

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
E. GOZLAN, ) OTA NO. 230914320  
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 )  
 APPELLANT. )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, September 18, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:12 p.m. and concluding at 1:45 p.m. on  
Wednesday, September 18, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ TERESA STANLEY  
ALJ EDDY Y. H. LAM

For the Appellant: E. GOZLAN

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
VIVIAN HO  
MARIA BROSTERHOUS

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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 7.)

(Department's Exhibits A-D were received into evidence at page 7.)

P R E S E N T A T I O N

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California; Wednesday, September 18, 2024

1:12 p.m.

JUDGE HOSEY: We are now on the record for the Appeal Gozlan, OTA Case No. 230914320. It is 1:12 p.m. on September 18th, 2024. The appeal is being conducted electronically via Zoom led by myself Sara Hosey. With me this morning are my Panel Members, Administrative Law Judge Teresa Stanley and Eddy Lam.

I want to remind today's participants and viewers that the Office of Tax Appeals is not a court but is an independent appeals body. The office is staffed by tax experts and is independent of the State's tax agencies. OTA does not engage in any ex parte communications with either party. Our decision will be based on the arguments and evidence provided by the parties on appeal, in conjunction with an appropriate application of the law. Again, we have read the briefs and examined the submitted exhibits, and we are looking forward to your arguments today.

Can I please have the parties introduce themselves for the record, starting with Appellant.

MR. GOZLAN: Hi. My name is Eric Gozlan.

JUDGE HOSEY: Thank you, Mr. Gozlan.

Can I get the Franchise Tax Board.

1 MS. HO: This is Vivian Ho for the Franchise Tax  
2 Board, along with my Co-Counsel Maria Brosterhous.

3 JUDGE HOSEY: Thank you, Ms. Ho.

4 The issue identified on appeal for today is  
5 whether Franchise Tax Board's proposed assessment for the  
6 2012 tax year has been barred by the statute of  
7 limitations.

8 Does this issue properly reflect what is at issue  
9 for today, Mr. Gozlan?

10 MR. GOZLAN: Yes, ma'am. Yes.

11 JUDGE HOSEY: Thank you.

12 Ms. Ho?

13 MS. HO: In the documentation Appellant submitted  
14 September 11th, labeled Appellant's supplemental brief, he  
15 also raised reasonable cause for abatement of the  
16 accuracy-related penalty.

17 JUDGE HOSEY: Okay. Mr. Gozlan, would you like  
18 to add some arguments regarding reasonable cause for  
19 abatement of the penalty.

20 MR. GOZLAN: Yes. Yes, I do. Yes.

21 JUDGE HOSEY: All right. We will add that.

22 Thank you for clarification, Ms. Ho and  
23 Mr. Gozlan.

24 MR. GOZLAN: Thank you.

25 JUDGE HOSEY: For the exhibits today submitted

1 with briefing and in response to the prehearing conference  
2 Minutes and Orders, we have Appellant's Exhibits 1  
3 through 6 and Respondent's Exhibits A through D.

4 For the record, are there any objections to these  
5 documents, Mr. Gozlan?

6 MR. GOZLAN: No, there are no objections.

7 JUDGE HOSEY: Thank you.

8 Ms. Ho?

9 MS. HO: No objections.

10 JUDGE HOSEY: Thank you.

11 So the exhibits are hereby admitted as evidence  
12 into the record.

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

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

17 JUDGE HOSEY: Okay. Are there any questions  
18 before we move onto the parties' presentations today?

19 Mr. Gozlan?

20 MR. GOZLAN: No questions.

21 JUDGE HOSEY: Ms. Ho?

22 MS. HO: No questions.

23 JUDGE HOSEY: Okay. Mr. Gozlan, you have 10  
24 minutes for your presentation today. Please begin when  
25 ready.

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MR. GOZLAN: Okay. Thank you.

PRESENTATION

MR. GOZLAN: Okay. So my -- my position on this issue is that the Franchise Tax Board failed to meet the statute of limitations by delaying their Notice of Proposed Assessment until just days of the June 8th, 2022, deadline. I received the Notice of Proposed Assessment on June 13th, 2022, via U.S. mail, and there was no postmark date on the envelope. The date that is on the letter is dated May 23rd of 2022. My position is that the Franchise Tax Board -- the Franchise Tax Board claims that this is sufficient notice. My position is that it this is not evidence of timely notice.

I'm going to give you a little bit of quick background information on how I got to this point. I went through a contentious divorce between 2011 and 2014 where I was awarded full custody of our three minor children. I raised them as a single father, while also running a small business. The divorce caused extreme financial hardship, and I could no longer afford the mortgage payments on the family home. I applied for a loan modification, but it was denied. I had no choice but to either foreclose or do a short sale. I opted for a short sale, and the house was sold in 2012.

1 Chase granted me a \$208,000 forgiveness of debt,  
2 which I claimed on my 2012 tax return. In 2014, I went  
3 through an unexpected IRS audit for my 2011 and 2012 tax  
4 years. I had never been audited before and found the  
5 timing peculiar. Interestingly, the auditor kept asking  
6 questions about my divorce. I later found out that my  
7 ex-wife had contacted the IRS as a whistle blower to have  
8 me investigated. The examination was finally closed in  
9 2016. The auditor could not find any wrongdoing, however,  
10 decided to disallow the \$208,000 forgiveness of debt that  
11 Chase granted, even though I complied with the rules of  
12 the short sale. I was ordered to pay federal taxes and  
13 accrued penalties and interest on that amount.

14 I later applied for an offer and compromise in  
15 August of 2016 and was granted a settlement, which I paid  
16 in full on October 24th of 2017. The evidence of that can  
17 be seen on my IRS transcript, which is part of Exhibit 3.  
18 Six years after the IRS examination was closed, I received  
19 on June 13th, 2022, a Notice of Proposed Assessment from  
20 the Franchise Tax Board via U.S. mail. The notice is  
21 dated May 23rd, 2022, stating that I owe \$13,614, plus 10  
22 years of accrued interest and penalties in the amount of  
23 \$11,864.

24 JUDGE HOSEY: Mr. Gozlan.

25 MR. GOZLAN: Yes.

1 JUDGE HOSEY: Sorry to interrupt. Can you slow  
2 down just a little bit. With the numbers and everything,  
3 I just want to make sure we get everything.

4 MR. GOZLAN: Oh, I apologize.

5 JUDGE HOSEY: No, you're doing great. Just a  
6 little bit slower for our stenographer.

7 MR. GOZLAN: Yeah. I just realize we have 10  
8 minutes. So I'm just trying to, you know, cram it all in  
9 in 10 minutes.

10 JUDGE HOSEY: It's okay. Slow down. I think  
11 we'll be okay on time.

12 MR. GOZLAN: Okay. Yeah. I'll slow down.

13 JUDGE HOSEY: Thank you so much.

14 MR. GOZLAN: Do you want me to repeat?

15 JUDGE HOSEY: No. Just after that last number  
16 you did -- I think we got to the last number and then  
17 start there.

18 MR. GOZLAN: So 6 years after the IRS examination  
19 was closed, I received on June 13th, 2022, a Notice of  
20 Proposed Assessment from the Franchise Tax Board via U.S.  
21 mail. The notice is dated May 23rd of 2022, stating that  
22 I owe \$13,614, plus 10 years of accrued interest and  
23 penalties in the amount of \$11,864, which you can see on  
24 Exhibit 1. I submitted my timely protest on July 16th of  
25 2022 on the basis that the notice was not timely and

1       unreasonably late.

2               The FTB claims that they received the federal  
3       audit information from the IRS on June 8th of 2018, which  
4       is two years after the IRS audit was complete, and that  
5       they had another four years until June 8th of 2022 to meet  
6       the statute of limitations. The Franchise Tax Board also  
7       claims they mailed the notice on May 23rd of 2022, yet,  
8       there was no postmarking from the postal service on the  
9       envelope to substantiate this claim. And I reference  
10      Exhibit 1, which is the original envelope that I received  
11      from the Franchise Tax Board.

12              I will attempt to demonstrate that the Franchise  
13      Tax Board failed to reasonably meet the four-year statute  
14      and should be subject to the same postmark rule and  
15      measure imposed on the taxpayer by both the IRS and the  
16      Franchise Tax Board. They shouldn't have rules for thee,  
17      but not for me. This would not be fair and equal  
18      application of the law. So my position -- actually, I'm  
19      sorry. The Franchise Tax Board's position states on their  
20      January 24th of 2023 letter, which is part of Exhibit 2.  
21      They say on that letter, "Since our notice was mailed on  
22      May 23rd of 2022, it is within the statute of limitations  
23      date."

24              On page 3 of their opening brief, they state,  
25      "There is also no California authority that requires FTB

1 to provide postmark date in order to demonstrate the  
2 timely mailing of a notice." The FTB also states on their  
3 letter, which is part of Exhibit 2, that, "California law  
4 is the same as federal law for the issues involved."

5 So my position is that the Franchise Tax Board is  
6 contradicting itself in these statements. And I will  
7 attempt to demonstrate that there is both California  
8 authority for the postmark rule, as well as the federal  
9 IRS Code 7502(a) contains a provision and an exception for  
10 the postmark rule as evidence of timely mailing. If you  
11 would refer to my Exhibit 5, which includes the IRS code  
12 7502 regarding timely mailing of documents and general  
13 rule as U.S. postmark stamped on the cover of a document  
14 shall be deemed to be the date of the delivery. And then  
15 I also include an IRS memo, which is part of my exhibit,  
16 entitled, "Received Date Procedures for Mail."

17 Can I refer to it? On paragraph 3 of that memo  
18 as part of my Exhibit 5, it says -- and I'll just try to  
19 go as fast as I can. It says, "The evidence of timely  
20 mailing is a postmark date on/or before the due date,  
21 whether the postmark is applied privately or by the U.S.  
22 Postal Service." And then it says, "Due date is confirmed  
23 by the requirement that the document be delivered within a  
24 reasonable time." And then below, on paragraph 5 of that  
25 same page, there's a reference to a case, Grossman versus

1 Commissioner which states that, "The Tax Court accepted a  
2 petition as timely when delivered 50 days after the due  
3 date, due to the postal service delays."

4 And then I refer to the next IRS memo on the next  
5 page which also talks about USPS delivery confirmation.  
6 The third paragraph of that states the general rule for  
7 when a document is considered filed is when the document  
8 is physically delivered to and received by the service.  
9 Section 752(a) of the Code provide an exception to this  
10 general rule. If a document is delivered by the U.S. Post  
11 Office, received by the service after the prescribed date,  
12 and the envelope in which the document is delivered is  
13 postmarked on/or before the prescribed due date, in such  
14 instances, the filing date is deemed to be the postmark  
15 date. So that timely mailing is considered timely filing  
16 as the postmark rule.

17 The Franchise Tax Board and the OTA websites are  
18 also replete with references about time sensitive notices  
19 in how documents must be postmarked, certified, or with  
20 tracking info in order to be considered timely. If you  
21 would refer to my Exhibit 4, it includes several  
22 screenshots and printouts from the Franchise Tax Board  
23 website, as well as Franchise Tax Board procedures that  
24 outline all of these things about the postmark date and so  
25 forth, as well as California Code of Regulations

1 Title 1830205 OTA rules, which also talks about date of  
2 mailing. So I won't labor you with all if those, but it's  
3 replete with -- with that information.

4 I also want to just refer to the latest  
5 submission, which is the California Tax Code 19050, which  
6 I discovered after the fact, which is part of my  
7 Exhibit 5. Which basically says, "A certificate by the  
8 Franchise Tax Board or of the Board, as the case may be,  
9 of the mailing of the notices specified in this article is  
10 prima fascia evidence of the assessment of the deficiency  
11 and of the giving of the notices." The Franchise Tax  
12 Board failed to provide such a certificate of proof of  
13 mailing. A printout from the taxpayer information folder  
14 system does not meet this requirement. Once again in my  
15 assessment, the date on the Franchise Tax Board notice is  
16 not proof of timely notice.

17 So I'm done with my presentation, other than the  
18 fact that I also have as my supplement, I have the  
19 reasonable cause and faith exception that I also want to  
20 present in the event that Your Honor doesn't rule in my  
21 favor. I want to fall back upon that as a fallback plan  
22 for some financial relief.

23 Would you like me to go into that, or wait for  
24 that later?

25 JUDGE HOSEY: Well, you have a couple of minutes

1 left now, and you also have your five minutes on rebuttal.  
2 Would you like to address it now or in response to  
3 Franchise Tax Board?

4 MR. GOZLAN: I can -- I can do it in response to  
5 Franchise Tax Board.

6 JUDGE HOSEY: Okay. Thank you so much,  
7 Mr. Gozlan.

8 MR. GOZLAN: Thank you.

9 JUDGE HOSEY: Franchise Tax Board, are you ready  
10 for your presentation? You also have 10 minutes.

11 MS. HO: Yes. Thank you.

12 JUDGE HOSEY: Thank you.

13

14 PRESENTATION

15 MS. HO: Good afternoon. My name is Vivian Ho.  
16 I along with my Co-Counsel, Maria Brosterhous, represent  
17 the Respondent, the Franchise Tax Board.

18 The issue in this appeal is whether Appellant  
19 demonstrated FTB's assessment for tax year 2012 is barred  
20 by the statute of limitations. At issue is also the  
21 accuracy-related penalty. FTB's assessment is based on  
22 the federal assessment and is timely under California law.  
23 Appellant's account transcript, which Appellant provided  
24 as his Exhibit 3, shows that the IRS examined Appellant's  
25 tax return and made adjustments on July 11th, 2016.

1 Under Revenue & Taxation Code section 19059, when  
2 a taxpayer or the IRS notify FTB of a final federal  
3 determination more than six months after the  
4 determination, FTB has four years to issue a Notice of  
5 Proposed Assessment. Appellant did not notify FTB of the  
6 federal determination. IRS notified FTB of the federal  
7 determination on June 8th, 2018, which is more than six  
8 months from the final determination date of July 11, 2016.  
9 As such, the issuance of FTB's Notice of Proposed  
10 Assessment on May 23rd, 2022, which is just four years  
11 after the IRS notification, is within the statute of  
12 limitations for assessment.

13 Appellant asserts that FTB has not demonstrated  
14 that assessment is timely by providing proof of mailing,  
15 such as a certified mailing receipt. Appellant also cites  
16 to Revenue & Taxation Code section 19050, which states  
17 that a certificate by FTB is prima facie evidence of  
18 mailing. While a certificate of mailing constitutes prima  
19 facie evidence, under Revenue & Taxation Code section  
20 18416, FTB is specifically allowed to send any notice by  
21 first class mail.

22 The same code section also specifically provides  
23 that FTB's notice requirements are satisfied when it sends  
24 a notice to taxpayer's last known address. As confirmed  
25 in Appellant's Exhibit 1, the Notice of Proposed

1 Assessment was sent to the same address Appellant reported  
2 in his opening brief. As such, FTB has satisfied its  
3 notice requirement for the issuance of the Notice of  
4 Proposed Assessment.

5 Regarding Appellant's claim that fairness  
6 dictates that FTB and the taxpayers be treated equally in  
7 regards to the mailing rules, the FTB and the OTA have to  
8 adhere by the law as -- as set by the legislature and  
9 cannot stray from the legal authority.

10 In Appellant's supplemental petition, Appellant  
11 also raises reasonable cause for abatement of the  
12 accuracy-related penalty. The arguments Appellant raise  
13 does not establish reasonable cause. Under Revenue &  
14 Taxation Code section 19164, which conforms to federal  
15 law, the accuracy-related penalty may be abated to the  
16 extent that a taxpayer shows that they acted in good faith  
17 and had reasonable cause for the understatement of tax.

18 Appellant, in his supplemental petition, only  
19 discusses his interaction with his attorney regarding the  
20 federal examination of his 2012 tax return. However,  
21 issue for abatement is not Appellant's conduct during the  
22 federal examination, but whether Appellant had reasonable  
23 cause for his failure to report the income at issue on his  
24 original tax return. Appellant did not provide any  
25 reasoning or documentation as to why he underreported his

1 income on his tax return and has not established  
2 reasonable cause for abatement.

3 As such, Appellant has not demonstrated  
4 Respondent's determination is in error, and Respondent  
5 respectfully request that its determination be upheld.

6 And thank you. I can take any questions the  
7 Panel may have.

8 JUDGE HOSEY: Thank you, Ms. Ho.

9 We're going to wait for questions from the Panel  
10 after Mr. Gozlan's rebuttal.

11 Mr. Gozlan, would you like five minutes for a  
12 rebuttal or to address any other issues you would like to  
13 address?

14

15 CLOSING STATEMENT

16 MR. GOZLAN: Yeah. So with regards to my  
17 supplemental petition for reasonable cause and good faith  
18 exception, I want to draw your attention to the IRC Code  
19 6664, which states that factors in determining  
20 reasonable -- one of the factors in determining reasonable  
21 cause is that courts generally apply a three-prong  
22 analysis to establish whether a taxpayer acted with  
23 reasonable cause in relying on professional advice:  
24 No. 1, the competence of the advisor; No. 2, the taxpayer  
25 supplying all necessary information to the adviser; No. 3,

1 the taxpayer's actual reliance on the advice. In  
2 determining whether a taxpayer exercised ordinary business  
3 care and prudence, you should consider all the facts and  
4 circumstances and review all available information, such  
5 as the taxpayer's stated reason, compliance history,  
6 length of time, and circumstances beyond the taxpayer's  
7 control.

8 So in my situation, on January 30th of 2015, I  
9 hired a tax attorney by the name of Brent Lance to  
10 represent me in connection with my IRS audit related to my  
11 2011 and 2012 tax returns. This attorney has over  
12 40 years of legal experience. I have never been audited  
13 before. I've never been imposed a penalty for late  
14 filing. I never went to college, nor do I have any  
15 experience or education with accounting or tax-related  
16 issues. I relied solely on the professional advice of my  
17 tax attorney on all matters related to the course of these  
18 issues.

19 JUDGE HOSEY: Mr. Gozlan.

20 MR. GOZLAN: Yes.

21 JUDGE HOSEY: Sorry to interrupt you. Just  
22 you're providing some factual background --

23 MR. GOZLAN: Yes.

24 JUDGE HOSEY: -- and I'd really like to swear you  
25 in so we're able to use your testimony today in our

1 decision making, if that works for you.

2 MR. GOZLAN: Can you repeat the last thing you  
3 just said?

4 JUDGE HOSEY: Sure. Yes. Since you're providing  
5 some facts for us to use in making a determination  
6 regarding reasonable cause, I'd like to swear you in so we  
7 can use your testimony under oath.

8 MR. GOZLAN: Sure.

9 JUDGE HOSEY: Okay. We can do that, and it will  
10 count for the whole hearing so we don't have to go back.  
11 You can continue on. I just want to be able to use these  
12 facts if we need them at a later date. Okay.

13 MR. GOZLAN: Of course. Of course.

14

15 E. GOZLAN,

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

19

20 JUDGE HOSEY: Please continue. Thank you.

21 MR. GOZLAN: Okay. So I relied solely on the  
22 professional advice of my tax attorney on all matters  
23 related to the course of these issues. My attorney  
24 advised me that the IRS would be notifying the State of  
25 California on all federal adjustments made to my returns.

1 I was never instructed to contact the FTB or to do  
2 anything further by my counsel.

3 And I want to refer you to Exhibit 6, which is a  
4 correspondence between me and my attorney regarding the  
5 completion of my IRS audit. And he states in this exhibit  
6 that it's -- let's see. He spoke with the AL yesterday  
7 concerning the issue we discussed. He says, "There is a  
8 unit within the IRS whose job it is to liaise with state  
9 authorities concerning the adjustments the IRS makes, as  
10 well as the adjustments made at the state level that may  
11 indicate more federal tax is due."

12 With that said, he said he has heard from other  
13 taxpayer representatives that the system doesn't always  
14 work as designed and that some IRS adjustments apparently  
15 never get notified to the states. He is not aware of why  
16 the system only works as designed sometimes. My guess and  
17 operating assumption have always been that the State of  
18 California will be notified. And then when I later  
19 reached out to him to ask if there was any evidence of --  
20 you know, I needed additional evidence in this situation  
21 as I was facing the FTB notice.

22 He emailed me and said, "Eric I found this email.  
23 I was looking for closing letters in my electronic files.  
24 It confirms our discussion that the State of California  
25 would most likely contact you at some point for tax on the

1 adjustments made at the federal level. Hopefully it will  
2 turn out that they really waited too long to do so."

3 So my point is that in regards to, you know, my  
4 relationship with my attorney, I had a falling out with  
5 him over excessive hourly fees and some bad legal advice  
6 and ceased doing business with him. I later filed for a  
7 federal OIC on my own and was granted a settlement amount  
8 due to financial hardship, which I already mentioned. I  
9 paid everything in full with the IRS and never knew I was  
10 required -- and I never knew that I was required to  
11 contact the FTB. So I relied on the information from my  
12 attorney that the federal agencies would be contacting the  
13 state with all that information.

14 So based upon that reliance of information on my  
15 professional attorney, I should be entitled to the  
16 reasonable case exception relief provided under IRC 664 on  
17 the basis that I exercised ordinary business care and had  
18 made reasonable efforts to determine the correct tax  
19 obligation while relying in good faith on the advice of my  
20 tax attorney. It turns out that this advice was erroneous  
21 and misleading.

22 So in closing, I was unaware I -- it was on me to  
23 reach out to the Franchise Tax Board and give them  
24 anything more than what the federal agency already had.  
25 So that's my fallback as far as, you know, if -- if my

1 case -- my presentation doesn't go my way. I'd like to  
2 have that as my fallback to try to get some level of  
3 relief on all of the accrued penalties and interest.

4 JUDGE HOSEY: Thank you, Mr. Gozlan.

5 I'm going to ask, Ms. Ho, does the Franchise Tax  
6 Board have any questions for Mr. Gozlan regarding his  
7 testimony?

8 MS. HO: Yes. Mr. Gozlan, when you were filing  
9 your 2012 tax return, did you receive any professional  
10 advice regarding matters of substantive law?

11 MR. GOZLAN: Can you be more specific? I had a  
12 CPA file my tax return, so I had a CPA.

13 MS. HO: Then were you advised how to treat  
14 certain items as income or not?

15 MR. GOZLAN: I -- you're -- it's very vague. You  
16 have to be more specific.

17 MS. BROSTERHOUS: I can be more specific. I  
18 think what Ms. Ho is getting at is, the income that was  
19 added back as a result of the IRS audit --

20 MR. GOZLAN: Yes.

21 MS. BROSTERHOUS: -- were you specifically  
22 advised that that income was excludable income?

23 MR. GOZLAN: Yes. In -- in filing of 2012, my  
24 CPA advised that that -- that the forgiveness of debt on  
25 the short sale was not going to be income added back. It

1 was going to be a write-off on my taxes. So that was  
2 under the advice of the CPA, and that was the only reason  
3 that I did the short sale. Otherwise, I could have just  
4 walked away from the property and -- and allowed them to  
5 foreclose. I did the short sale to try to work in good  
6 faith with the bank and to do everything by the book. So,  
7 yeah, I did everything under the advice of my CPA. He was  
8 aware of the short sale, and it was supposed to be a  
9 forgivable debt.

10 JUDGE HOSEY: Any other questions from the  
11 Franchise Tax Board?

12 MS. HO: No further questions. Thank you.

13 JUDGE HOSEY: Okay. Thank you.

14 Thank you, Mr. Gozlan.

15 I'm going to turn to my Panel now.

16 Judge Stanley, do you have any questions for the  
17 parties?

18 JUDGE STANLEY: This is Judge Stanley speaking.  
19 Yes, I did have at least one for the Franchise Tax Board.  
20 Mr. Gozlan mentioned Revenue & Taxation Code  
21 section 19050. Can you address whether and how that might  
22 apply to the facts of this case?

23 MS. HO: Yes. While the Franchise Tax Board  
24 could establish the mailing of a notice through a  
25 certificate, while that certificate will be prima facie

1 evidence, Code section 18416 also provides that FTB  
2 satisfied its notice requirement by sending a notice to a  
3 taxpayer's last known address. So while a certificate  
4 will be prima facie evidence it does not preclude FTB from  
5 establishing mailing of a notice through other means.

6 JUDGE STANLEY: Okay. This is Judge Stanley  
7 speaking. I don't have any further questions. Thank you.

8 JUDGE HOSEY: Thank you, Judge Stanley.

9 This is Judge Hosey again. I'm going to ask,  
10 Judge Lam, are there any questions for the parties?

11 JUDGE LAM: There are no questions from me.  
12 Thank you.

13 JUDGE HOSEY: Okay. Thank you.

14 Mr. Gozlan, is there anything else you'd like to  
15 say before we close the hearing for today?

16 MR. GOZLAN: Sure. I'd like to make a little  
17 closing argument.

18 JUDGE HOSEY: Just briefly, yes. Go ahead.

19 MR. GOZLAN: Just briefly. Yeah.

20 So my closing argument is very brief. Due to the  
21 time sensitivity of meeting the statute, you would think  
22 that the Franchise Tax Board would take greater care to  
23 ensure the timely notice of their NPA. And I'm asking  
24 here for equal application of the law that should be  
25 applied here on both sides. The same standard and measure

1 of timely mailing that the IRS and Franchise Tax Board use  
2 should be applied to this case. Notably, the U.S.  
3 postmark rule should be applied fairly to all parties.

4 Since the letter sent by the FTB was just within  
5 a few days of the statute deadline, and the envelope did  
6 not contain the U.S. postmark date on it as defined by  
7 federal statute, the FTB failed to perform timely notice  
8 and therefore, was outside the statute of limitations.

9 I hope that the Judge will apply the law fairly  
10 and equitably for both sides.

11 And if you, Your Honor, disagrees with my  
12 position to dismiss this case, then I would respectfully  
13 request consideration for at last waiving all the  
14 applicable interest and penalties that have accrued for  
15 the last 12 years.

16 That's it.

17 JUDGE HOSEY: Okay. Thank you, Mr. Gozlan.

18 Do I have any other questions from the -- from  
19 anybody before we conclude today?

20 Okay. So the evidence has been admitted into the  
21 record, and we have the arguments in your briefs as well  
22 as your arguments and testimony presented today. We now  
23 have a complete record from which to base our decision.  
24 We will meet and confer and have our written opinion  
25 issued no later than 100 days from today.

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I wish, again, to thank the parties for their efforts in this matter. And with that we're off the record.

(Proceedings adjourned at 1:45 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 10th day of October, 2024.

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