

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R. HEFT and J. HEFT,) OTA NO. 220911285
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, June 15, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:55 a.m. and concluding at 11:33 a.m. on
Thursday, June 15, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE GEARY

For the Appellant: R. HEFT

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
BRADLEY COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-14 were received at page 7.)

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

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California; Thursday, June 15, 2023

10:55 a.m.

JUDGE GEARY: Let's go on the record and then start the stenographic record.

And we'll begin by having the parties identify themselves, beginning with the Appellants.

MR. HEFT: Yes, Your Honor. Robert Heft appearing as the Appellant.

JUDGE GEARY: Thank you, Mr. Heft.

And for Franchise Tax Board.

MR. COUTINHO: Brad Coutinho appearing on behalf of Respondent Franchise Tax Board. Thank you.

JUDGE GEARY: Thank you, Mr. Coutinho.

The exhibits have been marked for identification in this appeal. And they consist of Appellant's exhibits marked 1 through 14 for identification, and Respondents exhibits marked A through F, as in frank, for identification. OTA incorporated all of the exhibits into a digital hearing binder, and OTA made that binder available to the parties for download. So hopefully the parties have downloaded the binder, reviewed the exhibits, and satisfied themselves that the exhibits are complete and legible and that the binder contain all the exhibits they seek to have admitted.

1 Let me begin by asking, Respondent Mr. Coutinho,
2 whether you have reviewed the evidence -- the electronic
3 evidence that was put into the binder, and whether the
4 exhibits submitted on behalf of Respondent are complete
5 and legible?

6 MR. COUTINHO: Yes. This is Brad Coutinho. And
7 yes, I have reviewed the exhibit binder, and it appears
8 accurate. Thank you.

9 JUDGE GEARY: Mr. Coutinho, can you tell me
10 whether or not FTB has any objection to the admission to
11 Appellant's Exhibits 1 through 14?

12 MR. COUTINHO: This is Brad Coutinho. We have no
13 objection to Appellant's exhibits. Thank you.

14 JUDGE GEARY: Thank you.

15 And let me ask Mr. Heft.

16 Mr. Heft, have you had an opportunity to review
17 the exhibits that are part of the electronic hearing
18 binder?

19 MR. HEFT: This is Robert Heft, Your Honor. Yes,
20 I have reviewed those.

21 JUDGE GEARY: And Mr. Heft, do you have any
22 objection to the admission of Respondent's exhibits marked
23 A through F for identification?

24 MR. HEFT: I do not have any objections, Your
25 Honor. Robert Heft.

1 JUDGE GEARY: Thank you, Mr. Heft.

2 All of the exhibits submitted by both parties are
3 now admitted in this matter.

4 (Appellant's Exhibits 1-14 were received
5 in evidence by the Administrative Law Judge.)

6 (Department's Exhibits A-F were received in
7 evidence by the Administrative Law Judge.)

8 JUDGE GEARY: A brief discussion of the issues.
9 The parties agree that the issues to be decided in this
10 appeal pertain to the 2020 tax year and are as follows:
11 First, is there reasonable cause to abate the late payment
12 penalty; and second, whether the estimated tax penalty
13 should be abated.

14 Mr. Heft, are those the issues that you
15 understood OTA would be taking under consideration?

16 MR. HEFT: Robert Heft. Yes. I understand those
17 to be the two issues.

18 JUDGE GEARY: Thank you.

19 And Mr. Coutinho, on behalf of Franchise Tax
20 Board, do you agree those are the issues?

21 MR. COUTINHO: Brad Coutinho. Yes, I do agree
22 that those are the issues on appeal.

23 JUDGE GEARY: Thank you, Mr. Coutinho.

24 Time estimates. Appellants have indicated at the
25 prehearing conference that they will require approximately

1 20 minutes to present argument and testimony.

2 Mr. Heft, is that still your estimate?

3 MR. HEFT: Robert Heft. That's still my
4 estimate, Your Honor.

5 JUDGE GEARY: Thank you, Mr. Heft.

6 Respondent indicated at the conference that it
7 would require approximately 15 minutes.

8 Mr. Coutinho, is that still your estimate for
9 argument today?

10 MR. COUTINHO: This is Brad Coutinho. Yes,
11 that's still my estimate. Thank you.

12 JUDGE GEARY: Thank you.

13 And the Appellants will also have approximately
14 five minutes for final comments or rebuttal argument if
15 they choose to use that at the conclusion of Respondent's
16 argument.

17 It's my understanding, Mr. Heft, that you wish to
18 testify today; is that correct?

19 MR. HEFT: Yes. That is correct. Robert Heft.
20 That is correct, Your Honor.

21 JUDGE GEARY: Do Appellants plan to offer any
22 other testimony beside yours?

23 MR. HEFT: Robert Heft. No, they do not, Your
24 Honor.

25 JUDGE GEARY: Thank you.

Mr. Coutinho, does Franchise Tax Board expect to offer any witnesses today?

MR. COUTINHO: This is Brad Coutinho. Franchise Tax Board does not anticipate calling any witnesses today. Thank you.

JUDGE GEARY: Thank you. All right. Thanks a lot.

Mr. Heft, you can proceed in any fashion you wish. The easiest way would probably be for you to intersperse your argument with your testimony. And in order to facilitate that process, I'm going to ask you to raise your right hand so I can administer an oath or affirmation to you.

R. HEFT,
produced as a witness, and having been first duly sworn by
the Administrative Law Judge, was examined and testified
as follows:

JUDGE GEARY: Thank you.

Let me just check something here. I think we're just about ready to go. All right.

Mr. Heft, you may begin whenever you're ready.

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1 that have been cited the distinction and facts that exist
2 between those cited cases and what we're dealing with
3 here.

4 They are older cases, all of them, but they don't
5 cover factual circumstances that are really very close at
6 all in terms of what we're dealing with here. The
7 standard that is -- that is articulated in those cases and
8 set out in the brief by FTB basically place the burden on
9 me to show reasonable cause exists to justify this late
10 payment. And I'm very confident -- and this is argument.
11 I'm very confident that I think the facts we presented
12 here will support a finding in a favor on using that
13 standard.

14 I have to show failure to pay occurred despite
15 the exercise of ordinary business care and prudence that's
16 cited in case of MB and GM Scott and the Appeal of Roger
17 Sleight. I assume these are cases that are used regularly
18 by FTB in these kinds of circumstances, and they define
19 the rules. But, you know, the reason for missing
20 deadlines must be such that -- and I think this is
21 important. It's such that an ordinarily intelligent and
22 prudent businessperson would have acted similarly under
23 the same circumstances. And that's from the Triple Crown
24 case.

25 That's the standard that I've been working with,

1 and I think I can meet. There's two prongs to those -- to
2 test. And again, this is argument from me. But one, I
3 have to show that I'm an ordinarily intelligent and -- and
4 this is critical, I think -- and a business -- and that I
5 would have acted as ordinary -- as an ordinary
6 businessperson would have acted.

7 So first of those is -- and this is argument,
8 Your Honor -- I don't have to be extraordinarily
9 intelligent to meet the standard. And this is testimony
10 now, is I think that I at least reach the standard of
11 ordinary intelligence. So I think that first part of it
12 there I have met, and the facts show that I have met.

13 Then secondly and probably critically, I don't
14 have to prove that I was exceptionally prudent, or that I
15 was extraordinarily prudent, in doing this or that I was
16 phenomenally prudent in doing this. All I have to show --
17 and I believe the facts here support this -- is that I
18 have been ordinary. That's all. Just ordinary. That's
19 what the standard is. That's run of the mill. It's
20 unremarkable.

21 And I think that -- and I'll argue in a minute
22 that the facts we have here allow me to at least meet that
23 standard, and it's a standard of ordinary care, really.
24 So and it's to be weighed under the circumstances under
25 which that I was operating at the time. It's the totality

1 of the circumstances that are referred to in the cases
2 that have been cited by FTB and apparently set the
3 standard here in this case.

4 So like most ordinary businesspersons that
5 operate a business, I had many, many things on my plate at
6 the time that I paid this estimated tax or believed that I
7 had paid this estimated tax. And so those circumstances,
8 you know, are relevant here. And this is testimony right
9 now, is that, you know, at the time I made my estimated
10 tax payments for 2020, I was running a 25-attorney law
11 firm. I was litigating cases. I was dealing with some
12 personal health issues that were very serious at the time.
13 I have a conserved disabled daughter who lives with my
14 wife and myself here at the home.

15 And those were the circumstances under which I
16 was operating, and those circumstances are relevant to the
17 decision in this case because that's what the cases say.
18 You must judge under the totality of the circumstance that
19 existed. My testimony -- of course, I understand we've
20 done discovery in this matter -- but my testimony here are
21 on those points, you know, of course is uncontroverted.
22 And I've sworn under oath that that is in fact the
23 circumstance, and it was.

24 And so I'm not making excuses here for what
25 occurred here. I'm simply setting out the circumstances

1 that are relevant to the question. Did I act as an
2 ordinarily intelligent and -- and as an ordinary prudent
3 businessperson would have acted under the same
4 circumstances. And so these facts, again, are not offered
5 as an excuse but simply to set the circumstances under
6 which my actions must be judged.

7 And so we have to now, I think, look at what did
8 I do here. And I would say this is -- this is probably a
9 blend of both testimony and argument, but it's primarily,
10 I suppose, it's testimony. I utilize a very competent
11 CPA, a tax attorney at a large CPA firm in Los Angeles
12 that I've been using for the last 20-plus years, probably,
13 to advise me on and have me -- and do the taxes for me.

14 He was there to advise me what taxes I needed to
15 pay. And on May the 25th, 2021, he told me that my state
16 estimate of \$20,000 was due by May the 17th of 2021. Now,
17 on 5/16 -- a day before he told me it was actually due --
18 the very next day after he sent me that email -- and it's
19 attached as one of the exhibits in my packet of
20 evidence -- I made efforts to make those payments,
21 good-faith efforts to make those payments. And I did it a
22 day earlier than he even suggested to me.

23 Now, I can tell you that sometimes I'm not
24 exactly as prompt as I should be under the circumstances,
25 but this is one instance where, in fact, I did act early

1 as opposed to my normal habits sometimes of acting late.
2 But I then emailed my accountant right back, and I told
3 him -- and that email is attached. I told him, hey I have
4 made these payments to the state and to the federal
5 government for those estimates that he told me to pay.

6 And I told him specifically that I paid the State
7 of California \$20,000, which was the amount that he had
8 told me that I should pay. Then on the 16th of May, when
9 I made these attempted payments, I had gone to the FTB
10 website and made the payment the way I had been making
11 payments to the state for years. Of course, how most
12 people have to make their payments. On that same day I
13 did the same thing. I went to the federal government's
14 website, and I paid my \$68,000 for estimated tax payments
15 to the IRS on their website.

16 This, I think, then becomes critical in terms of
17 argument here is that on May the 16th that same day, I got
18 two confirmations from FTB saying that my payment request
19 was received. Now, I know from many years of doing this
20 that the confirmation says specifically on them, I
21 understand that you, one, cannot rely upon these as
22 meaning that the payment has been made. I understand
23 that, and I understood it at the time.

24 But nonetheless it is a piece of evidence, a fact
25 that in my mind when I'm judged as to whether or not I

1 exercised ordinary prudence in my mind, historically, the
2 fact that I got those confirmations had always indicated
3 that I had paid my taxes as required. And so I'm not
4 trying to argue or rely on those two pieces of evidence to
5 say they sent those to me therefore, I knew they'd been
6 paid. I understand that they don't -- they say right on
7 them that you can't reply upon them.

8 But it is a factor. It is a fact that goes into
9 the overall determination of whether or not I acted as a
10 reasonably prudent businessperson would under these
11 circumstances, and I think it's a -- I think it's a valid
12 one. I mean, you get something in the email from the
13 State after you've just pushed the buttons to say you've
14 paid the tax. In your mind you assume that you've paid
15 your tax. And so I would say that is -- those are
16 important pieces here overall of evidence.

17 The confirmation showed -- and this is important
18 as well. The confirmation showed the bank routing number
19 on it, and the last four digits of the bank account from
20 which I paid the money. And so it didn't show all of the
21 string of numbers of the bank account, but it showed the
22 appropriate numbers that went with the bank account. So
23 again, I think another -- another point where one could
24 argue that a reasonable person would see that and think in
25 their mind, as I did, I've met my burden. I've paid my

1 estimated taxes that I was directed to do.

2 Then after a few days after that, I looked
3 briefly at my bank account online the way I normally do.
4 And I think I would say this, and maybe this is
5 speculation. I certainly don't have evidence of it, but I
6 think generally one could believe that many, many business
7 people scan their bank accounts to see whether or not
8 certain transactions have gone through, particularly ones
9 that are of that large amount. I mean, \$20,000 and
10 \$68,000 is a lot of money.

11 I'm looking to see is it there. I want to know
12 if my accounts, you know, are down by those amounts. And
13 I saw there the federal estimated payment of \$68,000, and
14 I saw there was a deduction of \$20,000 from my bank
15 account right in the same time frame when the Feds took
16 their money out. And, again, under the circumstances that
17 I've articulated here I think, you know, that was when I
18 reached the reasonable, I think, conclusion as a
19 businessperson exercising ordinary -- ordinary prudence,
20 concluded that I had taken care of this aspect that I
21 needed to take care of, this aspect of my tax liabilities.

22 I reasonably assumed and I believed that the
23 \$68,000 fed money had been paid and the \$20,000 from the
24 state had been paid. Now, you know, could I have been
25 more diligent? Of course I could have been more diligent.

1 I could be a hyper-technical person. I could be and
2 extraordinary technical person. I could be a
3 phenomenally, you know, technical person who looked at
4 everything. But that's not the -- I don't think that's
5 the standard the cases state. That's not what it is.

6 It's not an extraordinary standard. It's an
7 ordinary standard. And so -- and it's under the
8 circumstances that one was operating in. And so this is
9 argument for sure. You know, I fully assert and believe
10 that I have met that ordinary standard of business care
11 and ordinary standard of prudence. It's not like the
12 other cases that were cited that set the standards up
13 there.

14 It wasn't that I was, you know, I had -- my
15 accountant had not completed their work on a 1031
16 exchange, or my accountant had not completed this and told
17 me, you know, a different number for whatever reason. It
18 was a circumstance as I articulated. I knew what I was --
19 I had been told what I should paid. I indicated that to
20 my accountant that I had paid it. And I think that shows
21 it in my mind I believed that.

22 I did go on and did do it. I got multiple
23 confirmations that I had done it. I scanned my bank
24 account and showed that amount anyway had come out. And
25 I -- I still don't -- I still really don't know today for

1 sure if it was an error on my part that I put down the
2 wrong number. I know that's what the State asserts in
3 their argument. But the document that I think is attached
4 as an exhibit, it's got blacked out portions of, and I
5 can't really tell from that whether or not it was
6 something where I inserted the wrong number. And could I
7 have done that? Yes. Absolutely, I could have done that,
8 and perhaps I did do that. I just don't know that for
9 sure because I don't have the absolute, you know, evidence
10 to show that.

11 But even if I did, it still does not -- that
12 simple mistake does not fall below the level of the
13 standards that are set up by the cases. This is not a
14 circumstance of strict liability. It's not an ah-ha, I
15 caught you. You know, you made -- you put down the wrong
16 number. That's not what is there. It's that these cases
17 are setup and my right to appeal this and hopefully my
18 right to get my money abated and returned to me.

19 You know, I have to meet these certain burdens.
20 And I think that the evidence that I've submitted shows
21 what I have just testified to and argued to is that I at
22 least meet that standard, that ordinary standard. I don't
23 meet the phenomenal one. I don't meet the extraordinary
24 one, the exceptional one, but that's not what I have to
25 do. I just have to meet the basic standard, and I would

1 hope that the evidence that I presented is persuasive
2 enough to show that I have at least met that standard.

3 So I think that would be -- right now would be my
4 conclusion.

5 JUDGE GEARY: Thank you, Mr. Heft.

6 MR. HEFT: Hm-hm.

7 JUDGE GEARY: Because your presentation included
8 some testimony, not just argument --

9 MR. HEFT: Yes.

10 JUDGE GEARY: --I'm going to ask -- I'm going to
11 ask Franchise Tax Board if they have any questions, and I
12 may have questions. But I'll first ask Mr. Coutinho to
13 let me know if Franchise Tax Board has any questions for
14 you.

15 Mr. Coutinho?

16 MR. COUTINHO: This is Brad Coutinho. We have no
17 questions for Appellants. Thank you.

18 JUDGE GEARY: Thank you, Mr. Coutinho.

19 Mr. Heft, when you received -- you said that the
20 account number was redacted on some -- on at least one
21 document, were you never provided with a statement
22 concerning the number that FTB contends was input into the
23 system?

24 MR. HEFT: Your Honor, I would say being under
25 the penalty of perjury and knowing that I obviously want

1 to tell you the truth, I can tell you I can't really
2 recall whether I got something, you know, back two years
3 ago when this kind of first happened that specifically
4 stated that. I don't recall that. I just know that on
5 Exhibit F -- I think it's the last one here maybe.

6 On Exhibit F, I looked at it, and I'm looking at
7 it now, and it's where it says bank account it's blacked
8 out on my copy here. So I -- the answer is I don't think
9 I've ever seen anything from the state that I can recall
10 that showed what the error exactly was and what was
11 recorded. So that would be my answer.

12 JUDGE GEARY: All right. Thank you, Mr. Heft.
13 That's the only question I have for you.

14 I'm going to now allow Mr. Coutinho to give the
15 argument for Franchise Tax Board.

16 Mr. Coutinho, you may proceed when you are ready.
17

18 PRESENTATION

19 MR. COUTINHO: Good morning. This appeal is
20 about Appellant submitting payment late, partly due to
21 incorrectly inputting the wrong bank account number. As
22 such, FTB correctly imposed a late-payment penalty and an
23 estimate tax penalty for the 2020 tax year. Based on
24 precedential opinions from the Office of Tax Appeals,
25 those penalties should not be abated.

1 Regarding the late-payment penalty, Appellants
2 have not demonstrated reasonable cause to abate the
3 late-payment penalty. Appellants attempted to remit
4 payment of \$22,000 in May of 2021, but their payment was
5 rejected because they incorrectly input their bank account
6 number. Appellants did not submit payment that satisfied
7 their 2020 taxes until March of 2022, approximately a
8 ten-year -- ten-month period.

9 Appellants assert that their failure to pay their
10 taxes was reasonable because they did not know of the
11 dishonored payment until FTB issued its Notice of Tax
12 Return Change on February 3rd, 2022. Precedential
13 opinions from the Office of Tax Appeals reflects that
14 Appellants have not established reasonable cause. In the
15 Appeal of Friedman, the OTA Panel held that taxpayers are
16 expected to monitor their bank accounts to determine
17 whether payment has been successfully submitted.

18 Moreover, in Friedman, the Panel held that an
19 ordinary intelligent and prudent businessperson would have
20 monitored their bank account and verify their payment had
21 left their bank account prior to when their taxes are due.
22 In another precedential opinion, the Appeal of Scanlon,
23 the OTA Panel held the lack of notice from FTB of a failed
24 payment does not negate a taxpayer's duty of prudence and
25 due care to verify that a scheduled payment was

1 successfully remitted.

2 FTB can appreciate the circumstances that
3 Appellant-husband has mentioned today, specifically, that
4 the management of a law firm and the care of a family
5 member prevented him from noticing the late payment.
6 However, as stated in the Appeal of Scanlon, an ordinary
7 intelligent and prudent businessperson is expected to
8 quickly ascertain whether a payment, in fact, is paid to
9 FTB.

10 In this case, there is a significant gap from
11 when payment was due in May 17th, 2021, to when Appellants
12 finally submitted sufficient payment to pay their tax
13 liability, which was in early 2022 when Appellants finally
14 remitted sufficient payment. However, based on the
15 precedential opinions from the Office of Tax Appeals,
16 Appellant has not established reasonable cause to abate
17 the late-payment penalty.

18 In regards to the estimate tax penalty,
19 Appellants have not offered any argument or evidence for
20 why either of the two provisions for the waiver of the
21 penalty exist in this appeal. Specifically, Appellants
22 have not alleged that a casualty, disaster, or unusual
23 circumstance occurred during the 2020 tax year. And in
24 addition, Appellants have not alleged nor is there
25 evidence that Appellants retired after attaining the age

1 of 62 or became disabled during the 2020 tax year.

2 Accordingly, there are no grounds to abate the
3 late payment or estimate tax penalties in this case, and
4 FTB respectfully request that it be sustained.

5 I'd be happy to address any questions or concerns
6 Judge Geary may have. Thank you.

7 JUDGE GEARY: Thank you, Mr. Coutinho. I don't
8 have any questions for you. And because you did not
9 testify, Appellants do not get an opportunity to question
10 you.

11 Let me ask you, Mr. Heft, I can allow
12 approximately five minutes if you would like to give some
13 concluding remarks. Let me just caution you. Be careful
14 about displaying any documents to your camera. We can't
15 anticipate whether there might be confidential information
16 on any documents you might display. I don't expect you
17 to, but that's just a caution I wanted you to keep in
18 mind. And you may begin whenever you are ready.

19 MR. HEFT: I understand and appreciate the
20 caution.

21

22 CLOSING STATEMENT

23 MR. HEFT: This is Robert Heft with some quick
24 concluding remarks.

25 I understand everything that's been argued by

1 counsel for FTB, however, I respectfully disagree with
2 much of what was said. In terms of the standard that's
3 being applied in this case, we've talked about that
4 already, and I've gone over it. It is ordinary prudence.
5 It is what an ordinary businessperson would do.

6 The suggestion I would be expected as an ordinary
7 businessperson and ordinarily prudent businessperson to
8 continue to monitor my bank account for some lengthy
9 period of time after I had already scanned the bank
10 account and noticed -- apparently noticed that the \$20,000
11 that was showing there had not -- was not, in fact, the
12 \$20,000 that I believe had gone to the State of California
13 for my taxes. I don't think that this standard that's
14 applicable in this case would require me or anyone else to
15 go back and continue to monitor a bank account.

16 In terms of suggesting that lack of notice from
17 FTB, you know, can't be the basis for paying on time, as
18 soon as I was informed by the California tax people that
19 this \$20,000 had not been paid and that -- because of that
20 my taxes for that year were short by that amount, I
21 immediately paid those. I immediately paid those. So
22 suggestion that there was some sort of delay on my part --
23 of course, I didn't do anything further as I don't think
24 most ordinarily prudent businesspeople would do after I
25 believe I had made that payment appropriately.

1 And clearly if there was a problem with the
2 number, that wasn't something that would have come to my
3 attention until I was told that, hey, this money didn't
4 ever go through to this. And when that happened, well
5 then, I immediately took steps to make the appropriate
6 payment. And so I think that the things that have been
7 argued here but by the State are -- you know, clearly
8 they're in cases, but none of them speaks specifically to
9 these circumstances that we deal with here, and that's
10 what's before this Court.

11 It's not just a blanket argument that this is the
12 way it's done, and these are the controlling cases. It's
13 fact specific on any case like this where the burden is
14 one, on me and two, the standard that's involved is one of
15 ordinary, you know, prudence. And it's like a negligence
16 standard basically, and it's not strict liability. And I
17 think I have already shown sufficient evidence to show
18 that in this circumstance, at least, I exercised
19 reasonable prudence, and I did what a reasonably ordinary
20 businessperson would do.

21 Again, as I said, extraordinary? I'm not trying
22 to cloak myself in that. Extreme phenomenal conduct? I'm
23 not trying to cloak myself in that at all. But I am in
24 the circumstances of this case with these facts arguing
25 that this -- it should be abated because I met -- I met at

1 least those standards. And I think that to -- these facts
2 I would go so far, I guess, to at least to argue that to
3 apply here is to virtually putting a strict liability
4 standard upon me and any taxpayer. And I don't -- I don't
5 think that's what is intended by the case in all of these
6 previous rulings like in the Appellant circumstance here.

7 And so I think that I have made a case that at
8 least allows me to get over that hurdle in this case under
9 these circumstances and under these facts. And so with
10 that, I would submit the matter, Your Honor. And I
11 appreciate your time very much for hearing it.

12 JUDGE GEARY: Of course. Thank you.

13 Mr. Coutinho, does FTB submit the matter also?

14 MR. COUTINHO: Yes. This is Brad Coutinho. FTB
15 submits the matter as well.

16 JUDGE GEARY: All right. This case is being
17 submitted on June 15th, 2023, at 11:32 a.m. The record in
18 this matter is now closed.

19 This hearing is concluded, and our hearings at
20 OTA are in adjournment for the morning. We will resume
21 hearings at 1:00 p.m. today.

22 And I want to thank everybody for participating.
23 Thank you to the staff and everyone who are working behind
24 the scenes to help these virtual hearings happen
25 appropriately and correctly.

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OTA will issue an opinion in this matter within
100 days, and that opinion will be sent to the parties.

Thank you all.

(Proceedings adjourned at 11:33 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 14th day
of July, 2023.

ERNALYN M. ALONZO
HEARING REPORTER