

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. GILBERT and C. GILBERT,) OTA NO. 230112472
)
 APPELLANTS.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, May 14, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing
at 9:30 a.m. and concluding at 10:56 a.m.
on Wednesday, May 14, 2025, reported by
Ernaly M. Alonzo, Hearing Reporter, in
and for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH T. LONG

Panel Members: ALJ STEVEN KIM
ALJ ASAF KLETTER

For the Appellant: GARY SLAVETT
RICHARD GANO
G. GILBERT
B. DIVNEY
D. HIRSH
J. GOODSTEIN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER TUTTLE
BRAD COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received into evidence at page 8.)

(Appellant's Exhibits 3-4 were received into evidence at page 9.)

(Department's Exhibits A-J were received into evidence at page 8.)

OPENING STATEMENT

PAGE

By Mr. Slavett

9

By Mr. Tuttle

39

APPELLANT'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

D. Hirsh

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28

37

B. Divney

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G. Gilbert

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CLOSING STATEMENT

PAGE

By Mr. Slavett

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1 Cerritos, California; Wednesday, May 14, 2025

2 9:30 a.m.

3
4 JUDGE LONG: We are opening the record in the
5 Appeal of Gilbert. The OTA Case Number is 230112472.
6 This matter is being held before the Office of Tax
7 Appeals. Today's date is May 14th, 2025, and the time is
8 approximately 9:30 a.m. This hearing is being convened in
9 Cerritos, California.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Steven Kim and Judge Asaf Kletter are the other members of
14 this tax appeals panel. All three judges will meet after
15 the hearing and produce a written decision as equal
16 participants. Although the lead judge will conduct the
17 hearing, any judge on this panel may ask questions or
18 otherwise participate to ensure that we have all the
19 information needed to decide this appeal.

20 As a reminder, the Office of Tax Appeals is not a
21 Tax Court. It is an independent appeals body. The panel
22 does not engage in ex parte communications with either
23 party. OTA will issue an opinion based on the parties'
24 arguments, the admitted evidence, and the relevant law.

25 For the record, will the parties please state

1 their names, who they represent, starting with
2 representatives for FTB.

3 MR. TUTTLE: My name is Topher Tuttle,
4 representing Franchise Tax Board.

5 MR. COUTINHO: This is Brad Coutinho, also
6 representing Franchise Tax Board.

7 MR. SLAVETT: Gary Slavett, representing
8 Appellants Gary Gilbert and Charlotte Gilbert.

9 JUDGE LONG: Mr. Slavett, can you make sure your
10 microphone is on, and maybe move it a little closer to
11 you.

12 MR. SLAVETT: Sure. Gary Slavett, representing
13 Appellants.

14 MR. GANO: Richard Gano, representing Appellants.

15 JUDGE LONG: Thank you.

16 The issue to be decided in the appeal is whether
17 Appellants have established reasonable cause for the late
18 payment of tax.

19 My understanding is that Appellants have four
20 witnesses today.

21 MR. SLAVETT: That's correct, Your Honor.

22 JUDGE LONG: Can you please introduce them.

23 MR. SLAVETT: Sure. To my right is taxpayer Gary
24 Gilbert. Behind me to the far -- to your far left is
25 Brian Divney. Next to him is Jeffrey Goldstein [sic].

1 MR. GOODSTEIN: Goodstein.

2 MR. SLAVETT: Goodstein. I think we got that
3 wrong twice.

4 And next to him is -- is Dan Hirsh.

5 JUDGE LONG: Thank you.

6 Could the witnesses all please stand and raise
7 your right hand.

8

9 G. GILBERT,

10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined, and testified
12 as follows:

13

14 BRIAN DIVNEY,

15 produced as a witness, and having been first duly sworn by
16 the Administrative Law Judge, was examined, and testified
17 as follows:

18

19 D. HIRSH,

20 produced as a witness, and having been first duly sworn by
21 the Administrative Law Judge, was examined, and testified
22 as follows:

23 ///

24 ///

25 ///

1 J. GOODSTEIN

2 produced as a witness, and having been first duly sworn by
3 the Administrative Law Judge, was examined, and testified
4 as follows:

5
6 JUDGE LONG: Thank you. You may sit.

7 The exhibits for this appeal consist of FTB
8 Exhibits A through J and Appellants' Exhibits 1 through 4.
9 At the prehearing conference Appellant had no objections
10 to FTB's exhibits, and they are admitted into the record.

11 (Department's Exhibits A-J were received into
12 evidence by the Administrative Law Judge.)

13 JUDGE LONG: Similarly, FTB had no objection to
14 Appellants' Exhibits 1 and 2, and they are admitted into
15 the record.

16 (Appellant's Exhibits 1-2 were received into
17 evidence by the Administrative Law Judge.)

18 JUDGE LONG: After the prehearing conference,
19 Appellants submitted Exhibits 3 and 4. Identifying each
20 as: Exhibit 3, Email Correspondence, dated
21 April 15, 2021, between the CPA, Dan Hirsh and Gary
22 Gilbert's financial manager, Brian Divney; and Exhibit 4,
23 Email Correspondence, dated May 17, 2021, between Brian
24 Divney and Dan Hirsh.

25 Can FTB please confirm whether there are any

1 objections to those exhibits.

2 MR. TUTTLE: No objections.

3 JUDGE LONG: Thank you.

4 Exhibits 3 and 4 are also admitted into the
5 record.

6 (Appellant's Exhibits 3-4 were received into
7 evidence by the Administrative Law Judge.)

8 JUDGE LONG: Today's hearing is anticipated to
9 approximately two-and-a-half hours. We will begin with
10 the Appellants' opening preparation and witness testimony.

11 Mr. Slavett, you have requested two hours, and
12 you may begin when you are ready.

13 MR. SLAVETT: Thank you.

14

15 PRESENTATION

16 MR. SLAVETT: We are here today because despite
17 their best efforts, Gary and Charlotte Gilbert incurred a
18 \$413,000 late-payment penalty for their 2020 individual
19 income tax return Form 540. The evidence in the record
20 and the testimony today will clearly establish that the
21 late payment was due to reasonable cause and not to
22 willful neglect.

23 To establish reasonable cause, the Gilberts must
24 demonstrate that the failure to timely pay occurred
25 despite the exercise of ordinary business care and

1 prudence; that is, would an ordinary and intelligent and
2 prudent person have acted similarly under the
3 circumstances. Here, the Gilberts did everything they
4 could to pay their California tax timely. But despite
5 their best efforts, their payment was late. Why did this
6 happen? The Gilberts relied on tax professionals with
7 competency in California income taxes to determine their
8 estimated income tax by the due date. And the tax
9 professional's advice was based on the taxpayer's full
10 disclosure of relevant facts and documents.

11 To understand the complexity of this calculation
12 to determine the estimate of the Gilberts' income tax for
13 2020, we need to understand a little bit about Gary
14 Gilbert's activities. First, I'd like to point out that
15 the Gilberts' 2020 tax return is over 500 pages. It's a
16 very in-depth tax return, multiple states, and requires
17 quite a bit of work. Gary Gilbert has multiple ventures.
18 He's a film producer and businessman. He is co-founder,
19 with his brother, of Rocket Mortgage. Rocket Mortgage is
20 the largest mortgage broker in the U.S. with over 15
21 billion in revenue in 2020.

22 The Gilberts know that their taxes are extremely
23 complicated and take extra care to ensure they are
24 compliant with their tax obligations. To ensure
25 compliance, the Gilberts hire CPAs and other professionals

1 to assist them with their tax compliance. The Gilberts
2 take all measures possible to timely pay and to timely
3 file, and have done so every year without issue. As part
4 of the Gilberts' team of professionals is Brian Divney.
5 Brian Divney manages Gilberts' investments and provides
6 family office-type assistance with the Gilberts' finances.
7 Mr. Divney works with the Gilberts to gather all necessary
8 tax information and assist with them providing that
9 information to the CPA firm. The Gilberts retain the
10 accounting firm of Frank Hirsh, Sublesky & Freedman to
11 prepare their individual tax returns. The Gilberts used
12 the accounting firm for over 10 years without any
13 problems.

14 So what happened? Gary Gilberts' primary income
15 for the 2020 tax year from Rocket Holdings, Inc., which is
16 a holding company for Rocket Mortgage, the largest
17 mortgage broker. Gary is -- is -- is a 0.598 shareholder
18 of Rocket Holdings. Despite his relatively small
19 interest, his flow through earnings in 2020 was quite
20 large. On or about April 6, 2020, Rocket Holdings issued
21 a five-page document for the purposes of providing
22 Mr. Gilbert with sufficient information to determine his
23 estimated taxes. The schedule K-1 was --was to arrive
24 many months later. The April 6th document is Exhibit 1.

25 So here, as we will fully explain through

1 testimony of CPA Dan Hirsh and -- his team calculated the
2 estimated tax due for 2020 incorrectly. While the
3 information the CPA team had from Rocket, dated
4 April 6, 2021, was not as robust as the final K-1 issued
5 in September 2021, the April 6, 2021, information had
6 sufficient information to allow an accurate estimate.
7 Despite this, CPA Hirsh and the CPA team made an error in
8 the calculation of the California tax estimate. Page 4 of
9 Exhibit 1 contains information for the extension -- for
10 extension purposes for Mr. Gilbert's 2021 estimated
11 federal income. This is the information provided by
12 Rocket dated April 6th. Page 5 of that exhibit provided
13 information regarding state taxable income.

14 There seems to be some confusion with this
15 document. The FTB has indicated that the document states
16 that the Gilberts' California tax liability from their
17 Rock Holdings income was \$3.6 million. The FTB then
18 ponders why the Gilberts would think that their California
19 income tax liability was less than \$3.6 million in April
20 of 2021. The FTB has it completely wrong. The document
21 clearly provides that the \$3.6 million is the estimated
22 taxable income, not the tax liability. Again, that number
23 is what Rocket is telling Gary is the portion of Rocket's
24 income attributable to Gary that is taxable in California.
25 That is not the tax liability. In fact, the testimony

1 will show that today that this taxable income number is
2 the number that the CPAs used as taxable income in
3 California to determine the estimated California income
4 tax for 2020.

5 Exhibit 3 will show how the CPAs determine the
6 estimated tax for 2020 to be \$1.4 million, rather than
7 \$7 million. Exhibit 3 contains an email of
8 April 15th, 2021, from the CPA regarding the amount the
9 CPA recommends that Mr. Gilbert pay with their extension
10 by May 17th, 2021. For clarification, the Gilberts had
11 already made estimated payments of approximately \$1.1
12 million prior to April 15th, 2021. Therefore, the CPA
13 determined the total estimated tax for 2020 to be
14 approximately at \$1.45 million. The CPAs, therefore, made
15 a recommendation for the Gilberts to add an additional
16 \$350,000 with their extension.

17 Exhibit 4 is an email dated May 17th, which is
18 the due date of the payment to the CPA which instructs the
19 CPA to make the estimated payment to California, \$400,000.
20 This number was rounded up from the original
21 recommendation of \$350,000 to allow for a cushion. And
22 this amount, in fact, was paid. As of May 17th, 2021, the
23 Gilberts did everything possible to pay what they believed
24 to be the correct estimated taxes for 2020. They followed
25 their CPA's advice and even added a little bit just in

1 case, as they had done so in the past for the past 10
2 years or so without any problems. They had no reason to
3 believe this estimate would later be determined to be
4 wrong.

5 The actual K-1 for Rocket was issued in September
6 2021. That's also in Exhibit -- it's quite a large
7 document. You can see it's probably 40 or 50 pages. Now
8 that the CPAs actually had that K-1, they were able to do
9 the correct calculation, and they determined the liability
10 was --was in the -- was about \$7 million. So what did the
11 Gilberts do? They paid the remaining five-plus million
12 immediately. Fortunately, available funds was never an
13 issue for the Gilberts. When advised by their CPA to pay
14 the final estimate of \$350,000 in April of 2021, what did
15 they do? They paid \$400,000. When told by the CPA in
16 October '21 that their actual tax liability was much
17 larger, what did they do? They paid the remainder amount,
18 over \$5 million, immediately.

19 Ask yourselves, what else should they, could they
20 have done? Here, the Gilberts relied on competent CPAs
21 regarding substantive tax advice as to the amount of the
22 estimated income tax that would due in California for
23 2020, and that advice was based on full discloser of the
24 relevant facts and documents. There is nothing more the
25 Gilberts could have done. Based on all the facts, the

1 Gilberts' late payment of tax was due to reasonable cause,
2 as they exercised ordinary business care and prudence.

3 Thank you.

4 So I would like to call my first witness Dan
5 Hirsh. I'm also going to have Jeff appear as well, Dan
6 and Jeff together.

7

8 DIRECT EXAMINATION

9 BY MR. SLAVETT:

10 Q All right. Dan, what is your educational
11 background?

12 A I am a graduate of Michigan State. I earned my
13 CPA certificate in approximately 1980. I've been in
14 practice for over 40 years. And its present, I am a
15 shareholder -- or, at the time, was a shareholder in the
16 firm Frank, Hirsh, Subleskly & Freedman.

17 Q And how many CPAs, approximately, are in that
18 firm?

19 A So today there are 13 CPAs.

20 Q Okay. And as part of your profession as a CPA
21 preparing tax returns, do you prepare California tax
22 returns?

23 A Yes, I did.

24 Q And how often do you do California returns?

25 A I have a variety of clients, both business and

1 personal, in the State of California that I -- that we
2 service.

3 Q And tell me about how you met Gary Gilbert?

4 A I met Gary Gilbert through his brother Dan
5 Gilbert, and we became -- he -- and Gary became a client
6 of the firm approximately 2008.

7 Q So more like 15 or 16 years, rather than 10, as I
8 thought?

9 A Up to this -- yes.

10 Q And did you do his brother's returns as well, or
11 do you work for his brother?

12 A We -- we did work for his brother, but he left
13 the firm. His vast wealth dictated a larger organization
14 because there were so many arms associated with it. So it
15 was in his best interest to -- and he made that -- they
16 made that decision.

17 Q Great. And -- and in working with the Gilberts,
18 with Gary Gilbert and Charlotte Gilbert in doing their tax
19 returns, how do you receive information to prepare their
20 returns, generally?

21 A Generally, the communication, for the most part,
22 was through Brian Divney. Brian had his finger on the
23 pulse of everything that Gary had, not only from a
24 personal but from business perspective. And -- and we
25 both were the recipients of tax information to prepare tax

1 returns that we had access to -- through Rock Holdings.

2 Q So with respect to this tax year 2020 and other
3 years, Gary Gilbert receives -- he's a shareholder in Rock
4 Holdings, and he received K-1 and K-1 information; is that
5 correct?

6 A That is correct.

7 Q How do you generally obtain that information, the
8 K-1 and the relevant information that comes maybe before
9 the K-1?

10 A We were a preferred receipt list from Rock
11 Holdings. So through Dropbox, we would receive an email,
12 and we would retrieve the information from that Dropbox,
13 and then we would save it within our system. Brian
14 Divney, I believe, had access to that information as well
15 under the same methodology.

16 Q Okay. Great. So let's -- let's move to the tax
17 year at issue, which is 2020, and we were -- you were
18 doing the work, obviously, for the 2020 tax year in 2021;
19 right?

20 A Correct.

21 Q And in April of 2021, I would like to show you
22 Exhibit 3, page 2, which is the email from Mr. Hirsh to
23 Brian Divney. Do you recognize Exhibit 3, page 2?

24 A Yes, I do.

25 Q And could you tell me a little bit about what

1 this email is?

2 A This email represents our findings for, not only
3 the extension payment that was due May 17th, this was a
4 COVID -- you know, this was COVID. The State of
5 California extended the due date of the extension payments
6 until May 15th, I believe. But the first quarter 2021
7 quarterly estimate was still due April 15th. So we were
8 on top of that or, you know, we were aware of the filing
9 requirements. And over the course of the 90 days prior
10 to, as the year-end information becomes available, you
11 know, if you can imagine the pieces involved. It's not
12 just a K-1. There's 1099s from investment income, things
13 that come through, information that's available, you know,
14 beginning most likely by January 31 from -- from the
15 brokerage houses.

16 So it -- it wasn't a one-and-done here. It was
17 an evolution is each year we would have done for
18 Mr. Gilbert of accumulating the information and not do it
19 all at one time. We would bring the information in, enter
20 the information, and manage that information. But when
21 push comes to shove and really, it always comes down to
22 waiting for that tax information from Rock Holdings; and
23 that's when things get set in place to ultimately come to
24 a conclusion on our part or a position on our part this is
25 where we think we're at.

1 Q Great. And as part of this email, there were
2 some attachments with some draft returns; is that correct?
3 A That is correct.
4 Q And if you could take a look at Exhibit 3,
5 page --
6 MR. SLAVETT: I did, Your Honor, yesterday upload
7 or provide Bates Stamped exhibit. Do you have that
8 exhibit, the Bates Stamped version?
9 JUDGE LONG: Yes. I'm looking at it.
10 MR. SLAVETT: Okay. Thank you.
11 BY MR. SLAVETT:
12 Q -- Bates Stamped, page number 142 of Exhibit 3.
13 Mr. Hirsh, this is -- was attached to the email
14 as part of the draft return. If we look to the -- the
15 page 142 of the exhibit, it talks about what was -- what
16 the amount due was. Could you -- can you maybe elaborate
17 how you arrived at this and how you did this calculation?
18 And I'm sorry. This the amount --
19 A That we requested --
20 Q Yes.
21 A -- for him to pay.
22 Q And on page 140 Bates Stamped, line 66, it has
23 the total tax. And what does that say there?
24 A One million four sixty-eight four sixty five.
25 Q So this was the -- and we'll get more into the

1 testimony here -- but this was -- correct me if I'm -- if
2 this is incorrect. This was -- you had information
3 from -- from Rocket dated April 6, 2021. That information
4 was used to -- in your system to prepare an estimate,
5 which you did through a draft, kind of, return?

6 A That -- that is correct.

7 Q Okay. And this is line 65 shows what the
8 estimate -- what you believed at the time to be the
9 correct estimated --

10 A The -- the --

11 Q -- total tax?

12 A The total tax of \$1,468,465.

13 Q And on line 72, this shows what? How much was
14 already paid?

15 A That is correct, \$1,137,883.

16 Q And on page -- it's multiple times -- but on
17 page 142, Bates Stamped line 4 -- line 111 is -- is what
18 you estimated was owed plus, I believe, 113 --

19 A Yes.

20 Q -- was a, you know --

21 A Additional income.

22 Q -- was an additional amount?

23 A Yes.

24 Q So line 4 was the amount you had recommended?

25 A We rounded up from \$349,406 to \$350,000 at the

1 time.

2 Q Okay. So now, let's get into a little bit how
3 that -- what you used to calculate that number, how we got
4 to that number. Exhibit 1 on page -- Exhibit 1 is --
5 Exhibit 1 is, I think, a five-page document. I'm going to
6 put that in front of you here. This is the information
7 that you would have downloaded or received from Rock
8 Holdings?

9 A That would be correct, yes.

10 Q Okay. And it's not a K-1; is it?

11 A No, not at all.

12 Q And what would you say the difference between a
13 K-1 and an -- and information like this?

14 A It's a snapshot of what they perceive to be as
15 the income and -- may I look at this?

16 Q Yeah. Yes.

17 A This page, 2020 estimated federal income tax for
18 extension purchases is the line items that we used.

19 Q Page 4 is referring to.

20 A And, you know, in this instance, there was
21 \$51 million of taxable income, along with other sources of
22 income that we would have projected and entered into our
23 software. And then on the next page --

24 Q Page 5.

25 A And this is where we faltered. We backed down

1 the income, or subtracted out from the income reported on
2 the previous page to back down to the California source,
3 the income of \$3,674,786.

4 Q Okay. And when we look at Exhibit 2, Exhibit 2
5 is the K-1 from Rock Holdings; is that correct?

6 A That is correct.

7 Q And it looks to be 100 pages or so; is that
8 correct?

9 A That is correct.

10 Q And once you received this package with the
11 actual, you know, California K-1 in the package with all
12 the other state K-1s, what would you have done?

13 A We would have entered the information exactly as
14 it was presented on the K-1.

15 Q And -- and the K-1 provides boxes and more
16 detailed information how to enter this into your tax
17 software; is that correct?

18 A Precisely.

19 Q And so once you received this information, you
20 determined that the correct tax was \$7 million,
21 approximately?

22 A Correct.

23 Q Okay. And in May -- on May 17th, so the -- I'm
24 sorry. Let's go back to Exhibit 3, page -- I think it's
25 page 1 -- page 2. I'm sorry. Exhibit 3, page 2, the

1 email, after you had done this calculation with the April
2 information, again, this was the email you sent making a
3 recommendation; is that correct?

4 A Yes. It would have gone to Brian Divney.

5 Q Okay. And then on May 17th, Exhibit 4, there's
6 an email from Brian authorizing you to please make those
7 payments you recommended plus \$50,000. Tell me why he's
8 telling you to make payment? Were you making payments for
9 Mr. Gilbert at this time?

10 A No. I would go on these -- the IRS website and
11 the state website and -- and make those payments on behalf
12 of the taxpayer. Brian had provided me the -- the routing
13 and the account number in order for me to make those
14 payments. Mr. Gilbert relied on us to provide that
15 service.

16 MR. SLAVETT: Okay. And, Jeff, do you have
17 anything to the -- to the testimony of Dan?

18 MR. GOODSTEIN: No. I Mean, that's all accurate.

19 MR. SLAVETT: Okay. That's -- that's all the
20 questions I have for -- for Mr. Hirsh and Goodstein.

21 JUDGE LONG: Thank you.

22 Before we move on, we'll ask Franchise Tax Board,
23 do you have any questions for the witnesses?

24 MR. TUTTLE: No. No questions.

25 JUDGE LONG: Okay. Thank you.

1 I'm going to ask my co-panelists if they have any
2 questions.

3 Judge Kletter, do you have any?

4 JUDGE KLETTER: This is Judge Kletter. I have
5 just a couple of questions to clarify. So you mentioned
6 that the original income figure was from this
7 April 6th, 2021, communication showed \$51 million of
8 ordinary income, but you subtracted or backed down that
9 number to \$3,674,000. Why did you do that?

10 MR. HIRSH: We -- we surmised that would have
11 been the taxable income in the State of California for
12 California tax purposes.

13 JUDGE KLETTER: And in the past, have you
14 received this kind of communication from Rock Holdings?

15 MR. HIRSH: We would have received similar
16 communication in past from Rock, yes.

17 JUDGE KLETTER: But, usually, when you receive
18 that communication, would you go with the page 4 number
19 or, you know, whatever that income figure was, or would
20 you go with the estimated tax figure?

21 MR. HIRSH: I honestly don't recall in past how
22 that would have been calculated. But suffice it to say,
23 we, in past, the numbers were never anywhere near the
24 magnitude of this K-1. So there was -- I don't want to
25 say safe harbors. But, you know, we were conservative in

1 our approach as to what he should -- would have paid in.
2 And the numbers were so large this year that we missed it.

3 JUDGE KLETTER: Okay. And just to be clear, when
4 you say "we", this estimated projection from Rock
5 Holdings, Exhibit 1, is there any mathematical error in
6 the information in Exhibit 1?

7 MR. HIRSH: No.

8 JUDGE KLETTER: Okay. Thank you. No further
9 questions.

10 JUDGE LONG: Judge Kim, do you have any questions
11 for the witnesses?

12 JUDGE KIM: Yeah. This is Judge Kim. I just had
13 one question. So the California adjustment of \$48
14 million, that was just arithmetic trying to get to that
15 \$3-something million figure? Or what was the basis for
16 believing that that would be the correct California
17 adjustment?

18 MR. HIRSH: The basis would have been to back
19 down the non-California sourced income reported on this
20 exhibit to try -- for that specific K-1. There may have
21 been other K-1s that made up his return. If you do the
22 math on that exhibit that was on the tax return as part of
23 the draft, it's not exactly that number. There, perhaps,
24 were other variables, other K-1s that we had -- or that
25 were California -- either California based. Or, you know,

1 that we would already had the finished product, you know,
2 that we would have entered. So I can't make a correlation
3 to the exact number that showed up as the subtraction on
4 that California return.

5 And, unfortunately, when we did the draft return,
6 we saved it, but it, you know -- or it was an ongoing work
7 in process tax return. So I never froze out that version
8 of the tax return. At that moment we just continued on as
9 between April 6th as, you know, we came to our conclusion,
10 and the October 15th due date of the return as more
11 information became available, we just updated that
12 version. We didn't freeze it -- save it as that version.
13 And I've learned a lesson that, you know, that is probably
14 more prudent in the circumstance like this. But it --
15 it's not the rule.

16 And I don't think -- I don't believe any --
17 any -- I can't say any. We, you know, we didn't freeze it
18 out. I never expected in my wildest dreams that I would
19 be scrutinized for the results of a return like this.

20 JUDGE KIM: And since you've been working with
21 Appellants, have they always been California residents?

22 MR. HIRSH: This is my first -- please restate
23 the question?

24 JUDGE KIM: Of course. Since you've been filing
25 the Appellants' tax returns --

1 MR. HIRSH: Yes.

2 JUDGE KIM: -- have they always been California
3 residents?

4 MR. HIRSH: No, not at all. I'm a Michigan --

5 MR. SLAVETT: No. No. Has --

6 JUDGE KIM: Has Appellants --

7 MR. SLAVETT: -- Gary -- the Gilberts.

8 JUDGE KIM: -- Mr. And Mrs. Gilbert?

9 MR. HIRSH: Yes. He was always a California
10 resident.

11 JUDGE KIM: Okay. Thank you.

12 JUDGE LONG: Thank you.

13 I also have just a few questions. Mr. Hirsh, you
14 touched briefly on your experience with California
15 returns. Are you a licensed California CPA?

16 MR. HIRSH: I am not.

17 JUDGE LONG: Okay. And how long have you been
18 preparing California returns for? Approximately?

19 MR. HIRSH: I think before I met Mr. Gilbert. I
20 have had California clients before.

21 JUDGE LONG: Okay. So we're talking -- I believe
22 you said Mr. Gilbert --

23 MR. HIRSH: 15 years plus minimal.

24 JUDGE LONG: 15 years.

25 MR. HIRSH: Yeah.

1 JUDGE LONG: Okay. And then do you have any
2 other experience with California tax law outside of
3 preparing returns?

4 MR. HIRSH: No.

5 JUDGE LONG: Okay. And then with respect to --
6 my understanding is that the advice that was asked was,
7 essentially, what is the tax liability in California; is
8 that correct?

9 MR. HIRSH: Please restate.

10 JUDGE LONG: Regarding the advice that was asked.
11 Can you please verbalize what advice was asked with
12 respect to substantive California tax law.

13 MR. HIRSH: To prepare an accurate extension
14 payment, a calculation.

15 JUDGE LONG: Okay. Thank you. I do not have any
16 further questions. Thank you very much.

17 And, Mr. Slavett, if you would like to move on to
18 your next witness.

19 MR. SLAVETT: Can I ask a couple -- can I
20 redirect?

21 JUDGE LONG: Yes, of course.

22

23 REDIRECT EXAMINATION

24 BY MR. SLAVETT:

25 Q Mr. Hirsh, in preparing the -- the California

1 income tax estimate, did you -- did your firm make a
2 mistake in this calculation?

3 A Yes, we did.

4 Q And are you generally aware that a California
5 resident, such as Mr. Gilbert, would be taxed on the -- on
6 the entire amount with credit -- less credits and other
7 adjustments?

8 A That is correct.

9 Q Despite that -- despite that knowledge that you
10 had for many, many years, you still made the calculation
11 mistake; is that correct?

12 A Correct.

13 MR. SLAVETT: I have no further questions.

14 JUDGE LONG: Thank you. If you'd like to move on
15 to your next witness, that would be.

16 MR. SLAVETT: Okay. We're going to have
17 Mr. Divney.

18

19 DIRECT EXAMINATION

20 BY MR. SLAVETT:

21 Q Mr. Divney, I'm just bringing you up here to kind
22 of tie everything -- to connect the dots, for the lack of
23 a better term. Mr. Divney, tell me about your educational
24 background?

25 A Sure. My background I have over 30 years

1 experience in the investment management industry. I have
2 an MBA from New York University in finance and
3 international business, and a BA from Rutgers University
4 in economics.

5 Q And how do you know Gary and Charlotte Gilbert?

6 A I've known Gary for over 20 years and Charlotte
7 for almost as long, and met them through his brother, Dan
8 Gilbert.

9 Q And what do you do in the business sense for the
10 Gilberts?

11 A Sure. I provide advice to the Gilberts on their
12 investment portfolios and on financial matters related to
13 their family office and to the film production business.

14 Q And as part of your services to the Gilberts, do
15 you work with them on having their tax returns prepared?

16 A Yes, I do. Gary and I work together to collect,
17 organize, and forward all relevant tax information to the
18 CPA. We've developed policies and procedures over the
19 years to ensure that we have complete information as -- as
20 available, and do that on a quarterly and annual basis.

21 Q Great. So let's move to the 2020 tax year, which
22 is the year at issue, which the returns are being worked
23 on in 2021, obviously. And I'm going to have you look at
24 Exhibit 3, page 2, which is an email from Mr. Hirsh to
25 you. Can you maybe please give me a little bit of

1 background what your memory of this email is and how it
2 came about?

3 A Sure. Sorry. The date of this is April. Right.
4 So even though the deadline that year had been extended to
5 May 17th for returns and for payments, we had been working
6 on the first quarter and on 2020. And it was a very
7 common procedure for Dan to provide his final estimate on
8 the amount that should be paid.

9 Q And is this something you could have calculated?

10 A Oh, no. I'm not a CPA. Accounting isn't in my
11 background. The Gilberts have dozens of different
12 investments, private, public K-1s, 1099s in addition to a
13 complicated film business. So it's very complex, and we
14 rely on CPAs to do tax calculations.

15 Q And if you couldn't calculate it, could -- could
16 Gary Gilbert calculate this, in your opinion?

17 A I -- I think you would need to be a very
18 experienced and trained CPA. And if you're not, whether
19 it's me or Gary, I don't think anybody else could have.

20 Q Me neither. All right. So I'm going to point
21 you to Exhibit 4, which is an email from you -- no, I'm
22 sorry -- from -- the bottom part. There's two emails
23 here. The bottom part is from you to Mr. Hirsh on the
24 17th. Tell me about this -- this email?

25 A So this is just giving, you know, written

1 confirmation for Dan to trigger payments. As he -- as Dan
2 stated before, for estimated payments, he would go
3 directly to the IRS or the state websites and make the
4 payments after, you know, giving the baking information.
5 And with -- in this case, in particular with California,
6 his estimate was a \$350,000 payment on top of what was
7 already paid in and carried forward. And knowing that,
8 you know, we always have incomplete at the time, you know,
9 in the April, May time period before all final K-1s come
10 in before October, we always try to put in some cushion.
11 So we -- Gary and I made the decision to put another
12 \$50,000 in cushion in case there was, you know, more
13 information later.

14 Q And you mentioned Gary and you. Are you
15 communicating and working with Gary on this whole process?

16 A Absolutely. Gary -- like I said before, we
17 worked together to collect all the information to make
18 sure that, you know, we, you know, go through our
19 checklist that all prior entities are accounted for, any
20 new entities that year are accounted for, and that we also
21 talk about the actual estimate -- estimates to be paid.

22 MR. SLAVETT: Okay. No further questions.

23 JUDGE LONG: Thank you.

24 Franchise Tax Board, do you have any questions?

25 MR. TUTTLE: No questions.

1 JUDGE LONG: Thank you.

2 Judge Kletter, do you have any questions?

3 JUDGE KLETTER: This is Judge Kletter. No
4 questions. Thank you.

5 JUDGE LONG: Thank you.

6 And, Judge Kim, do you have any questions.

7 JUDGE KIM: No questions.

8 JUDGE LONG: I also do not have any questions.

9 Mr. Slavett, you can continue with your next
10 witness.

11 MR. SLAVETT: All right. Mr. Gilbert, we're
12 moving right along.

13

14 DIRECT EXAMINATION

15 BY MR. SLAVETT:

16 Q All right. Finally, Mr. Gilbert. All right. So
17 tell me about your educational background?

18 A I attended the University of Michigan from a
19 under grad.

20 Q And what do you do for work or occupation?

21 A My main occupation is producing films but also,
22 looking over investments, looking at potential new
23 investments, and whatnot.

24 Q Okay. And tell me about your relationship. We
25 heard a little bit from Mr. Divney about what he does for

1 you. From your perspective what -- how did you meet Brian
2 and -- Mr. Divney, and what does he do for you?

3 A So I met Brian Divney from my brother Dan
4 Gilbert, and he started working with me in June of 2002.
5 So we're going on 23 years. And he has basically been
6 running, I guess you could say, my family office, looking
7 over my investments, helping me compile all the
8 information that I need for my tax returns. And, yeah,
9 just basically looking over all my investments and -- and
10 helping me prepare for tax returns.

11 Q Great. And -- and your CPA Dan Hirsh and his
12 firm, tell me about how you started using Mr. Hirsh's firm
13 and then Dan Hirsh.

14 A So, again, I was also referred to Dan Hirsh's
15 firm through my brother Dan Gilbert, and we started
16 working together. I believe it was 2008. So it's -- it's
17 been a long time, 17 years.

18 Q And prior to this issue in 2020 with the payment,
19 have you had any issues that you recall with your tax
20 returns?

21 A Never.

22 Q So always like clockwork Hirsh would provide
23 estimates, you would pay, and returns would be filed, and
24 you haven't had an issue?

25 A That's correct. I would compile all the

1 information with Brian. We'd get it all over to Dan. And
2 for 17 years, like clockwork, there was never an issue.

3 Q And when -- when you received the information
4 that your estimate -- that you were to pay another
5 \$350,000 because your estimated tax liability was \$1.4,
6 did you think that -- did you think anything of that, that
7 there was any reason to believe that wasn't in the realm
8 of correct?

9 A No.

10 Q And -- and despite the fact that the K-1 for that
11 year from Rocket was in the area of \$60 million, did you
12 receive distributions anywhere near that amount in 2020?

13 A I did not. I believe I received maybe 35 percent
14 of that.

15 Q Okay?

16 A But it was -- it was drastically less than the
17 amount.

18 Q And is it your understanding that you pay taxes,
19 not only federally, but in multiple states?

20 A Yes.

21 Q And is it your understanding that also, that this
22 year your tax liability -- your estimated tax liability
23 that was provided to you in April and May was still maybe
24 50 percent more than the prior year's tax liability in
25 California?

1 A Correct.

2 Q And so again, did you have any reason to believe,
3 when told to make a payment, that this was an incorrect
4 estimate?

5 A No. Again, for, you know, 17 years we've been
6 working together and never had an issue. It was like,
7 again, like clockwork. I mean we -- every year we'd give
8 him all the information, and whatever he tells me to write
9 the check for, I write the check for.

10 Q And I've -- I've looked at your tax return, and
11 it's 500-plus pages. Could you have made this calculation
12 with respect to your estimated federal or state on your
13 own?

14 A Absolutely not.

15 Q And were you relying on Hirsh and his firm to
16 provide that information to you?

17 A Yes.

18 Q Okay. And so when -- when you're informed in
19 September or October of that year that your tax liability
20 was quite a bit larger and that you needed to make a \$5
21 million or so payment, did you, in fact, make that
22 payment?

23 A Immediately made the payment.

24 MR. SLAVETT: Okay. I have no further questions.

25 JUDGE LONG: Thank you.

1 Franchise Tax Board, do you have any questions
2 for the witnesses?

3 MR. TUTTLE: No questions. Thank you.

4 JUDGE LONG: Thank you.

5 Judge Kletter, do you have any questions?

6 JUDGE KLETTER: No questions.

7 JUDGE LONG: Thank you.

8 Judge Kim, do you have any questions?

9 JUDGE KIM: No, I don't. Thank you.

10 JUDGE LONG: I also do not have any questions.

11 Thank you very much.

12 Mr. Slavett, you may continue with your
13 presentation.

14 MR. SLAVETT: Can I have just one minute to
15 confer with my co-counsel?

16 JUDGE LONG: Yes.

17 MR. SLAVETT: Thank you.

18 If possible, could I recall Mr. Hirsh for just a
19 question.

20 JUDGE LONG: Yes. That's all right.

21 MR. SLAVETT: Okay.

22

23 FURTHER REDIRECT EXAMINATION

24 BY MR. SLAVETT:

25 Q So, Mr. Hirsh, thanks for coming back up. I'd

1 like to talk just briefly about kind of the -- of the
2 calculation and how it's determined. And it's my
3 understanding that whether -- that whether the tax --
4 whether income is taxable to Mr. Gilbert is obviously
5 based on substantive tax law as to whether he's a
6 resident; also, substantive tax law as to credits that he
7 paid in other jurisdictions. Because, ultimately, his tax
8 return claimed credits in other jurisdictions as well as
9 reductions. So I would like you to talk a little bit more
10 about kind of the -- the tax law that comes into
11 determining this calculation?

12 A The tax law, my understanding is California is --
13 is all source income gets reported, and it receives
14 credits for taxes paid in other jurisdictions.

15 Q So in determining this -- this estimate and this
16 taxable income, you have to understand substantive tax law
17 and make a determination based on substantive tax law; is
18 that correct?

19 A Correct.

20 MR. SLAVETT: Okay. No further questions.

21 JUDGE LONG: Thank you.

22 MR. SLAVETT: I'd like to do just a brief
23 closing, if permissible.

24 JUDGE LONG: It is. However, you have requested
25 time after Franchise Tax Board's presentation --

1 MR. SLAVETT: I'm sorry.

2 JUDGE LONG: -- to do your closing.

3 MR. SLAVETT: Yes. I forgot about that.

4 JUDGE LONG: But if you wanted to wrap up your
5 opening, that would be okay.

6 MR. SLAVETT: That's okay. We -- I can finish
7 after the Franchise Tax Board's.

8 JUDGE LONG: Okay. Thank you.

9 We're going to take a 10-minute break, and we
10 will resume at 10:35.

11 (There is a pause in the proceedings.)

12 JUDGE LONG: We're reopening the record in the
13 case -- in the Appeal of Gilbert.

14 Franchise Tax Board, we are ready for your
15 presentation. You requested 15 minutes, and you may begin
16 when ready.

17 MR. TUTTLE: Thank you.

18

19 PRESENTATION

20 MR. TUTTLE: And good morning. My name is Topher
21 Tuttle, and I'm representing the Respondent, the Franchise
22 Tax Board. With me is Brad Coutinho, also representing
23 Respondent.

24 At issue is whether Appellants have demonstrated
25 reasonable cause to abate the late-payment penalty. The

1 facts of this case are straight forward. The
2 approximately \$7 million tax amount due, showing on
3 Appellants' timely filed tax return for tax year 2020, was
4 not paid in full until October 15th, 2021. Since
5 Appellants had underpaid the tax amount by about
6 \$5.5 million, a late-payment penalty at the maximum rate
7 of 25 percent was imposed because the payment was more
8 than six months late. Appellants paid the late-payment
9 penalty, and then filed a claim for refund in which they
10 argued there was reasonable cause for abatement of the
11 penalty. This appeal followed Respondent's denial of that
12 claim. Appellants argue on appeal that they reasonably
13 relied on advice from their tax preparers in making their
14 payment by the payment deadline.

15 A taxpayer has the burden of proof to show that
16 reasonable cause exists to support abatement of the
17 late-payment penalty. To establish reasonable cause,
18 Appellants must demonstrate that the failure to timely pay
19 occurred despite the exercise of ordinary business care
20 and prudence. A taxpayer's reliance on improper advice as
21 to a matter of tax law maybe considered reasonable cause,
22 provided the advice is predicated on two conditions.
23 First, the taxpayer relied on a tax professional with
24 competency in the subject tax law; and second, the tax
25 professional's advice was based on the taxpayer's full

1 disclosure of the relevant facts and documents.

2 In this case, Appellants claim that their tax
3 preparer represented to them that a \$400,000 payment would
4 cover the balance of their California tax liability due at
5 the payment deadline. In support of this position,
6 Appellants have provided a copy of an April 15th, 2021,
7 email from their CPA, Mr. Hirsh, which shows estimated
8 payments due for federal, California, and Michigan
9 purposes. Appellants have also provided a response from
10 their business manager, Mr. Divney, which approved a
11 \$400,000 payment for California purposes on
12 May 17th, 2021.

13 I'm going to discuss two problems with
14 Appellants' argument that they reasonably relied on their
15 tax professionals when making their \$400,000 tax payment
16 at the payment deadline. The first problem with
17 Appellants' reasonable cause reliance is that the reason
18 the estimate sent by Mr. Hirsh were incorrect is due to
19 apparent calculation error or oversight to the extent the
20 estimates provided to Appellants were erroneous from a
21 calculation mistake, rather than a mistake in the analysis
22 of whether a particular item of income was taxable in
23 California. The estimates should not be considered
24 substantive advice. It is Appellants' burden to show that
25 the mistake was related to substantive advice, which was

1 given before the payment deadline. In this case,
2 Appellants have failed to meet this burden.

3 The second problem with Appellants' argument is
4 that Appellants have not established that they provided a
5 full disclosure of the relevant facts and documents before
6 the payment deadline. It is clear from the face of the
7 April 15th, 2021, email from Mr. Hirsh to Mr. Divney, that
8 Appellants' income for tax year 2020 remained influx at
9 the time the estimates were given. In the email,
10 Mr. Hirsh also admits that the package of 2020 tax returns
11 attached to the email is a draft, quote, "Which has so
12 many unknowns," quote -- end quote.

13 Appellants have also claimed, during this appeal,
14 that the financial picture they received from Rock
15 Holdings was incomplete at the payment deadline. Based on
16 these facts, Appellants knew that the estimates in the
17 April 15th, 2021, email did not include all relevant facts
18 and documents. Since the estimates were not based on a
19 full disclosure of all relevant facts and documents as
20 required under Boyle, the estimates cannot be relied upon
21 for reasonable cause penalty abatement. Under Moren, a
22 taxpayer must establish the efforts they undertook to
23 obtain missing information controlled by a third party.

24 In this case, there is no evidence that
25 Appellants and their tax professionals attempted to obtain

1 further information from Rock Holdings before the payment
2 deadline, even though they were aware that the information
3 they had was incomplete. Since Appellants have failed to
4 establish the eliminates of reasonable cause reliance on
5 substantive advice provided by their tax preparers,
6 they've not established that the late-payment penalty
7 should be abated for reasonable cause. Therefore, FTB's
8 denial of Appellants' claim for refund should be
9 sustained.

10 I'm happy to answer any of the questions the
11 panel may have. Thank you.

12 JUDGE LONG: Thank you.

13 Judge Kletter, do you have any questions?

14 JUDGE KLETTER: No questions.

15 JUDGE LONG: Judge Kim, do you have any
16 questions?

17 JUDGE KIM: No questions. Thank you.

18 JUDGE LONG: Can you direct me to the exhibit
19 with the so many unknowns language.

20 MR. TUTTLE: Yeah. So that's the -- I'm sorry.
21 I'm missing the exhibit numbers. It's the April -- it's
22 in Exhibit 3, page 2. That's right -- oh, do you have it?

23 MR. COUTINHO: Email is dated, Thursday,
24 April 15th, 2021.

25 MR. TUTTLE: Thursday -- sorry. Yeah. The email

1 is dated Thursday, April 15th, 2021. It was from Dan
2 Hirsh sent to Brian Divney in Exhibit 3.

3 JUDGE LONG: Thank you.

4 MR. TUTTLE: It's -- and the so many unknowns
5 comes under bullet 2 in the list.

6 JUDGE LONG: Thank you. I see is now. Okay. I
7 don't have any additional questions at this time. Does
8 that conclude your presentation?

9 MR. TUTTLE: It does.

10 JUDGE LONG: Thank you.

11 Mr. Slavett, you requested an additional 15
12 minutes for your closing. However, you have a lot of time
13 left from your opening.

14 MR. SLAVETT: I won't take 15.

15 JUDGE LONG: Okay. You may begin when ready.

16

17 CLOSING STATEMENT

18 MR. SLAVETT: Before I get to, kind of, closing,
19 the FTB's resuscitation of -- of what they believe the
20 facts are, ignored much of the testimony today. They're
21 sticking with the same story that's in their briefs
22 despite the testimony that was given that the CPA had all
23 necessary information with -- that they -- to create an
24 accurate estimate of the income tax. That April 16th --
25 April 6th information did provide what was needed to get

1 to an accurate amount.

2 However, when applying that, based on tax law
3 with respect to what is taxable in California, the CPA
4 simply made an error in their analysis of how they applied
5 the California tax law. The California tax law is what --
6 is that a California resident is subject to everything,
7 all taxes, and they get to reduce credits paid toward
8 other states. And so to determine this calculation, you
9 have to apply that law. Okay. This is not a case like
10 Boyle where a taxpayer missed the filing deadline, and
11 they relied on their -- they claimed that they relied on
12 their tax professional regarding that deadline.

13 Mr. Gilbert not -- didn't miss a deadline. Okay.
14 He didn't rely on his CPAs to determine whether there was
15 a deadline or whether he had to make a payment. Okay. He
16 relied on them to determine the substantive tax law, which
17 is a complicated tax calculation that he could not do to
18 determine what needed to be paid. And when he was given
19 that information as to what needed to be paid, he paid.
20 So the problem -- the issue is -- and -- and what's at
21 issue is the amount he paid was not the right amount.
22 Why? Because he relied on his tax professionals to
23 prepare a computation that -- that you have to understand
24 substantive tax law to prepare that computation. And so
25 these are different than the Moren case, the Boyle case.

1 We're talking about not a failure to meet a deadline by
2 any means. He met the deadline. He just paid a lower
3 amount based on incorrect information from his tax
4 professionals.

5 So, you know, I'm going to talk, kind of, briefly
6 to sum up where we are. Here, the Gilberts relied on
7 their competent CPA regarding substantive tax advice as to
8 the amount of the estimated income tax that would be due
9 to California for the -- for 2020. And that advice was
10 based on full disclosure of the relevant facts and
11 documents. There is nothing more the Gilberts could have
12 done. Based on all the -- all the facts, the Gilberts'
13 late payment of tax was due to reasonable cause, as he
14 exercised ordinary business care and prudence.

15 I also want to brief -- briefly talk about the
16 purpose of penalties. Why are we here? Remember, this is
17 not about tax. He paid what he owed. He paid what he
18 owed when he was told what to pay by his CPAs. He paid it
19 immediately. So penalties exist to encourage voluntary
20 compliance by supporting the standards of behavior
21 required by the tax code. Specifically, penalties act as
22 a deterrent of sub -- excuse me -- of specific behavior
23 discouraging tax payers from neglecting tax obligations,
24 such as filing returns on time, paying tax due, and
25 reporting income accurately.

1 Here, what behavior of the Gilberts is the
2 government trying to deter? That is, how should have the
3 Gilberts acted differently? What should they have done
4 that they didn't do? They hired competent CPAs and
5 provided the CPAs with all relevant and available
6 information. There was no way the Gilberts could have
7 calculated the estimated tax themselves. This penalty
8 does not act as a deterrent to the Gilberts. Perhaps, if
9 they didn't hire a CPA, or they didn't file their return
10 timely or paid timely once the CPA told them how much to
11 pay, or they didn't give the CPA all the information, then
12 perhaps is this penalty appropriate to act as a deterrent
13 so that he doesn't do it again. Here, the Gilberts did
14 everything they were supposed to do. And so therefore,
15 the penalty should be and must be abated.

16 That's all I got, Judge.

17 JUDGE LONG: Thank you. I do have one final
18 question, and you can bring Mr. Hirsh up, if you would
19 like. Is there an explanation for the -- the so many
20 unknowns language with respect to what is being discussed
21 here?

22 MR. SLAVETT: Mr. Divney may have an idea, but I
23 want to do Mr. Hirsh as well, since the email was written
24 by --

25 MR. DIVNEY: So in April, with the various

1 investments that the Gilberts have, much of the
2 information is -- is an estimate. So for, say, investment
3 accounts that are invested in public securities, that's,
4 you know, 1099s are definitive. Many hedge funds, private
5 investment vehicles, private companies don't have complete
6 information at that time to provide to us. And we've
7 experienced that years and years before, and years before,
8 we would say we need more information. But by this time
9 we understand that Rock Holdings only is going to be
10 giving us a certain amount of information.

11 In addition, there's some other less in magnitude
12 but investment vehicles that only provide estimates, and a
13 final K-1 comes in sometime between an April 15th
14 estimated payment -- or in this case, May 17th -- and
15 October 15th extension filing.

16 MR. SLAVETT: Okay. And, Mr. Hirsh, I'm going to
17 point you to the language that the Franchise Tax Board is
18 referring to.

19 MR. HIRSH: It's being taken out of context, to
20 be frank with you. Unknowns is -- is more reference to
21 "we don't have the information yet." It's not an un --
22 uncertainty of information. It's an unknown of source
23 documents to -- to have been received to date.

24 MR. SLAVETT: But based on the April 2021 Rocket
25 Holdings information, could you have prepared a -- an

1 estimate that was more accurate than your \$1.4 million?

2 MR. HIRSH: Yes.

3 MR. SLAVETT: So isn't it true you had
4 information on April 6, 2021, or about that time, that
5 would have allowed you to prepare a very accurate
6 estimate?

7 MR. HIRSH: Yes.

8 MR. SLAVETT: Was there any information --
9 additional information that -- that would have helped
10 you -- would have helped you to -- to get more accurate?

11 MR. HIRSH: The answer is no for the vast
12 majority. There's always additional information that's
13 presented on the actual K-1 itself that may change, but
14 nothing to the magnitude, with all due respect of not
15 having picked up \$150 million in taxable income and
16 shouldn't have backed out \$48 million to get to a net
17 California income of \$3 million. I was wrong.

18 JUDGE LONG: Okay. Thank you. I just want to
19 ask my co-panelists if they have any further questions
20 before we conclude our hearing.

21 Judge Kletter, do you have any questions?

22 JUDGE KLETTER: This is Judge Kletter. No
23 questions. Thank you.

24 JUDGE LONG: Judge Kim, do you have any
25 questions?

1 JUDGE KIM: No additional questions. Thank you.

2 JUDGE LONG: Thank you.

3 We are ready to conclude this morning's hearing.

4 The record in the Appeal of Gilbert is submitted on

5 Wednesday, May 14th, 2025.

6 The record is now closed.

7 Thank you everyone for coming in today.

8 The judges will meet and decide your case later
9 on, and we will send a written opinion of our decision
10 within 100 days.

11 Today's hearing in the Appeal of Gilbert is now
12 adjourned, and the afternoon calendar will begin at
13 1:00 o'clock.

14 Thank you.

15 (Proceedings adjourned at 10:56 a.m.)

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I have hereunto subscribed my name this 22nd day
of May, 2025.

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