

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. O'NEILL,) OTA NO. 19115444
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APPELLANT.

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, November 17, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

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IN THE MATTER OF THE APPEAL OF,)
J. O'NEILL,) OTA NO. 19115444
APPELLANT.)
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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 1:08 p.m. and concluding at 1:37 p.m. on
Wednesday, November 17, 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 JOHN JOHNSON
ALJ TOMMY LEUNG

For the Appellant: J. O'NEILL
A. O'NEILL

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CAMILLE DIXON
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 7.)

(Department's Exhibits A-N were received at page 7.)

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California; Wednesday, November 17, 2021

1:08 p.m.

JUDGE VASSIGH: We are opening the record in the Appeal of O'Neill. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 19115444. Today's date is Wednesday, November 17th, 2021, and the time is 1:08 p.m. This hearing is being conducted electronically with the agreement of the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Amanda Vassigh, and I will be the lead judge. Judges Leung and Johnson join me as members of this panel. All three of us will meet after the hearing and produce a written decision as equal participants. Although I will be conducting the hearing today, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

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

MS. DIXON: Good afternoon. My name is Camille Dixon. I'm Tax Counsel for the Franchise Tax Board, and along with me I have co-counsel Cynthia Kent. She is Tax Counsel IV for the Franchise Tax Board. Thank you.

1 JUDGE VASSIGH: This is Judge Vassigh. Thank
2 you.

3 And for Appellant, can you please introduce
4 yourself and who you have with you today.

5 MR. J. O'NEILL: My name is Jordan O'Neill,
6 Appellant. And I have with me my witness Adam O'Neill.

7 JUDGE VASSIGH: This is Judge Vassigh. Thank
8 you. Mr. O'Neill, Jordan O'Neill -- when I'm referring to
9 Mr. O'Neill, I will generally be referring to Jordan
10 O'Neill, unless I specify otherwise. In the prehearing
11 conference you indicated you would not be calling a
12 witness today. I just want to confirm that Adam O'Neill
13 is here in a witness capacity and not your representative;
14 is that correct?

15 MR. J. O'NEILL: He's only here as a witness
16 per -- as a witness and not as a representative, correct.

17 JUDGE VASSIGH: Okay. This is Judge Vassigh.
18 Thank you for clarifying that.

19 And I just want to make sure that Franchise Tax
20 Board does not have any objections to the witness being
21 present today.

22 MS. DIXON: Camille Dixon for the Franchise Tax
23 Board. We do not object.

24 JUDGE VASSIGH: This is Judge Vassigh. Thank you
25 very much.

1 Okay. The parties were emailed the electronic
2 exhibits binder, and the exhibits for this appeal consist
3 of FTB's exhibits numbered A through N.

4 Are these the correct exhibits that FTB intends
5 to submit into the record.

6 MS. DIXON: Camille Dixon for the Franchise Tax
7 Board. Yes, that's correct.

8 JUDGE VASSIGH: This is Judge Vassigh. Thank
9 you.

10 And for the Appellant we have exhibits numbered 1
11 through 11.

12 Mr. O'Neill, are these the correct exhibits you
13 intend to submit into the record?

14 MR. J. O'NEILL: Jordan O'Neill, Appellant. Yes,
15 that is correct.

16 JUDGE VASSIGH: This is Judge Vassigh. Thank you
17 so much.

18 Are there any objections to any of the exhibits I
19 listed? I hear no objections, so we will now admit the
20 exhibits I listed into the evidentiary record.

21 (Appellant's Exhibits 1-11 were received
22 in evidence by the Administrative Law Judge.)

23 (Department's Exhibits A-N were received in
24 evidence by the Administrative Law Judge.)

25 The issues to be decided in this case are one,

1 whether Appellant has met his burden to establish error in
2 FTB's proposed assessment of additional tax for 2014, or
3 the federal adjustments upon which it is based; and two,
4 whether a penalty for instituting and maintaining a
5 proceeding based upon frivolous or groundless position
6 should be imposed on Appellant pursuant to Revenue &
7 Taxation Code Section 19714.

8 As a reminder to the parties, during our
9 prehearing conference we decided that Mr. O'Neill will
10 have 5 minutes to make his opening presentation, then the
11 parties will each have up to 15 minutes to make their
12 arguments, and Mr. O'Neill will be given 5 minutes to
13 provide a rebuttal argument if he chooses.

14 Does anyone have any questions before we move on
15 to opening presentations? Okay. It sounds like we're
16 ready to proceed with Appellant's opening presentation.

17 Mr. O'Neill, I will be placing you under oath so
18 we can consider your statements as testimony, and you will
19 remain under oath until the close of this hearing. Please
20 raise your right hand.

21
22 J. O'NEILL,
23 produced as a witness, and having been first duly sworn by
24 the Administrative Law Judge, was examined and testified
25 as follows:

1 JUDGE VASSIGH: This is Judge Vassigh. Thank
2 you. Mr. O'Neill, this is your opportunity to tell us the
3 reasons for this appeal. When you are ready, please
4 begin.

5 MR. J. O'NEILL: Jordan O'Neill, Appellant.
6 Thank you, Judge.

7
8 OPENING STATEMENT

9 MR. O'NEILL: Opening statement. This hearing
10 was requested due to the imperative nature of the many
11 inconsistencies, irregularities, and false assertions and
12 statements surrounding the pertinent facts of the file tax
13 year in question. One set of facts shows the 2014 filing
14 was timely filed, reviewed accordingly by the Franchise
15 Tax Board, and all withholding credits claimed were
16 honored without dispute, accusation, or false assertion of
17 the information on the case of the filed forms.

18 The other set of determinations by the IRS shows
19 a filing that was assessed using bad payer data, and that
20 aligned with the statutory defined terms of the internal
21 revenue code asserting taxable events and receipts. That
22 information was correctly -- was corrected accordingly and
23 filed timely with both the IRS and the Franchise Tax Board
24 to correct and review the erroneous information contained
25 on information return W-2 by which the bad payer data was

1 contained.

2 I'm asserting reasonable dispute with third-party
3 wage information report W-2 provided to the IRS and the
4 Franchise Tax Board per 26 U.S.C. statutes 6201(d) and
5 Revenue & Tax Code 21024. As I'm operating under the
6 understanding and trust that all parties involved are
7 being transparent, honest, and care, I will address both
8 points.

9 That is the close of my opening statement.

10 JUDGE VASSIGH: This is Judge Vassigh. Thank
11 you, Mr. O'Neill. I would like to give you the
12 opportunity to present your witness.

13 So, Adam O'Neill, I would like to swear you in.
14 Please raise your right hand.

15

16 ADAM O'NEILL,

17 produced as a witness, and having been first duly sworn by
18 the Administrative Law Judge, was examined and testified
19 as follows:

20

21 JUDGE VASSIGH: Thank you. This is Judge Vassigh
22 again.

23 Mr. O'Neill, you may present your witness in any
24 way you prefer. Mr. O'Neill may speak to us in the
25 narrative, or you may ask him questions.

1 MR. J. O'NEILL: Jordan O'Neill, Appellant. I
2 have no questions for my witness at this time.

3 JUDGE VASSIGH: Okay. Thank you.

4 I would like to check in with my panelists. This
5 is Judge Vassigh again.

6 Judge Johnson, do you have any questions for
7 Mr. O'Neill?

8 JUDGE JOHNSON: This is Judge Johnson. No
9 questions. Thank you.

10 JUDGE VASSIGH: Okay. Judge Leung, do you have
11 any questions for Mr. O'Neill?

12 JUDGE LEUNG: No questions. Thank you.

13 JUDGE VASSIGH: Okay. Mr. O'Neill, before we go
14 back to Franchise Tax Board, I know we called that your
15 opening, I wanted to see if you had anything further to
16 say?

17 MR. J. O'NEILL: Nothing further to add to my
18 opening statement.

19 JUDGE VASSIGH: Okay. So was that your entire
20 presentation for now until rebuttal?

21 MR. J. O'NEILL: Just the opening statement.
22 Yeah, just -- no, no. That's -- I still have to finish
23 the rest of my presentation. That was --

24 JUDGE VASSIGH: Okay.

25 MR. J. O'NEILL: -- just my opening statement.

1 JUDGE VASSIGH: That's what I was trying to
2 confirm. Okay. So let's move into your presentation.
3 Just begin whenever you're ready. Thank you.
4

5 PRESENTATION

6 MR. J. O'NEILL: Thank you. Jordan O'Neill,
7 Appellant.

8 Let's start with that the IRS has filed -- well,
9 has failed to follow proper procedure protocol in meeting
10 their burden of proof per 26 USC Statute 6201, which
11 states that if a taxpayer asserts a reasonable dispute
12 with respect to any item reported on an information return
13 by a third party, the IRS will bear the burden producing
14 reasonable and probative information concerning such
15 deficiency in addition to such information return.

16 I would like to direct everyone's attention to
17 the 6020(b)(1) verification page, Exhibit 11, page 1. On
18 that page IRS FOIA confirms that no 6020(b) returns were
19 filed by the IRS under my name for any given tax year.
20 6020(b) states, "if any person fails to make any return
21 required by the internal revenue law or regulations made
22 thereunder at the time prescribed therefor, or makes,
23 willfully or otherwise, a false or fraudulent return, the
24 Secretary shall make such return from his own knowledge
25 and, from such information, he can obtain through

1 testimony or otherwise."

2 Below on page 2, 26 C.F.R. Statute 301.6020-1(b)
3 execution of returns additionally states, in general, "if
4 any person required by the Internal Revenue Code or by the
5 regulation to make a return fails to make such a return at
6 the time prescribed therefore, or makes, willfully or
7 otherwise, a false, fraudulent, or frivolous return, the
8 Commissioner or other authorized Internal Officer or
9 employee shall make such return from his own knowledge and
10 from such information he can obtain through testimony or
11 otherwise."

12 Furthermore, the IRS has never sent me or --
13 furthermore, I have never received a statutory Notice of
14 Deficiency verified by a written declaration that's made
15 under penalty of perjury, pursuant to 26 U.S.C. Statute
16 6065. You can see Exhibit 11, page of 2 of 13 for that
17 statute.

18 Moving forward, there is no doubt in my mind that
19 the return at issue contains sufficient information to
20 judge the substantial correctness of the self-assessment,
21 and it does not contain information that on its face
22 indicates the self-assessment is substantially incorrect.
23 Additionally, it's my steady belief that the return is not
24 based on any published frivolous positions that contains
25 only the facts and no elements attempting to delay or

1 impede the administration of tax laws.

2 Accordingly, the French Tax Board -- sorry.

3 Accordingly, the Franchise Tax Board has actually proven
4 my case by which the federal audit was faulty when the
5 Franchise Tax Board initially reviewed a determination of
6 my 2014 tax filing was approved and all withholding
7 credits as claimed, were returned to me without dispute,
8 delay, or accusation, as was my 2015 tax year filing
9 reviewed by the -- reviewed twice by the Franchise Tax
10 Board in Exhibit 9, pages 1, 2, 3.

11 Furthermore, Lisa Wang, Disclosure Specialist, of
12 the Franchise Tax Board Disclosure Office, has furnished a
13 copy of my Franchise Tax Board account transcripts dated
14 October 26, 2021, wherein the IRS identified as the,
15 quote-unquote, "source," reported, quote-unquote, "income
16 amounts of zero dollars and zero cents for tax years
17 2014," thereby, agreeing with corrected reported amounts
18 of, quote-unquote, "wages as defined within my federal and
19 state tax filings for 2014."

20 The IRS also reported zero dollars and zero cents
21 of, quote-unquote, "income for the tax year 2016 and 2017
22 respectively to the Franchise Tax Board." With respect to
23 the payer's W-2, however, I submitted a -- I submitted a
24 4852 Form to correct a substantial in accounting on the
25 part of the payer. I had no taxable receipts from the

1 payer in 2014, since I exercised no federal powers,
2 prerogatives, or privileges. I had no, quote-unquote,
3 "wages as defined at 3401(a) and Section 3121(a) of the
4 Internal Revenue Code," nor was I, quote-unquote, "an
5 employee as defined at Statute 3401(c) as related to the
6 payer in 2014."

7 My many letters to the IRS and the Franchise Tax
8 Board are explaining, not disputing, application of the
9 Revenue & Taxation Codes within the statutory definition
10 of the Internal Revenue Code. In every respect I followed
11 the precise wording of the codes, interpreting them in
12 proper context by the rules of statutory construction. It
13 is only when someone chooses to disregard the actual
14 written law and substitute its own preferred language,
15 making it fake law, that misconduct of law becomes
16 evident.

17 Listing the amounts of federal adjusted gross
18 income as required to give sufficient information by which
19 the self-assessment of the tax can be judged. That is all
20 the law requires. That is what the code and the
21 instructions tell me to do. However, with the Franchise
22 Tax Board's contrived language takes the place of the
23 actual real wording, as in this case when the payer's
24 erroneous information return includes receipts not subject
25 to reporting, of course, the correct liability cannot be

1 verified against the data.

2 It is further preposterous to state that there is
3 a legal requirement for me to adopt or endorse any
4 material fact derived from a third party known by me to be
5 false or not known to be true. It is only the fraudulent
6 substitution of language purportedly requiring me to,
7 quote-unquote, "verify the IRS and Franchise Tax Board's
8 defective data that gives rise to the fraudulent," quote-
9 unquote, "frivolous determination and penalty." In
10 California this is called extortion.

11 Certainly the Franchise Tax Board is not
12 attempting to penalize me for challenging a third-party
13 error, isn't it? As provided in 26 U.S.C. Statute 6201(d)
14 and Revenue & Tax Code Statute 7491(a)(1), I'm sure you
15 are aware that in any controversy, real or contrived, in
16 which the allegations made on a, quote-unquote,
17 "information return, W-2 or 1099, are/or purported to be
18 involved and the filing contributing has been made, the
19 burden of proof as to correctness of the third-party
20 allegations automatically, as a matter of statute, falls
21 on the State."

22 This is true in any hearing, any litigation, or
23 any other legal proceeding, whether it concerns the
24 information return allegations directly or indirectly
25 hinges upon them, as would be the case if a return were

1 actually being disregarded due to a failure to adopt those
2 allegations claiming the legitimacy of any suggestion that
3 a return is defective, due to not having incorporated the
4 allegations on a preferred third-party information return
5 but rest on the validity of those allegations.

6 But when a return has been filed disputing those
7 allegations, the burden of proof regarding the allegations
8 befalls on the government. Hearsay documents and
9 presumptions cannot be used as evidence or a substitute
10 for evidence. Only, quote-unquote, "wages as defined at
11 Internal Revenue Code 3401(a) and 3121(a) are reportable
12 on the W-2." To submit an uncorrected W-2 would be,
13 quote-unquote, "frivolous because it would be
14 self-contradictory in relation to the associated
15 correction notice."

16 In regard to Form 3525 intended for correcting
17 that payer data, is it, quote-unquote, "frivolous to use a
18 state form to perform the function for which it was
19 intended?" Is making a correction of a W-2 erroneously
20 reporting receipts constituting, quote-unquote, "wages as
21 defined in the codes frivolous?" Absolutely not. The
22 only section of the code specifying what must go on a W-2
23 states unequivocally that only tax class, quote-unquote,
24 "wages as defined per Statute 6051(a) is to be reported
25 and provided the statute in Exhibit 11, pages 4 of 13.

1 It does not say, quote-unquote, "which is
2 commonly understood." Accordingly, the IRS' records are
3 erroneous because, quote-unquote, "wages as defined is the
4 context, and the payer failed to exclude non-wage
5 receipts." I make no dispute, whatsoever, regarding the
6 statutory defined Internal Revenue Code. A careful
7 reading of my correspondences, call to action letters, and
8 timely filed forms, both to the IRS and the Franchise Tax
9 Board, shows that what I actually did was to proclaim my
10 meticulous compliance with the codes and with the precise
11 legislative definitions of the legal terms from the
12 statutes.

13 It is the IRS that expects the filer to adopt a
14 wide commonly misunderstood meaning of the terms to the
15 exclusion of the special definitions expressly given by
16 the legislature and congress. I'm merely explaining in my
17 letters that I was using specified definitions that the
18 law expressively requires. It seems that the Franchise
19 Tax Board is the only agency in California that imposes a
20 penalty for actually obeying the law. The Franchise Tax
21 Board agent should be asking the payer why they failed to
22 follow the requirements of Internal Revenue Code Section
23 6051(a)(3) and (5), 3401(a), 1321(a), and 3401(c), all of
24 which were swept into the California code and administered
25 within municipal capacity of the State.

1 Sorry. I lost my space.

2 Furthermore, I want to make clear that the
3 following statements asserted within the opening brief are
4 no way to be associated with or a reflection of my filings
5 or my correspondence to the Franchise Tax Board. To do so
6 would create, whether intended or unintended, a straw man
7 argument and a conflated association where there should be
8 none.

9 Giving all due consideration to Anne Mazur, a
10 Specialist of the Legal Division Franchise Tax Board with
11 her opening brief, assertions of the statement that she
12 alleges I am making are as follows, quote, "wages are not
13 income or are not taxable," end quote. I have never spoke
14 or have held the statement and never would. Second,
15 quote, "Only payments to government employees constitute
16 taxable wage income," end quote. I've never spoke or have
17 held this statement and never would.

18 The Franchise Tax Board has yet to establish what
19 is frivolous about correcting third-party reporting
20 errors, information that does not comply with the only
21 section of the code specifying what's to be included on
22 the W-2, would have to be bad payer data. So let me be
23 clear. The payer data and consequently the federal
24 assessment, and by extension the data relied upon by the
25 Franchise Tax Board are false. I had zero, quote, "wages

1 as defined from the source in 2014." There's no proof or
2 even admissible evidence in the record of a, quote,
3 "frivolous act, position, or submission per the Secretary
4 of Treasury's official list of frivolous positions, Notice
5 210-33.

6 To my knowledge, this official list of positions
7 holds ultimately the weight, authority, and supersede any
8 internal publication or IRS manual. I'm not arguing with
9 the law or the constitutionality of the tax code, only
10 stating it as clearly as the published codes and
11 procedures made available to the public. For the record,
12 the information provided is not my opinion and
13 interpretation or paraphrasing of the law, and it should
14 not be construed as such. It should follow that the law
15 is applied as written and not as it is paraphrased
16 reinterpreted and, therefore, misapplied, especially at a
17 context of the specific and unique case that it applies
18 to.

19 In closing, I believe my returns for the
20 aforementioned tax years are scrupulously accurate and
21 truthful. The contents of the returns I've completed and
22 submitted for the aforementioned tax period and the act of
23 their completion and submission are not intended or
24 desired to delay or impede the administration of federal
25 or state tax law. On the contrary, the returns concluded

1 and submitted for the tax years are my best efforts to
2 fully comply with all legal obligations to which I'm
3 subject to the best of my understanding of those
4 obligations and to conform of all relevant provisions of
5 the law as best that I understand those provisions.

6 The deductive reasoning and logical conclusions
7 should speak clearly to the filings' correctness, and any
8 final determinations should never be based on hearsay
9 documents but only truth and sworn testimony of the facts
10 as they are based on relevant law. I believe I have not
11 violated this appeal's hearing by, quote, "instituting or
12 maintaining this administrative appeal primary for delay,"
13 or, quote, "that I have unreasonably failed pursue
14 administrative remedies," and lastly, quote, "I do not
15 believe my testimony or written documentation contains or
16 incites any frivolous or groundless positions."

17 I thank you all for your time and consideration.
18 I believe my response to the opening brief, the submission
19 of the additional evidence pages, and my testimony have
20 provided detailed explanation and proof in establishing
21 error in Respondent's assessment and the federal
22 assessment on which it is based.

23 Thank you.

24 JUDGE VASSIGH: This is Judge Vassigh. Thank you
25 for your presentation, Mr. O'Neill. I would like to ask

1 my co-panelists if they have any questions for you.

2 Judge Leung?

3 JUDGE LEUNG: This is Judge Leung. I have no
4 questions for Mr. O'Neill. Thank you.

5 JUDGE VASSIGH: This is Judge Vassigh. Thank
6 you, Judge Leung.

7 Judge Johnson, do you have any questions for
8 Mr. O'Neill?

9 JUDGE JOHNSON: This is Judge Johnson. No
10 questions. Thank you.

11 JUDGE VASSIGH: Thank you, Judge Johnson.

12 This is Judge Vassigh again. I would like to
13 turn the time over to Franchise Tax Board now for your
14 presentation.

15 MS. DIXON: Thank you, Judge Vassigh.

16

17 PRESENTATION

18 MS. DIXON: This is Camille Dixon with the
19 Franchise Tax Board.

20 The evidence shows that the Appellant has failed
21 to establish error in the Respondent's proposed assessment
22 of additional tax for the 2014 tax year or error in the
23 federal action upon which the proposed assessment is
24 based.

25 For the 2014 tax year, the Appellant submitted

1 tax returns to both the Internal Revenue Service and
2 Respondent failing to report his earned wages as taxable
3 income. With his state return, he included a Form 3525
4 substitute for his W-2 only reporting withholding credits,
5 which he claimed as an overpayment and was refunded. The
6 IRS subsequently adjusted his federal return to include
7 the earned wages and assessed tax and interest.

8 The Appellant failed to notify the Respondent of
9 the federal changes as required by law. Upon receipt of
10 information from the IRS, Respondent followed the federal
11 adjustment accordingly and increased Appellant's taxable
12 income to include the omitted wage income in the amount of
13 \$68,847 and proposed to assess additional tax of \$3,437
14 plus applicable interest. Appellant contends that his
15 proposed assessment is erroneous because his wages from a
16 private sector employer are not taxable income.

17 However, when the IRS makes changes or
18 corrections to the taxpayer's return, the law requires
19 that the taxpayer must either concede the accuracy of the
20 federal discrimination or prove the federal changes are
21 erroneous. The federal adjustments have a presumption of
22 correctness, and it is the taxpayer's burden to prove
23 error. Appellant has not shown error in the federal
24 determination or FTB's assessment, which is based on the
25 federal action.

1 Just as the taxpayer in the Appeal of Eleanor
2 Balch, Appellant relies on a misreading of the Internal
3 Revenue Code to conclude the wages to private sector -- of
4 private sector employees are not income, a position held
5 to be frivolous and without merit by the courts as well as
6 the OTA in the precedential decision of the Appeal of
7 Eleanor Balch.

8 Moreover, Revenue Ruling 2006-18 specifically
9 addresses the Appellant's arguments stating that federal
10 income tax laws do not apply solely to federal employees.
11 Appellant received wage income from his employer Datasat
12 as evidenced by his federal account transcript and his
13 federal wage and income transcript for the 2014 tax year.
14 Further, Appellant does not deny that he received income
15 from Datasat. Pursuant to the law, wages are includable
16 in gross income and, therefore, Respondent's proposed
17 assessment based on those wages is correct.

18 Additionally, Appellant's contention that he did
19 not earn taxable wages from his private sector employer is
20 a position deemed by both the IRS and Respondent as
21 inherently frivolous. Accordingly, a penalty for
22 instituting and maintaining a proceeding based on a
23 frivolous or groundless position should be considered
24 under Revenue & Taxation Code Section 19714, just as it
25 was done in OTA's precedential opinion in Appeal of

1 Eleanor Balch.

2 The OTA imposed such a frivolous appeal penalty
3 for arguments made by Balch that have been consistently
4 rejected by OTA and its predecessor the State Board of
5 Equalization. Appellant in this case attempts to make the
6 same arguments that have been previously rejected by the
7 OTA in the Appeal of Eleanor Balch, and the law summary
8 for non-filer arguments was provided to Mr. O'Neill in
9 FTB's exhibits in the opening brief as Exhibit K.

10 Thank you, and I am happy to answer any
11 questions.

12 JUDGE VASSIGH: This is Judge Vassigh. Thank you
13 for your presentation, Ms. Dixon. I would like to check
14 with my co-panelists if they have any questions for you.

15 Judge Johnson, do you have any questions?

16 JUDGE JOHNSON: This is Judge Johnson. No
17 questions. Thank you.

18 JUDGE VASSIGH: Thank you.

19 Judge Leung, do you have any questions?

20 JUDGE LEUNG: No questions at this time. Thank
21 you.

22 JUDGE VASSIGH: Okay. So I'd like to go back to
23 Jordan O'Neill and ask you if you would like to take the
24 opportunity, five minutes, for a rebuttal to Ms. Dixon's
25 presentation?

1 MR. J. O'NEILL: Jordan O'Neill, Appellant. Yes,
2 I would.

3 JUDGE VASSIGH: Okay. So why don't you begin
4 whenever you're ready, Mr. O'Neill.

5

6 CLOSING STATEMENT

7 MR. J. O'NEILL: The idea that my case and the
8 Balch case is a conflation of the two cases and is
9 unacceptable. There is no evidence that the non-wage
10 payments made to me by Datasat Digital Entertainment do
11 meet the definition of wages as defined. The Franchise
12 Tax Board has not established that there is a frivolous
13 position taken from the Secretary of Treasury's official
14 list Notice 2010-33, is -- which is the only ultimate
15 legal way authority and supersedes any internal
16 publication of the IRS manual. If the Franchise Tax Board
17 can cite an official frivolous position from Notice
18 2010-33, I would ask they do that in this hearing today.

19 I believe I have submitted sufficient information
20 to prove that the information on my form is substantial.
21 If the Franchise Tax Board found the information submitted
22 on my filing erroneous and/or frivolous, it brings into
23 question why the 2014 filing approved in the first place.
24 There was no argument whatsoever from the Franchise Tax
25 Board that the information I provided on my form was in

1 any way shape or form erroneous or frivolous or that the
2 payments met the definition of wages as defined.

3 Can the representative of the Franchise Tax Board
4 cite a frivolous position from the Notice 2010-33 of
5 official frivolous positions of the Secretary of
6 Treasury's official list, please?

7 JUDGE VASSIGH: This is Judge Vassigh.
8 Mr. O'Neill, are you asking a question of FTB or was that
9 rhetorical?

10 MR. J. O'NEILL: No. I am asking the question.
11 I would like them to cite a frivolous position from Notice
12 2010-33 from the Secretary of Treasury's official list.

13 JUDGE VASSIGH: Ms. Dixon, are you prepared to
14 provide an example to Mr. O'Neill?

15 MS. DIXON: Camille Dixon for the Franchise Tax
16 Board. What I am prepared to say is that whether or not
17 the Appellant -- or the Appellant has maintained a
18 frivolous or groundless proceeding is up to the OTA. It
19 wouldn't be appropriate for the FTB to opine on whether or
20 not a certain action was frivolous.

21 JUDGE VASSIGH: Thank you, Ms. Dixon.

22 I'm just going to check in with my fellow
23 panelists one last time to see if anyone has any questions
24 for either party.

25 Okay. We are ready to conclude this hearing.

1 The record is now closed. Thank you everyone for coming
2 in today. This matter is now submitted to the panel to
3 privately confer and decide the issues. We will aim to
4 send you a written opinion of our decision within 100 days
5 after the record is closed.

6 Today's hearing in the Appeal of O'Neill is now
7 adjourned. We will adjourn for the day. Thank you. Have
8 a good day.

9 (Proceedings adjourned at 1:37 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 6th day
of December, 2021.

ERNALYN M. ALONZO
HEARING REPORTER