

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
J. COMPAGNO, ) OTA NO. 21098565  
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 APPELLANT. )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, April 24, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:31 a.m. and concluding at 10:11 a.m. on  
Thursday, April 24, 2025, reported by  
Ernaly M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ KENNY GAST  
ALJ NATASHA RALSTON

For the Appellant: J. COMPAGNO

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 6.)

(Department's Exhibits A-NN were received into evidence at page 6.)

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California; Thursday, April 24, 2025

9:31 a.m.

JUDGE LEUNG: We are going on the record.

Today is April 24th, 2025. It's approximately 9:31 in the morning. This the hearing of John Compagno, Docket No. 21098565.

Will the parties please introduce themselves for the record, beginning with the Appellant.

MR. KATZ: Steve Katz for Appellant.

JUDGE LEUNG: Welcome, Mr. Katz.

And for the Franchise Tax Board.

MS. MACEDO: Ariana Macedo, representing Franchise Tax Board, and with me today is Brad Coutinho.

JUDGE LEUNG: Good morning, Ms. Macedo and Mr. Coutinho.

Prior to today's hearing, the parties agreed to the following items:

Number one, that this hearing would be conducted electronically;

Number two, that the issue to be decided is whether the Franchise Tax Board's notices for the tax years 2006 through 2011 are timely;

Number three, that neither party disputes the computation of tax;



1 the FTB can rely on the fraud exception to the statute of  
2 limitations. And that applies to the 2006, '07, '08, '09,  
3 and '11 tax years. The 2010 year, we have agreed that  
4 that exception does apply. So that's not in dispute. We  
5 contend that the FTB has not proven by clear and  
6 convincing evidence, which is the standard that the fraud  
7 exception should apply and that, therefore, that those  
8 NPAs are untimely.

9 The second issue, which only applies to the 2011  
10 year also, again, has to do with the timeliness of the  
11 NPA; and that has to do with whether the substantial  
12 omission exception to the statute -- 25 percent omission  
13 applies. And again, we contend that that exception does  
14 not apply for reasons I'll explain shortly.

15 On the first main issue, the fraud exception to  
16 the statute, the FTB has acknowledged that it must prove  
17 the fraud exception applies or the 2006 through 2009 years  
18 are closed. I should note that during the audit, the FTB  
19 had relied also on the final federal determination  
20 exception to the statute of limitations. And I'd refer to  
21 our Exhibits 1, which are the NPAs, and 3, which is the  
22 Audit Issue Presentation Sheet 1. The FTB during protest  
23 abandoned that position. It conceded that that, in fact,  
24 that exception did not apply. So for the balance of the  
25 appeal and now the FTB is relying primarily on the fraud

1 exception, with the exception of 2011 year, which I noted.

2 It's undisputed that the FTB must prove fraud by  
3 clear and convincing evidence. Fraud is intentional  
4 wrongdoing and intent to evade taxes, and it cannot be  
5 imputed or presumed. That is a high standard. The FTB  
6 has not met that standard here. Their case, essentially,  
7 does attempt to impute fraud or assume fraud without  
8 having offered clear and convincing evidence of fraud.

9 Now, to meet its burden in the case, the FTB does  
10 point to a plea agreement that the taxpayer entered into  
11 with respect to a corporate return -- one corporate return  
12 for the 2010 year. There was no plea as to any of the  
13 personal returns that are at issue here, just that one  
14 corporate return; and again, just for the one year. And  
15 I'd refer the panel to our Exhibit 5, which is also FTB's  
16 Exhibit H. The FTB is effectively attempting to extend  
17 that plea to all the years and to argue that there's fraud  
18 for all the years based on that plea. That's contrary to  
19 the legal authority as cited in the briefs.

20 Now, to further attempt to prove its fraud case,  
21 the FTB claims that there are several so-called badges of  
22 fraud in this case. Badges of fraud are indicia of fraud  
23 that the panel certainly knows, and the courts have relied  
24 on historically to determine whether or not there was  
25 fraud when fraud has been proven. No single factor is

1 necessarily sufficient, but a combination may be  
2 sufficient to prove that there was fraud. The FTB has not  
3 made that finding here. They have not proven fraud by  
4 clear and convincing evidence.

5 The first badge of fraud the FTB points to is  
6 understatements of income. Now, the taxpayer does  
7 acknowledge that there were understatements of income on  
8 the returns that are at issue here related to omissions of  
9 certain constructive dividends. The FTB at no point, not  
10 during the audit, not during protest, not at any point  
11 during this appeal has explained what those items are, and  
12 why, in fact, those omissions were due to fraud, rather  
13 than negligence, recklessness, or anything else. The FTB  
14 also notes -- I just want to note that the 2006 and 2007  
15 returns are not available, which may also impact its  
16 ability to prove fraud that the returns are not even  
17 available.

18 The question I'd asked to the panel is, how can  
19 it be determined that the FTB ultimately has proven fraud  
20 by clear and convincing evidence when it does not -- has  
21 not offered any evidence about what these items were  
22 beyond stating that they're constructive dividends. In  
23 addition, as I noted, these omissions alone are not enough  
24 to prove fraud without more. You cannot just presume  
25 fraud, or assume fraud, or impute fraud. There has to be

1 some evidence of it, and this -- the omissions alone are  
2 not sufficient to do that.

3 The second so-called badge of fraud that the FTB  
4 points to is called implausible explanations of behavior.  
5 Now, I should note here again, that this is an item that  
6 changed from the audit. This was not an argument that the  
7 FTB made during the audit or at protest. It's a new  
8 argument that was made during appeal. I -- I'd suggest  
9 that the reason is that the FTB may -- may not have  
10 believed that this test or this factor applied. And, in  
11 fact, our view is that it does not. They point to the  
12 fact that it would be implausible for these omissions to  
13 have occurred without there being fraud. But typically,  
14 the way the courts apply this factor is they point to some  
15 implausible explanation, some inconsistent statements,  
16 some lie that was told by a taxpayer to an auditor, to an  
17 investigator in testimony. That does not exist here.  
18 There's no evidence of that in the record. So that factor  
19 again, does not apply.

20 And then finally, the FTB points to illegal acts  
21 as another badge of fraud. Here, the illegal act that  
22 they point to would be the plea as to the corporate tax  
23 return; which as I noted was again, as to one year, the  
24 2010 year. There are no illegal acts on the years or the  
25 returns that we are dealing with in this case. The only

1 one they can point to is to the corporate return for the  
2 2010 year. The cases that apply to this factor, they're  
3 typically looking at some other criminal activity, some  
4 drug activity, some other fraud scheme, something else.  
5 That is not the case here.

6 There's no evidence of that, the FTB says this  
7 can be applied in the case of an illegal tax act as well.  
8 But again, the only act here that we are -- that's been  
9 offered into evidence is the plea as to the corporate tax  
10 return for the one year. Nothing as to the personal  
11 returns, and it should not be -- it cannot be extended to  
12 those years. So in sum, they have not offered sufficient  
13 badges of fraud to prove by clear and convincing evidence  
14 that there, in fact, was fraud in this case as to these  
15 returns that are at issue.

16 Now, to support that conclusion, I want to just  
17 point to an issue that the OTA raised during the briefing  
18 process. This is in the June 9, '23 letter that was sent  
19 to Appellant and Respondent, and that was -- the question  
20 was posed, what did the IRS do in this case, which is a  
21 good question. And the answer is undisputed that the IRS  
22 did not pursue, did not assert fraud penalties as to any  
23 year except the 2010 years. That's the only year. There  
24 was not fraud penalty asserted for any other years. And  
25 that's a critical fact that we believe should be

1       determinative in this case if there's any question at all  
2       as to whether the FTB has met its burden.

3               So to sum up, on the fraud exception, the NPAs at  
4       issue for 2006 through 2009 and '11 are time barred,  
5       unless the FTB can prove fraud by clear and convincing  
6       evidence; and we do not believe it has done so. We  
7       concede the 2010 year. That's the only year in which  
8       we're conceding, but fraud has not been proven as to any  
9       other years, except that year. And for those reasons, we  
10      would ask the panel to reject the FTB's reliance on the  
11      fraud exceptions of the statute of limitations and to  
12      determine that the NPAs for 2006 through 2009 and '11 are  
13      closed under the fraud exception.

14              The second issue that I mentioned at the outset  
15      pertains only to the 2011 year, and that is whether the  
16      exception to the statute of limitations for a substantial  
17      omission or 25 percent omission applies. Normally, as a  
18      technical matter here, those -- the amounts would have  
19      that exception apply. However, we have some interesting  
20      facts; namely, that at no point during the audit, during  
21      protest, even during the opening -- the briefing in this  
22      case by FTB, was this issue raised. The argument was  
23      never raised by FTB until the OTA noted this question --  
24      raised this question during the briefing process.

25              We would submit that it would be simply unfair

1 and inequitable to allow the FTB to rely on this argument  
2 after several years had passed, and this had never been  
3 raised as part of the proceedings, to allow the FTB to  
4 rely on that argument. It is not -- that exception does  
5 not automatically apply. The OTA would have to determine  
6 if they're allowed to apply that exception, and under  
7 these circumstances where the argument was never raised at  
8 any point until late in the proceedings here, that FTB  
9 should not be allowed to rely on that exception.

10 That's all I have at this point. I thank you for  
11 your attention and would be happy to answer questions.  
12 Otherwise, I reserve the balance of my time to respond to  
13 the FTB.

14 JUDGE LEUNG: Thank you, Mr. Katz. I will now  
15 turn to my co-panelists to see if they have any questions  
16 for you.

17 Judge Ralston?

18 JUDGE RALSTON: No questions at this time. Thank  
19 you.

20 JUDGE LEUNG: Thank you.

21 Judge Gast?

22 JUDGE GAST: Hi. This is Judge Gast. I do not  
23 have any questions at this time. Thank you.

24 JUDGE LEUNG: Thank you.

25 Franchise Tax Board, please begin your

1 presentation.

2 MS. MACEDO: Thank you, Judge.

3

4 PRESENTATION

5 MS. MACEDO: Good morning. My name is Ariana  
6 Macedo, and I represent Respondent Franchise Tax Board in  
7 this matter. I am joined today by my colleague Brad  
8 Coutinho.

9 There are two issues on appeal today: First,  
10 whether Respondent's proposed assessments for the 2006  
11 through 2011 tax years are timely, pursuant to the fraud  
12 exception outlined in Revenue & Taxation Code  
13 section 19087; second, whether Respondent's proposed  
14 assessment for the 2011 tax year is timely, pursuant to  
15 Revenue & Taxation Code section 19058(a), six year statute  
16 of limitations for issuing a Notice of Proposed Assessment  
17 or NPA.

18 Beginning with a discussion of the pertinent  
19 facts of this case. On December 14th, 2016, Appellant  
20 signed a plea agreement with the United States Attorneys  
21 office for the Northern District of California. Appellant  
22 stipulated to the following facts: One, Appellant was the  
23 sole shareholder and chief executive officer of John  
24 Compagno, MD, Incorporated, West Coast Pathology  
25 Laboratory, Incorporated, and Histopathology Reference

1 Laboratory, Incorporated; two, Appellant caused the  
2 corporate tax preparer to overstate expenses on corporate  
3 returns for the 2006 through 2011 tax years; and three,  
4 Appellant approved, signed -- and signed personal income  
5 tax returns for the 2006 through 2011 tax years that  
6 omitted constructive dividends.

7 Based on the plea agreement, Respondent issued  
8 NPAs on November 20th, 2017, for the 2006 through 2011 tax  
9 years. Appellant asserted that the NPAs were untimely,  
10 but did not contest the acceptance of the additional tax  
11 assessed. Respondent affirmed the NPAs, and Appellant  
12 filed his timely appeal.

13 Turning to the first issue on appeal, Respondent  
14 properly issued its proposed assessment for the 2006  
15 through 2011 tax years. Revenue & Taxation Code  
16 section 19087 states in pertinent part, that if a taxpayer  
17 files a false or fraudulent return with the intent to  
18 evade tax, Respondent may estimate the taxpayer's net  
19 income and, at any time, may propose to assess the amount  
20 of tax due. Respondent has the burden of proving fraud by  
21 clear and convincing evidence. To meet this burden,  
22 Respondent must one, show that there is an underpayment of  
23 tax; two, that the intention was to evade taxes known to  
24 be owing by conduct intended to mislead, conceal, or  
25 otherwise prevent a collection of tax. Direct evidence of

1 fraud is seldom available, and its existence may  
2 therefore, be determine from the taxpayer's conduct and  
3 surrounding circumstances.

4           Regarding the first requirement, Appellant  
5 stipulated in his plea agreement with United States  
6 Attorneys Office that he caused his corporate tax preparer  
7 to overstate expenses on his 2006 through 2011 corporate  
8 returns. Moreover, Appellant stipulated in his plea  
9 agreement and conceded protest and appeal that Appellant  
10 filed returns for the 2006 through 2011 tax years in which  
11 he omitted constructive dividends resulting in the  
12 underreporting of personal income and taxes owed.  
13 Accordingly, there's no argument that an underpayment of  
14 tax exists. As such, the first requirement is satisfied.

15           Regarding the second requirement, Appellant's  
16 fraudulent intent to evade taxes for the 2006 through 2011  
17 tax years is exhibited by Appellant's consistent pattern  
18 of grossly underreporting income, implausible explanations  
19 of behavior, and engaging in illegal conduct. Respondent  
20 will address each factor in turn.

21           Moving to the first factor, understatement of  
22 taxes. Over the course of six consecutive years,  
23 Appellant omitted approximately \$10 million in  
24 constructive dividends from his individual income tax  
25 returns. The omitted income resulted in over \$1 million

1 of additional tax owed. Appellant's established pattern  
2 of grossly underreporting income over the course of six  
3 consecutive years strongly evidences Appellant's intent to  
4 fraudulently evade tax.

5 Moving to the second factor, implausible  
6 explanations of behavior. Appellant is a seasoned medical  
7 professional with over 40 years of business experience.  
8 Appellant is the sole owner and chief executive officer of  
9 at least three business entities. Therefore, Appellant's  
10 argument that he lacks formal accounting or tax training  
11 is unpersuasive given his 40-plus years of business  
12 experience, and his own admission of active participation  
13 in the businesses by stating that he caused his tax  
14 preparer to overstate business expenses.

15 Further, throughout the protest and appeals  
16 process, Appellant has been invited to distinguish his  
17 fraudulent intent to evade taxes on his 2010 corporate tax  
18 return from his personal returns filed during the 2006  
19 through 2011 tax years. However, Appellant has failed to  
20 provide respond -- a response, other than to say that the  
21 Appellant is not required to provide an explanation as the  
22 burden of proof rests with Respondent. With that said, a  
23 pattern of substantially underreporting income for several  
24 years is strong evidence of fraud, particularly if the  
25 reason for the underpayment is not because of an innocent

1 mistake or is otherwise, satisfactorily explained.

2 Therefore, absent any logical explanation,  
3 Appellant's educational background, business experience,  
4 and admission of underreporting personal income during the  
5 tax years at issue, strongly suggest that Appellant's  
6 actions were anything but a mistake, rather, a concerted  
7 effort to fraudulently evade tax.

8 Lastly, illegal conduct, Appellant was charged  
9 and pled guilty to federal tax evasion acknowledging that  
10 Appellant knowingly and willfully filed a false 2010  
11 corporate return with the IRS. While Appellant argues  
12 that omission of guilt to one tax year does not extend to  
13 others, it does demonstrate a propensity to defraud. Had  
14 Appellant only underreported income for a single tax year  
15 or several nonconsecutive tax years, Appellant's argument  
16 may have been persuasive. However, at issue is more than  
17 \$1 million of underreported tax spanning a period of six  
18 conservative years. Clearly, Appellant's purpose for  
19 doing so was none other than an intent to fraudulently  
20 evade the significant tax owed. Accordingly, Appellant  
21 has established that Appellant filed a false or fraudulent  
22 return with the intent to evade tax for the 2006 through  
23 2011 tax years. As such, Respondent properly issued its  
24 proposed assessments for the 2006 through 2011 tax years  
25 pursuant to the fraud exception of the Revenue & Taxation

1 Code section 19087.

2 Turning to the second issue on appeal, Respondent  
3 timely issued it's proposed assessment for the 2011 tax  
4 year pursuant to Revenue & Taxation Code section 19058(a).  
5 Revenue & Taxation Code section 19085(a) provides a  
6 six-year statute of limitations if a taxpayer omits from  
7 gross income an amount exceeding 25 percent of their  
8 reported gross income.

9 As discussed, Appellant has established that  
10 Appellant filed false or fraudulent returns with the  
11 intent to evade tax for the 2006 through 2011 tax years.  
12 However, if this panel were to rule against a finding of  
13 fraud, Respondent's proposed assessment for the 2011 tax  
14 year is still timely, pursuant to Revenue & Taxation Code  
15 section 19058(a) as one, Respondent properly proposed  
16 increasing Appellant's gross income by more than  
17 25 percent; and two, Respondent's 2011 NPA was issued on  
18 November 20th, 2017, nearly 11 months prior to the  
19 expiration of a six-year statute of limitations for  
20 issuing an NPA, which would have expired on  
21 October 15th, 2018. Therefore, Respondent's proposed  
22 assessment for the 2011 tax year is timely, pursuant to  
23 Revenue & Taxation Code section 19058(a).

24 Based on the relevant case law, facts, and  
25 evidence in the record, Respondent respectfully requests

1 that the panel sustain Respondent's position.

2 I'm happy to address any questions the panel may  
3 have at this time. Thank you.

4 JUDGE LEUNG: Thank you, Ms. Macedo.

5 Judge Ralston, any questions for the Franchise  
6 Tax Board?

7 Judge Ralston?

8 MR. COUTINHO: I think you're on mute.

9 JUDGE RALSTON: No questions.

10 JUDGE LEUNG: Thank you.

11 Judge Gast?

12 JUDGE GAST: This is Judge Gast. Yeah, I had a  
13 question.

14 Did the FTB impose any kind of fraud penalty  
15 against Appellant? I didn't see any in the NPA. So if  
16 FTB didn't specifically -- I'm thinking of 19164(c)  
17 potentially or any other penalty that might be applicable.  
18 Just curious why or why not that wasn't imposed.

19 MS. MACEDO: So the OTA -- sorry -- FTB -- there  
20 were interest-based penalties imposed, but they were  
21 abated at protest upon review.

22 MR. COUTINHO: And this is Brad Coutinho. There  
23 were no fraud-based penalties imposed in the proposed  
24 assessments. Does that answer your question?

25 JUDGE GAST: Yeah. Yeah. Do you know why that

1 is?

2 MR. COUTINHO: Unfortunately, we reviewed the  
3 record and we don't have information of why or why not  
4 those penalties were not imposed for those tax years.

5 JUDGE GAST: Okay. Thank you. No further  
6 questions.

7 JUDGE LEUNG: Thank you, Judge Gast.

8 Mr. Katz, by my accounting, you have 5 minutes  
9 left over from your presentation and 5 minutes allotted  
10 for your closing argument, so a total 10 minutes. But  
11 please, you don't have to take all 10 if you don't need  
12 them, but go ahead.

13 MR. KATZ: Thank you, Judge. I'll try not to.  
14 I'll just address a few points that were raised.

15

16 CLOSING STATEMENT

17 MR. KATZ: Just specifically as to the plea  
18 agreement that the FTB raised during their argument, I  
19 just want to point to the language in there because I  
20 think it's important. So this is the FTB's Exhibit H, and  
21 it's our Exhibit 5. And I'll just stick with the  
22 Exhibit H. Page 3 of that has the language that they're  
23 referring to at subparagraph H, there on page 3. And what  
24 I wanted to just note is the distinction between that  
25 paragraph and subparagraph K, which is the language

1       whereby the taxpayer had agreed to the false corporate  
2       return.  And that language is very different, and it's  
3       the -- it's critically important to look at that.

4               As to the corporate return, he said, "I knowingly  
5       and willfully filed with the IRS a false corporate return.  
6       And I knowingly and willfully overstated the expenses."  
7       That language does not appear with respect to any of the  
8       personal returns.  It's a critical distinction, and that's  
9       why our position is that the FTB cannot say that he  
10      stipulated to the same amounts or the same sort of  
11      behavior as to these personal returns.  This was limited.  
12      The language is very different, and there's no stipulation  
13      that there was any fraud or intentional act with respect  
14      to the personal returns.  So I just want to note that on  
15      the terms of the plea agreement.

16             Secondly, the FTB does cite the amount of the  
17      understatements and the period of years.  We -- we're not  
18      disputing that, but that does not remove the fact that  
19      they still have the burden of proving that by clear and  
20      convincing evidence that there was fraud.  And they have  
21      not explained what these items were.  There's nothing in  
22      the record that says what they were, and they have not  
23      explained it.  And I -- our position is what they're doing  
24      is essentially saying, based on this, you should presume  
25      that there was fraud; that fraud should be imputed based

1 on these -- these amounts and these years without any  
2 explanation, again, of what these items were. And I think  
3 it would be difficult to -- to understand how you can  
4 determine that by -- that they've proven fraud by clear  
5 and convincing evidence when they cannot explain what the  
6 items were.

7 The FTB also -- and this was in the briefing but  
8 was reiterated here -- says that, "They've invited the  
9 taxpayer to explain these items during the course of the  
10 briefing process."

11 Our view is that that -- that's twisting the  
12 burden of proof here. The FTB has the burden of proof.  
13 They have to prove by clear and convincing evidence that  
14 there was fraud. They are attempting to put that back on  
15 the taxpayer to explain this and to disprove the fraud.  
16 That is now how the case law works. That is not --  
17 that's -- that's not what the standard is. That's not  
18 what the burden of proof is. They have -- they have to  
19 prove fraud, and our position is that they have not done  
20 so.

21 With respect to the six-year statute of  
22 limitation issue, just quickly, no dispute again about the  
23 amounts or how the statute works. But I just did not hear  
24 any explanation from the FTB as to why this argument was  
25 only raised during the appeal process and never at audit

1 protest, never on briefing. It was not until recently.  
2 And so we would reiterate again that there's just -- it's  
3 fundamentally unfair. As a matter of equity, the OTA  
4 should not allow the FTB to rely on that exception to the  
5 statute.

6 Thank you.

7 JUDGE LEUNG: Thank you, Mr. Katz.

8 I'll go back to my panel members.

9 Judge Ralston, any questions for either party?

10 I think you're on mute.

11 Judge Ralston, you need to unmute you're mic.

12 MR. COUTINHO: I think she's trying to.

13 JUDGE LEUNG: Okay.

14 JUDGE RALSTON: Okay. I apologize for having  
15 some technical difficulties. No, I don't have any  
16 questions. Thank you.

17 JUDGE LEUNG: Okay. Thank you.

18 Judge Gast, any questions for either party?

19 JUDGE GAST: This is Judge Gast. No, I don't  
20 have any other questions. Thank you.

21 JUDGE LEUNG: I do have some final questions, and  
22 I'll go to you first, Mr. Katz.

23 The federal prosecution, was the criminal case  
24 solely for the 2010 year, or what years did the criminal  
25 case cover?

1 MR. KATZ: That -- that's correct, Judge. It was  
2 just for the 2 -- it was just for the 2010 year and the  
3 corporate return. And I believe the FTB also submitted as  
4 one its exhibits -- it's Exhibit FF was the criminal  
5 information that was filed, which refers only to the  
6 Form 1120 for the 2010 year.

7 JUDGE LEUNG: Okay. And there was no civil  
8 proceeding following the criminal case by the IRS?

9 MR. KATZ: There was -- there was not, Your  
10 Honor, with the exception of -- for the 2010 year on the  
11 corporate and personal side. And as -- as we noted that  
12 the -- we're not disputing that the statute -- the  
13 exception applies for that year that there was a fraud  
14 penalty asserted and agreed to by the -- with the IRS for  
15 the 2010 year alone.

16 JUDGE LEUNG: Okay. Was there a fraud penalty on  
17 the civil side too for -- on the IRS?

18 MR. KATZ: For that --

19 JUDGE LEUNG: -- on the IRS?

20 MR. KATZ: For that one year, Judge. And I  
21 just -- I just --

22 JUDGE LEUNG: Okay.

23 MR. KATZ: Sorry. I'll just refer you to our  
24 Exhibit 6, which is just a letter from the IRS auditor  
25 indicating that they were not taking any further action

1 with respect to the other years; the 2006, '07, '08, '09,  
2 or '11 years.

3 JUDGE LEUNG: Okay. Didn't notice anything in  
4 the taxpayer's transcript regarding a fraud penalty for  
5 2010.

6 MR. KATZ: Yeah. And these transcripts -- I know  
7 the FTB did, I believe, submit those. They can be hard to  
8 read for all of us and may be buried in there somewhere.  
9 I don't know, but we -- we don't dispute that there was a  
10 fraud penalty for the 2010 year.

11 JUDGE LEUNG: Okay. Okay. For the Franchise Tax  
12 Board, so I don't think any by -- I don't think you guys  
13 are disputing that the criminal prosecution is only for  
14 the 2010 year. So how do you arrive at fraud for other  
15 than what you say: There's a lot of money involved;  
16 there's a big understatement; there's a pattern here.  
17 But, you know, there's nothing else, not even a criminal  
18 prosecution for the '06, '07, '08, '09, and 2011 years.  
19 So there's nothing that you can bring to us other than the  
20 fact that there's a 2010 plea agreement?

21 MS. MACEDO: I think there's a lot in the record,  
22 Judge, demonstrating that Dr. Compagno had a pattern, as  
23 you stated, of grossly underreporting income. Like we had  
24 referenced in our -- in our oral argument, had this just  
25 been a single one-off year, there may have been a question

1 of whether or not fraud actually occurred. However, we're  
2 looking at over \$1 million of unreported tax over six  
3 consecutive years. Had it, again, been nonconsecutive,  
4 there may have been a question. But it was a clear  
5 pattern over six years reporting under \$1 million in tax  
6 owed.

7 We also have to take into account Dr. Compagno's  
8 medical and business experience. He had 40 years --  
9 40-plus years of business experience, presumably, filing  
10 returns, engaging in the tax business for the tax -- or  
11 the business of tax. And so for him to say that, you  
12 know, this was a mistake, is -- is anything but. The  
13 facts glean that this was a concerted effort on  
14 Dr. Compagno's part to fraudulently evade tax.

15 MR. COUTINHO: And this is Brad Coutinho. Just  
16 to supplement that response, I think from the plea  
17 agreement, as my co-counsel pointed out, you can glean a  
18 lot of information; specifically, that Dr. Compagno was  
19 the sole shareholder and chief executive officer. There  
20 was no other shareholder involved in this case. There's  
21 no implication of any accountant or anyone else that  
22 plausibly could have explained the reason for why there  
23 was this gross overstatement of tax.

24 I think some of Mr. Katz's, Appellant's  
25 representative, pointed out that Respondent is attempting

1 to flip the -- the burden of proof. But if you look at a  
2 lot of the cases at the federal level in regards to gross  
3 overstatement of income, a lot of times there's another  
4 plausible explanation given. There's a -- one of the  
5 cases that are cited by Appellant, Cooper versus  
6 Commissioner, which is TC Memo 1990-237, there was another  
7 plausible explanation that was provided. There was an  
8 explanation that it may be another family member that  
9 caused the gross overstatement of income. Similarly, in  
10 Corson versus Commissioner, another case that is relied on  
11 by Appellants. This is TC Memo 1965 -- sorry.

12 JUDGE LEUNG: I'm sorry. I have to interject. I  
13 think for purpose of the transcript, if you're mentioning  
14 case names other than Smith and Jones, it's probably  
15 better to spell out the case name --

16 MR. COUTINHO: Yes. I apologize.

17 JUDGE LEUNG: -- just for the transcript. Thank  
18 you.

19 MR. COUTINHO: I apologize for that. The case  
20 that I was referencing, Corson versus Commissioner, that's  
21 C-o-r-s-o-n, versus Commissioner. It's TC Memo 1965-214.  
22 And that case -- again, it's another case that Appellant's  
23 have relied on. In that case, there was another plausible  
24 explanation that there was a dip in the omitted income for  
25 the years where there wasn't a plea agreement. In this

1 case, as my cocounsel presented, it's pretty consistent  
2 across the board. There's nothing distinguishing the 2010  
3 tax year from any of the other tax years that we have on  
4 appeal.

5 While there's a little bit of a bias statement,  
6 there's also news article that was attached to  
7 Respondent's opening brief that highlights that the  
8 taxpayer -- the Appellant in this case cheated the  
9 government out of income taxes for the tax years at issue.

10 Again, going back to what my cocounsel presented  
11 in regards to Appellant's experience as a doctor and as a  
12 businessman, he's been in business for over 40 years.  
13 He's the sole shareholder of this entity. And there's  
14 just no other plausible explanation for why 2010 should be  
15 treated, besides the skillful negotiations of -- in the  
16 plea agreement.

17 So that is all I have to add.

18 JUDGE LEUNG: So again, for the Franchise Tax  
19 Board, was there actual audit of '06, '07, '08, '09 and  
20 2011? Or how do you arrive at these numbers, the  
21 understatements?

22 MR. COUTINHO: This is Brad Coutinho again, for  
23 Franchise Tax Board. There were restitution-based  
24 assessments on the individual, on the separate account  
25 transcripts for Appellant for the 2006, 2007, 2008, 2009,

1 2010, and 2011 tax years. Those were restitution-based  
2 assessments against Appellant at the individual level.  
3 And then the amounts are specifically stated in the plea  
4 agreement in regards to the omitted construction --  
5 constructive dividends. And that is how -- sorry, Judge  
6 Leung.

7 JUDGE LEUNG: No.

8 MR. COUTINHO: That -- that is how we arrived at  
9 those -- those amounts.

10 JUDGE LEUNG: Okay. Now, my understanding is a  
11 longstanding Franchise Tax Board position that each tax  
12 year stands on its own. So is this a departure from that  
13 position from the Franchise Tax Board that you can  
14 extrapolate fraud from one year to other years? Or if  
15 not, then how do you explain the one year standing on its  
16 own policy?

17 MS. MACEDO: We're -- we're not departing from,  
18 as you said, that kind of history. But we're just stating  
19 that if you take a global perspective of the case file and  
20 the tax years at issue, there is a pattern that  
21 effectuates from the taxpayer's behavior. We're not  
22 saying that you cannot -- or that we're not saying that --  
23 the law is correct that each tax year stands alone.  
24 However, gleaning from the taxpayer's behavior, there  
25 becomes a pattern.

1           MR. COUTINHO:  And this is Brad Coutinho just to  
2           supplement that.  Yes, we're -- as my co-counsel stated,  
3           we're -- we're reaching the same conclusion regarding that  
4           each tax year does stands on its own.  But as stated in  
5           the prehearing conference and throughout the briefing,  
6           Appellants don't contest the substance of the proposed  
7           assessments; that there wasn't omitted constructive  
8           dividends.  They merely rested their argument on the  
9           timeliness.  And so FTB's position is that the omitted  
10          constructive dividends for each tax year is not at issue.  
11          It is more so whether or not those proposed assessments  
12          were timely.

13                 Thank you.

14           JUDGE LEUNG:  Okay.  Just lost my train of  
15          thought.

16                 The statute regarding federal adjustments,  
17          there's nothing that's in there regarding the definition  
18          of final federal determination or a final federal action  
19          that includes restitution to kick off a new statute of  
20          limitations, is there, Franchise Tax Board?  In other  
21          words, you know, you got an IRS assessment that starts off  
22          a fresh statute of limitations for the state, depending on  
23          whether there's been notice given to the Franchise Tax  
24          Board.  My reading of 18622 says nothing about restitution  
25          payments where there's been no assessment recorded by the

1 IRS on the taxpayer's transcript. Is that your -- do you  
2 agree with that interpretation of 18622.

3 MR. COUTINHO: This is Brad Coutinho. Yes, we  
4 agree with that. Our proposed assessments are not based  
5 off of final federal determination date. Instead it is  
6 based on, that a false and fraudulent tax return was filed  
7 for the tax years at issue.

8 JUDGE LEUNG: Okay. I have no further questions.  
9 My colleagues, Judge Ralston?

10 JUDGE RALSTON: No questions. Thank you.

11 JUDGE LEUNG: Okay. Thank you.

12 And, Judge Gast, anything else?

13 JUDGE GAST: Nothing else for me. Thank you.

14 JUDGE LEUNG: Okay. That will conclude our  
15 hearing for today. We will endeavor to get out -- our  
16 decision out in writing to the parties within 100 days  
17 from today. I'm closing the record for this hearing.

18 Once the transcript is completed, it will be  
19 posted on OTA's web page.

20 I thank everybody for their participation, and  
21 the next hearing for today will commence at 1:00 p.m.

22 Everyone have a great day. Thank you very much.

23 (Proceedings adjourned at 10:11 a.m.)  
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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 6th day of May, 2025.

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