

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
KEIKO S. BOONE,) OTA NO. 18011447
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, April 23, 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, 91401, commencing at
10:29 a.m. and concluding at 10:49 a.m. on
Tuesday, April 23, 2019, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: Hon. NGUYEN DANG

Panel Members: Hon. KENNY GAST
Hon. DANIEL CHO

For the Appellant: KEIKO S. BOONE, Taxpayer
CHRISTOPHER ENGELMANN

For the Respondent: State of California
Franchise Tax Board
By: BRAD COUNTINHO
MARIA BROSTERHOUS

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I N D E X

OPENING STATEMENT

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By Mr. Engelmann	7
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E X H I B I T S

(The Electronic Exhibit File was received in evidence at page 7.)

CLOSING STATEMENT

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By Mr. Engelmann	14
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1 Los Angeles, California; Tuesday, April 23, 2019

2 10:29 a.m.

3

4 ADMINISTRATIVE LAW JUDGE DANG: Good morning.

5 We're opening the record in the appeal of Keiko S. Boone

6 before the Office of Tax Appeals. The Case No. is

7 18011447. This hearing is being convened in Los Angeles

8 on April 23, 2019 at 10:30 a.m.

9 Today's case will be heard and decided by a panel

10 of three judges. My name is Nguyen Dang, and I will be

11 acting as lead judge for purposes of conducting this

12 hearing. Also on the panel with me today are Judges

13 Kenneth Gast and Daniel Cho.

14 At this time will the parties please introduce

15 themselves for the record. Beginning with the Appellant,

16 please spell your name and state your title, if you would

17 like to have that included on the record.

18 MR. ENGELMANN: My name is Christopher Engelmann,

19 C-h-r-i-s-t-o-p-h-e-r, and then E-n-g-e-l-m-a-n-n. I'm

20 representing the taxpayer today.

21 MR. COUNTINHO: Brad Countinho for respondent.

22 My last name is spelled C-o-u-n-t-i-n-h-o. To my left is

23 Maria Brosterhous. Her last name is spelled

24 B-r-o-s-t-e-r-h-o-u-s.

25 ADMINISTRATIVE LAW JUDGE DANG: Thank you. The

1 issues I have today are whether appellant has established
2 that the late-filing penalty for the 2011 tax year should
3 be abated due to reasonable cause and the absence of
4 willful neglect.

5 Is that correct, Mr. Englemann.

6 MR. ENGELMANN: Yes, it is.

7 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

8 And Mr. Countinho; is that correct?

9 MR. COUNTINHO: Yes. That's correct.

10 ADMINISTRATIVE LAW JUDGE DANG: At the prehearing
11 conference the parties had stated that they are submitting
12 as evidence exhibits attached to their briefs.

13 Mr. Englemann, you -- also following that
14 prehearing conference, you also submitted additional
15 information. All these documents were combined into an
16 electronic exhibit file that was sent to you prior to this
17 hearing. Did you have a chance to review that file for
18 accuracy, Mr. Englemann?

19 MR. ENGELMANN: Yes, I did.

20 ADMINISTRATIVE LAW JUDGE DANG: And were there
21 any issues?

22 MR. ENGELMANN: No. There's no issues.

23 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

24 Mr. Countinho, do you have any objections?

25 MR. COUNTINHO: FTB does not have any objections.

1 ADMINISTRATIVE LAW JUDGE DANG: Thank you. I
2 have the same questions for you. Did you have the chance
3 to review the electronic file?

4 MR. COUNTINHO: I did.

5 ADMINISTRATIVE LAW JUDGE DANG: Okay. Did it
6 look accurate to you?

7 MR. COUNTINHO: It did.

8 ADMINISTRATIVE LAW JUDGE DANG: Okay. And
9 Mr. Engelmann, are there any objections in terms of the
10 file?

11 MR. ENGELMANN: No.

12 ADMINISTRATIVE LAW JUDGE DANG: Thank you. This
13 file is now being admitted into the record as evidence.

14 (The Electronic Exhibit File was received
15 in evidence by the Administrative Law Judge.)

16 ADMINISTRATIVE LAW JUDGE DANG: And if you're
17 ready, Mr. Engelmann, you may begin with your
18 presentation. You have 10 minutes.

19

20 OPENING STATEMENT

21 MR. ENGELMANN: Hello, everyone. Good morning,
22 as you said.

23 As you said earlier, the issue today is whether
24 late penalty fees can be abated from Ms. Boone's prior tax
25 year, the 2011 tax year. These issues can be abated if

1 there's reasonable cause, as you know. And in order to
2 know what reasonable cause is, you need to understand what
3 an ordinary and prudent person would do in a similar
4 situation.

5 So in order to do that, you need to know what
6 Ms. Boon's situation is. I understand, like, you hadn't
7 had the chance to read the briefs, and I don't want to go
8 through all the details. But just to kind of get a gist
9 of what it is, I need to explain the situation.

10 So in the month of February she broke her ankle
11 in three places. And, you know, I gave those exhibits of
12 those X-rays on page 2 to 6, which explains the break.
13 And so -- and because of that injury, she had to go
14 through surgery. Not right away, in fact, but a week
15 after due to complications of doctor and insurance.

16 After that she then had to deal with six months
17 of rehabilitation, learning how -- and dealing with all of
18 these situations. And on top of that, figuring out the
19 administrative, you know, problems that occurred with
20 this.

21 So what I'm saying, and what we're arguing is an
22 ordinary person in that similar situation -- where they
23 would break their ankle in three places, where they would
24 have to deal with physical therapy for six months as well
25 as any lingering effects that came from it -- an ordinary

1 person would not think on top of their head, "Oh, I need
2 to file my tax return on time."

3 A prudent person wouldn't think that as well,
4 because the only thing on their mind is that injury. When
5 you have that type of injury, when you're lying in bed,
6 you know, in your daughter's room between the weeks of
7 after surgery and before surgery, you're not thinking of
8 your tax return. You're thinking of just the pain you're
9 dealing with.

10 You're dealing -- you're trying to -- you're
11 thinking only of how can I walk? How can I go to the
12 bathroom? How can I, you know, things of that. So an
13 ordinary prudent person wouldn't think of that. And
14 because an ordinary prudent person wouldn't think of that
15 in that similar situation, there is a reasonable cause of
16 why she didn't file her tax return at that time and also
17 the lingering effects prior to that as well.

18 She also didn't express willful neglect because
19 as soon as she found -- you know, she realized that
20 this -- you know, that her tax return was not filed on
21 time, she immediately filed it right away.

22 And -- and that's all I have, Your Honor.

23 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you.
24 Mr. Countinho you have 10 minutes for your presentation.

25 MR. COUNTINHO: Thank you.

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1 on her and her family, appellant has not shown that she
2 was completely prevented from filing her tax return, and
3 thus, entitle to reasonable cause to abate the late filing
4 penalty.

5 Accordingly, FTB respectfully request that it be
6 sustained in this matter. I'd be happy to address any
7 questions or concerns the panel may have. Thank you for
8 your time.

9 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

10 Let me turn to my panel members at this time to
11 see if there's any questions. Judge Cho, do you have any
12 questions for either party?

13 ADMINISTRATIVE LAW JUDGE CHO: Just a quick
14 question for appellant. You said that it took her about
15 six months of rehab; is that correct?

16 MR. ENGELMANN: Yes.

17 ADMINISTRATIVE LAW JUDGE CHO: After the six
18 months were over, what prevented appellant from filing her
19 return?

20 MR. ENGELMANN: She dealt with administrative,
21 you know, things that you have to deal with after that
22 injury. Such as there's a time where she couldn't even
23 get her X-ray images because they were charging her an
24 extreme amount. And because of that, she had that.
25 There's also issues with her insurance as far as, like,

1 covering the cost of things. So by the time that October
2 deadline appeared, she was dealing with all of that.

3 ADMINISTRATIVE LAW JUDGE CHO: So when you say
4 that she was dealing with that, she was communicating with
5 the insurance company. She was, I guess, asking them for
6 certain --

7 MR. ENGELMANN: Yes. She was dealing with trying
8 to cover the cost of the surgery, as well as the physical
9 therapy. And there's complications where they weren't
10 getting back to her. And there were also complications
11 where here insurance somehow was not covering it, and then
12 they say they were covering it.

13 And then there were issues of, you know, like I
14 said earlier, like, getting the X-ray images without
15 extreme cost. The X-rays which I presented to you. She
16 was only able to get that just now. She was in the
17 process of trying to get those until just a few months
18 ago. And then also she was dealing, you know, with the
19 financial situation.

20 ADMINISTRATIVE LAW JUDGE CHO: Okay. Thank you.
21 That's all the questions I have.

22 ADMINISTRATIVE LAW JUDGE DANG: Judge Gast, do
23 you have any questions for the parties?

24 ADMINISTRATIVE LAW JUDGE GAST: Yeah. I have one
25 question for FTB, or maybe it's two. So is the standard

1 completely prevented from filing? Consistently prevented?
2 I see different, you know, in my own research.

3 MR. COUNTINHO: Yes. I believe it's continuously
4 prevented. So for instance, I think the case in the
5 Matter of Triple A Crown Baseball, LLC, precedential case,
6 the OTA, essentially in that case they found that taxpayer
7 had not been continuously prevented because the injury
8 suffered did not affect the taxpayer's cognitive abilities
9 throughout the entire period when they did not pay their
10 taxes in that case.

11 And so it would be a continuously prevented due
12 to sometime of debilitation or illness, such as being
13 hospitalized for an extended period of time or having an
14 injury that suffers an impact to the memory or cognitive
15 abilities.

16 ADMINISTRATIVE LAW JUDGE GAST: Okay. So in this
17 situation in your view, what would the appellant have to
18 show to get the abatement?

19 MR. COUNTINHO: If the taxpayer had shown in this
20 case that there have been some impact to cognitive
21 abilities due to pain medication that they had taken from
22 April all the way throughout October 15th that severely
23 prevented them from filing their tax return may rise to a
24 reasonable cause.

25 However, appellant's own statements in this case

1 that she did contact her husband to file on her behalf,
2 and that it was something that had slipped her mind. It
3 seems to be that she understood that she had a duty to
4 file, but she put other events, as appellant has stated
5 today, such as dealing with insurance companies, ahead of
6 her filing responsibility.

7 And while FTB is sympathetic to Ms. Boone and her
8 injuries, we believe the circumstances in this case do not
9 equate to reasonable cause to abate the penalty.

10 ADMINISTRATIVE LAW JUDGE GAST: Thank you.

11 MR. COUNTINHO: Thank you.

12 ADMINISTRATIVE LAW JUDGE DANG: Thank you.

13 Mr. Engelmann, you may have 10 minutes for your closing
14 arguments.

15
16 CLOSING STATEMENT

17 MR. ENGELMANN: So we -- there's been a lot of
18 talk today about what reasonable cause is. You know,
19 respondent has provided, you know, examples of cases that
20 show what is considered reasonable cause. But if you --
21 through my own research, if you look through the cases and
22 each time passes, that idea of reasonable cause gets more
23 narrow to a point where it's only a coma that's considered
24 reasonable cause, from what I saw.

25 You know, looking at exhibits cases, the filing,

1 I think, on page 62, the law examples like cases they
2 show. There are cases that show that the only time a
3 reasonable cause happen is if he's prevented from getting
4 his documents. But even that, the law summary is kind of
5 contradictory a little bit because even if -- so because
6 the paragraph above that, which talks about lack of
7 documents also says that you -- lack of documents is not
8 considered reasonable cause, because you can always file
9 it on time and then amend your tax return later.

10 So even the law summary is not consistent of what
11 reasonable cause is. The law summary doesn't -- is not --
12 doesn't even really know what reasonable cause is. And
13 each time each case is read, it's to a point where
14 reasonable cause is almost impossible to obtain. I think
15 there needs to be review of what reasonable cause is,
16 because the ordinary person doesn't.

17 You know, as I said earlier in my own statements,
18 does not think of, you know, tax returns as the first
19 thing on their mind. They don't think of -- what they
20 think of is my ankle is injured. I'm dealing with that.
21 I'm dealing with administrative. Those are the things I
22 would think of right away. That's what the ordinary tax
23 return -- you know, the taxpayer thinks about when
24 something like this occurs in this circumstance.

25 So that's why I'm suggesting that ordinary and

1 prudent person in this similar situation, and in this case
2 there's an ankle injury. There's six months, you know,
3 physical therapy. And besides that, there's also
4 administrative things they have to deal with. That's what
5 they would think about.

6 And so it is reasonable for a taxpayer to not
7 file their tax return. And just because, you know,
8 precedent of different cases show that's not the case, or
9 like it has to be continuous and things like that, that
10 may be narrowing the reasonable cause too much. The
11 not -- I don't -- the legislation's intent when they put
12 in -- input reasonable cause. They would have just put,
13 "Oh, they need to be in a coma, and that's reasonable
14 cause."

15 Instead they kind of gave this abstract idea to
16 kind of allow a taxpayer, you know, if they're in a
17 situation to be able to file their tax return without any
18 cost or fees or things of that nature. And in this case,
19 we believe that she should apply to whatever reasonable
20 cause is, which is what an ordinary prudent person in a
21 similar situation.

22 Not only that, she did not have any willful
23 neglect. Because, you know, as soon as she figured it out
24 she filed on time. And so then, you know, respondent has
25 mentioned that continuous. If appellant showed evidence

1 that her, you know, she was continuous up to the point
2 past her deadline, then it would have been reasonable
3 cause.

4 What I'm saying is even though there was no
5 medication that altered her mentality, a reasonable person
6 dealing with this situation would be continuously not
7 thinking of filing a tax return. They would continuously
8 be thinking of their situation.

9 ADMINISTRATIVE LAW JUDGE DANG: Thank you,
10 Mr. Engelmann. I do have small follow-up question. If we
11 were to expand the definition of reasonable cause as you
12 suggest, what would prevent a taxpayer who is
13 inconvenienced -- maybe quite a large inconvenience from
14 requiring them from filing their taxes in a timely manner?

15 MR. ENGELMANN: Can you rephrase the question?

16 ADMINISTRATIVE LAW JUDGE DANG: My understanding
17 is that you're arguing that we would expand the definition
18 of reasonable cause to include situations such as this,
19 which is highly inconvenient for the taxpayer to timely
20 file her taxes due to the pain she was undergoing, dealing
21 with her situation, and dealing with the insurance, as you
22 mentioned.

23 In those situations what would prevent the
24 taxpayer in that point from requiring them to timely file
25 their taxes any time there's some hardship in their life

1 or some type of inconvenience to them?

2 MR. ENGELMANN: Yeah. No. As far as I think it
3 still should be a facts basis, you know, on what's
4 occurring at that particular time, you know, as far as
5 overall. It's really hard to kind of pinpoint exactly
6 what would be a situation that would, you know, require
7 them to file their tax return on time versus there be a
8 reasonable cause or not.

9 And even like this type of situation, if there
10 were different facts that were considered, this situation
11 may also be a time required for her return. So to answer
12 your question, I think it really depends on the facts and
13 circumstances.

14 ADMINISTRATIVE LAW JUDGE DANG: With respect to
15 this particular situation, you mentioned pain,
16 post-surgery, rehabilitation. Are you perhaps
17 knowledgeable regarding the extent of the injury?

18 MR. ENGELMANN: Yes.

19 ADMINISTRATIVE LAW JUDGE DANG: Did she -- when
20 she -- after her surgery and she's recovering, she wasn't
21 on any medication. I see that in the record that she
22 refused to take the pain medication. If her injuries were
23 that painful, why would she not take the medication?

24 MR. ENGELMANN: Yeah. She -- in the past she's
25 had stomach problems with taking medication, gastric

1 problems. To my understanding those -- that type of pain,
2 she'd rather deal with one type of pain versus, like, both
3 of them. Considering -- and to really, I guess, help her
4 have a better life.

5 ADMINISTRATIVE LAW JUDGE DANG: I'm sorry. I
6 believe that's in the record. I didn't mean to ask you
7 about appellant's situation.

8 MR. ENGELMANN: Yeah. Right. I mean, I can go
9 further too. I mean, to kind of help answer your previous
10 question. I think the type of situation where, as far as
11 whether the facts are considered, the measure of pain has
12 to be considered. And in this case, she couldn't even get
13 out of bed after surgery. You know, as the record has
14 shown, she progressively got better. But then she was,
15 like, on food, and even up to, like, June, she was still
16 in a lot of pain.

17 And so to kind of help with that idea of what
18 would be considered a situation that would expand
19 reasonable cause, I think the measurement of pain is a
20 factor. Which in this case, she was just in a tremendous
21 amount of pain. Maybe in a different situation where the
22 pain wasn't as strong, then maybe a reasonable cause would
23 not be considered.

24 ADMINISTRATIVE LAW JUDGE DANG: Okay. I believe
25 the record indicated she wasn't employed during this time.

1 MR. ENGELMANN: I'm sorry?

2 ADMINISTRATIVE LAW JUDGE DANG: Was she employed
3 at the time she had broken her ankle?

4 MR. ENGELMANN: I'm not sure. I don't think so.

5 ADMINISTRATIVE LAW JUDGE DANG: Thank you. I'm
6 sorry. Mr. Countinho, you have 10 minutes for closing.

7 MR. COUNTINHO: I don't have anything to add from
8 my previous statements. However, if the panel has
9 questions for the respondent, I would be happy to address
10 them.

11 ADMINISTRATIVE LAW JUDGE DANG: Thank you. Panel
12 members, do you have any questions?

13 ADMINISTRATIVE LAW JUDGE CHO: I have no
14 questions.

15 ADMINISTRATIVE LAW JUDGE DANG: Mr. Gast, any
16 questions?

17 ADMINISTRATIVE LAW JUDGE GAST: No questions.
18 Thank you.

19 ADMINISTRATIVE LAW JUDGE DANG: Okay. Thank you,
20 everyone for your presentations. They were well done.

21 The record in this appeal is now closed and will
22 be submitted for decision. We will endeavor to send you
23 our written decision, typically, within 100 days.

24 Thank you once again. This hearing is now
25 adjourned.

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(Proceedings adjourned at 10:49 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 May, 2019.

ERNALYN M. ALONZO
HEARING REPORTER