

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
V. MOODY,) OTA NO. 240215493
)
)
) APPELLANT.
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_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, January 22, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ KEITH T. LONG
ALJ JOSH LAMBERT

For the Appellant: V. MOODY
NANCY BATTEL

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

VANESSA BEDFORD
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received into evidence at page 10.)

(Department's Exhibits A-J were received into evidence at page 10.)

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California; Thursday, January 22, 2026

1:03 p.m.

JUDGE RALSTON: So we are now on the record in the Case of Vesta Moody, OTA Case No. 240215493. The date is January 22nd, 2026, and the time is approximately 1:03 p.m. This hearing is being held electronically with the agreement of the parties.

I am Judge Ralston. My co-panelists today are Judge Long and Judge Lambert.

I'm going to ask the parties to identify themselves and who they represent, starting with Ms. Battel.

MS. BATTEL: Yes. My name is Nancy Battel, B-a-t-t-e-l. I represent Vesta Moody, who is present and sitting next to me. And as one of our witnesses, someone who just appeared briefly, is Michelle Puma.

JUDGE RALSTON: Thank you.

And for Respondent CDTFA.

MS. BEDFORD: I'm Vanessa Bedford, attorney for CDTFA.

MR. BACCHUS: Chad Bacchus, attorney with CDTFA.

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

JUDGE RALSTON: Okay. Thank you, everyone.

1 So we held a prehearing conference in this matter
2 in December of 2025. And as stated in the Minutes and
3 Orders, there is one issue to be decided in this appeal;
4 and that is whether Appellant Vesta Moody is personally
5 liable for the unpaid liabilities of MSC, Inc., dba
6 Gorilla Metal.

7 Ms. Battel, do you agree that that's the issue?

8 MS. BATTEL: That's correct, Your Honor.

9 JUDGE RALSTON: Thank you.

10 And Ms. Bedford, do you agree that that's the
11 issue?

12 MS. BEDFORD: Yes, we do.

13 JUDGE RALSTON: Thank you.

14 MS. BATTEL: Your Honor, as a preliminary matter,
15 can we get a comment on what the amount that is claimed to
16 be in dispute? Because I have an understanding, but my
17 client this morning just handed me a statement of account
18 that she received from the Department on -- dated
19 January 14th, indicating that, if she remitted the amount
20 of \$570, that that was the statement that -- of account of
21 what is due to them on this outstanding obligation.
22 However, according to correspondence I received -- or she
23 received back in January 22nd of 2024, the amount is quite
24 different.

25 JUDGE RALSTON: Okay. Ms. Bedford, do you have

1 that handy, what the amount is, at this time?

2 MS. BEDFORD: I can look in our evidence pile,
3 but I don't know what the letter that she -- that
4 Ms. Battel is referencing.

5 JUDGE RALSTON: Okay. Thank you.

6 MR. BACCHUS: That -- Ms. Ralston, that should be
7 something that Mr. Parker could probably lookup while
8 we're going through preliminaries and -- and give a -- an
9 update. Five-hundred-and-seventy dollars seems like a
10 collection cost recovery fee amount, but Mr. Parker can
11 verify.

12 MR. PARKER: Hi. This is --

13 MS. BATTEL: What does that mean a --

14 MR. PARKER: -- Jason Parker.

15 JUDGE RALSTON: Ms. Battel, yeah, I'm going to
16 let Mr. Parker. He can probably answer your question.

17 MR. PARKER: So the total current liability for
18 Ms. Moody right now is at \$26,798.92. And I can get the
19 breakdown of tax, penalty, and interest, if you would
20 like, but that's the total amount. I just pulled it out
21 of our system today.

22 MS. BATTEL: Okay. Because I'm looking at a --
23 in January 22nd, 2024, the tax liability had been reduced
24 to \$14,969.83, and then with penalties, it was up to
25 \$17,280.55. But that was over a year ago.

1 MR. PARKER: Right. So the -- the tax amount,
2 \$14,969.83, is correct.

3 MS. BATTEL: Okay.

4 MR. PARKER: The penalties currently are
5 \$2,310.72.

6 MS. BATTEL: Right.

7 MR. PARKER: And the interest is \$9,518.37.

8 MS. BATTEL: Okay. So the interest is what
9 brings it up to the \$26,000.

10 JUDGE RALSTON: Okay. Thank you.

11 MS. BATTEL: Thank you. Thank you.

12 JUDGE RALSTON: Yeah. Thank you, Mr. Parker, for
13 that information. We appreciate that.

14 I'm just going to cover a few more things, and
15 then we'll move on to your presentations.

16 So CDTFA has submitted Exhibits A through J. And
17 at the prehearing conference, Appellant has not objected
18 to those exhibits.

19 Ms. Battel, did you receive Respondent's Exhibits
20 A through J, and did you have any objections?

21 MS. BATTEL: I did not receive them on the date
22 that we're supposed to exchange them, no.

23 JUDGE RALSTON: Okay. The exhibits were sent
24 with Respondent's brief, and then we also sent -- and
25 then that was -- that was sent from CDTFA.

1 MS. BATTEL: Right.

2 JUDGE RALSTON: And so you would have received
3 them then. And then OTA, we sent the hearing binder --

4 MS. BATTEL: Yes.

5 JUDGE RALSTON: -- and that would have all the
6 same exhibits in it. So --

7 MS. BATTEL: Okay. Yes I'm looking at my -- my
8 lap -- my computer now, and I -- I uploaded your binder.
9 So I do have them here.

10 JUDGE RALSTON: Okay. And did you have any
11 objections?

12 MS. BATTEL: No.

13 JUDGE RALSTON: Okay. Thank you.

14 And then subsequent to the prehearing conference,
15 Ms. Battel submitted an index identifying seven exhibits
16 that had also been previously submitted. So for ease of
17 reference, when putting to the aforementioned hearing
18 binder, OTA renumbered Appellant's exhibits to comply with
19 our naming convention, and also put those in the hearing
20 binder. So we have Appellant's exhibits listed as
21 Exhibits 1 through 7.

22 Ms. Battel, did you have a chance to look at
23 that, and did that include all of your exhibits?

24 MS. BATTEL: Yes, I have them, and I'll review
25 them. My numbers are a little different, but we'll be

1 able to identify them along with yours as we go along.

2 JUDGE RALSTON: Okay. Great. And then so,
3 Ms. Bedford, did you receive Appellant's exhibits, and did
4 you have any objections?

5 MS. BEDFORD: We received them, and we don't have
6 any objections.

7 JUDGE RALSTON: Thank you.

8 So Respondent's Exhibits A through J are admitted
9 into evidence without objection.

10 (Department's Exhibits A-J were received into
11 evidence by the Administrative Law Judge.) ***

12 JUDGE RALSTON: And Appellant's Exhibits 1
13 through 7 are admitted without objection.

14 (Appellant's Exhibits 1-7 were received into
15 evidence by the Administrative Law Judge.)***

16 JUDGE RALSTON: Moving onto witnesses.

17 Ms. Battel, you indicated that you would be
18 testifying under oath and also Michelle Puma, CPA, would
19 be testifying, and then the Appellant Vesta Moody would
20 also be testifying under oath.

21 Ms. Bedford, did you have any objections to any
22 of Appellant's witnesses?

23 MS. BEDFORD: No, we do not.

24 JUDGE RALSTON: Thank you.

25 Oh, and, Ms. Battel, is that still correct?

1 Those are the three witnesses?

2 MS. BATTEL: Yes. That is correct, Your Honor.

3 JUDGE RALSTON: Thank you.

4 So what will happen is right before you give your
5 presentation in a few minutes, I will swear all of you in,
6 and then you will be able to proceed when we get to that
7 point.

8 So let's see. We are ready to move on to our
9 opening presentations.

10 Ms. Battel, you requested 60 minutes for your
11 presentation and witness testimony.

12 And, Ms. Bedford, you requested 20 minutes for
13 your presentation.

14 Does anyone have any questions before we move on
15 to presentations?

16 MS. BATTEL: No.

17 JUDGE RALSTON: Okay. And Ms. Bedford is
18 indicating no, so thank you. No questions.

19 So for your presentation, Ms. Battel, you can set
20 it up however you like. If you want to give a
21 presentation and then move into witness testimony, or if
22 you want to move into witness testimony. You can also ask
23 your witnesses to testify in a narrative formation, or you
24 can ask questions and have them answer.

25 After the witnesses testify, we will give CDTFA

1 the opportunity to ask questions, since they're testifying
2 under oath. And then also, the panel members may have
3 questions.

4 So I'm thinking because there are three
5 witnesses, I'm thinking after each witness testifies,
6 we'll stop for a minute, and then see if CDTFA had any
7 questions.

8 Or, Ms. Bedford, would you prefer to wait until
9 their testimony -- or all three witnesses have testified
10 and then give you the opportunity to ask questions?

11 MS. BEDFORD: I believe we can wait until all
12 three witnesses have testified, and then we can ask
13 questions if we need to.

14 JUDGE RALSTON: Okay. Thank you. So that seems
15 to work.

16 So, Ms. Battel, the floor is yours. You have
17 60 minutes for your presentation, and you may begin when
18 you are ready.

19 MS. BATTEL: Would you like to swear us in?

20 JUDGE RALSTON: Oh, I'm sorry. Let me -- yes.
21 Thank you.

22 Let me go ahead and swear everyone in. So,
23 Ms. Puma, Ms. Battel, and Ms. Moody, if you could please
24 raise your right hands.

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V. MOODY,

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

N. BATTEL,

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

M. PUMA,

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

JUDGE RALSTON: Okay. Now, Ms. Battel, you can go ahead and begin.

PRESENTATION***

MS. BATTEL: Okay. Good afternoon.

It's our position that Vesta Moody should not be -- is not a responsible party regarding the filing of the tax -- the sales tax returns, nor was the failure of they're not being filed the result of an intentional, conscience, and voluntarily course of action on her part.

1 I believe we briefed in the written submission
2 that personal liability can only be posed on a responsible
3 party if that individual willfully fails to pay or causes
4 to be the tax -- causes not to be paid the taxes due. And
5 this failure must be the result of an intentional,
6 conscience, and voluntary course of action. You will see
7 it's clear from the evidence that will be presented, that
8 Vesta Moody should not be considered a responsible party.

9 It's clear that once she became aware of the
10 sales tax liability, she did everything within her power
11 to cooperate with the Department in obtaining the
12 information that they requested regarding the delinquent
13 sales tax. And I believe that, you know, based upon the
14 testimony, that you should find accordingly.

15 Now, by way of offer of proof, since I'm
16 testifying, I'm -- I want to get -- let the Court know
17 I'm an attorney licensed to practice in all the state
18 courts, appellate courts, and before the U.S. Supreme
19 Court. And I've been in practice for over 40 years. I --
20 my practice initially -- well I've got a JD and MBA, and I
21 consulted with -- and I've helped businesses getting their
22 start in California. And Terry Moody was one of my
23 customers in that regard.

24 My practice now consists primarily of -- I do
25 estate and probate litigation, financial elder abuse

1 cases, and I'm on the -- I'm pro bone legal counsel for
2 senior adult legal assistance in California, in Santa
3 Clara County.

4 Now, by way, again, of offer of proof, I was
5 contacted by Terry Moody when he relocated to California
6 to open a franchise for a Canadian-based company called
7 Metal Supermarkets. I assisted him when he subsequent --
8 and this was over 25 years ago. I knew him for over
9 25 years. I helped him with the subsequent purchase of
10 the franchise, which he operated as Metal Service Center
11 in Hayward. Now, although I was contacted by Terry Moody
12 over the years to answer questions about general
13 litigation matters, not unrelated to this dispute, I never
14 agreed to act as an officer of Metal Service Center. And
15 I was unaware that I was listed as an officer on the
16 Statement of Information that was filed in
17 July 10th, 2017, which I have enclosed -- let's see where
18 it's an exhibit in your binder. It's exhibit -- where was
19 it? I believe it's at exhibit -- Nancy -- well, actually
20 you don't have that. He had listed me as an officer on
21 one of his filings, but this was without my knowledge or
22 consent.

23 As I said, I had very little contact with Terry
24 Moody prior to his death on May 25th, 2017. It was not
25 until I was contacted by Vesta Moody and learned of his

1 sudden and unexpected death, that I became aware of the
2 company's dire financial straits. When I learned that
3 Vesta had been contacted by the California Department of
4 Tax and Fee Administration, which I will refer to as "the
5 Department," I tried to explain to Vesta Moody the process
6 as best I could.

7 I told her this was, you know, outside of my
8 realm of expertise. However, I told her she should
9 cooperate fully with the Department and try to provide the
10 information that they have requested since she was the
11 only one remaining at the office in a position to do so.
12 Now, it wasn't until Vesta started looking into the
13 company's financial situation that she became aware that
14 Terry Moody had included her name on many of the corporate
15 documents. She also found out that an action had been
16 filed against her in Alameda County Superior Court by the
17 American Express Credit Card Company regarding her owing
18 them \$73,358.51 in expenses charged to a business credit
19 card of Metal Service Center. However, apparently, Mr.
20 Moody had opened this credit card in her name. She was
21 unaware of it and, you know, had no knowledge that this
22 had been done. Now, this action was subsequently
23 dismissed by the court upon proof that this had been done
24 without Vesta Moody's knowledge or consent.

25 Now, although, the Department claims that Vesta

1 was the person generally authorized to manage the
2 company's sales and tax affairs during the liability
3 period and afterward, from testimony from Vesta Moody, you
4 will see that this was not the case. Her husband had full
5 control of running the company and managing the company on
6 a day-to-day basis. She assisted, as she could in the
7 office, doing things such as opening mail, making
8 collection calls, answering the phone, and generally
9 applying assistance as an assistant, rather than an office
10 manager.

11 She had no involvement with preparation of the
12 taxes, income taxes, sales taxes, or any annual reporting
13 of information to the Secretary of State's office. These
14 matters were handled by Terry Moody and Metal
15 Supermarket's bookkeeper, Judy Carr, as well as the
16 accounting firm that handled his accounting matters since
17 he came to California. And that's the CPA firm of
18 Crawford Pimentel. And Michelle Puma will testify
19 regarding their involvement.

20 But before that, I want to introduce some of the
21 documents that we've talked about to show that all the
22 involvement with the Department, prior to Terry Moody's
23 death, was with Terry Moody and Metal Service Center's
24 bookkeeper, Judy --

25 MS. MOODY: Carr.

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MS. BATTEL: -- Judy Carr. Thank you.

Now, I'd like to call your attention to -- I have it identified as Exhibit 7. However, I see that your binder has it marked as Exhibit 1, I believe it. Okay. If you look at Exhibit 1, page 2 of Exhibit 1, it shows -- oh, no. I'm sorry. Exhibit -- no. This is Exhibit 1? Yes. If we look at the first -- 1-7 -- okay. If we look at Exhibit 1, it shows that the first contact of the auditor, Mr. Chi, had with Metal Service Center was on -- let's see -- January 13, 2017. They mailed something to the company. On February 7, 2017, Mr. Chi called and asked for Mr. Moody, who he's identified as the president and person filing the return. Mr. Moody was not available, but he called back later on in that date.

And then on March 8th, 2017, he met with Mr. Moody in Hayward office. Again, acknowledging that Mr. Moody needed to complete the forms relating to the tax situation. On March 8, 2017, the form was sent to Mr. Moody by email. And again, the auditor was explaining what information was needed. On March 13th, 2017, he then had contact with Mr. Moody, who was not in office and was to get back to him. Then if we look at the next page, it shows the next contact was in April 3rd, 2017. Mr. Moody is not in the office. April 4th, 2017, received email responses from Mr. Moody. He said that his wife was in

1 process of cancer treatment, and he was busy at home
2 taking care of his wife and would get back to them.

3 April 11th, 2017, again, they received the forms
4 from Mr. Moody. May 30th, 2017, they had a contact with
5 Judy Carr. She said she is the bookkeeper for the
6 business and was trying to locate the information that was
7 requested by the auditor. Then if we go to
8 May 30th, 2017, sent up a follow up to Mr. -- email to
9 Mr. Moody to see if he is available to schedule an
10 appointment. Then the next entry, May 30th, 2017,
11 received email from Mrs. Vesta Moody. She said she is the
12 wife of taxpayer Mr. Terry Moody. She said Mr. Moody just
13 passed away on last Thursday. She was in a bit of a
14 turmoil right now, and she requested the auditor to
15 postpone the audit for a few weeks.

16 May 30th, 2017 -- and Mr. Moody had passed away
17 on May 25th. And then if you look at the rest, all of the
18 contacts then were with Vesta Moody. He then met with
19 Vesta Moody. And if you don't want to go through each of
20 the entries, he met with Vesta Moody. She continually
21 provided him with the information that he requested.
22 Unfortunately, during this period of time -- and,
23 actually, I'll ask her now.

24 ///
25 ///

1 Q -- of the tax filing?

2 A I knew that he was being audited, but I didn't
3 know anything about it. To me it wasn't a big deal
4 because I know he'd been audited before. And one time
5 he -- he said they got money back. Another time he said
6 he had to pay. He was off \$200 or something. So I really
7 didn't know what to do, and I was trying to help, but I
8 really was way out of my depth.

9 Q Now were you ever given any forms by the auditor
10 to sign?

11 A Yes. He told me he needed to have a form signed
12 and that -- in order to turn in a report. And I said,
13 "Well, I don't think I should be signing this because I'm
14 not in charge or anything."

15 And he said, "Oh."

16 And I said I didn't want to be responsible for
17 anything because I didn't know what -- I didn't understand
18 what it was for. He said I was not responsible. I was
19 just signing so he could finish his paperwork.

20 Q Okay. Now, would you have ever signed these
21 forms if you realized it was going to implicate your
22 liability for nonpayment of the taxes?

23 A Good God, no. I would have run from that
24 business and just let it shut.

25 Q Okay. Now -- and is that ultimately what --

1 A Yes.

2 Q -- what happened?

3 A Yes. I had no idea the business was in such a
4 mess. My husband never let on for a moment.

5 MS. BATTEL: I'd -- I'd like to call the Court's
6 attention to the same exhibit. And that's an entry by
7 Mr. Chi on January 26, 2018, where he indicates that he
8 was in contact with Mrs. Moody. And so I received a
9 couple of voice mails from you, and he had received this
10 from Mrs. Moody, and saw no point to call you back.

11 "I am not the one who knows anything about this.
12 The person who did the bookkeeping quit and is not
13 returning emails or calls for information. This was
14 Terry's company, and he had this mess was going when he
15 passed. The stress of his passing, coupled with the
16 financial disaster he left, has caused me health issues.
17 I am no longer connected with the business, and it shut
18 the doors in December. The doctor said I had to get out
19 of this, or the kids would be losing another parent. All
20 the records are boxed and being stored. I appreciated
21 your kindness in the times we spoke and your patience."

22 BY MS. BATTEL:

23 Q Now, at any point time, did you realize that by
24 signing the forms that Mr. Chi had presented to you, that
25 you were representing yourself out to be the owner of the

1 company?

2 A No, not at any time. No.

3 Q Now, there is a form -- and let's look at the
4 exhibit -- oh, let's see. Okay. Let's look at the
5 court's exhibit -- okay. Well, we'll look at court's
6 Exhibit 3. This shows Terry Moody filed in
7 May 27th, 2024, where he lists you as a director of the
8 company. Were you aware that you were listed as a
9 director of the company?

10 A No, I did not.

11 Q Did you ever attend any meetings -- any corporate
12 meetings of the company?

13 A No. I -- I didn't have anything to do with the
14 business.

15 Q Okay. And it also lists Aaron Lander? Who is
16 Aaron Lander?

17 A He was like a general manager for Terry at that
18 time. He left several years later.

19 Q Okay. Now, at the time of Terry's death, was he
20 still involved with the company?

21 A No, he was not. He had left years before.

22 Q Okay. Now, who was left at the company at the
23 time of your husband's death?

24 A Not much. He had closed operations in one
25 locate -- well, he had cut them in half. There wasn't

1 much business so the staff was cut. There was Eddie
2 Busby. I think John was still there. I think there was
3 a -- a delivery guy named Raul but --

4 Q How long did they stay with the company?

5 A With -- Eddie was really the only other, I think,
6 full-time employee. Jeremy was still there part-time.
7 But there -- there was -- I mean, nobody was coming in.
8 Nobody was calling. The only people calling were people
9 trying to collect money.

10 Q Okay. Now did you --

11 JUDGE RALSTON: Ms. Battel, I'm sorry to
12 interrupt. I just want to remind both of you to let the
13 person finish speaking before you answer the question so
14 that we can make sure the transcript is clear.

15 MS. BATTEL: Okay.

16 JUDGE RALSTON: Thank you.

17 BY MS. BATTEL:

18 Q Did you completely answer the question?

19 A I think so.

20 Q Okay. Now, who was left to show up at the office
21 and try and take care of things after Terry died?

22 A It -- I -- there wasn't anybody. So I did.

23 Q Okay. And what did you do?

24 A I tried to open the mail. I tried to contact all
25 the creditors to let me them know what happened and said I

1 was trying to figure out what -- what was going on and
2 what the financial part was. I opened mail. I tried to
3 do collection calls to collect money, thinking if money
4 came in then people could get paid.

5 Q Did you do anything at all to try and salvage the
6 business or sell the business?

7 A I did. I contacted -- I had always been -- I
8 worked for the Chamber of Commerce, so I had some business
9 contacts. I reached out to a couple of people that I knew
10 and asked them if they knew of anyone I could contact to
11 see if someone could take over the business, sell the
12 business, what I should be doing. And I was introduced to
13 Nathan Chandler. He said in order to try to sell the
14 business, I needed to be on a form that I was -- I don't
15 know -- I have permission to do that.

16 Q Or you had this authority to --

17 A The authority. Thank you. And Terry had passed,
18 and so I filled out the form and tried to sell the
19 business.

20 Q Okay. And I want to show you what the Department
21 has marked as exhibit -- I believe it's Exhibit 4.

22 MS. BATTEL: Is that Exhibit 4, Your Honor?

23 MS. MOODY: Yes.

24 BY MS. BATTEL:

25 Q And is that the -- the form that you filed?

1 A Yes, ma'am.

2 Q Okay. And you said the purpose of that was to
3 enable you to see if you could sell the business?

4 A Yes.

5 Q And were you able to sell the business?

6 A No.

7 Q Okay. During this period of time, did you have
8 any interaction with the accountant who was handling the
9 books?

10 A Judy Carr. No. She stopped answering emails,
11 phone calls, texts. Nothing.

12 Q Okay. What about the accounting firm that had
13 assisted throughout the years?

14 A Yes. I would ask Michelle questions. She was
15 really, really patient and helpful because I didn't know
16 what a lot of these things were or what to do.

17 MS. BATTEL: Okay. At this point, Your Honor,
18 I'd like to let Ms. Michelle Puma provide testimony
19 regarding her involvement with the company during this
20 period of time.

21 JUDGE RALSTON: Great. Please proceed.

22

23 DIRECT EXAMINATION***

24 BY MS. BATTEL:

25 Q Okay. Michelle, are you there?

1 A I am.

2 Q Could you tell the Court a little bit about your
3 background, please?

4 A Yeah. I work with Crawford Pimentel Corporation.
5 Our company has been the tax preparers for Terry Moody's
6 business probably around the same time that he contacted
7 Nancy 25 years prior. We prepared the corporate tax
8 returns, and we prepared the shareholder tax returns. We
9 don't do sales tax. So our involvement with the Moodys
10 and Metal Service Center and the predecessor company,
11 Metal Supermarkets Hayward was for income tax return
12 filings.

13 Q Okay. Do you recall the last time you had
14 contact with Terry Moody?

15 A Honestly no. It probably would have been an
16 entire year prior to the final year of the -- well, what
17 should have been like a final tax return. I was also in
18 contact with the bookkeeper. So the normal course of
19 events for our corporate clients is their -- their
20 bookkeeper reaches out to us after the end of the client's
21 tax year and provides their financial statements. We take
22 those financial statements, and we prepare their corporate
23 tax returns.

24 So over the years I had interactions with Judy,
25 but because she was the one providing the financial

1 statements. So either Terry or Judy would provide the
2 financial statements to prepare the tax returns.

3 Q Okay. Prior to Terry's death, had you had any
4 contact with Vesta Moody regarding obtaining any of the
5 information regarding to the company's financial dealings?

6 A No. It --

7 Q It was always --

8 A Correct.

9 Q It was all with Terry Moody and Judy Carr?

10 A Correct.

11 Q Okay. When did you become aware of --

12 MS. BATTEL: I apologize to the Court. I am in
13 my home office, and that is my dog. I hope you don't hear
14 him barking, and it's disruptive.

15 JUDGE RALSTON: That's fine. Thank you.

16 MS. BATTEL: Okay. If it is, I will put her in
17 the house.

18 BY MS. BATTEL:

19 Q Okay. Michelle, when did you become aware of the
20 financial condition of the company?

21 A I think a couple of years prior to, you know, the
22 complete failure of the company, because the company had
23 started generating losses. So my recollection is that the
24 company had accumulated losses in excess of half-a-million
25 dollars in the two or three years leading up to Terry

1 Moody's death.

2 As I understood it, from conversations with the
3 bookkeeper before she just stopped working on the
4 accountants for the company, is that, you know, the
5 company was -- their financial condition had deteriorated,
6 such that vendors weren't getting paid. One of the
7 vendors that was not getting paid was the company that
8 handled their accounting software. So I think she fell
9 behind in updating bank reconciliations and financial
10 records because -- my assumption is that she wasn't being
11 paid as well.

12 Q Okay.

13 A So there -- there were no financial records
14 available. And then as I understand it, the access to the
15 company's accounting records was shut off because they
16 weren't paying the vendor that managed this program. So
17 the company used an accounting and point of sale software
18 accounting package that is specific to the metal industry.

19 Q Okay. And --

20 A They weren't paying their subscription, you know,
21 fees to this accounting package. So a final tax return
22 was never even prepared for the company because we had no
23 financial records to base the tax return on.

24 Q Now, did Vesta Moody reach out to you requesting
25 your assistance as to, "How can I acquire this information

1 that the Department is asking me to provide to them?"

2 A She did. She did. And I said, you know, it's
3 going to be very difficult if you can't access the
4 accounting records. Because as I understood it, Judy
5 would be the one to run the reports. So part of this
6 accounting software program, not only produces the
7 financial statements, it also tracks the sales. So that's
8 the where they extract the information that they use to
9 prepare the sales tax returns. And I believe -- again,
10 this is numerous years ago. But to the best of my
11 recollection, I would have told her, you know, I can't
12 even -- if you even have access to that program, I don't
13 know this program. I don't know how Judy extracts the
14 information. That was something she handled.

15 I believe the Department had asked for bank
16 statements to try to tabulate a sales tax liability in a
17 different manner. So that is very common in a sales tax
18 audit is, you know, you provide, you know, corresponding
19 information for your sales tax returns, which usually
20 entails bank statements. So I said, if you have, you
21 know, bank statements there in the office, you can provide
22 those to them. But I don't know how you'd get any other
23 information.

24 Q Okay. Do you know what ultimately happened to
25 Metal Service Center?

1 A Well, it's got to be just considered defunct as
2 far as the Secretary of State is concerned because they've
3 never filed a final tax return. So I haven't checked on
4 the Secretary of State website, but normally -- I mean,
5 they -- they may have just done an administrative close
6 out of the company because I know that a tax return was
7 never filed for this period of time because --

8 Q Do you know whether or not there's ever been any
9 request on the part of the -- the Internal Revenue Service
10 to sue Metal Service Center for nonpayment of these income
11 taxes?

12 A No, not to my knowledge.

13 Q Okay. And I know there's an indication in the
14 record that Mr. Moody had mentioned to Mr. Chi, at one
15 point in time, that he was looking into -- considering
16 bankruptcy filing. Do you have any information about
17 that?

18 A No. But filing for bankruptcy is actually very
19 expensive. So I'm not sure at what point in time Terry
20 considered doing that. I don't know if he -- you know,
21 there are attorneys that specialize in bankruptcy, but
22 it's a process.

23 Q Right.

24 A So there are fees associated with it.

25

1 REDIRECT EXAMINATION***

2 BY MS. BATTEL:

3 Q Yeah. At this point in time, I'd like to turn
4 for a moment to Vesta Moody asking, at any point in time
5 when you realized the dire financial straits, especially
6 after dealing with the Department, did you consult with or
7 talk with a bankruptcy attorney?

8 A Yes, I did. And I had an appointment, and she
9 explained that --

10 Q Now, this was attorney Norma Hammes?

11 A Yes.

12 Q No?

13 A -- that it was a very expensive process. And if
14 the company had no money, it was going to be difficult to
15 file bankruptcy. And without any records for anything,
16 that it would be better just to let it go.

17 Q And what did you do then?

18 A I told the few people that were still there that
19 I didn't have any option. I was just going to close the
20 doors and walk away.

21 Q And you mentioned that to Mr. Chi or --

22 A No.

23 Q I -- I'm sorry. I'm not sure. Is it Chi or Chi?
24 Maybe the --

25 A Chi Wong.

1 Q Chi. Chi Wong.

2 A By that time I wasn't really having
3 communications with him anymore. I said -- explained that
4 I don't have what he wants. I gave him bank records.
5 There was nothing else to give him. And I tried to have
6 him reach out to Judy Carr because she would be the only
7 one that had the most up-to-date things. And I don't know
8 that he ever had much luck with her. I started to get
9 letters from the tax people, but it was a lady's name
10 on -- I want to say Leticia something -- around that time.
11 I never heard from Mr. Wong again.

12 Q Okay. And then when was it that you contacted me
13 to see whether or not I could be of assistance to you?

14 A I think when I -- I realized what a mess this was
15 and how scared I was getting, because I really didn't know
16 what to do. Do I remember exactly when? Not exactly,
17 because it was so long ago.

18 Q Right. At any point in time, was -- to your
19 knowledge, was I involved with your husband regarding any
20 of these tax filings or the financial difficulties he was
21 experiencing?

22 A I didn't you were because you hadn't really been
23 in touch. He didn't have anything vetted, any contracts,
24 or anything, to my knowledge. But I still reached out to
25 you because I didn't know where to go.

1 Q Okay. And, at any point in time, did you review
2 or have me review any of the forms that Auditor Wong had
3 you sign?

4 A No. But I sure wish I had.

5 Q Yeah. Did you ever have Ms. Puma review any of
6 the forms that Mr. Wong had you sign?

7 A No. He had since -- since he told me I was not
8 taking responsibility, I was just helping him close out
9 his filing, I never -- I trusted him, and I should not
10 have.

11 Q Right.

12 A I should have reached out to you two lovely
13 ladies and asked for help.

14 MS. BATTEL: Okay. And I think the Court should
15 take notice. I believe it's also in the auditor's notes.
16 At one point in time, he indicated that he wanted
17 Ms. Moody to sign a form so that the statute of
18 limitations wouldn't expire. She didn't sign the form,
19 then he couldn't proceed further with the investigation.

20 MS. MOODY: Yes, correct.

21 BY MS. BATTEL:

22 Q And so you signed the form to be of assistance to
23 him?

24 A Yes.

25 ///

REDIRECT EXAMINATION***

BY MS. BATTEL:

Q Okay. Ms. Puma, before you stop testifying, I'd like to ask you, based upon your experience with filing of tax returns, sales tax returns, would you have considered Vesta Moody a responsible person within the company in charge of handling these matters?

A No, because she's more of like an administrative clerk. I mean, again, let me preface it with I don't do sale tax returns. I didn't read the definition many, you know, many months ago, many years ago when this whole thing was started. She wasn't the owner of the company. Terry Moody was. And I know just from interacting with him and Judy, that Judy was the one that prepared the sales tax returns.

Q Were you aware of any evidence that -- that she willfully or intentionally prevented these taxes from being paid?

A No.

Q Okay. Is there anything else that you'd like to add that you think might be helpful to the Court?

A Well, just that it, you know, from a non-technical standpoint, it just looks -- well, the reality is Vesta was just trying to do what she thought was appropriate. One of the forms, the exhibit that you

1 referenced was a State of Information filing that I
2 believe we did have a conversation with after the fact,
3 after Vesta had prepared the Statement of Information,
4 which is an online filing.

5 I wasn't present when she updated the Statement
6 of Information online. But my assumption is simply that
7 she clicked the button that says there's no changes and
8 filed the Statement of Information not knowing that she
9 was listed as an officer on that form. Again, those --
10 the Statement of Information forms, we didn't assist the
11 company with preparing those. They're available online.
12 Anyone could look them up. And it looks like Terry was
13 the person that had always prepared the Statement of
14 Information forms. So I -- I wouldn't have any reason to
15 believe that Vesta had ever prepared a Statement of
16 Information form.

17 She was, at best, a clerk. She'd have no
18 knowledge of this form or the implications of what it
19 could potentially mean by keeping the company in active
20 status. Because I think that's actually what Nathan was
21 trying to explain to her if she had tried to sell Terry's
22 business for his estate.

23 Q Now, if Vesta, at the time of Terry's death, had
24 just said, hey, I'm not responsible. I give up. I close
25 the doors. Could you see her having any liability for

1 income taxes for the company?

2 A No.

3 Q No. And I know you just said you don't do sales
4 tax returns. Neither do I. This is a new venture for me
5 as well.

6 If she had just closed the doors and had not
7 signed the documents that Mr. Wong gave her so that he
8 could continue with his audit, do you see her having any
9 responsibility?

10 A I don't know how she could. She had no -- no
11 sales tax knowledge.

12 MS. BATTEL: Okay. I mean, at this point, does
13 either the Department or the -- the Court have any
14 questions they'd like to ask Ms. Puma or myself?

15 JUDGE RALSTON: Does that conclude your
16 presentation? Because after your presentation, we will
17 move into questions.

18 MS. BATTEL: Okay. Other than -- I'm sorry
19 again.

20 You want to just let her in and close the door,
21 Vesta?

22 Can you hear my dog? I apologize.

23 JUDGE RALSTON: It's -- it's quite all right.
24 Yeah.

25 MS. BATTEL: Okay.

1 JUDGE RALSTON: Should we could take a few
2 minutes for recess if we're still waiting for her to come
3 back?

4 MS. BATTEL: Okay. I think she's coming back.
5 Yeah, right back because I just wanted to make a couple of
6 comments.

7 Are you coming back, Vesta?

8 MS. MOODY: Yeah. I got her to go into the
9 house.

10 MS. BATTEL: Okay.

11 MS. MOODY: I just --

12 MS. BATTEL: If the gate is there --

13 MS. MOODY: Yeah.

14 MS. BATTEL: -- that's fine.

15 MS. MOODY: I closed the door.

16 MS. BATTEL: Okay.

17 MS. MOODY: Sorry.

18 MS. BATTEL: I just want to say my practice is
19 going to the dogs, right.

20

21 RE-REDIRECT EXAMINATION***

22 BY MS. BATTEL:

23 Q Vesta, I just want you to let the -- the panel
24 know. What is your situation currently?

25 A I work a full-time job plus a part-time job. I

1 got to say the stress for all of this has not been great.
2 I have developed heart trouble. I'm sitting here now
3 feeling like I'm going to throw up. But this has been
4 going on for years, and I thought I was doing the right
5 thing. I thought someone was telling me that, you know,
6 he needed help to close out his audit; and I had to sign
7 it because there was no one else there's, so I did. I
8 wish to God I had never done that. I really -- I don't
9 have money to be paying -- what is it? -- \$26,798.92.

10 Q Now, we have filed on your behalf a petition as
11 an innocent spouse --

12 A Yes.

13 Q -- requesting relief, and it was denied. And do
14 you recall there was an indication in that denial that
15 well -- you have -- you have enough money just --

16 JUDGE RALSTON: Ms. Battel. Yeah. The innocent
17 spouse petition I don't think is before OTA. So I don't
18 think that is in the file.

19 MS. BATTEL: Okay. Okay.

20 BY MS. BATTEL:

21 Q Are you in a position to make restitution
22 payments of this amount?

23 A No. November 9th my daughter and granddaughter
24 moved in with me because they were in a bad situation. My
25 daughter works part-time with autistic children. Her

1 income is not great. It's a struggle every month.

2 MS. BATTEL: Okay. Before I turn it over then I
3 would just like to say as a summary, you know, I find it
4 very troublesome as an attorney that this has gone on now
5 for almost 10 years. I have never charged Vesta Moody nor
6 has Michelle Puma because I find it very disturbing that
7 she is being held responsible for this obligation, when in
8 retrospect, she did everything she could to cooperate with
9 the Department in obtaining the information they
10 requested.

11 In retrospect, after her husband's, death, Vesta
12 should have just closed the doors, walked away, and refuse
13 to cooperate at all. But instead, she spent her time and
14 emotional effort.

15 Now you were going through cancer treatment at
16 the time, were you not?

17 MS. MOODY: Yes. I had melanoma surgery in April
18 of that year. And the doctor said because of the stress I
19 was under, I had the recurrence in December.

20 MS. BATTEL: Okay. But you're fine now?

21 MS. MOODY: I -- I -- knock on wood. I get
22 checked every six months.

23 MS. BATTEL: But again, I just -- I -- I am very
24 disturbed by the fact that it's clear from Exhibit 1 and
25 Exhibit 2 -- and we didn't get into that one -- but that

1 showed all of the Department's contact with Metal Service
2 Center was with Terry Moody prior to his death. And Vesta
3 was the one who contacted the Department to say, hey, my
4 husband passed away. I know nothing about this.

5 And then all of a sudden, the Department's
6 records reflect, hey, Vesta Moody is the one that's in
7 charge, and she's the one that should be responsible. And
8 again, you know, I renew my request that this should be
9 brought to a conclusion with a determination that Vesta
10 Moody, number one, is not a responsible party. And no --
11 at no time did she willfully fail to pay or cause to be
12 paid the taxes due. And the fact that the taxes were not
13 paid was not the result of an intentional, conscious, and
14 voluntary course of action on her part.

15 To the contrary, she did everything she could to
16 salvage the business, to try to get some money to pay the
17 taxes, which again, was to her detriment. She should have
18 just said okay, just like Judy Carr had done, just like
19 Aaron who had been in the business before, saying I'm not
20 responsible. I'm closing the doors. Goodbye. But she
21 did not. And again, I renew my request that she should
22 not be held responsible for this obligation.

23 JUDGE RALSTON: Thank you. Ms. Battel, I
24 erroneously stated that the innocent spouse information
25 wasn't in the file, and it looks like the letter was

1 submitted as Exhibit H to Respondent's brief. So if you
2 had a comment that you wanted to make about that, please
3 go ahead and do so now.

4 MS. BATTEL: Okay. Well, I found it very
5 disconcerting that in that determination it was found that
6 despite all of the hardship she was experiencing, that she
7 had a disposable income of \$230 a month; and that,
8 therefore, this should go to the Department for this
9 obligation. I also find it reprehensible how much time
10 and effort and taxpayer's money has been spent by
11 attorneys.

12 Look, the Department has three attorneys at this
13 hearing. And I'm sure they're all being paid their salary
14 for being at this hearing for the sole purpose of trying
15 to collect -- what? -- \$230 a month from this woman who
16 lost her husband, is a widow now, and did everything she
17 could do to try and salvage this company in order to
18 payoff this obligation.

19 And I rest on that comment.

20 JUDGE RALSTON: Okay. Thank you very much.

21 Ms. Bedford, did you have any questions for any
22 of the three witnesses?

23 MS. BEDFORD: No, we do not.

24 JUDGE RALSTON: Okay. Thank you.

25 Okay. Let me check with my co-panelists.

1 Judge Long, did you have any questions for
2 Ms. Battel or either of the other witnesses?

3 JUDGE LONG: Yes, I do. I just have a few
4 questions for Ms. Moody.

5 And, Ms. Moody, thank you for sharing your story
6 today. I'm sure it's difficult. I just want to ask. I'm
7 looking at Exhibit 4, which is the Secretary of State
8 Statement of Information that was filed on
9 July 10th, 2017. And that is after Mr. Moody's death;
10 correct?

11 MS. MOODY: Yes, when I was trying to find if
12 someone could come in --

13 MS. BATTEL: Do you see it right there?

14 MS. MOODY: Yes.

15 MS. BATTEL: Okay.

16 MS. MOODY: -- come in and either takeover the
17 business --

18 JUDGE LONG: Oh, no.

19 JUDGE RALSTON: Let me stop you just for a
20 minute. Ms. Moody, we are unable to hear you. I don't
21 know if you can hear us. Can you give me a thumbs up if
22 you can hear me? Okay. So we are unable to hear you. It
23 looks like we lost connection. Can you say, like,
24 "testing?"

25 MS. MOODY: Testing. One, two, three.

1 JUDGE RALSTON: Okay. Looks like we have you
2 back. So, yeah, if you could go ahead and proceed.

3 MS. MOODY: I am so sorry. Yes. I see the
4 paper. Yes, that was the one that I filled out when I was
5 trying to find someone who could help find a buyer for the
6 business, or someone who could come in takeover and try to
7 figure out what's wrong and what to do. And I was advised
8 that I needed to have myself down as an authorized person.
9 And I said, well, I'm not. But, you know, Terry is dead,
10 so as his wife I guess it was okay. I don't -- I wish I'd
11 never done that. I wish I had not followed that advice.

12 JUDGE LONG: I understand. Okay. But when
13 Mr. Moody died, who became the owner of the company?

14 MS. MOODY: No one did. It was just there.

15 JUDGE LONG: Okay. And then the moving on -- so
16 with respect to the Secretary of State Statement of
17 Information, at that point, you filled that paperwork out.
18 And I understand your reasoning for it, but there's no
19 dispute that you identified yourself as the CEO at that
20 point?

21 MS. MOODY: What did I put it down?

22 MS. BATTEL: Chief executive officer, Vesta
23 Moody.

24 MS. MOODY: Yeah, I did.

25 JUDGE LONG: Okay. And then I want to move on to

1 the return, the sales and use tax return for the third
2 quarter of 2017 because my understanding is that the only
3 quarters in dispute currently are the third and fourth
4 quarter of 2017, which is after Mr. Moody died. I
5 understand your testimony was, in a lot of ways that
6 people weren't coming into work, the business was shutting
7 down. It does look like there were significant sales in
8 that third quarter. What -- can you explain those sales?

9 MS. MOODY: Not really. I wasn't really working
10 in the store like that. I was trying to figure out what
11 was going on. I know that in order to do things they
12 needed material, and the guys would -- would get some and
13 sell -- you know, and sell it and try to pay some of the
14 creditors that were hounding at the door all the time.

15 JUDGE LONG: Okay. And then who -- it's my
16 understanding is that the bookkeeper that normally
17 completed the sales and use tax returns, she quit. Had
18 she quit at this point? Who prepared this return, the
19 third quarter of 2017 return?

20 MS. MOODY: We never -- I never filled out
21 anything for a third quarter. I thought Judy was gone
22 before that. I thought the tax people figured out they
23 had done it.

24 MS. BATTEL: Your Honor, what exhibit are you
25 looking at so I can show it to her?

1 JUDGE LONG: I am looking at Exhibit I in the
2 hearing binder. It's a return for July through
3 September 2017.

4 MS. BATTEL: Okay. It's probably way down here.
5 Does it have her signature on it?

6 JUDGE LONG: No. It's not signed by anybody.

7 MS. MOODY: I was going to say, I never -- I
8 don't -- I wouldn't know how to do one of those things.

9 MS. BATTEL: Your Honor, what does it say? I'm
10 looking at -- is -- I'm looking at page 29 of 90. What --

11 JUDGE LONG: No. It should be page 1 of 22,
12 Exhibit I in the hearing binder.

13 JUDGE RALSTON: I think it's page 179 of the
14 hearing binder.

15 MS. BATTEL: Okay. Well --

16 JUDGE LONG: Thank you, Judge Ralston.

17 JUDGE RALSTON: Sure.

18 MS. BATTEL: Oh, sorry. Oh, here it is. Page 43
19 of 60.

20 MS. MOODY: Whoa, I think you just went past.
21 There's 176.

22 MS. BATTEL: Where? You saw 176?

23 MS. MOODY: Slow down. If you look to the far
24 right, you could see where it says 166 to --

25 MS. BATTEL: Oh, okay. I'm sorry.

1 What, Your Honor, was the one?

2 JUDGE LONG: 179.

3 MS. BATTEL: Okay. Thank you, Vesta. 79. Okay.

4 Here it is. Oops. And it says Board of Equalization from

5 October 31st, 2017, through July.

6 JUDGE LONG: Well, the due date would be

7 October 31st, 2017. But yeah, the --

8 MS. BATTEL: Okay.

9 JUDGE LONG: -- the quarter is July

10 through September 2017.

11 MS. BATTEL: Okay. We got it right here.

12 Do you see this, Vesta?

13 MS. MOODY: Yes, I do.

14 MS. BATTEL: Did you fill in any of this

15 information?

16 MS. MOODY: No, I did not.

17 MS. BATTEL: Have you ever seen this before?

18 MS. MOODY: No, I have not.

19 MS. BATTEL: And it goes on to page 2. So you,

20 as you say, you have no idea where this --

21 MS. MOODY: I have no --

22 MS. BATTEL: -- information came?

23 MS. MOODY: -- idea what that is.

24 JUDGE LONG: Okay. Thank you. I don't have any

25 other questions then. Thank you.

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JUDGE RALSTON: Thank you, Judge Long.

Judge Lambert, did you have any questions for any of the witnesses?

JUDGE LAMBERT: I have no questions at this time. Thanks.

JUDGE RALSTON: Okay. Thank you, Judge Lambert.

So we are ready to move on to the Respondent's presentation.

Ms. Bedford, I believe you requested 20 minutes. So you may begin when you are ready.

MR. PARKER: This is Jason Parker. I just have one thing to add before Ms. Bedford gives her presentation.

Ms. Battel was talking about the \$570 statement of account. That actually has a different account number listed on the statement than what the primary account for the Metal Service Center has. So --

MS. BATTEL: What is this for then?

MR. PARKER: As Mr. Bacchus mentioned earlier, it's for, what we call a collection cost recovery fee. And so it appears that was billed, it looked like, in August of '21.

MS. BATTEL: So in addition to the -- the \$26,000, is there another account out there she owes money on?

1 MR. PARKER: In our system it appears that way,
2 but I'd have to double check with our team to see whether
3 that should have been issued or not. Because I see the --

4 MS. BATTEL: So the --

5 MR. PARKER: Because I see that the duel
6 determination was petitioned timely. So it should not
7 have gone into collection. So I'm uncertain, at this
8 point, whether that collection cost recovery fee was valid
9 or not. But it is related to, in our system, a different
10 account number.

11 MS. BATTEL: Now, I'm very concerned because what
12 you're saying is her -- her liability exposure may not be
13 just the \$26,000, but there's another account out there.
14 I mean, when she brought this to me this morning, quite
15 frankly I said -- she looked at me. She said, "Nancy,
16 I'll write a check for \$570 now just to get this behind
17 me."

18 JUDGE RALSTON: So, Ms. Battel, I think if that
19 is a different account, then that is not before us at OTA.
20 So I think that would probably be better for you to
21 discuss with CDTFA after this hearing. And they may be
22 able to, you know, let you know what the other account is
23 related to. That would be --

24 Mr. Parker, is there, like, someone that they
25 could speak to that maybe could help clear this up, like,

1 after this hearing?

2 We're live streamed right now, and this is going
3 on our website. So I don't know if we want to discuss a
4 separate account on the livestream and have that posted.

5 MR. PARKER: Right. They can contact me, and I
6 can reach out to them by email with my contact information
7 if they don't have it.

8 MS. BATTEL: Do you have my contact information,
9 Mr. Parker?

10 MR. PARKER: I'm sure we have it in the record.

11 MS. BATTEL: Yeah.

12 MR. PARKER: I can double check that, but I'm
13 sure I have --

14 MS. BATTEL: Okay.

15 MR. PARKER: -- contact information.

16 MS. BATTEL: Yes. I'd be very interested in
17 hearing what this potential liability is.

18 JUDGE RALSTON: Okay. Thank you.

19 So we're going to proceed.

20 Ms. Bedford, you can begin with your
21 presentation.

22 After that, we'll give Ms. Battel a chance to
23 respond, and then we should be able to wrap this up.

24 MS. BEDFORD: Thank you.

25

1 March 19th, 2018, Exhibit A, page 22. The Department
2 closed MSC's seller permit, effective December 19th, 2017.
3 Appellant has not disputed that the business has
4 terminated.

5 As to the second element, personal liability can
6 be imposed only to the extent the corporation collected
7 sales tax reimbursement on its sales of tangible personal
8 property in the state but failed to remit the tax to the
9 Department when due; Revenue & Taxation Code section
10 6829(c), Regulation 1702.5(a). The evidence demonstrates
11 that MSC collected sale tax reimbursement during the
12 liability period. CDTFA 1296 Account Update Information
13 dated January 26th, 2018, Exhibit A, page 23, indicates
14 that sales tax reimbursement was added to the selling
15 price. CDTFA 414E, report a field audit, dated
16 January 30th, 2018, Exhibit A, pages 24 to 44, also states
17 that sales tax reimbursement was separately added to the
18 sale and price. Further, Appellant concedes that MSC
19 collected sales tax reimbursement during the liability
20 period; Exhibit A, page 8, lines 1 to 3.

21 As to the third element, whether Appellant was a
22 responsible person, the evidence shows that Appellant had
23 control, supervision of, and the responsibility for the
24 filing of returns or the payment of tax, and had a duty to
25 act for the corporation in complying with the sales and

1 use tax law. According to Appellant, she had authority to
2 access MSC's bank accounts and handle MSC's financial
3 matters after her husband's passing on May 25th, 2017;
4 Exhibit A, page 11, lines 13 to 15.

5 Prior to this, Appellant was listed as a director
6 on MSC's Statement of Information dated June 29th, 2004;
7 Exhibit A, page 19. On May 30th, 2017, Appellant
8 requested that the Department postpone the audit;
9 Exhibit A, page 46. On August 8th, 2017, Appellant met
10 with the Department to discuss the audit and to provide
11 documents; Exhibit A, page 47. Appellant continued to
12 discuss the audit with the Department to the end of
13 January 2018; Exhibits A, pages 47 to 49. On
14 July 10th, 2017, MSC filed an updated Statement of
15 Information listing Appellant as CEO; Exhibit A, page 20.

16 Appellant has also executed various CDTFA forms
17 on behalf of MSC during the quarter -- the third quarter
18 of 2017, including a waiver of the statute of limitations
19 on December 15th, 2017, Exhibit A, page 51, and a record
20 update on September 15th, 2017, Exhibit A, page 53, and
21 other forms in January 2018, Exhibit A, page 21, 23, 50
22 and, 52. Appellant's involvement in discussing MSC's tax
23 matters and signing various tax forms on its behalf
24 demonstrates that Appellant had responsibility for and
25 control over MSC's sales and use tax matters during the

1 liability period.

2 As to the fourth element of personal liability,
3 the evidence shows that Appellant's failure to pay MSC's
4 tax liabilities was willful. Failure to pay is willful if
5 the person had knowledge that the taxes were not being
6 paid and had the authority and ability to pay the taxes
7 but failed to do so. Failure to pay may be willful, even
8 without bad purpose or motivation, Regulation
9 1702.5(b)(2), MSC's unpaid sales tax, liabilities,
10 including tax, interest, and penalties originate from a
11 self-assessed sales and use tax return for 3Q '17 filed
12 with partial remittance; Exhibit A, pages 59 to 80,
13 Exhibits I and J. And a Notice of Determination, dated
14 February 4th, 2021, issued to MSC when it failed to file
15 its 4Q '17 sales and use tax return, Exhibit A, page 81.

16 The Notice of Determination is based on an
17 estimate of MSC's sales for 4Q '17. The estimate was
18 subsequently reduced by 50 percent based on a reaudit,
19 Exhibit B. During the liability period, Appellant engaged
20 in conversations with the Department regarding MSC's sales
21 and use tax liabilities. On August 8th, 2017, the
22 following matters were discussed with Appellant: Resale
23 certificates, which include information on why a
24 transaction is not subject to sales tax; sales tax
25 reconciliation for the ongoing audit showing a difference

1 of about \$11,000; and delivery charges; and including the
2 provision of a hyperlink to publication 100, which
3 includes the statement regarding reporting total sales for
4 reporting period and sales and use tax returns; Exhibit A,
5 pages 45 through 49.

6 Additionally, Appellant concedes that it was at
7 this meeting that she first became aware of the
8 outstanding sales tax liabilities that should have been
9 remitted to the Department, Appellant's opening brief,
10 page 7. At this meeting, the auditor also discussed
11 errors in the MSC audit based on the sales data given by
12 Mr. Moody, i.e., sales tax reconciliation differences in
13 the amount of about \$11,000, delivery charges where items
14 were shipped by MSC's own truck, and a tax rate deficiency
15 for Hayward starting in October 2014, as Hayward has a
16 sales tax in addition to that imposed by Alameda County.

17 While the audit liabilities are not at issue in
18 determining Appellant's liability, pursuant to section
19 6829, it does demonstrate that Appellant was aware that
20 MSC had outstanding liabilities and that she was,
21 essentially, on notice for future liabilities for MSC. On
22 September 13th, 2017, during the 3Q '17 liability period,
23 Appellant discussed XYZ letters, which mention sales
24 claimed on sales tax returns, and the application of sales
25 tax to sales made to nonprofit organizations and local

1 governments, Exhibit A, pages 45 to 49. In the following
2 months through the liability period, Appellant discussed
3 XYZ letters further partial manufacturing exempting
4 certificates, interest applied to the audit tax liability,
5 and the optional online payments, and received the audit
6 working papers and discussed them with the Department.

7 The Department sent a Demand For Payment, dated
8 October 4th, 2017, to MSC for the month of August 2017,
9 which shows that MSC's prepayment taxes were due and were
10 not paid in full, Exhibit G. On March 14th, 2018, the
11 Department informed Appellant that the 4Q '17 return was
12 delinquent and that there was an outstanding balance,
13 Exhibit A1, page 54. Thus, Appellant had knowledge that
14 the 3Q '17 and 4Q '17 tax liabilities were not being paid
15 at the latest as of March 14, 2018. However, because
16 Appellant had knowledge of the reporting requirements and
17 was a person responsible for MSC sales and use tax
18 matters, the evidence proves that Appellant had knowledge
19 of MSC's 3Q '17 and 4Q '17 tax liabilities were due, and
20 not being paid as of the date those returns were due,
21 October 31st, 2017 and January 31st, 2018, respectively.

22 Appellant was the person responsible for MSC's
23 sales tax liabilities for the liability period. The
24 evidence shows that Appellant was generally authorized to
25 manage MSC's sales and use tax affairs during the

1 liability period and after. Appellant was listed as MSC's
2 CEO on the 2017 Statement of Information dated
3 July 10th, 2017, Exhibit C, page 50. Appellant had
4 multiple contacts with the Department to discuss sales and
5 use tax matters beginning August 2017, Exhibit A, pages 45
6 to 49, hired an outside party to organize the sale of MSC,
7 Exhibit A, page 8, and had access to and the ability to
8 use MSC's bank accounts, Exhibit A, page 11, lines 13 to
9 15. This evidence demonstrates that Appellant had the
10 authority to pay MSC's taxes or to cause them to be paid
11 on and after the dates those taxes were due. There's no
12 evidence in the record indicating that Appellant's
13 authority was limited in any way.

14 As to Appellant's ability to pay the taxes, the
15 evidence shows that MSC had funds available to pay the
16 taxes throughout the liability period. For example,
17 Appellant's own supplemental statement for her penalty
18 relief request signed under the penalty of perjury,
19 includes the summary of disbursements made from MSC's bank
20 account, which were payroll related and made to others,
21 Exhibit A, page 82 and pages 83 to 89. MSC paid wages
22 during the liability period in the amount of about
23 \$288,000, Exhibit C, page 5. And MSC received merchant
24 payments during the liability period in the amount of
25 about \$257,000, Exhibit C, pages 5 and 51.

1 This information considered together with the
2 fact that MSC collected sales tax reimbursement during the
3 liability period, shows that funds were available to pay
4 the taxes for liability period, but the funds were paid to
5 other creditors instead. Appellant makes several
6 arguments against her personal liability under section
7 6829. First, Appellant argues in the opening brief that
8 she was not responsible person regarding the filing of
9 sales and use tax returns, pointing to business practices
10 that she assumed would continue into the liability period
11 and her general lack of knowledge regarding sales and use
12 tax matters.

13 Appellant further argues that funds were not
14 available to pay the outstanding tax liabilities. The
15 evidence present however, demonstrates that Appellant was
16 a responsible person during the liability period and that
17 Appellant had control, supervision of, and the
18 responsibility for the filing of returns or the payment of
19 tax, and had a duty to act for MSC in complying with the
20 sales and use tax law, including that funds were available
21 to pay the taxes for the liability period.

22 Appellant also argues that the Department coerced
23 or tricked her into signing forms on behalf of MSC,
24 providing her with misleading information, or took
25 advantage of an unsophisticated person. There's no

1 documentary evidence that the Department did any of the
2 above, including regarding Appellant signing any of the
3 aforementioned forms pertaining to MSC. Rather, the
4 available evidence shows that Appellant undertook these
5 tasks and responsibilities voluntarily.

6 Based on all the evidence provided, the
7 Department has met its burden on each of the elements for
8 imposing personal liability pursuant to Section 6829. For
9 these reasons, we request that the appeal be denied.

10 Thank you.

11 JUDGE RALSTON: Thank you, Ms. Bedford. Does
12 that include your presentation?

13 MS. BEDFORD: Yes.

14 JUDGE RALSTON: Thank you very much.

15 Judge Long, did you have any questions for the
16 Respondent?

17 JUDGE LONG: I do not have any questions. Thank
18 you.

19 JUDGE RALSTON: Thank you.

20 And Judge Lambert, did you have any questions for
21 the Respondent?

22 JUDGE LAMBERT: I have no questions. Thanks.

23 JUDGE RALSTON: Thank you.

24 Ms. Battel, would you like the opportunity for
25 rebuttal?

1 You are still muted. Let's see. I think I can
2 unmute you.

3 MS. BATTEL: There I go.

4 JUDGE RALSTON: Yes.

5 MS. BATTEL: Could you hear me now?

6 JUDGE RALSTON: Yes.

7 MS. BATTEL: Okay. Are you ready?

8 JUDGE RALSTON: Yes.

9

10 CLOSING STATEMENT***

11 MS. BATTEL: Okay. As far as Ms. Bedford's four
12 points -- the four points, yes, there's no dispute over
13 the fact that the corporation had dissolved. At the
14 time -- well at the time that these remaining tax
15 obligations were due.

16 However, as far as the second element, that she
17 must have collected the sales tax during the period in
18 question; when she collected any monies, there was never
19 any indication of oh, okay. This portion relates to sales
20 tax. This portion relates to monies that I can, you know,
21 pay out for ongoing obligations. She made no such
22 distinction because she wasn't aware of them. All she was
23 aware of is I want to collect what monies are available
24 and pay the ongoing expenses.

25 It's not until she fully cooperated with the

1 Department in providing the -- the documentation that they
2 needed in order to create an assessment and say, wait a
3 minute, this is what you owe in unpaid sales taxes, that
4 she was aware oh, how did that money that I collected,
5 maybe that portion would be attributable to sales tax.

6 But when that money was collected, she had no
7 idea of that distinction. She paid the money out to the
8 creditors, to the workers during that period of time. And
9 then when the tax liability -- the sales tax liability
10 came to her, and they said, okay, you owe this amount,
11 there was no money in the bank account. At that period in
12 time, there was no money. So how could she have willfully
13 not pay that money when there was -- was no money there.

14 I am very troubled by the fact of the -- the
15 third quarter sales tax return. Who prepared that
16 document? Vesta Moody said she didn't. Judy Carr was not
17 around. Obviously, I -- there must have been someone
18 within the Department that prepared that document based
19 upon the information that Vesta Moody was able to provide.
20 And as Michelle Puma had testified, she wasn't able to
21 access a lot of this information because the accounting
22 software package that the company used -- I think it was
23 called Metal Magic?

24 MS. MOODY: I think so.

25 MS. BATTEL: And it was unique to the metal

1 fabrication industry. Vesta couldn't access that
2 information because the account was closed for nonpayment.

3 MS. MOODY: Yeah. We couldn't access anything.
4 I even asked if we could just get in for an hour to try to
5 pull out some documents.

6 MS. BATTEL: Yeah.

7 MS. MOODY: They wouldn't let us.

8 MS. BATTEL: So I -- I'm just perplexed as to who
9 prepared those sales tax returns, and why aren't they
10 signed? The Department accepted an unsigned sales tax
11 return? Again, there's the argument. So I don't think
12 she must have collected sale tax during that period of
13 time. It's undisputed she collected what money she could,
14 but she had no indication that, okay, I'm collecting this,
15 and this is sales tax, and I should keep it aside. And
16 I'm collecting this to handle everything else.

17 Money came in. She paid what she could to try to
18 salvage a failing business. Once again, I don't think
19 there's -- was she the person for filing these returns?
20 No. Up until Terry's death, it's clear that he was, and
21 Judy Carr was. After his death, she was the only person
22 there. She was the only person who, I guess, technically
23 had control and supervision, but she didn't have the
24 knowledge. She didn't have the information, and she
25 didn't -- I mean, she might have had the authority to get

1 into the bank accounts. And if she did, she passed all of
2 that information onto the Department.

3 And -- and again, I don't believe that there's
4 sufficient evidence that any failure to pay the accrued
5 tax returns was willful or intentional on her part.
6 Because when she became aware of the exact amount, there
7 was no money there. How could she have paid them? And
8 that's when she decided, look, I can't do anything. The
9 business is closing. So again I -- I just -- I'm very
10 troubled that not only are -- is the Department saying she
11 owes 20 -- now owes \$26,798.92, but whoa, there's a new
12 account out here. Perhaps she owes more.

13 Come on. This lady has been through so much. I
14 implore that you finally find that she has no liability
15 for this obligation.

16 I thank you for your consideration.

17 JUDGE RALSTON: Okay. Thank you.

18 It looks like we are ready to conclude this
19 hearing.

20 So this case is submitted on January 22nd, 2026,
21 and the record is now closed.

22 The judges will meet to deliberate and decide
23 your case, and we will issue a written opinion within
24 100 days.

25 As Mr. Parker stated, he will reach out to you

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and address the other account that was raised.

And as far as our part, we'll send you our opinion within 100 days.

This hearing is adjourned, and that concludes the hearing calendar for today.

Thank you.

MS. BATTEL: Thank you.

(Proceedings concluded at 2:30 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 17th day of February, 2026.

ERNALYN M. ALONZO
HEARING REPORTER