

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
J. LEE and V. LEE, ) OTA NO. 19105396  
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 ) APPELLANT.  
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TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, September 22, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Virtual Proceedings,  
taken in the State of California, commencing  
at 1:03 p.m. and concluding at 2:02 p.m. on  
Wednesday, September 22, 2021, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ TOMMY LEUNG  
ALJ JOHN JOHNSON

For the Appellant: DAN LO

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
SARAH J. FASSETT  
ERIC A. YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received at the previous prehearing conference.)

(Department's Exhibits A-S were received at the previous prehearing conference.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Mr. Lo	20
By Ms. Fassett	22

W I T N E S S T E S T I M O N Y

	<u>PAGE</u>
By Mr. Lee	9

C L O S I N G S T A T E M E N T

	<u>PAGE</u>
By Mr. Lo	28

1  
2  
3  
4  
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California; Wednesday, September 22, 2021

1:03 p.m.

JUDGE ROSAS: We're on the record in the Matter of the Appeal of Lee, OTA Case Number 19105396. Today's date is September 22nd, 2021. The time is approximately 1:03 p.m.

This hearing was duly noticed to take place in person in Sacramento, California. But due to ongoing concerns regarding Covid and with the agreement of all the parties, we're holding this hearing remotely using video conferencing.

The panel of Administrative Law Judges includes Tommy Leung, John O. Johnson and me, Alberto Rosas.

Our stenographer today is Ms. Alonzo who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speaks one at a time and does not speak over each other. Please state your name each time before you speak. Also, please speak slowly and clearly. If needed, Ms. Alonzo will stop the hearing process and ask for clarification. After the hearing, the stenographer will produce the official hearing transcript, which will be available on the Office of Tax Appeals website.

I do want to say something about virtual hearings

1 and the visual optics onscreen. During today's virtual  
2 hearing it may sometimes seem that I'm not looking at you  
3 or that I'm distracted, but that's not the case. I have  
4 multiple monitors in front of me. I'm also using an  
5 instant messenger app where I can communicate with my  
6 co-panelist or tech support or with the management and  
7 staff that works behind the scenes to make these hearings  
8 possible. Regardless of how I may come across onscreen  
9 visually, I sure you I am listening to you, and I am  
10 taking good notes.

11 Before we continue, I want to ask whether there's  
12 anything that either of my co-panelists wish to add.

13 Judge Leung?

14 JUDGE LEUNG: I have nothing to add. Thank you,  
15 Judge Rosas.

16 JUDGE ROSAS: This is Judge Rosas.  
17 Judge Johnson?

18 JUDGE JOHNSON: This is Judge Johnson. Nothing  
19 to add. Thank you.

20 JUDGE ROSAS: This is Judge Rosas. For the  
21 parties, if you recall, we had a prehearing conference  
22 earlier this month on September 7th, 2021. Appellant's  
23 Exhibits 1 through 8 were admitted into evidence without  
24 objection. Respondent's exhibits Alpha through Sierra  
25 were admitted into evidence without objection.

1           A prehearing conference resulted in the issuance  
2 of a prehearing conference minutes and orders, which  
3 included six orders. These minutes and orders are  
4 self-explanatory. But just in case, I'll ask the parties  
5 whether they have any questions.

6           Mr. Lo?

7           MR. LO: No, I don't.

8           JUDGE ROSAS: This is Judge Rosas. Thank you,  
9 Mr. Lo. We cannot see you. So I just want to remind you,  
10 please state your name before you speak to avoid any  
11 confusion to maintain a clear record. Thank you.

12          MR. LO: Yes. Thank you.

13          JUDGE ROSAS: This is Judge Rosas. Ms. Fassett,  
14 do you have my questions regarding the prehearing  
15 conference minutes and orders?

16          MS. FASSETT: This is Sarah Fassett. Judge  
17 Rosas, I have no questions. Thank you.

18          JUDGE ROSAS: This is Judge Rosas. I stated in  
19 the prehearing conference minutes and orders for tax year  
20 2016, Respondent Franchise Tax Board imposed a late-filing  
21 penalty of \$1,474.25, plus a demand penalty of \$7,830.  
22 The parties agreed that the following are the two issues  
23 on appeal:

24                 Number one, whether Appellants established  
25 reasonable cause to abate the late-filing penalty; and

1 number two, whether Appellants established reasonable  
2 cause to abate the demand penalty.

3 Mr. Lo, do you have any questions before we move  
4 onto Mr. Lee's testimony?

5 MR. LO: Mr. Lo speaking. I do not have any  
6 questions before the testimony.

7 JUDGE ROSAS: This is Judge Rosas. Thank you,  
8 Mr. Lo.

9 And to the Franchise Tax Board, Ms. Fassett, do  
10 you have my questions before we move on?

11 MS. FASSETT: This is Sarah Fassett. I have no  
12 question. Thank you.

13 JUDGE ROSAS: This is Judge Rosas. In that case  
14 we're going to move forward to witness testimony from Mr.  
15 Lee.

16 Before we do so, Mr. Lee, I'm going to swear you  
17 in. Would you be so kind as to raise your right hand?

18

19 J. L. LEE,

20 produced as a witness, and having been first duly sworn by  
21 the Administrative Law Judge, was examined and testified  
22 as follows:

23

24 JUDGE ROSAS: This is Judge Rosas. Thank you,  
25 Mr. Lee.





1           In regard to the taxes for 2016 -- and by the  
2 way, if I'm looking at you and not looking, I'm looking at  
3 notes. So I'm not being rude or what not. So.

4           The issue all started in the beginning of 2017.  
5 Beginning of that year my wife got laid off after 18 years  
6 of employment. So that kind of created some havoc in  
7 terms of the, you know, family dynamics financially. The  
8 very next month on February 28th, my father was admitted  
9 to the hospital for a fall. So if you look at -- I guess  
10 it's labeled Exhibit 2, page 5 of 12. That is on  
11 February 28th. That's the first time he went into the  
12 hospital.

13           Just to go back a little bit before this, he was  
14 going through chemo treatments in 2016. We thought  
15 everything was okay until he did fall. I don't know if  
16 that was partially a cause of it or not, but that was the  
17 start of the fall in terms of my father's health. On  
18 3/23, that's Exhibit 2, page 10 of 12, you could see it  
19 went from moderate -- a moderate to high, and this was  
20 another emergency room visit. That was the second one.  
21 This caused my dad to -- when he fell, and he fell trying  
22 to unload a dish washer.

23           So he broke his pelvis bone or fractured it. I  
24 guess that's what the doctors were saying. He had to wear  
25 a body brace. This greatly decreased his mobility. He

1       couldn't walk around. He couldn't get out of bed. He  
2       couldn't get into bed. So we had to spend our time, you  
3       know, going to the house to help him get out of the bed in  
4       the morning if it's breakfast, lunch, or dinner, kind of  
5       help him move around the house. Now, the same procedure  
6       for his -- going to sleep was the same as well.

7                What had happened in March, it was a little bit  
8       more severe. He fell a second time, but this time he hit  
9       his head. At that point, he lost his ability to speak,  
10      not fully but partially. And his -- I guess his brain  
11      wasn't working 100 percent, maybe 20, 30 percent. So he  
12      needed a lot more care during that time. What also caused  
13      the issue too is he -- from what one reason or another, he  
14      couldn't go to the bathroom. He had problems eating. So  
15      then he had to get a catheter. So we had that to kind of  
16      deal with.

17               So we come to, I guess, it's May, May 23rd.  
18      That's the next emergency room visit. That's also  
19      Exhibit -- was it 3, page 4 out of 10. And according to  
20      Kaiser, that was a high rate -- rated as a high. They  
21      have these ratings of what they need to. So it was a  
22      severe visit. Then the next visit was on June 23rd, and  
23      that was -- is it 23rd -- the 27th. Exhibit 4, page 6 of  
24      6, and that's also listed as a high.

25               7/13, there was another emergency room visit, but

1 that one was for that day. Ultimately, it got to a point  
2 that we were not skilled enough to take care of my  
3 parents, because this is not what I typically do nor my  
4 wife. So at that point it was switching him over to a  
5 nursing home. He needed the 24-7 care. At that time, he  
6 never wanted to be in a nursing home, so it was very  
7 difficult. You know, it was difficult not only physically  
8 but emotionally on us because the whole time he was there  
9 he would yell out loud telling us that he doesn't want to  
10 be there.

11 So, again, even though we didn't have to take him  
12 up and out of bed, at that time, it was important to have  
13 the emotional support for my father and mother at that  
14 time. So -- so he was transferred around, let's say,  
15 July. He had multiple other visits to the emergency room.  
16 After that he kept on pulling his catheter out. I mention  
17 all these different dates, which it was just --

18 [TECHNICAL/VIDEO DIFFICULTIES]

19 JUDGE ROSAS: Mr. Lee, you're cutting in and out  
20 and it seems like you lost connectivity.

21 MR. LEE: Okay. Where did I leave off?

22 JUDGE ROSAS: So if you can just -- just in the  
23 last 30 seconds you were starting to cut off. So if you  
24 just --

25 MR. LEE: Okay. I don't want to just go -- okay.

1           What I was explaining is the dates of the visit  
2           from the emergency room. The one that happened on  
3           May 23rd, June 27th, July 13th, you know, they're all  
4           rated it has high important -- I mean, high-level visits  
5           according to Kaiser.

6                           [TECHNICAL/VIDEO DIFFICULTIES]

7           To help my dad, we had to move him to a skilled  
8           nursing facility, and that happened around July. I did  
9           mention -- I'm sorry if I have to repeat this. He never  
10          wanted to be there. So it was no longer us offering the  
11          physical support, it was more the emotional support for my  
12          father and my mother. During that time we really didn't  
13          have time to deal with anything else in life but to focus  
14          on my mother and father. I mean, we're talking about  
15          bills, my father -- I mean, my family, my son, my  
16          daughter, everything had to be on hold to just kind of  
17          basically take care of him.

18          Come October 22nd of 2017, he had pulled out his  
19          catheter, and this was probably the third time he has  
20          pulled it out. And the nursing facility is not skilled to  
21          put it back in. So, you know, he went straight back to  
22          Kaiser again. Unfortunately, at that time his health  
23          level deteriorated a little bit more. He became  
24          unconscious and never came to. On October 23rd, 2017,  
25          that was the day he passed.

1           So if you look at the years for 2017, pretty much  
2 the whole year was dedicated with -- to start off, my wife  
3 getting laid off, taking care of my dad and my mom, making  
4 sure he's okay. Then after the death, of course, comes  
5 the funeral. So we had to take care of all of that. Fast  
6 forward to 2018, we really didn't get our lives back in  
7 shape until probably the summertime after taking care of  
8 all these other, you know, leftover matters.

9           So that's when we filed -- or finally filed our  
10 taxes on 9 -- beginning of September. But I think during  
11 that time -- you should have it as one of the exhibits --  
12 that we did respond to Franchise Tax Board explaining the  
13 situation through my CPA, Mr. Lo. So, you know, I  
14 understand, yes, we filed late. This is a very unusual  
15 circumstance. I can say even before this, I would always  
16 be prepared to take care of my elderly parents and take  
17 care of the funeral without any issues.

18           But when you go through it -- I hate to say it --  
19 part of the time we had our head in the sand just not sure  
20 what to do, and we froze, right. So -- but, you know,  
21 we're -- we finally got our lives back together now. My  
22 mom currently is -- she had a fall as well, and I just  
23 don't want the same thing to be repeated. Recently I did  
24 mention on my other note that I had to leave my job at the  
25 beginning of this year. So we're -- financially we're in

1 a different type of situation with my wife and myself.

2 In this case, I would like to ask if -- for  
3 forgiveness and to have that amounts refunded to me and my  
4 wife. So I think -- I think --

5 Mr. Lo, is there anything else you think I should  
6 add? I mean, it kind of seems, like I'm rambling on. And  
7 I apologize if that's the case.

8 MR. LO: Yeah. This is Daniel Lo speaking.  
9 Mr. Lee, you know, I had reminded you that I know before  
10 October 15, '17, which is the extended date to have your  
11 taxes to be prepared and filed with the Franchise Tax  
12 Board and get it posted. But as you have mentioned to me  
13 that year that there was no way anybody else could  
14 probably help you to put together the information that  
15 would actually prepare an accurate on a -- an accurate  
16 return that would represent, truly, your tax position for  
17 that particular year, ending December 2016.

18 And I would reflect that would be accurately  
19 stated as well as filed, it could be filed in a timely  
20 manner. I asked you that if your spouse was going to be  
21 able to help you. I think you had mentioned that your  
22 spouse wasn't financially savvy to really put anything  
23 together because of all the years that you filed and every  
24 year you had your information ready for me to file an  
25 accurate and timely return, that it was all done by you.

1           Is that correct that your spouse is not  
2 financially savvy?

3           MR. LEE: That -- that's correct. She relies on  
4 me to do all the financial things for the family. She's  
5 never -- I'm sure you notice every time when you're asking  
6 me for the financial information, it's always coming from  
7 me throughout the years. It never would be coming from my  
8 wife. This is not what she does. I mean, sure. Her  
9 specialty is, you know, her strengths are -- she has other  
10 strengths besides, you know, getting involved with the  
11 financial matters. And she much rather would me take care  
12 of it than -- than her. So -- but, yes, you are correct.

13           MR. LO: I have no fur questions. This is Daniel  
14 speaking.

15           JUDGE ROSAS: This is Judge Rosas. Mr. Lee --

16           MR. LO: You're Honor, I think you're on mute. I  
17 can't -- I can't hear you speaking. So --

18           JUDGE ROSAS: This is Judge Rosas.

19           MR. LO: I'm having audible difficulty hearing  
20 you. This is Daniel speaking.

21           JUDGE ROSAS: [INDISCERNIBLE] on the other  
22 message that you're hearing me, but it's very quiet --  
23 same issue yesterday.

24           Mr. Lee, are you able to hear me at all?

25           MR. LEE: It's very, very faint. I have my



1 speakers turned all the way up. So I don't know. Can you  
2 hear me okay, though?

3 JUDGE ROSAS: This is Judge Rosas. Yes, Mr. Lee,  
4 we can hear you okay.

5 MR. LEE: Okay.

6 JUDGE JOHNSON: This is Judge Johnson. Let's, if  
7 we can, go off the record for five minutes here while we  
8 work with the audio to make sure we're all back to --

9 MR. LEE: Okay.

10 (There is a pause in the proceedings.)

11 JUDGE ROSAS: Ms. Alonzo, we are back on the  
12 record.

13 Mr. Lee, did you want to add anything else to  
14 your testimony before we open it up to questions?  
15 Mr. Lee, are you able to hear me?

16 MR. LEE: Oh, yes. I can hear you now. Thank  
17 you. Can you hear me?

18 JUDGE ROSAS: This is Judge Rosas. Mr. Lee, you  
19 are breaking up, but what I was asking you is do have any  
20 other thing to add before we open it up?

21 MR. LO: I can barely hear you. Can you hear me?

22 JUDGE ROSAS: This is Judge Rosas. Yes, I can  
23 hear you.

24 MR. LO: Daniel speaking. I can hear Mr. Lee and  
25 Judge Rosas, but Judge Rosas is coming in a little bit

1 more faintly. That's all. I can hear you.

2 JUDGE ROSAS: This is Judge Rosas. Mr. Lee, did  
3 you want to add anything else before we turn it over to  
4 questions?

5 MR. LEE: Yeah. I was thinking about one other  
6 thing that I did not mention is besides all the emergency  
7 visits. There were a lot of physical therapy visits that  
8 we have had to take my father to. That's why I had put it  
9 in all the exhibits, all the different dates for the  
10 physical therapy, the speech therapist, and what not. So  
11 I failed -- I forgot to mention that prior to this stop.  
12 So --

13 JUDGE ROSAS: Judge Rosas. Thank you, Mr. Lee.  
14 At this moment I'm going to turn it over to the Franchise  
15 Tax Board if they have any questions for you.

16 MS. FASSETT: This is Sarah Fassett. I have no  
17 questions.

18 JUDGE ROSAS: This is Judge Rosas. Thank you,  
19 Ms. Fassett.

20 I'm going to turn it over to my colleagues to see  
21 if they have any questions for Mr. Lee, starting with  
22 Judge Leung.

23 JUDGE LEUNG: Thank you, Judge Rosas.

24 Mr. Lee, were you also late with your federal tax  
25 return for 2016?

1 MR. LEE: For 2016, I believe I filed those both  
2 at the same time.

3 Mr. Lo, is that -- that's correct; right?

4 MR. LO: Yes. Yes. They both were late. They  
5 were not filed on a timely manner. Yes.

6 JUDGE LEUNG: And what happened at the federal  
7 level? Did you get the same late penalty?

8 MR. LEE: No. I don't believe so.

9 JUDGE ROSAS: Okay. And is this the first time  
10 in recent memory before 2016 or post 2016 that you had a  
11 lapse in filing tax returns on time?

12 MR. LO: No. They're, typically, when I do the  
13 tax returns, we will do the extensions because I want to  
14 get all the data by the usual tax date. And it's done by  
15 the October 15th timeframe.

16 JUDGE LEUNG: Okay. But you've done it by the  
17 extension date, not by April 15th, but at least by October  
18 15th?

19 MR. LO: Yes. Yes.

20 JUDGE LEUNG: Okay. Thank you.

21 Judge Rosas, this is Judge Leung. I'm finished  
22 with my questions. Thank you.

23 JUDGE ROSAS: This is Judge Rosas. Thank you,  
24 Judge Leung.

25 Judge Johnson, do you have any questions for

1 Mr. Lee?

2 JUDGE JOHNSON: This is Judge Johnson. No  
3 questions. Thank you.

4 JUDGE ROSAS: This is Judge Rosas. In that case  
5 we're going to turn it over to Mr. Lee's representative,  
6 Mr. Lo.

7 Mr. Lo, whenever you're ready you can begin your  
8 presentation. As we discussed you have up to 15 minutes  
9 to present your case. You may begin whenever you're  
10 ready, sir. Thank you.

11

12 PRESENTATION

13 MR. LO: Yes. This is Daniel Lo speaking on  
14 representing Mr. Jim Lee as a CPA.

15 As the case will present, it's pretty much where  
16 it stands. I truly believe Mr. Lee has gone through some  
17 quite detrimental family matters and issues related to his  
18 father's health in that particular year. So it -- it was  
19 quite emotional. And as I would basically say,  
20 emotionally draining and physically draining to be sole  
21 caretaker or sole provider for his father at that  
22 particular year.

23 And so with all that, basically, he had mentioned  
24 earlier in his 30-minute testimony, I'm sure you all  
25 have -- also have read all of his exhibits. The case that

1 I'm presenting on behalf of my client is that in itself  
2 it's one of those things that I think everyone should know  
3 that when they have a family member that has gone that far  
4 down, maybe downhill and need financial help with relating  
5 to their health matters.

6 It really would, in my sense as a practitioner,  
7 to believe that it really would fall into some reasonable  
8 cause within this particular provision that the Franchise  
9 Tax Board would impose a penalty under this particular  
10 failure to furnish a tax return timely. And as well as  
11 respected somewhat to pay the tax not on a timely manner  
12 due to the fact that I would believe more than 80 percent  
13 of his tax liability was being withheld through his normal  
14 wage withholding. The difference is, I believe, was about  
15 \$6,000 that he had to pay with the return.

16 At this point, I mean, making a point here that  
17 this -- this health matter falls into some reasonable  
18 cause that we're appealing today, so that hopefully all of  
19 you can grant him some kind of a waiver or abatement as to  
20 this penalty due to some current financial situation he's  
21 in right now. And having the fact that he's unemployed  
22 and this really would help him financially get his feet  
23 back off the ground.

24 That's pretty much what I have.

25 JUDGE ROSAS: This is Judge Rosas. Thank you,

1 Mr. Lo, for that concise argument.

2 At this point, I'm going to ask my colleagues if  
3 they have any clarifying questions based on your case  
4 presentation, starting with Judge Leung.

5 JUDGE LEUNG: This is Judge Leung. I have no  
6 questions for Mr. Lo at this time. Thank you,  
7 Judge Rosas.

8 JUDGE ROSAS: This is Judge Rosas. Thank you,  
9 Judge Leung.

10 Judge Johnson, any questions for Mr. Lo?

11 JUDGE JOHNSON: This is Judge Johnson. I have no  
12 questions at this time as well. Thank you.

13 JUDGE ROSAS: This is Judge Rosas. Mr. Lo,  
14 thanks again for your argument, but I also do not have any  
15 questions for you at this time.

16 MR. LO: Thank you very much.

17 JUDGE ROSAS: At this moment we're going to turn  
18 it over to the Franchise Tax Board, which has up to  
19 15 minutes to make its case presentation.

20 Ms. Fassett, Mr. Yadao, you may begin whenever  
21 you're ready.

22

23 PRESENTATION

24 MS. FASSETT: This is Sarah Fassett. Thank you  
25 and good afternoon. My name is Sarah Fassett and I, along

1 with Eric Yadao, represent the Franchise Tax Board or FTB.

2 As we heard in this appeal, there are two issues:  
3 Whether Appellants have established reasonable cause to  
4 abate the late-filing penalty.

5 Just as a note for Mr. Lo, a late-payment penalty  
6 was not imposed in this appeal, only a late-filing  
7 penalty.

8 And for the second issue, whether Appellants have  
9 established reasonable cause to abate the demand penalty.

10 For the reason set forth in FTB's opening brief  
11 as well as what I am going to discuss today, FTB's action  
12 should be sustained as Appellants have not established  
13 that the untimely filing of their 2016 California income  
14 return was due to reasonable cause, nor have they  
15 established that their failure to timely respond to FTB's  
16 demand for 2016 tax return was due to reasonable cause.

17 Appellants have not contested the imposition or  
18 calculation of either penalty and only argue for the  
19 abatement of the penalties based on their reasonable cause  
20 type argument. For both penalties, to establish  
21 reasonable cause, Appellants must show that the failure to  
22 timely comply with the law occurred, despite the exercise  
23 of ordinary business care and prudence.

24 Appellants claim that the events and commitments  
25 of their lives during 2016, 2017, and into part of 2018,

1 were serious circumstances which caused them to not be  
2 able to timely file or respond to FTB's demand. While FTB  
3 is not unsympathetic to Appellants' situation over the  
4 last few years, and we extend our condolences for the  
5 passing of Mr. Lee's father in October of 2017,  
6 Appellants' arguments and evidence do not meet their  
7 burden of proof and do not establish that their failures  
8 to timely comply were due to reasonable cause.

9           Unfortunately, based on FTB's records of  
10 Appellants' filing history, this is not an unusual event  
11 as Appellants claim. Appellants have each received  
12 numerous demands and NPAs over the last 10 tax years. And  
13 over those tax years have only timely filed 3 times. Also  
14 for the 2016 tax year, Appellant filed their federal  
15 return on August 31st, 2018, and the IRS imposed both a  
16 late filing and a late-payment penalty. And as of  
17 September 2nd, 2021, those penalties have not been abated  
18 or refunded. FTB is happy to provide those records if  
19 they aid in a decision in this appeal.

20           Appellants have also not demonstrated that they  
21 made any effort to timely file, why or how they were  
22 prevented from providing their longtime CPA with their tax  
23 information for the 2016 tax year, and why or how they  
24 were prevented from responding to FTB's demand in 2018.  
25 Instead, Appellants have argued that due to their busy



1 work schedules, personal issues, and the time spent caring  
2 for Mr. Lee's father, they were unable to comply with  
3 their tax obligation, and that equates reasonable cause.

4 While in some very limited cases taxpayers may  
5 demonstrate reasonable cause by presenting credible and  
6 competent evidence that the circumstances of an illness or  
7 other personal difficulty continuously prevented them from  
8 timely compliance, that is not the case in this appeal.  
9 While FTB agrees that last few years appear to have been  
10 very busy and stressful for Appellants, Appellants earned  
11 substantial wages and worked, as they stated, 40 to  
12 50 hours per week during the tax year at issue and during  
13 the years that followed.

14 They have not established with credible and  
15 competent evidence that they were both individually and  
16 continuously prevented from timely compliance with their  
17 filing obligation or obligation to timely respond to FTB's  
18 demand. No matter which spouse usually takes care of  
19 financial matters, each spouse has a nondelegable duty to  
20 file and to respond to FTB. And each spouse is jointly  
21 and severally liable for each tax year filed jointly.

22 Additionally, their assertions and evidence do  
23 not specifically speak to the time period surrounding  
24 FTB's demand for a tax return in 2018 or to why they were  
25 prevented from timely respond -- excuse me -- responding

1 to that demand. Although, some very limited cases exist  
2 where taxpayers have demonstrated reasonable cause, this  
3 is not the case in this appeal.

4 Furthermore, there's longstanding precedent  
5 discussed in the precedential opinions of the Appeal of  
6 Triple Crown Baseball and the Appeal of Head and Feliciano  
7 decided by this office that the penalty abatement isn't --  
8 that penalty abatement is not appropriate if the  
9 difficulties at issue simply cause the taxpayers to  
10 sacrifice the timeliness of one aspect of their business  
11 affairs to pursue other aspects, and that a taxpayer's  
12 selective inability to perform their tax obligations while  
13 participating in regular business activities, does not  
14 establish reasonable cause.

15 Thus, in this case, Appellants' evidence, or in  
16 some cases the lack thereof, makes it appear that  
17 Appellants both sacrificed, albeit it sometimes  
18 benevolently, their obligations to timely file and respond  
19 to FTB for other demands in their lives, and they were not  
20 continuously prevented from filing or responding timely.

21 Therefore, on the facts and evidence in the  
22 record, Franchise Tax Board respectfully request you  
23 sustain its position. I'm happy to address any questions  
24 the panel may have.

25 Thank you.



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CLOSING STATEMENT

MR. LO: I probably would make one statement as to the rebuttal. And that would be that if this situation had fallen on someone that would be in the post-pandemic level we're in right now, and if this situation would have caused the death of Mr. Lee's father if it was a Covid-19 related situation, my argument with that, would that change the failure of furnishing a return that would be imposed by this particular provision code? I wouldn't know if that will be in similar case because things have changed quite a bit since March of 2012.

And this particular case that facts and circumstances had obviously have fallen outside of that Covid-19 window. And I truly would believe my argument as to if Mr. Lee's father had passed away as of some Covid situation, I would really believe that the Franchise Tax Board would be enforcing this failure to furnish a tax return penalty based on the fact that this health-related issue causing a death would not be a reasonable cause.

That's all I have.

JUDGE ROSAS: This is Judge Rosas. Thank you, Mr. Lo, for your concise rebuttal.

At this point I'm going to turn it over to my colleagues to see if they have questions of either side.

Judge Leung?

1           JUDGE LEUNG: This is Judge Leung. Thank you,  
2 Judge Rosas. I have no further questions. Thank you.

3           JUDGE ROSAS: This is Judge Rosas. Thank you,  
4 Judge Leung.

5           Judge Johnson?

6           JUDGE JOHNSON: This is Judge Johnson. I do have  
7 a question for Franchise Tax Board. I noticed -- I think  
8 it's your Exhibit D -- that the NPA issued to Mr. Lee --  
9 and issued separate NPAs for both Appellants. But the one  
10 to Mr. Lee also included a demand penalty on there. In  
11 the record he did provide a 2013 demand for Ms. Lee. Was  
12 there an earlier demand as well for Mr. Lee?

13          MS. FASSETT: This is Sarah Fasset. And while  
14 the one demand for Mrs. Lee for 2013, which is in the  
15 record, does comply with the demand penalty requirements,  
16 there is not in the record a demand for Mr. Lee for 2013.  
17 But there is for Mr. Lee for 2012, both a demand and an  
18 NPA, which I can provide if you request.

19          JUDGE JOHNSON: Okay. Thank you. And if I  
20 could, question for Mr. Lee. Again, this is with regard  
21 to the demand penalty, which is penalty for not responding  
22 to FTB's demand for a tax return. Those were issued in  
23 March and April of 2018. I know in your testimony you  
24 mentioned that you were still trying to catch up after  
25 everything that happened during the beginning of 2018. Do

1 you have anything in particular or specific that was  
2 affecting your ability to respond to those demands in  
3 March, April, and May of 2018?

4 I'm sorry. This is Judge Johnson again. I don't  
5 think I can hear you, if you're muted or just quiet.

6 MR. LO: This is Daniel Lo speaking. Mr. Lee, I  
7 can't hear you either.

8 This is Mr. Lo speaking. Can anyone hear Mr. Lee  
9 at all?

10 JUDGE JOHNSON: This is Judge Johnson. I can't  
11 hear you, Mr. Lee. I don't see you as being muted, but I  
12 hear no audio coming through.

13 Mr. Lee, this is Judge Johnson again. We'll try  
14 to give you a call and walk you through the process so you  
15 can get alternative audio.

16 Mr. Rosas, is it okay if we go off the record for  
17 just a five-minute break?

18 JUDGE ROSAS: Yes. That's fine, Mr. Johnson.

19 JUDGE JOHNSON: Thank you Judge Rosas.

20 JUDGE ROSAS: Thank you Judge Johnson.

21 (There is a pause in the proceedings.)

22 JUDGE ROSAS: Ms. Alonzo, we can go back on the  
23 record.

24 And, Judge Johnson, the floor is yours. You had  
25 a pending question.

1           JUDGE JOHNSON: Yes. This is Judge Johnson.  
2           Mr. Lee, again, describe any specific difficulties you  
3           were experiencing during March, April, and May of 2018  
4           with regards to responding to FTB's demand letters.

5           MR. LEE: Okay. Yeah. So to answer that, you  
6           know, unfortunately, you know, with the death of my father  
7           happening in the end of 2017, there's a lot of things that  
8           had to be kind of put back together. And so I had  
9           mentioned to you that, you know, I had to put my family on  
10          hold. I had to put my work on hold and everything else.  
11          So to kind of catch up with things, it took me a while to  
12          kind of get all these things together for work, family,  
13          you know, and even the tax returns.

14          So, you know, around that time I -- you know, we  
15          didn't -- really didn't get our lives back together where  
16          we can kind of see a little bit more clear path until  
17          around -- I would say around the summertime. So --

18          JUDGE JOHNSON: This is Judge Johnson. Thank  
19          you, Mr. Lee.

20          MR. LEE: Okay.

21          Judge Rosas, that's all my questions.

22          JUDGE ROSAS: This is Judge Rosas. Thank you,  
23          Judge Johnson.

24          Judge Leung, we're getting ready to wrap this up.  
25          Any final questions from you, Judge Leung?

1           JUDGE LEUNG: I have no final questions,  
2           Judge Rosas. Thank you.

3           JUDGE ROSAS: This is Judge Rosas. I only had  
4           two final questions for the parties. Starting with  
5           Franchise Tax Board, is there anything else that you would  
6           like to add?

7           MS. FASSETT: This is Sarah Fassett. I don't  
8           believe there's anything else that I would like to add.  
9           Thank you, Judge Rosas.

10          JUDGE ROSAS: This is Judge Rosas. Mr. Lo and  
11          Mr. Lee, I'll give you the last question and the last  
12          word. The Appellant has the burden of proof, so I want to  
13          give you the last word, but please do not repeat yourself.  
14          My question is, other than what you've already told us  
15          here today, and other than all of the exhibits that you  
16          have submitted into evidence, is there anything else that  
17          either of you, Mr. Lee or Mr. Lo, would like this panel to  
18          know in order for us to make a well-informed decision?

19          MR. LEE: This is Mr. Lee. For my behalf I  
20          believe that you have heard everything that I have wanted  
21          to say.

22          So Mr. Lo?

23          JUDGE ROSAS: This is Judge Rosas. Mr. Lo, we're  
24          not able to hear you.

25          MR. LO: Mr. Lo speaking. I don't have any



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further --

MR. LEE: Oh, there you are.

MR. LO: I don't have any further evidence or documents to present for these particular comments.

JUDGE ROSAS: This is Judge Rosas. In that case this concludes the hearing in the appeal of Lee. Evidence has been received. The record is now closed, and this matter is submitted as of today, September 22nd, 2021. The parties will receive a written decision no later than 100 days from today.

Thank you, everyone. And that includes everyone on-camera and everyone behind the scenes. This hearing is now adjourned, and that concludes today's hearing.

Thank you, and we may now go off the record.

(Proceedings adjourned at 2:02 p.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 30th day of September, 2021.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER