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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. BRENNER,) OTA NO. 240516155
)
)
 APPELLANT.)
)
 _____)

Transcript of Proceedings, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, 90703, commencing at 1:20 p.m.
and concluding at 1:35 p.m. on Wednesday,
September 10, 2025, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ STEVEN KIM

Panel Members: ALJ TERESA A. STANLEY
HEARING OFFICER SETH ELSOM

For the Appellant: GEORGE SIMPSON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
VIVIAN HO
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

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

OPENING STATEMENT

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By Ms. Ho	12

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Cerritos, California; Wednesday, September 10, 2025

1:20 p.m.

JUDGE KIM: We are going on the on the record.

This is the Appeal of G. Brenner, OTA Case
NO. 240516155. The date is Wednesday,
September 10th, 2025, and the time is 1:10 p.m. This
hearing is being held in person in Cerritos, California.

I am Judge Steven Kim. I will be the lead ALJ
for the purpose of conducting this hearing. My
co-panelists, Judge Teresa Stanley and Hearing Officer
Seth Elsom, and I are equal participants in deliberating
and determining the outcome of this appeal.

Parties, could you please state your name, who
you represent, and title, starting with Appellant.

MR. SIMPSON: My name is George Simpson. I'm a
CPA, and I'm representing Gil Brenner.

JUDGE KIM: Thank you, Mr. Simpson.

And for Respondent FTB.

MS. HO: This is Vivian Ho for Franchise Tax
Board.

MS. BREEN: This is Amelia Breen, also for the
Franchise Tax Board.

JUDGE KIM: Thank you.

As stated in my prehearing conference Minutes and

1 Orders, the issue to be decided in this appeal is whether
2 the estimated tax penalty for the 2019 tax year should be
3 abated.

4 Mr. Simpson, do you agree this is the issue on
5 appeal?

6 MR. SIMPSON: Yes.

7 JUDGE KIM: And, Ms. Ho, do you agree?

8 MS. HO: Yes.

9 JUDGE KIM: Thank you.

10 FTB submitted Exhibits A through G, and Appellant
11 did not object to the admissibility of these exhibits.
12 Therefore, Exhibits A through G are admitted into
13 evidence.

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

16 JUDGE KIM: And Appellant submitted some
17 documents that are already included in FTB's exhibits.
18 Appellant did not submit any additional exhibits.

19 And neither party intends to call for any
20 witnesses for the oral hearing; is that still correct?

21 MR. SIMPSON: That's correct.

22 JUDGE KIM: Okay. Mr. Simpson, you will have
23 10 minutes for your presentation, and you may begin when
24 you're ready.

25 ///

1 penalty proof. I prepared the 2019 tax return that he had
2 in a balance of approximately \$140,000 that was due the
3 Franchise Tax Board. In 2018, Mr. Brenner filed a joint
4 return with his wife, and the following year he was
5 divorced. When I prepared the tax return, I had asked him
6 if it was the same bank account number because we were
7 going to have the monies transferred or directly come out
8 of the bank, and he said it was. Later on, we discovered
9 it was his ex-wife's bank account, and she was not overly
10 happy to have \$140,000 come out. When this was
11 discovered, we went online, and it was paid. And because
12 it was a Covid year, we had until July 15th to pay it, and
13 it was paid on time.

14 He then, subsequently, received a notice from the
15 Franchise Tax Board regarding the penalty that we're
16 talking about. I had -- I have responded to the Franchise
17 Tax Board on five different letters. We never received
18 any communication from them regarding the issue that they
19 would discuss it. We submitted the form -- where is it
20 at? Was it the 5305 -- 5805, after we discovered, yes,
21 there was -- we did not -- we did not realize it was over
22 \$150,000 -- or that the income was going to be over a
23 million dollars. So that was an error on my part, but we
24 submitted a Form 5805 that the penalty only ended up being
25 approximately \$1,800.

1 I have no idea whether the Franchise Tax Board
2 ever adjusted it for any of those letters because we
3 received no communication. So we ended up -- it was --
4 everything was paid. He is current. All the penalties
5 and interest have been paid. He got charged different
6 fees from the bank for the bounced check. But the big
7 thing was the penalty, and that's when I asked the
8 Franchise Tax Board taking everything into consideration,
9 if they would abate the penalty. We were never going to
10 argue the interest portion of it, but if the penalty was
11 abated, the interest -- as I said, we sent five different
12 letters starting in 2020, and there was -- never received
13 any response.

14 We had been -- we tried to call the Franchise Tax
15 Board, get on hold, get hung up on. So we tried to
16 communicate with them, and it wasn't -- so I didn't want
17 to go appeals, but the amount was a significant amount.
18 And I have actually reimbursed Mr. Brenner for the
19 penalty, so I'm talking here to save my money.

20 So that is what I have.

21 JUDGE KIM: Thank you, Mr. Simpson.

22 I'm going to see if my co-panelists have any
23 questions.

24 Judge Stanley?

25 JUDGE STANLEY: No. I don't. Thank you.

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JUDGE KIM: Hearing Officer Elsom?

HEARING OFFICER ELSOM: Can you explain again, are you arguing for a potential recalculation of the penalty, even if it is not fully abated?

MR. SIMPSON: That is correct too.

HEARING OFFICER ELSOM: And then can you direct us in the record to where you have a calculation for that or --

MR. SIMPSON: There should be a Form 5805 in my documents, and it's coming down that -- I'm looking for the -- and being old as I am, I went and left all my original documents at the office.

JUDGE STANLEY: If it help, Mr. Simpson, we do have that in our record.

MR. SIMPSON: Okay. Yeah. At \$1,692 is the penalty calculated on the 5805.

HEARING OFFICER ELSOM: Okay. And this is based on the payments that you did make?

MR. SIMPSON: Right. Because he -- the sale -- well, that and for the fact the sale was -- ended up in the fourth quarter of the 2019 year.

HEARING OFFICER ELSOM: Okay.

MR. SIMPSON: So doing that calculation based on when the income came in.

HEARING OFFICER ELSOM: Okay. Thank you.

1 JUDGE KIM: All right. Just give me a minute
2 here. So you said that the income came in in the fourth
3 quarter of 2019?

4 MR. SIMPSON: Of 2019. He was current on his
5 estimated tax payments on the liability for the three
6 fourths of the year.

7 JUDGE KIM: Okay. Did you use the annualized
8 income installment method?

9 MR. SIMPSON: Yes, I did.

10 JUDGE KIM: Okay. The form that you submitted,
11 this indicates no to whether you used that.

12 MR. SIMPSON: Okay. I have a different one that
13 has numbers filled in, and that's -- do you have the one
14 that showed the 6092?

15 JUDGE KIM: Form 5805?

16 MR. SIMPSON: 5805.

17 JUDGE KIM: I'm not seeing it.

18 Co-panelists, are you seeing it in the file?

19 HEARING OFFICER ELSOM: I don't know.

20 MR. SIMPSON: I'm trying to see when.

21 JUDGE KIM: Okay. I don't know if we have that
22 one in the file, but perhaps you may have an opportunity
23 to submit that after the hearing.

24 MR. SIMPSON: Okay. I was seeing if it was --
25 okay. I -- I see a copy on it.

1 JUDGE KIM: Okay. Well, let's --

2 MR. SIMPSON: Yeah.

3 JUDGE KIM: -- move on for now, and then perhaps
4 FTB will address that in their presentation.

5 MR. SIMPSON: Okay. Thank you.

6 JUDGE KIM: Ms. Ho, you'll have 10 minutes for
7 your presentation, and you may proceed when you are ready.

8 MS. HO: Thank you.

9

10 PRESENTATION

11 MS. HO: Good afternoon. My name is Vivian Ho.

12 I, along with my co-counsel Amelia Breen, represent

13 Respondent, the Franchise Tax Board.

14 The issue that is presented before you today are:
15 Whether the estimated tax penalty was correctly imposed;
16 and whether Appellant established grounds for abatement of
17 the penalty.

18 Because Appellant failed to make the required
19 estimated tax payments by the due dates, the estimated tax
20 penalty was correctly imposed. For taxpayers with income
21 of over \$150,000, a taxpayer must either make estimate tax
22 payments during the year that either total 90 percent or
23 more of the year at issue's liability, or 110 percent or
24 more of the preceding year's liability. However, for
25 taxpayers with income of over \$1 million, paying

1 110 percent of preceding year's liability does not apply
2 to satisfy the taxpayer's estimated tax obligations.

3 Appellant's income for the tax year in question
4 is over \$100 million, and as such, Appellant must use the
5 year at issue's liability for calculation of his estimated
6 tax obligations. Appellant's estimate tax payments fall
7 substantially short of the required 90 percent of the year
8 at issue's liability. And as such, the estimated tax
9 penalty was correctly imposed. In his presentation
10 Appellant references Form 5805, which Appellant completed
11 using his prior year income. Appellant has submitted
12 several Form 5805. Several of them appears to be the same
13 documents that was submitted on several occasions, but FTB
14 will also confirm with its records whether there is a form
15 with the figures referenced by Appellant. Appellant
16 argues he qualifies to use prior year income to calculate
17 his estimate tax obligations, despite having income of
18 \$100 million, which his position in all of his Form 5805s
19 as based on FTB's review of the record.

20 To support his position, Appellant cites to FTB's
21 instructions for the form. And as discussed in FTB's
22 opening brief, Appellant misinterpreted the FTB form
23 instructions, and the instructions do not support
24 Appellant's claim that he is allowed to use the preceding
25 year's income for calculation of whether he satisfied his

1 estimated tax obligations. Moreover, the form
2 instructions are not binding legal authority, and
3 Appellant may not rely on them for his position. As such,
4 Appellant has not established the estimated tax penalty
5 was incorrectly imposed.

6 Regarding penalty abatement, Appellant has not
7 established grounds for abatement. The law does not
8 provide for a reasonable cause basis for abatement of the
9 estimated tax penalty. The penalty may only be waived if
10 Appellant shows by reason of casualty, disaster, or other
11 unusual circumstances, that the imposition of the penalty
12 would be against equity and good conscious. The OTA has
13 held in the precedential opinion in Appeal of Saltzman,
14 that the phrase "casualty, disaster, or other unusual
15 circumstances," generally refers to unexpected events that
16 cause a loss of a hardship. Appellant raises -- appears
17 to raise grounds that he misinterpreted his tax
18 obligation, and also appears to raise grounds that he
19 relied on a tax professional.

20 However, as previously stated, there is no
21 reasonable cause basis for abatement, and Appellant has
22 not demonstrated there is reason of casualty, disaster, or
23 other unusual circumstances for waiver. As such, FTB
24 respectfully requests the OTA sustain FTB's determination
25 and deny Appellant's claim for refund.

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Thank you.

JUDGE KIM: Thank you.

Mr. Simpson, I just wanted to clarify your arguments on appeal. Are you still arguing that safe harbor applies?

MR. SIMPSON: No. And I stated that earlier.

JUDGE KIM: Okay. Just to clarify. So you're saying that the penalty amount should be recalculated?

MR. SIMPSON: Recalculated. And I was asking for abatement. And I don't know if COVID is disaster, but for the fact that it changed filing dates and -- and changed our country, COVID was -- that was -- 2019, I believe, was the original COVID year. So we could claim, yes, there was a disaster of national proportions. Mr. Brenner, I do not know if he got COVID or not, but that's besides the point. But there was a national disaster that could be used to waive it. I'm just asking that the Franchise Tax Board or the Appeals Court might look down, and they have the power to abate it. But I admitted that there was an error on it, and that was my error. Okay.

Thank you.

JUDGE KIM: Thank you.

Panel members, do you have any questions for Respondent.

Judge Stanley?

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JUDGE STANLEY: No, I don't. Thank you.

JUDGE KIM: Hearing Officer Elsom?

HEARING OFFICER ELSOM: I do not have any questions. Thank you.

JUDGE KIM: Okay. I'm going to leave the record open and allow you to submit some more additional briefing, Mr. Simpson, on when that income was received and -- and I guess a 5805 using the analyzed income installment method.

MR. SIMPSON: And where should I send that?

JUDGE KIM: You should submit it to OTA.

MR. SIMPSON: To you?

JUDGE KIM: Yes. And we will provide a copy to FTB.

MR. SIMPSON: Okay.

JUDGE KIM: I'll send an order out -- additional briefing order after this hearing.

MR. SIMPSON: Okay.

JUDGE KIM: And after we get that from you, we'll allow FTB about 30 days to respond to see if that penalty amount should be calculated. Okay.

MR. SIMPSON: If I might ask, and I have got all the Franchise Tax Board notices, and some of them are unclear where they made their adjustment, how they arrived at it. And I have trouble following all the penalties

1 that they assessed on all the things that they had sent my
2 client, and he forwarded me basically all his notices.
3 But trying to recalculate -- trying to calculate how the
4 Franchise Tax Board came up with all of them gets a little
5 confusing.

6 JUDGE KIM: Are you talking about the 2019 tax
7 year?

8 MR. SIMPSON: Yeah. I mean, there's a notice
9 here date 5/3 of '22, and it's "Balance If Summary," but
10 it just says total outstanding liability. It doesn't have
11 any penalty codes, where it came from. We've had several
12 of these collection fees. There was one that had an
13 adjustment. That was sent out on April 27th, '22, and
14 they have adjustment of \$2,117. I have no idea of where
15 that calculation from. And there was money that was taken
16 out of the his bank account. And I know how much it was,
17 but I don't know where it was applied to. And then
18 another letter of 8/3 of 2020, just coming up with a
19 liability of a balance due at \$2,901.23 with no codes no
20 nothing. They -- and so it's very hard to try --

21 JUDGE KIM: Okay. I'm not sure which exhibits.
22 Are you referring to an exhibit in the file?

23 MR. SIMPSON: Well, this -- this one was a --
24 this one was a state income tax return balance due notice
25 that the Franchise Tax Board sent out on August 18th at

1 2020. It doesn't refer to any year in particular, and it
2 just has an amount of \$2,901. And yet, we're trying to
3 decipher.

4 JUDGE KIM: Yeah. I don't think that -- that
5 income -- that notice is in the record.

6 MR. SIMPSON: Yeah. I thought I had just sent
7 everything.

8 JUDGE KIM: We have a September 28, 2020, notice,
9 and that indicates penalty code of C.

10 MR. SIMPSON: This one was 8/3 of 2020.

11 JUDGE KIM: Yeah. It's not in the record. I
12 don't see it.

13 MR. SIMPSON: Okay. I can resubmit that too. So
14 I don't know if that's for the 2019 tax. Oh, it says
15 other liability Code C. Oh, that's a dishonored payment.
16 They were --

17 JUDGE KIM: Okay.

18 MR. SIMPSON: It's an awful lot of money, if they
19 got their money on time, to hit with a dishonored check
20 when they got paid timely.

21 JUDGE KIM: Well, I don't think that is part of
22 the issue on appeal here, and I don't see what documents
23 you're referring to. But I will send out additional
24 briefing order after this hearing asking you for more
25 information to show that the amount of the penalty should

1 be adjusted and just wait for that. And once you respond,
2 FTB will have an opportunity to respond. And once, after
3 additional briefing has concluded, OTA will close the
4 record, and we will issue a written opinion within
5 100 days of closing the record.

6 So all right. I think that concludes the hearing
7 for today. And I think that's the last hearing on the
8 calendar.

9 So the hearing is adjourned. Thank you everyone.

10 (Proceedings concluded 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 24th day of September, 2025.

ERNALYN M. ALONZO
HEARING REPORTER