

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A. DAVIDSON and M. REHA,) OTA NO. 220811057
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, April 21, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:03 p.m. and concluding at 1:44 p.m. on
Friday, April 21, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Administrative Law Judge: CHERYL AKIN

For the Appellant: A. DAVIDSON
MICHAEL WITTE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER COOK
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 9.)
(Department's Exhibits A-F were received at page 11.)

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California; Friday, April 21, 2023
1:03 p.m.

JUDGE AKIN: We are opening the record in the Appeal of Davidson and Reha, OTA Case Number 220811057. This matter is being held electronically before the Office of Tax Appeals. Today's date is Friday, April 21st, 2023, and the time is approximately 1:03 p.m.

My name is Cheryl Akin. I am the Administrative Law Judge who will be conducting this hearing today and deciding this appeal. This case is being heard by I a single Administrative Law Judge under OTA's -- excuse me -- Office of Tax Appeals Small Case Program.

As a reminder Office of Tax Appeals is not a court. It's an independent appeals body. The office is staffed by tax experts and is independent of the State's taxing agencies, including the Franchise Tax Board. Because Office of Tax Appeals is separate and independent from the Franchise Tax Board, the only information I have and will consider in this appeal is the argument and evidence that have been submitted to the Office of Tax Appeals by the parties.

The written opinion for this appeal will be based on the briefs the parties have submitted, and the exhibits and evidence that are admitted into evidence today, and

1 the testimony and argument that is also presented today.
2 I've read the briefs and the exhibits, and I will remind
3 everyone that as an Administrative Law Judge in this
4 appeal, I do not engage in ex parte communication.

5 And let me pause for a moment because it looks
6 like maybe we have lost Ms. Davidson.

7 Ms. Davidson, are you there and able to hear us?

8 Let's give her a moment to see if she's able to
9 reconnect. If not, maybe Ms. Lopez you could reach out to
10 Ms. Davidson and see if she's able to rejoin?

11 JUDGE AKIN: Okay. Looks like maybe you're back.
12 Ms. Davidson, are you there?

13 MS. DAVIDSON: Yes. I missed everything that you
14 said.

15 JUDGE AKIN: Okay. Do you remember the last
16 thing you heard? And I can try to back up for you.

17 MS. DAVIDSON: No. Everything kind of just
18 stopped when you had announced the case and our
19 instructions for participation, and everything just
20 stopped.

21 JUDGE AKIN: Okay. Did you hear my explanation
22 about the Office of Tax Appeals being a separate and
23 independent agency?

24 MS. DAVIDSON: No.

25 JUDGE AKIN: Okay. I will just repeat that for

1 your benefit then. Okay?

2 MS. DAVIDSON: Yes.

3 JUDGE AKIN: So what I had said was as a
4 reminder, Office of Tax Appeals is not a court. It is an
5 independent appeals body. The office is staffed by tax
6 experts and is independent of the State's taxing agencies,
7 including the Franchise Tax Board. Because Office of Tax
8 Appeals is separate and independent from the Franchise Tax
9 Board, the only information I have and will consider in
10 this appeal is the arguments and evidence that have been
11 submitted by the parties.

12 And the written opinion for this appeal will be
13 based on the briefs, the testimony today, and the evidence
14 that is admitted today. I have read all the briefs. And
15 I will remind everyone that as an Administrative Law Judge
16 in this appeal, I do not engage in ex parte communication
17 with either party.

18 With that let me please have the parties
19 introduce themselves for the record. I'll start with the
20 Appellants.

21 MS. DAVIDSON: Andrea Davidson.

22 MR. WITTE: Michael Witte.

23 JUDGE AKIN: Okay. Thank you.

24 And let me have Franchise Tax Board introduce
25 themselves for the record.

1 MR. COOK: This is Chris Cook, Tax Counsel for
2 the Franchise Tax Board.

3 MR. YADAO: Hello. Eric Yadao, Tax Counsel
4 Franchise Tax Board.

5 JUDGE AKIN: Okay. Thank you.

6 Judge Akin speaking. As confirmed at the
7 prehearing conference and in my minutes and orders
8 following that conference, the issues to be decided in
9 this appeal are: One, whether Franchise Tax Board's
10 proposed assessment for the 2010 tax year is barred by the
11 statute of limitations; and two, if the proposed
12 assessment is not barred by the statute of limitations,
13 whether Appellants have established error in Franchise Tax
14 Board's proposed assessment for the 2010 tax year, which
15 is based on a federal determination.

16 I did want to just quickly check with the parties
17 and make sure this is consistent with their understanding
18 of the issue in this appeal.

19 Let me start with Appellant, Ms. Davidson.

20 MS. DAVIDSON: Yes.

21 MR. WITTE: Yes.

22 JUDGE AKIN: Thank you.

23 And Franchise Tax Board.

24 MR. COOK: This is Chris Cook. Yes, we've read
25 the issues.

1 JUDGE AKIN: Okay. Thank you.

2 With that, let's move onto the evidence in this
3 appeal. I'd like to start with Appellants exhibits.
4 Appellant has submitted six exhibits labeled Appellants
5 Exhibits 1 through 6. At the prehearing conference,
6 Franchise Tax Board indicated that they did not have any
7 objections to these exhibits, and Appellants Exhibits 1
8 through 6 are now admitted into the evidentiary record
9 without objection.

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

12 Franchise Tax Board submitted six exhibits which
13 it labeled Franchise Tax Board's Exhibits A through F. In
14 my prehearing conference minutes and orders, Appellants
15 were asked to review Franchise Tax Board's exhibits and
16 indicate in writing whether they had any objection to the
17 admission of these objections. I did not receive any
18 objections, but I did want to just confirm with Appellant
19 that there are no objections to the admission of these
20 exhibits.

21 Ms. Davidson and/or Mr. Witte?

22 MR. WITTE: I don't have any objections.

23 JUDGE AKIN: Okay.

24 MS. DAVIDSON: Andrea Davidson. I actually might
25 object to one of the them. We did not, as we have been

1 told, they were not sent with the emails, so they did not
2 arrive on time. But there was an exhibit that was
3 submitted that we had never received from the Franchise
4 Tax Board, and that was the IRS document. We've never
5 seen that before.

6 JUDGE AKIN: Okay. Thank you. You are maybe
7 referring to Franchise Tax Board's exhibit -- it looks
8 like I think D, which would be the Form 4549 income tax
9 examination changes.

10 MS. DAVIDSON: Yes, it is on IRS letterhead. We
11 had never received that from them.

12 JUDGE AKIN: I apologize if you did not receive
13 that. It was timely submitted by Franchise Tax Board. It
14 was actually attached to their opening brief. So when
15 they filed their opening brief -- I don't have the date in
16 front of me but months ago -- it should have been provided
17 to you at that time. And then again, I know we were
18 providing you copies before this hearing. So I apologize
19 if that wasn't provided to you previously, but I would
20 note that it was timely provided by Franchise Tax Board.

21 Did you have a time to review it, and would you
22 be prepared to discuss that at the hearing today?

23 MS. DAVIDSON: I did not have a lot of time to
24 review it, and I will just go along with everything
25 that --

1 JUDGE AKIN: The other option, if you do need
2 additional time to address this, what I can do is keep the
3 record open following the hearing and allow you to provide
4 a brief, a letter, a document addressing that document, if
5 that's your preference.

6 MS. DAVIDSON: Okay.

7 JUDGE AKIN: Would you like me to do that? Or
8 how about I check with you before I conclude the hearing,
9 and you can let me know if you would like to address that
10 in writing?

11 MS. DAVIDSON: I'm sorry -- okay.

12 JUDGE AKIN: Did you hear me, or would you like
13 me to repeat? I would be happy to.

14 MS. DAVIDSON: You asked if I might like to wait
15 until the end and then make that choice?

16 JUDGE AKIN: Yes.

17 MS. DAVIDSON: Okay. That's fine.

18 JUDGE AKIN: Okay. Then I will do that. Before
19 I conclude the hearing, I'll check back with you on that.
20 With that said, I will be admitting Franchise Tax Board's
21 Exhibits A through F, and those are now admitted into the
22 evidentiary record.

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

25 Okay. Let me navigate back to my notes. All

1 right. Next, what I'd like to quickly do is go over the
2 order of the proceedings, including the time estimates.
3 Okay. So in my minutes and orders, I indicated that
4 Appellants would have 20 minutes for their presentation,
5 including the witness testimony. Following the testimony
6 of each witness, Franchise Tax Board will be permitted to
7 ask clarifying questions of the witnesses regarding their
8 testimony. I may also ask clarifying questioning if I
9 have any.

10 Following Appellants' presentation and any
11 questions, Franchise Tax Board will have 10 minutes for
12 its presentation, after which I will ask any questions, I
13 might have of Franchise Tax Board. Finally, Appellants
14 will have 10 minutes following Franchise Tax Board's
15 presentation for a rebuttal or closing. And after that
16 rebuttal closing, I may ask any final questions that I
17 have of either party. With that I think we're ready to
18 begin.

19 First, I just wanted to verify whether both
20 Ms. Davidson and Mr. Witte are still planning on providing
21 witness testimony today.

22 MR. WITTE: I am.

23 JUDGE AKIN: Yes.

24 And Ms. Davidson, you're planning on providing
25 testimony as well?

1 MS. DAVIDSON: Yes.

2 JUDGE AKIN: Okay. And which of the two of you
3 will be speaking first?

4 MS. DAVIDSON: I'll do it.

5 JUDGE AKIN: Okay. I think we're ready to begin.

6 MS. DAVIDSON: Andrea Davidson. I'll do it.

7 JUDGE AKIN: Okay. Thank you, Ms. Davidson. I
8 will have you go first. Let me have you please raise your
9 right hand.

10

11 A. DAVIDSON,

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

15

16 JUDGE AKIN: Okay. Thank you. You may begin and
17 remember just to speak slowly, clearly, and loudly. If
18 needed, if we're having difficulty hearing, we may stop
19 you and ask you to, you know, slow down or repeat. Okay.
20 And you may begin when you are ready.

21

22 PRESENTATION

23 MS. DAVIDSON: Okay. Andrea Davidson. Thank you
24 everybody for taking your time today for this hearing.

25 We received a notice from Franchise Tax Board

1 back in January of 2021 telling us that our taxes were
2 incorrect from the year 2010. It seems to be a very long
3 time in my opinion. And I went over the paperwork, and
4 there was nothing that was shown to us or given to us on
5 IRS letterhead that indicated that they had sent anything
6 to the Franchise Tax Board.

7 Franchise Tax Board claimed that they got a
8 report. On March 5th in 2014 was the date of the report,
9 but that they did not receive that until April 10th of
10 2017. And they did not notify us of any such receipt of
11 information until January 6th of 2021. And we have had no
12 opportunity to be able to get any records as they are not
13 kept that long by us or by the IRS. We hold onto our
14 taxes for seven years. It was well past that time.

15 I question whether or not the IRS actually sent
16 them a notice because the IRS doesn't wait three years to
17 send a state a notice that there are more taxes due. And
18 then the State doesn't wait almost four years to then tell
19 a person that the taxes are due. They have also claimed
20 that they -- on exhibit -- I'm sorry. I'm having trouble
21 just figuring my exhibits here. But --

22 JUDGE AKIN: Did you want -- I apologize for
23 interrupting you, Ms. Davidson.

24 [TECHNICAL VIDEO DIFFICULTIES]

25 MS. DAVIDSON: I'm sorry, Judge. I did not

1 have -- did not catch that. Did I want --

2 JUDGE AKIN: I apologize. I think there's an
3 internet connection issue, and you were breaking up a
4 little bit, and I was going to try to help you with the
5 exhibit. Would you mind backing up and repeating the
6 exhibit number for us?

7 MS. DAVIDSON: The exhibit number that I
8 originally have this listed on is Exhibit 7. However,
9 since we had eliminated Exhibit 4 and Exhibit 8, I believe
10 this is now bumped up to be Exhibit Number 5, the letter
11 dated July 29th, 2022, Notice of Action. This is not a
12 bill. That's the one I'm referring to.

13 JUDGE AKIN: Okay. That's Exhibit 6.

14 MS. DAVIDSON: Exhibit 6.

15 JUDGE AKIN: Okay I'm looking at it, so please
16 proceed.

17 MS. DAVIDSON: Thank you, Judge.

18 In that exhibit, the Franchise Tax Board said
19 that we did not respond to their letter dated January 6th
20 of 2021. And because we did not respond, they've decided
21 that the assessment values are final. They added an extra
22 \$213 to it. We did send a certified letter to them in
23 response to that, to a Mr. Costa. And that's exhibit --
24 it was Exhibit A, our response, dated January 31st, 2022.

25 [TECHNICAL VIDEO DIFFICULTIES]

1 JUDGE AKIN: I'm so sorry. Your internet is
2 breaking up. Can you repeat that very last part. I
3 apologize for my interruption. We're just having a
4 difficult time hearing you.

5 MS. DAVIDSON: Yes. I understand, Judge. I'm
6 sorry about that. The exhibit of this, dated July 29th,
7 2022, that says it's a Notice of Action not a bill. It
8 states that their assessment is now final because we did
9 not respond to their letter. And we did respond to their
10 letter, and I have that exhibit dated January 31st, 2022.
11 It was listed as Exhibit A. However, because of the
12 numbering requests it is now Exhibit Number 1.

13 And that response was sent certified, and it was
14 received. And they assessed us an additional \$213. With
15 these Proposed Notice of Actions is not being -- the bill.
16 We have never received a bill. We never received proof of
17 what the IRS -- what FTB claims the IRS sent to us or to
18 them.

19 We have never received any proof in spite of our
20 asking for that proof in these letters and exhibits
21 requesting the IRS official letterhead that shows exactly
22 what was sent and when it was sent. We never received
23 anything to that effect. We just were told 11 years later
24 that we owe more taxes for 2010.

25 JUDGE AKIN: Okay. Thank you. Does that

1 conclude your presentation at this time or was there more?

2 MS. DAVIDSON: I believe it does. I believe I've
3 concluded, and Mr. Witte can add information if he'd like.

4 JUDGE AKIN: Okay. And Mr. Witte, you were
5 planning on testifying, so let me have you raise your
6 right hand please.

7

8 M. WITTE,

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

12

13 JUDGE AKIN: Okay. And you're a little soft. So
14 can I have you maybe move a little closer to the computer.

15 MR. WITTE: Okay.

16 JUDGE LONG: Perfect. And you may proceed when
17 you are ready.

18

19 WITNESS TESTIMONY

20 MR. WITTE: Okay. I'm Michael Witte. I'm a
21 certified public accountant in California for -- oh, my
22 gosh -- 35 years. I've been doing taxes for over 40 years
23 dealing with IRS, Franchise Tax Board, etc. I've been
24 doing Ms. Davidson's tax returns, I think, over 25 years.
25 And so I was their accountant the whole time that all of

1 this is going on.

2 And I want to say that I agree with everything
3 she said. I want to add that, in my opinion, you know, as
4 a witness here to this whole thing, referring back to
5 Franchise Tax Board Exhibit C where they're showing the
6 FEDSTAR IRS Data Sheet, and it says on there, FTB receive
7 date 4/10/2017. In my -- I don't -- it's not -- to me,
8 it's not IRS procedure. In other words, IRS procedure, if
9 you look at Exhibit D and it shows that they --

10 JUDGE AKIN: My apology Mr. Witte. I apologize
11 for the interruption. When you turn away, we're losing
12 your voice a little bit. So if you could repeat --

13 MR. WITTE: Okay. I'll try -- can you hear me
14 now?

15 JUDGE AKIN: Yes. And remember to speak nice and
16 slowly for us as well.

17 MR. WITTE: Okay. Thank you.

18 JUDGE AKIN: Thank you.

19 MR. WITTE: In the Franchise Tax Board Exhibit D,
20 it's the IRS tax exhibit --

21 JUDGE AKIN: I am so sorry. I know I just
22 interpreted you, and I've interrupted you again. It looks
23 like we lost Ms. Davidson, which is why I'm stopping you.
24 I am so sorry. We're going to give it just a moment to
25 see if she can reconnect here. If not, we'll have one of

1 our staff reach out to her. Let me give it just a moment.
2 I apologize. I know interruptions are difficult.

3 MS. DAVIDSON: Judge I am here.

4 JUDGE AKIN: You are here. Okay.

5 MS. DAVIDSON: Yes. My picture went blank,
6 Judge, but I am here.

7 JUDGE AKIN: Okay. If you're good with
8 proceeding, we can continue on then.

9 MS. DAVIDSON: Yes, please.

10 JUDGE AKIN: Okay. And I'm sorry, Mr. Witte. I
11 will try to minimize the interruptions. Please proceed.

12 MR. WITTE: Thank you. So I was referring to the
13 Franchise Tax Board Exhibit D, which is the Internal
14 Revenue Service income tax return examination change for
15 Reha Davidson for the year 2010, and it's dated March 10,
16 2014, and -- but then I refer to Franchise Tax Board
17 Exhibit C, which it says on there FTB receive date
18 4/10/2017.

19 So as a tax practitioner that I've been dealing
20 with the IRS for, you know, like I said 40 years, I've
21 never seen a -- the IRS always sent reports to Franchise
22 Tax Board right away. They've never in my -- ever one
23 time in my history -- and I've been working with them --
24 have they ever sent a client's -- send a client's report
25 to the Franchise Tax Board three years later.

1 So I find that -- and so I did try to call the
2 IRS to see when they sent this report to the Franchise Tax
3 Board, and they said they don't keep records this far
4 back. And so it seems like the only corroborating
5 evidence that the Franchise Tax Board has is their own
6 stamp, their own report. You know, which to me is not --
7 there's corroboration for what they're saying happened
8 here. So that's my number one point.

9 I also want to say that I don't understand. Even
10 if the Franchise Tax Board did -- I think Ms. Davidson
11 also said this. Even if they did receive this report in
12 2017, why did they wait almost four years later to bill my
13 client, you know. So that's 11 years after the year we're
14 talking about.

15 I keep records for seven years. When
16 Ms. Davidson sent me this report, I went to get my records
17 to see what they were talking about. They've been
18 shredded because it had almost been nine years. And so I
19 do a thousand tax returns a year. I cannot keep, you
20 know, 70,000 paper -- pieces of paper on every client.
21 It's just too burdensome. That's why we have the statute
22 of limitations.

23 So, you know, in my opinion it's like I don't
24 understand why the Franchise Tax Board said, you know, it
25 took all these years for them to hear from -- 3 years to

1 hear from the IRS, and then they took almost another 4
2 years. That's 7 years. And 11 years past when we
3 originally -- the year and like 10 years passed when the
4 tax return was filed.

5 So I think if this is allowed, if they can do
6 this, then there's no statute of limitations. They can --
7 they can say -- they can make their own piece of paper and
8 say I didn't receive this report from 30 years ago until
9 now, and we have to keep documents forever. So I just
10 think it's completely unfair to the taxpayer because we
11 have no way to defend ourselves against this assessment.

12 We have no papers. The IRS have no papers. The
13 only one who have papers on this is the Franchise Tax
14 Board. And so that's why I, you know, can't defend my
15 client because I don't have my records because they're
16 shredded because it was so long ago. It's way past the
17 statute of limitations.

18 And that's all I have to say.

19 JUDGE AKIN: Okay. Thank you, Mr. Witte.

20 And Ms. Davidson, are you still here? I'm making
21 sure we have you.

22 MS. DAVIDSON: Yes, I am.

23 JUDGE AKIN: Okay. Great.

24 MS. DAVIDSON: Yes, Judge.

25 JUDGE AKIN: And I realize I forgot to allow

1 Franchise Tax Board to ask any clarifying questions they
2 had of you, Ms. Davidson. So let me give them that
3 opportunity now.

4 Franchise Tax Board, did you have any questions
5 you would like to ask of either witness?

6 MR. COOK: This is Chris Cook. I just only have
7 one question for Mr. Witte with the Respondent's
8 Exhibit D, if that is his signature on the Form 4549?

9 MR. WITTE: Yes, I believe that is my signature.

10 MR. COOK: Okay. Thank you. That's all.

11 JUDGE AKIN: Okay. Thank you.

12 I do have a couple of questions I wanted to ask.
13 Let me start with a question for Mr. Witte. Do you recall
14 the IRS making adjustments to Appellants' 2010 tax year?

15 MR. WITTE: I did not until I received all this
16 information, and I vaguely recall. To be honest with you,
17 I told you I have -- I do about a thousand tax returns a
18 year. I've had thousands of IRS audits, and so I can't
19 remember everything, especially, for this long ago. But
20 it's come back to me vaguely. But to tell you what it was
21 all about, I would have to speculate. And I learned a
22 long time ago not to speculate.

23 JUDGE AKIN: Okay. Thank you. That's fair. One
24 follow-up question for you. Do you know if you ever
25 reported the IRS changes to the Franchise Tax Board

1 following the completion of the audit? I think it was
2 completed around March of 2014.

3 MR. WITTE: Again, that's why I went to the
4 storage to try to find this record, and it had been
5 shredded. And so to be completely honest with you, I
6 don't know if I did. Sometimes I do the -- I leave it up
7 to the client. But the IRS always -- yeah, I can't
8 remember one instance where the IRS did not report a
9 change to the Franchise Tax Board. And other than this
10 instance, I've never seen an instance where it didn't
11 happen within a few months.

12 My clients have always been assessed by the
13 Franchise Tax Board within a year. So -- but I always
14 leave it up to my clients. I tell them what their options
15 are. I can report it. I can amend their tax return and
16 send to the IRS, and I've done all of these things. And I
17 don't know. And to be honest with you, I don't know what
18 I did because I don't have the records because too much
19 time has elapsed.

20 JUDGE AKIN: Okay. Understood. Thank you.

21 And Ms. Davidson, I wanted to ask essentially the
22 same question of you. Do you remember the audit of the
23 2000 tax -- excuse me -- the 2010 tax year by the IRS?

24 MS. DAVIDSON: My answer is the same. Andrea
25 Davidson. I apologize. My answer is the same as

1 Mr. Witte. It was such a long time ago. We are -- I
2 don't know whether this is relevant, Judge, or not, so
3 please pardon me if it is not. We are the kind of people
4 who do not like to owe. We like to pay everything in
5 advance. We leave our refunds, if we're entitled to any,
6 in as estimates.

7 So if there was anything that was done, it was
8 taken care of and paid because I don't like to have
9 interest and penalties. If I owe taxes, I owe taxes, and
10 they are paid. I do not have a specific recollection of
11 an audit. I do remember being asked about our house that
12 we had sold in 2010, and we had sold that house at a loss
13 at the time. And we did not report that on our taxes
14 because it was a loss.

15 And that I -- I do have a recollection of being
16 asked about that, about the sale of our prior home. And I
17 do have those documentations as they pertain to real
18 estate and investment, and we sold at a loss. So for
19 any -- if anything, we would have had a deduction on that.
20 Other than that, I don't recall any other audit by
21 anybody.

22 JUDGE AKIN: Okay. Understood.

23 That's all the questions I have. So I believe we
24 are now ready for Franchise Tax Board's presentation.

25 So Mr. Cook, you have 10 minutes. Reminder to

1 speak slowly, clearly, and move close to the microphone,
2 and you may begin when you're ready.

3 MR. COOK: Okay. Thank you.

4
5 PRESENTATION

6 MR. COOK: The primary issue in this case is
7 whether FTB complied with the applicable statute of
8 limitations and issued a Notice of Proposed Assessment to
9 Appellants' 2010 tax year by the legal deadline to do so.
10 Under Section 18622 of the California Revenue & Taxation
11 Code, the taxpayer is generally required to report to FTB
12 the changes that IRS made to that taxpayer's tax year and
13 report this change within six months of the IRS's final
14 assessment.

15 In this case, Appellants never reported the IRS
16 changes to FTB. So the offer of statute of limitations is
17 Section 19060, which requires FTB to issue a Notice of
18 Proposed Assessment within four years from when it
19 received notification of the changes from the IRS. This
20 means that there are two legally relevant dates in this
21 case. First, March 27th, 2024, and second, April 10,
22 2017.

23 March 27, 2014 -- excuse me. March 27th, 2014,
24 is the date seen on Exhibit B which is the copy of the IRS
25 transcript and is the date the IRS assessed additional

1 federal tax on Appellants' 2010 tax year. April 10, 2017,
2 is the date seen on Exhibit C. This is the date that FTB
3 received notification of the changes from the IRS.

4 So the statute of limitations codify and
5 prescribe to FTB's deadline to issue a Notice of Proposed
6 Assessment in this case was April 10, 2021, four years
7 from receipt of the IRS notification. FTB did issue the
8 Notice of Proposed Assessment on January 6th, 2021, which
9 was a few months before the deadline.

10 It seems that Appellants argue that they were not
11 even aware of the IRS' changes. But Exhibit B shows that
12 they did agree to extend the IRS' statute of limitations
13 deadline. And they did make a payment to the IRS around
14 the time the IRS' changes became final. It also appears
15 to be Mr. Witte's signature on Exhibit D as power of
16 attorney accepting the IRS' assessment. But the real
17 point of this case is that the FTB did issue the notice of
18 proposed assessment within the period set by law after it
19 received the IRS' notification.

20 This leads to the other issue in this case. If
21 the OTA does hold that the Notice of Proposed Assessment
22 as timely issued, Appellants' next contention is that the
23 IRS' changes are themselves erroneous. It's a
24 well-established precedent that when FTB makes a change
25 based on an IRS change, then it's the taxpayer's burden to

1 prove that the change is erroneous.

2 This burden of proof means that the taxpayer must
3 provide evidence beyond just assertions to prove that the
4 assessment is erroneous. In this case, Appellants
5 have provided no evidence to the record to contest the
6 assessment. So Appellants have not met their burden to
7 prove an error. Therefore, this presentation can be
8 concluded with Respondent FTB asking you, Office of Tax
9 Appeals, to sustain the assessment of additional tax on
10 Appellant's 2010 tax year since there was --

11 And that's all I have. So thank you, and I'm
12 happy to answer any questions.

13 JUDGE AKIN: I apologize. I lost -- my computer
14 broke up. I don't know if it was just me, but I lost that
15 very tail end of your sentence. Could you please repeat
16 there in your last statement.

17 MR. COOK: OTA to sustain the assessment of
18 additional tax on Appellants' 2010 tax year, since the
19 additional tax timely assessed and there's no proof the
20 amount assessed was wrong.

21 And that concludes my presentation.

22 JUDGE AKIN: Thank you. And I apologize for the
23 technology. Thank you for repeating.

24 Okay. I do have a couple of questions for
25 Franchise Tax Board. The first is looking at Exhibit C,

1 which is the FEDSTAR IRS data sheet. The top right corner
2 indicates FTB received date of April 10th, 2017, but as
3 you noted per the IRS transcript, that would be Exhibit D.
4 It looks like the IRS finalized its assessment in March of
5 2014. I'm just wondering if you have any idea of why, you
6 know, assuming that that date is correct, the receipt
7 date, why it would have taken the IRS more than three
8 years to report its assessment to Franchise Tax Board?

9 MR. COOK: Yes. First it must be emphasized that
10 since Appellants did not report the change to FTB, then
11 without any other reporting, the statute is open and FTB
12 could assess at any time. But in this case, the
13 statute -- the statute of limitations applicable in this
14 case is found at 19060(b). It makes reference to a
15 six-month period and requires FTB to issue an NPA within
16 four years of the date of the IRS' taxpayer's
17 notification.

18 18622(c) requires a notification of the change or
19 correction to be sufficiently detailed to allow
20 computation that result in a California change. So any,
21 quote unquote, "notification that FTB may have received
22 before this point was not sufficient because it did not
23 provide a sufficient detail." If the IRS receives a
24 notification from the IRS that an audit was done, that
25 does not contain the data or the information to properly

1 assess California tax.

2 So, you know, as a general -- and, you know, I
3 can brief this or provide you more evidence upon request.
4 But generally if FTB receives the information that the IRS
5 had looked at it, then FTB will request the detailed
6 information from the IRS.

7 In this situation, this detailed information is
8 the amount you see on the FEDSTAR report on Exhibit C.
9 And this is -- this is the report that contains the
10 sufficient information required legally for the
11 notification to trigger the statute -- the statute of
12 limitations.

13 Does that help?

14 JUDGE AKIN: It does help a bit. I guess I was
15 just wondering why there might have been a delay of three
16 years in reporting it to Franchise Tax Board. But if you
17 don't know or don't know have the answer, that's okay. I
18 just wanted to ask in case you did have any information on
19 why it did take that amount of time to report it to
20 Franchise Tax Board.

21 MR. COOK: I don't have any additional
22 information for you at this point. But, again, if you
23 would like me to provide another exhibit, we can do that.

24 JUDGE AKIN: Okay. And then the follow-up
25 question I had is just regarding the FTB received date

1 that is indicated on that top-right corner of the FEDSTAR
2 IRS data sheet. Do you know if that is a
3 computer-generated date, or is that input by an employee
4 of FTB when the FEDSTAR data sheet is received?

5 MR. COOK: I do not know the answer to that
6 question, but I can get back to you with that.

7 JUDGE AKIN: Okay. I don't think I need the
8 follow-up information. I just wanted to ask in case you
9 knew off the top of your head. Okay. Thank you,
10 Mr. Cook. I don't have any further questions at this
11 time.

12 Let me go ahead and turn it back to Appellants
13 for their rebuttal. I believe we agreed to 10 minutes for
14 the rebuttal. I don't know if Mr. -- excuse me --
15 Mr. Witte or Ms. Davidson plans to speak, but either way
16 you have 10 minutes and may proceed when you are ready.

17

18 CLOSING STATEMENT

19 MR. WITTE: This is Mr. Witte. Thank you.

20 Mr. Cook did answer one of my questions about the
21 FEDSTAR report. And I had a follow-up question for him.
22 I don't know if I'm allowed to ask him questions but --
23 because I found that very unusual. It's the only time
24 I've seen it in my career that the IRS took three years to
25 report to the Franchise Tax Board. So I wanted to ask him

1 if this -- how many other cases he's seen like this.
2 That's one of my questions.

3 And the other question, I thought he referred to
4 something about that we extended the statute of
5 limitations, and he said it was on Exhibit B -- Franchise
6 Tax Board Exhibit B. I'm looking at Franchise Tax Board
7 Exhibit B and the only thing I see is that the -- it says
8 additional time for IRS to assess the taxpayer is
9 4/14/2014, which is the normal statute of limitations. I
10 don't see it anywhere on here where we ever extended the
11 statute of limitations.

12 And that's my only comments.

13 JUDGE AKIN: I would just note Franchise Tax
14 Board is providing argument only, not witness testimony.
15 So questions are not permitted, but I will allow Franchise
16 Tax Board to respond if they wanted to those questions.

17 MR. COOK: I will answer if you want me to,
18 Judge Akin.

19 JUDGE AKIN: Maybe if you don't mind responding
20 to the question regarding Exhibit B and the statute of
21 limitations. I believe Exhibit B is the --

22 MR. YADAO: IRS transcript.

23 JUDGE AKIN: Yes, the IRS account transcript. So
24 I think what Mr. Witte is referring to is in your
25 presentation. You indicated that they extended the

1 statute of limitations. Could you maybe direct us to the
2 specific item you're looking at on that account
3 transcript?

4 MR. COOK: Of course. I'm looking at -- it's on
5 page 2 of 2, Code Number 560. IRS can assess tax until
6 4/15/2014 is the notation put in there.

7 MR. YADAO: Judge Akin, can I interject?

8 JUDGE AKIN: Yes, please.

9 MR. YADAO: Eric Yadao, Franchise Tax Board. I
10 think that would be the ordinary statute date for the tax
11 year. So Mr. Cook may have misspoke.

12 JUDGE AKIN: Okay. Understood.

13 All right. Was there any additional closing
14 statement or rebuttal statement that either Mr. Witte or
15 Ms. Davidson would like to provide before I conclude the
16 hearing today?

17 MR. WITTE: Not from me.

18 MS. DAVIDSON: Andrea Davidson. I think I've
19 made my case. Thank you, Judge.

20 JUDGE AKIN: Okay. Thank you.

21 I believe we are now ready to conclude the
22 hearing. I would like to thank both parties -- oh, let me
23 back up.

24 Before I do, I did promise Ms. Davidson that I
25 would circle back to you. Did you want an opportunity to

1 respond to Franchise Tax Board's exhibit, the -- let's
2 see. It was their Exhibit D, the Form 4549 income tax
3 return examination changes. Did you want an opportunity
4 to address that in writing to Office of Tax Appeals, or is
5 it okay if I close the record here today?

6 MS. DAVIDSON: I believe it's okay. I believe
7 Mr. Witte responded on my behalf. Thank you, Judge.

8 JUDGE AKIN: Okay. Understood.

9 In that case, let me get back to my notes. We
10 are ready to close the record. One moment. Okay. There
11 we go. Okay.

12 We are ready to conclude the hearing. I would
13 like to thank both parties for their presentations here
14 today. I will decide the appeal based on the arguments,
15 testimony, and evidence in the record. I will issue a
16 written decision no later than 100 days from today. The
17 case is now submitted, and the record is now closed.

18 Thank you both for your participation today.

19 This concludes the hearing and the hearing
20 calendar for today. Thank you.

21 (Proceedings adjourned at 1:44 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
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foregoing is a true record of the testimony and
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I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 8th day
of May, 2023.

ERNALYN M. ALONZO
HEARING REPORTER