

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. RAGUNATHAN and P. PARTHASARATHY,) OTA NO. 20015671
)
)
APPELLANT.)
)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, March 29, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. RAGUNATHAN and P. PARTHASARATHY,) OTA NO. 20015671
)
)
APPELLANT.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:02 p.m. and concluding at 1:56 p.m. on
Tuesday, March 29, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ MIKE LE

Panel Members: ALJ NATASHA RALSTON
ALJ JOSHUA LAMBERT

For the Appellant: JEROME A. CLAY
S. RAGUNATHAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID MURADYAN
NANCY PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

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

(Appellant's Exhibit 9 was received on page 8.)

(Department's Exhibits A-CC were previously received at the prehearing conference.)

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

	<u>PAGE</u>
By Mr. Clay	19
By Mr. Muradyan	24

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

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

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

	<u>PAGE</u>
By Mr. Clay	32, 38

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Tuesday, March 29, 2022

1:02 p.m.

JUDGE LE: We are opening the record in the Appeal of Ragunathan and Parthasarathy. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 20015671. Today's date is Tuesday, March 29, 2022. The time is approximately 1:02 p.m. This hearing is being conducted electronically with the agreement of the parties.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Mike Le, and I will be the lead judge. Judge Natasha Ralston and Judge Josh Lambert are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions, or otherwise participate to ensure we have all the information needed to decide this appeal.

Now, for introductions for the record, will the parties please state their name and who they represent, starting with the Franchise Tax Board.

MR. MURADYAN: Hello this is David Muradyan. I represent Respondent Franchise Tax Board. And along with

1 me is my colleague, Nancy Parker.

2 JUDGE LE: Thank you, Mr. Muradyan.

3 This is Judge Le. Now turning to Appellants.

4 MR. CLAY: Again, afternoon, Your Honor. This is
5 Jerome Clay for the Appellant who is present,
6 Mr. Rangunathan. I might not have said that correct. It's
7 kind of hard to pronounce.

8 JUDGE LE: Can you -- Mr. Rangunathan, can you
9 pronounce your last name for us?

10 MR. RAGUNATHAN: It's Rangunathan.

11 JUDGE LE: Rangunathan. Okay.

12 MR. CLAY: Rangunathan. That's correct.

13 JUDGE LE: Okay. And, Mr. Clay, do you have --
14 is there another TAAP rep here with us?

15 MR. CLAY: I believe the TAAP supervisor is
16 present, Mengjun He is present.

17 MS. HE: Judge Le, Mengjun He from TAAP,
18 supervising. I'm just observing, really, not supervising.
19 Observing. Thank you.

20 JUDGE LE: Okay. This is Judge Le. Thank you,
21 Ms. He.

22 With that, let's move on to my minutes and
23 orders. As discussed and agreed upon by the parties at
24 the second prehearing conference on March 8th -- excuse
25 me. One second here.

1 As discussed and agreed upon by the parties at
2 the second prehearing conference on March 8, 2022, and
3 notated in my minutes and orders, there are two issues in
4 this matter. The first one is whether Respondent imposed
5 the demand penalty for the 2016 tax year; and second,
6 whether Appellants have established reasonable cause for
7 failing to timely respond to Respondent's demand for tax
8 return for the 2016 tax year.

9 Appellant as -- Ragunathan will testify as a
10 witness at this oral hearing. Appellant's Exhibits 1
11 through 8 were entered into the record on my minutes and
12 orders. And this morning we received an additional
13 exhibit from Appellant, which begins with a letter from
14 the Appellant's CPA dated May 26, 2020.

15 I would like to first turn to the Franchise Tax
16 Board to see if they have any objections to the admission
17 of this new evidence.

18 MR. MURADYAN: This is David Muradyan. No
19 objection.

20 JUDGE LE: Okay. Thank you, Mr. Muradyan.

21 This is Judge Le. Since the Franchise Tax Board
22 is not objecting to the exhibit -- to this exhibit,
23 Appellant's exhibit submitted this morning will be
24 admitted into the record, and it will be marked as
25 Exhibit 9.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Appellant's Exhibit 9 was received in evidence by the Administrative Law Judge.)
Moving on, Respondent's Exhibits A through CC were also entered into the record in my minutes and orders.

This oral hearing will begin with Appellant's witness testimony for up to 15 minutes.

Does anyone have any questions before I swear in Appellant? Starting with the Franchise Tax Board, are there any questions?

MR. MURADYAN: This is David Muradyan. No questions.

JUDGE LE: Thank you, Mr. Muradyan.

This is Judge Le. Now turning to Appellants, are there any questions before I swear in Appellant?

MR. CLAY: No questions, Your Honor.

JUDGE LE: This is Judge Le. Thank you.

Turning now to Appellant. Mr. Ragunathan, would you please raise your right hand.

S. RAGUNATHAN,

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

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE LE: This is Judge Le. Thank you.

Okay. Mr. Clay and Mr. Ragunathan, you have up to 15 minutes for the witness testimony starting at 1:08. Please proceed.

MR. CLAY: Good day. May it please the Court, this is Jerome Clay again representing the Appellant, Mr. Ragunathan.

DIRECT EXAMINATION

BY MR. CLAY:

Q Mr. Ragunathan, how are you doing?

A I'm good. Thank you.

Q Okay. So I'm going to get into this. In 2018 -- at the beginning of 2018, where were you currently residing?

A I was residing at [REDACTED], Los Altos.

Q [REDACTED]?

A [REDACTED], Los Altos. I was actually in two different addresses. I apologize. I have to go back in memory and see where I was living because we moved quite a few houses. So in 2018 I was living in -- there was an address in Santa Clara that we were living in, and then we moved to [REDACTED], Los Altos in 2020.

Q Okay. And who was currently living with you at the time in 2018? Who all was residing with you?

1 A It was me, my wife, my son, and either my parents
2 or my wife's parents that kind of alternated.

3 Q Okay. And so during 2018, how many times did you
4 move during that period of time?

5 A Between 2018 and '19 we moved to three different
6 houses. I was actually building a house in Los Altos.
7 And because of that, we had to move houses a couple of
8 different times.

9 Q So you were building the house. What was the
10 address of the house you were building?

11 A It's [REDACTED], Los Altos, California.

12 Q [REDACTED]. And you were building that
13 house in -- when did you start construction on that house?

14 A The construction started somewhere between early
15 2018 and then it ran all the way through the end of 2019.

16 Q So during 2018 and 2019 during the construction,
17 did you live in that residence?

18 A No, I did not.

19 Q Let me ask you this. During 2018 and 2019, did
20 you ever forward your mail to that residence?

21 A We -- I did not actively forward any mail to the
22 residence until after we moved into the house, end of
23 2019. Like, November 2019 is when we officially moved
24 into the house. But before that, I did not actively
25 forward any mail to that address.

1 MR. CLAY: Your Honor, as it relates to the
2 exhibits, do you have the exhibits we can share if I
3 wanted to show Mr. Ragunathan the notice, the NPA?

4 JUDGE LE: Yeah. So which brief was that
5 attached to?

6 MR. CLAY: It was the Respondent's brief, and
7 it's their notice -- the NPA notice. I believe it's
8 exhibit --

9 JUDGE LE: Exhibit B?

10 MR. CLAY: I believe so, Your Honor.

11 JUDGE LE: Okay. This is Judge Le. Just for the
12 panel to know, that's FTB's opening brief submitted on
13 March 13, 2020, Exhibit Number B.

14 MR. CLAY: That's correct. Can I --

15 JUDGE LE: Yes. Please proceed.

16 MR. CLAY: I don't see it up on the screen.

17 JUDGE LE: Oh, we can -- this is Judge Le. We
18 can view it on our own computers, but we can't pull it up
19 on the screen for everybody to share.

20 MR. CLAY: Okay.

21 BY MR. CLAY:

22 Q Mr. Ragunathan, can you see the exhibit on your
23 computer? It's Exhibit B.

24 A I do not see anything on my computer other than
25 the video streams that I see right now. I don't see the

1 document on my computer.

2 Q I don't see a document neither.

3 JUDGE LE: This is Judge Le. We can't pull up
4 that document on our screen to share with everybody. I
5 think as long as everybody has the brief, we can all view
6 it on our own computers.

7 MR. CLAY: Yes, Your Honor. I apologize. I
8 understand.

9 BY MR. CLAY:

10 Q I sent you some emails today, Mr. Rangunathan. I
11 don't -- did you receive them?

12 A Emails that were shared today?

13 Q Yes. It should have some exhibits attached.

14 A I can try to look it up, but I haven't looked at
15 it, so please give me a minute.

16 Q Well, in interest of time, let me -- I would tell
17 you that the Notice of Proposed Assessment, it was sent to
18 you on June -- I believe it was June 26th of 2018, and the
19 address listed was [REDACTED] in Los Gatos,
20 California -- correction. It was sent 6/6/2018, but the
21 address it was sent to [REDACTED], Los Gatos,
22 California. So my question is this. Were you living at
23 this residence on 06/6/2018, [REDACTED], Los Gatos,
24 California?

25 A No. I was not.

1 Q And, again, I'm going to ask you this again. I
2 hate to be redundant. I'm just trying to keep the record
3 correct. Were you receiving mail at 06/06/2018 at [REDACTED]
4 [REDACTED], Los Gatos, California?

5 A I was not actively forwarding any mail to that
6 address because I was not living there. And then the
7 house was being constructed, so no.

8 Q Also, I wanted to turn your attention to
9 exhibit -- it will be Appellant's Exhibit D, and it's --
10 they have a -- and I sent it to you. It's a LexisNexis
11 report. And on the report it has an effective date of
12 what they sent to you on [REDACTED], and the
13 effective date say 4/25/2018. Did you pull building
14 permits during 4/25/2018 or did anything to where it'll
15 show that you were living there?

16 A We definitely were not living there. I cannot go
17 by memory to figure out which month they actually pulled
18 the building permit in. I know that we were working with
19 the planning and building divisions of Los Altos
20 throughout 2017 and 2018, and construction officially
21 began around the June time frame of that year, May or June
22 time frame. So we definitely were not living in the house
23 before November 2019.

24 Q Okay. And then let me ask you. There was a
25 demand penalty -- Notice of Demand Penalty that was

1 sent -- I want to say it was sent to your house in [REDACTED]
2 [REDACTED]. Were you living there in 2018?

3 A No. We weren't. We actually moved out of that
4 house sometime in 2016.

5 Q 2016. I believe that's why I believe it was
6 returned. You say you moved out of the house in 2016?

7 A Yes.

8 Q Okay. Let me ask you this. Who prepared your
9 taxes? I mean, did you go to a tax preparer? Did you go
10 to a CPA? Who prepared your taxes?

11 A My taxes for the last 10, 12 years have been
12 prepared by Roland. He's a CPA based out of Austin,
13 Texas.

14 Q Okay. And let me ask you this. Did he advise
15 you that you just had to pay -- what did he advise you as
16 it relates to filing your taxes and then paying your tax
17 return and paying taxes owed?

18 A Yeah. I rely on my CPA for tax guidance as to
19 when we should file. And the recommendation that I got
20 was as long as we did not owe any taxes, it was okay to
21 file taxes late. And there would be penalties assessed
22 only if we actually owed taxes to the government.

23 Q And let me ask you this. Did you owe taxes when
24 your CPA filed?

25 A For 2016 we did not owe any taxes.

1 Q And then in 2018 -- did you owe taxes any other
2 time with that CPA?

3 A The only time that I can remember where we
4 actually owed taxes was, I think, in 2020. Any of the
5 years before that, I can't recollect ever having to owe
6 either a federal or a state tax.

7 Q And the reason why I ask that is just to show
8 that whatever you're CPA was doing, you never got
9 penalized for the taxes owed or not owed; is that kind of
10 correct?

11 A That's fair.

12 Q Okay. And then you stated that your had
13 mother -- your mother-in-law had some health issues back
14 in 2016?

15 A That's correct.

16 Q So what was -- so I don't want to get all into
17 details, but did she come to live with you during these
18 medical issues? And how did that affect your life during
19 that time?

20 A That's correct. So I was taking care of my mom
21 when she visited us in 2016. She's a cancer survivor, and
22 she has a whole range of medical issues. She takes about
23 17 different medications a day. So she was going through
24 a lot of medical issues during that time where I had to
25 take her to the emergency a couple of times. So that put

1 a lot of stress on us on top of all the other
2 house-related moves and other stuff that was going on in
3 our lives.

4 Q Okay. And I want this for the record. Have you
5 ever received or saw a Notice of Demand Penalty -- demand
6 notice from the Franchise Tax Board?

7 A As far as --

8 Q During the period of 2018 when the notices were
9 sent, did you ever see those notices during 2018?

10 A Not that I can recollect.

11 Q Did you ever see the Notice of Proposed
12 Assessment during 2018?

13 A Not that I can recollect.

14 Q Let me ask you this. Have you ever in the past,
15 from 2018 and prior to, have you ever received a Notice of
16 Proposed Assessment?

17 A Not that I can recollect.

18 Q In 2016 were you living in [REDACTED] -- was it [REDACTED]
19 [REDACTED] in Santa Clara?

20 A That's correct.

21 Q You were living there. Okay. And did the FTB
22 send you a notice to that address? Have they sent you
23 notices to that address?

24 A For 2016?

25 Q Yes.

1 A Not that I can recollect.

2 Q Okay. A couple of more questions. There were
3 some -- I looked through some of the exhibits and some
4 W -- I believe a W-2 showed in 2018 the address of 24 --
5 ██████████ in Los Altos. Do you know why a W-2 would
6 have that address on it?

7 A I don't have any firm recollection of ever
8 actively forwarding any mail to that address. So I don't
9 know how the W-2 was sent. I can speculate, but I would
10 rather not do that.

11 MR. CLAY: Thank you. At this time there's no
12 further questions.

13 JUDGE LE: This is Judge Le. Thank you for your
14 testimony.

15 Let me at this time turn to the Franchise Tax
16 Board to see if they have any questions for the witness.

17 MR. MURADYAN: This is David Muradyan. No
18 questions.

19 JUDGE LE: This is Judge Le. Thank you,
20 Mr. Muradyan.

21 Let me now turn to my ALJ panel to see if they
22 have any questions for the witness.

23 Turning first to Judge Lambert. Do you have any
24 questions for the witness?

25 JUDGE LAMBERT: This is Judge Lambert. I don't

1 have any questions at this time. Thanks.

2 JUDGE LE: Thank you. This is Judge Le.

3 Turning to Judge Ralston, do you have any
4 questions for the witness?

5 JUDGE RALSTON: This is Judge Ralston. I have
6 just one question. At any time during your moves and
7 things during the year at issue, did you notify Respondent
8 of your correct address?

9 MR. RAGUNATHAN: Hi. When you say Respondent, do
10 you mean the California FTB Board?

11 JUDGE RALSTON: Yes, the Franchise Tax Board.
12 Thank you.

13 MR. RAGUNATHAN: No. I was not aware that I had
14 to update the address and then notify the California FTB
15 Board. So I did not update the address for the California
16 FTB Board.

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

19 JUDGE LE: This is Judge Le. Thank you,
20 Judge Ralston.

21 I do have one question for the witness here. You
22 mentioned that you took your mother to the emergency a few
23 times. Do you have particular dates of when you took her?

24 MR. RAGUNATHAN: I can't remember the exact date
25 or month. There were two specific instances where I

1 actually took her to the emergency, both during 2016.
2 Outside of that, I don't have the firm dates at hand.

3 JUDGE LE: Thank you. This is Judge Le. No
4 further questions from me.

5 At this time I'd like to turn it back to Mr. Clay
6 so he can present his arguments for up to 15 minutes
7 starting at 1:23 p.m. Please proceed when you're ready.

8 MR. CLAY: Thank you, Your Honor.

9

10 PRESENTATION

11 MR. CLAY: So here there's a few issues, and
12 those are issues of one of -- did the Appellant receive
13 notice? Not only did he receive notice, but did he
14 receive a valid notice? And here, the FTB sent notice to
15 two addresses. They sent an address to [REDACTED] -- I think
16 it's [REDACTED] in Santa Clara. That's [REDACTED],
17 which I believe was returned. And then they also sent
18 notice, specifically the NPA, they sent notice to his Kent
19 address, which was [REDACTED] in Los Altos.

20 During this period of time, if you look through
21 the Respondent's -- I believe they're opening or their
22 reply -- one of the exhibits, it stated that Lexis -- they
23 received his address from a LexisNexis search. And on
24 this search, it stated that there was an effective date
25 of -- I want to say 4/25. But then it said when they

1 actually pulled the source date, they pulled the source
2 date on 6/26. But yet, you have a notice coming out on
3 06/6, which it's not consistent with what was attached to
4 the exhibits. The dates don't align.

5 And so even by their own exhibits that they
6 produced on this particular address, doesn't align. If
7 you look at the source date, unless the source date is
8 off, versus when they mailed, the two dates were in
9 conflict. But also the Appellant testified that he didn't
10 receive these notices, and he gave a reason why because he
11 didn't live there. He didn't live at this address until
12 2019.

13 And he forwarded his mail. I guess the issue
14 would be should he have contacted the FTB? But I don't
15 know if that's a requirement that you must contact the FTB
16 or any other agency that you're moving, other than him
17 putting it -- you know, the Appellant put in a forwarding
18 address, and he had his mail forwarded to his address that
19 he was living.

20 But then we look at reasonable cause. All right.
21 And that's something that is forwarded to the Appellant.
22 And one, he relied on his CPA's representation that he
23 had -- all he had to do is pay the taxes, and then he can
24 file later. Which if you look at it, the reason I asked
25 if the CPA had any issues in the past to see when he paid

1 these taxes was the computation wrong. And it wasn't. It
2 was pretty much accurate.

3 So the CPA gave him this advice that he's been
4 with 10 to 12 years, and he didn't believe that he had to
5 file. I mean, he paid his taxes. So the issue here is
6 him not filing his tax returns. So he relied on his CPA's
7 advice, and there's nothing to dispute that the CPA was
8 incompetent or not qualified. To the contrary, if you
9 look at it, he was filing 10 to 12 and had no issues, he's
10 more than competent. He's more than qualified.

11 You know, and even though he's a Texas CPA, he's
12 been performing his duties in California. But also, he
13 had issues with his mother. And don't go into details of
14 what those medical issues were, but she had severe health
15 issues. So she had these severe health issues along with
16 moving three or four times trying to get this house
17 together, he simply did not get this notice.

18 And so if this Court -- I believe there's a case
19 out there where we talked about if he didn't receive the
20 NPA within the four-year period, and I know there's a case
21 that might tend to disagree with our issue. I would then
22 ask this Court to look at the evidence and even the
23 testimony today of one, the Court needs to ask itself.
24 What -- was the Appellant given proper notice, and did
25 they mail proper notice?

1 And if the question is they didn't mail proper
2 notice, meaning they sent notice to [REDACTED]. And
3 looking at their own exhibits clearly states the source
4 date was 06/26 which is inconsistent with the mailing date
5 of 06/6. Then also the Court has to ask itself, in this
6 situation does a reasonable cause defense apply here? Did
7 he rely on his certified public accountant for this
8 advice? And the relationship of a certified public
9 accountant 10 to 12 years, no issues in the past. It's
10 the first issue, 10 to 12-year relationship, and the
11 computation was correct.

12 And so he relied on his CPA, and that's why he
13 didn't file. And also, did he have some underlying
14 issues, medical issues dealing with family members that he
15 was taking care of in the course of moving. And so here I
16 believe that he more than met his burden to show that
17 reasonable cause should apply. And he more than met his
18 burden that the notices were not valid. And if he met
19 that burden, you know, the Appellant should not be --
20 shouldn't be punished, shouldn't have to pay this tax.

21 We believe that the tax should be abated. And so
22 I just ask the court to really go through all the
23 evidence, Really look at this Exhibit D, really look at
24 where the notices were sent to because this is key here.
25 Where was the notice sent to? And then look at the

1 evidence that was submitted today, a declaration signed
2 from his CPA.

3 And with that, we submit, Your Honor.

4 JUDGE LE: This is Judge Le. Thank you, Mr. Clay
5 for your arguments.

6 I just want to note that going forward the
7 parties do not need to state the entire address of the
8 property. You can vaguely refer to the property as, for
9 instance, the Kent Drive property.

10 Now, I would like to return to my ALJ panel to
11 see if they have any questions again for Appellants.

12 Turning first to Judge Lambert. Do you have any
13 questions for Appellants?

14 JUDGE LAMBERT: Hi. This is Judge Lambert. I
15 don't have any questions. Thanks.

16 JUDGE LE: Thank you, Judge Lambert.

17 This is Judge Le. Turning now to Judge Ralston.
18 Do you have any questions for Appellants?

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

21 JUDGE LE: This is Judge Le. Thank you.

22 Now it is Respondent Franchise Tax Board 's turn
23 for their presentation.

24 Franchise Tax Board, you have up to 20 minutes
25 starting at 1:31 p.m. Please proceed. Thank you.

1 the taxpayer's last return filed with the FTB, unless the
2 taxpayer has provided to the FTB clear and concise written
3 or electronic notification of a different address, or the
4 FTB has an address that it has reason to believe is the
5 most current address for the taxpayer.

6 For the 2016 tax year, which is the tax year at
7 issue, FTB initially sent a Demand for Tax Return to
8 Appellants' [REDACTED] address because that was
9 the address that Appellants' provided on their last tax
10 return filed with FTB. Appellants' last returns, prior to
11 the Demand for Tax Return at issue, were filed on
12 July 9th, 2016, wherein, Appellants used the [REDACTED]
13 [REDACTED] for both their 2014 and 2015 returns.

14 However, after FTB sent out the demand letter, it
15 got notice that the correspondence sent to the [REDACTED]
16 [REDACTED] address was returned. Thereafter, on
17 April 25th, 2018, FTB was able to retrieve a better
18 address from LexisNexis, as it had reason to believe the
19 address from LexisNexis was the most current address for
20 the taxpayer as required by law. And that address was
21 [REDACTED] which is the same address that the
22 Appellants' placed their very own appeal letter to.

23 FTB successfully sent the Demand For Tax Return,
24 dated May 3rd, 2018 to the [REDACTED] address. FTB also
25 successful sent the NPA on July 2nd to the [REDACTED]

1 address as well. Thus, FTB mailed its 2016 demand notice
2 to Appellants' last-known address, which is what's
3 required under the law. Respondent FTB also sent the
4 notices for the 2014 tax year to Appellants' last-known
5 address. Specifically, for the 2014 taxable year the
6 request for tax return was sent to Appellants on
7 December 16, 2015, to the [REDACTED] address.

8 FTB had confirmed that the [REDACTED] Street
9 address was the last-known address from a payment
10 Appellants made on December 8, 2015, wherein they used the
11 [REDACTED] address on a payment voucher. Thus, FTB
12 mailed both the 2014 and 2016 demand notices, as well as
13 the NPAs for both years to Appellants' last-known address
14 as required by law. Moreover, for the 2018 tax year,
15 there are three separate W-2's, one for the Appellant and
16 two for Appellant-spouse. And all 3 W-2's have the [REDACTED]
17 [REDACTED] address, the same address the FTB mailed the demand
18 and NPA for the 2016 tax year in the 2018 year.

19 In addition, with respect to the declaration that
20 was submitted today, that declaration points out that
21 according to the CPA, FTB's -- the law that governs
22 California is different than the law that governs the IRS
23 with respect to the late-filing penalty. Specifically, in
24 that exhibit, Appellants' then CPA noted that he was under
25 the understanding that California was just like the

1 federal government in that as long as the payments were
2 made there would be no late-filing penalty imposed. That
3 is correct under Revenue & Taxation Code 19131.

4 California does not impose a late-filing penalty
5 if the tax is paid. In this case, the tax was indeed
6 fully paid. Therefore, FTB did not impose the late-filing
7 penalty. It appears based on both the CPA's declaration
8 that was sent in 2020, as well as Appellants' opening
9 brief, that there's a misunderstanding of the penalty at
10 issue. Specifically, the penalty at issue is the demand
11 penalty, which FTB imposed because there was no response
12 to the demand letter that was sent in 2018.

13 What the CPA is alluding to and what Appellants'
14 rep today covered pertains to the late-filing penalty,
15 which FTB did not impose. To be clear, FTB did not impose
16 the late-filing penalty in this case. Accordingly, the
17 letter from the CPA appears to be a misunderstanding by
18 the CPA as to what penalty FTB imposed.

19 As previously stated, the issues in this case are
20 whether FTB properly imposed a demand penalty for the 2016
21 tax year, and whether Appellants' have established
22 reasonable cause for failing to timely respond to FTB's
23 demand for return for the 2016 tax year. For the reasons
24 I'll provide, FTB properly imposed the demand penalty for
25 the 2016 tax year, and Appellants have not established

1 reasonable cause for abatement of the penalty.

2 First, FTB properly imposed the demand penalty
3 for the 2016 tax year. Revenue & Taxation Code Section
4 19133 requires FTB to impose a demand penalty if the
5 taxpayer fails to timely respond to FTB's demand notice.
6 Moreover, consistent with OTA's interpretation of
7 Regulation Section 19133 in the precedential Appeal of
8 Jones case, the demand penalty was properly imposed in
9 this case. Specifically, Appellants failed to timely
10 respond to the 2016 demand, and also failed to timely
11 respond to the 2014 request resulting in a 2014 NPA during
12 one of the -- during one of the four years preceding the
13 2016 tax year at issue.

14 Since both conditions under Regulation Section
15 1933 are met, especially in light of the Jones appeal, FTB
16 properly imposed the demand penalty. The only remaining
17 issue is whether Appellants have established reasonable
18 cause for failing to timely respond to FTB's demand for
19 the tax return for the 2016 tax year. In this case, they
20 have not. The demand penalty may be abated if the
21 taxpayer can establish that the failure to timely respond
22 to the demand penalty was due to reasonable cause and not
23 willful neglect.

24 In support of their argument that reasonable
25 cause exists to abate the demand penalty, Appellants in

1 their appeal letter contended that during the 2017 tax
2 year they were building a house that proved to be
3 extremely stressful and distracting to them, requiring
4 them to get required planning and building permits from
5 the city, as well as dealing with neighbors who opposed
6 the plan, and that they were taking care of
7 Appellant-husband's mother-in-law who Appellant stated had
8 health problems.

9 Focusing on Appellants' arguments with respect to
10 their mother-in-law's health, in order to show reasonable
11 cause, Appellants must present credible and competent
12 proof that the circumstances of Appellants'
13 mother-in-law's illness or other personal difficulty
14 completely prevented them from responding to FTB's demand
15 letter in the relevant period at issue, which is
16 May 3rd, 2018, to June 6th, 2018. However, Appellants
17 testified today that the health issues were during the
18 2016 tax year, not the 2018 tax year.

19 Thus, the health issues of Appellants'
20 mother-in-law would not constitute reasonable cause as the
21 health issues occurred during the 2016 tax year, not the
22 relevant period of May 3rd, 2018, through June 6th, 2018.
23 Unfortunately, Appellants have failed to provide any
24 explanation or evidence as to why they were completely
25 prevented from complying with the demand letter.

1 In fact, on appeal Appellants' argument centered
2 around why they were unable to timely file their 2016 tax
3 return in the 2017 calendar year, not why they were unable
4 to timely respond to the demand letter between
5 May 3rd, 2018, and June 6th, 2018. Appellants' appeal
6 letter did not provide any specific detail or evidence as
7 to what steps they took after Appellant-husband was issued
8 the demand letter, nor did they provide any detail or
9 evidence as to why they were unable to respond to the
10 demand penalty in the relevant period in 2018. Thus,
11 under the circumstances described by Appellant, reasonable
12 cause has not been demonstrated to abate the demand
13 penalty.

14 Moreover, it appears that during the 2018 tax
15 year, the time period during which Appellants were
16 supposed to respond to FTB's demand letter, both
17 Appellant-husband and Appellant-wife were still able to
18 work and earn a comfortable salary. As FTB's law summary
19 states, if the difficulties simply cause the taxpayers to
20 sacrifice the timeliness of one aspect of the taxpayers'
21 affairs to pursue other aspects, the taxpayers bear the
22 subsequence of that choice.

23 Thus, because Appellants have failed to provide
24 any evidence as to demonstrate reasonable cause or
25 explanation of what prevented them from responding to the

1 demand letter during the May 2018 through June 2018 period
2 in which they were required to respond, Appellants have
3 failed to demonstrate reasonable cause to abate the demand
4 penalty.

5 Accordingly, in accordance with the OTA's opinion
6 in the Appeal of Jones and for the reasons argued here, as
7 well as in FTB's opening reply and additional briefs,
8 FTB's actions should be sustained. I thank you, and I'm
9 happy to answer any questions you may have.

10 JUDGE LE: This is Judge Le. Thank you for your
11 presentation.

12 I'm going to turn again to my panel to see if
13 they have any questions for the Franchise Tax Board.
14 First, Judge Lambert, do you have any questions for
15 Franchise Tax Board?

16 JUDGE LAMBERT: Hi this is Judge Lambert. I
17 don't have any questions. Thanks.

18 JUDGE LE: This is Judge Le. Thank you.

19 Judge Ralston, do you have any questions?

20 JUDGE RALSTON: This is Judge Ralston. No
21 questions. Thanks.

22 JUDGE LE: This is Judge Le. Thank you.

23 I do not have a question at this time. So now
24 let's turn to Appellants and Mr. Clay for their rebuttal
25 to Respondent's argument.

1 provided proof.

2 And also, we talk about the health issues. The
3 health issue is important as long as with the building
4 because this happened during 2016. And who knows how long
5 these health issues last. But during this time when he
6 was filing during the time when notices were coming, he
7 was moving around, dealing with his family, dealing with a
8 newborn child, and he stated that he did not receive this
9 demand penalty.

10 And there was nothing -- there was nothing stated
11 in arguments that can unequivocally prove that the
12 Appellant received this notice. We had an address that
13 was returned back. We looked to it, just look at the
14 records. The [REDACTED] address that was sent first
15 was returned. They then, the FTB went onto LexisNexis.
16 We have the exhibits to prove that.

17 And they -- and if you look at the source date,
18 and this was the key, the source date says they looked at
19 this source date on 6/26. They haven't responded as to
20 why the source date would say 6/26 but, yet, they mailed
21 it to the [REDACTED] address on 06/06/2018. The dates
22 don't align. The dates don't even -- they don't agree.

23 So if you look at their evidence that they
24 produced, it's not consistent. So I would ask that as it
25 relates to the demand penalty, let's clear it up, the

1 demand penalty. We're talking about the demand penalty
2 that it should be overruled, and he should have this
3 demand penalty abated for the reason stated in the
4 opening, for the reason stated in the reply, but also for
5 this declaration that he relied on about filing. And also
6 because the FTB has not equivocally established this
7 last-known address. Their exhibits -- nothing they stated
8 have established this [REDACTED] address as being they're
9 last-known address in 2018.

10 So with that, we submit, Your Honor.

11 JUDGE LE: This is Judge Le. Thank you for your
12 rebuttal.

13 Let me turn to the ALJ panel one more time to see
14 if they have any final questions for either party before
15 we conclude the hearing.

16 Turning first to Judge Lambert. Do you have any
17 final questions for either party?

18 JUDGE LAMBERT: This is Judge Lambert. I don't
19 have any questions. Thanks.

20 JUDGE LE: Thank you, Judge Lambert.

21 This is Judge Le. Judge Ralston, do you have any
22 final questions for either party?

23 JUDGE RALSTON: This the Judge Ralston. I don't
24 have any final questions. Thank you.

25 JUDGE LE: This is Judge Le. Thank you.

1 I do have one question for Respondent Franchise
2 Tax Board here. I was wondering if you could walk us
3 through the exhibit that Appellant just mentioned, and
4 that's the exhibit that's attached to FTB's reply brief,
5 November 19, 2020. That's listed as Exhibit D.

6 MR. MURADYAN: Sure. This is David Muradyan.
7 Let me pull that up real quick.

8 JUDGE LE: Okay. Take your time.

9 MR. MURADYAN: Yes. So this is David Muradyan.
10 How can I help in that regard?

11 JUDGE LE: Yes. So there are two columns of
12 dates listed. One says "Source Date," and one says
13 "Effective Date." Do you know of a difference between the
14 two?

15 MR. MURADYAN: So I can tell you the source date
16 for -- the source date for the LexisNexis. The change
17 occurred on 4/25/2018. I have that. Let me pull it up.
18 So Exhibit D has the 6/26 date. If you go to the next
19 page, which I'm on, next page in the actual system, not in
20 the exhibit, the original source date is 4/25. And on
21 4/25 FTB got notification through LexisNexis that the [REDACTED]
22 address was the proper date, and that it would be
23 effective April 1st, 2018.

24 A couple of things I really want to address about
25 this whole issue, because Appellant keeps saying that FTB

1 has not demonstrated that, you know, we sent it to the
2 last-known address. You know, the last-known address --
3 we look at the law, R&TC Section 18416. And the law
4 states specifically 18416 subdivision(c) states that the
5 last-known address shall be the address that appears on
6 the taxpayer's last return filed with FTB, unless the
7 taxpayer has provided to FTB clear and concise written or
8 electronic notification of a different address. Which in
9 this case didn't happen, or the FTB has an address it has
10 reason to believe is the most current address.

11 So in this case, the FTB used the last-known
12 address which was the address on the tax return. When
13 that came back returned, FTB did what the law requires,
14 which is it had reason to believe that there was another
15 address that was the most current address. And FTB,
16 accordingly, sent both the demand and NPA to that
17 last-known address. So in this case, you know, the law,
18 18416, is very clear in how it works.

19 18416 does not state that FTB must prove that the
20 taxpayer received the document. Rather, 18416 states FTB
21 must prove that it sent it to the last-known address,
22 which we have done. We have stated why we, you know, sent
23 it to the [REDACTED] address. It was the last-known address
24 based on a LexisNexis update that we had reason to believe
25 was the proper address, and we sent it to that address.

1 And, again, I would like to remind the Board of a
2 couple of other things. All 3 W-2's were at the [REDACTED]
3 address, and Appellants didn't bring this argument up,
4 this last-known address or receipt address until the reply
5 brief. This was never briefed in the opening brief.

6 Another issue I would like to comment on is the
7 potential reliance on counsel argument, which Appellant
8 keeps mentioning. We did not impose the demand penalty
9 because Appellant filed their tax return late. In other
10 words, Appellants' potential reliance on their CPA has no
11 bearing in this case. Whether or not Appellant filed the
12 return late or not, would have zero impact as to whether
13 or not the demand penalty was issued.

14 Okay. In this case, we did not impose a
15 late-filing permanently because as Appellants have noted,
16 the tax was fully paid. In this case, the reason we
17 imposed a demand penalty is because the demand letter that
18 was sent to Appellants' last-known address, we never got a
19 response back. That's why the demand penalty was imposed
20 under 19133.

21 With that, thank you again. And I would be happy
22 to take any other questions.

23 JUDGE LE: This is Judge Le. Thank you. I have
24 no further questions for the Franchise Tax Board.

25 But I do want to give Appellants an opportunity

1 to provide any final remarks, if they want to.

2

3

ADDITIONAL CLOSING STATEMENT

4 MR. CLAY: Yes. To respond to the Respondent, he
5 stated something. He went on to the LexisNexis, and he
6 then clarified that he said that the source date was now
7 4/25. But, yet, this was never placed in their brief,
8 right? And let it be noted that Appellant sent in new
9 evidence -- well, not new, but evidence that was done
10 prior to this hearing. And now he goes on the screen,
11 reads from the screen where no one can see, and we've been
12 brief this -- we've had this brief for over a year.

13 And then he gives us dates of this 4/25, which I
14 have never seen, which is not in any of the briefs. And
15 now it's miraculously 4/25. So then you have to go back
16 to the steps that the Franchise Tax Board said, the
17 last-known address. We go to the address that was on the
18 last W-2, which came back. Again, it came back returned.
19 Then you got to go to the most reasonable address, and
20 they provided this LexisNexis search.

21 If you look at their exhibits, all that we have
22 to go by is their exhibits. This is the evidence, their
23 exhibits. Their Exhibit 9 clearly states the source data
24 was 6/6. It's inconsistent with the 06/06 mailing. This
25 is their evidence. Now in this last-minute rebuttal, they

1 go online and say, "Well, it's 4/25. And well, if you go
2 to the next page," which you don't have, and you're
3 supposed to take that in evidence.

4 The courts don't operate this way. You can't
5 start submitting evidence and talking evidence that's not
6 even presented. Courts would never stand this way. So
7 I'm just saying we have to look at their exhibits. Their
8 exhibits are inconsistent. The source date says 06/26.
9 It's inconsistent with the mailing date of 06/06. So by
10 their own evidence that last-known address was not valid.

11 With that, we submit.

12 JUDGE LE: This is Judge Le. Thank you.

13 At this point I think we're ready to conclude
14 this hearing. This case is submitted on March 29, 2022.
15 The record is now closed.

16 Thank you everyone for coming in today. The
17 judges will meet and decide the case later on, and we will
18 send a written opinion of our decision within 100 days.
19 Today's hearing in the Appeal of Rangunathan and
20 Parthasarathy is now adjourned.

21 (Proceedings adjourned at 1:56 p.m.)

22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 11th day of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER