

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A. CHERKASKY,) OTA NO. 19054781
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, April 13, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 9:33 a.m.
and concluding at 10:33 a.m. on Wednesday,
April 13, 2022, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ CHERYL AKIN

Panel Members: ALJ RICHARD TAY
ALJ ANDREW WONG

For the Appellant: A. CHERKASKY
C. CHERKASKY

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC BROWN
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 6.)

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

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Cerritos, California; Wednesday, April 13, 2022

9:33 a.m.

JUDGE AKIN: We are opening the record in the Appeal of Cherkasky, OTA Case Number 19054781. This matter is being held before the Office of Tax Appeals. Today's date is Wednesday, April 13th, 2022, and the time is approximately 9:33 a.m.

My name is Cheryl Akin, and I'm the lead Administrative Law Judge for this appeal. With me today are Administrative Law Judges Richard Tay and Andrew Wong. As a reminder the Office of Tax Appeals is not a court. It is an independent appeals body. The office is staffed by tax experts and is independent of the state tax agencies.

With that, I'd like to ask the parties please introduce themselves for the record, starting with Appellants.

MR. CHERKASKY: Good morning. My name is Andrew Cherkasky. I'm joined by my wife Catherine Cherkasky.

JUDGE AKIN: Okay. Thank you.
And Franchise Tax Board?

MR. BROWN: Good morning. I'm Eric Brown, Tax Counsel with the Franchise Tax Board.

JUDGE AKIN: Okay. Thank you. And was your

1 microphone on? Just a reminder to hit that so that it's
2 audible for everyone. Thank you.

3 MR. BROWN: That's fine. Would you like me to
4 repeat anything?

5 JUDGE AKIN: I think we're good.

6 MR. BROWN: Thank you.

7 JUDGE AKIN: Yeah. Thank you.

8 Okay. Now, I would like to quickly go over the
9 issue to be decided today. As confirmed at the prehearing
10 conference and in my minutes and orders following that
11 conference, the issue to be decided in this appeal is
12 whether Appellant has established reasonable cause to
13 abate the late-filing penalty for the 2015 tax year.

14 Next, I'd like to move onto the evidence in this
15 appeal. Appellants submitted Exhibits 1 through 3. These
16 exhibits were submitted prior to the prehearing
17 conference, and Franchise Tax Board indicated that they
18 did not have any objections to those exhibits. As such,
19 Appellants Exhibits 1 through 3 are now admitted and
20 entered into the record.

21 (Appellant's Exhibits 1-3 were received
22 in evidence by the Administrative Law Judge.)

23 Franchise Tax Board submitted Exhibits A through
24 M. They also submitted those exhibits prior to the
25 prehearing conference, and Appellant indicated they did

1 not have objections to those exhibits. As such, Franchise
2 Tax Board's Exhibits A through M are now admitted and
3 entered into the record.

4 (Department's Exhibits A-M were received in
5 evidence by the Administrative Law Judge.)

6 Before we actually jump into the presentations, I
7 just wanted to go quickly over the order of the
8 proceedings today. As indicated in my minutes and orders,
9 Appellants will have 20 minutes for their presentation,
10 including the witness testimony, after which, Franchise
11 Tax Board will have 10 minutes. Following Franchise Tax
12 Board's presentation, there will be an additional 10
13 minutes for Appellants to make a final closing or rebuttal
14 statement. Questions will be allowed after each of those
15 presentations and after the rebuttal. With that, I think
16 we're ready to begin.

17 Mr. Cherkasky, you indicated you'll be
18 testifying?

19 MR. CHERKASKY: Yes. I wasn't quite sure about
20 the exact process, but I wanted to make myself available
21 to, not just argue the case, but also to be subject to any
22 questions that, I guess, the opposing party or Your Honors
23 may have for me. So I figured to classify that as
24 testimony was most appropriate.

25 JUDGE AKIN: Yeah. What we can do then is just

1 swear you in before you begin and any factual statements
2 that you make can be, you know, taken as evidence. And is
3 Mrs. Cherkasky going to be testifying as well or just --

4 MR. CHERKASKY: I don't see a need for it. She's
5 here, and she's, I'm sure, happy to answer any questions
6 of any of the other parties. I was the one who did the
7 taxes, and so I'm the one who, I guess, has the
8 information that I believe would be helpful to you all.

9 JUDGE AKIN: Okay. Then what we can do is, if
10 she's needed to answer anything, we can swear her in at
11 that time.

12 MR. CHERKASKY: Very good.

13 JUDGE AKIN: So with that, I think we're ready to
14 begin. If you can please raise your right hand.

15
16 ANDREW CHERKASKY,
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 AKIN: Okay. Then we are ready for your
22 argument and testimony, and you may begin when you're
23 ready.

24 ///

25 ///

1 PRESENTATION

2 MR. CHERKASKY: Very good. Well, thank you and
3 good morning.

4 And I first want to say how grateful I am for
5 such accommodations over the years. This has been pending
6 now, I think, almost three years. Covid obviously stalled
7 us. And throughout that process we could have done things
8 remotely. I thought an in-person hearing was beneficial
9 just so that we can all see each other and hear each other
10 and. And the office has been just accommodating in
11 keeping us up-to-date.

12 Even this morning as I was pulling into the
13 parking lot, your folks were calling to make sure I was
14 finding things okay. And I just wanted to say I really
15 appreciate from the Office of Tax Appeals how, I guess,
16 taxpayer friendly or just user friendly the process has
17 been. So thank you and good morning.

18 The issue that we have here is that, I guess, the
19 State Franchise Tax Board perhaps has not been so
20 accommodating of the taxpayer and a bit more draconian.
21 And so what I'd like to do is introduce myself just a bit.
22 And the process that brings us here is the facts are as I
23 see them.

24 My name, again, is Andrew Cherkasky. I am a
25 California attorney, and I've been a California attorney

1 since 2013. My wife Catherine here is also a California
2 attorney. Prior to becoming a California attorney, I was
3 a and still am an Illinois attorney. I graduated in 2006.
4 I served as an officer in the Air Force, and I'm a former
5 federal prosecutor.

6 In 2013 I started a law firm that has been
7 operating since, starting first in Illinois and now in
8 California. And it's been successful, and I've
9 represented many clients over the years and take very
10 seriously the obligations in filing documents in a timely
11 manner, whether for my clients or whether for myself. And
12 so that's just a little bit of background that led to 2015
13 tax returns.

14 I believe that it was my first year, actually,
15 doing California taxes as I had recently moved permanently
16 from Illinois to California. And I did them myself. I
17 logged into the H&R tax software. I'm not a tax attorney
18 I practice criminal law primarily, but I took a tax course
19 in law school. I figure the ability to file taxes should
20 be something that an attorney should be able to do,
21 especially, with the relatively normal filing that I had
22 that year. Nothing particularly complicated.

23 And so I went about doing it on my own and went
24 through the process of doing it. It's not easy. You
25 spend quite a bit of time going through that process, and

1 I did. And I used that tax software. I did so, I
2 thought, very diligently reading all the instructions
3 along the way. If you read the tax return that was
4 intended to be filed, you'll see that it's relatively
5 complicated. Many different sections had to be filled
6 out. Many different instructions had to be followed along
7 the way, and I did so.

8 This isn't a simple 1040 that I was doing. This
9 is -- I believe I was filing -- I think I was in an LLP
10 status at the time. And so you've got your various
11 schedules and all of the pieces that go into that. And,
12 ultimately, I get to the end, and I push the buttons to
13 send it. And I intended to e-file it, and I thought I did
14 so. And the evidence, I believe, is very strong that I
15 did so in a reasonable manner in which a reasonable
16 prudent businessperson would do so.

17 Why? Well, first I would argue that I am a
18 reasonably prudent businessperson. I think that just in
19 the course of history and who I am and what I've done. I
20 can well establish that as a matter of my character. But
21 beyond just that, as I said, all of the steps I went
22 through to file those taxes, I wasn't -- I certainly was
23 not looking to do something negligently or to do something
24 half haz -- haphazardly or in a manner that wouldn't
25 effectively file the taxes.

1 I know the penalties. I know the consequence for
2 not filing your taxes, and so my intent, quite clearly,
3 was to file my taxes appropriately. And it wasn't just
4 that I just pushed the button. I pushed the button, and I
5 entered in -- as the Franchise Tax Board says in their
6 filings -- I entered in a adjusted gross income number
7 from my spouse from the year prior to confirm that I was
8 appropriate -- that I was the appropriate person to be
9 filing this.

10 And it didn't come back with any errors, no
11 alarms, no rejections. Usually, if you log into a website
12 to submit something and you put in those final numbers,
13 you know, the -- the-- make sure you're a human number, if
14 you don't get that right, it tells you you don't get that
15 right. Or if you put in a password and the password is
16 not right, it tells you that the password is not right.
17 There's no warning of any sort in that way. In fact, it
18 accepted the button push, and after I pushed the button to
19 submit those taxes, there's two pieces of information that
20 I received back to indicate to me, in a reasonably prudent
21 fashion, that I had successfully done so.

22 So not only did it accept the pushing of the
23 button after entering that special number, the secret
24 number that only the appropriate user should be able to
25 enter, it accepted that. But it -- I got the email. And

1 you all see the email in Exhibit 1. And on the website in
2 Exhibit 2, you can see that the website indicated that I
3 had e-filed. And that -- the piece from the website in
4 Exhibit 2, that's not just there the same day. That was
5 there for months and months to come. Any time you'd log
6 onto the system, that's what it showed up as.

7 So this wasn't just that day I printed this out.
8 I didn't print this out until all of this came up in 2018,
9 whenever the dispute finally came to my attention, and I
10 was -- I began my initial efforts to rebut the fine or the
11 penalty that I had. This is -- that's when I printed
12 Exhibit 2. So this is -- this was always there, and it
13 said, "E-file, yes." So nothing on there that would
14 indicate it. So I used two separate forms of
15 confirmation. And then beyond that, obviously, I
16 submitted the check.

17 So this would be a whole different case and a
18 whole different circumstance, I think, if I had just filed
19 my return and no check that corresponded with it. In
20 fact, I did file my check, and Exhibit 3 shows that. It
21 shows that the Franchise Tax Board collected that money
22 and cashed it. And it also shows in the memo section that
23 I specifically clarified that it was for the 2015 tax
24 return. And so as a brief aside, I don't quite understand
25 the law in this regarded where the Franchise Tax Board has

1 calculated a penalty on the 14-plus thousand dollars that
2 were due, when in fact I had paid that.

3 So I don't quite understand how you -- they
4 collected the money. They benefited from the money. And
5 now they seem to be wanting to unjustly enrich themselves
6 25 percent over, even though they had the money all along.
7 So as a side argument, I would note that even if you were
8 to find that I failed to act as a reasonably prudent
9 businessperson, that any fine or penalty should be
10 calculated only on the very small amount that perhaps I
11 miscalculated on an interest basis, not the 25 percent or
12 the \$14,000 that they had collected and were using all
13 along in whatever way the State chose to do so. So they
14 weren't confused about what the payment was for. They had
15 it. They collected it.

16 Now, a couple of the other pieces that I would
17 like to point out. The Franchise Tax Board has indicated
18 that an email might have been sent by H&R Block, perhaps
19 even a few hours later, indicating that my return hadn't
20 been accepted. I appreciate them submitting that. I
21 don't dispute that it exists. I certainly didn't get it.
22 And the way that you know that I didn't get it is because
23 I went through all of this effort to effectively file my
24 taxes. I desperately wanted to do so. I mean, I was
25 doing it with all of my very best intent at heart.

1 And had I been notified that I didn't do
2 something right, certainly, I think the evidence is
3 overwhelming that I would have simply corrected that
4 action. It wasn't a particularly complicated set of
5 instructions that came from that email. I think that what
6 they're indicating is that I had to go in and do a
7 different form or guess a different number for that prior
8 year's AGI. I'm not exactly sure, but it seems from that
9 email that the steps were relatively simple.

10 Other things I'd like to note in terms of
11 testimony and fact, is that there was nothing from the
12 State for years thereafter. So I submitted the check.
13 The check had the memo that clearly indicates what it was
14 for. It was for a very specific dollar amount, and it
15 wasn't for several years until there was some sort of
16 notification from the State that there was something
17 ineffective about my filing of taxes.

18 There was some time period there where we had
19 moved, and I think that the State may have sent something
20 to an old address that weren't delivered to us. But as
21 soon as we received a more formalized notification from
22 them at the new address, we certainly responded and acted
23 quickly to try to remedy the situation. We have tried to
24 settle with the State early on. You can see in the
25 State's brief and their prior filings that there was a

1 phone call placed that my statement that I'm making to you
2 today has been consistent all along from the time that we
3 originally spoke to them.

4 And, I mean, I'm not arguing that I shouldn't pay
5 the taxes. I should pay the taxes. The taxes were due.
6 It was \$14,000 and some-odd dollars. Very well. You
7 know, I elect to be a California taxpayer, and I hope to
8 enrich the State through the income that I have and their
9 fair portion of it. It's the penalty, and the draconian
10 penalty that has been assessed to an amount that I had
11 paid in a timely fashion, pretending as though I didn't.

12 It doesn't sit right. It feels as the State is
13 becoming unjustly enriched. Whether I was negligent in my
14 filing or not, again, it's kind of a two-part issue as I
15 see it. And, again, I'm not the expert on the law in
16 this, and I defer to you all in this regard. But it
17 doesn't strike me as a taxpayer as being particularly fair
18 or as something that should be -- that is a message that
19 will resonate amongst the taxpayers. It feels very
20 punitive. It feels very draconian.

21 And those are the facts as I see them. I'm happy
22 to answer any questions, and I'm happy to give a bit more
23 argument if this is the appropriate time for that. I'm
24 sure if this is supposed to be simply focused primarily on
25 the facts, or if I have a bit of leeway to argue a bit

1 through this time period.

2 JUDGE AKIN: It's your time.

3 MR. CHERKASKY: Okay.

4 JUDGE AKIN: You can present any factual
5 testimony or argument you want to. And then after your
6 argument, FTB will have 10 minutes for theirs, and then
7 you will have an additional 10 minutes for your rebuttal.
8 So you can choose what you would like to say now versus
9 what you would like to say later.

10 MR. CHERKASKY: Thank you, Your Honor, for
11 clarifying that.

12 In terms of just a bit of argument, we're using
13 the reasonably prudent businessperson standard. And I
14 accept that reasonably prudent business people from time
15 to time go through the process of getting through
16 extremely complicated and instruction-filled sorts of
17 obligations. It's not a full-proof system.
18 Businesspeople can make mistakes, just as lawyers can make
19 mistakes. It's whether under all of the circumstances and
20 under all of those steps it's reasonable and whether they
21 acted in that reasonable fashion.

22 The State seems to, in all of their filings,
23 really home in on this idea that just simply receiving
24 your tax filing software is confirmation of submission and
25 the other -- the website piece of it isn't enough. And I

1 just -- I can't agree with that. I think that from a
2 reasonable perspective where the state isn't looking --
3 this is not an entrapment situation.

4 The State is not looking to penalize people, at
5 least they shouldn't be. This should be a
6 taxpayer-friendly situation. It should be an effort for
7 all of us to get through the process of the taxpayer
8 making the payment and the State receiving that payment.
9 It should be as cordial as possible, I would think. In
10 fact, I see the taxpayer as a customer, so to speak. I
11 mean, they're there in the state paying taxes willingly.
12 They could up and move to another state.

13 So I think that the legislature and the whole
14 process of establishing the various tax codes and the
15 obligations of the Franchise Tax Board isn't doing so to
16 have a draconian punitive mission at hand. It's to ensure
17 that the taxpayers are doing the best they can to get
18 their -- to get the actual returns filed and payment of
19 those returns. And respect and I appreciate what the
20 Franchise Tax Board's purpose is.

21 But when it gets taken to this point, when
22 there's very understandable circumstances -- I don't know
23 how often you all have seen this. We point out in our
24 brief that the State has not cited any specific cases on
25 point to this. I believe that they cited two other cases

1 that I think are very distinguishable. One, in which
2 there's a \$200,000 payment, that they failed to go through
3 the entire web pay system and failed to push the button.
4 Well, that's -- obviously, differentiated from this case
5 because there wasn't \$200,000 withdrawn from their bank
6 account.

7 Whereas in my case you can see that the money was
8 taken out of my bank account. The check was cashed in the
9 process of going through all of this. And that check,
10 again, in that memo section very clearly indicates what
11 the check was intended for. I would also argue that the
12 State should not be allowed to act in this fashion when
13 they had reasonable cause to contact the taxpayer way
14 ahead of when they actually did. The state in their
15 filings suggest a multitude of times and establishes that
16 they knew that I tried to file my taxes, but they
17 knowingly rejected my taxes.

18 So they have some sort of computer system that
19 shows that I pushed the button, that shows I tried to
20 register with the State, and that the State itself
21 recognizes that it rejected my return on the date in
22 question. So it's not as though it was my tax software
23 that rejected the return, the State did. And so is it
24 really fair to put on the taxpayer a reasonably prudent
25 businessperson standard to go through all of these hoops

1 to make sure that the taxes were actually filed?

2 I mean, almost driving it there and handing it to
3 a person with a signed receipt it seems they want us to go
4 through. Yet, when they reject a claim, it takes them
5 two-plus years to send me a note that it wasn't accepted
6 and then to enrich themselves 25 percent of the total
7 amount due, even though they have been enjoying that total
8 amount due the entire time. It doesn't seem right. It
9 doesn't feel right.

10 And so, again, in kind of conclusion to my
11 opening here, I'm not asking to not pay taxes. I'm not
12 asking for a break on my taxes. I'm not asking for the
13 interest between April and October to be waived. I
14 recognize all of that is what this State is owed. I'm
15 happy to pay California taxes. Always have been. I'm not
16 one of those people who complains about it. It's what it
17 is, and I enjoy the beauty and benefits of living in this
18 State.

19 It's the 25 percent penalty on top of that that
20 just feels outrageously draconian and unforgiving of an
21 individual who, I think, lives a relatively prudent life
22 doing my best to file taxes in a reasonably
23 straightforward manner. And when it wasn't accepted here,
24 the State's failure to contact me certainly should have
25 some degree of impact of who is the reasonable one in all

1 of this, and whether that ultimate penalty is justifiable.

2 I do appreciate the time. Again, I really can't
3 say enough good things about the process that I have gone
4 through to get here and the accommodations that your
5 office has provided. It's taken a long time, and it's
6 certainly nice to see this coming to a conclusion. So I
7 thank you again, and I'm certainly open to any questions
8 on a factual basis or otherwise.

9 Thank you.

10 JUDGE AKIN: Thank you, Mr. Cherkasky, for your
11 argument and testimony. Let me start first with Franchise
12 Tax Board to see if they have any questions for your
13 factual statements.

14 MR. BROWN: I have no questions, Your Honor.

15 JUDGE AKIN: Okay. Thank you.

16 And let me turn now to my panel. Judge Tay, did
17 you have any questions for Appellant.

18 JUDGE TAY: I have one question for
19 Mr. Cherkasky.

20 Thank you, by the way, for participating in this
21 proceeding. When you look at web app or the H&R Block
22 software that you used, you mention that there are
23 communications regarding the completion of your return.
24 Do you see -- and those communications remain there today.
25 Do you see any notification of what the -- of what

1 H&R Block had sent to Respondent with regard to the reject
2 status?

3 MR. CHERKASKY: So much time has passed at this
4 point that I don't believe that the -- what you see in
5 Exhibit 2 is -- or excuse me -- in Exhibit 1. So
6 Exhibit 1 is the e-filing website confirmation. I don't
7 believe that's still there today. I think that was there
8 up until just a couple of years ago, but it was there at
9 the time that I started the appeal process. I can't say
10 that for sure.

11 So the question, essentially, is if clicked
12 around enough, can I find something that says that it was
13 rejected by the State. I'm not sure. Sorry. I can't say
14 that I've clicked around enough to clarify that. No, I'm
15 not sure.

16 JUDGE TAY: Okay. But, I guess, the other part
17 of the question is, when you were looking through to make
18 sure that your return had been filed correctly, did you
19 see any of that communication in, like, in the software
20 regardless of your email. But in the software was there,
21 like, an in-box of some kind or messages that your -- that
22 you noticed that --

23 MR. CHERKASKY: No. I -- I believe that the only
24 thing that I've ever seen that indicated that H&R Block
25 tried to tell me whether through the website or email is

1 the exhibit from Franchise Tax Board, that one email that
2 they have that says it sent it to me. I have not seen
3 that on the website that I can recall, certainly. And
4 what I want to be clear is I don't know if you clicked
5 around enough times and through enough sub-pages to get
6 there, if that might be there.

7 I don't know if I have thoroughly searched every
8 corner of it, but I have no recollection of it. And I
9 certainly did endeavor to find that. That's why I printed
10 out Exhibit 1 when I did. So that -- and not that I know
11 of. So I didn't see one, and not that I know of.

12 JUDGE TAY: Thank you.

13 JUDGE AKIN: Okay. And, Judge Wong, did you have
14 any questions for Appellant?

15 JUDGE WONG: I did have one -- excuse me -- one
16 question for Mr. Cherkasky.

17 In Exhibit 2 there's a sentence. It says, "As
18 soon as California tax office processes your return, we'll
19 send you an email to let you know that your return status
20 has been updated." What was your take on that sentence
21 when you read it?

22 MR. CHERKASKY: Well, that would have been my
23 effort to go into that website and see what you have in
24 Exhibit 1. And so I don't know that I ever specifically
25 thought to search out for the email or look for that

1 email. You know, H&R Block sends you a million things
2 sometimes because they want more services. They want you
3 to sign up for more services. So I don't know that I ever
4 interpreted it as being very strict to look for that email
5 or perhaps ignored it. Because on the website it had yes
6 to the e-file. That was my verification measure. So I
7 didn't think much about it, I guess, once I saw the
8 website say yes.

9 JUDGE WONG: Thank you.

10 MR. CHERKASKY: Of course.

11 JUDGE WONG: No further questions at this time.

12 JUDGE AKIN: Okay. I had just one very related
13 question. So after you attempted to e-file on
14 October 14th, did you ever, shortly thereafter, log back
15 into the H&R Block website to check and see if it had been
16 filed?

17 MR. CHERKASKY: Yes. That's the purpose of
18 Exhibit 1 there, and as well noting that I had -- that the
19 check had been cashed as well. Those were my two
20 verification mechanisms to see that I had done so
21 successfully. Again, I never saw that other email. I
22 wanted to do it all along. I wanted to get it right all
23 along. So I -- it stinks to be here. Not what I intended
24 in the first place and certainly didn't see anything else.
25 But Exhibit 1 and the cashing of the check were my

1 indications of a successful completion.

2 JUDGE AKIN: Okay. Thank you. I don't have any
3 additional questions.

4 I think we're ready now for Franchise Tax Board
5 to provide their presentation.

6 Mr. Brown, you have 10 minutes and may begin when
7 you're ready.

8 MR. BROWN: Thank you, Judge Akin.

9

10 PRESENTATION

11 MR. BROWN: For the 2015 tax year, Appellants
12 used H&R Block's third-party software to prepare their
13 federal and state tax returns, which they intended to file
14 electronically. On October 14, 2016, Appellants submitted
15 their California return through H&R Block's electronic
16 portal in which the software provider would prepare the
17 return for submission to FTB and electronically transmit
18 the return for filing.

19 When Appellants submitted a return to H&R Block
20 for filing, they received an email from H&R Block on
21 October 14, 2016.

22 JUDGE AKIN: I'm sorry to interrupt. Can you
23 move your microphone a little closer? We're having a
24 little hard time hearing you.

25 MR. BROWN: Is that better?

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JUDGE AKIN: Much better.

MR. BROWN: Thank you.

JUDGE AKIN: Thank you.

MR. BROWN: When Appellants submitted the return to H&R Block for filing, they received an email from H&R Block on October 14, 2016, at 11:01 a.m. The email message attached as an exhibit to Appellants' appeal letter reads, "Congratulations. Your California return is complete. As soon as California Tax Office processes your return, we'll send you an email to let you know that your return status has been updated."

Appellants understood this email message to read that their tax return filing process had completed, and that their filing obligation had been discharged. However, the email message clearly indicated that a subsequent email would be forthcoming to inform Appellants as to whether their return had been processed by California's tax office. H&R Block sent a follow-up email two and a half hours later at 1:40 p.m. on October 14, 2016.

The email advised Appellants that their return was rejected and provided a reason for the rejection and the manner in which Appellants could still file their 2015 return. Quote, "Your prior year adjusted gross income doesn't match the Franchise Tax Board's records. So you

1 can't sign your return electronically. You can still
2 e-file by signing an FTB 8453-OL California e-file return
3 authorization form. This won't delay the processing of
4 your return," unquote.

5 Appellants have not acknowledged the follow-up
6 email but have not disputed that they received it. The
7 following-up email left no doubt that the tax return had
8 not been filed or processed by the FTB. Appellants did
9 not follow up to ensure their tax return was filed. They
10 argue they were completely surprised over a year later to
11 receive the notice from FTB advising them that there was
12 no 2015 return on file.

13 Seven months after FTB sent notice that there was
14 no return on file, FTB sent a request for tax return to
15 Appellants requesting for Appellants to file their tax
16 return or indicate why they believe they did not need to
17 file a return. One month later in July 2018 Appellants
18 filed their tax return. The FTB subsequently imposed the
19 delinquent return penalty. Appellants paid the amount due
20 and filed their claim for refund.

21 It is well settled that each taxpayer has a
22 personal nondelegable obligation to file the return by the
23 due date. In its 2018 precedential opinion in the Appeal
24 of Quality Tax and Financial Services, Inc., the OTA
25 reenforced this nondelegable obligation and made clear

1 that in the absence of an acknowledgment that a return was
2 transmitted, received, or accepted, an ordinary
3 intelligent and prudent businessperson would have viewed
4 the e-file history and acknowledgment records to confirm
5 whether the return had been timely transmitted, received
6 by the tax preparation software provider and accepted.

7 Moreover, an ordinarily intelligent and prudent
8 businessperson after viewing the e-file history and
9 acknowledgment records and noticing the return had not
10 been accepted would have made other attempts to file prior
11 to the end of the extension period. The OTA reaffirmed
12 this position in the 2019 precedential opinion of Appeal
13 of Auburn Old Town Gallery, LLC. The initial email
14 message sent by H&R Block did not convey that Appellant's
15 return had been transmitted, received, or accepted.

16 The follow-up email clearly communicated that the
17 return had been rejected and also provided direction for
18 Appellants to file the return so that it would not be
19 late. In view of evidence that put Appellants on notice
20 that their tax return had not been filed and in view of
21 OTA precedent holding the taxpayers are required to follow
22 up to ensure tax returns are transmitted, received, and
23 accepted, Appellants have not established reasonable cause
24 to abate the penalty.

25 If I could, I would like to address one of the

1 questions put to Appellants by Judge Tay. You asked
2 whether the email -- or referred to an email sent to FTB,
3 if Mr. Cherkasky heard it -- and I don't want to
4 incorrectly phrase that. But my response is that is
5 Exhibit M to the Franchise Tax Board's reply. That was an
6 email that was sent to Mr. Cherkasky, and the email
7 address is provided in that exhibit. And FTB got a copy
8 of that email when we reached out to H&R Block to see if
9 there had been a follow-up email that had been.

10 I will respond to any questions the panel might
11 have.

12 JUDGE AKIN: Okay. Thank you, Mr. Brown.

13 Let me turn to my panel to see if they have any
14 questions of Franchise Tax Board.

15 Judge Tay, did you have any questions?

16 JUDGE TAY: Yes. I have a few questions just to
17 clarify. Exhibit M of Franchise Tax Board's exhibits is
18 not exactly a copy of the email that Mr. Cherkasky
19 received, but the content of that email was copied and
20 pasted into this email; is that correct?

21 MR. BROWN: That's correct.

22 JUDGE TAY: Okay. Okay. And -- so I think
23 there's a little bit -- maybe if you could just help
24 clarify for me. There's a few terms that are being thrown
25 around here. And so there's acceptance of a tax return.

1 There's processing the tax return. There's a complete tax
2 return, and there's a submitted tax return. Would you
3 just clarify kind of what -- excuse me -- can you clarify
4 what those terms mean?

5 MR. BROWN: Well, I will do my best in view of --
6 well, this is -- this is the environmental -- pardon me --
7 the electronic tax filing regimen, and we're dealing with
8 a third-party software. So this is not Franchise Tax
9 Board's process. But my understanding is that when
10 somebody uses a third-party software, such as one of
11 Intuit's product or H&R Block. And I mention Intuit
12 because that was one of the softwares from the Quality Tax
13 and Financial Tax Services or the Auburn Old Town Gallery,
14 LLC, cases.

15 But in any event, if it is accepted -- I would
16 only speculate -- but I would say that it had been
17 accepted for filing by the third-party software portal.
18 And whether it's processed or accepted, I can only
19 speculate. But I know when FTB accepts a tax return, that
20 means they will process it. That means they will accept
21 it as having been filed. They will process the values in
22 there and evaluate them. And the other term you used?

23 JUDGE TAY: Oh, sorry. Processed or processing.

24 MR. BROWN: Oh, process.

25 JUDGE TAY: Yeah.

1 MR. BROWN: Yeah. We use that term processing
2 for accepting the values or evaluating the values in there
3 and to determine tax liability based on whatever values
4 are in the return itself.

5 JUDGE TAY: Okay. And then when a tax return is
6 complete.

7 MR. BROWN: Complete. That's a term that
8 H&R Block use, and I don't really want to speculate on
9 that. Whether it's complete or not, I don't offer an
10 opinion. But what it means is something that's unique to
11 H&R Block.

12 JUDGE TAY: Fair enough. That's fair. I don't
13 want you to speculate what H&R Block means by using those
14 terms. And then submitted. You used "submitted" in your
15 presentation. So what does that mean when a tax return is
16 submitted?

17 MR. BROWN: Well, submitted if a tax return is
18 submitted, it can be submitted either electronically or by
19 mail. Perhaps somebody could even walk in the form and
20 submit the form that way. If it is submitted
21 electronically, it can go through a third-party software
22 provider and/or it can go through a direct e-file program
23 perhaps that FTB had or has.

24 JUDGE TAY: Okay.

25 MR. BROWN: That's what I mean by that.

1 JUDGE TAY: Thank you for clarifying. And just
2 one follow up on that is submitted doesn't necessarily
3 mean accepted; correct?

4 MR. BROWN: Oh, that's correct.

5 JUDGE TAY: Okay.

6 MR. BROWN: Yes.

7 JUDGE TAY: Okay.

8 MS. BROSTERHOUS: I'm sorry. May I make one
9 clarification?

10 JUDGE TAY: Sure. Sorry.

11 MS. BROSTERHOUS: And I just want to clarify that
12 here because the signature wasn't verified, the return was
13 submitted without a signature, and that's why it was
14 rejected.

15 JUDGE TAY: Okay. Now, you mention about how
16 taxpayer failed to check on the status of the return. So
17 would you just kind of inform me in 2016 how would the
18 taxpayer have checked?

19 MR. BROWN: Well, I'm sure they would have
20 checked with H&R Block in this case and make the
21 determination as to whether the tax agency, the Franchise
22 Tax Board, had accepted the return for filing. If there's
23 a way that FTB and H&R Block have some kind of protocol
24 whereby it's acknowledged and notice is sent, I'm sure
25 there is one. How would they have done that? I -- I

1 suspect they would have gone through H&R Block. As to
2 Franchise Tax Board I -- I don't know.

3 JUDGE TAY: Okay. Yes, Ms. Brosterhous?

4 MS. BROSTERHOUS: I think I can speak to that a
5 little bit. So currently we have My FTB. So you can have
6 an account on the FTB website, and you can check the
7 status of your filed return there.

8 JUDGE TAY: And was that available also in 2016?

9 MS. BROSTERHOUS: I'm trying to think back. I
10 believe it was. That might have been in the early days,
11 but I'm pretty sure it was available at that time. And
12 also, I know as someone who does e-file and have been
13 doing so for a long time now, you always receive an
14 additional email after you've submitted the return that
15 says, "Congratulations. Your return has been accepted by
16 the Franchise Tax Board or the IRS." So you should be
17 looking out for that.

18 JUDGE TAY: Okay. Now, if -- I know it's a
19 little bit of a hypothetical, but I'm trying to move a
20 little bit towards reasonable cause here, and I'm
21 wondering a little bit about what the limits are here.
22 And so let's say that the taxpayer did check, and there
23 was an error on Franchise Tax Board's website saying your
24 return has been accepted but the signature was wrong.
25 Would that be grounds for kind of relieving -- relief of

1 the penalty?

2 MS. BROSTERHOUS: We would need evidence of that.
3 If we see that the error was, in fact, ours in our system,
4 we would definitely consider that to be reasonable cause.

5 JUDGE TAY: Okay. And why isn't an acceptance of
6 payment an indication of the acceptance of return?

7 MS. BROSTERHOUS: A return still has to be filed
8 because the only way we can verify the amount of the
9 payment being correct and the correct amount of tax being
10 assessed is with the filing of the return and the
11 processing and validating of those values.

12 JUDGE TAY: Okay.

13 MS. BROSTERHOUS: So it's like two separate --
14 it's two separate requirements, the filing and the
15 payment.

16 JUDGE TAY: Fair enough. If the software
17 provider provided an erroneous notice, like if H&R Block
18 had said, you know, provided a notice that was in error.
19 Would that have been grounds for reasonable cause or if
20 any software provider for that matter?

21 MS. BROSTERHOUS: If we, again, had evidence that
22 H&R had been at fault. We might consider it, but the
23 taxpayer has a nondelegable duty. So they would probably
24 need to still check with us to make sure.

25 JUDGE TAY: Would it have been different if it

1 was a tax preparer. Let's say we have an email from an
2 accountant that says, "Great job. Your tax return is
3 complete. I'll let you when Franchise Tax Board finishes
4 processing it."

5 MS. BROSTERHOUS: We actually have many cases
6 like that, and no reasonable cause has been found there
7 because of the nondelegable duty requirement.

8 JUDGE TAY: Okay. Thank you. I have no further
9 questions.

10 JUDGE AKIN: Okay. Thank you, Judge Tay.

11 Judge Wong, did you have any questions for
12 Franchise Tax Board?

13 JUDGE WONG: I do not. Thank you.

14 JUDGE AKIN: Okay. And I do not have any
15 questions for Franchise Tax Board either. So with that, I
16 think we're ready for Appellant's closing and rebuttal.
17 And you have 10 minutes.

18 MR. CHERKASKY: Thank you.

19

20 CLOSING STATEMENT

21 MR. CHERKASKY: And I will start with just, I
22 guess, a few points in direct rebuttal. The Franchise Tax
23 Board has a particularly pedantic view of the process.
24 We're in a very modern era with computer software and
25 processes that are, to reasonable people, expected to work

1 relatively easily. I mean, we all are computer users, and
2 we all frequently have to go through the process of
3 navigating our world with e-payments and electronic
4 filings and whatnot.

5 The State really tries to distance themselves
6 from the H&R Block software, calling it obviously
7 third-party software and having very little knowledge of
8 the inner workings of that. I object to that. I don't
9 think that's particularly credible. They are very much
10 working in conjunction with these e-file websites. They
11 very much could eliminate the ability for those websites
12 to e-file.

13 There are some states -- or kind of back in my --
14 way back machine when I was younger and filing e-file --
15 going on to H&R Block-type websites or these various
16 websites, there were states that weren't setup to accept
17 e-filing, and you would have to mail things in. That's
18 the way that it was done until the states became
19 sophisticated enough in order to have a coordinated system
20 with the online software, and so California did so. And
21 they did so with, I guess, Intuit but also with H&R Block,
22 the service that I use.

23 And so to the extent here that the State is, I
24 guess, going through the process of accepting them as
25 acceptable third-party process, I really think the State

1 has some degree of obligation to make sure that the
2 standard taxpayer -- and I don't even consider myself a
3 standard taxpayer. I'm a relatively sophisticated
4 taxpayer.

5 In fact, according to the State, I believe that I
6 am, in fact, authorized to file taxes on other people's
7 behalf as an attorney. So I wouldn't, and I haven't. But
8 in terms of who I am, I mean, I'm a relatively
9 sophisticated citizen of the state. And I view this
10 website and the email that I get saying, "Congratulations,
11 your California return is complete," with an exclamation
12 point on there, to be pretty confirmatory of things. I
13 felt pretty good getting that. I felt pretty comfortable,
14 and then I stuck in the mail my check, which was cashed.

15 I do want to highlight just two cases that the
16 State uses in their reply brief dated back November of
17 2019. And both of those cases looks like Scanlon and
18 Friedman deal with taxpayers; first, incorrectly in
19 putting in bank information and second, taxpayer not going
20 through the web payment process system. And this is
21 something that the State didn't mention in their argument
22 just a minute ago is the idea that I paid, and that it was
23 accepted by them, and that I was able to verify that with
24 my bank.

25 In both those cases, the taxpayer was well aware

1 that it was unsuccessful. Because if they had logged into
2 their bank account, they would see that these payments did
3 not go through. So very different circumstances. Again,
4 they kind of get to this idea that the taxpayer is
5 ultimately responsible. I am responsible, and I did
6 attempt to file this, and I did pay the taxes.

7 And so that kind of gets to the final piece.
8 And, again, the State didn't comment on this -- I don't
9 believe directly, although they may have -- is how they
10 get to the calculation. So the State in -- on page 2 of
11 their initial brief, the Respondent's opening brief talks
12 about Section 19131 in terms of the 5 percent penalty or
13 25 percent total penalty shall not exceed 25 percent, but
14 it's all based on the tax due. And so I might be ignorant
15 on the law in term of when it's calculated that the tax is
16 due, and perhaps the law is particularly unforgiving in
17 this regard, but I can't imagine that it is.

18 They had the money. So I -- they had the money
19 all along. So I guess when I didn't file the taxes as I
20 was supposed to, my tax return, on October 16th and they
21 had the money, I really do believe that out of equity --
22 at a minimum, even if I was found to be in error and not
23 acting as a reasonably prudent businessperson, I plea with
24 the Board to calculate my tax penalty based on the small
25 amount of interest that I think I miscalculated between

1 April and October.

2 That's the total penalty because the whole rest
3 of it was paid. You know, the kind of idea of submitting
4 a tax return without a signature, I think that's an
5 interesting analogy. Because if I had put it in the mail
6 and just forgot to sign the bottom block, I don't think
7 we're talking about a nearly two-year period until they --
8 until the State contacts me about the adequacy of filing.
9 If somebody submits something and they do their best,
10 doesn't -- isn't the whole process here the State reaches
11 back out to them, let's them know, sends out a mailing
12 almost immediately?

13 In fact, I don't even understand. And this might
14 be my own little rant on the Franchise Tax Board here, but
15 I think that it has some degree of relevance when they
16 know that my wife is a taxpayer in the State, and they
17 don't see a tax right return from her, why isn't a notice
18 sent out the next month? I -- I -- why is it a year and a
19 half? Why is it so that the State can ultimately collect
20 \$4,000 from us? Isn't the idea to get the money, not to
21 get the penalties? So that's just a bit of an aside.

22 But if I were to have submitted it without a
23 signature, I would think that the State would have
24 responded much more quickly. And same thing with having
25 gone through a tax preparer. I think that if I had gone

1 onto a -- my accountant's website and it says, you know,
2 "California e-file, okay." I think that that's
3 sufficient.

4 I really do believe that when I can log on to
5 that third-party system and it suggests in perpetuity up
6 until -- again, up until the point that I filed my initial
7 brief, that their website indicates that my e-file was
8 okay. It's all that you need as a taxpayer to feel warm
9 and fuzzy. They suggest that you have to call or walk
10 there or knock on the door. I don't believe that there
11 was an easy readily accessible system back in 2016, and I
12 don't think that the Board has sufficient evidence to
13 establish before today that it did. I don't believe that
14 there was an easy online way to look to see if they had
15 what you had attempted to file.

16 So with all of that and with my best effort,
17 obviously, from a personal perspective, but I do think
18 that this is an inherent issue in the State. If people
19 are going through this effort and the State has such an
20 unforgiving attitude towards people that obviously put
21 forth a good effort to get something done in a relatively
22 business sense, I think that an injustice is being done.
23 So I don't know that this has precedential value or not.
24 That's not my intent here. I think that the circumstances
25 are highly unique.

1 In fact, my position and my background is pretty
2 highly unique. So I don't know how much precedential
3 value it would carry even if you did find for me. But it
4 really does, at the end of the day, feel unfair that the
5 State of California could profit so significantly from
6 a -- a very understandable error. Whether that's on one
7 side of the reasonably prudent businessperson, that's for
8 you all to decide. But it doesn't feel right knowing that
9 I went through all the steps, knowing that I got the
10 email, and knowing what that website says really puts a
11 huge, I think beyond just a reasonably prudent
12 businessperson perspective.

13 And you would be putting a standard like a --
14 basically, an accountant's view, somebody who has an
15 extensive experience with the system type of perspective.
16 Franchise Tax Board has that experience. I, as a
17 taxpayer, don't. I do this once a year, and you do the
18 best you can. You follow the instructions to the T as
19 best as you possibly can. Never the intent. You can see
20 all along what my intent was, and I think that it was to
21 file these successfully.

22 So thank you for your consideration. Again,
23 thank you for the time, and I do feel privileged to be
24 here as one of the first group of people who are back in
25 person. I think it's kind of unique to be in that role.

1 So thank you again for the accommodation.

2 JUDGE AKIN: All right. Thank you,
3 Mr. Cherkasky.

4 Let me turn again turn it to my panel members to
5 see if they have any final questions for either party.

6 Judge Tay.

7 JUDGE TAY: No. I think no further questions.

8 JUDGE AKIN: Okay. Thank you.

9 And Judge Wong?

10 JUDGE WONG: No questions. Thank you, parties.

11 JUDGE AKIN: I do have one follow-up question for
12 Franchise Tax Board. I'm wondering what would happen if
13 someone did, you know, mail in a paper return that wasn't
14 adequately signed. What does Franchise Tax Board do in
15 that situation? Do they notify the taxpayer?

16 MR. BROWN: Thank you, Your Honor. Yes, we would
17 reject that. Signature is an important part of the tax
18 return. And in particular, before the signature line on
19 the tax return appears the following: Under penalties of
20 perjury, I declare that I have examined the tax return,
21 including accompanying schedules and statement. And to
22 the best of my knowledge and belief, it is true and
23 correct and complete."

24 That's an important statement because it verifies
25 all the information that is contained in the return. We

1 would reject it whether it was not signed, whether e-filed
2 or personally delivered or delivered in the mail.

3 JUDGE AKIN: Yes. Just to follow up though, is
4 there some sort of notification that you at Franchise Tax
5 Board then sends to that taxpayer? And what's the time
6 frame of when that's typically sent to the taxpayer,
7 approximately?

8 MS. BROSTERHOUS: There definitely is a notice
9 that is sent when a return is submitted without a
10 signature. Unfortunately, I don't know the time frame.
11 And I would be happy to provide you with that information
12 after this hearing.

13 JUDGE AKIN: Do you know offhand whether it is
14 relatively immediate or is it months down the line?

15 MS. BROSTERHOUS: Unfortunately, I just have no
16 knowledge of that process. But if you'll allow me to note
17 one additional thing? Regarding my earlier statement
18 about My FTB, it was in fact available in 2016. And if
19 necessary, we can provide evidence of its availability to
20 the taxpayers at that time.

21 JUDGE AKIN: Okay. Thank you.

22 I think Judge Tay has one additional question.

23 JUDGE TAY: Sorry. For Respondent, just as a
24 follow up, apart from courtesy or normal practice or even
25 efficiency, what is the legal duty for Respondent to

1 notify a taxpayer of a return that has been rejected, if
2 any?

3 MS. BROSTERHOUS: Well, we do notify them. As to
4 the legal duty, I can't speak to the authority for that,
5 but we always notify when a return is rejected.

6 Go ahead, Eric.

7 MR. BROWN: Okay. And also it depends on how the
8 return is rejected. If it's rejected by the third-party
9 software, we may or may not know about that. If it's
10 rejected by FTB, we would -- we would notify.

11 MS. BROSTERHOUS: Yes. Let me revise my
12 statement to clarify it just to say that if it is rejected
13 by us, then we would notify always. We are not
14 responsible for third-party notifications.

15 JUDGE AKIN: I have one additional follow-up
16 question. In this case, was it rejected by the
17 third-party software, or was it rejected by Franchise Tax
18 Board?

19 MR. BROWN: Well, I believe if you look at the
20 exhibit, the email, it indicates that it was rejected --
21 it would have been rejected by H&R Block's electronic
22 portal, and the reason is given for that. And,
23 apparently, it didn't pass the muster of H&R Block's
24 electronic portal qualifications before being forwarded to
25 FTB. And that's similar to how Intuit works as well on

1 their Lacerte program.

2 JUDGE AKIN: Okay. Thank you.

3 JUDGE TAY: So what I'm understanding from you is
4 that the taxpayer submitted their return to H&R -- through
5 H&R Block. H&R Block, without consulting FTB, compared
6 the prior year's AGI, and deemed it invalid, and then
7 H&R Block rejected the return unilaterally. Okay.

8 MS. BROSTERHOUS: That's correct.

9 JUDGE TAY: So H&R Block has access to taxpayer's
10 prior year AGI whether or not he used H&R Block?

11 MR. BROWN: Yes. And the rejection -- there's a
12 footnote in our reply brief that indicates the rejection
13 is due to the inability to verify the signature of the
14 taxpayer. So it's an important matter to have the correct
15 identifying information. And that's why we insist on the
16 AGI from last year in order to identify the correct
17 submitter.

18 JUDGE TAY: That understand. But I guess the
19 part that I'm a little -- I just wanted to clarify, is
20 that H&R Block has this information on their own, and it's
21 H&R Block that's rejecting it, as opposed to checking with
22 FTB in some way, communicating with FTB database first?

23 MS. BROSTERHOUS: That's correct.

24 JUDGE TAY: Okay. Okay.

25 MR. CHERKASKY: May I make a comment on that?

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JUDGE AKIN: Yes, go right ahead.

MR. CHERKASKY: So I'm looking at Exhibit K from the Respondent's opening brief, which appears to be the PIT tax return search results. My interpretation was that a document from the State. I believe it was the State who communicated to H&R Block that the AGI did not match up. I mean, how would H&R Block have that information, otherwise? It obviously goes through the State.

And I think the State, in a couple of places in their various briefs, pretty clearly indicate that the State was the one who rejected the filing from H&R Block and then communicated back to them. And so that kind of goes back to the earlier question in this round of questions that you asked the government about what they would do with an unsigned document, and that they would go back to the taxpayer.

They didn't go back to the taxpayer. They didn't come to me. They went to H&R Block. And they relied on H&R Block, their third party -- they keep saying third party. It's a conduit to the government. I mean, this is an act of the -- this is, essentially, an act of an agent of the government in approving them to go through this process. And the government is responsible for its acts of its agents here.

So they're going to that third-party website and

1 not going through the effort to make sure that the website
2 does more to indicate that my e-filing was not okay. It
3 still said yes. So it all kind of comes back. And,
4 again, Exhibit K very clearly to me and in context of what
5 it says, came from this. That's the State's rejection.

6 MS. BROSTERHOUS: May I be allowed to clarify?

7 JUDGE AKIN: Yes.

8 MS. BROSTERHOUS: So we didn't reject the return.
9 What happens is H&R Block sends that particular number to
10 us, and we tell them if it's accurate. If it's
11 inaccurate, we say no, it's inaccurate. And then H&R
12 Block makes the decision to reject the return.

13 JUDGE AKIN: Okay. Thank you for the
14 clarification.

15 Are there any final follow-up questions from my
16 panel? It's looking like no. Okay. Well, I think we are
17 ready to conclude the case. I want to thank the parties
18 for their presentations today.

19 The panel of Administrative Law Judges will meet
20 and decide the case based upon the arguments, testimony,
21 and evidence in the record. We will issue our written
22 decision no later than 100 days from today. The case is
23 submitted, and the record is now closed.

24 This concludes our hearing calendar for today.
25 Thank you so much everyone.

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(Proceedings adjourned at 10:33 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 5th day of May, 2022.

ERNALYN M. ALONZO
HEARING REPORTER