

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
L. THORSON and J. THORSON,) OTA NO. 22039970
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, July 19, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:00 p.m. and concluding at 2:08 p.m. on
Wednesday, July 19, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ LAUREN KATAGIHARA
ALJ OVSEP AKOPCHIKYAN

For the Appellant: CEARRA CLARK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
ERIC BROWN
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-9 were received at page 8.)
(Appellant's Exhibits 10-12 were received at page 9.)
(Department's Exhibits A-R were received at page 8.)
(Department's Exhibits S-U were received at page 9.)

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APPELLANT'S WITNESSES:

DIRECT

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1 California; Wednesday, July 19, 2023

2 1:00 p.m.

3
4 JUDGE LONG: We are opening the record in the
5 Appeal of Thorson. The OTA Case Number is 22039970. This
6 matter is being held before the Office of Tax Appeals.
7 Today's date is Wednesday, July 19th, 2023, and the time
8 is approximately 1:00 p.m. This hearing is being convened
9 electronically.

10 Today's hearing is being heard by a panel of
11 three Administrative Law Judges. My name is Keith Long,
12 and I will be the lead Administrative Law Judge. Judge
13 Lauren Katagihara, and Judge Ovsep Akopchikyan are the
14 other members this tax appeals Panel. All three judges
15 will meet after the hearing and produce a written decision
16 as equal participants. Although the lead judge will
17 conduct the hearing, any judge on this panel may ask
18 questions or otherwise participate to ensure that we have
19 all the information needed to decide this appeal.

20 Also present is a stenographer, Ms. Alonzo, who
21 is reporting this hearing verbatim. To ensure we have an
22 accurate record, we ask that everyone speaks one at a time
23 and does not speak over each other. Also, speak clearly
24 and loudly. When needed, Ms. Alonzo will stop the hearing
25 process and ask for clarification. After the hearing,

1 Ms. Alonzo will produce the official hearing transcript
2 which will be available on the Office of Tax Appeals
3 website.

4 The Office of Tax Appeals is an independent and
5 neutral agency. It is not a tax court. All three judges
6 are coequal decision makers and can ask questions at any
7 time. I'd like to offer a few reminders to help the
8 process run as smoothly as possible. First, please ensure
9 your microphone is not muted when you speak, otherwise
10 your voice will not be picked up on the live stream.
11 Please remember to mute your microphone when you are not
12 speaking to avoid any echoes. As a reminder these
13 proceedings are being broadcast live and anything said
14 today and any information shared today is publicly
15 viewable on the live stream.

16 For the record, will the parties please state
17 their name and who they represent, starting with the
18 representatives for the Franchise Tax Board.

19 MR. BROWN: I'm Eric Brown, Franchise Tax Board.

20 MR. YADAO: Good afternoon. Eric Yadao,
21 Franchise Tax Board.

22 JUDGE LONG: Thank you.

23 And for the Appellant.

24 MS. CLARK: Good afternoon. My name Cearra
25 Clark, and I represent Appellants Mr. and Mrs. Thorson.

1 And I have here with me today Ms. Thorson.

2 JUDGE LONG: Thank you.

3 And my understanding is Mrs. Thorson will be
4 testifying as a witness today. Is that still correct?

5 MRS. THORSON: Yes.

6 MS. CLARK: Yes, Your Honor. It is.

7 JUDGE LONG: Great. Before we continue, let us
8 go ahead and swear in Mrs. Thorson as a witness.

9 Mrs. Thorson, can you please raise your right
10 hand and repeat after me -- or answer my question, I
11 suppose.

12

13 L. THORSON,

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

17

18 JUDGE LONG: Thank you. You may lower your hand.

19 Today there are several exhibits for the appeal.

20 At the prehearing conference and at our June 28, 2023,

21 minutes and orders the Office of Tax Appeals acknowledged

22 Franchise Tax Board's Exhibits A through Q. OTA has also

23 acknowledged Appellant's Exhibits 1 through 9 at the

24 prehearing conference. Neither party raised any objection

25 to these exhibits, and they are admitted. Hold on one

1 moment please.

2 My apologies.

3 As I noted at the prehearing conference, neither
4 party raised objections to these exhibits, and they are
5 admitted. In addition, at the prehearing conference we
6 identified FTB Exhibit R, which also had no objections.
7 OTA also acknowledges Appellant's Exhibit 1 through 9, and
8 Franchise Tax Board had no objection to these exhibits.
9 As a result FTB Exhibits A through R are admitted, and
10 Appellant's Exhibits 1 through 9 are admitted.

11 (Appellant's Exhibits 1-9 were received
12 in evidence by the Administrative Law Judge.)

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

15 JUDGE LONG: Thereafter, on July 5th, 2023,
16 Appellant submitted A, revised exhibit index, and attached
17 Exhibits 10 through 12. These include Exhibit 10, email
18 from Google Fi, email from telephone provider, Google Fi,
19 regarding call log retention. Exhibit 11, letter from TD,
20 letter from TD Ameritrade Bank regarding Thorson's account
21 funds in excess of the check amount \$20,000. Exhibit 12,
22 response from TD, verification from TD Ameritrade that
23 there were no bounced checks.

24 Before we go on, does Franchise Tax Board have
25 any objections to Appellant's submission?

1 MR. BROWN: No, Judge.

2 JUDGE LONG: Okay. Thank you.

3 Appellant's Exhibits 10 through 12 are admitted
4 into the record.

5 (Appellant's Exhibits 10-12 were received
6 in evidence by the Administrative Law Judge.)

7 JUDGE LONG: In response to Appellant's
8 submission, Franchise Tax Board submitted Exhibits S
9 through U, and they include Exhibit S, payment detail,
10 April 6, 2022; Exhibit T, payment detail, April 15th,
11 2022; Exhibit U, payment detail, June 15th, 2022.
12 Appellant filed a timely objection to these exhibits on
13 the basis of relevance.

14 As an explanation, FTB replied that these
15 exhibits are intended to rebut the contention that
16 Appellant never bounced any checks from a certain bank
17 account. OTA is going to admit these exhibits into the
18 record as they are intended to rebut assertions made by
19 Appellants. However, we're going to give these
20 exhibits -- recognize that these exhibits do not pertain
21 to the tax year in question, and they will be given the
22 weight that they deserve. As a result, FTB's Exhibits S,
23 T, and U are all admitted into the record.

24 (Department's Exhibits S-U were received in
25 evidence by the Administrative Law Judge.)

1 JUDGE LONG: There are three issues to be heard
2 in this appeal. They are one, whether Appellants have
3 established that the late-payment penalty should be
4 abated; two, whether Appellants have established that the
5 estimated tax penalty should be abated; and three, whether
6 Appellants have established the interest for the period
7 July 13, 2021, through October 15, 2021, should be abated.

8 Franchise Tax Board, is that your understanding
9 of the issues in this appeal?

10 MR. BROWN: Yes. That's correct, Judge.

11 JUDGE LONG: Thank you.

12 And, Ms. Clark, is that your understanding of the
13 issues in this appeal?

14 MS. CLARK: Yes, that's correct as well. Thank
15 you.

16 JUDGE LONG: Thank you.

17 Now the taxpayer has requested 50 minutes for
18 their opening presentation and also for their witness
19 testimony.

20 Ms. Clark, you may begin when you are ready.

21

22 PRESENTATION

23 MS. CLARK: Thank you, Your Honor.

24 Today we will be discussing the reason why the
25 Thorsons' late and estimated payment penalties and any

1 associated interest should be abated. I'd like to begin
2 by asking Ms. Thorson a few questions.

3

4 DIRECT EXAMINATION

5 BY MS. CLARK:

6 Q Mrs. Thorson, did you make your estimated tax
7 payments for the tax year 2020 and if so, when did you
8 make those payments?

9 A I made one in July and one in December of 2020.

10 Q And what type of account did you make these
11 payments from?

12 A They were from my TD Ameritrade -- one of my
13 several brokerage accounts with TD Ameritrade.

14 Q Thank you.

15 A So it's just not a checking account. It has
16 other activity in the account.

17 Q Thank you. And did this account, when you made
18 the check, have sufficient funds in July when you sent
19 that check to the Franchise Tax Board?

20 A Yes. July through the end of the year had
21 sufficient funds.

22 Q And could you please explain to us the
23 circumstances of this brokerage account specifically that
24 are relevant to the tax payments at issue and the checks
25 that you made in July?

1 A Yes. So this account -- well first of all,
2 because it's a brokerage account and actually my accounts
3 are linked so I see totals. There's a lot of fluctuation
4 in these accounts because of dividends, stock fluctuation,
5 all kinds of different variables. And this particular
6 account, we were in the Woolsey Fire at the end of 2018,
7 and we had to move out of our house.

8 And in 2019 there was some suspected fraud in
9 this account, this TD Ameritrade account. And rather than
10 closing the account, they just changed my account numbers.
11 So that I didn't have to shut everything down and regroup,
12 they just altered the numbers. And they sent me new
13 checks, but at the time I was not living in my house, and
14 all my files were in a state of disarray because of
15 remodeling and so forth.

16 And I did not -- I did not dispose of the other
17 checks just because of the timeline of not being in my
18 house and then by the time I got back. So when I went to
19 write the check for the two payments, I looked at my
20 account and I had the funds and I wrote the check not
21 realizing -- well, it turned out to be the December
22 check -- but not realizing that I had written it off the
23 old account number.

24 Q And you spoke to this a bit, but could you please
25 just explain a bit further if there was anything occurring

1 in your life prior to the other account being closed or
2 essentially the check -- the account number being changed
3 that impacted your ability to dispose of the checks with
4 that prior account number?

5 A Yeah. I guess I never would have imagined what
6 trauma fire brings had I not lived through it. I mean, 30
7 houses on our street burned. My husband actually saved
8 our house, but we have significant damage. And the
9 process of dealing with insurance, the process of moving
10 out and having to make a lot of decisions and still keep a
11 job and -- it was just a very stressful time of upheave.
12 And we were out of our house for about I think 8 or
13 9 months. And then even when we moved, it was probably a
14 year-and-a-half of dealing with insurance claims. I mean,
15 we moved back and it wasn't finished. We just wanted to
16 be home.

17 So there was just a lot of chaos in my life. And
18 then I had the suspected fraud on this account. And I do
19 have multiple accounts, and so I do have a stack of
20 checks. And it was just the time lapse of not being at
21 the house and not being able to dispose of the checks
22 right at the time the event happened because I was not
23 living there and dealing with all of the different events
24 going on with my life.

25 Q And is there a reason that you did not notice

1 that the payment that you sent in July did not go through?

2 A I mean I know it sounds like a lot and it's
3 something that would be noticeable, but that account --
4 those accounts, because they're linked, they fluctuate in
5 swings -- very big swings every day. And because I had
6 the funds there, I just assumed it would clear when it
7 cleared. And I just didn't -- there wasn't a day where I
8 thought, you know, that I noticed. And I've seen it be
9 delayed before in checks clearing, so I just didn't -- I
10 didn't notice it.

11 Q Were you notified that that check didn't clear?

12 A No. And that's the other -- that was my miss --
13 wrong assumption is I just -- I assumed that I would be
14 notified if there was an issue with a check. So I assumed
15 that it had gone through.

16 Q So given the fact you were not notified, at what
17 point, did you realize that the check didn't clear?

18 A Well, I filed my taxes, and I claimed that I made
19 those two -- that I made two payments because that's what
20 I had in my check register. And then I got a letter from
21 Franchise Tax Board, and I called the very same day
22 because I was extremely upset. I don't want to be on the
23 bad side of the Franchise Tax Board.

24 And it was hard to get through because now we're
25 in the time of Covid, and it was difficult to get through.

1 But I just assumed at first that maybe that it got applied
2 to a wrong year. Something went wrong because they said
3 they had only one of the payments of the two, that I had
4 only prepaid \$20,000, not 40,000.

5 So I had a different year where it had been
6 misapplied, and I had thought -- so anyway, I finally did
7 get through, and I was told that it was the December --
8 the December check that didn't clear. And he just said,
9 oh, just get a copy of the -- the agent, it was a male.
10 He said just get a copy of the cleared check and show --
11 and send that in, and we'll clear -- we'll trace it down,
12 and you'll be fine.

13 So I thought oh, okay. Great. You know, that's
14 what happened. So I went to the bank that day. I
15 requested a -- it was too far back to see it online, but I
16 requested a copy of the cleared check, and I sent all that
17 in with the documentation thinking that it would be
18 revolved through that.

19 Q And the Franchise Tax Board records show --
20 they're claiming that it shows that you didn't contact
21 them via phone as you're saying that you did here today.
22 Do you have any documentation to prove that you did, in
23 fact, call them?

24 A Well, I do because I -- I walk with a neighbor
25 every Tuesday. And actually, I didn't -- I remember that

1 I didn't get through, and I requested a callback because
2 you can get on that waiting list. And they happened to
3 call back while we were on our walk. And I said I have to
4 take this because this is, you know, Franchise Tax Board.
5 I have to get this resolved.

6 And so she heard the whole conversation that I
7 had on that date, which was a Tuesday, and that's the day
8 we walk. Anyway, she put it in a sworn statement about
9 that. And I also tried -- I did my best to obtain the
10 Google Fi records, which I couldn't. But I just -- why
11 would I have gone to those lengths to send in the check
12 information from December because it's not like I'm going
13 to be able to fool the Franchise Tax Board. I mean, that
14 would be silly to try.

15 I was told -- I was trying to verify that I had
16 written the two checks, and I was -- so it just doesn't
17 make any sense that I wouldn't have gotten the wrong
18 information and acted that way.

19 Q You mentioned a moment ago that you sent the
20 Franchise Tax Board a copy of the cleared December check.

21 A Right.

22 Q Can you explain why you did that?

23 A Because that's the one I was informed was the one
24 that was missing.

25 Q And it was actually the July check that didn't go

1 through; is that correct?

2 A And I -- right. And I did not learn that until
3 subsequent communication from Franchise Tax Board.

4 Q And once you did receive that information -- the
5 accurate information that it was the July check that it
6 did, in fact, not clear, how did you respond?

7 A I immediately paid everything that was due,
8 including the penalties and fees and mailed it in.

9 Q And have you ever had any checks that were sent
10 to the Franchise Tax Board prior to this 2020 tax year
11 bounce or not clear?

12 A No. And even the ones they're referring to in
13 2022, those were not bounced checks. That was my first
14 attempt at doing online payments. And the routing numbers
15 are very complicated with TD Ameritrade. They don't have
16 their own clearing. And so I made a -- they didn't
17 bounce. I had the money. I made an attempt to pay, and
18 it didn't go through because of the routing numbers. They
19 have several different ones.

20 And so because I learned from this that I
21 wouldn't get a notice, I went back the same day to check
22 and saw that it didn't clear. And then I resubmitted it,
23 and it went through. And this was the online payment.
24 But I've never bounced a check to the Franchise Tax Board.
25 And even this check actually didn't bounce. It got

1 rejected. It didn't -- it didn't bounce for a lack of
2 funds.

3 Q Thank, you Mrs. Thorson.

4 MS. CLARK: Your Honors, would you like to open
5 it up for additional questions for Mrs. Thorson now, or
6 would you like me to continue at this point?

7 JUDGE LONG: Why don't you continue, and we'll
8 give Franchise Tax Board the opportunity to ask
9 Mrs. Thorson questions after your presentation. And then
10 my co-Panelists and I will ask questions after that.

11 MS. CLARK: Thank you so much.

12

13 PRESENTATION

14 MS. CLARK: Your Honors, thank you for taking the
15 time to hear this case. Today we'll discuss the reason
16 why the late and estimated payment penalties and any
17 associated interest qualifies to be abated under the basis
18 of disaster, reasonable cause, Franchise Tax Board error,
19 and equitable estoppel. As we consider my clients'
20 circumstances, we'll first look to the issue of the
21 disaster.

22 In November of 2018, the Woolsey Fire disaster
23 ripped through Los Angeles and Venture Counties burning
24 almost 100,000 acres of land and forcing almost 300,000
25 people to be evacuated. The fire was so disastrous that

1 there were over 100 single-family residences that are
2 still under construction to this day, according to the
3 City of Malibu.

4 Unfortunately, my client and her family were
5 among those impacted by this fire which caused significant
6 soot and smoke damage to her home, along with several
7 buildings that burned down. All of this resulted in
8 Appellant and her family needing to be temporarily
9 relocated for several months because it was dangerous for
10 their health to remain at home.

11 During this time, she was managing both the
12 household that incurred the damage, and the household she
13 was living in, along with all of the bills and
14 responsibilities --

15 JUDGE LONG: Ms. Clark?

16 MS. CLARK: Yes.

17 JUDGE LONG: I'm sorry to interrupt, but I'm
18 getting a lot of interference. Can everyone please just
19 make sure that their microphones are muted.

20 Okay. All right. I think we're all set to go,
21 Ms. Clark, if you can continue. My apologies.

22 MS. CLARK: No worries. Thank you so much.

23 During this time she was managing both the
24 household that incurred the damage and the household she
25 was living in, along with all the responsibilities and

1 bills that come with that burden.

2 Shortly after that in 2019, she was forced to
3 deal with her financial accounts being compromised due to
4 concerns with fraud. As a result, her bank changed the
5 account numbers on her accounts, but this transition was
6 essentially seamless for my client because everything else
7 regarding the accounts remained the same. The bank sent
8 her replacement checks for the new account number, but
9 unfortunately due to the disastrous effects of the fire
10 and the resulting damage that occurred, she could not
11 access the old checks that were associated with the prior
12 account number in order to dispose of them.

13 When my client moved back into her home several
14 months later, she was still coping with the lingering
15 effects of the fire, which caused financial and economic
16 distress, because she was essentially still dealing with
17 the ongoing construction on her home while she was living
18 with it. And to add to that, corresponding with the
19 insurance company frequently to address the claims that
20 were associated with her complex insurance claim.

21 I ask that you imagine after such a large fire
22 and being displaced with your home, which is already a lot
23 for any individual to deal with, you move back in, and
24 it's not even completed. It's only about halfway
25 complete. You're still dealing with contractors working

1 on the outside of your home. You're replacing all the
2 furnishings inside your home, and you're also the sole
3 person responsible to manage and direct all of this for
4 such a huge project that totaled over \$1 million in claims
5 and over 800 replacement items.

6 With so much going on between the construction
7 and the bank changing her account numbers with the fraud,
8 along with the corona virus pandemic occurring around the
9 same time that we all experienced as well, she didn't have
10 the opportunity to dispose of the old checks when she was
11 finally able to access them. As a result, when she timely
12 mailed her estimated tax payments for the 2020 tax year in
13 July and December, she inadvertently sent the July 2020
14 payment on one of the old checks with the prior account
15 number.

16 California conforms to IRC Section 6654
17 subsection (e)(3)(a), which provides that the taxing
18 agency may waive the underpayment of estimated tax penalty
19 if it determines that by reason of casualty, disaster, or
20 other unusual circumstances, that the imposition of a
21 penalty would be against equity and good conscience. And
22 the phrase "casualty, disaster, or other unusual
23 circumstances," generally refers to unexpected events that
24 cause a hardship or a loss, which the Woolsey Fire
25 disaster here meets that criteria.

1 Given the foregoing circumstances that the fire
2 made it impracticable for my client to access the old
3 checks and to dispose of them timely, paired with the
4 ongoing adversity of the fire disaster impacting my client
5 and her family, we respectfully request that the Office of
6 Tax Appeals recognize that imposing the estimated tax
7 penalty would be against equity in good conscience.

8 Appellant was not aware that the payment she sent
9 in July of 2020 did not clear because as she mentioned,
10 she was not notified by her bank or the Franchise Tax
11 Board for many months. We recognize that the Franchise
12 Tax Board has no duty to notify my client that the check
13 did not clear. However, it is reasonable for her to
14 expect that some type of notification would be given as
15 courtesy since that typically would occur in the course of
16 ordinary business practices.

17 Can you imagine if you were attempting to pay
18 your utility bill and in good faith you thought the
19 payment went through, you made the payment on time, but
20 then suddenly you're sitting at your kitchen table and
21 your power goes out. You have no idea why this happened
22 without any warning and without any knowledge that the
23 payment that you made to the utility company did not go
24 through.

25 Revenue & Taxation Code Section 19134 allows for

1 the Franchise Tax Board to assess bad check penalties.
2 With this in mind, it would have been reasonable for the
3 Franchise Tax Board to notify my client that her check did
4 not clear and impose a 2 percent penalty, which could have
5 been abated arguing reasonable cause.

6 However, the Franchise Tax Board failed to notify
7 her despite them having knowledge a few mere weeks later
8 after the checks did not clear, and chose instead to
9 impose a much larger late-payment penalty several months
10 later. As such, Franchise Tax Board is imposing a much
11 higher penalty on my client than was necessary without her
12 knowledge of a problem and despite the fact that she was
13 exercising ordinary prudent care in light of her
14 circumstances.

15 We turn to my client's reasonable actions in
16 response to realizing that the July 2020 payment failed.
17 Revenue & Taxation Code Section 19132 subsection (a) (1)
18 sets forth that the late-payment penalty may be abated if
19 the taxpayer can show that the failure to make a timely
20 payment of tax was due to reasonable cause and was not due
21 to willful neglect. Willful neglect was defined in United
22 States v Boyle as a conscience intentional failure or
23 reckless indifference.

24 Case law has held that to establish reasonable
25 cause for the late-payment penalty of tax, the taxpayer

1 must show that the failure to make a timely payment of the
2 proper amount of tax occurred despite the exercise of
3 ordinary business care and prudence. The actions
4 proceeding the inadvertent mailing of the old check shows
5 that my client exercised ordinary business care and
6 prudence because she did act as an ordinarily intelligent
7 and prudent businessperson would have acted under similar
8 circumstances.

9 I want to examine that ordinary business care and
10 business care and prudence a bit further. In Appeal of
11 Moren, the Office of Tax Appeals held that the most
12 cautious approach is not the only reasonable and prudent
13 option. Since the account my client issued the check from
14 is the brokerage account and not a normal checking
15 account, it is common for the account totals to fluctuate
16 frequently and for many transactions to occur on this
17 account in a short period of time. Because of this, my
18 client was under the impression that the payment did go
19 through.

20 As such a reasonable and prudent taxpayer would
21 monitor their account, as my client did, and be considered
22 acting as reasonable and prudent without the most cautious
23 approach of checking every single line item on her account
24 daily, and then somehow having the ability to deduce that
25 the reason the payment didn't go through was because of

1 the check issue, rather than some other reason, such as
2 delays to mail, Covid, or possibly even the Franchise Tax
3 Board being backlogged in depositing the check.

4 Once she received notifications from the
5 Franchise Tax Board on July 21st and August 25th, 2021,
6 that she still owed taxes for the 2020 tax year, she
7 immediately took swift action to contact the Franchise Tax
8 Board upon receiving the notice to obtain clarity.
9 Despite having to wait up to an hour to speak with the
10 Franchise Tax Board agent each time she called, due to the
11 Covid pandemic impacting business processes, she was
12 provided inaccurate information that the second check she
13 sent, the one in December of 2020, did not get applied to
14 her account properly.

15 Understanding the importance of resolving the
16 situation, she promptly obtained a copy of the cleared
17 December check from her bank and submitted it to the
18 Franchise Tax Board so the payment could be applied
19 properly. She reasonably believed that this was a simple
20 mistake and that her tax payment may have just been
21 misapplied to the wrong tax year with a simple resolution.
22 Franchise Tax Board has previously applied payments to the
23 wrong account before, as she spoke to previously, and
24 she's never had an issue with the check not going through
25 with the Franchise Tax Board previously.

1 Past experience educates us on how to act in
2 those situations. And in this case, she responded
3 reasonably based upon her experience and what she was
4 being told by the Franchise Tax Board agents. We
5 recognize that the Franchise Tax Board call logs do not
6 document these two calls. And the Franchise Tax Board has
7 explained that their call center agents typically document
8 calls in their system when they occur.

9 However, based upon the evidence set forth in
10 Exhibit 9 that my client's friend and L.A. City attorney,
11 Ellen Sarmiento was present during one of the phone calls,
12 paired with my client's actions in sending the requested
13 documentation to the Franchise Tax Board in the form of
14 the December check, as well as the fact that she contacted
15 her phone company, Google Fi, to try to obtain the records
16 and escalate that request, all of this evidence is
17 consistent with my client receiving direction from
18 Franchise Tax Board agents on how to proceed to resolve
19 the missing payment issue.

20 With these facts, based on a preponderance of the
21 evidence, it's more likely than not that these calls did
22 in fact occur, and the lack of documentation in Franchise
23 Tax Board's system is more than likely a result of a
24 simple oversight by Franchise Tax Board staff in
25 documenting these calls, possibly due to the Franchise Tax

1 Board also coping with the effects of the Covid pandemic.

2 If the call did not occur as the Franchise Tax
3 Board records contend, my client would not have taken such
4 effort attempting to provide the proof or documentation to
5 show that it did, in fact, happen. After months of going
6 back and forth and following up with the Franchise Tax
7 Board, in October of 2021, Franchise Tax Board eventually
8 provided my client with the accurate information that it
9 was, in fact, the July 2020 check that was dishonored and
10 not the December check.

11 At no point prior to this date did anyone advise
12 her that the issue was with the first check. And by the
13 time she received the proper action from Franchise Tax
14 Board, she had already accrued additional liabilities.
15 Despite this, my client yet again took immediate
16 corrective action as an ordinarily intelligent and prudent
17 person would have under similar circumstances by promptly
18 sending a new check on October 15th, 2021, just a few days
19 after being provided the accurate information by Franchise
20 Tax Board in order to resolve the outstanding balances and
21 timely request of refunds.

22 In light of the circumstances set forth here, we
23 ask that the Office of Tax Appeals recognize the effort my
24 client put forth to act reasonably and responsibly despite
25 the draining circumstances occurring to her family over

1 several years. She's not intentionally abating her tax
2 responsibilities or consciously avoiding remitting payment
3 that's owed. Rather, she conducted reasonable care by
4 promptly responding to Franchise Tax Board's assertions
5 that the payment was not made.

6 Furthermore, she ultimately paid the account in
7 full immediately upon being provided correct direction
8 regarding the issue. All of these events occurred during
9 a time of great personal hardship for my client given the
10 fire and its lingering effects as well as the covid
11 pandemic. Despite these horrible circumstances, my client
12 remained dedicated to following up with the Franchise Tax
13 Board to resolve the tax payment issue in an attempt to
14 ensure her tax responsibilities were met. She satisfied
15 the standard of exercising ordinary care and prudence by
16 acting in a manner consistent of that, which an ordinary
17 intelligent and prudent businessperson would have given
18 the situation and facts present here.

19 Furthermore, as previously addressed, since we
20 established beyond the preponderance of the evidence that
21 the Franchise Tax Board provided my client incorrect
22 information on two occurrences, these factors meet the
23 requirement pursuant to Revenue & Taxation Code
24 Section 19104 subsection (a)(1), which sets forth that a
25 taxpayer is entitled to abatement of interest if it is the

1 result of an unreasonable delay or error on behalf of an
2 employee of the Franchise Tax Board.

3 Here, due to the unreasonable error on behalf of
4 the Franchise Tax Board employee by providing inaccurate
5 information regarding the wrong check that did not clear,
6 and because this error cannot be attributed to Mr. or
7 Mrs. Thorson and their actions, we contend that the
8 interest for the period July 2021 when she was first
9 notified of the deficiency through October 2021 when she
10 was finally provided the correct information should be
11 abated.

12 Moreover and finally, under the doctrine of
13 equitable estoppel, Appellant is subject to the abatement
14 of interest. In order to establish equitable estoppel,
15 four elements must be satisfied that I will discuss now.
16 Element number one, the party to be estopped must be
17 advised of the facts. Here that party is Franchise Tax
18 Board who had access to their own system and could view
19 what payment was missing. Thus, they were clearly advised
20 of the facts. This argument is further reenforced by the
21 fact that the Franchise Tax Board employee did eventually
22 provide this information to my client.

23 Element number two requires the party must intend
24 that its conduct be acted upon by the taxpayer, or it must
25 act in such a way that the party claiming estoppel had a

1 right to believe it was so intended. Franchise Tax Board
2 did intend for my client to act upon the inaccurate
3 information provided in both phone calls. And further, my
4 client did have reason to believe that this is how it was
5 intended because this information was in response to her
6 contacting Franchise Tax Board to resolve the issue.

7 Element number three requires that the party
8 claiming estoppel must be ignorant of the true facts,
9 which apply to my client here because she was unaware that
10 the July check was at issue and had no way to realize that
11 she had previously sent the check under the wrong account.

12 And lastly, element number four, the party
13 claiming estoppel must show detrimental reliance, which my
14 client has shown, that in reliance of the incorrect
15 information provided by the Franchise Tax Board, she
16 provided proof and clarification regarding that
17 December 2020 check, which is what she was advised was at
18 issue. Had she been given correct information from the
19 Franchise Tax Board in the first phone call she made, she
20 could have resolved this issue quickly, reducing the
21 interest accrued.

22 Thus, with all four elements being met, the
23 doctrine of equitable estoppel has been established. We
24 have proven based upon the circumstances that my client is
25 eligible to have her penalties and interest abated under

1 the basis of disaster, reasonable cause, Franchise Tax
2 Board error, and equitable estoppel. Therefore, we
3 respectfully request that the Office of Tax Appeals rule
4 in Appellant's favor and remove the estimated payment
5 penalties and any associated interest.

6 I would like to reserve about ten minutes for my
7 rebuttal. But thank you so much for taking the time to
8 hear my opening in this case.

9 JUDGE LONG: Thank you, Ms. Clark.

10 FTB, did you have any questions for Mrs. Thorson?

11 MR. YADAO: FTB does not have any questions thank
12 you.

13 JUDGE LONG: Okay. Thank you.

14 I have a few questions. And also, I am going to
15 give my co-Panelists the opportunity to ask questions as
16 well.

17 I just wanted to get clear, Mrs. Thorson, with
18 respect to the timeline. You're displaced because of the
19 Woolsey Fire; right?

20 MRS. THORSON: Correct.

21 JUDGE LONG: And that happened in November 2018?

22 MRS. THORSON: Correct.

23 JUDGE LONG: Okay. And then how long were you
24 displaced for?

25 MRS. THORSON: Through the summer. It was about

1 eight or nine months. I think we moved back in late
2 August.

3 JUDGE LONG: Okay.

4 MRS. THORSON: Which was the timeline when the
5 account was changed was while we were displaced.

6 JUDGE LONG: Okay. And then you were living
7 in -- you were living in that location?

8 MRS. THORSON: We were renting -- I'm sorry. Go
9 ahead. Finish your question.

10 JUDGE LONG: From August 2019 then until the
11 relevant check was written in July 2020.

12 MRS. THORSON: No. It's just that I -- the
13 change in checks happened while I was not living at my
14 house, didn't have access to the old checks.

15 JUDGE LONG: Okay. Now I'm confused. I'm sorry.
16 So did you move back --

17 MRS. THORSON: We moved out of our house in
18 November of 2018, and we moved back -- I can't exactly
19 remember if it was August or September of 2019.

20 JUDGE LONG: And then you stayed there from that
21 point on?

22 MRS. THORSON: Yes.

23 JUDGE LONG: Including when the check was written
24 in July 10 -- on July 10th, 2020?

25 MRS. THORSON: Correct.

1 JUDGE LONG: Okay. And the funds, you just
2 didn't notice them because of the type of account it was?

3 MRS. THORSON: Yeah. There's a lot of
4 fluctuation. The funds were in there, and I -- I saw that
5 the funds were there the day I wrote the check. I knew
6 there would be a delay of them coming out, and those,
7 accounts, because they're brokerage accounts there's just
8 a lot of fluctuation, but it never dipped below that
9 \$20,000. So the funds were always there.

10 JUDGE LONG: Okay. But there's no question that
11 the check was written from the wrong account number?

12 MRS. THORSON: It was written from the account
13 number that was -- had potential fraud. Yes. It was
14 the -- yes. Correct. The July check was -- was the
15 checkbook that was dishonored.

16 JUDGE LONG: Okay. I have no further questions.
17 Actually, I'm sorry. I have one last question for
18 Ms. Clark. With respect to estoppel, I believed you cited
19 6654(c)(a); is that correct?

20 MS. CLARK: I apologize. The connection broke
21 out a bit there. I didn't actually cite. I think you
22 were asking what section I cited for equitable estoppel?

23 JUDGE LONG: Hm-hm.

24 MS. CLARK: I didn't actually cite a code for
25 estoppel. I just kept it general under equitable

1 estoppel.

2 JUDGE LONG: Okay. Thank you.

3 MS. CLARK: Thank you.

4 JUDGE LONG: All right. No further questions
5 from me. I'm going to turn to my co-Panelists.

6 Judge Katagihara, do you have any questions?

7 JUDGE KATAGIHARA: This is Judge Katagihara.
8 Yes, I do have a question.

9 Mrs. Thorson, were the new checks mailed to you,
10 the home that was involved in the Woolsey Fire, or were
11 they mailed to your temporary home?

12 MRS. THORSON: I do not recall. I wish --

13 JUDGE KATAGIHARA: Do you remember when they were
14 received.

15 MRS. THORSON: Not specifically. I know there
16 was a delay but sometime in 2019. I don't -- I don't
17 recall where they were mailed.

18 JUDGE KATAGIHARA: Okay. Thank you.

19 MRS. THORSON: I apologize. I do -- as I never
20 said, I never -- the account never changed online. They
21 just -- like it was seamless to me. It just changed the
22 account numbers. So everything online was the same. It
23 was just the -- they happen to add this checking feature
24 onto the account. So they just changed that account
25 number for the checking purposes. So anyway it was --

1 everything else was the same for my account online.

2 JUDGE KATAGIHARA: Thank you. No further
3 questions.

4 MRS. THORSON: Thank you.

5 JUDGE LONG: Thank you.

6 Judge Akopchikyan, do you have any questions?

7 JUDGE AKOPCHIKYAN: No questions at this time.
8 Thank you.

9 JUDGE LONG: Okay. Thank you.

10 Franchise Tax Board, we are ready for you to
11 begin your presentation. I believe you asked for ten
12 minutes. You may begin when you are ready.

13 MR. BROWN: Thank you, Judge.

14

15 PRESENTATION

16 MR. BROWN: Good afternoon. I'm Eric Brown, Tax
17 Counsel with the Franchise Tax Board. In the present
18 appeal, Appellants failed to establish reasonable cause to
19 abate the late-payment penalty. Appellants have also
20 failed to show that the estimated tax penalty should be
21 abated, and Appellants have also failed to show that the
22 interest should be abated.

23 For tax year 2020, Appellants filed their tax
24 return and reported estimated tax payments of \$40,000.
25 However, Respondent's records reflected estimate tax

1 payments totaling only \$20,000 for tax year 2020.

2 Appellants remitted a July 2020 estimate tax payment by
3 check dated July 10, 2020, in the amount of \$20,000, but
4 the payment was dishonored because the account on which
5 the check was drafted was incorrect.

6 Because of the dishonored payment, Appellants'
7 total estimate tax payments for tax year 2020 was \$20,000
8 not \$40,000 as Appellants allege. This resulted in an
9 underpayment of Appellants' tax liability and a
10 corresponding late-payment penalty. The dishonored
11 payment also resulted in a penalty for Appellants'
12 underpayment of their estimated tax payment obligation.
13 Appellants paid the balance due and filed a claim for
14 refund which respondent denied. Thereafter, Appellants
15 filed their appeal.

16 Appellants have failed to establish reasonable
17 cause to abate the late payment penalty. Appellants admit
18 they did not discover their July 2020 check had been
19 dishonored until they received Respondent's notice a year
20 later. The law requires taxpayers to monitor their bank
21 accounts to ensure the payments are completed. The OTA
22 emphasized this obligation on the precedential decisions
23 of Friedman and Scanlon. While the payments involved in
24 the present appeal involve payments by written check, the
25 law is the same that taxpayers must monitor their bank

1 accounts to ensure that the check clears, and that the
2 money has been withdrawn.

3 If Appellants had simply monitored their bank
4 account as the law requires, whether online or by a review
5 of their printed bank statement, they would learn that
6 there had been no withdrawal made in connection with the
7 July 2020 check. Appellants have failed to establish
8 grounds for abatement of the estimated tax penalty.
9 Appellants rely on the same set of facts as previously
10 discussed to base their argument that the estimate tax
11 penalty should be abated.

12 However, Appellants' argument, with respect to
13 the late-payment penalty, is based on their claim that
14 they have established reasonable cause and the law
15 regarding abatement of the estimated tax penalty does not
16 permit abatement based on reasonable cause, except in
17 specific narrow circumstances, neither of which are
18 applicable here.

19 Appellants argue that they were victims of the
20 2018 Woolsey fire, and so they argue that they qualify to
21 have the estimate tax penalty abated based on, quote,
22 "Casualty, disaster, or other very limited unusual
23 circumstances if in position of the penalty would be
24 against equity in good conscience," unquote, within the
25 meaning of the federal statute to which California

1 conforms.

2 Respondent is sympathetic to Appellants' loss of
3 their home in the fire and does not minimize the
4 significant emotional toll on Appellants. But as
5 Respondent discussed in its reply brief, Appellants have
6 failed to show that the 2018 Woolsey Fire resulted in
7 Appellants' dishonored payment in July 2020 stemming from
8 their failure to monitor their bank account to ensure
9 their check had been cleared. Appellants have failed to
10 establish that interest should be abated.

11 Based on their contention that Respondent's
12 employee provided incorrect information, Appellants argue
13 they are entitled to partial abatement of interest
14 comprising a three-month period. Respondent reiterates
15 its denial of Appellants' claim that the July 13, 2021,
16 telephone call ever took place. But even if it did,
17 nothing in the telephone call constituted unreasonable
18 error or delay by an officer or employee of the Franchise
19 Tax Board acting in his or her official capacity in
20 performing a ministerial or managerial act.

21 Moreover, Section 19104 expressly provides that,
22 quote, "An error or delay shall be taken into account only
23 if no significant aspect of that error or delay can be
24 attributed to the taxpayer involved."

25 Appellants claim that a conversation took place

1 on July 13, 2021, which is interesting because that is the
2 date FTB mailed the notice. Indeed the declaration of
3 Ms. Sarmiento emphasized that the conversation took place
4 on the morning of July 13, 2021. As discussed in
5 Respondent's briefs, FTB's records do not show that a
6 conversation took place on that date. Yet, Appellants
7 insist that a telephone conversation took place on that
8 date, which would mean they received the notice on the
9 same day it was mailed.

10 Respondent reiterates that Appellants' failure to
11 monitor their bank account was the cause of the factor of
12 delay and thus, precludes abatement of interest in the
13 present appeal.

14 JUDGE LONG: Mr. Brown, I'm sorry to interrupt.

15 Mr. Yadao, are you still there?

16 We're going to take a moment to go off the record
17 and see whether we can confirm whether Mr. Yadao is still
18 there. If you all would like to turn off your cameras for
19 just a moment and mute your microphones, we will resume in
20 five minutes.

21 (There is a pause in the proceedings.)

22 JUDGE LONG: Mr. Brown, you may begin when you
23 are ready or resume when you're ready.

24 MR. BROWN: Thank you.

25 Appellants claim that a conversation took place

1 on July 13, 2021, which is interesting because that is the
2 date FTB mailed the notice. Indeed, the declaration of
3 Ms. Sarmiento emphasized that the conversation took place
4 on the morning of July 13, 2021. As discussed in
5 Respondent's brief, FTB's records do not show that a
6 conversation took place on that date. But even if it
7 did -- even assuming a conversation took place as
8 Appellants allege, it does not invoke equitable estoppel.

9 It is well settled the tax liability must be
10 based upon the law as set forth in the Revenue & Taxation
11 Code and not upon oral statements of FTB employees. It is
12 also well-settled that reliance on informal opinions
13 offered by an FTB employee is not sufficient to create
14 estoppel against the FTB.

15 Regarding the check dishonored, Appellants
16 emphasize that their check was dishonored because of
17 insufficient funds. Respondent agrees, but it is not
18 relevant because the only important fact is that the check
19 was dishonored. The check was dishonored because the
20 account on which the check was drafted was from an account
21 that the Appellants' bank had changed to a different
22 number. Appellants' bank notified Appellants a year
23 earlier that it changed the account number due to fraud
24 concerns.

25 At that time, July 2019, the bank also issued new

1 checks to Appellants. And that's Appellants reply brief
2 Exhibit 3. The check was not dishonored because of
3 insufficient funds. If it had been, it would have
4 triggered a dishonored payment penalty under Revenue &
5 Taxation Code Section 19134. A check dishonored due to
6 insufficient funds is one that the depositor's bank does
7 not pay, but at least the check was received by the bank
8 based on the account number listed on the check.

9 A transaction in which a check is dishonored
10 because the account information is incorrect does not even
11 get past the threshold of the bank's identification
12 criteria and simply sent back to the party negotiating the
13 payment. That's what happened here. But as OTA held in
14 the precedential opinion of Scanlon, quote, "Lack of
15 notice from the FTB of a failed payment does not negate
16 Appellants' duty of prudence and due care to verify that
17 their scheduled payments were successful," end quote.

18 Regardless of the reason Appellants' check was
19 dishonored, if Appellants had been monitoring their
20 accounts as the law requires, they would have learned that
21 no funds were withdrawn. This is true whether they would
22 have checked online or whether they reviewed their
23 periodic printed statement.

24 And I would be happy to respond to any questions
25 the panel may have.

1 JUDGE LONG: Thank you.

2 I'd like to and my co-Panelist if they have any

3 questions.

4 Judge Katagihara, do you have any questions?

5 JUDGE KATAGIHARA: No questions. Thank you.

6 JUDGE LONG: Judge Akopchikyan, do you have any

7 questions?

8 JUDGE AKOPCHIKYAN: No questions. Thank you.

9 JUDGE LONG: Okay. I also do not have any

10 questions.

11 Ms. Clark, would you like to make your rebuttal

12 and final statement?

13 MS. CLARK: Yes.

14 JUDGE LONG: You have five minutes.

15 MS. CLARK: Thank you so much. Thank you, Your

16 Honor.

17

18 CLOSING STATEMENT

19 MS. CLARK: The law allows for abatement of

20 penalties and interest under specific circumstances. And

21 these opportunities afforded because it's recognized that

22 when certain facts are present, it would be unfair and

23 unreasonable to impose penalties and interest.

24 Considering that, we pose that my client's circumstances

25 here are consistent with those circumstances as intended

1 by the law to abate her penalties and interest under the
2 basis of disaster, reasonable cause, Franchise Tax Board
3 error, and equitable estoppel.

4 Based upon the facts set forth previously, my
5 client is eligible for the abatement of interest because
6 she relied on Franchise Tax Board's direction and
7 assertions. While we understand mistakes are bound to
8 happen in life, my client should not be penalized due to
9 an oversight by Franchise Tax Board staff.

10 Furthermore, based upon the actions taken by my
11 client, it is clear that she exercised ordinary care and
12 prudence by accounting swiftly to resolve the issue. Any
13 ordinary intelligent and prudent business person, given
14 the situation and facts present here, would have acted the
15 same. And to hold my client to a higher standard would be
16 unfair given the stressors present in her life during this
17 time.

18 To reiterate, the Woolsey Fire repercussions, the
19 Covid-19 pandemic, and the fraud concerns of her bank all
20 weighed heavily on my client's life between the years of
21 2018 through 2021. Yet, she still ensured she paid her
22 taxes timely and took corrective action once she was
23 notified that there was mistake to ensure that her tax
24 obligations were met.

25 She responded swiftly each time Franchise Tax

1 Board contacted, and responded as an ordinary intelligent
2 and prudent businessperson would have, given the
3 information provided to her by the Franchise Tax Board.

4 We respectfully ask that the Office of Tax
5 Appeals rule in Appellant's favor and remove the late and
6 estimated payment penalties and any associated interest.

7 Thank you very much.

8 JUDGE LONG: Thank you.

9 We are ready to conclude this hearing. I just
10 want to make sure with my co-Panelists.

11 Judge Katagihara, are you ready to close the
12 hearing?

13 JUDGE KATAGIHARA: This is Judge Katagihara.
14 Yes. Thank you.

15 JUDGE LONG: And Judge Akopchikyan, are you ready
16 to close today's hearing?

17 JUDGE AKOPCHIKYAN: I am. Thank you, Judge Long.

18 JUDGE LONG: Okay. This case is submitted on
19 Wednesday, July 19th, 2023. The record is now closed.

20 Thank you to everyone for coming today. The ALJs
21 will meet and decide your case later on, and we'll send
22 you a written opinion of our decision within 100 days
23 after the record is closed.

24 Today's hearing in the Appeal of Thorsons is now
25 adjourned.

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(Proceedings adjourned at 2:08 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 1st day
of August, 2023.

ERNALYN M. ALONZO
HEARING REPORTER