

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
M. FREEDMAN and J. MONTAG-FREEDMAN, ) OTA NO. 230814077  
)  
APPELLANTS. )  
)  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, May 22, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 11:11 a.m. and concluding at 11:41 a.m.  
on Thursday, May 22, 2025, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SARA A. HOSEY

Panel Members: ALJ SETH ELSOM  
ALJ ERICA PARKER

For the Appellants: MICHAEL GROSSMAN  
ALLEN PERL

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
ANDREA WATKINS  
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received into evidence at page 6.)

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

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California; Thursday, May 22, 2025

11:11 a.m.

JUDGE HOSEY: This is the Appeal of M. Freedman and J. Montag-Freedman.

We are on the record.

The case number is 230814077. Today is May 22nd, 2025, and it is 11:11 a.m. This hearing is being held virtually via Zoom.

Again, I'm the lead Administrative Law Judge Sara Hosey; and with me today are my panel members, Seth Elsom and Erica Parker.

Can I please have the parties identify themselves for the record, starting with Appellants.

MR. PERL: Allan Perl, CPA.

MR. GROSSMAN: Michael Grossman, CPA.

MS. WATKINS: Excuse me.

JUDGE HOSEY: Sorry. Can I have the third person from the Appellants state their name for the record.

MS. HUNG: Nan Hung, accountant.

JUDGE HOSEY: Can you spell that for me, please?

MS. HUNG: N-a-n H-u-n-g.

JUDGE HOSEY: Thank you. I appreciate it.

MS. HUNG: Thank you.

JUDGE HOSEY: And for the Franchise Tax Board.

1 MS. WATKINS: Andrea Watkins.

2 MS. KENT: Cynthia Kent.

3 JUDGE HOSEY: Thank you.

4 Okay. The issue on appeal today is whether  
5 Appellants' claim refund for the 2017 tax year is barred  
6 by the statute of limitations.

7 We premarked Exhibits 1 through 10 for Appellant  
8 and A through N for Respondent FTB at the prehearing  
9 conference held on May 10th, 2025. We had additional  
10 submissions from both parties. Appellants' Exhibits 11  
11 and 12 and, from FTB, Exhibit O.

12 Are there any objections to Exhibits A through O,  
13 Appellants?

14 MR. PERL: No.

15 MR. GROSSMAN: No.

16 JUDGE HOSEY: Thank you.

17 Are there any objections to Exhibits 1 through 12  
18 from the Respondent, FTB?

19 MS. WATKINS: No objections.

20 JUDGE HOSEY: Thank you.

21 Having no objections, Exhibits A through O and 1  
22 through 12 are now admitted as evidence into the record.

23 (Appellant's Exhibits 1-12 were received into  
24 evidence by the Administrative Law Judge.)

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1 (Department's Exhibits A-0 were received into  
2 evidence by the Administrative Law Judge.)

3 JUDGE HOSEY: All right. We're going to start  
4 with Appellants' testimony from Mr. Grossman.

5 We're going to swear you in. Can you please  
6 raise your right hand.

7

8 M. GROSSMAN,  
9 produced as a witness, and having been first duly sworn by  
10 the Administrative Law Judge, was examined, and testified  
11 as follows:

12

13 JUDGE HOSEY: Great. Please begin your  
14 testimony, however you would like to do that today.

15

16 PRESENTATION

17 MR. GROSSMAN: Okay. So we filed the 2017 tax  
18 returns for Mr. And Mrs. Freedman, claiming the  
19 withholding deduction that was from a pass-through entity  
20 of \$11,073 on that 2017 return. That return, what I  
21 believe, was filed in September of 2018 on a timely basis,  
22 and we asked to have the overpayment applied to the  
23 subsequent year. Sorry. I'm sorry.

24 Was that -- that was supposed to be refunded,  
25 Allen? Do you have that information?

1           MR. PERL: Hang on. 2017 return had a -- had an  
2 overpayment of \$8,178 that we wanted applied to the  
3 following year.

4           MR. GROSSMAN: I'm sorry. I'm just looking at  
5 the returns. Are you sure it's applied, or was it  
6 refunded?

7           MR. PERL: It looks an overpayment applied.

8           JUDGE HOSEY: Excuse me. Can I clarify. Is this  
9 the individual return?

10          MR. GROSSMAN: Yes, it is.

11          JUDGE HOSEY: Okay. Thank you.

12          MR. PERL: Oh, I'm sorry. I was looking at  
13 the -- I apologize. I was looking at the pass-through  
14 entity.

15          JUDGE HOSEY: Yeah. The LLC return?

16          MR. PERL: Yeah.

17          JUDGE HOSEY: No worries.

18          MR. PERL: On the individual return, the  
19 overpayment, we wanted a portion applied to -- it looks  
20 like it was all applied to the 2018 estimate.

21          MR. GROSSMAN: Right. This is on the LLC return.  
22 The 81 --

23          MR. PERL: Then I went-- then I went to the  
24 individual. On the CA 540NR, for the year 2017, we  
25 applied it to the 2018.

1 MR. GROSSMAN: Right. So we didn't get any  
2 notification that the overpayment was denied, or that it  
3 was incorrect. So we kept on claiming those amounts that  
4 were applied. There was no notification from the State  
5 that this was incorrect or -- or there was any issue with  
6 that overpayment. And then we got to --

7 Nan, can you just chime in as to what year when  
8 it became an issue. Was it 2020?

9 MS. HUNG: Yes. We -- we -- we kept claiming  
10 those credits to be carried forward to the following years  
11 on the tax returns for several years. And then we  
12 realized that we -- we realized that this was not  
13 correctly being applied. So we called the FTB to ask them  
14 to apply for the credits. And the agent I spoke to, at  
15 that time, told me that this -- he saw this credit, and  
16 that he would follow up -- following -- he would follow to  
17 apply those credits as we indicated on our tax returns to  
18 the following years; which can be seen on the Exhibit M.  
19 That's the first catalog there. You can see from that.

20 And the agent told me that he will call me back  
21 and three days or several days that -- after all the  
22 credits were applied. So they will send us a clearance of  
23 this kind of thing. So that's the basic information that  
24 I got from the call to the FTB. So I always thought that  
25 the credits were there. And why it was not been applied

1 to the following year is because that processing time,  
2 that the FTB may need more time to process it.

3 MR. GROSSMAN: And that's the gist of how we --  
4 we ended up in this situation where, I guess, you're  
5 claiming the statute has not -- has run, but it was  
6 because of incorrect information given to us over -- over  
7 many phone calls from various agents.

8 MR. PERL: And -- and it's Allen Perl again. And  
9 it wasn't -- it wasn't really tax guidance. It was just  
10 going and giving us the impression that the funds were  
11 moved forward.

12 JUDGE HOSEY: Okay. Thank you.

13 Let me see if the Franchise Tax Board has any  
14 questions regarding the factual testimony.

15 MS. WATKINS: I do not have any questions. Thank  
16 you.

17 JUDGE HOSEY: Thank you.

18 And let me go to my panel.

19 Ms. Parker, do you have any questions for the  
20 Appellants?

21 HEARING OFFICER PARKER: I don't have any  
22 questions at this time.

23 JUDGE HOSEY: Thank you.

24 Mr. Elsom, do you have any questions for the  
25 Appellants?

1 HEARING OFFICER ELSOM: I did have just a few  
2 questions, and either one of you can answer this.

3 Were there any publications or guidance or  
4 materials that you relied to -- when filing the LLC  
5 returns to originally report the withholding credits as an  
6 overpayment allowable as a credit towards the following  
7 tax year? Can you describe how you arrived at that  
8 determination to report it that way, rather than the way  
9 that FTB is stating it should have been reported, which is  
10 allocated to the partners or the members of the LLC? I  
11 can rephrase that as -- if that --

12 MR. GROSSMAN: Were you saying we filed  
13 incorrectly? I'm -- I'm not sure what you're saying.

14 HEARING OFFICER ELSOM: Well, just -- the  
15 question I'm asking is what did you rely upon to determine  
16 that the withholding credits that were paid -- or excuse  
17 me -- the withholding amount should be treated as a  
18 overpayment and allowed as a credit towards the following  
19 tax year? Did you review any online material? Did you  
20 have any discussions internally? Or was there any  
21 authority that you relied upon to make that determination?  
22 And can you just explain basically explain how you, you  
23 know, reported it this way.

24 MR. GROSSMAN: Well, there was a tax overpayment,  
25 and we requested it to be applied to future tax

1 liabilities. I'm not sure what you're asking.

2 MR. PERL: Right. Let me -- let me chime in.  
3 It's Allen Perl.

4 And, Michael, you'll maybe clarify a little bit.

5 So the -- first, there's the tax that comes from  
6 the pass-through entity tax of form -- sorry.

7 MR. GROSSMAN: 540NR.

8 MR. PERL: 540NR. And that -- that tax -- that  
9 overpayment -- or that tax that's reported there, then  
10 flows through to the individual tax return of Michael and  
11 Jennifer Freedman. On the personal tax return, the  
12 California nonresident, the 540NR, at the end of the  
13 return, just the same as the federal government and in all  
14 states, you put down your tax withholding, your estimated  
15 taxes or taxes through the pass-through entity tax. That  
16 compared to your tax liability, either there's a balance  
17 due or an overpayment. When you have an overpayment on  
18 the tax form itself, you have an option of refunding the  
19 money or applying that tax forward, or you could split it  
20 between those two items. So it's basically common  
21 knowledge of tax forms in most cases.

22 There -- there are times that we specifically go  
23 into the instructions, but we didn't need the instructions  
24 nor call to the FTB in order to go and determine how we  
25 wanted to allocate and post that money. So when we asked

1 for it to be applied to the following tax year, which is  
2 fairly common practice for someone with tax liability, we  
3 would have assumed that we would have gotten corrected tax  
4 notices if the amount of money we were taking as a credit  
5 was improper.

6 MR. GROSSMAN: And we kept on claiming that same  
7 overpayment on the 2018 return, on the 2019 return. And  
8 we did not receive any notice whatsoever from the State  
9 that the overpayment was incorrect, and that it should --  
10 or, you know, something to that effect.

11 HEARING OFFICER ELSOM: Okay. And I just want to  
12 clarify, we're referring to the Bayberry Media, LLC return  
13 when we're discussing returns.

14 MR. GROSSMAN: Correct. Correct.

15 HEARING OFFICER ELSOM: Okay. Thank you.

16 JUDGE HOSEY: Thank you.

17 Okay. Let us move to the Franchise Tax Board for  
18 their argument.

19 Ms. Watkins, are you ready to begin your  
20 presentation?

21 MS. WATKINS: I am. Thank you.

22 JUDGE HOSEY: You have 10 minutes. Please begin  
23 when ready.

24 ///

25 ///



1 passed through to the entity's owner, who can then claim  
2 those withholding credits on their personal return. The  
3 entity cannot carry the credit forward to subsequent tax  
4 years. Upon review of Bayberry's 2020 and 2021 returns,  
5 FTB determined that the \$800 annual tax for both years  
6 remained unpaid, as the credit forward of the withholding,  
7 which originated in tax year 2017, was improper and,  
8 therefore, could not be used to satisfy the annual tax for  
9 either year.

10 Appellants' content that upon receiving notice of  
11 this in November of 2022, they initiated various phone  
12 calls to FTB in which they received conflicting or  
13 incomplete information from FTB representatives regarding  
14 how to report and receive the withholding credit at issue.  
15 Appellants ultimately filed an amended 2017 personal tax  
16 return on June 15th, 2023, in which they requested a  
17 refund of the withholding credit. However, the statute of  
18 limitations had already expired eight months earlier on  
19 October 12th, 2022.

20 Although, Appellants' appear to contend that  
21 equitable estoppel should apply in this case to open the  
22 statute of limitations, as is outlined in its 2004 United  
23 States District Court decision in Danoff, D-a-n-o-f-f, v.  
24 United States, which was later affirmed by the Ninth  
25 Circuit Court of Appeals, federal courts have uniformly

1 held that equitable estoppel cannot toll the statute of  
2 limitations in tax refund cases.

3 In the Appeal of Sedlacek, S-e-d-l-a-c-e-k, a  
4 1986 precedential Board of Equalization opinion, the Board  
5 held that the misinformation provided by the FTB  
6 representatives in that case was insufficient to create  
7 estoppel because reliance on informal opinions offered by  
8 an FTB employee is not sufficient. More recently in the  
9 precedential 2018 OTA opinion in the Appeal of Sedillo,  
10 S-e-d-i-l-l-o, the OTA held that the doctrine of equitable  
11 estoppel only applies in rare and unusual circumstances,  
12 and that when FTB instructions are alleged to be unclear  
13 or misleading, taxpayers must follow the law and not the  
14 instructions. Regardless, if relief under the doctrine of  
15 equitable estoppel was available, the taxpayer has the  
16 burden to prove that they detrimentally relied on  
17 representation made by FTB.

18 In this case, the statute of limitations had  
19 already expired prior to Appellants' phone call to FTB  
20 and, therefore, prior to any representations made by FTB  
21 employees. I provided a complete log of all the calls  
22 between the Appellants and FTB on both the personal and  
23 business accounts. Those are FTB's Exhibits I, M, and O.  
24 The first phone call to FTB regarding this issue was made  
25 on November 14th, 2022. The statute of limitations had

1 expired prior to that call on October 12th, 2022. If the  
2 taxpayer would have had the same liability regardless of  
3 the alleged action of FTB, then the doctrine of equitable  
4 estoppel cannot apply.

5 Appellants' tax year 2017 refund claim is time  
6 barred, and there is no equitable basis for suspending the  
7 statute of limitations. Therefore, I respectfully request  
8 that FTB's refund claim denial be affirmed.

9 I'm happy to answer any questions from the panel.

10 JUDGE HOSEY: Thank you, Ms. Watkins.

11 Let me go to my panel to see if there are any  
12 questions.

13 Ms. Parker, do you have any questions for FTB?

14 HEARING OFFICER PARKER: I do have a question  
15 regarding the LLC returns that were subsequently filed in  
16 2018, 2019, '20, and on. When we look at the return, it  
17 appears that that taxpayer was paying its \$800 annual LLC  
18 tax every year, and that wasn't being taken from that  
19 carryover that's now in dispute. Since we don't have  
20 access to that payment record, is that accurate to say  
21 that they were making \$800 payments every year outside of  
22 this withholding credit that they were also reporting?

23 MS. WATKINS: Yes, that's correct. They were  
24 making the \$800 payment up until after 2020, and that's  
25 when they requested that the credit -- the withholding

1 credit be applied to the \$800 tax. That was for 2020 and  
2 2021. And then upon review of that, that's when FTB made  
3 the determination that they had improperly carried forward  
4 that credit.

5 HEARING OFFICER PARKER: So the reason for the  
6 initiation of actually looking at that carryover was when  
7 they tried to utilize it?

8 MS. WATKINS: Exactly.

9 HEARING OFFICER PARKER: Okay. Thank you.

10 JUDGE HOSEY: Thank you.

11 Mr. Elsom, do you have any questions for the  
12 Franchise Tax Board?

13 HEARING OFFICER ELSOM: Yes, I did have a couple  
14 of questions.

15 And the first question I have is it looks as  
16 though or it sounds as though, from Appellants' testimony,  
17 they're relying on a basic calculation of what an  
18 overpayment is and how it's generally applied, at least on  
19 an individual level, which can be rolled over as a credit  
20 from year to year, and they're applying that to the LLC.  
21 And the question I have is for FTB. The opening brief --  
22 in the opening brief, you referenced, of course, the  
23 Revenue & Tax section, which is guiding for this issue,  
24 and also referenced the LLC booklet, and you have provided  
25 a copy of those instructions.

1           But those instructions omit discussion of what  
2 line 7, you know, how that should be calculated or  
3 reported, and that's the overpayment allowed as a credit.  
4 And so my question is, can you explain why that discussion  
5 of that line item is omitted and what that line item is  
6 actually supposed to represent?

7           MS. WATKINS: Yes, I can. So it actually is  
8 mentioned in the instructions. Let me pull that up.  
9 Sorry. It'll just take me a moment here.

10           HEARING OFFICER ELSOM: No problem. I'm taking a  
11 look myself right now to make sure I didn't miss it. And  
12 this is Exhibit A, and it's on -- looks like it would be  
13 on page 77 of the briefing file.

14           MS. WATKINS: It should be Exhibit K, the 568  
15 booklet instructions.

16           HEARING OFFICER ELSOM: And my question is  
17 specifically for line 7. So this is for the 2017 tax  
18 year. And for that tax year, line 7 is where the  
19 overpayment is allowed as a credit or reported.

20           MS. WATKINS: Are you looking at the 568  
21 instructions?

22           HEARING OFFICER ELSOM: Yes, the 568 booklet --  
23 LLC booklet.

24           MS. WATKINS: Okay. Yeah. So if you look at  
25 where it says line 8, withholding, it states that if LLC

1 was withheld upon by another entity, the LLC may either  
2 allocate the entire withholding credit to all its members  
3 or claim a portion on line 8, not to exceed the total tax  
4 and fee due, which in this case would be the \$800 minimum  
5 tax, and then allocate the remaining portion to all its  
6 members.

7 So the instructions clearly do indicate that  
8 line 8 could not exceed the actual tax due, which would  
9 have been \$800 in this case. So that would have been the  
10 maximum that Appellants -- or rather, Bayberry could have  
11 entered on line 8 to satisfy that -- that minimum tax.  
12 And then the reminder would have had to be allocated to  
13 the partners or partner in this case.

14 HEARING OFFICER ELSOM: So I understand that's  
15 how the withholdings are treated or at least the  
16 instructions are instructing the taxpayer to report the  
17 withholdings. But my question, again, is for line 7,  
18 which is overpayments -- overpayment from prior year  
19 allowed as a credit. Are there any instructions anywhere  
20 in this booklet that explain to the taxpayer how that item  
21 is calculated or where it should be reported?

22 MS. WATKINS: I would just say that an  
23 overpayment from a prior year allowed as a credit, there  
24 would be no overpayment allowed from a prior year in this  
25 case. So if anything, was -- you know, if they had

1 carried that forward, it wasn't proper to begin with  
2 because it shouldn't have been allowed as a credit.

3 HEARING OFFICER ELSOM: Can you explain how that  
4 credit is calculated, though? Or is there any guidance  
5 anywhere for the taxpayers to rely on when they're  
6 determining that line item?

7 MS. WATKINS: I would just refer back to the  
8 instructions for line 8.

9 HEARING OFFICER ELSOM: Okay. So am I correct if  
10 I summarize that line 8 withholding credit should be  
11 allocated to the partners, therefore, they're not  
12 available to calculate an overpayment, which would be  
13 allowed as a credit towards the following tax year?

14 MS. WATKINS: Exactly.

15 HEARING OFFICER ELSOM: Okay. I have no further  
16 questions. Thank you.

17 JUDGE HOSEY: Thank you.

18 All right. Let's move back to Appellant. You  
19 have five minutes for any final statements you would like  
20 to make before we close the record for the case, including  
21 anything that was discussed just now with FTB and the line  
22 items and instructions and everything. Is there anything  
23 else you would like to add?

24 Nope. I think your muted, Mr. Perl.

25 MR. PERL: There we go.

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JUDGE HOSEY: Hello. Thank you.

CLOSING STATEMENT

MR. PERL: In -- in -- also, as attachment number 12, during -- during the period of COVID, California, along with the federal government and most states, extended the statute of limitations for adding a number of months. So I'm -- I'm not sure whether or not this specifically applies to this case. But at the same time, as we were making an error on our pass-through entity tax with the application of the money, we never received any response from the FTB that we were handling it correctly saying where we were asking for money to be moved forward.

And I think as an example is that if we took credit for a \$100,000 estimated tax payment that we never made or never existed, we would have, should have received some kind of notification from FTB saying you're taking credit for something you're not eligible for or that you never paid. So whether it would be on the pass-through entity tax, vis-à-vis, the individual return where we weren't -- where we improperly applied an overpayment, there was lack of notice that something was incorrect. And that's why it wasn't until significantly later on, when we applied the money to the individual return, that

1 was the first notice we had that anything was done  
2 incorrectly from year to year on these returns.

3 Michael.

4 MR. GROSSMAN: That is correct. And it was  
5 beyond the statute, I guess, at that point. And -- and  
6 it's only beyond the statute because of the neglect of the  
7 FTB for not sending any notification of any filing error  
8 or anything to that effect.

9 JUDGE HOSEY: Okay. Thank you. Anything else  
10 before we conclude the hearing for today?

11 MS. WATKINS: Can I respond to the COVID  
12 extension?

13 JUDGE HOSEY: Yes. Ms. Watkins, go ahead.

14 MS. WATKINS: Okay. Thank you.

15 So in regard to the COVID-related extension, FTB  
16 did follow the IRS and did extend certain tax deadlines,  
17 which fell during the years 2020 and 2021. But there were  
18 no extensions that would cover the pertinent time period  
19 at issue in this appeal. So there was nothing that would  
20 extend the October 12th, 2022, deadline in which to claim  
21 a refund. And then in addition, I would just state that  
22 had the Appellants tried to apply the withholding credit  
23 in tax years 2017 and 2018, at that point, FTB would  
24 have -- that would have prompted FTB to review the  
25 returns, and they would have received notice had they

1 attempted to satisfy their \$800 tax in those first two tax  
2 years. But because they didn't until the years 2020 and  
3 2021, FTB was not prompted to look at the returns because  
4 the Appellants were making that \$800 minimum tax payment  
5 each year.

6 JUDGE HOSEY: Okay. Thank you.

7 Let me go back to Mr. Perl or Mr. Grossman.

8 Anything else from the Appellants?

9 MR. PERL: Not I.

10 MR. GROSSMAN: No.

11 JUDGE HOSEY: Okay. Thank you.

12 All right. I think we are ready to submit the  
13 case. Evidence has been admitted into the record, and we  
14 have the arguments and your briefs, as well as the oral  
15 arguments and testimony presented today. We now have a  
16 complete record from which to base our decision, and we  
17 are ready to submit the case.

18 The record is now closed.

19 This concludes the hearing for this appeal, and  
20 the parties should expect our written opinion no later  
21 than 100 days from today.

22 With that, we are now off the record, and this  
23 hearing is adjourned.

24 (Proceedings adjourned at 11:41 a.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 12th day of June, 2025.

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