

1 STATE OF CALIFORNIA
2 OFFICE OF TAX APPEALS
3 400 R STREET
4 SACRAMENTO, CALIFORNIA
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9 REPORTER'S TRANSCRIPT
10 JANUARY 22, 2018
11 CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARING
12 APPEAL OF
13 KATTZMEOWCA, LLC
14 993653
15 AGAINST PROPOSED ASSESSMENT OF
16 ADDITIONAL INCOME TAX
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27 Reported by: Kathleen Skidgel
28 CSR No. 9039

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P R E S E N T

Panel Lead: Grant Thompson
Administrative Law Judge

Panel Members: Teresa Stanley
Administrative Law Judge

Amanda Vassigh
Administrative Law Judge

Office of Tax
Appeals Staff: Claudia Lopez
Staff Services Manager II

Dana Holmes
Ombudsperson

Appearing for Taxpayer: Sandra Barnikel
Taxpayer

Appearing for
Franchise Tax Board: Adam Susz
Tax Counsel

Andy Amara
Tax Counsel

Michael Cornez
Tax Counsel

---oOo---

1 400 R STREET, HEARING ROOM

2 SACRAMENTO, CALIFORNIA

3 JANUARY 22, 2018

4 ---oOo---

5 JUDGE THOMPSON: We are on the record in
6 the appeal of Kattzmeowca, LLC, case number
7 18010809, before the Office of Tax Appeals.

8 It is January 22nd, 2018, and the time is
9 10:47 a.m., and this hearing is being held in
10 Sacramento.

11 Now I know we went through this before we
12 went on the record. But, again, for the record I'd
13 ask the parties to please identify themselves. And
14 I'll start with appellant's representative.

15 MS. BARNIKEL: My name is Sandra
16 Barnikel.

17 MR. SUSZ: My name is Adam Susz.

18 MR. AMARA: Andrew Amara.

19 MR. CORNEZ: Michael Cornez.

20 JUDGE THOMPSON: Thank you.

21 All right. As I stated, today's appeal is
22 being heard by a panel of three judges. My name is
23 Grant Thompson and I'll be acting as the lead judge
24 for the purpose of conducting this hearing. And I
25 have here with me Judge Vassigh to my left and Judge
26 Stanley to my right.

27 This hearing is being conducted pursuant to
28 the Administrative Procedures Act and regulations

1 applicable to the Office of Tax Appeals. However,
2 our hearings are less formal than a court, and I'll
3 try to keep things as simple as I can.

4 Both parties, during this process, have an
5 opportunity to object.

6 And, Ms. Barnikel, I wanted to mention that
7 I don't want you to feel you have to use a technical
8 legal term. If you feel that you need to object to
9 testimony or any evidence, you can just raise your
10 hand and get my attention and I'll listen to what
11 you have to say and I'll try to translate it into a
12 legal argument, okay?

13 MS. BARNIKEL: Okay.

14 JUDGE THOMPSON: Now I'm going to read into
15 the record the exhibits we discussed prior to going
16 on the record. And I'm going to ask each party if
17 there's any objection to the exhibits coming into
18 the record.

19 Exhibit 1 is the refund denial letter for
20 2015, dated November 7th, 2016, which was attached
21 to appellant's appeal letter.

22 And I'm going to ask you, Ms. Barnikel,
23 does this accurately state that's the exhibit you
24 would like to submit at this time?

25 MS. BARNIKEL: Yes, Your Honor.

26 JUDGE THOMPSON: Okay. And I know we
27 talked about this before going on the record, but do
28 you have any other documents that you're going to

1 present today?

2 MS. BARNIKEL: No, Your Honor.

3 JUDGE THOMPSON: Okay. Thank you.

4 For FTB, do you have any objection to this
5 document?

6 MR. SUSZ: No, Your Honor.

7 JUDGE THOMPSON: Okay. Thank you. This
8 exhibit is admitted.

9 For the FTB, we have Exhibits A through H
10 that we discussed before going on the record, and
11 I'm going to read through them fairly quickly. Stop
12 me if it's too quick.

13 Exhibit A are documents filed by the LLC
14 with the Secretary of State, including its articles
15 of organization.

16 Exhibit B is a printout of an FTB computer
17 record, showing the LLC's tax returns for the tax
18 years at issue, having been filed on September 1,
19 2016.

20 Exhibit C is a printout of FTB computer
21 records indicating the LLC's payment of \$5,461.07 on
22 September 1, 2016. That's \$5,461.07 on September 1,
23 2016.

24 Exhibit D is the FTB cover letter to
25 Exhibits A, B and C and the attached declaration of
26 FTB employee Jamie Szeto. That last name is
27 S-z-e-t-o. And that's dated January 17, 2018.

28 Exhibit E is the FTB's refund denial letter

1 for the 2012 tax year, dated October 14, 2016.

2 Exhibit F is the FTB's refund denial letter
3 for the 2013 tax year, also dated October 14, 2016.

4 And Exhibit G is the FTB's refund denial
5 letter for the 2014 tax year, also dated October 14,
6 2016.

7 And the last exhibit is Exhibit H. And
8 Exhibit H is a repeat of Exhibit A, which is the
9 documents attached -- I'm sorry, that were filed
10 with the LLC -- filed by the LLC with the Secretary
11 of State, except that it's a certified copy.

12 So, FTB, are there any additional exhibits
13 you're going to offer today?

14 MR. SUSZ: No, Your Honor.

15 JUDGE THOMPSON: Okay, thank you.

16 And Ms. Barnikel?

17 MS. BARNIKEL: Yes, I just do have a
18 question.

19 JUDGE THOMPSON: Yes.

20 MS. BARNIKEL: I have that I paid the
21 amount of 5586.67 on 10/4.

22 JUDGE THOMPSON: Okay, thank you.

23 Can you state that amount for me one more
24 time?

25 MS. BARNIKEL: 5586.67.

26 JUDGE THOMPSON: 5586 --

27 MS. BARNIKEL: 67.

28 JUDGE THOMPSON: -- 67. And on what date?

1 On October --

2 MS. BARNIKEL: '16. On October 4, '16,
3 2016.

4 JUDGE THOMPSON: Okay.

5 MS. BARNIKEL: That was the date that the
6 bill was presented to me.

7 JUDGE THOMPSON: Okay. Thank you.

8 One moment while I look at that exhibit.

9 Okay. Let me ask FTB, does that correlate
10 with your records, FTB?

11 MR. SUSZ: We're taking a look, Your
12 Honor.

13 JUDGE THOMPSON: Okay.

14 MR. AMARA: The only thing we have is the
15 5461.07 figure. But I don't have any reason to
16 doubt what appellant is suggesting that she paid.

17 MS. BARNIKEL: Can I make a comment?

18 JUDGE THOMPSON: Please do.

19 MS. BARNIKEL: The additional amount was
20 because I put this on a credit card and apparently
21 the State of California, if you put it on a credit
22 card, there's an extra fee. So that extra fee
23 amounted to 125.60, which gave my total balance was
24 5586.67.

25 JUDGE THOMPSON: Okay. I'm going to ask
26 you to repeat that one more time if you would.

27 MS. BARNIKEL: The state -- the credit card
28 charge was 125.60. And when you add that to

1 5461.07, you get 5586.67.

2 JUDGE THOMPSON: Okay. Thank you for
3 clarifying that.

4 MS. BARNIKEL: And that was on October 4th,
5 2016. That was when I was presented with this bill
6 and that was when I paid it.

7 JUDGE THOMPSON: So later on -- well, let
8 me ask you something. Are you reading from any
9 document that you would like to put in the record,
10 or is that your notes?

11 MS. BARNIKEL: No. That's an official
12 piece of paper that I got from the FTB when I was in
13 there. This is what they gave me.

14 JUDGE THOMPSON: It's up to you. But if
15 you would like, we can include that in the record as
16 well.

17 MS. BARNIKEL: It has my notes on it, but
18 do you want that? That's fine with me.

19 JUDGE THOMPSON: It's up to you. I could
20 ask Ms. Lopez to make a copy for everybody.

21 MS. BARNIKEL: Okay. That's fine if that's
22 what you want to have.

23 JUDGE THOMPSON: It will help us understand
24 what's going on.

25 MR. AMARA: Your Honor, can I just point
26 out, my understanding is that additional amount's a
27 vendor fee with the credit card transactions, FTB
28 doesn't collect that fee. That's a third-party fee.

1 I just wanted to put that in the record.

2 JUDGE THOMPSON: Sure. I understand.

3 MS. BARNIKEL: I didn't get that. What?

4 JUDGE THOMPSON: He said those are vendor
5 fees. I think you guys are agreeing.

6 MS. BARNIKEL: I don't know. It's what?

7 JUDGE THOMPSON: It's another way of saying
8 it's an extra credit card fee.

9 MS. BARNIKEL: Yes. And that's what the
10 gentleman at the FTB there gave me, this bill,
11 presented this bill to me and said this is what I
12 had to pay.

13 JUDGE THOMPSON: Mm-hmm. And so you got
14 your credit card and you paid it and then you
15 incurred the credit card charge on top of that,
16 right?

17 MS. BARNIKEL: The Franchise Tax Board
18 charged me the additional cost because they -- you
19 know, as a merchant you have to pay a cost for
20 someone that uses a credit card. And so that's
21 apparently what the State of California did, they
22 charged me that cost. I didn't get any cost,
23 additional cost from my credit card.

24 JUDGE THOMPSON: Okay. I think I
25 understand. But let's hold that. And if you are
26 comfortable doing it, you might want to talk about
27 it again in your testimony so we have it in the
28 record.

1 MS. BARNIKEL: Okay.

2 JUDGE THOMPSON: All right. So, Ms.
3 Barnikel, with the understanding FTB has submitted
4 its Exhibit C showing payment information here --

5 MS. BARNIKEL: Yes.

6 JUDGE THOMPSON: -- would you object to us
7 including that in the record and then considering it
8 alongside your testimony?

9 MS. BARNIKEL: Yes, this is just exactly
10 what's on that piece of paper that they're copying,
11 except it doesn't have any additional credit card
12 charge on it.

13 JUDGE THOMPSON: Okay. Okay.

14 All right. Then I'm going to keep moving
15 on. And when we come back and we get the exhibit
16 that Ms. Lopez is copying, I'll hand that out and
17 we'll look at that together briefly again. Okay?

18 MS. BARNIKEL: Okay.

19 JUDGE THOMPSON: All right. Before we went
20 on the record we discussed areas of agreement or
21 stipulations of the parties. And you recall I read
22 out six background facts and I got one date wrong,
23 which I'm going to correct and try not to do twice.

24 I'm going to read those facts, or proposed
25 facts, again and ask each party if they're in
26 agreement.

27 Number one, appellant Kattzmeowca, LLC was
28 formed on June 21st, 2012.

1 Number two, Ms. Barnikel and Carol Aufield
2 are its only two members.

3 Number three, appellant filed tax returns
4 for the 2012, 2013, 2014, 2015 tax years on
5 September 1, 2016.

6 Number four, all of the tax penalties and
7 interest assessed by the FTB against the LLC for the
8 years at issue have been paid.

9 Number five, appellant Kattzmeowca, LLC
10 filed a certificate of cancellation with the
11 California Secretary of State on October 4, 2016.

12 Number six, appellants filed a timely
13 appeal.

14 Do the parties agree with those facts?

15 MS. BARNIKEL: Yes, Your Honor.

16 JUDGE THOMPSON: Thank you.

17 MR. SUSZ: Yes, Your Honor.

18 JUDGE THOMPSON: Thank you.

19 Ms. Lopez is handing out the exhibit. Let
20 me just take a moment to review this and give the
21 Franchise Tax Board a chance to review it as well.

22 MS. BARNIKEL: I don't know if you can
23 decipher my notes at the bottom of the page.

24 JUDGE THOMPSON: Okay. Well, just for the
25 record, I see this is an October 4, 2016 notice, and
26 it reflects a total amount due of 5461.07. And it
27 does have some notations from Ms. Barnikel on it
28 that I'm not going to read into the record at this

1 point.

2 Does the Franchise Tax Board have any
3 objection to us taking this into the record for
4 consideration?

5 MR. SUSZ: No, Your Honor.

6 JUDGE THOMPSON: Thank you.

7 And thank you, Ms. Barnikel, for providing
8 it.

9 JUDGE STANLEY: Is this Exhibit 2?

10 JUDGE THOMPSON: Yes, I'll mark this as
11 Exhibit 2. Exhibit 1, Ms. Barnikel, is the 2015
12 refund denial. And this is Exhibit 2 of appellant
13 Kattzmeowca, LLC.

14 All right. So now we're going to move on,
15 if everybody's ready, to opening statements.
16 Opening statements are not mandatory. They are a
17 helpful way for us to understand each party's
18 arguments.

19 And again, Ms. Barnikel, if you choose to
20 make an opening statement, just explain in your own
21 words why you think you're right, what you hope to
22 show and prove today.

23 Keep in mind, later on you'll have an
24 opportunity to provide testimony and there may be
25 some overlap. But this opening statement is
26 primarily to set forth your arguments.

27 I don't want you to worry too much about
28 the format. Just explain why you think you should

1 prevail if you wish to give an opening statement.

2 All right. Would you like to give an
3 opening statement?

4 MS. BARNIKEL: Yes. I'd like to make an
5 opening statement briefly.

6 JUDGE THOMPSON: Okay. Are you ready to
7 go?

8 MS. BARNIKEL: Yes.

9 Well, I'm doing this -- first of all, I'm a
10 retired citizen, so I'm not familiar with all this
11 kind of activity. So I apologize if I cause issue
12 here or whatever.

13 But my friend and myself, Carol and I,
14 decided that since we are retired we would make a
15 little extra money by selling some of mother's and
16 grandmother's things. So we decided to go make a
17 flea market type thing. We were concerned that if
18 someone should trip, fall, whatever, hurt themselves
19 at our booth, that we would possibly be sued and
20 lose our house in the matter.

21 So in order to avoid doing that, we felt
22 that by doing a legal thing, an LLC, that we would
23 avoid that and we would therefore be protected and
24 we wouldn't have to worry about that. So that's why
25 we did the LLC.

26 As we started to do this and get ourselves
27 organized and get ready to go and do the flea market
28 aspect of it, we found that we're retired, we were a

1 little physically, shall we say, disabled and that
2 it was very difficult for us to do this. And in
3 fact it ended up that I was not able to continue
4 because I had a knee problem and I ended up having
5 knee replacement surgery. And so the actual
6 physical activity of doing the business was
7 impossible. So we just simply stopped.

8 Now, I've had a business before in another
9 state. I had a corporation. And when I sold the
10 corporation, I don't recall notifying that state
11 that I was no longer doing business. I simply sold
12 the business and moved on. And so I felt that since
13 we did not return any tax forms for tax collected
14 that the State of California would realize that
15 we're putting zero on it and that we would no longer
16 be in business. Unfortunately, that apparently was
17 not the case.

18 And so when we stopped doing our business
19 we just, you know, just continued on. And it wasn't
20 until four years later that I get a notice from the
21 Franchise Tax Board saying "Final Notice Before
22 Levy." If this is a final notice, where's the first
23 notice? And my final notice was to pay a fee of
24 \$250.

25 Well, immediately Carol and I tried to
26 contact the Franchise Tax Board. We were unable to
27 get through on the phone, so we made the trip down
28 to Sacramento and went to the Franchise Tax Board,

1 we were at the Secretary of State, and whatever we
2 could do to void this fee.

3 I guess one of my questions would be, if we
4 had paid this \$250 fee would everything have been
5 over and done with and we could have moved forward?

6 We did not do that. We tried to get this
7 fee eliminated and through the process we found out
8 that we had to do all of these other cancellation of
9 business, cancellation of all these other
10 activities.

11 And then finally we ended up at the
12 Franchise Tax Board and he said there was a fee of
13 \$800 per year: 2012, 2013, 2014, 2015. So we were
14 looking at a \$800 fee per year for those four years.
15 And so we were a little taken aback. So he said we
16 had to come back again another time. Then he filled
17 out this form with all these additional penalties
18 which we were unaware of. And that's when the final
19 bottom line came down to 2461, plus the Mastercharge
20 fee.

21 So I just feel that we were kind of taken
22 advantage of, shall we say here. You know, we were
23 just trying to making a little extra money as
24 retired people and all of a sudden we're facing an
25 almost \$6,000 bill here, which I've paid, but I
26 would like to have some sort of a refund on this.

27 Now, I know I made a mistake because we
28 didn't follow through. You know, we didn't read the

1 fine print on page 43 or whatever it was in the
2 brochure that you all sent out. But we were trying
3 to just simply make a little extra cash, and
4 apparently it backfired on us.

5 So, like I said, I'm willing to pay for at
6 least the 2012 year, but I don't think we should be
7 penalized for four years, seeing that nobody came
8 forward from the State of California and said "Oh,
9 by the way, you owe this money." And especially
10 when I got this notice that says "Final Notice
11 Before Levy." Final, to me, means that there was
12 something before that.

13 And so that's why I'm here today. I think
14 that I should have some sort of a refund on this.

15 JUDGE THOMPSON: Okay, thank you. So in a
16 moment I'm going to give FTB a chance to present its
17 opening argument and response, and then I'm going to
18 give you a chance to provide testimony.

19 MS. BARNIKEL: Okay.

20 JUDGE THOMPSON: So I think the testimony
21 will probably hit a lot of the same points. In case
22 I forget when we get to it, I don't want you to
23 worry about repeating yourself if you'd like to give
24 it under testimony again.

25 MS. BARNIKEL: Okay.

26 JUDGE THOMPSON: Okay. FTB are you ready
27 to give your opening statement?

28 MR. SUSZ: Yes, Your Honor.

1 JUDGE THOMPSON: Okay. Please begin.

2 MR. SUSZ: Good morning, Your Honors. This
3 is a case about a Limited Liability Company that was
4 formed in the State of California in 2012 and the
5 corresponding legal requirement for this California
6 LLC to file tax returns and pay the minimum annual
7 LLC tax each year until it terminated its existence
8 when it filed a Certificate of Cancellation as well
9 as a Certificate of Dissolution with the California
10 Secretary of State's office in 2016.

11 Kattzmeowca, LLC was formed in the State of
12 California in 2012 when it filed Articles of
13 Organization with the California Secretary of
14 State's office. The LLC was legally required to
15 file a California tax return and pay the minimum
16 \$800 LLC tax for each taxable year until it filed a
17 Certificate of Cancellation with the Secretary of
18 State in 2016.

19 Finally, related to the penalty issues in
20 this case, the LLC has not met its burden of proof
21 to establish reasonable cause for penalty abatement
22 in this case.

23 Thank you.

24 JUDGE THOMPSON: Okay. Thank you, FTB.

25 So appellant, in a moment I'm going to put
26 you under oath so you can give your testimony. And
27 before I do that, I don't know if I remembered to do
28 it previously, but we had admitted appellant's

1 Exhibits 1 and 2 and FTB's Exhibits A through H into
2 the record we discussed previously. And maybe I've
3 done that twice, but I just wanted to make that
4 clear.

5 Ms. Barnikel, are you ready to provide your
6 testimony and describe the factual background here
7 and the circumstances that led to the late filing
8 and late payment?

9 MS. BARNIKEL: Yes, I am.

10 JUDGE THOMPSON: All right. Please begin.
11 I'm sorry, I forgot to put you under oath.
12 Please stand and raise your right hand.

13 Do you swear to tell the truth, the whole
14 truth and nothing but the truth?

15 MS. BARNIKEL: I do.

16 JUDGE THOMPSON: All right, thank you.
17 Please be seated.

18 Now you may begin.

19 MS. BARNIKEL: Well, basically it's going
20 to be a repeat of what I just said earlier.

21 This business was formed as a -- we
22 thought, as a way of protecting ourselves from
23 further litigation from someone unbeknownst to us.
24 And we simply did not read the whole brochure that
25 came with all the paperwork that came back from the
26 State of California.

27 And I apologize for that and we're
28 certainly willing to pay some fee, but it just seems

1 like four years is a long time before I hear
2 anything from the State of California. And
3 especially when I got this final notice. It just
4 doesn't seem right that you should wait four years
5 before you notify. It seems to me that's a way to
6 make extra money as far as I'm concerned.

7 But anyway, the point is that we were
8 trying to just make some extra cash since we are
9 retired and living off of Social Security and that's
10 why we started the business.

11 We are willing to pay a portion of this,
12 but not all of this because I don't feel four
13 years -- I mean if I run my business and I don't
14 bill a client for four years and I'm going to say,
15 oh, and by the way you have to pay penalties
16 because, you know, you had whatever product that I
17 sold you and now it's four years later and you
18 expect me to pay? That's not the way business works
19 and I'm surprised that the State of California works
20 that way, too.

21 As I said, I'm willing to pay for the first
22 year, but not all the additional years.

23 And just as kind of a point of information,
24 my friend Carol has sold her home and moved on. So
25 this total burden is on me. And as a retired
26 person, \$6,000 is hard to pull out of Social
27 Security.

28 So when we did pay the \$5600, the gentleman

1 at the window said that we could apply for a refund
2 and we could get a refund of possibly up to 75
3 percent. And so we said, okay, whatever, just as
4 long as we can get some kind of a refund on this.

5 And so basically that's my testimony.

6 JUDGE THOMPSON: Okay, thank you. Just a
7 moment.

8 All right. I think we'll probably have
9 some questions from the Franchise Tax Board,
10 perhaps. And I think we'll probably have some
11 questions from the judges if you're ready.

12 Franchise Tax Board, do you have any
13 questions?

14 MR. SUSZ: We have no questions, Your
15 Honor.

16 JUDGE THOMPSON: Okay. Judge Vassigh, do
17 you have any questions you'd like to ask?

18 JUDGE VASSIGH: I'd just like to clarify
19 that the brochure you mentioned, is that something
20 that came from the Secretary of State as part of
21 filing the LLC?

22 MS. BARNIKEL: Yes. Yes, Your Honor.

23 JUDGE VASSIGH: Okay. Thank you.

24 MS. BARNIKEL: It was a very large packet.

25 JUDGE VASSIGH: Okay.

26 MS. BARNIKEL: And I can't tell you what's
27 in it.

28 As I said, my friend Carol, the other

1 person in this, she was keeper of the packet and she
2 moved away and I have no idea where that is.

3 JUDGE THOMPSON: Judge Stanley, I think,
4 has some questions.

5 JUDGE STANLEY: I just have one question.
6 You mentioned that you got a final notice from the
7 FTB. Do you have a copy of that with you by any
8 chance?

9 MS. BARNIKEL: Yeah. I have it right here.
10 Do you not have this?

11 JUDGE STANLEY: Can we take copies of that
12 also?

13 MS. BARNIKEL: You don't have that? Okay.
14 And this was the first piece of paper that
15 I received, dated -- well, I don't even see a date
16 on here. It says final date for payment is 9/10/16.
17 Notice date 8/26/16 is when this notice was sent
18 out.

19 JUDGE STANLEY: Would you mind handing that
20 to Ms. Holmes and we'll get copies and Judge
21 Thompson can mark it as next in order, Exhibit 3, I
22 believe.

23 Thank you. That's all.

24 JUDGE THOMPSON: I have a couple questions.
25 When you went in to pay the amount due you
26 mentioned being told that you might have a chance to
27 get a refund?

28 MS. BARNIKEL: That's right.

1 JUDGE THOMPSON: Could you tell me about
2 that?

3 MS. BARNIKEL: Well, when we had gone in
4 previously he said it was an \$800 fee. Okay. But I
5 had to come back, and I can't remember what the
6 reason was that we had to come back at another date.
7 We had to file a cancellation notice or something or
8 other. We had to go back to the Secretary of State.

9 So we went back to the Secretary of State,
10 then we had to come back to the Franchise Tax Board.
11 And that's when he -- I said, okay, we're going to
12 pay. And we were ready with checkbook to pay our
13 \$800 fee. And so he started filling out this form
14 that I gave you here. And it was \$800 per year, and
15 then there were penalties. And the penalties were
16 based on how many people were in the business and
17 other things. I can't remember. I mean we were
18 just astonished as to how this was adding up. And
19 then there were some interest charges on that.

20 And so then the bottom line, which they
21 gave us a copy of this piece of paper, and it said
22 that it was 5461. And we said, what? I thought it
23 was \$800? He said, no, 5461.

24 Well, since I didn't have 5461 in my
25 checkbook, I said I'll have to put it on the
26 Mastercard. That's when he told me that the State
27 of California doesn't deal with Mastercard and we
28 have to charge you the fee that they charge us. So

1 I said fine, whatever.

2 So he did that. As I'm writing out the
3 check, we tried to make a comment or we did make a
4 comment that 5586 was a big number. And he said oh,
5 well, don't worry about it, you can file for a
6 refund and sometimes they give you up to a 75
7 percent refund. So we said okay, whatever. And so
8 I gave him the credit card and went from there.

9 And this was the gentleman at the window at
10 the Franchise Tax Board.

11 JUDGE THOMPSON: And can you give me the
12 date when that occurred again?

13 MS. BARNIKEL: 10/4.

14 And the gentleman at the window -- I don't
15 have his last name -- his first name was Xavier.

16 JUDGE THOMPSON: Okay.

17 Judge Vassigh has some questions.

18 JUDGE VASSIGH: Ms Barnikel, is this the
19 correct address on the Final Notice Before Levy?

20 MS. BARNIKEL: 5841 Tweedsmuir, yes, that's
21 my address, my home address.

22 JUDGE VASSIGH: Thank you.

23 JUDGE THOMPSON: We're just going to take a
24 moment and review this and give FTB a chance to
25 review it.

26 (Pause.)

27 JUDGE THOMPSON: So just reading the
28 document here, it appears this is a Final Notice

1 Before Levy for the 2016 tax year. As you, I think,
2 stated, it's dated August 26, 2016.

3 MS. BARNIKEL: And this was the first
4 notice that I received from the date, you know, that
5 we filed the organization papers, which was back on
6 2012.

7 JUDGE THOMPSON: I'm just going to allow a
8 couple more moments for FTB to review it.

9 MS. BARNIKEL: And I guess my -- I mean I
10 might have a question here if this is for the
11 taxable year 2012 -- oh, it is through '12 through
12 '16. It's not December 16th. I don't know, I guess
13 that's how you could read that.

14 Does that mean that's through the years '12
15 through '16?

16 JUDGE THOMPSON: I'd ask respondent to
17 address that question.

18 MR. SUSZ: Your Honor, so my understanding
19 is this document does not relate to the tax and
20 penalties at issue in our appeal. This relates to
21 an obligation to file Statement of Information
22 document with the Secretary of State's office in the
23 case of a Limited Liability Company in the State of
24 California. And there's a specific Revenue and
25 Taxation Code section 19141 that sets forth a
26 penalty for failure to comply with that filing
27 requirement. That is what -- that is what this
28 document relates to.

1 JUDGE THOMPSON: Let me, just to address
2 her question, the 12 slash 16 indicates the tax year
3 December 2016, ending December 2016; is that
4 correct?

5 MR. SUSZ: That is correct, Your Honor.

6 JUDGE THOMPSON: So it's for the 2016 tax
7 year.

8 MS. BARNIKEL: How come I didn't get one
9 for '15 and '14 and '13 and '12?

10 JUDGE THOMPSON: I don't know the answer to
11 that.

12 MS. BARNIKEL: That's a good question.

13 MR. SUSZ: I believe I misspoke. It's for
14 '12 through '16. I think what this has to do with
15 is the fact that that document is required to be
16 filed with the Secretary of State's office in the
17 case of a Limited Liability Company wasn't filed and
18 this is a penalty that relates to failure to file
19 that document. The Revenue and Taxation Code simply
20 says that FTB, even though it's not, you know, it's
21 not our penalty, but we collect it. And my
22 understanding is I made an error. It would be for
23 the '12 to '16 years.

24 JUDGE THOMPSON: Okay. In addition to the
25 5,461.07 amount, there was a charge that the FTB
26 carried over from the credit card company; is that
27 correct?

28 MR. SUSZ: Yes, Your Honor. This is

1 unrelated to that credit card charge.

2 JUDGE THOMPSON: Okay.

3 MS. BARNIKEL: Your Honor. That was not
4 carried over to my credit card fee. And during this
5 whole process, through the months of October, we
6 filed some sort of a piece of paper, and I can find
7 it here for you, that says that we got the \$250
8 fee -- here. We requested the \$250 fee be cancelled
9 on 10/14, and on 10/19 the fee was waived.

10 JUDGE THOMPSON: So was this \$250 fee
11 included in the amount for which you're claiming a
12 refund?

13 MS. BARNIKEL: No. That \$250 fee is not
14 included in the 5,000 figure. But I'm saying I had
15 no clue that anything was coming from the Franchise
16 Tax Board or the Secretary of State or whoever it
17 was until I got this fee, this piece of paper which
18 said "final notice." That's what kind of threw us
19 because we had no previous notice.

20 JUDGE THOMPSON: I understand.

21 MS. BARNIKEL: And I also had no notice
22 from the Franchise Tax Board that these other fees
23 were due. I mean if I hadn't gone down to try to
24 eliminate this \$250 fee, would it still be running?

25 JUDGE THOMPSON: Mm-hmm, mm-hmm.

26 MS. BARNIKEL: I don't -- you know.

27 JUDGE THOMPSON: Let me mention a couple
28 things at this point.

1 One, Ms. Barnikel, if we don't receive a
2 document from either you or Franchise Tax Board, we
3 don't have it. So we don't have your entire record
4 of Franchise Tax Board. So if you think of any
5 other documents that you think might be helpful to
6 us to understand, then please feel free to provide
7 them and Ms. Lopez can make a copy. And we can take
8 a few minutes if you'd like. I just want to make
9 that clear to you.

10 MS. BARNIKEL: Well, I just assumed -- I
11 guess that's a major mistake on my part -- that the
12 Franchise Tax Board had copies of everything they
13 gave me.

14 JUDGE THOMPSON: Well they probably do, but
15 we don't necessarily have them. Unless one of you
16 all send it to us, we wouldn't have it.

17 MS. BARNIKEL: Okay. I don't know what's
18 missing. I mean, this piece of paper you didn't
19 have. This tax and final levy thing you didn't
20 have.

21 JUDGE THOMPSON: All right. So we have the
22 documents A through H that I read through that
23 Franchise Tax Board gave us. And then we have two
24 documents so far -- three now, from you. We have
25 the denial notice and then two additional documents
26 you provided during the hearing. But that's all we
27 have right now. So if you have anything else you
28 think is relevant, then you can certainly provide

1 it.

2 MS. BARNIKEL: Well, without double
3 checking through all my documents here, it's going
4 to take a few minutes --

5 JUDGE THOMPSON: Okay. Maybe we'll take a
6 brief recess. Would that be helpful?

7 MS. BARNIKEL: Okay. All right. Yes.

8 JUDGE THOMPSON: And before we do that I
9 wanted to note to you, you mentioned a few times
10 you'd be willing to pay one year but not all
11 years.

12 MS. BARNIKEL: Correct.

13 JUDGE THOMPSON: And I just wanted to be
14 clear to you about what our power is here at the
15 Office of Tax Appeals. We don't have the statutory
16 authority to settle an amount as if we were
17 considering the risk of litigation and sort of split
18 the difference.

19 The FTB has a program, settlement program
20 which they can do that. We can't do that. We just
21 to have look at the evidence in the record, the
22 arguments, and do our best to decide who's right and
23 who's wrong. So I just wanted to make sure that you
24 understood that.

25 MS. BARNIKEL: So does that mean I have to
26 pay it all or I pay none?

27 JUDGE THOMPSON: It just means that we
28 would apply the law to the facts offered and if that

1 resulted in you owing part of it, then you would owe
2 part of it. And if that resulted in you owing none
3 of it, you would owe none of it. But we can't look
4 at it say, "well, you know, we're not sure" or
5 "we'll split the difference," or "we'll compromise,"
6 or that kind of thing. Does that -- do you follow
7 what I'm saying?

8 MS. BARNIKEL: Okay, that makes sense.
9 Doesn't seem like the way it should be, but I guess
10 that's the way it is.

11 JUDGE THOMPSON: I only have the power that
12 we're given in the statute. And there's a separate
13 statute that gives FTB a settlement bureau that
14 handles those kinds of settlements, so I just wanted
15 to make sure you knew that.

16 MS. BARNIKEL: Okay.

17 JUDGE THOMPSON: So would five minutes be
18 long enough for you?

19 MS. BARNIKEL: Sure.

20 JUDGE THOMPSON: Let's take five minutes
21 and come back.

22 (Whereupon a break was taken from
23 11:24 a.m. until 11:40 a.m.)

24 JUDGE THOMPSON: We're back on the record
25 for the appeal of Kattzmeow, LLC. Thanks for your
26 patience.

27 While we were recessed, Ms. Barnikel
28 provided two documents.

1 One of these we actually already have in
2 the record, Ms. Barnikel. This document that's
3 dated November 8th, 2016 is the refund denial for
4 September 1st -- I'm sorry. It's refund denial for
5 the 2012 tax year. And it's already in the record
6 as FTB's Exhibit E.

7 MS. BARNIKEL: Because they have all
8 different dates on them, I wasn't sure which one it
9 was.

10 JUDGE THOMPSON: I know it's confusing, but
11 I'd rather be safe.

12 MS. BARNIKEL: Okay.

13 JUDGE THOMPSON: This second document is a
14 Reasonable Cause Business Entity Claim for Refund.
15 This is dated September 1st, 2016. And I'm going to
16 go ahead and mark that as appellant's Exhibit 4.

17 All right. At this time let me ask FTB,
18 does it have any objection to these exhibits,
19 Exhibit 3, the Final Notice Before Levy, or Exhibit
20 4, this Claim for Refund, coming into the record?

21 MR. SUSZ: No objections, Judge Thompson.

22 JUDGE THOMPSON: Thank you.

23 Okay. Thank you for pulling those together
24 for us.

25 MS. BARNIKEL: Okay.

26 JUDGE THOMPSON: As I mentioned I wanted to
27 ask you a question about something you mentioned in
28 your opening statement --

1 MS. BARNIKEL: Yes.

2 JUDGE THOMPSON: -- that I don't believe
3 you mentioned in your testimony later, and I was
4 hoping you could expand upon it some.

5 MS. BARNIKEL: Okay.

6 JUDGE THOMPSON: Before I do that, just for
7 the record and to simplify things, can you swear or
8 affirm that all the factual statements in your
9 opening statements are true and correct?

10 MS. BARNIKEL: Yes. Yes, sir.

11 JUDGE THOMPSON: Okay, thank you. That
12 will help, I think.

13 So, as I mentioned before we went on the
14 record, you had mentioned that you had suffered some
15 health problems during the years at issue.

16 MS. BARNIKEL: Yes, sir.

17 JUDGE THOMPSON: And I'm not sure about the
18 other member. And I think you mentioned a knee
19 replacement.

20 MS. BARNIKEL: Correct.

21 JUDGE THOMPSON: And if you could provide
22 some testimony about the extent of those issues and
23 the timing when they occurred, that might be
24 helpful.

25 MS. BARNIKEL: I can't tell exactly when it
26 occurred because there is no specific time as to
27 when knee pain starts. I don't remember having knee
28 pain prior to the start of the LLC. But as we

1 continued on, lifting boxes, moving this, moving
2 that, moving things, I started having difficulty and
3 pain in my knee. I even had to give up my yoga
4 classes because I could not attend, I could not do
5 the class.

6 And so that's why we stopped doing it,
7 because we didn't want to make the problem any
8 worse. And I did go on and eventually -- it wasn't
9 until December of '15 -- excuse me, December of '16
10 that I had actual surgery, trying to get
11 appointments with the surgeon and trying then to get
12 on his waiting list for the surgery, I spent almost
13 a year waiting for those two appointments. And so I
14 had surgery on December 16th for the total knee
15 replacement, and I spent the last year recovering
16 from that.

17 JUDGE THOMPSON: Okay. Thank you.

18 MS. BARNIKEL: Mm-hmm.

19 JUDGE THOMPSON: Okay. So, Ms. Barnikel,
20 is there anything else that you'd like to add before
21 you finish your testimony?

22 MS. BARNIKEL: No.

23 JUDGE THOMPSON: Okay, thank you. And my
24 fellow judges, have any further questions?

25 They say no.

26 FTB, do you have any further questions?

27 MR. AMARA: No.

28 Could I just clarify the \$250 penalty

1 that's come up a couple times, I just wanted to note
2 that that's a Secretary of State penalty that FTB's
3 statutorily required to collect. FTB would only
4 collect that after it receives information from the
5 Secretary of State that those particular
6 requirements were not met. So that's not an
7 FTB-initiated penalty. I just want to point that
8 out.

9 MS. BARNIKEL: Your Honor?

10 JUDGE THOMPSON: Yes.

11 MS. BARNIKEL: I might mention that we did
12 fill out paperwork asking for the fee to be waived,
13 the \$250 fee and that fee was waived on 10/19/16.

14 JUDGE THOMPSON: Thank you. That's
15 helpful.

16 All right. Before we move on, I want to
17 note for the record that we're going to take in
18 appellant's additional exhibit, Exhibit 4, which is
19 the Claim for Refund, dated December 1st, 2016.

20 Okay. At this time the Franchise Tax Board
21 has the chance to present any evidence that it would
22 like to submit, keeping in mind that we already have
23 in the record exhibits submitted so far by Franchise
24 Tax Board. And my understanding from our discussion
25 prior to going on the record is that FTB does not
26 have any witnesses that it's seeking to present
27 today; is that correct?

28 MR. SUSZ: That's correct, Judge Thompson.

1 JUDGE THOMPSON: Does FTB have any
2 additional exhibits that it'll be presenting today?

3 MR. SUSZ: No, we don't.

4 JUDGE THOMPSON: Okay. One moment, please.
5 We do have some questions from Judge
6 Stanley and so I want let her do that at this
7 point.

8 JUDGE STANLEY: I have questions for the
9 Franchise Tax Board representative.

10 I needed some clarification on the dates
11 because LLC filings are a different breed than
12 regular income taxes. So, for 2012, for example,
13 what is the filing date and the payment due date?

14 MR. SUSZ: Judge Stanley, so you're asking
15 for the filing due date for an LLC return, which
16 is -- it's the third -- so it is due the 15th day of
17 the third month of the close of the taxable year.

18 JUDGE STANLEY: Okay. You're referring to,
19 I think it's 18633.

20 MR. SUSZ: Point 5.

21 JUDGE STANLEY: Okay. So for 2012, the
22 statute would have said the fourth month -- the 15th
23 day of the fourth month because the law recently
24 changed, right?

25 MR. SUSZ: Well, the LLC tax, the \$800
26 minimum tax is due on the fourth month. The return
27 is due on the third month.

28 JUDGE STANLEY: Okay. And that's one of

1 the things I'm trying to clarify. So for 2012 the
2 return filing date would have been, you think, March
3 15th of the next -- of 2013?

4 MR. SUSZ: That's correct.

5 JUDGE STANLEY: And the payment date due
6 would have been April 15th of 2013?

7 MR. SUSZ: Correct.

8 JUDGE STANLEY: And then for the remainder
9 years, I can just bump that up a year?

10 MR. SUSZ: Yes.

11 JUDGE STANLEY: Did one of the
12 representatives think that might not have been
13 exactly correct?

14 MR. SUSZ: That is correct, Judge
15 Stanley.

16 JUDGE STANLEY: Okay. Thank you. That's
17 all I've got.

18 JUDGE THOMPSON: Thank you. All right. So
19 we're ready for closing arguments. And, again,
20 closing arguments are optional. But if you'd like
21 to provide them, we'd like to hear them.

22 And before we get to the closing arguments,
23 Judge Vassigh just reminded me I should state again
24 the issue on the record, which is whether appellant
25 Kattzmeow, LLC has shown that it's entitled to the
26 claimed refund for tax years 2012 through 2015.

27 All right. So I'm going to give Ms.
28 Barnikel a chance to present her closing arguments

1 and then FTB will have a chance. And then at that
2 point we may have a few questions for either party.
3 And, Ms. Barnikel, shortly before we close, I'll
4 give you the chance to have the last word.

5 Are you ready to give a closing statement?

6 MS. BARNIKEL: Yes.

7 JUDGE THOMPSON: Okay. Please do.

8 MS. BARNIKEL: Well, I just kind of wanted
9 to reiterate the fact that we did not realize that
10 we had to do this for four year -- I mean for the
11 four years. We never received any kind of notice
12 from the State of California that we were
13 delinquent. And once we were notified -- and it was
14 only by us going down there to the Franchise Tax
15 Board that we found that we were delinquent and that
16 we paid right away. And I just feel that it's not
17 fair and/or just for us to be penalized for four
18 years. Why did it take the State of California four
19 years to get back to us?

20 That would be my comment. I guess that's
21 all I have to say.

22 JUDGE THOMPSON: Thank you. You'll have
23 another chance towards the end if you think of
24 anything else.

25 Okay, Franchise Tax Board, would you like
26 to make your closing at this point?

27 MR. SUSZ: Yes, thank you.

28 The facts are not disputed in this matter.

1 The LLC was formed in California on June 21st, 2012
2 by filing Articles of Organization with the
3 California Secretary of State's office. No
4 California returns were filed by the LLC until
5 September 1st, 2016 when it filed California LLC
6 returns for taxable years 2012 through 2015 and paid
7 a total of \$5,461.07 in tax, penalties and interest.

8 The 2012 to 2015 payments were all due
9 prior to the September 1st, 2016 date that the
10 returns were filed and payment was made. All of the
11 returns list the LLC's address in Rocklin,
12 California.

13 Finally, the LLC filed a Certificate of
14 Cancellation as well as a Certificate of Dissolution
15 with the California Secretary of State's office on
16 October 4, 2016.

17 In terms of the applicable law in this area
18 under Revenue and Taxation Code section 18633.5
19 every LLC that's organized in the State of
20 California must file a California tax return.
21 Additionally, under Revenue and Taxation Code
22 section 17941 it must also pay a minimum annual LLC
23 tax of \$800. This tax must be paid annually until a
24 Certificate of Cancellation of the Articles of
25 Organization are filed with the Secretary of State's
26 office.

27 In this case because the LLC was organized
28 in California, it was required to file California

1 LLC tax returns and pay the \$800 LLC tax by the 15th
2 day of the fourth month of each taxable year until
3 it filed its Certificate of Cancellation of its
4 Articles of Organization with the California
5 Secretary of State.

6 Because the LLC did not file a Certificate
7 of Cancellation of its Articles of Organization with
8 the Secretary of State until October 4, 2016 it was
9 required to file tax returns and pay the minimum
10 \$800 LLC tax for taxable years 2012 to 2015.

11 I will now turn to my colleague Andrew
12 Amara to discuss the penalties in this case.

13 MR. AMARA: Thank you. The stipulated
14 facts and evidence in the record establish that
15 appellant failed to timely file its return or pay
16 the applicable tax in this case. Taxpayer incurs
17 penalties by operation of law for failing to timely
18 file returns. In this case that's Cal Revenue and
19 Taxation Code section 19172, and for failing to
20 timely pay applicable tax, that's section 19132.

21 To overturn or abate those penalties,
22 taxpayer must demonstrate by a preponderance of the
23 evidence that the late filing and late payments
24 occurred as a result of reasonable cause and not due
25 to willful neglect.

26 Appellant has noted that in requesting
27 abatement of penalties that it was unaware of the
28 relevant obligations that arose as a result of

1 filing Articles of Organization with the Secretary
2 of State. There's broad case law authority stating
3 the proposition that the taxpayers being unaware of
4 their legal or tax obligations is not a basis for
5 failing to comply with those obligations and it does
6 not establish reasonable cause.

7 So based on that authority and the evidence
8 presented here, reasonable cause has not been
9 established and the penalties should be sustained.

10 Thank you.

11 JUDGE THOMPSON: Okay. All right, at this
12 time I'd like to pause a moment and see if the
13 judges have any questions.

14 Judge Stanley, do you have any questions?

15 JUDGE STANLEY: No follow-up.

16 JUDGE THOMPSON: Judge Vassigh, do you have
17 any questions?

18 JUDGE VASSIGH: I do.

19 FTB, I think it would be helpful if you
20 could explain a little bit the statute of
21 limitations or the timing on why Ms. Barnikel
22 received notice when she did.

23 MR. AMARA: Are you referring to the
24 Secretary of State notice -- the LLC fee notice
25 or -- maybe I'll just try to clarify.

26 JUDGE VASSIGH: Okay. If you could just
27 explain the process.

28 MR. AMARA: Sure. FTB wouldn't have any --

1 first of all, FTB -- there's no obligation for FTB
2 to notify a taxpayer of their obligations whether,
3 you know, the filing obligations or the payment
4 obligations.

5 And in this case I think FTB stands behind
6 the proposition that taxpayers are required to
7 determine their own legal requirements when they
8 undertake to establish a business. And so that, I
9 think, supports FTB's action in this case.

10 And then, can I just also point out that
11 appellant noted that she received information after
12 it registered with the Secretary of State spelling
13 out the obligations that arise after that
14 registration. Now, she may not have read that, but
15 that would sufficiently spell out what the LLC was
16 required to do.

17 JUDGE THOMPSON: Ms. Barnikel, would you
18 like to respond to that? Also, you don't have to
19 limit to that. This is also an opportunity to make
20 any further arguments or statements you wish to
21 make.

22 MS. BARNIKEL: I would just like to make a
23 brief statement regarding that last statement that
24 he made that they did send me a packet.

25 The packet that we received -- now we're
26 not attorneys. We have no idea to try to read
27 through that packet and try to understand everything
28 that it says in there. And, you know, we briefly

1 went through it, but we can't understand. We don't
2 know what's going on. We're trying to sell our
3 products, and I guess I just have to plead innocence
4 in that respect.

5 I would think that, also, that once we did
6 apply, when we applied, that they would have sent
7 some kind of a notification, and I certainly didn't
8 see it in that packet, that said, oh, you have to
9 pay \$800 a year for this business. That was never
10 presented to me.

11 So I don't know -- you know, if it was in
12 that packet, it was buried so far deep that I have
13 no clue where it was. So I don't think there's any
14 willful neglect on our part. Is it stupidity for
15 not reading the whole packet and understanding? Or
16 is it just -- I don't know. I don't know what to
17 say in this respect. Because I feel that we've been
18 duped by the State of California and now we're
19 having to pay a \$6,000 fee for something that I
20 don't believe is our fault. And I guess that's all
21 I have to say.

22 JUDGE THOMPSON: Well, thank you very much
23 for that.

24 Does any party have anything further they
25 would like to add in this appeal before we close the
26 hearing?

27 MR. SUSZ: No. Thank you, Judge Thompson,
28 we're good.

1 JUDGE THOMPSON: All right. Well, at this
2 point then I'd just like to thank both parties for
3 coming by and presenting their evidence and
4 arguments. I know it's been a -- it's a rainy day
5 to come out and you've had to wait through the first
6 hearing to get here.

7 I'm going to close the record now on this
8 date and the appeal is now submitted for a decision.

9 We will issue our decision by mailing a
10 written opinion to the parties, which will be sent
11 no later than a hundred days from today's date. If
12 you have questions going forward, you may wish to
13 direct them to Ms. Holmes who you met when you came
14 in today and she can hopefully assist you. She's
15 our ombudsperson.

16 Before we adjourn, I want to note that we
17 had a third hearing originally scheduled for today.
18 And that has been postponed at appellant's request.
19 So therefore, we'll be finished today at the close
20 of this hearing, and we're going to reconvene
21 tomorrow morning at 9:00 a.m.

22 Thank you both very much, and this
23 hearing's now closed.

24 (Whereupon the proceedings concluded at
25 12:00 p.m.)

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