

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
C. ALLEN (dec'd) and A. ALLEN, ) OTA NO. 221111958  
APPELLANT. )  
)

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, January 16, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
C. ALLEN (dec'd) and A. ALLEN, ) OTA NO. 221111958  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:50 a.m. and concluding at 10:45 a.m. on  
Thursday, January 16, 2025, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Panel Lead: ALJ SETH ELSOM

Panel Members: ALJ STEVEN KIM  
ALJ NATASHA RALSTON

For the Appellant: A. ALLEN  
DORIS MASON

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
CHRISTOPHER T. TUTTLE  
MARIA BROSTERHOUS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1 and 5 were received into evidence at page 9.)

(Department's Exhibits A-L were received into evidence at page 12.)

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

	<u>PAGE</u>
By Ms. Mason	11
By Mr. Tuttle	31

W I T N E S S   T E S T I M O N Y

	<u>PAGE</u>
By Mrs. Allen	21

C L O S I N G   S T A T E M E N T

	<u>PAGE</u>
By Ms. Mason	34
By Mrs. Allen	37

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

California; Thursday, January 16, 2025

9:50 a.m.

HEARING OFFICER ELSOM: We're opening the record in the Appeal of Allen, OTA Case Number 221111958. This matter is being held virtually before the Office of Tax Appeals. Today's date is Thursday, December [sic] 16th, 2025, and the start time is approximately 9:50 a.m.

My name is Seth Elsom. I am the lead Hearing Officer for this appeal. With me today is Administrative Law Judge Natasha Ralston and Administrative Law Judge Steven Kim.

As a reminder the Office of Tax Appeals is not a court. It is an independent appeals body that is staffed by tax experts and is independent of the State's tax agencies, including the Franchise Tax Board.

With that, can the parties please introduce themselves for the record, again, starting with Appellant.

Ms. Allen, can you please introduce yourself.

MS. MASON: Okay.

HEARING OFFICER ELSOM: Okay.

MRS. ALLEN: My name is Amye Allen.

HEARING OFFICER ELSOM: You're Ms. Mason. You're representing Ms. Allen; correct?

MRS. MASON: Yes.

1           HEARING OFFICER ELSOM: Okay. And, Ms. Allen,  
2           can you please introduce yourself.

3           MRS. ALLEN: Okay. Can you hear me?

4           HEARING OFFICER ELSOM: Yes.

5           MRS. ALLEN: All right. My name is Amye Allen.

6           HEARING OFFICER ELSOM: Okay. Thank you.

7           And, Franchise Tax Board -- Ms. Allen, can you  
8           please mute your mic.

9           MRS. ALLEN: Mute my mic.

10          HEARING OFFICER ELSOM: Thank you.

11          And, Franchise Tax Board, can you please  
12          introduce yourselves.

13          MR. TUTTLE: My name is Topher Tuttle,  
14          representing Franchise Tax Board.

15          HEARING OFFICER ELSOM: Thank you.

16          MS. BROSTERHOUS: And my name is Maria  
17          Brosterhous, and I'm also representing the Franchise Tax  
18          Board.

19          HEARING OFFICER ELSOM: Thank you,  
20          Ms. Brosterhous.

21                 As confirmed at the prior prehearing conference  
22                 and in my Minutes and Orders following the conference, the  
23                 issues to be decided in this appeal are: Number one,  
24                 whether Appellant has shown error in FTB's proposed  
25                 assessment for the 2011 tax year, which was based on

1 federal determination; and two, whether Appellant has  
2 established that the accuracy-related penalty should be  
3 abated.

4 And now I'd like to address the Appellant's  
5 request to allow additional evidence or additional  
6 exhibits, excuse me.

7 Ms. Mason, can you explain exactly what you have  
8 today and whether you provided these exhibits to the  
9 Franchise Tax Board.

10 Ms. Mason, can you unmute your mic if you're  
11 attempting to speak.

12 MS. MASON: Okay. The information I have is the  
13 original information that was requested for this hearing,  
14 and it's not before you. I think it's important. Even  
15 though the circumstances are not warranted at this time, I  
16 would like to enter this information, the document.

17 HEARING OFFICER ELSOM: Can you explain what the  
18 document is? So at our -- in your prehearing conference  
19 statement, you had listed Exhibits 1 through 5, but you  
20 had only provided Exhibit 1 and 5. So we have three  
21 missing exhibits. And we provided a response date after  
22 the prehearing conference of January 2nd, 2025, to provide  
23 those. And then you recently indicated that you were  
24 going to, I believe, provide those exhibits on  
25 January 13th. But thus far, we don't have those exhibits.

1       So are those the same exhibits that you listed in your  
2       prehearing conference statement that we're missing --

3               MS. MASON:  Yes, they are.

4               HEARING OFFICER ELSOM:  -- or is this new  
5       information?

6               They are?

7               MS. MASON:  Yes, they are.

8               HEARING OFFICER ELSOM:  I'd like to ask Franchise  
9       Tax Board, do you have any objection to the admittance of  
10      these exhibits into the evidentiary record?

11              MR. TUTTLE:  So if the exhibits are admitted, I  
12      think we do object that they were not provided previously  
13      because there has not been an explanation of why they were  
14      not available in a timely manner.  If the OTA accepts them  
15      into evidence, FTB requests the opportunity to submit  
16      post-hearing briefing to respond to it.

17              HEARING OFFICER ELSOM:  Okay.  Ms. Mason, we're  
18      going to deny the admittance of these exhibits because you  
19      haven't established a good cause for the late submission  
20      of these.  But you can definitely address these in your  
21      presentation, and OTA will take those into account to the  
22      extent that any facts that you state in your presentation  
23      are relevant to the case.  We'll include those, and we'll  
24      take those into account.

25              So we're going to admit Exhibits 1 and 5 into the



1 record.

2 (Appellant's Exhibits 1 and 5 were received  
3 into evidence by the Administrative Law Judge.)

4 HEARING OFFICER ELSOM: And that brings us to  
5 FTB.

6 You submitted 11 exhibits, which have been  
7 labeled A through K. And then at the prehearing  
8 conference you referenced an additional exhibit, which you  
9 did submit, and that's Exhibit L.

10 And I wanted to confirm with Appellant, do you  
11 have any objections to FTB's admission of those exhibits?

12 MS. MASON: No.

13 HEARING OFFICER ELSOM: No. Okay. Thank you.

14 And, Ms. Mason, you indicated at the prehearing  
15 conference that both you and Appellant Allen will each be  
16 providing witness testimony. And I just wanted to clarify  
17 that that is still correct before we move forward.

18 MS. MASON: That's correct.

19 HEARING OFFICER ELSOM: Okay. And if you'd like,  
20 I can separately swear each of you in before you begin  
21 your presentations so that any factual statements you make  
22 will be taken into account during the presentation, and  
23 they may be considered as evidence by the panel after the  
24 hearing.

25 Are you okay with that, Ms. Mason?

1 MS. MASON: Yes, I am.

2 Ms. Allen?

3 MRS. ALLEN: I'm okay with it.

4 MS. MASON: Thank you.

5 HEARING OFFICER ELSOM: Okay. Thank both. And  
6 at this time, I would like to ask Ms. Mason, please raise  
7 your right hand.

8

9 D. MASON,

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

13

14 HEARING OFFICER ELSOM: And, Ms. Allen, please  
15 raise your right hand.

16

17 A. ALLEN,

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

21

22 HEARING OFFICER ELSOM: Thank you, Ms. Allen.

23 Ms. Mason and Ms. Allen, you can begin your  
24 presentation in whichever order you choose, and you have  
25 30 minutes for your presentation. So it looks like that

1 will conclude around 10:30. So you may begin, whichever  
2 of you would like to begin first.

3 MS. MASON: I'll begin first, and I've already  
4 introduced myself.

5

6 PRESENTATION

7 MS. MASON: I understand that we're here this  
8 morning to discuss two primary issues. One of the issues  
9 is whether or not we -- the Appellant has determined the  
10 error shown by the FTB's proposed assessment being based  
11 on -- for the tax year 2011, being based on a federal  
12 determination. And the other issue is whether or not the  
13 Appellants have established that the accuracy-related  
14 penalty should be abated. And in my capacity as  
15 representative for the Allens, I would state that we have  
16 reached a determination on there -- on that. I haven't  
17 discussed it with Mrs. Allen, and we'll talk about that.  
18 I'm sure she'll -- she'll understand.

19 In summary, we're here as Appellants because the  
20 Allens were involved in a couple of audits. One was 2010  
21 that was resolved and is not before this hearing this  
22 morning. The other one was a 2011 income tax deficiency  
23 whereby the Allens received a Notice of Deficiency  
24 somewhere around 2012 -- December 12th of 2012.

25 HEARING OFFICER ELSOM: Ms. Mason, before you

1 continue, I'd like to just address an item that I missed.  
2 FTB's Exhibits A through L are going to be admitted as  
3 evidence in the record today.

4 (Department's Exhibits A-L were received into  
5 evidence by the Administrative Law Judge.)

6 HEARING OFFICER ELSOM: So you can go ahead and  
7 continue.

8 MS. MASON: Okay. But we -- we acknowledge the  
9 appeal -- the necessary need for the appeal, and I'm --  
10 I'm really grateful. And I'm sure Mrs. Allen is to have a  
11 final opportunity to reach resolution of it. It's been  
12 longstanding.

13 So what happened is, after they went through the  
14 prior audit, they decided counsel was necessary. We were  
15 in agreement with that and, fortunately, we did locate  
16 counsel. But I think one of the most important matters of  
17 that NOD was that we had a 90-day period in which to file  
18 with the tax court in order to -- for them to present it,  
19 you know, their facts before the auditor or if there was  
20 any disagreement with the auditor. Well, by the onset of  
21 the 2012 -- the 2011 audit, counsel was retained and took  
22 over satisfying the former audit because they were like  
23 running consecutively and, you know, time was moving.

24 So anyway, the attorney stepped in, and as she  
25 would be her own counsel or represent the Allens, she

1 handled it in a way she saw fit. The 90-day letter was  
2 not filed. Instead, the audit pursued without the  
3 court -- the court petition. It became an argument made  
4 before the Internal Revenue Service by the attorney on  
5 behalf of the Allens wherein it was stated that they had  
6 never received a 90-day letter. Well, upon introduction  
7 of the attorney to the Allens -- because I had met her and  
8 referred her, I let her know that that was the important  
9 factor, responding to -- or filing that 90-day letter.  
10 That never happened. The audit pursued.

11 The 23 -- 2010 -- excuse me -- got settled in the  
12 mist of that, the 2011 audit. And so there was no other  
13 concern with that one. There was no -- no deficiency, no  
14 penalty. A good outcome. After the attorney got involved  
15 in the audit, I remained available to the Allens for  
16 questions, having filed an amended return, and was kept  
17 abreast of what was going on, pretty much through  
18 Mr. and Mrs. Allen. One of the things that was done,  
19 which I had tried to do, is get a reconsideration, and  
20 that took a lot of time.

21 The attorney pursued to represent them during the  
22 audit. She continued to represent them. And as a part of  
23 that, she -- she ended up requesting a Collection Due  
24 Process hearing. Prior to that, she had continued to get  
25 someone to reconsider the -- the facts of the audit. That

1 didn't happen. There was an appeal filed. And as it  
2 progressed with me having ran some of the documentation  
3 filed by the attorney in the outcome, it was -- it was  
4 stated that the Collection Due Process hearing precluded  
5 any -- it would take precedence over anything to do with  
6 the audit. She didn't want to hear anything about the  
7 audit. She just wanted to move -- and did, in fact, give  
8 the -- give an opportunity to be heard by representing a  
9 copy of a Notice of Deficiency that ended up -- it never  
10 got presented because of the ongoing dissension of the  
11 Appellants not having ever received an NOD, the Notice of  
12 Deficiency.

13 So during the -- it finally ended up in the  
14 Collection Due Process hearing, and the hearing -- the  
15 settlement officer there, Officer Derma [sic], filed a  
16 summary motion to -- for judgment, and it was filed,  
17 entered, and served all on November 15th, 2015.  
18 November -- excuse me. That might be November 18th. I  
19 stand corrected on that. At any rate, there was no  
20 opportunity for anything except that CDP. During that  
21 time -- I guess it had lasted awhile, and the Allens  
22 contacted me and asked me if I would come to court with  
23 them. There was something going on in court, which I  
24 really didn't understand because without having filed that  
25 90-day letter, that petition based on the 90-day letter,

1       they didn't have an opportunity in court, which is what  
2       the attorney continued to represent.

3               They never got their opportunity to be heard.  
4       They never got their opportunity to be heard when, in  
5       fact, it was her decision to not file that 90-day letter.  
6       I read that CDP, and I was going to include more of it.  
7       But what I have said is substantiated already in the  
8       material. While this whole thing was going on, it didn't  
9       come to me, because I had kind of taken a backseat. But  
10      it didn't appear to me or come to my knowledge or  
11      understanding that the Franchise Tax Board had never been  
12      contacted. But through means -- some means of the  
13      Internal Revenue Service, they were made aware of what was  
14      transpiring, and the Collection Due Process hearing was  
15      where I had been contacted by the Allens to come and be  
16      present. I didn't get the name of the attorney that was  
17      there that represented the IRS, and the trainee attorney  
18      that she was also representing or assisting at that  
19      meeting.

20             But it was -- it was very discouraging, and it  
21      ended up with the judgment in the favor of the Internal  
22      Revenue for an amount that really exceeded what it should  
23      have, had it not been -- go on -- had taken into so many  
24      different -- in so many different directions. Ultimately,  
25      I did get a letter from the Franchise Tax Board. Well, I

1 got it from OTA, Mr. Tuttle. And someone else had reached  
2 out to me. Heather, I believe, and I don't remember her  
3 last name. But they simply sent a letter, one to the  
4 Allens and I got a copy, asking us if we wanted to file an  
5 appeal, and the Allens agreed. I agreed to participate as  
6 a representative, and we're here today on that matter.

7 The two issues I stated earlier, I'll repeat, do  
8 we believe that the Franchise Tax Board erred when they  
9 decided to base their decision on the federal  
10 determination. I answered no to that. And the other part  
11 was whether or not the accuracy -- the penalty should be  
12 abated. I answered no on our part. My -- me as a  
13 representative, it was my decision. I had not discussed  
14 that with Mrs. Allen. But as I said earlier, I'm sure  
15 she'll understand because we haven't discussed anything  
16 that I'm talking about right now in the manner in which  
17 I'm speaking.

18 The exhibits include correspondence from the  
19 Internal Revenue. The auditor for the Internal Revenue  
20 had made his mind up. It was said to me when I met him in  
21 person that if there would be no change. No change. He  
22 didn't want to see any information that I had in support  
23 of the deductions and other criteria that was before the  
24 Internal Revenue, and that was that. But every time they  
25 got a letter, he would send me a letter. And he would



1        vacillate he's not changing anything. And then I received  
2        a letter, one of which I was including where he did, in  
3        fact, under the explanation of how the numbers were  
4        computed, he changed his mind because the audit, which I  
5        should have said it first, it had to do with the Allens  
6        having held themselves out from outside information from  
7        infliction.

8                I looked it up. I suggested it would be a good  
9        idea. So they -- they included an election to be  
10       considered real estate specialists, professionals, in  
11       terms of the fact that they had began to acquire property.  
12       And they had, in fact, acquired property. And so they  
13       made the election, and it was included as a part of the  
14       2011 return. Well, that was a hornet's nest, so to speak.  
15       But that was the decision made, and we followed it. I  
16       think it had to do with the audit, because I made the  
17       mistake in there too. And I think that was one of the  
18       first words I mentioned when I had been contacted by OTA,  
19       mistake. I believe Officer Elsom asked me what I meant by  
20       that, and I've never tried to explain it until I  
21       represented myself before the Allens.

22               At any rate, the appeal for the part of the  
23       Franchise Tax Board on -- before the Office of Tax Appeals  
24       this morning has to do with the finalization of that  
25       particular audit, 20 -- 2011. Franchise Tax Board had no

1 opportunity to participate, which would have been better.  
2 It would be -- we wouldn't be here today, and it would  
3 have all been resolved, I believe. But I'm grateful that  
4 we are here today because the opportunity that the Allens  
5 had been afforded, had the 90-day letter suggestion been  
6 acknowledged and a petition filed, I believe we would have  
7 had a favorable end.

8 I can say that from where I sit and my  
9 interaction with the auditor, he -- his mind was made up  
10 from the beginning. It was not going to be a no change --  
11 it was going to be a no change audit. But even he, in all  
12 of the letters that we've received, and there's at least  
13 half a dozen of letters back and forth every month with  
14 request for information and a computation of the outcome.  
15 And each time, the balance grew higher and higher based on  
16 the fact that interest is charged daily, compounded. And  
17 the time involved, it was long, out -- outstanding. And  
18 so the deficiency ended up being \$32,954 and -- excuse  
19 me -- there's some cents added to it. I think it's 19  
20 cents. I stand to be corrected.

21 But we had taken deductions on the return that  
22 would have gotten attention, and so I'm not here to defend  
23 that one way or the other at this point. I made my  
24 determination that no, we don't believe in my  
25 representative's capacity that the Franchise Tax Board has

1       errored on either one of those issues. And I base that on  
2       the fact that they didn't get the opportunity to present  
3       themselves and enter in their position at the onset of the  
4       audit. I think it would have been better for all parties  
5       involved.

6               However, the information that I'm not now allowed  
7       to present was just a mere show of the encounters that  
8       were being experienced throughout the audit process. It  
9       was a true battlefield of opinion and decisions, facts  
10      where people -- each representative -- each person  
11      involved, based on their individual representative's  
12      capacities before the Internal Revenue Service, from the  
13      same point of counsel, from myself, it was like a war  
14      zone; and it's a very disappointing outcome, but it is  
15      what it is. I want to again express appreciation for the  
16      fact that the Allens -- Mrs. Allen. Her husband is now  
17      deceased as of March 27th, 2019. So Mr. Allen has not  
18      been afforded his opportunity because of the fact that  
19      he -- you know, it's fate, I would say. Who knew?

20             But at any rate, I -- I would like to say that a  
21      part of the exhibits, if I'm still -- and I believe I can  
22      still submit those. They would show the vacillating  
23      opinion of the auditor. The -- the -- it was a situation  
24      where dialect was very important. I think the letters  
25      served better as a form of communication than, really, the

1 face-to-face meetings that we began with, in order to  
2 assure that we were being understood, that the  
3 communication between the auditor and I at the onset,  
4 which it initially began on the -- during the 2020 audit,  
5 was clear. And so I appreciate him and his participation.

6 The Franchise Tax Board -- or since I've been  
7 introduced to the Office of Tax Appeals, OTA, I found it  
8 to be refreshing because I do respect the fact that the  
9 State of California has two governing tax bodies. On the  
10 federal level it's the Internal Revenue Service. On the  
11 state level, it's the Franchise Tax Board. And I made  
12 my -- my decision of there being no error on the part of  
13 the Franchise Tax Board simply because from my standpoint  
14 that should have been an automatic inclusion, but audits  
15 are not easy. They can be very complex. And so I respect  
16 their decision because if it were not from the Collection  
17 Due Process hearing that finally stopped -- put an end to  
18 the audit process -- I mean, it went from 2012 to 2015.  
19 That's a long time.

20 However, it settled on the part of the IRS. And  
21 what I also appreciate about the Office of Tax Appeals is  
22 that they're a body in representation of the Franchise Tax  
23 Board, the CDTFA, and other agencies represented by the  
24 State of California who, even though they made their  
25 determination based on the federal determination, they --

1       it's a presumption that they're afforded. And -- but for  
2       the completed package of those existing or outstanding  
3       exhibits, they'll have a fairer or a clearer understanding  
4       of exactly what happened.

5               We had 30 minutes to speak. I haven't timed  
6       myself, but I don't want to take up too much more time  
7       without allowing Mrs. Allen to state her opinion.

8               HEARING OFFICER ELSOM: You have about 10 more  
9       minutes now. So if you want to continue or allow  
10      Mrs. Allen to speak, you've got 10 minutes to do so.

11              MS. MASON: I think it's important that you hear  
12      her point of view, even though she's chosen me to  
13      represent her. I've done the best I could, but given the  
14      circumstances, it was bigger than I imagined preparing an  
15      appeal. But you have part of it, so I will deliver the  
16      rest. But it would be totally inappropriate to just hear  
17      me and not hear Mrs. Allen.

18              HEARING OFFICER ELSOM: Okay. Thank you.

19              MS. MASON: Thank you.

20              MRS. ALLEN: Am I to speak now?

21              HEARING OFFICER ELSOM: Mrs. Allen, you can begin  
22      whenever you're ready.

23

24                               WITNESS TESTIMONY

25              MRS. ALLEN: Okay. I'd like to thank Ms. Mason,

1 first of all for agreeing to speak for us. I am not savvy  
2 in the laws of the Tax Board and all that kind of stuff.  
3 But I do know that as an American citizen I feel like I  
4 wasn't given due process, if I can say that. I did  
5 meet with the auditor who was a foreign-speaking person.  
6 And I'm not saying that in a negative way, but we could  
7 not understand him, and he could not understand us. And  
8 every time everything we said to him was Ms. Mason and him  
9 would -- I did not. He would say no change. No change.

10 To me, when they gave us an opportunity to have  
11 this reviewed, it should not have gone back to that same  
12 person. Some other eyes should have looked at, rather  
13 than Mr. Joshi because he refused to look at it again.  
14 And I know that they have more than one tax auditor.  
15 Somebody else could have looked at it and decided -- maybe  
16 they would have decided the same thing he came up with,  
17 and maybe they would not have. But I feel like we  
18 weren't -- we weren't dealt with properly. I don't think  
19 we were given a fair shake, and it just worried my husband  
20 to death, and he passed.

21 So then it passed down to me. I can tell you  
22 this. Every refund we were supposed to get was taken.  
23 Even part of my husband's Social Security was taken. Even  
24 part of my Social Security was taken at some point. And  
25 I -- I'm probably not doing a good job at what I'm saying,

1 but I want you to understand how I feel. I feel like we  
2 were being -- I don't want to say picked on because there  
3 are millions of people in the U.S., you know, with taxes  
4 and stuff. But I do feel like we were kind of -- because  
5 we were older and didn't really, really know, I think that  
6 whatever errors were made, at some point we should have  
7 been allowed to explain or have it explained to us exactly  
8 what happened.

9 I'm -- I'm not thrilled with the whole tax  
10 process, and I guess you can tell that by my voice. But  
11 we've never -- my husband and I never ever tried to cheat  
12 on our taxes. He was he a decorated war veteran. He was  
13 wounded. He had a purple heart and all that, and he was a  
14 straight shooter. He didn't want to -- not one ounce of  
15 anything. I might have been different, but he would not  
16 let me. We had to do whatever the law said, and so that's  
17 what we did. And I feel like we're just being mistreated  
18 at this point.

19 And that's about it.

20 HEARING OFFICER ELSOM: Okay. Thank you,  
21 Ms. Allen.

22 You have -- either of you have six minutes left  
23 to present. If there's anything else you want to add, you  
24 can feel free. Either one of you can add. And if you're  
25 finished, we'll -- we're going to turn it over to the

1 Franchise Tax Board to ask questions regarding the  
2 testimony. So would you like to add anything else, or  
3 were you complete with your presentation?

4 MS. MASON: I would. Thank you.

5 HEARING OFFICER ELSOM: Okay. Ms. Mason.

6 MS. MASON: Thank you.

7 HEARING OFFICER ELSOM: Go ahead.

8 MS. MASON: I would appeal to the OTA to use  
9 their discretion and -- and their assumptive ability to  
10 see through the explanation that we've provided. If I  
11 were to just speak based on feelings and emotions and  
12 fact, Mrs. Allen brought forth really, really important  
13 facts. But the audit was not fair, and it was not done in  
14 a manner where anybody could be afforded any blame. We  
15 started off with a 2010 audit before the IRS, and it  
16 turned out really good. No deficiency. No penalties.  
17 That's a miracle, but it had -- it had grounds for that.  
18 We didn't earn it. That was a mistake.

19 But the 2011 audit has afforded the IRS the  
20 ability to -- to prevail. Which I thought had it gone  
21 another way, we would have -- we would have proceeded.  
22 But I want to make it plain that the attorney that  
23 represented the Allens did her best. I respect her, but  
24 she in not understanding or realizing the urgency of that  
25 Notice of Deficiency letter; that 90-day letter that would



1       have allowed everybody to state their position and be done  
2       with it in a fair and -- and truthful manner. Lots of  
3       money would have been saved.

4               They -- they ended with IRS to a tune of an  
5       amount that -- that I mentioned at the onset. The State  
6       has their -- oh, they make their own decisions. They do  
7       agree with the IRS, and I'm going to cut it short. What  
8       they are asking for is small in consideration of what the  
9       Internal Revenue has received, and we believe that there  
10      are still outstanding monies. But I believe that I made  
11      the right decision in -- in finding no error in -- in  
12      their opinion to have ruled the way they did. And I would  
13      just ask, in all decency and order, that they would take  
14      the time to review the appeals response, the -- the  
15      document, the remaining exhibits, and the hearing response  
16      on file and the assumption -- assumptive -- or use that  
17      power that they have in their respected position to  
18      consider the amount, and perhaps a settlement can be  
19      reached rather than pay that sum because they have been  
20      penalized seriously.

21             I thank you. I rest my case.

22             HEARING OFFICER ELSOM: Thank you, Ms. Mason.

23             MS. MASON: You're welcome.

24             HEARING OFFICER ELSOM: Thank you.

25             So with that, I'd like to turn it over to the

1 Franchise Tax Board for any questions that they may have  
2 regarding Appellant's testimony.

3 MR. TUTTLE: Thank you. Franchise Tax Board does  
4 not have any questions.

5 HEARING OFFICER ELSOM: Okay. Thank you.

6 And I'd like to turn over to our panel now.

7 Natasha Ralston, do you have any questions for  
8 Appellant?

9 JUDGE RALSTON: Not at this time.

10 HEARING OFFICER ELSOM: Judge Kim, do you have  
11 any questions for Appellant?

12 JUDGE KIM: No, not at this time.

13 HEARING OFFICER ELSOM: Okay. Thank you.

14 I did have a couple of questions for you,  
15 Ms. Mason, if you could clarify. It looks like there were  
16 two separate items that may have been adjusted. I'm not  
17 entirely clear if these are connected. So there's some  
18 Schedule C deductions. There's cost of goods sold.  
19 There's other deductions or other expenses, and then  
20 there's a car and truck expense. And you had stated in  
21 your opening brief that your husband was retired. I  
22 believe he was a contractor. And I wanted to clarify, is  
23 that a separate business that your husband was -- or your  
24 ex-husband -- excuse me -- your deceased husband was  
25 operating at the time? Or did this relate entirely to the

1 three rental properties? Can you just provide some  
2 context there as to how those expenses were incurred?

3 MS. MASON: You mentioned my name, but it's  
4 directed to Mrs. Allen?

5 HEARING OFFICER ELSOM: Either of you can respond  
6 to that. Whoever is familiar with the -- Ms. Allen, can  
7 you respond to that question?

8 MS. MASON: Do you want me to?

9 MRS. ALLEN: Go ahead, Ms. Mason.

10 MS. MASON: Mr. Allen was retired from the  
11 Department of Water and Power and had been long retired.  
12 But as a part of that, he was an electrician for more than  
13 60 years. Based on his experience and for so long a time,  
14 during -- in their church they were -- he was a trustee.  
15 And so he kept doing the electrical -- providing the  
16 electrical services but not on a full-time basis. What he  
17 was doing was training other young gentlemen who were  
18 interested -- members of the church or someone in the  
19 community on how to provide those same services. So he  
20 was an asset to the community.

21 In relation to the properties, yes, he worked  
22 with -- and I didn't verify, but there were two gentlemen  
23 that he used a lot in that business who worked with him.  
24 And most of the monies he made from that activity, they  
25 were small. But he would end up spending them in -- as

1 compensation to the gentlemen because they were both  
2 independent contracts.

3 So it had to do with the buildings, the houses  
4 that were purchased. They bought one out of an estate,  
5 and they had another personal residence that was in need  
6 of repair. They were just beginning to get involved with  
7 that prior to the -- the 2010, because the house they  
8 purchased was bought in December of 2009. So right at  
9 that time they received an NOD from IRS. There was not  
10 sufficient time to -- to really put it up for rent because  
11 it was in need of -- it was in ill repair. They -- it had  
12 required a lot of work.

13 Please pardon my stammering. I have a tendency  
14 to get nervous. But --

15 HEARING OFFICER ELSOM: That -- that's okay.  
16 That's --

17 MS. MASON: Anyway, that was a part of the rental  
18 activity. We were of the opinion -- I feel -- felt -- I  
19 really felt strong about it. I thought I really  
20 understood it, that not -- you didn't have to show that  
21 you have a real estate license and you were selling houses  
22 in order to elect to group your properties together and  
23 have them treated as one -- one entity, rather than having  
24 to meet a real stringent requirement of contributing  
25 750 hours a year in the performance of a real estate

1 professional.

2 It also came at a time when I learned that IRS  
3 was conducting lifestyle audits, reality audits. And the  
4 audited -- auditor -- thank you, Mrs. Allen, for  
5 mentioning his name. I'll try to slow down a little bit  
6 because --

7 HEARING OFFICER ELSOM: Ms. Mason?

8 MS. MASON: Okay.

9 HEARING OFFICER ELSOM: I believe you've fully  
10 addressed that question.

11 MS. MASON: Okay.

12 HEARING OFFICER ELSOM: So I thank you for that.

13 MS. MASON: You're welcome.

14 HEARING OFFICER ELSOM: I did just want to  
15 clarify. So we have potentially two separate issues. We  
16 have the Schedule C expenses that were disallowed by the  
17 IRS. And then it looks like we have passive losses that  
18 were also reduced by the IRS. Is that basically correct?  
19 And the follow-up -- last follow-up question would be, did  
20 the IRS disallow any of these expenses for lack of  
21 substantiation, meaning they asked you to prove those  
22 expenses and you either couldn't -- or excuse me --  
23 Ms. Allen couldn't provide the information necessary to  
24 prove those expenses or didn't have it.

25 MS. MASON: I'll start by saying this. They're

1       good record keepers. Like I said, Mr. Allen was a trustee  
2       of the church. He kept records. He used -- he had his  
3       own way because as a part of it, there's a section 274 in  
4       the Internal Revenue Code that references it, and it's  
5       something that they -- they inform us of all the time that  
6       we need to keep records. It has to be double entry. If  
7       you write a check for something, surely there's a receipt  
8       somewhere.

9               So yes, we -- we were able to substantiate quite  
10       a bit. We were just with an auditor, who I've come to  
11       respect and appreciate, who really didn't understand my  
12       dialect, and I certainly didn't understand him. So there  
13       was a serious issue of communication. And I think, we --

14              HEARING OFFICER ELSOM: Okay.

15              MS. MASON: -- we accomplished the communication  
16       that we did by the continuous letters. Like I said, I  
17       have more -- at least half dozen -- and all of them are  
18       full of questions. He has self-employment tax in one or  
19       two of the letters, but there's no self-employment income.  
20       Then there's self-employment income with the maximum  
21       self-employment tax with no consideration for any cost  
22       that he incurred. So, yeah.

23              HEARING OFFICER ELSOM: Thank you, Ms. Mason. I  
24       believe you addressed the question.

25              So now we're going to turn this over to the

1 Franchise Tax Board for their presentation, and you have  
2 10 minutes, and you may begin when you're ready.

3 MR. TUTTLE: Thank you.

4

5 PRESENTATION

6 MR. TUTTLE: Good morning. My name is Topher  
7 Tuttle, and I'm representing Respondent, the Franchise Tax  
8 Board. With me is also Maria Brosterhous, also with the  
9 Franchise Tax Board.

10 There are two issues before you today: First,  
11 whether Appellants have established error -- excuse me --  
12 whether Appellants have established error in FTB's  
13 proposed assessment for the 2011 tax year, which was based  
14 on a federal assessment; second, whether Appellants have  
15 demonstrated that the accuracy-related penalty should be  
16 abated.

17 Turning to the first issue, California law  
18 requires a taxpayer to concede the accuracy of federal  
19 changes or state where the changes are erroneous. Under  
20 Todd versus McColgen, it is well settled that FTB's  
21 deficiency assessment is presumed correct, and the  
22 taxpayer bears the burden of proving error in FTB's  
23 determination. In this case, FTB received notice from the  
24 IRS that it had audited Appellants for tax year 2011 and  
25 disallowed various Schedule C and Schedule E deductions.

1       FTB then made corresponding adjustments in its proposed  
2       assessment.

3               Throughout both the protest and this appeal, FTB  
4       has repeatedly requested up-to-date federal account  
5       transcripts from the IRS to verify that there have been no  
6       further federal changes. In preparation for this hearing,  
7       FTB obtained an account transcript dated  
8       December 19th, 2024, which is identical to the federal  
9       account transcript attached to Respondent's opening brief  
10      as Exhibit C. This means the IRS has taken no further  
11      action on the account. FTB is not bound to follow the  
12      IRS' adjustments if Appellants were to establish that any  
13      or all of them are erroneous. However, Appellants have  
14      not provided any documentation to establish that the IRS'  
15      adjustments are erroneous. Thus, Appellants have failed  
16      to satisfy their burden of proof, and Respondent's  
17      proposed additional assessment -- proposed assessment of  
18      additional tax should be sustained.

19              Turning to the accuracy-related penalty, when  
20      Respondent imposes a penalty, the law presumes that the  
21      penalty was imposed correctly. The accuracy-related  
22      penalty was imposed pursuant to Revenue & Taxation Code  
23      section 19164 and Internal Revenue Code section 6662,  
24      which require a 20 percent penalty on an underpayment of  
25      income tax that is attributable to substantial



1 understatement of income tax, among other grounds.

2 A taxpayer has a substantial understatement of  
3 income tax if the amount of the understatement exceeds the  
4 greater of 10 percent of the tax required to be shown on  
5 the return for the taxable year or \$5,000. In this case,  
6 Appellants' understatement for tax year 2011 exceeds both  
7 of these thresholds. Although there are defenses to the  
8 accuracy-related penalty, Appellant has not raised any  
9 argument that the penalty should be abated. Since  
10 Appellant has failed to establish error in Respondent's  
11 proposed assessment and has failed to raise any grounds to  
12 abate the accuracy-related penalty, Respondent's action  
13 should be sustained.

14 Thank you.

15 HEARING OFFICER ELSOM: Thank you, Franchise Tax  
16 Board and Mr. Tuttle.

17 I'd like to turn this over to the panel now for  
18 any questions.

19 Judge Ralston, do you have any questions for  
20 Appellant -- or excuse me -- for the Franchise Tax Board?

21 JUDGE RALSTON: No questions. Thank you.

22 HEARING OFFICER ELSOM: And, Judge Kim, do you  
23 have any questions for the Franchise Tax Board?

24 JUDGE KIM: No questions for Respondent.

25 HEARING OFFICER ELSOM: Thank you.

At this point, I do not have any questions for the Franchise Tax Board either. And we're now going to turn this over to Appellant for Appellants' rebuttal or closing remarks.

Ms. Mason and Ms. Allen, you have 10 minutes, and you may begin your presentation when you are ready.

Go ahead and unmute your mic, Ms. Mason or Ms. Allen. Either one of you can begin if you have any rebuttal.

MS. MASON: I'm not muted.

## CLOSING STATEMENT

MS. MASON: I'm not muted.

My statements before were in answer to the two issues presented to me. I still stand on the decision that I made because of the fact that the matter didn't really get heard by the -- the Franchise Tax Board. They had no -- no participation whatsoever because they were not informed. However -- and it has been explained to me, and I did understand the presumption that the Franchise Tax Board maintains. But in all due respect, as Mrs. Allen stated, they -- they didn't have a voice. They didn't have a voice because of the representation and also because of the lack of communication.

And so I -- I look forward to -- even after

1 presenting the remainder of -- of the information that was  
2 due earlier, the outstanding exhibits will speak in a more  
3 clear and concise manner to the issues that are -- that  
4 remain, especially, in regards to the -- the determination  
5 of the amount of money that perhaps to some presumption  
6 consideration may be found. And by that, I mean reduce  
7 it. Find favor in the information that you will receive.

8 When I agreed to represent the Allens, I came  
9 from a whole different perspective. It was as if I was  
10 still being audited. And so I grasped the information  
11 that pertained to the audit. And as I -- as I said to  
12 prepare it, I just couldn't get it done because it really  
13 wasn't hitting the mark, so to speak, until recent. I  
14 understood that this was the final opportunity for them to  
15 at least obtain some favor from in the -- from the  
16 standpoint of the decision that has been made and accepted  
17 from the federal standpoint. They -- they didn't have a  
18 voice because they were led through counsel, who I -- I  
19 have whole respect for, in a -- in a direction that was  
20 totally argumentative.

21 It wasn't a situation where a resolution could be  
22 had. It took a New York settlement officer through  
23 summary judgment obtained through the United States Tax  
24 Court to have her judgment approved in an exorbitant --  
25 I'm embarrassed to state how much money they're out. That

1 was the opportunity that we responded to the audit for in  
2 the first place and could not reach a communicable level  
3 of understanding. So to me it's a travesty of justice  
4 that they have been -- that they've suffered the loss that  
5 they have.

6 And hopefully, when the exhibits that I did not  
7 send, since you've asked me to provide them and they will  
8 be, they are in a position or in the format that you would  
9 expect them to have been in if we were in an audit  
10 situation, so over again, trying to fight for the issues  
11 that they were entitled to at the onset of the first  
12 audit. There's information that I don't even need to  
13 mention because it's all over Instagram and everywhere.  
14 Congress even reprimanded the Internal Revenue because of  
15 the matter of treatment they were going about during the  
16 time of those two audits, 2020 and 2021. And now the  
17 Internal Revenue themselves have lifted the burden on  
18 people who qualify as real estate professionals without a  
19 license. Even the laws in the real estate industry have  
20 changed. Nothing is written in stone.

21 So I appeal to you in the best way I can, that  
22 you would extend your presumptive ability to look  
23 favorably upon the outcome of your decision.

24 Thank you.

25 HEARING OFFICER ELSOM: Thank you, Ms. Mason.

1 MS. MASON: You're welcome.

2 HEARING OFFICER ELSOM: Ms. Allen, did you want  
3 to add anything? You've got about three minutes left  
4 here.

5  
6 CLOSING STATEMENT

7 MRS. ALLEN: I don't know what I could say that  
8 would change the outcome, but I would like a fair  
9 assessment. I'm not saying that the Franchise Tax Board  
10 has not been fair. Maybe I am. But I would like it to be  
11 looked at in a fair manner, not just what the paper says,  
12 not just what the book says. But look at it, you know,  
13 fairly and know that we didn't do anything wrong. So if  
14 you can, if you will, just look at it fairly. Look at it  
15 from a human standpoint, not necessarily based on the  
16 words say this and this is what we go by. Look at it, you  
17 know, from your heart.

18 HEARING OFFICER ELSOM: Thank you, Ms. Allen.

19 At this point, I'd like to turn it over to our  
20 panel for questions for either Appellant or the Franchise  
21 Tax Board.

22 Judge Ralston, do you have any final questions  
23 for Appellant or Franchise Tax Board?

24 JUDGE RALSTON: No questions. Thank you.

25 HEARING OFFICER ELSOM: Judge Kim, do you have

1       any questions for either party?

2               JUDGE KIM:   No, thank you.

3               HEARING OFFICER ELSOM:   I do not have questions  
4       for either party.

5               I would like to provide Appellant the opportunity  
6       to provide these work papers that you referred to with  
7       regard to the IRS and their audit and also substantiation  
8       of cost related to any deductions that you believe you can  
9       prove or you attempted to prove at the time that weren't  
10      given the opportunity to.   And I'm going to issue a  
11      post-hearing order which will state the documents that  
12      you -- that we would like you to provide or give you an  
13      opportunity -- excuse me -- to prove -- to provide the  
14      exhibits you intended to provide.   Let me restate that.  
15      And we'll give you 30 days to provide those, and Franchise  
16      Tax Board will be given an additional 30 days to respond.

17              And with that, I believe we are ready to conclude  
18      the hearing.   I would like to thank the parties for their  
19      presentations today.   The panel of three here today will  
20      meet and decide the case based upon the arguments and  
21      evidence in the record.   We will issue our written  
22      decision no later than 100 days from today.

23              The case is submitted and the record is now  
24      closed.

25              This concludes the hearing for the Appeal of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Allen. Thank you.

(Proceedings adjourned at 10:45 a.m.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 24th day  
of February, 2025.

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