

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. O'HARA and C. WELDON,) OTA NO. 220710945
)
APPELLANTS.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, June 18, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 10:27 a.m.
and concluding at 12:20 p.m. on Wednesday,
June 18, 2025, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ JOSH LAMBERT

Panel Members: ALJ GREG TURNER
HEARING OFFICER SETH ELSOM

For the Appellant: CHRISTOPHER CAMPBELL
HANA KIM

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRIS COOK
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-7 were received into evidence at page 7.)

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

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

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By Mr. Campbell	7
By Mr. Cook	55

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	<u>P A G E</u>
By Mr. Campbell	66

1 Cerritos, California; Wednesday, June 18, 2025

2 10:27 a.m.

3
4 JUDGE LAMBERT: We're now on the record in the
5 Office of Tax Appeals oral hearing for the Appeal of
6 James O'Hara and Cynthia Weldon, Case No. 220710945. The
7 date is June 18th, 2025, and the time is 10:27 a.m.

8 My name is Josh Lambert, and I'm the lead
9 Administrative Law Judge for this hearing -- or lead panel
10 member for this hearing. And my co-panelists today are
11 Judge Turner and Hearing Officer Elsom.

12 First, we'd like everyone to introduce
13 themselves, so, FTB, could you please introduce yourselves
14 for the record by stating your names.

15 MS. ZUMAETA: Jackie Zumaeta for Franchise Tax
16 Board.

17 MR. COOK: Chris Cook for Franchise Tax Board.

18 JUDGE LAMBERT: Thank you.

19 And for Appellants, could you please introduce
20 yourselves.

21 MR. CAMPBELL: Chris Campbell for Appellants.

22 MS. KIM: Hana Kim for Appellants.

23 JUDGE LAMBERT: Thank you. Thank you all for
24 attending.

25 The issues in this appeal are: Whether OTA has

1 jurisdiction to determine whether FTB properly calculated
2 the amount of accrued interest on the undisputed tax
3 deficiency assessment; and the second issue is, if OTA has
4 jurisdiction, whether Appellants have shown error in FTB's
5 computation of interest.

6 In terms of exhibits, FTB provides Exhibits A
7 through E, and Appellants provided Exhibits 1 through 7.
8 And I believe FTB provided some kind of document before
9 the hearing.

10 Is that just like a summary of a timeline?

11 MR. COOK: Yes, Judge Lambert. It's not
12 submitted for evidence. It's a -- it's to assist with our
13 presentation, just a visual aid.

14 JUDGE LAMBERT: Okay. And the Appellants have a
15 copy as well?

16 MR. COOK: Yes. We provided a copy for the
17 Appellants.

18 JUDGE LAMBERT: Okay. Or Appellants
19 representatives.

20 So just double check, FTB, were there any
21 objections to Appellants exhibits?

22 MR. COOK: No objections.

23 JUDGE LAMBERT: And were there any objections to
24 FTB's exhibits, Mr. Campbell?

25 MR. CAMPBELL: No objections.

1 JUDGE LAMBERT: Okay. So that evidence is now on
2 the record.

3 (Appellant's Exhibits 1-7 were received into
4 evidence by the Administrative Law Judge.)

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

7 JUDGE LAMBERT: First, we will start with
8 Appellants' presentation. So we decided on 60 minutes.

9 So, Mr. Campbell, this is your opportunity to
10 explain Appellants' position, and you can proceed when
11 you're ready.

12 MR. CAMPBELL: Thank you, Judge Lambert.

13 Is that loud enough?

14 THE STENOGRAPHER: Can you please pull the mic
15 towards you.

16 MR. CAMPBELL: Yeah. How's that? Better?

17 THE STENOGRAPHER: Yes.

18 MR. CAMPBELL: Okay.

19

20 PRESENTATION

21 MR. CAMPBELL: First of all, thank you for being
22 here. We're pleased to be here as well.

23 I preface this. I'm going to go very slowly.

24 Hopefully I don't need the full 60 minutes, but I asked

25 for that because there's a decent amount of material that

1 I wanted to go through with everybody, you know, slowly
2 because it's -- it's important to see the framework of all
3 the statutes. So if we don't need the 60 minutes, that's
4 great.

5 Okay. So we have two issues. As you mentioned,
6 one is the jurisdiction issue, and the other one be the
7 merits, which is the method of computation of interest.
8 Before getting to those, I wanted to go through the facts
9 briefly -- the agreed facts. All the facts were agreed
10 and well stated in the FTB's brief and in our brief. But
11 I'd like to direct you to a table, if possible, that we
12 have on page 4 of our -- our reply brief, just the
13 March 28 brief. Because I think that's just as a visual
14 aid, really helpful here. And then I know the FTB
15 submitted something that they'll use that's also visual.
16 But if I may, whether you have it or not, there's, you
17 know, two -- two tables on -- on the page. There's the
18 upper table and the lower one.

19 So the issue here is the computation of interest
20 on a deficiency that was assessed for the 2017 tax year.
21 Basic facts, again, 2017 tax year, the taxpayers filed a
22 return reporting tax due of \$2.9 million. I'll just use
23 round numbers, which are at the top. And the overpayment
24 on the return to the next year, which was elected to be
25 credited to the next year, of \$3.7 million. 2018 return

1 reported tax due of \$1.279 million and, again, showed an
2 overpayment of \$3.03 million. And then in 2019, that
3 return, 2019 tax return showed a tax due of \$1.8 million
4 and an overpayment of \$1.2 million. So those are the
5 returns that were filed.

6 In 2021, the FTB audited the 2017 tax return and
7 notified the Appellants and us of the audit, and
8 immediately they explained that the issue was the claim of
9 another state credit in the amount of about \$2.2 million
10 for taxes paid to Iowa. As soon as we got that
11 information, we looked at the returns and realized that
12 that was a complete error, just unintentional error. We
13 informed the FTB auditor and, you know, explained that
14 we'd make a payment. And, you know, the auditor agreed to
15 close the case and issue an NPA. So the taxpayers made
16 the payment of the \$2.269 million on March 22, 2021. It's
17 shown on that same page 4. It's also, you know, on the
18 briefs. And that was, again, March 22, 2021.

19 What's important here is then to look at the NPA,
20 which was then issued after the payment. This is
21 Exhibit 3 to -- excuse me. I'm going to move this. --
22 Exhibit 3 to our appeal. And I just want to point out
23 that the -- again, this is issued June 10 after we made
24 the payment. And it shows Notice of Proposed Assessment
25 of \$2.627 million, which includes the additional tax of

1 \$2.69 million, about three quarters down the page.

2 And then it says interest to June 10, 2021. And
3 then it says, again, acknowledging the payment, "Your web
4 payment of \$2.269 million will be credited to your account
5 effective March 22, '21. The total additional tax and
6 interest shown on this notice does not include the
7 payment. The payment will be applied as of the payment
8 date and interest adjusted when the notice is final. If a
9 balance remains, interest -- additional interest will be
10 charged until the balance is paid in full."

11 When we saw the NPA and the \$358,000, we thought,
12 wow, that's really overstated. That doesn't make sense.
13 We had overpayment funds, you know, as of the end of -- at
14 4/15/2018 which is the day taxes are due for the 2017 tax
15 year; and, you know, going forward we always had
16 overpayment. So we -- our immediate response -- and even
17 though the NPA says it's an estimate and it's going to be
18 adjusted, the point is the NPA doesn't even include a
19 correct computation, right. So we've paid the tax, and
20 now we have an NPA that -- that we have to protest; and we
21 protested just the interest computation. So look, we need
22 to make sure that the overpayments taken into account,
23 which they should be. There's no dispute that
24 overpayments get taken into account.

25 So we filed the protest, and, during the protest,

1 we had a lot of back and forth. The protest -- some of
2 the protest correspondences are in the FTB's brief as
3 exhibits, and that's fine. That led to there's some
4 revised interest computations again. The FTB had to
5 recompute interest. And they had it one way, and then
6 they, you know, do it another way, which we'll get to, to
7 take into account overpayments. So they had to make
8 adjustments because it was incorrect to begin with. And
9 then at the end of the protest process, we still disagreed
10 with their computation.

11 And so, we agreed to disagree, so to speak. And
12 then they issued a Notice of Action, and that's
13 Exhibit 1 -- 1 to Appellants appeal. And, again, the
14 Notice of Action itself says this is affirmation of our
15 response to the Notice of Proposed Assessment issued
16 6/10/2021. There's a proposed amount of tax or balance
17 due of \$2.7 million.

18 It says additional tax of \$2.269 million,
19 interest \$2,627,222. Now, it's \$442,000 of interest for
20 the total balance of \$2.7. Again, on the Notice of Action
21 itself, they explain that in during the protest we dealt
22 with interest. It says it was determined that the FTB
23 incorrectly calculated the interest on the additional tax
24 based on the May Department Store decision. Then it says
25 the \$2.2 --

1 THE STENOGRAPHER: May I ask you to please slow
2 down when you're reading from a document.

3 MR. CAMPBELL: Sure. Sorry. Sorry.

4 THE STENOGRAPHER: Thank you.

5 MR. CAMPBELL: I'll try -- I wanted to go slowly,
6 so thank you for telling me to slow down.

7 Did everybody get that so far? Okay. Okay. So
8 the -- again, yes, I apologize. I'm reading, but it's
9 important.

10 The notice says \$2.269 million will be credited
11 to the account, effective March 22, '21. So again,
12 they're still telling us that this will happen in the
13 future. The total additional tax and interest shown on
14 this notice does include this payment or interest
15 calculated in accordance with May, which is exactly what
16 they said they had determined in the protest. Once the
17 notice becomes final, all payments will be applied, and
18 the interest will be determined as discussed during the
19 protest. Interest is charged to the date of your payment.
20 If a balance remains, additional interest will be charged
21 until the balance is paid in full.

22 So, again, just pointing out that we've made a
23 payment. We have a protest process disputing interest.
24 The Notice of Action which, you know, again but not
25 claiming that there's a problem with it. It's just the

1 way this works is that interest is not even finally
2 determined or computed until well after the process is
3 done. That's going to be important. So that was issued
4 on June 27th. Again, we had paid the tax balance of that
5 2017 deficiency on March 22, 2021. And the way FTB does
6 it a we'll see, you know, they continue to charge
7 interest. They had assessed interest, or they had said
8 there was an estimate of interest back in 2021. They
9 continue to assess interest on the balance the way they
10 compute it.

11 And so as of the time of the -- right before the
12 Notice of Action, there was still a balance of
13 approximately \$240,000, which we paid on June 22 right
14 before the Notice of Action. The point of that payment
15 was just simply to cut off any amount that the FTB said
16 was due at this time so that no more interest accrue under
17 their -- the way they do it.

18 So let's turn -- so, again, I -- none of this is
19 disputed. This is all on the record. Turn to the second
20 table in our page 4, and this shows -- this is -- the
21 purpose of this is important because it shows the effect
22 of the payment that was made. The deficiency was assessed
23 and the payment that was made in -- on March 22, '21. And
24 it goes to how -- we will show that the statutes work to
25 compute interest.

1 So when you take the \$2.269 million deficiency
2 into account back in 2017, the correct amount of tax, that
3 was due was \$2.5 million. And, again, since we were
4 overpaid by several million dollars, the remaining
5 overpayment balance of -- as of April 15, 2018, when 2017
6 taxes were due and payable, was then \$1.49 million.
7 Going -- rolling that forward to 2020 -- 2018, we now had
8 the reduced overpayment and the -- you know, nothing
9 changed on the 2018 tax return. It's just that the
10 overpayment at the end of that year becomes \$761,000,
11 which is then rolled over to 2019. So we have an
12 overpayment as of 4/15/2019, which is important because
13 that's -- we'll get -- we'll come back to.

14 And then in 2019, again, we have the tax due of
15 \$1.8 million, and our reduced overpayment causes us to
16 have on April 15, 2020, the date that tax is due for the
17 2019 tax year, we are now deficient to the extent of
18 \$1,040,626. Again, so then we then paid the deficiency on
19 March 22, 2021, and that's why we show -- as we will show
20 the statutes in both interests beginning on 4/15 of each
21 year, if there is tax due and unpaid. The first time tax
22 is due and unpaid on April 15 is April 15, 2020. We then
23 have a deficiency.

24 Our payment was made in 2021, so interest can
25 be -- can accrue on the -- on the amount that's due and

1 unpaid, which is the million -- through dollars through
2 the payment date. And we'll get to that in a minute. But
3 these are, you know, just using this to show the facts as
4 to what happens when we apply the deficiency and credit
5 overpayments.

6 Okay. The last piece of the facts is going to be
7 what the FTB's computation is, which is Exhibit C to their
8 brief, I think page 6. So hope everybody can have this
9 before them. But this is the interest computation that
10 they -- that their final one from the protest attached to
11 a November 18, 2021, letter. And you can see that there
12 is agreement. And the point of this is to show -- this
13 whole presentation is to show that the facts are agreed.
14 The facts of the matter are agreed. So quarter down the
15 page on the right side, you could -- you can see that with
16 the May Department, you know, store analysis, they start
17 with a revised overpayment balance of \$1,490,237, which is
18 the amount shown on our table as well. So we all agree
19 that we're overpaid on 4/15/2018 to the extent of
20 \$1,490,000.

21 The FTB then takes that overpayment balance and
22 applies it to required estimated payments going through
23 the year, and they get to a number -- an overpayment at
24 the end of the -- as of 4/15/2019, effectively for the
25 2018 taxable year. You'll see the \$889,000 number.

1 That's their -- so their -- so their point is that there's
2 \$889,000 of overpayment still available as of 4/15/2019.
3 They're doing it differently than we do the actual
4 overpayment, you know, of tax dollars not taking into
5 account estimates is the \$761,000 shown on our -- our
6 table.

7 So this is why, if you read, you know, in our
8 briefs, for example, there's a difference in the interest
9 that they are assessing to us and what -- and which --
10 what we paid on June 22, 2022. And -- and there's a
11 footnote too in our brief that just explains since we paid
12 more than we actually owe in interest, you know, we have a
13 refund claim before you as -- as part of this. Okay. So
14 I think that's good for the facts at this point.

15 Let me pause. Questions on the facts? Okay. Do
16 you have before the two tables, just because I think that
17 it's important to visualize all that. Okay. Great.

18 Okay. So turning to the issues, I'm going to go
19 first to jurisdiction. So just give me a minute to get my
20 folder here. Told you I would go slow, so just bear with
21 me. I hope that's okay. Okay.

22 So after briefing was complete in this case, the
23 OTA sent the parties a letter on October 4, 2023,
24 requesting the parties to submit briefs discussing if the
25 OTA has jurisdiction to determine whether FTB properly

1 calculated the amount of accrued interest on the
2 undisputed tax deficiency assessment of \$2.2 million. And
3 that letter went on to discuss statutes and cases that
4 deal with interest abatement. Because interest
5 abatement -- as we'll talk about in a minute -- is -- has
6 a specific standard of review before the Board -- before
7 the OTA.

8 This is not an interest abatement case. So
9 seeing that we responded the very next day with a letter
10 setting out the reasons the OTA has jurisdiction expressly
11 under their statutes that implement -- or that, you know,
12 establish the OTA and by the rules -- OTA's rules, and
13 then, you know, even some cases. So the FTB then
14 responded in February, a couple of months later. And even
15 though the OTA had raised sua sponte, they now, you know,
16 grabbed onto the issue and said, we -- OTA does not have
17 jurisdiction to hear and decide an appeal relating solely
18 to unpaid interest on a deficiency because interest is not
19 included in the legal definition of a deficiency. And
20 then they cited a case that also has to do with a statute
21 that's not applicable here, which we'll get to in a
22 minute.

23 But the issue of whether there's a -- it's
24 included in the definition of deficiency is not going to
25 be germane as we'll show. So that's how this came up by

1 way of background. And then the OTA clearly has
2 jurisdiction, and I'll go through that. Okay. And this
3 is where I need to go kind of slowly. And I submitted in
4 the -- it's a prehearing, you know, kind of supplement the
5 interest statutes for everybody to have handy. It's not
6 an exhibit. It's just the law, but it's helpful to have
7 them all, you know, in order from the Code, which we'll go
8 through in a minute.

9 So the Government Code established the OTA. And
10 then 15671, 15672. You're the successor to the Board.
11 You have jurisdiction to do everything that the Board of
12 Equalization did, including hear appeals from actions of
13 the Franchise Tax Board under Part 10.2, which is where we
14 are. You know, more specifically your regulations give
15 you, you know, jurisdiction. Expressly, Section 30103 of
16 your rules says in general OTA has jurisdiction to hear
17 and decide an appeal that has been timely submitted to the
18 OTA, pursuant to OTA's rules for tax appeals, if any of
19 the following circumstances apply: Number one, FTB mails
20 a Notice of Action on a -- on a proposed deficiency
21 assessment of additional tax, which may also include
22 penalties, fees, and interest.

23 I'll pause here because that is exactly what we
24 have if you go to the Notice of Action, which is Exhibit 1
25 to our appeal. Again, the plain -- you know, FTB mailed a

1 Notice of Action on June 27, 2022, with an appeal by date
2 of 30 days later, showing a proposed amount of tax --
3 additional tax of \$2.269 million and interest, again,
4 which was not correct. And it was an estimate, and way
5 overstated of \$442,000.

6 So, you know, the jurisdiction here is simply
7 based on the mailing of a notice that assesses -- let me
8 get the specific language again -- Notice of Action on a
9 proposed deficiency assessment -- which is what this
10 was -- of additional tax, which may also include
11 penalties, fees, and interest, which it does. Other
12 sections in 3103, you know, also provide that you have
13 jurisdiction to determine, you know, tax, interest,
14 penalties, and fees separately. And those are all, you
15 know, things within your jurisdiction.

16 31033, FTB mails a Notice of Action on a
17 cancellation, credit, or refund. Again, mailing a Notice
18 of Action on -- the whole point is the FTB has made a
19 determination against the taxpayer, and the taxpayer is
20 bringing it to you to review it and determine whether
21 that's correct. That's what this is. And I think at this
22 point I can simply say there is nowhere in any of these
23 statutes that make your jurisdiction dependent on whether
24 a tax is in dispute or not when it come here. It's just
25 not there. So everybody would concede the FTB is agreeing

1 that you have jurisdiction to determine whether a
2 computation of interest is correct under the statutes if
3 the tax is also in dispute.

4 So it just simply doesn't make any sense. FTB
5 issues Notices of Interest Assessment, whether there's a
6 tax due or not, on a regular daily basis probably. You
7 get interest if you underpay your tax on your return. You
8 get a notice that says hey, you owe additional amount plus
9 interest. You self-assess an additional amount that you
10 owe. If you get a deficiency assessment and you dispute
11 the tax and there's interest, you know, that's in dispute
12 as well; and it's also before. The jury -- you know, 3103
13 also says you have jurisdiction if the FTB mails a notice
14 that disallows interest on a refund. That's purely
15 related to interest. If I've asked for a refund and they
16 don't allow interest or the correct amount of interest on
17 the refund that I've requested, I can appeal that too.

18 Okay. So you have jurisdiction, you know, under
19 the Government Code and, expressly, under your own rules.
20 It's not dependent on whether a tax deficiency -- just tax
21 is disputed as well. And by the way, that wouldn't make
22 sense. Because the whole point here is that whether it's
23 at audit or before a hearing, everybody wants to get tax
24 resolved as early as possible. It doesn't make sense.
25 The FTB is saying here that okay, if you agree to the tax

1 or if you just get an assessment of interest because
2 you -- and again, which is after -- way after the fact.

3 These interest determinations are wrong as we're
4 seeing on NPAs and NOAs. They're -- they're not correct.
5 They have to be redone. They are saying if that's the
6 only thing in dispute, then, taxpayer, you have to pay
7 that interest, file a claim for refund, have the claim for
8 refund denied, and then file a complaint in court, and sue
9 for refund, and wait to hear your case before a judge.
10 That doesn't make sense. And, again, it just -- nothing
11 makes your jurisdiction dependent on a tax deficiency, tax
12 being in dispute as well.

13 So I'm going to pause because I think the -- most
14 of the cases that come before you involve interest
15 abatement. And so probably that's why the OTA sent the
16 initial letter and cited interest abatement statutes and
17 cases. And, again, this isn't an interest abatement case.
18 So let me just walk through the interest statutes
19 briefly -- well, sort of briefly. And I'm going to use
20 the copy that I sent, you know, in that prehearing letter
21 on like June 3, 2025. But it's just the law. Just got to
22 find my notes. Okay.

23 So the interest -- there's an entire Article 6 in
24 the code called "Interest," and it starts with 19101,
25 which is the statute that we're gonna -- that -- it

1 matters here. And that statute says if any amount of tax
2 imposed by Part 10 or Part 11 is not paid on or before the
3 last date prescribe for payment, interest on that amount
4 at the adjusted annual rate shall be paid for the period
5 from that last date to the date paid. That's the first
6 statute in the section, and it imposes interest.

7 Then there's a slew of other statutes that
8 continue. Some of these provide, you know, very specific
9 rules that say, okay, we've imposed interest per 19101,
10 and interest cannot accrue. We will in certain
11 circumstance. Other statutes, namely, 19104, 19109, 19112
12 are statutes that deal with requests for abatement. And
13 those statutes -- just looking at -- start with 19104 --
14 I'm sorry to belabor this, but I think since you see
15 interest abatement cases so much, I think I'm just going
16 to present it; and hopefully it doesn't take too long.

17 19104(a), FTB may abate interest on a deficiency
18 to the extent it's attributable in whole or in part to any
19 unreasonable error or delay on their side and not
20 attributable to the taxpayer, effectively what (a) says.
21 And then subsection (b) says for purposes of
22 subsection (a), and then when you get down to (b) (2) (B),
23 the State Board, now the OTA, shall have jurisdiction over
24 the appeal to determine whether the FTB's failure to abate
25 interest under the section was an abuse of discretion and

1 may order an abatement.

2 Okay. There's a specific standard of review that
3 applies to an abatement case. Why? Because the FTB has
4 given broad discretion to determine whether to abate
5 interest. Again, they have to look at their records and
6 determine whether there were delays that were not
7 attributable to the taxpayer. And, you know, if they
8 grant that, you can review that, but it's only for abuse
9 of discretion. The same is in 19109. The language, you
10 know, 19109(b) (2) (B), again, Board shall have jurisdiction
11 over the appeal to determine whether the failure to abate
12 interest under this subsection was an abuse of discretion.
13 This one pertains to disasters. You know, if there's a
14 disaster that causes a problem for a taxpayer.

15 And then there's 19112, which you got a case on
16 recently, which is what the FTB cited. This is a -- this
17 statute actually provides for waiver of interest, not
18 abatement. Waiver for any period for which the FTB
19 determines that an individual or fiduciary demonstrates
20 inability to pay. Last sentence of that section, any
21 waiver under this section shall be withdrawn or
22 retroactively made -- oh, wait. Sorry. There is --
23 sorry. I apologize. Strike that.

24 Interest may be waived. It's the FTB that
25 determines that on their own. You held, and there makes

1 sense that there's no authority. No jurisdiction here to
2 review. Really, a taxpayer doesn't have standing to ask
3 you to review -- I'm slow -- I got to slow down -- a
4 waiver of interest. Okay. So you have 19104, 19109,
5 19112, all of which have, you know, baked in standards of
6 review. Why? Because they have -- it's the FTB's
7 discretion to grant an abatement or to waive in the first
8 place. All of these other statutes, 19 -- starting with
9 19101, 19105, 19107, 19108, 19110, 19113. Okay. They all
10 have different language. These are mechanical very
11 specific statutes that tell the FTB and the world when
12 interest is imposed and when interest must be -- must not
13 accrue.

14 So just, you know, again, we already read 19101,
15 19105, and they all have the same language that's
16 important distinguishing from the abatement cases, 19105.
17 Interest in the case of an individual fiduciary, FTB shall
18 not assess interest charges pursuant to 19101, for the
19 period between 45 days after the date of final review of
20 an audit determining an additional amount is owed and the
21 date a notice is sent to the taxpayer. So there's a
22 period where interest shall not be assessed. FTB shall
23 not assess interest. Okay. That's a mandatory provision.
24 The FTB has to do that, right.

25 19107, overpayment by an individual and

1 deficiency in the same year. Last clause, no interest
2 shall be assessed on that portion of the deficiency as is
3 distinguished by the credit for the period of time
4 subsequent to an overpayment. It's the "no interest shall
5 be assessed" language that you will find in the
6 circumstances described in sections 19107, 108, 110,
7 and 113. So, again, the point of going through those
8 statutes, Article 6, specifically deals with interest.
9 There is a statutory scheme. If a tax-- you know, if
10 interest is imposed under 19101, that's the starting point
11 for everything. The taxpayer can request abatement.
12 That's their discretion -- FTB direction, and -- there's
13 this tentative review for that. All these other things
14 are mechanical, and it has to be done right; just like tax
15 has to be computed right.

16 Okay. And, again, the policy here is there is
17 simply no -- in those statutes and rules, there's no your
18 jurisdiction to review these interest computations is not
19 dependent on whether tax is also in dispute, and that's --
20 you know, it doesn't make senses as I said before to have
21 to go to court just to contest interest after you've
22 agreed to tax. And, by the way, if tax is settled on
23 the -- you know, resolved first or the OTA has the idea
24 that we no longer be able to contest interest; I mean,
25 again, that just doesn't make sense. So more -- again,

1 it's just not in the rules.

2 Questions on jurisdiction?

3 JUDGE LAMBERT: We'll probably save all of our
4 questions until after the full presentation.

5 MR. CAMPBELL: Okay. And I guess I should
6 just -- should add, again, the -- when the FTB responded
7 in February to their jurisdictional -- just this question
8 you posed -- they're statement was that you don't have
9 jurisdiction to hear and decide an appeal relating to
10 unpaid interest on a deficiency because interest is not
11 included in the legal definition of deficiency. So even
12 that issue, the way they phrased it did not -- wasn't
13 focusing on whether the deficiency was in dispute or not.

14 Their -- again, they'll probably explain. I just
15 am reading their issue -- you know, their statement of
16 the -- their issue as interest not included in the legal
17 definition of deficiency. And, again, the definition of a
18 deficiency is in a completely different set of sections
19 that deals with determining deficiency. That's 19043.
20 And that is simply that it's the amount shown on a return
21 and the amount that's actually due, if there's a -- you
22 know, that's what is -- is a tax deficiency. Interest, of
23 course, is then assessed on -- on any deficiency, and
24 that's separate. And then the interest statutes
25 themselves, I think it's 19114. I think. Hold on.

1 It says interest prescribed under this Article 6
2 on tax may be assessed and collected at any time during
3 the period within which the tax to which the interest
4 relates may be collected. So, again, the fact that
5 deficiency relates to tax, you know, just doesn't have any
6 impact on this issue or whether you have jurisdiction.
7 And, again, your jurisdiction in 3103 is -- exists when
8 the FTB mails a Notice of Action on a proposed assessment,
9 which may include, you know, interest, fees, and
10 penalties. And then there's other sections there as well
11 that raise interest. So I think that concludes the
12 discussion of jurisdiction.

13 I'm going to pause again so I can get together
14 the stuff for the merits. Sorry. Thanks for bearing with
15 me.

16 Okay. Going back to the facts, which I said at
17 the beginning. At the end of the day, what's in dispute
18 here? Our position is that the law in 19101 provides that
19 interest may be assessed, must be assessed, or is assessed
20 if any amount of tax is not paid on or before the last
21 date prescribed for payment. Interest on the amount shall
22 be paid for that -- for the period from that last date to
23 the date paid.

24 So that statute, the plain language is clear that
25 interest begins to run on April 15 of a particular year.

1 And that's because statutes that we all agree on -- I
2 won't go into, unless I need to -- provide that taxes are
3 paid on April 15th or due and paid on -- payable on
4 April 15. And all payments are applied. Even estimated
5 taxes are applied on April 15th, and that is when you
6 determine whether the amount of tax you've paid is more or
7 less than the tax that is imposed.

8 And in this case, 2017, taking into account all
9 the payments that had been made and the correct tax that
10 was due, there is an overpayment of \$1.49 million. We all
11 agree with that. Okay. Even -- there's no dispute. And
12 I think the point is, again, that we're going to come back
13 to this is a determination that is made on April 15 of
14 each year. In our table, you know, we show that under the
15 plain language of this statute -- the interest statute,
16 there is no tax due and not paid on April 15 of 2018, for
17 the 2017 year -- again, the FTB agrees -- or on
18 April 15, 2019, which the FTB actually agrees too. They
19 just say interest begins accrues then, but they agree
20 there's an overpayment at that time. And the first time
21 that there not an overpayment where tax is actually due
22 and not paid is April 15, 2020.

23 So that is why our application of the statute is
24 that on April 15, 2020, there is now a tax due and unpaid
25 of \$1,040,626 million that needs to be satisfied.

1 Interest can begin to accrue at that time, April 15, 2020,
2 and it is interest accrues shall be paid for the period
3 from that last date, April 15, 2020, to the date paid,
4 which, in our case, is March 22, 2021. That's -- so
5 that's 341 days. We calculated that our interest, based
6 on the FTB rates, was about \$37,981. Again, the way the
7 FTB does it, they computed it was about 240. We'll get to
8 that in a minute.

9 But the plain language of the statute is simply
10 that, you know, April 15 of the -- is the date that
11 interest can begin to accrue, and only if you have an
12 amount that's due and unpaid; and we just don't on
13 4/15/2018. So if I were just to slow down and state the
14 very specific issue and the answer, the FTB's position
15 here, which we'll get to, is that interest begins to
16 accrue on April 15, 2019. And then we'll go through their
17 discuss -- you know, their analysis of why that is, but it
18 can't be. Because under the plain language of the
19 statute, there is an overpayment as of that date. No tax
20 is due and not paid on April 15, 2019.

21 So the plain language, you know, says interest
22 does not begin to accrue on that date. It's just you
23 can't apply that language there. You can, as of
24 4/15/2020, which is what we do. So there is a, you know,
25 approximately a year there in dispute. But in

1 addition, -- I'll get to the, you know, FTB's position
2 here, which is shown on, you know, their Exhibit C. And
3 let's just take a look for a second.

4 In the far right column of their Exhibit C, page
5 6, you'll see as you go through, there were -- they agree
6 that we have an overpayment on 4/15/2018, again, of
7 \$1,490,000. And then they use that to satisfy some
8 payments for estimated taxes that we'll talk about, which
9 is the confusion here. And then down on April 15, 2019,
10 about three-quarters of the way down the page, you'll see
11 the remaining overpayment at the end of the 2019 --
12 sorry -- as of 4/15/2019 of \$889,000, and they move that
13 over to the next year. And then they reinstate the entire
14 amount of the deficiency of \$2,269,115, and they start
15 charging interest on that entire \$2.2 million on
16 April 15, 2019. I hope that just -- saying that shows
17 that that makes no sense. We have overpaid to the tune of
18 \$889,000 under their own theory.

19 And what we'll get to is their -- what they are
20 doing is not in accordance with the law. But the fact of
21 the matter is, certainly, there isn't \$2.269 million due
22 at that time. They just satisfied the \$2.269 million and
23 said we owed \$1.49 million and are applying that amount to
24 go down. So that's not right. That's why, you know, we
25 paid that full amount of like 240 and said that we really

1 only owed 37. So that's what the refund would be.

2 So the difference in our positions is not just
3 the accrual date. They want to start the interest
4 accruing on April 15, 2019, and we're starting it on
5 April 15, 2020. But they're also accruing interest on the
6 entire amount as if it were not paid, and it was. So,
7 again, our case is pretty straightforward and simple.
8 Just another -- you know, harks back to what the May court
9 said about the taxpayer's case. It's in our table.
10 It's -- it's simply based on 19101, which is very specific
11 and just focuses on April 15 of each tax year, and whether
12 there's an amount due.

13 The entire confusion and position here in this
14 computation on Exhibit C is all based on the incorporation
15 of certain part of the estimated tax payment regime.
16 Those simply -- those statutes just don't apply here, and
17 they don't -- you know, they're not -- they're not
18 relevant to this computation -- to the interest
19 computation. And that is, you know, there's cases
20 directly on point, which I'll get to.

21 But let me read just to set the stage. Again, I
22 just want to be clear. I'm going slow and being
23 repetitive. I apologize. Our case and the simple
24 application of the statute is in our table -- lower table
25 on page 4. Everything else now is going to be discussing

1 what the FTB is doing and why that's not correct under the
2 statutes.

3 Okay. So let me just read to what the -- read
4 the position because it -- it's -- and then I'll read some
5 of the passage from the case that deals with it. So the
6 FTB's position in their January 3, 2022, letter are the
7 protest determination for their affirming, again, the --
8 this computation on Exhibit C. The FT -- on page 2 of 4,
9 which is page 2 of FTB's Exhibit D. The FTB did not
10 charge interest during the period from April 15, 2018,
11 through April 15, 2019, because the taxpayers' 2017 tax
12 liability was determined as of April 15, 2018. And upon
13 filing their 2017 return, the taxpayers determined they
14 overpaid their 2017 tax liability and elected to have
15 their overpayment applied towards their 2018 estimated
16 taxes. The FTB started charging interest as of
17 April 15, 2019, because the taxpayers' 2018 tax liability
18 was determined as of April 15, 2019, and the FTB no longer
19 had use of the taxpayers' overpayment after April 15,
20 2019. Therefore, as of April 15th, 2019, the taxpayers
21 could elect to have their 2018 overpayment of \$3 million
22 returned or apply it towards 2019.

23 Let's just pause there.

24 Again, this shows that we all agree that tax
25 payments are due and applied and determined on April 15.

1 But there's this -- you know, the statement that we don't
2 have -- we have an overpayment in 20 -- you know -- 18.
3 But when we get to April 15, 2019, that the FTB no longer
4 had the use of the taxpayer's overpayment, they did. And
5 the courts, you know, we'll get to say that is important.
6 It doesn't allow interest to accrue. So they absolutely
7 had the use of our money on April 15, 2019.

8 Again, what this goes to is going to be this
9 theory about the -- this credit elect statute, which we'll
10 get to. They then say in their brief, just to drive it
11 home -- to be clear, this is on page 7 of their brief. To
12 be clear, when the FTB computes deficiency for an initial
13 tax year, and a credit elect was not fully needed to
14 satisfy estimated tax installments for the subsequent tax
15 year, precedential authority allows FTB to charge interest
16 on the deficiency assessed -- assessment, starting on the
17 due date of the subsequent tax year's return. Again,
18 April 15 is the key date.

19 Here, Appellants made an irrevocable election to
20 convert their 2017 overpayment to an estimated payment
21 towards 2018 tax liability. Then when they filed their
22 2018 return and elected to have another overpayment
23 applied towards 2019, then -- so that's what they did. At
24 that time, the original 2017 overpayment was no longer
25 held by Respondent for Appellants' 2017 account, and

1 interest properly began to accrue on the 2017 deficiency,
2 the entire \$2 million starting on April 15, 2019.

3 Again, there is this -- the question of whether
4 this cutting the -- the overpayment off on April 15, 2019,
5 and, at that point, they don't have the money. That's
6 just not true, and that is what we need to -- that's
7 really what's at issue in this case. And, again, 19101
8 makes -- and those interest provisions make no mention of
9 any of these statutes. That's important because, you
10 know, there's -- there's confusion between the estimated
11 regime and tax payment and interest. Okay. So that's --
12 those are two passages from the FTB. That's the crux of
13 their -- of their position.

14 Let me read from a couple cases that are directly
15 on point. This is Otis -- yeah, I'll get there.

16 This is Otis Spunkmeyer from 2004 Northern
17 District of California, federal case. Okay. And the
18 federal statutes are effectively the same, which, you
19 know, we're citing -- they're citing federal cases. We're
20 also citing federal cases because they're pretty much the
21 same. So the court -- as the courts in Spunkmeyer says
22 the court turns next to the one true issue in this case,
23 the merits of the theory upon which the IRS charged OSI
24 interest from March 15, 1995, for the 1993 tax year
25 deficiency, and March 15, 1996, for the 1994 tax year

1 deficiency. Again, IRS was applying the same theory here,
2 which is that you cut off this overpayment balance on
3 April 15th of the subsequent year. We'll get there in a
4 minute.

5 The IRS contends that Code section 6513(d) --
6 which is the same as the credit elect we'll get to -- in a
7 Revenue ruling govern the resolution of this question
8 before the court. More specifically, the IRS contends
9 that these provisions render OSI's tax unpaid as of
10 March 15, 1995, for the 1993 tax year, and March 15, 1996,
11 for the 1994 tax year. Because on these dates the
12 respective overpayment credits were deemed by the IRS to
13 be tax payments for the succeeding year. It's exactly
14 what the FTB is saying here.

15 The IRS argues -- it's on the next page of this
16 case. The IRS argues that under 6513(d) a credit elect
17 assigning one year's overpayment to the next year's tax
18 liability effectively transmutes the overpayment as of the
19 date of the subsequent year's tax return into a tax
20 payment for that year. At that moment, the IRS argues any
21 prior year underpayment becomes unpaid, and the IRS is
22 entitled to begin charging interest as of the date the tax
23 was due. The Court in this case disagrees with that, and
24 explains that that's not how the law works.

25 The taxpayer in this case, like our case, had an

1 overpayment balance at the end of that succeeding year.
2 And so the government -- you know, there is no statute
3 that allows -- like the credit elect statute we'll get to
4 in a minute. Nothing in -- in the interest statute
5 allows -- or the credit elect statute, which doesn't apply
6 to interest, allows you to treat an overpayment balance
7 that exists on April 15 as no longer there. We all agree
8 that it's there. And this 19101, it keys off of whether
9 there is tax due and unpaid as of that date. There isn't.

10 What's important in Otis and some of these other
11 cases, they take a step back and they say look, you have
12 to look at the context of these Code sections. Just like
13 here in the federal -- you know, in the federal cases and
14 the federal law, there is a chapter dealing with interest.
15 There is a chapter dealing with deficiency assessments.
16 There is a chapter dealing with an estimated tax payment
17 regime. They are separate. And what the court in Otis
18 says, and in other cases, that you have to look at -- when
19 you look at the structure and the context, you can't
20 import -- there's nothing in this credit elect statute,
21 and nothing in the interest statutes that, you know, where
22 they -- where they apply together. So I'll come back to
23 that.

24 Again, the Court -- you know, so they say in
25 Otis, for example, first why the IRS relies on

1 section 6513(d), which is the credit elect statute on the
2 federal side, when reviewed in this proper context, it's
3 concerned with the assessment of interest. It's concerned
4 with, you know, period of limitations. Okay. Tax -- you
5 know, time when taxes is due and deemed paid. So, again,
6 in this -- you know, in Otis the -- the Court is going
7 to -- I'll -- I'll come back to what they hold -- that
8 they reject the FTB's argument in this case completely.
9 And that's fine.

10 The only issue in this case, by the way, is
11 whether interest -- you know, the FTB's position is
12 interest accrues on April 15, 2019. It can't, because on
13 that day we have an overpayment. And certainly, it can't
14 accrue on the entire amount of this deficiency because
15 that's already been satisfied, even on their own
16 Exhibit C. So why is this difficult? Why is -- you know,
17 again, even the protest hearing officer in these
18 computations on the NPA and the NOA, they're wrong. You
19 know, they have to go back and recompute this and figure
20 it out. In this case, they didn't do it right. They're
21 just thinking that, like in the IRS notice and in the
22 Goldring and other cases, that this credit elect provision
23 automatically somehow treats taxes that are overpaid on
24 the sub -- as of the end of the succeeding year as now no
25 longer available, you know. But they're in the -- they

1 have the use of the money. So they have the money.

2 11:23. Okay. Sorry.

3 Goldring, which, you know, is also on point.

4 Otis is directly on point. Goldring is also directly on
5 point. I don't want to get into the authority issue. The
6 cases -- there's this progression of cases, Avon, May,
7 FleetBoston, Otis, Goldring. They have different factual
8 circumstances. Otis and Goldring are both directly on
9 point here because, like in this case, the taxpayers were
10 fully overpaid going into -- after the succeeding -- at
11 the end of succeeding year; which in this case was
12 April 15, 2019. That's not always the case. And the
13 other one -- and the earlier cases and Revenue ruling that
14 the IRS had, which are then kind of distinguish or explain
15 why they're not completely right in -- in Otis and -- and
16 Goldring are, you know, sort of a progression. So when
17 you get to Otis and Goldring, they're directly on point.
18 And, you know, talk about Avon and May completely. Okay.

19 JUDGE LAMBERT: Mr. Campbell, just letting you
20 know, my timer says you have like five minutes left.

21 MR. CAMPBELL: Oh, jeez. I went too slow. Okay.
22 Thank you.

23 So -- okay. In con -- okay. You know, I'll
24 conclude at this point and then the FTB can go.

25 But the point is -- wait. Let me find the

1 estimated -- I have to talk about the estimated payments.
2 Where are they?

3 Okay. FTB cites one statute in it's brief, which
4 is 19134 -- sorry -- 193 -- 364. This is the provision
5 that says if any overpayment of tax is claimed as a credit
6 against estimated tax for the succeeding taxable year,
7 that amount shall be considered as payment of the tax for
8 the succeeding year, and no claim for credit or refund
9 shall be allowed for the taxable year in which the
10 overpayment arises. And that section is also -- there's
11 other provisions that they didn't cite that -- that
12 contain that same language that are in the claim for
13 refund provisions in Article 1 and in, you know, like
14 payment, you know, penalties.

15 And the -- none of this -- again, in the interest
16 statute, in particular 19101(d), even says this is the
17 interest statute. This Article -- Articles shall not
18 apply to any failure to pay estimated tax required by
19 section 19136. So the statute cited by the FTB in 1913 --
20 19364, along with the estimated payment -- the estimated
21 tax regime are in separate provisions and just don't have
22 anything to do with interest by the expressed interest
23 statute.

24 Is it okay if I go over by a couple of minutes?
25 Do you mind? Just -- and then you can -- you know, you'll

1 go through these statutes too.

2 But I think the main -- what's important here is
3 that there is a separate regime. We incorporate in
4 1936 -- 136 the estimated tax payment regime, and then
5 we -- it's modified in California under 19136.1. That
6 regime requires you to pay in installments certain amounts
7 so that your, you know, tax is fully paid by April 15th of
8 the next year. In those statutes -- we can get to it in
9 rebuttal or maybe they'll go through. But those statutes
10 provide, and the credit elect statements says every time
11 you file your return, if there's an overpayment, you can
12 either have it -- choose to have it refunded. You get a
13 check back. Or you can credit it towards, you know, these
14 installment payments that are coming for the next year.
15 And in our case, we elected that every year. And in Otis
16 and in Goldring that's what happened. And in these other
17 cases, for the most part, that's what happened.

18 That -- this statute 19364 and the language that
19 says no claim for credit or refund shall be allowed for
20 the taxable year in which the overpayment arises. 19363,
21 all estimated taxes shall be deemed to have paid on the
22 last day prescribed for filing the return. Again,
23 April 15 everything is applied. The FTB agrees with that.
24 It's not in dispute.

25 The point is you can't ask for a refund of

1 estimated taxes of the -- of your overpayment until it's
2 applied the next year. But once it's applied, you can
3 certainly ask for refund. But that amount is sitting
4 there, and that's the point in Otis and Goldring and
5 this -- in these cases. They're saying, look, interest
6 runs when there's tax due and unpaid. Tax is applied in
7 all circumstances and determined whether there's an
8 underpayment or an overpayment on April 15. There -- the
9 separate regime, again, interest does not apply when
10 there's an underpayment of estimated tax.

11 The entire point -- and apologize if I'm going
12 fast -- of the installment payment system and estimated
13 system is at the end of the year and you self-assess or
14 you determine whether you have an underpayment penalty.
15 If you have underpaid the installments, then a separate
16 statute in -- in this other regime says, hey, you don't
17 have interest. You have a penalty. Okay. And in IRS
18 there's four quarters that you have to satisfy, and there'
19 different methodologies for determining whether you've
20 paid enough. You can't make any of those determinations
21 until April 15th, by the way.

22 So, at that point in time, that -- that's what
23 this credit elect relates to. I'm electing on my return
24 and move this forward. At the end of the next year, I'm
25 going to figure out, you know, whether I owe an

1 underpayment penalty, and whether my tax is overpaid or
2 not. But none of that has to do with interest. And
3 that's exactly what, you know, the Otis court said, and
4 Goldring said. And so, the question I would ask is --
5 sorry. I know I had it -- you know, A, whether interest
6 can accrue. What is the statute that allows interest to
7 accrue in this case on April 15, 2019, which is what 19101
8 says; and what is the statute that allows this credit
9 elect provision to cause interest to begin to accrue on
10 April 15, 2019?

11 There's no connection between the concept of each
12 year applying your overpayment to satisfy estimates that
13 are going to be, you know, determined whether there's an
14 underpayment later, and the fact that the FTB has your
15 money in the meantime to satisfy any underpayment that
16 might later, you know, come into fruition. And that --
17 I'll just leave you with Goldring.

18 Sorry. I'm analog. So, you know, I look at
19 paper, as Chris said.

20 In Goldring, same as Otis, the government's
21 argument in this case fixates on the theoretical migration
22 of a credit elect overpayment funds from one tax year to
23 another. However, this argument completely ignores the
24 simple undisputed fact that the IRS was never deprived of
25 its use of the money the Goldring lawfully owed at any

1 point during the five-year underpayment interest
2 assessment period. That's the same here. And, really,
3 the focus, again, is on April 15, 2019, because that's the
4 date -- that's the argument the FTB is making that on that
5 date this credit elect theoretical migration treats
6 whatever overpayment exists as no longer existing and
7 reinstates the entire deficiency. That is wrong. There's
8 no way to read the statutes to get there. So that would
9 be my question is, you know, how do you get there?

10 Lastly, I know -- I see their visual. I think
11 they're going to talk about some Revenue rulings, which
12 are distinguished in Otis -- or discussed in Otis and
13 Goldring. And the point is, the situations on those
14 rulings -- what's different here is that we are fully,
15 completely overpaid. There's no question, you know, as of
16 4/15/2019. So we're all in agreement. So that, again,
17 should be the focus is what's this -- what's the status of
18 our account, so to speak, on 4/15/2019. And we're happy
19 to pay interest. Again, we make a payment. We know we're
20 deficient at that point in time in 20 -- 4/15/2020, and
21 that' how we computed our interest.

22 So good? Okay. I'll stop here.

23 JUDGE LAMBERT: Okay. Thank you, Mr. Campbell.
24 I'll turn to the panel now to see if there's any
25 questions.

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Judge Turner, did you have any questions?

JUDGE TURNER: Yeah. I think I actually have two.

Is it your position that there isn't -- the FTB's miscalculation of interest is because there was not an amount unpaid under section 19101? Or, you identified other statutory limitations on the imposition of interest, 19105, 107, 108. Is it your position any of those specific statutes apply? Or is it simply that under 19101 there isn't an amount not paid until April 15th of 2020?

MR. CAMPBELL: That's a good question. That's a good question. I mean, the answer is 19101 answers the question because there isn't an amount unpaid. However, those statutes support the point. I think it's 19108 -- and I just wanted to find it -- where -- where is that statute? Give me one second. Again, this -- there's 19108 explains it. No interest shall be assessed on a portion of a deficiency from one year that's extinguished by a credit for a period of time subsequent to the date an overpayment was made. So I won't get into exactly how that applies.

But the point is these provisions like you cited, in addition to the main -- the plain language, which clearly applies to us, when you look at the whole scheme, the -- these statutes are saying that the FTB -- or that

1 we must move money that is overpaid to satisfy
2 deficiencies and no interest can accrue and that -- all of
3 that just goes to say, again, when you look at the whole
4 scheme and read the Otis and Goldring in particular -- you
5 can start with Avon and May for sure -- but that if you
6 have an overpayment as of April 15 date, you can't start
7 interest on that date, you know. So you have to look to
8 the next April 15 each time. And that's when a -- that's
9 when you measure, you know, whether you have an
10 overpayment or not.

11 Does that answer the question?

12 JUDGE TURNER: Yes.

13 MR. CAMPBELL: Okay.

14 JUDGE TURNER: Second question. We've talked
15 about the use of money, the overpayments being available
16 for the FTB or the State to use. What does it mean to
17 have the use of money?

18 MR. CAMPBELL: Good question. So in our briefs,
19 we used the term "use of the money principle," right. So
20 I -- I -- in hindsight, looking back -- again, this is why
21 I'm taking a lot of time to go through the statutes.
22 That's a label, and the label isn't really helpful unless
23 you understand what the statute say. So use of the money
24 just mean, you know, in general, interest, general
25 principle stated in all these cases that if the government

1 has use the of the taxpayer's money, the taxpayer, you
2 know, to cover all amounts, you know, due as tax at that
3 point in time, that you -- they can't assess interest.

4 Just like -- and so, I mean, it just makes sense.
5 If I -- if the FTB has got an extra \$100,000 of mine, and
6 I then it's later determined that I have \$100,000 that I
7 owe at the same time, I shouldn't be charged interest
8 because they actually have the \$100,000. And that's
9 exactly what the case is here.

10 JUDGE TURNER: I guess a follow up to that then
11 is it when you say use, is it a specific then to a tax
12 liability, or is there some -- some expanded use that the
13 court is referring to when their talking about use of
14 money?

15 MR. CAMPBELL: No. I think -- well, that's why
16 it's a label. And I think when you look at Avon, May,
17 FleetBoston, Goldring, Otis, and all the other cases that
18 are cited, it's just a description of the concept that you
19 don't charge interest, and you shouldn't be assessed
20 interest if there is enough money -- if there is amounts
21 that you've paid that are more than an amount that you
22 owe. In this case, the specific statute that we're
23 applying is 19101. That statute is the statute that
24 imposes interest. You don't have interest unless you
25 apply 19101.

1 19101 tells you when interest begins to accrue.
2 It only is on April 15. It's only if you have an
3 underpayment or not overpayment on tax due and unpaid on
4 April 15. Avon says that. May says, and it continues.
5 We all -- we all know that April 15 is the measuring date
6 for this point. So the use of the money, you know, in
7 this case, it's just a label. But when look at the
8 statute we are talking about, have you paid tax --
9 sufficient tax until on April 15? And in this case, we
10 did until April 15, 2020. That's it.

11 And, again, look at -- I mean, like you said,
12 it's talked about. It's a theory. It's the label that
13 all the cases use that we use high level, but it's very --
14 has a, you know, specific meaning in each of these cases
15 when you apply the law.

16 JUDGE TURNER: Thank you.

17 MR. CAMPBELL: Makes sense?

18 JUDGE TURNER: Yeah.

19 MR. CAMPBELL: Or did I answer? Okay.

20 JUDGE LAMBERT: Okay. Thanks.

21 And, Hearing Officer Elsom, did you have any
22 questions?

23 HEARING OFFICER ELSOM: Hi, Mr. Campbell. I did
24 have two questions. And the first was that you had made
25 the point that FTB's own schedule in Exhibits C applies

1 the overpayment against the 2.2. -- excuse me --
2 \$2.2 million liability, and this appears to be only for
3 the calculation of interest. And my question is, did you
4 have any discussions internally, review any law, or any
5 legal authority to apply that deficiency against the
6 overpayment and simply recalculate the overpayment credit
7 rolling forward? In other words, did you ask why the
8 Franchise Tax Board didn't simply recalculate the
9 overpayment to \$1.4 million and just roll that forward?

10 MR. CAMPBELL: Yes. Yes. During the protest --
11 and if you look at the exhibits, I think the protest
12 correspondence has mainly attached to the FTB's appeal;
13 not only is there back and forth, you know, written
14 communication, but there's references to telephone calls
15 and meetings. And so that entire process, as you'll see,
16 is our protest started with, you are not taking into
17 account overpayments. You need to recompute it. And
18 they're providing us interest computations and explaining
19 with citations to Avon and May, and stopping there, and
20 their interest computation to say that, no, here's how we
21 do it. And this is how we do it, and you're wrong.

22 The reason we're doing it is because of -- as we
23 read these, you know, cases and a Revenue ruling, you have
24 to apply the amount that you have overpaid towards -- and
25 treat the, you know, these estimated tax installment

1 payments as, you know, being satisfied. Now, we -- you
2 know, we explained to them that -- that doesn't even make
3 sense. Because under their own determination when they do
4 that, as you said, they spring the entire deficiency back
5 on April 15, 2019. So even under that theory it's not --
6 you know, it doesn't seem to make sense.

7 I don't know if that fully answers your question.
8 But yes, we absolutely discussed it, and that's the whole
9 point of the difference between their computation and what
10 they say in their protest determination letter, and the
11 opening -- and their brief when I read that passage
12 before, which I think relies on, like, Avon and May
13 mainly. And our position, again, relies on the statute
14 and the later cases, Otis and Goldring, that expound on
15 all that.

16 HEARING OFFICER ELSOM: And so, as a follow-up
17 question to that, did Appellant ultimately pay the
18 deficiency balance on March 22nd, 2021, to prevent the
19 accrual of interest, or were they conceding on that, you
20 know, calculation of overpayment credit?

21 MR. CAMPBELL: Good question. As our -- if you
22 look at our table, again, it's -- we all agreed that we
23 owed \$2.269 million back for 2017. The amount of
24 interest -- and so we paid that on March 22. When we paid
25 that, we were then again overpaid. It just didn't bring

1 our balance to zero. So on the met -- you know, each year
2 on the -- the date, you determine whether interest begins
3 to accrue April 15. You can see that after applying the
4 \$2.269 million payment to 2017 and 2018, we still have
5 overpayment of \$761,000 on April 15, 2019.

6 On April 15, 2020, that results in our actual tax
7 paid to be underpaid by \$1.040 million. So as we see it,
8 the statute says, you know, we pay interest on -- starting
9 on April 15, 2020, on the amount that is still unpaid.

10 Does that answer your question?

11 HEARING OFFICER ELSOM: I believe so.

12 MR. CAMPBELL: Okay.

13 HEARING OFFICER ELSOM: Second question is
14 regarding the schedule that the Franchise Tax Board
15 provided in Exhibit C. I just want to clarify that
16 there's no dispute on the interest calculation there. And
17 you had referenced the Franchise Tax Board's application
18 of a portion of the overpayment credit to estimated
19 quarterly payments. And I wasn't completely clear if you
20 were just drawing a distinction between how should it be
21 applied. How the overpayment should be applied, meaning
22 end of the -- you know, when the tax is due for the
23 following year, or if you had any dispute with actual
24 interest? Because it appears that there's no interest
25 charged for that period. So I just want to be clear on

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that.

MR. CAMPBELL: No interest charged for which period?

HEARING OFFICER ELSOM: For the period of 4/15/2018 through 4/15/2019.

MR. CAMPBELL: That's correct. We all agree that no interest is assessed or due for that period --

HEARING OFFICER ELSOM: Okay.

MR. CAMPBELL: -- because we were overpaid from 4/15/2018 to 4/15/2019. The issue is, on 4/15/2019 when we're still overpaid under their theory, they begin to assess interest on the entire amount of the \$2.2 million, which is just not correct.

HEARING OFFICER ELSOM: Okay. And then just a quick follow up. Again, this is just computational.

MR. CAMPBELL: Yeah.

HEARING OFFICER ELSOM: It appears that FTB applied the overpayment credit to quarter one and quarter four in that -- just in that context of that schedule. And was that because Appellant had separately made quarterly payments for quarter two and three?

MR. CAMPBELL: Well, you always make payment -- yeah. So if you look at the bottom of their schedule, and this is -- if anything, I think just the -- the confusion and the difficulty in doing this should lend itself to the

1 correct reading of the statute here, because all of this
2 is extremely difficult to follow, and it has to be done in
3 hindsight, right, and over and over again until it's
4 fixed.

5 So what they're doing here, and it's -- you can
6 see they have required estimated payments. Down at the
7 bottom they have this whole table. Those are the amounts.
8 And, again, the requirements are not known until
9 April 15th of the next year because that's when you can
10 determine what percentage you should have paid at each
11 quarter. And you self-assess a penalty if it exists, not
12 interest. So they're putting in the requirements here on
13 this first line, as well as amounts that we paid in to
14 satisfy those requirements, and that's what they're
15 debiting or taking into account in that right-hand column,
16 you know, to use it up, so to speak, which gets them to
17 negative \$880 -- which gets them to an overpayment of
18 \$889,000 as of like April 15.

19 Maybe pause. Am I answering your question?
20 Because they are applying -- I don't -- again, I'd have to
21 go back and study this particular chart, and maybe they'll
22 go through it. But that's what they're doing. They're
23 just -- their view is they take the \$1.490 million, which
24 we all agree is the overpayment, and they start applying
25 it against installments that are due and saying that

1 that's no longer available. But they say it's no longer
2 available only a year later as of April 15, 2019. That's
3 the issue in this case, and that's the very specific issue
4 dealt with in Otis that I want to draw your attention to.
5 Because every -- like, it gets very confusing otherwise.
6 But that should be the singular focus.

7 If you look at that, you say wow, how can that
8 all just disappear and all of a sudden I -- they say I
9 owe, again, \$2.269 and have to pay interest on it. So I'm
10 not disputing -- like, their interest, they -- they
11 computed, I think, \$240,000. We paid it to satisfy. But,
12 again, our self assessment was about \$37,000 on the right
13 way to do it.

14 HEARING OFFICER ELSOM: Okay. I believe that
15 answers the question.

16 MR. CAMPBELL: Okay.

17 HEARING OFFICER ELSOM: Thank you.

18 JUDGE LAMBERT: Okay. Thank you.

19 I don't have any questions, but I was wondering
20 if the parties were okay with taking a break for lunch and
21 then returning at 1:00, if that works? And then we could
22 finish with FTB's presentation and questions and then
23 closing. Does that work?

24 MS. ZUMAETA: We just have some travel
25 arrangements that would need to be changed if that were

1 the case. I think it would be our preference to maybe
2 power through it, but if OTA would like to do that, then
3 we have no objection.

4 JUDGE LAMBERT: Well, I think there's 30 minutes
5 left for FTB, then questions. So probably it seems like
6 it might take 45 minutes, 50 minutes. I guess -- how
7 about we take a -- let me just talk to the hearings
8 people. We could take like a 5 minute -- how about like a
9 5 or 10 minute break? How about 10 minutes? Does that
10 work then?

11 MS. ZUMAETA: Sure. Yeah, that's fine. And I
12 don't think we will utilize our entire 30 minutes.

13 JOSH LAMBERT: Okay.

14 MS. ZUMAETA: We'll come in quite underneath
15 that.

16 JUDGE LAMBERT: Okay. Cool. That sounds good.

17 We'll just go off the record then, and take a 10
18 minute break. Be back at 11:50.

19 (There was a pause in the proceeding.)

20 JUDGE LAMBERT: So we'll go back on the record.

21 And at this time, FTB, Mr. Cook, you can proceed
22 with your presentation. You have 30 minutes.

23 MR. COOK: Thank you, Judge Lambert.

24 ///

25 ///

1 defines a deficiency as being the excess of the amount of
2 tax the law imposes on a taxpayer, less the amount of tax
3 shown by the taxpayer on a return. Thus, a deficiency as
4 defined by statute does not include interest. Since
5 interest by itself is not a deficiency, the OTA does not
6 have jurisdiction under the rules for tax appeals to make
7 a decision on interest when there is no deficiency.

8 The OTA's predecessor, Board of Equalization said
9 as much in its 1995 decision -- and I hope I pronounce
10 this right -- Appeal of Nicholas Schillace, BOE stated --
11 and I paraphrase -- because interest is not a deficiency,
12 this Board does not have the subject matter jurisdiction
13 over questions relating sole to unpaid interest on a
14 deficiency. So the proper avenue to appeal FTB's interest
15 assessment when the related tax deficiency is not in
16 dispute is to pay the interest and file a refund reclaim
17 with FTB. If FTB denies the refund claim, the OTA does
18 have jurisdiction to hear and decide an appeal of the
19 refund claim denial under Section 3103(a)(3) of the rules
20 for tax appeals.

21 In this case today, FTB's record show receipt of
22 payment of the FTB's interest computation on
23 June 22nd, 2022. The payment was received before FTB sent
24 the Notice of Action on June 27th, and before the OTA
25 acknowledged receipt of Appellants' appeal on July 26th.

1 While the Notice of Action enumerates the underlying tax
2 deficiency, along with interest, if Appellants are not
3 challenging the tax deficiency, then the Notice of Action
4 is not the vehicle to get a hearing with the OTA. Since
5 the action in this hearing today is an appeal of a Notice
6 of Action and not an appeal of FTB's action denying a
7 claim for refund, FTB asks the OTA to consider dismissing
8 this case.

9 Moving on to the next issue, that is assuming OTA
10 does have jurisdiction to consider the interest on an
11 undisputed deficiency, we will start by repeating the
12 longstanding federal precedent that California follows,
13 that interest begins running when a tax becomes both due
14 and unpaid. Also, each tax year stands on its own. On
15 their 2017 tax return, Appellants reported an overpayment
16 of approximately \$3.8 million, which they request to be
17 applied to their 2018 estimated payments. Approximately
18 \$280,000 of this 2017 overpayment was used for the 2018
19 first quarter estimated payment, and approximately
20 \$321,000 was used for 2018 fourth quarter estimated
21 payment.

22 When Appellant filed -- when Appellants filed
23 their 2018 tax return, approximately \$3.2 million of a
24 2017 overpayment remained. Appellants used this remaining
25 \$3.2 million as payments applies to the 2018 tax year,

1 which then created an overpayment for 2018. Appellants
2 elected for this new overpayment to be used for 2019
3 estimated tax payments. Under section 19002(e) of the
4 Revenue & Taxation Code, overpayments that taxpayers
5 request to be credited to subsequent estimated payments
6 are considered payments for the subsequent year and cannot
7 be refunded or credited for the year for which they arose.

8 This means that under the law, when any portion
9 of the \$3.8 million overpayment from 2017 is used to
10 satisfy 2018's estimated tax payment, the amount used
11 cannot be used or refunded to 2017. Under section 19363
12 of the Revenue & Taxation Code, any payment for estimated
13 tax is deemed paid on the tax return filing deadlines for
14 that year. Under sections 9 -- under section 19364,
15 overpayments credit against estimated taxes are deemed to
16 be payments for the succeeding years and cannot be
17 credited or refunded to the year they arose.

18 And, again, under section 19002(e), a taxpayer
19 may claim a refund for overpayment in a prior taxable year
20 until the date that that overpayment is claimed as a
21 credit for a succeeding taxable year. So Appellants'
22 election on their 2018 tax return to apply all the 2017
23 overpayment to 2018 was deemed a payment to 2018, and
24 there cease to be an uncredited 2017 overpayment as of
25 April 15, 2019.

1 Appellants agree with the determination on FTB's
2 Notice of Proposed Assessment and Notice of Action that
3 the reported 2017 tax was underreported and underpaid by
4 approximately \$2.3 million when the 2017 tax was due on
5 April 15th, 2018. Under section 19101 of the Revenue &
6 Taxation Code, interest is charged on the underpayment of
7 tax from the day it was due until the underpayment is
8 paid. But in cases like this where an overpayment was
9 created in a year that is subsequently adjusted by audit,
10 FTB allows -- excuse me.

11 If FTB follows the federal case precedent, *May*
12 *Department Stores v United States*, as well as the
13 applicable IRS guidance and Revenue Ruling 99-40, the rule
14 under these authorities is that when an overpayment is
15 created any tax year and elected to be applied to the
16 subsequent year, then interest is not charged on the later
17 determined deficiency until the overpayment is applied to
18 the succeeding year's estimated payment. FTB corrected
19 its interest computation upon Appellants' protest of the
20 NPA to comply with these federal standards and with the
21 Revenue & Taxation Code.

22 Hopefully, this handout was -- you can refer to
23 this, and this will be helpful to show that thus, as
24 corrected, the law dictates that Appellants are not
25 charged interest on their underpaid 2017 tax until the

1 2017 overpayment is no longer available to be applied to
2 2017. Again, by law the 2017 overpayment was no longer
3 available when it was applied to 2018's tax year estimated
4 tax payments. Appellants' 2017 overpayment sufficiently
5 covered both the 2017 underpayment and 2018's estimated
6 payments. Therefore, the 2017 underpayment is not charged
7 interest while there was sufficient uncredited overpayment
8 balance still creditable to 2017.

9 When Appellants elected for the remaining
10 overpayment balance to be applied to 2018 payments on
11 their 2018 tax return, then by operation of law, there
12 remain no more 2017 overpayment that could cover the 2017
13 underpayment. Since there was no money remaining to cover
14 2017, interest began being charged beginning
15 April 15th, 2019. In summary, April 15th, 2019, is the
16 date Appellants elected to apply the entire 2017
17 overpayment to 2018 taxes and elected the resulting 2018
18 overpayment to be applied to 2019 estimated taxes. So no
19 more 2017 overpayment existed after this date.

20 Appellants' argument in this case is that FTB and
21 OTA should ignore that the 2017 overpayment was credited
22 to 2018 and reported on the 2018 return as contributing to
23 the overpayment, and elect -- and elected that a new
24 overpayment be applied to 2019. Appellants' argument is
25 that the 2017 overpayment really became part of sort of a

1 prepayment applicable to all tax years, kind of a pool of
2 money sitting in reserve to be applied to any tax payment
3 in any year as needed. While this would no doubt be
4 convenient, this is unfortunately not how the Revenue &
5 Taxation code and related federal authorities treat monies
6 as being applied to different account periods.

7 Once Appellants claimed all the overpayment as
8 2018 payments for use in 2019 on their 2018 tax return,
9 the government was no longer in possession of the funds
10 that could be used to satisfy the 2017 deficiency. So FTB
11 followed the law in determining that no interest is
12 charged from April 15th, 2018, to April 15th, 2019. And
13 FTB followed the law in determining that interest is
14 charged from April 15th, 2019, until the deficiency was
15 paid. Therefore, assuming the OTA has jurisdiction to
16 decide on this issue, FTB asks the OTA to sustain FTB's
17 interest calculations in this case.

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

19 JUDGE LAMBERT: Thank you, Mr. Cook.

20 I'll turn to the panel now.

21 Judge Turner, do you have any questions?

22 JUDGE TURNER: Yeah, the FTB. So with a taxpayer
23 disputes the calculation of interest on the refund, but
24 doesn't -- but the FTB concedes to the refund, is the
25 determination of that calculation of interest within the

1 jurisdiction of OTA? And how would you reconcile -- yeah.
2 Let's start with that.

3 MR. COOK: A refund claim is a separate action to
4 be brought to the OTA than an appeals claim. So in that
5 situation, the taxpayer had filed a claim for -- had paid
6 the interest amount, had filed a claim, FTB denied it.
7 And so it's like any other refund claim action at that
8 point.

9 JUDGE TURNER: No. I guess my question was if
10 the taxpayer filed a claim for refund and the F -- but
11 there was add -- and the FTB agreed with the amount of the
12 refund. There wasn't a dispute over the claim for the
13 refund itself, but there was a dispute over FTB's
14 calculation or whether or not interest was due on that
15 refund at all, would that question be within the
16 jurisdiction of OTA?

17 MR. COOK: Oh, if there's interest due on a
18 refund to be --

19 JUDGE TURNER: Correct.

20 MR. COOK: -- paid to the taxpayer.

21 JUDGE TURNER: Correct.

22 MR. COOK: If it's a refund claim, any -- any --
23 taxpayers are allowed to, you know, file a refund claim
24 with FTB. And once that's denied, that's their ticket to
25 the Office of Tax Appeals.

1 JUDGE TURNER: I'm not talking about the
2 substance of the claim. I'm talking about specifically
3 the calculation or determination of whether interest is
4 owed.

5 MR. COOK: Yes. If they've paid it, and they
6 filed a refund claim and it was denied.

7 JUDGE TURNER: Okay.

8 MS. ZUMAETA: So I would add that typically on a
9 claim for refund action at OTA, OTA's opinion addresses
10 the substantive issue. And then FTB subsequently
11 determines the amount of the refund that should go out,
12 which is the substantive amount as determined by OTA in
13 addition to the statutory interest that FTB would owe the
14 taxpayer. So, typically, in a claim for refund action,
15 OTA -- the taxpayer nor OTA would be advised what the
16 interest amount was beforehand, because it all depends on
17 when that claim -- when that refund claim is paid out. So
18 it -- it may take FTB three to four weeks to be able to
19 close out after the opinion goes final. At that point, we
20 would owe interest to the taxpayer until the -- until the
21 refund was actually issued.

22 JUDGE TURNER: Okay.

23 JUDGE LAMBERT: Okay. Thanks.

24 Hearing Officer Elsom, do you have any questions?

25 HEARING OFFICER ELSOM: Hi. I did have one

1 question, and maybe there's not a simple answer to this or
2 maybe it can be addressed. The 2017 overpayment balance,
3 it also has an overpayment from -- or excuse me --
4 overpayment credit from 2016 to 2017. And you had made
5 the point that Appellant essentially would like -- has a
6 pool of funds that he's -- would like applied against any
7 year until they're exhausted.

8 Isn't the application of 2016's overpayment
9 credit rolled into '17 and then to 2018. Isn't that the
10 same concept? In other words, you could have overpayment
11 credits from previous tax years that continue to roll
12 forward until they're actually applied. So could you
13 address that, or have you any position on that?

14 MR. COOK: Yes, that's how -- that's how the law
15 works. Once they -- you know, they claim on their return
16 as part of their payments for the tax year, and the
17 remaining overpay -- payment balance they elect to apply
18 to subsequent years' payments. So, at that point, that
19 2016 tax year overpayment did become, you know -- was part
20 of 2017. And then when it was claimed as part of 2017's
21 payments, it became part of that overpayment for that
22 year. Was that --

23 HEARING OFFICER ELSOM: Well, would the 2016 tax
24 year affect the calculation of interest, though, in '18?
25 Let's say there was a deficiency balance in that year. In

1 other words, he's rolling -- excuse me. Appellant would
2 like to roll forward the balance from '17, and you're
3 stating, you know, each year stands alone. If there was a
4 deficiency in '18, and that 2016 credit -- overpayment
5 credit is essentially baked into that balance that's
6 rolled forward, would interest -- would that effect the
7 calculation of interest?

8 MR. COOK: If they had an overpayment balance as
9 of the beginning -- excuse me -- at the end of the
10 subsequent tax year that's created by the subsequent tax
11 year, yeah, each year -- each tax year stands alone. That
12 2016 overpayment is not a 2016 overpayment anymore. It's
13 now a 2017 overpayment. Does that help?

14 HEARING OFFICER ELSOM: Yeah. Like I said, I'm
15 sure if there's a simple answer to this, but I -- that --
16 that's good. Thank you.

17 MR. COOK: Thank you.

18 JUDGE LAMBERT: Thanks.

19 I don't have any questions. So at this time, we
20 could move to the closing remarks for Mr. Campbell. And
21 before we had stated 10 minutes.

22 Do you still need the 10 minutes or --

23 MR. CAMPBELL: Probably less.

24 JUDGE LAMBERT: Okay. Well, okay. We'll just go
25 with 10 and -- for now.

1 you fully have the jurisdiction to apply the statutes and
2 determine the correct interest computation.

3 So, again, I would just say, please look at the
4 statutes, and -- and there's nothing in there that hinges
5 your jurisdiction on the existence of a deficiency.
6 That's just not what it says. They mailed a notice.
7 They've made a determination. That's what's before. And
8 all those different things, which several of them include
9 interest too.

10 By the way, in our letter in October 5, we cited
11 several cases where the Board and the OTA have reviewed
12 interest computations, at least one or two of which
13 Craft -- and another one there was no disputed tax at the
14 time of the -- of the decision. So I don't think
15 jurisdiction -- I think you should -- we would find that
16 you have jurisdiction. The Schillace case an abatement
17 request case as well. It's not -- okay. Yeah, that's
18 good.

19 Okay. On the merits, again, I think,
20 Judge Elsom, your question was a good one. First of all,
21 the concept that each year stands alone, that's just a
22 general principle in tax that every year you -- you
23 determine for that tax year what your income is, what
24 you're deductions are, and you file a return. That has
25 nothing to do with anything else. It's just a nice

1 comment, and it doesn't have to do with these statutes.

2 The key is, their argument as you just heard,
3 completely depends on the concept when you, you know,
4 elect to have an overpayment transferred to another year.
5 Under 19002 and 19364 and 19363, these provisions say that
6 you can't ask for a refund until the next year when
7 everything is applied. As the cases like Otis and
8 Goldring say, which are directly on point to these facts
9 where we have an overpayment balance at April 15, you --
10 you know, there is no question -- there's no statute that
11 allows you to impose interest on the amount of tax due an
12 unpaid on those dates.

13 The concept of a credit elect is -- where is
14 my comment on that? Sorry.

15 By the way, those -- so the concept of the pool
16 of money, excuse me. If you look at Article -- the claim
17 for refund Article 19300 through 19368, for example, those
18 provisions say that the FTB on their own initiative, if
19 they find that there's been an overpayment of any
20 liability, the amount of the overpayment may be credited
21 against any amount then due. There are several provisions
22 in the claim for refund section that allow the FTB on its
23 own -- at its determination to move money to satisfy
24 amounts due for prior years or subsequent years.

25 And then there are specific sections in that same

1 article that say a taxpayer has to file a claim for refund
2 in order to start that process. So they have to file.
3 The FTB can do it on their own initiative. All of those
4 statutes, you know, Article 1, claim for refund, the
5 estimated tax payment requirement, which actually comes
6 in -- into -- into Code through the refund and overpayment
7 section where they incorporate, you know, the IRS rules;
8 none of that as the courts and Otis and Goldring explain,
9 there is no connection between the interest statutes and
10 those statutes.

11 And the FTB has not provided any authority in its
12 discussion or in its briefs to connect the imposition of
13 interest in 19001 with the credit elect/estimated tax
14 regime, because there's just isn't one. And, again, the
15 interest statute itself, 19101(d) says interest doesn't
16 apply to underpayments of estimated taxes. There's an
17 entire separate regime that says, you know, we're
18 measuring those on these installment dates when everything
19 is applied at the end of the year. It's always in
20 hindsight. And we will determine if there's an
21 underpayment, and we will charge a penalty. It's
22 effectively like interest, but it's separate. So you have
23 these two parallel tracks, and they're just not -- not
24 connected, and that's just very clear.

25 And, again, I would just focus lastly to remind

1 everybody what the issue in this case is. They're saying
2 that under the law -- which I'm still not sure what the
3 statute is that they're relying on -- that this
4 overpayment that exists -- clearly on their own
5 schedule -- disappears on April 15, 2019. And not only
6 does it disappear, the entire \$2.269 million reappears as
7 due on April 15, 2019, such that interest can accrue on
8 that amount. I find no statute that says that, that does
9 that. The cases say that that is wrong. I mean, the
10 language that I read from, you know, from Otis and
11 Goldring earlier. So I think their position has been, you
12 know, asked and answered by the courts. There's no
13 connection in those statutes. And in this case, on these
14 facts, we can't have interest accrue on 4/15/2019, and
15 that's really the end of it.

16 JUDGE LAMBERT: Okay. Thank you, Mr. Campbell.

17 So if there's nothing further, I'm going to
18 conclude the hearing.

19 I want to thank both parties for appearing today.

20 And we will issue a written opinion within
21 100 days, and the record is now closed.

22 (Proceedings adjourned at 12:20 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 July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER