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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter Appeal of )  
Zoubek Consulting, LLC, ) OTA No. 18010923  
Appellant. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Tuesday, May 29, 2018

Reported by:  
Dorothy M. Simpson  
Hearing Reporter

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Appellant.	)	
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TRANSCRIPT OF PROCEEDINGS, taken at 15350 Sherman Way, Suite 300, Van Nuys, California 91406, commencing at 9:00 a.m. and concluding at 9:43 a.m. on Tuesday, May 29, 2018, reported by Dorothy M. Simpson, Hearing Reporter, in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. Neil Robinson

Panel Members: Hon. Linda Cheng  
Hon. Douglas Bramhall

For the Appellant: (In Pro Per)  
Paul Zoubek

For the Respondent: State of California  
Franchise Tax Board  
BY: BRADLEY COUTINHO  
MARGUERITE MOSNIER  
TAX COUNSEL  
Legal Division  
MS A260  
P.O. Box 1720  
Rancho Cordova, California 95741

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I N D E X

W I T N E S S E S	P A G E
Paul Zoubek	9

EXHIBITS

(Respondent's Exhibits 1 through 3 were received at page 7.)

(Appellant's Exhibits A through K were received at page 7.)

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Van Nuys, California; Tuesday, May 29, 2018  
9:00 a.m.

JUDGE ROBINSON: We are on the record. We are opening the hearing in the Appeal of Zoubek Consulting, LLC, before the Office of Tax Appeals in OTA Case No. 18010923. Today's date is May 29, 2018. And we are holding the hearing in Van Nuys, California.

For the record, would you please state your names and who you represent.

MR. ZOUBEK: Paul Zoubek, Zoubek Consulting, LLC, taxpayer.

MR. COUTINHO: Brad Coutinho, representing the Franchise Tax Board.

MS. MOSNIER: Marguerite Mosnier --

JUDGE ROBINSON: I'm --

MS. MOSNIER: Oh, excuse me.

JUDGE ROBINSON: I'm sorry. I interrupted you.

MS. MOSNIER: Marguerite Mosnier, Franchise Tax Board.

JUDGE ROBINSON: Okay. As we discussed in the prehearing conferences, the way that this will unfold is that we are going to have an opportunity for Mr. Zoubek to give us testimony under oath.

We're going to dispense with opening

1 statements, and we are going to have closing arguments.  
2 And at any time during that process, the judges may ask  
3 questions about the case.

4 Today's hearing is being heard by a panel of  
5 three judges.

6 My name is Neil Robinson, and I will be acting  
7 as the lead judge for the purpose of conducting this  
8 hearing.

9 Linda Cheng and Doug Bramhall are also hearing  
10 the evidence today.

11 All three judges will meet after the hearing  
12 and produce a written decision as equal participants.

13 Now, we have -- during the prehearing  
14 conference -- accumulated evidence on this evidence form  
15 that we have reviewed earlier today.

16 And off the record, we said that these were  
17 the exhibits that we would expect to see in the hearing  
18 today; is that correct?

19 MR. ZUBEK: Yes.

20 JUDGE ROBINSON: Okay. So I am going to enter into  
21 evidence -- into the record, Respondent's Exhibits A  
22 through L, and Appellant's Exhibits 1 through 3.

23 Does anybody have any objection to the  
24 entrance into evidence of these exhibits?

25 MR. ZUBEK: I do not.

1 MR. COUTINHO: Respondent just notes that we only  
2 have Exhibits A through K, I believe.

3 JUDGE ROBINSON: My mistake. So we are entering  
4 Respondent's A through K. Thank you for the reminder.

5 (Respondent's Exhibit A through K and  
6 Appellant's Exhibits 1 through 3 were  
7 received into evidence.)

8 JUDGE ROBINSON: Okay. We also had a prehearing  
9 conference that occurred on August 31, 2018. We had  
10 some agreed facts that were 1 through 14 in length --  
11 did I say August? It's April 30th, 2018. I just had  
12 eye surgery, and I'm having a difficult time seeing --  
13 April 30th, 2018, and we had agreed facts 1 through 14.

14 I can read them into the record, but I  
15 thought, perhaps, if we're all familiar with these  
16 documents, that we could just adopt and incorporate  
17 those stipulated facts.

18 Would everybody be comfortable with that?

19 MR. ZUBEK: Yes.

20 MR. COUTINHO: Yes.

21 JUDGE ROBINSON: Okay. Thank you. What I do wish  
22 to read into the record, however, are the agreed issues:

23 Issue No. 1. Has Appellant established that  
24 its failure to timely file its 2013 and 2014 returns was  
25 due to reasonable cause such that it is entitled to a

1 refund of the delinquent filing penalties imposed under  
2 Revenue and Taxation Code Section 19131?

3 Issue 2. Has Appellant established that it is  
4 entitled to relief from a 10 percent underpayment of the  
5 estimated limited liability company fee imposed under  
6 Section 17942(d)2?

7 Issue No. 3. Does Appellant have to pay LLC  
8 fees from total income from all sources pursuant to  
9 Section 17942?

10 And Issue 4, is Section 17942 constitutional?

11 As to Issue 4, we are also in agreement that  
12 OTA cannot rule on the constitutionality of a statute,  
13 but it was agreed that we would put it in the agreed  
14 issues to preserve the record on that issue for the  
15 benefit of Zoubek Consulting, LLC.

16 Does that accurately reflect the issues we are  
17 going to hear today?

18 MR. ZOUBEK: Yes.

19 MR. COUTINHO: Yes.

20 JUDGE ROBINSON: Okay. So at this stage of the  
21 proceeding, unless there are any questions, I would like  
22 to have Mr. Zoubek give his evidence, other than the  
23 exhibits that are on file.

24 My understanding is, Mr. Zoubek, you wanted to  
25 testify?



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MR. ZOUBEK: Yes.

JUDGE ROBINSON: Okay. And so I'm going swear you in.

Mr. Zoubek, if I could please ask you to stand and raise your right hand.

PAUL ZOUBEK,

having solemnly stated to tell the truth, was examined and testified as follows:

MR. ZOUBEK: Yes, I do.

JUDGE ROBINSON: Okay. Please be seated.

Mr. Zoubek, this is your opportunity to tell us about your circumstances surrounding this case and the reasons why you are going to persuade us to rule in your favor.

MR. ZOUBEK: Okay. So, first of all, what I want to point out to the Judge and the FTB, I'm a small business within this -- this state. I employ seven people. I pay those seven people. I feel that I contribute, you know, to the economy, the well-being of this state via the people that I employ, my clients that I serve.

And I'll bet you FTB didn't even research my company. I actually do environmental compliance. But that is the nature of my organization.

1           What my company does is we help people comply  
2 with California regulations, so things like Cal-OSHA,  
3 Department of Toxic Substances Control, we actually help  
4 companies and organizations within this state comply  
5 with rules and regulations to help people to insure that  
6 people mostly are safe on the job, because we do a lot  
7 of Cal-OSHA consultation.

8           Therefore, as attorneys do, you know, I  
9 collect fees for those particular -- that's my business.  
10 That's specifically what I do.

11           As I've -- I'm going to go to, as far as my  
12 exhibits are concerned, I am adamant about paying my  
13 taxes to my knowledge of what is supposed to be paid as  
14 far as tax is concerned both on my business, on behalf  
15 of my employees as far as their income tax are  
16 concerned, et cetera.

17           I was extremely dumbfounded a few years ago  
18 when I had -- I changed accountant and an accountant  
19 tells me that FTB requires that I pay a tax on a gross  
20 revenue. I was -- I'm totally dumbfounded on that. Why  
21 am I paying taxes on a gross revenue, when I've already  
22 paid taxes? I pay taxes on my personal taxes. I paid  
23 them \$800 a year as far as the LLC tax fees are  
24 concerned. That's double taxation.

25           That is why I bring the constitutional issue,

1 and I know Mr. Coutinho is going to say, "Oh, you can't,  
2 you know, judge as far as a constitutional issue." This  
3 is a constitutional issue, and I've got backup, you  
4 know, as far as my exhibits are concerned, that I'm  
5 being double taxed.

6 I'm being double taxed by FTB as far as my  
7 business is concerned. \$5,200 doesn't seem -- maybe  
8 seem a lot to those folks. That is one quarter of my  
9 payroll. I pay -- my payroll is between 20 and \$25,000  
10 per pay period and the people that I pay.

11 I can actually partially hire somebody and  
12 have them contribute to the economy of this state. They  
13 are prohibiting me from doing that, because they are  
14 double taxing me on what they consider a gross revenue.  
15 I don't understand that. That is double taxation.

16 Further, with the exhibits that I have -- I'm  
17 assuming I'm going to have the opportunity as far as  
18 going through my exhibits eventually --

19 JUDGE ROBINSON: Sure.

20 MR. ZOUBEK: -- at a further point after they  
21 are --

22 JUDGE ROBINSON: Well, this is your opportunity to  
23 do it at this point in time.

24 MR. ZOUBEK: Okay. Okay.

25 So my Exhibit 1, you know, as far as my Issue

1 1, or -- I believe it's my Exhibit 3 -- as far as me  
2 paying my taxes on time, what I have submitted as far as  
3 the exhibit is concerned is from their Web page from  
4 their Web. It's from their Web page, MYFTB -- whatever  
5 their Web page comes out to be.

6 And as far as when I filed my taxes, my taxes  
7 were filed timely as far as -- is -- is -- is what one  
8 of the arguments is.

9 JUDGE ROBINSON: Forgive me for interrupting.

10 The documents that you provided show that  
11 these were personal tax returns, not LLC returns; right?

12 MR. ZOUBEK: The LLC was a pass-through through my  
13 personal taxes at the time. That I -- I was not  
14 established as an S corp. Now I am established as an S  
15 corp.

16 When these taxes were filed, I was a single  
17 owner L -- single owner LLC -- or single member LLC.  
18 That's -- that's why, and that was Mr. Coutinho's  
19 question to me in one of the emails correspondence, as  
20 far as that.

21 So, on the first issue, I paid my taxes on  
22 time, you know. I paid my taxes on time what I knew  
23 what was due, in addition to the canceled checks that I  
24 have provided in that exhibit as far as the \$800 per  
25 year that they require of every limited liability

1 company in the state.

2 JUDGE ROBINSON: Okay. And, for the record, the  
3 cancelled checks that you are referring to are the \$800  
4 checks that were attached to Exhibit 3 --

5 MR. ZOUBEK: Correct.

6 JUDGE ROBINSON: -- is that correct?

7 MR. ZOUBEK: Yes. So those are cancelled checks.  
8 They have gotten their money, you know, as far as what  
9 is -- what I knew at the time was due as far as what --  
10 being taxed on a gross income mind boggles me, you know,  
11 as far as the taxpayer is concerned.

12 I have taken as far as the legal deductions on  
13 my income tax as a pass-through through things that I am  
14 supposed to -- that I am able to take deductions on as  
15 far as these exhibits are concerned. As far as  
16 exhibits, the -- the second argument -- it actually goes  
17 into the third argument -- what is referred to in  
18 17942(d)2 -- 1749 -- 17942(d)2, goes into exclusions for  
19 a sales factor.

20 So reading into what I can interpret from the  
21 sales factor, it goes -- sales of assets di sregarding  
22 for sales purposes under the regulations of 25137.  
23 Well, I go to 13527. 13527 says, "Amounts of gross  
24 receipts arising from incidental or occasional  
25 transaction may be excluded from a sales factor."

1           So what they are doing is, I -- if I go out --  
2 if I go out of town, I go up to Sacramento, I go up to  
3 the Bay Area from San Diego, I get reimbursed for a  
4 airfare by my client. What they are telling me is that  
5 reimbursement is taxable. That's not what I am reading  
6 here.

7           I am not reading that that actual  
8 reimbursement that I get for -- for incidentals that I  
9 get from a client, or what I pay my employees, which --  
10 their 401K, their taxes, which normally is tax  
11 deductible under the realm of other taxations, under  
12 IRS, under the State, as far as what -- what I am  
13 paying.

14           So as far as going into -- just going through  
15 the Exhibits 2 and 3, I just read the sales factors  
16 where I don't have to pay taxes on that under FTB. That  
17 is my argument to taxations.

18           In going into the constitutional issue -- and  
19 I know they don't want to talk about the Constitution --

20           JUDGE ROBINSON: Well, it's not that so much. It's  
21 that we don't have the authority --

22           MR. ZUBEK: I understand.

23           JUDGE ROBINSON: -- to decide a constitutional  
24 issue. We -- you know, we talked about this at the time  
25 of the conference --

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MR. ZOUBEK: I understand.

JUDGE ROBINSON: -- and I know that you were very --

MR. ZOUBEK: Adamant.

JUDGE ROBINSON: -- motivated to bring that up.

MR. ZOUBEK: But you can see -- I mean, this is like you paying your taxes. You take deductions for your kids, your mortgage. They come back to you and say, "Oh, now you owe us on everything that you have earned." I mean, you can see how outrageous this is. You know, that -- that -- in good conscience, they can sit here and say, "Gee, you owe us on everything that you have already paid taxes on." I've already paid taxes on those.

That -- that -- that is -- and I'm trying to be as respectful as I can, but you can see, as a small business person, this is something -- I can be paying somebody this money, as opposed to giving it to them. That is what frustrates me about this.

JUDGE ROBINSON: When you say "them," you --

MR. ZOUBEK: I'm sorry. For the record, Franchise Tax Board.

JUDGE ROBINSON: -- mean these representatives from FTB are not personally responsible.

MR. ZOUBEK: I understand that. Bad choice --

1 better choice of words.

2 JUDGE ROBINSON: Okay.

3 MR. ZOUBEK: Franchise Tax Board.

4 This is an issue, and that's why I appreciate  
5 the three of you at least hearing me on this, is I want  
6 to you put a face to what goes on in the state.

7 What goes on in the state, is basically we  
8 have a tax board that is double taxing small business --  
9 well, small businesses in this case -- in this state.  
10 That is the basis of my argument.

11 And the basis of my argument is within 17942.  
12 It says that I have certain things that can be  
13 disregarded as gross income. And I've taken that as far  
14 as my knowledge of what is due to Franchise Tax Board  
15 and what is due on the whole realm of my -- my taxation.

16 Thank you. That is my argument.

17 JUDGE ROBINSON: Thank you, Mr. Zoubek.

18 JUDGE BRAMHALL: Thank you, Mr. Zoubek.

19 JUDGE ROBINSON: Mr. Coutinho, do you have any  
20 questions for Mr. Zoubek?

21 MR. COUTINHO: We do not.

22 JUDGE ROBINSON: You know, I've got a few  
23 questions.

24 You know, in reading FTB's opening brief,  
25 there were already some assertions made that concerned



1 me a little bit, and I just want to ask a few questions  
2 about it.

3           There -- on page 4 of the opening brief, there  
4 is a -- an analysis of tax advice; right? And you say  
5 that two things that the -- the taxpayer would have to  
6 show to get relief from penalties for following the  
7 advice of a tax professional, is the person relied on by  
8 the taxpayer is the tax professional with competency in  
9 the subject, and the tax professional's advice is based  
10 on the full disclosure of the relevant facts and  
11 documents.

12           And then you go on to say that both of those  
13 tests were not met. But I'm not clear on the evidence  
14 that you are using to -- to justify those statements.

15           MR. COUTINHO: Yes. Judge Robinson, I believe  
16 Respondent erred in that sentence there regarding the  
17 facts that Appellant did not timely and fully disclose  
18 all relevant facts to his accountant. We do not have  
19 any evidence to that.

20           JUDGE ROBINSON: Okay. And do you have any  
21 evidence that the person relied on by the taxpayer was  
22 not a tax professional?

23           MR. COUTINHO: We do not.

24           JUDGE ROBINSON: Okay. Thank you, Mr. Coutinho.

25           Mr. Zoubek, I'm a little unclear about the --

1 the sequence of events.

2 In -- you started the LLC in 2010; right?

3 MR. ZOUBEK: Correct.

4 JUDGE ROBINSON: Okay. So -- and you filed LLC  
5 returns for 2010, '11, and '12?

6 MR. ZOUBEK: Correct.

7 JUDGE ROBINSON: Okay. And then there were --  
8 there were no filings again for LLC returns, even though  
9 you paid the \$800 until 2016?

10 MR. ZOUBEK: No. It was -- the taxes were paid the  
11 entire history --

12 JUDGE ROBINSON: Right.

13 MR. ZOUBEK: -- of the company.

14 JUDGE ROBINSON: Yes. But I'm talking about the  
15 actual filing of the LLC returns for 2013, 2014, and --  
16 and then 2015. There were three years of your returns  
17 that were filed in 2016; right?

18 MR. ZOUBEK: I believe so, yes.

19 JUDGE ROBINSON: Okay. In your -- in your opening  
20 brief, you said that you were -- you were -- you had an  
21 accountant that was preparing your returns and giving  
22 you advice?

23 MR. ZOUBEK: Correct.

24 JUDGE ROBINSON: And at some point in time --  
25 that's the part that's a little vague for me -- you

1 changed accountants --

2 MR. ZOUBEK: Correct.

3 JUDGE ROBINSON: -- and then received advice that  
4 was different from the first accountant?

5 MR. ZOUBEK: Yes.

6 JUDGE ROBINSON: At what point in time did you  
7 change accountants?

8 MR. ZOUBEK: I believe it was the 2015 time range.  
9 I don't recall, Judge Robinson, right off the top of my  
10 head.

11 But -- I mean, this is another thing that,  
12 respectfully, frustrates me is I told them via  
13 accounting advice that per subsequent accountant, that  
14 these had to be filed for the years in question. I was  
15 not advised that of my original accountant. That  
16 accountant just said, "LLC, \$800 a year. That's all you  
17 got to do."

18 It's when I changed accountants and he audited  
19 my books for the time frame in question that he stated,  
20 "Well, this is what you are supposed to do, you know, as  
21 far as the -- as far as the time range is concerned."

22 So at the time, you know, I did not have, you  
23 know, obviously, the best accountant and advice until a  
24 certain point in my -- my company, as far as the  
25 development of my company. And that's where these years

1 had come into question, and I paid those per his advice.

2 JUDGE BRAMHALL: I want to get right to the point.  
3 Did your accountant ever tell you you did not have to  
4 file returns?

5 MR. ZOUBEK: He didn't -- no, he did not. He did  
6 not say that.

7 JUDGE BRAMHALL: Thank you.

8 JUDGE ROBINSON: Okay. Judge Cheng, do you have  
9 any questions?

10 JUDGE CHENG: Yeah. Just -- I think going back and  
11 getting a better understanding of the issues.

12 My understanding is that we're talking about  
13 delinquent filing issues for 2013 and '14 and not -- not  
14 the taxes or fees for, you know, 2013 and '14.

15 Are you disputing that there are no taxes due,  
16 or --

17 MR. ZOUBEK: I'm disputing there's no taxes due  
18 in accordance to 17942(d) that I had taken a -- I had --  
19 had -- had been -- I was charged on taxes that would  
20 have normally been exempt under 17942(d) as far as a  
21 gross income was concerned, because a lot of that gross  
22 income was as a result of reimbursements from my clients  
23 as well as those -- that revenue that came in that would  
24 normally be written off in other taxable situations.

25 That is what I am arguing here as far as

1 what's in -- what's in the Tax Code.

2 JUDGE ROBINSON: Okay.

3 JUDGE CHENG: Do you have any arguments for the  
4 delinquent filing penalties on 2013 and '14, because,  
5 you know, you filed them in 2016.

6 MR. ZOUBEK: Based on that discussion of the  
7 accounting advice, I did not know that I was supposed to  
8 file those because that was the previous accounting  
9 advice. He didn't tell me that. My original accountant  
10 did not tell me that these had to be filed by a certain  
11 day.

12 My subsequent accountant told me to back file,  
13 which I did, as far as the dates in question, as well as  
14 the years in question.

15 JUDGE CHENG: Do you know if you filed a 2010  
16 return for the LLC?

17 Does FTB know if the taxpayer filed twenty --  
18 2010 return?

19 MR. COUTINHO: Yes, I believe Exhibit K in the  
20 record shows the 2010, 2011, and 2012 tax returns filed  
21 by the Appellant.

22 JUDGE CHENG: Timely?

23 MR. COUTINHO: Only '10 and '12 are timely. '11  
24 was -- I believe, was filed on September 25th, 2013.

25 JUDGE CHENG: Mr. Zoubek, did you have the same

1 accountant in 2010? Well, you said you had changed  
2 accountants in 2015?

3 MR. ZOUBEK: Correct.

4 JUDGE CHENG: So if the 2010 and 2012 were filed  
5 timely, what was different about 2013 and 2014?

6 MR. ZOUBEK: I was not advised. I was not advised  
7 at the time to file those.

8 JUDGE BRAMHALL: Understood.

9 JUDGE ROBINSON: Mr. Coutinho, do you have any  
10 questions of Mr. Zoubek?

11 MR. COUTINHO: We do not.

12 JUDGE ROBINSON: Okay.

13 Anything further? Okay.

14 Well, Mr. Zoubek, this is the time that we're  
15 concluding the evidence portion of the case, and now  
16 we're going to move into the closing statements. Okay?  
17 And that's -- thank you.

18 I skipped FTB. It was my understanding that  
19 FTB doesn't have any further evidence or witnesses to  
20 present?

21 MR. COUTINHO: That is correct.

22 JUDGE ROBINSON: Okay. So this is the stage of the  
23 case where, Mr. Zoubek, you go first in your closing  
24 statements, and then FTB will make their closing  
25 statements, and then you will have an opportunity for a

1 brief rebuttal, if necessary. Okay?

2 Could we just take a moment off the record?

3 (Off the record.)

4 JUDGE ROBINSON: Okay. We're back on the record.

5 So, Mr. Zoubek, I just want to caution both  
6 parties to talk to the Court -- to us. We're not  
7 actually a court, but to the judges, and not to each  
8 other during the closing statements, if that's  
9 acceptable to everyone; okay?

10 So, Mr. Zoubek, it's your turn to give us a  
11 brief summary of your case, and then at the conclusion,  
12 we'll let Mr. Coutinho and FTB do the same.

13 MR. ZOUBEK: Thank you. And I appreciate the  
14 opportunity to -- to speak, and -- on what I'm  
15 passionate as far as the issue is concerned.

16 Again, I -- I'm a little disturbed, and I have  
17 attempted to go through this at the legislative end with  
18 that anywhere in a Tax Code it says that a small  
19 business has to pay a tax on a gross income. That is  
20 double taxation. That is being doubly taxed.

21 As far as what FTB is actually requiring  
22 further in -- as I have elaborated on, tax advice was --  
23 was spotty as what was pointed out. There were certain  
24 years that I was advised to, you know, to file with  
25 FTB -- with FTB certain years that I had not.

1           It wasn't until the 2015 time range where I  
2 got what I feel more competent advice as far as an  
3 accountant as concerned. In fact, that accountant  
4 actually told me to switch to -- to, you know, that I am  
5 big enough to switch to an actual corporation, and  
6 that's what I did at that point.

7           As far as me knowing what specifically had to  
8 be filed, what had to be to be paid at the time, I  
9 relied on, obviously, some not-so-good advice, you know,  
10 as far as filings and payments are concerned.

11           Further, I don't feel that I should be  
12 subjected to a tax on a gross income based what I had  
13 stated in 17942(d) as far as those exemptions that I am  
14 allowed to take in the Tax Code as far as what is  
15 considered income on my organization.

16           I did make the attempt to file my taxes on  
17 time. I made a very good attempt to do that based on  
18 the advice that was given me at the time. With that, as  
19 far as concluding and putting aside that, I'm just --  
20 I'm really disturbed, you know, as to the way this --  
21 this Tax Code is written. I feel I'm being squeezed as  
22 a small business by Franchise Tax Board as far as what  
23 they are requiring on this.

24           As far as attempts to pay my taxes on time --  
25 which I am adamant about, which I do as far as my



1 bills -- what actually is in 17942 as far as exemptions,  
2 I don't feel that this applies to me as far as my  
3 organization is concerned.

4 So I would respectfully ask that the judge  
5 panel take that into consideration. Please do -- be in  
6 my seat as a small business, as somebody that's trying  
7 to contribute to the economics of the state, you know,  
8 as far as the people that I employ, the people that I  
9 help within the state.

10 This is extremely unfair as far as what --  
11 what I have had to go through as far as the -- this  
12 amount and what this is imposed on my business.

13 With that, I appreciate the opportunity to  
14 speak out, and I hope that you will rule in my favor.

15 JUDGE ROBINSON: Thank you.

16 Mr. Coutinho?

17 MR. COUTINHO: Good morning. FTB has three points  
18 to make.

19 The first is that the delinquent filing  
20 penalty imposed for the 2013 and 2014 tax years cannot  
21 be abated because Appellant does not establish that his  
22 failure to file was due to reasonable cause;

23 Second, that the estimated LLC fee penalty  
24 cannot be abated for the 2014 and 2015 tax years;

25 And, third, Appellant is required to pay LLC

1 fees on total income under California law. The  
2 California legislature enacted Revenue and Taxation Code  
3 Section 18633.5. Subsection i3 states that a limited  
4 liability company that is registered with the Secretary  
5 of State that has disregarded, shall file its return by  
6 the 15th date of the fourth month following the close of  
7 the taxable year.

8 Appellant registered with the California  
9 Secretary of State on January 4th, 2010, as an LLC.  
10 Thus, Appellant was required to file its 2013 tax return  
11 by April 15th, 2014, and its 2014 tax return by April  
12 15th, 2015.

13 As shown on Exhibit C of FTB's opening brief,  
14 Appellant did not file its 2013 and 2014 California tax  
15 returns until April 15th, 2016. Accordingly, FTB  
16 imposed a delinquent filing penalty for both years.

17 Under California law, the delinquent filing  
18 penalty can only be abated if the taxpayer can show  
19 failure to file was due to reasonable cause.  
20 Appellant's argument that it was unaware that it had to  
21 file tax return and it acted in good faith,  
22 unfortunately, it does not constitute reasonable care  
23 under the law.

24 The Supreme Court in United States versus  
25 Boyle stated that every taxpayer has an obligation to

1 file a tax return by the due date and reliance on an  
2 agent to file a tax return does not constitute  
3 reasonable cause to abate the delinquent filing  
4 penalties, and accordingly, the delinquent filing fees  
5 imposed for the 2013 and 2014 tax years cannot be  
6 abated.

7 To FTB's second point, Revenue and Taxation  
8 Code Section 17942(d)(1) requires that an LLC be  
9 estimated and paid by June 15th of the current taxable  
10 year. If an LLC does not make the estimate payment by  
11 June 15th, a penalty of 10 percent of the amount of the  
12 underpayment must be imposed. Accordingly, Appellant  
13 had a requirement to pay by June 15th the LLC fee for  
14 the 2014 and 2015 tax years.

15 As shown on Exhibit B of FTB's opening brief,  
16 Appellant did not pay the LLC fee for 2014 and 2015 tax  
17 years until April 15th, 2016. Accordingly, FTB  
18 correctly imposed the LLC fee estimate penalties and the  
19 penalties are not subject to reasonable cause abatement.

20 To FTB's third and final point --

21 JUDGE BRAMHALL: Can I just stop you there?

22 There is a safe harbor. Are you alleging that  
23 was not satisfied as well?

24 MR. COUTINHO: The safe harbor provision was  
25 applied to the 2013 tax year. There was no LLC fee owed

1 for the 2012 year; however, there was an LLC fee owed  
2 for the 2013 tax year, and that's why it was imposed for  
3 the 2014 and 2015 years, and not -- not the 2013 tax  
4 year.

5 JUDGE BRAMHALL: Thank you.

6 MR. COUTINHO: To FTB's final -- third and final  
7 point, Appellant is required to pay an LLC fee under  
8 California law. LLCs that register with the Secretary  
9 of State are subject to the annual requirements with the  
10 Franchise Tax Board, including filing a tax return,  
11 paying the \$800 LLC annual tax, and LLC fee when the LLC  
12 meets certain gross income requirements.

13 As stated previously, Appellant registered  
14 with the California Secretary of State on January 4th,  
15 2010, as an LLC. Appellant has filed a California Form  
16 568 Limited Liability Company return for each of the  
17 years at issue and self-reported sufficient total income  
18 to require Appellant to pay an LLC fee.

19 FTB understands Mr. Zoubek's argument  
20 regarding double taxation; however, the laws pertaining  
21 to LLCs registered with the Secretary of State are  
22 enacted by the California Legislature, not the Franchise  
23 Tax Board.

24 FTB has no authority change the laws at issue,  
25 but its function is limited to applying the laws enacted

1 by the California Legislature. Accordingly by law,  
2 Appellant is required to pay the an LLC fee for the tax  
3 years at issue and the FTB's actions should be  
4 sustained.

5 Thank you for your time.

6 JUDGE ROBINSON: Mr. Zoubek, do you have any  
7 rebuttal?

8 MR. ZUBEK: Well, I think the issue of reasonable  
9 cause abatement -- what FTB fails to realize is that a  
10 lot goes into running a small business.

11 I utilized what I felt was competent services  
12 at the time. That competent service failed me. That  
13 competent services did not tell me what was specifically  
14 required under FTB's requirements.

15 So as far as reasonable cause abatement, they  
16 are within reason -- within reason as far as abatement  
17 is concerned and the fact that I sought expert advice  
18 and did not receive that expert advice as far as what I  
19 thought I was -- what I thought I was paying for.

20 So as far as reasonable cause abatement, what  
21 is reasonable, is my business, you know, as far as  
22 what's reasonable and what advice was given to me at the  
23 time, as far as what was due to FTB. And I just -- I  
24 really have to reiterate this gross income argument that  
25 I have. I mean, it just mind boggles me as far as

1 double taxation is concerned.

2 But as far as reasonable cause, I'm going to  
3 respectfully disagree with Mr. Coutinho that I have not  
4 proved reasonable cause. I have proved reasonable  
5 cause.

6 I have a business to run. I cannot watch over  
7 other people that I don't have -- that I hire for a  
8 certain expertise that they are going advise me in  
9 accordance to the way things are supposed to be.

10 So the argument of reasonable cause, I will --  
11 that is my rebuttal as far as what they feel I have not  
12 established.

13 Thank you.

14 JUDGE ROBINSON: Thank you. Are there any  
15 questions before we conclude this hearing? Is there  
16 anything else we need to address?

17 MR. COUTINHO: No, Respondent doesn't have any.

18 MR. ZOUBEK: No, sir.

19 JUDGE ROBINSON: Then this matter will stand  
20 submitted today.

21 You can expect a decision within the next 100  
22 days.

23 And I want to thank both of you for your  
24 professionalism in presenting your cases today.

25 Thank you very much.

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MR. ZOUBEK: Thank you.

MR. COUTINHO: Thank you.

(Proceedings concluded at 9:43 a.m.)

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I, DOROTHY M. SIMPSON, hearing reporter,  
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That the foregoing transcript of  
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I further certify that I am in no way  
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I have hereunto subscribed my name this  
4th day OF June, 2018.



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DOROTHY M. SIMPSON  
HEARING REPORTER