



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, )  
 )  
D. SOARES and J. SOARES, ) OTA NO. 21047702  
 )  
 ) APPELLANT. )  
 )  
 )  
\_\_\_\_\_ )

Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 2:21 p.m. and concluding at 2:34 p.m. on  
Tuesday, March 29, 2022, reported by  
Ernaly 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 SARA HOSEY

Panel Members: ALJ JOSHUA ALDRICH  
ALJ TERESA STANLEY

For the Appellant: BRYANT L. JOLLEY

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
CAMILLE DIXON  
CYNTHIA KENT

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 1-3 were previously received at the prehearing conference.)

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

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

	<u>PAGE</u>
By Mr. Jolley	6
By Ms. Dixon	10

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Jolley	14

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

2:21 p.m.

JUDGE HOSEY: Let us go on the record.

All right. This is the Appeal of Dennis and Janet Soares, Case Number 21047702. Today is March 29, 2022. It's approximately 2:21 p.m. This hearing is being held virtually via Webex with the consent of the all the parties.

I am lead Administrative Law Judge Sarah Hosey, and with me today are Judges Teresa Stanley and Josh Aldrich.

Can I have the parties please state your names for the record. Let's start with you Mr. Jolley.

MR. JOLLEY: This is Bryant Jolley, Certified Public Accountant.

JUDGE HOSEY: Thank you.

For the Franchise Tax Board.

MS. DIXON: Camille Dixon, Tax Counsel for the Franchise Tax Board.

JUDGE HOSEY: Thank you.

The issue as agreed upon per the minutes and orders of March 9th, 2022, is whether Appellants have met their burden of proof to establish reasonable cause to abate the mandatory electronic payment, e-pay or

1 e-payment, on the January 4, 2021, tax payment.

2 We marked Exhibits 1 through 3 for Appellants and  
3 A through F for Respondent FTB at the prehearing  
4 conference held on March 8, 2022. No objections were  
5 raised by either party, and the exhibits were admitted  
6 into the record per the prehearing conference minutes and  
7 orders issued on March 9th, 2022.

8 Mr. Jolley, are you ready to begin your  
9 presentation?

10 MR. JOLLEY: I am.

11 JUDGE HOSEY: Go ahead. Thank you.

12

13 PRESENTATION

14 MR. JOLLEY: Basically, this is a matter of --  
15 not a matter of law, but rather a matter of determining  
16 whether or not the taxpayers had reasonable cause for  
17 abate -- for penalty abatement.

18 My April 1 letter, I gave a brief synopsis, but  
19 I thought I can maybe elaborate a little bit. The  
20 taxpayers were filing as farmers up to 2018 because they  
21 had started a nut business and expanded. When they were  
22 new accounts in 2018, I indicated to them that they would  
23 have to start filing estimated tax payments. This was in  
24 2019.

25 The problem was Covid started right about then.

1 So everything was messed up, even for us CPAs. A lot of  
2 things were changing after the fact, the FTB one of which  
3 was the filing deadline. So we had the first filing  
4 deadline at February -- for July first estimated payment  
5 would be due in July 20th.

6 We -- in putting it all together my office made  
7 an error in that it printed the e-paper estimates out.  
8 When I gave them to the taxpayer, the husband, I told him  
9 not to use the e-papers and to get rid of them, and that  
10 everything would have to be done electronically. He did  
11 make the July payment like that. The problem then, again,  
12 FTB does not have a third quarter one. So it's more  
13 confusing for the taxpayers.

14 The taxpayers are separated even though they run  
15 their businesses together. So he had given the packet to  
16 his wife and told her to make the January payment. He  
17 says electronically, but she saw the papers in there and  
18 saw the voucher had not been removed. So she mailed it in  
19 at that point in time. She mailed it in December. So FTB  
20 received it two weeks before they would have received the  
21 electronic payment.

22 And so there was a certain amount of confusion as  
23 much from my office as the taxpayer learning it. Because  
24 in the past -- the past five, seven, eight years ever  
25 since the 1 percent penalty was in place, they had always

1 paid their taxes on time on March 1 via electronic  
2 transfer.

3 My position is that I had at least five instances  
4 of this penalty being waived, granted albeit back in 19 --  
5 in 2012, 2013 because people were learning about it. Now,  
6 I don't know how the passage of time can change that  
7 because this is the first time the taxpayers were subject  
8 to this particular payment of estimates. So it's for this  
9 reason that I feel there is reasonable cause to have the  
10 penalty abatement. In this instance, taxpayers pay 2, 3,  
11 4, \$500,000 a year in Franchise Tax taxes.

12 It seemed to be a small matter to me when this  
13 started out. But like I say, this is kind of continuing  
14 education for me to see the amount of effort being put  
15 into this. But just a matter of goodwill, I would think  
16 that this definitely falls in -- falls in the abatement  
17 situation to keep everyone happy and keep those people  
18 paying about half a million dollars a year.

19 And that's basically it. Thank you.

20 JUDGE HOSEY: Thank you, Mr. Jolley.

21 This is Judge Hosey. Let me see if my  
22 co-panelists have any questions.

23 I'll start with Judge Aldrich.

24 JUDGE ALDRICH: Yes. This is Judge Aldrich.

25 Before we went on the record, you had mentioned that there



1 was some sort of change in the business practice of  
2 Appellant. Could you elaborate on that?

3 MR. JOLLEY: Yes, they were always filing as  
4 farmers. Most of their income had been farming related.  
5 So they were filing and paying all their taxes on March 1.  
6 That gives them an exception from any penalties or any  
7 estimated tax penalties. So because the nut-processing  
8 business became very successful during this period, they  
9 had exceeded the two-thirds of -- they were considering  
10 their nut processing the agriculture farming income  
11 because it was processing the almond harvest.

12 I told them, no. They would have to start making  
13 estimated tax payments. So this is where the confusion  
14 kind of started with them trying to comply 100 percent  
15 with the estimated tax payments, which was further  
16 complicated by Covid, further complicated by my staff  
17 making the error putting the paper estimates in when I  
18 instructed the husband to make them electronically. But  
19 then he gave them to his wife during that six-month  
20 period, and she saw the paper estimate and paid the paper  
21 estimate.

22 Again, there is no financial harm. This penalty  
23 is onerous by any effect. I mean, us in the CPA  
24 community -- the legislatures need to change this penalty.  
25 It's just -- it's out of line to have a 1 percent penalty

1 when they ended up paying the money early. There was no  
2 economic damage to the State. The State actually came out  
3 ahead. Everybody is happy.

4 It's just somebody had to cash a check, and it  
5 was a first-time occurrence. And that's why in my  
6 opinion, and I think for most people's opinions, that  
7 definitely would be reasonable cause for the confusion.

8 JUDGE ALDRICH: Mr. Jolley, I think that answered  
9 my question. I didn't have any further questions, but --  
10 so I'm going to turn it back to Judge Hosey. Thank you  
11 very much.

12 JUDGE HOSEY: Thank you.

13 Judge Stanley, did you have any questions.

14 JUDGE STANLEY: This is Judge Stanley. I do not  
15 have any questions right now. Thank you.

16 JUDGE HOSEY: Okay. Thank you.

17 Let's go ahead and move forward with Respondent's  
18 presentation.

19 Ms. Dixon, are you ready to begin?

20 MS. DIXON: I am. Thank you.

21 JUDGE HOSEY: Go ahead. Thank you.

22

23 PRESENTATION

24 MS. DIXON: Good afternoon. My name is Camille

25 Dixon. I am tax counsel with the Franchise Tax Board.

1 And along with me is my co- counsel Cynthia Kent, who is  
2 also tax counsel for the Franchise Tax Board.

3 As mentioned earlier this is a mandatory  
4 e-payment penalty case, and the issue is whether  
5 Appellants have met their burden of proof to establish  
6 reasonable cause to abate the mandatory electronic payment  
7 penalty.

8 Pursuant to statutory law, for any taxable year  
9 beginning on or after January 1st, 2009, individual  
10 taxpayers are required to electronically remit all  
11 payments to FTB once either of the following conditions  
12 are met: Either an estimated tax or extension payment  
13 exceeds \$20,000, or total tax liability on the original  
14 return exceeds \$80,000. Once either condition is met, the  
15 law requires taxpayers to make all future payments  
16 electronically.

17 On April 4, 2014, Dennis and Janet Soares, the  
18 Appellants, made s \$90,000 extension payment for the 2012  
19 taxable year, which triggered the electronic payment  
20 requirement. And it appears that Appellants continued to  
21 make appropriate electronic payment before making a  
22 \$150,000 estimate payment by check for the 2020 taxable  
23 year. Since the Appellants were required to make  
24 e-payments and did not do so, FTB properly imposed a  
25 mandatory 1 percent e-payment penalty of \$1,500 pursuant

1 to statutory law.

2 The precedential OTA opinion on point to address  
3 this issue is the Appeal of Porreca. In Porreca the  
4 taxpayers asked for abatement of penalties based on  
5 exercising reasonable care and prudence in making timely  
6 payments, and also because of a history of timely  
7 remitting taxes and not being penalized before. However,  
8 in its opinion, the OTA explained that a taxpayer does not  
9 exercise ordinary business care and prudence when they  
10 fail to acquaint themselves with the requirements of  
11 California tax law.

12 And in order to demonstrate reasonable cause, the  
13 taxpayer must show failure to file timely returns occurred  
14 despite the exercise of ordinary business care and  
15 prudence. OTA further explained that the taxpayers did  
16 not file an extension and there was not a waiver. Since  
17 no first-time abatement program like the IRS exists at the  
18 State level, OTA sustained the mandatory e-payment penalty  
19 in the Porreca case.

20 Here, the Appellants paid the penalty and,  
21 thereafter, filed a claim for refund. On appeal,  
22 Appellants argued that they are entitled to a refund of  
23 the e-payment penalty based on reasonable cause.  
24 Appellants contend that is the first time they are  
25 required to pay estimate income tax installments, and that

1       there was no willful neglect.

2               Appellants' tax preparer indicates Appellants are  
3 separated and a miscommunication occurred. Appellants'  
4 tax preparer informed Appellant-husband of the need to pay  
5 electronically. However, Appellants' tax preparer printed  
6 out payment vouchers and the Appellant-wife sent in the  
7 voucher with payment by check. They also contend  
8 abatement of the penalty is warranted based on their good  
9 filing history.

10               However, the Appellants did not file an  
11 extension, and there is not a waiver under the applicable  
12 statute. Since there is not a first-time abatement  
13 program and the Appellants have not demonstrated  
14 reasonable cause, the \$1,500, mandatory e-payment penalty  
15 should be sustained.

16               That concludes my presentation, and I'm happy to  
17 answer any questions that you have.

18               JUDGE HOSEY: Thank you, Ms. Dixon. This is  
19 Judge Hosey. I'm going to see if my panel members have  
20 any questions for you.

21               Judge Aldrich, do you have any questions?

22               JUDGE ALDRICH: No questions. Thank you.

23               JUDGE HOSEY: Okay. Judge Stanley, do you have  
24 any questions?

25               JUDGE STANLEY: This is Judge Stanley. I don't

1 have any questions. Thank you.

2 JUDGE HOSEY: Okay. It is Judge Hosey. I'm  
3 going to go ahead and see, Mr. Jolley, would you like five  
4 minutes to make a final statement?

5

6 CLOSING STATEMENT

7 MR. JOLLEY: Not that long out, but just out of  
8 curiosity. Understanding the FTB does not have a  
9 first-time abatement policy, whereas the IRS does, the  
10 question is still, why were we able to abate these back in  
11 2010, '11, and '12 simply by sending a simple letter in to  
12 the FTB? I had at least five or six of these penalties  
13 abated.

14 I'm not sure how the passage of time changes the  
15 rule of law as they were abating them in the beginning.  
16 Otherwise, we would have a lot of people up in arms. So  
17 it was more of a, perhaps, public relations issue back  
18 then, but I think with all things to be equal, the  
19 taxpayers being subject to the very first time have to pay  
20 estimated taxes, does fall a little bit in that category  
21 of reasonableness as opposed to someone who just forgot or  
22 didn't read the back law back in 2010, '11, and '12.

23 So that's our position. It just seems to be  
24 inequities here. Thank you.

25 JUDGE HOSEY: Thank you, Mr. Jolley. This is

1 Judge Hosey again. I have your evidence, and we've heard  
2 your arguments. Is there anything else you have prepared  
3 today to present to the panel before we submit the case?

4 MR. JOLLEY: Not from my end.

5 JUDGE HOSEY: Okay. Thank you.

6 We're ready to submit the case. The record is  
7 now closed.

8 This concludes the hearing, and the Judges will  
9 meet and decide the case based on the documents and  
10 arguments presented. We will aim to send both parties our  
11 written decision no later than 100 days from today.

12 The hearing is now adjourned.

13 (Proceedings adjourned at 2:34 p.m.)

14

15

16

17

18

19

20

21

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