

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
BRAYTON KIKUMOTO PROPERTIES, INC., ) OTA NO. 18011187  
 )  
 ) APPELLANT. )  
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, May 21, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
355 South Grand Avenue, South Tower, 23rd Floor,  
Los Angeles, California, 91401,  
commencing at 10:30 a.m. and concluding  
at 11:19 a.m. on Tuesday, May 21, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. KENNY GAST

Panel Members: Hon. ALBERTO ROSAS  
Hon. LINDA CHENG

For the Appellant: John Brayton

For the Respondent: State of California  
Franchise Tax Board  
By: Joel Smith  
Marguerite Mosnier

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E X H I B I T S

(Appellant's Exhibits were received at page 6.)  
(Franchise Tax Board's Exhibits were received at 6.)

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1 Los Angeles, California; Tuesday, May 21, 2019

2 10:14 a.m.

3  
4 ADMINISTRATIVE LAW JUDGE GAST: We're on the  
5 record. This is the appeal of Brayton Kikumoto  
6 Properties, LLC, OTA Case No. 18011187. Today is Tuesday,  
7 May 21st, 2019. The time is approximately 10:30 a.m. I'm  
8 the lead Administrative Law Judge Kenny Gast. And with me  
9 today is Judge Alberto Rosas and Judge Linda Cheng. We  
10 are the panel hearing and deciding this case today.

11 May I ask the parties to please state your names  
12 and titles for the record. And please spell your name, if  
13 you can, starting with the taxpayer.

14 MR. BRAYTON: John Brayton, B-r-a-y-t-o-n,  
15 J-o-h-n, taxpayer.

16 ADMINISTRATIVE LAW JUDGE GAST: Thank you.

17 MR. SMITH: Joel Smith, tax counsel with the  
18 respondent, Franchise Tax Board. J-o-e-l, S-m-i-t-h.

19 MS. MOSNIER: Marguerite Mosnier, counsel for  
20 Franchise Tax Board. It's M-a-r-g-u-e-r-i-t-e. My last  
21 name is M-o-s-n-i-e-r.

22 ADMINISTRATIVE LAW JUDGE GAST: Thank you. So we  
23 have two agreed upon issues today. The first one is for  
24 the 2012 and '13 tax year as taxpayer establish reasonable  
25 cause to abate the late filing penalty imposed under

1 California Revenue and Taxation Code section 19172.

2 And then the second issue is for the 2012 and  
3 2013 tax years. Was a late payment properly imposed under  
4 California Revenue and Taxation Code section 19132. And  
5 if so, has taxpayer established reasonable cause to abate  
6 it. We also may have a 2014 tax year issue depending on  
7 FTB's explanation and whether you agree or not with what  
8 they said there.

9 Okay. Exhibits. Taxpayer, you submitted  
10 Exhibits 1 through 10, and FTB you submitted Exhibits A  
11 through B. There were no objections filed with respect to  
12 those exhibits, so therefore, all those exhibits are now  
13 hereby admitted into the record as evidence.

14 (Appellant's Exhibits 1-10 were received  
15 in evidence by the Administrative Law Judge.)

16 (Department's Exhibits A-B were received  
17 in evidence by the Administrative Law Judge.)

18 Okay. The parties' presentations. So  
19 Mr. Brayton, you'll go first with 25 minutes. And before  
20 you go, I will need to swear you in. Just note that I'm  
21 not swearing in the FTB because they're not testifying to  
22 facts, whereas you are. They are presenting arguments.

23 So whenever you're ready, would you please stand  
24 and raise your right hand.

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JOHN BRAYTON,

produced as a witness by and on behalf of himself, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

THE WITNESS: Yes.

ADMINISTRATIVE LAW JUDGE GAST: Thank you. You may be seated. And whenever you're ready just let us know why the company is due a refund for '12 and '13.

OPENING STATEMENT

MR. BRAYTON: Okay. In trying to establish a reasonable cause, I've presented a lot of things already. I just want to reduce it down as much as I can. And there is also reasonable cause and not due to willful neglect. So I hope I can get willful neglect out of the way.

I paid taxes for the LLC every year. I guess looking back I missed one year, which was a surprise to me since I didn't think I had missed any. But taxes were paid, and apparently the forms I was filling out initially were the vouchers. This is the first time I done this. I know ignorance is no excuse.

So during this period things were not being done properly, but I attempted at all levels and every year to pay the taxes. And -- because I didn't want that to be a

1 problem. I never really -- I don't think I received  
2 anything up until during the 2010, 2014 period that things  
3 were missing, you know, like there was a problem. So I  
4 wasn't even aware that there was a problem until I, you  
5 know, talked to somebody at the FTB and they say, "Well,  
6 you're missing five returns."

7 And I think there's an exhibit that shows I did  
8 file returns during that period -- a return or some  
9 returns. And the issue here is there is -- there were  
10 medical issues going on at that time, and I've been trying  
11 to, you know, describe that in a way that would be  
12 reasonable cause for these things to happen. And I really  
13 have a hard time even with coming up with facts and things  
14 that I did. It's kind of a rough period.

15 So it's -- I'm trying to recall as much as I can,  
16 and I look back at some of the things -- times I filed and  
17 I don't even recall. All I know is I was trying to do  
18 everything as much as I could. So to establish reasonable  
19 cause I think -- I know ignorance isn't going to do it,  
20 and I don't expect that to be reasonable cause, although,  
21 it was something new to me.

22 I guess looking back, if I had known -- if I had  
23 gotten feedback -- I did contact the FTB many, many times  
24 over the years. I mean, just maybe hundreds of times. I  
25 have gone down to the office a lot. I was just trying to

1 keep on top of things as best I could, but also dealing  
2 with some pretty severe mental problems.

3 And I do have -- I did submit Exhibits --  
4 Exhibit 6. The documentation I did submit before and the  
5 replies I received back. I -- I forgot the name. I think  
6 it's Amanpour. That's the name that kind of rings the  
7 bell. One of his replies, he would address my doctors  
8 notes as though they were almost not relevant and kind of  
9 tried, like, corroborated it with my position. And he  
10 kind of indicated that, you know, maybe he was a friend of  
11 mine and it seemed like no matter what I submitted was  
12 kind of really objected offhand. It was not. I was  
13 trying to, I guess, make things up, and make things seem  
14 worse than they really were.

15 So I mean, I'm under oath so hopefully this has  
16 more weight 'cause I'm trying to provide honest  
17 information about that time period. And it was truthful  
18 that I was having a very difficult time with everything.  
19 In fact, I should mention I'm behind on my state taxes and  
20 federal taxes. I'm behind on many things. I'm trying to  
21 catch up. I'll catch up here, and I'm getting there too.

22 So I did find -- during this period my doctor, I  
23 would go see him. He wanted -- I was working. There was  
24 a period when I did work from late 2012 to early 2015.  
25 The FTB uses that as well, and I was able to work. I've

1       been unemployed. It was only two and a half years. I've  
2       employed for over the last ten years. And I took that  
3       because I needed money, but it was not a good situation.  
4       It was good because I had a job, but --

5               ADMINISTRATIVE LAW JUDGE GAST: Was that a  
6       full-time job?

7               MR. BRAYTON: Yes, it was full-time. Correct.

8               ADMINISTRATIVE LAW JUDGE GAST: That was in to  
9       2013 and '14.

10              MR. BRAYTON: Yes. October of 2012 to  
11       February of 2015.

12              ADMINISTRATIVE LAW JUDGE GAST: Okay.

13              MR. BRAYTON: And I was let go from that position  
14       due to inability to do my job. I do have an Exhibit 6,  
15       which was written by my physician, which I've got copies.

16              ADMINISTRATIVE LAW JUDGE GAST: We have  
17       Exhibit 6. Thank you.

18              MR. BRAYTON: Okay. It's a -- basically, the  
19       doctor's note that was given to me. My doctor wanted  
20       me -- excuse me. My doctor wanted to put me on  
21       disability, but I really wanted to keep my job and not,  
22       you know, make this a problem at work. So he ended up --  
23       he said, "Well, I'll write you a note that says I'll limit  
24       your hours to 40 hours a work at least."

25              So I never turned in this note to my employer. I

1 just held on to it. 'Cause every day if I felt like I was  
2 going to not make it through, I wanted to be able to pull  
3 out a note and try to get through that period as best as I  
4 could. I also submitted a couple -- a couple more  
5 exhibits of doctor's notes; one that was written just  
6 recently when I seen him last week.

7 ADMINISTRATIVE LAW JUDGE GAST: Exhibit 9?

8 MR. BRAYTON: Exhibit 10, I believe. Exhibit 9,  
9 you're right. May 11 -- May 10th, 2019. And we had a  
10 discussion. It was about that period, and I explained to  
11 him what was going on. And his opinion is I was impaired.  
12 I was unable to do a lot of personal activities including  
13 preparation of taxes and forms like that. So that's  
14 someone's professional opinion of what I was going  
15 through.

16 So in general, I guess I was able to do --  
17 function at a level where I could go to work. But looking  
18 back it -- many things fell through the cracks, and I  
19 would think that would establish reasonable cause for  
20 things like this to happen. And I take personal  
21 responsibility for what did happen as well. You know,  
22 it's -- these things do happen, and I -- the business we  
23 were trying to start never got off the ground. I was  
24 unemployed. And --

25 ADMINISTRATIVE LAW JUDGE GAST: Did the business

1 ever make any money?

2 MR. BRAYTON: No.

3 ADMINISTRATIVE LAW JUDGE GAST: Okay.

4 MR. BRAYTON: The LLC was established, and we  
5 never used it. So it wasn't -- and this is where maybe it  
6 got lower priority. It's like, well, we're not even using  
7 it. Let's keep it alive and we'll eventually get around  
8 to it. And so I think that's where it may have -- I  
9 definitely had to prioritize things. I mean, everything  
10 had to be prioritized.

11 I mean, my personal taxes I pay that right at,  
12 you know, send in the estimate, the forms to extend it,  
13 figure out what I need or try to estimate and then I paid  
14 more. So I'm always trying to do more just to avoid  
15 'cause I'll -- I'm thinking I'll go back soon and take  
16 care of it, but soon becomes months, years. I don't know  
17 where time goes. But everything was -- everything was  
18 paid. All the taxes were paid.

19 And I -- I've -- in 2015 or '16, I believe I went  
20 down to the FTB office 'cause at that point I realize  
21 there's things happening, and I've been told, you know,  
22 there's penalties and things like that. I wanted to clear  
23 that up. I wanted to clear it up. So I went down and  
24 just asked. Okay. What do I need to do to make this go  
25 away 'cause the stress was killing me?

1           So they told me write I check. I did write a  
2 check and gave them to them. But even three months later  
3 in March I get another bill, like, I owe more. And I  
4 just, you know, I guess I wrote another check. And I was  
5 just trying to take care of the problem and deal with  
6 whatever outcome later on. At that point I was -- I  
7 wasn't able to really get into a lot of details 'cause I  
8 just paid everything.

9           Later on I was told there was offer and comprise  
10 and things like that that I could have been done, but that  
11 wasn't suggested to me until I paid everything. But any  
12 way the FTB received all the funds, all the fees, all the  
13 penalties as soon as I knew they were due.

14           I think the other thing that comes up is the  
15 other member of the LLC is that he's also responsible for  
16 making sure the taxes are paid and forms are filed. He  
17 gave me that responsibility. He was out of the country  
18 much of the time. So he -- and we never really started  
19 the business. So I guess he didn't see this as a big  
20 priority as far as something that didn't come to his  
21 attention, and I told him I was taking care of everything.  
22 So I thought I was kind of on top of it.

23           And I -- so if -- I understand that both members  
24 need to be -- I need to make sure that things are being  
25 done properly, but I don't know. I mean, I guess if you

1 had ten members you had every member doing taxes. The  
2 fact it's only two shouldn't matter. I think that  
3 responsibility ultimately has to be given to somebody, and  
4 it was given to me.

5 And so the other partner was not aware of the  
6 situation that was happening at the time. And I never  
7 conveyed it to him, and not that I thought I needed to. I  
8 thought I was taking care of everything. So I thought  
9 there was no real issue unlike the personal taxes, which I  
10 guess I was used to. As long as I get the money in and  
11 get it paid, I wasn't aware of these fees and penalties  
12 for not filing on time. So that's my mistake. That's --  
13 that's ignorance on my part.

14 But I was trying to prioritize based on well, I  
15 really can't do this now. I guess maybe if I knew what  
16 was going to happen I would have prioritized differently.  
17 But it would have been -- you know, like I said, I was  
18 trying to get through this -- this period of time in my  
19 life where things were pretty bad, medical situations.

20 And I didn't -- I've been sick before and gotten  
21 through it. You know, things are in remission. Everything  
22 is good. I start going through other things, and it's just  
23 over time. Over time it just gets worse. You just have  
24 to prioritize. There is another issue that came up too.  
25 I submitted some medical billing forms, I think, that

1 showed my visits and many of them marked no shows or  
2 canceled, I guess.

3 I -- I'm not sure why there were so many of those  
4 in there. I'm not sure how they're tracking that  
5 information, but I do not recall. In fact it was  
6 difficult to get appointments. So I did make the  
7 appointments. Now, during this time I was prioritizing.  
8 So at work if they asked me, you know, you got to put in  
9 the eight hours extra, or extra five hours today or  
10 whatever, I guess I could have or maybe I had to  
11 reschedule. But I think that list was pretty long. I  
12 just don't recall missing. I mean, that just doesn't  
13 sound right to me.

14 So I had documentation. I tried to go back into  
15 the system and get updated information regarding that into  
16 the medical billing system or the online system, but I was  
17 unable to go back that far. And just in general the  
18 com -- the correspondence I have had between -- I don't  
19 know if it's the BOE or FTB or OTA. Things got really  
20 complicated. I guess there was that switch over, you know  
21 from BOE to OTA. I don't know.

22 Many, many times, even on phone calls, they gave  
23 me a number to call and the person would answer and not  
24 even know what his position was. I would get, "I'm just  
25 moving into my office, and I'm not sure who you should

1 talk to."

2 So there was a lot of miss communication and no  
3 communication. It was just confusion on both sides, which  
4 it only made matters worse for me maybe because I was  
5 having a difficult time trying to get things organized.  
6 But some of those replies had -- it seemed like  
7 inappropriate responses or things that seem to go after my  
8 character. Like, I'm a person that -- I don't want the  
9 other taxpayers to pay my bill like I'm not going to step  
10 up.

11 First of all, I paid all of my -- I didn't  
12 dispute any of it. I wanted to pay it. I had to get that  
13 out of the, you know, take care of that. But yeah, I --  
14 the -- some of the comments just seemed to be  
15 inappropriate and going after me as a person. And I don't  
16 know where that necessarily came from. So I guess --  
17 well, I -- I don't know. I just had a feeling that the  
18 person reviewing this wasn't giving it the appropriate,  
19 you know, time or effort to think about what was being  
20 written.

21 And the fact he would basically -- he said that  
22 my doctor wasn't providing -- well, I think what he was  
23 saying was he seemed -- he seemed -- like, he seemed hard  
24 pressed to write the notes. Like he was being, you know,  
25 coerced or something, you know. I just thought that was

1       rather inappropriate.

2                   And I'm here to state under oath that that's not  
3       the case.  So the doctor is not my friend.  I mean, we  
4       don't go out and have a beer or anything like that.  He's  
5       my physician.  That's it.  It's a professional  
6       relationship.  I think that might cover --

7                   ADMINISTRATIVE LAW JUDGE GAST:  Okay.

8                   MR. BRAYTON:  That's it for now.

9                   ADMINISTRATIVE LAW JUDGE GAST:  Thank you.

10                  Mr. Smith, any questions for Mr. Brayton?

11                  MR. SMITH:  I do not.

12                  ADMINISTRATIVE LAW JUDGE GAST:  Okay.  Panelist?  
13       Judge Cheng?

14                  ADMINISTRATIVE LAW JUDGE CHENG:  No, nothing from  
15       me at this time.

16                  ADMINISTRATIVE LAW JUDGE GAST:  Okay.  
17       Judge Roses?

18                  ADMINISTRATIVE LAW JUDGE ROSAS:  Yes, I do.  
19       Thank you.

20                  Good morning, Mr. Brayton.

21                  MR. BRAYTON:  Good morning.

22                  ADMINISTRATIVE LAW JUDGE ROSAS:  I just have a  
23       few clarifying questions.  Just to confirm, did I hear you  
24       correctly that you were working from February 2012 through  
25       2015 on a full-time basis?

1 MR. BRAYTON: That would be October 2012 to  
2 February 2015.

3 ADMINISTRATIVE LAW JUDGE ROSAS: From  
4 October 2012 through February 2015 you were employed on a  
5 full-time basis?

6 MR. BRAYTON: Yes, and then let go.

7 ADMINISTRATIVE LAW JUDGE ROSAS: When you were  
8 talking about the other member of the LLC, you made the  
9 statement that I quote, "I never conveyed it to him."  
10 What did you mean by that?

11 MR. BRAYTON: Well, I conveyed to him that I was  
12 handling all the details of the LLC. That we were not  
13 using it, but our understanding is that I would go ahead  
14 and pay the \$800 fee to keep it, you know, open. And I  
15 think it was just assumed, and I was doing that to the  
16 best of my ability.

17 I don't know how I missed that one year.  
18 That's -- it must have been a pretty bad year. So yeah,  
19 that's basically why that is. I didn't think there was an  
20 issue really, so there's -- our communication was just,  
21 yeah, I'll take care of that. We'll keep it open. Yeah,  
22 it was understood we wanted to keep it open because we  
23 were both paying for that.

24 ADMINISTRATIVE LAW JUDGE ROSAS: Did you make --  
25 I'm sorry. Let me rephrase that. Did you inform the

1 other LLC member regarding your personal health matters?

2 MR. BRAYTON: Not on an ongoing basis. He was  
3 working pretty much out of the town, out of the country  
4 much of the time. So we would touch base, you know, once  
5 or twice a year. So he knew there were issues but never  
6 to like -- you know, he knew there were issues. You know,  
7 I was functioning. You know, you kind of learn to have a  
8 facade and be able to look like you're doing okay. So I  
9 mean, I -- so he was unaware of the extent of the issue.

10 ADMINISTRATIVE LAW JUDGE ROSAS: Just to  
11 follow-up on what you just said regarding him being out of  
12 the country for most of the time. Can you be more  
13 specific in terms of his travels? How often out was he  
14 outside of the country during the tax years at issue?

15 MR. BRAYTON: Well, can't be too specific about  
16 dates and -- but I know, like, currently he's out of the  
17 country. He goes to Japan. His work takes him there. So  
18 he seems to be unavailable and out of the country much of  
19 the time.

20 ADMINISTRATIVE LAW JUDGE ROSAS: And when you say  
21 much of the time, can you just give an estimate in terms  
22 of percentage from the year, or are you speaking in term  
23 of months? Is it more than six months out of the year  
24 he's unavailable? More than nine months out of the year?  
25 I'll leave that to you to answer, but you can base it in

1 terms of months if that helps you.

2 And if you don't know, Mr. Brayton, that's fine  
3 as well.

4 MR. BRAYTON: Well, yeah. I don't want to  
5 misrepresent, but it seems if I ballpark it's at least six  
6 months. It seems like half the year. And it could be  
7 more or, and maybe it could be less. It just seems 50-50  
8 I guess. I'm just taking an average there. Yeah, I'm not  
9 really -- all I can -- what I can say is he's difficult to  
10 get a hold of.

11 I don't expect him to pick up when I call, that  
12 type of thing. And he usually contacts me when he's in  
13 town. Hey, I'm in town if you want to do something to get  
14 the business back or whatever. So he would normally  
15 contact me for that -- for that reason.

16 ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Brayton, I  
17 just have one final question. Everything you're saying is  
18 being transcribed, so I'll get a chance to read that  
19 later. And also I'm taking good notes, so I don't need  
20 you to repeat yourself.

21 Now, other than what you've already told us, is  
22 there anything else that this panel needs to know about  
23 your case?

24 MR. BRAYTON: I'm sorry. Could you repeat that  
25 one more time?

1 ADMINISTRATIVE LAW JUDGE ROSAS: Other than what  
2 you've already told us, is there anything else that this  
3 panel needs to know?

4 MR. BRAYTON: Everything I told you today in this  
5 hearing is correct.

6 ADMINISTRATIVE LAW JUDGE ROSAS: And  
7 everything -- aside from what's in the file and aside from  
8 what -- your testimony, I want to make sure we're not  
9 missing anything. Is there anything else important that  
10 you want us to know?

11 ADMINISTRATIVE LAW JUDGE GAST: Mr. Brayton,  
12 that's okay. If you can't think of anything right now,  
13 that's totally fine. You'll have another five minutes at  
14 the end of the hearing to address anything FTB says or if  
15 you want to say anything else.

16 MR. BRAYTON: I appreciate you giving me time. I  
17 went through my notes, and it looks like I covered  
18 everything. So I think I'm good.

19 ADMINISTRATIVE LAW JUDGE ROSAS: Thank you,  
20 Mr. Brayton.

21 MR. BRAYTON: Thank you.

22 ADMINISTRATIVE LAW JUDGE GAST: Okay. FTB, you  
23 will have 20 minutes. If you could discuss the 2012 and  
24 '13 years first and then move on to '14, that would be  
25 great, but I'll leave it up to you.

1           MR. SMITH: Sound good. I'll do everything and  
2 then 2014.

3           ADMINISTRATIVE LAW JUDGE GAST: Okay. Whenever  
4 you are ready.

5           MR. SMITH: All right. Thanks.

6

7

OPENING STATEMENT

8           MR. SMITH: In essence, the only issue for your  
9 office to decide today is whether the late filing and late  
10 payment penalties for Appellant's 2012 and 2013 tax years  
11 should be abated for reasonable cause.

12           The reasonable cause analysis is the same for  
13 both penalties. So that's why I kind of suggested there's  
14 one main issue. Appellant has not shown the penalty  
15 should be abated for reasonable cause. The facts are  
16 straightforward. Appellant failed to file its -- timely  
17 file its 2012 and 2013 tax returns, and failed to timely  
18 pay its 2012 and 2013 annual LLC tax.

19           Respondent's in position of the penalties at  
20 issue presumed proper, unless appellant is able to show  
21 that its failures to timely file a tax return and timely  
22 make its tax payments were due to reasonable cause, not  
23 willful neglect. Appellant must show that a prudent  
24 businessperson would have acted similarly under the  
25 circumstances.

1           Further as stated in the Office of Tax Appeals  
2           precedential opinion, the appeal of Triple Crown Baseball,  
3           LLC: If a taxpayer's difficulties cause the taxpayer to  
4           sacrifice timeliness of one aspect of its affairs to  
5           pursue other aspects, the taxpayer must bear the  
6           consequences of that choice.

7           In the appeal of Triple Crown Baseball, LLC, the  
8           manager had medical difficulties resulting from an auto  
9           accident, and argued that those medical difficulties  
10          prevented him from timely meeting the LLC's tax  
11          obligations. The Office of Tax Appeals sustained  
12          respondent's imposition of the penalties because in part,  
13          the record showed that the LLC's manager earned income  
14          during the relevant tax years. The facts in today's  
15          appeal are analogous to those in Triple Crown Baseball,  
16          LLC.

17          I do want to say that I'm sorry that Mr. Brayton  
18          felt that briefing in this matter attacked his character.  
19          That's all I can say is today's argument assumes that all  
20          the documentation he's provided is truthful and factual  
21          and that what he said today is true. There's no  
22          allegation that he was in cahoots with a medical provider  
23          or anything of the sort.

24          So with that being said, the facts are analogous  
25          today as they were to Triple Crown Baseball, LLC, for

1 three reasons. First, Mr. Brayton earned W-2 income as he  
2 admitted in 2012, 2013 and 2014. That's the time period  
3 in which the 2012 and 2013 tax payments and tax returns  
4 were due.

5 Second, Mr. Brayton actually took action related  
6 to appellant's tax obligations during this time period by  
7 submitting check payments for appellant on April 15th of  
8 2012, 2013 and 2014. It just so happens that those  
9 payments were late because the annual LLC tax for an LLC  
10 is due the 4th month of the tax year that the payment is  
11 being made.

12 So for the 2012 tax year, the payment is due  
13 April 15th, 2012. Whereas, for personal income tax, you  
14 know, the tax payments are due -- would be for to 2012  
15 would be due April 15th, 2013. And then finally third,  
16 again, Mr. Brayton referenced to it. It was appellant's  
17 Exhibit 6 that shows that prior to July 2014, Mr. Brayton  
18 was working more than 40 hours a week because the medical  
19 note at that time suggested that Mr. Brayton reduce his  
20 hours to 40 hours a week. So he was working during this  
21 time.

22 Based on this evidence, it appears Mr. Brayton  
23 sacrificed the timeliness of appellant's tax obligations  
24 to pursue other aspects of his life. Briefly, as it  
25 relates to the other partner in the LLC, the statutory

1 code referenced for that partner also being responsible  
2 for the tax years at issue, is corporation code section  
3 17150, which states that all members of a member managed  
4 LLC are subject to all duties and obligations of managers.

5 ADMINISTRATIVE LAW JUDGE GAST: I'm sorry what  
6 was that section?

7 MR. SMITH: 17150 California Corporations code.

8 ADMINISTRATIVE LAW JUDGE GAST: Okay. Thank you.

9 MR. SMITH: And there's been nothing provided in  
10 the record to suggest that the other partner could not  
11 meet his obligation, such as the organizing documentation  
12 of the LLC that would put the sole responsibility of tax  
13 matters into Mr. Brayton's hands.

14 As for 2014, I know we're not supposed to speak  
15 to the taxpayer, but in essence I am. We're going to kind  
16 of try and briefly go through the relevant exhibits to  
17 help explain the confusion. And again, I understand how  
18 Mr. Brayton was confused by the 2014 tax year.

19 ADMINISTRATIVE LAW JUDGE GAST: Before you begin,  
20 Mr. Brayton, do you have a copy of all these exhibits so  
21 you can follow along?

22 MR. BRAYTON: Yes.

23 MR. SMITH: So I'll be referencing Exhibit U,  
24 Exhibit V, and then Appellant's Exhibit 4.

25 ADMINISTRATIVE LAW JUDGE GAST: Okay.

1 MR. SMITH: So to start with Exhibit U is a  
2 current picture of Appellant's 2014 tax year. There are  
3 no penalties on that tax year. The only item on that tax  
4 year is the \$800 annual LLC tax. Now, appellant provided  
5 Exhibit 4, which was the December 2015 tax computation  
6 guide that showed the status of the account at that time.

7 Exhibit V is a tax computation guide that was  
8 prepared July 2017. As you'll see there is no -- there  
9 are not taxes on the 2014 tax year on Exhibit V, which is  
10 consistent with Exhibit U. Now, the reason there's a  
11 difference between 2015 and 2017 is that appellant made --  
12 bill -- made payments on the account after the 2015 tax  
13 computation guide that when applied to the account  
14 resulted in credits being timely applied to the 2014 tax  
15 year. Meaning, respondent considered the 2014 tax payment  
16 to be timely based on those tax credits.

17 So there would be no late payment penalties  
18 associated with the 2014 tax year.

19 ADMINISTRATIVE LAW JUDGE GAST: Payments after  
20 December 21st, 2015?

21 MR. SMITH: Well, some of the payments were  
22 ultimately in December, but that tax comp -- some payments  
23 have an effective date of prior to December 21st, which  
24 just means they were received, and they were given that  
25 date.

1           Now, it take respondent some amount of time to  
2           apply payments to an account. And so that would explain  
3           why maybe some payments that were made just before that  
4           tax computation guide weren't reflected on that guide.  
5           But the July 2017 tax computation guide reflects all  
6           payments made on appellant's account.

7           ADMINISTRATIVE LAW JUDGE GAST: Okay. And -- I'm  
8           sorry. Go ahead. And so the taxpayer submitted a refund  
9           claim for the 2014 tax year, and it looks like it's  
10          \$845.66. When I look at the December 21st, 2015, tax  
11          guide -- tax payment guide, there's an overpayment for  
12          that year of \$229.77, plus there's penalties and interest  
13          imposed of roughly \$55 -- about \$70. So that penalty and  
14          interest was reversed or removed.

15          So what happened to the payment that was applied  
16          to that, the \$70.23, as well as the overpayment of  
17          \$229.77? Did that get moved to 2015? Is there a way to  
18          figure that out to account for that with the Exhibit B you  
19          submitted?

20          MR. SMITH: Yes. So let me --

21          ADMINISTRATIVE LAW JUDGE GAST: Mr. Brayton, if  
22          you have any questions as well, please ask.

23          MR. SMITH: First off, I can't speak to the  
24          number that was put on the claim for refund. I didn't --  
25          that was not a number that we provided.

1 ADMINISTRATIVE LAW JUDGE GAST: Okay.

2 MR. SMITH: As for what happened to the payment,  
3 I would -- I'm not trying to hide any ball. I would just  
4 suggest looking at Exhibit V. It'll apply. Because of  
5 when bill payments were made and what years they were  
6 applied to, it almost makes appellant's Exhibit 4 obsolete  
7 because these payments are being applied to prior tax  
8 years, which would affect later tax years.

9 So what ends up happening for 2015 is that page 5  
10 of Exhibit V shows that there's an \$800 credit from the  
11 2014 tax year applied to the 2015 tax year resulting in --  
12 resulting in a timely payment for that year as well.

13 ADMINISTRATIVE LAW JUDGE GAST: Okay. And so  
14 just to be clear, there were no penalties or interest  
15 imposed at all for 2014?

16 MR. SMITH: Correct.

17 ADMINISTRATIVE LAW JUDGE GAST: And nothing that  
18 would have been carried over to 2015 would have gone to  
19 pay penalties or interest for that year?

20 MR. SMITH: For the 2014 tax year?

21 ADMINISTRATIVE LAW JUDGE GAST: For 2015.

22 MR. SMITH: No.

23 ADMINISTRATIVE LAW JUDGE GAST: Okay. It's just  
24 \$800 minimum tax for that year too?

25 MR. SMITH: Correct.

1 ADMINISTRATIVE LAW JUDGE GAST: Okay.

2 Mr. Brayton, do you have any comments on what FTB has  
3 said?

4 MR. BRAYTON: Like, I would just -- the number on  
5 that request for refund for that year --

6 ADMINISTRATIVE LAW JUDGE GAST: Yeah.

7 MR. BRAYTON: -- I don't know where that came  
8 from. Or initially I had it off the -- from the tax  
9 computation guide. But there was somebody at FTB who told  
10 me, "Well, it could be different. That tax computation  
11 guide is probably not accurate possibly."

12 So I don't know where that number came from and  
13 how it was calculated. It was just based on -- they told  
14 me do a best guess. It would be -- you can always request  
15 more, you know. If it's not there, then you're not going  
16 to get that of course. So yeah, there was definitely a  
17 lot of conversations with the FTB trying to work these  
18 things out.

19 And frankly it's still not all that clear. I  
20 mean it's -- to me. But I understand that yeah, for 2014  
21 if there's nothing -- no penalties, then of course there's  
22 no issue there.

23 ADMINISTRATIVE LAW JUDGE GAST: Okay.

24 MR. BRAYTON: But to understand how all this is  
25 applied, I don't think I brought the exhibit or maybe I

1 didn't submit it or I calculated everything I paid versus  
2 the FTB's number. And there's a discrepancy there, but I  
3 think it's on me to figure that out maybe. And then if  
4 there's a calculation I think is wrong, then I can go back  
5 and ask the FTB to clarify it. At that point we're just  
6 talking about how things were calculated.

7 ADMINISTRATIVE LAW JUDGE GAST: Right. Okay.  
8 Thank you.

9 FTB, are you done with your presentation?

10 MR. SMITH: Yeah. I would just conclude that  
11 appellant has not established reasonable cause based on  
12 the facts and evidence in the record. And I respectfully  
13 request that the Office of Tax Appeals sustain  
14 respondent's position. Thanks.

15 ADMINISTRATIVE LAW JUDGE GAST: Thank you.  
16 Questions from panel members? Ms. Cheng?

17 ADMINISTRATIVE LAW JUDGE CHENG: Yes. One  
18 question on the 2014 tax year. Mr. Brayton, did you pay  
19 the -- according to the notice dated December 21st, 2015,  
20 there's a balance of \$229.77. Do you recall if you paid  
21 that amount?

22 MR. BRAYTON: I'm sorry. Which date and how  
23 much?

24 ADMINISTRATIVE LAW JUDGE CHENG: This is  
25 Exhibit 4.

1 MR. BRAYTON: Exhibit 4. My Exhibit 4; right?

2 ADMINISTRATIVE LAW JUDGE CHENG: Yes.

3 ADMINISTRATIVE LAW JUDGE GAST: I have a copy  
4 here if you would like?

5 MR. BRAYTON: I think I have it here. Exhibit 4.  
6 Yes, I have got it.

7 ADMINISTRATIVE LAW JUDGE CHENG: Do you recall  
8 paying that amount?

9 MR. BRAYTON: No.

10 ADMINISTRATIVE LAW JUDGE GAST: That's a refund  
11 amount.

12 MR. BRAYTON: That's a refund; right?

13 ADMINISTRATIVE LAW JUDGE GAST: It's an  
14 overpayment.

15 ADMINISTRATIVE LAW JUDGE CHENG: Okay. Sorry.  
16 My mistake.

17 ADMINISTRATIVE LAW JUDGE GAST: Yeah. That's  
18 reflected as an overpayment on the December 21st, 2015,  
19 tax computation guide for 2014, which then doesn't show up  
20 on the most recent one for 2017.

21 Any questions, Judge Rosas?

22 ADMINISTRATIVE LAW JUDGE ROSAS: No further  
23 questions.

24 ADMINISTRATIVE LAW JUDGE GAST: All right.  
25 Mr. Brayton, you'll have five minutes.



1 The company I was working on was definitely over the top.  
2 So that was, like, if I had a choice not to take that job  
3 I was unemployed. I needed to make income to pay my  
4 taxes. And but starting -- it's about obligations and  
5 prioritizing. We all have to do that. There are  
6 different priorities.

7 I wasn't doing other obligations to avoid. I  
8 wasn't doing other things to avoid obligations. In a  
9 sense we all do. I mean, we all have to prioritize. So  
10 making income would be the most -- utmost important --  
11 important thing I could do. Taking care of my health  
12 should be number one. And I would just want to emphasize  
13 that I didn't -- I did not pay the FTB tax or fill out the  
14 returns to -- so I wouldn't have time to fill out my  
15 personal tax returns. All those things got shoved aside.  
16 There's nothing of -- I don't know. I guess we have to  
17 prioritize. That's what I did when it comes to medical  
18 things.

19 You know, for all -- if any of us go through  
20 that, you know, we have to prioritize. Just one more  
21 thing that just slipped my mind. I don't know. Maybe my  
22 five minutes may be up. So yeah, I can't remember. Sorry  
23 I just -- I don't recall things too well. Okay. I think  
24 I'm done.

25 ADMINISTRATIVE LAW JUDGE GAST: Okay. Thank you

1 very much, Mr. Brayton.

2 All right. This concludes the hearing. I want  
3 to thank both sides. I thought both sides did an  
4 excellent job of presenting. Thank you, Mr. Brayton, for  
5 complying with all the deadlines and submitting an  
6 exhibited list and an index. That was very helpful.

7 So from here the judges will meet and decide the  
8 case based upon the documents and testimony presented  
9 today. And we will aim to send our written decision no  
10 later than 100 days from today. And with that the case is  
11 submitted and the record is now closed.

12 Thank you.

13 (Proceedings adjourned at 11:19 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 3rd day of June, 2019.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER