

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
W. LEE and K. LEE, ) OTA NO. 18063280  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, July 21, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Virtual Proceedings,  
taken in the State of California, commencing  
at 1:00 p.m. and concluding at 1:41 p.m. on  
Wednesday, July 21, 2021, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ AMANDA VASSIGH

Panel Members: ALJ TERESA STANLEY  
ALJ JOHN JOHNSON

For the Appellant: EUGENE BALDI

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
NANCY PARKER  
BRIAN WERKING

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 - 4-4 were received at page 7.)  
(Department's Exhibits A-I were received at page 8.)

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1 California; Wednesday, July 21, 2021

2 1:00 p.m.

3  
4 JUDGE VASSIGH: Let's go on the record.

5 We're opening the record in the appeal of Lee.

6 This matter is being held before the Office of Tax  
7 Appeals. The OTA Case Number is 18063280. Today's date  
8 is Wednesday, July 21, 2021, and the time is approximately  
9 1:00 p.m. This hearing is being conducted electronically  
10 with the agreement of the parties.

11 Today's hearing is being heard by a panel of  
12 three Administrative Law Judges. My name is Amanda  
13 Vassigh, and I will be the lead judge. Judges Stanley and  
14 Johnson join me as members of this tax appeals panel. All  
15 three of us will meet after the hearing and produce a  
16 written decision as equal participants. Although I will  
17 conduct the hearing today, any judge on this panel may ask  
18 questions or otherwise participate to ensure we have all  
19 the information needed to decide this appeal.

20 For the record will the parties please state  
21 their names and who they represent, starting with  
22 representatives for the Franchise Tax Board.

23 MR. WERKING: Brian Werking representing  
24 Franchise Tax Board.

25 MS. PARKER: Nancy Parker representing Franchise

1 Tax Board.

2 JUDGE VASSIGH: And for the Appellants we have  
3 today?

4 MR. BALDI: Eugene Baldi representing the Lees.

5 JUDGE VASSIGH: Thank you, Mr. Baldi.

6 There will be -- my understanding is there is no  
7 witness testimony today, and the presentations will  
8 consist of oral arguments. The parties have been e-mailed  
9 the electronic exhibit binders this week. I know that  
10 there has been a revision to that binder. I don't know if  
11 everyone got the chance to check their e-mail. It seems  
12 that FTB's Exhibit I was included but not included or  
13 listed in the exhibit log, and FTB intended to submit a  
14 revised Exhibit F.

15 Does everyone have the exhibit binder that was  
16 sent out today?

17 Mr. Baldi?

18 MR. BALDI: Okay. So I have unmuted myself and,  
19 yes, I have it.

20 JUDGE VASSIGH: Thank you, Mr. Baldi.

21 And, Mr. Werking and Ms. Parker, do you have the  
22 updated exhibit binder?

23 MR. WERKING: Yes, I do.

24 JUDGE VASSIGH: Okay. And my co-panelists, I  
25 don't know if it was e-mailed to us, but we should have

1 the exhibits as well.

2 Judge Stanley, do you have the updated exhibits?

3 JUDGE STANLEY: Yes.

4 JUDGE VASSIGH: Okay. Judge Johnson, do you have  
5 the updated exhibits that you need for today?

6 JUDGE JOHNSON: This is Judge Johnson. Yes, I  
7 have the latest version of the exhibits. Thank you.

8 JUDGE VASSIGH: Okay. So I'm going to review the  
9 exhibits really quickly. FTB's exhibits are numbered A  
10 through I.

11 Are these the correct exhibits that FTB intends  
12 to submit into the record.

13 MR. WERKING: That's correct.

14 JUDGE VASSIGH: And Mr. Baldi Appellant's  
15 exhibits are numbered 1 through 4-4 are these the correct  
16 exhibits you intend so submit into the record?

17 MR. WERKING: That is correct.

18 JUDGE VASSIGH: And, Mr. Baldi, Appellants'  
19 exhibits are numbered 1 through 4-4. Are these the  
20 correct exhibits you intend to submit into the record?

21 MR. BALDI: Yes, they are.

22 JUDGE VASSIGH: So the exhibits summarized above  
23 are now admitted into the evidentiary record.

24 (Appellant's Exhibits 1 - 4-4 were received  
25 in evidence by the Administrative Law Judge.)

1           (Department's Exhibits A-I were received in  
2           evidence by the Administrative Law Judge.)  
3           The issue to be -- by the way, I just want to  
4           note that there were no objections to any of the exhibits;  
5           is that correct, Mr. Baldi?  
6           MR. BALDI: No objections.  
7           JUDGE VASSIGH: Okay. And Mr. Werking?  
8           MR. WERKING: No objections.  
9           JUDGE VASSIGH: No objections. Okay.  
10          The issue to be decided in this case is: Whether  
11          Appellants have proven error in FTB's proposed additional  
12          tax, which was based on information provided by the  
13          Internal Revenue Service.  
14          As a reminder to the parties, during our  
15          prehearing conference we decided that Mr. Baldi will have  
16          up to 10 minutes to make his opening presentation.  
17          Mr. Baldi, you don't need to feel pressured to  
18          use that full amount of time.  
19          Then the parties will each have 10 minutes to  
20          make their arguments.  
21          And, Mr. Baldi, you will have five minutes at the  
22          end to provide a rebuttal argument, if you choose.  
23          Does anyone have any questions before we move  
24          onto Mr. Baldi's opening presentation?  
25          Okay. We are ready to proceed with the



1 Appellants' opening presentation. Mr. Baldi, this is your  
2 opportunity to tell us the reasons for this appeal. When  
3 you are ready, please begin your presentation.

4 MR. BALDI: Okay. Thank you very much, Judge.

5  
6 PRESENTATION

7 MR. BALDI: It sort of seems to me like we're all  
8 playing with very similar numbers. It's just we're  
9 playing with them a little differently. The taxpayer and  
10 me as their representative received a 1099-DIV from LPL  
11 Financial and reported \$50,000 worth of income split  
12 between dividends of \$21,000 and change and capital  
13 distributions of \$29,000 and change, coming to \$50,000.  
14 The IRS through their 1099 program came up with another  
15 whole set of dividends and added that to what we had  
16 reported. It didn't look at the items to see whether they  
17 already had been reported but just added them on top of  
18 that.

19 So we discussed with the IRS and didn't get very  
20 far with making changes on that, and so they filed off the  
21 return saying, you know, sorry all these things are valid  
22 dividends. We don't care if the numbers are the same and  
23 you've already reported those numbers. These just happen  
24 to be the same exact numbers, and we're going to report  
25 them again. So that was step one.

1           Then the Franchise Tax Board was much more caring  
2     and hearing in the process, and they said, well, we can  
3     produce this exhibit -- I guess it's now Exhibit I -- and  
4     we can go through -- and sure enough, we can see in these  
5     two columns on the Exhibit I, page 1 through 3, we can see  
6     that some of these dividends are, in fact, already  
7     reported on the return. But low and behold, some of the  
8     dividends are not reported on the return. Therefore, we  
9     want to add the ones that are not reported to what the  
10    taxpayer already reported.

11           So we started out at 57. The federal government  
12    got up to 67, somewhere like this, 60 or 80. And the  
13    Franchise Tax Board has about \$10,000 or \$12,000 more than  
14    we do. We're -- we think the problem is coming -- is we  
15    sort of need to go to my Exhibit C.

16           Can I direct people to my Exhibit C?

17           JUDGE VASSIGH: This is Judge Vassigh. We  
18    numbered your Exhibits so that we would not have that  
19    confusion. So I think --

20           MR. BALDI: My Exhibit 3.

21           JUDGE VASSIGH: Okay. Thank you. We did not --

22           MR. BALDI: So it's an ex --

23           JUDGE VASSIGH: -- mean to confuse you.

24           MR. BALDI: Yeah. So it's an Excel spreadsheet  
25    that starts out at the top as reported on the tax return,

1 and then it has a middle section per the LPL 1099 dividend  
2 detail. And as part of my attachments further along, I  
3 have put in the detail of the LPL financial statement or  
4 financial dividends. Their 1099 page 1 is quite clear,  
5 and it's very easy to see that the numbers that I picked,  
6 the \$21,677 and the \$29,060 come right off of page 1 of  
7 LPL DIV.

8 Then they give us about eight or nine pages of  
9 detailed receipts by stock, breaking it down into various  
10 different categories, dividends, return of capital,  
11 short-term capital gain, and long-term capital gain. And  
12 it's almost impossible to reconcile those numbers to the  
13 numbers that they have on page 1. So that's sort of what  
14 the second part of this work paper 3 -- 3? -- 3 is. And  
15 that's the listing of the individual stocks and how much  
16 was -- that I could come up with in the detail that was  
17 going for the dividends and for capital gains. And that  
18 comes down to \$24,000 -- looks like to me in dividends --  
19 and \$26,000 in capital gain distribution.

20 Well, if you add those up, that comes out to the  
21 \$50,967, which is only \$200 different from what we  
22 reported up on the top part. But with me looking at their  
23 detail, I wasn't able to split it into the dividend  
24 capital gain categories as they were able to. But,  
25 effectively, we're dealing with the same numbers. They

1     said in their -- on their page 1 you got \$50,737 to report  
2     on their detail. Behind that on page 9 of 10, they come  
3     down to 57. If we back out the tax-exempt interest, we're  
4     at \$50,967.

5             So I'm saying okay. So we're talking about the  
6     same items. So if you go down to the third part of this  
7     page, this is what the IRS said. The IRS said, okay, we  
8     got dividends from Contra Fund. We got dividends from  
9     Diversified Capital, and they listed these various  
10    dividends. You might be able to tell that on line 41 that  
11    \$744 is highlighted. It's bold. It's bolder than the  
12    other numbers. And on the line 48 and 49, those are also  
13    bold. And the reason I made those bold is because those  
14    three don't appear up in the PPP or in the -- in the LPL  
15    1099 dividends information.

16            So the government added all this stuff down below  
17    and just said okay, you got to pay tax on all that. The  
18    Franchise Tax Board said no, we just like the 744, the 10  
19    and the 6, and we think you should pay tax on that. So  
20    what I'm pointing out is that if you take that approach,  
21    if you go back above and you go to line 26 through  
22    line 30, that's Franklin Fund, OPP, Pimco, Principle, that  
23    adds up to -- I wrote it down somewhere, but don't have it  
24    on this sheet -- to about \$20,000. Four, five, six,  
25    seven, oh, about \$15,000. Oh, it's \$14,230.

1           If you use either the Franchise Tax Board's  
2       approach and say well, we need to add these other  
3       dividends, I'm saying that those other dividends, although  
4       they're not named the same, are included in line 26  
5       through 30. And, in fact, the \$50,000 we reported, the  
6       \$50,000 that the PPP has and the \$50,000 that we should be  
7       doing, either with the IRS or with the Franchise Tax  
8       Board, is the same money. I have no idea why they have it  
9       as OTC Overseas, and Emerging.

10           But if we add those in, it seems like it's only  
11       fair to remove the Franklin, the 26, 27, 28, 29, and 30,  
12       because those are not appearing on anybody's information  
13       from the IRS or the Franchise Tax Board. That's just  
14       appearing in LPL. So if you are going to add the ones  
15       that you think we didn't put in there, you should remove  
16       the ones that we think we over reported, and you come  
17       back, effectively, to the same number. We're still all  
18       coming down to about \$50,000 combination, dividend, and  
19       capital gain.

20           And I just haven't been able to -- to have  
21       anybody sort of see that, yeah, we're talking about the  
22       same numbers on this. Sort of to point that out, if we go  
23       to my D -- my D is your page 4-1. And that's the changes  
24       as projected by the IRS. And so there's my -- my D-5 and  
25       D-6, if you find it in your 4 section, has down in the far

1 right-hand column identification numbers A, B, C, D, E, F,  
2 H, I. And -- and the stock. If you look at A, it says,  
3 okay. We have Contra Fund and it shows zero dollars on  
4 the return and there's \$16 reported by the IRS. So we're  
5 honky-dory.

6 If you go back to pages beyond that, you'll see  
7 A, again, on the right-hand side, Contra Fund, again, the  
8 same stock. And the IRS is saying zero on the return, \$16  
9 reported the IRS. And if you go down to the next one,  
10 \$685 and \$685, the IRS says, not on the return \$685. So  
11 they picked up the second 1099 issue and they said, you  
12 left all these things off. We wrote back to them and  
13 said, no we didn't. They're on the line up above. We  
14 couldn't get that far with them. And not all of them  
15 agree.

16 They do have these -- there's some crazy  
17 differences. And one of that is that OTC Portfolio. If  
18 you look at G up above, they say okay. You reported  
19 \$1,026 and we see \$1,026. But on the second part, the G,  
20 you reported zero, but now they have \$10,493. Which is,  
21 again, that number down at the bottom of that other page.  
22 We have no idea how one of their 1099s would have  
23 appropriately reported the \$1,026 that LPL did, but their  
24 second 1099 with the same stock changed it to \$10,000. And  
25 they had no idea either.

1           Is said, hey, if somebody sent it to us on a  
2   thumb drive or electronic, it's got to be gospel, you  
3   know. And you've got to prove to us that it's not right.  
4   And so we said, well, how do we prove that it's not right?  
5   So we went back to LPL and said, you know, did you send  
6   more than one 1099? And they sent us the letter that's  
7   part of evidence. They said, no, no. You only had one  
8   account. We only sent one 1099. We don't have any idea  
9   where IRS got these other things.

10           So earlier in the proceedings with the Franchise  
11   Tax Board, we said, well, maybe we could go to all these  
12   people and ask each one of them to give us a negative  
13   declaration that no, they didn't send a 1099 on their own.  
14   We decided that really wasn't feasible from our standpoint  
15   in the time of all the craziness going on with our Covid  
16   and so forth. All of this predates Covid.

17           So we sort of are hanging our hats on the fact  
18   that LPL says there's only one, that we can identify  
19   stocks with the exact same amount on the -- that we have  
20   reported, on the IRS saying no you didn't report it, and  
21   on the amount that they're adding in addition to that it's  
22   amazingly close to the \$14,000 of stocks in that line 26  
23   through 30 that we reported, and somebody is keeping out.  
24   So we're adding the additional ones to it.

25           So it's our contention that we got the 1099. We

1 completed the tax return with the proper amounts from the  
2 1099, and that is the real world.

3 JUDGE VASSIGH: Thank you, Mr. Baldi. That  
4 constitutes your opening and your presentation. Do you  
5 have anything else you would like to let us know before we  
6 go to panel questions?

7 MR. BALDI: Is that a question to me, Judge?

8 JUDGE VASSIGH: Yes, sir.

9 MR. BALDI: Well, it's a lovely day in Santa  
10 Rosa.

11 JUDGE VASSIGH: I'm happy for that. We'll be  
12 moving on to panel questions then.

13 Do either of my co-panelists have questions for  
14 Mr. Baldi?

15 JUDGE STANLEY: I do not. Thank you. This is  
16 Judge Stanley.

17 JUDGE JOHNSON: Judge Johnson. No questions  
18 also.

19 JUDGE VASSIGH: This is Judge Vassigh, again.  
20 Mr. Baldi, just to clarify, I just want to make sure I  
21 understand your Exhibit 3, the Lee summary. I just want  
22 to make sure I understood that you -- the way this is  
23 setup you are saying that lines 41, 48, and 49 are  
24 contained within the numbers on lines 26 through 30.

25 MR. BALDI: That's my best guess, Judge. It



1 makes us -- it makes us come out to the same amount, but I  
2 can't prove it in proof because -- but if we say no,  
3 they're not in that number -- am I breaking up? Something  
4 else is coming --

5 JUDGE VASSIGH: This is Judge Vassigh.

6 MR. BALDI: Something else is coming across.

7 JUDGE VASSIGH: There's a little bit.

8 MR. BALDI: Okay. Well --

9 JUDGE VASSIGH: This is Judge Vassigh. There's a  
10 little bit of feedback happening. But --

11 MR. BALDI: Okay. Let me try again.

12 JUDGE VASSIGH: Okay.

13 MR. BALDI: So if -- if, in fact, we -- let's say  
14 we can't prove that those items on line 41, line 48, and  
15 line 49 are the exact items that we have on line 26  
16 through 30, we at least ought to be able to agree if we're  
17 putting in ones that we're taking off of these pages from  
18 the IRS or the 1099 transcripts, we ought to similarly be  
19 able to take ones out, that we have included, that aren't  
20 on those transcripts. And if you look, you won't find  
21 that \$4,040, \$2,500, \$1,500, \$4,244 on any of those  
22 transcripts.

23 So I'm saying well, it would be nice if it was a  
24 two-way street. I mean, I can see adding ones that are on  
25 the transcript that we don't have, but don't we then have

1 to take ones off that we do have? Because we reported  
2 that \$50,000 worth of income. But granted it's split  
3 between the dividends, and my dividends came to -- or  
4 their's came to \$25 and \$26, but that's the same \$50,000  
5 we reported up on the top part of that sheet.

6 JUDGE VASSIGH: Thank you for your answer.

7 We will move on to the Franchise Tax Board's  
8 argument at this point.

9 Mr. Werking, Ms. Parker, whenever you're ready,  
10 please begin.

11 MS. PARKER: Thank you, Judge.

12

13 PRESENTATION

14 MR. WERKING: The issue in this case is whether  
15 Appellants have met their burden to show error in response  
16 for proposed deficiency assessment that is based on  
17 federal adjustments. Appellants have not met their  
18 burden. Their assertion that the capital gains and  
19 dividend income reported by LPL Financial includes the  
20 capital gains and dividend income separately reported from  
21 11 other payors separate from LPL Financial, who filed  
22 their own 1099, is not supported by the facts.

23 It is well-settled law that deficiency assessment  
24 by Respondent based on a federal adjustment is  
25 presumptively correct, and the taxpayer bears the burden

1 of proving it erroneous. As explained in precedential OTA  
2 opinion in the Appeal of Mauritsen, in attempting to prove  
3 error, a taxpayer's unsupported assertion will not satisfy  
4 his or her burden of proof. Absent uncontradicted,  
5 credible, competent, and relevant evidence showing that  
6 response determination is incorrect, it should be upheld.

7 In this case, Appellants filed their 2014 return  
8 reporting capital gains and dividend income reported on  
9 1099s from LPL Financial and T. Row Price but failed to  
10 report capital gains and dividend income reported from 11  
11 other payors. The IRS adjusted Appellants' account to  
12 include the additional income from the 11 payors and  
13 assessed Appellants' additional federal income tax. The  
14 California proposed deficiency in this case results from  
15 the California application of those federal adjustment.  
16 Appellants argue that their unreported capital gains and  
17 dividend income from the 11 payors was included on the  
18 1099 from LPL Financial, which Appellants reported on  
19 their return. This assertion is simply not supported by  
20 the facts.

21 The account numbers listed for Appellants from  
22 the directly-invested funds do not match the account  
23 number for Appellants as reported by LPL Financial,  
24 indicating investments made directly with the investment  
25 funds and the investments made through LPL Financial are

1       separate investments. Only 8 of the 11 investment funds  
2       are directly reporting 1099s to Appellants are included in  
3       the tax information reported by LPL Financial. And of the  
4       8 directly reported 1099s, none of the tax information  
5       exactly matches that of the information reported for the  
6       same funds by LPL.

7               I direct you to look at Respondent's Exhibit I,  
8       which provides a comparison of the information contained  
9       on the directly reported 1099s and the information  
10       contained in the tax information document from LPL  
11       financial. You can see the three investment funds  
12       directly reporting 1099s to Appellants are not included on  
13       the LPL tax documents. Those being OTC Portfolio,  
14       Overseas Fund, which are the first two funds on the first  
15       page, and then Emerging Asia Fund, which is in the middle  
16       of page 2. These three represent a significant portion of  
17       unreported income. And you will notice that the  
18       information from the 1099s directly reported does not  
19       exactly match the information reported by LPL Financial.

20               I'd like to specifically highlight the two funds  
21       with the largest reported income to compare. If you look  
22       at the bottom page 1 of Exhibit I, Select Retailing,  
23       you'll see that each category of tax information reported  
24       from Appellants' direct investment in Select Retailing is  
25       different from Appellants' investment in Select Retailing

1 through their brokerage LPL Financial.

2 Next, looking at the bottom of page 2, Fidelity  
3 Magellan, none of the tax information directly reported  
4 from the 1099 from Fidelity Magellan matches the tax  
5 information derived from LPL Financial. The capital gains  
6 are different. The ordinary dividends, all five dividends  
7 and withholding are all different.

8 The assertion that the 11 1099s directly  
9 reporting income from the investment funds is somehow  
10 duplicative of the income reported by LPL Financial, even  
11 reported under funds that are of the different name, is  
12 just not supported by the facts. Furthermore, it is  
13 well-settled law that a failure to produce evidence within  
14 the taxpayer's control gives rise to a presumption that  
15 such evidence is unfavorable to the taxpayer. Appellants  
16 have had ample opportunity to obtain corrected 1099s from  
17 the 11 payors, for which Appellants contend reported  
18 duplicative income but have not done so.

19 In a letter from the IRS to Appellants, dated  
20 September 28, 2018, that's Appellants Exhibit 4-3, 3  
21 page 1, the IRS informed Appellants that if they disagree  
22 with the federal adjustments, they will need to obtain  
23 corrected 1099s from the 11 payors. Appellants even  
24 indicated in their e-mail to the OTA, dated  
25 December 5th, 2019, that a deferral was necessary to allow

1 Appellants additional time to obtain corrected 1099s.  
2 Respondent suggested on its supplemental brief, dated  
3 April 22nd, 2020, that Appellant should obtain corrected  
4 1099s if they believe the 1099s reported incorrect  
5 information. Still, Appellants have not provided a  
6 corrected 1099.

7 Because Appellants' assertions are not supported  
8 by the facts, and Appellants have not provided any  
9 corrected 1099s to remedy what they contend are 1099s  
10 reporting duplicative income, Appellants have not met  
11 their burden to show error in Respondent's 2014 proposed  
12 deficiency assessment. That is based on federal  
13 adjustments. And Respondent respectfully request that the  
14 OTA sustain its actions.

15 Thank you, and I'll be happy to answer any  
16 questions the panel may have.

17 MR. BALDI: Am I part of the panel?

18 JUDGE VASSIGH: This is Judge Vassigh.

19 MR. BALDI: Or do I have to wait for my five  
20 minutes at the end?

21 JUDGE VASSIGH: I will give you your five minutes  
22 at the end. I just want to check in with my panel  
23 members. I'd like to see if they have any questions.

24 Judge Stanley, do you have any questions for  
25 Franchise Tax Board representatives?

1 JUDGE STANLEY: Yeah. I'm trying to kind of get  
2 to the crux of what was included on the LPL statement, the  
3 LPL's 1099. So, Mr. Werking, Appellant is saying that  
4 certain of those funds that were reported on the 1099 were  
5 not reported separately on other 1099s that the IRS  
6 produced. Have you had an opportunity to take a look at  
7 those specifically and see if you agree that they were  
8 included on LPL but not a separate 1099?

9 MR. WERKING: Well, what I think the issue or  
10 Appellant is suggesting is that the LPL Financial 1099  
11 contains all of the income -- investment income that  
12 Appellants received, and including, you know, the 11  
13 separately reported 1099s. Looking at Appellant's  
14 Exhibit 3, those funds that were listed on lines 26  
15 through 30 are, in fact, funds that Appellants invested in  
16 through the brokerage, LPL Financial, as well as all of  
17 the other funds that they invested through LPL Financial,  
18 and they reported on their return.

19 The separately reported 1099s from OTC Portfolio,  
20 from Overseas Fund, from Fidelity, from GMMMA, from Select  
21 Retailing, from Low Price Stock, from Diversified  
22 International, Emerging Asia, Trend Fund, Fidelity  
23 Magellan, Contra Fund, and Fidelity Growth and Income,  
24 those 1099s do not represent Appellants' investments  
25 through LPL Financial. Those are separate investments

1       that Appellants did not report on their return. They only  
2       reported the income they received through investing  
3       through LPL Financial.

4               JUDGE STANLEY: This is Judge Stanley. That's  
5       the only question that I had, unless Appellant's rep wants  
6       to answer that as well.

7               JUDGE VASSIGH: This is Judge Vassigh.  
8       Mr. Baldi, do you want to respond to that.

9

10                               REBUTTAL STATEMENT

11               MR. BALDI: Yeah. I think that's disingenuous.  
12       I mean, I know your hearts are all in the right spot. If  
13       I look at this exhibit, my D-5, which I think is your 4,  
14       which is the IRS listing the various dividends where I've  
15       got the A, B, C, D, and G. And Brian said, "Well, they  
16       have different account numbers."

17               But if the first line in the account information  
18       column is accurate, the account numbers are right. If you  
19       look on the first page that has that Contra Fund with the  
20       \$16 dividends, it has an account number ending in [REDACTED].  
21       If you look at the same thing where they added the \$16 and  
22       said we didn't have it on the part number, it has the same  
23       account number with [REDACTED]. And the next one is the same  
24       thing, [REDACTED]. And the one they added has [REDACTED].

25               Seems to me they're telling us those are the same



1 account numbers. I -- I don't -- Brian maybe has  
2 something different on his -- document it says -- there's  
3 a -- for an account number. But on mine there is -- all  
4 of those have the same account number. And so --

5 THE STENOGRAPHER: I can't understand. Can you,  
6 please, slow down. You're cutting in and out.

7 MR. BALDI: Yeah, I don't -- I don't know what's  
8 happening there. I will try and speak slower.

9 It appears to me that on my page D-5, which lists  
10 all of the -- first time the IRS agreed we paid on those  
11 dividends. And then on my page D-7 where the IRS says,  
12 well, here's a whole bunch of new ones that you haven't  
13 paid on, they're the same numbers as on my page. And it  
14 looks to me like they have the same account numbers.

15 So I -- I mean, it would be wonderful if I could  
16 say to you, "Well, of course. My clients had amazingly  
17 similar investments in all of these stocks inside the LPL  
18 portfolio and outside the LPL portfolio." And they  
19 just -- I mean, some of them vary by a buck. Some of them  
20 vary by two. But it would almost be impossible to have a  
21 portfolio of all of these positions come up with the same  
22 dividends. It boggles my imagination. You can't say,  
23 well, hell yeah. They reported that \$16 and this -- and  
24 we're trying to pick up another \$16. It's the same  
25 account number. It's the same stock name that it's got to

1 be the same dividends.

2 So I -- I don't know what to do. Obviously,  
3 Brian had a whole bunch of really fancy-sounding court  
4 cases that I've got to comply with, but I'm -- when coming  
5 to the three of you as an independent judging panel, it  
6 would seem that my only hope is for a reasonableness  
7 approach to this that if -- that I think we've reported  
8 \$50,000 of dividends.

9 The government wanted to add the dividends on  
10 again, and the Franchise Tax Board wants to add three of  
11 them on again without taking off the ones that  
12 Judge Stanley who obviously said, well, you know, how can  
13 you put these other ones on if you don't take these off?  
14 Well, Brian says, well, obviously when they made their  
15 duplicate setup of accounts that are outside of LPL, they  
16 just didn't duplicate those four. They absolutely should  
17 pay tax on those four within LPL. They just didn't make  
18 second copies of those on their outside portfolio. Well,  
19 my clients only have one portfolio.

20 JUDGE VASSIGH: This is Judge Vassigh. Thank  
21 you, Mr. Baldi.

22 Before I move along to my own question, I wanted  
23 to check in with Judge Johnson to see if he had any  
24 questions for Mr. Werking for yourself.

25 JUDGE JOHNSON: Thank you. This is

1 Judge Johnson. One question for Mr. Werking. I guess  
2 Appellant was talking about -- is it Exhibit 4-3, pages --  
3 I think it is 3 and 5, where the account numbers kind of  
4 match up. And without going into the actual account  
5 numbers, obviously, maybe just reference the last two  
6 numbers, if that works. Did you want to address, perhaps,  
7 Exhibit F or one of your exhibits to kind of provide your  
8 story on that?

9 MR. WERKING: Thank you, Judge. Yes, I would  
10 like to. When looking at Appellant's Exhibit 4-3, page 3,  
11 where those account numbers are the same account numbers  
12 that are reported under the Qualified Dividend Section,  
13 where those account numbers are the same account numbers  
14 that are from the separately reported 1099s, what the IRS  
15 is actually doing here is how IRS is -- or how the 1099s  
16 report qualify dividends and ordinary dividends. The  
17 ordinary dividend amount that's reported on a 1099  
18 necessarily includes the qualified dividend amount.

19 And so that's what's taking place here is the  
20 qualified dividend section is trying to -- is taking out  
21 those qualified dividends because they're already reported  
22 as ordinary dividends separately that the taxpayer did not  
23 include. And I think I'm not being entirely clear. What  
24 that section is trying to do is just report and show that  
25 the \$12,626 of qualified dividends is already represented

1 in the ordinary dividends that the IRS is indicating  
2 Appellants did not report from the 11 separately reported  
3 1099s.

4 So that's why that account number is the same is  
5 because that information is coming from those separately  
6 reported 1099s, even though that -- those qualified  
7 dividends are not reported under LPL Financial. They are  
8 just included in the information reported from the 1099s  
9 in the ordinary income reported from the 1099s that are  
10 from the 11 separately reported 1099.

11 MR. BALDI: I disagree. I mean, they came down  
12 with their total. And if you look at the IRS letter, they  
13 increased the total of dividends by \$38,000 -- excuse me.  
14 The capital gains they increased by \$38,000. The taxable  
15 dividends they increased to \$26,000. So there's not  
16 comparing qualified versus qualified. They're adding  
17 those to taxable income.

18 JUDGE JOHNSON: This is Judge Johnson. Thank  
19 you. That's all my questions, Judge Vassigh.

20 JUDGE VASSIGH: Thank you, Judge Johnson.

21 Thank you, Mr. Werking.

22 And, Mr. Baldi, it seems like you provided the  
23 bulk of your rebuttal to FTB, but I do want to give you  
24 the last word.

25 So if there are no other questions from my

1 co-panelists, Judge Stanley and Judge Johnson -- I'm  
2 getting shaking heads.

3 Mr. Baldi, I would like to give you the last few  
4 minutes to wrap us up. Thank you so much.

5

6 CLOSING STATEMENT

7 MR. BALDI: I have nothing else except to, you  
8 know, throw myself -- on the mercy isn't really. But I'm  
9 throwing myself on a reasonable looking at the numbers and  
10 saying if you take all the numbers that we reported, if  
11 you take all the numbers that the LPL reported, and if you  
12 take the numbers down below that the additional ones for  
13 the IRS, we're coming to almost the same number. I mean,  
14 if you say, hey Baldi, give us \$5,000 as an adjustment and  
15 we'll let you go, I would accept it. But, you know, I  
16 think we're within 3 or \$400 of each other on these silly  
17 things.

18 All I can do is hope for the best. I appreciate  
19 your time and effort. This has been a long-ongoing  
20 process since 2014, and my clients and I are hoping that  
21 you will see our side of the argument. Please give us  
22 some consideration. Thank you very much.

23 JUDGE VASSIGH: Thank you, Mr. Baldi.

24 We are ready to conclude the hearing at this  
25 point. The record is now closed. Thank you coming in --

1       thank you for showing up online today.

2               This matter is now submitted to the panel to  
3       privately confer and decide the issue. We will aim to  
4       send you a written opinion of our decision within 100 days  
5       after the record is closed today. Today's hearing in the  
6       appeal of Lee is now adjourned, and we will now adjourn  
7       for the day.

8               Thank you everyone. Have a wonderful rest of the  
9       day.

10              (Proceedings adjourned at 1:41 p.m.)

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