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

REPORTER'S TRANSCRIPT
JUNE 26, 2018
CORPORATE FRANCHISE AND PERSONAL INCOME TAX HEARING
APPEAL OF
ANTHONY OTTLINGER
18011758
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: Grant Thompson
Administrative Law Judge

Panel Members: Sara Hosey
Administrative Law Judge

Michael Geary
Administrative Law Judge

Office of Tax Appeals Staff: Dana Holmes
Ombudsperson

Appearing for Taxpayer: Anthony Ottlinger
Taxpayer

Appearing for Franchise Tax Board: Samantha Nguyen
Tax Counsel

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400 R STREET, HEARING ROOM
SACRAMENTO, CALIFORNIA
JUNE 26, 2018

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JUDGE THOMPSON: We are on the record in the appeal of Anthony Ottlinger, case number 18011758.

We're here in Sacramento. The date is Tuesday, June 26, 2018, and the time is approximately 9:13.

As I mentioned before we went on record, my name's Grant Thompson. I'm the lead Administrative Law Judge for this hearing. And my fellow co-panelists today are Michael Geary, to my left, and Sara Hosey, to my right.

Franchise Tax Board, could you please identify yourself once more for the record.

MS. NGUYEN: Samantha Nguyen, counsel for respondent Franchise Tax Board.

JUDGE THOMPSON: Thank you. And Mr. Ottlinger.

MR. OTTLINGER: Anthony Ottlinger.

JUDGE THOMPSON: Okay. Representing yourself today, thank you.

As I mentioned before we went on record, the issue today is whether appellant's entitled to a refund of additional tax, a late filing penalty and interest paid for 2014.

1 And we've reviewed all the documents that
2 have been provided by the parties, the Franchise Tax
3 Board's brief and, Mr. Ottlinger, your appeal letter
4 and your attachments. Franchise Tax Board provided
5 an additional document today, a Federal Wage
6 Transcript for 2014. And we're going to consider
7 all those items admitted into the record for our
8 consideration.

9 My understanding is that neither party has
10 any additional evidence today other than the wage
11 and income transcript which the Franchise Tax Board
12 provided and that neither party is providing any
13 witnesses other than, Mr. Ottlinger, you may
14 represent yourself and tell your story at the
15 hearing; is that correct?

16 MS. NGUYEN: Correct.

17 JUDGE THOMPSON: Okay. Let's go ahead and
18 get started. So, Mr. Ottlinger, I want you to stand
19 and raise your right hand so I can place you under
20 oath.

21 Do you swear or affirm to tell the truth,
22 the whole truth and nothing but the truth?

23 MR. OTTLINGER: I do.

24 JUDGE THOMPSON: Thank you.

25 All right. So when you're ready, Mr.
26 Ottlinger, I would like you to just do what you
27 started to do earlier, explain why you're here
28 today, what happened, and why you believe you're

1 entitled to a refund.

2 You'll have 20 minutes. I would suggest
3 you should focus on what amount of tax do you
4 believe is due, if any, and why. Because that's
5 what we're here to decide rather than procedural and
6 process issues. We're focused on, are you entitled
7 to a refund. And if you're entitled to a refund, we
8 want to figure that out and get that to you.

9 Are you ready to begin?

10 MR. OTTLINGER: Yes, sir.

11 JUDGE THOMPSON: Okay. You'll have 20
12 minutes, and you may begin.

13 MR. OTTLINGER: The Franchise Tax Board
14 wanted my W-2s for the year 2014, so I made a copy
15 of it and I mailed it to them.

16 They stated that they never received the
17 W-2 forms, and I wrote them back that I know we have
18 postal problems in this area and I told them that
19 I can't control what the post office -- how they
20 handle the mail. I put a stamp on there, and how
21 they handle it, it's on them, it's out of my hands.

22 So I had to mail it again to them. They
23 said I was late on the W-2s. And one letter that I
24 reviewed last night, said that the W-2s were
25 invalid. And they said, well, those were the W-2s
26 that were provided by my employer University of
27 California UC Davis.

28 And they said they were going to -- they

1 laid out a plan of what my penalties were going to
2 be, but it wasn't, uh -- they didn't break it down
3 why the penalties, how much it's going to be,
4 individually. And when they told me how the amount
5 was, I wrote down too much for 2014. Not for the
6 prior years, but for that year.

7 So I made out a check for them to be safe
8 about it. And I don't know what the penalty would
9 have been or what would have happened. And I feel
10 I'm being cheated out of my money. And I know with
11 the state budget and everything, they're trying to
12 get as much money off the taxpayers as they can, and
13 the fiscal year starts next month.

14 And the reason why I'm here is that, yes, I
15 feel that I'm entitled to a refund. And the Tax
16 Board, they should make their accuracies if they're
17 going to penalize taxpayers with their interest in a
18 more accuracy way, and that's what I basically asked
19 for and I never got it.

20 So I made out the money order out for them.
21 Actually it was a cashier's check, and like it was
22 done. And I couldn't -- I couldn't accept it.
23 That's why I wrote a letter to the Appeals Board.
24 And I've got letters from them, they even told me
25 last week to call them up all last weekend.

26 I don't have a phone. You know, I'm
27 retired for four years now. I work for a private
28 owner part-time. And I gave up my phone. I don't

1 even have an e-mail. I know you guys ask me for my
2 e-mail address and I don't have one. I'm retired,
3 and I get a pension once a month, and every two
4 weeks on my private contractor.

5 And I think they're asking too much for the
6 year 2014. Doesn't state previous years that I owe
7 them. And, you know, I don't know what's going on
8 with the Franchise Tax Board, if their records, how
9 accurate are they and who's responsible for the
10 assessment form. Because the one I got was a
11 proposed assessment form, and they said when they
12 got my 2014, I'm thinking finally they got it and
13 they said they're going to revise the assessment
14 form that I never received, you know.

15 And basically I'm just saying, well -- and
16 I've had people say, well, that's the Tax Board for
17 you. And I said, yeah, I know and I'm learning it
18 the hard way, you know.

19 I don't think I would be here if the
20 Franchise Tax Board and I, if we would work together
21 on this, and it doesn't look like it happened. And
22 I'm a reasonable person, you know.

23 You know, I know I was late on the taxes.
24 You know, I'm not perfect. I don't like paying
25 taxes. I even told the IRS. They said, "Why don't
26 you pay taxes?"

27 "Because everybody cheats on their taxes,
28 including the State of California."

1 They said, "Well, why didn't you have a tax
2 preparer do your taxes for you?"

3 "Because if I sign it and they make a
4 mistake on it, I have to pay a penalty and so do
5 they."

6 And she goes, "You know what, you're right.
7 So why did you bring it to us?"

8 "Because you're the IRS, you can't make
9 mistakes."

10 And then she goes, "Oh there'll be a fee
11 for that."

12 And I ask, "Well, can you waive it?"

13 And she goes, "You have an answer for
14 everything, don't you?"

15 I think she was being sarcastic, and so was
16 I. And when she told me what my refund was, I said,
17 "You know what? Why don't you go ahead and keep
18 it." \$200 for all that talk that we did, and it's
19 just not worth my time.

20 And as I said before, if the Franchise Tax
21 Board was willing to help work with me, you know, I
22 don't think this would be necessary.

23 And like I said before, I just ask for
24 accuracy on my penalties and interest.

25 JUDGE THOMPSON: Do you have anything to
26 add at this point?

27 MR. OTTLINGER: Yeah. The only thing I'm
28 not comfortable about the hearing is that all this

1 is being recorded, you know. And I'm sure that you
2 guys are writing things down and I don't know if
3 everything I'm saying is being recorded and is being
4 written down. And I don't have the paper here to
5 document everything. And the Tax Board and the Tax
6 Appeals Board, you guys told me to call you up.
7 Well, the reason why I don't make phone calls like
8 this is because it doesn't reserve my rights under
9 current law. You guys -- I can call you up and you
10 guys can tell me you never received a call from me,
11 just like the Tax Board. I can do the same thing,
12 and they said they never received a call and I can't
13 prove it.

14 JUDGE THOMPSON: Yeah. So the proceedings
15 today are being transcribed. That's why we have our
16 hearing reporter here taking notes, so to ensure we
17 have an accurate record.

18 Okay. With that, Franchise Tax Board are
19 you ready with your presentation?

20 MS. NGUYEN: Yes.

21 JUDGE THOMPSON: You may begin.

22 MS. NGUYEN: Appellant received sufficient
23 income to require him to file a return, all of which
24 are taxable.

25 Appellant's Federal Wage and Income
26 Transcript shows that appellant received income more
27 than the filing threshold amount. At no point does
28 appellant dispute receiving this income. The income

1 appellant received during the tax year includes
2 wages, pension income and interest income, all of
3 which are taxable as determined by the courts and
4 the Board of Equalization. This income also serves
5 as the basis of respondent's assessment.

6 Appellant did not file a valid return.
7 When FTB asked for a return, not his W-2s, he has
8 submitted W-2s which does not constitute a return.
9 He also submitted four blank 540s. In the *Appeal of*
10 *LaVonne A. Hodgson* the Board held that returns which
11 do not contain sufficient data from which respondent
12 can compute and assess the tax liability of a
13 taxpayer are not valid returns. Accordingly,
14 appellant did not show error in respondent's
15 assessment.

16 Appellant did not demonstrate the
17 delinquent filing penalty may be late. Appellant
18 himself has conceded that he filed late, therefore
19 the delinquent filing penalty was imposed. This is
20 the only penalty that was imposed. This penalty is
21 also shown on the bill dated March 27, 2017, which
22 was mailed to appellant and was in response to this
23 bill, which clearly indicates the penalty amount and
24 the name of the penalty. It was in response to this
25 bill that appellant made his payment, paying the tax
26 due in full.

27 The penalty may be abated for a reasonable
28 cause, and in addition to not filing a valid return

1 appellant's arguments that he does not know how to
2 complete a return and that no one would help him or
3 that tax preparers can make mistakes too do not meet
4 the reasonable cause standard.

5 Interest may also not be abated in this
6 matter. Appellant paid the balance due and full
7 after the April 15th deadline and his arguments do
8 not support abatement under the law. For the
9 reasons cited respondent respectfully requests its
10 denial of appellant's claim for refund be sustained.

11 Thank you.

12 JUDGE THOMPSON: Mr. Ottlinger, would you
13 like to briefly reply? Is there anything you'd like
14 to add? You're not required to, but you have the
15 opportunity.

16 MR. OTTLINGER: Anything to add?

17 JUDGE THOMPSON: Yes, anything in reply to
18 what the representative of the Franchise Tax Board
19 had to say?

20 MR. OTTLINGER: I noticed her dates and
21 stuff. I heard her dates and everything, but that
22 doesn't -- that really doesn't mean anything to me.
23 It's just their convenient way of adding cases like
24 this. They're professionally trained for it.

25 But I think the point we're getting here is
26 I did what I was supposed to do and I said what I
27 had to say, and it's just my word against hers. And
28 that's what it is. That's what it's all about here.

1 It's me against them, and I just want to see justice
2 done.

3 JUDGE THOMPSON: Okay, thank you.

4 I'm going to ask my co-panelists,
5 Mr. Geary, do you have any questions?

6 JUDGE GEARY: For Ms. Nguyen, the document
7 that you submitted today --

8 MS. NGUYEN: The Wage and Income
9 Transcript?

10 JUDGE GEARY: Can you just briefly describe
11 the components that went into the underlying
12 liability and describe the evidence that Franchise
13 Tax Board relied upon to determine each component?

14 MS. NGUYEN: Sure. So the basis of our
15 proposed assessment was the W-2 that's issued by the
16 Regents of University of California Davis for wages
17 of 26,614.

18 Our proposed assessment also includes a
19 Form 1099 interest that was reported by SAFE Credit
20 Union in the amount of \$32.

21 Our assessment also includes the 1099-R
22 which was issued by Fidelity Investments in the
23 amount of 18,445.

24 They also include the second 1099-R issued
25 by Fidelity in the amount of 12,219.

26 Now, at the time our assessment was issued,
27 we didn't have information for the two additional
28 1099-R's that were reported for Mr. Ottlinger by

1 UC Regents in the amount of 7,384 and 4,498.

2 JUDGE GEARY: And were those last two
3 amounts also included in the liability?

4 MS. NGUYEN: No.

5 JUDGE GEARY: They were not?

6 MS. NGUYEN: They were not. Yeah. We
7 didn't capture that at the time of our proposed
8 assessment calculation.

9 JUDGE GEARY: Okay. And did you receive
10 copies of the 1099s directly from the entities
11 Fidelity and UC Regents; is that where you received
12 them?

13 MS. NGUYEN: No. We received the income
14 information reported -- for the wages, we get it
15 from EDD.

16 JUDGE GEARY: Okay.

17 MS. NGUYEN: And then the 1099s, I
18 believe -- we receive it from the IRS.

19 JUDGE GEARY: EDD is Employment Development
20 Department?

21 MS. NGUYEN: Correct.

22 JUDGE GEARY: Thank you.

23 That's all I have. Thank you.

24 JUDGE THOMPSON: Okay. Thank you, Mr.
25 Geary.

26 Ms. Hosey, do you have any questions?

27 JUDGE HOSEY: No. Thank you.

28 JUDGE THOMPSON: Okay. I want to thank

1 both parties for coming in today.

2 MS. NGUYEN: Judge, may I speak?

3 JUDGE THOMPSON: Yes, please.

4 MS. NGUYEN: I just wanted to note that
5 upon further review of the matter, it appears that
6 there is an error in our footnote number one of
7 respondent's opening brief. Our footnote was
8 correcting the amount at issue and it actually is
9 incorrect, so please disregard --

10 JUDGE THOMPSON: Thank you. We noticed
11 that and corrected it.

12 MS. NGUYEN: Thank you.

13 JUDGE THOMPSON: All right. Thank you both
14 for coming in today. And I want to reiterate that
15 we have reviewed all the materials submitted by the
16 parties, and we're accepting all the materials into
17 the record, including the Wage and Income Transcript
18 that FTB provided today.

19 At this point I'm going to close the record
20 and I'm going to close the hearing. After we leave
21 today, myself and my co-panelists will meet and
22 discuss the evidence and the arguments we've heard.
23 And then within 100 days we'll mail the written
24 opinion to the parties for the parties to see the
25 outcome of the case and our reasoning behind it.

26 MR. OTTLINGER: So when you say an
27 "opinion," what are you talking about?

28 JUDGE THOMPSON: It's a written decision

1 that sets out the reasons for the panel's decision
2 and discusses the evidence and the arguments that
3 we've seen. So it would probably be relatively
4 short, three to five pages, and hopefully explain
5 the basis for how the panel determined. Okay?

6 MR. OTTLINGER: And you said earlier,
7 before the hearing, that you guys are no related to
8 the Franchise Tax Board.

9 JUDGE THOMPSON: Correct.

10 MR. OTTLINGER: But you both work for the
11 State of California.

12 JUDGE THOMPSON: That's correct, sir.

13 MR. OTTLINGER: That's what I thought.

14 JUDGE THOMPSON: But I do not report to the
15 Franchise Tax Board. I'm a totally separate
16 agency.

17 MR. OTTLINGER: Are we done?

18 JUDGE THOMPSON: Yes, we are.

19 MR. OTTLINGER: Thank you.

20 JUDGE THOMPSON: Thank you. The hearing's
21 now closed.

22 (The proceedings concluded at 9:28 a.m.)

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