

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. SWANSON and B. SWANSON,) OTA NO. 230813992
)
)
APPELLANTS.)
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)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, August 19, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at

400 R Street, Sacramento, California, 95811,

commencing at 9:43 a.m. and concluding

at 10:37 a.m. on Tuesday, August 19, 2025,

reported by Ernalyn M. Alonzo, Hearing Rep

in and for the State of California.

1 APPEARANCES:

2
3 Panel Lead: HEARING OFFICER KIM WILSON

4
5 Panel Members: ALJ VERONICA LONG
ALJ NATASHA RALSTON

6 For the Appellant: M. SWANSON
7 B. SWANSON

8 For the Respondent: STATE OF CALIFORNIA
9 FRANCHISE TAX BOARD

10 ARIANA MACEDO
11 BRAD COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-14 were received into evidence at page 9.)

(Department's Exhibits A-I were received into evidence at page 10.)

OPENING STATEMENT

By Mr. Swanson	11
By Ms. Macedo	27

CLOSING STATEMENT

By Mr. Swanson 30

1 Sacramento, California; Tuesday, August 19, 2025

2 9:43 a.m.

3

4 HEARING OFFICER WILSON: We are going on the
5 record.

6 This is the Appeal of Swanson, OTA Case
7 No. 230813992. The date is August 19, 2025, and the time
8 is 9:43 a.m. This hearing is being held in Sacramento,
9 California. My co-panelist Judge Long and Judge Ralston
10 and I are equal participants in deliberating and
11 determining the outcome of this appeal.

12 I'm going to ask the parties to identify
13 themselves for the record, starting with Appellant.

14 If you could please state your name for the
15 record.

16 MR. SWANSON: Oh, Melvin L. Swanson.

17 HEARING OFFICER WILSON: Thank you.

18 MS. MACEDO: Ariana Macedo for Respondent
19 Franchise Tax Board, and with me today is Brad Coutinho.

20 THE STENOGRAPHER: Ms. Macedo, may I ask that you
21 bring the mic closer to you. Thank you.

22 MS. MACEDO: Is this better.

23 THE STENOGRAPHER: A little louder, please.

24 MS. MACEDO: Can you hear me better now?

25 THE STENOGRAPHER: Yes. Thank you.

1 MS. MACEDO: Did you need me to repeat?

2 THE STENOGRAPHER: No. That's fine.

3 MS. MACEDO: No. Okay.

4 HEARING OFFICER WILSON: As stated in the Minutes
5 and Orders, the issues to be decided in this appeal are
6 whether Appellant has established reasonable cause to
7 abate the late-filing penalty and whether Appellant has
8 established a legal basis to abate interest.

9 As discussed in the prehearing conference,
10 Appellant submitted Exhibits A through J, which we
11 relabeled 1 through 10. FTB did not object to the
12 admissibility of these exhibits. Following the prehearing
13 conference, Appellant submitted three additional exhibits,
14 which we labeled 11 through 13.

15 Ms. Macedo, do you have any objections to 11
16 through 13?

17 MS. MACEDO: No objections.

18 HEARING OFFICER WILSON: And this morning we
19 received another exhibit.

20 Mr. Swanson, why was this submitted today?

21 MR. SWANSON: Well, I was looking -- looking at
22 it, and at the bottom of page -- this is on a 1040. At
23 the bottom of the page is -- it wasn't -- when I went to
24 the IRS and same thing. They didn't have my taxes. But
25 when I went there, I gave him -- gave them my taxes 'cause

1 I was wondering what was going on. But anyway, at the
2 bottom of the page, it's -- it's not signed by my wife or
3 I -- myself and signed by Sabrina Higby, certified public
4 accountant. And she's a third party designated -- or
5 however you pronounce it, and it had pin numbers for us.
6 And I was looking at that, and I go well, that's -- 'cause
7 at the IRS there was no problem with me not signing my
8 taxes, which I did on 4/11.

9 And then the second page there was -- and I may
10 be a copy, but it was something I had -- I may have this
11 already in there. But it was the electronic funds
12 withdrawals, and the -- and that's dated 4/18/22, which
13 the tax time in '22 was extended, because of COVID or
14 something, to the 18th from the 15th. And then I think it
15 even with COVID they had months after that. But anyway,
16 so that's what those three are about. And then the other
17 one is the one to the Franchise Tax Board that when I went
18 in, same thing on the bottom. It's got pin numbers and --
19 Sabrina Higby is designated third party, and this -- this
20 was when I took it in.

21 I'd brought a folder with me that I -- when I --
22 when we got done with our taxes that day, there was like
23 84 pages in the binder that she gave me at the end, and we
24 went all through it. And it was, you know, when we got --
25 when we got done with the taxes going through it -- when

1 I -- we thought, hey, we're done. And when I came home, I
2 just put that whole binder in plastic, which I have here.

3 HEARING OFFICER WILSON: So, excuse me.

4 Mr. Swanson, we're just discussing this one exhibit you
5 provided today.

6 MR. SWANSON: Yeah. Well, I -- okay. On this
7 page --

8 HEARING OFFICER WILSON: I just wanted to know
9 why it was not submitted timely.

10 MR. SWANSON: What?

11 HEARING OFFICER WILSON: Why the exhibit wasn't
12 submitted timely?

13 MR. SWANSON: Well, yes, this -- this is how it
14 should have been 4/11. When I went to the Franchise Tax
15 Board after months and months of trying to figure out what
16 happened --

17 HEARING OFFICER WILSON: I think you -- I think
18 you misunderstood my question. Not why was your tax
19 return not submitted timely, but why is the exhibit not
20 timely. So the exhibit supposed to be submitted in
21 advance of the hearing.

22 MR. SWANSON: I --

23 HEARING OFFICER WILSON: Is it just something you
24 felt that needed to be in the record?

25 MR. SWANSON: What I was concerned with after

1 looking at this was just where it says sign here
2 underneath our signatures, which above it when I went into
3 the Board --

4 HEARING OFFICER WILSON: Okay.

5 MR. SWANSON: -- there was no signatures on it,
6 and they had me sign it 9 --

7 HEARING OFFICER WILSON: Okay. All right. I
8 understand you're getting into your argument --

9 MR. SWANSON: Okay. I'll stop.

10 HEARING OFFICER WILSON: -- and your testimony,
11 so let's just hold off.

12 MR. SWANSON: Okay.

13 HEARING OFFICER WILSON: And, Ms. Macedo, do you
14 have any objection to this late exhibit?

15 MS. MACEDO: No objection.

16 HEARING OFFICER WILSON: Okay. We'll go ahead
17 and admit it and label it 14. So since there are no
18 objections, we'll admit Exhibits 1 through 14 for
19 Appellant.

20 (Appellant's Exhibits 1-14 were received
21 into evidence by the Hearing Officer.)

22 HEARING OFFICER WILSON: Next, we have FTB
23 submitted Exhibits A through I, and Appellant did not
24 object to the admissibility of these exhibits. Therefore,
25 A through I are admitted into evidence.

(Department's Exhibits A-I were received into evidence by the Hearing Officer.)

3 HEARING OFFICER WILSON: Mr. Swanson, you
4 indicated during the prehearing conference that you would
5 like to provide testimony. So I will go ahead and swear
6 you in. Please raise your right hand.

9 HEARING OFFICER WILSON: No.

10 MR. SWANSON: -- and you're going to swear me in
11 or whatever?

12 HEARING OFFICER WILSON: Yes. I'm going to swear
13 you in so that your testimony can be considered evidence.

14 MR. SWANSON: Fine.

15 HEARING OFFICER WILSON: Okay. So please raise
16 your right hand.

17
18 M. SWANSON,

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

22
23

24 You will have 30 minutes for your presentation.
25 You may begin when you're ready.

1 MR. SWANSON: Which -- which one are we -- my
2 presentation 1 through 13?

3 HEARING OFFICER WILSON: You're presentation is
4 whatever you want to present; witness testimony to support
5 the evidence in the record and your position.

6

7 PRESENTATION

8 MR. SWANSON: Well, I guess I'll start with --
9 with 1 on my evidence. That's a record of -- of e-filing
10 on -- and it's dated 4/18, and I owed the taxes of
11 \$25,381. And it's got my routing numbers and everything
12 that date that we filled out, my wife and I, at 4/11. And
13 so that's -- that's the first one, Exhibit 1.

14 Exhibit 2 -- let's see. Exhibit 2 is a
15 confirmation that my taxes to the Franchise Tax Board
16 weren't paid on 4 -- after 4/11, 4/12, before April 15th,
17 and they were paid at 7/1/22, \$25,381. That was supposed
18 to have been paid overnight is what -- we never ever
19 did -- whatever you call that -- electronic taxes. And -
20 and so we did what our accountant said. So anyway
21 that's -- they got the money, but they didn't get it 4 --
22 between 4/11 and 4/18. And so that raised flags.

23 Number 3 is the Golden One Credit Union, just
24 acknowledgement that on -- trying to see where the date
25 is. Anyway, it was acknowledgment at the Golden One that

1 there was an electronic withdrawal on -- oh, this was
2 signed. This is a paper we signed for electric
3 withdrawal. It's not a confirmation of it. This is what
4 we signed of -- to release the information to Sabrina
5 Higby to withdraw from our accountant to pay those funds.

6 Exhibit 4 was, you know, it was about failure of
7 filed for it, and it was shown to be a failure for -- to
8 us as reasonable cause without neglect. And something I
9 noted on here was the delinquent penalty was imposed of
10 \$6,345.25. But something that -- whoever typed this right
11 below that on the bottom of the first paragraph, it says
12 December 8th, 2022. And it should have said 4/11/22. But
13 even if December 8th is the wrong date. It should have
14 been December 9th, '22, I guess. But anyway that's just a
15 point there. We had -- they had to be signed
16 electronically.

17 Number 5 was down -- down about the middle of the
18 page it says, "Your position," and I wrote on there it was
19 a false statement. It says specifically, "You repeatedly
20 contacted your tax preparer Sabrina Higby," and that --
21 that's not true. I've had -- after 4 -- not 4/11 --
22 May -- May 11th, or whatever it was when I tried to get
23 ahold of her to try what was going on; why they weren't --
24 funds weren't taken out. I've -- we've -- she wouldn't
25 answer her phone. And so I -- we had actually went to her

1 office and that's when she was closing her business and
2 moving out.

3 And I've -- I'd never -- after that date, I think
4 that was May 7th or something -- it's in here several
5 places. But I'd never had any contact, any kind of --
6 that was the last time I -- we saw her, and I phoned and
7 phoned and phoned. And I have in one of my other exhibits
8 some of the phone calls and probably not a lot of them
9 were on her because we were lost. We go -- we were told
10 we had a person that had been in business for 10 years
11 doing our neighbor's taxes and stuff.

12 And anyway, I'll go to Exhibit 6, and that's
13 another false statement. And it says on July 1 -- okay,
14 that's the date -- you remitted payment of \$25,381. I --
15 I don't have any way of submitting that. We never did.
16 So the only thing I can say is that my constant calls to
17 Sabrina, Higby -- which my phone shows my name on it --
18 and she must have finally went back and -- and got her
19 file or something and looked at it, and she submitted.
20 She's the only one that had our information and our stuff,
21 you know, to withdraw funds and all that. So that was not
22 done by us. Absolutely not.

23 Number 7, was my statements that I don't -- I
24 guess no need to only read it. But when started and found
25 out that the taxes weren't paid, I finally decided after a

1 long time just not getting a hold of her, I went to the
2 IRS to -- to see what was going on. And I was told that
3 our taxes were paid, and I -- I thought hey, they finally
4 got paid and which was on the -- what -- whatever date
5 there -- I don't have it right in front of me -- July --
6 in July.

7 And then so I -- then on Exhibit 8, I -- and back
8 to 7. That had -- 7 had all the times in there and --
9 that I tried to get ahold of Sabrina and never was able to
10 get through because her line was busy. And at one point
11 there was an answering machine that said that she was
12 going to email everybody. Well, we never got any kind of
13 email from her. We never -- we never heard from her to
14 this date. And -- and on Exhibit 8 I requested abatement
15 of interest, and that's -- that will be discussed in a
16 little bit later, I guess.

17 And Exhibit 9 was actually when we went to the
18 Franchise Tax Board and gave -- gave the person there --
19 and the Franchise Tax Board, it wasn't like the IRS; you
20 went into a room where it was quiet and everything.
21 Franchise Tax Board had an open floor with windows and
22 people, a lot of noise, and everything else. But anyway,
23 I -- she said, you know, we never got your -- we got your
24 money, but we didn't get your taxes like IRS. And I said
25 we have the taxes with us. So I gave her the taxes. And

1 she made copies of it and that she looked at the end there
2 on this page, and she says, "You didn't sign your taxes.
3 Sign them."

4 And I said well, okay, I'll sign them 4/11/22,
5 which was the date they should have been signed. And she
6 said, "No, sign 12/9/22."

7 I said, "Well, that's not -- not the date we got
8 our taxes done." And I asked the -- I asked to talk to a
9 supervisor, and she says I couldn't talk to a supervisor.
10 And I'm going, at that point, you know, I'm thinking well,
11 maybe I ought to just leave. And then I said she's
12 already got the information, so that would -- wouldn't do
13 any good. So anyway, we ended up signing them
14 unwillingly.

15 And then Exhibit 10 was just a quick summary from
16 2004 to 2023. We never were ever late on our taxes. We
17 always did them, sent them in. And we didn't do them
18 electronically, only on the 2022 in Sabrina's office
19 because she said that's what we do. It'll be there the
20 next day.

21 And then the next Exhibit 11, I just made two
22 pages of the dates -- all the dates I tried getting ahold
23 of her and -- and were never able to just so it's clear,
24 'cause it was in the previous statements and stuff. And
25 anyway, May 5th is when I went to her office when the --

1 wondering why the money wasn't withdrawn. And I guess
2 July 5th is when the money was -- was withdrawn. She must
3 have sent it in. She's the only one that could have.

4 And then the next Exhibit 12, that's just the
5 actual -- my actual calendar, which I have the calendar
6 here too, but I made copies of when I tried to get ahold
7 of her. And so that's -- then the last thing on there,
8 which I -- I actually thought it was going to be on the
9 first, was my statement to Franchise Tax Board. It was
10 after finding out from the IRS that our taxes were never
11 received, I started calling the Franchise Tax Board and --
12 to see if they received our taxes and stuff. Phone lines
13 were always busy just like Sabrina's, really. And I was
14 finally able to get through and made an appointment for
15 12/09.

16 And the agent said that the Franchise Tax Board
17 got our taxes from the Golden 1. They were withdrawn
18 7/1/22. We told her taxes -- well, we told her weren't
19 paid. Anyway, it goes on and on about that. Anyway, we
20 gave the agent a copy of our tax. She said they were not
21 signed, to sign them with the 12/9/22 date. We said that
22 the taxes were not done. They were done on 4/11/22, and
23 that is the date we should sign. We asked to see the
24 supervisor, and she said we -- this is kind of repetitious
25 from before. And she said we could not just sign the

1 taxes.

2 This was like signing a confession. It was not a
3 fact. The agent gave us an amount that we owed for
4 penalty. And she gave us an amount for a penalty of
5 \$685.54. And we didn't have our checkbook, so we said
6 we'll go home and we'll write a check and -- and get a
7 return receipt and mail it. We went home on December 9th
8 and immediately wrote the check out, took it over and put
9 it in the mail. And then -- the next thing we --
10 everything was fine. When we walked out of there, then we
11 said hey, we paid our penalty. We're done, and we felt
12 good about hey, we came and we presented the taxes and --
13 and we got charged a penalty of \$685.54.

14 Well, then on 1/12/23, we received a letter from
15 the Franchise Tax Board that we owed \$6,345.25 for the
16 penalty and then \$304 for interest. And anyway, we owed
17 \$6,654.95, and we paid it that date with a voucher. Well,
18 what this right here shows me that the person that we were
19 dealing with at the Franchise Tax Board was -- she's
20 supposed to be a competent person; and she told us our
21 penalty was \$685. We -- we, you know, said hey, we'll pay
22 the \$685. This is done. And then all of a sudden we get
23 this thing we owe \$6,654. So she made a mistake. So, you
24 know, I'm not perfect, and evidently she's not perfect.
25 So, you know, what the heck?

1 This -- I'm a -- I've been an honest man all my
2 life and -- and respectful and everything. And, you know,
3 I've -- I've made some mistakes; and if I made a mistake,
4 I took care of them. And I feel that this was so unjust,
5 and it really was about calling us untruthful or liars,
6 and we did everything. We had \$125,000 of our money to
7 pay out. We knew we had to pay. We -- we were proud that
8 we'd made money on our sale of our rental and knew we had
9 to pay taxes, and we just -- we -- we ended up with a
10 person that had personal problems, evidently, after being
11 in business a long time and highly recommended. You know,
12 I don't -- I don't feel that -- you know, I feel it's
13 reasonable cause that we got caught up in somebody else's
14 failure. So that's -- that is, I guess, what I want to
15 say at the end of that.

16 Now, do we -- do I have to go on with the
17 Franchise, or do they do it with their A through I?

18 HEARING OFFICER WILSON: Your presentation is
19 anything you want to provide; so any testimony you would
20 like to give supporting the exhibits. I know you read
21 some of them. Did you want to explain in detail about
22 your attempts, the phone calls, or --

23 MR. SWANSON: Now, do I want to explain anything
24 in more detail about what I just went through?

25 HEARING OFFICER WILSON: Yes.

1 MR. SWANSON: Hey, I've detailed it out in the
2 three-page handwritten -- originally what I submitted the
3 same thing, and I submitted to the IRS. And the IRS
4 abated \$25,000 and something in penalties over the --
5 after they read that and over two phone calls, they abated
6 it down to, I think, \$811 of interest, the IRS. And I --
7 I thought they were -- read what I said to the honest
8 truth and took my word for being an honest person. So
9 that's that part.

10 I don't -- but I -- now -- now I have a question.
11 Is -- are they presenting their A through I, or am I --
12 I'm supposed to go through -- am I supposed to go through
13 that?

14 HEARING OFFICER WILSON: I believe the Franchise
15 Tax Board will make a presentation. I'm not sure if
16 they're going to go over every exhibit, but they'll
17 provide a summary of the case. So if want to provide any
18 information --

19 MR. SWANSON: Let me --

20 HEARING OFFICER WILSON: -- in response to their
21 exhibits?

22 MR. SWANSON: Let me look at it. I'll look at it
23 and see what I -- on their -- their Exhibit A, that was --
24 basically showed that I owed -- we owed \$25,000 in taxes
25 to the -- to the State. And actually, I guess, the total

1 amount was like 49 with our -- you know, from our sale of
2 our rental property and our regular income.

3 B was our California returns, just showing what
4 we paid in taxes \$49,000, and we owed -- anyway, we owed
5 additional \$26,000 or something the balance due. This
6 was -- they sent out just saying that we made 49 -- we
7 owed \$49,594, and we had a penalty of \$6,345 in interest.
8 Anyway, that we owed what I said before \$6,654.98, which
9 was sent to us that we -- we took care of.

10 HEARING OFFICER WILSON: Mr. Swanson, we do have
11 the exhibits, and we will review them. So if there's
12 anything specific you don't agree with in the exhibits or
13 you want to point out; otherwise, we do have the exhibits,
14 and we will review them.

15 MR. SWANSON: Well, I mean -- okay. Reasonable
16 cause papers and request for abatement, I guess we've
17 talked about that. Exhibit E was -- oh, I received the
18 letter that -- E was a denial of the claim saying it
19 wasn't reasonable cause of, you know, stipulation.
20 Understand that if you don't pay your taxes, you know --
21 you know, they're supposed to be paid, and that's -- we
22 tried everything. Fought for a year and this has been
23 four years later that I'm finally here. And then.
24 Exhibit E was the only thing on it was the wrong date. It
25 had 12/8/22 instead of 12/9.

1 And then the next thing G was whatever somebody
2 sent here, the figures on G. There's two columns, and the
3 first column the total is \$56,250, and the second column
4 totaled right. And in the first column they had them both
5 the same. You know, I don't know who did that.

6 Then H is a transcript I guess from the IRS
7 showing that they finally got down to of -- on here, it
8 says \$1,013, but I think the interest got down to \$811 or
9 something like that. On the next page I have the interest
10 ended up being reduced with the IRS 8/11/81 that I have a
11 copy of a returned check and stuff from the IRS.

12 Exhibit I is the last thing, and it was a bunch
13 of pages about the -- from the IRS too. I guess taxes
14 went through that.

15 And then I guess that's it. I -- I've done my
16 best, and I noticed on the agenda something that said a
17 closing statement. Am I supposed to do that now, or -- or
18 is that -- was -- were they going to present something?

19 HEARING OFFICER WILSON: So what's going to
20 happen next is Franchise Tax Board will make their
21 presentation, but then afterwards you'll have a chance to
22 provide a closing statement.

23 MR. SWANSON: I'm sorry. I didn't hear you.

24 HEARING OFFICER WILSON: After Franchise Tax
25 Board makes their presentation, you'll have 5 or

1 10 minutes to make a closing.

2 MR. SWANSON: Okay. That what I understood. I
3 thought they had something.

4 HEARING OFFICER WILSON: Yes.

5 MR. SWANSON: Okay.

6 HEARING OFFICER WILSON: I'm going to ask,
7 Franchise Tax Board, do you have any questions for
8 Appellant?

9 MS. MACEDO: No questions. Thank you.

10 HEARING OFFICER WILSON: Okay. Judge Ralston, do
11 you have any questions?

12 JUDGE RALSTON: I don't have any questions at
13 this time. Thank you.

14 HEARING OFFICER WILSON: Judge Long?

15 JUDGE LONG: Yes, I do have some questions.

16 I want to ask, if you could, could you walk us
17 through your attempts to contact your return preparer?
18 You've written in your exhibits the dates, but I'd like to
19 hear from you to tell us what happened with the return
20 preparer.

21 MR. SWANSON: Could I walk you through with --

22 JUDGE LONG: Yes. You've written in the exhibits
23 that you tried multiple times to contact the return
24 preparer, the CPA who prepared your return. Can you walk
25 us through the dates and how many times you tried to

1 contact her, please?

2 MR. SWANSON: Well, that's what I've -- I have
3 the calendar list, which was Exhibit 11 and my calendar.
4 And on February 11th -- oh, this starts from the
5 beginning. The 1st I called to make an appointment. On
6 March 11th, '22, we went to our first appointment, and she
7 asked us -- we brought our information with us, and she
8 asked if we had this and that, and we had everything
9 there. She was very surprised that we had all our
10 information and -- and stuff in our folders, answered
11 every question. We -- and she was doing things and -- and
12 stuff.

13 And we wanted to make sure why we -- we were
14 doing our taxes all the time. We wanted to make sure that
15 we didn't take and do something with the rental and -- and
16 end up here, you know. But anyway she -- she was able to
17 take and work on with -- my wife had all the -- the stuff
18 on the rental's depreciations and all that. And like I
19 say, she -- she was amazed, and -- and it was a quick
20 appointment. And we felt real good when we came out of
21 that. And then on April 11th, we -- we called and had an
22 appointment to pick up our taxes. We went in, and she had
23 the taxes done. She went through 84 pages of taxes, which
24 I have here. And normally our -- our taxes in '21 that we
25 did ourself, had -- or in '20, the year before, was

1 11 pages for IRS and Franchise Tax Board.

2 And then 2022 or '21 taxes there was the 90 --
3 86 pages, excuse me. And '22 was back to -- we had to do
4 our taxes again because we didn't have an accountant that
5 we thought we were going to have for the rest of our life.
6 And anyway there was 12 pages. But -- so I've -- then we
7 didn't hear from her, and then on May 5th I've -- we
8 called and called and no answer. So we drove to Loomis
9 where her office was, and she close -- she was moving out.
10 And we asked her why -- why weren't our taxes paid? Why
11 wasn't -- actually, we didn't know that. We said why
12 wasn't the money taken out of our account, you know, the
13 6th -- the 16th and -- or actually, the 12th. And --
14 because she said it would be taken out the next day, and
15 everything would be paid.

16 And she said, oh, the IRS and the Franchise Tax
17 Board are lacking labor, and they're overwhelmed. And so
18 don't worry about it. You know, everything was taken
19 care. They got sent, your taxes and the money stuff.
20 Well, it didn't happen. And then July 1, I finally -- I
21 made an appointment with the -- the IRS on Watt Avenue
22 wondering -- you know, I hadn't heard anything, and
23 probably -- I don't know how many times I tried to get
24 ahold of her between there. And when I went in on July 1,
25 the agent told me, yes, your tax were paid -- or excuse.

1 Yeah, he said you're -- we received the money. Your taxes
2 were paid. So that's the question I asked him. He
3 answered that. He didn't say anything more.

4 Anyway, I -- after we left there, things were
5 quiet. I -- I'm going well, taxes were paid, finally.
6 And then -- I don't know if I called a lot more, but
7 anyway I started calling in October and -- October 14th,
8 21st, 24th, and all -- I would get mailboxes are full on
9 -- on both lines. She had her office line, and we had her
10 cell phone number. And on November, I called
11 November 7th, mailboxes full. November 23rd, I said
12 something is not going on right. And I had another ill
13 feeling, so I made an appointment back at Watt Avenue with
14 the IRS and went in and talked to the agent. It was very
15 pleasant, and he says, you know -- he says, your taxes
16 were paid, but we never got your taxes. And I about had a
17 heart attack.

18 And anyway, I said well, I have the taxes with
19 me. So he made a copy, and -- and there was no question
20 about -- with him about not signing it on the 11th. And
21 that's what the new piece I brought you was showing that
22 she -- she was the third party, and it had our pin numbers
23 and stuff on it. And, you know, we didn't -- never heard
24 of a pin number before that. Anyway, then November 28th I
25 thought well, hey, if the IRS didn't get, you know, the

1 money on time and -- and the taxes on time, then I better
2 start calling the Franchise Tax Board, which I tried
3 calling. It was busy just like Sabrina's numbers.

4 I finally did get through because I think I
5 finally went on a hearing impaired line and was able to
6 get through and was able to make an appointment for
7 December 9th. And that's when we went to the Franchise
8 Tax Board and -- and anyway, I've already read what
9 happened there. And like I say I was very disappointed
10 that the number went from a penalty of
11 \$600-and-some-dollars to \$6,000. And I guess that -- that
12 just irritated me. And I guess so I filed for, you know,
13 to have that abated and stuff. And anyway, is -- I guess
14 I -- I'm an old guy and start rambling on. I don't want
15 to -- I want to get out of here myself.

16 But -- and anyway after December 19th, I tried
17 calling Sabrina's numbers. And she had another number,
18 and it just -- it -- it rang busy, but the other two were
19 the same, always, you know, mailbox is full.
20 December 30th I called again, and mailbox is full and busy
21 signal again.

22 So I guess end of my presentation. I'm so tired.

23 JUDGE LONG: All right. That answers my
24 questions. Thank you.

25 HEARING OFFICER WILSON: Next, we'll move on to

1 the Franchise Tax Board's presentation.

2 You have 10 minutes, and you can begin when
3 you're ready.

4

5 PRESENTATION

6 MS. MACEDO: Good morning. My name is Ariana
7 Macedo, and I represent Respondent --

8 MR. SWANSON: You can't hear her.

9 MS. MACEDO: Good morning. My name is Ariana
10 Macedo, and I represent Respondent Franchise Tax Board in
11 this matter. I am joined today by my colleague, Brad
12 Coutinho.

13 There are two issues on appeal today: First,
14 whether Appellants have established reasonable cause to
15 abate the delinquent filing penalty imposed for the 2021
16 taxable year; second, whether Appellants have established
17 a basis to abate the interest imposed for the 2021 taxable
18 year.

19 Turning to the first issue, Franchise Tax Board
20 properly imposed a delinquent file penalty when Appellants
21 failed to timely file a 2021 tax return. Appellants
22 untimely filed their 2021 tax return in December of 2022,
23 near nearly eight months after the April 15th, filing
24 deadline. On appeal, Appellants contend that they acted
25 with ordinary business care and prudence by timely

1 providing the necessary information to their tax preparer
2 and relying on their tax preparer to timely file their
3 2021 tax return.

4 Although Respondent sympathizes with Appellants'
5 position, it is well settled that taxpayers have a
6 personal nondelegable obligation to file their tax return
7 by the due date. For example, in the precedential opinion
8 *Appeal of Quality Tax and Financial Services Incorporated*,
9 OTA stated that in the absence of an acknowledgment that a
10 return was transmitted, received, and accepted, an
11 ordinarily intelligent and prudent businessperson would
12 have its e-filing history and acknowledgment records for
13 that return to confirm whether it had been transmitted,
14 received, and accepted.

15 Here, Appellants contend that their tax preparer
16 assured them that she would timely e-file their 2021 tax
17 return. However, Appellants have failed to provide any
18 documented proof, such as confirmation receipts and/or
19 emails, to substantiate that they made an effort to
20 obtain, review, and confirm their 2021 tax return had been
21 timely filed. Accordingly, Appellants have not
22 established a reasonable cause to abate the delinquent
23 filing penalty imposed for the 2021 taxable year.

24 Moving to the second issue, Appellants have
25 failed to demonstrate that they qualify for interest

1 abatement. Appellants have failed to demonstrate one,
2 unreasonable error or delay by the Franchise Tax Board in
3 its performance of a ministerial or managerial act; two,
4 extreme financial hardship caused by significant
5 disability or other catastrophic circumstance; or three,
6 reliance on the written advice of the Franchise Tax Board.
7 Accordingly, Appellants have failed to establish a basis
8 to abate the interest imposed for the 2021 taxable year.

9 Based on the relevant case law, facts, and
10 evidence in the record, Respondent request that the OTA
11 sustain Respondent's position.

12 I'm happy to address any questions you may have
13 at this time. Thank you.

14 HEARING OFFICER WILSON: Judge Ralston, do you
15 have any questions for Franchise Tax Board?

16 MR. SWANSON: Well, I heard her say I had --

17 JUDGE RALSTON: Oh, Mr. Swanson --

18 MR. SWANSON: Oh.

19 JUDGE RALSTON: Yeah. This is Judge Ralston. I
20 don't have any questions for Franchise Tax Board. Thank
21 you.

22 HEARING OFFICER WILSON: And, Judge Long, do you
23 have any questions for Franchise Tax Board?

24 JUDGE LONG: I have no questions. Thank you.

25 HEARING OFFICER WILSON: I did have one question.

1 Mr. Swanson mentioned that there was different penalty
2 amount mentioned to him at the time of his appointment
3 versus the letter. Is there -- could you provide some
4 explanation to what happened or --

5 MS. MACEDO: FTB does not want to speculate as --

6 MR. SWANSON: I can't hear you.

7 MS. MACEDO: FTB does not wish to speculate as to
8 why the penalties were different. However, we can confirm
9 that a refund was issued in the amount of \$683 and change
10 on February 6, 2023. Therefore, the initial payment
11 was -- was refunded.

12 HEARING OFFICER WILSON: Okay. Great. Thank
13 you.

14 Mr. Swanson, you have 5 to 10 minutes, if you'd
15 like to make a closing statement.

16

17 CLOSING STATEMENT

18 MR. SWANSON: Well, the one thing she -- she said
19 was about documents. I feel that I had plenty of
20 documents that I presented reasonable -- for reasonable
21 cause. And I know in the -- in the prehearing, think --
22 which I was a mess. I think she asked if I had, you
23 know -- you know, my telephone bills and, you know,
24 documents. I -- it was -- I never thought anything would
25 go -- that I'd have to back and -- and look -- get my

1 telephone bills out from the periods of '22. And -- and
2 you know, I could have got that. But hey, it was -- my
3 wife said hey, forget it, you know. Just -- it's driving
4 you nuts.

5 And in my closing statement I'll just say this.
6 Do you know what a boy -- Boy Scouts of America is? Well,
7 I'm an Eagle Scout. I was raised in a Scouting family,
8 and I had an older brother who was and Eagle Scout and on
9 even higher than that. And I got my Eagle Scout badge. I
10 was one of the youngest in Sacramento area to get Eagle
11 Scout, and -- and I lived by the Scout rules. I grew up
12 being honest, thrifty, you know, courteous, kind,
13 obedient, and all of the -- from Scout oath. And -- and I
14 had a mother and dad that were all involved in the Scout
15 and stuff.

16 Anyway, I've -- after that, I -- I had a note
17 here that, you know, we took Sabrina at her word and in
18 trust. And that's what I always believed that my word --
19 if I told you I was going to do something, I did. And --
20 and if something came along that might be better -- and I
21 raised my kids that way -- you gave your word. You follow
22 through. Anyway, she let us down. Her -- she didn't keep
23 her word or -- because of her business. And my wife and I
24 always -- we always do the best and try to get good
25 results. And we grew up in the time when somebody was

1 going to do something, their word was honest. And we
2 can't be held liable for somebody's personal or business
3 problems.

4 We have done our best to resolve this issues.

5 Amen.

6 HEARING OFFICER WILSON: Thank you, Mr. Swanson.

7 Final questions from the panel, Judge Ralston?

8 JUDGE RALSTON: No questions. Thank you.

9 HEARING OFFICER WILSON: And, Judge Long?

10 JUDGE LONG: I do have one question for the
11 Franchise Tax Board.

12 I want to confirm the sequence of events. So
13 Appellant goes to Franchise Tax Board for an appointment,
14 and he's told he has a balance due. And he pays that
15 amount, and then shortly thereafter receives a state
16 income tax balance due notice for a different amount. And
17 then FTB issues a refund for the first amount, and he pays
18 the amount of the balance due notice. So we was refunded
19 an amount when he was also still owing tax for the
20 penalty; is that correct?

21 MS. MACEDO: Sorry. Let me just collect my
22 notes. So the record shows that on December -- that on
23 December 9, 2022, Appellants paid \$685.84, which is what
24 the Appellant stated the FTB agent informed him was owed.
25 Then on January 15th, 2023, he paid -- or the taxpayer

1 submit two payments; one in the amount of \$5,971.05 and
2 then an additional payment of \$683.93. The secondary
3 payment of \$683.93, that is what was refunded. And so
4 they satisfied the balance due on the state income tax
5 balance due. There was an overpayment in that regard, and
6 so it was refunded in February -- February 6, 2023.

7 JUDGE LONG: All right. I understand. Thank
8 you.

9 MS. MACEDO: Thank you.

10 HEARING OFFICER WILSON: Okay. I don't have any
11 questions for you, so we're going to go ahead and submit
12 the case.

13 This case is submitted today on August 19, 2025,
14 the record is now closed.

15 Thank you everyone for participating today.

16 We will issue a written opinion within 100 days.

17 And today's hearing in the appeal of Swanson is
18 now concluded.

19 (Proceedings concluded at 10:37 a.m.)

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HEARING REPORTER'S CERTIFICATE

3 I, Ernaly M. Alonzo, Hearing Reporter in and for
4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was
6 taken before me at the time and place set forth, that the
7 testimony and proceedings were reported stenographically
8 by me and later transcribed by computer-aided
9 transcription under my direction and supervision, that the
10 foregoing is a true record of the testimony and
11 proceedings taken at that time.

12 I further certify that I am in no way interested
13 in the outcome of said action.

14 I have hereunto subscribed my name this 27th day
15 of August, 2025.

ERNALYN M. ALONZO
HEARING REPORTER