

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
J. BALDERSTON AND L. SHIOZAKI,) CASE NO. 21129337
)
APPELLANTS.)
_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, January 25, 2023

Reported by:

Maria Esquivel-Parkinson,
CSR No. 10621, RPR

Job No.:
40045 OTA

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 400 R Street, Sacramento, California,
17 commencing at 9:30 a.m. and concluding
18 at 10:23 a.m. on Wednesday, January 25, 2023,
19 reported by Maria Esquivel-Parkinson,
20 CSR No. 10621, RPR, a Certified Shorthand
21 Reporter in and for the State of California.
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24
25

1 APPEARANCES:

2
3 PANEL MEMBERS:

4
5 ALJ Teresa Stanley

6
7 FOR THE APPELLANTS:

8
9 L. Shiozaki, Taxpayer

10 Eileen Gardiner, Representative

11
12 FOR THE FTB:

13 OFFICE OF TAX APPEALS
14 400 R Street
Sacramento, California

15 Andrea Watkins

16 Nancy Parker
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I N D E X

E X H I B I T S

(Appellants' Exhibits 1 through 15 were admitted at
page 8)

(FTB's Exhibits A through H were admitted at
page 8)

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

P A G E

By Ms. Gardiner

9

By Ms. Shiozaki

12

By Ms. Watkins

26

1 Sacramento, California; Wednesday, January 25, 2023

2 9:30 a.m.

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4
5 ALJ STANLEY: So let's go on the record. And
6 once again, this is the Appeal of Balderston and
7 Shiozaki, Case No. 21129337. It's January 25th, 2022
8 [sic] at approximately 9:30 a.m. in Sacramento,
9 California. I am Judge Teresa Stanley, and I'd like to
10 on the record have the parties identify themselves. So
11 we'll start with Appellant.

12 MS. GARDINER: Good morning. My name is Eileen
13 Gardiner. I'm a CPA in -- licensed in California,
14 office in San Leandro.

15 ALJ STANLEY: Thank you.

16 APPELLANT SHIOZAKI: Taxpayer Linda Shiozaki.

17 ALJ STANLEY: Okay. You have a very soft
18 voice, so when you speak, can you try to project --

19 APPELLANT SHIOZAKI: Sure.

20 ALJ STANLEY: -- a little bit. And stay close
21 to the microphone. I don't want to make you
22 uncomfortable, but --

23 APPELLANT SHIOZAKI: Sure.

24 ALJ STANLEY: -- it will be hard to hear you
25 otherwise.

1 And Franchise Tax Board?

2 MS. WATKINS: Andrea Watkins with the Franchise
3 Tax Board.

4 ALJ STANLEY: And, Ms. Watkins, you also have a
5 soft voice. So make sure you project and keep that
6 microphone right up in your face.

7 MS. PARKER: Good morning. Nancy Parker for
8 Respondent.

9 ALJ STANLEY: Good morning. Thank you.

10 (Reporter clarification)

11 ALJ STANLEY: I did say that. Thank you for
12 catching that.

13 It's January 25th, 2023. And for the benefit
14 of the public and the parties, I note that the Office of
15 Tax Appeals is independent of the Franchise Tax Board
16 and any other tax agency. The Office of Tax Appeals is
17 not a court, but we're an independent appeals agency
18 that is staffed with our own tax experts. The only
19 evidence that I have in order to make a decision is what
20 has been presented by the parties in their briefing and
21 exhibits, which I have reviewed.

22 The issue today is -- oh, I skipped a step.

23 Appellant elected to have this appeal
24 determined pursuant to the procedures of the small case
25 program. Those procedures require the assignment of a

1 single administrative law judge, and Government Code
2 Section 15676.2(b) prohibits decisions issued by a
3 single administrative law judge from being -- from
4 having precedential effect.

5 That's, again, for the public who might tune in
6 and see just one judge and three spots open.

7 The issue today is whether Appellants have
8 established reasonable cause to abate the late payment
9 penalty.

10 Ms. Gardiner, doe that -- is that how you
11 understand the issue to be?

12 MS. GARDINER: Yes.

13 ALJ STANLEY: And, Ms. Watkins?

14 MS. WATKINS: Yes.

15 ALJ STANLEY: Okay. Thank you. And then we
16 had a stipulation that the Franchise Tax Board agrees to
17 refund \$369.39 paid by Appellants on
18 September 2nd, 2021.

19 Is that still in agreement, Ms. Watkins?

20 MS. WATKINS: Yes, it is.

21 ALJ STANLEY: Okay. Appellant submitted --
22 Appellants submitted Exhibits 1 through 15. Franchise
23 Tax Board did not object to Appellants exhibits, which
24 will be admitted into evidence. Appellant did not
25 submit any supplemental evidence.

1 (Appellant's Exhibits 1 through 15 admitted.)

2 ALJ STANLEY: FTB submitted Exhibits A through
3 H, and Appellant -- Appellants did not object to FTB's
4 exhibits, which will be admitted into evidence as well.
5 And FTB also did not submit any supplemental evidence.

6 (FTB's Exhibits A through H admitted.)

7 ALJ STANLEY: So we're going to begin the
8 Appellants' presentation.

9 Ms. Gardiner, do you intend to testify to
10 actual facts of what things happened in the case? We
11 talked about that at the prehearing conference --

12 MS. GARDINER: Yes. Yes.

13 ALJ STANLEY: -- and you said you would be.

14 MS. GARDINER: Um-hmm.

15 ALJ STANLEY: So can I have both Ms. Gardiner
16 and Ms. Shiozaki please raise their right hand.

17 Do you swear or affirm that you will tell the
18 truth, the whole truth and nothing but the truth?

19 MS. GARDINER: I do.

20 APPELLANT SHIOZAKI: I do.

21 ALJ STANLEY: Okay. And at this point,
22 Ms. Gardiner, you can proceed either with a narrative or
23 ask for question-answer, whichever is more comfortable.

24 MS. GARDINER: Okay. It's just a narrative.

25 /////

1 PRESENTATION

2 BY MS. GARDINER, Representative for Appellant:

3 Good morning. I have been working with John
4 Balderston and Linda Shiozaki since 2012 as their tax
5 preparer and consultant. On December 22nd, 2020, I was
6 contacted via email by Linda Shiozaki informing me that
7 her tax situation for 2020 was going to be very
8 different than in previous years. She had sold some
9 stock and she knew she was going to have capital gain
10 tax to pay on these sales. She wanted to ensure that
11 any underpayment penalties would be minimal and then to
12 get an idea of her projected tax obligation, which would
13 be due in April.

14 I prepared an income tax projection for the
15 couple based on information provided for the stock gains
16 and Linda's payroll. John's income was to be similar to
17 his 2019 amounts. Since their AGI for 2019 was under
18 \$150,000, the estimate requirement was just that they
19 needed to make sure they had paid in through estimates
20 and withholding an amount equal to their 2019 liability.
21 I gave them amounts to send in for federal and
22 California estimates by the January 15th due date to
23 minimize any underpayment penalty and then gave them an
24 idea of what would be owed when the returns were
25 finalized.

1 The remaining balance due was quite large.
2 Linda and I discussed several options on how to gather
3 the funds to pay this money. We talked about selling
4 more stock. We talked about taking money out of an IRA.
5 And in each of these, Linda and John were incurring
6 additional 2021 tax liabilities. So Linda did some
7 research and decided that she would try and get a line
8 of credit. Months went by. I finished the returns.
9 Clients made the estimated payment in January, and
10 then -- and the taxes were completed.

11 On May 17th Linda sent me an email confirming
12 that she had made both payments. She had clearly made
13 provisions for her tax obligations to be met. Linda did
14 not realize that the Franchise Tax Board did not receive
15 the funds until she received a notice dated July 8th,
16 2021. She received this on July 13th and she sent me a
17 copy of the email -- of the letter, the notice. I said
18 via email.

19 I asked Linda if she made the payment, and she
20 sent me the confirmation from FTB that a payment request
21 had been made. I was not able to call FTB for a few
22 days with my workload and I was out of town, but when I
23 got back, I did call and spoke to a representative on
24 the 21st of July. He told me that after she received
25 the confirmation but even before the end of the workday

1 on the 17th of May the payment was rejected. His
2 suggestion was to pay the penalty in full and then he
3 explained to me about Form 2917 and how to request a
4 reversal of a penalty if there's reasonable cause.

5 The underpayment penalty in this case was the
6 5 percent of the amount owed which is \$2907.35.
7 Additionally, there's a monthly payment then imposed
8 after that and for the three months until or a fraction
9 thereof until -- the payment was received. That totaled
10 872.21.

11 To establish reasonable cause, the taxpayer
12 must show that their failure to pay timely occurred
13 despite the exercise of ordinary business care and
14 prudence. Taxpayer was not aware and she did not know
15 that her credit line was not equipped to accept a
16 request for a debit payment. There were sufficient
17 funds on the credit line as that has been confirmed.
18 She did enter the correct number for that account and
19 the account was in good standing. Linda Shiozaki acted
20 in a very responsible manner throughout the whole entire
21 tax return process. Willful neglect was never a
22 question and it never came into the picture.

23 ALJ STANLEY: Does that conclude your
24 presentation?

25 MS. GARDINER: For now, um-hmm.

1 ALJ STANLEY: And are you going to ask
2 Ms. Shiozaki to testify to any facts?

3 MS. GARDINER: Yes.

4 ALJ STANLEY: Well, this is your time to
5 present your case as you -- as you wish to do it so --

6 MS. GARDINER: Okay.

7 So you're up now.

8 PRESENTATION

9 BY MS. SHIOZAKI, Appellant:

10 Thank you, your Honor, for this opportunity to
11 present my case in person to show that I have reasonable
12 cause and I acted in good faith to pay my 2020 state
13 taxes in full by the due date of May 17th, 2021 as
14 required by filing electronically.

15 Due to the anticipated higher-than-normal tax
16 liability for tax year 2020, to determine my tax
17 liability I started the tax preparation in late
18 December, much sooner than normal, in order for my tax
19 consultant to be able to estimate my tax liability.
20 Then after -- then after that, I needed to figure out
21 how I was going to pay for my taxes, both federal and
22 state.

23 After I learned what my estimated tax liability
24 was going to be for 2020, I consulted with a friend who
25 looked at my cash and retirement accounts. And upon --

1 he suggested securing a home equity line of credit.
2 This -- this was the first time I applied for this type
3 of loan. The bank required a lot of documents. I
4 started the loan application process in early March, but
5 I did not know whether I would be able to secure the
6 loan before the tax deadline.

7 Through my work I had a strong business
8 relationship with my bank, which I believe is why I was
9 able to -- they were able to push through and get my --
10 that I was able to secure my home equity loan credit in
11 time for the tax deadline. I was happy and felt a sense
12 of relief when the loan was approved as I did not know
13 how I would pay for my taxes otherwise. I did explore a
14 bit on payment plans, but it seemed like it wasn't -- I
15 wasn't sure if I would be -- if they would be able -- if
16 they would approve it.

17 So I proceeded -- after I signed my loan
18 papers, shortly thereafter I received the checks that I
19 used to pay for my federal taxes from the home equity
20 line of credit account. Once I received the final tax
21 voucher for my federal taxes from my tax accountant, I
22 wrote a check from my home equity line of credit
23 checking account, copied the check and the voucher for
24 my records. Then on May 17th, 2021, I went to the post
25 office to mail the check by certified mail and paid for

1 a return postcard so that I would get confirmation of
2 the receipt of my tax payment by the -- by --

3 (Reporter clarification)

4 APPELLANT SHIOZAKI: By the U.S. IRS. Then I
5 proceeded to pay my state taxes on May 17th, 2021. As
6 required by FTB and instructed by my tax accountant, I
7 used the web tax payment system to pay my state taxes
8 using the same home equity line of credit checking
9 account used to pay my federal taxes.

10 Since the tax amount was large, I was rather
11 nervous about entering the account number. I was very
12 careful and triple-checked the amount, the routing
13 number, and checking account number before finally
14 hitting the submit button. At the end of the
15 transaction I expected as I -- when -- I expected to be
16 able to print a receipt with the amount, the account
17 information, routing number, and account number, and the
18 date of payment when the payment was submitted so
19 that -- but -- but so I was very surprised that the web
20 payment system did not provide that. A normal
21 electronic transaction I am used to getting receipt, for
22 instance, when paying property taxes, utility bills and
23 purchased goods.

24 On May 17th, 2021, I received a confirmation
25 email from the FTB.

1 (Reporter interrupted)

2 APPELLANT SHIOZAKI: I received a confirmation
3 email from FTB, Exhibit 5, which stated the following:
4 The email is a confirmation that we received your
5 payment request. If you do -- if you have insufficient
6 funds, the banking information you enter is incorrect,
7 or your account is closed, your financial institution
8 may reject your request.

9 It also noted the -- that -- it would take two
10 days for the payment to clear to -- and -- and to
11 confirm your payment -- to confirm your payment has
12 cleared, review your bank account statement or contact
13 your bank.

14 When I read this, I knew that I had sufficient
15 funds, I entered the correct bank account information,
16 and the account was not closed. So I did not think that
17 even if the bank account information was correct that
18 the payment can be rejected. If the confirmation email
19 had indicated there are many reasons why a payment may
20 be rejected despite entering the correct banking
21 information or if FTB -- oh, sorry -- or if FTB would
22 have noted what type of check accounts is recommended,
23 such as a regular checking account based on their
24 knowledge and instances of type of checking accounts
25 that have been previously rejected repeatedly, or if the

1 email had noted that the FTB will not send confirmation
2 of your payment, therefore, to ensure your account,
3 monitor your bank account. But that was not -- but that
4 was not the case.

5 I also noted in one of the opinions that I
6 reviewed that aside from the home equity line of
7 credit -- and I'm not sure if it's for all type -- that
8 type of account. There was an opinion that also noted
9 that perhaps investment and money market accounts also
10 rejects even if there was a correct account number
11 entered. If after finding out that I could not use the
12 line of credit account checking account number to pay my
13 taxes, and I proceeded to pay my 2020 taxes using my
14 Fidelity Investment checking account -- because when my
15 tax accountant spoke to the FTB representative, there
16 was no guidance in terms of, you know, that it must be a
17 regular checking account. Perhaps they didn't know.

18 So if I had, because that is where I don't
19 really keep a whole lot of money in my regular checking
20 account, then I would have -- have had -- the web
21 payment system would have rejected my payment again,
22 then I would have had to monitor my investment account,
23 and then the -- when I didn't see my payment clear, then
24 I would have probably finally concluded maybe that I
25 need to, you know, transfer funds into my regular

1 checking account. But I also knew that -- but I also
2 knew that my federal tax payment, Exhibit 2 and 3,
3 cleared since the banker called to confirm when they
4 received the check.

5 Unfortunately, I did not -- I was not notified
6 that it's not customary for FTB to notify if there is a
7 issue with the payment. So we received -- I was -- when
8 I received the notification from my bank -- no. Even
9 though the FTB received notification from my -- from the
10 bank about the problem with the payment on May 18th, I
11 did not receive notification from the FTB until two
12 months later. And even in that notice, there was no
13 notification of why the -- the payment was rejected. It
14 was only later in their exhibit that had the information
15 about the May 18th, '22, notice.

16 ALJ STANLEY: I'm sorry. You need -- you need
17 to keep speaking up. Thank you.

18 APPELLANT SHIOZAKI: Okay. It was -- there was
19 documented that they received notification on May 18th
20 that there was a payment problem. And this is when
21 funds need to be transferred right away, you know, we
22 would use wire transfer, the bank would notify us
23 immediately if there is any information of a problem
24 with the transfer of the request, whether it's account
25 information, whether it's something on the other --

1 other side of -- similarly, when my staff pays bills
2 online through electronic -- electronically, she
3 receives a receipt for payment.

4 It should be noted that my staff makes online
5 payment does not have access to the bank account and
6 does not check if every transaction that was made online
7 cleared every time she makes a payment because that
8 would be very inefficient way to run a business. The
9 point I wanted to make was that in normal business
10 practice, what I am used to, if there are any issues
11 with electronic transfer, whether it's a ACH, ETF, or
12 wire transfer, the vendor will immediately notify the
13 payee. And when the transaction goes through,
14 acknowledgment of the transaction -- usually a
15 receipt -- is issued to a payee.

16 I assume FTB requires payment using the web
17 payment system for tax payment over a certain amount so
18 that they can retrieve -- receive the taxes sooner than
19 by mail. To expect that the FTB or web payment system
20 automatically notifies a taxpayer if there were any
21 issues with a payment isn't very unusual based on my
22 business practice or my experience with electronic
23 transfer. And as that is what is normally done in
24 business, it would be highly inefficient to expect that
25 each electronic payment be checked to see if it had

1 cleared. But instead, again we received the
2 notification problem of late payment in the letter dated
3 July 8, Exhibit 6 -- July 8th, 2022, Exhibit 6 around
4 July 13th, approximately, you know, close to two months
5 later from when the -- when they received notification
6 or when -- Exhibit H.

7 Given that I just paid my federal taxes with
8 the same checking account when using an -- okay. Yeah.
9 It's really unfortunate that if I had received
10 notification of the fact that the payment request was
11 rejected on May 18th, 2021, when the FTB received the
12 notice, the 2020 tax -- state taxes would have been paid
13 immediately as it was my intent to pay my 2020 taxes in
14 full by the due date. And the reason and purpose of
15 securing the loan was to pay for my extraordinary large
16 2020 taxes.

17 I believe that I am a responsible taxpayer. I
18 have never been assessed a penalty before. I hope
19 that -- that I -- that -- that -- I'm sorry. I hope
20 that I've demonstrated that I made a good faith effort
21 to pay my 2020 state taxes on time electronically using
22 the Web pay system as required by the State. There was
23 no way that I would have foreseen that I could write
24 checks from the home equity line of credit checking
25 account but could not use the same account number to

1 submit a ACH payment. Even the banker that I normally
2 deal with had to look into the matter and had to talk to
3 the back office who deals with this type of transaction.

4 In the -- in the request to abate the penalty,
5 we did submit a letter from the bank stating the fact
6 that I was not aware that the bank does not accept ACH
7 payments from this account. And she herself did not
8 know that. She had to call the back office that handles
9 this type of transactions. Again, the -- let's see. So
10 when I first submitted the request with when my tax
11 accountant first submitted the request for a refund of
12 the penalty --

13 ALJ STANLEY: Excuse me. You've gotten soft
14 again.

15 APPELLANT SHIOZAKI: I'm sorry.

16 ALJ STANLEY: I'm sorry.

17 APPELLANT SHIOZAKI: I'm sorry. The -- when --
18 when my tax accountant -- when I first approached the
19 bank, they wrote a letter. But in the first letter that
20 was -- that was sent in with the request for a refund of
21 the penalty, it did not note that I had paid my federal
22 taxes using the same bank account.

23 Subsequently, when I received the denial and
24 in -- in the letter, it -- it should be noted that
25 the -- the FTB specialist who denied who wrote the

1 letter said that I had incorrect -- I had the -- it
2 stated that it was an invalid account number. And I
3 would like to note that it was not an invalid number.
4 It was a correct account number. It just was that they,
5 the bank, did not allow -- allow electronic payments
6 through the home equity line of credit.

7 Subsequently, when we received -- so when --
8 subsequently, when I wrote my letter to the OTA, I --
9 we -- and a copy sent to FTB, we submitted another
10 letter stating that the bank -- the bank did not know
11 that the ACH -- that I was not aware of the fact that
12 the ACH was not permissible for a -- from the home line
13 of credit. And also, the fact that -- that -- that --
14 my federal tax payment was paid from the same account.

15 It was also cited in a number of the letters in
16 the law -- summary of the law in terms of electronic
17 payment errors that cited two cases. One was -- one
18 was -- one was the Appeal of Sidney G. Friedman,
19 Friedman, 2018-OTA-077P, July 20, 2018. In this case
20 the -- the appellant failed to push the "Submit" button.
21 And in the case of Appeal of Michael Devon Scanlon and
22 Devon Scanlon, 2019-OTA-075P, July 25th, 2018, this
23 appellant had entered the incorrect account number, not
24 only one time, but had a history of entering incorrect
25 account numbers.

1 So I agree that these -- in these cases,
2 ordinary business care and prudence was not -- did
3 not -- did not -- they didn't -- were -- were not
4 prudent to check their -- because under the email that
5 they would have gotten, they -- it would have sent -- it
6 was incorrect in the case of Scanlon and Scanlon. And
7 in the other one, they would not have received a
8 confirmation letter because the "Submit" button was not
9 pushed, which means that they would -- I would -- I
10 would have expected some kind of email confirming the
11 payment.

12 So I did look when I -- after I submitted it
13 when -- because I did not receive a confirmation when I
14 actually pushed the button, which I normally do, I was
15 looking to see what kind of confirmation I would get and
16 I received a confirmation request, but in the case of
17 Sidney -- Sidney Friedman and Ellen Friedman, that was
18 not the case. So they did not act with ordinary
19 business care to make sure that these -- that they
20 entered the right -- that they submitted the actual
21 payment and in the other case whether the account number
22 was correct.

23 In my work and personal life, I'm very careful
24 by nature. I believe that I behaved reasonably based on
25 my limited experience using electronic transfer and how

1 I am used -- how I am used to in a business setting.
2 I -- I -- paying property taxes and the norm of the
3 business norm that I am used to to receive a receipt
4 from making a payment from -- from an electronic
5 transaction.

6 I -- in addition, we did receive a second
7 payment for request for the \$361 that now the FTB has
8 rescinded and will be refunding, but I -- after I
9 received the notice, I did pay the amount before the
10 deadline of July 23rd. And then when we received the
11 second notice, my tax accountant -- tax accountant was
12 on vacation. So even though I didn't get -- I wanted to
13 wait until I got clarification, but I did pay before the
14 due date, despite the fact that in the actual letter of
15 May 18th it said that in order to avoid any further tax
16 penalty to pay the amount, which I did on July 22nd,
17 2021.

18 Your Honor -- your Honor, I hope I have -- that
19 you will consider all the facts in this particular case.
20 I believe I behaved reasonably -- reasonably based on my
21 business experience in normal business transaction using
22 electronic transfer and that I showed care in trying to
23 meet my tax obligation. I went to pay my state taxes in
24 full by the due date of May 17th, 2021, by securing a
25 home equity line of credit in advance of the tax

1 deadlines, and it was only because I was not able to
2 foresee that I could not use the same bank account for
3 the electronic payment even though it was used to pay my
4 federal taxes.

5 I -- in closing, I respectfully ask that the
6 denial to refund the penalty and interest be reversed.
7 Thank you, your Honor.

8 ALJ STANLEY: Thank you, Ms. Shiozaki and
9 Ms. Gardiner.

10 Ms. Watkins, does the Franchise Tax Board have
11 any questions for any of the witnesses?

12 MS. WATKINS: No.

13 (Reporter clarification)

14 MS. WATKINS: No questions.

15 ALJ STANLEY: Okay. I just had one for
16 Ms. Shiozaki. Did you ever look into the equity line of
17 credit to either confirm that the federal or state --

18 APPELLANT SHIOZAKI: I'm sorry?

19 ALJ STANLEY: Did you -- did you ever look into
20 the -- into -- at your equity line of credit account to
21 see whether the federal and state had cleared or either
22 one?

23 APPELLANT SHIOZAKI: Well, when I knew that
24 I -- the bank cleared my federal I am not in a habit of
25 looking at that. I knew it cleared basically when they

1 called because I said please pay my --

2 ALJ STANLEY: You knew that the federal check
3 had cleared?

4 APPELLANT SHIOZAKI: Right. Because the banker
5 called me to -- because it's a big amount, they -- at
6 that point I knew that the -- the -- and then I received
7 a return payment. When I mailed my federal taxes, I
8 paid for the return postage to get a postcard back. And
9 also, that was -- that was acknowledgment of receipt of
10 my payment, by check.

11 And also -- it was also -- and I always do that
12 because there has been cases where I had to prove that I
13 did make my payment on time and I've had to present
14 that. And it might have been this year's case, I'm not
15 sure, but -- but I also, you know, received a call on
16 May 27th from my banker saying that there's a check.
17 And I said, "Yes. Please pay it" because it's my tax
18 payment.

19 ALJ STANLEY: Okay. All right. Thank you.

20 Now, let's go to -- turn to the Franchise Tax
21 Board. And, Ms. Watkins, you can proceed when ready,
22 but please stay close to your microphone and try to keep
23 your voice up.

24 /////

25 /////

1 PRESENTATION

2 BY MS. WATKINS, Tax Counsel for Franchise Tax Board:

3 Good morning. Again, my name is Andrea
4 Watkins, and I represent Respondent, Franchise Tax
5 Board, along with my co-counsel Nancy Parker.

6 The issue on appeal is whether Appellants have
7 established reasonable cause to abate the late payment
8 penalty for the 2020 tax year. The law provides that a
9 penalty shall be imposed when the amount shown as due on
10 a taxpayer's return is not paid by the payment due date
11 unless the failure to pay on time was due to reasonable
12 cause and not willful neglect.

13 As Appellants have stated, they obtained a line
14 of credit through their bank in order to pay their 2020
15 state and federal tax liabilities. However, when they
16 attempted to pay their California tax electronically,
17 the Appellants' payment was rejected by their bank. As
18 a result, the tax was not paid by its due date and FTB
19 properly imposed a late payment penalty.

20 On July 8, 2021, FTB sent Appellants a Tax Due
21 notice for tax year 2020 that included unpaid tax,
22 penalty, and interest, which Appellants paid on
23 July 22nd, 2021, over two months after the tax due date.

24 In the precedential Appeal of Friedman, the OTA
25 found that in order to establish reasonable cause

1 taxpayers must show that their failure to make a timely
2 payment of tax occurred despite the exercise of ordinary
3 business care and prudence. In Friedman the OTA found
4 that Appellants' error in not completing the Web Pay
5 process and not realizing their payment had failed
6 because they did not check their bank account balance
7 showed the underpayment was as a result of an oversight
8 and lack of due diligence.

9 The OTA further found that the failure to
10 timely remit the balance due on a tax liability caused
11 by an oversight does not by itself constitute reasonable
12 cause.

13 In the precedential appeal of Scanlon, the OTA
14 found that they would expect reasonably prudent
15 taxpayers exercising due care and diligence to monitor
16 their bank account and quickly ascertain whether a
17 scheduled electronic payment had, in fact, been paid.
18 The OTA also found that lack of notice from FTB of a
19 failed payment does not negate Appellants' duty of
20 prudence and due care to verify that a scheduled payment
21 was successful.

22 In the current case, Appellants argue that they
23 have established reasonable cause because they entered
24 the correct bank account number and they had sufficient
25 credit; however, they did not enter a valid account

1 number from which an electronic payment could be made.

2 Appellants claim they were unaware that their
3 payment was not processed until they received notice
4 from FTB. Appellants did not verify that their payment
5 was processed by monitoring their line of credit account
6 as a reasonably prudent taxpayer would do. The payment
7 request confirmation email FTB sent to Appellants
8 instructed Appellants to confirm their payment cleared
9 directly with their bank within two business days, which
10 they did not do. Further the confirmation email also
11 warned Appellants that their payment could be rejected
12 if incorrect account information was provided, which is
13 unfortunately what happened in this case.

14 Appellants claim they entered the correct
15 account information; however, it was not correct for its
16 intended purpose. The evidence shows that Appellants'
17 late payment was the result of an oversight or a mistake
18 and lack of due diligence. Appellants have not met
19 their burden of proof to establish that their failure to
20 pay their 2020 tax on time was due to reasonable cause.
21 Therefore, Respondent respectfully requests that the OTA
22 sustain its denial of Appellants' claim for a refund
23 except for the abatement of \$361.39 of interest and
24 penalty as discussed earlier. Thank you. And I'm happy
25 to answer any questions.

1 ALJ STANLEY: Thank you, Ms. Watkins. I just
2 had one question, and I don't know how familiar you are
3 with Franchise Tax Board's Web Pay system. Does it have
4 any feature where a taxpayer can return to verify that a
5 payment was accepted or rejected?

6 MS. WATKINS: I do know that there's not an
7 email that is sent, but the taxpayer may be able to
8 check that on the MyFTB account. I'm not positive.

9 MS. PARKER: That's correct. That's correct.
10 It would show up on the taxpayer's account as a payment
11 had they registered and went on to MyFTB to confirm it.

12 ALJ STANLEY: Okay. Thank you.

13 All right. Ms. Gardiner, we talked at the
14 prehearing conference about giving Appellants the final
15 word. Do you have anything that you want to add in
16 response to the Franchise Tax Board's presentation, or
17 do you want to conclude at this point?

18 APPELLANT SHIOZAKI: I -- I'm still -- I guess
19 as a taxpayer whose good faith effort was to pay my
20 taxes on time, I'm just wondering if there's many types
21 of checking accounts that cannot -- that can get
22 rejected. And when I read that if you provide the
23 correct checking account number that it may get
24 rejected, I -- it would be better for -- as a taxpayer
25 to know what type of checking account is -- will most

1 likely not get rejected because it's not clear to me.
2 Because, again, as I stated in my presentation, that I
3 could have foreseeably [sic] not paid it from my regular
4 Wells Fargo checking account but paid it from my
5 Fidelity checking account, and then I would have had to
6 go through the same thing and not know why it was
7 rejected, and if there's other types of checking account
8 will get rejected, if the goal of the FTB is to collect
9 the payment and for the taxpayer to pay the payment on a
10 timely basis without -- without -- without a lot of
11 headache, I would hope that perhaps when my accountant
12 had called, there would be some kind of guidance or
13 there would be explicit verbiage in the Web Pay system
14 when you're paying it or in the -- in the confirmation
15 email that says that the FTB will not be sending a
16 receipt and it is the responsibility for the taxpayer to
17 confirm payment through -- whether it's looking at the
18 bank statement or looking at the FTB if you're
19 registered. And if you're not registered, and I believe
20 I had not registered because I was early in a hurry and
21 had some problems, then -- then I would not have been
22 able to, I believe -- I don't believe you can make a
23 payment and then register and find that, you know, that
24 your --

25 (Reporter clarification)

1 APPELLANT SHIOZAKI: I don't know if you didn't
2 register before you made the payment if you could go
3 back and it would be reflected as paid because you
4 weren't registered when made the payment. I just don't
5 know. But I was in a sort of like -- it was like at
6 three o'clock, and then I knew that it had to get paid
7 maybe by the end of the day. So I was sort of -- I
8 believe I had some problems with registering for the FTB
9 portal. But I don't believe that should be -- again, my
10 normal business practice is that I receive some kind of
11 confirmation of the transaction, and any delay in the
12 communication of the rejection only from a business
13 perspective would not be efficient, and that was what I
14 was operating on.

15 ALJ STANLEY: Okay. Thank you, Ms. Shiozaki.

16 APPELLANT SHIOZAKI: Thank you, your Honor.

17 ALJ STANLEY: This concludes --

18 MS. WATKINS: Can I respond briefly?

19 ALJ STANLEY: You have something specific that
20 she said that you wanted to respond to?

21 MS. WATKINS: Yeah. I just wanted to point out
22 that it appears that the payment was rejected by
23 Appellants' bank, not by FTB directly. And she also
24 could have -- you know, if she had trouble signing up
25 for MyFTB, she could have called in to Franchise Tax

1 Board to verify the payment.

2 APPELLANT SHIOZAKI: I didn't -- I didn't know
3 that that could be possible. There's no direction on
4 the payment process that that's -- how one should verify
5 it, which would be, again, very helpful to a taxpayer.
6 Because I think the intent of a taxpayer is to pay the
7 tax on time.

8 ALJ STANLEY: Okay.

9 APPELLANT SHIOZAKI: Thank you. Thank you,
10 your Honor.

11 ALJ STANLEY: All right. Thank you, everyone,
12 for your participation. This concludes the hearing.
13 The record is now closed. And the Office of Tax Appeals
14 will mail a written opinion no later than a hundred days
15 after today. And we are going to adjourn today since
16 there are no more appeals to be heard on this calendar.
17 So you have a good day. Thanks for -- my -- thanks for
18 accepting my constant interruptions to keep your voices
19 up. And have a nice afternoon.

20 APPELLANT SHIOZAKI: Thank you.

21 MS. WATKINS: Thank you.

22 MS. PARKER: Thank you.

23 (Conclusion of the proceedings at 10:23 a.m.)

24 ---oOo---

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

COUNTY OF SACRAMENTO) ss.

I, MARIA ESQUIVEL-PARKINSON, do hereby certify that I am a Certified Shorthand Reporter, and that at the times and places shown I recorded verbatim in shorthand writing all the proceedings in the following described action completely and correctly to the best of my ability:

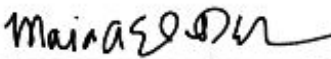
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CASE: In the Appeal of L. Shiozaki
DATE: Wednesday, January 25, 2023

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I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California on this 10th day of February, 2023.



Maria Esquivel-Parkinson
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