

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. HOSKINS and A. HOSKINS,) OTA NO. 21057743
)
 APPELLANT.)
)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, July 19, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:50 a.m. and concluding at 11:53 a.m. on
Tuesday, July 19, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ ANDREA LONG
ALJ SHERIENE RIDENOUR

For the Appellant: RICHARD GURRIERE
A. HOSKINS
DAVID VINCENT

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOSH RICAFORT
ELLEN SWAIN

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at page 6.)
(Department's Exhibits A-G were received at page 6.)

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WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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California; Tuesday, July 19, 2022

10:50 a.m.

JUDGE LEUNG: We'll go on the record now.

It is approximately 10:50 on July 19th, 2022.

This is the Appeal of Hoskins, Case Number 21057743, and I will start with the parties making their appearances.

Would you introduce yourselves for the record, beginning with you Mr. Gurriere.

MR. GURRIERE: Okay. I'm going to be referring to notes so that I can stay on time and on task.

JUDGE LEUNG: Mr. Gurriere, just one minute. I just need you to introduce yourself.

MR. VINCENT: Just introduce yourself.

MR. GURRIERE: Oh, I'm sorry. I couldn't hear you well.

MR. VINCENT: It is really muffled.

MR. GURRIERE: It's very muffled. Richard Gurriere, I am an enrolled agent for the Hoskins.

JUDGE LEUNG: Okay. With you Mr. Vincent.

MR. VINCENT: Yes Dan Vincent also enrolled agent for Hoskins.

JUDGE LEUNG: Okay. With you there is Mr. Vincent?

MR. VINCENT: Yes. I'm Dan Vincent also an

1 enrolled agent for Hoskins.

2 JUDGE LEUNG: Okay. And for the Franchise Tax
3 Board.

4 MR. RICAFORT: Good morning. Josh Ricafort for
5 the Franchise Tax Board along with Ellen Swain.

6 JUDGE LEUNG: Thank you.

7 MS. SWAIN: Good morning, Judge.

8 JUDGE LEUNG: Good morning.

9 And I'm Tommy Leung. I'm the lead judge, and I'm
10 here along with Judges Long and Ridenour. We all three
11 will be deciding your appeal today, and we will be equal
12 partners in making the decision.

13 The issue for decision in this case is, was there
14 reasonable cause to filing the 2018 California tax return
15 late.

16 We have exhibits to be entered into the record,
17 Exhibits A through G for the Franchise Tax Board and
18 exhibits attached to the Hoskins' briefing, which is the
19 claim for refund and the FTB's denial of that claim, will
20 all be entered into the record with no objection from
21 either party.

22 (Appellant's Exhibits 1-2 were received
23 in evidence by the Administrative Law Judge.)

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

1 We do have four stipulations of facts, the first
2 stipulation being the 2018 return was filed late in March
3 of 2020. The second stipulation is that the Franchise Tax
4 Board imposed a late-filing penalty. The third
5 stipulation was that both the IRS and Franchise Tax Board
6 extended the 2018 filing to April 30th of 2019, with those
7 effected by the Camp Fire. And the fourth stipulation was
8 that the Appellant filed their tax returns past the
9 expiration date.

10 I think that's all the housecleaning I can do
11 now.

12 So, Mr. Gurriere, please begin your presentation.

13 MR. GURRIERE: Okay. I will go from my opening
14 statement right into the case presentation, and then we'll
15 go to the witness to ask questions. Is that appropriate,
16 or would you like me to stop after each phase?

17 JUDGE LEUNG: No. You can do that. Let me get
18 Ms. Hoskins on. Let me swear her in first, and then you
19 can go right into your opening and presentation to your Q
20 and A with Ms. Hoskins.

21 Ms. Hoskins, can you hear me?

22 MS. HOSKINS: I can, yes.

23 JUDGE LEUNG: Please raise your right hand.

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ANGELA HOSKINS,

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

JUDGE LEUNG: Thank you. Please state your name for the record.

THE WITNESS: Angela Hoskins.

JUDGE LEUNG: Thank you, ma'am.

Mr. Gurriere, at your pleasure, please begin.

PRESENTATION

MR. GURRIERE: Thank you.

Again, this is a rarity for me. It's only the second time I've been to one of these proceedings. So I'm going to be following my notes pretty closely to stay on time and not to take up any more time than necessary.

This case, as we all know, is about penalties for 2018 tax return for failure to file timely. I would like to show that Mr. and Mrs. Hoskins took sufficient actions to make sure that their returns were filed timely. And we are also going to explain the circumstances under which they had to get this completed. Also, I'm going to give you a thorough background of the Hoskins and what they've got through, through fire, through their tax preparer, and

1 I believe that it's more than sufficient actions to abate
2 this penalty. So let's start with my case presentation.

3 First off, there were some things that were on
4 the initial appeal request that had to be changed. When
5 we first met with Mr. Vincent, I was instructed that the
6 Hoskins lived in Paradise, they were victims of the fire,
7 and that they had lost property and that their accountant
8 was in Paradise, California. I made the assumption that
9 their house had burned down, and that the accountant's
10 office had burned down.

11 And let's be real clear. Mr. Vincent, who is
12 representing also the client, is not the tax preparer in
13 this case. As soon as I found out these were not the
14 case, the taxpayer and family were living in Paradise.
15 They were purchasing a new home to move into when the fire
16 hit. They lost two rental properties, and the home that
17 they were going to move into burned down. Also, I found
18 out that Paradise -- and I'll explain this in a minute.
19 Paradise Fire was -- was a traumatic event that hasn't
20 been repeated anywhere.

21 I assume, since 95 percent of the community had
22 burned down, that the taxpayer's office had burned down
23 also. When you go up to Paradise, at the beginning part
24 of Paradise, there's a street called Pearson which had a
25 lot of businesses. They all burnt down except for just a

1 few. One of them happened to have been the tax preparer's
2 business.

3 So as soon as I learned this, I relayed all this
4 information on to the Franchise Tax Board to see how we
5 can go forward still believing the taxpayer had reasonable
6 cause for their returns to be filed late. The Hoskins are
7 the type of taxpayers that are very diligent in making
8 sure that their tax returns are filed timely. They have
9 never been late in the past in paying or in filing. She
10 is -- she's a hands-on individual, Mrs. Hoskins, to make
11 sure that this is done.

12 They had an accountant who prepared their tax
13 returns for years, and the accountant retired in the year
14 of the fire. And, of course, when the fire hit, that
15 accountant was not going to come back into business.
16 There was virtually, to the Hoskins' knowledge and to my
17 knowledge, there were no accountants in Paradise at all.
18 There were no businesses functioning in Paradise at all.

19 But they were given a referral of a tax
20 practitioner, and he came highly recommended to them. He
21 prepared tax returns for the city for the police
22 department. She gathered all of her information. She
23 went there and presented the information to the
24 accountant. Let me go back a little bit and talk about
25 this fire that most of us know about but few of us really

1 know the total impact of this fire and what it had on the
2 people who lived in that community.

3 As you know, it was November of 2018. And our
4 client, the Hoskins, were living in Paradise, and they
5 were in Paradise on the day of the fire. We can begin
6 by -- and she will explain this in more thoroughness
7 later. And if you want, you can question her about the
8 events of the day. But they tried to get out of Paradise,
9 and it was almost an impossibility. The fire was raging
10 early in the morning, and the traffic was absolutely
11 jammed. And they were in a fight for their lives to get
12 out of Paradise.

13 And the reason I say this, you might ask, what
14 does this have to do with filing a tax return. This is
15 the beginning of a substantial PTSD for those people who
16 lived in Paradise, and they still are suffering from this
17 trauma. They were able to get out of Paradise, unlike
18 other people who couldn't get out, and they had to stay
19 there and find a shopping mall or a church parking lot to
20 shelter in place.

21 Shortly after the fire, all the people were out.
22 It took several weeks for the fire to be completely out
23 and safe for people to go -- not ordinary citizens but
24 those people who were doing rescue, or in this case, body
25 identification. That took weeks and weeks. The local

1 news stations were reporting everyday the body count, but
2 there weren't bodies. There was only bones and teeth to
3 identify people.

4 The trauma in this entire community is -- it's
5 just hard to explain. But those who have been through
6 this, they suffered a huge trauma. When you were in
7 Chico -- of the 35,000 people displaced, there was about
8 18,000 of them that came to Chico. There was no place for
9 them. When you would go to shopping centers, or you would
10 go to K-mart, there were camps of hundreds and hundreds
11 and thousands of people camped out. This went on for week
12 after week after week after week.

13 And we find ourselves, shortly thereafter, in the
14 2018 filing season. These people are still in the mist of
15 this trauma of trying to sort out what was left of their
16 property. How are they going to survive? We talk
17 about -- well, the rules, and the State talks about
18 ordinary business care, making sure that you do the right
19 thing to make sure that these returns get filed timely.
20 The problem is -- is that there was no normal business
21 care. There were no businesses. Our taxpayer had to, on
22 her own, find a new accountant to do her tax returns. She
23 did.

24 She found an accountant up in Paradise. She was
25 prompt in getting him the information. They had their

1 meetings. He said, "Don't worry about your taxes. I will
2 get them prepared. We're going to be on an extension to
3 file them. And to make you feel more comfortable, there
4 are provisions because you're a victim of this fire that
5 you have an automatic extension."

6 During this time people acted differently towards
7 those people who are in business but were helping them.
8 There was more trust. There was more reliance upon those
9 folk, and this is the case with the Hoskins. They were
10 told this. But as Angela is going to testify later,
11 she -- she's the kind of person who even though she's been
12 assured everything is fine, she's going to try and make
13 sure that these returns get behind her and get filed. So
14 she went to the accountant and asked him, "How are we
15 doing? Can we get these filed?" again and again and
16 again.

17 And I'll let her tell you firsthand the
18 experience that she had of going there many times and
19 always getting the same response. "You're fine. We have
20 extensions. The fire makes it so you don't have to worry.
21 There are special provisions for." Finally in October of
22 the year, the -- the practitioner stopped talking to her.
23 Ghosted her. So she was talking to the staff, and the
24 staff would say the same thing. "You're on extension.
25 We've got special provisions. Don't worry about it."

1 I have a little bit of experience with this
2 practitioner and with these circumstances prior to my
3 being an enrolled agent and representing taxpayers, which
4 I've done about the last 10 years. I managed all the
5 enforcement activities for the Internal Revenue Service in
6 12 of the Northern California counties. I did that job
7 for about 25 years. And I would tell my agents, penalties
8 are imposed on taxpayers -- and your enforcement is
9 imposed on taxpayers not only to collect tax, but the
10 penalty is basically to bring people back into voluntary
11 compliance. And when you do it correctly, it works. To
12 some degree, it works.

13 But when you do it incorrectly and you punish
14 people with penalties when they've done everything that
15 they possibly could do, then it does the opposite effect.
16 It makes the taxpayer feel like the government doesn't
17 care, the government is not on their side to work with
18 them. And I think this is the position where the Hoskins
19 are at. They are victims. They are victims, first, of
20 the fire. They're victims, second, of an unscrupulous
21 preparer who, in essence, lied to her and told her
22 everything was fine, that there are special provision.

23 And I've got to tell you, as a practitioner I
24 went online to look for provisions for the fire. It's an
25 extremely difficult thing to do, even for a practitioner,

1 much less have an individual try to find out what -- what
2 am I covered by with this fire, with natural disaster,
3 listening, again, every day to FEMA, to the sheriff, to
4 all of these people who say, "Don't worry, it's going to
5 be okay," and a practitioner that says, "I've got you
6 covered. You're fine. The fire is a natural disaster.
7 It has been declared so, and you're covered."

8 She took that and believed it. And even though
9 she believed it, it's within her nature to say I want to
10 get my returns filed and get it behind me. So she went --
11 in my estimation, she went far beyond ordinary business
12 care that we would expect of a taxpayer, particularly, in
13 a situation like this. I commend her for -- for doing
14 what she has done. There's a question about credibility,
15 and I'm sure the State said -- I've seen some of their
16 remarks. It said, "Do you have emails? Do you have
17 documentation? Can you show us evidence of all the things
18 you've done?"

19 Well, I can tell you that in my past position
20 when she told me who her tax preparer was, all I could do
21 is hold my head and say, "You are absolutely credible to
22 me. I know who you dealt with, and I know the situation
23 that you're telling me is absolutely credible."

24 I can go on and on, but the main jest of my
25 presentation here is -- is to try and show you that this

1 taxpayer tried to do what they could. They were under
2 horrific trauma because of the fire, and they, in my
3 estimation, performed as well as anybody could be expected
4 to perform. They are a victim. Again, they're a victim
5 -- and I'm being redundant now -- of the fire, of the
6 preparer, and of the State for imposing the penalties.
7 The State is doing what they think is the right thing to
8 do, but still it's -- it victimizes my client because of
9 all she's been through.

10 So I would like to move on now to allowing Angela
11 to give her testimony as to what she has been through.

12 Can you hear me okay, Angela?

13 MS. HOSKINS: Yeah.

14
15 DIRECT EXAMINATION

16 BY MR. GURRIERE:

17 Q Okay. Angela, I would like you to explain the
18 effects of the fire and what it had on you and --
19 including your property loss.

20 A The day of the fire -- many people have stories.
21 Obviously, we went, you know, tried to evacuate. Me and
22 my daughter were on the other side of town. We had to get
23 to my husband and kids and pets. It took three hours to
24 go three miles. We gathered everything. We trekked
25 another six hours. Got in a car accident on the way out

1 of town. It -- it was very traumatic. And to this day
2 like I -- little side note, but I don't even want to be in
3 Paradise anymore.

4 It's -- every time we call it now -- we have
5 winter, and we have fire season. We don't have the other
6 seasons. So, you know, so far, we've been lucky. We
7 haven't had one this year, but every -- the last three
8 years we're in parking lots because we've been evacuated
9 waiting for the all-clear. You smell smoke. Any -- any
10 wind because it was high winds that day, it just petrifies
11 me. I just -- but the way the housing market is, we're
12 there until we can safely find a place to relocate. But
13 it's constant. It's awful.

14 But that particular day was the worst part of it,
15 but it wasn't just that day. Weeks -- a year later
16 it's -- it's all a complete life changer. It's -- it's
17 chaos. We were displaced like everybody else. We had to
18 live a few towns over until we could get back into our
19 home. We -- I guess I can say we were fortunate because
20 the day before the fire we had made an offer on a house,
21 and this is what messed up the taxes. To put the offer on
22 the house my husband drew against his 401K.

23 But we started buying homes at a young age. I
24 was 18. We would buy them. We would live in them until
25 we can make them a rental property. That was going to be

1 our retirement. And so this was another -- he took
2 against his 401K that he no longer had with an employer
3 rather than rolling it. We were buying another home. We
4 were going to invest and have another rental property to
5 help with our retirement.

6 That house burnt, which that in the end, we had
7 his 401K money to live on for a while, and then our
8 tenants were displaced. Because their home they rent from
9 us did burn, so we -- fortunately, we were able to give
10 them all money, get them back on their feet, so they can
11 find homes. We did help other people that were in the
12 hotel with us that couldn't afford their hotel bills. So
13 because we had his 401K, we were able to pay off a couple
14 of other people's hotel for the week or two. So, you
15 know, that part I'm glad we can help.

16 But if we hadn't taken that 401K out to buy that
17 property, we -- we wouldn't have had those penalties. But
18 we did set aside the money. My husband is -- is really
19 good, obviously. By the end of 18 we had 4 or 5 parties
20 by that point. He's great with that. So he had put aside
21 the money knowing roughly -- more, actually, so that we
22 could pay the penalties that we knew we were going to have
23 from his 401K draw. So --

24 Q Angela?

25 A Yes.

1 Q Would you say that you have -- you experienced
2 trauma, and that you still have trauma from that fire, and
3 it affects you and your life?

4 A Anybody who lived threw it has trauma. Me most
5 definitely. Like I said, it's -- it's crippled the way we
6 live. I mean, you just hope there's not another one. You
7 know, people tell us it's like a burnt match. We should
8 be safe, but that doesn't take away the, you know, like,
9 camp fire. Going camping now -- I know it sounds silly,
10 but that smell of that smoke now I can't. We don't. I
11 can't do that.

12 Q In the past, what was your record for filing
13 returns? Were you filing timely? Were you paying timely?

14 A Always on time. Always paid. And in this
15 instance, we had the money to pay, we just needed him to
16 tell us how much it would be.

17 Q So the accountant that prepared your tax returns,
18 explain to us how you came to know him and engage him with
19 preparing your taxes?

20 A Well, there wasn't a lot of choice. Actually, he
21 was the only one, but I did inquire because I didn't -- we
22 had a great guy for 15 years. So I did inquire around,
23 and our Realtor that we were buying that house from
24 recommended him. She told me that he did the police
25 department, some day care, some private schools, and other

1 clients of hers he's done their taxes. So he came highly
2 recommended by a couple of different people. So we went
3 down there and met with him.

4 Q So when you met with him, you were satisfied to
5 engage him. And what did you do? Did you bring documents
6 to him to prepare your tax return?

7 A We brought everything that we would normally
8 provide for our tax return from the rental properties to
9 everything you would turn in. He sat down with my husband
10 and I at the very end of February, I believe it was, of
11 2019, and he went through all the paperwork. And he said
12 it looked good, that he would get to us, and it should be
13 no longer than a week or two. And that was norm -- I mean
14 our other guy did it in a week, so that sounded right to
15 me.

16 And when that first week was up, I called just to
17 see how it was going like I did the other guy, and he said
18 he's -- he's getting it. He's almost done, that he had a
19 lot more clients come in, but everything would be fine.

20 Q You said that you had called him in the next week
21 or two to follow up. Did you do more follow ups after
22 that?

23 A I called every week for the first two months.
24 His office is in town, and I -- I worked out of town. But
25 if I made it up during business hours, I would even stop

1 by his office. I probably did that a couple of dozen
2 times, asked where things are, where we stood, and I was
3 told that there were special circumstances because of the
4 fire, that we were okay not to worry about. He then told
5 me an extension was filed, and so everything would be
6 good. He would get to us when he was done. Now, he felt
7 comfortable because of our extension.

8 So I -- I had no -- no clue that the penalties
9 would arise. Like I said, we had the money to pay our
10 taxes. We paid our taxes when he finally gave us
11 everything. That evening we wrote the check, and we sent
12 them. We were like, "Good. That's off our back. We're
13 good."

14 And then a couple of months later we got the
15 penalty letters we didn't expect.

16 Q So did you trust this tax preparer?

17 A Absolutely. I -- well, yes, absolutely. I would
18 never have taken my taxes to somebody that I didn't think
19 I could trust.

20 Q So when he was telling you there were special
21 provisions, did you think of perhaps he was not telling
22 you the truth?

23 A No, not at all. Because, as I'm sure anybody who
24 dealt with anything like this is aware, there was special
25 circumstances for many different avenues because of the

1 fire. So when he told me that there were special
2 circumstances because of the fire, that I just assumed
3 because everything else is, that I could take him for his
4 word.

5 Q So if he said that you were on extension, you had
6 special circumstances, and not to worry, why did you
7 continue to follow up with him?

8 A Because my husband is -- he's a bill payer. He
9 doesn't like stuff of -- he knew we were going to pay
10 because of that 401K. He just wanted it out of the bank
11 and done. So that's why I kept asking him about it just
12 so we can get it behind us.

13 Q So you had the money. So when -- when the
14 preparer finally -- well, let me go back.

15 When -- when you got to a certain point, you
16 finally decided whether you -- and tell me if I'm correct
17 or not. Whether you had an extension or not, you wanted
18 to pull your documentation and find somebody else; is that
19 correct?

20 A Yeah. That was the final when we -- that was
21 like within days of him saying it was complete. I went
22 in, and he wasn't there again -- because I had trouble
23 getting ahold of him -- but I asked his office to please
24 get my paperwork together, that I was going to be back by
25 the next afternoon to pick it up because I just wanted to

1 get it taken care of, and if he was behind, I needed to
2 find somebody that could do it quickly. And I got a call
3 that evening saying it would ready the next morning.

4 Q And when you went the next morning, was it ready?

5 A It was.

6 Q And what happened after you signed your tax
7 return?

8 A I took them to my husband's work, which is just
9 down the street, and we actually went out to the car. We
10 wrote the checks, and I mailed them right then.

11 Q So you paid those immediately?

12 A Immediately.

13 Q Okay. You also paid penalties?

14 A We didn't know we had those penalties until a
15 couple of months later, but we did pay those as well.
16 Yes.

17 Q Okay. So you thought this was all behind you.
18 You had special provisions. You stated that you were on
19 extension. You finally filed your tax return and now you
20 can get on with your life as far as taxes are concerned?

21 A Yes.

22 Q What was the next thing that happened in regards
23 to the 2018 tax year?

24 A A couple of months went by, and we got a letter
25 from the Franchise Tax Board and the IRS stating we had

1 penalties. So I took those letters to the preparer, and
2 he made photocopies of them, and said he was going to
3 write a letter, not to worry about it. It would be taken
4 care of. So then we received another set of letters, and
5 I took them to him again, and I said, "It's not being
6 taken care of because I'm still getting letters about it.

7 And he said, "Nobody is working in the office at
8 this point. Your letter is probably sitting in a box with
9 nobody there to read it."

10 And then that's when I went and found Dan
11 Vincent, who is sitting next to you, and he has guided me
12 through the rest of it.

13 Q Okay. So to summarize, you've been through the
14 fire. You found an accountant. The accountant you
15 contacted frequently; correct?

16 A Correct.

17 Q You felt satisfied that you were in no danger of
18 being late for filing because of the fire and because of
19 extensions?

20 A That was my -- this was my interpretation of what
21 he told us. That's what I understood, yes.

22 Q And when this was all over, did you realize that
23 any of the things that the accountant had told you were
24 not true?

25 A Obviously, when my penalty letters came, I knew

1 it wasn't true. And then I was asked by Dan if I had
2 signed an extension letter, which we've never had an
3 extension, so I didn't know that would have been anything.
4 And the guy never had us sign anything for an extension or
5 anything. But at the time I didn't know that that was
6 something you do because I've never had an extension.

7 Q Is there anything else you would like to add to
8 this that you would like the judge to know about your
9 circumstance?

10 A Just I'm a law-abiding citizen. We pay our
11 taxes. My husband and I have worked from the age of 18 to
12 try to set up a retirement with our rental properties,
13 which obviously we no longer have. We even paid the
14 penalties just so they wouldn't keep growing. I mean, we
15 weren't trying to get away with anything. We obviously
16 hired the wrong guy. I trusted the wrong person and --

17 Q And one last question.

18 A Uh-huh.

19 Q Think you might have acted differently with this
20 accountant because of the fire, because of the
21 circumstances, because of what happened in Paradise, and
22 what happened to all the businesses in Paradise? Do you
23 think --

24 A I think -- I think I just trusted him because of
25 the way everything else felt with the fire. I mean, there

1 was a lot of -- I mean, we didn't receive any FEMA help.
2 We didn't -- we had insurance and stuff, but there was so
3 many programs out there to help fire victims there was no
4 reason for me not to believe him when he told me that it
5 was handled, that there was extensions and special
6 circumstances, and that we would be okay.

7 Q I am sure that there are people, even here on
8 this conference, who are wondering why didn't you just get
9 your documentation six, eight months earlier and just go
10 somewhere else. Why wouldn't you do that?

11 A First of all, because I -- I assumed wherever I
12 went at that point -- I mean, he had me believe everybody
13 was backed up and everybody was busy. And if the proper
14 stuff was filed, like, we were under, you know, the --
15 that's what we were told, and that's what we felt, that I
16 figured we were just going through the motions, that it
17 wasn't just us, that everybody was running into these
18 circumstances, but it was okay.

19 Q So because of the circumstances of the fire and
20 how the community was, you felt that you were in the best
21 position to get your tax returns prepared quickly?

22 A I figured everybody was backed up, so yeah. I
23 would run into the same circumstance everywhere. The only
24 reason I went and threatened and I was going to get my
25 paperwork is because my husband just doesn't like having a

1 bill hanging over his head. So he said, "I just want to
2 pay this."

3 So that's the only reason I was going to move.
4 It wasn't because of -- I figured everything else was
5 kosher.

6 Q Thank you very much. Anything else you would
7 like to add?

8 A I don't think so. Thank you, though.

9 Q Thank you.

10 JUDGE LEUNG: Thank you, Ms. Hoskins.

11 Franchise Tax Board, any questions for
12 Ms. Hoskins?

13 MR. RICAFORT: No questions, Judge.

14 JUDGE LEUNG: Okay. For Judge Long, any
15 questions for Ms. Hoskins?

16 MR. GURRIERE: I'm sorry. We could not hear you.

17 JUDGE LEUNG: Judge Long, any questions for
18 Ms. Hoskins?

19 JUDGE LONG: This is Judge Long. Can you hear
20 me?

21 JUDGE LEUNG: I cannot hear Judge Long.

22 MR. GURRIERE: We cannot hear you.

23 JUDGE LONG: Let me -- maybe if I get a little
24 closer. Can you hear me now?

25 MR. GURRIERE: Better.

1 JUDGE LONG: Okay. I have no questions.

2 MR. GURRIERE: Perfect.

3 JUDGE LEUNG: Thank you, Judge Long.

4 Judge Ridenour, any questions Ms. Hoskins?

5 JUDGE RIDENOUR: This is Judge Ridenour. No
6 questions. Thank you.

7 JUDGE LEUNG: Ms. Hoskins, I just have a question
8 with respect with the timelines. So you mentioned you've
9 had this accountant do your tax returns for 15 years, and
10 he stopped doing them because he was what? The fires
11 drove him out, or what happened there?

12 MS. HOSKINS: No. He was located in Washington.
13 We're in California. During -- he used to live in
14 California, so we would send our taxes to Washington. He
15 just decided to retire prior to the fire. He had let
16 us -- yeah. Well, right around the fire time, tax time,
17 probably in October he sent out letters saying he was
18 going to retire.

19 JUDGE LEUNG: Okay. So at what point did you
20 begin looking for new accountant? October of 2018?
21 November 2018?

22 MS. HOSKINS: It would have been -- we didn't get
23 back into our home until it was December -- I think it was
24 like two days before New Year's, and then that's when we
25 started inquiring.

1 JUDGE LEUNG: And you retained this preparer
2 when? January, February, 2019?

3 MS. HOSKINS: We waited until we received all of
4 our documentation for, like, our property taxes and stuff.
5 So it was late February that we had the first meeting with
6 him.

7 JUDGE LEUNG: Okay. And as you testified several
8 times between February and, I guess, what, October 2019
9 you met with him?

10 MS. HOSKINS: Dozens of times between calling and
11 going in, yeah.

12 JUDGE LEUNG: And so you finally filed your
13 returns in March of 2020, and that's when you cut the
14 checks and paid the taxes in March of 2020?

15 MS. HOSKINS: Correct.

16 JUDGE LEUNG: Okay. I have no further questions
17 for Ms. Hoskins. I thank you for testifying and being
18 here. And, of course, you're welcome to stay and listen
19 to the rest of the proceedings, if that's your desire.

20 We will now go on to the Franchise Tax Board for
21 their presentation, and you all will have 15 minutes.

22

23 PRESENTATION

24 MR. RICAFORT: Thank you, Judge Leung.

25 Good morning. My name is Josh Ricafort, and I

1 along with Ellen Swain represent Respondent, the Franchise
2 Tax Board.

3 Pursuant to Revenue & Taxation Code Section
4 19131, the FTB imposes a penalty for the failure to file a
5 return on or before the due date unless it is shown that
6 the failure is due to reasonable cause and not due to
7 willful neglect. Appellants do not dispute that their
8 return was filed late, and also do not dispute the amounts
9 of the penalty.

10 Here Appellants make three arguments as to why
11 the late-filing penalty should be abated. I will now
12 address their three arguments.

13 First, Appellants argue that they should be
14 provided relief from the late-filing penalty because they
15 were victims of the 2018 Camp Fire disaster. Due to the
16 impact of the 2018 Camp Fire disaster, both the IRS and
17 the FTB offered relief from the filing deadlines for the
18 2018 tax returns for taxpayers impacted by the Camp Fire
19 disaster, extending the due date for federal and state
20 returns, on April 30, 2019, respectively.

21 Because Appellants filed their 2018 tax -- state
22 income tax return over 10 months from the extended due
23 date provided by the FTB for the victims of the Camp Fire
24 disaster, Appellants were assessed the late-filing
25 penalty.

1 Second, Appellants also argue that they filed
2 their tax return late because their accountant was not
3 responsive for four months from October of 2019, resulting
4 in them having to find another accountant. Appellants
5 contend that the late-filing penalty should be abated
6 based on their reliance on their non-responsive
7 accountant. Appellants stated, and supported by
8 Respondent's Exhibit E, that Appellants' accountant that
9 they retained in late February of 2018 was in business in
10 2018 and 2019, and that they provided everything needed
11 for the accountant to prepare their return.

12 While Appellants have not provided any evidence
13 of how many times they contacted their accountant and what
14 efforts Appellants took to compel their accountant to
15 compel -- excuse me -- to compel their accountant to file
16 their return, the longstanding law is clear under the
17 United States Supreme Court's decision in U.S. v. Boyle,
18 where the Court held that the failure to timely make a
19 filing of a tax return is not an excuse by the taxpayer's
20 reliance on an agent, and such reliance is not reasonable
21 cause for a late filing. The Supreme Court noted that one
22 does not need to be a tax expert to know that tax returns
23 have fixed filing dates, and taxes must be paid when due.

24 Here, Appellant stated that while they had the
25 funds to pay their liability, they just needed the

1 accountant to tell them. While FTB is sympathetic to
2 losses and difficulties that Appellants have suffered, as
3 well as their tax preparer's lack of response despite the
4 tragically terrible situation that they have undergone,
5 the U.S. Supreme Court in Boyle, the OTA in the Appeal of
6 Quality Tax and Financial Services Incorporated and the
7 BOE in the Appeal of Thomas and Gail Boehme, have all held
8 that each taxpayer has a personal nondelegable obligation
9 to file a tax return by the due date, and, as a result,
10 found that reliance on a tax professional is not
11 reasonable cause for filing a return late.

12 Even if Appellants have made numerous attempts to
13 follow up with their accountant regarding their filing,
14 the law is clear. There's a nondelegable duty to timely
15 file and pay their balance. Therefore, Appellants'
16 contention that the late-filing penalty should be abated
17 because they relied on their accountant to timely file the
18 return is not reasonable cause for the abatement of the
19 late-filing penalty.

20 Third and finally, Appellants also ask for the
21 late-filing penalty to be abated because the IRS abated
22 all of their 2018 penalties. FTB may only follow a
23 federal determination of a penalty abatement when the
24 abatement is for reasonable cause. Appellants have not
25 shown that the IRS abated the penalty for reasonable cause

1 or proved it is -- was not abated under the IRS first-time
2 abatement program. Unlike the IRS, FTB may only abate the
3 late-filing penalty for reasonable cause and not based on
4 compliance history. Respondent can provide a copy of
5 Appellants' IRS master file and reason codes for abatement
6 upon request from the OTA.

7 Appellants have not established their failure to
8 file their return by the due date was due to reasonable
9 cause. FTB's action to deny their claim for refund of the
10 late-filing penalty should be sustained.

11 Thank you. And at this time, I will be happy to
12 answer any questions the panel may have.

13 JUDGE LEUNG: Thank you, Mr. Ricafort.

14 Judge Long, any questions for the Franchise Tax
15 Board?

16 JUDGE LONG: This is Judge Long. I have no
17 questions. No questions from me.

18 JUDGE LEUNG: Thank you.

19 Judge Ridenour?

20 JUDGE RIDENOUR: This is Judge Ridenour. No
21 questions as well. Thank you.

22 JUDGE LEUNG: Thank you, Judge Ridenour.

23 Mr. Gurriere, five minutes for your closing.

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1 there's nothing more that they can do, particularly when
2 they're lied to, there is a deceitfulness. And I tell
3 you, I'm working with the client now to file a complaint
4 with the Director of Practice for Internal Revenue
5 Service. And I think in all honesty, the penalties are
6 wrong, and we have an opportunity to correct that wrong.

7 She has done everything that she could have done.
8 She did not question the validity that she was filing
9 timely. Therefore, I think that she has met a reasonable
10 cause -- clearly has met her reasonable cause, and I would
11 ask that these penalties be abated because there are
12 exceptions to the rule. This is not normal times. It was
13 not normal circumstances, and she had a deceitful
14 practitioner.

15 Thank you.

16 JUDGE LEUNG: Thank you, Mr. Gurriere.

17 Judge Long, any questions for either party?

18 JUDGE LONG: This is Judge Long. No questions
19 from me. Thank you for your time today.

20 JUDGE LEUNG: I can't hear you, Judge Long.
21 Could you speak into the mic.

22 JUDGE LONG: Can you hear me a little bit better?

23 JUDGE LEUNG: Just slightly.

24 JUDGE LONG: I have no questions. Thank you.

25 JUDGE LEUNG: Thank you.

1 Judge Ridenour?

2 JUDGE RIDENOUR: Judge Ridenour. Also no
3 questions. Thank you, everybody.

4 JUDGE LEUNG: Thank you.

5 For the Franchise Tax Board is this unique, this
6 circumstance where the folks who were impacted by either
7 the Camp Fire or other disasters in California in the past
8 couple of years, have you noticed any uptick or increase
9 in these types of late filings because of the Camp Fire?

10 MS. SWAIN: Thank you for that question, Judge.
11 This is Ellen Swain.

12 You know, I think that the Camp Fire for all of
13 us who were in California was just a devastating
14 experience. And, you know, those of us who smelled the
15 smoke when it hit the levels of purple on the apps that
16 tell you about the air quality, and we weren't -- we were
17 traumatized, and we weren't in the middle of it. So
18 there's -- there's no dispute from the Franchise Tax
19 Board's position that what the Appellants have been
20 through is devastating.

21 And as you can see in the record, what we tried
22 to do, as it shows in the exhibits, the prior colleagues
23 who had this case were trying to reach out to find out,
24 you know, please help us understand what happened. Please
25 give us the information. And so we've really always

1 approached this case with a level of, I think, curiosity
2 and openness as to what taxpayers are experiencing because
3 I think I'd like to believe we would do that with every
4 case. But I think the truth is we all smelled all that
5 smoke, right?

6 So there's never been any dispute that these are
7 people who were deeply impacted. But we're in a position
8 of having to follow the United States Supreme Court
9 precedent of Boyle. And so when you -- and so when you
10 ask, like, is this a greater situation? You know, I think
11 to answer that question on point, I think that's exactly
12 why we look to what the IRS has done and then the
13 government in terms of its declaration of a disaster.

14 And those disaster declarations happen all
15 throughout the year, and they did make a disaster
16 declaration for this fire and only gave two extra weeks
17 for filing. Sometimes they'll give a much longer period
18 of time, but this was two weeks. And then the Governor,
19 I'm assuming had made his own declaration, and the FTB
20 followed that. So we usually walk in tandem with every
21 one of these disasters. And because I can tell you that
22 because there has been so many notable fires, again just
23 this really tragic fact for California, you know, both
24 Northern and Southern, but certainly we've had more in
25 recent years in Northern.

1 And we do see those. We have seen, certainly, a
2 number of disasters -- disaster relief statements go out,
3 a number of extensions related to disasters as they happen
4 throughout the country. I've actually been involved and
5 seen them when we've had taxpayers that were in Louisiana,
6 and that's a different type of problem. That's a
7 hurricane problem. So we certainly see the extensions.
8 We follow those extensions, and we have -- and the
9 taxpayers follow those as well.

10 Thank you.

11 JUDGE LEUNG: Thank you, Ms. Swain.

12 Mr. Gurriere, almost the same question for you.
13 In your practice, how often have you gone in front of the
14 taxing authority to ask for an extension because of the
15 Camp Fire or other disaster, and how often have you gotten
16 those penalties knocked off other than for -- other than
17 for the IRS good-filing history exception for reasonable
18 cause? Mr. Gurriere?

19 MR. GURRIERE: I do representation work, Judge.
20 And I don't preparer tax returns, and I don't file
21 extensions for taxpayers. Mr. Vincent does. That's his
22 practice. I usually go in afterwards when there is a
23 penalty or an enforcement issue, a lien issue, offer and
24 compromise, those types of things. But I can tell you
25 that I have filed various requests for abatement based on

1 the fire, and this is the only time we've been denied.

2 And I would have to say, the State and I really
3 didn't have much interaction. And, hopefully, they can
4 see now that -- that she was taking prudent business care.
5 But could I have Mr. Vincent answer your question about
6 the filing of extensions because of the fire?

7 JUDGE LEUNG: Yes, you can, but I'm more
8 interested in whether how many did you file after the fact
9 of requesting abatement and how many were granted. So
10 I'll let you finish up first and then we'll go to
11 Mr. Vincent.

12 MR. VINCENT: He asked, essentially, how many
13 you've filed for abatements in the past and how many times
14 you essentially were successful in getting the penalties
15 abated.

16 MR. GURRIERE: Well, for the Paradise Fire I
17 think I've had five cases that I've submitted and four
18 have been accepted.

19 MR. VINCENT: And all the IRS ones.

20 MR. GURRIERE: Yeah, IRS. Now, if I can just
21 say, Judge, that we put in a request for abatement, both
22 for first-time penalty and also for reasonable cause. The
23 IRS did not reject our reasonable cause, but it was easier
24 for them to say we will give you abatement of all the
25 penalties based on their past record and their first-time

1 policy.

2 JUDGE LEUNG: Okay. Thank you. And,
3 Mr. Gurriere, you mentioned you have filed a complaint
4 against another preparer at the IRS. How about the
5 Hoskins, the preparer who did her return this time? Did
6 you file a complaint? Was a complaint filed against this
7 preparer also?

8 MR. GURRIERE: Yeah. We -- we have not filed the
9 complaint. We're working on that. And the complaint
10 would be that he had lied to the taxpayer. And for
11 whatever reasons, he did not file the tax return timely.
12 And I can tell you this won't be the first time for this
13 individual. And I've asked the client, "Do you want to do
14 this," because she's probably not going to get any relief
15 other than the taxpayer or the preparer will either be
16 sanctioned or -- in a case like this, he probably won't
17 lose his license, but he'd have some penalties imposed.

18 JUDGE LEUNG: Okay. Thank you.

19 One last time for our panel members.

20 Judge Ridenour or Judge Long either one of you
21 have any questions?

22 JUDGE RIDENOUR: This is Judge Ridenour. No, but
23 thank you.

24 JUDGE LEUNG: Thank you.

25 Judge Long?

1 JUDGE LONG: This is Judge Long. No questions.
2 Thank you.

3 JUDGE LEUNG: Okay. I hear no questions from
4 Judge Long.

5 Okay. That concludes our hearing for today. I'm
6 closing the record.

7 We anticipate sending out our decision within 100
8 days. We thank everybody for their time and their
9 participation at this hearing and for the great
10 presentation.

11 This will be the last hearing of the day, and so
12 you all have a great day and take good care of yourself.

13 MR. GURRIERE: Can I ask one last question?

14 JUDGE LEUNG: Yes.

15 MR. GURRIERE: Yeah, the process, how long will
16 this take before we hear back, and how will we hear back?
17 Would it be through the mail or --

18 JUDGE LEUNG: You will be getting a written
19 decision from us within 100 days from today.

20 MR. GURRIERE: Okay. Great.

21 JUDGE LEUNG: So that will be -- you know, I'm
22 thinking if we have -- if OTA has your email address,
23 it'll be attached to an email. Of course, we normally
24 would mail it out anyway. So we hope to get it out by,
25 you know, within 100 days.

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MR. GURRIERE: Thank you, Judge.

JUDGE LEUNG: Okay. Thank you. Have a great
day. Bye now.

(Proceedings adjourned at 11:53 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
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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 1st day
of August, 2022.

ERNALYN M. ALONZO
HEARING REPORTER