

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. SKINNER,) OTA NO. 20046122
)
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, February 23, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:06 p.m. and concluding at 3:02 p.m. on
Wednesday, February 23, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ CHERYL AKIN
ALJ ANDREA LONG

For the Appellant: J. SKINNER
THOMA SKINNER
Y. FLORES
J. DREHER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER TUTTLE
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 7.)
(Department's Exhibits A-EE were received at page 7.)

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California; Wednesday, February 23, 2022

2:06 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the appeal of James Skinner, Case Number 20046122. The date is February 23rd, 2022, and the time is 2:06 p.m.

My name is Josh Lambert, and I'm the lead Administrative Law Judge for purposes of conducting this hearing. And my co-panelists today are Judge Andrea Long and Judge Cheryl Akin.

I'd like to have everyone introduce themselves for the record. FTB, can you please introduce yourselves by giving your full first and last name. Thank you.

MR. TUTTLE: Yes. My name is Topher Tuttle representing Franchise Tax Board.

JUDGE LAMBERT: I believe you're on mute.

MS. BROSTERHOUSE: Let me try again. Maria Brosterhous, Franchise Tax Board.

JUDGE LAMBERT: Thank you.

And for Appellant, can you all introduce yourselves, please.

MR. T. SKINNER: Good afternoon. My name is Tom Skinner. I am counsel on record for Appellant James Skinner.

1 MR. J. SKINNER: Hello. My name is James
2 Skinner.

3 JUDGE LAMBERT: And Ms. Flores, can you introduce
4 yourself if you can hear me.

5 MS. FLORES: Yvonne Flores.

6 JUDGE LAMBERT: Okay. And Mr. Dreher?

7 MR. J. SKINNER: He's downstairs. Do you need
8 him to introduce himself, to come up?

9 JUDGE LAMBERT: Yeah. Maybe you could get him
10 because we're going to be starting soon.

11 MR. J. SKINNER: He'll be right up.

12 JUDGE LAMBERT: Thank you.

13 MR. J. SKINNER: He's coming.

14 JUDGE LAMBERT: Also, I believe I hear some
15 background noise.

16 MR. J. SKINNER: I'll turn it down.

17 JUDGE LAMBERT: Okay.

18 MR. J. SKINNER: Can you introduce yourself.

19 JUDGE LAMBERT: This is Judge Lambert. Mr.
20 Dreher, we just wanted you to introduce yourself and state
21 your first and last name for the record.

22 MR. DREHER: Jason Dreher, D-r-e-h-e-r.

23 JUDGE LAMBERT: Okay. Thank you very much.

24 MR. J. SKINNER: I'll call you when we need you,
25 about 5 or 10 minutes.

1 JUDGE LAMBERT: Okay. I'll move on to stating
2 the issues. The issues are whether Appellant has
3 established error in FTB's proposed assessments for the
4 2007 to 2010 tax years; whether the late filing penalties
5 should be abated for the 2007 through 2010 tax years;
6 whether the accuracy-related penalties should be abated
7 for the 2007 through 2010 tax years.

8 FTB provides Exhibits A through EE. Appellant
9 will be entering Exhibits 1 through 3. That evidence is
10 now in the record.

11 (Appellant's Exhibits 1-3 were received
12 in evidence by the Administrative Law Judge.)

13 (Department's Exhibits A-EE were received in
14 evidence by the Administrative Law Judge.)

15 Mr. Tom Skinner, this will be your opportunity to
16 explain Appellant's position. You'll have an hour and
17 15 minutes.

18 First, I can -- since Mr. Dreher is not present,
19 I can just swear in each witness right before they
20 present. And if you can just let me know when they're
21 presenting, I'll just swear them in at that time. And you
22 can decide when you want them to testify and how you
23 allocate your time during your preparation. So now is
24 your time. You may proceed. Thank you.

25 MR. TOM SKINNER: Thank you, Judge Lambert.

1 companies and merchant vendors so as to explain his fairly
2 idiosyncratic business model. However, he was able to
3 acquire some records from the vendors, including Southern
4 Wine & Spirit and Restaurant Depot. And he was able to
5 retrieve a few months of credit card statements, and those
6 can be found on Exhibit C -- I'm sorry -- Exhibit 3 of his
7 brief.

8 Matching the credit card purchases from those
9 vendors, Restaurant Depot and Southern Wine & Spirits,
10 with his credit card numbers as confirmed on his credit
11 card bills corroborated the taxpayer's story, which is
12 that he was often making purchases for businesses, such as
13 Saki Kavouniaris', and then he was being reimbursed by
14 Saki Kavouniaris. And it's our belief that all of those
15 reimbursements were assessed 100 percent as income and not
16 as reimbursements. So we were able to, with the limited
17 records we did have, we were able to convince the IRS to
18 lower -- to reduce that assessment that was originally
19 generated in 2015 by over 20 percent.

20 We have provided this information to the FTB, and
21 the FTB agreed to honor that result from the audit
22 reconsideration. We're here today because as you can see
23 from Exhibit 2, we've tried to subpoena the credit card
24 statements from the taxpayer which would corroborate
25 further reimbursements and deductions to his income, but

1 we're not able to get those records because they're over
2 seven years old. And none of those banks, including Chase
3 and Fremont Bank and Bank of America, keep records that
4 are older than seven years.

5 So to -- I'm going to allow the taxpayer to
6 testify here. But just generally speaking, he had too
7 broad -- broadly speaking, he had two different sources of
8 income during this time. One was, generally speaking,
9 bridge loans. So for example for Mr. Kavourniaris who had
10 cash flow issues, the taxpayer would make purchases from
11 Restaurant Depot or Southern Wine & Spirit for
12 Mr. Kavourniaris, and then Mr. Kavourniaris would
13 reimburse him at a later date.

14 Additionally, so those reimbursements, those the
15 IRS, in looking at the documentation of the credit card
16 statements and the purchase records from Restaurant Depot
17 and Southern Wine & Spirits was convinced that there was
18 corroborating documentation showing the -- to showing the
19 taxpayer's position. However, for another category of
20 income from the taxpayer, it was cashing third-party
21 checks. And those he -- those were assessed entirely as
22 income, and the taxpayer doesn't have any records to show
23 that the checks that he cashed he dispersed those funds to
24 the third parties whose names were written on the check.

25 Now, I just want to -- I'm looking at the

1 Respondent's brief that is dated February 22nd. I think
2 it might be a little bit different from the current brief
3 from the FTB. But to provide an example, on Exhibit R
4 beginning with page 16 and then going onto page 17, 18,
5 19, 20, and 21, there are a number of different -- there
6 are several bank records showing deposits. And a lot of
7 those deposits show checks that are not made out to the
8 taxpayer. And the taxpayer is going to provide more
9 information today to explain what was happening with
10 that -- that source of income -- that source of revenue,
11 rather, and why it wasn't entirely income.

12 So without further ado, James Skinner, can you
13 hear me?

14 MR. JAMES SKINNER: Sure. Yes.

15 MR. TOM SKINNER: Can you please explain your
16 business model with respect to cashing third-party checks.

17 JUDGE LAMBERT: Mr. Tom Skinner, maybe I should
18 swear in Mr. James Skinner first?

19 MR. TOM SKINNER: Yes. That's a good idea.

20 MR. JAMES SKINNER: Because of work, can we get
21 Yvonne's testimony in first because she's at work and her
22 freedom of time. So I think she might be better to go
23 first.

24 MR. TOM SKINNER: Okay.

25 JUDGE LAMBERT: Okay. Is that what you want to

1 do Mr. Skinner?

2 MR. JAMES SKINNER: Yes.

3 MR. TOM SKINNER: Yes.

4 JUDGE LAMBERT: Okay. Ms. Flores, can you hear
5 me?

6 MS. FLORES: Yes.

7 JUDGE LAMBERT: I'm going to swear you in. Can
8 you please raise your right hand.

9

10 YVONNE FLORES,

11 produced as a witness, and having been first duly sworn by
12 the Administrative Law Judge, was examined and testified
13 as follows:

14 JUDGE LAMBERT: Thank you.

15

16 WITNESS TESTIMONY

17 BY MR. TOM SKINNER:

18 Q Ms. Flores, where do you work?

19 A Bank of America.

20 Q How long have you worked there?

21 A 15 years total.

22 Q Do you know the taxpayer?

23 A Yes.

24 Q How do you know him?

25 A He -- I met him when I was a teller at the

1 Burlington Financial Center. He would come in all the
2 time to do his transactions.

3 Q Are you able to provide a rough time frame of
4 when he came in to do his transactions?

5 A I was at the Irvington one from around April of
6 2008 -- sorry -- 2007 to -- let me see -- December of
7 2008, possibly January of 2009.

8 Q And can you provide a rough estimate of how often
9 the taxpayer, James Skinner, came into that branch and
10 conducted transactions with you?

11 A With me, per se, I would say two to three times a
12 week, but I know there were other times that he would come
13 in more often. He just wouldn't come in to me directly.
14 There's multiple staff.

15 Q So can you please describe what type of
16 transactions he entered into with you -- or not with you,
17 but that you witnessed?

18 A He would deposit checks. He did have an
19 agreement on file to do third-party checks because he's a
20 business owner, and it's a business account. We never
21 would cash them outright. They had to be deposited. He
22 would also do withdrawals to take money back out and then
23 get change for the business as well.

24 Q Now, do you -- do you have any other information
25 about the nature of the third-party check cashing that the

1 taxpayer performed while you were at these banks?

2 A The only thing, when I first met him and had
3 asked, because it was a new -- newer thing for me -- the
4 center I had just transferred from, we didn't do those
5 kinds of transactions. I just remember having a
6 conversation with him asking who the checks were payable,
7 and he just mentioned that he had help people cash their
8 checks who didn't have bank accounts or couldn't open a
9 bank account for their own personal reasons, that he would
10 help them.

11 Q And did you ever have any problems arise as a
12 result of these transactions?

13 A No.

14 Q Well, thank you Ms. Flores. I think that is all
15 the testimony we were looking from you today. Is there
16 anything else that you would like to add about what you
17 witnessed the taxpayer do at the banks that you worked at?

18 A Nothing that I can think of at the moment, no.

19 Q Well, thank you so much for joining us here
20 today.

21 A You're welcome.

22 MS. FLORES: Do I need to wait to be asked by
23 anybody else? I think I heard part of that. Do they need
24 to cross-examine me, or am I okay to drop off the call?

25 JUDGE LAMBERT: This is Judge Lambert. I think

1 maybe because you have to go we could have FTB and panel
2 ask you -- go now and see if we have any questions, if
3 that's okay, Ms. Flores?

4 MS. FLORES: Yes, that's fine.

5 JUDGE LAMBERT: Okay. FTB, did you have any
6 questions for Ms. Flores?

7 MR. TUTTLE: No questions. Thank you.

8 JUDGE LAMBERT: Okay. I'm going to ask the panel
9 if they have questions. Judge Long, did you have any
10 questions for her?

11 JUDGE LONG: This is Judge Long. No questions.

12 JUDGE LAMBERT: And Judge Akin, did you have any
13 questions?

14 JUDGE AKIN: Judge Akin speaking. I do not have
15 any questions for Ms. Flores. Thank you.

16 JUDGE LAMBERT: And this is Judge Lambert. I
17 also don't have any questions for Ms. Flores.

18 So, Ms. Flores, thank you very much for attending
19 the hearing, and I think it would be okay if you needed to
20 leave now.

21 MS. FLORES: Okay. Thank you.

22 JUDGE LAMBERT: Thanks.

23 Mr. Tom Skinner, you can proceed with your
24 presentation, or did you want me to swear in Mr. James
25 Skinner?

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MR. TOM SKINNER: Yes, please.

MR. JAMES SKINNER: Can we do Jason Dreher next?

JUDGE LAMBERT: That would be fine.

MR. JAMES SKINNER: Let me go get him. Give me a quick second.

JUDGE LAMBERT: Okay. Thanks. Hi, Mr. Dreher.

MR. DREHER: Yes.

JUDGE LAMBERT: Thanks for coming. Right now we're conducting the hearing for Mr. James Skinner, and I believe you're going to be testifying as a witness; is that correct?

MR. DREHER: Yes.

JUDGE LAMBERT: Before you proceed, can you -- I'd like to swear you in. So can you please raise your right hand.

JASON DREHER,

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

JUDGE LAMBERT: Thank you very much.

And, Mr. Tom Skinner, you can proceed.

///
///

1 WITNESS TESTIMONY

2 BY MR. TOM SKINNER:

3 Q Mr. Dreher, do you know James Skinner?

4 A Yes, I do.

5 Q For how long have you known him?

6 A For how long have I known him?

7 Q Yes.

8 A Probably 22 years.

9 Q Have you ever cashed checks through James
10 Skinner?

11 A I heard have I ever cashed checks. What did you
12 say after that?

13 Q Have you ever cashed checks with or through James
14 Skinner?

15 A Yes.

16 Q Can you please explain how those transactions
17 worked?

18 A It's pretty simple. James Skinner has an
19 establishment right down the street from our -- my
20 company, and I would bring my expense checks in, and I
21 cashed them. It wasn't a bad check. It wasn't -- nothing
22 crazy about it. He charged 2 percent, and I'd cash a
23 check.

24 JUDGE LAMBERT: Mr. Tom Skinner or Mr. Dreher,
25 would it be possible to -- I hear feedback in the

1 background of talk. It makes it difficult to hear. Could
2 it be possible to make it --

3 MR. JAMES SKINNER: We're at a business right now
4 and I mean -- sorry.

5 MR. DREHER: We're upstairs.

6 MR. JAMES SKINNER: I turned -- yeah. We're
7 upstairs.

8 JUDGE LAMBERT: I see. Well, could you perhaps
9 maybe get closer to the microphone then we could hear you
10 better.

11 MR. JAMES SKINNER: Okay. Go ahead.

12 JUDGE LAMBERT: Thanks.

13 MR. JASON DREHER: Where's the microphone.

14 MR. JAMES SKINNER: You're fine.

15 BY MR. TOM SKINNER:

16 Q So, Mr. Dreher, the checks you cashed with James
17 Skinner, did they have his name written on the checks?

18 MR. JAMES SKINNER: Did the checks have my name
19 written on them?

20 MR. DREHER: No.

21 BY MR. TOM SKINNER:

22 Q And so why did you decide to cash checks with
23 James Skinner?

24 MR. JAMES SKINNER: Did you hear the question?

25 MR. JASON DREHER: I did hear the question.

1 Because they were my expense checks, and my --
2 well, if I've sworn to tell the truth, because I didn't
3 want my significant other to -- it was my money. It was
4 my kitty money. It was -- it was a check from my company
5 made out to me, a good check. So I mean, I really don't
6 know why I'm here? Why I'm --

7 MR. JAMES SKINNER: You're not in trouble.

8 MR. DREHER: I know. Yeah.

9 BY MR. TOM SKINNER:

10 Q So you were -- you would provide a check to James
11 Skinner, and he would provide you with cash. Is that your
12 testimony?

13 A Yes. He'd take 2 percent. So say it was --

14 Q Okay. So 98 percent of the amount on the check
15 was returned back to you in the form of cash?

16 A If not the whole amount, yes. And like I said,
17 I've been friends with him for 22 years.

18 Q Can you estimate how many times you exchanged
19 these checks for cash with James Skinner during 2007?

20 A No. Are you kidding me? No. I don't remember
21 what I had for dinner last Wednesday night.

22 Q Are you able to provide any sort of ballpark
23 estimate as to how many times you have engaged with James
24 Skinner during -- with these check-cashing transactions?

25 A A monetary amount or a --

1 Q Number of checks.

2 A 20 to 30 probably, once a month. I guess 2007,
3 yeah. We're going back what? Five years?

4 MR. JAMES SKINNER: 15.

5 MR. DREHER: Yeah.

6 BY MR. TOM SKINNER:

7 Q Can you estimate the monetary amount of the
8 checks in total that you have --

9 A No more than -- the monetary amount per check or
10 in total?

11 Q Either one?

12 A No, because I'd be guessing and lying. No more
13 than \$5,000 up to \$800, \$700 that -- yeah. I have no
14 idea. Otherwise I'd be lying. I raised my hand. I
15 mean --

16 Q So your previous response that the numbers that
17 you provided \$5,000 to \$800 is that total or per check?

18 MR. JAMES SKINNER: Per check.

19 MR. DREHER: Per -- per check.

20 MR. TOM SKINNER: Per check. Thank you,

21 Mr. Dreher. I have no further questions.

22 MR. JAMES SKINNER: You're done, unless they want
23 to ask you more questions.

24 JUDGE LAMBERT: Mr. Dreher, is it okay if I just
25 ask if anyone has any questions for you?

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MR. DREHER: Sure.

JUDGE LAMBERT: Okay. FTB, did you have any questions for Mr. Dreher?

MR. TUTTLE: No questions at this time.

JUDGE LAMBERT: And Judge Long, did you have any questions?

JUDGE LONG: This is Judge Long. No questions from me. Thank you.

JUDGE LAMBERT: And, Judge Akin, did you have any questions?

JUDGE AKIN: Judge Akin speaking. No questions. Thank you.

JUDGE LAMBERT: And this is Judge Lambert. I don't have any questions as well. So thank you, Mr. Dreher, I appreciate it.

MR. DREHER: All right.

MR. JAMES SKINNER: See you.

MR. DREHER: I wanted to ask some questions.

MR. JAMES SKINNER: You don't get to ask questions. I'll see you later in a half hour. You did perfect. You did perfect.

JUDGE LAMBERT: Okay. Mr. Tom Skinner. Would you like me it to swear in Mr. James Skinner?

Mr. James Skinner, can I swear you in now?

MR. JAMES SKINNER: Absolutely.

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JUDGE LAMBERT: Okay. Thanks.

JAMES SKINNER,

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

JUDGE LAMBERT: Thanks.

And, Mr. Tom Skinner, you may proceed.

WITNESS TESTIMONY

BY MR. TOM SKINNER:

Q James Skinner, can you please describe your check cashing operations during these --

A Absolutely. So from 1999 to 2011, I managed a business called Kirby's Sportsbar in Fremont, California. And after managing it for a couple of years, I noticed that the liquor store next door was cashing payroll checks, and then the customers would come to the bar and spend the money. So I started cashing small amounts of checks. The business is located right by Tesla, which back then was called Nummi.

And so a lot of people would cash their checks at the liquor store and then have, you know, disposable income to spend at the bar, and I got paid based off sales

1 at the bar. So I started slowly in 2003 and '04 cashing
2 small checks, and it grew to -- a busy Friday was 40 to
3 \$50,000 in payroll checks. One or two trips to the bank
4 with Yvonne, or who else it ever was.

5 So I was cashing third-party checks. And as you
6 guys head the testimony, those checks were deposited into
7 an account. Yvonne thinks I'm the business owner, but
8 there's a reason why I'm not the business owner. However,
9 I'm a signee on that account. That was a Bank America
10 account. I'm actually not the business owner. But
11 business accounts can have signees where people can do
12 transactions on the account. And so I used to cash
13 payroll checks.

14 You would cash payroll checks much like the 70s
15 and 80s in a sports bar. Then the customer has disposable
16 income. They tend to spend more money. And I cashed a
17 lot of checks for many years. And I mean, generally, a
18 check cashing service to generate revenue in a business.

19 Q Can you please explain your business operations
20 with respect to bridge loans and other types of financing
21 that you provided to business owners, such as Saki
22 Kavourniaris?

23 A So in the early 2000s I met Saki Kavourniaris.
24 He owns a restaurant on the way home from the bar that I
25 was running, and I met him. And I got to know him a

1 little, and he would be in financial -- especially in
2 2007, '08, and '09, the dot-com. He has a high-end
3 restaurant, and he was in trouble financially, and he
4 would ask me if he could help me. This is -- I'll give
5 various examples.

6 So he knew on a Wednesday that his payroll was
7 \$20,000 --roughly \$20,000 -- and the payroll would be on
8 Friday. He knew he didn't have that money, and Wednesday
9 and Thursday's restaurant sales would not cover that
10 amount. But he knew, based on his reservations and
11 bookings, that his Friday night sales and his Saturday
12 night sales, that money would be deposited into his
13 account on Monday, and he'd be able to cover his payroll.

14 So on Wednesday afternoon I'd let him use two or
15 three of my credit cards. He'd run my credit cards for
16 \$10,000 each, for a total of \$20,000. I would benefit
17 from the point system, right. I would benefit from the
18 points. The money would then get into Saki's account
19 Monday morning. He would write me a check. I would write
20 the check to my account. It would clear Tuesday. I would
21 pay my credit card off Wednesday morning.

22 On most of my credit cards that I did this on --
23 this was the bridge loan -- I was making about a point and
24 a half to two points. So for a three-minute transaction
25 where he swiped my credit cards and I signed a receipt, I

1 would make 3 or \$400 in points. In points. So that was
2 the bridge loans, and we did that. And the documentation
3 that the IRS provided of a multiple \$500 checks, multiple
4 \$1,000 checks, multiple \$5,000 checks, they would all
5 match up exactly with credit card statements where you
6 would see a credit.

7 My Chase Freedom card has a \$20,000 restaurant
8 swipe, right, and you would see it matches with -- it's
9 paid off seven days later. But to pay it I had to e-bill
10 it through my account. So I had to deposit the check.
11 The IRS doesn't -- they don't know that because when they
12 subpoenaed the records, the IRS only saw the incoming
13 money. They didn't subpoena my e-bill system or the
14 debits from the account. So that was one thing called
15 bridge loans with Saki.

16 There're multiple other examples that I'll give
17 you that speak on behalf of why I have so many deposits
18 under JMN Management, which is Saki's corporation. So he
19 couldn't pay his PG&E bill. I paid it. He would write me
20 a check two weeks later. He couldn't make his -- he
21 couldn't pay his vendors. And Mr. Thomas Skinner talks
22 about Southern Wine & Spirits and Restaurant Depo, but
23 that's only 15 percent of his expenses. He had Costco
24 expenses. He had Young's Market expenses. He had
25 business insurance expenses. He had EDD expenses.

1 There was a time I was covering multiple
2 thousands of dollars via credit card swipes, via different
3 ways I would provide them, and he would pay me back. He
4 basically needed time. If you know the restaurant
5 business, there's times of the year where it's extremely
6 dead and slow and then Mother's Day he does \$70,000.
7 Easter, he does \$50,000. So the money was there. Because
8 I knew him for years, he just needed 20 days, 30 days, 40
9 days to pay his bills and catch up. So there was -- there
10 was times I had extra cash myself, and I would pay his
11 dishwashers. And he'd write me a check, and I'd wait
12 three days. And in exchange I'd get a steak dinner for my
13 daughter and I.

14 So the government has -- the IRS showed documents
15 of deposits. And I want to get back to the third party in
16 a minute. But if you really look at them, you'd go,
17 there's no W-2s to match. The federal government --
18 there's no company that says, hey, Mr. Skinner made a
19 quarter of million dollars in 2008, and this is -- or
20 there's no independent contractor set. None of that.
21 It's merely deposits.

22 And those deposits, if I had the subpoena powers
23 the federal government has, I could then show. But when
24 you go to Chase -- call Chase and go, hey, I need my
25 statements -- American Express -- from 2000 to 2008, and

1 you're doing this in 2018 and '19. You're not going to
2 get the documentation. You're just not. I don't have the
3 same powers.

4 I want to go back a little bit to the third-party
5 checks. So the documentation the federal government
6 provided was pages of third-party checks; Check number,
7 check amount, and a name. The IRS is actually stating --
8 when you reverse the thinking, they're actually stating
9 that over 500 people endorsed their check to me, a
10 third-party check, and received no compensation. So over
11 500 people endorsed their payroll, their expense check,
12 their home improvement check, whatever check it was, and
13 received no compensation for it.

14 All these people just signed over their payroll
15 checks to me. That's their position. That is their
16 third -- that's what they're saying. These third party --
17 and you heard from even Yvonne Flores -- they were
18 third-party checks, 99 percent of them. It just -- to me
19 it's common sense, and it's reasonable to think there's a
20 list from the IRS with hundreds of names, hundreds of
21 check amounts, all of them have a name on the check that's
22 not my name. I then testify that I was cashing
23 third-party checks. A teller who is now a manager at a
24 big-time bank say, yeah, he was cashing third-party
25 checks.

1 And Jason Dreher, I can bring in 50 guys like
2 that if we want to go through that because I still know
3 the guys, and I'm in contact with them. It's just
4 reasonable to think that all of these third-party checks
5 were absolutely not income. I was cashing third-party
6 checks.

7 Q Mr. James Skinner, have you ever seen the IRS' or
8 the FTB for their matter, their computation of how they
9 arrived at your tax assessments?

10 A No. The documentation I've seen is merely
11 deposits into a bank account -- or two bank accounts that
12 I was tied into it. It's all deposits. It's all
13 deposits. So, you know, if you just think about the
14 numbers, if I was just roughly doing \$100,000 a week in
15 check cashing -- and that's only check cashing. That's
16 not Saki. That's \$5 million a year that would be declared
17 income because as Yvonne Flores stated, those were
18 deposits.

19 But the federal government does not point out in
20 their paperwork, or they don't even know, that seven
21 seconds I deposited \$16,937 on January 8, 2007, I withdraw
22 \$16,978 because they didn't provide that documentation. I
23 can't get it. I don't -- I can't get it from the banks.

24 MR. TOM SKINNER: I have no further questions.
25 FTB?

1 JUDGE LAMBERT: Thank you. I will now move
2 onto -- well, Mr. Tom Skinner, are you finished with your
3 presentation, or should we just ask -- have the witness
4 been questioned?

5 MR. TOM SKINNER: Yes, I'm finished with my
6 presentation.

7 JUDGE LAMBERT: Okay. Thanks.

8 Now, FTB, did you have any questions for
9 Mr. James Skinner?

10 MR. TUTTLE: I have one question. Mr. Skinner,
11 when you were performing these check-cashing transactions,
12 did you ever issue a receipt?

13 MR. JAMES SKINNER: No.

14 MR. TUTTLE: Thank you. No further questions.

15 JUDGE LAMBERT: I will now ask my panel if they
16 have any questions.

17 Judge Long, did you have any questions for Mr.
18 Skinner -- or Mr. Tom Skinner or Mr. James Skinner,
19 actually?

20 JUDGE LONG: This is Judge Long. No questions at
21 this time.

22 JUDGE LAMBERT: And Judge Akin, did you have any
23 questions for Mr. James Skinner or Mr. Tom Skinner?

24 JUDGE AKIN: Yes. I think I have one question
25 for Mr. James Skinner. I understand your testimony

1 regarding the check cashing and also the short-term loans.
2 I guess I'm just wondering what your method of income or
3 livelihood was during these tax years?

4 MR. JAMES SKINNER: I worked at the business, the
5 sports bar. It was called Kirby's Sportsbar. I had a
6 salary. I also had a bonus structure based on the sales
7 of the business -- what the monthly sales were. Can I add
8 to that a little bit?

9 JUDGE AKIN: Yes. Please go ahead.

10 MR. JAMES SKINNER: It's also the absence of
11 evidence. I think you can make an inference that the
12 federal government doesn't provide in their paperwork I
13 have a yacht and a helicopter. I live in the home that I
14 was raised in at my mom's house. Okay. That's number
15 one. And number two, the federal government doesn't say I
16 owe a bunch of money, right, because company A, B, C down
17 the street submitted some kind of paperwork that said we
18 paid this guy in X amount.

19 No. I was making 50 to \$70,000 a year in these
20 years, roughly. And although I didn't file taxes in a
21 timely fashion, I eventually did file taxes. And if I
22 have to pay penalty fees for being three, five, seven
23 years late, I would accept that. I would also accept if
24 there was a penalty that I was running a check-cashing
25 business without a bond or a license. But the point I'm

1 trying to make is the deposits were not income.

2 JUDGE AKIN: Thank you. I don't have any further
3 questions.

4 JUDGE LAMBERT: This is Judge Lambert. I have a
5 question for Mr. Tom Skinner first. I just want to ask
6 you the FTB Exhibit R you were discussing, is that the
7 document that the IRS was looking at? And is that a bank
8 statement of some kind or a personal self-made statement?

9 MR. TOM SKINNER: Yeah. That is a -- when we
10 went through audit reconsideration, we requested all the
11 documents that the IRS utilized in order to arrive at
12 their original assessment in 2015. We got boxes of
13 paperwork. And included among them are these bank
14 statement entries, but we never received any document
15 calculating the income. So this Exhibit R is several
16 pages of deposits which show many third-party checks. And
17 so that would corroborate the taxpayer's narrative about
18 cashing third-party checks.

19 JUDGE LAMBERT: Okay. Thanks. And I think
20 that's all the questions I have for now, and I'll probably
21 have more after FTB makes their preparation.

22 So let's move on to FTB.

23 Mr. Tuttle, before you stated you'll have 10
24 minutes. We decided you'll have 10 minutes for your
25 presentation, so you may proceed. Thanks.

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MR. TUTTLE: Thank you.

PRESENTATION

MR. TUTTLE: Good afternoon. My name is Topher Tuttle, and I'm representing Respondent Franchise Tax Board and with me Maria Brosterhous also of the Franchise Tax Board.

There are three issues before your panel today: First, whether Appellant had established error in Respondent's proposed assessments for tax years 2007 through 2010; second, whether delinquent filing penalties should be abated for the same years; and third, whether the accuracy-related penalties should be abated for the same years.

Concerning the first issue, Revenue & Taxation Code Section 18622 requires a taxpayer to concede the accuracy of federal changes or state where the changes are erroneous. Under Todd versus McCogan, it is well settled that a deficiency assessment based on federal adjustments is presumed correct, and the taxpayer bears the burden of proving error in FTB's determination. In this case, Respondent originally received notice from the IRS that it had audited Appellant's tax years 2007 through 2010, and Respondent made corresponding adjustments in its proposed assessment for the same tax years.

1 When Appellant provided information during this
2 appeal that the IRS subsequently allowed 23 percent of the
3 previously disallowed business expenses, Respondent
4 verified those revisions and conceded similar reductions.
5 Significantly, the 23 percent allowance used by the IRS
6 was actually calculated by Appellant. During the federal
7 audit reconsideration, the IRS asked Appellant to
8 calculate and substantiate the percentage of applicable
9 business expenses from the only two months of credit card
10 statements obtainable by Appellant. The resulting
11 23 percent figure was then projected across all four years
12 at issue.

13 Thus, the IRS and Respondent have both used
14 Appellant's available records and his own calculations to
15 estimate the amount of allowable claimed business
16 expenses. Appellant has admitted no further documentation
17 is available, and the witness testimony presented today
18 does not establish any further reductions are warranted.
19 As a result, Appellant has failed to satisfy his burden of
20 proof and Respondent's revised proposed assessments should
21 be sustained.

22 Turning to the two penalty issues. When
23 Respondent imposes a penalty, the law presumes that the
24 penalty was imposed correctly. The delinquent filing
25 penalties were properly imposed because Appellant did not

1 file timely tax returns for any of the years at issue.
2 Since Appellant's tax returns for these years were not
3 filed until 2014, the maximum penalty of 25 percent was
4 properly applied for each year.

5 The accuracy-related penalties were imposed
6 pursuant to Revenue & Taxation Code Section 19164 and
7 Internal Revenue Code Section 6662, which require a
8 20 percent penalty on an underpayment of income tax that
9 is attributable to substantial understatement of income
10 tax among other grounds. The taxpayer has substantial
11 understatement of income tax, if the amount of the
12 understatement exceeds the greater of 10 percent of the
13 tax required to be shown on the return for the taxable
14 year or \$5,000.

15 In this case, Appellant's understatements for all
16 tax years on appeal exceed both of these thresholds.
17 Although, there are defenses to both of these penalties,
18 Appellant has not raised any arguments that the penalties
19 should be abated. Thus, they may not be abated. Since
20 Appellant has failed to establish error in Respondent's
21 revised proposed assessments, and has failed to raise any
22 cause to abate the delinquent filing and accuracy-related
23 penalties, Respondent's action should be sustained.

24 I'm happy to answer any questions you may have.
25 Thank you.

1 JUDGE LAMBERT: Thank you, Mr. Tuttle.

2 Judge Long, did you have any questions for FTB?

3 JUDGE LONG: This is Judge Long. So the
4 23 percent reduction that FTB -- I'm sorry -- that the IRS
5 and FTB applied to Appellant's assessment, that doesn't
6 account for Appellant's argument today regarding the
7 bridge loans and the payroll cash checking; is that
8 correct?

9 MR. TUTTLE: So the document in question is the
10 revenue agent report attached to Appellant's opening
11 brief, his appeal letter. And that report indicates that
12 the expenses of, you know, the business expenses were
13 substantiated by Appellant. It does not give detail as to
14 which business activity was considered.

15 JUDGE LONG: Thank you. No other questions.

16 JUDGE LAMBERT: Thank you, Judge Long.

17 Judge Akin, did you have any questions?

18 JUDGE AKIN: Judge Akin speaking. No questions
19 for Franchise Tax Board at this time. Thank you.

20 JUDGE LAMBERT: Thank you, Judge Akin.

21 Excuse me. Mr. Tuttle, I had a question as to
22 whether you can respond to what Mr. James and Tom Skinner
23 were stating about that statement Exhibit R that provides
24 various names, including -- I could see Mr. Dreher on it
25 and Mr. Kavourniaris on it. And what Mr. James Skinner

1 stated that these are all checks that are made out to
2 various individuals, and that would be an explanation for
3 why these were deposited that it's a check cashing
4 business. Can you please comment on that?

5 MR. TUTTLE: I would say we don't have enough
6 information to know whether or not the IRS has already
7 incorporated any adjustments based on the documents
8 available. So it may be that these were already
9 considered by the IRS in the adjustment that they made
10 during the audit reconsideration.

11 JUDGE LAMBERT: Thanks.

12 Maybe I can turn to Mr. Tom Skinner.

13 Do you know if these were already incorporated
14 into the IRS adjustment?

15 MR. TOM SKINNER: Yes. I went through the entire
16 audit reconsideration process on behalf of the taxpayer,
17 and the 23 percent reduction was based entirely off of
18 matching charges from Southern Wine & Spirits and
19 Restaurant Depot and matching them to those -- the handful
20 of credit card statements that the taxpayer did have. So
21 all of the 23 percent reduction was entirely attributable
22 to corroborating documentation with respect to the bridge
23 loan group of income.

24 None of the reduction that the IRS allowed was
25 attributable to the cashing of the third-party checks. So

1 we asked from the IRS a third-party summons in order to
2 get more documentations from, for example, Young's Market
3 and Costco, like the taxpayer mentioned. We subpoenaed
4 documents from those -- well, first we requested
5 informally, then we subpoenaed. And those businesses just
6 did not have or want to provide the documentation.

7 So the 23 percent reduction was essentially
8 entirely attributable to the bridge loan business that the
9 taxpayer conducted with Saki Kavourniaris and made
10 purchases for Mr. Kavourniaris' business and then was
11 reimbursed shortly thereafter. And he made those
12 purchases at many different locations, but we are only
13 able to get corroborating documentation from Restaurant
14 Depot and Southern Wine & Spirits.

15 JUDGE LAMBERT: Thank you.

16 I believe that Judge Akin has a question at this
17 time.

18 JUDGE AKIN: Yes. Thank you, Judge Lambert.

19 Just a quick follow-up question for you, Mr. Tom
20 Skinner. So I understand what you're saying is that
21 23 percent is based on the bridge loans. Is there any way
22 for us to know how much of the IRS income assessments
23 relate to the bridge loan business versus the check
24 cashing business? Is there anything in the record you
25 could point me to?

1 MR. TOM SKINNER: I think that's a great
2 question, Judge Akin. And that's been part of our
3 frustration because we don't know how the IRS computed the
4 original assessment nor do we -- well, we don't know how
5 they computed the original assessments. And what we do
6 know from the audit reconsideration is that they agreed to
7 lower it by 23 percent. But we do not know how they
8 originally arrived at their assessments when they
9 performed the audit originally in 2015.

10 JUDGE AKIN: And just a follow to that, it looks
11 like the IRS based it on, you know, kind of what's called
12 a bank deposit analysis, so based on deposits made to bank
13 accounts. Is there any way that you or Mr. -- sorry, the
14 other Mr. Skinner -- James Skinner can tell me any
15 estimate of how many -- how much of those deposits are
16 related to which business, you know, maybe a percentage?

17 MR. TOM SKINNER: I would defer to the taxpayer
18 on that.

19 JUDGE AKIN: You're muted, Mr. James Skinner.
20 You're muted.

21 MR. TOM SKINNER: Okay. Hang on. Please start
22 over.

23 MR. JAMES SKINNER: Okay. Now?

24 MR. TOM SKINNER: Yes.

25 MR. JAMES SKINNER: Okay. It would be hard for

1 me to be within 10 or 15 percent because the check-cashing
2 business, which eventually became deposits, was the -- I
3 was doing it before the audited years, and it actually
4 grew. So, you know, I mentioned this earlier not knowing
5 you were going to ask that question. There were many
6 Fridays I went to the bank and deposited \$25,000 twice in
7 a day and withdraw \$25,000 cash. So of the total
8 assessment, what percentage is third-party checks? I
9 would -- definitely over 50 percent.

10 And there's been a couple of comments about the
11 23 percent reduction based on documents from bank accounts
12 and purchases from vendors. That's not all for Southern
13 Wine & Spirits and Restaurant Depo. That's just what we
14 could prove in two months of statements. There's a lot
15 more Restaurant Depo and lot more Southern Wine & Spirits
16 expenses in that category. I just can't get the documents
17 from the bank that says I paid that invoice off.

18 JUDGE AKIN: Okay. Thank you. And I don't have
19 any additional questions at this time.

20 JUDGE LAMBERT: Thank you, Judge Akin.

21 Now, I don't believe there are any questions at
22 this time. So now I'll allow Mr. Tom Skinner five minutes
23 to present some closing remarks. You made proceed. Thank
24 you.

25 MR. TOM SKINNER: Thank you, Judge Lambert.

1 exist anymore. So we have done what we can with the
2 documents available to us, but there just aren't that
3 many. And it would be very, very harsh to impose the
4 entire assessments on the taxpayer when he has brought a
5 lot of credible evidence showing that a lot of these
6 deposits were not entirely income but instead were
7 reimbursements.

8 JUDGE LAMBERT: Okay. Thank you, Mr. Tom
9 Skinner.

10 I'm going to just ask the panel one more time if
11 they have any further questions.

12 Judge Long, did you have any final questions?

13 JUDGE LONG: This is Judge Long. No questions.

14 JUDGE LAMBERT: And, Judge Akin, do you have any
15 questions?

16 JUDGE AKIN: Thank you. Judge Akin speaking. I
17 don't have any additional questions.

18 JUDGE LAMBERT: Thanks.

19 And this is Judge Lambert. I have no further
20 questions. And so I think that if there's nothing further
21 I'm going to close the record and conclude the hearing.

22 I want to thank everyone for appearing today,
23 including the witnesses, Mr. James Skinner,
24 Mr. Tom Skinner, and Ms. Brosterhous and Mr. Tuttle.

25 We will issue a written opinion within 100 days

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and -- did someone have their hand up?

MR. JAMES SKINNER: Yeah. I just wanted to make one final point.

JUDGE LAMBERT: Sure.

MR. JAMES SKINNER: So for years I've been hearing provide documentation, provide documentation, for years. It's reasonable that a third-party check written out to someone else is documentation. That's documentation that that wasn't income. I just want to reiterate the position of the IRS on all these third-party checks, hundreds of thousands of dollars, hundreds of people did not get -- they basically endorsed their check to me for no service, no product. How believable is that?

Thank you.

JUDGE LAMBERT: Thank you, Mr. James Skinner.

Okay. Well, if there's nothing further, as I stated before, we will issue a written opinion within 100 days.

Thank you. This hearing is now closed, and the record is now closed. Thank you, everyone.

(Proceedings adjourned at 3:02 p.m.)