

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
JOSIE R. MACADANGDANG,) OTA NO. 18042865
)
) APPELLANT.)
)
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_____)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, February 20, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
355 South Grand Avenue, South Tower, 23rd Floor,
Los Angeles, California, 90012, commencing
at 10:06 a.m. and concluding at 10:30 a.m.
on Wednesday, February 20, 2019, reported
by Ernalyn M. Alonzo, Hearing Reporter, in
and for the State of California.

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APPEARANCES:

Panel Lead: Hon. DOUGLAS BRAMHALL

Panel Members: Hon. LINDA CHENG
Hon. JEFFREY MARGOLIS

For the Appellant: JOSIE MACADANGDANG, Taxpayer
GEORGE CLIFTON, Witness

For the Respondent: State of California
Franchise Tax Board
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(Appellant's Exhibits were received at page 5.)

(Franchise Tax Board's Exhibits were received at 5.)

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Los Angeles, California; Wednesday, February 20, 2019

10:06 a.m.

ADMINISTRATIVE LAW JUDGE BRAMHALL: We'll go on the record now.

This is the appeal of Josie R. Macadangdang, OTA, Case No. 18042865. It is Wednesday, February 20th, 2019, at 10:06 a.m. As I said, I'm Doug Bramhall. I'm the lead judge for the hearing today. On the panel with me is Linda Cheng and Jeffrey Margolis.

Parties for the record will, again, please introduce yourself. For the Franchise Tax Board?

MR. COUTINHO: For the Franchise Tax Board it's Brad Coutinho. My last name is spelled C-o-u-t-i-n-h-o.

MS. MOSNIER: Marguerite Mosnier, M-o-s-n-i-e-r.

ADMINISTRATIVE LAW JUDGE BRAMHALL: For the Appellant, please introduce yourself.

MS. MACADANGDANG: Josie R. Macadangdang.

MR. CLIFTON: (ANOTHER LANGUAGE IS SPOKEN).

MS. MACADANGDANG: He said, "I am Josie's husband. Is that okay?"

ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you. That's fine. And acting as a representative I understand?

MS. MACADANGDANG: Yes.

ADMINISTRATIVE LAW JUDGE BRAMHALL: The issue in

1 this appeal is whether Josie, as you have asked to be
2 referred to, qualifies for the head of household filing
3 status for tax year 2014. I have handed out exhibit logs
4 that I received no objection to, per se, showing
5 Appellant's Exhibits 1 through 5 and Franchise Tax Board
6 Exhibits A through I.

7 These exhibits are acceptable as evidence without
8 objection and, therefore, I am admitting them into the
9 record by reference to the exhibit log.

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

12 (Department's Exhibits A-I were received
13 in evidence by the Administrative Law Judge.)

14 ADMINISTRATIVE LAW JUDGE BRAMHALL: Are you ready
15 to begin, Josie?

16 MR. CLIFTON: I'm the one speaking. Josie's
17 native language is not English. You have her so
18 discombobulated that she doesn't have her -- she has
19 foremost in her mind her native dialect of Ilocano from
20 the Philippines.

21 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay.

22 MR. CLIFTON: You know I'm speaking for her. I
23 prepared the returns in my handwriting.

24 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. Please
25 begin.

1 column, "Use the same filing status for California that
2 you used for your federal income tax return."

3 A monkey could understand that. Being a monkey
4 even I understand it. 16 words. That's why we're here.
5 I read those 16 words, and I thought, "Oh, we used HOH."
6 You know what I mean when I say that? Head of household.
7 We use HOH for the federal. We're going to use it for the
8 California. It says right here. I may do it. I'm using
9 their words.

10 Think about how much money is being wasted this
11 whole thing. They're working, the salaries, being here
12 and all, because we got 400 some-odd dollars in a refund
13 that it claims we shouldn't have gotten. The words here,
14 16 word -- back to arrogance. All the FTB had to do was
15 say, "You know what George and Josie, you're right. We
16 should withdraw those words, let you go. California can
17 afford the \$400 that you got. California FTB has learned
18 something, and it will never put that in a booklet again."

19 But when I -- earlier today on the way here, we
20 tried to go into a building. The first door I grabbed --
21 I hadn't noticed carefully before grabbing the handle --
22 said use other door. Okay. Here's what I didn't do. I
23 didn't -- nor did Josie -- tap on the window trying to get
24 the attention of the security people inside in order to
25 say, "Hi. Is it true I have to use the other door? Or

1 may I in fact use this door even though the sign on it
2 says use the other door?"

3 I didn't do that. Nobody here would. I used the
4 other door. I followed instructions. Okay. Here
5 16 words, "Use the same filing status for California that
6 you used for your federal income return." As I've shown
7 in our brief, we used head of household under federal
8 return. So I used head of household on California state
9 return.

10 Now, if it wants to claim that there's any
11 ambiguity, uncertainty, confusion, double interpretations,
12 whatever, that's to be construed against the maker of the
13 document just as in contracts law. And moreover, this is
14 a contract of adhesion. In my brief I talk about implied
15 law contracts and implied-in-fact contracts. But even if
16 you want to say -- the FTB wants to say, "Oh, it's not a
17 contract," it's an agreement, and it's analogous.

18 The point about an ambiguity and uncertainty is
19 to be construed against the maker of the document in which
20 you find uncertainty or ambiguity. Analogously, it should
21 apply to an agreement. My gosh, this is just an
22 absurdity. We are fine upstanding citizens. Yeah, I've
23 gotten mad today about the whole thing with your calling
24 me sir, even after I say not to.

25 Because I have a former buddy from the Marine

1 Corps that he's not my buddy anymore. His son felt at
2 some point he was a daughter. And you know how some
3 people in this country are. Some people handle that kind
4 of a thing well. Some don't, just as when somebody comes
5 out being whatever it might be. Well, that child is now
6 in heaven because of suicide because my buddy kept saying
7 to him, "You're a sir. You're a mister," doing what the
8 drill instructors did to us in Marine Corps boot camp.

9 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay.

10 MR. CLIFTON: And so I'm on an uphill battle. I
11 make a fool out of myself, I'm sure, when I tell people in
12 Best Buy and everywhere, don't call me sir. That's not my
13 name. I'll say I've never been knighted. I had --

14 ADMINISTRATIVE LAW JUDGE BRAMHALL: Let's stay to
15 the point, okay? Please.

16 MR. CLIFTON: So anyway, I'm trying to get the
17 country to cut with the sir, the ma'am, and mister because
18 we don't really know; right?

19 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay.

20 MR. CLIFTON: You and I grew up seeing Bruce
21 Jenner winning the Olympics one way; right? Now, he's
22 dealing -- she's Caitlyn Jenner.

23 ADMINISTRATIVE LAW JUDGE BRAMHALL: Have you
24 finished presenting your case on the head of household
25 issue?

1 MR. CLIFTON: So any way it has said that on page
2 3 of the 6-page brief, you state that, "Because you used
3 the head of household filing status in your federal
4 return, you were required to use the head of household
5 filing status in your state tax return." That's a lie.

6 Having been in the CIA, I am very careful -- not
7 perfect -- but I did not say required. That's a lie. And
8 it's doing it to boost its position, and I hate that
9 because, again, that's arrogance. That's a falsehood.
10 That's fake news as the clown in the White House likes to
11 say. I never said required. I said we did the one,
12 claiming HOH on the California state return because of
13 having done it on the federal, and because of this 16-word
14 sentence that says, do it on federal, do it on state.

15 So that's a lie. I haven't lied on a document
16 here that I presented. It has lied. Here's another
17 thing, second paragraph of that same page in the middle.
18 "If you were objecting to the law as it is written," I'm
19 not objecting to any law as it is written. I'm talking
20 about what you have here. Think of how many people
21 wouldn't fight this. You know most people wouldn't;
22 right?

23 Josie and I fight everything because I've seen
24 guys give their lives in Vietnam for nothing. 23 vets
25 they kill themselves, and I stand up for their memories,

1 if you will. We shouldn't have been there. I'm not proud
2 of being there, and I hate being told "thank you for your
3 service." So please don't anybody say that. Never should
4 have been in Vietnam.

5 But any way, "If you are objecting to the laws as
6 it is written, your disagreement with the law should be
7 directed to the California State Legislature." I'm not
8 disagreeing with anything. I'm saying look at your
9 doggone words. Look at your words. Get off your high
10 horse. Quit being so arrogant, which is typical American
11 behavior. I know. I've been all over the world. I know
12 the ugly American. That's why people around the world
13 hate Americans.

14 They didn't hate me because I'm there speaking
15 the language when I was in China, Japan, France, Latin
16 America, Mexico. I speak four foreign languages. Any
17 way, if you're objecting to the laws as it is written --
18 ridiculous. Again, side tracking the whole matter. You
19 say -- I won't keep reading -- but the 16 words, I
20 followed them.

21 We don't have children. I bet if we had one
22 about -- I don't know. When do children read? Six?
23 Seven? Five? I don't know. I bet the child would read
24 that and say, "Mommy, remember you did the federal one,
25 one way. Well, it says here if you do the federal one

1 way, you may do the state the other way." Oh, thank you
2 six-year old child.

3 All this entity has to do is come off of its high
4 horse, admit an error, an ambiguity an amount of
5 uncertainty, or just too many words. Pull them out and
6 never publish them again in a booklet, and nobody will
7 have a leg to stand on for doing what I've done; right?

8 This thing was filed by April of '15. Here we
9 are late February '19. We're almost four years later. If
10 it isn't a contract, if it isn't an agreement, it should
11 be considered one. This issue about ambiguity should be
12 considered analogous to whatever you do call this. And
13 who produced it? Not I. We're the little people here.
14 We're the novices. This entity is the expert in the
15 field, if you will. It has drafted this.

16 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. So
17 I've read your brief, and it's well written. Your case is
18 well presented. I appreciate that, and so far you
19 repeated pretty much what's in there. Would you like to
20 conclude?

21 MR. CLIFTON: Yes. It all boils down to
22 proofreading. Proofreading. As is the case with so many
23 people today, you too, meaning the FTB, have failed at
24 proofreading. When you write a document, proofread it for
25 spelling, grammar, content, et cetera. How many times do

1 we call a business today only to hear, "Your call may be
2 recorded for quality control?" And I what I usually say
3 upon hearing that, even though there probably isn't a
4 human being there, you have no quality to control.

5 And when somebody does get on the line and say,
6 "You have no -- you will not record -- you do not have my
7 permission to record." Therefore, California law says you
8 may not legally record without my permission. What do
9 these companies do today? They think, oh by saying it's
10 going to be recorded, and you're not objecting within,
11 that's consenting to it.

12 It's just same as coming into this building
13 today. I have to show an ID to get into a building, yet
14 nobody checks the bags. Think of that. I have to show an
15 ID to get in because a few people do bad in the world;
16 right? You and I grew up. I'm not saying you're as old
17 as I am, but you and I -- I bet you remember going to an
18 airport there's nothing; right? And yet you've never
19 hijacked a plane or wanted to. Neither have I.

20 ADMINISTRATIVE LAW JUDGE BRAMHALL: George, I'm
21 sorry. I just want to keep you on track. Okay?

22 MR. CLIFTON: Okay. That's it.

23 ADMINISTRATIVE LAW JUDGE BRAMHALL: Is that your
24 conclusion for now? You'll have an opportunity for final
25 closing argument after the FTB presents its case. Okay.

1 Thank you.

2 Franchise Tax Board, ready?

3 MR. COUTINHO: Yes.

4 ADMINISTRATIVE LAW JUDGE BRAMHALL: Proceed.

5

6 OPENING STATEMENT

7 MR. COUTINHO: Good morning. Appellant is not
8 entitled to head of household filing status for the 2014
9 tax year because the person she claimed does not meet the
10 requirements to be a qualified person. Appellant
11 incorrectly asserts that her fiancé is a qualifying person
12 for head of household filing status.

13 California adopts the federal definition of head
14 of household. Internal Revenue Code Section 2(b) sets out
15 the requirements for head of household filing status.
16 Section 2(b)(3) of the Internal Revenue code contains the
17 limitations. One of the limitations states that a
18 taxpayer shall not be entitled to head of household filing
19 status if the only relationship between the taxpayer and
20 the claimed individual is that the individual resides
21 within the same household as the taxpayer.

22 In short, a qualified person as specified under
23 Internal Revenue Code Section 152 must be related to the
24 taxpayer either by blood or marriage. On page 9 of the
25 IRS Publication 501 for the 2014 tax year, there's an

1 example that's relevant to this appeal.

2 The example states that a taxpayer's girlfriend
3 who lived with the taxpayer for the entire year could not
4 be claimed as a qualifying person for head of household
5 filing status, because the taxpayer's girlfriend is not
6 related to them by blood or marriage.

7 Accordingly, Appellant's fiancée cannot be
8 considered a qualifying person, and thus Appellant is not
9 entitled to head of household filing status for the 2014
10 tax year. Appellant also incorrectly asserts that since
11 the IRS accepted Appellant's filing status as head of
12 household, California must also accept her filing status.

13 California case law states that FTB is not bound
14 to adopt the conclusions reached by the IRS. Further,
15 Section 18521(a)(2) of the Revenue and Taxation Code
16 states that if FTB determines that the filing status used
17 on a taxpayer's federal income tax was incorrect, FTB may
18 revise the return to reflect the correct status.

19 ADMINISTRATIVE LAW JUDGE BRAMHALL: Excuse me,
20 Mr. Coutinho, what section is that?

21 MR. COUTINHO: That's Section 18521(a)(2) of the
22 Revenue and Taxation Code.

23 In this case, FTB conducted its own independent
24 audit and determined that Appellant did not meet her
25 burden in establishing that she's entitled to head of

1 household filing status.

2 Finally, Appellant's argument that FTB
3 instructions are unclear and any ambiguity should be
4 resolved against FTB are without merit. Appellant points
5 to FTB's instructions, which directs the taxpayer to use
6 the same filing status for California that a taxpayer uses
7 for the federal tax return.

8 However, this instruction does not distinguish
9 the requirement that a taxpayer must qualify for the
10 filing status that is designated on both their federal and
11 California tax returns. The FTB's instructions presuppose
12 Appellant correctly reported her filing status on her
13 federal return.

14 However, even if the Office of Tax Appeals were
15 to determine that FTB's instructions were unclear, the
16 Office of Tax Appeals is held in the appeal of John
17 Sudello, a Presidential Opinion; that when FTB's
18 instructions are alleged to be unclear or misleading, the
19 taxpayer must follow the law and not the instructions.

20 Accordingly, FTB respectfully request that you
21 sustain this matter, and Appellant be denied head of
22 household filing status for 2014 tax year.

23 I would be happy to address any questions or
24 concerns the panel may have. Thank you for your time.

25 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.

1 Questions?

2 ADMINISTRATIVE LAW JUDGE MARGOLIS: I have a
3 question, Mr. Coutinho. I just want to make sure I'm
4 correct here. So the FTB is not imposed to any penalty
5 against the taxpayer here, but have them pay what FTB has
6 determined is the correct amount of tax?

7 MR. COUTINHO: That is correct. They've also
8 allowed a dependent exemption credit in this case. It's
9 just change the filing status from head of household
10 status to filing single.

11 ADMINISTRATIVE LAW JUDGE MARGOLIS: Okay. Thank
12 you.

13 ADMINISTRATIVE LAW JUDGE BRAMHALL: George, would
14 you like to make a closing statement or rebuttal to that?

15

16 CLOSING STATEMENT

17 MR. CLIFTON: Okay. As is stated on the 23rd
18 page of my brief -- the brief I have prepared on behalf of
19 Josie. When you were driving your car and you stop for a
20 red light, do you go when the light is green, or do you
21 pick this book up, the California Driver Handbook English
22 2018? Of course it's in Spanish and maybe in other
23 languages.

24 When you were driving your car and you stopped
25 for a red light, do you go when the light is green, or do

1 you pick this book up and look to see if it says anything
2 about not going? My gosh, all of the citations of law and
3 even if cases were cited or not -- I didn't hear well
4 because the individual with FTB who just spoke on his
5 behalf, spoke very low.

6 But anyway, none of that matters because I was
7 directed out of that maze, so to speak, by the 16 words.
8 There's no way around this. And if we lose, we're going
9 to go to court and we're going to put it before regular
10 everyday people to hear. And I feel quite certain that
11 they're going to agree with us.

12 If not, then I don't know anything, because we
13 didn't deal with anything else. I saw that, but I said
14 we're not about to break the law or cheat or lie or steal
15 or whatever. Never have. We don't do that. We claim
16 income that isn't even paid with a check, even if it's
17 cash. I claim it. I say, "Honey, we're going to claim
18 it. We're going to claim it. That's the right thing to
19 do."

20 I don't want to ever look behind my shoulder to
21 look at who's coming after me. But anyway, we were
22 steered clear of statutes, exemptions, case law because of
23 the 16 words. What this entity should do is say, you know
24 what? You're right. This is a big entity. The book is
25 what, 100 pages or whatever. Who can keep track? We're

1 going to take 16 words out. You go scot-free. Nobody
2 else will have it to use. The end.

3 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.
4 That concludes the hearing today. Thank you all for your
5 time and effort that you put into presenting your cases.

6 The record is now closed. We will convene as a
7 panel, issue a decision in writing. Our goal is within a
8 hundred days from today. That concludes. Thank you.

9 (Proceedings adjourned at 10:30 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 13th day of March, 2019.

ERNALYN M. ALONZO
HEARING REPORTER