

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
ROBERT G. KETCHUM, ) OTA NO. 18011175  
)  
APPELLANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Wednesday, April 24, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF, )  
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ROBERT G. KETCHUM, ) OTA NO. 1801175  
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 APPELLANT. )  
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Transcript of Proceedings, taken at  
355 South Grand Avenue, South Tower, 23rd Floor,  
Los Angeles, California, 91401,  
commencing at 10:02 a.m. and concluding  
at 10:22 a.m., on Wednesday, April 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. LINDA CHENG

For the Appellant: JOHN C. LEVINE

For the Respondent: State of California  
Franchise Tax Board  
By: BRIAN MILLER  
MARIA BROSTERHOUS  
  
TAX COUNSEL  
Legal Division  
P.O. Box 1720  
Rancho Cordova, CA 95741  
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(Franchise Tax Board's Exhibits were received at 6.)

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Los Angeles, California; Wednesday, April 24, 2019

10:02 a.m.

ADMINISTRATIVE LAW JUDGE STANLEY: We are going on the record.

This is the matter of appeal of Robert G. Ketchum, Case No. 18011175. The date is April 24th, 2019. The time is 10:02 a.m., and we're in Los Angeles, California. Once again, I am Judge Teresa Stanley, and I have Judge Kenneth Gast and Judge Linda Cheng with me.

And once again, I'm going to ask the parties to identify themselves for the record.

MR. LEVINE: John LeVine, EA. I'm representing Robert Ketchum. And the reason is because of the fact that basically it's my error that I am here for.

ADMINISTRATIVE LAW JUDGE STANLEY: Thank you.

MR. MILLER: I am Brian Miller representing Respondent Franchise Tax Board.

MS. BROSTERHOUS: I'm Maria Brosterhous. And I'll spell that for you, B-r-o-s-t-e-r-h-o-u-s.

ADMINISTRATIVE LAW JUDGE STANLEY: Thank you. And particularly, Mr. LeVine, you haven't done this before. If you have any questions at any point, feel free to ask them.

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MR. LEVINE: No problem.

ADMINISTRATIVE LAW JUDGE STANLEY: Okay. We're first going to admit appellant's Exhibits 1 through 4 into the record and Respondent's Exhibits A through E. They will be admitted unless there's an objection. Seeing none, I'm going to admit those.

(Appellant's Exhibits 1-4 were received in evidence by the Administrative Law Judge.)

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

ADMINISTRATIVE LAW JUDGE STANLEY: So we had determined at our prehearing conference that opening statements would not be necessary.

So Mr. LeVine, I'm going to ask you to stand and raise your right hand, please.

JOHN C. LEVINE,

produced as a witness by and on behalf of the appellant, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

MR. LEVINE: I do.

ADMINISTRATIVE LAW JUDGE STANLEY: Thank you. You may be seated. Okay. I'm going to let you go ahead and proceed with your case.



1 one-month penalty and just have it taken there.

2 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Is that  
3 what you want to say today?

4 MR. LEVINE: Yes, that's what I want to say  
5 today.

6 ADMINISTRATIVE LAW JUDGE STANLEY: Does the  
7 Franchise Tax Board have any questions, Mr. Miller?

8 MR. MILLER: No questions, Your Honor.

9 ADMINISTRATIVE LAW JUDGE STANLEY: Judge Gast?

10 ADMINISTRATIVE LAW JUDGE GAST: No questions.

11 ADMINISTRATIVE LAW JUDGE STANLEY: Judge Cheng?

12 ADMINISTRATIVE LAW JUDGE CHENG: No questions.

13 ADMINISTRATIVE LAW JUDGE STANLEY: I actually do.  
14 Is there more to the story or the file?

15 MR. LEVINE: Well, basically there's more in the  
16 file than just what I'm saying here. But basically, the  
17 issue that is out of that thing or what it all gets boiled  
18 down to is the fact that, besides having the medical  
19 issues and stuff that are in the file, it was basically  
20 the fact that I had come back, you know, within the  
21 context of the week or so filing the due date of the  
22 return.

23 I saw it sitting there and basically panicked,  
24 and then I immediately filed it. And as I say, you know,  
25 I can't -- \$9,000 or whatever the number is right now, I



1 can't, you know, continue doing it and making a living at  
2 it. Because if I'm charging 4 or \$500 or \$1000 for a  
3 return, there's no way I can pay a \$9,000 fee.

4 ADMINISTRATIVE LAW JUDGE STANLEY: Based on what  
5 we saw in the file with the medical record, can you let us  
6 know kind of how the dates worked with the date you were  
7 released back by your doctor to go back to work, and also  
8 whether anybody was taking care of your practice while you  
9 were unable to do so?

10 MR. LEVINE: My office manager, who is my wife,  
11 was doing it. I was basically hospitalized for seven  
12 weeks over here at the USC Hospital and -- let me take  
13 some water.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Sure. Take  
15 your time.

16 MR. LEVINE: And I basically came out of there.  
17 I had a stroke, and I -- the stroke was serious enough  
18 that I, for the first four-and-a-half weeks or so, I was  
19 out of it. I apparently was doing -- talking and stuff  
20 with people, but I was out of it.

21 And the conditions were so bad that the doctors  
22 mentioned to my wife that there was a possibility that I  
23 was going to need nursing care -- 24-hour nursing care.  
24 And as there's a -- I believe there's a letter from my GP  
25 in there, and some other stuff that I sent.

1 ADMINISTRATIVE LAW JUDGE STANLEY: And do you  
2 remember the date that you went back to work?

3 MR. LEVINE: I can tell you the date I left work.  
4 I left work around 6:00 o'clock or 7:00 o'clock in the  
5 morning, and I apparently drove home. I don't have any  
6 remembrance of it. And my wife found me on the bottom of  
7 the bed or the floor of the bed where I was apparently  
8 putting on or taking off clothes. And so she called to  
9 take me to the hospital, and the -- and I basically was  
10 checked in for the next four-and-a-half weeks.

11 I was totally out of it. And I would say it was  
12 around -- I want to say it was the 14th of April, and it  
13 was in the morning.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. But  
15 then at some point your doctor did release you to work at  
16 least part-time. That's the reason the file --

17 MR. LEVINE: Right. Right.

18 ADMINISTRATIVE LAW JUDGE STANLEY: Do you  
19 remember around when?

20 MR. LEVINE: Well, basically, it was -- I was out  
21 of it for the year coming, and it was -- I basically came  
22 home. I was not allowed to do much. I probably went  
23 through, I think August, before I could really go back to  
24 work full time. And as I say, it was a case that it was  
25 one return, and it happened to be a big return.

1 ADMINISTRATIVE LAW JUDGE STANLEY: In your  
2 practice, do you normally relay back to your clients when  
3 tax returns have been processed and accepted? Do you  
4 provide them that information?

5 MR. LEVINE: I mean, not regularly, no. It's  
6 once they send back the documents, I knowledge the receipt  
7 of the documents to them. And I then tell them that, you  
8 know, I will e-file it. And on that statement alone, they  
9 basically, you know, allow me to go forward with it. And  
10 this one here -- this client in particular is a client  
11 that we do bookkeeping and other services for on an  
12 ongoing situation. So he -- my wife, who is my office  
13 manager, is in regular contact with him.

14 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. While  
15 you were out, was your wife processing other clients'  
16 returns?

17 MR. LEVINE: No. She doesn't have the authority  
18 to do it. In other words, I'm an EA and I can go ahead  
19 and do it. And basically she was leaving everything  
20 there, you know, for me to go forward with it. Plus I had  
21 all the extensions that, you know, she had to do on the  
22 last day.

23 ADMINISTRATIVE LAW JUDGE STANLEY: So she could  
24 file extensions, but she could not file returns?

25 MR. LEVINE: Well, she -- I mean, she can do it

1 in the sense that it's basically putting the information  
2 in, and there's no signature on the form. And then she,  
3 you know, took care of it that way.

4 ADMINISTRATIVE LAW JUDGE STANLEY: And when you  
5 e-file for clients, do you have a system for checking --

6 MR. LEVINE: Yes.

7 ADMINISTRATIVE LAW JUDGE STANLEY: -- to make  
8 sure it's being done?

9 MR. LEVINE: Yes.

10 ADMINISTRATIVE LAW JUDGE STANLEY: And that  
11 didn't happen in this case either?

12 MR. LEVINE: No.

13 ADMINISTRATIVE LAW JUDGE STANLEY: After the  
14 follow-up does -- Mr. Miller, do you have any follow-up  
15 questions?

16 MR. MILLER: No, I do not.

17 ADMINISTRATIVE LAW JUDGE STANLEY: Judge Gast?  
18 Judge Cheng?

19 ADMINISTRATIVE LAW JUDGE GAST: No.

20 ADMINISTRATIVE LAW JUDGE CHENG: No questions.

21 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. So at  
22 this point do you have anything else that you want the  
23 panel to consider for Mr. Ketchum?

24 MR. LEVINE: Well, I would like you to consider  
25 taking the penalty away. But short of that, I would like

1 to have it reduced to just one month.

2 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. I don't  
3 know, since you just spoke and told your whole story, if  
4 you want to have any kind of closing statement?

5 MR. LEVINE: No.

6 ADMINISTRATIVE LAW JUDGE STANLEY: So I'm going  
7 to let the Franchise Tax Board speak to this, and then you  
8 can have the last word, if you want, to respond to  
9 anything they say.

10 MR. LEVINE: Okay.

11 ADMINISTRATIVE LAW JUDGE STANLEY: Please  
12 proceed, Mr. Miller.

13

14 OPENING STATEMENT

15 MR. MILLER: So Respondent Franchise Tax Board  
16 properly imposed the filing penalty. That does not appear  
17 to be in dispute. Abating the penalty, however, under the  
18 law we cannot abate it unless appellant demonstrate a  
19 reasonable cause that prevented the timely filing of the  
20 return.

21 In this case, Mr. LeVine made a mistake, and it  
22 was filed late. However, the appellant cannot delegate  
23 his personal duty to a tax preparer or an attorney or  
24 anyone else to timely file a return. So the penalty is  
25 imposed on the appellant, not anyone else. So appellant,

1 not his tax preparer, was responsible for meeting the  
2 filing deadline.

3 In this case, we're sympathetic with Mr. LeVine's  
4 situation. However, the illness does not appear to have  
5 prevented the timely filing of the return. Because as he  
6 told us this morning, the return was already prepared. It  
7 was just a matter of the mechanics of e-filing that appear  
8 to have failed. Therefore, his illness, while not good  
9 for anyone's situation, it did not prevent him from filing  
10 the return timely for his client.

11 Regarding reducing the penalty to one month, even  
12 though he missed it by -- missed the extended deadline by  
13 three weeks, we are unable -- because the penalty goes  
14 back to the original filing deadline, which was  
15 April 18th, 2016, under the statute it -- you have to  
16 disregard -- or we disregard any extensions, which include  
17 the automatic six-month extension.

18 We're not sure about the IRS settlement or  
19 reduction. We don't have any information on that. The  
20 file we did request from IRS. We don't have the  
21 information yet. However, if it was the First Time  
22 Abatement Program, the Franchise Tax Board -- the State of  
23 California does not have that program.

24 And number two, if IRS reduced it based on  
25 reasonable cause, the Franchise Tax Board would be willing

1 to look at it and may reduce it. However, absence of  
2 showing a reasonable cause, the law does not have any way  
3 for us to do that.

4 So in conclusion, reasonable cause to abate the  
5 penalty has not been shown. And his illness did not  
6 prevent the timely filing for return.

7 ADMINISTRATIVE LAW JUDGE STANLEY: You've  
8 concluded?

9 MR. MILLER: I have concluded.

10 ADMINISTRATIVE LAW JUDGE STANLEY: Mr. LeVine?

11

12 CLOSING STATEMENT

13 MR. LEVINE: Basically it's the same. The  
14 argument is still the same in the sense that once Robert  
15 put the signed form back in the mail to me and I received  
16 it, I would have -- especially since it was a large  
17 return, I would have gone to the thing of making sure that  
18 it was filed and processed. I went through those steps.

19 I had a number of returns that I had to e-file  
20 that day. Excuse me. And apparently, I stand corrected  
21 relative to the -- how soon I saw it. But as I said in  
22 the beginning, you have to find a way to make it so that  
23 if I'm a week or two or three weeks late in e-filing, I  
24 have to be able to have it where it's only one month to  
25 submit it again.

1           And hopefully -- it's the only time I've ever had  
2           it where, you know, I was stuck with it and had a thing  
3           this big. And I was not in the position to pay it. And  
4           I'm not in the position now to pay it. And, you know,  
5           it's a case of I need help. And as I say, I, you know,  
6           will gladly accept, you know, one month abatement.

7           I mean taking it and reducing it to one month,  
8           but to have it all six months and everything else for what  
9           basically is a one-month mistake, you know, I can't -- I  
10          can't have it. Yeah.

11          ADMINISTRATIVE LAW JUDGE STANLEY: Okay. Is  
12          there anything else you want the panel to know before we  
13          adjourn?

14          MR. LEVINE: Not really.

15          ADMINISTRATIVE LAW JUDGE STANLEY: Okay. I've  
16          got a little housekeeping issue. I didn't state the issue  
17          for the record.

18          The issue is whether the late filing penalty  
19          should be abated, and whether appellant has shown  
20          reasonable cause to do so. And the second issue of  
21          whether there was reasonable cause to abate the electronic  
22          payment penalty has been withdrawn by the appellant. Can  
23          you confirm that, Mr. LeVine?

24          MR. LEVINE: Yes.

25          ADMINISTRATIVE LAW JUDGE STANLEY: And



1 Mr. Miller, you don't object to it at all?

2 MR. MILLER: No objection, Judge.

3 ADMINISTRATIVE LAW JUDGE STANLEY: Okay. First I  
4 want to let you know that I'm glad to see that you have  
5 recovered.

6 MR. LEVINE: Yes.

7 ADMINISTRATIVE LAW JUDGE STANLEY: Because it  
8 doesn't sound like you were necessarily on the path to do  
9 that at first, so I'm happy for you.

10 And this concludes our hearing. The judges will  
11 meet and decide the case based on the documents and  
12 testimony.

13 ADMINISTRATIVE LAW JUDGE GAST: I think FTB has  
14 something they want to say.

15 ADMINISTRATIVE LAW JUDGE STANLEY: You wanted to  
16 say something?

17 MS. BROSTERHOUS: I just wanted to let Mr. Levine  
18 know that once the amount goes final, if it does, that the  
19 FTB does have programs to help him with payment and  
20 programs that may reduce the payment. We have an  
21 installment payment agreement program, and we also have an  
22 offer and comprise program.

23 MR. LEVINE: Okay.

24 ADMINISTRATIVE LAW JUDGE STANLEY: I'm glad you  
25 said that because it's not our role to do that, so thank

1 you. Okay. So we're going to adjourn this. We'll  
2 deliberate on this case amongst the three of us, and we'll  
3 mail a decision to you no later than a 100 days from  
4 today.

5 So the record in this case is closed, and we will  
6 recess until the afternoon session.

7 (Proceedings adjourned at 10:22 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 16th day of May, 2019.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER