

STATE OF CALIFORNIA
OFFICE OF TAX APPEALS

In the Matter of:

Jamie R. Hoover) Case No.: 18011066
City of Tracy a Compliance)
_____)

FRANCHISE AND INCOME TAX APPEALS HEARING

OFFICE OF TAX APPEALS HEARINGS

HEARING ROOM

1400 R. STREET

SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 18, 2018

10:30 A.M.

Reported by:

Peter Petty

APPEARANCES

ADMINISTRATIVE LAW JUDGES

Teresa Stanley, Lead

Andrew Kwee

Jeffrey Margolis

CLERK

Claudia Lopez

APPEARING FOR FRANCHISE TAX BOARD

Samantha Nguyen, Tax Counsel

Marguerite Mosnier, Tax Counsel

APPEARING FOR TAXPAYER

Lisa Powers, Representative

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P R O C E E D I N G S

10:30 A.M.

SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 18, 2018

LEAD ADMIN. LAW JUDGE STANLEY: Once again, this is the appeal of Jamie R. Hoover, Case Number 18011066. The date is Tuesday, December 18th, 2018. It's about 10:30 a.m. at the location in Sacramento, California. I'm the Lead Administrative Law Judge, Teresa Stanley, and my Co-Panelists are Judge Jeffrey Margolis and Judge Andrew Kwee.

The issues that we have today are twofold with the -- whether Appellant is entitled to interest on overpayments for taxable years 2001 through 2006, inclusive, from the dates of payments through the original return filings dates. And Ms. Powers has an additional issue where she believes that section 193-- 341 -- 431(d) should not apply in this case, Revenue and Tax Code section 19431(d) should not apply.

ADMIN. LAW JUDGE MARGOLIS: It's 19341.

LEAD ADMIN. LAW JUDGE STANLEY: It is 341?

1 ADMIN. LAW JUDGE MARGOLIS: Yeah.

2 LEAD ADMIN. LAW JUDGE STANLEY: I thought
3 it was, then I read something. Okay.

4 And just to make sure that we have on the
5 record who is here with us, for Appellant we
6 have?

7 MS. POWERS: Lisa Powers.

8 LEAD ADMIN. LAW JUDGE STANLEY: And Mr.
9 Hoover is not planning to appear today?

10 MS. POWERS: No. He lives in Seattle and
11 he decided not to. He has a child and so --

12 LEAD ADMIN. LAW JUDGE STANLEY: Okay.

13 And for the Franchise Tax Board?

14 MS. NGUYEN: Samantha Nguyen.

15 MS. MOSNIER: Marguerite Mosnier.

16 LEAD ADMIN. LAW JUDGE STANLEY: Thank
17 you. Okay.

18 As we determined off the record, we are
19 going to enter Appellant's Exhibits 1 through 16
20 into the record without objection.

21 (Appellant's Exhibits 1 through 16 are
22 received.)

23 LEAD ADMIN. LAW JUDGE STANLEY: We are
24 going to enter Respondent's Exhibits A through N.

25 (Respondent's Exhibits A through N are

1 received.)

2 LEAD ADMIN. LAW JUDGE STANLEY: And the
3 additional statements of law and cases that were
4 submitted by Appellant will be addressed during
5 argument. And if the Panel needs extra briefing
6 from the Franchise Tax Board after we review it,
7 we'll reopen briefing for that purpose. Okay.

8 So, Ms. Powers, since you have no
9 witnesses here today, it doesn't seem like an
10 opening and closing statement would be helpful at
11 this point. So if you just want to basically
12 summarize your argument about why Mr. Hoover
13 should win this appeal, that would be helpful to
14 us. And since the -- you submitted that new
15 information, if you could try to address that in
16 your argument, as well, so that the Franchise Tax
17 Board has an opportunity to respond to it?

18 MS. POWERS: You want me to address that
19 now; is what you're saying?

20 LEAD ADMIN. LAW JUDGE STANLEY: Yes.

21 MS. POWERS: So not in closing?

22 LEAD ADMIN. LAW JUDGE STANLEY: Right.

23 MS. POWERS: Oh, sure.

24 LEAD ADMIN. LAW JUDGE STANLEY: We're
25 going to jump straight to closing because there

1 are no witnesses.

2 MS. POWERS: No opening. Yeah.

3 LEAD ADMIN. LAW JUDGE STANLEY: Franchise
4 Tax Board, you have no witnesses; right?

5 MS. NGUYEN: No witnesses.

6 LEAD ADMIN. LAW JUDGE STANLEY: Okay.

7 MS. NGUYEN: Right.

8 LEAD ADMIN. LAW JUDGE STANLEY: So --

9 MS. POWERS: No, that sounds fine.

10 LEAD ADMIN. LAW JUDGE STANLEY: -- so
11 rather than having an opening and an opening, and
12 a closing and a closing, let's just jump to
13 closing. And --

14 MS. POWERS: Perfect.

15 LEAD ADMIN. LAW JUDGE STANLEY: -- it's a
16 legal issue anyway, so --

17 MS. POWERS: Yes.

18 LEAD ADMIN. LAW JUDGE STANLEY: -- that's
19 ample.

20 MS. POWERS: I agree. Thank you.

21 CLOSING STATEMENT

22 MS. POWERS: So the reason why the
23 Appellant does not think that section 19 -- I
24 think it's 19341, or is it 19431 --

25 LEAD ADMIN. LAW JUDGE STANLEY: 341 --

1 MS. POWERS: -- (d), which is subsection
2 (d), so paragraph (d), is a limitation that
3 limits interest on a taxpayers overpayment in the
4 case of a late return to the date that they
5 actually file their late return. And what it is,
6 is it's an enforcement weapon or tool that tax
7 agencies have, IRS has one, too, to punish a
8 taxpayer for failing to file timely, and that's a
9 reasonable assumption. I don't disagree with it.
10 I think the law does its best to be fair in all
11 instances.

12 I think that in the case, however, of a
13 financially disabled taxpayer as defined in IRC
14 6411(h) and under RTC 19316, that this is a very
15 narrow application of the situation in their
16 instances in that the standard statutes
17 applicable on a mass application basis to all
18 taxpayers do not necessarily apply to these
19 taxpayers, and they specifically do not apply
20 during the period that their statute of
21 limitations cited in 6511(h) are suspended.

22 And the key meaning of the word is: What
23 does suspend mean? And I think that that's a
24 nuance that maybe all of us, initially in this
25 case, overlooked is that both the FTB and perhaps

1 me, as well, in my responses, a suspension really
2 is just that, it's a stoppage of the tolling of
3 time.

4 And in the case of a financially disabled
5 taxpayer the key question then becomes one, if
6 you will, of factual finding, of when did they
7 emerge from their state of being disabled and
8 unable to handle their financial affairs? It's
9 not a question here, I think we have all agreed,
10 due to the finding by IRS, that Jamie Hoover was
11 found and is found here as being financially
12 disabled and qualifying. Rather, the question
13 addresses the interest payable on him due to the
14 overpayments that he had with his FTB final
15 resolution of all of his returns, both the
16 original filed return, then the amended returns
17 that our firm did.

18 And my goal in appearing on his behalf
19 today is to, if anything, help speak to this
20 issue because I think it's one -- even though
21 narrow it still deserves an understanding of
22 application. And there are a couple of planks of
23 law that reach this issue.

24 As far as I'm concerned, one of them is
25 taxpayer equity which is, perhaps, the cardinal

1 issue. Another issue, perhaps just as important,
2 is one that's cited in one of the cases that I
3 have included in my new material which cites a
4 Supreme Court document called The Avoidance of
5 Injustice.

6 And the Avoidance of Injustice is more
7 applicable to a financially disabled taxpayer
8 than it is, perhaps, to most, only in the sense
9 that for a period of time, and in this case it
10 was approximately six to eight years, I can't
11 remember precisely but I'll find it later, he was
12 unable to speak for himself, act for himself, do
13 anything for himself. And it took, ultimately,
14 the assistance and the care of the woman that he
15 married in 2010 to bring him out of that
16 condition.

17 He was afflicted with ADHD, which is a
18 little-understood condition in adults. It's very
19 prevalent in children, but to have an adult be an
20 ADHD -- to be afflicted with that disease is not
21 normal. It's not often identified. It can be
22 comorbid, meaning it presents with another
23 condition at the same time. And it has to be
24 readily addressed. Jamie Hoover is under a
25 pretty good condition today and consistent status

1 of awareness because he's being treated with
2 drugs and it's helping him.

3 So that said, the wife's letter goes back
4 in time, when she first met him and what he was
5 like. And she also addresses what he's like
6 today.

7 The analogy that it's okay to remit or
8 reimburse a taxpayer for the government's use of
9 their money while they're financially disabled to
10 a situation where they have to then late file and
11 they don't get it is saying that they're going --
12 we're going to punish them for having been
13 disabled in the first place. I don't think that
14 is a fair application of the statute that goes
15 along with being financially disabled. It's a
16 punitive measure that ought not to apply.

17 In my mind, it's analogous to seeing a
18 blind man on the street who's selling pencils and
19 going and taking some of those pencils and maybe
20 using them halfway, and then returning them later
21 because he won't notice and saying, well, I'm
22 sorry, we gave you back some of your pencils
23 because we used half of them but you won't
24 notice, and we're going to do this against you
25 because the code says we can. Well, sometimes

1 because the code says we can does not mean that
2 the code should be applied.

3 So when I was analyzing this issue for
4 today's hearing the first question that I tried
5 to solve is what is the due date of a financially
6 disabled taxpayer for a return that's filed late?
7 What is that due date? I really don't think it's
8 defined anywhere. I looked. And that's why some
9 of the cases in the rulings that I cite are so
10 old, is that the law ranges in the history on
11 interest overpayments, mostly federal or only
12 federal, I should say, here, go back a long way.
13 And it is an issue of equity. That's clear.

14 So when does that issue of equity stop?
15 And we say, well, the taxpayer, while still
16 deserving an equitable treatment, is now normal.
17 And the only finding I could come up with is that
18 the date of file or the due date was when that
19 taxpayer became capable after having been
20 incapable, because there's no other way to state
21 normalcy, unless we know that he was abnormal for
22 a while.

23 And speaking of when he came out of it --
24 and I write in my six-page summary that when one
25 has a disease, when a human has a disease, we

1 don't just wake up one day and we're healed. You
2 know, we are cured, our bodies cure us, over a
3 period of time. This applies to the common cold,
4 it applies to cancer, it applies to a stroke, you
5 know, just about anything that is a disease. So
6 citing that specific date, as we discussed in our
7 prehearing phone conference, as you mentioned,
8 Judge Stanley, it's not simple.

9 So because I can't find a date other than
10 the date that he filed, that would be my
11 position, that that is his due date. And if that
12 is his due date, then he would then get,
13 statutorily, as most taxpayers get, a three-and-
14 a-half month period to file because, if you will,
15 the due date -- or the first date one can file
16 like a 1990 tax return would be January first of
17 1991, and then they get, without extension,
18 three-and-one-half months, up until April 15th.
19 So that's the normal due date without extension.

20 So what I have opined as a supposition
21 here or imagined due date is that Hoover's due
22 date was three-and-a-half months after the dates
23 that he overtly filed his late-filed tax returns
24 due to his financial disability status, which is
25 not argued by any of us.

1 So imagine, if we will, that we had
2 another case that came in here next week that had
3 this very same issue, we'd have to answer the
4 same question all over again.

5 Part of the statute, the 6511(h), and
6 also 19316, is that the taxpayer stands alone in
7 this issue unless they have someone to help them,
8 who can help them. That would be, normally, a
9 spouse. Jamie Hoover did not have a spouse. He
10 was divorced early on and separated in the period
11 of his disability. His ex-wife actually stole
12 money from him after they were divorced. She
13 stole from him \$600,000, which is what the
14 federal case and the state cases were about and
15 the amended returns, and that was deemed to be a
16 legal theft. That's how out of it he was.

17 He once had \$1.1 million in his bank
18 account. And he went to the grocery store,
19 apparently sometime in 2006 or thereabout, and
20 tried to use it for groceries and his \$1.1
21 million was gone. And that's because his ex-
22 spouse had taken 600, and FTB had levied the
23 remainder of it. He was never aware of any of
24 it. It's a small indication, but a large one, of
25 how out of it he was.

1 So due date is an issue.

2 Date of file is another issue. What is a
3 late-filed return, is another issue or legal
4 planking and determination?

5 When do a taxpayers payments qualify
6 legally as an overpayment? Overpayment in
7 federal law is defined as when the amount of
8 cumulative tax paid exceeds the final tax
9 liability. And in Jamie Hoover's case for
10 California, that happened very early on because
11 Franchise Tax Board will normally assess on the
12 amount realized. They'll create a tax liability
13 when they have to file a substitute return, as
14 does IRS, because they don't know what basis is.
15 They have to do it that way. That's fine. But
16 that's what they levied on, and therefore there
17 was an overpayment.

18 In the case of IRS, just as a side note,
19 we may or may not have this issue of the tax
20 years being overpaid, simply because when it was
21 all said and done and all the years were settled,
22 Hoover had to pay IRS \$150,000. So IRS never
23 levied him for some reason and FTB did, which is
24 why we have a difference there.

25 The way that an overpayment is applied in

1 a federal law and any California law is that
2 statutory interest is due, unless otherwise
3 accepted or limited for some reason. So that's
4 why I feel that the application of the limitation
5 section under RTC section 19341(d) is not
6 applicable here because in order to do so, FTB
7 must then prove without a doubt that the due date
8 is the normal due date for this taxpayer. I
9 don't think that that can ever be done based upon
10 the facts.

11 The federal overpayment, as well, in one
12 of your -- the cited things from Ruling 75315 is
13 defined there when there is, in fact, no due
14 date. So if there's never a due date, when is
15 the overpayment entitled to interest? And that
16 would be when it is an overpayment. When it
17 exceeds the amount of settled tax liability due.

18 I think that, in sum, that would be the
19 gist of what I have to say, is that you, in a
20 way, face a difficult decision because -- and I'm
21 here, along with all of you. You know, I
22 represent taxpayers. I file truthfully as a
23 practitioner. I recognize that with the tax law
24 that we live by, all parts of it, we agree that
25 we like some, we have to accept the others that

1 we don't, sometimes, think are right.

2 And I'm not -- you know, by my own mind,
3 I'm certain what the right decision is here, and
4 that's to avoid injustice to this taxpayer,
5 because I think it would be unjust to apply a
6 section intended from normal practice and filing
7 enforcement upon a legally incapable filer at the
8 ordinary due date.

9 And that's the end of my comment now.

10 LEAD ADMIN. LAW JUDGE STANLEY: Okay.
11 Before we proceed to your response to that, I did
12 have one question. I don't know if my fellow
13 Judges do yet.

14 But you agree, Ms. Powers, that your
15 client was refunded overpayments plus interest
16 beginning, at least, on the date of his filing?

17 MS. POWERS: Yes, we do. He was very
18 grateful for that refund.

19 LEAD ADMIN. LAW JUDGE STANLEY: Okay. Do
20 you know, does anybody know the amount even at
21 issue here? We don't have that in any of the
22 documents that I saw.

23 MS. POWERS: We've tried to do a quick
24 calculation of it. It's somewhere, I think, more
25 than \$100,000 and less than \$300,000. I know

1 that's a very broad range of numbers. But, as I
2 mentioned in our pretrial call, I had a long-
3 scheduled vacation and I returned five days ago,
4 so I'm sorry.

5 LEAD ADMIN. LAW JUDGE STANLEY: Okay.
6 Before we proceed, do you have other questions of
7 the -- of Ms. Powers?

8 ADMIN. LAW JUDGE MARGOLIS: I just --
9 what's the -- is there any legislative history or
10 showing that 19341(d) was intended to be
11 punitive?

12 MS. POWERS: Well, I think by nature, no,
13 I don't think that's true. But I think just by
14 common understanding, it's not a reward, it's
15 taking away of interest on money the government
16 was holding. It is punitive by definition and
17 operation.

18 ADMIN. LAW JUDGE MARGOLIS: Okay.
19 Because I know that sometimes when you have --
20 you know, when you make a claim from the
21 government, they give interest from the date of
22 the claim. So I think that might be part of the
23 reason here. It may not be punitive, per se, but
24 the government may just want to know what
25 liabilities it owes. And by filing a return and

1 requesting a refund, that might be the basis for
2 their saying, you know, when you make a claim
3 against me, I'll pay you a refund from -- I'll
4 pay you interest from the date of the claim but,
5 you know, I want to know how much I owe. So that
6 might be another analogy here, I'm not sure.

7 MS. POWERS: I think your point is made.
8 But I still maintain that that section does not
9 apply to a suspended statutory taxpayer. I mean,
10 his limitations are suspended. All of his -- all
11 of the limitation provisions are suspended until
12 they are out of that condition. Therefore, it
13 cannot be applicable.

14 ADMIN. LAW JUDGE MARGOLIS: Nothing
15 further.

16 LEAD ADMIN. LAW JUDGE STANLEY: Do you
17 have any questions?

18 ADMIN. LAW JUDGE KWEE: Well, I believe
19 in some of your -- I believe in some of your
20 briefing that you had mentioned that the IRS
21 allowed payment of credit interest for the period
22 starting from the date of payment; is that
23 correct?

24 MS. POWERS: I think it may have in
25 certain of the years. Frankly, we had no looked

1 at that issue first. We looked at this one
2 immediately because I was unaware of 19341(d)
3 when we filed a claim for Jamie Hoover with
4 Franchise Tax Board, and then when we received
5 the notice that it, you know, it applied. And
6 that's said with no disrespect to California law
7 at all. It's just that having a whole separate
8 code section on top of a federal set of, you
9 know, of laws is a lot of code sections to know
10 about, so I was not aware of that section.

11 But I think that IRS may have had an
12 overpayment in some of the years that it did not
13 credit the taxpayer for. And now that I am aware
14 in a way I never thought I would be of the
15 applicability of these provisions, we'll look
16 again at the IRS record. And if there is
17 anything there to claim for him, we'll probably
18 claim it.

19 ADMIN. LAW JUDGE KWEE: Okay. And does
20 the FTB have an opinion on the matter of whether
21 the IRS refund gave credit interest for the
22 period starting from the day of payment?

23 MS. NGUYEN: Well, it looks like for
24 2006, overpayments for the Appellant were dated
25 from the original due date, original return due

1 date. Appellant has conceded that the IRS
2 audited 2005 and 2006 tax years. And during those
3 years there was an appeals conference and it
4 looks like there was a settlement. So the
5 allowance of interest from the original due date
6 for 2006 may have been a part of the settlement
7 with the IRS.

8 MS. POWERS: It was not. Thank you,
9 though.

10 MS. MOSNIER: There's no evidence in the
11 record that the dates for which interest was
12 allowed by the IRS in any event, whether --
13 regardless of the dates for which interest was
14 allowed at the federal level has no bearing on
15 the interpretation of the state statutes in this
16 case. We don't know what happened at the federal
17 level. And we don't know why what happened
18 happened.

19 So our position would be that it doesn't
20 make a difference, no matter what.

21 ADMIN. LAW JUDGE KWEE: Okay. Thank you.

22 MS. POWERS: And if I -- can I speak or
23 not?

24 LEAD ADMIN. LAW JUDGE STANLEY: Yes.

25 MS. POWERS: I'll wait.

1 LEAD ADMIN. LAW JUDGE STANLEY: No, go
2 ahead --

3 MS. POWERS: Okay.

4 LEAD ADMIN. LAW JUDGE STANLEY: -- no.

5 MS. POWERS: I want to say that I don't
6 think that the two situations are entirely
7 comparable because with the federal case, when it
8 was all said and done and what IRS does and FTB
9 will do, as well, is they will apply, when you
10 have a group of returns, if there's an amount
11 outstanding, a collection outstanding on one
12 return, they will refund the taxpayer. They'll
13 just apply it to the year where money is due
14 without refunding it directly to the taxpayer.
15 So they refund it but indirectly to this Agency.

16 And in the case of IRS, when it was all
17 said and done and all the credits and refunds
18 back and forth were done, Jamie Hoover had to pay
19 IRS either \$125,00 or \$150,000.

20 In the case of FTB, FTB nominally, at
21 least with their first filing of interest and our
22 claims and the refunds, owed Hoover, you know,
23 \$700,000 or \$800,000 and it paid about \$535,000
24 originally. So -- but that's because, as I said
25 earlier, FTB had so excessively levied him and

1 IRS had not levied him at all.

2 When he first walked into our office as
3 referred by another CPA, his total assessments
4 for both agencies came to well over \$2.5 million.

5 LEAD ADMIN. LAW JUDGE STANLEY: Okay.

6 All right. Would you like an opportunity to make
7 a closing statement?

8 MS. NGUYEN: Yes, please.

9 LEAD ADMIN. LAW JUDGE STANLEY: Okay.
10 Proceed.

11 CLOSING STATEMENT

12 MS. NGUYEN: Revenue Taxation Code
13 sections 19316 and 19341 operate independently.
14 Therefore, Appellant is not entitled to any
15 interest in addition to what has already been
16 paid to him.

17 Section 19316 provides an exception to
18 the general statute of limitations for filing a
19 claim for a refund based on a finding of
20 financial disability. That's all it does. It
21 serves an important function by creating an
22 extended claim filing deadline under certain
23 circumstances.

24 In this case, Respondent's finding of
25 financial disability enabled the Appellant to

1 file timely refund claims for tax years 2001 to
2 2004.

3 Unrelated to a claim filing deadline,
4 section 19341(d) addresses circumstances under
5 which interest will not be paid on refunds.
6 Section 19341(d) provides, in the case of a
7 return of tax which is filed after the last date
8 prescribed for filing the return determined with
9 regard to extension, no interest shall be allowed
10 or paid for any day before the date on which the
11 return was filed. In this case, because the
12 returns for all tax years were filed late,
13 Respondent was prohibited by section 19341(d)
14 from allowing interest on overpayments before the
15 dates the returns were filed. Section 19341(d)
16 does not provide an alternate prescription based
17 on the presence or absence of financial
18 disability.

19 Sections 19316 and 19341 are standalone
20 statutes and they are clearly written. 19316
21 applies to the statute of limitations for filing
22 a claim for a refund. 19341(d) applies to when
23 interest is not allowed.

24 MS. MOSNIER: And as FTB discussed in its
25 opening brief on page 12, if you look at

1 principles of statutory construction, they fully
2 support FTB's interpretation here. And when you
3 are looking at interpreting state statutes, the
4 California Supreme Court is the final word on
5 interpreting them. And in the case of Lennane
6 versus the Franchise Tax Board in a 1994 decision
7 cited in our opening brief, the Court set out the
8 rules to interpret statutes.

9 The first thing you do is look at the
10 language and you give the words their plain
11 meaning. The plain meaning of section 19316 is
12 that under certain circumstances a statute of
13 limitations for filing a claim, a refund claim,
14 may be extended. The plain language of 19341(d)
15 is that the state is prohibited from allowing
16 interest on overpayments under certain
17 circumstances. And those would include
18 specifically the dates on which late-filed
19 returns come in.

20 And we'd note that it's section -- the
21 Appellant seems to be concerned about not
22 understanding what the return filing dates are,
23 the due dates are under California Law, Revenue
24 Taxation Code section 18566 answers that question
25 and says that for personal income taxpayers,

1 their returns are due on the 15th of April
2 following the tax year at issue.

3 So we start there and then we say, well,
4 what did the legislature intend? Because we
5 presume that our legislature understands what it
6 is doing when it enacts statutes.

7 Section 19341 was enacted in 1993.
8 Section 19316 was enacted almost ten years later.
9 Had the legislature intended for section 19341(d)
10 not to apply when a taxpayer's refund claim is
11 filed within a statute that's extended because of
12 the determination of financial disability, it
13 could have, at the time it enacted section 19316,
14 added language to that section to indicate that
15 19341(d) would not apply when the refund claim
16 was filed pursuant to that section, or it could
17 have amended section 19341(d) to the same effect.
18 It did neither.

19 So pursuant to California Supreme Court
20 guidance and determination, FTB has properly
21 determined that these statutes stand alone and
22 that it is, in fact, prohibited by 19341(d) from
23 allowing any interest in excess of what has
24 already been allowed.

25 MS. NGUYEN: Because Appellant filed his

1 2001 to 2006 returns late, FTB properly allowed
2 interest on the overpayments only from the dates
3 that he filed those returns, pursuant to
4 19341(d). There's no statute which authorizes
5 repellant to -- Appellant -- sorry. There's no
6 statute which authorizes Respondent to allow
7 interest on the overpayments from the date
8 Appellant filed his returns.

9 Section 19316 does not govern interest.
10 And Southern California 19341(d) clearly
11 prohibits it. Therefore, Respondent respectfully
12 requests your office sustains this action.

13 LEAD ADMIN. LAW JUDGE STANLEY: Thank
14 you.

15 Do you have follow-up questions?

16 ADMIN. LAW JUDGE MARGOLIS: I guess I'll
17 just ask you the same question I asked
18 Petitioner's counsel. I mean, do you -- is your
19 position that 19341(d) is intended to be a
20 punitive statute?

21 MS. NGUYEN: There's no evidence that it
22 was intended to be a punitive statute.

23 ADMIN. LAW JUDGE MARGOLIS: Okay. Thank
24 you.

25 LEAD ADMIN. LAW JUDGE STANLEY: Any

1 follow-up?

2 ADMIN. LAW JUDGE KWEE: So I think the
3 Appellant had been arguing that due to their
4 financial disability of mental condition their
5 due date was extended. And I'm just wondering if
6 the Franchise Tax Board would like an opportunity
7 to address the concern of whether or not, because
8 of the financial condition or medical condition
9 the timeframe to file a return could have been
10 extended?

11 MS. NGUYEN: As mentioned, section 18566
12 provides the deadline for filing a return. And
13 there is no exception to that deadline, based on
14 a financial disability.

15 ADMIN. LAW JUDGE KWEE: Thank you.

16 LEAD ADMIN. LAW JUDGE STANLEY: So if
17 you're saying that there's no exception to that
18 deadline then -- and that 19316 is only an
19 extension of the time to file a claim for a
20 refund, then why is it that he's relieved of
21 late-filing penalties?

22 MS. NGUYEN: That could be -- well,
23 reasonably found penalties, late payment
24 penalties, could be abated for reasonable cause.
25 So the finding of financial ability, the facts

1 for that could constitute reasonable cause to
2 abate those penalties.

3 MS. MOSNIER: I think in this case that
4 because, at least for -- I think for all tax
5 years, Franchise Tax Board had taken filing
6 enforcement action. And there were filing
7 enforcement assessments that had become final and
8 those would always include late-filing penalties
9 at the times the original returns were filed, and
10 then perhaps the amended returns.

11 The calculation of a late-filing penalty
12 under section 19131 may have been a calculation
13 based on the revised amount of the tax liability
14 of zero dollars because the penalty is calculated
15 as a percentage of the amount by which the tax
16 liability was unpaid as of the original due date
17 of the return.

18 So if it turns out that there had been
19 withholding or other payments as of the original
20 due date of each return that exceeded the
21 liabilities that were established, either by the
22 original or by subsequent amended returns, then
23 those, the late filing penalty under 19131, would
24 be recalculated. And if it turns out there was
25 no underpayment of the self-assessed or amended

1 self-assessed liabilities, the calculation would
2 be zero dollars.

3 LEAD ADMIN. LAW JUDGE STANLEY: And that
4 would apply for the 19131 but not the 19133
5 penalties?

6 MS. MOSNIER: Correct.

7 LEAD ADMIN. LAW JUDGE STANLEY: That
8 would be --

9 MS. MOSNIER: 19133 demand penalty is not
10 calculated based on underpayment of the liability
11 as of the original due date.

12 LEAD ADMIN. LAW JUDGE STANLEY: So the
13 reason that Franchise Tax Board wouldn't have
14 charged him for that would have been that they
15 consider financial hardship to be reasonable
16 cause to abate penalties?

17 CHAIRPERSON WRIGHT: Well, the standard
18 under the law to abate the late filing or a
19 demand penalty isn't financial hardship, it is
20 reasonable cause. But it -- specifically in the
21 case of a late payment penalty, financial
22 hardship can constitute reasonable cause but that
23 penalty isn't -- I don't know that that penalty
24 is at issue here.

25 I can tell you, though, that with respect

1 to looping back to your question about why if we
2 allowed -- there were a late -- we allowed the
3 late-filed refund claims as timely because of
4 financial disability, why we -- that wouldn't
5 constitute reason to abate the late-filing
6 penalty, I'm not sure when all is said and done
7 that there are late-filed penalties on any of
8 these tax year accounts.

9 LEAD ADMIN. LAW JUDGE STANLEY: Okay.
10 Thank you.

11 Do you -- would you like to follow-up and
12 do -- have the final word, Ms. Powers?

13 MS. POWERS: I would. Thank you.

14 REBUTTAL CLOSING STATEMENT

15 MS. POWERS: Going back to part of what
16 my -- FTB said here, Samantha said, she said that
17 19316 and 19341 are not related. And I feel they
18 are absolutely related because when you have a
19 taxpayer who's been suspended or excused from
20 filing until they're capable of filing, and that
21 condition, by the way, is called being financial
22 disabled which I'll distinguish later, in a
23 minute, as it pertains to the definition of
24 financial hardship in regard to penalties,
25 because the two are different, but they are

1 directly related. When that taxpayer is able to
2 file, it's then when 19341 would come into play.
3 While they're suspended, they're suspended.

4 If -- a simple analogy is if I am late
5 for class, I ask the teacher if I can come in
6 late. The teacher can't reprimand me once I show
7 up late if they've first said it was okay that I
8 be late in the first place. You cannot have it
9 both ways.

10 And that's, in a way, what is trying to
11 happen here at the FTB level, is that by saying
12 that these two statutes are not related is
13 ignorant of the necessity of defining a due date
14 and late file date in anybody's case.

15 The other is I want to point out that
16 this issue of statutory construction is one of a
17 wish. We all wish statutory construction was
18 perfect. It never is perfect. It never will be
19 because laws happen, they're written, and they
20 have to then be applied to circumstances that
21 were not foreseen at the date the statute was
22 written.

23 A simple example of that is that when the
24 section for filing, an absolute filing by FTB of
25 the federal determination was added to 19316 and

1 that did not happen until, I think, two years
2 ago. So 19316 has, itself, been adjusted or
3 amended in later law. And it has -- there is
4 some specificity in the statute right now of what
5 other -- about what other California code
6 sections it relates to. And those things only
7 happen because of hearings like this one that we
8 learn, oh, yes, this is applicable. You know,
9 it's very difficult to imagine the application of
10 something once you've decided it's a good
11 principle to write statute on or as a general
12 rule or for ease of administration of collection,
13 et cetera, all the reasons that we do it.

14 The other is even Lennane which is cited
15 1994. That's eight years before 19316 was
16 created. So you would hope that when the people
17 wrote 19316, the legislature wrote it, they would
18 have thought about it. I don't think they did.

19 I was at that hearing, as you know, by
20 our -- the data that you have in that file. I
21 brought the case that created 19316 for
22 California, which called the Estate of Jenny
23 Pappas. And there was literally zero authority
24 on the record in RTC about a financially disabled
25 taxpayer. I brought it anyway and we won at that

1 hearing and they wrote 19316.

2 And the head of the panel, which was the
3 SBOE, your predecessor agency at that time, and
4 it was in 1999 or early 2000 when this hearing
5 happened, said the feds had just past what he
6 called an Elder Rule two years before that and
7 that we needed one, too, at the California level.
8 And that's how this statute was created was by
9 the Estate of Jenny Pappas case, and that was an
10 84-year-old decedent who had been semiconscious
11 for nine years before she died and had not filed
12 for other -- there were other facts that aren't
13 pertinent.

14 So I only raise this to say that the
15 notion of statutory construction is not always
16 applicable either in every case.

17 The other thing I would say is that with
18 IRS, if there is an overpayment, there's interest
19 payable on an overpayment the date it exists.
20 And that can happen, as in Rev Rule 753515, as
21 well as I the case cited which MNOPF, which
22 stands for some trust agency of the Navy. And
23 where there is no return required there's
24 interest due statutorily under 6513, I believe,
25 they cite when the overpayment exists and is paid

1 and remitted, less the dates needed by the
2 government to refund them. So it's not so hard
3 to find the legal overpayment. It's just, in
4 this case, removing this punitive measure of
5 19641(d).

6 The last thing I would say is about the
7 penalty abatement. That was not automatically
8 given by Franchise Tax Board to Jamie Hoover. We
9 asked for it and it was agreed that we were able
10 to get those penalties removed under reasonable
11 cause. They were not removed, as I recall, for
12 being a hardship, financial hardship, because
13 Jamie Hoover didn't have a financial hardship.
14 He was one of the original programmers for e-Bay
15 and Yahoo. He's brilliant and was brilliant at
16 what he did then. And then his life went to
17 pieces and now he's not quite as brilliant as
18 before but he's functional.

19 So just as a point, there was no
20 financial hardship found in this case. There
21 was, however, financial disability.

22 And that's it.

23 LEAD ADMIN. LAW JUDGE STANLEY: Okay. If
24 my fellow Judges have no other questions, no,
25 okay, I'm going to close today's record. And if

1 we do decide that, after we review the materials
2 that were submitted late, if we need additional
3 briefing, we will reopen for that purpose only.
4 If we do not do that, you can expect a decision
5 within 100 days.

6 Thank you.

7 ADMIN. LAW JUDGE MARGOLIS: Thank you.

8 MS. POWERS: Thank you.

9 MS. MOSNIER: Thank you.

10 (The hearing concluded at 11:12 a.m.)

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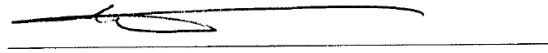
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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of January, 2019.



PETER PETTY
CER**D-493
Notary Public

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

January 4, 2019