

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
L. HACKNEY,) OTA NO. 240516261
)
)
APPELLANT.)
)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, August 13, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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14 Transcript of Proceedings, taken at
15 12900 Park Plaza Drive, Suite 300, Cerritos,
16 California, 90703, commencing at 1:30 p.m.
17 and concluding at 1:49 p.m. on Wednesday,
18 August 13, 2025, reported by Ernaly M. Alonzo,
19 Hearing Reporter, in and for the State of
20 California.

1 APPEARANCES:

2
3 Panel Lead: HEARING OFFICER KIM WILSON

4
5 Panel Members: ALJ ASAFA KLETTER
ALJ TERESA A. STANLEY

6 For the Appellant: KEN MOUSSEAU
P. SCALISI

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8 For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

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10 JOHN LY
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

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

OPENING STATEMENT

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By Mr. Mousseau 7

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By Mr. Ly 13

CLOSING STATEMENT

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By Mr. Mousseau 19

1 Cerritos, California; Wednesday, August 13, 2025

2 1:30 p.m.

3

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

6 This is the Appeal of Hackney, OTA Case
7 No. 240516261. The date is August 13th, 2025, and the
8 time is approximately 1:30. The hearing is being held in
9 Cerritos, California.

10 I'm Hearing Officer Kim Wilson, and with me are
11 Judge Kletter and Judge Stanley. I will be the lead panel
12 member for the purpose of conducting this hearing, but we
13 are equal participants in deliberating and determining the
14 outcome of the appeal.

15 And then for the record, could you please
16 identify yourself.

17 MR. SCALISI: Phillip Scalisi, executor.

18 HEARING OFFICER WILSON: Thank you.

19 MR. MOUSSEAU: Kenneth Mousseau, enrolled agent
20 representing the estate.

21 HEARING OFFICER WILSON: Thank you.

22 And Franchise Tax Board.

23 MR. LY: This is John Ly from Franchise Tax
24 Board.

25 MS. ZUMAETA: And Jackie Zumaeta for Franchise

1 Tax Board.

2 HEARING OFFICER WILSON: Thank you.

3 As stated in the Minutes and Orders, the issue to
4 be decided in this appeal is whether Appellant has
5 established a legal basis to suspend the statute of
6 limitations on the claim for refund filed for the 2018 tax
7 year.

8 FTB submitted Exhibits A through I. Appellants
9 did not object to the admissibility of these exhibits.
10 Following the prehearing conference, FTB submitted an
11 additional Exhibit J.

12 Mr. Scalisi or Mr. Mousseau, do you have any
13 objections to Exhibit J, which is the IRS transcript?
14 Okay.

15 MR. MOUSSEAU: No.

16 HEARING OFFICER WILSON: Thank you.

17 Therefore, Exhibits A through J are admitted into
18 evidence.

19 (Department's Exhibits A-J were received
20 into evidence by the Hearing officer.)

21 HEARING OFFICER WILSON: I did not note any
22 additional exhibits from the Appellant; is that correct?

23 MR. MOUSSEAU: That is correct.

24 HEARING OFFICER WILSON: Thank you.

25 All right. You did indicate that you would like

1 to provide witness testimony both of you. So I will swear
2 you under oath. Would you both please raise your right
3 hand.

4

5 P. SCALISI,

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

9

10 K. MOUSSEAU,

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

14

15 HEARING OFFICER WILSON: Thank you.

16 So you asked for 15 minutes for your
17 presentation, and you may begin when you're ready.

18

19 PRESENTATION

20 MR. MOUSSEAU: Probably not necessary for the
21 whole 15 minutes, but I just wanted to review. Thank you.
22 I appreciate, you know, hearing the case today and for
23 giving us an opportunity to speak.

24 We are here on behalf of Aunt Lucy. Lucy Hackney
25 passed away July 23rd, 2023. We are -- Mr. Scalisi is the

1 executor -- current executor of the trust and will. And
2 we are here, basically, to explain some scenarios and
3 express a little bit of frustration over the statute of
4 limitations and the overpayments that weren't -- that
5 weren't refunded. Just to back up a little bit, the
6 reason there was a balance due was 2018 for -- for
7 Aunt Lucy. She sold her house as her health was declining
8 and believed she paid all the taxes or was not necessary
9 of needing to pay the taxes when she sold the house. She
10 had not been filing her tax returns as her health was
11 diminishing, but she -- her intent was to not -- not to
12 skirt paying the taxes that she thought they were already
13 paid on her behalf.

14 So I'm basically going off of our exhibits here,
15 our appeals letter. I just wanted to make sure it was
16 recorded properly in the court. In March 4th, 2021, she
17 was determined of being incapable of handling her own
18 financial matters. And on April 9th, Patty Pistilli, who
19 was Aunt Lucy's niece, basically resigned as the executor,
20 making Mr. Philip Scalisi the executor. Upon that day, he
21 was handed a pile of documents and was made aware of
22 several of Aunt Lucy's back tax issues, including the 2018
23 notice, Exhibit C. In there was the final notice before
24 levy or lien, dated April 7th, 2021, which was obviously
25 right before Mr. Scalisi took over.

1 And I guess as part of my questioning here to
2 Mr. Scalisi has been -- what -- are you a good taxpayer,
3 and what -- what is your opinion? What do you normally do
4 when you receive a letter from IRS or the Franchise Tax
5 Board, and that is to just snap it, pay it, and make sure
6 it's taken care of. In this case, one of his first acts
7 was to make sure that this balance due was paid out of --
8 put of the estate and paid \$13,914. At that point,
9 Mr. Scalisi understanding was that the \$13,914.29 was
10 satisfying the 8/20/20 -- the 2018 liability, not knowing
11 at that point, didn't realize that the tax return was not
12 filed.

13 The payment, like I said, was made as a snap
14 judgment in fear of more repercussions from the
15 government, and he thought the state obligation was
16 satisfied. When he came to me -- well, in between coming
17 to me and that payment, as stated in my appeals letter,
18 the payment was made -- a second payment was made
19 March 28th, 2022. It was paid online for \$6,256. There's
20 where things get sketchy. We understand that. We don't
21 know who made the payment. We don't know why that number
22 came up as a payment. When I finally prepared the tax
23 return, it was very similar to that amount.

24 We believe that -- then, again, this is
25 speculation. But we believe that Aunt Lucy was still

1 working her niece Patty, the former executor, and dealing
2 with a separate tax preparer. And as in Exhibit J, two
3 payments were made that day; one to the Franchise Tax
4 Board for \$6,256, and one to the IRS for \$19,476.

5 Something happened that day where payments made. We don't
6 know what happened or how those amounts were calculated;
7 kind of -- kind of fishy there.

8 We believe -- like I said, Ms. Hackney was
9 participating in her own financial decisions. We -- we
10 have some other -- some other cases where that may have
11 happened where she may have been paying her own bills or
12 doing things she probably wasn't capable doing. It's our
13 belief that a tax prepare -- a tax return was prepared,
14 and a payment was made with the understanding that 2018
15 would be closed.

16 In other cases that I have, every time a tax
17 payment is made and a bill is -- a liability is
18 satisfied -- and then I have several cases where a payment
19 is made to the wrong account year -- or the wrong tax
20 year, wrong account. They have to be moved around. But
21 in essence, if -- if there is an overpayment of a tax,
22 that is generally refunded or moved to a different year.
23 It is not -- there is sometimes the Franchise Tax Board is
24 nice enough to send a letter that says, hey, you have a
25 balance due, where we need to call them and move the

1 payments around.

2 So we were not under the impression that there
3 was any -- didn't understand why this \$6,000 payment
4 didn't get repaid. \$6,256 did not get repaid, thinking
5 that everything was -- the liability was settled. We
6 don't know where the payment went to or came from. We
7 believe that payment should -- understanding the statute
8 of limitations, the \$13,914 that was originally paid
9 shouldn't have been paid in the first place because that
10 was not the correct tax liability. That was just a --
11 based off of a substitute filed return, which I don't -- I
12 know there are legal basis to file a substitute file
13 return, but there's -- I don't ever believe that's --
14 ethically that's a good thing for the Franchise Tax Board
15 to do.

16 So like I said, we're here to express more
17 frustration than anything. So we're -- yeah. We're
18 basically thinking that the \$6,256 would be -- that should
19 have been -- that was an overpayment beyond the statute of
20 limitations of the \$13,000. There was \$20,000 paid on
21 this account that only should have been \$6,200. We're not
22 even really asking for the \$13,000 back. We're asking --
23 we think that the \$6,256 should be repaid because
24 everything should have been satisfied.

25 And I know that in your -- in your response in

1 the appeals, any voluntary -- anything voluntarily paid
2 before the return is filed is not considered overpayments,
3 according to this -- this statute. We believe the statute
4 of limitations should have -- should have been moved --
5 moved up to the time of the tax filing in 2024 when it was
6 actually received.

7 But do you have anything you want to add?

8 MR. SCALISI: No. That's all good by me.

9 MR. MOUSSEAU: Okay.

10 HEARING OFFICER WILSON: Thank you.

11 Franchise Tax Board, did you have any questions
12 for the witness?

13 MR. LY: No questions from Franchise Tax Board.

14 Thank you.

15 HEARING OFFICER WILSON: Thank you.

16 Judge Kletter?

17 JUDGE KLETTER: No questions. Thank you.

18 HEARING OFFICER WILSON: Judge Stanley?

19 JUDGE STANLEY: Not at this time. Thank you.

20 HEARING OFFICER WILSON: All right. We'll go
21 ahead and move to Franchise Tax Board's presentation.

22 Mr. Ly, you have 10 minutes for your
23 presentation. Please begin.

24 MR. LY: Thank you.

25 ///

PRESENTATION

2 MR. LY: Good afternoon. I, John Ly, along with
3 Jackie Zumaeta, represent the Respondent Franchise Tax
4 Board.

The issue is whether Appellant has established that a timely claim refund for the 2018 tax year was filed before the statute of limitations expired. Unfortunately, the evidence will show that Appellant did not, as to the barred overpayment. Under the applicable section of the Revenue & Taxation Code, the general statute of limitations provides that the last day to file a claim for refund is the later of four years from the date the return was filed, if it was filed within the extended due date; four years from the due date of the return without regard to extension; or one year from the date of overpayment.

16 For the 2018 tax year, as Appellant failed to
17 file a timely return, the four-year statute of limitations
18 expired on April 15th, 2023, one year before Appellant
19 late filed her original 2018 return on April 15, 2024.
20 Under the one-year statute of limitations, Appellant's
21 payments on her 2018 tax year account were made over one
22 year prior to her claim for refund. Therefore, the
23 one-year statute of limitations is also unavailable to
24 allow a refund of Appellant's overpayment for the 2018 tax
25 year.

1 On appeal, Appellant contends that she was
2 financially disabled during the applicable statute of
3 limitations period. According to law, an individual
4 taxpayer shall not be considered to be financially
5 disabled for any period during which individual spouse or
6 any other person is legally authorized to act on the
7 individual's behalf in financial matters. In Appellant's
8 form 1564, it is stated that she did have persons legally
9 authorized to act on her behalf in financial matters
10 during the entirety of statute of limitations period. As
11 such. Appellant has not established financial disability
12 to toll the statute of limitations and allow refund of her
13 overpayment.

1 account, as a payment was remitted after the account was
2 fully paid. When a taxpayer remits a payment, the law
3 prevents Respondent from issuing refunds, unless a claim
4 for refund is filed before the expiration of the statute
5 of limitations. The language of the statute of
6 limitations is explicit and must be strictly construed.
7 In the precedential opinion in the Appeal of Gillespie,
8 OTA held that there is no equitable basis for suspending
9 the statute of limitations. Moreover, the United States
10 Supreme Court in United States v Dalm explain that a
11 taxpayer's failure to file a claim for refund or credit
12 within the statute of limitations bars the refund or
13 credit, even when it is later shown that the tax was not
14 owed in the first instance.

15 Appellant has not provided any additional
16 evidence that would allow Respondent by law to grant her
17 claim for refund. Therefore, Respondent respectfully
18 requests that the Office of Tax Appeals sustain
19 Respondent's claim for refund denial for the 2018 tax
20 year.

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

22 HEARING OFFICER WILSON: Thank you.

23 Judge Stanley, do you have a question?

24 JUDGE STANLEY: Yes. Yes. I do for Appellant.

25 You didn't address in your presentation anything

1 with respect to financial disability, and I see that you
2 have a doctor's letter and an affidavit regarding the
3 decedent's financial disability; but can you address in
4 any way who was authorized to act on Aunt Lucy's behalf
5 during the relevant time periods.

6 MR. SCALISI: That would be my cousin Patricia
7 Pistilli. She was in charge of all her finances until
8 2021, I think it was. And then it was sort of like a
9 transition period where I took over and saw the mess I had
10 to deal with. And -- I mean, that's all I have on that.

11 JUDGE STANLEY: Okay. Could I ask you to spell
12 that name that you just stated, Patricia.

13 MR. SCALISI: P-a-t-r-i-c-i-a, P-i-s-t-i-l-l-i.

14 JUDGE STANLEY: Thank you.

15 MR. MOUSSEAU: Can I continue with that?

16 Cousin Patty has since come to me and has for --
17 for -- as a client and not the most organized of persons.
18 This why she kind of took over -- handed off to
19 Mr. Scalisi here. No, we did not -- at no point are we
20 saying that Aunt Lucy was financially disabled. It was
21 mentally. I mean, she was -- I don't know if that's the
22 same term here in the courts. But she basically was
23 diagnosed with dementia. And as with most things with
24 dementia -- most patients with dementia, there's things
25 going on that executor can't control or, you know, go --

1 going, like I said, going behind the back and paying a
2 bill or something, and then it gets paid twice or
3 there's -- it -- it wasn't an intent.

4 And she certainly wasn't financially disabled.

5 Obviously, she was making -- they were making these
6 payments on her behalf. So that's never been the claim of
7 financially disabled. It's more of a mental health
8 disability. So --

9 JUDGE STANLEY: And if I could just to clarify
10 for you, financial disability is a term used in the law
11 that can be either mental and/or physical impairment of a
12 certain duration that makes her unable to be able to
13 manage her own finances. So that's why I use that
14 particular term.

15 Did -- did you, Mr. Scalisi, did you ever address
16 the issue of the taxes with the prior trustee then?

17 MR. SCALISI: No, I didn't because she was pretty
18 much clueless on everything. She would just put
19 everything on the back burner and forget about it until we
20 started getting Notices of Demand of Payment. So
21 basically, I took everything from her at that point and
22 just started just paying. Like when I got the first
23 notice from the Franchise Tax Board saying they were going
24 to levy all the retirement accounts, I just immediately
25 sent out that \$13,000. And just from then on, I just kept

1 on. You know, Ken and I worked together to try straighten
2 out five years of taxes, I think it is, that they
3 basically just left to the wayside.

4 JUDGE STANLEY: Okay. Thank you.

5 MR. MOUSSEAU: Sorry. Could -- and you could
6 see -- what is this? -- Exhibit I. Like when Mr. Scalisi
7 were paying me, we got right on it and started filing the
8 returns and the back -- there was '18, '19, '20, '21, '22,
9 '23 were all filed basically at the same time. So we --
10 we were trying to clean up the mess. So I know there's --
11 you know, we didn't bring very much in the way of
12 statutes. We're -- we're basically talking about intent
13 and what our intents were and what we could do and what we
14 could handle. So that -- that's the last probably I would
15 say.

16 JUDGE STANLEY: Thank you.

17 HEARING OFFICER WILSON: Judge Kletter, do you
18 have any a question?

19 JUDGE KLETTER: This is Judge Kletter. No
20 questions. Thank you.

21 HEARING OFFICER WILSON: Thank you.

22 You have, like, 5 minutes if you would like for a
23 rebuttal or closing statements.

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25 ///

CLOSING STATEMENT

2 MR. MOUSSEAU: I -- I think this is more about
3 intent than anything. I mean, we -- we were not -- I -- I
4 know there are some cases. I haven't found any statute,
5 but I know there are some cases of -- intent is sometimes
6 is -- yeah, what is just is what we're talking about here.
7 And I don't -- I don't find that, you know, taking \$13,000
8 from the estate even after -- I just don't find that just
9 as all, even though the statute of limitations are --
10 we're well aware of statute of limitations. It's just we
11 believe though that the, you know, statute of limitations
12 really should be from the time of the filing, especially
13 when there's a substitute file return. The substitute
14 file return is -- is something I will have an issue with
15 the State of California.

16 I -- I understand that there's a lot of negligent
17 taxpayers out there, and including probably the former
18 executor in this case. So we're -- we're basing most of
19 this on intent. And, you know, as a good taxpayer,
20 getting a letter from -- recognizing that you get a letter
21 from a tax entity, you're going to pay that right away.
22 And that's what we believe both -- Phil did. And even in
23 her diminished capacity, Aunt Lucy did. That's what we
24 think those payments came from to the IRS and to the
25 Franchise Tax Board back in March of -- March of 2022.

1 So --

2 HEARING OFFICER WILSON: Thank you.

3 We'll go ahead and submit the case. Today is
4 August 13th. The case is submitted.

5 The record is now closed.

6 Thank you, everyone, for participating today.

7 The panel will meet and deliberate and decide your case.

8 We will issue a written opinion within 100 days from
9 today.

10 Today's hearing in the Appeal of Hackney is
11 concluded, and this concludes the hearing calendar for
12 today.

13 Thank you.

14 (Proceedings concluded at 1:49 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyyn M. Alonzo, Hearing Reporter in and for 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 21st day
15 of August, 2025.

ERNALYN M. ALONZO
HEARING REPORTER