

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MARSHALL RANCHES, LLC,) OTA NO. 231214921
)
)
 APPELLANT.)
)
)
 _____)

TRANSCRIPT OF PROCEEDINGS

Fresno, California

Tuesday, April 22, 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,)
MARSHALL RANCHES, LLC,) OTA NO. 231214921
APPELLANT.)
_____)

Transcript of Proceedings, taken at
855 M Street, Suite 960, Fresno, California, 90703,
commencing at 1:02 p.m. and concluding
at 1:20 p.m. on Tuesday, April 22, 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:

Administrative Law Judge: VERONICA I. LONG

For the Appellant: S. GILBERT

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

TRISTEN THALHUBER
JACKIE ZUMAETA

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 1-4 were received into evidence at page 6.)

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

O P E N I N G S T A T E M E N T

	<u>P A G E</u>
By Ms. Gilbert	7
By Mr. Thalhuber	13

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Ms. Gilbert	16

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

Fresno, California; Tuesday, April 22, 2025

1:02 a.m.

JUDGE LONG: With that, we're going on the record.

This is the appeal of Marshall Ranches, LLC, OTA Case No. 231214921. The date is April 22nd, and the time is 1:02 p.m. This hearing is being held in Fresno, California.

I am Judge Long, and this hearing is being heard under the Small Case Procedures Program. So I will be the Administrative Law Judge deciding the matter.

I'm going to ask the parties to identify themselves and who they represent, beginning with Franchise Tax Board.

MR. THALHUBER: My name is Tristen Thalhuber, and with me is Jackie Zumaeta.

JUDGE LONG: Taxpayer.

MS. GILBERT: My name is Susan Gilbert. I am a member of Marshall Ranches, LLC, along with my three brothers and my sister; and I'm the bookkeeper/tax matters partner.

JUDGE LONG: All right. Thank you.

As stated in the Minutes and Orders that the issues to be decided in this appeal are: Whether

1 Appellant has established a basis to abate the late-filing
2 penalty; and whether Appellant has established a basis to
3 abate the late payment penalty.

4 Appellant submitted Exhibits 1 through 4, and FTB
5 did not object to the admissibility of these exhibits.
6 Therefore, Exhibits 1 through 4 are now admitted into
7 evidence.

8 (Appellant's Exhibits 1-4 were received
9 into evidence by the Administrative Law
10 Judge.)

11 JUDGE LONG: FTB submitted Exhibits A through G.
12 Appellant did not object to the admission of these
13 exhibits. Therefore, Exhibits A through G are now
14 admitted into evidence.

15 (Department's Exhibits A-G were received
16 into evidence by the Administrative Law
17 Judge.)

18 JUDGE LONG: I'm going to ask if either party has
19 any additional exhibits today?

20 Okay. I see shaking of heads. Thank you.

21 With that, Ms. Gilbert, I believe you indicated
22 during the prehearing conference that you wanted to
23 provide witness testimony, and Franchise Tax Board did not
24 object. Would you still like --

25 MS. GILBERT: I did not say that.

1 JUDGE LONG: You do not want to provide witness
2 testimony.

3 MS. GILBERT: No.

4 JUDGE LONG: All right. That's absolutely fine.
5 In that case, I will go ahead and let you begin with your
6 presentation. You have 10 minutes and may begin when
7 you're ready.

8

9 PRESENTATION

10 MS. GILBERT: Thank you.

11 So December 31st of 2022, I was tackling the
12 books for the coming tax year, and I noticed my \$800 LLC
13 fee that was submitted with the 2022 tax year -- I'm
14 sorry -- 2023 tax year -- 2021 had not cleared the bank.
15 So I looked back through my papers. I couldn't see
16 anything, and I went onto the software that I was using
17 and pulled up the Marshall Ranches tax returns. The IRS
18 tax return was accepted. Upon further study, I found that
19 the California tax return was rejected and therefore, the
20 payment was also rejected.

21 I then wrote a letter immediately to the
22 Franchise Tax Board pointing out that the tax return got
23 rejected. I didn't realize that until now, and I'm
24 submitting that tax return along with the \$800 payment,
25 and I'm mailing it in and letting them know that I found

1 it wasn't filed due to rejection. But the rejection error
2 said that the Secretary of State number and/or the entity
3 name and address had changed. They had not changed. They
4 haven't changed since 2006. So I also pointed that in my
5 letter. But I did say I will pay whatever penalty, you
6 know, as soon as you let me know.

7 So from my end I was pretty proactive right from
8 the start when I found the error, and I'm the one that
9 pointed it out to Franchise Tax Board. And knowing the
10 way that some of their system runs, I probably could have
11 just waited for them to catch up with me, but that's not
12 me. I'm a licensed tax preparer certified by both IRS and
13 Franchise Tax Board, and I'm pretty ethical. So I made
14 sure I pointed it out.

15 So when I got hit with a \$995.36 penalty for an
16 \$800 LLC fee, I was a little frustrated; and so I started
17 the appeal process. I asked for an abatement of the
18 penalty simply on the fact that it was not willful
19 neglect, as has been pointed out by Franchise Tax Board.
20 It was not due to lack of intelligence or lack of common
21 prudence, as those were also pointed out several times in
22 the correspondences. It was simply an oversight on my
23 part, which I rectified.

24 And in 17 years of Marshall Ranches filing this
25 Form 568, there was one late filing. That was the one

1 that got kicked out by the software, and I did not see it
2 because I assumed that when the IRS hit and accepted, that
3 the Franchise Tax Board was also accepted. The rejection
4 notice is completely an error. That was the other part of
5 my appeal. There was no error in the Secretary of State
6 number, and there was no error in the name/address of
7 Marshall Ranches. They've been the same for that whole
8 time frame.

9 And so I'm frustrated, especially, when you take
10 into account of -- and I'm not saying it makes me right or
11 any less late on the filing. The late filing was due to
12 an error on my part. But I get real frustrated with
13 Employment Development Department; all the errors that
14 were made; all those payments that were sent out during
15 COVID that never should have been sent out. None of them
16 were resubmitted. Nobody paid them back.

17 I paid my fee, and I'm willing to pay a -- what I
18 would call a nominal penalty. But to penalize me
19 \$900-plus dollars for an \$800 fee that was paid as soon as
20 I figured out it was missing is nothing but sheer
21 frustration. The other fact is they took my 2022 payment
22 and applied it to the 2021 where it clearly states on the
23 bottom of the line -- memo line, what tax year. And then
24 they took the 2023 payment and applied it to 2022. And
25 they kept penalizing me for those until I got it

1 straightened out. Lots and lots of book work and lots of
2 margin for errors.

3 I don't think I am of limited intelligence or
4 limited prudence. I've been doing this a long time. I
5 simply made an error. And if the Franchise Tax Board is
6 error free, I would be amazed. But I will man up and say
7 I made the error, but I also notified them of the error
8 and made it right. And for that reason, I request an
9 appeal of that \$900-some odd dollar penalty due to my long
10 history of getting it right, one time I did not.

11 And in ending, I will say that because I found
12 that the California ones are not automatically accepted
13 when the IRS has accepted, and there's no notice from the
14 Franchise Tax Board or the software that it got rejected,
15 I am a lot more diligent on making sure the California
16 ones are accepted. And this year especially, I lost my
17 husband January 17th, and -- so my mind is way out there,
18 and I have been extremely diligent. So if nothing less, I
19 have learned my lesson.

20 JUDGE LONG: All right. Thank you.

21 MS. GILBERT: You're welcome.

22 JUDGE LONG: I want to ask. Now, your --
23 everything you just presented -- I want to be clear. It's
24 considered argument, rather than testimony. If you would
25 like it to be considered as testimony, as in the basis for

1 fact finding in of itself, I'd have to swear you in as a
2 witness. You said you don't want to do that. I just want
3 to confirm that you understand that you're not being --

4 MS. GILBERT: If I have to be sworn in for it to
5 be accepted as my testimony, then yes, I would do that.

6 JUDGE LONG: All right. I --

7 MS. GILBERT: Do I have to say it all over again?

8 JUDGE LONG: No. I won't make you say it all
9 over again, but I will ask you to swear and affirm that
10 the testimony you gave is the truth.

11 MS. GILBERT: All right.

12 JUDGE LONG: So I'm going to ask you,
13 Ms. Gilbert, to please raise your right hand.

14

15 S. GILBERT,

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

19

20 JUDGE LONG: All right. Thank you. You can
21 lower your hand.

22 And now I have one further question for you --

23 MS. GILBERT: Sure.

24 JUDGE LONG: -- about your testimony. You stated
25 that you discovered this discrepancy when you went to

1 check the payment. Can you tell me when you originally
2 made the payment of the taxes?

3 MS. GILBERT: Yeah. Yes. The payment was
4 submitted with the tax return in February of -- let me
5 find it here -- resubmitted on January 10th of 2023, but
6 it was filed February 24th of 2022. And our particular
7 bank account, there's like maybe six articles that clear
8 through there every month. It's a very small CalCap
9 operation that we've been running since 19 -- or 1878,
10 and it's small. So I don't always go and wait for every
11 penny to come in. There's PG&E, and there's a couple of
12 gas cards, and there's the insurance. And then every once
13 in a awhile there's a hay bill or a feed bill. And that's
14 it. So I pay that \$800 every year. This time I actually
15 submitted it online with the -- with the Form 568.

16 So when the 568 was rejected, the payment was
17 too. And that's how that did not get to the Franchise Tax
18 Board. And again, I didn't find it until the end of the
19 year when I was doing my annual going through the
20 statements and making sure; making my little tallies of
21 where the money went. So that's -- that's how that
22 happened.

23 Did that answer your question?

24 JUDGE LONG: Yes. Thank you, Ms. Gilbert.

25 And I'll ask, Franchise Tax Board, if you have

1 any questions for Ms. Gilbert about her factual testimony?

2 MR. THALHUBER: I do not. Thank you.

3 JUDGE LONG: All right. Thank you, Ms. Gilbert.

4 With that, I will pass it to Franchise Tax Board.

5 Franchise Tax Board, you have 10 minutes for your
6 presentation. You may begin when you're ready.

7 MR. THALHUBER: Thank you, Judge Long.

8

9 PRESENTATION

10 MR. THALHUBER: Again, this is Tristen Thalhuber
11 on behalf of Franchise Tax Board.

12 At issue in this appeal is: First, whether
13 Appellant has established reasonable cause to abate the
14 late-filing penalty for the 2021 tax year; and second,
15 whether Appellant has established reasonable cause to
16 abate the late late-payment penalty for the 2021 tax year.

17 For the 2021 tax year, LLC tax returns were due
18 no later than March 15th, 2022. Appellant late filed its
19 2021 tax return on January 15th, 2023, 10 months after the
20 return was due. As a result, FTB properly imposed the
21 late-filing penalty. Now, when FTB imposes a penalty, the
22 law presumes the penalty and correctly imposed, and the
23 Appellant bears the burden of proving that its failure to
24 timely was due to reasonable cause.

25 Here, Appellant contends that the late-filing

1 penalty should be abated based on reasonable cause because
2 Appellant attempted to electronically file its 2021 tax
3 return on February 24th, 2022, but due to oversight did
4 not notice that it had been rejected. In support,
5 Appellant provides screenshots from its tax preparation
6 software indicating that its 2021 tax return was ready for
7 e-filing and transmitted. However, the law is clear that
8 a return that is transmitted electronically is not filed
9 until an acknowledgment record shows that it was
10 transmitted, received, and accepted. Appellant has not
11 discussed or substantiated what efforts, if any, it took
12 to verify that its 2021 tax return was timely transmitted,
13 received, and accepted. Therefore, Appellant's oversight
14 does not establish reasonable cause to abate the
15 late-filing penalty.

16 As for the late payment penalty issue, every LLC
17 that is doing business or organized in California must pay
18 an annual tax of \$800 on or before the 15th day of the
19 fourth month of the taxable year. Because Appellant did
20 not timely pay its annual tax by April 15th, 2021, FTB
21 properly imposed a late-payment penalty. Again, the law
22 presumes that the penalty is correctly imposed, and the
23 Appellant bears the burden of proving that the failure of
24 time -- the failure to timely pay its tax was due to
25 reasonable cause.

1 The failure to timely remit the balance due on a
2 tax liability caused by an oversight does not by itself
3 constitute reasonable cause. Appellant contends that it
4 remitted payment of its annual tax on February 24th, 2022.
5 However, the due date of the annual tax payment for the
6 2021 tax year was April 15th, 2021. And FTB records show
7 that Appellant remitted payment of its annual tax on
8 May 3rd, 2021. As such, Appellant has failed to establish
9 reasonable cause to abate the late-payment penalty.
10 Therefore, FTB requests that the Office of Tax Appeals
11 sustain the FTB's claim for refund denial for the 2021 tax
12 year.

13 Thank you, and I'm happy to answer any questions.

14 JUDGE LONG: All right. Thank you, Franchise Tax
15 Board. I do have two questions for you. First, you've
16 stated that the -- for the late-payment penalty, that the
17 payment was due on April 15th, of 2021, and that was paid
18 on May 3rd of 2021; is that correct?

19 MR. THALHUBER: Yes, that is correct.

20 JUDGE LONG: All right. And it's my
21 understanding that Ms. Gilbert has testified that she paid
22 it on -- in February of 2022, but that's -- you have
23 earlier date for the receipt of funds?

24 MR. THALHUBER: Yes, that is correct.

25 JUDGE LONG: All right. To confirm my

1 understanding, had Ms. Gilbert not paid until February of
2 2022, the late-payment penalty would, in fact, be much
3 greater?

4 MR. THALHUBER: Yes, that is correct.

5 JUDGE LONG: All right. And thank you. And then
6 I also want to ask, if Ms. Gilbert had not reached out,
7 how long would it have taken Franchise Tax Board to notify
8 the taxpayer of the issue?

9 MR. THALHUBER: I honestly, can't give you an
10 exact timeline of how long it would take.

11 JUDGE LONG: All right. Thank you.

12 That concludes my questions for Franchise Tax
13 Board.

14 Ms. Gilbert, you, if you would like to, can make
15 a final statement or a rebuttal to Franchise Tax Board's
16 presentation. I can give you five minutes to do that, if
17 you'd like to.

18

19 CLOSING STATEMENT

20 MS. GILBERT: I just have one statement to make,
21 and it's not a personal affront to you. But I want to
22 know how much in legal fees my \$900-and-some-odd dollar
23 request for abatement of that penalty, how much over and
24 above that has gone to this ordeal? And I'm just like a
25 dog with a bone. So I don't give up when I don't think

1 I've done anything wrong. And yes, I did miss it, but
2 you're saying I did not --

3 JUDGE LONG: Ms. Gilbert, I'm going to stop you.
4 Is your microphone on?

5 MS. GILBERT: Oh, I'm pretty loud. I'm sorry.

6 JUDGE LONG: All right. Thank you. It's just
7 for maintaining our live stream.

8 MS. GILBERT: Anyway, I realize it's just a
9 statement. I think it went on way far too long, one
10 letter back and forth to state our cause would have fine.
11 Yes, the payment was late, but it was -- you state it was
12 not made. It was not received by Franchise Tax Board in a
13 timely matter. I made it in a timely matter. I just did
14 not see it got kicked out electronically. It wasn't that
15 it wasn't attempted to be made. I did everything timely
16 until it got kicked out by the computer, and that is my
17 issue on the oversight. I didn't neglect. There was
18 nothing willful, neglect involved.

19 JUDGE LONG: All right. Thank you, Ms. Gilbert.
20 I believe that that concludes the hearing in this
21 case.

22 MS. GILBERT: Thank you.

23 JUDGE LONG: The case is now submitted on
24 April 22nd, 2025. The record is now closed.

25 I want to thank you everyone for participating

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

today. I will consider your appeal, and we'll issue a written opinion within 100 days.

Today's hearing in the Appeal of Marshall Ranches, LLC, is now concluded.

(Proceedings adjourned at 1:20 p.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 1st day of May, 2025.

ERNALYN M. ALONZO
HEARING REPORTER