

BEFORE THE OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
M. LIBITZKY and S. LIBITZKY,) OTA NO. 18124095
)
) Appellants.
)
_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS
Sacramento, California
Tuesday, October 15, 2024

Reported by:

CHRISTINA RODRIGUEZ
Hearing Reporter

Job No. :
51282 OTA(C)

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

3
4
5 In the Matter of the Appeal of:)
6 M. LIBITZKY and S. LIBITZKY,)
7 Appellants.)
8 _____)

OTA NO. 18124095

9
10
11
12
13
14
15 TRANSCRIPT OF PROCEEDINGS, taken
16 at 400 R Street, Suite 470, Sacramento,
17 California, commencing at 1:00 p.m.
18 and concluding at 1:43 p.m. on Tuesday,
19 October 15, 2024, reported by
20 Christina L. Rodriguez, Hearing Reporter.
21
22
23
24
25

1 APPEARANCES:

2
3
4 Administrative Law Judge: KEITH LONG
5 VERONICA LONG
6 GREG TURNER

7 For the Appellant: S. ROSS KOCHENDERFER JR.
8 MOSES LIBITZKY
9 DAEDRA SCHWARTZ

10 For the Respondent: CHRISTOPHER TUTTLE
11 MARIA BROSTERHOUS
12
13
14
15
16
17
18
19
20
21
22
23
24
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

I N D E X

E X H I B I T S

(Respondent's Exhibits A-BB were admitted into evidence, page 7)

(Appellant's Exhibits 1-26 were admitted into evidence, page 8)

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

	PAGE
By Mr. Kochenderfer	9
By Mr. Tuttle	25

C L O S I N G S T A T E M E N T

	PAGE
By Mr. Kochenderfer	30

1 Sacramento, California; Tuesday, October 15, 2024

2 1:00 p.m.

3
4
5 JUDGE LONG: We are opening the record in the
6 appeal of Libitzky, OTA Case No. is 18124095. This
7 matter being held before The Office of Tax Appeals.
8 Today's date is October 15th, 2024, and the time is
9 approximately 1:00 p.m. This hearing is being convened
10 electronically. Today's hearing is being heard by a
11 panel of three administrative law judges.

12 My name is Keith Long, and I will be the Lead
13 Administrative Law Judge. Judge Greg Turner and Judge
14 Veronica Long are the other members of this tax appeals
15 panel. All three judges will meet after the hearing and
16 produce a written decision as equal participants.

17 Although the lead judge will conduct the
18 hearing, any judge on this panel may ask questions or
19 otherwise participate to ensure that we have all the
20 information needed to decide this appeal.

21 As a reminder, The Office of Tax Appeals is
22 not a tax court, it is an independent appeals body. The
23 panel does not engage in ex parte communications with
24 either party. OTA will issue an opinion based on the
25 party's arguments, the admitted evidence, and the

1 relevant law.

2 For the record, will the parties please state
3 their name and who they represent starting with the
4 representatives for Franchise Tax Board.

5 MR. TUTTLE: Hi -- excuse me. My name is
6 Topher Tuttle, representing Franchise Tax Board.

7 MS. BROSTERHOUS: Maria Brosterhous, also
8 representing Franchise tax board.

9 MR. KOCHENDERFER: Ross Kochenderfer,
10 representing Moses and Susan Libitzky.

11 MR. LIBITZKY: And, Moses Libitzky, I'm the
12 taxpayer.

13 MR. KOCHENDERFER: Also, on my far right is my
14 Taxpayer Legal Daedra Schwartz, who's accompanying me.

15 JUDGE LONG: Thank you. Can you spell that
16 for me.

17 MR. KOCHENDERFER: Sure,
18 K-O-C-H-E-N-D-E-R-F-E-R. First name, Ross, R-O-S-S.

19 JUDGE LONG: And your colleague's name.

20 MR. KOCHENDERFER: Mr. Libitzky. Moses
21 Libitzky, L-I-B-I-T-Z-K-Y. And Daedra Schwartz, that's
22 D-A-E-D-R-A; Schwartz, S-C-H-W-A-R-T-Z.

23 JUDGE LONG: Thank you.

24 MR. KOCHENDERFER: Certainly.

25 JUDGE LONG: There is one issue in this

1 appeal. It is whether appellant's claim for credit from
2 overpayment for the 2011 tax year is barred by the
3 statute of limitations. My understanding is that there
4 are no witnesses in this appeal; is that correct Mr.
5 Kochenderfer?

6 MR. KOCHENDERFER: Correct, from our side.

7 JUDGE LONG: And Franchise Tax Board.

8 MR. TUTTLE: No witnesses.

9 JUDGE LONG: Thank you. The exhibits for this
10 appeal consist of Franchise Tax Board Exhibits A-BB. At
11 the prehearing conference, appellants stated there was
12 no objection to these exhibits.

13 Can Appellant please confirm that there are no
14 objections.

15 MR. KOCHENDERFER: Confirm.

16 JUDGE LONG: Thank you. And after the
17 prehearing conference, appellant provided an exhibit
18 index identifying Exhibits 1-26.

19 Does FTB have any objections to these
20 exhibits?

21 MR. TUTTLE: No objections.

22 JUDGE LONG: Thank you. Since there are no
23 objections, Franchise Tax Board's Exhibits A-BB and
24 Appellant Exhibits 1-26 are admitted.

25 (Respondent's Exhibits A-BB were

1 admitted into evidence.)

2 (Appellant's Exhibits 1-26 were admitted
3 into evidence.)

4 JUDGE LONG: At the prehearing conference, the
5 parties agreed to the following:

6 One, appellant filed their 2011 state income
7 tax return on October 15th, 2016; and, two, the 2011
8 state income tax return claims an overpayment.

9 However, there's a discrepancy between the
10 amount purported on appellant's return identified here
11 as Exhibit T, and the amount shown on FTB's tax or
12 detail; tax year 2011 -- identified as FTB's Exhibit U.

13 Is that your understanding as well,
14 Mr. Kochenderfer.

15 MR. KOCHENDERFER: The numbers may differ,
16 your Honor. But the overpayment from 2011 at issue is
17 \$246,000 dollars. That's the amount that's being
18 carried over. Now, there are some internal adjustments
19 because of other tax payments that may make that number
20 appear to be 217 or something. But at issue in this
21 appeal is the 246,000 allowance to be carried over.

22 JUDGE LONG: Okay. I understand.

23 Franchise Tax Board, is that your
24 understanding as well? With respect to the prehearing
25 conference agreements.

1 MR. TUTTLE: Yes.

2 JUDGE LONG: Thank you.

3 Today's hearing is expected to take
4 approximately one hour. Taxpayer's presentation is
5 expected to last 25 minutes, and we can begin whenever
6 you're ready, Mr. Kochenderfer.

7

8 PRESENTATION

9 MR. KOCHENDERFER: I am ready. Thank you very
10 much, your Honor, and thank you to the panel for hearing
11 our appeal of Moses and Susan Libitzky.

12 As you know, Mr. Libitzky is here with me on
13 my right today. Because he is, of course, very much
14 involved in this matter. His wife, Susan, is not able
15 to attend due to health and medical reasons. If she
16 were able to attend, she'd be here.

17 As you know, this case involves a tax return
18 for 2011 -- a form 540 that Moses and Susan Libitzky
19 filed. Because of a series of circumstances, the return
20 has been deemed filed late, October 15th, 2016, to be
21 exact. And therein lies the issue because on that
22 return, there was a \$246,000 dollar overpayment.

23 Franchise Tax Board agrees that their tax --
24 the tax was overpaid 246,000 for that particular year;
25 that is not a dispute. And we're here to explain why

1 the panel should allow this credit to the Libitzky's.

2 I'm very optimistic that once you hear the
3 evidence and review the evidence and the testimony and
4 the pleadings that have been filed that you will help us
5 resolve this case, and I'm optimistic it will be
6 favorable to my client. I say that without intending to
7 sound presumptuous in any way because I am not
8 presumptuous of your task.

9 As the panel will see from the agreed
10 evidence, the Libitzky's have a long history of filing
11 all their tax returns, of paying all their taxes, making
12 their tax deposits timely, and taking their tax
13 obligations extremely seriously.

14 Because of the nature of my client's business
15 and businesses, his income can fluctuate up and down.
16 And, so, because of that and in order to be cautious, he
17 tends to overpay his tax to make sure that any
18 fluctuations are covered by his deposits.

19 As a matter of practice over many years, he
20 has also checked the box on the return -- Moses and
21 Susan -- applying any overpayment to the following year.

22 If, in fact, he had checked the box send me a
23 check, we wouldn't be here today with this case; this
24 dispute would not exist. He would have identified why
25 he didn't get his refund. He would've gotten his

1 income; case close.

2 The two issues today before the panel in this
3 appeal are:

4 First, whether the communications made by my
5 client to Franchise Tax Board well prior to the filing
6 or re-filing of their tax return and well within the
7 statute of limitations, Revenue and Tax Code 19306,
8 constituted an informal claim under the law;

9 And, secondly, whether California law
10 recognizes informal claims -- that being claims that do
11 not perfectly confirm to the statute as being sufficient
12 to toll or freeze the statute of limitations until a
13 complete and conforming claim for refund is made which
14 is ordinarily the filing of a tax return.

15 The answer to both these questions, as you
16 will see, is affirmative. And, I think, convincingly
17 affirmative. But let me first start, just for a moment,
18 with giving you a little bit background so that you will
19 understand how this came about.

20 Moses Libitzky is a businessman. His office
21 is in Emeryville, California. He has worked from that
22 office for many, many decades. He has several
23 employees. He also engages and has always engaged in
24 inhouse accountant. He did in 2011 and 2012. He does
25 now, in that account, has helped him with not only

1 accounting and finance and tax compliance and tax
2 returns.

3 So in his office, he has many tax returns --
4 federal, state, individual, corporate, limited liability
5 company, partnerships, payroll, out-of-state tax
6 returns, in state tax returns, payroll -- so on.
7 There's a lot of tax returns to be filed, and they take
8 their responsibilities very, very seriously.

9 One of the things that I will point out that
10 if you look at Exhibit 8 of Appellant's Exhibits, which
11 is actually taken from the Respondent's Exhibits, the
12 Franchise Tax Board makes note that the Libitzky's have
13 an outstanding record of filing their returns, and they
14 do. Forty-five years of unblemished filing of returns,
15 paying their tax, and meeting their obligations.

16 So the Libitzky's practice and protocol was to
17 try to keep those tax deposits overpaid and to apply the
18 overpayments to the following year. Attached with our
19 exhibits, you'll see Exhibit 3 which is a statement or
20 summary of remittances and applications from the year
21 2010-2016.

22 That identifies for the panel exactly what
23 their payments were, their tax liability, the amount
24 carried over. It corresponds to their Franchise Tax
25 Board returns -- their four and five 40's exactly.

1 I don't think any of those numbers are in
2 dispute with my colleagues from France Tax Board and,
3 during this process of 2012 and 2013 when the confusion
4 arose, all this information was available to Franchise
5 Tax Board. They could see the filing history, they can
6 see the overpayment applications from prior years, they
7 can see the pattern of conduct that the Libitzky's had.

8 As they usually did, they extended their 2011
9 tax return automatic extension to October 15th.

10 Mr. Libitzky and his accountant both believe and, in
11 good faith, believed that both the federal and state
12 returns had been filed on time.

13 In fact, on October 15th of 2012, by mailing
14 them in matching manila envelopes, postage paid at the
15 US mailbox that sits at the bottom of their street --
16 the typical US mailboxes that you see around office
17 buildings -- because there was no check enclosed with
18 those returns, they both had overpayments.

19 It was their practice to file them without a
20 certified mail receipt -- unfortunate. Their protocol
21 was to always file items with certified mail receipts if
22 it included a check. But this did not include a check,
23 so there was no certified mail receipt.

24 And we acknowledge that not withstanding their
25 good faith belief; their best of intentions; their

1 recollections; their office practices; we are unable to
2 prove that the return was filed on that date. We are,
3 therefore, compelled to agree that when they both,
4 Mr. Libitzky and Mrs. Libitzky, signed or resigned the
5 tax return at the end of 2016 that that's the official
6 filing date of the return.

7 And the return itself, your Honors, you'll
8 find at Exhibit 4, in our exhibits, you'll find both the
9 copy of the return they kept in their file, and you'll
10 also find the actual resigned -- I call it resigned --
11 return from October of 2016.

12 So lets turn to the two precise issues that we
13 have here. If the Libitzky's had timely alerted the
14 Franchise Tax Board to their expectation of an
15 overpayment and their wish to claim that overpayment in
16 2012 and if California law allows such an informal claim
17 to toll the statute, then Moses and Susan must get
18 credit for what they overpaid.

19 Revenue Tax Code 19322 tells us what a formal
20 claim includes. Revenue and Tax Code 19306 provides the
21 limitations periods for making a claim. To be valid, a
22 claim and the statute doesn't set a formal claim or an
23 informal claim. It simply says a claim must be made
24 within four years of the last date prescribed for filing
25 the return without regard to extensions.

1 That, your Honors, will be April 15th, 2016.
2 That would be four years after April 15th, 2012. Now,
3 I've made references earlier and few minutes ago to
4 informal claims. What is an informal claim under
5 California law, and what is an informal claim under
6 federal law which provides good authority for
7 interpreting state law.

8 An informal claim is a communication or an
9 information from a taxpayer that may technically fall
10 short of being a formal claim under the Tax Code 19322,
11 but which sufficiently alerts the tax agency that a
12 taxpayer is claiming or anticipating or believes they
13 are entitled to some form of credit or refund for a
14 given tax year for a given type of tax.

15 And that, here, is what happened, and that's
16 what put Franchise Tax Board on notice of such an
17 expectation. The seven old -- and, I think, extremely
18 important case here -- is a Federal Supreme Court case
19 Kales v. United States. I've attached at Exhibit 18,
20 and it has been cited in California cases; Kales at 194.

21 A tax claim, which the agency could reject
22 because it is too general or because it does not comply
23 with the formal requirements of the statute, will
24 nevertheless be treated as a claim where the defects are
25 remedy by amendment file after the laps of the statutory

1 period. Spot on.

2 I also would direct your attention to the
3 American Radiator Standard Sanitary case, Exhibit 19. A
4 regularity in the formal claim are, thus, cured
5 retroactively. Now, a later bit later, along came the
6 New England Electric Case, also cited in some California
7 appellant cases, and it establishes a three-part test.

8 First, the informal claim has to provide some
9 indication that the taxpayer is asserting a right;

10 Second, it needs to demonstrate the basis for
11 that right, what's it about;

12 And, third, it has to have a written
13 component.

14 I also think the board should look carefully
15 at Newton v. United States, another federal case that
16 came along later, a very significant importance because
17 it is cited in the California Second District Court of
18 Appeal case Paul Newman v. Franchise Tax Board; it's a
19 Paul Newman case, it's at Exhibit 22.

20 That case said it just needs to be a notice,
21 fairly advising the tax agency of the nature of the
22 claim. And as the headnote in Newman says a letter
23 satisfied the purpose of putting the board unnoticed
24 that a right was being asserted with respect to an
25 overpayment of tax.

1 So what about the Libitzky's March 14th, 2014,
2 facts, those six pages that were sent; they are Exhibit
3 5 to our Appellant's evidence, and they're also the same
4 evidence put forth by the respondent.

5 Even if we ignore the simpler test of Paul
6 Newman, which is a notice, and we look at the New
7 England components -- the New England electric
8 components -- the 2011 tax return that was enclosed, the
9 three pages clearly shows what their tax liability was;
10 what their overpayment was; and what they were doing
11 with the overpayment.

12 No confusion at all on the first problem. The
13 second problem, their legal basis to the right -- it's
14 an overpayment. Revenue Tax Code 19301, 19364, the
15 government doesn't get to confiscate an overpayment. It
16 either has to refund it or credit it -- the legal right.

17 Third, the written component. The facts
18 itself. The facts itself. That, in and of itself, I
19 think, makes it very clear that there was an informal
20 claim.

21 One quick aside, there's a significant case
22 law that says even if a taxpayer did not communicate in
23 writing with the agency, if the agency itself made
24 notations in the records that substantiated the matter,
25 then that's sufficient.

1 And, here, in Exhibits 10, 11, and 12, at the
2 bottom, highlighted for your ease of reference, you will
3 see notations made by Franchise Tax Board immediately
4 after the facts. Everybody understood. There was -- in
5 addition to the facts, there was some phone calls with
6 the accountant. There was no confusion. It was crystal
7 clear.

8 They knew what the Libitzkys intended, and
9 that is not at issue. So lets move to the second issue.
10 Does California law recognize informal claims, and the
11 fact that they are meant to told the statute of
12 limitations until a defect can be corrected. It
13 absolutely does. It is the law of this state.

14 I've cite some of the earlier cases just a
15 moment ago, including Paul Newman and the federal cases
16 that speak to that. And those federal cases are very
17 much valid authority for the interpretation of a similar
18 issue for state cases.

19 We're not asking the panel to make new
20 California law. We're not asking you to go to some
21 territory that's never been explored. We're just asking
22 you to connect the facts with the law that exist and to
23 provide them the refund that they're entitled to.

24 Now, in interpreting the claims statute
25 itself, California law's very clear. First, District

1 Court of Appeal's decision McKnight v. Franchise Tax
2 Board, page 988.

3 It has long been the policy of California
4 courts to liberally construe claims for refund of taxes.
5 Going on, a claim is adequate, and the purpose of the
6 statutory requirement is served if the Franchise Tax
7 Board shall know what the claim of the applicant is.
8 And, of course, they did.

9 I attached Paul Newman v. Franchise Tax Board
10 is our Exhibit 22. That is also a second district court
11 of appeal decision and very, very instructive. It's not
12 clear whether Paul Newman himself wrote a letter or his
13 accountant, it's not exactly clear from the case. But
14 they said the letter satisfied the purpose that we
15 understand you have a claim of an overpayment.

16 It's an interesting case because it also cited
17 Newton v. United States, the federal case, which in and
18 of itself brings in Kales, and a whole litany of federal
19 law. I want to very briefly touch -- before my time
20 runs out -- on Shiseido Cosmetics v. Franchise Tax Board
21 because I think opposing counsel wants to hang their hat
22 on that case.

23 I attached that case for your references,
24 Exhibit 24. I dealt with it very, very carefully in my
25 supplemental reply brief of January 16th, this year, and

1 I would invite you to look at that again. That case is
2 easily distinguishable. It does nothing for -- to
3 improve the position of Franchise Tax Board here. In
4 fact, by implication, it supports my client.

5 In Shiseido, the court ruled on one simple
6 issue -- the taxpayer had not paid the tax. And they
7 were trying to come into the jurisdiction of the court
8 under the claim of refunder overpayment, but you can't
9 have a refunder overpayment if you haven't first paid
10 the tax. And the court disposed the case on that basis.

11 Now, the taxpayer tried to argue that it was
12 an informal claim, and they mentioned Kales and other
13 cases, and the court of appeals could have thrown the
14 baby out with the bath water and said that's meaningless
15 here. They distinguished it. They distinguished it on
16 the basis of what I just explained. You simply can't
17 have an overpayment if you haven't paid the tax.

18 One final item I do want to mention, the
19 Libitzky's 2011 income tax -- federal income tax return
20 was also lost or never received, and it was the subject
21 of the same kind of dispute with Internal Revenue
22 Service. I've attached the entire appellant court
23 decision because I think it's worth reading, and it's
24 there available. I know it may be of interest to you.

25 That case in that decision holds no weight or

1 no bearing here for two reasons: The Ninth Circuit
2 Court of Appeals basically said you have made an
3 informal claim. It was later that the claim, the
4 informal claim here with the state, but Internal Revenue
5 Code 6511(b) has a second tier of limitations on
6 recovery.

7 And that limitation provides a lookback zone
8 of two and a half years. They ruled that we were
9 outside that. California Law 19306 has no equivalent
10 provision to 6511(b). There's no equivalency
11 whatsoever.

12 Second, if, in fact, federal law applied
13 here -- if California law applied there -- we would have
14 prevailed because our informal claim was March 14th,
15 2014, well within the statute; well within the two and
16 half years. But, unfortunately, we had an extra hurdle
17 to overcome with the feds that proved to be an obstacle.

18 In conclusion, what I'd like to say is that
19 we're respectfully asking the panel to grant this claim
20 in this appeal of Moses and Susan Libitzky to allow them
21 the credit for the overpaid tax which everyone,
22 including Franchise Tax Board, agrees they overpaid.

23 And everyone obviously can tell that Franchise
24 Tax Board was on timely notice of what their claim was.
25 By granting this appeal, we do the right thing. We get

1 them the money that was overpaid. By law, the facts,
2 their entitled to it.

3 Thank you very much.

4 JUDGE LONG: Thank you. I do have a couple of
5 questions, and I will turn over to my co-panelists for
6 questions as well.

7 First, so appellant's opening brief asserts
8 that the subsequent returns for 2012, '13, and '14
9 constitute renewed timely claims putting activity on
10 actual notice -- the Libitzky's activity in claiming how
11 much was credited. I just want to confirm, is that
12 still an avenue of argument that you are pursuing?

13 MR. KOCHENDERFER: It is not at this point.
14 Yeah. That was 2018 when we filed that original appeal,
15 your Honor, and we were still developing information on
16 the case. We're not yielding. We're not stating we're
17 not going to keep that in the back of our minds. But
18 for the case today with your Honors, that's out.

19 JUDGE LONG: Okay. Thank you. And then I
20 just wanted to clarify with respect to Shiseido. So in
21 Shiseido, the court states nothing was ruling purports
22 to authorize as valid a refund claim that fails to meet
23 the essential statutory criteria.

24 My understanding is that with respect to the
25 tax return, it was not signed, which played a part in

1 the FTB's position that it is not a valid claim for
2 refund. 19322 does require a claim for refund to be
3 written, signed, and state the specific grounds upon
4 which is founded. And I note that most of the cases
5 that you cite to are -- were decided prior to the 1986
6 amendment that required them a claim for refund to be
7 signed.

8 Given the case law, all exist prior to that
9 signature requirement and the statements to Shiseido, is
10 there any -- what is your position with respect to the
11 signature requirement.

12 MR. KOCHENDERFER: Sure. 19322 says the
13 formal claim has to have three or four different
14 elements; one is that it needs to be signed and other
15 elements as well. In the context -- and that is a
16 formal claim that the Franchise Tax Board, Internal
17 Revenue Service for that matter, cannot act on anything
18 less than a formal claim.

19 But it is the distinction between an informal
20 claim with the information it provides and a formal
21 claim that comes later -- that's what Kales is about.
22 Yes, on the facts of March 14th, 2014, had there --
23 which is marked on the return "copy" and so on and so
24 forth -- had there been a signature, it would have
25 constituted a formal return. We wouldn't be here.

1 Even if it was the first three or four pages.
2 That's -- we acknowledge that the signature was not
3 there, but that doesn't change the context of whether
4 the Franchise Tax Board was alerted and understood and
5 thereupon we had an informal claim.

6 We know that in other cases, whether it's
7 Wertin or J.H. McKnight or Paul Newman, there were
8 infirmities because if -- informal claims, it would have
9 been processed. But there were infirmities, and that's
10 what Kales tells us -- a technical deficiency, but,
11 nevertheless, it puts the agency on notice.

12 19322.1 came along a little year. You didn't
13 mention it, your Honor, but that actually is -- it
14 doesn't have anything to do with informal claims.

15 19322.1 simply said -- and I think it came in
16 the laws of 2000, 2001 -- and it simply said we're no
17 longer going to require taxpayers to full pay the tax
18 before they can get jurisdiction to dispute or request a
19 claim for refund or overpayment. So it liberalized it.

20 But there's nothing in that that talks about
21 anything differently with informal claims. So we
22 acknowledge it's not a formal claim. The formal claim
23 perfects the decision informal claim. Thank you. I
24 hope I answered.

25 JUDGE LONG: Yes, thank you. I just want to

1 make sure I give the opportunity to my co-panelists to
2 ask any questions.

3 Judge Long, do you have any questions?

4 JUDGE VERONICA LONG: I'm going to hold my
5 questions until after Franchise Tax Board's testimony.
6 Thank you.

7 JUDGE LONG: Judge Turner, do you have any
8 questions?

9 JUDGE TURNER: Not at this time. Thank you.

10 JUDGE LONG: Okay. Thank you. Then we will
11 turn to Franchise Tax Board's presentation. FTB
12 requested 15 minutes, and you may begin when you're
13 ready.

14

15 PRESENTATION

16 MR. TUTTLE: Thank you. Good afternoon. My
17 name is Topher Tuttle, and I represent Respondent, the
18 Franchise Tax Board, in this matter. With me is Maria
19 Brosterhous who also represents respondent.

20 The issue in this case is whether appellant's
21 claim for refund for the 2011 tax year is barred by the
22 statute of limitations. California law prohibits
23 respondent from crediting or refunding an overpayment
24 when a claim for refund was not filed within four years
25 of the due date of the return or within one year from

1 the date of overpayment -- whichever is later.

2 In this case, appellant's original tax return
3 for the 2011 tax year was due by April 15th, 2012.
4 However, respondent did not receive appellant's tax
5 return until October 15th, 2016. As a result, the tax
6 return was filed beyond the four year statute of
7 limitations period.

8 If the four year statute of limitations has
9 run, only payments made within one year of the refund
10 claim can be refunded or credited under California law.
11 With respect to tax year 2011, almost all payments,
12 credits, were made during 2011 and 2012.

13 However, appellant made a payment of about \$58
14 dollars in June of 2016, and respondent already refunded
15 this payment as a credit for the 2012 tax year.
16 Therefore, except for this credit amount which was
17 already refunded to appellants, the remaining
18 overpayment credits at issue are barred by the statutes
19 of limitations.

20 Although appellants argue that they filed a
21 copy of the tax return by the extended due date in 2012,
22 there is no evidence in support to this contention. In
23 addition, although appellants argue that their March
24 14th, 2014 text message constitutes a timely claim for
25 refund because it contained the first three pages of

1 their 2011 California Tax Return.

2 The fact that this facts was unsigned means
3 that it does not meet the requirements of Revenue
4 Taxation Code, Section 19322, which specifies that a
5 claim for a refund -- as apposing counsel has
6 mentioned -- it does not say formal or informal.

7 It says a claim for refund must: One, be in
8 writing; two, be signed; and, three, state the grounds
9 upon which the claim was founded since appellant's facts
10 were not a valid claim for refund.

11 And to the point of apposing counsel that
12 there's case law that supports informal claim for refund
13 serving to toll statute of limitations, I will mention
14 that the issue -- the reason that these -- for the
15 majority of these cases, the reason that they were
16 informal or efficient was that the grounds of the claim
17 were not artfully pled.

18 That is not the issue in this case where the
19 grounds were apparent from the facts. The issue is that
20 there were statutory requirements that that claim did
21 not meet. To the extent, appellants contend that -- and
22 it hasn't been raised -- but to the extent that the
23 March 14th, 2014 facts, appellants argue it was signed
24 by the CPA; respondent takes the position that the CPA
25 was not authorized to sign on appellant's behalf because

1 he did not have a current power of attorney on file.

2 Accordingly, respondents denial for
3 appellant's claim for refund is proper and should be
4 sustained. Thank you.

5 JUDGE LONG: Thank you.

6 Judge Long, do you have any questions?

7 JUDGE VERONICA LONG: I do. I'm going to
8 begin my questions -- well, is it alright if I go ahead
9 and ask questions to the appellant's counsel as well?

10 JUDGE LONG: Yeah, go ahead.

11 JUDGE VERONICA LONG: So this question is for
12 appellant's counsel. I'm reading through Shiseido, I
13 noted at the end that it states it declines to follow
14 American Radiator and Newman; would you like to comment
15 on that.

16 MR. KOCHENDERFER: It declines to follow them
17 because those are not at issue in the Shiseido case.
18 Shiseido was ruled on the basis of the fact that the
19 taxpayer had not paid the tax that they were claiming a
20 refund for. So the taxpayers argue that those cases
21 should apply was not valid.

22 They didn't have jurisdiction to even get to
23 that point, and that's what what happened in Shiseido.
24 That's the reason that there was a problem there. Now,
25 if Shiseido was a 1991 case -- if it had come in 2000 or

1 after 2001 -- they would have been saved by 19322.1; the
2 new code section that was adopted liberalizing that.

3 So Shiseido isn't really about Kales and those
4 other cases, but it doesn't say -- we -- they're not
5 valid cases, they're not anything like that. It simply
6 says that we decline to follow them here because it's
7 not at issue. It wasn't about an informal claim. You
8 can't have a claim without paying the tax.

9 JUDGE VERONICA LONG: All right. Thank you.

10 And then my next question is for Franchise Tax
11 Board. Franchise Tax Board, in the McKnight opinion, it
12 says that Shiseido has no relevancy where a post payment
13 claim for refund is final; would you like to comment on
14 that.

15 MR. TUTTLE: Right. So, again, I'll point out
16 that the issue in McKnight was that the claim for refund
17 -- the grounds of the claim for refund were being
18 contested by the parties, and that's not the issue in
19 this case. It's clear what the grounds were on the
20 facts of the claim.

21 However, the statutory requirements of 19322
22 require all three elements. For example -- if, for
23 example, the taxpayer in this case had made an oral
24 claim for refund, that also would have apprised
25 Franchise Tax Board; but that is a requirement under

1 19322 that the claim be in writing.

2 And, so, the knowledge of the grounds of the
3 claim is not sufficient to toll the statute of
4 limitations.

5 JUDGE VERONICA LONG: All right. Thank you.
6 That's all my questions.

7 JUDGE LONG: Judge Turner, do you have any
8 questions?

9 JUDGE TURNER: I do not. Thank you.

10 JUDGE LONG: Okay. Thank you. We'll move
11 forward to appellant's final statement.

12 MR. KOCHENDERFER: Yes.

13 JUDGE LONG: Appellant has requested 10
14 minutes.

15 MR. KOCHENDERFER: Yes.

16 JUDGE LONG: And you may begin when you're
17 ready.

18
19 CLOSING STATEMENT

20 MR. KOCHENDERFER: Yes. Thank you very much,
21 your Honor.

22 First of all, opposing counsel has mentioned
23 some one-year period, but I want -- and do course, I'd
24 like to have the panel review and read carefully
25 19306(a), which actually puts in place three different

1 timelines; and, it says, whichever occurs later.

2 And the one which occurs later here is four
3 years from the date the tax return was due. So that's
4 the relevant section that we're looking at here. Now,
5 with regard -- I think there's confusion between a
6 formal claim and an informal claim.

7 We acknowledge that mister -- that Moses and
8 Susan Libitzky did not sign the tax return that was
9 submitted in the facts and that they did not sign the
10 facts -- we get that.

11 It would have been a formal claim. And I
12 would carefully direct your attention because the
13 analysis that are so good in some of those federal cases
14 -- some of which are cited in Newman and McKnight and
15 Wertin and so on -- as to how the process works.

16 The question is: Was the Franchise Tax Board
17 fairly alerted to the taxpayer's attentions? It's not
18 about whether there was a small deficiency because those
19 deficiencies, as American Radiators tell, they get cured
20 retroactively.

21 Now, with respect to our accountant, to
22 mister -- our accountant, Mr. Albrecht, signing the
23 facts, it's irrelevant. We know that he was the
24 accountant. His name is on the return that's attached.
25 His name was on the prior years return, the year before

1 that. All this information is known to Franchise Tax
2 Board.

3 He was obviously communicating in response to
4 a notice that was received, and Franchise Tax Board had
5 no objection. They didn't say we won't talk to you
6 because we don't know who you are. They knew who he
7 was, and there are notations on Exhibits 10, 11, and
8 12 -- were obvious they accepted that. They accepted
9 that he was representing an overpayment.

10 The situation that occurred, it was his
11 understanding that the Franchise Tax Board was still
12 looking for the return. We believe that it'd been
13 filed, there was a lot of confusion, but that's what the
14 informal claim doctrine is about.

15 It's about protecting taxpayers who may not
16 perfectly comply. And when the ramifications are so
17 onerous and inequitable that the issue that becomes was
18 it sufficient to alert the taxpayer. And then, as
19 J.H. McKnight says, then the informal claim concept does
20 toll the statutes. And the purpose of this statute is
21 met.

22 So the argument about the CPA signing it is a
23 technicality. It's, just, again, a stretch and doesn't
24 alter the issue of whether it's an informal claim.

25 And I will add that my client's business

1 practice is -- and he testified this in February -- is
2 to -- they respond to every inquiry by phone, mail
3 inquiry of any tax authorities; and they get a lot of
4 mail from tax authorities.

5 And, at times, there is confusion and my
6 client's thought the return had been filed. They
7 thought the board was looking for it or maybe it was
8 selected for audit or maybe it was lost. They thought
9 it had been re-filed.

10 There was a great deal of confusion on both
11 sides and miscommunications, but, at the end of the day,
12 the board knew that -- what they were claiming and what
13 the situations was. And it was cured by the filing of
14 the actual tax return signed which is the formal claim
15 which is processable by the agency.

16 They can't process an informal claim. It
17 simply tolls the statute. So, really, the threshold
18 question is was the agency alerted to their intentions,
19 and it was. And, of course, I mean, I don't think
20 reasonable minds can disagree about the import of the
21 six pages of our Exhibit 5.

22 And I hope I answered all of your questions.
23 Perhaps -- and I hope you have more questions for me at
24 this point because I would love to try to answer them.

25 THE HEARING REPORTER: Can I have a spelling

1 of the accountant's name.

2 MR. KOCHENDERFER: Albrecht, A-L-B-R-E-C-H-T.

3 Thank you.

4 THE HEARING REPORTER: Thank you.

5 JUDGE LONG: Thank you. I believe we're ready
6 to conclude the hearing. I just want to check with my
7 co-panelist.

8 Judge Long, do you have any further questions?

9 JUDGE VERONICA LONG: I have no further
10 questions. Thank you.

11 JUDGE LONG: Judge Turner, do you have any
12 questions?

13 JUDGE TURNER: Neither do I.

14 JUDGE LONG: Okay. Thank you.

15 This case is submitted on Tuesday, October
16 15th, 2024. The record is now closed. We will -- the
17 judges will meet and decide your case later on and send
18 a written opinion of the decision within 100 days from
19 today.

20 I want to thank everyone for coming in today.
21 And today's hearing in the appeal of Libitzky is now
22 adjourned and this concludes today's hearing.

23 (Proceedings concluded at 1:43 p.m.)

24

25

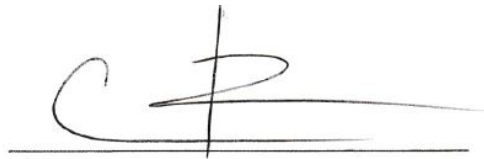
1 HEARING REPORTER'S CERTIFICATE

2
3 I, Christina L. Rodriguez, Hearing Reporter in
4 and for the State of California, do hereby certify:

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

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

14 I have hereunto subscribed my name this 7th
15 day of November, 2024.

16
17
18
19 

20 Hearing Reporter

21
22 CHRISTINA RODRIGUEZ
23
24
25

<hr/> \$ <hr/>	1:00 5:2,9	<hr/> 5 <hr/>	addition 18:5 26:23
\$246,000 8:17 9:22	1:43 34:23	5 17:3 33:21	adequate 19:5
\$58 26:13	<hr/> 2 <hr/>	540 9:18	adjourned 34:22
<hr/> 1 <hr/>	2000 24:16 28:25	<hr/> 6 <hr/>	adjustments 8:18
1-26 7:18,24 8:2	2001 24:16 29:1	6511(b) 21:5,10	administrative 5:11,13
10 18:1 30:13 32:7	2011 7:2 8:6,7,12, 16 9:18 11:24 13:8 17:8 20:19 25:21 26:3,11,12 27:1	<hr/> 8 <hr/>	admitted 5:25 7:24 8:1,2
100 34:18	2012 11:24 13:3, 13 14:16 15:2 22:8 26:3,12,15, 21	8 12:10	adopted 29:2
11 18:1 32:7	2013 13:3	<hr/> 9 <hr/>	advising 16:21
12 18:1 32:8	2014 17:1 21:15 23:22 26:24 27:23	988 19:2	affirmative 11:16, 17
13 22:8	2016 8:7 9:20 14:5,11 15:1 26:5, 14	<hr/> A <hr/>	afternoon 25:16
14 22:8	2018 22:14	A-BB 7:10,23,25	agency 15:11,21 16:21 17:23 24:11 33:15,18
14th 17:1 21:14 23:22 26:24 27:23	2024 5:1,8 34:16	A-L-B-R-E-C-H-T 34:2	agree 14:3
15 5:1 25:12	217 8:20	absolutely 18:13	agreed 8:5 10:9
15th 5:8 8:7 9:20 13:9,13 15:1,2 26:3,5 34:16	22 16:19 19:10	accepted 32:8	agreements 8:25
16th 19:25	24 19:24	accompanying 6:14	agrees 9:23 21:22
18 15:19	246,000 8:21 9:24	account 11:25	ahead 28:8,10
18124095 5:6	25 9:5	accountant 11:24 13:10 18:6 19:13 31:21,22,24	Albrecht 31:22 34:2
19 16:3	<hr/> 3 <hr/>	accountant's 34:1	alert 32:18
19301 17:14	3 12:19	accounting 12:1	alerted 14:13 24:4 31:17 33:18
19306 11:7 14:20 21:9	<hr/> 4 <hr/>	acknowledge 13:24 24:2,22 31:7	alerts 15:11
19306(a) 30:25	4 14:8	act 23:17	allowance 8:21
19322 14:19 15:10 23:2,12 27:4 29:21 30:1	40's 12:25	activity 22:9,10	alright 28:8
19322.1 24:12,15 29:1		actual 14:10 22:10 33:14	alter 32:24
19364 17:14		add 32:25	amendment 15:25 23:6
194 15:20			American 16:3 28:14 31:19
1986 23:5			amount 8:10,11, 17 12:23 26:16
1991 28:25			analysis 31:13

- anticipating** 15:12
- apparent** 27:19
- appeal** 5:6,20 7:1, 4,10 8:21 9:11 11:3 16:18 19:11 21:20,25 22:14 34:21
- Appeal's** 19:1
- appeals** 5:7,14, 21,22 20:13 21:2
- appellant** 7:13, 17,24 8:6 16:7 20:22 26:13 30:13
- appellant's** 7:1 8:2,10 12:10 17:3 22:7 25:20 26:2,4 27:9,25 28:3,9,12 30:11
- appellants** 7:11 26:17,20,23 27:21,23
- applicant** 19:7
- applications** 12:20 13:6
- applied** 21:12,13
- apply** 12:17 28:21
- applying** 10:21
- opposing** 19:21 27:5,11 30:22
- apprised** 29:24
- approximately** 5:9 9:4
- April** 15:1,2 26:3
- argue** 20:11 26:20,23 27:23 28:20
- argument** 22:12 32:22
- arguments** 5:25
- arose** 13:4
- artfully** 27:17
- asserted** 16:24
- asserting** 16:9
- asserts** 22:7
- attached** 12:18 15:19 19:9,23 20:22 31:24
- attend** 9:15,16
- attention** 16:2 31:12
- attentions** 31:17
- attorney** 28:1
- audit** 33:8
- authorities** 33:3, 4
- authority** 15:6 18:17
- authorize** 22:22
- authorized** 27:25
- automatic** 13:9
- avenue** 22:12
-
- B**
-
- baby** 20:14
- back** 22:17
- background** 11:18
- barred** 7:2 25:21 26:18
- based** 5:24
- basically** 21:2
- basis** 16:10 17:13 20:10,16 28:18
- bath** 20:14
- bearing** 21:1
- begin** 9:5 25:12 28:8 30:16
- behalf** 27:25
- belief** 13:25
- believed** 13:11
- believes** 15:12
- bit** 11:18 16:5
- board** 6:4,6,8 7:7, 10 8:23 9:23 11:5 12:12,25 13:2,5 14:14 15:16 16:14,18,23 18:3 19:2,7,9,20 20:3 21:22,24 23:16 24:4 25:18 29:11, 25 31:16 32:2,4, 11 33:7,12
- Board's** 7:23 25:5,11
- body** 5:22
- bottom** 13:15 18:2
- box** 10:20,22
- briefly** 19:19
- brings** 19:18
- Brosterhous** 6:7 25:19
- buildings** 13:17
- business** 10:14 32:25
- businesses** 10:15
- businessman** 11:20
-
- C**
-
- California** 5:1 11:9,21 14:16 15:5,20 16:6,17 18:10,20,25 19:3 21:9,13 25:22 26:10 27:1
- call** 14:10
- calls** 18:5
- carefully** 16:14 19:24 30:24 31:12
- carried** 8:18,21 12:24
- case** 5:6 9:17 10:5,23 11:1 15:18 16:3,6,15, 18,19,20 17:21 19:13,16,17,22,23 20:1,10,25 22:16, 18 23:8 25:20 26:2 27:12,18 28:17,25 29:19,23 34:15,17
- cases** 15:20 16:7 18:14,15,16,18 20:13 23:4 24:6 27:15 28:20 29:4, 5 31:13
- cautious** 10:16
- certified** 13:20, 21,23
- change** 24:3
- check** 10:23 13:17,22 34:6
- checked** 10:20,22
- Circuit** 21:1
- circumstances** 9:19
- cite** 18:14 23:5
- cited** 15:20 16:6, 17 19:16 31:14
- claim** 7:1 11:8,13 14:15,16,20,21, 22,23 15:4,5,8,10, 21,24 16:4,8,22 17:20 19:5,7,15 20:8,12 21:3,4,14, 19,24 22:22 23:1, 2,6,13,16,18,20, 21 24:5,19,22,23 25:21,24 26:10,24 27:5,7,9,10,12,16, 20 28:3 29:7,8,13, 16,17,20,24 30:1, 3 31:6,11 32:14, 19,24 33:14,16
- claiming** 15:12

- 22:10 28:19 33:12
claims 8:8 11:10
 15:4 18:10,24
 19:4 22:9 24:8,14,
 21
clarify 22:20
clear 17:19 18:7,
 25 19:12,13 29:19
client 10:6 11:5
 20:4
client's 10:14
 32:25 33:6
close 11:1
closed 34:16
CLOSING 30:19
co-panelist 34:7
co-panelists
 22:5 25:1
code 11:7 14:19,
 20 15:10 17:14
 21:5 27:4 29:2
colleague's 6:19
colleagues 13:2
comment 28:14
 29:13
communicate
 17:22
communicating
 32:3
communication
 15:8
communications
 5:23 11:4
company 12:5
compelled 14:3
complete 11:13
compliance 12:1
comply 15:22
 32:16
component
 16:13 17:17
components
 17:7,8
concept 32:19
conclude 34:6
concluded 34:23
concludes 34:22
conclusion 21:18
conduct 5:17
 13:7
conference 7:11,
 17 8:4,25
confirm 7:13,15
 11:11 22:11
confiscate 17:15
conforming
 11:13
confusion 13:3
 17:12 18:6 31:5
 32:13 33:5,10
connect 18:22
consist 7:10
constitute 22:9
constituted 11:8
 23:25
constitutes
 26:24
construe 19:4
contained 26:25
contend 27:21
contention 26:22
contested 29:18
context 23:15
 24:3
convened 5:9
convincingly
 11:16
copy 14:9 23:23
 26:21
corporate 12:4
correct 7:4,6
corrected 18:12
corresponds
 12:24
Cosmetics 19:20
counsel 19:21
 27:5,11 28:9,12
 30:22
couple 22:4
court 5:22 15:18
 16:17 19:1,10
 20:5,7,10,13,22
 21:2 22:21
courts 19:4
covered 10:18
CPA 27:24 32:22
credit 7:1 10:1
 14:18 15:13 17:16
 21:21 26:15,16
credited 22:11
 26:10
crediting 25:23
credits 26:12,18
criteria 22:23
crystal 18:6
cured 16:4 31:19
 33:13
current 28:1
-
- D**
-
- D-A-E-D-R-A**
 6:22
Daedra 6:14,21
date 5:8 14:2,6,24
 25:25 26:1,21
 31:3
day 33:11
days 34:18
deal 33:10
dealt 19:24
decades 11:22
decide 5:20 34:17
decided 23:5
decision 5:16
 19:1,11 20:23,25
 24:23 34:18
decline 29:6
declines 28:13,16
deemed 9:20
defect 18:12
defects 15:24
deficiencies
 31:19
deficiency 24:10
 31:18
demonstrate
 16:10
denial 28:2
deposits 10:12,
 18 12:17
detail 8:12
developing 22:15
differ 8:15
differently 24:21
direct 16:2 31:12
disagree 33:20
discrepancy 8:9
disposed 20:10
dispute 9:25
 10:24 13:2 20:21
 24:18
distinction 23:19
distinguishable
 20:2
distinguished
 20:15
district 16:17
 18:25 19:10

doctrine 32:14
dollar 9:22
dollars 8:17 26:14
due 9:15 25:25
 26:3,21 31:3

E

earlier 15:3 18:14
ease 18:2
easily 20:2
efficient 27:16
electric 16:6 17:7
electronically
 5:10
elements 23:14,
 15 29:22
Emeryville 11:21
employees 11:23
enclosed 13:17
 17:8
end 14:5 28:13
 33:11
engage 5:23
engaged 11:23
engages 11:23
England 16:6
 17:7
ensure 5:19
entire 20:22
entitled 15:13
 18:23 22:2
envelopes 13:14
equal 5:16
equivalency
 21:10
equivalent 21:9
essential 22:23

establishes 16:7
evidence 5:25
 8:1,3 10:3,10
 17:3,4 26:22
exact 9:21
excuse 6:5
exhibit 7:17 8:11,
 12 12:10,19 14:8
 15:19 16:3,19
 17:2 19:10,24
 33:21
exhibits 7:9,10,
 12,18,20,23,24,25
 8:2 12:10,11,19
 14:8 18:1 32:7

exist 10:24 18:22
 23:8
expectation
 14:14 15:17
expected 9:3,5
explain 9:25
explained 20:16
explored 18:21
extended 13:8
 26:21
extension 13:9
extensions 14:25
extent 27:21,22
extra 21:16
extremely 10:13
 15:17

F

fact 10:22 13:13
 18:11 20:4 21:12
 27:2 28:18
facts 17:2,17,18
 18:4,5,22 22:1
 23:22 27:2,9,19,
 23 29:20 31:9,10,
 23

fails 22:22
fairly 16:21 31:17
faith 13:11,25
fall 15:9
favorable 10:6
February 33:1
federal 12:4 13:11
 15:6,18 16:15
 18:15,16 19:17,18
 20:19 21:12 31:13

feds 21:17
file 13:19,21 14:9
 15:25 28:1
filed 8:6 9:19,20
 10:4 12:7 13:12
 14:2 22:14 25:24
 26:6,20 32:13
 33:6

filing 10:10 11:5,
 14 12:13,14 13:5
 14:6,24 33:13

final 20:18 29:13
 30:11

finance 12:1

find 14:8,10

fluctuate 10:15

fluctuations
 10:18

follow 28:13,16
 29:6

form 9:18 15:13

formal 14:19,22
 15:10,23 16:4
 23:13,16,18,20,25
 24:22 27:6 31:6,
 11 33:14

Forty-five 12:14

forward 30:11

founded 23:4
 27:9

France 13:2

Franchise 6:4,6,8
 7:7,10,23 8:23
 9:23 11:5 12:12,
 24 13:4 14:14
 15:16 16:18 18:3
 19:1,6,9,20 20:3
 21:22,23 23:16
 24:4 25:5,11,18
 29:10,11,25 31:16
 32:1,4,11

freeze 11:12

FTB 7:19 25:11

FTB's 8:11,12
 23:1

full 24:17

G

general 15:22

give 25:1

giving 11:18

good 13:11,25
 15:6 25:16 31:13

government
 17:15

grant 21:19

granting 21:25

great 33:10

Greg 5:13

grounds 23:3
 27:8,16,19 29:17,
 19 30:2

H

half 21:8,16

hang 19:21

happened 15:15
 28:23

hat 19:21

headnote 16:22

health 9:15

hear 10:2**heard** 5:10**hearing** 5:9,10,
15,18 9:3,10
33:25 34:4,6,21,
22**held** 5:7**helped** 11:25**highlighted** 18:2**history** 10:10
13:5**hold** 25:4**holds** 20:25**Honor** 8:16 9:10
22:15 24:13 30:21**Honors** 14:7 15:1
22:18**hope** 24:24 33:22,
23**hour** 9:4**hurdle** 21:16

I

identified 8:10,12
10:24**identifies** 12:22**identifying** 7:18**ignore** 17:5**immediately** 18:3**implication** 20:4**import** 33:20**importance**
16:16**important** 15:18**improve** 20:3**include** 13:22**included** 13:22**includes** 14:20**including** 18:15
21:22**income** 8:6,8
10:15 11:1 20:19**independent**
5:22**index** 7:18**indication** 16:9**individual** 12:4**inequitable** 32:17**infirmities** 24:8,9**informal** 11:8,10
14:16,23 15:4,5,8
16:8 17:19 18:10
20:12 21:3,4,14
23:19 24:5,8,14,
21,23 27:6,12,16
29:7 31:6 32:14,
19,24 33:16**information** 5:20
13:4 15:9 22:15
23:20 32:1**inhouse** 11:24**inquiry** 33:2,3**instructive** 19:11**intended** 18:8**intending** 10:6**intentions** 13:25
33:18**interest** 20:24**interesting** 19:16**internal** 8:18
20:21 21:4 23:16**interpretation**
18:17**interpreting** 15:7
18:24**invite** 20:1**involved** 9:14**involves** 9:17**irrelevant** 31:23**issue** 5:24 6:25
8:16,20 9:21 18:9,
18 20:6 25:20
26:18 27:14,18,19
28:17 29:7,16,18
32:17,24**issues** 11:2 14:12**item** 20:18**items** 13:21

J

J.H. 24:7 32:19**January** 19:25**judge** 5:5,13,17,
18 6:15,19,23,25
7:7,9,16,22 8:4,22
9:2 22:4,19 24:25
25:3,4,7,9,10
28:5,6,7,10,11
29:9 30:5,7,9,10,
13,16 34:5,8,9,11,
13,14**judges** 5:11,15
34:17**June** 26:14**jurisdiction** 20:7
24:18 28:22

K

**K-O-C-H-E-N-D-
E-R-F-E-R** 6:18**Kales** 15:19,20
19:18 20:12 23:21
24:10 29:3**Keith** 5:12**kind** 20:21**knew** 18:8 32:6
33:12**knowledge** 30:2**Kochenderfer**
6:9,13,17,20,247:5,6,15 8:14,15
9:6,9 22:13 23:12
28:16 30:12,15,20
34:2

L

L-I-B-I-T-Z-K-Y
6:21**laps** 15:25**late** 9:20**law** 5:11,13 6:1
11:8,9 14:16 15:5,
6,7 17:22 18:10,
13,20,22 19:19
21:9,12,13 22:1
23:8 25:22 26:10
27:12**law's** 18:25**laws** 24:16**lead** 5:12,17**legal** 6:14 17:13,
16**lets** 14:12 18:9**letter** 16:22 19:12,
14**liability** 12:4,23
17:9**liberalized** 24:19**liberalizing** 29:2**liberally** 19:4**Libitzky** 5:6 6:10,
11,20,21 9:11,12,
18 11:20 13:10
14:4 21:20 31:8
34:21**Libitzky's** 10:1,10
12:12,16 13:7
14:13 17:1 20:19
22:10**Libitzkys** 18:8**lies** 9:21**limitation** 21:7

limitations 7:3
11:7,12 14:21
18:12 21:5 25:22
26:7,8,19 27:13
30:4

limited 12:4

litany 19:18

long 5:5,12,14
6:15,19,23,25 7:7,
9,16,22 8:4,22 9:2
10:10 19:3 22:4,
19 24:25 25:3,4,7,
10 28:5,6,7,10,11
29:9 30:5,7,10,13,
16 34:5,8,9,11,14

longer 24:17

lookback 21:7

lost 20:20 33:8

lot 12:7 32:13 33:3

love 33:24

M

made 11:4,13
14:23 15:3 17:23
18:3 21:2 26:9,12,
13 29:23

mail 13:20,21,23
33:2,4

mailbox 13:15

mailboxes 13:16

mailing 13:13

majority 27:15

make 8:19 10:17
18:19 25:1

makes 12:12
17:19

making 10:11
14:21

manila 13:14

March 17:1 21:14
23:22 26:23 27:23

Maria 6:7 25:18

marked 23:23

matching 13:14

matter 5:7 9:14
10:19 17:24 23:17
25:18

Mcknight 19:1
24:7 29:11,16
31:14 32:19

meaningless
20:14

means 27:2

meant 18:11

medical 9:15

meet 5:15 22:22
27:3,21 34:17

meeting 12:15

members 5:14

mention 20:18
24:13 27:13

mentioned 20:12
27:6 30:22

message 26:24

met 32:21

minds 22:17
33:20

minutes 9:5 15:3
25:12 30:14

**miscommunicati
ons** 33:11

mister 31:7,22

moment 11:17
18:15

money 22:1

Moses 6:10,11,20
9:11,18 10:20
11:20 14:17 21:20
31:7

move 18:9 30:10

N

nature 10:14
16:21

needed 5:20

Newman 16:18,
19,22 17:6 18:15
19:9,12 24:7
28:14 31:14

Newton 16:15
19:17

Ninth 21:1

notations 17:24
18:3 32:7

note 12:12 23:4

noted 28:13

notice 15:16
16:20 17:6 21:24
22:10 24:11 32:4

number 8:19

numbers 8:15
13:1

O

objection 7:12
32:5

objections 7:14,
19,21,23

obligations
10:13 12:15

obstacle 21:17

obvious 32:8

occurred 32:10

occurs 31:1,2

October 5:1,8 8:7
9:20 13:9,13
14:11 26:5 34:15

office 5:7,21
11:20,22 12:3
13:16 14:1

official 14:5

one-year 30:23

onerous 32:17

opening 5:5 22:7

opinion 5:24
29:11 34:18

opportunity 25:1

optimistic 10:2,5

oral 29:23

order 10:16

ordinarily 11:14

original 22:14
26:2

OTA 5:6,24

out-of-state 12:5

outstanding
12:13

overcome 21:17

overpaid 9:24
12:17 14:18
21:21,22 22:1

overpay 10:17

overpayment 7:2
8:8,16 9:22 10:21
13:6 14:15 16:25
17:10,11,14,15
19:15 20:8,9,17
24:19 25:23 26:1,
18 32:9

overpayments
12:18 13:18

P

p.m. 5:2,9 34:23

pages 17:2,9 24:1
26:25 33:21

paid 13:14 20:6,9,
17 28:19

panel 5:11,15,18,
23 9:10 10:1,9

- 11:2 12:22 18:19
21:19 30:24
- part** 22:25
- parte** 5:23
- participants** 5:16
- participate** 5:19
- parties** 6:2 8:5
29:18
- partnerships**
12:5
- party** 5:24
- party's** 5:25
- pattern** 13:7
- Paul** 16:18,19
17:5 18:15 19:9,
12 24:7
- pay** 24:17
- paying** 10:11
12:15 29:8
- payment** 26:13,
15 29:12
- payments** 8:19
12:23 26:9,11
- payroll** 12:5,6
- perfectly** 11:11
32:16
- perfects** 24:23
- period** 16:1 26:7
30:23
- periods** 14:21
- phone** 18:5 33:2
- place** 30:25
- played** 22:25
- pleadings** 10:4
- pled** 27:17
- point** 12:9 22:13
27:11 28:23 29:15
33:24
- policy** 19:3
- position** 20:3
23:1,10 27:24
- post** 29:12
- postage** 13:14
- power** 28:1
- practice** 10:19
12:16 13:19 33:1
- practices** 14:1
- precise** 14:12
- prehearing** 7:11,
17 8:4,24
- prescribed** 14:24
- presentation** 9:4,
8 25:11,15
- presumptuous**
10:7,8
- prevailed** 21:14
- prior** 11:5 13:6
23:5,8 31:25
- problem** 17:12,13
28:24
- proceedings**
34:23
- process** 13:3
31:15 33:16
- processable**
33:15
- processed** 24:9
- produce** 5:16
- prohibits** 25:22
- proper** 28:3
- protecting** 32:15
- protocol** 12:16
13:20
- prove** 14:2
- proved** 21:17
- provide** 16:8
18:23
- provided** 7:17
- provision** 21:10
- purported** 8:10
- purports** 22:21
- purpose** 16:23
19:5,14 32:20
- pursuing** 22:12
- put** 15:16 17:4
- puts** 24:11 30:25
- putting** 16:23
22:9
-
- Q**
-
- question** 28:11
29:10 31:16 33:18
- questions** 5:18
11:15 22:5,6 25:2,
3,5,8 28:6,8,9
30:6,8 33:22,23
34:8,10,12
- quick** 17:21
-
- R**
-
- R-O-S-S** 6:18
- Radiator** 16:3
28:14
- Radiators** 31:19
- raised** 27:22
- ramifications**
32:16
- re-filed** 33:9
- re-filing** 11:6
- read** 30:24
- reading** 20:23
28:12
- ready** 9:6,9 25:13
30:17 34:5
- reason** 27:14,15
28:24
- reasonable** 33:20
- reasons** 9:15
21:1
- receipt** 13:20,23
- receipts** 13:21
- receive** 26:4
- received** 20:20
32:4
- recognize** 18:10
- recognizes** 11:10
- recollections**
14:1
- record** 5:5 6:2
12:13 34:16
- records** 17:24
- recovery** 21:6
- reference** 18:2
- references** 15:3
19:23
- refund** 10:25
11:13 15:13 17:16
18:23 19:4 22:22
23:2,6 24:19
25:21,24 26:9,25
27:5,7,10,12 28:3,
20 29:13,16,17,24
- refunded** 26:10,
14,17
- refunder** 20:8,9
- refunding** 25:23
- regard** 14:25 31:5
- regularity** 16:4
- reject** 15:21
- relevancy** 29:12
- relevant** 6:1 31:4
- remaining** 26:17
- remedy** 15:25
- reminder** 5:21
- remittances**
12:20

renewed 22:9
reply 19:25
REPORTER
 33:25 34:4
represent 6:3
 25:17
representatives
 6:4
representing 6:6,
 8,10 32:9
represents 25:19
request 24:18
requested 25:12
 30:13
require 23:2
 24:17 29:22
required 23:6
requirement 19:6
 23:9,11 29:25
requirements
 15:23 27:3,20
 29:21
resigned 14:4,10
resolve 10:5
respect 8:24
 16:24 22:20,24
 23:10 26:11 31:21
respectfully
 21:19
respond 33:2
respondent 17:4
 25:17,19,23 26:4,
 14 27:24
respondent's
 7:25 12:11
respondents
 28:2
response 32:3
responsibilities
 12:8
result 26:5
retroactively
 16:5 31:20
return 8:7,8,10
 9:17,19,22 10:20
 11:6,14 13:9 14:2,
 5,6,7,9,11,25 17:8
 20:19 22:25
 23:23,25 25:25
 26:2,5,6,21 27:1
 31:3,8,24,25
 32:12 33:6,14
returns 10:11
 12:2,3,6,7,13,14,
 25 13:12,18 22:8
Revenue 11:7
 14:19,20 17:14
 20:21 21:4 23:17
 27:3
review 10:3 30:24
Ross 6:9,18
ruled 20:5 21:8
 28:18
ruling 22:21
run 26:9
runs 19:20

S

S-C-H-W-A-R-T-Z
 6:22
Sacramento 5:1
Sanitary 16:3
satisfied 16:23
 19:14
saved 29:1
Schwartz 6:14,
 21,22
section 27:4 29:2
 31:4
selected 33:8
send 10:22 34:17
series 9:19
served 19:6
Service 20:22
 23:17
servicing 27:13
set 14:22
she'd 9:16
Shiseido 19:20
 20:5 22:20,21
 23:9 28:12,17,18,
 23,25 29:3,12
short 15:10
shown 8:11
shows 17:9
side 7:6
sides 33:11
sign 27:25 31:8,9
signature 23:9,
 11,24 24:2
signed 14:4 22:25
 23:3,7,14 27:8,23
 33:14
significant 16:16
 17:21
signing 31:22
 32:22
similar 18:17
simple 20:5
simpler 17:5
simply 14:23
 20:16 24:15,16
 29:5 33:17
sits 13:15
situation 32:10
situations 33:13
small 31:18
sound 10:7
speak 18:16
specific 23:3
specifies 27:4
spell 6:15
spelling 33:25
Spot 16:1
Standard 16:3
start 11:17
starting 6:3
state 6:2 8:6,8
 12:4,6 13:11 15:7
 18:13,18 21:4
 23:3 27:8
stated 7:11
statement 12:19
 30:11,19
statements 23:9
states 15:19
 16:15 19:17 22:21
 28:13
stating 22:16
statute 7:3 11:7,
 11,12 14:17,22
 15:23 18:11,24
 21:15 25:22 26:6,
 8 27:13 30:3
 32:20 33:17
statutes 26:18
 32:20
statutory 15:25
 19:6 22:23 27:20
 29:21
street 13:15
stretch 32:23
subject 20:20
submitted 31:9
 34:15
subsequent 22:8
substantiated
 17:24
sufficient 11:11
 17:25 30:3 32:18
sufficiently 15:11
summary 12:20

supplemental 19:25

support 26:22

supports 20:4
27:12

Supreme 15:18

Susan 6:10 9:11,
14,18 10:21 14:17
21:20 31:8

sustained 28:4

T

takes 27:24

taking 10:12

talk 32:5

talks 24:20

task 10:8

tax 5:7,14,21,22
6:4,6,8 7:2,7,10,
23 8:7,8,11,12,19,
23 9:17,23,24
10:11,12,17 11:5,
6,7,14 12:1,3,5,6,
7,12,15,17,23,24
13:2,5,9 14:5,14,
19,20 15:10,11,
14,16,21 16:18,
21,25 17:8,9,14
18:3 19:1,6,9,20
20:3,6,10,17,19
21:21,22,24 22:25
23:16 24:4,17
25:5,11,18,21
26:2,3,4,5,11,15,
21 27:1 28:19
29:8,10,11,25
31:3,8,16 32:1,4,
11 33:3,4,14

Taxation 27:4

taxes 10:11 19:4

taxpayer 6:12,14
15:9,12 16:9
17:22 20:6,11
28:19 29:23 32:18

taxpayer's 9:4
31:17

taxpayers 24:17
28:20 32:15

technical 24:10

technicality
32:23

technically 15:9

tells 14:19 24:10

territory 18:21

test 16:7 17:5

testified 33:1

testimony 10:3
25:5

text 26:24

thing 21:25

things 12:9

thought 33:6,7,8

three-part 16:7

threshold 33:17

thrown 20:13

tier 21:5

time 5:8 13:12
19:19 25:9

timelines 31:1

timely 10:12
14:13 21:24 22:9
26:24

times 33:5

today 9:13 10:23
11:2 22:18 34:19,
20

today's 5:8,10 9:3
34:21,22

told 18:11

toll 11:12 14:17
27:13 30:3 32:20

tolls 33:17

Topher 6:6 25:17

touch 19:19

treated 15:24

Tuesday 5:1
34:15

turn 14:12 22:5
25:11

Turner 5:13 25:7,
9 30:7,9 34:11,13

Tuttle 6:5,6 7:8,21
9:1 25:16,17
29:15

type 15:14

typical 13:16

U

unable 14:1

unblemished
12:14

understand 8:22
11:19 19:15

understanding
7:3 8:13,24 22:24
32:11

understood 18:4
24:4

unfortunate
13:20

United 15:19
16:15 19:17

unnoticed 16:23

unsigned 27:2

V

valid 14:21 18:17
22:22 23:1 27:10
28:21 29:5

Veronica 5:14
25:4 28:7,11 29:9
30:5 34:9

W

wanted 22:20

water 20:14

weight 20:25

Wertin 24:7 31:15

whatsoever
21:11

whichever 26:1
31:1

wife 9:14

withstanding
13:24

witnesses 7:4,8

worked 11:21

works 31:15

worth 20:23

would've 10:25

writing 17:23 27:8
30:1

written 5:16 16:12
17:17 23:3 34:18

wrote 19:12

Y

year 7:2 8:12 9:24
10:21 12:18,20
15:14 19:25 24:12
25:21,25 26:3,6,8,
9,11,15 31:25

years 10:19 12:14
13:6 14:24 15:2
21:8,16 25:24
31:3,25

yielding 22:16

Z

zone 21:7