

BEFORE THE OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. MIDDLEBROOK,) OTA NO. 241017682
)
)
 APPELLANT.)
)
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_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS
State of California
Wednesday, February 18, 2026

Reported by:

CHRISTINA RODRIGUEZ
CSR No. 14898

JOB No. :
60788OTA(C)

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

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6 J. MIDDLEBROOK,)
7 APPELLANT.) OTA NO. 241017682
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14 Transcript of Proceedings, taken at 400 R Street,
15 Sacramento, California, 95811, commencing at 1:03 p.m.
16 and concluding at 1:20 p.m. on Wednesday, February 18,
17 2026, reported by Christina L. Rodriguez, CSR No.
18 14898, a Certified Shorthand Reporter in and for the
19 State of California.
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APPEARANCES :

Panel Lead: AMANDA VASSIGH
Panel Members: VERONICA LONG
L. KATRINE SHELTON
For the Appellant: GREG SCHMIDT
For the Respondent: BRAD COUTINHO
ELLEN SWAIN

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 through 5 were received on page 6.)

(Department's Exhibits A through G were received on page 6.)

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

	PAGE
By Mr. Schmidt	7
By Ms. Coutinho	12

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

	PAGE
By Mr. Schmidt	16

1 Sacramento, California; Wednesday, February 18, 2026

2 1:03 p.m.

3
4
5 JUDGE VASSIGH: We are going on the record.

6 This is the Appeal of Middlebrook, OTA Case
7 No. 241017682. The date is February 18, 2026, and the
8 time is one 1:04 p.m. This hearing is being held in
9 Sacramento, California.

10 I am Judge Vassigh, I will be the lead for the
11 purpose of conducting this hearing. My co-panelist
12 Judge Long and Judge Shelton and I are equal
13 participants in deliberating and determining the outcome
14 of this appeal.

15 I'm going to ask the parties to identify
16 themselves on the record and who they represent,
17 starting with FTB, Franchise Tax Board.

18 MR. COUTINHO: Good afternoon. Brad Coutinho
19 representing the Respondent, Franchise Tax Board.

20 MS. SWAIN: Good afternoon. My name is Ellen
21 Swain, and I also represent the Franchise Tax Board.

22 JUDGE VASSIGH: Thank you.

23 Appellant.

24 MR. SCHMIDT: Greg Schmidt representing
25 Middlebrook.

1 JUDGE VASSIGH: Thank you.

2 As stated in the minutes and orders the,
3 parties have agreed that the issue to be decided in this
4 appeal is whether the statute of limitations bars
5 Appellant's claim for refund for the 2019 tax year.

6 So let's talk about the exhibits in this case.
7 FTB submitted Exhibits A through G, and Appellant did
8 not object to the admissibility of these exhibits;
9 therefore, A through G are now admitted into evidence.

10 (Respondent's Exhibits A through G were
11 admitted into evidence.)

12 JUDGE VASSIGH: And Appellant submitted A
13 through D, which we will rename Exhibits 1 through 5 as
14 instructed in the minutes and orders and after our
15 prehearing conference. That is just in keeping with OTA
16 regulations and keeps us from getting confused when
17 referencing.

18 So A through D now 1 through 5. FTB did not
19 object to the admissibility to these exhibits; therefore
20 Exhibits 1 through 5 are now admitted into evidence.

21 (Appellant's Exhibits 1 through 5 were
22 admitted into evidence.)

23 JUDGE VASSIGH: Mr. Schmidt, you also
24 submitted a documentation entitled "Clarification of Due
25 Date." This will not be admitted as a brief since

1 briefing has closed, and it will not be permitted as an
2 exhibit since it is legal argument. But you are very
3 welcome to make those arguments and points in your
4 presentation.

5 MR. SCHMIDT: Okay.

6 JUDGE VASSIGH: Okay. You indicated,
7 Mr. Submit, that you will be testifying as a witness.
8 So before we begin your presentation, I will place you
9 under oath so we can consider your factual statements as
10 testimony. You will remain under oath until the close
11 of this hearing.

12 So please raise your right-hand.

13
14 GREG SCHMIDT,
15 Produced as a witness, and having been first duly sworn
16 by The Administrative Law Judge, was examined and
17 testified as follows:

18 MR. SCHMIDT: I do.

19 JUDGE VASSIGH: Thank you. Mr. Schmidt,
20 whenever you're ready, you may begin your 10-minute
21 presentation.

22 MR. SCHMIDT: Thank you. Is it too late to
23 submit a exhibit for reference for this hearing?

24 JUDGE VASSIGH: Can you tell me about the
25 exhibit?

1 MR. SCHMIDT: The exhibit is the IRS Notice
2 2020-23, which specifies exactly what the due date was
3 and the intent was by the IRS in this matter, because
4 it's a very unique situation. And so the issue is
5 clarifying this due date, and that's what the whole
6 hearing is about. So --

7 JUDGE VASSIGH: Was that included in your
8 clarification --

9 MR. SCHMIDT: No. Actually, it's not, because
10 what happened is I was superceded by another document --
11 this was superceded to another -- that document. So
12 this is a newer one that came out that, basically, on
13 point says here is what the definition is.

14 JUDGE VASSIGH: Since it is a legal document
15 more than factual, I will not admit it. But you can
16 refer to it, and Franchise Tax Board can look it
17 up -- they can refer to it completely, then we'll have
18 whatever information you want.

19 MR. SCHMIDT: Wonderful.

20 JUDGE VASSIGH: The same as if you were citing
21 a case.

22 MR. SCHMIDT: Okay.

23 JUDGE VASSIGH: Okay. So whenever you are
24 ready, it is 1:07.

25 ///

1 taxpayer's required to perform a tax-related act by a
2 due date falls within a postponement period, effecting
3 taxpayer's eligible for postponement at the time to
4 perform the act until the last day of the period, which
5 would be July 15th.

6 And analyzing in intent, it was clear that
7 under these circumstances, there was a whole new due
8 date created due to the pandemic, and now the actual due
9 date of these returns was July 15th.

10 And then the -- under this notice I written on
11 2020-23, this issue on April 9th, 2020, under the
12 Emergency of Declaration of the Stanford Act in regard
13 to the ongoing issue, and it basically states that it
14 postpones all time-sensitive actions for taxpayers.

15 And so this 2023, which I have a copy -- I'd
16 be glad to share with the FTB -- on page 8, it very
17 clearly spells out that the effected taxpayers have
18 until July 15th, 2020, to perform all specified-time
19 sensitive actions that are due to be performed on or
20 before April 1st or July 15th.

21 This relief includes the time for filing
22 petitions with the tax court, review a decision by the
23 tax court, or filing a claim for refund or any refund of
24 any tax.

25 So, basically, the State -- and they cited the

1 case of Galeski, Barbie Galeski Estate, as their
2 precedent for saying that the statute ran. And the
3 problem in the Galeski case is it had nothing to do with
4 any postponements of any dates. It was purely a
5 statutory failure.

6 And I believe it's inapplicable in in this
7 situation, because we have a modified due date and a
8 filing that was within this period. So to me, it's
9 pretty clear it was filed timely.

10 So that's it.

11 JUDGE VASSIGH: Thank you, Mr. Schmidt.

12 I'd like to check in with my co-panelist and
13 see if anyone has questions for you.

14 Judge Long?

15 JUDGE LONG: I have no questions at this time.
16 Thank you.

17 JUDGE VASSIGH: Judge Shelton?

18 JUDGE SHELTON: Thank you. Yes, I just have a
19 couple of small questions. I apologize, I did not hear
20 which notice you were referring to. Could you please
21 restate the notice number?

22 MR. SCHMIDT: The IRS Notice No.?

23 JUDGE SHELTON: Correct.

24 MR. SCHMIDT: Yeah. It's IRS Notice No -- it
25 says Notice 2020-23, and it is -- it says update to

1 notice 2018 that was issued, and it's a 10-page decision
2 by the IRS.

3 JUDGE SHELTON: Okay. Thank you for
4 clarifying. And were you reading from the Statute Code
5 Section 7508A, from the IRS' notice? Or were you
6 reading a version that's independent from IRS' notice?

7 MR. SCHMIDT: The first one I read was the
8 cite of 301 that talked about -- and the second one was
9 from -- last one was from the notice on page 8. When I
10 said page 8, that was from the IRS Notice 2020-23.

11 JUDGE SHELTON: Okay. Thank you. Thank you
12 for clarifying.

13 Nothing further.

14 JUDGE VASSIGH: Thank you, Judge Shelton.

15 We are ready for Franchise Tax Board's
16 presentation. You have 10 minutes, when you are ready.

17

18 PRESENTATION

19 MR. COUTINHO: Thank you, Judge.

20 Good afternoon. In this appeal, Appellant
21 filed it's claim for refund for the 2019 tax year after
22 the statute of limitations expired on June 13, 2024.

23 Based on the precedential opinions from the
24 Office of Tax Appeals, Appellant is not entitled to a
25 refund and or credit for the 2019 tax year. Appellant

1 timely filed her 2019 California tax return in March
2 2020, reporting the total tax of approximately 5,000
3 that was timely made.

4 Subsequently, Appellant filed an amended tax
5 return in June of 2024 that reported additional
6 California income tax withholdings that resulted in an
7 overpayment of approximately \$6,000.

8 Franchise Tax Board made minor adjustments in
9 the process of Appellant's amended return which
10 reflected an overpayment for the 2019 tax year.
11 However, due to the statute of limitations, Franchise
12 Tax Board did not issue a refund and or credit, and
13 Appellant then filed a timely appeal.

14 In this case, the central issue is whether the
15 four-year statute of limitations period, which began on
16 April 15th, 2020, for as Appellant erroneously contends
17 on July 15th, 2020, due to the Covid-19 pandemic.

18 Appellant has cited to a couple of IRS'
19 notices. In briefing, the IRS Notice 2023-21, and then
20 today, IRS Notice 2020-18 -- 23. That states that
21 Covid-19 changed the due date to July 15 for the 2019
22 tax year.

23 However, specifically, IRS Notice 2023-21
24 states that under Treasury Regulation
25 301.7508(a)(1)(b)(4), that the postponement of time due

1 to disaster to perform that is not an exception of the
2 due date of the act.

3 Importantly, the Office Of Tax Appeals has
4 issued a precedential opinion on this specific topic in
5 the Appeal of Wynn. In the Appeal of Wynn, the taxpayer
6 filed an untimely tax return for the 2019 tax year
7 unpaid in May 2024.

8 The taxpayers swore to appellant are due to
9 the statute of limitations period should be extended to
10 July 2024 due to Covid-19. However, the OTA citing to
11 the same regulation referenced in IRS Notice 2023-21
12 stated that the postponement period does not change the
13 due date of the return; and as such, the four-year
14 statute of limitations period expired on April 15th,
15 2024, not July 15th, 2024.

16 And, thus, Appellant's claim for refund in
17 Wynn was untimely. Similar, Appellant's claim was filed
18 on June 13, 2024; and, therefore, is untimely under the
19 four-year statute of limitations period, because it
20 expired on April 15th, 2024.

21 As such, Respondent requests that it'd be
22 sustained in this matter. I'm happy to address any
23 questions or concerns the panel may have. Thank you.

24 JUDGE VASSIGH: Thank you, Mr. Coutinho. I'm
25 going to turn to my co-panelist.

1 Judge Long, do you have any questions?

2 JUDGE LONG: I have no questions. Thank you.

3 JUDGE VASSIGH: Thank you.

4 And, Judge Shelton, do you have any questions?

5 JUDGE SHELTON: Yes, I do.

6 Mr. Coutinho, when FTB provided it's brief to
7 OTA in December 13th, 2024, there were two opinions out
8 there available -- publically available opinions that
9 analyze Code Section 7508A.

10 Those opinions are Adobe Commissioner with the
11 cite at 162 T.C. 148; and *Huong v. the United States*, a
12 Court Federal Claims case with the citation of 179 Fed.
13 Cl. 32.

14 Do either of these opinions impact FTB's
15 analysis at all in this case?

16 MR. SCHMIDT: Unfortunately, I haven't
17 reviewed those two opinions. I'm happy to submit
18 additional briefing if the Office of Tax Appeals request
19 it regarding those two Federal opinions.

20 JUDGE SHELTON: I believe that we will do so.
21 OTA will request that.

22 MR. COUTINHO: Okay. That's fine.

23 JUDGE VASSIGH: Thank you.

24 I'm going to turn to Mr. Schmidt. You have
25 five to 10 minutes for your rebuttal.

1 ///

2 CLOSING STATEMENT

3 MR. SCHMIDT: Thank you.

4 The State keeps saying that the statute of
5 limitations ran -- it is assuming the date was April
6 13th when -- if there was no pandemic, that that would
7 absolutely be true, and I'm not denying that fact.

8 But the key issue, again, is a matter of
9 semantics -- what's the, quote, "due date"? And it's
10 pretty clear that this due date was modified from April
11 to July, and we have a new due date.

12 So to refer back and say that the four years
13 runs from the due date of April 15th is a nonsensical
14 argument. And there's no logic to that argument, in my
15 opinion, because that due date is no longer a due date.
16 The due date is July 15th. It's not April 15th, as it's
17 alleged.

18 There's also a really good case I'd like to
19 bring to the attention of the Court, which is
20 R. Pomrehn case, it's OTA Case No. 240215270.

21 And in that case -- it's a very similar
22 case -- where the -- applied for a refund, and the State
23 said "No. It was not untimely,." And the OTA reversed
24 that and said, "Yes. It was timely," because it was
25 made within the postponement period. And so, therefore,

1 it was valid.

2 So, again, it's a matter of semantics we're
3 talking about here. What is the, quote, "due date"?
4 And I'm saying that, you know, it would seem to me that
5 the whole logic of this extension was to change things.
6 'Cause, like I mentioned before, if there's no due date,
7 then the four years applies.

8 But we have a pandemic, which modified
9 everything. And so therefore, the new due date is July
10 15, and the filing in June was timely.

11 JUDGE VASSIGH: Thank you, Mr. Schmidt.

12 We've had a request to keep the record open
13 for additional briefing. Mr. Schmidt, do you object to
14 that?

15 MR. SCHMIDT: I'm sorry, what was that?

16 JUDGE VASSIGH: Do you object to keeping the
17 record open for additional briefing?

18 MR. SCHMIDT: No objection.

19 JUDGE VASSIGH: Great. So we will hold the
20 record open for additional briefing on the issue of
21 updated materials.

22 Yes, Mr. Coutinho?

23 MR. COUTINHO: Is it possible to get those
24 citations in the minutes and orders?

25 JUDGE VASSIGH: Absolutely.

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MR. COUTINHO: Thank you.

JUDGE VASSIGH: So FTB will have 30 days to file an additional brief. I will send you an order with the exact questioning and citations.

And Mr. Schmidt, you will also have 30 days after receipt of FTB's additional brief to respond to that.

We are going to hold the record open for that additional briefing following the additional briefing period. OTA will close the record and issue a written opinion within 100 days.

This hearing is concluded and the record is held open with the cases submitted today on February 18th. I'd like to thank everyone for participating today. Today's hearing in the Appeal of Middlebrook is now concluded. Thank you.

(The proceeding concluded at 1:20 p.m.)

1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

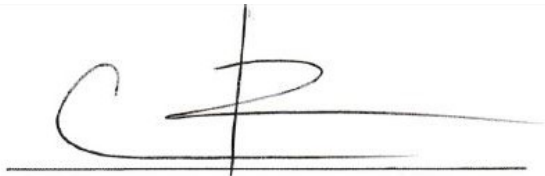
5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand,
10 which was thereafter transcribed under my direction;
11 that the foregoing transcript is a true record of the
12 testimony given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript [] was [] was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of
19 any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: March 30, 2026

23 A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a vertical stroke that crosses the line.

<hr/> \$ <hr/>	2020 10:11,18 13:2,16,17	<hr/> 7 <hr/>	AMANDA 3:3
\$6,000 13:7	2020-18 13:20	7 4:9	amended 9:8 13:4,9
<hr/> 1 <hr/>	2020-23 8:2 10:11 11:25 12:10	7508A 12:5 15:9	analysis 15:15
1 4:4 6:13,18,20,21	2023 10:15	<hr/> 8 <hr/>	analyze 15:9
10 12:16 15:25	2023-21 13:19,23 14:11	8 10:16 12:9,10	analyzing 10:6
10-minute 7:20	2024 9:5,9,11 12:22 13:5 14:7, 10,15,18,20 15:7	<hr/> 9 <hr/>	apologize 11:19
10-page 12:1	2025 9:9	95811 2:15	appeal 2:5 5:6,14 6:4 12:20 13:13 14:5 18:15
100 18:11	2026 2:17 5:1,7	9th 10:11	Appeals 2:1 12:24 14:3 15:18
11th 9:11	23 13:20	<hr/> A <hr/>	APPEARANCES 3:1
12 4:10	240215270 16:20	absolutely 16:7 17:25	appellant 2:7 3:5 5:23 6:7,12 12:20, 24,25 13:4,13,16, 18 14:8
13 12:22 14:18	241017682 2:6 5:7	accountant 9:10	appellant's 4:4 6:5,21 13:9 14:16, 17
13th 9:5 15:7 16:6	<hr/> 3 <hr/>	act 10:1,4,12 14:2	applied 16:22
148 15:11	30 18:2,5	actions 10:14,19	applies 17:7
14898 2:18	301 12:8	actual 10:8	approximately 13:2,7
15 13:21 17:10	301.7508(a)(1)(b) (4) 13:25	additional 13:5 15:18 17:13,17,20 18:3,6,9	April 9:14 10:11, 20 13:16 14:14,20 16:5,10,13,16
15th 9:9,14 10:5,9, 18,20 13:16,17 14:14,15,20 16:13,16	3017508(a) 9:21	address 14:22	area 9:17
16 4:14	32 15:13	adjustments 13:8	argument 7:2 16:14
162 15:11	<hr/> 4 <hr/>	Administrative 7:16	arguments 7:3
179 15:12	400 2:14	admissibility 6:8, 19	assuming 16:5
18 2:16 5:1,7	<hr/> 5 <hr/>	admit 8:15	attention 16:19
18th 18:14	5 4:4 6:13,18,20,21	admitted 6:9,11, 20,22,25	<hr/> B <hr/>
1:03 2:15 5:2	5,000 13:2	Adobe 15:10	back 9:12 16:12
1:04 5:8	<hr/> 6 <hr/>	afternoon 5:18, 20 12:20	Barbie 11:1
1:07 8:24	6 4:4,6	agreed 6:3	bars 6:4
1:20 2:16 18:17		alleged 16:17	
1st 10:20			
<hr/> 2 <hr/>			
2018 12:1			
2019 6:5 12:21,25 13:1,10,21 14:6			

Based 12:23
basically 8:12
 9:3,15,20,25
 10:13,25

began 13:15

begin 7:8,20

Board 5:17,19,21
 8:16 13:8,12

Board's 12:15

Brad 3:6 5:18

briefing 7:1 13:19
 15:18 17:13,17,20
 18:9

bring 16:19

C

California 2:2,15,
 19 5:1,9 13:1,6

case 5:6 6:6 8:21
 9:4 11:1,3 13:14
 15:12,15 16:18,
 20,21,22

cases 9:19 18:13

central 13:14

Certified 2:18

change 9:21
 14:12 17:5

changed 13:21

check 11:12

Christina 2:17

circumstances
 10:7

citation 15:12

citations 17:24
 18:4

cite 12:8 15:11

cited 10:25 13:18

citing 8:20 14:10

CI 15:13

claim 6:5 10:23
 12:21 14:16,17

claiming 9:20

Claims 15:12

clarification 6:24
 8:8 9:6

clarifying 8:5
 12:4,12

clear 10:6 11:9
 16:10

close 7:10 18:10

closed 7:1

CLOSING 4:12
 16:2

co-panelist 5:11
 11:12 14:25

Code 12:4 15:9

commencing
 2:15

Commissioner
 15:10

completely 8:17

concerns 14:23

concluded 18:12,
 16,17

concluding 2:16

conducting 5:11

conference 6:15

confused 6:16

contends 13:16

copy 10:15

Correct 11:23

couple 11:19
 13:18

court 10:22,23
 15:12 16:19

Coutinho 3:6
 4:10 5:18 12:19
 14:24 15:6,22
 17:22,23 18:1

Covid-19 13:17,
 21 14:10

CPA 9:6

created 10:8

credit 12:25 13:12

CSR 2:17

D

date 5:7 6:25 8:2,5
 9:16,22 10:2,8,9
 11:7 13:21 14:2,
 13 16:5,9,10,11,
 13,15,16 17:3,6,9

dates 11:4

day 10:4

days 18:2,5,11

deadline 9:21

December 15:7

decided 6:3

decision 10:22
 12:1

Declaration
 10:12

define 9:16

definition 8:13

deliberating 5:13

denying 16:7

department's 4:5

determining 5:13

disaster 14:1

discussion 9:17

document 8:10,
 11,14

documentation
 6:24

due 6:24 8:2,5
 9:16,21 10:2,7,8,
 19 11:7 13:11,17,
 21,25 14:2,8,10,

13 16:9,10,11,13,
 15,16 17:3,6,9

duly 7:15

E

effected 9:25
 10:17

effecting 10:2

eligible 10:3

Ellen 3:7 5:20

Emergency
 10:12

entitled 6:24 9:13
 12:24

equal 5:12

erroneously
 13:16

Estate 11:1

evidence 6:9,11,
 20,22

exact 18:4

examined 7:16

exception 14:1

exhibit 7:2,23,25
 8:1

exhibits 4:4,5 6:6,
 7,8,10,13,19,20,
 21

expired 12:22
 14:14,20

extended 14:9

extension 17:5

F

fact 16:7

factual 7:9 8:15

failure 11:5

falls 10:2

February 2:16
5:1,7 9:5 18:13

Fed 15:12

Federal 15:12,19

file 9:8 18:3

filed 11:9 12:21
13:1,4,13 14:6,17

filing 10:21,23
11:8 17:10

fine 15:22

four-year 13:15
14:13,19

Franchise 5:17,
19,21 8:16 12:15
13:8,11

FTB 5:17 6:7,18
10:16 15:6 18:2

FTB's 15:14 18:6

G

Galeski 11:1,3

glad 10:16

good 5:18,20
12:20 16:18

Great 17:19

Greg 3:5 5:24
7:14

H

happened 8:10

happy 14:22
15:17

hear 11:19

hearing 5:8,11
7:11,23 8:6 18:12,
15

held 5:8 18:13

hold 17:19 18:8

Huong 15:11

I

identify 5:15

impact 15:14

Importantly 14:3

inapplicable 11:6

included 8:7

includes 10:21

income 13:6

independent
12:6

information 8:18

informed 9:7

instructed 6:14

intent 8:3 10:6

IRS 8:1,3 11:22,24
12:2,10 13:19,20,
23 14:11

IRS' 12:5,6 13:18

issue 6:3 8:4
10:11,13 13:12,14
16:8 17:20 18:10

issued 12:1 14:4

J

Judge 5:5,10,12,
22 6:1,12,23 7:6,
16,19,24 8:7,14,
20,23 11:11,14,
15,17,18,23 12:3,
11,14,19 14:24
15:1,2,3,4,5,20,23
17:11,16,19,25
18:2

July 9:9 10:5,9,18,
20 13:17,21
14:10,15 16:11,16
17:9

June 9:11 12:22
13:5 14:18 17:10

K

KATRINE 3:4

keeping 6:15
17:16

key 16:8

L

late 7:22

law 7:16 9:18

lead 3:3 5:10

legal 7:2 8:14

limitations 6:4
12:22 13:11,15
14:9,14,19 16:5

logic 16:14 17:5

Long 3:4 5:12
11:14,15 15:1,2

longer 16:15

lot 9:16

M

made 13:3,8
16:25

make 7:3

March 13:1

materials 17:21

matter 2:5 8:3
14:22 16:8 17:2

Members 3:4

mentioned 17:6

Middlebrook 2:6
5:6,25 18:15

minor 13:8

minutes 6:2,14
12:16 15:25 17:24

misapplied 9:24

**misinterpretatio
n** 9:24

modified 11:7
16:10 17:8

mother 9:4

N

needed 9:7,8

newer 8:12

nonsensical
16:13

notice 8:1 10:10
11:20,21,22,24,25
12:1,5,6,9,10
13:19,20,23 14:11

notices 13:19

notified 9:4

number 11:21

O

oath 7:9,10

object 6:8,19
17:13,16

objection 17:18

Office 2:1 12:24
14:3 15:18

ongoing 10:13

open 17:12,17,20
18:8,13

opinion 9:3 14:4
16:15 18:11

opinions 12:23
15:7,8,10,14,17,
19

order 18:3

orders 6:2,14
17:24

OTA 2:6 5:6 6:15
14:10 15:7,21
16:20,23 18:10

outcome 5:13**overpayment**
13:7,10

P

p.m. 2:15,16 5:2,8
18:17**pandemic** 10:8
13:17 16:6 17:8**panel** 3:3,4 14:23**paragraph** 9:25**participants** 5:13**participating**
18:14**parties** 5:15 6:3**perform** 10:1,4,18
14:1**performed** 10:19**period** 9:14 10:2,4
11:8 13:15 14:9,
12,14,19 16:25
18:10**permitted** 7:1**petitions** 10:22**place** 7:8**point** 8:13**points** 7:3**Pomrehn** 16:20**postponement**
10:2,3 13:25
14:12 16:25**postponements**
11:4**postpones** 10:14**precedent** 11:2**precedential**
12:23 14:4**preceding** 9:24**prehearing** 6:15**presentation** 4:7
7:4,8,21 9:2
12:16,18**pretty** 9:4 11:9
16:10**problem** 9:23
11:3**proceeding**
18:17**Proceedings**
2:14**process** 13:9**Produced** 7:15**provided** 15:6**publically** 15:8**purely** 11:4**purpose** 5:11

Q

question 9:15**questioning** 18:4**questions** 11:13,
15,19 14:23 15:1,
2,4**quote** 16:9 17:3

R

raise 7:12**ran** 11:2 16:5**read** 12:7**reading** 9:19
12:4,6**ready** 7:20 8:24
12:15,16**rebuttal** 15:25**receipt** 18:6**received** 4:4,5**record** 5:5,16
17:12,17,20 18:8,

10,12

refer 8:16,17
16:12**reference** 7:23**referenced** 14:11**referencing** 6:17**referring** 11:20**refiled** 9:10**reflected** 13:10**refund** 6:5 9:5,12,
13 10:23 12:21,25
13:12 14:16 16:22**regard** 10:12**regulation** 13:24
14:11**regulations** 6:16**relief** 10:21**remain** 7:10**rename** 6:13**reported** 2:17
13:5**Reporter** 2:18**reporting** 13:2**represent** 5:16,21**representing**
5:19,24**request** 15:18,21
17:12**requested** 9:11**requests** 14:21**required** 10:1**respond** 18:6**responded** 9:6**Respondent** 3:6
5:19 14:21**respondent's**
6:10**restate** 11:21**resulted** 13:6**return** 9:9 13:1,5,
9 14:6,13**returns** 10:9**reversed** 16:23**review** 10:22**reviewed** 15:17**right-hand** 7:12**Rodriguez** 2:17**runs** 16:13

S

Sacramento 2:15
5:1,9**Schmidt** 3:5 4:9,
14 5:24 6:23 7:5,
14,18,19,22 8:1,9,
19,22 9:3 11:11,
22,24 12:7 15:16,
24 16:3 17:11,15,
18 18:5**Schmidt** 17:13**Section** 9:20 12:5
15:9**semantics** 16:9
17:2**send** 18:3**sensitive** 10:19**share** 10:16**Shelton** 3:4 5:12
11:17,18,23 12:3,
11,14 15:4,5,20**Shorthand** 2:18**similar** 14:17
16:21**simple** 9:4**situation** 8:4 11:7**small** 11:19**specific** 14:4

specifically 13:23
specified-time 10:18
specifies 8:2
spells 10:17
Stanford 10:12
starting 5:17
state 2:2,19 9:6,8, 12,23 10:25 16:4, 22
State's 9:19
stated 6:2 14:12
STATEMENT 4:12 16:2
statements 7:9
states 10:13 13:20,24 15:11
statute 6:4 11:2 12:4,22 13:11,15 14:9,14,19 16:4
statutory 9:13 11:5
Street 2:14
submit 7:7,23 15:17
submitted 6:7,12, 24 18:13
Subsequently 13:4
superceded 8:10,11
sustained 14:22
Swain 3:7 5:20,21
swore 14:8
sworn 7:15

T

T.C. 15:11

talk 6:6
talked 12:8
talking 17:3
tax 2:1 5:17,19,21 6:5 8:16 10:22,23, 24 12:15,21,24,25 13:1,2,4,6,8,10, 12,22 14:3,6 15:18
tax-related 10:1
taxes 9:11
taxpayer 14:5
taxpayer's 10:1,3
taxpayers 10:14, 17 14:8
testified 7:17
testifying 7:7
testimony 7:10
things 17:5
time 5:8 10:3,21 11:15 13:25
time-sensitive 10:14
timely 9:8 11:9 13:1,3,13 16:24 17:10
today 13:20 18:13,15
Today's 18:15
topic 14:4
total 13:2
Transcript 2:14
Treasury 9:20 13:24
true 16:7
turn 14:25 15:24

U

unique 8:4

United 15:11
unpaid 14:7
untimely 14:6,17, 18
untimely, 16:23
update 11:25
updated 17:21

V

valid 17:1
Vassigh 3:3 5:5, 10,22 6:1,12,23 7:6,19,24 8:7,14, 20,23 11:11,17 12:14 14:24 15:3, 23 17:11,16,19,25 18:2
VERONICA 3:4
version 12:6

W

Wednesday 2:16 5:1
withholdings 13:6
Wonderful 8:19
written 10:10 18:10
Wynn 14:5,17

Y

year 6:5 12:21,25 13:10,22 14:6
years 16:12 17:7