

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
FISHBONE APPAREL, INC.,) OTA NO. 230212546
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, July 24, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:04 p.m. and concluding at 1:31 p.m. on
Thursday, July 24, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: HEARING OFFICER SETH ELSOM

Panel Members: ALJ ASAF KLETTER
HEARING OFFICER ERICA PARKER

For the Appellant: FRANK GERTZEN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
ALISA PINARBASI
TOPHER TUTTLE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received into evidence at page 7.)

(Department's Exhibits A-N were received into evidence at page 8.)

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California; Thursday, July 24, 2025

1:04 p.m.

HEARING OFFICER ELSOM: We are opening the record in Appeal of Fishbone Apparel, Inc., Case No. 230212546. This matter is being held virtually before the Office of Tax Appeals. Today's date is Thursday, July 24th, 2025, and the time is approximately 1:04 p.m.

My name is Seth Elsom, and I'm the lead Hearing Officer for this appeal. With me today is Administrative Law Judge Asaf Kletter and Hearing Officer Erica Parker.

As a reminder, the Office of Tax Appeals is not a court. It is an independent appeals body that is staffed by tax experts and is independent of the State's agencies, including the Franchise Tax Board.

And with that, I would like to ask the parties to introduce themselves for the record, beginning with Appellant.

Mr. Gertzen, you can go ahead and unmute and introduce yourself.

MR. GERTZEN: Yeah. Frank Gertzen, representing Fishbone Apparel.

HEARING OFFICER ELSOM: Thank you.

And Franchise Tax Board, can you please introduce yourselves.

1 MS. PINARBASI: I Alisa Pinarbasi, and I with
2 Topher Tuttle for the Franchise Tax Board.

3 HEARING OFFICER ELSOM: Thank you.

4 And now we're going to go over the issues to be
5 heard in this hearing. As confirmed at the prior
6 prehearing conference and in my Minutes and Orders
7 following the conference, the issues to be decided in this
8 appeal are: One, whether Appellant has established error
9 in FTB's proposed assessment; two, whether Appellant has
10 established reasonable cause for abatement of the
11 late-filing penalty; three, whether Appellant has
12 established a legal basis for abatement of the filing
13 enforcement fee; and four, whether Appellant has
14 established a legal basis for abatement of interest.

15 Now, I'd like to move on to admission of exhibits
16 as evidence.

17 And, Mr. Gertzen, we'll begin you as
18 representative for Fishbone Apparel, Inc. As noted in the
19 prehearing conference, Appellant was provided with the
20 opportunity to submit its opening brief as exhibits, and
21 Mr. Gertzen, you had agreed too. These exhibits were
22 listed in the prehearing conference Minutes and Orders as
23 Exhibits 1 and 2. FTB did not object to the admission of
24 these items.

25 And, FTB, I wanted to confirm with you now that

1 you still do not have any objection to the admissions of
2 these items 1 and 2 as exhibits.

3 MS. PINARBASI: That's correct. Thank you.

4 HEARING OFFICER ELSOM: Thank you.

5 Appellant's Exhibits 1 and 2 now admitted and
6 entered into the evidentiary record.

7 (Appellant's Exhibits 1 and 2 were received
8 into evidence by the Hearing Officer.)

9 HEARING OFFICER ELSOM: And we're now moving to
10 Franchise Tax Board.

11 FTB, you have submitted 14 exhibits that were
12 labeled Exhibits A through N. These exhibits were
13 submitted by the Franchise Tax Board prior to the
14 prehearing conference. Appellant was asked to review the
15 exhibits and indicate in writing whether it had any
16 objection to admission of FTB's items.

17 Mr. Gertzen, you did not provide any written
18 objection to OTA. And I just wanted to confirm that you
19 still have no objections to the admission of FTB's
20 Exhibits A through N as evidence.

21 MR. GERTZEN: That is correct.

22 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.

23 FTB's Exhibits A through N are now entered in --
24 or now -- excuse me -- admitted and entered into the
25 evidentiary record.

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

3 HEARING OFFICER ELSOM: Now, we're going to
4 witness testimony.

5 And, Mr. Gertzen, you indicated at the prehearing
6 conference that you plan to provide witness testimony on
7 behalf of Appellant. So I will swear you in before you
8 begin your presentation, so that any factual statements
9 you make during the presentation or in response to any
10 question may be considered as evidence by the panel. And
11 I will swear you in just a moment here.

12 But before I do that, again, go over the order of
13 the hearing. As noted in the Minutes and Orders,
14 Mr. Gertzen will present first on behalf of Appellant and
15 will have approximately 15 minutes for the presentation.
16 Following Appellant's presentation, FTB will have the
17 opportunity to ask Appellant questions regarding
18 Appellant's testimony only. The panel will then be given
19 the opportunity to ask any questions they may for
20 Appellant.

21 Following that, FTB will have 20 minutes for its
22 presentation, after which I will again turn it over to the
23 panel for any questions they have of FTB. And finally,
24 Appellant, you'll have an additional 5 minutes for
25 rebuttal or a closing statement. And then after you

1 finish your closing statement, Mr. Gertzen, I will do a
2 final check with my panel to see if there are any
3 remaining questions for either party. So with that, I
4 believe that we are ready to begin.

5 And before we do, that I'd like to ask either
6 party if they have any questions before I turn it over to
7 Mr. Gertzen for his presentation. No questions from
8 either party?

9 MR. GERTZEN: No.

10 HEARING OFFICER ELSOM: Okay. Mr. Gertzen, even
11 though you are connected telephonically, I'd like to ask
12 you to raise your right hand.

13

14 F. GERTZEN,

15 produced as a witness, and having been first duly sworn by
16 the Hearing Officer, was examined, and testified as
17 follows:

18

19 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.
20 You may begin when you are ready, and you have 15 minutes
21 for your presentation.

22 MR. GERTZEN: Thank you.

23

24 PRESENTATION

25 MR. GERTZEN: The Respondent has provided over

1 50 pages of exhibits to the Office of Tax Appeals, with
2 the notable fact that none of these exhibits demonstrates
3 any evidence whatsoever of taxable sales in the State of
4 California. The Respondent is presuming its determination
5 of tax is correct. Its assumption does not meet any
6 minimum threshold under section 23101 of the California
7 Revenue & Taxation Code or any other relevant section or
8 subsection. It's not reasonable or, for that matter,
9 rational.

10 The Respondent presumes that the Appellant has
11 made sales in the state because of the Appellant's
12 self-reported filing with the CDTFA. On numerous
13 occasions, the Respondent was notified that this filing
14 was coerced upon the Appellant to quickly settle
15 outstanding issues with the state and did not clearly
16 reflect sales in that state.

17 Furthermore, any assumptions of self-reported
18 sales or actual sales after the Appellant's statement is
19 far reaching. The Respondent has never provided actual
20 proof of any taxable sales in the State of California, yet
21 it has admitted to having information reporting inventory
22 in warehouses or fulfillment centers in the state. No
23 report has been provided with the information of what that
24 inventory is, was, or who it was sold to.

25 The Appellant would argue that if this inventory

1 did exist and the Respondent was aware of it as they
2 allege, then why hasn't that specific nature of these
3 items presented in this hearing or in an exhibit? One can
4 only presume that the inventory never did really exist, or
5 the inventory was never really sold in the state.
6 Therefore, the Respondent's determination that the
7 Appellant was doing business in the State of California
8 during 2019 is faulty since its entire assessment is based
9 on the Appellant's self-reported CDTFA return and/or the
10 report of alleged inventory.

11 Since the Respondent cannot possibly know why,
12 how, or for what extenuating circumstances the tax filing
13 was made. Their presumption based on this information
14 must be determined to be faulty or made in error.
15 Additionally, any assumption that inventory merely stored
16 in an amazon warehouse in California meets the definition
17 of retailer engaged in business in California is
18 ridiculous and faulty on its face. Nothing has been
19 provided to demonstrate the nature or the quantities of
20 these items in the warehouse. Amazon inventory alone is
21 not evidence of taxable sales in the State of California.
22 There is simply no correlation between the two.

23 Amazon does not have warehouses in every state.
24 Inventory in a California warehouse can be sold into
25 neighboring states. Never having been provided with a

1 list of these items, the quantity of these items, it can
2 be easily asserted that these items, if they existed, were
3 sold outside of the State of California. Also, if there
4 were items in these warehouses, it is possible, depending
5 on the nature of the item and, of course, the quantity,
6 that these items could have gone unsold. Since the
7 Respondent has not provided any evidence, whatsoever to
8 the contrary, it can easily be asserted at this time that
9 these items, if they existed, went unsold.

10 The Respondent has tried to provide detailed
11 information on nexus which, in this case, the Appellant
12 feels is irrelevant. Since the Appellant did not have any
13 sales or taxable sales in the state, therefore, nexus is
14 moot. The Appellant's Amazon reporting, which the
15 Respondent apparently has access to, shows zero sales in
16 California during the time period in question. Since
17 Amazon picks, packs, and ships all of our items, we must
18 rely on their reporting system, which shows zero sales,
19 lacking any actual evidence of the Respondent -- from the
20 Respondent and having only, in the Respondent's words,
21 presumption that the determination of tax is correct. The
22 Appellant can find no other decision, except that the
23 Respondent's assessment was made in error for the taxable
24 period.

25 Thank you.

1 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.
2 You'll have approximately 5 more minutes, if you would
3 like to continue and if there's anything else you'd like
4 to add before I turn it over to FTB for any questions
5 regarding your testimony.

6 MR. GERTZEN: No. That's fine. I only asked for
7 5 but they gave me 10.

8 HEARING OFFICER ELSOM: Okay. Thank you,
9 Mr. Gertzen.

10 Franchise Tax Board, did you have any questions
11 for Mr. Gertzen regarding Appellant's testimony only?

12 MS. PINARBASI: No questions. Thank you.

13 HEARING OFFICER ELSOM: Okay. Thank you.

14 I'm going to now turn it over to our panel.

15 Judge, Kletter, did you have any questions for
16 Appellant?

17 JUDGE KLETTER: Hi. This is Judge Kletter. I
18 just have one question.

19 Mr. Gertzen, you mentioned that the Amazon
20 reporting said that there were zero sales. I'm wondering
21 where is that in the record.

22 MR. GERTZEN: Where is the report?

23 JUDGE KLETTER: Yeah. Like, where is the
24 evidence that zero sales were made, according to the
25 Amazon records? Is that one of the exhibits in the

1 record?

2 MR. GERTZEN: No. It would be a blank piece of
3 paper, and I didn't feel that it would be productive to
4 enter a blank piece of paper. When you report -- when the
5 report comes out, it's a blank piece of paper.

6 JUDGE KLETTER: So I'm just trying to understand.
7 So when you go to the Amazon website, you can print out a
8 report of how many sales you make by state? Or can you
9 walk me through the report, or how you access it and what
10 it says?

11 MR. GERTZEN: Yes. You can go on the back end of
12 your selling account, and you can print a report of sales.
13 And then if you -- if you sort that by state, you can see
14 each sale by state. So it would be -- there's no
15 California on the report. I guess I should have submitted
16 the report with no sales in the State of California.

17 JUDGE KLETTER: So just so I understand. So,
18 like, it would tell you -- let's say you made sales only
19 in Texas and Nevada, it would say Texas sales this number,
20 Nevada this number. Is that the only --

21 MR. GERTZEN: No.

22 JUDGE KLETTER: -- information that is on the
23 report?

24 MR. GERTZEN: It -- it would list every customer.
25 It would list every individual sale and then -- and then

1 the address, and one of the columns would be the state.
2 So it might -- if you made -- you know, it wouldn't give
3 you a total by state, but it would give you, if there were
4 -- well, if there was one sale in the state, then it
5 would be the total. But if there were three sales to
6 three individual customers, then there would be three --
7 three rows on the report. But if there are zero sales, it
8 would be zero columns on the report.

9 JUDGE KLETTER: And does the report provide a
10 total of how many sales were made in that year? So, for
11 example, if you sold to three customers, one in Texas --

12 MR. GERTZEN: Yeah. But the -- but the sales
13 report would -- would show you that for the time period
14 given, and that is my exact point. And I'm glad you
15 brought that up that the Respondent has provided over
16 50 pages of exhibits. Okay. They've also provided
17 information that they have a direct relationship with
18 Amazon, and they had gotten reporting from Amazon about
19 inventory in the warehouse. Okay.

20 And so, my whole point is, if they have this
21 relationship with Amazon, why are they asking for a report
22 of inventory in a warehouse that you can clearly see in
23 their exhibits. If they want to prove sales, why don't
24 they produce the report of sales in the State of
25 California? Okay. It's not my -- it's not my position

1 that I'm trying to prove that I don't have any sales.
2 They're trying to prove that I do have sales. Isn't the
3 burden upon them to prove that I do have sales in
4 California?

5 JUDGE KLETTER: Well, this is --

6 MR. GERTZEN: And why -- why don't they -- they
7 have 50 pages of exhibits. They have a relationship with
8 the Amazon corporation. Why is it that they don't have
9 one single report with one single sale? They don't exist.
10 That's why. I mean, clearly, if there were sales that
11 existed, they would have these reports.

12 JUDGE KLETTER: Right. Mr. Gertzen, I understand
13 you, and thank you. You've answered my question. I
14 appreciate it.

15 MR. GERTZEN: Okay. Thank you.

16 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.

17 Hearing Officer Parker, did you have any
18 questions for Appellant?

19 HEARING OFFICER PARKER: No, I have no questions.
20 Thank you.

21 HEARING OFFICER ELSOM: Thank you.

22 Mr. Gertzen, I did have one question for you, and
23 that's, do you receive any report from Amazon that shows
24 the location where the inventory is stored? And I believe
25 you had mentioned that, you know, sales are occurring

1 outside of the state. Presumably, they'd be stored in a
2 location near that state so they could be shipped out, or
3 something to that effect. Can you explain any information
4 you receive from Amazon that states where the products are
5 shipped from, or how they're stored contractually?

6 MR. GERTZEN: We don't actually receive
7 information. We have to go into the system and pull that
8 information out, if we need it.

9 HEARING OFFICER ELSOM: Okay. Do you --

10 MR. GERTZEN: In other words --

11 HEARING OFFICER ELSOM: -- have access to that?
12 Can that be provided?

13 MR. GERTZEN: I do have access to information on
14 where inventory is stored, yes.

15 HEARING OFFICER ELSOM: Okay.

16 MR. GERTZEN: But from the tax year 2019, I do
17 not.

18 HEARING OFFICER ELSOM: Okay.

19 MR. GERTZEN: It's a --

20 HEARING OFFICER ELSOM: Okay. Go ahead. Sorry.

21 MR. GERTZEN: I was going to say that the
22 information is, I believe, it's real-time.

23 HEARING OFFICER ELSOM: Okay. We can hold the
24 record open after this hearing to allow you to provide
25 this information. It feels like it's relevant to the

1 determination here. So thus --

2 MR. GERTZEN: Well, I would have to say that the
3 information for the -- the inventory that's stored in the
4 warehouse in 2025 is different from any information -- any
5 inventory that might have stored when our business started
6 in 2019. So, in other words, there might have been six
7 items in the warehouse in 2019 and now -- and -- and I'm
8 not saying there was six items. I don't think there was
9 any, but there might have been.

10 I mean, we only did a very -- we were just
11 starting in 2019. So in 2025, now there might be an
12 enormous amount of item. So I think it would skew -- I
13 mean, I don't mind providing the information, but I don't
14 think it would be relevant because it -- it would skew
15 your opinion of the inventory because we're making sale in
16 California now.

17 HEARING OFFICER ELSOM: Okay. So there's no
18 information, just to clarify, historically getting back to
19 the year at issue, only what is currently held?

20 MR. GERTZEN: There should be, because the
21 Respondent had said that they have this information.
22 They -- they have information that inventory was stored in
23 the warehouse. It's part of their exhibits.

24 HEARING OFFICER ELSOM: Okay. But --

25 MR. GERTZEN: But yet, they haven't provided the

1 information of that inventory -- that's another thing that
2 I mentioned in my oral argument. They -- they provide
3 information that says we had inventory, but they're not
4 providing the information on what that inventory is and
5 what the quantity was.

6 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.
7 I understand that, but do you have -- just to reiterate,
8 do you have any historical information for the year at
9 issue you can --

10 MR. GERTZEN: No, we don't.

11 HEARING OFFICER ELSOM: Okay.

12 MR. GERTZEN: We do not have --

13 HEARING OFFICER ELSOM: Okay. Thank you.

14 I'd now like to turn it over to Franchise Tax
15 Board for their presentation.

16 Franchise Tax Board, you have 20 minutes to
17 present, and you can begin when you are ready.

18

19 PRESENTATION

20 MS. PINARBASI: Good afternoon. My name is Alisa
21 Pinarbasi, and I, along with Topher Tuttle, represent the
22 Franchise Tax Board.

23 The issues in this appeal are: Whether Appellant
24 owes the annual minimum Franchise tax; and whether
25 Appellant has established a basis to abate the delinquent

1 filing penalty, the filing enforcement fee, and applicable
2 interest.

3 First, I will discuss whether Appellant owes the
4 minimum Franchise tax. Every corporation is required to
5 pay an annual minimum tax to California of \$800 and file a
6 return if it is doing business in California within the
7 definition of Revenue & Taxation Code section 23101. In
8 the precedential opinion, Appeal of GEF Operating, Inc.,
9 your office found that section 23101 included two
10 alternative tests to determine whether a taxpayer is doing
11 business in California. The first is found in
12 subsection (a), and states the taxpayer is doing business,
13 if it is actively engaging in any transaction for the
14 purpose of financial or pecuniary gain or profit.

15 The second test is found in subsection (b), and
16 includes a list of specific conditions which, if
17 satisfied, will establish a taxpayer is doing business.
18 Appeal of GEF specifically states that these conditions
19 are not minimum thresholds, and do not provide any safe
20 harbor from the general definition of doing business found
21 in subsection (a). FTB agrees that Appellant does not
22 satisfy any of the conditions in subsection (b) for doing
23 business. However, as your office stated, this is not --
24 this does not prevent FTB from finding Appellant is doing
25 business under subsection (a).

1 In this case, FTB received information from the
2 California Department of Tax and Fee Administration that
3 Appellant had sales in California during the tax year at
4 issue. Because Appellant denied having California sales
5 or filing a sales and use tax return, FTB requested CDTFA
6 provide relevant documentation related to Appellant. The
7 CDTFA had a similar filing enforcement process with
8 Appellant, which is important to this appeal because CDTFA
9 determined that Appellant had a filing requirement with
10 California due to California sales, and its physical
11 presence of inventory stored in California warehouses.

12 Section 23101 is co-extensive with the
13 constitution. Or, in other words, if the constitution
14 permits a tax to be imposed, then the taxpayer is doing
15 business within the meaning of 23101. Therefore, if there
16 is substantial nexus for Appellant to have a sales and use
17 tax imposed upon them, then that suggests there is also a
18 substantial nexus for an income tax to be imposed on
19 Appellant.

20 The CDTFA enforcement began when it issued
21 Appellant a letter stating that it had received
22 information that Appellant had inventory stored in
23 fulfillment centers in California. This required
24 Appellant to register with the CDTFA and file a sales and
25 use tax return. There was then communication noted in

1 Appellant's account that the start date for filing would
2 be the date inventory was placed in California by Amazon,
3 and then Appellant was issued instructions on how to
4 determine the date stored and where the goods were stored.
5 Instead of providing information that it did not have
6 California sales or inventory in California, Appellant
7 filed a 2019 sales and use tax return on February 5th,
8 2020, and submitted payment the same day. This suggests
9 that Appellant reviewed its inventory and sales and
10 determined it had a California filing requirement for the
11 2019 tax year.

12 The CDTFA records indicate that Appellant called
13 in 2022 and stated that it had not conducted any business
14 in California. However, its 2019 return remains on file,
15 and Appellant has not established that its 2019 filing was
16 in error. Additionally, Appellant has not produced any of
17 its records. Your office has held in the precedential
18 opinion, Appeal of Vardell that a failure of a party to
19 introduce evidence, which is within his control gives rise
20 to the presumption that, if provided, it would be
21 unfavorable. As such, Appellant has not demonstrated that
22 its filing with the CDTFA was an error, or that it did not
23 have sales in the 2019 tax year.

24 Further, in addition to CDTFA's finding of
25 Appellant storing inventory in California and Appellant's

1 subsequent filing of a sales and use tax return reporting
2 California sales, Appellant's Amazon storefront also
3 suggests that it engages in fulfillment by Amazon, as
4 demonstrated in Exhibit K. Exhibit L details how FBA
5 works and how if Appellant engaged in FBA, then Amazon
6 likely stored Appellant's goods in its California
7 warehouses. Notably in Exhibit H on page 4, there is a
8 list of California fulfillment centers in -- located in
9 California.

10 To be considered doing business under
11 section 23101(a), the entity does not need to have a
12 regular course of business. Even just one
13 profit-motivated transaction is enough to be considered
14 doing business; and that transaction does not need to
15 result in profit as long as it was profit motivated.
16 Here, Appellant had sales to California residents and also
17 stored its inventory in California warehouses and,
18 therefore, engaged in a profit-motivated transaction in
19 California. Because Appellant had a physical presence in
20 California and California sales, it is doing business
21 within the meaning of 23101(a). In conclusion, Appellant
22 has not met its burden to establish error in FTB's
23 assessment.

24 Next, I will discuss the imposed penalty, fee,
25 and interest. The late-filing penalty was properly

1 imposed because Appellant failed to timely file a tax
2 return by the due date. The penalty can be abated upon a
3 showing of reasonable cause, but Appellant has only argued
4 that it did not have a filing requirement. Even if
5 Appellant is unaware of a filing requirement, ignorance of
6 the law is not an excuse for failure to timely file a
7 return. As such, Appellant has not established reasonable
8 cause to abate the late-filing penalty. The filing
9 enforcement fee was properly imposed because FTB notified
10 Appellant that it had a filing requirement, and Appellant
11 failed to file a return by the prescribed due date. Once
12 the filing enforcement fee is improperly imposed, there is
13 no provision that excuses the imposition of the fee.
14 Appellant has only argued that it did not have filing
15 requirement, and therefore, Appellant has failed to
16 establish a basis to abate.

17 Lastly, interest is mandatory, and FTB does not
18 have authority to abate interest unless authorized by
19 statute. Appellant has not alleged, and FTB has not
20 determined that any statutory exception for interest
21 applies. Therefore, interest shall remain imposed. Basis
22 on the facts and evidence in the record, FTB respectfully
23 requests you sustain its position.

24 I'm happy to address any questions you may have.

25 HEARING OFFICER ELSOM: Thank you, Franchise Tax

1 Board.

2 I'd like to turn this over to my panel now -- or
3 the panel -- excuse me -- for questions regarding FTB's
4 presentation.

5 Beginning with Judge Kletter, do you have any
6 questions for the Franchise Tax Board?

7 JUDGE KLETTER: This is Judge Kletter. No
8 questions. Thank you.

9 HEARING OFFICER ELSOM: Thank you.

10 And, Hearing Officer Parker, do you have any
11 questions for the Franchise Tax Board?

12 HEARING OFFICER PARKER: I have no questions.
13 Thank you.

14 HEARING OFFICER ELSOM: I did have one question,
15 Ms. Pinarbasi. So Mr. Gertzen is pretty adamant that he
16 did not have California sales in 2019. Are there any
17 specific source documents that were shared by the CDTFA
18 with the Franchise Tax Board that are in the record you
19 can direct us to that show the California sales or
20 inventory that was held in the California warehouses?

21 MS. PINARBASI: Unfortunately, I did not get
22 those records from CDTFA. The records that we have are
23 just Appellant's own self-reported California sales.

24 HEARING OFFICER ELSOM: Okay. Thank you,
25 Ms. Pinarbasi.

1 With that, we'd like to turn it over to
2 Mr. Gertzen for the final presentation or rebuttal to
3 FTB's presentation.

4 Appellant, Mr. Gertzen, you have 5 minutes, and
5 you may begin whenever you're ready.

6 MR. GERTZEN: Thank you.

7
8 CLOSING STATEMENT

9 MR. GERTZEN: Again, absent any evidence
10 presented here today from the Respondent, there's not one
11 profit-motivated transaction. There's no substantial
12 nexus. They can't even tell us what the transaction was,
13 and they can't even tell what the inventory was. It is
14 clear the Respondent's assessment for the 2019 tax year
15 was made in error. Therefore, reasonable cause has been
16 established for the abatement of the late-filing penalty.
17 In addition, the Appellant has established a legal basis
18 for the abatement of filing of enforcement fee and for the
19 abatement of interest.

20 Thank you.

21 HEARING OFFICER ELSOM: Thank you, Mr. Gertzen.

22 With that, I believe we are ready to conclude the
23 hearing.

24 I would like to ask if FTB has any objection to
25 holding the record open to allow Mr. Gertzen to provide

1 records for the California sales for the 2019 that he
2 states he has.

3 MS. PINARBASI: I have no objection. I will note
4 that I did ask Appellant to provide these records as well,
5 and I have not received them. But no objection to keeping
6 the record open.

7 HEARING OFFICER ELSOM: Okay. Thank you.

8 We're going to hold the record open for an
9 additional 30 days to allow Appellant to provide these
10 records. And I will issue Minutes and Orders following
11 this hearing to state that and, basically, summarize the
12 holding open of the record.

13 And the, FTB, would you like 30 days to respond
14 to that with whatever Mr. Gertzen provides?

15 MS. PINARBASI: Yes. Thank you.

16 HEARING OFFICER ELSOM: Okay. Thank you.

17 So we will do that. We will hold the record
18 open. And, again, I will issue Minutes and Orders at the
19 conclusion of the hearing after we conclude. The record
20 will remain open until we receive a reply from both
21 Mr. Gertzen and Franchise Tax Board.

22 The hearing is now concluded, and I would like to
23 thank everyone for attending. Thank you.

24 (Proceedings concluded at 1:31 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 30th day
of July, 2025.

ERNALYN M. ALONZO
HEARING REPORTER