





1 APPEARANCES:

2  
3 Administrative Law Judge: KIM WILSON  
4 SETH ELSOM  
5 HUY "MIKE" LE

6 For the Appellant: MICHELLE RUSCITO

7  
8 For the Respondent: STATE OF CALIFORNIA  
9 Franchise Tax Board  
10 NOEL GARCIA-ROSENBLUM  
11 BRAD COUTINHO

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I N D E X

E X H I B I T S

(Respondent's Exhibits A-I were received in Judge Wilson's minutes and orders, page 6)

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1 California; Wednesday, November 13, 2024

2 9:30 a.m.

3  
4  
5 JUDGE WILSON: This is the appeal of Ruscito.  
6 OTA Case No. 230513233. The date is November 13, 2024,  
7 and the time is 9:30 a.m. This hearing is being held in  
8 Sacramento, California.

9 I'm the Hearing Officer, Kim Wilson, and I will  
10 be the lead for purpose of conducting the hearing. My  
11 co-panelist are Hearing Officers Seth Elsom, and  
12 Administrative Law Judge Mike Le. We are equal  
13 participants in deliberating and determining the outcome  
14 of this appeal.

15 I'm going to ask the parties to identify  
16 themselves and who they represent starting with appellant.

17 MS. RUSCITO: Michelle Ruscito, representing myself  
18 and Peter Ruscito.

19 MR. GARCIA-ROSENBLUM: I'm Noel Garcia-Rosenblum,  
20 representing Franchise Tax Board.

21 MR. COUTINHO: And I'm Brad Coutinho, also  
22 representing Franchise Tax Board.

23 JUDGE WILSON: Thank you.

24 As stated in the minutes and orders, the issue to  
25 be decided in this appeal is whether appellant has shown

1 reasonable cause to pay the late filing penalty.

2 Appellant has not submitted any exhibits.

3 Ms. Ruscito, is that correct?

4 MS. RUSCITO: Yes.

5 JUDGE WILSON: And FTB submitted Exhibit's A through  
6 I. Appellant did not object to the admissibility to these  
7 exhibits; therefore, Exhibit's A through I are admitted  
8 into evidence.

9 (Respondent's Exhibit's A-I are admitted into  
10 evidence.)

11 JUDGE WILSON: Ms. Ruscito, since you will be  
12 testifying today, I will need to place you under oath.  
13 Please raise your right-hand.

14 MS. RUSCITO: Yes.

15 JUDGE WILSON: Thank you. Ms. Ruscito, you will have  
16 10-15 minutes for your testimony and presentation and  
17 proceed when you are ready.

18  
19 MICHELLE RUSCITO,

20 Produced as a witness, and having been first duly sworn by  
21 The Administrative Law Judge, was examined and testified  
22 as follows:

23  
24 PRESENTATION

25 MS. RUSCITO: So we're talking about the tax year of

1 2020, and I did the completing -- the filings in 2021.  
2 You know, you do the filings. So it wasn't a typical  
3 earnings for tax year due to my husband and I selling off  
4 a lot of stocks in December of 2020 in order to pay off  
5 our condo in Florida and then prepare for retirement.

6 And we typically get a refund at tax time, but  
7 this year we owe them very significant amount of money.  
8 Like, 54,000 or something. So the deadline for the tax  
9 returns was pushed out of it due to the government shut  
10 downs and the business shut downs due to Covid.

11 And our payment for our remaining tax was  
12 received electronically by the Franchise Tax Board about  
13 one week later than the extended due date. So  
14 I -- what -- they have the exact dates, but I believe it's  
15 May 20, 2001 (sic). And that date was extended for Covid.

16 So I did mail my tax forms for the paperwork  
17 seven months after the filing due date due to extenuating  
18 circumstance. So the tax firm penalized me about 25  
19 percent over 13,000 for being one week late on a payment  
20 and being late with the paperwork. And this is the same  
21 penalty I would have received if it was like I never paid  
22 the taxes at all.

23 The penalty fines seems unreasonable to me. I  
24 don't believe that the intended loss is severely penalize  
25 a person for making a mistake one year by not submitting

1 the paperwork on time when the person did send in all the  
2 tax money that was due.

3 The Franchise Tax Board received my tax money due  
4 in full from me, so there's no intention on my part to not  
5 my taxes. I've been paying my taxes in California since  
6 1992, and I pay in full every year.

7 JUDGE WILSON: Excuse me, could you slow down just a  
8 little bit.

9 MS. RUSCITO: Sorry.

10 JUDGE WILSON: That's okay.

11 MS. RUSCITO: Do you need me to repeat anything?

12 (Reporter response)

13 MS. RUSCITO: The tax forms of paperwork was filed  
14 about seven months late from the times. So it was May  
15 2022 that I did file the paperwork. And I believe there  
16 was an extenuating circumstances for my failure to send  
17 the forms on time, and I asked for one time forgiveness  
18 for filing late.

19 First, 2021, as we all probably realize that this  
20 was the year the world shut down due to Covid. The  
21 federal government recognizes 2021 was not a normal year  
22 and has forgiven any late filing of taxes in 2020. The  
23 federal government sent me a re-filing when they reversed  
24 my late charges and withdrew the penalty charge.

25 The California government shut down a lot of



1 businesses and governments in schools, and life was not  
2 normal in the US. Now, in addition to this national world  
3 crises, I had my own personal crises that really threw my  
4 life -- kind of threw me on edge and overwhelmed me for  
5 sure.

6 Both my parents were hospitalized in Delray  
7 Beach, Florida, in January 2021. My dad had an emergency  
8 surgery for internal bleeding, and we were told he would  
9 not make it through; and at the same time, my mother was  
10 hospitalized for Covid and started experiencing  
11 dementia-like symptoms.

12 My brother, Andrew, who my parents were taking  
13 care of, needed my help and he was also hospitalized. So  
14 I flew to Florida to take care of my parents and navigate  
15 all this medical stuff. This was all during the first  
16 half of 2021. It was a tough year.

17 The second half of November, my brother JP who  
18 lives in Hawaii had a brain aneurysm. And in January,  
19 2021, I flew to Hawaii to pick him up and bring him to  
20 Florida. So, basically, there's a lot more to this, but  
21 it was an extremely stressful year for me, and I was  
22 overwhelmed.

23 So in all the stress in my life at this time and  
24 in addition to the abnormality of doing business during  
25 Covid, I did electronically send in the funds to pay my

1 taxes I owed. And I forgot to mail in my tax paperwork,  
2 and I'm requesting the Franchise Tax Board to give me this  
3 one time forgiveness for filing the paperwork late.

4 And I did want to mention the type of note that  
5 during this appeal process, the Franchise Tax Board  
6 extended the case twice and didn't file their paperwork on  
7 time. So I just hope this is taken into consideration.

8 So I'm almost done.

9 When I received the penalty letter that I owed  
10 \$64 dollars in taxes but my penalty was \$13,000 dollars, I  
11 dismissed it. I thought it was a fraud. I didn't believe  
12 it was real. And I actually wrote to the tax board  
13 multiple times and gave my phone number and asking for  
14 someone to call me and explain this.

15 25 percent penalty on tax money that was  
16 submitted a week late is excessive and not reasonable.  
17 And the Franchise Tax Board did get their money. And, you  
18 know, I'm up-to-date on all my taxes, and there was no  
19 intent not to pay the taxes -- and I want to make sure  
20 that's clear. And I believe that they will agree to that  
21 part of it.

22 The paperwork was overdue and extenuating  
23 circumstances of the Covid and then my personal crises are  
24 the reason to give me a one time forgiveness on being late  
25 for the paperwork.

1 Thank you very much.

2 (Reporter clarification)

3 MS. RUSCITO: Peter, P-E-T-E-R.

4 JUDGE WILSON: Franchise Tax Board, do you have any  
5 questions for appellant?

6 MR. GARCIA-ROSENBLUM: No questions, thank you.

7 JUDGE WILSON: Thank you.

8 Judge Le.

9 JUDGE LE: No questions, thank you.

10 JUDGE WILSON: And Judge Elsom.

11 JUDGE ELSOM: Ms. Ruscito, I do have just a couple  
12 questions.

13 So I understand these were some very stressful  
14 circumstances you were dealing with. Can you describe the  
15 extent that you attempted to ensure that your return was  
16 timely filed between November 15th, 2021, which was the  
17 extended due date; and it looks like May 6th, 2022, when  
18 you did file the return.

19 Can you provide a little bit more context as to  
20 what steps you took during that time period.

21 MS. RUSCITO: I can only tell you I thought -- I  
22 thought I filed them.

23 I had them printed out, and they got lost in the  
24 paperwork. And then January, I had my -- well, November,  
25 we had my brother with his aneurysm, so I spent a lot of

1 time in Florida more than probably about at least half the  
2 year. Of each year, I've been spending, like, more than  
3 half the year in Florida just to take care of them.

4 I admit it was an error on my part. It was a  
5 misstep. I have to figure myself realizing what I went  
6 through -- being the care provider. Everybody needed me  
7 including my family, you know, I have four children.

8 And so -- so yeah. I don't really have more than  
9 I thought I sent them. I'm -- I don't know what happened.  
10 I thought I sent them. I don't know why they didn't get  
11 there, but I probably didn't.

12 JUDGE ELSOM: Okay. Thank you.

13 JUDGE WILSON: Okay. I don't have any questions at  
14 this time.

15 So Franchise Tax Board, you can begin your  
16 presentation.

17  
18 PRESENTATION

19 MR. GARCIA-ROSENBLUM: Thank you.

20 Good morning. My name is Noel Garcia-Rosenblum,  
21 and I -- my Co-Counsel, Brad Coutinho, represents  
22 Franchise Tax Board in this matter.

23 The issue in the appeal is whether the appellants  
24 have demonstrated reasonable cause to pay the late filing  
25 penalty imposed during the 2020 taxable year.

1           Respondent received the appellant's 2020  
2 California Tax Return on May 6th, 2022. Approximately one  
3 year after the extended filing deadline. This return  
4 reported that there's zero balance due; however, the  
5 reported estimated tax payment of \$54,707 dollars was  
6 submitted via respondent's electronic web pay on May 28th,  
7 2021. Two weeks after the extended payment deadline.

8           Because the appellants' return was not filed by  
9 the corresponding due date, respondent imposed a penalty  
10 otherwise known as a late filing penalty in the amount of  
11 \$14,335 dollars. Appellants paid the penalty in full and  
12 filed a claim for refund requesting that the penalty be  
13 litigated due to reasonable cause.

14           Respondent subsequently denies this claim, and  
15 appellants timely was denied.

16           California law provides that a respondent shall  
17 impose the late filing penalty when a taxpayer fails to  
18 file a tax return on or before the respected due date.

19           In response to the Covid-19 pandemic, respondent  
20 postponed the deadline for taxpayers to timely file and  
21 pay the 2020 California tax liabilities until May 17,  
22 2021, with an automatic extended deadline of October 15th,  
23 2021. Accordingly, the appellants 2020 tax return, which  
24 was filed on May 6th, 2022, was untimely.

25           During the appeal, the appellants do not dispute

1 that their returns was filed after the expected deadline,  
2 but rather argue that they demonstrated reasonable cause.

3 Specifically, the appellants contended that they  
4 spent significant time in Florida taking care of their  
5 parents who were hospitalized in January 2021. They  
6 supported this contention. The appellants provided bank  
7 statements showing consistent for their transactions from  
8 January until May of 2021.

9 (Reporter clarification)

10 MR. GARCIA-ROSENBLUM: Yes.

11 While other personal difficulties that prevented  
12 taxpayers from filing tax return may be considered a  
13 reasonable cause, the difficulties have caused the  
14 taxpayer to satisfy the timeliness for one aspect of their  
15 affairs in order to pursue other aspects. The taxpayers  
16 must pay the consequences of that choice.

17 Additionally, in order to demonstrate a  
18 reasonable cause, a taxpayer must present competent proof  
19 that the circumstances of their personal difficulty  
20 completely and continuously prevented the taxpayer from  
21 filing a timely return.

22 Here, while the appellants' bank statements  
23 establish their presence in Florida from January until May  
24 of 2021, these statements do not indicate that the  
25 appellants were continuously present in Florida that meets

1 the filing deadline of October 15th, 2021.

2 Furthermore, even if such evidence were  
3 presented, the appellants have not shown how their  
4 presence in Florida completely and continuously prevented  
5 them from filing a return until May of 2022.

6 Therefore, based on the facts and records, the  
7 appellants have failed to demonstrate reasonable cause to  
8 pay for late filing. Therefore, respondent's position  
9 should be sustained.

10 I'm happy to answer any questions you may have.  
11 Thank you.

12 JUDGE WILSON: Thank you.

13 Judge Le, any questions?

14 JUDGE LE: No questions, thank you.

15 JUDGE WILSON: And Hearing Officer Elsom, questions?

16 JUDGE ELSOM: No questions, thank you.

17 JUDGE WILSON: I did have one question.

18 The appellant mentioned that she also had some  
19 issues with her brother in Hawaii. I did notice that was  
20 in the record. Would that have made a --

21 MR. GARCIA-ROSENBLUM: It could have been possibly  
22 taken into consideration. Respondent did request  
23 additional information of September of, I believe, 2023,  
24 and requested an additional information to support their  
25 claim of reasonable cause.

1           In response, respondent received the bank records  
2 related to the Florida -- the tax form in Florida early in  
3 2021 and nothing further --

4           (Reporter clarification)

5           MR. GARCIA-ROSENBLUM: Nothing else was received in  
6 response to request information.

7           JUDGE WILSON: Thank you.

8           Judge Le, any other questions?

9           JUDGE LE: No questions, thank you.

10          JUDGE WILSON: And --

11          JUDGE ELSOM: No additional questions, thank you.

12          JUDGE WILSON: Okay.

13                 We'll go back to Ms. Ruscito. You have five  
14 minutes to do a closing or rebuttal statement to what  
15 Franchise Tax Board has presented.

16          MS. RUSCITO: I have no -- no further -- I said what I  
17 had to say.

18          JUDGE WILSON: Okay.

19                 Judge Le, do you have any questions for either  
20 party?

21          JUDGE LE: No, thank you.

22          JUDGE WILSON: And Officer Elsom.

23          JUDGE ELSOM: No additional questions, thank you.

24          JUDGE WILSON: All right. I don't have any additional  
25 questions. So we will go ahead and close the record.



1           This case is being submitted on November 13th,  
2 2024. The record is now close.

3           (Proceedings adjourned at 9:45 a.m.)  
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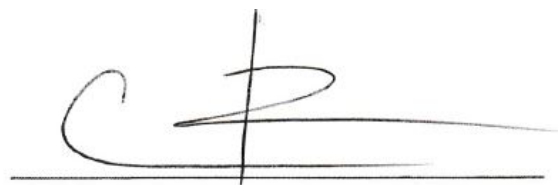
1 HEARING REPORTER'S CERTIFICATE

2  
3 I, Christina L. Rodriguez, Hearing Reporter in and for  
4 the State of California, do hereby certify:

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

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

14 I have hereunto subscribed my name this 3rd day  
15 of December, 2024.

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23 Hearing Reporter

24 CHRISTINA RODRIGUEZ  
25

<hr/> <b>\$</b> <hr/>	<hr/> <b>6</b> <hr/>	14:3,6,25 15:3,7	<b>call</b> 10:14
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