

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)	
)	
C. GOTTSTEIN,)	OTA NO. 18011452
)	18011450
APPELLANT.)	18011448
)	
_____)	

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, January 25, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:27 p.m. and concluding at 2:28 p.m. on
Wednesday, January 26, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ ELLIOTT SCOTT EWING
ALJ TERESA STANLEY

For the Appellant: C. GOTTSTEIN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
DAVID MURADYAN
NANCY PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-58 were received at page 6.)
(Department's Exhibits A-NN were received at page 6.)

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California; Wednesday, January 25, 2022
1:27 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals' oral hearing for the Appeal of Carol Gottstein, Case Numbers 18011452, 18011450, and 18011448. The date is January 26, 2022, and the time is 1:27 p.m.

My name Judge Lambert, and I'm the lead Administrative Law Judge for purposes of conducting this hearing, and my co-panelists today are Judge Ewing and Judge Stanley.

FTB, can you please introduce yourselves for the record.

MR. MURADYAN: This is David Muradyan from the California Franchise Tax Board, and along with me is my colleague, Nancy Parker.

JUDGE LAMBERT: Thank you. This is Judge Lambert.

Ms. Gottstein, can you please introduce yourselves for the record.

MS. GOTTSTEIN: My name is Carol Gottstein.

JUDGE LAMBERT: Thank you.

And thanks to both parties for appearing at this hearing.

1 The issues today are whether Appellant
2 demonstrated error in the proposed assessments for the
3 2012 through 2014 tax years; whether the demand penalty
4 should be abated for the 2013 through 2014 tax years;
5 whether the late-filing penalties should be abated for the
6 2012 through 2014 tax years; whether the filing
7 enforcement cost recovery fees for the 2013 and 2014 tax
8 years can be abated; whether interest should be abated;
9 and whether OTA has jurisdiction to consider Appellant's
10 request for reimbursement of charges or fees pursuant to
11 Revenue & Taxation Code Section 21018 and, if so, any
12 remedy should be provided.

13 FTB provides Exhibits A through NN, and
14 Ms. Gottstein is entering Exhibits 1 through 58, and that
15 evidence is now in the record.

16 (Appellant's Exhibits 1-58 were received
17 in evidence by the Administrative Law Judge.)
18 (Department's Exhibits A-NN were received in
19 evidence by the Administrative Law Judge.)

20 So, Ms. Gottstein, this will be your opportunity
21 to explain your position. First, I'll swear you in.
22 Please raise your right hand.

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C. GOTTSTEIN,

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

JUDGE LAMBERT: Thank you. Okay. You have 20 minutes, and you may proceed. Thanks.

PRESENTATION

MS. GOTTSTEIN: Thank you very much.

I believe this is the third appeal I have submitted to a California agency regarding my dispute with the FTB for the past tax years. First, I submitted the timely appeals to BOE, and at the same time I requested and received assistance from the BOE TAAP, which is the Taxpayer Appeals Assistance Program, which prepared an opening brief for the TY tax year 2012 appeal only. After TAAP withdrew its help from any further appeals, but before the 2012 appeal was heard, all three appeals were consolidated into a single BOE appeal. FTB submitted briefs in 2016 and 2019, and I filed responsive briefs to both of them.

Second, after the demise of the BOE, I submitted a new consolidated appeal to the new OTA, transferring the BOE submission to the OTA interagency. And all of this

1 was pre-pandemic dated May 31st, 2019. Now I have
2 scrambled to collect all of the previous paperwork and
3 sort it into exhibits and some semblance of a presentation
4 for this third appeal, which is only being heard for the
5 first time as an appeal hearing.

6 All right. I admit that I have not filed my FTB
7 returns for 2012, '13, or '14. I haven't filed the IRS
8 returns for those years either. I understand my IRS
9 returns are currently non-collectible status based on the
10 continuous series of overwhelming hardships I've
11 experienced. If I was a geographical area maybe I'd be
12 declared a disaster area. Since I was hit by a car as a
13 pedestrian, I have had six spine reconstruction surgeries,
14 each successively more complex.

15 Because it is described to them in words, I have
16 included Exhibits 1 through 8, which are post-op X-rays
17 and photos of my 2019 surgeries. I just want you to
18 understand that I'm not exaggerating when I say I have
19 real handicaps trying to perform just activities of daily
20 living, let alone conform to ordinary business practices
21 as prescribed by the FTB. I only have full use of one
22 hand, and until 2021 I have bilateral cataracts which
23 prevented me from reading small print.

24 In 2017, I had a stop gap spinal fusion when I
25 lost leg function suddenly. I would have had this 2019

1 reconstruction performed in 2018, except the FTB suddenly
2 threatened to levy all my bank accounts to nothing. I
3 could not take the chance of being in the hospital and not
4 being able to open the mail or make phone calls to defend
5 my only means of support from the FTB's levies.

6 I get through life alone as best as I can. I
7 have no significant others or no living family to help me
8 with anything; no siblings, children, aunts or uncles, or
9 parents. My husband left me in 1997 when I became
10 disabled. I'm now a age 66 and have been completely and
11 permanently disabled by the spinal injury since 1996. I
12 have not been employed in any capacity since 1996. I have
13 never run a business nor been employed by one. My income
14 is entirely passive, and I'm not capable of ordinary
15 business practices. I don't even know what they are.

16 I cannot physically manage a home computer, and I
17 was not able to afford paid-tax preparation during the
18 same years I was forced to pay attorneys to defend my
19 spousal support in Superior Court and my medical license.
20 From 2012 to 2014, which you can see in Exhibits 53 and
21 54, my medical license was suddenly subject to anonymous
22 accusation. Mysterious and baseless since I had not
23 practiced medicine in a decade. I had to get an attorney
24 and fight it as far as I can afford to. Losing my license
25 was like losing my identity.

1 Then in 2014 October, my ex-husband suddenly
2 decided that he was tired of paying spousal support, and
3 then I had to fight for that by finding more attorneys.
4 You can see the docket for that proceeding in Exhibits 29
5 through 30. At the same time my spine was failing faster,
6 and my spine surgeon wanted me to have an extensive
7 anterior-posterior stem-to-stern spinal fusion. I would
8 have a prolonged recovery. Please see Exhibit 1, the
9 letter from Ravi Bains dated April 24th of 2012.

10 2012 is when the tax return problem began. I had
11 no room in my life, even for that surgery to be done,
12 until 2017 when I almost lost the use of my legs. This
13 15-hour operation of 2019 was finally performed in July of
14 2019, and this is year three of my three-year
15 rehabilitation. Despite restrictions on bending,
16 twisting, and lifting, one of the rods you see in the
17 X-rays has already broken. Throughout it all, I am still
18 trying to cooperate with this tax appeal process.

19 In 2013, when the Franchise Tax Board requested
20 my 2011 return, I sent an explanation, which was accepted
21 by FTB without further comment. See Exhibit 21. In
22 August 2014, FTB's suddenly began aggressively demanding
23 my TY 2012 return, then the 2013 return, then the 2014
24 return. I'd like to stop and point out that since 2016, I
25 have filed all my state and federal returns, via the AARP

1 Tax Aide Vita and TCE program.

2 Once I figured out exactly when and where to sign
3 up for this service and what to bring in order to have my
4 returns prepared, and how to do it, I was able to file
5 returns for each current tax season. However, the VITA
6 and TCE program does not prepare previous tax year
7 returns. I have asked about this each time I went in to
8 have the current year's return done. Even though I
9 qualified by age, disability, and low income to use the
10 TCE service, I did not know anything about VITA until 2015
11 when a FTB staffer mentioned it in a phone call I made to
12 her.

13 She only sent me a link to the IRS VITA site but
14 no other useful information. And at that time in 2015,
15 the website for IRS did not show any VITA sites in my own
16 city of residence. Figuring out how to access VITA took a
17 lot of effort on my part. It absolutely required the use
18 of a computer just to find the hours and locations of
19 VITA. I did not know VITA was only open during tax
20 season, and many sites are itinerant. FTB, however, mails
21 all its NPAs and NOAs in the off season.

22 Despite my years of diligent efforts to access
23 VITA tax prep services, I was diverted along the way by
24 advice I received from the State of California agencies
25 FTB, TAAP, BOE, and even the IRS SPEC personnel

1 themselves. Please see the Exhibit 9, the Department of
2 Treasury decision on my civil rights, Exhibit 15,
3 Exhibit 12, which is the entire 90-page appeal I submitted
4 to the Board of Equalization, and it contains the
5 information about TAAP representation and how it was
6 conducted for me, unfair assumptions that are made by
7 Franchise Tax Board Filing Enforcement.

8 In contra distinction to the IRS, only the FTB
9 has aggressively pursued filing enforcement of very
10 low-income taxpayers. In opposition to the spirit of the
11 of California Revenue & Taxation Code part 10.721001 to
12 21028, which is also known as the Taxpayer's Bill of
13 Rights. The Franchise Tax Board untimely 2018 levy
14 briefly bumped my IRS account out of CNC status. But
15 after I explained the situation to the IRS, currently
16 non-collectible status was restored.

17 It was never my intention not to file tax
18 returns. But according to the IRS Taxpayer's Bill of
19 Rights' 10 commandments, which is Exhibit 37, the taxpayer
20 has the right to pay no more than the correct amount of
21 tax. That's what I want to do, pay no more than the
22 correct amount of tax. The FTB claims it has the right to
23 presumption of correctness in its NPAs. I think this
24 presumption is fundamentally unfair because it routinely
25 bases its NPAs on several unrealistic assumptions.

1 For example, if you look at Exhibit 38, in 2004
2 FTB sent me an NPA alleging my income to be \$171,634,
3 based solely on my holding a medical license, which every
4 medical resident in the state earning about \$35,000 a year
5 holds. I didn't know whether to laugh or cry. I wasn't
6 working or even employable as a physician at the time, and
7 my income consisted of spousal support and a small amount
8 of dividends and capital gains, probably no more
9 than \$35,000. The NPA overestimated my income by \$136,634.
10 How do you prove this a negative?

11 The second poor assumption FTB makes is always
12 supplying the standard deduction. Since I've always paid
13 property taxes on my residence and had large medical bills
14 and insurance premiums, my itemized deductions always
15 exceed the standard deduction. See Exhibit 16 through 18
16 for proof of my payments to Kaiser for annual premiums,
17 co-payments, and prescriptions.

18 The third unfair assumption made is that all
19 capital gains have a cost basis of zero. Well, a stock,
20 obviously, can result in a gain or a loss.

21 The fourth unfair assumption FTB makes is that
22 the less the taxpayer makes, the more straightforward
23 their tax return must be to file. Low income must equal
24 ability to use the short form. But if a taxpayer has even
25 one stock sale resulting in a significant gain or loss,

1 the long form must be filed to account for it accompanied
2 by schedules and worksheets.

3 This is not a straightforward process. With
4 computerized trading, multiple mergers, and
5 reorganizations going on, and individual shareholder may
6 have no idea how to report a stock trade on a return.
7 Such is the case of Sara Lee, the stock I held. In three
8 years it underwent a reverse split, a spin, a
9 re-domiciliation, and multiple name changes. I don't know
10 how to report these events on a tax return. Under what
11 stock name? In which year to report them? How does the
12 cost basis change? I have enclosed exhibits to show how
13 unclear it is; Exhibits 10, 11, 13 and 14.

14 The FTB specialist wrote in one of her briefs
15 that the split was completed in 2012, but she is wrong. I
16 received the most recent cost basis analysis of this stock
17 from Charles Schwab in May 2019. To my knowledge, no
18 stock I have bought has ever been through so many
19 permutations as this one. Also see Exhibit 39 for further
20 elaboration on that. Exhibit 13 is the May 2019 Schwab
21 mailing to me.

22 The fifth unrealistic assumption FTB makes is
23 that the taxpayer can always file an amended return. This
24 is referred to in Respondent's Exhibit E, the letter from
25 the taxpayer's rights advocate to me. But there's no time

1 limit, or there's no time indicated. As far as I can
2 tell, that's only true for four years from the return
3 date. All these assumptions overstate taxpayer income to
4 the detriment of the taxpayer.

5 So I know I probably will owe something. I'm
6 trying -- I have to file a return. I'm just appealing the
7 penalties and collection fees for late filing because of
8 the overwhelming reasonable cause I feel I had. It's --
9 the circumstances that I'm explaining now are the exact
10 same ones that I explained to the IRS which caused my tax
11 returns to be put into currently non-collectible status
12 after I explained them to the national taxpayer advocate.

13 I have explained and explained these
14 circumstances repeatedly to the California Taxpayer's
15 Rights Advocate, the Franchise Tax Board, the BOE, and now
16 the OTA. To quote page 8 of the FTB opening brief dated
17 3/8/2019, "Respondent's imposition of a delinquent filing
18 penalty under Section 19131 and the demand penalty under
19 Section 19133 is presumed proper, unless the taxpayer is
20 able to show that her failure to file on time or on demand
21 was due to reasonable cause and not willful neglect."

22 To establish reasonable cause, the taxpayer must
23 show that the failure to file on time or on demand
24 occurred despite the exercise of ordinary business care
25 and prudence. I intend to show by a preponderance of the

1 evidence that there was no willful neglect involved. If
2 you do not find willful neglect, you must find reasonable
3 cause. I made timely responses to all the FTB notices and
4 mailing and made diligent efforts to learn how to file my
5 returns and obtain the information needed to establish
6 cost basis, and for help via the Tax Appeals Assistance
7 Program of the then existing BOE.

8 I applied for and was accepted into the BOE TAAP
9 and was assigned a law student and supervising attorney.
10 In fact, the AOB for this case for 2012 was prepared for
11 by the law student; Exhibit 9 -- 19. Unfortunately, when
12 BOE fell apart before my appeal was resolved so did TAAP.
13 I was dropped from the TAAP without explanation,
14 resolution, referral, or recommendation. Apparently TAAP
15 is only now for CDTFA appeals, and my appeal no longer
16 qualifies.

17 It's important for you to note that I was
18 abandoned by the attorneys of the TAAP. I did not
19 withdraw my case from TAAP. My law student graduated and
20 went to New York. The supervising attorney retired, and I
21 was left without guidance or representation. I diligently
22 emailed and called the TAAP office for a substitute but
23 did not get a response.

24 I also brought my IRS transcripts and supporting
25 documents in 2016 to the only VITA site open outside of

1 tax season within 15 miles of where I live. I followed
2 the site's instruction but was ultimately denied any tax
3 preparation services. Since there was no legal basis for
4 denying me service because I qualified for VITA by age,
5 disability, and low income, I filed a complaint with the
6 Department of Treasury Office of Civil Rights and
7 Diversity. Please see Exhibits 9 and 10.

8 This complaint was investigated over several
9 months by Treasury Department representatives in Kentucky
10 and Washington D.C. issuing a decision which, although,
11 containing important inaccuracies was largely in my favor.
12 My tax returns were not prepared by this VITA, and there
13 was nowhere else for me to go at that time of year. As
14 soon as my federal complaint was submitted in 2015, before
15 any decision was issued, some local IRS SPEC relationship
16 managers took it upon themselves to attempt to prepare my
17 tax returns. Please see Exhibit 15.

18 The returns they prepared could not be signed by
19 me under penalty of perjury because they were missing key
20 entries like the amount of tax you pay. They put
21 long-term gains on the short-term gains page, which would
22 seem to be the wrong place. Then they fed these figures
23 into a computer program, which I had no access to, called
24 TaxWise. Since I didn't know how the calculations were
25 made and the preparer did not sign any of the returns, I

1 wouldn't be able to answer any questions in an audit.

2 Please see Exhibit 42 or a Treasury Letter.

3 On my first visit, the VITA site which is known
4 as SACDC told me to return after obtaining my IRS
5 transcripts, which I did. They still wouldn't or couldn't
6 do my 2012 through 2014 tax returns after I presented them
7 with the material they requested. The IRS Spec County
8 Relationship manager spent half a day trying, and they
9 couldn't do it properly either. If my returns for these
10 tax years are so easy to complete why couldn't either the
11 SACDC nor the IRS Spec employees do them?

12 At that point how was I supposed to do them? I
13 had no experience with computer tax preparation before
14 this. After these two experiences, I had enough
15 experience on senior center computers to attempt the
16 online free-tax programs, but I discovered some barriers.
17 The IRS free file options either wouldn't do California
18 returns or wouldn't accept capital gains or foreign tax
19 credits. They were also restricted by, age, taxpayer, or
20 by whether you received the earned income tax credit.

21 I tried to do it on TaxSlayer for 2012,
22 populating the data fields in October 2015, but halfway
23 through the program shut down and would not let me
24 continue because there's a three-year limit on how far
25 back you could have old returns prepared by that program.

1 Please consider all these factors cumulative
2 because I understand one basis of reasonable cause for
3 delayed filing may be illness. Disability is not
4 mentioned by the FTB in the cases that they cite, and I
5 note that most of the cases cited by Respondent in one of
6 the briefs took place before the ADA, Americans with
7 Disabilities Act, became law. As I said Exhibits 1
8 through 8 are photos and X-rays which convey better than
9 words the 20-plus implants I have holding me together. I
10 don't know any other way to convey my physical
11 limitations. It would be impractical for me to show you
12 all my medical records, nor can I afford an expert medical
13 examiner to testify as a witness for purposes of this
14 hearing.

15 Please also note Exhibit 1, Dr. Bains' letter of
16 April 2012, states that I have atrophy of my left hand.
17 It means the hand is unusable. It also briefly describes
18 the spinal condition that led up to that humongous surgery
19 you have before you. Now, imagine how disabled I must
20 have been in the years leading up to this surgery, which
21 include the tax years in question, 2012, 2013, and '14.
22 This surgery could have been done in April of 2012 or at
23 least started the planning for it.

24 According to the Chief of Spine Surgery of
25 Northern California Kaiser Permanente, I was not able to

1 timely have this important surgery until 2019 because of
2 all the other issues I had to defend against. I have
3 included in all these exhibits the dockets for my family
4 law cases, my medical license defense, and extraordinary
5 writ by the Court of Appeals. It's all there.

6 I would never have pursued this appeal thus far
7 if I hadn't been accepted into the TAAP program. I
8 thought I would at least have a lawsuit from the
9 California TAAP to present my case, and then I was
10 unprofessionally abandoned by the program. I cannot
11 afford a private attorney, accountant, or other tax
12 professional simultaneously with having to expend time and
13 resources on defending myself in family court and
14 undergoing and recovering from these extensive surgeries,
15 the likes of which you've probably never seen.

16 This tax season I will renew my efforts to find
17 someone who can prepare past returns. I think this
18 time I -- I think this time I will be successful because I
19 have learned a lot. I've also cured some of the physical
20 disabilities which slowed me down. I believe that my
21 efforts to use TAAP and seek out tax preparation services,
22 even though they were not successful, constitute an
23 extreme amount of due diligence. They should dispel the
24 impression of willful neglect. I hope that I have shown
25 by the preponderance of the evidence that there was no

1 willful neglect involved. And if you do not find willful
2 neglect, you must find reasonable cause.

3 Now, I would like to address the last issue,
4 Issue 6. On the Issue 6, the Franchise Tax Board
5 submitted a memo and some additional exhibits LL, MM, and
6 NN, which I felt lack significant data. So I submitted
7 Exhibit 57, which is my personal notes of the timeline and
8 Exhibit 58, which is a page from my medical record showing
9 you that during July of 2017, which was the absolute
10 middle of the Franchise Tax Board's demands for my tax
11 return for 2015 made me unable to respond to the demands
12 for the 2015 tax return in a timely fashion.

13 Regarding Exhibit LL, the Franchise Tax Board's
14 screen shot of a comment screen, notice that the Franchise
15 Tax Board employee does not indicate his name or phone
16 number, but it does correspond roughly to my timeline.
17 His name was Eric Scheidegger. Even though he says that
18 the taxpayer was told to call him for any questions in the
19 future, you will find that the phone number is
20 disconnected and has been for some time. You will also
21 find his name and phone in the CFPB complaint that I filed
22 at this time.

23 I would ask the panel to please read my Exhibit
24 45, which is my online public posted CFPB complaint
25 regarding the levying of my account to zero by U.S. Bank

1 and the failure to repay any of the money or provide me
2 with any documentation of what happened. Every word I
3 wrote is exactly what happened, and I stand by it. It was
4 written at that time.

5 Also attached to this email -- attached to the
6 email that I sent you on Tuesday January 25th at 1:07 p.m.
7 is a timeline in which I realize some of the dollar
8 amounts are inaccurate because at that time I was writing
9 from memory, and they were ballpark amounts. FTB only
10 provided one comment screen from one FTB employee. I
11 provided an exhibit. I believe it's the -- it's from
12 Verizon showing screen shots of my telephone. That's all
13 I can give you to prove that a 39-minute call was made to
14 me on the day of that FTB screen shot.

15 But before then I had called -- I called
16 Franchise Tax Board as soon as I got an impersonal letter
17 in the mail from U.S. Bank telling me that my account had
18 been levied by the Franchise Tax Board without containing
19 no amount or no reason. And the phone number in the
20 U.S. Bank letter to FTB was not fruitful, but I made phone
21 calls to Malvero Woods, to the Taxpayer Rights Advocate
22 office, and finally ended up with Kelly or Eric in
23 collections.

24 JUDGE LAMBERT: Ms. Gottstein, sorry to
25 interrupt. I just wanted to let you know that I think the

1 time is running out. So you could perhaps wrap it up in a
2 little bit. Thank you.

3 MS. GOTTSTEIN: I did want to point out that
4 Eric's comments omit that FTB told me I had to request the
5 money be moved in order to stop the levy. In fact, he
6 said it three times. I can't move the money unless you
7 tell us you request it. That doesn't make it my idea. I
8 could have sent another money order if I had been properly
9 notified of the pending levy. Eric said, no, I should ask
10 him to move the money.

11 It didn't make sense to me that FTB should send
12 any money back to me since, obviously, I was in the middle
13 of several delinquent returns. Why not keep it in my FTB
14 account? It showed extremely poor judgment on FTB's part
15 to send me any money knowing it would be intercepted by
16 the IRS. Per the FTB memo, "The FTB may want to leave
17 TY 2015 out of this hearing, but it is FTB itself who
18 muddled the waters between tax years 2013 and 2015 for
19 this taxpayer, resulting in the complete loss to both
20 parties of the amount paid by the Appellant in good faith
21 for 2013," which is the subject of this hearing.

22 It would never occur to this ordinary
23 unsophisticated taxpayer that money paid for one tax year
24 could be moved to the account for another tax year. I
25 just needed to stop a bottomless levy, which for all I

1 knew attacked all of my accounts everywhere and all my
2 property for unknown amounts. Such a situation would
3 leave me with bounced checks, unpaid bills, essentially,
4 financial devastation. FTB needs to make this right. And
5 issuing me a refund won't work because doing so just bumps
6 my IRS account into IRS collections and out of
7 non-collectible status until I connect with a National
8 Taxpayer advocate again to resubmit all my documentation.

9 Issue 6 refers to the RNTC Section 21018. In the
10 fourth paragraph of their memo on page 2 of 3 it says,
11 "21018 allows for the reimbursement of direct result of an
12 erroneous processing action or erroneous collection action
13 by the Respondent." Then the Respondent goes on with his
14 argument by ignoring the words processing collection by
15 focusing on the levy. But it is Respondent's complete and
16 total bungling of the processing and collection for a
17 later year, 2015, by removing money from an account for a
18 past year, 2013, which was already under active appeal
19 when the money was removed makes this consideration of a
20 remedy timely for this TY 2013 hearing, even if the 2015
21 year is not the official year under appeal during this
22 proceedings.

23 All I want to do is stop the liens and levies on
24 my account so that I can survive in this economy, and I
25 don't see how sending me a refund would help, but will you

1 please just credit my 2013 account for what I paid into it
2 in good faith in response to Franchise Tax Board's demand
3 in 2016, that will be good.

4 Please, I would like you to refer to an email
5 that I wrote dated Tuesday, January 25th, 2022 at
6 1:07 p.m. It's got a couple of more pages that I was
7 going to read, but in the interest of conforming to the
8 time of this hearing, I won't read them. It contains the
9 restatement of the timeline during which I certified
10 mailed my protest of the 2013 tax year twice. It took
11 three months for the Franchise Tax Board to even
12 acknowledge the protest. Susan Maples the Taxpayer Rights
13 advocate acknowledges that she counted my letter to her as
14 a protest for the 2013 tax year. That's Exhibit E. That
15 one is three pages long.

16 And at this point, I should not have had to worry
17 about 2013, but then I got a final notice of levy and lien
18 a year after I protested the 2013 tax year. Of course, in
19 2016 when I made a payment for 2013, I had no way of
20 knowing that in the future, in 2018, my bank accounts
21 would be levied for 2015. I also had no way of knowing
22 that I would be suddenly admitted to the hospital in June
23 and July of 2017 for spinal cord decompression surgery.
24 But I did share all this with Franchise Tax Board, as it
25 went on, as best as I could over the phone. And there's

1 much more detail in my email of that date,
2 January 25th, 2022.

3 JUDGE LAMBERT: Ms. Gottstein, are you finished?
4 I just want to note that we're going over time, and we
5 have access to all those emails and briefing as well. So,
6 you know, we will be looking at them. We've looked at
7 them already. So if you wanted to conclude soon, since we
8 have a hearing that's coming up next, that would be great.
9 Thank you.

10 MS. GOTTSTEIN: That's it. Thank you very much.

11 JUDGE LAMBERT: Okay. Thanks a lot. I really
12 appreciate it. I'm going to go to FTB and ask if they
13 have any questions of you.

14 FTB, do you have any questions.

15 MR. MURADYAN: This is David Muradyan from FTB.
16 No questions.

17 JUDGE LAMBERT: And, Judge Ewing -- this is Josh
18 Lambert by the way. Judge Ewing, do you have any
19 questions?

20 JUDGE EWING: Judge Ewing here. I do not have
21 any questions at this time.

22 JUDGE LAMBERT: And, Judge Stanley, do you have
23 any questions?

24 JUDGE STANLEY: I just have two quick ones.
25 Ms. Gottstein, you referred to a CFPB complaint. Can you

1 tell us what that is?

2 MS. GOTTSTEIN: Carol Gottstein. Yes. I'm
3 sorry. It's the Consumer Financial Protection Bureau.
4 Because I was not getting any response from the U.S. Bank
5 in regards to the levy, I filed a complaint with the
6 Federal Consumer Financial Protection Bureau.

7 JUDGE STANLEY: Okay. Thank you. This is
8 Judge Stanley again. My other -- my only other question
9 is you said in your testimony and in your briefing that
10 the IRS put in a status of non-collectible -- your
11 accounts as being non-collectible. In the documentation
12 that we have in the briefing, the way -- the
13 transcripts -- the account transcripts for the tax years
14 at issue do not say anything with respect to penalties
15 imposed or abated. Am I correct that the IRS did not
16 impose or abate any penalties for those tax years?

17 MS. GOTTSTEIN: You are correct. Carol
18 Gottstein.

19 JUDGE STANLEY: Okay. Thank you.

20 JUDGE LAMBERT: This is Judge Lambert. I don't
21 have any questions at this time, but I may in the future
22 later on. So I'm going to move on to FTB's presentation.

23 FTB, you have 25 minutes for your presentation
24 you may now proceed. Thanks.

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1 taxpayer fails to file a tax return, Section 19087
2 authorizes FTB to estimate income from any available
3 information and to propose the amount of tax, interest,
4 and penalties due.

5 Based on the interest, dividend, and broker
6 transaction income information obtained by FTB, Appellant
7 earned sufficient income to require the filing of tax
8 returns for the 2012, 2013, and 2014 tax years. In
9 addition, in her appeal Appellant noted that she received
10 spousal support in the amount of about twice the amount of
11 her annual health plan premiums. Spousal support may
12 constitute income to Appellant. Thus, even without
13 considering the broker's transactions for which Appellant
14 stated she lacked basis information on, based on the
15 taxable spousal support not included in the FTAs,
16 Appellant's income well exceeds the filing thresholds for
17 the 2012, 2013, and 2014 tax years.

18 Because Appellant failed to file tax returns for
19 2012, 2013, and 2014 tax years, FTB properly estimated
20 income based on available information and proposed an
21 assessment. If Appellant disagrees with these
22 assessments, it's her burden of proof to show error in the
23 assessments. In this matter in order to show error in
24 FTB's assessments for the subject years, Appellant must
25 either show with uncontradicted, credible, and competent

1 poof that her gross income and adjusted gross income are
2 below the applicable threshold levels for all three years,
3 or file a valid tax return for each year that reflects
4 Appellant's gross income, allowable deductions, and tax
5 liability as required by law, even if the return shows
6 taxable income of zero or less.

7 The Franchise Tax Board, as well as the State
8 Board of Equalization, and the Office of Tax Appeals have
9 allowed more than ample time and opportunity for Appellant
10 to file her tax returns for the 2012, 2013, and 2014 tax
11 years. Unfortunately, to date she has not done so, nor
12 has she shown that she's not required to file the tax
13 returns in these years. Thus, Appellant has not shown
14 error in the proposed assessments issued pursuant to
15 filing enforcement actions.

16 With respect to the delinquent filing and demand
17 penalties, FTB properly imposed the penalties, and
18 Appellant has not demonstrated reasonable cause to abate
19 either of the penalties assessed in 2012, 2013, and 2014
20 tax years. With respect to the delinquent filing penalty,
21 Section 19131 provides that a delinquent filing penalty
22 must be imposed when a taxpayer fails to file a return by
23 the due date, unless it is shown that the failure is due
24 to reasonable cause and not willful neglect.

25 FTB properly imposed the delinquent filing

1 penalty for all three years because Appellant did not file
2 a timely return. With respect to the demand penalty,
3 Section 19133 provides that a demand penalty may be
4 imposed when a taxpayer fails or refuses to file a return
5 upon demand, unless it is shown that the failure is due to
6 reasonable cause and not willful neglect. FTB properly
7 assessed the demand penalty for the 2013 and 2014 tax
8 years because Appellant failed to file tax returns in
9 response to the 2013 and 2014 demand letters and the
10 conditions required by Regulation Section 19133(b) were
11 satisfied.

12 FTB's imposition of the delinquent-filing penalty
13 and the demand penalty are presumed proper, unless
14 Appellant shows that her failure to file on time or
15 failure to file on demand was due to reasonable cause. In
16 this case, Appellant argues that she was prevented from
17 timely filing her tax returns, as well as filing her tax
18 returns by the demand deadlines due to her physical
19 disabilities, other personal disabilities, and lack of
20 basis information relating to stock transactions, among
21 other reasons.

22 Unfortunately, none of the reasons Appellant has
23 offered establishes reasonable cause for her failure to
24 timely file her tax returns or to timely respond to demand
25 letters. With respect to her physical disabilities,

1 although Appellant has provided documentation, she has not
2 provided evidence that her disabilities prevented her from
3 filing her 2012, 2013, and 2014 tax returns by the
4 respective due dates or by the respective demand
5 deadlines.

6 In fact, Appellant recently provided a medical
7 receipt showing that she had a medical procedure done in
8 July of 2017, which, according to Appellant, was during
9 the demand period for the 2015 tax year. However, the
10 demand penalties in this case are for the 2013 and 2014
11 tax years, and the relevant periods to respond to demand
12 penalties were April of 2015 and February of 2016, not
13 July of 2017.

14 More importantly, for tax years 2016
15 through 2020, Appellant has timely filed all returns for
16 each and every single one of those years, all during the
17 period in which Appellant states she would have been
18 unable to file her 2012 to 2014 returns, which are at
19 issue in this case. FTB is sympathetic to the physical
20 and personal difficulties faced by Appellant. However,
21 Appellant in this case has not demonstrated that the
22 difficulty she described prevented her from timely filing
23 her returns for the subject years nor prevented her filing
24 the returns upon demand.

25 Appellant also references her involvement in

1 long-term legal battles, including her ex-husband
2 reopening their 2003 divorce and her interest related to
3 the revocation of her medical license. She states both
4 legal actions cost her countless time and resources. In
5 addition, Appellant appear to pursue other civic
6 activities during the relevant periods. Unfortunately,
7 because Appellant apparently sacrificed the timeliness of
8 one aspect of her affairs, the filing of tax returns, to
9 pursue other aspects, Appellant must bear the consequences
10 of that choice.

11 Appellant has also stated that she was unable to
12 file her tax returns because she was missing basis
13 information related to stock transactions. However, the
14 fact that information is lost, lacking, inaccurate, or
15 difficult to obtain, is insufficient to meet the
16 taxpayer's burden of establishing reasonable cause.
17 Appellant could have filed her 2012, 2013, and 2014 tax
18 returns by their respective original due dates and/or by
19 the demand deadlines based on the best information
20 available at the time, especially, considering her income
21 primarily consisted of dividends and apparently alimony
22 that did not require any additional information or special
23 computation. However, she did not.

24 As your office has stated in *Moren*, taxpayer
25 should ascertain their tax liability with the information

1 available to them. And if they don't have sufficient
2 information, they must make efforts to acquire information
3 necessary to determine the tax liability associated with
4 the subject tax years. Unfortunately, that has not been
5 demonstrated in this case.

6 In sum, Appellant has not demonstrated that her
7 failure to meet the filing deadlines for her 2012, 2013,
8 and 2014 tax years occurred despite her exercise of
9 ordinary business care and prudence. Therefore, Appellant
10 has not established reasonable cause and not willful
11 neglect for those failures. As such, the delinquent
12 filing and demand penalties must not be abated.

13 With respect to the filing enforcement cost,
14 recovery fee, and interest, Appellant has not established
15 the basis upon which these can be abated. And I refer
16 your office to FTB's briefs on the matter.

17 Finally, with respect to Issue 6, which was added
18 following the preliminary hearing conference, and it
19 concerns whether the OTA has jurisdiction to consider
20 Appellant's request for reimbursement of charges or fees,
21 pursuant to R&TC Section 21018. As set forth in FTB's
22 reply and FTB's response to your office's minutes and
23 orders, and as stated in your office's recent precedential
24 decision of the Appeal of Jacqueline Mairghread Patterson
25 Trust, your office does not have jurisdiction over any

1 alleged violations of Taxpayer Bill of Rights claims,
2 except for R&TC Section 21013, which is not at issue here.
3 In fact, OTA's regulations, specifically Title 18
4 California Code of Regulations Section 30104(d) also
5 support this position.

6 Issue 6 concerns a matter that is unrelated to
7 the disputed Notices of Action issued for 2012, 2013, and
8 2014 taxable years and that formed the basis for this
9 appeal. Specifically, Appellant argues that FTB wrongly
10 denied her claim for reimbursement of bank charges
11 relating to an allegedly erroneous bank levy of funds that
12 were applied to a taxable year, 2015, which is not
13 included in this appeal.

14 Further, with respect to the payment of \$753.36
15 in question, which was initially applied to the 2013 tax
16 year then transferred to the 2015 year, per Appellant's
17 specific explicit instructions, there was no levy.
18 Instead, Appellant voluntarily remitted a personal money
19 order to FTB prior to FTB issuing a levy for the 2013 tax
20 as evidenced by Exhibit A to FTB's response to OTA's
21 minutes and order.

22 Thus, even if it was determined that there's
23 jurisdiction over Section 21018, there would be no claim
24 under it as FTB did not levy that amount. And that amount
25 was instead paid voluntarily through a money order.

1 Therefore, consistent with your office's regulation as
2 well as your office's recent precedential decision, FTB
3 respectfully requests that your office determine that
4 there is no jurisdiction to hear Appellant's claim under
5 Revenue & Taxation Code Section 21018, and that
6 Appellant's request to reapply the payment from the 2015
7 tax year to the 2013 tax year should be denied.

8 In summary, Appellant has not met her burden to
9 show error in FTB's assessment of the tax liabilities for
10 the 2012, 2013, and 2014 tax years, nor has she
11 demonstrated reasonable cause to support abatement of the
12 delinquent filing and demand penalties. Appellant has
13 also not established the basis upon which to properly
14 charge interest or filing enforcement fees can be waived.

15 Accordingly, FTB's actions should be sustained as
16 to all three tax years. I thank you, and I welcome any
17 questions your Board may have.

18 JUDGE LAMBERT: Thank you, Mr. Muradyan.

19 I'm going to ask the panel if they have
20 questions. Judge Ewing, do you have any questions?

21 JUDGE EWING: This is Judge Ewing. I do not have
22 any questions.

23 JUDGE LAMBERT: This is Judge Lambert.
24 Judge Stanley, do you have any questions?

25 JUDGE STANLEY: This is Judge Stanley. No, I

1 don't have any questions at this time.

2 JUDGE LAMBERT: This is Judge Lambert. I guess
3 maybe I have a couple of questions. FTB, there was some
4 statements in the briefing that perhaps she had
5 provided -- Ms. Gottstein provided basis information or --
6 and also information on itemized deductions, such as
7 property tax payments and medical deductions. Can you
8 just comment on those issues and whether or not or why FTB
9 could make adjustments to her tax amount?

10 MR. MURADYAN: Yes. So one thing I wanted to
11 note, Ms. Gottstein has, you know, discussed about
12 deducting medical expenses. As the office is aware,
13 medical expenses can be deducted, but they cannot exceed
14 10 percent of the AGI. Outside of that, you know, as far
15 as any other information, I don't have any response to
16 that at this time, other than, you know, noting that
17 Appellant in this case did not file returns for any of the
18 three subject tax years.

19 And, you know, to the extent that there were any
20 issues with respect to ascertaining the basis of those
21 stock transactions, Appellant has not demonstrated that
22 she attempted to get those during or before the relevant
23 periods, which would be 2015 -- you know, April of 2015
24 for all three years.

25 JUDGE LAMBERT: This is Judge Lambert. Thanks.

1 And just one more question with regarded to Ms.
2 Gottstein's arguments or what she was stating, you know,
3 during her testimony that she could not pay for a tax
4 preparer to prepare her returns, is that -- do you know if
5 that is -- would qualify as reasonable cause under any
6 legal authorities, or can you respond to her comments on
7 that issue?

8 MR. MURADYAN: I can only say that I'm not aware
9 of any legal authority to that affect. As Ms. Gottstein
10 has demonstrated, you know, for the 2016 through 2020
11 years, she has filed her tax returns timely for each and
12 every year. She has also filed her 2015 year, which was
13 not timely, but she filed it. And in this case, you know,
14 the three tax years at issue are 2012, 2013, and 2014.
15 That is precisely why, you know, taxpayers, it's in their
16 best interest to file those returns because they can file
17 the returns and deduct whatever deductions they have. But
18 as to your question, I'm not aware of any authority to
19 that affect.

20 JUDGE LAMBERT: This is Judge Lambert. Okay.
21 Thanks.

22 I appreciate your presentation, and now we're
23 going to move to Ms. Gottstein. If you want to make any
24 closing remarks, I believe that we allocated -- was it 10
25 minutes for it?

1 MS. GOTTSTEIN: Correct.

2 JUDGE LAMBERT: Let me just double check. Okay.
3 Then you may have 10 minutes to provide closing remarks.
4 Thank you.

5
6 CLOSING STATEMENT

7 MS. GOTTSTEIN: Thank you. Carol Gottstein.

8 In evaluating whether a taxpayer neglected tax
9 preparation for other activities, there has to be some
10 realistic risk benefits analysis made by the taxpayer.
11 Taxpayer cannot blow off a court appearance that would
12 result in holding her in contempt of court or cause her
13 great loss of assets or loss of her financial support,
14 which is what would have happened if I spent any less time
15 on my ex-husband's attack on my spousal support and
16 attempt to attack my assets.

17 You can see -- you can't get the details from the
18 docket, but it was very time consuming and often I didn't
19 have an attorney and had to write the declarations and
20 conference statements myself. Also, major surgery,
21 rehabilitation time, and restrictions on mobility comprise
22 any human being. A human being can only accomplish so
23 much.

24 These are not medical procedures that are over
25 and done in a day. A 15-hour operation, which puts you in

1 the intensive care unit for four days and then in a
2 skilled nursing facility for a month and a half, that's
3 the kind of disability I walked into the surgery with;
4 unable to walk without the use of a walker -- a
5 four-wheeled push walker anywhere, unable to go to a lot
6 of facilities and use them, unable to use a computer and
7 maintain one in my own home.

8 I just want you to consider the wording. And
9 please look at the exhibits that are before you because I
10 don't know what I need to do to prove that it compromised
11 my ability to do taxes, other than what I have already
12 told you. I know that it would cost me \$10,000 for half a
13 day for a medical expert on the use of one's hand to
14 appear before you for this hearing, and that just didn't
15 seem worth it.

16 Also regarding my ability to file taxes, from
17 2016 on it was a learning experience, and I did learn what
18 to bring. But also the stock that was giving me trouble
19 for 2012, 2013, and 2014 was Sara Lee. As I said and as
20 you will see if you just look at Exhibit 10, the U.S.
21 federal income tax and information issued a whole bulletin
22 on how to figure out Sara Lee Corporation's distribution.
23 It became a stock called Coffee Company that existed for
24 less than a day, and then it got re-domiciled to
25 D.E. Master Blenders in Holland and re-domiciliation has a

1 cost basis, but they couldn't tell me how to figure it.

2 It isn't simply knowing what you paid for the
3 stock and knowing what you sold it for. The reverse split
4 and -- I don't even remember what the spin was, but I
5 still haven't figured out what the re-domiciliation and
6 how that would affect cost basis. And DEMB, apparently, I
7 found out later that it's supposed to be reported on the
8 2014 tax return, whereas, the Sara Lee is reported on the
9 2012 or '13. The bulletin says the tax rules are very
10 complex, and we urge you to consult your tax adviser
11 regarding the application of these rules to your
12 particular circumstance. So all I can say is this is --
13 this is not a job for an amateur. And by 2015 that stock
14 was gone.

15 Now, you know, 2015 isn't the subject of what's
16 going on right now but just for the purposes of those
17 three years under discussion in this hearing, '12 through
18 the '14, the stock situation was incredibly complex. And
19 my exhibits are full of correspondences I had with Charles
20 Schwab representatives at different locations, by live
21 chat, by email, and by paper correspondence trying to
22 figure out how to report different things with different
23 basis all for one stock.

24 And I don't see how I could have turned in a tax
25 return that had something like that completely missing off

1 of it. Maybe that's what I learn. Maybe I should do that
2 next time, just leave something out if I don't understand
3 it. But the other thing is it's -- it's still very
4 disturbing that Mr. -- when FTB says that I made a
5 voluntary payment in response to a final notice before a
6 levy and lien. Such a notice -- when you get a final
7 notice before a levy and lien, that's especially
8 frightening.

9 That's extremely frightening to a taxpayer with
10 limited means, especially when the taxpayer is physically
11 disabled and without family support and so must always be
12 able to pay caregivers as needed. When you drain my bank
13 account to zero, that threatens my safe deposit box. That
14 destroys my free checking for life. And please notice
15 that Franchise Tax Board mailed the same lien amount out
16 over and over to multiple banks, even though it only
17 needed to collect the lien amount once. It made more
18 trouble for me in a day than I can undo in months.

19 It admitted its error in the screen shot. It
20 said that, "The notice of levy and lien was mailed before
21 FTB became aware of Appellant's protest of 2013 tax year's
22 Notice of Action." Even though the 2013 protest was
23 actually submitted twice in 2015, a full year before the
24 final notice of levy was issued in 2016. So I don't see
25 how the Franchise Tax Board has an excuse for failing to

1 notice its own issuance of -- when it got a protest, and
2 when it issued a notice, and when I didn't communicate
3 with the Taxpayer's Rights advocate in its own agency.

4 Anyway, all of this combined to take up my time
5 and just consider it cumulatively with the fact that I had
6 surgeries going on all through this, and I had to recover
7 from those surgeries. And there were times after my
8 surgeries that for weeks and months I wasn't allowed to
9 bend, twist, lift anything, including papers. And lifting
10 papers is all I've been doing for the past three years,
11 which has caused one of those rods to break in my spine
12 already. So it doesn't take much. I'm trying to be
13 careful, but there are restrictions on my activities of
14 daily living that I simply must observe in order to exist.

15 Thank you very much. That's all I can think of
16 to say.

17 JUDGE LAMBERT: Thank you, Ms. Gottstein. I
18 appreciate it.

19 Now, I'm going to ask if my co-panelists have any
20 final questions of either party. Judge Ewing, do you have
21 any questions?

22 JUDGE EWING: This is Judge Ewing. I do not have
23 any questions at this time. Thank you.

24 JUDGE LAMBERT: This is Judge Lambert.
25 Judge Stanley, do you have any questions?

1 JUDGE STANLEY: This is Judge Stanley. I don't
2 have any questions. They've all been answered by the
3 presentations of the parties. Thanks.

4 JUDGE LAMBERT: Thank you.

5 And likewise I don't have any questions. I think
6 my questions have been answered.

7 So if there's nothing further, I'm go to close
8 the record and conclude the hearing. I want to thank
9 everyone for appearing today. We will issue a written
10 opinion within 100 days.

11 Thank you. This hearing is now closed, and the
12 next hearing, I think, is scheduled to start at 3:00 p.m.
13 So thank you, everyone.

14 (Proceedings adjourned at 2:28 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
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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 24th day
of February, 2022.

ERNALYN M. ALONZO
HEARING REPORTER