

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
P. BINNS, ) OTA NO. 21078200  
)  
APPELLANT. )  
)  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, January 26, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:41 a.m. and concluding at 10:16 a.m. on  
Wednesday, January 26, 2022, 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 NATASHA RALSTON  
ALJ TOMMY LEUNG

For the Appellant: LAQUANNA MCDOWELL

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
BRADLEY COUTINHO  
ELLEN SWAIN

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I N D E X

E X H I B I T S

(Department's Exhibits A-U were received at page 6.)

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California; Wednesday, January 26, 2022

9:41 a.m.

JUDGE STANLEY: So we'll go on the record in the Appeal of Patricia Binns, Case Number 21078200. The date is January 26, 2022. The time now is 9:41.

Sorry it's taking a moment.

Okay. The schedule -- this was scheduled for virtual hearing with the agreement of the parties. I'm Judge Teresa Stanley, and on the panel with me is Judge Natasha Ralston and Judge Tommy Leung. I will conduct the proceedings, but the panel will equally deliberate and issue a written opinion within 100 days after the hearing.

I'm going to ask on the record that you each identify yourselves and who you represent, and we'll start with the Appellant.

Ms. McDowell, that would be you.

MS. MCDOWELL: I'm sorry. Yes, my name. This is Ms. McDowell speaking. I'm the power of attorney, and I'm representing Ms. Patricia R. Binns in this matter.

JUDGE STANLEY: Thank you.

And Franchise Tax Board.

MR. COUTINHO: This is Brad Coutinho, and I represent the Franchise Tax Board.

JUDGE STANLEY: And we have --

1 MS. SWAIN: Good morning. This is Ellen Swain.  
2 I also represent the Franchise Tax Board.

3 JUDGE STANLEY: Okay. Thank you.

4 The issues for this appeal are whether Appellant  
5 has established reasonable cause or a basis to abate  
6 penalties and fees, and that includes for 2013, 2014,  
7 2015, 2017, and 2018. There were various penalties  
8 including late-filing penalties, estimated tax penalty, a  
9 late-payment penalty, a demand to file penalty, and some  
10 county lien fees, and a filing enforcement fee.

11 Ms. McDowell, do you agree that those are the  
12 issues today?

13 MS. MCDOWELL: This is Ms. McDowell, and yes,  
14 ma'am, I agree.

15 JUDGE STANLEY: And Mr. Coutinho?

16 MR. COUTINHO: Yes. This is Brad Coutinho. I  
17 agree.

18 JUDGE STANLEY: Okay. This is Judge Stanley.  
19 We -- we have not received any exhibits from Appellant, so  
20 there are none to admit into the record. Appellant did  
21 submit some information to the Franchise Tax Board, which  
22 is included in their Exhibits A through U, which will all  
23 be admitted into evidence.

24 (Department's Exhibits A-U were received in  
25 evidence by the Administrative Law Judge.)

1 Does either party have anything else that they  
2 wish to present today?

3 Ms. McDowell, starting with you.

4 MS. MCDOWELL: This is Ms. McDowell and no,  
5 ma'am.

6 JUDGE STANLEY: And Mr. Coutinho?

7 MR. COUTINHO: This is Mr. Coutinho. No further  
8 exhibits.

9 JUDGE STANLEY: Okay. Neither party is producing  
10 witnesses today, so we won't be swearing in anyone for  
11 witness testimony. We will just have each side present  
12 their position in this appeal.

13 And, Ms. McDowell, you may proceed when you're  
14 ready.

15

16 PRESENTATION

17 MS. MCDOWELL: This is Ms. McDowell. Good  
18 morning to everyone again.

19 A lot of this liability that was assessed to  
20 Ms. Patricia Binns, again, we agree that it was warranted,  
21 but her problems and the issues arrived prior to her first  
22 assessment, the 2013 tax year. And the 2011 and the 2012  
23 tax year, Ms. Binns had dealt with identity theft, at  
24 which time she was notified of this when she tried to file  
25 her own personal tax returns.

1 Her first notice from the State regarding her tax  
2 issue came several years after the death of her mother,  
3 which she -- I'm sorry, give me one second -- which is  
4 where this liability was created. So in 2013 her mother  
5 passed away leaving both herself and her brother at the  
6 time an annuity account that they knew nothing about. In  
7 that process, in that year, her brother also passed away.  
8 And at that time they didn't tell Ms. Binns she was sole  
9 heir to this annuity.

10 So during that time she went to try to get the  
11 tax returns filed. When she did reach out to the State,  
12 and they had stated to her that the returns were filed,  
13 she tried to correct that, saying that she never filed her  
14 own personal returns. It was at that point, again, she  
15 then decided that she needed to hire -- get someone hired  
16 in order to try and rectify the situation for her.

17 Unknown to her, the annuity did not pay out any  
18 taxes. All she knew at that point was that she received  
19 this lump sum amount of money that was in stocks, that was  
20 in bonds, and that was in this annuity, and she was to  
21 report on taxes. So she did hire a company in 2015, I  
22 believe, after the assessment was retained. She hired a  
23 company called BC tax out of Boulder, Colorado.

24 This company was to file the tax returns, get her  
25 tax returns from 2011, '12, through the current year,



1       which would have been 2015, to get those tax returns filed  
2       and processed for her as well as deal with any tax debt  
3       that would be associated with her tax filings.

4               She was assured by this company that they would  
5       assist and help her. That company then got her in touch  
6       with Cornerstone Financial Services, which was the company  
7       that would be actually dealing with her tax filings. She  
8       provided them with all of the information that they  
9       requested, and they, in turn, had indicated to her through  
10      emails, though back and forth, that they would be dealing  
11      with the tax debt as well as filing the tax returns and  
12      getting everything resolved.

13             During that time, a little time after that, her  
14      account was levied. She reached out to the company  
15      advising that the State had issued a levy to her bank  
16      account she attached to the funds. She had told them that  
17      she was okay with the State keeping money. She knows that  
18      she owed the State owed money -- she owed money to the  
19      State. She just wants to get it resolved so she can pay  
20      the State off as quickly as possible.

21             They, again, assured her that they were working  
22      on it, that they would be notifying the State of them  
23      filing the tax returns and with them filing the power of  
24      attorney, and they would handle the case for her. 2016  
25      rolls around. She then reaches out to the company again

1 because she didn't get anything in the mail. She didn't  
2 get any copies of her tax returns. And at that point, the  
3 company didn't return phone calls to her. They were not  
4 responding to any emails. No one was returning any calls.

5 An individual from my company, at that point,  
6 Omni Tax Help, reached out to her and advised to her that  
7 we would be able to assist her, and we would do a courtesy  
8 check to determine what was going on with the State. We  
9 obtained the proper documentation in order for us to file  
10 the powers of attorney, at which we advised her that the  
11 tax returns were missing, that the State did assess her  
12 and filed substitute returns for the 2013 and 2014 tax  
13 years.

14 We notified her of the amount that they had  
15 indicated that she owed. And then we then at that time  
16 immediately got her in contact with an individual at our  
17 sister company that could actually get the tax returns  
18 filed. In that process, we also reached out to that  
19 company. We did a letter requesting that all of the  
20 monies that Ms. Binns did pay them, that they will return  
21 them or she will file a suit against them to receive the  
22 funds back because they did not do what they were  
23 promised -- that they promised her.

24 In turn, the company did remit all the monies  
25 that Ms. Binns did pay, and she did -- they returned her

1 funds, and she was able to utilize those funds to assist  
2 with getting her tax returns filed properly, and also  
3 being established on a payment arrangement.

4 So the tax returns did get filed, and I believe  
5 that's in the State's exhibit. They did get filed in the  
6 third quarter of the 2016 tax year, which at that point we  
7 also helped her in filing all the tax returns up until the  
8 2017 tax year. After it was all said and done, Ms. Binns  
9 did owe a little more than what the State had initially  
10 assessed her, at which time we established a full payment  
11 installment agreement on her behalf, all of the levies and  
12 monies that the State did receive were applied to the '13  
13 and '14 tax years. The 2014 tax year yielded a smaller  
14 liability than the State had stated. But all in all, she  
15 was on a full-payment arrangement with the State.

16 In 2018 when the tax return was filed, Ms. Binns  
17 income did go up. She had retired, of course, from public  
18 service. She was a teacher in the State of California.  
19 She did 34 years while she was there. She was receiving  
20 pension and then social security. And she also had these  
21 retired -- this annuity that she was also receiving money  
22 from, and so her income went up. She then owed a new tax  
23 year -- a new tax debt for 2018 tax year, at which we  
24 notified her of it.

25 She tried to pay that off prior to the tax return

1 being assessed. However, it ended up defaulting her  
2 installment agreement, at which we reached right back out  
3 to the State. We explained to them the situation. They  
4 did reinstate her installment agreement. And she has  
5 since full paid the full amount of liability on the  
6 account.

7 Now, Ms. Binns has never denied the State after  
8 finding out that the taxes were not paid through this  
9 inheritance. She did do her due diligence in trying to  
10 reach out to a company to rectify this situation prior to  
11 her being levied, prior to it be -- it creating the  
12 liability that it did. Unfortunately, she did run into an  
13 individual -- a company that did scam her, and she was  
14 able to get around that by hiring our company and -- and  
15 we were able, again, to rectify the problem.

16 She hasn't owed since she filed her tax returns.  
17 She paid what she owes, if anything is owed. And the only  
18 issue that we see is that it was just a situation where  
19 she honestly had no idea how to deal with such a huge  
20 inheritance. She trusted the wrong individuals to try to  
21 help her fix this problem, thus, creating the tax debt,  
22 and, thus, creating the situation that she worked so hard  
23 to get herself out of.

24 So we are requesting that the -- that you guys do  
25 find that there is reasonable cause and that she did do

1 her due diligence in trying to correct the situation once  
2 she was advised of it. She did pay off all of the tax  
3 debt, penalties, and interest. She made sure that her  
4 payments after the 2018 tax return liability defaulting  
5 that they were paid on time. And she actually overpaid,  
6 and she received a check back from the State because she  
7 was diligent in making sure that everything was paid off  
8 because she knows that the liability was hers.

9 So we're just asking for some leniency with  
10 removal of the taxes -- I'm sorry -- removal of the  
11 penalties in good faith. And, of course, she will  
12 continue to remain compliant and do her due diligence in  
13 making sure that she's not back into this any time soon.

14 And that completes my portion.

15 JUDGE STANLEY: This is Judge Stanley. Thank  
16 you, Ms. McDowell.

17 Judge Ralston do you have any questions for  
18 Appellant?

19 JUDGE RALSTON: This is Judge Ralston. No  
20 questions at this time.

21 JUDGE STANLEY: Judge Leung, do you have any  
22 questions?

23 JUDGE LEUNG: Yes, a quick question for  
24 Ms. McDowell.

25 Ms. McDowell, why did your client pick a Colorado

1 tax preparer to file her returns?

2 MS. MCDOWELL: This is Ms. McDowell speaking.  
3 Full disclosure, we honestly don't know. She did have  
4 them reach out. As we're all aware, when a lien is filed,  
5 a lot of companies, like myself, who deal with tax debts,  
6 we reach out to clients. And there are sales associates  
7 and some companies out there that will sell you a dream,  
8 and there are some companies out there that will sell you  
9 a job, and they will complete the job.

10 Unfortunately, it's a situation where she was, of  
11 course -- I'm not going to say preyed -- but she was  
12 reached out, and she felt like she could trust the  
13 individual and they would do the job. And at that point,  
14 Ms. Binns didn't care they were in Colorado or California.  
15 She was just trying to get the situation corrected. She  
16 trusted the first person that reached out to her, and she  
17 paid them to do a service that they didn't do.

18 JUDGE LEUNG: Thank you. That's all.

19 MS. MCDOWELL: You're welcome, sir.

20 JUDGE STANLEY: This is Judge Stanley.

21 Mr. Coutinho, the Franchise Tax Board can begin their  
22 presentation when you're ready.

23

24 PRESENTATION

25 MR. COUTINHO: Thank you. Appellant has failed

1 to establish grounds to abate the penalties and fees  
2 imposed for the tax years at issue for two reasons. Her  
3 first is that Appellant's assertion that she was unaware  
4 of the annuity income for the 2013 tax year is unsupported  
5 by documentation and most critically, an insufficient  
6 justification for abating the delinquent filing penalty  
7 imposed for the 2013 tax year.

8 Second, Appellant's argument that she was misled  
9 by her former tax preparer does not absolve her of her  
10 non-delegable duty to timely file her tax return, pay her  
11 taxes, or respond to notices for the tax years at issue.

12 So my first point, Appellant contends that she  
13 was unaware nor received the annuity income for the 2013  
14 tax year. Unlike the taxpayer in the Appeal of Moren,  
15 Appellant hasn't provided letters, emails, phone logs, or  
16 any other documentation which would reflect when she  
17 learned of the income and what steps were taken to  
18 ascertain her tax liability. In the Appeal of Moren, the  
19 Office of Tax Appeals weighed heavily the efforts taken by  
20 the taxpayer to acquire the information necessary to  
21 determine her tax liability prior to the filing deadline.

22 The Office of Tax Appeals held that without  
23 substantiation of efforts taken, reasonable cause cannot  
24 be established. However, even if Appellant had the  
25 documentation to support her position, the Office of Tax

1 Appeals is held in the Appeal of G.F. Operating, Inc.,  
2 that lack of knowledge of the law is not an excuse for  
3 failing to file a timely return.

4 Moreover, excluding the annuity income, Appellant  
5 should have known she had a filing requirement due to W-2  
6 income she received as reflected on her 2013 California  
7 tax return. Thus, Appellant has not established  
8 reasonable cause to abate the delinquent filing penalty  
9 imposed for the 2013 tax year when she filed her return  
10 more than two-and-a-half-years after the filing deadline.

11 To my second point, Appellant asserts that  
12 reasonable cause exists because she was misled by her  
13 former tax preparer that her tax returns were timely  
14 filed. While Respondent does find it commendable that  
15 Appellant eventually corrected the error, in the United  
16 States versus Boyle, the U.S. Supreme Court held that  
17 reliance on an agent, such as a tax preparer, to file a  
18 tax return by the due date is not reasonable cause.  
19 Rather, a taxpayer has a nondelegable duty to ensure her  
20 tax returns are timely filed.

21 Appellant was on notice that her tax returns had  
22 not been timely filed when she received a request for tax  
23 returns for the 2013 tax year and then later when she  
24 received the Demand for Tax Return for the 2014 and 2017  
25 tax years. Appellant has not explained why she did not



1 respond to these notices or take further steps to ensure  
2 tax returns were timely filed and paid. Accordingly,  
3 Appellant has failed to establish reasonable cause to  
4 abate the demand, delinquent, and late-payment penalties  
5 imposed.

6 Finally, Appellant has not established that  
7 either of the two waivers applies for abatement of the  
8 estimate tax penalties imposed, nor is there any statutory  
9 basis to abate the collection that were properly imposed  
10 for the tax years at issue. Therefore, Respondent's  
11 position in this appeal should be sustained.

12 Thank you for your time. I'm happy to address  
13 any questions that your panel may have.

14 JUDGE STANLEY: This is Judge Stanley. Thank  
15 you, Mr. Coutinho.

16 Judge Ralston, do you have any questions for the  
17 Franchise Tax Board?

18 JUDGE RALSTON: This is Judge Ralston. No  
19 questions. Thank you.

20 JUDGE STANLEY: And Judge Leung, do you have any  
21 questions for the Franchise Tax Board?

22 JUDGE LEUNG: This is Judge Leung. I have no  
23 questions at this time. I will wait until after  
24 Ms. McDowell finishes her closing. Thank you.

25 JUDGE STANLEY: This is Judge Stanley.

1 Ms. McDowell, would you like to briefly respond to the  
2 Franchise Tax Board's position?

3

4

CLOSING STATEMENT

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MS. MCDOWELL: This is Ms. McDowell. And, yes, I  
would like to. Just a couple of things.

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First being the issue with the tax return filing  
is because there was an identity theft issue with the 2011  
and 2012 tax years. The taxpayer was unable to file those  
returns because she had to go through the proper channels  
in order to show that she was the actual individual, and  
it was her who was trying to file her taxes. So that is a  
process that she had to go through with both the Internal  
Revenue Service and with the State.

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She also had to wait and get a pin in order for  
her to actually file the returns. Again, that also went  
into the 2013 tax year as well as -- well, 2013  
through the 2017 tax year. And to this date, the client  
has to file with a specific pin that she gets every year  
updated because of the identity theft.

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So to say that she had -- she should have filed  
on time, there were issues with filing on time because she  
could not give the proper information in order for her to  
correct the identity theft issue without filing the  
previous years. And so you can't file a return and

1 correct that issue if you don't have the correct  
2 information that is reported on the falsified return. So  
3 that's one of the issues that we ran into, but we were  
4 helping her correct this issue.

5 The other thing that I would like to bring to  
6 light is, again, we go back to her mother passing, and  
7 there's an annuity that her and her brother knew nothing  
8 about. So when that whole situation happened and the will  
9 was read, she being someone who was W-2, who was trying to  
10 file the returns prior to the 2013 tax year, again, she  
11 never denied not trying to file the return. In that, we  
12 also mention that she never denied not owing. She's  
13 always stated that she knows that there's a tax debt  
14 because her income went up.

15 She had issues, again, by trusting the wrong  
16 individuals. We're not blaming this company for her  
17 owing. We're blaming the company for taking money and not  
18 fixing the issue. So I do want to clarify that portion as  
19 well. We 100 percent stand by this is the taxpayer's  
20 responsibility. We also stand by the fact that it is the  
21 client -- it is the taxpayer's responsibility to make sure  
22 that she is aware, and she's paying notice to anything  
23 that comes in the mail.

24 The third point I would like to state is we did  
25 file a power of attorney with the State of California in

1 2016 when we took over the case. We did speak with  
2 representatives consistently explaining the situation at  
3 which we were advised on how to handle. And we were given  
4 dates and times to make sure that we we're one, filing tax  
5 returns, which we met every deadline that the State gave  
6 us. We also, again, verified that things were received  
7 when documentation were requested, and we set up a payment  
8 arrangement that did fully pay the liability that she  
9 owed.

10 I do want to reiterate that the client never once  
11 stated she didn't owe, never once stated that this tax  
12 wasn't hers, and she took full responsibility, and she did  
13 pay. Not many clients can -- not many taxpayers can state  
14 that. In this case, we have also shown good faith to the  
15 State. She hasn't owed since the 2018 tax year. She  
16 files her tax returns, and she pays on time.

17 So is this a one off where we have an individual  
18 who was taken advantage of, who was promised the world to  
19 try to fix the problem that she knows existed. And in  
20 that situation, did she just trust the wrong person? Yes.  
21 Is that the State's fault? No. Is that her fault? Yes.  
22 We will take responsibility of it, but we did everything  
23 in our power, and she did everything in her power to  
24 correct it. And she did correct it.

25 We're just, again, asking for a little grace in

1 this in requesting the penalty be removed because we feel  
2 we did show reasonable cause as to why she should not be  
3 penalized for things that were out of her control.

4 JUDGE STANLEY: This is Judge Stanley.  
5 Ms. McDowell, is that the end of your statement?

6 MS. MCDOWELL: Yes, ma'am.

7 JUDGE STANLEY: Okay. Thank you.

8 This concludes the hearing. The judges will meet  
9 and decide the appeal based on the documents and  
10 testimony. Well, we don't -- oh, excuse me.

11 I failed to ask my fellow judges if they have any  
12 further questions, and Judge Leung has raised his hand, so  
13 I assume he does.

14 You can proceed.

15 JUDGE LEUNG: Thank you, Judge Stanley. This  
16 question is for both parties, starting with, you,  
17 Ms. McDowell.

18 I like to look at a little more background as to  
19 what happened at the IRS in these particular years. For  
20 example, were her tax returns filed on time with them?  
21 Were they delayed? If they were delayed, did the IRS pose  
22 these types of penalties on this is?

23 MS. MCDOWELL: This is Ms. McDowell speaking.  
24 Just so I have clear understanding of your question,  
25 you're asking for background as far as after the 2018 tax

1 year? Has she been current and compliant with the IRS and  
2 the State?

3 JUDGE LEUNG: No. I'm asking about these years,  
4 2013, 2014, 2015, 2016, and 2017.

5 MS. MCDOWELL: Okay. You're asking why she was  
6 not compliant? I'm not understanding the question. I'm  
7 sorry. This is Ms. McDowell speaking.

8 JUDGE LEUNG: Yes. I'm asking whether she filed  
9 on time with the IRS, and if not, whether the IRS also  
10 imposed late-filing late-payment penalties on her?

11 MS. MCDOWELL: This is Ms. McDowell speaking.  
12 Yes, all of the tax returns, like the State, were also  
13 filed late. She also fully paid the tax with the Internal  
14 Revenue Service, and they did release \$98,000 worth of  
15 penalties, at which time they did refund her for those,  
16 due to her showing that she did have reasonable cause to  
17 request the penalty to be removed due to the circumstances  
18 that we presented to you today.

19 So the Internal Revenue Service did agree with  
20 our findings regarding it not being the taxpayer's fault,  
21 and she did have good filing -- she did file her tax  
22 returns prior to the 2013 and the 2012 incidents where she  
23 filed on time and paid on time. They never had an issue  
24 up until the 2013 tax year. And they did agree with  
25 removing her penalties that were assessed for the taxes

1 that were owed.

2 JUDGE LEUNG: This is Judge Leung again.

3 Ms. McDowell, did the IRS remove the penalties because of  
4 a good filing history or because of the identity theft?

5 MS. MCDOWELL: This is Ms. McDowell. Both. So  
6 she showed reasonable cause. And part of that reasonable  
7 cause was that she, prior to these issues, she had good  
8 faith in filing her tax returns. And after the issue,  
9 after her paying, she also showed good faith in filing her  
10 tax returns and paying on time. So they did relieve her  
11 of the penalties for both of those reasons.

12 JUDGE STANLEY: And did you provide the Franchise  
13 Tax Board with documentation to indicate what the IRS did?

14 MS. MCDOWELL: This is Ms. McDowell and, no, I  
15 did not provide them with that information. That is  
16 documentation that we can submit if requested. Normally,  
17 with the State of California and my experience with them,  
18 they -- I tend to get back from a lot of reps that we're  
19 not the Internal Revenue Service. We have nothing to do  
20 with the Internal Revenue Service. Our rules are our  
21 rules, and we don't necessarily cross pollinate unless  
22 it's a payment arrangement, and we need proof of that  
23 documentation.

24 So for that I do take responsibility if that  
25 wasn't submitted. But that is documentation that we can

1 show.

2 JUDGE LEUNG: Thank you, Ms. McDowell.

3 Mr. Coutinho, setting aside the good filing  
4 history, which I know the State of California does not  
5 have in its tool box for relieving penalties -- if the IRS  
6 had relieved some of those penalties because of identity  
7 theft, would that be sufficient reasonable cause for you  
8 folks?

9 MR. COUTINHO: Judge Leung, to answer your  
10 question briefly and then I'll give a more expansive  
11 answer, yes. If any of the penalties were abated for  
12 reasonable cause, FTB would be interested in having that  
13 information and then may revise its position as  
14 appropriately. The Franchise Tax Board has requested  
15 information from the IRS for the tax years at issue as  
16 Ms. McDowell stated. They mirror what happened at the  
17 state level. The tax returns were similarly filed late  
18 for the 2013 and 2014, and the similar penalties were  
19 imposed.

20 It appears from FTB's records that all the other  
21 penalties for the other tax years have not been abated.  
22 However, the 2013 tax year it appears that the  
23 delinquent-filing penalty was abated. However, as you  
24 stated, it appears to be part of the IRS's first-time  
25 abatement program and not due to reasonable cause.



1           However, if Appellant has information that the  
2           2013 tax delinquent-filing penalty was abated for  
3           reasonable cause, we would take a look at that. But based  
4           off FTB's records, currently it looks to be a part of the  
5           IRS's first-time abatement program for the 2013 tax year  
6           as opposed for abatement for reasonable cause.

7           JUDGE LEUNG: Thank you.

8           That's all my questions, Judge Stanley. Now back  
9           to you.

10          JUDGE STANLEY: This is Judge Stanley. Thank  
11          you, Judge Leung.

12          Judge Ralston, do you have any additional  
13          questions?

14          JUDGE RALSTON: This is Judge Ralston. No  
15          questions. Thank you.

16          JUDGE STANLEY: This is Judge Stanley. I had  
17          been going to ask about the identity theft and how it  
18          specifically did effect 2013. It sounds like it's  
19          possible that the IRS did abate those -- the 2013 at least  
20          the penalties, but we -- I think it would be helpful to  
21          the Office of Tax Appeals because our record does not  
22          include any information with respect to why some of the  
23          penalties were abated and for which tax years.

24          So, Ms. McDowell, do you think if I keep the  
25          record open in this case that you would be able to submit

1 that to the Franchise Tax Board and to the Office of Tax  
2 Appeals?

3 MS. MCDOWELL: This is Ms. McDowell speaking.  
4 And, yes, we can submit all of our records regarding that  
5 and the paperwork for all of the years that were removed  
6 for abatement.

7 JUDGE STANLEY: Okay. This is Judge Stanley.  
8 How long do you think you would need to do that?

9 MS. MCDOWELL: Just a week. I'm sorry. This is  
10 Ms. McDowell. Just a week because a lot of that  
11 information is archived with our company, and we would  
12 have to pull it up in order to get it sent to you. So I  
13 would say no more than a week's time to turn around.

14 JUDGE STANLEY: This is Judge Stanley. Thank  
15 you, Ms. McDowell. To be safe why don't I hold the record  
16 open and give you two weeks to get that to us with a copy  
17 to the Franchise Tax Board.

18 And then, Mr. Coutinho, how long would the  
19 Franchise Tax Board need to review the additional  
20 information?

21 MR. COUTINHO: Similarly, if we could get two  
22 weeks to respond to the information. And then also this  
23 is Brad Coutinho. Actually, can we request 30 days; time  
24 frame to respond. And then also we would like to submit  
25 what FTB's records reflect in regards to information that

1 we received from the IRS regarding the 2013 tax year.

2 JUDGE STANLEY: Would you like -- this is  
3 Judge Stanley. Mr. Coutinho, would you like to submit  
4 that first or just after you receive whatever Appellant  
5 has?

6 MR. COUTINHO: I think to make it easy for the  
7 Office of Tax Appeals -- this is Brad Coutinho -- we would  
8 like to respond after we receive information from  
9 Appellant. We can have 30 days to respond and then  
10 provide information regarding -- well, to clarify if we  
11 need additional information from the IRS to explain what  
12 happened for the 2013 tax year. I think that would be  
13 helpful as well. So I think after Appellant has responded  
14 would be appropriate. Thank you.

15 JUDGE STANLEY: Thank you. This is Judge  
16 Stanley. To be fair, Ms. McDowell, would you also like  
17 30 days? Because I'm going to give the Franchise Tax  
18 Board 30 days to respond to what you produce.

19 MS. MCDOWELL: This is Ms. McDowell. That's  
20 fine. And I would like to just verify where we're sending  
21 that information to so that we can make sure it's there  
22 timely.

23 JUDGE STANLEY: Yes. I will issue another order  
24 holding the record open and giving -- putting the dates  
25 and where to send the information. So I'll do that after

1 the hearing, so that will be clear. And what I'll do with  
2 the Franchise Tax Board's response is set their response  
3 to be due 30 days from the date that they receive your  
4 documentation. And that way we don't necessarily have to  
5 hold the whole thing up for 60 days if you get it sooner.  
6 Does that sound okay, Ms. McDowell?

7 MS. MCDOWELL: This is Ms. McDowell. Yes, ma'am.  
8 That's fine.

9 JUDGE STANLEY: And does that sound okay to you  
10 too, Mr. Coutinho?

11 MR. COUTINHO: Yes. This is Mr. Coutinho. That  
12 sounds great.

13 JUDGE STANLEY: Okay. Then now I'll go back to  
14 my earlier statement that this concludes the hearing. And  
15 we will not be issuing an opinion until sometime in the  
16 100 days after we close the record. So that will be the  
17 official date that the clock starts ticking.

18 So we will recess the hearing, and we will  
19 reconvene at 1:00 p.m. for another hearing.

20 Thank you all for participating today, and have a  
21 good day.

22 (Proceedings adjourned at 10:16 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 21st day of February, 2022.

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