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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ JOHN JOHNSON
ALJ JOSHUA ALDRICH

For the Appellant: DAVID GORAL

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 1-4 were received at page 7.)

(Department's Exhibits A-G were received at page 7.)

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California; Wednesday, June 29, 2022

11:06 a.m.

JUDGE TAY: We are opening the record in the Appeal of Moshe Hai before the Office of Tax Appeals, Case Number 21047568. This hearing is being convened virtually on June 29th, 2022.

Today's case is being heard and decided equally by a panel of three judges. My name is Richard Tay, and I'll be acting as the lead judge for the purpose of conducting this hearing. Also on the panel with me today are Judges John Johnson and Josh Aldrich.

Will the parties please introduce themselves for the record, beginning with Appellant.

MR. GORAL: Hi. My name is David Goral. I'm representing the Appellant, tax preparer. That's it.

JUDGE TAY: Okay. Thank you.
And Franchise Tax Board.

MR. MURADYAN: My name is David Muradyan, and I represent Respondent Franchise Tax Board. And sitting next to me is my colleague, Nancy Parker, who I can -- she can introduce herself as well.

MS. PARKER: You're doing a good job, David.
Good morning.

JUDGE TAY: Okay. The issue we will discuss

1 today is whether Appellant has shown Respondent erred in
2 its claim for refund denial of the late-filing penalty for
3 the 2018 tax year.

4 Prior to the hearing, we circulated the exhibits
5 submitted by both parties in a file we call the hearing
6 binder. It contains Appellant's Exhibits 1 through 4 and
7 FTB Exhibits A through F. There are no objections to
8 admitting those exhibits into evidence.

9 Now, Franchise Tax Board submitted a late -- an
10 untimely submission of evidence in a form of a -- in a
11 declaration, and so that's an additional exhibit. And in
12 response, Appellant provided two exhibits today.

13 Franchise Tax Board, did you get Appellant's
14 exhibits.

15 MR. MURADYAN: We did.

16 JUDGE TAY: You did. Okay. Franchise Tax Board,
17 is there a good cause for why this submission of the
18 declaration was so late?

19 MR. MURADYAN: In the course of -- thank you
20 Judge Tay. In the course of reviewing the file and
21 examining, you know, the case, we realized that it might
22 be good to have a declaration, just to add additional
23 clarity. It would have been ideal had we done it prior to
24 the deadline, but we, you know, determined that it was at
25 least better to submit it because it did give additional

1 clarity with respect to the process.

2 JUDGE TAY: Okay. Appellant do you have any
3 objections to admitting Franchise Tax Board's evidence
4 into the record?

5 MR. GORAL: No, I do not.

6 JUDGE TAY: Okay.

7 And Franchise Tax Board, do you have any
8 objections to admitting Appellant's evidence into the
9 record?

10 MR. MURADYAN: We do not.

11 JUDGE TAY: Okay. I just want to recognize that
12 because the evidence was submitted so late, it did put the
13 panel and the parties in a little bit of a difficult
14 position. But given that there is no objection, and given
15 that Appellant may have time to respond to the evidence,
16 the late filed evidence, then I will allow those exhibits
17 into the record, and we will include it all together for
18 purposes of this appeal. Okay. So all the hearing binder
19 as well as the late-filed exhibits are now entered into
20 the record.

21 (Appellant's Exhibits 1-4 were received
22 in evidence by the Administrative Law Judge.)

23 (Department's Exhibits A-G were received in
24 evidence by the Administrative Law Judge.)

25 Okay. We're going to start with presentations.

1 So Appellant will have 15 minutes.

2 Please feel free to begin whenever you're ready.

3 MR. GORAL: Okay.

4

5 PRESENTATION

6 MR. GORAL: First off, I'd like to thank the
7 Office of Tax Appeals for hearing this case virtually and
8 in person.

9 I assume you all have reviewed the information
10 provided by my office to show why and how this tax return
11 was filed late. In our report issued by the Tax Appeals
12 Office, the statement was made that the Appellants have
13 not demonstrated that the tax preparation software has a
14 programming flaw or instructional error. This is the
15 basis of our argument. However, to their point, the tax
16 software we use incurred an error that is quite rare and
17 very difficult to explain if you're not a tax preparer or
18 familiar with using the program itself.

19 To simplify the situation, I will once again give
20 a quick timeline of what transpired on the 2018 tax filing
21 and how the program did, in fact, failed to notify us on
22 the original rejection. The taxpayer filed an extension.
23 The taxpayer filed an original tax return on October 15th.
24 The tax return was rejected the following day to an
25 incorrect IRS identity protection pin.

1 Generally, when a system rejects the tax return,
2 it notifies the tax preparer in two different ways.
3 First, it pops up a window which shows the rejection, and
4 second, it reflects a red notification next to the
5 client's name indicating a federal rejection. It's a
6 bright red link, and you can't miss it. In this situation
7 the tax program reflected the status of September to
8 Lacerte, which basically means that our tax program,
9 Lacerte, is working on forwarding the tax return to the
10 government agencies and in no way reflected that the
11 actual tax return was rejected.

12 A year later the tax preparer -- oh, sorry -- the
13 taxpayer received notice from the Franchise Tax Board
14 stating that the return was never received. We did
15 research within the activity report of the program and saw
16 that the tax return was, in fact, rejected but did not
17 reflect it on the main screen where these extremely
18 important notifications are normally reflected. If you
19 refer to Exhibit 2, it shows a similar example with
20 another client and is a known issue within Lacerte. Per
21 Exhibit 2 -- I'm not sure.

22 The binder is a little bit blurry, probably from
23 all the scanning. But it's basically a screen shot of the
24 e-file status activity. And behind it is what is
25 highlighted as what's reflected on the program in the main

1 screen. In the main screen you can see it says,
2 "California, sent to California." But when you look at
3 the e-file activity, it shows as "California accepted."
4 Generally, when it's accepted, as you can see in the other
5 examples, the e-file activity is shown there as California
6 accepted. So in this current -- in this particular
7 example, it's still showing that it sent to California,
8 but the system hasn't updated to show that it's actually
9 been, in fact, accepted by California.

10 Lacerte was immediately contacted and on further
11 research within the tax forms with users who also use
12 Lacerte, and although this is an anomaly, this is a known
13 issue as you can see on Exhibit 3-A. And on the recent
14 article that I submitted this morning, "How to Update the
15 E-File Acknowledgment Status in Lacerte," which was only
16 published April 20th, 2022. This is a known issue with
17 Lacerte.

18 Furthermore, the fact that the Franchise Tax
19 Board rejected the tax return due to the taxpayer not
20 having a correct IRS pin, begs the question of whether or
21 not the original rejection by the State was fair in the
22 first place. The Franchise Tax Board did not issue a
23 protection pin, rather it's an IRS pin and should not have
24 affected the filing of the state tax return. If the tax
25 preparer -- if the taxpayer does not need a federal pin to

1 file a California tax return, the California return should
2 have gone through just fine. Nothing was changed when it
3 was refiled.

4 In response to Muna Yan's -- I hope I got that
5 name right -- testimony, specifically Item Number 7 where
6 she notes that the return, and I quote, "The return was
7 never present or attempted to be filed by the -- to the
8 Franchise Tax Board." Again, the other attachment that I
9 submitted this morning shows the e-file activity process
10 within the program. If you refer to that, there is a
11 timeline of -- it starts -- at the bottom 9:09, failed the
12 validation. It goes to 10:15 tax validation. 10:15 sent
13 to Lacerte. So that's proof that it actually was filed on
14 October 15th and sent to Lacerte.

15 You don't see anything after that until
16 September 9th, the following year, where it shows sent to
17 Lacerte, received at Lacerte, that's the one we got the
18 notice and checked the update. The system never updated
19 us the day it was actually rejected. So there's no way
20 the tax preparer or the taxpayer would actually know it
21 was rejected until we reviewed it when we received the
22 letter from the Franchise Tax Board saying there was never
23 a tax return filed.

24 The taxpayers always paid their taxes on time.
25 Their intent was pure, and their taxes were paid within

1 the deadline in full. The only reason they are being hit
2 with these massive penalties is due to computer error,
3 which they nor the tax preparer had control over. The
4 following years of their business were severely hit by
5 Covid reflecting a massive reduction in income going from
6 \$470,000 of gross income taxable in California to only
7 \$18,000 between 2019 and 2020 combined.

8 This family is facing serious financial hardships
9 due to the current environment, and we're asking the tax
10 court to please refund these penalties. The taxpayer did,
11 in fact, pay their taxes in full and on time. The tax
12 program did, in fact, have a glitch in notifying the tax
13 preparer that there was an issue in processing the tax
14 return, and the IRS protection pin expired without
15 notifying the taxpayer of a new pin.

16 We know that the Franchise Tax Board has rejected
17 all of our initial attempts to get our penalties removed,
18 but we're hoping that with and in-person explanation, the
19 tax court will find the flexibility in removing these
20 penalties due to innocent and uncontrollable error.

21 We appreciate your time in the matter. That's it
22 for me.

23 JUDGE TAY: Thank you, Appellant.

24 I'm going to turn to my panel right now to see if
25 they have any questions.

1 Judge Johnson, any questions?

2 JUDGE JOHNSON: This is Judge Johnson. No
3 questions at this time. Thank you.

4 JUDGE TAY: Thank you.

5 Judge Aldrich, any questions?

6 JUDGE ALDRICH: Hi. This is Judge Aldrich.
7 Yeah. I have a question for Appellants' representative.
8 In your argument you made reference to the fact that the
9 issue is a known issue with Lacerte. Do you have, like, a
10 timeline for when it became known?

11 MR. GORAL: So I have an exhibit in my
12 Exhibit 3-A. You can see -- so right when we find out this
13 was an issue, I did copious research online within
14 forms -- users that use Lacerte, the same tax program that
15 I use. It's often used when there's tax issues that you
16 have questions about or other system errors. I put a
17 screen shot, which is Exhibit 3-A, where somebody else has
18 a similar issue. And then I contacted Lacerte and fairly
19 recently to -- to double check this and see if they have
20 any known issues as well, which is where they sent me this
21 article that was just published April 20th, 2022, showing
22 basically the resolution of recognizing that it's an
23 issue, and giving you a guideline of how to make sure it
24 doesn't happen in the future. So --

25 JUDGE ALDRICH: Thank you. I think you've

1 answered my question.

2 JUDGE TAY: Judge Aldrich, any further question?

3 JUDGE ALDRICH: No further questions. Thank you.

4 JUDGE TAY: Okay. Thank you.

5 I have no questions at the time at the moment.

6 So I'm going to move onto Respondent for Respondents
7 presentation. You have 15 minutes. Please begin whenever
8 you're ready.

9

10 PRESENTATION

11 MR. MURADYAN: Good morning. My name is David
12 Muradyan, and I represent Respondent Franchise Tax Board
13 in this matter. Also, with me from FTB, is my colleague
14 Nancy Parker.

15 The issue in this case is whether Appellants have
16 shown that FTB erred in its claim for refund denial of the
17 late-filing penalty for the 2018 tax year. Appellants
18 filed their 2018 return late on September 9th, 2020,
19 following an FTB letter informing them that no tax return
20 was on file. FTB processed the return and imposed a
21 late-filing penalty because Appellants filed their return
22 almost a year-and-a-half late.

23 Thereafter, Appellants made a payment to satisfy
24 their 2018 tax balance and filed a claim for refund
25 arguing that the late-filing penalty should be abated

1 because they attempted to file their tax return on
2 October 15th, 2019, within the extension deadline, and
3 that they did not find out that the tax return had not
4 gone through until they received a letter from FTB in
5 September of 2020.

6 FTB denied Appellants' claim for refund and
7 Appellants' filed this appeal. On appeal, Appellants make
8 the same argument that they did in their claim for refund.
9 Unfortunately, Appellants have failed to show reasonable
10 cause to support abatement of the late-filing penalty.
11 Under Revenue & Taxation Code 19131, FTB's imposition of
12 the late-filing penalty is proper unless the taxpayer is
13 able to show that the failure to file on time was due to
14 reasonable cause and not due to willful neglect.

15 The taxpayer bears the burden of proof that
16 reasonable cause exists for abatement of the late-filing
17 penalty. In this case, Appellants argue that their
18 failure to timely file a California tax return was due to
19 reasonable cause because they contend that they attempted
20 to file their return on October 15th, 2019, which is
21 within the extension deadline, but that there was some
22 sort of an error which prevented the return actually to be
23 filed.

24 More specifically, Appellants state that, at
25 least in part, the computer program that they used,

1 Lacerte, which is part of Intuit, to file the tax return
2 did not correctly notify them of the rejection. An
3 ordinary and prudent businessperson would at least make
4 efforts sometime reasonably soon after the filing attempt
5 to ensure that the return was properly filed and
6 processed. However, Appellants failed to check on the
7 status of the filing of their 2018 state income tax return
8 until nearly a year when FTB contacted them.

9 This is an especially glaring error by
10 Appellants -- this is an especially glaring error by
11 Appellants given that Appellants were aware that their
12 federal return was originally rejected. After the
13 rejection of their federal return, the Appellants should
14 have been aware of filing problems with their submissions
15 and confirm that their state return was also filed and
16 accepted.

17 As set forth in the declaration of Muna Yan, a
18 copy of which has been provided to both the Office of Tax
19 Appeals and Appellant, Lacerte generally does not file the
20 state return until the federal return is accepted by the
21 IRS. This process can be observed on Appellants' 2018
22 activity report with the Lacerte transmission record
23 indicating error code REJ001, which indicates that, quote,
24 "The state return was rejected because the federal taxing
25 authority has not accepted or has rejected the declaration

1 of the return."

2 In sum, as set forth in the declaration, the
3 return was never presented or attempted to be filed to FTB
4 because it was rejected by the IRS, and FTB's filing
5 systems have no record of an attempted filing of
6 Appellants' 2018 return on or about October 15th, 2019.

7 In addition, Appellants claim that there should
8 be no penalty because they relied on their tax software,
9 that the computer program they used to file the tax return
10 did not correctly notify them of this rejection. In this
11 regard, your office in the Appeal of Mauritzon with the
12 citation 2021-OTA-198P, a precedential opinion, stated
13 that in order to qualify for reasonable cause in a
14 situation where a taxpayer claims reliance on a software
15 program, that the taxpayer must -- and I quote,
16 "Demonstrate that the tax preparation software had a
17 program flaw or instructional error to establish
18 reasonable cause, and that the taxpayer must show that the
19 error was due to the tax preparation software and not
20 Appellants' own error."

21 However, Appellants have not demonstrated that
22 the tax preparation software had a program flaw or
23 instructional error. As stated by the Appellants, they
24 had difficulty with their federal return because of the
25 expiration of their federal pin. Because their federal

1 return was not originally accepted and Appellants had to
2 resubmit it, Appellants should have been aware of
3 potential electronic filing issues and carefully reviewed
4 their Lacerte records to determine if their state return
5 was actually accepted.

6 Furthermore, FTB contacted the tax software
7 provider, Lacerte, to see what information was made
8 available through a Lacerte software -- through the
9 Lacerte software regarding Appellants' attempted filing of
10 their 2018 return. As can be seen from the email sent by
11 Lacerte to FTB, the rejected status of the federal and
12 California return was made available to the tax preparer
13 using Lacerte the date it was rejected, October 15, 2019.

14 Thus, the information from Lacerte does not
15 support Appellants' position. As according to Lacerte,
16 Appellants were informed of the rejection on the date of
17 the rejection, which was October 15, 2019. The
18 information was available to Appellants had they reviewed
19 the information in the Lacerte activity report.

20 Finally, Appellant submitted two documents today
21 purporting to support to their position. However, neither
22 document supports Appellants' position. The article from
23 Lacerte that was updated on April 20, 2022, states merely
24 that if the status of, quote, "Sent to Intuit," unquote,
25 hasn't changed in a few days, then an attempt should be

1 made to connect to the server. If anything, this goes
2 against what Appellants are claiming.

3 In this case, Appellants should have reached out
4 to Lacerte to ascertain what was occurring. The other
5 screen shot shows that the return was submitted to
6 Lacerte, not that it was accepted. Again, neither of
7 these new exhibits support Appellants' positions. Based
8 on the foregoing, Appellants' reason for failing to timely
9 file their tax return by the due date does not demonstrate
10 reasonable cause. Because Appellants have failed to show
11 that FTB erred in its claim to refund denial of the
12 late-filing penalty for the 2018 tax year, FTB's actions
13 should be sustained.

14 With that, I'll wrap up my presentation, and I'm
15 happy to take any questions the Board may have.

16 JUDGE TAY: Thank you, Respondent.

17 I'm going to turn to my panel. Judge Johnson,
18 any questions for Franchise Tax Board?

19 JUDGE JOHNSON: This is Judge Johnson. I think I
20 have one question. Maybe it's just I misheard --

21 THE STENOGRAPHER: Judge Johnson, may I ask you
22 to please speak up. I'm unable to hear you.

23 JUDGE JOHNSON: Sorry about that. I'm a little
24 far away from my speaker here.

25 THE STENOGRAPHER: Thank you.

1 JUDGE JOHNSON: One question and clarification
2 for Respondent. The penalty at issue, how is it
3 calculated? What's it based on?

4 MR. GORAL: I can't hear.

5 JUDGE JOHNSON: Am I not coming through?

6 THE STENOGRAPHER: Can you repeat that question,
7 please?

8 JUDGE JOHNSON: Sure. The penalty -- the
9 late-filing penalty, what is it based on? How is it
10 calculated?

11 MR. MURADYAN: Yes. The late-filing penalty
12 is -- under 19131, is calculated on the unpaid tax, and
13 it's 5 percent per month up to 25 percent.

14 JUDGE JOHNSON: Okay. Thank you. So that's
15 based on amounts not paid by the normal --

16 MR. MURADYAN: That's correct.

17 JUDGE JOHNSON: Okay. Then I guess, Appellant,
18 when you have your rebuttal -- I thought you had mentioned
19 that taxes were paid in full by the deadline. If you just
20 want to clarify that when it's your turn again, I'd
21 appreciate that. That's the only question I have. Thank
22 you.

23 JUDGE TAY: Thank you, Judge Johnson.

24 Judge Aldrich, any questions for Respondent?

25 JUDGE ALDRICH: This is Judge Aldrich. No

1 questions. Thank you.

2 JUDGE TAY: Okay. I have no questions at this
3 time. I would like to give Appellant the opportunity for
4 their rebuttal.

5 Appellant, you have -- Appellants have 10
6 minutes. Please begin whenever you're ready.

7 MR. GORAL: Thank you.

8

9 CLOSING STATEMENT

10 MR. GORAL: One of the -- so just to quickly
11 touch on the question of if the taxes were paid in full.
12 They were -- they were paid when the tax return was filed.
13 I don't have a copy of the actual check. Maybe the
14 Franchise Tax Board could give us a date of when the
15 payment was received and applied to the account. It
16 should have been right around when the tax return was
17 filed. Hopefully, that answers your question.

18 The other issue to one of the main points that
19 the Franchise Tax Board was alluding to, the -- it sounds
20 like they think we knew the tax return was rejected by the
21 IRS and, therefore, should have known that it was rejected
22 by California as well. In general I would 100 percent
23 agree with that. However, we weren't made aware -- the
24 same situation with the Franchise Tax Board how we didn't
25 know it was rejected by the Franchise Tax Board holds true

1 to the IRS side as well.

2 It was an overall system error, both federal and
3 California. I'm dealing with the same issue with federal
4 as well. There was no update in the system, both federal
5 or state, that showed that the tax return was, in fact,
6 rejected until a year later when we had to refresh and
7 look at the e-file activity. But on the normal use of the
8 program, which I file 500 tax returns a year, and quite a
9 few of them get rejected due to something missing or
10 something minor, it gives you a rejection code within
11 24 hours. It tells you exactly what it is and gives you
12 the steps to resolve that. It never happened.

13 The other issue that Mrs. -- or Ms. Yan --
14 Ms. Muna Yan had mentioned was that there are -- based on
15 her experience, there's no way that a California tax
16 return -- yeah, I guess I don't even -- I don't really --
17 I didn't prepare, because I got this morning, on how to
18 prove this was wrong. But she had mentioned that there's
19 generally if a tax return is rejected by the IRS, then
20 most likely California will reject it as well. That's not
21 entirely true. There are ways that a federal return can
22 get rejected but California goes through just fine.
23 There's more than one way, and it's normal, actually, for
24 that to happen.

25 You had mentioned something -- the Franchise Tax

1 Board had mentioned something about, if I knew the
2 Franchise -- if I knew the IRS was rejected, I should have
3 then known that California was also rejected. Number 1,
4 just because federal is rejected doesn't mean California
5 is rejected. And Number 2, we never knew that the IRS or
6 federal return was rejected due to the same computer
7 error, which I feel like I've provided enough information
8 to substantiate that claim.

9 That's all I really have to comment on at this
10 time.

11 JUDGE TAY: Thank you, Appellants.

12 I'm going to turn to my panel for any final
13 questions for either of the parties.

14 Judge Johnson, do you have any questions for
15 Appellants or Respondent?

16 JUDGE JOHNSON: Yes. This is Judge Johnson. I
17 do have a question for Appellants. In going back to the
18 payments, it sounds like when you originally intended to
19 file on October 15th, 2019, you intended the payments to
20 go through at that time, right, when the returns were
21 filed?

22 MR. GORAL: Yes.

23 JUDGE JOHNSON: And was there any checking of the
24 bank accounts to see if any of the payments didn't go
25 through as maybe an indicator that something might be

1 wrong?

2 MR. GORAL: Payment went through just fine.

3 And -- and to your point, this penalty doesn't have -- and
4 maybe the Franchise Tax Board can just verify what I'm
5 about to say. But the penalty doesn't have anything to do
6 with, like, a late-payment penalty. It's a late-filing
7 penalty that we're trying to remove. Any late-payment
8 penalty is fine. We're not questioning that. It's really
9 the late-filing penalty, which is a separate penalty.

10 JUDGE JOHNSON: Thank you.

11 Let me turn to Franchise Tax Board. Do you know
12 when the payment was made?

13 MR. MURADYAN: Yes. And I'll do a very brief
14 explanation. So the payment was made on October 15, 2019,
15 which was at the same time that they attempted to file the
16 tax return with the extension deadline. However, an
17 extension to file is not an extension to pay. In other
18 words, the payment itself was late. Had the payment been
19 on October 15th, 2019, there would have been no
20 late-filing penalty. Because under 19131, the late-filing
21 penalty is a percentage, 5 percent per month up to
22 25 percent of the unpaid tax.

23 So even though the late-payment penalty in this
24 case was not issued, the fact that the payment was late,
25 essentially, resulted in the late-filing penalty being

1 imposed because they -- because there was a balance due.
2 And under 19131, the penalty is 5 percent per month of the
3 unpaid tax. And because the payment was made essentially
4 six months late, that's why we assessed 25 percent of, you
5 know, for the late-filing penalty because the payment was
6 made six months late.

7 JUDGE JOHNSON: This is Judge Johnson again.
8 Okay. Thank you. So I'm staying with Franchise Tax
9 Board. So the payment that was made in December of 2020,
10 that bill payment, that consisted only of penalties and
11 interest, not of any underlying tax?

12 MR. MURADYAN: That's correct. The underlying
13 tax was paid on October 19 -- October 15 of 2019, which,
14 again, was late. It was six-month late because an
15 extension to file is not an extension to pay late. But
16 the 2020 payment was merely to allow them to file this
17 claim for refund. They had to pay the penalty so that
18 they can file a claim for refund.

19 JUDGE JOHNSON: Sure. And I'll stick with
20 Franchise Tax Board. I know you've briefed, kind of, the
21 issue and had a declaration as to sort of what, from your
22 position, you saw the Appellants receiving as far as
23 information from the preparation software as to whether or
24 not it had gone through, what stage it got stalled at. If
25 Appellants are seeing a message, which to them normally

1 would mean that it's going through, they see the payment
2 being withdrawn as it should have been withdrawn from the
3 tax, what other steps would have been reasonable, ordinary
4 business prudence, that they should have taken to ensure
5 that the return was filed?

6 MR. MURADYAN: Well, Number 1, you know, the
7 software never said that the payment was accepted. It
8 merely said it was sent. And if you look at the exhibit
9 that Appellants provided just this morning -- and it's the
10 timeline exhibit -- here's what it says. It says, "You
11 have successfully sent this tax filing to the Lacerte
12 electronic filing center. Lacerte will acknowledge that
13 the filing was received in 5 to 10 minutes." And then it
14 says later, "If the filing is accepted and you need to
15 make changes, you must do an amended filing."

16 So this message that was sent to us in the
17 morning as an exhibit by Appellants' counsel, even that
18 doesn't substantiate what they're trying to claim. It
19 merely says that, "You have submitted the return." It
20 does not say that the return has been accepted. And as I
21 noted previously, both in our declaration and also with
22 respect to the activity report, there's no evidence that
23 FTB ever received the report. As we stated, we did not
24 receive it because Lacerte never sent it to us.

25 And the reason Lacerte never sent it to us is

1 because the federal return was never accepted. As far as
2 additional steps, you know, you mentioned about the
3 payment going through and the filing. Those are two
4 separate issues, correct? Payment has simply to do with
5 the banking information. The filing has to do with the
6 software company. It would have been reasonable to follow
7 up with Lacerte to ensure that both returns were accepted
8 and not just merely submitted.

9 JUDGE JOHNSON: Okay. Thank you. And is there
10 also any sort of self-service portal of Franchise Tax
11 Board we could have seen the status of the return?

12 MR. MURADYAN: I don't want to speculate because
13 this was, you know, done around October 15th of 2019. But
14 as you -- as the OTA is aware, FTB does have the My FTB
15 portal. You know, again, that's there so taxpayers can
16 check general status. As to this particular case, again,
17 I don't want to speculate. But just as a general matter,
18 the My FTB portal is always available.

19 JUDGE JOHNSON: Judge Johnson. Thank you.

20 And let me turn to Mr. -- the Appellant, again.
21 Sorry. You mentioned that you presented some information
22 about, kind of, conflicting notices you might get in the
23 Lacerte software when this error comes up. And then once
24 you got Franchise Tax Board's letter, you went and took a
25 deeper look, maybe refreshed something, and then it showed

1 that the return had not, in fact, been filed to the
2 Franchise Tax Board. Was there anything you could have
3 done at the time of the filing to have refreshed or to
4 look into a deeper screen that would have shown you that
5 the returns had not been filed?

6 MR. GORAL: Realistically, no. We rely on our
7 tax program to notify us. If anything goes wrong or if
8 the tax return is rejected, as far as the tax preparer is
9 concerned, once we submit the tax return to Lacerte, they
10 kind of take it from there. They process the -- the --
11 they don't process the tax return, but they forward the
12 tax return on to the tax agencies. At that time, if
13 there's something that doesn't match, like an incorrect
14 pin, they notify Lacerte who then notifies us.

15 So we heavily rely on Lacerte on notifying us of
16 any kind of errors. And it's all presented in a fashion
17 that makes it very efficient for the tax preparer. As,
18 I'm sure you all know, during tax season, especially on
19 the last day of the filing deadline, it's nearly
20 impossible to expect a tax preparer to dig into every
21 client and make sure that everything has gone through with
22 each individual tax return, both federal, state,
23 corporate, personal, all the tax returns we work on, and
24 do digging on each tax return.

25 It's not just effective use of our time, and

1 that's why we pay Lacerte a heavy premium to make sure
2 these things get handled for us. We understand that it's
3 a computer. There's computer glitches all the time. I
4 had one this morning before our meeting. It kind of sent
5 me into a little frenzy, but it happens, and we deal with
6 it. So our argument is just that the taxpayers are
7 receiving this penalty -- and by the way, just to touch on
8 the penalty. I found a breakdown of the penalties that
9 are being issued.

10 The total penalties and balance due, which was
11 already paid, is \$8,059.11. Of that, \$6,758.75 is
12 specifically a late-filing penalty. The remaining balance
13 is what the Franchise Tax Board referred to as far as you
14 file an extension, you don't have extra time to pay your
15 taxes. So the difference there is specifically for paying
16 their taxes in full but just a little bit late. So the
17 difference there being 1,300 bucks, we don't care about
18 that. What we care about is the 67 and change hundred
19 dollars late-filing penalty specific to just the
20 late-filing penalty.

21 I hope that answers your question. If you have
22 any other question, I'm happy to answer.

23 JUDGE JOHNSON: This is Judge Johnson. Thank
24 you. I appreciate both of you responding to my questions.
25 That's all my questions.

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JUDGE TAY: Thank you, John Johnson.

Judge Aldrich, any questions for the parties?

JUDGE ALDRICH: This is Judge Aldrich. No questions for the parties. Thank you.

JUDGE TAY: I just have one question. I was just wondering if Respondent can respond to Appellants' point about the validity of FTB's rejection of the state return, if their error was in the inability or having a wrong IRS pin.

MR. MURADYAN: Yeah. I can respond. And, you know, I would like to -- you know, I disagree with kind of the characterization of the timeline that Appellant noted. If we look at Exhibit 1 that Appellants themselves submitted, it's the 2018 activity report. And it goes over, kind of, all the various, you know, statuses. On -- it says previous activity. It says on 10/15 it says, "Rejected." And it says, "Return rejected. This return was rejected by taxing agency on October 15. You need to fix errors in this return." So that was by the Feds.

Then there is a rejection error code that's REJ001. It says, "This state return was rejected because the federal taxing authority has not yet accepted or has rejected the federal return." It says, "Correct the errors in the federal return and then refile these returns for e-file after the federal return is accepted."

1 In this case, as set forth by us in our opening
2 brief and our declaration, FTB never received even the
3 copy of said return because Lacerte, as they have
4 indicated, they never sent it to us. They, you know, they
5 rejected the return because the federal return was
6 rejected. And as the declaration states, because the
7 federal return was rejected, it never went to that next
8 step of sending it to the State.

9 So all I can, you know, say is what, you know,
10 Lacerte has said, which is that they did notify Appellants
11 on October 15, 2019, that the return was rejected, and the
12 declaration that merely confirms what Lacerte said. So I
13 would ask -- I would kindly ask the Board to review all
14 the documentation and make a determination.

15 Thank you.

16 JUDGE TAY: Respondent, just a follow-up
17 question. If they had filed on their own, say to the FTB
18 website, and not had their federal pin, would that have
19 been accepted by Franchise Tax Board?

20 MR. MURADYAN: Judge Tay, I don't want to
21 speculate. Because as you are aware, you know, once a
22 return is submitted, it goes through various processes by
23 the agency in charge. In this case, it would be FTB. And
24 I don't want to speculate as to whether it would have been
25 accepted or not because we would not know exactly what was

1 involved.

2 So in this case, all I can -- you know, the one
3 thing we can state is that FTB never received the return
4 because they filed through Lacerte. And, again, I'd
5 really like to focus the Board on the fact that nearly 10
6 months passed and Appellants never thought about checking
7 the, you know, the status checking to ensure that the
8 returns were indeed accepted, despite the fact that they
9 received notification, as stated by Lacerte, that the
10 returns were rejected.

11 MR. GORAL: Can I respond to something real
12 quick?

13 JUDGE TAY: Yes sure.

14 MR. GORAL: What he's referring to is not a
15 notification by any means. Generally, we are notified.
16 But this activity report is not a notification report.
17 This is an activity report that you have to pull up
18 manually. You have to go in, and you have to dig deep
19 into what the activity in the background is doing. That's
20 what we ended up pulling up once we received the notice,
21 and that's why I have a timeline here of occurrences on
22 that same exhibit.

23 This isn't presented to you when the tax return
24 is rejected. What's presented to you is the notifications
25 that you're referring to. So I think you're getting it

1 mixed up. These are not notification. Normally, you get
2 notification. This is an activity report. The
3 notifications that we normally do receive, a thousand
4 times -- well, 99 percent of the time, did not come
5 through this particular case.

6 MR. MURADYAN: Could I respond, please?

7 JUDGE TAY: Sorry. Yes, please.

8 MR. MURADYAN: Okay. And I'll make it very
9 brief.

10 With respect to the notification, we -- you know,
11 given the Appellants claims, we reached out to Lacerte and
12 contacted them. And as Exhibit F, which is an email from
13 a Lacerte employee dated June 9, 2021, states, and I
14 quote, "The rejected status of the federal and California
15 return was made available to the tax preparer using
16 Lacerte the date it was rejected, October 15, 2019." Done
17 with the quote.

18 So this is not something we're alleging. This is
19 something that Lacerte specifically claimed. And we've
20 attached that as Exhibit F to our opening brief. And with
21 that, I will be done. Thank you.

22 JUDGE TAY: Thank you, Respondent.

23 I'm just going to turn to my panel one more time.
24 Judge Aldrich, did you have any questions for the parties?

25 JUDGE ALDRICH: I guess this could, you know, go

1 to Appellants' representative, and then if FTB wishes to
2 respond, they may. But for these particular taxpayers,
3 absent a waiver, would they have the option of filing a
4 paper return?

5 MR. GORAL: Is that a question to me?

6 JUDGE ALDRICH: Yes.

7 MR. GORAL: They could file a conventional paper
8 return, yes. Was that the question? Sorry.

9 JUDGE ALDRICH: Yes.

10 MR. GORAL: Right. But as far as we were
11 concerned, they didn't have to because it was
12 electronically filed on October 15th. And then, again, we
13 weren't notified until 10 months later that it hadn't gone
14 through. So we didn't know we would have needed to file a
15 conventional paper return.

16 JUDGE ALDRICH: Understood. Thank you.

17 And, FTB, did you wish to respond?

18 MR. MURADYAN: No response. Thank you.

19 JUDGE ALDRICH: Thank you.

20 I have no further questions.

21 JUDGE TAY: Okay. And one more time. Judge
22 Johnson, any further questions for the parties?

23 JUDGE JOHNSON: Judge Johnson. No further
24 questions. Thank you.

25 JUDGE TAY: Okay. Thank you.

1 I don't have any questions either. And so I
2 believe that will conclude our hearing. Thank you
3 everyone for your presentations. Before I -- sorry.

4 Before I close, Mr. Goral, would you like an
5 opportunity to ask questions or respond to Franchise Tax
6 Board's late-filed exhibits?

7 MR. GORAL: You mean in specific questions to
8 what was presented here?

9 JUDGE TAY: Well, I do want to give you an
10 opportunity if you would like to ask or to submit
11 questions for the declarant to answer, or if you would
12 like any additional time to submit any other kind of brief
13 in response to the late-filed exhibit --

14 MR. GORAL: I -- have a couple of notes. Sorry
15 if I was interrupting.

16 JUDGE TAY: That's okay.

17 MR. GORAL: I do have a couple of notes on what
18 was presented. Maybe I can just really quick go over
19 them, if you guys don't mind?

20 JUDGE TAY: I think that would be okay.

21 MR. GORAL: Okay. So on Number 2, basically, it
22 says on the last sentence, "FTB's record reflects no
23 earlier attempt at filing or filing of 2018 California tax
24 return." And basically, that's the whole foundation of
25 our argument is that the FTB itself wouldn't have -- don't

1 have the records of it being filed because Lacerte never
2 presented it to them. It stopped at Lacerte.

3 So the argument of, well, the Franchise Tax Board
4 never got it. Well, yeah, we know they didn't get it. It
5 wasn't California that rejected it. It was that it just
6 never even got there. Had it gotten there, they would
7 have accepted it just fine.

8 The -- one thing I would actually ask is -- is
9 Muna Yan, does she actually use the software? It states
10 in here that she's been employed with Franchise Tax Board
11 for approximately six years. So I'm wondering in the last
12 six years does she file tax returns and use Lacerte?

13 JUDGE TAY: I don't want Mr. Muradyan to
14 speculate on that. If you would like, I can give you time
15 to submit that question if you would like her response to
16 be admitted into the record. Would you like an
17 opportunity to do that?

18 MR. GORAL: That would be great.

19 JUDGE TAY: Okay. In that case I'm going to
20 leave the record open for 30 days to allow Appellants an
21 opportunity to submit questions and/or a brief in response
22 to Franchise Tax Board's late-filed exhibit. So we will
23 leave the record open, and we will wait for Appellants'
24 submission of any kind of questions or additional
25 information, after which Franchise Tax Board will have an

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opportunity to respond.

Okay. All right. Thank you to the parties very much.

This hearing is now adjourned.

(Proceedings adjourned at 11:54 a.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 18th day of July, 2022.

ERNALYN M. ALONZO
HEARING REPORTER