

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
K. BUEHRING and M. BUEHRING,          ) OTA NO. 18032380  
   )  
                    APPELLANT.               )  
   )  
   )

## TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, November 18, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California, 90703,  
commencing at 1:07 p.m. and concluding  
at 2:28 p.m. on Wednesday, November 18, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1 APPEARANCES:

2

3 Panel Lead: ALJ ALBERTO ROSAS

4

5 Panel Members: ALJ AMANDA VASSIGH  
ALJ RICHARD TAY

6 For the Appellant: ZENA GREENSPAN

7

8 For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

9 MIRA COUTINHO  
10 MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-29 were previously received into evidence during the prehearing conference.)

(Appellant's Exhibit 27 was received into evidence at page 8)

(Department's Exhibits A-I were previously received into evidence during the prehearing conference.)

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1 Cerritos, California; Wednesday, November 18, 2020

2 1:07 p.m.

3

4 JUDGE ROSAS: We are on the record in the matter  
5 of the appeal of K. Buehring and M. Buehring, OTA Case  
6 Number 18032380. Today is November 18th, 2020, and the  
7 time is approximately 1:07 p.m. This hearing was  
8 originally noticed to take place in Cerritos, California.  
9 However, due to ongoing concerns related to the Covid-19  
10 Corona virus, and with the agreement of all the parties,  
11 we are holding this hearing remotely using video  
12 conferencing.

13 I want to take a moment to thank the parties and  
14 representatives for agreeing to hold today's hearing  
15 virtually. Also, I want to thank all of the OTA staff and  
16 team members who work behind the scenes to make these  
17 virtual hearings possible. The panel of Administrative  
18 Law Judges consist of Amanda Vassigh, Richard Tay, and  
19 myself, Alberto Rosas. Although, I may be the lead  
20 Administrative Law Judge for purposes of conducting  
21 today's hearing, please know that this panel, the three of  
22 us, we are each equal participants and equal decision  
23 makers.

24 We're going to start with stating your  
25 appearances for the record, and we will start with the

1 Appellant's representative.

2 MS. GREENSPAN: My name is Zena Greenspan. I  
3 represent Klaus Dieter Buehring and Michelle Buehring in  
4 this matter.

5 MR. AARONSON: I'm Dale Aaronson.

6 JUDGE ROSAS: And now appearances from FTB,  
7 please.

8 MS. COUTINHO: Mira Coutinho for the Franchise  
9 Tax Board.

10 MS. BROSTERHOUS: And Maria Brosterhous for the  
11 Franchise Tax Board.

12 JUDGE ROSAS: As I mentioned, this hearing is  
13 being recorded. As a reminder please state your name  
14 before you speak, please speak slowly, speak clearly, and  
15 speak one at a time. I'd like to discuss a few  
16 administrative matters.

17 We had a prehearing conference October 28, 2020,  
18 which resulted in the issuance of seven orders. I'm going  
19 to discuss the five most relevant orders:

20 Number one, Appellant's Exhibits 1 through 29  
21 were admitted into evidence without objection. But I will  
22 note that 27 was just a placeholder, not an actual  
23 evidentiary exhibit. And I will discuss Exhibit 27 later.

24 The second order, Respondent's Exhibits Alpha  
25 through India, that's A through I, were admitted into

1 evidence without objections.

2 Order three, Appellant's were granted until  
3 November 3rd to submit additional exhibits, and Respondent  
4 was granted two business days after receipt of Appellant's  
5 exhibit to make any objections.

6 Number four, no witnesses will testify at today's  
7 oral hearing.

8 And number five, the parties shall comply with  
9 the hearing time limits discussed during the prehearing  
10 conference.

11 As I mentioned, I will discuss Exhibit 27 in a  
12 moment. But before I do so, I have one question for the  
13 parties. Is this an accurate summary of the prehearing  
14 conference minutes and orders?

15 Ms. Greenspan, I'll start with you.

16 MS. GREENSPAN: Yes, it is.

17 JUDGE ROSAS: Ms. Coutinho?

18 MS. COUTINHO: Yes, it is.

19 JUDGE ROSAS: This is Judge Rosas. There was one  
20 additional exhibit in accordance with the prehearing  
21 conference minutes and orders. On November 3rd Appellant  
22 submitted an additional exhibit. Specifically, Appellant  
23 admitted Exhibit 27. Respondent did not submit any  
24 written objections to Exhibit 27; is that correct,  
25 Ms. Coutinho?

1 MS. COUTINHO: That's correct. Franchise Tax  
2 Board has no objections to the exhibit.

3 JUDGE ROSAS: This is Judge Rosas. Thank you  
4 very much. In that case Exhibit 27 as submitted on  
5 November 3rd is hereby admitted into evidence without  
6 objection.

7 (Appellant's Exhibit 27 was received  
8 in evidence by the Administrative Law Judge.)

9 The parties agreed that the following are the two  
10 issues on appeal: Number One, whether Appellants have  
11 established reasonable cause to abate the late filing  
12 penalty; Number Two, whether Appellants have established  
13 that they are entitled to abatement of the estimated tax  
14 penalty.

15 Ms. Greenspan, do you have any comments or  
16 questions before we move into your opening presentation?

17 MS. GREENSPAN: No. Probably a small procedural.  
18 Do I -- is it appropriate at this hearing to reintroduce  
19 any facts or -- I'm prepared to just go straight to my  
20 arguments with the two issues?

21 JUDGE ROSAS: In terms of facts, if you want to  
22 highlight some facts that are in the record, if you wanted  
23 to bring the panel's attention to any specific facts by  
24 referencing the exhibit letter or exhibit number, you may  
25 do so. In terms of describing or discussing any new



1 facts, technically, you're not a witness. So we would not  
2 allow any testimony from you as a representative.

3 But in terms of, as I mentioned, highlighting or  
4 trying to bring the panel's attention to what you believe  
5 are the most pertinent facts in the record, please, by all  
6 means, reference that exhibit letter or exhibit number,  
7 and bring our attention to that.

8 MS. GREENSPAN: Okay, thank you.

9 JUDGE ROSAS: Certainly, Ms. Greenspan. And once  
10 again, any questions before you may begin?

11 MS. GREENSPAN: No.

12 JUDGE ROSAS: Okay. In that case we're going to  
13 proceed with your opening argument. As you mentioned as  
14 an estimate you have 20 minutes. If necessary, if you're  
15 going close to the time period, I will let you know. I  
16 will try to give you a reminder when you're at the  
17 15-minute mark.

18 And as I mentioned, we don't have any other  
19 hearings scheduled later today. So in terms of  
20 flexibility, we will do everything possible to try to  
21 accommodate additional time if necessary. Ms. Greenspan,  
22 you may begin whenever you're ready.

23 Thank you.

24

25

PRESENTATION

1                   MS. GREENSPAN: Thank you. Good afternoon.  
2       Respondent asserted Appellant relied on professional  
3       accountants, E&Y, and its employer Samsung as its agent,  
4       which does not constitute allowing reasonable cause. It's  
5       understood that under U.S. Boyle, that reliance on a tax  
6       professional and not function as a substitute for  
7       compliance with an unambiguous statute.

8                   The taxpayer did not substitute an agent or the  
9       tax professional to abrogate his duty to file his tax  
10      return by the October 15th due date. Samsung's contract  
11      benefit was and extremely strong inducement for Klaus to  
12      take the job and relocate to the UK. Samsung structured  
13      more than a contractual obligation to Klaus to ensure his  
14      tax returns would be prepared and filed on time, and that  
15      the taxes would be paid by his employer. By contract,  
16      Klaus also had to be fully responsible for filing his  
17      California and U.S. tax returns.

18                  This contractual relationship created an  
19      extraordinarily high duty of care, likened to a fiduciary  
20      duty of care for which Klaus could rely. Samsung made  
21      contractual obligations for the smooth handling of Klaus's  
22      tax filings and payment obligations. Samsung, in fact,  
23      kept its promise to Klaus for the four prior years' tax  
24      filings with their continuous course of dealings with  
25      Klaus.

1 Appellant's previous income tax returns were  
2 filed by their October 15th extension filing deadline.  
3 Klaus would have no reason to believe that Samsung would  
4 not perform that way again. Samsung was supposed to cover  
5 in full Klaus's tax estimates, including the \$20,000  
6 estimated tax buffer by April 15th for the Franchise Tax  
7 Board as they had done for four prior years.

8 Klaus was assured by his E&Y liaison that he was  
9 covered for his 2014 taxes on April 15th. In spite of  
10 Samsung's promise to Klaus, he remained responsible for  
11 filing his own taxes pursuant to the employment contract.  
12 He did not relinquish his own filing obligation to the  
13 FTB. There was no willful neglect.

14 The agreement required Klaus to report his  
15 non-wage income, such as dividends, interest, and  
16 investment income, provide all of his U.S.-based source  
17 income to E&Y before the filing deadline due date,  
18 admitting it into the E&Y secure propriety portal, pay  
19 taxes on his employment stock options and other share  
20 options that were contingent incentive incomes. Samsung's  
21 agreement stated that their obligation was to make sure  
22 that the taxes were filed and paid for the salary, bonus,  
23 and benefits.

24 Samsung's agreement stated that their obligation  
25 was to file the Buehring's personal tax returns for the

1 year in which there would be an early contract  
2 termination. And, yes, Klaus and Michelle would also be  
3 responsible for settling their taxes by the relevant  
4 deadlines. Klaus got involved with the tax process --  
5 filing process. Klaus did not rely exclusively on  
6 Samsung's assurances that it would file his tax returns  
7 and pay his 2014 California taxes.

8 On September the 2nd, Klaus demanded that his pay  
9 summary rollup total, which is a confirmation of income  
10 according to his information that he had available between  
11 January and April '14. January 30th, Klaus contacted  
12 Ernst & Young liaison requesting his W-2, which he did not  
13 receive, and they did not provide. February 2nd Klaus  
14 discussed with his liaison his concern and need to extend  
15 his taxes and his tax returns -- not his taxes -- his  
16 returns. Sorry.

17 April 13th of '14, Klaus discussed his tax  
18 payment filings schedule, his extension, and the extension  
19 payment with E&Y's liaison Smite. April 14th through 15th  
20 Klaus initiated contact with E&Y's liaison for his  
21 extension estimates. Both Klaus and Smite confirmed his  
22 obligation to the Franchise Tax Board, which was  
23 approximately \$150,000, calculating his tax liability  
24 based on his \$1,444,069 salary he earned in 2014. Knowing  
25 what was paid into the system from his discussion with

1     Smite, \$86,358 of withholding, \$5,000 from a prior  
2     estimate on June 2014, with the Franchise Tax Board the  
3     \$25,000 he paid to the FTB on 4/15, and the \$36,760 from  
4     the hypo withholding tax, he did not have to pay in  
5     further to the Franchise Tax Board.

6             However, Klaus still requested E&Y to the Samsung  
7     to pay an additional \$20,000 to cover his approximately  
8     \$200,000 of worldwide income on April 15th. On April 15th  
9     his 2014 income tax return was extended based on Klaus'  
10    wage income from that \$1,444,069 year to date income. No  
11    W-2 was available nor received. A TEQ calculation and the  
12    HMRC tax return were not yet filed. Smite confirmed to  
13    Samsung that E&Y calculated the same liability as  
14    calculated by Klaus.

15            May 21st, Klaus took a trip to Ernst & Young in  
16    San Jose to meet Smite Dontkale and Ernst & Young tax  
17    managers to discuss his tax filings and payments.  
18    July 24th, Klaus received confirmation from Svetlana  
19    Moore, who is an assistant to E&Y tax manager Vikram Verk,  
20    that his income tax returns were being worked on.  
21    September the 24th, Klaus again made his efforts.  
22    Ernst & Young wrote to Klaus to provide assistance to him  
23    to submit his tax organizer since he said he had tried to  
24    submit it, and he had been having problems and was unable  
25    to do so.

1           Anna Brown of E&YUK discussed that E&Y would  
2     obtain his compensation information directly from Samsung.  
3     September 24th, Klaus reported his non-wage earnings  
4     income and submitted his tax organizer into the E&Y's  
5     propriety portal account, which is controlled by E&Y.  
6     Again, Samsung had first received any tax drafts and/or  
7     tax final information but not Klaus.

8           October the 12th, outside information of the  
9     status of his tax filing from E&Y, Svetlana, had submitted  
10    a corrected 1099 from E-Trade. October 14th, Klaus still  
11    asked E&Y's confirmation of the extension payment and his  
12    TEQ. October the 15th, Klaus received a very urgent phone  
13    call from Svetlana for him to pay \$227,476 in tax with  
14    penalties and interest calculated to date that E&Y would  
15    then file his 2014 California income tax returns that day.

16           This is also an unusual circumstance because the  
17    E&Y tax specialist contacted Klaus directly rather than,  
18    again, through other intermediaries. From that 10/15  
19    phone call, Klaus firmly believed that his income tax  
20    return was being filed on October the 15th. This is also  
21    true based on a conduct that Samsung prior four-year  
22    course of dealings had for Klaus' benefits.

23           November 12th, Klaus contacted Svetlana to  
24    receive further updates about his TEQ filings and the tax  
25    payments. November 25th, Svetlana told Klaus that his

1       2014 TEQ would be finalized by the first week of December.  
2       December the 3rd E&Y's Gayani Siriwardena, who is a  
3       forensic investigator and a tax manager, wrote Klaus that  
4       E&Y would deliver the TEQ to Samsung for their review and  
5       then to Klaus. Gayani told Klaus that the TEQ would be  
6       received once the California income tax items were  
7       clarified by Samsung.

8               Recall that U.K. taxes had to be filed for the  
9       TEQ determination to have been calculated. It would not  
10      have been available to Klaus on April the 15th. March 22,  
11      2016, it appeared that Klaus received notification that  
12      his HMRC taxes were not filed on time. There was a  
13      penalty assessment. This is confirmation that the U.K.  
14      finally received Klaus' 2014 filed HMRC return well after  
15      October 15th. This is from communication with Kim Chapman  
16      from E&YUK.

17              Klaus' relation with E&Y's expert expatriate tax  
18      team was not simply reliance on his tax professional. The  
19      accounting firm provided higher duties on his behalf.  
20      Even if Klaus had gone to another expert tax professional  
21      familiar with expatriate tax filing, he would have had to  
22      rely on the information received from E&Y and Samsung.  
23      More from E&Y because Klaus is not responsible for filing  
24      his HMRC taxes. E&Y prepared those U.K. filings for  
25      Samsung pay to U.K. directly.

1           Therefore, the timing of their reporting Klaus  
2       would have still remained the same, even if another  
3       accountant were brought in or even if Klaus could prepare  
4       his own tax returns by himself. To assist Klaus in his  
5       filing of his tax return, E&Y provided a tax team with  
6       expertise in expatriate tax law, including the Franchise  
7       Tax Board California law, IRS federal law, and UK HMRC  
8       services. And they also provided a liaison to go between  
9       E&Y and Samsung directly. Ostensibly, provide Samsung but  
10      not Klaus, a direct information from E&Y so that the  
11      employer was required to pay the correct liabilities due  
12      to the Franchise Tax Board.

13           Once Samsung agreed upon the amounts to be paid,  
14      only then would E&Y file Klaus' tax returns. In his  
15      dealings with E&Y, Klaus did not receive confirmations of  
16      the filed extensions until well after the April 15th  
17      deadline and after each year's extended tax returns were  
18      filed on/or around October 15th. This protocol was set up  
19      for Samsung to fulfill its promise that it would provide  
20      Klaus reliance and confidence for the taxing authorities  
21      to receive Klaus' filing payment obligations from the  
22      employer, including estimated payments and withholdings,  
23      and then for E&Y to timely file the Buehring's income  
24      returns.

25           To fulfill its obligation to Klaus, Samsung



1 contracts set forth a tax equalization policy, whereby,  
2 the company would deduct monthly from his wages for tax  
3 liabilities in his California taxes related to any salary,  
4 bonuses, and benefits. A hypothetical -- called a hypo --  
5 withheld from his salary covered tax deficiency, such as  
6 to the Franchise Tax Board. This TEQ calculation was done  
7 by E&Y. The TEQ had to be submitted to Samsung but not to  
8 Klaus. The TEQ could only be presented to Klaus after  
9 Samsung approved it.

10 Klaus was effectively kept in the dark regarding  
11 his TEQ. Klaus was not responsible for his TEQ and U.K.  
12 filings and the HMRC tax payments, the certainty of Klaus'  
13 tax obligations to the Franchise Tax Board could not be  
14 determined until he received his W-2 worksheet. And the  
15 worksheet could only be presented to Klaus after the TEQ  
16 was determined and after the U.K. tax returns were  
17 finalized after Samsung approved the information. It's  
18 the U.K. taxes that were included in determining Klaus'  
19 W-2 wages.

20 Respondent's assertions are incorrect regarding  
21 Klaus' reliance on the E&Y expert tax team and his  
22 employment contract. Klaus went much further than an  
23 ordinarily intelligent prudent businessperson. His  
24 actions and conduct indicated he was on top of his tax  
25 filings at all time with all of the information that was

1 available to him from his employer, from his expert tax  
2 professionals, from his tax professionals' communications  
3 to his employers by April 15th, and even beyond during the  
4 period between April 15th and October 15th.

5 Despite this information available to him, Klaus  
6 did not rest in receiving his tax reporting information to  
7 ensure that his 2014 tax filings were done on time. He  
8 believed and had confirmation from E&Y he had sufficiently  
9 paid into the Franchise Tax Board system and that his  
10 \$170,000 liability was his total tax liability, and that  
11 it was paid by April 15th, 2015, through his extension.

12 He also believed that the call that he received  
13 on October the 15th, whereby, he paid his taxes in full,  
14 including penalties, were going to be filed --

15 JUDGE ROSAS: Ms. Greenspan, this is Judge Rosas.  
16 I'm terribly sorry for the interruption. I am being  
17 informed that because of the sound quality, it seems like  
18 you are cutting in and out. And our stenographer is  
19 having a difficult time following along. If you can make  
20 a conscious effort of trying to speak directly into your  
21 microphone and speaking slower, that would be very  
22 helpful.

23 I know you're trying to rush because of the time  
24 period, but based on the technical issues, we are going to  
25 grant you additional time. So there is no need to speed

1 up. If you could please take your time, speak slowly, and  
2 try to speak directly into the microphone. We'll see if  
3 that works any better.

4 Thank you, Ms. Greenspan.

5 MS. GREENSPAN: Well, do I have to provide  
6 clarification of anything I've said to this point?

7 JUDGE ROSAS: This is Judge Rosas. Ms.  
8 Greenspan, that is a wonderful question, and I will turn  
9 that question over to our stenographer.

10 Ms. Alonzo, do you need Ms. Greenspan to repeat  
11 anything or to go back to any particular section.

12 THE STENOGRAPHER: To be honest with you, I  
13 didn't get any of the names, the formal names that were  
14 said.

15 MS. GREENSPAN: This is Zena Greenspan. Should I  
16 repeat any of the names or the names that I had referred  
17 to this point?

18 THE STENOGRAPHER: Maybe at the very end you  
19 could give me a list of the names?

20 MS. GREENSPAN: Okay.

21 THE STENOGRAPHER: That would be very helpful.

22 MS. GREENSPAN: Would I submit that in writing or  
23 orally?

24 THE STENOGRAPHER: We could -- I don't know. I  
25 will refer to Judge Rosas on that.

1 JUDGE ROSAS: This is Judge Rosas. Two things,  
2 Ms. Greenspan, at the end of your oral argument if you can  
3 just verbally provide those names. Moreover, I'm aware of  
4 the e-mail that you sent to OTA regarding your  
5 presentation today and some of the abbreviations that you  
6 were going to use. I'm going to make sure that our office  
7 forwards that to Ms. Alonzo. Because that information in  
8 that e-mail may also be helpful to Ms. Alonzo as she's  
9 going back and trying to understand the names and the  
10 references you were using.

11 So we'll attempt to resolve this problem both  
12 ways. As I mentioned, concluding your presentation, you  
13 can recite those names. And secondly, I'll make certain  
14 that our office forwards that e-mail directly to  
15 Ms. Alonzo.

16 MS. GREENSPAN: Okay.

17 JUDGE ROSAS: Thank you both once again. And  
18 Ms. Greenspan, take your time, speak slowly, speak  
19 directly into the microphone. You may continue whenever  
20 you're ready.

21 MS. GREENSPAN: And if you don't mind telling me  
22 whether you can hear me better now? Is this better?  
23 Okay.

24 JUDGE ROSAS: I see that everybody is nodding in  
25 agreement, yes.

1           MS. GREENSPAN: Thank you. Sorry for it being  
2 muffled before.

3           It would be unconscionable to calculate the  
4 delinquent filing penalties based on the income of  
5 \$2,206,220 that was stated on the FTB's copy of the W-2.  
6 The worksheet actually said that it was \$2,206,168. So  
7 even Klaus did not receive accurate information from his  
8 worksheet, which is the only tax report he received after  
9 October the 15th. It would be punitive under the  
10 circumstances to penalize the Appellants.

11           These penalties are against equity and good  
12 conscience given the extraordinary circumstances that  
13 Mr. Buehring faced in seeking confirmation that his taxes  
14 were filed by their due dates. With respect to reasonable  
15 cause, the Respondent's conclusions are incorrect in this  
16 extraordinary and impossible situation that Klaus faced in  
17 attempting to file the Buehring's California tax returns.  
18 These facts are also provided with the same conclusion  
19 that the underpayment penalty are unconscionable and  
20 unfairly punitive to the taxpayers. Those penalties --

21           JUDGE ROSAS: Ms. Greenspan, this is Judge Rosas.  
22 Once again, I'm terribly sorry for the interruption. I  
23 know that when I was in your shoes, I hated it when  
24 someone interrupted my flow. So I could definitely  
25 empathize.

1           I cannot help but notice that every time you turn  
2   your head away from the computer monitor towards the  
3   documents on your lower left-hand side, that's when we  
4   seem to be losing sound quality. I don't --

5           MS. GREENSPAN: How about now?

6           THE JUDGE: I don't know if there's anything you  
7   can do on your end to make sure that as your reading  
8   you're speaking directly towards the microphone. That  
9   might help alleviate some of the sound issues and concerns  
10  that we seem to be experiencing. Just an observation.

11          MS. GREENSPAN: Okay. Thank you. How is it now?  
12  If I look away, how is it now? Better?

13          JUDGE ROSAS: It seems to -- it seems like you're  
14  not breaking up. It seems like you're having continuing  
15  sound quality this time around. So, yes, whatever you're  
16  doing now seems to be working.

17          MS. GREENSPAN: I apologize. I apologize.

18          JUDGE ROSAS: No. No need to apologize,  
19  Ms. Greenspan. As I mentioned at the beginning, I  
20  predicted we were going to have some technical issues.  
21  It's just part of the new world, zoom hearings,  
22  what-have-you. It's just one of those things we need to  
23  get over, but I understand that we're doing the best on  
24  our part to try to alleviate those I.T. issues. Thank you  
25  for your patience and for the adjustments you are able to

1       make.

2               MS. GREENSPAN:   Thank you.

3               The penalties -- the aforementioned penalties,  
4       following the reason of the appeal of Mazdyasni, would be  
5       against equity and good conscience due to the unusual  
6       extraordinary circumstances Klaus faced.

7               From the appeal of Roger Sleight, the fact that  
8       the tax information is lost, lacking, inaccurate, or  
9       difficult to obtain is insufficient to meet the taxpayer's  
10      burden of establishing reasonable cause. And from the  
11      appeal of Mazdyasni, we know that a mere showing of  
12      reasonable cause or lack of willful neglect is not  
13      sufficient to grant relief from the estimated tax penalty.

14              However, applying the rule of the Mazdyasni  
15      appeal, the law does allow for abatement of the estimated  
16      tax penalty, if by reason of casualty, disaster, or  
17      unusual circumstances, in position of the penalty would be  
18      against equity in good conscience. We recognize that the  
19      exception for unusual circumstances is considerably  
20      narrower than reasonable cause. However, unlike the  
21      Mazdyasni appellants, the Buehrings have demonstrated  
22      sufficient-unusual circumstances and even extraordinary  
23      circumstances in their case to warrant that OTA to grant  
24      them relief from imposed estimated tax penalty.

25              There are substantial unusual circumstances

1 warranting the waiver of each of the penalties that the  
2 Buehrings paid in full. Again, Klaus' W-2 was not  
3 verifiable from Samsung until -- by April 15th. Klaus'  
4 W-2 worksheet was not available until closer to or most  
5 likely after October 15th. His U.K. taxes were neither  
6 available nor determinable, which was in control of  
7 Samsung and E&Y until after October 15th.

8 By receiving his U.K. taxes, Klaus might have  
9 been able to estimate his wage's gross to estimate what  
10 were the final W-2 wages. Klaus was limited to his year  
11 and wages reflected on his last paycheck and his payroll  
12 summary data, which was that \$1,444,069, and his  
13 withholding from wages, \$86,358. This payroll summary was  
14 issued to Klaus on the August the 29th, 2014. This was  
15 all that was possibly available from Samsung to determine  
16 Klaus' estimated taxes.

17 Had the hypo tax been paid to the FTB as  
18 confirmed by the E&Y liaison, instead of merely being  
19 withheld from his wages, then the Buehrings would have  
20 been covered for their estimated taxes well over  
21 100 percent with what was paid in based on the  
22 year-to-date earnings of the \$1,440,069. Because with the  
23 hypo tax together on his pay stub, \$153,118 is what was  
24 paid in and what was what he knew.

25 Based on the preponderance of the evidence, the



1 Buehrings have demonstrated that they conducted themselves  
2 as ordinarily intelligent prudent businesspeople in a  
3 manner such that reasonable cause should be recognized to  
4 abate the underpayment of estimated taxes. Due to these  
5 unusual circumstances, the imposition of the estimated tax  
6 penalty and also the late filing penalty would be against  
7 equity and good conscience and unfairly punitive and  
8 unjust against the Buehrings.

9 Due to the extraordinary circumstances, whereby,  
10 Klaus did not have his tax reporting information because  
11 he had no ability to obtain the information necessary to  
12 prepare accurate estimates by April 15th, that the OTA  
13 should consider ordering the FTB to abate the estimated  
14 tax penalty.

15 Respondent asserted that Appellant's reason for  
16 the taxpayer's inability to file by the timely due date  
17 was due to not having the documents, and as such, does not  
18 constitute reasonable cause to abate late filing  
19 penalties. This is not a case of tax information being  
20 lost, lacking, inaccurate, or difficult to obtain. This  
21 was an impossible situation that Klaus faced since  
22 April 15th and even before since January 2015 in which  
23 Klaus had no ability to receive his W-2.

24 The W-2 determination was apparently dependent on  
25 the U.K. taxes that were paid and filed late in 2015;

1 after October 15th, apparently. Klaus did not have the  
2 ability to determine his income from Samsung's wages on  
3 April 15th beyond what was stated on the year to date  
4 final pay stub, which apparently was an incorrect amount  
5 of wages, but was the only amount of wages that could be  
6 relied upon.

7 Had he received his W-2 in January or even at the  
8 beginning of April, he would have been able to have his  
9 income returns prepared and filed timely, and would have  
10 been able to pay his total tax liability by April  
11 the 15th. Klaus demonstrated above and beyond efforts,  
12 beyond what an ordinarily intelligent prudent  
13 businessperson would do under the same circumstances in  
14 securing his tax reporting data, including pursuing the  
15 TEQ and the HMRC filing. As well, confirmation that his  
16 tax extension to file contain the correct taxes paid by  
17 the April 15th filing deadline.

18 Also, Klaus's October 15th payment in full to the  
19 FTB of the \$227,476 was done immediately once he was told  
20 that his tax returns are being filed then with the tax  
21 payment that he had to make by that time that day. The  
22 Buehrings have met their burden of proof so that the  
23 penalties for late filing should be waived. It would be  
24 an outrageous strike against equity and good conscience  
25 due to the impossible situation that these unusual

1       circumstances to deny the Buehrings for reasonable cause.

2               The OTA should consider abating the delinquent  
3       filing penalty and the estimated tax penalty imposed  
4       against Appellant. Respondent argued that the complexity  
5       of tax law is not valid to waive the delinquent filing  
6       penalty as reasonable cause. This is not just a case of  
7       the inability to prepare the 2014 tax return due to  
8       complex tax laws. Even if Klaus hired competent  
9       professionals or attempted to prepare his own tax returns,  
10      again, he would not have been able to obtain the final  
11      reporting information necessary to prepare his 2014 tax  
12      returns.

13             The information Klaus had would have resulted in  
14      a materially incorrect filing, even at October the 15th.  
15      However complex the international and domestic tax laws  
16      might have been, both Klaus and E&Y both estimated the  
17      same 2014 tax liability for California on April 15th. As  
18      an ordinarily intelligent prudent businessperson, Klaus  
19      was more conservative in estimating and asking that Smite  
20      inform Samsung to pay the additional \$20,000 estimate to  
21      the FTB; and that he himself pay the FTB \$25,000 based on  
22      his efforts using the information available at April 15th.

23             Certainly, the payment of \$227,476 on  
24      October 15th, together with the information of an urgent  
25      phone call telling him he had to pay his 2014 taxes, that

1       was based on his knowing that the tax returns would be  
2       filed that day as well.  There's reasonable cause to abate  
3       the late filing and estimated penalties, which the  
4       Buehrings paid to the FTB on October the 15th, the  
5       standard of the ordinary intelligent prudent business  
6       person was met through the process with Klaus' efforts to  
7       file his California tax return by October 15th, extension  
8       filing deadline due date, and when the Buehrings paid  
9       their taxes on October the 15th, and Klaus' efforts for  
10      himself to have Samsung pay his estimated taxes by April  
11      15th.

12               Thank you.

13               JUDGE ROSAS:  This is Judge Rosas.  Thank you  
14      very much, Ms. Greenspan.

15               At this moment I'm going to turn it over to my  
16      colleagues to see if either of them have any clarifying  
17      questions for you.  And I'll start with my colleague  
18      Judge Vassigh.

19               JUDGE VASSIGH:  I do not have any questions at  
20      this time.  Thank you.

21               JUDGE ROSAS:  This is Judge Rosas.  Thank you,  
22      Judge Vassigh.

23               Judge Tay, what about you?  Do you have any  
24      clarifying questions for Ms. Greenspan?

25               JUDGE TAY:  This is Judge Tay.  No clarifying

1 questions. Thank you.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,  
3 Judge Tay.

4 Ms. Greenspan, the only question I had was --  
5 thank you, first of all, very much for that narrative in  
6 terms of the timing and the history of events. The dates  
7 and the events are very helpful. I noticed that you did  
8 not reference any exhibits.

9 MS. GREENSPAN: Oh, I'm sorry.

10 JUDGE ROSAS: No worries. But my question is, if  
11 I were to go back through the exhibits, would those  
12 exhibits confirm the dates and the information as you  
13 presented them?

14 MS. GREENSPAN: Absolutely. Yes. I actually  
15 have -- I didn't realize I had to state it as I was going  
16 through it. That would have taken another five minutes  
17 off of my presentation. I had an exhibit list for every  
18 statement and every calendared reference, or more than  
19 one, depending on what I had as to exhibits.

20 JUDGE ROSAS: Ms. Greenspan, this is Judge Rosas.  
21 No worries. I just wanted to confirm that there wasn't  
22 anything in your opening presentation that can't be tied  
23 to one of the exhibits. But you already answered my  
24 question, so thank you very much. I do not have any other  
25 questions for you at this time, Ms. Greenspan.

At this moment I'm going to turn it over to the Franchise Tax Board, and they have up to 20 minutes for their presentation.

## PRESENTATION

MS. COUTINHO: Thank you. This is Mira Coutinho.  
Good afternoon, Judges.

Respondent properly imposed the delinquent filing penalty and the estimate tax penalty for the 2014 tax year, and Appellants have not established grounds to abate these liabilities. Appellants filed their 2014 joint tax return on October 26, 2015, over six months after the original due date. Based on the amounts reported, Respondent issued a notice of tax change, which revised Appellant's account and imposed a delinquent filing penalty and estimate tax penalty.

First addressing the delinquent filing penalty; the delinquent filing penalty was properly imposed under California law because Appellants failed to file their 2014 tax return by the April 15th, 2015, due date. And Appellants have not established reasonable cause to abate the penalty.

Under Revenue & Taxation Code Section 19131, if a taxpayer fails to file a return by the April 15th due date, then a delinquent filing penalty is imposed, unless

1 the taxpayer show that the failure is due to reasonable  
2 cause and not willful neglect. This penalty is mandatory,  
3 and Respondent does not have discretion in its  
4 application.

5 Appellants bear the burden to prove that  
6 reasonable cause exists to support the abatement. In  
7 order to establish reasonable cause, the taxpayer must  
8 show that the failure to timely file occurred despite the  
9 exercise of ordinary business care and prudence.  
10 Appellants assert multiple arguments as to why the  
11 delinquent filing penalty should be abated and why there's  
12 reasonable cause to abate these penalties.

13 Appellants first assert that they should have  
14 filed separate returns with the filing status of "Married  
15 Filing Separate". But because Mr. Buehring was not in  
16 California for the 2014 tax year, therefore,  
17 Mr. Buehring's return would have been due on  
18 June 15, 2015. And the automatic extension would have  
19 given him until December 15th to file a timely return.

20 Even if Mr. Buehring was a California nonresident  
21 in 2014, he statutorily cannot now file a California  
22 return with the status "Married Filing Separate". Revenue  
23 & Taxation Code Section 18521 requires Appellants to use  
24 the same filing status as used on their federal return.  
25 Appellants filed their federal return using the "Married

1 File Joint" status. Therefore, they are statutorily  
2 required to use the same filing status for their  
3 California return.

4 Revenue & Taxation Code Section 18521(c)(2) makes  
5 clear that because Mr. Buehring received California source  
6 income from Mrs. Buehring's income, Appellants cannot file  
7 separate returns. Additionally, under subsection (e),  
8 Appellants are precluded from now filing a separate return  
9 because they did not file by the April 15th due date.  
10 Therefore, based on Section 18521, Appellants are  
11 precluded from now filing a "Married Filing Separate"  
12 return. Consequently, their "Married Filing Joint"  
13 return, was due on April 15th, 2015, because Mrs. Buehring  
14 was not residing or traveling abroad such that  
15 Section 18567 applies.

16 Second, Appellants assert that Mr. Buehring's  
17 employment contract contractually obligated his employer,  
18 Samsung, and its accounting firm, Ernst and Young or E&Y,  
19 to file and pay his taxes. The law is clear. The  
20 obligation to pay or file one's taxes is a non-delegable  
21 duty. In United States versus Boyle, the court held each  
22 taxpayer has a personal non-delegable obligation to file  
23 his or her tax return by the due date.

24 Reliance by a layperson on a tax professional is,  
25 of course, common. But that reliance cannot function as a



1       substitute for compliance with an unambiguous statute.  
2       Additionally, the cases that Appellant cites to you for  
3       the first time also further the principle that reliance on  
4       a tax preparer to make payments and file a return is  
5       insufficient to establish reasonable cause.

6               The statute is clear in this case. Appellants  
7       are required to file their return by the April 15th, 2015,  
8       due day date. They were aware of this deadline as they  
9       filed California resident returns in the past. Appellants  
10      attempt to shift the blame onto E&Y indicating that they  
11      missed the deadline, and they were not responsive and  
12      completely blindsided them when filing their return late.

13             However, Appellants' shift of blame is  
14      unwarranted. The contract between Appellant and Samsung  
15      is only between Appellant and Samsung. FTB was not a  
16      party to this contract and cannot provide recourse or a  
17      breach of this contract. Contract law requires that any  
18      breach of a contract must be stopped between the parties  
19      to the contract. Consequently, simply because E&Y was  
20      contractually obligated to file on time does not establish  
21      reasonable cause, and does not change the outcome of this  
22      case.

23             Additionally, Appellants were aware of E&Y's past  
24      performance and still decided to trust them on filing  
25      their 2014 return on time. In 2013 Appellants' California

1 return was also filed late, and an estimate penalty was  
2 imposed.

3 MS. GREENSPAN: Objection. Can I object? That's  
4 not in evidence.

5 JUDGE ROSAS: Sorry. Ms. Greenspan, what's your  
6 objection?

7 MS. GREENSPAN: She's bringing up a 2013 tax  
8 return that's not in evidence. I don't know if I'm  
9 allowed to insert this now. I apologize if I misspoke. I  
10 can wait.

11 JUDGE ROSAS: No, no. That's fine. You're free  
12 to make objections.

13 Ms. Coutinho, can you clarify?

14 MS. COUTINHO: Yes. I will acknowledge that the  
15 2013 return was not included into evidence. Respondent is  
16 willing to provide that if that is needed. However,  
17 Appellants make the argument that this is never -- that  
18 E&Y has never filed their return late in the past, but  
19 that's simply not the case. A prior -- a review of all  
20 Appellants' tax returns, which was necessary in this case  
21 because they always filed California resident returns,  
22 shows them that they know what the deadline is.

23 And more, importantly, they're aware of E&Y's  
24 past performance and, therefore, cannot be blindsided at  
25 this point and argue that they didn't know that in 2014

1       this was something that E&Y could have done.

2               JUDGE ROSAS: Thank you, Ms. Coutinho.

3               And thank you, Ms. Greenspan. Ms. Greenspan,  
4       that is a valid objection. Fortunately, for your  
5       perspective, this panel cannot make any factual findings  
6       on arguments alone. So regardless of the arguments that  
7       Ms. Coutinho is making, that will not form the basis of a  
8       factual finding. Because as you correctly pointed out, we  
9       do not have those prior year tax returns in evidence.

10              However, I understand your concern,  
11       Ms. Greenspan, and it does sort of muddy the waters, if  
12       you will for a lack of a better term, when arguments are  
13       made that reference facts not in evidence. So I'm going  
14       to sustain the objection. I'm going to ask Ms. Coutinho  
15       to please limit her arguments to the facts that have  
16       already been admitted, which are the exhibits in the  
17       electronic exhibit binder. But I realize that you might  
18       inadvertently make additional references as part of your  
19       prepared presentation.

20              If that's the case, Ms. Greenspan, I just ask you  
21       to remain on your toes and just make any further relevant  
22       objections if necessary, and I will address those in due  
23       course one at a time.

24              MS. GREENSPAN: Thank you. And I apologize,  
25       Ms. Coutinho. I -- I don't know the proper procedure. I

1       understood civil procedure, so I apologize.

2               MS. COUTINHO: That's okay. If I can ask, if you  
3       don't mind muting your mic, I think I'm getting some  
4       feedback from your monitor. So it's just -- I don't know  
5       if anyone else is hearing that. But in terms of  
6       objections, you're -- of course, you can unmute. But just  
7       for purposes of making the hearing clear for everyone, I  
8       would appreciate it if you could mute during my  
9       presentation. Thank you.

10              Moving on, Appellants argue that they could not  
11       file their own return because they didn't have the  
12       required information and it was too difficult to compute  
13       themselves. However, case law has established that  
14       difficulty in obtaining the required information in  
15       compliance of the law are not excuses for filing a late  
16       return. Additionally, Appellants' own exhibit indicates  
17       that Mr. Buehring did not exercise ordinary business care  
18       and prudence.

19              Exhibit 13 an e-mail from E&Y indicating that  
20       Mr. Buehring had not yet submitted his 2014 organizer for  
21       the United States. E&Y warranted that if the tax  
22       organizer was not completed soon, penalties and interest  
23       would be imposed. The due date for completing this tax  
24       organizer was March 1st, 2015, and this e-mail from E&Y  
25       was sent on April 12th, 2015, just days before the filing

1 deadline.

2           Additionally, subsequent e-mails indicate that  
3 this same tax organizer was not completed until early  
4 October of 2015. That would mean that Mr. Buehring waited  
5 over seven months before he completed his tax organizer as  
6 required by E&Y. Appellants attempt to blame E&Y for  
7 filing their return late. However, Mr. Buehring's own  
8 inaction and delay made it impossible for E&Y to complete  
9 his 2014 California return. Mr. Buehring did not exercise  
10 ordinary business care and prudence by waiting over seven  
11 months before completing the required information needed  
12 by his own tax preparer.

13           Appellants assert they made other efforts to  
14 reach out to E&Y, but no e-mail records have been  
15 provided. The exhibits are simply unsupported assertions  
16 that do not and cannot amount to reasonable cause. As  
17 such, Appellants' own actions negate any finding of  
18 reasonable cause to abate the delinquent late-filing  
19 penalty.

20           Moving onto the estimate tax penalty. The  
21 estimate tax penalty was properly imposed under California  
22 law, and Appellants have not established grounds to abate  
23 it. Revenue & Taxation Code Section 19136 requires  
24 Appellants to make estimate tax payments even if the full  
25 amount of tax was paid on the due date of the return.

1 Failure to make the estimated tax payments results in an  
2 estimate tax penalty that's equal to the interest that  
3 would have accrued on their required estimate payment had  
4 it been made on time. This penalty is mandatory unless a  
5 statutory exception applies.

6 Appellants were required to make quarterly  
7 estimate payments on April 15th, 2014, June 15th, 2014,  
8 September 15, 2014, and a final payment on  
9 January 15th, 2015. When the estimate payments were not  
10 made by these dates, an estimate tax penalty was imposed  
11 on each of the quarterly payments.

12 The Office of Tax Appeals has held that relief  
13 from the estimate tax penalty is not available upon a mere  
14 showing of reasonable cause and willful neglect. The law  
15 allows for abatement only when by reason of casualty,  
16 disaster, or other unusual circumstance. Imposition of  
17 the penalty would be against equity and good conscience.

18 The Office of Tax Appeals also noted that this  
19 exception is narrower than reasonable cause. Appellants  
20 make the same arguments that they made earlier, that they  
21 relied on tax professional to make the payments and that  
22 they were not responsive when they e-mailed them.  
23 However, these arguments fall short of establishing  
24 reasonable cause and most definitely are not reasons of  
25 casualty, disaster, or other unusual circumstances.

1           Mr. Buehring's employment contracts, Exhibit 9  
2           and 11, made clear that Appellants are responsible for  
3           withholdings on a non-salaried income. Therefore, any  
4           estimate payments that needed to be made on other types of  
5           income was their own responsibility. Furthermore, as with  
6           the delinquent filing penalty, Appellant's own actions  
7           demonstrate that the estimate tax penalty is likely due to  
8           their own delay.

9           Exhibit 15 indicates that he contracted -- excuse  
10          me -- he contacted E&Y in order to make an estimate  
11          payment. This e-mail is dated April 14th, 2015, which is  
12          over four months after the due date of his final estimate  
13          tax payment. He alleges that E&Y never responded to this  
14          e-mail, but Exhibit 16 shows that he did get in contact  
15          with E&Y.

16          This situation and Mr. Buehring's own inaction  
17          does not constitute casualty, disaster, or other unusual  
18          circumstance by which the estimate penalty can be abated.  
19          Based on the relevant case law, facts, and evidence in the  
20          record, Respondent respectfully request that you sustain  
21          this position. Thank you.

22                 JUDGE ROSAS: This is Judge Rosas. Thank you  
23          very much, Ms. Coutinho.

24                 I'm going to turn it over to my colleagues to see  
25          if either of them have any clarifying questions for you.

1 I'll start with Judge Vassigh.

2 JUDGE VASSIGH: This is Judge Vassigh. No, I do  
3 not have any questions. Thank you.

4 JUDGE ROSAS: This is Judge Rosas. Judge Tay, do  
5 you have any clarifying questions for Ms. Coutinho?

6 JUDGE TAY: This is Judge Tay. No clarifying  
7 questions. Thank you.

8 JUDGE ROSAS: This is Judge Rosas. Ms. Coutinho,  
9 I only have one question. As part of your presentation,  
10 you referenced four of Appellants own exhibits;  
11 Exhibits 9, 11, 15, and 16. Did I miss any other exhibits  
12 that you referenced as part of your presentation --

13 MS. COUTINHO: Yes.

14 JUDGE ROSAS: -- specifically, Appellant's own  
15 exhibits?

16 MS. COUTINHO: So the four exhibits that you  
17 refer to are made in reference to the estimate tax penalty  
18 portion of this case. However, there was Exhibit 13 that  
19 was also referenced in terms of the delinquent filing  
20 penalty and Appellant's actions or rather, inactions for  
21 that.

22 JUDGE ROSAS: This is Judge Rosas. And,  
23 Ms. Coutinho, would it be safe to say that it's your  
24 position that of Appellant's own exhibits, Exhibits 9, 11,  
25 13, 15, and 16 actually contradict their position?



1 MS. COUTINHO: That is our position, yes, that  
2 when you look at those exhibits it actually shows that  
3 Mr. Buehring's own inactions or delay in responding to his  
4 tax preparer resulted in both the delinquent filing  
5 penalty and the estimate tax penalty.

6 JUDGE ROSAS: Thank you, Ms. Coutinho. No  
7 further questions at this time.

8 At this moment, Ms. Greenspan, you have an  
9 opportunity to present a rebuttal argument. As we  
10 discussed, you have up to 10 minutes. And then following  
11 your rebuttal argument, we're going to open it up to  
12 questions from the panel. At that point the panel can ask  
13 questions of either side.

14 Ms. Greenspan, you may begin whenever you're  
15 ready. And just as a reminder, please speak slowly and  
16 try to speak directly into the microphone. Thank you.

17

18 CLOSING STATEMENT

19 MS. GREENSPAN: This is Zena Greenspan.

20 One of the arguments that was discussed by  
21 Ms. Coutinho was not part of the two issues that we had  
22 discussed, and that had to do with the filing status. We  
23 agreed that would not be part of this discussion. So I  
24 did not address that. And that filing status was based on  
25 the argument that Mr. Buehring was not a non-resident of

1 the United States and California at that time. So I don't  
2 believe that's a valid argument to present. That's one  
3 thing.

4 We're not asking for the abatement based on that  
5 filing status. Now, also the declaration of the Appellant  
6 is part of the record, and that call was from Ernst and  
7 Young on October the 15th, 2015, that he did pay his  
8 taxes, and he understood that the tax returns would be  
9 filed. He does not receive any confirmation of that tax  
10 return being filed. He wanted to close the account and  
11 put it to rest. He had left the company's employment back  
12 in August of 2014, and it was a paramount concern that he  
13 make sure that there's closure.

14 And the demonstration that I presented of at  
15 least 14 calendared efforts of Mr. Buehring is part of his  
16 declaration under penalty of perjury and stands as his  
17 recollection of his schedule. He has tried to compile as  
18 much as he could in information to present to us in  
19 preparing the brief, and that would be the best that I  
20 have, bits and pieces. So definitely speaks to his  
21 efforts.

22 Now as far as an estimate is concerned, based on  
23 the information that he had, which is his pay stub that he  
24 received August the 29th, everything was paid into the  
25 system. I can pull out the exhibit. I'm sorry. I have

1 to pull out -- if I'm able to hold a moment on that to get  
2 the exhibit of this pay stub. Then it was very clear that  
3 the money that he had paid in, plus when he anticipated  
4 paying on April the 15th that \$25,000, except for the  
5 \$20,000 that appeared wasn't paid, and he did not find  
6 about it, that was the estimate that he asked  
7 Ernst & Young to communicate to Samsung, which was by  
8 contract obligated to pay and has paid it. \$153,000-plus  
9 was paid into the system. The hypo tax --

10 JUDGE ROSAS: Ms. Greenspan, looks like you're  
11 breaking up there.

12 MS. GREENSPAN: The hypo tax -- the hypo tax on  
13 Exhibit A, which is his pay stub, indicated exhibit -- I'm  
14 sorry -- Exhibit 25, page 1 of 1, indicates that there's a  
15 hypo tax allocation as well, in addition to his  
16 withholding. And on account with the Franchise Tax Board,  
17 there was that \$5,000 payment. So to Klaus' objective  
18 and -- and calculated observation, everything was paid in  
19 properly and on time before the April 15th filing  
20 deadline. And that was also corroborated by Smita  
21 Dontkale who was his liaison between Ernst & Young. And  
22 Ernst & Young is the one that communicated his obligation  
23 of \$150,000.

24 He would not have known anything beyond that  
25 because, again, the estimate for his taxes, his gross of

1 wage, that was not even in existence until October the  
2 15th. Being mindful of that, he paid immediately, when he  
3 was told to on October the 15th, his liability. And he  
4 knew that the tax return would be filed by then. It's --  
5 it's not blaming Ernst & Young. This is a fact. He  
6 understood that his tax return would be filed that day,  
7 and he received this urgent call that he had to produce  
8 the money in order to pay it together with the return. So  
9 there's that part of it.

10 Now, as far as Ms. Coutinho's assertions that he  
11 was not demonstrating his obligations within the confines  
12 of the contract, the guidance of the contract doesn't say  
13 if he's going to be punished if he doesn't pay -- I mean,  
14 if he doesn't submit his tax information by the filing  
15 deadline. It is done so that they can perform their work  
16 within a proper timely fashion. However, Mr. Buehring for  
17 the record, submitted all of his tax reporting information  
18 well before the April 15th estimated filing deadline.

19 And with the exception of the -- it was a  
20 corrected 1099 that he received from E-Trade that he had  
21 to submit. He submitted everything for them to calculate.  
22 It was not -- it had calculated his taxes and to prepare  
23 his returns on time. And as far as the effort to do the  
24 tax organizer, he had struggled with the tax organizer and  
25 he had to receive help. I don't have proof of the phone

1 call, but most likely he's either made another e-mail  
2 communication or phone call or some -- some kind of  
3 communication to get their help because they did phone him  
4 and offer him information. And I think it's from the U.K.  
5 Ernst & Young that reached out to him.

6 And after their instruction, he was able to  
7 submit his tax organizer with all of the information and  
8 then separately the amended -- I'm sorry -- the corrected  
9 1099 from E-Trade. You cited that in -- in your brief.  
10 So it isn't a question that he didn't do what he was  
11 supposed to do. He did what he could do based on the time  
12 constraints.

13 The other -- the other thing that's not in the  
14 record makes, and it makes perfect sense, he was not  
15 getting all of his tax reporting information immediately  
16 between the United States and the U.K. There was probably  
17 some kind of time delay, I would gather. And I'm only  
18 speaking from personal experience, which is not part the  
19 record. And he provides all of his tax reporting  
20 information in a timely fashion to prepare the tax  
21 returns.

22 And as far as shifting the blame and the duty,  
23 there was a huge obligation for Samsung to make sure that  
24 his tax returns would be prepared on time, and this was a  
25 fiduciary responsibility. It isn't a shifting of the

1 duty. It isn't an agency relationship, but it was very  
2 clear that Samsung intervened in the whole process of  
3 Mr. Buehring's tax returns because they had to have  
4 everything in front of them prepared directly from  
5 Ernst & Young to them before they could make any kind of  
6 determination; before they could decide that the taxes  
7 would be paid to the Franchise Tax Board. And --

8 MS. COUTINHO: I'd like to object.

9 MS. GREENSPAN: I'm sorry.

10 MS. COUTINHO: I'm sorry to interrupt. I would  
11 like to on the grounds that Ms. Greenspan herself has  
12 acknowledged that this information is not in the record  
13 and, similarly, should not be attested or should not be  
14 considered with this appeal. And so any kind of  
15 background as to what has been done in the past or what is  
16 generally done in the past is not relevant and quite  
17 frankly, not in front of us in the record to corroborate.

18 MS. GREENSPAN: Actually --

19 JUDGE ROSAS: This is Judge Rosas.

20 MS. GREENSPAN: Oh, I'm sorry.

21 JUDGE ROSAS: This is Judge Rosas. Again, in  
22 terms of referring to facts not in evidence, I'm going to  
23 sustain that objection. Ms. Coutinho, you raise an  
24 interesting point in terms of the reciprocity in terms of  
25 the objection that was made when you were referring to

1 facts not in evidence. And, again, I'm going to go ahead  
2 and sustain the objection.

3 Ms. Greenspan, you did make a point during your  
4 rebuttal. You conceded that you were talking from  
5 personal experience, and that there were no facts  
6 regarding this. So, again, I'm going to ask you --  
7 please, because we're trying to avoid going over the time  
8 limit, if you could just focus your rebuttal arguments on  
9 the facts that are already admitted into evidence and any  
10 particular response to Ms. Coutinho's presentation. But,  
11 again, if you're going to refer to facts, I ask that you  
12 please limit it to the facts that are already admitted  
13 into evidence. Thank you.

14 MS. GREENSPAN: Absolutely. And I apologize.  
15 But as to the reference obligations of Samsung, it is  
16 clearly on each of the contracts. The initial CSR  
17 contract when CSR purchased by Samsung, Samsung -- and  
18 they're all in the record. Samsung pledged to keep the  
19 same policies and tax reporting obligations as CSR did.  
20 And in the subsequent contracts that Klaus signed with  
21 Samsung, including the secondment which, I guess, is their  
22 second contract; Exhibit 11, I believe.

23 It has that information, and it typically says in  
24 one part, "The accounting agency will also be advising SSI  
25 on, which is Samsung, on the amounts to be deducted from

1     your pay relating to" --

2                 JUDGE ROSAS:  Ms. Greenspan, this is Judge Rosas.  
3     My apologies for the interruption.  We're having a very  
4     difficult -- I can't speak for everyone else, but on my  
5     end at least, I'm having a very difficult time hearing  
6     you.  It seems like every time you turn your head towards  
7     the left to look at the documents while you continue to  
8     speak, it seems like you're breaking out at that point.

9                 MS. GREENSPAN:  I apologize.  I don't know how  
10    far back I have to repeat, but Samsung purchased CSR.  
11    Klaus started working CSR.  And in every subsequent  
12    contract that Klaus signed with Samsung, there were same  
13    commitments that Samsung was involved in the process of  
14    approving all of the tax reporting information before it  
15    could go back to Ernst & Young before the tax returns  
16    could be filed.

17                I'm not blaming anyone.  That's their system, and  
18    that was the obligation.  And ostensibly the purpose of  
19    Samsung's doing so was to ensure that the Franchise Tax  
20    Board would have a flow and would be able to receive the  
21    estimates and also the tax returns timely.  Samsung has a  
22    very high purpose in making sure that their executives can  
23    work for them, giving 100 percent of their work, effort,  
24    and time, especially, in this kind of rigorous job that  
25    Mr. Buehring did have, so that they would be able to hire



1 the best of talent from around the world, so that they  
2 would become the industry leader.

3 That was their objective, and they wanted to make  
4 sure that their executives are doing what they're supposed  
5 to do. And Samsung has a big stake in that venture, and  
6 this is more like a fiduciary relationship. They have to  
7 provide integrity for this tax preparation and tax  
8 reporting process. Separate from that, Mr. Buehring did  
9 demonstrate time and time again what he needed to do to  
10 try and get his tax returns filed on time, and he did not  
11 rest in this objective. So -- and it is in record.

12 So I do disagree with Ms. Coutinho with respect  
13 to the information. It certainly just on the declarations  
14 and the certifications and the diary that Mr. Buehring  
15 provided and all of whatever he had in the way of his  
16 records and e-mails, they're all part of the record. And,  
17 of course, correspondence does show people from  
18 Ernst & Young who were involved in that process in  
19 communicating this information. And when he did respond  
20 to filing his tax return on October 15th, he responded  
21 immediately by paying the taxes, hearing and knowing that  
22 the tax return was being filed. He jumped on October  
23 the 15th.

24 So -- and that's not inconsistent. And in  
25 Ms. Coutinho's exhibit, there is something that shows that

1 the Franchise Tax Board did receive the payment on October  
2 the 15th as a return payment. So that's acknowledged.

3 JUDGE ROSAS: This is Judge Rosas.

4 Ms. Greenspan, does that conclude your rebuttal argument?

5 MS. GREENSPAN: I'm also suggesting -- I'm not  
6 suggesting. I take that back. The course of dealings  
7 also speaks to Klaus' not just reliance, but that there  
8 was a system and process in place for which he could  
9 definitely rely on, and that there was nothing different  
10 and inconsistent except for the fact he was terminated in  
11 2014.

12 But his contract does clearly state that the tax  
13 return would be prepared by Samsung that hired  
14 Ernst & Young. So there isn't anything inconsistent in  
15 what he had going over the prior five years -- four years  
16 with this being the fifth year of filings.

17 JUDGE ROSAS: This is Judge Rosas.

18 Ms. Greenspan, does that conclude your rebuttal argument?

19 MS. GREENSPAN: And the other component is that  
20 whatever was paid was paid by the extension due date of  
21 April 15th. And whatever he knew that was paid, what was  
22 represented that was going to be paid between his liaison  
23 and the only person -- between Ernst & Young and Samsung  
24 through the liaison who is the only party. He was able by  
25 contract and by course of dealings to communicate with

1       between the parties.

2               JUDGE ROSAS:   This is Judge Rosas.   Thank you,  
3       Ms. Greenspan.   We're long past your 10 minutes allotted  
4       for your rebuttal.   Does that conclude your rebuttal  
5       argument or was there anything else you wanted to add  
6       briefly?

7               MS. GREENSPAN:   Again, the payment that he made  
8       for the extension due date was based on his pay stub, the  
9       \$1,444,068, which is the only document that he received  
10      from Samsung between -- other than the pay rollup between  
11      August the 29th, 2014, and April 15th, 2015.

12              JUDGE ROSAS:   This is Judge Rosas.   Thank you  
13      very much, Ms. Greenspan.

14              MS. GREENSPAN:   Thank you.

15              JUDGE ROSAS:   At this point I'm going to turn it  
16      over to my panelist to see if either of them have any  
17      questions of either side, and I'll begin with  
18      Judge Vassigh.

19              Do you have any questions for either side?

20              JUDGE VASSIGH:   I do not have any questions.  
21      Thank you.

22              JUDGE ROSAS:   This is Judge Rosas.   Judge Tay, do  
23      you have any questions for either side?

24              Judge Tay:   One question for the Appellant.

25      Ms. Greenspan, in your understanding, was there any reason

1 for why or any difficulty in obtaining records such that  
2 E&Y would not have been able to file your client's tax  
3 return by the October 15th extended deadline?

4 MS. GREENSPAN: E&Y, it's very clear. May I --  
5 E&Y had to wait for Samsung to provide that information.  
6 And on -- here we go. On September the 24th Klaus  
7 received from Anna Brown of E&Y in the U.K., discussed E&Y  
8 would have had his compensation information directly from  
9 Samsung. So E&Y had to wait for Samsung to provide that  
10 information to them before they could even attempt to do  
11 any kind of calculations for the tax equivalency efforts  
12 and for preparing his hypo tax and also for preparing the  
13 gross up information.

14 And also one of the reasons that Klaus was not  
15 participating in his own English taxes, is that there was  
16 information that Samsung was specifically required to pay  
17 directly. And he had no knowledge of it, including other  
18 types of pay for his housing, for his vehicle, for other  
19 types of benefits. And that was only something that  
20 Samsung dealt with directly to -- as part what they  
21 provided in benefits for Mr. Buehring.

22 So, yes, E&Y would not have been able to. They  
23 were waiting as well for Samsung to provide it. The  
24 protocol was Klaus spoke to his liaison. The liaison was  
25 hired by E&Y. E&Y would speak to her, who would then go

1 to Klaus and say, "I'm going to talk to Samsung." And  
2 then Samsung would go and talk to her and back again to  
3 the middle point, and then they would go to E&Y. And once  
4 everything was done, only then would Klaus receive such  
5 types of documentation. And that's the best answer I  
6 could give you, I believe.

7 JUDGE TAY: Okay. And do you have any  
8 information as to when E&Y or Mr. Buehring received that  
9 information from Samsung?

10 MS. GREENSPAN: Well, based on the fact that he  
11 received a phone call on October 15th, he knew at that  
12 time what his wages were in the United States. He sought  
13 confirmation for the TEQ throughout 2015, for all of those  
14 months. It was unknown for Klaus on -- before that time.  
15 And it would not have been known. It's not a situation  
16 where it's difficult to get records. There were no  
17 records provided even to the tax accountant.

18 And, again, in my point, had he hired another  
19 professional to try and intervene, that professional would  
20 have had to go through the system to obtain those records,  
21 and those records were not readily available; not  
22 available at all. It was an impossible situation. That's  
23 what makes this different. It's not difficult to obtain,  
24 it's an impossible situation that he was put in.

25 JUDGE TAY: Ms. Coutinho, can I ask you a

1 clarifying question? It seem like taxes were paid on  
2 October 15th, but the return was filed a little bit later;  
3 is that correct?

4 MS. COUTINHO: That's correct. The taxes were  
5 paid in parts, but the largest chunk was file -- was paid  
6 late on October 15th because an extension to file is not  
7 an extension to pay. So that payment should have been  
8 made in April, and that's what the large part is, the  
9 penalty at issue. But yes, the return was filed in  
10 October -- later in October 20 -- let me lookup the exact  
11 date for you guys.

12 JUDGE TAY: 26th? That's --

13 MS. COUTINHO: Yes, the 26th.

14 JUDGE TAY: Okay.

15 MS. COUTINHO: So there's an 11-day delay between  
16 that.

17 JUDGE TAY: Ms. Greenspan, any other explanation  
18 for the 11-day delay?

19 MS. GREENSPAN: Absolutely not. He did not know.  
20 He was told that day pay it. We're filing it on  
21 October 15th. And what we -- when I saw the 26th, I  
22 thought, actually, that the Franchise Tax Board was  
23 incorrect because we saw that the -- when we got the  
24 return, that it was signed October the 23rd. So I  
25 acknowledged to Mr. Buehring, "You realize you have a

1 penalty here."

2 He did not find out anything about it. And, in  
3 fact, in Exhibit 26, the calculation of the U.S. taxable  
4 compensation, including the U.K. allowance, that was part  
5 of his W-2 worksheet, the only document that he did  
6 receive, clearly closer to October 15th and beyond. He  
7 went through his own -- page 10 of Exhibit 26. Klaus  
8 Buehring saw what was paid into the system to make sure  
9 that, you know, everything was accurate. And the other  
10 area which he could not respond to, and he couldn't  
11 determine, and nor could he determine what the actual  
12 taxes were until computed by E&Y.

13 Because these check marks indicated -- and he  
14 indicated it to me, but I'm just going by the document, he  
15 couldn't reconcile those numbers to ascertain what those  
16 numbers could be, if he would have been able to receive  
17 this W-2 worksheet prior to October 15th.

18 JUDGE TAY: Thank you. No further questions.

19 MS. GREENSPAN: Thank you.

20 JUDGE ROSAS: This is Judge Rosas. Thank you  
21 very much, Judge Tay.

22 I have just two questions one for each side, and  
23 we're getting ready to conclude this oral hearing. My  
24 first question to Ms. Coutinho. Is there anything else  
25 that you would like to add, Ms. Coutinho?

1 MS. COUTINHO: One small thing to add because  
2 it's only brought up by Appellants on multiple occasions  
3 about the U.K. versus U.S. tax. However, in Respondent's  
4 Exhibit F, I believe, which is a federal account  
5 transcript shows that the federal return was also filed  
6 late, but there was adequate payments made at the federal  
7 level. It simply was just not made at the California  
8 level.

9 So any arguments as to not having the sufficient  
10 information to make those payments are negated by the fact  
11 that they had the information for the federal purposes of  
12 calculating the IRS tax, but simply just did not do the  
13 same for the state level.

14 JUDGE ROSAS: This is Judge Rosas. Thank you,  
15 Ms. Coutinho.

16 Ms. Greenspan, you represent Appellants. The  
17 Appellants have the burden of proof, so I do want to give  
18 you the last word. Now, you do not need to repeat  
19 yourself. But my question is, other than what you've  
20 already told us here today and other than the exhibits  
21 that have already been submitted into evidence, is there  
22 anything else you think this panel needs to know in order  
23 for us to make a well-informed decision?

24 MS. GREENSPAN: As far as Mr. Buehring is  
25 concerned and his knowledge of the state taxes and his



1 liability, his state wages, Exhibit 26, page 1 of 10 on  
2 his W-2 worksheet that he received from his accountant,  
3 indicates on line 16, which is line 16. I believe state  
4 wages of \$796 and I can't read it well --

5 JUDGE ROSAS: Ms. Greenspan, every time you move  
6 off camera, we cannot hear you.

7 MS. GREENSPAN: Sorry. His W-2 worksheet, which  
8 is the only demonstration to Mr. Buehring of information  
9 regarding whether or not he could calculate estimated tax  
10 liability, the state wages, line 16 of his W-2 worksheet  
11 prepared by Ernst & Young, a very substantial accounting  
12 firm, says that line 16, his state wages, are \$796-plus  
13 dollars. So the accountants represented information  
14 that's clearly different from the W-2 wages, which is what  
15 we're looking at based on the W-2 that the Franchise Tax  
16 Board received at some point.

17 We don't know when the W-2 was actually provided  
18 or delivered or whatever, received by the Franchise Tax  
19 Board. But we do see here on the W-2 worksheet that  
20 there's some inconsistency between state wages that was  
21 represented on the W-2 and the final gross up information  
22 of the gross wages, completely between that line 16 of his  
23 W-2 worksheet. That's one thing.

24 Secondly, with respect to Mr. Buehring's filing  
25 of the tax return, he was told that his return was being

1 filed. The tax return clearly was filed late, but he  
2 responded on the basis of immediacy based on his  
3 obligation, based on everything that he made the effort to  
4 determine. He had no further information that he could  
5 have received from either Samsung or Ernst & Young until  
6 that final phone call that he received on October 15th,  
7 "Pay, we're filing today."

8 And under that basis he would have filed the tax  
9 return on time. And that is what he understood, and  
10 that's what he believed, and that's how he responded.

11 JUDGE ROSAS: This is Judge Rosas. Thank you  
12 very much, Ms. Greenspan.

13 That concludes the hearing in the appeal of  
14 K. Buehring and M. Buehring. The record is now closed,  
15 and the matter is submitted as of today,  
16 November 18th, 2020. The parties will receive our written  
17 decision no later than 100 days from today.

18 Thank you to both parties, as well as to the  
19 representative, to my esteem co-panelists, and to our  
20 stenographer, and also to the OTA team members behind the  
21 scenes.

22 Lastly, I do want to take the opportunity to wish  
23 all of you a happy Thanksgiving. Stay safe. Stay  
24 healthy.

25 This hearing is now adjourned. Thank you.

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(Proceedings adjourned at 2:28 p.m.)

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I have hereunto subscribed my name this 11th day  
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