

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	)	
	)	
J. SMITH,	)	OTA NO. 22029629
	)	220310040
APPELLANT.	)	
	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, March 16, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, )  
J. SMITH, ) OTA NO. 22029629  
APPELLANT. ) 220310040  
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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Suite 300, Cerritos,  
California, 91401, commencing at 9:30 a.m.  
and concluding at 10:04 a.m. on Thursday,  
March 16, 2023, reported by Ernalyn M. Alonzo,  
Hearing Reporter, in and for the State of  
California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ SARA HOSEY  
ALJ KEITH LONG

For the Appellant: RICHARD STACK

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
JOEL SMITH  
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 8.)  
(Department's Exhibits A-G were received at page 7.)

OPENING STATEMENT

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CLOSING STATEMENT

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1 Cerritos, California; Thursday, March 16, 2023

2 9:30 a.m.

3  
4 JUDGE KLETTER: So this is the appeal of Smith.  
5 It's OTA consolidated Case Numbers 22029629 and 220310040.  
6 Today is Thursday, March 16th, 2023, and the time is  
7 approximately 9:30 a.m. We're -- my name is  
8 Judge Kletter. With me are Administrative Law Judges Sara  
9 Hosey and Keith Long. While I'm the lead ALJ in  
10 conducting this hearing, all judges are co- equal decision  
11 makers.

12 Also present is our stenographer Ms. Alonzo who  
13 is reporting this hearing verbatim. To ensure we have an  
14 accurate record, we ask that everyone speaks one at a time  
15 and does not speak over each other. Please speak clearly  
16 and loudly. When needed, Ms. Alonzo will stop the hearing  
17 process and ask for clarification. And following the  
18 hearing, Ms. Alonzo will produce the official hearing  
19 transcript which will be available on the OTA website.  
20 The hearing transcript and the video recording are part of  
21 the public record.

22 Before we begin, some general rules to please  
23 keep in mind. Again, please say your name before you  
24 speak and try to speak directly into at the microphone.  
25 As a reminder this proceeding is a live broadcast and any

1 information shared is -- will be publicly viewable. And  
2 if you have any questions during the process or any issue,  
3 please direct them to me, and just I ask that you please  
4 wait for me to acknowledge you before you -- then we can  
5 work through whatever issue it is.

6 And as a general reminder, the OTA -- the Office  
7 of Tax Appeals is not a court. We are an independent  
8 appeals body. We are staffed by tax experts and  
9 independent of the State's tax agencies.

10 If I can have the parties, beginning with  
11 Appellant please each identify yourselves by stating your  
12 name for the record, it would be appreciated.

13 MR. STACK: Good morning, Judges. Richard Stack  
14 representing the Appellant Jonathan Smith in these  
15 appeals.

16 JUDGE KLETTER: Thank you.

17 MR. SMITH: Good morning. My name is Joel Smith  
18 with Respondent Franchise Tax Board.

19 MS. ZUMAETA: Good morning. This is Jackie  
20 Zumaeta with Respondent Franchise Tax Board.

21 JUDGE KLETTER: This is Judge Kletter with the  
22 Office of Tax Appeals. Thank you.

23 The issue for today is whether the statute of  
24 limitations bars Appellant's claim for refund for the  
25 2012, 2013, and 2015 tax years. The 2014 year was

1        withdrawn. With respect to the evidentiary record, FTB  
2        has provided consolidated Exhibits A through G. I just  
3        want to confirm with FTB.

4                Do you have any new exhibits that you'll be  
5        providing today?

6                MR. SMITH: No.

7                JUDGE KLETTER: Thank you.

8                And with respect to those exhibits,  
9        Appellant's -- Appellant objected to exhibits as hearsay  
10       and also as lacking in foundation. As a reminder the OTA  
11       has more relaxed rules of evidence. So that objection is  
12       overruled, and those exhibits are entered into the record.

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

15               Please note that they will be given the due  
16       weight that -- and due consideration.

17               Appellant has provided consolidated Exhibits 1  
18       through 6, and I just want to confirm with Appellant.

19               Are there any new exhibits that you'll be  
20       providing today?

21               MR. STACK: That is all we have.

22               JUDGE KLETTER: And this is Judge Kletter. Thank  
23       you.

24               The Franchise Tax Board did not object to the  
25       admissibility of those exhibits. So they are entered into

1 the record.

2 (Appellant's Exhibits 1-6 were received  
3 in evidence by the Administrative Law Judge.)

4 And then as a reminder we have 25 minutes for  
5 Appellant's presentation, followed by 15 minutes for  
6 Franchise Tax Board's presentation, and then 5 minutes,  
7 Appellant, for your closing statement and rebuttal.

8 Mr. Stack, are you ready to begin your  
9 presentation?

10 MR. STACK: Yes, I am.

11 JUDGE KLETTER: Please begin.

12 MR. STACK: Thank you.

13

14 PRESENTATION

15 MR. STACK: The issues in this case are largely  
16 legal. They are some factually issues, but they're  
17 generally not in dispute, except to the extent that  
18 there's an issue as to the significance of amended or  
19 original returns that were filed late by the taxpayer and  
20 whether that constitutes a federal adjustment. And also  
21 there's an issue as to the -- whether the -- whether  
22 there's reasonable cause for the failure to file timely,  
23 claims for refunds, if they are untimely filed under  
24 Supreme Court case of Boechler.

25 So I'll just start with the issues. So the main



1 three issues here are whether the taxpayer made deposits  
2 in the nature of cash bonds within the one-year period of  
3 limitations provided Revenue & Taxation Code  
4 Section 19306(a). The second issue concerns whether IRS  
5 adjustments are pending adjustments to taxpayer's 2012,  
6 2013, and 2015 income tax accounts satisfies the two-year  
7 limitations period of R&T Code Section 19311.

8 And then the third issue is whether based on the  
9 Supreme Court's decision last year in Boechler  
10 interpreting what we regard as an analogous statute of  
11 limitations. Reasonable cause exists for the taxpayer's  
12 possible untimely filing of his refund claims for the  
13 years at issue.

14 And so I'll just address the first issue. I  
15 should say sub-issues probably. The overarching issue is  
16 whether the statute of limitations allows for the refund  
17 claims. Again, in reviewing our brief, you'll see that  
18 we -- the factual statements that we have largely track  
19 what the FTB has -- has set forth. There are some  
20 differences, and I'll point those out. The theory of our  
21 case, really, is that due to the IRS audits of earlier tax  
22 years that involved years 2007, 2008, and 2010 that  
23 resulted in the filing of tax court cases.

24 There was an uncertainty of tax attributes and  
25 capitol loss carryovers of Mr. Smith for those years '07,

1 '08, and '10 and also subsequent years. And as a result  
2 he did not timely file his income tax returns for the  
3 years at issue here, with either the FTB or IRS. But  
4 shortly after those audits were concluded and the  
5 taxpayer's cases were concluded from June to September of  
6 2021, Mr. Smith filed income tax returns for the subject  
7 years with both the FTB and the IRS. And that's where we  
8 get into the federal adjustment issue.

9 The initial issue I'd like to discuss is the --  
10 whether the taxpayer made deposits in the nature of cash  
11 bonds within the meaning of R&T Section 19306(a). It's  
12 our position that any amounts the FTB received from the  
13 taxpayer, before he filed his returns, were deposits in  
14 the nature of the cash bonds that did not become payments  
15 until after the taxpayer filed his return, which would  
16 have fixed his liability. And accordingly, our argument  
17 is that the one-year statute of limitations from payment  
18 of R&T Section 19306(a) did not start to run until after  
19 the taxpayer filed his forms 540NRs.

20 And as you know California incorporates federal  
21 law as relates to deposits that are made to suspend the  
22 running of the interest on potential underpayments. And  
23 that law is IRC Section 6603 which we've cited in our  
24 briefs. And for California purposes, a deposit is not  
25 considered a payment of tax for purposes of filing a

1 refund claim, converting an administrative claim into a  
2 traditional refund action, or filing a refund action,  
3 unless the taxpayer provides a written notification to the  
4 FTB stating that the deposit is a payment of tax, or a  
5 deposit was actually used to pay a final tax liability,  
6 and that's referenced as R&T Section 19041.5. And it's  
7 our contention that any substitute return that the FTB  
8 filed as to the taxpayer had no effect on the refund claim  
9 limitation period as to amounts it received from the  
10 taxpayer.

11 The second issue has to do with IRS adjustments  
12 or pending adjustments to the taxpayer's 2012, '13 and '15  
13 income tax accounts. R&T Sections 19311(a)(1) and (2)  
14 provide that if the IRS makes or allows a, quote, "change  
15 or correction," end of quote, to a tax return, the  
16 taxpayer may file a, quote, "claim for credit or refund  
17 resulting from the adjustment," end of quote, and FTB, in  
18 quote, "may allow," end of quote, such credit or refund  
19 within two years of the date of the final determination as  
20 defined by Sections 18622 or 18622.5 or within the  
21 limitation period provided in Section 19306, whichever  
22 period expires later.

23 And the case that we cited for that proposition  
24 is Sahadi versus Scheaffer, a court appeals decision from  
25 2007. In turn subdivision (d) of R&T Code Section 18622

1 provides in part that the date -- quote, "the date of each  
2 final federal determination shall be the date on which  
3 each adjustment or resolution resulting from an Internal  
4 Revenue Service examination is assessed pursuant to  
5 Section 6203 of the Internal Revenue Code", end of quote.

6 In this case, to the extent that the taxpayer  
7 filed Forms 1040 that the IRS did not process, if there is  
8 later a credit that results from a federal adjustment,  
9 it's our position the refund claim is timely since it was  
10 filed within two years from the date of a final federal  
11 determination under R&T Section 19311 subsection(a). And  
12 once the IRS processed the taxpayer's federal returns, it  
13 will have made federal adjustments which will affect the  
14 taxpayer's state income returns for the subject years.  
15 Consequently, the taxpayer filed his refund claims within  
16 the two-year refund claim statute of limitations provided  
17 by Section 19311(a).

18 The third issue I would like to address has to do  
19 with the Supreme Court's decision in Boechler that was  
20 decided last April, April of 2022. In that case the court  
21 unanimously held that the 30-day time limit to file a  
22 petition for review of a collection due process  
23 determination specified by IRC Section 6330(d)(1) is a  
24 non-jurisdictional deadline subject to equitable tolling.

25 And I'm not sure how familiar you are with the

1 CDP rules. Collection Due Process is what CDP stands for.  
2 It allows taxpayers to contest IRS levies before they are  
3 imposed, and IRS lien filings after the fact. And the  
4 statute states, quote, "The person may come within 30 days  
5 of a determination under the section, petition the tax  
6 court for review of such determination, and the tax court  
7 shall have jurisdiction with respect to such matter," end  
8 of quote.

9 It is our contention that -- I know that the  
10 State in its briefing said that's not a federal statute of  
11 limitations. It is a federal statute of limitations that  
12 its Supreme Court determined is a claim processing rule.  
13 And in Boechler the Supreme Court parsed the language of  
14 Section 6330 of the Internal Revenue Code looking for a  
15 clear statement from Congress that it intended to make  
16 into a jurisdictional limit the 30-day deadline to file a  
17 tax court petition after a CDP Notice of Determination.  
18 It did not find any such clear statement.

19 And the Supreme Court in Boechler emphasized that  
20 there is a general applicability of equitable tolling. It  
21 indicated in a quote that is in our briefs that, quote,  
22 "Equitable tolling is a traditional feature of American  
23 jurisprudence and a background principle against which  
24 Congress drafts limitations periods." And that cites  
25 Lozano. And it goes on to say that "Because we do not

1 understand Congress to alter that backdrop lightly,  
2 non-jurisdictional limitations periods are presumptively  
3 subject to equitable tolling. And it cites Irwin versus  
4 Department of Veteran Affairs. It's a 1990 Supreme Court  
5 opinion.

6 So the Boechler court went on to apply the  
7 general principle of equitable tolling to the CDP statute.  
8 And it found that it saw nothing to rebut the presumption  
9 of equitable tolling. The Section 6330(d)(1) did not  
10 expressly prohibit equitable tolling, and a short 30-day  
11 time limit is directed at the taxpayer, not the court.  
12 And so that's -- so it basically found that the deadline  
13 also appears in the section of the tax code that is,  
14 quote, "Unusually protective of taxpayers and a scheme in  
15 which laymen unassisted by trained lawyers often initiate  
16 the process," citing a case called Auber.

17 And it indicated that this context has nothing to  
18 rebut the presumption that non-jurisdictional deadlines  
19 can be equitably tolled. In Boechler the IRS argued that  
20 even if IRC Section 6330 didn't create a jurisdictional  
21 barrier, petitioner should nevertheless still not have the  
22 opportunity to come into tax court late, because equitable  
23 tolling should not apply in a tax case. And that's citing  
24 a 26-year-old Supreme Court case, U.S. versus Brockamp  
25 decided in 1997. And that held that equitable tolling is

1       inapplicable to IRC Sections 6511 deadline for taxpayers  
2       to file refund claims.

3               And basically the Supreme Court in Boechler  
4       distinguished Brockamp on the following grounds. Brockamp  
5       rested on several distinctive features of the statutory  
6       deadline, and Congress wrote the time limit in 6511 of the  
7       Internal Revenue Codes in unusually emphatic form. And  
8       its detailed technical language could not easily be read  
9       as containing implicit exceptions. The court went on to  
10      say that the statute also reiterated the deadline several  
11      times, in several ways. And the statute explicitly listed  
12      numerous -- actually six exceptions for the deadline.

13             And based on Boechler and Brockamp, it is evident  
14      here that the language of the California refund statutes  
15      here at issue, R&T Code Sections 19306(a) and 19311(a),  
16      are not sufficiently clear and emphatic to precludes  
17      applicability of equitable tolling. For example, R&T Code  
18      Section 19306 uses the word "shall" only once with  
19      reference to the allowance of credits or refunds. And  
20      that statute reads, "No credit or refund shall be allowed  
21      or made after the period ending four years from the date  
22      the return was filed," end of quote.

23             Similarly, R&T Code Sections 19311(a)(1) and (2)  
24      both use the word "may" with reference to the filing and  
25      allowance of claims for refund based on a final federal

1 determination. And the former subdivision, that be (a)(1)  
2 states in pertinent part, quote, "A claim for credit or  
3 refund resulting from the adjustment may be filed by the  
4 taxpayer within two years from the date of the final  
5 federal determination," end of quote.

6 Further, R&T Code Section 19311(a)(2) states,  
7 quote, "Within two years of the date of the final  
8 determination, the Franchise Tax Board may allow a credit  
9 or make a refund," end of quote. Here the taxpayer,  
10 Mr. Smith, has ample basis for application of equitable  
11 tolling. If this court were to determine that he untimely  
12 filed his refund claims for the subject years, being '12,  
13 '13 and '15, the facts here indicate that due to IRS  
14 audits of earlier tax years 2007, '08, and '10 for which  
15 Mr. Smith filed tax court cases and the uncertainty of his  
16 tax attributes and capital loss carryovers for those years  
17 and subsequent years, until the tax corp cases were  
18 resolved that he did not timely file his returns for the  
19 subject years, we submit that's reasonable cause for not  
20 timely filing the claims.

21 Nonetheless, shortly after the audits were  
22 concluded and the tax court cases were over from June to  
23 September of 2021, Mr. Smith filed income tax returns for  
24 the subject years with both the FTB and the IRS. And we  
25 submit that he acted reasonably under the circumstances



1 and was unable to file accurate tax returns for the  
2 subject years until after his tax attributes and  
3 carryovers could be determined by the outcome of his tax  
4 court litigation for the earlier years.

5 With that, I believe that is our opening  
6 presentation. If Your Judges have any questions, I'm more  
7 than happy to address them.

8 JUDGE KLETTER: This is Judge Kletter. Thank  
9 you, Mr. Stack, for your presentation. We'll hold  
10 questions just to follow FTB's presentation.

11 Franchise Tax Board, are you ready to begin your  
12 presentation?

13 MR. SMITH: Yes.

14 JUDGE KLETTER: Please begin. Thank you.

15 MR. SMITH: Thank you.

16  
17 PRESENTATION

18 MR. SMITH: Good morning. My name is Joel Smith  
19 and with me is Jackie Zumaeta, and we are with Respondent  
20 Franchise Tax Board.

21 As mentioned during Appellant's case in chief,  
22 the loan issue in these consolidated appeals is did  
23 Appellant file timely claims for refund for the 2012,  
24 2013, and 2015 tax years before the expiration of the  
25 statute of limitations. As mentioned, the facts are in

1       dispute with regard to when notices were issued, when  
2       payments were made, when claims were filed.

3               So I'm not going to go into the details of the  
4       timeline for each tax year. Those are outlined in the  
5       Respondent's opening briefs. If the Panel has questions  
6       regarding the fact pattern and timeline, feel free to ask  
7       questions. I can address those, but I won't get into that  
8       to save all of us time.

9               There is, however, disagreement with regard to  
10      the application of the statute of limitations. And as I  
11      will explain in our briefing supports, Appellant did not  
12      file claims within an applicable statute of limitations.  
13      The applicable statute of limitations in the appeal is  
14      Revenue & Taxation Code Section 19306. Since Appellant  
15      did not file timely tax returns, the applicable statute  
16      time frames are four years from the date of the original  
17      due date for each year's tax return or one year from the  
18      date of payment, whichever is later.

19              With regard to each of Appellant's arguments,  
20      I'll address all three of those and then -- individually  
21      as part of my presentation. First, Appellant's payments  
22      were not tax deposits. All payments at issue were made as  
23      a result of Respondent's collection action taken after  
24      assessments became final. Revenue & Taxation Code  
25      Section 19041.5 allows taxpayers to make payments to pay

1 tax which have not been assessed at the time of the  
2 deposit.

3 Quoting that section, a deposit shall not be  
4 considered a payment of tax for purposes of filing a claim  
5 for refund until the deposit is used to pay a final tax  
6 liability. Here, all payments at issue were made after  
7 Respondent issued Notices of Proposed Assessment after  
8 those NPAs went final, and after the Respondent initiated  
9 collection action. All payments were to pay final tax  
10 liabilities. They were not tax deposits under  
11 Section 19041.5.

12 With regard to the two-year federal action  
13 statute of limitations, Revenue & Taxation Code  
14 Section 19311 does not apply because there were no federal  
15 changes giving rise to a claim for refund. Section 19311  
16 only applies if the IRS makes a change or correction on  
17 Appellant's original or amended federal tax return, and  
18 the taxpayer files a claim for refund resulting from the  
19 adjustment.

20 If the IRS makes a change of correction,  
21 taxpayers have two years from the final federal  
22 determination date to file a claim for refund with  
23 California. The final federal determination date is  
24 defined in Section 18622. That's the date on which each  
25 adjustment resulting from an IRS examination is assessed.

1           So to summarize, for the two-year statute to  
2       apply, there needs to have been an IRS examination that  
3       gives rise to filing a California claim for refund  
4       resulting from an adjustment. The adjustment needs to be  
5       posted on the taxpayer's account transcript to determine  
6       when the final federal determination date is to calculate  
7       the two-year statute of limitations. Here, this series of  
8       events did not apply to any of the tax years at issue.

9           For 2012 Appellant filed an original return in  
10      July of 2021. There's no change or correction made to the  
11      account as a result of an IRS examination as required  
12      under Section 18622. For 2015, Appellant did not file an  
13      original federal tax return until October 2021. Again,  
14      there was no change of correction. 2013 is a little bit  
15      different because the IRS prepared a substitute tax  
16      return. *Healer v. Commissioner*, a 2000 United States Tax  
17      Court case, follows a long line of tax court cases that  
18      holds a substitute tax return is not considered an  
19      original tax return filed by the taxpayer for purposes of  
20      the claim for refund statute of limitations. That's  
21      exactly what happened here.

22           So when Appellant filed his original 2013 federal  
23      tax return in August of 2021, the calculation or any  
24      change made to the account because of that original tax  
25      return is not -- does not give rise to the Section 19311

1 statute of limitations because of that substitute tax  
2 return as it's not a tax return filed or considered an  
3 original tax return under that code section.

4 It appears, based on Appellant's account  
5 transcript, that an adjustment was made to significantly  
6 increase his federal tax liability for the 2013 tax year.  
7 There's nothing in the account transcript to indicate that  
8 a claim for refund with California would be proper given  
9 the adjustments that were made at the federal level. So  
10 for all three tax years, the IRS did not conduct an  
11 examination that led to a refund adjustment. Therefore,  
12 the statute of limitations under Section 19311 does not  
13 apply.

14 One quick note. Processing a return is not an  
15 IRS examination. And another note is, if there were to be  
16 any pending adjustments at the federal level, by  
17 definition those adjustments have not been made, have not  
18 been posted to the federal account. Filing a claim for  
19 refund on something that has not happened, there would be  
20 no reason -- or it would be impossible to process such a  
21 claim. If there is later action taken on an account,  
22 Appellant could file a tax return in accordance with later  
23 adjustments. But to file a claim for refund on  
24 adjustments that may happen into the future, that's not  
25 proper.

1           And then finally with regard to the third  
2       argument Appellant has offered today, Boechler is not  
3       relevant to this appeal. Boechler considered the  
4       jurisdictional requirements of the IRS's collection due  
5       process hearing under the Internal Revenue Code. As  
6       Appellant mentions, the Supreme Court of the United States  
7       expressly rejected the IRS's argument that no equitable  
8       tolling in statute of limitations cases should apply for  
9       collection in due process hearings.

10           The Boechler opinion expressly mention that it  
11       did -- was not overturning the longstanding precedent set  
12       in United States v. Brockamp, which held that the statute  
13       of limitations is a jurisdictional statute not subject to  
14       equitable tolling or reasonable cause. Boechler does not  
15       apply to the federal claim for refund statute of  
16       limitations. Boechler does not apply to the California  
17       claim for refund statute of limitations. Therefore,  
18       Boechler does not apply to this appeal.

19           In conclusion based on the evidence in the record  
20       and the California statute of limitations law, Respondent  
21       properly denied Appellant's 2012, 2013, and 2015 claims  
22       for refund. Respondent requests you sustain its position.  
23       I can answer any questions the Panel has at this time.

24           Thank you.

25           JUDGE KLETTER: This is Judge Kletter. Thank you

1       for your presentation.

2               I'd like to turn it over to my Panel members  
3 before we, you know, move to closing statements by  
4 Appellant.

5               I just wanted to ask, Judge Long, do you have any  
6 questions for the parties?

7               JUDGE LONG: I do have a couple of questions. I  
8 wanted to start with Appellant. I just want to make clear  
9 your position with respect to Boechler is that under  
10 Boechler 19306 is not sufficiently specific enough to  
11 allow Brockamp to be applicable in this case?

12              MR. STACK: Yes, that's our position.

13              JUDGE LONG: And that's even though Brockamp is  
14 also specifically applicable to a time for credit or  
15 refund statute of limitations?

16              MR. STACK: Yes. That's a different statute.  
17 Brockamp is a different statute. It emphatically used the  
18 word "shall" several times as the Supreme Court noted.  
19 Whereas, the California statute does not use such clear  
20 language, such emphatic language, which we argue allows  
21 for equitable tolling in consideration with regard to that  
22 statute.

23              JUDGE LONG: Okay. Thank you.

24              I also have a question for FTB.

25              With respect to the Appellant's argument as to

1 the pending IRS adjustments, I understand that your  
2 position is that the -- first that by definition, if there  
3 are pending adjustments, they have not actually happened  
4 because that's what the word pending means. And also that  
5 the statute of limitations would have already passed any  
6 way.

7 But let's just, for the sake of this discussion,  
8 if Appellant were to prevail on the pending IRS  
9 adjustments argument, would the claim for refund in the  
10 returns that have already filed be sufficient? Or would  
11 FTB's position be that an additional claim for refund  
12 would have to be filed after the adjustments were made?

13 MR. SMITH: I think I understand all of the  
14 questions. I'm not saying that the -- I can't remember  
15 exactly what you said, but there was something in there  
16 that wasn't accurate as to what I wanted to convey to the  
17 Panel. I'm sorry. I can't remember exactly what that  
18 was. But with regard to your final question, there's  
19 nothing on these accounts to suggest that there's a  
20 pending action. But be that as it may, if there were to  
21 be something to happen at a later date, the Appellant  
22 would need to provide some documentation.

23 I mean, we could use -- right. Wouldn't need to  
24 file another tax return, per se, to start the time for  
25 refund. But there would need to be something filed to



1 connect the federal adjustment to the California return.  
2 For all we know an adjustment may not be applicable to  
3 California. So it wouldn't just be an automatic, you  
4 know, waiving of a wand and the claim happens. There  
5 would need to be something filed, but it doesn't  
6 necessarily have to be an exact, you know, form or  
7 something to that effect.

8 Does that answer the question?

9 JUDGE LONG: Yes, thank you. I have no further  
10 questions.

11 JUDGE KLETTER: This is Judge Kletter. I just  
12 want to turn it over to Judge Hosey. Do you have any  
13 questions for either of the parties?

14 JUDGE HOSEY: No questions. Thank you for your  
15 presentations.

16 JUDGE KLETTER: So this is Judge Kletter. I also  
17 don't have any questions, but I would like to ask,  
18 Mr. Stack, would you like to make a final statement or a  
19 rebuttal to anything that Franchise Tax Board or Mr. Smith  
20 said? Is there anything else that you prepared or would  
21 like to say before the case is submitted?

22

23 CLOSING STATEMENT

24 MR. STACK: Let me just respond briefly to what  
25 the FTB has mentioned, some of the points made by the FTB.

1           I think the main thing I'd like to mention is  
2     that, you know, as far as the Boechler case, we believe it  
3     is relevant and -- for the reasons we stated. And we  
4     distinguished the language of the refund claim statute  
5     6511 of the Internal Revenue Code and 19306 of the  
6     Revenue & Taxation Code and how the language used was  
7     different. And based on that and the facts of the case  
8     concerning the previous IRS audits and the uncertainty as  
9     to capital loss carryover and things of that nature, the  
10    taxpayer was not able to file accurate returns for these  
11    years at issue here until 2021.

12           And so based on that, we think there is  
13    reasonable cause for the taxpayer to not have timely filed  
14    his refund claims and the Court should consider those  
15    circumstances the taxpayer has alerted the Panel to. And  
16    with that, I don't think I have anything further to add.

17           JUDGE KLETTER: This is Judge Kletter. I'd like  
18    to thank the parties again for their presentation. This  
19    concludes our hearing for today.

20           And the Judges will meet and decide the case  
21    based on the documentation and the arguments that were  
22    presented today. We'll issue our written decision no  
23    later than 100 days from today. The case is submitted and  
24    the record is now closed.

25           This concludes this hearing session, and we'll be

1       returning at 1:00 p.m. for additional hearings.

2               Thank you.

3               (Proceedings adjourned at 10:04 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 21st day  
of March, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER