

## BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
W. REDDEN and S. REDDEN, ) OTA NO. 220410238  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, July 21, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
W. REDDEN and S. REDDEN, ) OTA NO. 220410238  
 )  
 ) APPELLANT. )  
 )  
 )  
\_\_\_\_\_ )

Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 12:59 p.m. and concluding at 1:45 p.m. on  
Friday, July 21, 2023,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Administrative Law Judge: JUDGE MICHAEL GEARY

For the Appellant: ASIA SMITH  
PAMELA LORENZ

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
VIVIAN HO  
MARIA BROSTERHOUS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 7.)

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

P R E S E N T A T I O N

PAGE

By Ms. Smith 10

By Ms. Ho 26

W I T N E S S   T E S T I M O N Y

PAGE

By Mr. Redden 17

By Ms. Lorenz 22

C L O S I N G   S T A T E M E N T

PAGE

By Ms. Smith 30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

California; Friday, July 21, 2023

12:59 p.m.

JUDGE GEARY: Will the parties representatives please identify themselves by stating their names and who they represent, beginning with Appellant's representative.

MS. SMITH: Good morning. My name is Asia Smith, and I'm here today representing Appellants Mr. William Redden and Ms. Sonja Redden.

JUDGE GEARY: Thank you.  
And Respondent, please.

MS. HO: This is Vivian Ho on behalf of the Franchise Tax Board.

MS. BROSTERHOUS: I'm Maria Brosterhous, also from the Franchise Tax Board.

JUDGE GEARY: Thank you.  
And when I direct a question to Appellants or Respondent, I will be directing it to Asia Smith or Vivian Ho, respectively.

Regarding witnesses, it's my understanding that Mr. Redden and a Ms. Lorenz will be testifying today. Is that correct, Appellants?

MS. SMITH: That is correct.

JUDGE GEARY: And I believe a Ms. Pamela Lorenz is participating. I think I can see her participating on

1 my screen. And Mr. Redden I see is also participating. I  
2 see him on my screen. I do not see Ms. Redden. She's not  
3 participating in today's hearing; is that right,  
4 Appellants?

5 MS. SMITH: That's correct. She's not  
6 participating today. Only Mr. Redden and Ms. Lorenz.

7 JUDGE GEARY: All right. Thank you.

8 Will Respondents be calling any witnesses today?

9 MS. HO: This is Vivian Ho. We will not be  
10 calling any witnesses. Thank you.

11 JUDGE GEARY: Thank you.

12 The exhibits marked for identification in this  
13 appeal consist of proposed documentary evidence beginning  
14 with Appellants' exhibit marked 1 for identification, and  
15 also Respondent's Exhibits marked A through H for  
16 identification. The parties provided copies of the  
17 exhibits to each other and to OTA, and OTA incorporated  
18 all proposed exhibits into a digital hearing binder, which  
19 should be in the possession of the participants, at least  
20 the parties and their representatives.

21 Have Appellants confirmed that their Exhibit 1,  
22 which I believe is FTB Form 5805, that has been  
23 incorporated into the binder is complete and legible?

24 MS. SMITH: Yes.

25 JUDGE GEARY: Thank you.

1           And has Respondent confirmed that its Exhibits A  
2           through H that have been incorporated into the binder are  
3           complete and legible?

4           MS. HO:   This is Vivian Ho.   Yes, we have.

5           JUDGE GEARY:   Thank you.   Ms. Ho, I can tell you,  
6           you probably don't need to identify yourself each time you  
7           speak.   I've cleared that with our stenographer.   As long  
8           as you're the only one on your screen, and I see that you  
9           are, that won't be necessary.

10           Does Respondent have any objection to the  
11           admission of Appellants' Exhibit 1?

12           MS. HO:   We do not have any objection.

13           JUDGE GEARY:   Thank you.

14           Does Appellant have any objection to the  
15           admission of Respondent's Exhibits A through H?

16           MS. SMITH:   No objection.

17           JUDGE GEARY:   Thank you.

18           Those exhibits are all admitted.

19           (Appellant's Exhibit 1 was received in  
20           evidence by the Administrative Law Judge.)

21           (Department's Exhibits A-H were received in  
22           evidence by the Administrative Law Judge.)

23           JUDGE GEARY:   It has been agreed by the parties  
24           that the issue to be decided by OTA is whether Appellants  
25           are entitled to abatement of the estimated tax penalty

1 imposed for the 2019 tax year. We have discussed -- the  
2 parties and I have discussed not only that issue but also  
3 how much time they would need to present their cases  
4 today. And it was agreed that Appellants would have  
5 approximately 25 minutes for testimony and their opening  
6 argument, that Respondent would have approximately  
7 15 minutes for its only argument, and that Appellants  
8 would have approximately five minutes for optional  
9 concluding remarks.

10 Let me ask Appellants first. Are those time  
11 estimates, in your opinion, still accurate for Appellant?

12 MS. SMITH: Yes, that's correct.

13 JUDGE GEARY: Thank you.

14 And, Ms. Ho, is Respondent satisfied that the  
15 15 minutes will be sufficient today?

16 MS. HO: Yes.

17 JUDGE GEARY: Thank you.

18 Let me ask Appellants. How do you plan to make  
19 your opening presentation so I can decide when I need to  
20 swear in witnesses and such. And by that, I mean do you  
21 want to give an opening statement that would not be  
22 considered argument? Or when in your presentation do you  
23 want to present testimony from the witnesses, things like  
24 that.

25 MS. SMITH: I don't -- I plan for my entire



1 15-minute presentation to be an argument, preferably at  
2 the beginning followed by Mr. Redden's testimony then  
3 Ms. Lorenz' testimony. Or however you would like, I can  
4 go after them.

5 JUDGE GEARY: It's entirely up to you. If you  
6 want to give your argument followed by testimony from  
7 those two witnesses, that is perfectly fine with OTA. And  
8 we'll proceed in that fashion unless you decide to do  
9 something else.

10 Does anyone have any questions then before I  
11 administer the oath or affirmation to the witnesses? And  
12 I will swear them both in together so that when you're  
13 ready to proceed from argument to examination, it will be  
14 smooth and won't have to interrupt the process.

15 Any questions from anybody?

16 MS. SMITH: No questions from Appellant.

17 JUDGE GEARY: Okay. Let me ask both the  
18 witnesses, who I see clearly on my screen, to please raise  
19 their right hands.

20

21 W. REDDEN,  
22 produced as a witness, and having been first duly sworn by  
23 the Administrative Law Judge, was examined and testified  
24 as follows:

25 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P. LORENZ,

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.

Appellants you may proceed when you are ready.

PRESENTATION

MS. SMITH: Good afternoon. My name is Asia Smith, and I'm here today representing Appellants Mr. William Redden and Mrs. Sonja Redden.

Today we're requesting the penalty of \$4,725 be waived for the following two reasons. First, we seek the penalty waiver based on the unusual circumstance involving a once-in-a-lifetime capital gain of \$1 million. Second, due to the unusual circumstance of their financial advisers not grasping the FTB's full intention behind the instructions on Form 5805 due to the poorly written instructions provided by the FTB.

In accordance with IRC Section 6654(e)(3)(a), the FTB has the authority to waive the addition of tax if it deems that the imposition of such a penalty would be inequitable under certain circumstances such as casualty, disaster, or other unusual events, such that the

1 imposition of the penalty would be against equity and good  
2 conscience. Today we assert that these unusual  
3 circumstances exist, justifying the request for a waiver  
4 of the estimated tax penalty.

5 Now, allow me to provide some background  
6 information. Let's start from the very beginning.  
7 Mr. & Mrs. Redden have been paying estimated taxes since  
8 the 1990s utilizing the safe harbor method for  
9 approximately three years. Prior to 2019, they  
10 consistently complied with the safe harbor method  
11 diligently fulfilling their obligations as California  
12 taxpayers.

13 To give you a better understanding of their  
14 lives, Mr. Redden who is here with us today, a dedicated  
15 family man and has been married to Mrs. Redden for  
16 53 years. They have raised six children and are proud  
17 grandparents of nine grandchildren. Mr. Redden has  
18 devoted 32 years of his life to public health and employee  
19 safety, safeguarding the public from health-related  
20 outbreaks. Meanwhile Mrs. Redden has been a substitute  
21 teacher and a devoted homemaker, prioritizing education  
22 and family.

23 Both Mr. & Mrs. Redden had multiple sources of  
24 income, which presented challenges in accurately  
25 estimating their tax obligations. Now, recognizing the

1 importance of being compliant taxpayers, they sought the  
2 assistance of a financial adviser, Pamela Lorenz, who is  
3 here with us today. Ms. Lorenz has been providing tax  
4 advice and preparing their taxes for the past decade.

5 The first reason we seek the penalty waiver stems  
6 from a significant event in 2019. During that year,  
7 Mr. & Mrs. Redden sold the lease and an easement to a cell  
8 tower resulting in an extraordinary once-in-a-lifetime  
9 capital gain. This gain caused their California adjusted  
10 gross income to exceed \$1 million for the first time ever.  
11 Unfortunately, neither Mr. & Mrs. Redden nor Ms. Lorenz  
12 were aware that the safe harbor provision, the very same  
13 provision that they have been using for the past 30 years  
14 did not apply. And this was due to the poorly written  
15 instructions on Form 5805 provided by the FTB.

16 Now, it's crucial to note that Mr. & Mrs. Redden,  
17 they didn't forget to pay their taxes. They weren't late  
18 in paying their taxes. Rather, they paid their taxes on  
19 time but what happened is that they miscalculated their  
20 obligations due to the unprecedented circumstances  
21 surrounding the substantial increase in income and the  
22 misleading instructions provided by the FTB.

23 Moving on to the second reason. In requesting a  
24 waiver of penalty, Mr. & Mrs. Redden's financial adviser,  
25 Ms. Lorenz, despite her extensive experience in providing

1 tax advice and using the safe harbor provision, it is an  
2 unusual circumstance that even she struggled to comprehend  
3 the instructions provided by the FTB.

4 Now, at this time I encourage you all to now  
5 access and have in front of you Form 5805, which should be  
6 accessible through the digital hearing binder. This is  
7 Exhibit 1. Now, if you have it in front of you, for the  
8 reminder of my presentation, I will be focusing on the box  
9 you see on the first page. The first word in the box says  
10 "important" in bold.

11 Now, in this box, these were the instructions  
12 provided when paying estimated taxes but, unfortunately,  
13 these instructions in this form proved to be unclear and  
14 confusing leading to misinterpretation. The confusion  
15 arose from several areas within these instructions. Now,  
16 I know there's a few bullet points in this box, but I want  
17 to take each one, one by one. Again, if you have it in  
18 front of you, the first bullet point states that this form  
19 should not be filled out if your estimated tax penalties  
20 in 2018 and 2019 amounted to less than \$500. This first  
21 bullet point is not at issue.

22 Now, the second bullet point, this states that  
23 this form should not be completed if there is no tax  
24 liability in 2018. And finally, moving on to the very  
25 last bullet point. This bullet point states that the

1 taxpayer should withhold either 90 percent of the tax  
2 shown in 2019 or 110 percent of this tax shown in 2018.  
3 And as you see there is a bold "and", they are not using  
4 the annualized installment method.

5 But more specifically, I want to focus your  
6 attention on the last sentence of the third bullet point  
7 which states that taxpayers with an AGI of \$1 million must  
8 use their 2019 tax return if, that is if they do not meet  
9 one of the two conditions above. This sentence right here  
10 is poorly written because it is unclear what is meant by  
11 the two conditions above leading to further confusion.

12 So the average taxpayer, even after reading these  
13 instructions over and over and over again, it would seem  
14 that these two conditions refer to the only two mentioned  
15 in the last bullet point. The average taxpayer and  
16 financial adviser would believe this because that last  
17 sentence mentioning the two conditions is only attached to  
18 the last bullet point. It's not attached to any of the  
19 other bullet points. And second, in the last bullet  
20 point, there's a bolded "and", which implies that there  
21 are two conditions.

22 So in the Redden's case, to them, they satisfied  
23 these two conditions. First, they paid 110 percent of  
24 their 2018 tax and second, they are not using the  
25 annualized method. Therefore, they met the two

1 conditions. And as a result, they could pay 110 percent  
2 of their 2018 tax. But however this is not how the FTB  
3 interpreted these instructions.

4 The problem here lies within the poor wording of  
5 these instructions. The FTB intended for the two  
6 conditions to be the second bullet point and the third  
7 bullet point combined. However, the Reddens and their tax  
8 adviser did not consider the second bullet point as one of  
9 the two conditions. Because if you look at this box,  
10 there are a total of three conditions as shown by three  
11 bullet points.

12 So on these instructions it is very confusing to  
13 refer to two conditions above when in total there are  
14 actually three in this box. Now, it would make sense if  
15 there were only two bullet points amounting to a total of  
16 two conditions, but that's not the case. Consequently,  
17 the average taxpayer, again, would assume that the two  
18 conditions mentioned are those in the last bullet point,  
19 which is precisely what Mr. & Mrs. Redden did, again,  
20 especially, since the last sentence mentioning these two  
21 conditions is only attached to the last bullet point.

22 Furthermore, it is important to note that we are  
23 not only discussing the confusion faced by everyday  
24 taxpayers when completing Form 5805, but the confusion by  
25 an experienced seasoned financial adviser who has been

1 filing taxes and utilizing the safe harbor method for  
2 decades. Even she could not comprehend the true intention  
3 of the FTB. This is precisely why the penalty should be  
4 waived as it was an unusual circumstance where Ms. Lorenz,  
5 with their expertise could not fully grasp the FTB's true  
6 intention behind Form 5805 due to these poorly written  
7 instructions.

8 In sum, these instructions on Form 5805 would be  
9 more understandable to everyday taxpayers if the FTB wrote  
10 the instructions to reflect the relevant statutes. These  
11 instructions would be more clear, more understanding if  
12 they aligned with California Code Section 19136.3, which  
13 clearly states that the taxpayers cannot pay their tax  
14 liability based on the prior year if their AGI exceeds  
15 \$1 million. This is what the instructions should have  
16 said.

17 This provision in the instructions would have  
18 made it crystal clear to both everyday taxpayers and  
19 financial advisers that the only option available is to  
20 pay the estimated taxes based on the current year if their  
21 AGI exceeds \$1 million.

22 Given these circumstances mentioned, we  
23 respectfully request the waiver of \$4,725 be waived citing  
24 the exceptional unusual circumstances of a  
25 once-in-a-lifetime capital gain of \$1 million, and the



1 unusual circumstance where a veteran financial adviser  
2 with her expertise could not fully grasp the FTB's true  
3 intentions due to poorly written instructions by the FTB.  
4 Because circling back to IRC Section 6654(e)(3)(a), it  
5 would be against equity. It would be against good  
6 conscience to penalize Mr. & Mrs. Redden for the FTB's  
7 inadequate instructions which mislead both the taxpayer  
8 and their financial adviser.

9 Thank you.

10 JUDGE GEARY: Thank you. And which of the  
11 witnesses do you wish to examine first?

12 MS. SMITH: Mr. Redden.

13 JUDGE GEARY: Are you planning to do it in a  
14 question/answer format, or is Mr. Redden going to be  
15 giving a narrative type of statement?

16 MS. SMITH: I'm not going to do a  
17 question-and-answer format. Mr. Redden is going to give a  
18 five-minute testimony.

19 JUDGE GEARY: That's fine. Thank you.

20 Mr. Redden, you may proceed when you are ready.

21  
22 WITNESS TESTIMONY

23 MR REDDEN: Thank you. My name is William  
24 Redden. Thank you for letting me provide our viewpoint.  
25 I'd like to present our perspective regarding the FTB's

1 penalty assessment for not paying the estimated taxes in a  
2 timely manner.

3 I have historically since the 1990s have been  
4 worried about paying the correct estimated tax and always,  
5 or nearly always use the safe harbor method 110 percent.  
6 For the year 2019, we would have relied heavily on the  
7 5805 form as representing the law. The two conditions  
8 referenced in the 5805 form that we met were condition  
9 one, the amount of your withholding plus your estimated  
10 payment, if paid, the required installments are 110  
11 percent.

12 Condition two, and you're not using the  
13 annualized income installment method, which we didn't.  
14 However, at the time of paying the estimated taxes, I was  
15 still concerned that somehow, we were not paying enough.  
16 I read the 5805 form again, which represents the  
17 California tax law and thought we were in compliance. I  
18 decided to pay a little more than the safe harbor method  
19 of 110 percent required just in case we miscalculated the  
20 110 percent.

21 JUDGE GEARY: Mr. Redden, let me just interrupt  
22 you for a second. I think you may be going a little fast.  
23 I'm seeing a little distress on my stenographer's face.  
24 And sometimes when people read, they go fast. So try to  
25 slow yourself down a bit, would you, please.

1                   MR. REDDEN: Yeah. Okay.

2                   2020 was a difficult year because Covid and  
3                   California delayed the payment of the 2019 taxes until  
4                   July 2020. We paid our \$153,500 in California income  
5                   taxes. In July 2020, I noticed on the FTB website we owed  
6                   \$4,725 in additional taxes. And I thought the FTB had  
7                   made a mistake -- an obvious mistake, and I decided to  
8                   wait for their letter.

9                   That letter arrived in the fall of 2020 demanding  
10                  payment of penalty for underpayment of estimated taxes. I  
11                  notified my tax adviser. She was surprised as well. I  
12                  contacted FTB, and I was told that we needed to pay the  
13                  entire amount, including penalty and interest penalties  
14                  and then appeal their decision using Form 517. I looked  
15                  at the appeal form, and I said if there is reasonable  
16                  cause, then FTB may refund the penalty.

17                  Well, we thought if somehow, we misunderstood  
18                  5805 form, we can argue reasonable cause. Unfortunately,  
19                  after discussing our situation with the TAAP attorneys, it  
20                  turned out even if 5805 is worded poorly, it does not  
21                  matter. The law is clear. Essentially, you must pay the  
22                  tax when the income is generated. Ignorance of the law is  
23                  no excuse is what is frequently quoted. This is a major  
24                  point. This is a major point.

25                  As far as taxpayers are concerned, we think that

1 5805 form is the law. The technical aspect is the one  
2 with the Taxes & Revenue Code. We look at these two.  
3 They are one and the same. I understand the review  
4 appeals form, reasonable cause. I thought we had a good  
5 case. Unfortunately, under the law our situation does not  
6 constitute a reasonable cause. Again, there is legal  
7 interpretation was there reasonable cause as referenced in  
8 the Franchise Tax Board 2017-form. It's the same mumbo  
9 jumbo.

10 We reasonably relied on the 5805 form as  
11 representing the law. The 5805 form should have been  
12 designed to clearly represent the legal technical details  
13 of the law. I think any reasonable person would say that  
14 the 5805 form is equivalent to the technical document  
15 California Code 19136.3. I went into a state of  
16 depression based upon what our TAAP attorneys were saying.  
17 It was like a nightmare. There was no reason we couldn't  
18 pay the estimated interpreted by it.

19 There was no financial value to not paying the  
20 correct amount to FTB. There was no financial gain in  
21 delaying payment. We placed the money in a savings  
22 account. It generated .2 percent. Besides, it would have  
23 been foolish to not pay estimated tax in a timely manner  
24 for FTB. Because FTB would immediately have caught the  
25 underpayment, which they did.

1           And that concludes my presentation. Thank you  
2           for allowing me to make my peace -- statement. Thank you.

3           JUDGE GEARY: Thank you, Mr. Redden. Because you  
4           have given testimony, I need to allow Franchise Tax Board  
5           to ask questions if they have any.

6           So Respondent, do you have any questions for  
7           Mr. Redden?

8           MS. HO: Respondent did not have any questions  
9           for Mr. Redden. Thank you.

10          JUDGE GEARY: Thank you.

11          Mr. Redden, I might have a question or perhaps  
12          two. I believe we're going to be hearing from Pamela  
13          Lorenz in a just a minute. Let me ask you, you and your  
14          wife, I take it, have been having Ms. Lorenz provide tax  
15          advice and complete your tax returns for some period of  
16          time before the 2019 was filed; is that correct?

17          MR. REDDEN: Yes.

18          JUDGE GEARY: Can you estimate how long you've  
19          been using the services of Ms. Lorenz?

20          MR. REDDEN: I think it's 20, 30 years. Seems  
21          like the 90s we started up with her.

22          JUDGE GEARY: All right. And you consider -- I  
23          take it you consider Ms. Lorenz to be an expert in giving  
24          tax advice; correct?

25          MR. REDDEN: Oh, yes. Definitely.

1 JUDGE GEARY: Those are the only questions I have  
2 of Mr. Redden. Thanks very much.

3 Let me turn to the representative.

4 Appellants, do you want Ms. Lorenz to also  
5 present her testimony in a narrative fashion, or were you  
6 going to do a question and answer for her?

7 MS. SMITH: Ms. Lorenz will also be presenting  
8 her testimony in a narrative fashion.

9 JUDGE GEARY: All right. Thank you.

10 Ms. Lorenz, you've already been administered an  
11 oath or affirmation. You can begin your testimony  
12 whenever you're ready.

13

14 WITNESS TESTIMONY

15 MS. LORENZ: Hello. My name is Pamela J. Lorenz,  
16 and I'm a California tax preparer under the CTEC program.  
17 I'm now in my 48th tax season. So I have some experience  
18 preparing taxes and working with my clients on estimated  
19 taxes. I do middle class American taxpayers. I think I  
20 only have one other taxpayer that makes over a million  
21 dollars. And in this case, Bill had not made a million  
22 dollars at any prior years.

23 He's one of the only clients that consistently  
24 works with me and being concerned about his estimated tax.  
25 He will always pay more and then I compute with my tax

1     program. I use Thompson Reuters Ultra Tax. And then he  
2     and I together reviewed the Form 5805 in May and June of  
3     2019. I've got where I marked it all up saying, well if  
4     you meet any of the following conditions, you do not owe a  
5     penalty.

6             And we thought we satisfied two conditions.  
7     Evidently, now I know, of course, when you make over s  
8     million dollars, you're required to pay the percentage of  
9     the income for that year, not based on the prior year.  
10    And I understand that ignorance is not an excuse. We made  
11    a mistake. But I really feel like we spent a lot of time  
12    trying to compute it to see if it really was due. And  
13    then when I actually filed the return in July of '20, the  
14    penalty popped up in my program.

15            So I went to the Form 5805. Read it again and  
16    again, and I requested the waiver in the body of the tax  
17    return by stating that we had timely paid the 2019  
18    payments of \$11,629, which was 100 -- was greater than the  
19    110 percent tax of the 2018 tax liability. Now I know  
20    that California has instructions on this. I know as a tax  
21    preparer I'm required to know and uphold the tax laws.  
22    And I just feel that this form was not clear enough to  
23    where Bill and I could each understand what the minimum  
24    was, especially, the last -- there are three bullet points  
25    as Asia pointed out.

1           And in the last bullet point, the very last line  
2       says -- well, it's like a run-on sentence. It has if you  
3       do this, if you do that, and you're not using the  
4       annualized income installment agreement, then comma, AGI  
5       equal to greater than 1 million must use the tax shown on  
6       their 2019 tax return, if they do not meet one of the two  
7       conditions above. And we thought we met one of the two  
8       conditions above, but evidently, we didn't.

9           So I'm just respectfully requesting that you can  
10      consider abating this penalty. Bill had good faith. We  
11      had no intentional disregard of the estimated tax  
12      liability when, in fact, he paid in \$11,600 when I thought  
13      he was only pay in \$8,270. He actually paid in more than  
14      using the calculation based on 2018 tax. And it was an  
15      unusual circumstance with him having this  
16      once-in-a-lifetime windfall of this capital gain.

17           So that's the only thing I have to say about  
18      that. Thank you very much.

19           JUDGE GEARY: Thank you, Ms. Lorenz.

20           Let me ask Respondent if it has any questions for  
21      you.

22           MS. HO: Respondent does not have any questions  
23      for Ms. Lorenz. Thank you.

24           JUDGE GEARY: Thank you.

25           I think I might have a question or two.



1 Ms. Lorenz, did you say that you later learned that there  
2 were other instructions on the use of the Form 5805?

3 MS. LORENZ: Well, this past when we were  
4 researching for this meeting when we went to the IRS  
5 website and pulled up Form 5805, it printed out four  
6 forms -- four pages. And all of my work papers back in  
7 2019, it only printed off side 1 of the Form 5805. And I  
8 think had I seen the other calculations and worked them  
9 out manually, then I would have realized no, that's not  
10 right. We still need to pay in the 2019 tax amount  
11 because of the gross income.

12 JUDGE GEARY: Had you ever -- was this the  
13 first -- your first experience completing a Form 5805 for  
14 one of your clients?

15 MS. LORENZ: Yes, because I've got -- I have one  
16 other client that consistently makes over a million  
17 dollars. They've made over a million dollars a year for  
18 the last ten years, and I use my Ultra Tax Accounting  
19 Program to calculate the estimated taxes for the following  
20 year, and they pay it. We've never discussed it. I've  
21 never gone back and review the calculations. We've never  
22 had a penalty.

23 I have had 5805 penalty forms for other clients  
24 for other reasons, but not for this reason. So it's the  
25 first time I've ever had to manually compute an estimated

1 tax on someone who was going to make over a million  
2 dollars prior to filing.

3 JUDGE GEARY: Did you have to do it on the first  
4 occasion that this other client went over a million, or  
5 had he already been making over a million dollars annually  
6 before he --

7 MS. LORENZ: No, they didn't make that much. But  
8 it's been probably 10 or 15 years now that they've been  
9 making over a million. And honestly, I don't remember the  
10 first time he went over a million, but I know we haven't  
11 had any penalties.

12 JUDGE GEARY: Okay. Thank you, Ms. Lorenz.

13 MS. LORENZ: Oh, I know what. Because he's on  
14 W-2, and I had him hold out the required tax when we did  
15 the payroll. That's how I did it.

16 JUDGE GEARY: Okay. Thank you. Thank you.  
17 Appellants, is there anything further?

18 MS. SMITH: Nothing further.

19 JUDGE GEARY: Thank you.

20 Respondent, are you ready to give your argument?

21 MS. HO: Yes. Thank you, Judge Geary.

22 JUDGE GEARY: You may proceed.

23

24 PRESENTATION

25 MS. HO: Good afternoon. My name is Vivian Ho.

1 I along with my co-counsel Maria Brosterhous represent  
2 Respondent Franchise Tax Board.

3 The issue presented before you today is whether  
4 Appellants have established any grounds to abate the  
5 estimated tax penalty, which FTB imposed for tax year  
6 2019. FTB's position is that Appellants were correctly  
7 assessed the estimated tax penalty, and they have not  
8 established any grounds for abatement.

9 Under Revenue & Taxation Code Section 19136,  
10 which conforms to the Internal Revenue Code Section 6654,  
11 unless an exception is specifically listed, a taxpayer  
12 must be assessed the estimated tax penalty if they fail to  
13 make sufficient payment through withholdings or estimated  
14 tax payments during the tax year. In order to avoid the  
15 estimated penalty, a taxpayer must either pay 90 percent  
16 or more of the year at issues liability or 100 percent or  
17 more of the previous year's liability.

18 For married individuals with income over  
19 \$150,000, the percentage is 110 percent of the preceding  
20 year's liability. However, under Revenue & Taxation Code  
21 Section 19136.3, because Appellants' California adjusted  
22 gross income is over \$1 million, paying either 100 percent  
23 or 110 percent of the preceding year's liability does not  
24 satisfy their estimated tax payment obligation.

25 For taxpayers with income over \$1 million, they

1 can only satisfy their estimated tax payment obligations  
2 by paying 90 percent or more of the year at issues  
3 liability. Here, Appellants did not pay 90 percent or  
4 more of their 2019 liability during the tax year and  
5 therefore, the estimated tax penalty was correctly  
6 imposed.

7 Appellants argue that based on their readings of  
8 instructions for Form 5805 paying 110 percent of their  
9 preceding year's liability still allowed them to qualify  
10 for the safe harbor treatment, despite their California  
11 adjusted gross income being over \$1 million. However, the  
12 statute is clear on this issue that this is not available  
13 to them. Appellant is incorrect that form instruction is  
14 controlling authority. Appellant has an obligation to  
15 comply with the statute, which controlling authority.

16 Appellants also argue that they attempted to  
17 exercise ordinary care and prudence. They argue they were  
18 confused by the instructions and they misunderstood that  
19 obligation under the tax law. And Appellants also argue  
20 they rely on a tax professional. These are reasonable  
21 cause arguments. And under Appeal of Mazdyasni a  
22 precedential opinion from the Office of Tax Appeals, there  
23 is no reasonable cause type waiver for the estimated tax  
24 penalty.

25 And Appellants' extenuating circumstances are not

1 sufficient to establish they are entitled to a refund of  
2 the penalty. Under IRC Section 6654, which California  
3 follows, the estimated tax penalty can only be waived if  
4 the Appellant shows by reason of casualty, disaster, or  
5 other unusual circumstance that the imposition of the  
6 estimated tax penalty will be against equity and good  
7 conscience.

8 As stated in Mazdyasni, the OTA has stated that  
9 the exception for unusual circumstances is considerably  
10 more narrow than reasonable cause. Under Appeal of  
11 Salzman, also a precedential opinion of the OTA, the  
12 phrase casualty, disaster, or other unusual circumstances  
13 generally refers to unexpected events that cause a  
14 hardship or a loss, and due to the circumstances will be  
15 against equity and good conscience.

16 Also stated in Salzman, the OTA held that  
17 imposing the estimated tax penalty in circumstances where  
18 the liability is larger than expected, does not go against  
19 equity and good conscience. In Salzman, the OTA stated  
20 that unusual circumstances has to do with hardship  
21 generally, and unexpected income is not a hardship.  
22 Accordingly, FTB respectfully request the assessment be  
23 sustained.

24 And thank you. I'm available for any question.

25 JUDGE GEARY: Thank you.

1           I want to explain to Appellants why I will not be  
2 offering Appellants an opportunity to ask Ms. Ho  
3 questions. It's because Ms. Ho has not given factual  
4 testimony. She's only giving argument. Therefore, only  
5 I, the judge in the case, can ask Ms. Ho questions. I  
6 understand FTB's position, and I don't have any questions  
7 for her right now.

8           So I turn back to Appellants. As I indicated at  
9 our prehearing conference and I think earlier in this  
10 hearing, Appellants can have another five minutes  
11 approximately for concluding remarks, if you would like to  
12 give them. Would you like to make some concluding  
13 remarks?

14           MS. SMITH: Yes, I would.

15           JUDGE GEARY: All right. You may proceed when  
16 you're ready.

17

18                           CLOSING STATEMENT

19           MS. SMITH: The FTB argues that while the term  
20 "unusual circumstances" is mentioned alongside casualties,  
21 disasters, or other uncommon events, it must amount a  
22 hardship or a loss. But case law fails to provide a clear  
23 definition of the magnitude of such disasters, hardships,  
24 or loss. It is our position here today that instructions  
25 like those found on Form 5805 will result in a collective

1 disaster to everyone.

2 Instructions like this will lead to hundreds of  
3 everyday taxpayers paying penalties due to something that  
4 can be written in a much simpler and easy terms. Terms  
5 and instruction that everyday taxpayers and financial  
6 advisers could understand. Instructions -- leaving  
7 instructions like this will lead to disaster because this  
8 will be at a cost to everyone. This situation will have  
9 far-reaching consequences, wasting the valued time and  
10 resources of the courts, the tribunals, taxpayers and the  
11 government due to misleading guidance by the FTB.

12 Furthermore, this flawed approach will likely  
13 trigger an increase in audits for individuals who do not  
14 fully grasp the complexities, contrary to the FTB's  
15 responsibility of educating California citizens on tax  
16 matters. As a result, ordinary taxpayers like  
17 Mr. & Mrs. Redden find themselves confused and mislead  
18 instead of being properly informed. And although the FTB  
19 argues that instructions are not law, the reality is for  
20 everyday taxpayers the instruction are all they know to  
21 access.

22 Everyday taxpayers have no reason to doubt the  
23 experts at the FTB. They have no reason to doubt that  
24 these experts at the FTB would not give them correct and  
25 not give them clear instructions. If, in fact, taxpayers

1 are expected to look beyond the instructions and forms  
2 provided by the experts at the FTB, then the problem is  
3 not the taxpayers.

4 The problem is the form. The problem is the  
5 instructions. And the problem is the writers and the  
6 experts at the FTB who are writing these instructions.  
7 And although the FTB argues that the statute is binding,  
8 then these instructions should accurately reflect the  
9 relevant statutes, such as California Code  
10 Section 19136.3, which clearly states that taxpayers  
11 cannot pay their tax liability based on the prior year if  
12 their AGI exceeds \$1 million.

13 If the statute is binding then its statute  
14 wording should be included within these forms.  
15 Considering these factors, all of this would be against  
16 equity and good conscience to penalize Mr. & Mrs. Redden  
17 for the FTB's inadequate instructions which mislead both  
18 the taxpayer and their financial adviser.

19 Thank you.

20 JUDGE GEARY: Thank you.

21 Appellants, do you submit the matter?

22 MS. SMITH: Yes, we do.

23 JUDGE GEARY: And Respondent, do you submit the  
24 matter? I'm sorry I didn't hear that, Ms. Ho.

25 MS. HO: Oh, I'm sorry. Yes, we do.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JUDGE GEARY: Thank you.

This case is submitted on July 21st, 2023, at 1:44 p.m. The record in this appeal is now close.

I want to thank the parties for their participation today. In the coming weeks, I will be considering the evidence and the arguments, and OTA will send a written opinion to the parties within 100 days of today's date.

The hearing is now concluded, and this also concludes OTA's afternoon calendar on its YouTube channel. There will be no other hearings today. Thank you again, everybody.

(Proceedings adjourned at 1:45 p.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 8th day  
of August, 2023.

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