



1                                   BEFORE THE OFFICE OF TAX APPEALS

2                                   STATE OF CALIFORNIA

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4

5   In the Matter of the Appeal of:            )

6   T. BORN (DEC'D),                            )   OTA No. 240315752

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15                                   TRANSCRIPT OF ELECTRONIC PROCEEDINGS,

16                                   taken at 400 R Street, Suite 470, Sacramento,

17                                   California, commencing at 9:49 a.m. and

18                                   concluding at 10:06 a.m. on Tuesday,

19                                   December 17, 2024, reported by

20                                   Christina L. Rodriguez, Hearing Reporter.

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APPEARANCES :

Administrative Law Judge:        CHERYL AKINS

For the Appellant:                MICHAEL J. WALSH

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 1-4 were received in Judge Akin's minutes and orders, page 7)

(FTB's Exhibits A-I were received in Judge Akin's minutes and orders, page 7)

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

PAGE

Mr. Walsh

9

Ms. Ho

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C L O S I N G   S T A T E M E N T

PAGE

By Mr. Walsh

16

1 California; Tuesday, December 17, 2024

2 9:49 a.m.

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4  
5 JUDGE AKIN: We are opening the record in the appeal  
6 of Born. OTA Case No. 240315752. This matter is being  
7 held before the Office of Tax Appeals in Sacramento,  
8 California. Today's date is Tuesday, December 17th, 2024.  
9 And the time is approximately 9:49 a.m.

10 Again, my name is Cheryl Akin. I am the  
11 administrative law judge who will be deciding this appeal.  
12 This case is being heard by a single administrative law  
13 judge under the Office of Tax Appeals Small Case Program.

14 As a reminder, the Office of Tax Appeals is not a  
15 court. It is an independent appeals body. The office is  
16 staffed by tax experts and is independent of the states  
17 tax agencies including the Franchise Tax Board.

18 Because Office of Tax Appeals is separate and  
19 independent from the Franchise Tax Board, the only  
20 information I have and will consider in this appeal is the  
21 argument and evidence that has been submitted to the  
22 Office of Tax Appeals by the parties, and the information  
23 that is presented here today.

24 I have read all the briefs in the exhibits, and I  
25 will remind everyone that as the administrative law judge

1 in this case, I do not engage in ex parte communication  
2 with either party.

3 With that, let me please have the parties  
4 introduce themselves for the record starting with the  
5 Appellant.

6 MR. WALSH: Michael Walsh.

7 JUDGE AKIN: Thank you.

8 And Franchise Tax Board.

9 MS. HO: This is Vivian Ho and my Co-Counsel, Maria  
10 Brosterhous, for the Franchise Tax Board.

11 JUDGE AKIN: Okay. Thank you.

12 As confirmed in the prehearing conference minutes  
13 and orders, which followed that prehearing conference, the  
14 issue to be decided in this appeal is whether appellant's  
15 claim for refund for the 2017 tax year is barred by the  
16 statute of limitations.

17 I just wanted to verify that this is consistent  
18 with the party's understanding.

19 I'll start with you, Mr. Walsh.

20 MR. WALSH: Correct. That's the understanding. Yes.

21 JUDGE AKIN: Perfect. Thank you.

22 And Franchise Tax Board.

23 MS. HO: Yes, that's correct. Thank you.

24 JUDGE AKIN: Okay. Thank you.

25 With that, I'd like to quickly move on to the

1 evidence in this appeal. Appellants submitted four  
2 exhibits that were labeled as Appellant's Exhibits 1  
3 through 4 at the prehearing conference. FTB indicated  
4 that they did not have any objections to these exhibits.

5 So Appellant's Exhibits 1 through 4 are now  
6 admitted into the evidentiary record without objection.

7 (Appellant's Exhibits 1-4 were admitted into  
8 evidence.)

9 JUDGE AKIN: Franchise Tax Board submitted nine  
10 exhibits which are labeled as Franchise Tax Board's  
11 Exhibits A through I.

12 Again, at the prehearing conference, appellant  
13 indicated that he did not have any objection to these  
14 exhibits. And FTB's Exhibits A through I are now admitted  
15 into the evidentiary record without objection.

16 (FTB's Exhibits A-I are admitted  
17 into evidence.)

18 JUDGE AKIN: All right. Is there any additional  
19 evidence here today that needs to be addressed before we  
20 move on?

21 MR. WALSH: No.

22 JUDGE AKIN: Thank you, Mr. Walsh.

23 And Ms. Ho.

24 MS. HO: Nothing from the Franchise Tax Board. Thank  
25 you.

1 JUDGE AKIN: Thank you.

2 All right. Finally, before we begin, I quickly  
3 like to review today's proceedings.

4 So it is my understanding, Mr. Walsh, that you  
5 plan to be sworn in.

6 MR. WALSH: Yes.

7 JUDGE AKIN: Okay. Perfect. So what I'll do when  
8 it's time for your presentation, I'll just swear you in at  
9 the beginning so that we can consider any of your  
10 statements you may make as evidence.

11 As indicated in my minutes and orders, you will  
12 have 15 minutes for your presentation; after which FTB  
13 will have an opportunity to ask any clarifying questions  
14 they may have. I will then ask any questions I have  
15 before turning it over to Franchise Tax Board for their  
16 presentation.

17 Franchise Tax Board has 10 minutes for it's  
18 presentation after which I will ask any questions I have  
19 of Franchise Tax Board before turning it back to you,  
20 Mr. Walsh, for a final closing or rebuttal statement for  
21 five minutes.

22 So that's how these proceedings will run.

23 Are there any questions before I hand it over for  
24 presentations.

25 MR. WALSH: No.

1 JUDGE AKIN: Thank you. Okay. So Mr. Walsh, if you  
2 are ready, I can swear you in. Can you please raise your  
3 right hand.

4  
5 MICHAEL WALSH,  
6 Produced as a witness, and having been first duly sworn by  
7 the administrative law judge, was examined and testified  
8 as follows:

9 MR. WALSH: Yes.

10 JUDGE AKIN: Okay. Great. You have 15 minutes and  
11 may begin when you're ready.

12  
13 PRESENTATION

14 MR. WALSH: This meeting today is to discuss the taxes  
15 of 2017 that were paid on behalf of Teresa Born and should  
16 be refunded. I want to start by telling you a little bit  
17 about Teresa Born.

18 Teresa Born was my aunt and never married and was  
19 actively involved throughout my life. And for those  
20 reasons, my brother Ed Walsh and myself were honored to  
21 act on her behalf for the instructions of her trust when  
22 she was no longer able to make decisions due to the  
23 effects of a debilitating stroke in 2016.

24 The capacity letter from her primary care doctor,  
25 Dr. Swan, declaring her inability to make decisions is on

1 the exhibits.

2 At that time in 2016, my mother passed away. In  
3 the end of February, my wife was diagnosed with breast  
4 cancer. Upon surgery, chemo therapy, and radiation, my  
5 daughter was attending college; my son in high school.  
6 And I was working full-time as a pharmacist for the  
7 California Poison Control Center in Sacramento.

8 My brother Ed Walsh was going through a  
9 difficult divorce. At that point, our relationship  
10 between me and my brother and I were strained. At the  
11 same time, it was clear Teresa Born was going to need 24  
12 hour care. So we moved Teresa Born to assistant living in  
13 Coventry Place in San Francisco.

14 At this point, Ed Walsh was paying all her bills  
15 through her checking account. Unbeknownst to us, Teresa  
16 had opened a P.O. box prior to her stroke due to mail  
17 being stolen at her house.

18 Unfortunately, due to her stroke, she was unable  
19 to tell us this. We did not know where her important mail  
20 was going. We did not find out this until later, and so  
21 we never received her W-2 forms, so we were unable to  
22 complete her tax returns.

23 I went to the P.O. box in San Francisco where it  
24 was. And I talked to the guys, and they go, "You're not  
25 Teresa Born. I can't help you."

1           And I also went to this whole security office on  
2 Valencia Street in San Francisco and tried to change the  
3 address, but they really -- didn't really seem to trust us  
4 because we weren't the person requesting the change of  
5 address; it was my Aunt Teresa Born.

6           So Ed Walsh never received any tax documents  
7 until 2019 when he paid the bill for 2017 from the  
8 Franchise Tax Board. He did the right thing, and he paid  
9 it. That's another exhibit.

10           Unfortunately, Teresa passed away in May of 2023,  
11 and I was tasked of cleaning up the mess that had been  
12 made by her estate. I filed all her back taxes, closed up  
13 all existing accounts, arranged for cremation burial as  
14 per her wishes.

15           This is one of the last items that needs to be  
16 done to settle her estate. I began the process in June of  
17 2023 and hired a CPA to file all her back taxes; and come  
18 to find out, she didn't really owe the \$3,468 dollars that  
19 was paid by Ed Walsh. But, in fact, she owed a refund of  
20 of \$146 dollars.

21           So my brother Ed did due diligence to paying her  
22 bill that was sent to her address in San Francisco. We  
23 acted in good faith. We -- I understand the statute of  
24 limitations to refund the money had expired.

25           However, in this case, there were extenuating

1 circumstances. We were unable to file taxes without a W-2  
2 form because we didn't know her mail was going to a P.O.  
3 box.

4 Thank you.

5 JUDGE AKIN: Thank you for sharing that with me, and I  
6 understand the emotions behind this. So thank you.

7 MR. WALSH: Yeah.

8 JUDGE AKIN: Ms. Ho, did you have any questions for  
9 Mr. Walsh?

10 MS. HO: Yes, thank you.

11 One question for Mr. Walsh. Just want to confirm  
12 your statement. You and your brother were authorized to  
13 handle Ms. Teresa Born's legal and financial matters under  
14 the Teresa Born 2007 trust starting from 2016?

15 MR. WALSH: Yes. Correct.

16 MS. HO: Thank you. I have no further questions.

17 JUDGE AKIN: Okay. Thank you.

18 And I had just one question for you, Mr. Walsh.  
19 So I understand your testimony is that you weren't able to  
20 file until you obtained the W-2 and other tax documents.  
21 Do you know when it was that you were able to obtain that  
22 information? An approximate timeframe is fine if you  
23 don't know certainty.

24 MR. WALSH: Yeah. I think my brother Ed got, you  
25 know, the tax bill from Franchise Tax Board like in

1 December of 2019. Right away, he wrote the check for it  
2 because we didn't have a W-2. So we followed what he got  
3 in the mail at the address. And so I don't know when we  
4 got the W-2's.

5 I talked to my CPA in June of 2023, and he  
6 must've found them, you know. And I filed all the taxes  
7 for the IRS and the State of California.

8 JUDGE AKIN: Okay. Understood. Thank you. I don't  
9 have any additional questions.

10 MR. WALSH: Okay.

11 JUDGE AKIN: So what happens next is I'm going to turn  
12 it over to Franchise Tax Board for their presentation.  
13 They will have 10 minutes. After which you will have five  
14 minutes to address anything you would like to that was in  
15 their statement.

16 Okay. So Ms. Ho, you have 10 minutes and may  
17 begin when you're ready.

18  
19 PRESENTATION

20 MS. HO: Thank you.

21 Good morning. My name is Vivian Ho. I, along  
22 with my Co-Counsel, Maria Brosterhous, represent  
23 Respondent, the Franchise Tax Board.

24 The issue in this appeal is whether appellant's  
25 claim for refund for tax year 2017 is barred by the

1 statute of limitations.

2 Under the law, FTB can only allow a refund claim  
3 if it is filed within any of the following periods. Four  
4 years from the original due date of the tax return; four  
5 years from the date the return was filed if it was filed  
6 timely by the extended due date; or one year from the date  
7 of overpayment.

8 Appellant's claim for refund was properly denied  
9 because it was not filed within any of the statutory  
10 periods. Appellant's representative asserts appellant was  
11 unable to file her tax return and provided a doctor's  
12 letter to establish appellant's suffered from dementia  
13 until her passing in 2023.

14 Appellant also raises personal difficulties that  
15 he faced along with appellant's other representative. As  
16 held in the precedential opinion of Appeal of Gillespie,  
17 there is no reasonable cause or equitable basis for  
18 suspending the statute of limitations.

19 While FTB is sympathetic to the situation faced  
20 by appellant and her representatives, as held in  
21 precedent, neither ill health or any other unfortunate  
22 circumstance can extend the statute of limitations for  
23 filing a claim of refund.

24 The sole exception to the statute of limitations  
25 is tolling due to financial disability, and it is not

1 applicable to this case.

2 In order to establish financial disability  
3 tolling, the taxpayer must demonstrate by a doctor's  
4 affidavit that they were unable to manage their financial  
5 affairs due to a medically determinable physical or mental  
6 impairment that is terminal or expected to last a  
7 continuous period of not less than 12 months.

8 The taxpayer must also show that there is no  
9 legally authorized person to act on their behalf during  
10 the period that they were seeking to establish tolling.  
11 Appellant does not satisfy these requirements.

12 The doctor's letter appellant's representative  
13 provided does not meet the requirements to establish  
14 tolling, as it does not include the duration of the  
15 financial disability, which is required to establish the  
16 tolling period as held in the Appeal of the State vs.  
17 Gillespie.

18 The letter is also not signed under penalties of  
19 perjury, and appellant's representative also did not  
20 submit Form 1564 as required by FTB procedure.

21 Moreover, appellant does not qualify for a  
22 financial disability because she had multiple  
23 representatives authorized to handle her financial affairs  
24 during the period she was incapacitated. As appellant's  
25 representative has provided, he was authorized to handle

1 appellant's affairs since 2016 when appellant suffered  
2 from health concerns and became incapacitated.

3 As such, there is no period of time in which  
4 appellant was financially disabled without a legally  
5 authorized representative to handle her financial matters.  
6 As such, appellant's claim for a refund is barred by the  
7 statute of limitations.

8 Unfortunately, the law is firm on this matter.  
9 FTB respectfully requests appellant's claim for refund be  
10 denied.

11 Thank you.

12 JUDGE AKIN: Okay. Thank you, Ms. Ho.

13 I don't have any questions for Franchise Tax  
14 Board at this time.

15 So what I can do now is turn it back to you,  
16 Mr. Walsh, for a final closing statement. You have up to  
17 five minutes.

18  
19 CLOSING STATEMENT

20 MR. WALSH: I understand the statute of limitations to  
21 refund the money had expired; however, in this case, there  
22 were extenuating circumstances. We were unable to file  
23 her taxes without a W-2 form. That's a core issue is what  
24 I'm presenting today.

25 I ask for consideration of maybe getting part of

1 our money back that my brother paid in good faith.  
2 In good faith, he paid it when we got the bill from  
3 Franchise Tax Board. But I understand the limitations.

4 So we did our best, and it's very hard. We  
5 didn't have her W-2 forms. So I'm -- we would have filed  
6 them if we had them. That's a basic premise here.

7 And you go to the post office -- "you're not  
8 Teresa Born. We don't know who you are." There's so much  
9 fraud in this world that it's very, very difficult to  
10 obtain somebody else's W-2 forms.

11 Thank you for your time. Thank you.

12 JUDGE AKIN: And thank you, Mr. Walsh. I know this is  
13 challenging. I heard what you've said, and I understand  
14 what you've said. So thank you very much.

15 MR. WALSH: Okay.

16 JUDGE AKIN: Okay. I don't have any additional  
17 questions for either parties. So unless there was  
18 something else that either party would like to quickly  
19 address, I believe we're ready to conclude the hearing.

20 Okay. So thank you again both parties for being  
21 here.

22 Sorry, my notes.

23 I'd like to thank you both for your presentations  
24 today. I will decide this case based on the argument and  
25 evidence that has been presented to me in this appeal. I

1 will issue an opinion no later than 100 days from today.  
2 This case is now submitted and the record is now closed.

3 (Proceedings concluded at 10:06 a.m.)  
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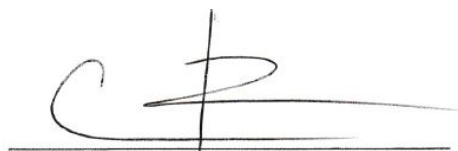
1 HEARING REPORTER'S CERTIFICATE

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 28th day  
15 of December.

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21 Hearing Reporter  
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**\$146** 11:20**\$3,468** 11:18

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**1** 7:2,5**1-4** 7:7**10** 8:17 13:13,16**100** 18:1**10:06** 18:3**12** 15:7**15** 8:12 9:10**1564** 15:20**17** 5:1**17th** 5:8

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**2**

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**2007** 12:14**2016** 9:23 10:2  
12:14 16:1**2017** 6:15 9:15  
11:7 13:25**2019** 11:7 13:1**2023** 11:10,17  
13:5 14:13**2024** 5:1,8**24** 10:11**240315752** 5:6

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**4** 7:3,5

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**9:49** 5:2,9

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**A**

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**A-I** 7:16**a.m.** 5:2,9 18:3**account** 10:15**accounts** 11:13**act** 9:21 15:9**acted** 11:23**actively** 9:19**additional** 7:18  
13:9 17:16**address** 11:3,5,  
22 13:3,14 17:19**addressed** 7:19**administrative**  
5:11,12,25 9:7**admitted** 7:6,7,  
14,16**affairs** 15:5,23  
16:1**affidavit** 15:4**agencies** 5:17**Akin** 5:5,10 6:7,  
11,21,24 7:9,18,  
22 8:1,7 9:1,10  
12:5,8,17 13:8,11  
16:12 17:12,16**appeal** 5:5,11,20  
6:14 7:1 13:24  
14:16 15:16 17:25**appeals** 5:7,13,  
14,15,18,22**appellant** 6:5  
7:12 14:10,14,20  
15:11,21 16:1,4**appellant's** 6:14  
7:2,5,7 13:24  
14:8,10,12,15  
15:12,19,24 16:1,  
6,9**Appellants** 7:1**applicable** 15:1**approximate**  
12:22**approximately**  
5:9**argument** 5:21  
17:24**arranged** 11:13**asserts** 14:10**assistant** 10:12**attending** 10:5**aunt** 9:18 11:5**authorized** 12:12  
15:9,23,25 16:5

---

**B**

---

**back** 8:19 11:12,  
17 16:15 17:1**barred** 6:15 13:25  
16:6**based** 17:24**basic** 17:6**basis** 14:17**began** 11:16**begin** 8:2 9:11  
13:17**beginning** 8:9**behalf** 9:15,21  
15:9**bill** 11:7,22 12:25  
17:2**bills** 10:14**bit** 9:16**Board** 5:17,19  
6:8,10,22 7:9,24  
8:15,17,19 11:8  
12:25 13:12,23  
16:14 17:3**Board's** 7:10**body** 5:15**Born** 5:6 9:15,17,  
18 10:11,12,25  
11:5 12:14 17:8**Born's** 12:13**box** 10:16,23 12:3**breast** 10:3**briefs** 5:24**Brosterhouse**  
6:10 13:22**brother** 9:20 10:8,  
10 11:21 12:12,24  
17:1**burial** 11:13

---

**C**

---

**California** 5:1,8  
10:7 13:7**cancer** 10:4**capacity** 9:24**care** 9:24 10:12**case** 5:6,12,13 6:1  
11:25 15:1 16:21  
17:24 18:2**Center** 10:7**certainty** 12:23**challenging**  
17:13**change** 11:2,4**check** 13:1**checking** 10:15**chemo** 10:4**Cheryl** 5:10**circumstance**  
14:22**circumstances**  
12:1 16:22**claim** 6:15 13:25  
14:2,8,23 16:6,9

- clarifying** 8:13  
**cleaning** 11:11  
**clear** 10:11  
**closed** 11:12 18:2  
**closing** 8:20  
 16:16,19  
**Co-counsel** 6:9  
 13:22  
**college** 10:5  
**communication**  
 6:1  
**complete** 10:22  
**concerns** 16:2  
**conclude** 17:19  
**concluded** 18:3  
**conference** 6:12,  
 13 7:3,12  
**confirm** 12:11  
**confirmed** 6:12  
**consideration**  
 16:25  
**consistent** 6:17  
**continuous** 15:7  
**Control** 10:7  
**core** 16:23  
**correct** 6:20,23  
 12:15  
**court** 5:15  
**Coventry** 10:13  
**CPA** 11:17 13:5  
**cremation** 11:13
- 
- D**
- 
- date** 5:8 14:4,5,6  
**daughter** 10:5  
**days** 18:1  
**debilitating** 9:23
- December** 5:1,8  
 13:1  
**decide** 17:24  
**decided** 6:14  
**deciding** 5:11  
**decisions** 9:22,  
 25  
**declaring** 9:25  
**dementia** 14:12  
**demonstrate**  
 15:3  
**denied** 14:8 16:10  
**determinable**  
 15:5  
**diagnosed** 10:3  
**difficult** 10:9 17:9  
**difficulties** 14:14  
**diligence** 11:21  
**disability** 14:25  
 15:2,15,22  
**disabled** 16:4  
**discuss** 9:14  
**divorce** 10:9  
**doctor** 9:24  
**doctor's** 14:11  
 15:3,12  
**documents** 11:6  
 12:20  
**dollars** 11:18,20  
**due** 9:22 10:16,18  
 11:21 14:4,6,25  
 15:5  
**duly** 9:6  
**duration** 15:14
- 
- E**
- 
- Ed** 9:20 10:8,14  
 11:6,19,21 12:24
- effects** 9:23  
**else's** 17:10  
**emotions** 12:6  
**end** 10:3  
**engage** 6:1  
**equitable** 14:17  
**establish** 14:12  
 15:2,10,13,15  
**estate** 11:12,16  
**evidence** 5:21  
 7:1,8,17,19 8:10  
 17:25  
**evidentiary** 7:6,  
 15  
**examined** 9:7  
**exception** 14:24  
**exhibit** 11:9  
**exhibits** 5:24 7:2,  
 4,5,7,10,11,14,16  
 10:1  
**existing** 11:13  
**expected** 15:6  
**experts** 5:16  
**expired** 11:24  
 16:21  
**extend** 14:22  
**extended** 14:6  
**extenuating**  
 11:25 16:22
- 
- F**
- 
- faceted** 14:15,19  
**fact** 11:19  
**faith** 11:23 17:1,2  
**February** 10:3  
**file** 11:17 12:1,20  
 14:11 16:22  
**filed** 11:12 13:6  
 14:3,5,9 17:5  
**filing** 14:23  
**final** 8:20 16:16  
**Finally** 8:2  
**financial** 12:13  
 14:25 15:2,4,15,  
 22,23 16:5  
**financially** 16:4  
**find** 10:20 11:18  
**fine** 12:22  
**firm** 16:8  
**form** 12:2 15:20  
 16:23  
**forms** 10:21 17:5,  
 10  
**found** 13:6  
**Franchise** 5:17,  
 19 6:8,10,22 7:9,  
 10,24 8:15,17,19  
 11:8 12:25 13:12,  
 23 16:13 17:3  
**Francisco** 10:13,  
 23 11:2,22  
**fraud** 17:9  
**FTB** 7:3 8:12 14:2,  
 19 15:20 16:9  
**FTB's** 7:14,16  
**full-time** 10:6
- 
- G**
- 
- Gillespie** 14:16  
 15:17  
**good** 11:23 13:21  
 17:1,2  
**Great** 9:10  
**guys** 10:24
- 
- H**
- 
- hand** 8:23 9:3

**handle** 12:13  
15:23,25 16:5

**hard** 17:4

**health** 14:21 16:2

**heard** 5:12 17:13

**hearing** 17:19

**held** 5:7 14:16,20  
15:16

**high** 10:5

**hired** 11:17

**Ho** 6:9,23 7:23,24  
12:8,10,16 13:16,  
20,21 16:12

**honored** 9:20

**hour** 10:12

**house** 10:17

---

**I**

---

**ill** 14:21

**impairment** 15:6

**important** 10:19

**inability** 9:25

**incapacitated**  
15:24 16:2

**include** 15:14

**including** 5:17

**independent**  
5:15,16,19

**information** 5:20,  
22 12:22

**instructions** 9:21

**introduce** 6:4

**involved** 9:19

**IRS** 13:7

**issue** 6:14 13:24  
16:23 18:1

**items** 11:15

---

**J**

---

**judge** 5:5,11,13,  
25 6:7,11,21,24  
7:9,18,22 8:1,7  
9:1,7,10 12:5,8,17  
13:8,11 16:12  
17:12,16

**June** 11:16 13:5

---

**L**

---

**labeled** 7:2,10

**law** 5:11,12,25 9:7  
14:2 16:8

**legal** 12:13

**legally** 15:9 16:4

**letter** 9:24 14:12  
15:12,18

**life** 9:19

**limitations** 6:16  
11:24 14:1,18,22,  
24 16:7,20 17:3

**living** 10:12

**longer** 9:22

---

**M**

---

**made** 11:12

**mail** 10:16,19 12:2  
13:3

**make** 8:10 9:22,25

**manage** 15:4

**Maria** 6:9 13:22

**married** 9:18

**matter** 5:6 16:8

**matters** 12:13  
16:5

**medically** 15:5

**meet** 15:13

**meeting** 9:14

**mental** 15:5

**mess** 11:11

**Michael** 6:6 9:5

**minutes** 6:12  
8:11,12,17,21  
9:10 13:13,14,16  
16:17

**money** 11:24  
16:21 17:1

**months** 15:7

**morning** 13:21

**mother** 10:2

**move** 6:25 7:20

**moved** 10:12

**multiple** 15:22

**must've** 13:6

---

**N**

---

**notes** 17:22

---

**O**

---

**objection** 7:6,13,  
15

**objections** 7:4

**obtain** 12:21  
17:10

**obtained** 12:20

**office** 5:7,13,14,  
15,18,22 11:1  
17:7

**opened** 10:16

**opening** 5:5

**opinion** 14:16  
18:1

**opportunity** 8:13

**order** 15:2

**orders** 6:13 8:11

**original** 14:4

**OTA** 5:6

**overpayment**  
14:7

**owe** 11:18

**owed** 11:19

---

**P**

---

**P.O.** 10:16,23 12:2

**paid** 9:15 11:7,8,  
19 17:1,2

**part** 16:25

**parte** 6:1

**parties** 5:22 6:3  
17:17,20

**party** 6:2 17:18

**party's** 6:18

**passed** 10:2  
11:10

**passing** 14:13

**paying** 10:14  
11:21

**penalties** 15:18

**Perfect** 6:21 8:7

**period** 15:7,10,16,  
24 16:3

**periods** 14:3,10

**perjury** 15:19

**person** 11:4 15:9

**personal** 14:14

**pharmacist** 10:6

**physical** 15:5

**Place** 10:13

**plan** 8:5

**point** 10:9,14

**Poison** 10:7

**post** 17:7

**precedent** 14:21**precedential**  
14:16**prehearing** 6:12,  
13 7:3,12**premise** 17:6**presentation** 8:8,  
12,16,18 9:13  
13:12,19**presentations**  
8:24 17:23**presented** 5:23  
17:25**presenting** 16:24**primary** 9:24**prior** 10:16**procedure** 15:20**proceedings** 8:3,  
22 18:3**process** 11:16**Produced** 9:6**Program** 5:13**properly** 14:8**provided** 14:11  
15:13,25

---

**Q**

---

**qualify** 15:21**question** 12:11,  
18**questions** 8:13,  
14,18,23 12:8,16  
13:9 16:13 17:17**quickly** 6:25 8:2  
17:18

---

**R**

---

**radiation** 10:4**raise** 9:2**raises** 14:14**read** 5:24**ready** 9:2,11  
13:17 17:19**reasonable** 14:17**reasons** 9:20**rebuttal** 8:20**received** 10:21  
11:6**record** 5:5 6:4  
7:6,15 18:2**refund** 6:15  
11:19,24 13:25  
14:2,8,23 16:6,9,  
21**refunded** 9:16**relationship** 10:9**remind** 5:25**reminder** 5:14**represent** 13:22**representative**  
14:10,15 15:12,  
19,25 16:5**representatives**  
14:20 15:23**requesting** 11:4**requests** 16:9**required** 15:15,20**requirements**  
15:11,13**respectfully** 16:9**Respondent**  
13:23**return** 14:4,5,11**returns** 10:22**review** 8:3**run** 8:22

---

**S**

---

**Sacramento** 5:7  
10:7**San** 10:13,23  
11:2,22**satisfy** 15:11**school** 10:5**security** 11:1**seeking** 15:10**separate** 5:18**settle** 11:16**sharing** 12:5**show** 15:8**signed** 15:18**single** 5:12**situation** 14:19**Small** 5:13**sole** 14:24**son** 10:5**staffed** 5:16**start** 6:19 9:16**starting** 6:4 12:14**State** 13:7 15:16**statement** 8:20  
12:12 13:15  
16:16,19**statements** 8:10**states** 5:16**statute** 6:16 11:23  
14:1,18,22,24  
16:7,20**statutory** 14:9**stolen** 10:17**strained** 10:10**Street** 11:2**stroke** 9:23 10:16,

18

**submit** 15:20**submitted** 5:21  
7:1,9 18:2**suffered** 14:12  
16:1**surgery** 10:4**suspending**  
14:18**Swan** 9:25**swear** 8:8 9:2**sworn** 8:5 9:6**sympathetic**  
14:19

---

**T**

---

**talked** 10:24 13:5**tasked** 11:11**tax** 5:7,13,14,16,  
17,18,19,22 6:8,  
10,15,22 7:9,10,  
24 8:15,17,19  
10:22 11:6,8  
12:20,25 13:12,  
23,25 14:4,11  
16:13 17:3**taxes** 9:14 11:12,  
17 12:1 13:6  
16:23**taxpayer** 15:3,8**telling** 9:16**Teresa** 9:15,17,18  
10:11,12,15,25  
11:5,10 12:13,14  
17:8**terminal** 15:6**testified** 9:7**testimony** 12:19**therapy** 10:4**thing** 11:8

**time** 5:9 8:8 10:2,  
11 16:3,14 17:11

**timeframe** 12:22

**timely** 14:6

**today** 5:23 7:19  
9:14 16:24 17:24  
18:1

**today's** 5:8 8:3

**tolling** 14:25 15:3,  
10,14,16

**trust** 9:21 11:3  
12:14

**Tuesday** 5:1,8

**turn** 13:11 16:15

**turning** 8:15,19

---

**U**

---

**unable** 10:18,21  
12:1 14:11 15:4  
16:22

**Unbeknownst**  
10:15

**understand**  
11:23 12:6,19  
16:20 17:3,13

**understanding**  
6:18,20 8:4

**Understood** 13:8

**unfortunate**  
14:21

---

**V**

---

**Valencia** 11:2

**verify** 6:17

**Vivian** 6:9 13:21

---

**W**

---

**W-2** 10:21 12:1,20  
13:2 16:23 17:5,  
10

**W-2's** 13:4

**Walsh** 6:6,19,20  
7:21,22 8:4,6,20,  
25 9:1,5,9,14,20  
10:8,14 11:6,19  
12:7,9,11,15,18,  
24 13:10 16:16,20  
17:12,15

**wanted** 6:17

**wife** 10:3

**wishes** 11:14

**working** 10:6

**world** 17:9

**wrote** 13:1

---

**Y**

---

**year** 6:15 13:25  
14:6

**years** 14:4,5