

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
HOMER H. HUMMEL, JR., AND) OTA NO. 18011268
MARGARET A. HUMMEL,)
)
APPELLANT.)
)
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TRANSCRIPT OF PROCEEDINGS

Van Nuys, California

Thursday, January 24, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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MARGARET A. HUMMEL,)
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Transcript of Proceedings, taken at
6150 Van Nuys Blvd., Van Nuys, California, 91401,
commencing at 10:08 a.m. and concluding
at 10:29 a.m. on Thursday, January 24, 2019,
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:

For the Respondent: State of California
Franchise Tax Board
By: BRAD COUTINHO
NATASHA PAGE

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I N D E X

WITNESSES

PAGE

Homer H. Hummel, Jr.

6

E X H I B I T S

(Appellant's Exhibits were received at page 17.)

(Franchise Tax Board's Exhibits were received at page 17.)

CLOSING STATEMENTS

Page

Line

By Mr. Hummel

12

21

By Mr. Coutinho

13

10

1 Van Nuys, California; Thursday, January 24, 2019

2 10:08 a.m.

3

4 ADMINISTRATIVE LAW JUDGE STANLEY: Let's go on
5 the record in this case. This is the matter of the appeal
6 of Homer H. Hummel Jr., and Margaret A. Hummel,
7 Case No. 18011268. The date is January 24th, 2019. We're
8 hearing this matter in Van Nuys, California, and the time
9 now is 10:08 a.m.

10 Once again, for the record, I am Teresa Stanley.
11 I have Judge Dang and Judge Gast with me. And can you
12 please restate your name for the record.

13 MR. HUMMEL: Yes. My name is Homer H. Hummel Jr.

14 MR. COUTINHO: Yes. It's Bradley Coutinho. My
15 last name is spelled, C-o-u-t-i-n-h-o. And I'm with
16 Natasha Page. Her last name is P-a-g-e.

17 ADMINISTRATIVE LAW JUDGE STANLEY: Thank you.
18 The issue that we have today to determine is whether the
19 Appellants qualify for the senior head of household credit
20 for tax year 2016. And a threshold question -- a
21 threshold issue that we had listed at the prehearing
22 conference is whether Appellants qualified for head of
23 household filing status for taxable year 2014 or 2015.

24 Do you agree that's what we're deciding today?

25 MR. HUMMEL: Yes. I will -- I will touch on

1 those two issues.

2 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.

3 MR. COUTINHO: Yes, Franchise Tax Board agrees.

4 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. And
5 then we had one stipulation at the prehearing conference
6 that Mr. And Mrs. Hummel were married in 2014, 2015 and
7 2016; correct?

8 MR. HUMMEL: Yes, that's correct.

9 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.

10 MR. COUTINHO: Correct.

11 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So then
12 you are still stipulating to that?

13 MR. HUMMEL: Yeah.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Then we
15 can go ahead and just jump into it, if you want to talk in
16 the narrative. You mentioned a statement. If you want to
17 read a statement, that's fine too. Whatever is most
18 comfortable for you.

19 MR. HUMMEL: Right. I have a written -- I have
20 my testimony written. I find that helpful so I don't
21 stutter, ohs and ahs, ums. Okay.

22 ADMINISTRATIVE LAW JUDGE STANLEY: You may
23 proceed.

24 MR. HUMMEL: Thank you. I begin with my position
25 on this case, OTA Case No. 18011268, which is that I'm

1 entitled to claim the credit for Senior Head of
2 Household-Code 163 for 216 -- excuse me -- 2016 tax year.
3 I cite California Law, Revenue and Tax Code -- abbreviated
4 R&TC, Division 2, Other Taxes, Part 10; Personal Income
5 Tax Chapter 2, Imposition of Tax; Section 17054.7 as the
6 tax relevant to the Credit for Senior Head of
7 Household-163.

8 ADMINISTRATIVE LAW JUDGE STANLEY: Oh, excuse me,
9 Mr. Hummel. I'm sorry to interrupt, but I forgot that we
10 take witness testimony under oath. I got it in my notes
11 here, and I forgot to swear you in. So if you don't mind,
12 can you stand for a moment.

13 MR. HUMMEL: Sure.

14
15 HOMER H. HUMMEL JR.,
16 produced as a witness by and on behalf of himself, and
17 having been first duly sworn by the Administrative Law
18 Judge, was examined and testified as follows:

19
20 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Thank
21 you.

22 MR. HUMMEL: Okay. Should I begin again, or may
23 I continue?

24 ADMINISTRATIVE LAW JUDGE STANLEY: You may
25 continue.

1 MR. HUMMEL: Okay. Thank you.

2 Section 17054.7 Subdivision C, as in Charlie,
3 reads quote, "Qualified senior head of household means an
4 individual who meets all of the following.

5 "Sub-item 1, attain the age of 65 before the
6 close of the taxable year.

7 "Sub-item 2, qualified as the head of household
8 in accordance with section 10742 for either of the two
9 taxable years immediately preceding the taxable year by
10 providing a household for qualifying individual who died
11 during either of the two taxable years immediately
12 preceding the taxable year.

13 "Sub-item 3, whose adjusted gross income for the
14 taxable year does not exceed \$37,500."

15 Now, my birth certificate -- that's Exhibit Log
16 Item No. 2 -- can be used to verify that I was over the
17 age of 65 at the close of the taxable year. That
18 addresses Subdivision(c)(1). My adjusted gross income --
19 abbreviated AGI -- for 2016 did not exceed the AGI limit.
20 And that addresses Subdivision(c)(3).

21 Note that 17054.7 subdivision(b), as in bravo,
22 (3), provides for specified inflation adjustment to the
23 AGI limit in subdivision(c)(3). Therefore, I clearly meet
24 the requirements of 17054.7 subdivision (c)(1) and (3).
25 And these two requirements are not contested by the FTB.

1 The crux of this case is the second requirement,
2 that is 17054.7 subdivision (c)(2). It begins with these
3 words, quote, "Qualified as the head of household in
4 accordance with Section 17042," unquote. Section 17042 is
5 brief and reads in total, quote, "Section 2(b) and (C) of
6 the Internal Revenue Code relating to definitions of head
7 of household and certain married individuals living apart
8 respectively, shall apply except otherwise provided,"
9 unquote.

10 The FTB document titled "Forms and Instructions,
11 California 5402016 Personal Income Tax Booklet," that's in
12 FTB's opening brief Exhibit F, which I will refer --
13 subsequently refer to as the, quote, "Tax Booklet,"
14 unquote.

15 Page 13 contains instructions for the credit for
16 senior head of household, Code 163. And these
17 instructions meet the, quote, "Except as otherwise
18 provided," unquote, cause of section 17042. It is also
19 important to note that tax return filing status is nowhere
20 mentioned in section 17054.7.

21 The tax booklet on page 13, Instructions for the
22 Credit for Senior Head of Household-Code 163, the second
23 bulleted requirement has its own definition of head of
24 household. That requirement begins with the words,
25 "Qualified as a head of household in 2014 or 2015 by

1 providing, dot, dot, dot. That is providing something.

2 Well, that something has two parts.

3 One, a household for qualifying individual, and
4 two, it defines that qualifying individual as one who died
5 during 2014 or 2015. Now, addressing the second part of
6 that providing, my son, Homer H. Hummel III, died during
7 2015. So he is a qualifying individual. And addressing
8 the first part, I provided a household for him his entire
9 life. Therefore, I have met the second bulleted
10 requirement in the tax booklet.

11 The tax booklet, page 13, Instructions for the
12 Credit for Senior Head of Household-Code 163, does refer
13 to filing status in one sentence, quote, "If you meet all
14 the conditions listed above, you do not need to qualify to
15 use the head of household filing status for 2016 in order
16 to claim this credit," unquote.

17 Therefore, I am entitled to claim the Credit for
18 Senior Household-Code 163 for the 2016 tax year. I now
19 point out an important error in the FTB's opening brief,
20 dated January 25, 2018. In the quote, "FTB's position,"
21 section of the brief, the second paragraph purports to
22 report the second bulleted requirement of the tax code
23 booklet instructions for the Credit for Senior Head of
24 Household-Code 163 as, quote, "Item 2, qualify for the
25 head of household filing status in 2014 or 2015 by

1 providing a household for a qualifying individual who died
2 during 2014 or 2015," unquote. That is correct.

3 The correct quote, you can refer to FTB's opening
4 brief, Exhibit F, is, quote, "Qualified as the head of
5 household in 2014 or 2015 by providing a household for a
6 qualifying individual who died during 2014 or 2015." Note
7 that the correct quote does not contain the words "filing
8 status."

9 The entire multipage discussion of head of
10 household filing status in the FTB's opening brief is
11 irrelevant to the case being heard today.

12 This concludes my testimony for this case, and
13 I'm open for questions from panel or the FTB
14 representative.

15 ADMINISTRATIVE LAW JUDGE STANLEY: Mr. Coutinho,
16 do you have any questions?

17 MR. COUTINHO: We do not have any questions.

18 ADMINISTRATIVE LAW JUDGE STANLEY: Judge Dang?

19 ADMINISTRATIVE LAW JUDGE DANG: No questions.

20 ADMINISTRATIVE LAW JUDGE STANLEY: Judge Gast?

21 ADMINISTRATIVE LAW JUDGE GAST: No questions.

22 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Nor do
23 I.

24 MR. HUMMEL: Okay.

25 ADMINISTRATIVE LAW JUDGE STANLEY: So you must

1 have done a great job. So rather than -- unless you have
2 something you want to conclude with, we will turn to the
3 Franchise Tax Board and see what their response is.

4 MR. HUMMEL: Okay. Thank you. Excuse me. The
5 next thing on the agenda would be a -- well, questions and
6 then next one after that is closing statement by the
7 Appellant. That's listed here.

8 ADMINISTRATIVE LAW JUDGE STANLEY: Right. Right.
9 So you're prepared to do that?

10 MR. HUMMEL: No. In fact I'm going to wave that,
11 and I will have a final statement.

12 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So
13 Mr. Coutinho, you said you don't have any witnesses. I
14 take it that's still accurate?

15 MR. COUTINHO: That is correct.

16 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So then
17 if you do have a concluding statement of some sort to
18 make, Mr. Hummel, now is it the time for that.

19

20 CLOSING STATEMENT

21 MR. HUMMEL: Okay. Members of the panel, please
22 note that I have in a detailed manner cited California law
23 relevant to this case and relevant portions of the FTB's
24 tax booklet document as evidence of my claim that I'm
25 entitled to the credit for Senior Head of Household-Code

1 163 for the 2016 tax year.

2 I implore you to rule favorably toward my
3 position in this case, and thank you for your attention to
4 my testimony today. Thank you.

5 ADMINISTRATIVE LAW JUDGE STANLEY: Thank you.

6 Mr. Coutinho, do you have a closing statement.

7 MR. COUTINHO: I do.

8

9 CLOSING STATEMENT

10 MR. COUTINHO: Good morning. There's only one
11 question to be answered in this appeal, and that is
12 whether Appellants -- that is Appellants are not entitled
13 to the Senior Head of Household Credit for the 2016 tax
14 years, because Appellants are not entitled for head of
15 household filing status for the 2014 and 2015 tax years.

16 Appellants filed a timely 2016 California tax
17 return with the filing status married, filing joint. On
18 their return, Appellants reported a Senior Head of
19 Household credit of approximately \$800. Subsequently, FTB
20 issued a notice of tax return change denying Appellants
21 the credit.

22 Appellants paid the balance owed and filed a
23 claim for refund asserting that they are entitled to
24 Senior Head of Household Credit. FTB denied the claim for
25 refund that the Appellants filed as timely appealed. The

1 Senior Head of Household Credit is available to senior
2 citizens who can use the head of household filing status,
3 but have lost the person who is their qualifying
4 individual due to death.

5 The credit can be claimed by an individual who
6 meets all of the following requirements. As Appellant
7 stated, one, the individual is 65 years or older as of the
8 last day of the taxable year.

9 Two, he or she qualifies as head of household in
10 accordance with Section 17042 for either of the two
11 taxable years immediately preceding the taxable year by
12 providing a household for a qualifying individual who died
13 during either of the two taxable years immediately
14 preceding the taxable year.

15 And three, the individual's adjusted gross income
16 does not exceed \$71,370 for the 2016 tax year. As stated
17 by Appellants, the main contention in this appeal is that
18 Appellants do not meet the second requirement of the
19 Senior Head of Household Credit. Specifically, they have
20 not established that either of them qualified for head of
21 household filing status for the 2014 or the 2015 tax
22 years.

23 Under Revenue and Taxation Code Section 17042,
24 California has adopted the federal definition of head of
25 household. The federal analysis for head of household

1 filing status begins with whether the taxpayer was
2 unmarried or considered unmarried during the tax year.
3 Because only a taxpayer who falls into one of those
4 statuses may qualify for head of household filing status.

5 A taxpayer is considered unmarried if they did
6 not live with his or her spouse for the last six months of
7 the tax appeal. In this appeal Appellants do not qualify
8 for head of household filing status for 2014 or 2015.
9 Because for both tax years, they filed tax returns using
10 the filing status married, filing joint.

11 Further, Appellants have not provided any
12 evidence establishing that they were separated for the
13 last six months of the 2014 or the 2015 tax years.
14 Therefore, Appellants do not qualify for the Senior Head
15 of Household Credit for the 2016 tax year because they
16 have not established that they were entitled to head of
17 household filing status for the 2014 or the 2015 tax
18 years.

19 Appellants incorrectly assert that they are
20 entitled to the Senior Head of Household Credit because
21 they provided a household for a qualifying individual who
22 died in 2015. However, the law not only requires
23 Appellants to provide a household for qualifying
24 individual, but also requires that Appellants meet the
25 requirements for head of household filing status under

1 Section 17402.

2 Appellant's arguments today was regarding the
3 instructions found in FTB's booklet. Appellant argues
4 that the booklet provides a new definition for head of
5 household. However, FTB as an administrative agency does
6 not have the legal authority to interpret a statute in
7 such a way to change its meaning or effect.

8 Accordingly, the reason the instructions do not
9 provide a comprehensive definition of head of household is
10 due to space, and thus forth, does not fully recite
11 Revenue Taxation Code Section 17054.7. However, Appellant
12 has not established that he's entitled to head of
13 household for 2014 and 2015 tax years, and thus, he's not
14 entitled to Senior Head of Household Credit for the 2016
15 tax year.

16 If you have any questions, I would be happy to
17 address them. Thank you.

18 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.
19 Actually, I'm going to ask Mr. Hummel if he wants to have
20 the final word here.

21 MR. HUMMEL: Yes, I do.

22 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.

23 MR. HUMMEL: Okay. He quotes Section 17042, and
24 as I have noted in my testimony, that includes four
25 important words at the end of that section, "except as

1 otherwise provided." And I claim that the FTB's own
2 document, the tax booklet, is satisfy -- meets that clause
3 of Section 17042.

4 And furthermore the tax booklet on page 13 has
5 this sentence, "If you meet all the conditions listed
6 above, you do not need to qualify to use the head of
7 household filing status for 2016 in order to claim this
8 credit."

9 And there was another important point that -- the
10 entire section of 17054.7 does not have the words "filing
11 status" in it. And so for those reasons and with that
12 evidence, I feel I'm entitled to claim that Senior Head of
13 Household Credit.

14 Okay. That's all I have to say.

15 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. One
16 thing that I failed to do in the beginning was to admit
17 the exhibits into evidence on the record. So exhibits 1
18 through 6 for Appellant and Exhibits A through E, with the
19 inclusion of the Personal Income Tax Booklet, will be
20 entered into evidence.

21 Any objections?

22 MR. HUMMEL: No.

23 MR. COUTINHO: No objection.

24 ADMINISTRATIVE LAW JUDGE STANLEY: Okay.

25 ///

1 (Appellant's Exhibits 1-6 were received
2 in evidence by the Administrative Law Judge.)
3 (Respondent's Exhibits A-E were received
4 in evidence by the Administrative Law Judge.)
5 ADMINISTRATIVE LAW JUDGE STANLEY: All right.
6 Then I would like to thank you for coming and
7 participating in this hearing. And the panel is going to
8 take what you said under consideration, and we'll have a
9 decision out to you within -- we shoot for within 100
10 days. It may be sooner than that.
11 MR. HUMMEL: Okay.
12 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. All
13 right. Thank you.
14 MR. HUMMEL: Thank you.
15 MR. COUTINHO: Thank you.
16 ADMINISTRATIVE LAW JUDGE STANLEY: Off the
17 record.
18 (The preceding was concluded at 10:29 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 15th day
of February, 2019.

ERNALYN M. ALONZO
HEARING REPORTER