

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. CYRUS and B. CYRUS,) OTA NO. 20046130
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, October 20, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. CYRUS and B. CYRUS,) OTA NO. 20046130
)
) APPELLANT.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 12:58 p.m. and concluding at 1:38 p.m.
on Thursday, October 20, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ ASAF KLETTER
ALJ JOHN JOHNSON

For the Appellant: M. CYRUS
B. CYRUS
BRIAN PLAUT

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID MURADYAN
NANCY PARKER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 6.)

(Appellant's Exhibits 1-7 were received at page 23.)

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

P R E S E N T A T I O N

P A G E

By Mr. Plaut	11
By Mr. Muradyan	18

A P P E L L A N T ' S
W I T N E S S E S :

D I R E C T

C R O S S

R E D I R E C T

R E C R O S S

M. Cyrus	7			
----------	---	--	--	--

C L O S I N G S T A T E M E N T

P A G E

By Mr. Plaut	23
--------------	----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Thursday, October 20, 2022

12:58 p.m.

JUDGE LAMBERT: We are now on the record of Office of Tax Appeals oral hearing for Appeal of Marianne Cyrus and Barry Cyrus, Case Number 20046130. The date is October 20th, 2022, and the time is 12:58 p.m.

My name is Josh Lambert, and I'm the lead Administrative Law Judge for this hearing. And my co-Panelists today are Judge John Johnson and Judge Asaf Kletter.

JUDGE LAMBERT: FTB, could you please introduce yourselves for the record.

MR. MURADYAN: Yes. Hello. This is David Muradyan. I represent Respondent Franchise Tax Board, and along with me is my colleague Nancy Parker.

JUDGE LAMBERT: Thank you.

And for Appellant, could you please introduce yourselves.

MR. PLAUT: Yes. I'm Brian Plaut. I'm the TAAPS representative for Appellant Mr. And Mrs. Cyrus, and along with me is Mrs. Cyrus.

JUDGE LAMBERT: Thank you.

As discussed at the conference, the issues to be decided in this appeal are whether the late-filing penalty

1 was properly imposed for the 2017 tax year, and whether
2 there's reasonable cause for the late filing of the return
3 for the 2017 tax year.

4 FTB provides Exhibits A through J, and Appellants
5 provide Exhibits 1 through 6. There were no objections,
6 and that evidence is now in the record.

7 (Appellant's Exhibits 1-6 were received
8 in evidence by the Administrative Law Judge.)

9 (Department's Exhibits A-J were received in
10 evidence by the Administrative Law Judge.)

11 FTB won't be presenting any witnesses, but I
12 believe, Mrs. Cyrus, you were planning on being a witness;
13 is that correct?

14 MRS. CYRUS: That is correct.

15 JUDGE LAMBERT: And after you give your
16 testimony, are you okay if FTB wants to ask you any
17 questions perhaps?

18 MRS. CYRUS: Yes, that's fine.

19 JUDGE LAMBERT: Okay. Thank you.

20 And before Appellant's presentation, before
21 Mr. Plaut starts speaking, I'll just swear you in
22 Mrs. Cyrus, if that's okay?

23 MRS. CYRUS: Yes.

24 JUDGE LAMBERT: Can you please raise your right
25 hand.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

M. CYRUS,

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

JUDGE LAMBERT: Thank you.

So Mr. Plaut, this is your opportunity to explain Appellants' position, and you have 20 minutes, and you can allocate it however you want between your arguments and the testimony. So you may proceed now if you're ready.

MR. PLAUT: Perfect. Thank you, Your Honor. This is Brian Plaut speaking. I think it would be helpful to question Mrs. Cyrus first and then move into my opening statement.

DIRECT EXAMINATION

BY MR. PLAUT:

Q So Mrs. Cyrus to begin, when did you first submit your tax return to the IRS and the FTB?

A I completed it on April 15th and attempted to submitted them. I'm sorry. I completed the returns in April, submitted a request for extension, and it was received and accepted. I attempted to submit them in July. However, because of the amount due I was -- and normally we submit them electronically -- they were kicked

1 back. And I was told I had to mail them in for both FTB
2 and for the IRS.

3 Q And do you normally submit your returns
4 electronically or by paper?

5 A For the last 10 or 15 years it's been 100 percent
6 electronically.

7 Q And why were those returns sent back to you by
8 the IRS and FTB?

9 A When we filed the paper returns in October, by
10 the October 15th deadline, each of the governing bodies
11 sent, like, the tax returns because we had erred in
12 signing them. I'm not sure if I -- I can't remember if I
13 signed them and my husband didn't, or neither one of us
14 signed them. As I said, you know, we're used to normally
15 submitting them electronically. We just printed them and
16 mailed them out, and so we did not sign them. And they
17 were both returned within a matter of weeks.

18 Q And when those returns came back to you, what did
19 you do with them?

20 A For the IRS, we immediately signed them probably
21 within a day and sent them back to the IRS. The FTB was
22 returned a couple of weeks later, and we immediately
23 signed them and put them in -- I believe we FedExed them
24 because they were a couple of weeks past, you know, in
25 terms of us getting them back.

1 Q And in your affidavit, you said you had some
2 conversations with the FTB regarding your payment plan.
3 Could you please tell me about those and approximately
4 when those conversations occurred?

5 A Okay. So in October when I submitted both
6 returns to the FTB and the IRS, I said I gave each --
7 accompanying each return was a personal check for partial
8 payment along with the request for a payment plan for each
9 body. And when I first received the notice back from the
10 IRS, like I said we signed it, sent it back. And they
11 actually responded to my request for the payment plan.
12 And so it's been a big chunk of what was owed and went on
13 a payment plan almost immediately.

14 With FTB, got the check back and the return,
15 resubmitted it. Never heard back from them. So I didn't
16 hear from them in November or December. And quite
17 frankly, I wasn't thinking about them because my husband's
18 prostate surgery -- prostate cancer surgery was in
19 mid-October. And so he was on the road to recovery. In
20 January as we're -- I'm looking to do, you know, the
21 following year's returns, I realize that FTB has not
22 contacted me about either my return or cashed the check or
23 responded to my request for payment.

24 So I called them in January and I said, hey, just
25 want to know if you got everything and if my request for a

1 payment plan has been approved. So it would have been in
2 January and February of 2019.

3 Q Perfect. And during those conversations, did
4 anyone ever tell you that you were delinquent in filing
5 you tax returns for 2017?

6 A No. In fact, the only conversations or the
7 conversations that began in January 2019 were about the
8 payment plan. And we confirmed that I had owed -- I think
9 it was \$18,000 and something dollars and -- I don't
10 remember verbatim, but the first conversation I had was I
11 had to submit the request, I think electronically, or I
12 had to fill out a different form.

13 So I can't remember if it was electronically
14 submitted or faxed or sent back via the mail. It was
15 likely either faxed or electronically submitted, but I
16 filled out the form and they said rather than -- and when
17 I realized they hadn't cashed the check, I was told by FTB
18 to go ahead and send it in electronically, which I did.

19 Q Perfect. And over the course of all of your tax
20 returns for the year 2017, did you promptly respond to FTB
21 notices you received in the mail?

22 A I didn't receive any notices regarding tax year
23 2017 until I initiated conversations with FTB in January
24 of 2019 and then I was getting a couple of different forms
25 to fill out about, you know, the payment plan. And in

1 each form the only thing that was referenced to the actual
2 filing -- to the return of the filing tax return was the
3 date that I filed. And you can see, and I think there's
4 evidence that's supporting that every time I put
5 October 15th, 2018.

6 MR. PLAUT: And, Your Honors, I have no further
7 question but would love if the FTB has any questions
8 before I begin my opening statement, I'd be happy to allow
9 that to happen.

10 JUDGE LAMBERT: This is Judge Lambert. We could
11 just wait until the end of your presentation for
12 questions. Thanks.

13 MR. PLAUT: Okay. Absolutely.

14
15 PRESENTATION

16 MR. PLAUT: So good afternoon, Your Honors.

17 As my client has testified, she's taken every
18 opportunity to ensure that her and husband's taxes would
19 be filed on time. They also took every effort to ensure
20 they paid what was due. My client submitted their 2017
21 tax returns on time by filing to the FTB and the IRS on
22 October 15th, 2018, which was their extended deadline.
23 They're timely filings are established by their physically
24 mailing of the tax return.

25 In November 2018, both the IRS and FTB rejected

1 those tax returns because they were missing a spousal
2 signature. After receiving this news, my clients acted
3 quickly to return their filings, and the IRS processed
4 their return on January 7th, 2019. As shown in
5 Appellants' supplemental exhibits, the IRS even cashed the
6 check that they had sent on November 6, 2018. FTB, on the
7 other hand, did not process their state income tax return
8 until May 31st, 2019, nearly 20 -- sorry -- nearly four
9 months after the IRS.

10 In conversations with the IRS, it was made clear
11 to my clients that the IRS deleted their penalties and
12 reversed the interest charges because they had, in fact,
13 submitted the filing and payment on time, albeit while
14 missing a spousal signature. The FTB on the other hand
15 said they never received such a filing has imposed a
16 burdensome 25 percent penalty with interest on my clients
17 who by their own account had been in constant contact with
18 the FTB officials to ensure they met their duty.

19 These are not criminals who are hiding behind the
20 law and evading the tax man. They are upstanding citizens
21 who took every effort to ensure that they were being
22 responsible in paying their tax burden. In our brief
23 there's a sworn declaration from my client giving a
24 helpful timeline of what exactly occurred.

25 On July 27, 2018, Mrs. Cyrus completed and

1 printed out the federal and state tax returns from turbo
2 tax. Given the amount owed, she sent a paper filing on
3 October 15th, 2018, with paper checks. In mid to late
4 November, she received both paper returns back with
5 missing signatures. Given that they normally e-file, it
6 was a simple oversight that they corrected immediately.
7 They returned both checks -- returned both returns with
8 checks for initial payments and a request for a payment
9 plan.

10 The IRS in January 2019 approved their payment
11 plan, but Mrs. Cyrus proactively reached out to the FTB to
12 engage in a series of calls to setup a payment plan with
13 them, as noted in our supplemental exhibit package. She
14 called numerous times, and after months of going back and
15 forth through the paperwork, she entered into an
16 installment plan with the FTB by May 2019.

17 She had questioned the penalties, and by her own
18 statement under penalty of perjury, she was told to check
19 the box on the paperwork stating that they would present a
20 hardship, and once the bill is paid, she could request a
21 return. At no point in these conversations prior to May
22 2019, did anyone say her return was not received. The
23 only concern, according to my clients, was how she was
24 going to pay. By the time the FTB said they had not
25 received their return, Mrs. Cyrus was already well into

1 her installment plan for her timely filed tax returns.

2 Turning to the law California Revenue & Taxation
3 Code Section 19131 imposes a penalty on late filing of tax
4 returns. By its own terms the section does not apply to a
5 timely filed tax return, which is the case here. Notably
6 Appellants had the same situation with their IRS return.
7 While the IRS initially assessed the penalties, they later
8 reversed because Appellants did in fact submit their tax
9 return on time, although missing one spousal signature.

10 The FTB should follow the IRS' decision to delete
11 the penalties because there was no late filing. However,
12 even if there is any doubt as to whether they should
13 qualify as a valid filing, Appellants did have reasonable
14 cause for the abatement of any penalties associated with
15 that filing. A late penalty can be abated if the taxpayer
16 shows that the failure to pay is due to reasonable cause
17 and not due to willful neglect.

18 Willful neglect as United States v Boyle tells us
19 is a conscious intentional failure or reckless
20 indifference. A timely married filing jointly submission
21 pending one spousal's signature can establish reasonable
22 cause when the taxpayer reasonably believes that their tax
23 return was properly submitted for filing. In the Reifler
24 case, the taxpayer submitted their tax return for filing
25 pending one of the spouse's signatures. Accordingly, the

1 IRS rejected that return, but the taxpayers made no effort
2 to correct.

3 According to the Court, the taxpayers failed to
4 exercise ordinary business care and prudence when they did
5 not attempt to find out why the IRS had sent this return
6 back to them. The Court's reasoning implies reasonable
7 cause would have existed had they attempted to inquire
8 about the rejected returns and then took remedial actions.

9 Mr. and Mrs. Cyrus' position is unlike Reifler.
10 Appellants properly requested an extension to the filing
11 deadline and submitted their tax return before October
12 15th, 2018. Moreover, Appellants conducted reasonable
13 care by promptly responding to the IRS and FTB's assertion
14 that the 2017 tax returns were never filed. Appellants
15 corrected and submitted their California State income tax
16 return and ultimately paid their account in full.

17 All of these actions it responds to and
18 proactively reaching out to the FTB occurred during a
19 period of great personal hardship. Mr. Cyrus was
20 undergoing surgery for late-stage prostate cancer during
21 October 2018. Despite this horrible circumstance,
22 Mrs. Cyrus was still able to get her tax returns out on
23 time.

24 In conclusion, it's clear to see here that my
25 clients took every effort to ensure that they met their

1 burden to file and pay their taxes on time. This is a
2 family of great moral fortitude and those who have always
3 tried to do right in the eyes of the law. They are not
4 criminals evading their taxes but are now being hit with a
5 25 percent penalty. In the eyes of a just outcome, it is
6 clear that my clients should be given the forgiveness of
7 the Court. Therefore, we would respectfully request that
8 the OTA rule in Mr. and Mrs. Cyrus' favor and remove the
9 late-filing penalty and all received interests.

10 Thank you, Your Honors, for taking the time to
11 hear this case. And we reserve three minutes for rebuttal
12 at the end.

13 JUDGE LAMBERT: Thank you, Mr. Plaut.

14 Mr. Muradyan, did you have any questions for
15 Mrs. Cyrus?

16 MR. MURADYAN: This is David Muradyan. I have no
17 questions.

18 JUDGE LAMBERT: Thank you, Mr. Muradyan.

19 And Judge Johnson, do you have any questions?

20 JUDGE JOHNSON: This is Judge Johnson. No
21 questions. Thank you.

22 JUDGE LAMBERT: Judge Kletter, did you have any
23 questions?

24 JUDGE KLETTER: This is Judge Kletter. I just
25 have one question for Mrs. Cyrus or her representative.

1 During your testimony you mentioned that in November of
2 2018 or possibly in December of 2018, the FTB notified you
3 that the return that was filed was missing a spousal
4 signature. And you mentioned that you FedExed a copy back
5 to the FTB with the signatures. Do you have, like, a
6 tracking number for that FedEx, or do you have a copy of
7 that receipt, or something to that effect?

8 MRS. CYRUS: I did provide to Mr. Plaut my
9 banking records at the time. And quite honestly, I don't
10 have the physical FedEx tracking number. However, when
11 you go back into my statements that's -- again, one of the
12 things I was able to control is going back three or
13 four years in bank statements I was able to show when the
14 IRS cashed the check, which was, like, November 7th.

15 I was able to show that there was an electronic
16 notice on my statement to Federal Express. I think it was
17 November 8th or 9th. I can't remember, but I did submit
18 that. Unfortunately, I don't have the specific tracking
19 number. Again, reasonably I thought that I was in good
20 shape until about a year ago.

21 JUDGE KLETTER: Thank you so much, Mrs. Cyrus.
22 This is Judge Kletter speaking. I have no further
23 questions.

24 JUDGE LAMBERT: Thank you. I don't have any
25 questions at this time.

But -- so Mr. Muradyan, you can proceed with your presentation for ten minutes.

MR. MURADYAN: Thank you Judge Lambert.

PRESENTATION

MR. MURADYAN: This is -- good morning -- good afternoon, again. My name is David Muradyan, and I represent Respondent Franchise Tax Board in this matter. And also with me from FTB is my colleague Nancy Parker.

In this case, the sole issue on appeal is whether Appellants have established reasonable cause for abatement of the delinquent filing penalty. For reasons we will provide, they have not. This case arose from a filing enforcement action wherein FTB issued a request for tax return on April 23rd, 2019. Appellants responded stating that they had filed their tax return on October 15, 2018. FTB had no record of such filing.

Appellants ultimately filed their 2017 tax return on May 31st, 2019, more than a year late. FTB processed the return and imposed a delinquent filing penalty of \$4,811.50, which Appellants paid and filed a claim for refund. FTB denied Appellants' claim for refund because Appellants did not demonstrate reasonable cause for abatement of the late filing penalty, and this timely appeal followed.

1 On appeal, Appellants' primary argument is that
2 they filed their 2017 tax return on paper on October 15th,
3 2018, within the extension deadline but that they
4 neglected to sign the return, which according to
5 Appellants, resulted in both their state and federal
6 returns being mailed back to them on or around November of
7 2018. Appellants stated in their claim for refund that
8 upon receiving the returns back from both the FTB and the
9 IRS, they resubmitted both returns with the signatures.

10 However, Appellants have provided no evidence to
11 support their contention that they timely filed their 2017
12 return by mail. In addition, they have provided no
13 evidence that their tax returns were returned by FTB in
14 November 2018 for lack of signatures. Finally, they have
15 provided no evidence that they resubmitted their return.

16 Specifically, FTB reviewed its records, and it
17 has no records of returning a 2017 return to Appellants
18 for lack of signatures. There are no notes or comments in
19 FTB's records for the 2017 tax year, nor in any of the
20 comments in FTB's records that it returned Appellants'
21 submission for failure to sign. In short, FTB's records
22 do reflect that it issued a request for tax return on
23 April 23rd of 2019, and that FTB received Appellants'
24 2017 return a little over a month later on May 31st, 2019.

25 Furthermore, Appellants have not provided any

1 proof of timely mailing their 2017 return. The law
2 provides that unsupported assertions are insufficient to
3 satisfy taxpayer's burden of proof. Appellants should
4 provide proof of their original timely submission and
5 their timely resubmission of their return by providing
6 proof of each mailing, such as copies of the certified
7 mail receipts for each submission.

8 The law provides that it is the taxpayer's
9 responsibility to show that a return was timely filed as
10 set forth in greater detail in FTB's opening brief.
11 Because Appellants have provided no substantiation of the
12 proof of mailing in the form of a registered or certified
13 mailing receipt for either the original submission on
14 October 15th, 2018, or the subsequent resubmission about a
15 month later, the delinquent filing penalty was properly
16 imposed and it should be sustained.

17 The only document the Appellants have referenced
18 as evidence of an October 15th, 2018, return submission is
19 a signed copy of FTB Form 8453, which is the California
20 Online E-File Return Authorization for individuals. This
21 was attached to their paper return. On appeal, Appellants
22 state that this form is evidence of their timely filing
23 because of the date they entered on this form.

24 However, the signing of a return is not evidence
25 of the filing of a return. Appellant stated that they did

1 not e-file or attempt to e-file their 2017 return. Thus,
2 Appellants must provide proof of mailing to demonstrate
3 their timely filing by the mailing of their return. As
4 previously stated, Appellants also argued that they
5 received their 2017 state return back from FTB for lack of
6 signatures in November of 2018. Yet, Appellants did not
7 file their 2017 return until May 31st of 2019, more than a
8 year after the due date -- the original due date.

9 Even assuming Appellants have proof of mailing
10 the original return to FTB and if they have evidence that
11 FTB did send back the return for signatures in November of
12 2018, it is not reasonable to wait five months to resubmit
13 the return. Appellants appear to have only filed when
14 prompted to do so when they received FTB's request for tax
15 return in April of 2018.

16 Appellants also state that Appellant husband had
17 health problems on or around October 2018. FTB
18 sympathizes with the Appellants on this issue.
19 Unfortunately, Appellants have not demonstrated how
20 Appellant's health issues completely prevented them from
21 timely filing the return by the extension due date,
22 considering that the procedure occurred on October 22nd,
23 2018, which was after the expiration of the October 15th,
24 2018, extension deadline.

25 Moreover, Appellants' own admission and their

1 primary argument in this case is that they did in fact
2 mail the return by October 15, 2018, an argument, that as
3 FTB has demonstrated, is unsupported by the evidence.
4 Especially considering that Appellants filed their return
5 in May 2019 when prompted to do so when they received
6 FTB's request for tax return in April of 2019.

7 In fact, this is all supported by referencing the
8 payments Appellants made as their first payment, other
9 than their regular California withholdings, was not done
10 until May 27th, 2019, right around the time that FTB
11 received their return. And the first installment
12 agreement payment was not done until November 19, 2019,
13 over a year after Appellants purported to have filed their
14 return, which was October 15 of 2018.

15 Finally, Appellant stated that the delinquent
16 filing penalty was abated by the IRS and that FTB should
17 follow suit. Unfortunately, the IRS abated the penalty
18 due to Appellants' good filing history and not reasonable
19 cause. And FTB does not have authority to follow a
20 federal first-time abatement of penalty due to good filing
21 history for the tax year at issue. Accordingly, FTB
22 respectfully request that the OTA sustain FTB's action.

23 Thank you. And with that, I'd be happy to take
24 any questions.

25 JUDGE LAMBERT: Thank you, Mr. Muradyan.

1 Appellants, just to clarify I admitted Exhibits 1
2 through 6. It should be 1 through 7. I misspoke but
3 moving on, so 7 is admitted also.

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

6 And, Judge Johnson, did you have any questions?

7 JUDGE JOHNSON: Judge Johnson. No questions for
8 Respondent. Thank you.

9 JUDGE LAMBERT: And, Judge, Kletter, did you have
10 any questions for FTB?

11 JUDGE KLETTER: This is Judge Kletter speaking.
12 I do not have any questions for FTB. Thank you.

13 JUDGE LAMBERT: Okay.

14 And this is Judge Lambert, and I don't have any
15 questions at this time. So Mr. Plaut, if you could
16 provide your closing remarks. Is five minutes, okay?

17 MR. PLAUT: Yes, Your Honor.

18 JUDGE LAMBERT: Okay. Proceed.

19 MR. PLAUT: Thank you, Your Honors.

20

21 CLOSING STATEMENT

22 MR. PLAUT: While Appellants appreciate FTB's
23 arguments, our story could not be clearer. The return my
24 clients submitted for 2017 was not late. Mrs. Cyrus
25 printed the tax return, mailed it in, and took every step

1 necessary to ensure that it was dealt within timely
2 fashion. This includes proactively calling the FTB as
3 noted by our call logs to set up a payment plan and
4 responding to all FTB correspondents in a timely fashion.

5 When my client spoke to the FTB representative
6 Shannon from FTB Station 2464 just this week on
7 October 14th via the phone, it was confirmed to the
8 Appellant that prior to FTB sending their request for a
9 filing, Appellant spoke with the FTB twice, once on
10 January 6, 2019 and once on February 8, 2019, related to
11 tax year 2017. At no point in these conversations with
12 the FTB, did anyone from the FTB let my client know that
13 their returns were not received.

14 Had she been made aware as shown over and over
15 again, my clients would have taken every step to pay their
16 tax burden on time as they do with their much more
17 substantial IRS bill. FTB's reliance on IRS' coding of
18 the deletion of penalties similarly not persuading, the
19 IRS in conversation with my client noted that it was the
20 timely filing that allowed for removal of such charges.

21 Relating to the health issues, as we all know
22 health issues did not start on the day of his surgery.
23 While the actual surgery for Mr. Cyrus occurred after the
24 October 15th, 2020, deadline for the extension, it's only
25 natural to have had the issues related to these illnesses

1 for the weeks leading up to, including presurgery
2 appointments, including health-related issues, and
3 including just dealing with a lot of doctor visits and
4 everything of that nature.

5 Because my clients have shown they made a good
6 faith effort to file on time, the return should be treated
7 as timely. My clients are not asking for money that's not
8 owed to them. Rather, they are asking for what Your
9 Honors see -- rather asking that Your Honors see that they
10 are upstanding members of the community that are being hit
11 with a 25 percent penalty despite their best efforts to
12 file and pay their taxes on time. My clients would once
13 again ask Your Honors to find in their favor and remove
14 all penalties and associated interest for their 2017
15 filing.

16 Thank you again, Your Honors, for your time in
17 hearing this case.

18 JUDGE LAMBERT: Thank you, Mr. Plaut.

19 And I'll ask my co-Panelists if they have any
20 final questions of either party.

21 Judge Johnson, did you have any questions?

22 JUDGE JOHNSON: I do have one question. I'll
23 send it to Respondent Mr. Muradyan. I know your Exhibit H
24 shows a correspondence list for this taxpayer, and I'm
25 looking at -- I believe this would be Exhibit 6 for

1 Appellant, which is their call log we just referenced, and
2 the dates don't really line up. Any comments or
3 explanation of why those dates might not line up?

4 MR. MURADYAN: This is David Muradyan. So
5 Exhibit H is a listing of all of the correspondence. So
6 that includes everything, you know, including documents we
7 receive, documents that we sent. And, whereas, the call
8 log that was submitted is simply just a call log of
9 telephone calls and/or faxes.

10 One other item I would like to add is if you look
11 at Exhibit H, you can clearly see that the installment
12 agreement documentation was first sent by FTB on July 1st
13 of 2019. That is when it first, you know, was initiated.
14 The actual first payment, as set forth in Exhibit E,
15 wasn't until November 19, 2019.

16 So I hope I answered your question but if not,
17 please let me know.

18 JUDGE JOHNSON: Judge Johnson again. Yeah.
19 Thank you. And were you able to check the Franchise Tax
20 Board's call logs internally to see if these Appellants
21 regarding the 2017 tax year, showed up?

22 MR. MURADYAN: So the call logs I was able to
23 confirm the October -- sorry -- the February 8th, 2019,
24 call. There was no notation of the January 6th, 2019, but
25 that, you know, that's simply on a -- based on a cursory

1 review. It's possible that it, you know, could have been
2 in a different system. But kind of going back to that
3 issue again, ultimately, you know, Appellants' rep noted
4 that they started the installment agreement payments
5 before FTB sent the request for tax return when, in fact,
6 the installment agreement payments weren't started until,
7 like, six months after FTB sent the request for
8 information or request for tax return.

9 JUDGE JOHNSON: This is Judge Johnson. Thank
10 you. I just wanted to make sure I have an idea of where
11 the records match up for both sides. Thank you.

12 That's all my question, Judge Lambert.

13 JUDGE LAMBERT: Thank you, Judge Johnson.

14 Mrs. Cyrus, I see you raised your hand. Did you
15 have something that you wanted to add?

16 MRS. CYRUS: I'm not sure when it's appropriate.
17 I wanted to respond to something the FTB said, and I would
18 love to just make a statement as well, whenever it's
19 appropriate, if it's appropriate.

20 JUDGE LAMBERT: Yes, of course. Now is fine.

21 MRS. CYRUS: Okay. So a couple of things. In
22 terms of the record of the timelines, I never said that I
23 began the payment in January of 2019. January of 2019 is
24 when we began discussing between January of 2019 and
25 November of 2019. That's how long it took the Franchise

1 Tax Board to get me -- approve the plan, get all our
2 paperwork together. And, again, I believe I only provided
3 the phone records that I was -- you know, that were
4 confirmed my FTB through July.

5 But again, you can see it's January. It's
6 February. There's a notation in March, and then in
7 March -- from March there's a notation in May. And then
8 there's two notations in July. There's at least six
9 instances that FTB itself had admitted that I was at
10 least -- you know, had phone calls or faces or comments
11 regarding tax year '17. And this agent was very specific
12 about it being just related to tax year '17 throughout
13 that 2019 period.

14 So by FTB's own, you know, person there's
15 evidence that I did contact as I said I did. I also
16 wanted to -- again, I respect everything that Your Honors
17 are hearing this morning, but I also wanted to just say
18 that, yeah, my husband's surgery was October 22nd. To
19 Mr. Plaut's point, he was diagnosed in August. And if
20 you've ever had anybody have cancer in your family, you
21 know, the diagnosis to the surgery is not one day. It's
22 months before.

23 So, again, I'm not asking for sympathy, and I
24 wasn't even saying that because of my husband's cancer
25 diagnosis we didn't file on time. What I was saying is

1 that reasonably -- and I think we keep using that word
2 reasonable -- reasonably we did file on time and in the
3 midst of one of the hardest things in our life, we were
4 continually contacting both tax agencies.

5 Finally, the last thing I wanted to rebut and
6 just make mention of, you know, the IRS, I'm not familiar
7 with their codes. I couldn't say, hey, make sure you code
8 my records with the fact that I proved that I paid on
9 time. But just like FTB, if the IRS is asserting that I
10 didn't file timely, I would have had to prove it. They
11 didn't abate my penalties because we're so nice.

12 We filed timely. I had to prove that we filed.
13 I had to prove that they cashed the check in November.
14 And so noting their own records that they cashed the check
15 in November, that they had everything, that's why they
16 abated my penalties. I'm not in control of the coding
17 that they put on my account -- my records. So I just
18 wanted to rebut that.

19 I still would like to make a statement, but I
20 wanted to just take a breath because I see Mr. Muradyan
21 has his hand up. And I, again, I want to be respectful of
22 this particular forum.

23 JUDGE LAMBERT: Thank you, Mrs. Cyrus. I
24 appreciate it.

25 I see -- yes, I see Mr. Muradyan has his hand up.

1 Did you want to say something?

2 MR. MURADYAN: Yes. This is David Muradyan
3 again. Just a couple of points on the IRS front. It is
4 true as Appellants' claim, the IRS did cash the check in
5 November of 2018. However, for FTB this was not the case.
6 For FTB the first payment that was actually made was all
7 the way in May of 2019. So while they -- you know, while
8 it is true the Appellants did provide a payment to the IRS
9 on November of 2018, for FTB, the very first payment we
10 received wasn't until May of 2019, about six months later
11 than what was done with the IRS.

12 With respect to the coding issue, the IRS IMF
13 clearly indicates that they did abate the penalty due to
14 the first -- due to the Appellants' good filing history
15 and not reasonable cause. Now, you know, FTB would love
16 to do that. However, the law does not provide us with
17 authority to do that. As you all know, the IRA does have
18 authority to abate based in the first time abate good
19 filing history. FTB, for at least the tax year at issue,
20 2017, does not have such authority.

21 And, lastly, I wanted to make a comment about
22 Appellants' -- you know, I want to make it clear. FTB is
23 not arguing that Appellants are, you know, bad people.
24 They're very, very -- they seem to be extremely nice
25 people. We completely sympathize with them. And, in

1 fact, with respect to Appellant's health issue, completely
2 understand and sympathize with the health issue.

3 The point I was trying to make was that
4 Appellants' have not really argued the health issue as
5 reasonable cause. They're argument has been that their
6 payment was submitted on time. So that's why I wanted to
7 raise that up. Again, FTB sympathizes completely with the
8 Appellants. We simply, as you are all aware, we follow
9 the law and try to do the best we can within the confines
10 of the law.

11 With that, I would like to say thank you.

12 JUDGE LAMBERT: Thank you, Mr. Muradyan.

13 Mrs. Cyrus, did you have something you wanted to
14 say?

15 MRS. CYRUS: The last -- I'll do the last thing.
16 I'll just wrap it up, if you don't mind.

17 JUDGE LAMBERT: Sure. Of course.

18 MRS. CYRUS: Mr. Muradyan is correct. We were
19 not arguing the health issue as reasonable cause. It was
20 just part of the timeline. As Mr. Muradyan states, the
21 first payment to FTB was made 2019. I refer FTB back to
22 their own records. They wouldn't accept a payment from me
23 until the tax -- until the installment agreement was
24 approved. That took them from January to May. Okay.
25 Again, I've proven and by their own records I've shown my

1 calls. And so with all of that, that ends, sort of, my
2 defense. I would just like to make my last statement at
3 this time. Bear with me. I wrote it down.

4 Your Honors, thank you again for taking the time
5 to hear my appeal. I know you guys have sat through a
6 number of cases here today. However, for me there is only
7 this one, and this represents my last opportunity to be
8 heard on this matter. You've heard about my timeline and
9 how articulate Mr. Plaut and his colleagues were able to
10 represent my assertions.

11 I want to say that 2018 was a difficult year, and
12 I don't say that for your sympathy. This is, you know,
13 again, as Mr. Muradyan eloquently stated, I'm not asking
14 for sympathy. But thank you for the sympathy you have
15 shown. Between the spousal cancer diagnosis and the
16 subsequent surgery while managing household minor
17 children -- I only bring it to -- that when we discuss the
18 whole question of what's reasonable, that you think about
19 what is reasonable for a taxpayer to prove years after
20 several communications with the FTB and the IRS, and only
21 having my end of the communication as evidence.

22 I don't have the recordings of the phone calls to
23 the FTB. I don't have the airtight proof of assertions
24 that the FTB is -- is stating that I should have. But I
25 have a lot of reasonable evidence that I kept at the time,

1 and I've made reasonable attempts to retrieve what I could
2 in support of my claim thus far and for this hearing.

3 FTB's argument is that my abatement from the IRS
4 was due to my good standing as a taxpayer. Again, not
5 knowing what codes they would add to my record, I still
6 submit I had to prove the same assertions to them as I'm
7 attempting to prove to you that I did submit my return on
8 time. If on their end they decided to abate because I was
9 a good filer, that's on them. However, I would have had
10 to prove the same assertions, which they accepted.

11 Finally, with an \$87,000 federal burden and only
12 an \$18,000 state burden, it's not reasonable that I would
13 attempt to paying the higher-heavier burden and ignore the
14 smaller one for a year. Additionally, in my several
15 conversations with FTB, I took their word that by checking
16 the hardship box and paying the full monies due, that I
17 would be eligible for the return of the penalties. Also,
18 I'm not asking for the return of the interest, just the
19 penalties.

20 So if you find that it was reasonable and an
21 honest attempt to cure my burden at the federal level, I
22 could only ask that this sum of evidence before you today,
23 Your Honors, while not complete in FTB's eyes and perhaps
24 not in yours. But I hope you come to the conclusion that
25 not only did I submit my tax return on time, but that I

1 proactively contacted FTB by their own records and entered
2 into a payment plan.

3 Again, not in their control of their timely
4 approval of my payment plan and submitted my payment upon
5 their request in May, they would not accept a request
6 prior to that. At no time prior to May did FTB advise me
7 they were missing my return -- or April. I'm not sure of
8 the dates. Mr. Muradyan mentioned an April date. And, in
9 fact, every document I filled out and returned to the FTB,
10 you will see I make mention of my 10/15/2018 submission.

11 With all of that, I thank you and my colleagues
12 at TAAP. And, Your Honors, I thank you for your
13 consideration and time today.

14 JUDGE LAMBERT: Thank you, Mr. Cyrus. I
15 appreciate it.

16 I'm just going to turn to Judge Kletter and ask
17 him if he has any final questions for either party.

18 JUDGE KLETTER: This is Judge Kletter. I don't
19 have any questions for either parties, but thank you so
20 much for your presentation today.

21 JUDGE LAMBERT: This is Judge Lambert. I just
22 want to ask Mr. Muradyan and maybe I missed it, but is it
23 typical if there's two joint filers filing a return and
24 one doesn't sign it that it would be sent back and not be
25 considered a filing? Do you know?

1 MR. MURADYAN: Typically, you know, when it's a
2 tax return with joint filers, both of them do have to
3 sign. That's -- I would say that's typical. And in this
4 case, we -- like I, you know, I noted our records didn't
5 indicate one way or the other whether, you know, one of
6 them signed or both of them didn't sign, or what the case
7 was because we just simply didn't have any records of it,
8 which is why, you know, we -- in our opening brief we
9 asked if Appellants could provide some sort of
10 documentation or certified mailing receipt to substantiate
11 that fact.

12 JUDGE LAMBERT: And typically, would there be
13 some sort of record you think that it was filed and then
14 not accepted and maybe returned because one person didn't
15 sign it?

16 MR. MURADYAN: I would say, generally, with paper
17 filings, it would be typical for there to be a record.

18 JUDGE LAMBERT: Okay. Thank you.

19 If there's nothing further -- I have no
20 questions. And if there's nothing else to be discussed at
21 this time, then I'm going to conclude the hearing. So I
22 want to thank both the parties for appearing today.

23 And Mrs. Cyrus, I appreciate you testifying, and
24 thank you for appearing.

25 And we are going to issue a written opinion after

1 discussing and examining the evidence in the record, and
2 we will issue the opinion within 100 days. So thank you,
3 and the record is now closed.

4 Have a nice day. Bye.

5 (Proceedings adjourned at 1:38 p.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 21st day
of November, 2022.

ERNALYN M. ALONZO
HEARING REPORTER