

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. LISTER,) OTA NO. 240516165
)
)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, August 13, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. LISTER,) OTA NO. 240516165
APPELLANT.)
_____)

Transcript of Proceedings, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 9:28 a.m.
and concluding at 9:46 a.m. on Wednesday,
August 13, 2025, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ TERESA A. STANLEY
HEARING OFFICER ERICA PARKER

For the Appellant: M. LISTER

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 Exhibit 1 was received into evidence at page 6.)

(Department's Exhibits A-L 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. Lister	7
By Mr. Ly	9

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By	12

1 Cerritos, California; Wednesday, August 13, 2025

2 9:28 a.m.

3
4 JUDGE KLETTER: Let's go on the record.

5 This is Appeal of Lister, as I mentioned, OTA
6 Case Number 240516165. Today is Wednesday, August 13th,
7 and the time is 9:28 a.m. I'm Judge Kletter and with me
8 is Administrative Law Judge Teresa Stanley and Hearing
9 Officer Erica Parker. While I'm lead ALJ in conducting
10 this hearing, all panel members are co-equal decision
11 makers.

12 Ms. Alonzo is reporting this hearing verbatim.
13 As I mentioned earlier, to ensure we have an accurate
14 record, we ask that everyone speak one at a time and does
15 not speak over each other. Please speak clearly and
16 loudly. And the hearing transcript and video recording
17 are part of the public record.

18 I'd like for the parties to please each identify
19 yourself by stating your name for the record, beginning
20 with Appellant.

21 MR. LISTER: Marquez Lister.

22 JUDGE KLETTER: Thank you.

23 And for Franchise Tax Board.

24 MR. LY: John Ly.

25 MS. ZUMAETA: And Jackie Zumaeta.

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JUDGE KLETTER: Thank you so much.

In our hearing today is the issue that we're hearing is whether the statute of limitations bars Appellant's claim for refund for the 2018 tax year.

With respect to the evidentiary record, FTB provided Exhibits A through L. Appellant did not object to the admissibility of these exhibits therefore, those exhibits are entered into the record.

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

JUDGE KLETTER: And Appellant has provided Exhibit 1. FTB did not object to the admissibility of this exhibit and, therefore, this exhibit is entered into the record.

(Appellant's Exhibit #1 was received into evidence by the Administrative Law Judge.)

JUDGE KLETTER: As a reminder, we have 10 minutes for Appellant's presentation, 10 minutes Franchise Tax Board's presentation, and then, Appellant, you'll have 5 minutes for a closing statement and rebuttal or anything you would like to respond.

Mr. Lister, are you ready to begin your presentation?

MR. LISTER: Yes.

JUDGE KLETTER: Please go ahead and begin.

1 you -- we can -- we take this and go on about your way.
2 And that's how I feel the State has treated me. I also
3 had a certified mail receipt to make sure that they
4 received it in time enough so that I wouldn't have any
5 actions taken against me. And then also -- no.

6 That's it. They can go ahead and proceed.

7 JUDGE KLETTER: Mr. Lister, as we discussed
8 during the prehearing conference, to the extent that
9 you're providing testimony about what FTB said to you or
10 your personal knowledge, I can swear you in so that we can
11 consider that testimony as evidence.

12 MR. LISTER: That's fine.

13 JUDGE KLETTER: Please raise your right hand.

14

15 M. LISTER,

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

19

20 JUDGE KLETTER: Thank you.

21 So now I'm going to turn it over to Franchise Tax
22 Board. You'll have 10 minutes for your presentation.

23 Mr. Ly, are you ready to begin.

24 MR. LY: Yes. Thank you.

25 JUDGE KLETTER: Go ahead.

1 tax return on April 15, 2022. If a taxpayer claims a
2 return was timely filed by mail, the taxpayer must provide
3 compelling proof, such as a certified mail receipt.

4 In support of his claim, Appellant has provided
5 copies of certified mail receipts for envelopes sent both
6 to FTB and the IRS for April 15, 2022, in which he
7 contends contained his 2018 tax year returns. However,
8 FTB has no record of receiving Appellant's 2018 tax return
9 on that date, and a certified mail receipt does not prove
10 the contents of the envelope. Extrinsic evidence, such as
11 FTB's official records, may be considered to show whether
12 something was timely mailed. Appellant has not provided
13 any evidence to suggest that his 2018 California tax
14 return was placed in the same envelope as the one sent by
15 certified mail on April 15, 2022.

16 Additionally, a review of Appellant's 2017 tax
17 year account indicates that he filed his 2017 California
18 tax return on April 15, 2022, which strongly suggest that
19 the provided certified mail receipt corresponds with the
20 filing of his 2017 tax return.

21 Lastly, in a phone call with FTB on July 7, 2023,
22 over 14 months after the alleged filing of his 2018 tax
23 year return, Appellant acknowledge that he still needed to
24 file his 2018 California tax return. Moreover, the IRS
25 has no record of a return filed by Appellant on or near

1 April 15, 2022, for the 2018 tax year but does show
2 receipt of Appellant's 2017 federal tax year return that
3 similarly coincides with the certified mail receipt date
4 provided. As such, based on compelling extrinsic
5 evidence, January 29, 2024, is the date of actual receipt
6 of Appellant's 2018 California tax return, and the
7 certified mail receipt is insufficient to establish an
8 earlier filing date.

9 The Office of Tax Appeals in its precedential
10 opinion in the Appeal of Benemi Partners, held that the
11 language of the statute of limitations is explicit and
12 must be strictly construed. The United States Supreme
13 Court in United States v Dalm explain that this is true,
14 even when it is later shown that the tax was not owed in
15 the first place. Appellant has not provided sufficient
16 evidence that will allow FTB by law to grant his claim for
17 refund. Therefore, FTB respectfully requests that the
18 Office of Tax Appeals sustain FTB's claim for refund
19 denial for the 2018 tax year.

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

21 JUDGE KLETTER: Thank you, Mr. Ly.

22 I'm actually going to ask, Mr. Lister, is there
23 anything you would like to say in response, a final
24 statement, or anything else that you've prepared or would
25 like to say, and then I'll turn it over to the panel

1 members for questions.

2

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CLOSING STATEMENT

4

MR. LISTER: Yes. The Franchise Tax Board sent me something saying that I had a total overpayment for the tax year 2018. So it shows that they did get something.

7

JUDGE KLETTER: Can you let me know what is on the piece of paper that you have in your hand, or what is it titled?

10

MR. LISTER: Statute of Limitations. We recently processed your income tax return or claim. And they're saying they didn't get it for 2018. And the tax year clearly states on the top right-hand corner. It says 2018.

15

JUDGE KLETTER: So that is Exhibit 1 in our record. It's the Statute of Limitations Notice.

17

MR. LISTER: Yes. And -- yes. And -- and also, had they not had me -- the certified mail receipt does show proof that I sent it -- sent this in when they asked me to after they had called. On top of that, I wouldn't had -- if I had not sent it in -- from the garnishment, I have one year, right. This is before the one year any way.

24

So had they had not called me and had me file and send those documents in, it would -- I would have waited,

25

1 and then I would have been able to file within -- after
2 the -- the time that they garnish me would have put me
3 well within the one year. So I'm ahead of them by an
4 extra three months before -- or however many months before
5 the stat -- the one-year statute of limitations to allow
6 me to file for that year, if that makes any sense to you.

7 JUDGE KLETTER: Yes. And noted. Was there
8 anything else that you wanted to, add, or I can turn it
9 over and --

10 MR. LISTER: No.

11 JUDGE KLETTER: I'm going to ask. Judge Stanley,
12 did you have any questions for either of the parties?

13 JUDGE STANLEY: Just a clarifying question for
14 Mr. Lister.

15 The Franchise Tax Board says that that certified
16 mail receipt appears to be for your 2017 tax return
17 instead of your 2018 --

18 MR. LISTER: No.

19 JUDGE STANLEY: -- tax return.

20 MR. LISTER: I had --

21 JUDGE STANLEY: Wait. Wait until I --

22 MR. LISTER: I'm sorry.

23 JUDGE STANLEY: -- finish.

24 MR. LISTER: Go ahead.

25 JUDGE STANLEY: I'm just wondering if you can see

1 or show me anywhere on that receipt where it provides
2 which tax year you sent in, which tax return.

3 MR. LISTER: It was. There were -- they made me
4 do '17 and '18, and I have two separate receipts. One
5 showing -- one was for '17, and one was for '18, certified
6 mail receipts. I'm sorry.

7 JUDGE STANLEY: So you're showing us two
8 receipts. Did you submit both of those?

9 MR. LISTER: Yes. Both of those are on the same
10 certified mail document there on that page.

11 JUDGE KLETTER: It looks like one of the
12 certified mail receipts is addressed to Cincinnati, Ohio,
13 and then the other one is to Sacramento, California.

14 MR. LISTER: Where is that?

15 JUDGE STANLEY: Okay. I can just clarify. I can
16 see that it's written IRS on the first receipt.

17 Thank you. I don't have any more questions.

18 JUDGE KLETTER: I'm going to ask
19 Hearing Officer Parker.

20 Do you have any questions for either of the
21 parties?

22 HEARING OFFICER PARKER: Yes.

23 MR. LISTER: One -- one other thing. This is
24 2018.

25 JUDGE KLETTER: Noted.

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MR. LISTER: Okay.

HEARING OFFICER PARKER: I do have a question for Mr. Lister.

MR. LISTER: Yes.

HEARING OFFICER PARKER: So the FTB is acknowledging that they did receive the 2018 tax return and that it was filed on January 29th, 2024, which is the tax return that you filed; is that correct?

MR. LISTER: January 29th? No. I got --

HEARING OFFICER PARKER: That would be Exhibit F in the record.

MR. LISTER: Can I see your copy?

MR. LY: Yeah. It's right here, Exhibit F.

HEARING OFFICER PARKER: So my question is -- so this one was filed on January 29th. And my question would be, what prompted you to file the 2018 return in 2024?

MR. LISTER: The phone call. You guys called me.

HEARING OFFICER PARKER: The Franchise Tax Board called you?

MR. LISTER: They called me. That's where I -- that's where these dates came from.

HEARING OFFICER PARKER: Do you know what month they called you or when they called you?

MR. LISTER: Maybe. So you don't -- you guys have no record of them -- you guys calling me?

1 JUDGE KLETTER: If Franchise Tax Board can give
2 you exhibits, there's an Exhibit K that has -- the
3 Franchise Tax Board provided the call logs.

4 MR. LY: The next page shows the calls.

5 HEARING OFFICER PARKER: So the call log that
6 they shared with you was dated July 7th, 2023. And so my
7 question is, if you were --

8 MR. LISTER: July. What about -- no April? No
9 May? Or is this for different calls?

10 HEARING OFFICER PARKER: Yes. Those would have
11 been other ones. The 7/7 is the one they provide the
12 detail for the conversation where --

13 MR. LISTER: July 7th.

14 JUDGE KLETTER: It's page 2 of Exhibit K.

15 MR. LISTER: It's on page 2. It doesn't say it
16 on this page. Exhibit K, page 2?

17 JUDGE KLETTER: Oh, I'm sorry. It starts at the
18 bottom of -- very bottom of page 1. It says "Comment
19 Detail." They even --

20 MR. LISTER: Oh, July 7th.

21 JUDGE KLETTER: And it continues on.

22 MR. LISTER: Is that the initial call? No.

23 HEARING OFFICER PARKER: This is the July 7th.
24 But I do see now that it does say there that you were
25 advised that you needed to file the tax year 2018

1 through 2022, and that was on July 7th. So is that the
2 reason you submitted the return --

3 MR. LISTER: Yes.

4 HEARING OFFICER PARKER: -- the January in 2024?

5 MR. LISTER: There were two different -- two
6 separate instances. No. Because this is after -- this is
7 after -- I mean, this is after the call that I got. The
8 call was before July.

9 HEARING OFFICER PARKER: Okay. So you filed this
10 tax return in January 2024 after a conversation with FTB?
11 Is that why --

12 MR. LISTER: After the conversation with FTB,
13 they told me to file --

14 THE STENOGRAPHER: Stop. I'm need to ask you to
15 please wait until she finishes her question before --

16 MR. LISTER: Oh, I'm sorry. I forget just now.

17 THE STENOGRAPHER: -- answering, otherwise I
18 can't get both of you at the same time. Thank you.

19 HEARING OFFICER PARKER: I apologize.

20 So the call -- you received a call, and that
21 prompted the filing of the 2018 return in 2024?

22 MR. LISTER: That was 2022.

23 HEARING OFFICER PARKER: Okay. I think that
24 answers my question.

25 JUDGE KLETTER: Okay. So now that we've gone

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through the questions from the judges, I actually don't have any questions myself.

So this concludes the hearing, and the panel will meet and decide the case based on the documents and the testimony that was presented. We will issue our written decision no later than 100 days from today.

The case is submitted, and the record is now closed.

This concludes this case, and we're going to go off the record.

(Proceedings concluded at 9:46 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 20th day of August, 2025.

ERNALYN M. ALONZO
HEARING REPORTER