

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R. PACK,) OTA NO. 18010026
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, March 16, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 1:03 p.m. and concluding
at 2:19 p.m. on Thursday, March 16, 2023,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ JOSHUA LAMBERT
ALJ CHERYL AKIN

For the Appellant: A. LAVAR TAYLOR
LISA NELSON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRAD COUTINHO
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-13 were received during the prehearing conference.)
(Department's Exhibits A-O were received during the prehearing conference.)

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

| | <u>PAGE</u> |
|-----------------|-------------|
| By Mr. Taylor | 27 |
| By Mr. Coutinho | 46 |

| <u>APPELLANT'S WITNESSES:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|-------------------------------|---------------|--------------|-----------------|----------------|
| P. Becker | 8 | | | |
| L. Vince | 12 | | | |
| K. Hosman | 20 | | | |
| R. Pack | 22 | | | |

CLOSING STATEMENT

| | <u>PAGE</u> |
|---------------|-------------|
| By Mr. Taylor | 51 |
| By Mr. Pack | 51 |

1 Cerritos, California; Thursday, March 16, 2023

2 1:03 p.m.

3
4 JUDGE HOSEY: We are now on the record.

5 This is the Appeal of R. Pack. It is Case
6 Number 18010026. Today is March 16th, 2023, and it is
7 1:03 p.m. We're here in Cerritos, California. I'm lead
8 Administrative Law Judge Sara Hosey, and with me today are
9 Judge Josh Lambert and Judge Cheryl Akin.

10 Can I have the parties identify themselves for
11 the record, please.

12 MR. TAYLOR: Yes. Lavar Taylor, Taylor Nelson
13 Amitrano, appearing on behalf Mr. Pack.

14 MS. NELSON: Lisa Nelson also with Taylor Nelson
15 Amitrano, LLP, up here on behalf of Mr. Pack.

16 MR. COUTINHO: Brad Coutinho for Respondent
17 Franchise Tax Board.

18 MS. ZUMAETA: Jackie Zumaeta for Respondent
19 Franchise Tax Board.

20 JUDGE HOSEY: Thank you.

21 And then Judge Akin has a quick statement she
22 would like to make before we move forward.

23 JUDGE AKIN: Yes. Thank you, Judge Hosey.

24 In reviewing the record for this appeal, I noted
25 that the Protest Hearing Officer has the -- that work for

1 Franchise Tax Board has the same last name as me. I just
2 wanted to clarify for the parties and for the record that
3 there is no relationship and no conflict of interest.
4 That was all. Thank you.

5 JUDGE HOSEY: Any questions before we move
6 forward?

7 MR. TAYLOR: No.

8 JUDGE HOSEY: Okay. Let's do this.

9 So the issue in today's appeal is whether
10 Appellant has established that he timely filed his appeal
11 such that the Office of Tax Appeals has jurisdiction to
12 decide this appeal.

13 As for the exhibits, we marked Exhibits 1 through
14 13 for Appellant and A through O for Respondent Franchise
15 Tax Board at the prehearing conference held on
16 February 16th, 2023. No objections were raised by either
17 party and Exhibits 1 through 13 and A through O were
18 admitted into the record per the prehearing conference
19 minutes and orders. They were issued February 21st, 2023.

20 Do I have any additional exhibits for the hearing
21 today, Mr. Taylor?

22 MR. TAYLOR: No, Your Honor.

23 JUDGE HOSEY: Thank you.

24 Mr. Coutinho?

25 MR. COUTINHO: No additional exhibits.

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JUDGE HOSEY: Thank you.

All right. For Appellants we're going to go ahead and move into the testimony. We are going to --
Mr. Taylor, you're going to call Mr. Becker first?

MR. TAYLOR: Yes.

JUDGE HOSEY: Okay.

MR. TAYLOR: So Appellant calls Mr. Philip Becker.

JUDGE HOSEY: Okay. I'm going to have him come forward to a microphone if that is a possibility. And we'll swear him in so that we can all hear him through our microphones.

MS. NELSON: You can take my seat.

MR. BECKER: Thank you.

JUDGE HOSEY: Thank you, Ms. Nelson.

Okay. Mr. Becker, we're going to swear you in now for your testimony. Please raise your right hand.

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

JUDGE HOSEY: Thank you. Please begin.

1 MR. TAYLOR: Thank you.

2

3 DIRECT EXAMINATION

4 BY MR. TAYLOR:

5 Q Mr. Becker, do you recall signing a declaration
6 in 2018 that was to be submitted to the Office of Tax
7 Appeals in connection with Mr. Pack's appeal?

8 A Yes.

9 Q I'm handing you now what has been identified as
10 Exhibit 12. Please review that document, and let me know
11 when you're ready to continue.

12 A Okay.

13 Q All right. Is that the declaration you signed
14 back in 2018?

15 A Yes.

16 Q And are the statements in that declaration
17 accurate?

18 A Yes.

19 Q Mr. Becker, during year 2016, did you have on
20 file with the Franchise Tax Board a power of attorney for
21 Mr. Pack authorizing you to represent him for personal
22 income taxes for the year 2006?

23 A I did.

24 Q And during 2006, did you ever receive a copy of a
25 document called Notice of Action relating to Mr. Pack's

1 2006 income tax return and audit from the Franchise Tax
2 Board?

3 A No.

4 Q During 2016, did you ever receive from the
5 Franchise Tax Board copies of billing notices sent to
6 Mr. Pack regarding Mr. Pack's 2006 income taxes?

7 A No.

8 Q During the year 2016, did Mr. Pack ever contact
9 you by phone, email, or letter to tell you that he had
10 received a billing notice from the Franchise Tax Board
11 regarding his 2006 income taxes prior to our office being
12 retained in late 2016?

13 A No.

14 Q During the year 2016, did Mr. Vince ever contact
15 you by phone, email, or letter to tell you that he had
16 received a billing notice from the Franchise Tax Board
17 regarding Mr. Pack's 2006 income taxes prior to our office
18 being retained in late 2016?

19 A No.

20 Q During the year 2016, did anyone from the
21 Franchise Tax Board contact you directly by phone
22 regarding collection of Mr. Pack's 2006 California income
23 taxes?

24 A No.

25 Q Now, Mr. Becker, your business office, Becker

1 Financial, moved locations in 2014; correct?

2 A Correct. Yes.

3 Q And after that move occurred -- do you recall
4 what month approximately when that was?

5 A I believe it was in April.

6 Q Okay. And after that move, did all of the tax
7 returns prepared by Becker Financial reflect the firm's
8 new address when listing your office as the preparer?

9 A Yes.

10 Q And that would be the W Street address?

11 A Correct.

12 MR. TAYLOR: I have no further questions.

13 JUDGE HOSEY: Thank you.

14 I'm going to move to the Franchise Tax Board.

15 Mr. Coutinho, any questions for the witness?

16 MR. COUTINHO: No questions thank you.

17 JUDGE HOSEY: Okay. Thank you.

18 I'm going to move to my Panel. Judge Lambert,
19 any questions for the witness.

20 JUDGE LAMBERT: Hi. I had a question. I was
21 just wondering, you stated that Becker Financial moved.
22 And correct me if I'm wrong, but there seems to be some
23 filings in the record that use the Irvine address that
24 occurred after 2014, so just power of attorney from 2016.
25 Do you know why maybe the address -- old address was used

1 in later filings made?

2 MR. BECKER: Are you referring to the 2014
3 filing?

4 JUDGE LAMBERT: Just other filings, like the
5 power of attorney filed in 2016 by Mr. Pack. He continued
6 to use the Becker Financial address.

7 MR. BECKER: Are you referring to the 2082
8 Michaelson address?

9 JUDGE LAMBERT: Let me double check. Yeah,
10 that's right.

11 MR. BECKER: That was inadvertent. I -- you
12 know, that's something, you know, clerical function. And
13 I don't recall that even being discussed.

14 JUDGE LAMBERT: Okay. Thanks. That's the only
15 question I have.

16 JUDGE HOSEY: Okay. Thank you.

17 Judge Akin?

18 JUDGE AKIN: Judge Akin speaking. I don't have
19 any questions. Thank you for your testimony.

20 JUDGE HOSEY: Okay. Thank you, Mr. Becker. I
21 think we are finished with your testimony.

22 Would you like to call your next witness,
23 Mr. Taylor?

24 MR. TAYLOR: Yes. Thank you very much. Mr. Pack
25 calls Larry Vince.

1 JUDGE HOSEY: Good afternoon, Mr. Vince.

2 MR. VINCE: Good afternoon.

3 JUDGE HOSEY: I'm going to swear you in. Can you
4 please raise your right hand. Thank you.

5

6 L. VINCE,

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

10

11 JUDGE HOSEY: Thank you. Please begin,
12 Mr. Taylor.

13 MR. TAYLOR: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. TAYLOR:

17 Q Mr. Vince, do you recall signing a declaration in
18 2018 that was to be submitted to the Office of Tax Appeals
19 in connection with Mr. Pack's appeal?

20 A I do.

21 Q I'm going to hand you what's been identified as
22 Exhibit 13, and I'd like you to look at that. And let me
23 know when you've finished reviewing it.

24 A Okay.

25 Q Is that your declaration?

1 A It is.

2 Q Are the statements in that declaration accurate?

3 A Yes, at that time. I'm no longer practicing law.
4 I went inactive with the state bar. Other than that,
5 everything is correct.

6 Q During the year 2016, did you have a Franchise
7 Tax Board power of attorney on file for Mr. Pack for
8 personal income taxes for 2006?

9 A Yeah, I really don't remember, frankly. Most of
10 the work that I was doing I did in conjunction with Phil
11 Becker at his office because Phil had these binders with
12 all these transactions in it. So when I was on the phone
13 with the Franchise Tax Board, it was in Phil Becker's
14 office. I don't know -- I don't know if I had power of
15 attorney or not. Frankly, I don't remember.

16 Q During 2016, did you ever receive from the
17 Franchise Tax Board copies of any billing notices sent to
18 Mr. Pack regarding Mr. Pack's 2006 income taxes?

19 A No.

20 Q During 2016, did Mr. Pack ever contact you by
21 telephone, email, or letter to tell you that he had
22 received a billing notice from the Franchise Tax Board
23 regarding his 2006 income taxes prior to our firm being
24 retained late in 2016?

25 A No.

1 Q During 2016, did Mr. Phil Becker ever contact you
2 by phone, email, or letter to tell you that he had
3 received a billing notice from the Franchise Tax Board
4 regarding Mr. Pack's 2006 income taxes prior to our firm
5 being retained late in 2016?

6 A No.

7 Q During 2016, did anyone from the Franchise Tax
8 Board contact you by phone regarding the collection of
9 Mr. Pack's 2006 income taxes?

10 A No.

11 Q Did you call the Franchise Tax Board collection
12 unit regarding Mr. Pack's case in June of 2016?

13 A No.

14 Q Did you ever call the Franchise Tax Board
15 collection unit regarding Mr. Pack's case after April 4th,
16 2016, which is the date on which the Franchise Tax Board
17 says that they issued the Notice of Action in this case,
18 regarding Mr. Pack's case?

19 A No. I don't remember ever doing that.

20 Q Now, in June of 2016, was your business telephone
21 number 949-622-8125?

22 A No.

23 Q Have you ever had that telephone number?

24 A I have not.

25 Q Have you heard of a CPA by the name of Michael

1 Conkey?

2 A Yes.

3 Q Could you explain how you are familiar with
4 Mr. Conkey?

5 A Mike Conkey was an audit manager at Grant
6 Thornton, and I was the tax partner there. And in
7 addition, there were two tax managers, Linda Scardina
8 [sic] and Judy McClain [sic]. They were good friends with
9 Mike.

10 THE STENOGRAPHER: I'm sorry to interrupt, but
11 can you repeat the names, please.

12 JUDGE HOSEY: Oh, I'm sorry. Can you repeat the
13 names for the stenographer, please, the names of the
14 individuals.

15 MR. VINCE: Judy McClain and Linda Scardina.

16 JUDGE HOSEY: And you can spell -- what is it?
17 McCockey [sic]?

18 MR. VINCE: McConkey.

19 JUDGE HOSEY: Oh, McConkey. Can you spell that?

20 MR. VINCE: No.

21 JUDGE HOSEY: Okay.

22 MR. VINCE: I can't spell his name.

23 JUDGE HOSEY: Okay. Thank you.

24 MR. VINCE: I could barely spell half the words
25 I'm supposed to know to spell. It's not my strong suite.

1 JUDGE HOSEY: That's fine.

2 MR. VINCE: Okay.

3 JUDGE HOSEY: You can continue with your
4 testimony. Thank you.

5 MR. VINCE: When I left the national CPA firm, I
6 had an anti-compete agreement with them as a partner. So
7 I went out as an attorney, and Linda and Judy were looking
8 for space. So we got together and leased a suite from
9 Olen Properties, and another attorney went in with us. My
10 telephone number at that time was 949-622-8128. And it
11 continued to be that telephone until January 1 of this
12 year when I realized that, you know, when people called
13 that number it came through Verizon.

14 I would answer the phone. And after a while I
15 was just getting robo calls. And anyone that I had
16 networked with or would refer business to me, you know, I
17 just kept referring them over to Lavar and let him deal
18 with it. So Conkey, the way I understand it from Linda
19 and Judy, had this practice that he had out of his home
20 that one day a week he would be a -- like an in-house
21 controller for small businesses.

22 He had that telephone number, I guess, that he
23 could access remotely, because I was not familiar with it.
24 He had worked out a deal with Linda and Judy because they
25 were a lot younger than me, and they were good friends,

1 that they would bundle up his mail and send it to him once
2 a week. And I guess if there was something important,
3 they would open it up and call him. I don't know what
4 their arrangement was but, you know, I never really had
5 anything to, you know, do with Mike. You know, I hadn't
6 seen him in umpteenth years. The last I heard he was a
7 division controller for subsidiaries of Kaufman & Broad.
8 Again, it's been years.

9 So the number that they have was not my number.
10 8128 came through to a -- through Verizon to a phone on my
11 desk. I didn't answer it. It recorded, and I would just,
12 you know, sit in my home. I'd pick it up. I picked it
13 up, like I said, until this past January 1 when I
14 terminated that. That's all I can say about Mike Conkey.

15 BY MR. TAYLOR:

16 Q And so did Mike Conkey at -- you're talking now
17 about the office located at 30 Corporate Park in Irvine?

18 A Yes.

19 Q And did you ever see Mr. Conkey at that location?

20 A No. He was the gray ghost.

21 Q At one point, you did have an office at that
22 location?

23 A I did. Okay.

24 Q By June of 2016 had you moved?

25 A Yes.

1 Q And where did you move to?

2 A To my home, and then I established a P.O. Box.
3 And, you know, all my mail would be forwarded to that P.O.
4 Box, which is on Lincoln Avenue in Cypress. And
5 interestingly enough the postman that had our building was
6 a client of the CPAs. So he knew who we were. So if
7 somebody would put a wrong suite number on a box, he
8 would, you know, make sure we got it.

9 If something came in inadvertently not being
10 forwarded because I had put in forwarding immediately --
11 actually about two weeks before I left, and they wanted 14
12 to 15 days. So they had plenty of time to forward my
13 mail. And I would go down and pick it up, you know, every
14 day, you know, for the first three or four years and as
15 time went by. As a matter of fact, this Friday I'm also
16 going to discontinue that also.

17 Q Okay. Thank you.

18 MR. TAYLOR: No further questions.

19 JUDGE HOSEY: Okay. Thank you, Vince.

20 I'm going to move onto the Franchise Tax Board.

21 Mr. Coutinho, any questions for the witness?

22 MR. COUTINHO: No questions. But just for the
23 aid of the stenographer, I think Michael Conkey is in the
24 briefing. And it is spelled, C-o-n-k-e-y.

25 JUDGE HOSEY: Thank you. I remember seeing it.

1 I just needed to clarify because that is a hard one.

2 Thank you.

3 I'm going to move to the Panel to see if we have
4 any questions.

5 Judge Lambert?

6 JUDGE LAMBERT: I have no questions. Thanks.

7 JUDGE HOSEY: Thank you.

8 Judge Akin?

9 JUDGE AKIN: A little background. No questions
10 from me. Thank you.

11 JUDGE HOSEY: Okay. Thank you, Mr. Vince.

12 Okay. Let's go ahead and call the next witness
13 when you're ready, Mr. Taylor.

14 MR. TAYLOR: Yes. Mr. Pack calls Kevin Hosman.

15 JUDGE HOSEY: Good afternoon, Mr. Hosman. I'm
16 going to swear you in. Please raise your right hand.

17

18 K. HOSMAN,

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

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23 JUDGE HOSEY: Thank you.

24 You can begin, Mr. Taylor.

25 MR. TAYLOR: Thank you.

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Q Mr. Hosman, do you recall signing a declaration in 2018 that was to be submitted to the Office of Tax Appeals in connection with Mr. Pack's appeal?

Q I'm going to hand you what's been identified as Exhibit 11. And I would like you to review that document and let me know when you're done.

Q Is that the declaration that you signed?

Q And are the statements in that declaration rate?

Q During -- leading up to the year 2016, were you involved in the audit of Mr. Pack's income tax return?

Q Okay. And as a result of that involvement were you in a position to learn about any billing notices that may have been issued by the Franchise Tax Board to Mr. Pack regarding his 2006 income taxes?

STATE OF CALIFORNIA OFFICE OF TAX APPEALS

1 Q And during 2016, did you ever become aware of any
2 billing notice sent by the Franchise Tax Board to Mr. Pack
3 regarding Mr. Pack's 2006 income taxes?

4 A No.

5 Q And during 2016, did Mr. Pack ever advise you
6 that the Franchise Tax Board had sent him billing notices
7 regarding Mr. Pack's 2006 income taxes prior to our firm's
8 involvement in late 2016?

9 A No.

10 MR. TAYLOR: No further questions.

11 JUDGE HOSEY: Okay. Thank you.

12 I'm going to move to the Franchise Tax Board.

13 Mr. Coutinho, do you have any questions for the
14 witness?

15 MR. COUTINHO: No questions. Thank you.

16 JUDGE HOSEY: Okay. Let's move to the panel.

17 Judge Lambert, any questions?

18 JUDGE LAMBERT: No questions. Thanks.

19 JUDGE HOSEY: Okay. Judge Akin, any questions?

20 JUDGE AKIN: No questions. Thank you.

21 JUDGE HOSEY: Okay. I think that we're finished.
22 Thank you so much for your testimony, Mr. Hosman.

23 And then Mr. Taylor, when you are ready, we'll
24 call the last witness.

25 MR. TAYLOR: Thank you. Mr. Pack calls Mr. Pack.

1 JUDGE HOSEY: Good afternoon, Mr. Pack.

2 MR. PACK: Good afternoon to you.

3 JUDGE HOSEY: Thank you. I'm going to swear you
4 in. Can you please raise your right hand.

5 MR. PACK: Sure.

6

7 R. Pack,

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

11

12 JUDGE HOSEY: Thank you.

13 Please begin, Mr. Taylor.

14 MR. TAYLOR: Thank you.

15

16 DIRECT EXAMINATION

17 BY MR. TAYLOR:

18 Q Mr. Pack, do you recall signing a declaration in
19 2018 that was to be submitted to the Office of Tax Appeals
20 in connection with your appeal relating to your 2006 tax
21 year involving the Franchise Tax Board?

22 A Yes.

23 Q I'm going to hand you what has been identified as
24 Exhibit 10. I would like you to review that document,
25 please, and let me know when you're done reviewing it.

1 A I've reviewed it.

2 Q Mr. Pack, is this the declaration that you signed
3 in 2018?

4 A Yes.

5 Q And are the statements in that declaration
6 accurate?

7 A Yes.

8 Q Mr. Pack, do you recall when you first learned in
9 2016 that the Franchise Tax Board was billing you for the
10 disputed 2006 income taxes?

11 A Well, what I recall is when my assistant came to
12 my office and told me that there was no money in my
13 account at Wells Fargo, and I couldn't believe it. It was
14 November of -- actually, Thanksgiving weekend. And so I
15 couldn't imagine it. She thought it was an error,
16 obviously, something she might have done. And so I went
17 over to the bank branch, which is right outside our office
18 in Coto De Caza, and talk to the branch manager. And he
19 showed me the levy that the State had, you know, went
20 against that account for, and I was shocked.

21 I didn't understand it. And that's when, you
22 know, we started doing our investigative work and got
23 Lavar Taylor's firm involved. That's my first knowledge
24 of that.

25 Q And prior to that time, did Mr. Vince ever advise

1 you during 2016 that the Franchise Tax Board was billing
2 you for the 2006 income taxes?

3 A No.

4 Q And prior to that time, did Mr. Becker ever
5 advise you during 2016 that the Franchise Tax Board was
6 billing you for the 2006 income taxes?

7 A No.

8 Q Mr. Pack, Exhibit F has copies of Franchise Tax
9 Board's orders to withhold. And rather than hand you
10 those documents to look at, I'm just going to read you the
11 name and address of the applicable financial institutions.
12 There's only two. The first one is called Kinecta,
13 K-i-n-e-c-t-a, Federal Credit Union on Rosecrans Avenue,
14 Manhattan Beach. During 2016 did that financial
15 institution ever contact you regarding an FTB order to
16 withhold or levy?

17 A No.

18 Q The second financial institution is called LBS
19 Financial Credit Union in Long Beach. During 2016, did
20 that financial institution ever contact you regarding any
21 levy or order to withhold issued by the Franchise Tax
22 Board?

23 A No.

24 MR. TAYLOR: I have no further questions. I do
25 want to, though, Mr. Pack has requested to make a

1 statement at the very end of the case. It's very short.
2 It's his case, and I just wanted to make the tribunal
3 aware of that. And so when the time comes I would ask
4 that he -- he would like to make a very brief statement.
5 It's not testimony. It's a statement.

6 JUDGE HOSEY: Okay. So we'll -- well, we're
7 going to do the argument portion next. So he can do that
8 before your argument or after your argument. However you
9 would like to structure it is fine with me.

10 MR. TAYLOR: He would like to do it at the very
11 end, perhaps like when I do my rebuttal.

12 JUDGE HOSEY: Okay. So final 5-minute rebuttal.
13 Okay. We can do it at that time.

14 MR. TAYLOR: Okay.

15 JUDGE HOSEY: That's no problem. Okay. Let me
16 see if we have any questions for this portion.

17 Okay. I'm going to move to the Franchise Tax
18 Board.

19 Mr. Coutinho, any questions for Mr. Pack?

20 MR. COUTINHO: No questions. Thank you.

21 JUDGE HOSEY: Okay. Thank you.

22 Now, I'm going to move to the Panel.

23 Judge Lambert, any questions?

24 JUDGE LAMBERT: Hi. I just have one question.

25 On the 2014 return that has the address for Becker, did

1 you review it, and you didn't notice the address was
2 incorrect?

3 MR. PACK: I reviewed the numbers as far as the
4 accounting numbers were concerned. But Mr. Becker has
5 been my CPA for 35, 40 years, and my address has been the
6 same. So I didn't look at the address. I looked at the
7 numbers.

8 JUDGE LAMBERT: Okay. Thanks. And just on the
9 2016 power of attorney that also uses the Becker address
10 in Irvine, and I believe it was stated it was
11 inadvertentness. Did you notice that address was
12 incorrect also, or why was that address used in 2016 as
13 your address on the power of attorney; do you recall?

14 MR. PACK: I don't recall.

15 JUDGE LAMBERT: Okay. Thank you. That's all.

16 JUDGE HOSEY: Okay. Thank you.

17 I'm moving to Judge Akin. Any questions?

18 JUDGE AKIN: No questions from me. Thank you.

19 JUDGE HOSEY: Okay. Thank you, Mr. Pack. We'll
20 save your statement for the end of the argument portion.

21 MR. PACK: Thank you very much.

22 JUDGE HOSEY: Okay. Thank you.

23 Okay. Moving to the argument portion of our
24 presentations.

25 Mr. Taylor, Appellants typically go first. Are

1 you ready to begin your 30-minutes argument?

2 MR. TAYLOR: Yes, Your Honor. I may not take up
3 the full 30 minutes, but --

4 JUDGE HOSEY: That's fine.

5 MR. TAYLOR: -- I figure that would be fine with
6 everybody. But I'm ready to begin. Thank you.

7 JUDGE HOSEY: Okay. Please begin when you're
8 ready. Thank you.

9 MR. TAYLOR: Thank you.

10

11

PRESENTATION

12

13 MR. TAYLOR: This case is unusual. It's an
14 unusual set of facts. But the heart of the issue is does
15 Mr. Pack get the opportunity to present the merits of his
16 case to this tribunal. And while technically, you know,
17 the burden of coming forward with evidence is to matters
18 within Mr. Pack's control is on him. He doesn't have
19 control over the evidence that's not in his possession and
20 control. And so while he does have the burden of coming
21 forward with his evidence, and we have come forward with
22 the all the evidence that we have and presented all the
23 testimony that we can present.

23

24 It is the burden of the Franchise Tax Board to
25 come forward with the evidence in its control, and there's
26 policy reasons. When you go look at the historical

1 shifting of the burden, the reasons are the party with the
2 evidence comes forward, has the burden of coming forward
3 with that evidence. Otherwise, all the IRS auditors and
4 the Franchise Tax Board auditors if they thought they had
5 the burden, they'd go out and be very intrusive on their
6 audits. And it just makes a lot of sense to have the
7 burden be on the party that has the evidence.

8 Similarly, with that responsibility comes the
9 negative inferences that follow. If you don't -- if you
10 have evidence -- if you have the ability to present
11 evidence and you don't, that responsibility and that rule
12 should apply to both taxpayers and any government taxing
13 agency, whether it's the Franchise Tax Board or the IRS
14 or -- because otherwise the courts, this tribunal
15 encourages parties to play games. And gamesmanship is not
16 how cases should be decided.

17 So the first issue here is, was a Notice of
18 Action ever issued? And that issue was teed up in our
19 briefs. And the Franchise Tax Board did come forward with
20 some documents. Those are exhibits admitted into
21 evidence. But what the Franchise Tax Board did not do
22 here, even though I scream like I'm an ex-spouse in
23 divorce court at the top of my lungs, they have the burden
24 of coming forward with the evidence.

25 I hope you don't get too tired of hearing me say

1 that. I've said it a lot. But the fact that I've said it
2 a lot and they haven't come forward with that evidence is
3 meaningful in the context of this case. Not necessarily
4 every case. This is an unusual fact pattern. And so the
5 FTB could have come forward with what I call a
6 comprehensive declaration saying here is how we do things.
7 Here is what happens when we issue a Notice of Action.
8 Here's what we do. Here's what we don't do.

9 We look. We look at this. We look at that. We
10 don't look at this. We don't look at that. Okay. And we
11 have some anomalies here -- some here because if a Notice
12 of Action was sent to the Michaelson address, which, you
13 know, if it was sent, that's where everybody agrees it was
14 sent if it was sent. It wasn't forwarded to anybody, and
15 Mr. Vince has said in his declaration that he didn't get
16 the copy of the Notice of Action for the LLC, the entity.
17 So we have some evidentiary anomalies.

18 And it would have been very simple for the
19 Franchise Tax Board to come forward with a comprehensive
20 declaration saying this is how we do it, and this is what
21 we did, and why we did it, and we followed our normal
22 procedures. They didn't do that. Now, how easy is it for
23 them to do that? Well, there's a -- I'm going to cite a
24 case.

25 It's not a precedential case, but it

1 illustrates -- the reason I'm citing it is because it
2 illustrates what the FTB can do. Okay. And that case is
3 called Appeal of Nornhold, N-o-r-n-h-o-l-d, OTA Case
4 Number 18011130, decided in June of 2020 right when
5 briefing was closing in the present case. So this was
6 effectively decided at a time where -- make -- we
7 couldn't -- nobody could include it in this brief -- in
8 the briefing.

9 And so in that case the taxpayer lost. And the
10 reason the taxpayer lost is because they came forward with
11 and saying, hey, look we think this involved a non-filer
12 and demand for returns and NPAs. And so the taxpayer was
13 claiming there were irregularities. And what happened in
14 that case was the FTB came forward with a very
15 comprehensive declaration saying here's what happened. We
16 explain it.

17 And the -- and this tribunal looked at and said
18 you know what, they came forward with this declaration.
19 You lose. The reason I'm pointing that out here is
20 because they didn't do that here. That creates the
21 opportunity for this Court to say no Notice of Action was
22 issued. It's an inference. I'm not arguing here that
23 this Panel is required to find that. It's an inference
24 that the Panel is permitted to draw. That's the case law.

25 And because of all the other things in the case,

1 we're asking the Court draw that inference and say no
2 Notice of Action issued. If that's the case, then this
3 Panel clearly has no jurisdiction because technically how
4 that would affect the case is there's still an open case
5 in the protest unit. And this Court would say well, we
6 have no jurisdiction because no NOA, Notice of Action was
7 issued and, therefore, you know, goodbye.

8 And presumably the Franchise Tax Board will issue
9 a new or a Notice of Action, send it to an address that
10 everybody agrees is good, and we would file a petition and
11 we will be back here arguing the merits. Okay. That's
12 possibility number one. Okay.

13 Moving on. The Franchise Tax Board is required
14 to issue a Notice of Action to the taxpayer's last-known
15 addresses. And the code section in the Revenue & Taxation
16 Code has some language that makes it different from the
17 IRS the way that the last-known address is defined at the
18 IRS level. I'm going to emphasize that. And so
19 understand when we're citing case law, they're citing case
20 law, we're citing case law.

21 The fact is all of these cases involving
22 last-known address are case specific, fact specific. But
23 the language in the State statute is different, and I'll
24 talk about why it's different and the effect of that
25 difference in a moment. But first -- well, let me -- I'll

1 just, you know, the language says it's the last-known
2 address shall be the address that appears on the
3 taxpayer's last return filed with the Franchise Tax Board,
4 unless the taxpayer has provided the Franchise Tax Board
5 clear and concise written or electronic notification of a
6 different address, or -- and this is where it's different
7 from the federal rule -- the Franchise Tax Board has an
8 address that it has reason to believe is the most current
9 address for the taxpayer.

10 This last phrase is very important in the context
11 of the present case. So we start with the return
12 addresses on the return. We move onto clear and concise
13 notice, and then we move onto this third phrase. But
14 overall, arching over all of these rules is case law that
15 requires the tax authority to exercise reasonable due
16 diligence in ascertaining a taxpayer's last-known address.
17 So that's not in the statute, but it's in the case law.
18 And it's important, again, in the context of in this case.

19 So let's -- first, let's pretend all we're
20 dealing with is the tax return for 2014. We're not.
21 That's not the rule, but let's start there. When you look
22 at that return, it shows two, not one, two different
23 addresses for Becker Financial. It's not very difficult
24 to see that. One is at the beginning. One is at the end.
25 And if you look at that return and you see the two

1 different addresses, you go, what? There's something
2 wrong. I ought to check this out. And that's where the
3 duty to exercise reasonable diligence comes in, setting
4 aside everything else.

5 Just looking at the return itself, there are two
6 different addresses for Becker Financial. And so that
7 triggering -- under the rule of exercise and due
8 diligence, that triggers a duty to say let's figure this
9 out. And what could the Franchise Tax Board have done to
10 figure it out? Well, Mr. Becker's telephone number is
11 right there on the return. That's a two-minute phone
12 call. We have the Google. That's a two-minute Google to
13 look at the address.

14 They could also look at the Franchise Tax Board's
15 own records from the protest unit, which I'll get to in a
16 moment in more detail, but those records show
17 correspondence with Mr. Pack, an address that's not the
18 address that's listed at the front, not the back but the
19 front of the 2014 Form 540 for Mr. Pack. So you don't
20 have to go further than that in saying, they didn't -- you
21 know, if you look at the return there's a duty to exercise
22 due diligence.

23 They didn't do that and, therefore, what follows
24 is they didn't send it to the last-known address. Now in
25 the end I'll get to -- you know, there's an issue about a

1 remedy in that situation, whether you -- well, I might as
2 well do it now. The remedy is do you treat, when they
3 don't send it to the last-known address and the taxpayer
4 properly files a petition, which is what happened here, as
5 soon as he found out his bank account got levied, he
6 called me.

7 I called the protest unit, and we filed a
8 petition with this tribunal's predecessor very quickly,
9 certainly within 30 days. So if the Court concludes that
10 this -- that the Franchise Tax Board did not exercise due
11 diligence with respect to just looking at the return, the
12 tribunal can say, you know what, it's a timely petition.
13 The Court could say, well, it was not a valid -- kind of
14 like the IRS's last-known address.

15 We're not -- we don't -- you know, the Tax Court
16 would say you know what, you weren't -- they didn't send
17 it to your last-known address. And so we're going to
18 dismiss for lack of jurisdiction. That's what the tax
19 court does. And then presumably, the Franchise Tax Board
20 would again issue a new Notice of Action, and there would
21 be a new case file.

22 But from our standpoint we cited to a case where
23 the Board of Equalization took jurisdiction because the
24 taxpayer came in within 30 days after learning about it.
25 We're fine with that. All we're asking for is a chance

1 for Mr. Pack to get a shot at having this tribunal
2 deciding the merits. That's all he wants.

3 So let's go back now to the language of
4 Section 18416 in the last phrase. That last phrase says,
5 if the Franchise Tax Board has reason -- has an address
6 that it has reason to believe is the most current address.
7 So that reason to believe, you can -- you can come forward
8 with evidence -- and we have -- that shows that they had
9 reason to believe that there was a more current address
10 because there was correspondence going on in the protest
11 unit.

12 But I think there's also potentially -- you know,
13 what was going on in the minds of the Franchise --
14 relevant Franchise Tax Board's employees could be
15 important to this tribunal. I'm not on the tribunal. I
16 don't get to make that call, but it could be important.
17 And if this tribunal believes it's important, if it is
18 important, my question is why, in light of me screaming
19 not quite at the top of my lungs but saying repeatedly,
20 you haven't come forward with evidence. I repeat that.
21 That's a theme throughout our briefs. Why didn't you come
22 forward with this evidence?

23 Why not did the Franchise Tax Board come forward
24 with the testimony of the people who were involved in the
25 correspondence? What were they thinking? They could be

1 people, people who actually made the decision and what
2 address to put on any Notice of Action that was issued.
3 It could be the people who were involved at the protest
4 unit who were sending correspondence in the fall of 2015
5 and early in 2016 going to the Coto de Caza address.

6 Now, the Franchise Tax Board did not produce any
7 of those employees, whether by declaration or to come here
8 in person. And we have most certainly placed them on
9 notice that we think they ought to do that. And once
10 again I go back to what I said at the very beginning of
11 the argument. The allocation of the burden of proof
12 should be based on which party has the evidence. We've
13 come forward with everything that we could get.

14 And, in fact, the evidence that we came forward
15 with, we got after the Franchise Tax Board filed its first
16 brief. And in that brief -- and I'm not saying they were
17 trying to deliberately mislead this tribunal, but they
18 made a choice. They came forward with these wage -- you
19 know, I call them levies because I'm an IRS guy. That's
20 how I started. But they are orders to withhold, and they
21 didn't complete the -- I'm sorry.

22 They didn't come forward with the other orders to
23 withhold at the end that had the Coto De Caza address.
24 And they didn't come forward with the correspondence from
25 the protest unit that had the Coto De Caza address. And

1 certainly they had access to their own files. And so when
2 you couple that, you know, that fact that they, you know,
3 just didn't come forward, and they could have with their
4 failure to produce witnesses to talk about that.

5 This tribunal should draw adverse inferences
6 against the Franchise Tax Board. And we're not saying --
7 you know, there's this thing in the briefing saying we're
8 accusing them of spoliation of evidence. That's not the
9 case. We don't need spoliation of evidence for this
10 tribunal to draw adverse inferences. So we're not
11 accusing them of anything in bad faith.

12 It's just they have a choice to present evidence,
13 and they chose one way. And coupled with the failure to
14 produce the -- with the witnesses is, you know, calls for
15 the drawing of adverse inferences against the Franchise
16 Tax Board as to what those witnesses would say and the
17 question of did they exercise due diligence.

18 We don't know what they would say. And so the
19 tribunal should, in fact, draw those adverse inferences.
20 Now, I want to talk briefly -- and how far -- I'm sorry.
21 I turned off my things. How far am I into the 30 minutes?

22 JUDGE HOSEY: Can you hear me now?

23 MR. TAYLOR: I can. Thank you.

24 JUDGE HOSEY: Okay. You have about 13 minutes
25 left.

1 MR. TAYLOR: Okay. All right. Well, I think
2 I'll finish up early, but maybe not.

3 So I want to -- so it's very clear. Okay. These
4 records show correspondence with Mr. Pack at the address
5 that we say they should have sent it to. Okay. I want to
6 briefly discuss the tiff between the declaration, you
7 know, the direct conflict in the testimony between
8 Mr. Vince and the FTB employee offer -- whose declaration
9 was offered. I do that as a side show. It's -- and the
10 reason I do that as a side show is because if you look at
11 what was said by whoever.

12 If there was a call and it was hypothetically
13 Mr. Vince, the contents of the notes don't reveal any
14 awareness that there was a Notice of Action. It just
15 reveals awareness of a billing notice. And I could speak
16 for myself. I've had multiple cases where the Franchise
17 Tax Board issued premature billing notices. It doesn't
18 mean that there was a Notice of Action issued. So there's
19 no awareness of the Notice of Action, which from our
20 standpoint this was important.

21 Another curious aspect of that is that the
22 declarant says, oh, I would normally ask the
23 representative to give me the taxpayer's address. Well,
24 I'm quite certain in this hypothetical conversation that
25 Mr. Vince -- if there was a conversation -- didn't offer

1 the address on the 2014 return as the taxpayer's address.
2 And if he gave the wrong address, why is this FTB employee
3 talking to him when in this hypothetical conversation a
4 bad address is given?

5 So enough about that. I think it's a sideshow.
6 But they did not offer this declarant for
7 cross-examination. I sure as heck would like to ask them
8 some questions, but I can't. And that's another reason to
9 draw adverse inferences.

10 The last thing I want to talk about is something
11 that was -- actually, it's my understanding my partner
12 told me that this was discussed at this morning's hearing.
13 So with Richard Stack, who I've known for a long time.
14 And he talked about equitable tolling. Last year the
15 Supreme Court issued an opinion allowing equitable tolling
16 in the federal tax arena. It's a revolutionary change in
17 the federal case law. In 2021, the California Supreme
18 Court issued an opinion dealing with -- observing that
19 yes, equitable tolling can be, you know, it can apply even
20 in a tax -- or what I call a California agency context.

21 I can talk about these cases but none of them
22 were decided until after the briefing in this case closed.
23 So I welcome the opportunity to file quick and short. I'm
24 not looking for, you know, for any -- to make it long or
25 to, you know, have a long deadline. This can be very

1 quick from our standpoint, since these cases came down
2 after the briefing closed, for us to argue the opportunity
3 for equitable tolling in this case.

4 Equitable tolling is different than the
5 last-known address. Okay. Equitable tolling presumes
6 that something was issued to the last-known address, but
7 there is some of that that occurred that makes it unfair
8 for it to deny the taxpayer the opportunity to come in and
9 argue the merits. It only deals with, again, as this
10 hearing does or this hearing does, the opportunity to
11 present your case on the merits.

12 Again, I'm more than happy -- I wrote a friend of
13 the court brief in the Supreme Court case. I hope they
14 read it, really. But so I'm well versed in the area, and
15 I can offer, you know, a -- if the panel wishes to have
16 briefing on that point, I think it's appropriate because
17 equitable tolling is -- you know, it does provide
18 additional grounds for this tribunal to say, okay, we're
19 going to give Mr. Pack a shot at that hearing out --
20 persuading that he's right on the merits.

21 And, you know, the Supreme Court case uses a case
22 called Boechler or Boechler, depending on if you're German
23 or not. And the California -- the actual -- if you go
24 back and look at the case that the California Supreme
25 Court cited, it's called Saint Francis Memorial Hospital.

1 If you want cites, I can give you cites. But I think
2 given how much money is at stake here, I would like the
3 opportunity to file very quickly. And, you know, this can
4 be like a two-week thing and, you know, two weeks and 10
5 pages or something like that to submit an additional brief
6 on equitable tolling if the Panel is so inclined.

7 JUDGE HOSEY: Not to interrupt you, but I think
8 the Panel is open to additional briefing on this issue. I
9 know I saw you probably looking up the case. So we can
10 have additional briefing on that after the hearing. You
11 don't have to respond to those cases or issue at this time
12 since we didn't prep for it.

13 MS. ZUMAETA: We do have an equitable tolling
14 argument today. We just wanted to make sure that we had
15 addressed all of the issues in it. So if you would like
16 to proceed today, we are good with that, but totally
17 within your discretion.

18 JUDGE HOSEY: Mr. Taylor, are you comfortable
19 with that if they address the equitable tolling? I can
20 still have additional briefing after the fact if you would
21 like to discuss the cases.

22 MR. TAYLOR: We would like the opportunity for
23 additional briefing. However they want to proceed on
24 their argument is up to them as long as we get additional
25 briefing.

1 JUDGE HOSEY: Yeah, I think we could both have
2 opportunity for it. If you would like to discuss it
3 today, you are more than welcome to. And then we can also
4 have additional briefing. So we'll all have the case
5 cites and everybody can be on the same page. That's fine
6 with us. I can -- I'll leave the record open, and then
7 I'll issue a short order with dates after this hearing.
8 And then it will be a short turn around, and then we can
9 move forward from there.

10 MR. TAYLOR: Okay. Thank you. I am done with my
11 argument in chief.

12 JUDGE HOSEY: Oh, okay. Great. Thank you,
13 Mr. Taylor. Let me just see if my Panel has any
14 questions.

15 Judge Lambert?

16 JUDGE LAMBERT: Hi. Yeah. I have a question.
17 Oh, you were pointing out that the orders to withhold
18 changed addresses in late 2016, and that wasn't in the
19 record originally but then you put it into the record.
20 And just to clarify what -- I can ask FTB, but what was
21 the reason? Like, what do you think the reason was for
22 the change suddenly to a different address?

23 MR. TAYLOR: Well, this is my best guess. Okay.
24 And I'm not the FTB, so this is not evidence. But my best
25 guess, it was changed in response to the receipt of the

1 2015 Form 540. But my point is not so much why it
2 occurred -- why the change occurred. It's the fact that
3 the full picture wasn't presented first initially. They
4 didn't come forward and say, oh, here's what happened.
5 Okay. They didn't come forward and say, okay, by the way,
6 here was the first batch of orders to withhold issued to
7 the Michaelson address and say but -- and there were some
8 more issued to the Coto De Caza address. But we think
9 that's happened because of the -- of the filing of the 540
10 or whatever reason, okay, they offer.

11 Again, I'm not the Franchise Tax Board I am
12 guessing, and I don't -- you know, what I'm saying here
13 doesn't constitute as evidence. My point is that they had
14 the opportunity to come forward and present the full
15 picture, and they chose not to. And that, combined with
16 all the other things that happened here is what we're --
17 calls for the drawing of adverse inferences.

18 JUDGE LAMBERT: Okay. Thanks. And just one more
19 question. Do you know, Becker Financial, I mean, maybe
20 you would know. Did they change their own personal
21 address with the post -- the United States Post Office and
22 with FTB? Or are you aware?

23 MR. TAYLOR: I -- I am not aware of what
24 happened, but I know what I would have done. I would have
25 had a forwarding order on file. And I expect that they

1 had a forwarding order on file. And if that's a question
2 the tribunal wants to pose to Mr. Becker, I have no
3 problem with calling him back for you to pose that
4 question.

5 JUDGE LAMBERT: Um, okay. Sure. Just to confirm
6 why it wasn't forwarded necessarily. I just want to see
7 if they did put in a forwarding order.

8 MR. TAYLOR: I'm fine. So --

9 JUDGE HOSEY: Yeah. We can call Mr. Becker again
10 just for a brief question.

11 Mr. Becker, can you please come to the
12 microphone. Mr. Becker, I'm just going to remind you that
13 you are still under oath for this proceeding.

14 MR. BECKER: Yes.

15 JUDGE HOSEY: Okay. Go ahead, Judge Lambert.

16 JUDGE LAMBERT: All right. Thanks, Mr. Becker,
17 for coming up again. I just want to confirm that whether
18 or not a, you know, the company submitted that -- a change
19 of address form with the United States Post Office or, you
20 know, and/or FTB? And, you know, was it inadvertent --
21 was it a mistake that it wasn't forwarded or how was the
22 forwarding done?

23 MR. BECKER: Well, when the office moved, we did
24 put in a mail forwarding request with the U.S. Post
25 Office, and we did receive forwarded mail. But we did not

1 receive anything from the Franchise Tax Board.

2 JUDGE LAMBERT: Okay. Okay. That's all. Thank
3 you just for confirming that, and I have no other
4 questions. Thank you.

5 JUDGE HOSEY: Thank you, Mr. Becker and
6 Judge Lambert.

7 I'm going to go ahead and ask Judge Akin if you
8 have any questions?

9 JUDGE AKIN: Yes. Thank you. I have just one
10 question. In -- I was trying to look through the record,
11 but you might be able to direct me better. A lot of
12 correspondence I'm seeing from the Protest Hearing Officer
13 looks like it was mailed prior to the filing of the 2014
14 return on October 14th, 2015. Was there any additional
15 correspondence from the Protest Hearing Officer after that
16 date that you're aware of?

17 MR. TAYLOR: Yes, in February of 2016. There was
18 a letter that was sent to Mr. Vince, and he had moved by
19 that time and so it got returned. And so the Protest
20 Hearing Officer then sent a letter out and found out that
21 Mr. Vince had moved and then said, oh, okay. I'm going to
22 send it to your new address. And to be sure, I'm going to
23 send it to the taxpayer. And that went out after the
24 return. That was, I think, within the first two months of
25 2016.

1 JUDGE AKIN: Thank you. I do remember seeing
2 that. Thank you.

3 JUDGE HOSEY: Okay. Thank you.

4 With no further questions, we're going to move to
5 the Franchise Tax Board's argument.

6 MR. COUTINHO: Can the Franchise Tax Board have a
7 few minutes just to discuss this matter in regards to the
8 testimony provided today?

9 JUDGE HOSEY: Yeah. Let's do a five-minute
10 break, and then we'll come back on the record.

11 MR. COUTINHO: Thank you very much.

12 JUDGE HOSEY: Thank you.

13 (There is a pause in the proceedings.)

14 JUDGE HOSEY: We're back on the record for
15 R. Pack.

16 Franchise Tax Board, are you ready for your
17 argument?

18 MR. COUTINHO: Yes. Thank you for the time to
19 discuss the matter.

20 JUDGE HOSEY: Of course. Yeah. Please begin
21 when you're ready.

22

23 PRESENTATION

24 MR. COUTINHO: Good afternoon.

25 This case is about Appellant's failure to timely

1 file an appeal. As such, the Office of Tax Appeals does
2 not have jurisdiction to hear and decide this appeal for
3 two reasons. The first is that Appellant's appeal letter
4 was filed after the period to appeal had expired. The
5 second is contrary to his assertion, the Notice of Action
6 was issued to Appellant's last-known address.

7 To my first point, the Office of Tax Appeals does
8 not have jurisdiction to hear and decide this appeal.
9 Revenue & Taxation Code Section 19045 states that "An
10 action upon a protest is final if a taxpayer does not file
11 an appeal within 30 days after a Notice of Action is
12 issued." Moreover, OTA's rules for tax appeals Regulation
13 30203 states that "An appeal is timely if it is mailed or
14 received by OTA within 30 days from the date FTB mails a
15 Notice of Action upon a protest of an unpaid assessment."

16 In this case, FTB issued a Notice of Action to
17 Appellant on April 4th, 2016. Appellant's appeal letter
18 was postmarked dated December 5th, 2016, seven months
19 after the deadline to appeal expired. Accordingly, OTA
20 does not have jurisdiction to hear and decide this appeal
21 because Appellant filed his appeal letter after the 30-day
22 period expired.

23 To my second point, contrary to Appellant's
24 argument FTB's Notice of Action was issued to Appellant's
25 last-known address. Under Revenue & Taxation Code

1 Section 18416 subsection (c), the last-known address is
2 the address that appears on the taxpayer's last return
3 files with the Franchise Tax Board. Unless the taxpayer
4 provides clear and concise notification of a different
5 address, or Franchise Tax Board has an address it has
6 reason to believe is its most current address.

7 Exhibit C to FTB's opening brief reflects that
8 FTB mails Appellant's Notice of Action to an address in
9 Irvine. This address was obtained from Appellant's most
10 recently filed tax return filed on October 14, 2015, less
11 than six months prior to the issuance of the Notice of
12 Action. Appellant states that listing this address -- the
13 Irvine address was inadvertent due to a clerical error,
14 but provides no other context for why this address was
15 listed. More importantly Appellant nor his
16 representatives informed FTB that this address was
17 incorrect prior to the issuance of the Notice of Action.

18 Today Appellant has cited to the Appeal of
19 Nornhold, which is an Office of Tax Appeals opinion from
20 the 2020 tax year from 2020. In that appeal there are two
21 important notes that we would like the Panel to -- it's a
22 non-precedential opinion. But in there they state that "A
23 notice of" -- or "Any notice must be sent to just the
24 taxpayer," and they cite to Revenue & Taxation Code
25 Section 18416.

1 In that particular case the taxpayer requested
2 that the notice be sent to his accountant, but the Office
3 of Tax Appeals clearly stated that "The requirements under
4 Revenue & Taxation Code Section 18416 only requires that
5 notice be sent to the taxpayer."

6 The second point from that opinion was that the
7 taxpayer has the burden to provide -- that they provided
8 the Franchise Tax Board with clear and concise
9 notification prior to the notice being issued. As stated
10 earlier, clear and concise information was not
11 communicated to the Franchise Tax Board prior to the
12 Notice of Action being issued. Appellant's argument rests
13 that Franchise Tax Board has reason to believe that the
14 Coto De Caza address, not the Irvine address, was the
15 Appellant's most current address.

16 However, there's nothing in the record for why
17 FTB would override the address listed on Appellant's last
18 return filed between October 2015, when the return was
19 filed, and April 4th, 2016, when the Notice of Action was
20 issued. Appellant's reliance on correspondence before the
21 last return was filed and after the Notice of Action was
22 issued is irrelevant in this case.

23 Accordingly, there's no basis to conclude that
24 Appellant's last-known address was anything other than the
25 Irvine address when the April 4th, 2016, Notice of Action

1 was issued. Because Respondent's Notice of Action is
2 valid and was properly issued and Appellant failed to
3 timely file its appeal, OTA does not have jurisdiction to
4 hear and decide this appeal, and FTB's position should be
5 sustained.

6 Thank you for your time. I'm happy to address
7 any questions your Panel may have.

8 JUDGE HOSEY: Okay. Thank you.

9 Let me check with my Panel.

10 Judge Lambert, any questions?

11 JUDGE LAMBERT: This is Judge Lambert. I don't
12 have any questions. Thanks.

13 MR. COUTINHO: Thank you.

14 JUDGE HOSEY: Okay. Thank you.

15 Judge Akin?

16 JUDGE AKIN: No questions from me. Thank you.

17 JUDGE HOSEY: Okay. I don't have any questions
18 either. Thank you. I did actually, about the additional
19 briefing on the -- you're going to go ahead and wait for
20 the --

21 MS. ZUMAETA: Yeah. We decided to go ahead and
22 wait on that. Thank you.

23 MR. COUTINHO: Oh, yes. Sorry. I apologize for
24 not --

25 JUDGE HOSEY: Okay. Thank you.

1 Okay. No questions. All right. We're going to
2 move to Appellant's final statements. Did you want
3 Mr. Pack to have his final statement now or are we going
4 to do a rebuttal first.

5 MR. TAYLOR: I have one very short rebuttal.

6 JUDGE HOSEY: Okay. Thank you.

7 MR. TAYLOR: And then I'll invite Mr. Pack to
8 come up so he can be ready to go as soon as I'm done
9 because I'm very short.

10 JUDGE HOSEY: Okay. Great. Thank you. Just,
11 again, when you're ready. Thank you, Mr. Taylor.

12

13 CLOSING STATEMENT

14 MR. TAYLOR: One point I'd like to make, thank
15 you, is that there is no clear and concise notice here
16 because the 2014 return had conflicting addresses for
17 Becker Financial. So if you want to phrase it in terms of
18 what is clear and concise notice, that return is not -- I
19 mean it's ambiguous. It's -- because you've got two
20 different -- it's not -- all it does is it raises
21 questions. So that's my point.

22 And with that, I will turn it over to my client,
23 Mr. Pack, to go ahead and make his statement.

24 MR. PACK: Well, first of all, I want to say that
25 I thank everybody for their time and their cordiality.

1 Everybody has been very nice. And even though we all
2 don't agree to -- we can agree to disagree, it's been a
3 very good environment. And I thank all the Panel for all
4 your -- I'd say really warm hospitality. And I just
5 wanted to give you overview, basically, and overview.

6 I'm not, as you can tell by my speech pattern and
7 stuff, I'm not an accountant. I'm not a lawyer. I'm a
8 business guy. I'm a home builder. Okay. So I love what
9 I do. I've lived -- born and raised here in California.
10 I've lived here my whole life, and I've been a taxpayer
11 for 57 years, believe it or not, you know, starting as a
12 box boy bagging groceries. And so I love living in
13 California. And I know that it's a big state, and I
14 realize that there's a lot of taxes that are needed to
15 support the wonderful state that we're all privileged
16 enough to live in.

17 And this is in no way intended for us not to pay
18 what is owed or whatever is determined through an audit
19 and then an appeal of what we're intending to pay. And
20 all I can tell you is that for as much work as we've done
21 for as long as we've done this, we would have never ever
22 overlooked something as a notice that would be so serious
23 and just disregard that and end up getting swept as I did
24 on that Thanksgiving weekend in 2016.

25 That's probably one of the most lowest points of

1 my business career to find out, oh, my gosh. So I'm
2 respectfully asking you folks as the judges here that you
3 allow our case to be continued. I guess it would be with
4 the same tribunal as where we were before but in a
5 different venue. And I don't know, from what I understand
6 and talking to Lavar and the team, there's really no
7 downside to the State. So we still have all the, you
8 know, the penalties or whatever the accrual is based on
9 the assessments.

10 That's still going to continue. So it's not
11 like, you know, we -- there's no -- I don't -- in my
12 opinion, there's no downside for the State to not allow us
13 to be heard. I mean, you know, it's kind of like I want
14 be able to prove that, you know, we're innocent before
15 proven guilty. I don't know if that makes sense. But
16 that's my request, and I -- again, thank you very much for
17 everybody's time today.

18 JUDGE HOSEY: We really appreciate your
19 statement. Thank you.

20 I'm just going to check to see if there's any
21 other questions.

22 Judge Lambert?

23 JUDGE LAMBERT: I have no questions. Thanks.

24 JUDGE HOSEY: And Judge Akin?

25 JUDGE AKIN: No additional questions. And I just

1 want to thank you for your statement.

2 MR. PACK: Thank you.

3 JUDGE HOSEY: Is there anything else you would
4 like to add before we close the hearing? We won't be
5 closing the record because we'll have additional briefing,
6 but just close the hearing for today.

7 MR. TAYLOR: No, Your Honor.

8 JUDGE HOSEY: Okay. Thank you for time.

9 Thank you everyone for you time.

10 The evidence have been admitted into the record,
11 and we have your arguments, briefs, as well as the
12 testimony presented today. We are leaving the record open
13 for an additional briefing on the equitable tolling issue.
14 I will issue a short order in the next few days with the
15 dates for that. So keep an eye open for that document.

16 But the hearing is now closed for the today.

17 MS. NELSON: May I make one request?

18 JUDGE HOSEY: Oh, sure. Yes.

19 MS. NELSON: I'm sorry. We have a hearing on
20 April 4th and April 5th in District Court, and so if --
21 whatever deadline you do set for this briefing would be
22 after that, would be most appreciated.

23 JUDGE HOSEY: I can definitely do that. We have
24 a busy schedule as well around here. So --

25 MS. NELSON: Okay. We know how short of an

1 order.

2 JUDGE HOSEY: -- after that April -- sorry. That
3 was April 6th?

4 MS. NELSON: 4th and the 5th.

5 JUDGE HOSEY: 4th and 5th. No problem.

6 MS. NELSON: Thank you. I didn't know how short
7 of an order you were thinking, and so I know Lavar posed
8 two weeks, and I was, well --

9 JUDGE HOSEY: It's a busy time of year. So I
10 will set the deadline. And usually Appellants go first,
11 and then I'll give FTB a chance to respond. And I'll set
12 it outside that --

13 MS. NELSON: I appreciate it.

14 JUDGE HOSEY: I'll give two weeks from those
15 dates, if that works for you --

16 MS. NELSON: That would be great.

17 JUDGE HOSEY: -- or around then. Okay.

18 MS. NELSON: Thank you.

19 JUDGE HOSEY: Okay. With that, we are now off
20 the record, and the hearing is adjourned.

21 Thank you all for your time.

22 (Proceedings adjourned at 2:19 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
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I further certify that I am in no way interested
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I have hereunto subscribed my name this 27th day
of March, 2023.

ERNALYN M. ALONZO
HEARING REPORTER