

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. HENDERSON,) OTA NO. 21037406
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, June 16, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 9:48 a.m.
and concluding at 10:35 a.m. on Thursday,
June 16, 2022, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ SARA HOSEY
ALJ DANIEL CHO

For the Appellant: K. HENDERSON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
JOEL SMITH

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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 6.)
(Department's Exhibits A-F were received at page 6.)

OPENING STATEMENT

	<u>PAGE</u>
By Ms. Henderson	7
By Mr. Smith	12

REBUTTAL

	<u>PAGE</u>
By Ms. Henderson	19

1 Cerritos, California; Thursday, June 16, 2022

2 9:48 a.m.

3
4 JUDGE TAY: Let's go on the record.

5 We are opening the record in Appeal of Henderson
6 before the Office of Tax Appeals, Case Number 21037406.

7 This hearing is being convened on June 16th, 2022.

8 Today's appeal is being heard and decided equally by a
9 panel of three judges. My name is Richard Tay. I will be
10 acting as the lead judge for the purposes of conducting
11 this hearing. Also on the panel today are Judge Sarah
12 Hosey and Judge Daniel Cho.

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

15 MS. HENDERSON: Kaishelle Henderson.

16 JUDGE TAY: Thank you.

17 And Respondent.

18 MR. SMITH: Joel Smith for the Franchise Tax
19 Board.

20 JUDGE TAY: Thank you.

21 The issue we will discuss today is whether
22 Appellant has shown error in Respondent's claim for refund
23 denial for the 2014 tax year. Prior to the hearing we
24 circulated exhibits submitted by both parties in a file we
25 call a hearing binder. It contains Appellant's Exhibits 1

1 and Franchise Tax Board's A through F. Today Appellant
2 submitted three more exhibits, which will be added to the
3 record, Exhibits 2 through 4.

4 There were no objections to admitting the
5 exhibits into evidence; is that right, Appellant?

6 MS. HENDERSON: Correct.

7 JUDGE TAY: And Respondent?

8 MR. SMITH: Correct.

9 JUDGE TAY: Okay. The exhibits will now be
10 admitted into evidence.

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

13 (Department's Exhibits A-F were received in
14 evidence by the Administrative Law Judge.)

15 We will start with Appellant's presentation. And
16 before she begins, I would like to swear her in.

17 So would you please stand and raise your right
18 hand.

19

20 KAISHELLE HENDERSON,

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

24

25 JUDGE TAY: Okay. Thank you. Appellant, you'll

1 have 30 minutes. Please begin whenever you're ready.

2

3 PRESENTATION

4 MS. HENDERSON: I think it's best if I just go
5 ahead and read off what I prepared. Sorry. I'm going to
6 try.

7 JUDGE TAY: That's okay. Please take your time.

8 MS. HENDERSON: I'll try to get through it. It's
9 really hard.

10 JUDGE TAY: Would you like to take a couple of
11 minutes? We can take a short break if you would like.

12 MS. HENDERSON: No. No. I -- no. I can do it.

13 JUDGE TAY: Okay. Whenever you're ready. Please
14 take your time, though.

15 MS. HENDERSON: Okay. First, I would like to say
16 thank you for taking the time out to hear my case. It's
17 been an incredibly rough few years for my family and I.
18 I'm experiencing an extremely difficult divorce, financial
19 hardship, job relocation, new home search, and now
20 beginning life as a single mother.

21 My ex-husband who was a taxpayer, who was
22 responsible for all of our tax needs while we were
23 married. Originally, when I mentioned to him that we were
24 receiving notices on my state tax, he assured me not to
25 worry, and he would take care of it. I trusted that he

1 would actually do so. But this was not the case, and this
2 was in 2017.

3 I received my first wage garnishment in July of
4 2019. I contacted the State Tax Board and was told that
5 all I needed to do was to file my taxes for 2014 to get
6 the garnishment released. At this time, I did not really
7 think about the time limit that taxes needed to be
8 submitted by. I reached out to a new tax preparer, Andrew
9 Alexander to get this completed. We submitted this on
10 7/8/19. On 8/27/19 I spoke to Auburn [sic] at the State
11 Tax Board and was told that the levy was released and no
12 amount was owed after they had received my taxes.

13 Also, Bridgette McCarthy -- those are part of the
14 emails. This would be the bigger one, number -- this
15 would be part of Number 3. Bridgette McCarthy is head of
16 payroll at URBN [sic]. And that's the parent company
17 of -- at Anthropology [sic] where I work. So I went back
18 and forth with her through emails making sure that it was
19 released and making sure they confirmed that they received
20 the release letters and everything back and forth.

21 And so that was in that email that she also
22 confirmed that the notice was received. I think it's on
23 the fourth page that she said -- this was Tuesday,
24 August 27th that she said --

25 THE STENOGRAPHER: I'm sorry. I just need you to

1 slow down just a little bit and just be a little bit more
2 clearer.

3 MS. HENDERSON: Yes. Okay.

4 THE STENOGRAPHER: Thank you.

5 MS. HENDERSON: The last email on page 4 is with
6 my correspondence with my payroll department, and I just
7 wanted her to confirm that she had received the release
8 document from the State Tax Board. And she did confirm
9 that she had received it. And they also told me that no
10 amount was owed at the time. So I'm still going forward
11 as if everything has been processed. I also received a
12 new notice that my return has been denied due to my tax
13 preparer using the wrong filing status. And this is even
14 in the exhibits from the Tax Board.

15 And so he did it single -- by single first, and
16 that's was the mistake he made. So then when I received
17 the new notice, he -- and I also in the email -- and this
18 would be the last email. This would be Number 4. This is
19 just saying -- the email saying that he needed to use the
20 married filing jointly as the filing status. But when we
21 submitted it, I didn't realize that he had put married
22 filing separately and not jointly. So I think that's when
23 his error came in.

24 So after receiving the new notice that my return
25 has been denied due to my tax preparer using the wrong

1 filing status, I finally got ahold of him and emailed him
2 on 9/5/20. I told him that we needed to update the filing
3 status to married filing jointly. And that's the email
4 Number 4, Exhibit 4. He amended the return on 9/6, but
5 again with the wrong filing status as married filing
6 separately.

7 Unfortunately, my tax preparer passed in
8 February 2021 from Covid. So I was not able to get
9 another one done and submit with corrections that I can
10 confirm. That's what I already said. So it's just been a
11 little stressful. I think it would be stressful for
12 anybody. I don't know the ins and outs of the tax world.
13 If you ask me about visuals and merchandising, I can tell
14 you. But I think I made the honest mistake of believing
15 and trusting that tax professionals submit taxes
16 accurately and efficiently. And that was a mistake I made
17 in not double checking to make sure.

18 But also the time frame that I was working with,
19 I was trying to get it in as soon as possible because my
20 wages were being garnished, like, \$4 or \$500. Well, \$414
21 up to -- \$374. So it was important that I stopped it
22 right away. So I didn't take the second to make sure that
23 he put the proper filing status. I just saw amended and
24 automatically, you know, faxed it over.

25 But this has caused a great deal of stress and

1 anxiety on my health and well-being. And then I just hope
2 today that if you will hear enough to get this matter
3 officially closed, it's just one more chapter. My
4 ex-husband -- and this is the Document Number 2 -- he just
5 recently filed for bankruptcy, and he was able to get the
6 tax portion of his tax release and not mine. And he did
7 all of the tax preparation, and it's basically I'm left
8 with the mess to kind of clear up.

9 So I'm just hoping today -- that's why we're
10 here. That's why I'm continuously trying because I know I
11 think I still have a couple of more years I have to go
12 through. But I'm just hoping today we can close this out
13 or give me a decision so we can close it out and get it
14 finally taken care of because it's been awhile. You know,
15 the time kind of just goes by quickly.

16 But thanks again for your time. Thanks.

17 JUDGE TAY: Thank you very much, Ms. Henderson.
18 I appreciate you giving your presentation. And I
19 acknowledge that it's been a difficult time for all of us.
20 And so I appreciate you coming here and allowing us to
21 hear your side of the story.

22 I'm going to ask -- turn to my panel and ask to
23 see if there are any questions at this time for Appellant.

24 Judge Hosey, any questions for Appellant?

25 JUDGE HOSEY: No questions at this time. Thank

1 you.

2 JUDGE TAY: Thank you.

3 And Judge Cho?

4 JUDGE CHO: I don't have any questions either.

5 Thank you.

6 JUDGE TAY: Okay. I would also like to give
7 Franchise Tax Board, since Appellant did give testimony,
8 to cross-examine, if there are any questions from
9 Franchise Tax Board. So, Respondent, please proceed with
10 any cross-examination you might have.

11 MR. SMITH: I do not have any questions at this
12 time. Thanks.

13 JUDGE TAY: Okay. Thank you.

14 In that case I will move onto Respondent's
15 presentation.

16 Respondent, you have 10 minutes. Please begin
17 whenever you're ready.

18 MR. SMITH: Thank you.

19

20 PRESENTATION

21 MR. SMITH: Good morning. My name is Joel Smith.
22 I'm with the Franchise Tax Board.

23 The issue this morning before us relates to a
24 claim for refund. It is not Appellant and her then-spouse
25 do not have an existing tax liability for the 2014 tax

1 year. The relevant facts are relatively straightforward.
2 The FTB received information from the IRS regarding
3 Appellant and her then-spouse's 2014 federal tax return
4 that was filed with married filing jointly filing status.
5 The FTB did not have a California tax return on record for
6 Appellant or her then-spouse. So the FTB issued a request
7 for tax return and an NPA in 2016 based on the information
8 it received from the IRS. Once the NPA went final, the
9 FTB received payments that satisfied Appellant and then
10 her spouse's tax liability.

11 Appellant did, as she mentioned, file an original
12 tax return for the 2014 tax year using the married --
13 excuse me -- using the single filing status, and then
14 filed an amended 2014 California tax return in 2020 using
15 the married filing separately filing status. The FTB did
16 review Appellant's tax returns and denied them based on
17 the fact that she did not use the same filing status that
18 she and her then-spouse used for the federal 2014 tax
19 year.

20 Under Revenue & Taxation Code Section 18521,
21 taxpayers are required to use the same filing status for
22 their California tax return that they used for their
23 federal tax return. As mentioned in the FTB's claim
24 denial letter, there are two very narrow exceptions that
25 do not apply in this appeal. And then also subdivision

1 (e) of our R&TC Section 18521, does allow Appellant to
2 file a separate 2014 return if it was done within the time
3 frame allowed under Revenue & Taxation Code Section 18567.

4 That time frame is, for the 2014 tax year, would
5 be April 15th, 2015, is the original tax return filing
6 date. The extended due date is October 15th, 2015. As
7 mentioned, Appellant's original tax return filed in 2019
8 is well after that deadline, which means she needs to use
9 the same filing status for California that she used for
10 the federal 2014 tax year.

11 Based on the evidence in the record and
12 California law, the FTB properly denied Appellant's claim
13 for refund. I can answer any questions you may have.
14 Thank you.

15 JUDGE TAY: Thank you, Respondent.

16 I will now turn to my panel to ask if they have
17 any questions.

18 Judge Hosey, any questions for Franchise Tax
19 Board at this time?

20 JUDGE HOSEY: I'm just checking my notes. Just
21 give me one minute. Is there an element to this case that
22 includes the statute of limitations? This is for you,
23 Mr. Smith. Thank you.

24 MR. SMITH: I mean, yes. I mean, there's kind of
25 two things going on at once. There's the statute of

1 limitations. The primary issue as I see it is the
2 changing of the filing status. And so that's why these
3 returns were denied. As for the statute of limitations,
4 I'm kind of -- I need some more clarification as to what
5 exactly you're asking, please.

6 JUDGE HOSEY: Yeah. I was just trying to figure
7 out if she had her last payment received, if there was
8 another way to -- or if she was barred by the statute of
9 limitations from that date?

10 MR. SMITH: So the last payment received was --
11 the primary issue is this is a joint liability.

12 JUDGE HOSEY: Right.

13 MR. SMITH: So for Appellant or even her
14 then-spouse to file separate returns and to then request a
15 refund off of those, it's just not allowed. Now, if a
16 joint return is filed -- which has not happened -- then
17 perhaps, you know, we -- the FTB would review it, and
18 there would be an avenue available there. I just can't
19 comment on that since it hasn't happened.

20 JUDGE HOSEY: Okay. I understand. Thank you.
21 No further questions, Judge Tay.

22 JUDGE TAY: Thank you, Judge Hosey.

23 Judge Cho, any questions?

24 JUDGE CHO: Yeah. I'm just going off the
25 questions that Judge Hosey asked. So is it Respondent's

1 position that the original return and the amended return
2 don't qualify as claims for refund?

3 MR. SMITH: So not that they don't qualify as
4 claims for refund, it's that they've been denied because
5 they -- since the tax return wasn't filed, the tax return
6 serves as the claim for refund. And because the tax
7 return does not have the same filing status as the federal
8 tax return, which is required under Section 18521, those
9 returns are denied as valid claim for refunds for -- in
10 the -- in Appellant's request for claim for refund. I
11 mean, it's just -- I'm not entirely sure how to further
12 explain that the claims for refunds, which are tax
13 returns, are not proper, given the federal filing status.

14 JUDGE CHO: Let me see if I can make the question
15 a little more pin-pointed. So would the original return
16 on July 8th, 2019, be considered a claim for refund?
17 Whether it's denied or granted, that's not the question.
18 Just can it be a claim for refund?

19 MR. SMITH: Yes. Just as the second amended
20 return was denied as a claim for refund, because the
21 return is requesting a refund. And so there are -- the
22 requirements to be a claim for refund are relatively
23 simple as far as, you know, requesting the basis for the
24 claim for refund signed and in writing. So it meets that
25 standard. Just it's denied because it's not a proper

1 filing status.

2 JUDGE CHO: Okay. And I just want to confirm as
3 well. So FTB is stating that there is no liability for
4 Appellant for the 2014 tax year; correct?

5 MR. SMITH: There is no existing liability. I
6 understand Appellant likely, you know, has an issue
7 with -- I haven't looked on the back end of these payments
8 to see where they were coming from. My guess is, based on
9 Appellant's testimony, some of these payments were from
10 her. So there's likely a concern as to -- as to, you
11 know, not being too excited about that being the case.

12 So -- and since that first return was filed in
13 '19 and some payments were received in '21, that would be
14 like today. There's no liability whereas perhaps as part
15 of Appellant's timeline of events, there would be a
16 liability that followed her original return. Does that
17 make sense?

18 JUDGE CHO: Yes. Yes, it does. Thank you. And
19 I think just one more follow-up question. And I hate to
20 do hypotheticals, but just in the -- in the instance that
21 if we find that this was a valid claim for refund, would
22 any of those payments that she made be refunded to her?

23 MR. SMITH: So if you find that it's a valid
24 claim for refund, meaning find that it was appropriate
25 that she use a different filing status than at the federal

1 level, I first -- I -- we need to know what return you
2 consider to be the one to establish a refund. Because
3 then that date would dictate what payments may or may not
4 be available for refund under Section 19306, provided
5 that's the statute that your panel decides is the one that
6 you grant the claim for refund under.

7 JUDGE CHO: Okay. So would FTB be prepared to
8 let us know what payments would fall under Section 19306
9 at this point in time?

10 MR. SMITH: At this point in time, none of them
11 would be granted a refund, again, because this is a joint
12 liability with Appellant and then her then-spouse. I
13 mean, there's no -- to my knowledge, there's no mechanism
14 available to split this liability in a way that would
15 allow one of the taxpayers to receive a refund when it's a
16 joint liability.

17 I mean, there's no -- there's no dispute as to
18 the validity of the NPA and the tax liability due as a
19 result. So there was a long answer to your question.
20 Right now I can't tell you what amount would be available
21 under a statute because there's been no return filed to
22 indicate a refund is appropriate.

23 JUDGE CHO: Okay. Thank you for your time.
24 Those are the questions I had.

25 JUDGE TAY: Okay. I think I might have some

1 questions later on. But I will allow Appellant to have 10
2 minutes on rebuttal, and then I'll open it up for
3 questions for both parties once again. Okay.

4 So, Ms. Henderson, please proceed whenever you're
5 ready. You have 10 minutes.

6

7

REBUTTAL

8 MS. HENDERSON: I think I have three questions.
9 One, if I would have filed the correct filing status
10 originally would have -- would this have all been, like,
11 cleared up a long time ago?

12 JUDGE TAY: Oh, sorry. Ms. Henderson, you're
13 actually allowed to ask the party any question. You can
14 direct questions to us, and we can ask the Franchise Tax
15 Board. But -- yes.

16 MS. HENDERSON: If that's, like, that's one of my
17 first questions. If it had the proper filing status
18 originally, the first amendment -- the first return in
19 2019, would this have all gone away? So that's number
20 one. And then I was actually told -- I think Judge Hosey
21 brought it up. I was actually told that I was not allowed
22 to file a third. I have to -- it was either a telephone
23 call or, actually, I have form. I would have to find it.

24 But I was told I was not able to file a third one
25 just because we had -- I had messed up the first two with

1 the filing status. And then I wasn't able to do an
2 additional one to get it cleared up with the correct
3 filing status. And so -- and then three, I just thought
4 I -- I find it interesting that it's a joint liability.
5 So it's hard to say, like, somebody gets a refund, but
6 then also on Exhibit 2, it's easy to say that they're not
7 liable for this amount. Does that make any sense?

8 Like, you could say, hey, you know, you are
9 excused or, you know, you filed bankruptcy, so you're
10 excused for this portion. It's like, you know, A and B,
11 you're excused for, you know, A and B. You know, it's not
12 Kaishelle now, on me. But when it comes for refund, I
13 can't say that I should be owed the amount that I was
14 paying when I shouldn't have. If I would have filed the
15 original filing status the correct way, then I wouldn't
16 have had to pay it anyway.

17 I think that's where my frustration comes in.

18 JUDGE TAY: Okay. Does that conclude your
19 rebuttal?

20 MS. HENDERSON: Yes. Thank you.

21 JUDGE TAY: Okay. Thank you.

22 I'll start off just by turning it to Franchise
23 Tax Board to answer her first question, whether -- I think
24 the question was whether if she had filed with the correct
25 filing status three years ago, would that have resolved

1 the issues here?

2 MR. SMITH: So based on the amounts reported on
3 that original return filed in '19 with the single filing
4 status, it likely would not have been accepted because the
5 joint -- the joint liability, based on the federal
6 information the FTB received, indicated income in excess
7 of \$100,000. So if someone were to file a return that
8 indicates an amount significantly lower than that or a
9 different amount, the FTB would then review that to make
10 sure the numbers matched.

11 Now, if Appellant files just checking the box
12 married filing jointly but only reports her income, then
13 that's -- that's not going to be enough to prove error in
14 the FTB's assessment. So just checking the box is --
15 would not have solved the issue absent amounts that
16 correspond to information FTB had available at that time.

17 JUDGE TAY: Okay. I'm going to turn to my panel
18 to see if they have any questions. Okay.

19 Judge Hosey, you have questions?

20 JUDGE HOSEY: Thank you. Yes. I'm looking at
21 18521 right now, the time frame to file. I thought it
22 was -- is it four years, Mr. Smith? I need to -- file
23 using the same filing status as used on the federal income
24 tax return, or is it stated somewhere else?

25 MR. SMITH: The 18521 is the amount of time

1 that -- so subdivision (e) --

2 JUDGE HOSEY: Thank you.

3 MR. SMITH: You're asking if there's a -- for
4 Appellant to file a separate tax return?

5 JUDGE HOSEY: Yeah. I'm trying to answer her
6 question about timing if she had filed earlier.

7 MR. SMITH: So the separate return shall not be
8 made be either spouse or domestic partner after the period
9 for either to file a separate return has expired.

10 JUDGE HOSEY: Okay.

11 MR. SMITH: And R&TC Section 18567 provides the
12 time frame with which to file a timely return. Now, the
13 four-year statute of limitations is a different item. And
14 then real quick just to clarify. Appellant's Exhibit
15 Number 2 regarding her then-spouse's tax liability is from
16 the IRS that has no relation to the FTB.

17 JUDGE HOSEY: Yeah. That was my next question I
18 was going to ask, Ms. Henderson. This is your husband's
19 filing with the bankruptcy to release the federal tax
20 lien. Did you file for bankruptcy as well for these tax
21 years, or is it just him as an individual?

22 MS. HENDERSON: It's just him as an individual.
23 I have not.

24 JUDGE HOSEY: Okay. And it's for 2013 and '14?

25 MS. HENDERSON: Correct.

1 JUDGE HOSEY: Okay. Okay. Those are all my
2 questions. Thank you both.

3 Thank you, Judge Tay.

4 JUDGE TAY: Thank you, Judge Hosey.

5 Judge Cho, any questions?

6 JUDGE CHO: I don't have any more questions.

7 Thank you very much.

8 JUDGE TAY: I am so sorry. I think that you said
9 you don't have any questions. Okay.

10 Okay. I have a few questions. So just in terms
11 of my understanding of the timeline. Appellant and her
12 then-husband filed a tax return -- a federal tax return,
13 but did not file a California tax return. Their
14 California tax return would have been due April 2015?

15 MR. SMITH: Correct. And then the automatic
16 extension due date of October 15th.

17 JUDGE TAY: Okay. And I'm going back to the
18 four-year statute of limitations again. And so the
19 four-year statute of limitations would have expired
20 April 2019?

21 MR. SMITH: Correct.

22 JUDGE TAY: Okay. Now, Appellant filed their
23 original California income tax return later in 2019 in
24 July; is that correct?

25 MR. SMITH: Yes, July 8th, 2019.

1 JUDGE TAY: Okay. And then the amended 540 or
2 the 540X in September of 2020?

3 MR. SMITH: Yes. September 8th.

4 JUDGE TAY: Okay. I'm looking at Franchise Tax
5 Board's Exhibit C, which includes the payments that were
6 received by the Franchise Tax Board. Is that an accurate
7 list of the payments that would ultimately lead to, you
8 know, a total amount of 70 -- \$800 dollars give or take?

9 MR. SMITH: Yes.

10 JUDGE TAY: Okay. Now, if I take -- let me make
11 sure I understand your position with regard to the
12 original tax return filed in 2019. Now, Judge Cho asked
13 questions about whether or not that would be considered a
14 valid claim for refund, which is different than a valid
15 tax return for filing.

16 MR. SMITH: That's the question?

17 JUDGE TAY: That's my premise. Okay. And you
18 can disagree that, and please state your position on that.
19 And so would -- I'm just going to reiterate the question a
20 little bit. Would that original return that was submitted
21 in 2019 be a valid claim for refund, even if it may not be
22 a valid tax return for filing?

23 MR. SMITH: Yeah. So and I apologize. I may
24 have stumbled over my words more than once. Yes, the
25 original return is a claim for refund. It meets the

1 limited requirements of a claim for refund. That is in
2 writing. It's signed, and it states the basis for the
3 refund.

4 JUDGE TAY: Okay. Excuse me. So now it also
5 sounds like -- and I'm just trying to understand your
6 position that even as a valid claim for refund, the
7 amounts requested are -- are not allowed because they're
8 not accurate or they don't match with the federal amounts
9 that you received, based on the federal information you
10 received?

11 MR. SMITH: Yeah. No, that wouldn't -- that's
12 not accurate, and I apologize if that's what you took away
13 from that. The question I got I thought was if Appellant
14 had filed as married filing jointly, would this go away.
15 And all I'm saying is just checking the married filing
16 jointly box by itself doesn't mean that the return is
17 going to be accepted because there was married filing
18 jointly at the federal level.

19 The amounts reported on the return would then,
20 you know, need to comport with the information the FTB has
21 available. The amounts do not have to be exact to the
22 federal amounts. I mean, there are different tax laws in
23 California than there are at the federal level. So
24 there's no expectation that the amounts would be the exact
25 same.

1 JUDGE TAY: Okay. Oh, sorry. I didn't mean to
2 interrupt. So then can you -- would you please kind of
3 maybe reiterate your position as to why the claim for
4 refund is denied, okay. Because that's a separate issue
5 than whether or not the returned was filed with the same
6 filing status. There's a certain tax position and reasons
7 that Appellant is saying that she is entitled to a refund,
8 right.

9 But so far, we haven't heard reasons why the
10 refund substantively should be denied. With her return
11 she provided a W-2, wage information. And so that all
12 needs to be assessed and processed and then determined
13 whether or not that refund should be allowed or denied.
14 So can you please explain Respondent's position on that?

15 MR. SMITH: So that was a little long. What was
16 the exact question?

17 JUDGE TAY: Sorry. Let me try to make that a
18 little bit more succinct. What is Respondent's position
19 on Appellant's claim for refund on a substantive level?

20 MR. SMITH: Okay. So substantively not using the
21 same filing status matters because your tax -- the tax --
22 there's just a number of things that are different
23 depending on your filing status. So that would be one
24 reason substantively that the claim for refund was denied.
25 And then the second one would be that the joint return

1 liability -- or excuse me. It wasn't a return. The joint
2 liability, the amounts on the claim for refund wouldn't
3 establish a claim for refund based on the joint liability
4 that was at issue.

5 So the amount as I recall the return asked for,
6 like, a \$10 refund or something. It just didn't --
7 substantively a joint liability cannot then become an
8 individual liability. So it seems to me that
9 substantively not using the same filing status is a reason
10 to deny the claim.

11 JUDGE TAY: I'm going to take a five-minute break
12 to discuss with my panel, and then we'll come back.

13 So let's take a five-minute recess, and we'll go
14 off the record.

15 (There is a pause in the proceedings.)

16 JUDGE TAY: Let's go on the record again.

17 Thank you both for your presentations and your
18 responses to our questions. I have one more question for
19 Respondent. Now -- I'm sorry, two more questions. One,
20 your position is that Appellant has not filed a valid tax
21 return yet; is that correct?

22 MR. SMITH: My position -- I don't necessarily
23 consider it a position -- is that Section 18521
24 subdivision (a) applies when it reads, except as otherwise
25 provided in this section, an individual shall use the same

1 filing status that he or she used on his or her federal
2 income tax return filed for the same taxable year.

3 JUDGE TAY: If -- I'm sorry. Here, Appellant
4 filed a valid claim for refund, but according to
5 Respondent, has not filed an appropriate tax return.
6 Would there be any relief available for Appellant in the
7 situation where -- any relief available assuming the
8 valid -- the claim for refund was valid but no valid
9 return has been filed.

10 MR. SMITH: So just filing a valid claim for
11 refund does not mean someone is entitled to an actual
12 refund. So I'm not sure if that's what you're asking. I
13 mean, the first thing would be -- one way would be to file
14 a married filing jointly tax return for the 2014 tax year.
15 And I don't know what that return would look like as to
16 whether or not that would even -- there would be a refund
17 to be had. So, I mean, you can't create refunds out of
18 thin air. The refunds that have been provided to FTB to
19 this point do not indicate the Appellant is entitled to a
20 refund.

21 JUDGE TAY: Sorry. Come back at me one more
22 time, please. Could you repeat that last part again.

23 MR. SMITH: You can't create refunds out of thin
24 air. So what's been provided to this point does not --
25 Appellant hasn't established she's entitled to a refund

1 based on primarily Revenue & Taxation Code Section 18521,
2 which explicitly states taxpayer shall use the same filing
3 status. And as I mentioned, just checking the box itself
4 doesn't necessarily indicate a taxpayer gets a refund.
5 The underlying amounts reported would need to comport with
6 the information available to FTB at that time.

7 JUDGE TAY: Okay. I have no further question,
8 but I will turn to my panel one more time just to see if
9 they have anything.

10 Judge Hosey, any questions?

11 JUDGE HOSEY: No further questions. Thank you
12 both.

13 JUDGE TAY: And, Judge Cho, any questions?

14 JUDGE CHO: I don't have any questions either.
15 Thank you very much.

16 JUDGE TAY: Okay. Thank you everyone for
17 presentations. The record in this appeal is now closed,
18 and the appeal will be submitted for a decision. We will
19 endeavor to send you our written decision no later than
20 100 days from today.

21 This hearing is now adjourned. Thank you again.

22 (Proceedings adjourned at 10:35 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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I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 12th day
of July, 2022.

ERNALYN M. ALONZO
HEARING REPORTER