

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. CATLIN and L. CATLIN,) OTA NO. 21037387
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, July 26, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:02 p.m. and concluding at 1:49 p.m. on
Tuesday, July 26, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ MIKE LE

Panel Members: ALJ SARA HOSEY
ALJ JOSHUA LAMBERT

For the Appellant: MURRAY GREIFF
D. CATLIN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PHILIP KLEAM
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-2 were previously received at the prehearing conference.)

(Department's Exhibits A-H were previously received at the prehearing conference.)

(Department's Exhibit K was received on page 7.)

APPELLANTS'
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

David Catlin

8

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By Mr. Greiff

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By Mr. Klean

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By Mr. Greiff

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California; Tuesday, July 26, 2022
1:02 p.m.

JUDGE LE: We're opening the record in the Appeal of Catlin. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 21037387. Today's date is Tuesday, July 26th, 2022, and the time is approximately 1:02 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 Mike Le, and I'll be the lead judge. Judge Sarah Hosey and Judge Josh Lambert are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participant to ensure we have all the information needed to decide this appeal.

Now for the parties introductions. For the record, will the parties please state their name and who they represent, starting with Respondent Franchise Tax Board.

MR. KLEAM: Good afternoon, Judge. This is Phillip Kleam for Respondent Franchise Tax Board.

JUDGE LE: Good afternoon, Mr. Kleam.

1 MR. YADAO: Good afternoon. This is Eric Yadao
2 also for Franchise Tax Board.

3 JUDGE LE: This is Judge Le. Thank you,
4 Mr. Yadao.

5 Now turning to Appellants. Please state your
6 name.

7 MR. GREIFF: Murray -- excuse me. Murray Greiff,
8 attorney for the Appellants.

9 JUDGE LE: Thank you, Mr. Greiff.

10 MR. CATLIN: And David Catlin.

11 JUDGE LE: This is Judge Le. Thank you,
12 Mr. Catlin.

13 Let's move on to my minutes and orders. As
14 discussed with the parties at the prehearing conference on
15 July 6th and notated in my minutes and orders, the issues
16 in this matter are first, whether Appellants have
17 established reasonable cause for the late payment of tax,
18 and second, whether Appellants have established the basis
19 to abate the estimated tax penalty. Appellants will have
20 Mr. Catlin testify as a witness.

21 Appellants' Exhibits 1 and 2 were entered into
22 the record in my minutes and orders. Upon OTA's request,
23 Appellants submitted a clear copy of Exhibit 1 on
24 July 6th, 2022. Respondent's Exhibits A through J were
25 also entered into the record in my minutes and orders. On

1 July 11, 2022, Respondent timely submitted Exhibit K,
2 which is an redacted copy of Exhibit I. Appellants did
3 not submit any rejection. So this additional exhibit is
4 entered into the record as Exhibit K. Per OTA's order on
5 July 19, 2022, Exhibit K is partially sealed, and Exhibit
6 I has been removed from the record.

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

9 Today's oral hearing will begin with Appellants'
10 presentation, starting with Appellant's witness testimony
11 for up to 10 minutes. Does anyone have any questions
12 before we begin with Appellants' witness testimony?

13 Starting with Respondent Franchise Tax Board, any
14 questions before we begin?

15 MR. KLEAM: Phillip Kleam. No questions, Judge.

16 JUDGE LE: Thank you, Mr. Kleam.

17 This is Judge Le. Turning now to Appellants. Do
18 you have any questions before we begin with the witness
19 testimony?

20 MR. GREIFF: Murray Greiff. No questions.

21 JUDGE LE: This is Judge Le.

22 MR. CATLIN: David Catlin. No questions.

23 JUDGE LE: This is Judge Le. Thank you both.

24 Okay. At this point, Mr. Catlin, would you
25 please raise your right hand.

1 MR. CATLIN: Yes.

2

3 DAVID CATLIN,

4 produced as a witness, and having been first duly sworn by
5 the Administrative Law Judge, was examined and testified
6 as follows:

7

8 JUDGE LE: Thank you.

9 Okay. Appellants, you have up to 10 minutes for
10 the witness testimony, starting at 1:06 p.m. Please
11 proceed. Thank you.

12

13 DIRECT EXAMINATION

14 BY MR. GREIFF:

15 Q Okay. Murray Greiff. Mr. Catlin, can you tell
16 me your age please?

17 A I'm 78.

18 Q Murray Greiff. Your education, Mr. Catlin?

19 A David Catlin. Bachelors, South Dakota State
20 University.

21 Q And what year did you get that degree,
22 Mr. Catlin?

23 A 1966.

24 Q Mr. Catlin, this is Murray Greiff. Mr. Catlin,
25 what were the circumstances that made it necessary for you

1 to make the estimated tax payment that's in question here
2 today?

3 A We were a minority shareholder in a company that
4 was acquired by a private equity company, and there were
5 confusions with the acquiring company about the handling
6 of the money of the return of capital and what was the
7 capital gain and some things like that. And they finally
8 got something to our accounting person for the three of us
9 that were shareholders, and it came almost to the last day
10 of filing an estimate.

11 And they did get it there, and they did -- our
12 accounting managers for our taxes and our regular reports
13 we do every year advised me -- I think it was on the 14th
14 or the end of the 13th of June to make the \$900,000
15 estimate based on what they thought was somewhat extra
16 conservative but the right thing to do. And I did that on
17 June 14th.

18 Q And how did you do that, Mr. Catlin? Murray
19 Greiff speaking.

20 A I did it with -- I am sorry. Yeah. David
21 Catlin. I did it on an online payment, which is something
22 that I normally do. So I did it in a hurry, but I did it
23 and got it out and got the confirmation back, and I
24 thought I was done.

25 Q Have you previously made -- sorry. Murray

1 Greiff. Have you previously made electronic payments?

2 A Oh, yes. I've done this for many, many years. I
3 have the same accounting bookkeeping firm that does it.
4 And for the past 10 or 15 years I've done them, I think,
5 almost entirely through UBS where we have our investment
6 accounts.

7 Q And Mr. -- Murray Greiff. Mr. Catlin, when did
8 you learn that the payment did not go through?

9 A Well, none of us had any thought that it didn't
10 go through. So when the notice came from the California
11 Tax Board, I think -- I don't have it in front of me --
12 but I believe it was in November that there was a short
13 payment after they had done the tax return, and I owed
14 \$600 -- six-hundred and some thousand -- \$625,920.20,
15 including the penalty and the accrued interest. That was
16 the first I knew about it, and I was somewhat shocked.
17 None of us thought that that was the case.

18 Q And, Mr. Catlin, why were you shocked that that
19 wasn't the case?

20 A Because if anything goes wrong with a -- after
21 I've had my confirmation that the payment is there, I've
22 always -- if anything ever was questioned or something was
23 done wrong or dollars were in a different account or
24 something, the bank had an arrangement with UBS that they
25 would immediately notify them, and they would correct

1 whatever is wrong. So I never thought about -- at least I
2 didn't that day thinking about confirming to them that I
3 had done it because it just always has happened. And I
4 made an assumption, which I shouldn't have made the
5 assumption.

6 Q Now, Mr. Catlin, I bring your attention to our
7 Exhibit 2, which is the UBS letter. Is that in response
8 to your inquiry as to the \$900,000 payment?

9 A Yes, it was.

10 Q Okay. And what was your relationship --

11 A This is David Catlin. Yes, it was. I'm sorry.

12 Q Yeah. Murray Greiff. What -- can you confirm or
13 explain a little bit what your relationship was at the
14 bank? Why would they have had this relationship with you?

15 A All of our investment amounts that we have are
16 with UBS and have been 10 or 15 years with this particular
17 office. We were in there kind of as a favored
18 private-client relationship. They did all their banking
19 through an outside bank. But that bank had an arrangement
20 with the team that looked after us, that if anything came
21 through in the way of an online payment or something like
22 that, if there was any issue with it, they would
23 immediately call UBS if something was wrong; wrong
24 account, wrong this, wrong that. They immediately took
25 care of it. They wouldn't be rejecting it.

1 Q Murray Greiff. Mr. Catlin, did you have any
2 extraordinary type of accounts with the bank that would
3 prohibit some electronic payments?

4 A Not that I know of. David Catlin. Not that I
5 know of.

6 Q Murray Greiff. Mr. Catlin, at this time this
7 payment was made, how much money did you have in the bank?

8 A We had just sold the 20-year-old or 18-year-old
9 company to a private equity company, and I had in excess
10 of \$4 million still in liquid assets at our main Catlin
11 family account at UBS.

12 Q Murray Greiff. Mr. Catlin, did you check your
13 bank account to see whether the check -- the payment was
14 made?

15 A David Catlin. No, I never checked it.

16 Q Why didn't you check it, Mr. Catlin? Murray
17 Greiff.

18 A David Catlin. Probably force of habit, although
19 I've never had a deposit this large that I can ever
20 recall. But as a force of habit I knew that if anything
21 was wrong, they would take care of it. And I already had
22 the confirmation that it was in, and I never thought about
23 it. It's not that I don't think \$900,000 is a lot of
24 money. I remember when \$90 was a lot of money. But I
25 happen to have the money that came in from the takeover of

1 the business, and I was just sure it would be there.

2 I don't receive statements from that bank. I
3 only get summaries from UBS on a monthly -- on a monthly
4 report. I'm not one that balances my checkbook or looks
5 at unless there's a close issue of some sort. Other than
6 that, I look at the monthly reports just a little bit, and
7 I don't look very much at those. And I proceed according
8 to kind of a trust factor and the fact I've never had
9 anything go wrong.

10 Q Murray Greiff. Mr. Catlin, have you had any
11 other -- strike that.

12 Mr. Catlin, have you ever requested an abatement
13 or a refund for any penalties that were assessed?

14 A I can't recall that I ever made such a request of
15 abatement or refund, to the best of my memory.

16 Q Mr. Catlin, have you had any other penalties
17 assessed?

18 A David Catlin. I don't think so, unless there
19 might have been a few dollars or something, if an \$800
20 Franchise Tax thing for -- I think it's made April 15th,
21 maybe once or twice over the years I didn't send it or
22 forgot to send it or was reminded to send it. So if there
23 were, they were probably two-digit penalties, if there was
24 some.

25 I don't necessarily recall, but I don't believe I

1 always perfectly turned that in. And I think it's April
2 15th, or else I forgot one of the entities, one or the
3 other. But I don't -- other than that, I don't think
4 there's ever been anything.

5 Q Are you current in filing and paying your taxes
6 now?

7 A David Catlin. You bet. I have a new discipline
8 of how to handle anything along this line.

9 Q So have you made any changes so that this won't
10 happen again?

11 A David Catlin. Yes. Both Sonnaben & Shu our
12 accounting firm that does all of our books and myself are
13 both agreed, whenever we do the online payment, which
14 usually comes guided from Sonnaben & Shu, I first of all
15 send them a copy of the confirmation from the tax
16 authorities. And then on top of that, each one of us
17 contacts UBS, if that's where the payment was made from,
18 to look the next day to make sure that that payment
19 cleared. I can assure it's an absolute rule from now
20 forward, unfortunately.

21 Q Mr. Catlin, in 2019 when this -- when you had
22 this gain, what was your employment?

23 A I was not a salary person at the company, but I
24 was a shareholder, and I was a board member until the
25 acquisition, at which time I stopped being on the board of

1 directors because this was obviously owned by another
2 large company.

3 MR. GREIFF: I don't have any more questions. I
4 know -- I'd like to reserve that time for my argument,
5 whatever is left. I'm sorry. Murray Greiff speaking. I
6 apologize for that.

7 JUDGE LE: This is Judge Le. Thank you,
8 Mr. Catlin, for your testimony there. All right. It
9 looks like you used up your entire 10 minutes we have
10 allotted for the witness testimony.

11 Let me now turn to Respondent Franchise Tax
12 Board. Do you have any questions for Mr. Catlin?

13 MR. KLEAM: Phillip Klean. Judge, no, I do not
14 have any questions. Thank you.

15 JUDGE LE: This is Judge Le. Thank you,
16 Mr. Klean.

17 Now, let me turn to the panel to see if they have
18 any questions for the witness here.

19 Turning first to Judge Hosey. Do you have any
20 questions for the witness?

21 JUDGE HOSEY: Hi. This is Judge Hosey. Yes, I
22 do have a quick clarification I'd like to ask Mr. Catlin.

23 Hi, Mr. Catlin. This is Judge Hosey.

24 MR. CATLIN: David Catlin. Hi.

25 JUDGE HOSEY: So I'm looking at the UBS letter on

1 August 26, 2021, regarding their statement about the
2 \$900,000 payment. And I guess we have the confirmation
3 page that you receive once you made the request to pay
4 FTB, and I guess I'm a little confused as to how it works.
5 So once you send your payment request in, UMB Bank, they
6 said they never received that request? Or they're saying
7 that they never --

8 MR. CATLIN: This is David Catlin.

9 JUDGE HOSEY: Go ahead.

10 MR. CATLIN: This is David Catlin. I believe to
11 the part that I know, that the request went to the bank
12 and it wasn't forwarded to UBS, and it wasn't denied for
13 insufficient funds or anything like that because,
14 collectively, there was, you know, a decent seven-figure
15 cash amount to pay that \$900,000. So it was a unique time
16 in my life, but I didn't have concern that it wouldn't be
17 handled for some reason.

18 It never made it through the system, and it went
19 back as -- I don't remember the exact words of it, but I
20 think it might have been on the other thing submitted.
21 But it was a non-doable one of some sort. I forget what
22 it was -- what the words were.

23 JUDGE HOSEY: Okay. This is Judge Hosey again.
24 So when you get those bank statements or the monthly
25 summaries, it's a summary of all the accounts together

1 that you own at UBS?

2 MR. CATLIN: David Catlin. Yes, I get a monthly
3 summary that has any investments you have and any changes
4 from the previous months. There's a cash total of what
5 you have there. And then each one of the -- maybe there's
6 12 or 13 accounts there -- of what the balance in each one
7 of the accounts is, whether it's up or down and anything
8 like that.

9 But there's no detail that would come from their
10 outside bank that they use for -- I don't know if it's for
11 all clients, but all the clients I'm aware of. They
12 all -- all their banking activity goes with an outside
13 bank who does the biddings for UBS and keeps track of the
14 records. But I don't receive a statement like I would
15 from Bank of America or Wells Fargo or a summary at the
16 end of each month for our personal use that my wife or I
17 use.

18 JUDGE HOSEY: Okay. This is Judge Hosey. Thank
19 you, Mr. Catlin, for clarifying.

20 That's all I have, Judge Le.

21 JUDGE LE: This is Judge Le.

22 MR. CATLIN: David Catlin. You're welcome.

23 JUDGE LE: This is Judge Le. Thank you,
24 Judge Hosey.

25 Turning now to Judge Lambert. Do you have any

1 questions for the witness?

2 JUDGE LAMBERT: Hi. This is Judge Lambert. I
3 don't have any questions at this time. Thank you.

4 JUDGE LE: This is Judge Le. Thank you,
5 Judge Lambert.

6 Okay. Let's move on to Appellants' arguments.

7 Mr. Greiff, you have up to 10 minutes for your
8 arguments.

9 MR. GREIFF: Okay. Thank you.

10 JUDGE LE: You're welcome. Please proceed.

11 MR. GREIFF: I'll try to make it quick. Okay.

12

13 PRESENTATION

14 MR. GREFF: You know, on the Respondent's
15 Exhibit, I believe it's J, page 1, on the declaration of
16 Mr. Reali, he discusses that the payment was returned with
17 a code of R20, which is a non-transaction account. I
18 believe Mr. Catlin testified that he didn't have such an
19 account or didn't have any special accounts. On the
20 Appellants' exhibit, that we were just discussing, the
21 letter says that the check never got there.

22 The Respondent's Exhibit G relates a case -- list
23 a bunch of case -- numerous cases discussing why the
24 taxpayer shouldn't prevail. There's one case in
25 particular, which is the case of Scanlon, which discusses

1 electronic deposits. And that had no -- I think is a
2 little misleading because it came down to whether it was
3 reasonable -- what a reasonable prudent taxpayer would do.
4 And even though it discusses that he made his payments
5 electronically, I don't think electronic is the key to
6 that case. So if your reading the --

7 (NOISE INTERRUPTION)

8 JUDGE LE: I'm sorry. Mr. Catlin, can you mute
9 your audio at this point?

10 MR. CATLIN: Yes.

11 JUDGE LE: Thank you.

12 MR. GREIFF: Shall I continue?

13 JUDGE LE: This is Judge Le. Yes, please
14 proceed.

15 MR. GREIFF: Okay. So the case talks about what
16 a reasonable prudent taxpayer would do, and my argument
17 here on this particular issue is that Mr. Catlin actually
18 took out, in a sense, an insurance policy. He had an
19 agreement with the bank where any overdrafts or anything
20 that was out of the ordinary, he had special bankers that
21 would take care of his account. I think that conversely
22 if he didn't make those arrangements, he wouldn't be a
23 reasonably prudent taxpayer. So based on that, I think
24 he's met the burden as to -- of being a reasonable person
25 to have that particular penalty abated.

1 Now, as to the estimated tax-payment penalty,
2 that gets a little more difficult because the estimated
3 tax penalty, with the exception for the waiver, is that --
4 and I'll read -- I'm going to read that section. It says,
5 "No addition to the tax shall be imposed under subsection
6 (a) with respect to any underpayment to the extent the
7 secretary determines that by reason of casualty, disaster,
8 or other unusual circumstances, the imposition of such
9 addition to the tax would be against equity and good
10 conscience."

11 There's no disagreement with Respondent that
12 reasonable cause is not an acceptable reason for that
13 particular section standing alone. Now, the issue is
14 whether that particular exception applies. And the reason
15 is because -- and I'm going to paraphrase one of the court
16 cases that the OTA had, and it was in the case of Gerald
17 F. and Barbara Johnson. It's OTA Case Number 18011316
18 where they discuss the words casualty, disaster, followed
19 by the more general words. And you'll excuse me, but my
20 Latin was not something that I ever took, and I'll just --

21 The quote here says, "When we interpret the
22 statutory phrase, casualty, disaster, or other unusual
23 circumstances, we consider the canon of," and I -- excuse
24 me for missing the Latin -- "meaning that there were
25 specific words are followed by more general words. The

1 more general words are generally limited to the items that
2 are similar to the specific words."

3 But it goes onto say, "However, we are cautious
4 to ensure that we do not give the words or other unusual
5 circumstances such narrow interpretation that they do not
6 have any meaning beyond the specific words of casualty and
7 disaster."

8 So there are -- I've -- in the following cases,
9 the Court did not limit unusual circumstances to a
10 casualty or disaster. What in re Sims, 92-1 U.S. Tax
11 Court P 50,034 found that the inability to secure
12 documents was allowed in, and in Stoddard v U.S.,
13 664 F.Supp.2d 774 they allowed discussion with failure to
14 get forms to 1099.

15 So I feel that -- that the unusual circumstances
16 where being a discrepancy between the Franchise Tax Board
17 saying it got returned under this code R20, and the fact
18 that UBS said they never got it, and Mr. Catlin saying I
19 took care of it by being a reasonable prudent person by
20 having this insurance policy, I feel that Mr. Catlin has
21 met his burden in both cases -- both penalty cases and,
22 therefore, I rest.

23 JUDGE LE: Thank you so much for your
24 presentation.

25 This is Judge Le. Let me again turn to my panel

1 to see if they have any questions.

2 Judge Hosey, any questions at this point.

3 I'm sorry. I believe you're muted.

4 JUDGE HOSEY: This is Judge Hosey. Can you hear
5 me, Judge Le?

6 JUDGE LE: I can hear you now.

7 JUDGE HOSEY: Okay. So I have no further
8 questions right now. Thank you.

9 JUDGE LE: This is Judge Le. Thank you.

10 Judge Lambert, any questions?

11 JUDGE LAMBERT: Hi. This is Judge Lambert.

12 Yeah, maybe I'll just have a question for Mr. Catlin. I
13 was wondering in the past when you made payments using the
14 Web Pay system, did you receive an email when it's -- that
15 it is verified that the payment actually went through a
16 couple of days later after you had scheduled the payment?
17 Did FTB email you a confirmation that the payment is
18 complete?

19 MR. CATLIN: Hi. This is David Catlin. Yes, I
20 did receive something that your payment has cleared. I
21 don't recall that. I know that I always get a
22 confirmation that it's come into their system and at that
23 point in time. Probably if it wasn't for the suddenness
24 of this company sale and not getting the breakdown of what
25 to have for the tax thing until the day of, I probably

1 would have -- should have been more prudent about telling
2 everybody, but I don't recall that I used a confirmation
3 of some sort from the Tax Board or the IRS saying your
4 online payment cleared.

5 JUDGE LAMBERT: I see. And you didn't receive
6 anything saying that it didn't clear afterwards? It's
7 just that you didn't receive anything at all after this
8 payment didn't go through?

9 MR. CATLIN: David Catlin. I really wish -- I
10 really, really wish there was a case that would say we
11 have this very large payment and it came back with some
12 non-processable or some -- some reason for it, please
13 respond or do it, but I never received anything that I
14 know of that said something went array with you.

15 JUDGE LAMBERT: Okay. Thank you. That's all the
16 questions that I have.

17 JUDGE LE: This is Judge Le. Thank you,
18 Judge Lambert.

19 I do have one question for Mr. Greiff. You
20 mentioned a few cases as it relates to the estimated tax
21 penalty. Are those cases cited in your brief?

22 MR. GREIFF: No, they're not, Your Honor.

23 JUDGE LE: Okay. Can you tell me the cite again
24 for the one, I believe you said it was Stoddard v United
25 States.

1 MR. GREIFF: 6 -- I'm sorry. 664 F.Supp.2d 774.

2 JUDGE LE: Thank you.

3 Okay. Now, it is time for the Franchise Tax
4 Board to present their presentation. Mr. Kleam, you have
5 up to 10 minutes starting at 1:31 p.m. Please proceed.

6

7 PRESENTATION

8 MR. KLEAM: Thank you everyone and good
9 afternoon. And, again, my name is Phillip Kleam and,
10 again, with me is Eric Yadao and we represent the
11 Respondent Franchise Tax Board.

12 So this case is about Appellants, as Mr. Catlin
13 has stated, not acting with reasonable care when he
14 attempted to make an estimate tax payment, and not only
15 put in the incorrect bank information but failed to ensure
16 that the \$900,000 payment was actually withdrawn from his
17 account.

18 For the 2019 tax year, Appellants reported
19 estimated payments of \$1,154,012. However, the Franchise
20 Tax Board had only received payments of \$254,012,
21 difference of \$900,000. This resulted in a balance due of
22 \$624,416.85, including a late-payment penalty of
23 \$41,303.63, and an estimate penalty of \$22,742. So as you
24 stated, the issues on appeal are whether Appellants have
25 established a reasonable cause to abate the late-payment

1 penalty, and whether they have established a basis to
2 abate the estimate-tax penalty.

3 So, first, as to the reasonable cause to abate
4 the late-payment penalty, in order to establish reasonable
5 cause, Appellants must show that the failure to timely pay
6 the amount shown on their return occurred despite the
7 exercise of ordinary business care and prudence. Now,
8 originally in their opening brief, Appellants argued that
9 they were entitled to reasonable cause abatement because
10 Appellants attempted to use Web Pay to make the estimated
11 payment but mistakenly entered the wrong bank account
12 number, which resulted in the payment not being processed.

13 Now, this does not amount to reasonable cause to
14 abate. In the OTA's precedential decision in Scanlon, it
15 was held that taxpayers are expected to monitor their bank
16 accounts and ascertain whether a scheduled electronic
17 payment was, in fact, paid. Appellants did not do so, and
18 they admitted that they did not realize that the payment
19 had not been processed until they received the state
20 income tax due notice a year and a half later.

21 Had Appellants been exercising that ordinary
22 business care and prudence, they would have confirmed that
23 the \$900,000 payment had been withdrawn from the account
24 and that the payment had been completed. But because --
25 so because they did not exercise ordinary business care

1 and prudence making sure that payment had been received
2 and processed and withdrawn from their account, they are
3 not entitled to reasonable cause abatement of that
4 late-payment penalty.

5 Now, in their reply Appellants have gone from
6 saying that they put in the wrong bank account information
7 to claiming that Franchise Tax Board never attempted to
8 process the payment. Specifically, they obtained a
9 statement from their bank accounts -- their bank saying
10 that regardless of what account Appellants entered, the
11 bank would have made sure the liability was paid.
12 However, as you've seen from your review of Exhibit I,
13 this is just not true.

14 Franchise Tax Board attempted to process the
15 payment on June 17th, 2019, and again on June 20th, 2019,
16 but the bank rejected the payment request and returned it
17 with the code stating that it was a non-transactional
18 account. Now, Mr. Greiff stated he -- that Mr. Catlin or
19 the Appellants do not have a non-transactional account,
20 but what I have from my notes and, you know, is that
21 Mr. Catlin stated that he was unsure if he had one. He
22 said not to his knowledge. And the bank never
23 specifically says that they do not have a non-transaction
24 account.

25 Remember, the burden of proof, of course, is on

1 them to establish that this account, that they do not have
2 a non-transaction account. And as you can see from the
3 fact that we received a rejection code -- a return code of
4 rejection non-transaction account, this seems to indicate
5 they do, in fact, have a non-transaction account.

6 So because they did not act with ordinary
7 business care and prudence by ensuring that \$900,000
8 payment had been withdrawn from the account, they're not
9 entitled to reasonable cause abatement of a late-payment
10 penalty.

11 JUDGE LE: This is Judge Le. Thank you,
12 Mr. Kleam.

13 MR. KLEAM: Oh, I'm sorry. I'm sorry. I just
14 had a little bit more. I was just referring to my notes
15 from Mr. Greiff. But if you had a question, please feel
16 free to ask.

17 JUDGE LE: Oh, please continue with your
18 presentation.

19 MR. KLEAM: I apologize for the pause. That was
20 confusing.

21 So now as to the estimated penalty, Appellants
22 have not demonstrated any basis to abate. Estimated
23 penalties can only be abated under very limited
24 circumstances by reason of casualty, disaster, unusual
25 circumstances. I realize that, you know, Mr. Greiff and

1 the Appellants are claiming that based on these tax cases
2 that he cited in his argument -- that I admittedly have
3 not read yet because they weren't in the briefing -- that
4 this is likened to inability to -- unusual circumstances
5 is likened to an inability to secure documents or a
6 failure to get -- I think he said W-2s or 1099s.

7 But it really is just much, much simpler than
8 that. It is a matter of user error by failing to put in
9 the correct -- the correct bank account information. This
10 isn't, you know, information that isn't available.
11 Mr. Catlin stated that he received the estimate from his
12 accountants in a timely manner. There wasn't an inability
13 to obtain documents or information to get that estimate.
14 He had the estimate. He just put in the wrong bank
15 account information, and so the payment couldn't be
16 processed.

17 The OTA determined in the precedential decision
18 in Johnson that unusual circumstances or types of events
19 that cause hardship or loss that would make it unfair for
20 the estimate penalty apply. This is simple user error.
21 This is not hardship or loss. And because of that they
22 have not stated any -- any basis to abate the estimated
23 tax penalty.

24 Now, I want to discuss one more thing, and that
25 is just that a lot of emphasis is being put on Mr. --

1 Appellant's reliance on the bank not acting as how he
2 expected it to; the bank not -- him making assumptions
3 that the bank would take care of this. The fact that, you
4 know, he said he didn't used to review bank statements
5 because he just trusted them and knew they would take care
6 of it. But that cannot be sufficient or reasonable cause
7 to abate or any basis to abate the estimate penalty.

8 Because from, you know, United States v Boyle --
9 and since I didn't cite this in my brief, I'll go ahead
10 and do the cite now, United States v Boyle 1985 469 U.S.
11 241, a taxpayer's reliance on an agent, such as an
12 accountant or tax attorney, is not reasonable cause,
13 right. You have a personal nondelegable duty to, you
14 know, to pay your taxes -- to file your taxes and pay your
15 taxes and everything else. And that nondelegable duty
16 comes from Appeal of Thomas K. and Gail -- I'm going to
17 butcher the pronunciation -- G. Boehme. That's spelled
18 B-o-e-h-m-e, 85-SBE-134 November 6, 1985.

19 So, you know, Appellants put a great deal of
20 reliance on their bank to take care of these issues, but
21 at the end of the day, it comes down to the fact that it's
22 the Appellant's duty to check their bank account to make
23 sure that Web Pay went through, to make sure that the
24 money was removed from the account, and to not leave it to
25 an agent to take care of for him. So -- and because of

1 that, they have not established reasonable cause to abate
2 the late-payment penalty, and they have not established
3 any cause basis to abate the estimate penalty.

4 So thank you very much.

5 JUDGE LE: This is Judge Le. Thank you, again,
6 Mr. Kleam.

7 Let me turn to the panel to see if they have any
8 questions for Respondent.

9 Judge Hosey, any questions for Respondent?

10 JUDGE HOSEY: Hi. This is Judge Hosey. Yes, I
11 do have one.

12 MR. KLEAM: I'm sorry, Judge. Could you speak up
13 or your mic is very, very quiet.

14 JUDGE HOSEY: Can you hear me now?

15 MR. KLEAM: Yes.

16 JUDGE HOSEY: Is this better?

17 MR. KLEAM: Yes. Thank you.

18 JUDGE HOSEY: Okay. Thank you. This is
19 Judge Hosey. Mr. Kleam, I'm trying to get clarification
20 on the process. So, Mr. Catlin, we have a Web Pay
21 confirmation in which he requested to pay online. And
22 whether it was incorrect bank information or
23 non-transaction account or insufficient funds, once FTB
24 receives, you know, an error code, what is the next step
25 that is taken? Is the next step the notice, the NPA?

1 MR. KLEAM: Okay. So what happens is, so he
2 submits the Web Payment. We send him a thing, a document
3 or confirmation that says, "Your payment" -- "this is just
4 a notice that you have attempted to process the payment.
5 We will attempt to process the payment within one to three
6 days. We have not processed the payment when he received
7 -- when somebody receives the Web Pay confirmation.

8 So that information then comes to the Franchise
9 Tax Board. The Franchise Tax Board then uses that
10 information to attempt to process the account, process the
11 payment from the taxpayer's bank account. And then the
12 response code comes back. They either get the payment or
13 the response code, which in this case said non-transaction
14 account. And then, as in this case, we try to process it
15 again.

16 Now, the next step after that is when we do send
17 out the notice. Now, of course, it all sounds, you know,
18 very simple and straightforward with just, you know, me
19 describing it to you here, but there are a lot of
20 taxpayers. So there is quite a bit of delay in between
21 each of these steps. But, yes, the next step is the
22 Notice of State Income Tax Due.

23 JUDGE HOSEY: Thank you, and that's all I have.

24 JUDGE LE: Thank you, Judge Hosey.

25 Turning now to Judge Lambert. Any questions for

1 Respondent?

2 JUDGE LAMBERT: Hi. This is Judge Lambert.

3 Yeah. I guess to follow up on what Judge Hosey was
4 saying. It sounds like when the payment is rejected it --
5 there's no follow-up email sent to the taxpayer. Is that
6 true? And then also, if the payment is successful, is
7 there some sort of confirmation sent?

8 MR. KLEAM: You know, I'm not sure off the top of
9 my head.

10 Eric, are you aware of whether we send
11 confirmation emails when payments are accepted?

12 MR. YADAO: This is Eric Yadao, Franchise Tax
13 Board. I'm not certain if they get a con -- like, if FTB
14 sends a confirmation of payment. But what I do know is
15 that the taxpayer when they schedule an electronic
16 payment, at the bottom of that confirmation, it requires
17 or suggests that they check their bank account within two
18 to three business days to confirm that the payment has
19 been transmitted.

20 And on another note, I do know that -- so this
21 payment in particular was an estimated tax payment. And
22 at that time, we had no liability to post that again. So
23 the payment would sit in suspense until a return was
24 filed. It was not until the return was filed and
25 over-reporting of timely payments made prompted us to send

1 a notice that you reported more payments made than we had
2 received.

3 And then the only other time we will send -- I do
4 know that we'll send a notice out is if is -- the payment
5 is rejected by the bank due to non-sufficient funds,
6 meaning the correct bank account information is entered,
7 but there's insufficient funds in the account. And then
8 on a final note on this, I would just like to point out
9 that the Office of Tax Appeals has visited a similar
10 argument, lack of notice from FTB, and stated that, again,
11 in Scanlon, likewise lack of notice from the FTB of a
12 failed payment does not negate Appellants' duty of
13 prudence and due care to verify that their scheduled
14 payments were successful.

15 And then if I may make one additional point.
16 There's been an evolution of the Appellants' argument from
17 their reply brief where they stated they never opened a
18 non-transactional account and, therefore, they tried to
19 assert that it was the bank's error. But if you go back
20 to their appeal letter, their original argument was they
21 acknowledged that they unknowingly typed an incorrect bank
22 information.

23 And then later on page 11, they said this account
24 is a special purpose account and has very little
25 transactions. It's never used for tax payments. So

1 they're aware of the account and, again, they acknowledge
2 that they typed in the incorrect account number, a mistake
3 that is not attributable to the bank, to FTB, but only to
4 Appellants.

5 JUDGE LAMBERT: This is Judge Lambert. Thanks.
6 And that was informative. And then I had one more
7 question. Is there some way to log into FTB's website,
8 like, my FTB where someone could, if they have an account,
9 they could check the status of payments on FTB's website.

10 MR. KLEAM: I'm not sure if it's the website, but
11 you can call in to check the status of payments and
12 confirm whether a payment has been processed.

13 JUDGE LAMBERT: Okay. Thank you. That's all the
14 questions I have.

15 JUDGE LE: Thank you, Judge Lambert. This is
16 Judge Le.

17 Let's now turn back to Appellants for a rebuttal
18 to Respondent's arguments. You have up to five minutes
19 please begin.

20
21 CLOSING STATEMENT

22 MR. GREIFF: Murray Greiff. I'd like to point
23 out that I believe that there has been selective reading
24 of this letter from UB -- from the bank. The bank says
25 two things, "We have confirmed with UMB that we did not

1 receive a \$900,000 debit for this amount." And it further
2 goes on to say that, "Please note that if this debit
3 request had been received by UBS and funds were not
4 available, it is UBS' policy to work to make the funds
5 available before rejecting any debit request."

6 So the client -- the taxpayer was reasonable in
7 their business practices to ensure that they wouldn't have
8 any negative banking transactions by arranging to have
9 this particular resource management account. So, you
10 know, to say that -- strike that. So I just think that it
11 was a little bit misleading by Respondent to just kind of,
12 you now, picking and choosing it.

13 Also, as far as the cases I cited for the
14 estimated tax penalty, the specific cases that I cited
15 were not specific to -- well, let me try. It was only to
16 make the point that the -- there's a broadening of the
17 section that it doesn't only apply to casualty and to
18 theft. That was the point of those cites. It wasn't to
19 make an analogy that my client fits into that. My client
20 fits into his own unusual circumstances.

21 And finally on the Supreme Court case, That's the
22 general rule. If you follow the cases through that there
23 are exceptions to the Supreme Court case. For instance, I
24 think if you -- one of the cases -- and I don't have the
25 cite -- but if you hire a knowledgeable CPA or an attorney

1 that's knowledge in the area of a certain reliance, that
2 you can be accused.

3 So I think that the -- it's also misleading to
4 just cite that case. I thought I turned -- sorry. I
5 apologize. So I just think that the broad stroke of that
6 Supreme Court case I don't think necessarily applies here.

7 I rest. I don't have anything else to say.

8 JUDGE LE: Thank you very much.

9 This is Judge Le. For a final time let me check
10 with the panel to see if they have final questions for
11 either party before we conclude the hearing.

12 Judge Hosey, any final questions for either
13 party?

14 JUDGE HOSEY: This is Judge Hosey. No final
15 questions. Thank you.

16 JUDGE LE: Thank you.

17 This is Judge Le. Turning now to Judge Lambert.
18 Any final questions for either party?

19 JUDGE LAMBERT: This is Judge Lambert. I have no
20 final questions. Thank you so much everybody for coming.

21 JUDGE LE: This is Judge Le. Thank you.

22 I have no further questions myself. So I believe
23 that concludes our hearing. Thank you everyone for coming
24 in today.

25 This case is submitted on July 26, 2022, and the

1 record is now closed. The Judges will meet and decide
2 your case later on, and we'll send you a written opinion
3 of our decision within 100 days.

4 Today's hearing in the Appeal of Catlin is now
5 adjourned. Thank you and goodbye.

6 (Proceedings adjourned at 1:49 p.m.)

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I further certify that I am in no way interested
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I have hereunto subscribed my name this 1st day
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