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IN THE UNITED STATES TAX COURT

In the Matter of:)
PRESTON OLSEN & ELIZABETH OLSEN,) Docket Nos. 26469-14,
ET AL.,) 21247-16
Petitioners,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.) Consolidated

Volume: 1
Pages: 1 through 153
Place: Provo, Utah
Date: January 21, 2020

Plaintiff
Exhibit

972



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3 In the Matter of:)
4 PRESTON OLSEN & ELIZABETH OLSEN,) Docket Nos. 26469-14,
ET AL.,) 21247-16
5 Petitioners,)
6 v.)
7 COMMISSIONER OF INTERNAL REVENUE,)
8 Respondent.) Consolidated
9

10 4th District Juvenile Courthouse-Provo
11 137 Freedom Boulevard 200 W
Courtroom 5223, Courtroom #5B-5th Floor
Provo, Utah 84604
12

13 January 21, 2020

14 The above-entitled matter came on for trial, pursuant
15 to notice at 10:05 a.m.
16

17 BEFORE: HONORABLE ALBERT G. LAUBER
Judge

18 APPEARANCES:

19 For the Petitioners:
PAUL W. JONES, ESQ.
20 HALE WOOD, PLLC
4766 South Holladay Boulevard
21 Salt Lake City, Utah 84117

22 For the Respondent:
SKYLER K. BRADBURY, ESQ.
23 DAVID W. SORENSEN, ESQ.
INTERNAL REVENUE SERVICE
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| 3 | WITNESSES: | DIRECT | CROSS | REDIRECT | RECROSS |
| 4 | FOR THE PETITIONERS: | | | | |
| 5 | Preston Olsen | 63 | | | |
| 6 | OPENING STATEMENT: | | | | PAGE |
| 7 | On behalf of the Petitioners | | | | 40 |
| 8 | On behalf of the Respondent | | | | 50 |
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1 E X H I B I T S

2 EXHIBITS: IDENTIFIED RECEIVED
3 1-J through 144-J Error! Bookmark
4 **not defined.**

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

2 (10:05 a.m.)

3 THE CLERK: All rise. The Court is now in
4 session, Judge Albert G. Lauber presiding.

5 THE COURT: Please be seated. Good morning.

6 IN UNISON: Good morning.

7 THE COURT: Appearances?

8 MR. BRADBURY: Yeah. Skyler Bradbury for
9 Respondent.

10 THE COURT: Mr. Bradbury.

11 MR. JONES: Paul Jones for Petitioners.

12 THE COURT: Jones.

13 MR. HOUTSMA: Matthew Houtsma for Respondent.

14 MR. SORENSEN: David Sorensen for Respondent,
15 Your Honor. Good morning.

16 THE COURT: You may be seated.

17 So I understand we have some stipulations.

18 That's good.

19 MR. BRADBURY: We do. We have a Stipulation of
20 Facts consisting of 318 paragraphs and 144 exhibits. May
21 I approach?

22 THE COURT: You may approach. And I have the
23 exhibits here; is that right?

24 MR. BRADBURY: Yes.

25 THE COURT: All right.

1 And are there reserved objections?

2 MR. BRADBURY: Is it okay if I sit down, Your
3 Honor?

4 THE COURT: Yes, sure.

5 MR. BRADBURY: Before we get to some objections,
6 there are -- we gave you a flash drive also with the
7 Stipulation of Facts. It's hyperlinked to the exhibits.
8 We had problems with some of the videos that the experts
9 reviewed. So Exhibits 132, 133, 134, 138, and 140 do not
10 have links on that flash drive, the Stipulation of Facts.
11 And also, 132, 133, and 140 are not on the flash drive at
12 all. We couldn't get them to load. Our IRS technology
13 wouldn't allow that.

14 THE COURT: Okay.

15 MR. BRADBURY: So those are Petitioners'
16 Exhibits. We've talked about them. And we don't need to
17 reference them at all. So we may just have those stricken
18 from the Stipulation of Facts, but --

19 THE COURT: Okay. So you're saying that
20 Petitioner is not going to rely upon those exhibits after
21 all?

22 MR. JONES: May I stay seated as well, Your
23 Honor?

24 THE COURT: Sure.

25 MR. JONES: Thank you. We will rely on them in

1 terms of the -- it is documentation that the expert
2 reviewed to compile his report. And he doesn't make
3 specific reference to them in his report, and it's
4 unlikely he will testify about them. However, if there's
5 a need to review them for some reason, we -- I don't know
6 that there's any objection by other party to have them in
7 the record.

8 We also, on Petitioners' side, would be happy to
9 provide them on a flash drive. They can be made
10 available --

11 THE COURT: Okay.

12 MR. JONES: -- for the Court.

13 THE COURT: We wouldn't have to change the
14 stipulation. We just have to get a new flash drive, if
15 you wanted to use those or --

16 MR. JONES: Or at least as supplemented flash
17 drive, yeah.

18 THE COURT: Okay.

19 MR. JONES: Supplemented. That'll be a first.

20 MR. BRADBURY: A second flash drive.

21 MR. JONES: A second flash drive.

22 THE COURT: A second flash drive. Okay. All
23 right. Okay. I understand that. So I'll let you guys
24 deal with that later if we need to.

25 MR. JONES: Okay.

1 THE COURT: Okay.

2 MR. JONES: Thank you.

3 THE COURT: And objections inside the
4 stipulations?

5 MR. JONES: Inside the objection -- or excuse
6 me -- inside the Stip of Facts, we do have objections as
7 to relevancy for quite a number of them, actually, on
8 Petitioners' side. So specifically, the documents so --
9 they're marked as Exhibits 33-J through 74-J, 76-J through
10 94-J, 96-J through 98-J, 100-J through 111-J, 113-J
11 through 118-J. And these are all communication-type
12 materials. In a few cases, they are promotional
13 materials. That's how I would categorize them. But the
14 vast majority of these exhibits are email communications.

15 THE COURT: From whom to whom?

16 MR. JONES: Well, what I was going to say is
17 they're various communications. So they're from -- they
18 are emails that were sent to the Petitioner or sent by the
19 Petitioner. They were exchanged in a -- in part of the
20 informal discovery process of this case. And so the
21 Petitioner provided them. As such, we don't -- we don't
22 object to their existence or authenticity. However, we
23 are -- it's our initial burden, of course, and we're not
24 using them for any purpose.

25 So I viewed them, perhaps, being used for

1 impeachment purposes on their end, but we're not disputing
2 that they exist. I just don't know how they're relevant
3 to the elements that are present here, again, the issues
4 that are set forth on the Notice of Deficiency are whether
5 this is a trade or business, placed in service issue,
6 whether the lenses qualify for solar energy property under
7 the Code.

8 And therefore, I don't know how -- we don't plan
9 to use them to show that. I don't know what defensive
10 measures the Government intends to use them by. But
11 again, we stipulated to them being what they are, but do
12 they go to an element of the case? To our case-in-chief,
13 I would say no. Do they go to a defensive element? I
14 inquired about that, and I view them mostly as being for
15 impeachment purposes. But I don't know, so --

16 THE COURT: So these were promotional materials
17 about the solar power --

18 MR. JONES: Sure.

19 THE COURT: -- venture and communications to and
20 from Petitioner about his involvement in that. Wouldn't
21 they be relevant to whether he's in a trade or business?

22 MR. JONES: They could be viewed that way.

23 THE COURT: How many hours a year he spent on
24 them?

25 MR. JONES: Sure.

1 THE COURT: Seems to me it would be relevant.
2 Well, I'm inclined to overrule all the relevancy
3 objections. It seems to me that they likely are. I mean,
4 I haven't seen all the things yet. But it seems to me
5 they would be relevant to the time and effort he spent on
6 the activity and how well acquainted he was with the
7 information. And that can all go to the trade or business
8 issue, the hobby loss question, I think.

9 MR. JONES: Sure.

10 THE COURT: If there are some that you think
11 don't, well, we can deal with them later. But my
12 inclination -- well, I'll deal with all these. I guess
13 when Respondent seeks to introduce these, I can rule on
14 the relevancy objections. And then if we haven't ruled
15 on, then we can clean them all up at the end of the trial.
16 But my instinct is most of these probably have at least
17 some tangential relevance to the trade or business issue.

18 MR. JONES: And on that question about cleaning
19 it up, there are a lot of them. And I don't know -- I
20 mean, again, we don't -- on our side of the table, we
21 don't plan to display them as part of our case-in-chief.
22 But let's just say for a talking point here on this issue,
23 if they're not displayed, how would the Court proceed
24 handling that? Is that something we submit a written
25 objection back and forth to, or how would the Court deal

1 with that?

2 THE COURT: When I've done that before, if
3 either party seeks to use an exhibit to which there's an
4 objection, I would rule on that objection at that time,
5 and to any similar documents that are actually used during
6 the colloquy with the witness.

7 MR. JONES: And in that regard, would that
8 include -- so for instance, would that be we're reserving
9 objections even into the briefing process then?

10 THE COURT: No. So that'll be the first hit.
11 The first tranche is any exhibits you seek to use during
12 the trial with the witnesses, I'll rule on any objections
13 to those exhibits at that time. Then at the end of the
14 trial, if there are any exhibits that have been objected
15 to but not used, we can either trot through all of them at
16 that point, and we'll just clean up all of it. Or, if
17 that seems too tedious because there are hundreds of them,
18 I can ask you guys to submit a post-trial memo. I've done
19 that in another case.

20 MR. JONES: Okay.

21 THE COURT: So let's wait to the end of trial,
22 see if we can conveniently do it then. If not, there will
23 be some kind of post-trial memo, which will be handed in
24 well before you have to file your brief, so you'd know
25 what's in, what's out before you have to file your briefs.

1 MR. JONES: Great.

2 THE COURT: Okay?

3 MR. JONES: Thank you.

4 MR. SORENSEN: Just to address that point, Your
5 Honor, there will be exhibits that are not utilized during
6 cross-examination, but for which the Respondent will be
7 utilizing on brief. We believe that all of these
8 exchanges of information during the tax years relevant to
9 the promotion that the Petitioner was investing in are
10 relevant.

11 THE COURT: Oh, I agree. No, I agree. I'm not
12 saying you're limited to using the exhibits you use at
13 trial.

14 MR. SORENSEN: Okay.

15 THE COURT: All I'm saying is to the extent you
16 haven't used them at trial, and I haven't ruled on the
17 relevancy objections during the trial, I'll rule on all of
18 them at the end of the trial, at the last day. We'll just
19 trot them all, and I'll call balls and strikes at that
20 point. Okay? Okay.

21 Did that take care of the stipulations for the
22 moment?

23 MR. BRADBURY: Yes. We offer it into evidence
24 Your Honor.

25 THE COURT: Okay. I will admit the stipulation

1 of facts with all the exhibits enumerated. We'll deal
2 with the reserved objections later. But everything else
3 is admitted into evidence at this time.

4 (Whereupon, the Documents referred to as Exhibit
5 1-J through 144-J was received into evidence.)

9 MR. BRADBURY: Return preparers, correct.

10 THE COURT: Okay.

11 MR. BRADBURY: Mr. Sorensen will be arguing that
12 motion, Your Honor.

13 THE COURT: Okay.

14 MR. SORENSEN: Your Honor, we'd also like just
15 to introduce the Court to a member of our team, Dawn. And
16 I apologize. I'm going to butcher the last name.

17 MS. LOISEL: Loisel.

18 MR. SORENSEN: Loisel. Who is a paralegal who
19 will be assisting us to put exhibits on the wall for
20 witnesses to view?

21 THE COURT: Oh. Fancier than I'd expected.

22 Okay.

23 MR. SORENSEN: Well --

24 THE COURT: It's really high tech.

25 MR. SORENSEN: -- we'll see how that works

1 without a screen. The screen is on this side, but we'll
2 see how it works.

3 THE COURT: Okay.

4 MR. SORENSEN: Yes, Your Honor, the Motion in
5 Limine, the Respondent believes that the report that has
6 been submitted by the Petitioners is -- first of all, it's
7 a mystery to me. They submit it, and in a footnote, they
8 claim it's not an expert report. They're submitting a
9 factual report to the Court. I've never seen, in my years
10 of experience, a factual report submitted pre-trial
11 without foundation. So we would object to that, Your
12 Honor. It's clear that they were retained as experts to
13 perform scientific tests, and so it is an expert witness
14 report.

15 THE COURT: Right. So to simplify this, I'm
16 clearly not going to let them testify as fact witnesses,
17 because they clearly are providing scientific information.
18 And only two of them could testify, the two guys who
19 signed the report. So the question is, can those two guys
20 testify as experts?

21 MR. SORENSEN: And in that regard, Your Honor,
22 we would object to the nature of the report. The report
23 is clearly deficient. Even the qualifications listed for
24 the experts, they don't tell us their degrees they hold,
25 what scientific background they have. It's a three-line

1 or a four-line statement that we're engineers with
2 experience. It does not allow us to explore it,
3 pre-trial, to develop what that experience was, who they
4 are, and what they did.

5 Additionally, the report doesn't -- is factually
6 deficient on the experiments. We were unable to read the
7 report and determine -- or ascertain exactly what was
8 done, what records were kept, what was utilized in the
9 report to determine what they determined.

10 The third point, Your Honor, is they conducted a
11 test that has no relationship to the system that we're
12 arguing about. Nowhere was a Stirling engine discussed in
13 the years of the promotion, yet that's what they utilized.

14 The last point, Your Honor, is, at no point in
15 time has the Respondent ever contended that the lenses do
16 not produce heat in some fashion.

17 THE COURT: That's the point I want to get to.
18 It seems like they were -- that Respondent concedes the
19 point that they thought -- they demonstrated by their
20 experiment.

21 MR. SORENSEN: Concede is a strong word, Your
22 Honor. We have never contested that the lenses do not
23 produce some form of heat.

24 THE COURT: So Respondent does -- in your
25 Pre-Trial Memo, you said you agree that the lenses can be

1 used to produce enough heat that in some system --

2 MR. SORENSEN: Some system somewhere.

3 THE COURT: -- that could potentially produce
4 energy electricity, right, in some system?

5 MR. SORENSEN: Could produce electricity. That
6 doesn't mean that it could commercially produce --

7 THE COURT: Right.

8 MR. SORENSEN: -- electricity or that it could
9 utilize the system as Mr. Johnson envisioned it. That's
10 correct, Your Honor. Well, there's one point, and I
11 misspoke. We would like to have the witnesses excused
12 prior to where we are at this point, the witnesses who are
13 going to testify.

14 THE COURT: The fact witnesses?

15 MR. SORENSEN: The fact witnesses. And I meant
16 to do that prior to starting my argument. We'd like to
17 have those witnesses excluded from the courtroom.

18 THE COURT: During the Motions in Limine?

19 MR. SORENSEN: Yes. We're going to also address
20 another issue that involves on the fact witnesses that we
21 would like to have the Court cleared for.

22 THE COURT: Okay. Any objection?

23 MR. JONES: No.

24 THE COURT: Okay.

25 MR. JONES: No, I don't. I don't have any,

1 except for Preston Olsen. He's entitled to be here,

2 but --

3 MR. SORENSEN: Well, Preston Olsen's the
4 Petitioner.

5 THE COURT: Right.

6 MR. SORENSEN: He's not excludable.

7 THE COURT: Right.

8 MR. JONES: Right.

9 MR. BRADBURY: And our expert witness.

10 MR. SORENSEN: And our expert. Yeah. But I
11 believe we have at least two witnesses that are present.

12 MR. JONES: One.

13 MR. SORENSEN: Okay. Mr. Johnson needs to be
14 asked to leave.

15 THE COURT: And are the CPAs here?

16 MR. JONES: No.

17 THE COURT: No.

18 MR. SORENSEN: And maybe we should just tell Mr.
19 Johnson, just wait in one of the side rooms.

20 MR. JOHNSON: Am I going to be -- come back in
21 later?

22 MR. SORENSEN: Yeah. You'll be called in to
23 testify when it's time.

24 MR. JOHNSON: They'll call me back in. Okay.

25 MR. SORENSEN: I apologize for interrupting that

1 argument, Your Honor.

2 THE COURT: Okay.

3 MR. SORENSEN: It was something I had in my
4 notes.

5 But yes, the Court is correct in that we did
6 state that in our pre-trial memo. So we believe that with
7 that fact involved, that nothing that these experts will
8 testify to is relevant.

9 THE COURT: Um-hum. Because the experiment goes
10 to a point that's not in --

11 MR. SORENSEN: Not in dispute. And it's
12 envisioning and testing the system that's not in dispute,
13 not even part of the case.

14 THE COURT: And how about the two CPAs? I
15 understand you have conceded the penalty because you
16 didn't get requisite supervisor approval, as we had in our
17 latest ruling required.

18 MR. SORENSEN: Yes. We violated the claim
19 ruling, essentially. So we have conceded all additions to
20 tax in this case. Additionally, Your Honor --

21 THE COURT: And accuracy penalties, you mean?

22 MR. SORENSEN: Yes.

23 THE COURT: Yeah.

24 MR. SORENSEN: I'm sorry. Yes. Additionally,
25 Your Honor, the CPAs in this case, and we'll address them

1 individually, first Mr. Bolander. Mr. Bolander is
2 actually, in our mind, a promoter of the transaction. As
3 Mr. Olsen will testify, he went to a meeting in 2009,
4 where Mr. Bolander, with other promoters, made a
5 presentation. And his entire presentation was about the
6 allowability of the tax deductions and credits at issue.
7 He's actually a promoter of the transaction.

8 Additionally, the CPAs did not give Mr. Olsen
9 advice to invest in these transactions, as he invested
10 prior to his retention of the CPAs. He had already
11 engaged in the transaction. So any information that the
12 CPAs can testify to about Mr. Johnson's intent, his
13 business activities and such, would be hearsay from the
14 CPAs. Mr. Olsen -- excuse me -- is free to testify to
15 what his intent was, what his business activities were.
16 Their testimony is simply not relevant and would be
17 objectionable as hearsay for anything he told them. And
18 anything they told him relevant to advice is not at issue
19 because penalties are not at issue.

20 THE COURT: Well, I believe, Mr. Jones says that
21 their testimony could be relevant on the section 193
22 question. Because one factor there is the extent to which
23 the taxpayer consulted knowledgeable people about the
24 business.

25 MR. SORENSEN: I believe the case law says

1 knowledgeable, unrelated people. If he is -- if he is
2 seeking advice from those associated with the promotion,
3 then that advice is more than suspect, Your Honor. It
4 would not be allowable.

5 (Counsel confer.)

6 MR. SORENSEN: Oh, and I'm being corrected here.
7 They're, in fact, not CPAs. Mr. Jameson is an enrolled
8 agent.

9 THE COURT: Enrolled agent.

10 MR. SORENSEN: And I believe Mr. Bolander is
11 a --

12 MR. BRADBURY: Mr. Bolander is --

13 MR. SORENSEN: Is he a CPA?

14 MR. BRADBURY: I believe he is a CPA.

15 MR. SORENSEN: I thought he was. He may a CPA,
16 but Mr. Jameson is not a CPA. I don't want to give him
17 more credit than I should.

18 MR. BRADBURY: He's an enrolled agent, yeah.

19 MR. SORENSEN: He's an enrolled agent.

20 THE COURT: Okay. And Mr. Jones says they may
21 also be relevant in providing testimony about the
22 burden-of-proof shift possibly and to the extent of
23 cooperation with the Internal Revenue Service during the
24 examination?

25 MR. SORENSEN: Again, Your Honor, they -- I

1 guess that's -- I'm going to have to think that one
2 through. But again, any of that information would also be
3 testimony from Mr. Olsen. They could have done nothing
4 that Mr. Olsen didn't tell them to, provide information to
5 them, or authorize them to do. And what they provided to
6 the Appeals officer -- and I will say that's where Mr.
7 Jameson's involvement was, was to the Appeals officer. He
8 wrote the protest and then made an argument to the Appeals
9 officer. None of that is going to come in anyway, because
10 that's before the statute -- the issuance of the statutory
11 Notice of Deficiency, which the Court would not allow them
12 to go behind.

13 Additionally -- the presentation --

14 THE COURT: They can show --

15 MR. SORENSEN: -- to an Appeals officers is in
16 the -- in the guise of settlement discussions.

17 THE COURT: No, but it can show cooperation.

18 MR. SORENSEN: It can show cooperation, Your
19 Honor, but we will stipulate to any of those documents
20 that were submitted to the IRS. What Mr. Jameson would
21 testify to would be his opinions, his beliefs, his -- why
22 he was doing it, none of which is relevant. The actions
23 are relevant, but we'll stipulate to those. We'll
24 stipulate that he provided information, that he provided
25 documents.

1 THE COURT: Okay.

2 MR. SORENSEN: Additionally, Your Honor, I don't
3 believe the burden of proof has yet been raised. But I
4 will say, in our experience, we're going to prove our
5 case. Burden of proof will not be an issue.

6 THE COURT: Okay.

7 MR. JONES: So can I clarify that? So that is
8 an important issue. So the burden shifting for the
9 CPAs -- or excuse me -- the tax preparer -- I'll just
10 refer to them as the tax preparers to testify about,
11 because both of them did represent Mr. Olsen during exam.
12 And that is relevant to the burden-shifting analysis that
13 is at issue. So is there a concession there that I'm
14 hearing that you're saying we would stipulate that element
15 number 3 of that is met?

16 MR. SORENSEN: No, we would stipulate to
17 whatever actions were taken, not that the burden was met,
18 because we believe it wasn't met. But we would stipulate
19 to whatever -- and let's be clear. Mr. Bolander was never
20 involved in the audit. He ceased representation prior to
21 the audit. So we're only talking about Mr. Jameson at
22 this point.

23 MR. JONES: I don't understand that to be the
24 case. So my conversations in discussing what he will
25 testify to indicate that he did represent Mr. Olsen in

1 exam. So that is why he's being -- that is one of the
2 reasons he's being called.

3 MR. SORENSEN: That's news to us, Your Honor.

4 We would argue that it's the Petitioner's burden to show
5 what was provided to the IRS, how they responded to
6 requests for information, what was done. It's not the
7 CPA's burden or the enrolled agent's burden to say, Mr.
8 Olsen provided this, or Mr. Olsen provided that.

9 THE COURT: Well, if they're acting for him, I
10 mean, they would be the ones making the provision, I would
11 think.

12 MR. JONES: Right.

13 MR. SORENSEN: If they were. If there was
14 documents provided by them. Are you representing that
15 there were documents provided by other than Mr. Jameson's
16 protest?

17 MR. JONES: I understand there to be -- I will
18 be merely asking them about their personal knowledge of
19 what they did during representation. So did they get
20 requests? Did they -- because I agree with you. They're
21 not relevant to prove our case, but they are relevant
22 in -- so if we're looking at 7491, and we're saying all of
23 these three elements met to shift the burden to the IRS,
24 one of those is, did the Petitioner cooperate with IRS in
25 its document production, making witnesses available, going

1 to meetings, interviews? They will both testify that
2 there was this cooperative work. And they gave the IRS
3 everything that was requested, those types of things. And
4 if that's conceded, we can avoid that discussion about it,
5 and --

6 (Counsel confer.)

7 MR. SORENSEN: Your Honor, could we take this up
8 a little later? The CPAs are not scheduled to -- or the
9 agents, enrolled agent, and the CPA are not scheduled to
10 testify until later in the week. Can we see if maybe we
11 can -- if that's the only point of their testimony, we can
12 see if we can maybe discuss where we are with that and
13 whether they're going to be necessary. We can continue
14 the argument, at that point, Your Honor.

15 THE COURT: Okay. But my inclination, at this
16 point, is to think that one or both of them might have --
17 might be a very limited area that they could provide
18 relevant testimony on. And the two points would be advice
19 about the solar power project. And if they were
20 knowledgeable about that subject and gave advice, that
21 could be relevant to the -- one of the section 183 hobby
22 loss questions, and also the cooperation with the IRS. So
23 if you can work out those two elements, they may not need
24 to testify. But I would be inclined to permit very
25 limited testimony on those two points.

1 MR. JONES: May I also address, what about --
2 both of these preparers actually prepared the income tax
3 returns that are at issue in all but one of the years.
4 And one of the issues that I would have -- factual issues
5 that I will be having then testify to are decisions
6 they're making. You prepared this Schedule C. Why did
7 you mark -- for example, why did you mark the "material
8 participation" box? Why did you -- the choices they made
9 in preparing the return. And I --

10 THE COURT: I think those are all legal issues
11 for me to decide, not for them to --

12 MR. JONES: Okay. If that's the ruling, I
13 accept that. But that is --

14 THE COURT: No, I saw that point in your --

15 MR. JONES: Yeah.

16 THE COURT: -- response. And it seems to me
17 that whether they prepared the returns correctly, it's not
18 relevant from a penalty point of view, because all
19 penalties have been conceded.

20 MR. JONES: Sure.

21 THE COURT: And otherwise, I think it's just a
22 question of law. And I have to decide whether it's
23 material participation and whether they -- how many hours
24 a month they worked and whatever. And I'm not going to be
25 persuaded by how they filled out the return.

1 MR. JONES: Okay.

2 THE COURT: So I think that's irrelevant.

3 Okay. Mr. Jones, would you like to address the
4 expert report point?

5 MR. JONES: Yeah, the expert report --

6 THE COURT: The thing that troubles me is --

7 MR. JONES: Sure.

8 THE COURT: -- primarily, it does seem to me
9 that it may not just be relevant. If Respondent agrees
10 that you can take these lenses, and they can be used to
11 generate enough heat through some system to power an
12 engine and produce electricity, if that's conceded, I
13 don't see what more they prove by their experiment than
14 that.

15 MR. JONES: If I can get that concession on the
16 record, I will agree. Yeah.

17 THE COURT: Well, I think they said they have an
18 agreement, but concession was too strong a word.

19 MR. JONES: Right.

20 MR. SORENSEN: We don't disagree, Your Honor,
21 that the lenses do produce heat, and that heat, in some
22 systems, can be then used to generate electricity. We do
23 not dispute that.

24 MR. SORENSEN: So is that -- the question,
25 though, is that a concession. So --

1 THE COURT: But let me read the relevant
2 sentence of the report. Find it. Okay. It's on page 11,
3 "Conclusion: It's clearly, by the most basic definitions,
4 electrical power. The Johnson Fresnel Lens System
5 produces enough solar process heat to run a Stirling
6 engine and produce electricity. Selecting a Stirling
7 engine size for this application and tuning the engine
8 generator will likely improve performance". Well, it --

9 MR. SORENSEN: Up until that last sentence, Your
10 Honor, I think we were okay.

11 THE COURT: How about system? I don't think you
12 agree there's a system.

13 MR. SORENSEN: No, we don't agree. We agree the
14 system that they tested and utilized was not the system --

15 MR. JONES: Not the system.

16 MR. SORENSEN: -- not the system that was
17 envisioned.

18 MR. JONES: And just if I could speak to that
19 specific point. So this case is not about the system that
20 International Automated Systems and RaPower3 developed and
21 promoted and sold and so forth, or -- what the taxpayer at
22 issue in this case purchased was the lens. And so its use
23 is what is at issue. It gets leased to an entity called
24 LTB. There is an understanding about what those lenses
25 were intended to do, once they were leased, that this

1 taxpayer has. And so the concern -- the overarching
2 concern that Petitioners have is, is that lens -- does it
3 qualify to solar energy property under the regs? Is it
4 energy property under the Code, by extension?

5 And so we are dealing with just the lens itself.

6 We believe that a reading of the regs qualifies it as
7 solar energy property because it can be used in a system
8 that will generate electricity.

9 THE COURT: Well, I think you're getting into
10 you --

11 MR. JONES: Sure.

12 THE COURT: -- opening argument now. But I'm
13 just trying to -- I mean, if we take the word "system"
14 out, if we just say that the conclusion of these engineers
15 was that, by the most basic definition electrical power,
16 the Johnson Fresnel Lens produces enough solar process
17 heat to run an engine and produce electricity. If
18 Respondent would agree with that, right --

19 MR. SORENSEN: As long as there's not a
20 commercial --

21 THE COURT: Right. Right.

22 MR. SORENSEN: -- determination.

23 THE COURT: Right.

24 MR. SORENSEN: That the lenses do produce
25 sufficient heat, that the Stirling engine did produce some

1 electricity, we have no problem with that.

2 THE COURT: I think you've got the concession
3 that --

4 MR. JONES: Okay.

5 THE COURT: -- you want. So on that basis, I
6 will exclude this report as not relative to any point in
7 dispute.

8 MR. JONES: With that concession being part of
9 the ruling?

10 THE COURT: Right. Right.

11 MR. JONES: Thank you.

12 MR. SORENSEN: Your Honor, there is one other
13 housekeeping matter to be brought up, a delicate matter.
14 Petitioners intend to call Neldon Johnson as a witness.
15 And the Respondent would like some clarification on two
16 points related to that. The first is, we're concerned
17 about a conflict of interest that we want to establish on
18 the record so that we don't have a collateral attack
19 sometime down the road. In that I mean, Mr. Johnson hired
20 Mr. Jones as an attorney some years ago, related to the
21 transaction. We're not sure whether Mr. Jones still has
22 some relationship capacity as an attorney for the witness
23 versus his capacity to the Petitioners. We're also aware
24 that the District Court, in their finding, found that Mr.
25 Johnson was paying Mr. Jones' fees for this litigation.

1 The second point is -- I bring this up. Mr.
2 Johnson has a hearing set for this Thursday and this
3 Friday in the United States District Court. It's a
4 contempt hearing. His attorneys, last week, filed a
5 Motion to Continue the contempt hearing, to allow him to
6 testify in this court. As part of the order issued by the
7 District Court, Mr. Johnson was ordered not to provide --
8 and I want to get this exact. The order said,
9 "Prohibition against advocacy to federal taxing
10 authorities. Making arguments or submitting documents or
11 other material to the IRS or the United States Tax Court."
12 He was precluded from doing that. Last Friday, when the
13 District Court was requested to continue the hearing, the
14 District Court issued an order and ordered Mr. Johnson to
15 file a Motion to Quash the subpoena in this case. When I
16 checked the docket, that order is not yet -- or that
17 motion by Mr. Johnson has not yet been filed.

18 I don't represent Mr. Johnson. I don't know if
19 Mr. Jones does.

20 MR. JONES: I do not. I do not.

21 MR. SORENSEN: But I want to make the Court
22 aware that Mr. Johnson's testimony is a potential criminal
23 violation for him in the District Court. And so I wanted
24 to bring that to the Court's attention, to clarify our
25 situation here and the record we have, so that we're not,

1 at some point, having an argument about either a conflict
2 of interest or that the witness was precluded from
3 testifying.

4 THE COURT: Okay. Read to me again what the
5 District Court said he could not do.

6 MR. SORENSEN: Well, Your Honor, if -- I
7 believe -- let me get the exact order for you so the Court
8 can see it.

9 THE COURT: So this order was issued when Mr.
10 Johnson went to the District Court and asked to continue?

11 MR. SORENSEN: No. No. This order was issued
12 at the end of a 14-day -- 12-day --

13 MR. JONES: 12-day trial.

14 MR. SORENSEN: -- 12-day trial --

15 THE COURT: Trial, okay.

16 MR. SORENSEN: -- in District Court. It was the
17 Department of Justice moving to enjoin the promoters from
18 doing anything in the future related to this transaction.
19 And as a result, the court issued a lengthy order. And as
20 part of that order, Mr. Johnson was enjoined from
21 providing information to this court, and many other
22 things. And let me provide a copy of that order to Your
23 Honor, so you can see the language.

24 May I approach, Your Honor?

25 THE COURT: You may approach.

1 MR. SORENSEN: It's page 133, number 9. And I
2 apologize for the smallness. I was trying not to kill a
3 lot of trees.

4 THE COURT: So it's a prohibition against
5 advocacy consisting of making arguments or submitting
6 documents or other materials to the IRS or to the U.S. Tax
7 Court.

8 MR. SORENSEN: To claim or support the claim.

9 THE COURT: Right. And then you said that this
10 has come up more recently, when Mr. Johnson moved to
11 continue the District Court contempt hearing, because he
12 wanted to testify here. And what happened then?

13 MR. SORENSEN: The court -- and may I approach
14 one more time, Your Honor? I'll provide you with the
15 docket text of the court's order. May I show Mr. Jones?
16 I didn't share this with you. This is a printout from the
17 District Court's website. The part in red is the docket
18 text of the order.

19 THE COURT: Okay. So who issued the Tax Court
20 subpoena to Mr. Johnson?

21 MR. SORENSEN: Mr. Jones did.

22 THE COURT: So seems like --

23 MR. SORENSEN: And that's the
24 conflict-of-interest concern that I was trying to raise.
25 So he has, in the past, been Mr. Johnson's attorney and is

1 currently Mr. Olsen's attorney, the concern.

2 THE COURT: Well, the order says that Mr.

3 Johnson must move to quash the Tax Court subpoena, which
4 appears the judge does not believe he should be allowed to
5 testify in this court.

6 MR. SORENSEN: That's the Respondent's reading
7 and our discussion with DOJ. Yes.

8 THE COURT: It says, "By no later than noon on
9 Tuesday," today, "Johnson must provide the date of service
10 or proof of service of a Tax Court subpoena and the names
11 of all counsel and contact information for the Tax Court
12 staff and judge." Will he provide that by noon today?

13 MR. JONES: I don't represent Mr. Johnson. I
14 don't know.

15 THE COURT: Okay. Well, I would say the basis
16 of this, it's very unlikely that he's going to be able to
17 testify in this case. But we'll see what happens.

18 MR. SORENSEN: May I approach, Your Honor?

19 THE COURT: I mean, I'm not going to let him
20 testify in defiance of a District Court order that he not
21 be permitted to testify, which is, I gather, is the gist
22 of that order.

23 MR. SORENSEN: That's the Respondent's reading
24 and our understanding of it, yes, Your Honor.

25 MR. JONES: So I don't know what the scope of

1 that is. I mean, he is not being called to advocate. He
2 is being called to present factual matters that are
3 relevant to the case. I have read the provisions of the
4 order that limit what he is able to testify about. But I
5 don't know how that translates to advocacy. Again, it's
6 either something happened, or it didn't.

7 THE COURT: Well, I mean, I might be reluctant
8 to interpret it to violate the District Court's order.
9 But it appears that the District Court has interpreted its
10 own order to prohibit him from testifying. And that's why
11 it told him he must -- he must move to quash the subpoena.
12 Not that he may move, but he must move to quash the
13 subpoena.

14 MR. JONES: Understood. I don't know. I mean
15 that -- I feel like, I mean, it's -- I mean, I feel
16 prejudiced by that result, and I'm not -- because, again,
17 there are important factual matters that --

18 THE COURT: Well, I'm not ruling on that yet.

19 MR. JONES: Yeah.

20 THE COURT: All I'm saying is, he was supposed
21 to do something in an hour and 15 minutes, and we'll see
22 if he does that. If he doesn't do that, that may trigger
23 another response in the District Court.

24 MR. SORENSEN: It may, Your Honor. And really,
25 the concern we have with raising it was twofold, one,

1 conflict-of-interest concern that we may, at some point,
2 get an argument that there was. And we wanted to
3 establish for the record -- try to establish for the
4 record. And Mr. Jones, I believe, has testified that he
5 no longer represents Mr. Johnson, so that may eliminate
6 the conflict. But we also wanted the Court to be aware.

7 THE COURT: Is Mr. Johnson paying the fees for
8 this case?

9 MR. JONES: He is not. So I was paid by the
10 entities through a certain date. It was a couple years
11 ago. I am no longer being paid by Neldon Johnson, any of
12 the entities he's related to.

13 THE COURT REPORTER: Judge, I need to stop.
14 It's not recording right.

15 (Whereupon, a recess was held from 10:52 a.m.
16 until 11:06 a.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 Okay. All systems on again?

20 THE COURT REPORTER: Yes.

21 THE COURT: Very good.

22 MR. SORENSEN: Your Honor, I would note for the
23 Court's consideration, Mr. Johnson is in the courtroom,
24 the witness who was excluded. And I believe Mr. Jones and
25 he have a matter.

1 MR. JONES: I discussed the matter with Mr.
2 Johnson. I'm not his counsel, but he has indicated he
3 would like to make an oral Motion to Quash the subpoena.
4 And I oppose that oral motion.

5 MR. SORENSEN: Before that goes forward, Your
6 Honor, I would note -- and I don't know that he's allowed
7 to appear in this matter. But Mr. Johnson's attorney from
8 the District Court is present in the courtroom, so he is
9 represented by counsel; is he not? I was informed Mr.
10 Snuffer was here.

11 MR. SNUFFER: I am here. I only represented him
12 in the Tenth Circuit Court.

13 MR. SORENSEN: Oh, not in the District Court. I
14 apologize.

15 MR. JONES: But you are his counsel.

16 MR. SNUFFER: Counsel in the District Court is
17 Mr. Edwin Wall, who's been appointed by the Court to
18 represent him in the District Court. I've withdrawn as
19 counsel, been replaced by Ed Wall. I'm handling all the
20 appeal matters --

21 MR. JONES: Okay.

22 MR. SNUFFER: -- that are currently pending and
23 ready for decision by the Tenth Circuit.

24 MR. SORENSEN: I apologize, Your Honor. I
25 thought you were still representing him. Just let the

1 Court know that he had counsel in the courtroom.

2 THE COURT: So Mr. Johnson is making an oral
3 Motion to Quash the subpoena that Mr. Jones issued to him?

4 MR. JONES: Yes.

5 THE COURT: Well, it's my understanding that he
6 was directed by the District Court to make that motion,
7 because apparently the District Court believed that his
8 testimony in this case would violate its prior order,
9 directing him not to provide any information to, among
10 other things, the U.S. Tax Court. So the District Court
11 had to be thinking about cases exactly like this when the
12 issued that order. And it's, apparently, the District
13 Court's belief that Mr. Johnson's testimony would violate
14 that order and as a matter of culminating to the District
15 Court, I'm going to acquiesce to the District Court's view
16 and quash the subpoena.

17 MR. JONES: Very well. Did we resolve the --

18 MR. SORENSEN: Oh, Your Honor, the
19 conflict-of-interest question.

20 THE COURT: Well, hasn't that gone away now?

21 MR. JONES: Yes, Your Honor.

22 MR. SORENSEN: It has. If he doesn't testify,
23 it has gone away by it's become moot.

24 THE COURT: Yeah.

25 MR. SORENSEN: I was simply going to note that

1 the Petitioner was willing, on the record, to waive any
2 conflict of interest, which would have satisfied our
3 concern.

4 THE COURT: Okay. But I think it's moot now.

5 MR. SORENSEN: But it's moot now.

6 THE COURT: Since we've quashed the subpoena.

7 MR. SORENSEN: Okay.

8 THE COURT: I guess IRS is not going to call him
9 to testify.

10 MR. SORENSEN: We are not going to call him to
11 testify.

12 THE COURT: All right. So I think that's moot.

13 MR. BRADBURY: I believe that's all the
14 preliminary matters we had, Your Honor.

15 THE COURT: Okay. Well, let's --

16 MR. BRADBURY: Unless you wanted to talk about
17 scheduling witnesses and what you want to do for the rest
18 of the week.

19 THE COURT: Okay. Well, do you want to make
20 opening statements, or do you want to do some more
21 housekeeping stuff first? I mean, how you schedule the
22 witnesses is entirely up to you guys.

23 MR. SORENSEN: Your Honor, I think we should do
24 a housekeeping matter. I believe Mr. Jones has a witness
25 who can only testify on --

1 MR. JONES: Thursday, yeah. So Mr. --

2 MR. BRADBURY: Can he come tomorrow?

3 MR. SORENSEN: Bolander, was it?

4 MR. JONES: Bolander, yeah, cannot -- cannot
5 come tomorrow. And so he would need to testify Thursday
6 morning.

7 MR. SORENSEN: The only concern we're going to
8 have with that, Your Honor, is if we're willing to have
9 witnesses with Mr. Johnson not testifying, and the two
10 engineers not testifying, we may finish by tomorrow. And
11 then it's whether or not the Court's willing to extend the
12 session until Thursday morning to hear the last witness.

13 THE COURT: Yeah, I'd be willing to do that.

14 MR. SORENSEN: Okay.

15 THE COURT: I'm willing to do that.

16 MR. JONES: Okay.

17 MR. SORENSEN: Okay. Well, that's the only
18 housekeeping matter, I believe. Our witness is available
19 at any time.

20 THE COURT: You only have one witness?

21 MR. BRADBURY: We have one witness, Your Honor.

22 THE COURT: Okay. All right. Okay. Do we have
23 opening statements?

24 MR. JONES: Yes. As a housekeeping matter, I
25 would ask, perhaps, that we do opening statements, and

1 then if we could maybe break for lunch and then come back
2 to start the presentation of witnesses, would that be
3 okay?

4 THE COURT: That'll be fine.

5 MR. JONES: Okay. So I'll go ahead and begin.

6 So the matter that is before this court concerns -- and
7 I'll talk about what we're -- pardon me. I'm just getting
8 my -- apologize.

9 We're here today to discuss Notices of
10 Deficiency, in other words additional tax that has been
11 proposed to be assessed by the IRS. And the issue is
12 fairly well laid out in the pre-trial -- the issues are
13 fairly well laid out in the pre-trial memo. But I'll just
14 discuss what's relevant to what we'll be presenting to the
15 Court as kind of a roadmap.

16 At issue are the solar lenses. And the solar
17 lenses are triangle in shape, and they are attached or
18 affixed to a circular steel ring. And the concept is that
19 sunlight comes down, refracts through these Fresnel
20 lenses, and concentrates to a point. That point is very
21 hot. In other words, the purpose of these lenses that are
22 purchased by -- that was purchased by the taxpayer in this
23 case --

24 THE COURT: Now, when you say, "purchase of
25 lens", by that do you mean the whole pie or one slice of

1 the pizza pie?

2 MR. JONES: One slice, yeah.

3 THE COURT: So each lens is like a slice of a
4 pizza pie. And how many of those make up the whole
5 circle?

6 MR. JONES: That's correct. And they're all --

7 THE COURT: How many of them make up the whole
8 circle?

9 MR. JONES: I believe that it's 24; is that
10 right? 13 -- is it only 13?

11 MR. SORENSEN: 17.

12 MR. JONES: Or 17. It's an odd number. But it
13 forms a circle. I apologize I didn't know that.

14 MR. SORENSEN: We'll get there, Your Honor. 17.

15 MR. JONES: 17, yeah. The experts know. But
16 the point being, though, that it forms a circle with these
17 pie-shaped lenses. And it is only the lens that is --
18 that is purchased. And that lens was then leased through
19 agreements that are in the Stipulation of Facts. And the
20 rental is defined in those agreements. And the parties
21 generally follow the terms of those agreements by intent.
22 And the issue is whether those -- that lens purchase was
23 properly reported on the tax returns, meaning it was
24 represented to be a trade or business.

25 THE COURT: So these are all -- this is on a

1 Schedule C?

2 MR. JONES: Yes, that's correct. So each of the
3 years at issue, and I'll bring up this, because I had
4 support for the presentation of that evidence, again, as a
5 general roadmap. The tax years that are at issue are
6 2009, '10, '11, '12, '13, and '14.

7 2009 is not -- is in issue because basically,
8 depreciation deduction that was taken on that return
9 carried over to 2010. And so 2009 is not a tax year that
10 is before this court.

11 In 2010, IRS examined the year 2010 and made
12 some adjustments that related to 2009 and referenced them
13 as recaptured items. Those have been conceded in the pre-
14 trial memo. And Counsel has agreed to that in their pre-
15 trial memo. But I wanted to make it clear that we do
16 agree that matters on that 2009 return are at issue in the
17 case, for the purposes of discussing how they carry over
18 to 2010.

19 And everything in this case revolves around the
20 use of that lens, what the taxpayer purchased, being that
21 lens, and then made use of it, and does that qualify --
22 does that rental activity qualify as a trade or business
23 or an activity that's held for the production of income.
24 Does the lens qualify as solar energy property pursuant to
25 the regs? And those are the base issues that are covered

1 on all of the Notices of Deficiency.

2 I would just point out that in the first Notice
3 of Deficiency, which covers the tax years 2010, '11, and
4 '12, there is a point made about substantiation, but it's
5 not -- in the Notice of Deficiency, but it's not clearly
6 defined. I think that the Stipulation of Facts shows that
7 all the necessary items for substantiation are there,
8 meaning that we don't disagree about what the purchase
9 price was, how it was paid, what's represented to be the
10 amount the Petitioner remains liable for. All those
11 calculation matters were submitted in exam and also -- not
12 conceded, but stipulated to in the Stipulation of Facts.

13 And so I don't -- I don't view this trial being a lot
14 about having to determine what amounts we're working with,
15 what the -- what the correct purchase price is, or what
16 those agreements specify they're supposed to be. And I
17 wanted to make that clear, because, again, the language
18 used -- I just will point it out quickly. It just states
19 that -- I apologize. I'll just flip to it here.

20 THE COURT: Are you contending the 90-day letter
21 was invalid because it wasn't --

22 MR. JONES: No.

23 THE COURT: -- specifically -- what's the point
24 then?

25 MR. JONES: Just the point is that we think

1 we've already met the substantiation issue. So it says --
2 the quote was, "The taxpayers cannot claim deductions,
3 credit, or exemptions, unless you show that you meet all
4 the requirements to be eligible for them. And so I know
5 that was specific the tax credit. Now, that encompasses
6 other -- something other than substantiation. But I just
7 wanted to note that, that there was an issue about that.
8 And I think that we believe the substantiation has been
9 met through showing that we've got these agreements, and
10 that's something I can argue on the briefs, obviously.
11 But the point I'm just making in my opening here is that a
12 lot of those factual matters about, did you make this
13 payment; do you have a canceled check for it, those types
14 of things are addressed through our Stipulation.

15 THE COURT: But still a part of the requirements
16 you have to meet is being a trade or business, having
17 placed the property into service. I mean --

18 MR. JONES: Sure.

19 THE COURT: -- all those requirements have to be
20 met as well.

21 MR. JONES: Agreed.

22 THE COURT: All right.

23 MR. JONES: And we will discuss facts that show
24 that in the presentation of witnesses and evidence. And
25 we will put on evidence to show that the requirements have

1 been met for being a trade or business and for -- and also
2 for the qualifications of the lenses being solar energy
3 property.

4 THE COURT: Okay. So I have a couple of
5 questions about --

6 MR. JONES: Sure

7 THE COURT: -- how the issues relate to each
8 other. So as everybody knows, I have -- we have about 200
9 or more --

10 MR. JONES: Yes.

11 THE COURT: -- of these cases, all involving
12 taxpayers who, I assume, bought lenses.

13 MR. JONES: Correct.

14 THE COURT: And presumably all reported Schedule
15 C businesses claiming depreciation and credits. And this
16 case was intended, in a way, in part as a test case.

17 MR. JONES: Correct.

18 THE COURT: But of course, it's unusual for a
19 test case. And it has both individual issues that are
20 specific to each taxpayer, plus maybe common issues,
21 including whether an individual person is in a trade or
22 business. It has to be decided on each case, pretty much,
23 based on its facts. I assume that the placed-in-service
24 issue is common and would not differ much from one case to
25 the other.

1 MR. JONES: I agree with that assessment, Your
2 Honor.

3 THE COURT: Now, if I were to find there was no
4 trade or business being conducted, would that -- and that
5 would not help resolve the other cases, would that totally
6 resolve this case? In other words, do they have to be in
7 a trade or business both to claim depreciation and to
8 claim the credits, or could they get the credits without
9 being a trade or business?

10 MR. JONES: Well, there is an issue -- so you
11 can get the credits without being a trade or business, if
12 it's held for the production of income, which -- that
13 phrase in the Tax Code, at least in my understanding,
14 connotes a passive-activity-type --

15 THE COURT: Right.

16 MR. JONES: -- structure, so a passive rental,
17 like a rental real estate or something like that, Schedule
18 E versus Schedule C, although you could probably -- you
19 could say that the Schedule C could be considered passive
20 activity as well. But the point being is that's the
21 distinction is that there is -- the credit is available
22 for both held for the production of income and trade or
23 business.

24 And this brings up a point that I was actually
25 about to get to, so I'll sort of dive into that, because

1 it has relevance to what Your Honor is talking about. On
2 a passive activity, there are limitations that exist to
3 the credit. Those are the at-risk rules. Those are
4 passive-activity loss limitations, and the other, which is
5 relevant in the Notice of Deficiency is the trade or
6 business argument.

7 Now, I know that in the -- in the Respondent's
8 pre-trial memo, the issue of the at-risk rules and the
9 issue of passive activity was raised. Those issues are
10 not raised in the Notice of Deficiency. That'd be a new
11 matter that I think they would need to bear the burden on.
12 But it doesn't -- it doesn't take away the credit; it just
13 precludes use. So it would be -- it might have the same
14 effect. So for example, if this Court's ultimate
15 determination after we're all done with this is that I
16 think that the lenses do qualify as solar energy property,
17 but I think that this was a passive activity -- let's just
18 say that's ruling, hypothetically. The Petitioners are
19 still going to owe some tax, because they're going to be
20 limited to only their passive income of being able to
21 offset -- the credit being used to offset it and the
22 depreciation deduction being able to offset other income
23 they might have. Does that make sense?

24 THE COURT: Was there passive income from this
25 activity?

1 MR. JONES: There's no gross income from this
2 activity in any of the years at issue. And so the
3 activity was we -- Petitioner purchased these lenses,
4 said, I'm renting them to you, LTB. LTB didn't generate
5 any rental income back to the Petitioners. But
6 Petitioners intent was to lease them out for the
7 production of income, and we would argue they were in a
8 trade or business doing so, under the law.

9 And actually, that -- we will also cover -- I
10 wanted to also mention we will talk about when the lenses
11 are placed in service. In a very straightforward way, our
12 contention will be that they were placed in service when
13 they were leased. And they were leased at the time they
14 were purchased. And that will be -- that is the roadmap
15 that Petitioners intend to follow. And we will
16 demonstrate that by the preponderance of the evidence.

17 THE COURT: From whom were the lenses purchased?

18 MR. JONES: An entity called RaPower3.

19 THE COURT: And to whom where they leased back?

20 MR. JONES: An entity called LTB, LLC.

21 THE COURT: And was that related to RaPower3?

22 MR. JONES: Yes. It's common ownership.

23 THE COURT: So it was just a sale and lease back
24 to the same --

25 MR. JONES: Right. That is correct.

1 THE COURT: Was no rental income ever received?
2 MR. JONES: No rental income was ever received.
3 And again, that wasn't desired by the lens purchasers,
4 right? They purchased it and leased it with the intent to
5 generate revenue, right. That was the -- that's the
6 intent there. But Your Honor is correct that a same,
7 related entity, but no rental income.

8 THE COURT: From Respondent's pre-trial memo, it
9 looked like the total payments the taxpayer made were
10 almost equal to the credits that they got. So that was a
11 wash. And they got the depreciation deductions for free.
12 That seems like what the deal was here. They just made a
13 deposit, and they purchased credits and depreciation
14 deductions, and then nothing changed on the ground; isn't
15 that what happened here?

16 MR. JONES: They invested substantial assets, so
17 their own money. So they invested their own money.

18 THE COURT: Yeah, to buy the credits.

19 MR. JONES: Well, to buy the lenses. They
20 didn't buy credits.

21 THE COURT: Well, did they ever get the lenses?

22 MR. JONES: They didn't take physical possession
23 of them.

24 THE COURT: They have received the lenses?

25 MR. JONES: Yes.

1 THE COURT: They still have them?

2 MR. JONES: Yeah.

3 THE COURT: Okay. That's something. Okay.

4 MR. JONES: Yeah. That's where we're going,
5 Your Honor. So any other questions I can answer for you?

6 THE COURT: Not right now.

7 MR. JONES: Okay.

8 THE COURT: I think we're good.

9 MR. JONES: Thank you.

10 MR. BRADBURY: Do you mind if I remain seated
11 for the opening statement?

12 THE COURT: That's fine.

13 MR. BRADBURY: As you've heard, Petitioners want
14 you to believe that they operated a legitimate business
15 involving these solar lenses, somehow. Rather than dwell
16 on Petitioner's imagined ideal, Respondent asks that you
17 focus on what is real. And you pointed out some of the
18 problems here. And that's true for all the Petitioners
19 that are on your docket involved in this scheme.

20 The tax years at issue in this case, Petitioners
21 participated in a tax-avoidance scheme through which they
22 improperly received over \$130,000 of federal income tax
23 refunds. As you know, in October 2018, after a 12-day
24 trial, the United States District Court for the District
25 of Utah determined that this particular solar lens program

1 was an abusive tax-avoidance scheme.

2 THE COURT: Now, let me ask you -- stop there.

3 How is that relevant to what I have to do here? Is that
4 just a background fact that has certain -- a historical
5 fact that has certain consequences, or are there any -- I
6 mean, the parties are different, so I don't see how
7 collateral estoppel would apply.

8 MR. BRADBURY: Right. That's why we're here.

9 THE COURT: Okay. Right.

10 MR. BRADBURY: Yeah. If it did apply, we would
11 have filed a Motion for Summary Judgment --

12 THE COURT: Right.

13 MR. BRADBURY: -- a year ago --

14 THE COURT: Right.

15 MR. BRADBURY: -- and not been here.

16 THE COURT: Right.

17 MR. BRADBURY: But it is relevant to the whole
18 scheme and the background of what happened, that they were
19 selling credits and depreciation expenses and allowing
20 taxpayers to claim improper refunds.

21 MR. JONES: If I may, I mean, I would ask that
22 it not referred to as a scheme. I mean, those rulings
23 apply not to these Petitioners. And they did not -- they
24 didn't make appearances. They weren't parties to that
25 case. They don't believe they were in a scheme. They

1 purchased lenses which they believed would generate money.

2 THE COURT: Okay.

3 MR. JONES: So I object to the characterization.

4 I think that it's inflammatory.

5 THE COURT: Okay.

6 MR. JONES: And I agree --

7 THE COURT: Let's use more neutral references.

8 MR. BRADBURY: Well, this isn't evidence either;
9 it's argument.

10 THE COURT: Right. Right. Okay.

11 MR. BRADBURY: All right. You want me
12 to continue?

13 THE COURT: Sure.

14 MR. BRADBURY: All right. So throughout this
15 trial we refer to the promoters of this promotion,
16 including Neldon Johnson, who was going to testify but now
17 will not, Greg Shepard, and a few of the various entities
18 that they used, which Mr. Jones mentioned, including
19 International Automated Systems, or IAS, RaPower3, and
20 LTB. These entities and the many others Mr. Johnson
21 formed were designed to complicate and hide the true
22 purposes of the transactions at issue in this case. The
23 promoters described its purpose as "buying our solar
24 lenses with your tax money instead of giving it to the
25 IRS, by receiving nearly double your investment from the

1 IRS in tax benefits."

2 In a January 17th, 2011 document provided to
3 participants in this promotion, the promoters explicitly
4 stated, "Your objective in purchasing your solar lenses
5 was and is to zero out your taxes." Petitioners did
6 exactly that for the tax years at issue in this case.
7 Despite earning between \$145,000 and \$183,000 in wages
8 each tax year, they avoided paying any income tax for tax
9 years 2010 through 2013, and paid only \$1,538 in tax year
10 '14.

11 Other than these improper tax refunds,
12 Petitioners received no benefit from their participation
13 in this promotion. They earned no income from their solar
14 lenses in any tax year to date; none, as Mr. Jones
15 conceded.

16 The promotion required Petitioners and hundreds
17 of other participants to purchase solar lenses. For the
18 tax years at issue, the promoters set the price per solar
19 lens at \$3,500. Petitioners could not negotiate that
20 price.

21 THE COURT: Wasn't it higher in the first --
22 wasn't it \$30,000 that first year?

23 MR. BRADBURY: In 2009, it was. But again, that
24 year is not at issue, other than the carryover amount. So
25 the purchase price for the two lenses they purchased in

1 2009 was \$30,000. And the lenses are the exact same. Why
2 they dropped to 3,500 from 30,000, I don't know.

Petitioners, however, paid only a small amount of that total purchase price, as you mentioned. They paid a down payment; and of that down payment, they paid only a small portion of that in the year at issue as an upfront payment. During the tax years at issue, Petitioners purchased a total of 52 solar lenses, so that'd be 54 if you include 2009. They, however, never took possession of these solar lenses, and like all the other participants in this promotion, Petitioners have no way to identify the solar lenses they purchased. This week, you will see that Petitioners chose the number of lenses to purchase based solely on the tax benefits they would receive. In fact, they used their individual income tax return from the previous year to determine the exact number of solar lenses they should purchase to eliminate their federal income tax liability.

19 As you have heard, Petitioners argue they
20 operated a legitimate business called PFO Solar, LLC, for
21 the tax years at issue. At various times they claimed the
22 purpose of this business, on the Schedule C, was to
23 produce solar energy, or, in the later tax years, 2013 or
24 '14, was to rent equipment.

25 If Petitioners were engaged in a legitimate

1 business with a profit motive, why did they then choose to
2 limit the amount of lenses they purchased to only the
3 exact amount needed to zero out the income tax liability?

4 Mr. Jones mentioned the bulk of the expenses
5 Petitioners claimed for their so-called business were
6 depreciation for their solar lenses, including a small
7 amount of legal and professional fees, only \$750 total in
8 tax years 2010 and '11, amounts which Petitioners have
9 conceded. The Petitioners claimed total business losses
10 of \$142,388, and they made no income, ever.

11 Curiously, at least for an alleged legitimate
12 business, Petitioners claimed no other expenses, no
13 advertising expenses, no office expenses, no travel
14 expenses, no car and truck expenses, no utility expenses,
15 no repair or maintenance expenses. And again, Petitioners
16 received no income from their lenses. Further,
17 Petitioners will never make any income from their solar
18 lenses, because the receiver, appointed in the United
19 States District Court, has seized all the assets and
20 property that the promoters controlled. And those
21 assets --

22 THE COURT: But that happened after the years at
23 issue, right?

24 MR. BRADBURY: Yes.

25 THE COURT: They couldn't have foreseen that

1 necessarily.

2 MR. BRADBURY: They could not. But they never
3 will make income from it, because those assets have been
4 seized and will be sold or have been sold at auction.

5 Even if Petitioners were engaged in a legitimate business
6 for the tax years at issue, they are not entitled to
7 depreciation expenses or the energy credits they claim.

8 Pursuant to sections 167, 168, which deals with
9 depreciation, and section 48, which deals with the credit,
10 Petitioners must demonstrate that those solar lenses they
11 purchased were placed in service for a specifically
12 assigned function.

13 According to the equipment purchase agreements
14 Petitioner, Preston Olsen, signed, that specifically
15 assigned function of the solar lenses that they purchased
16 was to create electricity at the target rate of 600 peak
17 watts. Petitioners' solar lenses were never utilized in
18 this fashion, and as a result they never met this target
19 rate. They never produced any electricity at all. And
20 nobody knows if Petitioner's solar lenses were ever
21 installed on any towers in Delta, Utah, or if they even
22 existed. And that includes Petitioners.

23 Further, Petitioners cannot meet any of the five
24 factors courts have used to determine whether energy
25 property used to generate electricity may be concerned

1 placed in service.

2 Number 1, neither Petitioners nor the promoters
3 obtained the necessary permits and licenses for operation
4 of a solar energy plant.

5 Number 2, neither Petitioners nor the promoters
6 can provide evidence that critical preoperational testing
7 has been completed. The IAS proposed technology involves
8 many components, including the solar lenses, but those
9 components have never been combined into a functioning
10 system to even test.

11 Number 3, Petitioners have no control over the
12 alleged solar-energy plant. Rather, the promoters
13 maintain control over everything, including the solar
14 lenses that Petitioners purchased. Petitioners cannot
15 negotiate who they lease the lenses to.

16 Number 4, Petitioners solar lenses have not been
17 incorporated into any system that is synchronized with the
18 transmission or power grid.

19 And number 5, no daily or regular operation of
20 the alleged solar energy plant ever occurred, and it never
21 will.

22 You'll read expert reports submitted by
23 Petitioner's expert, Mr. Ken Gardner, and Respondent's
24 expert, Dr. Thomas Mancini, and may hear testimony from
25 each of them. Like me, you'll probably learn more about

1 solar energy technology that you have expected when you
2 went into tax law.

3 Mr. Gardner opined in his expert report that the
4 solar lenses Petitioners purchased were a part or
5 component related to the functioning of equipment that
6 uses solar energy to generate electricity.

7 And number 2, that the IAS technology is
8 technically viable to generate electricity with either
9 steam generators or concentrated photovoltaic power, or
10 CPV.

11 In contrast, Dr. Mancini concluded that the IAS
12 technology is a combination of separate-component parts
13 that do not work together in an operational system. He
14 also concluded that the IAS technology could not be a
15 commercial-grade solar dish system that converts sunlight
16 into electrical power or any other useful energy.

17 And regardless of whether the technology
18 developed Mr. Johnson and IAS works for the purpose of
19 producing electricity, Petitioners cannot demonstrate that
20 the solar lenses they purchased were installed as part of
21 a working system.

22 THE COURT: I think Mr. Jones seems to argue
23 that they were placed in service when they were leased.

24 MR. BRADBURY: Right. Which is not what they
25 were intended to do. Their specifically assigned function

1 was to produce electricity, not to be leased. And the
2 only way they can make income from those solar lenses was
3 if they produced electricity. And they never did; they
4 never will.

5 Finally, Petitioners have argued, in their
6 pre-trial memo, and again here this morning, that their
7 business was not the production of power, but they were in
8 the business of leasing. If true, Petitioners have
9 admitted they are not entitled to any losses, because
10 leasing is considered a passive activity under section
11 469(b)(2). Petitioners received no passive income during
12 the tax years at issue, and thus cannot offset any of
13 their passive losses.

14 Pursuant to section 48(a)(3)(C), Petitioners are
15 also not entitled to an energy credit, because they cannot
16 claim the depreciation expenses.

17 Through this promotion, Petitioners, and many
18 others, stole money from the millions of taxpayers who pay
19 their fair share of individual income tax. Petitioners
20 abused our system of voluntary tax compliance. And we are
21 confident that at the end of this trial, you'll determine
22 that Petitioners invested in a tax-avoidance scheme,
23 rather than a legitimate business, that the solar lenses
24 they purchased were never placed in service. Accordingly,
25 the Petitioners are entitled to no deductions or credits

1 related to their solar lenses.

2 THE COURT: Okay. Thank you, Counsel.

3 So my understanding is you'd like to break for
4 lunch now?

5 MR. JONES: I think so, if that would be all
6 right, just because we'd just start up and probably need
7 to take a break. So it might be a little bit better to
8 just start and move forward.

9 THE COURT: Okay. How late do you think you'll
10 want to run today?

11 MR. JONES: I will be -- I would guess that Mr.
12 Olsen might go until the end of the day. We do have
13 another witness that was told to be ready for today, so --

14 MR. SORENSEN: May I have a moment, Your Honor?

15 THE COURT: Yeah.

16 (Counsel confer.)

17 MR. JONES: Are you asking how late in the day
18 you'd like to go?

19 THE COURT: I'm trying to think of how long a
20 lunch break we should take.

21 MR. JONES: Okay. I don't know.

22 THE COURT: Come back at 12:30?

23 MR. JONES: Should we go --

24 THE COURT: That enough time for lunch?

25 MR. JONES: I think so. That's fine with me.

1 MR. SORENSEN: Your Honor, do we have access to
2 this courtroom after 5?

3 THE COURT: It's a good question. We'll find
4 out.

5 MR. SORENSEN: Respondent is willing to go late
6 in the evening if we need to.

7 THE COURT: You prefer not to?

8 MR. SORENSEN: Prefer not to, but we're out --

9 THE COURT: Right. Okay.

10 MR. SORENSEN: I mean, Your Honor --

11 THE COURT: Well, let's come back --

12 MR. SORENSEN: -- to be candid --

13 THE COURT: -- at --

14 MR. SORENSEN: -- we're staying 30 feet away.

15 We can go as long as we want.

16 THE COURT: Okay. Well, let's come back at
17 12:30 and plan to run until about 5. And we'll check on
18 the availability of the courtroom after that. Okay?

19 MR. JONES: I have another quick housekeeping
20 matter. So is the trial session for tomorrow -- are we
21 planning 10 a.m. every day?

22 THE COURT: Yes.

23 MR. JONES: Okay.

24 THE COURT: Unless we need to start earlier to
25 get done.

1 MR. JONES: Great. 10 a.m. is good, because I'm
2 coming from Salt Lake. There's --
3 MR. SORENSEN: And the traffic from Salt Lake --
4 MR. JONES: Yeah.
5 MR. SORENSEN: -- with that construction is
6 horrible.

7 MR. JONES: Stipulated. Yeah. Yeah.

8 THE COURT: Okay.

9 THE CLERK: All rise.

10 (Whereupon, a recess was held from 11:39 a.m.
11 until 12:42 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Please be seated.

14 Mr. Jones, would you call your first witness?

15 MR. JONES: Yes. Petitioners call Preston Olsen
16 to the witness stand.

17 May I be seated during examination?

18 THE COURT: That'd be fine.

19 MR. JONES: Thank you.

20 Yes, and you'll be sworn in.

21 PRESTON OLSEN

22 having been duly sworn, testified as follows:

23 THE CLERK: Please state your name and address
24 for the record.

25 THE WITNESS: Preston Olsen. My address is 9351

1 South Dutch Valley Drive, South Jordan, Utah 84095.

2 THE CLERK: Thanks.

3 THE WITNESS: Thanks.

4 DIRECT EXAMINATION

5 BY MR. JONES:

6 Q Good afternoon, Mr. Olsen. You just stated your
7 name and address for the record, so I won't ask you that
8 again. But how long have you lived at that address?

9 A A little more than five years.

10 Q And are you married?

11 A Yes.

12 Q Who's your wife?

13 A My wife is Elizabeth Olsen.

14 Q All right. And she's also a Petitioner in this
15 case; is that correct?

16 A That's correct.

17 Q Do you have any kids?

18 A I do. I have five kids.

19 Q All right. And what are their names?

20 A The oldest is named Lucas, and the second is
21 Seth, the third is my girl, Sophia, fourth is James, and
22 my final is Gideon.

23 Q Great. All right. Can you tell us what your
24 educational background is?

25 A Sure. I graduated from BYU, seems like a long

1 time ago, in economics, Bachelor's in Arts, I think it is,
2 and then graduated from the University of Chicago Law
3 School, I think in around 2000.

4 Q And what did you do after law school?

5 A I spent some time in New York, seeing how that
6 life is, and then moved back to Salt Lake, worked for a
7 law firm out there called Cleary Gottlieb, and then moved
8 back here to work at a firm called Ballard Spahr.

9 Q And when did you move back to work with Ballard
10 Spahr?

11 A I think it was around 2004.

12 Q 2004?

13 A I think, yeah.

14 Q And what do you -- or what did you do at Ballard
15 Spahr?

16 A Mostly what I would call public finance. So
17 working on financing public projects or projects for
18 nonprofits.

19 Q And maybe just tell us, what does that entail
20 exactly?

21 A Most of it entails either loans or the sale of
22 bonds to finance these projects, most of which are tax-
23 exempt because they're for public purposes and issued by
24 public entities. And so we draft the documents for
25 disclosure to sell the bonds, and then indentures of trust

1 and things like that, and then issue opinions that
2 everything's been done in accordance with the tax code.

3 Q Okay. Great. And you no longer work with
4 Ballard Spahr?

5 A No. I currently work at a law firm called
6 Gilmore & Bell, PC.

7 Q And when did you start with Gilmore & Bell?

8 A I think it was January 1st of 2017.

9 Q Okay. And what's your work entail there?

10 A The same thing. In fact it was our whole
11 practice group from Ballard Spahr that just moved to this
12 firm.

13 Q Started your own firm?

14 A Well, no. It's a group out of Kansas City, but
15 they do -- they kind of specialize in this area, and
16 Ballard Spahr is more of a full-service firm, so we just
17 sort of moved over and opened a Salt Lake office for this
18 firm.

19 Q Okay. And what was your position with Ballard
20 Spahr?

21 A I'd say I was an associate for a number of years
22 and then a partner the last year we were there.

23 Q Did you recall what year you made partner?

24 A No.

25 Q Okay.

1 A Probably 2015, I'm guessing.

2 Q Okay. And are you a partner at Gilmore Bell?

3 A Yeah. We don't -- it's a different

4 organization, but it's a shareholder there, yeah.

5 Q Okay. All right. You filed tax returns in the
6 tax years in 2009 through '14 for each tax year; is that
7 correct?

8 A Yes.

9 Q And you saw -- I'll just kind of represent you
10 saw that we Filed a Stipulation of facts that has exhibits
11 in it.

12 A Uh-huh.

13 Q They're sitting before you in binders. And if
14 we refer to something, we might also display it over here.
15 It might be easier for you to look over there, and it
16 might be easier for you to review this. But I'll just let
17 you know as sort of an instructional matter, this is --
18 this is what we'll be -- we'll be looking at some of these
19 exhibits. So maybe if you wouldn't mind just opening the
20 first one to Exhibit 1-J.

21 A Okay.

22 Q And you can see a tax return there. Maybe if
23 you just take a moment and have a look at it.

24 A Uh-huh.

25 Q And I'll let you know, we've already agreed that

1 this is your tax return, but nonetheless, I'll just ask
2 you to confirm, is this the tax return you filed for 2009?

3 A Yes.

4 Q Great. And I'll just let you know, Exhibit 2-J
5 is your 2010 return, 3-J is your 2011, 4-J is 2012, 5-J is
6 '13, and 6-J is '14. And if you'd like, you can flip
7 through them. Although I think you've reviewed them
8 previously.

9 A Uh-huh.

10 Q Who prepared your 2009 tax return?

11 A If I remember it correctly, my '09, '10, and I
12 think '11 returns were done by Bryan Bolander.

13 Q Who prepared the other years? So who
14 prepared ---

15 A I hope I'm getting this right, but one year it
16 was --

17 MR. SORENSEN: Your Honor, can I just clarify?
18 Are we asking from his memory, or are we asking him to
19 read from the exhibits, because he seems to be turning
20 pages to look at the exhibits.

21 THE COURT: Well, the preparer's listed on the
22 returns, right?

23 MR. SORENSEN: Yes.

24 MR. JONES: Yes.

25 MR. SORENSEN: I just want to make it for the

1 record that he's -- that he appears to be reading from the
2 exhibit, not from memory.

3 THE WITNESS: It's just from memory right now,
4 but I can look on the exhibits.

5 BY MR. JONES:

6 Q If you don't know from your memory, the
7 preparers are listed on there. You can refresh your
8 recollection and look if you'd like.

9 A Okay. Where does it list the preparers? I
10 don't see it on there.

11 Q It's on the second page --

12 A Oh, I got it. I got it. I got it.

13 Q -- for each return.

14 A Yeah, Bryan Bolander, and the name of his firm
15 is there, for 2009. For 2010, it's the same, Bryan
16 Bolander. 2011 was, again, Bryan Bolander, which is what
17 I remembered.

18 Q Okay.

19 A 2012 is Kenneth Riter. 2013 was done by Richard
20 Jameson.

21 Q And what about 2014?

22 A 2014 was also prepared by Richard Jameson.

23 Q Okay. I'd like for you to explain what the
24 process is when you approach the preparer to have your tax
25 returns prepared. Can you describe for the Court, what do

1 you do when you are getting your taxes prepared?

2 A Typically, the preparer, around the beginning of
3 the year, sends me a packet in the mail. And in the mail,
4 it has a list of, I guess, new tax issues for that year
5 and then has a list of -- like, a questionnaire to fill
6 out. And the I usually fill that out, send it back with
7 the supporting documents that they request in the
8 questionnaire.

9 Q Okay. Are there communications that you engage
10 in apart from that questionnaire about the preparation of
11 your return?

12 A Yeah, typically, either call him on the phone or
13 email back and forth to make sure they have everything
14 they need.

15 Q Okay. Was that done in tax years 2009 through
16 '14 with each preparer?

17 A Yes. In fact, for 2009 and '10, I went and met
18 at Bryan Bolander's office several times to kind of get
19 some questions answered from him.

20 Q What were the questions that you went to discuss
21 with Bryan Bolander?

22 A Primarily whether or not he felt confident about
23 the use of the tax credits and depreciation.

24 Q And what did he tell you?

25 MR. SORENSEN: Objection, Your Honor. Hearsay.

1 THE COURT: Sustained.

2 MR. JONES: I'm sorry. Why would that -- I'm
3 not following that. He would be testifying as to what he
4 was told, right? So it's his understanding of --

5 MR. SORENSEN: Your Honor, it called for an
6 out-of-court statement by a third party.

7 THE COURT: He can express his understanding of
8 what the upshot of the communication was, but I think he
9 can't testify literally to what he was told by somebody
10 else.

11 BY MR. JONES:

12 Q What did you learn from asking questions to Mr.
13 Bolander about the questions you concerning the
14 availability of the tax credits?

15 A Yeah, he had a large file with all of the things
16 he thought supported the tax credit in this -- on my tax
17 returns and taking the depreciation, and we talked about
18 that, and I felt comfortable with it.

19 Q Thank you. Did you communicate similarly with
20 either of the other preparers?

21 A It wasn't as in depth, but I met with Kenneth
22 Riter at his office and kind of asked the similar
23 questions, if he felt confident in his research that
24 everything was fine on my returns for the claiming the
25 deductions and the tax credits. And he said that he

1 though in his opinion it was fine as well.

2 Q What about with Mr. Jameson?

3 A The same thing.

4 Q What did you learn from him?

5 A I talked to him, not in person but on the phone,
6 because he's -- I think he lives in St. George. But I did
7 the same things with him. And then, obviously, he helped
8 me later, and Bryan, in the, I guess, appeals process with
9 the IRS.

10 Q Okay. Will you turn to Exhibit 1-J?

11 A Uh-huh.

12 Q And it's the Schedule C listed on 1-J. And I'm
13 trying to see. It's page number -- I believe it's -- it
14 is displayed on the screen here as well.

15 A Okay. I have it. Thank you.

16 Q You have it as well?

17 A Yeah.

18 Q Do you know what this page is reporting on your
19 tax return?

20 A Yeah, it's reporting profits and losses from
21 business.

22 Q And what is that business?

23 A It's the business that I started with just a
24 little sole-member LLC called PFO Solar, LLC, to purchase
25 these lenses and then lease them back to generate income.

1 Q Okay. And do you know -- or is there a similar
2 Schedule C on each of the tax years at issue?

3 A Yes. I think it's similar. I think they may
4 have changed the -- depending on the tax preparer, I think
5 they may have changed. I think Bryan Bolander was listed
6 as solar energy. I think in the other -- some of the
7 other tax preparers thought it was better to list it, I
8 think, as -- let me see -- equipment rental services. I
9 think that's the significant change, over the years.

10 Q Was there a difference in your understanding of
11 what you were doing?

12 A No. It was the same documentation that I
13 thought I saw. And I think the other tax preparers
14 thought that was, I don't know, in their opinion a
15 better -- a better, I guess, description.

16 MR. SORENSEN: I'm going to object, Your Honor.
17 That's an assumption on his part, unless he's going to
18 testify to hearsay. He's not sure why they did it. He
19 can't testify as to what they thought or what they
20 believed.

21 MR. JONES: He did testify it was his belief,
22 but yeah.

23 MR. SORENSEN: I believe he said at the last
24 sentence, and they believed that it was a better fit.

25 THE COURT: I'll overrule the objection.

1 BY MR. JONES:

2 Q What were your activities?

3 MR. JONES: Actually, strike that.

4 BY MR. JONES:

5 Q Were there any changes in your business
6 activities in any of these years, 2009 through 2014?

7 A No.

8 Q So it is your testimony that the activity that
9 you were conducting did not change?

10 MR. SORENSEN: Objection, Your Honor. Leading,
11 but it's also been asked and answered.

12 THE COURT: I'll allow it.

13 THE WITNESS: The activity did not change during
14 those years -- I mean, my activity.

15 BY MR. JONES:

16 Q Thank you. Were your returns selected for
17 examination by the IRS?

18 A Yes.

19 Q And when I say -- I should qualify. My question
20 was -- I'm referring to the tax years at issue, so that
21 would be 2010 through -- 2009 through 2014.

22 A Yes.

23 Q Okay. And when did this occur?

24 A I honestly don't remember the exact time.

25 Q You don't remember?

1 A Huh-uh.

2 Q Okay. Do you remember how you found out that
3 your --

4 A Yes.

5 Q -- returns were selected for audit?

6 A I got a letter in the mail, obviously, from the
7 IRS. I think the first letter had maybe the 2009 to 2012
8 tax years selected. And then the other two were added
9 later in time. That's my recollection.

10 Q So your returns were audited in two separate --
11 on two separate exams; is that what you're saying?

12 A I don't know if that's technically how it
13 happened. I don't know if they just add them to the same
14 exam. I don't know how it works.

15 Q You don't know? Okay. What did you do when you
16 found out that your tax returns were being audited by the
17 IRS?

18 A I think the first person I contacted was Bryan
19 Bolander, because he was the preparer for the -- I think
20 the tax years that were being audited initially.

21 Q And what did you learn from Bryan Bolander when
22 you contacted him about the being audited?

23 A I think I learned that he -- that there -- like,
24 because he had -- my understanding is he prepared tax
25 returns for other people who purchased lenses, and that he

1 was aware of it, and that he could represent me in the
2 next steps, with the IRS.

3 Q Okay. What else happened?

4 A I mean, I guess I signed an authorization for
5 him to represent me in the audit. And he and I worked
6 together to send a response to the IRS.

7 Q Okay. You mentioned that you were -- you
8 received two letters. You believe you received two
9 letters. Did you also have another representative helping
10 you with exam?

11 A Yeah, later. Bryan only wanted to represent me
12 with respect to the years that he prepared my tax returns.
13 And so I later had a similar relationship with Rick
14 Jameson to represent me on the other years.

15 Q And do you recall which years those are?

16 A I believe they're -- let me just double-check.
17 I think it's '12, '13, and '14, were the -- it would have
18 been the years that Bryan Bolander did not prepare my tax
19 returns.

20 Q You mentioned that one year was prepared by
21 Kenneth Riter. Did he represent you before the IRS at
22 all?

23 A He did not.

24 MR. SORENSEN: Your Honor, just a point of
25 clarification, it was Kenneth [Ritt'-er], I believe, not

1 [Ride'-er].

2 MR. JONES: Oh, I'm sorry.

3 THE WITNESS: Riter.

4 MR. JONES: Riter?

5 MR. SORENSEN: The return preparer's name. Just
6 to keep the record straight.

7 MR. JONES: Oh, thank you. It's R-I-T-E-R.

8 MR. SORENSEN: Right.

9 MR. JONES: In point of fact, I actually don't
10 know how that's pronounced, so whether --

11 MR. SORENSEN: I just know that the witness --

12 MR. JONES: Yeah.

13 MR. SORENSEN: -- said Riter when he identified
14 him.

15 THE WITNESS: I have no idea how it's
16 pronounced. I assume it's Riter.

17 MR. JONES: I don't either, unfortunately. But
18 thank you.

19 THE WITNESS: Sorry, what was your question?

20 BY MR. JONES:

21 Q Did Mr. Riter represent you in -- before the IRS
22 in an exam?

23 A He did not.

24 Q He did not?

25 A And Rick Jameson represented me for that year

1 that he -- for the tax return that was prepared by Mr.

2 Riter.

3 Q And can you describe your role for us in the
4 exam process?

5 A Yeah. It seemed pretty minimal. I didn't meet
6 or talk with any IRS people personally. It was all done
7 by either Bryan Bolander or Rick Jameson. And if they
8 needed additional information from me, they would ask for
9 it, and I'd send it to them, and they were the ones who
10 would send it along to the IRS. And then they had me
11 review any written, I guess, information before they sent
12 it along.

13 Q Were there requests for information and
14 documents and meetings made by the IRS?

15 A Yes.

16 Q And the process you describe, is that how they
17 were handled?

18 A Yes.

19 Q Okay. Who interacted with the IRS during the
20 exam process?

21 A It was either Bryan Bolander or Rick Jameson.

22 Q And was there anything that they -- that you
23 were aware of that was unresponsive or failed to -- or a
24 refusal of documents of information provided?

25 A I'm not aware of anything that wasn't provided

1 to them that they asked for.

2 Q And you testified that you reviewed the
3 information sent back to the IRS to those requests,
4 correct?

5 A Yes.

6 Q Okay. And were you generally cooperative with
7 the IRS during the examination process?

8 A I think so.

9 Q Do you know if your representatives were
10 cooperative with the IRS?

11 A I believe they were. I think they tried to meet
12 all the deadlines.

13 Q Okay. Can you turn to Exhibit Number 7-J? And
14 would you mind turning to -- it's going to be the -- not
15 the last page. I think there will be a page reference.
16 Page 28.

17 A Okay. 28, okay, I'm there. 28 of 30, on the
18 top?

19 Q Yeah.

20 A Okay.

21 Q I'm going to direct your attention to the two
22 subheadings. One is "carry forward other credits from
23 Form 3800". Do you see that?

24 A Yes.

25 Q There's also another line below it, a -- or a

1 heading that says "other credits from Form 3800". Do you
2 see that?

3 A I do.

4 Q Would you just take a minute and review the --
5 those two paragraphs?

6 A Yes, I just read the paragraph.

7 Q Okay. There's a statement in both those
8 paragraphs that says, "We did not get enough information
9 to support your entries." Do you see that?

10 A Yes.

11 Q Do you know why the IRS would make that
12 statement?

13 MR. SORENSEN: Objection, Your Honor. He
14 doesn't have a foundation for knowing why the IRS made
15 statements on the statutory notice.

16 THE COURT: Sustained.

17 BY MR. JONES:

18 Q Do you believe that you submitted all documents
19 and answered all the requests the IRS made for
20 information?

21 A I believe I did, or one of my representatives
22 did.

23 Q Were you made aware of any information that was
24 lacking?

25 A I'm not aware of anything.

1 Q Did your representatives communicate anything to
2 you about lacking information?

3 MR. SORENSEN: Objection, Your Honor. Calls for
4 hearsay.

5 THE COURT: Mr. Jones, I think you're going here
6 with a point you made in your opening statement. But the
7 requirements are not just providing numbers and contracts.
8 You have to be in a trade or business, and you have to
9 put -- place in service the property, to be eligible to
10 claim depreciation. Those are part of the requirements.
11 So I don't see what you're driving at here. He may have
12 given them a lot of information, but he didn't give them
13 enough to meet all the requirements.

14 MR. JONES: I am driving at cooperation. I am
15 actually asking, at this part, about the issue is, was
16 there cooperation? So we didn't come to a concession on
17 that, and so --

18 THE COURT: Okay. All right.

19 MR. JONES: -- I'm putting that evidence into
20 the record.

21 THE COURT: But any argument you're trying to
22 make, the Notice of Deficiency was invalid or not specific
23 enough, I'm not buying.

24 MR. JONES: And I will stipulate the Notice of
25 Deficiency is valid. Yeah. No such argument being made.

1 THE COURT: Okay. All right. So you may
2 continue.

3 MR. JONES: Thank you. I apologize. Did that
4 question get answered affirmatively before --

5 THE COURT: Why don't you ask the question
6 again?

7 MR. JONES: Okay.

8 BY MR. JONES:

9 Q Were you made aware of any information that was
10 lacking that the IRS still needed for this examination?

11 A I wasn't aware of anything that they requested
12 and didn't receive. I'm not sure.

13 Q Okay. Thank you. Let's talk about your rental
14 activity with the Schedule C that we reviewed before.

15 A Uh-huh.

16 Q Who was that business relationship with?

17 MR. SORENSEN: Your Honor, I'd only object as to
18 that's a vague question. What business relationship are
19 we talking about?

20 MR. JONES: I did represent that we were turning
21 our attention to the leasing activity, so --

22 MR. SORENSEN: But what business activity? The
23 way I interpret the question is, who were the two
24 businesses or what business activity? I apologize if that
25 was wildly incorrect. But it seems a very vague question.

1 MR. JONES: Yeah. I was asking him to turn his
2 attention to the leasing activity. And I said, who was
3 that business relationship with?

4 THE COURT: Well, it might help if he could
5 clarify the entities that were involved that he dealt
6 with, maybe lay a foundation for all that.

7 MR. JONES: Yeah.

8 BY MR. JONES:

9 Q You testified that you had a leasing business
10 earlier, correct?

11 A Yes.

12 Q Who are the business entities that are involved
13 in that leasing transaction and business?

14 A I'm just skipping to the actual agreements.

15 Q Would you like to reference the agreements?

16 A I would. Yes.

17 Q The agreements are found in -- started in --

18 MR. SORENSEN: Your Honor --

19 MR. JONES: -- 12-J.

20 MR. SORENSEN: -- before we do that, can we get
21 a question answered, either he does or does not know who
22 the entities are before we refresh his memory?

23 THE COURT: Yeah. Please ask him.

24 BY MR. JONES:

25 Q Do you know who they are --

1 A I know who they are.

2 Q -- without looking?

3 A Yeah, I know the entities, but I'd rather,
4 actually, look at the actual written documents.

5 Q Go ahead and tell us from your memory first, and
6 then we'll -- if you need to refresh your recollection.

7 A I think the first purchase agreement was with
8 International Automated Systems, and then later with
9 RaPower3.

10 Q And who was the other -- who are -- who is the
11 other party to that agreement?

12 A PFO Solar, LLC.

13 Q Okay. All right. If you would like to turn to
14 Exhibit 12-J, 15-J -- or excuse me -- 14-J, and then 14-J
15 through -- I'm sorry; let's see here -- through 21-J, are
16 the agreements that were entered into --

17 A Uh-huh.

18 Q -- if you'd like to review those.

19 A Sure.

20 MR. SORENSEN: Again, Your Honor, just an
21 objection here. Do we have a question pending, or are we
22 just going to ask the witness to review all the documents
23 in the Stipulation prior to a question being asked?

24 THE COURT: Mr. Jones, do you have a question
25 you're --

1 MR. JONES: I do. I do.

2 BY MR. JONES:

3 Q So after reviewing those documents, would you
4 like to tell us who the -- who the business entity -- do
5 you have to -- would you like to clarify your answer in
6 any way after having reviewed those documents?

7 A I think the answer is correct. International
8 Automated Systems in 2009, with PFO Solar, LLC. And then
9 beginning in 2011, between RaPower3, LLC, and PFO Solar,
10 LLC.

11 Q Okay. Thank you. Can you tell us what you know
12 about International Automated Systems?

13 A Yeah. What I know is that they're a publicly
14 traded company, because I bought a ton of stock in the
15 company. And they are kind of a developmental company
16 developing new technologies, and some of which are solar,
17 some of which are other types of technology.

18 Q Anything else?

19 A I'm not sure what else.

20 Q Okay. If that's all, that's fine. Can you tell
21 us what you know about RaPower3?

22 A What I know is RaPower3 had -- my understanding
23 is they had an agreement, with a license to --

24 MR. SORENSEN: Your Honor, again, I'm going to
25 object. It appears the witness is reading from documents.

1 Can we ask that he not be reading from documents and
2 answer a question? Because we're not having the documents
3 identified by number. He's just reading from a document
4 that we don't know what document it is.

5 MR. JONES: Were you reading from a document?

6 THE WITNESS: Yeah. I'm reading from -- most
7 people would read the documents before they made
8 statements. Just seems normal. Unless you want me just
9 to make stuff up and -- I don't know what -- or just
10 guess.

11 MR. JONES: Well --

12 THE WITNESS: I have no idea.

13 THE COURT: Respondent's counsel is driving at
14 the point that your ability to remember the terms of these
15 agreements and so forth from memory might be relevant to
16 how seriously you were engaged in this. If you have to
17 read everything from a document, that might suggest you
18 didn't really participate much in this at all.

19 THE WITNESS: I find that ridiculous, but okay.

20 As a lawyer, who wouldn't want to look at the documents
21 before you make a statement. If you want me to just make
22 statements from memory, I'll do that, too.

23 THE COURT: Unless Counsel asks you to --

24 THE WITNESS: That's so ridiculous.

25 THE COURT: -- look at a document and answer

1 something based on the document, the questions should be
2 answered based on your memory.

3 THE WITNESS: Okay. I don't understand that,
4 but I will comply.

5 BY MR. JONES:

6 Q Yeah. If you don't remember something, it's not
7 a problem to refresh your recollection by reviewing the
8 document and --

9 A It's like what do you even enter into the
10 documents, right, if you just have to remember everything
11 by memory? That's why you write things down and sign
12 them.

13 Q Sure. And so if you do need to -- if you need
14 to go back and review something, I can --

15 A Sure.

16 Q I can refer you back to those exhibits, and you
17 may review them to refresh your recollection. Okay?

18 A Sounds good.

19 Q All right And I believe the question was -- that
20 was pending that you were answering is, can you tell
21 us what you know about RaPower3?

22 A RaPower3 has some licensing arrangement with the
23 intellectual property holders of the lenses, so that they
24 can sell the lenses.

25 Q Okay. Anything else you know about RaPower3?

1 A Not much.

2 Q Okay. I would like you to turn to page 2 of
3 Exhibit 13-J.

4 A Okay.

5 Q Or I'm sorry.

6 THE COURT: Before we leave 12-J, I have a
7 couple of questions about that. Mr. Olsen, this agreement
8 says that "Seller agrees to complete the following for the
9 alternative energy system and shall furnish and deliver
10 the alternative energy system". And you're paying \$3,000
11 each for each alternative energy system. What did you
12 think you were purchasing?

13 THE WITNESS: Lens.

14 THE COURT: So the lens is the alternative
15 energy system in this contract?

16 THE WITNESS: Yes.

17 THE COURT: Why do you think a system was a
18 lens?

19 THE WITNESS: Because the lens, by itself,
20 produces enough heat that it can be applied to a variety
21 of uses. It doesn't have to be applied to one specific --
22 it is, itself, something that generates an enormous amount
23 of heat, which is, in itself, remarkable.

24 THE COURT: Okay. Now, it says that the
25 purchase price for these first two lenses you bought was

1 \$30,000 apiece. And apparently, later, the price went
2 down to \$3,500 apiece.

3 THE WITNESS: Yes.

4 THE COURT: Why was that, do you believe?

5 THE WITNESS: The initial -- and I could look at
6 it, but off the top of my head, I thought the initial
7 piece of -- they sold were more lenses in one unit. Like,
8 I thought it was, like -- I can't remember the number.
9 But I think, initially, they were sold as a package of,
10 like, five or six lenses. And then later, they were sold
11 as one lens. I don't know why they changed that item.

12 THE COURT: It would still be a different price?

13 THE WITNESS: Yes. I don't think it divides
14 exactly, if that's what you're asking.

15 THE COURT: Okay.

16 You may continue, Counsel.

17 MR. JONES: Thank you, Your Honor.

18 I misspoke. I'm still in 12-J.

19 THE COURT: Okay.

20 BY MR. JONES:

21 Q Would you mind flipping over to page 2?

22 A Yeah.

23 Q And there is an entity there listed in paragraph
24 4. Do you see that?

25 A I see it.

1 Q And what does that say? Who is that entity?

2 A The entity, LTB, LLC.

3 Q Are you familiar with LTB, LLC?

4 A Only through these contracts, that it was going
5 to be the entity that operated and managed the equipment.

6 Q And the equipment -- what is the equipment
7 you're referencing?

8 A The lenses that generate the heat.

9 Q Okay. Would you turn to Exhibit -- let's see.

10 This is 15-J.

11 A Yeah.

12 Q And do you know what this document is?

13 A This appears to be -- this is the operation and
14 maintenance agreement between the LTB, LLC, entity and PFO
15 Solar, LLC.

16 Q Okay. And LTB is the -- is referred to as the
17 operator; is that correct?

18 A Yes.

19 Q And what is this agreement accomplishing, in
20 your -- what's your understanding what this agreement is
21 accomplishing?

22 A Without reading it, I guess?

23 Q You can read it. You're welcome to read it and
24 refer to it, to supplement your understanding.

25 A Oh, good. Well, it's just -- it seems like a

1 normal operating maintenance agreement where they will
2 take the lenses, and they will operate them in a,
3 hopefully -- we all hoped -- revenue-producing endeavor,
4 and then they would pay back rental payments.

5 Q So is this a rental agreement?

6 MR. BRADBURY: Objection, Your Honor. It has a
7 title, and it doesn't say "rental agreement."

8 THE COURT: I'll sustain that objection.

9 BY MR. JONES:

10 Q Do you believe this agreement accomplishes a
11 rental of your lenses?

12 A Yeah. They're supposed to operate it and pay
13 rental payments. I don't know if there's much more to a
14 rental agreement.

15 Q I'll refer you to their lines on the first page
16 of Exhibit 15-J.

17 A Okay.

18 Q And it's the one -- it's the second recital. It
19 says, "Whereas the owner decides to rent to operator" --

20 A Uh-huh.

21 Q -- "and the operator desires to rent from
22 owner".

23 A Yes, I see that.

24 Q What's your understanding of that sentence?

25 A That the lenses were going to be rented to this

1 operator, and they were going to pay a rental stream back
2 for any revenue generated by those lenses.

3 Q Okay. Did you enter into an agreement with --

4 MR. JONES: Excuse me. I'll strike that.

5 BY MR. JONES:

6 Q Did PFO Solar, LLC, enter into an agreement like
7 this for 2011, 2012, 2013, and 2014?

8 A Yes.

9 Q I'd like to go back and talk about the genesis,
10 now, of your business relationship with all these entities
11 we talked about.

12 THE COURT: Counsel, before we leave 15-J, I'd
13 like to ask --

14 MR. JONES: Sure.

15 THE COURT: -- one more question about --

16 THE WITNESS: Sure.

17 THE COURT: -- paragraph 5-2 on page 6, 15-J,
18 refers to rental payment. It says, "Once the owners'
19 alternative energy systems are installed and producing
20 revenue, then at the end of each quarter, rental payment
21 will be due." So your understanding, there was no rental
22 payment due currently, during the year 2009, '10, '11,
23 '12? It was not until the system was up and operating
24 that rental payments would be due?

25 THE WITNESS: Correct. I thought that would

1 have been in one of those years. Yes. But that was my
2 understanding of the agreement.

3 THE COURT: It says, "The rental payment
4 operator/owner will culminate into an annual payment equal
5 to \$150 per alternative energy system." That was the rent
6 you were going to receive --

7 THE WITNESS: Yes.

8 THE COURT: -- ultimately, you understood?

9 THE WITNESS: That's my understanding, yeah, on,
10 I think, a quarterly basis. Yeah.

11 THE COURT: Okay.

12 You may continue, Counsel.

13 BY MR. JONES:

14 Q Yeah. I'd like to go back in time a little bit
15 here. And we've just talked about International Automated
16 Systems, RaPower3, and LTB. Can you tell us how you
17 became acquainted with those entities?

18 A Yes. So I think in 2009, I was approached by a
19 high school friend of mine. His name is Matt, Matthew
20 Shepard. And he kind of told me about this company and
21 that they were doing some really interesting things in
22 energy and kind of asked if I wanted to be a part of it.
23 And so I said, yeah, I'd be interested in learning more
24 about it.

25 Q And what happened then?

1 A If I remember correctly, they were in the
2 process of working with -- I don't remember the name of
3 the company -- think it was in North Salt Lake -- to
4 construct the towers to put the lenses on. And so they
5 asked me if I wanted to go up there and just see what they
6 were working on and see how far along everything was. So
7 I went up there and went through the -- kind of like a
8 manufacturing facility and talked with the people working
9 there about what they were building and things, and just
10 kind of getting an idea that it was, like, a real
11 endeavor. They were really building these things and
12 intending to use the lenses to generate electricity.

13 Q I'm sorry. What's the time period that this is
14 taking place?

15 A I think this was early 2009, so it would have
16 been before I, obviously, signed the first equipment
17 purchase agreement.

18 Q Okay. And you testified that that took place --
19 those events took place in North Salt Lake; is that right?

20 A I know it was north of where I work. I don't
21 remember exactly. I mean, I could probably -- I could go
22 back and get the name of the company. I just don't
23 remember.

24 Q Okay.

25 A This was a manufacturer, like a steel

1 manufacturer.

2 Q Okay. And at that time, what is it specifically
3 that you observed there in that facility?

4 A They gave us, like, a tour of the facility, to
5 show us all the things that they could do and how they
6 would be helpful in manufacturing the towers. And I was
7 just tagging along. Obviously, they were, in some ways,
8 making a sales pitch to the people who were there. And
9 then they showed some computer, I guess, renderings,
10 drawings, of how the towers would operate and how they
11 proposed to put the lenses on the towers, things like
12 that.

13 Q And were there -- I just want to make sure I'm
14 clearly understanding. Were there actual towers
15 constructed at that site?

16 A No. The only things I saw there were just the
17 computer drawings of them. I didn't see any actual
18 towers. And then they showed us a -- I don't know if this
19 facility ever manufactured them. I think they were
20 proposing to do it.

21 Q Okay. All right. And when did you decide to
22 commence a business relationship with your leasing
23 activity with these entities?

24 A After going up there to see the stuff up there,
25 and after reviewing some of the materials that they sent

1 to me on the lenses and what they could do, then I formed
2 the PFO Solar entity and decided to make an initial
3 purchase. And if I remember, back then, you had to
4 purchase -- and if I could look in here, I could tell you
5 exactly, but I think it was \$9,000 each. So it was
6 \$18,000, I believe, and --

7 Q Which document would you like to look at to
8 refresh that memory?

9 A The first equipment purchase agreement.

10 Q So if you'd like to turn to Exhibit -- I believe
11 it's -- or I'm sorry -- 12-J, if that would help you
12 refresh your recollection.

13 A Okay. Thank you. Yeah, that's what I
14 remembered. Two systems, and then I decided to just try
15 that. Because I didn't think it was a huge amount of
16 money. If I lost it, it wouldn't be the end of the world,
17 so just kind of how I chose that.

18 MR. SORENSEN: Your Honor, can I have a moment
19 with Counsel?

20 THE COURT: Okay.

21 (Counsel confer.)

22 BY MR. JONES:

23 Q You may continue with your -- I think you
24 were --

25 A I just decided it looked really interesting. I

1 really wanted to be involved in the -- somehow in this
2 company. I thought it was going to do pretty amazing
3 things. So I bought two of the systems, and I figured
4 that if I lost \$18,000, I guess it wouldn't be the end of
5 the world. But I wanted to kind of get involved with
6 the technology.

7 Q Did you perform any due diligence in connection
8 with that first equipment purchase?

9 A Yeah. Well, they had a number of different
10 items that they sent me to look at, kind of having to do
11 with the lenses and the turbine, and, obviously, some
12 thoughts about some of the other applications for the
13 lenses, and kind of describing the amount of heat that it
14 could produce.

15 And there were some videos that you could watch
16 that showed, like, that the thing produced enough heat
17 that it could, like, start things on fire or whatever, and
18 that -- and then they described how the -- if they used
19 the turbine in the system, how it would work. It would
20 preheat some fluids. It would be used to preheat water.
21 And then they could use additional natural gas or
22 something to heat it up a little more before it goes into
23 the turbine.

24 And they also talked about potentially using it
25 in some applications like to dilute sulfuric acid or

1 things like that. So I guess you can store heat that way
2 and get it back out later. And then I think they talked
3 about that they would love to design a concentrated
4 photovoltaic system, which --

5 MR. SORENSEN: Your Honor, I'm going to object
6 to the narrative. One of the difficulties with we have
7 with the narrative, many of these things occurred in later
8 years, and I believe the question dealt with due diligence
9 prior to 2009.

10 MR. JONES: That is correct.

11 MR. SORENSEN: But many of the descriptions
12 we're giving are descriptions of activities that didn't
13 come into existence until '12, '13, or '14.

14 THE WITNESS: Okay.

15 MR. JONES: I will concede that point.

16 THE WITNESS: Yeah. Sorry about that.

17 MR. JONES: I was asking you about --

18 THE WITNESS: I was rambling. What was the --
19 it was exactly, what, in 2009?

20 BY MR. JONES:

21 Q Yeah, the initial -- yeah.

22 A Okay.

23 Q So this is -- I am, to clarify, sort of -- I
24 actually agree with that. I am actually just asking what
25 due diligence did you do to make that --

1 A The first purchase?

2 Q Yeah.

3 A Yeah. It was primarily talking to them about
4 the potential use for the heat. And at the time, I think
5 the one that they really wanted to use was preheating the
6 fluids to put into the turbine. And then also, going up
7 to -- going to that manufacturer was real helpful to me,
8 because it made it look more like there was a -- like they
9 were going to get the project built. They were talking to
10 a fabricator. And then I think that's about the diligence
11 I did for that first one.

12 Q Okay. And do you recall speaking with a --

13 MR. JONES: Well, actually strike that. Strike
14 that.

15 BY MR. JONES:

16 Q When did you decide to actually then invest
17 after this due diligence? When was that that you decided,
18 I'm going to put my money into this?

19 A I'm not sure I understand exactly. Like, time
20 period or --

21 Q Yeah, the time period. Exactly. Yeah.

22 A I think it was just soon after that. I mean, I
23 don't --

24 Q Would it have been around the same time you
25 entered into this equipment purchase?

1 A Yes.

2 Q Okay. So I guess I'm asking, there wasn't a
3 significant lag of time; you did due diligence and then --

4 A I think that's correct, yes.

5 Q -- pretty quickly invested? Okay. Okay. Let's
6 move down the line now to the next agreement which is
7 Exhibit 14-J.

8 A Okay.

9 Q So this is after you've made your initial
10 purchase there in 2009?

11 A Uh-huh.

12 Q Can you describe to us what's your
13 decision-making process, due diligence, so forth in
14 deciding to enter into this agreement to purchase more
15 lenses?

16 A In 2011?

17 Q Yes.

18 A I'm not 100 percent sure on when I did specific
19 things, unfortunately. I should have brought, like, a
20 time line. But by this time, I think I was -- I had gone
21 down to visit with Neldon Johnson. I think the first time
22 I met him was in Payson, Utah.

23 Q Did you say Payson?

24 A I think it was Payson.

25 Q Okay.

1 A Yeah. In Utah County. And kind of discussed
2 with him, like, where he saw the lenses being used, and
3 kind of discussing, well, what's the progress on the --
4 completing the project and using the lenses to then
5 generate electricity? And I'm trying to remember. I
6 think they had kind of a question-and-answer kind of a
7 meeting. And I think this was around 2011, at
8 Thanksgiving Point, in one of the office buildings
9 there --

10 Q Okay.

11 A -- where they kind of described in a little more
12 detail that I hadn't heard about how the lenses were
13 developed and kind of, like, the process involved. And I
14 don't know. I felt really excited about the direction
15 everything was going.

16 Q Okay. And did you do any other, that you can
17 recall, due-diligence items before you invest here, is
18 there anything else?

19 MR. SORENSEN: Your Honor, I object to the
20 question as somewhat vague as to time frame. We skipped
21 2009 and the original investment and moved to 2011. And
22 the question there was, what else did you do before the
23 initial investment?

24 MR. JONES: I'm referring to the -- we're on
25 this exhibit, which is 2011.

1 MR. SORENSEN: So to clarify, we're talking
2 about due diligence in this tax year?

3 MR. JONES: Yes. 2011. If that wasn't clear, I
4 apologize.

5 THE WITNESS: Sorry. Was there -- I'm sorry.

6 BY MR. JONES:

7 Q Was there any other due diligence that you did
8 prior to making this next purchase in 2011?

9 A Well, I think, generally, between 2009 and 2011,
10 I did a lot more of my own research, just on, like, how
11 concentrated solar was being used now, the type of trough
12 systems and mirror systems, things like that. And
13 obviously, I'm not an expert, just seeing that it -- to
14 me, it seemed similar. Other than using the mirrors and
15 troughs, they used these lenses, which, from what I could
16 gather, just looked -- doing some research on the
17 internet, were cheaper to manufacture.

18 Q Okay. Thank you. And then, what made you
19 decide to purchase lenses and lease them out in 2011,
20 then? What were the reasons for making the investment
21 then?

22 A I thought the project was getting -- was making
23 progress and that it would be -- in the not-too-distant
24 future, the lenses would be generating electricity and
25 sending a return back to me.

1 Q Okay. And I know it's a little bit tedious, but
2 I wonder if we can now look at -- into the future. So
3 let's turn to Exhibit 15 -- or actually it's 16-J.

4 A 16?

5 Q And this is your purchase in 2012.

6 A Uh-huh.

7 Q So that's the kind of the time period. We're
8 kind of moving along here. Do you want to describe your
9 due-diligence procedures in deciding to continue here?

10 A Yeah. I think around this time frame, I started
11 to go down to -- I'm guessing a little bit on the time
12 frames. But they moved to a facility outside of Delta,
13 Utah, like a bigger facility where they could manufacture
14 things and put things up in a big field that was nearby.
15 And so I started going down maybe, I think about
16 quarterly, to see how progress was coming. And everything
17 seemed to be moving really well. Like, they had acquired
18 a bunch of manufacturing equipment and were installing it.
19 They were working on a few basic kinks to work out, like
20 some of the -- some of the guidance system for the towers.
21 And it just felt like everything was gathering some
22 momentum. So I felt like it was going to happen soon.

23 Q And when you say "it was going to happen" --

24 A "It" being rental income being sent back to me.

25 Q Okay. What was your motivation for going down

1 to Delta and observing the progress?

2 A Well, I didn't want to purchase any more lenses
3 unless I felt like I was going to get the rental payments
4 sometime. So I wanted to make sure there was progress and
5 just kind of see for myself. Because I would hear glowing
6 things, which I'm sure -- stack full of my emails that I
7 would get. But I wanted to see for myself what was going
8 on, talk to Neldon himself.

9 Q And you mentioned that you went down -- you
10 started to go down quarterly?

11 A I think about quarterly is what I tried to do,
12 go down every three or four months.

13 Q Okay. And can you give us a time frame, sort of
14 when you started doing that and an end time frame, if you
15 can --

16 A Yeah, I don't --

17 Q -- remember?

18 A -- remember exactly. But it seems like it was
19 around 2011 or so. I think I've been going down ever
20 since until the -- I guess, the District Court decision,
21 and then I haven't been down since that.

22 Q So you --

23 A Since the receiver took the property.

24 Q You haven't been since the receiver took the
25 property?

1 A No. But I still try to follow on the
2 technology, because I still think it's amazing. I still
3 think it's going to be seriously revolutionary stuff --

4 Q Okay.

5 A -- regardless of the outcome of these tax cases,
6 I mean --

7 Q Okay. Anything else in terms of decision to
8 lease?

9 A I think that's about it.

10 Q And I should say decision to buy --

11 A Yeah.

12 Q -- and then lease? Okay. And would that -- is
13 there anything different that you -- that you -- would you
14 say those due-diligence items are similar for 2013 and '14
15 as well?

16 A I think so. Yeah. The first ones, I hadn't
17 actually been down, I don't think, to meet with Neldon or
18 things on the first time I purchased them. But I think
19 after that, I had gone. And they had some, like,
20 annual -- I don't know what you'd call them -- conference
21 or just a question-and-answer thing. And so they had --
22 and so I went to those when I could. So there was one in
23 Thanksgiving Point, like I mentioned. And then there was
24 at least one at the Salt Lake City Library. And then I
25 think they held one down in Delta, kind of just in a

1 pavilion at a park there. But I found it was more -- it
2 was much better for me to get information just to go down
3 there by myself, in a smaller group, and see what was
4 happening and talk to Neldon personally.

5 Q Okay. Thank you.

6 THE COURT: Mr. Olsen, I noticed that these
7 agreements --

8 THE WITNESS: Yeah.

9 THE COURT: -- are almost all dated during
10 December.

11 THE WITNESS: Yes.

12 THE COURT: 2011, December 9th, then it's next
13 one December 20th, and then it's December 30th, then
14 December 29th. Why did you just make the decisions to buy
15 these lenses almost at the end of each tax year?

16 THE WITNESS: Yeah, the first one -- the first
17 purchase I made in 2009?

18 THE COURT: That was in July.

19 THE WITNESS: Yes. I wasn't even planning to
20 take the tax credits. I was just buying the lenses. I
21 just wanted to be involved. And then when it got closer
22 to the end -- to do my taxes for that year, probably in
23 February, maybe, of the following year, that's when I met
24 with Bryan Bolander and kind of really talked it out about
25 whether this was something that could be done, take the

1 tax credits and the depreciation. And we talked through
2 it, and he had all his materials. And we looked through
3 them. And I said, that sounds great. Let's do it then.

4 And then in the future, I thought, well --
5 because I was investing in the company by purchasing
6 stock, too. Like, I think I purchased more than a million
7 shares in the company. I believe in this company. And so
8 I was buying stock, and I actually felt like the stock was
9 going to be the way that I would benefit the most,
10 eventually. But then I thought, hey, if these tax credits
11 are allowed, why not use them to, like, leverage? So I
12 would wait until the end of the year to see what I thought
13 my taxes would be, to try and use tax liabilities to
14 leverage to buy the lenses, into the company, as well as
15 the stock, and so that's what I did, after -- I guess,
16 beginning in 2012.

17 THE COURT: And you tended to buy different
18 numbers of lenses each year. How do you decide how many
19 lenses to buy in a particular year?

20 THE WITNESS: Most of them are probably based
21 on, like, what I thought my tax liability would be,
22 because I thought it was a way that I could use a tax
23 liability to kind of leverage into purchasing this
24 equipment.

25 THE COURT: And how would you know how many

1 credits you -- how many lenses you needed to buy to zero
2 out your tax liability?

3 THE WITNESS: Well, I'd just guess. I mean,
4 they weren't always perfect.

5 THE COURT: Okay.

6 You may continue, Counsel.

7 MR. JONES: Thank you.

8 BY MR. JONES:

9 Q Can you describe for us your understanding of
10 what you purchased, what the lenses were?

11 A Can I just clarify this thing?

12 MR. SORENSEN: Your Honor, I'd object to any
13 further clarification. It's not a narrative. We need
14 questions from Counsel.

15 BY MR. JONES:

16 Q Would you like to clarify your answer?

17 A Yes.

18 Q Please clarify.

19 A Because I don't think it's correct to say that
20 I -- maybe it is correct in a way, but I just never
21 thought that I was doing this to zero out my tax
22 liability. That was never my intention. It was always, I
23 thought, okay, if I have extra money, the best way to make
24 money on this venture is actually to buy stock in the
25 company, which is why I dumped all the money I could. But

1 then I thought, hey, if it's allowed by law, can't I also
2 leverage into this company to even participate more by
3 doing what I thought the federal government wanted us to
4 do, which was to promote renewable energy and purchase --
5 so I would take -- hey, if they want me to shift my
6 taxes -- I had to buy lenses. So we're pushing solar
7 energy, and also, I can participate in this company I
8 think is amazing. That sounds perfect, you know what I
9 mean? And I don't even have to come out of pocket for it.
10 And I thought that's what the federal government wanted.
11 Apparently, I don't know.

12 Q Thank you. I had asked -- before your
13 clarification, I had asked the question, can you -- and
14 I'm kind of shifting topics now to the actual lens
15 purchase here. So can describe what you purchased, what
16 these lenses are, what your understanding of them is?

17 A Yeah. My understanding, so they -- the lenses
18 are -- my understanding is they're quite remarkable,
19 because it's a massive Fresnel lens, right? Like, the
20 diameter is dozens of feet. To produce something like
21 that with glass would cost, I imagine, hundreds of
22 thousands of dollars. But what Neldon figured out is that
23 if you can use plastic and use a Fresnel lens, which means
24 you cut angles into the plastic, then when the light comes
25 down, it hits it and focuses, right? And the real genius

1 of it all is to be able to make one that that's massive,
2 so that it can concentrate that much sunlight, and to do
3 it relatively inexpensively. Yeah, and so they put them
4 in -- and the reason why they're put -- and obviously,
5 they're put in a circle. And they're kind of like in a
6 wedge shape, so they can put them in a big circle. Does
7 that --

8 Q That's your description, yeah --

9 A That's my description.

10 Q -- that I'm looking for, yeah. Okay. And what
11 condition are the lenses in when you buy them?

12 A They're brand new, so when you go down to the
13 facility, one thing out of place --

14 MR. SORENSEN: Your Honor, I'd like to object to
15 the foundation of the question. We don't know how the
16 witness knows what shape the lenses are, if we can get
17 that established before we ask the question what shape
18 they are.

19 THE COURT: Perhaps lay a foundation, Counsel.

20 MR. JONES: Sure.

21 BY MR. JONES:

22 Q What shape are these lenses that you purchased?

23 MR. SORENSEN: Your Honor, that's not the
24 foundation for his knowledge of what shape the lenses are
25 in.

1 MR. JONES: Oh, I misunderstood your objection.

2 I apologize. I literally thought you were asking about
3 their dimensions, so --

4 THE WITNESS: Oh, yeah, the little shapes?

5 Yeah.

6 MR. JONES: Yes. I apologize.

7 BY MR. JONES:

8 Q So you did purchase lenses from RaPower3.

9 That's been established, correct?

10 A Yes.

11 Q Okay. And do you have knowledge of -- do you
12 have personal knowledge about the lenses that you
13 purchased?

14 A Yes.

15 Q And how did you acquire that knowledge?

16 A Okay. So each time I would go down to Delta to
17 kind of see what's going on, I would always -- there was
18 always a room in the back that just had kind of like a
19 pallet, with all the lenses in there. They would be,
20 like, Saran-wrapped, because they'd just been shipped in.
21 And I would ask them, so are these -- these are the lenses
22 that were purchased by me and other purchasers? And they
23 were, like, yes, these are the lenses. And then,
24 obviously, they, later on, started to try to put them on
25 the towers. And they built, like, a significant number.

1 And again, I asked, them, are these the lenses that we
2 purchased? Yes. And then that, before it could get
3 completed, was shut down.

4 MR. SORENSEN: Objection to the narrative, Your
5 Honor. We're not getting a time frame here. It's later.
6 We don't what years. The evidence is clear that there
7 were no towers erected in the tax years at issue. And so
8 we don't know the time frame of the Petitioner's testimony
9 at this point.

10 BY MR. JONES:

11 Q Would you mind stating the time --

12 A What's that?

13 Q Would you mind stating the time frame that
14 you're talking about?

15 A That's a good question. I mean, it seems like
16 the very first times I went down, the lenses were -- they
17 were in the warehouse, on the pallets. And it was
18 later -- and they were -- like, when I would go down, one
19 of the things that they were always trying to figure out
20 is -- at least from what I gathered and talked to the
21 people, is, how can we put these lenses in frames fast
22 enough and efficiently enough to put them on the towers?
23 And it seemed like it just, like -- I mean, it seemed like
24 they -- so at first, they tried to do some glue situation.
25 So we would watch them frame the lenses with the glue.

1 But apparently the glue didn't work out in the real-word
2 environment.

3 Q And when was this?

4 A I think that was probably, like, 2012, around
5 that time.

6 Q 2012? Okay.

7 A And then, seems like 2013 or '14, or maybe it
8 was less time than that, '13, when the -- because they put
9 them out into the -- they had some test towers that had
10 been up for some time, maybe, like, a handful of them,
11 where they were testing, like, the gearing to make sure it
12 worked. And they were also testing the lenses to see if
13 they could put them out there and that they would not
14 break in the wind. And yeah, so at first they were
15 testing glue. And then later, they were testing, like,
16 a -- like, an automated welder, Weldfast. I think that
17 was around 2013.

18 Q Okay.

19 A And then eventually, they decided that it was --
20 they just created these clamps. And they had all the --
21 they built these in-house. It was pretty amazing. They
22 had their own plasma cutters and the big things that bend
23 metal and stuff and they -- these clamps is what they set
24 on. And then it seems like around 2014 or '15 is when
25 they started really, okay, now, we can put these up en

1 masse. And they started to build the tower frames. Like,
2 seemed like there were dozens of them out there. And
3 that's what I was saying, these are our lenses, right?
4 They're finally going up. Yes. And then they shut the
5 whole thing down, so they never got to finish it.

6 Q Okay. And those were the occasions where you
7 observed the lenses?

8 A Well, yeah, and every time I went down there,
9 they had pallets of lenses.

10 Q Okay. And what condition were the lenses in
11 when you purchased them?

12 A They appeared to me to be brand new, because
13 they were on pallets and they were Saran-wrapped, and
14 everything looked like they'd just been delivered from
15 the --

16 Q Okay.

17 A -- whoever manufactured them.

18 Q Okay. What is your understanding as to whether
19 your rental business is the first person to use these
20 lenses?

21 A I believe that at first, like I said, I think
22 they came straight from manufacturing facility, these
23 pallets, wrapped up in, like, the Saran-wrap stuff, and
24 they were brand new.

25 Q Okay. And what is your understanding about what

1 the lenses are supposed to do? I mean, what are they
2 supposed to do?

3 A Just, you put them in the array, and then they
4 create a great deal of heat.

5 Q Okay.

6 A And then the heat -- like we were discussing in
7 the time frames, seems like in the initial part, they were
8 going to -- the thing that they said that they could do is
9 to preheat fluids to then -- and then, I guess, very
10 similar to what is done in all concentrated solar energy
11 things is to preheat fluids, preheat water. And then they
12 add, if necessary, maybe coal or natural gas, which I
13 understand is how all these facilities work, to heat it up
14 to the final temperature to turn the turbine on.

15 And then they also had discussed -- well,
16 there's a lot of other -- and I don't know the exact time
17 frames. Like, seems like around 2012 is when I made
18 this -- might have been 2011 when I made the second
19 purchase. They had already talked about, oh, we're trying
20 to work on another application that would be really
21 amazing. And that is the concentrated photovoltaics.
22 Which I think they'd already been working on, because they
23 already had -- they had, like, a prototype unit ready to
24 demonstrate. And in the time frame of, currently, 2019,
25 they have an amazing concentrated photovoltaic --

1 MR. SORENSEN: Objection, Your Honor, as to
2 relevance of what any -- his understanding of what anybody
3 is doing in 2019.

4 THE COURT: Sustained.

5 THE WITNESS: Well, I have seen it with my eyes.
6 I don't know if that matters, but --

7 BY MR. JONES:

8 Q Yeah. I understand that. So for --

9 A In the tax years?

10 Q -- context, we're only dealing with the --

11 A Yeah.

12 Q -- tax years.

13 A Got you.

14 Q So when these lenses are leased to this LTB
15 entity, what was your understanding of what was supposed
16 to happen with the lenses at that point?

17 A Well, I always understood that they would be put
18 up on the towers in these arrays and that they would be
19 used. Initially, I understood that they would be used to
20 preheat liquids to use in the turbine. And then later, I
21 understood they could be used in the concentrated
22 photovoltaics or possibly to concentrate sulfuric acid, so
23 that you can store heat. And those were, like, the
24 most -- I think that's what they generally talked about.

25 Q Okay. Did you have the understanding that there

1 were customers that LTB would have, or how would -- do you
2 know how they would make money to pay your rental payment?

3 A Well, I assumed that they -- well, my
4 understanding was that they would put up the towers and
5 then put the power on the grid and pay rental payments
6 from it. That's what I expected to happen, eventually.

7 Q So you only expected LTB to have one customer,
8 which would be the -- like, a power company or --

9 A That's kind of what I assumed. I didn't know if
10 it would be just in one spot, because I think they were
11 thinking of erecting some in Texas as well, where I think
12 the -- I'm not an expert in power. But I think the power
13 grid down there is deregulated. It's a little bit easier
14 to put power up, I think, in Texas.

15 MR. SORENSEN: Your Honor, objection as to
16 foundation for his belief that they're building towers
17 anywhere but Delta.

18 THE COURT: I'll allow his answer.

19 BY MR. JONES:

20 Q Did you have an understanding of any other
21 commercial uses that the lenses might be put to by LTB?

22 A Well, in these tax years? Yeah.

23 Q Well, yes, but generally is fine.

24 A Well, I don't know if I bring up --

25 MR. SORENSEN: Your Honor, I'm late again. I

1 would object to the generally whenever is fine. It's the
2 tax years at issue that we'd like to know what he was
3 believing or understood or was making his decisions based
4 upon.

5 THE COURT: Please answer the question with
6 reference to the tax years at issue.

7 THE WITNESS: Okay.

8 I think that was the general idea that it would
9 be used for, during these tax years, the ideas that -- the
10 initial was to drive the Johnson turbine. Then sometime
11 in 2011 or '12, they thought, they can also use this for a
12 concentrated photovoltaic, which seemed really
13 interesting. And then, at that same time, they were also
14 talking about being able to concentrate sulfuric acid to
15 create heat that they could also use in the Johnson
16 turbine.

17 BY MR. JONES:

18 Q Okay. Any other applications that you can think
19 of?

20 A I think those are the ones that I remember from
21 those tax years.

22 Q Okay. Did you make the lenses available to LTB
23 as soon as you purchased them?

24 MR. SORENSEN: Your Honor, that assumes, I
25 believe, a fact not in evidence that he ever had

1 possession of them to make them available to anybody.

2 MR. JONES: I don't think we disagree he made --
3 they were purchased. I don't think there's a dispute
4 about that. We have the checks. We have the contracts.
5 We agree that he's liable in the Stipulation of Facts. I
6 mean, all those foundational elements are present in the
7 stipulation.

8 MR. SORENSEN: But the question assumed that he
9 had possession to make them available to anybody.

10 THE COURT: Well, he had ownership.

11 MR. SORENSEN: The question wasn't did he enter
12 into an agreement for the third party to utilize the
13 lenses. The question was whether he made them available
14 to anybody.

15 MR. JONES: Right. Right. I mean, that's -- I
16 don't see the controversy in that question, did he make
17 them available.

18 THE COURT: Well, it appears that the purchase
19 agreement and the operation and maintenance agreement,
20 which has a rental clause, were executed on the same day
21 each year. So --

22 MR. JONES: Right.

23 THE COURT: It seemed that they were made
24 available simultaneously with the purchase.

25 MR. JONES: Right. Do we concede that point?

1 MR. SORENSEN: We concede that point, Your
2 Honor.

3 MR. JONES: Okay.

4 MR. SORENSEN: The point is, he never had
5 physical possession to make them available to anybody
6 else.

7 MR. JONES: Well, then that sounds like we're
8 not conceding that.

9 MR. SORENSEN: Nor was he offered anybody else
10 to enter into an agreement with. It was always the one
11 related entity.

12 MR. JONES: That sounds like we're not conceding
13 the point then, because I'm asking, were they made
14 available? And you're saying we won't say. I mean, Your
15 Honor said, well, they're -- they are being made available
16 simultaneously by the execution of the agreement.

17 THE COURT: I mean, really, if you look at
18 Exhibits 16-J, 17-J, I mean, they're literally the same
19 minute.

20 MR. SORENSEN: Right.

21 THE COURT: Right? They're executed
22 absolutely -- so the purchase agreement and the operation
23 maintenance agreement were executed simultaneously.

24 MR. SORENSEN: And we would concede that point,
25 Your Honor.

1 THE COURT: Okay.

2 MR. JONES: But not the being made available?

3 MR. SORENSEN: Not to anybody else.

4 MR. JONES: Okay. Then I think I need to have
5 him testify that they were made available, unless there's
6 a concession in that point.

7 MR. SORENSEN: How could they have been
8 available to anybody else if, at the moment he buys them,
9 he enters into a lease agreement with the related entity?

10 MR. JONES: But he --

11 MR. SORENSEN: They're not available to anybody
12 else.

13 MR. JONES: He has to enter into it. That is
14 making them available. He can choose not to. He can say,
15 I don't -- I am not making that available.

16 MR. SORENSEN: No, that's evidence not yet
17 before the Court.

18 MR. JONES: That's why I'm asking the -- that's
19 the point of the question, did you make them available? I
20 mean, that's -- I don't know what the controversy is.

21 THE COURT: But if the answer is, he
22 concurrently signed a lease agreement, then I guess I have
23 to decide what the substance of the transaction was. But
24 it is clear that these things were purchased and leased
25 back simultaneously.

1 MR. JONES: Right.

2 THE COURT: Okay. So I think move on from
3 there. And I'll have to draw whatever interferences are
4 appropriate from that.

5 MR. JONES: Okay.

6 BY MR. JONES:

7 Q Did you ever make any money from renting the
8 lenses to LTB?

9 A Unfortunately, no.

10 Q Why do you think you didn't make any money?

11 A I mean, personally, I think they just kept
12 running into some obstacles to overcome. And then, I
13 honestly feel like they were making really good progress,
14 and then -- I don't know if this is the right thing to
15 say -- but I swear the government shut them down. I
16 thought they were going to make it to the end zone. I
17 did.

18 Q Okay. All right. We had a -- you heard we had
19 a discussion about never taking possession of the lenses.
20 Was that concerning to you?

21 A Actual physical possession?

22 Q Right.

23 A No, I didn't, like, want them in my house or
24 something. I just assumed they'd just be delivered right
25 to the project site.

1 Q Okay. And did you ever follow up on that point
2 of them existing?

3 A Yes. When I would go down in the visits, and
4 they had the pallets of them, or I would ask them, like --
5 I don't know if I asked them every time, but these are the
6 lenses I purchased? Yes, they're all the same. They're
7 fungible. Some of those are yours.

8 Q Okay. Did you believe that your lens-rental
9 business would be profitable?

10 A Yes.

11 Q And why did you believe that?

12 A Well, I really believed, and continue to
13 believe, that Neldon Johnson had some really, really
14 interesting technology that I really think will work, and
15 I think that will generate electricity, affordably, and
16 that they will make revenues. And I thought they would
17 pay back rental income from those revenues.

18 Q Okay. And how much money did you put into the
19 lens-rental business?

20 A I don't remember the exact amount, but I think
21 it's in the Stipulation of Facts, but it was somewhere,
22 approximately \$70,000 or so to purchase lenses.

23 Q Is that a significant investment for you?

24 A Yeah, I think so. I think -- I mean, yeah.

25 Q Why such a large investment?

1 A Well, mostly because I believe in the company.
2 I think I invested more money in their stock,
3 significantly more. And obviously, like I said, because
4 the tax credits were available, it was -- it seemed like
5 it was a way to kind of leverage that to get more involved
6 in the company and to kind of send money their way so that
7 they could keep pushing the -- this -- get this solar
8 project up.

9 Q Okay. Were you aware that you might lose your
10 money?

11 A Yeah.

12 Q Okay. Did you realize that upfront, or when did
13 you realize?

14 A Yeah. No, I realized that. Especially the very
15 first contract I signed, I thought, I could lose this all
16 or whatever.

17 Q Okay. Did you borrow any money to use in the --
18 in the lens-rental business?

19 A I don't know if I borrowed any. I may have
20 borrowed some from, like, a credit line to make that first
21 \$18,000 purchase. That's, I think, possible.

22 Q It's possible. You don't know for sure?

23 A Not 100 percent sure.

24 Q Okay. Did you use a business entity to operate
25 your lens-rental business?

1 A I tried to sign all the agreements with the LLC
2 that I created.

3 Q And what was the name of that LLC, again?

4 A PFO Solar, LLC.

5 Q And where was it organized?

6 A In Utah.

7 Q In Utah? Did you use a professional to --

8 A No, I just --

9 Q -- far as --

10 A -- did it online at the --

11 Q Did it online, yourself?

12 A Yeah. Uh-huh.

13 Q And why did you use a business entity for the
14 lens-rental business?

15 A I was hoping, and my expectation was, that it
16 would grow, and it would generate revenues, and it would
17 be its own little entity that would create money and pass
18 it on to the sole member.

19 Q Okay. Did you operate PFO Solar in -- formally
20 like a business?

21 A Tried to. There wasn't a whole lot of
22 operations, unfortunately, but --

23 Q Okay. What were the operations?

24 A I guess just the signing the agreements and then
25 coordinating with the tax returns with the -- with the

1 accountants. I guess that was it. Purchasing lenses.

2 Q Okay. And so you kept it registered every year?

3 A Yes.

4 Q And did you file all the tax returns and other
5 reports?

6 A Yes.

7 MR. SORENSEN: Your Honor, I'm going to object
8 to that. There's no tax returns filed by a Schedule C
9 entity. So the question --

10 THE COURT: Because it's a disregarded entity.

11 MR. SORENSEN: That's right. So it's assuming a
12 fact that doesn't exist.

13 MR. JONES: That is a tax return. How can that
14 be argued to not be a tax return?

15 MR. SORENSEN: Well, in that case, Your Honor,
16 we're going to object. That's already been established
17 that all the tax returns were filed. Asked and answered.

18 MR. JONES: Well --

19 THE COURT: I mean, he reflected the operations
20 of PFO Solar on the Schedule C because of disregarded
21 entity. So his --

22 MR. JONES: Right.

23 THE COURT: -- 1040 return reflected the --

24 MR. JONES: Yeah. And I am -- so this line of
25 questioning is talking about, did you operate things in a

1 business-like manner?

2 THE COURT: Right. Right.

3 MR. JONES: So it's speaking to those issues.

4 And so that's one factor. That's the relevancy, so -- is
5 the objection overruled, I assume?

6 THE COURT: Well, I overrule the objection in
7 so -- well, I'll sustain the objection insofar as there's
8 implications he filed additional tax returns on behalf of
9 his LLC. His 1040 contained the Schedule C that reflected
10 the operations of the LLC.

11 MR. JONES: But may I just say, is it overruled
12 to the extent that it shows that he was filing required
13 reports to operate his business in --

14 THE COURT: Well, he filed his 1040, which he's
15 required to do by other provisions of law.

16 MR. JONES: Right. And again, the fact -- what
17 I'm testing here, though, is, is he operating in a
18 business-like manner? Did he file required --

19 THE COURT: Well, you can ask him about any
20 other filing requirements he had and if he met them,
21 but --

22 MR. JONES: Well, I'm only on this question.
23 We're just addressing the objection to just this one
24 question, right?

25 THE COURT: I think the objection was prompted

1 by the recognition that no separate tax filings were
2 required for his LLC. He could not have made any
3 additional tax filings apart from his 1040 and the
4 Schedule C in his 1040.

5 MR. JONES: Okay. And I apologize. I'm not
6 trying to make this into a --

7 THE COURT: Right.

8 MR. JONES: -- mountain from a molehill. But I
9 just want to clarify, though. So we are all agreeing that
10 he filed his required tax return for this business entity,
11 right?

12 THE COURT: Yes, that's stipulated. These are
13 stipulated.

14 MR. JONES: That's what we're saying? We're
15 stipulating that. Okay. As long as that is in the record
16 I -- and I apologize for the long-windedness. I just
17 want -- I want my record to accurately reflect what I
18 am -- have an understanding of that record. So thank you,
19 Your Honor.

20 BY MR. JONES:

21 Q Did you maintain books and records for PFO
22 Solar?

23 MR. SORENSEN: Your Honor, I'm going to object
24 to that. That's a leading question.

25 THE COURT: Well, no, I don't think it's

1 leading.

2 MR. SORENSEN: He could ask what books and
3 records were maintained on behalf of the entity, not did
4 you, which prompts a yes or no.

5 MR. JONES: Then you would object to a lacking
6 foundation. Because I can -- I need to develop him.

7 THE COURT: Why don't you ask him, what, if any,
8 books and records that he maintained --

9 MR. SORENSEN: What, if any.

10 THE COURT: -- for PFO Solar, separate from his
11 own books and records?

12 MR. JONES: Yeah. But you are okay with the
13 question?

14 THE COURT: As long as you follow it up with,
15 what were they, yeah.

16 MR. JONES: And I will.

17 BY MR. JONES:

18 Q So the question was, did you maintain books and
19 records for PFO Solar?

20 A Yes.

21 Q And what were they?

22 A Primarily just tracking the agreements that had
23 been entered into, and then just sending those agreements
24 on to my tax preparer, and then having him account for it,
25 as I mentioned, as a pass-through entity.

1 Q Did you also maintain financial records?

2 A There weren't much. I mean, I had a little
3 spreadsheet that would kind of -- I'd just write all my
4 lenses I purchased and hopeful projections for rental, but
5 that's about it.

6 Q And you provided copies of checks and so forth.

7 Is that included in your books and records for this case?

8 A Yes. I provided the checks for the purchase of
9 the lenses.

10 Q Okay.

11 THE COURT: And what account were the checks
12 drawn on?

13 THE WITNESS: They're from my own checking
14 account.

15 BY MR. JONES:

16 Q Did you maintain a separate bank account for PFO
17 Solar?

18 A I did not. I'd planned to open one if I ever
19 had revenues.

20 Q Okay.

21 A Once I had revenues, hopefully.

22 Q When did you consider opening a bank account?

23 A I considered opening it initially, but just
24 didn't think it was necessary, the extra expense, until I
25 had a -- until I had some revenues coming in from it.

1 Q Okay. All right.

2 THE COURT: And how about -- you said you made
3 frequent trips to the site.

4 THE WITNESS: Uh-huh.

5 THE COURT: Did you keep records of your travel
6 and expenses going to visit the site and so forth?

7 THE WITNESS: No, I didn't. It wasn't a
8 significant amount of money, so I just didn't.

9 BY MR. JONES:

10 Q Can you tell us about any persons that you
11 consulted with about your lens business and investments?

12 Who are some people you consulted with?

13 A I mean, I assume my -- I consulted with my tax
14 preparers. I'm not sure if I consulted with anyone else.
15 I mean, I'm not sure if I understand the question exactly.

16 Q Did you seek advice from anyone, is what I'm
17 asking about, about engaging in the rental business -- in
18 the lens-rental business?

19 A I don't think, other than talking to my tax
20 preparers, talking to Neldon about the technology. I
21 think that's most of the people I talked to about it.

22 Q Okay. Did you ever attend any seminars or trade
23 meetings, do any self-study where you can tell us about,
24 about the -- specifically about engaging in this
25 lens-rental business?

1 A No. I don't think I attended any specific trade
2 meetings, other than the ones that weren't exactly trade
3 meetings, but the ones that were sponsored by
4 International Automated Systems or RaPower3. I don't
5 think I went to anything else.

6 Q Okay. How much time do you think you devoted in
7 2009 to carrying on the trade for the lens-rental
8 business?

9 A Guess just the amount of time to visit the
10 manufacturing facility and ask questions, do some research
11 about concentrated solar, forming the entity, asking
12 questions to -- and reviewing the materials. I don't know
13 how many hours that is. It's not --

14 Q And what about in 2011?

15 A I probably spent a little more --

16 Q I'm sorry.

17 A Yeah.

18 Q 2010. I apologize.

19 A 2010?

20 Q I want to go in succession here. 2010.

21 A Again, just the amount of time that it would
22 take to go to the -- I'm assuming they had the conference
23 in 2010, the first one, and go -- and driving down to
24 visit the site every few months and asking questions. And
25 I sent around quite a few emails that were updates,

1 reading the emails, just renewing my LLC every year, then
2 just trying to determine how many lenses to purchase and
3 that stuff.

4 MR. SORENSEN: Your Honor, just -- and I
5 apologize on my objecting too much, but there were no
6 lenses purchased in 2010. There was no activity engaged
7 in that we know of in 2010. The only tax aspect was the
8 carryover from 2009. So the reference about determining
9 how many lenses to purchase in that year is inaccurate.

10 MR. JONES: That's how he testified. I mean,
11 I -- he had the --

12 THE WITNESS: I didn't purchase any lenses in
13 2010. I'm sorry.

14 MR. JONES: He had the activity, and that's --
15 again, that's on the Stipulation. That activity is
16 reported. He's testifying he engaged in the activity
17 during the year, and --

18 MR. SORENSEN: Oh, no, my objection was to the
19 reference of determining how many lenses to purchase in
20 2010. He didn't purchase any.

21 THE COURT: He decided to purchase none. That
22 took him a while to figure out the math on that, so --

23 MR. JONES: Right.

24 THE COURT: So I overrule the objection.

25 MR. JONES: Okay.

1 BY MR. JONES:

2 Q What about in 2011?

3 A Similar, except I think '11 -- I think each year
4 I was taking more trips down to Delta, as things were
5 progressing faster, and there were more new things to see.
6 So I may have gone even a few more times down.

7 Q And what about 2012?

8 A It would be similar to in '13 and '14 as well.

9 Q As well? Okay. All fairly similar?

10 A Uh-huh.

11 THE COURT: But Mr. Olsen, do you have any time
12 records, I mean, calendars, logs, anything to show this
13 expenditure of time, to track this expenditure of time?

14 THE WITNESS: No, I didn't track. I mean, I
15 guess I have a calendar that shows when I was scheduled to
16 go down there. I put it on my calendar, just Google
17 Calendar. But I didn't track the time.

18 BY MR. JONES:

19 Q Who performed any managerial tasks that were
20 required of PFO Solar?

21 A Just me. I'm the sole member, and it's just me.

22 Q So what about administrative tasks? Would that
23 also just be you?

24 MR. SORENSEN: Your Honor, an objection.

25 There's been no evidence that there were any

1 administrative tasks. I believe the evidence was all that
2 was done was purchase agreements and tax returns.

3 MR. JONES: I'd say that objection
4 mischaracterizes evidence. I mean, he's got a --

5 THE COURT: Well, if you could ask him what
6 administrative tasks were involved beyond those and who
7 performed them.

8 MR. JONES: Okay.

9 BY MR. JONES:

10 Q What administrative tasks were involved with PFO
11 Solar?

12 A I mean, I think just renewing the LLC each year
13 and just maintaining PDF copies of the documents. I don't
14 know if there's a lot.

15 Q Okay. Who would perform that, though?

16 A Me.

17 Q Anyone else?

18 A No.

19 Q Is there any other personnel that's involved
20 with your -- with PFO Solar?

21 A No.

22 Q Are you it?

23 A Yeah, just me.

24 Q Okay. No employees?

25 A No employees.

1 Q Okay. Contractors?

2 A No.

3 Q Okay. Was there any recreational or
4 pleasure-seeking component to the rental -- lens-rental
5 business, for you?

6 A I don't think it was recreational, no.

7 Q Pleasure-seeking?

8 A I don't think so.

9 Q Okay. All right. If you could turn to the
10 Stipulation of Facts.

11 A Where's that at?

12 MR. SORENSEN: It's in the front of volume 1.

13 BY MR. JONES:

14 Q It's in the front, and I will --

15 A Volume 1?

16 Q Yeah. And it's Stipulation of Fact number 50.

17 A Okay.

18 Q And I'm sorry. I was just trying to find the
19 page myself. So that's page 9.

20 A Okay. I've got it, yeah. Number 50?

21 Q You've got it? And I'll just read that. It
22 says, "Pursuant to" --

23 MR. SORENSEN: Your Honor, I'm going to object
24 to the reading of it. We stipulated to it.

25 MR. JONES: I'm going to ask him a question

1 about his understanding about it, so I just wanted to --

2 MR. SORENSEN: Okay. But it is a fact
3 stipulated.

4 MR. JONES: I get it.

5 THE COURT: What exhibit are you on, Counsel,
6 150?

7 MR. JONES: It's page 9 of the Stipulation of
8 Facts and stipulation number 50 --

9 THE COURT: 50.

10 MR. JONES: -- paragraph 50.

11 THE COURT: Okay. Exhibit 50?

12 MR. JONES: I apologize. It's not an exhibit.
13 It's actually the paragraph 50.

14 THE COURT: Oh, of the Stipulation?

15 MR. JONES: Of the Stipulation of Facts. Yeah.

16 MR. SORENSEN: Your Honor, it's also on the wall
17 if that helps.

18 THE COURT: Okay. And what's the --

19 MR. JONES: I'm going to be asking a question
20 about his understanding. I understand the stipulation to
21 mean that we're agreeing that the Petitioner is still --
22 or he remains liable, that it's a debt that he owes. And
23 I'm confirming, to clarify, so there's no parsing out of
24 the language on this.

25 MR. SORENSEN: Well, Your Honor, the language

1 says what it says.

2 MR. JONES: That's why I'm following up on it.

3 MR. SORENSEN: And the agreement says what it
4 says.

5 THE COURT: Well, if you want to ask him to
6 expand on this, like when he's liable to pay the amounts,
7 under what conditions he's liable to pay the amounts, that
8 would be fine, but I think the fact that he's liable to
9 pay them, you don't need to ask any questions about that.

10 MR. JONES: Okay.

11 THE COURT: That stands for itself.

12 MR. JONES: So again, I just want to clarify, so
13 we don't have a dispute that Petitioners owe debt?

14 MR. SORENSEN: We've stipulated to the
15 terminology and the document. We don't dispute what the
16 documents state.

17 MR. JONES: Okay.

18 THE COURT: Well, as I read the document, the
19 repayment of everything but the down payment was
20 contingent.

21 MR. SORENSEN: That's right, Your Honor.

22 THE COURT: It was contingent on there being an
23 installed electrical-generation facility. And if that
24 contingency --

25 MR. SORENSEN: Producing power.

1 THE COURT: -- is never -- never occurs, there's
2 no liability to repay.

3 MR. JONES: And that's why I'm asking is he --
4 does he believe he's liable. I mean, I'm asking that
5 question. So I mean, there -- again, and if they're
6 conceding he remains liable, then I guess that's
7 concession, but --

8 THE COURT: Well, he's liable under certain
9 conditions.

10 MR. JONES: Right.

11 MR. SORENSEN: As the documents state.

12 MR. JONES: But this is not -- this is not a
13 conditional statement, right? I mean, I don't read any
14 contingency there.

15 THE COURT: But his liability rises from the
16 contract that he signed.

17 MR. JONES: Correct.

18 THE COURT: On the contract that he signed, the
19 liability rises only upon the occurrence of a condition,
20 namely, the installation of the plant. So --

21 MR. JONES: Right. Right.

22 THE COURT: I mean, if the stipulation is
23 unclear, I'm going to go by the document that imposes the
24 liability.

25 MR. JONES: Sure.

1 THE COURT: I do have a question about that.

2 For 2009 --

3 MR. JONES: Right.

4 THE COURT: -- it says that the remaining
5 balance for the two solar lenses. Now, I thought the
6 Petitioner testified that his belief was after 2009 he
7 purchased a stack of five or six.

8 MR. SORENSEN: No. His testimony was he
9 purchased two, and he believes that it was equivalent to
10 approximately -- and I don't want to misstate his
11 testimony -- ten lenses in a system. And thus, each
12 system cost \$30,000, and he purchased 2 of them for
13 \$60,000, with a \$9,000 down payment on each of the 2.

14 THE COURT: Okay. So the lenses mean something
15 different here from other paragraphs in the stipulation?

16 MR. SORENSEN: They do.

17 THE COURT: Okay.

18 MR. SORENSEN: They are specifically referencing
19 what was purchased in that purchase agreement.

20 THE COURT: Right.

21 MR. JONES: That's right.

22 THE COURT: Okay.

23 MR. JONES: Yeah.

24 MR. SORENSEN: And we don't -- yeah, we don't
25 know exactly, and I don't believe Petitioners know exactly

1 the number of lenses or the configuration. But it was a
2 different configuration of more lenses than was purchased
3 in later years.

4 MR. JONES: That's right.

5 THE COURT: Well, I mean, it's an important fact
6 to me whether there would still be a different
7 configuration or whether the 30,000 was so much bigger
8 because of some kind of down payment to participate in
9 this promotion. In other words, he's paying for more than
10 just a lens, or he's paying for something else in the
11 first year. So --

12 MR. SORENSEN: Well, Your Honor, it might -- I
13 don't know if this helps or this is the time, but there
14 was an exhibit -- it's Exhibit 50-J -- that is one of the
15 emails Petitioner sent where he describes the purchase in
16 2009, where he says it's 2 of the older systems, which he
17 believes equates 20 lenses today --

18 THE COURT: Okay.

19 MR. SORENSEN: -- as to the numerical equivalent
20 of what the old one was versus what the new one is.

21 THE COURT: Okay. Okay. All right.

22 MR. JONES: Yeah. I mean, we can ask Mr. Olsen,
23 but I -- on that point, I mean, I think that it's --
24 there's still lenses that are being purchased, but it's --
25 so it isn't different property, but it might -- it might

1 represent, like, Mr. Sorensen is alluding to, a different
2 amount of rents or whatever. When they're talking about
3 equivalency, it's -- it isn't the lens itself. It's the
4 amount of rental income or whatever. And they say, well,
5 this was more because it would generate more revenue or
6 whatnot, so --

7 THE COURT: Okay. Well, so we've covered that
8 stipulation paragraph. You may move on.

9 MR. JONES: Okay. Actually, would it -- I'm
10 pretty close to probably being done with the direct.
11 Would we be able to take, like, a ten-minute break?

12 THE COURT: Yeah, we'll take a ten-minute break
13 right now.

14 MR. JONES: Okay.

15 THE COURT: Good.

16 MR. JONES: Thank you.

17 THE CLERK: All rise.

18 (Whereupon, a recess was held from 2:32 p.m.
19 until 2:46 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated.

22 RESUMED DIRECT EXAMINATION

23 BY MR. JONES:

24 Q Okay. I don't have too much more for you, but
25 just a couple other quick questions here. Let's see. Are

1 you familiar with the -- so not the lenses but the
2 technology where the lenses was going to be used, like
3 that would be used in the applications that you described
4 earlier in your testimony. Are you familiar with that
5 technology?

6 A Yeah, to the extent that it was explained to me
7 and the things that I've been down there to see. Does
8 that make sense? I mean --

9 Q Yes. And can you describe for us what your
10 knowledge --

11 A Understanding?

12 Q -- consists of?

13 A Yeah, my understanding of the turbine system is
14 that, like I said, the lenses would preheat water or a
15 heat-transfer fluid of some sort that would heat water.
16 And then it would additionally heated with a natural gas
17 or something. And then it would be pushed through the
18 turbine, which I have seen operate down there. And you
19 push the fluid through it, and it turns the steam at the
20 nozzles, on the arms, which makes it rotate really fast
21 and create torque, which you can hook up to a generator.

22 Q Okay. And when did you observe those -- what
23 you just described?

24 A 2011 or 2012, on one of the visits that the
25 turbine was actually running.

1 Q Okay.

2 A Actually, on two of the visits it was, around
3 that time frame.

4 Q And on that occasion, you did see the turbine
5 running?

6 A Yes.

7 Q Okay. The other question I wanted to ask is
8 that, do you recall speaking with your sister about the
9 technology?

10 A Yes.

11 Q And what did you -- can you describe those --
12 what your understanding was from that exchange?

13 MR. SORENSEN: Your Honor, I'm going to object.
14 I'm not sure the relevancy of what he told his sister as
15 to the tax years at issue.

16 MR. JONES: It was a discussion he had as
17 another person he consulted with about the technology, and
18 then --

19 THE COURT: Well, perhaps, first should lay a
20 foundation about what her qualifications would be to
21 render advice or expert opinions about technology.

22 MR. JONES: Okay.

23 MR. SORENSEN: As well as when the discussion
24 occurred. It's a broad time frame.

25 MR. JONES: Okay.

1 BY MR. JONES:

2 Q What does your sister do?

3 A My sister is, like, an associate professor at
4 BYU, in chemistry. I don't know if that's her exact
5 title, but --

6 Q Okay.

7 A She got her PhD from there and did her
8 dissertation on catalysts, things like that.

9 Q In chemistry?

10 A Uh-huh.

11 Q Okay. Why did you speak with your sister about
12 the technology?

13 A I took her to see the site really early, maybe
14 even 2010. In fact, it was like -- I mean, I could
15 probably go back and find out the site. Because we
16 were -- I mean, we stopped by, because we were going
17 south. We were headed towards Las Vegas. And so we -- I
18 said I wanted her to see it. I took her off to Delta.

19 And she talked to Neldon. And she was really impressed.

20 MR. SORENSEN: Objection, Your Honor. He can't
21 testify as to what his sister felt, the impression she
22 had.

23 THE COURT: I think he can testify as to his
24 impression how she reacted to the --

25 MR. SORENSEN: That's different than what was

1 about to be testified to.

2 BY MR. JONES:

3 Q Go ahead.

4 A Anyway, she told me she was really impressed.

5 MR. SORENSEN: Objection, Your Honor. Hearsay.

6 THE COURT: Again, try and explain what you
7 understand of her reaction and the takeaway you took from
8 that.

9 THE WITNESS: Okay. My understanding was she
10 was quite impressed. And she mentioned that she builds --

11 MR. SORENSEN: Hearsay, Your Honor. I'm not
12 going to get around --

13 MR. JONES: She mentioned --

14 MR. SORENSEN: -- the fact that he's going to
15 try to testify to what she told him. She's not going to
16 testify to those facts.

17 THE WITNESS: All right.

18 BY MR. JONES:

19 Q You can testify about your understanding of what
20 resulted from that conversation.

21 A Okay. My understanding was that she, in her
22 lab, does a lot of research and development. And she's
23 the first person that I've taken down who didn't complain
24 about the state of the lab down there. Lots of people had
25 come down and were like, oh, why don't they clean up a

1 little better? She's the first one that said, yeah, this
2 looks like a real lab. It looks like my lab, where we are
3 trying to get things working.

4 MR. SORENSEN: Again, Your Honor, I'm late
5 objecting. Hearsay to what she said.

6 THE COURT: I will discount the testimony
7 appropriately.

8 THE WITNESS: I felt, after talking to her, that
9 it was positive, I felt, and that -- but I did feel like
10 the one kind of warning that I felt that was that it was
11 going to take a few more years than I expected to get this
12 done, based on kind of my conversation with her, where I
13 felt, after talking to her, this technology was at, at the
14 time.

15 BY MR. JONES:

16 Q Okay. All right. Thank you. Do you recall how
17 many seminars -- I'm not sure what to call them
18 specifically. You talked about attending seminars --

19 A Uh-huh.

20 Q -- that RaPower3 put on. Do you know how many
21 you attended?

22 A I remember the first one that I attended was at
23 Thanksgiving Point, and I believe around -- I mean, I just
24 don't remember the exact time, 2010, possibly. And then
25 there was one at the Salt Lake City Library. I don't

1 remember the exact year. And then they had one down in
2 the park in Delta, like, in one of the pavilions. And
3 those are the three that really -- that come to my mind,
4 besides sometimes they would arrange tours, where multiple
5 people would go down. And they'd say, we're having a tour
6 on such and such date. And those were a little more --
7 they were organized but a little more -- they weren't,
8 like, seminars so much.

9 Q Okay. Great.

10 MR. JONES: And that's all I have for direct, so
11 I can pass the witness, unless Your Honor has any
12 questions.

13 MR. SORENSEN: Your Honor, the concern I have,
14 and I addressed this with Mr. Jones, cross-examination is
15 going to take a while. And I would rather not start and
16 be interrupted. The way we've dealt with issues, the
17 trial is not going to take four days. And so I'm
18 wondering if we can start cross-examination in the
19 morning, Your Honor. And we're confident we'll be
20 complete by Thursday morning, when Mr. Bolander takes the
21 witness stand.

22 THE COURT: So what other witnesses do we have
23 in store? We have the two experts.

24 MR. SORENSEN: We have two experts, we have one
25 more fact witness, and then we have two CPAs.

1 MR. JONES: Yeah, it'll be -- Randy Johnson will
2 be another fact witness.

3 MR. SORENSEN: Right, Randy Johnson.

4 MR. JONES: And then the two CPAs that are on
5 the limine.

6 MR. SORENSEN: Well, CPA and enrolled agent, I
7 got to be careful.

8 MR. JONES: I apologize. I need to say tax
9 preparer. It's a lot easier. So the two tax preparers;
10 their, of course, questions will be quite limited at this
11 point. So they should be really quick.

12 MR. SORENSEN: Really quick?

13 MR. JONES: Yeah.

14 THE COURT: So tomorrow, we would do the cross
15 of Mr. Olsen in the morning, as long as needed, and then
16 after lunch, put on Petitioners' expert?

17 MR. SORENSEN: Well, I believe we'll do Randy
18 Johnson.

19 MR. JONES: Well, actually, you'll do Randy
20 Johnson. Yeah.

21 MR. SORENSEN: The fact witness.

22 MR. JONES: And he's a fact witness. He's an
23 employee of the International Automated Systems and
24 RaPower3, so -- and --

25 MR. SORENSEN: I believe we'll get to

1 Petitioners' expert before the day and be done with

2 Petitioners' expert before the day tomorrow is done.

3 THE COURT: Okay.

4 MR. SORENSEN: And then we'll just have the CPAs

5 and the Respondent's expert.

6 THE COURT: On Thursday?

7 MR. JONES: Yep.

8 MR. SORENSEN: Yeah.

9 THE COURT: Okay. All right. That's fine with
10 me, if that's agreeable to Counsel.

11 MR. JONES: That's agreeable to me.

12 THE COURT: Okay.

13 MR. JONES: Yeah.

14 THE COURT: All right.

15 So I had just one question. I mean, it --

16 THE WITNESS: Yeah.

17 THE COURT: -- struck me that -- in your
18 testimony that you had quite a bit of genuine interest in
19 this technology and solar power, and, indeed, you sort of
20 backed it up by apparently buying stock in the company.

21 But I'm trying to figure out what your view of the trade
22 or business was that you were in. So on the first few tax
23 returns, you listed the business as solar energy. As I
24 understand it, you weren't directly engaged yourself in
25 the solar energy business. I mean, you weren't conducting

1 experiments or --

2 THE WITNESS: No.

3 THE COURT: You bought assets that you expected
4 to be used in the solar energy business. But I don't see
5 how any of your activities were directly involved in that
6 business, right. So then later, you changed the
7 description of your business to the leasing of the lenses.
8 And there are a lot of companies that are engaged in the
9 rental business, I mean, Rent-A-Center, U-Haul, I mean,
10 they all -- they rent property and the marketing and all
11 that kind of stuff. But it seems that the rentals you
12 made, you just made -- every year, you made one rental,
13 and it was simultaneous with the purchase. So --

14 THE WITNESS: Uh-huh.

15 THE COURT: -- what I'm trying to understand is,
16 what rental business activity did you engage in? I mean,
17 you didn't have to market these things, because they were
18 rented the minute you bought them. So I'm trying to -- I
19 understand. It seemed to me like you were more of an
20 investor, that you had bought these lenses. It's kind of
21 like buying raw land on the hope it could be developed
22 five years from now. And then you'll get a big payoff.
23 So it seems like your activities were more of an investor
24 buying, arguably speculative, property, in the hope that
25 it would yield income down the road. I don't see what the

1 correct business activity was, apart from the investment
2 activity.

3 THE WITNESS: The way I understood it was that I
4 was purchasing real property that was being put -- placed
5 into a solar application.

6 THE COURT: Well, personal property?

7 THE WITNESS: Yeah, personal property.

8 THE COURT: Right.

9 THE WITNESS: And that I didn't feel it was
10 speculative, in the sense that there was no upside. It
11 was a fixed rental return that I expected.

12 THE COURT: But only due five years out, and
13 only if the property was successful.

14 THE WITNESS: True, but it's not -- it's very
15 different than your example of buying raw land. You would
16 buy that for an upside. It's not speculative, what I did.
17 I bought personal property that I thought was going to be
18 rented for a fixed return.

19 THE COURT: But there was no current rent.

20 THE WITNESS: True. I expected there to be.

21 THE COURT: But only if -- only if the
22 installation became commercially viable and yielded
23 income.

24 THE WITNESS: True.

25 THE COURT: So it seems like you're getting your

1 return, as an investment return, on the success of the
2 venture you've invested in, not current rent for other
3 people's use of your property.

4 THE WITNESS: I don't think that's the case, but
5 that is what you think.

6 THE COURT: Okay.

7 Well, we'll finish for today and pick tomorrow
8 morning at 10 o'clock.

9 THE CLERK: All rise.

10 (Whereupon, at 2:59 p.m., the above-entitled
11 matter was concluded.)

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1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

2 CASE NAME: Preston Olsen & Elizabeth Olsen, et al. v.

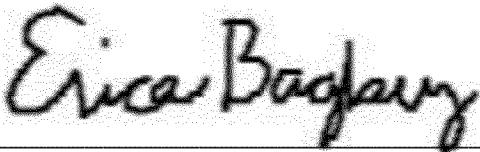
3 Commissioner

4 DOCKET NOS.: 26469-14; 21247-16

5 We, the undersigned, do hereby certify that the
6 foregoing pages, numbers 1 through 153 inclusive, are the
7 true, accurate and complete transcript prepared from the
8 verbal recording made by electronic recording by Deborah
9 Gonzalez on January 21, 2020 before the United States Tax
10 Court at its session in Provo, UT, in accordance with the
11 applicable provisions of the current verbatim reporting
12 contract of the Court and have verified the accuracy of
13 the transcript by comparing the typewritten transcript
14 against the verbal recording.

15

16



19 Erica Bagbey, CDLT-178 2/1/20

20 Transcriber Date

21

22

23



24 Traci Fine, CDLT-169 2/1/20

25 Proofreader Date

