

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

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4
5 In the Matter of the Appeal of:)
6 WESTERN DISTRIBUTING COMPANY,)
7 Appellant.) OTA No. 230914432
8 _____) Volume II

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 400 R Street, Sacramento, California,
17 commencing at 8:57 a.m. and concluding at
18 11:11 a.m. on Wednesday, March 18, 2026,
19 reported by Christina L. Rodriguez, CSR No. 14898,
20 a Certified Shorthand Reporter in and for the
21 State of California.

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APPEARANCES :

Panel Lead:	SARA A. HOSEY
Panel Members:	VERONICA I. LONG JOHN O. JOHNSON
For the Appellant:	V. GAINS S. GUADAGNI EDWIN P. ANTOLIN
For the Respondent:	KEN HAVENS KATIE FRANK

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I N D E X

E X H I B I T S

(No exhibits were received into evidence)

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1 Sacramento, California; Wednesday, March 18, 2026

2 8:57 a.m.

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4 P R O O C E E D I N G S

5 JUDGE HOSEY: We are now back on record in the
6 consolidated appeals of Western Distributing Company and
7 its nonresident shareholders. It's March 18, 2026, at
8 approximately 9:00 a.m. We are now moving to Appellants
9 for our arguments.

10 Mr. Antolin, are you ready?

11 MR. ANTOLIN: Yes, Your Honor.

12 JUDGE HOSEY: Please begin.

13
14 P R E S E N T A T I O N

15 MR. ANTOLIN: Thank you. We have a PowerPoint
16 slides, and we're ready to present those. Thank you.
17 So as we discussed yesterday, there are six questions.
18 The primary question being whether the beverage
19 distribution business and the transportation business
20 operated as unitary business.

21 If they did not, everything else -- all the
22 other issues fall away. And so we're going to focus
23 primarily on that and touch on the other issues in the
24 alternative. So whether or not the transportation
25 business and the beverage business operated on unitary

1 business, it's very clear that there's been ample
2 testimony to establish the separate nature of those
3 operations.

4 First, and very importantly, those two
5 divisions operated in very, very different types of
6 businesses. One was buying and selling beverages, and
7 the other was providing an interstate transportation
8 service. Two, each of those businesses operated with
9 various separate day-to-day and strategic policymaking
10 management.

11 Three, they operated with very separate
12 operations. The testimony established that the two
13 divisions had separate employees, separate staffing,
14 separate management, separate facilities, separate
15 equipment, separate customers, separate bookkeeping,
16 separate accounting -- all of that.

17 Four, there was no vertical integration
18 between the businesses. Now, the FTB argues that there
19 were signs of vertical integration, and I will touch on
20 this in a bit, but the evidence and the testimony is
21 very clear and, in fact, in 2010, the year of issue,
22 there was no vertical integration between any of the
23 divisions.

24 Finally, there were no meaningful centralized
25 functions here, and I'll discuss each of those

1 functions. Now, to be sure, there were modest shared
2 functions. For example, there was a corporate
3 accounting group that was used to prepare corporate
4 level financial statements and tax returns.

5 There was shared insurance purchasing, single
6 checking account and running a payroll and we'll touch
7 on those, as well. But those connections are not the
8 kind of integration by themselves that you would expect
9 to see in unitary business and certainly not the kind of
10 connections that the courts have relied on to find a
11 unitary business and we'll go through that, as well.

12 So when we review the alleged unitary
13 connection, the connection that the FTB relies on, I
14 want you to keep in mind what it is that the FTB is not
15 saying. They are not saying that beverages and
16 transportation had synergies and that benefited both.

17 They're not saying, for example, that they
18 shared a warehouse or that they shared equipment or that
19 they shared management so that it would -- that would
20 enable both divisions to benefit from synergies between
21 them. They're not saying that there was this type of
22 integration at the operational level. They are not
23 saying that.

24 What they are saying is, oh, well, look, you
25 know, there's some insurance and there's a corporate

1 accounting department, there was payroll.

2 But as we know and what the Board of
3 Equalization has said in 20th Century Fox -- to
4 demonstrate the existence of a unitary business, it is
5 necessary to do more than simply list circumstances
6 which are labeled unitary factors.

7 You have to show how those factors actually
8 lead to synergies and benefits that result in these
9 separate businesses operating as one business or as a
10 unit and that is where the FTB's argument fails. It's
11 merely listing factors. It is not saying how did
12 transportation and beverages operate as one unit. How
13 did they benefit from these alleged connections.

14 So now what I'd like to do is kind of break
15 down each of the arguments from the FTB's briefing. So
16 on page 15 of the brief, the FTB argues: There was
17 complete overlap between WDC's board of directors --
18 WDC's board of directors and executive officers and the
19 management of the divisions. First, that's not true.

20 It is not true that there was complete overlap
21 between the management of the divisions. Now, it is
22 true WDC is a single corporation. As a single
23 corporation, it will have a single board of directors
24 and a single set of officers. But that is typical of
25 every corporation that has divisions that operate

1 separately or that operate as unitary business. That is
2 not a material unitary connection.

3 It is not true that the management -- that
4 there was complete overlap in the management of the
5 divisions. The testimony is undisputed that each
6 division had its own separate managers in place and
7 those managers, because of the policies set by Mr. Gains
8 as a CEO, had the authority and the direction to operate
9 autonomously; to operate independently of all of the
10 other divisions.

11 So it is not true that there was complete
12 overlap in the management of the divisions. What there
13 was -- at the corporate level -- was merely high level
14 oversight as you would expect in any corporate setting,
15 whether unitary or not.

16 Keep in mind, during 2010, the CEO, Mr. Gains,
17 was actively actively acting as an professional NHR car
18 race driver and on the road for 40-plus weeks of the
19 year. He had a full career doing something separate
20 from the operations of these businesses.

21 It was not practical for him to be involved in
22 the day-to-day operations nor was he -- he wasn't
23 consistent with what he envisioned for a business for
24 each of these divisions to operate as independent
25 businesses.

1 To be sure, he checked in. He wanted to see
2 how they were performing financially. He had Chris
3 Boggs (phonetic), also the CFO, in place to check in and
4 see how the divisions were performing financially, but
5 that is typical of any unitary business. The day-to-day
6 operations and the strategy decisions were made at the
7 division management level.

8 As we know from Court of Appeal from Tenneco
9 managerial links, including interlocking Boards of
10 Directors and frequent communications between upper
11 management levels are characteristic of any parent and
12 its wholly owned subsidiary and without more are not
13 relevant to the issue of unity.

14 Next on page 8 of the Respondent's brief, the
15 FTB just lists these alleged centralized
16 functions -- centralized the FTB's rights. WDC provided
17 centralized accounting, purchasing, human resources, and
18 dispersing function for its division and employed a
19 single checking account. Let's look at he each one of
20 those in detail.

21 There was no centralized accounting. The
22 books for each division were maintained by each
23 division. The testimony on that is undisputed. And,
24 also, we know from Tenneco that centralized accounting
25 without more is not a significant unitary factor, and

1 the FTB itself and its own audit technique manual states
2 common tax return preparation and common financial
3 statement preparation will not carry any weight in a
4 unitary context.

5 So here, we know that the -- what the central
6 office did in the corporate accounting group was gather
7 the financial information from the separate divisions
8 and then combine that into a corporate level financial
9 statement and also gather that information for the
10 preparation of state and federal tax returns by their
11 accounting firm.

12 So it really is more of a -- you could think
13 of a corporate accounting group as more of a clearing
14 house. They are the ones pulling together the financial
15 information from the operating divisions and those
16 operating divisions kept their own books, used their own
17 separating accounting software to keep their books, and
18 all of that information that had to be rolled up to the
19 corporate office so that the corporate office can
20 prepare financial statements and tax returns.

21 That is not the type of unitary connection
22 that you would expect that the courts had ever rely on
23 because in this context in corporation, single
24 corporation is obligated, for example, to prepare tax
25 returns. It has to gather that information from the

1 divisions. It has no choice. The divisions cannot
2 prepare their own tax returns.

3 FTB has also argued that there was an effect
4 centralized purchasing. In fact, there was no
5 centralized purchasing. The testimony undisputed is
6 that each manager in each division made its own
7 purchasing decisions.

8 And as Mr. Guadagni testified yesterday, the
9 divisions would create a purchase order on their own
10 without approval from the corporate office. They would
11 send that purchase order to the vendor for fulfilling.

12 The vendor will fulfill that order, send an
13 invoice, and the divisions will receive that invoice and
14 connect that invoice to the purchase order, receive the
15 order, make sure that all of the inventory levels
16 purchased actually shows up on the dock.

17 So, you know, reconcile to see if there are
18 any differences. And once all of that process is
19 completed at the division level, that paperwork is
20 packaged up, signed off to be paid, approved by the
21 division management as ready to be paid and then that
22 little package and coded.

23 So for example, cost of good sold or taxes,
24 however it needs to be coded for financial accounting
25 and tax return purposes, and then that little package is

1 sent to the corporate accounting department to pay.

2 So the corporate accounting department really
3 does literally nothing except write the check in that
4 situation, and it has the coding, so it already knows on
5 how that expense should be coded and for corporate
6 financial statement purposes and for corporate tax
7 return reporting purposes.

8 As to insurance -- that it is true in this
9 year -- the insurance was purchased centrally at the
10 corporate level, but you have to keep in mind that the
11 insurance -- that two-page document in the exhibit -- is
12 not a policy.

13 It appears to be a summary of the policy, but
14 the actual policy would add writers of each of the
15 business and separate underwriting for each of those
16 businesses. And then, of course, the expense for
17 insurance would have been allocated to each of the
18 businesses.

19 And as Mr. Gains testified yesterday, in some
20 cases the business each division could contact the
21 broker and see if they can get a better rate. They were
22 not precluded from doing so.

23 But in the end, the focus on insurance in our
24 view, is a minor connection. It is common in whether
25 the -- common in the corporate setting, whether there is

1 a unitary business or not a unitary business. For
2 example, the Court of Appeal in Chase Brass said
3 (indiscernible) does some minor purchasing for Chase.

4 In some instances, insurances purchased for
5 two or more companies. That is a minor connection
6 according to the Court of Appeal in Chase Brass. And
7 group call Chase Brass, the Court of Appeal found one
8 group to be unitary and another group to be non-unitary.

9 And in A.M. Castle, the Court of Appeal said
10 although the company had some overlapping insurance,
11 there was no significant integration between the
12 day-to-day administrative operations. Again, reflecting
13 that insurance is a minor connection in the overall
14 unitary analysis, and it certainly is minor in this
15 case.

16 What you don't see with respect to centralized
17 purchasing is centralized purchasing with respect to the
18 core operations of the business. You don't see
19 centralized purchasing for inventory or for product.
20 You don't see centralized purchasing for equipment used
21 by the businesses.

22 So -- and you don't see, for example,
23 centralized purchasing for accounting software. Each
24 company had their own separate software. And you don't
25 see centralized -- in a way it's

1 purchasing -- centralized hiring of employees. All of
2 that is separate. And even the expenses are incurred
3 separately.

4 Next, the FTB says that there was a
5 centralized human resources department. And again, that
6 is an overstatement. Here, the testimony is undisputed
7 as to who manages the employees, who decides who to
8 hire, who to fire, who decides how much to pay the
9 employees, who decides the schedule, the work schedules,
10 the vacation schedules, all of that.

11 All of that is set at the management at the --
12 by the managers of the divisions, not by the parent
13 corporate office.

14 Now, there was a centralized payroll
15 processing activity at the corporate level, but as we
16 know, the information -- it's similar to purchases in
17 that the division level management sets the wages, sets
18 the hours work, tracks the hours worked by the
19 individual employees, and then gathers that information,
20 determines how much the payroll should be for employees,
21 and then sends that information to the corporate office
22 so that the corporate office has the right numbers to
23 enter into the payroll processing service. ADP, I
24 believe, is what they used during this period.

25 As to the health insurance and the other

1 benefits, those were centralized out of the corporate
2 office; but in our view, in a corporate setting, is
3 typical for a corporation to have a single health
4 insurance plan that covers a corporation or to have
5 employee benefits that cover the corporation as well and
6 all of its employees.

7 In Tenneco, the Court of Appeal said Tenneco
8 lacked substantial centralized department even though we
9 know in Tenneco there was extensive employee benefits
10 and health insurance and all of that, that was
11 centralized in the corporate office in Tenneco still in
12 that case. The Court of Appeal found that there
13 were -- the -- in that case -- call to exclude the
14 subsidiaries were not engaged in unitary business with
15 the parent.

16 Now there was some discussion yesterday about
17 on boarding, and Mr. Gains and Mr. Guadagni said that
18 employees were on boarded at the -- at the division
19 level. And that is correct. Because the very different
20 operations of each business, on boarding had to be done
21 at the division level so the employees knew kind of what
22 the policies were, you know, their expected work
23 schedules, you know, when they can take vacations. All
24 of that, kind of the day-to-day.

25 But then, also, Mr. Boggs testified in his

1 declaration that there was some on boarding at the
2 corporate level and that would have been to make sure
3 that people get entered into the payroll system. You
4 need to get their W9 and kind of thing, make sure
5 they're signed up for health insurance and those types
6 of things.

7 Let's turn to the single checking account. So
8 the writing of checks and -- well, so there's the
9 writing of checks. There's the single checking account,
10 and then there's the line of credit. Let's talk about
11 all of those.

12 The FTB argues that divisions did not have
13 independent capital, and that is not correct. We know
14 from testimony that is undisputed that the divisions had
15 control over their purchasing. When they needed to buy
16 something or needed to hire additional employees, they
17 had the authority to do so. Merely having the payment
18 come out of a central checking account does not mean
19 that the purchasing decisions were not made at the
20 division level.

21 In fact, the purchasing decisions were not
22 centralized in any way. So in this case, as I mentioned
23 earlier, when the divisions made purchases, they
24 packaged up the purchase order invoice. They confirmed
25 that everything purchased actually arrives.

1 And then when that is confirmed, all that
2 documentation is packaged up, signed off, the expenses
3 are coded as cost of goods sold -- for example, the
4 taxes. And then all of that is sent to the corporate
5 office for the writing of the check.

6 The nominal benefit of having the corporate
7 office print the check and sign it is really almost no
8 benefit to the operating divisions -- and why is that?

9 Because the operating divisions had their own
10 bookkeepers. They could have easily printed that check
11 as well and signed it. That take one minute, if given
12 that. And so the notion having the central office that
13 confers some type of significant material benefit for
14 unitary analysis is not true.

15 I also want to note that when the
16 division -- when the corporate office prints the checks,
17 they printed the division's name on the checks. The
18 checks that were not coming from the corporate parent.
19 They were coming from the operating divisions, and the
20 reason for that is important because to the world to the
21 vendors, the various operating divisions, they knew the
22 operating division.

23 They didn't know the corporate office or the
24 corporate parents, so they needed to understand that
25 these payments, these checks, were coming from the

1 company or the business they were dealing with, and
2 that's an important point.

3 The single checking account Mr. Gains
4 testified yesterday that, really, the reason for having
5 that is to be able to monitor cash and expenses coming
6 in and out of the company. It's important, especially
7 for a smaller family owned business -- that they'd be
8 able to keep an eye on things, because as Mr. Gains
9 pointed out, in some instances, there could be fraud or
10 embezzlement, and they need to be tracking that very
11 carefully.

12 And, also, I want to point out in Mr. Bogg's
13 declaration, in some cases -- in a pinch -- if the
14 division really needed to write a check quickly, they
15 had the ability to do that. They had blank checks. It
16 did not happen often. But if that occasion ever arose,
17 the divisions were empowered to write their own checks
18 if they had to. It's not a normal course, but they also
19 had that ability, and they had the blank checks to do
20 that.

21 I'd like to talk briefly about the line of
22 credit. As Mr. Gains testified yesterday, the line of
23 credit related only to the beverage distribution
24 business that did not benefit the other operating
25 divisions did not benefit transportation.

1 So it's the Court of Appeal in Tenneco said
2 business strategy and activities, including cash,
3 management -- which is really what we have
4 here -- constitute the kind of behavior that one would
5 expect to find in any parent subsidiary or parent
6 division relationship.

7 Next, I'd like to address the FTB's argument
8 that contribution and defendants existed between the
9 beverage and transportation segments due to vertically
10 integrated operations within WDC's wholesale average
11 chain. And that's on Respondent's 3 to page 17. As the
12 testimony in the declarations and the testimony we heard
13 yesterday, it is undisputed that these were not
14 vertically integrated business.

15 What do we know? We know that Mr. Gains in
16 the 1970s had the idea that if they owned their own
17 interstate trucks, they can go pick up inventory and
18 bring that inventory back to the warehouse in Colorado
19 for the beverage distribution business. That's what we
20 know.

21 We know that that occurred, that or that idea
22 originated and the purchase of the original trucks
23 occurred in the 1970s. But what we also know is that it
24 didn't work out. It is -- when you think about it, in a
25 very simple way, sending an empty interstate 18-wheeler

1 truck to Florida to pick up rum to bring back to
2 Colorado or sending an empty truck to Kentucky to pick
3 up bourbon to drive back to Colorado doesn't make sense,
4 because you are incurring the expense both ways. Going
5 out on an empty truck and coming back with a full truck.

6 That makes no sense in an interstate trucking
7 operation. And Mr. Gains realized that and decided
8 well, what does make sense is to use these trucks to
9 provide interstate trucking services to everyone, and
10 that's what he did. He stated yesterday that by the
11 late 80s or 90s, the trucking business and the beverage
12 distribution business had become completely separate.

13 And certainly by 2010, the operations of those
14 two divisions were completely separate. And we know
15 that because the volume was less than one percent of
16 beverage distribution inventory that was received on
17 western distribution -- distributing transportation
18 trucks.

19 We also know that because whenever the
20 beverage distribution division decided to use the
21 transportation division trucks for transportation
22 services, they charged an on length price. So there was
23 absolutely no benefit to that relationship.

24 And how did -- so how did the bulk of the
25 beverage distribution businesses inventory arrive at the

1 warehouse in Colorado? Mr. Guadagni testified that for
2 almost all purchases of inventory, it is the
3 manufacturer or brewer, Miller brewing for example, that
4 arranges the shipping.

5 And they demand that they do not let the
6 distribution wholesalers arrange shipping. So the had
7 -- the distribution business had no ability to create
8 this vertically integrated business. And in fact, there
9 was not one.

10 So I'd like to sum up our unitary position.
11 As I started saying, that these were different
12 businesses, they had separate management that the
13 day-to-day and the policy level, they had separate
14 operations. There is no vertical integration and no
15 meaningful centralized functions.

16 Merely listing those functions is not enough.
17 What FTB must show for there to be unitary business is
18 that the connections create synergies or unquantifiable
19 flows of value between the beverage distribution
20 business and the transportation business.

21 We don't see that. We don't see any evidence
22 that there was these -- these synergies or
23 unquantifiable flows of value between the two operating
24 divisions.

25 What we see is completely insubstantial number

1 of intercompany transactions that were all charged on
2 arm's length basis and will bid out like they do for all
3 of their transportation services when they need them.
4 That derives no unquantifiable flows of value from one
5 division to the other that says they're dealing with a
6 third party customer.

7 We have very modest amount of purchasing on
8 insurance but, again, that -- there's no evidence that
9 somehow that that creates these unquantifiable flows of
10 value between the two or if there are any -- they're
11 modest, they're extremely modest in the big picture of
12 the operations of the two corporations.

13 What the FTB has also suggested is that by
14 having Mr. Gains signed declarations that relate to
15 federal court litigation that somehow evidences a
16 unitary business. But again, there's no evidence that
17 in fact, the two business -- the beverage distribution
18 business and the transportation business were truly
19 integrated.

20 The statement on those declarations related to
21 motions to remove actions in state court to federal
22 court. And as I explained yesterday, the way to get to
23 -- one way to get into federal court is through
24 diversity jurisdiction. And when a corporation is a
25 party, the corporation is viewed to be a citizen of the

1 state where it is incorporated or where its principle
2 place of business is located.

3 And for the purposes of diversity
4 jurisdiction, the principle place of business is by
5 default the headquarters office. That is the sole
6 purpose for those declarations is not to establish that
7 there was or was not a unitary business. And our view
8 is that the FTB's reliance on those declarations, it's
9 just overstating what the true purpose of those
10 declarations purposes were.

11 And finally, as to the declarations that were
12 signed decade or more after the year at issue, we would
13 say that those have no relevance to the case and to the
14 declarations that were signed two years before the years
15 of issue or the year at issue, it also is not relevant
16 because it proceeds the years -- the year at issue.

17 The FTB, also, yesterday during
18 cross-examination asked Mr. Gains about whether he
19 signed documents related to the sale of the beverage
20 distribution business. And that is true, he did sign
21 those documents. But again, that is not signed of a
22 unitary business or centralized management between the
23 beverage company and the transportation company.

24 What does it mean when Mr. Gains signs the
25 sale agreement? Well, the sale agreement is between two

1 legal entities, the buyer and Western Distributing
2 Company. It has to be signed by an officer of Western
3 Distributing Company to be valid and that is the sole
4 purpose for that.

5 That is not to say that he was signing that in
6 his capacity as an active manager of the operations of
7 the beverage business or of the transportation business
8 or any other businesses. He signed that his capacity as
9 a legal officer of the corporation and really had to
10 sign that. He had no choice. And then finally, the
11 context of the sale of the beverage distribution rights.

12 That the decision to sale the beverage
13 distribution rights also does not evidence centralized
14 management by the corporate office. And the reason for
15 that is they did not have a choice to sale those
16 beverage distribution rights.

17 When Miller and Coors combined, the result
18 after that combination is that you had a Miller
19 distributor, which was Western Distributing or
20 Beverages, and you had Coors distributor operating in
21 the same location, and that's untenable.

22 So the combined bill of Coors told Western
23 Distributing, "You have to sell." They had no choice.
24 They were compelled to sell, and they were chosen as the
25 party not to be the ongoing distribution company for

1 that combined group. So they did not make that
2 decision, that was imposed on them.

3 So the various connections that FTB relies on
4 are not the type of connections the courts have found
5 create the unitary business. On the one hand, when you
6 have diverse businesses, you have cases like dental
7 insurance or Mole-Richardson. And in those cases, you
8 have some centralized options. You have centralized
9 accounting and even insurance.

10 But courts do not conclude that those very
11 diverse businesses were unitary based on that. In those
12 cases, what the courts relied on was the very, very
13 strong centralized management in both of those cases.
14 So when courts find that there's a unitary business in
15 the context of diverse businesses, they do look at those
16 centralized accounting or other functions such as
17 insurance.

18 But what they really hone in on is strong
19 strong centralized management, because that is how you
20 can have diverse businesses become one single unitary
21 business. And so for example, you had the dental -- in
22 the dental insurance case, you had the management in the
23 dental insurance company very involved in the
24 agriculture company or business also owned by the
25 taxpayer.

1 As so far as deciding what crops to grow --
2 what land to buy, what land to sell -- very, very
3 involved that is not present here. This case is much
4 more like the Tenneco case.

5 In Tenneco, you had an integrated oil business
6 which was a unitary business, but you also had a diverse
7 set of businesses. You had shipbuilding, tractor
8 building, packaging business. And in Tenneco, the
9 question was -- well, are these other businesses, the
10 non-oil businesses or the diverse businesses? Are they
11 part of the oil unitary group?

12 Like in our case, in Tenneco, there was a
13 very, very strong corporate policy for independent
14 management of the various businesses, which we have
15 here. And in that case, the Court concluded that the
16 separate businesses -- the shipbuilding, the tractor
17 building -- the packaging businesses were not part of
18 the unitary oil business.

19 Partly because of the very strong policy at
20 the set at the very highest level in the corporation
21 that the businesses should operate separately and
22 independently. We have the same policy in our case.

23 The Court found that the shipbuilding,
24 tractor, and packaging business were all non-unitary.
25 Notwithstanding that there were some centralized

1 connection in the two -- from the corporate
2 headquarters. For example, the corporate parent in
3 Tenneco had to approve all purchases exceeding \$100,000.

4 They had to approve all hirings and of anyone
5 whose salary exceeded \$25,000. There was a centralized
6 plan for evaluating professional employees. There were
7 centralized benefits, employee benefit plans, thrift
8 plans, retirement plans. There was some -- there was a
9 centralized insurance department in Tenneco.

10 Notwithstanding all of that, the Court of Appeal
11 concluded that those were not -- that the shipbuilding,
12 tractor building, packaging businesses were not part of
13 the same unitary business.

14 That is the controlling analysis in our case.
15 So the bottom line, what do we have here? We have a
16 beverage company that was licensed and -- that was
17 licensed and legally authorized to operate and sell beer
18 only in Colorado.

19 The FTB wants to tax the portion of the gain
20 from the sales of distribution rights from that
21 business. The only way to do that is by establishing a
22 unitary business with transportation as we have shown
23 and as the testimony has established.

24 The alleged connections are too thin to
25 establish a unitary business with California. And when

1 you think about these connections, lets assume that
2 those connections had some weight and we should consider
3 them. Well, all of those connections occurred all in
4 Colorado. The corporate county departments in Colorado,
5 the insurance make -- the purchasing decisions are in
6 Colorado.

7 So how is California contributing to the -- to
8 the alleged unitary business? It is not. The only
9 connection activity in California is trucks are coming
10 into California on very rare occasions -- and this is
11 very rare, less than 1%.

12 They are picking up inventory in California
13 and driving it back out at market rates. So there
14 really is no benefit that California's -- that the
15 activities in California creates some type of synergy
16 unquantifiable flow of value that benefits the beverage
17 activity in Colorado.

18 So in some, we think that the connections that
19 the FTB relies on are too thin to create unitary
20 business. There really is not one if the board or the
21 panel were to conclude so, it would expand beyond what
22 the current case law defines as a unitary business, and
23 the panel should certainly not go that far because no
24 case under these facts has found -- or similar facts, I
25 know that they are all facts specific -- but no case has

1 found the unitary business on such thin facts where we
2 don't really have any strong centralized management or
3 strong integration of the operations of the businesses.

4 So I'd like to turn to the other issues which
5 are all in the alternative. So assuming for the sake of
6 argument that there is a unitary business -- well, our
7 first argument on 17951-44 and the flowthrough of the
8 gains to the shareholders, our view on that is that
9 because there's no a unitary business, that gain
10 therefore is not apportionable business income and
11 cannot flow through to the shareholders under 17951-4.

12 Now, turning to the arguments that are in the
13 alternative. So the first argument is the application
14 of the special trucking regulation under 25137-11. And
15 it is there, I'm not going to read it for you, but I'd
16 like to focus on just a few parts on that regulation on
17 this next slide.

18 So first, the regulation says, the first step
19 is to determine what portion of the trucking company's
20 income constitutes business income. We note, it says
21 the trucking company's income constitute business
22 income, and then that business income is apportioned to
23 this date pursuant to the property, payroll and
24 apportioned factors set forth in this regulation.

25 So the second point is that, when we have

1 trucking company business income, that income must be
2 apportioned as set forth in 25137-11. And then
3 non-trucking company income is not apportioned under
4 Section 25137-11.

5 It is that simple. We have one trucking
6 company here. A trucking company is defined in the
7 regulation as a motor carrier transporting property of
8 others for compensation. And we only have one business
9 that is doing that.

10 Now, we have noted that WDC, the corporation
11 is registered with the U.S. Department of Transportation
12 as a motor carrier, but if you were to look it up, it's
13 registration on the U.S. DOT website. You will see that
14 it is registered at -- it's doing business as active --
15 or entity that is registered.

16 And the doing business as entity is the
17 transportation division. No other division in WDC is
18 technically registered with the U.S. Department of
19 Transportation.

20 But I'd like to also point out that the
21 definition of a trucking does not turn on registration
22 with the U.S. DOT. The definition of a trucking company
23 in regulation 25137-11 is simply a motor carrier
24 transporting property of others for compensation. And
25 here, we have only a single motor carrier that is

1 transferring the property of others for compensation,
2 and that is the transportation entity.

3 The FTB's position seeks to expand the scope
4 of 25137-11 to groups and we're assuming there's unitary
5 group for purposes of this argument although we have
6 already established that there is not a unitary group.
7 But if we assume that there is a unitary group, the
8 FTB's position is that 25137 should apply to an entire
9 unitary group if one part of it is a trucking company as
10 defined in the regulation.

11 But the problem with that argument is that the
12 regulation does not say that. It very clearly says that
13 only trucking company income is apportioned under the
14 rules of 25137 so that the only income of the
15 transportation division should be subject to the rules
16 in 25137.

17 And if you do that, then when you turn
18 assuming there's unitary group, the gain from sale of
19 beverages would not be apportioned under the rules in
20 25137. It would be apportioned under the standard rules
21 and it has no factors in California. It has no sales,
22 no property in California.

23 The next argument we make is that, even if you
24 were to accept that there was a unitary business and if
25 you accept the 25137-11 applies that the resulting

1 appportionment percentage in California is skewed. And
2 we see that here. Look at the FTB's appportionment
3 percentage for 2010 is 613257. It is an outlier when
4 you look at the appportionment percentage for the prior
5 years, '09, '08, '07, '06.

6 And why is that? The reason is so far off
7 from the prior years is because the sale occurred on
8 January 11, 2010, so at the very beginning of the year.
9 And because of that, the appportionment factors that
10 result in 2010 exclude essentially all of the
11 distribution businesses activities because it was no
12 longer owned. You don't have the sales of the
13 distribution business, you don't have the payroll of the
14 distribution business, you don't have the property of
15 the distribution business.

16 And that's skews the appportioned percentage in
17 2010 so that essential you are appportioning the gain a
18 sale from the distribution business by the
19 transportation companies factors and not a combined
20 distribution business factors and transportation
21 business factors. And our view is that that is -- does
22 not fairly reflect the activities of this alleged
23 unitary business in California. As you can see it over
24 states the level of activity in California.

25 And there are two reasonable ways to cure that

1 distortion. One way is to well, let's look at the
2 period during 2010 when the companies were still
3 operating together and we have apportionment of
4 percentage of 2.9 percent. Another reasonable way to
5 cure that distortion is to look at the prior year and
6 you get a more reasonable balanced result that reflects
7 the activities of the distribution business operating
8 with the transportation business.

9 Next, I'd like to touch on penalties and
10 interest. So penalties should be aided. And why is
11 that? So what we know from U.S. Supreme Court in Boyle
12 is when an accountant or attorney advises a taxpayer on
13 a matter of tax law such as whether a liability exists,
14 it is reasonable for the taxpayer to rely on that
15 advice. So in this case, we have a complicated issue,
16 I'll admit that.

17 When Western Distributing Corps sold the
18 beverage distribution business or the licenses that they
19 had the right, the distribution rights, the question
20 then is, is apportionment of that gain subject to tax in
21 California or not? Should it be apportioned? Is there
22 a unitary business? Is there not a unitary business?
23 If there is a unitary business, what is the proper
24 apportionment? How do you compute that? How do you
25 apply the trucking regulation to this diverse alleged

1 unitary business. Those are all complicated tax issues.

2 As Mr. Gains testified yesterday, none of the
3 shareholders of WDC are tax professionals, they rely on
4 WDC's tax expertise and really the tax expertise of
5 their accounting firm to determine the proper sourcing
6 for that gain that is reasonable to do here.

7 It would not have been reasonable not to
8 follow the sourcing recommendation by the accounting
9 firm that prepared the returns. Because of that, under
10 the standard of Boyle, the penalties imposed on the
11 individual shareholders, there was no penalties imposed
12 on WDC. The penalties imposed on individuals
13 shareholders should be abated.

14 These are complicated tax issues. They rely
15 on tax professionals to tell them how to report that.
16 It gets reported on their K-1s. They're entitled to
17 rely on reports in those K-1s. There's no reason to
18 think that those K-1s were looked at and analyzed by
19 professionals. Because of all that, I don't think it
20 should be abated.

21 Finally, interest should be abated. The FTB
22 has agreed to abate 11 months of interest. We believe
23 that interest for any period exceeding 36 months should
24 be abated. When you calculate the time from the day of
25 the protest to the determination letter, seven years

1 five months had elapsed. FTB has agreed to abate 11 of
2 those months. We think anything in excess of 36 months
3 should properly be abated because of delay by the FTB.

4 And the was of delay caused by the FTB.
5 There's a change in the protest hearing officer. There
6 was delays in issuing the protest determination letter,
7 but I think in any instance, seven years, five months
8 from the date of protest to the determination letter is
9 excessive. And that is the reason to be interest and
10 excess of thirty-six months should be abated.

11 Finally, I'd like to just touch on the FTB's
12 tax benefit rules arguments in their briefing. That's a
13 new issue that was not raised in the protest or the
14 audit under FTB's burden on that issue.

15 You know, I don't believe they have met their
16 burden to show that there has been any tax benefit in
17 this case but they have shown at most is that
18 amortization deductions and other loss or casualties
19 deductions were claimed on returns. But that is not
20 sufficient to show that there is a tax benefit.

21 Under HP Management Court and appeal that
22 board equalization, the board said if the events which
23 gave rise to the loss in the prior year and the recovery
24 in the current year do not constitute a single
25 integrated transaction, the tax benefit rule has no

1 complication. We know by definition here there was not
2 a single transaction.

3 The FTB has said there were amortization
4 deductions and other loss deductions. That is one
5 thing. Here, the recovery quote, alleged recovery is
6 the sale of the beverage distribution list. Those are
7 completely different transactions. So no basis for the
8 application of the tax benefit. With that, I will
9 conclude my part.

10 JUDGE HOSEY: Thank you Mr. Antolin. I'm
11 going to see if the panel has any questions for you at
12 this time. I'm going to start with, Judge Johnson.

13 Any questions?

14 JUDGE JOHNSON: No questions at this time,
15 thank you.

16 JUDGE HOSEY: All right.

17 Judge Long, any questions?

18 JUDGE LONG: Okay. There we go. I just want
19 to ask one -- one or two questions. I -- when I was
20 listening to your argument, there were -- there were a
21 couple of mentions of things that I wanted to find out
22 if we have them in the evidentiary record or if it's
23 only in the argument.

24 The first item you said that the divisions
25 printed checks so that the beer company printed checks

1 from the divisions with the names of the divisions on
2 them. Do we have that in the evidentiary record?

3 MR. ANTOLIN: That's in Mr. Bogg's
4 declaration. I can't recall the exact right. I can get
5 that for you.

6 JUDGE LONG: That's all. I'm happy to review
7 the declaration.

8 MR. ANTOLIN: It's a two-page declaration. I
9 have a few pages.

10 JUDGE LONG: I'm happy to look and confirm. I
11 just want to make sure we have it in the record while we
12 have witnesses present. And then my second question is
13 related -- you also said the divisions had blank checks,
14 so that also been in the declaration?

15 MR. ANTOLIN: Yes.

16 Judge LONG: I see now. Thank you. That's
17 all my questions. Thank you.

18 JUDGE HOSEY: I'm going to save any questions
19 until after rebuttal just so all arguments are out. I'm
20 going to check in -- I think now maybe a good time for a
21 quick break and then we'll move to Franchise Tax Board
22 arguments. That will be a bigger chunk of time.

23 And then we'll go to rebuttal and any more
24 questions from the panel if there are any. Any
25 questions before we go on a break?

1 JUDGE LONG: No questions.

2 JUDGE HOSEY: Okay. Well, it's 9:53. We'll
3 take 15-minute break, and we'll return at 10 after
4 10:00. We're now off the record.

5 (Short break.)

6 JUDGE HOSEY: We are now back on the record.

7 We are now moving to the oral arguments from
8 the Respondent, Franchise Tax Board.

9 Mr. Havens and team, are we ready to begin?

10 MR. HAVENS: Yes, Judge. We are.

11 JUDGE HOSEY: Please begin. Thank you.

12

13 RESPONDENT'S ARGUMENTS

14 MR. HAVENS: Good morning. As previously
15 stated, I'm Kennedy Havens from the Franchise Tax Board.

16 When Western Distributing Company, or WDC,
17 filed its California return for the taxable year in
18 December 31st, 2009, reported that WDC was engaged in a
19 beer and wine distilled alcoholic beverage wholesale
20 business.

21 And the WDC in its various
22 divisions -- includes transportation and beverage
23 divisions -- were engaged in a diversified unitary
24 business with no separate trader business.

25 WDC was engaged in a unitary trader business.

1 WDC included income and expenses from its beer
2 distribution operations and trucking operations as
3 business income. WDC's clear distribution rights were
4 identified as the business assets of WDC's diversified
5 unitary trader business. And WDC amortized and deducted
6 beer distribution rights from its unitary gross income.

7 However, when WDC sold those same distribution
8 rights related assets just 11 days later on January 11th
9 of 2020, WDC claimed the distribution rights had lost
10 their business. WDC still reported that it was a beer,
11 wine, and distilled alcoholic beverage wholesaler, and
12 that its various divisions were engaged in diversified
13 unitary business.

14 However, despite including income expenses
15 from the beer distribution operations and trucking
16 operations, WDC claimed the gain on those previously
17 reported business assets was nonbusiness income. While
18 WDC included the gain from its tax base, it included the
19 gain in the sales factor denominator.

20 Thus, WDC claimed the same item as allocable
21 nonbusiness income for the purposes of the income tax
22 base and apportionable business gross receipts for the
23 purposes of sales factor. Clearly, WDC made an error on
24 this 2010 return.

25 The Franchise Tax Board's position is that

1 WDC's error was in characterization of sale, and that
2 WDC sale of a previously reported business asset, a
3 self-reported unitary trader business, constituted
4 business income.

5 Pursuant to the application of the standard
6 apportionment of the formula under the uniform division
7 of income for tax (indiscernible), WDC is taxable on its
8 apportioned gain from the sale of this beer distribution
9 rights and related assets, and WC's nonresident
10 shareholders are taxable on their distributed share of
11 the apportion gain.

12 The Appellant will have you believe that WDC's
13 error was not in the characterization of the sale but
14 rather in WC's representation that the unitary trader
15 business existed at all.

16 In contrast to its original filing for the
17 year at issue and prior years, WDC has claimed that
18 audit protest, and now on appeal, that its self-reported
19 unitary trader business in 2010 was sufficient.

20 That WDC's contemporaneous representations to
21 the contrary were untrue. Or in the alternative, WDC
22 claims to be in contemporaneous representation that was
23 engaged in unitary trader business are correct -- that
24 the operation of law requires WDC's trucking division be
25 treated as a separate trader business, or failing that

1 contention, WDC claims that the standard proportion of
2 the formula reflecting WDC's actual business operations
3 of the year at issue must be thrown out, and that
4 unitary operations conducted over five business days in
5 January must be used to apportion the sale of business
6 assets that appreciated over years.

7 On review, the Franchise Tax Board found that
8 WDC's facts supported a finding immunity -- that WDC's
9 assets were business assets of the unitary trader
10 business.

11 Thus, the FTB's assessment comports with the
12 binding admission that WDC might own its original
13 return -- that WDC was engaged in the first of five
14 unitary business and imposes the tax consequences that
15 logically followed from that determination.

16 In the presentation that follows, I'll review
17 my WDC's filings, contemporaneous documentary evidence,
18 witness testimony, and WDC's facts confirm the unitary
19 relationship existed between WDC and its beverage and
20 transportation divisions in 2010.

21 I'll establish that WDC's standard of formula
22 required the apportionment of WDC's trucking activities
23 under California Code Regulations Title 18, which I'll
24 refer to as CCR, at section 25137-11 -- then the
25 exclusion of WC's substantial occasional sale under CCR

1 section 25137, subdivision(c)(1)(a).

2 Although established why, as a result of this
3 treatment, WDC and the nonresident appellants owed taxes
4 here at issue.

5 Finally, as WDC's nonresident shareholders did
6 not file returns and not demonstrate a reasonable cause,
7 all addressed by the penalties assessed by the FTB
8 should be sustained and why interest is due.

9 The California Supreme Court has provided two
10 tests in determining whether a unitary relationship
11 exists -- the three unity's test and the dependency or
12 contribution test. Both the three unity's tests and the
13 dependency or contribution test were ratified by the
14 United States Supreme Court as part of the settle
15 jurisprudence of the unitary business principle.

16 The three unity's test provides that unity
17 exist if unity ownership, unity operation, and unity is
18 present. WDC was unitary, Western Beverage Distributing
19 of Colorado or Western Beverage, its beverage
20 distribution division. And Western Distributing
21 Transportation Corporation or Western Transportation,
22 its transportation division under the three units test.

23 Under unity of ownership, ownership requires a
24 bond control ownership between unitary businesses. WDC
25 was founded in 1933 by Vieri Gains' grandfather as a

1 family-owned Coors and beer distributorship, Vieri Gains
2 became CEO of WDC in 1977.

3 In 1986, brothers Vieri and Carlo Gains
4 restructured WDC -- bifurcates stock into voting and
5 nonvoting shares. For the years at issue, WDC's board
6 of directors consisted of the siblings of Vieri Gains as
7 president, Carlo Gains as secretary, and (name
8 indiscernible) as the director of the board.

9 And the board members directly control 100% of
10 WDC's voting stock. Vieri Gains controlling 84.12% of
11 its body. In addition to its position to secretarial
12 work, Carlo Gains also helped within the WDC's beverage
13 distribution division, Vieri Gains' sons (indiscernible)
14 for shareholders of WDC and help management roles in the
15 beverage distribution and trucking divisions
16 respectively.

17 Vieri Gains directed the formation of Western
18 Distributing Transportation Corporation in 1977, and its
19 dissolution and incorporation into WDC as a division in
20 1986. Vieri Gains also personally established the
21 Western Transportation and Western Beverage Trade Gains.

22 In 2010, Vieri Gains, in his capacity as CEO
23 and shareholder of WDC, and Carlo Gains, in his role as
24 a shareholder of WDC, were responsible for the
25 disposition of Western Beverages beer and distribution

1 rights, inventory, and land assets.

2 For the taxable year end of 2010, Western
3 Transportation and Western Beverage were wholly owned
4 divisions of WDC without separate legal distance. Thus,
5 community ownership existed between WDC and its
6 divisions.

7 Unity of operations also existed between WDC
8 and the Beverage and Transportation operations. Unity
9 of operations refers to operations or staff functions.
10 California Appellate Courts have looked to join
11 purchasing, joint county, joint finance, and joint human
12 resources as indicative of operational community, as
13 these cost savings are shared on divisions.

14 In the other case of Dental Consultants versus
15 Franchise Tax Board, California Appellate Court found
16 that apparent corporations bookkeeping, accounting,
17 check writing, legal and insurance core functions,
18 create obvious savings to subsidiary in constituting
19 unity of operations, even if businesses were extensively
20 managed by a professional management company and engaged
21 in different lines of businesses.

22 In that case, insurance management hired
23 professional managers that manage their farming
24 operations. Similar, in the public decision of Paul
25 Richardson versus Franchise Tax Board, the Court

1 determined that centralization of operational activities
2 from the parent subsidiary, including accounting,
3 purchasing, advertising, and maintenance and personnel
4 efforts, processing and payroll, and expense payments
5 supported a finding of business unity.

6 In this case, WDC engaged in joint purchasing,
7 engaged in single insurance policy covered WDC in all
8 its divisions, securing savings that proved all
9 divisions.

10 WDC operated centralized human resource
11 functions across all WDC divisions -- including
12 onboarding employees in WDC divisions, providing
13 employment health insurance and benefits for WDC
14 divisions, administration of common performance and
15 center local program for employees of WDC divisions.

16 WDC's CEO testified that he acted as the EEOC
17 officer for WDC and all of its divisions. He engaged in
18 litigation on behalf of WDC and its divisions. WDC's
19 CEO further testified that WDC's human resource
20 functions also included the promulgation of employee
21 handbook which provided policies of the (indiscernible)
22 provisions.

23 WDC also administered a centralized accounting
24 department, which centralized dispersing control
25 divisions overseen principally by WDC's CEO, Vieri

1 Gains, and WDC's CFO. WDC's headquarters handled
2 payroll for employees of the divisions. The WDC
3 employee a single checking account with all the incomes
4 deposited from which all expenses were paid, removing
5 the need for any intercompany finance agreements as all
6 finances were managed and coming with that single
7 account.

8 The sample statement provided by the accounts
9 show that WDC's CEO personally signed 94 percent of all
10 checks issued from WC's checking account. Governing
11 operational expenses of WDC, Western Transportation, and
12 Western Beverage. WDC also employed a line of credit
13 secured by beverage assets that was mingled with general
14 checking account funds, and the interest of which was
15 paid by WDC.

16 In addition to the daily operational function
17 by payroll dispersing, WDC's accounting department was
18 responsible, according to Chris Boggs, for WDC's
19 financial statements and tax returns encompassing WDC
20 divisions, preparing profit and loss statements for all
21 WDC divisions, and providing managerial accounting and
22 financial data to inform WDC management and division
23 management.

24 In labor litigation, involving transportation
25 divisions in 2021 and again, 2025, WDC's CEO's affidavit

1 stated that management and administrative functions were
2 conducted at WDC's headquarters in Denver -- including,
3 as proven in this case, human resources, finance,
4 treasury, payroll, and safety. These are the functions
5 identified for the FTB and supported by its exhibit for
6 the years at issue.

7 A single bank account for all operations in
8 the joint line of credit in addition to the
9 centralized dispersing purchasing human resources and
10 accounting functions is indicative of operational
11 community, as it provides savings to all members of
12 (indiscernible.)

13 In addition to these joint operational
14 elements, operational immunity existed for the
15 transportation operations to WDC's supply chain and
16 asset management structure. Western Transportation was
17 created by refrigerated long haul capabilities for
18 beverage operations. It continues to supply beer
19 distribution -- excuse me -- beer delivery throughout
20 the United States.

21 Sample invoices show that Western
22 Transportation carried beverage inventory for Western
23 Beverage and Western Imports, fulfilling this proof of
24 functionality. A captain transportation company
25 provided WDC's beverage distribution operations with a

1 dedicated long haul solution for freight were provided
2 throughput to WDC's Western Transportation Division.

3 Similarly, Western Transportation offered
4 towing services to all WDC divisions, and WDC's inhouse
5 maintenance job service assets, both the beverage and
6 trucking divisions.

7 In total, the centralized purchasing,
8 accounting, and human resources and finance and
9 dispersing convolute the vertical integration operations
10 of the unity operation existed between WDC and its
11 beverage and transportation divisions.

12 Unity of use also existed between WDC and its
13 beverage and transportation divisions. Unity use refers
14 to executive deployment and operational systems.

15 WDC was a family-owned business regarding
16 executive employment, Vieri Gains as the CEO of WDC
17 since 1977, was president of WDC's board and only 84.12%
18 of WDC's public stock.

19 Vieri Gains was president; Carlo Gains was the
20 executive; Phoebe (phonetic) of WDC as a stable manager,
21 who in the beverage distribution division, secretary
22 (indiscernible) to the voting stock. Vieri Gains stocks
23 were shareable with the managers of that distribution
24 and trucking operations.

25 Vieri Gains' affidavit states the trucking

1 operations in support of WDC's wholesale beverage
2 business began the year that he became CEO.

3 And Vieri Gains testified that he identified
4 the value long haul trucking and back hauling on
5 beverage loads as refers to WDC's operations. Vieri
6 Gains discontinued the separate existence of Western
7 transportation in 1986, merging Western Transportation
8 and innovative beverage operations into WDC, making WDC
9 an S-corporation under its control.

10 Vieri Gains personally established Western
11 Transportation training in 1987, and the Western
12 Beverage training in 2001. In addition to establishing
13 divisions, Vieri Gains oversaw a common operational
14 systems. WDC employed a single checking account in
15 which all of the income were profit in which individuals
16 were paid moving the need for any informal financing
17 agreement.

18 Vieri Gains personally signed 94% of the
19 checks issued from the checking account, covering
20 operational expenses for the WDC Western Transportation
21 and Western Beverage. WDC's CEO testified that WDC
22 helped yearly planning to establish budgets for
23 divisions approved WDC or an approval from WDC
24 executives was required for large purchases.

25 Vieri Gains were dispersing not just a high

1 level expenses, but all operational expenses. As
2 evidence by signature on digital checks was as little as
3 25 cents. This systemic level of involvement in
4 day-to-day dispersing and review of data dispersing is a
5 far cry from a high-level oversight any investor would
6 provide an investment.

7 WDC also employed a line of credit upon which
8 it paid interest, secured by beverage assets that were
9 checking account funds. Vieri Gains in response
10 directed an accounting system where an all revenue and
11 all expenses were routed to WDC's checking account.
12 Divisions rely on WDC's central accounting for
13 operational capital cash.

14 Division managers were required to consult
15 (indiscernible) to Vieri Gains' (indiscernible) due to
16 the regular course of business, demonstrating measurable
17 reliance existed between the divisions.

18 Vieri Gains testified that he performed human
19 resource legal functions for all divisions, acting as
20 WDC's EEOC representative and engaging with employment
21 litigation proceedings on behalf of the divisions.

22 In this role and as CEO of WDC, Vieri Gains
23 signed a consent to settlement 58 employee actions on
24 behalf of WDC and its divisions. WDC's CEO testified
25 that WDC promulgated policies and an employee handbook,

1 that employees were required to sign acknowledgement of
2 such policies as part of WDC's centralized onboarding
3 process.

4 WDC offered employee discounts, allowing WDC
5 division employees to discount automotive repair
6 services at its inhouse automotive repair shop and
7 discounted alcoholic beverages from the beverage
8 decision.

9 Moreover, in labor litigation involving the
10 transportation division of 2021 and 2025, WDC's CEO
11 submitted an affidavit stating that operational
12 executive administrative and policy making decisions
13 were conducted at WDC's headquarters in Denver.

14 In 2010, Vieri Gains, and his capacity as the
15 CEO of WDC, sold beverage distribution rights that
16 formed the core of WDC's beverage division, Evidencing
17 WDC's absolute control of divisional business and
18 assets.

19 As WDC's president served as CEO, and WDC
20 secretary served as executive vice president and
21 division manager and shareholder service division
22 managers, significant overtime existed between the board
23 of directors, executive officers and division
24 management.

25 The control exhibited by Vieri Gains is dual

1 as president and CEO of WDC, and the systems of
2 operation and management implemented WDC constituted
3 use.

4 WDC was also engaged in unitary business when
5 applying the contribution of dependency tests. The
6 hallmarks of contributions whether the operation of
7 business in the state is dependent upon or contributes
8 to the business without state.

9 As previously discussed, the divisions were
10 entirely reliant on centralized financing and
11 centralized functions for day-to-day operations, they
12 moved trucking divisions and operations in the beverage
13 co-op operations.

14 The divisions who contributed all
15 (indiscernible) on the account and relied upon WDC to
16 provide centralized dispersing onboarding payroll
17 benefits. Thus, WDC's self awarded California trucking
18 operations were dependent on and contributed to larger
19 business.

20 In addition to the dependents on centralized
21 function, contribution of dependencies existed between
22 the beverage and transportation segments operations than
23 WDC's wholesale beverage supply chain and maintenance
24 structure.

25 Western Transportation is created to provide

1 long haul capabilities for refrigerated beverage
2 operations. The sample invoices show that Western
3 Transportation carried beverage and food for Western
4 Beverage and Western Imports from California, fulfilling
5 this vertical functionality.

6 Moreover, Western Transportation offered
7 towing services to all efficient, and WDC's inhouse
8 maintenance shop service assets of beverage trucking
9 divisions. Such an arrangement are evidence of
10 contribution and not just between the divisions, but
11 with the unitary business as a whole.

12 In general terms, there was no full value
13 between businesses due to the division's transactions
14 being conducted at arms' length. However, as
15 demonstrated in cases such as A.M. Castle and Exxon
16 versus the Department of Revenues, the flow of value,
17 they still exist when an intercompany are made at a
18 larger rate.

19 Specifically in Exxon, wholesale purchases and
20 wholesale capital was done by the Exxon Corporation,
21 despite the fact that these were done at market rate,
22 unity and particularly unity of operations were found to
23 still exist.

24 The United States Supreme Court in the case of
25 Bisceglia versus the United States provided that, and I

1 quote, "Our tax structure is based on the system of
2 overrate, and the government depends upon the good faith
3 and integrity of each potential taxpayer to disclose
4 honestly all information relevant to tax liability."
5 End quote.

6 The OTA, and the precedential opinion in the
7 Appeal of Johnson, provided the taxpayer's statements on
8 the signed tax return constitute binding emissions, and
9 the further provided that cogent evidence is required to
10 prove that such statements are incorrect.

11 The FTB's determination is presumed correct
12 and the taxpayer has the burden of proven error.
13 Further, in the absence of credible, competent, and
14 relevant evidence showing that the FTB's determinations
15 incorrect, it must be held.

16 Were there any creditability in Appellant's
17 various claims, either that its sales or nonbusiness as
18 originally reported; or that its beverage operations
19 were not in unitary or part of a separate trade business
20 under any of the Appellant's theories.

21 Deductions taken years prior to and including
22 2010 would be subject to tax or equitable tax
23 principles. Deductions or matters is a legislative
24 race, and the burden has clearly shown the right to a
25 claim deductions on the taxpayer. The tax benefit rule

1 applies to require inclusion income when it's
2 fundamentally inconsistent with an earlier deduction
3 occur.

4 Here, WDC claimed California source deductions
5 related to its beverage distribution rights on
6 originally filed returns, where WDC not engaged in
7 unitary trade or business. They originally filed for
8 business character of WDC's assets would be
9 inconsistent, and the tax benefit rule would require
10 company recovery of those amounts.

11 However, as previously noted, it's the
12 economist burden to prove by coaching evidence,
13 providing their own binding admission of unity as
14 established error in the FTB's discrimination.

15 As the foregoing facts demonstrated unity
16 existed, Appellant's have not met their burden. As a
17 unitary trader business existed, in the assets sold
18 where business assets and (indiscernible), California
19 Supreme Court and Appellate Court cases, such as
20 (indiscernible) versus California versus Franchise Tax
21 Group, and Jim Beam versus Franchise Tax Board required
22 characterization of that sale as business income.

23 Moreover, the duty in consistency would apply
24 to require business sales. The duty of consistency
25 precludes a taxpayer who gaining an advantage in one

1 year then claiming an incompatible position to
2 disadvantage the tax agency in another.

3 The duty of consistency specifically applies
4 if the taxpayer makes a representation on which the FTB
5 utilize, and then seeks to characterize the situation in
6 a way that harms the FTB. For the years prior to 2010,
7 WDC representatives unitary trader business income to
8 distribution rights, which WDC characterized as business
9 assets.

10 WDC amortized those rights in closed years
11 generating business losses, then sought to
12 recharacterize the assets to the FTB's detriment as
13 nonbusiness assets in the year issue.

14 According to duty, consistency applies,
15 requiring treatment of the previously reported assets as
16 business assets of the unitary trader business in the
17 year at issue. As WDC's operations constituted unitary
18 trader business and beer distribution rights related
19 assets or assets of equity territorial business, WDC is
20 required to apportion that business income using the
21 standard.

22 The trucking regulation, inclusive of the
23 substantial sale, constituted WDC's standard formula for
24 2010. In the appeal floor, the State Board of
25 Equalization held that when conditions and regulations

1 promulgated under revenue and taxation code or RNTC,
2 section 25137 are met.

3 Those regulations become the standard portion
4 of form by the other party. The FTB's exhibits proved
5 and WDC's CEO has testified that WDC was a registered
6 common carrier department of transportation, carrying
7 tangible personal property of others for compensation.

8 CCR section 25137-11, Subdivision(b)(1),
9 defines "a trucking company as a motor common carrier,
10 motor contract carrier, or an express carrier which
11 primarily transports tangible property by others by
12 motor vehicle for compensation." End quote.

13 As WDC was a trucking company under this
14 definition, CCR section 25137-11 applies to a portion of
15 WDC's income. Appellant's claim that CCR section
16 25137-11 creates a de facto separate trade of business.

17 As evidence, the Appellant's note that
18 subdivision(a)(1) of the regulation requires trucking
19 companies identify the business and nonbusiness income,
20 which also requires bifurcating trucking activities from
21 other activities and applying the regulations solely to
22 the trucking activities.

23 However, reading the regulations in its
24 entirety remedies the (indiscernible). Subdivision(c)
25 of the regulation provides that a trucking company that

1 traded portions using their property, they rule in sales
2 factor -- rules that are in RTC sections 25129 through
3 25136, unless modified by the trucking regulation or
4 other regulations promulgated under 25137.

5 As the trucking regulation only modifies the
6 trucking company sales from hauling freight, mail and
7 express, and property and payroll related to mobile
8 property, all other sales will follow the standard
9 apportionment rules. There would be no need for this
10 provision as the taxpayer suggests. The regulation only
11 applies to the enumerated trucking activities.

12 As trucking income clearly encompasses the
13 business income beyond trucking operations, the
14 regulations required that income be characterized to be
15 business or nonbusiness. It's a common feature of
16 formula apportionment rather than the delineation of
17 separate trucking tax base.

18 CCR section 25137-11 does not require that WDC
19 treat its transportation division as a separate
20 portionable of trucking trade or business. Rather, it
21 requires that WDC sources qualifying in trucking
22 activities pursuant to the regulation.

23 It should be noted that other special
24 apportionment rules under 25137 provide the modification
25 of the apportionment of sales, property, or payroll.

1 And these provisions likewise do not require separate
2 apportionment.

3 Further, the unitary business principle
4 mandates that the income at issue not be separately
5 enforcement. Under the unitary method, unitary business
6 income is provided from the functioning of the unitary
7 business as a whole. Accordingly, the unitary group is
8 combined, along with that portion of factors to ensure
9 the group's unitary income is a portion based on the
10 activities of the entire unitary business.

11 Appellants argued to undermine these basic
12 concepts of community, which provide that once a unitary
13 relationship is established, the unitary elements are
14 not separable and contribute to the unitary business as
15 a whole.

16 Furthermore, for the OTA to accept the
17 Appellant's claim that trucking activities must be
18 separately apportioned under the rule set forth in
19 section 25137-11.

20 Because WDC was a trucking company was
21 required to use the sales factor provided at RNTC
22 sections 25134 to 25136, and the underlying regulations
23 unless modified by a special regulation.

24 TCR section 25137, subdivision(c)(1)(a),
25 provided a substantial of occasional sales to include

1 taxpayer's distribution lines to be eliminated from the
2 sales factor if, in the aggregate, those sales to a
3 single purchaser are outside the taxpayer's normal
4 course of business can result in a five percent or
5 greater decrease in the sales-factor denominator.

6 As WDC's Miller and High Country asset sales
7 both constitute in greater than five percent decrease in
8 the sales-factor denominator would be excluded or not
9 occasional. The substantial and occasional rule apply
10 became the standard formula at WDC giving rise to the
11 FTB's assessment and WDC's tax liability for the year at
12 issue.

13 In addition to WDC's liability pursuant to
14 (indiscernible), WDC's nonresident shareholders must
15 source their pro rata share of WDC's income pursuant to
16 the standard to the formula. An S-corporation's
17 nonresident shareholders are tax only on their
18 California sources.

19 CCR section 17951-4, subdivision(f), provides
20 that a nonresident shareholders pro rata share of income
21 of an S-corporation conducting a unitary trader business
22 (indiscernible) in California shall be determined as a
23 piece corporation or partnership.

24 The total business income of the partnership
25 is apportioned to the partnership level, and accordance

1 with the portion of rules, we did that -- and
2 distributed to partners giving rise to the liability of
3 the partners. In this case, that applies to WDC's
4 shareholders. They're taxed on their apportioned piece
5 -- or excuse me, on the distributed share of the
6 apportioned -- did that nonresident shareholding.

7 Now that we've established that the standard
8 treatment results in liability for WDC and shareholders,
9 we turn to Appellant's final alternative argument.

10 Formulary apportionment provides a
11 constitutionally sufficient estimate of business
12 California. The parties seek an alternative proportion
13 pursuant to RTC section 25137 must demonstrate by clear
14 and convincing evidence that the standard apportionment
15 does not fairly reflect the taxpayer's business in
16 California.

17 Further, the mere assertion that there's a
18 better approach to formula an apportion that is not
19 sufficient. In the context of the substantial sales
20 rule, the taxpayer's deviation from the standard
21 requires a showing by clear and convincing evidence that
22 application of the regulation unfairly represents the
23 extent of the taxpayer's business activities, and that
24 the taxpayer's alternative is reasonable.

25 As WDC party-seeking alternative

1 appportionment, it bears this burden of proof.

2 Application of the substantial occasional sale to WDC
3 removes WDC's presumptively stored in sales from the
4 sales factor.

5 When CCR section 25137, subdivision(c)(1)(a),
6 was expanded to include the sales for following
7 rationale to the (indiscernible) sale rules provided in
8 the rule in 1997-1.

9 And I quote, "The exclusion from the sales
10 factor pursuant to 18 CCR, section 25137(c)(1)(a), a
11 substantial amount of gross receipts from an incidental
12 or occasional sale of a fixed asset is based on the
13 rationale that such gross receipts do not fairly reflect
14 the taxpayer's day-to-day business activities; and,
15 therefore, caused excessive income to the appportionment
16 of the state where the occasional sale took place.

17 This is especially so if the growth of built
18 in appreciation occurs over a substantial period of
19 time, because the taking into gross receipts in the year
20 of recognition that does not reflect the gradual effects
21 of appreciation over several years.

22 This same rationale we apply to gross receipts
23 from incidental or occasional sales in the tangible
24 property however used in a regular course of the
25 taxpayer's trader business." End quote.

1 The purpose of the sales factor is to reflect
2 the market for the taxpayers and services. Thus, the
3 key purpose for this rule is to prevent the substantial
4 and occasional sales from restoring the apportionment of
5 income derived from day-to-day (indiscernible) business
6 activities.

7 Because the substantial occasional sale would
8 overload the sales factor, destroy the reflection of the
9 market for the taxpayers and services, the regulation
10 uses the ordinary activities of the taxpayers and
11 unitary trader business to source such sales.

12 Another reason the sales are excluded in this
13 case is the recognition that doesn't reflect the gradual
14 effects of appreciation over multiple years. Appellants
15 argue that WDC's 2010 self-reported unitary business
16 activities cannot fairly represent WDC's sale of its
17 assets -- citing to Tenneco.

18 Tenneco involved the apportionment of an
19 installment sale. In Tenneco, the FTB asserted that an
20 installment sale used the apportionment of form of the
21 year of the original sale -- storage later year
22 installments.

23 The Appellate Court agreed that providing that
24 an apportionment formula based on the factors of the
25 year's sale more closely reflects the activities which

1 gave rise to the income.

2 Appellants in this case directly identified
3 the issue highlighted in the 1997-1, that the activities
4 giving rise to the gain on WDC's distribution rights and
5 related assets, did not correspond to the year when the
6 recognition occurred.

7 However, it's precisely because of this
8 presumptive distortion and the inability to identify
9 activities of the single prior period related to the
10 gain on the assets, that the substantial occasional sale
11 rule exist to apportion such things.

12 In this case, WDC derives a business income
13 from the sale of unitary business assets in 2010.
14 Pursuant to the substantial occasional sale rule, the
15 FTB used WDC's day-to-day business activities to
16 determine the degree of WDC's sale; they constituted
17 California source business income.

18 The rationale inherent in the regulation is
19 more than justified in this case. Appreciation of WDC's
20 distribution rates occurred over the years of ownership.
21 Most of the rights were put into service more than a
22 decade prior to the sale.

23 To complicate matters, WDC amortized those
24 distribution rights in previous years, thereby reducing
25 the California basis and increasing the gain which WDC

1 recognized at the time of sale.

2 As the unitary business activities, which
3 generated the gain, isolated; they're clearly identified
4 using the day-to-day business operations of the unitary
5 trader business to apportion incomes appropriate.

6 Furthermore, this rationale is applied to the
7 facts of firms rather than undermines the purposes of
8 substantial occasional sale, which is to ensure the
9 day-to-day or ordinary business activities that the
10 taxpayer's mark are fairly reflected. The inclusion of
11 the proceeds at issue could undermine that purpose.

12 As Appellants have failed to establish that
13 the standard apportionment formula unfairly represents
14 WDC business activities by clear and convincing evidence
15 and not entitled to alternative apportionment.

16 Additionally, Appellant's alternative formula
17 is not reasonable. Appellants argue that an alternative
18 formula consisting of five business days in January
19 represents the years of activities which gave rise to
20 appreciation on their distribution lines.

21 This alternative deposits without evidence
22 that a 10-day period is representative of all activities
23 giving rise to the gain on WDC's distribution lines.

24 Appellant's argument is not established by
25 this approach to the rationale, much less reasonable.

1 As yet another alternative in this much less involved
2 alternative arguments, Appellants have claimed they
3 would accept an alternative of blended prior year
4 apportionment should the FTB so provide.

5 As WDC is the parties seeking alternative
6 apportionment, it is required to prove that the standard
7 proportion of the formula unfairly represents its
8 California business activities, and that its alternative
9 is reasonable. It's failed to do so.

10 As WDC's unitary income constituted business
11 income of a unitary trader business, the Appellant did
12 not establish unfair representation by the standard
13 formula or a reasonable alternative. The FTB
14 assessments to the tax liability should stand.

15 In addition to the liabilities issue,
16 Appellants also dispute the penalties of interest.

17 We've already established that WDC was an
18 S-corporation engaged in a unitary trader business
19 within and throughout California, and that WDC sale of
20 business assets constituted apportionable business
21 income resulting in a liability for WDC non-invested
22 shareholders.

23 Each taxpayer has a non-delegable obligation
24 to file a tax return by the due date. Despite the April
25 15th, 2011, due date, WDC's nonresident shareholders did

1 not file 2010 tax returns.

2 RTC section 19131 provides that WDC shall
3 impose billing to file the penalty, specifies five
4 percent of the tax due for each month that a valid tax
5 return is not filed after it's due, not to exceed 25% of
6 the tax.

7 In this case, where taxpayer fails to file a
8 tax return at all more than a decade after it's due, the
9 full penalty is applied unless the taxpayer can
10 establish that the late filing was due to reasonable
11 cause and was not due to willful neglect.

12 While the penalty may be abated upon showing
13 reasonable cause, it's the taxpayer's burden to prove
14 that reasonable cause existed. To establish reasonable
15 cause, the taxpayer must show that the failure to file
16 occurred despite the exercise of ordinary business care
17 or proven that the ordinarily intelligent proved
18 business back under the same fact in certain
19 circumstances.

20 Specifically, in cases like this, where the
21 taxpayers asserted that it relied upon a professional
22 substantive interpretation of law that the filing was
23 not required, the precedential OTA opinion of appeal of
24 Summit Hosting LLC provides that the taxpayer must show
25 first, that the person relied upon by the taxpayer as a

1 tax professional with the competency in the subject tax
2 law.

3 And second, that the tax professional's advice
4 is based on the taxpayer's full disclosure of all the
5 relevant facts and documents. Appellants bear this
6 burden of proof. The taxpayer's failure to introduce
7 evidence that's within his control gives rise to the
8 presumption of the evidence if provided would be
9 unfavorable to the taxpayer's position.

10 Individual Appellants provided no evidence
11 regarding nonresident shareholders who consulted
12 regarding the tax bill liability. And as the identity
13 of these professionals unknown, there would be no
14 appraisal of that professional's competency in
15 California tax law.

16 The (indiscernible) on WDC's preparers who
17 reported nonbusiness income and gross receipts in the
18 same transaction, seriously undermined that tax
19 professionals, credibility, and professional standing
20 California tax law. As unsupported assertions are
21 insufficient to satisfy taxpayer's burden of proof, the
22 penalty against the balance in this case should be
23 sustained.

24 Finally, Revenue and Taxation Code, section
25 19.01, provides that interest must be paid on

1 Appellant's balances with such interest compounded
2 daily. Taxpayers find that they're entitled to
3 abatement under RTC section 19104, asserting
4 unreasonable error or delay caused by the manager or the
5 ministerial act.

6 Appellants bear the burden of proof, and
7 review on this issue is (indiscernible) discretion. A
8 statement is briefing yet to be as prepared to obtain
9 interest from December 2nd, 2016 through November 3rd,
10 2017 due to unreasonable (indiscernible).

11 The valuation of taxpayers' claims improved
12 the protest, filed a settlement request, and various
13 other issues required charitable deliberation and arrive
14 at the proper conclusion.

15 Profitably deliberation regarding regulatory
16 application and management activities such as replacing
17 a hearing officer is not an error due to managerial or
18 ministerial act. As WDC's unitary income constituted
19 business income or unitary trader business, the
20 Appellant should not establish unfair representation by
21 the standard of apportionment form or a reasonable
22 alternative.

23 WDC and WDC's nonresident shareholders
24 liabilities reflected in the FTB's assessment and should
25 be sustained. Moreover, the Appellants have not shown

1 reasonable cause for late filing or prove the use of
2 discretion and interest payment. Those claims should,
3 likewise, be denied.

4 I'm happy to answer any questions the panel
5 may have at this point.

6 JUDGE HOSEY: Thank you, Mr. Havens.

7 I'm going to go to the panel and see if there
8 are any questions regarding your oral arguments today.

9 Starting with Judge Johnson.

10 JUDGE JOHNSON: Thank you. I have no
11 questions at this time.

12 JUDGE HOSEY: Thank you.

13 Judge Long?

14 JUDGE LONG: Yes, I do have two questions.

15 First, I want to go back to the tax benefit
16 rule, and I want to ask in the -- in Appellant's reply
17 brief and also in their argument today, they asserted
18 that FTB has the burden of proof on that issue, and I
19 want to know if Franchise Tax Board has a position or a
20 response to that assertion?

21 MR. HAVENS: Yes, Judge. The Franchise Tax
22 Board would bear the burden of proof on that particular
23 issue. However, in order to arrive at that issue, a
24 finding that the taxpayer was not unitary would be
25 required.

1 JUDGE LONG: All right. Thank you.

2 And my next question is about the penalty
3 abatement, and I just want to clarify, because this it's
4 a little bit complicated, because my understanding is
5 that the penalty is applied on individuals, not the
6 entity, and that there's been testimony about seeking
7 prepared advice at the entity level.

8 Is it FTB's position that in order to get
9 penalty abatement for a (indiscernible), that the
10 individual taxpayers would have needed to seek advice?

11 MR. HAVENS: So Judge, in this particular
12 case, because the individual taxpayers bear the
13 burden -- or excuse me, are required to file a return,
14 and the individual tax -- excuse me -- the individuals
15 are required to do that, regardless of personal
16 knowledge, relies upon the preparer would be something
17 that they would need to prove individually.

18 JUDGE LONG: All right. Thank you.

19 That's all my questions.

20 JUDGE HOSEY: Okay. I have no questions. I
21 appreciate your presentation. We're doing pretty good
22 on time.

23 So I'm going to go ahead and move to
24 Mr. Antolin for your rebuttal.

25 ///

1 REBUTTAL STATEMENT

2 MR. ANTOLIN: Thank you. So handful of
3 points. So first, Judge Long, you had asked about the
4 Boggs declaration. It's paragraph 14, where Mr. Boggs
5 had stated that the checks had printed the name of each
6 division on them and that blank checks were also in the
7 possession of the division should they need to write a
8 check.

9 Turning to the FTB's argument. First, the US
10 Supreme Court has made very clear -- that the linchpin
11 of apportion ability is the unitary business principle.
12 That is what is the condition for the State of
13 California to tax apportion of this gain.

14 The tax returns, what was said on the tax
15 returns, none of that is dispositive. What is
16 dispositive is whether or not there is a unitary
17 business.

18 In our view, the evidence is
19 overwhelming -- that there was not sufficient connection
20 between the beverage distribution business and the
21 transportation business to create a single unitary
22 business. One thing that counsel for FTB had mentioned
23 is that the presence of the single checking account made
24 intercompany financing unnecessary in this case.

25 There's no evidence that any division needed

1 financing or intercompany financing except for the
2 beverage distribution business, which obtained its own
3 line of credit.

4 The assumption that there could have been
5 other intercompany financing that had been avoided in
6 this case, there's no evidence to support that. That's
7 pure speculation. The consent decree related to the
8 EEOC matter occurred in 2025, 15 years after the years
9 at issue. It has no relevance here.

10 Citation to Exxon as supporting the view that
11 a unitary business can be found even though there are
12 arms' length transactions really misses the substance of
13 that case, which is a completely unified integrated oil
14 company which we do not have in this case.

15 On the Regulation 25137-11, the trucking
16 regulation, we differ with the FTB's interpretation of
17 its regulation. In our view, the FTB is in effect
18 asking this panel to expand the scope of that trucking
19 regulation to include trucking companies and
20 non-trucking companies, but that is not what that
21 regulation says.

22 In order to expand the scope of that
23 regulation, the FTB would need to go through a
24 regulation project to do that. It has not addressed it.
25 Maybe they would come out that way if they addressed it,

1 but they cannot do it ad hoc through this appeal.

2 Finally, on that point related to the
3 application of the trucking regulation, Counsel for FTB
4 mentioned that under subsection(c) of that regulation,
5 there's language there that suggests it would include
6 non-unitary -- or I'm sorry, non-trucking companies. We
7 disagree with that.

8 Our reading of subsection(c) and what it says
9 is that you go to regularly UDITPA-- not the special
10 trucking company UDITPA-- when a trucking company has
11 non-mobile property, then you apply the principles in
12 regularly UDITPA.

13 When you have a trucking company with mobile
14 property, then you apply the special rules in section
15 25137-11. That is the reason for that distinction.

16 To read that distinction in the way that the
17 FTB suggests here would broaden it to apply to
18 non-trucking companies, which then creates a conflict
19 internally within that regulation between subdivision(a)
20 and subdivision(c). The panel should avoid reading the
21 regulation in a way that creates internal conflict.

22 As to the distortion under 25137,
23 generally -- this is interesting -- so here, the FTB
24 agrees that the standard apportionment formula is
25 distortive.

1 The FTB says it is distortive to include in
2 the denominator the receipts from the sale of the
3 distribution rights, and therefore we have to modify the
4 standard apportionment formula as set forth in
5 regulation 25137(c) to remove those amounts of gross
6 receipts.

7 And the reasoning is, well, it was a sale of
8 an asset. If you remove the receipts of the sale of the
9 asset, then you are reflecting apportionment not skewed
10 by those large amounts of receipts. You are
11 apportioning that income by, quote, "the day-to-day
12 regular business operations."

13 Let's accept that premise for a second. What
14 we are saying is, well, you should apportion the -- if
15 this is all apportionable income, you should apportion
16 it by the regular day-to-day activities of the alleged
17 unitary business, which would include the activities of
18 the distribution business and the trucking business.

19 But when you apply that to 2010, we don't have
20 the distribution business. The business was sold on
21 January 11th. There's no room in that year to properly
22 reflect the day-to-day activities of the distribution
23 business. That is distortion as well. We're not
24 looking at the true day-to-day operations of the, quote,
25 "unitary business."

1 We are looking at, really, a skewed version of
2 that business, which is heavily dependent on just the
3 transportation division and excludes the operations from
4 the beverage distribution business. So there are ways
5 to fix that. We have offered to, what we believe, are
6 reasonable alternatives, and we ask you to take a look
7 at that.

8 Finally, on the penalty issue, the returns
9 were prepared by -- the returns for the corporation was
10 prepared by a very well respected Colorado accounting
11 firm -- Erhard, Keith, Steiner, and Hotman, P.C.

12 It was reasonable for the corporation to rely
13 on that accounting firm to prepare its federal and state
14 tax returns, and in preparing those federal and state
15 tax returns, that accounting firm also had to prepare
16 K-1s for the shareholders.

17 And on those K-1s, that accounting firm had to
18 make a determination of what income, if any, is sourced
19 to California, And it was reasonable then for the
20 corporation to rely on that determination made by that
21 accounting firm.

22 It follows then that when the
23 shareholders -- none of whom are California residents
24 and none of whom are tax professionals -- when those
25 shareholders receive the K-1 from the corporation, it is

1 reasonable for them to rely on the determination of
2 whether there's California source or not California
3 source on those K-1s.

4 They do not have to, and it would not be
5 reasonable to expect them to hire separate tax
6 professionals to evaluate the sourcing information on
7 the K-1 provided by the corporation. That is not
8 required under (indiscernible) -- under the law.

9 No further comments.

10 JUDGE HOSEY: Thank you. I'm going to see if
11 there are any further questions from the panel, starting
12 with Judge Johnson.

13 Any questions?

14 JUDGE JOHNSON: I think all my questions have
15 been answered. Thank you.

16 JUDGE HOSEY: Thank you.

17 Judge Long, any questions?

18 JUDGE LONG: I have no further questions.

19 Thank you for your presentations.

20 JUDGE HOSEY: Okay. I have one question just
21 to clarify. So mine is about the tax reporting.

22 Western Distributing Company did not report
23 any separate unitary businesses. They included Western
24 beverages deductions in the calculation for the unitary
25 business income.

1 So my understanding -- and Franchise Tax Board
2 can correct me if I'm wrong -- is arguing that these
3 representations indicate that Western beverage was a
4 part of the unitary business. So can you clarify your
5 arguments on the tax reporting point for me?

6 MR. ANTOLIN: Yes. Our position on the tax
7 return is that the returns are not correct on that
8 point. When we looked at the actual facts after the
9 audit had been completed, we determined that they should
10 actually not have been reporting as a unitary business.
11 The facts do not support that conclusion.

12 JUDGE HOSEY: Okay. Great. Thank you. I
13 don't have any other questions.

14 Since we did ask, we can go ahead and see if
15 Franchise Tax Board has any comments, and then we'll go
16 back to Appellants final statements. Thank you.

17 MR. HAVENS: So Judge, we do just have a
18 couple quick comments.

19 Regarding the standard apportionment reform,
20 the substantial occasional sales rule is the standard
21 enforcement performance. It's not a rationale, it's not
22 a justification, it's a formula. We have provided some
23 history as to why it is the way it is, but it's still
24 the taxpayer's burden to prove that that formula is
25 incorrect, whereas unfairly representing its activities.

1 And one final note that during testimony
2 yesterday, we had asked the CEO whether or not the
3 beverage operations continued following the sale of beer
4 distribution price, he testified that they had. Thus,
5 Appellant's claims that the unitary business was somehow
6 fundamentally altered, various disclosures remained.

7 The beverage operations continued following
8 the sale of beer distribution as to the trucking
9 operations. So, thus, the daily business activities
10 during the year sale included all operations.

11 Those are the total of our comments. Thank
12 you.

13 JUDGE HOSEY: Thank you.

14 Back to Mr. Antolin, any final statements
15 before we close for the day?

16 MR. ANTOLIN: Thank you. One quick response
17 to the final point made by a colleague from the FTB, and
18 that is, it is true that the beverage distribution
19 business did continue after the sale of the Miller and
20 other beer distribution rights in 2010, but it continued
21 in a very small and much more diminished capacity.

22 It is essentially not the same business and to
23 suggest that the nature and the day-to-day operations
24 and the factors of sales, property, and payroll of the
25 beverage distribution business did not change after the

1 sale is completely incorrect.

2 You can see that in the numbers and the
3 dramatic change in the apportion funding from 2010
4 versus the priors.

5 That's all.

6 JUDGE HOSEY: Great. Thank you. I think
7 we're ready to conclude the hearing. The evidence has
8 been admitted into the record, and we have the arguments
9 in your briefs as well as the oral arguments presented
10 today and the testimony provided this week.

11 We now have a complete record from which to
12 base our decision, and we're ready to submit the case
13 today. So the record is now closed.

14 (The proceeding concluded at 11:11 a.m.)

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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

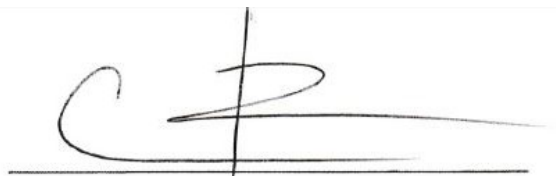
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of any
19 attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: March 18, 2026

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24 
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