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APPEARANCES

Panel Lead:

JOHN JOHNSON, ADMINISTRATIVE LAW JUDGE  
STATE OF CALIFORNIA  
OFFICE OF TAX APPEALS  
400 R Street  
Sacramento, California 95811

Panel Members:

AMANDA VASSIGH, ADMINISTRATIVE LAW JUDGE  
NEIL ROBINSON, ADMINISTRATIVE LAW JUDGE

The Appellant:

HARRY MOREN, TAXPAYER

For Franchise Tax Board:

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EXHIBITS

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(Exhibits premarked, described  
and retained by Administrative  
Law Judge.)

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TUESDAY, FEBRUARY 26, 2019 - 9:05 A.M.

ALJ JOHNSON: Good morning. This is the appeal of Harry M. Moren. It's Case No. 18011276. It is 9:05 a.m. on February 26, 2019. It is a cold and rainy morning here in Sacramento, California.

I'm the lead ALJ for this hearing, John Johnson. And I'm going to say good morning to my co-panelists today. Good morning, Ms. Vassigh.

ALJ VASSIGH: Good morning.

ALJ JOHNSON: Good morning, Mr. Robinson.

ALJ ROBINSON: Good morning.

ALJ JOHNSON: If the parties would please introduce themselves for the record, starting with Mr. Moren.

THE APPELLANT: Good morning. My name is Harry Moren. Excuse me, I have a speech --

ALJ JOHNSON: No problem. Take your time and always be comfortable.

THE APPELLANT: My name is Harry Moren. I'm the taxpayer and I'm here representing myself today.

ALJ JOHNSON: Thank you.

MR. AMARA: Andrew Amara for the Franchise Tax Board.

MS. BROSTERHOUS: And Maria Brosterhous.

1           ALJ JOHNSON: Thank you. The issue today is  
2 whether Appellant had reasonable cause for the late  
3 payment of the portion of his tax liability for the  
4 2015 tax year. The exhibits have been provided for  
5 the briefs, and we have an additional exhibit today  
6 from the parties.

7           We will enter those exhibits as evidence. It  
8 will be Exhibits 1 through 12 for Mr. Moren, and  
9 Exhibits A through F for the Franchise Tax Board.  
10 Sorry -- A through G. Apologies.

11           (Appellant's Exhibits 1-12  
12 admitted into evidence.)

13           (Respondent's Exhibits A-G  
14 admitted into evidence.)

15           ALJ JOHNSON: Okay. Mr. Moren, you will have  
16 ten minutes allotted for your presentation. You can  
17 present facts and arguments. Narrative format is  
18 fine. Since you are presenting facts as part of your  
19 testimony, after we're done, Mr. Amara of the  
20 Franchise Tax Board will be able to ask you questions  
21 about those facts.

22           To get started, let's go ahead and give you  
23 the oath. If you could stand and raise your right  
24 hand.

25           Do you solemnly swear or affirm to tell the

1 truth, the whole truth and nothing but the truth?

2 THE WITNESS: I do.

3 (Appellant sworn in.)

4 ALJ JOHNSON: Thank you. Whenever you're  
5 comfortable, please begin. And you can be seated or  
6 stand, whatever is more comfortable.

7 THE APPELLANT: Okay. I'll start with  
8 standing and see how that works.

9 Good morning, your Honors. Thank you for  
10 giving me the opportunity today to come and argue my  
11 appeal. I am here to ask you to find that I had  
12 reasonable cause for the late payments portion of my  
13 taxes for the tax year 2015.

14 As a taxpayer, I consistently and timely pay  
15 my taxes for the federal and state. This dispute with  
16 the FTB for tax year 2015 is my first dispute with the  
17 FTB. And no matter how it's resolved, I hope that  
18 there will not be a second one.

19 In April of 2016, I looked over my taxes to  
20 prepare to pay by the date as I normally do. Some  
21 years I pay in April. Other years I extend and pay  
22 later in the year in October. But always in April, I  
23 run an initial calculation on what my tax liability is  
24 to make sure that I have withheld enough or paid  
25 enough.

1           In April of 2016, I determined that I was  
2           about \$8,000 short. And on April 11th of 2016, I made  
3           an extension payment to both the IRS and the FTB. The  
4           amount to the FTB was about \$1,000 at that time.

5           Several days later on April 14, 2016, I  
6           received an email from the accountant handling the  
7           estate of my father who had deceased. And this  
8           accountant sent a rather confusing letter to myself  
9           and my two siblings, who are the other beneficiaries,  
10          and which is in the record as Exhibit 9.

11          The gist of the header was that the estate  
12          had made a decision to recharacterize some income as  
13          reportable by the beneficiaries instead of by the  
14          estate. For reasons that the accountant thought were  
15          beneficial to the estate, the beneficiaries were never  
16          consulted on this decision, or whether this took into  
17          account our interests was never really made clear.

18          In response to this letter, my sister sent an  
19          email to the accountant which is in the record as  
20          Exhibit 10 asking for clarification as to what the  
21          letter meant. The letter did not specify an amount of  
22          income that we should report. It said that we have  
23          been distributed a certain amount, and that some of  
24          the distributions have been recharacterized, but that  
25          the accountant would send further information about

1 how to report it.

2 We did not understand why this information  
3 would be taxable or what this decision to  
4 recharacterization should be or how we should report  
5 this. And as I said, my sister sent an email to the  
6 accountant, Exhibit 10 in the record. Both my sister  
7 and I called the accountant and left voice messages  
8 and we never got any response from the accountant on  
9 this.

10 April passes, May passes, June passes. The  
11 accountant had said that he would send more  
12 information in June. Nothing happened. July passes.  
13 In the middle of August, we finally get a letter from  
14 the accountant saying that he has now put together a  
15 Schedule K-1 and will be sending it to us. I received  
16 that Schedule K-1 in the next week or so. I don't  
17 know the exact date.

18 And so the effect of that Schedule K-1 was  
19 that my taxable income for 2015 was approximately  
20 twice as much as I had estimated back in April when I  
21 took stock of my tax liabilities.

22 I paid my taxes taking into account the  
23 Schedule K-1 in October of 2016. And it was at that  
24 point that both the FTB and the IRS assessed me with  
25 late payment penalties representing the taxable



1 liability on that Schedule K-1.

2 As reflected in the record, Exhibit 4, the  
3 IRS eventually agreed to withdraw the late payment  
4 penalty when I -- after I had sent them a letter  
5 explaining to them the unique circumstances in this  
6 case. The FTB, however, took a different approach and  
7 did not. They did not explain any reasons why they  
8 denied my request.

9 As I'm sure this panel is aware, the  
10 California Revenue and Tax Code, Section 19132 imposes  
11 a mandatory late payment penalty unless the failure is  
12 due to reasonable cause and not due to willful  
13 neglect.

14 As my understanding from the briefing of the  
15 FTB and the communication, that they do not intend  
16 there was any willful neglect here. The question was  
17 whether or not there was reasonable cause for the late  
18 payment.

19 Whether or not there is reasonable cause is  
20 not defined in the California R&T code itself, but we  
21 have some decisions from the OTA's predecessor to rely  
22 on.

23 To establish reasonable cause, a taxpayer  
24 must show that the failure to timely pay the amount  
25 shown on his tax return occurred despite the exercise

1 of ordinary business care and prudence. That is from  
2 the appeal of M.B. and G.M. Scott.

3 The taxpayer's reason for failing to pay the  
4 amount of tax shown by the due date must be such that  
5 an ordinary intelligent and prudent business person  
6 would have acted similarly under the circumstances.  
7 That's from the appeal of Robert T. and Mark Curry  
8 [sic].

9 And at least one decision has found that  
10 there can be found reasonable cause when it was  
11 impossible for the taxpayer to obtain any of the  
12 necessary additional information from a third party  
13 within the time required or when the taxpayer was  
14 denied access to essential records in order to  
15 adequately estimate tax liability. That's from the  
16 appeal of Howard G. and Mary Tons.

17 And I would also like to draw your attention  
18 to an FTB document that I cited in my brief. This is  
19 on page 4 of the opening brief. The FTB instructs  
20 taxpayers to pay no more than the correct amount that  
21 you owe. So in essence, the FTB is saying don't  
22 overestimate and pay us something if you don't know  
23 that that is what is due.

24 In this case, it was reasonable for me to  
25 wait until I had sufficient information as to what my

1 tax liability would be based on this accountant's  
2 recharacterization of the estate's income as taxable  
3 to the beneficiaries.

4 It is true that on April 14th of 2016, the  
5 accountant told the beneficiaries, including myself,  
6 that that is the decision they made, but they gave us  
7 no specifics as to what that tax liability was or that  
8 we could pay it at that time. And my attempts or my  
9 sister's attempts to get more information about what  
10 that tax liability might be were met without any  
11 response.

12 So as was suggested in the Tons case, I was  
13 denied access to the essential records in order for me  
14 to understand what my tax liability was and to pay it  
15 in April of 2016. You can be sure based on my record  
16 as a taxpayer that had I had that information, I would  
17 have paid it. And as soon as I did get that  
18 information, I did pay it.

19 That's all I have for now. Thank you, your  
20 Honors.

21 ALJ JOHNSON: Thank you very much. If I  
22 could clarify one part. You mentioned on page 4 of  
23 your brief, referring to the Franchise Tax Board, I  
24 believe talking about the legal ruling of 105; is that  
25 correct?

1 THE APPELLANT: No. It's at the bottom of  
2 the page. It's -- I don't have the title of the  
3 document. It's called 4058B.pdf. If you have my  
4 brief in front of you, it's the bottom of the full  
5 paragraph on that page.

6 ALJ JOHNSON: Okay. I see it now. Thank you  
7 very much. I just wanted to clarify what document  
8 you're talking about.

9 THE APPELLANT: Thank you, your Honor.

10 ALJ JOHNSON: And Mr. Amara, as far as the  
11 factual statements that were made, do you have any  
12 questions that you'd like to pose to Mr. Moren?

13 MR. AMARA: No questions directly to  
14 Mr. Moren. Maybe there's a couple items I would just  
15 address in response before I get into the closing  
16 statement. Is that okay?

17 ALJ JOHNSON: Yeah. That's perfectly fine.  
18 If you're ready, you have ten minutes to go ahead and  
19 provide your arguments.

20 MR. AMARA: Thank you. First, I just want to  
21 point out Mr. Moren mentioned the IRS abatement, this  
22 penalty in this case. As we made clear in our opening  
23 brief, that abatement was not based on any substantive  
24 reasonable cause determination. That was a first-time  
25 abate. It's a one-time consideration. It's the

1 program the IRS has, and FTB doesn't have a  
2 counterpart. So we were constrained in that regard.  
3 We couldn't abate on that basis. So I want to point  
4 that out, first and foremost.

5 I want to summarize our case here. Again,  
6 this is a 2015 taxpayer late payment penalty case.  
7 Appellant failed to timely pay tax on \$220,000 of  
8 income as you're aware of the 2015 taxable year.  
9 Despite receiving timely advice, his advice before the  
10 payment due date, that there be some or significant  
11 amount of tax liability associated with the  
12 distribution, the \$220,000 distribution. Beyond that,  
13 penalty to fail to pay anything or taking any action  
14 after receiving the August 2016 K-1 confirming this is  
15 the taxable gain.

16 Based on those facts, Appellant's late  
17 payment was not the product of reasonable cause and  
18 probably should be sustained here. With respect to  
19 the legal standard of burden of proof here, the late  
20 payment penalties is presumed to be correct.

21 Appellant bears the burden of reasonable  
22 cause and the lack of willful neglect. As Appellant  
23 pointed out, our position is there's no reasonable  
24 cause in this case.

25 I wanted to instill this case down to some of

1 the key facts and arguments to make it a little bit  
2 more clear. There's no dispute Appellant admits that  
3 he received timely advice that he'd be liable for, at  
4 minimum, some tax on the \$220,000 estate distribution.  
5 That's contained in the April 14th email and the  
6 letter attached from the CPA.

7 I'd like to read directly from that letter,  
8 Judge. Page 2 from the letter contains the following:

9 We represent -- this is the CPA writing.

10 "We represent the estate in the above matters  
11 and suggest that you seek individual tax counsel  
12 handling your specific tax issues for 2015 and later  
13 due to the estate administration distributions."

14 After receiving that letter, Appellant knew  
15 the response, he didn't take any action. He didn't  
16 pay anything, didn't estimate his income. He  
17 apparently didn't seek additional counsel as advised.

18 The appellant contends that this letter and  
19 the representations from the CPA confused him. We  
20 don't doubt that, but confusion is not reasonable  
21 cause, and it's not a basis to abate a penalty.

22 In response to this letter, our position is  
23 that a reasonably prudent business person in similar  
24 circumstances would have sought the advice with the  
25 letter, informed them they should. A reasonably

1 prudent business person may have paid some tax, made  
2 some reasonable estimate as to the tax liability and  
3 paid something in response. The appellant did  
4 nothing.

5 Several months later, Appellant acknowledges  
6 after months of inaction, he received a K-1 showing  
7 the exact taxable gain. That was in August of 2016.  
8 And there's no dispute that he received the K-1 at  
9 some point in August, maybe late August. Again,  
10 Appellant failed to seek any advice on what his tax  
11 liability would be. He failed to pay anything, again,  
12 after receiving that K-1.

13 Our position is that a reasonably prudent  
14 business person after receiving the K-1 in August  
15 would have estimated his tax liability and paid the  
16 tax after it was cleared, additional taxes owed.

17 So again, Appellant continued to act in a  
18 manner that is not consistent with reasonable cause.  
19 And we sympathize with Appellant's confusion  
20 throughout the process. But, again, confusion and  
21 inaction are not reasonable cause.

22 In summary, Appellant failed to take  
23 necessary steps to establish reasonable cause for the  
24 late payment. And as a result, penalty should be  
25 sustained. I'd be happy to take any questions you may

1 have at this point.

2 ALJ JOHNSON: Thank you. Before we get to  
3 any questions from the panel, let me go back to  
4 Mr. Moren. You have up to five minutes if you want to  
5 provide any rebuttal or closing statements.

6 THE APPELLANT: Thank you. Counsel for the  
7 FTB says that I did not do anything after receiving  
8 the April 2016 notice from the accountant. As I  
9 explained in my opening, we did do something. We were  
10 confused. We went back to the accountant to try to  
11 get more information on this tax liability that this  
12 April letter implied existed. We asked. We tried to  
13 contact the accountant by email, by phone, and we got  
14 no response from him.

15 It is true that I did not contact an outside  
16 tax professional. I thought about doing that. My  
17 father was a tax professional himself, and I learned  
18 how to do my taxes from him. And I thought about  
19 contacting a tax professional. And I said, what's the  
20 first thing a tax professional is going to ask me?

21 He's going to ask, what are the documents?  
22 What do you have? And I had no Schedule K-1 or any  
23 form. I didn't have any information that I could give  
24 to a tax professional to get advice on in April.

25 So while Mr. Amara characterized us as not



1 doing anything in April, that's not true. We sought  
2 information from the author of this, the accountant  
3 who sent this letter to try to understand better what  
4 he was indicating from it, and from there, we could  
5 make a decision. But we got no information to that  
6 effect.

7 Mr. Amara suggested that we make some  
8 estimate in April as to some payment. We had no  
9 information on which to make any such estimate.  
10 Mr. Amara did not address the Tons case at all. We  
11 had said there's reasonable cause when a taxpayer is  
12 denied essential information.

13 There was no way I could make an estimate. I  
14 did not know from this letter if the entire amount  
15 that was listed in the letter would be eventually  
16 taxable or whether part of it was would it be half of  
17 it, 10 would be 75 percent. I don't know. As I  
18 mentioned earlier, the FTB's guidance, itself, said  
19 pay no more than you owe.

20 I had no information on which to make the  
21 type of estimate that Mr. Amara suggests. I submitted  
22 this new exhibit today marked as Exhibit 12. In this  
23 exhibit, the account has reissued the Schedule K-1  
24 into question. They slightly revised the numbers  
25 downward.

1           To me, the amount is not what's issued, it's  
2           that they didn't really know what they were doing.  
3           They made this decision to recharacterize money. They  
4           didn't have an idea in April of 2016 what it was that  
5           was going to be recharacterized, my tax liability.  
6           They made, based on some information I still don't  
7           have access to, they issued a Schedule K-1 in 2016.

8           Now, in 2018, they looked at their  
9           information again and issued a new K-1. I don't even  
10          have this information on which they are making these  
11          estimates or revising what this information is. I  
12          can't understand how Mr. Amara expects me or any  
13          prudent business person to make such an estimate.

14          Mr. Amara also mentioned that in August 2016,  
15          I failed to take any action. That's not true. As  
16          Exhibit 11 -- make sure I have the right one. Yes.  
17          As Exhibit 11 shows, I sent an email to the accountant  
18          on August 21st, after receiving the Schedule K-1,  
19          asking him questions about it. He still had not  
20          resolved the questions that we had from April as to  
21          whether or not this tax liability should fall on us.  
22          Inheritances are normally not taxable. He still gave  
23          no reply to our questions about that issue.

24          The accountant is the one that holds all this  
25          information. And just to be clear, in one of the

1 FTB's briefs, they put a line in that just because an  
2 accountant does not provide their client all the  
3 information is no excuse for a client to not pay tax.  
4 I was not this accountant's client. This accountant  
5 worked for the estate. And they made it very clear  
6 that they were not working for me. They didn't  
7 respond to me. They didn't give me information.

8 And this is not before this panel, but I  
9 don't feel like they took my best interest at heart.  
10 This is not my accountant. I was not their client.  
11 As Exhibit 11 shows, I didn't hear back from the  
12 accountant, and August 31st, again, sent an email  
13 following up trying to understand what my tax  
14 liability was from this accountant's perspective on  
15 the Schedule K-1. Again, no response.

16 This is not in the record, but I tried to  
17 call the accountant again. This time I called him one  
18 time and left him a voice message and I never heard  
19 back from this accountant.

20 So when Mr. Amara says I took no action,  
21 that's not true. I was trying to figure out what to  
22 do with the Schedule K-1. And in October I paid my  
23 taxes based on the Schedule K-1 that was provided to  
24 me.

25 One final thing, I understand that with

1 respect to the decision of the IRS to provide an  
2 abatement, I understand from Mr. Amara that the FTB  
3 does not have a similar program. And I just bring  
4 this before the panel to say that the IRS recognized  
5 that I have a good record of paying my taxes on time.  
6 And they did grant me abatement.

7 And I would hope that this panel can  
8 recognize that as well and exercise the powers that  
9 they have to find legal cause and grant abatement in  
10 my case. Thank you, your Honors.

11 ALJ JOHNSON: Thank you. I think we might  
12 have some questions from the panel.

13 Ms. Vassigh, do you have any questions?

14 ALJ VASSIGH: I do not.

15 ALJ JOHNSON: Mr. Robinson, do you have any  
16 questions?

17 ALJ ROBINSON: I just have a quick question.  
18 Can you give us some sense about how  
19 prudently you tried to contact the accountant between  
20 April of 2016 and say August of 2016?

21 THE APPELLANT: I did not contact them  
22 between April and August of 2016. My experience is  
23 that the accountant is unresponsive. So after  
24 receiving this first letter in April, we tried to  
25 reach the accountant and it was unresponsive. And I

1 didn't see that reaching out to the accountant,  
2 calling the accountant every week or every month would  
3 yield anything other than that.

4 ALJ ROBINSON: Thank you.

5 ALJ JOHNSON: And I'll follow up on a  
6 question on that. I know you provided an email from  
7 your co-beneficiary sister. Was there ever a response  
8 from that email?

9 THE APPELLANT: There was no response, your  
10 Honor.

11 ALJ JOHNSON: And was there a response to  
12 your emails in August?

13 THE APPELLANT: There was no response, your  
14 Honor.

15 ALJ JOHNSON: And then after the nonresponse,  
16 you said you called once to try to contact the  
17 accountant again?

18 THE APPELLANT: And I didn't get through. I  
19 left a voice message and did not hear back.

20 ALJ JOHNSON: Okay. Thank you.

21 THE APPELLANT: I would like to add something  
22 if I may.

23 ALJ JOHNSON: Please.

24 THE APPELLANT: After this appeal was in  
25 progress and Mr. Amara and I were attempting to --

1 were attempting to reach a settlement, we contacted  
2 the accountant to try to get an affidavit because we  
3 thought that that would be helpful as evidence in  
4 either towards the settlement or in this proceeding.

5 Mr. Amara may agree, if he has memory on  
6 this, that the accountant was willing to give an  
7 affidavit only on the condition that the FTB not  
8 investigate him or any impropriety. In the end, the  
9 FTB did not agree to that condition, and so we did not  
10 get an affidavit from the accountant.

11 ALJ JOHNSON: Okay. Thank you. I guess one  
12 final question.

13 It appears as though, at least on the  
14 original Schedule K-1, not the amended one, about  
15 90 percent of the distribution ended up being reported  
16 taxable by the estate to you. And I know the original  
17 letter that you got on April 14th mentioned the  
18 significant tax burden and significant tax payment,  
19 and you also had knowledge of the actual month that  
20 you had received.

21 But still, because of the uncertainty, was it  
22 your belief that there was no way to tell exactly what  
23 that meant and what dollar amount would be acceptable  
24 to pay; is that correct?

25 THE APPELLANT: So when I received the

1 April 14th letter, I wasn't even certain that I had  
2 any tax liability on this at all. I didn't understand  
3 the accountant's decision to characterize estate  
4 income as beneficiary income. And my understanding  
5 was that inheritance income is not taxable.

6 So one of my threshold questions that we  
7 tried to resolve in April and didn't get a response to  
8 is why are we liable for anything here. Can I -- I'm  
9 not sure that answered your question.

10 ALJ JOHNSON: I think it's very helpful, yes.

11 THE APPELLANT: Okay.

12 ALJ JOHNSON: I think we have evidence and  
13 arguments for the brief and the testimony and  
14 arguments today.

15 Were there any follow-up questions from the  
16 parties?

17 MR. AMARA: Could I just add a couple items,  
18 respond to a couple of those items, Judge?

19 ALJ JOHNSON: Please proceed.

20 MR. AMARA: First of all, Appellant's  
21 contention that he wasn't able to reasonably estimate  
22 what the additional tax liability would be, I just  
23 wanted to point out a letter from the CPA indicated  
24 that he received \$225,000 distribution.

25 His other income in 2015 involved roughly the

1 same amount of income. The tax that he paid through  
2 withholds and estimated taxes was roughly \$20,000 on  
3 his other income.

4 It wouldn't be very difficult to figure out  
5 that an equal amount of additional income would  
6 require an additional payment meeting that same --  
7 those same payments that he made throughout the course  
8 of 2015. I want to point that out as that's right  
9 there in the letter.

10 ALJ JOHNSON: That is under the assumption  
11 that it would be 100-percent taxable?

12 MR. AMARA: Correct. That's the -- our  
13 contention is that would be the safest play and, you  
14 know, I think a reasonably prudent business person in  
15 similar circumstances would maybe determine that I'll  
16 pay the -- I'll assume that the entire amount is  
17 taxable. And then if it ends up not being the case,  
18 then I can get a refund after I can file an amended  
19 return to get a refund.

20 Secondly, the proposition that lack of  
21 information or documentation is sufficient and a  
22 sufficient reason to pay tax constitutes reasonable  
23 cause for paying tax liability simply is not accurate.  
24 The bulk of the BOE authority and federal authority is  
25 that lack of documentation, lack of records is



1 insufficient for paying tax and does not constitute  
2 reasonable cause.

3 In that regard, I'll just read from one of  
4 the BOE cases briefly. This is the appeal of J.B. and  
5 P.R. Campbell, 1985 BOE case, states that "We have  
6 held that the complexity and problems in accumulating  
7 the information necessary to complete a return is not  
8 reasonable cause for the failure to pay the tax that  
9 is due."

10 There is a myriad of other cases that state  
11 that proposition as well. We sent that out. So I  
12 just wanted to point that out as well. Thank you.

13 ALJ JOHNSON: Thank you. And I believe,  
14 Mr. Moren, I understand what your rebuttal is, but do  
15 you have anything else that you'd like to add?

16 THE APPELLANT: Yeah. I'd like to briefly  
17 respond to those two points. Your Honor correctly  
18 pointed out that Mr. Amara's recommendation on what a  
19 reasonable person would do based on the assessment  
20 that 100 percent of the number cited in that letter  
21 would be taxable. And I don't think that there is any  
22 foundation for such an assumption.

23 I think it goes contrary to the FTB's own  
24 guidance to not pay more than you owe. I think that  
25 when you are able to make a reasonable estimate, when

1 you have information to make that estimate, that's  
2 true. In this case, there was no such information.

3 The second point, Mr. Amara brings up the  
4 lack of information or documentation is similar. And  
5 I think he cites -- I think there's a distinction  
6 between not having a particular document, for  
7 instance, not having the Schedule K-1, and not having  
8 the underlying information that informs what that tax  
9 liability is maybe. So I don't understand K-1s so  
10 well, I'll think about it more in terms of the income  
11 like the W-2.

12 If I didn't receive my W-2, I recognize that  
13 I would still be responsible for paying the income tax  
14 on my salary on time, and that I would have the  
15 information necessary to estimate that by going back  
16 through my paychecks that I received through the year  
17 and understanding, okay, this is what I made. I have  
18 the information. I can put together my estimate of  
19 tax liability even if I don't have that specific form,  
20 the W-2.

21 This is a different case. It's not just that  
22 I didn't have the Schedule K-1, it's that I didn't  
23 have any of the information for the numbers that went  
24 into this K-1, not at that time nor do I still. I  
25 still don't have access to any of that information

1 that the accountant used to populate those numbers, or  
2 in 2018, to decide that the numbers in 2016 were  
3 incorrect and needed to be slightly revised.

4 It's a different case when you don't have a  
5 single document, versus here, where you don't have any  
6 of the underlying information to make that estimate.  
7 Thank you.

8 ALJ JOHNSON: Thank you very much. With  
9 that, I think we have a complete record. So we'll  
10 close the record now. I thank both parties for coming  
11 today and for all the work you've done so far in this  
12 appeal. This will conclude our hearing in this  
13 appeal.

14 The judges will meet and decide based on  
15 arguments and evidence presented. We will aim to send  
16 both parties our written decision no later than  
17 100 days from today, February 26, 2019. And with  
18 that, we are off the record.

19 (Whereupon the proceedings were  
20 adjourned at 9:41 a.m.)

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REPORTER'S CERTIFICATE

I, Amy E. Perry, a Certified Shorthand Reporter in and for the State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing in the matter of HARRY J. MOREN was reported in shorthand by me, Amy E. Perry, a duly qualified Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewritten form by means of computer-aided transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March, 2019.

\_\_\_\_\_

AMY E. PERRY  
Certified Shorthand Reporter  
License No. 11880