

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. SMITH,) OTA NO. 230513197
)
)
 APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, March 13, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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K. SMITH,) OTA NO. 230513197
APPELLANT.)
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Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 1:08 p.m. and
concluding at 1:36 p.m. on Wednesday, March 13,
2024, reported by Ernalyn M. Alonzo, Hearing
Reporter, in and for the State of California.

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APPEARANCES:

Administrative Law Judge: ALJ RICHARD TAY

For the Appellant: K. SMITH

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

NOEL GARCIA-ROSENBLUM
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 6.)

(Department's Exhibits A-J were received into evidence at page 6.)

O P E N I N G S T A T E M E N T

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	<u>P A G E</u>
By Mr. Smith	21

1 Cerritos, California; Wednesday, March 13, 2024

2 1:08 p.m.

3
4 JUDGE TAY: We are going to go on the record.

5 The appeal today is the Appeal of Kenneth L.
6 Smith Jr., OTA Case No. 230513197. It's about 1:08 p.m.
7 on March 13th, 2024.

8 This appeal is being conducting by myself,
9 Judge Richard Tay. This appeal is being heard and decided
10 by a single Administrative Law Judge under the Office of
11 Tax Appeals Small Case Program.

12 Just to remind today's participants and any
13 viewers, the Office of Tax Appeals is not a court but is
14 independent appeals body. The office is staffed by tax
15 experts and is independent of the state's tax agencies.
16 We do not engage in any ex parte communications with
17 either party. My decision will be based on the arguments
18 and evidence provided by the parties on appeal in
19 conjunction with an appropriate application of the law.

20 And for the record, I'm going to ask the parties
21 again to introduce yourselves.

22 I'll start with Appellant Mr. Smith.

23 MR. SMITH: Kenneth Smith.

24 JUDGE TAY: Thank you.

25 MR. GARCIA-ROSENBLUM: Noel Garcia-Rosenblum for

1 Respondent Franchise Tax Board.

2 MS. ZUMAETA: I'm Jackie Zumaeta for Respondent
3 Franchise Tax Board.

4 JUDGE TAY: Thank you.

5 During the appeal process, Respondent submitted
6 Exhibits A through J, and Appellant submitted Exhibits 1
7 through 6. There were no objections to those exhibits.

8 Is that correct, Franchise Tax Board?

9 MR. GARCIA-ROSENBLUM: That is correct.

10 JUDGE TAY: And Mr. Smith?

11 MR. SMITH: Correct.

12 JUDGE TAY: Okay. The exhibits are hereby
13 admitted as evidence into the record.

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

16 (Department's Exhibits A-J were received in
17 evidence by the Administrative Law Judge.)

18 JUDGE TAY: I'm going to start with Mr. Smith and
19 allow you to give your presentation, and I'll also swear
20 you in as a witness. If you would, please stand and raise
21 your right hand.

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K. SMITH,

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

JUDGE TAY: Thank you very much. Please feel free to be seated. Mr. Smith, you have 15 minutes.

MR. SMITH: Okay.

JUDGE TAY: Feel free to begin whenever you're ready.

MR. SMITH. Sounds good.

PRESENTATION

MR. SMITH: Now, I know that they have -- I'm assuming they have what I wrote you in contesting this initially, is the exhibits that you referred to. So I don't know that I need to read them all, but it's the May 2nd letter that I appealed. But since we're all here and I have 15 minutes, I can read them. There's nothing changed.

So my initial comment was right on. The request for appeal is that because they denied my appeal, I'm contesting it because of the definition for reasonable cause is subjective. And I aim to layout why I had reasonable cause. And I don't know who determined that it

1 was, you know, reasonable cause, but someone did. I had
2 submitted specific objective reasons, which I didn't think
3 was adjudicated thoroughly. Maybe if a second person saw
4 them -- that's why we're here -- they might feel
5 differently that it was reasonable.

6 And I submitted this appeal -- actually, I was
7 told I should submit an appeal by two agents from the FTB,
8 one over the phone and when I paid the fee upfront so I
9 wouldn't accrue any more interest, and the other at the
10 Santa Ana field office. They're very professional. And
11 so I submitted that on the 24th of September of 2021. And
12 I inquired about it and inquired about it and inquired
13 about it, and I'd go back to the FTB as I wrote here, and
14 they didn't know the status.

15 So they said finally on the 14th December of
16 2022, a year and three months later, they said well, you
17 better submit it again. So I submitted the appeal again.
18 This time I sent it certified mail, and I sent it on the
19 23rd of February -- correction -- the first of February in
20 2023. And then it took them 16 months later -- well,
21 that's when they responded. I'm sorry. I submitted it on
22 the 14th of December 2022 and got the adjudicated response
23 on the 1st of February 2023, which was 16 months later.

24 They tried to help me, but the people I called in
25 that want the FTB, they said we don't have any reason to

1 know where they are in the appeal the process or I should
2 say -- yeah -- the appeal process initially. So I
3 submitted these 6 exhibits that outline the different
4 conversations that I have had with FTB, all very
5 professional. And as I mentioned in my first paragraph
6 under issue, it's about the \$1,601.34 that I paid, which
7 includes a penalty plus this fee.

8 And as you can see from my tax records in 2016,
9 this has been going on for awhile. I retired from the
10 Navy after 24 years in 2014, and there are a lot of issues
11 between nondeductible expenses. I had some deductible
12 expenses. I had some Schedule C issues. I had some back
13 issues with getting that pay. But the bottom line is I
14 just could not finish my federal return. So as the same
15 thing happened in 2016, I always make sure I overpay. So
16 the federal government doesn't -- as long as you overpay
17 you have up to, I think, four years to file.

18 But apparently California -- not apparently, they
19 do have a stricter rule. So even though I'd overpaid, I
20 got a notice in December -- December 12th, stating that I
21 was having this proposed penalty of \$4,200, which I
22 immediately got on top on this and said, look, I'm waiting
23 for my federal return. And I sent that to them on
24 February the -- what was it? -- yeah, February the 19th
25 of 2020. So, ultimately, it took a long time before I

1 could get my federal return completed. So I didn't want
2 to submit a fraudulent return or unfinished return.

3 So that's what happened. And I assumed things
4 were good because I overpaid, as it was the federal. So I
5 just outlined in the discussion section while I was
6 accumulating the data. And I don't know if the State
7 needs to know why I was, you know, unable to finish my
8 federal return, but those are the general reasons. And
9 then after -- I filed the appeal in 19th of the February
10 in 2020. Then after that all heck broke loose when it
11 came to trying to get the rest of the information. A lot
12 of things shut down in the next two years.

13 But the bottom line is I was able to file both
14 the IRS return and the California 540 on February the 8th
15 of 2021. And then I spoke with some of your folks, very
16 professional. As you can see it up there, I went ahead
17 and paid the penalty pending adjudication of the appeal.
18 And I had the overpayment. It was \$17,000 that year, and
19 it was transferred to the following year for an
20 overpayment of 24 -- \$20,000 total. For what's it worth,
21 I have a \$23,000 overpayment now in 2024 -- '23 because I
22 just didn't want these things to happen. But, again, it
23 happened because of the deadline, I guess.

24 So September 24th, 2021, going back, I talked to
25 the, you know, Santa Ana field office manager, very

1 professional, Mr. Menendez. He's not there any longer.
2 And he called, and they're all trying to figure out why it
3 wasn't complete. That's my appeal that I submitted in
4 September. And then over the next year I just made a
5 couple of more calls. They made calls. Finally I
6 stated -- they told me on the 28th of November 2022, and
7 stated they couldn't tell the status, only that it was
8 being processed in Sacramento. So they said to resubmit
9 my original 2917, which I did on 24th of September of
10 2021.

11 THE STENOGRAPHER: Excuse me.

12 MR. SMITH: Yes.

13 THE STENOGRAPHER: May I please ask you to slow
14 down a little bit?

15 MR. SMITH: Oh, okay. Just for the record, I was
16 also -- I'm just reading.

17 Where can I go back to?

18 THE STENOGRAPHER: You can just continue.

19 MR. SMITH: Okay. So visited the Santa field
20 office.

21 I don't want to run out of my 15 minutes, so I'm
22 sorry.

23 28 of November 2022, I went back to Santa Ana
24 FTB. They said they could not tell the status that they
25 were actually -- all they could see that it was being

1 processed in Sacramento and asked me to resubmit my 20 --
2 they called it the 2917. That's the official form to
3 contest, if you will, their findings. So I submitted it
4 on the 14th of December 2022, a re-submittal.

5 And I've said this before. I just said it real
6 quickly. I had it certified mail. I submitted it on the
7 14th of December 2022, and it was date stamped to arrive
8 on the 12th of December of 2022. I guess they just forgot
9 to switch over their - their date stamp. But that's just,
10 you know, good information to know. I know they had it.
11 And then 2 months later, a month-and-a-half later, I did
12 get the response from the original one I sent in September
13 of 2021, 16 months ago.

14 It says denied. Reason, quote, unquote, "My
15 letter" -- it was actually more than a letter but, "My
16 letter does not constitute reasonable cause for waiving,"
17 and it says, "penalties", and then put in parenthesis
18 demand. But the bottom line is I appealed it February --
19 in May -- May 2nd and wrote this letter that I just
20 finished reading. And that's it. That was just evidence
21 from the letters attached, but I don't need to read it.
22 It's just the correspondence we have between myself and
23 the Tax Board starting in February of 2023, the
24 re-submittal, if you will, of my original claim.

25 How much time do I have left?

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JUDGE TAY: Mr. Smith, you have 7 minutes.

MR. SMITH: Okay. So I guess I should look at my reasonable -- my first claim, the one that I resubmitted. I listed it with three enclosures. There were six areas that I wanted to get into. And I requested the extension to file on the 19th of February 2020 after being -- after receiving the 12 December 2019 Notice of Proposed Assessment. And it said to process by February the 10th, and I got it in February the 19th. So that's my bad, nine days.

Then the second was I filed the original 540 on the 15th of March 2022 for 2016. And had the same delay going on as I mentioned, and there was no penalty or no demands letters sent. So, again, after overpaying by \$10,000 from 2016, I applied it to 2017. I knew that I had way overpaid it. And then we did have the shutdown because of this lack of information. And, you know, I'm not blaming everything on the virus for the shut down, but it took me a year to get the rest of the stuff that I needed.

And so even for that year, 2017, I had \$11,000 withheld from California taxes and plus the rollover from last year. It was \$22,000 basically that was there, and I took the overpayment and transferred it in 2018. And the rest is just basically talking about the worksheet that I

1 filled out and how I have been in touch with them and
2 writing in on the phone and what dates I had the
3 conversations. One was 30th of June, 2021, where I
4 decided -- or they encouraged me to file a claim or,
5 whatever, contest it, but go ahead and pay the penalties
6 while we can get the additional interest charges. And I
7 mentioned that I was missing the required receipts and
8 information I was trying to get so I could do the federal
9 returns. I couldn't do a federal until I did the state.
10 So that was basically it.

11 And I respectfully request the penalty with
12 interest fees for failure to file in 2017 be refunded.
13 And that's it. I submitted that on September the 11th.
14 And, again, I heard back on February 2023 with their
15 answer.

16 I have nothing else.

17 JUDGE TAY: Thank you, Mr. Smith. I'm going to
18 ask you just one or two questions.

19 MR. SMITH: Sure.

20 JUDGE TAY: Thank you for your presentation and
21 thank you for your service to our country.

22 MR. SMITH: Okay. Yeah.

23 JUDGE TAY: Now, the issue in this appeal is
24 regarding the demand penalty. Okay. And that means that
25 Franchise Tax Board sent you a notice, and I believe I

1 have it in front of me.

2 Franchise Tax Board, you can correct me if I am
3 wrong.

4 But the notice is dated October 3rd, 2019.

5 MR. SMITH: Yeah. I didn't see that until I saw
6 it mentioned here on my December 12th letter where it
7 says, "Why you received this notice. October 3rd, 2019,
8 we sent you a notice."

9 Well, I never received a notice until I got -- I
10 got a copy of it in your submittal --

11 JUDGE TAY: Okay.

12 MR. SMITH: -- which is page 6, I believe. Let
13 me look. Let me make sure I've got it here.

14 JUDGE TAY: Yeah. If you could explain anything
15 about maybe why you did not respond -- excuse -- why you
16 did not respond to that notice?

17 MR. SMITH: I didn't receive it.

18 JUDGE TAY: Okay.

19 MR. SMITH: I did not receive it, and that's
20 what's strange because I -- I saw that they refer -- my
21 brother's birthday -- October 3rd, 2019. And it said
22 that I had this fee, and I had to protest by
23 February 10th. So protesting that was what, you know,
24 that was what I was protesting. Then I saw the FTB's
25 submittal here, which is very thorough. It had -- I think

1 it it's on exhibit -- let me see here. I want to make
2 sure I've got it right.

3 Yeah, that letter you're referring to on October
4 3rd, yeah, I first saw it on Exhibit 8, page 1 of 4. And
5 that's where it says, "You received this notice because
6 your records show you were paid by the Department of
7 Agriculture and National Finance Center. I work for
8 Online Security. That's who pays us. And --

9 JUDGE TAY: Yes, Mr. Smith, that's the notice.
10 Now --

11 MR. SMITH: I never -- I never received that.
12 And I guess that's obviously why it was late the first
13 time. Yeah.

14 JUDGE TAY: Is -- just curious. Is that your
15 address for --

16 MR. SMITH: Yes, that's the correct address. I
17 mean, they -- I would like to see it sent certified mail.
18 Even if I send it certified mail, then obviously it's my
19 bad if I've misplaced it or something, but I never saw it.
20 Under oath, never saw it. And now I see it referred to on
21 December 12th. And I said, oh, holy. Gee wiz. I got to
22 get this thing, you know, supplemented and get -- get --
23 you know, start appealing it or whatever and explaining
24 why that it was late.

25 And I didn't call up the FTB and asked them,

1 matter.

2 There are two issues at appeal before you today:
3 First, whether the Appellant has established reasonable
4 cause to support the abatement of the Notice and Demand
5 Penalty, also referred to as a Demand Penalty, imposed
6 during the 2017 tax year; second, whether Respondent
7 properly imposed a collection cost recovery fee.

8 After Appellant failed to file a 2017 California
9 tax return, Respondent issued a Demand for Tax Return
10 requiring a response from the Appellant by either filing a
11 return or demonstrating that he did not need to file a tax
12 return for that year. When the Appellant did not respond
13 in any manner by the required date of November 6, 2019,
14 Respondent issued a Notice of Proposed Assessment or NPA.
15 In response to the NPA, Appellant submitted an untimely
16 protest contending that he was going to file a 2017 tax
17 return, and Respondent put a collection hold on the
18 Appellant's account for 30 days to allow him time to do
19 so.

20 Appellant failed to file a tax return within this
21 period, and Respondent took collection action, including
22 the issuance of a final notice before levy and lien on
23 August 26th, 2020. Respondent received Appellant's 2017
24 tax return on February 8th, 2021. Respondent accepted
25 this return and reduced the demand penalty in accordance

1 with the total tax reported on Appellant's tax return.
2 Appellant then paid the demand penalty and the collection
3 cost recovery fee in full and filed a claim for refund.
4 Respond denied this claim, and Appellant filed this timely
5 appeal.

6 Appellant does not dispute the imposition nor
7 calculation of the demand penalty, but instead argues that
8 the penalty should be abated for reasonable cause because
9 he was unable to obtain information required to complete
10 his federal tax return. The demand penalty may be abated
11 if a taxpayer demonstrates that their failure to respond
12 to a demand notice was a result of reasonable cause and
13 not willful neglect. Taxpayers bear the burden of proving
14 the existence of reasonable cause and must demonstrate
15 that the failure to timely respond occurred despite the
16 exercise of ordinary business care and prudence.

17 Here, Appellant argues that he did not have
18 necessary information to file his tax return for the 2017
19 tax year. A taxpayer's inability to provide a timely
20 response to a demand notice because of lack of necessary
21 information is not considered reasonable cause. In these
22 circumstances, the appropriate action to file a return
23 with the information available at that time and then file
24 an amended return later if necessary. Therefore, the
25 Appellant has failed to establish reasonable cause and the

1 demand penalty should be sustained.

2 Lastly, California law provides that Respondent
3 shall impose a collection cost recovery fee if a taxpayer
4 fails to file -- to pay a liability due after Respondent
5 mails a notice advising the taxpayer that their continued
6 failure to pay may result in collection action.

7 There's no reasonable cause defense to the
8 imposition of this fee. Respondent issued a final notice
9 before levy and lien informing the Appellant that it may
10 impose a collection cost recovery fee if the liability is
11 not paid. Respondent then properly imposed a collection
12 cost recovery fee after Appellant did not pay the amount
13 due. Therefore, the imposition of this fee was proper and
14 should be sustained.

15 I'm happy to answer any questions you may have.
16 Thank you.

17 JUDGE TAY: Thank you, Franchise Tax Board. I
18 have just a couple of questions. First, Appellant talked
19 about having made overpayments for the tax year. Can you
20 explain why there's still a demand penalty amount due?

21 MR. GARCIA-ROSENBLUM: The demand penalty is
22 based off the total tax due before payments.

23 JUDGE TAY: Okay. So regardless of what payments
24 they made then it's calculated based on the actual tax
25 showing due. Okay.

1 MR. GARCIA-ROSENBLUM: Yes, that's correct.

2 JUDGE TAY: Second question is, can you just
3 respond to Mr. Smith's contention that he didn't receive
4 the demand penalty.

5 MR. GARCIA-ROSENBLUM: Yes. Respondent mailed
6 the demand notice to the Appellant's last known address,
7 which was the same address as the NPA, which he did
8 receive. And that's Respondent's responsibility is to
9 send it to the last known address.

10 JUDGE TAY: Okay. So Franchise Tax Board, you're
11 saying you fulfilled the requirements of sending it to
12 taxpayer's best address thereby, to valid demand notice.

13 MR. GARCIA-ROSENBLUM: Yes.

14 JUDGE TAY: Okay. Thank you.

15 Mr. Smith, I'm going to allow you 5 minutes on
16 rebuttal.

17 MR. SMITH: Thank you. There's --

18 JUDGE TAY: Feel free to begin whenever you're
19 ready.

20

21 CLOSING STATEMENT

22 MR. SMITH: Yeah, good question. So going back
23 to the ordinary business, what a person would do in
24 ordinary business. Again, it's subjective. But, you
25 know, I did my best to comply with the federal

1 requirements. I did not want to file -- I'm not going to
2 say fraudulent -- but an incomplete return and then have
3 to turn around and file an amended return for both the
4 federal and the state. And so that's the reason I didn't
5 do it.

6 I was since told by FTB, go ahead and -- kind of
7 what the folks here said -- is just go ahead and file any
8 return or incomplete return and say -- just put something
9 on the file even though I'd have to do a do over. And I
10 thought that -- I kind of laughed at it. I said, well,
11 that sounds illegal to me to fraudulently -- to sign
12 something I know is not complete knowing I haven't done
13 the federal, even though you don't require copies of the
14 federal. In some cases you do. The federal -- the
15 Franchise Tax Board does. So I just thought it was --
16 that was not reasonable business to go ahead and sign a
17 return that I knew knowingly wasn't complete just to meet
18 what I thought was protestable [sic] proposed amount that
19 would be waived because I'd overpaid by -- from the
20 previous year, actually, not this current year.

21 We're talking about from 2016. The overpayment
22 was \$10,376. So and, again, I'm following what happened
23 in 2016. I also was late by the same amount, but I didn't
24 receive any of these assessments. And all I can say is --
25 and this you can look it up. It's a fact. The federal

1 government has still not adjudicated my February -- I
2 submitted February 2nd of 2021, the middle of all this,
3 tax return because they said they lost it, apparently. So
4 I resubmitted it.

5 So I may end up having to do this all over again
6 depending on what they find when they do process this
7 return. They're way behind. And, again, it's --
8 sometimes that happens. And all I can suggest is that the
9 post office maybe didn't make the delivery. I don't know,
10 but I certainly am very thorough. I lived by myself. I'm
11 married now. So I'm not going to blame my wife 'cause
12 didn't have one.

13 But the point is I did my best, and I feel that
14 it was reasonable. I demonstrated ordinary business
15 practices to get this done. I kept the communication
16 entirely open with exception of not knowing until December
17 the 12th that I had this other thing that was sent on
18 October 3rd, which is -- you know, it had some deadlines
19 in it, obviously, that I missed. So, you know, I don't
20 have -- I don't have any excuse for missing by 9 days,
21 that protest amount -- protest by date, October the --
22 February 10th. But I did submit and then explained why I
23 was, you know, late so that I would hopefully avoid any
24 issues knowing that it was overpaid.

25 And I don't think there's anything else I can add

1 to that. I just want to say the FTB folks are very, very
2 supportive. And they saw the -- they saw the issue, and
3 they said go ahead and file another return even if they're
4 going to have to refile it again just so that it's on file
5 that you met this deadline. So -- and I also thought --
6 not that it makes any difference in this case. But
7 16 months is a long time to process an appeal from the
8 time I submitted it.

9 That's just neither here nor there, but they
10 seemed to have apparently lost that because they didn't
11 act on it until I resent it with certified mail on the
12 14th of December. Then the -- that's 2022. And then they
13 responded a month-and-a-half later saying it was denied,
14 but they apparently lost the original one is all I can
15 figure.

16 So anyhow, that's my case. Thank you for
17 listening to it.

18 JUDGE TAY: Thank you, Mr. Smith. I just have
19 one more question.

20 MR. SMITH: Sure.

21 JUDGE TAY: Is there a reason that you were not
22 able to file a timely tax return?

23 MR. SMITH: The federal?

24 JUDGE TAY: Federal or state, yeah.

25 MR. SMITH: Well, the reason I couldn't file a

1 timely tax return is it would have had to been incomplete
2 because I was getting information not only from Schedule
3 E, Schedule S part-time. And there were some issues, but
4 I'm not even going to use it as an excuse. I didn't put
5 it in my letter. But I was basically awaiting to be able
6 to file a perfect tax return, one that wouldn't have to
7 be -- do the 1040X and then do a 540X or whatever it is.
8 So I was going to wait until I got everything I needed and
9 then filed it. And I think the same day or the day after,
10 I went up to FTB and turned in my 2017.

11 JUDGE TAY: Okay. So was that information
12 missing in 20 --

13 MR. SMITH: Same in 2016 also.

14 JUDGE TAY: Sorry. Was it also missing in 2019?

15 MR. SMITH: I don't remember 2019.

16 JUDGE TAY: Okay.

17 MR. SMITH: I don't remember -- I mean,
18 apparently everything was timely. I don't recall any
19 issue. I've always done my own income taxes since I first
20 went overseas out of college and working in Saudi Arabia
21 until the first -- the person I had do it said, no, you
22 didn't tell us the company was paying you in cash. So you
23 had to do quarterly payments. So since then I have not
24 had an attorney -- or an accountant do the work. But
25 regardless, after I retired in 2020 is when I decided to

1 hire somebody.

2 JUDGE TAY: Okay.

3 MR. SMITH: So I've hired a professional now and
4 in California. I just want to tell you this is -- and he
5 says don't you want this \$23,899 refund back from Finance
6 Tax Board [sic] for 2022? I said no. I said transfer it
7 to FTB. So that's -- I -- I mean, I load up on the money
8 to make sure. In thinking that as with the federal, there
9 wouldn't be any fines. But I didn't blow off the letter
10 on October 3rd because of that assumption, but when I saw
11 the -- when was it? -- December the 12th letter referring
12 to that and I see the proposed amount, even that I felt
13 was appealable. And I did protest, but that got -- they
14 basically said that I didn't show reasonable cause for
15 being late. And I don't know what else I could say. I
16 can't prove I didn't do something. I can't prove I didn't
17 receive this, but I don't like this hanging over my head.
18 I don't like it.

19 JUDGE TAY: I understand.

20 MR. SMITH: So that's why I'm happy to be here
21 'cause I just want to just get it out, and I'm glad it's
22 being aired. And I guess it's another issue if someone
23 were to say how can the State of California -- and it has
24 nothing to do with this -- but how can they supersede
25 federal law by saying, well, we're going to fine you

1 whether you've overpaid or not, and the federal government
2 doesn't.

3 JUDGE TAY: Well, California does have its
4 separate laws.

5 MR. SMITH: I know they do for catalytic
6 converters, but I didn't know that. Anyhow, that's my
7 story and it's truthful and open about it, and I just
8 wanted to lay it out and have you make a decision.

9 JUDGE TAY: Thank you, Mr. Smith.

10 MR. SMITH: You're welcome.

11 JUDGE TAY: I appreciate it. I think we're at
12 the end of our hearing here. I don't have any more
13 questions.

14 Do the parties have any questions for me?

15 Mr. Smith?

16 MR. SMITH: No. Thank you very much. I
17 appreciate it.

18 JUDGE TAY: Franchise Tax Board?

19 MR. GARCIA-ROSENBLUM: No questions.

20 JUDGE TAY: Okay. Again, I want to thank both
21 parties for your appearance and your efforts today in this
22 matter.

23 This concludes the hearing for this appeal. The
24 record is now closed.

25 I will endeavor to issue a written opinion no

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later than 100 days from today.

With that, we are now off the record.

(Proceedings adjourned at 1:36 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 2nd day of April, 2024.

ERNALYN M. ALONZO
HEARING REPORTER