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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
P. SWARTZ,) OTA NO. 231014459
)
)
 APPELLANT.)
)
)
 _____)

Transcript of Proceedings, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 9:30 a.m.
and concluding at 10:46 a.m. on Wednesday,
October 15, 2025, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ SETH ELSOM

Panel Members: ALJ GREG TURNER
ALJ TERESA A. STANLEY

For the Appellant: P. SWARTZ
CHRISTOPHER CAMPBELL
DAVID HAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHARLES TSAI
JACKIE ZUMAETA

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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 7.)

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Cerritos, California; Wednesday, October 15, 2025

9:30 a.m.

HEARING OFFICER ELSOM: We are opening the record in the Appeal of Swartz, OTA case number 231014459. This matter is being held at the Office of Tax Appeals hearing room in Cerritos, California. Today's date is Wednesday, October 15th, 2025, and the time is approximately 9:30 a.m.

My name is Seth Elsom. I am the lead Hearing Officer for this appeal. With me today is Administrative Law Judge Greg Turner and Administrative Law Judge Teresa Stanley.

And as a reminder, the Office of Tax Appeals is not a court. It is an independent appeals body staffed by tax experts and is independent of the State's tax agency, which includes the Franchise Tax Board.

With that, I would like to ask the parties again to introduce themselves for the record, and we'll begin with Appellant.

MR. SWARTZ: My name is Peter Swartz, and I was formally the president and owner of NH Research, which is the company that's under discussion.

HEARING OFFICER ELSOM: Thank you, Mr. Swartz.

MR. CAMPBELL: Chris Campbell, Appellant

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representative.

HEARING OFFICER ELSOM: Thank you, Mr. Campbell.

MR. HAN: David Han, Appellant representative.

HEARING OFFICER ELSOM: Thank you, Mr. Han.

And Franchise Tax Board.

MR. TSAI: Good morning. Charles Tsai for
Respondent.

HEARING OFFICER ELSOM: Thank you, Mr. Tsai.

MS. ZUMAETA: Good morning. Jackie Zumaeta for
Respondent.

HEARING OFFICER ELSOM: Thank you, Ms. Zumaeta.

And as confirmed at the prehearing conference and
in the corrected Minutes and Orders following the
conference, we have one issue to be decided in this
appeal; and that's whether Appellant has established
reasonable cause for the abatement of the late payment
penalty for the 2021 tax year.

And moving on to the exhibits, let's start with
Appellant. In the prehearing conference, and as noted in
the Minutes and Orders, you had submitted Exhibits 1
through 6, and the Franchise Tax Board do not object to
the admission of those items.

I just wanted to clarify. Are those exhibits
correct?

MR. CAMPBELL: Yes, Judge.

1 HEARING OFFICER ELSOM: Okay. Thank you.

2 And, Franchise Tax Board, do you have any
3 objection to the admittance of those exhibits as evidence
4 today?

5 MR. TSAI: No objection.

6 HEARING OFFICER ELSOM: Okay. Thank you.

7 Appellant's Exhibits 1 through 6 are now admitted
8 into the evidentiary record.

9 (Appellant's Exhibits 1-6 were received
10 into evidence by the Hearing Officer.)

11 HEARING OFFICER ELSOM: And that brings us to the
12 Franchise Tax Board. Franchise Tax Board, you submitted
13 12 exhibits, which have been labeled as Exhibits A
14 through L. As noted in the prehearing conference and the
15 prehearing conference Minutes and Orders, Appellant did
16 not have any objection to those items.

17 I wanted to quickly check in with you again,
18 Appellants, do you have any objection to the Franchise Tax
19 Board's admittance of these exhibits as evidence?

20 MR. CAMPBELL: No, Judge.

21 HEARING OFFICER ELSOM: Thank you.

22 Moving on to witnesses.

23 Mr. Swartz, you indicated in the prehearing
24 conference that you plan to testify or provide witness
25 testimony. I will swear you in before we begin the

1 presentation so that any factual statements you make
2 during the presentation or in response to questions, may
3 be taken into account as we decide this hearing.

4 And before I do that, I would just like to
5 briefly go over the order of the hearing. As noted in the
6 prehearing conference Minutes and Orders, Appellant will
7 present first and will have approximately 60 minutes for
8 the presentation. Following that, FTB will have the
9 opportunity to ask Appellant questions of the testimony
10 only, and the panel will also ask questions regarding the
11 presentation. Following that, FTB will have 15 minutes
12 for its presentation, and I will again turn it over to the
13 panel to ask questions regarding FTB's presentation. And
14 then finally, Appellant, you will have five minutes for
15 closing statements and rebuttal.

16 And with that, I believe we are ready to begin.
17 And does either party have any questions before we begin
18 the hearing or the presentations?

19 MR. CAMPBELL: No, Judge.

20 HEARING OFFICER ELSOM: Thank you.

21 And Franchise Tax Board?

22 MR. TSAI: None at this time. Thank you.

23 HEARING OFFICER ELSOM: Okay. Mr. Swartz, I'd
24 like to ask you to please raise your right hand.

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R. SWARTZ,

produced as a witness, and having been first duly sworn by the Hearing Officer, was examined, and testified as follows:

HEARING OFFICER ELSOM: Thank you. Mr. Swartz.

And, Appellant, Mr. Swartz, Mr. Campbell, and Mr. Han, you may begin your presentation in whatever order you'd like, and you have 60 minutes.

MR. CAMPBELL: Okay. Thank you, Judge.

PRESENTATION

MR. CAMPBELL: Good morning, everybody. Thank you for being here. Get this mic straightened up.

So I'm just going to spend a minute and just intro and go through what we intend to present, and I don't think it will take the whole hour by any means. Let me get this closer to me. I apologize.

This is a penalty abatement request case as you noted. In this case, Mr. Swartz -- for 2021, Mr. Swartz satisfied his California and federal income tax liability each year, including in 2021, through a combination of withholding, quarterly estimated tax payments, and extension payments. These payment are made to the FTB and IRS electronically on their respective websites, at least

1 in the years in question, when that became -- electronic
2 payment was the norm.

3 These payments are generally due on the same
4 date. And Mr. Swartz, like most taxpayers, pays -- made
5 the payments at the same time when they -- when they fell
6 on the same dates. And, in this case, in 2021 the issue
7 that causes us to have an under payment penalty is that on
8 two of the quarterly payments, he in -- \$2.4 million was
9 inadvertently paid to the IRS that was intended to go to
10 the FTB. So it's just a basic background.

11 Mr. Han will go through the payments in detail
12 just so we have that on the record the facts of the
13 payments and the dates and what happened. And also, to
14 clear up a point that came up at the prehearing
15 conference, which is just that there was a final payment
16 made after April 15 of the year in question; and we're not
17 contesting the penalty on that piece. So we'll go through
18 that in more detail.

19 After that -- oh, and just let me pause. We
20 prepared a presentational handout, which I've shown the
21 Franchise Tax Board, and I think you have copies. It's
22 four pages. Three pages after the first page are all just
23 pages from the record. One is a tax return page, and the
24 other two are notices that are already exhibits. And then
25 the first page is just to make it easy to go through the

1 -- the payments. And, again, I showed Mr. Tsai and Ms.
2 Zumaeta earlier. So if it's okay, we'll use that to walk
3 through the -- the presentation.

4 After Mr. Han goes through the -- the facts, I
5 will ask some questions of Mr. Swartz, who is here today,
6 to provide testimony to show that he is acting as an
7 ordinarily intelligent prudent businessperson and -- and
8 making his tax payments, and that the failure occurred
9 despite, you know, those efforts. And also, to primarily
10 counter the FTB's claim that he hasn't provided -- that we
11 have no evidence of him duly monitoring his bank account,
12 which is really the main thing that comes out when we go
13 forward. And then after I ask questions of him, I'm gonna
14 just present our discussion of the law, and then we'll be
15 done with our presentation and turn it over to you guys.

16 So with that, Mr. Han, take it away.

17 MR. HAN: Thank you.

18 So I'll be going be through the record of
19 payments as reflected on the --

20 HEARING OFFICER ELSOM: Mr. Han, just I'd like to
21 clarify first with the Franchise Tax Board.

22 Do you have any objection to these items that
23 Appellant is referring to today?

24 MR. TSAI: Sorry, Judge. Just to clarify, when
25 you refer to "these items," do you mean the handout that I

1 received out this morning?

2 HEARING OFFICER ELSOM: Yes, the handouts -- the
3 additional handouts provided.

4 MR. TSAI: No objection to three items.
5 Obviously, they are part of the record already. To the
6 extent there's any discrepancies on it, I haven't had time
7 to check -- cross reference all the payment amounts and
8 dates. But to the extent that it's consistent with FTB's
9 brief and exhibits, there's no objection.

10 HEARING OFFICER ELSOM: Okay. We can refer back
11 to this, and I'll come back to you. And if you have any
12 discrepancies that you notice as you're reviewing this,
13 then we can discuss it at that point.

14 MR. TSAI: Thank you.

15 HEARING OFFICER ELSOM: Go ahead and continue,
16 Appellant.

17 MR. HAN: Thank you, Judge.

18 I'll be going through the record of payments as
19 reflected on the first page of the packet. We understand
20 the facts regarding the payments are not in dispute, and
21 that these facts are also reflected in the FTB's exhibits.
22 We wanted to present these facts so that they're in the
23 record.

24 Starting with April 15th, 2021, Mr. Swartz needed
25 to pay \$770,000 to FTB for its first estimated tax payment

1 to California for tax year 2021. Mr. Swartz did, in fact,
2 pay the FTB on the due date in the amount of \$330,000 on
3 April 15th. We noted in the table that the payment of
4 \$770,000 went to the IRS. Next, was a prior year
5 overpayment credit of \$66,204, which is applied on
6 May 17th, 2021. On June 15th, 2021, for his second
7 estimated tax payment, Mr. Swartz made a payment of
8 \$1,075,000, which was paid timely on June 15th. On
9 September 15th, 2021, Mr. Swartz needed to pay \$2 million
10 to the FTB for its third estimated tax payment.
11 Mr. Swartz did make this payment in the amount of \$2
12 million on the due date, but to the IRS. For his fourth
13 estimated tax payment, due January 15th, 2022, Mr. Swartz
14 needed to pay \$20,100,000 to the FTB and \$35 million to
15 the IRS, and he made those payments in these amounts on
16 January 12th, 2022.

17 Before April 15th, 2022, Mr. Swartz was advised
18 by his accountant to make a \$20,000 extension payment,
19 which he made timely on April 12th, since the return was
20 going to be filed by the extended due date of
21 October 15th, 2022. At this point, I'll point out that as
22 of April 15th, 2022, the belief was that \$24,045,894 had
23 been paid to the FTB when, in fact, \$21,591,204 was
24 actually paid to the FTB. This shows that the
25 underpayment as of April 15th was \$2,440,000 and a late

1 payment penalty and monthly penalty were imposed on that
2 amount of underpayment.

3 In October, when Mr. Swartz' California return
4 was filed, the return reported a tax due of \$24,305,625,
5 and the return reported total payments of \$24,045,894,
6 which -- which in turn computed a balance due of \$259,731.
7 We've included, as page 2 of the packet, these amounts
8 that were reported on the return. Mr. Swartz, his
9 California return was prepared and filed in advance of
10 October 15th, and you could see that Mr. Swartz paid this
11 balance due early on October 11th, 2022.

12 Next, Mr. Swartz received a notice from the FTB
13 on November 7th, less than a month later of the filing of
14 his return, indicating a balance due of approximately
15 \$2.9 million. We've included this notice as page 3 of the
16 packet. Mr. Swartz forwarded this notice to Deloitte,
17 actually to me, and I called the FTB to verify the notice
18 in the amounts. And we found out through the FTB phone
19 representative that the notice did not yet reflect the
20 \$259,731 payment that was made on October 11th. And the
21 representative provided to me that the balance on that
22 notice should be reduced by the amount of the October 11th
23 payment. Around the same time, the IRS provided a notice
24 indicating that the IRS was refunding an overpayment of
25 \$2.2 million. This notice is included as the last page of

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the packet.

Mr. Swartz surely paid the FTB the balance due on the notice on November 23rd, less the amount of the October 11th payment. The FTB also sent a second notice on January 9th, 2023, with a balance of \$13,775, which to our understanding is the late payment penalty plus interest on the \$259,731. So at the bottom of our table on page 1, we wanted to clarify on the record Mr. Swartz's original refund claim was for \$240,379, which included amounts attributable to the late payment of \$259,731, which was the issue discussed during our prehearing conference.

We wanted to clarify that we are only disputing the amount of penalty attributable to the \$2,440,000 underpayment and not the late payment of \$259,731. Thus, the amount at issue in this appeal should be reduced by the portion attributable to the \$259,731.

Before moving on, I just want to see if there are any questions on the amounts or dates reflected on page 1 of our packet.

HEARING OFFICER ELSOM: No questions for me.
Thank you. Thanks for clarifying that.

Do you have any questions --

JUDGE TURNER: Not yet. Thank you.

JUDGE STANLEY: I don't have any questions yet.

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Thank you.

HEARING OFFICER ELSOM: Thank you.

Go ahead and continue.

MR. CAMPBELL: Thanks, Mr. Han.

FTB, if you find any -- I -- I think it matches everything, but just let us know later. It's not intended to be an exhibit, just a presentation. Okay. Well, thank you.

So the next -- the next piece here --

HEARING OFFICER ELSOM: Mr. Campbell.

MR. CAMPBELL: Yeah. I'm sorry.

HEARING OFFICER ELSOM: Franchise Tax Board, do you agree with that calculation?

MR. TSAI: As like I was saying, I think that we can rely on the briefs and exhibits since they've already been submitted. I was listening very carefully. There's no dispute as to those on the record that match up the dates and amounts as to the FTB payments. The notices, there's no objection. And obviously, to the extent that there's a concession for the amount at issue, no objection. It's simply for the portion for the presentation in terms of belief or the math that I simply can't confirm off the top of my head.

HEARING OFFICER ELSOM: Okay. We were just -- again, going back to the prehearing conference, just

1 confirming that that specific \$259,751 was late. So it
2 sounds like we have an agreement on that.

3 And we can go ahead and continue, Appellant.

4 MR. CAMPBELL: Thank you, Judge. Okay. So at
5 this point I wanted to ask Mr. Swartz some questions that
6 you could hear from him, because that's important I think
7 in this -- in this case.

8 So let me do this, since we have one mic. No
9 that's okay. I think that's better so there's no
10 disturbance.

11 HEARING OFFICER ELSOM: We're going to pause the
12 record so we can get Mr. Swartz an additional mic.

13 (There was a pause in the proceedings.)

14 HEARING OFFICER ELSOM: Okay. Well, we'll resume
15 the record now.

16 MR. CAMPBELL: Okay. Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. CAMPBELL:

20 Q Okay. So the tax year is -- is 2021. And as
21 Mr. Han went through the table of payments, which we
22 talked about in advance, I just want to go through some
23 questions so that you can explain in your own words, you
24 know, some background and what happened. So in this first
25 estimated --

1 MR. SWARTZ: Can I -- can you hear me okay?

2 HEARING OFFICER ELSOM: Yes, we can hear you.

3 MR. SWARTZ: Okay. Would it be helpful if I gave
4 them just a quick background of the company and how we
5 arrived at this position, some color on the history of the
6 company and who I am and what's happened over the past 50
7 years?

8 HEARING OFFICER ELSOM: You're free to present
9 any items that you'd like, and then we'll ask clarifying
10 question. And we can clarify some of that background
11 information if we feel that it's relevant. And we'll go
12 ahead and let Mr. Campbell --

13 MR. CAMPBELL: Can I pause, like, off the record
14 for one second?

15 HEARING OFFICER ELSOM: Sure.

16 MR. CAMPBELL: Thanks.

17 MR. SWARTZ: Makes sense. Okay. Pardon us.

18 Some background; I'm a mechanical engineer with
19 an MBA that is an entrepreneur, and I've done that my
20 entire life. I started my first company when I was
21 29 years old back in 1969. Built it up, sold it, bought a
22 second company that was very small. Built that up and
23 sold it. And finally, wound up with what's called NH
24 Research Perisol Holdings. And that was a winner because
25 of some of the product development. We built testers,

1 auto -- computer controlled testers for electric vehicle
2 batteries. And this is so a manufacturer, before you put
3 a battery in his car and warrantied it, would know how
4 this battery would degrade in time. He could program our
5 tester to cycle that battery for either city use, cross
6 country use, hot, cold, and see the degradation of the
7 battery. So that was 10 years or so ago, and it was a
8 huge success in the marketplace.

9 So I built my three companies, including the one
10 under discussion, as me as the sole owner and president.
11 And I did that -- had to do that very, very carefully
12 because growth takes money. I didn't -- didn't have the
13 artificial intelligence luxury that entrepreneurs have
14 today of raising huge sums of money. So I funded the
15 growth of all my companies, particularly this one,
16 internally. And to do that, you have to be very prudent
17 and very careful and watch the money because I didn't use
18 bank loans. I never used outside investors. I did it all
19 through the profits of the company.

20 And I'm pleased to say I actually prepared a
21 spreadsheet that you can look at later, if it's of any
22 interest. Over 50 years we never ever missed a payment.
23 I mean, it was we were on automatic. So I am used to
24 paying things on time. It's a 50-year track record, and
25 it was kind of a shock that this happened to me, these

1 missed payments. There's no excuse for it. However, I
2 should share that what happened in 2021 is a large
3 company, a billion-and-a-half-dollar company in Texas,
4 along with two other companies, started to acquire us,
5 with my encouragement, given that I was getting up in --
6 in age.

7 And it was a chaotic event dealing with major
8 Fortune 500 companies that want a million pieces of
9 information and inspections and interviews and all of
10 that. No excuse for failing to pay on time, but it was a
11 chaotic one-time event. And, you know, I feel terrible
12 about this because it's a blemish on a 50-year record of
13 being on time; and never having to borrow money, never
14 having to get outside investors to sustain the growth and
15 prosperity of my business. So that's kind of the
16 background of the company. We made this mistake, and I
17 guess we can talk about further now about what to do about
18 it.

19 MR. CAMPBELL: Thank you for that background.
20 And let me -- that's very helpful. And, again, as we know
21 really the point of the abatement provision when we --
22 when I talk next is, you know, whether, you know,
23 reasonably ordinarily prudent business person, you know,
24 the facts, whether this failure occurred despite the
25 exercise of ordinary business care and prudence

1 effectively, and whether the mistakes sort of reasonable
2 in that context. So I think all of your background helps,
3 you know, provide good context for your history and your
4 prudence.

5 So let me ask some specific questions --

6 MR. SWARTZ: Certainly.

7 MR. CAMPBELL: -- about 2021, so that we can get
8 to the -- to those specifics.

9 BY MR. CAMPBELL:

10 Q So in 2021, that first payment, which is the
11 first mistake that was made, there was \$770,000 owed to
12 the FTB and \$330,000 to the IRS. And can you explain --
13 just give some background on how you know you had to pay
14 those amounts?

15 A Well, I always had the services -- employed the
16 services of Deloitte of -- as the final judge of our
17 payments and the veracity of our financial statements. So
18 that, and the fact that I've been through this at least 50
19 times, you know, I kind of know what needs to be done and
20 when. Not the precise amount, but what we need to be
21 cognizant of. And my other practice, which seems to have
22 worked until this latest incident, is when you're
23 self-funding, when you're boot strapping your company, you
24 have to really monitor cash closely.

25 So my practice was always to check our bank

1 balances, how much money we had in the bank; and I could
2 see when the money was withdrawn to pay federal and state
3 taxes. So that was my method that served me pretty well
4 until this last incident.

5 Q Well, only incident, really --

6 A Only incident.

7 Q -- in 2021. So let's just go through it then.
8 Obviously, you have, as you just said, you know you have
9 obligations to make quarterly estimated tax payments to
10 states and the federal government. Deloitte, as your tax
11 preparer, is the one preparing returns year to year,
12 even -- I don't know how long you've been using us, but
13 probably --

14 A The better -- the better part of 30 years.

15 Q Okay. Well, thank you for that. This is good
16 for me. So preparing returns. And as part of that
17 process usually your accountant and probably in connection
18 when you -- in this period of time when you're running
19 this particular business, since the money is being
20 generated, all of your income is coming from the company,
21 and you have an executive staff and a controller, my --
22 I -- I think you were that person plus the accountant is,
23 you know, constantly looking at numbers in order to
24 determine how much would be owed on each of these
25 quarters; right?

1 A Yes, sir.

2 Q Okay. That -- what you -- I'm trying to put into
3 words what he said a minute ago. So -- so you have --
4 they're telling you you need to pay 770 to the FTB and
5 \$330,000 to the IRS, and so that's how, you know, we know
6 that those are owed. And, in fact, for that first
7 estimated payment in 2021, those amounts were paid, and
8 they were just paid to the wrong agencies. Now,
9 specifically, let's just go through for a minute on the --
10 you know, for that payment, you know, what happened. In
11 other words, that -- first of all, that -- those funds
12 were paid out of the which account?

13 A In 2021.

14 Q Yeah, for these payments.

15 A -- company account.

16 Q Company. Right. And -- and when you referred a
17 minute ago to the company account and checking the
18 balances, that's the account you're referring to?

19 A Yes.

20 Q And the company had one account?

21 A Yes.

22 Q And you would know A, you saw in particular this
23 \$1.1 million total come out after you checked the balance.
24 In general, like, how -- what was your process of checking
25 the balance? And, you know, as you said, there's a lot of

1 money coming in and out, and you're boot strapping. So
2 you really need to be on top of this?

3 A Yeah. What I checked is, you know, how much
4 money do we have left, and does that make sense, given the
5 obligations that we have for payroll and parts and
6 material, as well as tax payments. So it -- it -- you
7 know, a CEO owner -- this is an international company. We
8 had several people with our own office in China. We had
9 an office in Europe. We were dealing with all the big
10 automotive manufacturers, Rivian being locally are being
11 our number one customer, bought a dozen of our systems at
12 \$100,000 apiece. You're -- you're kind of juggling all of
13 this. And my check and balance was to see how much money
14 was left in the company account, and I'd do that
15 automatically. But, you know, how much detail I went into
16 was obviously not enough because they had that mix up. It
17 was -- it was a shock for me.

18 Q So the controller that was between -- in the
19 company. And you had about how many employees?

20 A About 100 employees.

21 Q A hundred employees. Okay. So one of the senior
22 executives was a controller, and that person is in charge
23 of finances. And does that person look at this account
24 constantly? I mean, they're in charge of --

25 A Yes.

1 Q Okay. So for these -- has this -- had this
2 controller ever made a mistake like this in the past?

3 A No he was relatively new. But previously,
4 controllers in 50 years had never made a mistake.

5 Q Right. Okay.

6 A I -- I mean -- yeah.

7 Q No, it's unfortunate. So -- so the -- for this
8 particular payment, this is the one where the \$770,000 was
9 due to the FTB, \$330,000 to the IRS, and the payment
10 was -- each payment was made to the wrong agency. Okay.
11 So let's move on.

12 Mr. Swartz, the -- I think the next -- where's
13 that chart? Yeah. The June payments were made correctly.
14 So now we go to the -- to the other payment that created a
15 failure here, which is the September estimated third
16 payment, and that's -- again, \$2 million at that point is
17 owed to the FTB, and no payments owed to the IRS. And,
18 again, just how did you know that those -- the \$2 million
19 needed to be paid to the FTB?

20 A Well, I'm sure our controller was working with
21 Deloitte. And what I would do is, after the payments were
22 made, would check -- would do a quick check of our bank
23 balance to make sure I knew how much money was in the
24 account. And that was sufficient to continue making
25 payroll accounts payable and all the other expenditures

1 that goes with growing, you know, a self-reliant company.

2 Q So on -- you know, on September 15th, it takes a
3 couple of days to process. After September 15, you saw \$2
4 million debited?

5 A Yes.

6 Q And in your -- in your -- and so you understood
7 at that point in time that that tax payment had been made?

8 A Yes.

9 Q Okay. And would you have noticed if that
10 \$2 million payment had not been paid out of the account?

11 A Likely.

12 Q Yeah. Okay. Okay. So now the -- you know, the
13 next estimated payment is due in January, and these are
14 the payments that were made to California of about \$20
15 million and then \$35 million to the IRS. What happened
16 between, you know, September and January to result in
17 these very, very large payments?

18 A Well, the company, after a huge effort, were
19 three bidders for the company. You know, we selected what
20 we thought would be the best partner and chose a company;
21 and on October 18th, we closed. And, you know, the money
22 was wired to my personal account. And the payments, the
23 \$20 million and \$50 million payments then came out of my
24 personal account.

25 Q So you sold the company, and it closed in

1 October, and --

2 A Yes.

3 Q -- for cash. And so you were paid the cash. And
4 so that's why for January, A, I mean, the large amount of
5 proceeds and gain resulted in a very large payment to both
6 California and -- and IRS. And then again, since now this
7 is -- again, this is all your personal taxes, obviously,
8 but these payments now are made directly by you because
9 the controller and company is gone, and now you have the
10 cash as opposed to the company being in the -- in the
11 company account.

12 MR. CAMPBELL: And by the way, I don't want to --
13 we're not trying to confuse anybody between the company
14 and the personal account. I mean, anything -- when he's
15 running the company, it's all invested in the company.
16 That's where his income and money is coming from. So
17 anything paid by company is simply a distribution. And
18 anyway, to just make that clear. But during the period
19 where he's running the company and owning it, that's where
20 the funds are coming from. So that's why it's coming out
21 of that account. Now he sells it, and now we're back --
22 you know, he's paying his -- his taxes.

23 BY MR. CAMPBELL:

24 Q And, again, really working with Deloitte to make
25 sure your returns are done correctly and that you're

1 making proper payment; is that correct?

2 A Yes, that's correct.

3 Q Okay. Thank you. Okay. So in January you made
4 these large payments. And then -- and then again, just --
5 Mr. Han already went through the -- sort of the -- the
6 actual facts. But as you said -- and we went through, you
7 know, the payment due date for a tax year is April 15.
8 And so you made a \$20,000, what's called an extension
9 payment on that date. Again, because your return isn't
10 gonna be filed until later after its prepared. So who
11 would've told -- who told you to make a \$20,000 payment?

12 A Well, I'm sure it's a combination of Deloitte and
13 my controller.

14 Q Well, I think the controller was gone at that
15 point. At this point, you're probably just working --

16 A With Deloitte.

17 Q -- with Deloitte. Yeah. So --

18 A Yes, that's right.

19 Q -- point -- point being is?

20 THE HEARING REPORTER: Sir?

21 MR. CAMPBELL: Yes.

22 THE HEARING REPORTER: Can you both wait for each
23 other to finish your sentences. I'm not getting both of
24 you at the same time.

25 MR. CAMPBELL: Sorry. Let me move this a little

1 closer too.

2 BY MR. CAMPBELL:

3 Q So we we're talking about the \$20,000 payment,
4 which was made in April?

5 A Yes.

6 Q Okay. So now we're in October. And again,
7 returns take -- large returns take a while to prepare.
8 So, at some point, can you just tell -- explain your
9 normal -- or in 2021, if you can recall specifically for
10 that tax year, you know, how you might get -- get the
11 return from Deloitte, review it, and in general what that
12 process looks like, you know, for finalizing the return
13 and reviewing it?

14 A Well, what -- whatever came from Deloitte would
15 be copied to me. I'd look it over and probably okay the
16 controller to make the payment.

17 Q Well, this is -- these are your -- I'm sorry. So
18 is it correct to say that Deloitte provided you with a
19 return prior to October 15, 2022, that you reviewed?

20 A Yes.

21 Q Okay. Great. And again, all of this is just to
22 keep track of and show that you're working with the
23 accountants in a -- in a big accounting firm to tell you
24 what you owe and that you're making payments on time, in
25 fact, early, that are needed to be made. So prior to the

1 October 15th, filing deadline, after the tax had been
2 computed, this is why there was an additional, you know,
3 \$259,000 due in October that you paid on October 11 or 12.
4 And that is late, as we all understand. But again, this
5 is you being diligent working with Deloitte and making
6 these payments as you're being told, you know, how much to
7 pay; right?

8 A Yes.

9 Q Okay. Okay. So now the return for 2021 is
10 filed. It's past October. And then as Mr. Han explained,
11 some notices came. What -- what happened, to your
12 recollection? And I'll just show you the pages from the
13 record that are the two notices. Again, you know, do you
14 recall receiving --

15 A Yes. Well, my standard procedure would be to
16 pass these along to Deloitte and ask them to advise me
17 what's the correct position here; as to pay it, or is it a
18 mistake? And when I -- they -- they advise me, then I
19 would do what they say.

20 Q Were you surprised to see that you owed
21 \$3 million to California shortly after you filed the
22 return?

23 A Yes.

24 Q Okay.

25 A Shocked.

1 Q And that you had overpaid the IRS by about
2 \$2.3 million?

3 A Shocked.

4 Q Okay. So I think when Mr. Han said that he
5 received the FTB notice and then investigated it and then
6 determined what had happened, do you recall that -- those
7 things happening, and then paying the additional
8 \$2.7 million?

9 A Yeah. Vaguely. So much going on in the sale of
10 a company, that I have to say that, you know, I -- I
11 recollect all that stuff, but some of the detail has been
12 lost.

13 Q That's fair. That's understandable. Okay. I
14 guess lastly, just -- again, the point of all of this is
15 again, let you explain your past experience and show that
16 you're diligent and ensuring and doing -- taking all the
17 steps that a reasonable person would take to make sure
18 that you're meeting your tax obligation. In this case,
19 that included making sure you knew how much needed to be
20 paid to both California and the federal government on each
21 payment date, and actually overseeing and delegate -- not
22 delegate, excuse me -- directing those payments to be made
23 or making them yourself; but either way, making those --
24 seeing that those payments were made. And in this case,
25 in particular with those two payments that we're talking

1 about that were mistakenly paid to the IRS, you saw them
2 come out of the account -- the company account?

3 A No. I saw -- I saw the company -- the balance --

4 Q Yes.

5 A -- in the company account.

6 Q Right.

7 A I didn't -- I didn't go deeper than that to see
8 the individual --

9 Q You would have seen the debit. Maybe not the
10 payee is what you're referring to?

11 A Yes.

12 MR. CAMPBELL: Okay. You saw it, and you would
13 have noticed if those amounts hadn't been paid. Okay. I
14 think that's the main piece of information that I wanted
15 to -- that we wanted to provide in testimony.

16 So with that, I will turn it back to regular
17 argument, and I think we could just finish our
18 presentation, and then I think you guys would want to ask
19 questions. That's fine okay. Okay.

20 HEARING OFFICER ELSOM: You have about 25 minutes
21 left for your presentation.

22 MR. CAMPBELL: I thought I wouldn't take the
23 whole hour. Okay. Okay.

24 So we've reviewed the facts and the payments.
25 We've heard from Mr. Swartz. Again, returning to this

1 issue here, the question is, you know, whether these facts
2 and circumstances show that there's reasonable cause to
3 abate this penalty; whether the failure to timely pay
4 these two amounts, which really the fact that we're -- you
5 know, timely pay to the FTB. They were paid on time, but
6 they, unfortunately, were not paid to the FTB. They were
7 paid to the IRS. Whether that failure occurred despite
8 exercising ordinary business care and prudence, and
9 whether an ordinarily intelligent and prudent business
10 person would have acted similarly under the same
11 circumstances.

12 And we submit that the requirement that he
13 exercised ordinary business care and prudence to ensure
14 his taxes are paid on time, as established by the fact
15 that he, in fact, made payments in the correct amounts on
16 the due dates or even before. He was absolutely aware of
17 his obligations to make these payments. He was aware of
18 the amounts that he needed to pay to both the IRS and the
19 FTB on each payment date. There were sufficient funds in
20 the account to make all of the payments. The payments
21 initiated and actually debited from the accounts. There's
22 no dispute. And he checked the bank account regularly as
23 the CEO of the company for the two payments in question,
24 which came out of the company account, obviously. He's
25 checking that regularly; saw the balance go down, which

1 indicated that the payments were made as he intended. And
2 also testified that he would have noticed if these
3 payments had not been made.

4 You know his track record, the nature of the
5 circumstances, managing the enterprise at that time,
6 completely understanding and always being diligent about
7 meeting these obligations and making quarterly payments
8 for, as he said, 50 years. I mean, we can go back many
9 years. I don't know if there's any dispute that you've
10 never had a failure before. Those facts on their own
11 objectively should satisfy the standard of, you know,
12 wouldn't -- wouldn't -- did this occur despite exercising
13 ordinary care and prudence. I think the answer to that is
14 yes.

15 But let's -- you know, we have case law to look
16 at. So we want to line it up with -- with cases. The
17 line of cases that's most analogous here are what we'll
18 call the attempted payment cases. These are in the OTA
19 cases, such as Scanlon, Friedman -- sorry. I'll just get
20 my list -- Lewis. And I think more recently Duino. It's
21 a short case. Yeah. Duino, think. Each of those
22 cases involve -- and -- and again, the FTB's main issue is
23 there's no dispute as to we knew the payments needed to be
24 made that -- in the right amounts, and that they were
25 actually made -- just in this case, made to the wrong

1 agency. So the FTB obviously -- didn't get its money,
2 obviously, the right amount.

3 But there's no dispute that, you know, he was
4 intending to comply and -- and, in fact, payments were
5 made and came out of the account because the FTB got
6 the -- you know, we can see from the transcripts the FTB
7 was paid money. And, you know, there's no dispute to
8 that. But all of these cases Friedman, Scanlon, Lewis,
9 and Duino, these are taxpayers who attempted to initiate
10 payments using Web Pay mainly and failed. So they
11 claim -- they filed claims saying we'd like our penalty
12 abated because we entered the wrong bank account number.
13 Payment didn't go through. We entered the right account
14 number, but that account actually didn't allow debits.
15 Can't withdraw from that account. Okay. And I think
16 another one was also we entered the wrong account number.

17 So in each of those situations -- and by the way,
18 the circumstances of each of those people at the time is
19 different than Mr. Swartz. Most of those were just
20 individual taxpayers who were making their own payments
21 without a lot of complexity anyway, and small payments.
22 But in each of those instances, the facts are we knew how
23 much to pay. We tried to pay. We can show you a
24 screenshot of the FTB Web Pay that says, you know, we're
25 trying to pay, but the money never left the account. And

1 in each case, the OTA's opinion said, we would expect
2 somebody to -- in that situation, to monitor their bank
3 account to make sure payments were made. Okay.

4 Here, we did that. And we have a person who is,
5 for these payments in particular -- and again, these are
6 large payments, sophisticated. Obviously using executives
7 and Deloitte to make sure his obligations are, you know
8 met, and the payments were actually made. He's checking
9 the accounts. He sees if payments are made or not in this
10 case. That's very different from the attempted payment
11 cases where no payment is -- is made. Nobody gets -- the
12 money doesn't leave the account. You would see money not
13 leaving your account. So it's pretty hard to say, you
14 know, hey, excuse me because I entered my bank account
15 number wrong. Okay. Well, you could probably fix that
16 pretty quickly, or you would see the payment didn't go
17 through right away. That's not the case here, right.

18 So we would say that, in my view, looking at
19 those cases just as a barometer and thinking about the
20 facts and circumstances and listening to Mr. Swartz
21 himself, our standard here -- like the penalty -- the law
22 doesn't require perfection. We wouldn't have a penalty
23 abatement provision if there weren't facts and
24 circumstances that justified abatement for reasonable
25 cause. And what does it mean to be an ordinarily

1 intelligent prudent businessperson? In all of the cases,
2 it means that you are aware of your obligations. You are
3 diligent. You take steps to make sure your obligations
4 are met in time. You're paying the right amount. All of
5 those things he did.

6 He, in fact -- he, in fact, paid here. There's
7 no case out there where somebody paid and was penalized.
8 In the normal course you might say, okay, I paid the IRS.
9 I paid the wrong person. I paid the IRS \$2 million when I
10 should have paid the FTB \$2 million. Sounds horrible.
11 Sounds like how could anybody make that mistake? In the
12 normal course you go get the money back from the wrong
13 person, and the IRS actually refunded the money right away
14 at about the same time that the FTB said, hey, you are
15 short \$2.4 million. And that's what happened. And, of
16 course, we're paying interest. You might expect to pay
17 interest on the fact that you're paying late, but is that
18 a penalizable offense here? I would say no. I mean, this
19 is a person who is sitting here before you today telling
20 you that he has spent, you know, every year cognizant and
21 very mindful of his obligations to pay taxes. And he's
22 never had a failure before.

23 I think it's -- lastly, I think it's worth noting
24 that, you know, payments are due on the same day to these
25 agencies. And if you just think about whether somebody

1 might make this mistake -- maybe to us because we're all
2 tax professionals. This is what we do everyday. It might
3 seems strange. But if you put yourself in the shoes of
4 Mr. Swartz, I think you could see how maybe it's quite
5 possible that despite all of those things, and you've got
6 your estimated tax payment information from your
7 accountant, and you go on and you pay the wrong person --
8 again that happened twice in this one year -- it's -- it's
9 possible, and it's not unreasonable.

10 And again, as soon as he found out, got notices
11 from both agencies, paid it right away. We ran it down
12 because it came to us directly, the notices -- well, not
13 directly, excuse me -- forwarded to us from him. It was
14 fixed and paid right away. We were on top of it. And,
15 again, he's astounded it happened. Mortified that it
16 happened, but mistakes happen. And if it didn't happen,
17 we wouldn't be here.

18 And I guess the last thing is, there was -- it's
19 always going to be the case. Excuse me. No disrespect to
20 any colleagues of mine. It's always going to be the case
21 that when a penalty is denied, the government is gonna
22 say, "Hey, with the benefit of hindsight, if you just did
23 this, you wouldn't have made that mistake. How could you
24 make this mistake? Nobody else would make this mistake.
25 It's pretty obvious what happened."

1 Well, that's the point. I mean, there are going
2 to be situations. If that's the standard, then we might
3 not as well be or have a penalty abatement provision
4 because what would ever qualify if we always, from the
5 benefit of hindsight say, "Gee, how could you do that? I
6 wouldn't have done that."

7 But in this case, so what do we ask of people?
8 We ask them to be prudent, diligent, and -- you know, any
9 case that is out there should be, you know, deterring
10 noncompliance. So obviously it makes sense that when
11 people enter their bank accounts wrong -- we have four
12 cases to this affect -- that you'd say, "Gee, I don't know
13 how you could do that."

14 But if we don't want to sit -- you know, have a
15 law out there saying, "Hey, we can just have late payments
16 because you entered" -- I mean, you could see how that
17 would work. Here, he entered -- everything was done
18 correctly. The payment was made to the wrong person, and
19 it happened twice in his lifetime; and it's corrected
20 immediately, and that's where we are. So I think in our
21 case, both objectively and lining up with the cases, and
22 just from a -- you know, again, each case stand on its
23 own. So it's important to look at him and these facts
24 independently of everything. You know, I think we're of
25 the view that this penalty should be abated.

1 And I'll leave it at that.

2 HEARING OFFICER ELSOM: Okay. Thank you very
3 much for your testimony, Mr. Swartz, and also for the
4 presentation.

5 At this time I'd like to turn it over
6 to Franchise -- yes, I'm going to turn it over to the
7 Franchise Tax Board to ask if you'd look to ask Appellant
8 any questions regarding his testimony only.

9 MR. TSAI: No questions. Thank you.

10 HEARING OFFICER ELSOM: Okay. Thank you.

11 And now we'll turn it over to our panel.

12 And, Judge Stanley, do you have any questions for
13 Appellant?

14 JUDGE STANLEY: I just had one question, and it's
15 not about the testimony. You mentioned a couple of cases:
16 Appeal of Scanlon, Friedman, Lewis, and there was one that
17 you said Duino or something, that I don't see in your
18 briefing. Can you spell that.

19 MR. CAMPBELL: Yeah. So apart from this case, it
20 wasn't in the brief, and we just came up on it recently.
21 It was a 2023 decision called, D-U-I-N-O, I think.

22 Do you have that?

23 MR. HAN: So I have the case number, if you would
24 like it. It's Case No. 220410272.

25 MR. CAMPBELL: I think it was a two or three page

1 opinion that just cited Scanlon and Friedman. So it was
2 just another -- we just wanted to get the universe of
3 attempted payment cases in front of you.

4 JUDGE STANLEY: Okay. And I'm just trying to
5 provide our hearing reporter with the information she
6 needs to give us a clean transcript, so thank you. I
7 don't have any questions. Thank you for your
8 presentation.

9 HEARING OFFICER ELSOM: I'd like to turn this
10 over to Judge Turner.

11 Do you have any questions for Appellant?

12 JUDGE TURNER: I don't at this time. Thanks.

13 HEARING OFFICER ELSOM: I did have just a couple
14 questions, mainly clarifying questions for Mr. Swartz.
15 Can you clarify what do you mean specifically by boot
16 strapping, and maybe provide a little bit more context as
17 to why you make your individual tax payments through the
18 entity, the S corporation that you own.

19 MR. SWARTZ: Yes. By boot strapping, what I mean
20 is that the company self-funds its own growth through
21 profits -- its own profits. And that -- that doesn't
22 happen anymore, but that was the way I wanted to grow the
23 company slower than maybe it could have been. But we
24 never had other investors. We never had bank loans. Our
25 growth was funded by the profits of the company. And the

1 advantage of that for me personally is my equity isn't
2 diluted. So I had pretty tight control over the company.
3 But with that philosophy, it -- it is incumbent on me is
4 to watch everything pretty carefully, including our tax
5 payments and our bank balances. And --

6 HEARING OFFICER ELSOM: And can you just maybe
7 briefly explain why you chose to make the payments on your
8 individual account through this entity, or chose to
9 instruct the controller to do that for you.

10 MR. SWARTZ: Yeah. I just instructed the
11 controller to do that. There was a company account, which
12 was 2021, and then 22 -- 2022 payments would have been my
13 personal account because the company had been sold.

14 HEARING OFFICER ELSOM: Okay.

15 MR. CAMPBELL: I think, Mr. Swartz, just help
16 answer that question, if I may ask. He's asking why for
17 when you owned the company and during 2021, for example,
18 you were making the personal tax payments out of the
19 company account and the boot -- and how that related to
20 the bootstrapping. Which I think you were testifying
21 earlier is that because this company is -- no outside
22 funds. It's just whatever you're earning is going into
23 this account, and all the payments that you're making to
24 run the company, payroll, is coming out of the account.
25 And it's also your source of income and cash. Because

1 anything that you are making personally is generated by
2 the business you're running.

3 So if there's the money in the company, at that
4 point in time, which would otherwise get distributed to
5 you so you could then make payments personally, which is
6 often, you know the case. In this case, those payments
7 were just being made directly out of the company, which is
8 fine. It just eliminates a stop. And then when the
9 company is sold, now you have all the cash in your account
10 as opposed to, sort of, your cash is in the company
11 account from running a business.

12 That's what I think what you're asking.

13 HEARING OFFICER ELSOM: I think -- yes. I think
14 that sufficiently answers the question.

15 And then just one more follow-up question. Did
16 you have discussion regarding the specific amounts that
17 were due to the Franchise Tax Board with the controller,
18 or with Deloitte, or anyone that assisted you with the
19 payment? And maybe if you can describe how that payment
20 was actually made. I believe you had mentioned that you
21 were present during the payment, or had instructed the
22 payment to be made. Were you actually in the room with
23 the controller, or did you just instructs him, you know,
24 through some other means, maybe email or phone call? Or
25 can you provide some context there?

1 MR. SWARTZ: We were in an adjoining offices. So
2 I would see him constantly during the day as he was
3 passing, or I was passing his office. And I'm sure there
4 was a discussion about taxes being -- so we were very,
5 very close. So I -- I knew what was going on, but we'd
6 done it so many times successfully, that I didn't take --
7 I don't know -- extensive time to go over the details. He
8 had a job to do like several of my other managers, and I
9 trusted him to do the right thing once we had the numbers
10 from Deloitte.

11 HEARING OFFICER ELSOM: All right. Thank you,
12 Mr. Swartz.

13 Did you want to add anything Mr. Campbell?

14 MR. CAMPBELL: I'm thinking.

15 HEARING OFFICER ELSOM: We can return. We'll
16 have follow-up questions --

17 MR. CAMPBELL: Okay.

18 HEARING OFFICER ELSOM: -- or potential for
19 follow-up questions.

20 And Judge Stanley had one additional question, I
21 believe, as well.

22 JUDGE STANLEY: Yes. I forgot to ask that
23 because I got caught up with the case law. Sorry about
24 that.

25 Mr. Swartz, you did testify that you checked the

1 accounts. But I think you said that you checked it to
2 make sure that you had a balance that could accommodate
3 your payroll and all the other things that you had to pay.
4 Did you specifically check to make sure that the tax
5 payments had been deducted from the account?

6 MR. SWARTZ: Well, I could tell from the level of
7 the account that tax payments had been made. But I didn't
8 go -- with the million other things a CEO has to do, I
9 didn't go into the specific payments, the specific debits
10 of the account. I -- I was looking at what's left, and is
11 that sufficient to pay payroll, accounts payable, and so
12 forth in the future.

13 JUDGE STANLEY: So are you saying that you
14 verified that the tax payments were made, but not to who
15 and whether they went to the right organization?

16 MR. SWARTZ: Yes. Exactly.

17 JUDGE STANLEY: Okay. Thank you.

18 HEARING OFFICER ELSOM: Thank you.

19 And at this time I'd like to turn it over
20 Franchise Tax Board for your presentation. You have 15
21 minutes, and you may begin whenever you are ready.

22 MR. TSAI: Thank you, Judge.

23

24 PRESENTATION

25 MR. TSAI: Good morning. My name is Charles

1 Tsai, along with my co-counsel, Jaclyn Zumaeta. I
2 represent Respondent Franchise Tax Board.

3 There's only one issue in this appeal, whether
4 Appellant has shown reasonable cause to abate the late
5 payment penalty imposed for the 2021 tax year. For the
6 212120 -- excuse me -- for the 2021 tax year, Appellant
7 was required to pay the full amount of tax due by
8 April 15th, 2022. It is undisputed that Appellant
9 underpaid the tax due as of that date. Respondent's
10 calculation of a late payment penalty is also undisputed.
11 Appellant acknowledges his failure to pay in the briefs,
12 quote, "True. The FTB did not get the amount it was owed
13 on time," end quote. That's at Appellant's reply brief at
14 page 3, line 3. It's also supported by today's testimony.
15 Therefore, the late payment penalty was properly imposed
16 in this case.

17 Over seven months after the deadline, Respondent
18 received payment of Appellant's tax liability on
19 November 23rd, 2022. On January 20, 2023, Appellant made
20 a payment for the outstanding balance. The late payment
21 penalty will be abated if a taxpayer shows that the
22 failure to make a timely -- excuse me -- to make a timely
23 payment of tax was due to reasonable cause and was not due
24 to willful neglect. To establish reasonable cause, a
25 taxpayer must show that the failure to make a timely

1 payment occurred despite the exercise of ordinary business
2 care and prudence. The taxpayer bears the burden of
3 proving that an ordinary intelligent and prudent business
4 person would have acted similarly under the same
5 circumstances.

6 In this case, precedential OTA opinion support
7 that Appellant has not established reasonable cause.
8 Appellant contends that his controller mistakenly made two
9 estimated tax payments to the IRS that were intended for
10 FTB. However, in the Appeal of Friedman, the OTA held
11 that the failure to timely remit a tax payment due to an
12 error or oversight does not by itself constitute
13 reasonable cause. Moreover, it's well settled that
14 taxpayers have a nondelegable duty to timely pay their
15 taxes, and reliance upon an accountant or controller is
16 not reasonable cause.

17 Appellant argues that he exercised ordinary
18 business care and prudence. He asserts the following: He
19 made payments in the correct amounts on the due dates; he
20 was aware of his obligations and the amounts due to the
21 IRS and FTB; his accountant had sufficient funds to make
22 all the payments; and the fact that he initiated the
23 payments and the funds were debited from the account
24 indicated to him that he had satisfied his obligations.

25 However, despite all this, in Friedman, the OTA

1 explained the taxpayers are expected to monitor their bank
2 accounts to determine whether payment has been
3 successfully remitted. Moreover, in Appeal of Scanlon,
4 the OTA held that reasonably prudent taxpayers exercising
5 due care and diligence are expected to monitor their bank
6 account and quickly ascertain whether a scheduled payment
7 to FTB was, in fact, paid.

8 In this case, if Appellant had checked and
9 monitored the bank account, he could have confirmed funds
10 were not only withdrawn but also, the correct payments
11 were received by the correct taxing agency. Appellant
12 acknowledges this in the briefs, quote, "True. If he
13 checked to make sure each agency received the right
14 payment, there would not have been a failure or penalty,"
15 end quote. That's at Appellant's reply brief at page 5,
16 lines 11 and 12. Testimony today only supports this.
17 There's no evidence showing Appellant made any effort to
18 verify the accuracy of the reported payments prior to
19 filing his return as well. The exercise of ordinary
20 business care and prudence in filing a return would
21 include confirming the amount reported on their return as
22 having been paid.

23 Appellant asserts that, upon being notified of
24 the underpayment in November 2022, he promptly paid the
25 amount due. However, a taxpayer's actions fall in the

1 initial error that cause nonpayment does not amount to
2 reasonable cause to abate the late payment penalty. The
3 cases that Appellant relies upon in the briefing are
4 non-precedential and distinguishable. First, in the
5 Appeal of Dermatology Management, LLC, the case involves
6 unique circumstances, specifically, multiple ownership
7 changes that required three returns for short reporting --
8 reporting periods. There was uncertainty regarding the
9 year ends and the due dates.

10 The OTA in that case noted that under the usual
11 calendar year reporting, taxpayer's returns and payments
12 would have been timely. Here, in Appellant's case,
13 there's no evidence of any unique circumstances.
14 Appellant alleges that the sale of his company was unique
15 circumstance. However, there was no uncertainty regarding
16 the deadlines for his payments or the return.

17 The second case in Appeal of Paradigm Publishing,
18 Inc., involved an extraordinary event. Specifically,
19 three S corporations sold assets to a buyer and gave the
20 buyer the right to allocate the purchase price among the
21 assets. This lead to the complex nature of calculating
22 the tax liability because of the purchase price
23 allocation. Here in Appellant's case, there was no
24 extraordinary event or complexity in calculating
25 Appellant's tax liability. In the briefing and in today's

1 testimony, Appellant makes assertions regarding his tax --
2 his filing and payment history. However, prior filing and
3 payment history is not applicable to tax years prior to
4 2022. California's one-time abatement statute is only
5 available for tax years beginning January 1st, 2022.

6 There's an argument that the law doesn't require
7 perfection, but it requires reasonable cause. Appellant
8 has failed to meet this burden to show reasonable cause to
9 abate the late payment penalty. Accordingly, Respondent
10 requests that OTA sustain Respondent's action denying the
11 claim for refund.

12 I'm happy to answer any questions that the panel
13 may have. Thank you.

14 HEARING OFFICER ELSOM: Thank you for your
15 presentation, Mr. Tsai.

16 And now I'd like to turn it over to our panel for
17 any questions.

18 Judge Stanley, do you have any questions for the
19 Franchise Tax Board?

20 JUDGE STANLEY: I just have one. If the panel
21 were to find reasonable cause for the misapplied estimate
22 payments, what is the Franchise Tax Board's position with
23 respect to the \$259,731 paid on October 11th, 2022?

24 MS. ZUMAETA: So if the panel were to find
25 reasonable cause as to the remainder of those payments,

1 then I think both sides have conceded that that payment
2 was late, the \$259,000. So what we would need to do is
3 compute the penalty that would be due on that \$259,000.
4 And that would be -- the amount of the claim would be
5 reduced by that amount.

6 JUDGE STANLEY: Thank you.

7 HEARING OFFICER ELSOM: Thank you, Judge Stanley.

8 And, Judge Turner, do you have any questions for
9 the Franchise Tax Board?

10 JUDGE TURNER: I do not.

11 HEARING OFFICER ELSOM: Okay. Now, I'd like to
12 turn it over to Appellant for your final closing remarks.
13 You have five minutes to present, and you may begin
14 whenever you're ready.

15 MR. CAMPBELL: Okay. Thank you, Judge.

16

17 CLOSING STATEMENT

18 MR. CAMPBELL: Yes, this is short. I think I
19 just want to make a couple of points.

20 Just -- one, we are not -- they're not making any
21 argument here or asking for reasonable cause based on
22 complexity of anything, which are like the Dermatology
23 Management cases and Paradigm. So that's absolutely not
24 anything that we're asking for. I just want to make that
25 clear for the record. The issue is here solely whether,

1 you know, based on the facts and circumstances, you know,
2 knowing the amounts to be paid, having sufficient funds,
3 actually paying the amounts required to be paid. So we
4 have evidence of intent and actual execution of making
5 payments. But unfortunately, two of those were made to
6 the wrong agency.

7 It's under those circumstances. No complexity
8 involved. And -- and we're just asking that when you sit
9 here and look at each case on its own and hear Mr. Swartz
10 and that he's very diligent, a very prudent person, you
11 know, to ensure that his tax obligations are always met.
12 And again, if we had one time abatement, we'd probably be
13 entitled to that. Unfortunately, we don't. So does this
14 meet the regular test of, you know, would an ordinarily --
15 would he act as an ordinarily prudent person? I think the
16 answer yes, and I think that's what his testimony
17 establishes.

18 Lastly, I would again just say -- again, just
19 hearing the concept of willful neglect, right. I mean
20 penalties generally are there to deter noncompliance. So
21 willful neglect is part of the language, right. No
22 willful denial. There's no question that there's no
23 willful neglect here. There's no negligence. You know,
24 there's a mistake, and mistakes happen. And with the
25 benefit of hindsight, what I heard the agency say is

1 exactly what I think is, at that at the end of the day,
2 what this case is about.

3 I understand that I'm looking at my bank account
4 and seeing balances go down, and understand that \$2
5 million needs to be paid, and I can see that it's paid.
6 Did I pay the wrong person? Yeah. Should I have seen
7 that, as we said in our briefs, yeah. If had seen that,
8 it would not have happened in the first place. Is that a
9 reasonable mistake that could be made? In the
10 circumstances, it was made.

11 Is it reasonable to excuse the penalty? You
12 know, we're paying interest on it, obviously. But is it
13 reasonable to excuse the penalty? That's what this is
14 about, and we say it is. And the reason it's different
15 from the attempted payment cases is because obviously
16 payment was, in fact, made. And I think that's really
17 important here.

18 I'll leave it at that.

19 HEARING OFFICER ELSOM: Thank you, Mr. Campbell.

20 I did have one final follow-up question, and this
21 is specifically for you, Mr. Swartz. Can you explain
22 again the previous time frame for when the controller
23 assisted you with payments. I know it was a number of
24 decades. I believe you said you'd worked with the same
25 controller. And did that controller or the tax preparer

1 ever explain how estimated tax payments worked and how
2 they're calculated? And, you know, are you basically
3 familiar with why estimated tax payments are made?

4 MR. SWARTZ: Yes. I always had a controller in
5 the company. A controller at this point in time, which is
6 '21, '22, was relatively new. But I understood, you know,
7 what his normally do and when. And like the several other
8 people I managed, the department managers, I had to have a
9 little trust that when we agreed on something it would be
10 executed properly, and that trust was violated.

11 Did I answer your question?

12 HEARING OFFICER ELSOM: I believe so. Thank you,
13 Mr. Swartz.

14 And with that, I believe we are ready to close
15 the record today.

16 I would like thank both parties for your
17 presentations.

18 The panel of three here today will meet to decide
19 the case based on the arguments and the evidence that's
20 been provided. We will issue our written decision no
21 later than 100 days from today's date. This case is
22 submitted, and the record is now closed.

23 This concludes the hearing for the Appeal of
24 Swartz.

25 Thank you, everyone.

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(Proceedings concluded at 10:46 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 November, 2025.

ERNALYN M. ALONZO
HEARING REPORTER