

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. WICKLUND and A. TAM,) OTA NO. 230813998
)
 APPELLANTS.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, March 19, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 2:21 p.m. and concluding at 3:01 p.m. on
Wednesday, March 19, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ MICHAEL F. GEARY

Panel Members: HEARING OFFICER ERICA PARKER
ALJ SHERIENE ANNE RIDENOUR

For the Appellants: J. WICKLUND
A. TAM
THOMAS MICHEL

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 1-5 were received into evidence at page 7.)

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

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	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
J. Wicklund	9	13	19	

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California; Wednesday, March 19, 2025

2:21 p.m.

JUDGE GEARY: Ms. Alonzo, let's start our record.

And I will begin by asking the parties to identify themselves by stating their names and who they represent, beginning with Appellants.

MR. MICHEL: This is Thomas Michel representing Appellants.

JUDGE GEARY: Thank you.

Respondent.

MS. HO: This is Vivian Ho, along with my Co-Counsel Maria Brosterhous for Respondent.

JUDGE GEARY: Thank you.

And it's my understanding, Mr. Michel, that Mr. Wicklund will be testifying today; is that correct?

MR. MICHEL: That's correct, yes.

JUDGE GEARY: All right. Will Respondent be calling any witnesses today?

MS. HO: No witness. Thank you.

JUDGE GEARY: All right. Thank you.

The exhibits marked for identification in this appeal consist of Appellants' exhibits marked 1 through 5 for identification, and Respondent's exhibits marked A through N for identification. The parties provided copies

1 of the exhibits to each other and to OTA, and those were
2 incorporated into an electronic hearing binder, which
3 should be in the possession of the parties.

4 Let me ask you first, Mr. Michel. Has Appellant
5 confirmed that Appellants' exhibits incorporated into the
6 binder are complete and as legible as the ones you
7 submitted?

8 MR. MICHEL: Yes. They are.

9 JUDGE GEARY: Thank you.

10 And has the Respondent also done that?

11 MS. HO: Yes.

12 JUDGE GEARY: Thank you.

13 The parties were instructed to state objections
14 to the proposed evidence in writing, and neither party has
15 done that. But Appellant disclosed proposed Exhibits 4
16 and 5 late, so I will give FTB an opportunity to state
17 objections to those document now.

18 Does Respondent have any objection to the
19 admission of Appellants' Exhibits 1 through 5?

20 MS. HO: No objections.

21 JUDGE GEARY: Thank you.

22 Does Appellant have any objection to the
23 admission of Respondent's Exhibits A through N?

24 MR. MICHEL: No objections.

25 JUDGE GEARY: Thank you. All of those exhibits

1 are now admitted into OTA's record.

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

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

6 JUDGE GEARY: It has been agreed by the parties
7 that the sole issue to be decided in this appeal is
8 whether Appellants are entitled to abatement of the
9 late-payment penalty in the amount of \$1,968.14.

10 Mr. Michel, do you agree that is the issue that
11 is being submitted to OTA, or will be submitted to OTA for
12 consideration?

13 MR. MICHEL: That's correct.

14 JUDGE GEARY: Ms. Ho, do you also agree?

15 MS. HO: Yes.

16 JUDGE GEARY: Thank you.

17 As discussed, during our prehearing conference,
18 it was agreed that Appellants would have 20 minutes for
19 its opening statement or their opening statement and
20 witness examination. Respondent requested and will be
21 given t10 minutes for its only argument, and Appellants
22 will have roughly 5 minutes for closing remarks.
23 Appellants may structure their testimony and argument
24 components of their opening presentation however they
25 wish, and we'll begin with that in just a minute.

1 But first let me ask if there's any questions
2 from the parties or their representatives about how we're
3 going to be proceeding today. Seeing none, I'll begin by
4 administering an oath to Mr. Wicklund.

5 Mr. Wicklund, would you raise your right hand
6 please. And tell me when you've done that because your
7 picture is not currently displayed on the screen.

8 MR. WICKLUND: I have done that.

9
10 J. WICKLUND,
11 produced as a witness, and having been first duly sworn by
12 the Administrative Law Judge, was examined, and testified
13 as follows:

14
15 JUDGE GEARY: Thank you. You can put your hand
16 down.

17 And, Mr. Michel, you can begin with your
18 presentation. I don't know if you intend to offer some
19 argument first, but, like I said, you can structure your
20 presentation any way you want, and you can begin now.

21 MR. MICHEL: Thank you, Judge.

22 The Appellants will start their presentation with
23 a question and answer segment as the testimony from
24 Mr. Wicklund.

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Q Now, Mr. Wicklund, how long have you been paying California taxes?

Q And what method did you use to pay California
s before the 2021 tax year?

Q Okay. And have you ever had any issues
during those payments through FTB Web Pay before 2021
year?

Q And when -- when did you first try to pay your
s for 2021?

Q Okay. And how do you normally input your banking information to do that?

Q Thank you. And did you pay the IRS at the same

1 time you paid your state liability?

2 A I did.

3 Q Okay. And when you entered your banking
4 information into the FTB Web Pay and submitted it, was
5 there any screen or notice suggesting that anything had
6 gone wrong with your scheduled payment?

7 A No, nothing at all.

8 Q And would you have expected some kind of notice
9 like that?

10 A I would have. Yeah. I -- I would assume that
11 their bill pay system would probably be like any other
12 where when I make an online purchase or debit, you know,
13 that it not allow me to submit, essentially, if there's
14 going to be any kind of error in one of the payment
15 fields.

16 Q All right. Thank you. And after that day, did
17 you receive anything else from the FTB suggesting that
18 the -- the payment had been successful?

19 A About -- I think about two weeks later I received
20 a written notice.

21 Q And what did that notice say?

22 A I actually brought it with me. It says, "Why you
23 receive this notice. You recently made an estimated tax
24 or extension payment for more than \$20,000." And then it
25 continues to go on, and then it basically mandates that

1 moving forward I'll have to use the electronic payment
2 system. So it says because I now meet the requirements
3 for future payments to be done electronically.

4 Q And how did you interpret that notice when you
5 first got it?

6 A Yeah. I mean, I just assumed that this was just
7 further confirmation that they received my funds, asking
8 me to make future payments electronically. Yeah. This to
9 me was just kind of validation.

10 Q All right. And when did you learn after that
11 that the FTB had not actually received your scheduled
12 payment?

13 A They -- they sent the letter. I think it was
14 postmarked the end of June. We got it the very first week
15 of July, you know, sharing that the payment was
16 delinquent.

17 Q And then after you received that notice, when did
18 you pay the FTB?

19 A As soon as possible. When we got the notice, we
20 called FTB first to find out what was happening, because
21 it's quite confusing to get a delinquency; to find out why
22 there's a penalty; what we're supposed to do for next
23 steps. And we were informed to make the payment,
24 including the penalty payment, which we did promptly. And
25 then we started the appeals process.

1 Q Okay. Now, taking a step back to when you
2 actually input that information the first time. Exhibit O
3 shows -- from the FTB, shows that a different routing
4 number was used for your first scheduled payment compared
5 to your last scheduled payment. Do you know how that
6 could have happened?

7 A I have no idea. You know, the best solution I
8 can come up for is like when you Google search Chase Bank
9 routing number. Maybe it defaults to the state that
10 you're currently -- that your IP address is currently in.
11 When I asked Chase Bank about, like, if that would matter,
12 the feedback that I got is it shouldn't matter because the
13 routing number will always bring you back to the bank.
14 It's the account number that is most important. So, yeah.
15 I -- I had no expectation from this that, like, the FTB
16 would not be attempting to take the funds, more or less.

17 Q Okay. And then do you know if you used that same
18 routing number to pay your federal tax liability?

19 A I did. And that's -- that's the confusing thing.
20 It's a copy and paste exercise for me. So when I'm making
21 both those payments, I'm also pulling in the same routing
22 number for the federal IRS as I was for -- for California.

23 Q And then was there any issue with that payment to
24 the IRS?

25 A There was not.

1 MR. MICHEL: All right. Well, thank you.

2 Those were all my questions for Mr. Wicklund. So
3 I will move onto my argument after just one second.

4 MR. MICHEL: First, I would like to thank the OTA
5 Judges for hearing this appeal today.

6 JUDGE GEARY: Mr. Michel, let me just interrupt
7 you for a second, if I may.

8 MR. MICHEL: Oh, yeah. Sure.

9 JUDGE GEARY: Do you want the panel or FTB to ask
10 questions of the witness now, or is it your preference
11 that the questions for the witness be reserved until you
12 give your argument?

13 MR. MICHEL: The questions could be presented
14 now.

15 JUDGE GEARY: All right. Let me first ask FTB,
16 Ms. Ho, do you have any questions for the witness?

17 MS. HO: Yes.

18

19 CROSS-EXAMINATION

20 BY MS. HO:

21 Q Mr. Wicklund, you testified that you obtained
22 your routing information by Googling. Did you obtain
23 official source for your routing number from your bank's
24 website or other sources that's affiliated with the bank?

25 A That's a good question. Thanks for asking. I --

1 I don't know what the source was at the time. I just know
2 that the routing number worked for the federal payment but
3 not the California payment.

4 Q Okay. And you mentioned that you confirmed with
5 a banker that both routing numbers will work. Did you
6 confirm at the time you made the payment, or was it a
7 confirmation you made for your appeal?

8 A I'm so sorry. Can you repeat that again? It got
9 a little bit quiet.

10 Q Sure. You said that you confirmed with a banker
11 at your financial institution that the -- either routing
12 number would have worked. Did you confirm for this
13 appeal, or did you confirm at the time you made the
14 payment with the banker that either routing numbers would
15 work?

16 A No. I just confirmed it after we received the --
17 the evidence. And I don't know what document you provided
18 recently about what routing numbers were used and, like,
19 that there was a difference in routing numbers. And so
20 this was a question I just asked between last week and
21 this week of our personal banker of does it impact. I
22 don't know if that answers your question. I apologize.

23 Q Yes, it does.

24 A Okay.

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

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JUDGE GEARY: Thank you.

Let me ask my co-panelist.

Ms. Parker, do you have a question?

HEARING OFFICER PARKER: I have no question at this time.

JUDGE GEARY: Thank you.

Ms. Ridenour, do you have any questions?

JUDGE RIDENOUR: I just want to clarify the record. Were you speaking about Exhibit N as opposed to Exhibit O?

MR. MICHEL: Oh, yes. I apologize. That was -- that is Exhibit N.

JUDGE RIDENOUR: Okay. I'm going to hold off my questions for this moment. Thank you.

JUDGE GEARY: You're welcome.

I think I might just ask a question or two now, Mr. Wicklund. Looking at Exhibit N, it looks like there were other uses by you of the Web Pay system in addition to the one that failed on April 15th, 2022. There was one that was successful. It looks like on July 6th, 2022. And there was another one that was successful on August 6th, 2022, and those two use a different routing number. How did you get the routing numbers when you made those payments?

MR. WICKLUND: Thank, Your Honor. It -- it's the

1 same process for me, Google search. I can't explain the
2 differences, other than I know I was in Washington State
3 for one payment, and I know I was here in California for
4 the summer payments or vice versa. So I don't know if
5 that provides any clarity to the -- to the panel.

6 JUDGE GEARY: Do you mean that you were in the
7 State of Washington when you did the Google search? Is
8 that what you're saying?

9 MR. WICKLUND: That what I'm -- that's my only
10 possible explanation is the IP address is in Washington
11 and so the preemptive response is going to be based on the
12 state I'm in, but I -- this is just me guessing how Google
13 is working behind the scenes.

14 JUDGE GEARY: When you use the Web Pay system for
15 FTB, when you used at the time of the failed payment in
16 April of 2022, were there -- was there any information
17 provided to you, the user, regarding verification -- a
18 need for verification to make sure that the electronic
19 transfer, in fact, took place?

20 MR. WICKLUND: Do you mean some kind of
21 submission acceptance page?

22 JUDGE GEARY: Something to tell you -- some
23 script to tell you that you should be diligent to make
24 sure that your bank actually transferred the money after
25 you completed the online work.

1 MR. WICKLUND: Yeah, Your Honor, the -- the --
2 the carefully selected language, I think, has become more
3 clear and evident, you know, after the fact. But at the
4 time when making the payment, there was no suggestion to
5 me that my payment wasn't being accepted.

6 JUDGE GEARY: Tell me about this language that
7 has become more clear and evident to you after fact. What
8 is the language that you are thinking of when you say
9 that?

10 MR. WICKLUND: Yeah, of course. The -- I think
11 it's the OTA -- or excuse me -- the Franchise Tax Board.
12 And I apologize if I get this wrong. I think that during
13 the appeals process, it's their argument that it's my
14 responsibility to check my bank account to make sure funds
15 are withdrawn. And that is the language I'm thinking
16 about, Your Honor.

17 JUDGE GEARY: What I was asking is if there was
18 any language to that effect that was displayed on your
19 screen at the time that you attempted to make the payment.

20 MR. WICKLUND: I see. I honestly can't recall.

21 JUDGE GEARY: Okay.

22 MR. WICKLUND: If I'm under oath, I can't recall.

23 JUDGE GEARY: All right. You don't use checks to
24 make any payments of any kind?

25 MR. WICKLUND: You know, the reason why I know my

1 account number so well is I've had it since I was a
2 teenager. And I used it to balance my checkbook and be
3 diligent, but I think that I've just fallen into that trap
4 of everyone else and everything is electronic now. If
5 I -- If I need a check nowadays, I have to go to the bank
6 and ask for a check.

7 JUDGE GEARY: Okay.

8 MR. WICKLUND: Yeah.

9 JUDGE GEARY: Thank you, Mr. Wicklund. Those are
10 the only questions I have at this time.

11 Mr. Michel, I suppose I should just make sure.

12 Ms. Ho, any other questions for this witness?

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

14 JUDGE GEARY: Ms. Parker, any questions for this
15 witness?

16 HEARING OFFICER PARKER: No. I have no
17 questions.

18 JUDGE GEARY: And, Ms. Ridenour, any questions?

19 JUDGE RIDENOUR: Not at this time. Thank you.

20 JUDGE GEARY: Thank you.

21 Mr. Michel, I think you can now resume your
22 argument.

23 MR. MICHEL: Judge, if I may, may I ask one more
24 question of Mr. Wicklund --

25 JUDGE GEARY: Of course.

1 MR. MICHEL: -- in response to Ms. Ho's question?

2 JUDGE GEARY: Of course.

3

4 REDIRECT EXAMINATION

5 BY MR. MICHEL:

6 Q Mr. Wicklund, at the time that you first made
7 that payment for 2021 tax year, did you have any reason to
8 confer with your banker whether or not using different
9 state's routing number would effect the payment?

10 A No. I've never had this issue before.

11 MR. MICHEL: All right. Thank you. That was my
12 only question.

13 JUDGE GEARY: All right. You may proceed with
14 your argument.

15

16 PRESENTATION

17 MR. MICHEL: Okay. Well, again, I would like to
18 thank the OTA Judges for hearing this appeal today.

19 Now, this case is about responsible taxpayers who
20 did their due diligence by paying their taxes on time or
21 trying to but are, nonetheless, facing penalties. I will
22 discuss why the late-payment penalty imposed on Appellants
23 should be abated due to reasonable cause under Revenue &
24 Taxation Code section 19132(a)(1). Now, under this
25 section, late-payment penalty may be abated if failure to

1 pay the tax was due to reasonable cause and not due to
2 willful neglect. Willful neglect was defined in United
3 States v Boyle as a conscience intentional failure or
4 reckless indifference.

5 According to case law, to establish that a
6 failure to timely pay taxes was due to reasonable cause,
7 the taxpayer must show that the failure occurred despite
8 the exercise of ordinary business care and prudence. Now,
9 Mr. Wicklund's testimony shows that Appellants met the
10 reasonable cause standard, and that they acted as an
11 ordinarily intelligent and prudent business-person would
12 have in similar circumstances.

13 First, the Appellants had good compliance
14 history. They followed a similar routine they had used in
15 previous years, which had never before resulted in any
16 issues; and they received no indication from their bank or
17 the FTB that anything had gone wrong. Second, any
18 suspicion Appellants may have had about the FTB not
19 securing their funds was precluded by the mandatory
20 electronic payment notice sent to them by the FTB.

21 To my first point, the Appellants carefully
22 calculated their tax liability for the 2021 tax year and
23 ensured they had deposited enough funds in their bank
24 account to pay both their federal and state taxes. Once
25 the Appellants submitted their 2021 state tax return and

1 entered their payment information into the FTB Web Pay
2 system, there was no indication that the FTB would not
3 secure their funds exactly as they had in previous years.
4 Respondent contends that despite these facts, the
5 Appellants did not demonstrate ordinary business care and
6 prudence because taxpayers are expected to monitor their
7 business account -- their bank accounts.

8 To support this assertion, the Respondent cites
9 Appeal of Scanlon and Appeal of Friedman. However,
10 Appellants' circumstances are unlike the circumstances in
11 those cases. In Scanlon, the panel held that reasonably
12 prudent taxpayers would monitor their bank account and
13 quickly ascertain whether a payment was, in fact, made.
14 But when exactly a taxpayer is expected to monitor their
15 bank account is unclear. While immediately monitoring the
16 account would be the most cautious approach, the panel, in
17 Appeal of Moren, held that the most cautious approach is
18 not the only reasonable and prudent approach. In Scanlon,
19 the taxpayers learned of their failed payment eight months
20 after the payment was due.

21 Appellants here instead, learned of their failed
22 payment and promptly paid the amount due after about
23 two-and-a-half months. Moreover, the taxpayer in Scanlon
24 failed to show proper prudence because they entered an
25 incorrect bank account number into FTB Web Pay. A mistake

1 they had made in a previous year as well. The Appellants
2 here made no such mistake, much less a repeat mistake.

3 While Appellants entered different routing
4 numbers between their two payments, Exhibit 4 shows the
5 routing number used for the April 15th payment is Chase
6 Bank's correct California routing number. Although
7 Appellants' Chase Bank account was opened in Washington,
8 Appellants successfully identified Chase Bank with a
9 correct routing number. And so they would have reasonably
10 expected their payment to succeed. Exhibit 5, an email
11 between Appellant and his personal banker at Chase, shows
12 that even a professional banker would have expected FTB to
13 be able to secure the funds with any Chase Bank routing
14 number.

15 Further, since Wicklund -- since Mr. Wicklund is
16 convinced he must have used the same routing number to pay
17 his federal taxes, there was no issue with that payment.
18 There's likely some factual foundation to that belief.
19 Therefore, Appellants reasonably believed they did not
20 enter any incorrect information into FTB Web Pay. And so
21 they showed the correct amount of prudence necessary to
22 meet the reasonable cause standard.

23 Respondents also rely on Appeal of Friedman where
24 the panel held that the failure to timely remit the
25 balance on a tax liability caused by an oversight does not

1 by itself constitute reasonable cause. However, as I just
2 explained, there was no oversight by Appellants. Given
3 the information Appellants entered into FTB Web Pay, any
4 reasonably prudent business-person would have expected the
5 payment to go through.

6 Additionally, there were other factors which
7 indicated to Appellants that there was no reason to check
8 their bank account, which leads me to the second point
9 that less than two weeks after Appellants' scheduled
10 payment and before the end of the month, Respondent issued
11 a mandatory electronic payment notice to the Appellant.
12 This e-pay notice listed two triggering conditions for why
13 it was sent: The first, that you recently made an
14 estimated tax or extension payment for more than \$20,000;
15 and then the second, that you filed the tax return with
16 the total tax liability of over \$80,000. Appellants had
17 planned a payment of \$30,634, and reported a tax liability
18 of \$105,178. Meaning, they expected to fall into both
19 triggering conditions. Appellants interpreted this notice
20 as evidence that their payment to FTB had been successful,
21 and so they had no reason to believe they needed to
22 further ensure the FTB had secured their funds.

23 Now, Respondent contends that the e-pay notice is
24 not relevant since Appellants only fell into the second
25 triggering condition relating to total tax liability, and

1 that the notice was not meant to confirm the payment.
2 However, a reasonable cause analysis only depends upon how
3 a reasonable and prudent businessperson would have
4 interpreted the notice and not the reality of why it was
5 sent. The notice clearly states that one of its
6 triggering conditions is that a payment was made by the
7 taxpayer. An ordinarily intelligent and prudent
8 business-person would understand that processing a payment
9 is faster than processing a return. Therefore, the
10 reasonable conclusion is that the FTB already knew whether
11 the payment had failed when the notice was sent, even if
12 only the second triggering condition was met.

13 This reasonable assumption is supported by the
14 reality of the events. Exhibit E shows Respondent's
15 system had already flagged Appellants' payment as
16 dishonored the day before the e-pay notice was issued.
17 The taxpayer would find it entirely unlikely that the FTB
18 would send a notice about how to pay future tax liability
19 when it already knew that the payment for the current year
20 already failed. In such a case, a taxpayer would expect
21 to receive a similar notice at the time showing that their
22 payment had failed. While cases such as Scanlon show that
23 lack of notice from FTB of a failed payment does not
24 negate the taxpayer's duty of prudence and care to verify
25 that a scheduled payment was successful. The

1 circumstances here are different.

2 In other similar cases, the taxpayer did not
3 receive any notice from the FTB contemplating the status
4 of their payment. Here, the timing and manner of the
5 e-pay notice actively indicated to the Appellants that
6 their payment had been successful, and that they could
7 have expected other similar notifications if the FTB had
8 not received their funds. Therefore, Appellants had no
9 reason to monitor their bank account closely for the
10 relatively short two-and-a-half month period it took for
11 them to receive a balance due notice. Once they learned
12 the FTB had not secured funds out of their account, the
13 Appellants promptly paid their tax liability, along with
14 all calculated penalties.

15 Given these facts: One, that Appellants had good
16 reason to suspect their payments succeeded; and two, that
17 Appellants reasonably believed they received confirmation
18 of their payment, we respectfully request that the Office
19 of Tax Appeals rule in Appellants' favor and abate their
20 late-payment penalty, along with any accrued interest.

21 Thank you.

22 JUDGE GEARY: Thank you, Mr. Michel.

23 I think that, Judge Ridenour, you withheld
24 questions earlier. Do you have any questions now for
25 either Mr. Michel or his witness?

1 JUDGE RIDENOUR: I will wait until both parties
2 present. Thank you.

3 JUDGE GEARY: Okay. All right.

4 I have a question for you, Mr. Michel. Do you
5 agree that OTA cases basically state that a taxpayer has
6 an obligation to verify that an electronic payment, in
7 fact, is completed as part of that taxpayer's exercise of
8 ordinary and reasonable diligence?

9 MR. MICHEL: I do not believe that the previous
10 cases have given that specific duty in all cases. I think
11 reasonable cause standard calls for looking at all the
12 facts and circumstances surrounding each case. And so
13 like in this case where there are other facts and
14 circumstances which would have led the taxpayer to not
15 think they needed to look into their account, they can
16 still meet that standard.

17 JUDGE GEARY: Does the Scanlon case, for example,
18 indicate that the duty is created immediately upon the --
19 regardless of what might happen later, does the Scanlon
20 case indicate that that duty exists immediately after the
21 attempt to make a payment and continues until such time as
22 that payment is confirmed?

23 MR. MICHEL: I -- I don't believe so because
24 it -- it even takes -- it can take a day or two for a
25 payment to even go through. So when a taxpayer is

1 supposed to actually check their bank account seems --
2 there doesn't seem to be any clear line of when they're
3 supposed to do that.

4 JUDGE GEARY: Doesn't your argument -- did you
5 indicate that your client received the letter concerning
6 electronic payments -- how long? Twelve days after was
7 it --

8 MR. MICHEL: Yeah. It was --

9 JUDGE GEARY: -- payment. So doesn't your
10 argument basically say that no duty arises, even from the
11 beginning, if a letter like that is sent to a taxpayer?

12 MR. MICHEL: I believe that if a letter like that
13 is sent within a relatively short period of time, it would
14 indicate to the taxpayer that their payment went through,
15 and that there's no reason to look into their account.

16 JUDGE GEARY: Okay. So you are saying that if --
17 if the taxpayer takes no action to confirm payment for two
18 weeks but receives a letter like the letter your clients
19 received, that taxpayer's failure to confirm payment
20 during that two weeks does not constitute negligence?

21 MR. MICHEL: Yes, that would not constitute
22 negligence.

23 JUDGE GEARY: Okay. Thank you.

24 JUDGE RIDENOUR: I have some follow-up questions,
25 Judge Geary, for that, please.

1 JUDGE GEARY: All right. Go ahead, please.

2 JUDGE RIDENOUR: Is it Mr. --

3 MR. MICHEL: Michel.

4 JUDGE RIDENOUR: Thank you.

5 You use a lot of words of expect, assume, more
6 but yet, you've never talked about the duty to check. And
7 yet, you say payments are going to be made between one to
8 two days, but then a notice sent two weeks thereafter is
9 reasonable cause not to check it. And I'm trying to grasp
10 the logic behind your argument to assume things and to
11 expect things, does not sound very reasonable yet alone to
12 reach the reasonable prudent business-person standard. So
13 again, I'm trying really hard to understand your argument.
14 So maybe you can narrow that down or address the expect,
15 assume, two days versus two weeks difference, et cetera,
16 please.

17 MR. MICHEL: Yeah. So I would say that the
18 actual standard for reasonable cause is what a
19 reasonable -- reasonably intelligent and prudent
20 business-person would expect to do. The statute itself
21 doesn't impose any duty to look at a -- look into your
22 bank account. So the actual standard is just what would
23 that person do. And, you know, what that person would do
24 has a lot to do with what they would expect.

25 JUDGE RIDENOUR: So are you saying that it's not

1 prudent to double check to make sure money has been
2 withdrawn from your account and also, going along with
3 Judge Geary's questions regarding our OTA precedential
4 opinions that have touched on this?

5 MR. MICHEL: I -- well, that would -- I would go
6 back to the holding in Moren, which is that the most
7 prudent option is not the only prudent option. And so
8 while immediately checking constantly after that payment
9 is scheduled might be the most prudent option, it wouldn't
10 be the only prudent option. And -- and there are plenty
11 of different ways that someone would look into whether or
12 not a payment had gone through. Even if you would
13 normally expect it to take one or two days, people
14 sometimes wait until the end of the month to look over
15 their transactions or anything like that. So I'm just
16 arguing that there's no clear line when the taxpayer is
17 supposed to look into their account.

18 JUDGE RIDENOUR: Okay. Thank you.

19 No more questions, Judge Geary.

20 JUDGE GEARY: Thank you, Judge Ridenour.

21 Ms. Ho, are you prepared to give your argument?

22 MS. HO: Yes. Thank you.

23 JUDGE GEARY: Okay. You may proceed.

24 MS. HO: Thank you.

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1 failed to monitor their bank account and quickly verified
2 their payment, as it is not until almost three months
3 after both the due date and their unsuccessful payment
4 attempt that Appellants paid their liability. It is also
5 unclear how Appellants did not realize that their
6 attempted payment of over \$30,000 was not deducted from
7 their bank account. As such, Appellants did not act with
8 due care and diligence in fulfilling their tax payment
9 obligations.

10 Regarding Appellants' assertion that their
11 payment attempt was dishonored due to an unknown reason,
12 FTB's records indicate that Appellants' payment was
13 unsuccessful due to Appellants providing an
14 incorrect accounting -- sorry -- routing number. As
15 Appellant testify, he did not obtain his routing number
16 from his financial institution or any official source.
17 Respondent's Exhibit N shows that while the account number
18 for Appellants' dishonor payment matches the account
19 number for his successful payments, the routing number
20 used for the dishonored payment does not match the routing
21 number for the successful payments. As held in the Appeal
22 of Friedman, a late payment due to a taxpayer's own
23 oversight does not establish reasonable cause.

24 Regarding Appellants' assertion that they
25 received notice from FTB confirming that their attempted

1 payment was successful, Appellants are mistaken. The FTB
2 notice Appellants provided on appeal is a mandatory e-pay
3 notice. This is a general notice regarding a future e-pay
4 requirement. As indicated on the notice, the e-pay
5 requirement is triggered when a taxpayer, either makes a
6 payment of over \$20,000, or files a tax return reporting
7 over \$80,000 in liability.

8 Appellant filed their 2021 tax return on
9 April 15, 2022, and they received this notice on
10 April 28th, 2022, after their return was filed because it
11 reported a liability of over \$80,000. The notice does not
12 provide any type of confirmation that Appellants' payment
13 attempt was successful. Accordingly, as Appellant have
14 not established reasonable cause for their late payment,
15 FTB respectfully requests Appellants' claim for refund be
16 denied.

17 Thank you.

18 JUDGE GEARY: Thank you.

19 Let me ask my colleagues if they have any
20 questions for you, Ms. Ho.

21 Hearing Officer Parker, do you have any questions
22 for Respondent?

23 HEARING OFFICER PARKER: I have no questions.

24 JUDGE GEARY: Judge Ridenour, do you have any
25 questions for Respondent?

1 JUDGE RIDENOUR: No questions.

2 JUDGE GEARY: Thank you.

3 Thank you, Ms. Ho.

4 Mr. Michel, you can have up to five minutes or so
5 for closing remarks, if you would like to make some. Do
6 you want to make some closing remarks?

7 MR. MICHEL: Yes, please.

8 JUDGE GEARY: All right. You may proceed then.

9

10 CLOSING STATEMENT

11 MR. MICHEL: In every step, the Appellants acted
12 not only as an ordinarily intelligent and prudent
13 business-person would have, and I think as any respectable
14 citizen would have, they thought they paid their taxes.
15 Once they were notified otherwise, they promptly paid the
16 full amount. Now, Respondent's contention that Appellants
17 did not act reasonably simply because they did not check
18 their bank account, goes against the fact that a
19 reasonable cause analysis takes into consideration all the
20 facts and circumstances surrounding the failed payment.
21 And therefore, it's whatever a reasonably intelligent and
22 prudent businessperson would have expected under those
23 circumstances.

24 Appellants had no reason to check their bank
25 account because one, they scheduled their payment, and

1 they were given no indication that it had gone wrong; and
2 two, because shortly thereafter, they received a notice
3 which they reasonably interpreted as a confirmation of
4 their payment. Now, given these facts, we again
5 respectfully request that the Office of Tax Appeals rule
6 in the Appellants' favor and abate their late-payment
7 penalty, along with any accrued interest.

8 Thank you. That's all.

9 JUDGE GEARY: Thank you, Mr. Michel.

10 Okay. Bear with me for a second.

11 The case is concluded now. We've heard the
12 testimony. We've heard the arguments of the parties. It
13 is March 19, 2025, 3:01 p.m. This case is being submitted
14 now.

15 The record is closed.

16 I want to thank everyone for participating today.
17 In the coming weeks, the panel will meet to consider the
18 matter, and OTA will send a written opinion within
19 100 days of today's date.

20 (Proceedings adjourned at 3:01 p.m.)
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HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 1st day
of April, 2025.

ERNALYN M. ALONZO
HEARING REPORTER