

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
CIVIL UNLIMITED DIVISION

RODERICK HAMBY, an individual;	)	
and TRACY REED, an individual,	)	
	)	
Plaintiffs,	)	
	)	Case No.:
vs.	)	37-2020-00023341-
	)	CU-BC-CTL
TRANG REED, an individual; and	)	
DOES 1 through 25, inclusive,	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF DAVID HEISTEIN  
SAN DIEGO, CALIFORNIA  
MARCH 3, 2022

REPORTED BY: Kathryn L. Edwards, CSR No. 7288

RODERICK HAMBY, an individual;  
and TRACY REED, an individual,  
  
Plaintiffs,  
  
vs.  
  
TRANG REED, an individual; and  
DOES 1 through 25, inclusive,  
  
Defendants.

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21  
22  
23  
24  
25

1   **APPEARANCES:**

2

3           **For the Plaintiffs:**

4

5           **WEBB LAW GROUP, APC**  
6           **BY:   LENDEN F. WEBB, ESQ.**  
7           **10509 Vista Sorrento Parkway**  
8           **Suite 430**  
9           **San Diego, California 92121**  
10          **Phone:   619-399-7700**  
11          **Email:   lwebb@webblawgroup.com**

12

13          **For the Defendant:**

14

15          **LAW OFFICE OF ROBERT OTTILIE**  
16          **BY:   ROBERT P. OTTILIE, ESQ.**  
17          **444 West C Street**  
18          **Suite 320**  
19          **San Diego, California 92101**  
20          **Phone:   619-231-4841**  
21          **Email:   ro@ottilielaw.com**

22

23

24

25

Also Present (remotely via Zoom):

Tracy Reed, Plaintiff

Raza Khan, Law Clerk, Webb Law Group, APC

1 I N D E X

2 **WITNESS: DAVID HEISTEIN**

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1 SAN DIEGO, CALIFORNIA, THURSDAY, MARCH 3, 2022

2 9:14 A.M.

3 ---o0o---

4 DAVID HEISTEIN,

5 having been first duly sworn, testified as follows:

6

7 EXAMINATION

8 BY MR. OTTILIE:

9 Q Would you state and then spell your entire  
10 name.

11 A David Heistein. David, D-a-v-i-d, Heistein,  
12 H-e-i-s-t-e-i-n.

13 Q And how are you currently employed?

14 A Via Profitwise Accounting.

15 Q And how long have you had that business?

16 A Eighteen years.

17 Q How were you employed before that?

18 A Good question. Controller of a construction  
19 company.

20 Q Are you a licensed CPA?

21 A Yes.

22 Q When did you get your CPA license?

23 A 2008.

24 Q Where is Profitwise Accounting located?

25 A 4660 La Jolla Village Drive.

1 Q Pardon me?

2 A 4660 La Jolla Village Drive.

3 Q Is there a suite?

4 A 400.

5 Q And I think we have your residence address.

6 We served you at the residence address; right? For the  
7 record, can you give us that?

8 A 3626 Tavera Circle.

9 Q Can you spell the street?

10 A Yeah, T-a-v-a-r-a Circle, San Diego 92117.

11 Q Let me go over a few ground rules --

12 A Okay.

13 Q -- for the deposition.

14 First is that the court reporter to your right  
15 is taking down everything you say, and there will be a  
16 transcript prepared in a few weeks that will be shared  
17 with you. And you'll have an opportunity to review that  
18 to make sure we get everything right --

19 A Okay.

20 Q -- correct any typos, et cetera.

21 A Uh-huh.

22 Q The first and most important rule of this  
23 deposition is that only one of us can speak at a time.  
24 So it's important that I complete my entire question  
25 before you verbalize any response. And that goes in

1 reverse. I need to make absolutely certain you've  
2 completed your answer before I start a new question.

3 Sometimes witnesses will pause, the lawyer  
4 starts in, the witness isn't comfortable, they put their  
5 hand up and stop the attorney. But I want you to do  
6 that if I do that to you. Okay?

7 A Okay.

8 Q And the reason is that we have to get a  
9 complete transcript. So if you start to offer an answer  
10 even two or three words before the end of the sentence,  
11 the question that I'm asking you, she'll drop off the  
12 question and go to the answer. And then we'll have an  
13 incomplete question, and somebody reviewing this might  
14 have difficulty understanding it. Okay?

15 A Okay.

16 Q The other thing is you do need to verbalize  
17 all responses. You're nodding your head. That's fine  
18 because I'm asking you at the end of the question if you  
19 understand. But if during the deposition you want to  
20 communicate anything or if you're pointing somewhere on  
21 a return or something like that, you'll need to  
22 verbalize the response to go along with the physical  
23 gesture.

24 Have you ever had your deposition taken  
25 before?

1           A       I have not.

2           Q       So it's a pretty simple process. It's just a  
3 conversation back and forth, other than these  
4 formalities that we've talked about.

5                    You are testifying under oath as though you  
6 were in a court of law, and your testimony in this  
7 transcript could potentially be utilized at the time of  
8 trial of this matter or for some other purpose. So it  
9 is very important that you give your best testimony.  
10 Obviously, the best way to do that is to make sure you  
11 understand my questions.

12                   Mr. Webb is here representing some other  
13 parties in the case. I represent Trang Reed. I think  
14 you know multiple parties in the case and have for  
15 years. But all we're asking for you to do is not to  
16 take sides in this dispute but simply provide facts to  
17 assist the parties hopefully in resolving their dispute.

18                   Do you understand that?

19           A       Yes.

20           Q       Okay. So if you have any questions at all --  
21 we're not adverse. Mr. Webb isn't adverse to you. Our  
22 clients aren't adverse to you. You've done their taxes  
23 for years. So if you have any questions at all as we're  
24 proceeding through this, feel free to just put your hand  
25 up and stop me and say, "Let's talk a little bit. I'm



1 not sure I understand your question. I'm not sure I  
2 understand where you're going." And I'm happy to work  
3 through that with you. Okay?

4 A Okay.

5 Q And Mr. Webb is here, and he can jump in as  
6 well. He may jump in to assert objections to questions  
7 that I ask you, and that's just a normal part of the  
8 process. Unlike court, we don't have a judge here to  
9 rule on objections. So he asserts objections.

10 If he was taking the deposition or when he's  
11 questioning you when I'm done, I could assert  
12 objections. The judge may end up having to rule on  
13 those some day, but the judge isn't here today. So then  
14 we go on, and you give an answer. Okay?

15 A Okay.

16 Q Is there any reason why you feel you cannot  
17 give your best testimony today?

18 A No.

19 Q Have you consumed any alcohol or taken any  
20 drugs in the last 24 hours that would impact your  
21 ability to give your best testimony?

22 A No.

23 Q Do you have any questions of me before we  
24 proceed with the process?

25 A No.

1           Q     And I do have a check for you at the end. And  
2 we'll figure out your mileage and fill that in and give  
3 that to you. Okay?

4           A     Okay.

5           Q     So you remind me of that.

6           A     Okay.

7           Q     What do you do in Profitwise Accounting? What  
8 is the nature of that business?

9           A     It's an accounting firm. I'm the managing  
10 partner.

11          Q     Do you have other employees?

12          A     Yes.

13          Q     How many?

14          A     Twelve.

15          Q     And generally in your accounting firm, what  
16 type of services do you offer?

17          A     Bookkeeping; tax planning; tax returns;  
18 consulting.

19          Q     So it's basically a tax-based practice?

20          A     Correct.

21          Q     In addition to tax, you do offer regular  
22 bookkeeping services to firms; correct?

23          A     Correct.

24          Q     Did my client, Tran Reed, ever utilize your  
25 services for bookkeeping purposes?

1           A       She did not. But Tracy did.

2           Q       For his personal affairs? Or for the  
3 CoPilot Co. account?

4           A       CoPilot Co.

5           Q       And then for what years did Tracy utilize your  
6 services for bookkeeping for CoPilot Co.?

7           A       Well, I guess, yeah, starting with the 2011  
8 return, all the way up until I think when it stopped  
9 having activity, which I believe was 2017, roughly.

10          Q       And when you say he utilized your services for  
11 bookkeeping purposes, how was -- how were those services  
12 distinct from the tax work that I can see from the work  
13 product here?

14          A       Yeah, so he would provide us with bank  
15 statements. We basically had a QuickBooks accounting  
16 file that we set up. And we would input the  
17 transactions from the bank statements into the  
18 QuickBooks file and reconcile, reach out to him for any  
19 clarification on coding of expenses if we were unclear  
20 on how to code certain items so that we can deliver him  
21 the financial statements. So that was kind of the  
22 bookkeeping piece. And then as part of preparing his  
23 individual tax return, we take that information, put it  
24 on the Schedule C of his personal return for CoPilot Co.

25                 And so hopefully that answers your question a

1 little bit there.

2 Q Yeah, it helps. Thank you.

3 When you say that you did financial  
4 statements, there were monthly financial statements  
5 generated?

6 A Probably quarterly is my guess, as far as the  
7 frequency.

8 Q And who provided the source information to you  
9 that generated the quarterly financial reports?

10 A Tracy would provide that to us either via bank  
11 statements or, if we had online access, we would pull it  
12 off of the bank's website.

13 Q Did you have online access at some point?

14 A We probably did have online access at certain  
15 points. I know that sometimes we would lose access; so  
16 he had to provide us with the PDF copies of the  
17 statements.

18 Q When you generated financial statements, did  
19 you share them with Tracy?

20 A Yes.

21 Q Did you share them with Tran?

22 A I mean, most likely not. Usually we deal with  
23 our main point of contact, whoever that is, and that's  
24 who we share the financials with.

25 MR. WEBB: When you say the word "probably,"

1 I'm gonna give you an instruction that counsel hasn't  
2 given you.

3 THE WITNESS: Uh-huh.

4 MR. WEBB: Today we want to know things that  
5 are based on something you recall --

6 THE WITNESS: Uh-huh.

7 MR. WEBB: -- what he would call -- counsel  
8 and I would call an estimation.

9 THE WITNESS: Uh-huh.

10 MR. WEBB: You may not remember exact dates,  
11 exact names, quantities, but we do want to know a  
12 general understanding of what you know.

13 THE WITNESS: Uh-huh.

14 MR. WEBB: But if you're saying things based  
15 on your practice at the office, but you don't have any  
16 recollection of that --

17 THE WITNESS: Uh-huh.

18 MR. WEBB: -- for instance, financial  
19 statements --

20 THE WITNESS: Uh-huh.

21 MR. WEBB: -- or who you would have provided  
22 something to --

23 THE WITNESS: Uh-huh.

24 MR. WEBB: -- make sure to be clear as far as  
25 "Well, here's our practice," compared to if you actually

1 have recollection of it. That's an estimate.

2 We don't want you to guess --

3 THE WITNESS: Uh-huh.

4 MR. WEBB: -- where you don't have any memory  
5 of something.

6 THE WITNESS: Right.

7 MR. WEBB: But we do want your estimation if  
8 you do have a recollection of something happening.

9 So that's the clarification I want to make  
10 sure is clear here today, because I understand that it  
11 sounds -- when you say the word "probably," we think  
12 it's -- maybe it's sometimes you have some clients and  
13 sometimes you don't.

14 Just be clear in your answer. That's all I  
15 ask.

16 THE WITNESS: Understood.

17 BY MR. OTTILIE:

18 Q So when you did billings for your work with  
19 Tran Reed, Tracy Reed, CoPilot Co., did you bill each of  
20 them separately? Or just one bill for the three?

21 A So, you know, for CoPilot Co. we typically  
22 would do a monthly ACH, bill that company every month  
23 for the bookkeeping services.

24 As far as doing their joint tax return, that  
25 would be a separate bill we would send once we completed

1 the tax return.

2 **Q You would send to whom?**

3 A We would send it to both of them. I mean, I  
4 don't -- I can't recollect, you know, specifically who  
5 paid that, if it was Tran or Tracy. It typically would  
6 go to both of them, and somebody would pay it.

7 **Q Did your accounting firm ever have access to**  
8 **the CoPilot Co. bank account?**

9 A Yes, we did, at certain points.

10 **Q And what was the nature of that access?**

11 A Nature of the access? For most our clients we  
12 typically want view-only access. I can't recollect if  
13 we had view-only access or we had more than view-only  
14 access.

15 **Q So with some clients you actually have the**  
16 **ability to write checks?**

17 A Well, you know, some clients will provide us  
18 with their log-in. So we would have the same log-in the  
19 client would have. Generally, though, we prefer to get  
20 a view-only access, if that's available with that bank.

21 **Q What is your recollection as to how you came**  
22 **to be providing services to CoPilot Co.?**

23 A You know, Tracy reached out to us and --  
24 looking for accounting services. And we met with him  
25 and gave a quote; started working together.

1           Q     And when would that have been?

2           A     Let's see. I have to -- I think, when we  
3 first met Tracy he was a couple years behind in his  
4 filings. So I would guess maybe 2013. Perhaps sometime  
5 around in that time frame.

6           Q     When you say he was a couple years behind on  
7 his filings, what do you mean?

8                   MR. WEBB: And, Counsel, would you stipulate  
9 to a running objection as far as tax privacy, just so we  
10 don't clutter up the transcript?

11                   MR. OTTILIE: Sure.

12                   I don't stipulate to the objection, but I'll  
13 stipulate you don't have to assert that.

14                   MR. WEBB: Thank you so much. I appreciate  
15 it.

16                   MR. OTTILIE: Yeah.

17                   THE WITNESS: So if I recollect, when he had  
18 come to us, he was a couple years behind for filing  
19 anything for CoPilot Co. I believe he had filed -- you  
20 know, I can't recollect a hundred percent if he had  
21 filed all of his individual tax returns. Perhaps he had  
22 already filed 2011. Then we did an amended return to  
23 include the business activity of CoPilot Co. on that and  
24 perhaps also with 2012.

25



1 BY MR. OTTILIE:

2 Q So you do have a recollection of doing at  
3 least one amended return; correct?

4 A Yes.

5 Q And that was --

6 A They're probably right here. I can probably  
7 tell you.

8 Q Can you do that?

9 A Yeah.

10 Q If you can do it quickly, if it's no problem.

11 A Yeah, let's look at these two years here.

12 Yeah, so '12 was amended. I'm sure '13 -- I  
13 mean '11 was amended as well. Yeah, '11 and '12 were  
14 both amended returns.

15 Q So as I understand it -- and we're gonna mark  
16 at some point the documents that you brought today.

17 A Uh-huh.

18 Q And I appreciate you doing that. Thank you.

19 A Sure.

20 Q For 2011 and 2012 you have only amended  
21 returns; correct?

22 A Correct.

23 Q So your understanding, although I know you  
24 wouldn't have been involved, was that returns had  
25 already been prepared for those years by the

1 individuals? But not for the company; correct?

2 A Correct.

3 Q So the amendment was necessary to capture tax  
4 reporting for the business CoPilot Co.; correct?

5 A Correct.

6 Q And then after 2012 are there any amended  
7 returns? Or is that the end of the amendments?

8 A So we might have -- may have amended a return  
9 more recently. Let me see if any of these are amended.  
10 Yeah, that's all I recall right now. I'd have  
11 to look to let you know if there was more recent years  
12 that were amended.

13 What we provided was everything. We didn't  
14 have any amended returns. It would be in what we  
15 provided.

16 Q Then --

17 A I'm pretty sure there's no other amended  
18 returns for these years we're talking about through  
19 2017.

20 Q Now, we asked you to bring any returns for  
21 2018, the tax year 2018. Did you do that? I didn't see  
22 it.

23 A No. I don't know if we did a joint return.  
24 You're looking for a joint return? Because at  
25 some point --

1           Q     I don't think there was a joint return in  
2     2018. But I'm wondering whether you did a CoPilot Co.  
3     return in 2018 when the parties were still married and  
4     before they divorced.

5           A     Okay. I'm gonna have to look.

6           Q     But you did not bring that; correct?

7           A     Correct.

8           Q     But you may have; correct?

9           A     I may have.

10          Q     Yeah, the subpoena did ask through 2018.

11          A     Okay.

12          Q     If you can check on that. And if you do --

13          A     Okay.

14          Q     -- let both counsel know and maybe share that  
15     with us --

16          A     Okay.

17          Q     -- because the parties were married, and she  
18     did have an interest in the company through whatever  
19     the -- I don't think the divorce is final yet,  
20     unfortunately, as far as I know.

21          A     Okay.

22          Q     Maybe they'll get back together. We'll see?

23          A     Is Tracy on Zoom here?

24                 MR. WEBB: He's right here. (Indicating.)

25                 THE WITNESS: Okay. Hey, Tracy.

1 BY MR. OTTILIE:

2 Q Now, so the first time that you would have  
3 actually done the amended returns would have been in  
4 what year?

5 A So most likely 2013.

6 Q So based on the fact that you have amended  
7 returns for '11 and '12 --

8 A Uh-huh.

9 Q And you didn't do the underlying returns, I  
10 take it; correct?

11 A Yes.

12 Q Your best recollection is that 2013 is that  
13 the clients came to you, you did the amended returns for  
14 '11 and '12, and then at some point you did the '13  
15 return; correct?

16 A Yes.

17 Q And did you physically meet with somebody each  
18 year as you did the tax returns?

19 A Typically we do not meet with our clients each  
20 year.

21 Q Do you sometimes meet with clients?

22 A Rarely.

23 Q Do you meet with clients the first time you  
24 work with them?

25 A I mean, back then I would say, yeah, the

1 majority of our clients.

2 We met with Tracy in person. The first time,  
3 we met him. We may have met in person, you know, one or  
4 two other times. But most of our work, we typically,  
5 you know, work -- work virtually with most of our  
6 clients.

7 Q Did you ever meet with Tran Reed?

8 A I don't recall.

9 Q With respect to CoPilot Co., did you  
10 understand what type of business entity it was?

11 A So when Tracy had first come to us and it was  
12 an LLC, you know, we had some questions about, you know,  
13 did he have this other partner or not. You know, and I  
14 think -- for some reason I think we decided to move  
15 forward with the single-member LLC, as opposed to a  
16 partnership, because that would have alleviated  
17 penalties, late filing penalties, for him. And I think,  
18 based on the information we had at the time, we decided  
19 to move forward with a single member. It was our  
20 understanding that there wasn't another partner involved  
21 with the business.

22 Q There was or was not?

23 A Was not.

24 MR. OTTILIE: Can you read back that answer.

25 MR. WEBB: And the question, if you could.

1 (Record read by the court reporter.)

2 BY MR. OTTILIE:

3 Q Okay. I want to break that answer down a  
4 little bit.

5 A Uh-huh.

6 Q So you indicated that there was a question or  
7 a concern whether there was a different member --

8 A Uh-huh.

9 Q -- other than Mr. and Mrs. Reed; correct?

10 A Correct.

11 Q There was a question on that issue.

12 But had there been another member, as you did  
13 the amendments it would have created penalties for the  
14 company for not having properly reported them in the  
15 past and a late filing fee for this other member; is  
16 that correct?

17 MR. WEBB: Objection. Incomplete  
18 hypothetical. Overbroad as to time.

19 But if you understand the question, you can  
20 answer.

21 THE WITNESS: Yes. I mean, there would have  
22 been late K-1 filing penalties that would be assessed at  
23 the entity level. As far as the individuals, yeah, I  
24 don't know of an individual penalty that would be  
25 assessed.

1 BY MR. OTTILIE:

2 Q So this is a good time to start educating  
3 ourselves a little bit. And maybe we all know these  
4 things, but somebody reading the transcript may not. So  
5 we've got to break it down pretty simple.

6 What's a K-1?

7 A K-1 is a -- you know, similar to kind of like  
8 a W-2. It basically has the allocation of income of  
9 loss of an individual partner on a partnership. And  
10 that K-1, basically, is delivered to that individual and  
11 is incorporated into the individual's tax return, much  
12 like a W-2 would be incorporated in that return?

13 Q So a K-1 can allocate loss correctly?

14 A Yeah.

15 Q Correct?

16 A Allocates income and loss.

17 Q Income and loss?

18 A Uh-huh.

19 Q Yes?

20 A Correct.

21 Q Okay. I didn't say this one, but uh-huhs and  
22 huh-uhs --

23 A Got it.

24 Q -- while you and I are getting it, she may get  
25 just the opposite. It's a close call sometimes.

1                   So it is correct that a K-1 allocates both  
2   loss or profit, depending; correct?

3           A       Yes.

4           Q       And a K-1 is issued by an LLC to its members;  
5   correct?

6           A       Correct.

7           Q       Does a K-1 have to be issued to all members?  
8   Or is it only necessary to issue a K-1 to a member who  
9   participates in profit or loss?

10          A       The K-1 is issued to all members.

11          Q       Even if they are not a participant in profit  
12   and loss; correct?

13          A       Correct.

14          Q       And in that instance, would the recipient of  
15   the K-1, if they were not a participant in profit and/or  
16   loss, be required to submit the K-1 with their tax  
17   return?

18          A       Yes.

19          Q       So a member of an LLC, whether or not they  
20   participate in profit and loss, is by law required to  
21   receive the K-1; correct?

22          A       Correct.

23          Q       And by law, even if it has no tax implications  
24   to them, they are required to submit that with their  
25   returns; correct?



1           A     Correct.

2           Q     Do they submit that with both their federal  
3     and state returns?

4           A     Yes.

5           Q     And who imposes this requirement of K-1  
6     reporting?

7           A     The IRS.

8           Q     So that's a federal rule?  Not a state rule;  
9     correct?

10          A     Yes.

11          Q     But the state Franchise Tax Board takes  
12     advantage of it for reporting purposes; correct?

13          A     Yes.  The Franchise Tax Board follows the --  
14     the IRS rules, or they have their own rules.  They call  
15     it conformity.  So -- so the state conforms to the  
16     federal rules.  So it follows the federal rules.

17          Q     What are your responsibilities, as a CPA, with  
18     respect to ensuring that your clients have issued K-1's  
19     to appropriate parties if you're aware there is such an  
20     obligation?

21          A     Anything in the tax returns we prepare, we  
22     provide, you know, the K-1's and the cover letters, you  
23     know, basically stating that they should deliver that to  
24     the partners.

25          Q     You have that obligation as a result of your

1     **license?**

2           A     Not that I'm aware of.

3           Q     If you're aware of a member who should receive  
4     a K-1, are you able to file the return for the LLC  
5     without indicating the presence or existence of that  
6     member?

7           A     No.

8           Q     Did -- do you have any recollection of Tran  
9     Reed ever personally sharing information with you for  
10    the Tran Reed, Tracy Reed, CoPilot Co. returns?

11          A     It's possible that she did share some  
12    information with us during tax preparation, but I can't  
13    recall specifically.

14          Q     How many -- roughly, how many clients do you  
15    have?

16          A     180.

17          Q     Has that been pretty consistent during this  
18    period of time we're talking about?

19          A     No. It's increased.

20          Q     Good.

21                 Do you know what CoPilot Co. did as a  
22    business?

23          A     In vague terms, I think they did computer  
24    networking.

25          Q     And who did you understand that through the

1     2017 return, the filing of the 2017 return, to be the  
2     members of CoPilot Co., an LLC?

3             A     Tracy Reed.

4             Q     Anyone else?

5             A     No.

6             Q     Did you ever understand Tran Reed to be a  
7     member of the LLC?

8             A     No.

9             Q     How did you come to have the understanding  
10    that the sole member of the LLC was Tracy Reed?

11            A     Through our initial conversation with him.

12            Q     With whom?

13            A     With Tracy Reed.

14            Q     So Tracy Reed never once told you that Tran  
15    Reed was a member of the LLC; is that correct?

16            A     Correct.

17            Q     And as a CPA, when you were first presented  
18    with this company that was an LLC, I assume -- but I  
19    can't assume; I need to find out from you -- that you  
20    would have personally made an effort to determine how  
21    many members there were; correct?

22            A     Correct.

23            Q     One reason being that you'd have to give K-1's  
24    to other members, potentially; correct?

25            A     Correct.

1           Q     And another reason is that it would dictate  
2     the nature of the return that you would file for the  
3     LLC; correct?

4           A     Correct.

5           Q     And so you made that determination in this  
6     case by actually communicating with the client; correct?

7           A     Correct.

8           Q     Is it conceivable that your memory has just  
9     failed over the years and you would have just made that  
10    decision on your own without inquiring?

11          A     No.

12          Q     Did you ever ask Tran Reed if she was a member  
13    of the LLC?

14          A     No.

15          Q     Did you ever hear the name Roderick Hamby?  
16    Other than in the context of the subpoena that I served  
17    on you?

18          A     No.

19                I mean, may be potential that, you know, that  
20    name was maybe brought up, you know, when we first met  
21    with Tracy originally. We were inquiring about the  
22    status of, you know, this other partner that he may have  
23    had. I don't recall his name back, you know, ten years  
24    ago, but it's possible that name came up back then.

25          Q     Okay. So that's possible. But what I do

1 understand you recall for certain --

2 A Uh-huh.

3 Q -- is that there was some discussion about  
4 somebody else possibly having some relationship to the  
5 LLC; is that correct?

6 A Correct.

7 Q And the determination from your interview or  
8 questioning of Tracy Reed was that there was not another  
9 member; is that correct?

10 A Correct.

11 Q And had he told you that there was another  
12 member, you would have made certain that the filing  
13 would have conformed to IRS and Franchise Tax Board  
14 requirements with respect to an LLC; correct?

15 A Yes.

16 Q Because, in fact, the reporting of the profits  
17 or losses of CoPilot Co. LLC in each of these years,  
18 from 2011 through 2017, were based on an understanding  
19 by you that this was a single-member LLC; correct?

20 A Correct.

21 Q And that came directly from Tracy Reed;  
22 correct?

23 A Correct.

24 Q Had you understood that there was a second  
25 member, you would have had to have filed entirely

1 different forms with both the feds and the state;  
2 correct?

3 MR. WEBB: Objection. It assumes facts not in  
4 evidence. Vague as to "entirely."

5 You can answer.

6 THE WITNESS: Correct.

7 BY MR. OTTILIE:

8 Q So in each of the years that we're gonna look  
9 at and that you've brought documents, 2011 through 2017,  
10 you filed the business activity of CoPilot Co. on a  
11 Schedule C for Tracy Reed; correct?

12 A Correct.

13 Q Had there been a second member, you could not  
14 have used a Schedule C; is that correct?

15 A Correct.

16 Q Now, as I understand it, for reporting to the  
17 federal government there are multiple options with  
18 respect to the forms that could be used to report an  
19 LLC; is that correct?

20 A Correct.

21 Q My understanding is that one way in which you  
22 could do that would be through a federal Form 1065;  
23 correct?

24 A Correct.

25 Q What's a Form 1065?

1           A     Partnership tax return.

2           Q     And for CoPilot Co., Inc., at least in those  
3 tax years we've been looking at, '11 through '17, you  
4 never utilized a 1065; is that correct?

5           A     Correct.

6           Q     And then another way to have done this would  
7 be a Form 1120; correct?

8           A     Correct.

9           Q     What's a Form 1120?

10          A     It's a corporate return, corporate tax return.

11          Q     So that's a return you could use for any  
12 corporation? Including an LLC; correct?

13          A     Yep.

14          Q     And you never utilized that in any of these  
15 tax years, '11 through '17; correct?

16          A     Correct.

17          Q     And then as I understand it, but correct me if  
18 I'm wrong, you could also use a federal Form 1120-S?

19          A     Correct.

20          Q     And explain what that is.

21          A     It's an S corp. tax return.

22          Q     And that was never utilized in reporting for  
23 CoPilot Co. LLC in the tax years '11 through '17;  
24 correct?

25          A     Correct.

1           Q     Now, we don't have the returns for '18, but my  
2 understanding is you did do those returns; correct? For  
3 the tax year of '18?

4           A     For Tracy. Yes.

5           Q     And CoPilot Co.; correct?

6           A     Whatever year CoPilot Co. ceased to be in  
7 business, we, you know, would have done that return.

8           Q     Okay. Is it your understanding that  
9 CoPilot Co. has ceased to do business?

10          A     That's my understanding.

11          Q     Who told you that?

12          A     I don't recall.

13          Q     Do you understand why they ceased doing  
14 business?

15          A     I guess my understanding is, you know, either  
16 lack of business or -- I -- I'm not exactly sure, you  
17 know, what the internal issues were. So I don't know  
18 the exact reason why they stopped doing business.

19          Q     Was it, in fact, precipitated by the loss of  
20 their biggest client?

21          A     I don't -- I don't know that.

22          Q     That wasn't shared with you?

23          A     No.

24                   I had other team members working directly on  
25 Tracy's work during this time.



1 Q But you signed off on it; correct?

2 A Yes.

3 Q And why do you have to sign off on other  
4 people working?

5 A To validate the information.

6 Q Pardon me?

7 A To validate the information is correct.

8 Q Are you the only CPA in the office?

9 A No.

10 Q But you were the CPA that validated the  
11 information on those returns for CoPilot Co. over the  
12 years; correct?

13 A Correct.

14 Q Who were the other members that worked on this  
15 account?

16 A Thomas Williams. Doug Mowery.

17 Q Doug?

18 A Or Dave Mowery.

19 They were former employees.

20 Q Do you know where they are now?

21 A One I do. One I do not. Thomas, I do not  
22 know where he is.

23 Q Where is Mowery?

24 A Colorado.

25 Q Now, if an LLC has two or more members, there

1 are also forms that have to be filed with the Franchise  
2 Tax Board in California? Other than a Schedule C; is  
3 that correct?

4 MR. WEBB: Objection. Incomplete hypothetical  
5 regarding spouses.

6 You can answer.

7 THE WITNESS: Yeah, a California LLC has a  
8 separate form that gets filed in California.

9 BY MR. OTTILIE:

10 Q If the LLC has more than one member; correct?

11 A Regardless, it still has a form that gets  
12 filed with California, if a single member or  
13 multi-member. Just a different form.

14 Q Is that a Form 568?

15 A Yes.

16 Q Did you ever file a Form 568 for CoPilot Co.?

17 A Let me see. So no. Never filed a partnership  
18 return in California. We filed a -- the -- let me just  
19 see. Let me doublecheck. I can't remember that form  
20 number off the top of my head right now.

21 (Reporter requested the witness to keep his  
22 voice up.)

23 THE WITNESS: Yes, we filed a Form 568. It  
24 was a LLC return.

25 ///

1 BY MR. OTTILIE:

2 Q You did?

3 A Yeah.

4 Q And you're looking at -- let me finish.

5 You're looking at one instance. What year are  
6 you looking at right now?

7 A 2016.

8 Q Okay. Can I see what -- what you have there?

9 We'll come back to all the documents and mark  
10 them, but --

11 A Sure.

12 Q And let's make sure it gets back into the  
13 right place.

14 MR. WEBB: Is that for one member?

15 THE WITNESS: That's for one member.

16 BY MR. OTTILIE:

17 Q Okay. Counsel just asked you, but I was about  
18 to ask you.

19 So just so the record is clear, I'm looking at  
20 a Form 568, California Form 568, for the taxable year  
21 2016, for a limited liability company return of income;  
22 correct?

23 A Yes.

24 Q And this is specifically for CoPilot Co. LLC;  
25 correct?

1           A     Yes.

2           Q     And is there somewhere on this document that  
3 indicates that this is a single-member LLC?

4           A     If I could see it. Let me look.

5           Q     We're passing the documents back and forth,  
6 but I also want to ask how many pages that document is  
7 so I make sure I -- I get that too.

8           A     So it has -- in box K it indicates total  
9 members of the LLC is one, on that top line right there.  
10 (Indicating.)

11          Q     Give me the whole -- so the whole document is  
12 how many pages?

13                   Is everything you've given me the Form 568?

14                   So here is a voucher that doesn't go with the  
15 Form; correct?

16          A     Correct.

17          Q     This page I'm showing you here, does that go  
18 with that Form?

19          A     Yes.

20          Q     Okay. So the Form 568 is a four-page  
21 document? At least in 2016; correct?

22          A     Correct.

23          Q     And you said that -- box K asked the  
24 individual filing the return to enter the maximum number  
25 of members in the LLC at any time during the year;

1 correct?

2 A Correct.

3 Q And in the box indicated, it says "One";

4 correct?

5 A Correct.

6 Q Then it says "For multiple member LLC's,  
7 attach a California Schedule K-1 for each of these  
8 members," which goes back to what you described before;

9 correct?

10 A Correct.

11 Q Now, isn't it true that -- if a husband and  
12 wife are the sole members of an LLC, that they may  
13 report for tax purposes as a single-member LLC?

14 A Yes.

15 Q So in that instance, these forms that we've  
16 talked about, whether the federal government or the  
17 state government, that have to be utilized for purposes  
18 of multiple-member LLC's, do not have to be utilized if  
19 the LLC has two members but the two members are husband  
20 and wife; correct?

21 A Correct.

22 Q Are there any other exceptions to that rule?

23 A Not that I'm aware of.

24 Q And if the LLC is a two-member LLC reported as  
25 a single member because the two members are husband and

1 wife, is it necessary to issue a K-1 to the two members?

2 A No.

3 MR. WEBB: Can I have his last question and  
4 answer read back.

5 (Record read by the court reporter.)

6 BY MR. OTTILIE:

7 Q So on this form, page 3, there's a question  
8 that says "Sole Owner's Name," and it indicates "Tracy  
9 Reed." But by law, if it's a two-member LLC filing as a  
10 single member because the two members are husband and  
11 wife, would you put both members' name on that line? Or  
12 just one?

13 A We typically would just put one name on that  
14 line.

15 Q Even though you know there's another member,  
16 but the other member is the spouse; correct?

17 A Correct. Uh-huh.

18 Q And then the next question on this form states  
19 "What type of entity is the ultimate owner of this  
20 SMLLC?" And it says "See instructions."

21 What's the SM stand for?

22 A Single member.

23 Q And in this case it identifies the ultimate  
24 owner of the entity as an individual. The other options  
25 are corporation, pass-through, S corporation, estate

1 trust, or the fifth, exempt organizations.

2 So this marks the box "individual," but that's  
3 the box you would indicate if this was a  
4 husband-and-wife, two-member LLC; correct?

5 A Yes. It would be the same.

6 Q I'm gonna give this back.

7 Is it your recollection, without going through  
8 the documents, that a Form 568 was utilized each of  
9 these reporting years, 2011 through 2017?

10 A Yes.

11 Q Now, there are two other -- other ways you can  
12 report LLC profits or loss with the State of California;  
13 correct?

14 A Can you be more specific?

15 Q Form 100?

16 A Yes. If you're -- if you're opting to file as  
17 a corporation.

18 Q What?

19 A If you're opting to file as a corporation.

20 Q So that's sort of the state equivalent of the  
21 1120 for the feds; correct?

22 A Correct.

23 Q And then you could also file a 100-S; correct?

24 A Correct.

25 Q And that would be the equivalent of the Feds'

1 1120-S; correct?

2 A Correct.

3 Q Can you report the taxable activity of an LLC  
4 on a Schedule C?

5 A Yes.

6 Q And what I understand you're saying is that  
7 while you can report it on the Schedule C, at least for  
8 the state you'd still have to file one of these three  
9 forms? Potentially a 568 or a 100 or a 100-S; is that  
10 correct?

11 A Correct.

12 Q And do you believe that the taxable activity  
13 of the CoPilot Co. LLC was reported each of these years,  
14 2011 through 2017, each of these tax years, on a  
15 Schedule C?

16 A Correct.

17 Q And on the Schedule C, it was Tracy Reed that  
18 indicated this was his business; correct?

19 A Correct.

20 Q And then, because it's a business, there's  
21 withholding that has to be performed; correct?  
22 Withholding for self-employed?

23 A Yes.

24 Q Okay. And explain what that is.

25 A So, yeah, on a single-member LL- -- or a



1 single-member LLC, if you file a Schedule C, you know,  
2 the income is reported on your individual tax return,  
3 and it's subject to just the normal income tax  
4 withholding laws.

5 Typically if you're generating profits and you  
6 have a self-employed business, your best practice is to  
7 typically make estimated tax payments throughout the  
8 year on that share of income.

9 Q But you have to fill out a form for  
10 self-employment taxes; correct?

11 A It gets filled out with your individual tax  
12 return.

13 Q And what's that form called?

14 A SE.

15 Q Pardon me?

16 A SE.

17 Q For?

18 A For self-employment tax.

19 Q In each of these taxable years, '11 through  
20 '17, you filled out an SE or CoPilot Co.; correct?

21 A Correct.

22 Q And that indicated Tracy Reed as the owner;  
23 correct?

24 A Yes.

25 Q Now, if you had a husband and wife who were

1 both members of an LLC and they declared themselves, for  
2 tax purposes, as a single member, which is how they  
3 should declare; correct?

4 A They can. That's an option.

5 Q They don't have to?

6 A No.

7 Q But if they do, then do you indicate -- do you  
8 have to, by law, indicate that one of those two is the  
9 owner? Or can you indicate they're joint owners? Or  
10 can you do it either way?

11 A So on the California return that we were  
12 looking at, you know, typically we would just indicate  
13 one of the owners. On the individual tax return,  
14 there's only two options. And you either just do one  
15 Schedule C or you can bifurcate the Schedule C's into  
16 two separate Schedule C's if you want to treat -- treat  
17 them as 50/50 owners.

18 Q But you can do it either way? Even if they  
19 are 50/50 owners?

20 A Yes.

21 Q Correct?

22 A Yes.

23 Q Yes?

24 A Uh-huh.

25 Q Yes?

1           A     Yes.  Sorry.

2           Q     Now, to be clear, if there's a third member of  
3     an LLC -- you have a married couple or two members, and  
4     we've talked about the ways you can report that.  If  
5     there's a third member who is not married to these two  
6     individuals, you have to change the reporting entirely;  
7     correct?

8           A     Correct.

9           Q     You can no longer utilize the Schedule C;  
10    correct?

11          A     Correct.

12          Q     You would have to identify that individual?  
13    And whether or not they're a part- -- they are a  
14    participant in profits and losses, they have to get a  
15    K-1; correct?

16          A     Correct.

17          Q     And if somebody receives a K-1 as a member of  
18    an LLC, they have to take that K-1 and submit it with  
19    their own federal and state tax returns; correct?

20          A     Correct.

21          Q     And if there are losses in the business, the  
22    LLC, and the member receives a K-1, and they are a  
23    participant in the losses, that would show up on their  
24    K-1; correct?

25          A     Correct.

1           Q     If an LLC generates a profit and there is a  
2 member, who is not part of the married couple, who  
3 receives a K-1, and it reflects profits, they have to  
4 pay taxes on those profits; correct?

5           A     Correct.

6           Q     Am I correct that they have to pay taxes on  
7 those profits whether or not those profits are  
8 distributed to them?

9           A     Correct.

10          Q     Then I'm correct, at least in the tax years  
11 we've talked about, 2011 through 2017, no K-1's were  
12 issued for CoPilot Co. Inc.; correct?

13          A     Correct.

14          Q     Do you ever recall issuing K-1's for  
15 CoPilot Co. Inc. after the 2017 tax return?

16          A     No.

17          Q     Did you ever ask to see a copy of an operating  
18 agreement for the LLC?

19          A     I don't recall exactly what we asked for. At  
20 our initial interview with Tracy, we looked at the  
21 documents that he had, and I believe that's all the  
22 documents he had on the LLC. And so I can't recall if  
23 we saw an operating agreement back then or not.

24          Q     At some point in time at the inception of the  
25 relationship there was a discussion of a potential third

1 party involved with the business; correct?

2 A Correct.

3 Q And you don't recall the name of that person  
4 at this time; correct?

5 A Correct.

6 Q But you do recall the discussion; correct?

7 A Correct.

8 Q And you did understand the importance both to  
9 your client and also to your own obligations to  
10 ascertain whether in fact there was another member so  
11 that the reporting could be accurate for both the  
12 benefit of the LLC and yourself; correct?

13 A Correct.

14 Q And so you made a determination, in working  
15 with Tracy Reed, that there was no other member that  
16 needed to be included in tax reporting; correct?

17 A Correct.

18 Q Now, has Tracy Reed come to you, at any point  
19 since you first met him, to share with you that there  
20 was an error? That in fact there was another member?

21 A Not to me directly.

22 Q Did he come to you indirectly to communicate  
23 that?

24 A Not that I'm aware of.

25 Q So do you have any knowledge of Tracy Reed

1 communicating to anybody with your company that an error  
2 has been made and that there was another member of the  
3 LLC?

4 A Not that I'm aware of.

5 Q If you became aware of that, would you have to  
6 advise your client of his obligation to amend the tax  
7 returns for the years '11 through '17 and even  
8 thereafter?

9 A Yes.

10 Q And would you have a personal obligation upon  
11 learning of that information, as the CPA, to do the  
12 same?

13 A Yes.

14 Q Do you anticipate you will be asked to file  
15 any amended returns for CoPilot Co. LLC?

16 A I have no knowledge of that. I have not been  
17 asked that. So I have no knowledge of that.

18 Q If you learn that there had been a -- three  
19 members of this LLC -- Tran Reed, Tracy Reed, and a  
20 third party, whoever that may be -- and that that had  
21 been the case since 2011 and continuously through the  
22 time that you did tax reporting for the LLC, whether or  
23 not it got done, there would be an obligation to go back  
24 and amend all of the LLC returns; correct?

25 A Correct.

1           Q     Would it be -- then be necessary to correct  
2 the returns of Tracy Reed and Tran Reed?

3           A     Correct.

4           Q     If there was a third member of an LLC that  
5 included Tracy Reed and Tran Reed, whoever that  
6 individual may be, would it be necessary, if they were a  
7 participant -- no. I guess, apparently not. Either  
8 way, whether they were a participant in profits or not,  
9 it would be necessary to go back and issue a K-1 to  
10 them; correct?

11          A     Correct.

12               MR. WEBB: Objection. Incomplete  
13 hypothetical.

14 BY MR. OTTILIE:

15          Q     So let's -- let's be clear on that.

16               If -- if it was necessary to file an amended  
17 return because you determined and your client shared  
18 with you that there had been three members of an LLC who  
19 were participants in profits going back to 2011 and  
20 continuously through 2017, in addition to these  
21 amendments we've talked about for the company, the  
22 company would have to issue K-1's to all members;  
23 correct?

24          A     Correct.

25          Q     And then those individuals would have to

1 submit those to the IRS and the Franchise Tax Board;  
2 correct?

3 A Correct.

4 Q And they would have to potentially amend their  
5 own returns; correct?

6 A Correct.

7 Q If they were not profit or loss participants,  
8 could they submit that K-1 for those years without  
9 having to amend their returns? Or would it be necessary  
10 to amend their returns to at least identify the K-1?

11 A So if I understand your question, in the  
12 scenario where they get issued a K-1 but there is no --  
13 it's a zero K-1 with no profit or loss, is that the  
14 question?

15 Yeah, I mean, you could amend, but I don't  
16 think it would be worthwhile to amend because there is  
17 no change in taxability. So it probably doesn't make  
18 sense to do that.

19 Q Now, you're the CPA for CoPilot Co. LLC;  
20 correct?

21 A When the business was active. It's not active  
22 anymore. So we're not doing anything actively with that  
23 business.

24 Q But with respect to the need for an amendment,  
25 should one arise, because there were three members and



1 one of them was not Tran Reed or Tracy Reed -- well, let  
2 me strike that.

3           You've indicated you were only aware there was  
4 one member of this LLC. But if it turned out there were  
5 two members, Tracy Reed and Tran Reed, that discovery  
6 would not alter how the returns were filed over the  
7 years; correct?

8           A     Can you repeat the question?

9           Q     Well, if you were to determine that at all the  
10 relevant times, 2011 through 2017, there were actually  
11 two members of this LLC, but they were Tran and Tracy  
12 Reed and they were married at all those times, that  
13 would not necessitate any amendment to any of those  
14 returns; correct?

15          A     Correct.

16          Q     And it would not necessitate any K-1 issuance;  
17 correct?

18          A     Correct.

19          Q     So they'd be fine if that were the scenario;  
20 correct?

21          A     Correct.

22          Q     But as we discussed, if there was a third  
23 membership or even a second member who was not a part of  
24 the marriage, that would require these amendments we've  
25 discussed; correct?

1                   MR. WEBB: Objection. Incomplete  
2 hypothetical. Omits facts.

3                   You can answer.

4                   THE WITNESS: Correct.

5 BY MR. OTTILIE:

6           Q     If throughout these taxable years of '11  
7 through '17 there was a third-party member of  
8 CoPilot Co. LLC, and he or she contends they were  
9 entitled to a share of the profits during those years,  
10 and if the LLC amended its returns to reflect that and  
11 issued an appropriate K-1, that would then also, in this  
12 case, necessitate amendments to the joint returns that  
13 were filed on behalf of Tracy and Tran Reed; correct?

14          A     Correct.

15          Q     Because, in fact, if some third party was  
16 entitled to some of the profits, their income during  
17 those years would go down; correct?

18          A     Correct.

19          Q     And they might benefit from a refund; correct?

20                   MR. WEBB: Objection. Incomplete  
21 hypothetical. Assumes facts not in evidence.

22                   Go ahead.

23                   THE WITNESS: So the refunds are only good for  
24 the last three years. They would not get any refunds  
25 for the prior years.

1 BY MR. OTTILIE:

2 Q Now, with respect to this third party, if one  
3 had existed for CoPilot Co. LLC from 2011 through 2017  
4 and that individual failed to pay taxes on what he  
5 contends was his entitlement to profit from the business  
6 those years, they too would have to file an amended  
7 return; correct?

8 A Correct.

9 MR. WEBB: Objection. Assumes facts not in  
10 evidence. Financial privacy third party.

11 BY MR. OTTILIE:

12 Q And in filing amendments, would he have to  
13 file for all those years?

14 MR. WEBB: Same objections.

15 THE WITNESS: Yes.

16 BY MR. OTTILIE:

17 Q And you talked about the three years going  
18 back on refunds. If this third party filed amended  
19 returns, would he or she, whoever it may be, have to pay  
20 back taxes all the way to 2011? Or would there be a  
21 three-year rule for his or her payment as well?

22 MR. WEBB: Objection. Incomplete  
23 hypothetical. Omits, when he was taxed, if there was  
24 income or loss, whether the status of his taxes were  
25 eligible for income and loss. Third-party financial

1 privacy.

2 You can answer.

3 THE WITNESS: Yes. They would have to amend.  
4 If there was any income in those years, they would have  
5 to pay the taxes plus interest and penalties. And there  
6 is no three-year waiver. They'd have to pay taxes all  
7 the way back to the beginning.

8 BY MR. OTTILIE:

9 Q So if somebody hasn't paid taxes on income  
10 they contend they made in 2011, even though we're now in  
11 2022, if they're honest and they file an amended return  
12 to reflect their contention, they owe those taxes even  
13 though it's beyond the three-year period? Or the IRS  
14 can come in and audit them; correct?

15 MR. WEBB: Same objections.

16 THE WITNESS: Yes. Technically they would owe  
17 those taxes.

18 BY MR. OTTILIE:

19 Q And in addition to the taxes, they would owe  
20 penalties; correct?

21 MR. WEBB: Same objections.

22 THE WITNESS: Correct.

23 BY MR. OTTILIE:

24 Q And interest; correct?

25 MR. WEBB: Same objections.

1                   **THE WITNESS: Correct.**

2   **BY MR. OTTILIE:**

3           Q     What interest rate does the federal government  
4   use on unpaid taxes?

5           A     It varies by year.

6           Q     What is it now?

7           A     4 percent.

8           Q     What interest rate does the state government  
9   apply to unpaid taxes?

10          A     Same thing. It varies. Tends to be a little  
11   bit higher than the federal rate.

12          Q     California.

13          A     Right.

14          Q     What are the penalties of the federal  
15   government for not paying income taxes?

16          A     It varies as well. It's too hard to estimate  
17   that.

18          Q     Is there a high or a low or --

19          A     You could probably use 50 percent of the  
20   unpaid tax as a ballpark. 50 percent of the unpaid tax  
21   as a ballpark if we're going back multiple years.

22          Q     Five-zero?

23          A     Yes.

24          Q     And state?

25          A     Similar.

1           Q     Now, let's say you're a member of an LLC and  
2     you're not part of the married couple. So using  
3     CoPilot Co. LLC, if there was a member out there who was  
4     not married to Tracy or Tran, and they determined that  
5     the LLC had made profits in various tax years, and they  
6     determined or they contended that they were entitled to  
7     those profits but had not received them, do they have an  
8     obligation to report that to taxing authorities? Or can  
9     they wait to see if they actually get the money?

10           MR. WEBB: Third-party financial privacy.  
11     Incomplete hypothetical.

12           You can answer.

13           THE WITNESS: So if I understand, your  
14     question is if they -- if they got issued a K-1 in those  
15     years, they would still be obligated to incorporate that  
16     K-1 into their individual tax return and report that to  
17     the IRS even though they didn't receive the money from  
18     the business?

19     BY MR. OTTILIE:

20           Q     Let's say they don't get a K-1 but they know  
21     they're entitled to profits. Do they have an obligation  
22     to report the income? Or by arranging to not receive a  
23     K-1, can the potential K-1 recipient avoid their  
24     obligation to pay taxes on what they contend is their  
25     income?

1           MR. WEBB: Same objection. Incomplete  
2 hypothetical. Third-party financial privacy.

3           You can answer.

4           THE WITNESS: Not that I'm aware of.

5 BY MR. OTTILIE:

6           Q     So I want to make sure I'm clear. So if there  
7 was a member of an LLC and they contend in this  
8 hypothetical that they're entitled to 33 percent of the  
9 profits of the LLC, even if they don't get a K-1 they  
10 are required to report any income reflective of their  
11 interest to the IRS; correct?

12          MR. WEBB: Same objections.

13          THE WITNESS: Yes. I would assume so. I  
14 guess I've never seen anyone do that, because usually  
15 people have a K-1 before they ever report their income.  
16 But I would say technically, yeah, I would think, yes,  
17 even though I've never seen that done in practice.

18 BY MR. OTTILIE:

19          Q     Now, I get some K-1's. And my sister is  
20 responsible for getting me one of those, and it always  
21 comes way late in the process. So I'm always bugging  
22 her for that.

23          A     Uh-huh.

24          Q     Do you ever get bugged by individuals that are  
25 entitled to K-1's or 1099's or W-2's from your 180

1 clients?

2 A Yes.

3 Q Did a gentleman by the name of Roderick Hamby  
4 at any time communicate with you asking for K-1's?

5 A Not that I recall.

6 Q Okay. Rod Hamby sued my client Tracy [sic].  
7 You know that; correct?

8 A I know he's party to this lawsuit. I don't  
9 know the specifics.

10 Q So Tracy Reed and Roderick Hamby have sued my  
11 client.

12 A Okay.

13 Q And in the lawsuit, Roderick Hamby contends  
14 that at all times we've talked about, 2011 through 2017  
15 and beyond, he was a 33 percent owner in CoPilot Co.  
16 LLC. And Roderick Hamby contends in that lawsuit and  
17 under oath in discovery that he was entitled at all  
18 relevant times each year to 33 percent of the profits  
19 from the LLC.

20 Before I just shared that with you now, had  
21 you ever heard that before?

22 A No.

23 Q He filed this lawsuit in 2019 contending this.

24 At any time since 2019, up to and including  
25 the present, has Roderick Hamby reached out to your



1 company, either personally, any of their employees, by  
2 phone, in person, in writing, in any manner, to ask for  
3 a K-1 for the years 2011 through 2017 or '18 so that he  
4 may properly report to the IRS and Franchise Tax Board  
5 what he contends to be his income from the LLC?

6 MR. WEBB: Objection. Assumes facts that are  
7 not in evidence inside the question.

8 But you can answer.

9 THE WITNESS: Not that I'm aware of.

10 BY MR. OTTILIE:

11 Q During this period of 2019, 2020, 2021, 2022,  
12 has Tracy Reed ever come to you and said "I'm in a  
13 lawsuit in which I contend that Roderick Hamby was  
14 entitled to 33 percent of profits and losses from 2011  
15 through 2017 or 2018, and you and I need to get together  
16 to fix the returns and issue K-1's to him so we can help  
17 him do his reporting to the IRS and Franchise Tax  
18 Board"?

19 A No.

20 Q Do you still do work for Tracy Reed?

21 A Yes.

22 Q At the present time you are not filing returns  
23 for CoPilot Co.; correct?

24 A Correct.

25 Q At some point in time Tracy and Tran Reed

1 initiated a divorce. Were you aware of that?

2 A Yes.

3 Q And when the divorce was initiated, but even  
4 before the trial, they ceased doing joint returns; is  
5 that correct?

6 A Yes.

7 Q So their last joint return was through the tax  
8 year 2017; is that correct?

9 A I would assume so. I'd have to look at '18 to  
10 be a hundred percent on that.

11 Q And when they went to separate returns, they  
12 still filed as married individuals, but filing separate  
13 returns; correct?

14 A Correct.

15 Q So in tax lingo it's filing separate but  
16 married; right?

17 A Correct.

18 Q Or is it married separate?

19 A Married separate.

20 Q Okay. And until their divorce, they're  
21 required to do that; correct? Indicate that they're  
22 still married but filing separate returns?

23 A Correct.

24 Q And when they went to that married but  
25 separate, did you do the separate returns for Tran Reed?

1 Or did she go somewhere else?

2 A We do not do her returns. She went somewhere  
3 else.

4 Q Do you understand that the Reeds are not  
5 married? They're divorced currently, at this time?

6 A I do not know the status.

7 Q Have you ever seen a judgment in their  
8 divorce?

9 A No.

10 Q Did you assist Mr. Reed in any respect -- and  
11 I don't want to know how -- in his filings in the family  
12 court?

13 A No.

14 Q Did you at any time talk to him about his  
15 potential divorce?

16 A No.

17 Q Did you at any time share information with him  
18 that he asked for to be utilized in his divorce?

19 A No.

20 Q So in his divorce, he contended that he and  
21 Tran Reed jointly owned the LLC. Were you aware of  
22 that?

23 A No.

24 Q If in his divorce proceedings under oath he  
25 told the Court that he and Tran were joint owners of the

1 LLC, that would be inconsistent with what he told you at  
2 all times; correct?

3 MR. WEBB: Objection. Misstates prior  
4 testimony. Argumentative. Relevance.  
5 Go ahead.

6 THE WITNESS: Correct.

7 BY MR. OTTILIE:

8 Q In the divorce filings, under oath Mr. Reed  
9 indicated that the LLC, at least at the time he was  
10 filing these documents under oath, had a value of minus  
11 \$32,000, reflecting the then existing obligations of the  
12 LLC.

13 Are you aware that the LLC had a negative  
14 value or owed \$32,000 that it did not have the assets to  
15 pay?

16 MR. WEBB: Objection. Vague as to time.  
17 Assumes facts not in evidence. Foundation.

18 You can answer.

19 THE WITNESS: No.

20 BY MR. OTTILIE:

21 Q In the divorce, Mr. Reed under oath indicated  
22 that he would take the entirety of that debt as his  
23 obligation in the divorce as long as he received a  
24 similar amount in offsetting assets but claiming that he  
25 and his wife were the hundred percent responsible

1 parties for that debt.

2 If he were to do that, would that be  
3 consistent with the way Mr. Reed was advising you was  
4 the ownership of the LLC?

5 MR. WEBB: Counsel, assumes facts not in  
6 evidence. Argumentative. Calls for expert testimony.  
7 The pleadings they filed with the Court are unverified.

8 You can answer.

9 THE WITNESS: I would assume so.

10 (Whereupon Raza Khan entered the deposition  
11 remotely via Zoom.)

12 MR. OTTILIE: Let's mark some exhibits at this  
13 point in time. So first, just going consecutively from  
14 my original deposition, we'll mark the next exhibit as  
15 202.

16 (Exhibit 202 was marked for identification  
17 and attached hereto.)

18 BY MR. OTTILIE:

19 Q Let me show you 202. That's the subpoena that  
20 brought you here today; is that correct?

21 A Yep. Yes.

22 Q And if you look at page -- Attachment 3 to the  
23 subpoena, which is two pages in length, that reflects  
24 documents you were asked to bring today; correct?

25 A Yes.

1           Q     Okay. And so there was an A, B, and a C  
2 subsection. "A" asked you for each of the tax years  
3 2010 through 2018, nine years total. "Please produce  
4 the following documents," and there's a series of four  
5 documents under that section A; correct?

6           A     Correct.

7           Q     And section B did the same thing, although in  
8 that case asking for some distinct documents for the  
9 same nine total tax years; correct?

10          A     Correct.

11          Q     And then subsection C on the next page asked  
12 for four categories of documents for those same nine  
13 years; correct?

14          A     Correct.

15          Q     And then the deposition subpoena generated  
16 some documents that you've brought today that we're  
17 gonna mark so we can get a record of that. And I  
18 appreciate that. I know that took some effort to  
19 generate that. So thank you very much.

20                But you did produce all of the documents that  
21 would have been responsive, except potentially for the  
22 year 2018; is that correct?

23          A     Correct.

24          Q     And -- and you're gonna determine, after you  
25 leave here today, whether there was a 2018? And then

1     you'll share that information with both Mr. Webb and  
2     myself?

3             A     Yes.

4             Q     And he and I will have some agreement.

5                     MR. OTTILIE: With respect to how we'll hold  
6     the documents, Mr. Webb, where you're concerned, we'll  
7     make sure we do that.

8     BY MR. OTTILIE:

9             Q     But beyond 2018, it's your testimony that  
10    everything we asked for here, for 2010 through 2017, has  
11    been brought here today; correct?

12            A     Correct.

13            Q     And as I understand it, there's nothing for  
14    2010; correct?

15            A     Correct.

16            Q     And then the way that I think you've assembled  
17    documents, you've taken everything that we asked for,  
18    whether it's in category A 1 through 4, category B 1  
19    through 3, or category C 1 through 4, and grouped them  
20    by tax years; correct?

21            A     Correct.

22            Q     So if we want to find any of those things --  
23    and we're not gonna go through each of them today; we're  
24    almost done here -- they'd be under the year? And  
25    you've put an orange sticky on the top of each year to

1 identify the year; correct?

2 A Correct.

3 Q And I'll ask you generally, just to speed this  
4 up. It's my understanding that there were e-file  
5 authorizations from the Reeds for you to file their  
6 federal and state tax returns at all relevant times;  
7 correct?

8 A Yes. With the exception of the amended  
9 returns, which needed to be paper filed by them.

10 Q Okay. And they were paper filed by them;  
11 correct?

12 A Correct.

13 Q But what you've brought here today, beyond the  
14 amended returns for '11 and '12, are all based on e-file  
15 authorizations for both the federal filing and the state  
16 filing; correct?

17 A Correct.

18 Q And are those authorizations actually in each  
19 grouping of documents?

20 A I believe so.

21 Q Okay. And I really appreciate that.

22 And is there proof in each of those categories  
23 of documents that the returns were actually filed?

24 A I believe so.

25 Q And what would be the proof? What would we



1 look for to make sure?

2 A There would be an IRS e-file acceptance  
3 letter.

4 Q Okay. To your knowledge, there's never been  
5 an advisement to you or the Reeds or CoPilot Co. of not  
6 filing returns for those years; correct?

7 A Correct.

8 Q And whatever forms were utilized for reporting  
9 purposes, whether they were the right ones or the wrong  
10 ones, depending on the nature of this relationship,  
11 whatever they were is all in these groups for each of  
12 these tax years; correct?

13 A Correct.

14 MR. OTTILIE: Okay. So let's -- let's go off  
15 the record for just a second.

16 MR. WEBB: Sure.

17 (Discussion off the record.)

18 MR. OTTILIE: So we've already marked  
19 Exhibit 202.

20 We're gonna mark this as Exhibit 203, the  
21 documents you have given me that include your orange,  
22 sticky, post-it "2011 Tax Return"; correct?

23 THE WITNESS: Yes.

24 (Exhibit 203 was marked for identification  
25 and attached hereto.)

1 BY MR. OTTILIE:

2 Q And that will have all the information in it  
3 that we've discussed previously; correct?

4 A Correct.

5 MR. OTTILIE: We'll then mark as 204 the 2012  
6 tax return.

7 (Exhibit 204 was marked for identification  
8 and attached hereto.)

9 BY MR. OTTILIE:

10 Q That will have everything for 2012 in it;  
11 right?

12 A Correct.

13 MR. OTTILIE: Then we'll go to 205, and that  
14 will be the 2013 tax return.

15 (Exhibit 205 was marked for identification  
16 and attached hereto.)

17 BY MR. OTTILIE:

18 Q That will have everything in it for that tax  
19 year?

20 A Correct.

21 MR. OTTILIE: 206 I've indicated on the 2014  
22 tax return documents.

23 (Exhibit 206 was marked for identification  
24 and attached hereto.)

25 ///

1 BY MR. OTTILIE:

2 Q Correct?

3 A Correct.

4 MR. OTTILIE: 207 will be the 2015 tax  
5 returns.

6 (Exhibit 207 was marked for identification  
7 and attached hereto.)

8 BY MR. OTTILIE:

9 Q Is that correct?

10 A Correct.

11 MR. OTTILIE: 208 will be the exhibit for all  
12 the 2016 tax return documents.

13 (Exhibit 208 was marked for identification  
14 and attached hereto.)

15 BY MR. OTTILIE:

16 Q Correct?

17 A Correct.

18 MR. OTTILIE: 209 will be the documents that  
19 you brought us for the 2017 tax year.

20 (Exhibit 209 was marked for identification  
21 and attached hereto.)

22 BY MR. OTTILIE:

23 Q Correct?

24 A Correct.

25 MR. OTTILIE: Do you want to take a quick

1 break? It's been about an hour and a half.

2 MR. WEBB: My questions are gonna be so short  
3 that I don't think it's gonna be worth everybody's time  
4 to take a break.

5 MR. OTTILIE: No, I --- I've got about 10 or  
6 15 more myself. And we can push through or do you want  
7 to run to the restroom?

8 THE WITNESS: Run to the restroom.

9 MR. OTTILIE: Yeah, because typically we'd  
10 take one after an hour, an hour and 15. So let's take a  
11 five-minute break.

12 THE WITNESS: Okay.

13 (Recess: 10:38 A.M. to 10:46 A.M.)

14 BY MR. OTTILIE:

15 Q I want to do this. And I don't know that we  
16 need to, but just to be safe so that I don't have any  
17 misunderstandings if I want to look at one of the  
18 returns just to see how this played out in practice.

19 Let me ask you a question. So you had already  
20 provided Tran Reed with some documents; correct?

21 A Correct.

22 Q For each of these tax years?

23 A Correct.

24 Q And I brought some of those for 2016, '17, and  
25 '18. I was gonna mark them as exhibits. I don't think

1 I need to because you've brought them again; correct?

2 A Correct.

3 Q I'm just taking out my document for the 2017  
4 tax year that I was gonna utilize while I gave you back  
5 Exhibit 209 which covers the 2017 tax year. And just in  
6 my imprecise way of looking at them, I'm noticing that  
7 the stack I have seems to be smaller than the stack you  
8 have.

9 Can you see that?

10 A Yes.

11 Q So my question, when you gave Tran Reed  
12 documents, did you give her everything you're giving me  
13 today? Or because of the nature of my subpoena is there  
14 more information that you're providing?

15 A Gave her the same information.

16 Q Okay. So it may just be that --

17 A We just -- we uploaded everything to our  
18 portal. So I don't know what she printed and  
19 downloaded. And that's what my admin printed and  
20 downloaded. So it's possible she didn't print  
21 everything out.

22 Q Got it.

23 Okay. So here's what I'll do. I'll take the  
24 big clip off the top. I'm gonna keep these documents in  
25 order. And I don't have a lot of questions, but I have

1 a few. And it will be similar to what we've already  
2 gone over, but we'll just tie it to the documents.

3 So this is Exhibit 207. There's a variety of  
4 documents in here. And what I want to do is sort of cut  
5 to the federal form.

6 Let's do this. So I'm going through them, and  
7 the first document I want to ask you about is a  
8 four-page document. And the sequence, it comes after  
9 various e-file signature authorizations and estimated  
10 tax returns. And it's a four-page document prepared  
11 8/20/18 for CoPilot Co. LLC, referred to as a profit and  
12 loss January through December 2017. The fourth page has  
13 very little information on it, but it does indicate that  
14 it is page 4 of 4.

15 Is that a profit and loss statement for that  
16 year that's indicated for CoPilot Co. LLC?

17 A Yes.

18 Q And that's something that was prepared by your  
19 firm based on your at least quarterly profit and loss  
20 statements; correct?

21 A Correct.

22 Q Then about midway down through the exhibit you  
23 have separately clipped an August 20th, 2018, letter  
24 indicating that you have filed -- prepared to file the  
25 following returns for the Reeds, including a U.S.

1 Individual Income Tax Return Form 1040, a California  
2 Resident Income Tax Return Form 540, and a California  
3 LLC Return of Income Form 568.

4 And then behind those I assume we'll find  
5 those three documents; correct?

6 A Correct.

7 Q So flip down a few more pages, and we have a  
8 document identified as a 1040 U.S. Individual Income Tax  
9 Return 2017, indicates Tracy R. Reed and Tran Q. Reed  
10 are the joint filers of this document.

11 Have I accurately understood that correct?

12 A Correct.

13 Q So this is their federal tax return for the  
14 tax year 2017; correct?

15 A Correct.

16 Q And on line 11 -- or 12, it says "Business  
17 Income or Loss." Do you see that?

18 A Yes.

19 Q And it has a number to the right of that of  
20 79,276; correct?

21 A Correct.

22 Q And what does that number 79,276 reflect?

23 A The net profit of the Schedule C business.

24 Q So that reflects profit? Not a loss; correct?

25 A Correct.

1           Q     And it identifies the amount of a profit from  
2     a business that is documented on the Schedule C;  
3     correct?

4           A     Correct.

5           Q     Okay. And I don't think I asked you this  
6     question. It's very elementary. But for the record,  
7     what is a Schedule C?

8           A     That's where you report income or loss of  
9     business activity from a self -- sole proprietorship.

10          Q     So now let's go to what I believe is the  
11     Schedule C, that's a few pages down.

12                     And that appears to be a two-page document; is  
13     that correct?

14          A     Correct.

15          Q     And then right behind that is something that  
16     indicates that it's a Schedule B.

17                     Does that go along with the Schedule C?

18          A     No.

19          Q     That's a separate form; correct?

20          A     No. It -- yeah, it's a self-employment tax.  
21     So it's related to it.

22          Q     But it's separate from the Schedule C;  
23     correct?

24          A     Correct.

25          Q     And do we accurately refer to that as a



1 Section [sic] B?

2 How would you -- what would you call that  
3 one-page form?

4 A It's Schedule SE.

5 Q For self-employment?

6 A Correct.

7 Q And that's where you fill in the information  
8 that allows you to indicate how much you owe to the  
9 federal government in self-employment tax; correct?

10 A Correct.

11 Q So on the Schedule C it identifies the name of  
12 a proprietor as Tracy R. Reed for business name of  
13 CoPilot Co. LLC; correct?

14 A Correct.

15 Q And that's the business entity we discussed  
16 earlier; correct?

17 A Correct.

18 Q And again, if in fact -- and I know you had a  
19 different understanding. But if in fact Tracy and Tran  
20 Reed had both been members of that LLC, this would still  
21 be an appropriate way to report this to the IRS;  
22 correct?

23 A Yes.

24 MR. WEBB: And just for the record, you're  
25 referring to which document? So the record is clear.

1                   MR. OTTILIE: This is the Schedule C, two-page  
2 document, within the 2017 tax returns.

3                   MR. WEBB: Thank you.

4 BY MR. OTTILIE:

5           Q       And this indicates gross receipts for sales of  
6 \$140,231; correct?

7           A       Correct.

8           Q       So that would reflect the revenues that the  
9 LLC had actually received during the tax year 2017;  
10 correct?

11          A       Correct.

12          Q       And this is information you report based on  
13 what is supplied to you by Tracy Reed; correct?

14          A       Correct.

15          Q       And then there's a part two, "Expenses." And  
16 I assume part two is designed to allow the tax filer to  
17 report legitimate expenses incurred in the LLC and  
18 deduct those from gross receipts or sales; is that  
19 correct?

20          A       Yes.

21          Q       And in this case it shows total expenses of  
22 58,822.

23                   Is that what you filed with the federal  
24 government?

25          A       Yes.

1           Q     And that resulted in what is referred to, on  
2 line 29, as tentative profit of \$81,409.

3                     Is that what you filed with the IRS?

4           A     Yes.

5           Q     And then there's something called "Expenses  
6 for Business Use of Your Home," which is line 30 on this  
7 Schedule C. And that shows \$2,133.

8                     Did I get that right?

9           A     Yes.

10          Q     And because this business apparently operates  
11 out of the home, the taxpayer is entitled to a deduction  
12 for some portion of the use of the home?

13          A     Correct.

14          Q     And that's what line 30 accomplishes?

15          A     Yes.

16          Q     And then line 31 is designed to show the net  
17 profit or loss from that business; correct?

18          A     Correct.

19          Q     And for that tax year, what did your firm fill  
20 out and report to the IRS for CoPilot Co. LLC as its  
21 reported net profit?

22          A     79,276.

23          Q     At any time subsequent to the preparation of  
24 the tax returns for 2016, 2017, 2015, has Tracy Reed  
25 ever come to you or anyone in your firm to advise you

1     that he and CoPilot Co. LLC underreported gross receipts  
2     or sales?

3             A     No.

4             Q     Has Tracy Reed at any time for the tax years  
5     2015, 2016, and 2017 ever advised you that a non-member  
6     of the LLC at any time stole or secreted receipts of the  
7     LLC that did not get reported on the Schedule C for the  
8     tax years '15, '16, '17, or '18?

9             A     No.

10            Q     If in fact receipts or sales were  
11     underreported because someone who was not entitled to  
12     them secreted or stole funds and that was later  
13     discovered, that would necessitate an amendment of the  
14     tax return for that year; correct?

15            A     Correct.

16                   MR. WEBB: Objection. Incomplete  
17     hypothetical. Assumes facts.

18     BY MR. OTTILIE:

19            Q     And then let's look at the next document.

20                   Let me ask you this. Other than my office  
21     through the subpoena, has anybody, at any time up to and  
22     including the present, ever asked you for copies of  
23     these returns for CoPilot Co. LLC?

24            A     No.

25            Q     Is my office, via the subpoena on behalf of

1 Tran Reed, the first individual or entity to ask for  
2 these copies?

3 A Yes.

4 Q So prior to right now today, the State  
5 Franchise Board has not asked for any additional  
6 documentation from you regarding any of these tax years;  
7 correct?

8 A Franchise Tax Board? No. I mean, we -- yeah,  
9 for those years, I don't -- I don't believe so. No.

10 Q And then for those same tax years, '11 through  
11 '17, has the federal government asked for any additional  
12 information for these tax years beyond what you've  
13 shared with us today?

14 A No.

15 Q Has anyone acting on behalf of Rod Hamby  
16 contacted you -- his attorney, himself, anyone claiming  
17 to be a representative -- asking you at any time for the  
18 tax returns for CoPilot Co. from 2011 through 2017?

19 A No.

20 Q Has Roderick Hamby or anyone acting on his  
21 behalf, including an attorney, ever asked you for the  
22 profit and loss statements for CoPilot Co. for the years  
23 2011 through 2017?

24 A No.

25 Q Okay. Now let's look at the very next page in

1 this file, which is a Form 2441.

2 That's not what I want.

3 The next page would be the schedule SE. And  
4 that reflects declaration of self-employment income;  
5 correct?

6 A Yes.

7 Q And how much is reported on this particular  
8 document for the tax year 2017?

9 A Self-employment income or the self-employment  
10 tax?

11 Q Self-employment income.

12 A 79,276.

13 Q And then that reflects taxes are paid on that  
14 amount; correct?

15 A Correct.

16 Q How much?

17 A Self-employment tax is, let's see, 3,326.

18 Q And I didn't ask you the same question with  
19 respect to the Schedule C, but let's back up to that.

20 The amount on the Form SE matches the amount  
21 of net profit shown on the Schedule C; correct?

22 A Yes.

23 Q And then the Schedule C income that goes onto  
24 a Form 1040 is a part of the income associated with that  
25 filer; correct?

1           A     Correct.

2           Q     So in this case, whether or not this was a  
3     one-member or two-member LLC or even a three-member, the  
4     LLC reported as a single-member, which it could do even  
5     if there were two members married; correct?

6           A     Correct.

7           Q     But the taxes on that \$79,276 were paid as  
8     part of the joint return filed by Tran Reed and Tracy  
9     Reed; correct?

10          A     Correct.

11          Q     Have you ever met Mr. Webb before today?

12          A     No.

13          Q     Have you ever talked to Mr. Webb before today?

14          A     No.

15          Q     Has he ever corresponded with you before  
16     today?

17          A     No.

18          Q     Aside from the CoPilot Co. LLC, have you filed  
19     returns for other LLC's?

20          A     Yes.

21          Q     Are you aware of a term referred to as the tax  
22     member of an LLC?

23          A     Yes.

24          Q     What does the phrase "tax member" mean?

25          A     In terms of, you know, a member for tax

1 reporting purposes.

2 Q So you've heard that term before?

3 A Yes.

4 Q Do you have any understanding as to whether  
5 every member of an LLC is entitled to a prorated share  
6 of profits? Or is that to be determined from agreement  
7 of the parties?

8 A Yeah, it's up to the operating agreement.

9 Q In the event there's been an error in these  
10 tax filings that we've looked at today by not  
11 appropriately reporting of a third-party member such  
12 that it would require amended returns, penalties, and  
13 interest to be paid, are the penalties and interest the  
14 obligation of the LLC? Or would it be a responsibility  
15 of the LLC and the tax member? Or do you know?

16 MR. WEBB: Objection. Incomplete  
17 hypothetical. Third-party financial privacy.

18 You can answer.

19 THE WITNESS: Yes. Typically the late K-1  
20 filing penalty would be assessed at the LLC level first.  
21 Then potentially it could be assessed at the individual  
22 level. Certainly on the individual returns, you know,  
23 they would be subject to any penalties and interest for  
24 filing amended returns with additional taxable income.

25 ///



1 BY MR. OTTILIE:

2 Q So the LLC would receive penalties and  
3 interest first as it related to the K-1 filings;  
4 correct?

5 A Correct.

6 Q If they were insolvent or incapable of making  
7 the payments, can the tax authorities come after the tax  
8 member?

9 A Possible.

10 Q Can they go after non-members?

11 A Non-members? I don't know the answer to that.

12 MR. OTTILIE: Okay. I'm done. Your turn.

13 MR. WEBB: Sure.

14

15 EXAMINATION

16 BY MR. WEBB:

17 Q I represent Tracy Reed and Rod Hamby. My name  
18 is Lenden Webb.

19 First question, just to follow up on what he  
20 asked. If someone is on a deferred compensation and  
21 they don't get monies, but the other two parties do get  
22 distributions, would the -- have you ever seen the IRS  
23 come and penalize a member for not reporting that they  
24 were a member?

25 MR. OTTILIE: One -- one second.

1                   Objection. Vague and ambiguous as to  
2 "deferred compensation." Incomplete hypothetical.

3                   THE WITNESS: Yeah, I --

4                   MR. OTTILIE: Wait.

5                   Calls for -- and it calls for a speculation.

6 BY MR. WEBB:

7           Q       And the question is have you ever seen that?

8           A       I have not.

9           Q       Okay. Were you ever aware that there is a  
10 deferred compensation member, Rod Hamby, as part of this  
11 LLC?

12          A       No.

13                  MR. OTTILIE: Same objection with respect to  
14 vague and ambiguous as to the term "deferred  
15 compensation."

16                  THE WITNESS: No.

17 BY MR. WEBB:

18          Q       Okay. And if two members paid taxes on  
19 income, as you were just looking at for CoPilot Co., as  
20 Tracy and Tran Reed did, would they be penalized if in  
21 fact some of that income should have been taxable to  
22 someone else?

23          A       Penalized? So would Tracy and Tran be  
24 penalized?

25          Q       For paying too much tax.

1           A     It wouldn't be -- no, they would not, other  
2     than paying the taxes.  No.

3           Q     But there would be no extra tax to pay,  
4     because there would actually be a reduction on the  
5     income that they had if there was a third member; right?

6           A     Correct.

7           Q     Okay.

8           A     So, yeah, I mean, the main penalties you're  
9     looking at are late K-1 filing penalties for all those  
10    years if you're amending these partnership returns, and  
11    then, you know, the cost and expense of amending the  
12    additional returns.

13          Q     And late K-1 filings, if you amend your K-1 to  
14    be a lesser amount because there should have been a  
15    third party, would Tracy Reed be paying a penalty to the  
16    feds on his federal personal taxes?

17          A     Yes.  Each member would be assessed a  
18    per-month penalty, late-payment penalty.

19          Q     How much approximately -- not exact, but how  
20    much approximately would that be if you go back and you  
21    say, "You know what?  I paid too much.  My K-1 should  
22    have been less"?

23          A     I think it's roughly about \$200 per month per  
24    partner.  So if you have three partners, that's 600 a  
25    month, times 12 months.  So, you know, 7 grand a year,

1 you know, over X amount of years. So it's gonna be a  
2 pretty substantial amount of money. And there is  
3 potential to try to abate those penalties as well, but I  
4 don't know. I guess you'd have to --

5 Q So \$200 per month penalty for -- on the fed  
6 side if you say, "Hey, you know what? I paid too much  
7 in my -- on my K-1. My K-1 should have been smaller"?

8 A Correct.

9 Q Okay. And is that true for even the third  
10 partner who wasn't given the K-1 but should have been  
11 given a K-1?

12 A Yeah, for all the partners who get a K-1.

13 Q Now, what if the third partner was on a  
14 deferred compensation plan so he wasn't even eligible  
15 for compensation?

16 MR. OTTILIE: Same objection with respect to  
17 vague and ambiguous. Calls for speculation.

18 THE WITNESS: I think if there was a K-1  
19 issued, the IRS would default penalty on that.

20 BY MR. OTTILIE:

21 Q What if there is not a K-1 issued because they  
22 weren't eligible for compensation under the agreement  
23 with the partners?

24 A Then the late K-1 penalty wouldn't apply for  
25 the K-1.

1           Q     You're saying a late penalty would not apply  
2     in that instance; correct?

3           A     Correct.

4           Q     Okay. Does the agreement between the parties  
5     have to be filed with the feds? The operating  
6     agreement?

7           A     No.

8           Q     Does any successive agreement or amendments to  
9     the operating agreement have to be filed with the feds?

10          A     No.

11          Q     If there is an oral agreement between the  
12     parties, does that have to be memorialized and filed  
13     with the feds?

14          A     No.

15          Q     Did -- and same questions for the state. Are  
16     the state rules similar to the fed rules as far as all  
17     of those are concerned?

18          A     Yes.

19                 MR. WEBB: Thank you for your time.

20                 THE WITNESS: Sure.

21                 MR. WEBB: I appreciate you coming here. I  
22     know it's an old client and it's also tax season.

23                 THE WITNESS: Yeah.

24                 MR. WEBB: For what it's worth, I apologize.  
25     But I appreciate you being here. Make sure you get

1     **paid.**

2                   **No other questions unless I have follow-up.**

3                   **MR. OTTILIE: A couple more questions.**

4

5                   **FURTHER EXAMINATION**

6     **BY MR. OTTILIE:**

7           **Q       So Mr. Webb has asked you some questions about**  
8     **a deferred compensation member, and I objected to the**  
9     **term "deferred compensation."**

10                   **How did you understand his use of that term?**

11           **A       How did I understand it? Yeah, a member that**  
12     **would be entitled to some type of deferred compensation**  
13     **arrangement.**

14           **Q       And what is deferred compensation, just again**  
15     **for our elementary purposes?**

16           **A       Providing compensation to somebody at a later**  
17     **date and time.**

18           **Q       Like what?**

19           **A       Some point in the future.**

20           **Q       Yeah, but what types of compensation?**

21           **A       Deferred compensation usually, you know, it**  
22     **might be something that you give an employee, you know,**  
23     **someone that's providing services, that you're gonna**  
24     **compensate them at some point in the future. That's my**  
25     **understanding.**

1 Q It might be a bonus?

2 A Could be a bonus.

3 Q Stock options?

4 A Could be stocks.

5 Q Benefits?

6 A Yeah, could be anything.

7 Q So those are deferred because typically, if  
8 not always you can tell me -- that's what I'm trying to  
9 learn -- they are earned over a period of time; correct?

10 A Correct.

11 Q Can you avoid the payment of income taxes on  
12 your share of profits in an LLC by simply agreeing, with  
13 the tax member of the LLC, that their presence in the  
14 LLC will be concealed for a period in excess of a decade  
15 and then at that time pay them some money which they  
16 could then declare as income in that tenth or eleventh  
17 year? Can you do that?

18 MR. WEBB: Objection. Incomplete  
19 hypothetical. Assumes facts not in evidence.  
20 Third-party claims of privacy.

21 Go ahead.

22 THE WITNESS: Yeah, not that I'm aware of. I  
23 don't think they would be a legal member if he did  
24 something like that.

25 ///

1 BY MR. OTTILIE:

2 Q If you're an actual member of the LLC, even if  
3 your compensation is zero or something else that's  
4 deferred, you still have to get a K-1; correct?

5 MR. WEBB: Objection. Argumentative.  
6 Misstates prior testimony. Incomplete hypothetical.  
7 You can answer.

8 THE WITNESS: As far as I understand, yes.

9 BY MR. OTTILIE:

10 Q And even if you're a member of an LLC entitled  
11 to deferred income, you would have to take your K-1 and  
12 submit it to the IRS with your tax return; correct?

13 MR. WEBB: Same objections. Foundation.  
14 Calls for expert testimony. Not designated as an expert  
15 at this current time.

16 You can answer.

17 THE WITNESS: Yes.

18 BY MR. OTTILIE:

19 Q Are you aware of any situation in which  
20 somebody could earn income in a tax year, that is  
21 100 percent vested and earned, and report that on a  
22 later tax return to avoid declaring the earned  
23 compensation in the year in which it accrued and was  
24 100 percent earned?

25 MR. WEBB: Same objections. Vague.



1                   THE WITNESS: Not that I'm aware of.

2       BY MR. OTTILIE:

3           Q     At any time did Mr. Tracy Reed advise you that  
4     there was another member of the CoPilot Co. LLC, but he  
5     wanted you to be aware of that but not report the  
6     individual because, although the individual was a  
7     member, he was a, quote/unquote, "deferred compensation"  
8     member?

9           A     Not that I recall.

10          Q     And I know you don't remember the name  
11     necessarily, Roderick Hamby, but you do recall a  
12     discussion about another potential participant in the  
13     LLC; correct?

14          A     Correct.

15          Q     And that was at the inception of the  
16     relationship; correct?

17          A     Correct.

18          Q     And at that time did Mr. Reed, Tracy Reed,  
19     tell you, yes, there is somebody else out here, but he  
20     or she is on a deferred compensation plan? So they're  
21     not really a real member of the LLC?

22          A     Not that I recall.

23          Q     Did he say anything similar to that?

24          A     Not that I recall.

25          Q     Did he ever give you any reason to believe

1     that each tax year for which you were approving and  
2     assisting these parties in submitting their returns  
3     there was some third party out there consistently  
4     annually accruing a right to a share of the profits in  
5     the LLC?

6             MR. WEBB:  Objection.  Foundation.  
7     Third-party financial privacy.  Compound.

8             You can answer.

9             THE WITNESS:  No.

10            MR. OTTILIE:  Okay.  I'm done.

11            Mr. Webb?

12            MR. WEBB:  No, thank you.

13            MR. OTTILIE:  Okay.  So here's what we're  
14     gonna do.  You're gonna have to review the transcript at  
15     some point in time.

16            THE WITNESS:  Okay.

17            MR. OTTILIE:  You're gonna be allowed to make  
18     any changes you want.  You can change no's to yes.  I  
19     wouldn't encourage that.  But if it's the right thing to  
20     do, you've got to do it.

21            THE WITNESS:  Right.

22            MR. OTTILIE:  Because when you're done, you  
23     have to sign this under penalty of perjury.  Okay?  So  
24     even though we're -- you're gonna be somewhere doing  
25     that, it's just like raising your hand in court.  Okay?

1                   THE WITNESS:   Okay.

2                   MR. OTTILIE:   So you're gonna coordinate --  
3   we're gonna handle the review and signing per Code, and  
4   you're going to hear from the court reporting firm here.  
5   They'll get your information and get this to you  
6   electronically.

7                   Is that how we do it?

8                   And when you review that, take your time,  
9   don't rush through it, and feel free to correct typos.  
10   Not that she'll make any. But if she does, you can do  
11   those as well.

12                  THE WITNESS:   Okay.

13                  MR. OTTILIE:   And they'll explain in that  
14   process how you indicate each change. It's by page and  
15   line and whatever. And then you sign that.

16                  And then they're gonna share the fully  
17   executed document with Mr. Webb and myself so all the  
18   parties will have that. Okay?

19                  THE WITNESS:   Okay.

20                  MR. OTTILIE:   And I think that's it.

21                  I am gonna give you a check. So stay around.

22                  I am also gonna serve you your trial subpoena  
23   so you can appear in court on June 13th for our trial.  
24   But I'm happy to coordinate with you on your appearance  
25   if you'd like to do that. So reach out to me

1    beforehand, and maybe we'll resolve this matter before  
2    then.  And we'll go off the record now, but I will get  
3    you served with the subpoena and I will get your check.

4               THE WITNESS:  Okay.

5               MR. WEBB:  Agreed.  Thank you.

6               (Deposition was adjourned at 11:18 A.M.)

7                               - - -

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Declaration Under Penalty of Perjury

I, DAVID HEISTEIN, the witness herein, declare under penalty of perjury that I have read the foregoing in its entirety; and that the testimony contained therein, as corrected by me, is a true and accurate transcription of my testimony elicited at said time and place.

Executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
at \_\_\_\_\_, \_\_\_\_\_.  
(city) (state)

\_\_\_\_\_  
DAVID HEISTEIN

1 I, Kathryn L. Edwards, Certified Shorthand Reporter in and for  
2 the State of California, Certificate No. 7288, do hereby  
3 certify:

4  
5 That the witness in the foregoing deposition was, by me, first  
6 duly sworn to testify to the truth, the whole truth, and nothing  
7 but the truth in the foregoing cause; that the deposition was  
8 reported by me, to the best of my ability, in machine shorthand  
9 and thereafter transcribed through computer-aided transcription,  
10 under my direction, and that the foregoing transcript is a true  
11 record of the witness at said deposition.

12  
13 I do further certify that I am a disinterested person and am not  
14 of counsel or attorney for either or any of the parties in the  
15 foregoing proceeding and caption named nor in any way interested  
16 in the outcome of the cause in said caption.

17  
18 The dismantling, unsealing, or unbinding of the original transcript  
19 will render the reporter's certificate null and void.

20  
21 Dated this 17<sup>th</sup> day of March, 2022, at  
22 San Diego, California.

23  
24   
25 \_\_\_\_\_  
Kathryn L. Edwards  
CSR No. 7288

# C E R T I F I C A T E

*I, the undersigned, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following changes listed below).*

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No.	No.

**Please turn to back of transcript and  
sign the Penalty of Perjury page.**

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