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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
DIGITAL MARKETING STRATEGY,) OTA NO. 20086555
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:38 a.m. and concluding at 10:11 a.m. on
Friday, December 17, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ CHERYL AKIN
ALJ SARA HOSEY

For the Appellant: BRYAN NUXOLL

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
CHRISTOPHER TUTTLE
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 7.)

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

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California; Friday, December 17, 2021

9:38 a.m.

JUDGE RALSTON: So we are now on the record in the Appeal of Digital Marketing Strategy. This matter is being heard before the Office of Tax Appeals. The OTA Case Number is 20086555. Today's date is Friday, December 17, 2021, and the time is approximately 9:38 a.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. I am Judge Ralston, and I will be the lead judge and conduct the hearing today. Judge Akin and Judge Hosey are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written decision as equal participants. And although I'll be conducting the hearing today, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information we need.

We also have present our stenographer, Ms. Alonzo.

I'm going to ask the parties to introduce themselves, starting with the Appellant. So please state your name and who you representative for the record,

1 starting with Mr. Nuxoll.

2 MR. NUXOLL: This is Bryan Nuxoll, and I'm here
3 today representing the Appellants, Digital Marketing
4 Strategy.

5 JUDGE RALSTON: Thank you.

6 And for respondent.

7 MR. TUTTLE: My name is Topher Tuttle, and I
8 represent Respondent Franchise Tax Board.

9 MS. BROSTERHOUS: My name is Maria Brosterhous,
10 and I also represent Franchise Tax Board.

11 JUDGE RALSTON: Thank you.

12 So at the prehearing conference we decided -- we
13 discussed that the issue to be decided in this appeal is
14 whether Appellants have established reasonable cause for
15 abatement of the late-payment penalty. Neither party
16 intends to call any witnesses.

17 Moving on to the exhibits, as discussed at the
18 prehearing conference, both parties submitted Appellant's
19 2018 California S corporation return as an exhibit. So
20 this exhibit shall be marked as Appellant's Exhibit 5, and
21 Respondent's Exhibit A. Appellant has submitted Exhibits
22 1 through 6, and Respondent has not raised any objections.
23 So Appellant's Exhibits 1 through 6 are admitted without
24 objection.

25 ///

1 (Appellant's Exhibits 1-6 were received
2 in evidence by the Administrative Law Judge.)
3 Respondent has provided Exhibits A through G, and
4 Appellant has not objected. So Respondent's Exhibits A
5 through G are submitted without objection.

6 (Department's Exhibits A-G were received in
7 evidence by the Administrative Law Judge.)

8 This hearing is expected to last approximately
9 60 minutes.

10 Appellant, you will have 25 minutes for your
11 opening presentation.

12 Respondent will have 10 minutes for their
13 presentation, and Appellant will have approximately 10
14 minutes for rebuttal. Does anyone have any questions
15 before we move onto opening presentations? Okay. It
16 looks like we are ready to go.

17 So Mr. Nuxoll, you have 25 minutes for your
18 presentation. Please begin when you are ready.

19

20 PRESENTATION

21 MR. NUXOLL: This is Bryan Nuxoll thank you, Your
22 Honors.

23 Daniel Vardi formed a business known as Digital
24 Marketing Strategy in Texas on December 13th, 2017, in
25 preparation for the business to be fully operational

1 January 1st, 2018. Throughout the year, 2018, Digital
2 Marketing Strategy failed and did not make a single dollar
3 in profit. The business ceased to operate December
4 31st, 2018.

5 When a business fails, it's a moment of great
6 hardship as it represents the deaths of a person's dream.
7 What makes matters worse is that Mr. Vardi received notice
8 from the FTB that through no fault of his own he incurred
9 a penalty due to owing taxes he thought he was exempt
10 from. It through no fault of his own because Mr. Vardi
11 relied on the advice of his accountant that because his
12 business operated in California for less than one year, he
13 did not need to pay the state franchise tax. Because Mr.
14 Vardi relied on his accountant's advice, the tax was not
15 paid.

16 Now, the FTB asserts Mr. Vardi owes this tax and
17 the late-payment penalty despite reliance on his
18 accountant's advice. Mr. Vardi and his young family are
19 already struggling. His business has failed, and now he's
20 being told that he owes a tax penalty as a result of
21 following the advice of his accountant. However, if a
22 taxpayer relies on improper substantive advice of an
23 accountant or a tax attorney as to a matter of tax
24 liability, failing to pay the tax shown on the return by
25 the due dates may be considered reasonable cause if

1 certain conditions are met.

2 And those conditions have to be shown by a burden
3 of a preponderance of the evidence more likely than not.
4 There are three elements that need to be shown to show
5 reasonable cause due to reliance of an accountant. And
6 those three elements are: First one, a full disclosure is
7 made to relevant facts and documents to a tax preparer;
8 the second eliminate is the taxpayer was a competent
9 professional with sufficient expertise; and third, that
10 the taxpayer relied in good faith on the tax preparer's
11 advice.

12 I will additionally argue that although it is
13 more like than not that the Appellant's accountant was
14 competent, competency is not actually a requirement that
15 is a -- and is not a determining issue. The first
16 eliminate was satisfied that a full disclosure was made of
17 the relevant facts and documents to the tax preparer.
18 Now, first I want to acknowledge the FTB's arguments in
19 their reply brief that Cassie Schultz did not answer the
20 question that was sent by email as shown in Exhibits 2 and
21 3. This question was sent by a previous TAAP
22 representative.

23 Now, this doesn't necessarily matter for proving
24 the element because I'll show that first off, that the
25 question that was asked wasn't a good question to have

1 been asked. And second, there is other evidence that we
2 can use to show that this burden has been met. So the
3 question that was asked was, "Did you fully disclose all
4 necessary and accurate information," which sounds similar
5 to what should have been asked at first, which is, "The
6 taxpayer, did they make a full disclosure of the relevant
7 facts and documents?"

8 Now, the reason why this question was never
9 clarified with the taxpayer's accountant was because it
10 just would be cost prohibitive. The penalty for late
11 payment is \$84 plus interest, and tax accountants charge
12 hundreds of dollars an hour for their services. And it
13 would have been half an hour's worth of time. So it would
14 just cost more than \$84 to have the issue clarified. But
15 despite this, the reason why the framing of this question
16 can make a difference is because something that's
17 necessary and accurate, it's different than something
18 that's relevant.

19 A document that is relevance can differ for
20 something that's required, even if the definitions are
21 similar. So Cassie Schultz not being able to confirm the
22 taxpayer's question or email does not -- it means that we
23 have to look for other evidence to satisfy this burden.
24 And we can see the evidence elsewhere in Exhibit 5 for
25 the -- from my exhibits. And for the Respondent's

1 exhibits, we can see that under Exhibit A, and the
2 information puts in the 2018 tax returns.

3 So the relevant facts that need to have been
4 provided were the following: That the Appellant's
5 business is out of state; the date of the business that it
6 was incorporated; the date the business operated; the date
7 the business dissolved; and whether the business was
8 registered with the Secretary of the State. These are the
9 relevant facts and documents that need to have been
10 provided. We can by -- how this -- information was filled
11 out on the tax return, that this information was, in fact,
12 provided.

13 And, specifically, on page 1 of the exhibits, we
14 have nothing put under the Secretary of State file number
15 box. This means that the relevant information was
16 provided in this instance. We can also see under Section
17 A on this page the date of the dissolution of the business
18 was provided because that's put inside of the tax return,
19 the dates. And on page 3 of the exhibits, we can see that
20 under line F the date of incorporation was provided. And
21 under lines A and J, we see when the business began
22 operation in California.

23 So despite the non-answer from Cassie Schultz in
24 the email in Exhibits 2 and 3, we have evidence showing
25 these first elements required for reasonable cause due to

1 relying on the improper substantive advice of an
2 accountant. It's been satisfied.

3 Now, the second element for showing reasonable
4 cause, the tax preparer was a competent professional with
5 sufficient expertise, this has also been met. But first
6 I'm going to argue that the Boyle case does not actually
7 require competency as a requirement to fulfill reasonable
8 cause. However, if competency is a requirement, Cassie
9 Schultz was a competent professional with sufficient
10 expertise. The FTB cites to the Burton Swartz Land
11 Corporation v. Commissioner case and refers to competence
12 being from that case.

13 Now, it's true that Burton Swartz does refer to
14 competence in its holding for reasonable cause. However,
15 the reason why Boyle cites the Burton Swartz is for a
16 different reason than to establish a competency standard.
17 Boyle cites to Burton Swartz because it incorporates the
18 case's holding to create the following quotation. Courts
19 have frequently held that reasonable cause is established
20 when a taxpayer shows that he reasonably relied on the
21 advice of accountant or attorney that it was unnecessary
22 to file a return, even when such advice turned out to have
23 been mistaken.

24 As we can see through a text in Boyle, Supreme
25 Court does not make any mention to competence being a

1 requirement. The only requirement stated by the text is
2 reasonable reliance. As quoted in Boyle, when an
3 accountant or attorney advises a taxpayer on a matter of
4 tax law, such as whether or not a liability exists, it is
5 reasonable for the taxpayer to rely on that advice. Most
6 taxpayers are not competent to discern error and the
7 substantive advice of an accountant or an attorney.

8 To require the taxpayer to challenge the attorney
9 to seek a second opinion or try to monitor counsel on the
10 provisions of the code himself would nullify the very
11 purpose of seeking the advice of a presumed expert in the
12 first place. Ordinary business care and prudence do not
13 demand such actions. Mr. Vardi and Digital Marketing
14 Strategy received advice on whether a liability existed.
15 It was, therefore, reasonable for him to rely on that
16 advice. To have Mr. Vardi find out if the accountant he
17 hired was competent by seeking a second opinion or by
18 monitoring counsel of the provisions of the tax code, it
19 would nullify the very purpose of him seeking the advice
20 of his accountant in the first place.

21 As I will soon state, however, there's strong
22 evidence that Cassie Schultz is a presumed expert who is
23 competent in California tax law. A substantive mistake by
24 Cassie Schultz does not mean that she's incompetent.
25 Otherwise this reasonable cause exception wouldn't even be

1 able to exist. Now, each following point I'm going to
2 state is -- may not on its own satisfy competence, but all
3 together it'll give us a picture that Cassie Schultz was a
4 competent professional with sufficient expertise.

5 Cassie Schultz the accountant advised Digital
6 Marketing Strategy for a fee and handled the business'
7 California tax matters. We can see that the evidence of
8 this relationship as shown in the email exchange in
9 Exhibit 4. Cassie Schultz' relationship with the Digital
10 Marketing Strategy, it continued to exist as shown in
11 Exhibit 1 when Cassie Schultz contacted the FTB and the
12 Secretary of State's office on the company's behalf in
13 February 2020 in an attempt to get the penalties and the
14 interest reduced or abated. Cassie Schultz also has 20
15 years of experience. This shows more competence in the
16 tax preparer with little to no experience.

17 Cassie Schultz is an enrolled agent senior tax
18 accountant shown in the emails in Exhibit 4 and the letter
19 in Exhibit 1. The FTB argues in their brief that Cassie
20 Schultz worked for a bookkeeping firm in Texas. This
21 cannot be further exaggerated. The company is called
22 Bittel Books & Taxes. The very name of the company shows
23 that they are a tax firm. The business is not just called
24 Bittel Books. That would imply that it was a bookkeeping
25 firm, but it has taxes in the name.

1 In the recently decided case, Appeal of Summit
2 Hosting, LLC, the taxpayer relied on his out-of-state
3 CPA's advice that the Appellant did not have to file a
4 California tax return. At first the facts in our case
5 seem similar. However, this current case is very
6 different from the case that was recently decided in
7 Appeal of Summit Hosting. Here, there was no question
8 whether or not Digital Marketing Strategy had to file a
9 California tax return. We have a California tax return
10 filed as shown in Exhibit A and Exhibit 5.

11 Further, a CPA certified in the State of Georgia
12 should not be compared to an enrolled agent who can do
13 business across state lines. Not only does the very
14 nature of an EA differ from a CPA regarding doing business
15 across state lines, the requirements to practice differ as
16 well. An enrolled agent is competent under California
17 law. As shown in Exhibit 6, page 3, California law
18 requires anyone who prepares tax returns for a fee within
19 the State of California and is not an exempt preparer, to
20 register as a tax preparer with the California Tax
21 Education Counsel, also known as CTEC.

22 On page 1 of Exhibit 6, CTEC was established by
23 the state legislature to promote competent tax preparation
24 within the State of California. To show that the
25 information on Exhibit 6 has not been pulled out of a

1 magic hat, I will cite the statute where this information
2 can be found. CTEC is referred to in the Business and
3 Professions Code, Division 8, Chapter 14, known as the Tax
4 Preparation Act.

5 CTEC requirements show competency, or that a tax
6 preparer would have to have 60 hours of qualifying tax
7 education from a CTEC approved provider. And they have to
8 pass a background check, obtain a Live Scan. They have to
9 have a \$5,000 tax preparer bond. They have to register
10 with CTEC within 18 months from the completion date of the
11 certificate of completion. They have to pay a
12 registration fee of \$33. These requirements are listed by
13 the state statute under that Tax Preparation Act. An
14 enrolled agent is exempt from CTEC requirements, unlike a
15 CPA -- and a CPA is in that Summit Hosting case that was
16 recently decided, they're no exempt, but and EA is exempt
17 from these requirements.

18 And this is shown on page 3 of Exhibit 6. It's
19 also shown by Business Professions Code 22258(a)(5), which
20 states a person who is enrolled to practice before the
21 IRS, pursuant to subpart(a) of part 10 of Title 31 of the
22 Code of Federal Regulations, they are exempt from CTEC
23 requirements. And when you go to subpart (a) of part 10
24 of Title 31 of the Code of Federal Regulations,
25 Section 10.3 list agents who may practice. Subsection (c)

1 lists enrolled agents.

2 So we can see through the CTEC websites and by
3 statutes that EAs are exempt from CTEC requirements. The
4 reason why this is important is because it shows the State
5 of California considers EA's competent enough to not need
6 to fulfill the CTEC requirements that show competency.
7 The State of California already considers them to be
8 competent enough. Because Cassie Schultz is an enrolled
9 agent, this means that she is just as competent as a
10 California tax preparer is required to be under state law.

11 On Exhibit 6 page 5, the IRS website refers to
12 enrolled agents as the highest credential the IRS awards.
13 Individuals who obtain this elite status must adhere to
14 ethical standards and complete 72 hours of continuing
15 education every three years. This can also be found under
16 CFR Section 10.6 subsection (e). On page 3 of Exhibit 6,
17 and under Business and Professions Code 22255, the renewal
18 requirements for CTEC registration are to complete
19 20 hours of continuing education each year. That's 60
20 hours over 3 years.

21 This means over the course of 3 years, an
22 enrolled agent is required to have even more continuing
23 education than what is required by the State of
24 California. It means, if anything, an enrolled agent is
25 even more competent than a California tax preparer would

1 be with sufficient expertise.

2 Next, the email conversation, Exhibits 2 and 3.
3 It shows that Cassie Schultz did not dispute the fact that
4 she was competent in California tax law. Otherwise she
5 would have been said she couldn't answer the question like
6 the other two questions that were asked in that exhibit.
7 Lastly, Exhibit 5 shows that Digital Marketing Strategy's
8 accountant is competent because she timely prepared and
9 filed the California return for Digital Marketing Strategy
10 and showed general knowledge of the first-year minimum
11 franchise tax exception.

12 As previously mentioned, FTB's Exhibit A, page 3,
13 shows the accountant knew the business was incorporated in
14 Texas and knew the business began operations in California
15 in 2018. The accountant is still competent, and we can
16 see this because the necessary information was found out
17 that she knew the statutes and it's just that she -- she
18 didn't quite know the statute well enough. But screwing
19 up interpretation of a statute, that's okay. Because the
20 exception is for substantive incorrect advice, the
21 exception I made for reasonable cause.

22 So all these facts lead to the conclusion that it
23 is more definitely more likely than not that the second
24 element to show reasonable cause has been met. We can see
25 this in Exhibit 4 as well, with the fact that Cassie

1 Schultz made a mistake, and she took immediate action to
2 abate the tax fees and penalties.

3 The last element has also been met, which is that
4 the taxpayer relied in good faith on the tax preparer's
5 advice. Digital Marketing Strategy has met this burden
6 it's more likely than not that this has happened. This
7 element does not appear to be contested by the FTB,
8 according to their reply brief. The only mention of this
9 element is the fact that the FTB has brought the element
10 up. Nowhere has this element actually been contested in
11 anything they have written down. Further, on the FTB's
12 Exhibit G, at the bottom of the first full paragraph on
13 page 2, a good faith element is not even listed as a
14 requirement to satisfy reasonable cause due to a taxpayer
15 relying on improper substantive advice from a tax
16 preparer. I will still show that this element has been
17 made -- this element has been met.

18 Like the first element, we have in Exhibits 2 and
19 3 a non-answer from Cassie Schultz. However, the question
20 drafted by the previous tax representative was, your CPA
21 advise you there is no filing requirements to which you
22 relied. The correct question that should have been asked
23 was, did the taxpayer rely in good faith on the tax
24 preparer's advice.

25 Because the question was phrased incorrectly, the

1 Appellant's accountant was confused and the non-answer
2 doesn't even matter. Because when you look at what the
3 element is asking for, it's not asking for the
4 accountant's answer. It's asking whether the taxpayer,
5 Digital Marketing Strategy, relied in good faith on the
6 advice. So asking this question, it doesn't even make
7 sense.

8 So did this element be satisfied -- was it
9 satisfied by Digital Marketing Strategy? It was, because
10 Digital Marketing Strategy relied in good faith on this
11 advice. We can see this because Digital Marketing
12 Strategy, Daniel Vardi, he had his taxes filed on time by
13 Cassie Schultz. If he didn't rely on good faith on her
14 advice -- her advice as in Cassie Schultz -- Daniel Vardi
15 would have hired somebody else to file his taxes, or he
16 would have done the taxes by himself. That didn't happen,
17 so we know he relied in good faith that his accountant was
18 correct.

19 Even after it became apparent that the FTB
20 demanded the state franchise tax be paid with the
21 late-payment penalty, Digital Marketing Strategy continued
22 to act in good faith in reliance on Cassie Schultz' advice
23 because he continued to use her services and faced fees
24 charge for those very services. By continuously engaging
25 the accountant for future paid services, it shows that

1 Digital Marketing Strategy continued to rely on good faith
2 on its accountant's advice, and he had trust in her work.
3 Therefore, this third element has been met.

4 In conclusion, the late-payment penalty for
5 Digital Marketing Strategy should be abated due to
6 reasonable cause. Digital Marketing Strategy provided the
7 relevant facts and documents. We can see the relevant
8 facts and documents were provided by looking at the tax
9 return filed by Cassie Schultz, the accountant, under
10 Exhibit A and Exhibit 5. I argue that competency is not a
11 requirement to show reasonable cause. As requiring the
12 taxpayer to challenge the attorney to seek a second
13 opinion or to try to monitor counsel on the provisions of
14 the code himself would nullify the very purpose of seeking
15 the advice of a presumed expert in the first place.

16 If competency of a tax preparer is a requirement
17 to show reasonable cause, Cassie Schultz has more than met
18 the requirements. As an enrolled EA with over 20 years of
19 experience, she's exempt from the very requirement under
20 CTEC that there to show -- that are there to show
21 competency to practice in California. With stricter
22 continuing education requirements than that's required
23 under CTEC, if anything, she's more competent than
24 somebody that is deemed by the legislature of California
25 to be competent under state law.

1 Lastly, Digital Marketing Strategy acted in good
2 faith relying on Cassie Schultz' advice. And we can see
3 this because he had her file his taxes. And when it
4 turned out that there was an issue with the late-payment
5 penalty, he continued to rely on her to have the issue
6 resolved. Therefore, the preponderance of evidence shows
7 that an ordinary and prudent businessman would have acted
8 under these similar circumstances.

9 That concludes my arguments. Thank you, Your
10 Honors.

11 JUDGE RALSTON: This is Judge Ralston. Thank
12 you, Mr. Nuxoll.

13 I'm going to turn to my panel.

14 Judge Akin, did you have any questions?

15 JUDGE AKIN: Yes. Just one question. I'm
16 wondering if you know whether Ms. Schultz had any
17 experience in preparing, specifically, California tax
18 returns?

19 MR. NUXOLL: I do not.

20 JUDGE AKIN: Okay. Thank you.

21 JUDGE RALSTON: This is Judge Ralston.
22 Judge Hosey, did you have any questions for the Appellant?

23 JUDGE HOSEY: I did. Yes. This is Judge Hosey.
24 Mr. Nuxoll so Appellant's are agreeing that Digital
25 Marketing Strategy did business in California in 2018; is

1 that correct?

2 MR. NUXOLL: This is Bryan Nuxoll. This is
3 correct.

4 JUDGE HOSEY: Okay. Thank you. I'll save my
5 other questions for later on. Thank you.

6 JUDGE RALSTON: This is Judge Ralston.
7 Mr. Tuttle, you have 10 minutes for your presentation.
8 Please begin when you are ready.

9 MR. TUTTLE: Thank you.

10

11

PRESENTATION

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MR. TUTTLE: Good afternoon. My name is Topher
Tuttle, and I am representing Respondent Franchise Tax
Board today. With me is Maria Brosterhous also with the
Franchise Tax Board.

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Although Appellant has not conceded the other
issue, the only issue Appellant has raised in this hearing
is whether Appellant has demonstrated reasonable cause to
abate the late-payment penalty. As a result, FTB will
only address the late-payment penalty issue and will
otherwise rest on its briefing for the other issues.

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The late-payment penalty may be abated if the
taxpayer demonstrates its failure to timely pay was the
result of reasonable cause and not willful neglect. The
taxpayer has the burden to show that reasonable cause

1 exists to support abatement of the late-payment penalty.
2 In addition, under United States versus Boyle, the
3 taxpayer's reliance on improper advice as to a matter of
4 tax law may be considered reasonable cause, provided the
5 advice is predicated on two conditions.

6 First, the taxpayer relied on a tax professional
7 with competency in the subject tax law. And second, the
8 tax professional's advice was based on the taxpayer's full
9 disclosure of the relevant facts and documents. In this
10 case Appellant has failed to demonstrate either condition.
11 Although Appellant has attempted to provide evidence that
12 the taxpayer was competent generally in the field of tax
13 law, Appellant has provided no evidence that the preparer
14 had any experience or expertise in California tax law.

15 In fact, during this appeal Appellant requested
16 the preparer to issue a letter confirming her expertise in
17 California tax law. And the resulting letter made no
18 mention of her experience in preparing California tax
19 returns. Likewise for the second condition, Appellant has
20 not demonstrated that the preparer was apprised of all
21 necessary facts and documents. In her email response to
22 Appellant, the preparer explicitly declined to confirm
23 that she was given full disclosure of all necessary facts
24 and documents when Appellant requested she do so.

25 Since Appellant has failed to establish the

1 conditions for reasonable cause reliance on the advice of
2 a professional under Boyle, Appellant has not met its
3 burden of proof, and the late-payment penalty may not be
4 abated.

5 Thank you.

6 JUDGE RALSTON: This is Judge Ralston. Thank
7 you, Mr. Tuttle.

8 Judge Akin, did you have any questions for
9 Respondent?

10 JUDGE AKIN: Thank you. No questions for
11 Respondent.

12 JUDGE RALSTON: This is Judge Ralston. Thank
13 you.

14 Judge Hosey, did you have any questions for the
15 Respondent?

16 JUDGE HOSEY: Not at this time. Thank you.

17 JUDGE RALSTON: Thank you, Judge Hosey.

18 Mr. Nuxoll, you have 10 minutes for your
19 rebuttal. Please begin when you are ready.

20

21 CLOSING STATEMENT

22 MR. NUXOLL: Thank you, Your Honors. This is
23 Bryan Nuxoll speaking.

24 So in response to the Franchise Tax Board's
25 arguments I have a few points. So first, they are

1 essentially saying that it's because there's no specific
2 evidence that Cassie Schultz has done tax documents in
3 California, therefore, she's not a competent professional
4 with sufficient expertise.

5 However -- and it is true that there's no mention
6 of her expertise -- I had provided evidence to show that
7 under state law she is exempt from CTEC requirements,
8 which are in place by the state legislature to show that a
9 tax preparer is competent under California law. It,
10 therefore, follows that in addition to this and everything
11 else I mentioned in the opening statement, that the tax
12 preparer, Cassie Schultz, is competent and meets this
13 element.

14 And the last thing here is it is true that in the
15 email Cassie Schultz declines to answer the question of
16 whether relevant facts and documents were provided. But
17 the FTB uses its arguments to state that instead this is
18 meant to be taken as Cassie Schultz saying that the
19 relevant facts and documents were not provided. But this
20 just wasn't answered. This was not given in her reply.
21 She just didn't answer the question. And because she
22 didn't answer the question, we have to look for other
23 evidence that this was -- the relevant facts and documents
24 were provided.

25 And the relevant facts and documents were shown

1 to be provided as shown in the FTB's Exhibit A and in my
2 Exhibit 5 where we look at what is relevance and
3 necessary. Well, I list what is relevant and necessary.
4 We have things like what if the business was and the
5 secretary -- whether it was registered with the Secretary
6 of the State. I mentioned things like when the business
7 operated in California, where it was formed, when it was
8 incorporated, when it was dissolved.

9 These are the relevant facts and documents that
10 need to have been provided. And if -- if they were not
11 provided, then Cassie Schultz wouldn't have been able to
12 file the tax return in the first place. But we can see
13 that she filed the tax return. Because if you go -- if
14 you look at the bottom of Exhibit 5 and look at the bottom
15 of Exhibit A, we see that she filled out the tax
16 paperwork, and she -- yeah. It has her -- it has her
17 bullets redacted, but it has her ID. And at least it has
18 her name. It shows that she filled out the taxes.

19 So if the relevant facts and documents were not
20 provided, then she would not have been able to do that in
21 the first place. We -- we have evidence here that despite
22 the fact that she wasn't able to answer that question,
23 Exhibits 2 and 3, which were provided by a previous tax
24 representative, there's still evidence that this element
25 has been met.

1 That's my rebuttal. Thank you, Your Honors.

2 JUDGE RALSTON: Thank you, Mr. Nuxoll.

3 I'm going to turn to my panel again.

4 Judge Akin, did you have any questions for either
5 party?

6 JUDGE AKIN: Judge Akin speaking. No additional
7 questions for either party. Thank you.

8 JUDGE RALSTON: This is Judge Ralston. Thank
9 you, Judge Akin.

10 Judge Hosey, did you have any questions for
11 either party?

12 JUDGE HOSEY: Yes. Just one. This is Judge
13 Hosey. Oh, can you hear me?

14 JUDGE RALSTON: Yes. We can hear you now. Thank
15 you.

16 JUDGE HOSEY: Sorry. I'll get a little closer.
17 Okay. Mr. Nuxoll, I see the return is filed in March of
18 2019. Do we have any documents or correspondence between
19 Appellant and the accountant from before that time, of
20 what was given or what was advised?

21 MR. NUXOLL: This is Bryan Nuxoll speaking. Not
22 that I know of.

23 JUDGE HOSEY: Thank you.

24 JUDGE RALSTON: This is Judge Ralston.

25 Judge Hosey, did you have any further questions?

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JUDGE HOSEY: No. That's all I have. Thank you.

JUDGE RALSTON: Okay. Thank you.

Thank you, everyone. We are ready to conclude this hearing. This case is submitted on December 17, 2021, at 10:11 a.m. Today's hearing in the Appeal of Digital Marketing Strategy is now adjourned, and the record is closed.

Thank you to everyone for attending. The judges will meet and decide your case later on, and we will send you a written opinion of our decision within 100 days. Thank you, everyone.

(Proceedings adjourned at 10:11 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 10th day of January, 2022.

ERNALYN M. ALONZO
HEARING REPORTER