess the codes or
4 the logins to be able to file those returns. Everything
5 else -- I believe paper filings were done by Michael Webb,
6 but Matthew Gordon didn't have the experience or knowledge
7 to be able to prepare and file those returns.

8 JUDGE LAMBERT: Okay. And I think you were
9 stating that Mr. Gordon found out about liabilities in
10 early 2010, and it seems like there were still returns
11 filed without payments after that. And I'm wondering if
12 that's true, why wasn't any corrective action taken to
13 change Mr. Webb out or fix anything else?

14 MR. HAMILTON: Yes. So to fix that, they brought
15 in Marco Rangel to file the returns and try to correct the
16 action. That was -- that was when they transferred over
17 the responsibilities from Michael Webb to Marco Rangel to
18 get them back into compliance.

19 JUDGE LAMBERT: Okay. When was -- because I
20 thought that Webb, you were asserting, was in charge until
21 like 2011. And so when was Rangel brought in?

22 MR. HAMILTON: Rangel was brought in in September
23 of 2010. Mike Webb was still at the -- at the location
24 and still acting as general manager, but he was not in
25 charge of filing the sales tax returns from that point,

1 from September 2010 when it was transferred over to Marco
2 Rangel.

3 JUDGE LAMBERT: Okay. So I guess I'm just
4 wondering why wouldn't -- if the returns were filed
5 without payment, if that's true, then wouldn't you want
6 to, you know, change control from Webb immediately if he
7 was the one who is responsible for all these mistakes?

8 MR. HAMILTON: I'll transfer that over to Matthew
9 Gordon to answer.

10 MR. GORDON: Because the company, at that time,
11 was more or less in GE's control, I think right around
12 then, they brought in their own people. They had two
13 people there. There was limited ability to do too much.
14 Marco Rangel did the audit for Blackrock for the
15 consolidation that was going on. And so he stayed to
16 oversea the accounting and bookkeeping, and I think that
17 that was the only solution. To go out, at that point, and
18 try to hire somebody new to understand what's going on and
19 to get in there and get GE to go along with anything
20 probably would have been impossible.

21 JUDGE LAMBERT: Thank you. But also, if there
22 were some liabilities from unpaid returns, then wouldn't
23 that incentivize you to start reviewing more returns after
24 that knowledge comes, after you discovered the liabilities
25 to make sure you reviewed the returns after that and the

1 payments?

2 MR. GORDON: After the July -- when did --

3 JUDGE STANLEY: Mr. Hamilton, can you please
4 speak into your microphone.

5 MR. GORDON: When did Marco Rangel come in?

6 MR. HAMILTON: Marco Rangel was taken in to -- in
7 September of 2010. But I think the question is why
8 wouldn't you, kind of, after finding out in February of
9 2010 take more of an interest.

10 Is that what you're kind of --

11 JUDGE LAMBERT: Yeah, that would -- you know,
12 according to that, you would think you would want to
13 review the returns and the payments after that. And I'm
14 wondering if that's --

15 MR. GORDON: Well, we hired somebody who is in
16 that business, who would understand it, is CPA Marco
17 Rangel to do that and to advise. Because I was -- as Lil
18 Harvey said, I had my own problems. The -- in October of
19 '08 the real estate market had a crash. I mean -- and the
20 assets we were holding were underwater. And I was also
21 involved in a company that was doing recycling -- recycled
22 package -- packaging that could be reused, but I was
23 \$10 million underwater, and I was dealing with those
24 issues. It was -- Lehman was holding some of the notes.
25 Lehman went out of business overnight. So we had this

1 third party from Blackrock in there that seemed very
2 competent and was handling it.

3 JUDGE LAMBERT: Okay. And -- but you didn't
4 think that may be the returns would be underpaid, assuming
5 they previously were, or you were just ignoring it or not
6 wanting to think about it?

7 MR. GORDON: I did, but since the company worked
8 out a 30 percent margin, and they were paying \$1.75 for
9 merchandise, and the accounts were controlled by GE; plus
10 23 percent interest, and GE drew their own money out and
11 had control over them. It didn't make any difference what
12 I did because they decided where the money went, and there
13 was no control. If there was control and I could get in
14 there, last thing in the world I wanted was any
15 liabilities in my life like this. But it was entirely
16 impossible.

17 And then in July 2010, of course, they owned the
18 inventory itself, and apparently, they didn't pay sales
19 taxes on the inventory they owned and sold. And then they
20 foreclosed the company itself in October 2010, and they
21 continued not to pay sales tax on the business that they
22 were doing. But Aztec didn't own any inventory to even
23 pay taxes on as of July. And as of January, they had no
24 control of their finances. GE took over their bank
25 accounts.

1 JUDGE LAMBERT: Okay. Thanks. I appreciate it.

2 MR. GORDON: Sure.

3 JUDGE STANLEY: Thank you.

4 Judge Ralston, do you have questions?

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

6 JUDGE STANLEY: I have a few. Are you saying,
7 Mr. Gordon, that you never signed checks; it was always
8 done by somebody else with a stamp?

9 MR. GORDON: Yes.

10 JUDGE STANLEY: Okay. But you had the ability to
11 pay by phone. Did you ever do that?

12 MR. GORDON: No.

13 JUDGE STANLEY: I thought I saw a reference in
14 the exhibits to a payment made by phone to CDTFA. That
15 wouldn't have been you?

16 MR. GORDON: No.

17 JUDGE STANLEY: Okay. The temporary restraining
18 order, our copy in the file, shows an application that was
19 signed and filed with the court. But the actual temporary
20 restraining order that we have in our file does not show
21 it was ever signed by a judge and file stamped by the
22 court. Were you ever served with a document that a judge
23 signed.

24 MR. GORDON: They had a big pile of document,
25 about like this. I don't know if they served. I'm not

1 sure the full content because it was massive. They did
2 tell me that I was restrained from coming down to the
3 site. They said it would disturb the employees and et
4 cetera. So -- so I don't know. I know that -- I learned
5 part of what was going on from the people from the GE when
6 they just said, you know, you can't be down there. I --
7 I -- he may have the documents -- signed document in this
8 package. I don't know.

9 JUDGE STANLEY: Okay. So I guess the important
10 question for me is whether or not it was signed by a
11 judge. You were under the impression it was?

12 MR. GORDON: Yes.

13 JUDGE STANLEY: Okay. Then also, when you said
14 GE took over and controlled the bank account, when was
15 that again?

16 MR. GORDON: It looks like it was of January of
17 2009.

18 MR. HAMILTON: We have a -- the -- the
19 forbearance agreement in there, that in 2009 that's when
20 they started taking over, but they didn't takeover the
21 inventory until 2010 -- July 2010.

22 MR. GORDON: Until that point, they were just
23 billing at \$1.75 for every dollar they were taking out of
24 the account on their ACH privilege and withdrawing 23.4
25 percent interest, and who knows what else. But there

1 was -- but they were in control of the banking.

2 JUDGE STANLEY: Okay. So just to clarify, when
3 you say they were in control of the banking, they didn't
4 take over the bank account. They just had authority under
5 the forbearance agreement to withdraw funds that they
6 thought they were entitled to; right?

7 MR. HAMILTON: Correct.

8 JUDGE STANLEY: Okay. And when did you say you
9 first learned about the liabilities to the then Board of
10 Equalization? Did you say early 2010?

11 MR. GORDON: When did the -- what's the date on
12 that?

13 MR. HAMILTON: So that would be February of 2010
14 when he went to go sell the business, and that's when the
15 independent audit company was brought in and the
16 liabilities were found.

17 JUDGE STANLEY: Okay. Okay. That's all I have
18 right now. So let's go ahead and turn it over to CDTFA.
19 The agency is not presenting any evidence and will only
20 argue the appeal, so they won't be testifying under oath
21 or affirmation.

22 Ms. Jacobs, you requested 25 minutes for your
23 presentation, and you can begin when you're ready.

24 MS. JACOBS: Thank you.

25

1 was an officer of MLS who had control, supervision of, and
2 the responsibility for the filing of returns or the
3 payment of tax, and had a duty to act for the corporation
4 in complying with the sales and use tax law; see
5 section 6829(b) and Regulation 1702.5(b)(1). Appellant is
6 identified and, in many cases, identified himself as MLS's
7 president, CEO, and owner, among other positions on
8 documents related to MLS's financial affairs; see
9 Exhibit A, pages 21, 24, 30, 34, 37, 42 through 43, 51, 52
10 through 53, 57 through 58, 72, 75, 78, 85, 90, 92, 94, 95
11 to 96, 97, 99, and I'll stop reading there.

12 Appellant is listed as the only corporate officer
13 with the Secretary of State and 100 percent shareholder
14 for MLS on the corporation's federal income tax returns
15 for 2009, 2010 and 2011; Exhibit A, pages 24 to 25, 53,
16 and 97 through 99. Appellant prepared and signed MLS's
17 paper sales use tax returns for third quarter '09 and
18 fourth quarter '09, and is listed as the preparer and
19 electronic filer for MLS's sales and use tax returns for
20 first quarter '10 through fourth quarter '10; Exhibit A,
21 pages 59 to 60, and 61 to 70.

22 Furthermore, Appellant requested an installment
23 payment agreement, or IPA, to pay MLS's unpaid sales and
24 use tax liabilities for third quarter '09 via telephone on
25 January 28th, 2010, and signed the IPA on March 3rd, 2010.

1 The IPA was terminated on April 10th, 2010, and then
2 reinstated on December 16th, 2010, to include second
3 quarter 2010, and then terminated again on
4 January 12th, 2011, with the remaining balance; Exhibit F.
5 In a letter dated, April 24th, 2011, Appellant requested
6 that MLS be considered for settlement; Exhibit A, page 90.

7 By preparing and signing sales and use tax
8 returns, entering into IPAs and requesting the Department
9 consider settlement, the evidence shows Appellant had the
10 responsibility to file MLS's sales and use tax returns and
11 to make or otherwise, direct the payment of MLS's sales
12 tax liabilities. In fact, Appellant identified himself as
13 a responsible person on the responsible person
14 questionnaire that he completed and returned to the
15 Department, dated March 30th, 2011; Exhibit A, page 30.
16 Appellant has asserted that MLS employee Michael Webb
17 signed documents for MLS without his knowledge, including
18 MLS's sales and use tax returns. However, Appellant has
19 not provided any documentary evidence to this effect.

20 Furthermore, while Appellant claims Mr. Webb used
21 a signature stamp of Appellant's name, which I did find
22 on -- it looks like the opening brief page 188 -- the
23 stamp does not appear to match the signatures on third
24 quarter '09 and fourth quarter '09 returns; see Exhibit A,
25 pages 59 to 60, and 250 to 251. And as will be explained

1 in our discussion on authority, Appellant was in
2 communication with the Department via telephone throughout
3 the liability period. Even if Appellant did delegate
4 responsibility to an employee, that does not relieve him
5 of his own responsibility as president, CEO, and owner of
6 MLS.

7 Appellant also claims that MLS's creditor,
8 General Electric Commercial Finance Corporation or GE,
9 which held a security interest against MLS's inventory and
10 account receivable, exercised its rights to the collateral
11 beginning on -- in July of 2010 or January of 2009,
12 depending on which date we're going by. But Appellant has
13 claimed that it made it impossible for MLS to remit tax to
14 the Department. However, as will be discussed in more
15 detail in a few moments, Appellant remained involved in
16 MLS's tax obligations throughout the quarters at issue,
17 including speaking with the Department on the phone
18 numerous times and signing and submitting documents
19 related to the tax liability as late as January
20 31st, 2011. Therefore, the third element is also
21 satisfied.

22 As to the fourth element of personal liability,
23 the evidence shows that Appellant's failure to pay MLS's
24 tax liabilities was willful. Failure to pay is willful,
25 if the person had knowledge that the taxes were not being

1 paid and had the authority and ability to pay the taxes
2 but failed to do so. Failure to pay may be willful, even
3 without bad purpose or motivation, Regulation
4 1702.5(b) (2).

5 As to the Appellant's authority, as the owner and
6 corporate officer, Appellant had the authority to direct
7 the financial affairs of the corporation, including the
8 authority to pay taxes throughout the liability period.
9 These positions are evidence that Appellant had broad,
10 implied, and actual authority to ensure compliance with
11 the sales and use tax law, even if that responsibility was
12 delegated to others; see Commercial Security Company
13 versus Modesto Drug Company 1919 43 Cal.App. 162 pin site
14 173. Nothing indicates that his authority was limited in
15 any way. As previously stated, Appellant also prepared
16 and signed MLS's paper sales and use tax returns for third
17 quarter '09 and fourth quarter '09, and is listed as the
18 preparer and electronic filer for MLS's sales and use tax
19 returns for first quarter '10 through fourth quarter '10;
20 Exhibit A, pages 59 to 60, and 61 to 70.

21 Appellant has claimed that MLS employee Michael
22 Webb had total control of the finances. However, absent
23 an expressed limitation on Appellant's duties and powers,
24 Appellant was still responsible to ensure the
25 corporation's sales and use tax obligations were met, even

1 if he had delegated those task; see again, Commercial
2 Security Company versus Modesto Drug Company. Appellant
3 also claims that its creditor, GE, exercised its rights to
4 accelerate the security interest and its rights to the
5 collateral in January 2009 and January 2010; and that
6 after -- afterward, Appellant was no longer a shareholder
7 or had any ability to pay anything.

8 However, the evidence following those dates, and
9 before the business terminated on February 12th, 2011,
10 show that MLS made at least 36 payments towards its
11 liabilities post July 2010, which totaled over \$333,000;
12 see Exhibit H. Appellant also communicated with the
13 Department on at least 10 occasions following the date
14 regarding -- following July 2010, regarding MLS's sales
15 and use tax matters. So on August 2nd, 4th, and 27th of
16 2010, September 21st, 2010, October 21st and 25th of 2010,
17 and November 15th, 17th, 30th of 2010, and February 3rd of
18 2011, including attempts to reinstate the IPA; Exhibit A,
19 pages 39 through 51. Thus, on and after the taxes became
20 due, Appellant had the authority to pay the tax or cause
21 them to be paid.

22 Appellant also had actual knowledge that the
23 taxes were due and not being paid and the ability to pay
24 the taxes. Here, MLS's sales tax liabilities were based
25 on partial and non-remittance returns for third quarter

1 '09 to fourth quarter '10, and a Department estimate for
2 part of first quarter '10, January 1st, 2011, through
3 February 12th, 2011. The liabilities became due on the
4 dates its returns were due on/or before the last day of
5 the month following each quarterly period. Those dates
6 were October 31st, 2009 for third quarter '09,
7 April 30th, 2010, for first quarter '10, July 31st, 2010,
8 for second quarter '10, January 31st, 2010 for fourth
9 quarter '10, and April 30th, 2011 for first quarter of
10 2011.

11 We will take each of these quarter by quarter.
12 So MLS's third quarter '09 sales and use tax return was
13 due on October 31st, 2009, and Appellant signed MLS's
14 late-filed non-remittance return on November 17th, 2009;
15 Exhibit A, page 59. Because Appellant signed and filed
16 the third quarter '09 return without payment, Appellant
17 knew MLS's tax for that quarter was due and unpaid.
18 Appellant also actively participated in MLS's sales and
19 use tax matters for this quarter by requesting and
20 securing an IPA, including both signing the IPA on
21 March 3rd, 2010, and engaging with phone conversations
22 with the Department regarding it on January 28th,
23 February 25th, August 27th, and November 30th, 2010; see
24 Exhibit F.

25 Therefore, while Appellant at least had actual

1 knowledge that the third quarter '09 liability was not
2 being paid as of January 28th, 2010, the date the IPA was
3 requested, the evidence supports a finding of actual
4 knowledge as early as November 17th, 2009, when the return
5 was filed without payment. During third quarter '09, the
6 evidence shows MLS paid its employees over \$300,000,
7 remitted over \$100,000 to its distributor, R&B, and paid
8 \$20,000 to GE; Exhibit A, pages 57 and 103 to 131. These
9 amounts exceeded the business's tax liability for third
10 quarter '09, but it appears the funds were used to pay
11 other creditors instead. Thus, Appellant had the ability
12 to pay MLS's third quarter '09 tax liability.

13 MLS's first quarter '10 return was due on
14 April 30th, 2010, and Appellant electronically filed MLS's
15 partial remittance return in his capacity as owner, or at
16 least is listed as such on April 29th, 2010; Exhibit A,
17 pages 61 -- 62 -- 61 to 62. In addition to submitting the
18 return, Appellant called the Department on May 7th, 2010,
19 and claimed MLS would pay the remainder of the first
20 quarter '10 tax liability the next week; Exhibit A, page
21 38. Thus, Appellant had actual knowledge that the first
22 quarter '10 tax liability was not being paid as of
23 May 7th, 2010, the date of the phone conversation, and the
24 evidence supports a finding of actual knowledge as early
25 as April 30th, 2010, when the return was due and had been

1 filed without full payment.

2 MLS's bank statements show that MLS had deposits
3 of over \$1.4 million in first quarter 2010, exceeding the
4 business tax liability for first quarter '10; Exhibits E,
5 sub-exhibits CC, DD, and EE. Thus, Appellant had the
6 ability to pay MLS's first quarter '10 tax liability.

7 MLS's second quarter '10 return was due on
8 July 31st, 2010, and Appellant electronically filed MLS's
9 partial remittance return in his capacity as owner on
10 July 30th, 2010; Exhibit A, pages 55 to 66. In addition
11 to submitting the return, Appellant called the Department
12 on four occasions, August 2nd, 4th, 27th, and
13 September 21st of 2010, regarding the second quarter '10
14 liabilities; Exhibit A, pages 39 to 41. Appellant also
15 referenced the outstanding second quarter '10 liability
16 when he signed and submitted the December 16th, 2010, IPA;
17 Exhibit F. Therefore, Appellant had actual knowledge that
18 the second quarter '10 liability was not being paid as of
19 August 2nd, 2010, the date of the first conversation. And
20 the evidence supports a finding as early as
21 July 31st, 2010, when the return was filed without
22 remittance.

23 The evidence shows MLS paid its employees over
24 \$2,000 -- oh, \$200,000, remitted over \$100,000 to its
25 distributor, R&B, and paid \$20,000 over -- or paid \$20,000

1 to GE in second quarter 2010; Exhibit A, page 57 and 103
2 to 131. These amounts exceeded the business's tax
3 liability for second quarter '10, but it appears the funds
4 were used to pay other creditors instead. Thus, Appellant
5 had the ability to pay MLS's second quarter '10 tax
6 liability.

7 MLS's fourth quarter '10 return was due on
8 January 31st, 2011, and Appellant electronically filed
9 MLS's non-remittance return in his capacity as president
10 on July 31st, 2011; Exhibit A, pages 69 to 70. In
11 addition to submitting the return, Appellant signed and
12 submitted a form BOE 468 Request For Extension to File Tax
13 Return, dated also, January 31st, 2011, requesting a one
14 month extension to pay the fourth quarter '10 liability;
15 Exhibit G. Appellant also emailed the Department
16 regarding the fourth quarter '10 liability on
17 February 3rd, 2011, claiming that it would be paid within
18 the next two weeks; Exhibit A, page 51. Thus, Appellant
19 had actual knowledge that the fourth quarter '10 liability
20 was not being paid as of, at least, February 3rd, 2011,
21 the date of the email. And the evidence supports a
22 finding as early as January 31st, 2011, when the return
23 was filed without remittance, along with the request for
24 extension.

25 MLS's Union Bank statements show that MLS had

1 deposits of over \$500,000 in fourth quarter '10, exceeding
2 the business's tax liability for fourth quarter '10; see
3 Exhibit E, sub-Exhibit FF. Thus, Appellant had the
4 ability to pay MLS's fourth quarter '10 tax liability.
5 Last quarter, MLS did not file a closeout sales and use
6 tax return or pay any taxes for the period of
7 January 1st, 2011, through the business's closeout of
8 February 12th, 2011. The Department estimated MLS's gross
9 receipts for this period and issued an NOD to MLS, dated
10 February 6th, 2014; Exhibit B.

11 Appellant's active involvement in MLS's sales and
12 use tax matters before and during this period, including
13 signing and submitting the Form BOE 468 regarding the
14 fourth quarter '10 liability on January 31st, 2011. And a
15 phone call with the Department on February 3rd, 2011,
16 support a finding that Appellant had actual knowledge that
17 MLS's tax liability for first quarter '11 was due and
18 unpaid, at least, by April 30th, 2011, the date of the
19 first quarter '11 return -- the date the first quarter '11
20 was due and early as February 12, 2011, the date MLS
21 ceased business operations. There's no evidence
22 demonstrating that Appellant ceased involvement during
23 this time.

24 The evidence shows MLS paid its employs over
25 \$110,000 in wages in first quarter '11 and remitted over

1 \$100,000 to its distributor, R&B; Exhibit A, pages 57, and
2 103 to 131. Furthermore, MLS's federal income tax returns
3 indicate it was making sales and collecting sales tax
4 reimbursement from its customers in 2011; see Exhibit A,
5 page 97. Therefore, Appellant had the ability to pay
6 MLS's first quarter '11 tax liability. Thus, after the
7 taxes became due, Appellant had actual knowledge that
8 MLS's taxes were due and not being paid. And Appellant
9 had the ability to pay the taxes, but the funds were used
10 to pay other creditors instead.

11 In sum, Appellant was a person responsible for
12 MLS's sales and use tax obligations, and Appellant's
13 failure to pay was willful, meaning Appellant had actual
14 knowledge that the taxes were due and not being paid and
15 had the authority and ability to pay the taxes but did not
16 do so. Based on all the evidence provided, The Department
17 has met its burden of proving all elements for imposing
18 personal liability to Appellant. For these reasons, we
19 request that the appeal be denied.

20 Thank you.

21 JUDGE STANLEY: Thank you, Ms. Jacobs.

22 Judge Lambert, do you have any questions for the
23 Department?

24 JUDGE LAMBERT: I don't have any questions.

25 JUDGE STANLEY: Judge Ralston, do you have

1 questions for the Department?

2 JUDGE RALSTON: Yes. This is Judge Ralston. I
3 actually have a question for the Appellant and also for
4 the Department.

5 So, Mr. Gordon, with regard to the returns that
6 were filed, it's your position that you did not sign those
7 returns -- the sales and use tax returns?

8 MR. GORDON: No, I didn't, and we have affidavits
9 showing that Marco Rangel was the one filing; and before
10 that, that they were filed Webb. And the phone calls that
11 were made with the BOE were return calls of messages left
12 by a Claudine DeBoer, I think her name was, to me. So
13 naturally I returned phone calls. The business would call
14 me and say, "You have a message."

15 If you look, you'll see I didn't initiate the
16 calls. And for what it's worth, our properties were
17 foreclosed on because they weren't paying their mortgages.
18 GE, when they took over, they didn't. So R&B could
19 foreclose on the properties and own those and then next,
20 they could foreclose on the business.

21 Thank you.

22 JUDGE RALSTON: Okay. Thank you.

23 So when did you become aware that your name was
24 signed on those returns, or that someone had signed them
25 using your name?

1 MR. GORDON: When they were showed to me by
2 our -- well, it was John Sunnen originally. He was the
3 person that we -- or I hired to look into the matters. He
4 retired and passed it on to Jeff Hamilton. But he was
5 attorney and account accountant for 35 years in tax
6 matters with organization like yourself, and that's who
7 did the forensic accounting originally.

8 JUDGE RALSTON: Okay. Thank you.

9 And for CDTFA, I think you addressed that during
10 your statement, but did you address whether that is
11 actually the Appellant's signature on the sales and use
12 tax returns? Or do you have a position on that?

13 MS. JACOBS: We don't have evidence from
14 Appellant. I mean, we have the signature stamp. The
15 signature stamp doesn't appear to us to match the
16 signatures on the returns. We would say that would be up
17 to Appellant to prove that it's not his signature. It is
18 his signature. He was the corporate officer and CEO, but
19 we also have evidence in addition to signatures, such as
20 the numerous phone calls with Appellant that we think show
21 that he was aware of the liabilities.

22 JUDGE RALSTON: Okay. Thank you.

23 JUDGE STANLEY: Okay. And I just have one
24 question for the Department.

25 Ms. Jacobs, Appellant makes a compelling case

1 that, at least during part of this time, Mr. Webb was a
2 responsible person within the statutory definition. How
3 does that affect this appeal?

4 MS. JACOBS: The Department may find more than
5 one responsible person. It doesn't absolve. If there --
6 in general -- we can't speak directly to that. But in
7 general, the Department may find more than one responsible
8 person, and it doesn't absolve any one responsible person
9 from being responsible for the liability. Of course, the
10 Department wouldn't collect more than once on any
11 liability.

12 JUDGE STANLEY: Okay. That's all I have. Thank
13 you.

14 So we'll turn back to Mr. Hamilton.

15 And I'll give you five minutes to make any kind
16 of rebuttal or closing statement you wish to.

17
18 CLOSING STATEMENT

19 MR. HAMILTON: Okay. So a couple of things that
20 I wanted to rebut on the State's presentation. One was
21 that they did claim that the Statement of Information
22 2009, 2010, 2011, had Matthew Gordon as the president and
23 secretary and treasurer. And I would like to point out
24 that, for the most part, at least in 2010 and 2011, those
25 were done electronically, and those were not done by

1 Matthew Gordon. Those were also done by Michael Webb.

2 The -- also, the preparer -- first quarter 2010
3 through the fourth quarter of 2010, those were done
4 electronically. And I'd like to reiterate that Matthew
5 Gordon had no access codes to file those electronically.
6 So his name may be listed on the electronic returns, but
7 he did not file those returns.

8 The State had mentioned that he was aware of
9 liabilities at the time of filing. That would not be the
10 case if he did not actually file the return. He became
11 aware when he would get calls from the BOE, at the time,
12 and then call back to try to make arrangements.

13 I'd also like to point out that the responsible
14 person questionnaire that was done, that was done as part
15 of a closing out the corporation. He had received advice
16 from his attorney that that's what he needed to fill out
17 to close out the corporation. So he had not been aware of
18 what that questionnaire was actually for, or that it was
19 anything prior to the periods that are in question.

20 And furthermore, the statements that the taxpayer
21 did call to make IPAs and settlements is correct.

22 However, just the act of -- of making a settlement or
23 getting into an installment agreement doesn't necessarily
24 tie into responsibility or control. As I pointed out
25 earlier, it's what any reasonable person would do when

1 they are faced with a liability, is that they would try to
2 correct that liability, whether or not they were fully
3 responsible for it. He didn't want it to come back to him
4 and -- and cause more issues at the time.

5 And another point out from the State was that the
6 that the company paid employees \$300,000 in payroll one
7 year, I think \$200,000 in payroll another year. Payroll
8 was always being handled by Michael Webb. And as I
9 mentioned before, he had family members that were
10 submitted in the payroll records that, you know, weren't
11 actually on payroll, and he was leasing cars through the
12 business. Michael Webb was also signing credit
13 applications through the signature stamp and -- and doing
14 a lot of things that would -- would have prevented the
15 company from paying the liabilities, however, not under
16 the control of Matthew Gordon.

17 And the -- again, you know, having -- having the
18 knowledge of -- of a liability doesn't necessarily mean
19 that he had control over what was being done. Again, we
20 point out to GE, about GE having control over the
21 finances, and GE having control over what was paid and
22 when starting from July 2010. So he may have had
23 knowledge, and he may have called back the State on many
24 occasions to try and resolve the issue as -- as an owner.

25 But yeah, we do question the ability for him to

1 be able to make those payments. And I believe one of the
2 references to an email that was sent back to the Board of
3 Equalization was actually sent back from Michael Webb, who
4 signs it as corporate secretary. So at -- at points in
5 there, Mike Webb was trying to resolve issues as well.

6 And finally, with the responsible parties, it's
7 my understanding that the State can go after more than one
8 responsible party. But as we kind of showed in the prior
9 presentation, that there wasn't any day-to-day activities
10 that Matthew Gordon was performing. He wasn't signing
11 checks. He wasn't doing payroll. He wasn't hiring and
12 firing people. He wasn't dealing with anything inside
13 that day-to-day activities. So while the State can go
14 after more responsible -- more than one responsible
15 person, we hold that Matthew Gordon should not be held
16 responsible for that.

17 And now I'll turn the last minute or so to
18 Matthew Gordon.

19 MR. GORDON: Thank you.

20 I'm not a lawyer like -- or a judge or anything,
21 but as of July of 2010, the company didn't own anything to
22 buy or sell. It was owned by GE. And I really don't
23 understand. They did what they wanted with their own
24 money. They paid who they wanted because their obligation
25 was to keep the company open for R&B so they can complete

1 their transaction, and how they did that was their own
2 concern.

3 I, obviously, could have no effect on how they
4 negotiated and what they chose to do in this respect. In
5 January of 2009, when they took over the capital or use of
6 money, and did it -- took what they wanted, I can see that
7 certain things were and weren't paid. The mortgages,
8 there was \$190,000 of debt to R&B that was owed that
9 wasn't paid. The company, obviously, payroll went down.
10 You can see the numbers from \$300,000 to \$200,000 and down
11 for, like, \$100,000 because they couldn't afford to pay
12 employees. The employees were disappearing.

13 And, from my point of view, is if the company
14 didn't own anything and didn't sell anything, I don't know
15 how that makes them responsible. And when money is paid
16 for a product, until the product is delivered, the money
17 doesn't belong to the company. And -- and if you look at
18 Lil Harvey's deposition, under penalty of perjury, she
19 says appliances weren't getting delivered. And the reason
20 why is the company didn't have the money to pay for the
21 appliances. So that money didn't belong to the State for
22 sales tax. And you can't say that the money was there to
23 pay, if it didn't belong to the company because they
24 didn't deliver the appliances to the customers. So that's
25 kind of the situation.

1 I hope you'll look upon this in a reasonable
2 manner. Thank you.

3 JUDGE STANLEY: Thank you, Mr. Hamilton and
4 Mr. Gordon.

5 Judge Lambert, do you have any final questions?

6 JUDGE LAMBERT: No. Thanks.

7 JUDGE STANLEY: Judge Ralston do you?

8 JUDGE RALSTON: This is Judge Ralston. No
9 further questions. Thank you.

10 JUDGE STANLEY: Okay. I don't have questions. I
11 just want to make a note that both parties referred to an
12 IPA, and a lot of us think that's a beer.

13 Ms. Jacob, can you explain what that is?

14 MS. JACOBS: And installment payment agreement is
15 a situation in which taxpayer will enter into an agreement
16 with the Department to pay a certain amount each month in
17 order to pay down a tax liability.

18 JUDGE STANLEY: Thank you.

19 And also I wanted to let Mr. Hamilton know what
20 we've admitted is Exhibits 7, 8 and 9 are actually in the
21 record under other document, such as the Appeals Bureau
22 decision and its many attachment, and the protest and its
23 many attachments. So we do have everything in our file at
24 least, and that's the important part.

25 So the case is submitted on September 9th, 2025.

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The record is now closed, so let's go off the record.

And thank you, everyone, for coming and participating here today.

The judges will meet and deliberate and decide the case and will issue a written opinion within 100 days.

So today's hearing in the Appeal of Gordon is concluded.

(Proceedings concluded at 2:27 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 24th day of September, 2025.

ERNALYN M. ALONZO
HEARING REPORTER