

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
C. HYATT,) OTA NO. 21078175
)
)
APPELLANT.)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, September 27, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:38 p.m. and concluding at 2:27 p.m. on
Tuesday, September 27, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ OVSEP AKOPCHIKYAN

Panel Members: ALJ SARA HOSEY
ALJ SHERIENE RIDENOUR

For the Appellant: C. HYATT

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOEL SMITH
NATASHA PAGE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received at page 7.)
(Department's Exhibits A-F were received at page 6.)

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California; Tuesday, September 27, 2022
1:38 p.m.

JUDGE AKOPCHIKYAN: We are going on the record in the Appeal of C. Hyatt before the Office of Tax Appeals. The OTA Case Number is 21078175. Today is Tuesday, September 27, 2022, and the time is approximately 1:38 p.m. We are holding this appeal electronically via Webex.

This appeal is being heard by a panel of three Administrative Law Judges. My name is Ovsep Akopchikyan, and I'm the lead judge for purposes of conducting this hearing. Judges Sarah Hosey and Sheriene Ridenour are the other members of this panel. All three judges are equal decision makers. Although I am the lead judge for purposes of conducting this hearing, any judge on this panel may ask questions or otherwise participate to make sure we have all the information we need to decide this appeal.

Now, for introductions, will the parties please identify yourself by stating your name for the record, beginning with Appellant.

MR. HYATT: Cliff Hyatt, Appellant.
JUDGE AKOPCHIKYAN: For FTB.
MR. SMITH: Joel Smith for FTB.

1 MS. PAGE: Natasha Page for the FTB.

2 JUDGE AKOPCHIKYAN: Thank you all.

3 As discussed and agreed upon by the parties at
4 the prehearing conference on September 7, 2022, and I have
5 noted in my prehearing conference minutes and orders, the
6 issue in this appeal is whether Appellant's claims for
7 refund for the 2011, 2012, and 2013 tax years are time
8 barred by the statute of limitations.

9 With respect to the evidentiary record, FTB
10 provided Exhibits A through N during the briefing process.
11 Appellant did not object to the admissibility of these
12 exhibits at the prehearing conference. After the
13 conference, FTB submitted one more exhibit, Exhibit O,
14 which are collection notices that FTB issued to Mr. Hyatt.

15 Mr. Hyatt, do you have any objection to
16 Exhibit O?

17 MR. HYATT: No.

18 JUDGE AKOPCHIKYAN: All FTB's Exhibit A through O
19 are entered into the record.

20 (Department's Exhibits A-O were received in
21 evidence by the Administrative Law Judge.)

22 With respect to the Appellant, Appellant provided
23 Exhibits A through F during the briefing process, which I
24 relabeled as Exhibit 1 through 6 during the prehearing
25 conference, so as to avoid any confusion between FTB's

1 exhibits, which are labeled using the letters and
2 Appellant's Exhibits which are labeled using numbers. FTB
3 did not object to the admissibility of these exhibits at
4 the prehearing conference. After the conference,
5 Appellant submitted one more exhibit, Exhibit 7, which is
6 the four-page document containing FTB's internal comments
7 about Appellant's account.

8 Does the FTB have any objection to this exhibit?

9 MR. SMITH: Joel Smith. FTB does not have any
10 objections.

11 JUDGE AKOPCHIKYAN: Thank you. All of
12 Appellant's exhibits, Exhibit 1 through 7 are entered into
13 the record.

14 (Appellant's Exhibits 1-7 were received
15 in evidence by the Administrative Law Judge.)

16 Lastly as discussed, Appellant will testify as a
17 witness at this hearing. This oral hearing will begin
18 with Appellant's presentation, including his testimony for
19 a total of up to 30 minutes.

20 Does anyone have any questions before I swear in
21 Mr. Hyatt for his testimony?

22 Hearing none, Mr. Hyatt, will you please raise
23 your right hand.

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C. HYATT,

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

JUDGE AKOPCHIKYAN: Thank you, Mr. Hyatt. Please proceed with your presentation when you are ready.

PRESENTATION

MR. HYATT: Thank you, Your Honors.

This started for me in November of 2020. I received a letter from my bank that FTB was attempting to seize over \$100,000 in two accounts owned by my 98-year-old aunt. I am the primary caregiver for my aunt. She happens to be 100 years old now, so she's still going. These accounts were two accounts that were in a joint status. She also had accounts in her own name, but these particular accounts were joint status accounts because I needed access to that money in the event of her death and the power of attorney expired.

I called FTB on December 1st, 2020, and spoke to Jennifer Sorenson, Senior Compliance Rep for Complex Accounts, about this situation. She has handled my accounts at FTB, apparently, for several years. It's the first time I had spoken to her though. I explained to her

1 I was unemployed since 2010. I had virtually no income
2 until 2017. Ms. Sorenson reviewed my account and informed
3 me that FTB records showed income from me from 2011 to
4 2017. Ms. Sorenson explained that this income had been
5 estimated based on the payment of mortgage interest on my
6 home -- my payment, mortgage interest on my home. This
7 home in Los Angeles was foreclosed on in 2015.

8 Ms. Sorenson confirmed that there were no records
9 of any hard income, that is any income on the document of
10 W-2s or 1099s, and that tax liability was solely created
11 out of my ability to pay my mortgage. She also said that
12 the current collection efforts on my aunt's accounts were
13 the result of income created from 2013 through 2016.
14 Ms. Sorenson indicated that what I was telling her was
15 true, that I was unemployed during these years, that
16 actually no tax liability from 2013 through 2016 should
17 release the levies on my aunt's accounts. Which, of
18 course, pleased me at the time.

19 That's when it occurred to me, what about 2011
20 and 2012? Remember she had said that this particular levy
21 was based on 2013 through 2016. I was unemployed those
22 two years '11 and '12, and I never paid any taxes or filed
23 any returns those years. That's when Ms. Sorenson told me
24 that money from the foreclosure of my home in 2015 was
25 used to pay fictitious tax liabilities for 2011 and 2012.

1 I asked her if I could get that money back, and she said
2 she'd look into it.

3 Let's take a look at Exhibit 7 now, if we may.
4 Exhibit 7 is a four-page document. It's entitled,
5 "Account Comments", and this is a document that was
6 presented to me in discovery by FTB. It reflects comments
7 that are made ostensibly contemporaneously by people who
8 worked on my account at various points in time. As you
9 see on the left-hand side, the left-hand column, you see a
10 date -- you see a number of dates. And then you also see
11 further across from left to right as user identifier.
12 That's ostensibly the person who is making the comments.
13 And then in the note text boxes you see the actual
14 comments being made.

15 I want to draw the Panel's attention to basically
16 the center of this exhibit -- of the first page of this
17 exhibit, which I've labeled Exhibit 7.1. The date is
18 12/1/2020. And you can see the user or the author of
19 these comments is Jennifer Sorenson. And then there's a
20 bunch of text to the right. And, basically, if you read
21 that text from that box and the box right below it and the
22 box below that, it confirms what I just testified to.

23 Let me highlight a couple of points here. In the
24 middle of the second box of that date 12/1/2020, she
25 states that, "Based on this information and no hard

1 income, we can abate tax years 2013 through 2016." So,
2 again, she's following along what I had told her during
3 the conversation -- during our former conversations that I
4 was unemployed during those years in filing these returns.

5 Further down she states, I quote, "There is also
6 question in the assessment of the '10 -- 2010 through 2012
7 tax years that were paid through the E.P. claim, advised
8 that 2010 tax year was based on hard income." As an
9 aside, I actually told her I was working in 2010. That
10 was my last year, so I had income that year.

11 Back to her statements, quote, "He indicated that
12 this was the last year he worked and had the partnership.
13 Tax years '11 and '12 based on estimated income only with
14 no hard income and, again, the debtor," -- now we go to
15 the next box, which it sort of runs -- "had no income
16 those tax years, so should not have to file. We have a
17 large amount of payments on those tax years. We'll look
18 into the source of these payments and whether we can
19 reverse the assessments for a refund. Explain S.O.L.,"
20 which is the statute of limitations.

21 So I think that generally confirms what I
22 testified to earlier, that this is the conversation I had
23 with Jennifer Sorenson, and she documented in the books
24 and records of FTB. I'd like you to turn the page to the
25 second page of Exhibit 7. And if you look at the very

1 top, you'll see a couple of other entries, the first two
2 by Jennifer Sorenson where she states, I requested to
3 release -- quote, "I requested to release the statute of
4 limitations and the refund of over a certain amount of
5 \$60,342.40 for the 2012 tax year and \$57,758.77 on tax
6 year of '11."

7 So you could see what's going on now. About
8 three weeks later she's gone and reviewed my records, has
9 confirmed my -- I was not making any income those years
10 and is now seeking to refund the money that was taken
11 during those two years. And she actually goes on a little
12 further. I think in the next entry she also looks at tax
13 years 2013 as well, \$1,00.96. Even more importantly, if
14 you go further down to the 1, 2, 3, 4, 5, fifth box, okay,
15 and the date here is January 5th, 2021. She submits a
16 request to lead -- her lead. Her lead is her supervisor.

17 She requests to her lead in the email to
18 authorize a statute of limitations refund and a refund
19 done and approve as the debtor had no file requirement,
20 need to refund payment through the collections, statute of
21 limitations refunds needed as follows for tax year 2011,
22 \$57,758.77, tax year 2012, \$60,342.40, tax year 2013,
23 \$2,733.32. This reflects the money that I'm seeking be
24 returned to me in this claim in the course of this appeal.

25 Okay. So now what we have here is the refund

1 being processed within complex accounts, the area that had
2 jurisdiction over my accounts during this period. And you
3 see the box just below that there's an entry by Shallon De
4 Los Santos. Now, I don't know who Shallon De Los Santos
5 is. I've never spoken to her. I've spoken to Jennifer
6 Sorenson several times but never to Shallon De Los Santos.
7 But she, apparently, through the work charts that have
8 been provided to me also worked in Complex Accounts.

9 Jennifer Sorenson was senior compliance
10 officer -- excuse me -- compliance rep. Shallon was a
11 principal compliance rep, which I believe is senior to a
12 senior compliance rep. And she states in her entry,
13 "Completed request for tax years '11 through '13 per
14 collector Jennifer Sorenson." Sorenson is considered the
15 collector. "No file requirement and balances were based
16 on O.L.," which I believe is my occupational license,
17 "will ask co-lead to approve to allow the refunds to be
18 issued."

19 So this matter is now percolating further up the
20 chain within Complex Accounts. It appears that one lead
21 has taken -- has approved it, and now it's going to
22 another lead. The next important entry with respect to
23 this case is further down on the same page, second page of
24 Exhibit 7, number 6. Excuse me. I'm sorry. The date is
25 January 20th, 2021. This is -- excuse me. This is an

1 entry by Leslie Yorston. Leslie Yorston is a person who
2 works in a department called Collection Advisory Team,
3 C.A.T.

4 All right. This is what Leslie Yorston says, do
5 not -- quote, "Do not allow for the 2011 through 2013 tax
6 years to override the statute of limitations. The funds
7 are statute of limitations and are not to be refunded.
8 The 2011 through 2013 tax years were overpaid by the
9 taxpayer. They were not collected by FTB." And that's
10 the only entry that I see in this entire document, that I
11 see in the entire record books and records of FTB that
12 indicates a denial of my claim.

13 Now, who is Leslie Yorston? I was not able to
14 speak to Leslie Yorston. She would certainly be a good
15 person to depose when we get to civil discovery. But it
16 appears that she's someone who works in C.A.T., and she
17 also appears to be a person who was involved in the
18 obtainment of the foreclosure funds. If you look on the
19 very first page of this exhibit, you see her name appears
20 several times from 2015 when my house was foreclosed on.

21 Now, the question I have is, is she the only
22 person who decided this claim should be denied? Is she an
23 attorney? Was this claim ever reviewed by attorneys
24 inside FTB? I see no record of it. I see no record in
25 the account comments of attorney review. I see no record

1 in the privilege log of any attorney review. Again, these
2 are very important issues, I think, for later civil
3 discovery.

4 Okay. That completes the first part of my
5 analysis. My analysis I should mention is really in two
6 parts. This is the factual part. My next part is the
7 legal part -- my legal analysis, which I've obtained --
8 which I've covered in a slide that I handed over to you,
9 the hearing aid. Does the Panel have this hearing aid?
10 Good. Thank you. We can go through this. This will make
11 it easier as an outline if we go through basically the
12 legal arguments.

13 First of all with the respect to the factual
14 chronology, does anybody have any questions? Okay. Thank
15 you. All right. So in a case like this it seems like the
16 clearest thing to do is just start right with the statute,
17 the statute of limitations as it applies to FTB. I'm sure
18 you folks have had plenty of opportunities to look at
19 this. This is RTC Section 19306, subsection (a), no
20 credit or refund shall be allowed or made after the period
21 and in four years from the date the return was filed. And
22 then there is some text after that.

23 But that's what I would consider the first prong
24 of the statute of limitations bar. All right. It's four
25 years from the date the return was filed or date -- read

1 further down -- if someone doesn't file a return, a date
2 of prescribed filing of the return. All right. And the
3 second prong is one year from the date of overpayment
4 whichever payment is later. Okay. So the first prong
5 deals with actual filing of a return or the requirement to
6 file a return. And the second part deals with actual
7 overpayments. All right.

8 So let's look at this statute in the context of
9 my facts, and let's turn to the first page of my handout.
10 And I've entitled it, "Statute Unclear Or Inapplicable."
11 Okay. The statute speaks of refund. Technically I'm not
12 seeking a refund here. A refund implies the actual
13 payment and the return of a payment. I'm seeking
14 restitution of funds that were obtained through an
15 involuntary collection.

16 We're going to get into that in more detail
17 later. But all of this money -- virtually all of this
18 money came from the foreclosure of my home, and some may
19 have come from bank levies as well. But all of it was
20 involuntary. None of it was the result of any voluntary
21 payments.

22 Does the statute deal with that situation? I
23 don't see any reference to a collection or the collected
24 funds in the statute. The statute speaks of returns being
25 filed. Well, I didn't file a return, and I think it's

1 uncontested that I had no obligation to file a return. So
2 that doesn't apply. The statute speaks of overpayment,
3 when it says in the second prong, one year from the date
4 of overpayment. Well, I never made any payments. How is
5 there an overpayment if I made no overpayments? What we
6 have here is a pure collection. So that's my first point,
7 the statute was either unclear or just inapplicable.

8 My second point under the legal analysis -- this
9 is the second page of my handout. There's no direct case
10 precedent here. And what I mean by that is, as far as I
11 can tell -- again, if people have more information, I'm
12 all ears. I'm working off what I did, my own research and
13 the research that -- and the cases that were provided in
14 the Respondent's brief.

15 But I don't see any case that has all the facts
16 that exist in my case, and I've listed those facts here,
17 the salient facts. No hard income. No tax liability. No
18 obligation to file. No documentation of income stream
19 either from W-2 or a 1099. No voluntary payments or
20 withholding, it's a pure collection case. And no notice
21 of any allocation of the monies collected to the disputed
22 tax years.

23 Now, several cases were cited by the Respondent
24 in his brief. And those cases, most of them are statute
25 of limitations cases. Not all of the, actually, but most

1 are. But none of them have the facts that are similar to
2 mine. If you look at a Gillespie Case, it was an
3 obligation to file in that case, and the taxpayer actually
4 made a payment, and so refunds. So it wasn't a collection
5 case.

6 The Dalm case was actually a gift tax case -- a
7 federal gift tax case where taxes were filed, a payment
8 was made. It's not a collection. There's a federal case
9 called the Prussner case which is actually an estate tax
10 case, all right, not an income tax case, and not even a
11 statute of limitations case. I mean, it's really a case
12 that stands to the proposition that agencies can set very
13 fixed rules that have to be honored, but it's not a
14 statute of limitations case. It's a case in which some of
15 the parties didn't have complete attachments to the filing
16 of their federal tax returns -- federal estate tax
17 returns.

18 The Cornbleth case is a gambling case. Okay. So
19 it involved withholding. Again, not a collection case.
20 So I can't find any case really that deals with a pure
21 collection and no obligation to file. Those are the two
22 key elements. Let's flip the page, and let's go to my
23 third point here in which I tried to apply the statutes if
24 we can, at least wholly apply the statute to these facts.

25 First of all, there's no file return. So the

1 first prong of a four-year bar can apply. All right. So
2 that bar can apply. The second point is after one year
3 from the date of overpayment. Well, no payments were
4 made. So how does the one-year bar apply if no payments
5 were made. There can't be any overpayment. Now, FTB is
6 taking the position that a collection is a payment. I
7 think that's a torturous use of the definition of the term
8 payment, but let's go with that for the time being.

9 Let's say that even if a collection is deemed a
10 payment or triggers the one-year bar is overpayment, not
11 actually the payment. So when was the actual overpayment?
12 There was no credit in my account until the abatement took
13 place, and we went over the facts. The abatement didn't
14 take place until late December 2020. The money was
15 collected in 2015. So you can't really have an
16 overpayment until you actually create a credit. All
17 right.

18 If in fact, if you had looked at my account
19 records, right, if you look at the P&L of my account prior
20 to the abatement, it would show a liability and the
21 payment of the liability and the extinguishment of the
22 liability on my records. But it was not until late
23 December 2020 that that liability was extinguished. And
24 that's when the overpayment took place. Now my request
25 for a return of the money didn't take place also until

1 December. So I can argue, if overpayment is the trigger
2 for the one-year bar, I'm within the one year because the
3 overpayment didn't take place until the liability was
4 extinguished in December 2020.

5 Fourth point, mistake in over collection. I'm
6 going to quote from the Respondent's brief here because
7 it's pretty well written. Overpayment is a claim for a
8 refund after the taxpayer makes a payment, whereas, over
9 collection occurs when amount collected exceeds the amount
10 due. So what you have here is a very clear distinction
11 between payment and collections. Payments are made by
12 taxpayers. Collections are something that are executed by
13 FTB, right. They are very, very different situations.

14 And the statute of limitations does not apply to
15 over collections. That's -- that's the black letter of
16 the law, right. And there's no dispute to that. All
17 right. What we have here is an over collection. All
18 right. Or an improper collection. It is entirely
19 involuntarily. All right. The cases that are cited all
20 dealt with situations -- the cases that were cited in the
21 brief by the Respondent -- all dealt with situations where
22 some payments were being made by the taxpayer.

23 Here, I made no payments. So this is a clear
24 over collection. It's also a clear mistake, right. It's
25 a mistake to take money which is not owed. Now, the

1 Respondent points to a technical advice memo 2001, and a
2 specific example, example 5 in 2001 of this technical
3 advice memo. If you have a chance, you might want to take
4 a look at it. It's really a short read. But essentially,
5 we have a situation in which the taxpayer -- I think it's
6 a hypothetical situation, actually. I'm not sure about
7 that -- but in -- which we have the taxpayer claims a
8 mistake because there was an error in the W-2.

9 In that particular example, the FTB claimed
10 that's not a mistake. The error in the W-2 is not a
11 mistake. And if you read that example very, very closely,
12 you'll see that what really turned that particular case
13 was the failure of the taxpayer to file in that example.
14 All right. That's what vitiated the so-called mistake in
15 the W-2. These facts are very different than mine. First
16 of all there's no W-2, there are no payments, and there's
17 no obligation to file.

18 And I'd like to point out, if I haven't already
19 pointed it out, if you notice from the account comments in
20 some of my conversation with Jennifer Sorenson, probably
21 the most salient point that demonstrates -- excuse me --
22 that demonstrates the argument that these funds should be
23 returned is no obligation to file in connection with a
24 pure collection. Okay.

25 Now, let's go to the last point here, my last

1 legal point. This is the Delay of Discovery Rule, right.
2 And you could see this rule right in the California Code
3 of Civil Procedure. I quote -- this is Section 338(d),
4 "An action for relief on the grounds of fraud or mistake,
5 the cause of action in this case is not deemed to have
6 been approved until discovery by the aggrieved party of
7 facts constituting for the mistake."

8 Well, we don't have fraud here, okay. But what
9 we certainly have is a mistake, and the over collection is
10 a clear mistake. I did not learn that the money from the
11 foreclosure was allocated to tax years 2011, 2012, and
12 2013 until my initial conversation with Jennifer Sorenson
13 on December 1st, 2020, right. That's the date, right, in
14 which the statute of limitations should have started. Or
15 another way to say, is the statute of limitations should
16 have tolled until that particular date.

17 And even my reply brief, I even cited some case
18 law -- it's a federal case law, in which the toll in --
19 which a court holds the tolling is especially appropriate
20 in restitution cases to prevent unjust enrichment. Well,
21 that's kind of what we have here. All right. There's no
22 payment here. There's a pure collection, and what I'm
23 seeking is restitution to prevent the unjust enrichment of
24 FTB obtaining over \$120,000 that they were never entitled
25 to.

1 So let me just summarize, and I think I'm almost
2 done here. I suspect I'm within my time. But I'll
3 summarize in saying there are five legal issues that
4 support the granting of this appeal. First, the statute
5 doesn't apply. The statute applies only to filed returns
6 and payments made. There was no filing here. There was
7 no duty to file. There were no payments made.

8 Second, there's no direct precedent that applies
9 to my facts. In my case there was no hard income, no tax
10 liability, no obligation to file, no voluntary payments,
11 and no notice of allocation.

12 Third, even if you do apply the statute, it's
13 possible to fit, all right -- to fit these particular
14 facts into the one-year overpayment provision of the
15 statute, because the overpayment didn't occur until
16 December 2020. It didn't occur until the tax liability
17 was extinguished in December 2020. So, therefore, I fit
18 within the one-year statute of overpayment. Remember the
19 statute is not triggered by payment. It's triggered by
20 overpayment.

21 Fourth, mistake in over collection. It's very
22 clear that the statute of limitations doesn't apply to
23 mistakes in over collection, right. The example five is
24 very different facts than what we have right here. There
25 was a duty to file in that case. I had no duty to file.

1 Finally, the statute tolls for discovery of
2 mistake. December 1st, 2020, in my conversation with
3 Jennifer Sorenson, I learned of the mistake. The money
4 was over collected and applied to years in which there was
5 no tax liability.

6 The appeal should be granted on these grounds to
7 prevent unjust enrichment. That concludes my
8 presentation.

9 JUDGE AKOPCHIKYAN: Thank you, Mr. Hyatt, for
10 your presentation and testimony.

11 Does the Franchise Tax Board have any questions
12 for Mr. Hyatt?

13 MR. SMITH: Joel Smith. No, I do not have any
14 questions.

15 JUDGE AKOPCHIKYAN: Turning over to my Panel
16 members to see if they have any question.

17 Judge Hosey, do you have any questions for
18 Mr. Hyatt?

19 JUDGE HOSEY: No questions at this time. Thank
20 you.

21 JUDGE AKOPCHIKYAN: Thank you.

22 Judge Ridenour, any questions for Mr. Hyatt?

23 JUDGE RIDENOUR: Also no questions at this time.
24 Thank you.

25 JUDGE AKOPCHIKYAN: Thank you.

1 I also do not have any questions. Thank you
2 again, Mr. Hyatt.

3 Mr. Smith, it is now your turn to make your
4 presentation. You have 15 minutes. Please proceed when
5 you are ready.

6
7 PRESENTATION

8 MR. SMITH: Joel Smith. Thank you. Again, this
9 is Joel Smith with the Franchise Tax Board. Good
10 afternoon.

11 As has been mentioned, the only issue on appeal
12 today is whether Appellant filed his 2011, 2012 and 2013
13 claims for refund before the expiration of the statute of
14 limitations. This is a straightforward statute of
15 limitations appeal. Respondent issued demands for all tax
16 years based on information it received concerning
17 Appellant's payment of mortgage interest. Appellant did
18 not respond to any of those demands.

19 Then under Revenue & Taxation Code Section 19087,
20 Respondent issued valid Notices of Proposed Assessment
21 estimating Appellant's income. Appellant did not protest
22 any of those proposed assessments. Once each of the
23 N.P.A.s, proposed assessments, went final, Respondent
24 commenced with collection action. And Respondent received
25 final payment for the 2011 and 2012 tax years on

1 July 10th, 2015, and final payment for the 2013 tax year
2 on March 27th, 2017.

3 Appellant then filed claims for refund for each
4 of the tax years on March 15th, 2021. As Appellant
5 explained during his case in chief, under Revenue &
6 Taxation Code Section 19306, Appellant had until four
7 years from the original due date of each tax return or one
8 year from the date of overpayment to file a claim for
9 refund. As has been explained in Respondent's opening
10 brief, Appellant failed to file claims for refund before
11 the statutory dates under Revenue & Taxation Code Section
12 19306 for all tax years at issue.

13 As for Appellant's argument as it relates to an
14 over collection, first, the assertion that Estate of
15 Gillespie is not applicable or relevant is unfounded. The
16 Estate of Gillespie is very much on point. That is a --
17 it was the result of assessments based on estimating
18 income from a business license. FTB received payments
19 through the collection efforts, and they were deemed to be
20 barred by the statute of limitations.

21 So here the argument that these are an over
22 collection is not correct. As the technical advice
23 memorandum 2007-01 explains, an over collection occurs
24 when the amount collected exceeds the amount actually due
25 under the law as a result of a clerical or mechanical

1 error. To quote the technical advisement memorandum,
2 "Collection of amounts pursuant to a valid assessment will
3 never result in an over collection."

4 Here Respondent's valid assessments were based on
5 proper estimates of income under Revenue & Taxation Code
6 Section 19087. Respondent pursued collection action after
7 the valid assessments went final. In conclusion, based on
8 the record and California law, Respondent properly denied
9 Appellant's claims for refund.

10 I can answer any questions the Panel has. Thank
11 you.

12 THE STENOGRAPHER: I'm sorry, Judge, but I cannot
13 hear you.

14 JUDGE AKOPCHIKYAN: We're going to take a
15 five-minute break to try and fix my audio, unless you can
16 hear me now.

17 MR. HYATT: I hear you fine now, sir.

18 JUDGE AKOPCHIKYAN: Okay. Perfect. I'm not sure
19 why it's going in or out.

20 But thank you, Mr. Smith, for your presentation.

21 I'm going to turn it over to my Panel members to
22 see if we have any questions for Respondent.

23 Judge Hosey, do you have any questions for
24 Respondent?

25 JUDGE HOSEY: No questions. Thank you.

1 JUDGE AKOPCHIKYAN: Judge Ridenour, any questions
2 for Respondent?

3 JUDGE RIDENOUR: Actually, I do have one
4 question, please. This is Judge Ridenour. I noticed on
5 the N.P.A.s you have a certain amount for, like, 2011,
6 \$55,054.07. But then when you go into the current values
7 displayed, you collected \$57,758.77. So there would be,
8 according to the two documents, an over collection. And
9 so I was wondering if FTB can give their -- explain that,
10 please.

11 MR. SMITH: Joel Smith. Yeah. So for example,
12 Exhibit C would be the 2011 NPA showing the \$55,000, and
13 then Exhibit D shows the amount collected of \$57,000 and
14 change. That difference would be additional interest that
15 has accrued on the accounts since the issuance of the NPA.
16 So basically the interest from the issuance of the NPA to
17 the payment date.

18 JUDGE RIDENOUR: Thank you very much for the
19 clarification. That's my only question. Thank you.

20 JUDGE AKOPCHIKYAN: I do not have any questions
21 for the Respondent.

22 Mr. Hyatt, it's now your turn to rebut the
23 Respondent's arguments and give your final statement. You
24 have up to five minutes. Please proceed when you are
25 ready.

1 MR. HYATT: Thank you, Your Honor.

2

3 CLOSING STATEMENT

4 MR. HYATT: Just a couple of points. I believe
5 Respondent's counsel mention that Gillespie was a good
6 precedent. Gillespie wasn't a collection case. I'm
7 reading Gillespie page 3, Item 11. On December 15, 2013,
8 Respondent received Appellant's payment in the amount of
9 \$21,656. So it was a payment case. It wasn't a
10 collection case, and there also was no obligation to file.
11 So Gillespie was very different than my fact pattern.

12 Secondly, the -- Counsel Smith, he mentioned
13 several collection notices or at least he filed some
14 collection notices. I think it's fair to say something
15 about those notices. First of all, none of -- I don't
16 think any of those notices show -- or there's any evidence
17 anywhere that I actually received any notice. I mean,
18 these were all sent by mail as far as I can tell. Some of
19 them were sent to the wrong address, but some were sent to
20 the address I lived in.

21 I had a home in Los Angeles. I was not in
22 Los Angeles for much of that period, 2011 -- approximately
23 2010 after I left the firm to around 2018. I was in
24 New York quite a bit. My mom was ill during that period,
25 and she passed away in 2018. So I don't recall receiving

1 those notices. I wasn't there, actually, to receive those
2 notices to some extent. People were there for me. And
3 also, these notices in no way -- I didn't see any evidence
4 of any notice that actually showed a collection of funds
5 from the foreclosure.

6 I saw notices that showed delinquency, again,
7 through the exhibits. I saw notices that showed an amount
8 owed, an assessment. I don't see any notice of any type
9 of actual collection. I found out about the collection on
10 December 1st, 2020. And I think the record is clear on
11 that. That's when I learned of it. All right. And
12 that's the date, if we go with the delay of discovery
13 rule, we use for the tolling of the statute.

14 I'm not sure what happened in this particular
15 case, to be honest with you. When I requested the money
16 be returned to me, the money that was taken via the
17 foreclosure, apparently, according to account records,
18 several people approved this account -- excuse me --
19 approved the return of the funds. But then it also
20 appears that one person stopped it, and we don't know who
21 this person really is, and whether this person was using
22 the legal analysis or whether there was any legal review
23 of this internal -- of this situation internal to FTB.

24 When I spoke to executive advisory services
25 later, they also -- which is an office that works with the

1 taxpayer advocate, it also said that their opinions were
2 consistent with Complex Accounts, Ms. Sorenson, and saying
3 they would have a different view and that this money
4 should have been returned because it's a mistake.

5 Once, again, I don't know what happened. I think
6 this case screams more discovery, more depositions, more
7 email. There's only been a few emails that have been
8 produced. But let me say this. If this case gets to
9 federal court and somebody tells the judge that emails
10 have been purposely destroyed, FTB is going to be looking
11 at exposure much higher than what they may owe me as a
12 claim -- 10 or 20 times as high. You destroy emails in
13 federal court, you're looking at a seven or eight-figure
14 fine. So hopefully Joel can find some emails somewhere
15 down the road for the benefit of FTB.

16 Anyway, that's all I have. I want to thank
17 everybody on the Panel. I want to thank everybody at FTB.
18 I want to thank Joel because Joel he's been very courteous
19 and very honest and very professional in providing me any
20 information I asked for in this discovery. And he's been
21 honest and very professional, let me say that again. And
22 thank you for giving me the opportunity to be heard.

23 JUDGE AKOPCHIKYAN: Let me turn to my Panel
24 members for any final questions for either party.

25 Judge Hosey any questions?

1 JUDGE HOSEY: This is Judge Hosey. I do have a
2 quick question.

3 JUDGE AKOPCHIKYAN: I'm having a little trouble
4 hearing you.

5 JUDGE HOSEY: Okay. Can you hear me now? This
6 is Judge Hosey.

7 JUDGE AKOPCHIKYAN: That's better.

8 JUDGE HOSEY: Thank you. I do have a question
9 for clarification for the Appellant, Mr. Hyatt. You said
10 you owned the LA property. Can you clarify what dates you
11 resided there?

12 MR. HYATT: Well, I owned the property from, I
13 believe, 2015 -- excuse me -- 2005 to the foreclosure in
14 2015. I believe that's correct. That's when I owned the
15 property. After I left my firm in 2010 and was
16 unemployed, I still resided there partially, but I spent
17 most of my time in New York.

18 JUDGE HOSEY: Okay. Thank you, Mr. Hyatt.

19 This is Judge Hosey again. I have a question for
20 Mr. Smith as well for the Franchise Tax Board. Can you
21 tell us about the notifications that went to the L.A.
22 property and whether it was properly noticed, Mr. Smith?

23 MR. SMITH: Joel Smith. So I'm guessing you're
24 referencing Exhibit O. So this is the first -- it's been
25 mentioned that these were maybe not received. There's

1 nothing in record to suggest the FTB had notice of another
2 address, meaning, they were issued to Appellant's last
3 known address. And as Appellant's Exhibit 7-1 shows in
4 2015, there is -- there is a back and forth between FTB
5 and the foreclosure trustee as it relates to Appellant
6 having notice of these payments coming to FTB.

7 So in conclusion, there's nothing to indicate
8 these documents were returned to FTB as they were sent to
9 the wrong address. And Appellant seems to note that they
10 were sent to his California address.

11 MR. HYATT: Can I be heard on this as well? This
12 is Christopher Hyatt, the Appellant.

13 JUDGE HOSEY: Mr. Hyatt, this is Judge Hosey.

14 JUDGE AKOPCHIKYAN: Do you want to add to your
15 answer?

16 MR. HYATT: Yeah. I just have one thing to add
17 to Joel's comment with respect to my knowledge of payments
18 were being made to FTB. On the foreclosure of my home --
19 let me make this clear. I owed money from 2010. Okay.
20 And I was well-aware that money from the foreclosure of my
21 home was being used for 2010. I owed a considerable
22 amount of money for 2010. And so that's where I was --
23 that was my understanding that the money from the
24 foreclosure was being used for 2010. I didn't learn about
25 the money from the foreclosure being used for 2011 and

1 2012 until 2020.

2 JUDGE HOSEY: Thank you, Mr. Hyatt.

3 Thank you, Mr. Smith.

4 I think that answers my questions. That's all I
5 have. Thank you.

6 JUDGE AKOPCHIKYAN: Judge Ridenour, any questions
7 for either party?

8 JUDGE RIDENOUR: I'm sorry. Did you ask -- this
9 is Judge Ridenour. No questions. Thank you.

10 JUDGE AKOPCHIKYAN: Judge Akopchikyan speaking.
11 Mr. Hyatt, I do have one questions. Exhibit 7 that you
12 provided has the account comments. On page 1, line 4,
13 there is an entry from May 13th, 2015. It says the
14 taxpayer has protested dispersement of the funds in 2015.
15 Do you recall any facts and circumstances around that
16 protest?

17 MR. HYATT: I believe going back -- again, we're
18 going back a little bit in time. But I believe that's
19 generally accurate in that when I first heard that the
20 money from the foreclosure that was being used to pay my
21 back taxes, I sort of routinely file an objection. But
22 that -- but when -- but I knew all along I owed money from
23 2010, right.

24 And I actually got money from the foreclosure
25 back for -- for over and above the 2010. I got some

1 surplus funds returned to me as well. So that was my
2 understanding, all right, that the money from the
3 foreclosure in 2015 was being used to pay 2010 taxes,
4 which I did owe.

5 JUDGE AKOPCHIKYAN: I don't have any further
6 questions. Does either party have any questions for the
7 Office of Tax Appeals before we conclude the hearing?
8 Hearing none, we are ready to conclude this hearing.

9 This case is submitted on September 27, 2022, and
10 record is now closed.

11 I want to thank the parties for their
12 presentation today, and Mr. Hyatt for his testimony. The
13 Judges will meet and decide this case based on the
14 arguments and evidence presented to the Office of Tax
15 Appeals. We will issue our written decision no later than
16 100 days from today.

17 This concludes the last hearing for today. Thank
18 you all for your participation.

19 (Proceedings adjourned at 2:27 p.m.)
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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
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 13th day
of October, 2022.

ERNALYN M. ALONZO
HEARING REPORTER