

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
GINA MCCLURE,) OTA NO. 18042674
)
 APPELLANT.)
)

)

TRANSCRIPT OF PROCEEDINGS

Torrance, California

Thursday, December 13, 2018

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
Torrance Cultural Arts Center, 3330 Civic
Center Dr., Garden Room, Torrance, California,
91401, commencing at 9:57 a.m. and concluding
at 10:31 a.m. on Thursday, December 13, 2018,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. TERESA STANLEY

Panel Members: Hon. KENNY GAST
Hon. NGUYEN DANG

For the Appellant: GINA MCCLURE, TAXPAYER

For the Respondent: State of California
Franchise Tax Board
By: ANDREW AMARA
MARGUERITE MOSNIER

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I N D E X

WITNESSES

PAGE

Gina McClure

11

E X H I B I T S

(Appellant's Exhibits were received at page 10.)

(Franchise Tax Board's Exhibits were received at page 10.)

CLOSING STATEMENTS

PAGE

LINE

By Ms. McClure

28

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By Mr. Amara

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25

1 Torrance, California; Thursday, December 13, 2018

2 9:57 a.m.

3

4 ADMINISTRATIVE LAW JUDGE STANLEY: We'll go on
5 the record.

6 Once again this is the Appeal of Gina McClure.
7 The Case No. is 18042474. The date is December 13, 2018,
8 and the time is 9:57 a.m., and we're here in beautiful
9 Torrance, California.

10 I'm the lead administrative law judge for the
11 hearing, Teresa Stanley. And I have Kenneth Gast and
12 Nguyen Dang, and that's actually on my paper. So I'll
13 make sure I got it right.

14 Ms. McClure, can you once again state your name
15 for the record, please.

16 MS. MCCLURE: Gina McClure.

17 ADMINISTRATIVE LAW JUDGE STANLEY: And for
18 Franchise Tax Board.

19 MR. AMARA: Sure. Andrew Amara.

20 MS. MOSNIER: Marguerite Mosnier.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Thank
22 you. The issue as we stated before is whether Appellant
23 established reasonable cause to abate the Notice and
24 Demand Penalty for taxable year 2015, and what effect, if
25 any, does Appellant's amended return have on the

1 calculation of the Notice and Demand Penalty.

2 Who would like to -- if there's a stipulation
3 related to the issue -- who would like to --

4 MR. AMARA: I can address it, Judge.

5 So FTB's process -- Appellant's amended return
6 process posted the return. And so it drops the penalty
7 figure down -- this is the demand penalty figure -- down
8 to \$912.50. That's the principal amount, and there's
9 interest as well, totaling \$60.01.

10 MS. MCCLURE: That would be interest -- you're
11 interest or my interest?

12 MR. AMARA: Interest in connection with the
13 penalty. I can -- yeah, interest penalty.

14 MS. MCCLURE: I'm sorry. So I would be paying
15 that interest?

16 MR. AMARA: Well --

17 MS. MCCLURE: I mean, is it my interest?

18 ADMINISTRATIVE LAW JUDGE STANLEY: So what he's
19 indicated to the panel is that he -- that FTB, Franchise
20 Tax Board, has processed your amended return.

21 MS. MCCLURE: Okay.

22 ADMINISTRATIVE LAW JUDGE STANLEY: And so they
23 had -- they reduced the amount of the penalty. They've
24 also calculated interest to date on that penalty. So
25 they're looking at it from the prospective that you are

1 paying it. And I think that you're here to argue why you
2 should not have to pay it; right?

3 MS. MCCLURE: Okay. But if it's already been
4 withheld, and I have paid it -- it's been withheld. Why
5 would there be interest because they currently have that
6 money?

7 MS. MOSNIER: This is shown as a credit
8 adjustment, and the account balance is currently zero. So
9 as I understand it, that would indicate that if the --
10 that the -- there's \$60.01 allowed as interest on the
11 penalty that would be part of either a credit and/or
12 refund if your office determines that she has established
13 reasonable cause to abate the penalty.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So out
15 of the amount that she's paid, you're saying that \$912.00
16 plus \$60.00 and some cents --

17 MS. MOSNIER: Yes.

18 ADMINISTRATIVE LAW JUDGE STANLEY: -- is what you
19 would deduct from her -- from what she's paid to come up
20 with her refund if we sustain the penalty?

21 MS. MOSNIER: No. She would be paying into it,
22 the \$ 912.50 plus \$60.00.

23 ADMINISTRATIVE LAW JUDGE STANLEY: Plus \$60.00.
24 Okay.

25 MS. MCCLURE: That's my interest. Okay. Because

1 they've had the money. Now, I understand it. So 9 plus
2 60. Thank you. That's clarification. Thank you.

3 ADMINISTRATIVE LAW JUDGE STANLEY: That's if we
4 sustain the penalty. So you still have the opportunity to
5 state your case.

6 MS. MCCLURE: Right. That's what they're holding
7 now, and that's what I would get. Okay. Got it.

8 ADMINISTRATIVE LAW JUDGE STANLEY: Yeah, if we
9 sustain the penalty. If not, it'll be a whole different
10 number.

11 MS. MOSNIER: Excuse me for one minute. I'm not
12 sure the \$60.01 credit -- credit adjustment might be
13 interest that was paid on refunds that have previously --
14 oh, that was a refund of \$1,231.26 allowed on 11/29/18, so
15 just weeks ago. And it may be that the \$60.01 relates to
16 that.

17 We can say with certainty is if your office finds
18 that there's reasonable cause to abate the \$912.50
19 penalty, it will be credited and/or refunded with interest
20 as allowed by law.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. That's
22 perfect.

23 MS. MOSNIER: Okay.

24 MS. MCCLURE: And my understanding is you
25 currently have that money now. You have that. You have

1 that money now.

2 MR. AMARA: Yeah, there is a refund case.

3 MS. MCCLURE: Okay. So my all my deductions I
4 have had they have kept that amount of money, and they
5 have it in there?

6 ADMINISTRATIVE LAW JUDGE STANLEY: Right.

7 MS. MCCLURE: Very good. Okay. Just to correct
8 that.

9 ADMINISTRATIVE LAW JUDGE STANLEY: And your case
10 here today is based on a claim for refund of the full
11 penalty amount that you paid.

12 MS. MCCLURE: Right. And they have that in their
13 bank account now, and it would come back to me.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Correct.

15 MS. MCCLURE: They've -- they've kept it because
16 of my overpayment in taxes; correct, Mr. Amara?

17 ADMINISTRATIVE LAW JUDGE STANLEY: Correct. That
18 would be correct, but that's, you know, that will be
19 dependent upon what we decide.

20 MS. MCCLURE: I understand.

21 ADMINISTRATIVE LAW JUDGE STANLEY: And so we'll
22 have a time period after --

23 MS. MCCLURE: Okay.

24 ADMINISTRATIVE LAW JUDGE STANLEY: -- we close
25 your hearing to give a written decision to them. So

1 they're not going to walk out tomorrow and refund that.

2 MS. MCCLURE: Yeah. I understand. Okay.
3 Certainly. Okay. I just got confused on that.

4 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So once
5 again we are admitting into evidence Appellant's Exhibits
6 1 through 5, and Respondent's Exhibits A through K, which
7 includes Ms. McClure's amended 2015 return.

8 Are there any objections this morning,
9 Ms. McClure?

10 MS. MCCLURE: No.

11 ADMINISTRATIVE LAW JUDGE STANLEY: Mr. Amara?

12 MR. AMARA: No.

13 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So
14 those will be admitted without objection.

15 (Appellant's Exhibits 1-5 were received
16 in evidence by the Administrative Law Judge.) .

17 (Respondent's Exhibits A-K were received
18 in evidence by the Administrative Law Judge.)

19 We are going to skip opening statements today as
20 noted at the prehearing conference, since Ms. McClure only
21 has herself as a witness. Is that still correct?

22 MS. MCCLURE: Yes. So I will be giving my
23 statement now; is that correct?

24 ADMINISTRATIVE LAW JUDGE STANLEY: Correct. I'm
25 going to go ahead and place you under oath. And just to

1 clarify, I won't be placing the Franchise Tax Board under
2 oath because they're not testifying as witnesses. So
3 that's why if you see a disparity here, that's why that
4 exist.

5 MS. MCCLURE: Okay.

6 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Can you
7 please stand and raise your right hand.

8
9 GINA MCCLURE,
10 produced as a witness by and on behalf of herself, and
11 having been first duly sworn by the Administrative Law
12 Judge, was examined and testified as follows:

13

14 ADMINISTRATIVE LAW JUDGE STANLEY: Thank you.

15 MS. MCCLURE: Thank you.

16 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. You can
17 stand or sit or whatever is most comfortable for you and
18 just --

19 MS. MCCLURE: Okay.

20 ADMINISTRATIVE LAW JUDGE STANLEY: -- tell us why
21 you think that you should not be subject to this notice
22 and demand penalty.

23 MS. MCCLURE: Okay. Thank you, Your Honor.
24 Thank you everybody that's here. I appreciate the
25 opportunity to be heard.

1 When I first asked for the appeal, as you
2 probably know, I was sent a three-page case law list from
3 the FTB. 20 cases, 19 of them ruled against the taxpayer,
4 and one of them in favor. I'm not sure if that was
5 supposed to dissuade me or to tell me I don't have a
6 chance.

7 But I am here today because I feel in my
8 situation that this particular law that we have, which
9 deals with the Demand Notice, it's important to look at
10 the caveat of -- in the demand penalty, the exception of
11 whether you had reasonable cause you would have reasonable
12 cause and the willful neglect, both of them together.

13 So in my case, as you probably know from looking
14 at this, we've stipulated that my tax liability was
15 \$3,650. I had paid through deductions, \$9,863, which
16 meant that I had a credit due of \$6,213. So in looking at
17 that the tax bureau had been paid and can be, you know,
18 have it in their bank account. I can only look to this
19 particular penalty as thinking that it's got to be
20 punitive.

21 Because why take 25 percent when I in fact had
22 prepaid it back under deductions. And that's why I think
23 it's so important to look at the caveat of whether there
24 was reasonable cause and not willful neglect in order to
25 abate this.

1 Now, from my brief I had indicated to you that
2 this particular tax year was very unusual. What was on
3 those taxes had to do with a lawsuit, attorney fees, and
4 some of it went under W-2's. Some of it went under
5 1099's. When I was issued the W-2's and the 1099's, at
6 the end of January some time in February, I realized there
7 was a big mistake.

8 I had, in fact, received a check for \$46,908.00.
9 And that check is one of my exhibits, No. 5. And yet I
10 was received a 1099 in the amount of \$1,502 -- \$1,524.47.
11 It overstated my income by \$105,000. That was because
12 that was the attorney's part of it. It was on there.

13 So I did my best to -- knowing that I didn't owe
14 any money, I knew that I would be able to get the
15 automatic extension to October. I started calling Zenith
16 Insurance Company sometime in February and March, and told
17 them, you know, "I need this correction." I want to get
18 this money. You know, I know I was going to be owed
19 money.

20 And part of my exhibits, you'll see, would be the
21 letters that I sent to zenith, and you'll see those. And
22 that's going to be under Exhibit 2, 3 and 4. And the
23 first letter was sent on April 12, 2016. Then I knew I
24 had extension to -- the automatic extension to October.
25 Still nothing. Sent another one in October saying, "Look,

1 I'm under the gun. I got to get this done." Still
2 nothing. Then again in May 2017.

3 Now, the brief that the Franchise Tax Board sent,
4 you know, it really can't be due diligence because her
5 first letter was dated 4/12/2016. Well, I didn't get my
6 W-2's until the very end of January, and I had made some
7 phone calls. And yes, the first written letter was then,
8 but I also knew I had an automatic extension.

9 So I would have to disagree with that logic. I
10 think it's reasonable cause to try to get the W-2 forms
11 correct. I have to sign it under penalty of perjury, and
12 as I know that I've overpaid my taxes, I didn't want to
13 have to then pay more money. I knew I was going to be
14 getting a credit.

15 So because of that, I think it was reasonable
16 cause to delay. Now, what happened is in May they sent me
17 a letter saying you need to file them, and they gave until
18 June 30th. Right around that time I called them and told
19 them, "I still don't have it. So is it possible to get
20 another extension?"

21 And they said, "No. A letter is going out."

22 Little did I know the demand letter would be, I
23 don't can't care how much you overpaid we're getting
24 25 percent it. So I got that, scrambled quickly to get
25 whatever I could. I'd say about a month or so later, I

1 want to say the demand letter is in July. In August I
2 sent those out. They were wrong. I had to sign them
3 under penalty of perjury. I didn't have everything from
4 Zenith.

5 So I subsequently in December did file the
6 correct ones, and that's what we have, the amended ones
7 today. I did just receive that that was processed just
8 last month, but I had filed them in December 2017. They
9 were held up because of this appeal, I guess.

10 That's where I get my reasonable cause was to
11 wait to get that information because that \$105.00 went to
12 my attorney. The other one, which is more important, is
13 the willful neglect. And when you look at willful
14 neglect, if you look at the definition, it talks about
15 carelessness, indifference, you don't even care. That's
16 not true.

17 The letter show I care. The letters and the
18 phone calls show that I want to do it right. I'm not
19 willful neglecting paying my taxes, because I way overpaid
20 my taxes. I knew I was going to get a refund. As a
21 matter of fact, my tax return shows I almost paid three
22 times what I owed.

23 So there wasn't any, you know, really willful
24 neglect. I did try through the whole process. I -- I
25 think it's reasonable. I always, you know, pay my taxes.

1 And again, I think that if you look at the legislature and
2 you guys and why this caveat was put in there, and there's
3 a lot of stuff on the Internet about it, it really has to
4 be with people who just willfully neglected. They don't
5 pay their taxes. They don't care. That's not me.

6 And lastly, I do want to mention in Mr. Amara's
7 or in the Tax Board's brief under -- I'm trying to think
8 where the brief is. They have a footnote on page 1, which
9 indicates that they sent two of the Notice of Proposed
10 Assessments for 2012 and 2013. And it is true that they
11 sent them, however, because this might influence your
12 decision.

13 In those two years the individual filing
14 requirements said that single head of household, which I
15 am with four kids, if you do not have to file -- and I
16 have it here -- if you make under \$37,621. I called the
17 Tax Bureau and they said no. Legal filing requirements if
18 you don't make that.

19 In fact, they sent the letters and you can see
20 them there. It says we have in our thing that you have
21 about a couple of hundred dollars from Wells Fargo. And
22 we're also imputing wages on it because you are licensed.

23 I made probably under \$12,000 that year. And so
24 when I got these notices, I immediately filed. In fact,
25 it showed it was way under the requirement. I paid zero

1 taxes. And so just given the fact that they sent those
2 because they imputed the wages does -- is not dispositive
3 that I have ever done this before.

4 In those cases, I was not required to file. I
5 owed zero. And it was that they said, well, we imputed
6 it. Show us differently, and I did. So I would like to
7 bring that up. I can provide those to you, if it's going
8 to make a difference.

9 Unfortunately the computer I had, I couldn't get
10 into it, but I can get it out of the computer, or the
11 Federal Tax Bureau, or you can just take my testimony.
12 But I would be happy to verify those two years that I
13 absolutely legally was not required to file in those two
14 years.

15 And, in fact, I did. And your notes, if you can
16 get into them, will also show I have zero liability. It
17 was well under that amount. I think it was under \$15,000
18 those years, and I'm a single mother of four. So I don't
19 want that to influence it. I've been paying taxes since I
20 was 15 and a half.

21 This is the first time this has happened. It was
22 due to this big lawsuit, attorney fees, 1099's, W-2's,
23 everything divided. And I just feel that I've showed that
24 I've overpaid my taxes. I'm not trying to rip anybody
25 off, and my letters and phone call show that I did not

1 have willful neglect.

2 It was wasn't as if I did nothing at all for that
3 entire year. I really did try to get everything, and
4 ultimately I got it and everything is amended and it's
5 good. So I would ask not to be penalized for that.

6 Thank you.

7 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.

8 Mr. Amara, do you have any questions for Ms. McClure?

9 MR. AMARA: No. I have no questions at this time,
10 Judge.

11 ADMINISTRATIVE LAW JUDGE STANLEY: Mr. Gast, do
12 you have any questions.

13 ADMINISTRATIVE LAW JUDGE GAST: No. I don't.

14 ADMINISTRATIVE LAW JUDGE DANG: I have one
15 question for Ms. McClure. Prior to the filing deadline,
16 were you aware of the amount that you were supposed to
17 receive from Zenith? I know that you mentioned that the
18 amount reflected on the 1099 was incorrect. Were you
19 aware of the actual amount that it should have reflected?

20 MS. MCCLURE: It was -- not 100 percent aware
21 because some of that went the attorney, and some of that
22 had to be cost too, that the attorney took off his fees.
23 And so in the very end, I wasn't 100 percent aware of what
24 I was going to get because the cost were going to be
25 deducted. And then that, supposedly, I wasn't going to be

1 taxed on.

2 So I wasn't 100 percent aware. I really
3 wanted -- it was a lot of money. You know, it was a major
4 lawsuit. It was five years in the making, and I just
5 wanted everything to be right. And I knew that I had
6 overpaid my taxes, and I really -- I really did try to
7 work with them to get everything right.

8 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

9 ADMINISTRATIVE LAW JUDGE STANLEY: I have one
10 question. The Respondent's Exhibits B and C show the
11 notices from 2011 and 2012 tax years. You're saying that
12 in both of those years you did not have a requirement to
13 file?

14 MS. MCCLURE: That's correct. So if we look at
15 those two tax years, you'll see that the information they
16 have is a few hundred dollars in interest. And the
17 reason that they -- for example, on the first. Let's go
18 into this exhibit. Let's see. I guess this would be
19 Exhibit B.

20 On the second copy it says, you know, "We've
21 received information that you have \$263.00 from Wells
22 Fargo City Bank and U.S." And this is page 2 of
23 Exhibit B, 4 out of 4. And then they go on to say that,
24 "Because you have a professional license, we are imputing
25 a wage of \$106,000.00. That's what the average attorney

1 in the U.S. makes." So forth and so on, and that was
2 this.

3 Well, I wasn't practicing at the time. And in
4 fact I did have a license. And so the law is that they
5 can impute wages, send you a thing, and say, hey, I
6 imputed the wages. And this was news to me. I quickly
7 filed. And I -- again, I would offer to you to show proof
8 of this under, I believe, was around \$12,000 is what I did
9 earn.

10 And I can submit to you this is the filing
11 requirements. This is off of the website. If you are
12 head of household of two or more, and you make under
13 \$37,621.00, there are no filing requirements. And I did
14 call the Tax Board when I got this.

15 They said you're right, but they imputed this.
16 So just go ahead and put them together. It was really
17 easy. It was zero taxes. And they said that's going to
18 be the easiest way, but you are right. You didn't have
19 it. But because they imputed it, go ahead and do that.
20 So that's what I did.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. And
22 then a follow-up question to that. On both of these
23 notices, they say if you don't have a filing requirement
24 complete Section B of the enclosed reply and mail it in.
25 Did you do that for either of those years?

1 MS. MCCLURE: I don't remember. I think what I
2 quickly did is just -- I think I just put together a tax
3 return because it just showed zero. I'm not -- I'm not
4 sure. It's -- it's possible. Nothing ever became of
5 this. It never went to appeals or whatever. I think I
6 might have checked that off, and also did a tax return, if
7 I can remember correctly.

8 Because I got kind of scared about this. So I
9 think I said I did it, but I guess I wanted to be
10 perfectly sure I wouldn't, you know, have any more
11 penalties. I think I might have done both, but nothing
12 became of this. I got this and everything was done after
13 that. So I just don't want that to influence it because
14 that's not --

15 ADMINISTRATIVE LAW JUDGE STANLEY: Well, yeah.
16 I'm just trying to figure out, though. If you complied
17 with that, then you were not penalized for those years.

18 MS. MCCLURE: Absolutely not. And as a matter of
19 fact, I would be more than willing to -- well, there was a
20 zero balance. There was zero taxes. And I would be more
21 than willing to submit those to you or to ask the Federal
22 Tax Bureau to submit those to clarify. There was zero
23 taxes, and there's no penalties or anything.

24 ADMINISTRATIVE LAW JUDGE GAST: So just to be
25 clear, there was zero taxes, but you're saying the wages

1 for '11 and '12 was not \$106,000ish. It was a lot lower?

2 MS. MCCLURE: No. That -- they imputed that.

3 And in those years I believe I wasn't even working. And
4 so I, again, will be happy to submit it. I want to say
5 that my wages with interest and a little bit that I had
6 done was under \$12,000. There was no taxes due at all.

7 There were no penalties given. And only because
8 I didn't know about this imputing thing, when I called and
9 said, you know, I don't owe any taxes. And they said, no,
10 just look this up. And I was well below it.

11 So -- and again, if that's part of a record that
12 you would need from me, I would be more than happy to give
13 it to you because I just noticed this footnote on the
14 bottom as I was prepping. And I just don't want that to
15 be considered. So --

16 MR. AMARA: Judge, if I can just address this
17 briefly.

18 So the original in this Exhibit B, the Demand
19 Notice -- the Demand of Tax Return Notice, in each of
20 these years, both 2011 taxable year and 2012 taxable
21 years, as Appellant has noted, those are occupational
22 license based. They are generated notices. So the
23 presence of her occupational license results in the
24 notice.

25 And the obligation of a taxpayer is to respond to

1 those notices in a timely fashion in the manner
2 prescribed, and the failure to respond in that manner
3 results in the Notice of Proposed Assessments. So the
4 presence of those Notices of Proposed Assessments for each
5 of those years indicates there's no timely response to
6 each of those notices.

7 MS. MCCLURE: So --

8 MR. AMARA: Now, if there was ultimately not a
9 filing obligation, if that didn't come to the attention of
10 the FTB in a timely manner, that is within the 30 days of
11 those original notices, then the Notice of Proposed
12 Assessments are still going to be generated. And
13 that's -- that indicates -- the record indicates that's
14 what occurred here.

15 MS. MCCLURE: So when I got the notices I did
16 call. They said you're right, but because you have this
17 imputing, go ahead and file them. And there were no
18 penalties at all. Mr. Amara, I know you didn't attach
19 anything else, but --

20 ADMINISTRATIVE LAW JUDGE STANLEY: Please,
21 address us.

22 MS. MCCLURE: I'm sorry. So once I got this
23 notice, after I called them and they told me there's no
24 filing requirement, I get this notice. And I'm like okay.
25 And they said, you are right. There's only -- almost two

1 conflicting things. Go ahead and file it right away.

2 There were not penalties, and I owed zero taxes.
3 So I've learned a lesson that if you, you know, even
4 didn't earn a dime, just go ahead and file them because
5 you're going to get this imputation notice.

6 ADMINISTRATIVE LAW JUDGE DANG: Quick question
7 for the Franchise Tax Board. Were these M.P.A.'s for the
8 prior years, were they canceled or deleted?

9 MR. AMARA: I don't have that in front of me.
10 I'll just note for purposes of this hearing and the issues
11 here. The presence of the M.P.A.'s, the fact that they
12 were issued is all that was required for the demand
13 penalty be done under the regulation, under regulation
14 19133. I don't have it in front of me whether those
15 M.P.A.'s were ultimately withdrawn. I'm not -- I'm just
16 not clear one way or the other whether --

17 ADMINISTRATIVE LAW JUDGE DANG: That's fine.

18 MR. AMARA: Sure.

19 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

20 MS. MCCLURE: Would we be able to give that
21 information it was withdrawn? Would we be able to get
22 that and have you look at it if it is a factor? Because
23 it was withdrawn. I didn't owe any penalties, and it's
24 kind of two conflicting laws in a way. Because one says
25 you don't have to do it, and the other one says we're

1 going to impute it.

2 So when I -- I realized that, I went ahead and
3 did that. But I -- if it would help to show that there
4 were no penalties, no taxes owed, and ultimately nothing
5 happened from this, would that be helpful?

6 ADMINISTRATIVE LAW JUDGE STANLEY: Unless one of
7 my panel members thinks that is relevant. Based on the
8 evidence that we have, whatever you filed wasn't filed
9 within the time frame that you were given before they
10 issued the Notice of Proposed Assessments. So I'm not
11 sure that it would have any relevance to hold the record
12 open and get extra time.

13 MS. MCCLURE: But I don't see how if I have --
14 right here there's a law that there are no filing
15 requirements if it's under a certain amount, and I didn't
16 know until the -- this notice that they had imputed wages.

17 So until I get this notice saying, hey, we've got
18 \$300 from Wells Fargo and first -- and by the way, we have
19 \$106 'cause that's what the average person -- I didn't
20 know -- I didn't know that I had that. And it says
21 specifically there are no filing requirements that's under
22 that.

23 Now, I called them and I said to them, "What
24 makes you think I have a filing requirement? Did you get
25 a W-2 from anyone?"

1 The go, "No. All we have is \$300."

2 I said, "Well, why are you asking me?"

3 They said, "There's no -- there's no filing.
4 Then don't do it."

5 I didn't realize until I get this notice. That
6 notice tells me, hey, by the way -- and there were no
7 notices before -- we're imputing wages on you. And that's
8 why this filing requirement doesn't apply, which I think
9 is a conflict.

10 Because I know for a fact I earned under this,
11 and the law is if you earn under this, you don't have to
12 file. So I didn't know that they had imputed that 100
13 until I got it. And then by then it's too late.

14 ADMINISTRATIVE LAW JUDGE STANLEY: But the tax
15 year we're looking at is 2015. So --

16 MS. MCCLURE: No, but I was just saying if for
17 any reason it influence you. I'm happy to tell you.

18 ADMINISTRATIVE LAW JUDGE DANG: I think he's
19 saying under the law as long as a notice is issued that
20 you fail to respond to -- it's failing to respond is what
21 your argument is.

22 MR. AMARA: Correct, Judge.

23 ADMINISTRATIVE LAW JUDGE DANG: I think we'll --
24 and I understand you may have had, you know, wages below
25 the filing threshold for '11 and '12, but I think we'll

1 take that into consideration when we confer after this.

2 MS. MCCLURE: Right. And unfortunately he didn't
3 bring the notice before that. But a notice was given, hey
4 you need to file taxes. And then I called and I'm like,
5 hey why do I have to file taxes? I'm only showing \$300,
6 and they said I don't know. And I said, but -- then we
7 get this notice for the first time ever that says, oh,
8 we're imputing taxes. That's why you need to file it.

9 Well, nowhere in the prior notices -- they just
10 said file your taxes. And I, you know, I keep going back
11 to that. Why didn't they before then say, just so you
12 know we're imputing, and that's why we're asking you
13 because, you know, because of that?

14 And I thought I was within -- when they were
15 asking me, I thought I was within the thing because that's
16 the first time I ever saw the imputation after the notice
17 was filed. If I had known that -- if they had said, by
18 the way, here's the figure. And, you know, but I kept
19 calling them and they kept saying, no, you're good. Don't
20 worry about those notices. You don't have to file.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Given
22 the additional testimony, do you have any follow-up
23 questions, Mr. Amara?

24 MR. AMARA: No. No, judge.

25 ADMINISTRATIVE LAW JUDGE STANLEY: And Franchise

1 Tax Board still doesn't have any witnesses; correct?

2 MR. AMARA: Correct.

3 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So do
4 you have -- Ms. McClure, would you like to make a closing
5 statement or do you think you've said everything you need
6 to say?

7

8 CLOSING STATEMENT

9 MS. MCCLURE: Give me one second. I guess
10 closing statement would be that -- and I know I've
11 received lots of case laws against the taxpayers, but I
12 really think in this situation there was reasonable cause.

13 It was a huge amount of difference. They had the
14 money, and it wasn't willful neglect. I really did, all
15 the way along, respond to their notices. And so I think
16 this is kind of an unusual situation. It's not typical
17 that you have all these W-2's and 1099's and attorney fees
18 and all the different things that it would be reasonable,
19 and that I've shown not willful neglect to abate that.

20 And that's all. Thank you so much.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Thank you.

22 Mr. Amara.

23

24 CLOSING STATEMENT

25 MR. AMARA: Sure. I'll proceed with our closing.

1 As you just heard this case is really about Appellant's
2 incorrect belief that her efforts to obtain corrected
3 payer information relating to the 1099 that is missing
4 constitutes reasonable cause for failing to file her
5 return in response to a Demand for Tax Return Notice.

6 I just want to go over the facts briefly in this
7 case. FTB issued Appellant a Demand for Tax Return Notice
8 after she failed to timely file her 2015 tax return.
9 Appellant failed to file a return or prove she lacked a
10 filing obligation in response to that Demand for Tax
11 Return Notice, even after she was given a multiple-month
12 deferral.

13 Accordingly, FTB issued Appellant a Notice of
14 Proposed Assessment proposing to assess tax and penalties,
15 including the demand penalty in this case. Subsequent to
16 that, Appellant filed her 2015 taxable year return, paid
17 her liability, and filed a claim for refund, which was
18 denied.

19 And that brings us to where we are today. Now,
20 with respect to the legal framework in this case, the
21 penalties presumed correct. And the burden is on
22 Appellant to demonstrate both, that there was reasonable
23 cause and a lack of willful neglect. And in response to
24 some of what Appellant's argued, our position is she
25 hasn't established that first prong of reasonable cause

1 for failing to file her return.

2 As you just heard, her proffered reason for
3 failing to file was that she was making efforts to obtain
4 the corrected 1099 information. This can be classified as
5 lack of documentation or lack of information defense. And
6 as contained in our opening brief, there is substantial
7 authority for the proposition that lack of documentation
8 and lack of information does not constitute reasonable
9 cause for failing to file in response to a demand.

10 Where information is lacking or inaccurate, the
11 obligation on the taxpayer is to file a return based on
12 best estimates and submit amended return if necessary.
13 Indeed, Appellant demonstrated she was capable of taking
14 such action, and she filed her original return late and
15 filed an amended return to correct it.

16 She failed to take those steps in a timely manner
17 to avoid penalties. Her determination -- Appellant's
18 determination to put off filing the return demonstrates a
19 lack of reasonable cause, and penalties should be
20 sustained as a result.

21 And at that point -- at this point, that's all I
22 have. Thank you.

23 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. I
24 wanted clarification on your stipulation.

25 MR. AMARA: Sure.

1 ADMINISTRATIVE LAW JUDGE STANLEY: Exhibit G
2 shows a demand penalty of \$1,146.75. Are you saying that
3 you're reducing that to \$912.50 plus applicable
4 interest --

5 MR. AMARA: Correct.

6 ADMINISTRATIVE LAW JUDGE STANLEY: -- to the date
7 it was paid?

8 MR. AMARA: Correct.

9 ADMINISTRATIVE LAW JUDGE STANLEY: Do you have a
10 question?

11 ADMINISTRATIVE LAW JUDGE GAST: Yeah. Follow up
12 on that point. I wasn't really clear. If it's being
13 reduced, what happens to that difference between the
14 refund claim amount and the new assessed demand penalty?
15 Is that being refunded?

16 MR. AMARA: It's being refunded, correct. Yeah.
17 There's a reduced tax being refunded and the difference in
18 the penalties being refunded as well.

19 ADMINISTRATIVE LAW JUDGE GAST: Okay. Okay.

20 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.
21 Ms. McClure, you have an opportunity to respond to that.

22 MS. MCCLURE: I have no response. Thank you.

23 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Well,
24 at this point we're going to close the record on this
25 case. We'll take all these documents that we've talked

1 about under submission. The panel will confer, and we'll
2 come up with a written decision in no more than 100 days.
3 Thank you for coming and presenting.

4 MS. MCCLURE: Thank you.

5 MR. AMARA: Thank you, Judge.

6 MS. MOSNIER: Thank you.

7 ADMINISTRATIVE LAW JUDGE STANLEY: We're off the
8 record.

9 (Proceedings adjourned at 10:31 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 3rd day of January, 2019.

ERNALYN M. ALONZO
HEARING REPORTER