

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
JAKE J. GALLINETTI, INC.,                   ) OTA NO. 19105358  
   )  
                    APPELLANT.                )  
   )  
   )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, November 18, 2021

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:40 a.m. and concluding at 10:22 a.m. on  
Thursday, November 18, 2021, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ ANDREA LONG  
ALJ JOHN JOHNSON

For the Appellant: J. GALLINETTI  
O. J. WHITE  
P. WHITE

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
ERIC BROWN  
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 8.)

(Department's Exhibits A-I and K were received at page 8.)

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California; Thursday, November 18, 2021

9:40 a.m.

JUDGE STANLEY: We're going on the record in the Appeal of Jake J. Gallinetti, Inc. Our Office of Tax Appeals Case Number is 19105358. The date is November 18th, 2021, and the time is approximately 9:40 a.m. This matter was originally scheduled for a hearing in Cerritos, California, but it is being conducted remotely due to Covid-19.

The judges on the panel today are myself, Judge Stanley, and we also have Judge Andrea Long and Judge John Johnson. As I said, I will conduct the hearing, but the panel will equally deliberate and issue a written opinion.

Let's start with identifying the parties, starting with the Appellants, Mr. White.

MR. WHITE: Okay. James White, Certified Public Accountant, 100 percent shareholder, and CEO, president of O. James White, CPA Accountancy Corporation.

JUDGE STANLEY: Okay. Thank you.

And Franchise Tax Board representatives?

MR. BROWN: I am Eric Brown, Tax Counsel with the Franchise Tax Board.

MS. BROSTERHOUS: Maria Brosterhous, also of the

1 Franchise Tax Board.

2 JUDGE STANLEY: Okay. Thank you.

3 Right now we need to discuss a couple of things  
4 about exhibits. We did have Appellant's Exhibits 1  
5 through 5 that were submitted on time. We have an  
6 additional four-page document that was delivered after the  
7 due date established at the prehearing conference. So let  
8 me go into that for a second.

9 Mr. Brown, did you receive a copy of that?

10 MR. BROWN: I did receive a copy.

11 JUDGE STANLEY: Okay. So it's a four-page  
12 document, and I will note that page 1 just appears to be a  
13 copy of page 1 of my prehearing conference minutes and  
14 orders.

15 So, Mr. White, you're not saying that would be  
16 evidence, right?

17 MR. WHITE: No. It's like a transmittal --

18 JUDGE STANLEY: Okay. Like a --

19 MR. WHITE: -- that's same as the support  
20 documents for the first item of the issues to be resolved.

21 JUDGE STANLEY: Okay. This is Judge Stanley.  
22 Thank you. So page 2 is a business entity e-file waiver  
23 request confirmation.

24 Mr. White, would you please address why you were  
25 unable to get this to us by Friday the 12th.

1           MR. WHITE: I could not locate it. One piece of  
2 paper amongst many pieces of paper, but I found it to my  
3 great relief. It may be -- well, you'll make an  
4 administrative decision regarding its applicability and  
5 timeliness, but that's why it was submitted. It was a  
6 lost lamb, but I found it.

7           JUDGE STANLEY: Okay. And, Mr. Brown, does the  
8 Franchise Tax Board have any objection to admitting this  
9 document into evidence?

10          MR. BROWN: This is Eric Brown, and, no, we don't  
11 have any objection.

12          JUDGE STANLEY: Okay. This is Judge --

13          MR. WHITE: Thank you.

14          JUDGE STANLEY: This is Judge Stanley. Pages 3  
15 and 4 appear to be schedules of the Appellant's tax return  
16 for the tax year at issue. I note that these are already  
17 in Respondent's Exhibit A.

18          Mr. White, is there any reason that we need to  
19 readmit these particular schedules?

20          MR. WHITE: I'll leave that administrative  
21 decision to you, Judge Stanley. The reason why they were  
22 supporting documents is because they were -- they are  
23 referred to in the Franchise Tax Board document that was  
24 just a few moments ago admitted. And they identify  
25 line 5, Schedule M-2, which the Franchise Tax Board's

1 reasoning as to why the return was rejected. And that  
2 reasoning, based upon the statistics reflected on the tax  
3 return pages that I have submitted is unclear to me.

4 JUDGE STANLEY: Okay. This is Judge Stanley.

5 Mr. Brown, does FTB have any objection to  
6 attaching those two pages to the waiver request  
7 confirmation?

8 MR. BROWN: Eric Brown. And, no, we don't have  
9 any objection.

10 JUDGE STANLEY: Okay. This is Judge Stanley.  
11 What we'll do is we'll mark these three pages as  
12 Appellant's Exhibit 6, with the business entity e-file  
13 waiver request and the two documents that are supporting  
14 that document. So we'll mark those as Exhibit 6 and  
15 finding good cause and no objection by Franchise Tax  
16 Board, we will admit that document into evidence as well.

17 So we'll be admitting Appellant's Exhibits 1  
18 through 6 into evidence at this time and Respondent's  
19 Exhibits A through -- let's see, A through I and Exhibit K  
20 into evidence.

21 (Appellant's Exhibits 1-6 were received  
22 in evidence by the Administrative Law Judge.)  
23 (Department's Exhibits A-I, and K were received  
24 in evidence by the Administrative Law Judge.)  
25 And the reason that I'm omitting Franchise Tax



1 Board's Exhibits J and L are because those are law  
2 summaries, so they're really not evidence.

3 Mr. Brown, do you have any reason why you want  
4 those admitted into evidence?

5 MR. BROWN: No. I don't have any -- any feelings  
6 regarding that.

7 JUDGE STANLEY: Okay. This is Judge Stanley.  
8 Thank you. Do either -- does either party have any other  
9 issues with respect to exhibits, starting with Mr. White?

10 MR. WHITE: I have none other that have come to  
11 mind, Your Honor. That's the end of the sentence.

12 JUDGE STANLEY: This is Judge Stanley.  
13 Mr. Brown, do you have any other issues with respect to  
14 exhibits?

15 MR. BROWN: This is Eric Brown, and we have no  
16 other issues.

17 JUDGE STANLEY: Okay. Great. Then let's move  
18 forward. We have three issues in this appeal. One is  
19 whether Appellant has established reasonable cause to  
20 abate the late-filing penalty imposed, pursuant to  
21 Revenue & Taxation Code Section 19172.5. Number Two is  
22 whether Appellant has established a basis to abate  
23 interest. And Number Three is whether Appellant has  
24 established a basis to abate the collection cost recovery  
25 fee.

1           Starting with Mr. White, does that comport with  
2 your understanding of the issues?

3           MR. WHITE: James White. At the moment,  
4 Judge Stanley.

5           JUDGE STANLEY: And this is Judge Stanley.  
6 Mr. Brown, are those the issues that presented in this  
7 case today?

8           MR. BROWN: Yes, those are the issues.

9           JUDGE STANLEY: Great. Okay. Let's then move  
10 onto presentation of the case, and Mr. White had requested  
11 just a five-minute opening statement.

12           So I'll let you proceed when you're ready,  
13 Mr. White.

14

15                           OPENING STATEMENT

16           MR. WHITE: My opening statement is that I'm  
17 trained and have conducted myself in the last 50 years of  
18 practice to follow procedures. And the continuing  
19 education courses that I take teach me the proper  
20 procedures for following Revenue & Taxation law. I do not  
21 interpret law. I do not practice law. It's my  
22 understanding that the procedures for properly -- not for  
23 properly -- but for timely filing the 2016 Form 100-S for  
24 Gallinetti, Incorporated was for -- to file by -- and if  
25 not filed by that date, the extension would automatically

1 be given until October the 15th, which was Sunday,  
2 October 16th of 2017. That was accomplished so there  
3 should be no late-filing penalty applied.

4 JUDGE STANLEY: This is Judge Stanley. Does that  
5 conclude your opening?

6 MR. WHITE: That is my opening.

7 JUDGE STANLEY: Okay. Thank you. So I'm going  
8 move on to witness testimony, and I'm going to swear in  
9 any witness who will testify. And I want to point out,  
10 while we're on the record, that we will not be swearing  
11 any Franchise Tax Board members because their only  
12 participation will be argument and presenting their case.  
13 They will not be presenting any facts. They will just be  
14 referring to any facts that are already in the evidentiary  
15 record. That's just to explain so it doesn't look unfair  
16 why I'm swearing one side but not the other.

17 MR. WHITE: James White. That does appear to be  
18 an unbalanced teeter-totter. Please continue.

19 JUDGE STANLEY: This is Judge Stanley. I  
20 understand that, and that's why I explained so that people  
21 know they will not be testifying to any facts. Mr. White,  
22 who would you like to testify first.

23 MR. WHITE: Let me ask. James White. Let me ask  
24 Patricia White, my spouse of 60 years, if she would like  
25 to go first.

1 MRS. WHITE: Okay.

2 JUDGE STANLEY: Okay. This is Judge Stanley.  
3 Why don't I -- since I can see you all three there  
4 together, why don't I just swear you all three in and then  
5 your statements can be taken as fact and used as evidence  
6 in the hearing. So would you please raise your right  
7 hands.

8  
9 O. JAMES WHITE,  
10 produced as a witness, and having been first duly sworn by  
11 the Administrative Law Judge, was examined and testified  
12 as follows:

13  
14 P. WHITE,  
15 produced as a witness, and having been first duly sworn by  
16 the Administrative Law Judge, was examined and testified  
17 as follows:

18  
19 J. GALLINETTI,  
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 STANLEY: Thank you.

25 Okay. Mr. White, you may proceed with either

1 having witnesses testifying in the narrative or asking  
2 questions, whichever is more comfortable.

3  
4 WITNESS TESTIMONY

5 MR. WHITE: James White. Patricia, did you, in  
6 fact, file and enter into our log the J. J. Gallinetti,  
7 Inc., 2016 return on October the 16th, 2017.

8 MRS. WHITE: I did. I put it in the mailbox and  
9 mailed it. And the reason we ended up mailing it was  
10 because of our software. When we sent the return to the  
11 Franchise Tax Board, the Franchise Tax Board rejected it.  
12 And we requested that our software experts, which is the  
13 Lacerte, why it was rejected, and they said there was no  
14 reason for it to be rejected. But because it was  
15 rejected, we mailed it. And we mailed it on time.

16 That's it for me.

17 JUDGE STANLEY: Okay. Thank you. This is  
18 Judge Stanley.

19 Mr. White, do you have any questions of  
20 Mr. Gallinetti?

21 MR. WHITE: James White. My client for 30 years  
22 has been J. J. Gallinetti and then J. J. Gallinetti, Inc.,  
23 an esteemed chicken rancher in the Clovis area. He has  
24 produced millions of birds that all of us enjoyed at  
25 various locations during our lifetime, I'm sure.

1           Jake, do you have any observations regarding the  
2       proceedings?

3  
4                               WITNESS TESTIMONY

5           MR. GALLINETTI: Not on the proceedings, but I  
6       would like to interact. I've been -- if I can. This is  
7       Jake Gallinetti. I've been a taxpayer ever since I was  
8       12 years old. I worked with my dad for many years out at  
9       the chicken ranch. I took it over. I purchased it in my  
10      20s, and I've been paying taxes all my life. I have a  
11      100 percent confidence in O. J. White in the last 30 years  
12      that he's been doing my accounting.

13           And I really am disappointed in this and -- on  
14      what's going and on what has happened. And I was  
15      embarrassed with my bank and other people that I work with  
16      on what has happened. And I'd really appreciate it if we  
17      can resolve this and take care of this with no other  
18      action taken.

19           Thank you.

20           JUDGE STANLEY: Thank you. This is  
21      Judge Stanley.

22           Mr. White, do you yourself have any testimony to  
23      present.

24           MR. WHITE: I believe I have stated our case in  
25      my opening statement, Your Honor.

1 JUDGE STANLEY: Okay. You can call me  
2 Judge Stanley. Since we're not a court we don't -- we try  
3 not to use "Your Honor."

4 MR. WHITE: As you wish.

5 JUDGE STANLEY: Thank you. Okay. Again, this is  
6 Judge Stanley, and I want to see if any of our judge  
7 panel, our ALJs have any questions for any of these  
8 witnesses.

9 I'll start with Judge Long.

10 JUDGE LONG: Good morning this is Judge Long. I  
11 just had a quick clarifying question. It seems that --

12 MR. WHITE: You need to help me here.

13 JUDGE LONG: Can you hear me, okay?

14 MR. WHITE: I cannot.

15 MRS. WHITE: Okay. I can hear you. What?

16 JUDGE LONG: All right. Can you hear me now?

17 MRS. WHITE: That's better. Yes.

18 JUDGE LONG: Okay. I'll speak a little louder.  
19 So I just had a couple of clarifying questions about the  
20 dates that -- that you mailed the return. Was that in  
21 October or in September?

22 MR. WHITE: James White. I affirm Mrs. White's  
23 testimony per our written record chronologically  
24 maintained. It was filed on October the 16th, 2017.  
25 October the 5th, 2017 was a Sunday. So I believe Monday

1       October 16th was a valid date for filing. That's it.

2               MRS. WHITE: Yeah.

3               JUDGE STANLEY: This is Judge Long. I think the  
4       record show it was in September. I'm trying where I found  
5       that date originally, and I just want to make sure we have  
6       our dates correct.

7               MR. WHITE: James White. I am curious myself as  
8       to all of the records into it or Lacerte, which is a  
9       division into it, the Franchise Tax Board and their  
10      records. In any regarded, being a professional following  
11      the standards that I've been taught, we had an automatic  
12      extension allowed to us to file that return, which rolled  
13      over to the 16th of October 2017, and we complied.

14              I'm finished.

15              JUDGE LONG: Thank you. I was mistaken. Thank  
16      you. That was my only question.

17              JUDGE STANLEY: Okay. Thank you, Judge Long.

18              Judge Johnson do you have any questions of these  
19      witnesses?

20              JUDGE JOHNSON: Hi. This is Judge Johnson.

21      Mrs. White or Mr. White or whoever can answer, with regard  
22      to trying to file electronically and it being rejected and  
23      ultimately filed by paper, by mail, you submitted that  
24      business entity e-file waiver request. Do you know the  
25      dates of when you requested the waiver and when you



1 received the waiver granted from FTB?

2 MR. WHITE: James White. Judge Johnson, thank  
3 you for the question. I have no recall whatsoever  
4 regarding that waiver.

5 JUDGE JOHNSON: This is Judge Johnson. Thank  
6 you.

7 And, Mrs. White, you would not have any other  
8 information about that as well?

9 MRS. WHITE: No. Just that it was rejected when  
10 we tried to e-file it, and that was in September when it  
11 was rejected.

12 JUDGE JOHNSON: Okay. Thank you. And it may be  
13 in Franchise Tax Board's presentation that the explanation  
14 of that was an automatic granting of a waiver or something  
15 like that, but we can wait for them to discuss that as  
16 well. No further questions.

17 Thank you, Judge Stanley.

18 MR. WHITE: Thank you.

19 JUDGE STANLEY: This is Judge Stanley. And just  
20 as a follow up, I know, Mr. White, you said you don't have  
21 any independent recollection, but your last attempt to  
22 submit electronically appears to be -- if I'm remembering  
23 correctly -- on or about September 17th. Do you know who  
24 would have processed that document, the request for the  
25 waiver, and whether it would have been filed -- whether it

1 was filed immediately after the final rejection or whether  
2 it would have been later on down the road?

3 MR. WHITE: James White. Judge Stanley, thank  
4 you again for asking the question in another way. I -- I  
5 absolutely have no recall regarding that document.

6 JUDGE STANLEY: Okay.

7 MR. WHITE: The whole process was a maze of  
8 months of time and frustration with -- with responses from  
9 people we rely upon to help us do our business  
10 efficiently. So a one-time issue, it's not occurred  
11 subsequently for which everyone is very grateful.

12 JUDGE STANLEY: Thank you, Mr. White.

13 MR. WHITE: Thanks.

14 JUDGE STANLEY: I'm sorry. I forgot to ask  
15 Mr. Brown if the Franchise Tax Board has any questions of  
16 any witness.

17 MR. BROWN: This is Eric Brown. And, no, I have  
18 no questions at this time.

19 JUDGE STANLEY: Okay. Thank you. So not a huge  
20 faux pas there by skipping you. Sorry, Mr. Brown.

21 Okay. If you nothing further, Mr. White, we'll  
22 move on to the presentation by the Franchise Tax Board.

23 Mr. Brown, you may proceed when ready.

24 MR. BROWN: Thank you.

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1 nothing to do with the Franchise Tax Board. Indeed, the  
2 evidence shows that the problems were due to preparation  
3 errors in the returns themselves, which the tax  
4 preparation software rejected each time electronic filing  
5 was attempted.

6 As indicated in the declaration of Muna Yan, a  
7 longtime FTB employee who was familiar with FTB's  
8 electronic filing system, whenever electronically filed  
9 tax returns are rejected, and electronic file is kept.  
10 Ms. Yan declared that she made a diligent search for  
11 evidence that Appellant's attempted electronic filings  
12 were rejected by FTB but found no record of attempted  
13 filings.

14 Ms. Yan further asserted that she spoke with a  
15 representative from the tax preparation software company  
16 who confirmed that in Appellant's case the returns were  
17 rejected because of a schema validation error, which means  
18 FTB never received Appellant's actual return, let alone  
19 that it rejected the return. Nevertheless,  
20 notwithstanding that Appellant was unable to timely file  
21 its tax return electronically, Appellant made no effort to  
22 file a printed return.

23 The Board of Equalization determined that a  
24 taxpayer's oversight leading to an untimely filing of its  
25 tax return does not constitute reasonable cause.

1 Likewise, in 2018 in the precedential decision of Quality  
2 Tax Financial Services, Inc., the Office of Tax Appeals  
3 determined that reasonable cause was not shown when a  
4 taxpayer had difficulty e-filing its return and held that  
5 after multiple e-filing rejections, the ordinary prudent  
6 businessperson would have made other attempts to file  
7 prior to the end of the extension period, such as filing a  
8 paper return.

9           Since Appellant ignored numerous demands for  
10 payment, the FTB was required to employ collection  
11 activities, and so it imposed a collection cost recovery  
12 fee. There is no provision in the law to abate a  
13 collection cost recovery fee. Similarly, Appellant failed  
14 to show any evidence or present any argument as to why  
15 interest should be abated. Imposition of interest is  
16 mandatory. It is not a penalty, and there is no  
17 reasonable cause exception to the imposition of interest.  
18 Interest is simply a compensation to the State of  
19 California for the use of money until the amount owed is  
20 paid in full.

21           In view of the above, FTB's proposed assessment  
22 should be sustained. Thank you. I will respond to any of  
23 the panel's questions.

24           JUDGE STANLEY: This is Judge Stanley. Thank  
25 you, Mr. Brown.

1           Judge Long, do you have any questions of the  
2 Franchise Tax Board?

3           JUDGE LONG: This is Judge Long. I do. Just  
4 give me a moment so I can review them quickly.

5           So, FTB, do you know when the Appellant submitted  
6 their waiver for the e-filing?

7           MR. BROWN: I was unable to find anything about  
8 the waiver that he was discussing. I didn't see it in any  
9 of the briefs, and we don't have any record of a waiver.

10          JUDGE LONG: Okay. Thank you. And so you've  
11 mentioned that because FTB has no records of the  
12 Appellant's attempts to e-file, does that mean there would  
13 be no avenue for reasonable cause in FTB's opinion?

14          MR. BROWN: I'm not sure I understand your  
15 question. Are you asking that because FTB has no record  
16 of attempts to e-file that that wouldn't constitute  
17 reasonable cause?

18          JUDGE LONG: Yes. So I was trying to understand  
19 FTB's position on this. As you stated that there was  
20 no -- in FTB's records there was no records of Appellant's  
21 attempting to e-file. So I guess my question is how -- is  
22 that the only -- if -- had FTB had records, would that  
23 be -- would that constitute reasonable cause?

24          MR. BROWN: Thank you, Judge. Eric Brown. The  
25 way I would answer that is I would tell you that we

1       have -- we keep records of any electronic filings that are  
2       rejected. That would suggest that records -- or that  
3       filings that are attempted but rejected do come into FTB.  
4       That is not the case here as we explained. It appears  
5       that the filings were rejected. The tax preparation  
6       software vendor -- and didn't get to FTB, and that was the  
7       purpose of the evidence of Ms. Yan.

8               JUDGE LONG: Then my last question for now is,  
9       can you explain what a schema validation error is?

10              MR. BROWN: Thank you. I do not know what that  
11       is. I just know that it indicates from the tax  
12       preparation vendor -- software vendor that it is an error  
13       that is not on FTB's side. It was on the preparer and tax  
14       preparation software's end, if you will.

15              JUDGE LONG: Thank you. I have no further  
16       questions.

17              JUDGE STANLEY: This is Judge Stanley.  
18       Judge Johnson, do you have any questions?

19              JUDGE JOHNSON: This is Judge Johnson. Thank  
20       you. In Appellant's opening arguments, I believe he  
21       mentioned that he filed by the auto extension for  
22       October 2017. When was the extension? Franchise Tax  
23       Board, when was the extension -- sorry -- automatic filing  
24       extensions for S corporations for the 2016 tax year?

25              MR. BROWN: Eric Brown. The extension is six

1 months after the third month after the close of the tax  
2 year. That would have been September 15th.

3 JUDGE JOHNSON: Thank you. No further questions.

4 JUDGE STANLEY: This is Judge Stanley.

5 Mr. Brown, you indicated that you don't have a record of  
6 that waiver request or grant. Do you happen to have any  
7 personal knowledge of whether those waivers are automatic  
8 through the FTB website?

9 MR. BROWN: Eric Brown. I am not aware.

10 JUDGE STANLEY: Okay. So the waiver indicates  
11 that it was granted based on reasonable cause. Can you  
12 explain whether it's the Franchise Tax Board's position  
13 that reasonable cause in the -- with respect to the  
14 e-filing mandatory requirement is different from  
15 reasonable cause with respect to a late-filing penalty?

16 MR. BROWN: Thank you, Judge. May I ask for you  
17 to repeat the question to clarify, please?

18 MS. BROSTERHOUS: Eric, you know what, can I take  
19 this? I think I know what Judge Stanley is trying to get  
20 at.

21 MR. BROWN: Thank you.

22 MS. BROSTERHOUS: I'd like to indicate that the  
23 document we received as an exhibit regarding the waiver  
24 indicates that the taxpayer requested the waiver based on  
25 reasonable cause. There's nothing actually in that waiver



1 to indicate that we granted it based on that reason.

2 JUDGE STANLEY: This is Judge Stanley again. So,  
3 Ms. Brosterhous, it says that -- the document does say,  
4 "Your waiver has been granted for the return and tax  
5 period." And then they say, "Reason for waiver,  
6 reasonable cause," and it's based on rejection of the 100  
7 S for negative number in Schedule M-2, line 5. So --

8 MS. BROSTERHOUS: Okay. Perhaps I misread it. I  
9 read that line as that that was the reason it was  
10 requested. I apologize for that. I would say that  
11 because we don't know whether that waiver is an automatic  
12 grant, we can't really speak to the reason it was granted.

13 JUDGE STANLEY: This is Judge Stanley. And this  
14 document was submitted late. So I understand that the  
15 Franchise Tax Board may not be prepared to address the  
16 kind of questions that we're asking today, and we --

17 MR. WHITE: Pardon me, Judge. James White. That  
18 statement appears prejudicial.

19 JUDGE STANLEY: This is Judge Stanley.

20 MR. WHITE: Yeah. James White. It was not filed  
21 late, but it may not be appropriate for me to speak. If  
22 so, I apologize.

23 JUDGE STANLEY: This is Judge Stanley. I'll take  
24 that as an objection to what I was saying. With respect  
25 to late, our deadline that we established for new exhibits

1 was Friday, November the 12th, and this document was  
2 submitted to us on November 15th, three days later or  
3 after the weekend. So with respect to our deadlines, it  
4 was late, and we decided to admit it based on good cause  
5 and without Franchise Tax Board's objection.

6 So all I'm saying is that they may need an  
7 opportunity after the hearing to address the kind of  
8 questions we're asking about a document they just received  
9 just a couple of days ago. So that's all I'm saying.

10 MR. WHITE: James White. Judge Stanley, I was  
11 entirely out of line. I was referring to my perception of  
12 the conversation going to the tax return being filed late.  
13 I wish it was not. And I'll read to you statutory  
14 information relative to the return being -- to be filed on  
15 the 15th day of the 4th month and statutory statements  
16 which identify that the extensions are automatically given  
17 to October the 15th. That's it for me. James White.

18 JUDGE STANLEY: Okay. This is Judge Stanley.  
19 I'll just continue with my questions because I don't think  
20 the Franchise Tax Board has had a chance to consider  
21 whether or not reasonable cause, with respect to the  
22 e-file waiver request, would be the same standard with  
23 respect to reasonable cause for a late-filed return.

24 So if the Franchise Tax Board would like to do  
25 so, I can give you time to look into that and also

1 possibly check Franchise Tax Board's records to see if you  
2 know when this form was submitted and granted; and  
3 thirdly, whether this is an automated kind of grant as  
4 opposed to something that's considered by a person at the  
5 Franchise Tax Board.

6 Would the Franchise Tax Board like the  
7 opportunity to do that?

8 MR. BROWN: Yes, Judge. Eric Brown. In so far  
9 as the date -- the extended deadline is concerned, we have  
10 attached copy of FTB Notice 2016-04, which indicates that  
11 the hearing or the extension deadline for S corporation  
12 returns is the 6th month. That would be September 15th  
13 after the third month, which would have been March 15th.

14 MR. WHITE: It's right here. James White.  
15 Verbatim.

16 JUDGE STANLEY: This is Judge Stanley. Let me  
17 just say that the panel is capable of figuring out the  
18 dates and that we will include that discussion in the  
19 opinion when we issue the opinion and the appropriate  
20 response.

21 MR. WHITE: No disrespect was intended, Judge.

22 JUDGE STANLEY: Okay. So, Mr. Brown, were you  
23 saying that you would want the opportunity to brief this  
24 following the conclusion of the hearing?

25 MR. BROWN: Yes. We would like that. However,

1 the filing deadline is the filing deadline. And whether  
2 the tax return was filed electronically or received by  
3 mail is not the point here. The point is when it was  
4 received.

5 JUDGE STANLEY: This is Judge Stanley. I  
6 understand. Okay.

7 Judge Long or Judge Johnson, do you have any  
8 follow-up questions?

9 JUDGE LONG: This is Judge Long. No questions  
10 from me.

11 JUDGE JOHNSON: Judge Johnson. No questions.  
12 Thank you.

13 JUDGE STANLEY: Okay. This is Judge Stanley.  
14 Mr. Brown, how much time would you like to be able to just  
15 brief that, basically what you just said?

16 MR. BROWN: I would say a week. I'm sorry. Let  
17 me extend that. I want to make sure I give myself and my  
18 staff adequate time. 30 days, please.

19 JUDGE STANLEY: Yes. And I was going to point  
20 out -- this Judge Stanley. I was going to point out that  
21 the holiday week is next week. So we don't want to set  
22 you on Thanksgiving Day. So I'll give you 30 days, and  
23 I'll issue a new order to put that into writing.

24 And, Mr. White, once the Franchise Tax Board does  
25 that, we will give you an opportunity to respond -- a

1 30-day opportunity to respond. So we'll hold the record  
2 open for that purpose only.

3 MR. WHITE: Thank you.

4 JUDGE STANLEY: And let's go -- let's turn to  
5 conclusions.

6 Mr. White, you had asked for an opportunity to  
7 sum everything up and make a closing statement. You may  
8 proceed.

9

10 CLOSING STATEMENT

11 MR. WHITE: James White. Thank you for the  
12 respect that you provided to us. We appreciate you as  
13 hard-working California citizens doing your job, and I  
14 want you to know that we're out here out of government  
15 attempting to do our job also.

16 That is my conclusion.

17 JUDGE STANLEY: This is Judge Stanley. Thank  
18 you.

19 And, Mr. Brown, Franchise Tax Board does not  
20 require a closing statement?

21 MR. BROWN: No, Judge. Thank you.

22 JUDGE STANLEY: Okay. Then this matter is  
23 concluded. The record will remain open for 30 days for  
24 the Franchise Tax Board to brief the matters that were  
25 raised here today, and 30 days, thereafter, for the

1 Appellant to respond to the Franchise Tax Board if they  
2 desire to do so. At that point the record will be closed  
3 and within 100 days from that point, the panel will issue  
4 a written opinion.

5 Are there any questions before we conclude,  
6 Mr. White?

7 MR. WHITE: James White. Patricia White, any  
8 observations?

9 Mr. Gallinetti, any observations?

10 MR. GALLINETTI: I will hold my tongue for right  
11 now, but thank you for allowing us to be in your presence.

12 JUDGE STANLEY: This is Judge Stanley. Thank you  
13 all for your participation.

14 We're going to recess and reconvene at 10:45 for  
15 another hearing. So thank you all. It was good to see  
16 you this morning. Have a nice day.

17 (Proceedings adjourned at 10:22 a.m.)  
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I, Ernalyne M. Alonzo, Hearing Reporter in and for  
the State of California, do hereby certify:

That the foregoing transcript of proceedings was  
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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 December, 2021.

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ERNALYN M. ALONZO  
HEARING REPORTER