BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	
J. HUTCHINSON,	OTA NO. 250522236
APPELLANT.	

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, September 9, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, J. HUTCHINSON, APPELLANT.	OTA NO. 250522236

Transcript of Proceedings, taken at 400 R Street, Sacramento, California, 95811, commencing at 1:11 p.m. and concluding at 2:36 p.m. on Wednesday, September 15, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	HEARING OFFICER SETH ELSOM
Panel Members:	ALJ VERONICA I. LONG ALJ TERESA A. STANLEY
For the Appellant:	J. HUTCHINSON JEFFREY KAHN
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD TRISTEN THALHUBER BRAD COUTINHO

I N D E X

E X H I B I T S

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

(Department's Exhibits A-M were received into evidence at page 9.)

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Sacramento, California; Wednesday, September 15, 2026

1:11 p.m.

HEARING OFFICER ELSOM: Hutchinson, Case No. 250522236. This matter is being held before the Office of Tax Appeals in Sacramento, California. Today's date is Wednesday September 9th, 2026, and the time is approximately 1:11 p.m.

My name is Seth Elsom. I'm the lead Hearing Officer for this appeal. With me today is Administrative Law Judge Veronica Long and Administrative Law Judge Theresa Stanley.

As a reminder, the Office of Tax Appeals is not a court. It is an independent appeals body that is staffed by tax experts and is independent of the state's tax agencies, which includes the Franchise Tax Board.

With that, can the parties please introduce themselves, and we will begin with Appellant.

MR. KAHN: Can you hear me now?

HEARING OFFICER ELSOM: We can hear you. Thank you.

MR. KAHN: Thank you. So Jeffrey Kahn. I am the attorney for the Appellant taxpayer. And next to me is my client the taxpayer, Jeff Hutchinson.

HEARING OFFICER ELSOM: Thank you.

And, Franchise Tax Board, can you please introduce yourself.

MR. THALHUBER: Yes. This is the Tristen Thalhuber, and with me is Brad Coutinho on behalf of Respondent Franchise Tax Board. Thank you.

[INAUDIBLE]

HEARING OFFICER ELSOM: Thank you.

As confirmed at the prior prehearing conference and in my Minutes and Orders following the conference, the issues to be decided in this appeal are whether Appellant's claim for refund for the 2018 and 2019 tax years are barred by the statute of limitations.

We're going to move on to the admission of evidence. And as noted at the prior prehearing conference, Appellant agreed to the submission of two exhibits, which were provided in the opening brief. Those were the Statute of Limitations letters denying Appellant's claim for refund for the 2018 and 2019 tax years. Appellant submitted an additional seven exhibits which were labeled A through G, and we will mark those as Exhibits 3 through 9.

And before we get to the most recent submission, FTB did not object to the admission of those items. And additionally, today Appellant has submitted Exhibit A, which appears to be a supplement to the most recent

submission, and Exhibit H.

And Appellant can you explain again for the record what these -- exactly what these documents are and also, why they weren't submitted by the August 25th deadline to submit the items.

MR. KAHN: Yeah. So, the Exhibit A is a statement of -- I'm sorry. Exhibit A is selected pages from the Statement of Decision that was issued by the divorce court. It was only one page, that was page 18 that was included in the August 25th submission. Inadvertently, page 17 and page 22 of that same document, Statement of Decision, was not included in there. We did not realize that until today in preparation for today's hearing. The taxpayer will be testifying, based on his recollection of what was issued by the court. And what we would ask this tribunal, regardless of whether these other two pages are also gonna accepted as part of Exhibit A, we ask the tribunal to take judicial notice of the Statement of Decision.

With regards to Exhibit H, that is a document which substantiates the fact that taxpayer had to appeal the Statement of Decision that was rendered as there were items in there that he would testify to that were either ambiguous or incorrect and that Appellant's brief was not included in the original submission, again, inadvertently.

We did not know that it was not included in there, but again, after going through the record today in preparation for today's hearing, realize that is something too to include. And again, we'll ask the Court to take judicial notice of that document that was filed with the appellate court.

HEARING OFFICER ELSOM: Thank you, Mr. Kahn.

And FTB, can you please restate your objections to the submission of these additional exhibits.

MR. COUTINHO: Yes. Respondent objects to the admission of pages 17 and 20. Both of these documents appear to have been in Appellant's possession as they were petitioner to the family court matter. And they have not established an inadvertent mistake is a good cause for why those exhibits are submitted after the August 25th deadline that was clearly articulated in the prehearing Minutes and Orders.

HEARING OFFICER ELSOM: And similar objection for Exhibit H?

MR. COUTINHO: Yes.

HEARING OFFICER ELSOM: Okay. We're going to allow the admission of Exhibit A as it's a supplement to the items already submitted by Appellant because that's relevant to the appeal, but we're not going to allow the admission of Exhibit H due to timeliness.

So we have the admission of Exhibits 1 through 9, and that includes the additional three items for Exhibit A; and those items are admitted into the record.

(Appellant's Exhibits 1-9 were received into evidence by the Administrative Law Judge.)

HEARING OFFICER ELSOM: And now we'll move to the Franchise Tax Board.

Franchise Tax Board, you've submitted 13 exhibits with your opening brief. Those exhibits were submitted by FTB at the prior prehearing conference. Appellant was asked to review these exhibits and indicate in writing whether it had any objection to the admission of FTB's items. Appellant did not provide any written objection to OTA.

Mr. Hutchinson and Mr. Kahn, I wanted to ask you again and verify that you still have no objection to the admission of these items into the record?

MR. KAHN: No objection.

HEARING OFFICER ELSOM: Thank you, Mr. Kahn.

Franchise Tax Board's Exhibits A through M are now admitted and entered into the evidentiary record.

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

HEARING OFFICER ELSOM: And Appellant, Mr. Hutchinson, in your prior prehearing conference

statement you indicated that you will be providing witness testimony. And with that, I can swear you in before you begin your presentation so that any item that you testify or any facts you testify to can be considered in the record in deciding this appeal.

Finally, before I swear in the witness, I would like to go over the order of the hearing. As noted in the prehearing conference Minutes and Orders, Appellant will present first and will have approximately 45 minutes for the presentation. Following Appellant's presentation, the Franchise Tax Board will have the opportunity to ask the Appellant questions regarding Appellant's testimony only. The panel will then be given an opportunity to ask any questions they may have for Appellant. And following that, the Franchise Tax Board will have 10 minutes for its presentation, after which I will again turn it over to the panel for any questions they may have of the Franchise Tax Board. Finally, Appellant will have an additional 5 minutes for a rebuttal or closing statement. And after that, I will again turn it over to the panel for any questions regarding either party.

And with that, I think we are ready to begin. And does either party have any questions before I turn it over to Appellant for their presentation?

MR. KAHN: I do. In terms of when the taxpayer

will be testifying, where would you like him to be at?

HEARING OFFICER ELSOM: You can begin in whichever order you'd like or how -- or whichever order is comfortable for you, or you can just present your side and any facts that Appellant testifies to will be considered in the record.

MR. KAHN: Okay. So --

HEARING OFFICER ELSOM: That's entirely up --

MR. KAHN: -- he could sit here while I send -- ask questions?

HEARING OFFICER ELSOM: That's fine. Yes.

Mr. Hutchinson, I'm going to ask you to please raise your right hand.

MR. HUTCHINSON: Do I need to stand?

HEARING OFFICER ELSOM: No. You're fine -- okay there.

J. HUTCHINSON,

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

HEARING OFFICER ELSOM: Thank you.

Appellant, the time is 1:20. You may begin your presentation whenever you're ready, and you have

45 minutes.

MR. KAHN: Thank you, Your Honor. I'll start out with my opening statement.

PRESENTATION

MR. KAHN: Good afternoon, chairs and members of the panel. My name is Jeffrey B. Kahn, and I represent the petitioner Jeffrey E. Hutchinson.

This appeal concerns the denial of Mr. Hutchinson's claims for refund for the 2018 and 2019 tax years. We recognize that the stated issue is whether those claims are barred by the applicable limitations period. The evidence will show however, that this is not the case in which a taxpayer ignored his responsibilities or sought to avoid payment. It is a case in which a taxpayer confronted and protracted a highly consequential family law proceedings, made conservative payments while the necessary tax allocation information remained unresolved; and ultimately, filed returns that FTB accepted as reporting the correct liability.

For 2018, FTB's estimate was ultimately replaced by Mr. Hutchinson's filed return reporting zero tax. FTB accepted that result, abated the filing related penalties and enforcement fees assessed under the estimate, and recognized a substantial overpayment. For 2019,

Mr. Hutchinson made a $110,000 extension payment and had substantial withholding credits. The return FTB accepted reported a tax of $102,020 and it resulted in a claimed overpayment of approximately $68,420.

Mr. Hutchinson's testimony and the payment history demonstrative will show that he made these payments because he believed it was responsible to do so while he worked to obtain the information and clarification needed to submit complete and accurate returns. The evidence does not ask the panel to create a freestanding equitable exception to a statutory deadline, it provides the factual context for his conduct and explains why the payment history is inconsistent with any suggestion of indifference to his tax obligations.

Now, the evidence also presents -- or will present a discrete procedural issue concerning FTB's 2018 collection activity. The family court proceeding place the Stow Lane property under a court-driven refinance or sale timetable. While pursuing that refinance, Mr. Hutchinson learned through escrow, not from a notice he recalls receiving, that FTB had recorded a lien against the property. Escrow and the lender advised him that the lien had to be paid in order for the refinance to close. The settlement statement documents the resulting payoff from the refinance proceeds.

The evidence will show that the recorded lien is dated April 18, 2023, and it was recorded on April 19th, 2023. It will also show that Mr. Hutchinson's My FTB Portal history identifies as an intent to record a Notice of State Tax Lien dated March 3, 2023. Yet, the actual March 3 notice is not included in the FTB's exhibit packet. Mr. Hutchinson did not receive it to his knowledge. And when the portal link was assessed, it returned file not found.

Petitioner is not asking the panel to infer from non-receipt alone that no notice was mailed. The limited point is that the record should establish whether FTB can identify the preliminary notice, the address used, the method of mailing, and reliable proof of mailing. The separate preliminary notice statute requires a mailed notice before a lien is filed or recorded and requires particular content, including the earliest recording date and the remedies available to prevent an erroneous lien. The November 2022 final notice before levy and lien is not a substitute for establishing the March 2023 preliminary notice record. The November notice carries a November 23rd notice date and a December 8th payment due date is not a general collection notice. The portal itself identifies the later March 3 intent to record entry. This distinction matters because Mr. Hutchinson's

payment through escrow occurred only after the lien appeared in the refinance process and the lender required payoff of closing.

Petitioner respectfully asks that the lien and the escrow evidence be received for that limited purpose to establish the collection subsequence the notice issue and the circumstances under which the 2018 payment was made. Petitioner also asks that the panel clarify whether it would address the section 21019 issue in this refund appeal or whether that issue must be preserved for a separate administrative remedy.

Regarding 2019, petitioner recognizes that the 2019 refund does not turn on the 2018 lien. The 2019 evidence serves a different purpose. It shows petitioner's proactive effort to make an extension payment and account for withholding while the divorce related allocation questions remain unresolved. We will separately address any evidence bearing on a timely written claim, a credit request, or a final federal determination that could affect the statutory period. If the panel concludes that the present record doesn't establish a statutory basis to allow the 2019 refund, petitioner ask that the good-faith payment evidence nevertheless be considered accurately and not treat it as an attempt to collapse the separate 2018 and 2019 issues

into one.

At the conclusion of the evidence, petitioner will ask the panel to consider the record as a whole. FTB accepted returns reflecting correct tax results. Mr. Hutchinson's conduct shows continued efforts to comply during a difficult period in this life, and the 2018 collection record leaves a concrete unresolved question about the statutory preliminary lien notice. Petitioner will present Mr. Hutchinson's testimony and the evidence in that focus sequence.

Thank you.

HEARING OFFICER ELSOM: Thank you, Mr. Kahn. You may continue whenever you're ready.

MR. KAHN: Okay. So I'd like to call to the stand the petitioner, Jeffrey E. Hutchinson.

DIRECT EXAMINATION

BY MR. KAHN:

Q Mr. Hutchinson, please state your name and current address.

A My name is Jeffrey Earnest Hutchinson, and I live --

JUDGE LONG: I'm sorry. I'm going to interrupt you there. Because we're doing a livestream, we're going to ask you not to state your address --

MR. HUTCHINSON: Oh, okay.

JUDGE LONG: -- because we don't want that on the live stream. Thank you.

MR. HUTCHINSON: My name is Jeffrey Earnest Hutchinson. I'm the taxpayer.

BY MR. KAHN:

Q Okay.

A Thank you.

Q Did you file -- let me get closer.

Did you file the 2018 and 2019 California returns that are at issue?

A I did.

Q And are you familiar with your FTB account communications, the refinancing of your home, and the documents we will discuss?

A Yes, I am.

Q Did you personally receive and review the documents you sent to Counsel for this hearing?

A Yes, I did.

Q Okay. I'm showing you proposed Exhibit G. Do you recognize this as a summary of your California tax payments and reported tax for the years at issue?

A Yes.

Q Was the summary prepared from FTB account information and records you reviewed?

A Yes, it is.

Q For 2019, what payment did you make with your extension?

A At the time the extension was due I made a payment of $110,000.

Q Did you also have withholding credited for 2019?

A Yes.

Q And how much was that?

A That was $60,439.50 that was withheld from an escrow in 2019. I made the -- the withholding was in 2019 at the escrow, and then the extension payment was made on the due date in 2020.

Q And did the payments for 2019 exceed the tax ultimately reported on your tax return for that year?

A It did.

MR. KAHN: And so I'd like to offer Exhibit G in evidence.

BY MR. KAHN:

Q And what was your reason for making all these payments as indicated on Exhibit G?

A Well, I -- I filed the extensions and made the payments because I knew that I had income that needed to be eventually reported and filed, and I would have tax obligations owed. And so, I conservatively estimated what I thought I would owe and made payments in excess of that

in order to make sure that the State was sent the money, and then I would not be outside of -- that I would be complying with my tax obligations and not, you know, kind of be a tax scoff or be considered to be avoiding taxes. So, I did what I could to try and be conservative and proactive -- and as proactive as I could at the time those extensions were due.

Q Okay. Thank you. And so, at the time that you made these extension payments and later sought to prepare the returns, what information did you believe was still missing?

A Several items. And I was missing all of the W-2 information, all of the 1030 -- 1099 information, the K-1s that were involved; the documents that provided the evidence and allocation of the income, including a resolution of whether we'd be filing individually or -- or jointly as -- and whether or not our two children would be included on -- on which individual tax returns. I just didn't think I had the data at the time. And so I continued to seek that information over that three or four-year period.

Q And from whom were you trying to get that information from?

A Most of it was from my ex-wife, and a portion of it was from the divorce court in terms of how they were

going to allow us to allocate what were substantial pieces of income amongst the two of us.

Q So, with regards to that court-related clarification, did you believe you would need to get from them the information accurately allocate income, expenses, and tax obligations?

A Yes. Without an agreement on those amounts and allocations, I didn't think I had the information to file complete and accurate returns.

Q And did you believe you could responsibly submit final returns before those issues were resolved?

A No, I did not.

Q Okay. And so while waiting for that information, you made estimated or extension payments and so, what was that purchase -- I'm sorry. What was that purpose again for making those payments?

A I knew that I would be owing some taxes to the State because the income was there. I didn't have a complete al -- allocation or accounting of the income. And so I made conservative payments -- overpayments essentially, so what I thought I would owed and eventual would -- when I got the information from my ex-wife and/or the court, I could file the accurate returns at that time.

Q Okay. I'm showing you proposed Exhibit A. Do you recognize this document?

A I do.

Q And what -- what is this document consistent of to your knowledge?

A It's three pages from the April 2023 Statement of Decision in our divorce litigation from the family court judge in Contra Costa County, California.

MR. KAHN: So, I'd like to ask the panel to take judicial notice that these three pages come from the Statement of Decision that was issued by the divorce court.

JUDGE LONG: I'm going to go ahead and let you know, Mr. Kahn, just a couple of things. We've already admitted the exhibits into evidence, so you don't have to refer to them as proposed exhibits. They've already been submitted into evidence. And unlike, you know, for example, in Tax Court, you don't need to lay the foundation for the documents. We have them electronically in front of us. And Mr. Hutchinson is welcome to testify in a narrative format, whatever works best for you. And also, because we are not a Tax Court, we're an administrative body, we take administrative notice instead of judicial notice.

MR. KAHN: Okay.

JUDGE LONG: So, I'll go ahead and let you continue. Thank you.

MR. KAHN: All right. Very good. Okay.

BY MR. KAHN:

Q Okay. So referring to Exhibit A, what did this Order require you to do concerning incumbrances, refinancing, or sale of the property?

MR. HUTCHINSON: Can I pause for a quick minute?

HEARING OFFICER ELSOM: Sure, Mr. Hutchinson. You've got a good amount of time here. So, take your time.

MR. HUTCHINSON: Sorry. The question was it -- what did it require me to do in relation to the Stow Lane property?

BY MR. KAHN:

Q I'll repeat -- I'll repeat the question.

A Okay.

Q What did the Order require you to do concerning incumbrances, refinancing, or sale of the property?

A So, as part of the -- so, the -- the Orders, I was awarded our home and ordered to get -- to remove my ex-wife's name from the loan on the home. The challenge was that when this Order was filed on the 19th of April, I was only given 30 days in which to do that. So, I essentially was ordered to refinance my property and get my ex-wife's name removed from the loan on April 19th of 2023. If I did not do that, I was at substantial risk.

Because it goes on later in the Order to say that I -- that I would lose -- I would be forced to sell the home or that that my ex-wife could buy it at an extreme discount. And since it was the home that we had for 15 years was a home to my children --

Q And this requirement, that led you to pursue the May 2023 refinance?

A Yes. It was the top priority of everything at the time.

Q Okay. I'm now showing you Exhibit B, and this is a May 12, 2023, escrow email chain. You recognize it?

A I do.

Q Did you send or receive these emails at the time -- at or near the time shown?

A Yes.

Q And what did escrow tell you that morning of May 12th about the FTB lien?

A Well, we were coming up against the deadline to get the refinance completed 'cause as noted in the previous Order that we described, it -- the deadline to complete the refinance was essentially May 19th. We had been working very hard to get it done. And on the morning of May 12th, which was to be the settlement date, I got an email from the loan officer saying, "Hello, sir. During our data down prior to recording, my title department

pulled the attached state tax lien."

And kind of importantly here, typically a bank will do a preliminary title report review even before they quote you a loan. It never showed up in the preliminary title report, and in the morning of the closing, I was told that there was this tax lien. And so I got on a phone call with that person and I said, "What can we do?"

And they said, "It's a lien that goes in priority, and if you want to complete this refinance, we just have to pay it."

And so in a follow-up email, I, you know, reenforced the fact that I wasn't even aware that this lien had been filed. And I said, "Can we pay it and get it released through escrow?"

Which they did, and they told me that they would request a demand from Franchise Tax Board, which they did receive. And that demand was eventually paid through escrow.

Q So, before that escrow communication of -- of May 12th, 2023, had you personally seen a preliminary lien notice from FTB?

A No.

Q And --

A The first I'd become aware of any lien action was on the morning of this refinance escrow, and I had no

choice but to essentially pay it or risk violation of the Divorce Court Order. And it was clear at the time that that was my only choice.

Q And did the lender or escrow agent tell you that paying off this lien was necessary to complete the refinance?

A Yes. There was no way to complete the refinance without taking care of that --

Q Okay.

A -- lien.

Q Okay. I'm showing you Exhibit C. Do you recognize this as the recorded FTB lien and the escrow demand for payoff?

A Yes.

Q And does it identify the 2018 tax year and the lien amount that escrow was asked to pay?

A It -- it does.

Q Okay. Now -- now, I'd like to show you Exhibit D. Do you recognize this as the final refinance settlement statement?

A Yes, I do. It's dated that same day May 12th.

Q And does it show the FTB lien payoff from the refinance proceeds?

A Yes, it does.

Q And was that payment made to permit the refinance

to close?

A Yes.

Q So, now I'd like to show you Exhibit E. Is this a printout of your FTB portal's notices and correspondence list?

A Yes, it is.

Q I'd like to call your attention to -- in the sent date column, there's an entry that appears on March 3, 2023.

A Yes.

Q Okay. And what entry does it show for March 3, 2023?

A It states, "March 3rd, 2023, tax year 2018 title intent to record a notice of tax claim." And then there's a document view button to the right of that.

Q Okay. I'd like to show you Exhibit F -- Exhibit F. So, when you first saw this notice and correspondence listed in Exhibit E, and saw that entry, what was your next step in terms of what you did in that portal to get more information?

A I clicked on the view link to see if I could see the document.

Q Okay. And what happened when you attempted to click on that link?

A It returns notice. It says file not found so

that document was not available or presented on that portal for me to access any ways.

Q So, in other words, what you're showing as Exhibit F is what appeared on your screen, "File not found"?

A Yes.

Q Okay. And to your knowledge, did you receive the underlying preliminary notice in your mail at your address?

A I don't recall receiving it. No.

Q Okay. When did you ultimately file the 2018 and 2019 California returns?

A I began the process shortly after the divorce litigation was resolved and the final judgment was made regarding the tax allocations, and that was done in late -- in late November or early December 2024. And so for the tax years '17 through '20 I began filing those in -- in consecutive order beginning in mid-December. And I believe that I filed the 2018 and '19. I needed to get 2017 accepted. And then 2018 and '19 I filed in 2020. I filed consecutively, and beginning in early January, as soon as I received the allocations from the court as well as the court mandated information from my ex- spouse.

Q So, what you testified to earlier about the need to get court clarification on allocations, expenses, and

other things, your testimony that you didn't get that clarification until around November of 2024?

A November and December of 2024 is when I began receiving that information.

Q Okay. And then after you filed the tax returns, what action did FTB take regarding the tax calculations reported on them?

A I recall that my 2017 was accepted, and I received a -- a no tax owed or no refund. And then I received a notice that my 2018 and 2019 refund requests were not going to be allowed, and they referenced the statute of limitations.

Q Okay. Prior to November of 2024, what was your understanding from the Statement of Decision as to what restrictions or limitations were placed on you by the court regarding your tax debt and tax filing obligations?

A In one -- in one part of the Court Order, it established that I was to be solely responsible for 100 percent of tax liability related to some -- just income that we had received. That particular item was a large item that we ended up understanding that that particular Order was in error, and we filed an appeal. That appeal was eventually settled, and it's referenced in Exhibit H. But that -- that appeal was eventually settled, and I was not obligated -- I was not allocated

that tax allocation, which was an important piece to being able to file accurate and complete returns after the settlement of those issues.

And then the other piece in the Statement of Decision was on page 22. The piece I was just referring to is page 17, lines 18 through 21, which relates to the tax allocation of that particular item. And then later on in page 22, lines 18 through 21, it's saying that the court reserves jurisdiction over the tax debt arriving out -- out of the community with respect to the party's 2017, '18, '19, and '20 tax returns; and I interpreted that as part of this decision. The tax returns and the filings were still under the jurisdiction of the court and that there were reserved issues that still needed to be resolved. So, at that time of these orders, I did not have the information and clarification on how to even file complete and accurate tax returns. And I did not have that until the litigation was settled and the final judgment was made in November of 2024.

Q Okay. Thank you. And then -- and what's your understanding of why FTB denied the refund request?

A My understanding is that they denied refund because I did not file the tax returns within period of limitations that I think was four years beyond the original due date. In the case of 2018, I would have

needed to file this by 2023. But I later learned that it's actually a year after the final payment was made. The final payment was actually a forced payment through escrow. So, I would have had until June of 2024 to file the 2018 return and request a refund. In the case of 2019, I would have had until the spring of 2023. I think it's important -- I think it's important to point out -- sorry.

Well, I think it's important to point out that the bulk of the tax at issue here in both of these tax years was related to the sale of our home that occurred in 2018. And that home in escrow essentially completed in 2019. And so, there was a withholding made in 2019, and then there was an extension payment made of withholding $60,000 in 2019 and an extension payment of $110,000 that was made in 2019 that would have -- that more than covered by over $60,000 that -- that tax obligation of what -- what was eventually accepted to be $102,000.

The amount that was assessed and liened in 2018, zero dollars of that was ever owed. They just essentially taxed me based on a -- on an escrow statement that they received based on gross sales. And so, the Tax Board -- the Franchise Tax Board is essentially been paid twice for -- on the same income. And the challenge I had is that I wasn't aware I was being liened, and I was forced.

I didn't -- by the time I realized I was being liened, I didn't have any time -- I didn't have a chance to get it resolved before the -- the divorce court had ordered me to -- essentially, I was forced by the divorce court to pay the lien off before I had time to argue it.

So, I'm not -- this is not the case where I've overpaid, forgotten about it, filed later, and requested some relief. I legitimately had no choice but to pay it, and I'm seeking relief after the fact.

MR. KAHN: Okay. I have no further questions.

HEARING OFFICER ELSOM: Appellant, you still have 10 minutes. Does that conclude the presentation?

MR. KAHN: It does, other than a closing statement.

HEARING OFFICER ELSOM: Okay. Thank you.

I'd like to now turn this over to the Franchise Tax Board for any questions regarding Appellant's testimony only.

Franchise Tax Board, do you have any questions for Appellant?

MR. THALHUBER: No questions. Thank you.

HEARING OFFICER ELSOM: Thank you.

And I'd like to turn it over to the panel now.

Administrative Law Judge long, do you have any questions for Appellant?

JUDGE LONG: I have a question for Mr. Kahn about his argument. I'd like to ask, you discussed the deficiency of notice regarding the lien. What would you like -- what -- what is -- what is your -- your proof of relief, essentially, with regard to the lien notice? If the lien notice were found to be insufficient, what would you like the outcome to be?

MR. KAHN: Sure. So, under State law before a tax lien gets filed, Franchise Tax Board or whatever taxes -- state tax agency is required to give notice to the taxpayer, "We intend to file a tax lien." And that notice would include appeals rights mannered dispute. And there's a certain time period to go ahead and do that. And that notice would have to be sent out before the tax lien gets filed. Taxpayer having not received that notice didn't know that he had rights. He didn't even know that a lien was filed because that notice supposedly was sent out in March of 2023, and he didn't even learn about there being a tax lien out there until May of 2023.

So, had he received that notice, that would have alerted him that a lien was going to be filed. And if you were gonna disagree with that action, this is what you need to do in order to dispute, but he never received that notice.

JUDGE LONG: So, I'd just like to confirm my

understanding. Is it your argument that there is an exception to the statute of limitations for an insufficient lien notice?

MR. KAHN: I don't know if the statute would provide for such an exception, but the payment that he made was to pay off a tax lien that he was told, if this tax lien is not paid, the refinance is not gonna go through. And so, that being his first knowledge that there was even a tax lien filed -- 'cause remember, he didn't file a tax return. He didn't file a tax return. So, it's not like he filed a tax return that was a known liability, and the State now is looking to secure their interest and file a tax lien. He didn't file a tax return. And the State went ahead, created and a liability and now supposedly sent out a notice that, "Hey there's a liability out there, we're looking to file a tax lien." He never received that notice.

The State went ahead and filed a tax lien, and he found out about it because again, under the court order he was ordered a refinance and sell the property, and that's when it came up by the escrow agent in May, that oh, there's a tax lien filed. Interestingly enough, if the taxpayer was never subject to any kind of an order to sell or refinance, he wouldn't have never known that there was even a tax lien out there because he didn't get that

preliminary notice. And there was no event to occur to sell or refinance the house, and he would have lived in the house still not knowing that there's a tax lien, you know, on it.

So, the fact that he didn't receive that preliminary notice, I think, is kind of like a lack of due process that he received. 'Cause had he received that, he could have acted appropriately to now dispute, file an appeal, preserve his rights, or whatever.

JUDGE LONG: All right. That concludes my questions. Thank you.

HEARING OFFICER ELSOM: Thank you, Judge Long.

And, Administrative Law Judge Stanley, do you have any questions for Appellant?

JUDGE STANLEY: No. I -- I just wanted to follow up on Judge Long's question. Are you saying that the lack of due process somehow tolls the statute of limitations?

MR. KAHN: Well, the -- clearly the due process is something required under law before the State is to go ahead and file a tax lien. His payment that was made was made to clear that tax lien. It wasn't a payment against a self-assessed liability, a liability reflected from a return that he filed. It was from a lien that the state filed. And so what we're saying is, is that he had no choice because he didn't receive any advance notice of

this and had the opportunity to dispute it, and he had to pay it so he could be in compliance with -- with the court's order.

JUDGE STANLEY: Okay. I -- I think understand what -- what you're saying about him paying it because he had to pay it because the lien, and he didn't get notice. So, I don't at this moment have any further questions, but I might later.

HEARING OFFICER ELSOM: Thank you. Thank you, Judge Stanley.

I do have one question for you, Mr. Hutchinson. Can you verify the funds that went into your account at the close of that refinance on May 12th, 2023?

MR. HUTCHINSON: The net funds payable to me?

HEARING OFFICER ELSOM: Exactly. Yes.

MR. HUTCHINSON: I think it was -- I can look at it, but it was in the order $400,000 that I received.

HEARING OFFICER ELSOM: Okay. And so, then -- then exact amount that went to the Franchise Tax Board for the lien regarding the 2018 tax year was $212,440.22?

MR. HUTCHINSON: Yes, the -- the -- and -- and it should be noted that that was an estimated payment that was made through escrow. And in the end in June, I did receive a $508 refund. Because I think at the end when they cleared all the penalties and fees and time and

interest that we had overpaid it by $506. So, at the -- at the closing of the escrow FTB received $212,440.22. I received into my account $462,344.72. I otherwise would have received, you know, $212,000 more than that.

And subsequently in June, it's noted in the Tax Board's presentation that I did receive a $580 or so refund in June. So, the net that FTB collected was probable just shy of $212,000 in the end.

HEARING OFFICER ELSOM: Okay. Thank you, Mr. Hutchinson.

No further questions from me, and so we're going to turn this over to the Franchise Tax Board for their presentation. And Franchise Tax Board, you have 10 minutes for your presentation, and you may begin when you're ready.

MR. COUTINHO: Can we have a brief recess -- a five-minute recess just to discuss this matter?

HEARING OFFICER ELSOM: Sure.

MR. COUTINHO: Thank you so much.

HEARING OFFICER ELSOM: We -- the time is 2:03, so we'll reconvene at 2:08, and we'll go off the record right now.

(There is a pause in the proceedings.)

HEARING OFFICER ELSOM: We're going to go back on the record now.

Franchise Tax Board, you have 10 minutes to begin your presentation, and you can begin whenever you're ready.

PRESENTATION

MR. THALHUBER: Thank you and good afternoon. This is Tristen Thalhuber on behalf of Respondent Franchise Tax Board.

The issue --

JUDGE STANLEY: Mr. Thalhuber, I'm sorry to interrupt you, especially right at the beginning. But you're speaking very softly, and I can see your microphone is on, but maybe it's not close enough?

MR. THALHUBER: How -- how's this?

JUDGE STANLEY: That's better. Thank you.

MR. THALHUBER: All right. The issue in this appeal is whether the Appellant has established that he filed a timely claim for refund for the 2018 and 2019 tax years prior to the expiration of the statute of limitations. Unfortunately, the record will show he did not as to the barred overpayments.

For the 2018 tax year, Appellant late filed his original 2018 California tax return on January 24th, 2025. And as such, the four-year statute of limitations expired on April 15th, 2023. Appellant filed his 2018 claim for

refund in the form of his 2018 tax return over a year after the four-year statute of limitations period expired. Furthermore, all payments on Appellant's 2018 tax year account were made prior to the one year statute of limitations. Therefore, the one year statute of limitations is unavailable to allow a refund of Appellant's 2018 tax year overpayment.

For the 2019 tax year, Appellant late filed his original 2019 California tax return on January 30th, 2025. And as such, the four-year statute of limitations expired on April 15th, 2024. Appellant filed his 2019 claim for refund in the form of his 2019 tax return over eight months after the four-year statute of limitations period expired. Furthermore, all payments on Appellant's 2019 tax year account were made prior to the one-year statute of limitations. Therefore, the one-year statute of limitations is also unavailable to allow a refund of Appellant's 2019 tax year overpayment.

Appellant alleges that his 2018 and 2019 tax returns were selected by the IRS for review, which resulted in a federal action and that pursuant to section 19311, Appellant's 2018 and '19 refund claims were timely filed within two years from the date of the final federal determinations on his 2018 and 2019 federal tax accounts. However, review of the most recent 2018 and 2019 federal

account transcript show there are no entries on either transcript indicating that the IRS abated any tax, made any adjustments, or that there are any pending federal actions or claims.

Appellant also alleges that he filed a timely and formal claim for refund for the 2018 tax year on January 24th, 2025. However, FTB records do not show that any informal claims for refund were filed for either 2018 or 2019 before the applicable four-year statute of limitations period expired. Moreover, an informal claim for refund filed on the alleged January 24th date would still be an untimely informal refund claim.

Lastly, during the prehearing conference, Appellant indicated that due to hardships related to his divorce proceedings in 2018, Appellant was unable to timely file his 2018 and 2019 refund claims within the relevant statute of limitations. Furthermore, Appellant allege that the judge overseeing the divorce proceedings issued a ruling that all of Appellant's tax returns fall under the jurisdiction of the relevant family court and thus, Appellant was unable to file any tax returns without court approval. While Appellant's situation unfortunate, such hardships do not negate his responsibility to timely file a return and will not extend the statute of limitations. There's also no reasonable cause or

equitable basis for suspending the statute of limitations.

Lastly, nothing in the record indicates that Appellant was prevented from filing his 2018 and 2019 refund claims within the relevant statute of limitations, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. As for the Appellant's argument that he owed no tax for the 2018 tax year and that the overpayment resulted from FTB's collection activity pursuant to its valid and final proceeded assessment, the Office of Tax Appeals in its precedential opinion in the Appeal of Benemi Partners, held that the language of the statute of limitations is explicit and must be strictly construed.

The United States Supreme Court in United States versus Dalm explain that this is even -- this is true even when it is later shown that the tax was not owed in the first place. Appellant has not provided any evidence that would allow FTB by law to grant his claim for refund. Therefore, FTB respectfully requests that the Office of Tax Appeals sustain FTB's claim for refund denials for the 2018 and 2019 tax years.

Thank you, and I am happy to answer any questions.

HEARING OFFICER ELSOM: Thank you, Franchise Tax Board.

I'd like to turn it over to the panel now for questions.

Judge Long, do you have any questions for the Franchise Tax Board?

JUDGE LONG: I do. I have a question for Franchise Tax Board.

We have heard from Mr. Hutchinson today that -- I want to get the exact dollar amount here -- that approximately $212,440 was taken from his refinance to direct towards his 2018 tax lien. But when I look at the tax year detail, I believe that's -- let me find -- Franchise Tax Board's Exhibit F, I see a bill payment in the amount of $203,162. Can you explain if that amount that was taken from the mortgage that -- was it $212,000? -- if that amount was received by Franchise Tax Board, and why it shows what looks like $203,000 was received by Franchise Tax Board instead? I am comparing -- let's see. This is Appellant's Exhibit E to Franchise Tax Board's Exhibit F.

MR. COUTINHO: Can you give us one moment just to review our records?

JUDGE LONG: Absolutely. Thank you.

(There is a pause in the proceedings.)

MR. COUTINHO: Respondent is still reviewing its records. We're happy to submit additional -- additional

briefing regarding that payment. But yes, you are correct. The $203,000 was applied to the 2018 tax year and so, we don't right now have the information regarding the discrepancy between the $216,000 that was reflected on Exhibit E of Appellant's records and the $203,000 that Respondent received, but we're happy to submit additional briefing.

JUDGE LONG: All right. I will leave that up to Hearing Officer Elsom. Thank you.

HEARING OFFICER ELSOM: Thank you, Judge Long.

And, Judge Stanley, do you have any questions for the Franchise Tax Board?

JUDGE STANLEY: I have -- I have another question about Exhibit F. Why, if you -- why, if there was still an outstanding tax due pursuant to the NPA -- I mean, the Notice of Proposed Assessment, why would a refund have been granted to Appellant in 2023 before he filed his returns? It may be another thing that you want to add if -- if you're granted additional briefing.

MR. COUTINHO: So, you're asking why a refund was afforded? I don't know a refund of -- of -- I think the three payments, it was the $203,000 the payment the tax year transfer from the '21 tax year and the tax year transfer from the '22 tax year satisfied the proposed assessment from [INAUDIBLE]. But it looks like the -- it

looks like about $585 remaining, but the NPA was for $208,000. And so I believe the three numbers added together probably gets us over the $208,000 plus interest. And so that's why there's a refund that was given. But we're happy to provide additional briefing if -- if that's what the panel requests.

JUDGE STANLEY: But if there's no claim for refund why would you make a refund? That's my real question. And if you had a valid reason for doing a refund as of June 27th, 2023, and the amount of the escrow payment was higher, would that refund have been higher as well?

MR. THALHUBER: We're happy to submit additional briefing regarding that -- that portion.

JUDGE STANLEY: Thank you.

HEARING OFFICER ELSOM: Thank you, Judge Stanley.

And I just wanted to follow up on this question. I know you don't have the specific answers right now. But when I reviewed the file, I see on the notice of state tax lien dated April 18th, 2023, it's listing $216,025.93 and then there was a transfer from Appellant's 2022 accounts on April 28th, 2023, of $5,674.09. So, that leaves us with the approximate amount that was withdrawn upon the close of the refinance, and that's $212,440.22. And that ties out to the demand for payment of tax lien, which

looks like there was a little bit of delay. And in Appellant's receipt of that, and that was dated three days later on May 15th, 2023.

So, the question I think that remains here is that why was there an additional transfer from Appellant's 2021 tax year after that point of $8,581.53? And then I would ask as a supplement to that, why -- shouldn't the refund have been higher than 585 point -- $585.25 to Judge Stanley's question?

MR. COUTINHO: We're happy to provide that in an additional brief. Thank you.

HEARING OFFICER ELSOM: Okay. Just wanted to make you aware of what the -- the questions may be.

MR. COUTINHO: Yeah. I don't want to provide inaccurate information to OTA. So, I just want to make sure that we do our math and -- and get back with a response back to you.

HEARING OFFICER ELSOM: Understandable. Thank you Franchise Tax Board.

Judge Stanley, you had an additional question?

JUDGE STANLEY: Yes, Hearing Officers.

I -- unless I missed it in your question, I wanted to ask the Franchise Tax Board if they would agree that the transfer from 2021, is that what you were asking about? -- the transfer from 2021 occurred after the

escrow payment, and would that have resulted in an over collection? So, add -- add -- add -- added to the additional briefing.

MR. COUTINHO: I'll add it to my homework, yes.

JUDGE STANLEY: Thank you.

HEARING OFFICER ELSOM: Thank you, Judge Stanley.

And I'd now like to turn this over to Appellant for any closing remarks, and you have five minutes. You may begin whenever you're ready.

MR. KAHN: Thank you, Your Honor.

CLOSING STATEMENT

MR. KAHN: So, to the chair and members of the panel, the evidence establishes that Mr. Hutchinson did not disregard his tax obligations. During a prolonged and difficult family law period, he made conservative payments while he worked to obtain the information and clarification he believed necessary to submit accurate returns. Now, for 2019, he made a $110,000 extension payment, received substantial withholding credits. And for 2018, FTB collected more than $200,000 through the lien and escrow process.

When Mr. Hutchinson filed his returns, FTB accepted the reported results. For 2018 that meant zero tax liability. FTB, nevertheless, contends it may retain

the resulting overpayments because the refund claims were not filed within the statutory limitations periods. Now, we understand that this appeal requires the panel to apply the governing refund statutes. Petitioner does not ask the panel to create an unlimited hardship exception, the evidence concerning the family law proceedings and the payments is offered to establish Mr. Hutchinson's good faith conduct to explain why the returns were not filed earlier and to provide the factual context of the collection activity.

Now, for 2018, the record also raises a distinct statutory process issue. FTB's My FTB history identifies a March 3, 2023, intent to record a notice of state tax lien. That lien was then recorded in April of 2023. The actual March 3rd notice however, is not in FTB's exhibit package and Mr. Hutchinson testified he did not receive it to his acknowledge, and the portal link did not produce the underlying document. Petitioner does not ask the panel to treat non-receipt alone as proof that no notice was mailed. The point is narrower.

Revenue & Taxation Code section 21019 requires a preliminary notice before Franchise Tax Board can go ahead and record a lien. The current record should establish whether FTB can identify the actual notice, show it's required contents, identify the address and method of

mailing, and provide reasonable proof that it was mailed. The November 2022 final notice before levy and lien does not resolve that question. That was a general collection notice. The portal itself reflects a later and separate March 3rd intent to record entry. And the lien came to light during -- well, the lien only came to light during the Stow Lane refinance process. And the evidence shows that the escrow and the lender required payoff for the transaction to close.

Now, that context matters because the payment was not considered a concession that the estimated assessment was correct. In fact, Franchise Tax Board issued a refund check after getting that payment. Arguably, if petitioner never received the preliminary lien notice, it is questionable whether that tax lien itself was valid. But was it clear is that the petitioner did not have the advance notice to even dispute this lien filing.

Now, for 2019, petitioner recognizes that this lien notice issue does not resolve the separate limitations question. The 2019 evidence, though, that we've provided nevertheless, establishes that Mr. Hutchinson paid proactivity -- paid proactively and ultimately overpaid. Petitioner preserves any available statutory basis for relief including any timely written request or final federal determination that may bear on

this applicable period.

Accordingly, petitioner respectfully requests that the panel one, consider the payment, escrow, and lien evidence as establishing Mr. Hutchinson's good faith compliance efforts and the circumstances of the 2018 collection; two, require a complete record regarding the March 3rd, preliminary lien notice and FTB's compliance with section 21019; and three, to the extent the panel concludes the section 21019 issue lies outside this refund appeal, expressly preserve petitioner's ability to pursue the appropriate administrative remedy without treating the lien issue as waived.

Mr. Hutchinson did what he understood he could do to comply while facing difficult circumstances and incomplete information. The latter returns established that the State received more than the correct tax. Petitioner respectfully asks the panel to apply the statutes to the complete record and to ensure that FTB's statutory notice process is fully established before the 2018 lien collection is allowed to stand.

Thank you.

HEARING OFFICER ELSOM: Thank you, Mr. Kahn.

I'd like to turn the -- this over to the panel for any questions of either party.

Go ahead Mr. Hutchinson.

MR. HUTCHINSON: Would it be okay if I made a quick closing sentence?

HEARING OFFICER ELSOM: Absolutely.

MR. HUTCHINSON: Thank you.

It is not fun being here. It is not fun hiring a tax attorney. It is not fun going through a divorce, and I hope I only have to do it once and that's it. I've been a citizen of the State of California since 1997. I've raised my family here. I'm not a tax expert. I'm not an attorney, and I understand there are certain statutes that need to be applied. I guess my final statement is to appeal to the panel to given the collective story that's been presented today, which includes me doing the very best I could to pay what I could in order to comply with what I thought I could during the years of this divorce and appeal.

I legitimately did not have access to information from my spouse. I did not have really material allocations of income and expense settled from the divorce court. And I tried very hard to get that done. And as soon as I did get that information, I filed as soon as I could to get this completed. We've raised potential procedural issues in terms of how I was noticed or not noticed relative to the lien. We've raised issues about whether or not anybody -- I'd ever -- I'd never

acknowledged owing that tax. The State has acknowledged that it wasn't owed by accepting the return.

And even as we sit here today, we see that one, I potentially overpaid, even through that escrow, which we -- it sound like we're still trying to do the math on; and two, that I was issued a refund in June without even filing a return or request for refund. The escrow didn't request a refund, and I didn't file on my return until I thought I could in December and January of 2023, '24, and '25. And one of the esteemed panelists raised the same question as why I was issued a refund without filing a return.

So -- and the amount of money that is discussed here is very, very material. It's -- it's homes, it's college educations. It's not like I overpaid by a few thousand dollars forgot to do my paperwork, and now I'm asking this is a significant amount of money that was kind of taken from me under very dire circumstances that I could not control. I was given an order to refinance my house on June -- sorry -- on April 19th. I needed to complete that on May 19th. On May 12th, I found out about this lien, and I paid it.

So, without the legal expertise to, quote, "statute and precedent case law," I sit here as a long-time citizen saying that I think we've presented a

story here where there should be some equitable review and relief of this very, very, very substantial amount of money, which was never owed to the state.

Thank you.

HEARING OFFICER ELSOM: Thank you, Mr. Hutchinson. And thank you for your testimony today and your presentation. We appreciate it.

I'd like to now again turn it over to the panel for any questions you have of either party.

Judge Long, do you have any questions for either party?

JUDGE LONG: I have no further questions. Thank you for your presentations today.

HEARING OFFICER ELSOM: And Judge Stanley [sic], do you have any questions for either party?

JUDGE STANLEY: I have no questions. Thank you both -- thank you all for -- for coming here and presenting to us.

HEARING OFFICER ELSOM: Again, would like to thank you both for your presentations today, Franchise Tax Board and Appellant.

We're going to go ahead and hold the record open for an additional 30 days to allow Franchise Tax Board to respond to questions pursuant to our post-hearing order. And with that, our hearing is concluded today. And again

thank you, everybody, for providing your presentations, and that concludes the hearing of Hutchinson.

Thank you.

(Proceedings concluded at 2:36 p.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 23rd day of September, 2026.

_____

ERNALYN M. ALONZO
HEARING REPORTER