

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
N. KHAYYAM and S. KHAYYAM,) OTA NO. 221212098
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 APPELLANTS.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, August 22, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:40 a.m. and concluding at 10:25 a.m. on
Thursday, August 22, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ JOHN JOHNSON
ALJ VERONICA LONG

For the Appellant: N. KHAYYAM
S. KHAYYAM
E. ZOTO
K. LIPNER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC BROWN
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received into evidence at page 5.)

(Department's Exhibits A-F were received into evidence at page 5.)

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California; Thursday, August 22, 2024

9:40 a.m.

JUDGE LEUNG: This is Appeal of Khayyam, OTA Case Number 221212098. Today is February 22nd [sic]. It's approximately 9:40 in the morning.

The issue -- let's see. Before this hearing was held, in a prehearing conference the parties agreed to the following: That this hearing will be held electronically; that the issue to be decided is whether the late-filing penalty for the 2020 tax year should be abated; that the -- let's see -- I forgot now -- that the, exhibits, Franchise Tax Board's A through F, as in frank, and taxpayer's 1 through 2 are all admitted into evidence and into the record.

(Appellant's Exhibits 1-2 were received in evidence by the Administrative Law Judge.)
(Department's Exhibits A-F were received in evidence by the Administrative Law Judge.)

JUDGE LEUNG: I would ask the parties to please introduce themselves before we get started, beginning with you, Ms. Khayyam.

MRS. KHAYYAM: I'm Nikou Khayyam, one of the defendants.

JUDGE LEUNG: Taxpayer, not defendants.

1 MRS. KHAYYAM: Taxpayer.

2 JUDGE LEUNG: Sir?

3 MR. KHAYYAM: Soheil Khayyam, the taxpayer.

4 JUDGE LEUNG: Good morning.

5 And the two witnesses.

6 MR. LIPNER: Kevin Lipner, CPA for the Khayyams.

7 JUDGE LEUNG: Okay. Ms. Zoto.

8 MS. ZOTO: I'm Enkaleda Zoto.

9 JUDGE LEUNG: Good morning.

10 MS. ZOTO: I'm controller. Good morning.

11 JUDGE LEUNG: Okay. Now for Franchise Tax Board.

12 MR. BROWN: Eric Brown, California Franchise Tax

13 Board.

14 JUDGE LEUNG: Good morning.

15 Ms. Kent?

16 MS. KENT: Cynthia Kent, also appearing on behalf

17 of the California Franchise Tax Board.

18 JUDGE LEUNG: Good morning, Ms. Kent.

19 Before we get started, I think for the taxpayer

20 you all might be testifying about some of the facts. So

21 I'm going to have you all get sworn in first. So will

22 you, Mrs. Khayyam, Mr. Khayyam, Mr. Lipner, and Ms. Zoto,

23 please raise your right hands.

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N. KHAYYAM,

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

S. KHAYYAM,

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

K. LIPNER,

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

E. ZOTO,

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

JUDGE LEUNG: Thank you. Please put your hands down.

Mrs. Khayyam, you may begin your presentation, and start when you're ready.

///

1 extension because our paperwork wasn't ready.

2 Because of the New York extension, we were unable
3 to calculate our personal taxes for California on time.
4 So because we had this New York extension, we took the
5 New York extension. We were not able to file on time in
6 California. Once we did and the taxes were -- I have it
7 here -- \$171,000.58, we actually overpaid and paid a
8 penalty on that. But then later we're hit with a penalty
9 of \$46,524. We asked for consideration to abate this
10 penalty because of the unusual circumstances of COVID and
11 were denied twice. So this is our case.

12 Soheil, is anything you would like to add?

13

14 WITNESS TESTIMONY

15 MR. KHAYYAM: No, you -- you explained it pretty
16 good. But I just want to ask for the understanding of the
17 situation that we were in, that you will recall New York
18 was hit the hardest with the COVID, unfortunately. It was
19 a very difficult situation. And as Nikou mentioned, our
20 CFO had underlying situation with the overweight. And
21 even after we decided to come back to work, she refused
22 and said she wants to work from home. And we were not
23 aware that the work is being done or not. And by the time
24 we found it, it was just way past the time.

25 We had, actually, angel -- I call her an angel

1 because she saved me. I'm talking about our new CFO,
2 Enka, and came to the rescue. But when she came in, she
3 told me, "Soheil, this is going to be a big mess because
4 nothing was done." Absolutely nothing was done, and we
5 were not aware of it. She tried to put it together the
6 best she can as fast as she can, and that caused the
7 delay, unfortunately, which caused us to file late;
8 because our personal tax are related to the K-1s that we
9 get from the companies. So because we didn't have that
10 prepared on time, automatically our personal taxes got
11 delayed. So we did -- we did pay the taxes of -- Nikou,
12 much? \$170-some thousand dollars?

13 MRS. KHAYYAM: \$171,058.

14 MR. KHAYYAM: -- 58. And hope and ask for your
15 understanding to -- we've been doing -- we've been in
16 business many years. We've been paying our taxes on time
17 all these years. This was just an unusual year, unusual
18 time, and we hope we will have your understanding.

19 Thank you.

20 Enka, you want to add about when you came over
21 and you took over the books of messy -- how messy was the
22 books when you was came in.

23 MS. ZOTO: [INDISCERNIBLE]

24 MRS. KHAYYAM: You can. You can.

25 I'm -- I'm sorry. Can Enka continue, Judge?

1 Yes.

2

3

WITNESS TESTIMONY

4 MS. ZOTO: Oh, hi. I -- when I started -- I
5 started -- my first day of work was in August 9, 2021, and
6 Elizabeth, my predecessor, she was a -- she resigned in
7 July 21st. So I never had a chance to meet with her, and
8 she never hand me over the work or anything. So I went
9 over all the books, all the statements, everything in the
10 system, and nothing was done. It was no journal entries
11 for 2020. There was no bank statements downloaded for
12 2020 in the system. It was no general entries. There was
13 nothing -- nothing done.

14 And I have to redo and recollect everything, all
15 information. I have to redo -- do all the financials --
16 to prepare all the financials, I have to do all the
17 accountant analysis because they are all necessary for me
18 to hand it over to the accountant for them to prepare the
19 financial -- for the taxes for us. So all of this took me
20 months and months, and I wasn't able to do it on time.
21 I'm -- I'm sorry about the whole thing, but that's what it
22 was.

23 JUDGE LEUNG: Thank you.

24 Mrs. Khayyam, would you like Mr. Lipner to
25 testify about something?

1 State of New York to pay in anything up until the filing
2 date of February 15th of 2022.

3 So, you know, nothing was intentionally done to
4 file late and, you know, not pay the taxes. The taxes
5 were paid, like I said earlier, when the return was
6 submitted on February 5th of 2022. So, again, there was
7 no willful intent. There was no -- nothing intentionally
8 done to not file timely. It was just, you know, very
9 unusual circumstances for their business and for the State
10 of New York for, you know, not being able to get records
11 together, not being able to get into the office, not being
12 able to put everything together in order to receive their
13 outside K-1s for their businesses that they need in order
14 to prepare their personal tax returns.

15 JUDGE LEUNG: Thank you. Mr. Lipner, I didn't
16 mean to cut you off. So you have anything else to add?

17 MR. LIPNER: No. I -- you know, I just want to
18 day hopefully, you know, the Franchise Tax Board will, you
19 know, be, you know, have the understanding -- you'll have
20 the understanding that there was no willful intent on
21 anyone's part not to pay and file, you know, anything not
22 on a timely basis.

23 Thank you, Judge.

24 JUDGE LEUNG: Thank you.

25 Mrs. Khayyam, anything else?

1 MRS. KHAYYAM: No. I think everything was
2 clearly stated.

3 JUDGE LEUNG: Okay. Mr. Brown, anything for
4 Franchise Tax Board? Do you have any questions for the
5 witnesses?

6 I think you're muted. Can't hear you, Mr. Brown.
7 Still can't hear you.

8 MR. BROWN: Can you hear me now?

9 JUDGE LEUNG: Yes, thank you.

10 MR. BROWN: Something happened where I lost my
11 picture, but it is what it is.

12 JUDGE LEUNG: That happens to all of us.

13 MR. BROWN: Okay. I am prepared to proceed if
14 the Judge is ready.

15 JUDGE LEUNG: Well, I was wondering if you have
16 any questions for the witnesses first.

17 MR. BROWN: Oh, do I have any questions? No, I
18 do not have any questions. Thank you.

19 JUDGE LEUNG: Okay. Let me go to my
20 Co-Panelists.

21 Judge Long, any questions for the witnesses?

22 JUDGE LONG: I do have a question about books and
23 records that were the basis for this. Are your books and
24 records located in the office or is this electronic?

25 MR. KHAYYAM: It's in the office.

1 JUDGE LONG: It's in the office. And your office
2 is located in New York?

3 MR. KHAYYAM: Yes, Manhattan, New York City.

4 JUDGE LONG: All right. Thank you. That's all
5 my questions.

6 JUDGE LEUNG: Thank you, Judge Long.

7 Judge Johnson, any questions?

8 JUDGE JOHNSON: Thank you. I have one question.

9 You mentioned the prior CFO left in July of 2021.
10 And at that time, it sounds like everyone was back in the
11 office already. And when she left you realize she hadn't
12 been doing any work. Did you realize before of July of
13 2021 that she had not been properly keeping up with the
14 books?

15 MR. KHAYYAM: We -- we thought that she is
16 running behind, but we didn't know to the extent of how
17 backed up she was. I believe with her conditions, which
18 she did -- she did catch COVID, and she could not work for
19 a long period of time -- a long period of time because of
20 her underlying situation that she had. But we did not
21 know about how disastrous it actually was.

22 JUDGE JOHNSON: Okay.

23 MR. KHAYYAM: Yeah.

24 JUDGE JOHNSON: Sorry for one second.

25 Ms. Kent, I think we lost Eric Brown for a

1 second, but he's coming back.

2 Do you need any of that repeated, Franchise Tax
3 Board? Ms. Kent.

4 JUDGE LEUNG: Well, Mr. Brown left again. Oh,
5 now he's back.

6 MR. JOHNSON: Yeah. I think you're still muted,
7 Ms. Kent.

8 MS. KENT: It's taking forever get off of unmute.
9 I apologize. I am trying. But no, we don't need any of
10 that repeated. Thank you.

11 JUDGE JOHNSON: Okay. Thank you.

12 Okay. Then that's the only question. Thank you,
13 Judge Leung.

14 JUDGE LEUNG: Okay. Judge Johnson, thank you.

15 Mr. Lipner, you mentioned the Fed's granted
16 another extension in September of 2021 because of some
17 natural disaster. Was that like a flood, or what was
18 going on?

19 MR. LIPNER: It was Hurricane Ida.

20 JUDGE LEUNG: Okay. Hurricane Ida. And is there
21 any -- this wasn't an individual -- by individual
22 extension. This is basically a public announcement made
23 by the IRS?

24 MR. LIPNER: Correct.

25 JUDGE LEUNG: Is there anywhere we can find that

1 announcement?

2 MR. LIPNER: Yeah. I actually -- I have that.
3 I'm staring at that. I know -- I apologize. I didn't log
4 into Zoom, but I do have -- I don't know how I can get
5 that over to you. I do have the announcement.

6 JUDGE LEUNG: You can wait until after the
7 hearing and email it to evidence@ota.state.gov, and also
8 send a copy to the Franchise Tax Board, wherever -- I
9 guess you must have Eric Brown's email. So you can
10 after --

11 MR. LIPNER: Okay. Can you just give me that --
12 that email again, evidence --

13 JUDGE LEUNG: Evidence@ota.ca.gov.

14 MR. LIPNER: Okay.

15 JUDGE LEUNG: Thank you.

16 MR. LIPNER: Okay. Do I need to reference
17 anything in that email?

18 JUDGE LEUNG: You can reference this particular
19 OTA Case Number 221212098, Appeal of Khayyam.

20 MR. LIPNER: Just can you repeat the numbers one
21 more time?

22 JUDGE LEUNG: Sure. 221212098.

23 MR. LIPNER: Okay. I will send that over.

24 JUDGE LEUNG: Great. Thank you.

25 Mr. Brown, when you're ready.

1 MR. BROWN: Thank you, Judge, and I apologize for
2 the technical difficulty a moment ago.

3 JUDGE LEUNG: No worries.
4

5 PRESENTATION

6 MR. BROWN: Good morning. I'm Eric Brown,
7 attorney for the Franchise Tax Board. Also from the
8 Franchise Tax Board is Cynthia Kent.

9 In this appeal, Appellants have failed to
10 establish reasonable cause to abate the late-filing
11 penalty. The tax year is 2020. Because of the COVID
12 environment, the due date for filing tax returns was
13 extended to May 17th, 2021. Under California law, there
14 is an automatic paperless extension by which an individual
15 taxpayer may file a California income tax return by
16 October 15th without imposition of a late-filing penalty.
17 For tax year 2020, the automatic extension deadline was
18 October 15, 2021.

19 Appellants did not file their California tax
20 return until February 5th, 2022, 10 months after the
21 original filing deadline. Appellants remitted a payment
22 along with the tax return. Even though Appellants
23 reported total payments of \$7,835 representing an estimate
24 of tax payment, the evidence is clear that Appellants had
25 not made any extension payments or estimate tax payments

1 or any other payments of any kind prior to February 5th,
2 2022, not even withheld tax.

3 Since Appellants filed their tax return almost 10
4 months after the filing deadline, FTB imposed a
5 late-filing penalty. Appellants argue they were unable to
6 file their tax return by the original deadline or the
7 appended deadline because of the unavailability of their
8 chief financial officer Appellants' manufacturing company.
9 Appellants' company operated as a subchapter S corporation
10 of which Appellant Soheil Khayyam was the sole
11 shareholder. Appellants argue that because of the
12 unavailability of their CFO, they were unable to obtain a
13 K-1 from the S corporation in time to file a timely tax
14 return.

15 Appellants also argue their tax preparer was
16 likely unavailable due -- likewise unavailable due to
17 COVID circumstances to prepare Appellants' tax return.
18 Appellants have failed to provide evidence to support
19 their assertion. Additionally, Appellants made no efforts
20 to estimate their taxes based on prior tax years, and
21 Appellants made no payments of any kind prior to February
22 of 2022.

23 If Appellants had remitted an extension or
24 estimate tax payment by May 17, 2021, based on an estimate
25 from previous tax years, there may have been no late

1 filing penalty at all, since the penalty is based on a
2 percentage of tax owed as of the original due date of the
3 return. Alternatively to the extent Appellants might have
4 remitted a payment in any amount, the late-filing penalty
5 would have been less than the current penalty amount.

6 In the 2019 OTA precedential opinion of Appeal of
7 Moren, the OTA stated that, quote, "If a taxpayer asserts
8 that he does not have the information necessary to make a
9 reasonably accurate estimate of his tax liability, he must
10 show the efforts made to acquire that information from the
11 source that held it, and the difficulties in obtaining the
12 necessary information led to the delay in payment. An
13 assertion that records were difficult to obtain without
14 any substantiation of efforts made to retrieve those
15 records or otherwise showing that they were unobtainable
16 is not sufficient to show reasonable cause," unquote.

17 In the 2018 OTA precedential opinion of Appeal of
18 Tao Xie, in which the OTA determined that a taxpayer had
19 not shown reasonable cause to abate the late-filing
20 penalty, the OTA held that taxpayers have an obligation to
21 file timely returns with the best available information
22 and then to subsequently file an amended return if
23 necessary. The OTA also reiterated the difficulty in
24 obtaining information does not constitute reasonable cause
25 for the late filing of a return.

1 In the previously mentioned Moren precedential
2 opinion, the OTA discussed one of the factors in
3 determining whether a taxpayer had shown reasonable cause
4 was the degree of taxpayer's access to the documents or
5 information required to determine their tax liability.
6 The less access to the information, the more reasonable a
7 taxpayer is unsuccessful efforts to obtain documents for
8 information might be. In the present appeal, Appellants
9 had control over the information they needed to determine
10 their tax liability. Mr. Khayyam was the sole shareholder
11 of the S corporation under which the manufacturing company
12 was operated. Appellants did not need to go through third
13 parties to obtain the information they needed.

14 Appellants have failed to produce any evidence to
15 show the efforts they made to acquire the information to
16 prepare the K-1, or the difficulties in obtaining the
17 necessary information led to the delay in filing or
18 payment. The only evidence they have produced is their
19 unsubstantiated assertions to the effect that COVID
20 shutdowns prevented them from obtaining the information
21 they themselves control. Let's see. Appellants have
22 failed to establish reasonable cause to abate the
23 late-filing penalty, and Respondent respectfully request
24 that the OTA sustain Respondent's actions.

25 I would be happy to answer any questions the

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Panel may have.

JUDGE LEUNG: Thank you, Mr. Brown.

Judge Long, any questions for the Franchise Tax Board?

JUDGE LONG: I don't have any questions right now. Thank you.

JUDGE LEUNG: You're welcome.

Judge Johnson?

JUDGE JOHNSON: No questions. Thank you.

JUDGE LEUNG: Okay. Mr. Brown, I do have one question for you at this point, and you might not have the answer right at the tip of your head. So if you don't, I will ask you the question, and then I will go to the taxpayer to give you some time to check it out. But the taxpayers in their presentation assert this is the first time they've been late. So is that correct?

MR. BROWN: I don't know that, Judge, and I can check that out. But I don't have any reason to doubt that assertion.

JUDGE LEUNG: Okay. I'm going to let the taxpayers make their closing and then maybe by the time they're done you might have the answer for us.

Mrs. Khayyam, you have your closing statement and rebuttal argument.

MRS. KHAYYAM: Go ahead, Soheil, do you want to

1 take the closing statement?

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CLOSING STATEMENT

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MR. KHAYYAM: It is -- it is very hard to explain the situation that we were in during that time. All the consequences of the late filings are -- I heard Mr. Brown's argument. But it is very difficult for you to put yourself in my shoes while I'm trying to run a company at that time, which I had no access to a lot of our documents because we -- we were told by the governor of New York that we have to stay home for months and months. We were not prepared. We did not have that electronic capabilities, or my staff were not familiar the electronic expertise to, like, a lot of people who were working from home and manage to get the work done from home.

We -- we are a small company. We are a 41-year-old company. Many of my staff are with me these 41 years. So they're mostly as old as I am, not as technical myself, not as technical with the electronic complications to do the work from home. So to make a long story short, we just were not equipped to get it done, and that's what we -- that's why we suffered. And it's a miracle that we are still -- we managed to make it back, bring the company back and be here today still running the company.

1 But we were in a chaos -- chaos mode, and I'm not
2 exaggerating using that word. It was a chaotic time.
3 I -- I -- it's hard for you to understand it because you
4 were not in our shoes here what we were going through. I
5 hope I explained it the best as I could to make the
6 matters as -- as understandable and as -- as -- as real as
7 what we were going through. We have paid our taxes every
8 year. We manage to pay it on time. This was just one
9 hiccup, which is caused by not something which was in our
10 power. So I do explain -- I do hope -- I do hope that I
11 will have your understanding that what happened was
12 because of what we went through.

13 That's all I have to say. Thank you.

14 JUDGE LEUNG: Thank you, Mr. Khayyam.

15 Judge Long, any questions for anybody?

16 JUDGE LONG: Yes. I'm going to ask a follow-up
17 question to Mr. Khayyam. You mentioned that you didn't
18 have online tools or the availability to work remotely.
19 Prior to this, you know, to this COVID incident in, you
20 know, March 2020 and subsequent, had you or your staff
21 done much work in terms of remote work, or were you office
22 based?

23 MR. KHAYYAM: We were always office based.

24 That's why when we had to work from home, it became
25 impossible for us.

1 JUDGE LONG: All right. And I have one more
2 question. Now, I understand that 2020 is the year at
3 issue and also the year that COVID began. So I want ask
4 for your 2021 return, did you have any -- FTB might be
5 able to respond to this too. Did you have any incident or
6 any issues with your 2021 return?

7 MR. KHAYYAM: Ken, can you answer that, please.

8 MR. LIPNER: No. 2021, Judge, was filed with a
9 valid extension. It was filed by the extended due date of
10 October 15th of 2022.

11 JUDGE LONG: All right. Thank you. That's all
12 my questions.

13 JUDGE LEUNG: Thank you, Judge Long.

14 Judge Johnson?

15 JUDGE JOHNSON: Thank you.

16 I have one question for Appellants. I know we're
17 focusing largely on, I believe, Khayyam Industries, the
18 company at issue. Were there any -- or was there a
19 significant portion of your income that also came from
20 outside that company? Are there investment income, for
21 example, or business income? Or was it all basically just
22 from that company?

23 MR. KHAYYAM: It was all from the company.

24 JUDGE JOHNSON: Okay. Thank you. No further
25 questions.

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JUDGE LEUNG: Thank you, Judge Johnson.

For the taxpayer, either Mrs. Khayyam or Mr. Khayyam, what business were you guys in manufacturing? What did you make?

MR. KHAYYAM: Ladies apparel, Judge. It's very hands on -- very hands-on type of a business.

MRS. KHAYYAM: That's why we're strictly in-office business because it's a clothing business. People have to come, and people see the clothing. The staff has to work with each other. We had never, not even one person who was working remotely. Nobody had ever worked remotely because this is work that cannot be done remotely since it's a teamwork team effort.

So when we were hit with COVID, the first few months we were, like, up in the air. We didn't know how to manage it, and it took a very long time. And then even after we did try to work from home, there was no way for us to monitor what our accounting department was or was not doing. So it all added to the difficulties.

JUDGE LEUNG: Yeah, bringing back memories. My parents are in the fashion industry. All on Canal Street.

MRS. KHAYYAM: Oh, okay.

MR. KHAYYAM: So, Judge, you can relate to what we say that all hands-on business is business.

JUDGE LEUNG: Yes. Yes. Yes. So you're income

1 for the 2020 year, was it any different from the prior
2 years? Was it more? Was it less or the same?

3 MRS. KHAYYAM: Because of COVID, yeah, no.
4 Because of COVID, COVID was a crazy time when it was
5 closed. There was no income, no shipping, and then
6 suddenly everybody needed goods. And then there was that
7 shipping disaster where the goods got stuck. So it was a
8 very different time from any other prior years. Very hard
9 to gauge.

10 JUDGE LEUNG: Okay. So was the income at the
11 higher or lower?

12 MR. KHAYYAM: Lower. Lower.

13 JUDGE LEUNG: Lower. Okay. Okay. Thank you.

14 For the Franchise Tax Board, the Form 540NR or
15 the resident return, it's very independent on what
16 taxpayers -- how they file with the 1040 with the IRS.
17 And oftentimes the amounts come right off the lines from
18 the Form 1040. Is that not correct?

19 MR. BROWN: That's correct.

20 JUDGE LEUNG: So in situations where the 1040 is
21 not filed yet, would you say that it's almost impossible
22 for a taxpayer to file either a Form 540 or Form 540NR?

23 MR. BROWN: I don't know that, Judge, because it
24 depends. It's -- it's different for every taxpayer.

25 JUDGE LEUNG: Okay. Has the FTB every

1 experienced a situation where -- where the IRS tells
2 taxpayers you don't need to file during -- by the normal
3 due date. We'll give you more time because whatever
4 disaster, whether it's a hurricane in Florida or Texas, or
5 floods in New York or what not, and -- which FTB would not
6 follow that same extension?

7 MR. BROWN: Well, I'm not entirely prepared to
8 answer that, Judge, because I -- I'm not an expert on our
9 damage -- or pardon me -- our disaster policies. But I do
10 know we have disaster policies with extensions, and they
11 do follow the Internal Revenue Services. And I do know
12 when a governor or the President declares a disaster, then
13 there will usually be a following extension for many
14 things. So, yes, FTB has handled those many times in the
15 past; in particular, some of the California wildfires and
16 earthquakes and floods that we encounter as well.

17 JUDGE LEUNG: Yes, I understand California
18 disaster which are almost every year that that makes
19 sense. I'm just wondering where you have taxpayers or
20 nonresidents and in their state of residence, they have
21 their own personal or natural disaster, and the IRS gives
22 that state an extension. Would Franchise Tax Board follow
23 up and do the same thing?

24 MR. BROWN: Oh, yes they would. I -- I'm sure
25 they would. I was unaware of the specific extension of

1 any deadline, including a -- the -- any -- any deadlines
2 that the IRS imposed for tax year 2020.

3 JUDGE LEUNG: Well, we'll see of Mr. Lipner's
4 submission after the hearing.

5 MR. LIPNER: Judge, I just sent that over in an
6 email.

7 JUDGE LEUNG: Okay. We'll just hold on. Yes.
8 Thank you, Mr. Lipner. Let's hold on to that, because
9 Mr. Brown may not be near his email.

10 But so in a situation like here, if the IRS had
11 given the taxpayer any -- I sort of recall that -- that
12 particular Hurricane Ida in 2021. So normally the 2020
13 federal return would have been filed with the extension by
14 October 15th, 2021. They -- apparently, there was a
15 disaster in New York in September of 2021 where the IRS
16 said, okay, we're going to give you extensions through
17 February 2022. If it that turns out to be correct,
18 Mr. Brown, would Franchise Tax Board entertain or abide by
19 the IRS extension to February 2022?

20 MR. BROWN: Well, I can't provide an answer to
21 that, Judge. There's too many other circumstances that we
22 just do not know. And that's one of the problems here, is
23 we don't have any sufficient evidence in the form of any
24 efforts or any kind of efforts made to even -- even
25 estimate whatever taxes were due to file a return of any

1 kind, make any payments of any kind.

2 We don't know what communications were or were
3 not made. We have no documentary evidence of any kind to
4 show what the -- what the reactions were in the face of
5 any such disaster. California and the IRS are two
6 separate agencies. And, again, we deal with disasters
7 manually. And so, you know, it's just part of the
8 taxpayer world in which we live.

9 JUDGE LEUNG: Yes.

10 MR. BROWN: I'm not unsympathetic to what
11 happened during COVID. And, in fact, California's
12 response was to extend its own deadline for -- for a
13 month. And that was the date that the Governor and
14 legislature determined was reasonable for California.
15 And, again, I don't have enough information or evidence to
16 make a response as to this taxpayer's particular
17 responses, other than the witness testimony that we heard
18 today.

19 JUDGE LEUNG: Okay. That's a fair point.

20 And the taxpayer -- Mr. Lipner has already sent
21 by email the IRS announcement. Do you need any other
22 information to verify that the IRS gave extensions to
23 everybody in New York through February of 2022? If you
24 need it, what would you like?

25 MR. BROWN: I don't -- I -- I am not in a

1 position to even know, Your Honor. And if they say it was
2 extended, I don't have any reason to disbelieve that. The
3 question is, you know, what the individual circumstances
4 are prevailing, more than whether there was a blanket IRS
5 extension. That -- that's my concern at this point. I've
6 have not had an opportunity to address any of those
7 concerns at all. And that was one of my concerns I
8 articulated in the prehearing conference.

9 JUDGE LEUNG: Would you like an opportunity to
10 address it?

11 MR. BROWN: It depends. I -- I don't know what
12 I'm even asking to be responding to.

13 MS. KENT: This is Cynthia Kent, if may I add?

14 JUDGE LEUNG: Go ahead, Ms. Kent.

15 MS. KENT: We're happy to review the additional
16 evidence, and we'll review it with our disaster relief
17 team. And generally we do follow, if the IRS does allow
18 an extension. So we will reevaluate based on that
19 evidence. However, the tax payment was still late still.
20 The taxpayers may, in fact, be subject to a late-payment
21 penalty.

22 And I do have the answer to your earlier
23 question, if I may. I did take a quick look at their --
24 their accounts. I did just look at it quickly, and it
25 appears that they do have estimate tax payments for most

1 tax years that have been imposed and paid. They also have
2 a late-filing penalty that was imposed for the 2018 year
3 and also the 2021 tax year. So they did pay late for
4 those two years as well.

5 JUDGE LEUNG: Okay. Let me put everybody on mute
6 so I can confer with my Co-Panelists to see whether we
7 would want additional briefing. So just --

8 MR. LIPNER: Judge, can I just enter -- can I
9 just make one comment. This is Mr. Lipner.

10 JUDGE LEUNG: Sure.

11 MR. LIPNER: There was never a late filing by the
12 Khayyams. There might have been late payments, but
13 nothing was -- prior to the year in question, nothing was
14 ever filed late by the Khayyams on any tax years with the
15 State of California.

16 JUDGE LEUNG: Okay. Give me about five minutes.
17 I will be right back. Stay where you are.

18 MR. LIPNER: Thank you.

19 (There is a pause in the proceedings.)

20 JUDGE LEUNG: We're back. Thank you everybody
21 for being patient.

22 This is what we've decided to do. We're going to
23 ask for additional briefing, and we'll let the FTB go
24 first. We'll give them 30 days, and then the taxpayer 30
25 days to respond after that. And then if FTB wants to

1 submit something after that, 30 days. So you're typical
2 30-30-30 type of additional briefing.

3 And what we would like to be answered is whether
4 Franchise Tax Board will follow IRS guidance or
5 pronouncements regarding extensions for filing when
6 there's a disaster outside of New York -- outside of
7 California, and the disaster occurs where the taxpayer
8 state of residence is.

9 Mr. Brown?

10 MR. BROWN: That's fine. I have no issue with
11 that, Your Honor.

12 JUDGE LEUNG: I just want to make sure that what
13 we're asking you is clear.

14 MR. BROWN: It is clear. Am I to expect any of
15 this in writing?

16 JUDGE LEUNG: We will be doing a -- I should be
17 getting an order out as soon as I can after this hearing.
18 So the answer is yes.

19 MR. BROWN: All right. Thank you.

20 JUDGE LEUNG: And you will at least have a start
21 with what Mr. Lipner has sent you by email. You look at
22 that and whatever research you guys are doing. You know
23 what to do with that. So you have 30 days to prepare that
24 brief.

25 Mr. And Mrs. Khayyam, after FTB prepares that

1 briefing, the OTA -- they will send you a copy, I believe.
2 The OTA will send you a copy and a letter saying that FTB
3 has submitted their brief, and they'll give you 30 days to
4 respond to that. And then after you respond, the same
5 process, we'll send a copy to FTB. OTA will notify
6 everybody that we received the taxpayer's response, and
7 then we'll give FTB 30 days, if they desire, another
8 30 days. And that's it.

9 MRS. KHAYYAM: Okay. Thank you.

10 MR. KHAYYAM: Thank you, sir.

11 JUDGE LEUNG: So we will keep the record open for
12 this hearing, and we will await the additional briefing.
13 And after we've gotten our briefing done, we will close
14 the record later, but we will keep in touch with everyone
15 with correspondence.

16 So we thank everybody for attending today's
17 appeal, and we will be he ending this hearing at this
18 point.

19 And the next hearing for OTA this morning will
20 begin around 10:50 a.m. Everybody have a great day. Take
21 care.

22 (Proceedings adjourned at 10:25 a.m.)
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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 23rd day of September, 2024.

ERNALYN M. ALONZO
HEARING REPORTER