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HEARING
OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Franchise and
Income Tax Appeals Hearing of:
GRETA HEDIN, OTA Case No. 18042858
Appellant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MARCH 26, 2019
9:01 A.M.

OFFICE OF TAX APPEALS
400 R STREET
SACRAMENTO, CALIFORNIA

Reported by AMY E. PERRY, CSR No. 11880

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APPEARANCES

Panel Lead:

JEFFREY MARGOLIS, ADMINISTRATIVE LAW JUDGE
STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
400 R Street
Sacramento, California 95811

Panel Members:

AMANDA VASSIGH, ADMINISTRATIVE LAW JUDGE
JEFF ANGEJA, ADMINISTRATIVE LAW JUDGE

For Appellant:

THOMAS G. BRENNER
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Auburn, California 95603

For Franchise Tax Board:

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MARIA BROSTERHOUS, TAX COUNSEL
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Also Present:

CRISTINA RUBALCAVA, SUPERVISOR
OFFICE OF TAX APPEALS
FOUNDATION SUPPORT

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EXHIBITS

<u>APPELLANT'S EXHIBITS</u>	<u>PAGE</u>
Exhibit 1 admitted into evidence	5

<u>RESPONDENT'S EXHIBITS</u>	
Exhibits A-G admitted into evidence	6

(Exhibits premarked, described
and retained by Administrative
Law Judge.)

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TUESDAY, MARCH 26, 2019 - 9:01 A.M.

ALJ MARGOLIS: We are on the record in the appeal of Greta Hedin, OTA Case No. 18042858. The date is March 26, 2019, and this hearing is held in Sacramento, California, before Judges Jeffrey Margolis, Jeff Angeja, and Amanda Vassigh.

Will the parties and their representatives please identify themselves for the record, starting with the taxpayer.

MR. BRENNER: Thomas Brenner.

ALJ MARGOLIS: Okay. Could you spell your last name for the court reporter.

MR. BRENNER: B-R-E-N-N-E-R.

ALJ MARGOLIS: Thank you. For the FTB.

MS. PATEL: Mira Patel for Franchise Tax Board, that's P-A-T-E-L, and I'm here with Maria Brosterhous as well.

ALJ MARGOLIS: Okay. The issue in this appeal that I believe is in dispute, and I want to make sure the parties agree, is whether the appellant is entitled to a refund of an overpayment that existed in her 2006 account.

Is there any objection to that statement of the issue?

1 MR. BRENNER: No.

2 MS. PATEL: No objections.

3 ALJ MARGOLIS: Okay. Thank you. And at the
4 pre-hearing conference, both parties indicated they do
5 not intend to call any witnesses; is that still
6 correct?

7 MR. BRENNER: Correct.

8 MS. PATEL: Correct.

9 ALJ MARGOLIS: Okay. Well, let's go over the
10 exhibits that the parties asked to be admitted into
11 evidence today, starting with Petitioner's exhibit.

12 I believe the only exhibit we have is the
13 claim denial notice. And there was no objection to
14 that; is that correct?

15 MS. PATEL: That's correct.

16 ALJ MARGOLIS: Okay. That will be admitted
17 as Exhibit 1.

18 (Appellant's Exhibit 1 admitted
19 into evidence.)

20 ALJ MARGOLIS: And then the FTB had several
21 exhibits labeled Exhibits A through G.

22 Mr. Brenner, at the pre-hearing conference
23 you said you had no objection to those. Is that still
24 correct?

25 MR. BRENNER: That's correct.

1 ALJ MARGOLIS: Okay. We will admit Exhibits
2 A through G into the record.

3 (Respondent's Exhibits A-G
4 admitted into evidence.)

5 ALJ MARGOLIS: Next, Mr. Brenner, it's time
6 for you to make your argument.

7 MR. BRENNER: Well, ours is of a hardship
8 case. We've turned in the timeline or situation
9 including the homelessness.

10 ALJ MARGOLIS: I'm sorry, I overlooked one
11 thing. There's this additional exhibit.

12 FTB, do you have an objection this coming
13 into the record?

14 MS. PATEL: No objections for the timeline
15 and the statement from Mr. Brenner as well.

16 ALJ MARGOLIS: Okay. Thank you. Excuse me
17 for interrupting.

18 MR. BRENNER: Yeah. So we have included a
19 timeline that shows generally what happened and how it
20 took place with her homelessness, et cetera, and
21 hardships and her inability to respond to the notices.

22 Also, we have included the ex-boyfriend's
23 letter stating that he had made payments on the
24 mortgage, and that she had no filing requirement
25 originally, and that the Franchise Tax Board had taken

1 that mortgage interest, timed it by 4, created a
2 taxable event and continued to make collection
3 furthering her hardship.

4 She currently resides in a low-income
5 housing, Section A apartment, Social Security, and
6 it's her only income. She never has gone back to work
7 since '04, '05. So ours is a hardship-type situation,
8 and we're asking her or requesting leniency here in
9 the timeline for the repayment.

10 ALJ MARGOLIS: Okay. Thank you. Is that the
11 end of your statement?

12 MR. BRENNER: That's it.

13 ALJ MARGOLIS: Ms. Patel?

14 MS. PATEL: Ms. Hedin filed her 2006 claim
15 for refund on May 15, 2017. FTB denied her claim for
16 refund because it was not filed within the statutory
17 period. California law requires that taxpayers file a
18 claim for refund within four years of the due date of
19 the return, or one year from the date of payment,
20 whichever is later.

21 Furthermore, the law does not provide for a
22 waiver exception or any exception based on financial
23 hardship for or to the statutory period.

24 In this case, four years from the due date of
25 the return would have been April 15, 2011, and one

1 year from the date of the most recent payment would
2 have been September 11, 2015. Therefore, the later of
3 those two dates, September 11, 2015 would have been
4 the deadline for Ms. Hedin to file her claim for
5 refund. However, she filed her claim for refund more
6 than a year and a half later.

7 Furthermore, there's no other document that
8 Ms. Hedin filed during this time period that could be
9 construed as a claim for refund. As such, FTB is
10 prohibited by law for refunding Ms. Hedin any
11 overpayment she may have.

12 As stated in the OTA's precedential case of
13 Gillespie, even if FTB abated the tax on an estimate
14 of income that was later proven to be inaccurate,
15 there was no recourse to refund taxes paid when the
16 claim was untimely.

17 At the pre-hearing conference, Ms. Hedin's
18 representative agreed to the fact that Ms. Hedin's
19 claimed refund was not timely. Therefore,
20 unfortunately, there is no recourse for Ms. Hedin's
21 untimely claim.

22 With respect to the filing enforcement action
23 taken on Ms. Hedin's 2006 account, FTB sent a request
24 for tax return and a notice of proposed assessment to
25 her last known address. In Appellant's timeline

1 provided, Ms. Hedin indicated that she lived at the
2 address that the notices were sent to. Furthermore,
3 FTB has no record of the mail being returned.

4 On the facts and evidence in the record, FTB
5 respectfully requests you sustain its position. I'm
6 happy to answer any questions. Thank you.

7 ALJ MARGOLIS: Ms. Patel, thank you for the
8 information about the address. So could you just
9 state which address the demand notice was sent to and
10 when it was sent again?

11 MS. PATEL: So both the requests for tax
12 return and the NPA were sent to the 13600 Lake Valley
13 Drive.

14 ALJ MARGOLIS: 13600 Lake Valley.

15 MS. PATEL: So if you look at Appellant's
16 timeline, it indicates that she lived at that address
17 from 2005 to 2009, and both those notices were sent in
18 2009.

19 ALJ MARGOLIS: Okay. Thank you very much.
20 Do you have any questions for either side?

21 ALJ ANGEJA: No.

22 ALJ MARGOLIS: Mr. Brenner, you have an
23 opportunity to make a short rebuttal if you'd like.

24 MR. BRENNER: Well, the 2009, she was at that
25 address but she left there in the end of 2009 for

1 Bakersfield and then Garden Valley. And then in 2014,
2 that house was sold under lien or under -- she
3 couldn't make the payments, and then the Franchise Tax
4 Board lien had taken place then, and she was
5 homeless yet through 2016. And I'm not sure she got
6 all those notices or understood exactly her rights.

7 ALJ MARGOLIS: Okay. Okay. We've now
8 received your evidence and arguments. The referenced
9 case is now closed. In a moment we will adjourn and
10 the judges will meet to decide this case, and they
11 will send you the written decision within 100 days
12 from today.

13 Is there anything further from the parties?

14 MS. PATEL: Nothing further.

15 ALJ MARGOLIS: Okay. Thank you. With that,
16 this hearing is adjourned.

17 (Whereupon the proceedings were
18 adjourned at 9:09 a.m.)

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REPORTER'S CERTIFICATE

I, Amy E. Perry, a Certified Shorthand Reporter in and for the State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Amy E. Perry, a duly qualified Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewritten form by means of computer-aided transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2019.

AMY E. PERRY
Certified Shorthand Reporter
License No. 11880