

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. BLACK and T. BLACK,) OTA NO. 19095223
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, August 30, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:26 a.m. and concluding at 10:37 a.m. on
Tuesday, August 30, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ KENNY GAST

Panel Members: ALJ JOHN JOHNSON
ALJ RICHARD TAY

For the Appellant: J. BLACK
T. BLACK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRAD J. COUTINHO
ELLEN SWAIN

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-16 were received at page 6.)
(Department's Exhibits A-L were received at page 6.)

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California; Tuesday, August 30, 2022

9:26 a.m.

JUDGE GAST: Okay. We are on the record.

This is the Appeal of Black, OTA Case Number 19095223. Today is Tuesday, August 30th, 2022, and the time is approximately 9:26 a.m. We're holding this hearing electronically with the agreement of all the parties.

My name is Kenny Gast, and I'm the lead Administrative Law Judge for this appeal. With me today are Administrative Law Judges John Johnson and Richard Tay.

Can the parties please identify yourselves by stating your name for the record, beginning with Appellants.

MR. BLACK: Jeff Black.

MRS. BLACK: Teresa Black.

JUDGE GAST: Okay.

And now the Franchise Tax Board.

MR. COUTINHO: Brad Coutinho with the Franchise Tax Board.

MS. SWAIN: Good morning. Ellen Swain with the Franchise Tax Board.

JUDGE GAST: Thank you.

1 Okay. The issue for this hearing is whether
2 Appellants have established error in Franchise Tax Board's
3 proposed assessment for the 2012 tax year, which is based
4 on a final federal determination.

5 Each of the parties have submitted exhibits for
6 this appeal. So with respect to the evidentiary record,
7 Appellants have provided Exhibits 1 through 16, and FTB
8 did not object to the admissibility of these exhibits.
9 Therefore, they are entered into the record.

10 (Appellant's Exhibits 1-16 were received
11 in evidence by the Administrative Law Judge.)

12 Franchise Tax Board provide Exhibits A through L.
13 Appellants have not objected to the admissibility of these
14 exhibits. Therefore, these exhibits are entered into the
15 record as well.

16 (Department's Exhibits A-L were received in
17 evidence by the Administrative Law Judge.)

18 All right. Let's move on to the parties'
19 presentations. As discussed in the prehearing conference
20 minutes and orders, Appellants will have 35 minutes for
21 their presentation, which will include testimony.

22 So before you begin, Mr. And Mrs. Black, I ask
23 that I swear you in for your presentation as well as any
24 facts you may give for your hearing.

25 Okay. If you would please raise your right

1 hands.

2

3

J. BLACK,

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

T. BLACK,

9

produced as a witness, and having been first duly sworn by

10

the Administrative Law Judge, was examined and testified

11

as follows:

12

13

JUDGE GAST: Okay. Thank you. Please begin

14

whenever you're ready.

15

16

PRESENTATION

17

MR. BLACK: Okay. Thank you for being here and

18

listening to our Office -- our tax appeal.

19

I'm going to start off in response to the

20

Franchise Board's reply brief, Teresa and Jeff Black agree

21

this appeal should be decided on the transfer's intention

22

for making the transfer, specifically, when the transfer

23

was made. This is the \$424,000 that we're talking about

24

that we claim is -- was gifted to us and is not considered

25

income, specifically, when the transfer was made, and it's

1 the date of the transfer. The intention as a gift was
2 made the Easter Sunday, April 24th, 2012.

3 That is the day Steven Black told Jeffery and
4 Teresa Black he would buy us a house. We relocated to
5 California. We went to go visit him. My brother paid for
6 us as a family to come visit him in 2011 for Easter
7 Sunday. He just cashed in over \$30 million of stock
8 options, and he wanted us to share in good happiness, come
9 out here, enjoy your vacation, and he offered us a job.
10 The deciding factor should be in this transfer as a gift,
11 should be Robin Black's own words, statements, made under
12 oath along with her actions.

13 Going back, the most critical consideration in
14 this regard, as the court agreed to, Bogardus verse
15 Commissioner, is the transferor's intention. As a result,
16 it's easily to conclude that a transfer, which is what
17 happened between family members such as to children,
18 brother, sisters, nieces or nephews, is likely to qualify
19 as a gift. The intent must be present at the time -- must
20 be present -- very good -- present at the time the gift is
21 made and is different from a mere expectation.

22 The third eliminate for a valid gift is
23 acceptance. In the situation, there is a gracious
24 unenforceful [sic] promise of a gift. It is unilateral
25 promise without consideration. California Civil Code

1 Section 1146 defines a gift as follow: A gift is a
2 transfer of personal property made voluntarily and without
3 consideration. Section 1147 says that a verbal gift is
4 generally unenforceful unless the means of obtaining
5 possession and control of the thing or give --

6 JUDGE GAST: Mr. Black, I'm sorry to interrupt
7 you. Could you please slow down for our stenographer.

8 MR. BLACK: Okay. You got it.

9 JUDGE GAST: Thank you for your presentation.
10 Okay. Go ahead. Thank you.

11 MR. BLACK: Yeah.

12 Three things are necessary for a valid gift.
13 There must be an intent on the part of the donor, having
14 capacity to contract to make an unconditional gift. There
15 must be an actual or symbolic delivery, such as to
16 relinquish all control by the donor. And three, the donor
17 must -- receiver signify acceptance, acceptance where it
18 may be presumed.

19 Here's a big key here. On April 18th an email
20 from Robin Black, which is Exhibit 10, says -- an email
21 from Robin Black to Teresa Black, "Please note that
22 everything that we're doing is in your best financial
23 interest. We are bound by law to report all gifts made to
24 family. We have asked our attorneys and accountants to
25 step in so that you and Jeff are not hit with a huge tax

1 bill. These documents will not be open to negotiations
2 since we are asking that they do what is necessary so that
3 you're not subject to taxes and/or penalties where the
4 house is concerned." That's Exhibit 10, OTA.

5 Again, "These documents will not be open to
6 negotiation since we are asking that they do what is
7 necessary so you're not subject to taxes and/or penalties
8 where the house is concerned. Further, there's no
9 employment contract between RSB Vineyards and Jeffery
10 Black. There's a job offer. No contract. Job offer
11 specifically states the offer is not intended to be a
12 contract and is at will and can be terminated at any
13 time."

14 You want to add something, Teresa?

15 MRS. BLACK: No, I don't.

16 MR. BLACK: Okay. Robin Black acknowledges in
17 transcripts -- these are -- I forget exhibit. In the
18 transcripts are going to be as audio files. I believe
19 there's 35 pages, number 12. Audio -- okay. Exhibit 12
20 OTA Number 12. Robin Black acknowledges in transcripts
21 she brought loan documents to the April 6th meeting,
22 almost a year after employed. Judge Flores at that -- she
23 was the judge at that unemployment hearing -- was baffled
24 by Robin Black's comments. "Why now do you bring loan
25 documents?" This is almost a year after I was employed.

1 The housing -- the house closed on June 29th,
2 2011. That was the in -- that was -- that day was the
3 gift of traction.

4 MRS. BLACK: All that's in here --

5 MR. BLACK: Okay.

6 MRS. BLACK: -- the deed of the house where it
7 shows the monies were transferred from Robin and Steven
8 Black's trust to Jeff and Teresa Black for the purchase of
9 401 Elsie Way, which is the home we're discussing. And at
10 that time there were no loans given to us. There was
11 nothing asked of us. Robin paid for the house. We were
12 in New Jersey. We are not present for the closing. And
13 she called and said, "Congratulations. You have a house.
14 We just bought you a house."

15 When we moved out to California, she handed us
16 all the paperwork for the closing, documents, including
17 the deed to the house, and the deed of the house was
18 deeded to Jeff and Teresa Black. There's nothing on there
19 that says RSB Vineyards transferred any monies to us.
20 There is no housing allowance that we ever received from
21 RSB Vineyards as discussed in the job offer. And there
22 were no loans presented to us or -- nor spoken to us at
23 any time about the property.

24 It was a gift. She said from Robin and Steven
25 Black to us at the time the house was purchased. That was

1 June 29th, 2011. Unfortunately, in 2012 of April they had
2 purchased a new tasting room, and it was compromised, so
3 they couldn't run their business. So Jeff was actually --
4 nobody was working. She wrote, actually, an article in
5 the Healdsburg newspaper about how she was still paying
6 all of her employees, although, none of them were working
7 because the tasting room was inoperable.

8 On April 6th she said she was called in a meeting
9 to discuss the new tasting room and when the plan for that
10 reopen would be, but in the meantime, she was laying Jeff
11 off. She gave him a layoff letter --

12 MR. BLACK: It's exhibit --

13 MRS. BLACK: -- which is in here.

14 MR. BLACK: Exhibit 5, Layoff Recap.

15 MRS. BLACK: Yeah. And at that time, she
16 presented us with two promissory notes. One -- they're
17 dated April 6th --

18 MR. BLACK: Exhibit 8.

19 MRS. BLACK: -- 2012. Exhibit 8 is for the
20 amount of \$248,000. And then the other promissory note
21 was for \$407,432.44. She said that we were to review
22 these, and that we needed to -- we would hear from her
23 attorneys on how these were going to be gifted. She said
24 the one that was written for \$248,000 had already started
25 gifting, that she was allowed to give \$26,000 to each

1 family member according to the law for gifting --

2 MR. BLACK: For family members.

3 MRS. BLACK: -- for family members, and that she
4 already started that with the loan, which was representing
5 \$300,000 towards the house. So she said that she would be
6 gifting that every year and that the other loan would be
7 getting gifted after that loan was complete. And that we
8 were to take it over and review it, and we would be
9 hearing from her attorneys.

10 So go back to where you were on the 6th, maybe.

11 MR. BLACK: It's showing this. Not that long.

12 MRS. BLACK: Well, she sent over the loan
13 documents. We reviewed them with our lawyer, and she told
14 us we did not need to see a lawyer. Everything had to be
15 done her way so that she could gift things internally
16 and --

17 MR. BLACK: Yes. Jeff Black. Exhibit 10, "good
18 morning, Teresa." And what you have to understand is that
19 Teresa never worked for RSB Vineyards.

20 MRS. BLACK: No.

21 MR. BLACK: Never. Not a second, not a minute,
22 not a day.

23 MRS. BLACK: And the house is also deeded in my
24 name --

25 MR. BLACK: Yes.

1 MRS. BLACK: -- as a gift from them.

2 MR. BLACK: And that you can see on exhibit --
3 we'll go back to exhibit for the deed. Actually, go to
4 Exhibit 2, First American Title Company where it shows you
5 the transaction of the monies coming from Steven and Robin
6 Black. No mention of RSB Vineyards. Basically, during
7 this whole process RSB Vineyards doesn't exist, okay,
8 because everything, every email, the correspondence for
9 the promissory notes are all Robin and Steven Black, not
10 RSB Vineyards.

11 The title company says the monies were given from
12 Steven and Robin Black and paid to the title company to
13 process the loan and --

14 MRS. BLACK: For Jeff and Teresa Black.

15 MR. BLACK: -- for Jeff and Teresa Black. Robin
16 Black also states, which is also a very important
17 information here is -- let me find that paragraph. It's
18 got a question here -- is that she states in the
19 unemployment testimony that -- and during that time --
20 okay. This is Number 11. This is page 11 on the exhibit
21 for the unemployment hearing. Okay. Robin Black says,
22 "And during that time when we paid for the house, we
23 transferred part of the name to them so they have the
24 home with -- home with the verbal arrangement that was
25 going to pay us back."

1 Well, she -- if you look at the title and you
2 look at the deed, her name is not on there. She never
3 owned that house. She doesn't have any percent, or she
4 never held a claim to that house. So that was a
5 fraudulent comment, okay, by her. And she's made many
6 fraudulent comments.

7 Okay. So you go back to Exhibit 10, "Good
8 morning Teresa. Please note -- know that everything that
9 we are doing is in your best financial interest. We are
10 bound by law to report all gifts made to family. We have
11 asked our attorneys and accountants to step in so that you
12 and Jeff are not hit with a huge tax bill. You signed the
13 promissory note for the \$248,000, and we continue -- and
14 continue."

15 She says, "We say continue." This letter is
16 dated 4/18/2012. So she says, "We continue to make yearly
17 internal book entries for the maximum allowed by our
18 ask -- by the IRS. No further severance will be given.
19 The house is completely yours, and the matter is closed.
20 Steven and I pay. Again, our attorneys and accountants to
21 draft all documents required. These documents will not be
22 open to negotiation since we're asking that they do what's
23 necessary so that you and Jeff -- so that you are not
24 subject to taxes and/or penalties where the house is
25 concerned."

1 That's very --

2 MRS. BLACK: And she put your official end date.

3 MR. BLACK: Yeah. And my official end date was
4 5/31.

5 Now, I'd like to go through some of the exhibits.
6 But the main thing is that anything after June 29th, 2011,
7 is -- is really -- shouldn't be an issue here. It's what
8 the intent of the monies given to us on June 29th. Okay.
9 What was the intent June 29th, 2011? All the evidence and
10 all these documents are going to show you that the intent
11 was a gift, and it was a family gift. It was the -- RSB
12 Vineyards is not even involved or -- are in any of these
13 transactions or any of the communications.

14 MRS. BLACK: And their name is never on any
15 document.

16 MR. BLACK: Yeah. If you take Exhibit 1 -- you
17 take Exhibit 1, gifts from Steven and Robin Black, which I
18 wanted to put up -- you know, at least have you see. They
19 were very generous to us. Okay. We -- we don't dispute
20 that basically on June 29th, 2011, okay, to April 6th when
21 we got the promissory notes, things didn't go good between
22 Robin Black and myself. What happened was in 2000 --
23 September and October of 2011, my brother Steven Black,
24 who was the initiator to have us facilitate -- to move out
25 to California and work for him, he left Santa Rosa,

1 California, September, October and he went to Reddington
2 Shores, Florida, to move.

3 He moved out of state. He -- he wanted nothing
4 to do with the business. He told -- he told me that I
5 have to deal with Robin from now on, and he was out. He
6 didn't want anything to do with the business. So Robin --
7 so Teresa and I moved our family out here. He moves in
8 September, October -- basically, September into October.
9 He buys a condo at Reddington Shores. He buys a house in
10 Reddington Shore, and it's all documented. You can find
11 out the house purchases out there by him, and has nothing
12 to do with RSB Vineyards.

13 And things deteriorated between Robin Black and
14 myself. When that house was purchased, we never heard
15 anything about a loan, about anything, about nothing, just
16 don't work. Don't do anything because things are
17 changing. Okay. Based on April 6th, we had a meeting and
18 that's when she said we're going in a different direction
19 and, basically, here's your promissory notes. We need you
20 to sign this for gifting. And we're going in a different
21 direction and, basically, I had a layoff recap about ten
22 days later from them. So --

23 MRS. BLACK: But we did contact an attorney to
24 look at the documents she wanted us to sign. Which in
25 those promissory notes, she never actually put anything

1 from her lawyer of how this was going to be gifted each
2 year, which is what our lawyer wanted. He said for us to
3 sign those notes she could say -- she could say we
4 defaulted, and then we would have to -- we would --
5 basically, she would ruin our credit. But there's nothing
6 stating in there, and she was going to gift. So he asked
7 her to please -- documentation. There's a review in there
8 from our lawyer on the note that he sent back to their
9 lawyer. It's --

10 MR. BLACK: It's exhibit -- and we need to put
11 these together so we have them. Right here.

12 MRS. BLACK: Yes, where he --

13 MR. BLACK: Exhibit 12.

14 MRS. BLACK: In Exhibit 12, he just says that --
15 let's see.

16 MR. BLACK: Acknowledging that they --

17 MRS. BLACK: Well, he says, "I returned to the
18 office a few minutes ago from a meeting with Jeff and
19 Teresa and their CPA Renee Megali. The purpose of the
20 meeting was to review the documentation below, which is
21 the promissory note.

22 THE STENOGRAPHER: Mrs. Black, can I please have
23 you slow down when you are reading. Thank you.

24 MRS. BLACK: Sure. Thank you.

25 Okay. He says, "Structuring the agreements and

1 conveyance as presented poses several significant problems
2 for my client that they do not want and cannot have.
3 Acknowledging that they defaulted on a non-existent loan
4 is a nonstarter. Regardless of whether your clients
5 issued mine a 1099 for debt forgiveness, as they are
6 obliged to -- which we have never gotten -- and any
7 agreement they won't do so is illegal and unenforceable."

8 "And regardless of whether the debt forgiven
9 would be exempt from income under recent federal and state
10 debt relief legislation, the fact remains that my clients,
11 unless they want to purger themselves -- and they don't --
12 would have to affirmatively disclose on any future loan
13 application that they defaulted on former loan, end of
14 application. And if they did receive a 1099, even if the
15 amount of cancelled debt was exempt and excluded from
16 income, the same would still appear on their returns,
17 which they would have to produce to a future lender as
18 part of any future loan application. As before, end of
19 application, this is not something my clients will accept
20 or subject themselves to under any circumstances."

21 MR. BLACK: Again, Jeff Black. That was
22 Exhibit 12.

23 MRS. BLACK: After that we heard back from her.
24 She basically sent you -- let's find it and see where that
25 is.

1 MR. BLACK: Okay. Yeah. Let's go to --

2 MRS. BLACK: Not that. At that point, there was
3 no more mention of promissory notes or anything like that.
4 She sent us a note over on 5/16/2012. "I wanted to inform
5 you that I have gone ahead and requested that your last
6 paycheck for period 5/16/2012 to 5/31/2012 be issued a
7 promised bonus --

8 MR. BLACK: Prorated.

9 MRS. BLACK: -- "prorated bonus of \$4,166.70 and
10 \$15.67 accrued vacation days will be included. Once I am
11 in receipt of the check, this will be direct deposited. I
12 will send it via express mail to your home. I will email
13 you with the express tracker. Since the Elsie Way home is
14 yours, I wanted to inform you that the current Bay Alarm
15 System was purchased and not leased from Bay Alarm.
16 Therefore, it is part of the house. I will be canceling
17 the monitoring service and dedicated phone line effective
18 5/31/12. If you want to setup your own" -- yada, yada,
19 yada.

20 She also includes on express mail, May 17th,
21 which is Exhibit 6, the final paychecks that he was
22 administered and some other information regarding that.
23 And then where is your final paycheck here?

24 MR. BLACK: Don't forget --

25 MRS. BLACK: Okay. So then there's an exhibit

1 with a separation agreement and general release. What
2 exhibit is this?

3 MR. BLACK: Nine.

4 MRS. BLACK: Exhibit 9. But Section C she says,
5 "Employee acknowledges and agrees that on or before his
6 last day of employment he received all accrued salary,
7 vacation pay, bonuses, commissions, overtime pay, comp
8 time pay, expense reimburses -- reimbursement, and any and
9 all other wages, compensation, and benefits owing to the
10 employee by the employer. On Exhibit 15 --

11 MR. BLACK: That's my paycheck.

12 MRS. BLACK: Is his last paycheck, and his total
13 compensation I think was --

14 MR. BLACK: 54 --

15 MRS. BLACK: Yeah. 54 thou -- well no. Yeah.
16 \$54,500 --

17 MR. BLACK: 66,160.

18 MRS. BLACK: Yeah. 6 -- his total compensation
19 is \$66,168.41 as her records state. On his W-2 -- so
20 on -- so that was the last that we heard from her
21 regarding anything, last payment. She kind of lost touch
22 with us after that until November 5th, 2012 --

23 MR. BLACK: It should have that.

24 MRS. BLACK: -- which I'm not sure if you guys
25 have this letter. It's a certified letter from Jeff --

1 Jeffery H. Black.

2 MR. BLACK: FTB has this letter.

3 JUDGE GAST: This is Judge Gast. We do have that
4 letter, and I believe it is -- one second.

5 MR. BLACK: Exhibit J, page 20 to 42.

6 JUDGE GAST: Yes. That's exactly right. Exhibit
7 J, page 20 of FTB's exhibits. I'm sorry. Go ahead.

8 MR. BLACK: Yeah. No. Thank you.

9 MRS. BLACK: So at that -- obvious -- you can
10 read the letter. You know that she says she is amending
11 his 2011 W-2 and also amending his 2012.

12 MR. BLACK: Now the key thing -- this is Jeff
13 Black -- is this letter is November 5th, 2000 --

14 MRS. BLACK: Of 2012.

15 MR. BLACK: -- 2012. We move back to New Jersey,
16 and tried to get -- we're trying to get our life together
17 with no jobs, two dogs, two kids, two cars, okay, and not
18 a pleasant situation that were -- that we found ourselves
19 in and, basically, right after Sandy. It was like a week
20 after Sandy hurricane -- Super Storm Sandy, we get this
21 letter.

22 MRS. BLACK: Right. So I'm assuming -- she's --
23 well, she's stating that no promissory notes were ever
24 signed to -- with us for RSB Vineyards. And the ones she
25 had administered were personal. They were to Robin and

1 Steven Black. They hadn't -- they were not company loans.
2 They were letters -- promissory notes she drew up that
3 were personal. There's never any documentation in any of
4 this where RSB Vineyards has sent money, loaned money, or
5 anything else.

6 If you look back on the promissory note she wrote
7 on April 6th, it was \$407,000. It was \$407,432. In the
8 letter she states here she comes up with another loan
9 amount now, in the second paragraph. "For planning
10 purposes you should be aware of what to expect on your
11 2012 W-2. As you know RSB Vineyards loaned you
12 \$416,414.78 to buy a house."

13 That never happened but that number conveniently
14 changed. Plus the house price that we bought the house
15 for was 782 -- \$700,822. So if there was a house for 300,
16 the difference on the house price came out to be \$400,822.
17 If we were going to be -- to have a mortgage, that's what
18 that mortgage price would have been. Not the 407 that she
19 comes up with on April 6th, not the 416,414.78 she claims
20 she lent us, which changed. And she says in here,
21 "Bringing your total income to \$458,143.48."

22 So when we actually get the W-2, that is not the
23 number that's on his W-2. The number on his W-2 is
24 actually increased to \$490,653. And she's claiming that
25 there's loan forgiveness in the amount of -- well, it's

1 actually not loan forgiveness. She puts it down as
2 severance payment, and it's for \$424,485.09. Now the loan
3 has increased another \$13,000, this so-called loan.

4 Exchanged four different times the amount she's
5 claiming, but what she put on her taxes -- his taxes is
6 more than what she listed even in that November 5th
7 letter. She changes it again for his 2012 W-2.

8 So Robin Black falsifies his federal tax return
9 even if there was a loan, which would have been personal,
10 not through the company as these notes state. It would
11 have been for a different amount than the 424. It would
12 have never been that number. So we don't even know how
13 she came up with that number, but we did notice through
14 all this documentation it just keeps changing and
15 changing.

16 So -- but also, she gave Mr. Coutinho Exhibit J.
17 Well, I'm not sure which one it is, but I think you have
18 it, that she initially gave us a promissory note on
19 June 16th, 2011, to sign, which we have never seen. It's
20 for the amount of \$700,822.44, which is the total purchase
21 price for the house. This was never given to us. Under
22 oath in her employment hearing, she states that she gave
23 us two promissory notes for two different amounts.

24 MR. BLACK: 248.

25 MRS. BLACK: For 248 and for the 407. The first

1 time she did this was April 6th, 2012. And the judge even
2 questions her and asks why now? Why a year later are you
3 bringing documents for them to sign? And she states that
4 she had some house -- she talked to her accountants and
5 they had some house cleaning to do, and that was that.
6 But she does admit the first time she ever showed us any
7 documents that they drew up regarding promissory notes was
8 on April 6th, 2012, not June 11, 2011, which this is for a
9 full purchase price of a home. It isn't relevant to any
10 housing assistance or any other promissory notes. This is
11 a new thing that she just made up and gave to
12 Mr. Coutinho.

13 Again, it doesn't even -- it still doesn't match
14 where she actually puts the \$424,485.09 on his W-2 in
15 2012. That's a whole other new number that came out of
16 the -- somewhere. We don't know where, but she made it
17 up. And there it is. And she refuses to take it off his
18 W-2 and change it because of the hostility she has towards
19 my husband. But going back --

20 JUDGE GAST: Sorry to interrupt. This is
21 Judge Gast.

22 MRS. BLACK: Yeah.

23 JUDGE GAST: You have about ten minutes left, and
24 I do want to reserve a little bit of time for questions if
25 the panel or FTB has --

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MRS. BLACK: Okay.

JUDGE GAST: -- of any witnesses here. Okay.

Thank you.

MRS. BLACK: Sure.

MR. BLACK: Okay.

JUDGE GAST: Please proceed, though, if you want to complete your presentation.

MR. BLACK: Okay.

MRS. BLACK: We'll go back to -- what we want to focus on is what happened in 2012 when the initial transaction was made.

MR. BLACK: We -- we -- we -- this is Jeff Black. We want to key in, again, the intent. The intent on June 29th of the monies given to us for the house that was purchased and for everything that we showed you and, basically, Robin Black's own words talking about gifting. All gifts have to be recorded by family, matters to the IRS and so forth and so on. These are all her words. These are not our words. This is her words, her statements, her action -- her actions and how she did this transaction.

All right. Anything after June 29th, 2011, is irrelevant. All right. One, I had a job offer. I don't have a contract. My employment was never attached to the house. Okay. There's not one -- Mr. Coutinho cannot show

1 one document, not one email -- or the Franchise Board, not
2 one document, not one email, not one piece of evidence
3 that says my employment is attached to the house. And if
4 so, what does that mean?

5 So five years from 2011 I pick up, and we part
6 our ways. I get taxed on a house or something, a house
7 that I -- that Teresa and I own. We own the house full
8 and clear. On June 29th we were 100 percent in full
9 possession of that house, Teresa Black and myself, Jeff
10 Black. The deed was us. Robin lied. She never had any
11 interest in the house that she says. She says, "I had
12 part concern" -- in the transcript part ownership. That
13 never happened. That was a lie.

14 So I want that to be very clear that any -- that
15 everything from June 29th, 2011, and even before that, the
16 intention was a gift. It was done as a gift and is not
17 compensation. There's no other way to describe it that it
18 was not compensation. It was a gift.

19 MRS. BLACK: Yes. That was also given to me, and
20 I had no part of RSB Vineyards. But the point is in 2011
21 everything was fine. Everything changed in 2012 when she
22 laid him off, and that's when she tried to go back and
23 reverse everything that she did --

24 MR. BLACK: Exactly.

25 MRS. BLACK: -- and comingle her personal stuff

1 with business transactions. But there's not one document
2 from her anywhere from RSB Vineyards concerning any of
3 this. So this was all done to a personal family trust.

4 MR. BLACK: Right.

5 MRS. BLACK: You can -- but that -- any way we're
6 finished if you would like to proceed with --

7 MR. BLACK: The next step.

8 MRS. BLACK: -- any questions or the next step.

9 JUDGE GAST: Thank you.

10 This is Judge Gast. I'm going to now ask the
11 Franchise Tax Board if they have any questions for the
12 witnesses.

13 MR. COUTINHO: This is Brad Coutinho. Franchise
14 Tax Board does not have any questions for the witnesses.
15 Thank you.

16 JUDGE GAST: Okay. Thank you.

17 And I'm going to turn it over to the panel to see
18 if there are any questions at this time.

19 I'll start with Judge Johnson.

20 JUDGE JOHNSON: This is Judge Johnson. I might
21 have a question or two.

22 You sold the house in August of 2012; is that
23 right?

24 MR. BLACK: Correct.

25 MRS. BLACK: Yes.

1 JUDGE JOHNSON: Okay. When you sold it, did you
2 have to get it signed off by any other joint owners or
3 cleared of any loaded incumbrances or anything?

4 MR. BLACK: No.

5 MRS. BLACK: No. The house is free and clear.

6 MR. BLACK: No.

7 JUDGE JOHNSON: Okay. That's all. Thank you.

8 JUDGE GAST: This is Judge Gast. Thank you,
9 Judge Johnson.

10 Judge Tay any questions?

11 JUDGE TAY: This is Judge Tay. Maybe a couple of
12 clarifying questions for Appellants.

13 This dispute with the Franchise Tax Board kind of
14 arises out of information they received from the IRS. And
15 I was wondering if you had disputed the amounts of income
16 or tax with the IRS?

17 MR. BLACK: We had --

18 MRS. BLACK: We did.

19 MR. BLACK: We did.

20 JUDGE TAY: And what's the current status of that
21 dispute?

22 MR. BLACK: The current --

23 MRS. BLACK: They --

24 MR. BLACK: They will not change it.

25 MRS. BLACK: Well, they threw out the 2011 where

1 she tried to go back and change our tax refund. They
2 declined. They said no.

3 MR. BLACK: Yeah. They declined the amended
4 \$300,000.

5 MRS. BLACK: \$300,000.

6 MR. BLACK: 2011. She tried to amend it and was
7 denied.

8 MRS. BLACK: And then we did dispute it with
9 them, but they basically told us unless -- for 2012,
10 unless she changed it, there wasn't anything --

11 MR. BLACK: Right. Yeah.

12 MRS. BLACK: -- we could do.

13 MR. BLACK: They said unless she changes our W-2
14 and corrects it, that's the only way they would change it.

15 MRS. BLACK: And we did -- yeah --

16 MR. BLACK: I -- I actually have -- we actually
17 what?

18 MRS. BLACK: We have a Respondent's brief that
19 was an appeal from Jeffery and Teresa Black to the IRS
20 from our tax attorney where he kind of goes through -- I
21 think you might have this too.

22 MR. BLACK: Yeah. The Franchise Board has -- we
23 had an IRS enrolled agent we hired to --

24 MRS. BLACK: Yeah.

25 MR. BLACK: -- look into --

1 MRS. BLACK: To help us --

2 MR. BLACK: -- help us.

3 MRS. BLACK: -- look into this.

4 MR. BLACK: And he agreed with the assertion
5 that, if anything, this was a family personal matter.
6 This had not -- this was not compensation, and we could
7 send you that IRS --

8 MRS. BLACK: It was just here.

9 MR. BLACK: -- that enrolled agent report. It's
10 right over there. We can send you that report. And he
11 confers what we've been trying to say or trying to get our
12 point across is that this was either a family -- it was a
13 matter or get -- he even said it was a gift at best.

14 MRS. BLACK: Well he said here, "At best it was a
15 family loan that could be proved. Then Steve and Robin
16 Black, if it was" -- okay. Wait. Yeah. "At best it was
17 a family loan that Steven and Robin Black would be able to
18 pursue it through legal channels or deduct it personally
19 as a non-business bad debt. They would not be allowed to
20 deduct it as wages against ordinary business income.
21 Based on the evidence above, it can be argued that the
22 funds used to purchase the house were either gifts or
23 loans, but it cannot be proven that they were compensation
24 because they did not come from RSB Vineyards."

25 JUDGE GAST: This is Judge Gast. Sorry to

1 interrupt. Is this FTB's Exhibit G, page 5 of 23? Is
2 that the lettering you're referring to?

3 MR. BLACK: Yeah.

4 MRS. BLACK: Oh, it's Exhibit G, page 8 --

5 MR. BLACK: Page 8 of 23.

6 MRS. BLACK: -- of 23. But so you have --

7 JUDGE GAST: Yes.

8 MRS. BLACK: -- the Fifer for accounting and tax
9 service that we sent to the IRS that is --

10 JUDGE GAST: I'm sorry to interrupt again. If
11 you could both, Mr. and Mrs. Black, speak one at a time
12 for our stenographer, that would be appreciated. Sorry.

13 MR. BLACK: My apologies.

14 JUDGE GAST: No. No problem.

15 MRS. BLACK: Yes. But Exhibit G is -- is that
16 information that I believe you're looking for that we sent
17 to the IRS in regards to the tax matter.

18 MR. BLACK: And the response back from the IRS
19 was that unless RSB Vineyards would change that W-2 and
20 correct it, they would not do anything.

21 JUDGE TAY: Okay. Thank you. And with regard to
22 the email that Robin Black sent to Teresa in April of
23 2012, it only mentions \$248,000?

24 MRS. BLACK: Yeah. She only mentioned that and
25 said that the house is -- no further severance will be

1 given and the house is completely yours and the matter is
2 closed. So our tax attorney, Rene Magali, said that
3 the -- that portion of the house was gifted. Your brother
4 gave it free and clear to you in 2011.

5 And maybe that's why she didn't mention it here,
6 but the 248 is the only -- is the only one. Although, she
7 did send over the 407, and that's what we -- my lawyer was
8 questioning on what this was for. And she basically said
9 everything they were doing would be gifted. They can only
10 gift \$26,000 a year per person.

11 MR. BLACK: Or, you know, 135 and change.

12 MRS. BLACK: I guess yeah. Yeah, whatever it
13 could be, but it would be deducted each year until the
14 loan was cancelled. That's what she wrote in here. It's
15 not completely written out. I'm not sure if we have
16 any --

17 MR. BLACK: This is Jeff Black. Just in close, I
18 do want to say that we have been transparent on our taxes,
19 2011 and 2012, from the very beginning we submitted our
20 tax returns. We've been transparent. We hired legal
21 representation from day one, even before we did our taxes
22 in 2011, '12. We went to Renee Megali CPA Accounting
23 Firm. We went back to Mike Villa. They are both out of
24 Healdsburg, attorney at law. We hired the IRS enrolled
25 agent, Dave Fifer, Feinstein, a big legal representative.

1 And so we didn't take this lightly. I have spent
2 a lot of money out of our own pocket trying to defend
3 ourselves and do the right thing. We've never defaulted
4 on anything in our entire lives. Our tax -- my tax
5 records are clean. Okay. I'm going to be 61. I have
6 never had an issue with a tax return. Same thing with my
7 wife Teresa. Never. We're good tax paying people and
8 have always done the right thing.

9 Robin Black has tried to destroy us. All right.
10 My brother turned his back and went in a different
11 direction. And I also exhibit -- in exhibits, I'm not
12 going to get into it. I included some letters from people
13 that know Robin and Steven Black. And you can read those
14 and make your own decisions about the credibility and
15 character of these people. But we've always done -- try
16 to do the right thing and pay our debt.

17 MRS. BLACK: Right.

18 MR. BLACK: And -- and I don't know what more I
19 could say. It's just -- we just want everybody to be
20 objective and -- and I guess, you know, I guess rule by
21 the law, I mean, obviously. And we respect your decision.
22 But this was always done, the house and these monies. The
23 house always done as a family transaction. All right.
24 Never -- never -- it was never supposed to be anything
25 other than that. And, unfortunately, some things don't

1 work out and it was cut short, and this was what happened.

2 MRS. BLACK: But the initial intent was --

3 MR. BLACK: A gift.

4 MRS. BLACK: -- a gift. And I just think that
5 even looking at all these exhibits where she keeps
6 changing -- I mean, she keeps saying there's some type of
7 loan, but the loan keeps changing. So it -- it's just she
8 keeps -- she's all over the place. She just keeps
9 changing things left and right, and she is actually taxing
10 us on more than the house was even paid for as far, as the
11 other side of the 300, which was denied.

12 But the house should have been -- the other
13 balance of the house was 400,822, which we had no loan
14 for, and we never ever discussed a loan, and when she did
15 bring this up as promissory notes, it was in the -- with
16 the intent to gift us this money, and that was how she was
17 doing it with her accountants. I'm not familiar with how
18 all that works. I'm not an accountant. So --

19 MR. BLACK: And we have no idea what she --

20 MRS. BLACK: We went to legal -- we went for
21 legal counsel, and our lawyer said no, no. That's not
22 what you want to do. You're putting yourself in financial
23 jeopardy. And we --

24 JUDGE GAST: Okay. I want to thank you for your
25 presentation. I want to move on to the Franchise Tax

1 Board. You will have five to ten minutes on rebuttal. So
2 you will have the last word on this. I do want to stick
3 to the minutes and orders presentation times.

4 So I'm going to turn it over to the FTB for ten
5 minutes, and I'd ask that everyone please mute your
6 microphones except for FTB who is presenting. Thank you.

7

8 PRESENTATION

9 MR. COUTINHO: Good morning. My name is Brad
10 Coutinho. And along with my co-counsel Ellen Swain, we
11 represent the Franchise Tax Board.

12 The heart of this appeal is whether Appellants
13 have met their burden to show that the funds given by
14 Appellant-husband's employer to purchase property is not
15 taxable compensation but, rather, a nontaxable gift.
16 Appellants have not met this burden because the record
17 reflects that the funds were tied to Appellant-husband's
18 employment or, alternatively, was a loan that was
19 discharged in 2012. Accordingly, Appellants have not
20 shown that FTB's proposed assessment, which is based on
21 federal adjustments, is erroneous. And, thus, FTB's
22 position should be sustained.

23 For the 2012 tax year the IRS assessed additional
24 tax based on unreported income received by
25 Appellant-husband's employer, RSB Vineyards. Information

1 from the IRS indicates that the federal assessment has not
2 been revised nor has it been abated. FTB's proposed
3 assessment is based upon federal adjustments and proposes
4 additional tax based on the unreported income. Appellants
5 erroneously assert that the funds are not income but,
6 rather, was a gift.

7 As Appellants have correctly stated today, when
8 determining whether the funds were a gift or compensation,
9 the most important consideration is the transferor's
10 intent. From the record it is clear, the transferor's
11 intent was to induce a long-term relationship with
12 Appellant-husband and not to bequeath Appellants a gift
13 for four reasons.

14 The first is the timing of when the property was
15 purchased and the location indicates that it was tied to
16 Appellant-husband's employment. The property was
17 purchased during the same month Appellant-husband began
18 his employment with RSB Vineyards. In addition, the
19 property is located ten miles away from
20 Appellant-husband's job, not in New Jersey where
21 Appellants resided prior to 2012. Accordingly, there was
22 a target-anticipated benefit of economic return for the
23 funds; namely, Appellant-husband's services as a sales
24 executive, rather, than a detached disinterested form of
25 generosity from the transferor.

1 Second, page 40 of Exhibit J to Respondent's
2 opening brief is a copy of Appellant-husband's offer
3 letter. The offer letter reflects that housing assistance
4 was part of Appellant-husband's compensation and was
5 contemplated at the time of Appellant-husband began his
6 employment. Again, this is evidence that the purpose of
7 the funds was not a detached and disinterested form of
8 generosity but, rather, was part of Appellant-husband's
9 compensation.

10 Third, the size of the funds indicates that the
11 intent was to compensate, not gift the house to
12 Appellants. As stated earlier, the amount at issue,
13 approximately \$400,000, is more than double all of the
14 other gifts given to Appellants as indicated on
15 Appellants' Exhibit 2. Thus, there's a difference between
16 a small and spontaneous gift given to Appellants in
17 comparison to a property that requires planning,
18 forethought, and due diligence.

19 Fourth, and most importantly, Robin Black,
20 Appellant-husband's employer and the transferor of the
21 funds, has testified on multiple occasion that the purpose
22 of the funds was part of Appellant-husband's compensation
23 and not intended as a gift. Alternatively, if the funds
24 were not compensation, it should be treated as a loan that
25 was discharged in 2012. There were three promissory notes

1 issued to Appellants to sign with the terms of repaying
2 the funds.

3 Moreover, the lenders, Steven and Robin Black,
4 kept detailed notes regarding the expense incurred
5 purchasing the property, including the closing cost, the
6 escrow deposit, the wire transfer fees, and the repairs
7 made. Robin Black has stated that in or around October
8 2012 it became clear that Appellants were not going to
9 repay the loan after they sold the property, moved to New
10 Jersey, and kept all of the proceeds from the sale of the
11 home.

12 Accordingly, the debt owed was cancelled in or
13 around October 2012. If the funds are not compensation
14 for Mr. Black's services, it must be treated as income
15 from discharge of indebtedness under California Revenue &
16 Taxation Code Section 17071. Accordingly, Respondent's
17 proposed assessment in adjusting Appellant's income is
18 correct under that theory, and it must be sustained.

19 I'm happy to answer any questions your panel may
20 have. Thank you.

21 JUDGE GAST: This is Judge Gast. Thank you very
22 much.

23 I'm going to turn over to my panel again for
24 questions.

25 Judge Johnson, do you have any questions?

1 JUDGE JOHNSON: This is Judge Johnson. No
2 questions at this time. Thank you.

3 JUDGE GAST: Thank you, Judge Johnson.
4 Judge Tay?

5 JUDGE TAY: This is Judge Tay. Respondent, what
6 effect does the fact that the promissory notes are not
7 executed have on your alternative theory?

8 MR. COUTINHO: Yes. The promissory notes in this
9 instance have not been signed by Appellants. However,
10 they're indicative one, for the compensation arguments
11 that the transferor's intent was not to bequeath the gift,
12 but there was contemplation that the funds would be
13 repaid. In regards to whether or not it's a bona fide
14 debt, as stated in Respondent's reply brief under two
15 considerations in determining whether or not it is a bona
16 fide debt, it is the intention of repayments.

17 In this case, the funds were given to Appellants.
18 They obviously -- there was -- there was no loss on the
19 property. So when they sold the proceeds there could be
20 an expectation of repayments of the funds given. And,
21 then, obviously, the promissory notes indicate that the
22 loan -- the individuals giving the loan, Steve, and Robin
23 Black, intended that it be repaid to them rather than just
24 bequeathing a gift.

25 JUDGE TAY: Thank you. Does there have to be an

1 intention of repayment on behalf of the alleged borrowers
2 as well?

3 MR. COUTINHO: The case law indicates that the
4 most important consideration is the intent of repayment by
5 the transferor, not the borrower.

6 JUDGE TAY: So you're saying even if the borrower
7 does not agree to repayment, then it would still be a
8 loan?

9 MR. COUTINHO: It still could be considered a
10 loan, correct.

11 JUDGE TAY: Okay. And now from what I understand
12 RSB Vineyards or -- sorry. Robin Black cancelled the debt
13 in 2012. That's your argument.

14 MR. COUTINHO: Correct.

15 JUDGE TAY: And if -- is that a loan sufficient
16 to trigger cancellation of debt income from for the
17 borrower, like, the unilateral cancellation of debt from
18 the borrower, I guess?

19 MR. COUTINHO: Yeah. So as addressed in FTB's
20 additional brief dated June 15th, 2021, we discussed
21 whether or not there has to be an event, essentially, that
22 makes repayment unlikely for -- then would be unlikely to
23 occur. And based on Robin Black's testimony in 2012, it
24 appears that is the date that they ceased to collect the
25 debt. And so, yes, it can be unilateral. It could be

1 the -- the individuals giving the loan. When they no
2 longer seek the repayment, that date is the relevant date
3 in determining whether or not there's cancellation of debt
4 income.

5 JUDGE TAY: Okay. No further questions at this
6 time. Thank you.

7 JUDGE GAST: Thank you, Judge Tay.

8 This is Judge Gast. I have one question for
9 Mr. Coutinho on the compensation argument. I know you had
10 addressed this in the additional briefing. But assuming
11 this is compensation, can you explain your substantial
12 restriction argument for 2011 and why it would not be
13 income in 2011 when the funds were, you know, paid into
14 escrow and the home was deeded to Appellants.

15 MR. COUTINHO: Yes. So as shown in the exhibits
16 there's two types of funds. Basically, there's the
17 \$300,000 that was indicated in the offer letter dated
18 May 1st, 2011. And that was treated as compensation for
19 the 2011 tax year. For the 2012 tax year, both RSB
20 Vineyards and the IRS agreed that it should be treated for
21 funds for the 2012 tax year.

22 And the reason for that is that the nature of the
23 funds wasn't intended to -- it wasn't noted in the offer
24 letter, the additional \$400,000. Rather it appears to
25 have -- the goal of it was to induce a long-term

1 employment relationship. Obviously, the relationship
2 deteriorated. Then the relationship deteriorated in 2012.

3 And so the funds were properly classified for the
4 2012 tax year as opposed to the 2011 tax year because the
5 intent of the funds was not to merely induce Appellants to
6 move to California but, rather, to establish a long-term
7 employment relationship. And when that relationship
8 deteriorated in 2012, the funds were properly classified
9 for that tax year.

10 JUDGE GAST: This is Judge Gast. Thank you.

11 With that, I'm going to -- I don't believe
12 there's any more questions from the panel. So I'm going
13 to turn it back over to Appellants for their rebuttal for
14 five minutes.

15 And whenever you're ready, please begin.

16 Mr. Black, I believe you're muted.

17 MR. BLACK: Thank you.

18

19 CLOSING STATEMENT

20 MR. BLACK: First of all, the job offer you refer
21 to was an at-will job offer. Okay. It was at-will and
22 can be --

23 MRS. BLACK: Was not a contract.

24 MR. BLACK: Was not a contract. And Robin

25 Black --

1 MRS. BLACK: Was long- term.

2 MR. BLACK: And Robin Black states in that job
3 offer this is not a contract. And doesn't say anywhere
4 there, okay, that I'm bound to her by employment. House
5 is bound to my employment. Zero. This is -- this -- I
6 don't -- just because Robin Black says so doesn't mean so
7 because she's been guilty of a lot of fraudulent claims in
8 her testimony. All right. That's one.

9 And then two, we were never asked about -- one,
10 first of all, you're condoning and you're enforcing a
11 promissory -- non-executed promissory notes. These
12 promissory notes are invalid. They're -- they're paper.
13 They're paper not signed. So there's no validity to these
14 promissory notes.

15 MRS. BLACK: And the --

16 MR. BLACK: Go ahead, Teresa.

17 MRS. BLACK: And the note that she gave
18 Mr. Coutinho is dated June 6th, 2011, for \$700,000 not the
19 248 and not the 407. So she's saying that this was the
20 original note. Why would we take a loan for \$700,000 if
21 we were being given \$300,000 in housing assistance? It's
22 not there. This is all fabricated.

23 MR. BLACK: Yeah.

24 MRS. BLACK: These notes are invalid. They're
25 not even signed. So I -- we were never -- we were given

1 funds at the time when they were sent. She says in here
2 right on her letter to me that this is done for gifting.
3 She's -- again, she says they're drafting all these
4 accounts and all documents required. These will be done
5 this way for gifting purposes.

6 She doesn't every mention also -- she says in his
7 job offer that it's not a contract, and it is at-will and
8 it could be terminated at any time by her -- the employer
9 or the employee. There's nothing in there saying that
10 there's a loan amount or a promissory note, and that it is
11 all validated on a long-term employment that we're -- that
12 we're going to have a long-term employment agreement here.
13 There was none.

14 MR. BLACK: Jeff-- Jeff Black. Mr. Coutinho, you
15 don't acknowledge any gifting --

16 JUDGE GAST: Mr. Black, I'm sorry to interrupt
17 you. Please don't refer to Mr. Coutinho.

18 MR. BLACK: Okay. Sorry.

19 JUDGE GAST: Just talk to the panel. Thank you.

20 MR. BLACK: No. The -- the Franchise Tax Board
21 doesn't -- doesn't acknowledge any exhibits that reflect
22 her words about gifting. Please note, everything we are
23 doing is in your best financial interest, and this
24 April 18th, 2012. Okay. Almost a year after I was
25 employed. All right. We are bound by law to report all

1 gifts made to family. What is that intent? The intent is
2 that she was intending to gift it. Okay. Which she did
3 on June 29th.

4 So there's this fabrication that this long-term
5 employment -- you're assuming all this. Okay. And -- and
6 that's a scary road to go down. What you have to look at
7 is all the pieces to the puzzle. All right. Robin Black
8 gives you the answers to this test. All right. She says
9 exactly what we've said, that it's gifting. It's not
10 compensation. She says that. It's very easy to put
11 everything together. Again, Robin Black gives you the
12 answers. Gives all of us the answers to this test.

13 Thank you.

14 MRS. BLACK: And in 2012 she tried to go back and
15 change it. And she fabricated all of these notes and
16 everything else. So, again, none of them are executed.

17 MR. BLACK: Where -- Jeff Black. Where is our
18 1099 for debt relief? Are we --

19 MRS. BLACK: We never got that.

20 MR. BLACK: We never got that. We were never
21 notified. All right. She just assumed that we weren't
22 repaying a loan back. We were never even asked.

23 MRS. BLACK: They never asked us.

24 MR. BLACK: Show me a document. Show me an
25 email. Show me any -- any type of correspondence that

1 asks Teresa and I to pay back a loan, any money. It does
2 not exist.

3 MRS. BLACK: No.

4 MR. BLACK: She never asked us to.

5 MRS. BLACK: The only correspondence we had from
6 her after -- after your last paycheck and such, was when
7 we got that note on November 5th, 2012, about the
8 amendments she was going to be making and the additional
9 monies she was putting on his W-2. Never did she ask us
10 to repay a loan either in that -- in that letter. There
11 was no contact. There was no correspondence.

12 We didn't know anything about it. As far as we
13 were concerned, her last letter to us said, "You own the
14 house. It's yours free and clear." That was it. Yeah.
15 We are doing it. These documents would not be --
16 whatever -- necessary so you are not subject to taxes
17 and/or penalties where the house is concerned. Just the
18 official end date is 5/31/12, Robin.

19 She -- why would we think we needed to repay
20 something when she told us the house is ours? We own it.
21 That's it. So why would we think we were going to pay a
22 loan back that doesn't exist, that we never signed. It
23 was never executed. We don't even know. She -- like I
24 said, she fabricated all these promissory notes. None of
25 them are the same. They all have different dates. Which

1 one is it? It isn't any of them because they're all made
2 up. She could write whatever she wants. None of them are
3 executed. Why would I pay a loan back that I don't have.

4 MR. BLACK: And you never worked for her.

5 MRS. BLACK: And I never worked for them either.
6 Why -- why am I getting taxed when I own half of that
7 house as a non-paid employee? I'm not an employee. I was
8 never employed by RSB Vineyards not one day, and I was --
9 I'm on the deed of that house owner of that house. Half
10 of that house is mine.

11 JUDGE GAST: Okay. Thank you very much. Does
12 that conclude your rebuttal?

13 MR. BLACK: It does.

14 JUDGE GAST: Okay. Thank you.

15 I'm going to ask the panel one last time before
16 we close the hearing for questions. I'm going to turn it
17 over to -- or ask Judge Johnson if he has any questions.

18 JUDGE JOHNSON: This is Judge Johnson. I think I
19 have a couple of questions for Franchise Tax Board. And
20 based off of what the Appellants were just talking about,
21 the letters, later on in 2012 and promissory notes and the
22 attempts to get those signed. Was there ever any
23 indication that R. Black was ever trying to get collection
24 or repayment of the loan from Appellants?

25 MR. COUTINHO: Yes. I think -- I think the

1 promissory notes are indicative of that they were hoping
2 to get repayments of the monies -- of the funds lent.

3 JUDGE JOHNSON: Okay. With the promissory notes,
4 I think that's their Exhibit 10, the email that was sent
5 with them. And that was like it was indicating that --
6 let's see. They would take a yearly book entry with the
7 maximum allowed by the IRS. It seems to indicate that
8 they weren't going to annually write off the loan until it
9 was exhausted, as Appellants testify to. Does that sound
10 right?

11 MR. COUTINHO: Without having R. Black here to --
12 this is Brad Coutinho. Without having R. Black here to
13 testify regarding the intent of that, I'm uncomfortable
14 stating that. But I think if it was intended as a gift
15 and detached form of generosity, you wouldn't send a
16 promissory note. You wouldn't send this email. It would
17 just be intended at the time the funds were transferred
18 that to be a gift.

19 I think there was some confusion in the 2012 tax
20 year once the employment relationship deteriorated and
21 regarding how to classify them. Ultimately, it appears
22 that RSB Vineyards deemed them to be compensation and that
23 the IRS agreed with that. And Appellants haven't met
24 their burden to show that Respondent's proposed
25 assessment, which is based on federal adjustments, is

1 incorrect.

2 And so while there was confusion maybe in April
3 of 2012 regarding the classification of the funds, it
4 appears that the intention of the transferor, when the
5 funds were transferred in 2011, was to compensate
6 Appellant-husband and establish a long-term employment
7 relationship. Thank you.

8 JUDGE JOHNSON: Okay. This is Judge Johnson. I
9 do have a question about compensation as well. But
10 sticking to the alternative argument regarding it was a
11 cancellation of debt income, essentially. Assuming that
12 there was a loan but there was never attempts to get
13 repayment, never intentioned by the lender to have that
14 money repaid, what effect would that have on the
15 cancellation of debt income analysis?

16 MR. COUTINHO: Again, it's Respondent's position
17 that the reason the promissory notes were issued was an
18 intent to get repayments of the funds. If it is deemed
19 that the lender never intended to be repaid, then
20 obviously that would more lean towards that it was a gift.
21 But, however, Respondent's position is that the testimony
22 from the lender, Appellant Robin Black, stating that she
23 intended it to be a loan.

24 And the fact promissory notes were issued in
25 addition to detailed notes regarding what was -- what,

1 essentially, had been spent on the property regarding the
2 escrow deposits and closing cost, it indicates that it was
3 not a detached and disinterested form of generosity made
4 out of admiration. But, rather, there was an intent that
5 those funds would either be repaid in the form of a
6 long-term employment or just repaid in general.

7 JUDGE JOHNSON: Judge Johnson. Thank you. And
8 going to the principal argument regarding that the
9 \$416,000 was compensation, you mention that's compensation
10 by RSB the entity, and that's reflected on the W-2. Going
11 through the record and seeing that, you know, clearly, it
12 looks like that \$416,000 is represented in the value of
13 the property that was put in Appellants' names.

14 And looking at the funds that was used to
15 purchase that property, it seems to come from the family
16 members individually or their trust. Can you just explain
17 the timing and mechanism of how that \$416,000 is coming
18 from RSB to Appellants as compensation.

19 MR. COUTINHO: Yes. So it does appear that the
20 funds were directed by Steven and Robin Black, the owners
21 of RSB Vineyards. And in regards to the intention, given
22 that that was the same time that Appellant-husband had
23 begun his employment and the location of the property, it
24 indicates that there was a target economic benefit to the
25 lenders, in this case Steven and Robin Black.

1 Had it just been a gift, it could have been a
2 condo in Hawaii or a ranch in Arizona or better yet, a
3 home that was purchased in New Jersey where Appellants had
4 lived prior to 2011. But because the funds were used to
5 purchase a property that was ten miles away from where RSB
6 Vineyards is located, it's a strong indication that the
7 funds were specifically tied to employment.

8 If funds were not given to purchase this home,
9 it's unlikely that Appellant-husband would ever move to
10 California to begin his employment. So there is an
11 intrinsic link between the funds that were transferred and
12 Appellant-husband's employment with RSB Vineyards.

13 JUDGE JOHNSON: Okay. Judge Johnson. Let me try
14 one more question then. RSB Vineyards, it looks like it
15 was paying -- they're reporting salary, vacation, and
16 other compensation to Appellant-husband outside of the
17 house transaction. Is there any impact on the fact that
18 we're saying that the purchase of the house was partly
19 compensation for his employment when the funds to purchase
20 the house came from, say, a family trust rather than RSB
21 the company?

22 MR. COUTINHO: I don't think it's solely
23 determinative where -- who made the funds, whether it be
24 directly from RSB Vineyard's bank account or whether it be
25 from Steven and Robin Black's personal account. I think

1 the intention of what the funds were used for is the most
2 important characterization. And it appears that unlike
3 other gifts that were given to Appellants, this gift was
4 solely intentioned that it was tied to inducing a
5 long-term employment relationship between the parties.

6 There is a case that I cite to in Respondent's
7 reply brief. It's Larsen versus Commissioner, which has
8 similar facts in this case. In that case, there was a
9 relationship between the employer and employee that
10 trended towards a romantic relationship, and there was a
11 question of whether or not the funds were for employment
12 purposes or whether or not the funds were for personal
13 purposes. And in that case, they found the funds were
14 used to induce the employee to stay in Seattle.

15 And similar to this case, the funds appear to be
16 intended to form a long-term employment relationship and
17 have Appellant-husband to move to California to work or
18 RSB Vineyards. Thank you.

19 JUDGE JOHNSON: Judge Johnson, again. And you
20 mention the other gifts that were provided, and that's
21 listed in Exhibit 2, I believe it was. Some of the gifts
22 also listed were improvements to the house as far as
23 carpeting and purchasing the alarm system. Is it FTB's
24 position that the improvements to the house were gifts
25 from family and not compensation from the company?

1 MR. COUTINHO: Yes. So it does appear that
2 the -- I think it's Exhibit J to Respondent's opening
3 brief. There is a detailed listing of what was included
4 in the compensation. And I believe they did include the
5 Bay Alarm installation and some of the repairs to the
6 property. It's unclear to the Respondent if there was any
7 overlap between Exhibit 2 of Appellants and the
8 information provided by Robin Black of what is considered
9 compensation.

10 JUDGE JOHNSON: Okay. Thank you. And I
11 misspoke. It was Exhibit 1 I was referencing. And that's
12 Exhibit J, page 11. Thank you.

13 Judge Johnson. No further questions.

14 JUDGE GAST: Thank you. This is Judge Gast.
15 Thank you, Judge Johnson.

16 I'm going to turn it over to Judge Tay to see if
17 he has any questions.

18 JUDGE TAY: Just one clarifying question for
19 Respondent. What case are you referring to exactly that
20 states that the intent of the lender -- the intention of
21 repayment is enough to show that a bona fide debt exist?

22 MR. COUTINHO: Yes. Hold on one second. I
23 believe it's stated in FTB's additional brief that's dated
24 June 15th, 2011. And on page 3 it states that whether
25 there was a reasonable expectation of repayment, there's a

1 few cases related, but one of them is the Estate of Nixon,
2 which is a Fifth Circuit Court case from 1972. And I can
3 provide the citation as well if needed.

4 JUDGE TAY: Thank you for clarifying. I see the
5 citation there. No further questions.

6 JUDGE GAST: This is Judge Gast. Thank you,
7 Judge Tay.

8 I don't have any other questions. I think my
9 panelists asked everything I was going to ask. So with
10 that, I'm going to conclude the hearing. And I want to
11 thank the parties for their presentations.

12 We will meet and decide the case based on the
13 arguments, documents, and testimonies presented. We will
14 issue our decision no later than 100 days from today.

15 This case is submitted and record closed.

16 (Proceedings adjourned at 10:37 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 12th day of September, 2022.

ERNALYN M. ALONZO
HEARING REPORTER