

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
J. STEWART, ) OTA NO. 221011615  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, June 15, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:34 a.m. and concluding at 10:06 a.m. on  
Thursday, June 15, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Administrative Judge: JUDGE VASSIGH

For the Appellant: J. STEWART

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

JOEL SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 7.)  
(Department's Exhibits A-G were received at page 7.)

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California; Thursday, June 15, 2023

9:34 a.m.

JUDGE VASSIGH: Let's go on the record.

And this is the appeal of Stewart, Case Number 221011615. Today is June 15th. The time is 9:34 a.m. I'm Judge Amanda Vassigh. This hearing is being conducted electronically with the agreement of the parties.

I'm going to ask the parties to identify themselves on the record, and we'll start with Appellant Mr. Stewart.

MR. STEWART: John Stewart.

JUDGE VASSIGH: Thank you.

And now we'll go to Respondent FTB's representative.

MR. SMITH: Joel Smith.

JUDGE VASSIGH: Thank you very much.

And I just want to reiterate, if you have any questions at any time just wave at me, and we'll get your questions settled.

Okay. So for the benefit of the public and the parties, I note that OTA is independent of the Franchise Tax Board and any other tax agency. OTA is not a court but an independent appeals agency. The only evidence in our record is what is submitted in this appeal.

1 Appellant elected to have this appeal determined  
2 pursuant to the procedures of the Small Case Program.  
3 Those procedures require the assignment of a single  
4 Administrative Law Judge, and decisions issued in this  
5 program do not have any precedential effect. I have  
6 reviewed the exhibits and briefings submitted by the  
7 parties in this case, and I will issue an opinion based on  
8 briefing and today's presentation.

9 The issue to be decided in this appeal is whether  
10 the statute of limitations bars Appellant's claim for  
11 refund for the 2006 [sic] tax year.

12 I'm going to now go over the exhibits that have  
13 been submitted. Appellant submitted exhibits labeled 1  
14 through 4 as set out in his email dated May 30th, 2023.  
15 Now, Exhibit 4 consisted of legal arguments which will not  
16 be admitted into the evidentiary record, and they will not  
17 be included in the briefing since it was submitted after  
18 briefing closed.

19 However, Mr. Stewart, you're free to make  
20 arguments today in your presentation and that will include  
21 them in the record.

22 So I want to check with Mr. Smith. Does FTB have  
23 any objections to Appellant's Exhibits 1 through 3?

24 MR. SMITH: Joel Smith. No objections. One  
25 comment though. The issue statement referenced the 2006

1 tax year, I believe it's '16.

2 JUDGE VASSIGH: Sorry. I misspoke 2016. Thank  
3 you for that.

4 MR. SMITH: No problem. Thanks.

5 JUDGE VASSIGH: Okay. So Appellant's Exhibits 1  
6 through 3 will now be admitted into evidence.

7 (Appellant's Exhibits 1-3 were received  
8 in evidence by the Administrative Law Judge.)

9 JUDGE VASSIGH: Now, the FTB has submitted  
10 Exhibits A through and G.

11 And I want to check in with you, Mr. Stewart. Do  
12 you have any objections to FTB's exhibits?

13 MR. STEWART: I don't even know if I would be  
14 qualified to know what I would be objecting to. I  
15 apologize. I'm not an attorney.

16 JUDGE VASSIGH: You do not need to be. You do  
17 not need to be. That is fine. We are very informal, and  
18 you do not need a legal background here.

19 So FTB's exhibits will be admitted into evidence.

20 (Department's Exhibits A-G were received in  
21 evidence by the Administrative Law Judge.)

22 JUDGE VASSIGH: So I want to quickly go over the  
23 timing of today's proceedings. During our prehearing  
24 conference, we decided that Mr. Stewart would have ten  
25 minutes for his presentation. That includes any witness

1 testimony, after which FTB will be permitted to ask  
2 questions they may have regarding Mr. Stewart's factual  
3 testimony. FTB will then have ten minutes for their  
4 presentation.

5 And after that, Mr. Stewart, you will have an  
6 optional five additional minutes for a closing or a  
7 rebuttal. Does anyone have any questions before we move  
8 on to the presentations?

9 MR. STEWART: John Stewart. No, not at this  
10 time.

11 JUDGE VASSIGH: Thank you, Mr. Stewart. This is  
12 Judge Vassigh. So Mr. Stewart, since you will be  
13 testifying as to factual evidence, I'm going to place you  
14 under oath now, and you will remain under oath until the  
15 end of this proceeding. So I'm going to ask you -- first  
16 of all, I also want to explain that FTB's representative  
17 will not be providing actual testimony, so I'm not going  
18 to be swearing Mr. Smith in.

19 So, Mr. Stewart, I'm going to ask you to raise  
20 your right hand.

21  
22 J. STEWART,  
23 produced as a witness, and having been first duly sworn by  
24 the Administrative Law Judge, was examined and testified  
25 as follows:



1 JUDGE VASSIGH: Thank you. Okay. We're ready to  
2 proceed with your opening presentation, Mr. Stewart,  
3 whenever you're ready. Please begin.

4 MR. STEWART: Yes. Thank you. Thank you very  
5 much.

6

7 PRESENTATION

8 MR. STEWART: I apologize. I wrote this down so  
9 there's a speaking voice, and there's a reading voice. So  
10 my apologies, and I don't want to drone on.

11 It was just expressed that the FTB will not be  
12 presenting factual information from my understanding of  
13 that, and the reality is it's all factual information.  
14 But the law is not about facts. We just found that out in  
15 the Supreme Court 50-year precedent is out. New game in  
16 town, new people who are reviewing things, things are  
17 being looked at. It's interpretive. The law is  
18 subjective. It is not objective. It is based upon  
19 interpretation. That being said, it's not a condemnation.  
20 It's just an explanation.

21 I'm going to start out with something that just  
22 came to our attention. Dear taxpayer, our records show we  
23 received your income tax return for the period listed  
24 above. We're sorry, but we can't find your income tax  
25 return.

1 JUDGE VASSIGH: Excuse me, Mr. Stewart. I'm  
2 sorry.

3 MR. STEWART: Yeah.

4 JUDGE VASSIGH: You're referring to something.  
5 Is that one of the exhibits?

6 MR. STEWART: No. This is my opening  
7 presentation. This is my opening --

8 JUDGE VASSIGH: It seems like you're reading a  
9 letter.

10 MR. STEWART: Yes. Well, I'm not reading the  
11 whole letter. I'm just reading a snippet of a letter but,  
12 yes.

13 JUDGE VASSIGH: Are you referring to something  
14 that's not part of the record?

15 MR. STEWART: Well, it's my opening statement --

16 JUDGE VASSIGH: I understand.

17 MR. STEWART -- so I'm reading a letter.

18 JUDGE VASSIGH: Is it a letter that you received  
19 from the Franchise Tax Board?

20 MR. STEWART: No. It's actually a letter I  
21 received from the IRS that told me that they lost mine,  
22 and would I be so kind to refile it. And the purpose of  
23 it is as an example that mistakes happen and the Franchise  
24 Tax Board, IRS, or something like that. It's just if you  
25 want it, I can submit it. I can explain that also in my

1 opening -- in my opening dialogue. But if you let me  
2 continue --

3 JUDGE VASSIGH: I don't think -- I don't think  
4 I'll ask you to have it as an exhibit because I'm not sure  
5 that it will be relevant to this question at hand. I  
6 understand that you want to use it to make a point. I  
7 will allow that, but it's -- I want to urge you to stay to  
8 the topic and --

9 MR. STEWART: Sure. Understood. Again, I'm  
10 just -- I'm just trying to explain it. The Franchise Tax  
11 Board is coming with facts based upon case law, based upon  
12 belief and how things are approached. I'm coming at it  
13 from case law but a different interpretation of it.

14 So the case -- the case before you revolves  
15 around this failure to file my 2016 tax return that shows  
16 the State of California was owed \$79. The Franchise Tax  
17 Board seized \$4,564.33 owed to me for the period 11/28/18  
18 through 11/4/19 as a punishment. That is a draconian  
19 penalty of almost 600 percent for my failure to properly  
20 file my 2016 taxes on time. Loan sharks only charge  
21 100 percent.

22 I explained that my omission was unintentional as  
23 I was dealing with and still dealing with a lot of complex  
24 legal and tax issues. See Exhibits 1 and 3. When I  
25 finally discovered my unintentional error and filed my

1        taxes in 2022, the FTB cashed my \$79 check. And I thought  
2        the issue was resolved, and a refund of the majority of  
3        the \$4,564 was seized forthcoming.

4                It's my understanding as a layman, a contract is  
5        an offer, acceptance, consideration, mutuality of  
6        obligation, confidence, and capacity. The Franchise Tax  
7        Board definitely maintains confidence. They definitely  
8        maintain capacity. Yet, they cashed my \$79 check. Sounds  
9        like they made an error. They shouldn't have cashed my  
10       check. I understand they did and again, mistakes happen.

11               I explained that my -- I understand mistakes are  
12       made, and the FTB is a large organization. But they  
13       cashed my check and then sent back a check for \$79.83.  
14       That's 1.05 percent for my trouble. It seems a double  
15       standard when you demand a 6,000 percent penalty for those  
16       who make mistakes but only offer a 1 percent reimbursement  
17       for your own mistake.

18               The FTB has offered its justification a sword for  
19       this harshness. Prussner v U.S. 7th Circuit 1990.  
20       Moreover, this is my understanding. Moreover, fixed  
21       deadlines may appear harsh because they can be missed.  
22       However, the result in occasional harshness is redeemed by  
23       the clarity imported. The statute of limitation promotes  
24       fairness and practicality in the administration of an  
25       income tax policy under California law.

1           The FTB properly denied your claim for refund.  
2       It's funny as we're talking about fixed deadlines, after  
3       calling Emily Bell on 5/30/23 at 11:40 about where and  
4       when to send my info for the hearing, she said that should  
5       have already been sent by Phyllis Mallard. I don't know.  
6       This is just what I was told. I received the instructions  
7       dated 5/23/23 at 1:00 o'clock on 5/30/23 at 11:40 with a  
8       deadline of submitting one day later of 1:00 p.m.

9           I believe Emily reminded Phyllis, and she sent  
10      them to me. Mistakes happen. Even with those with  
11      defined deadlines. Should Emily be fired? Should Phyllis  
12      be fired? Should they be penalized for breakage? Should  
13      they? No. It was a mistake. Statutorily what would  
14      have happened though, had she not sent me that  
15      information. I would have missed -- I potentially could  
16      have missed my deadline. The point I'm making is mistakes  
17      happen with deadlines.

18           Here are some quotes and thoughts from Prussner.  
19      I believe Prussner is not a sword but a shield for my  
20      case. Prussner is essentially a case revolving around a  
21      failure by an attorney to file all the correct paperwork  
22      from an estate issue involving Prussner and the IRS. I  
23      believe the statements following represent the spirit or  
24      the intent of the law, which is what the law is supposed  
25      to be about, not statutes, rules, or punishment.

1           Irony, if I understand, Ms. Prussner was assessed  
2   a 100 percent penalty of \$118,000, not the 6,000 percent  
3   penalty assessed me. One, twice after complaints from  
4   taxpayers who were denied qualified use valuation because  
5   of failures to comply with all the technical  
6   requirements -- my apologies. If I'm going too fast,  
7   please let me know sorry. Sorry.

8           Prussner. There are statements following that  
9   represent the spirit of the intended law, which is now  
10  supposed to be about statutes. I've read that. Sorry.

11          Congress has passed statutes designed to  
12  ameliorate the consequences for the taxpayer who complies  
13  substantially, although not completely. It appears that  
14  even Congress realizes that oftentimes the IRS, vis-a-vis  
15  the FTB, can be overzealous in their pursuits. Two, all  
16  fixed deadlines seem harsh because all could be missed by  
17  a whisker, by a day. U.S. v. Locke or for that matter, by  
18  an hour or a minute. They are arbitrary by nature. This  
19  is all Prussner.

20          As Chief Judge Baker 224 opinion illustrates,  
21  District Courts have been more liberal than Tax Courts in  
22  excusing the substantially complying taxpayer faced with  
23  forfeiture, Van Keppel versus the U.S., the requirements,  
24  the omission of which harms the IRS could be thought the  
25  essential ones. Yet, among other relevant consideration

1 listed in American Air Filter. It's a case.

2 Besides harm to the IRS are the specificity of  
3 the requirement that the taxpayer failed to comply with  
4 and the appropriateness of forfeiture as a sanction for  
5 his default. These factors are linked as the more  
6 innocent, the more excusable. The default is the less  
7 suitable is a harsh sanction, 6,000 percent on a \$79  
8 mistake. Ford is a general practice of law that the  
9 severity of the sanction should be tailored to that of the  
10 wrong being punished, Okaw Drainage District versus  
11 National Distillers Chemical Corp. This statement talks  
12 about the harm to the IRS.

13 My question is what was the harm to the FTB that  
14 required such an onerous penalty? Reading the Tax Court's  
15 decisions on the subject of substantial compliance is  
16 enough to make one's head swim. Tax lawyers can have no  
17 confidence concerning circumstances in which not  
18 compliance with regulations governing the election of  
19 favorable tax treatment will or will not work a  
20 forfeiture.

21 My thoughts and questions. A, Prussner appears  
22 to state that mistakes happen and the consequences should  
23 be equal to the harm incurred by the IRS. A 5,000-plus  
24 percentage penalty is onerous and serves no purpose other  
25 than to be confiscatory. What harm was suffered by the

1       FTB that warrants a 5,000 percent penalty on a debt of  
2       \$79? Prussner, by my estimates, was only assessed a  
3       100 percent penalty, which in my case would be \$157.

4               That was the reason I read the opening statement  
5       that I did from the IRS. They lost my return, and they  
6       acknowledge it. And then they said hey, would you mind  
7       sending us another one? Now, based upon what the FTB is  
8       proposing -- and I understand this is not personal. They  
9       sent me 1 percent. We had a contract. I sent you my \$79.  
10      Your organization cashed it, acknowledge they made a  
11      mistake, and then sent me 80-plus cents in return.

12              If we have a contract -- yes, I know. There's  
13      statutes. There's regulations. There's things of that  
14      nature, but that's not the spirit of the law. The  
15      representative for the FTB in defining what the penalty  
16      should be using Prussner. But he used it not  
17      intentionally, not to be bad, but to make a point that it  
18      needs to be harsh. That's taken out of context for what  
19      the rest of the Prussner decision was. And those examples  
20      I gave were representations of Prussner.

21              Again, I understand what's going on. I'm just  
22      trying to ask for some leniency. I believe if you are  
23      going to use Prussner as a sword, as well as justification  
24      for an action or a penalty, you should also be willing to  
25      assess that penalty accordingly. My original debt, had



1 the taxes been filed on time, would have been \$79. It is  
2 unfair to argue or use Prussner as a shield for a  
3 5,000 percent -- plus percent penalty, when the IRS only  
4 asked for a penalty that appeared to be 100 percent.  
5 \$118,000 is for what they felt was owed.

6 Sorry for my long diatribe. That is the end of  
7 my statement. And my wife has just come, and she's  
8 sitting across from me. Do you need to see her so that  
9 you can swear her in?

10 JUDGE VASSIGH: I would like that, Mr. Stewart.  
11 We've gone over your time, but since your witness is here,  
12 I would like to give you about -- good morning.

13 MRS. STEWART: Good morning.

14 JUDGE VASSIGH: -- four more minutes.

15 Hello.

16 So I would like to give four more minutes so that  
17 his witness can testify for us.

18 Now Ms. Stewart, I'm going to have to swear you  
19 in, and you'll remain under oath until the end of this  
20 proceeding. Please raise your right hand.

21

22 K. STEWART,

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

1 JUDGE VASSIGH: Thank you. And so you may  
2 proceed when you are ready. And again, it's 9:53. I'll  
3 give you four minutes for that.

4 MRS. STEWART: I'm sorry I -- I do apologize.  
5 I'm working. Like John said, I'm just gonna piggyback on  
6 him. I'll probably take 20 seconds.

7 You know, when we did file -- when we had the  
8 taxes done, it was with somebody we didn't normally use  
9 because we we're refinancing our house. We assumed they  
10 had been filed. They weren't. Once we found out they --  
11 they weren't actually filed, because the refinance person  
12 took them as filed.

13 So it was -- yes, it was a mistake on our part,  
14 but this is kind of an excessive fine. Us, you know,  
15 owing \$79 and then having to pay almost \$5,000, that's  
16 just, you know, that's a lot. And I'm sure my husband  
17 covered everything. And that's kind of all I have to say.

18 MR. STEWART: Well, do you want to talk about  
19 what the last five years have been like. That was the  
20 whole reason for a lot of this problem, our parents  
21 passing away.

22 MRS. STEWART: Yeah. We've been -- we've been  
23 entangled in the IRS. I don't mean entangled in a bad  
24 way. I'm just saying we've had so many things come at us  
25 that we're not familiar with. We've never done probates

1 and taxes on, you know, his folks' house and their back  
2 taxes and just the mess it's been in. It's been -- it's  
3 been a little difficult to keep up with everything.

4 We're not attorneys. We're not tax preparers.  
5 That's why we've had -- we've had the same lady do our  
6 taxes the last 14 years. We've been entwined in a huge  
7 lawsuit on a property that we purchased, our forever  
8 property we thought. And, you know, it's just a lot of  
9 money going in and out, and a lot of -- a lot of IRS stuff  
10 from his parents that we're still dealing with.

11 So but to have this one, and then the IRS  
12 actually lose our other one, it's been -- it's been hard  
13 to keep up on stuff.

14 JUDGE VASSIGH: Okay. Thank you so much,  
15 Mrs. Stewart.

16 Thank you, Mr. Stewart.

17 I want to check in with Mr. Smith.

18 Do you have any questions for Mr. Stewart or  
19 Mrs. Stewart?

20 MR. SMITH: Joel Smith. I do not have any  
21 questions.

22 JUDGE VASSIGH: Okay. This is Judge Vassigh.  
23 What I would like to do then is move to FTB's  
24 presentation.

25 And, Mr. Smith, please begin when you're ready.

1 MR. SMITH: Okay. Thank you, Judge Vassigh.

2

3 PRESENTATION

4 MR. SMITH: My name is Joel Smith. I represent  
5 Respondent Franchise Tax Board.

6 As has been mentioned, the loan issue in this  
7 appeal is whether Appellant filed a claim for refund for  
8 2016 tax year before the expiration of the statute of  
9 limitations. The facts are not in dispute. Respondent  
10 issued a valid Filing Enforcement Notice of Proposed  
11 Assessment after Appellant did not file a tax return. The  
12 Notice of Proposed Assessment was based on Appellant's  
13 wages earned.

14 Once the Notice of Proposed Assessment went  
15 final, collection action followed, which included a  
16 payment plan. Respondent received the last payment on the  
17 payment plan on November 4th, 2019. Appellant filed a  
18 claim for refund in the form of an original tax return  
19 reporting total tax of \$3,874 on September 14th, 2022.  
20 Appellant did not file a claim for refund within an  
21 applicable statute of limitations.

22 Revenue & Taxation Code Section 19306 provides  
23 that Appellant must file a claim for refund within four  
24 years of the original filing due date or one year from the  
25 date of overpayment. Appellant included the payment with

1 the claim for refund, which Respondent refunded under the  
2 one-year statute of limitations. However, all other  
3 payments for the 2016 tax year were time-barred under  
4 Section 19306. And the list and dates of those payments  
5 are provided in Respondent's Exhibit D.

6 Based on the evidence in the record and  
7 California law, Respondent properly denied Appellant's  
8 claim for refund for the 2016 tax year and ask that the  
9 OTA sustain its position.

10 I can answer any questions that the Judge has at  
11 this time. Thank you.

12 JUDGE VASSIGH: Thank you for your presentation,  
13 Mr. Smith. I do have one question for you. Mr. Stewart  
14 discussed the Prussner case at length. I want to know --  
15 and it seems that he believes FTB has misapplied or  
16 misinterpreted that case. Can you speak to that, please?

17 MR. SMITH: Joel Smith. Yes. So to characterize  
18 Respondent's position as relying on Prussner is not  
19 accurate. Prussner is a case like many others at the  
20 federal level that explains the nature of the statute of  
21 limitations and how it's applied.

22 It is a case that the OTA quoted in the  
23 precedential opinion of Benemi Partners. And it's  
24 provided again, because the federal and California laws on  
25 statute of limitations are similar in how they are

1 applied. So it's language that is used to explain the  
2 reasoning behind the statute of limitations.

3 JUDGE VASSIGH: Judge Vassigh here. Thank you  
4 for that information, Mr. Smith.

5 At this time, Mr. Stewart, I'd like to hand this  
6 back to you to have the last word. If you would like, you  
7 can have five minutes to offer a rebuttal or a closing.

8 MR. STEWART: Yes, thank you.

9

10 CLOSING STATEMENT

11 MR. STEWART: Again, this hinges on -- sorry.  
12 This hinges on whether the law is going to look -- excuse  
13 me -- you the Judge are going to look at this from a  
14 statutory, or are you going to look at from a spirit of  
15 the law. Our founding fathers were very smart. I know  
16 it's causing a lot of chaos right now. They purposely  
17 wrote the Constitution to allow broad latitude.

18 Your average car contract has more words in it  
19 than the Constitution does, and that was done on purpose.  
20 It was allowed ambiguity, some changing of the times.  
21 They were very smart men. Unfortunately, the women  
22 probably didn't get as much credit as they needed for it  
23 that helped them with this. But they wrote the  
24 Constitution as a base, fungible, to be worked with. All  
25 laws come down from there.

1           The Franchise Tax Board is using the IRS as their  
2     guide in this. The reason I use Prussner is that is the  
3     sword that they were using as justification. And what I  
4     was trying to say is even in the writing of Prussner they  
5     said this stuff is confusing, and they essentially  
6     complied. Are -- what is the purpose of the fine? This  
7     is all Prussner, and this is all captured in the notes.  
8     And I apologize if you got to go back and read that stuff.  
9     But what it talks about is applying a correct fine to an  
10    offense.

11           What the FTB has done is they've said  
12    Mr. Stewart's 2016 return, even they got them from 1983  
13    for me. You can see how much I've paid in taxes and  
14    things like this, and you've got them through 2023. But  
15    when I missed the \$79, they immediately went to the most  
16    draconian penalty they could do. I don't know if that's  
17    statutorily the way it is. Did somebody in the FTB now  
18    have to go well, last year he owed \$500. The year after  
19    he owed -- we owed him \$4,000.

20           No. They immediately went to this,  
21    Mr. Stewart -- who at the time I had six kids, owned a  
22    house, lot of expenses thus, only owing \$79, he must be  
23    held as zero and the -- and no exempts. That is the  
24    position Franchise Tax Board used. Whether that's the  
25    position that they deemed that's appropriate, it's what

1       they used. They just went as hard and as harsh as they  
2       could. It's not personal, but it should be personal.

3               Mistakes are made. I pointed that out. Several  
4       mistakes were made. Had I missed my deadline for filing  
5       my information, even though I understand now that I can't  
6       file legal arguments or something because it wasn't  
7       originally done that way. I may have lost this entire  
8       opportunity to have this discussion. And again, should  
9       that person be fired? Should that person be -- have a  
10      penalty assessed against them? No. Because it was an  
11      honest mistake.

12             If you go to a grocery store, and you're working  
13      in the shelving and you drop a jar of pickles, it's  
14      illegal for your boss to come and say you dropped that jar  
15      of pickles. I'm taking it out of your salary. Now, if  
16      you take that jar of pickles and you throw it at somebody,  
17      you're going to get fired, and they're probably going to  
18      charge you for it. Accidents happen. Mistakes are made.

19             The penalty should be reflective of the mistake.  
20      \$79 and you took over \$4,000. Not you personally, okay.  
21      But it is personal. That's a lot of money. One of the  
22      other things is, that money, I can't apply that to  
23      anything. I'm going to owe money this year for taxes. I  
24      retired. What's going to end up happening is I can't  
25      apply this \$4,000.



1           I believe there's a term called equitable  
2       recoupment. Now, if they can't give me my money back, is  
3       there a way that they could say, yeah, we probably  
4       shouldn't have taken that much money from you, but we'll  
5       allow you to apply it towards something else, the term  
6       equitable recoupment. Now, again, I'm not an attorney,  
7       but the law is not written for attorneys or judges. It's  
8       written for people like myself, and the punishment needs  
9       to fit the crime in this case.

10           What was my crime? I dropped my 2016 taxes to  
11       the bottom of the file that had state, federal, my mom and  
12       dad's, and stuff of that nature. It got lost. And when I  
13       got this information, I thought it was something else. If  
14       you ever look at an FTB or an IRS information they give  
15       you, or even this stuff I got sent from the FTB, you need  
16       a lawyer to just translate it. That's not the purpose of  
17       the law. The law should be available to everybody, and it  
18       should represent spirit, not the fact.

19           Thank you.

20           JUDGE VASSIGH: Thank you.

21           Okay. So this concludes the hearing, and this  
22       case is now submitted for determination. The record is  
23       now closed.

24           OTA will aim to mail a written opinion to the  
25       parties no later than 100 days from today. I would like to

1       thank both parties for participating in this hearing.

2               I'd like to thank Ms. Alonzo and the other OTA  
3       staff for their services in support of this hearing.

4               And that's it for this hearing. OTA is going to  
5       take a five-minute recess and will convene at 10:11 a.m.  
6       Thank you very much and have a good day.

7               (Proceedings adjourned at 10:06 a.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 13th day  
of July, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER