

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. MANUEL and N. MANUEL,) OTA NO. 21068047
)
 APPELLANT.)
)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, March 23, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:11 p.m. and concluding at 2:55 a.m. on
Thursday, March 23, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ OVSEP AKOPCHIKYAN

Panel Members: ALJ AMANDA VASSIGH
ALJ SHERIENE RIDENOUR

For the Appellant: M. MANUEL
ANASTASIA MARTYANOVA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
TOPHER TUTTLE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 15.)

(Department's Exhibits A-K were received at page 15.)

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1 California; Thursday, March 23, 2023

2 2:11 p.m.

3
4 JUDGE AKOPCHIKYAN: Good afternoon, everybody.

5 We are here for the Appeal of M. Manuel and N. Manuel.

6 The Appellant M. Manuel has an appointment at 2:30, so

7 we're going to swear him in and start and go on the record

8 in this case, start with the testimony. After the

9 testimony, I'll give some introductory remarks regarding

10 the case, and we'll move forward with his Representative's

11 presentation.

12 Mr. Manuel, will you please raise your right

13 hand.

14
15 M. MANUEL,

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

17 the Administrative Law Judge, was examined and testified

18 as follows:

19
20 JUDGE AKOPCHIKYAN: Thank you.

21 Ms. Martyanova, you may proceed with his

22 testimony. Ms. Martyanova, are you going to ask him

23 questions?

24 Or Mr. Manuel, are you just going to give your

25 testimony.

1 MS. MARTYANOVA: Yes, I would like to make a few
2 introductory remarks and then proceed to the --
3 Mr. Manuel's testimony.

4 JUDGE AKOPCHIKYAN: Okay. My only caveat is that
5 if Mr. Manual is testifying, we're going to have to give
6 enough time for the Franchise Tax Board to ask any
7 questions and also for the Panel to ask any questions.

8 MS. MARTYANOVA: Yes, I'm -- thank you so much.

9 As OTA held in its precedential Warren and its
10 ability to get the necessary documents can establish
11 reasonable cause. Here, as the record shows and the -- as
12 we'll further demonstrate through witness testimony and
13 argument, Appellant's testimony -- Appellant's inability
14 to make a timely payment was caused --

15 JUDGE AKOPCHIKYAN: Ms. Martyanova, I apologize
16 for interrupting you, but it seems like you're giving your
17 presentation. I just want to move forward with his
18 testimony first, and then you can give your opening
19 remarks and your presentation after he's finished with his
20 testimony.

21 MS. MARTYANOVA: Okay. Thank you.

22 MR. MANUEL: That works. Should I go ahead?

23 JUDGE AKOPCHIKYAN: Yes, please.

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1 tried to get, you know, the K-1 in a timely basis. It's
2 undisputed that we did not receive the K-1 that was, you
3 know, the -- that would have allowed us -- or really my
4 tax adviser -- to come up with the tax estimate until
5 sometime late -- well, he didn't receive it until
6 September of 2020. And there were clear emails from him
7 asking my CFOs for it all through August.

8 We have tried to provide evidence showing that we
9 did ask for it or my CFOs did ask for it. I know it was
10 due sometime due in July. Apologies if my dates are off.
11 What this really comes down to is we've been told we
12 didn't do enough of an effort to try and get the K-1s
13 before the date in July. And I just have to remind
14 everyone, we're talking about the dates of April to July
15 of 2020.

16 I also want to remind everyone as the owner of
17 the entity it's not really my job to be chasing K-1s. You
18 know, it's the job of, you know, our CFO who did, you
19 know, provide testimony that they were asking for it. I
20 did call the owner of the entity a couple of times, and
21 I've been asked, well, where's the written evidence that
22 you asked for this in a timely basis. I wasn't preparing
23 documentation for a hearing.

24 I was -- this was April, May, June 2020. I
25 wasn't even that concerned about taxes at that point in

1 time. I was wondering if my daughters and my son were
2 going to be able to go to school at some point. I -- you
3 know, running a live events company wondering how I was
4 going to employee to keep my staff employed. You know,
5 chasing a K-1 very, very far from my point of view at that
6 point in time.

7 You know, but an effort was made. We don't have
8 the evidence, right. We just don't, right. Calls were
9 made. Clearly, we didn't receive it because we didn't
10 receive it until September of 2020. There were
11 complicating factors. This is a multi -- there were
12 several entities, one U.K., one Singapore. It was a
13 company that we sold to Cirque du Soleil. We went into
14 bankruptcy. It was just a confluence [sic] of reasons why
15 we did not receive this in a timely manner.

16 It just fundamentally seemed wrong to me that I'm
17 penalized for something that my tax people just couldn't
18 have done. Could we have done more? Maybe, right. If
19 the judges' decision is we should have done more and the
20 penalty stands, trust me, I'm fine with that, right. It
21 seems wrong to me but, you know, I will accept whatever
22 decision judges pass down.

23 I just wanted to at least share my point of view
24 of why I'm here. And I hope that that's enough. If
25 not -- and by the way I know this country fights enough.

1 I don't want to fight this with anyone. I think the
2 people of the Tax Authority are doing their job. You
3 know, I think everyone is doing their job. I just think
4 that this was just an unfortunate circumstance, but I'm
5 prepared to accept whatever the decision is. That is what
6 I wanted to say.

7 JUDGE AKOPCHIKYAN: Thank you, Mr. Manuel.

8 Does the Franchise Tax Board have any questions
9 for Appellant?

10 MR. TUTTLE: No questions.

11 JUDGE AKOPCHIKYAN: Thank you.

12 Turning over to my panel, Judge Vassigh any
13 questions for Mr. Manuel.

14 JUDGE VASSIGH: I do have a couple of questions
15 for Mr. Manuel.

16 Mr. Manuel, can you clarify for us. I understand
17 that you didn't document your efforts to procure the K-1.
18 At one point you told us you were trying to procure it at
19 another time. You were telling us you weren't focused on
20 chasing the K-1. So can you clarify for us what those
21 efforts were and the timing.

22 MR. MANUEL: Yes, Your Honor. To clarify my
23 statement earlier, I was preoccupied with a lot of other
24 things. But I was asked at one point in time by my CFO to
25 call Simon Painter. And I believe the call was -- I had

1 three calls with him, and I -- I do not recall exactly
2 which of those three calls. And I said where are you guys
3 with the K-1s? That's about the extent of it, Your Honor.
4 I'm not -- I'm not going to, you know --

5 JUDGE VASSIGH: Do you remember at what point in
6 time you were making those calls?

7 MR. MANUEL: Yeah. Well, I have the dates here.

8 JUDGE VASSIGH: Oh, okay.

9 MR. MANUEL: There were three calls. One was
10 May 6th, one was May -- well, the one on May 12, was 20
11 seconds, so that probably wasn't it. And there was one on
12 June 5th. So it was either the -- my guess is it was the
13 June 5th call to him.

14 JUDGE VASSIGH: Are you getting those dates from
15 your phone records or --

16 MR. MANUEL: Yes, I am.

17 JUDGE VASSIGH: Okay. Thank you. And my second
18 question to you is would you have been able to estimate
19 your income to file returns without the K-1s? And why or
20 why not?

21 MR. MANUEL: I don't think so. That's certainly
22 a question for my tax -- the outside firm that prepares
23 our taxes. And their -- their statement to us was that
24 they could not finalize our taxes without these K-1s. I
25 think a large portion of the income were, you know, coming

1 from these -- these K-1s. So unfortunately, ma'am, Your
2 Honor, that's a third-party answer from my tax provider
3 who is not with us today. But that was the reason that he
4 gave us.

5 JUDGE VASSIGH: Thank you, Mr. Manuel. I have no
6 further questions.

7 MR. MANUEL: Thank you, Your Honor.

8 JUDGE AKOPCHIKYAN: Okay. Judge Ridenour, any
9 questions for Mr. Manuel?

10 JUDGE RIDENOUR: I do have a question. You
11 indicated that it's not your job to chase the K-1s.
12 However, what is your position on it is your job to timely
13 file and pay?

14 MR. MANUEL: Yes, it is.

15 JUDGE RIDENOUR: Thank you. No further
16 questions.

17 JUDGE AKOPCHIKYAN: Thank you, Mr. Manuel. You
18 are free to go. I know you have an appointment. We'll
19 proceed with your presentation through your
20 representative.

21 MR. MANUEL: Thank you, again.

22 JUDGE AKOPCHIKYAN: Thank you for your testimony.

23 MR. MANUEL: Thank you, Your Honors.

24 JUDGE AKOPCHIKYAN: We're going to go back to --
25 I still hear some background noise. Okay. We're good for

1 now.

2 So we're going to go back to the introduction
3 that we skipped because Mr. Manual had to leave early.

4 So my name is Ovsep Akopchikyan, and I'm the lead
5 Administrative Law Judge for purposes of conducting this
6 hearing. With me are Administrative Law Judges Amanda
7 Vassigh and Sheriene Ridenour.

8 I wanted to cover a few points to help the
9 hearing go as smoothly as possible. Here with us today is
10 our Stenographer Ms. Alonzo, who is reporting this hearing
11 verbatim. To ensure that we have an accurate record, we
12 ask that you all speak one at a time and do not speak over
13 each other. Also, please do your best to speak clearly
14 and loudly. When needed, Ms. Alonzo will stop the hearing
15 and ask for clarification.

16 After the hearing, Ms. Alonzo will produce the
17 official hearing transcript, which will be available on
18 the Office of Tax Appeals website. The hearing transcript
19 and the video recording are part of the public record. To
20 help Ms. Alonzo make an accurate transcript, please state
21 your name each time you speak.

22 Remember that the proceeding is being broadcast
23 live on the internet and any information you share is
24 publicly viewable. Please do not share any confidential
25 information. Please mute your microphone if you are not

1 speaking so we avoid background noises.

2 Lastly, as a reminder, the Office of Tax Appeals
3 is not a court. We are an impartial tax appeals agency
4 staffed by tax experts. We are independent from the
5 State's tax agencies, including the Franchise Tax Board.

6 Any questions?

7 MS. MARTYANOVA: No question. Thank you.

8 JUDGE AKOPCHIKYAN: So let's start with
9 introductions. Will the parties identify yourselves by
10 stating your name for the record, beginning with
11 Appellant.

12 MS. MARTYANOVA: Yes. My name is Anastasia
13 Martyanova, and I'm here for Appellant Mark and Nicole
14 Manuel.

15 JUDGE AKOPCHIKYAN: I hear an echo when you are
16 speaking, Ms. Martyanova. Is that just me or -- oh.
17 Okay. We'll try again. Okay.

18 Mr. Tuttle, I hope I'm pronouncing your last name
19 correctly.

20 MR. TUTTLE: My name is Topher Tuttle and I
21 represent Respondent Franchise Tax Board.

22 JUDGE AKOPCHIKYAN: Thank you, Mr. Tuttle.

23 As discussed, and agreed upon by the parties at
24 the prehearing conference on March 1st, 2023, and as noted
25 in my prehearing conference minutes and orders, the issue

1 on appeal is whether there is reasonable cause to abate
2 the late-payment penalty for the 2019 tax year.

3 With respect to the evidentiary record, FTB
4 provided Exhibits A through K during the briefing process.
5 Appellant did not object to the admissibility of these
6 exhibits at the prehearing conference. Therefore, FTB's
7 Exhibits A through K are entered into the record.

8 (Department's Exhibits A-K were received in
9 evidence by the Administrative Law Judge.)

10 Appellant provided Exhibits 1 through 11 during
11 the briefing process. FTB did not object to the
12 admissibility of these exhibits at the prehearing
13 conference. Therefore, Appellant's Exhibits 1 through 11
14 are entered into the record.

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

17 So the oral hearing already began with
18 Mr. Manuel's sworn testimony. We're going to continue
19 with Appellant's presentation for a total of -- we have 35
20 minutes allocated minus approximately 15 minutes for the
21 testimony.

22 You have about 20 minutes, Ms. Martyanova.

23 Then FTB will have about 10 minutes for its
24 presentation as agreed. And Appellants will have 5 more
25 minutes for a rebuttal.

1 Any questions before we proceed?

2 Ms. Martyanova, you may begin with your
3 presentation when you are ready.

4

5 PRESENTATION

6 MS. MARTYANOVA: Okay. I would like to thank you
7 for your flexibility and your time. And I would like to
8 start with stating that as OTA held in its precedent
9 Moren-- necessary documents can establish reasonable
10 cause. Here, as the record shows and through -- we show
11 it through witness testimony, and for the argument that
12 Appellant's inability to make a timely payment was caused
13 by the delay in getting the K-1, just as in Warren.

14 Also just as in that case Moren, Appellant
15 exercised ordinary prudent care in trying to get the K-1
16 sooner but was unable to do that. In addition, even more
17 than -- even more so than in Moren, Appellant had no
18 control over the entity as he sold all his interest and
19 was no longer a member months before the tax payment was
20 due.

21 Furthermore, for their efforts to try to obtain
22 and obtain these documents, documentation would have been
23 futile given the situation because of a number of factors
24 that were stated during the witness testimony. Which is
25 essentially the U.K. entities ceased all of its activities

1 and was not operating properly, meaning that all staff was
2 working remotely and did not have access to all the
3 documentation.

4 Another factor is that two countries, two
5 entities, they have different tax deadlines for filing the
6 tax return. It's not a complication to our situation.
7 And another factor is there was a disposition of shares in
8 the U.K. entity to a separate entity. It means there was
9 a huge reorganization due to essentially insolvency of the
10 U.K. entity.

11 So this was introductory remarks, and I would
12 like to proceed to the main argument.

13 And I want us to step back and remember that all
14 these events took place during the height of the pandemic
15 when it affected the world the most. The first six months
16 of the pandemic left a trail of devastation across the
17 world, hitting some of the most cherished industries with
18 brutal force. For millions of Americans, the impact of
19 Covid on the daily lives was palpable and heartbreaking.
20 The hospitality, tourism, entertainment, and retail
21 sectors were hit the hardest with countless businesses
22 shuttered and millions of jobs lost.

23 The entertainment industry in particular was
24 caught off guard facing an unprecedented situation with no
25 time to prepare. These numbers paint a bleak picture

1 revealing the staggering loss suffered by the industry.
2 In 2020 alone, the entertainment industry lost a whopping
3 \$160 billion in revenue. Movie theaters once busy with
4 crowds eager for the latest blockbusters were forced to
5 close their doors leading to a loss of over \$2 billion in
6 revenue for studios.

7 Live events, such as concerts and sport games,
8 faced similar fates with an estimate \$30 billion loss in
9 revenue for the year. The closure of theme parks and
10 other entertainment venues led to job losses for over
11 one-million employees and revenue losses of \$23 billion
12 for companies.

13 So the facts of the pandemic were not -- they
14 were not only financial but also deeply emotional and
15 psychological. As the world struggled to contain the
16 virus, people grappled with isolation, anxiety, and
17 stress. The loss of the entertainment industry hit
18 especially hard as it disrupted the joy, inspiration, and
19 the sense of community that entertainment provides.

20 The governments around the world stepped in to
21 provide support for businesses to remain afloat and
22 safeguard employment for individuals. However, despite
23 these efforts many businesses still struggled to survive,
24 and some were forced to close permanently as the U.K.
25 entity. In our case, Illusionist Live Limited

1 Partnership, they encountered similar outcome of declaring
2 bankruptcy and permanent closure, which was the main but
3 not the only reason attributable to delay in the issuance
4 of its documentation to U.S. entities.

5 The shutdown of the U.K. entity in turn lead to
6 the delayed submission of K-1s for the entities in which
7 the Appellants had a vested interest and delayed
8 submission of the Appellant's business and personal tax
9 return. Up to this point, Appellants and the FTB have
10 exchanged numerous briefs, discussed in length numerous
11 impediments, along with corresponding efforts made on
12 behalf of the taxpayer to timely file their California
13 personal tax return and pay their tax liability.

14 Essentially, the focus was on four factors
15 outlined in the Internal Revenue Manual, namely taxpayers'
16 reason for late payment, compliance history, length of
17 time between noncompliance and subsequent compliance to
18 pay the liability and the circumstances, which were beyond
19 the taxpayers' control. We'll start with the first one
20 the, easiest one. We'll start with compliance history.

21 So according to the Internal Revenue Manual, the
22 administrative body must look at the preceding tax years
23 for payment patterns and the taxpayer's overall compliance
24 history. Appellant has always timely paid their taxes
25 before the year in question, and this was an isolated

1 incident of a late payment.

2 Another factor that we must consider is
3 taxpayers' reason for late payment. The manual states
4 that the dates and explanation of a taxpayer should
5 clearly correspond with the events in which the penalties
6 are based. In our reply brief, Appellant states that
7 Kilburn Live received the K-1 from the U.K. entity on
8 September 8th of 2012. And so the reason for this late
9 payment was essentially a late submission of the documents
10 from the U.K. entity. But more so the fact that the U.K.
11 entity ceased virtually all of its operations in 2020.

12 And as I stated before, most people they switched
13 to work remotely, and they did not have access to
14 necessary documentation. And also, I would like to state
15 that you can find the confirmation of the U.K. entity that
16 it ceases its activities on Exhibit 2 in the Appellants'
17 reply brief. It's note 18. Production of K-1 is a
18 time-consuming process that depending on the size and
19 complexity of the partnership can take anywhere from a few
20 hours to several weeks or months to complete. And as we
21 can see from the brief structure of the U.S. and U.K.
22 entities, it is complexed and confusing. And it was the
23 responsibility of the U.K. entity to produce the K-1
24 schedule in time.

25 Another reason is Appellants' lack of access to

1 the U.K. partnership books since Appellant sold their
2 entire interest of the U.K. partnership on February 23rd,
3 2019. Since then they had no power to compel the U.K.
4 entity to produce its records. Appellant is the CEO of
5 Kilburn Live and has no control over operations or
6 accounting. This is the area of responsibility for the
7 CEO and the CFO. Appellant provided written proof of K-1
8 request from the chief of the entity.

9 Furthermore, the CPA for the Kilburn entities
10 could not have estimated Appellants' tax liability until
11 the tax completion were done for both U.S. entities,
12 Kilburn Live and Kilburn Media because a majority of
13 Appellant's income was coming from those corporations. So
14 one of the reasons, again, that before filing personal tax
15 return, they needed to get business tax return. And this
16 explains one month's delay in submission of personal tax
17 return. The K-1 was complicated in itself and preparation
18 of business tax return takes time and also not an easy
19 task.

20 And another reason that Appellant could not have
21 estimated his tax liability on the tax level because it
22 was a great difference between federal and state level tax
23 liability. A reasonable estimate would have been
24 impossible. Also because, yeah, Kilburn Live and the
25 Appellants' lack of knowledge as to how much of the income

1 from the U.K. partnership was taxable.

2 And other factors complicated the situation are
3 the disposition of the UK partnership shares to a separate
4 entity and the difference, as I stated, in federal and
5 California tax liabilities and the difference in treatment
6 of losses. So it was a loss in the federal level and an
7 amount due on the state level. Appellants' taxes, they
8 were an intricate puzzle which would be impossible to
9 solve without, at the very least, and understanding of
10 their tax liability from each entity.

11 Next, I'm going to proceed to the third factor,
12 length of time between noncompliance and compliance of
13 payment. So administrative body must also consider the
14 length of time in between those two events. And Exhibit 4
15 shows the CFO's continuing attempts to receive K-1 past
16 the deadline. And as was stated in the briefs, the
17 majority of communication between the entities management
18 were via FaceTime or Skype. Today during his testimony,
19 Appellant stated -- he referred to phone logs that we were
20 able to obtain.

21 But as for such tools as FaceTime or Skype, they
22 have really limited amount of time when they keep the
23 records. That's why we were not able to provide any
24 additional reasonable proof of communication. Exhibit 6
25 shows specific times when Appellant contacted the U.K.

1 entity regarding the K-1 request. And I would like to add
2 that it's general -- it's customary in the business to
3 utilize efficient modes of communication such as phone
4 calls, video conference, and Skype calls, instead of
5 composing lengthy email. And thus, it's expectable to see
6 a limited number of emails on this topic.

7 The last factor that we must consider,
8 circumstances which are beyond the taxpayer's control. So
9 the OTA must consider whether or not that taxpayer could
10 have anticipated the event that caused the noncompliance.
11 I believe we can all agree that nobody could have
12 anticipated the impact that Covid would have in all areas
13 of our lives back at the beginning of 2020. Internal
14 Revenue Manual states that when evaluating their request
15 for penalty relief, the administrative body must consider
16 the facts and circumstances relevant to each case.

17 So information to consider when evaluating such a
18 request includes but is not limited to an explanation as
19 to the following: Why the records were unavailable and
20 what steps were taken to secure the records? If other
21 means were explored to secure needed information? Why the
22 taxpayer did not estimate the information? If the
23 taxpayer promptly complied once the missing information
24 was received? And supporting documentation, such as
25 copies of letters written and responses received in an

1 effort to get the needed information.

2 So we would like to reiterate that the records
3 were not available due to the circumstances that include
4 but are not limited to the fact that the U.K. entity
5 ceased to virtually all of its activities in 2020 and
6 declared bankruptcy as it was unable to timely provide
7 schedule K-1 to Kilburn Live. Also, we have different
8 deadlines for the U.K. tax filing and complex foreign laws
9 that are involved in this situation. We know that the
10 deadline for the U.K. entity, which was going through a
11 major reorganizations, deadline for their tax returns were
12 January of the next year 2021.

13 And another factor is that, yeah, disposition of
14 shares as I stated reorganization of entity. So the
15 Appellant did not have access to the U.K. partnership
16 books. He did not have this access since February 2019
17 and thus, no other means of securing the needed
18 information. And again, Appellants could not estimate the
19 tax liability due to difference -- significant differences
20 on federal and state level tax returns and due to the
21 different tax treatment of losses. And also, there was
22 delay for personal tax return because the partnership tax
23 return must have been filed first.

24 Appellants did try diligently before the tax
25 payment deadline to obtain the necessary documents. As

1 shown on Exhibit 6, Appellant made phone calls to
2 then-president of the U.K. entity. And considering the
3 aforementioned circumstances, it's not practical nor
4 rational to anticipate those entities are undergoing
5 reorganization due to their solvency and with the
6 postponement of tax filing deadlines until January 2021,
7 that this entity would be able to submit schedule K-1 to
8 its U.S. shareholders by the July 15, deadline.

9 Once Appellants received the scheduled K-1, they
10 did everything in their power to calculate and pay their
11 taxes in a timely manner. Even though they experienced
12 financial hardship due to the fact that their -- most of
13 their income was from a company that holds live events and
14 the income had a decrease of 90 percent of -- this entity
15 had a 90 percent decrease of revenue in 2020, they still
16 paid their tax liability as soon as they could.

17 So I'm going to stop here and invite any
18 questions.

19 JUDGE AKOPCHIKYAN: Give me one moment. Can you
20 hear me now? Thank you.

21 Thank you for your presentation, Ms. Martyanova.
22 Turning it over to my Panel members.

23 Judge Vassigh, do you have any questions for
24 Ms. Martyanova?

25 JUDGE VASSIGH: I do not. Thank you.

1 JUDGE AKOPCHIKYAN: Thank you.

2 Judge Ridenour, any questions?

3 JUDGE RIDENOUR: No questions. Thank you.

4 JUDGE AKOPCHIKYAN: Thank you.

5 I do have one question regarding Appellant's
6 position. Is most of the late payment related to one
7 transaction? We don't have a copy of the K-1, but it
8 seems like it's all related to the sale of his interest in
9 the U.K. entity, which happened back in February 2019.

10 MS. MARTYANOVA: Yes, that's correct.

11 JUDGE AKOPCHIKYAN: Okay. Thank you. I don't
12 have any other questions.

13 Mr. Tuttle, I apologize if I'm mispronouncing
14 your last name. You can proceed when you're ready.

15

16 PRESENTATION

17 MR. TUTTLE: Good afternoon. My name is Topher
18 Tuttle, and I'm representing Respondent, the Franchise Tax
19 Board.

20 The issue in this case is whether Appellants have
21 demonstrated reasonable cause such that the late-payment
22 penalty may be abated for tax year 2019. The facts for
23 tax year 2019 are straightforward. Appellants timely
24 filed their 2019 California resident return on
25 October 15th, 2020. However, Appellants did not pay the

1 tax amount in full until October 14th, 2020. As a result,
2 Respondent imposed a late-payment penalty of about
3 \$19,000.

4 Appellants explain that most of their income for
5 tax year 2019 arises from the interest they held in a
6 certain U.K. partnership. As is relevant to this appeal,
7 the U.K. partnership was sold to Cirque du Soleil in
8 February 2019 for a gain of nearly \$9 million.

9 Appellants' claim that they were unable to estimate their
10 tax relating to the U.K. partnership until it issued a
11 schedule K-1 on September 8th, 2020, despite their efforts
12 to obtain this information before the payment deadline of
13 July 15th, 2020.

14 Under Revenue & Taxation Code Section 19132, the
15 late-payment penalty may be abated upon a showing of
16 reasonable cause. To establish reasonable cause, a
17 taxpayer must show that the failure to timely pay the tax
18 occurred despite the exercise of ordinary business care
19 and prudence. In the precedential opinion Appeal of
20 Moren, the Office of Tax Appeals explained that taxpayers
21 must establish that they could not have acquired the
22 information necessary to make an estimate of their tax
23 liability when information relating to the income source
24 is held by a third party.

25 In addition, taxpayers must show the specific

1 efforts they took to acquire the information necessary to
2 determine their tax liability. Appellants have not
3 demonstrated what information was held by the U.K.
4 partnership that they needed to be able to estimate their
5 tax liability. But they have attempted to demonstrate
6 that they took efforts to obtain the necessary information
7 from both the managing partner and the tax preparer of the
8 U.K. partnership in a manner similar to that demonstrated
9 by the taxpayer in Moran.

10 However, the present case is distinguishable from
11 Moran on several important points. First, prior to the
12 payment deadline in Moran, the taxpayer believed some
13 portion of the income in question would be taxed at the
14 estate level. Thus, the distributions from the estate
15 would not be primarily taxable to him. In this case,
16 Appellants' income relates primarily to the sale of the
17 U.K. partnership to Cirque du Soleil, which occurred on
18 February 2019 over a year before the payment deadline.

19 Appellants presumably expected to pay tax on
20 their pro rata share of the gain. Typically, a partner in
21 a partnership would expect to know of their pro rata share
22 of the gain arising from the sale of the partnership
23 interest. This is important because Appellants could
24 estimate their pro rata share of the U.K. partnership sale
25 long before the payment deadline for tax year 2019, even

1 without a schedule K-1.

2 Second, the taxpayer in Moran learned about the
3 estate's decision to have the beneficiaries personally
4 report the estate's distributions and pay the tax on the
5 day before the payment deadline. In this case, the
6 relevant transaction, the sale of the U.K. partnership,
7 occurred in February 2019. Appellants were aware of the
8 sale price and the flow through pro rata share long before
9 the payment deadline. The OTA in Moran explained that
10 reasonably estimating a tax liability requires that a
11 minimum level of information is available to the taxpayer.
12 In this case, Appellants have failed to demonstrate that
13 they did not have this minimum level of information.

14 Third, the taxpayers in Moran had concrete
15 evidence of the content of their communication with the
16 estate asking for clarification and additional
17 information. In this case, Appellants have not
18 established they exercised ordinary care and prudence in
19 their efforts to obtain information from the U.K.
20 partnership's managing partner and tax preparer.
21 Although, Appellants have provided some evidence of phone
22 contact with the managing partner in May and June of 2020,
23 the record is silent regarding efforts to obtain schedule
24 K-1s after June 5th as the payment deadline approached.

25 Respondent asserts that an ordinarily prudent

1 person would continue to make contact as the deadline
2 approached. Furthermore, Appellants' evidence of their
3 inquiry efforts after the payment deadline are primarily
4 internal discussions about the need to request the
5 information from the U.K. partnership, not documented
6 requests to the U.K. partnership.

7 As a result, Appellants have only provided
8 evidence of contact with the U.K. partnership asking for
9 tax information in May and early June 2020. This limited
10 contact prior to the payment deadline does not reflect
11 ordinary business care and prudence. Thus, Respondent
12 asks OTA to follow the precedential opinion in Moran to
13 determine that Appellants have failed to demonstrate
14 reasonable cause to abate the late-payment penalty.

15 Thank you. I am happy to answer any questions
16 the Panel may have.

17 JUDGE AKOPCHIKYAN: Thank you. I don't have any
18 questions. But let me turn over to my Panel members.

19 Judge Vassigh, any questions?

20 JUDGE VASSIGH: No. Thank you.

21 JUDGE AKOPCHIKYAN: Thank you.

22 Judge Ridenour?

23 JUDGE RIDENOUR: No questions. Thank you.

24 JUDGE AKOPCHIKYAN: Thank you.

25 Ms. Martyanova, it's time for your rebuttal. You

1 have five minutes. Please proceed when you're ready.

2 MS. MARTYANOVA: Thank you.

3

4 CLOSING STATEMENT

5 MS. MARTYANOVA: Case law states that in order to
6 show reasonable cause a taxpayer must show exercise of
7 ordinary business care and prudence. The standard for
8 determining whether a taxpayer exercised ordinary care and
9 prudence is that of an ordinarily intelligent and prudent
10 businessperson under the same circumstances.

11 Appellant satisfied this standard. If an
12 ordinarily intelligent and prudent businessperson were
13 placed in the same circumstances, they would have also
14 been unable to obtain the necessary records from the U.K.
15 entity and make a reasonable estimate on their tax
16 liability before receiving the schedule K-1 from the U.K.
17 entity and the two U.S. entities.

18 When managing a complex business structure, a
19 proper separation of responsibility is crucial. In this
20 case, we have demonstrated that both the CFO and the tax
21 preparer for the U.S. entities consistently contacted the
22 U.K. partnership on behalf of Appellants numerous times
23 regarding the K-1 schedule, and that the CEO of Kilburn
24 Live was not responsible for accounting or operations
25 repeatedly requested documentation from the U.K. entity's

1 president to ensure his compliance with the law.

2 Appellants made both verbal and written requests
3 prior and post deadline and proved this with evidence
4 provided to the parties. Yes, unlike the Moran case, we
5 don't have solid written proof, but today's testimony,
6 under penalty of perjury, I believe, will add to the
7 evidence that we have provided so far of the attempts that
8 were made by Appellant to obtain the records, both prior
9 to the deadline and past the deadline.

10 What the law requires is that we show continuing
11 efforts to try and get the K-1 schedule. And what written
12 evidence we were able to get, we provided the parties
13 with. And additionally, any other efforts by Appellant to
14 obtain the schedule beyond what we have shown, additional
15 efforts would have been futile given all the
16 circumstances, including operational impact from Covid on
17 the U.K. partnership, the ongoing major reorganization,
18 and difference in the U.K. tax year period and deadline
19 and the U.S. tax deadlines.

20 It's understandable that during the challenging
21 times of the pandemic, the entertainment industry face
22 severe financial strain, including the U.K. entity which
23 went through bankruptcy. Therefore, unreasonable to
24 expect the taxpayer to be able to compel documents from
25 other parties who are under even more significant stress

1 during this period.

2 Thus, the taxpayer has provided credible,
3 competent, relevant evidence to support the claim of
4 reasonable cause in the form of today's testimony under
5 the penalty of perjury as well as exhibits to the briefs
6 showing written attempts to obtain K-1 prior and past the
7 deadline.

8 This concludes Appellants' presentation. Thank
9 you so much.

10 JUDGE AKOPCHIKYAN: Thank you very much.

11 Do either party have any questions before we
12 conclude the hearing?

13 Hearing none, we are ready to conclude this
14 hearing. This case is submitted on March 23, 2023, and
15 the record is now closed.

16 I want to thank the parties for their
17 presentation today, and Mr. Manuel for his testimony.

18 The judges will meet and decide this case based
19 on the argument and evidence presented to the Office of
20 Tax Appeals. We will issue our written opinion no later
21 than 100 days from today. Thank you all.

22 We will take a brief recess before the next
23 hearing, which is scheduled to begin at approximately
24 3:05 p.m.

25 Thank you.

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(Proceedings adjourned at 2:55)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 10th day
of April, 2023.

ERNALYN M. ALONZO
HEARING REPORTER