

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
T. KALILI,) OTA NO. 20116888
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, June 16, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
T. KALILI,) OTA NO. 20116888
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:07 p.m. and concluding at 2:13 p.m. on
Friday, June 16, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Panel Lead: ALJ OVSEP AKOPCHIKYAN

Panel Members: ALJ RICHARD TAY
ALJ KENNY GAST

For the Appellant: T. KALILI
ROBERT YOUNG
THOMAS CARTER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOEL SMITH
BRADLEY COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits A-T were received at page 13.)
(Department's Exhibits 1-16 were received at page 13.)

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California; Friday, June 16, 2023

1:07 p.m.

JUDGE AKOPCHIKYAN: We're going on the record in the Appeal of Keith Kalili. The OTA case number is 20116888. Today is Friday, June 16th, 2023, and the time is approximately 1:07 p.m. We're holding this appeal electronically via Webex by the consent of all parties.

This appeal is being heard by a panel of Administrative Law Judges. My name is Ovsep Akopchikyan, and I am the lead judge for purposes of conducting this hearing. Judges Richard Tay and Kenny Gast are the other members of this panel. All three judges are equal decision makers and may ask questions to make sure we have all the information we need to decide this appeal.

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

Mr. Kalili, can you please introduce yourself for the record?

MR. KALILI: Okay. Yes. Hi. This is Tom Kalili.

JUDGE AKOPCHIKYAN: And, Mr. Kalili, will you be arguing and presenting your case today, or is Mr. Carter or Mr. Young going to be doing that?

1 MR. KALILI: I can give a brief introduction.

2 JUDGE AKOPCHIKYAN: Okay. So Mr. Carter and
3 Mr. Young, can you also please introduce yourselves for
4 the record.

5 MR. YOUNG: Myself, I'm Robert Young. I'm acting
6 as the -- assisting the presentation of this meeting
7 today. The main individual who will be presenting most of
8 the information and mostly argument will be Mr. Tom
9 Carter. However, we felt that the --

10 JUDGE AKOPCHIKYAN: Mr. Young, I didn't
11 understand about half -- Mr. Young, sorry to interrupt
12 you.

13 MR. YOUNG: Yes.

14 JUDGE AKOPCHIKYAN: I didn't understand about
15 half of what you said.

16 MR. YOUNG: Maybe I'm talking too fast?

17 JUDGE AKOPCHIKYAN: I don't think it's the speed.

18 Mr. Kalili, can you please mute your microphone
19 when you're not speaking.

20 I do think it's the speed, Mr. Young. I do think
21 it's your audio. Are you on your phone, or are you on a
22 headset?

23 MR. YOUNG: I'm just on the computer.

24 JUDGE AKOPCHIKYAN: If you speak a little slower
25 maybe that might help. Can you please try one more time?

1 MR. YOUNG: Okay. I'm here as counsel to assist
2 Dr. Kalili. The main individual making the presentation
3 on this matter will be Tom Carter who is the individual
4 accountant for the taxpayer, Dr. Kalili. However, we
5 agree that Dr. Kalili should make the initial
6 presentation, and that's what he's attempting to do at
7 this point. But after that, the main argument will be
8 presented by Tom Carter.

9 JUDGE AKOPCHIKYAN: Mr. Carter, did you introduce
10 yourself for the record?

11 MR. CARTER: Can you hear me?

12 JUDGE AKOPCHIKYAN: I hear you.

13 MR. CARTER: What was the question, sir?

14 JUDGE AKOPCHIKYAN: Did you introduce yourself
15 for the record? I forgot.

16 MR. CARTER: I did earlier, but I'll do it again.

17 JUDGE AKOPCHIKYAN: Okay.

18 MR. CARTER: Thomas David Carter. I'm using
19 Thomas so that you don't get confused with Tom Kalili.

20 JUDGE AKOPCHIKYAN: Okay. Thank you, Mr. Carter.
21 And now for the Franchise Tax Board.

22 MR. SMITH: Joel Smith.

23 JUDGE AKOPCHIKYAN: Thank you, Mr. Smith.

24 MR. COUTINHO: And Brad Coutinho for Respondent,
25 Franchise Tax Board.

1 JUDGE AKOPCHIKYAN: Thank you, Mr. Coutinho.

2 And thank you all.

3 So as discussed at the prehearing conference and
4 as noted in my prehearing conference minutes and orders,
5 there are three issues on appeal. The first issue is
6 whether Appellant's claims for refund for the 2010 and
7 2011 tax years are barred by the statute of limitations.
8 This is how we framed the issue when we discussed it at
9 the prehearing conference. However, after the conference,
10 FTB and Appellant has sent letters in modifying this
11 issue.

12 It's my understanding that FTB has revised its
13 position and has indicated that at the conclusion of the
14 appeal, FTB will allow a refund of \$3,697.77 for the 2010
15 tax year, and a refund of \$456.43 for the 2011 tax year,
16 plus applicable interest for each year. FTB also noted
17 that these amounts do not reflect Appellant's
18 court-ordered restitution payment because FTB asserts that
19 it does not have authority to refund restitution payment.

20 Is this the correct summary of the FTB's revised
21 position?

22 MR. SMITH: Joel Smith. Yes, that's correct.

23 MR. YOUNG: Excuse me. This is Robert Young.
24 Unfortunately, I'm only getting about every third or
25 fourth syllable. No words. Is it possible I could call

1 in on the phone and join that way. Maybe it would be a
2 more propitious approach.

3 JUDGE AKOPCHIKYAN: Mr. Young, I'm not trying to
4 give you a hard time, but I do not understand when you --
5 can try speaking a little bit slower so I can try to
6 understand you?

7 MR. YOUNG: I think I'm able to hear Mr.
8 Kalili -- Dr. Kalili better than you. Perhaps there is a
9 number that I can call in. He could say it so that I can
10 write it down. I can't hear any more than I can say a few
11 syllables from what you're saying. I'm not getting no
12 words.

13 JUDGE AKOPCHIKYAN: I still don't hear you. So
14 give me one moment, Mr. Young, while I check with our
15 technology team to see how we could remedy this audio
16 problem. I'm going to go off the record for few minutes,
17 and somebody from Office of Tax Appeals will be contacting
18 you, Mr. Young.

19 (There is a pause in the proceedings.)

20 JUDGE AKOPCHIKYAN: We're going back on the
21 record in the Appeal of Kalili.

22 Before we got off the record, I summarized FTB's
23 revised position regarding the 2010 and 2011 tax years,
24 and response Mr. Young had a comment. I'm going to go
25 ahead and let him give me that comment and then we'll

1 proceed.

2 MR. YOUNG: Okay. All I -- my comment was that
3 we wanted Dr. Kalili to make the initial presentation, but
4 the main argument will be made by Tom Carter, and then I
5 had a few comments to make after that point. So perhaps
6 Dr. Kalili should start. Thank you.

7 JUDGE AKOPCHIKYAN: Thank you, Mr. Young.

8 Dr. Kalili, we are not yet ready for your
9 presentation. I'm going to have to swear you in before
10 that, but I'm still summarizing the issues on appeal. So
11 just give me a few minutes, and I'll let you know when
12 we're ready to proceed with your testimony and your
13 presentation.

14 So in response to FTB's revised position,
15 Appellant sent a letter to us as well and indicating that
16 the amount of the allowed refund is not correct. So it
17 seemed like the issue had been modified. It's no longer
18 whether the 2010 and 2011 refund claims are barred by the
19 statute of limitations but rather, whether the amount that
20 FTB has allowed as refunds for those two years is correct.

21 Is that a fair summary, Mr. Smith or Mr. Coutinho
22 of your understanding of the revised issue?

23 MR. SMITH: Joel Smith. I suppose. I'm not
24 entirely clear what the issue is left to be decided as it
25 relates to the 2010, 2011 claims for refund.

1 JUDGE AKOPCHIKYAN: Well, it seems that in the
2 letter that Appellant sent, they are suggesting that the
3 refund should have closer to about \$30,000 based on an
4 amended return they filed and the amounts therein, and
5 that the amount that the FTB had allowed is an incorrect
6 amount. So I guess the only issue in my view is whether
7 the amount or what FTB allowed or what the Appellant
8 indicated it should have been.

9 MR. SMITH: Joel Smith. Okay.

10 JUDGE AKOPCHIKYAN: Okay. Thank you.

11 And going to Kalili's team, is that a fair
12 summary of the first issue?

13 DR. KALILI: Tom Carter, is that accurate with
14 you?

15 MR. CARTER: Yes, it is an accurate statement.
16 My numbers are based on the returns that you signed and
17 filed in 2017. And the FTB, from what I could read, is
18 based on IRS transcripts, and I don't know which
19 transcripts he's talking about. So that's the difference.

20 JUDGE AKOPCHIKYAN: Okay. Well, let's address
21 the merits of your argument in your presentation,
22 Mr. Carter. As of now we are just summarizing the issues
23 on appeal.

24 MR. CARTER: Okay.

25 JUDGE AKOPCHIKYAN: Thank you. So that takes

1 care of the first issue. With respect to the second and
2 third issue, OTA has severed those issues because the
3 determination of the second issue might render the third
4 issue moot. And after we severed the issue, neither party
5 objected.

6 So we're going to go ahead and today only address
7 the second issue, which is whether OTA has jurisdiction to
8 decide whether Appellant is entitled to a refund of
9 restitution payments made pursuant to a criminal plea
10 agreement for the 2007 through 2009 tax years. And if OTA
11 decides the second issue in the affirmative, meaning that
12 we do have jurisdiction, then OTA will schedule a separate
13 hearing and issue a separate opinion for the third issue,
14 which is whether Appellant has established that he's
15 entitled to a refund of those restitution payments. If
16 OTA determines that it does not have jurisdiction, OTA
17 will issue only one opinion addressing Issues 1 and 2, and
18 will not hold a hearing or will not issue a separate
19 opinion on Issue 3.

20 One final point regarding the issues on appeal,
21 On May 24th and May 29th, Appellant had requested that the
22 Office of Tax Appeals order Wells Fargo Bank and Bank of
23 America to reimburse Appellant for alleged losses relating
24 to identity theft. And as I stated at the prehearing
25 conference, the Office of Tax Appeals is not a court. We

1 cannot decide disputes between Appellant and Wells Fargo
2 or Appellant and Bank of America.

3 We are an independent appeals agency that decides
4 only appeals from California taxpayers concerning taxes
5 and fees administered by California tax agencies. In
6 other words, we will not be able to decide the dispute
7 between Dr. Kalili and Wells Fargo or Bank of America.

8 Turning to the evidentiary record, FTB submitted
9 Exhibits 1 through 16 during the briefing process.
10 Appellant did not object to the admissibility of these
11 exhibits. Therefore, all of those exhibits are entered
12 into the record.

13 (Department's Exhibits 1-16 were received in
14 evidence by the Administrative Law Judge.)

15 JUDGE AKOPCHIKYAN: With respect to Appellant's
16 exhibits, Appellant submitted Exhibits A through T with an
17 exhibit index after the prehearing conference. FTB did
18 not object in writing to the admissibility of any exhibit
19 as I requested in my prehearing conference minutes and
20 orders. Therefore, all of Appellant's exhibits are
21 entered into the record.

22 (Appellant's Exhibits A-T were received
23 in evidence by the Administrative Law Judge.)

24 JUDGE AKOPCHIKYAN: Turning to the presentation
25 of this hearing, the hearing will begin with Appellant's

1 presentation, including the testimony of Dr. Kalili for a
2 total of 45 minutes. FTB will then present its position
3 for a total of 15 minutes, and Appellant will have five
4 minutes for rebuttal.

5 Does anyone have questions before I swear in
6 Dr. Kalili for his testimony?

7 Hearing none, Dr. Kalili, will you please raise
8 your right hand.

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

14
15 JUDGE AKOPCHIKYAN: Thank you, Dr. Kalili. You
16 may begin with your presentation when you are ready.

17
18 PRESENTATION

19 MR. KALILI: Okay. I would like to say it's an
20 honor to be at this meeting. I want to thank everyone for
21 your time and for this opportunity. It's been a very
22 difficult, very painful road in the last -- since 2010,
23 essentially. July 10, 2010, I was in Barcelona with about
24 seven or eight other professors, and faculties, and
25 scientists presenting. My paper was -- I was fortunate to

1 have my paper published.

2 So I present a paper and all of a sudden I
3 received a call from my office that there was a --
4 essentially a raid in my office. They took 20 charts.
5 Well, at that time they took 200 charts. Out of the 200
6 charts, they found 20 charts that were -- included a lot
7 of payments. And when I quickly changed my flight and
8 came back, we noticed that none of those 20 charts were
9 any treatments performed by me.

10 And then I had my bookkeeper come in to look at
11 the Quicken to see what was the money details, what was
12 going on. There was 1,200 checks missing in the Quicken
13 file. We requested both Bank of America and Wells Fargo
14 to get a copy of those checks. That took some time. When
15 we got it, it was literally about two feet high in stacks,
16 and every one of those checks were forged checks with my
17 signature significantly different than my signature.

18 Essentially, my office manager had come up with
19 her own signature signing everything. It totaled
20 \$1.8 million. They were sent out to a variety of her
21 family members and to the husband-and-wife doctors in my
22 office. And the husband, Dr. Tom Daraia happens to be my
23 second cousin. So then we shared this information with
24 the District Attorney. District Attorney -- Bob Shapiro
25 was representing me at the time. District Attorney says

1 they were shocked and stunned and so forth, but they said
2 we spent half a million dollars on the case. We can't
3 just dismiss everything. Just go ahead and pick two
4 counts.

5 So we picked one tax count and one other count.
6 And ultimately, the IRS came in, and both Divisions of
7 Audit and I.D. Theft, and they investigated this
8 thoroughly. It took about four to six months and they
9 gave a ten-page dissertation validating that none of the
10 payments -- they followed the money. None of the payments
11 came into my account. They went into a variety -- a
12 multitude of accounts under my office manager and the
13 husband-and-wife doctors in my office.

14 They said that we're going to clear any tax
15 liability and -- of interest. The legal division -- the
16 trial division of the IRS was not aware of this. We had a
17 trial pending. And three days before the trial, I got a
18 call from the trial attorney from the IRS. She told me
19 that we recently got documentation from the I.D. Theft and
20 the Audit Division of IRS, and -- and we're going to --
21 and we're going to clear everything. And she told me
22 we're going to clear everything out.

23 And so they cleared everything, and both of the
24 trial attorney, the I.D. Theft -- manager of I.D. Theft
25 and the audit manager of IRS, they all said that the

1 Franchise Tax Board initially based the 400-and-some
2 money -- \$400,000 and change based on the \$1.8 million
3 that supposedly I got. And then they said that now it has
4 adjusted to zero, they have to adjust also as well
5 according -- because they base -- the Franchise Tax Board
6 bases the tax liability based on the IRS.

7 And so that's where we are with that. That's
8 pretty much the thrust of the case.

9 Tom, anything else on this?

10 MR. CARTER: Well, I think you stated it
11 correctly that there were files taken from your office,
12 including your Quicken computer files that showed bogus
13 information that the Franchise Tax Board used to come up
14 with their numbers. And I'll go deeper into that when I'm
15 asked to.

16 MR. KALILI: So I'm pretty much finished, Your
17 Honor, at this point.

18 MR. YOUNG: Okay. I just wanted to make a few
19 comments. Besides the statute of limitations issue, I
20 just don't understand how one person could be responsible
21 to pay the taxes when somebody else got all the money.
22 And that's essentially what's happened here. And I mean,
23 I -- if I -- I would like to ask if the contention of the
24 Franchise Tax Board is that that person should be
25 responsible to pay the taxes and somebody else got the

1 money, I'd like somebody to point to a statute rule or
2 case that says that.

3 If the issue is the statute of limitations and
4 that's the only impediment to this, well then, I'd like to
5 know that as well. So if we get past the statute of
6 limitations, the Franchise Tax Board will be happy to
7 issue a refund to a Dr. Kalili, well that would make sense
8 to me. But if they feel that besides the statute and Dr.
9 Kalili really is not entitled to any refund, but he is
10 responsible for paying taxes for what somebody else got,
11 well then, I would like -- as I say, I'd like to have a
12 case, a rule, a statute, something that would support
13 that.

14 And that's all I have to say.

15 Sorry. As far as jurisdiction is concerned, one
16 more comment. It seems to me if a mistake was made, as
17 Dr. Kalili contends, a mistake was made by the Franchise
18 Tax Board in determining and assessing Dr. Kalili's tax
19 liability, it seems to me the appropriate forum would be
20 the one we're in right now. So, I mean, I don't see how
21 this forum would not have jurisdiction over that, if
22 indeed a mistake like this was made, as Dr. Kalili
23 contends.

24 Those are my comments. Thank you so much.

25 JUDGE AKOPCHIKYAN: Thank you, Mr. Young. Thank

1 you, Dr. Kalili. Is that going to be all for your
2 presentation?

3 MR. YOUNG: Tom Carter, I think he had more to
4 say in detail.

5 JUDGE AKOPCHIKYAN: Mr. Carter.

6 MR. CARTER: Good afternoon, everyone. And thank
7 you for taking the time to hear this theory. I just wish
8 that you are able to have jurisdiction so that this could
9 be finalized because it's been a ten-year struggle for
10 Dr. Kalili to get justice that was finally given to him by
11 the IRS in 2018 when the U.S. Tax Court took \$811,000 off
12 the books.

13 And therefore, we filed actually in 2017 after
14 the IRS I.D. Theft people gave him the \$1.9 million
15 allowable adjustment, which we then had his tax accountant
16 file tax returns for the years in question and two of them
17 produced refunds, which I have submitted to the court as
18 Exhibit H, being for \$295 -- \$2,695 versus the \$3,600 that
19 FTB says.

20 And then we submitted Exhibit I that the FTB
21 agreed to was only \$146, but we filed it at \$25,725. So
22 I'm somewhat confused where the federal transcripts come
23 in to play when line 1 of the state return is the adjusted
24 number at IRS. And then secondly, in regard to the
25 difference, there were two Wells Fargo garnishments that

1 were taken. One of them from Dr. Kalili's daughter
2 because Dr. Kalili was a signer, so the computer didn't
3 check that. So that's how you get to your \$26,000
4 difference.

5 Then if you go forward now, we're asking only for
6 \$786,000 because FTB has already agreed to the concept
7 that there was I.D. theft and therefore, the whole \$786
8 should be given a refund. That -- and to take it a step
9 further, I ask you to go to Exhibit D, which would be the
10 exhibit that I summarize which shows 102 felony charges
11 made, of which about 75 representing 25 bogus insurance
12 claims. That as you can see on Exhibit D, I listed the
13 name of the doctors per charge.

14 And then towards the end, we have listed the tax
15 returns that appear to be bogus. But they weren't bogus
16 because he had delayed filing because he was in a criminal
17 situation and his attorneys told him to not file until the
18 criminal case was over, which then he did file. And
19 actually he filed them before the \$786,000 was paid. So
20 that's a technical time and difference that didn't get
21 checked.

22 And I now take you to Exhibit E where -- which
23 are the exhibits I used at IRS because it appears that in
24 the Quicken Books, which is a computer software program
25 that Dr. Kalili was using, there were about \$140,000 per

1 year of IRS -- I mean, Franchise Tax Board assumed as
2 personal as if he had taken those deductions when, in
3 fact, he didn't because the accountant deleted them from
4 the schedules that he was given when the tax returns were
5 filed.

6 And then if you go to page E-2 of the exhibit,
7 you'll see that line by line where those, quote, "personal
8 expenses were not reflected on his Schedule C returns for
9 the years in question." So that kind of summarized. I
10 can go further into details as to the issues, but the IRS
11 spent quite a bit of time. And I spent quite a bit of
12 time, I think about 200 hours, to get the IRS to see that
13 there were errors made at FTB and DOI in order to get the
14 case reopened.

15 And within about a week or two after Dr. Kalili
16 filed a request for an I.D. Theft audit, we had the audit
17 and we then went to Woodland Hills with boxes and boxes to
18 be given to IRS, who then spent time looking at all the
19 information and confirmed that he was entitled to
20 \$1.9 million, which is about \$1.8 million on the two banks
21 that failed to check signatures and about \$100,000 on --
22 for ATM withdrawals that the office manager did.

23 And take it a step further, there are lots of
24 payments that the office made. And what they did was they
25 created credit cards in their name, the same ones that

1 Dr. Kalili had. So Dr. Kalili, if he looked at a check or
2 at a statement, would see oh, I'm with AmEx. That's no
3 problem. When, in fact, the AmEx payment was a fraudulent
4 payment for personal expenses of the fraudsters.

5 Including also in the list, you will see of the checks
6 that cleared the bank there was \$250,000 approximately to
7 Dr. Daraia and his now wife Monica who wasn't his wife at
8 the time and --

9 JUDGE AKOPCHIKYAN: Mr. Carter?

10 MR. CARTER: Yes.

11 JUDGE AKOPCHIKYAN: I apologize for interrupting
12 you, but the statements you're making now don't appear
13 relevant to the issues we have before us today. They seem
14 like they relate to the third issue that's been severed.
15 I would please ask that any argument be made only with
16 respect to the issues that we need to decide in this
17 severed appeal.

18 MR. CARTER: Okay. Well, the issues -- the issue
19 in my opinion is a refund for \$786,000. I'm only giving
20 you background as to how and why I was involved and asked
21 to assist to get the refund. I had to spend a lot of time
22 to document that there was a problem. And that problem
23 wasn't recognized by FTB, Department of Insurance, or the
24 Beverly Hills Police Department or the D.A.'s office.

25 So that's why I'm bringing up the documentation

1 that I gave IRS who then agreed. So had FTB, DOI, Beverly
2 Hills Police Department, and the D.A.'s office looked into
3 the supporting documents rather than just into Quicken
4 computer files, they would have seen what I saw within a
5 very short time.

6 That's why I'm bringing up the subject of how I
7 arrived and came to my conclusion and why I filed on
8 behalf of Dr. Kalili the appeal after I was told that if
9 we get the courts to expunge the two felonies, which was
10 done. It took twice to be done because the first time I
11 only thought that what was needed as the tax expungement.
12 And then the FTB came back, no. You had to do both.

13 So his then-attorney Carruso filed the second
14 one. And in your files are copies as you had asked to be
15 given of the court documents that show that the two
16 felonies were expunged. Therefore, the refund should be
17 given.

18 Am I making that point clear, sir?

19 JUDGE AKOPCHIKYAN: I understand your point,
20 Mr. Carter. But just to summarize the two issues that we
21 have before us today, the first one is whether the Office
22 of Tax Appeals has jurisdiction to basically order FTB to
23 refund the restitution payment. So that in my mind is
24 more of a legal issue. So all of the factual argument
25 that you're making in my mind are not relevant to that

1 issue of jurisdiction.

2 And with respect to the second issue, which is
3 the 2010 and 2011 statute of limitations, you have -- you
4 contend that the amount that Franchise Tax Board has
5 refunded is not the correct amount. So to the extent you
6 are bringing up any facts, I would like to know what your
7 position is, why the amount you claimed in your refund
8 claim is the correct amount, and why FTB erred in giving
9 the amount that they approved.

10 MR. CARTER: Thank you for giving me that added
11 opportunity. I'm going to start by saying I'm not a
12 lawyer, but I went back and found that the OTA was created
13 in 2017 as part of its taxpayer transparency and fairness
14 act. And that, I assume, gives you the authority. But
15 I'm not the lawyer, so I'll leave that to Robert Young to
16 argue why we're here.

17 As far as my numbers, if you go back to
18 Exhibit 10 -- I mean, Exhibit H for the \$2,695, you will
19 see the tax return as filed is what was filed by
20 Dr. Kalili's accountant, which shows the carry back or the
21 amount that IRS allowed. And after going through line by
22 line the numbers, if you wish, I can, it ends up with the
23 \$2,695 in excess of allowance. So that's how I got to 10.

24 As far as the year '11, if you go to Exhibit I,
25 you have the carry forward from the loss that went carry

1 forward as allowed under federal and state law, and that
2 produced the \$26,725 refund as was filed that originally
3 FTB couldn't find. So now the Respondent is saying that
4 they found documents, but they are using numbers that are
5 different from mine based on a transcript that I don't
6 know when that transcript was given to them and as of what
7 period, because the transcript changes from period A to
8 period B after adjustments are made.

9 So if he was using transcripts prior to 2017,
10 then those transcripts are invalid because he should be
11 using transcripts further down the road. So that's how I
12 arrived at the numbers based on the IRS allowing
13 \$1.9 million of a loss to be amended in the IRS returns.

14 And by the way, the Franchise Tax Board hit
15 Dr. Kalili originally with a \$43,000 tax after IRS sent
16 them notification that amended returns were filed. So
17 those numbers then were also reversed, and this is the
18 outcome, the \$26,000 and the \$2,600.

19 JUDGE AKOPCHIKYAN: Thank you, Mr. Carter.

20 Is that the end of Dr. Kalili's presentation on
21 both issues?

22 MR. CARTER: That's the big picture. You don't
23 want me to go into details, so I don't want to go into
24 details, But those are the facts, you know. And the \$786
25 is made up -- if you go to Exhibit G, it's the email that

1 Robert Shapiro got from the D.A. saying either pay
2 \$786,000 or we go trial and you potentially could go to
3 jail. That's why Dr. Kalili agreed to two out of the 102
4 charges that were subsequently expunged because the courts
5 agreed -- the courts other than Franchise Tax Board,
6 agreed that there was I.D. theft.

7 MR. YOUNG: I would like Tom Carter to tell us --
8 give us the facts showing that the request for the refund
9 is timely made based on the filing of these tax returns,
10 the complaints that had been made on behalf of Dr. Kalili.
11 I think Tom Carter is probably best person to speak on
12 that because he was the one that made all the filings.

13 MR. CARTER: Well, the returns as filed -- if I
14 may speak again -- were as of April 30th of '17. We have
15 those two amended returns which Franchise Tax Board has
16 already agreed that there would be refunds. So I don't
17 know as of what date they are looking at the transcripts.
18 But I'm assuming if they agree to give \$4,000, which are
19 their own numbers, then they agree that the amended
20 returns were filed timely and the request for the \$786,000
21 was timely because I don't -- I'm not a lawyer, but if
22 there's fraud involved, I don't know if there's a statute
23 of limitations.

24 JUDGE AKOPCHIKYAN: Okay. Just to be clear,
25 Mr. Young, Mr. Carter, and Dr. Kalili, you will also have

1 time for a rebuttal presentation after the Franchise Tax
2 Board gives their presentation. So as of now you have
3 15 minutes left in your presentation which you can use for
4 a rebuttal. Whenever you are ready, we can turn over the
5 presentation to Franchise Tax Board, and then you can
6 address any comments they make in the last 15 minutes.

7 MR. CARTER: I will stop at this point and use
8 the 15 minutes if needed when asked.

9 MR. YOUNG: Okay. That's fine. Thank you.

10 JUDGE AKOPCHIKYAN: Thank you.

11 Now, I'm going to turn to the Franchise Tax
12 Board. My first questions to them is whether they have
13 any questions for the witness, Dr. Kalili?

14 MR. SMITH: Joel Smith. I do not have any
15 questions.

16 JUDGE AKOPCHIKYAN: Thank you.

17 I'm going to turn over to my Panel members to see
18 if they have questions for Dr. Kalili or his attorney or
19 representatives.

20 Judge Gast?

21 JUDGE GAST: This is Judge Gast. I don't have
22 any questions at this time. Thank you.

23 JUDGE TAY: This is Judge Tay. I don't have any
24 questions.

25 JUDGE AKOPCHIKYAN: Thank you.

1 I don't have any questions at this time either.
2 So I'm going to go ahead and turn it over to the Franchise
3 Tax Board for their presentation. You may proceed when
4 you're ready.

5
6 PRESENTATION

7 MR. SMITH: Good afternoon. Thank you. My name
8 is Joel Smith and with me is Brad Coutinho, and we
9 represent Respondent, Franchise Tax Board.

10 With regard to the first issue, pursuant to
11 Respondent's revised position, at the conclusion of this
12 appeal Respondent will refund all payments Appellant made
13 for the 2010 and 2011 tax years under the federal action
14 statute of limitations. So statute of limitations is not
15 at issue with regard to 2010 and 2011, which are the
16 amended returns that gave rise to this appeal.

17 The amounts -- so the burden is on Appellant to
18 establish entitlement to a refund. Simply writing numbers
19 on a tax return does not then make those numbers truthful.
20 On these tax returns -- the amended tax returns,
21 Exhibit 3 -- excuse me -- which is provided as
22 Respondent's Exhibit 16, page 1, shows taxes paid for
23 2010. Page 3 shows taxes paid for 2011. That's taxes
24 that Appellant is reporting as having been made.

25 However, Respondent's Exhibit 3, which is the

1 2010 tax year and Respondent's Exhibit 6, which is the
2 2011 tax year reflects what was actually done for those
3 tax years. So those are the amounts that are used to
4 provide for the amounts reflected in Respondent's revised
5 position. Again, it's Appellant's burden to establish
6 that -- there's an assertion that there was \$25,000 of tax
7 paid for the 2011 tax year. Exhibit 6 would suggest
8 that's not accurate. So those are -- that's where the
9 numbers -- the amounts come from.

10 And Respondent's revised position, Appellant has
11 not provided any documentation to support the amounts
12 reported on those amended tax returns. The account
13 transcripts that were relied on were pulled the first week
14 of June 2023, so they are very current. And they do show
15 a zero adjusted gross income at the federal level. But,
16 again, refunds -- it sounded as if Mr. Carter was
17 asserting payments made to IRS would reflect amounts that
18 Respondent is responsible to pay, and that's simply
19 incorrect.

20 To summarize with regard to Issue 1, Exhibit 3
21 and Exhibit 6 show the amounts that Appellant paid for
22 those tax years, and those amounts will be refunded at the
23 conclusion of this appeal.

24 With regard to the second issue, which is whether
25 the Office of Tax Appeals has jurisdiction to decide

1 whether Appellant is entitled to refund of restitution
2 payments made pursuant to a criminal plea agreement, the
3 relevant facts of this issue are that Appellant entered
4 into a plea agreement in Los Angeles County Superior Court
5 in April of 2014. This included a restitution payment to
6 Respondent, and restitution payment is not a tax
7 assessment.

8 The restitution payment can be seen in
9 Respondent's Exhibit 10 as to where it was applied. It's
10 considered a taxpayer liability. It is not a tax
11 assessment. Exhibit 10 is Appellant's 20 -- excuse me --
12 2009 tax year.

13 The transcript of the plea hearing is provided as
14 Respondent's Exhibit 11. Numerous times during the plea
15 hearing it was made clear to all parties that the
16 restitution payment was a condition of the plea agreement.
17 And on page 15 of Exhibit 11, it was for all charges,
18 including dismissed charges. The Office of Tax Appeals
19 does not have jurisdiction to refund a restitution
20 payment. Office of Tax Appeals' jurisdiction is provided
21 in Regulation Section 30103.

22 Respondent's refusal to refund the payment
23 following Appellant's request is not one of the enumerated
24 actions of Respondent that gives rise to appeal rights
25 provided in Section 30103. In fact, it's not even that

1 Respondent refused to refund the payment. It's that
2 Respondent has no authority to refund the payment as I
3 will explain later.

4 In the alternative, if the Office of Tax Appeals
5 finds there is jurisdiction, again, it's Appellant's
6 burden to establish entitlement to a refund by a
7 preponderance of the evidence. Penal Code Section 1202.4
8 subdivision (f) states that a court may modify restitution
9 amount on its own motion or a motion of District Attorney,
10 victim, or defendant. If a motion is made, victims are
11 notified of the proceeding.

12 Respondent's Exhibit 14 is a docket of the
13 criminal matter that related to Appellant's restitution
14 payment. No such motion to modify the restitution has
15 been made in Appellant's criminal proceeding. Appellant
16 in some of the briefing referenced Penal Code
17 Section 1203.4 as authority for there being a dismissal of
18 the restitution payment, if that's even possible.
19 However, this code section of the Penal Code is something
20 that all defendants are entitled to upon successful
21 completion of probation. The dismissal under Penal Code
22 Section 1203.4 does not overturn the conviction or
23 invalidate any restitution paid to any entity.

24 In conclusion, first, Appellant's -- excuse me --
25 Respondent's revised position accurately reflects the

1 amounts Appellant is entitled to for the 2010 and 2011 tax
2 years paid to the State of California for those tax years.
3 And then based on California law, the Office of Tax
4 Appeals does not have jurisdiction to refund the
5 restitution payment.

6 The Respondent requests you sustain its
7 positions. I can answer any questions the Panel has at
8 this time. Thank you.

9 JUDGE AKOPCHIKYAN: Thank you, Mr. Smith, for
10 your representation.

11 I'm going to go ahead and turn it over to my
12 Panel members to see if they have any questions.
13 Judge Tay?

14 JUDGE TAY: This is Judge Tay. I have no
15 questions at this time.

16 JUDGE AKOPCHIKYAN: Thank you.

17 Judge Gast?

18 JUDGE GAST: This is Judge Gast. I just have one
19 question for Mr. Smith. I don't think you mention Revenue
20 & Taxation Code Section 19722 involving restitution orders
21 and other amounts imposed by a court of confident
22 jurisdiction. I don't know if that's relevant here, but
23 have you looked at that section? And if so, can you
24 advise the Panel your position on it. If you can't at
25 this time, that's fine.

1 MR. SMITH: Judge Gast, I've not reviewed that
2 code section.

3 JUDGE GAST: Okay.

4 MR. SMITH: I can certainly review it and get
5 back to you in a form of a briefing or after Appellant's
6 conclusion rebuttal, whatever it's referred to as.

7 JUDGE GAST: Okay. Maybe we try at the latter
8 after Appellant goes, and you can look at it. Maybe that
9 will be the best avenue for right now, but that's all the
10 questions I have.

11 JUDGE AKOPCHIKYAN: Thank you, Judge Gast.

12 I do have one question for Franchise Tax Board.
13 Appellant, Mr. Carter indicated two levy payments made in
14 2017, and he suggested that should have been part of the
15 refund claim. In both payments I see levy notices from
16 the bank to Dr. Kalili. One is Exhibit L, one is Exhibit
17 M in Appellant's briefing. One is for \$68.83. One is for
18 \$1,776.18. But that levy notices don't indicate anything
19 about the underlying tax.

20 I also don't see a copy of the legal order from
21 FTB to the bank asking them to levy this amount. Do you
22 know -- and if you don't, it's okay. But do you know
23 where these payments were applied to? What tax years
24 specifically.

25 MR. SMITH: Yes. The primary or the significant

1 portion of that is -- was applied to the 2011 tax year.
2 That's Exhibit 6, page 1, line 4, reflects that small
3 amount. I don't have that off the top of my head. That
4 was applied to 2009 tax year. Again, those are not
5 related to the restitution payment. Those are related to
6 the tax liabilities for Appellant.

7 JUDGE AKOPCHIKYAN: Both amounts in your position
8 were applied -- most of it was applied to the 2011 and
9 therefore, part of their approved amount under Exhibit --
10 well, Exhibit 6 is basically the transcript, right, or
11 your records of the payments received. I see one on
12 August 15, 2017, for about \$1,697. Are you saying a large
13 part of that was from the levy amount? Or all of that was
14 from the levy?

15 MR. SMITH: Correct.

16 JUDGE AKOPCHIKYAN: Okay. And the balance
17 whatever was not applied to 2011, all of it was applied to
18 2009?

19 MR. SMITH: Correct.

20 JUDGE AKOPCHIKYAN: Okay. Okay. I don't have
21 any other questions. I'm going to turn it back over to
22 Dr. Kalili for any rebuttal presentation that they have.

23

24 CLOSING STATEMENT

25 MR. KALILI: Thank you, Your Honor.

1 Pretty much the thrust of this whole case is if
2 they -- what's right, and if it's a strong-arm tactic to
3 take the money after you find out the person didn't really
4 owe it and you keep it, or you want to be ethical and
5 follow proper protocol to make sure that everyone is whole
6 as it should be.

7 At the time they thought they -- when they asked
8 me to pay those cashier checks, one of them to Franchise
9 Tax Board in the approximate amount of \$400,000, that was
10 based on not just a settlement plea agreement. It was
11 based on something, just like the payments to the
12 insurance companies. They were all down to the penny
13 based on specific things. The payments to the Franchise
14 Tax Board was based on the tax liability that I had for
15 the \$1.8 million, and that would have been the \$400,000.

16 However, when IRS cleared that amount, then
17 Franchise Tax Board, one would think that they would also
18 just accordingly. Again, it was this -- payment was not
19 just something taken from the air, that hey, okay. You
20 guys pay this amount, and we're clear. It was paid. It
21 was requested and demanded of me under duress. I would
22 like to make that clear because 50 years of imprisonment.
23 And at the time I had two kids of school age, junior high
24 school and high school.

25 So the payment was based on the tax liability

1 they were under the impression that I had at the time.
2 And I'm essentially quoting three different divisions of
3 the IRS, the trial attorney, the Audit Division and Tax
4 I.D. Theft division. They all told me the amount you paid
5 was based on what they thought was your tax liability.
6 The amount of Franchise Tax Board would have been around
7 400-something thousand dollars -- it was down to the
8 penny -- because of the tax liability at the time. They
9 though I received \$1.8 million.

10 However, when that was cleared, then the
11 Franchise Tax Board has to adjust accordingly. So it
12 seems like Mr. Joel Smith is -- is giving the audience the
13 illusion or delusion that this was a settlement agreement.
14 It was a settlement agreement based on specific amounts.
15 Based on the amount that I owed at the time and then that
16 was rectified. I mean, it's like -- it's just -- it just
17 doesn't seem proper that they received the money and then
18 later they find out I didn't owe it, and then they keep
19 it.

20 Again, it wasn't a settlement agreement coming
21 from the air. It was based on an exact amount that they
22 thought that I was liable for. I just wanted -- I'm sure
23 everyone understands that. Is that pretty, clear, Your
24 Honor? You see the difference that Joel is trying to
25 bring out? He's trying to bring out that it was a

1 settlement agreement. Just from thin air, yeah, let's pay
2 this amount. But it wasn't.

3 It based on the calculation down to the penny how
4 much they thought I owed if I received the \$1.8 million.
5 That's what it was based on. And then later it was
6 cleared, and then they need to adjust accordingly.

7 That's all I have to say about that.

8 JUDGE AKOPCHIKYAN: Thank you, Dr. Kalili.

9 And does Mr. Carter or Mr. Young have anything to
10 add.

11 MR. CARTER: Yes, I have to add, Your Honor.

12 The first thing is -- and I'm not the lawyer, so
13 I'll let Robert Young address it. But we complied with
14 the request from FTB to have the court reverse two counts,
15 which the court did and, therefore, that should have --
16 and it's in your presentation that I submitted, those
17 court records -- that those two charges were totally
18 reversed, expunged. I don't know what word you need to
19 use. So that's the first point that I disagree with that
20 it wasn't done properly. I don't know what proper is
21 because I'm not a lawyer. So I'll let the lawyers decide
22 that.

23 The second thing, as Dr. Kalili points out, the
24 \$335,000-approximately of tax, if you go back to the
25 schedule that Mr. Smith put into the file, it shows by

1 year the amount based on Quicken files. Those are the
2 computer files that were taken from the office, which are
3 totally bogus because that income was never received by
4 Dr. Kalili. Okay. And it was totally reversed. Those
5 Quicken files were totally bogus in order to satisfy
6 whatever the fraudsters needed. So that ties in.

7 And third item is, if he used the June 23rd
8 account transcripts, they wouldn't show the amounts paid
9 to Franchise Tax Board. So I'm totally confused how you
10 get what's paid to Franchise Tax Board off an IRS return.
11 But I'll leave that again to you as honorable judges to
12 determine that statement.

13 And then secondly, as far as the numbers go, we
14 had two divisions of IRS audit the tax returns as filed at
15 IRS, and the first line at Franchise Tax Board is the
16 adjusted gross income from IRS. So if IRS' number is X,
17 then X becomes the first line on the state return, and
18 that was what was used in the tax returns that were filed.

19 So I'll leave that again. And I thank you for
20 your time, and I'll turn it over to Robert Young who can
21 discuss the -- what was filed in the courts if needed.
22 But that's what was filed as told by Attorney Haase in
23 2017 was needed.

24 MR. YOUNG: My first point is going to be the one
25 Dr. Kalili made. I thought he said pretty well, pretty

1 articulately. The fact is that the money paid, as he
2 said, was just not a settlement out of the blue. It was
3 based exactly on the amount of taxes -- state taxes that
4 was going to be held for those particular years. And the
5 fact now that it shows that he's -- just got money he
6 never should have had to pay those tax.

7 The Franchise Tax Board got money it never should
8 have gotten. It should now be required to return it.
9 Whatever you want to call it, the fact is -- restitution,
10 whatever you want to call it, whatever you want to call
11 the payment made, it was not made in the abstract. It was
12 made based on the taxes. It is and does constitute the
13 tax liability that was supposed.

14 And the fact is that tax liability should never
15 have been collected from him because it didn't exist based
16 on events that occurred. Subsequently such as the
17 dismissal of the charges and the determination by the IRS
18 that that money was not owed. It was stolen from him
19 through I.D. theft. So I mean, I don't think we should
20 stand on form over substance. It's not a bunch of words
21 that are the key, it's the substance that counts. The
22 substance is that these -- is that these -- the money
23 deducted, the \$400,000 that he paid, that was -- those
24 were taxes, and he should be entitled to restitution of
25 those taxes.

1 The second point is when -- when criminal charges
2 were dismissed -- dismissed, that's the end of the case.
3 I mean, it's like they were never made. It goes back up
4 initially, and he's been exonerated from those. So that's
5 been the case there's another reason why that that should
6 be the end of the criminal case and therefore, he should
7 be entitled to the return of the money for that reason as
8 well.

9 And there should not be a discrepancy between the
10 IRS' adjusted tax liability and the Franchise Tax Board
11 adjusted liability -- tax liability. They should be the
12 same. So for the third reason that I believe restitution
13 should be made and that the court does have jurisdiction
14 over mistakes that were made by the Franchise Tax Board.
15 Otherwise, I mean, what's the Office of Tax Appeals for if
16 it's not to correct mistakes made by the Franchise Tax
17 Board.

18 Those are my comments. Hello?

19 JUDGE AKOPCHIKYAN: I hear you, Mr. Young.

20 MR. YOUNG: Okay. All right. Thank you.

21 JUDGE AKOPCHIKYAN: Thank you.

22 That's the end of Appellant's presentation?

23 MR. CARTER: Yes.

24 JUDGE AKOPCHIKYAN: Thank you.

25 I'm going to go ahead and turn it over to my

1 Panel members for any final questions for Appellant.

2 JUDGE TAY: This is Judge Tay. I don't have any
3 further questions.

4 JUDGE AKOPCHIKYAN: Thank you, Judge Tay.
5 Judge Gast.

6 JUDGE GAST: This is Judge Gast. I do not have
7 any further questions, although, I'm not sure if Mr. Smith
8 from the Franchise Tax Board wants to respond to my prior
9 question. If not, that's okay.

10 MR. SMITH: This is Joel Smith. I would like to
11 respond if now is a good time.

12 JUDGE AKOPCHIKYAN: Go ahead, Mr. Smith. Thank
13 you.

14 MR. SMITH: So Judge Gast referenced Revenue &
15 Taxation Code 19722. I think you had asked like what our
16 thoughts were on that code section. Subdivision (c) is
17 most important, as no refund or credit may be allowed for
18 any amounts paid or payments applied under this section.
19 Again, this is a restitution payment, and this is not the
20 proper forum to get a refund of that payment. Penal Code
21 Section 1202.4 clearly states how a criminal defendant
22 modifies a restitution order. Office of Tax Appeals is
23 not the proper forum for that.

24 JUDGE GAST: Okay. Thank you, Mr. Smith.

25 I'll turn it back to Judge Akopchikyan.

1 JUDGE AKOPCHIKYAN: Thank you.

2 I don't have any questions for either party.

3 Does either party have any questions for me or the Panel
4 so that -- before we conclude the hearing?

5 MR. CARTER: I have a question because I'm not a
6 lawyer.

7 JUDGE AKOPCHIKYAN: Go ahead, Mr. Carter.

8 MR. CARTER: What board should Dr. Kalili have
9 gone to after he got the IRS to agree that things were
10 done in error or to have gotten the refund given in 2017
11 when FTB Dennis Haus in his email to me said all that is
12 needed is to have those two counts reversed, which is what
13 was done. So now to tell me in 2023 we're in the wrong
14 venue, I'd like to know what venue we should have gone to
15 in 2017 when we did what was asked of my client.

16 If that's an allowable question for this court,
17 because the issue is jurisdiction, and I keep hearing that
18 there is no -- possibly no jurisdiction. But if there
19 isn't, then why were we not told this is the wrong venue
20 in 2017 when the OTA was formed?

21 JUDGE AKOPCHIKYAN: Okay. Mr. Carter, I do
22 understand your question. However, I cannot give legal
23 advice. And nobody on the Panel could give legal advice,
24 but I do appreciate your question, and I understood it.

25 If there are no other questions, we're going to

1 go ahead and.

2 MR. KALILI: I have one.

3 JUDGE AKOPCHIKYAN: Go ahead.

4 MR. KALILI: Sorry, Your Honor. Yeah. I just
5 had a -- Mr. Joel Smith continues to claim that this was a
6 restitution agreement. Ultimately, the Franchise Tax
7 Board check -- the cashier's check went to the Franchise
8 Tax Board. So, I mean, are they hoods in the street that
9 they take the money and run? They never earned the money.
10 They didn't -- it wasn't a proper acceptance of the money.

11 So he's essentially calling the representative of
12 the United States a thief. You know, they take the money,
13 and we recognize they should have never got it, and now
14 they want to keep it.

15 JUDGE AKOPCHIKYAN: Dr. Kalili, I'm going to
16 interrupt you because I don't appreciate any implication
17 that anybody is a thief here. Feel free to argue the
18 merits of your case based on a legal basis, but please
19 refrain from any name calling.

20 MR. KALILI: I appreciate that. I apologize. It
21 just seems like they're keeping the money even though they
22 recognize that the money is not theirs. That's all.

23 JUDGE AKOPCHIKYAN: I do understand your
24 position.

25 MR. KALILI: I apologize about the term.

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JUDGE AKOPCHIKYAN: No problem.

Okay. We are ready to conclude this hearing.
This case is submitted on June 16th, 2023, and the record
is now closed.

I want to thank the parties for their
presentation today. The Judges will meet and decide this
appeal based on the arguments and evidence presented to
the Office of Tax Appeals, and we will issue our decision
no later than 100 days from today.

And this concludes the last hearing for the
today. Thank you.

(Proceedings adjourned at 2:13 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 24th day
of July, 2023.

ERNALYN M. ALONZO
HEARING REPORTER