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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
ANDREJ MAIHORN and ANGELITA) OTA NO. 18032523
BILLMAN MAIHORN,)
APPELLANT.)
_____)

Transcript of Proceedings, taken at
355 South Grand Avenue, South Tower, 23rd Floor,
Los Angeles, California, 90021, commencing
at 10:51 a.m. and concluding at 11:36 a.m. on
Wednesday, February 20, 2019, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG

Panel Members: Hon. LINDA CHENG
Hon. DANIEL CHO

For the Appellant: ANDREJ MAIHORN, Taxpayer
ANGELITA BILLMAN MAIHORN,
Taxpayer

For the Respondent: State of California
Franchise Tax Board
By: DAVID KOWALCYK
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I N D E X

OPENING STATEMENT

PAGE

By Mr. Kowalcyk 37

WITNESS TESTIMONY

PAGE

Angelita Billman Maihorn 10

Andrej Maihorn 18

E X H I B I T S

(All exhibits presented today were received on page 9.)

CLOSING STATEMENT

PAGE

By Mr. Maihorn 39

1
2
3
4
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Los Angeles, California; Wednesday, February 20, 2019

10:51 a.m.

ADMINISTRATIVE LAW JUDGE DANG: Good morning once again, and welcome to the Office of Tax Appeal. We're opening the record in the appeal of Andrej Maihorn and Angelita Billman Maihorn.

MRS. MAIHORN: It's Angelita.

ADMINISTRATIVE LAW JUDGE DANG: Angelita -- my apologies --

MRS. MAIHORN: It's all right.

ADMINISTRATIVE LAW JUDGE DANG: -- Billman Maihorn before the Office of Tax Appeals. The Case No. is 18032523, and this hearing is being convened in Los Angeles on February 20th, 2019. The time is 10:51 a.m.

Today's case is being heard by a panel of three judges. I'm the lead judge. My name is Nguyen Dang for purposes of conducting this hearing, but all three of us will participate in issuing a decision. Also on panel with me today is Judges Daniel Cho and Linda Cheng.

Will the parties please introduce themselves for the record, beginning with the Appellant.

MRS. MAIHORN: I'm Angela Billman Maihorn.

MR. MAIHORN: And Andrej Maihorn.

1 ADMINISTRATIVE LAW JUDGE DANG: And for the
2 Franchise Tax Board?

3 MR. KOWALCYK: David Kowalcyk for Franchise Tax
4 Board.

5 MS. MONSNIER: Marguerite Mosnier for Franchise
6 Tax Board.

7 ADMINISTRATIVE LAW JUDGE DANG: Thank you. The
8 issue I have before us today is whether abatement of the
9 notice and demand penalty for 2015 is warranted due to
10 reasonable cause and the absence of willful neglect.

11 Does that sound correct to you, appellants?

12 MRS. MAIHORN: Yes.

13 ADMINISTRATIVE LAW JUDGE DANG: Franchise Tax
14 Board?

15 MR. KOWALCYK: Yes.

16 ADMINISTRATIVE LAW JUDGE DANG: Thank you. Prior
17 to this hearing, the parties stated that they would be
18 submitting as evidence as exhibits previously attached to
19 their briefs, which have already been exchanged between
20 parties. We combined that into electronic files that was
21 sent to both parties.

22 Appellant, did you have a chance to review that
23 electronic document?

24 MRS. MAIHORN: Yes.

25 MR. MAIHORN: I think so, yeah.

1 ADMINISTRATIVE LAW JUDGE DANG: Are there any
2 objections to admitting that?

3 MRS. MAIHORN: No.

4 MR. MAIHORN: No.

5 ADMINISTRATIVE LAW JUDGE DANG: Franchise Tax
6 Board, I'm assuming you also received a copy of that file?

7 MR. KOWALCYK: Correct.

8 ADMINISTRATIVE LAW JUDGE DANG: And you had a
9 chance to review it?

10 MR. KOWALCYK: Yes.

11 ADMINISTRATIVE LAW JUDGE DANG: No objections?

12 MR. KOWALCYK: No objections.

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
14 Also today Appellants brought in new exhibits. I'm not
15 quite certain what the purpose of these exhibits are.
16 Would you mind explaining just briefly?

17 MR. MAIHORN: So the one is basically
18 highlighting -- so we get the daily notification from
19 USPS, what mail is coming --

20 MRS. MAIHORN: To our house.

21 MR. MAIHORN: -- to our house, our mailbox. So
22 last night I literally scanned the past few weeks, and I
23 basically just printout a few samples of mail that was
24 scanned for our address that arrived, actually. That was
25 a totally wrong address, totally different neighborhood,

1 totally different part of the city. And funny enough,
2 actually, important tax return documents for some folks as
3 some evidence. I think I submitted with the original file
4 a different example. In the beginning it was just
5 showcasing, just for example, the last few weeks,
6 actually.

7 ADMINISTRATIVE LAW JUDGE DANG: So every item on
8 this list are examples of mail that you received from
9 other --

10 MRS. MAIHORN: Oh, no. That's somebody he's
11 talking about.

12 MR. MAIHORN: Oh, this one. That's the --

13 ADMINISTRATIVE LAW JUDGE DANG: Okay. Just the
14 first one.

15 MRS. MAIHORN: That's the --

16 MR. MAIHORN: And this one here, I just made a
17 list of items that we need to collect in order to file our
18 taxes. And since --

19 MRS. MAIHORN: Well, yeah. That's just a
20 detailed list because I'll bring that up in just a couple
21 of minutes.

22 ADMINISTRATIVE LAW JUDGE DANG: Okay.

23 MR. MAIHORN: And I think we highlighted that in
24 our --

25 MRS. MAIHORN: It's just more specific.

1 MR. MAIHORN: -- appeal as well.

2 ADMINISTRATIVE LAW JUDGE DANG: Okay. If you
3 could, please talk one at time for the stenographer.

4 MRS. MAIHORN: I'm sorry. I'm sorry.

5 ADMINISTRATIVE LAW JUDGE DANG: Okay. And just
6 to confirm, the remaining items on this list are items you
7 that you need to gather in order to prepare your tax
8 return?

9 MRS. MAIHORN: Correct.

10 MR. MAIHORN: Yes.

11 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
12 Franchise Tax Board, are there any objections to admitting
13 this into evidence?

14 MR. KOWALCYK: No objections.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay. With no
16 objection, we will be -- the electronic file that has been
17 sent to the parties will now be admitted into the record
18 as well as the evidence that Appellants have now brought
19 today to the hearing.

20 (All evidence submitted for this
21 hearing is received in evidence by
22 the Administrative Law Judge.)***

23 If you're ready to begin, I can go head and swear
24 you in.

25 MRS. MAIHORN: Sure.

1 ADMINISTRATIVE LAW JUDGE DANG: I'll just do both
2 of you at the same time, if you don't mind standing.

3 MRS. MAIHORN: Okay.

4 ADMINISTRATIVE LAW JUDGE DANG: Raise your right
5 hand.

6

7

8 ANGELITA BILLMAN MAIHORN,
9 produced as a witness by and on behalf of herself, and
10 having been first duly sworn by the Hearing Officer, was
11 examined and testified as follows:

11

12

13 ANDREJ MAIHORN,
14 produced as a witness by and on behalf of himself, and
15 having been first duly sworn by the Hearing Officer, was
16 examined and testified as follows:

16

17

18 ADMINISTRATIVE LAW JUDGE DANG: Thank you. You
19 may be seated. Just to remind you again that you have 20
20 minutes for your testimony for both of you together.
21 Ms. Maihorn I believe you're going to begin?

21

22

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MRS. MAIHORN: Yes.

ADMINISTRATIVE LAW JUDGE DANG: Okay. So
whenever you're ready, go ahead.

MRS. MAIHORN: Okay. This is a little free form.
It's not necessarily all written out. But we feel the

1 reason that we are here because on documents, or just by
2 whatever we've written in a small paragraph, I wasn't able
3 to establish that we have a reasonable reason why we
4 didn't get -- we failed to have reasonable cause of why we
5 didn't respond to the State requests for our taxes, and so
6 that's why we're here.

7 And in that reasonable amount for me means, like,
8 there's room for some human decisions. It's not
9 necessarily a black or white thing. It doesn't apply to
10 every single person and every single household, and every
11 single, you know, place. It's more of wow. This is a
12 situation where we as judges have to decide, like, yeah, I
13 could see how that could be a real problem and maybe allow
14 some humanness in this system.

15 I don't see it as necessarily being just a cut
16 and dry yes or no. And so our problem is that we're
17 fortunate enough to live up in the hills. And in the
18 hills it's like being in the hills. You don't always get
19 the right mail delivered to you. You often get other
20 people's mail delivered to you.

21 In fact, I was telling him I should have held on
22 it because just three day ago I had three pieces of mail
23 that came in our mail that were for someone else, and I --
24 it was on the staircase for a couple of days or so. I
25 guess it was more than three days ago. It was three days

1 ago I returned it.

2 It was laying, and I was like, you know what? I
3 really need to stick this outside for our mail dude. So I
4 stick it outside and put the little red flag up. One of
5 those things was different from this one, but it said
6 "Important Tax Document." It was for somebody else. So I
7 sent it back to our mailman so he could hopefully get it
8 to where it goes.

9 But this is a common occurrence for us, and
10 that's fine. What are my choices as a civilian who has
11 got a, you know, wonky mail system? Well, I could
12 complain, which we have. It doesn't really do anything
13 'cause it's not necessarily our mailman as you can tell by
14 the documents here. This is presorted at the post office.
15 So you just kind of deal with it.

16 If you got something you know that's going to
17 come to you, you tell them use FedEx; get a certified
18 mail; use UPS. Do whatever you need to do if you really
19 need it to get to us. Fine. Other than that, like, the
20 W-2's in this whole long list of things that I have to
21 collect every year, it takes a while 'cause half of this
22 stuff gets lost.

23 I have to contact the studios. And I have to
24 contact all those different places most of the time to
25 have them resend it to us, and sometimes resend it again.

1 And it's just what it is. It is a pain? Yes. But what
2 are my options? I could try to, you know, get a post
3 office box and have some of the stuff delivered there, but
4 we had a post office box at our other house, and it
5 doesn't necessarily mean that everything is going to get
6 into that. That's not a guarantee.

7 It's also not my responsibility to fork out money
8 in addition to paying taxes, which provide for the, you
9 know, USPS. Well, it's up to -- I shouldn't have to pay
10 several hundred dollars month just to try to maybe get a
11 few more pieces if it's going to a P.O. Box. And then you
12 have to also deal with that little inconvenience of when
13 you can go pick that up. That's a whole other ball of
14 yarn.

15 The bottom line is we work with it. We just deal
16 with it. And when we find that there's an issue, we fix
17 it. In this case, unfortunately, I don't know. One of
18 these guys seems to come to our place all the time. All
19 the time. And we're wondering if maybe we have the same
20 problem where our stuff just gets sent all the time -- I
21 mean not ever single time, but often -- to this one
22 specific thing like this guy's get sent to ours.

23 'Cause, like, they're sort of similar addresses,
24 but not really 'cause it's actually in Inglewood, which is
25 nowhere near our house. It's not like a couple of houses

1 down. So I don't know why we didn't receive the first and
2 second thing from the IRS, but I can tell you everything
3 that we've ever done and actually received we've acted
4 immediately on.

5 And as soon as we got the one that said this is
6 what's happening, we act immediately on it. And I think
7 what's -- what's frustrating here is that they -- they
8 tell us that -- that we didn't act as ordinary intelligent
9 and prudent business persons would have -- would have
10 done, which I don't know what you personally would have
11 done if the same situation happened to you.

12 It's just you deal with what you have and you do
13 the best to make up for it. We -- we always overpay our
14 taxes because we know this is a problem, and it takes us
15 time to go and collect all the stuff from the missing
16 pieces. Sometimes it takes months to get the stuff from
17 people. So we always over pay our taxes always every
18 year.

19 And we have one of our exhibits here that says
20 just from 2009, every single year from 2009 we over pay
21 our taxes. We file them so that we have a grace period of
22 time where we can go and collect all the stuff we need,
23 and then we'll take the money back from the state at that
24 point. Now, do we get -- do we get any bonus for letting
25 the State sitting on our money? Of course not.

1 ADMINISTRATIVE LAW JUDGE DANG: Just to interrupt
2 you for one second. That document you just pointed to --

3 MRS. MAIHORN: Yes.

4 ADMINISTRATIVE LAW JUDGE DANG: Is that currently
5 in the exhibit?

6 MRS. MAIHORN: Yeah. We submitted.

7 MR. MAIHORN: We send it all to Claudia Lopez.

8 MRS. MAIHORN: And we have -- we also have, like,
9 the actual returns to back up these numbers. This is just
10 a quick -- quick thing for you guys.

11 ADMINISTRATIVE LAW JUDGE DANG: Oh, okay. Thank
12 you.

13 MRS. MAIHORN: So you can see every year we over
14 pay intentionally, and we don't get anything for that.
15 There's no bonus brownie points. But this year, you know,
16 and for the record, I'd also like to say ID got stolen; my
17 tax ID or whatever. Now, maybe it was out of my mailbox,
18 maybe it wasn't. I don't know. We did change and got
19 what an ordinary intelligent businessperson would do, and
20 got a locked mailbox.

21 But instead now, every year I have to get an ID
22 for -- not my social security number -- an additional
23 taxpayer ID. A couple of times that's not gotten to us
24 because it comes by mail. So then I have to track that
25 down. And it's annoying, but it is what it is. And so we

1 overpay our taxes every year just to make sure that we'll
2 be getting a return and that we do not owe the state ever,
3 ever, ever.

4 Now this is a year where we didn't owe the State
5 in 2015, again. And yet they said, "Well, they contacted
6 us because they figured that we did." And we didn't
7 respond so then they decided they were going to tax us
8 because -- and it turns out we still didn't owe them as
9 always. My husband's job hasn't changed. There's nothing
10 new that had changed. There's absolutely zero reason to
11 think that we would suddenly owe them, and we didn't owe
12 them.

13 But then they said, "Well, we're gonna keep that
14 money anyway because we tried to contact you and tell you
15 that you should do your taxes, and we're gonna keep that
16 money." I don't know. To me this seems like not really,
17 really reasonable or fair. I mean, it's -- we always --
18 there's no -- if we have to send in our mail to the
19 government, whether it's the State or the IRS, we have to
20 certify it. If it's really important, we have to make
21 sure that there is something that says it's certified. We
22 sent it to you. Period.

23 If the State or the IRS sends something to us and
24 we just don't get it, well, they're going to tax us and
25 take our money that we overpaid to them anyway. So

1 they're going to keep it. They don't certify it to us.
2 They don't make sure it arrived and was signed for. I
3 understand that maybe one, they mailed the first one. But
4 by second one if they don't hear from us, send us a
5 certified thing that says you actually received it and you
6 ignored it. We have proof that you ignored it. Then, you
7 know, fine.

8 When we got the one that we did get, we acted
9 immediately on it, and we filed our taxes and we got --
10 would have gotten the money back. But then they decided,
11 no we're just going to keep what we would have been owed
12 you. Ever never has that ever happened to us before. We
13 would have no reason to be looking for a letter that we
14 owed taxes. Again, nothing changed with my husband's
15 status or business or job. Nothing changed.

16 So we wouldn't know to be looking for, oh,
17 they're going to come after us. It's been over a decade
18 that we've done this. So in conclusion, I'm going to turn
19 it over to my husband. But I just feel like this is a
20 situation where reasonable -- this is not a reasonable
21 situation.

22 We do not have a reasonable mail delivery
23 service, but we are reasonable taxpayers who always try
24 to, in fact, make up for our unreasonable mail situation
25 by over paying every year just to make sure we don't get

1 in trouble.

2 And this comes along, and then we quickly when
3 they say -- when we get the thing that says you got to
4 pay. We want your taxes now. We give them our taxes that
5 we owe, they still come back to us and say we're going to
6 keep what we owe you -- what we owe you because -- well,
7 we're just going to keep it.

8 I just don't see this as being fair or right.
9 It's a human decision. It's not something that you can
10 actually sit there and say in a law book, well, we sent
11 the two pieces of mail, especially when they didn't
12 certify them in any way, shape, or form. They can't
13 guarantee that they actually got to us. And then they
14 take money on top of it. It's one thing if -- I just --
15 any way. I'll leave it there. I'm done.

16 MR. MAIHORN: All right. I'm going to be a
17 little bit more specific. I guess --

18 MRS. MAIHORN: He's German. That's why.

19 MR. MAIHORN: -- that's why I left the opening to
20 her. I mean, obviously, the mail issue is the main
21 concern that we have, and the main reason why. That's
22 kind of why we try to layout, therefore, the reasonable
23 cause. I mean, it's also a combination of other things
24 that play a role, right.

25 So we filed, I think, as part of the prehearing.

1 We filed basically the overview, and we typically file the
2 taxes. Basically, these are the dates since we file
3 jointly, and since we use the tax accountant, actually for
4 filing. We have a tax accountant that me and my wife have
5 been using, basically, for 25 years or so.

6 So you'll see in the list -- it's consistently
7 late. I mean, it's up to, you know, two years late pretty
8 much consistently. So we didn't file the taxes within the
9 same year. We never had fines. We never had a penalty
10 before. So our assumption was -- and that was the
11 confirmation we got from our tax accountant as well that
12 as long as you owe. And I understand that might not be
13 the case where stuff is written out differently, but the
14 assumption is as long as you don't owe, you don't have to
15 file.

16 So the combination of dealing with an issue of
17 the mail service, getting the material together, having
18 your life of two small kids, a busy of schedule that I
19 have for travel and stuff, filing within, like, until
20 April 15, by now we don't know. It's just -- it was never
21 a pressure to us based on our filing history as well,
22 right.

23 So also for like most of the cases, you know, we
24 use electronic communication. I mean we use it for this
25 case, right. We were able to submit certain things like

1 e-mail. You know, you can get a confirmation for that.
2 So I mean, we are still dealing with a pretty antiquated
3 system for, like, pretty important forms of documentation.

4 In addition, you see the list we submitted here.
5 There are quite a few documents that we need to submit
6 just because Angie, she was an actress before. So she
7 has -- basically she still gets residual checks from all
8 the different studios. So we have to make sure before we
9 actually can file and then basically file the tax return
10 that we have all the documents in place.

11 We cannot do a temporary filing and then make an
12 adjustment because we don't have the documents. We asked
13 our tax accountant, but it's not really an option. So I
14 understand that there was mail sent out that we haven't
15 seen, we haven't received. Whatever happened there, we
16 got the notification on September 20th that we actually
17 did receive.

18 Once I received that, I had already highlighted
19 the penalties and everything. I literally -- literally I
20 was on a business trip. Right after I took that with me
21 and called the Franchise Tax Board basically, immediately.
22 So that should be a call on record that we called
23 immediately trying to understand the situation. And based
24 on the conversation, the way it went it was like us not
25 understanding what the situation was and how it led to

1 that situation.

2 Because we haven't received the mail and I think
3 it -- hopefully it's on record based on that call. So
4 based on the conversation that we had, it was kept open.
5 If there was a penalty or not at the end, we basically
6 filed the report. We made sure we had all the documents
7 in place and we filed the report.

8 What I have done is also -- based on the response
9 we got from the FTB, I just want to go through the
10 different bullet points and how they have been addressed
11 in case of the -- in context of this reasonable call --
12 cost.

13 It was saying here, "Moreover, ordinarily
14 intelligent and prudent persons would have used a
15 different address or P.O. Box if the new mail delivering
16 to that location is unreliable."

17 So the challenge that we see here is A, we had a
18 P.O. Box and it arrived via carrier. We had a P.O. Box
19 there. The experience was not much better to be honest.
20 So I don't think it's the issue. If you look at this,
21 this is mail -- it doesn't state -- ours got to somewhere
22 else. That just means that someone else's mail got to us.

23 Which also means if I have a different address,
24 it doesn't prove that that would change the problem;
25 right? Because clearly this guy here didn't get a tax

1 documents even though he's living in Inglewood, which is
2 like far enough from us to be not even close. The address
3 doesn't even resemble our address. Like, we are 1931
4 Sunset Plaza Drive. This one is 1931 West 91th Place.

5 So it's not even close from that perspective. So
6 I don't see that we -- that this applies to have a
7 different address that would necessarily fix the issue.
8 And that's just from the last few weeks, actually, that I
9 just went through.

10 The next statement was, "Ordinarily intelligent
11 and prudent business persons would not depend on an
12 unreliable mail service for sending or receiving important
13 documents." And that's exactly true. My issue, and my
14 wife already stated is if we know that documents are
15 coming or we know that a check is coming, we make sure we
16 understand that this is coming. We get a tracking number.
17 We get it certified. We use a different service.

18 We expect the same from the ordinary intelligent
19 and prudent business person from the FTB at the end. If
20 there are important tax documents that they need to be
21 delivered, I expect the same from the other party. Which
22 is not the case here because, certainly the other party is
23 relying on the system, you know. So I don't understand
24 why it's a one-sided topic for this. For really important
25 stuff, we use other services that we need.

1 The next one was, "Ordinarily intelligent and
2 prudent business persons also would have contacted FTB if
3 they knew they may receive a demand for tax return."

4 The problem is that we have now been penalized.
5 We now add a filing, so it's like I would not proactively
6 ask or necessarily expect that there would be a demand for
7 tax return because it was not an issue before. We haven't
8 paid penalties. So that statement doesn't apply at all
9 either.

10 And then finally it says, "Finally, ordinarily
11 intelligent and prudent business persons would not have
12 waited over six months to file a tax return in response to
13 a demand."

14 So first of all, exactly. I would not have
15 waited for six months. It's absolutely the case. The
16 first time I got the mail into the box, which is
17 September 20th, I made that call to follow-up on the
18 issue. I would have not -- my wife obviously knows me,
19 but I'm like everything that's regarding finances, I'm
20 very adamant about it.

21 So if we would have gotten the mail, we would
22 have reacted. So we would have not have waited for six
23 months. And again, based on the history of filing and the
24 material that we need to get, yeah, we are not filing
25 within six months until the tax year is over.

1 So again as my wife said also, it's like we are
2 not avoiding paying taxes. You know, I had the
3 opportunity. The IRS asked me to change the -- whatever
4 you call it -- dependable number, the dependents or
5 whatever, the credits. I don't want to get close to break
6 even. I want to keep it as it is. I know I don't owe. I
7 don't have an issue with filing returns, et cetera.

8 And then at last but not at least, I look for fun
9 last night, really, on the statistics of USPS. It's
10 online publicly available. I mean, it's not a surprise,
11 but the assumptions are out there. It's not an uncommon
12 thing. Based on 200 billion deliveries that are made by
13 USPS, 5.5 billion, which is around 3 percent, are
14 undelivered as addressed.

15 There are different things that happen. 1.3
16 billion are returned to sender. 2 billion are discarded,
17 and the rest are forwarded. But it's not necessarily an
18 absolutely uncommon issue, you know, for this delivery
19 system. So I would really like, based on the definitions
20 of reasonable cause and in our situation, I think we have
21 a very valid point. And we do understand certain things
22 are different, obviously. We do understand that, you
23 know, we want to file earlier now based on what happened
24 here.

25 We'll certainly do it. Even though, like, last

1 year all documents together we file by October. But
2 that's totally fine as long as we don't owe.

3 ADMINISTRATIVE LAW JUDGE DANG: Does that clue
4 your presentation.

5 MRS. MAIHORN: Yeah, the other thing, I mean,
6 it's just a side note. I don't quite understand. You
7 know, the penalty was applied as 25 percent of the taxes
8 that you -- the calculated taxes that you -- the
9 calculated taxes of the tax year, which was \$10,130. But
10 then we prepaid basically as part of the paychecks. We
11 paid \$13,000 -- whatever it was already.

12 So I don't get the concept of those penalties
13 because we clearly overpaid than what they are based on of
14 the calculation. So I mean, that's a different topic. I
15 mean, again, that's the other thing. I mean, you know, we
16 are a family four with small kids. For us it's not --
17 that's why we are here. We want to go through the
18 process. For us it's a big deal losing \$2,500, you know,
19 especially living in LA. So for us it's not -- I just
20 cannot just let it go, you know. And it is a big deal.

21 And so we are -- we have regular jobs. You know,
22 we pay our taxes. We do everything that we do, and so
23 hopefully the State of California sees that.

24 ADMINISTRATIVE LAW JUDGE DANG: Thank you. Is
25 that --

1 MRS. MAIHORN: Yes.

2 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
3 Before I give Franchise Tax Board an opportunity to cross,
4 I just had one small clarification. You had mentioned,
5 Ms. Maihorn, a P.O. Box that you had set up?

6 MR. MAIHORN: Oh, we have a small cabin in Lake
7 Arrowhead, and you have -- you can't get mail to the
8 house. So you have to have a P.O. Box. And we've had a
9 nightmare with that, because half of the stuff they won't
10 deliver to P.O. Box. And if you do get stuff out of the
11 P.O. Box, you can only get it at certain hours.

12 And if you don't check it every two months -- so
13 if we go to Europe -- because he's German -- for a couple
14 of months, then you lose your P.O. Box, period, if someone
15 doesn't check it. It's a nightmare. But we were trying
16 to consider would that make a difference. The answer is a
17 resounding no. And as you can see -- what he was saying.

18 MR. MAIHORN: Yeah. The other -- we live in the
19 hills in a small rental place. For us getting a P.O. Box,
20 the nearest P.O. Office is literally about a 20-minute
21 drive for us to go up and down the hill. I work from
22 home.

23 MRS. MAIHORN: It still doesn't change anything.

24 MR. MAIHORN: It's inconvenience, right. So for
25 us basically a roundtrip is 40 minutes. So like, it's

1 also not optimal from a business perspective too.

2 MRS. MAIHORN: Right. And as we were saying,
3 these people all don't have P.O. Boxes, and they are
4 getting their mail delivered to our house. So should
5 everyone go out and get a P.O. Box? And will that change
6 anything? Or will we all just get our stuff at different
7 P.O. Boxes?

8 ADMINISTRATIVE LAW JUDGE DANG: No. Thank you.
9 I just wanted to make sure that P.O. Box -- that address
10 had nothing to do with the notices that were sent to you.

11 MRS. MAIHORN: No, no. That has nothing to do
12 with this.

13 ADMINISTRATIVE LAW JUDGE DANG: You're just
14 giving an example.

15 MR. MAIHORN: Yes. Right. We have personal
16 experience of P.O. Boxes, and, you know. So I think we're
17 relatively intelligent and, you know, prudent business
18 people-ish. So, you know, that doesn't work.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you.
20 Franchise Tax Board you can -- if you would like to cross,
21 you may at this time.

22 MR. KOWALCYK: I have no questions.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay. Panel
24 members?

25 ADMINISTRATIVE LAW JUDGE CHO: Yeah. I had a

1 quick question. From the file that I've seen, it look
2 like there were a lot -- a good number of notices that
3 were sent out prior to the one at issue. Did you ever
4 those notices that request for demand -- the request for
5 tax return?

6 MRS. MAIHORN: I mean, I don't know that it was
7 -- I mean, the different change from our house -- the
8 request for demand is the last one that you get, like,
9 when penalties apply when there is a request for filing.
10 The only thing that I recall is that there was mail that
11 we got to file, or that -- I don't know how it was
12 phrased.

13 The tax did not come in yet, the tax report for a
14 certain year, and the Tax Board asked us to file taxes.
15 But I don't know if the demand is the last one that you
16 get before it applies. At least I don't recall it.

17 ADMINISTRATIVE LAW JUDGE CHO: So the ones that
18 I'm actually referring to are the 2010 through 2014 tax
19 years. They were sent, I believe, in 2012 through 2015 or
20 '16. So from 2012 through 2016, pretty much almost every
21 year, I think you have to be sending your requests to file
22 a California tax return. Did you ever receive those? Do
23 you remember?

24 MR. MAIHORN: I think we might have.

25 MRS. MAIHORN: I'm sure we received --

1 MR. MAIHORN: Personally, I would have to look.
2 I don't know off the top of my head right now. Because,
3 like, typically again, we get certain thing. And the only
4 thing I recall, if anything, was, hey we didn't get your
5 taxes yet. Can you file your taxes? And we filed our
6 taxes.

7 And again, what we typically do is when we get
8 it, and it was maybe once or twice, just the tax request,
9 that we call our tax accountant. And he's like, yeah it's
10 fine, you know, just come in. You know, get your stuff
11 and then you come in and then you file it as long as you
12 don't owe. That was the thing. But I don't recall that
13 we got into tax for demand or what you call it.

14 MRS. MAIHORN: Right. I think we have received
15 requests for our taxes, almost like an automatically
16 generated after April 15th. Like, hey, we didn't get your
17 taxes, kind of a thing. To which we know, yeah, yeah, we
18 know. We haven't got our taxes. We're going to get them
19 together. We know you owe us. And we're not going to get
20 penalized because we always overpay intentionally.

21 So we always -- and we call our tax accountant.
22 And we got a note, you know, from the government or the
23 State. They want our taxes. Oh, yeah. Okay. We're
24 going to do our taxes. Great. But there wasn't a -- in
25 the years previous, as far as I know, a demand where if

1 you don't do this by this date, we're going to arbitrarily
2 draw up a number that we're going to say that you owe use
3 because you didn't pay your taxes on time, even though you
4 overpaid and we're going to have to pay you back anyway.
5 So, you know what I'm saying?

6 ADMINISTRATIVE LAW JUDGE CHO: I see. Yes.

7 MRS. MAIHORN: To us it seems like -- to me it
8 always seem like any notices from a thing that's
9 automatically generated. We didn't get your taxes. Do
10 your taxes. So people do them. You us money.

11 ADMINISTRATIVE LAW JUDGE CHO: I see. Okay.
12 Thank you.

13 ADMINISTRATIVE LAW JUDGE CHENG: Yes, a few
14 questions. Referring to -- do you have a copy of the
15 exhibits before you or no?

16 MR. MAIHORN: Yes.

17 ADMINISTRATIVE LAW JUDGE CHENG: Okay. So do you
18 remember receiving the notice from FTB, dated
19 April 4th, 2017? And I think that's Exhibit A.

20 MR. MAIHORN: No. That's the thing. I mean,
21 there was supposedly -- I think there were two, right,
22 that we didn't -- we didn't see, which, I think is
23 April -- and I only know from this document. It was
24 April 4 and June or something.

25 ADMINISTRATIVE LAW JUDGE CHENG: You didn't

1 receive either one?

2 MRS. MAIHORN: No.

3 MR. MAIHORN: That's the thing.

4 MRS. MAIHORN: That's why we're here.

5 MR. MAIHORN: I got the September 20th, and
6 that's when I made a call in to FTB.

7 ADMINISTRATIVE LAW JUDGE CHENG: What did you
8 receive on September 20?

9 MR. MAIHORN: That was the demand, right. Let me
10 see.

11 ADMINISTRATIVE LAW JUDGE CHENG: FTB, do you know
12 what they are referring to that they received on
13 September 20th?

14 MR. KOWALCYK: I -- I'm not sure what they
15 received, but give me a moment to look.

16 MR. MAIHORN: Yeah. There was a separate one
17 that was in September. That was the one I was reacting
18 on.

19 MRS. MAIHORN: Are we allowed to ask if they have
20 record of when we called in to the State, that first call?
21 Do they have a transcript?

22 MR. MAIHORN: I think it was highlighted in the
23 thing.

24 MR. KOWALCYK: If you look on Exhibit F, I
25 believe on page 28, that is one record of their call to

1 the Franchise Tax Board on September 19, 2017.

2 ADMINISTRATIVE LAW JUDGE CHENG: Okay.

3 MS. MOSNIER: As far as FTB's records with
4 respect to any or all communications, telephone calls,
5 from the taxpayers, they are often but not always noted in
6 a log that we could look at, but we hadn't. I don't know
7 if we had checked for all of them in preparing for this
8 hearing. So in response to Ms. Maihorn's questions
9 whether we have records of all of them, perhaps we do, but
10 we wouldn't necessarily have those records with us today.

11 ADMINISTRATIVE LAW JUDGE DANG: Okay.

12 MR. MAIHORN: Okay. And I can look it up too.

13 ADMINISTRATIVE LAW JUDGE CHO: Correct me if I'm
14 wrong, but it may be that -- looking at the comments here,
15 it looks like the demand went out on April 4th, 2017, and
16 then a notice of proposed assessment went out on
17 June 5th, 2017. And then it says that Mr. Maihorn called
18 in regards to a Notice of Balance Due. Is it FTB's
19 practice to send a Notice of Balance Due two or three
20 months after the Notice of Assessment goes out?

21 MS. MOSNIER: Yes. If no protest is filed by the
22 taxpayers in response to a Notice of Assessment, which is
23 a 60-day period to protest the proposed assessment, if
24 none is filed, and none was filed in this case, then the
25 liability does become a final liability as a matter of

1 law. And our systems would just automatically generate
2 and send out a bill.

3 So perhaps that -- this notice amounts to that.
4 It could be this document were referring to could have
5 been received in September. The timing would be about
6 right.

7 ADMINISTRATIVE LAW JUDGE CHO: Thank you. Does
8 that sound agreeable to you, Mr. Maihorn?

9 MR. MAIHORN: Well, I don't agree necessarily
10 with the 60-day that it comes into effect if you don't
11 know about it.

12 MRS. MAIHORN: I know, sweetie, but he's asking
13 if that sounds right. It sounds right.

14 MR. MAIHORN: I think that's the mail I'm
15 referring to, yeah.

16 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

17 ADMINISTRATIVE LAW JUDGE CHENG: And how long
18 have you been living at this address, (ADDRESS REDACTED)?

19 MR. MAIHORN: August 2005.

20 ADMINISTRATIVE LAW JUDGE CHENG: And how long
21 have you had this mail delivery problem?

22 MRS. MAIHORN: Always.

23 ADMINISTRATIVE LAW JUDGE CHENG: Since 2005?

24 MRS. MAIHORN: Yeah.

25 ADMINISTRATIVE LAW JUDGE CHENG: Since 2005?

1 MRS. MAIHORN: Sure.

2 MR. MAIHORN: We deal with it. We know how to
3 deal with it.

4 MRS. MAIHORN: Well, we try.

5 MR. MAIHORN: Yeah. I mean, with this one,
6 obviously, it was costly.

7 ADMINISTRATIVE LAW JUDGE CHENG: And subsequent
8 to all this, did you ever receive the April 4th, 2017,
9 notice?

10 MRS. MAIHORN: No, not to our knowledge.

11 MR. MAIHORN: No.

12 ADMINISTRATIVE LAW JUDGE CHENG: Okay. Thank
13 you.

14 ADMINISTRATIVE LAW JUDGE DANG: I just have one
15 quick question. As far as the unreliability of your mail
16 service, how -- if you can give an estimate -- in your own
17 words, based on your experience, how often did
18 correspondence go missing?

19 MR. MAIHORN: The problem is it's hard to tell
20 because we get so much junk mail. I mean, I don't know
21 how much you guys experience of stuff that's, like,
22 random --

23 MRS. MAIHORN: Every child list. So we get
24 like --

25 MR. MAIHORN: -- mail and things. We get twice.

1 I don't -- I do everything electronically primarily. And
2 so other than Christmas cards that we get -- the New
3 Year's cards that we get from people, there's not much
4 really, you know, that is important that we would rely on
5 the mail system. Again, if we know we're going to get a
6 check, then we know we look out for that, you know. And
7 then we can follow up with the respective people. So she
8 still gets residual checks. I don't know how many we
9 missed. I just don't know.

10 MRS. MAIHORN: All of that is caught by the
11 studios and they contact you and say you haven't cashed
12 these checks. We will reissue them.

13 MR. MAIHORN: But again, my issue is we are set
14 to a standard here as an intelligent prudent business
15 persons, but on the other side it's not the case, right?
16 And again, it's okay if someone sends it certified or like
17 there's a tracking number or something else that you know
18 it has been delivered. But it's like otherwise we don't
19 know, right? And it's like I am -- I think I'm a
20 responsible person, and I would follow-up this stuff if I
21 have a chance to follow-up on these items.

22 ADMINISTRATIVE LAW JUDGE DANG: It's a bit
23 unclear to me how unreliable your mail service is. I
24 mean, I don't always get my mail sometimes. But I would
25 say overall it's fairly reliable.

1 MR. MAIHORN: And that's why -- so these here are
2 just four cases out of the pile. You see the dates,
3 basically, the notification dates on the topic because
4 these are the -- and this is just the daily e-mail
5 notification from USPS that's coming in, right. So I
6 took -- literally, I went through the -- this is December
7 only, think. This is December only. I have four cases
8 for December only.

9 And again, this is not us delivered in the hills.
10 That is someone else that's actually in Inglewood that got
11 delivered to us in the hills. So I don't know if ours is
12 worse or better than this person. A lot of people --
13 probably ours is worse because we are in the hills. But I
14 mean, it is significant. And these are tax documents.

15 So this is like three times tax documents, and
16 the other one is a finance statement from Kia to someone
17 else that was delivered to us. This is not just your
18 random mail that got redirected for whatever reason.

19 MRS. MAIHORN: This is -- but we're not in
20 closing?

21 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry?

22 MRS. MAIHORN: We're not in closing; right?

23 ADMINISTRATIVE LAW JUDGE DANG: No.

24 MRS. MAIHORN: We're just answering a question?

25 ADMINISTRATIVE LAW JUDGE DANG: Yes.

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MRS. MAIHORN: Okay.

ADMINISTRATIVE LAW JUDGE DANG: Thank you.

MR. MAIHORN: So I mean it's -- the problem is we don't know how unreliable it is.

ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.

MR. MAIHORN: Again, those are public numbers, obviously.

ADMINISTRATIVE LAW JUDGE DANG: Franchise Tax Board, if you're prepared, you have 15 minutes for your presentation.

MR. KOWALCYK: Yes. Thank you.

OPENING STATEMENT***

MR. KOWALCYK: Good morning. The issue before us today is whether Andrej and Angelita Maihorn have met their burden of proof to establish reasonable cause to meet the demand penalty for tax year 2015.

Mr. and Mrs. Maihorn's argument that they established reasonable cause to make the demand penalty because they didn't receive the demand for tax return fails, because the Franchise Tax Board's failing of the demand to the taxpayers last known address is sufficient notification, whether or not they actually receive the notice.

In this case, the Franchise Tax Board mailed the

1 demand to Mr. and Mrs. Maihorn's last known address, and
2 the notice was not returned. Mr. and Mrs. Maihorn's
3 argument that they filed a tax return also fails because
4 the demand penalty is imposed when a taxpayer doesn't
5 respond to the due dates set forth in the demand.

6 In this case, Mr. and Mrs. Maihorn filed a tax
7 return over six months after the deadline set by the
8 demand. Finally, Mr. and Mrs. Maihorn's argument that
9 they did not have a tax liability also fails, because
10 their belief that they didn't owe any taxes or are
11 entitled to a refund is not reasonable cause.

12 So accordingly, Mr. And Mrs. Maihorn have failed
13 to meet their burden of proof to establish reasonable
14 cause to meet their demand penalty. The Franchise Tax
15 Board's action must be sustained. Thank you.

16 ADMINISTRATIVE LAW JUDGE DANG: Thank you. Any
17 questions from the panel?

18 ADMINISTRATIVE LAW JUDGE CHENG: No.

19 ADMINISTRATIVE LAW JUDGE CHO: No.

20 MS. MOSNIER: I think it's important to note that
21 the purpose of the demand penalty is to ensure that
22 taxpayers timely report their tax obligations to the
23 State. Because just as a form of government, that's what
24 the government relies on as a State when it is forming its
25 budget, because it knows how much is coming in. And

1 that's why this penalty is harsh.

2 That's why the legislature determined that it
3 would not give taxpayers credit the amounts they paid in
4 for purposes of calculating the penalty. It's the
5 legislature's determination that it's really important for
6 taxpayers to get returns filed on time. And that's why
7 the hammer seems so heavy here.

8 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
9 Does that conclude your presentation, Franchise Tax Board?

10 MR. KOWALCYK: Yes.

11 ADMINISTRATIVE LAW JUDGE DANG: You have five
12 minutes in rebuttal.

13

14 CLOSING STATEMENT***

15 MR. MAIHORN: Yeah. Just really quick. I mean,
16 the credit, again, I don't think I agree since we overpay.
17 So I don't know that we get a credit. It's actually the
18 opposite. It's probably the opposite. And I think,
19 again, you have the document. I outlined it in the
20 previous discussion. I think there's a clear reasonable
21 cause, and I went through every single point. It was
22 highlighted if -- how we could have acted defectively.

23 Again, just not knowing what you don't know makes
24 it hard to act on something. We did react once we knew.
25 I don't think that any ordinarily intelligent and prudent

1 business person could have been done anything differently
2 based on the points that were highlighted here. And, you
3 know, it is what it is.

4 MRS. MAIHORN: I also think that, you know,
5 certainly I understand that the State wants to make sure
6 that they know for their budget next year how much they
7 have going out or what they have coming in. So the
8 concept of what they have coming in, if people haven't
9 paid their taxes they fine them heavily; like, really
10 heavily if you haven't paid your taxes.

11 But to say, well, you overpaid your taxes, so
12 we're going to fine you for not doing it on time is also
13 frustrating as a side note to whether we have reasonable
14 cause or not, I realize. But I think going forward it's
15 important to note that even if we had plan an extension,
16 which we'll probably always have to have an extension,
17 even that would be in October.

18 And the note we didn't get, you know, the April
19 and June notes, like, they gave us, like, 60-days or, you
20 know, for whatever it was. Even then our taxes still
21 wouldn't have been filed until October or so. The point
22 is we still would have to get all of the documents
23 together. We will continue to try and get them from here
24 on out, like, certainly as much as we can.

25 I don't have all of my stuff for this year yet,

1 but you better believe I'm going to try and, like, get
2 them, even if they say, well, we're not going to send them
3 yet. And I'll have to wait for them to send them. You
4 know, we'll go through this whole process again and again,
5 but we will be on it as much as we can. And we will file
6 extensions if they want to know so that they can give us
7 our money back at a reasonable time, whatever.

8 It's just I still don't understand the concept
9 that when we have to file something, we file it with
10 certified mail or UPS or FedEx. But if it's going to
11 State or if it's going to the government, we do it with
12 certified mail to make sure we know it was received
13 because it's important. When you're taking money away
14 from someone or you're giving money to somebody else, that
15 should be certified.

16 If the original note was the issue, okay. Maybe
17 we didn't get the first issue. But the second notice
18 where they say we're going to take these taxes from you,
19 we're going to keep your money that you overpaid if you
20 don't respond to us, and then they don't hear anything
21 from us, and they just say, well I guess they are ignoring
22 us, is really not fair. And it's not okay to just
23 reasonably assume that we probably got it, and we didn't
24 pay attention to it.

25 Because when we did get the notice in September,

1 we acted on it immediately, which the records of the phone
2 calls states. We wouldn't have just ignored it. And I
3 think that maybe there needs to be a law passed. Maybe I
4 need to go collect signatures outside of the supermarket
5 to pass a law that if you have a government, a state
6 government, or otherwise that's going to take money from
7 you, and they just sent you a letter saying we're going to
8 do it, it should be certified to make sure that they
9 really know it got to the person that it was supposed to
10 be delivered to.

11 That's it.

12 ADMINISTRATIVE LAW JUDGE DANG: Mr. Maihorn, do
13 you have anything further?

14 MR. MAIHORN: I'm good. Thanks.

15 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you,
16 everyone, for their presentations. The record in this
17 case is now closed, and this will be submitted for
18 decision. The panel members will meet and will deliberate
19 over what has been said today as well as the evidentiary
20 record in reaching our decision. We will endeavor to have
21 a written decision to you within 100 days, both parties.

22 MRS. MAIHORN: Thank you.

23 MR. MAIHORN: Thank you.

24 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
25 everyone. This hearing is now adjourned.

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(Proceedings adjourned at 11:36 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 15th day of March, 2019.

ERNALYN M. ALONZO
HEARING REPORTER