

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
WALTER PARNG,) OTA NO. 18011288
)
 Appellant.)

)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, February 21, 2019

Reported by:

SHELBY K. MAASKE
Hearing Reporter

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16 TRANSCRIPT OF PROCEEDINGS, taken at
17 355 South Grand Avenue, South Tower,
18 23rd Floor, Los Angeles, California,
19 commencing at 12:33 p.m. and concluding
20 at 1:13 p.m. on Thursday, February 21, 2019,
21 reported by Shelby K. Maaske, Hearing Reporter.
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1 APPEARANCES:

2
3 Panel Lead:

HON. NGUYEN DANG

4 Panel Members:

HON. KENNY GAST

5 HON. DOUGLAS BRAMHALL

6 For the Appellant:

7 WALTER PARNG,
Taxpayer

8 For the Respondent:

9 ERIC YADAO,
Tax Counsel

10 CIRO IMMORDINO,
11 Tax Counsel
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I N D E X

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APPELLANT'S/FRANCHISE TAX BOARD:	Received in evidence
Exhibits File	7

1 Los Angeles, California; Thursday, February 21, 2019

2 12:33 p.m.

3
4
5 ADMINISTRATIVE LAW JUDGE DANG: Good morning, everyone.
6 Welcome to the Office of Tax Appeals. We are opening the record
7 of the appeal of Walter Parng before the Office of Tax Appeals.
8 The case number is 18011288. This hearing is being convened in
9 Los Angeles on Thursday, February 21, 2019. The time is 12:33
10 p.m.

11 Today's case is heard by a panel of three judges. My name
12 is Nguyen Dang; I will be the lead judge for purposes of
13 conducting this hearing. All three of us will participate in
14 deciding this case, however. Also with me on the panel is
15 Judge Douglas Bramhall and Judge Kenneth Gast.

16 At this time, will the parties, please, introduce
17 themselves for the record, beginning with Appellant.

18 MR. PARNG: My name is Walter Parng.

19 MS. PARNG: Hi, I'm Constance Parng, his sister.

20 ADMINISTRATIVE LAW JUDGE DANG: Respondent.

21 MR. YADAO: Good morning. Eric Yadao for the Franchise Tax
22 Board, and sitting with me is Ciro Immordino.

23 ADMINISTRATIVE LAW JUDGE DANG: Thank you. The issue I
24 have before me today is whether Appellant has established that
25 the late filing penalty should be abated to reasonable cost in

1 the absence of willful neglect.

2 Does that sound correct to you, Mr. Parng?

3 MR. PARNG: Yes. And we would also like to explore some
4 parts of the tax code that could support my abatement.

5 ADMINISTRATIVE LAW JUDGE DANG: Sure. As it applies to the
6 late filing penalty?

7 MR. PARNG: Yes.

8 ADMINISTRATIVE LAW JUDGE DANG: You are not disputing that
9 the return was late filed?

10 MR. PARNG: I'm not disputing it was late filed.

11 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

12 And Respondent, that sounds correct to you as well?

13 MR. YADAO: Yes.

14 ADMINISTRATIVE LAW JUDGE DANG: Prior to this hearing, the
15 parties had stated that they will be submitting as evidence the
16 exhibits as attached to their briefs that were briefly exchanged
17 in the briefing phase of this appeal. Those documents were
18 combined into an electric file that was sent to both parties.

19 Mr. Parng, did you receive that file?

20 MR. PARNG: I did.

21 ADMINISTRATIVE LAW JUDGE DANG: Did you have any objections
22 to that being admitted as evidence today?

23 MR. PARNG: I do not.

24 ADMINISTRATIVE LAW JUDGE DANG: Okay.

25 Respondent, same question. Did you receive the file and

1 did you have a chance to review it?

2 MR. YADAO: We have received and reviewed it, and there's
3 no objection to it.

4 ADMINISTRATIVE LAW JUDGE DANG: Thank you so much.

5 With that being said, this file will now be admitted into
6 the record.

7 (Department's and Appellant's Exhibits were
8 received in evidence by the Administrative Law Judge.)

9 ADMINISTRATIVE LAW JUDGE DANG: Mr. Parng, at this time,
10 would you, please, stand and I'll swear you in.

11
12 WALTER PARNG,
13 called as a witness, and having been first duly sworn, was
14 examined and testified as follows:

15
16 THE WITNESS: I do.

17 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you. You may
18 be seated. So if you are ready to, you can begin with your
19 10-minute presentation.

20 MR. PARNG: Sure. First of all, I would like to thank
21 everyone for being here and hearing me out. I understand from
22 the prehearing that you guys are somewhat versed on the briefing
23 documents and what has occurred, so I will try to keep it short.
24 Obviously, I'm not a professional lawyer, so I appreciate your
25 patience with me.

1 With a really brief recap, April 15th, I made an earnest
2 attempt to make a timely payment. There was a desired payment
3 due to insufficient funds. I realized that immediately; I was
4 transferring funds from one bank to another and I realized that
5 and within one or two days and as soon as I realized, I made a
6 second attempt to make a timely payment. By April 23rd, so
7 basically, seven days later, the payment was made in full an
8 estimated was made in full, which, would represent, on
9 overpayment of taxes.

10 From there, you know, months later -- because I filed my
11 taxes on October 15th -- I spent a month working with my tax
12 preparer to get that completed. October 15th, we spoke on the
13 phone for 10 minutes reviewing all the documents. I told him it
14 was good to go, and he said it was good to go, he sent me the
15 prepared taxes and three months later, I'm now trying to file my
16 2015 taxes.

17 So now we are in March 2016. I'm trying to log in to my
18 FTB account online. As a part of the log-in process, it
19 requires me to enter my adjusted gross income from previous
20 years just as a verification process. I could not log in. I
21 tried multiple times. I ended up calling support and that is
22 when I realized, after getting transferred around, they said,
23 You never filed your taxes.

24 This is the first time at that point that I realized my tax
25 return was not filed. As far as I knew, up until March 23,

1 2016, my taxes were filed. I called my tax preparer, Did you
2 file my taxes, and he said, Yeah, it's fine. Everything is
3 good. Then I'm like, The Tax Board is saying they don't have
4 it. He calls me back 30 minutes later, he says, It was never
5 sent that day it was filed. It's not a complicated case, that's
6 just what happened. I honestly think we have solid legal ground
7 on this case, and I will present that to you. But just for my
8 own sanity, I'd like to appeal to some common sense. I paid
9 this. I paid in full. California had my money, right, in
10 full -- overpayment, in fact, by April 23rd of 2015.

11 It has been argued that the penalties assessed is what did
12 the Tax Board receive on April 15. And that is what the
13 argument that has been made so far. It's seems absurd to me to
14 have had paid my money, in full -- or overpaid, you know, days
15 later and to have a \$40,000.00 penalty to be applied because of
16 that supposed rule.

17 Next, I think there was some question about willful
18 neglect, if I overpaid. If I had filed my taxes on time, I
19 would have got a refund. I have zero reason to want to file my
20 taxes late. I spent a long time working with my tax preparer to
21 get this done. I can't understand why anyone would think -- why
22 would anyone want to file their taxes late? It was not willful
23 neglect. I don't even know how to argue it. It just seems like
24 it should be obvious that I wasn't trying to, you know, risk
25 having a penalty or anything like that.

1 I do realize that this needs to be rooted on solid legal
2 ground and I do want to focus on that here, in what I believe is
3 a poor or gross misinterpretation or misapplication of the tax
4 code. I would like to refer to Tax Code 19131, which has been
5 referred to multiple times by Mr. Yadao. I think in that code,
6 it basically defines the penalty for a late filing. But I think
7 more importantly what I want to point to is that it defines,
8 basically, the tax that -- how the penalty is calculated,
9 basically.

10 I would like to read that section. It says "For the
11 purpose of this section, the amount of tax required to be shown
12 on there shall be reduced" -- shall be reduced -- "by the amount
13 of any part of the tax which is paid on or before the date
14 prescribed for payment of the tax and" -- and -- "by the amount
15 of any credit against the tax which may be claimed upon the
16 return." So I believe that the payments that I made on
17 April 23rd should be assumed as credit against the tax which may
18 be claimed on the return.

19 You know, the IRS actually has the same language in their
20 tax code as well, Revenue Code 6651, 6651(b), "The penalty
21 imposed on the net amount due." By the time that my filing was
22 late -- I just want to repeat, that the Franchise Tax Board had
23 all the payments that it needed. I also want to point to
24 something written by Conner -- in one of the responses that they
25 sent in May 2017, it was stated that "The penalty is calculated

1 at five percent after for allowing timely payments each month
2 the return is late. So even in their own arguments they sent to
3 me, it seems like it allowed for payments to be made while my
4 return was late, and it just so happens my payment was made just
5 a few days after April 15th. So it would seem to me that even
6 in their own argument they recognize that payments can be made
7 after April 15th and after there's a late filing.

8 I think the next argument I want to make is to address an
9 argument that Mr. Yadao made during prehearing, and this has to
10 do with 19132. I believe as far as the penalty being calculated
11 and needing to have been accepted by April 15th, that part is
12 true, however, also in 19132, it defines how that penalty should
13 be applied. So if you look at 19132 paragraph 2 as well as 3,
14 you can read that "For the purposes of this section, the total
15 tax unpaid means the amount of tax shown on the return reduced
16 by both of the following, the amount of any of the part of tax
17 which is paid on or before the day prescribed for payment of the
18 tax" -- which I think would include my withholding, which was
19 paid before then -- "the amount of any credit against the tax
20 which may be claimed upon the return," and again for the
21 purposes of this section "Remaining tax means total tax unpaid
22 reduced by the amount of any payment of the tax." So again,
23 "Reduced by the amount of any payment of the tax."

24 So to me, again, my taxes were paid. And if I had sent the
25 taxes via mail, you guys would have gotten it even later. So I

1 think I would like my payment submitted on 4/23 to be considered
2 as a timely payment. I also took a penalty on the late payment,
3 so it seems like I'm taking a double-penalty. I had a
4 dishonored payment and I paid that penalty and now there is this
5 late file penalty, which is stacking on top of that, and what I
6 perceive, is a very unfair way.

7 Finally, my final argument is simply that I have never been
8 in trouble with the law. I don't have so much as one or two
9 parking tickets in the past 15 years of my life. I have never
10 had any issue with the law. I never filed late in any other
11 time like that in my life. My understanding is that the law now
12 does allow like a first-time abatement. And it seems like I
13 should be eligible at least under that rule as well. I think it
14 just doesn't seem like to me whatever -- it doesn't seem to me
15 that this was the intent of the law to charge me the amount that
16 I have been charged for what has happened.

17 ADMINISTRATIVE LAW JUDGE DANG: Does that conclude your
18 opening presentation?

19 MS. PARNG: I just want to add that even if the payment on
20 April 23rd is not considered a timely payment because I know
21 they're very strict with the April 15th thing, however, based on
22 laws that we read, it still seems like the failure to pay
23 penalties should only apply for that seven to eight days until
24 the payment is remitted in full, in my understanding.

25 In my understanding, also, for the failure to file, as far

1 as the way they are computing, it says here that the amount of
2 tax required to be shown on the return shall be reduced by the
3 amount of any tax that was paid on or before the date prescribed
4 for payment of the tax and by the amount of any credit against
5 the tax which may be claimed upon the return. Since the
6 estimated tax, I believe is, in fact, a credit against a tax
7 which may be claimed upon a return, so I also -- based on this
8 understanding of the law, that failure to file penalty should
9 last no more than that seven to eight days ending on April 23rd,
10 2015.

11 So that's what we have seen, and I want to add -- forgive
12 us if we are getting this wrong in our lack of legalese
13 vocabulary -- you started saying the issues at hand is whether
14 before the Appellant, what was written here, and I also think
15 that the issue to reframe it and to add to was also whether or
16 not the late filing penalty if properly imposed here, that if
17 it's -- I don't know if it applied correctly.

18 ADMINISTRATIVE LAW JUDGE DANG: Just to instruct you for
19 one second.

20 Franchise Tax Board, in my review of the file, it did not
21 indicate that a late penalty is applied.

22 MR. YADAO: It is not.

23 MS. PARNG: I'm just saying either of them, because I know
24 in some of the documents they keep mentioning because of the
25 failure to pay in full on the April 15th, essentially,

1 25 percent -- because it lasted for five months -- that's
2 25 percent of the amount owed on April 15th. I'm going to do
3 a -- roughly \$157,000.00, there's a couple more numbers there,
4 and that's based on this idea that there was something unpaid
5 for that long. What I'm saying is that if something was paid
6 seven to eight days after the -- shouldn't that be the end of
7 that duration of penalties?

8 It says, I mean -- it says pretty clearly that the amount
9 of tax required, the purpose of the section, you know, the
10 amount of tax required to be shown on the return shall be
11 reduced by this, so that's our understanding, I hope I'm
12 explaining that coherently.

13 ADMINISTRATIVE LAW JUDGE DANG: I understand exactly what
14 you're saying. I just want to make clear that, Mr. Parng, that
15 you understand the late payment penalty has not been imposed on
16 you.

17 MR. PARNG: I understand. I think that concludes our
18 opening.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

20 Franchise Tax Board, do you have any questions for
21 Mr. Parng?

22 MR. YADAO: I don't have any questions. I think I
23 understand his position. And I would just clarify that the
24 penalty -- and I think you understand this -- but the penalty is
25 based on it's five percent of the month for the amount not paid

1 by the deadline, and it lasts for up to five months to maximize
2 at 25 percent until the return is filed. You know, if you filed
3 four months late, then it would have been four times five
4 percent, and the penalty, we applied it the way the law was
5 intended.

6 I understand your argument that you paid it on the 23rd,
7 there's some additional information as to why that happened
8 that's not in the record. I'm not sure that's it's relevant
9 here, but it appears that it was on intentional late payment, so
10 even -- if you look at the pleadings, I mean, Mr. Parng had gone
11 through that he relied on his tax professional.

12 You cannot rely on the tax professional to do that. That's
13 a nondelegable task. With respect to first time abatement, the
14 IRS has the administrative ability to do first time abatement,
15 it's not even in statute at the federal level. We don't have
16 the authority to do that. We have promoted legislation to allow
17 first time abatement, but I don't think we have ever
18 successfully -- either we haven't found an author or it died in
19 the subcommittee because of the revenue impact, or whatever the
20 legislation's reason are on that.

21 We have looked at passing regulations to where we would
22 possibly be able to apply the first-time abatement, but the
23 difference between the IRS and the Franchise Tax Board is they
24 have administrative authority to do that. Our administrative
25 authority is through regulations, and we have to pass those

1 through Office of Administrative Law. And one of the things
2 that the Office of Administrative Law looks at when they look at
3 our proposed regulations, is authority do that. And the
4 authority is under 19131, and is the exceptions to the penalty
5 there is explicitly reasonable cause, not first-time abatement,
6 so it would, in essence, be an invalid regulation or underground
7 regulation, and likely wouldn't have been passed by Office of
8 Administrative Law, so we did not pursue it beyond that.

9 There is a recent precedential decision by Office of Tax
10 Appeals called Quality Tax and Financial Services and Citation,
11 if you're interested in that. And your office had stated in the
12 absence of an acknowledgment that a return was transmitted,
13 received, or accepted, an ordinary prudent and intelligent
14 businessperson would have viewed the e-file history and
15 acknowledgment records to confirm whether the return had been
16 timely transmitted.

17 So when we talk about the ordinary and prudent
18 businessperson, that is equal to a demonstration of reasonable
19 cause. And while I understand Mr. Parng may have believed he
20 filed his return in June of 2015 as set forth in the
21 proceedings, and maybe I misheard, now he thought it was in
22 October, but the ordinary and prudent and businessperson under
23 your precedential authority, as well as the precedential case as
24 well as other federal authorities, the ordinary and prudent
25 businessperson in Mr. Parng's position, we believe, would have

1 only had to rely on FTB's electronic confirmation of that
2 receipt of that return. That's consistent with your decision in
3 quality, tax, and financial services.

4 Secondly, the ordinary and prudent person in Mr. Parng's
5 position also would have received the refund of the overpayment
6 shown on his return, and in the absence of receiving that -- and
7 again, he thought he filed his return in June -- he would have
8 contacted FTB saying, Where's my refund? He didn't rely on
9 electronic confirmation and he didn't follow up on the refund.

10 And they had mentioned the late filing penalty. So for
11 instance, he files his return in June as set forth in the
12 pleadings, and say, July comes by or August comes by, Hey, I
13 never got my refund, and he calls and we say, We don't have your
14 return. He would have had that return filed within the
15 automatic extension period, granted, we would have imposed a
16 late payment penalty because that payment was seven days late,
17 but there wouldn't have been a late file penalty, so to mitigate
18 his own error had he followed up on the refund.

19 MS. PARNG: I'm sorry. Can you repeat that last point. I
20 couldn't hear.

21 ADMINISTRATIVE LAW JUDGE DANG: Please, direct your
22 questions to us.

23 MS. PARNG: I'm sorry.

24 ADMINISTRATIVE LAW JUDGE DANG: Would you mind repeating.

25 MR. YADAO: If he would have followed up on his refund

1 within a timely period, he would have been able to file his
2 return within the automatic extension period; that didn't happen
3 either. And we think the ordinary and prudent businessperson
4 would have relied on, one, the electric confirmation that the
5 return was filed; and two, would have followed up on the
6 whereabouts of a -- roughly in the neighborhood of a \$5,800.00
7 refund, and neither of those things happened.

8 ADMINISTRATIVE LAW JUDGE DANG: Was that your opening
9 presentation?

10 MR. YADAO: That was it.

11 ADMINISTRATIVE LAW JUDGE BRAMHALL: I have one question in
12 this case, there was a late return and there was a late payment,
13 do you have discretion as to which of those penalties that you
14 apply.

15 MR. YADAO: No, they are system-generated penalties, so
16 they're applied according to the law. So for instance, if he
17 would have filed within the automatic extension period, the
18 system would have generated a late payment, because he filed
19 after the extension period and we have no idea whether it's his
20 payment at that point composed all of his liability of part of
21 it until we process that return. We have no idea how to treat
22 that so it's the taxpayer's conduct to determine which penalty
23 is imposed.

24 ADMINISTRATIVE LAW JUDGE DANG: Judge Gast, do you have any
25 questions?

1 ADMINISTRATIVE LAW JUDGE GAST: No, I don't have any
2 questions.

3 MS. PARNG: I have a lot to say. Can I get sworn in --
4 does being a witness also help?

5 ADMINISTRATIVE LAW JUDGE DANG: Do you have any personal
6 knowledge of the events that occurred?

7 MS. PARNG: Yes. We are siblings and so I'm aware of
8 Walter's life. All this happened the year I was getting
9 married. We are in each other's life. I'm a witness to his
10 life, but I don't know. Because I don't want to accidentally
11 state things that a representative cannot state.

12 ADMINISTRATIVE LAW JUDGE DANG: What do you intend to
13 testify regarding?

14 MS. PARNG: There's a lot of things that I want to address
15 first as far as legal matters. I'm not a lawyer, but I'm a
16 geek. I like to read and I read deeply. I'd like to point out
17 some discrepancies here, as well as bring up information that I
18 have as his sister in his life. So whatever you deem necessary.

19 ADMINISTRATIVE LAW JUDGE DANG: Let me ask you this: Will
20 you be added to the facts that have been discussed so far
21 regarding the date of his payment?

22 MS. PARNG: I think I may be adding information in regards
23 the reasonable cause, willful neglect thing as well as, you
24 know, personal testimony as far as things -- I know we are
25 talking about first time abatement not being something that

1 California officially adopts yet, but there's information, and I
2 would like to share about that. I just don't know what I can or
3 cannot say.

4 ADMINISTRATIVE LAW JUDGE DANG: Franchise Tax Board, do you
5 have any objection to her?

6 MR. YADAO: I wouldn't know what her testimony is going to
7 be so I don't know.

8 ADMINISTRATIVE LAW JUDGE DANG: It sounds if you're making
9 mostly a legal response.

10 MS. PARNG: I would say I'm making, probably, seven, maybe,
11 eight legal responses and then one or two personal responses as
12 far as personal knowledge responses.

13 ADMINISTRATIVE LAW JUDGE DANG: Pertaining to...

14 MR. PARNG: I think mainly we just have questions of the
15 interpretation of 19131 and 19132. And I'm going to go ahead
16 and ask, maybe it can just be explained to me so that I can
17 understand a little bit better. It says "The penalty composed
18 under paragraph 1 shall consist of both of following: A five
19 percent of total tax unpaid and defined in Subdivision C." In
20 there, it talks about that the payments that you did make should
21 be counted as a credit. I don't understand what I'm not
22 understanding.

23 ADMINISTRATIVE LAW JUDGE DANG: Would you like to take a
24 brief recess, and if you are looking for an explanation from the
25 Franchise Tax Board.

1 MS. PARNG: I am not looking for an explanation, I have a
2 lot to say in response to the explanations that were just given,
3 so I would like to address them, if that's okay with you.

4 ADMINISTRATIVE LAW JUDGE DANG: Do you have any objection
5 to swearing her in and letting her testify as to her one
6 personal --

7 MS. PARNG: If not, a lot of it is purely legal as well.

8 ADMINISTRATIVE LAW JUDGE DANG: There's no --

9 MS. PARNG: I just want to do it, testify, let's do it.

10 MR. YADAO: No objections.

11 ADMINISTRATIVE LAW JUDGE DANG: Please, raise your right
12 hand.

13
14 CONSTANCE PARNG,
15 called as a witness and having been first duly sworn, was
16 examined and testified as follows:

17
18 THE WITNESS: Yes, I do.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you. You may be
20 seated.

21 Go ahead.

22 MS. PARNG: So I'm going to start with the legal things. I
23 actually believe that it's very clear in the tax code why --

24 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry to interrupt.
25 Let me ask from you, originally, prior to this hearing, we had a

1 allotted five minutes for Mr. Parng's rebuttal, do you
2 anticipate taking --

3 MS. PARNG: I'm going to try to do this as quickly as
4 possible.

5 ADMINISTRATIVE LAW JUDGE DANG: I'll give you leeway if you
6 need additional time.

7 MS. PARNG: There's a few big points here. First of all,
8 intentional late payment. This is a really big question to me,
9 why would it be intentional when a person is guaranteed to get a
10 refund? That makes no common sense. There is no benefit to
11 anyone, to the filer, to the taxpayer, to file late when you are
12 owed a refund. Now, the statement saying that a prudent person,
13 you know, one should not rely on the tax preparer. I know that
14 in the court of law that has been something that has been
15 addressed that one cannot completely trust a tax preparer, and
16 yet, I would like to point out that hundreds of thousands of
17 people, do, in fact, rely on tax preparers to do their jobs.
18 It's not an insane thought for a human being to have. So that
19 is that.

20 I want to talk about five percent each month. Yes, that is
21 true. The five percent for each month or fraction thereof
22 elapsing between the due date of the return, April 15th,
23 determine without any extension of time for filing and the date
24 for which it was filed. Yes, the total penalty may not exceed
25 25 percent of the tax. Now, if you go down and read this code

1 Section 19131, Section C, explains to you exactly what that tax
2 is we're talking about. 25 percent of what amount? You are
3 saying 25 of the tax, what is the tax? And that is defined very
4 clearly in 19131, letter C. I don't see any discrepancies
5 there, like, the amount is reduced, it says very clearly. So
6 that's my address to that.

7 Another thing about -- it's just arbitrary, the system
8 might do a penalty for late filing, may do a penalty for late
9 payment, that is actually not true. It is clearly defined in
10 Section 19132, this is in paragraph 3 (b), "The penalty
11 described by Subdivision A shall not be assessed for the same
12 taxable year, the sum of any penalties imposed under 19131
13 relating to the failure to file return." And Section 19133,
14 "Relating to failure to file return after demand is equal to or
15 greater than the subdivision penalty."

16 What are they saying? No one is hit with both penalties in
17 the same taxable year. No one is hit with the same penalty. In
18 the event the penalty imposed under Subdivision (a) is greater
19 than the sum of penalties imposed under Sections 19131 and
20 19133, the penalty imposed under subdivision (a) shall be the
21 amount which exceeds the sum of any penalties imposed under
22 Section 19131 and 19133. Meaning, whichever one is greater.

23 The penalty for filing late was greater than the penalty
24 for the late payment penalty. So they chose between those two
25 penalties, you don't get both, whatever one was more costly. So

1 that is the reason for why. Because it's not arbitrary, are we
2 going to do the penalty for late file or the penalty for late
3 payment, it's determined by whichever one is a bigger amount.
4 So that is clearly stated here as well. I wanted to address
5 that. Done, done, done.

6 And finally, Walter did file an extension, that should be
7 seen in his tax records, that is why October 15th was a prudent
8 and, you know -- that was the date that you're allowed to file
9 if you have a tax refund coming to if you have already paid your
10 taxes. And finally, where is my refund? A prudent person would
11 think I am owed a refund, how come it didn't come. Well, I'd
12 like to disclose, our grandmother was extremely ill during that
13 Fall. Actually, the year before that Fall she got really sick
14 and she passed away that February.

15 So I don't think that a lot of our family members were
16 thinking about where is my refund I'm supposed to get. So
17 that's a personal piece I'm adding. As far as the first time
18 abatement, yes, it has not passed, however, it was proposed in
19 2013, 2014, 2015, and most recent in 2017. And for all other
20 intents and purposes, the majority of the tax code for the
21 California Franchise Tax mirrors federal tax laws.

22 All I'm saying here is the federal tax law clearly has a
23 first-time abatement available. And I'm also saying that IRS
24 Tax Code, which mirrors 19131, which is Revenue Code 6651 (b)
25 says "Penalty imposed on the net amount due." So again, yes,

1 five percent of each month that you did not pay, five months
2 maximum, but what is that tax? The tax that is owed in the net
3 amount the net tax due. It does not say initial tax, yes,
4 initial tax was \$157,000.00, but after a payment of
5 \$166,000.000, you don't have a net tax amount due, therefore,
6 this is a misinterpretation of the law, which I do believe is a
7 pretty open and closed clear black and white case that if we
8 were bringing it to Superior Court with a proper lawyer, not me,
9 I think this is pretty clear cut. So I'm done with that
10 portion. Thank you.

11 ADMINISTRATIVE LAW JUDGE DANG: Thank you, Ms. Parng.

12 Mr. Parng, did you want to add something?

13 MR. PARNG: I think my understanding that there was a late
14 extension payment request filed, but again, due to this one
15 error that happened on April 15th, I think because the payment
16 wasn't received on April 15th, I don't think -- they did not
17 acknowledge the extension payment request. So again, it's like
18 this one error that happened on 4/15 that is, like, triple
19 stacked, in my opinion, which is an unbelievable way. That's
20 all I have.

21 ADMINISTRATIVE LAW JUDGE DANG: Great. Thank you.

22 Judges, do you have any additional questions?

23 ADMINISTRATIVE LAW JUDGE GAST: No.

24 ADMINISTRATIVE LAW JUDGE BRAMHALL: No questions.

25 ADMINISTRATIVE LAW JUDGE DANG: Franchise Tax Board, if you

1 would like to respond briefly.

2 MR. YADAO: It's not relevant as to the imposition of the
3 penalty of whether -- just to clarify -- whether the payment was
4 intentionally or accidentally late. So I was referring to
5 when -- again, this isn't in the record -- when Mr. Parng
6 submitted a claim for refund on a dishonored payment penalty, he
7 clarified in his claim for refund that he didn't intend for that
8 payment to cash until April 21st because that's when funds would
9 have been available. I have his claim with me, if it matters to
10 your panel, to see his own words to that.

11 Just to clarify, it doesn't matter that the late payment
12 was intentional or accidental. Again, the penalty imposed is
13 the late filing and not the late payment, and it's based on the
14 amount that was paid after the payment deadline.

15 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

16 Do you feel a need to respond?

17 MS. PARNG: Yes, I do.

18 ADMINISTRATIVE LAW JUDGE DANG: Keep this brief.

19 MS. PARNG: Yes. That has been addressed by the previous
20 attorney that Walter had, and there's this confusion claim for
21 refund all this stuff. First and foremost, we are looking for a
22 post-payment waiver, an abatement of these penalties, and
23 according to the law, should not be there. If there were no
24 penalties, there is nothing owed at all, just a refund, and in
25 which case, the claim for refund is completely valid.

1 A lot of times, if you read through the docket or what do
2 you call it, a binder, it's been misconstrued, claim for refund
3 and penalty abatement, post-payment waiver request. So I would
4 like to make sure that we understand that these are different
5 things. And so that was willful. And when -- I'm not sure
6 which document you were referring to and I wish that you could
7 point out which exhibit that is, but Exhibit A clearly states
8 that a payment of \$165,000.00 was received by the Franchise Tax
9 Board on April 23rd, 2015. Those are the main things.

10 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you very much.
11 Thank you everyone for your presentations, and once again, thank
12 you so much for your patience. The record in this case is now
13 closed. Following the hearing today, the judges will meet,
14 deliberate this case, and you should expect a decision from
15 us -- we will endeavor to get it out in 100 days. Thank you
16 very much. This hearing is now adjourned.

17 (Hearing adjourned at 1:13 p.m.)
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1 REPORTER'S CERTIFICATION

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

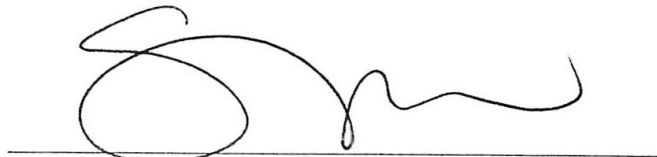
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under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

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

22 Dated: February 21, 2019

23
24 
25 Shelby Maaske,
Hearing Reporter