

RECEIVED

Oct 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-001558

CarMax Auto Superstores, Inc., ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

RECORD ON APPEAL
VOLUME IX of IX

NELSON MULLINS RILEY &
SCARBOROUGH, LLP
C. Mitchell Brown
Bryson M. Geer
John C. von Lehe, Jr.
Robert T. Streisel
151 Meeting Street, Suite 600
Charleston, SC 29401-2239
Telephone: (843) 853-5200
mitch.brown@nelsonmullins.com
bryson.geer@nelsonmullins.com
john.vonlehe@nelsonmullins.com
bobby.streisel@nelsonmullins.com

*Counsel for Appellant CarMax Auto
Superstores, Inc.*

SOUTH CAROLINA DEPARTMENT OF
REVENUE
Marcus D. Antley
W. Allen Myrick
Jason P. Luther
300A Outlet Pointe Blvd.
Columbia, SC 29210
(843) 898-5623
marcus.antley@dor.sc.gov
allen.myrick@dor.sc.gov
jason.luther@dor.sc.gov
courtorders@dor.sc.gov

*Counsel for Respondent South Carolina
Department of Revenue*

TABLE OF CONTENTS

VOLUME I

ORDERS

Order on Joint Motion to Take Expert Depositions Beyond Discovery Deadline (March 1, 2023)	1
Remand Order (Original Final Order) (July 12, 2024)	3
Order Rescinding Remand Order (July 29, 2024)	73
Order Granting Motion for Reconsideration (August 15, 2024)	74
Amended Final Order (August 15, 2024)	84
Order Denying Motion for Reconsideration (September 20, 2024)	153
Order Granting Consent Motion to Recognize Inapplicability of Automatic Stay to ALC's Second Reconsideration Order (October 21, 2024)	155

PLEADINGS

CarMax Auto Superstores Inc. ("CarMax East") Request for Contested Case Hearing (June 8, 2021)	156
CarMax East's Pre-Hearing Statement (August 2, 2021)	168
South Carolina Department of Revenue's ("Department") Pre-Hearing Statement (July 29, 2021)	176

PRE-TRIAL MOTIONS AND SUBMISSIONS

Department's Expert Disclosure (April 25, 2022)	182
CarMax East's Motion in Limine to Exclude Expert Testimony Challenging the 2004 Valuation Study and for Expedited Hearing on Same (April 21, 2023)	206
CarMax East's Motion to Exclude Expert Witness (May 5, 2023)	339
Department's Response to CarMax East's Motion in Limine to Exclude Expert Testimony Challenging the 2004 Valuation Study and for Expedited Hearing on Same (May 8, 2023)	361
CarMax East's Deposition Designations (May 23, 2023)	363

Respondent’s Counter Designations and Objections to Petitioner’s Deposition Designations (May 26, 2023).....	378
---	-----

Joint Exhibit List (May 26, 2023).....	381
--	-----

POST-TRIAL MOTIONS AND SUBMISSIONS

Letter to ALC re: 30(b)(6) Deposition of the Department (w/o enclosed transcript ¹) (January 30, 2024)	386
---	-----

CarMax East’s Proposed Final Order (January 31, 2024)	392
---	-----

Department’s Proposed Final Order (January 31, 2024)	473
--	-----

VOLUME II

Department’s Proposed Final Order (January 31, 2024) cont.	501
---	-----

CarMax East’s Motion to Reconsider Remand Order (July 22, 2024).....	518
--	-----

Department’s Response to CarMax East’s Motion to Reconsider Remand Order (August 2, 2024)	552
--	-----

CarMax East’s Motion to Reconsider Amended Final Order and Reconsideration Order (August 26, 2024)	566
---	-----

Department’s Response to CarMax East’s Second Motion to Reconsider (September 10, 2024)	591
--	-----

Consent Motion to Recognize Inapplicability of Automatic Stay to ALC’s Second Reconsideration Order (October 2, 2024).....	600
---	-----

TRANSCRIPTS

Hearing Transcript (May 22-26, 2023).....	606
---	-----

Opening Statement of the Department by Mr. Antley	621
---	-----

Opening Statement of CarMax East by Mr. von Lehe.....	629
---	-----

Testimony of Orville Sharpe	
Direct Examination by Mr. Antley, Counsel for Department.....	644
Cross Examination by Mr. Streisel, Counsel for CarMax East	692

¹ This transcript is separately included in the Record on Appeal (“ROA” or “R.”) at R. 1917.

Re-Direct Examination by Mr. Antley, Counsel for Department.....	763
Testimony of David W. DeRamus, PhD	
Direct Examination by Mr. Antley, Counsel for Department.....	768
Voir Dire by Ms. Geer, Counsel for CarMax East	802
Direct Examination Continued by Mr. Antley, Counsel for Department	819

VOLUME III

Direct Examination by Mr. Antley, Counsel for Department cont.	1001
Cross Examination by Ms. Geer, Counsel for CarMax East	1162
Testimony of Eileen Yost	
Direct Examination by Ms. Geer, Counsel for CarMax East	1340
Cross Examination by Mr. Antley, Counsel for Department.....	1429
Testimony of Prof. Richard D. Pomp	
Direct Examination by Mr. von Lehe, Counsel for CarMax East	1441
Voir Dire by Mr. Antley, Counsel for Department.....	1454
Direct Examination Continued by Mr. von Lehe, Counsel for CarMax East.....	1471

VOLUME IV

Testimony of Prof. Richard D. Pomp cont.	
Direct Examination by Mr. von Lehe, Counsel for CarMax East cont.....	1501
Cross Examination by Mr. Antley, Counsel for Department.....	1555
Testimony of Brian Cody, PhD	
Direct Examination by Ms. Geer, Counsel for CarMax East	1558
Cross Examination by Mr. Antley, Counsel for Department.....	1722
Re-Direct Examination by Ms. Geer, Counsel for CarMax East.....	1730
Testimony of David W. DeRamus, PhD	
Rebuttal by Mr. Antley, Counsel for Department.....	1741
Cross Rebuttal by Ms. Geer, Counsel for CarMax East	1855
Further Rebuttal by Mr. Antley, Counsel for Department.....	1899
Transcript of Designated Portions of 30(b)(6) Deposition of Department (March 17, 2023)....	1917
Testimony of Orville Sharpe	
Direct Examination by Mr. Streisel, Counsel for CarMax East	1921

VOLUME V

Testimony of Orville Sharpe cont.	
Direct Examination by Mr. Streisel, Counsel for CarMax East cont.....	2001
Cross Examination by Mr. Antley, Counsel for Department.....	2112
Billing records of Dr. DeRamus provided in lieu of deposition testimony	2154

JOINT TRIAL EXHIBITS

Joint Exhibit 1: 2003 CarMax East Annual Report and 10-K	2165
Joint Exhibit 2: 2004 CarMax East Annual Report and 10-K	2192
Joint Exhibit 3: 2005 CarMax East Annual Report and 10-K	2211
Joint Exhibit 4: 2016 CarMax East Annual Report and 10-K	2231
Joint Exhibit 5: 2017 CarMax East Annual Report and 10-K	2353

VOLUME VI²

Joint Exhibit 6: 2018 CarMax East Annual Report and 10-K	2485
Joint Exhibit 7: E&Y Transfer Pricing Report FYE February 29, 2012	2613
Joint Exhibit 8: E&Y Transfer Pricing Report FYE February 28, 2015	2614

VOLUME VII³

Joint Exhibit 8: E&Y Transfer Pricing Report FYE February 28, 2015 cont.....	2985
Joint Exhibit 9: Form 1120 (amended) FY 2016 – Consolidated Federal Return	3089
Joint Exhibit 10: Form 1120 FY 2017 – Consolidated Federal Return	3220
Joint Exhibit 11: Form 1120 FY 2018 – Consolidated Federal Return	3351
Joint Exhibit 12: Form 1065 (amended) FY 2016 – CBS Federal Return.....	3530
Joint Exhibit 13: Form 1065 FY 2017 – CBS Federal Return.....	3565
Joint Exhibit 14: Form 1065 FY 2018 – CBS Federal Return.....	3595

² The last page for both Joint Exhibit 7 and 8 was filed under seal.

³ Joint Exhibits 9-21, 24-25, 38, 50, and portions of 26 and 30-31 were filed under seal.

Joint Exhibit 15: Form SC 1120 FY 2016 – CarMax East	3627
Joint Exhibit 16: Form SC 1120 (amended) FY 2016 – CarMax East	3637
Joint Exhibit 17: Form SC 1120 FY 2017 – CarMax East	3649
Joint Exhibit 18: Form SC 1120 FY 2018 – CarMax East	3659
Joint Exhibit 19: Form SC 1120 (amended) FY 2016 – CarMax West.....	3672
Joint Exhibit 20: Form SC 1120 FY 2017 – CarMax West.....	3684
Joint Exhibit 21: Form SC 1120 FY 2018 – CarMax West.....	3697
Joint Exhibit 22: Explanation of Audit Assessments and Adjustments.....	3709
Joint Exhibit 23: Proposed Assessment (September 4, 2019)	3710
Joint Exhibit 24: Corporate Working Papers of the Department.....	3713
Joint Exhibit 25: Apportionment Schedules	3735
Joint Exhibit 26: Report of Field Audit (September 4, 2019).....	3745
Joint Exhibit 27: Department Determination (May 14, 2021).....	3762
Joint Exhibit 28: SC Revenue Ruling 15-5.....	3775
Joint Exhibit 29: Audit Appointment Letter	3788
Joint Exhibit 30: IDR #1 Responses	3790
Joint Exhibit 31: IDR #2 Responses.....	3791
Joint Exhibit 32: CarMax East Protest (November 14, 2019)	3794
Joint Exhibit 33: CarMax Organizational Chart	3805
Joint Exhibit 34: Master Management Services Agreement.....	3806
Joint Exhibit 35: Amendments to Master Management Services Agreement	3833
Joint Exhibit 36: License Agreement.....	3846
Joint Exhibit 37: Management Fee Breakout FY 2016-18	3857

Joint Exhibit 38: 2016 Sample SC Invoices, Wire Requests, and Monthly Reconciliations	3860
Joint Exhibit 39: Legal Entity Org Chart with Associate Counts	3909
Joint Exhibit 40: CarMax East and West Initial Contributions to CBS (December 1, 2004)	3910
Joint Exhibit 41: E&Y Memo to CarMax re: Certain Federal and State Income Tax Consequences of Proposed Restructure	3914
Joint Exhibit 42: E&Y Draft Board of Directors Corporate Reorganization Presentation (April 6, 2004)	3957
Joint Exhibit 43: CarMax Memo re: Purposes of Restructuring (November 1, 2004)	3973
Joint Exhibit 44: CarMax BOD Meeting Minutes (April 6, 2004)	3977
Joint Exhibit 45: Business Purpose Notes	4021
Joint Exhibit 46: E&Y Memo to Corporate Restructuring File (February 13, 2004)	4022
Joint Exhibit 47: Audit Committee Notes and Board of Directors Corporate Reorganization Presentation (April 6, 2004)	4029
Joint Exhibit 48: Memo to E&Y File re: Restructuring (September 6, 2004)	4046
Joint Exhibit 49: List of Officers and Directors for CarMax, Inc. and various subsidiaries	4047
Joint Exhibit 50: CarMax East SC Sales by Stores	4075
Joint Exhibit 51: IRS Overpayment Letter to CarMax	4076
Joint Exhibit 52: E&Y Memo to CarMax re: Treatment of Advance Payments following Restructuring (May 31, 2005)	4078
Joint Exhibit 53: E&Y Memo to CarMax re: State Tax Challenges (November 17, 2004)	4100

VOLUME VIII⁴

Joint Exhibit 53: E&Y Memo to CarMax re: State Tax Challenges (November 17, 2004) cont.	4163
Joint Exhibit 54: E&Y Memo to CarMax re: Potential Restructuring (November 12, 2004)	4184
Joint Exhibit 55: E&Y Valuation of IP (“2004 Valuation Study”)	4227
Joint Exhibit 56: 2010 TRAC Commission Report	4273
Joint Exhibit 57: CV of Professor Richard Pomp	4322
Joint Exhibit 58: CV of Dr. Brian Cody	4357
Joint Exhibit 61: CV of Dr. David DeRamus	4363
Joint Exhibit 62: Memo (Car dealer set)	4373
Joint Exhibit 63: Memo (Back office set)	4382
Joint Exhibit 64: Memo (Real estate services set)	4488
Joint Exhibit 65: Memo (Retailer set)	4501
Joint Exhibit 66: FY16 –18 Legal P&L	4549
Joint Exhibit 67: CASS Associates	4549
Joint Exhibit 68: E&Y Supporting Documentation	4549
Joint Exhibit 69: FY16 –18 Legal Balance Sheets Summaries	4549
Joint Exhibit 70: Spreadsheet from Brian Cody's file	4549
Joint Exhibit 71: DeRamus Spreadsheet 1	4549
Joint Exhibit 72: DeRamus Spreadsheet 2	4549
Joint Exhibit 73: DeRamus Spreadsheet 3	4549
Joint Exhibit 74: DeRamus Spreadsheet 4	4549

⁴ Joint Exhibits 66, 68-71, 77, and 81-84 were filed under seal. In addition, Joint Exhibits 66-83 are electronic documents that have been provided to the Court via a thumb drive.

Joint Exhibit 75: DeRamus Spreadsheet 5	4549
Joint Exhibit 76: DeRamus Spreadsheet 6	4549
Joint Exhibit 77: DeRamus Spreadsheet 7	4549
Joint Exhibit 78: DeRamus Spreadsheet 8	4549
Joint Exhibit 79: DeRamus Spreadsheet 9	4549
Joint Exhibit 80: DeRamus Spreadsheet 10.....	4549
Joint Exhibit 81: FY 16 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 82: FY 17 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 83: FY 18 CAF v. Non-CAF Legal P&L	4549
Joint Exhibit 84: Form SC 1120 FY2016 – CarMax Auto Superstores West Coast, Inc.	4550

VOLUME IX⁵

Joint Exhibit 85: 30(b)(6) Deposition of CarMax Auto Superstores, Inc. (with exhibits) (September 22, 2022).....	4560
Testimony of Eileen Yost as 30(b)(6) Witness	
Direct Examination by Mr. Antley, Counsel for Department	4563
Cross Examination by Ms. Geer, Counsel for CarMax East	4741
Exhibit 1: Notice of 30(b)(6) Deposition ⁶	4743
Exhibit 2: Proposed Assessment (September 4, 2019)	4746
Exhibit 3: CarMax Protest	4747
Exhibit 4: CarMax Organizational Chart.....	4748
Exhibit 5: CarMax Form 10-K FY ending February 28, 2018	4749
Exhibit 6: Master Management Services Agreement	4750
Exhibit 7: License Agreement	4751
Exhibit 8: Employment Services Agreement CBS - CASS.....	4752
Exhibit 9: E&Y Transfer Pricing Analysis FY ending February 28, 2015.....	4761

⁵ Respondent’s Demonstrative Exhibits 1, 2, and 3 were filed under seal. Additionally, Respondent’s Demonstrative Exhibit 1 is an electronic document submitted to the Court via a thumb drive.

⁶ The bulk of the remaining exhibits in this deposition are duplicates of items already included in the Record on Appeal, so the placeholder for each will refer to the page where each exhibit was previously included.

Exhibit 10: E&Y memo to CarMax re: Treatment of Advance payments following restructuring (May 31, 2005)	4762
Exhibit 11: CarMax East’s Pre-Hearing Statement	4763
Exhibit 15: Department Determination.....	4764
Exhibit 16: CarMax BOD meeting minutes (April 6, 2004)	4765
Exhibit 17: Memo to Corporate Restructuring File (February 13, 2004)	4766
Exhibit 18: Business Purpose Notes	4767
Exhibit 19: Audit Committee Notes and Board of Directors Corporate Reorganization Presentation (April 6, 2004)	4768
Exhibit 20: CarMax memo re: purposes of restructuring (November 1, 2004).....	4769
Exhibit 21: FY 2017 Officers and Directors as of October 1, 2016	4770

OTHER MATERIALS OR DOCUMENTS

Letter from Court of Appeals Consolidating two Notices of Appeal (October 23, 2024).....	4771
--	------

DEMONSTRATIVE EXHIBITS

Respondent’s Demonstrative Exhibit 1	4773
Respondent’s Demonstrative Exhibit 2	4774
Respondent’s Demonstrative Exhibit 3	4871

OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 21-ALJ-17-0182-CC

CarMax Auto Superstores, Inc.,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of)
Revenue,)
)
Respondent.)
-----)

30(b)(6) DEPOSITION OF
CARMAX AUTO SUPERSTORES, INC.
EILEEN YOST

Thursday, September 22, 2022
9:24 a.m. - 2:01 p.m.

The deposition of 30(b)(6) representative EILEEN YOST, taken on behalf of the Respondent via Zoom Videoconferencing, on the 22nd day of September, 2022, before Jamie Leigh Barrs, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com
ROA_004560

APPEARANCES

Bryson M. Geer, Esquire

Nelson Mullins Riley and Scarborough, LLP
 151 Meeting Street, Suite 600
 Post Office Box 1806 (29402)
 Charleston, South Carolina 29401
 Attorney for the Petitioner

Marcus Dawson Antley, III, Esquire

South Carolina Department of Revenue
 300A Outlet Pointe Boulevard
 Columbia, South Carolina 29210
 Attorney for Respondent

INDEX

<u>MS. YOST:</u>	<u>PAGE</u>
MR. ANTLEY. EXAMINATION.	4
MS. GEER. CROSS EXAMINATION.	182
Signature.	184
Certificate	185

EXHIBITS

(Respondent's Exhibit Numbers 1 through 11 and 15 through 20 were marked prior to the deposition and introduced as follows:)

Respondent's Exhibit Number 1.	7
(Notice of 30(b)(6) Deposition; CarMax Auto Superstores, Incorporated)	
Respondent's Exhibit Number 2.	19
(Bates Numbers CarMax-514 Through CarMax-516)	
Respondent's Exhibit Number 3.	21
(Bates Numbers CarMax-526 Through CarMax-536)	
Respondent's Exhibit Number 4.	27, 66
(Bates Number CarMax-425; Organizational Chart)	
Respondent's Exhibit Number 5.	46, 144
(CarMax, Incorporated; Form 10K)	
Respondent's Exhibit Number 6.	70
(Bates Numbers CarMax-1097 Through CarMax-1123)	
Respondent's Exhibit Number 7.	87
(Bates Numbers CarMax-1086 Through CarMax-1096)	
Respondent's Exhibit Number 8.	90
(CarMax Employment Services Agreement)	
Respondent's Exhibit Number 9.	94, 118, 141



(CarMax, Incorporated Transfer Pricing Study; 2015)	
Respondent's Exhibit Number 10	148
(Bates Numbers CarMax-1699 Through CarMax-1720)	
Respondent's Exhibit Number 11	153
(CarMax Auto Superstores, Inc. Pre-Hearing Statement)	
Respondent's Exhibit Number 15	163
(Bates Numbers CarMax-537 Through CarMax-549)	
Respondent's Exhibit Number 16	167
(Bates Numbers CarMax-1868 Through CarMax-1911)	
Respondent's Exhibit Number 17	169
(Bates Numbers CarMax-1913 Through CarMax-1919)	
Respondent's Exhibit Number 18	170
(Eileen Yost Excerpt; Bates Number CarMax-1912)	
Respondent's Exhibit Number 19	172
(Bates Numbers CarMax-1920 Through CarMax-1936)	
Respondent's Exhibit Number 20	179
(Bates Numbers CarMax-1864 Through CarMax-1867)	
Respondent's Exhibit Number 21	182
(Bates Numbers CarMax-1938 Through CarMax-1965)	

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page.



1 **EILEEN YOST**, having been duly sworn, deposes and
2 testifies as follows:

3 **MS. YOST - EXAMINATION BY MR. ANTLEY:**

4 Q: Good morning, Ms. Yost.

5 A: Good morning.

6 Q: I -- my name is Trey Antley and I am an
7 Attorney with the South Carolina Department of
8 Revenue.

9 Could you please state your full name and
10 business address for the record?

11 A: It's Eileen Yost. My address is 12800 Tuckahoe
12 Creek Parkway, Richmond, Virginia 23238.

13 Q: Thank you. All right. Have you ever had your
14 deposition taken before?

15 A: I have, once.

16 Q: Okay. So do you know why we are here today?

17 A: Yes.

18 Q: Okay. All right. As you know then, I'll be
19 asking you a series of questions. Anything
20 that I say that is not clear or you do not
21 understand, please ask me to clarify it or
22 repeat it.

23 A: Uh-huh.

24 Q: Please give verbal responses to my questions so
25 the court reporter can record your answer.



1 Okay?

2 A: Okay.

3 Q: If you need a break during the questioning,
4 just let me know and we'll ---

5 A: Okay.

6 Q: We can break. And at times during the
7 deposition your attorney may object to my
8 question, please continue answering the
9 question unless she specifically tells you not
10 to answer. Okay?

11 A: Okay.

12 Q: And this is a 30(b)(6) Deposition for CarMax
13 Auto Superstores, Inc., which is different from
14 an individual deposition, so I may ask you some
15 personal questions related to your education
16 and your professional background first, but
17 this is -- the substantive portion of the
18 deposition is where the Department will seek
19 answers from CarMax Auto Superstores, Inc. and
20 not from you individually. Do you understand
21 and agree to answer questions on behalf of
22 CarMax?

23 A: Yes.

24 Q: And do you understand that CarMax has
25 designated you to answer questions on its



1 behalf today?

2 A: Yes.

3 Q: Okay. There are several CarMax company
4 entities involved in this matter, so I will
5 refer to them by their abbreviations.

6 So with CarMax Auto Superstores, Inc., I'm
7 going to refer to that as CarMax East. I will
8 refer to CarMax Auto Superstores West Coast,
9 Inc. as CarMax West. And the CarMax Business
10 Services LLC, as CBS. I will refer to CarMax,
11 Inc., and all of its subsidiaries collectively,
12 as the CarMax Group. Do you understand those
13 abbreviations?

14 A: Yes.

15 Q: Okay. If you have any kind of confusion or
16 anything at any point and you -- and you need
17 me to clarify which entity I'm talking about,
18 just let me know.

19 A: Okay. I will.

20 Q: Okay. Did your -- were you provided with
21 copies of exhibits for today's deposition?

22 A: Yes.

23 Q: Okay. Are those accessible to you now?

24 A: Yes, they are.

25 Q: Okay. Could you look at Exhibit Number 1?



1 A: Yes.

2 (Respondent's Exhibit Number 1 was introduced into
3 the record at this time.)

4 Q: Okay. Do you have it ---

5 A: So, just for the record, my screen with the
6 exhibits is to my -- well, it's to my left.
7 So, when you see me look over there, it's
8 because I'm referring to the exhibits.

9 Q: Okay. Understood. Okay. So, you have -- you
10 have Exhibit 1?

11 A: Yes.

12 Q: Okay. Have you seen that Exhibit before?

13 A: When I got it two days ago, yes.

14 Q: Okay. Are you prepared to answer any questions
15 related to those topics on behalf of CarMax?

16 A: Yes.

17 Q: Okay. Are there any topics on that list that
18 you're not prepared to answer?

19 A: No, I don't believe so.

20 Q: Okay. So I'm going to start with the -- little
21 bit of some background questions about you.

22 Could you tell me your educational
23 background?

24 A: I have a Bachelor of Science degree in
25 Accounting from Binghamton University.



1 Q: Okay.

2 A: I also have a -- a Virginia CPA License.

3 Q: Okay. And could you walk me through your
4 professional background since -- since college?

5 A: Yeah. After I graduated from college, I spent
6 three years at a small public accounting firm
7 in New York. After that, I went to Circuit
8 City and I spent ten years at Circuit City, and
9 then transitioned over to CarMax. And I've
10 spent the last 20 years at CarMax.

11 Q: And could you go through what you're positions
12 were at Circuit City and then later CarMax, and
13 -- and what -- what those positions were and
14 what your duties were in those positions?

15 A: Sure. Yeah. I started at Circuit City in 1992
16 and there, I was a tax analyst. I prepared tax
17 returns, did state audits, paid estimated tax
18 payments. So, very general corporate tax
19 staff-level duties and responsibilities.

20 Q: Okay.

21 A: After the I was the ---

22 Q: How long were you in that position?

23 A: I was there ---

24 Q: I'm sorry.

25 A: --- for about two and half years ---



1 Q: Okay.

2 A: --- in that position. After that, I was a
3 supervisor in Accounts Receivable, still in the
4 Accounting department, but in the Accounts
5 Receivable area. And there, I supervised
6 anywhere between seven and 14 associates whose
7 daily responsibilities were managing store
8 accounts receivable for Circuit City.

9 Q: Okay.

10 A: I stayed in that position for about 14 months.
11 After that, I was a Customer Service Manager at
12 Circuit City's private label credit card bank.
13 And there, I managed a team of 16 people who
14 essentially worked in the call center and took
15 inbound customer service calls from Circuit
16 City's credit card customers. I did that for
17 just under a year, maybe, 11 months or so. So,
18 that would put me around early 1997, I believe.

19 And at that point, I went back to Circuit
20 City's tax department as a manager. I stayed
21 in that role until I went to CarMax in 2002,
22 and then I transitioned from Circuit City to
23 CarMax as an Income Tax Manager in my same --
24 essentially, my same role, but built the Tax
25 Department for CarMax from about 2002 to 2005.



1 In 2005, I was promoted and took on
2 responsibility for the entire Tax Department.
3 Prior to that, I had income tax
4 responsibilities. Starting in 2005 with my
5 promotion, I took on responsibility for the
6 sales and use tax team, personal property tax,
7 real estate, so the -- all of the indirect
8 taxes. I was in that role until, I think,
9 around 2009, maybe. At that point, I was
10 promoted to Director of Tax, similar
11 responsibilities for the entire team, a little
12 bit more strategic focus. I took on some fixed
13 asset responsibilities. And then in 2011, I
14 was promoted to my current title, which is
15 Assistant Vice President of Tax, and I've been
16 in that same role since 2011.

17 Q: Okay. And what's -- what are your
18 responsibilities as the Assistant Vice
19 President of Tax?

20 A: So, I manage the entire Tax Department, all
21 income tax, so all direct and indirect tax
22 responsibilities, tax accounting, tax
23 controversy, strategic planning and direction
24 for -- for the Tax Department. And, you know,
25 leadership responsibilities within the larger



1 Accounting Department.

2 Q: So, how many employees do you supervise in --
3 in that role?

4 A: I have 17 associates on my team, plus me.

5 Q: And what are their responsibilities, how does
6 that break down between those 17?

7 A: I -- I've got -- at some point, 9 or 10, I --
8 the, you know, the numbers came move a little
9 bit, but 9 or 10 that do all of the indirect
10 tax work, so all the sales and use, personal
11 property, real estate taxes, business licenses,
12 things like that. There's various levels among
13 those associates anywhere from an hourly, more
14 support role, all the way up. I have a Senior
15 Manager that leads that team, that reports
16 directly to me. On the income tax side, you
17 know, the other 8 or 9 people -- 9 or 10
18 people, they do all of the income tax work, so
19 all of the tax accounting, all of the -- they
20 actually prepare the tax returns. They would
21 actually be the first line of associates to
22 work with the auditors that come in. They
23 record the journal entries for the tax
24 provision. And, again, saying there's various
25 levels of roles, I have an hourly associate on



1 that team, as well as the indirect team, and
2 then I have various levels of analyst, staff,
3 managers. And I have a Director that oversees
4 the Income Tax Team and she reports directly to
5 me.

6 Q: Were one of your employees the point of contact
7 with the Department of Revenue for this audit?

8 A: Yes.

9 Q: Okay. All right. Have you ever served as a
10 witness before in any court proceedings?

11 A: Yes.

12 Q: All right. How many cases have you been a
13 witness for?

14 A: Just one.

15 Q: Okay. Was that the one with the South Carolina
16 Department of Revenue?

17 A: It was.

18 Q: Okay. All right. How many depositions have
19 you had taken in the past five years?

20 A: None, in the past five years.

21 Q: Okay. With the -- so, the -- the one case that
22 you testified in was the case with the South
23 Carolina Department of Revenue, do you -- do
24 you have a good recollection of that case?

25 A: From what perspective?



1 Q: From your involve- -- your involvement. Your
2 persp- -- your involvement in that case.

3 A: Yes, my -- yes. I'm -- I'm -- yes. My
4 involvement, I'm -- I'm fairly familiar with,
5 yes.

6 Q: Okay. In -- in that case, the Department used
7 a separate accounting as an alternative
8 apportionment method, is that ---

9 A: Yes.

10 Q: --- your recollection? Okay. And in that
11 case, was it CarMax's position that separate
12 accounting was not appropriate because CarMax -
13 - the CarMax Group was a unitary business?

14 A: (No audible response.)

15 Q: Is that your recollection, or do you recall?

16 **MS. GEER:** Object to the form.

17 A: Yeah, can you ask that a different way? I
18 don't -- I don't know ---

19 Q: Sure.

20 A: --- that I understand the question the way
21 you've asked it.

22 Q: Well, do you -- do you remember CarMax's
23 position in that case, as to why the
24 Department's alternative method of -- of
25 apportionment, specifically, separate



1 accounting, was not appropriate?

2 A: My recollection, really, was more that CarMax
3 -- by following the statutory method, CarMax
4 had properly accounted for and reported all of
5 its South Carolina net income.

6 Q: Okay. Do you recall, if in that case, either
7 during your testimony or of -- any of your
8 involvement in that case, whether CarMax took
9 the position that it was a unitary business --
10 the CarMax Group?

11 A: I don't believe in that case we talked
12 specifically about the CarMax Group. I do
13 remember that there was a -- there was a
14 discussion and a -- and testimony regarding
15 whether or not CarMax West and CBS were
16 unitary.

17 Q: And what was your recollection of -- of the --
18 of CarMax's position, as to that issue?

19 A: For that specific issue, I do remember that
20 there was testimony in our case that CarMax
21 West and CBS were unitary with each other.

22 Q: Okay. What did you do, if anything, to get
23 prepared for the deposition today?

24 A: I reviewed all of the Exhibits that were
25 provided. I refreshed myself on that -- you



1 know, the particular audit year, since they
2 were several years ago. I refreshed myself on
3 the tax returns, themselves. I refreshed
4 myself on, you know, the prior work case. I
5 reread the -- the audit -- the audit report.
6 I reread our protests. I reread the Department
7 Determination. You know, I just made sure that
8 I was in a position to talk about things for
9 CarMax that, maybe, weren't part of my specific
10 daily responsibilities. Like you said at the
11 beginning, just to make sure that I could be a
12 CarMax witness and not more of a personal
13 witness.

14 Q: Okay. Did you talk to anyone other than --
15 than the Attorneys for CarMax in preparation
16 for the deposition today?

17 A: In what sense?

18 Q: In order to prepare for your depo- -- your
19 testimony today, did you -- did you speak with
20 anyone to try to gather information? You --
21 you mentioned you looked at some documents.
22 Did you ---

23 A: Uh-huh.

24 Q: Did you talk to any people?

25 A: I talked to people within CarMax. Again, just



1 to make sure I could refresh on -- on, again,
2 some of the areas that just weren't necessarily
3 part of my daily responsibilities.

4 Q: Who did you talk with at CarMax? And if ---

5 A: I talked to ---

6 Q: And if you could say their name and their role.
7 I'm sorry.

8 A: Yeah. David Smith. He is -- I think his title
9 is Vice President. It's either Assistant Vice
10 President or Vice President of Strategy, to
11 refresh on, you know, just some of our general
12 strategy. I -- I know that's not the word I'm
13 looking for. You know, strategy and business
14 processes, things like that.

15 I talked with our trea- -- Assistant
16 Treasurer, Greg Dostic (ph), just to make sure
17 I understood how our cash management -- our
18 centralized cash management worked, to make
19 sure that there had been no changes in that --
20 in any of those processes. Other than that, I
21 -- other than my team, my actual team, I don't
22 believe that I -- I really spoke with --
23 there're -- there're -- I -- I don't remember
24 speaking with anyone very specifically about
25 the case.



1 Oh, other than Internal Counsel, sorry.
2 Internal Counsel, as well.

3 Q: Okay. Do you -- did you speak with any of the
4 experts for CarMax, ex- -- outside of CarMax?

5 A: Yes. I spoke with one of our expert witnesses.

6 Q: Which expert?

7 A: Bryan Cody.

8 Q: Okay. And -- and you mentioned what you talked
9 about with David Smith and Greg Dostic (ph).
10 What did you talk about with Bryan Cody?

11 A: Mostly the transfer pricing. Just the
12 economics around the transfer pricing.

13 Q: Was that so you'd be able to speak about the
14 transfer pricing study?

15 A: Generally, yes. And to inform him about our
16 transfer pricing study and policies, and
17 transactions.

18 Q: Okay. Did you prepare any documents yourself
19 for -- in preparation for today?

20 A: Only the documents that I reviewed with my
21 Counsel.

22 Q: Okay. All right. So, getting to the issues in
23 this specific case. What is your understanding
24 of CarMax's position?

25 A: CarMax's position is that we -- that by



1 following the statutory method, that we fairly
2 reflect CarMax's business in South Carolina.

3 Q: Does CarMax have a position on whether the
4 Department's alternative apportionment method
5 is reasonable?

6 A: We don't believe that it is reasonable.

7 Q: Okay. So, you don't believe.

8 And -- and what's your understanding of
9 the Department's position?

10 A: I don't know if I fully understand the legal
11 position. I -- I think I understand the
12 auditor's position, which, basically said that,
13 you know, our actual corporate structure, in
14 her mind, dictated that we did not fairly
15 reflect our business in South Carolina and, you
16 know, that she seemed to believe that revenue
17 ruling 15-5, seemed to be all the Department
18 needed to invoke their Alternative
19 Apportionment Statute and force a combined
20 reporting assessment on CarMax.

21 Q: All right. So, I'm going to ask you to look at
22 Exhibit Number 2.

23 A: Okay.

24 Q: So do you have it? Sorry. Let me know when
25 you have it.



1 A: I have it.

2 (Respondent's Exhibit Number 2 was introduced into
3 the record at this time.)

4 Q: Okay. Have you seen that before?

5 A: I have.

6 Q: And -- and I'm assuming, you probably saw that
7 prior to two days ago, right?

8 A: I did.

9 Q: Okay. What is it?

10 A: This is the -- the proposed assessment from a
11 dollar perspective, not a quali- -- not a
12 qualitative audit report.

13 Q: Okay. What is the audit period?

14 A: The audit period is from March 1st of 2015
15 through February 28 of 2018.

16 Q: And is that based on your fiscal year?

17 A: It is. So, our fiscal year ends in February.
18 So, for me, those would be fiscal '16 through
19 '18. And you may ---

20 Q: Okay.

21 A: --- hear me refer -- if you ask me a question
22 about those years, you may hear me refer to
23 them as fiscal '16, '17, or '18.

24 Q: Okay. So, it would be when it ended, is what
25 you would con- -- okay. And when you -- if you



1 -- if any point we refer to tax years, would
2 you use that same -- that ---

3 A: I ---

4 Q: --- same language?

5 A: I can refer to it any way you want. Typically,
6 I would say the fiscal year. But, again, it's
7 easy to translate it to the tax return year if
8 that's easier.

9 Q: Okay. So, if -- but if you were referring to
10 a tax return year, we -- we'd be talking about
11 2015, 2016, and 2017?

12 A: Yes.

13 Q: Okay. I just want to make sure we're referring
14 to it the same way.

15 Okay. What was your -- were you involved
16 in that portion of the -- or, were you involved
17 in the audit?

18 A: I was only peripherally involved in the actual
19 field work part of the audit. Like I said
20 earlier, I have folks that are on my team that
21 have direct responsibility to work with the
22 auditors. My job is mainly to ensure that they
23 have the time and the resources and the
24 information to work directly with the auditors.

25 Q: Okay. Do you know if this -- that Proposed



1 Assessment is based on information provided by
2 CarMax?

3 A: Yes.

4 Q: Okay. If combined unitary reporting is
5 appropriate, do you disagree with the numbers
6 in the Proposed Assessment?

7 A: No. The numbers as they are now, I don't
8 disagree with. We had to fix some mistakes in
9 it, but once those mistakes were corrected, the
10 -- the map is correct. I'll put it that way.

11 Q: Okay. So -- so the dispute's not over whether
12 we got the math right, it's just -- we -- how
13 we should cal- -- how -- what the calculus
14 should be or -- and the equation should be,
15 right?

16 A: Correct.

17 Q: All right. Okay. Thank you.

18 Okay. If you could look at Exhibit 3, and
19 let me know when you have it.

20 A: I have it.

21 **(Respondent's Exhibit Number 3 was introduced into**
22 **the record at this time.)**

23 Q: Have you see that before?

24 A: I have.

25 Q: Okay. And what is it?



1 A: This is our Protest of that audit period.

2 Q: Okay. Does it accurately describe CarMax's
3 position in this matter?

4 A: It does.

5 Q: Okay. And does the Protest leave out any
6 arguments that CarMax is prepared to make at
7 trial?

8 **MS. GEER:** Object to the form.

9 A: Can you rephrase the question?

10 Q: Sure. Are there other arguments that are not
11 included in that Protest that CarMax plans to
12 make?

13 **MS. GEER:** Same objection.

14 A: I believe that, materially, this Protest
15 identifies the main issues, but I can't say for
16 certain that there won't be any other
17 discussions.

18 Q: But there's nothing at this point that you're
19 aware of?

20 A: I think I would have to probably refer back to
21 the Pre-Hearing Statement to -- to be
22 absolutely certain that there's -- there
23 weren't any differences between the Protest and
24 the Pre-Hearing Statement.

25 Q: Okay. Yeah. I -- I was going to ask you about



1 that in a little bit too. So, we can -- we can
2 wait until we get there.

3 A: Okay.

4 Q: Okay. So, I -- I think we -- I asked you this
5 a little bit about carm- -- when we were
6 talking about CarMax's position, but just to --
7 I want to make sure we're clear. So, does
8 CarMax's use of separate reporting fairly
9 represent the extent of it's business activity
10 in South Carolina?

11 A: I don't necessarily agree with the term
12 separate reporting. I -- I have a separate
13 filing in South Carolina, so each of my
14 taxpayers in the group with nexus to South
15 Carolina files a separate tax return. I -- I
16 don't think that's the same as separate
17 accounting.

18 Q: It's -- I'm sorry. Separate reporting, not
19 separate accounting.

20 A: Separate rep- -- I -- yeah. I -- I think of
21 those as two different things. So, if you are
22 asking, if I believe that CarMax's position is
23 that separate tax return filings is
24 appropriate, the answer is yes.

25 Q: Okay. It is appropriate to rep- -- to fairly



1 represent its business activity in South
2 Carolina? I just want to make sure.

3 A: Yes.

4 Q: Okay. What is CarMax's business activity in
5 South Carolina?

6 A: So, CarMax has retail superstores in South
7 Carolina where they sell cars, they service
8 vehicles. We recondition vehicles at -- at, at
9 least, one of the stores in South Carolina.
10 It's essentially, everything that you would
11 think of with retail operations of a car
12 dealership.

13 Q: Okay. So, it's retail operations?

14 A: Uh-huh.

15 Q: Okay.

16 A: Yes.

17 Q: Is ... And I just want to -- I want to clarify
18 this again, too.

19 With the Combined Unitary Reporting
20 Method, the method that the Department
21 employed, is it -- is that not a reasonable
22 alternative apportionment method?

23 A: I don't believe that it is.

24 Q: And -- and why do you think it is not?

25 A: There's a few reasons why. Number one, South



1 Carolina is a separate reporting -- a separate
2 filing State. Number two, when I look at the
3 business of CarMax in the State, it -- there's
4 about -- it's about three and a half percent of
5 sales that actually take place in South
6 Carolina and that, very closely, approximates
7 the apportionment factor in the CarMax East tax
8 return. And the way the Department has
9 recalculated it, it apportions almost 12
10 percent to South Carolina, which does not make
11 any sense at all based on the business. That
12 seems like a very unreasonable number when I
13 know how many -- when have three stores in the
14 State, added a fourth in the last quarter of
15 the third audit year. It's out of all
16 proportion to the business that's being done in
17 South Carolina. And then, another reason is,
18 you know, even though there are inner-company
19 transactions between the legal entities,
20 they're all supported by a third party transfer
21 pricing study that -- that identifies an arm's
22 length price, to which the inner-company
23 transactions should -- should have. And all of
24 those reasons are why I believe that the
25 standard formula clearly reflects the business



1 that's being done in South Carolina.

2 Q: Is it CarMax's position that, if -- if the
3 Department's method was of use in every state,
4 that double taxation would occur?

5 **MS. GEER:** Object to the form.

6 A: Can you -- yeah. Can you repeat the question,
7 or say it ---

8 Q: Sure.

9 A: --- differently?

10 Q: Sure. Well, I repeat it first and if that
11 doesn't make sense, then I'll -- I can try to
12 say it differently. But is it CarMax's
13 position that if -- if it's method that it --
14 sorry, the Department's method, the Combined
15 Unitary Reporting, was employed in every state
16 that double taxation would occur?

17 **MS. GEER:** Object to the form.

18 A: I think I need you to restate it. I -- I'm not
19 sure ---

20 Q: Okay.

21 A: --- I'm following what -- the question that
22 you're actually asking me.

23 Q: Sure. So, if Combined Unitary Reporting, the
24 method that the Department offers as an
25 alternative apportionment method ---



1 A: Uh-huh.

2 Q: --- if that method was used in every state,
3 would that result in double taxation?

4 **MS. GEER:** Same objection.

5 A: I -- I don't -- I don't know. I -- I honestly,
6 I haven't looked at it from that perspective,
7 so I don't know that I could answer the
8 question.

9 Q: Okay. Is there any alternative apportionment
10 method that CarMax would consider reasonable?

11 A: No, not at this point.

12 Q: Okay. If you could look at Exhibit Number 4,
13 and let me know when you have it.

14 A: I have it.

15 **(Respondent's Exhibit Number 4 was introduced into**
16 **the record at this time.)**

17 Q: Okay. Have you seen that before?

18 A: I have.

19 Q: Did CarMax prepare that document for the
20 Department or was it already prepared?

21 A: I think it was already prepared.

22 Q: Okay. Is that -- well, what is it?

23 A: It's the CarMax Corporate Organizational Chart.

24 Q: Okay. And does that represent all the CarMax
25 entities during the audit period?



1 A: I believe that it does.

2 Q: Okay. Is it an accurate representation of
3 CarMax's corporate structure for the whole
4 audit period?

5 A: I think, yes. And my qualification is, there
6 are many of these separate single-member LLCs,
7 as you can see underneath CarMax Business
8 Services, without the incorporation dates or
9 organizational dates specifically listed on
10 this org-chart, I believe that it is the
11 structure throughout the entire audit period,
12 but it is possible that one or more of those
13 single-member LLCs could have been added during
14 the audit period. But, materially, this is the
15 organizational chart of the Company.

16 Q: Just -- just so I'm -- I'm sure. The -- the
17 part that might have changed or might be
18 different, you said the single-member LLCs.
19 Could you -- could you name what those are?

20 A: So, there's several single-member LLCs that sit
21 underneath CBS.

22 Q: Uh-huh.

23 A: I can name all of them if you want me to.

24 Q: Okay.

25 A: My -- my only point was that, it is possible



1 that one of those could have been added during
2 the audit period. And I believe that your
3 question was, was this the organizational chart
4 throughout the three-year audit period. And I
5 just wanted to say that, without seeing the
6 incorporation dates or organizational dates, I
7 can't 100 percent say that this was the exact
8 chart during the entire three-year period.
9 But, other than one of those potentially
10 single-member LLCs, the rest of the
11 organizational chart was in place throughout
12 the audit period.

13 Q: Okay. And just for the record, since we'll be
14 reading this later, could you just name, at
15 least, one of the single-member LLCs, so we
16 know we're looking at the right place?

17 A: Yes. One of them is CarMax Funding Five, LLC.

18 Q: Okay. And so, it -- those are the single-
19 member LLCs that are named similarly, right?

20 A: Uh-huh.

21 Q: Just different numbers, is ---

22 A: Yes.

23 Q: --- that right?

24 A: Yes.

25 Q: Okay. Okay. Since -- since you testified for



1 CarMax in 2010 at the hearing with the
2 Department, has the structure changed, the
3 corporate structure?

4 A: No, not materially. Again, other than, maybe,
5 some of the single-member LLCs being added
6 since 2010 -- that is very likely, that since
7 2010 we may have added, along the same vein
8 that I was just describing, we may have added
9 some of those -- one or more of those single-
10 member LLCs. But other than that, no. The --
11 the chart is exactly the same as it was in
12 2010.

13 Q: Okay. Thank you.

14 A: Uh-huh.

15 Q: When was the current structure -- and, and I'm
16 -- and I know yo- -- we have the caveat of
17 those single-member LLCs, but when the was
18 current structure, the ma- -- the big, big
19 picture material structure, when was that
20 created?

21 A: That was put in place December 1st, 2004.

22 Q: Okay. And what was the prior structure? Do
23 you -- do you recall what it was?

24 A: Prior to that restructuring, I believe -- I
25 believe, the structure was -- was a little bit



1 simpler. CarMax, Inc. was still the publically
2 traded holding company. CarMax Auto
3 Superstores, Inc. and CarMax Auto Superstores
4 West Coast, Inc. sat directly below CarMax,
5 Inc. We still had Glenn Allen Insurance
6 Limited. We also had ... I'm looking at the
7 Exhibit, at -- we had CarMax of Laurel, LLC and
8 CarMax Auto Mall, LLC. Those two single-member
9 LLCs existed prior to December 1st, 2004.

10 I'm confident that some or all, at least,
11 two, I think, of the single-member LLCs that
12 currently sit below CBS existed, but probably
13 no more than two of those.

14 Q: So, was the -- I guess, the biggest difference
15 was CBS ---

16 A: Uh-huh.

17 Q: --- was -- did not exist? Is that correct?

18 A: The -- the biggest difference would be CBS,
19 that came -- that -- that -- that legal entity
20 was only created in 2004 as a part of the
21 larger restructuring.

22 Q: Okay. All right. So, I -- I wanted to walk
23 through the -- the different entities, starting
24 with CarMax, Inc.

25 Could you ---

1 A: Okay.

2 Q: --- describe that entity, where it's organized,
3 headquartered, its business purpose?

4 A: Uh-huh. Yeah. CarMax, Inc. is publicly traded
5 holding company. They're organized in Virgin-
6 -- incorporated in Virginia. It's a C-corp,
7 incorporated in Virginia. It -- it -- it's
8 only purpose is to be the parent company and
9 the public traded stock company.

10 Q: And you -- you said -- you said it organized in
11 Virginia, did you say where it was
12 headquartered?

13 A: In Virginia.

14 Q: Okay.

15 A: Yeah. And like I said, it's a C-corp, so it
16 was incorporated in Virginia.

17 Q: Yeah. I -- sorry. Okay. So, it's the parent
18 company to all of the CarMax entities?

19 A: Correct.

20 Q: Okay. So, does it own all the entities 100
21 percent -- all the CarMax entities 100 percent,
22 either directly or indirectly?

23 A: Directly or indirectly, yes.

24 Q: Okay. Who are the Officers and Directors of
25 CarMax, Inc.?



1 A: I believe that we produced ---

2 **MS. GEER:** Yeah. Actually, I just realized, Trey, I
3 have a list for you and I totally forgot to
4 send it to you. So, in our next break I'll
5 send it, and then you can ask questions on that
6 afterwards. I apologize.

7 **MR. ANTLEY:** Okay. That's fine. Thank you.

8 **MS. GEER:** Yep.

9 Q: Okay. So, CarMax, Inc., does it file a
10 consolidated Federal Income Tax Return for the
11 majority of its subsidiaries?

12 A: Yes.

13 Q: Okay. How many employees -- well, and I -- and
14 if this gets to what the document that you're
15 talking about providing -- providing me, let me
16 know. But, how many employees are in CarMax,
17 Inc.?

18 A: None.

19 Q: Okay. Does CarMax, Inc. have any -- any
20 revenue or any income?

21 A: No. No.

22 Q: Okay. So, I'm going to talk about CarMax the
23 Group. So, it -- it operates retail stores in
24 the United States, is that right?

25 A: Yes.



1 Q: Okay. And those retail stores sell used cars,
2 right?

3 A: Yes. It -- during the audit period, we did
4 have a couple of new car franchises, but the
5 majority -- the ma- -- the big majority of the
6 sales were all used vehicles.

7 Q: Okay. Does the ... Okay. I'm sorry.

8 So, how many -- and it -- I -- I believe,
9 I may have previous- -- the -- oh, yeah,
10 Exhibit -- Exhibit 5 is the 10-K, so if you
11 need to -- to reference that, feel free.

12 But, do you know how many retail stores
13 that CarMax had in the United States as of
14 February the 28th, 2018?

15 A: 188.

16 Q: 188?

17 A: Uh-huh.

18 Q: Okay. And of those, do you know how many were
19 in South Carolina?

20 A: A total ---

21 Q: I think you ---

22 A: --- of four.

23 Q: --- might have already said this.

24 A: A total of four ---

25 Q: A total of fo- ---



1 A: --- with the fourth added in the fourth quarter
2 of fiscal '18.

3 Q: Okay. All four of those, are they all owned by
4 CarMax East?

5 A: Yes.

6 Q: Okay. When you gave me that number, 188, is
7 that used car stores, or did that include some
8 -- some of those new car dealerships?

9 A: I believe that is our total number of stores,
10 so I believe it includes the new car.

11 Q: Okay.

12 A: I'm not 100 percent sure, but call it 99.9.

13 Q: Okay. How many total retail locations are
14 owned by CarMax East?

15 A: The majority of that 188. About, probably,
16 about 75 percent of them in -- during the audit
17 period, in that fiscal year.

18 Q: Okay. Yeah. And that's -- that's what I'm
19 asking is about the audit period. So, I'm --
20 thank you for clarifying.

21 How many total CarMax locations were owned
22 by CarMax West during the audit period? Is it
23 the re- -- the rest of them, the other 25
24 percent, roughly?

25 A: Yes. And it -- but, if you remember from the



1 org-chart, there's also the single-member LLC,
2 CarMax Auto Superstores California, LLC. So
3 the rest of them were owned in that group,
4 between those two legal entities.

5 Q: Okay. So, between CarMax West and -- and, you
6 said, CarMax ---

7 A: CarMax Auto ---

8 Q: --- out in California?

9 A: --- Superstores California, LLC. It's a
10 single-member LLC underneath CarMax West. So,
11 when I ---

12 Q: Okay.

13 A: --- talk about CarMax West, I typically talk
14 about those two legal entities together as
15 CarMax West.

16 Q: Okay. Well -- and that's -- that's how I was
17 also referring to them, as well, so. I'm --
18 I'm glad we're on the same page.

19 Okay. In -- in what states does CarMax
20 East file state income for franchise or gross
21 receipts tax returns?

22 A: Almost all of them. So, of the CarMax East
23 states ... I mean, there's a -- there's a few
24 states in CarMax East that we don't have
25 stores. I mean, I -- do you want me to name



1 all of the states, or ---

2 Q: If -- if it's easier ---

3 A: I think I -- (technical audio interference) ---

4 Q: --- you can say ---

5 A: --- you can re-ask me the question.

6 Q: Yeah. If it's easier to, I'm -- I'm glad for
7 you to say, in every state except for these
8 three, and you -- and you tell me what those
9 three are. If it's -- if it's that big of a
10 number.

11 A: Okay. So, of the -- of the CarMax Auto
12 Superstores, Inc. states, where they're
13 qualified to do business, they do not file
14 returns in Vermont, West Virginia, Arkansas ...
15 I believe during the audit period, those are
16 the -- those are the States where we do not
17 have stores.

18 Q: Okay. Does CarMax East own stores located in
19 unitary states?

20 A: Yes.

21 Q: And which states are those?

22 A: We filed in like 20 unitary states, so. Gosh,
23 off -- off the top of my head, Maine, New
24 Hampshire, Massachusetts, New York, Illinois,
25 Kansas, Nebraska. Again, I -- I wasn't



1 prepared to name all the states, so that is --
2 that is from my memory of what states are
3 unitary that are CarMax East Coast states. I
4 -- I can't say ---

5 Q: That's fine. And ---

6 A: --- it's a -- it's a -- a com- -- a complete
7 list.

8 Q: That's fine. And if you have -- if you have
9 any kind of documentation that would show that,
10 too, then -- then I'm fine with -- would you
11 have any documentation that would show which
12 states?

13 A: I -- I'm sure I do somewhere. Yes.

14 Q: Is that something you'd be able to provide?
15 And -- and of course, consulting with your
16 Attorney, the Attorney for CarMax.

17 **MS. GEER:** Yeah. I apologize. I was trying to get
18 this list to you. What -- what document do you
19 need?

20 **MR. ANTLEY:** I'm -- I'm interested in the states
21 where CarMax East own -- they -- sorry, the
22 unitary states that CarMax East owns stores in.

23 **MS. GEER:** All right.

24 **MR. ANTLEY:** And then my next question ---

25 **MS. GEER:** So, the 20 states that she started ---



1 **MR. ANTLEY:** Yeah.

2 **MS. GEER:** --- to list off, you just want the rest
3 of the list?

4 **MR. ANTLEY:** Yeah, that's right.

5 **MS. GEER:** Okay. Yep. Got it.

6 **MR. ANTLEY:** Thanks.

7 Q: And -- and my next question is going to be
8 about CarMax West, and I wanted to see if there
9 were any separate entity states that it owns
10 stores in. And if -- so, if it -- we might go
11 down that same -- that same route. But -- that
12 -- that's -- so, I'll go ahead and ask that
13 question. Does CarMax West own any stores
14 located in separate entity states?

15 A: No, I don't believe so.

16 Q: Okay. Well, that's simple. Okay.

17 **MS. GEER:** We can confirm that, Trey, just to make
18 sure. And if there are any, we'll get you the
19 name.

20 **MR. ANTLEY:** Okay.

21 Q: In what states -- and this may be a long list,
22 too, so feel free to let me know if -- and --
23 if -- if you have that documentation, that's
24 fine. But, in what states does CarMax West
25 file state income, franchise or gross receipts



1 tax returns?

2 A: Yeah, that's a long list of states. So, I can
3 -- I -- I will answer to the best I can, and
4 then we can provide a list just to be sure that
5 I've caught all of them. And, I'm sorry, can
6 you repeat the question? Do you want to know
7 all filings or just state corporate income tax
8 filings?

9 Q: Store -- state corporate income, franchise or
10 gross -- gross receipt tax returns. And, when
11 I asked you earlier about CarMax East, I think
12 you said that they file in almost all, so is --
13 is that -- is -- you're telling me there's a
14 lot for CarMax -- CarMax West, as well? Is it
15 almost all, as well?

16 A: No. I don't believe it's going to be as
17 extensive of a list as CarMax East.

18 Q: Okay.

19 A: So, CarMax West would file either a corporate
20 income or franchise or gross receipts tax
21 return in, Washington State, Oregon,
22 California, Idaho, Utah, Colorado -- you're
23 really testing me on my geography, Arizona, New
24 Mexico, Virginia, I believe, Georgia. That's
25 the extent that I'm pretty confident in. I do



1 think that there's more, so I think providing
2 a list to include any other than the ones that
3 I've just mentioned would be the best thing.
4 And I also remember ---

5 Q: Okay.

6 A: --- we filed unitary in Texas as well, so. A
7 list is probably the best follow-up.

8 Q: Did -- CarMax West files in Texas, is that what
9 you're saying?

10 A: Car- -- CarMax East files a combined --
11 (technical audio interference) -- in Texas.

12 Q: Okay. And do you know what percentage of
13 CarMax Group's -- their -- their receipts come
14 from interest?

15 A: I'm sorry. Can you repeat the question?

16 Q: Yeah. That might -- and that might be too
17 specific of a -- of a question, so that's fine.

18 But I'm -- I'm trying to figure out, what
19 amount of CarMax, the Group's, receipts are
20 from interest, as opposed to the sale of autos?

21 A: I honestly -- I honestly, don't know.

22 Q: Okay.

23 A: And -- and by interest, do you mean, like
24 interest income from bank accounts, or -- what
25 do you mean by interest? Do you mean ---



1 Q: So -- okay.

2 A: No, go ahead.

3 Q: So, of -- what -- I'm trying to -- so, thinking
4 of CarMax's receipts, do they get any receipts
5 other than from the sale of autos?

6 A: Yes.

7 Q: Okay. Is -- is some of that from, I guess,
8 through their financing company?

9 A: Yes.

10 Q: And would that include interest?

11 A: Yes. Interest ---

12 Q: Is that what the receipt ---

13 A: --- finance charges.

14 Q: --- would be?

15 A: Yes. Yes.

16 Q: Yeah. Okay. So, that -- that's what I was
17 trying to figure out. How does that compare to
18 -- to their -- their sales of autos, that --
19 those receipts? And -- and if -- and if you
20 don't know that percentage, that's fine. I ---

21 A: It's a much smaller percentage. I can't tell
22 you ---

23 Q: Okay.

24 A: --- exactly what the numbers are, but it's a
25 much smaller percentage than the sale of



1 automobiles.

2 Q: Okay. Is -- is there any other source of --
3 any -- any other receipts that CarMax has,
4 other than the sale of auto or receipts from
5 that -- that financing?

6 A: Yeah. There's a -- there's a couple of much
7 smaller revenue streams; sales of extended
8 purchase protection products, sales of new
9 cars, depending on how you want to classify
10 those, service sales, you know, oil changes,
11 brake work. And then, they also get receipts
12 from originations of third party finance
13 providers.

14 Q: Uh-huh. Okay. Okay. And so, now, go ahead,
15 just talk about the typical CarMax retail
16 store. And I have -- I have been to one, but
17 for the record, I -- I'd you to describe one.

18 What is the typical layout for a CarMax
19 retail store?

20 A: Typical layout, in terms of what the store
21 itself looks like?

22 Q: Yes.

23 A: So, we've got a few different footprints of
24 stores. Some stores are bigger than others
25 depending on if they do the reconditioning of



1 the cars. But a typical dealership would look
2 like -- it would have a sales -- a sales area.
3 It would have a front lot with the cars that
4 are available for sale in inventory. They
5 would have a back lot of cars that may be in
6 inventory, but not ready for sale to a
7 customer. Stores would typically have a
8 service area, they would vary in size based on
9 either the size of the store or the level of
10 service work that is expected to be done at
11 that store. They probably have a car wash,
12 detailing area.

13 Q: So, you -- you said that the main deviations
14 between store -- or variations between stores,
15 would be just in size, is that correct? And --
16 and then, well -- I don't wanna asked you two
17 questions at once.

18 So, one of the main variations would be
19 size, is that correct?

20 A: Yes.

21 Q: Okay. And another -- what would help determine
22 the size or even make it -- cause a -- a
23 different layout, is if the store does
24 reconditioning?

25 A: That's one reason ---



1 Q: Okay.

2 A: --- it might be different, yes.

3 Q: Okay. Are the stores in South Carolina stores
4 that do reconditioning?

5 A: I believe one of them does reconditioning.

6 Q: Okay. Do you -- and feel free to refer to the
7 -- the 10K, but do you know how many cars make
8 up CarMax's nationwide inventory as of February
9 28th, 2018?

10 A: I'll have to look at the exhibit (reviews
11 documents). And honestly, it -- it might take
12 me a minute to actually find it.

13 Q: That's fine. And I -- and I should've -- I'm
14 sorry, I don't have a page to point you to.

15 A: Well, I'm doing a search.

16 **COURT REPORTER:** Mr. Antley, I did not receive the
17 exhibits. Could you just tell me which one
18 you're referring to?

19 **MR. ANTLEY:** Sure. This is Exhibit 5.

20 **COURT REPORTER:** Okay. Thank you.

21 **MR. ANTLEY:** You're welcome. And I'm sorry. I
22 didn't realize -- I was thinking we would be in
23 the same -- same room until -- until yesterday.

24 **COURT REPORTER:** That's okay. Y'all can just e-mail
25 them to me whenever we're finished.



1 **MR. ANTLEY:** Okay.

2 **(Respondent's Exhibit Number 5 was introduced into**
3 **the record at this time.)**

4 A: According to the 10K, we have approximately
5 70,000 vehicles in inventory at February 28th,
6 2018.

7 Q: Okay. And -- and will CarMax transfer
8 virtually any used vehicle in its inventory to
9 a local store?

10 A: Yes. At a customer's request. Yes.

11 Q: Is there any material difference between the
12 vehicles offered in CarMax's retail stores --
13 I guess, with the exception of the new car
14 dealers? Are you saying ---

15 A: Can you ask me that a little bit more
16 specifically?

17 Q: Sure. Sure. So, in the used car retail
18 locations, are there any -- are there cars
19 different that are offered? I mean, I
20 understand that they'd be -- it's not going to
21 be the identical car, but are they generally
22 the same kinds of cars?

23 A: Generally. I mean ...

24 Q: For example, there's not a store that sells
25 just 18-wheelers or big rigs. They're --



1 they're all just general ---

2 A: None of them sell big rigs.

3 Q: Okay.

4 A: But ---

5 Q: So, there could -- it could -- normal com- --

6 consumer vehicles, is that correct?

7 A: Correct.

8 Q: Okay. Are they within a certain age range?

9 A: Generally.

10 Q: Is there -- will CarMax sell -- is there a

11 cutoff age of a car that CarMax will sale?

12 A: I don't believe that there's a hard and fast

13 rule, but usually, we try to look at zero to

14 10-year vehicles.

15 Q: Okay. Does CarMax sell any vehicles online?

16 A: Not during the audit period.

17 Q: Okay. Did CarMax have their website available

18 during the audit period?

19 A: Yes.

20 Q: And what -- during the audit period, what did

21 that website allow a customer to do?

22 A: Look at cars.

23 Q: Okay. But not purchase them?

24 A: Correct. Not purchase them.

25 Q: Okay. All right. So, I want to talk a little



1 bit about car -- or ask about CarMax Business
2 Services, LLC. And I'm going to refer to that
3 as CBS.

4 A: Yes.

5 Q: So which entity, or entities, own CBS?

6 A: So, CarMax East and CarMax West are members of
7 the multi-member LLC.

8 Q: Okay. So, is that a -- is there a partnership
9 or is it just a -- it's just an LLC?

10 A: It's formed as an LLC, taxed as a partnership.

11 Q: Okay. What are the percentages of -- of
12 ownership between CarMax West and CarMax East?

13 A: CarMax West owns 93 and a half percent of CBS.
14 CarMax East owns six and a half percent of CBS.

15 Q: Okay. And what were those percentages based
16 on?

17 A: Based on their contributions to the LLC.

18 Q: Okay. And what did they contribute?

19 A: Generally, CarMax West contributed intangible
20 property. CarMax East contributed the
21 corporate management functions, the finance
22 business, and some other relatively minor fixed
23 assets and people.

24 Q: Are the retail stores part of the
25 contributions?



1 A: No.

2 Q: Okay. And how were those contributions valued?
3 Or, how was a value set to those contributions?

4 A: We hired a third party firm to do an evaluation
5 study to determine the values of each of those
6 sets of contributions.

7 Q: Okay. So not just intangibles, but also the
8 management and what -- what were the other --
9 what were the items again? The -- (technical
10 audio interference) -- value ---

11 A: The corporate management -- I'm sorry.

12 Q: --- you -- (technical audio interference) --
13 corporate management. I'm sorry.

14 A: Corporate management ---

15 Q: What were the it- ---

16 A: --- and finance business.

17 Q: Okay. Who or what entity made the decision of
18 what assets to put in CarMax East and CarMax
19 West, initially? For example, the -- the man-
20 -- the corporate management and finance and --
21 in CarMax East, who had control or who decided?
22 And then, the same for the intangibles and
23 other assets contributed by CarMax West.

24 Did that make sense or would you like to
25 me rephrase it?



1 A: I'd like you to rephrase it because I don't
2 understand what you're trying to ask me.

3 Q: Sure. So, how did the man- -- the corporate
4 management and finance come to be, initially,
5 in CarMax East prior to the contribution to
6 CBS?

7 A: Oh, how did they originally come to be in
8 CarMax East?

9 Q: Yes.

10 A: CarMax East, prior to the restructuring, was
11 really the -- the main legal entity. In terms
12 of the operations of the -- of the stores, they
13 had majority of the stores prior to the
14 restructuring. All of the corporate employees
15 -- all of the corporate management employees
16 and functions resided in CarMax East. Also,
17 the -- the finance operations line of business
18 was inside CarMax East.

19 Q: Okay. So, was -- did the CarMax East ever hold
20 the intangibles?

21 A: No.

22 Q: So ... Okay.

23 So, why were the intangibles in CarMax
24 West, or why were they -- why were they in that
25 entity?



1 A: That's where they were originally put when the
2 st- -- when the -- when that particular
3 structure was set up by Circuit City.

4 Q: Okay. So, it was -- it -- so, I guess, that
5 gets back to my question.

6 So, Circuit City, the predecessor to -- to
7 CarMax is what divided these assets between
8 CarMax East and CarMax West?

9 A: Yes.

10 Q: Okay. So, CarMax West has 95 percent of the --
11 of CBS. Is -- is that -- is it fair to say
12 that the intangibles were valued higher than
13 the assets contributed by CarMax East?

14 A: Yes. They own 93.5 percent.

15 Q: Uh-huh. So, the in- ---

16 A: And ---

17 Q: But the intangibles that were held by CarMax
18 West were valued higher than the corporate
19 management finance held by CarMax East?

20 A: Yes.

21 Q: Okay. And when you said intangibles, what
22 would -- what would that include ---

23 A: I may need the ---

24 Q: --- that were held by -- initially, by CarMax
25 West?



1 A: The -- the intellectual property, trademarks
2 and trade names, mostly.

3 Q: Were you able -- did you see the -- I guess,
4 the evaluation that was conducted by that third
5 party as -- as to the intellectual property?

6 A: Yeah.

7 Q: So, what is it that creates the value for the
8 intellectual property?

9 A: Honestly, I did not prepare to answer questions
10 about that initial evaluation. So, I am not --
11 I'm not prepared to answer any of those
12 specific questions related to the methodology
13 or value, or any of that.

14 Q: Okay. Do you recall talking about the
15 evaluation of intellectual property in the --
16 in the earlier hearing with the Department of
17 Revenue?

18 A: I do not believe that that came up. I believe
19 that that was just generally accepted by the
20 Department as fact, because I don't believe it
21 came up other than in a factual way to talk
22 about how the partnership was created.

23 Q: Okay. Do you recall any discussion in the
24 prior case about the sales of the retail stores
25 impacting the value of the intellectual



1 property?

2 A: I do.

3 Q: And in what way does it impact the value of
4 intellectual property?

5 A: So, from my perspective, and I -- I don't -- I
6 can't say whether this is an economically
7 feasible way to think about it, but from my
8 perspective, it seems as though, you know, as
9 the -- as the CarMax business becomes more
10 well-known, and -- whether that's through
11 selling more cars or whatever the case may be,
12 it seems to me that the intellectual property
13 could become more valuable.

14 Q: Okay. I can't recall -- I remember we talked
15 about -- that CBS was created later, but did
16 you say exactly the date when it was created?
17 And if you did, would you repeat it?

18 A: So, the -- the restructure took place on
19 December 1st, 2004. I believe that CBS, as a
20 legal entity, was organized in, maybe, April of
21 2004 in advance of the restructuring.

22 Q: Okay. And what was the business purpose of the
23 CBS?

24 A: Yes. CBS -- CBS was created for two very
25 specific reasons. One, was to centralize the



1 corporate management functions. And then, the
2 second reason was, to separate the finance
3 business from the retail operations in order to
4 allow for ease in compliance with the rules and
5 regulations related to each of those lines of
6 business.

7 Q: Okay. Does CBS have Officers or Directors?

8 A: They do.

9 Q: Who -- who are their Officers and Directors?

10 A: Could we defer that question until you receive
11 the list from Bryson?

12 Q: That -- yeah, that's fine. And if I ask
13 another question, let -- just remind me ---

14 A: It's okay.

15 Q: --- that that list is coming.

16 Do you know how many employees are -- that
17 CBS has?

18 A: None.

19 Q: What are the sources of revenue for CBS?

20 A: Yeah. There're -- there's two -- there's two
21 sources of revenue in CBS. One is the
22 management fee, and the other is all of the --
23 the finance receipts from the finance
24 operations. So, finance income, late fees, you
25 know ---



1 Q: Okay.

2 A: --- that type of income.

3 Q: Okay. Is -- is any of that revenue from
4 outside of the CarMax Group, in other words,
5 from a third party?

6 A: No.

7 Q: Does CBS itself operate any retail stores?

8 A: No.

9 Q: Okay. And -- and you said before that CBS
10 actually owns the -- the trademarks and -- or
11 the intangibles?

12 A: Uh-huh. Yes.

13 Q: CarMax ---

14 A: Yes, they own all the IP.

15 Q: Does it receive royalties for the use of IP?

16 A: As part of the management fee, yes.

17 Q: And it doesn't license that IP outside of the
18 CarMax Group, right?

19 A: Right.

20 Q: Okay. What functions or responsibilities does
21 CB- -- does CBS perform for the CarMax Group?

22 A: They perform all the corporate management
23 services, and they operate the finance
24 operation business.

25 Q: Does CBS rely on any third party for any kind



1 of business function?

2 A: Yes. Yeah. They have contracts with
3 consultants, vendors, anything that they need
4 to carry out their function.

5 Q: Do they have third parties with -- who provide
6 finances or corporate management services?

7 A: Are you asking me if CBS has any other vendor
8 who ---

9 Q: Yeah.

10 A: --- provides them corporate management? No.

11 Q: Uh-huh. So, they -- they're -- the buck stops
12 with them, right? Okay.

13 A: (Nods head.) Yes.

14 Q: So, do you know how many -- well, does CBS --
15 I think you said, they do not have any
16 employees.

17 A: They do not have any, they lease their
18 employees.

19 Q: Okay. I think -- I think I'll get to some more
20 questions about that when we get to the -- look
21 at that agreement.

22 Of the leased employees, do you know about
23 how many provide corporate -- corporate
24 management services versus finance services?

25 A: No. I -- no, I don't know exactly.



1 Q: Okay. Do you -- okay. Does -- does CarMax
2 East -- I'm sorry, the -- that we're talking --
3 we were talking about CBS, but let's shift now
4 to CarMax East.

5 Do you know if they own any -- any
6 trademarks or intangibles, any IP on their own?

7 A: I don't think that they do.

8 Q: That they do not?

9 A: I -- I don't believe that CarMax East owns any
10 IP.

11 Q: Okay. Okay. So, now we- -- we'll shift to
12 CarMax East now, so. Okay. That -- CarMax
13 East is tha- -- which CarMax entity owns that?

14 A: CarMax, Inc. owns CarMax East.

15 Q: Okay. Wh- -- so, why did CarMax structure
16 itself in that way, where CarMax, Inc. owns
17 CarMax East?

18 A: I don't -- I don't -- I don't know.

19 Q: Okay.

20 A: Because CarMax, Inc. is the publically traded
21 holding company, so that's the only reason I
22 could -- I could think of.

23 Q: Okay. Who are the Officers and Directors of
24 CarMax East?

25 A: If we could defer that question to providing



1 the list, I would appreciate that.

2 Q: That will be fine. And what's the business
3 purpose of CarMax East?

4 A: To own and operate the vehicle location -- the
5 vehicle sales locations.

6 Q: When you say the vehicle sales locations,
7 you're -- not all of the ones for the entire
8 CarMax Group, right?

9 A: Right. The ones that they own.

10 Q: Okay.

11 A: Yeah.

12 Q: And I think earlier we were just talking about
13 filing. So, where -- where different filings
14 are made. So, I'm just going to ask about
15 those stores.

16 Do you -- do you know how many states
17 CarMax East operates its retail stores in?

18 A: I'm going to guess around 30 or so, during the
19 audit period.

20 Q: Oka. And would you be able to name them or
21 would that be too many?

22 A: It's a geography test.

23 Q: (Laughter.)

24 A: I could certainly try, if -- if you want me to
25 name the states.



1 Q: And if it's easier, if you have a -- if there's
2 a list of -- that shows -- or some kind of
3 diagram that shows where CarMax East versus
4 West, where they hold those retail stores, I --
5 I'm fine with that, if that could be more
6 efficient. Do you know if such a document
7 exists?

8 A: I could look at a map of the United States and
9 tell you where to draw the line.

10 Q: Is -- is that -- is it that simple? You just
11 draw a line between the United States?

12 A: Well, it's only that simple because that's the
13 outcome or that's the result, but -- but, yeah.
14 It -- it's all of the states starting with the
15 Dakotas down to Texas and East.

16 Q: Okay. So, let me make sure I -- I get this.

17 So, from -- so, the Dakotas are -- it --
18 is that part of the finance ---

19 A: Are the western most states of Carmax East?

20 Q: Of CarMax East? Okay.

21 A: So, if -- if my geography holds, it's the
22 Dakotas and then, maybe, Nebraska, Kansas,
23 Oklahoma, Texas.

24 Q: Okay.

25 A: And then, everything East -- including those,



1 and everything East.

2 Q: Okay. And so, everything West of the Dakotas
3 would be part of those retails stores would be
4 under CarMax West?

5 A: Yes. If we have stores in the states West of
6 that imaginary line ---

7 Q: Okay.

8 A: --- those stores would be owned by CarMax West.

9 Q: I'm just going to look back at my notes and
10 make sure I -- if -- did we talk about which
11 states -- 'cause it sounds like CarMax has
12 stores in most states. Did we talk about --
13 well, actually, we just talked about filing,
14 so.

15 Do you know which states CarMax does not
16 operate retail stores? And I'm talking about
17 either West, East, the CarMax Group as a ---

18 A: Yeah.

19 Q: --- a whole.

20 A: So, during the audit period, I believe we do
21 not have stores in Vermont, West Virginia,
22 D.C., Arkansas, Montana, North Dakota and South
23 Dakota.

24 Q: So when you were talking about it earlier,
25 there are currently stores in North -- in the



1 Dakotas?

2 A: There are not.

3 Q: Or you do not think there are?

4 A: I probably omitted ---

5 Q: Okay.

6 A: --- them when I was listing the states where we
7 do not have a filing requirement. We do not
8 currently have states in either North or South
9 Dakota.

10 Q: You do not currently have stores in those two
11 states?

12 A: Correct.

13 Q: Okay. I apologize, if I asked this. I know we
14 were talking about a little bit of -- different
15 filings, but does CarMax East file a combined
16 unitary report in any state?

17 A: Yes.

18 Q: Okay. And those would've been the states when
19 we talked about the unitary states, earlier?

20 A: Yes.

21 Q: Okay. Are there any material differences
22 between CarMax East and CarMax West, their
23 stores? Like, the layout, how -- how they
24 operate?

25 A: No, not from that perspective. No. Again,



1 there may be different sizes of stores
2 throughout, whether it's CarMax -- CarMax East
3 or CarMax West, but generally, they would
4 operate in a similar fashion.

5 Q: Okay. Okay. How many employees does CarMax
6 East have?

7 A: During the audit -- at the end of the audit
8 period, I believe they had about 16,500.

9 Q: Okay. And where are they located?

10 A: In all of the states I mentioned.

11 Q: So every states that they have a retail
12 location, is that right?

13 A: Yes.

14 Q: And not any -- that they do not? It would --
15 well, I guess, they would only be located in
16 the retail locations, is that accurate?

17 A: CarMax East associates would work inside the
18 stores.

19 Q: Okay.

20 A: Yes.

21 Q: Which CarMax entity pays the salaries for those
22 employees?

23 A: Do you want me to -- I'm sorry. Ask -- ask me
24 ---

25 Q: Which -- so, for the CarMax East employees that



1 we were just talking, those 16,500, is there a
2 different entity or -- that pays their
3 salaries?

4 A: No, that is Employer. CarMax Auto Superstores,
5 Inc. is the Employer.

6 Q: Okay. All right. So, does CarMax East rely on
7 any related entities for certain business
8 functions?

9 A: The -- yeah, they have contractual --
10 contractual reliance, if you want to use the
11 word reliance, they have contracts in place to
12 receive or provide services between the
13 entities, mostly receive.

14 Q: Okay. And what are those entities? Is that --
15 is that the CBS or is there another entity?

16 A: Yeah, basically CBS. They receive ---

17 Q: Okay.

18 A: --- the corporate management services from CBS
19 and the -- the customers receive the financing
20 service services.

21 Q: Okay. Does CarMax East rely on any third
22 parties , anyone outside the CarMax Group for
23 those services?

24 A: For the corporate management services?

25 Q: And the financing, those two.



1 A: Financing, yes.

2 Q: Okay. But not for corporate -- the corporate
3 management services?

4 A: No.

5 Q: And just so we're clear, when we're talking
6 about corporate management services, are we
7 talking about -- I mean, just with some general
8 management and administrative support services?

9 A: Yes.

10 Q: Is that -- management IT services?

11 A: Yes.

12 Q: Human resources?

13 A: Yes.

14 Q: Well, finance and accounting services, not at
15 the customer level, but internally for the --
16 for the business?

17 A: Yes.

18 Q: Real estate services?

19 A: Yes.

20 Q: Advertising?

21 A: Yes.

22 Q: And analytical and business development?

23 A: Yes.

24 Q: And in -- for the employees themselves, where
25 did -- where -- which entity was it you were



1 talking about leases employees?

2 A: So, CBS leases its employees.

3 Q: Okay. Not -- not CarMax East, they don't lease
4 any employ- -- lease any employees?

5 A: No.

6 Q: Okay. Does CarMax -- or, what are the sources
7 of -- of revenue for CarMax East?

8 A: So, it's mainly the things that we talked
9 about. So, the retail sales from customers --
10 retail sales to customers, wholesale vehicle
11 sales, and then some of the other ancillary
12 extended protection policies, third party
13 finance fees, service income and new car sales,
14 depending on where you want to put those,
15 either in the retail sales or in the other
16 ancillary.

17 Q: Okay. Okay. I'm going to move to CarMax West.

18 A: Okay.

19 Q: So, which entity owns CarMax Auto Superstore
20 West Coast, Inc., which I'll refer to as CarMax
21 -- CarMax West?

22 A: CarMax Auto Superstores, Inc.

23 Q: Okay.

24 A: I believe. Actually, can I go back and look at
25 the Exhibit, what the org-chart?



1 Q: Of course. Of course, please.

2 **(Respondent's Exhibit Number 4 was referenced at this**
3 **time.)**

4 A: Yes. CarMax Auto Superstores, Inc. owns 100
5 percent of CarMax Auto Superstores West Coast,
6 Inc.

7 Q: Okay. Do you know why CarMax structures the
8 ownership of CarMax West in that way?

9 A: I, honestly, don't remember. But it -- it
10 happened at the time of the same restructure.

11 Q: So, previously -- prior to the reorganization,
12 they were not, I guess, ver- -- they were not
13 -- they were kind of vertical ownership -- they
14 were horizontal?

15 A: That's correct.

16 Q: Okay. Let me just say that in a different way,
17 so I mean -- so, it's clear. But, CarMax
18 previous -- prior to the reorganization, CarMax
19 East did not own CarMax West?

20 A: Correct.

21 Q: Okay. All right. Who are the Officers and
22 Directors of CarMax West? And if you need to
23 refer to the list, that's fine.

24 A: If we can defer to the list, I'd appreciate it.

25 Q: That's fine. And -- okay. And, what's the



1 business purpose of CarMax West?

2 A: To own and operate the retail stores within
3 that legal entity.

4 Q: How many employees does CarMax West have?

5 A: At the end of the audit period, they had about
6 6,500.

7 Q: And are they also located just in those retails
8 stores?

9 A: Yes.

10 Q: Is CarMax West the entity that pays the --
11 their salaries?

12 A: Either CarMax West or CarMax Auto Superstores
13 California, LLC, they are both legal employers.

14 Q: I got you. Do you know why CarMax California
15 is a separate entity from CarMax West?

16 A: It was all for legal liability protection
17 issues.

18 Q: Okay.

19 A: To segregate the -- the liabilities of those
20 particular stores in California.

21 Q: So, it wasn't tax related?

22 A: No.

23 Q: Okay. All right. And -- and all the CarMax
24 West stores are basically following that
25 similar layout with the caveats, you said. And



1 it may be some are -- are bigger and some might
2 have a reconditioning section, but a CarMax
3 stores looks like a CarMax store regardless of
4 where it's located?

5 A: Generally, yes.

6 Q: Okay. And does CarMax West rely on any related
7 entities for certain business functions?

8 A: The same contractual relationships exists with
9 CarMax West and CBS as they do with CarMax East
10 and CBS?

11 Q: Okay. So they get the same services from CBS
12 that CarMax East ...

13 A: (Nods head.)

14 Q: Okay.

15 A: Yes.

16 Q: If -- if you could say that. Thank you.

17 Does CarMax West rely on any third parties
18 for those services, in addition to CBS?

19 A: The same as CarMax East does. So there would
20 be -- there could be third party -- there are
21 third party finance partners.

22 Q: Uh-huh.

23 A: They rely on wholesale dealers to buy their
24 wholesale cars. They rely on the same extended
25 protection policy companies that -- that own



1 those policies. So, essentially, the same
2 types of third party relationships as CarMax
3 East.

4 Q: Okay. And what are the sources of revenue for
5 CarMax West?

6 A: It -- it's the same as CarMax East. So retail
7 sales, wholesale sales, sales of extended
8 purchase protection policies, third party
9 finance fees, new car sale -- actually, not new
10 car sales, I apologize. There were no --
11 during the audit period, there were no new car
12 franchises with CarMax West. Service sales.
13 The same -- the same, other than new cars.

14 Q: Is -- is the same -- is -- would your answer be
15 the same, I guess, for -- if there are any
16 other sources of reven- -- if there's any
17 revenue from third parties ? I can ---

18 A: Yes. There's ---

19 Q: --- restate the question.

20 A: --- revenue from third parties .

21 Q: There are. And -- and would it be the same
22 revenue that there was for CarMax East?

23 A: Yes.

24 Q: Are there any other functions or
25 responsibilities that CarMax West has that we



1 haven't mentioned?

2 A: No.

3 Q: Okay. Okay. So, now, I'd like to start going
4 through some -- some of the documents, again.

5 So, if you could look at Exhibit 6.

6 A: Okay.

7 **(Respondent's Exhibit Number 6 was introduced into**
8 **the record at this time.)**

9 Q: Have you seen that before?

10 A: I have.

11 Q: And what is it?

12 A: It's the Master Management Services Agreement.

13 Q: Okay. Keith Browning signed it on behalf of
14 all the CarMax entities except CBS, right? And
15 feel free to scroll.

16 A: Yes, that looks like the case.

17 Q: Okay. So, he signed on behalf of CarMax East
18 and CarMax West?

19 A: He did.

20 Q: Who is Keith Browning?

21 A: At the time, he was our Executive Vice
22 President and Chief Financial Officer.

23 Q: And was he authorized to sign on behalf of
24 CarMax West and East?

25 A: Yes.



1 Q: Okay. Who is Stuart Heaton?

2 A: At the time, he was our Vice President and
3 Secretary.

4 Q: And when you say, our, do you -- what do --
5 what are you referring to?

6 A: I was referring, generally. Specifically, he
7 is CBS' Vice President and Secretary.

8 Q: Okay. And so, he -- was he authorized to sign
9 agreements on behalf of CBS?

10 A: Yes.

11 Q: The addresses for all of those entities that
12 are parties to that agreement, they're all the
13 same, right?

14 A: No. I -- the mailing address, maybe, but not
15 their physical addresses.

16 Q: What ---

17 A: Not all of them.

18 Q: So, what's the mailing address for? Is that --
19 what is that location?

20 A: (No audible response.)

21 Q: Do you recognize it?

22 A: I'm scrolling to make sure I'm looking at the
23 same thing that you are. Where -- where are
24 you seeing the address?

25 Q: I believe there's a like a -- a 4900 Cox ---



1 A: Okay. So, on Page 14 of the agreement, is that
2 where you looking at it?

3 Q: Well, I'm -- I -- I'll have to pull it up. I
4 don't have two monitors, so it -- I won't be
5 able ---

6 A: Okay.

7 Q: --- see it. If you give me one second.

8 A: So, yes. So at the time, the corporate
9 headquarters for CarMax was located at 4900 Cox
10 Road in Glen Allen, Virginia.

11 Q: Okay. I'm -- I'm just making sure I'm on the
12 same page. You said Page 14 is where you were
13 looking?

14 A: It's Page 14 of the PDF document. I don't
15 think the page numbers themselves in the
16 document are numbered.

17 Q: Okay. Okay.

18 A: It looks like it may also -- I don't see on ---

19 Q: I -- I ---

20 A: --- (technical audio interference) -- one.

21 Q: Okay. Where I was referring to, it's actually
22 -- it's basically -- well, CarMax 01104, it's
23 Page 8, and it's at -- it's a list of where
24 notices should be sent.

25 A: Oh, okay.



1 Q: Yeah.

2 A: Yeah. So, again, that is -- at the time, this
3 was the Corporate Headquarters address of CBS.

4 Q: Okay.

5 A: And -- and the other businesses, and CarMax
6 Auto Superstores, Inc.

7 Q: You said the corporate address is -- before I
8 think you mentioned mailing address. Is it the
9 mailing address or a physical address, or?

10 A: This is a physical address.

11 Q: Okay. Are those individuals all physically
12 located, I guess, Mr. Browning and Mr. Heaton,
13 are they both phys- -- were they, at the time,
14 physically located in those locations?

15 A: Yes.

16 Q: All right. Could you just give an overview of
17 what that -- what transaction this document is
18 showing, or what that agreement is for?

19 A: Yes. So, this is the agreement between CBS and
20 all of the operating entities to -- to
21 essentially provide the corporate management
22 services. So all of the services that we
23 talked about. So the general corporate,
24 administrative-type services. Some of which
25 you listed, IT, finance, accounting, HR, things



1 like that. It also covers -- I think, it
2 generally covers the licensing. And then, the
3 licensing is also covered in a separate
4 document that I think is the next exhibit. It
5 also covers the marketing, the real estate, and
6 the -- the strategic business support services
7 that are provided by CBS to the stores.

8 Q: Okay. So, I wanted to just ask about different
9 parts of it. So I think this is on Page CarMax
10 001111. It talks about day-to-day ---

11 A: Let me get there.

12 Q: Oh, I'm sorry.

13 A: Yeah, let me get there.

14 Q: All right. Yeah, let me know when you're
15 there.

16 A: Okay. I'm there.

17 Q: It -- it talks about day-to-day administrative
18 and management services, what does that mean?

19 A: I think it just means daily responsibilities of
20 oversight for the -- for the corporate
21 functions. Whether it's day-to-day accounting,
22 day-to-day HR, day-to-day communication. I
23 think it just refers to a -- very high level
24 scope of general day-to-day services that would
25 be provided by a management company.



1 Q: So, I'm -- I'm trying to think. How -- so, how
2 would that work in a -- in a store? So, if --
3 would C -- would CBS have an employee in that
4 local store, or is it someone that's located
5 outside that store who's -- I guess, how is
6 that management occurring?

7 A: So when I read this, I don't read this as day-
8 to-day management functions for the stores, I
9 read this as day-to-day management functions of
10 the larger Corporate Headquarters organization.

11 Q: Okay.

12 A: Because the day-to-day management of the
13 stores, happens at the store.

14 Q: Okay. Okay. On Page CarMax 001113 -- and let
15 me know when you're there.

16 A: I'm there.

17 Q: It says that, hum- -- it has Human Resource
18 Services and it mentions that -- provide
19 staffing and training. What -- what does that
20 mean?

21 A: So training and staffing, I would think, are
22 things like, sales operations training that
23 would be developed at CBS and then given to the
24 stores to execute out on the training.

25 Q: Uh-huh.



1 A: Staffing, I think of more higher level,
2 strategic talent management, as opposed to day-
3 to-day interviewing and hiring that would
4 happen at the stores.

5 Q: Uh-huh.

6 A: So, when I read these, I think of the -- the
7 bigger picture corporate management versus the
8 individual day-to-day store actions that would
9 be executed.

10 Q: Okay. So the staffing then, relates to
11 staffing of -- of people at CBS?

12 A: It -- it could either refer to the staffing of
13 people at CBS, or it could refer to how we
14 create staffing models for the stores. That's
15 how I read it knowing the business operations.

16 Q: Okay. So, I guess -- just to clarify. So this
17 doesn't mean that, without CBS there would be
18 no staff at a CarMax retail store, there just
19 wouldn't be the -- the higher -- well, the
20 higher level staff that are making corporate
21 management decisions?

22 A: Correct.

23 Q: Okay. If you could turn to CarMax 001115.

24 A: Okay.

25 Q: Let me know when you're there.



1 A: I'm there.

2 Q: So it says, Finance and Accounting Services and
3 one of the things it lists there is, identified
4 federal and state tax planning opportunities
5 and implement tax strategies as appropriate.
6 What does that mean?

7 A: That's my job. So, again, as a corporate --
8 and I don't -- I'm trying find the exact words
9 that you have on here, that you read from. I
10 don't see that on 1115.

11 Q: All right. Let me pull it up. I'm sorry. I
12 won't be able to see you when I ---

13 A: That's okay. I'm -- I'm looking for it, so I
14 -- so, I don't need you to ... Oh, Tax
15 Services. Okay, 1117.

16 Yeah. So, again, when you think about it,
17 these are the -- the higher level corporate tax
18 services that are provided. The stores are not
19 expected to do these things on their own,
20 they're -- they expect their -- they expect CBS
21 to do these on their behalf. So, file their
22 tax returns for them, respond to audits for
23 them, right. That's what this entails.

24 Q: So, you said this is what you do. So are you
25 -- are you part of CBS?



1 A: I -- I am one of the leased employees that
2 works on behalf of CBS, yes.

3 Q: Oh, okay. So, what -- what's an example of
4 state tax planning?

5 A: It could be anything. An example might be,
6 understanding a state's new legislation
7 regarding an apportionment factor, and making
8 sure that I understand, that my team
9 understands, what does that mean when the law
10 changes and we have to file a new way. What
11 does that -- what does that entail? How do we
12 make estimated tax payments? How do we
13 communicate that to anyone else who might need
14 to know that that's changed? And it -- it's
15 obviously in a bigger picture, not just one
16 individual state, but that's just an example of
17 what my team would do.

18 Q: Okay. So underneath that, I think there's a --
19 another -- another bullet point about advise on
20 various tax planning opportunities including,
21 financial transactions, business, operations
22 and proposals. Does that mean -- is that the
23 same that you were just mentioning or is that
24 -- is that separate?

25 A: yeah, that might be separate. When I -- when



1 I look at that, what -- a specific example that
2 I think about could be, if CarMax is looking to
3 open stores in a new state where it currently
4 doesn't have any stores. I wo- -- my --
5 someone on my team, either me or someone on my
6 team, would work with people in financial
7 planning and analysis, as an example, and say,
8 you know, here's what the -- here's what the
9 state filing requirements are in that state,
10 make sure that you're modeling correctly on
11 what that state might look like. And that
12 could be from all different state tax
13 perspectives. Indirect tax is a big component
14 of that. Whether that state has a gross
15 receipts tax, or a specific business license
16 that needs to be obtained. We would -- we
17 would consult on all of those types of things,
18 as one example.

19 Q: And you mentioned indirect taxes, is it -- do
20 you -- is there another example you could give
21 about income taxes?

22 A: On how we do various tax planning opportunities
23 like that?

24 Q: Yes.

25 A: I mean, income taxes falls into that same --



1 into that same vein. My team is responsible
2 for doing all of the effective tax rate
3 reporting, all of the tax accounting, all of the
4 -- all of the tax work that's done to report
5 through the 10K, that's what my team all does.

6 So, it could be any type of transaction or
7 -- or you know, new line of business. Like,
8 when we started selling extended warranties, my
9 team was consulted on what that meant as a new
10 business proposal, or business -- line of
11 business, some- -- something new to sell,
12 right. My team would be consulted on, if there
13 was any special or unusual tax treatment
14 associated with that, did we need do any new
15 filings as a results of that, it could -- it
16 could really be anything. It could be an
17 acquisition. It could be a disposition. It
18 could be -- when we got rid of all our new car
19 franchises, my team was involved in consulting
20 and understanding and communicating to the
21 leadership group what that looked like.

22 Q: Okay. I'm going to go now to Page -- what's --
23 what's Bates labeled as CarMax 001119.

24 A: Okay. So, Legal Services?

25 Q: Yeah. So, I will -- does CBS have attorneys



1 that are leased to it?

2 A: Yes.

3 Q: Are -- 'cause they're leased to them, too? Do
4 those attorneys represent all of the CarMax
5 entities?

6 A: Yes.

7 Q: And so, that would include CarMax East and
8 CarMax West?

9 A: They would represent CarMax East and West
10 because CarMax East and West do not have their
11 own attorneys on staff.

12 Q: Okay. Are -- they're the same attorneys that
13 represent Ea- -- like -- (technical audio
14 interference) -- that represent both, or are
15 there CarMax East attorneys and CarMax West
16 attorneys?

17 A: I don't know that for sure. There's -- there's
18 so many lawyers. I don't know ---

19 Q: Okay.

20 A: --- how their responsibilities are broken down.

21 Q: Okay. Are -- do you know if they're -- if
22 they're kept separate in any way? Like, that
23 -- the CarMax West attorneys don't talk with
24 the CarMax East, or do you ---

25 A: No. I'm sure that's not the case.



1 Q: Okay. All right. So, now, I'd like to move to
2 CarMax 001123.

3 A: Okay.

4 Q: So, this is talking about the Fee.

5 A: Uh-huh.

6 Q: It -- it says it's prepaid. So, how -- how do
7 you reconcile prepayment with actual sales?

8 A: So the prepayment is based on the budget of
9 units of cars, we call them units, of units to
10 be sold. And then, we would do a True-Up
11 afterwards to say, well, how many actual units
12 were sold versus how many budgeted units were
13 sold, and then we would true that up on the
14 next invoice.

15 Q: So, how often are the True-Ups done?

16 A: Essentially, every month.

17 Q: Okay. Monthly.

18 A: Uh-huh.

19 Q: Okay. How often is that fee adjusted?

20 A: The total fee?

21 Q: Yeah. The amount of the fee ...

22 A: Uh-huh.

23 Q: Yeah.

24 A: No. It would only be adjusted -- if it's
25 adjusted, it would only be adjusted annually.



1 Q: Okay.

2 A: Can I add to that?

3 Q: Yes. Please.

4 A: So, based on the Transfer Pricing Study, which
5 I know we haven't really talked about yet, but
6 we do those every three years. So every three
7 years, it also could be adjusted, in total.

8 Q: So, is it ever adjusted without a transfer
9 pricing study?

10 A: Yes, it could be. Not -- not always, but it
11 could be.

12 Q: Okay. All right. So -- so there's -- in
13 there, it mentions a license fee of \$120. Is
14 that a royalty paid for the intellectual
15 property?

16 A: I believe that it is. Point me to where you're
17 looking so I can be certain. Is it the third
18 paragraph?

19 Q: All right. My -- I'm going to have to pull it
20 up. So, let me ---

21 A: I'm sorry. I keep forgetting that you don't
22 have it in front of you.

23 Yes. Of -- the component of the fee is
24 for the licensing and in this particular
25 agreement, of the total \$929, \$120 represented



1 the -- the licensing fee.

2 Q: Okay. Do you know if that portion of the fee,
3 the license fee, if that's also based on
4 transfer pricing studies?

5 A: It is.

6 Q: Okay. Is that portion adjusted the same way as
7 the overall, is it sometimes -- and, if it's
8 done, it's done annually?

9 A: Yes.

10 Q: And sometimes it's done when there's not a
11 transfer pricing study?

12 A: If in total, it -- if the management fee in
13 total is adjusted, the licensed fee may or may
14 not also be adjusted.

15 Q: So, with -- with the -- with that portion of
16 that 120, it is sometime -- it's adjusted
17 without a transfer pricing study?

18 A: It could be.

19 Q: Okay. Do you have any documentation of when
20 that fee is adjusted, like, are there addendums
21 to that agreement?

22 A: Yes. Anytime the fee is adjusted, at all, an
23 addendum to the Management Services Agreement
24 is drafted and executed to -- again, it's all
25 contractual, so I'd -- I have to adjust my



1 agreement, my contract, to -- to say what the
2 fee is going to be.

3 So, yes, there would be an addendum
4 drafted and executed to identify the new fee.

5 Q: Okay. So, would you have one for the -- for
6 the entire audit period? If the -- if the fee
7 was adjusted during that audit period, would
8 there be an addendum for that whole -- that
9 whole period, I guess, which ...

10 A: Yes. If the fee were just adjusted, I would
11 have a corresponding addendum to this agreement
12 to identify the new fee.

13 Q: Okay. Does the Master Services Agreement as a
14 whole, does that accurately reflect how the --
15 the parties do business?

16 A: Yes.

17 Q: Okay. So it's -- it's, I guess, strictly
18 followed by the parties?

19 A: I would have to reread it, but yes. I'm
20 confident that it is -- it is, materially,
21 strictly followed by the parties.

22 Q: Okay. And I don't think this has been
23 mentioned at any point, but, how is procurement
24 -- who -- is there an entity that provides
25 procurement services? Does CBS ---



1 A: CBS provides non-inventory procurement
2 services.

3 Q: Okay. How are -- how is the inventory
4 procurement done?

5 A: It's ---

6 Q: When ---

7 A: --- de-centralized at each store or region.

8 Q: Okay. Got you. Okay. So, we'll move to
9 Exhibit 7.

10 **MS. GEER:** Trey.

11 **MS. ANTLEY:** Yes.

12 **MS. YOST:** Bryson?

13 **MS. GEER:** Sorry. At -- we've been going for almost
14 two years. Would you mind if we took a short
15 break, if you're maybe on ---

16 **MR. ANTLEY:** Yeah. No, no, no, that's fine. And
17 I'm -- I'm looking at about -- I'm pretty close
18 to halfway. So, this really is a good point to
19 break.

20 **MS. GEER:** Okay.

21 **MR. ANTLEY:** Would you -- how long of a break would
22 you like to take?

23 **MS. GEER:** So, you think halfway, so that would mean
24 that you have about two hours to go?

25 **MR. ANTLEY:** Yeah, that's probably about right.



1 **MS. GEER:** Yeah. I don't know. Eileen, what -- how
2 -- how are you feeling? Do you want to do like
3 a shorter break now and keep going, and then we
4 can decide if we want to take a lunch break if
5 it ...

6 **MS. YOST:** Yeah. I mean, I could use a five-minute
7 if -- if nothing else. So whatever you guys
8 want to do.

9 **MS. GEER:** Let's do 10, and then keep going. And
10 then, if we all -- you know, if anyone gets
11 hungry, we can stop.

12 **MS. YOST:** Okay, that sounds good.

13 **MR. ANTLEY:** That sounds good.

14 **(Off the record from 11:16 a.m until 11:28 a.m.)**

15 **COURT REPORTER:** All right. We're back on the
16 record.

17 Q: Okay. So, I'd like you to look at Exhibit 7.

18 A: Okay.

19 **(Respondent's Exhibit Number 7 was introduced into**
20 **the record at this time.)**

21 Q: Okay. What is this?

22 A: This is the License Agreement.

23 Q: Okay. Which CarMax entity owns the licencing
24 and trademarks for the CarMax Group?

25 A: CBS.



1 **COURT REPORTER:** I'm sorry, you guys. Ms. Yost, I
2 can't hear you that well. Are -- did you
3 change your speaker or something? Or are you
4 a little bit further away from it?

5 **MS. YOST:** I -- I did not. I can try to speak up a
6 little bit if that's helpful.

7 **COURT REPORTER:** Well, for some reason you sound a
8 lot better now, so we'll just keep going.

9 **MS. YOST:** Okay.

10 **COURT REPORTER:** Thank you.

11 **MS. YOST:** Okay.

12 Q: Okay. So, I'll just -- I'll just ask you those
13 questions one more time.

14 So, which CarMax entity owns the licensing
15 and trademarks for the CarMax Group.

16 A: CBS.

17 Q: Okay. And which CarMax entities pay for the
18 right to use -- to use that intellectual
19 property?

20 A: CarMax East, CarMax West, CarMax California,
21 and then some of the smaller single-member
22 LLCs. So, CarMax Auto Mall and CarMax of
23 Laurel, during the audit period.

24 Q: Okay. Do any third parties license the
25 intellectual property?



1 A: No.

2 Q: Okay. If you could just turn to CarMax 001087.
3 It mentions -- there's a paragraph that
4 mentions royalty-free, fully-paid up. Do you
5 -- do you know what means? And tell me if
6 you've -- once you've found it. I ...

7 A: Royalty -- royalty-three?

8 Q: Royalty-free.

9 A: Oh, royalty-free.

10 Q: Fully-paid up.

11 A: I do not know what that means.

12 Q: Okay.

13 A: It's probably ---

14 Q: Do you ---

15 A: --- a legal term.

16 Q: Okay. So, if you could go to 001091. Are --
17 are the addresses the same for CBS and CarMax
18 East?

19 A: They are.

20 Q: Okay. And is that -- those are the same
21 addresses we've seen before, is that right?

22 A: Yes.

23 Q: Okay. And that's a physical address, and --
24 that those individuals are physically located
25 at?



1 A: Correct.

2 Q: Okay. If -- we'll go ahead and move to Exhibit
3 8.

4 A: Okay.

5 **(Respondent's Exhibit Number 8 was introduced into**
6 **the record at this time.)**

7 Q: Okay. Have you seen this before?

8 A: I have.

9 Q: What is it?

10 A: This is an Employment Services Agreement.

11 Q: And could you describe the -- the transact- --
12 the transaction that that Agreement is for?

13 A: Yes. So I've mentioned prior, that CBS leases
14 it's employees and it doesn't hold employee of
15 its own. This is the Agreement by which it
16 leases its employees.

17 Q: Okay. So in this structure -- if we could use
18 you an example, what is the -- what is the
19 entity that leases you and -- first, I -- we'll
20 start there.

21 Which is -- what entity is the -- the
22 lessor? Who is the one leasing you?

23 A: CarMax Auto Superstores Services, Inc.

24 Q: Okay. And I might refer to that -- I know --
25 I -- do y'all say -- call that CASS or, what --



1 -

2 A: Yeah, CASS is fine.

3 Q: Okay. So, they're the ones that lease you, and
4 they lease you to CBS?

5 A: Correct.

6 Q: Okay. Does CASS do anything other than lease
7 employees?

8 A: No.

9 Q: Okay. So, is the fee for the services provided
10 by CASS, it -- does that include all wages,
11 salaries, payroll taxes, employee benefit and
12 administrative expenses?

13 A: Yes.

14 Q: Is the fee that CASS charges, is that based on
15 a transfer pricing study?

16 A: Yes.

17 Q: Is that fee adjusted as well?

18 A: It can be, through the transfer pricing study.

19 Q: Is it ever adjusted without a transfer pricing
20 study?

21 A: I don't believe it is, but it -- it may be
22 contractually allowed to be.

23 Q: And is this also an instance where there would
24 be an addendum that would show those
25 adjustments?



1 A: I -- I believe -- I believe so. I'd have to
2 reread the Agreement, but I believe that if the
3 fee were to change, there would be -- there
4 would be an addendum to it, because the leasing
5 fee is specifically identified in this
6 Agreement, so any changes to that fee would be
7 an addendum to the Agreement.

8 Q: Okay. So, is -- does -- does CASS lease
9 employees to any other CarMax entity?

10 A: No.

11 Q: Does CASS lease employees to any third party?

12 A: No.

13 Q: Why does it not lease employees to any other
14 entity or any third parties ?

15 A: They don't have any employees that work for any
16 other third party company.

17 Q: Okay. Do they offer leasing to third party
18 companies?

19 A: No.

20 Q: Okay. Okay. If you could go to the last page
21 of that Agreement.

22 A: Okay.

23 Q: Okay. There's not a signature, right?

24 A: There is not.

25 Q: Do you -- do you know if CarMax has a signed



1 copy?

2 A: I do not know, for sure. I would have assumed
3 that we did somewhere, but I do not know.

4 Q: Okay. It -- it looks like, 'cause it's not
5 signed, but it looks like Stuart Heaton would
6 have signed on behalf of CBS. Is -- is that --
7 is that what you see in that Agreement?

8 A: That is correct. Yes.

9 Q: Do you know -- and so, you don't know if he
10 actually signed a copy?

11 A: No. I -- I guess, I can't say for sure. I'm
12 ...

13 I can't say for sure.

14 Q: Okay. And this is the same -- same Stuart
15 Heaton we had -- we'd spoken about earlier, so
16 he has ---

17 A: Yes.

18 Q: --- the same position. And, would he als- --
19 and he would also have authority to sign on
20 behalf of CBS for this Agreement?

21 A: Yes.

22 Q: Okay. I see Keith Browning is also on there.
23 Is -- is that -- is that correct?

24 A: Yes.

25 Q: And is -- this is the Keith Browning we talked



1 about earlier?

2 A: Yes.

3 Q: Okay. And he -- would he be authorized to sign
4 on behalf of CASS?

5 A: Yes.

6 Q: Okay. Does this Agreement accurately reflect
7 the -- the transaction it describes between
8 CASS and CBS?

9 A: Yes.

10 Q: So, this -- this actually happened. It's not
11 just an agreement, but this actually how it
12 works?

13 A: Yes, this is actually how it works.

14 Q: Okay. All right. If you could move to Exhibit
15 9.

16 A: Okay.

17 **(Respondent's Exhibit Number 9 was introduced into**
18 **the record at this time.)**

19 Q: All right. Have you seen that before?

20 A: I have.

21 Q: And what is it?

22 A: This is the Transfer Pricing Study for the
23 fiscal year ended February 28th, 2015.

24 Q: Okay. Did CarMax request that Ernst and Young
25 prepare that Study?



1 A: Yes.

2 Q: Okay. And -- and, why did CarMax ask for that
3 -- that Study?

4 A: Because we need a transfer pricing study to
5 ensure that we're accurately pricing our inner-
6 company transactions.

7 Q: Did you participate or act in anyway on behalf
8 of CarMax during that initial consultation, and
9 in drafting a -- process for the Transfer
10 Pricing Study?

11 A: For this particular one? Or, which one?

12 Q: That one.

13 A: Yes.

14 Q: Okay. Did anyone else from CarMax consult with
15 Ernst and Young during the drafting process of
16 that Study?

17 A: I'm confident that others on my team also
18 participated.

19 Q: Would you have been the primary point of
20 contact?

21 A: Yes.

22 Q: Okay. How many transfer pricing studies has
23 CarMax requested since this Transfer Pricing
24 Study?

25 A: Since this one?



1 Q: Uh-huh.

2 A: I -- I believe, two.

3 Q: Okay. Were any of those during the audit
4 period?

5 A: There ... No. There were two during the audit
6 period, this is the second one during the audit
7 period.

8 Q: Okay. And I think we might have gotten into
9 this a little bit earlier, but, how often are
10 transfer pricing studies requested?

11 A: Every three years.

12 Q: Every three years. Does CarMax only work with
13 Ernst and Young for those studies?

14 A: Yes. For transfer pricing, yes, Ernst and
15 Young is our Vendor.

16 Q: Okay. Does the -- does that Transfer Pricing
17 Study that you're looking at, does that
18 describe every intercompany transaction between
19 the CarMax Group entities?

20 A: It describes the transactions between CarMax
21 Business Services and the store entities.

22 Q: Okay. Are there any transactions that it does
23 not describe between the CarMax entities?

24 A: It wouldn't describe any activity that happens
25 between the store entities or any other



1 transaction, other than the ones that CBS
2 performs. Is that your question?

3 Q: Yes. So, are there -- are there any other
4 transactions with different 482 studies?

5 A: Just the employment services.

6 Q: Okay. What is the value of vehicles purchased
7 by CarMax in each of the -- the audit years?

8 A: I don't understand your question. I'm sorry.

9 Q: Okay. So, what's the -- the value of the
10 vehicles purchased by CarMax in South Carolina
11 for each of the audit years? Is that
12 information you'd have access to if you don't
13 know it?

14 A: I honestly, don't understand what you're asking
15 me. I apologize. I -- the value of the
16 vehicles? Do you want to know like our total
17 sales?

18 Q: So, I -- I guess, your inventory. How much is
19 -- of cars, do -- is there a value that you
20 have attached to that?

21 A: Yes, there's a value. I have no idea what it
22 is in South Carolina.

23 Q: Okay. But you would, at least, be able to know
24 the -- the sales, maybe not the inventory
25 value, but you would know the sales for South



1 Carolina?

2 A: Yes. I'll be honest, I don't know that off the
3 top of my head, but I could look at a South
4 Carolina Tax Return and look at the
5 apportionment factor and tell you what the
6 sales are.

7 Q: Okay. Do you -- I understand that you don't
8 know the numbers off the top of your head, do
9 you know if the South Carolina sales changed
10 over the audit years?

11 A: I'm -- I'm sure they did.

12 Q: Do you know what would've caused the changes in
13 those sales?

14 A: The number of customers walking through the
15 doors to buy cars.

16 Q: So, that they would've -- I guess, sales
17 would've gone up, there're more purchases being
18 made, that would increase your sales? Is -- is
19 that accurate?

20 A: I want to be sure I'm answering your question.
21 You're asking, in the CarMax Store, if -- in
22 each of the CarMax Stores, or in total of the
23 four South Carolina Stores, do sales change
24 every year? Is that what you're asking me?

25 Q: Yes. Yes.



1 A: The answer is, yes.

2 Q: And what are ---

3 A: They could go up or they could go down
4 depending on the number of customers or
5 wholesale dealers that buy cars that year.

6 Q: Yeah. And -- and we're -- and we were talking
7 at -- at this point we're talking high level.
8 So, I'm -- I'm -- what I want to know is what
9 factors then, lead to those changes?

10 What makes -- what makes sales go up; what
11 makes sales go down?

12 A: At a high level, I -- I guess, I would say
13 economic conditions. The credit and financing
14 markets may affect whether customers are buying
15 cars. It could be macroeconomic pricing
16 changes.

17 Q: Is there anything unique to CarMax that would
18 affect it as opposed to other car dealers, and
19 particularly in South Carolina?

20 A: Gosh. I don't know if that's in my area of
21 expertise, but, no. I -- I can't think of
22 anything that would solely affect CarMax versus
23 any other car dealer, in terms of consumer
24 attitudes towards buying cars.

25 Q: Okay. What about competitive strengths? Are



1 there competitive strengths that the South
2 Carolina Stores, relative to other car dealers
3 in South Carolina? Do you think ---

4 A: I would have ---

5 Q: --- CarMax was ---

6 A: --- no idea.

7 Q: Okay. So, the no-haggle price isn't -- you
8 wouldn't say that's a -- a competitive
9 advantage, or?

10 A: Oh, I -- okay. I'm -- I'm sorry. I did not
11 understand that to be your question. Yeah. I
12 -- I mean, generally, I believe that no-haggle
13 pricing and the transparency with which we do
14 every part of the transaction would be a
15 competitive advantage. So from that
16 perspective, yes, that could be a reason why a
17 customer might buy a car from CarMax versus a
18 different dealership.

19 Q: Yeah. I'm -- I'm just trying to figure out how
20 CarMax is the same or different from -- from
21 its competitors, from other car dealers.

22 A: Yeah. The biggest thing I would say, is the
23 transparency with which we do every aspect of
24 our sales and purchase trade-in, financing
25 process.



1 Q: Okay. Could you describe the flow of the
2 transaction from the acquisition of a used car
3 to its sale in a South Carolina store?

4 A: Sure. I'll -- I'll approach it -- I'll
5 approach it from a perspective of, a customer
6 comes in to sell a us their car. So one form
7 of inventory acquisition, would be a customer
8 comes into the store to sell us their car, we
9 will buy pretty much any car from any customer,
10 regardless of what the car looks like, how old
11 it is, how many miles it has. What determines
12 whether or not it goes on our front lot for
13 sale -- for a retail sale to a customer, would
14 depend on the year of the car, the miles, the
15 condition, things like that. But when it's --
16 when we are purchasing it in the appraisal
17 line, we call it the appraisal lane, we don't
18 care what it looks like, we'll either
19 recondition it and put it on the front retail
20 lot for sale to a customer or we'll put it
21 through our wholesale auction and sell it to
22 another dealer.

23 So, if we purchase the car and decide to
24 put it on the retail lot, we will recondition
25 it. So, we'll give it an oil change and filter



1 change, we'll detail it, we'll buff out a
2 scratch if we feel like that's needed. We do
3 all the things to get it ready to put on the
4 front lot for sale to a customer. So once it's
5 on the front lot and available for sale, the
6 inventory will -- that car will show up on
7 CarMax.com on the website. A customer can come
8 in and test drive that car. If they are
9 interested in buying it, they can apply for
10 financing. They can buy an extended protection
11 policy on it. But we look at -- we look at all
12 of the transactions, all of the things I -- I
13 started with, like, when -- when you start with
14 selling your car in the appraisal lane,
15 purchasing the car, any extra extended
16 protection policies and the financing rate are
17 all independent of each other. They're all
18 very transparent.

19 I'll give an example. I mean, it's no-
20 haggle pricing, so the sticker that's on the
21 car is the price of the car. There's no
22 haggling involved. If the customer chooses to
23 finance, we would submit a credit application
24 to various finance companies including our own,
25 CarMax Auto Finance. I think -- I don't



1 remember if we've identified CarMax Auto
2 Finance itself, but that's the -- that's the
3 doing-business-as name of our financing
4 operations. So, we call it CAF ---

5 Q: And where's that ---

6 A: --- C-A-F.

7 Q: And where is that held?

8 A: That's inside CBS. That's the financing
9 operations. That's the one line of business in
10 CBS. So, we would send the customers credit
11 application to CAF and other third party
12 finance providers, and when the results come
13 back from any or all of those finance
14 providers, the customer gets to choose their
15 offer. There's no finance manager on site
16 who's going to negotiate the -- the interest
17 rate, the APR, based on any of the other pieces
18 of the transaction. So, the customer can look
19 at the computer screen and see how many months
20 any of the finance companies are willing to
21 finance, the rate, which then calculates out to
22 the monthly payment. So, the customer gets to
23 choose their financing from those offers. The
24 pricing of any extended purchase protection
25 policies is very direct and up-front, and the



1 customer can choose based on a certain
2 deductible, a certain mileage, whatever the
3 different characteristics are of that extended
4 purchase protection policy. And then the
5 transaction, with all of those different
6 pieces, go into the final buyer's order, for
7 the car purchase.

8 If the car is financed, there's a retail
9 installment contract associated with the sale,
10 such that, whichever financing offer the
11 customer selected, that retail installment
12 contract will be legally assigned to that
13 finance company provider. And then, the
14 customer has a loan and then subsequently makes
15 payments on their car loan.

16 Q: So, how are cars transferred from a -- a non-
17 South Carolina location to a South Carolina
18 location?

19 A: So, a customer can request a transfer, if
20 they're out on CarMax.com looking at cars and
21 they see a car in -- they see a white Camry in
22 Alabama that they want, they can request.
23 During the audit period, they would have to
24 call the store and request that that car be
25 transferred. So, a sales consultant in the



1 South Carolina store would -- would start the
2 transfer process, call the other store, tell
3 them to put it on hold, right. The car needs
4 to get on a truck to be transported to the
5 South Carolina store. And then, once the car
6 comes -- you know, gets to the South Carolina
7 store, it probably needs -- if South Carolina
8 has a specific inspection process, I don't --
9 I don't know what the process is or an
10 admissions testing, or something like that.
11 The car would have to go through all of the
12 proper South Carolina rules and regulations
13 related to the sale of the car before the car
14 become salable to the customer. And then ---

15 Q: It sales -- (technical audio interference) ---

16 A: --- (technical audio interference) -- call the
17 customer and say, you're car is here, make an
18 appointment, come in, test drive it, blah,
19 blah, blah.

20 Q: So, you said that this -- you're example of
21 this process started from the customer looking
22 at the website. Could this also happen with a
23 customer in the retail location in South
24 Carolina saying, hey, guys, I'd like a white
25 Camry?



1 A: Yes, it absolutely could.

2 Q: Okay. How is that -- how is that priced? Is
3 there a cost to the transfer?

4 A: Sometimes, yes. Sometimes, no.

5 Q: Okay. What determines whether there's a cost
6 to the customer?

7 A: Generally, it's the distance away. Most of the
8 time, if a car, depending on the size of the
9 state, if a car is transferred from another
10 location within the same state, many times it's
11 a free transfer.

12 Q: Okay. Are the -- is the price of the car, does
13 it change? If -- if you take -- if you don't
14 take into consideration the transfer fee, is
15 the price the same if it's in California or
16 it's in South Carolina?

17 A: Yes.

18 Q: Okay. If -- if -- in your example, if I go in
19 a South Carolina store and I get -- I get that
20 Alabama Camry transferred to me, are there --
21 like, are -- are the profits of that purchase
22 split between the two stores or -- or, how --
23 how does that -- how does that transaction
24 occur? It is -- how does -- financially, what
25 happens to each -- each retail location?



1 A: Financially, really, the only thing I believe
2 that happens is that -- I'm -- you know, from
3 an accounting perspective and an inventory
4 management perspective, that inventory would
5 actually move.

6 So, let's say that the value -- the
7 inventory value of that car is \$10,000, the
8 inventory management system would move the
9 value of the inventory from the Alabama store
10 to the South Carolina store. But until the
11 sale actually takes place, there's no profit
12 really involved in it. Because, again, until
13 the sale takes place, that's the transaction
14 that would cause a profit, so to speak, to be
15 earned.

16 Q: Okay. And so, once that sale -- sale does take
17 place, is all of that profit, I guess, assigned
18 to the South Carolina store, or is -- is it
19 split be--- with the Alabama store?

20 A: No. I mean, the legal sale takes place in
21 South Carolina, so South Carolina is -- is --
22 I don't know, I guess I would say credited with
23 the sale. The sale takes place in South
24 Carolina, Alabama now has nothing to do with
25 it.



1 Q: Okay. So there's no exchange of value, I
2 guess, between the South Carolina store and the
3 Alabama store for the inven- -- I guess, the
4 only exchange would be the inventory that moves
5 from Alabama to South Carolina, but there's no
6 -- that ten -- your example of 10,000, that
7 \$10,000 car, doesn't mean that \$10,000 comes
8 from that South Carolina store and then is
9 deposit into the bank account of the Alabama
10 store. Is that right?

11 A: There's no cash that changes hands to move the
12 inventory.

13 Q: So, it's just an accounting where the inventory
14 now is -- is no longer on the Alabama book,
15 it's on the South Carolina book?

16 A: I believe that's the case.

17 Q: Okay. Does -- does CarMax track it's sale of
18 inventory based on the state where -- where it
19 purchases vehicles? Is it able to -- are --
20 are you able to tell where the vehicle was
21 purchased?

22 A: Yes.

23 Q: Okay. Would you be able to tell, and I'm
24 guessing, you don't know this off the top of
25 your head, but what fraction of CarMax's sales



1 in South Carolina are from cars that were
2 actually purchased in South Carolina?

3 A: I do not know.

4 Q: But you -- you would -- but that information
5 would exist in CarMax's systems?

6 A: I would guess that it does, yes. I -- I would
7 guess that it does, we have a lot of data.

8 Q: And -- and I understanding that you don't know
9 the actual numbers, would have any kind of
10 estimate of how many of the cars, sold in South
11 Carolina, were actually purchased in South
12 Carolina?

13 A: No, I have no idea. I would -- I would assume
14 the majority, but that would just be an
15 educated guess.

16 Q: Okay. That's fair. How are prices determined
17 for a car that's being traded in or -- or sold
18 to CarMax?

19 A: So, generally, our pricing strategy is created
20 at CBS. And then, that strategy is in turn --
21 it, kind of -- handed down, given to the
22 stores. And the actual -- the -- the
23 appraisal, so remember I called it an appraisal
24 lane, so the appraisal of the car that comes in,
25 you -- most dealerships would consider it a



1 trade-in, we ca- -- we call it an appraisal.
2 So, the buyer in the store would appraise the
3 car, look at the car, look at the options, make
4 sure that it understood, you know -- does it
5 have four-wheel drive, does it have a sunroof,
6 right, things that they can fairly readily
7 determine. The pricing strategy is all done at
8 CBS. So, really, the store buyer just executes
9 out the strategy that CBS has provided to the
10 stores, mostly in terms of, you know, systems.

11 You know, if you have a white Camry, four-
12 wheel drive won't apply. A white Camry with a
13 sunroof and heated seats in this condition,
14 with this numbers of miles, and this year, this
15 is generally what you should pay -- buy, from
16 the customer. This is what you should pay to
17 buy that car.

18 Q: And that's a set number, it's not a -- it's not
19 a range, it -- that they are able to then
20 negotiate?

21 A: well, there's no negotiation on the customer's
22 side. There could be a range on the buyer's
23 side. Again, every used car is unique because
24 it's a used car. It -- it's not -- it's not a
25 commodity like a new car is where it comes in



1 with zero miles on it. So -- so, yes, I'm sure
2 that there's generally a range of what the
3 buyer would offer the customer, but the
4 customer does not get to negotiate the offer.

5 Q: And when you say buyer, that's the -- that's
6 the person at the CarMax retail location?

7 A: Yes. That's a ---

8 Q: Or ---

9 A: An associate at the store who's
10 responsibilities are to purchase cars from
11 customers in the appraisal lane or at an
12 outside auction.

13 Q: Okay. And, I guess, that strategy would be the
14 same regardless of the retail store's location,
15 or does it -- or -- correct? I mean, if it's
16 not then let me know.

17 A: The process by which a -- we would buy a car in
18 the appraisal lane?

19 Q: That -- that -- yeah. The process by which
20 it's appraised. So, if I get the exact -- if
21 it's the identical car, it's appraised in a
22 South Carolina store versus a California store,
23 that the strategy is the same. Maybe -- maybe,
24 there's some -- there's a human factor, is that
25 right, that might influence it, but -- but the



1 number should -- should be pretty close to the
2 same whether it -- regardless of the store?

3 A: You know, I -- I can't say that for sure. A
4 better example of that would be, a four-wheel
5 drive SUV in Florida versus a four-wheel drive
6 SUV in Colorado. The strategy may determine
7 that you would buy that car from a customer at
8 a different price in Florida than in Colorado.
9 The strategy ---

10 Q: Okay.

11 A: --- is what creates that differentiation.

12 Q: Got you. That makes sense.

13 So, is -- with -- with a person ... When
14 a -- when a price -- okay. So that's -- we
15 we're talking about when a ca- -- when a
16 vehicle is purchased. To determine the price
17 that a vehicle is then sold to a customer, how
18 -- how is that done? Is there a similar
19 system, or?

20 A: Yes. So, again, the pricing strategy of the
21 cars in inventory, to be sold to customers, the
22 strategy also occurs at CBS.

23 Q: Okay.

24 A: So, CBS determines the sales price of each of
25 the cars. Essentially, tells the store what



1 sticker price to put on the car and then the
2 store would then sell the car. But all the
3 strategy is occurring at CBS.

4 Q: Okay. And part of that no-haggle price is, the
5 sales person, their manager, anybody in that
6 retail store cannot change that price?

7 A: It is no-haggle.

8 Q: So that -- that price set by CBS, is it ...

9 A: Yes. Unless CBS determines that the prices
10 should change. So for ---

11 Q: I understand.

12 A: --- example, if the car has been sitting on the
13 same lot for 60 days ---

14 Q: Uh-huh.

15 A: --- we may marked down -- the store may mark
16 down the price, if directed by CBS.

17 Q: Got you. And there's not a difference between
18 pricing of a vehicle that you purchased, wether
19 or not you're trading in a vehicle, is that
20 right?

21 A: The two transactions are treated separately.
22 So, it makes no difference what the appraisal
23 of your car that you're trading in is versus
24 the sales prices of the car you're buying.
25 It's two completely separate -- it -- it's two



1 completely separate determinations of that
2 value.

3 Q: Uh-huh.

4 A: When it comes to the actual buyer's order --
5 I'll -- I'll put it in more realistic terms.

6 You bring a car into the appraisal lane
7 that you want to -- that you want to trade in.
8 The --- the appraisal value is \$5,000. The
9 store can either hand you a draft for \$5,000 or
10 the customer can say, well, I'm going to go buy
11 another car, so hang onto that draft and I'll
12 apply it against the purchase price of the car
13 I'm going to buy. So, then it's just math.
14 But the -- but the value of the -- the trade-
15 in, the appraisal, doesn't change whether the
16 person's -- the customer's gonna buy a car from
17 us or not. They can walk out of the store with
18 that \$5,000 draft and catch a ride home, and
19 not buy a car from us.

20 Q: Okay. Is the price -- and I -- I think I know
21 the answer to this, but, is the price of the
22 vehicle that's being sold to the customer, is
23 that affected at all whether the transaction's
24 financed through CarMax versus a third party?

25 A: Okay. It -- and it doesn't even matter if it's



1 even financed. You could write a check if you
2 wanted to and the prices is always the same.

3 Q: Okay. If a vehicle has to be repossessed, do
4 the South Carolina stores have any role in
5 that?

6 A: Not directly. Really, it's the finance
7 company's responsibility if there's a
8 repossession that takes place because their the
9 ones that, you know, hopefully perfected their
10 lien on the car, and it's their collateral that
11 they're trying to get back. So, the store
12 really wouldn't get involved in that.

13 Q: And when you say finance companies, could be
14 that CAFF?

15 A: Absolutely.

16 Q: Okay. Could that -- so, would that -- if it --
17 could a repossessed vehicle by CAFF be then
18 resold then in a CarMax retail location?

19 A: So, it could, but generally, only because the
20 store is doing wholesale auctions. It
21 typically, would not go back on the retail lot,
22 but it all depends on the car. Like, for
23 example, if that white Camry -- if that 2019 --
24 well, that's not the audit period, but I think
25 you get the drift of what I'm saying, right.



1 If that 2019 white Camry got repossessed within
2 the first 45 days of being sold, and nothing
3 physically happened to the car, it was damaged
4 or anything, yes, it absolutely could go back
5 out on the -- I mean, again, it would have to
6 go through the -- the legal process of
7 repossessions, which I -- I can only say very
8 high level that there is a legal process to
9 repossessions. But it would have to go
10 through, you know, being brought back through
11 the appraisal lane and -- and the whole bit.
12 It's -- it's no longer a CarMax store car,
13 inventory. So, again, it would have to jump
14 through all the hoops to be put back out on the
15 retail lot. If it was damaged in some way and
16 still came back, we would most likely just
17 wholesale it.

18 Q: So, it would be part of -- you said, it would
19 not be a CarMax store car ---

20 A: Our -- (technical audio interference) ---

21 Q: --- it would -- it would be part of CAFF, is
22 that right? It'd be CAFF's car?

23 A: It -- it technically is CAFF's car. The- --
24 there're -- there are legal procedures that I
25 know we can go through, I -- I can't detail out



1 exactly what they are, but I know that there
2 are procedures whereby, I'm going to say,
3 generally, CarMax could buy the car back.
4 Legally, I can't explain exactly what I mean by
5 that, but there are processes in place that, if
6 the car were to come back, it -- it could be
7 resold at a CarMax location, but it's -- it's
8 -- I can't stress enough that it's very legal,
9 and I -- I don't feel comfortable trying to
10 explain how it would all work.

11 Q: Okay. That's fine. I -- I'm just trying to
12 figure out the -- how separate CAFF is from the
13 stores in this process. So, it -- it sounds
14 like, the -- the cost of repossession, all of
15 that is handled by CAFF not the local retail
16 store, is that correct?

17 A: That's correct.

18 Q: And -- well, even the servicing of those loans,
19 that's handled by CAFF, not the local retail
20 store.

21 A: That's correct. Once that retail installment
22 contract is assigned, like I described before,
23 the stores are done.

24 Q: Okay.

25 A: So, once the loan is assigned to a finance



1 company, in this case we can say it's CAFF,
2 CAFF does all the servicing, the store has
3 nothing to do with the car or the loan or
4 anything else, at all.

5 Q: Okay. So, I -- I think we've talked about some
6 of this, but we're looking at -- if you could
7 look at -- on that Transfer Pricing Study, I
8 think it's -- well, let me make sure. That --
9 that's Exhibit 9. It -- where it's Bates
10 labeled 000025.

11 **(Respondent's Exhibit Number 9 was referenced at this**
12 **time.)**

13 A: Okay. Let me get there.

14 Q: Sure.

15 A: Okay. 25.

16 Q: Yeah. So, what are the -- the CarMax quality
17 certified standards?

18 A: Basically, there is a -- now, let me see if
19 it's in here before I say what it is.

20 Yeah. So -- so, they have to pass the
21 comprehensive inspection. I was going to say
22 it's a 120-point inspection. I -- I don't
23 think that -- it doesn't appear that it's that
24 detailed in this description of it, but I think
25 it's like 120, 125-point inspection that they



1 need to go through to make sure that it -- it
2 lives up to what we've called our quality
3 standards in order to be put on the front lot
4 for resale to a customer. And anytime a
5 vehicle that we purchased through the appraisal
6 lane doesn't meet those quality standards, we
7 would wholesale the vehicle.

8 Q: Okay. And that's all done at the local retail
9 store level?

10 A: Yes. All the reconditioning is done at the
11 sore.

12 Q: Okay. If you could look at -- it's 42. Bates
13 level -- label 42 of that same Exhibit. Let me
14 know when you're there.

15 A: Okay. I'm on 42.

16 Q: Okay. It mentions car auctions. It -- what
17 are those? Are those the wholesaling auctions
18 you were talking about?

19 A: Are you section of central title?

20 Q: I -- I'm sorry. Let me pull it up.

21 A: It -- it looks like it's trying to describe the
22 titling process.

23 Q: Oh, okay.

24 A: So -- so, yes. So, our titling -- our central
25 title department basically manages transferring



1 titles when cars are bought and sold. So when
2 it's -- again, when it's sold at an auction, we
3 need to make sure that we have the title in
4 order to resale it.

5 Q: But -- but they're -- the auction that you're
6 referring to, is that -- that's -- is that the
7 wholesale auction you had told me about
8 earlier?

9 A: This appears to be describing the titling
10 process when our buyers go to outside auctions
11 to purchase inventory.

12 Q: Okay. Okay.

13 A: So, if -- if you remember, I mentioned that
14 there's two ways to acquire inventory. One is
15 through our own appraisal lane.

16 Q: Uh-huh.

17 A: So, a buyer would buy a customer's car directly
18 from the customer. The other way is our buyers
19 go to outside auctions and purchase cars ---

20 Q: Okay.

21 A: --- at the auctions.

22 Q: Do you know how often CarMax would get a car
23 that doesn't have a title?

24 A: No. I have no idea. Eventually, we always get
25 the title, but at -- at the time of the



1 auction, the -- the title may or may not be at
2 the auction house.

3 Q: So, you're talking about getting a title, who
4 would bear the cost of -- of getting that
5 title, which entity?

6 A: If a CarMax entity bears the costs, as opposed
7 to the auction house, it would be the store.
8 So, either CarMax East, CarMax West, CarMax
9 California. It -- it's -- it's a store -- it's
10 a store cost.

11 Q: Okay. So -- and so, how are auctions used to
12 help -- to manage inventory?

13 A: Which auctions? The one we go to to buy cars,
14 or the ones that ---

15 Q: Yeah.

16 A: --- we use to sell cars we don't want to put on
17 our front lot?

18 Q: The ones you go to buy cars.

19 A: Okay. Sorry. Repeat the question, please.

20 Q: So, how -- how does CarMax use those auctions
21 to manage inventory?

22 A: Well, we use it to acquire inventory. I'm not
23 sure what you mean by manage inventory, but we
24 go to the auctions to acquire inventory.

25 Q: Does CarMax have a -- a goal of a certain kind



1 of car they're looking for or is it -- if it
2 fits within these basic criteria, then CarMax
3 is going to purchase it?

4 A: So, the strategy group at CBS would overall
5 management the levels of inventory at the
6 stores, how many Camrys, how many SUVs, how
7 many Jeeps, how many whatevers. And then the
8 buyers are basically sent with instructions,
9 these are the types of cars to look for. We --
10 we get -- when we got to auctions, I think we
11 get a, I call it a preview, I don't know what
12 the official terms is, we get a listing of all
13 the cars that are going to be at the auctions
14 and their conditions. So we, sort of, know
15 what's going to come through and what we should
16 be looking for. All of the strategy of that is
17 defined --created and defined at CBS and handed
18 down to the buyers that go to the actual
19 auctions.

20 Q: Are the buyers ---

21 A: We'll buy this many Camrys for this basic
22 price.

23 Q: Are the buyers connected to particular stores
24 or are they part of CBS and they go out and buy
25 and then the inventory gets distributed to the



1 different retail stores?

2 A: So, the buyers are always employees of the
3 store, they're never employees of CBS. They
4 may be buying for their individual store or
5 they may be buying for their region.

6 Q: Okay. You -- you've mentioned extended
7 warranties.

8 A: Uh-huh.

9 Q: Are those sold in the South Carolina stores?

10 A: Yes.

11 Q: And how -- how are those priced?

12 A: They're priced contractually between the CarMax
13 store and the -- and the company that owns the
14 warranty. We -- we sell a third party
15 warranty, they're not our warranty.

16 Q: Okay.

17 A: But they do have a pricing matrix. I mentioned
18 it earlier. You could look at the matrix by
19 the amount of the deductible. You want to --
20 whether you want a \$50 deductible over 60,000
21 miles or if you want a \$500 deductible over
22 30,000 or 80,000 miles. So, there's a pricing
23 matrix, but they're not our warranties, we're
24 just selling them and earning a commission.

25 Q: Okay. How could the -- the South Carolina



1 stores promote their activities in local
2 markets? So, what kind of adverti- -- what do
3 they -- what involvement do they have in -- in
4 promotion, advertising?

5 A: They might have local signage in their stores.
6 Marketing strategy is determined at CBS, and
7 CBS may determine that the stores need a banner
8 outside the location. If there's certain
9 signage, like how tall the pole is outside the
10 store that has the big lit up CarMax sign. You
11 know, again, the -- the strategy of that is
12 determined at CBS, but it has to conform with
13 local regulations about how tall the pole can
14 be kind of thing, right. So, the stores --
15 again, really, the stores are there to execute
16 the strategy that's determined by CBS. So the
17 stores aren't creating their own banners or
18 signage or marketing materials, they would be
19 given to the stores and told, hang these.
20 Whatever the strategy might be.

21 Q: Okay. What -- what influences the level of
22 radio, television, newspaper and other media
23 promotions, advertising in particular markets?

24 A: I -- I don't know, specifically. Generally, I
25 know that marketing strategy determines --



1 marketing -- the marketing strategy team would
2 understand what the television markets are.
3 So, I -- I'm sorry. I'm going to answer it
4 like 50,000 feet.

5 They know what the television markets are.
6 They know the reach of however those markets
7 are determined and therefore, they would exe-
8 -- you know, they would create a marketing
9 strategy around that. Some of our TV
10 commercials, for example, are nationwide versus
11 regional, all that's determined through the
12 strategy created at CBS. And, again, the --
13 the stores have no control over a TV
14 commercial. The stores, I don't think have
15 control over a newspaper ad, or if a car is
16 listed an Edmund site for example, right. I
17 don't believe the store manages any of that
18 type of marketing or advertising. I believe
19 all of that -- I know the strategy is created
20 at CBS and I believe that all of that is -- is
21 executed or driven by CBS.

22 Q: Do you know what differences, or what would
23 cause a difference in how the -- if any
24 advertising among the stores? I think you
25 mentioned there's national and regional.

1 What's -- what causes there to be a difference,
2 or what is the difference?

3 A: My best guess would be, that one factor would
4 be the size of the television market. As an
5 example, I don't know that the Charleston,
6 South Carolina TV market and the Columbia,
7 South Carolina TV market are the same size.
8 I'm -- again, educated guess. They may have
9 different local TV commercials, for example.
10 They may all get the same national or maybe
11 regional commercials, but they may not be
12 getting the same local. But, again, the -- the
13 marketing area, I can describe to you at a
14 certain level, but once it gets down into too
15 many details, I -- I did not -- I did not see
16 that as one of the areas that I needed to be
17 specifically well versed in. So, I can only
18 answer to that level.

19 Q: I -- and I don't need it to be too detailed.
20 I -- with a -- I guess, would an adverti- --
21 would there be a -- a CarMax advertisement that
22 says, come visit our location on Jamil Road in
23 Columbia, South Carolina?

24 A: There could be. I -- I don't -- I don't know.

25 Q: Okay. But the -- I guess, the -- the brain



1 power behind that is -- that's all at CBS,
2 that's not a local store that's making any of
3 those calls?

4 A: That's all in CBS.

5 Q: Okay. Does CBS create and maintain any
6 trademarks in South Carolina?

7 A: I don't believe that any would be created.
8 Define maintained.

9 Q: Well, I would look at those jointly. So like,
10 created and maintained. So not just -- I -- if
11 -- if they're not being created, then that
12 answers my question.

13 A: Okay.

14 Q: If that makes sense.

15 A: Uh-huh.

16 Q: Okay. And I think I kind of hinted at this
17 ear- -- or we've got close to asking this.
18 But, does a -- does a Tennessee per- -- I'm
19 using a -- just an example, but does a
20 Tennessee customer's experience at a CarMax
21 store, does that -- does that differ from a
22 South Carolina customer in a -- in a South
23 Carolina store?

24 A: I don't know. That's kind of hypothetical.
25 Business processes and procedures would



1 materially be similar in both of the stores.
2 I think a customer's experience of those
3 processes and procedures could be different
4 because of the sales consultant they're working
5 with. But -- but again, I -- I certainly
6 couldn't ---

7 Q: No, I don't mean -- I don't mean ---

8 A: --- say what a customer's experience is.

9 Q: --- that -- that low of a level ---

10 A: I'm sorry.

11 Q: Yeah. I -- I don't mean that a low of a level,
12 like if it's -- you know, if -- if John the
13 sales associate is having a bad day, then
14 that's going to cause this customer to have a
15 bad day, too. But -- but just if you -- if a
16 customer goes into the South Carolina store,
17 they go into the Tennessee store, they can
18 expect basically the same experience, as far as
19 the process of selling and -- or, selling their
20 vehicle if they want to or buying a new one?

21 A: Yes.

22 Q: Okay. With the transaction flow that we've
23 been talking about, how these vehicles are
24 purchased and how they're sold, is there any
25 difference between a Tennessee store and a



1 South Carolina store?

2 A: I can't think of anything that would materially
3 change any of those processes. Again, when I
4 think about it, I think about the transparency
5 of each of the different things that occur when
6 a customer buys a car. Those are materially
7 the -- it is the process. It -- it -- it's a
8 tran- -- it's more of a transparency of the way
9 the transactions are approached or demonstrated
10 to a customer. So, from that perspective,
11 that's -- that's a -- that's a universal CarMax
12 policy, right. So, no, the policy itself would
13 not be different.

14 Q: Okay. So, I wanted to ask you about the -- the
15 restructuring that happened in 2004. What was
16 the business purpose of that restructuring?

17 A: Yeah. The -- the busin- -- the main business
18 purpose, really, related to CBS. And what we
19 -- the business purpose of creating CBS was to
20 centralize the corporate management functions
21 in CBS, and to separate the finance operations
22 from the retail operations so that we could
23 better, easier, comply with the different laws
24 and regulations that are governed by retail
25 sales of vehicles versus financing operations.



1 They're very different.

2 Q: And how did that benefit CarMax's operations in
3 South Carolina? Is it -- is it just like you
4 said, is the- -- is there anything unique to
5 South Carolina?

6 A: I don't believe there would have been anything
7 unique to South Carolina.

8 Q: I'm make su- -- I'm -- there's -- I think
9 there's an exhibit I want you to look at. I'm
10 just trying to make sure I -- I'm pointing at
11 the right one. (Reviews documents.) No.
12 Actually, I -- I think we've already talked
13 about that one.

14 Okay. So, in -- I think you said there
15 was a store -- there were four stores in South
16 Carolina during the audit period, one was
17 opened towards the end of the period. Is that
18 one the Myrtle Beach store?

19 A: Yes.

20 Q: Okay. So, how was Myrtle Beach selected as a
21 -- as the new location for a retail -- CarMax
22 retail store?

23 A: So, generally, we have teams at CBS that manage
24 all of our, you know, real estate, corporate
25 expansion, all of those types of things, all



1 the marketing analytics, where, you know, where
2 is a market that currently doesn't have a store
3 that we believe we could be profitable if we
4 put a store in that particular place. So
5 through that process, Myrtle Beach was
6 identified as an area that we believed could
7 support -- and we, meaning CBS, could support
8 a retail store.

9 Q: Okay. So where was the -- or, how was the
10 budgeting of that new store developed and
11 managed with ... Was that at CBS?

12 A: All of that's at CBS. So, there's -- there's
13 all kinds of a really smart people making all
14 kinds of ridiculously detailed models of, you
15 know, break even and profitability, and how
16 many cars would we have to sell, what are the
17 market conditions, what's the best corner of
18 the best retail spot to go open a store? All
19 of that strategy and analytics is done at CBS.

20 Q: And how is that location, since it was brand
21 new, how was it stocked with inventory?

22 A: Generally, it was stocked with whatever cars
23 the strategic pricing team or the strategic
24 merchandising team decided what cars should
25 belong on that lot, what cars did they think



1 would sell. And that could be anywhere from
2 the total number of cars that they thought that
3 location could support, down to how many white
4 Camrys should be on that particular lot.

5 Q: And inventory for CarMax, the Group ---

6 A: Uh-huh.

7 Q: --- that's -- that is held in the retail
8 locations, right? There's no separate area,
9 like a distribution center or anything that
10 holds inventory?

11 A: No. We don't have any distribution centers.
12 If it saleable inventory, it's on the front lot
13 for customers to walk the lot.

14 Q: So the inventory for Myrtle Beach would have
15 come from other retail stores, or it would've
16 been purchased through a car auction?

17 A: Any of those ways.

18 Q: Okay. How was the opening of that new store
19 promoted?

20 A: So -- so, I don't know, specifically. My best
21 guess would be that they started doing
22 television commercials in that TV market. I'm
23 -- there may have been -- they may have used
24 CarMax.com to identify that a new store --
25 especially if you were -- if a customer was



1 searching inventory at a store relatively close
2 or maybe in all of South Carolina -- so, again,
3 I'm prefacing this all with, this is my best
4 guess.

5 There may have been a pop-up, or -- I
6 don't even know how the ads work, right. But
7 they're may have been a pop-up that says,
8 opening soon in Myrtle Beach, right. I would
9 be confident that there would have been -- as
10 the store was actually being constructed, there
11 were probably signs out -- out in front that
12 said, opening soon, right. A CarMax sign may
13 have been put out at whatever stage of
14 construction, right, is per- -- either
15 permittable by a local ordinance or whatever
16 methodology, right, is used to promote that
17 local store. There may have been individual TV
18 commercials. The local news may have covered.
19 There may have been news of a zoning change.
20 There could have been a lot of ways that the
21 new store would be promoted prior to its Grand
22 Opening.

23 Q: But -- and would that be all done by CBS or
24 does the local store take part of any of work?

25 A: So, the strategy ---



1 Q: I ---

2 A: --- would be developed by CBS. The local store
3 team may be involved, especially, if you think
4 about it from a Grand Opening perspective, the
5 local store team would be there. So, again, I
6 -- I think -- I think the point that I'm trying
7 to make sure that I get across is that, all the
8 strategy and planning occurs at CBS, when it's
9 time to execute the strategy, the execution in
10 some cases is turned over to the local store to
11 make it happen.

12 Q: I got you. Okay. Talking about financing
13 again. Is it the customers decision of -- of
14 the financing they choose for their vehicle, if
15 they choose to go with CAFF or a third party?

16 A: Yes. As many offers -- as many offers as the
17 customer has to choose from, they get to
18 choose.

19 Q: Does -- does CarMax maintain independent
20 financial data for any of its subsi- --
21 subsidiaries? Does that make sense?

22 A: I'm not -- I'm not sure I understand. Ask me
23 a little bit differently.

24 Q: So, for example, CarMax East, does that have
25 its own, I guess, audited financials separate



1 -- separate from the CarMax -- the CarMa- --
2 the CarMax Group?

3 A: No.

4 Q: Okay. It -- so, if it's not -- how -- or what
5 -- what's the process for developing the
6 information to generate the appropriate tax
7 returns?

8 A: The accounting system. The financial system.

9 Q: What does CarMax do to con- -- or, how does
10 CarMax conclude that it has complied with South
11 Carolina's tax requirements?

12 A: So my team is responsible for all of the
13 filings. So they read the laws, the statutes.
14 They read the tax return filing instructions,
15 and they determine the proper way to file the
16 tax return and, you know, they -- they create
17 the apportionment factor information. We start
18 with federal taxable income and we understand
19 what the adjustments are. So my team
20 generally, for every state, goes through and
21 understands the rules and then files
22 appropriately.

23 Q: Do they review published policy documents from
24 the Department or -- from the South Carolina
25 Department of Revenue?



1 A: Yes.

2 Q: Do they review what we refer to as the 15-5?

3 A: Uh-huh.

4 Q: 15-5?

5 A: In detail.

6 Q: Okay. So for CarMax East, how does CarMax
7 develop financials that appropriately reflect
8 its taxable income?

9 A: So the general ledger, the financial system, is
10 set up in such a way that I can report by legal
11 entity ---

12 Q: Okay.

13 A: --- by state. I don't normally look at it by
14 store, but by state. And we have a tax return
15 preparation system that ingests the data from
16 the financial system, and that's how we would
17 -- that's how we would prepare the returns. So
18 we would look at any state modifications, we
19 would look at the apportionment factor and
20 understand what the factors are, and how to put
21 the data in the right places and file the
22 forms.

23 Q: How does CarMax monitor its transfer pricing
24 policies and the arms-length nature of charges
25 made to various entities?



1 A: How do we monitor the study, or how do we
2 monitor the execution?

3 Q: The execution.

4 A: So the way the -- the way that both the
5 management fee and the employment services fee,
6 they're invoiced between the entities. So
7 CarMax Business Services for the management
8 fee. CarMax Business Services would invoice
9 the stores, basically. The transactions are
10 settled in cash, so it causes entries in the
11 financial system to record the income on CBS,
12 the cash part of the transaction, and then the
13 expense on the stores. So it's all recorded
14 based on the invoicing process. So there's
15 really nothing intermittently that would need
16 to be done. If the rate changes, transfer
17 pricing study to transferring pricing study,
18 and an addendum to the contract is written, the
19 invoice processing ingests the new amount of
20 the fee and creates the invoice for the new
21 few.

22 Q: So talking about the IP, the intellectual
23 property, again.

24 A: Uh-huh.

25 Q: How does CBS create -- or, does it create value



1 for the intellectual property? Or, how -- how
2 does it create and maintain the value of that
3 intellectual property?

4 A: Well, the creation, I guess, would be if
5 there's any new trademarks or trade names that
6 get created. That would be the create side.
7 I don't, honestly, I don't know exactly how
8 often a new trademark or a trade name gets
9 created. I think of the maintenance, even
10 though in prior question you said you kind of
11 thought of the creation and the maintenance as
12 the same thing, I guess, maybe, maintenance
13 isn't the right word. But I sort of think of
14 maintenance as the monitoring of the existing
15 trademarks and trade names to ensure that,
16 like, no one's infringing on our trademarks or
17 trade names, or any of our IP. So I, kind of,
18 bucket that maybe in the maintaining sort of
19 section. And all that happens at CBS.

20 Q: So, does CBS do anything that increases the
21 value of the intellectual property?

22 A: You know, I don't know for sure. What I do
23 know, is that they maintain the value by not
24 allowing others to infringe on it and bring the
25 quality down, right. But from -- from the work



1 that our attorneys actually do, I can't -- I
2 can't say specifically what that is.

3 Q: Does CVS -- or CBS, does it influence how --
4 how the different CarMax entities, how they use
5 that intellectual property?

6 A: I think, yes. And the way I would -- the way
7 I would -- the reason that I think yes, is that
8 all of the materials, whether it's a marketing
9 material or any other kind of material, for
10 lack of a better word, any time the trademark
11 or trade name or logo or anything is used, it
12 -- it's a -- it's a controlled environmental,
13 I guess, right. I mean, if it's a -- if it's
14 a marketing material that uses the IP, it's
15 designated as a copyrighted trademark or trade
16 name, right. So, I think -- the stores don't
17 really do anything that -- that really affect
18 the use of the trademark or trade name, I
19 guess. So that -- I think that's the best --
20 the best way I can describe that. I -- I don't
21 know if that even answers your question.

22 Q: Do the companies -- the stores, sorry, the --
23 the stores, do they have any responsibilities
24 for promoting or maintaining that intellectual
25 property? And this might have been where you



1 were going with it being in a contained
2 environment.

3 A: I can't think of any specific direction that
4 they're given. The stores are there to sell
5 cars, execute the strategy and, you know, take
6 care of the customers. So however
7 economically, or whatever, that may affect the
8 IP, I don't -- I don't know that I can speak to
9 -- I don't know that I can speak to the details
10 of that.

11 Q: And I think -- I think you might have said this
12 about advertising materials or promotions that
13 would have the intellectual property on it.

14 A: Uh-huh.

15 Q: It -- is the -- whatever that -- the cost
16 associated with that, is that -- is that born
17 by the -- by the retail store, or is that CBS
18 that has to have -- have that cost?

19 A: So, I believe that the cost is at CBS and then
20 one of the transactions included in the
21 management fee is marketing -- marketing
22 services.

23 Q: Okay.

24 A: Marketing strategy.

25 Q: So it would be a part of that fee?



1 A: It would.

2 Q: I guess.

3 A: Uh-huh.

4 Q: Okay. So the Transfer Pricing Study that we
5 were looking at, if you could go to Page
6 CarMax -- the Bates label -- so Bates labeled
7 95.

8 A: Give me a second to get there.

9 Q: Of course.

10 A: Okay. 95. Yes.

11 **(Respondent's Exhibit Number 9 was referenced at this**
12 **time.)**

13 Q: Okay. So it indicates that Ernst and Young
14 developed that document based on interviews
15 with tax personnel.

16 A: Uh-huh.

17 Q: Have any business personnel had input -- input?

18 A: So, again, I'm just -- I'm looking at the same
19 document you are.

20 Q: Uh-huh.

21 A: Business folks would have had input, but it may
22 not have been through personal interview.

23 A: Okay.

24 Q: So, how would it -- would it have been through
25 tax personnel or through pro- -- providing



1 documents, or?

2 A: Most likely through providing documents.

3 Q: Okay.

4 A: One of the documents that we provided are
5 business function descriptions, write-ups, so
6 to speak. My team would normally do most of
7 the legwork associated with working with the
8 business to update those. And if EY determined
9 that they wanted to personally interview, in
10 this particular study, someone, they would just
11 identify that person.

12 Q: So, is this -- I -- what is the benefit to
13 having CarMax West and CarMax East as -- as
14 separate entities, from a business perspective?

15 A: You know, the main thing I can think of, are
16 the different, you know, just regional
17 differences many times in the West Coast. But,
18 you know, the -- we -- we inherited this
19 structure from Circuit City. So, again, I
20 didn't really spend a lot of time thinking
21 through all of the business aspects of why
22 they're separate. So I don't know how detailed
23 I can answer your question.

24 Q: Do you know why, I guess, post-org- -- the
25 reorganization, why they were maintained as



1 separate entities?

2 A: You know, part of it is because they already
3 were. But part of it, too, is -- you know, I
4 know it's an -- an incredibly difficult
5 activity to try to re-license a store, but
6 other than that -- other than that, no. I
7 think, you know, the -- the structure existed,
8 we knew what we wanted CBS -- we knew what
9 activities we wanted in CBS and, you know, kind
10 of, left the stores alone as much as we could.

11 Q: When you were -- we spoke a little bit about
12 this before, so I just want to -- want to
13 revisit this. But, you -- you mentioned how
14 there are certain services that are provided by
15 third parties and I -- and I've seen -- I don't
16 -- I don't know if this is in the 10K that you
17 have, but at least the 2017 10K, there's a
18 statement about; many of the components of our
19 business, including data management, key
20 operational processes, and critical customer
21 systems are provided by third parties. Is that
22 what you were referring to earlier when we --
23 when we talked about services provided by third
24 parties ?

25 A: It'd probably be easier for me to answer the



1 question if you can point me, so ---

2 Q: Let me see ...

3 A: --- I can see the context by which you're --
4 you're reading.

5 Q: Let me make sure I ... I think the -- yeah.
6 I think this is the -- this would be the -- the
7 10K. So, this is Exhibit 5.

8 A: Uh-huh.

9 Q: I think it's Page 15. I'm pulling it up here
10 to confirm.

11 **(Respondent's Exhibit Number 5 was referenced at this**
12 **time.)**

13 A: 15 of the PDF? The -- the -- I don't think
14 this one is Bates stamped.

15 Q: Yeah. No. Fif- -- I think -- well, I think
16 it's 15 of the ---

17 A: Of the actual Report?

18 Q: Yes. And I think that is correct. Let me see.
19 Yes. So, in there it says; we rely on third
20 party vendors for key components of our
21 business.

22 Do you see that heading?

23 A: Yes.

24 Q: It's -- of the PDF it's Page 27, that's where
25 I'm at.



1 A: Okay.

2 Q: Do -- did you see that?

3 A: I do. I'm -- let me just ---

4 Q: So ---

5 A: --- have a chance to read it and put it

6 context.

7 Q: Yes. Please. Please, take your time.

8 A: Okay. So again, this is in -- this is in a

9 section of, probably, Risks and ... I'm trying

10 to find the heading of which this is a part.

11 So, this is the Risk Factors section of the

12 10K. And what -- how I read that section is --

13 like, for example, when it says data management

14 ---

15 Q: Uh-huh.

16 A: --- what I -- what I interpret that to be, are

17 the external data centers where we would keep

18 servers to create redundancy in our data, such

19 that, if a -- if a server goes down, right,

20 there's redundancy where we can pull it up in

21 a different data center. So that's how I

22 interpret data management. And that would be

23 a third party data warehouse.

24 Q: Okay.

25 A: Key operational processes. I -- I'm not 100



1 percent sure what that's referring to.
2 Critical customer systems. I think about the
3 external -- like, the third party finance
4 companies who we do -- again, I hate the word
5 rely, but, who we rely on to provide credit and
6 financing to some of our customers.

7 That's what I think about when I read
8 those risk factors because, for example, if a
9 finance company's systems are down -- like, if
10 -- if all the systems went down at 5:00 and
11 we're open, the stores are opened until 9:00 at
12 night, well, we're going to have trouble
13 selling cars that need to be financed, if we
14 can't rely on our -- on our vendors to have
15 their systems operational. Again, didn't focus
16 my attention on this particular paragraph when
17 I was doing my review, but those are the things
18 I think about in our business that they could
19 be referring to.

20 Q: Okay. And you say you didn't know about the
21 key operational processes, that part?

22 A: In this context, I just -- off the top of my
23 head, can't think about what they're referring
24 to.

25 Q: Would -- would you at least be able to know if



1 those services are different from what CBS
2 offers to ---

3 A: Without knowing what they are, I can't say for
4 sure. But -- but it ---

5 Q: Okay.

6 A: Most likely, it is not executive corporate
7 management services.

8 Q: Okay.

9 A: That's my best guess.

10 Q: Does CarMax have an advanced pricing agreement
11 with any state regarding its operations and
12 profitability in that state?

13 A: Advance pricing agreement from a tax
14 perspective?

15 Q: Yes.

16 A: No.

17 Q: Okay. If you could go to Exhibit 10. Are --
18 are -- and are you still okay? Do -- do you
19 need a break? I know ---

20 A: How much longer do you think we're going to go?

21 Q: I think that was the -- the denser part that
22 we've gotten through. I think the last part
23 could be -- we'll go through a lot of exhibits,
24 but I don't think it will take that -- as long.
25 I'm thinking an hour or less.



1 A: I'd rather keep going then, if that's okay with
2 everyone else.

3 Q: Okay.

4 **MS. GEER:** Can we just, like, take a three-minute
5 break just for restroom and water?

6 **MR. ANTLEY:** Yes. That's comple- -- that's fine
7 with me.

8 **(Off the record from 12:58 p.m. until 1:05 p.m.)**

9 **COURT REPORTER:** All right. We're back on the
10 record.

11 Q: All right. Okay. If -- if you could pull up
12 Exhibit Number 10.

13 A: Okay.

14 **(Respondent's Exhibit Number 10 was introduced into**
15 **the record at this time.)**

16 Q: Have -- have you seen this before?

17 A: I have.

18 Q: And what is it?

19 A: This is a -- a memo from Ernst and Young about
20 a specific part of the restructuring
21 transaction.

22 Q: Okay. Could you turn to 001702?

23 A: Yep.

24 Q: Okay. And I -- and -- tell me if I'm -- I
25 don't have it pulled up, so if you don't see



1 it, let me know. If -- if you need time, but.

2 Do you see the section where it says that
3 CarMax engaged Ernst and Young to assist in
4 determining the optimal structure for the
5 Company from a management, business operations
6 and state and local tax perspective ---

7 A: Yes.

8 Q: --- and; as a result, focusing on management
9 operational and state and local tax
10 efficiencies.

11 So, was one of the purposes of the
12 restructure to minimize state and local taxes?

13 A: I wouldn't say it was one of the purposes, I
14 would say it was more one of the outcomes.
15 Once the business had identified what they
16 wanted to do differently, then we looked at,
17 well, what would that even -- how would we
18 approach that, what would that look like.

19 Q: And so, how are state and local taxes minimized
20 with the new structure?

21 A: So, I think we just created more of a -- an
22 efficient -- a tax efficient structure, in
23 terms of where we were filing, were there
24 apportionment -- I -- you kn- -- making sure we
25 understood in the different states how we



1 should be apportioning income. Making sure
2 that, you know, where we had inner-company
3 transactions, we did the transfer pricing
4 study, things like that.

5 Q: And does that include South Carolina and South
6 Carolina taxes?

7 A: I mean, in general. It wasn't directed at
8 South Carolina, but South Carolina is a State
9 in which we do business.

10 Q: So, you said that that was one of the outcomes
11 of the restructure, was that state and local
12 taxes were minimized. Was that true for South
13 Carolina?

14 A: You know, I'd honestly have to look pre and
15 post. So I don't -- I don't know the answer
16 specifically to that question.

17 Q: Okay. All right. If you could turn to what's
18 Bates labeled as CarMax 00176. Let me know
19 when you're there.

20 A: Okay.

21 Q: Okay. And let me know if you can -- you see
22 the -- where I'm at. But in there, it says the
23 formation of CBS was done for several reasons
24 including reducing state income taxes.

25 A: Okay.



1 Q: Is that a true statement?

2 A: The formation of CBS? I would say -- I would
3 say, yeah. There was some state tax reduction
4 in there with specifically CBS.

5 Q: And is that -- was that the case for the State
6 of South Carolina income taxes?

7 A: You know, that's hard to say because the only
8 connection CBS has to South Carolina are
9 through the IP. So, if I had to say,
10 generally, I would probably say that South
11 Carolina is probably lumped in there. But,
12 again, it -- there was nothing that was done to
13 isolate South Carolina to do anything, you
14 know, structurally state tax different. That
15 didn't come out very good, but.

16 Q: And so, it would've been a general approach,
17 not a specific to an individual state approach,
18 I guess?

19 A: Correct.

20 Q: Okay. All right. If you could just go to the
21 next page.

22 A: Okay.

23 Q: Okay. And tell me wh- -- if you find this
24 part, but I'm going to read; over a three year
25 period, the anticipated state tax savings to be



1 generated from the formation of CBS is expected
2 to be a multiple of the federal tax savings
3 anticipated to be derived from the formation of
4 CBS. The anticipated tax -- state tax savings
5 to be generated are a permanent benefit.

6 Do you see the -- that portion?

7 A: I do.

8 Q: What is that -- what are the anticipated state
9 tax savings that's referring to?

10 A: State tax savings that would be a permanent
11 benefit ... I'm trying to think pre and post.
12 I'm sure that there were states where, you
13 know, nexus was going to be a consideration.
14 The partnership is a flow through, so it's not
15 necessarily the CBS taxes themselves. I would
16 think, just where income is recorded and
17 expenses are recorded, would -- would -- is
18 really the only thing that could generate state
19 tax savings other than through an apportionment
20 factor or a modification.

21 Q: So, are you saying apportionment factor would
22 generate savings? I -- I ...

23 A: It could, depending on how states use their --
24 you know, whether a state is three-factor or a
25 single-factor, or what's included or what's



1 excluded from the apportionment factor.

2 Q: What about whether a state is a unitary versus
3 separate reporting state?

4 A: I'm sure that would be considered.

5 Q: Did -- was South Carolina one of the States
6 that -- that CarMax anticipated savings from --
7 tax savings from?

8 A: Again, I think as a group, we were expecting
9 state tax savings. I, again, I don't think
10 that we targeted South Carolina in there, but
11 as South Carolina was a State were currently
12 doing business in, I think they would have been
13 lumped into the general bucket of state taxes.

14 Q: Yeah. And when I ask -- yeah. I'm not asking
15 if you've target South Carolina, but if we were
16 included in the group of states where their tax
17 savings.

18 A: I would expect that South Carolina was included
19 in that.

20 Q: Okay. All right. So, if you could look at
21 Exhibit 11.

22 A: Okay.

23 **(Respondent's Exhibit Number 11 was introduced into**
24 **the record at this time.)**

25 Q: Have you seen that document before?



1 A: Yes.

2 Q: Okay. And before, we were talking about
3 CarMax's arguments and you weren't sure if the
4 Protest included everything, but that the --
5 that the Pre-Hearing Statement might have some
6 additional arguments. Do you recall that?

7 A: I do.

8 Q: Okay. Does the Pre-Hearing Statement include
9 all the arguments that you're aware of that
10 CarMax has?

11 A: Yeah. (Reviews documents.) I'm -- I'm looking
12 at it just to be sure, but I think it does.

13 Q: Sure. Yeah. Take your time.

14 A: I believe that it does. It's a pretty legal
15 document. So, to my best knowledge, it does
16 include our arguments.

17 Q: Okay. Okay. So, in that, I guess ... I think
18 we've -- we might have already addressed this,
19 but CarMax -- CarMax East and even CarMax, as
20 the -- all -- any CarMax entity, their
21 activities in South Carolina, their business
22 activities, are those the retail operations?
23 And then, I think you might have mentioned some
24 intellectual property. Is there -- is there
25 any -- or, was that even included in the -- the



1 list of business activities you named earlier?

2 A: Well, the main business activities that we have
3 in South Carolina are the stores.

4 Q: Okay. In the Pre-Hearing Statement, it
5 mentions that there's an unreasonable result by
6 using combined reporting. And it says it's
7 because tax -- it taxes income that is earned
8 out of state and it is out of all appropriate
9 proportion to the income that is earned in
10 South Carolina.

11 What is the income that's out of state
12 that that's referring to?

13 A: It would be all the income that's earned by any
14 company other than CarMax East and it's
15 distributive shared of CBS.

16 Q: So that -- that -- now, which entity would
17 generate the income?

18 A: It's mainly CarMax West.

19 Q: Okay. And where does CarMax West's income come
20 from?

21 A: It mainly comes from the sale of vehicles in
22 their stores. And then, they have their piece
23 of the CBS partnership.

24 Q: Does CarMax currently file any state income tax
25 returns using combined reporting in which



1 combined unitary reporting is not the standard
2 statutory apportionment method?

3 A: No. Not during the audit period, no.

4 Q: Does it currently?

5 A: There is one state where we've elected a
6 different method of consolidation that's not
7 mandatory unitary combined.

8 Q: What state is that?

9 A: It's Virginia.

10 Q: But that was not during the audit period?

11 A: No. Huh-uh.

12 Q: Oh, when was that for?

13 A: It was a more current year.

14 Q: Do you know the year?

15 A: It may've -- it -- it was either this -- just
16 this past year, fiscal '22 or fiscal '21. I --
17 I don't remember for sure. It might have been
18 fiscal '22.

19 Q: Okay. CarMax files a consolidated federal
20 return, is that right?

21 A: Yes.

22 Q: Okay. And what entities are included in that
23 consolidated return?

24 A: (No audible response.)

25 Q: I'm sorry.



1 A: Perhaps say ---

2 Q: Are all the CarMax entities included?

3 A: No.

4 Q: Okay. Which enti- ---

5 A: CarMax, Inc. -- CarMax Auto Superstores, Inc.,
6 CarMax Auto Superstores West Coast, Inc.,
7 CarMax Auto Superstores California, Glen Allen
8 Insurance Limited, CarMax Auto Mall, CarMax of
9 Laurel. I believe those are the entities that
10 are in the consolidated federal return.

11 Q: Is -- is CarMax the group -- is CarMax Group a
12 unitary business?

13 **MS. GEER:** Object to the form. Sorry. I couldn't
14 hit the mute button quick enough.

15 A: So, I think that's a legal question, whether or
16 not something's a unitary group. So, I don't
17 know that I'm qualified to answer that.

18 Q: From -- I'm asking from a tax perspective, as
19 -- as the Director of Tax from CarMax, is the
20 CarMax Group a unitary business?

21 A: I think it depends on what the state filing
22 qualifications are, if you're asking me from a
23 tax perspective. So, if a state has a combined
24 filing statute on its books, we would read and
25 understand the statute and decide which of our



1 entities, if any, need to be filing in that
2 state.

3 Q: Is there any state in which the CarMax Group is
4 treated as unitary business?

5 A: Again, I can't answer from a unitary business.
6 I can answer from a unitary combined filing tax
7 filing methodology.

8 Q: Okay.

9 A: Which -- which is different. I believe that's
10 different than what may be the legal definition
11 of unitary business.

12 Q: Could you answer it then?

13 A: Can you re-ask me the question?

14 Q: So, you differentiated, you said, if there's a
15 -- I'm sorry. You'll have to repeat what your
16 -- what your response was.

17 A: Okay. You asked me if we fi- -- if I think
18 that we're unitary form a tax -- as a tax
19 director, do I believe that we have -- I think
20 what you asked me is, if we have a unitary
21 filing obligation in any state.

22 Q: Okay. I think that's -- I think that's
23 accurate.

24 A: Okay. So, if a state has a unitary combined
25 filing methodology statute, and I meet all the



1 requirements of that filing statute, I would
2 file as a combined group.

3 Q: And that would be the entire CarMax Group?

4 A: It may or not be the entire group. In -- in
5 most cases, it's not the entire federal
6 consolidated group.

7 Q: In any case?

8 A: In any case? Yes.

9 Q: And -- and which case is that?

10 A: I -- of the 20 unitary combined returns we
11 file, I honestly, don't know which are the
12 entire federal consolidated group and which are
13 not.

14 Q: Okay. So from a business perspective, is there
15 added value by having all these entities
16 grouped together?

17 A: From a tax perspective?

18 Q: From a business perspective.

19 A: Oh. I don't know. Help me understand what you
20 mean by value.

21 Q: So, is -- is CarMax for -- well, I guess, we'll
22 talk about the big pieces. Big pieces you
23 have, CBS, CarMax West and CarMax East.

24 A: Uh-huh.

25 Q: Are -- is the CarMax Group more valuable than



1 the sum of its parts, is essentially what I'm
2 trying to ask.

3 A: Oh, I -- I don't ---

4 Q: Very ---

5 A: --- think I'm qualified to answer that
6 question. That sounds like an economist type
7 of question.

8 Q: Sorry. I'm just thinking and making sure.
9 From a business perspective, would you be able
10 to answer it?

11 A: Is the group more valuable than the sum of its
12 parts from a business perspective? I think the
13 business is the sum of its parts, from a
14 business perspective. I -- I don't know --
15 again, I'm not a business valuation person
16 either. When I think about it from a
17 layperson's term, the business is the sum of
18 its parts. I don't know how you would value it
19 differently than that.

20 Q: Does CBS add business value to CarMax East?

21 A: CBS provides a service to CarMax East that it
22 doesn't have the resources to provide for
23 itself.

24 Q: Okay. Is the income from CarMax East, CarMax
25 West, CBS, is that income commingled?



1 A: Is the income commingled?

2 Q: Income, revenue. The money that comes into the
3 different entities.

4 A: The cash?

5 Q: Yes.

6 A: So, the -- so, the -- yeah. The cash gets
7 commingled. The cash concentrated for use by
8 the entities. We have a centralized cash
9 management group. So, yes.

10 Q: Okay. So, does going through CarMax, Inc. or
11 -- I'm sorry -- CarMax the Group, for all
12 entities in CarMax the Group, are they all
13 owned directly or indirectly by CarMax, Inc.?

14 A: Yes.

15 Q: Okay. Does CBS provide all the -- the
16 centralized management for all the entities in
17 CarMax Group?

18 A: Yes.

19 Q: Okay. Is -- is CBS the central executive
20 authority for CarMax Group?

21 A: Yes.

22 Q: Do all of the entities contribute to the profit
23 of CarMax, Inc., the profitability of CarMax,
24 Inc., the publically traded company?

25 A: You know, I don't -- I don't know if I know how



1 to answer that question because when I think
2 about CarMax, Inc. as a legal entity, there is
3 no profitability to it. I -- I don't know if
4 I could answer that question as it relates to
5 -- for example, the stock price, right. So, I
6 -- either, maybe ask me the question
7 differently or I'm going to have to stick with
8 my I don't know answer.

9 Q: That's fine. If -- does -- does CarMax East
10 contribute to the profitability of any other
11 entity in the CarMax Group?

12 A: I mean, maybe, through the inner-company
13 transactions. But, again, they're -- they're
14 priced at arms-length, so either CarMax East
15 would be paying them internally or they'd be
16 paying them externally to someone else to
17 perform those service. So, that's the only way
18 I can think of how to answer your question.

19 Q: Does CarMax -- so, does CarMax East contribute
20 to the profitability of CBS?

21 A: It contributes income to CBS through its
22 contractual obligation, profitability is a
23 different measure.

24 Q: Okay. Does CarMax West contribute income to
25 CBS?



1 A: Yes. They pay income to CBS through their
2 contractual arrangements.

3 Q: And then, CBS distributes that income to CarMax
4 East and CarMax West?

5 A: Yes, it distributes. It's -- it's L- -- it's
6 a multi-member LLC tax, like a partnership.
7 It's -- it distributes, that's the whole point
8 of the flow through.

9 Q: Okay. If you could look at Exhibit 15, now.
10 Just let me know when you get there.

11 A: Okay. 15. Yep.

12 **(Respondent's Exhibit Number 15 was introduced into**
13 **the record at this time.)**

14 Q: Okay. Do you recognize that document?

15 A: I do.

16 Q: Have you seen it? What is it?

17 A: It's the Department Determination.

18 Q: Okay. Had you received this -- this is --
19 well, a document I'm assuming you received more
20 than two days ago?

21 A: Yes.

22 Q: Okay. Have you had a chance to review it?

23 A: Yes.

24 Q: Are -- what facts in the Department
25 Determination does CarMax disagree with?



1 A: The one specific fact that stuck out to me was
2 a statement that CarMax East and CarMax West
3 share inventory. Only one ---

4 Q: Is that not right?

5 A: --- legal entity owns the inventory at any
6 point in time. So, sharing to me is different
7 than -- than the legal ownership.

8 Q: Okay. Okay. I'll have to make sure I
9 understand the inventory then.

10 So, the inventory is actually held in the
11 retail location, right?

12 A: Owned.

13 Q: Physically held ---

14 A: Owned by the physical location.

15 Q: Okay. And does -- so, okay. So the physical
16 location owns it. The entity that owns it ---

17 A: Well, the legal entity owns it. Let -- let me
18 make sure that I'm clear. The legal entity
19 owns it.

20 Q: So, for example, CarMax East would own the
21 inventory, okay, CarMax East can draw on or
22 pull inventory from CarMax West if there's a
23 customer here that wants to -- to buy that?

24 A: Yeah. As a customer ---

25 Q: A in-store ---



1 A: --- service, we provide to our customers.
2 Yeah.

3 Q: Okay.

4 A: But pull from is -- again, it's not like you're
5 pulling a TV off the shelf. You're -- you're
6 -- there's processes that the inventory needs
7 to go through to be transferred between stores.

8 Q: Okay. So -- but, so -- your issue is the word,
9 share, as you were looking at -- you're viewing
10 that as shared ownership?

11 A: That's how I read it.

12 Q: Okay. It -- would it be better stated, that
13 they have access to each other's inventory?
14 Or, what -- what would be a better way of
15 explaining it?

16 A: I don't know. I hadn't considered how to
17 rewrite your Department Determination
18 (laughter). I'm sorry.

19 Q: That -- that -- well, I just want -- I'm just
20 talking about factually. You don't have to
21 rewrite it. Just factually, what's a better
22 way of saying it?

23 A: I ...

24 Q: Or, could you explain the relationship?

25 A: I think I would use some of the words that, you



1 know, at a customer's request, inventory could
2 be transferred between locations or legal
3 entities.

4 Q: Okay.

5 A: And I think the transferring implies more than
6 just a sharing or a pulling a TV off the shelf.
7 I think it's just a different connotation.

8 Q: Okay. And was that -- was that the only issue?
9 Was there another factual issue?

10 A: Factually, I think that was the main thing that
11 I disagreed with.

12 Q: Okay. So, go back to the word probability. Is
13 there a -- is there a large variants in the
14 profitability of individual stores?

15 A: Oh, they're definitely could be. Yeah. Yeah,
16 for sure.

17 Q: Is it -- does the variance occur based on
18 whether they're in CarMax West or CarMax East?

19 A: No.

20 Q: Okay. All right. So, I think we've already
21 talked about numbers. It's not -- it's not the
22 -- the math that you have an issue with. So,
23 the numbers and the Department Determination is
24 not -- that's not the issue, it's just how we
25 got to those numbers, is that right?



1 A: Yeah.

2 Q: Okay. So, let's -- if you could go to Exhibit
3 16.

4 A: Okay.

5 **(Respondent's Exhibit Number 16 was introduced into**
6 **the record at this time.)**

7 Q: And have you seen that document before?

8 A: I have.

9 Q: Okay. What is it?

10 A: It is an excerpt of Board of Directors meeting
11 minutes.

12 Q: Okay. Did you attend that meeting?

13 A: I believe ---

14 Q: And take your time ---

15 A: --- that I did.

16 Q: Take your time to look.

17 A: I believe that I did attend the meeting.

18 Q: All right.

19 A: Actually, wait. October 6th, 2004. You know
20 what, let me scroll before I say for sure
21 whether I actually attended. Yes. I actually
22 did attend this meeting.

23 Q: Okay. Could you go to CarMax 001875?

24 A: Uh-huh.

25 Q: Okay. So, I'm going to read, see if you can



1 follow.

2 The proposed restructuring would allow the
3 company to realize greater operational, legal
4 and tax advantages than were being realized
5 under the current structure. Are these the
6 same tax advantages that we've already talked
7 about?

8 A: Yes.

9 Q: So, that would be state and local taxes? If,
10 at least, included, maybe their federal as
11 well.

12 A: Included, yeah. They would be included in that
13 bucket.

14 Q: And within that bucket, there would also be
15 South Carolina taxes?

16 A: Yes.

17 Q: Okay.

18 A: Again, as a ---

19 Q: If you could go ---

20 A: --- general piece of the bucket.

21 Q: Yeah. Included in the bucket. If -- if you
22 could just go to 1901.

23 A: Okay. 1901. Yep.

24 Q: Do you see where there's a -- a phrase where it
25 says; provide greater cost in tax savings? Are



1 these -- are you -- I'm sorry. I'll give you
2 a second to find it.

3 A: Which whereas clause are you in?

4 Q: I'll have to pull it up, I'm sorry.

5 A: Oh, sorry. I keep forgetting that you don't
6 have it in front of you. Yeah. I'm -- I'm
7 trying to find it.

8 **MS. GEER:** Is it the second paragraph?

9 A: It ---

10 Q: I'm -- I'm still scrolling through it, so ---

11 **MS. YOST:** I think -- Bryson, I think it's the
12 second whereas clause.

13 **MS. GEER:** Yeah.

14 Q: Okay. So, do you see where -- does it say
15 provide greater cost in tax savings?

16 A: Yes.

17 Q: Okay. And are those, those same tax savings
18 we've been talking about?

19 A: Yeah.

20 Q: Okay. All right. So, I think these last few
21 will be quick, but if you could just go to
22 Exhibit 17.

23 A: Okay.

24 **(Respondent's Exhibit Number 17 was introduced into**
25 **the record at this time.)**



1 Q: All right. What -- have you seen that document
2 before?

3 A: I have.

4 Q: And what is it?

5 A: It's a -- it looks like a draft of a Memo by
6 Ernst and Young related to the corporate
7 restructuring.

8 Q: Prior to the restructure, how were -- were
9 CarMax's business activities in South Carolina
10 different?

11 A: The stores weren't any different, no.

12 Q: Okay. So -- so, it'd just be the retail sales
13 -- again, and retail operations would be the
14 business activities, those are the -- the same
15 prior and post-reorganization?

16 A: Yeah. Yes.

17 Q: Okay. All right. If you could go to Exhibit
18 18.

19 A: Okay.

20 **(Respondent's Exhibit Number 18 was introduced into**
21 **the record at this time.)**

22 Q: Okay. Have you seen that before?

23 A: I have.

24 Q: Who prepared it?

25 A: Looks like me.



1 Q: And why was it prepared?

2 A: It looks like it was an excerpt of a
3 conversation or some kind of meeting about the
4 employment services entity.

5 Q: Does it accurately describe CarMax's business
6 purpose?

7 A: I think that this is an excerpt of notes that
8 I wrote. So, whether or not this accurately
9 describes the business activity, I think the
10 ideas are there.

11 Q: Okay. And what does the part that says choice
12 of entity to minimize taxes refer to?

13 A: Probably, what entity we were looking at to
14 form whether we wanted to form a single-member
15 LLC or some other form. Again, this is -- this
16 doesn't have a date on it. I'm assuming that
17 at the time of the restructure, this was 18
18 years ago. So, even though this is a document
19 that I wrote, it's also 18 years ago. So I --
20 when I -- when I answer the question just based
21 on the context, that's what it appears to be.
22 I can't tell you exactly what I was doing 18
23 years ago when I took these cryptic sort of
24 notes.

25 Q: That's fair. And my guess, is to the best of



1 your recollection, the -- and based on your
2 notes, you were saying, you think that's a
3 choice of entity or that's referring to a
4 choice of entity?

5 A: I think that was one consideration out of a
6 number of considerations that needed to be made
7 prior to creating any entity that was going to
8 house employees.

9 Q: Okay. And -- and which -- you -- you said
10 which ent- -- did you say which entity this was
11 referring to?

12 A: It appears to be referring to CASS.

13 Q: Okay. Okay. If you could go to Exhibit 19.

14 A: Okay.

15 **(Respondent's Exhibit Number 19 was introduced into**
16 **the record at this time.)**

17 Q: Have you seen that before?

18 A: I have. It's got my name on it.

19 Q: All right. What is it?

20 (Laughter.)

21 Q: What is it?

22 A: It appears to be an excerpt of the minutes from
23 an audit committee meeting.

24 Q: Do you know who prepared it?

25 A: Probably, the secretary of the -- whoever was



1 presiding as secretary at the audit committee.

2 Q: Do you know why it was prepared?

3 A: Because they take minutes at all of the
4 meetings.

5 Q: Okay. And is that your copy, your personal
6 copy?

7 A: It is.

8 Q: Okay. And so, were you present for that
9 meeting?

10 A: I would have to read through to see if I was
11 because I was not invited to all of the audit
12 committee meetings. But, it appears that this
13 is the one that we talked about, the corporate
14 restructure. So, yes. I -- I do believe I was
15 there at the meeting.

16 Q: Okay. Okay. If you could go to what's Bates
17 labeled -- I believe -- this number looks
18 really strange. So, I'm not sure if this is
19 right. Is it ... I -- I have on here 1025,
20 but I'm thinking that's not the right Bates
21 label. So, it might be 1925.

22 A: Okay.

23 Q: On -- on that, do you see -- does it mention
24 changing state tax environment?

25 A: Uh-huh. Yep.



1 Q: Okay. Yeah. So, what does that refer to?

2 A: It refers to the fact that there had been a lot
3 of legislation that was changing the state tax
4 environment and we were highlighting that in
5 the -- in the discussion with the audit
6 committee.

7 Q: Do you remember if that had to do with any kind
8 of move for combined unitary reporting?

9 A: There's no indication that it does or doesn't.
10 And, again, 18 years ago, I couldn't tell you
11 for sure.

12 Q: Okay. If you could go five more pages to 1930.

13 A: Okay.

14 Q: Okay. There -- do you see where it mentions
15 separate -- separating companies based on where
16 they're -- the operations are in separate
17 entity states or unitary states?

18 A: Yes.

19 Q: Okay. Is that referring to state income taxes?

20 A: Well, I'm -- I'm sure it is, that's how we
21 would refer to filings.

22 Q: Okay. And so, this is -- this was -- and I'm
23 sorry, for contexting it, this is the meeting
24 to -- discussing the -- the reorganization that
25 occurred in 2004, is that right?



1 A: Correct.

2 Q: Okay.

3 A: I will point out that this slide, where this
4 discussion is, never came to fruition, the way
5 it's designed.

6 Q: Oh, okay. So, that -- that is not -- what that
7 slide shows is not what happened?

8 A: That is not what happened, ultimately.

9 Q: Okay. All right. If you could go to 1934.

10 A: Okay.

11 Q: Do you see where it says organizational
12 discipline will be required to minimize state
13 tax?

14 A: Yes.

15 Q: What's that referring to?

16 A: If I had to guess, from 18 years ago, one of
17 the things that we talked about was the fact
18 that we needed to be diligent in how we
19 invoiced inner-company transactions. And if we
20 did not do it according to agreement or
21 according to us -- you know, a substantive way
22 to invoice and pay cash for inner-company
23 transactions, then they might not be upheld as
24 strongly if we would.

25 Q: Okay.



1 A: I think there were a lot organizations at the
2 time that thought they could just journal entry
3 instead of invoicing, and we did not want to
4 approach our transactions that way.

5 Q: Okay. And has that been the case? Has that
6 been CarMax's proc- -- practice that they
7 maintain the organization discipline that this
8 is referring to?

9 A: Again, not understanding necessarily what all
10 of it encompassed, as it relates to the
11 invoicing processes of inner-company
12 transactions, yes, we have been -- we have --
13 we continue today to do it exactly how we've
14 designed the -- I say we very loosely, the
15 organization, has designed its invoicing and
16 cash settlement processes.

17 Q: Okay. And that would be the same for the audit
18 period then, too, right?

19 A: Absolutely.

20 Q: Okay. Do you see where it says, use of partn-
21 -- (technical audio interference) -- reduces
22 the risk that structure will be overturned by
23 states that have attacked intercompany
24 intangible licensing transactions in recent
25 years?



1 A: Uh-huh. Yes, I see that.

2 Q: Do you recall what's that referring to?

3 A: I think it's referring to the partnership.

4 Q: With CB- -- the CBS?

5 A: CBS partnership.

6 Q: How about the intercompany intangible licensing
7 transactions, what -- what would that be
8 referring to, in the context of CarMax?

9 A: The licencing agreement. The ---

10 Q: Between CBS.

11 A: --- licencing -- (technical audio interference)
12 ---

13 Q: Okay. Do you see where it says mitigate state
14 tax exposure?

15 A: Yep.

16 Q: What's that referring to?

17 A: It's listed as one of the potential advantages
18 of reorganizing.

19 Q: Do you know what kind of -- or what that means?
20 What type of state tax exposure is being
21 minimized, or how it's being minimized?

22 A: Again, there's not a lot of context in this
23 particular document. But, again, I think that
24 we've established that there were some
25 potential tax reductions that may be able to be



1 ascertained from the restructuring.

2 Q: All right. So, I guess, that's the same as how
3 you answered it earlier. Is that -- was that
4 accurate, that the tax -- the tax pri- -- with
5 the tax advantages from restructuring, would be
6 the same that you mentioned earlier?

7 A: I believe it would be the same.

8 Q: Okay. And then, when it also says; significant
9 recurring tax savings, is that the same as what
10 we've talked about, too?

11 A: I think it is, probably federal and state.

12 Q: Okay. I get -- when we were talking about
13 permanent tax savings benefits, is that -- is
14 that basically what this is referring to as
15 well, when it says significant recurring?

16 A: Not necessarily. I think recurring could
17 either be a recurring timing benefit or
18 recurring permanent benefit. It could be used
19 -- it -- it could be either one of those, or
20 both.

21 Q: Okay. Okay. On the next page it says; the
22 proposed legal structure provides significant
23 tax savings with direct correlation to how the
24 business operates.

25 A: Uh-huh.



1 Q: What does that mean? What's that referring to?

2 A: Again, there's not a lot of context in here.

3 I -- when I read it now, I think through the
4 whole purpose of CBS, in understanding how one
5 entity, after the restructuring, is responsible
6 for all of the corporate management activities
7 and strategy, and how that -- that is actually
8 how the business should be operating. So,
9 that's how I look at it. Again, there's not a
10 lot of other direct context about what else it
11 could be referring to, but given that CBS was
12 the biggest change that was made in the
13 restructuring, I'm assuming it's -- it's
14 looking at how the business operates from a CBS
15 perspective.

16 Q: Okay. And I think this will be the last
17 Exhibit, Exhibit 20. If you could pull that
18 up.

19 A: Okay.

20 **(Respondent's Exhibit Number 20 was introduced into**
21 **the record at this time.)**

22 Q: Do you have it?

23 A: Yes.

24 Q: Okay. Have you seen that before?

25 A: I have.



1 Q: Who drafted it?

2 A: Nick Pace.

3 Q: Okay. And he was an Attorney for CarMax?

4 A: Yes.

5 Q: Do you know if he was assigned to a specific
6 entity, or he was just for the whole CarMax
7 Group?

8 A: It's been a long time. I'm guessing he was an
9 overall CarMax Internal Counsel.

10 Q: Okay. And it -- on there it says, Attorney
11 Work Product.

12 A: Uh-huh. Yes.

13 Q: Is that right?

14 A: Yes.

15 Q: Okay. Is it -- is CarMax waiving any privilege
16 regarding that document?

17 A: I'll defer that question to Bryson.

18 **MS. GEER:** I -- I would say that we determined that
19 it did not actually contain work product. So,
20 to the extent there is any, then we did, but I
21 don't believe there is.

22 **MR. ANTLEY:** Thank you.

23 **MS. GEER:** Uh-huh.

24 Q: Okay. Do you know why that document was
25 created?



1 A: It would've been created to just document the
2 thought processes and positions that we went
3 through to -- to identify what our business
4 purpose was for doing the restructuring.

5 Q: Okay. And it doesn't mention taxes, does it?
6 And if you needed time to skim it, that's fine.

7 A: I don't see any mention of taxes in here.

8 Q: Okay. Based on that document, could -- what
9 would you say is the business purpose of
10 CarMax's current organization?

11 A: The business purpose was really to segregate
12 the finance operations from the retail
13 operations, and to create the centralized
14 corporate management functions, line of
15 business in CBS, which really is consistent
16 with -- you know, yes, there were some tax
17 efficiencies that came out of it, but this was
18 really the original business reason for doing
19 the restructuring.

20 Q: Okay. I -- I don't have any questions for you.
21 So, now, if Ms. Geer has some questions, she
22 can ask you. Thank you.

23 A: You're welcome.

24 **MS. GEER:** Trey, just so the record is clear, do --
25 I don't care either way, but do you want to



1 identify the -- the list that I sent you as an
2 exhibit, or?

3 **MR. ANTLEY:** Sure. Maybe, it would be good. That -
4 - that's probably a good idea for the record.
5 We can do an Exhibit 21.

6 **(Respondent's Exhibit Number 21 was marked for**
7 **identification purposes.)**

8 **MS. GEER:** Okay. All right. And can I have like
9 three or four minutes? I just need to look
10 through my notes and I can ---

11 **MR. ANTLEY:** Of course.

12 **MS. GEER:** Yeah. Make sure -- I don't think I -- I
13 won't have much, but I may have one or two.

14 **MR. ANTLEY:** Okay.

15 **MS. GEER:** All right.

16 **(Off the record from 1:55 p.m. until 2:00 p.m.)**

17 **COURT REPORTER:** We are back on the record.

18 **MS. GEER:** All right. Oh, sorry. I just have one
19 question and it probably does matter at all,
20 but it just was a little unclear to me, so I'm
21 going to attempt to clarify.

22 **MS. YOST - CROSS EXAMINATION BY MS. GEER:**

23 Q: So, Trey asked you as the very beginning of the
24 deposition about what you had done to prepare
25 ---



1 A: Uh-huh.

2 Q: --- for the deposition. And he asked you who
3 -- who all you had spoken to in connection with
4 that. And then I -- I think we kind of morphed
5 into some other areas. And then, as you were
6 listing what people that you had talked to, you
7 list -- listed Bryan Cody.

8 A: Yes.

9 Q: And so my question is just, did you talk with
10 Bryan Cody in connection with preparing for
11 your deposition or for some other purpose at
12 some other time?

13 A: Oh, it was -- it was just more in general. It
14 wasn't necessarily preparing for the
15 deposition.

16 Q: Okay. That -- that was my only question.

17 A: Okay.

18 **MS. GEER:** Do you have anymore, Trey?

19 **MR. ANTLEY:** I don't.

20 **MS. GEER:** Okay.

21 **(There being no further questions, the deposition**
22 **concluded at 2:01 p.m.)**

23

24

25



EXHIBIT 1

STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

CarMax Auto Superstores, Inc.,	)	DOCKET NO. 21-ALJ-17-0182-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	NOTICE OF DEPOSITION
	)	PURSUANT TO RULE 30(b)(6), SCRCF
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	

**TO: BRYSON M. GEER, ESQUIRE, AND JOHN C. VON LEHE, JR., ESQUIRE,
ATTORNEYS FOR PETITIONER**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), SCRCF, counsel for Respondent, South Carolina Department of Revenue (Department), will take the deposition of CarMax Auto Superstores, Inc. by and through its designee, via Video Conference and upon oral examination before a Notary Public or some other official authorized by law to take depositions. The deposition will commence on September 22, 2022, at 9:30 AM EST, and continue until complete.

The deposition is being taken for purpose of discovery, use at trial, and all other purposes as are permitted under the rules of this Court and all other applicable statutes.

Pursuant to Rule 30(j)(8), SCRCF, the undersigned counsel is hereby providing notice that the deponent may be shown documents and/or materials during this deposition. Additionally, the deponent may be asked questions about any documents and/or materials that have been produced by any party, subpoena, or otherwise through discovery.

The Department requests that CarMax Auto Superstores, Inc.'s designee have the knowledge to testify on behalf of CarMax Auto Superstores, Inc. regarding the following matters:

Defined Terms:

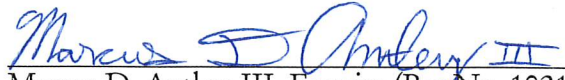
1. "CarMax Auto Superstores, Inc." is CarMax Auto Superstores, Inc., CarMax East, or Petitioner.
2. "CarMax Group" is CarMax, Inc. and its subsidiaries as defined in the Department Determination dated May 14, 2021.
3. "Periods at Issue" is the corporate income tax and license fee for the period ended March 1, 2015 through February 28, 2018.

CarMax Auto Superstores, Inc. 30(b)(6) topics:

1. The accuracy, completeness, and authentication of documents produced by Petitioner and related to the Periods at Issue in this matter.
2. Federal and South Carolina income tax returns filed by Petitioner during the Audit Period.
3. Filing of combined unitary returns in other states by any member of the CarMax Group.
4. All bases for Petitioner's contention that the standard statutory method of apportionment fairly represents its business activities in South Carolina.
5. Prior audit examinations of Petitioner conducted by the South Carolina Department of Revenue.
6. The request for and the preparation of the transfer pricing study authored by Ernest & Young for Petitioner.
7. The business decision to organize the CarMax Group under its current structure.
8. All intercompany agreements between the CarMax Group affiliates in effect during the Periods at Issue, including whether and under what terms and conditions the entities comprising the CarMax Group exchange goods or services with each other.
9. The nature of the business, the business operations, and the customers of all entities within the CarMax Group, including the entire business of Petitioner transacted or conducted in South Carolina.
10. All sources of revenue from third parties to the CarMax Group, excluding retail customers of Petitioner.
11. Identity of all officers and directors of each entity in the CarMax Group.

Please be present to cross examine if you so desire.

{Signature on following page}



Marcus D. Antley, III, Esquire (Bar No. 102176)

Associate Counsel

Adam J. Neil, Esquire (Bar No. 69594)

Associate General Counsel, Litigation

Jason P. Luther, Esquire (Bar No. 78021)

Chief Legal Officer

300A Outlet Pointe Boulevard

Columbia, SC 29210

(803) 898.5623 (Telephone)

(803) 896.0171 (Fax)

Attorneys for Department of Revenue

Marcus.Antley@dor.sc.gov

CourtOrders@dor.sc.gov

Columbia, South Carolina
August 17, 2022

Exhibit 2

Proposed Assessment (September 4, 2019)

See Joint Ex. 23, R. 3710

Exhibit 3

CarMax Protest

See Joint Ex. 32, R. 3794

Exhibit 4

CarMax Organizational Chart

See Joint Ex. 33, R. 3805

Exhibit 5

CarMax Form 10-K FY ending February 28, 2018

See Joint Ex. 6, R. 2485

Exhibit 6

Master Management Services Agreement

See Joint Ex. 34, R. 3806

Exhibit 7

License Agreement

See Joint Ex. 36, R. 3846

EMPLOYMENT SERVICES AGREEMENT

THIS EMPLOYMENT SERVICES AGREEMENT (the "Agreement") is entered into this 1st day of December, 2004 (the "Effective Date") by and between **CARMAX BUSINESS SERVICES, LLC**, a Delaware limited liability company ("CBS") and **CARMAX AUTO SUPERSTORES SERVICES, INC.**, a Virginia corporation and wholly-owned subsidiary of CBS ("Provider").

RECITALS

WHEREAS, Provider and CBS are indirect subsidiaries of CarMax, Inc., a Virginia corporation ("CarMax") that owns and/or controls entities engaged in the business of new and used vehicle sales;

WHEREAS, CBS provides corporate management and related services to certain affiliates and subsidiaries of CarMax;

WHEREAS, Provider employs individuals who are knowledgeable and skilled in CBS's line of business, including performing corporate management functions for businesses engaged in new and used vehicle sales and related activities;

WHEREAS, CarMax and CBS have determined that it is in the best interests of CarMax and its affiliates and subsidiaries, including CBS, for Provider to act as the employer of all of CBS's common law employees and to provide such common law employees to CBS pursuant to the terms of this Agreement;

WHEREAS, Provider wishes to provide its common law employees to CBS to perform specified job functions required by CBS; and

WHEREAS, the parties wish to set out the relative rights and obligations of the parties respecting the contemplated provision of the employees.

TERMS

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, Provider and CBS agree as follows:

1. Provision of Provided Employees. Provider agrees to furnish to CBS such common law employees of Provider as CBS may request from time to time, subject to the following:

(a) CBS may request that Provider provide any of its common law employees (collectively, the "Provided Employees") for such period or periods as may be specified by CBS.

(b) CBS agrees to provide all facilities, supplies, equipment, and all other necessary items that may be required by employees to perform their services as Provided Employees, except as may otherwise be agreed to by the parties.

(c) In the event that CBS no longer requires the services of a Provided Employee prior to the end of the period or periods for which such Provided Employee was requested, CBS shall so notify Provider, and at such time the provision of services by such Provided Employee to CBS shall terminate.

2. Status of Provided Employees.

(a) It is the intention of the parties that the Provided Employees be treated as common law employees of Provider for all purposes under this Agreement and for all applicable requirements under federal and state law, and that the Provided Employees not be treated as common law employees of CBS for any such requirements. Notwithstanding the foregoing, to the extent not otherwise required under applicable federal or state law, the respective rights and obligations of the parties with respect to the Provided Employees are specified in this Agreement.

(b) Provider shall have sufficient authority so as to maintain a right of direction and control over Provided Employees, and shall retain authority to hire, terminate, discipline and reassign Provided Employees. CBS shall, however, retain such sufficient direction and control over the Provided Employees as is necessary to conduct CBS's business and without which CBS would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory, or statutory requirement of CBS. Provider and CBS acknowledge and agree that such direction and control of the Provided Employees shall be subject to the terms of any employee handbook or other employee policies adopted by CarMax that are applicable to CBS and/or Provider. If required by applicable law, Provider will give notice of the relationship between Provider and CBS to each Provided Employee it assigns to perform services for CBS under this Agreement.

(c) As the common law employer of all Provided Employees, Provider assumes full responsibilities to comply with laws applicable to common law employees of the Provider, including applicable employment tax, workers' compensation and immigration laws.

(d) Provider shall be the rated employer for unemployment compensation purposes with respect to the Provided Employees.

3. Compliance with Workplace and Other Applicable Laws.

(a) Provider shall secure workers' compensation coverage for the Provided Employees in such amounts as is required by applicable law and shall be responsible for the management of workers' compensation claims, claims filings and related procedures for the Provided Employees for services that they perform as Provided Employees.

(b) CBS represents that its working environment, equipment, machinery, supplies and training for existing employees currently meets all federal OSHA standards and that they will be maintained in compliance with such standards during the duration of this Agreement. CBS shall provide and ensure use of all personal protection gear and equipment, as required by law, or as deemed necessary by Provider or Provider's workers' compensation carrier.

(c) CBS represents and warrants that it has obtained all licenses and permits necessary and required to carry conduct its business as currently conducted and shall obtain any and all licenses necessary to conduct its business in the future. CBS shall be responsible for ensuring that each Provided Employee has the necessary license or permit, if any, to perform the skills and complete the tasks required by such Provided Employee on behalf of CBS.

4. Benefit Plans.

(a) CBS acknowledges that Provider, as a participating employer in all of CarMax's employee benefit plans (including without limitation, medical, dental, life insurance, disability, deferred compensation, saving and incentive plans), provides certain employee benefit plans for the possible benefit of Provided Employees and that the terms and conditions of such plans (including, without limitation, terms regarding participation and eligibility) shall be determined by Provider and/or CarMax. Any other employee benefits that may be provided to the Provided Employees, or to CBS's common law employees, shall be the sole responsibility of CBS.

(b) Provider agrees to be responsible for all continuation coverage for the Provided Employees that may be required under Provider's group health plan pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

5. Fees for Provided Employees. As compensation for the provision of Provided Employees under this Agreement, CBS shall pay Provider a calendar monthly fee (the "Fee"), as follows:

(a) The applicable fee shall be determined each calendar month during the term of this Agreement, and shall be equal to the sum of the following five (5) items:

(i) Direct Compensation Expenses. This item consists of the aggregate direct compensation expenses for all Provided Employees for the applicable calendar month. For a Provided Employee who is paid on an hourly basis, the direct compensation expense for any calendar month shall be determined by multiplying the hourly rate of pay for such Provided Employee by the number of Hours of Service (as that term is defined in subsection (b) below) provided by the Provided Employee to CBS during that calendar month and adding any overtime premium, bonuses, differentials or other items of compensation paid to such Provided Employee during that calendar month. For a Provided Employee who is paid on a salary basis, the direct compensation expense for any calendar month shall be the total salary paid by Provider to such Provided Employee for such calendar month plus any additional items of compensation paid to such salaried employee during the applicable calendar month.

(ii) Fringe Benefit Expenses. This item consists of the aggregate fringe benefit expenses for all Provided Employees for the applicable calendar month. The fringe benefit expense for each Provided Employee for a calendar month shall be the total expenses of Provider for all employer-provided fringe benefits for such Provided Employee (including Provider's contributions to any retirement plan maintained covering the Provided Employee, and Provider's payment of premiums for health insurance coverage for the Provided Employee) for the calendar month.

(iii) Reimbursement Expenses. This item consists of the aggregate out-of-pocket expenses for all Provided Employees for the applicable calendar month. For the purpose of this Section 5, "out-of-pocket" expenses means the aggregate actual costs incurred by Provided Employees and reimbursed by Provider for business related travel and meals, required training and educational courses, required tools and uniforms, and the like.

(iv) Leasing Fee. An employee leasing and human resource management fee for each calendar month equal to one percent (1.00%) of the sum of the items set forth in Sections 5(a)(i) and (ii) for such calendar month. The parties agree to review the leasing fee at least once every fiscal year (as defined below) and adjust such leasing fee as agreed to by the parties in good faith, taking into account the quality and quantity of services provided under this Agreement by Provider. For the purpose of this Agreement, "fiscal year" shall mean CarMax's fiscal year in effect from time to time. At the date of this Agreement, CarMax's fiscal year begins on March 1 and ends on the last day of February.

(v) Certain Taxes. This items consists of any employer's portion of employment related taxes on wages or other compensation paid to the Provided Employees under (i), (ii) or (iii) above, including, without limitation, any social security or federal, state or local unemployment taxes, for such calendar month.

(b) For purposes of this Section 5, an "Hour of Service" shall be any hour or portion of an hour during which the Provided Employee provides services to Provider and for which the Provided Employee is entitled to be paid by Provider.

(c) Upon request, CBS agrees to provide documentation of the total Hours of Service provided by each Provided Employee for each calendar month no later than thirty (30) days after the end of such calendar month, or within such other period of time as may be agreed to by the parties. Documentation under this subsection shall be provided in a form and manner agreed to by the parties, which shall be sufficient to permit Provider to accurately determine the amount of the Fee.

(d) CBS shall pay Provider the Fee no later than thirty (30) days after the end of the applicable calendar month, or within such other period of time as may be agreed to by the parties.

Can do quarterly

(e) Provider assumes responsibility for the payment of wages to the Provided Employees without regard to payments by CBS to Provider of the fees due under this Section 5, and Provider assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on Provided Employees.

6. **Limit of Services.** Provider will only provide Provided Employees to CBS, and such other services as may be explicitly provided for in this Agreement. No other services shall be provided or implied, including without limitation any strategic, operational or other business related decisions with regard to CBS's business. Such decisions shall exclusively be the responsibility of CBS, and Provider shall bear no responsibility or liability for any actions or inactions by CBS. When implementing such decisions, whether or not Provided Employees implement the actions, CBS shall be acting solely on its own volition and responsibility. If any of the Provided Employees are supervisory employees, then such supervisory employees' scope of employment is strictly limited. Any such supervisor's actions which are in violation of law or which result in liability will be outside the scope of their responsibility as Provided Employees and in such event supervisory Provided Employees will be acting solely as the agents of CBS.

7. **Insurance.** CBS will provide proof of comprehensive general liability coverage for its operations and all employees and Provided Employees, with a minimum limit of liability as agreed to by the parties. If any Provided Employee will operate a vehicle owned or otherwise of any kind of CBS, CBS shall, upon request of Provider, furnish liability insurance therefore against liability for bodily injury and property damage and against uninsured motorists, each with a minimum limit of liability as agreed to by the parties. Such policies shall also include blanket collateral liability and personal injury liability coverage. CBS agrees, at its own expense, to include Provider as an additional named insured on all of CBS's insurance policies and fidelity bonds. CBS shall at the request of Provider deliver to Provider a certificate evidencing such insurance and the agreement(s) of the insurer(s) that such insurance may not be canceled without ten (10) days prior notice to Provider. Any protection against the dishonest or criminal conduct or misappropriation of any funds engaged in by any employee maintained hereunder, such as fidelity bonding, shall be at CBS's expense. All insurance policies shall waive CBS's subrogation rights in favor of Provider. CBS's obligation under this Section 7 shall survive termination of this Agreement.

8. **Confidential Information.**

(a) For the purposes of this Agreement, "Confidential Information" means non-public information about the disclosing party's or any of its affiliates' business or activities that is proprietary and confidential, which shall include, without limitation, all business, financial, technical and other information, including software (source and object code) and programming code, of a party or its affiliates marked or designated "confidential" or "proprietary" or by its nature or the circumstances surrounding its disclosure should reasonably be regarded as confidential. Confidential Information includes not only written or other tangible information, but also information transferred orally, visually, electronically or by any other means. Confidential Information will not include information that (i) is in or enters the public domain without breach of this Agreement, or (ii) the receiving party lawfully receives from a third party

without restriction on disclosure and to the receiving party's knowledge without breach of a nondisclosure obligation.

(b) Each of Provider and CBS agree that (i) it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement, and (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar type and importance.

(c) Notwithstanding the foregoing, each party may disclose Confidential Information (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law, including without limitation disclosure obligations imposed under the federal securities laws, provided that such party has given the other party prior notice of such requirement when legally permissible to permit the other party to take such legal action to prevent the disclosure as it deems reasonable, appropriate or necessary, or (ii) on a "need-to-know" basis under an obligation of confidentiality to its consultants, legal counsel, affiliates, accountants, banks and other financing sources and their advisors.

(d) All Confidential Information supplied or developed by either party shall be and remain the sole and exclusive property of the party who supplied or developed it.

(e) The parties agree to comply with all privacy and data protection laws, rules and regulations, as applicable now or in the future. Without limiting the generality of the preceding sentence, in the course of performing under this Agreement, the parties may disclose to each other or may receive information that meets the definition of "nonpublic personal information" ("Nonpublic Personal Information") in the regulations promulgated under Title V of the Gramm-Leach-Bliley Act of 1999 as amended from time to time, 15 U.S.C. 6801 to 6809, ("GLB Act Privacy Regulations"). The parties agree that they will not use or disclose such Nonpublic Personal Information to any nonaffiliated third party except: (a) in the ordinary course of business to carry out the purpose or purposes for which the Nonpublic Personal Information is disclosed to such party under an exception to the GLB Act Privacy Regulations; (b) to the extent necessary to carry out the purpose or purposes for which such information is disclosed; or (c) as permitted by applicable law. The parties further agree that any affiliate of either party shall use and disclose Nonpublic Personal Information to any nonaffiliated third party only to the extent that the recipient of such information may use and disclose such information. Each party shall maintain physical, electronic and procedural safeguards in compliance with applicable laws to protect the Nonpublic Personal Information received from the disclosing party to: (d) ensure the security and confidentiality of such information; (e) protect against anticipated threats or hazards to the security or integrity of such information; and (f) protect against unauthorized access or use of such information. Each party shall comply in all respects with all applicable requirements of Title V of the Gramm-Leach-Bliley Act of 1999 and its implementing regulations.

(f) The terms of this Section 8 shall survive termination of this Agreement.

(a) Neither party may assign this Agreement or any rights or obligations hereunder without first obtaining the written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the permitted successors and assigns of the parties.

(b) This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Agreement. Except as specifically provided herein, this Agreement may be changed only by a written amendment signed by both parties.

(c) This Agreement is made in and shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws rules. Any dispute arising hereunder shall be adjudicated in a court of competent jurisdiction located in the Commonwealth of Virginia. In the event of any lawsuit or other proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to an award of its costs and reasonable attorney's fees incurred at all levels of proceedings.

(d) No rights of any third party are created by this Agreement and no person not a party to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral to the contrary.

(e) In the event that any provision contained in this Agreement is held to be unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remainder of this Agreement shall in no way be affected or impaired thereby.

(g) Any delay or failure by either party in the performance of this Agreement will be excused to the extent that the delay or failure is due solely to causes or contingencies beyond the reasonable control of such party.

(f) This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

(g) Any notice required or permitted hereunder shall be in writing and shall be sent to the address given below of the party to be notified, unless such party has previously notified the other of a change of address, in which case the notice shall be sent to such changed address:

If to Provider:	CarMax Auto Superstores Services, Inc. 4900 Cox Road Glen Allen, Virginia 23060 Attention: Keith D. Browning, Executive Vice President and CFO
-----------------	---

If to CBS:	CarMax Business Services, LLC
------------	-------------------------------

4900 Cox Road
Glen Allen, Virginia 23060
Attention: Stuart A. Heaton, Vice President and Secretary

with a copy to: CarMax Business Services, LLC
4900 Cox Road
Glen Allen, Virginia 23060
Attention: Legal Department

Such notice shall be dispatched by prepaid registered or certified United States mail or via any national overnight mail service, and shall be deemed to have been duly given or rendered five (5) days after mailing or upon delivery, whichever is earlier.

[signature page follows]

IN WITNESS HEREOF, the parties have hereunto set their hand on the date written below.

COMPANY:

CARMAX BUSINESS SERVICES, LLC

By: _____
Stuart A. Heaton, its Vice President & Secretary

PROVIDER:

CARMAX AUTO SUPERSTORES SERVICES, INC.

By: _____
Keith D. Browning, its Executive Vice President &
Chief Financial Officer

Exhibit 9

E&Y Transfer Pricing Analysis FY ending February 28, 2015

See Joint Ex. 8, R. 2853

Exhibit 10

E&Y Memo to CarMax re: Treatment of Advance Payments
following Restructuring (May 31, 2005)

See Joint Ex. 52, R. 4078

Exhibit 11

CarMax East's Pre-Hearing Statement

See R. 168.

Exhibit 15

Department Determination

See Joint Ex. 27, R. 3762

Exhibit 16

CarMax BOD Meeting Minutes (April 6, 2004)

See Joint Ex. 44, R. 3977

Exhibit 17

Memo to Corporate Restructuring File (February 13, 2004)

See Joint Ex. 46, R. 4022

Exhibit 18

Business Purpose Notes

See Joint Ex. 45, R. 4021

Exhibit 19

Audit Committee Notes and Board of Directors Corporate
Reorganization Presentation (April 6, 2004)

See Joint Ex. 47, R. 4029

Exhibit 20

CarMax Memo re: Purposes of Restructuring (November 1,
2004)

See Joint Ex. 43, R. 3973

Exhibit 21

FY 2017 Officers and Directors as of October 1, 2016

See Joint Ex. 49, R. 4047



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 23, 2024

Mr. C. Mitchell Brown, Esquire
PO Box 11070
Columbia SC 29211

Mr. John C. Von Lehe, Jr., Esquire
Ms. Bryson Moore Geer, Esquire
PO Box 1806
Charleston SC 29402

Mr. Robert Thomas Streisel, Esquire
151 Meeting Street
Liberty Center 6Th Floor
Charleston SC 29401

Re: CarMax Auto Superstores, Inc. v. SCDOR
Appellate Case No. 2024-001558

Dear Counsel:

The Court received multiple notices of appeal in this case. The notices of appeal have been consolidated for consideration by the Court, and we anticipate receiving one record on appeal. The times for perfecting the appeal will run from the date of service of the last notice of appeal.

ROA_004771

Very truly yours,

CLERK

cc: Marcus Dawson Antley, III, Esquire
Jason Phillip Luther, Esquire

**** CONFIDENTIAL INFORMATION FILED UNDER SEAL ****

CarMax Auto Superstores, Inc. v. South Carolina Department of Revenue
Appellate Case No. 2024-001558

Respondent's Demonstrative Exhibit 1

File included on Thumb Drive

**** CONFIDENTIAL INFORMATION FILED UNDER SEAL ****

CarMax Auto Superstores, Inc. v. South Carolina Department of Revenue
Appellate Case No. 2024-001558

Respondent's Demonstrative Ex. 2 (SCDOR Spreadsheet)

**** CONFIDENTIAL INFORMATION FILED UNDER SEAL ****

CarMax Auto Superstores, Inc. v. South Carolina Department of Revenue
Appellate Case No. 2024-001558

Respondent's Demonstrative Ex. 3 (SCDOR Spreadsheet)