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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of)
the Estate of Barbara D.)
Gillespie:)
)
MARY GILLESPIE,) OTA No. 18011018
)
Appellant.)
)
)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Wednesday, March 28, 2018

Reported by:
Tracy A. Terkeurst,
CSR No. 8180, RPR

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APPEARANCES:

Panel Lead: Hon. Neil Robinson
Panel Members: Hon. Sara Hosey
Hon. Douglas Bramhall

For the Appellant: (In Pro Per)
MARY GILLESPIE

For the Respondent: State of California
Franchise Tax Board
BY: BRADLEY COUTINHO
TAX COUNSEL
Legal Division
MS A260
P.O. Box 1720
Rancho Cordova, California 95741

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I N D E X

WITNESSES

PAGE

Mary Gillespie

9

EXHIBITS

(Respondent's Exhibits A through L were
received at page 6.)

(Appellant's Exhibits 1 through 15 were
received at page 6.)

1 VAN NUYS, CALIFORNIA, WEDNESDAY, MARCH 28, 2018

2 9:12 a.m.

3
4 JUDGE N. ROBINSON: We are opening the record in
5 the Appeal of the Estate of Barbara D. Gillespie before
6 the Office of Tax Appeals in OTA Case No. 18011018.
7 Today's date is March 28, 2018, and we are holding the
8 hearing in Van Nuys, California.

9 For the record, would the parties please state
10 their appearances.

11 MS. GILLESPIE: Mary Gillespie.

12 JUDGE N. ROBINSON: Thank you, Ms. Gillespie.

13 MR. COUTINHO: Brad Coutinho for the Respondent.

14 JUDGE N. ROBINSON: Today's hearing is being heard
15 by a panel of three judges. My name is Neil Robinson,
16 and I will be acting as the lead judge for the purpose
17 of conducting this hearing. Sara Hosey and Doug
18 Bramhall are also hearing the evidence today. All three
19 judges will meet after the hearing and produce a written
20 decision as equal participants.

21 As I mentioned before, if either of you have
22 any questions, please ask. It's okay to interrupt us.
23 It's okay to ask us whatever you need to know. Okay?

24 The first thing I would like do is put the
25 documentary evidence that we've discussed off the record

1 into evidence. We have had a prehearing conference;
2 we've reviewed these documents; we've reviewed them
3 again today. So I would move that Respondent's
4 documents A through L on the Office of Tax Appeals
5 exhibit log be admitted into evidence unless there is an
6 objection.

7 Ms. Gillespie, do you have an objection?

8 MS. GILLESPIE: No objection, Your Honor.

9 (Respondent's Exhibits A through L were
10 received into evidence.)

11 JUDGE N. ROBINSON: Okay. And I also move that
12 Ms. Gillespie's documents, 1 through 15, be admitted
13 into evidence.

14 Mr. Coutinho, do you have any objection?

15 MR. COUTINHO: We do not.

16 (Appellant's Exhibits 1 through 15 were
17 received into evidence.)

18 JUDGE N. ROBINSON: Okay. At the prehearing
19 conference, we discussed some agreed facts, and I would
20 like to go through them. There are five. We can do it
21 quickly. And if these are still agreed upon, I would
22 like you to so state. Okay?

23 So the first thing that we agreed on is that
24 Barbara D. Gillespie passed away on June 11, 2006; is
25 that correct?

1 MS. GILLESPIE: That's correct.

2 MR. COUTINHO: That is correct.

3 JUDGE N. ROBINSON: Okay. Diane Williams Starbuck
4 was appointed administrator of the estate of Barbara D.
5 Gillespie on November 2nd, 2006.

6 MS. GILLESPIE: Correct.

7 MR. COUTINHO: That is correct.

8 JUDGE N. ROBINSON: Thank you.

9 Mary Gillespie was appointed as administrator
10 of the estate of Barbara D. Gillespie on November 13th,
11 2012.

12 MR. COUTINHO: That is correct.

13 MS. GILLESPIE: Yes.

14 JUDGE N. ROBINSON: The California tax liabilities
15 in the amount of \$21,650.20 were paid to the F.T.B. on
16 December 15th, 2013.

17 MS. GILLESPIE: Correct.

18 MR. COUTINHO: That is correct.

19 JUDGE N. ROBINSON: Patricia C. Scuritch,
20 (phonetically) CPA, filed a claim for refund on behalf
21 of the estate of Barbara Gillespie on August 18, 2015.

22 MS. GILLESPIE: Correct.

23 MR. COUTINHO: That is correct.

24 JUDGE N. ROBINSON: The issues to be heard:
25 Whether Appellant's claim for refund is barred by the

1 statute of limitations. Is that still the issue today?

2 MR. COUTINHO: Yes.

3 MS. GILLESPIE: It is, Your Honor. However, as we
4 mentioned during the preconference hearing, I -- there
5 are -- I have some issues about the assessment of the
6 taxes from the California Franchise Tax Board, and I
7 would like to discuss those as we go along.

8 JUDGE N. ROBINSON: Mr. Coutinho?

9 MR. COUTINHO: We are fine with her -- with
10 Appellant raising those issues on an argument, but we
11 still think the issue is whether the Appellant's claim
12 for refund is barred by the statute of limitations.

13 JUDGE N. ROBINSON: Would you agree that there has
14 been no decision on whether or not the statute of
15 limitations applies or has been tolled; correct?

16 MR. COUTINHO: Correct.

17 JUDGE N. ROBINSON: Okay. So -- and we are hearing
18 the whole case today, so we are not separating the
19 issues into different days. So I think because of that,
20 Ms. Gillespie has an opportunity to present that
21 evidence.

22 MR. COUTINHO: Yes.

23 MS. GILLESPIE: Thank you, Your Honor.

24 JUDGE N. ROBINSON: Okay. This is the time,
25 Ms. Gillespie, when I will swear you in so that you can

1 give your statement under oath today. I want to just
2 caution you about a few minor things. You're very
3 soft-spoken. We want to make sure that you --

4 MS. GILLESPIE: Okay. I need to speak louder.
5 Okay.

6 JUDGE N. ROBINSON: -- are speaking up so that the
7 court reporter can accurately record what you say.

8 MS. GILLESPIE: Thank you, Your Honor.

9 JUDGE N. ROBINSON: So please stand and raise your
10 right hand.

11 Do you solemnly swear or affirm that the
12 testimony you will give today will be the truth, the
13 whole truth, and nothing but the truth?

14 MS. GILLESPIE: I do, Your Honor.

15 JUDGE N. ROBINSON: Okay. Please be seated. This
16 is your opportunity to tell us your -- your side of this
17 case.

18
19 MARY GILLESPIE,
20 having solemnly stated to tell the truth, was
21 examined and testified as follows:

22
23 MS. GILLESPIE: Okay. Thank you. Thank you, Your
24 Honor. And I'm not an attorney, so I probably don't
25 speak the same language, and you do. So please, you

1 know, feel free to ask questions, or if you have
2 anything that I'm not saying in -- whatever. If you
3 need clarification, let me know.

4 JUDGE N. ROBINSON: We welcome the opportunity to
5 have people who are not attorneys.

6 MS. GILLESPIE: Okay. Thank you, Your Honor.

7 JUDGE N. ROBINSON: So please feel comfortable, and
8 if we have questions, we'll ask.

9 MS. GILLESPIE: Okay. Thank you.

10 I do understand the F.T.B. has submitted the
11 tax assessments for the years 2005, 2006 for my
12 mother's -- for my mother's income in those years.
13 During those years, my mother was receiving no income,
14 and she was on state disability, California state
15 disability. She worked for the California State
16 Compensation Fund, and was on disability for some time.

17 Her monthly -- I think it was every two
18 months -- or every two weeks, whatever, every paycheck
19 was about \$814, that was her income during those years.
20 She passed in June of 20 -- 2006, so why there would be
21 an income assessment based in 2006 kind of alludes me.

22 But her income as declared by the Franchise
23 Tax Board, I believe you provided -- not "you," --
24 excuse me, "you" is F.T.B. -- you provided a general
25 average lawyer/attorney, California-barred attorney's

1 income for those years. My mother was not making that
2 income. She was on state disability, and I believe
3 that's something that the F.T.B. should have been quite
4 aware of.

5 Since she was working for the State, it would
6 seem consistent that they would know that she was not
7 receiving that income, and F.T.B. included in that
8 income statement not just her proposed assumed average
9 income of a California-barred attorney, but they also
10 included some USAA interest payments that were in the
11 amount of \$339, I believe, based on the IRS assessment
12 or a document that we received.

13 So those amounts, quite frankly, I believe,
14 are quite minimal and certainly don't warrant any income
15 tax payments. IRS did not request any income tax
16 payments. There were no -- the IRS had no W-2, had no
17 1099, no IRS tax payments were made, filed, prepared.

18 It is -- I don't -- I'm person -- I don't
19 understand why F.T.B. requested those tax assessments
20 for those years based on the income that F.T.B. should
21 have been aware of that she was receiving, based on the
22 fact that she passed in 2006, and why there was a
23 request for that year alludes me.

24 But I think this probate has been quite long.
25 My mother, as you documented, noted, Your Honor, passed

1 in 2006. The first administrator was my aunt, Diane
2 Starbuck, and there was, I guess for lack of a better
3 word, some handling of the estate that probably -- that
4 was not in order. We were of the understanding,
5 according to my attorney's office, Attorney Hayward,
6 that various tax payments were made, filed, et cetera,
7 but they weren't.

8 We did not receive, I believe, until 200- --
9 oh, let's see -- a request that F.T.B. was in 2013 that
10 we received your note -- Attorney Hayward received your
11 note that these tax assessments were due from 2005,
12 2006. I was working in Vienna, Austria at the time for
13 a federal employee -- I was working for the U.S.
14 Mission.

15 My attorney advised me to pay this tax
16 assessment in good faith. It was incurring penalties,
17 it was incurring fees, and what I was told was that we
18 would ask for a refund, but let's, in good faith, pay
19 what -- what is -- I'm not quite sure I understand this
20 now -- but pay what is requested, what is due. I did,
21 and with the, you know, with the plan that we would ask
22 for a refund.

23 I then received -- we then requested a refund
24 in August -- I'm sorry. I paid the tax assessments,
25 excuse me, in December 15, 2013, as noted by Your Honor.

1 F.T.B. -- F.T.B. denied the request on July 22nd, 2016,
2 regarding a request for a refund stating that the
3 statute of limitations had passed.

4 This may be getting a little bit ahead of the
5 story, but I guess I'm not sure how we could have passed
6 the statute of limitations. You say it's four years.
7 Well, when the statute of limitations is four years, and
8 the payment was made in 2015 -- '13, sorry, how are you
9 basing a statute of limitations based on 2005 when we
10 weren't even aware that the taxes were due until 2013
11 and paid in 2013 quite promptly in good faith?

12 Note that I had become administrator, as Your
13 Honor had mentioned, so it was quite in my power to do
14 that, and I am repeating myself, but I did want to act,
15 obviously, in very good faith.

16 I guess that's really my point, I think, Your
17 Honor, is that I understand, yes, that tax assessments
18 were requested, tax assessments were paid by myself. I
19 was not under the understanding that there was a statute
20 of limitations, and certainly not in the time period
21 that we are talking about, there seems to be -- I mean,
22 okay, as I mentioned, 2005, 2006, why this four-year --
23 and quite frankly, the whole question of a statute of
24 limitation seems quite questionable. Why were the tax
25 assessments even made?

1 IRS never -- I'm repeating myself, so please
2 excuse me. IRS never requested tax payments. Why the
3 State of California? My mother was on disability. She
4 certainly was not generating an income that merited any
5 tax payment. And why didn't F.T.B. -- why wasn't F.T.B.
6 certainly aware of that? They could have checked with
7 the State regarding her status when F.T.B. contacted,
8 sent letters and asked, I believe, in 2007, 2008, after
9 my mom's passing, "Where is our payment?"

10 Well, why wouldn't F.T.B. have checked? My
11 mother, A, she had passed; B, she was receiving mail to
12 a mailbox that she couldn't get to. The former
13 administrator, my aunt, probably wasn't -- how she was
14 handling things was not clear. We never received that
15 communication until 2013.

16 So I -- my point is, I'm acting in very good
17 faith. I've acted in good faith. I -- I don't believe
18 tax assessments should have been assessed, and I would
19 request -- I have requested and I feel that a refund is
20 in order -- is -- would be due based on this -- based on
21 these facts and -- thank you. Thank you, Your Honor.

22 JUDGE D. BRAMHALL: Thank you.

23 JUDGE N. ROBINSON: Questions? Well, wait a
24 minute. Sorry. I jumped the gun.

25 Mr. Coutinho, do you have any questions of

1 Ms. Gillespie?

2 MR. COUTINHO: We do not.

3 JUDGE N. ROBINSON: Okay. My apologies.

4 JUDGE D. BRAMHALL: So as I understood, you were
5 working in Austria --

6 MS. GILLESPIE: Correct.

7 JUDGE D. BRAMHALL: -- when you got word that this
8 tax assessment was still in the estate and hadn't been
9 paid, and an attorney advised you at that point to --

10 MS. GILLESPIE: My attorney did, Attorney Hayward,
11 Ernest Hayward.

12 JUDGE D. BRAMHALL: Okay. And that -- and to file
13 a refund claim.

14 MS. GILLESPIE: Correct.

15 JUDGE D. BRAMHALL: Okay. And that was in December
16 of --

17 MS. GILLESPIE: We made the payment on
18 December 15th, 2013.

19 JUDGE D. BRAMHALL: '13. Okay.

20 MS. GILLESPIE: Thank you, Your Honor. And
21 received -- yeah. Sorry.

22 JUDGE D. BRAMHALL: Okay. So just -- was there --
23 is there an explanation of why the delay between the
24 2013 and 2015 to actually file that claim?

25 MS. GILLESPIE: We -- actually, I was not -- my

1 attorney did not advise me about a statute -- about the
2 statute of limitations. We wanted to -- we -- actually,
3 that was the purpose of paying this was to close the
4 probate, and then I think request the reimbursement, the
5 refund at that time.

6 Had I known, Your Honor, I would have
7 requested much sooner or asked that it be requested much
8 sooner. I believed we were in a timely -- timely time
9 frame.

10 JUDGE D. BRAMHALL: Okay. Thank you. That's good.
11 Thank you.

12 MS. GILLESPIE: Thank you.

13 JUDGE S. HOSEY: That clarifies for me too, thank
14 you, the timeline. That was helpful. Thank you.

15 MS. GILLESPIE: There were a lot of timelines.
16 It's gone on for some time and that's -- so, yeah --

17 JUDGE S. HOSEY: Thank you.

18 MS. GILLESPIE: -- feel free to ask.

19 JUDGE D. BRAMHALL: As a comment, it's unfortunate
20 during that period of time when it was not -- the estate
21 wasn't being handled appropriately, it appears.

22 MS. GILLESPIE: That is unfortunate, I know. And
23 that's when it became very -- it became obvious that
24 funds were being taken out of the account. Many -- I
25 think you've read in the documentation other things that

1 were happening, that my aunt resigned, and I became
2 administrator. Then I went overseas, so, again,
3 distance is probably not always so helpful, but -- so I
4 tried to act promptly.

5 JUDGE D. BRAMHALL: Okay. Thank you.

6 JUDGE N. ROBINSON: Ms. Gillespie, the first time
7 you were aware that there was a claim by the State of
8 California for income tax was in February of 2013?

9 MS. GILLESPIE: It -- that sounds right.

10 JUDGE N. ROBINSON: When the estate received a
11 notification of some kind?

12 MS. GILLESPIE: Yes, that's right.

13 JUDGE N. ROBINSON: Okay. Were you represented at
14 that time?

15 MS. GILLESPIE: I've been represented by Attorney
16 Hayward since --

17 JUDGE N. ROBINSON: Okay.

18 MS. GILLESPIE: -- since I started, almost, as the
19 administrator.

20 JUDGE N. ROBINSON: Okay. Thank you.

21 MS. GILLESPIE: Thank you.

22 JUDGE N. ROBINSON: Mr. Coutinho?

23 MR. COUTINHO: We don't have any questions at this
24 time.

25 JUDGE N. ROBINSON: Do we have any questions for

1 Mr. Coutinho?

2 JUDGE D. BRAMHALL: No.

3 JUDGE S. HOSEY: I don't believe so, no.

4 JUDGE N. ROBINSON: Is there anything you would
5 like to add today, Ms. Gillespie?

6 MS. GILLESPIE: Just a second. Let me go through
7 my notes.

8 JUDGE N. ROBINSON: Sure. Take a few minutes
9 and...

10 MS. GILLESPIE: Your Honor -- Your Honors, I think
11 I've covered the points I wanted to make. I probably
12 didn't go into as much detail about my mom's situation
13 before her passing and, you know, the number of moves
14 that she made and staying in a motel due to flooding in
15 her home.

16 I mean, that's all in the documentation, but I
17 think that is kind of important in the sense that she
18 wasn't able to keep, you know, I guess keep track of her
19 mail before she went to City of Hope very well.

20 And it was a mailbox, like Mail Box Et Cetera,
21 where her mail was going, and that my aunt kept that
22 mailbox, I don't know for how long, but for a short
23 time, at least some time after that. But I would maybe
24 just indicate that -- and I know from personal
25 experience when I was with my mom that she really wasn't

1 very well.

2 And it was -- you know, so mail was probably
3 not, you know, kept -- I don't know what the word is --
4 watched as carefully due to her illness, you know,
5 before she was diagnosed with lung cancer.

6 So I think just the personal issues regarding
7 her health are somewhat important as well. That's it.

8 JUDGE N. ROBINSON: Did your aunt maintain that
9 mailbox after your mother's passing?

10 MS. GILLESPIE: She did, Your Honor, from my
11 understanding. Now, I don't know if she checked it
12 frequently, I don't -- you know, I don't know. And I
13 don't know for how long she kept it.

14 JUDGE N. ROBINSON: Okay. Ms. Gillespie, thank
15 you.

16 MS. GILLESPIE: Thank you, Your Honors.

17 JUDGE N. ROBINSON: Anything further?

18 MR. COUTINHO: In terms of closing statements or --

19 JUDGE N. ROBINSON: Okay. If there is nothing
20 further, Ms. Gillespie --

21 MS. GILLESPIE: Thank you.

22 JUDGE N. ROBINSON: -- you are welcome to make a
23 closing statement. It's a summary of your evidence and
24 the reasons why you ought to prevail today.

25 MS. GILLESPIE: Okay. Thank you, Your Honor.

1 I would submit that income that California
2 Franchise Tax Board was erroneous in assessing taxes on
3 my mother's income during 2005 and 2006 as she was on
4 disability for the State of California, California State
5 Compensation Fund. She was not receiving the income
6 proposed by the F.T.B. in their assessment. She was not
7 practicing as an attorney and certainly wasn't receiving
8 that income. She wasn't generating the income that
9 would merit tax assessments by the State of California.

10 She -- and did not pay -- IRS tax payments
11 were not filed or paid during those years, as they did
12 not have any documents to propose that, to afford that
13 payment.

14 I believe based on the fact that F.T.B.
15 erroneously assessed these taxes, that I paid -- based
16 on my attorney's advice -- that I paid in good faith to
17 not accumulate or incur additional fees, penalties,
18 et cetera, that a refund -- my request for a refund be
19 honored based on the -- based on the facts of this case
20 and this situation.

21 The statute of limitations proposed by -- it
22 would seem the statute of limitations proposed by the
23 F.T.B. or cited by the F.T.B. four years from 2005 and
24 2006, which takes it out to 2010, 2011, the tax -- I
25 didn't make those payments until 2013. So how would I

1 ever make a request for a refund in 2010 and 2011 when I
2 wasn't even aware that those tax assessments were due.

3 Those tax payments were never made at that
4 time, and they were only made in '13. So, okay, granted
5 this isn't stated probably in the California law, but
6 maybe four years after, but after you make a payment,
7 but how would you make a -- request a refund when you
8 haven't made a payment yet?

9 So I -- I have some question about citing the
10 statute of limitations in this case, not only based on
11 that fact, but certainly based on the fact that F.T.B.
12 should have been very well aware of my mother's status,
13 my mother's situation, my mother's income level, very
14 low, and the fact that the IRS had never requested any
15 tax payments, and the fact that she was on disability
16 for the State of California.

17 We -- I made the tax assessments, I paid the
18 tax assessments in December of 2013. As you noted, Your
19 Honor, I requested a refund in 2015. Had I known there
20 was a statute, yes, I would have requested much sooner,
21 a statute of limitation, I certainly would have. That
22 it is a very sizeable -- \$21,000 plus, it's a large sum
23 of money, very, very large sum of money.

24 I wrote that check quite promptly; that was
25 the right thing to do. I believe that it's the right

1 thing for the F.T.B. to provide the refund based on
2 their action that was not correct. Thank you, sir.

3 JUDGE N. ROBINSON: Thank you.

4 JUDGE S. HOSEY: Thank you.

5 JUDGE D. BRAMHALL: Thank you.

6 JUDGE N. ROBINSON: Mr. Coutinho?

7 MR. COUTINHO: Good morning, Your Honors. The
8 facts of this case are undoubtedly unfortunate, as
9 Ms. Gillespie has testified today; however, under
10 California law, it prevents the Franchise Tax Board from
11 considering Appellant's claims for refund under the
12 statute of limitations.

13 I have three points to make. The first is
14 that the four-year statute of limitations period for
15 both tax years expired prior to Respondent receiving
16 Appellant's claims.

17 My second point is that the one-year statute
18 of limitations period also expired prior to receiving
19 Appellant's claims.

20 My third and final point is that California
21 law does not allow a reasonable cause waiver or
22 equitable tolling of the statute of limitations.

23 To my first point, under Revenue and Taxation
24 Code section 19306, a claim for refund can only be
25 allowed if it is filed within either of the following

1 two time frames: The first time frame is either four
2 years from the original due date of the return, or one
3 year from the date of the last overpayment, whichever
4 time frame happens to be later.

5 In this case, the four-year statute of
6 limitations period expired prior to receiving
7 Appellant's claims for refund. For the latest year on
8 appeal, the 2006 tax year, the four-year statute of
9 limitations period expired in April 2011, four years
10 from the original due date of the return.

11 Exhibit I shows that Appellant's claim for
12 refund were not received until August 2015, more than
13 four years from the statute of limitations expiring.
14 Accordingly, Appellant's claim cannot be considered
15 under the four-year statute of limitations time frame.

16 To my second point, the one-year statute of
17 limitations period also expired for both tax years prior
18 to Appellant's claims for refund. The one-year statute
19 of limitations period is measured as one year from the
20 date of the last overpayment.

21 Exhibits G and H of Respondent's opening brief
22 show that the last payment made was received in
23 December 2013. Accordingly, Appellant's claims for
24 refund in August 2015 cannot be considered timely under
25 the one-year statute of limitations period.

1 To my third and final point, under California
2 law, there is no reasonable cause or equitable tolling
3 of the statute of limitations for extenuating
4 circumstances. Unlike the abatement of a penalty, the
5 law simply does not allow for tolling of the statute of
6 limitations for unfortunate circumstance.

7 As cited in Respondent's opening brief, the
8 U.S. Supreme Court in the United States versus Dalm
9 upheld that, "Unless a claim for refund of a tax has
10 been filed within the time frame imposed, a claim may
11 not be maintained regardless of whether the tax has been
12 erroneously, illegally, or wrongfully collected."

13 The Board of the Equalization held an appeal
14 of Earl W. that neither ill health of a taxpayer nor any
15 other unfortunate circumstance will excuse a late filing
16 of a claim for refund.

17 The purpose behind the statute of limitations
18 is to impart clarity. Even if it leads to results that
19 are sometimes advantageous to the taxpayer or sometimes
20 advantageous to the government.

21 Based upon the facts of this appeal,
22 Appellant's claims are barred by the statute of
23 limitations under Revenue and Taxation Code section
24 19306, and Respondent's action should be sustained.

25 I would be happy to address any questions you

1 may have. Thank you for your time.

2 JUDGE N. ROBINSON: Ms. Gillespie, would you like
3 to respond to Mr. Coutinho's comments?

4 MS. GILLESPIE: Thank you, Your Honor.

5 I think I would probably reiterate what I've
6 already stated, and I can do so, but I think it's on the
7 record.

8 JUDGE N. ROBINSON: Okay.

9 MS. GILLESPIE: Thank you.

10 JUDGE D. BRAMHALL: I have one question. It's not
11 really a question, but I heard a misunderstanding on the
12 part of Ms. Gillespie, and that is with regard to the
13 one-year statute of limitations. So, I mean,
14 Ms. Gillespie understands the four-year statute of
15 limitations, and as I heard her testimony, she
16 questioned how could a four-year statute of limitations
17 apply when she hasn't even made a payment yet.

18 But I don't think she linked the one-year
19 statute of limitations to the payment. So will you just
20 slow down a little bit and explain that and just nice
21 and clear, forget the statute language to Ms. Gillespie?

22 MR. COUTINHO: Right. So there is two time frames
23 for the statute of limitations. As Judge Bramhall said,
24 you understand the four years is from the original due
25 date. There is also a one-year component. And that's

1 one year from the date of the last overpayment. In this
2 case, because payment was made in December 2013, the
3 claim that was received in August 2015 was more than one
4 year.

5 MS. GILLESPIE: I under -- excuse me, Your Honor.
6 I think I did understand -- I do understand that, but
7 when I read your documentation, I heard -- I read,
8 "overpayment."

9 I thought, "Okay. This is not an overpayment.
10 This is spot-on. This is -- it's the exact payment." I
11 did not overpay anything. I paid exactly what you
12 requested, F.T.B., exactly what F.T.B. requested. So
13 did I not see -- excuse me if I'm wrong, but there was
14 no overpayment. It was perfect payment.

15 So why would the one year -- I saw the one
16 year, but then I thought, "Well, there was no
17 overpayment involved here."

18 MR. COUTINHO: So that's for when you file a claim
19 for refund, you're alleging that the amount you paid,
20 the \$21,000, that there was an overpayment, that the tax
21 that was actually owed was less than \$21,000.

22 MS. GILLESPIE: Yes.

23 MR. COUTINHO: And thus, you should get a credit
24 and refund for that money. Is that -- does that make
25 more sense?

1 MS. GILLESPIE: But you had also additional fees
2 imposed on that, you know, the late fees and the
3 assessment and all the other things. So I put it into
4 one group, and it was --

5 MR. COUTINHO: Right. So you're saying that those
6 fees, the penalties, the interest, and the tax that was
7 assessed was not correct, that it should have been far
8 less or none at all.

9 MS. GILLESPIE: None at all.

10 MR. COUTINHO: None at all. So you're saying that
11 the amount you paid, the \$21,000, was an overpayment
12 because no money was actually owed. And so you're -- so
13 that's where the one-year overpayment, because you're
14 saying that you overpaid because there was no tax --
15 your claim is essentially stating there is no tax,
16 penalties, or interest that should have been imposed or
17 assessed.

18 JUDGE D. BRAMHALL: I think we'll take your point
19 into consideration. I understand what you're saying,
20 but I also understand what Mr. Coutinho is saying.

21 MS. GILLESPIE: May I make just one comment?

22 JUDGE N. ROBINSON: Of course.

23 MS. GILLESPIE: When I made the payment, I don't
24 think I told F.T.B. at that time I was going to request
25 a refund. So F.T.B., I think, maybe would think, "Oh,

1 this is what we are due."

2 MR. COUTINHO: Yes.

3 MS. GILLESPIE: So why -- and it wasn't until later
4 that I requested a refund. So to assume -- I mean, I --
5 overpayment, yes, from my standpoint, yes, but from
6 F.T.B., that was the amount that you --

7 JUDGE D. BRAMHALL: Let me see if I can answer
8 that. When you made the payment, it was a payment that
9 was due. But when you --

10 MS. GILLESPIE: I had a bill for it.

11 JUDGE D. BRAMHALL: Yes. Correct. But when you
12 asked for it back, you were saying, "It was the amount
13 that you said was due, but now I want it back because it
14 is an overpayment."

15 MS. GILLESPIE: Right.

16 JUDGE D. BRAMHALL: Okay.

17 MS. GILLESPIE: Okay. Thank you, Your Honor.

18 JUDGE N. ROBINSON: Ms. Gillespie, do you have any
19 other comments or concerns?

20 MS. GILLESPIE: Thank you, Your Honor.

21 JUDGE N. ROBINSON: Do you have any questions?

22 MS. GILLESPIE: Not at this time. Thank you.

23 JUDGE N. ROBINSON: Okay. Thank you very much.

24 And Mr. Coutinho?

25 MR. COUTINHO: Not at this time.

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JUDGE N. ROBINSON: Judge Hosey?

JUDGE S. HOSEY: I'm good. Thank you.

JUDGE D. BRAMHALL: I'm good.

JUDGE N. ROBINSON: Thank you very much.

Well, we are going to conclude the hearing today by an order of submission, and that just means that we are closing the record for -- from further evidence and argument today, and that you can expect that within a hundred days, we will issue our opinion.

MS. GILLESPIE: Okay. Thank you, Your Honors.

JUDGE S. HOSEY: Thank you.

JUDGE N. ROBINSON: Thank you.

JUDGE D. BRAMHALL: Thank you.

JUDGE N. ROBINSON: I would like to thank you both for attending today.

MR. COUTINHO: Thank you.

(Proceedings concluded at 9:44 a.m.)

C E R T I F I C A T E

I, TRACY A. TERKEURST, CSR #8180, RPR, a
Certified Shorthand Reporter within and for the State of
California, do hereby declare:

That the foregoing hearing was taken before me
at the time and place set forth and was taken down by me
in shorthand and thereafter transcribed into typewriting
under my direction and supervision;

That the foregoing hearing is a full, true and
correct transcript of my shorthand notes so taken.

I further declare that I am neither counsel
for nor related to any of the parties to said action nor
in any way interested in the outcome thereof.

I declare under penalty of perjury this 14th
day of April, 2018, that the foregoing is true and
correct.

A handwritten signature in blue ink, appearing to read 'Tracy A. Terkeurst', is written over a horizontal line.

TRACY A. TERKEURST, CSR 8180, RPR
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA