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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. EPSTEIN,) OTA NO. 21017149
)
)
 APPELLANT.)
)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:00 p.m. and concluding at 2:44 p.m. on
Wednesday, March 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 OVSEP AKOPCHIKYAN
ALJ CHERYL AKIN

For the Appellant: ARISH GILL
S. EPSTEIN
MENGJUN HE

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

(Appellant's Exhibits 1-11 were received at page 6.)
(Department's Exhibits A-D were received at page 6.)

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California; Wednesday, March 23, 2022

2:00 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the Appeal of Suzanne Epstein, Case Number 21017149. The date is March 23rd, 2022, and the time is 2:00 p.m.

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

FTB, can you please introduce yourselves for the record by stating your first and last name.

MR. COUTINHO: This is Brad Coutinho for the Franchise Tax Board. The spelling of my last name is C-o-u-t-i-n-h-o.

JUDGE LAMBERT: Okay. Thanks. You don't have to spell it just you could state -- I was just asking to state the first and last name but thanks.

And for Appellant, could you introduce yourselves for the record as well.

Ms. Epstein, I believe you're on mute, if you could unmute.

MS. EPSTEIN: I'm Suzanne Epstein. I am the Appellant.

1 JUDGE LAMBERT: Okay. Thank you, Ms. Epstein.
2 And Appellant's representatives can you please
3 introduce yourselves for the record.

4 MR. GILL: Yes. This is Arish Gill. I'm the
5 representative for the Appellant.

6 MS. HE: Hi, Judge Lambert. Mengjun He from TAAP
7 observing. Thank you.

8 JUDGE LAMBERT: Hi.
9 Thank you for attending everyone -- everybody.
10 The issue in this hearing is whether the
11 late-payment penalty should be abated for the 2019 tax
12 year.

13 FTB provides Exhibits A through D. Appellant
14 will be entering Exhibits 1 through 11. There are no
15 objections, and that evidence is now in the record.

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

18 (Department's Exhibits A-D were received in
19 evidence by the Administrative Law Judge.)

20 Mr. Gill, this will be your opportunity to
21 explain Appellant's position.

22 And first, Ms. Epstein, can I swear you in so you
23 may testify?

24 MS. EPSTEIN: Yes.

25 JUDGE LAMBERT: Okay. Please raise your right

1 hand.

2 S. EPSTEIN,

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

6

7 JUDGE LAMBERT: Thank you, Ms. Epstein.

8 Mr. Gill, you may now proceed, and you'll have
9 25 minutes.

10 MR. GILL: Yes. This is Mr. Gill. I'd like to
11 begin by introducing Appellant Ms. Epstein. Ms. Epstein
12 will offer testimony to establish the relevant facts
13 regarding this appeal against FTB's assessment, penalties,
14 and interest.

15 JUDGE LAMBERT: Mr. Gill, you can proceed with
16 your full presentation.

17 MR. GILL: We're going to start with testimony
18 from the witness first.

19 JUDGE LAMBERT: Please proceed. I swore her in
20 so you can let her provide any testimony that she wants at
21 this time. It's up to you.

22 MR. GILL: Yes. Ms. Epstein?

23

24 WITNESS TESTIMONY

25 MS. EPSTEIN: Okay. Good afternoon, Your Honors.

1 I am the Appellant Suzanne Epstein. I am asking you that
2 my \$5,524.26 in payments -- in penalties for my 2019 tax
3 year be returned to me. I am not requesting the \$808.93
4 in interest that I paid to be returned. In hindsight I
5 was four months late in paying my taxes, and I agree that
6 I owe the interest.

7 I feel that over \$800 in interest is penalty
8 enough for my in-hindsight error considering I attempted
9 to pay in good-faith and on time, and considering that I
10 have never been delinquent in paying my taxes before, and
11 that ultimately I paid my bill immediately upon
12 notification and realization of the error.

13 I thought I was paying my 2019 income taxes on
14 time by going to the FTB website and paying via e-check.
15 I paid on June 24th of 2020. This was my first time ever
16 paying via the FTB website. Before that, I had always
17 paid my taxes every year via paper check from that same
18 account, and I had never been late paying my yearly taxes.
19 I thought I was fulfilling my obligation by paying my
20 taxes 22 days earlier than they needed to be paid by,
21 since they were due that year on July 15th of 2020.

22 In October of 19 -- I'm sorry. In October of
23 2019 I sold my San Francisco condo, which I had lived in
24 for 27 years. I moved my belongings into a storage unit.
25 I found a fully furnished basement bedroom and bathroom in

1 someone's home to rent until I could buy my retirement
2 home. My San Francisco condo investment was my nest egg.
3 Giving almost \$6,000 of my nest egg to the Franchise Tax
4 Board because of an e-check error in hindsight is far too
5 big of a chunk of my nest egg to lose. I was counting on
6 that money as part of my life plan.

7 Because of the large profit I made selling my
8 condo, I had an enormous amount of capital gains in the
9 2019 tax year. That's the only reason why I owed so much
10 in taxes that year and the only reason I had to pay my
11 taxes via the website. Had I been able to pay via paper
12 check, that would have cleared and my taxes would have
13 been paid on time. On June 24, 2020, I paid my federal
14 taxes using that same Vanguard account with a paper check
15 number 1053 in the amount of \$176,035, and that check
16 cleared with no problems at all. Had I also been able to
17 pay my state taxes with a paper check, we would not be
18 here today.

19 I followed the payment directions on the FTB
20 website. It said you could pay by check. So I took out
21 my Vanguard checkbook. The FTB website said to look for a
22 nine-digit number on the bottom left of the check followed
23 by my own account number to the right of that. I looked
24 carefully at my Vanguard check and indeed saw nine number
25 on the left of the check and my account number on the

1 right.

2 So I entered those numbers from my check as
3 directed by the website. After that, I thought I had
4 fulfilled my obligation to pay my taxes. I have submitted
5 Exhibit 1 so that you can see what my Vanguard checks look
6 like. I had no idea at the time that Vanguard does not
7 allow e-checks or e-payments. I was not aware of this at
8 this time I made my payment. The check looked like any
9 other check. I knew I was always able to write paper
10 checks from that account, and I knew that I was always
11 able to do wire transfers from that account. So I had no
12 reason to think that I wouldn't be able to make electronic
13 payments from that account.

14 Had I known that Vanguard did not employe
15 e-payments, I absolutely would have paid my taxes from a
16 different source that day. My only error in hindsight was
17 not going back to the FTB website a week later and seeing
18 that my payment had not gone through. Why did I not do
19 that? Here are the reasons why.

20 First and foremost, I had no reason to assume
21 that the payment would not have gone through. I didn't
22 recall seeing the line at the bottom of the website when I
23 first paid saying it was my obligation to go back and make
24 sure payment went through. I had plenty of money in the
25 account that I paid from. I had submitted the Vanguard

1 paperwork to show that I had the money in my account.
2 Once I paid my bill online, I literally crossed it off my
3 very long to-do list and thought the task was completed
4 successfully.

5 Next, I was forced to leave an apartment where I
6 was renting sooner than I wanted to leave. The owners of
7 the home where I was living in a basement apartment wanted
8 that space back because their college-age children wanted
9 to come back home during the pandemic. Legally I could
10 have stayed due to a pandemic emergency freezing of tenant
11 evictions, but I didn't want to make waves. So I agreed
12 to vacate the space before I was really ready to leave.

13 I had to scramble to prepare to move out,
14 cleaning the space, finding somewhere new to live. I put
15 all my focus into my house buying search. Luckily, I did
16 find a house I liked, and luckily my bid was accepted on
17 June 1st of 2020. Thus, I gave my landlord written notice
18 on June 1st of 2020 that I would be vacating the basement
19 apartment. I asked them to stay until July 15th, but they
20 would not allow me to stay that long. They told me I must
21 vacate by June 30th. So I had to rush to move, which
22 added a lot of extra stress and anxiety at the time.

23 Next, I was in the middle of purchasing my new
24 house. House buying during the pandemic was not easy.
25 There were no open houses. Everything had to be done with

1 advanced signed waivers and private showings. The title
2 company offices were all closed to the public. I had to
3 arrange private notaries to meet me outdoors to sign
4 documents. Every step was harder and more complicated.

5 I have included a copy of the close of my escrow
6 on my home as Exhibit 3. My escrow closed on
7 June 19th, 2020. I had termite damage to my new home that
8 needed to be tented and fumigated before I could move in.
9 I wasn't able to move into my home until June 29th, 2020.
10 Between June 15th and 29th, I was packing, hiring movers,
11 hiring termite people, getting quotes for needed sewer
12 lateral work, trying to clean the apartment that I was
13 ready to move out of, moving things in and out of two
14 storage units that I had rented, vacating those units and
15 making them broom-swept clean, and planning to move into
16 my new home; and all of this in the midst of a global
17 pandemic.

18 Moving day into my new home took 14 hours. It
19 started with two mass movers showing up to my rental
20 apartment that morning and emptying out my apartment into
21 a moving truck, then going to the storage units and
22 emptying them, then going to the house and unloading all
23 the contents of my new home. My new home is smaller than
24 my San Francisco condo was, so much of my furniture did
25 not fit into my new home. My garage was packed to the

1 ceiling with rugs, boxes, and couches that didn't fit into
2 my house. I wasn't able to park in my garage for at
3 least -- my car in my garage for at least four months
4 after moving.

5 At the time most of the Goodwill shops were
6 closed due to the pandemic, and they were not accepting
7 donations. So I couldn't get rid of all the items that I
8 had that needed to be given away. I was trying to sell
9 extra couches and rugs. It took me months to finally get
10 things donated, sold, given away, and finally to be able
11 to park in my garage. It took me months to unpack all the
12 boxes from the move. I was in a state of disorganization
13 for the first few months living in my new home. Stacks
14 and stacks of boxes filled each room. I live alone and
15 because it was the pandemic, I wasn't inviting people into
16 my home. So I had to unpack 27 years-worth of boxes all
17 by myself.

18 Next, I was having terrible anxiety during the
19 early months of the pandemic. My landlords wanted me to
20 move out before my lease was up because they wanted their
21 adult-college children to come back and move into the
22 family home. They were coming back from college from
23 New York City where 1 in 20 people were having Covid at
24 the time, and we were sharing a common kitchen. So I was
25 very nervous about that. I was sanitizing my groceries.

1 I wasn't touching my mail or packages for days after
2 delivery.

3 I wasn't sleeping very much. I'd be up until
4 5:00 or 5:30 a.m. several nights a week unable to fall
5 asleep. I tried to alleviate my anxiety by seeking help
6 from Psychotherapist Rachel Michaelson by regularly
7 attending her Zoom classes twice a week that did TTT,
8 which stands for trauma tapping technique to ease my
9 anxiety. Some of you may have seen where people tap
10 different parts of their faces to alleviate anxiety. I
11 have submitted a letter from Rachel Michaelson where she
12 attests that I was working with her on my anxiety at the
13 time. That's Exhibit 9.

14 For all these reasons I have just mentioned, they
15 were all consuming in my life and in my head, in my total
16 absorption of buying and moving into a new home, and my
17 Covid-related anxiety, I did not go back to make sure that
18 my initial payment had gone through. And I sincerely
19 apologize for that lapse in follow through

20 I do deserve to pay the interest for the late
21 payment, but the penalties are far too punitive for my
22 mistake in hindsight. As soon as I was informed by letter
23 by the FTB four months later, I took steps to pay my tax
24 obligation immediately. I had the FTB send me -- had the
25 FTB sent me an email letting me know the first transaction

1 did not go through, I would have paid my bill immediately
2 and not have incurred such a huge penalty. If Vanguard
3 had contacted me and let me know that my payment did not
4 go through, I would have repaid it immediately.

5 Due to the global pandemic and due to buying a
6 new house at the time of the initial payment, I didn't
7 realize that the e-check didn't clear. I only later was
8 told by Vanguard that those nine numbers at the bottom of
9 my check aren't really routing numbers. I had no idea
10 when I went to pay online that day that Vanguard does not
11 act like a true bank in that particular way. Now I know.

12 I have since asked the FTB to allow me to go back
13 to paying my taxes via paper checks, and that request was
14 granted. My mandatory e-payment waiver request was
15 approved on October 26th, 2020. So this kind of issue
16 will never happen again.

17 In summation, I paid my taxes in good faith and
18 on time. I should not be penalized with \$5,524.26 in
19 penalties. I can understand the interest, but paying an
20 additional \$5,500 in penalties is too harsh a punishment
21 for someone that paid in good faith and on time,
22 especially considering that in four months' time when I
23 was notified that my initial payment had not actually gone
24 through, I immediately paid what I owed in full.

25 Only because the sale of my San Francisco condo I

1 owed FTB over \$92,000 in taxes in 2019. But in 2020 I
2 only owed around \$2,000. And in 2021 I owe \$900 -- I'm
3 sorry. I owe \$696 in state taxes. So keeping almost
4 \$6,000 in penalties alone would be keeping perhaps up to
5 six or seven years' worth of my state tax payments. That
6 is simply unfair and unreasonable to ask someone to pay so
7 many years' worth of taxes as a punishment.

8 Your Honors, I hope that you will find that I
9 have proved enough reasonable cause to abate my
10 late-payment penalty in full. However, if you find it
11 fair to keep only a portion of the penalties and refund a
12 partial amount of the penalties back to me, I will trust
13 your judgment.

14 Thank you for taking the time to hear my plea.
15 Suzanne Epstein, Appellant.

16 JUDGE LAMBERT: Thank, you Ms. Epstein. I
17 appreciate you providing your testimony.

18 And, Mr. Gill, I believe does that end your
19 presentation as well?

20 MR. GILL: Hi. The is Arish Gill. Can I give my
21 opening argument now?

22 JUDGE LAMBERT: Yeah. You have 10 minutes
23 remaining.

24

25

PRESENTATION

1 MR. GILL: So moving on, Appellant's first
2 contention is that Appellant has established reasonable
3 cause for the abatement of penalties imposed pursuant to
4 Revenue & Taxation Code Section 19132. Specifically,
5 Section 19132(a)(1) allows for the abatement of imposed
6 penalties where the taxpayer shows the late payment was
7 due to reasonable cause and not willful neglect.

8 In the Appeal of Curry, the OTA expanded the
9 reasonable cause standard by adopting the ordinary
10 prudence and care standard, specifying that inquiry will
11 take into account the taxpayer's circumstances. As
12 apparently found in other precedential opinions, ordinary
13 business care is a fact-sensitive inquiry into one
14 ordinary, prudent, and careful businessperson would do
15 under the circumstances that the taxpayer faced.

16 While in hindsight Appellant may have done a line
17 entry check on her account, in the Appeal of Harry Moren,
18 the OTA held that acting with ordinary business prudence
19 and care does not require that the taxpayer act in the
20 most cautious manner. To require that the taxpayer make
21 exhaustive inquiries into every possible impediment to
22 payment violates the standard as articulated in Moren.

23 Ms. Epstein ensured that she had enough funds in
24 her account to make the payment, and she had no reason to
25 believe that the payment would be unsuccessful. So the

1 question to be asking when applying the reasonable care
2 standard is not whether the taxpayer acted as perfectly
3 diligent and inquiring taxpayer but, rather, whether the
4 taxpayer acted reasonably, given the set of facts knowing
5 to her or should have been known to her.

6 In this case, Appellant has acted with ordinary
7 business care and prudence given the set of facts
8 available to her. Appellant has never paid her taxes
9 electronically, ensured she had more than enough funds to
10 pay the balance, and followed FTB's instructions given on
11 FTB's website. After reaching the final page, which
12 confirms that payment has been scheduled, and after seeing
13 a large withdrawal from the same account, she made the
14 reasonable assumption that payment was successful.

15 Given Appellant had ensured she had sufficient
16 funds prior to attempting her payment, Appellant made --
17 Appellant believed that no further action as required of
18 her at this point. Had FTB simply allowed Appellant to
19 pay her taxes by paper check, the payment would have been
20 completed with no issue. It's also important to note here
21 that while California does not have a procedure for
22 abating a late-payment penalty based on a history of
23 compliance, the OTA pointed out in the Appeal of Moren
24 that a history of timely filing and payment compliance may
25 still be considered as supporting evidence of the

1 credibility and the intent of the taxpayer.

2 Ms. Epstein believed she was paying her taxes in
3 good faith and set aside funds to ensure that the taxes
4 would be paid and paid her federal tax liability using the
5 same account via paper check with no issue. This is the
6 first time Appellant has ever faced an issue with tax
7 compliance.

8 Furthermore, Vanguard also gave no notice
9 whatsoever that the payment was unsuccessful, nor was
10 Appellant aware of any other issues with the scheduled
11 payment and had no reason to believe that further inquiry
12 was necessary. Until she received the notice from FTB,
13 she realized that the payment was unsuccessful, and upon
14 receipt of this information, she immediately paid her tax
15 liability to the FTB. Given the foregoing, Appellant has
16 acted in a matter consistent with what an ordinary prudent
17 and careful businessperson would do given the similar
18 circumstance.

19 The facts here heavily support the conclusion
20 that Appellant had every intention of making the payment.
21 She undertook all the necessary steps to effectuate the
22 payment, checked her account after the fact to see a large
23 withdrawal has taken place, and was only prevented from
24 paying because of a piece of information that Appellant
25 was not aware of. As soon as she became aware of the

1 unsuccessful payment, she immediately transferred the
2 funds to a different account and paid her state tax
3 liability. These are not the actions of a taxpayer who is
4 intentionally and consciously failing to pay her tax
5 liability.

6 JUDGE LAMBERT: Okay. Thank you, Mr. Gill.

7 At this time I'm going to turn to my co-panelist.
8 Oh, first I'm going to ask FTB if they have any questions
9 of Ms. Epstein.

10 Mr. Coutinho, do you have any questions for
11 Ms. Epstein?

12 MR. COUTINHO: This is Mr. Coutinho. I have no
13 further questions for Ms. Epstein. Thank you.

14 JUDGE LAMBERT: Thank you.

15 And now I'll turn to my panel. And
16 Judge Akopchikyan, do you have any questions for either
17 Ms. Epstein or Mr. Gill?

18 JUDGE AKOPCHIKYAN: This is Judge Akopchikyan. I
19 have no questions for Ms. Epstein.

20 JUDGE LAMBERT: Okay. And, Judge Akin, do you
21 have any questions?

22 JUDGE AKIN: No. Judge Akin speaking. I don't
23 have any questions. Thank you both for your presentation
24 and testimony.

25 JUDGE LAMBERT: Thank you, Judge Akin.

1 I have one question that I wanted to ask.
2 Ms. Epstein, I was wondering which payment -- do you know
3 which payment in particular you're looking at in the
4 Vanguard statement that confused you? I believe you
5 stated you checked and you saw a payment and you thought
6 that was the payment to FTB. Do you happen to know which
7 one it was?

8 MS. EPSTEIN: Suzanne Epstein speaking. Not off
9 the top of my head, no. I mean, I can tell you what
10 payment was eventually transferred to a different bank
11 where I paid everything. But I don't recall the exact
12 statement that I looked at. Vanguard statements don't
13 really come like bank statements with line-item
14 deductions, you know, like a bank account.

15 So I usually just get the end of the month
16 statement. And it seemed I'm not very good at balancing
17 checkbooks, which does not mean I ever bounced a check. I
18 don't. But I always have enough money in there, you know,
19 to float and be successful keeping track of things. So I
20 just saw a large number had been deducted, you know, the
21 end number, and assumed that had gone through.

22 I also was just in the mindset of after I did sit
23 down to the computer with the FTB website, I not only paid
24 my 2019 yearly taxes at that moment, but I also did two
25 more transactions and I paid my first quarter and second

1 quarter of 2021 at the same time. And so those things
2 were all -- I had a long very long written list. I do
3 things handwritten -- you know, pay first quarter taxes,
4 pay second quarter taxes, pay 2019 taxes, call the termite
5 company, call quotes for sewer unilateral, you know, all
6 these things. And after I did them on the website, I
7 literally crossed them off my list and believed with every
8 fiber of my being that they had been completed.

9 So I just didn't think more about going back to
10 verify that because the money was there, and I knew that I
11 could do wire transfers with those checks, and I could
12 write checks with those checks. So it didn't occur to me
13 that e-checks would not be allowed. I mean, I kind of
14 wished Vanguard would have called me and said, "Hey, we
15 see that you've attempted three times to make e-payments
16 and, you know, we don't do that."

17 And then I would have had plenty of time before
18 July 15th to remedy that, but I was just completely
19 unaware.

20 JUDGE LAMBERT: This is Judge Lambert. Thank
21 you, Ms. Epstein. And I have a couple of other questions
22 and perhaps just a follow up on what you said --

23 MS. EPSTEIN: Yes.

24 JUDGE LAMBERT: -- that if there was -- I think
25 there was a couple of other payments I saw there that were

1 for large amounts. Were those payments, if you want to go
2 into kind of -- you were expecting other withdrawals as
3 well because there seems to be a couple of payments there.
4 So were those other payments you were keeping track of, or
5 what were they payments for?

6 MS. EPSTEIN: What happened was when I sold my
7 San Francisco condo I had only bought it for \$190,000 in
8 1992 when I was 29 years old. And, you know, who knew
9 what San Francisco was going to do real estate-wise. But
10 in the 27 years that I lived there I ended up selling it
11 for \$1.43 million, and it had been paid off by then.

12 So when I got my -- when I sold my condo after
13 paying the Realtor and whatever closing costs are, I
14 believe I was handed a check for something like
15 \$1.38 million, something like that. I don't have the
16 check handy right now. But suffice to say I was given a
17 huge check. And I was under the impression that bank
18 accounts that have more than \$250,000 in them aren't
19 guaranteed by the federal government if there's some
20 monetary crash of our system.

21 And so I didn't want to put \$250,000 in any one
22 bank account. So I was opening different bank accounts
23 and putting \$250,000 in U.F.B. Bank and putting \$250,000
24 in a Wells Fargo account. And I added more to that
25 Vanguard that already existed, and I added more to a

1 Fidelity that existed. And so I was spreading out those
2 monies.

3 And so then when I bought my condo, I paid cash
4 for my condo. And so I was emptying out all those various
5 bank accounts to write the check to the title company for
6 the amount that I paid for the new house. So some of that
7 money from the Vanguard was going, you know,
8 \$176,000-something went to my yearly federal taxes. And
9 then I thought that, like, \$92,000 was going to the FTB,
10 which ultimately now in hindsight I realize it didn't that
11 day. And then some of it was going to pay the house, and
12 so I wasn't very good at keeping track of it I admit.

13 But fortunately we don't punish people by putting
14 them in jail for not keeping great track of numbers. In
15 my whole life it's always just, you know, worked out. But
16 I did lose track of the total, and that was pretty much
17 due in full to all the anxiety I was having at the time.
18 It was a really stressful time in my life, the beginning
19 months of the pandemic and really not wanting to move out
20 from where I was living.

21 But the circumstances of that situation had
22 changed from when we signed the lease, and they wanted me
23 to stay and their kids were all in college, and they
24 weren't at the house very much. And then with the
25 pandemic all the colleges were doing remote classes, and

1 they wanted the kids -- and the kids didn't want to be in
2 New York where Covid was raging, and the kids just said,
3 please, can we just come home to the house?

4 So they really wanted their family house back.
5 And so then I had to kind of put house buying on a fast
6 track. And just all the stress of am I going to get
7 Covid, and are these people that are going to move in with
8 me and share a kitchen with me going to bring Covid? And,
9 you know, there were lots of things that entailed my
10 anxiety, you know. But I'm sure a lot of people had
11 anxiety during the early months of Covid.

12 A lot of unknowns and a lot of things to feel
13 scared about. And not sleeping well and just being
14 really, really scared, and all these changes that I had to
15 make, and big important ones. So it was -- it was really
16 all consuming, and I dropped the ball on those numbers,
17 which I sincerely apologize for. And -- and I've never
18 made a mistake like that before in my life and, hopefully,
19 I will never do that again.

20 JUDGE LAMBERT: Thank you, Ms. Epstein for that,
21 and I'll ask just one more question.

22 MS. EPSTEIN: Yes.

23 JUDGE LAMBERT: I was just wondering when
24 Vanguard told you that they don't accept electronic --
25 they wouldn't process these electronic payments, did it

1 also have to do with the type of account, like, because it
2 was a money market account, or was it just in general that
3 they couldn't -- did they say anything specific about it?

4 MS. EPSTEIN: Sort of. It actually took me
5 several calls to Vanguard to find this out. I had at
6 least three calls with them where they didn't know. I
7 didn't get the right person, obviously. You know, I spoke
8 to someone who said, "I don't understand," and "we don't
9 know why."

10 And, you know, finally I called another day and
11 someone put me on hold and transferred me to somebody else
12 who finally came on the line and said, "Oh, I know what
13 happened. Those nine numbers at the bottom of the check,
14 they look like they should be a routing number, but we
15 actually don't have a routing number here because we don't
16 act like a typical bank. We're a brokerage house, and so
17 we don't do e-checks."

18 You know, I had no idea. And I know that I had
19 done wire transfers. And I had done wire transfers
20 recently because I wire transferred some of the money from
21 the house purchase, you know, to the Vanguard and then out
22 to the -- I don't know what you call it -- the place that
23 gathers all the money for when you buy a house, the title
24 company, I guess. So I had successfully done wire
25 transfers and written checks from those accounts.

1 So it seemed only logical that I could also --
2 well, I've never paid with e-check before ever. Not just
3 paying with the FTB website, but I've never used an
4 e-check in my life. So I was really just going on what
5 the website directing me to, you know, take a check, look
6 at your check. You should see nine numbers at the bottom
7 left. You should see numbers to the right of that. Those
8 should match up with your account numbers, and all of that
9 was the case.

10 And so I did that three times with the 2019
11 payment and then my 2020 first and second quarterly
12 payments. It would have nice if someone from Vanguard
13 could have given me a ring and said, "Hey, we see here
14 that you're trying three times to make e-check payments,
15 and your account doesn't allow that. You know, we'd like
16 to let you know that."

17 I would have had plenty of time to remedy that,
18 but I just didn't know. So when I finally got someone
19 that said they knew and that's the reason, and they don't
20 act as a real bank, I said, "Well, I didn't know that."

21 And they said -- I think he said something like,
22 "When you first signed up for your account, that was in
23 the small print." But I have had that Vanguard account
24 for probably at least 25 years, and I don't remember
25 things that were in the small print 25 years ago. Do any

1 of you?

2 So that was, you know, not in my consciousness at
3 all. And I assure you, had it been, I wouldn't have paid
4 that way. I would have paid the way that I ultimately
5 paid, which is the day that I got the letter I went
6 straight to my local bank, Bank of the West down the
7 street. And I wrote a paper check to my own name for -- I
8 think it was \$100,604.18. And that was going to cover the
9 \$98,000 that I owed, which included now the interest and
10 the penalties and then the first two payments. One was
11 \$1,400 and other was \$1,200 or something like that.

12 So all of that added up. And then I deposited
13 that check in my Bank of the West account. And I did have
14 to wait day or two for that check to clear because it was
15 a large amount. But the minute the funds cleared, then I
16 went back to the FTB website now using a Bank of America
17 check -- I'm sorry, not Bank of America -- Bank of the
18 West check. And this time knowing that was a true routing
19 number from a true bank.

20 So I just did not realize that a Vanguard check
21 could not be an electronic transaction, and that's
22 where -- that's where I got into trouble.

23 JUDGE LAMBERT: Thank you, Ms. Epstein.

24 MS. EPSTEIN: I never ever want to pay my taxes
25 late. And also just to mention that, you know, I realize

1 that the number of the penalty -- dollar amount of the
2 penalty is really just based on what you owe. But what I
3 owed that year was a true anomaly because I had a house
4 that I owned for 27 years and 27 years of huge growth in
5 San Francisco. And I've never paid that much in taxes,
6 and I never will pay that much in taxes again.

7 And so to find me such a huge number based on
8 that when that is not my normal yearly situation. So if
9 you want to say, okay, she should pay taxes based on what
10 she normally pays. And if you want to go back and look at
11 what I've paid every other year of my life other than that
12 year and average it out, I think that would be fair.

13 If you want to pay it based on what I'm going to
14 pay you this year, it would be a percentage of whatever
15 \$696 is. But it just seems really unfair to lose such a
16 huge amount of what is my nest egg. So I hope you'll have
17 mercy on me.

18 JUDGE LAMBERT: Okay. Well, thank you,
19 Ms. Epstein, for answering the questions and for your
20 testimony.

21 And thank you, Mr. Gill.

22 I'm going to proceed to FTB.

23 And, Mr. Coutinho, you can give your presentation
24 now, and you'll have 10 minutes. Thank you.

25 MR. COUTINHO: Thank you.

1 and the Appeal of Friedman that exercising ordinary
2 business care and prudence entails ensuring that the
3 electronic payment was actually remitted, even if there is
4 a lack of notice from the Franchise Tax Board. Similar to
5 Scanlon and Friedman, Appellant's conduct does not
6 establish reasonable cause because she failed to monitor
7 her bank account to ensure successful payment had been
8 remitted. Appellant's Vanguard transaction history,
9 marked as Exhibit 11, reflects that if Appellant did
10 monitor her account, she would have observed that her
11 California tax payment had not been successfully remitted.

12 Following the reasoning in Scanlon and Friedman,
13 Appellant's oversight, unfortunately, does not establish
14 reasonable cause to abate the late-payment penalty
15 imposed, and Respondent's position in this case should be
16 sustained.

17 I'm happy to address any questions or concerns
18 your panel may have. Thank you for your time.

19 JUDGE LAMBERT: Thank you, Mr. Coutinho.

20 Judge Akopchikyan, do you have any questions?

21 JUDGE AKOPCHIKYAN: This is Judge Akopchikyan. I
22 have no questions for Respondent.

23 JUDGE LAMBERT: Thank you.

24 And, Judge Akin, do you have any questions?

25 JUDGE AKIN: Judge Akin speaking. I do not have

1 any questions. Thank you.

2 JUDGE LAMBERT: Thanks.

3 This is Judge Lambert, and I don't have any
4 questions either.

5 So now we could proceed to, Mr. Gill and
6 Ms. Epstein, you may now give your closing remarks. You
7 have five minutes. Thank you.

8

9 CLOSING STATEMENT

10 MR. GILL: This is Mr. Gill for Appellant. I'd
11 like to start by distinguishing Appellant's situation from
12 the Appeal of Friedman and the Appeal of Scanlon. In the
13 Appeal of Friedman, the Appellants had made the error with
14 e-pay on multiple occasions going back to 2012. And
15 Ms. Epstein had made no such error. Ms. Epstein also
16 ensured -- it's worth mentioning that Ms. Epstein also
17 ensured she had enough funds in her account prior to
18 attempting the payment. So she had no reason to assume
19 that it wasn't successful.

20 In Scanlon -- sorry -- I'm sorry. In Scanlon
21 there was the history of error going back to 2012. While
22 in Friedman, the taxpayer did not fully complete the FTB's
23 instruction of submitting payment, while Ms. Epstein
24 completed all of FTB's instructions completely and
25 accurately and, yet, the payment was unsuccessful.

1 Given Ms. Epstein's full intention to pay, we
2 would also like to request as a secondary contention that
3 she be given partial abatement as a result of her past tax
4 compliance and full intention to pay her tax liability, if
5 reasonable cause for the abatement cannot be granted.

6 JUDGE LAMBERT: Okay. Thank you, Mr. Gill, if
7 that concludes your presentation.

8 I'll ask my co-panelists if they have any
9 questions of either party.

10 Judge Akopchikyan, do you have any questions?

11 JUDGE AKOPCHIKYAN: This is Judge Akopchikyan.
12 No questions.

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

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

17 JUDGE LAMBERT: Thanks.

18 This is Judge Lambert. I don't have any
19 questions. So if there's nothing further, I'm going to
20 conclude the hearing and close the record.

21 We will issue a written opinion within 100 days.
22 I want to thank everyone for attending today, and please
23 have a good day. Thank you.

24 (Proceedings adjourned at 2:44 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 7th day of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER