

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
IMPACT AUTOMATION, INC., ) OTA NO. 230312813  
 )  
 )  
APPELLANT. )  
 )  
 )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, February 20, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER



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APPEARANCES:

Panel Lead:	ALJ TOMMY LEUNG
Panel Members:	ALJ STEVEN KIM HEARING OFFICER ERICA PARKER
For the Appellant:	STEVE WARGO
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD  TOPHER TUTTLE MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received into evidence at page 7.)

(Department's Exhibits A-K were received into evidence at page 6.)

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California; Thursday, February 20, 2025

1:10 p.m.

JUDGE LEUNG: At this point, I'm going to go on the record.

And today's date is February 20th, 2025. It is approximately 1:10 p.m. This is the Appeal of Impact Automation, Docket Number 230312813.

Prior to today's hearing, the parties agreed to the following: No. 1, that this hearing be held electronically; No. 2, that the taxable years at issue is 2020; No. 3, the issues will be decided on whether the late-filing penalty and interest for the 2020 tax year are to be abated; and No. 4, the amount in controversy is \$37,178.75, and this is a refund appeal.

Sitting with me on the panel today are Hearing Officers Erica Parker and Steven Kim.

Will the parties please introduce themselves, starting with the taxpayer, Mr. Wargo.

MR. WARGO: Hello, everybody. I'm Steve Wargo. I'm calling you from Columbia, Maryland, between -- halfway between Baltimore and Washington. And it is about 30 degrees out, and we're enjoying this nice winter day.

Judge, you mentioned the \$37,000 penalty. At the time, the State has not presented me with the interest

1       owed on that penalty.

2               JUDGE LEUNG:   Okay.   We'll let the Franchise Tax  
3       Board address that when they start making their  
4       presentation.

5               MR. WARGO:   Very good.

6               JUDGE LEUNG:   So I just hold your horses.

7               MR. WARGO:   Sure.

8               JUDGE LEUNG:   For the Franchise Tax Board, please  
9       introduce yourselves.

10              MR. TUTTLE:   Hello.   My name is Topher Tuttle  
11       representing Franchise Tax Board.

12              JUDGE LEUNG:   Hello.   And --

13              MS. BROSTERHOUS:   And my name is Maria  
14       Brosterhous, also from the Franchise Tax Board.

15              JUDGE LEUNG:   Good afternoon, Ms. Brosterhous.

16              Mr. Wargo, we've agreed to have you -- oh, we've  
17       also -- prior to today's hearing, exhibits -- parties --  
18       the Franchise Tax Board had Exhibits A through K, and  
19       Impact Automation had Exhibits 1 through 5.   Neither party  
20       objected to each party's exhibits, and they are now being  
21       admitted into evidence, and that's part of the record.   So  
22       get that out of the way.

23              (Department's Exhibits A-K were received into  
24       evidence by the Administrative Law Judge.)

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

JUDGE LEUNG: Mr. Wargo, before you begin your  
presentation, please raise your right hand.

S. WARGO,

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

JUDGE LEUNG: Thank you. Okay. Mr. Wargo, you  
have 15 minutes for your presentation and 5 minutes for  
rebuttal, if desired. And, of course, there's no need for  
you to use all 15 minutes if you don't need it. So please  
begin at your pleasure.

MR. WARGO: All right. Thank you, Judge. If  
it's okay, I was going to share my screen. And I -- I  
just want to take the Board through the documents and the  
timelines on where -- what's happened and where we are  
right now.

JUDGE LEUNG: Of course. Like I said before,  
this is going live over the air. So --

MR. WARGO: Okay.

JUDGE LEUNG -- there you go.

MR. WARGO: Well, very good. I'm going to go

1 ahead and share my screen, and I'll just talk through --  
2 I'll talk through my position. Can everybody see a  
3 PowerPoint right now? The PowerPoint says, "Introduction:  
4 Steve Wargo, Columbia Maryland."

5 MS. BROSTERHOUS: Yes, we can.

6 MR. WARGO: Okay. Thank you. Thank you.

7

8 PRESENTATION

9 MR. WARGO: Okay. Well, greetings again from  
10 Maryland. My name is Steve Wargo. I'm a small business  
11 owner. I started Impact Automation with my wife in 2018,  
12 and I set off on a small business adventure. Just -- I'm  
13 an engineer by schooling. First in my family to go to  
14 college, and I don't mind paying my fair share of taxes.  
15 We live in a great country, and I need to pay my share  
16 just like everyone else. And I'm here by myself. There's  
17 no lawyer. There's no accountant. I'm just the taxpayer  
18 asking for forgiveness in light of the circumstances.

19 So I'll tell you my story. At the end there's  
20 really, I think, three reasons I'm making this appeal,  
21 and -- and those three reasons are -- are -- it really  
22 comes down to there was no willful intent. It was a very  
23 difficult business environment in 2020 and 2021 with  
24 COVID, and I'm asking for forgiveness. Because of this  
25 case, the California State held up my refund for 2021 for

1 almost two-and-a-half years. Took many, many phone calls  
2 and -- to get that released. And -- and that really un --  
3 that was really hard for us to be without that cash for  
4 those -- that period of time. So I'll tell you a little  
5 bit about what we do, and then I'll give you a timeline of  
6 where we were at.

7 So why is this Maryland guy and this Maryland  
8 company filing in California to begin with? What we do is  
9 we provide automation in those years to the U.S. Post, and  
10 we were working in Sacramento -- in west Sacramento trying  
11 to get the mail out of the building during COVID. So we  
12 had a large contract. We worked in California, in  
13 Sacramento, and we were trying to move that mail to the  
14 parcel sorting machines and then back out of the building  
15 so Californians can get their mail processed. And it was  
16 a very difficult time, and we were -- there were active  
17 cases of COVID in the plant, in the facility, but we were  
18 working and doing our installation to help move the mail.

19 This letter is one of our exhibits just to  
20 document that that's what we were doing in 2020, and that  
21 led to our -- in, 2021, that led to our tax filings. We  
22 shared with the Court this was the tax return we did file,  
23 and you will see January 2021st [sic]. That's when that  
24 was filed with the State of California. Taxes were due  
25 September 15th. This -- I got a -- I got a tax package

1 this thick from my accountants, an inch thick. On  
2 page 63 -- page 62 it said, hey, we've overpaid California  
3 that year, but that was on my 100S. I didn't see my 540NR  
4 which said I needed to send in a big check and the tax  
5 returns in September. This was overlooked. When I  
6 discovered it, we filed in January of 2021. We sent you a  
7 check, and we sent it FedEx because we wanted it there the  
8 next day. That -- the self-discovery and self-reporting,  
9 this is -- I had switched accountants. It's a new  
10 business, and those tax returns came in late.

11 We received a notice in February from the State  
12 that said -- and I can make this a little bit larger, but  
13 we -- we -- that we owed a total of \$259,000. They had  
14 processed, I guess, that tax return and said we are short.  
15 We started the appeal process -- or we started the  
16 discussion process with the State through our accountants  
17 in 2022 to try to come up with what do we actually owe  
18 and -- and so we can get this behind us. We also received  
19 a notice on -- in July -- I'm sorry -- July 12th. Now,  
20 the balance due said we owed \$169,000 from the state. So  
21 as July is going on, we've received that notice.

22 In September we got another notice from the state  
23 that said, hey, here's your penalty. Here's your  
24 interest. Here's the adjustments. You owe us \$14,000,  
25 and we said okay that seems reasonable. We paid that

1 immediately. So that was our second payment toward 2020.  
2 When we paid that balance, we definitely paid what we  
3 thought was the penalty and interest. And at that point,  
4 we applied for a refund, and we filled out your Reasonable  
5 Cause Form.

6 Just through the timeline -- I know it's not  
7 2020, but in September we paid what we thought was 2020.  
8 In October, the state said, hey, we've got a big refund  
9 coming your way for 2021. So we -- we called in and said,  
10 yup, that's our refund. This is a legit tax refund.  
11 We're a legit business. But this was held up for almost  
12 two-and-a-half years because -- I'm not quite sure all the  
13 details why, but that refund we expected that to be  
14 released, and it never was released until many, many calls  
15 and emails; and we had an advocate working on our behalf.  
16 So I don't know all the California laws, but I know that  
17 was not released to us for two-and-a-half years. And a  
18 small business, that's a lot of money that we're out.  
19 So -- so we did the appeal for 2020, and we -- we sent  
20 that in. That appeal was denied on 12/12 by the state.

21 February of 2023 the state said, hey, you've got  
22 a new balance due. We've just re-looked at your taxes,  
23 and you owe us \$157,000 now. Wow, I thought we were good  
24 in the summer but, obviously, we were not good. So we had  
25 a revised balance that came across. So paid our

1 accountants to look into this. And while we were doing  
2 that, in March we -- we appealed the decision that we  
3 couldn't receive an adjustment, and that's what let us to  
4 this meeting today.

5 So in February when the state said, hey, we don't  
6 have all the supporting details, we are not -- we think  
7 you owe us a lot of money. What did we do? We amended  
8 our return. We clarified some of the credits that we  
9 received and between that amendment in May, the appeal was  
10 assigned. Mr. Tuttle is now part of the -- you know, on  
11 the other side looking at this. And once that appeal was  
12 made, we asked the state to please consider, after the  
13 opening brief, our amended returns, which they did.

14 So that's where we are now. Mr. Tuttle is now  
15 computed what he thinks we now owe as a penalty. Our 2021  
16 refund, after lots of phone calls and 12 emails, finally  
17 got released. So now we're at the point of what do we  
18 really owe now that our amended returns have been  
19 reviewed, and all the damage is done. But -- so today,  
20 February 20th, 2025, I'm ready to get this behind us.  
21 Again, our -- my -- my request for an appeal -- a request  
22 for a waiver of penalty was that this was not willful  
23 intent. It was a difficult business environment and --  
24 during COVID and when those taxes were due. I missed  
25 page 63 of my tax return that said I needed to send it in

1 and write a check.

2 And we did undo a lot of hardship by not having  
3 that 2021 refund for two-and-a-half years. And that was  
4 tied to this appeal, but I'm not sure why it got held up  
5 and -- and the -- but why. But it definitely -- we've  
6 already suffered enough since the state has had that money  
7 for that period of time.

8 So that's my presentation on the timeline, and  
9 the documents to support what's happened. It was super  
10 frustrating and super expensive for me just to work  
11 through this, but now we're here today and I'm -- I'm  
12 ready for your decision.

13 What questions do you have?

14 JUDGE LEUNG: Thank you, Mr. Wargo.

15 Does the Franchise Tax Board have any questions  
16 for Mr. Wargo?

17 MR. TUTTLE: No questions. Thank you.

18 JUDGE LEUNG: All right. Go to my Co-Panelist.

19 Ms. Parker, any questions for Mr. Wargo?

20 HEARING OFFICER PARKER: I have no questions at  
21 this time.

22 JUDGE LEUNG: Okay. Mr. Kim, any questions for  
23 Mr. Wargo?

24 JUDGE KIM: No questions at this time.

25 JUDGE LEUNG: Okay. I also have no questions for

1 you, Mr. Wargo, at this time.

2 I'm going to let the Franchise Tax Board make  
3 their presentation. And if you please, Mr. Tuttle, please  
4 address what the amount at issue is and answer Mr. Wargo's  
5 question about does that \$37,178.75 include interest. So  
6 go ahead.

7 MR. TUTTLE: Thank you.

8 So to -- to first respond to the outstanding  
9 question about the interest. Franchise Tax Board does not  
10 have a calculated interest amount to -- to bring to this  
11 hearing today, but it is something we can calculate. It's  
12 a manual process for us to calculate since interest is  
13 ongoing, but we can calculate it and have it be presented  
14 in post-hearing briefing.

15

16 PRESENTATION

17 MR. TUTTLE: So to -- to my presentation, good  
18 afternoon. My name is Topher Tuttle, and I'm representing  
19 the Respondent, the Franchise Tax Board. With me is Maria  
20 Brosterhous, also representing Respondent.

21 At issue is whether Appellant has demonstrated  
22 reasonable cause to abate the delinquent filing penalty.  
23 In this case, Appellant did not file a group tax return  
24 for tax year 2020 on behalf of its shareholders, until  
25 January 15th, 2022. The original group tax return

1 reflected total tax of about \$240,000. Appellant filed an  
2 amended tax return on May 22nd, 2023, which reflected a  
3 lower total tax of about \$220,000. However, Appellant  
4 only made timely tax payments totaling \$72,000. Since the  
5 group tax return was due by May 17th, 2021, but was not  
6 filed until January 15th, 2022, Respondent properly  
7 imposed a delinquent filing penalty at the maximum rate of  
8 25 percent because the tax return was more than five  
9 months late. However, based on Appellant's amended  
10 return, the amount of the delinquent filing penalty has  
11 been reduced to about \$37,000.

12 A taxpayer has the burden of proof to show that  
13 reasonable cause exists to support abatement of the  
14 delinquent filing penalty. To establish reasonable cause,  
15 Appellant must demonstrate that the failure to timely file  
16 occurred despite the exercise of ordinary business care  
17 and prudence. In this case, Appellant admits that due to  
18 an oversight, the California group tax return for tax year  
19 2020 was not filed contemporaneously with the timely filed  
20 federal and Maryland state tax returns.

21 Unfortunately, an oversight or Appellant's lack  
22 of due diligence is not a basis for granting relief from  
23 the penalty. Thus, Appellant has failed to demonstrate it  
24 exercised ordinary business care and prudence and thus,  
25 has not demonstrated reasonable cause to abate the

1 delinquent filing penalty. Since Appellant has failed to  
2 establish reasonable cause, FTB's denial of Appellant's  
3 claim for refund should be sustained.

4 I'm happy to answer any questions the panel may  
5 have. Thank you.

6 JUDGE LEUNG: Thank you, Mr. Tuttle.

7 Ms. Parker, any questions for the Franchise Tax  
8 Board?

9 HEARING OFFICER PARKER: No, I do not have any  
10 questions. Thank you.

11 JUDGE LEUNG: Thank you.

12 Mr. Kim, any questions for the Franchise Tax  
13 Board?

14 JUDGE KIM: I have no questions. Thank you.

15 JUDGE LEUNG: Okay. Mr. Tuttle, something really  
16 quick. The \$37,178 and 75 cents, that's just the penalty  
17 itself; correct?

18 MR. TUTTLE: Correct.

19 JUDGE LEUNG: And so any interest would be on top  
20 of that?

21 MR. TUTTLE: Yes.

22 JUDGE LEUNG: And, of course, that interest, if  
23 the Impact Automation prevails, would be in addition to  
24 the \$37,178 and would be paid back to Impact Automation if  
25 it prevails?

1           MR. TUTTLE: Well, I will say that the  
2           outstanding balance, it is -- this is something FTB could  
3           respond to in additional briefing post hearing if desired.  
4           Although, we, I think, procedurally there's an issue here  
5           that the claim denial was issued before the revised  
6           penalty amount of \$65,000 was issued. And so the claim  
7           denial may have been on an amount that had not yet been  
8           paid. And so even though this is a claim for refund  
9           action, it may not have been paid in full. And that's  
10          something FTB could address in briefing, if requested by  
11          OTA.

12           JUDGE LEUNG: Okay. Now, you are confusing me.  
13          So is the proper amount in dispute the \$65,000 that you're  
14          talking about or the \$37,000?

15           MR. TUTTLE: So the part that is improper here is  
16          the amount that may have been paid or not. That's  
17          something FTB -- I cannot answer as we speak here now.  
18          What the -- the original penalty amount was \$65,000, but  
19          that's not -- that was the amounts at issue when this case  
20          was appealed is \$65,000. And FTB's position is that based  
21          on the amended tax return it should be reduced to \$37,000.  
22          That should be the amount of the delinquent filing  
23          penalty.

24           JUDGE LEUNG: Okay.

25           MR. TUTTLE: The reason interest is still

1 accruing, even though this is a claim for refund action,  
2 is that the claimed denial was issued prior to the  
3 calculation of the \$65,000 penalty. So the -- if you  
4 looked at the notices presented by Appellant, there was a  
5 notice that said the balance due was \$14,000, and that's  
6 the amount the Appellant paid and then filed a claim for  
7 refund. All of that occurred before FTB had calculated  
8 the delinquent filing penalty amount of \$65,000.

9 I'm sorry to muddy all of the issues. I --

10 MR. WARGO: That's not correct. I'm sorry.

11 JUDGE LEUNG: Oh, just hold on there. Mr. Wargo,  
12 you'll get your chance when you do your rebuttal. So I  
13 just want to have Mr. Tuttle focus on exactly what we're  
14 talking about here. And I remember the briefing said the  
15 amount in controversy is \$37,178 and 75 cents.

16 MR. TUTTLE: Yes, for the penalty amount.  
17 Correct.

18 JUDGE LEUNG: Yes. That's the only issue is  
19 penalty amount --

20 MR. TUTTLE: Yes.

21 JUDGE LEUNG: -- and that's just pure penalty.  
22 The 25 percent or whatever taxes owed on the late-filing,  
23 that's the \$37,178.75?

24 MR. TUTTLE: Correct.

25 JUDGE LEUNG: Okay. Now, regardless of whatever

1 \$65,000, that number really doesn't -- it's not relevant  
2 here -- correct me if I am wrong in this assumption --  
3 because that's not the amount in controversy.

4 MR. TUTTLE: Correct.

5 JUDGE LEUNG: You've agreed that the penalty is  
6 \$37,000.

7 MR. TUTTLE: Yes.

8 JUDGE LEUNG: Okay. And that's what the taxpayer  
9 has already paid, or no?

10 MR. TUTTLE: That -- that is the question that I  
11 cannot answer until we've done a further analysis of the  
12 amounts at issue.

13 JUDGE LEUNG: Okay. So --

14 MR. TUTTLE: It is not clear to me that the  
15 taxpayer has paid the full amount of the penalty.

16 JUDGE LEUNG: So you allow this claim to go and  
17 issued a denial notice to treat it as a claim, even though  
18 the taxpayer has not met the full payment required?

19 MR. TUTTLE: That -- that I cannot answer. That  
20 would require further development.

21 JUDGE LEUNG: Okay. So could you answer me --  
22 and I'm sure Mr. Wargo wants to know the answer to this  
23 question. Why did he get a bill for \$14,000 and not  
24 \$37,000?

25 MR. TUTTLE: That accounting is something that

1 FTB would like to address in further briefing.

2 JUDGE LEUNG: Okay.

3 MR. TUTTLE: Because I -- I don't -- I cannot  
4 explain it at this time.

5 JUDGE LEUNG: Okay. Mr. Wargo, I see you start  
6 your screen sharing, so I guess you're ready to go. Go  
7 ahead.

8 MR. WARGO: No. So in -- he did -- the state  
9 sent me a notice on 7/12 that said the penalty was  
10 \$65,000, which was 7/12 the penalty is \$65,000. Then on  
11 9/7 they sent me the penalty of \$35,000, but I had  
12 overpaid my tax. So my \$14,000 payment that went into the  
13 state covered the balance due, which included my interest  
14 and my penalty at that time. So since then -- and that's  
15 what I made my appeal off of. Since then, the numbers are  
16 different. Certain credits were not allowed or allowed  
17 through the amended return. But I mean, this record show  
18 that I paid \$239, and that I paid this balance of \$14,000.  
19 If you -- if you want run -- statement of my account, I  
20 paid both of these numbers. So --

21 JUDGE LEUNG: Okay. Mr. Wargo, I just want to  
22 remind you again that if you don't want certain  
23 confidential information to be shared over the air, you  
24 need to watch what you're sharing on your screen. So just  
25 a reminder for you.

1           Okay. So let me get this straight, Mr. Wargo.  
2           You got your bill for 14 grand. You overpaid your taxes,  
3           so you figure with your overpayment and \$14,000, you've  
4           fulfilled the whatever -- the \$35,000 that Franchise Tax  
5           Board finally sent you. Now, did the amended return get  
6           filed after the \$14,000 was paid in? Is that what  
7           happened?

8           MR. WARGO: That's correct.

9           JUDGE LEUNG: So then the amended return gets  
10          filed, and then Franchise Tax Board makes more  
11          adjustments, and then they come up with another number.

12          MR. WARGO: That's right.

13          JUDGE LEUNG: Let me ask you this, Mr. Wargo. Is  
14          it your position that the -- that the penalty could be no  
15          more than the \$37,178?

16          MR. WARGO: I think both of us agree that it  
17          could be no more than that number.

18          JUDGE LEUNG: Mr. Tuttle, is that correct?

19          MR. TUTTLE: That's correct.

20          JUDGE LEUNG: Okay. So whatever adjustments come  
21          out of that amended return, the penalty is going to be  
22          \$37,178.75 plus interest.

23          MR. TUTTLE: Correct.

24          JUDGE LEUNG: Okay. And, Mr. Wargo, the  
25          overpayment you had, was it approximately \$21,000? I

1 mean, you're saying \$14,000 and the bill was for about,  
2 you know, 35 grand. So I'm doing very rough math, 35  
3 minus 14, so would that -- with the overpayment would have  
4 been 30 -- would have been \$21,000. Is that about right?

5 MR. WARGO: So this statement had a balance due.  
6 Yeah, that's correct of 21 -- well, it's probable \$24,000  
7 because it included the interest, maybe \$25,000.

8 JUDGE LEUNG: Okay. Okay. Gotcha. Okay. I'm  
9 going to go to my co-panelists.

10 Ms. Parker, do you have any questions for the  
11 parties?

12 HEARING OFFICER PARKER: I would like to ask FTB  
13 a quick question regarding that original \$65,000 penalty  
14 that was assessed. Is it fair to say -- when I reviewed  
15 the exhibits that were provided, it appears that an  
16 original \$72,000 payment was not applied to their account,  
17 so that's what triggered the higher \$65,000 original  
18 penalty. But after some phone calls that we can see in --  
19 I think it was in some logs -- or somehow it did get  
20 resolved, and that's what lowered it to a \$35,000; is that  
21 correct?

22 MR. TUTTLE: That is part of it, yes. So the  
23 original \$65,000 penalty was calculated on unpaid tax,  
24 which included, basically, two large adjustments. One is  
25 the \$72,000 tax payments that were later credited to

1 Appellant's account. The other was a research credit that  
2 had been claimed on the original return but was denied.  
3 In the amended return, that research credit has -- you  
4 know, FTB has accepted it as reported on the amended  
5 return. So those two adjustments are what lowered the  
6 amount of unpaid tax as shown on the amended return.

7 HEARING OFFICER PARKER: And that \$72,000 payment  
8 is being considered timely. It looked like it was  
9 maybe -- it was credited to the wrong account. Is that  
10 accurate?

11 MR. TUTTLE: The payment has been correctly  
12 applied and is considered timely, which is why the penalty  
13 amount -- that's part of why the penalty amount has been  
14 reduced.

15 HEARING OFFICER PARKER: Okay. And then the  
16 final amended return that we now have, that you've  
17 accepted that has generated the \$37,000 penalty, that was  
18 submitted after the appeal started?

19 MR. TUTTLE: Correct.

20 HEARING OFFICER PARKER: And it increased. The  
21 taxpayer self-reported an increased tax liability?

22 MR. TUTTLE: The amended return had about \$20,000  
23 decreased tax liability from the original return.

24 HEARING OFFICER PARKER: Yet, the penalty was  
25 higher?

1 MR. TUTTLE: The penalty calculated on the  
2 amended tax return is lower.

3 HEARING OFFICER PARKER: When you adjusted the --  
4 when you originally adjusted the penalty amount to  
5 \$35,000, that notice that was dated September 12th said  
6 that the tax was \$214,000.

7 MR. TUTTLE: That is before the amended return.

8 HEARING OFFICER PARKER: Yes. And that's what  
9 the \$35,000 penalty was based off of. And then the  
10 amended return, unless I'm looking at the wrong amendment  
11 penalty return -- I'm looking at Exhibit K. Is that not  
12 the amended return?

13 MR. TUTTLE: That is the amended return.

14 HEARING OFFICER PARKER: Okay. And on that one  
15 the total tax is \$220. So it went up, did it not?

16 MR. TUTTLE: So the --

17 HEARING OFFICER PARKER: Oh, the research  
18 credits. That's the part you're talking about.

19 MR. TUTTLE: There were two --

20 HEARING OFFICER PARKER: So --

21 MR. TUTTLE: There were two large adjustments.

22 HEARING OFFICER PARKER: So the unpaid tax went  
23 down --

24 MR. TUTTLE: Yes.

25 HEARING OFFICER PARKER: -- after all of your --

1       okay. Thank you. That clarifies that in my head.

2               JUDGE LEUNG: Judge Kim, questions for either  
3 party?

4               JUDGE KIM: I have no questions to add. Thank  
5 you.

6               JUDGE LEUNG: Okay. So I'm going to go back to  
7 this amended return. So it sounds like, Mr. Tuttle, that  
8 the Franchise Tax Board has not finished going through the  
9 amended return and figure out what the final penalty  
10 should be. Does that sound about right?

11              MR. TUTTLE: I'm sorry if I've misrepresented  
12 that earlier. The Franchise Tax Board has accepted the  
13 amounts reported on the amended tax return for purposes of  
14 this appeal. And in our reply brief, we calculated the  
15 penalty that is due based on the figures in that amended  
16 tax return. The \$37,000 penalty is what FTB sees as the  
17 correct amount of penalty based on the most, you know, the  
18 latest information in that amended tax return.

19              JUDGE LEUNG: And that's pure penalty. There's  
20 no interest.

21              MR. TUTTLE: That's only penalty. That does not  
22 reflect the interest.

23              JUDGE LEUNG: So I think I'm maybe circling it  
24 back to Ms. Parker's question. If the amended return  
25 resulted in a reduction of tax, and the original notices

1       stated that the penalty was about 35 grand, wouldn't that  
2       35 grand be reduced because of the amended return?

3               MR. TUTTLE:  And that's -- that's the issue that  
4       FTB would like to address is the accounting of each of  
5       those notices, and when they -- remember there are two  
6       large adjustments that happened in the interim.  We have  
7       the \$72,000 payment that was reported on the original  
8       return, but FTB did not immediately apply.  That was  
9       corrected and later applied, which reduced the penalty.  
10      Then there was a research credit on the original return  
11      that was denied but not fully substantiated.  That was  
12      corrected in the amended tax return.

13              So there are several steps in the interim between  
14      the original filing and the amended tax return that  
15      changed the numbers that are showing on these notices.  So  
16      the largest amount of the delinquent filing penalty was  
17      the \$65,000.  At one period, that was the amount of the  
18      penalty.  Based on all of the changes that have happened  
19      between the beginning and end of, you know, these -- the  
20      original return and the amended tax return, the current  
21      amount of the penalty, based on the latest numbers, is the  
22      \$37,000 amount.

23              JUDGE LEUNG:  Okay.  And how much time do you  
24      anticipate you would need before you provide OTA with  
25      final-final numbers?

1           MR. TUTTLE: So the numbers at issue that we've  
2 discussed are the final numbers. What is not final is  
3 what the snapshot was at the time each notice was issued.  
4 We don't have a -- a clear chart that shows why the  
5 \$35,000 showed in the September 12th notice, and why in  
6 the July notice there was a \$65,000. It's the -- those  
7 snapshots are the ones that we don't have a clear  
8 reconciliation for in the record. The current record is  
9 complete for the -- the final numbers.

10           We know that the Appellant and FTB both recognize  
11 that the amended return is correct, and we're going to  
12 calculate the penalty based on the amended return figures.  
13 So that means the only issue remaining is whether the  
14 delinquent filing penalty was properly imposed based on  
15 the late-filed original tax return. And the amount of the  
16 penalty, both parties agree, is no more than the \$37,000  
17 amount we've discussed.

18           JUDGE LEUNG: Okay. But if the amount should  
19 turn out to be less, based on your analysis post hearing,  
20 then you would have to refund some of that back to the  
21 taxpayer of that \$37,000, correct?

22           MR. TUTTLE: I -- again, I'm sorry if I'm not  
23 explaining. The \$37,000 is the final number. That's not  
24 going to change. We -- FTB stands by its position that  
25 it's properly calculated, that the delinquent filing

1 penalty at that \$37,000. What may not be clear in the  
2 record is why there were different penalty amounts at  
3 different stages of the appeal. When the notices were  
4 issued, in the record, there are different penalty  
5 amounts. And I -- it would take more analysis to explain  
6 why it was \$65,000 for awhile. Why was it \$37,000 -- or  
7 \$35,000 a year. That could still be reconciled, but it is  
8 not germane not to -- the ultimate decision is we have the  
9 correct penalty in front of us now.

10 JUDGE LEUNG: We can decide among ourselves,  
11 among the panel members what is germane --

12 MR. TUTTLE: Sure.

13 JUDGE LEUNG: -- and not germane.

14 MR. TUTTLE: Yes.

15 JUDGE LEUNG: But going back to one of my  
16 original questions. How much time would you need to  
17 reconcile?

18 MR. TUTTLE: FTB could have a full accounting  
19 within 30 days.

20 JUDGE LEUNG: Okay. Mr. Wargo, do you have  
21 anything you wish to add?

22 MR. WARGO: Just a couple of things.

23 JUDGE LEUNG: Yes.

24 ///

25 ///



1 JUDGE LEUNG: Well, Mr. Wargo --

2 MR. WARGO: I don't think that's right.

3 JUDGE LEUNG: -- if I may alleviate your,  
4 concern, this is a refund claim. So any interest that  
5 accrues will be going back to you. You would not be  
6 charged anymore because you've paid it.

7 MR. WARGO: I have no idea what my balance is on  
8 my account.

9 JUDGE LEUNG: Well, Mr. Tuttle, does he still owe  
10 you guys money?

11 MR. TUTTLE: That's the question that I can't  
12 answer. I don't know. Based -- based -- based on the  
13 timing of the notices, at the time that he paid the  
14 \$14,000, and we issued a claim refund denial, I would --  
15 that's -- that's what remains unknown to me is that this  
16 has been paid in full without that accounting.

17 JUDGE LEUNG: Okay.

18 MR. WARGO: I still don't understand how I called  
19 in October of 2022 saying, please refund my 2021 tax  
20 returns, how this got muddied where that couldn't get  
21 released because of my appeal or my denial. Once the  
22 denial was done, once you denied my -- my claim in  
23 December, why didn't you release me my money? Why -- why  
24 did it take two-and-a-half years for that to happen?

25 JUDGE LEUNG: Mr. Wargo, the 2021 year is not in

1 front of us. So that's something that you might want to  
2 pick up with the advocate at Franchise Tax Board. But at  
3 this point, we're concerned with the 2020 year.

4 And I think at this point, I'm going to back and  
5 discuss further with my co-panelists. I think we're going  
6 to keep the record open. At least in my mind, if not in  
7 the minds of my co-panelists, we're thinking of a  
8 additional briefing; 30 days for Franchise Tax Board,  
9 30 days for you to reply, Mr. Wargo, and then 30 days for  
10 Franchise Tax Board if they want to reply to that. We  
11 will let you folks know, after we deliberate after this  
12 hearing, what our plans are. At this point, I'm not  
13 confident that we have a complete record and -- at least  
14 what the amount is, what the status is for this case. So  
15 I'm going to hold this hearing open -- hold the record  
16 open, and we will be adjourned. And we'll get back to you  
17 a written order letting you folks know whether the record  
18 has been closed so we can make a decision, or we keep the  
19 record open and ask for additional briefing.

20 Any -- any other concerns, Mr. Wargo?

21 MR. WARGO: I just -- I have -- I run a business.  
22 I've got 50 employees. This is not what I do for a  
23 living. I want to get this behind me.

24 JUDGE LEUNG: Understood.

25 Mr. Tuttle, any questions for us?

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MR. TUTTLE: No. Thank you.

JUDGE LEUNG: Okay. We are adjourned.

And I don't believe there are anymore cases this afternoon. So OTA will get back to the parties with additional correspondence to follow.

Thank you.

(Proceedings adjourned at 1:52 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 17th day of March, 2025.

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