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STATE OF CALIFORNIA  
OFFICE OF TAX APPEALS  
400 R STREET  
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT  
JUNE 19, 2018  
CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARING  
APPEAL OF  
MARK MORGAN  
18011045  
AGAINST PROPOSED ASSESSMENT OF  
ADDITIONAL INCOME TAX

Reported By: Kathleen Skidgel  
CSR No. 9039

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P R E S E N T

Panel Lead: Linda Cheng  
Administrative Law Judge

Panel Members: Daniel Cho  
Administrative Law Judge  
Michael Geary  
Administrative Law Judge

Appearing for Taxpayer: Mark Morgan  
Taxpayer

Appearing for  
Franchise Tax Board: Gi Nam  
Tax Counsel  
Marguerite Mosnier  
Tax Counsel

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1 400 R STREET, HEARING ROOM

2 SACRAMENTO, CALIFORNIA

3 JUNE 19, 2018

4 ---oOo---

5 JUDGE CHENG: We're opening the record in  
6 the Appeal of Mark Morgan, before the Office of Tax  
7 Appeals, in OTA case number 18011045. Today's date  
8 is June 19, 2018. The time is 9:16 a.m. This  
9 hearing is being convened in Los Angeles.

10 Today's hearing is being heard by a panel of  
11 three judges. My name is Linda Cheng, and I will be  
12 acting as the lead judge for the purposes of  
13 conducting this hearing. Judges Geary and Cho are  
14 also hearing the evidence today.

15 All three judges will meet after the  
16 hearing, discuss and produce a written decision  
17 within a hundred days of today. Although I'm the  
18 lead judge and will conduct this hearing, all of us  
19 may ask questions and otherwise participate as part  
20 of the panel; this way we can make sure we collect  
21 all the information that's needed to make the correct  
22 decision here.

23 As I mentioned, if you have any questions at  
24 any point in time, please feel free to raise them.  
25 Any questions at this point?

26 MR. NAM: No questions.

27 JUDGE CHENG: Very good.

28 Will the parties please state their

1       appearances, give us your names and who you  
2       represent.

3               MR. MORGAN:   Mark Morgan.   I represent  
4       myself.

5               JUDGE CHENG:   Thank you.

6               MR. NAM:   Gi Nam for Respondent Franchise  
7       Tax Board.

8               MR. MOSNIER:   Marguerite Mosnier,  
9       M-o-s-n-i-e-r, for Respondent Franchise Tax Board.

10              JUDGE CHENG:   Okay.   So now we're going to  
11       enter the marked exhibits into the record.   And from  
12       the taxpayer we have the following exhibits:

13              Number 1 is the Response to Demand;

14              Number 2, Response to Determination of  
15       Filing;

16              Number 3, Response to Proposed Assessment;

17              Number 4, Request to Appeal -- Request to  
18       Appeal the Notice of Action;

19              Number 5, Board of Equalization Filing  
20       Supplement;

21              Number 6 and Number 7 are cases, federal  
22       cases --

23              JUDGE GEARY:   Statutes.

24              JUDGE CHO:   Statutes.

25              JUDGE CHENG:   Statutes.   Sorry.   26 USC  
26       2703 and 26 USC 5005.

27              MR. MORGAN:   I'm sorry.   I think that was  
28       5703.

1 JUDGE GEARY: Actually it says "2703," but  
2 let's check.

3 MR. MORGAN: It's supposed to be "57." My  
4 typo.

5 JUDGE CHO: It says "5703."

6 JUDGE CHENG: So strike "2703." It's  
7 5703.

8 And Number 8 is Appeal of Fred Dauberger,  
9 et al., or excerpt from that appeal;

10 Number 9 is the Congressional House Record  
11 excerpt;

12 And Number 10 is a list of court cases and  
13 legal authorities.

14 And from the Franchise Tax Board, we have  
15 Exhibits A through N:

16 A is a copy of FTB's Demand of the 2013  
17 Tax Return;

18 B is a copy of Appellant's Response to the  
19 Demand;

20 C is a copy of the Determination of Filing  
21 Requirement and Tax Return Demand;

22 D is a copy of Appellant's Response to  
23 that Determination and Demand;

24 E is a copy of the 2013 Notice of Proposed  
25 Assessment;

26 F is a copy of Appellant's Protest of the  
27 2013 Notice of Proposed Assessment;

28 G is a copy of the Protest Notice of

1 Determination;

2 H is a copy of the 2013 Notice of Action;

3 I is a copy of the Law Summary on Nonfiler  
4 and Frivolous Arguments;

5 J is a copy of the Federal Wage and Income  
6 Transcript;

7 K is a copy of the Law Summary on  
8 Reasonable Cause Abatement, Delinquent Filing  
9 Penalty, Notice of Demand, and Failure to Furnish  
10 Penalty;

11 L is a copy of the 2012 Demand for Tax  
12 Return and Notice of Proposed Assessment;

13 M is a copy of the Law Summary on Filing  
14 Enforcement, Collection, and Lien Fees;

15 N is a copy of the 2013 Federal Account  
16 Transcript.

17 Any questions or concerns about those  
18 exhibits?

19 MR. NAM: No questions.

20 JUDGE CHENG: So these exhibits are entered  
21 into evidence.

22 So I have the issues before us today as the  
23 following:

24 Number one, whether appellant has shown  
25 error in FTB's assessment for tax year 2013;

26 Number two, whether appellant has shown  
27 reasonable cause to abate the delinquent filing  
28 penalty and demand penalty;



1           Number three, whether the filing enforcement  
2 fee was properly imposed;

3           And number four, whether a penalty for  
4 continuing to make frivolous arguments should be  
5 imposed.

6           If there are no questions about the issues,  
7 we can go ahead and start.

8           MR. MORGAN: I do have a question about the  
9 issues.

10          JUDGE CHENG: Please.

11          MR. MORGAN: The FTB has made those issues  
12 and -- well, they created the issues. My issue is  
13 not any of those. It is whether or not I am -- if I  
14 am actually -- whether or not I am actually subject  
15 to those issues, whether or not I'm responsible for  
16 those issues, whether or not I am liable for those  
17 issues.

18          Anybody can -- anybody can send someone else  
19 an invoice for something. That doesn't mean it's  
20 valid. And what I've been trying -- what I've been  
21 trying to accomplish is, determine whether or not I  
22 am one who is deserving of an assessment.

23          And because they have -- because the FTB has  
24 limited the scope of the issues for those two lines,  
25 it shuts me out altogether. So I don't believe that  
26 those are issues that should be discussed because  
27 they are -- you know, on the assumption that that is  
28 a valid and true assessment.

1 JUDGE CHENG: Well, thank you. And I  
2 appreciate the way you are framing that. But perhaps  
3 I can frame it a little differently because I think  
4 we are all talking about the same thing here, maybe  
5 in different words. But my goal here is, and our  
6 goal here is to determine whether or not you should  
7 be assessed the amount that's at issue; and for that  
8 I mean the amount of \$505 in tax, and penalties of  
9 475.25 and interest. And so we're here to determine  
10 whether that should be imposed against you.

11 Are you aware of any other issues or any  
12 nonassessment, nonmonetary issues before us?

13 MR. MORGAN: I think it's going to be to  
14 where the FTB is going to try and prove those four  
15 items and I'm going to try and prove that those four  
16 items don't exist. So that's basically what my  
17 standpoint is.

18 JUDGE CHENG: Okay. That's fine. And you  
19 can present all that in your case in chief.

20 MR. MORGAN: Okay.

21 JUDGE CHENG: So from what I understand  
22 there are no witnesses here today; is that correct?

23 MR. NAM: No witnesses.

24 JUDGE CHENG: No witnesses, okay.

25 So in that case, Mr. Morgan, you may go  
26 ahead and present your case. But let me first put  
27 you under oath so we can admit everything that you're  
28 saying into the record. All right?

1           So will you please stand? Raise your right  
2 hand. Do you swear or affirm to tell the truth, the  
3 whole truth and nothing but the truth?

4           MR. MORGAN: I do.

5           JUDGE CHENG: Please have a seat. And you  
6 have ten minutes to make your case.

7           MR. MORGAN: Okay. I would like to quote  
8 that pretty much summarizes a lot of items.

9           The income tax is an excise tax, and income  
10 is merely the basis of determining this amount.

11           The first federal income tax law was  
12 approved by President Lincoln on August 5th, 1861, a  
13 little after the Civil War started. It was  
14 distinctly a war revenue measure. The act of 1861  
15 provided for a tax to be levied, assessed and  
16 collected in the year 1862, the tax to be based upon  
17 income for the preceding year, that is, the year  
18 1861. This tax which was due and payable on or  
19 before June 30, 1862 was levied only for that  
20 first -- for that one year.

21           The income on which the tax was based was  
22 defined as income from all sources, whether derived  
23 from any kind of property, rents, interests,  
24 dividends, salaries, or from any profession, trade,  
25 employment or vocation. Thus investment income, as  
26 well as other kinds of incomes, was included in the  
27 basis of measuring the tax.

28           In sustaining Civil War income tax laws, the

1 Supreme Court held tax based on income was not a  
2 direct tax but an excise tax or a duty and as such  
3 did not require apportionment among the States.  
4 Springer versus the United States (1830) (sic). This  
5 decision, rendered after the income tax had been  
6 thoroughly tested for a period of 10 years,  
7 represents a deliberate determination as to the  
8 fundamental nature of the tax.

9 After a lapse of about a quarter century,  
10 Congress again passed an income-tax law. The act of  
11 1894 provided for tax to be levied, collected, and  
12 paid from and after January 1, 1895 until the first  
13 day of January 1900. Like the Civil War acts it  
14 provided that the tax should be based on the income  
15 received in the preceding calendar year.

16 Although the Supreme Court held this portion  
17 of the act to be unconstitutional, it still  
18 recognized that the income tax was, in essence, an  
19 excise tax. The Court said that a tax on income from  
20 business, privileges, or employment, standing by  
21 itself, would be valid as an excise tax; but the tax  
22 on investment income is likely to be invalid because  
23 the Court regarded the tax based on income from  
24 property as a tax on the property itself and  
25 therefore a direct tax which must be apportioned  
26 among the States (*Pollock versus Farmers' Loan and*  
27 *Trust Company* (1895)).

28 The Court said that to sustain a portion of

1 the tax while declaring the rest invalid would leave  
2 a burden of the tax to be borne by the professions,  
3 trades, employments, or vocations and in that way  
4 what was intended as a tax on capital would remain in  
5 substance a tax on occupations and labor. We cannot  
6 believe that such -- we cannot believe that such was  
7 an intention of Congress. So the entire portion of  
8 the net of the act relating to the income tax was  
9 declared invalid.

10 It must --

11 Oh, sorry. I'm sorry.

12 Provision of the Constitution:

13 "To lay and collect taxes, duties,  
14 imposts, and excises, to pay the debts and  
15 provide for the common defense and general  
16 welfare of the United States; but all  
17 duties, imposts, and excises shall be  
18 uniform throughout the United States"  
19 (Article I, section 8, subdivision 1).

20 The second provision:

21 "No capitation, or other direct, tax  
22 shall be laid, unless in proportion to the  
23 census of enumeration herein before  
24 directed to be taken" (Article I, section  
25 9, subdivision 4).

26 Thus the Constitution made a distinction  
27 between "taxes" on the one hand and "duties, imposts,  
28 and excises" on the other. The only taxes generally

1     regarded as "direct" were poll taxes and taxes on  
2     property. The only direct taxes which had been  
3     imposed by Congress prior to 1894 were taxes on  
4     lands, houses, and slaves. The Court had no  
5     difficulty in classifying a tax on income as an  
6     excise tax. Its objection to the act of 1894 was  
7     doubtless based on a theory that a tax on rents was  
8     not in reality an income tax but a direct tax on  
9     lands and buildings.

10           The Sixteenth Amendment authorizes the  
11     taxation of income "from whatever source derived" --  
12     thus taking investment income -- "without  
13     apportionment among the several states." The Supreme  
14     Court has held that the Sixteenth Amendment did not  
15     extend the taxing power of the United States to new  
16     or excepted subjects but merely removed the necessity  
17     which might otherwise exist for an apportionment  
18     among the States of the taxes laid on income whether  
19     it be derived from one source or another. That's  
20     *Brushaber versus Union Pacific Railroad*.

21           JUDGE GEARY: You're at five minutes so  
22     far.

23           MR. MORGAN: Thank you.

24           JUDGE GEARY: You're welcome.

25           MR. MORGAN: That was written in 1943 by  
26     F. Morris Hubbard, who was a legislative draftsman  
27     for the Treasury Department and worked at research  
28     for Columbia University.

1           I had some questions whether or not --  
2   whether or not the tax that the FTB is imposing is,  
3   what kind of tax it is, what's the class of tax, what  
4   is the class of tax that it's in? Is it direct or  
5   indirect? And what would be the nature of the tax;  
6   would it be people, property or activities?

7           I'm probably restating a couple things that  
8   I already stated. And with that, once you discover  
9   what class it's in, you can discover what subject of  
10   the taxes are on and who would be subject to them,  
11   who would be liable for them, and therefore who would  
12   have a requirement to do any filing of forms.

13           I requested from the -- through a FOIA  
14   request through the Franchise Tax Board, asking if  
15   anybody -- for example, question number two, names  
16   and contact information of any persons having  
17   personal knowledge of acts, commissions or events in  
18   the process of documents for that year in question.  
19   And what I got back was, "No individual is  
20   responsible for issuing an NPA. It's an automated  
21   system." And it says, "Additionally, numerous  
22   individuals are associated with the review of  
23   accounts and we do not maintain a listing of accounts  
24   or who may have reviewed their accounts." It could  
25   be one, it could be 50, it could be a thousand  
26   people.

27           And what I try and get back is, I'm trying  
28   to locate who made the determination that I'm

1 required to file any forms or I'm subject to taxes or  
2 liable for the tax. And what I got back was the same  
3 thing, "numerous individuals associated with the  
4 review of your account."

5 In the filing for the determination of a tax  
6 return -- filing requirement for a tax return, what I  
7 got back was it started out saying, "We reviewed your  
8 response." What is "we"? Is it one person, 50  
9 people or a thousand people? And that's why I came  
10 up with the request. And what I got back was it  
11 could be anybody. So I can't get any answers from  
12 them.

13 JUDGE CHENG: Mr. Morgan, you have two  
14 minutes.

15 MR. MORGAN: Thank you.

16 And I would like to say that the main  
17 reason why -- one of the main reasons why I'm here is  
18 not only to do what I said, but the FTB has a machine  
19 in place and that's called a hearing, but it's  
20 anything but a hearing. You sit down with somebody  
21 in a room and they have no authority to make a  
22 determination on whatever you present to them. They  
23 only go by recommendation and they're a paid employee  
24 of the FTB. Major bias. I can't do anything from  
25 there.

26 And there are a couple of cases I'd like to  
27 refer to that actually encouraged me to take this to  
28 this level. So I'm not doing this for any purpose of



1 delay or postponement. I haven't asked for a  
2 postponement. As you can see, this has gone on for  
3 three years, so -- which I have no input as to the  
4 timeline, timeframe, but this does take --

5 JUDGE GEARY: You've got about a minute left  
6 on this.

7 MR. MORGAN: Okay. Those two court cases I  
8 said, *McHugh versus Santa Cruz*, 1973, "exhaustion of  
9 administrative remedies entails not merely pursuing  
10 them but pursuing them to a conclusion on the merit,  
11 if possible."

12 And the second one is *Graham versus Bryant*,  
13 1954. "It is implicitly required that administrative  
14 remedies be pursued in good faith. However, it is  
15 not necessary that administrative remedies be pursued  
16 with the greatest skill or the most effective  
17 manner."

18 I'm trying to find out what is the basis of  
19 their determination that I am required to do any  
20 filing? What is the basis of the determination that  
21 I am subject to this tax that they're saying, the  
22 revenue tax? I cannot see it.

23 JUDGE GEARY: Okay, thank you.

24 JUDGE CHENG: You'll have time on closing  
25 statements.

26 MR. MORGAN: I tried to cut back.

27 JUDGE CHENG: Okay. FTB, any testimony  
28 today?

1           MR. NAM: No testimony, just an opening  
2 statement.

3           JUDGE CHENG: Okay. Go ahead.

4           MR. NAM: Members of the panel, my name is  
5 Gi Nam for Respondent Franchise Tax Board.

6           We are here today because appellant has not  
7 filed his 2013 California tax return, despite  
8 receiving Form W-2 acquiring wages of \$39,821 and  
9 Form 1099-INT reporting interest income of \$22 and  
10 because appellant did not respond to FTB's request to  
11 file a tax return.

12           With that said, I will begin discussing the  
13 respondent's position in the same order that the  
14 issues were presented for the record.

15           First, appellant has not shown error in the  
16 respondent's proposed assessment of taxes.  
17 Respondent's initial burden is to show that the  
18 proposed assessment is reasonable and rational. If  
19 respondent satisfies its burden, then the proposed  
20 assessment is presumed to be correct; and this is  
21 pursuant to the authority cited in Exhibit I, section  
22 3. And appellant needs to prove that respondent's  
23 assessment is incorrect by a preponderance of  
24 evidence; this is pursuant to OTA Regulation 30705  
25 subdivision (c).

26           Here respondent met its initial burden by  
27 using the income information reported on federal  
28 forms W-2 and 1099-INT by payers of the income Valley

1 Crest Landscape Maintenance, Inc., which reported  
2 \$39,821 of wages, and JP Morgan Chase Bank NA, which  
3 reported \$22 of interest. This can be found in  
4 respondent's opening brief Exhibit J, Federal Wage  
5 and Income Transcript pages 1 and 3.

6 Appellant has not shown any evidence  
7 indicating that assessment is incorrect, nor has he  
8 filed his return. Furthermore, appellant has never  
9 denied receiving the income from the payers.  
10 Therefore, respondent's proposed assessment of taxes  
11 should be sustained.

12 Second, appellant has not shown that his  
13 failure to timely file and respond to demand or tax  
14 return was due to reasonable cause. Appellant has  
15 not demonstrated reasonable cause for failing to  
16 timely file and respond to demand. Therefore, the  
17 penalty should be sustained.

18 Third, the filing enforcement fee was  
19 properly imposed. There is no reasonable cause  
20 abatement to the fee. Here, appellant failed to  
21 respond to the demand, thus the filing enforcement  
22 fee was properly imposed.

23 Lastly, appellant made arguments regarding  
24 the constitutionality -- excuse me.

25 Fourth, pursuant to Revenue and Taxation  
26 Code section 19714 and OTA's Regulation section  
27 30502, your panel may impose a frivolous appeal  
28 penalty not to exceed \$5,000.

1           And lastly, appellant made arguments  
2     regarding the constitutionality of California  
3     statutes and due process issues. However, issues on  
4     the constitutional validity of the California  
5     statutes and issues regarding the substantive or  
6     procedural rights are outside the scope of this  
7     appeal under Office of Tax Appeal Regulations section  
8     30102 subdivision (b).

9           This completes my opening statements. And  
10    for these reasons, respondent respectfully requests  
11    that the members of the panel sustain respondent's  
12    position. Thank you.

13           JUDGE CHENG: Thank you. And because there  
14    is no testimony from the Franchise Tax Board, we may  
15    proceed with closing statements.

16           And this is your opportunity to basically  
17    summarize your evidence and legal argument that you  
18    just made. And, again, you will have ten minutes to  
19    do that.

20           Mr. Morgan.

21           MR. MORGAN: Okay. The FTB likes to mail a  
22    form letter stating that I qualify for frivolous  
23    arguments. And they list a few of the cases on that  
24    form letter, which I happened to look up.

25           For example, *Castillo* -- these are mainly  
26    cases that they list:

27           *Castillo*, this had to do with filing an  
28    accurate return;

1           *Bailey*, EDD info use, Fourth and Fifth  
2       Amendments, filing claims for refunds in lieu of 540  
3       Form.

4           *Meyers*, perjury if filing a return,  
5       citizenry, remuneration of the California republic,  
6       filing under certain forms for zero income liability;

7           *Bailey*, due process issues;

8           *Wesley*, constitutional issues, zero return  
9       income is used in the Sixteenth Amendment;

10          *Boehme*, residency issues;

11          *Miller*, theft, loss and tax preparer issues.

12          I don't qualify for any of those. They're  
13       lumping in with a bunch of people and say, "See, he's  
14       one of them."

15          When I asked them what arguments I'm -- what  
16       arguments I'm claiming, they don't correspond to the  
17       cases that they're presenting to me, that I'm  
18       supposedly lumped in with.

19          Some of the -- some of the codes they have  
20       listed in their brief are penalty codes, and they  
21       cannot become penalty codes until someone is actually  
22       subject to that penalty. They have not been able to  
23       show that I am subject to that penalty. Just by the  
24       claims themselves is not evidence enough.

25          My question is -- my questions are, if --  
26       what is the subject of the tax; is it people,  
27       property, or activities? What activity am I in --  
28       which activity am I involved in which is taxable for

1 every purposes, and where is the statute that  
2 specifically states me, as a person, who will be  
3 taxable? Who makes the determinations for their  
4 basis that I am the one who is required to file forms  
5 with them? Who makes the determination whether or  
6 not I have a filing requirement, and what is the  
7 basis for that decision?

8 Everything -- all the other questions that I  
9 have asked in my reply brief have gone unanswered. I  
10 would like to have answers for those in order for me  
11 to understand where they stand. If they fail to give  
12 me answers, I have no other choice but to take this  
13 to the places where I have taken it.

14 From what I understand, this tax that they  
15 are talking about should be labeled as an indirect  
16 tax. If it's an indirect tax as *Tyler versus United*  
17 *States* said, in 1930, it's a tax upon the happening  
18 of event as distinguished from its tangible fruits  
19 and that doesn't get taxed.

20 In *Flint versus Stone Tracy Company*, excises  
21 are taxes laid upon the manufacture, sale or  
22 consumption of commodities within a country, upon  
23 licenses to pursue certain occupations, dependent  
24 upon corporate privileges.

25 The *Dauberger* case points out that the  
26 California tax is not based on property. If it's not  
27 property, it's not people, then it must be an  
28 activity. What activity am I involved in, which then

1 requires me to do as they're asking me to do and  
2 demanding me to do?

3 I did submit the 5703 USC 26 and 5005 USC 26  
4 that shows distinct liability for that. And that has  
5 to do with manufacturing of tobacco and alcohol. You  
6 don't see that in any of the codes that they have  
7 submitted to me. It has the catch phrase "subject  
8 to" or "liable for." But what is it that is doing  
9 that? What triggers that "subject to" or "liable  
10 for"? What is that that has -- that creates a filing  
11 requirement? They don't seem to tell me.

12 How many minutes do I have left?

13 JUDGE CHENG: Five.

14 MR. MORGAN: Basically it's, from where I  
15 stand, before anybody can be determined to have a  
16 filing requirement, you must determine what is being  
17 taxed here: Is it money; is it property; is it  
18 activities; is it people? What is that? Once that's  
19 determined, then you can get to what is the subject  
20 of the tax, and the nature of the tax. And then once  
21 that's determined, does that person qualify for a  
22 filing requirement?

23 Just because somebody makes money does not  
24 constitute a filing requirement, because if I was to  
25 make \$5 that would not constitute a filing  
26 requirement, apparently. Just because -- if I have  
27 not filed in the past, that does not require that I  
28 file now. It has no recognition as to that,

1 determination for that.

2           Excuse me. I'm very nervous. First hearing  
3 in the morning is like dressing for gym class in  
4 January, right?

5           JUDGE CHENG: You don't have to use all of  
6 your ten minutes.

7           MR. MORGAN: I don't want to run out with  
8 nothing to say.

9           JUDGE CHENG: You have five minutes on  
10 rebuttal.

11           MR. MORGAN: I want to make sure I try to  
12 get all of this in. Because I know when I leave I'm  
13 going to say, "I should have said that."

14           Also, from what I understand it's the --  
15 this tax, this income tax is not on -- is not on  
16 money itself, but they point to an article of the  
17 California Constitution that states that it  
18 authorizes a tax on or measured by income. Well, it  
19 can't be a tax on income because that would be a  
20 direct tax on person or property and we already know  
21 California tax is not based on property. But the  
22 income tax is based on measurement and measurement of  
23 the money. That tells them how much they can take.  
24 So it becomes excise tax and excise tax has to fall  
25 under the excise rules. And I do not see where I  
26 qualify and they've not been able to ever provide me  
27 with the specific statute which specifically  
28 identifies someone who falls under the excise tax



1 rule and does not -- because I'm not -- I'm not,  
2 uh --

3 JUDGE GEARY: Two minutes.

4 MR. MORGAN: I'm not -- I'm not involved in  
5 a revenue taxable activity. They have not been able  
6 to show me that. And so I'm here to say because of  
7 that, the opposed assessment should not have taken  
8 place because, number one, I would have had to have  
9 qualified for that assessment to begin with and in  
10 order to qualify, again, you have to go through the  
11 steps -- what is the subject, nature, what activity  
12 am I involved in -- to qualify for that, that would  
13 be -- that would all end up being the filing  
14 requirement and if I don't have a filing  
15 requirement --

16 JUDGE CHENG: Please wrap up.

17 MR. MORGAN: -- then those items, that  
18 assessment and those items within would not apply.

19 JUDGE CHENG: Thank you.

20 Now, FTB, do you have any questions for  
21 Mr. Morgan?

22 MR. NAM: No questions.

23 JUDGE CHENG: Does the panel have any  
24 questions for Mr. Morgan?

25 JUDGE GEARY: I do not.

26 JUDGE CHO: I don't have any questions for  
27 Mr. Morgan.

28 JUDGE CHENG: So Franchise Tax Board, please

1 present your closing statement.

2 MR. NAM: Respondent rests its position on  
3 today's opening statements and the opening brief that  
4 we filed. And no further closing arguments.

5 JUDGE CHENG: Thank you.

6 Do you have any questions for the Franchise  
7 Tax Board?

8 MR. MORGAN: Neither one of you authored  
9 these, this brief, correct? The brief that's in the  
10 file -- I can't identify it -- respondent's brief?

11 MR. NAM: Judge Cheng, should I respond to  
12 you or the appellant?

13 JUDGE CHENG: You can tell the panel your  
14 answer to that.

15 MR. NAM: Okay. The brief, opening brief,  
16 if that's the question, the opening brief was not  
17 authored by me. It was authored, drafted by another  
18 staff member.

19 MR. MORGAN: So would the questions that I  
20 have about that brief be appropriate for you or the  
21 that other staff member?

22 MR. NAM: I would be able to address the  
23 questions on the brief. I've reviewed the brief.

24 MR. MORGAN: Okay. So why would I be lumped  
25 in with people who don't claim the same items that  
26 I'm asking? There's no commonality there?

27 MR. NAM: So, as briefed, our position is  
28 stated and we cite in the opening brief and we cite

1 to Exhibit I. So the questions you have are provided  
2 in Exhibit I.

3 MR. MORGAN: Exactly. And so what I'm  
4 trying to understand is that in my reply brief I do  
5 ask questions, which of those frivolous arguments am  
6 I talking about? When did I ever mention?

7 MR. NAM: Judge, I don't have a clear answer  
8 to that question. I don't fully understand that  
9 question.

10 MR. MORGAN: Well, that's why -- in my  
11 opinion, I think the person who authored this should  
12 be here, this opening brief should be here to answer  
13 questions. Because obviously if they're here to just  
14 review what has been written and then try and  
15 interpret that, and if they don't have a response, a  
16 satisfactory response, then it kind of like is not  
17 accomplishing anything.

18 And I do -- I do -- when I went through  
19 the -- this opening brief, there were quite a few  
20 inconsistencies that I did have, that I would have  
21 been able to develop questions for. And I don't know  
22 if -- like I said, they would be the right people to  
23 ask those questions of.

24 JUDGE GEARY: Okay. We should probably move  
25 along to your final closing. If you'd like to  
26 address -- you've got five minutes for rebuttal. If  
27 you'd like to address these inconsistencies in your  
28 final closing, you can do that. But probably are not

1 going to get the kind of answers you want from the  
2 people who are here representing the FTB.

3 JUDGE CHO: Before we do that, may I ask a  
4 quick question?

5 JUDGE CHENG: Yes. So I'm going to open it  
6 up to the panel for questions. If you have any  
7 questions for the Franchise Tax Board.

8 JUDGE GEARY: I do not.

9 JUDGE CHO: I just have a quick question for  
10 the FTB. According to your Exhibit J, the Federal  
11 Wage Income Transcript, it does list that -- I'm  
12 sorry, JP Morgan Chase received interest income in  
13 the amount of \$8,600. But when you issued your  
14 Notice of Proposed Assessment, you allocated just the  
15 standard deduction to that; is there a specific  
16 reason for that?

17 MR. NAM: Yes, Judge Cho. Under the law, in  
18 order to receive or itemize deductions, the taxpayer  
19 would have to file the return and claim those on the  
20 return.

21 JUDGE CHO: So because he didn't file  
22 anything that he wouldn't get the itemized deduction,  
23 just the standard deduction.

24 MR. NAM: That's correct. And it's also  
25 here the borrowers are Mark Morgan and Lynnette  
26 Morgan, it's not him solely. So he wouldn't be able  
27 to -- we just don't know until he files his return.

28 JUDGE CHO: I see. Thank you.

1 JUDGE CHENG: Any other questions, panel?

2 JUDGE GEARY: No.

3 JUDGE CHENG: Okay. Mr. Morgan, you have  
4 five minutes on your closing.

5 MR. MORGAN: The Franchise Tax Board mails  
6 out numerous notices, demands, and on some of them  
7 they state that if you don't reply in a certain  
8 manner and a certain time limit you will be assessed  
9 additional penalties. I have never violated any one  
10 of those expectations and yet I find additional  
11 penalties added to their ever-increasing bill, which  
12 I believe I have stated in my responses to them.

13 And basically this just comes down to who  
14 makes -- who's making the determination and what are  
15 they basing it on and how I would qualify to do that  
16 what they're asking of me. To me, I do not believe  
17 that I fall under a tax for revenue purposes,  
18 therefore, that would negate any filing of their tax  
19 forms and --

20 I would like to mention, before it's not  
21 too late, court case *Higley versus CIR*, 69 F.2d,  
22 court liability for taxation must clearly appear.

23 Right now I believe the FTB is working  
24 solely on assumption and without fact, without basis.  
25 If there is a basis they have not let that be known  
26 to me, after I've asked for it.

27 And therefore, I do believe that it's not  
28 necessary to have to prove that the facts and figures

1 they're claiming on their assessment is either true  
2 or not true. And I know that if the OTA has the same  
3 rules and regulations as the BOE, then that's all  
4 that they were concerned with is how correct is the  
5 assessment. And if the assessment is invalid to  
6 begin with, it's not going to matter if it's correct  
7 or not.

8 JUDGE CHENG: You have one minute.

9 MR. MORGAN: I apologize if I seem like I'm  
10 repeating myself on a lot of cases, lot of instances.  
11 I'm trying to get out as much as I can.

12 JUDGE GEARY: No apologies necessary.

13 MR. MORGAN: I feel like if I wrote it down  
14 I know it would not have come -- it's not coming from  
15 me, my words. So I would rather make the mistake of  
16 blurting something out rather than have to read from  
17 something that won't get my point across that I'd  
18 like to get across, which right now is just a little  
19 confusion.

20 With that, I've done the best I can.

21 JUDGE CHENG: Thank you.

22 JUDGE GEARY: Thank you.

23 JUDGE CHENG: Appreciate it.

24 I just have one last question for FTB  
25 because I'm not sure that this was cited earlier.  
26 But can you please tell us, and tell Mr. Morgan, the  
27 legal basis for the Franchise Tax Board's assessment?

28 MR. NAM: Yes, I could do that.

1           So the law provides under Revenue and  
2   Taxation Code 17041 subdivisions (a), (b) and (i) and  
3   also Section 17951, that California residents are  
4   taxed upon their entire taxable income, regardless of  
5   the source.

6           And so long as appellant is a resident of  
7   California he is taxed on his income.

8           JUDGE CHENG:   Okay.   I don't have any other  
9   questions.

10          JUDGE GEARY:   I have no questions.

11          JUDGE CHENG:   Okay, very good.   With that  
12   the record is complete and will now be closed, and  
13   the case is submitted for the panel's consideration  
14   as of today June 19, 2018.

15          And the panel will meet, discuss and issue a  
16   written decision within a hundred days and you will  
17   receive a copy of that decision.   So thank you for  
18   attending the hearing today.   And we are now  
19   adjourned.

20          (The proceedings concluded at 10:00 a.m.)

21                       ---oOo---

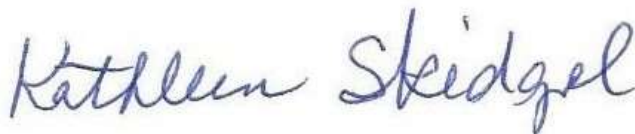
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REPORTER'S CERTIFICATE

State of California       )  
  )   ss  
County of Sacramento     )

I, Kathleen Skidgel, Hearing Reporter for  
the California State Office of Tax Appeals certify  
that on June 19, 2018 I recorded verbatim, in  
shorthand, to the best of my ability, the proceedings  
in the above-entitled hearing; that I transcribed the  
shorthand writing into typewriting; and that the  
preceding pages 1 through 31 constitute a complete  
and accurate transcription of the shorthand writing.

Dated: July 3, 2018



KATHLEEN SKIDGEL, CSR #9039-----  
Hearing Reporter



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