

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. BRIGGS,) OTA NO. 21129184
)
APPELLANT.)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, March 21, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:03 p.m. and concluding at 2:16 p.m. on
Thursday, March 21, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ VERONICA LONG
ALJ AMANDA VASSIGH

For the Appellant: M. BRIGGS
CRYSTAL CIARAMITARO

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

MARGUERITE MOSNIER
ANDREA WATKINS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received into evidence at page 10.)

(Department's Exhibits A-R were received into evidence at page 10.)

(Department's Exhibits S-T were received into evidence at page 10.)

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| | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
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CLOSING STATEMENT

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California; Thursday, March 21, 2024

1:03 p.m.

JUDGE RALSTON: Let's go ahead and open the record.

We're now on the record in the Appeal of Briggs. This matter is being heard before the Office of Tax Appeals, Office of Tax Appeals Case Number 21129184. Today's date is Thursday, March 21st, 2024, and the time is approximately 1:03 p.m.

Today's hearing is being heard by a panel of three Administrative Law Judges. I am Judge Ralston, and I will be the lead judge. Judge Long and Judge Vassigh are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written decision as equal participants. Although as the lead judge I will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information that we need to decide this appeal.

As I mentioned earlier, this hearing is being live streamed to the public and is being recorded. The transcript and the video recording are part of the public record and will be posted on our website. So for that reason, please don't show any confidential or private

1 information on the screen.

2 Also present is our stenographer, Ms. Alonzo, who
3 is reporting this hearing verbatim. To ensure we have an
4 accurate record, we ask that everyone speaks one at a time
5 and does not speak over each other. Also speak clearly
6 and loudly. When needed, the stenographer will stop the
7 hearing process and ask for clarification. After the
8 hearing, the stenographer will produce the official
9 hearing transcript which will be available on the Office
10 of Tax Appeals website.

11 Please also keep your microphone muted when
12 you're not speaking to cut down on any background noise.
13 And please state your name and who you represent for the
14 record, starting with the Appellant, Ms. Ciaramitaro.

15 MS. CIARAMITARO: Yes. I'm my name is --
16 [INAUDIBLE] -- with TAAP.

17 JUDGE RALSTON: Ms. Ciaramitaro, you were a
18 little hard to hear. Can you repeat that again.

19 MS. CIARAMITARO: Yes. My name is --
20 [INAUDIBLE] --

21 JUDGE RALSTON: It looks like -- it sounds like
22 we lost you. It started off strong, but then we lost you.

23 MS. CIARAMITARO: [INAUDIBLE]

24 JUDGE RALSTON: Let's maybe take a few minutes --
25 oh, perfect.

1 MS. CIARAMITARO: Okay. The headphones weren't
2 working.

3 My name is Crystal Ciaramitaro. I'm here with
4 TAAP on behalf of the Appellant.

5 JUDGE RALSTON: Thank you.

6 And, Mr. Briggs, if you could also introduce
7 yourself for the record.

8 MR. BRIGGS: Yes. I'm Mark Briggs.

9 JUDGE RALSTON: Thank you.

10 And for the Respondent, if you could go ahead and
11 introduce yourselves. Thank you.

12 MS. MOSNIER: Marguerite Mosnier from Franchise
13 Tax Board.

14 MS. WATKINS: And Andrea Watkins, also for the
15 Franchise Tax Board.

16 JUDGE RALSTON: Thank you.

17 We held the prehearing conference in this matter
18 on February 22nd, 2024. As confirmed at the prehearing
19 conference, there is one issue, and that is whether --
20 well, the issue is whether Appellant is due an additional
21 refund or credit for the 2015 tax year. It was also
22 stated that while Appellant does not expressly concede
23 that his claim for refund is barred by the four-year
24 statute of limitations, he does not intend to further
25 argue this issue.

1 Is that still correct?

2 MS. CIARAMITARO: That's correct.

3 JUDGE RALSTON: Thank you.

4 Okay. So at the prehearing conference, there
5 were four facts that the parties stipulated to. So I'm
6 just going to go ahead and read those into the record.
7 The first is that Respondent established Appellant's 2015
8 tax liability pursuant to its filing enforcement statutory
9 authority under Revenue & Taxation Code section 19087(a).
10 The second is Respondent received payments and credits
11 totaling \$7,143.42 on Appellant's 2015 account. The third
12 is Respondent processed the return and accepted
13 Appellant's self-assessed \$528 tax liability. And the
14 fourth stipulation is Appellant filed his 2015 federal
15 return with the IRS on November 16th, 2021.

16 So is that still correct?

17 MS. CIARAMITARO: That's correct.

18 MS. MOSNIER: Yeah. It is.

19 JUDGE RALSTON: Thank you.

20 And there was another stipulation that I believe
21 the Appellant wasn't sure that they wanted to stipulate to
22 and wanted to take a look at, and that was after revising
23 penalties and crediting timely overpayments, Appellant's
24 2015 account reflects a \$5,108.37 credit balance; and that
25 is the correct amount at issue.

1 Ms. Ciaramitaro, did you have a chance to look at
2 that and decide whether you wanted to agree to stipulate
3 to that statement?

4 MS. CIARAMITARO: Yes. FTB ended up providing an
5 additional -- an additional exhibit to outline that this
6 amount in dispute was transferred to another tax year. So
7 we don't dispute the final refund amount.

8 JUDGE RALSTON: Okay. Thank you.

9 So just so the record is clear, the parties also
10 stipulate that after revising penalties and crediting
11 timely over-payments, Appellant's 2015 account reflects a
12 \$5,108.37 credit balance, and that is the correct amount
13 at issue. So I believe those were all the stipulations.

14 So moving forward, the Appellant, Mr. Briggs,
15 intends to testify under oath as a witness, and the
16 Respondent does not object to Appellant's testifying as a
17 witness.

18 So, Mr. Briggs, when that time comes, I will
19 swear you in so that you can give your testimony. I'll
20 let you know when that is.

21 And the Respondent also does not intend to submit
22 any witnesses.

23 So the Appellant admitted Exhibits 1 through 8,
24 and Respondent has not objected to Appellant's Exhibits 1
25 through 8. Therefore, Appellant's Exhibits 1 through 8

1 shall be admitted without objection.

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

4 JUDGE RALSTON: Ms. Ciaramitaro, are those the
5 only exhibits you intend to submit, 1 through 8?

6 MS. CIARAMITARO: That's correct.

7 JUDGE RALSTON: Thank you.

8 And for the Respondent, FTB has submitted
9 exhibits A through T. Appellant has not objected to
10 Respondent's Exhibits A through R. So Respondent's
11 Exhibits A through R shall be admitted without objection.

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

14 JUDGE RALSTON: For the Exhibit S and Exhibit T,
15 Ms. Ciaramitaro, did you have a chance to look at these
16 exhibits, and did you have any objections to them?

17 MS. CIARAMITARO: Yes. We have no objections.

18 JUDGE RALSTON: Okay. Thank you so Respondent's
19 Exhibits S and T are also admitted without objection.

20 (Department's Exhibits S-T were received in
21 evidence by the Administrative Law Judge.)

22 JUDGE RALSTON: Ms. Mosnier, did you have any
23 additional exhibits?

24 MS. MOSNIER: No.

25 JUDGE RALSTON: Okay. Thank you.

1 So as discussed at the prehearing conference,
2 Appellant will have approximately 30 minutes for their
3 opening statement, and then we'll move into witness
4 testimony and we'll have approximately 40 minutes -- I
5 mean -- sorry -- 10 minutes. So which means for
6 Appellant's opening statement and witness testimony will
7 be approximately 40 minutes. Respondent has requested
8 20 minutes to present their case, and then the Appellant
9 will have approximately 10 minutes for rebuttal. After
10 Mr. Briggs' testimony, the Respondent will have the
11 opportunity to ask questions. And also, the Panel Members
12 may have questions for the witness or for either party,
13 and they may be asked at any time.

14 So does anyone have any questions before we move
15 onto our opening presentations?

16 Nobody -- oh, sorry.

17 MS. CIARAMITARO: I would just like to ask if
18 it's okay to start with the witness testimony and then
19 move onto Appellant's argument, if that's okay with you.

20 JUDGE RALSTON: Yes. You have 40 minutes, and
21 you can use that however you wish to present your case.

22 MS. CIARAMITARO: Okay. Thank you.

23 JUDGE RALSTON: Sure.

24 So let's move along. So first I'm going to swear
25 in Mr. Briggs.

1 Mr. Briggs, if you could please raise your right
2 hand.

3

4 M. BRIGGS,

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

8

9 JUDGE RALSTON: Thank you.

10 So we're ready to proceed with Appellant's
11 opening presentation.

12 Ms. Ciaramitaro, please begin when you're ready.

13 MS. CIARAMITARO: Thank you.

14

15 PRESENTATION

16 MS. CIARAMITARO: Appellant's refund claim is
17 timely under R&TC section 19311 because the claim was made
18 within two years of federal change or correction.
19 Further, Appellant's reading of the elements required to
20 trigger R&TC section 19311 is supported by the statutory
21 language in the legislative history of the applicable
22 statutes. For factual background, I will begin with
23 Mr. Briggs' testimony.

24 ///

25 ///

DIRECT EXAMINATION

BY MS. CIARAMITARO:

Q Mr. Briggs, can you briefly tell us your age and background?

A Yes. My name is Mark Briggs. I'm 72 years old. I served four years in the United States Marine Corps from 1969 to 1973. Basically, after being discharged, I've been a resident of the State of California for -- or since 1974. And then, basically, I went and actually acquired jobs and various jobs, but menial labor task-type jobs. And then in 2012 I find myself a homeless veteran, and I was referred to by We Care, a program at that time was helping people that were homeless. And they referred me to the Veterans Village of San Diego.

And they went ahead and helped me, assisted me, and basically got me back on my feet again; and even sent me to training to get a commercial driver's license. And then also continued on to also have -- got me hired with Swift Transportation, a mega carrier. And that was in 2013. And then I reached the stage at when in 2015 I decided to improve my compensation, get a little more independence as far as, you know, choosing my routes, 'cause I was driving all 48 lower states at that time. They refer to us as over the road drivers.

And that's where in 2015 I decided I wanted to

1 become an owner-operator under what they call a lease
2 purchase program. And, basically, now I'm unemployed, or
3 I should say, slash, retired.

4 Q Thank you. Can you also briefly describe your
5 tax knowledge and experience?

6 A Well, that is very, very limited and really no
7 knowledge as far as, you know, tax codes or laws or
8 whatever is in that format. But I -- I do know I was all
9 under W-2 filing. And, in fact, I started out first was
10 EZ 540, EZ form. And then, basically, when I did get
11 married then I naturally was still under a W-2 income.
12 And always remembered my wife usually handled most of our
13 taxes and -- which was -- I mean, even though we were
14 married, she always wrote payroll deductions on taxes to
15 make sure it's single and zero. So we always benefited
16 from a refund.

17 Q Thank you. And can you also please describe your
18 prior tax compliance history?

19 A As far as I can recollect, I had no major issues.
20 No problems. I always got a -- in most cases I always had
21 a refund.

22 Q Thank you. And can you tell us a little bit
23 about your job during tax year 2015 and what it entailed
24 about your lifestyle during that time?

25 A Well, basically, a truck driver. We're 24-7.

1 We're out on the road. We're kind of like in a nomadic
2 situation. Where, you know, never in one spot long. And
3 you know, basically it was little bit -- for me, it was a
4 little bit slight -- slight difficulty because, you know,
5 you didn't eat healthy. You didn't have a regular sleep
6 pattern. And like I said, you weren't close to home or
7 family.

8 And, basically, it was pretty difficult. And
9 probably motivate us to keep going was, basically, once
10 the wheels were turning, we were paid and we were
11 compensated. But as far as anything else, it was -- it
12 was a very, very tough and remote life.

13 Q Thank you. And did you experience any change in
14 your job situation in 2015?

15 A Oh, yes. Yes.

16 Q And when did it happen?

17 A That was in the latter part of March of 2015.

18 Q And can you briefly describe this change?

19 A Well, the first thing I noticed was my tax
20 situation, and it was -- naturally, like I said, I always
21 received a W-2. I didn't even know what a 1099 was. And
22 then, basically, because I was more confused is because at
23 the beginning of the year of 2015, the first three months
24 or so, I was a company driver, which was under a W-2
25 format. And then later on I did get a 1099, and I was

1 kind of puzzled. And I, you know, I was thinking I didn't
2 understand it.

3 I did request for some help, but even Swift or
4 the contractor that was in charge of my -- my truck and
5 myself said that -- usually any type of tax, I was
6 referred to a tax -- or they referred me to go to a tax
7 professional. So I was a little confused, and I didn't
8 really understand the total ramifications as far as, you
9 know, taxes.

10 Q And during this time, did you have any difficulty
11 maintaining recordkeeping and tax filings to remain in
12 compliance?

13 A Well, it's very bad because I'm not a very
14 organized individual. Naturally, being on the road I was,
15 you know, out on the road anywhere from months to -- I
16 think the longest period was three months, a little bit
17 over three months. So I was never -- never home. I tried
18 to maintain, you know, at least my expenses and -- and
19 like I said, when I got -- got home, I would throw it in a
20 box, and I didn't even organize it with certain expenses
21 and whatever, you know. And it was just a little -- a
22 little bit more difficult for me to -- to keep all the
23 records and trying to keep organized.

24 Because like I said, I was in and when you get
25 anxious to go home. And I knew at that time I had a

1 storage unit, and I went ahead and put it all in the
2 storage unit and didn't organize it. It was even prepared
3 to start really.

4 Q Thank you. Did you have any contacts with the
5 FTB?

6 A Oh, yes. And it started out with letters. And I
7 can't recall the exact year or months, but I'm pretty sure
8 the letters started coming in on the 16th. And you have
9 to remember that I'm on the road. I'm not where I'm
10 accessible to a mailbox or, you know, I could read the
11 letters right away. It was all piled up in a UPS Post
12 Office box or -- yeah, a UPS box. And, you know, like I
13 said, I was always behind. And I tried to call the
14 numbers usually provided by FTB. And then like I said, it
15 was kind of like, you know, I was late. And it was also
16 pretty hard to get through to them at -- at times.

17 I think it was -- now I'm trying to recall
18 totally. Oh, I did finally get through. I did 'cause I
19 did learn prior from other people telling me that I could
20 make a payment or whatever because I was in delinquency as
21 far as filing and paying my taxes. So I did setup an
22 account and -- payment account with FTB, and they went
23 ahead and instructed me that this will be applied to the
24 2015. And, in fact, I was trying to negotiate a lower
25 amount.

1 They said no because it was predetermined that
2 that 1099 form, which had earnings of \$112 that they would
3 deem that collection on that amount. So whatever taxes,
4 you know, supposedly paid which added up significantly
5 because I think it was in the thousands.

6 Q And, Mr. Briggs, during those conversations where
7 FTB told you to, you know, get your -- your paperwork in
8 order to file an accurate return, were you ever told about
9 a statute of limitations deadline?

10 A Oh, excuse me. Yeah. No. Never. Never
11 anything like that. The only conversation that I could
12 recall correctly is that FTB told me, you know, because I
13 did mention I misplaced or I lost my -- my records and I
14 know it's a very important part of the 1099 to have, you
15 know, your expenses and whatever affiliated with my income
16 as far as that. And the, you know, I -- like I said, I --
17 and he did tell me. He said you cannot file inaccurate
18 information on the expense side or anything -- any type of
19 erroneous information.

20 So -- and he -- he did tell me that basically,
21 you know, I could try to do some research into my bank
22 account and whatever, you know, credit cards or anything
23 even with the contractor to try and get it in. And I did
24 that, and the numbers didn't even come close because a lot
25 of drivers -- for us to get good discounts on fuel and

1 whatever we may need as far as maintenance, we paid in
2 cash because, you know, that's -- I guess that's a way to
3 get a discount.

4 Q And, Mr. Briggs, to your understanding, did the
5 IRS make a change or correction to your 2015 tax?

6 A Yeah. I didn't -- I didn't really understand it,
7 but I know they waived penalties and the interest. And
8 then they -- I think they went back to the original
9 amount. And it kind of puzzled me because at -- at that
10 time, I was still having problems with the filings such as
11 the state, 2015. It took a long time because Mr. Medina
12 from FTB collections was the one that helped me greatly in
13 getting everything. He contacted my first tax preparer.
14 He recommended that I get a CPA to do my second tax
15 because it was just totally -- you know, there was no
16 record. There was this and that.

17 And naturally, I was in the 2020. So that was
18 during the COVID. So, in fact, Mr. Medina was working
19 from home, but he was more than willing to give me, you
20 know, information. He always told me give me, give me a
21 call in a couple of weeks and -- and either I or you will
22 know the status of your return and we'll get this done.
23 And that's what his main goal was to get that 2015 tax
24 rectified.

25 Q Thank you, Mr. Briggs. And finally, briefly what

1 is your view on the fairness of this refund denial given
2 the circumstances?

3 A Well, like I said, I don't have much knowledge as
4 far as taxes. And I was so appreciative of Mr. Medina
5 helping me and explaining things, you know, such as, you
6 know, you could have filed and -- and filed or request
7 amendment for that original filing. All these things I
8 didn't know about. And then, you know, I was swayed by
9 bad recommendations and bad information and bad advice
10 from not real qualified people. But, you know, since I
11 had never dealt, you know, in depth with taxes or even,
12 you know, professional accountants or CPAs; so, you know,
13 all these things.

14 And then, you know, my interpretation is quite
15 simple. You know, I thought FTB maybe once they agreed to
16 the payments to me that they filed on my behalf because
17 they told me quite specifically we're going based on your
18 income on the 1099. And so, you know, like I said, I know
19 this is a very simplistic way of looking at it, but, you
20 know, I thought oh, you know. Okay. I'm good. I'm going
21 to pay. And then what Mr. Medina did at the near the end
22 there when he got finally got the final information, that
23 he told me. He said, oh, it looks like you have
24 overpayment and you might be getting some money back.

25 And that's what I -- I was, you know, basically

1 very -- very, you know, happy and -- and whatever. At
2 least I -- I felt, you know, helped resolved this issue
3 and never to give any type of complications again like
4 that toward FTB or any -- or any -- IRS and stuff. I
5 settled with them too.

6 MS. CIARAMITARO: Thank you, Mr. Briggs.

7 And that is all for our witness testimony.

8 MR. BRIGGS: Oh, can I just say one thing if you
9 don't mind? I don't know if it's appropriate at this
10 time. Would that be okay to do the Court?

11 MS. CIARAMITARO: Sure. Go ahead.

12 MR. BRIGGS: Okay. Yeah. First all, naturally,
13 I'd like to thank the Court for listening in this case of
14 my appeal and, naturally, to OTA because they always kept
15 me informed and they directed me to a wonderful program of
16 T-A-A-P, TAAP, and all the young people that were
17 individuals that were helping me, and I mean with sincere
18 concern. It is greatly appreciated on my behalf, and for
19 all the young individuals and, especially, I -- I don't
20 mean to be rude, Crystal, but it was a pleasure and an
21 honor to meet you. And all your advice and your -- your
22 assistance is greatly appreciated. And to all the TAAP
23 young law students, whatever their endeavors or their
24 aspirations are, I hope them much success in their
25 profession and also as humans. So thank you again.

1 MS. CIARAMITARO: Thank you so much.

2 If it's okay if everybody, I'd like to start with
3 my oral argument now.

4 JUDGE RALSTON: Sure. Go ahead.

5 MS. CIARAMITARO: Thank you.

6 So as Mr. Briggs has just testified, he was
7 unable to file his 2015 returns properly due to his
8 employer's decision in that year to reclassify his
9 employee status from a salaried employee to an independent
10 contractor. This meant that the 1099 form Mr. Briggs
11 received did not represent his net income and he was,
12 instead, forced to meticulously track and account for all
13 job-related expenses to be able to derive his taxable
14 income. This was a task too daunting for him, a truck
15 driver who was always on the road for weeks and months at
16 a time. Mr. Briggs promptly relayed this information with
17 FTB when FTB contacted him about his tax due.

18 He followed up with FTB representatives multiple
19 times and even wanted to initially file a return using
20 estimated figures. However, he was encouraged by the FTB
21 to wait and gather all applicable documents to file a
22 proper 2015 return because severe penalties and a
23 potential audit would ensue if estimates were used to
24 file. FTB representatives further assured him that he
25 would not have an issue correcting his liability and

1 recovering any amount over his tax due when he eventually
2 did file. FTB began ultimately collecting a total of
3 \$7,142 from Appellant by wage garnishments, per Exhibit J.

4 However, at no time did any FTB representative
5 ever mention the statute of limitations that applied to
6 claiming a refund later. Through his best efforts,
7 Mr. Briggs engaged a tax preparer for the first time and
8 made numerous filings of his 2015 California tax return
9 beginning in December of 2020, within one year of all
10 payment shown in Exhibit J referenced in FTB's opening
11 brief. Unfortunately, to no fault of Mr. Briggs, FTB has
12 no record of these filings, and Mr. Briggs' taxpayer could
13 no longer furnish the right proof of filing to FTB's
14 satisfaction. This is all discussed in Appellant's reply
15 brief dated April 18, 2022.

16 On the IRS side of his tax matters, for the same
17 year as shown in the IRS transcript for year 2015, which
18 FTB included in Exhibit L, eight significant entries
19 occurred as we thoroughly discussed within Appellant's
20 reply brief date July 14th, 2022. But I will reiterate
21 once more here:

22 First, in 2015 Appellant had 1099 or W-2
23 withholding credits of federal income tax of \$1,321 for
24 tax year 2015 with a posted payment effective date of
25 April 15th, 2016.

1 Second, before the individual line entries in the
2 return due date or return received date, whichever is
3 later field, the transcript lists this date as
4 January 31st, 2018. We all know that the return due date
5 for tax year 2015 is April 15th, 2016, and this entry
6 clearly indicates that on January 31st, 2018, the IRS
7 received a return for 2015. On February 2nd, 2018, the
8 IRS examined the return received on January 31st, 2018.

9 Fourth, on February 19th, 2018, the IRS processed
10 the return received on January 31st, 2018.

11 Fifth, on February 19th, 2018, the IRS prepared a
12 substitute return on Appellant's behalf.

13 Sixth, on March 18th, 2019, the IRS posted
14 additional tax assessed by examination in the amount of
15 \$38,411 plus penalties, late fees, interest, and then
16 closed examination of the return on the same day.

17 Seventh, on November 16th, 2021, the IRS received
18 another return for 2015.

19 And eighth, on March 28th, 2022, the IRS issued a
20 notice indicating that it reduced or removed prior tax
21 assessed by \$33,147, reduced or removed previously
22 assessed penalties and interest by close to \$17,000, and
23 then resolved the claim.

24 Thus, Mr. Briggs' IRS clearly illustrates that
25 the IRS first received a return on January 31st, 2018,

1 examined that return on February 2nd, 2018, posted
2 additional tax assessed by examination on
3 March 18th, 2019, and finally reduced or removed prior tax
4 assessed penalties and interest on March 28th, 2022.
5 Based on this, there clearly been a change or correction
6 to items required to be reported on a tax return, and
7 Appellant's refund claim was timely filed under R&TC
8 19311.

9 Therefore, we respectfully request that this
10 Court reverses FTB's original denial of Appellant's timely
11 claim for refund for three main reasons:

12 First, Appellant's timely claim for refund is the
13 result of a federal determination supported by the plain
14 language of statute R&TC section 19311.

15 Second, while the plain meaning of the statutes
16 in question should be sufficient, the legislative history
17 surrounding the statute's implementation also supports
18 Appellant's position that his claim for refund is the
19 result of a federal determination.

20 And third, ruling in FTB's favor would be
21 inequitable application of the statute of limitations
22 policy, and would set an unfavorable precedent to
23 taxpayers who are also properly entitled to file refund
24 claims, and do so under the plain language of R&TC
25 sections 19311. First, a plain reading of R&TC

1 Section 19311 notes that if a claim for refund is filed
2 within two years of the date of a final determination
3 resulting from a change or correction made by the IRS, the
4 taxpayer is within the statute of limitations.

5 The clear language of R&TC section 19311(a)(1)
6 states, "If a change or correction is made or allowed by
7 the Commissioner of Internal Revenue or other officer of
8 the United States or other competent authority, a claim
9 for refund resulting from the adjustment may be filed by
10 the taxpayer within two years from the date of the final
11 federal determination as defined by section 18622." In
12 pursuant to R&TC section 18622 the final federal
13 determination date referenced in R&TC section 19311 is
14 defined as the date on which each adjustment or resolution
15 resulting from an Internal Revenue Service examination is
16 assessed pursuant to section 6203 of the Internal Revenue
17 code.

18 And finally, if we look to the Internal Revenue
19 Code section 6203, we find that final federal
20 determination assessments made pursuant to R&TC section
21 18622 are made by, quote, "Reporting the liability of the
22 taxpayer in the Office of the Secretary, a determination
23 or adjustment of a taxpayer's federal liability and the
24 adjustment and settlement of a taxpayer's liability are
25 referenced as examples of this, according to R&TC 18622,

1 complement California of Regulation title 18,
2 section 190598."

3 Beginning with R&TC section 19311, it very
4 clearly and concisely indicates that a change or a
5 correction made or allowed triggers the two-year statute
6 of limitations application. There is simply no further
7 language available in the statute that restricts or
8 outlines the particular type of change or correction
9 required as FTB contends in its revisionist
10 interpretation. In fact, in this context, the word A,
11 change or correction is synonymous with any per the simple
12 dictionary definition of the word. And here, the type of
13 change or correction that was made or allowed by the IRS
14 occurred on March 28th, 2022, where, per Appellant's 2015
15 transcript, IRS transcript, the IRS reduced or removed tax
16 assessed, reduced or removed the penalty for filing the
17 2015 return after the due date, and reduced or removed the
18 late payment of tax penalty, reduced or removed the
19 interest -- late-penalty interest charged and issued a
20 notice.

21 It should also be highlighted that the IRS
22 specifically referred to these actions as a, quote,
23 "Change to Appellant's Form 1040-A," end quote, per the
24 notice Appellant received as referenced in Exhibit 6.
25 Despite clear evidence of changes or corrections made, FTB

1 argues that 19311 cannot possibly apply to Appellant,
2 because for the statute to apply, the, quote, "Refund
3 claim must state an overpayment relative to a liability
4 stated on an earlier return."

5 Yet, language requiring the presence of a prior
6 filed tax return simply does not exist in the plain
7 reading of R&TC Section 19311, and would require taxpayers
8 to have filed two tax returns in order to receive benefits
9 associated with R&TC Section 19311. This view must be
10 rejected. If FTB's misinterpretation was correct, we
11 would be able to point to precise statutory language under
12 R&TC section 19311 or, otherwise, requiring an earlier
13 return. Moreover, in this case, the changes made by the
14 IRS are well within the broad outline of R&TC
15 section 18622 that, again, only specifies that changes can
16 be to any item required to be shown on a federal tax
17 return.

18 Here, the IRS made the federal determination for
19 Mr. Briggs' 2015 federal return on March 28th, 2022. This
20 final federal determination resulted from the IRS reducing
21 Appellant's, quote, "Prior tax assessed in removing all
22 penalties, late fees, and interest for tax year 2015," as
23 previously stated. These changes made by the IRS were
24 changes to items required to be shown on a federal tax
25 return and, therefore, meet the standard of changes or

1 corrections to a federal return required by 19311. R&TC
2 Section 18622 does not actually require a change be made
3 on a federal return itself. It only mandates that a
4 change be made to an item that is required to be recorded
5 on a federal tax return.

6 Thus, FTB's assertion that the IRS did not adjust
7 any item reported on Appellant's return in its June 2022
8 reply brief is a blatant misreading of what is necessary
9 to constitute a federal determination under the plain
10 language of R&TC Section 18622. To be clear, all that is
11 required to meet the prescribed definition of a final
12 federal determination under 18622 is that an adjustment
13 resulting from an IRS examination must be made.
14 Similarly, with respect to establishing what constitutes
15 an adjustment or resolution under R&TC section 18622,
16 there is no language that restricts this meeting of an
17 adjustment or resolution to only apply to deficiency
18 assessments as the FTB is contended.

19 In fact, there are statutory provisions, R&TC
20 sections 19059 and 19606, that we direct FTB to that
21 separately address the statute of limitations that apply
22 to deficiency assessments. Thus, the interpretation and
23 statutory analysis of these sections is not relevant to
24 this appeal and more, importantly, are not in conflict
25 here. Both precedential and non-precedential opinions

1 support Appellant's position in that a final federal
2 determination can be any adjustment of a taxpayer's tax
3 liability, including a no-change determination.

4 FTB has also maintained this broad understanding
5 per its December 2022 additional reply brief that cited
6 the non-precedential opinion in Appeal of Unified Precious
7 Metals. In this holding, the California State Board of
8 Equalization held that an assessment entry of zero dollars
9 falls within the definition of assessment contemplated by
10 R&TC section 18622 because the IRS revised the taxpayer's
11 taxable income on account -- on the account transcript,
12 despite not assessing any tax. And what's more, in Appeal
13 of Frederick and Carol Engelbrecht, the California State
14 Board of Equalization held that a federal determination
15 was any adjustment of a taxpayer's liability and cited a
16 final determination of changes or corrections to gross
17 income or deductions as an example of a final federal
18 determination.

19 However, even if FTB's improper interpretation
20 requiring that a change to items reported on Appellant's
21 return was entertained, IRS first examined Appellant's
22 return in 2018. Then, therefore, the changes made
23 following receipt of a subsequent return in 2021 proves
24 existence of a final federal determination. Because the
25 IRS made changes to items required to be shown on a

1 federal tax return, R&TC section 18622 is applicable and,
2 therefore, R&TC section 19311 extends the statute of
3 limitations on the basis of a federal adjustment applied.

4 Further, the date that the IRS made this final
5 determination also coincides with this clear reading of
6 IRS section 6203 previously referenced. R&TC section 6203
7 notes that the final federal determination date is the
8 date on which assessments are made by reporting the
9 liability of the taxpayer in the Office of the Secretary.
10 This final federal determination date is the date that
11 adjustments or resolutions were assessed by the IRS as
12 evidenced by the reduction of Appellant's liability and
13 removal of all related penalties and interest as shown on
14 Appellant's IRS transcript. Which is in this case is
15 March 28, 2022, and it's the date that the two-year
16 statute of limitations begins to run. Further evidence
17 saying the final federal determination date is the fact
18 that tax year 2015 was subsequently closed for Appellant
19 on this date.

20 Therefore, Appellant is rightfully entitled to
21 the full amount of his 2015 refund claim because his claim
22 follows a final federal determination which was timely
23 filed within the two-year statute of limitations of the
24 final federal determination as clearly permitted by the
25 plain statutory language of sections 19311 and 18622.

1 Accordingly, FTB's erroneous interpretations and rewriting
2 of these statutes should be denied. When statutes like
3 the ones in contention are clear, the Supreme Court in
4 Connecticut National Bank versus Germain reminds us that
5 we, as well as its courts, must, quote, "Presume that a
6 legislature says in the statute what it means, and means
7 in the statute what it says."

8 While Appellant contends that the statutes are
9 clear as written and there's no need to dig into
10 legislative intent or history, to my second point, the
11 legislative history behind the statutory intent
12 surrounding R&TC section 19311 and R&TC section 18622,
13 also support Appellant's position that his claim for
14 refund is proper and timely under the two-year statute of
15 limitations. However, it should be noted that even if
16 statutory language in question was ambiguous, which it is
17 not here, the Supreme Court of California held in
18 Microsoft v FTB that the Court is compelled to and prefers
19 to adopt a construction favorable to the taxpayer. This
20 is because tax and statutes are strictly construed against
21 the government and should be enforced clearly and
22 unequivocally.

23 What is clear here is that FTB continues to
24 retroactively rewrite these statutes contrary to the
25 legislative intent or analysis that is readily available

1 when it should only be administering the law as it is
2 written. The present-day statutes were a product of
3 initiatives made by the legislature to address confusion
4 on the side of both taxpayers and staff, and not intended
5 to be read in isolation only in FTB's favor. For example,
6 the 1999 addition of subdivision (d) to R&TC section 18622
7 sought to clarify prior ambiguities related to defining
8 the date of a final federal determination. As the 1999
9 bill analysis states, the federal determination date is
10 defined as the date on which assessments are made pursuant
11 to IRC section 6203.

12 The bill also noted that the bill would serve as
13 a technical cleanup bill for personal income tax laws.
14 Here, the state legislature was clear in its intention to
15 make a noncontroversial change to have the FTB follow the
16 date set forth by the IRS on the final federal
17 determination investing the power and deciding the final
18 federal determination date with the IRS. Thus, along with
19 this clearly stated intention, R&TC Section 18622 should
20 be read in its plainest form. In this case, final federal
21 determination date, which is the date of last action made
22 by the IRS set forth in Mr. Briggs' 2015 filing
23 transcript, is March 28th, 2022, because the IRS made
24 adjustment to prior tax assessed and reduced or removed
25 all penalties and interest.

1 Similarly, the precursors to the enactment of
2 R&TC section 19311, sections 19053.6 and 26073.4 are also
3 representative of the legislature's intent to provide
4 taxpayers with the maximum amount of flexibility to claim
5 a refund following a final federal determination. The
6 precursor statutes use familiar language when
7 unequivocally stating that the statutes apply when, quote,
8 "A change or correction is made or allowed by the IRS with
9 no further limitation requiring a change to a specific
10 item on a tax return."

11 Further, they specifically state that a claim for
12 credit or refund resulting from the adjustment may be
13 filed by the taxpayer within two years from the date of
14 the final federal determination. The legislature also
15 actually specifically recognize that, quote, "In practice,
16 most taxpayers do not file an amended return after an
17 adjustment is made," in its 1933 California bill analysis.
18 Therefore, it is clear here that the enactment of the
19 foundations to R&TC section 19311 was intended to benefit
20 the taxpayer. The legislative intent in enacting these
21 statutes was to provide the taxpayer maximum flexibility
22 in their ability to claim a refund following a federal
23 determination. And had the legislature intended to
24 require a taxpayer to file an amended return, there would
25 be language available in the present-day statute that

1 supports this.

2 However, the legislature recognize that filing an
3 amended return is not common or required in practice and,
4 instead, all that is required is that the taxpayer shows
5 that there were changes or corrections made or allowed by
6 the IRS. Therefore, FTB should not be able to
7 successfully argue that only a claim resulting from a
8 change or correction to a taxpayer's original or amended
9 return opens this claim. As FTB notes in its
10 December 2022 brief, these predecessor statutes to
11 R&TC section 19311, offered an opportunity to amend a
12 return. However, it was not required and was recognized
13 as an uncommon practice.

14 If this were the intention of the legislature, we
15 would see clear language signifying this intention
16 throughout all iterations of the statute continuing to
17 present day. The legislative intent in history of R&TC
18 statutes analyzed in this case all support Appellant's
19 position that he rightfully availed himself to using the
20 two-year extended statutes of limitations because his
21 claim for refund follows a final federal determination.

22 To my third and final point, the ramifications of
23 a decision in favor of FTB would not only unjustly deprive
24 Appellant of the refund he is owed for tax year 2015, but
25 it would signal to other taxpayers that they too may not

1 rely on plain statutory language and are, instead, subject
2 to this erroneous interpretation employed to deny taxpayer
3 refunds. When statutes are clear, as they are here, there
4 should be no need to dig into legislative intent or
5 history behind them. And when there are statutory
6 ambiguities, those should be resolved in taxpayer's favor.
7 Again, we should presume that the legislature says in the
8 statute what it means, and it means what it says.

9 This is even more so necessary in this case when
10 Appellant was given contradicting information by the FTB
11 when he first made his best efforts to remedy his 2015
12 filing through multiple attempts once he was able to
13 gather the correct information regarding his filing.
14 Appellant also communicated at the outset of this issue
15 how excessive FTB's tax imposed and subsequent wage
16 garnishment was given tax liability would be over \$5,000
17 less than what FTB withheld from him.

18 Appellant is not asking for anything that he is
19 not entitled to. He is simply asking that his appeal be
20 granted so that he may be returned the funds he was
21 deprived of at the hands of FTB's misapplication of the
22 statute of limitations policy. The statutory language is
23 clear, and it should be applied to this case as it is
24 written. Therefore, Appellant respectfully request that
25 his appeal be granted to allow for him to recover his full

1 refund for tax year 2015 to which he's entitled.

2 Thank you.

3 JUDGE RALSTON: Okay. Thank you.

4 Ms. Mosnier, did you have any questions for the
5 witness, Mr. Briggs?

6 MS. MOSNIER: Thank you for asking. No.

7 JUDGE RALSTON: Okay. Thank you.

8 For my Co-Panelists, did you have -- Judge Long,
9 did you have any questions for Mr. Briggs or for the
10 Appellant's representative?

11 JUDGE LONG: I don't. Thank you.

12 JUDGE RALSTON: And, Judge Vassigh, did you have
13 any questions for Mr. Briggs or the Appellant's
14 representative?

15 JUDGE VASSIGH: I do not. Thank you.

16 JUDGE RALSTON: Thank you.

17 I have a question for Mr. Briggs.

18 You stated that when you were talking with FTB
19 and you were advised -- I think you said you were advised
20 not to file until you've had all of the proper
21 documentation. Was that a telephone conversation, or was
22 that in writing?

23 MR. BRIGGS: Yes, Your Honor. It was in a
24 telephone conversation. I think it was my second
25 conversation with FTB over the phone.

1 JUDGE RALSTON: Okay. Thank you.

2 Okay. Ms. Mosnier, you can go ahead and begin
3 your presentation when you're ready.

4 MS. MOSNIER: Thank you very much.

5

6 PRESENTATION

7 MS. MOSNIER: Good afternoon. Marguerite Mosnier
8 and Andrea Watkins for Respondent Franchise Tax Board.

9 In this case, FTB partially denied the
10 Appellant's refund claim for the 2015 tax year as
11 untimely. FTB's action should be sustained because there
12 was no open refund statute of limitations under Revenue &
13 Taxation Code section 19306 with respect to the denied
14 portion of the claim. Additionally, section 19311 is not
15 applicable in this case. And after a brief discussion of
16 the facts, I will discuss first section 19306 briefly and
17 then section 19311.

18 The facts are straightforward. Both the IRS and
19 the Internal Revenue Service established the Appellant's
20 tax liabilities for the 2015 tax year through their
21 respective statutory assessment authorities. FTB
22 established the Appellant's liability in 2017. On
23 September 27th, 2021, the Appellant filed his 2015
24 California return, and that date is reflected both on
25 Exhibits J and N. FTB accepted the return and credited

1 and/or refunded overpayments received within a year before
2 the September 27th date. About two months later, on
3 November 16, 2021, the Appellant filed his federal return.
4 And that is an agreed to fact in this appeal, which the
5 OTA recited at the beginning of this hearing. About four
6 months after the IRS received the return, it processed it,
7 and the account transcript reflects that it abated part of
8 the tax.

9 Now, with respect to the denied portion of the
10 claim that is untimely, we note that its the Appellant's
11 burden to show that the claim was timely filed. And,
12 although, he alleges that an earlier filing date with the
13 Franchise Tax Board, an assertion without any evidence
14 does not meet his burden of proof. As the OTA stated in
15 its precedential opinion Appeal of Fisher, which is at
16 2022-OTA-337P, a taxpayer must provide evidence of a
17 mailing date through a registered or certified mail
18 receipt to establish a filing date that is based on
19 mailing the return. The evidence that -- the record does
20 not reflect any such evidence, and FTB is unaware of any.

21 For remaining section 19306 arguments, FTB rests
22 on its briefing on that issue. Further, Section 19311 is
23 not applicable in this case, and I'd like to touch briefly
24 on the history of this section. In 1969 the legislature
25 enacted 19053.6 with respect to individual taxpayers and

1 section 26073.4 with respect to corporate taxpayers, and
2 provided and opened a special purpose refund statute of
3 limitations for taxpayers that opened following federal
4 adjustments, corrections, or changes by the Internal
5 Revenue Service. And as Exhibit P illustrates, there were
6 equitable considerations to enact these provisions because
7 at that time California law authorized FTB an additional
8 assessment statute of limitations to mail proposed
9 assessments that resulted from IRS changes or corrections.

10 So adding these two statutes was really a
11 corollary to provide the same benefit to a taxpayer with
12 respect to beneficial federal adjustments that the
13 existing statutes provided to FTB with respect to
14 assessments based on federal adjustments that would, from
15 FTB's view, increase the taxpayer's California liability.
16 Beginning in 1994, both those statutes were amended, and
17 they were renumbered as a single statute, section 19311.
18 Now that section opens a refund claim only under limited
19 circumstances that are not present in this case.

20 It provides that a taxpayer may file a refund
21 claim within two years of the date of the final federal
22 determination, which is a change or correction allowed by
23 the Internal Revenue Service. Further, the refund claim
24 must result from a federal adjustment. Here, there was no
25 change or correction. The Appellant's claim is returned.

1 It did not result from IRS action, and it was not filed
2 within two years following any final federal determination
3 date.

4 So to begin first with the phrase change of
5 correction, that phrase means an adjustment to a
6 taxpayer's federal return. There are four Board of
7 Equalization decisions, one precedential and three
8 non-precedential that are instructive in this case. And I
9 will discuss them chronologically beginning with the
10 earliest. In the Appeal of Davis, a precedential opinion,
11 the citation is 95-SBE-003, in the Board of Equalization's
12 review of a proposed assessment where a refund claim had
13 been filed with respect to one of the tax years, the Board
14 said that -- and this is with respect to section 19053.6,
15 which is the relevant refund -- fed action refund statute
16 at that time. And we've note that the language of that
17 statute is virtually identical to 19311, 19053.6 is set
18 out in Exhibit O.

19 The Board said that 19053.6 applies only when the
20 IRS has adjusted a taxpayer's return. A few years later
21 in the Appeal of Foley, a non-precedential opinion issued
22 December 10, 1998, taxpayers filed untimely returns that
23 were outside the 19306 statute of limitations claim of
24 refund. And they, argued, as Appellant does here, that
25 the claims were timely under section 19311 in their case

1 because they were filed within 90 days of a Tax Court
2 decision establishing federal liabilities. The BOE
3 rejected their 19311 argument because there had been no
4 change to the Appellant's original or amended federal
5 return.

6 In that case, as in this case, Appellants had not
7 filed timely returns for the year at issue. And in their
8 case, the IRS had assessed a Notice of Determination they
9 had appealed to the Tax Court. That's how it went through
10 procedural avenue. More recently in Appeal of Klemp,
11 K-l-e-m-p, a non-precedential decision issued
12 August 21st, 2012, that was a decision on a petition for
13 rehearing by an Appellant whose statute of limitations
14 claim had been denied by FTB, and that action affirmed by
15 the Board. In that case, the taxpayer had had his federal
16 liabilities established by a substitute for return at the
17 federal level. He later filed his federal return. And as
18 the Board of Equalization described it, the IRS, quote,
19 "Replaced its estimate with information provided on the
20 return."

21 The Board noted that that act did not constitute
22 a change of correction to any item required to be shown on
23 a return since it was the taxpayer's original return. And
24 although a substitute for return is sufficient to
25 establish a tax liability, it is not considered a

1 taxpayer's original return. And in the Klemp decision,
2 the Board looked to a Tax Court decision Millsap versus
3 Commissioner, a 1988 decision at 91 TC 926, in which the
4 Tax Court held that although a substitute for return was
5 sufficient to establish a liability, it was not, for
6 example, a return for the purposes of a taxpayer's
7 subsequent ability to file a federal return and claim a
8 filing status different from the one shown on the
9 substitute for return.

10 And then the most recent Board of Equalization
11 decision I want to touch on is Appeal of Tzou, T-z-o-u,
12 and C-h-s-i-e-h, a non-precedential decision issued
13 July 27th, 2017. In that decision, the Board of
14 Equalization affirmed FTB's denial of a refund claim under
15 section 19306, and agreed that section 19311 was not
16 applicable because it applies only when the IRS changes
17 the amount of income shown or disclosed by a taxpayer on
18 an original or amended return. And in that case, the IRS
19 had accepted that return.

20 In this case, the Appellant's account transcript,
21 Exhibit L, shows that a liability was established via a
22 substitute for return in 2019. And I believe that the
23 confusion perhaps at the bottom of page 1 of the account
24 transcript, I think, perhaps that the Appellant alluded to
25 in argument regarding a processing date of

1 February 19, 2018, for a return, simply reflects the first
2 entry on the account transcript, the TC 150, entry that
3 shows a substitute for a return being prepared by the IRS.
4 A substitute for return is not an original return. The
5 Internal Revenue Manual speaks to this in sections 4.12.1
6 defining a substitute for return, and in section 4.12.1.8
7 detailing IRS' steps to establish a liability.

8 Moreover, Internal Revenue Code section 6020
9 subdivision (b) has been interpreted to mean that a
10 substitute for a return is not a return for all purposes.
11 For example, in the Millsap v Commissioner case I just
12 mentioned, it doesn't serve as an original return for
13 purposes of filing status. And in Healer, H-e-a-l-e-r,
14 versus Commissioner, 115 TC 306, a 2000 decision, the Tax
15 Court held that a substitute for a return is not an
16 original return for refund claim purposes at the federal
17 level, IRC section 6511 purposes.

18 Here, the Appellant's account transcript does not
19 reflect that the IRS examined or changed the only return
20 that the Appellant acknowledges he filed with the IRS. It
21 does not reflect they examined the return when they
22 processed it in March 2022 and partially abated tax.
23 Instead, what the IRS did is exactly what the Board of
24 Equalization described in Klemp. In other words, it was
25 merely a recording of tax liability information provided

1 for the first time in a late-filing return. Likewise, the
2 Appellant has not established that the refund claim at
3 issue results from federal action. There was no IRS exam.
4 There was no IRS change or correction to any return filed
5 by the Appellant.

6 Finally, the refund claim fails the requirement
7 that it be filed within two years after the date of a
8 final federal determination. There was no final federal
9 determination. The March 2022 entry abating tax was not a
10 final federal determination as that term is defined. And
11 we would note too that the refund claim filed with the
12 Franchise Tax Board was filed in September of 2021. And
13 the March 28, 2022, date that the Appellant has argued
14 today constitutes the final federal determination that
15 would open the two-year statute of limitations, could not
16 possibly support a 19311 jurisdiction when that refund
17 claim was filed months before the tax was abated in March
18 of 2022. The Appellant hasn't shown that there was a
19 final federal determination within two years before
20 September 27th, 2021, and the account transcript does not
21 reflect any.

22 The inescapable conclusion is that the denied
23 portion of the refund claim is untimely under
24 section 19306, and that no special federal action refund
25 statute of limitations under Section 19311 could have

1 opened. To hold otherwise would be to reward taxpayers
2 who don't file timely returns, which would conflict with
3 established tax policy. FTB, therefore, respectfully
4 requests that the Office of Tax Appeals sustain its action
5 in partially denying this refund claim.

6 Thank you. I'd be happy to address your
7 questions.

8 JUDGE RALSTON: Thank you.

9 Judge Long, did you have any questions for the
10 Respondent?

11 JUDGE LONG: I don't have any questions. Thank
12 you.

13 JUDGE RALSTON: Thank you.

14 And, Judge Vassigh, did you have any questions
15 for the Respondent?

16 JUDGE VASSIGH: No, I do not. Thank you.

17 JUDGE RALSTON: Okay. Thank you.

18 So the Appellant you have 10 minutes for your
19 rebuttal. So you can begin when you're ready.

20 MS. CIARAMITARO: Thank you.

21

22 CLOSING STATEMENT

23 MS. CIARAMITARO: Again, we'd like to state that
24 the plain statutory language dictates for a taxpayer to
25 avail themselves to the two-year statute of limitations

1 refund claim under R&TC Section 19311; that first, there
2 must be a change or correction made by the IRS and second,
3 the claim for refund must be filed within two years of the
4 final federal determination. And Appellant has met both
5 requirements here.

6 The IRS made changes to Appellant's 2015 return
7 when it removed all penalties and interest and corrected
8 Appellant's taxable income to correct -- to the correct
9 amount per his 2015 filing, and Appellant made a claim for
10 refund on November 30th, 2021, which is within two years
11 of this date. There is no requirement that -- that as
12 FTB's contends that claim for refund must be made after
13 that final federal determination. All that is required is
14 that it must be made within two years of that
15 determination. And Appellant's earlier claim for refund
16 was perfected when the federal corrections materialized,
17 and all that's required is that the claim results from the
18 adjustment, which is the case here.

19 Next, the plain statutory language supports
20 Appellant's position that a refund is owed. With respect
21 to the non-precedential opinions that Respondent cites,
22 while non-precedential opinions can be illustrative and
23 could help to understand the situation, they should not be
24 relied on in this situation, especially, when the facts
25 that are referenced within those non-precedential opinions

1 are really not on point here as Respondent contends. And,
2 although, Appellant has cited non-precedential opinions
3 within briefs for the purpose of addressing these
4 counter-points, these opinions are cited by Appellant
5 because they're more on point with the facts of our case
6 as well.

7 We also argue, again, as we mentioned earlier
8 that there was a correction made to a return filed by
9 Appellant -- or a change of correction made to his
10 liability, and there's no requirement that the FTB -- that
11 IRS has to make a change to a return itself. It's just a
12 requirement that a change or correction is made to items
13 required to be reported on a return. Therefore, we argue
14 that there was a final federal determination that occurred
15 on March 22nd, and Appellant's refund claim was timely
16 within the two years allotted by the state.

17 So to finalize, the plain statutory language
18 supports our Appellant's argument. While we have dug into
19 the legislative history, as Respondent has as well, that
20 legislative history also is construed in Appellant's
21 favor. And we reiterate once more that when the statutes
22 are clear as they are here, there's no need to dig into
23 the legislative history behind such statutes. We should
24 be able to rely on them as they are construed, and
25 Appellant meets the requirements of availing himself to a

1 refund under R&TC section 19311.

2 Thank you.

3 JUDGE RALSTON: Thank you.

4 If you guys can give me just a minute to gather
5 my notes.

6 Looks like we may have lost -- oh -- some of the
7 parties.

8 Ms. Mosnier, are you still available?

9 MS. MOSNIER: I am. I don't know why -- I don't
10 know why I went away visually, but I'm here. Thanks.

11 JUDGE RALSTON: Okay. Thank you. Yes, as long
12 as you're here that's fine.

13 I did have a question for the parties, and I
14 understand that you may not have the answer now and may
15 need to, you know, provide the answer later, but I would
16 just like to ask. Would the Appellants be able to file
17 another claim for refund at this time if -- if we
18 determined that the claim for refund did not result from
19 the IRS actions on March 28th, 2022? Would the Appellant
20 be able to file a claim for refund based on those actions,
21 like, now at this point? So if either party could answer.

22 MS. CIARAMITARO: We would --

23 MS. MOSNIER: Oh, excuse me.

24 MS. CIARAMITARO: Oh, go ahead.

25 MS. MOSNIER: Excuse me.

1 MS. CIARAMITARO: Go ahead.

2 MS. MOSNIER: You're the Appellant. You get to
3 go first.

4 MS. CIARAMITARO: Thank you. We would argue
5 that -- that because the change or correction was made in
6 the final federal determination was made on March of 2022,
7 that a claim filed now -- let me just make sure it's
8 March 20 -- 28. So, yes, today is March 21st, 2024. And
9 if a claim were to be filed now, that would be within the
10 two-year statute of limitations. However, we would also
11 like to look into this issue as this wasn't addressed in
12 previous briefs.

13 JUDGE RALSTON: Thank you.

14 MS. MOSNIER: Oh, excuse me. Sorry.

15 JUDGE RALSTON: Oh, please go ahead.

16 MS. MOSNIER: Okay. FTB's position would be that
17 there has been no change or correction. Via the account
18 transcript does not reflect that the IRS made a change or
19 correction to a federal return filed by a taxpayer. And
20 that that is what was intended by the legislature when it
21 enacted 19311, and that is what is required under Appeals
22 of Davis and Foley and Klemp and Tzou and Chsieh, and so
23 that a claim filed today, a claim filed within the next
24 week would still not meet the requirements for 19 -- to
25 open 19311.

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JUDGE RALSTON: Okay. Thank you.

So I don't think that I have any further questions. And so my -- I don't think that my Co-Panelists do either, but feel free to chime in if that's not correct.

So we are ready to conclude this hearing. I want to thank everybody for attending today's hearing.

Today's hearing in the Appeal of Briggs is now adjourned and the record is closed.

The Judges will meet and decide your case later on, and we will send you a written opinion of our decision within 100 days.

So unless anyone has any questions for me, we'll go ahead and conclude. So thank you everyone for attending.

(Proceedings adjourned at 2:16 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 19th day of April, 2024.

ERNALYN M. ALONZO
HEARING REPORTER