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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
FRANK E. FEDER 1996 TRUST, ) OTA NO. 230713919  
 )  
 )  
 APPELLANT. )  
 )  
 \_\_\_\_\_ )

Transcript of Proceedings, taken at  
12900 Park Plaza Drive, Suite 300, Cerritos,  
California, 90703, commencing at 1:12 p.m.  
and concluding at 1:35 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 JOHN O. JOHNSON

Panel Members: ALJ KENNETH GAST  
ALJ TERESA A. STANLEY

For the Appellant: MICHAEL BROIDA  
ARASH B. KAHEN

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
JOHN LY  
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-15 were received into evidence at page 6.)

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

O P E N I N G   S T A T E M E N T

|               | <u>P A G E</u> |
|---------------|----------------|
| By Mr. Kahen  | 7              |
| By Mr. Broida | 8              |
| By Mr. Ly     | 18             |

C L O S I N G   S T A T E M E N T

|              | <u>P A G E</u> |
|--------------|----------------|
| By Mr. Kahen | 21             |

1 Cerritos, California; Wednesday, June 18, 2025

2 1:12 p.m.

3  
4 JUDGE JOHNSON: We're going on the record.

5 This is the Appeal of Frank E. Feder 1996 Trust,  
6 OTA Case No. 230713919.

7 The hearing is being led by myself,  
8 Administrative Law Judge Johnson, here in sunny Cerritos,  
9 California. My co-panelists today are Administrative Law  
10 Judge Kenny Gast and Administrative Law Judge Teresa  
11 Stanley, and they are my co-equal decision makers in this  
12 appeal.

13 And it is 1:12 p.m. on June 18th, 2025.

14 I'll remind today's participants and viewers that  
15 the Office of Tax Appeals is not a court but is an  
16 independent appeals body. The office is staffed by tax  
17 experts and is independent of the State's tax agencies.

18 The decision on appeal will be based solely on  
19 the arguments and evidence provided by the parties on  
20 appeal, including today's testimony, in conjunction with  
21 an appropriate application of the law.

22 Let me have the parties introduce themselves,  
23 starting with Appellant's side.

24 MR. KAHEN: Good morning. Arash B. Kahen,  
25 attorney for Appellant Frank E. Feder Trust.

1           MR. BROIDA: My name is Michael Broida. I am  
2 from Heller, Broida & Eisenberg. Our firm prepared the  
3 tax return.

4           JUDGE JOHNSON: Thank you.

5           And Respondent.

6           MR. LY: This is John Ly from Franchise Tax  
7 Board.

8           MS. ZUMAETA: And Jackie Zumaeta from Franchise  
9 Tax Board.

10          JUDGE JOHNSON: Thank you.

11          The issues we have on appeal are: Whether  
12 Appellant has shown it had reasonable cause for the late  
13 payment of tax for the 2021 tax year; and whether  
14 Appellant has shown that interest should be abated.  
15 Appellant's have provided Exhibits 1 through 15, and  
16 Respondent has provided Exhibits A through G. There are  
17 no objections, and those exhibits are hereby admitted as  
18 evidence into the record.

19          (Appellant's Exhibits 1-15 were received into  
20 evidence by the Administrative Law Judge.)

21          (Department's Exhibits A-G were received into  
22 evidence by the Administrative Law Judge.)

23          JUDGE JOHNSON: With that, we're about to go into  
24 the parties' presentations. If there's no questions, I'll  
25 go ahead and swear-in Appellant's witnesses.

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If you both could raise your right hand for me.

M. BROIDA,

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

A. KAHEN,

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

JUDGE JOHNSON: Thank you very much.

Mr. Kahen, you can begin with Mr. Broida's testimony when you're ready.

PRESENTATION

MR. KAHEN: Yes. Mr. Broida.

Good morning, to the Board, to the FTB agents and attorneys. I appreciate the time to give us to be heard today. Mr. Broida is going to testify as to what the error occurred, and we're going to continue with our argument, how that -- sorry. Mr. Broida is going to testify with regards to the type of error, and what happened there. And with submission of the new evidence

1 No. 15, he'll use that as a -- a -- as a guide what  
2 happened in here. And then after that, we're going to  
3 start with our -- with my own argument here.

4 Go ahead.

5 MR. BROIDA: Okay. My name is Michael Broida.  
6 I'm a CPA with the firm Heller, Broida & Eisenberg. We  
7 prepared the 2021 fiduciary -- California fiduciary income  
8 tax return for Frank E. Feder 1996 Trust.

9 The Trust paid \$168,000 for its fourth quarter  
10 2021 estimate on a timely basis in January 2022. When our  
11 office prepared the return, a staff-level error occurred.  
12 The person entering the data mistakenly input \$400,000 for  
13 the fourth quarter estimate paid to the Franchise Tax  
14 Board, instead of the \$168,000, which was actually paid.  
15 The \$400,000 was actually paid to the Internal Revenue  
16 Service. The error created a mismatch. There was less  
17 tax owed on the return than should have been. When we  
18 were notified of the late payment, we immediately  
19 responded. All of our payments up to that point had been  
20 on a timely basis.

21 The Trust had really no way of knowing about this  
22 mistake. The taxpayer had fully funded the Franchise Tax  
23 Board payment in good faith and relied on our office to  
24 correctly reflect that in the return. And as I said, as  
25 soon as we were notified by the Franchise Tax Board, we

1 reviewed our internal records, identified the source of  
2 the error, and the Trust immediately paid the remaining  
3 balance, along with interest and penalties. This wasn't  
4 the case of trying to avoid payment or delay payment. The  
5 money was paid. We paid the Franchise. We paid everybody  
6 on time. It's just a unique situation where a clerical  
7 error occurred.

8 Thank you very much.

9 JUDGE JOHNSON: Yes, Mr. Kahen.

10 MR. KAHEN: I have one more -- I would like to --  
11 ask Mr. Broida to clarify when did -- I would like to  
12 find -- ask Mr. Broida when did you exactly find out about  
13 the issue, and when did you submit the payment to correct  
14 the issue?

15 MR. BROIDA: We were notified of the payment in  
16 late February 2022 that the payment had been an  
17 error and -- I'm sorry -- 2023. Once we were notified, we  
18 immediately -- we were notified in late February. In  
19 early March we made the payment. So really as soon as we  
20 could made the payment after being notified. And --

21 MR. KAHEN: Thank you very much, Mr. Broida.

22 With that, I'm going to start my oral argument on  
23 this.

24 JUDGE JOHNSON: If we can real quick, let's just  
25 make sure FTB has any questions for the witness.

1           MR. LY: No questions from the Franchise Tax  
2 Board.

3           JUDGE JOHNSON: Okay. Any questions from the  
4 panel? No questions.

5           Okay. You can continue. Thank you.

6           MR. KAHEN: Thank you very much.

7           Good afternoon. Thank you for the opportunity to  
8 present this appeal on behalf of Frank E. Feder Trust.  
9 Today we're here addressing a penalty that should be  
10 abated, and one arising not from a disregarded tax laws or  
11 from internal clerical error that basically should have  
12 been caught. It's -- it was a simple, very third-tier  
13 clerical error that caused it. The reason I'm calling it  
14 a third-tier error is that it wasn't the taxpayer who  
15 caused the -- who made this error. It wasn't the CPA who  
16 cause -- who made this error. It was a clerk that was  
17 working for the CPA.

18           So it was a very, very unique situation and  
19 circumstances. This case applies in reasonable cause. It  
20 was meant to function to protect taxpayer to exercise  
21 ordinary business care and prudence but, nevertheless,  
22 caught by rare circumstances, like in this matter. In  
23 this case, the --

24           JUDGE STANLEY: Mr. Kahen.

25           MR. KAHEN: Yes.

1 JUDGE STANLEY: When you're reading, you tend to  
2 speak a little quickly. So --

3 MR. KAHEN: My apologies.

4 JUDGE STANLEY: -- can slow down a little bit so  
5 that our stenographer can catch everything.

6 MR. KAHEN: My apologies for that.

7 JUDGE STANLEY: Thank you.

8 MR. KAHEN: No problem.

9 So, nevertheless, the Trust in this case filed  
10 their taxes on time. They funded the payment on time.  
11 All the estimated taxes for that year were paid on time.  
12 \$168,000 was paid on time for the fourth quarter, and  
13 relied on a qualified CPA, acted promptly upon the  
14 discovery of the error from the CPA's firm.

15 And then so we're going to go into concern the  
16 late payment is Revenue & Taxation Code 19132 where the  
17 Trust immediately filed a return. The full payment was  
18 funded and directed upon the discovery of the matter.  
19 Unforeseeable clerical did not create -- or did not create  
20 undue delays more than the discovery. Meaning, as soon as  
21 Mr. Broida discovered the issue at hand, which was around  
22 February 23rd, '21, according to the files.  
23 February 21, '23, FTB notified that there is a deficiency.  
24 And on March 8th in their own filing, they say we ex -- we  
25 received and they have applied the funds to the account.

1 Meaning, that between 20 -- February 2120 -- sorry --  
2 February 21, '23, to March 3rd, which is like maybe one  
3 week or two weeks difference. By the time FTB usually  
4 applies a balance and it shows on the record, it takes a  
5 couple of days. That means upon the discovery, within a  
6 day or two -- they did not even wait -- they made the  
7 payment.

8 The legal standard for reasonable cause in this  
9 case under FTB and under Treasury Regulation  
10 section 301.6651-1(c)(1), reasonable cause exist where the  
11 taxpayer exercises ordinary business care and prudent and  
12 was nevertheless unable to comply. That standard is met  
13 here. The Trust did not ignore the tax obligation. The  
14 Trust relied upon a qualified CPA. It funded the payments  
15 in advance, and it acted immediately to fix the issue.

16 In this case, there was no enrichment on behalf  
17 of the Trust on any capacity in here. The amount that was  
18 supposed to be received by FTB got paid on time to them,  
19 which was \$168,000 that they made on the January of '21 --  
20 sorry '22, which was for the calendar year '21. The only  
21 issue that created it was simply instead of putting  
22 168,000, that clerk just accidentally put 400,000, which  
23 created the entire thing.

24 FTB will cite Boyle and Fisher -- U.S. Supreme  
25 Court Boyle and Fisher, which is in my Appellant brief and

1 in their brief, that this is a nondelegable duty. But  
2 Boyle applies to failure to file, and not payment  
3 execution or not clerical error. The Trust did not  
4 delegate responsibility of filing taxes, and they failed  
5 on that. They gave instructions how to fund the payments,  
6 and relied on the CPA's office for a mechanical input of  
7 the tax return. The error was committed by a subordinate  
8 staffer, a third-tier error involving the internal input  
9 as an estimated of payments that was paid.

10 Mr. Broida says that when he confirmed, it was  
11 not in -- no negligence or abandonment of duty. The funds  
12 were submitted on time correct -- but incorrectly logged  
13 into the tax return. Breakdown of that event of CPA would  
14 have -- any CPA would have had a difficulty catch that  
15 when that happens because it's already been input in the  
16 system.

17 The willful neglect, as laid out by the Supreme  
18 Court cases in here doesn't exist. The moment Trust was  
19 notified of the issue, they immediately within days fixed  
20 it. They didn't wait months or years. And with regards  
21 to the late payment, FTB has collected its interest for  
22 this debt and for the issue. FTB cases on the -- also  
23 cites other cases such as Boyle, Fisher, Triple Crown, and  
24 Summit Hosting. These facts of these cases don't apply to  
25 this case. One is -- one of -- they have to do with late

1 filings, complete reliance with no supervision. They had  
2 a failure to act.

3 The return was, in this case, it was all  
4 different. Return was time filed. Payment was funded.  
5 Taxpayer acted promptly to resolve the issue, and there is  
6 no pattern of neglect or systematic failure in this case.  
7 For the taxpayer in this case, hasn't had similar issues  
8 or running issues with owing taxes for late filing or late  
9 payment or non-filing or nonpayment. This is the first  
10 time they have had to be faced with such a thing.

11 The purpose of -- unlike these cases cited, our  
12 failures didn't happen at the top. It didn't come from  
13 taxpayer. It didn't come from a CPA. This is a  
14 third-tier execution of error committed by subordinate.  
15 Un -- un-catchable without a trigger. In this case was  
16 the FTB was a trigger after they processed the return that  
17 they discovered this issue. This -- that makes a unique  
18 and distinguishes on the reasonable cause standard.

19 The penalty -- and we're going to go into penalty  
20 purpose and equity. Penalty statute exists to deter  
21 willful or careless noncompliance. It's not meant to  
22 punish good-faith taxpayer, in this case, the Trust. They  
23 complied with their obligations. They used professional  
24 responsibility encountered unforeseeable -- but they  
25 encountered unforeseeable error, and they act immediately

1 to fix it.

2 If penalty relief isn't available here, whether  
3 diligent taxpayer funded directed payment on time,  
4 suffered rare third-party clerical error, corrected it  
5 immediately, then no one can ever qualify for penalty of  
6 payment on their FTB rules. It'll be very hard to meet  
7 that standard.

8 Closing argument is that this isn't a case about  
9 a taxpayer, like, ignoring the law. Or the one who --  
10 like, this is the one who followed it. It funded it, and  
11 it's just what we call an act of God or some error that's  
12 unforeseeable that comes about. Penalty abatement for  
13 reasonable cause is there for this purpose for -- for  
14 issues like this.

15 The law makes room for reasonable cause because  
16 not every mistake is a misconduct. When the facts show  
17 diligence, integrity, and rapid correction, like they do  
18 here, penalty serves no purpose, just to punish the  
19 taxpayer in here. And the amount just for one simple  
20 clerical error being assessed as a penalty is really  
21 unreasonable. For that purpose, we request that this  
22 penalty be abated.

23 Thank you very much.

24 JUDGE JOHNSON: All right. Thank you.

25 Let me ask, Franchise Tax Board, as to any

1 factual statements that were made, did you have any  
2 questions?

3 MR. LY: No questions.

4 JUDGE JOHNSON: Okay. And then fact or  
5 otherwise, I'll ask my panel members.

6 Judge Stanley, any questions?

7 JUDGE STANLEY: Yes, I've got one. You mentioned  
8 a couple of times that the tax was fully funded. What do  
9 you mean by that?

10 MR. KAHEN: Estimated taxes that were supposed to  
11 be paid on the January for the fourth quarter of 20 -- for  
12 2021, that they paid on January 22nd. The \$168,000 was  
13 supposed to be remitted. According to his calculation,  
14 they sent it in. All estimated tax that they were  
15 supposed to pay, they paid it.

16 JUDGE STANLEY: Okay. And was the \$232,000 that  
17 wasn't paid, was that somehow fully funded as well?

18 MR. KAHEN: If I may ask, the 230 -- which one --  
19 for where is that balance from? After filing of the tax  
20 return with the \$168,000 or a \$400,000 deficiency? My  
21 apologies.

22 JUDGE STANLEY: After correcting from \$400,000 to  
23 \$168,000, there's a remaining balance of \$232,000.

24 MR. KAHEN: They paid it upon receiving that  
25 notice that it needs to be cleared. They did it.

1 JUDGE STANLEY: Okay. So when you meant that the  
2 tax was fully funded, you didn't include that \$232,000?

3 MR. KAHEN: No, Your Honor.

4 JUDGE STANLEY: Okay. Thank you.

5 JUDGE JOHNSON: Judge Gast, any questions?

6 JUDGE GAST: No questions. Thank you.

7 JUDGE JOHNSON: All right. Thank you.

8 I may have a question or two. I know in the  
9 brief it may have been mentioned or alluded to that  
10 perhaps that \$400,000 estimated payment that went to the  
11 IRS should have gone to FTB instead, is that still part of  
12 the argument? Or is it just that it was reported  
13 incorrectly?

14 MR. KAHEN: It was reported incorrectly. My  
15 apologies.

16 JUDGE JOHNSON: Okay. Thank you. And I know at  
17 the prehearing conference, when we were laying out the  
18 issues on appeal, we have the penalty. You also mentioned  
19 that you might be separately arguing interest abatement on  
20 appeal. Did you have any separate arguments?

21 MR. KAHEN: We're relinquishing that argument.  
22 We're willing FTB to keep the interest.

23 JUDGE JOHNSON: Okay. Thank you.

24 With that, if Franchise Tax Board is ready to  
25 present, may start.



1           Because Appellant late paid its 2021 tax  
2     liability, the late payment was properly imposed, and  
3     Appellant does not dispute its calculation. However,  
4     Appellant contends that its late payment of tax was due to  
5     reasonable cause and, therefore, the penalty should be  
6     abated. To establish reasonable cause, a taxpayer must  
7     show that the failure to timely pay occurred despite the  
8     exercise of ordinary business care and prudence. The  
9     reason for the late payment must be such that an  
10    ordinarily intelligent and prudent businessperson would  
11    have acted similarly under the same circumstances.

12           Appellant contends that Respondent should follow  
13    the IRS's abatement of its failure to pay penalty.  
14    Respondent will follow a federal finding of reasonable  
15    cause. However, a review of Appellant's business master  
16    file shows that the penalty was abated under the federal  
17    First Time Abate policy, and not for a finding of  
18    reasonable cause. Additionally, California's one-time  
19    abate statute will not allow for the request of relief, as  
20    it is only available for individuals, and for tax years  
21    beginning on or after January 1, 2022.

22           Appellant also contends that it has established  
23    reasonable cause because its Trustee is not experienced in  
24    financial matters, and it relied on its CPA and the CPA's  
25    firm to fulfill its tax obligations and make its timely

1 payment of tax. It is well settled that taxpayers who  
2 fail to acquaint themselves with the requirements of  
3 California tax law, have not exercised ordinary business  
4 care and prudence. Each taxpayer has a personal  
5 nondelegable duty to timely pay their taxes by the  
6 respective due date. In *United States v Boyle*, the  
7 Supreme Court held that reliance on the erroneous advice  
8 of a tax professional may be considered reasonable cause  
9 when the advice is of a matter of substantive tax law.  
10 Furthermore, the Supreme Court held that reliance on an  
11 expert cannot serve as a substitute for compliance with an  
12 unambiguous statute, such as payment deadlines.

13 Appellant further contends that by the CPA's  
14 clerical error, Appellant reported or remitted the  
15 incorrect amount of estimated tax. In the precedential  
16 opinion in the Appeal of Fisher, OTA held that the  
17 exercise of ordinary business care and prudence requires  
18 taxpayers to do more than merely perform and/or delegate  
19 the task necessary to timely file or, in this case, pay  
20 taxes due. Had Appellant's Trustee acted with ordinary  
21 business care and prudence by checking and monitoring the  
22 bank account to verify the correct amounts with the CPA  
23 and the CPA's firm, they would have both realized that the  
24 wrong payment was reported to Respondent.

25 Furthermore, the failure to timely remit a

1 payment of a tax liability caused by an oversight does not  
2 by itself constitute reasonable cause. Therefore,  
3 Appellant has failed to establish reasonable cause, and  
4 Respondent respectfully request the OTA sustain  
5 Respondent's claim for refund denial for the 2021 tax  
6 year.

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

8 JUDGE JOHNSON: All right. Thank you. I think I  
9 might save questions for the end, if we have any on your  
10 side.

11 But with that, I do want to give 5 minutes back  
12 to Mr. Kahen and Appellants.

13 Is there anything more you'd like to add or rebut  
14 to what Respondent said.

15

16 CLOSING STATEMENT

17 MR. KAHEN: It's a very simple rebuttal with  
18 regards to the cases cited in there. Almost every single  
19 that is cited in their -- in my brief has been addressed.  
20 All the factual background of these cases have been  
21 addressed and analyzed. I will just pick Boyle -- like,  
22 Boyle just for one example to show in it, because all the  
23 counter arguments that are raised in this are basically  
24 written down on the briefs.

25 For example, Boyle was about failure to file, and

1 this case was a simple failure to -- what's is it called?  
2 My apologies. It was a failure that was not caught on a  
3 clerical error. Secondly, there was no missed deadline in  
4 this case. It was a clerical error, again, in this case.  
5 The facts in this case are extremely unique, and all of  
6 the cited cases in here almost don't match. This is a  
7 very, very unique case on its own, clerical mistake level.

8 The Boyle involved complete inaction. It can  
9 take -- like, as soon as they found out what happened, it  
10 took them for awhile to do anything. Technical input  
11 error and full performance in this case happened almost  
12 two days afterwards. That's how we -- and this is just on  
13 Boyle. The rest of the cases that are also cited, we sat  
14 down. We compared the facts, and the facts very  
15 different. And in this case, I -- I did my research. I  
16 tried to do it, and there was nothing similar or any -- no  
17 cases I was ever able to find that have such a unique  
18 similar circumstances in a way that the detection of the  
19 problem is so hard to find.

20 There is nothing, and I went, and I even looked  
21 like in willful negligence. And the action of my clients  
22 in here, there are no cases cited in OTA or in Supreme  
23 Court that will live up to the standard of a willful  
24 negligence that needs to be established. I would love for  
25 FTB to show where was my client willfully negligent.

1 That's the question I will arise -- like I will raise to  
2 them.

3 With that, I'll finish. Thank you.

4 JUDGE JOHNSON: Thank you.

5 I'll turn to the panel to see if they have  
6 questions.

7 I'll start with Judge Gast.

8 JUDGE GAST: No questions. Thank you.

9 JUDGE JOHNSON: And Judge Stanley?

10 JUDGE STANLEY: No questions. Thank you.

11 JUDGE JOHNSON: All right. With that, we have  
12 evidence that's been admitted into the record. We have  
13 arguments and your briefs, as well as your arguments and  
14 testimony today, and a complete record from which to base  
15 a decision.

16 Before we conclude, I will ask one last time if  
17 we have any other questions or comments from the parties.

18 For Appellant?

19 MR. KAHEN: None from Appellant.

20 JUDGE JOHNSON: Thank you.

21 And Respondent?

22 MR. LY: No questions.

23 JUDGE JOHNSON: Thank you.

24 I wish to, again, thank both parties for their  
25 efforts in this matter.

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This concludes the hearing in this appeal.

The parties should expect our written opinion no later than 100 days from today.

And with that, we are now off the record.

(Proceedings adjourned at 1:35 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