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HEARING

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Franchise  
and Income Tax Appeals Hearing of:

MICHAEL A. GORIN

No. 18010985

Appellant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TUESDAY, JULY 30, 2019; 10:00 A.M.

OFFICE OF TAX APPEALS  
400 R STREET  
SACRAMENTO, CALIFORNIA

REPORTED BY:

MELINDA M. SELLERS, CSR# 10686, CRC, RMR, CRR, CCRR

1 APPEARANCES

2 Panel Lead:

3 JEFF ANGEJA, ADMINISTRATIVE LAW JUDGE  
4 STATE OF CALIFORNIA  
5 OFFICE OF TAX APPEALS  
6 400 R Street  
7 Sacramento, California 95811

8  
9 Panel Members:

10 ALBERTO ROSAS, ADMINISTRATIVE LAW JUDGE  
11 AMANDA VASSIGH, ADMINISTRATIVE LAW JUDGE

12  
13 For Appellant:

14 MICHAEL A. GORIN, TAXPAYER

15  
16 For Franchise Tax Board:

17 GI NAM, TAX COUNSEL  
18 MARIA BROSTERHOUS, TAX COUNSEL  
19 STATE OF CALIFORNIA  
20 FRANCHISE TAX BOARD  
21 PO Box 1720  
22 Rancho Cordova, California 95741

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1 TUESDAY, JULY 30, 2019; 10:00 A.M.

2

3 ALJ ANGEJA: I'd like to go on the record in the  
4 Office of Tax Appeals oral hearing for the appeal of  
5 Michael Gorin.

6 Please come forward.

7 And that is Case Number 18010985.

8 Good morning.

9 THE APPELLANT: Good morning.

10 ALJ ANGEJA: We are in Sacramento, California.  
11 Today is Tuesday, July 30, 2019, and it's 10:00 a.m.  
12 My name is Jeff Angeja, and I'm the lead administrative  
13 law judge for this hearing.

14 My fellow copanelists today are Alberto Rosas  
15 and Amanda Vassigh. We are equal copanelists who will  
16 be deciding this case.

17 And, Mr. Gorin, could you please introduce  
18 yourself for the record.

19 THE APPELLANT: My name is Michael Gorin.

20 ALJ ANGEJA: And for Franchise Tax Board?

21 MR. NAM: Gi Nam.

22 MS. BROSTERHOUS: Maria Brosterhous.

23 ALJ ANGEJA: And this appeal involves two issues,  
24 which are as follows: first, whether Franchise Tax  
25 Board's assessment is barred by the statute of

1 limitations; and, second, whether appellant has shown  
2 error in the proposed assessment, which is based on the  
3 federal determination.

4           Is that correct? You've got no additional  
5 issues?

6           And during our prehearing conferences, we  
7 discussed the exhibits, and the parties have previously  
8 exchanged them, and those are A through M from  
9 Franchise Tax Board and Exhibit 1 from appellant.

10           Neither party voiced any objections during the  
11 prehearing conferences. I assume that's still the  
12 case. So if there's no objection I hereby admit those  
13 exhibits into the record.

14           (Exhibits A - M and Exhibit 1 were admitted  
15 into evidence.)

16           ALJ ANGEJA: This morning we got a new exhibit --  
17 or we had Exhibit M. This is marked as Exhibit M. I  
18 think make it N, right.

19           MR. NAM: Yes, that's correct.

20           ALJ ANGEJA: This is an accounting of the current  
21 balance as of today's date that Mr. Gorin had requested  
22 during our prehearing conferences.

23           Is there any objection to the admission of  
24 this document? So we'll admit Exhibit N as well.

25           (Exhibit N was admitted into evidence.)

1 ALJ ANGEJA: It's my understanding that FTB is not  
2 calling any witnesses today. Right?

3 And, Mr. Gorin, you're going to testify on  
4 your own behalf?

5 THE APPELLANT: That's correct.

6 ALJ ANGEJA: Okay. And so when I get to that spot,  
7 I'll swear you in.

8 For the benefit of the audience, the  
9 difference is FTB's lawyers are making arguments. We  
10 wouldn't be making findings of fact based on their  
11 argument. When Mr. Gorin is sworn in, his testimony  
12 will be evidence on which we can make factual findings.

13 And so with that we'd also agreed FTB --  
14 sorry.

15 Mr. Gorin's presentation will not exceed 15  
16 minutes, and he will go first. Franchise Tax Board  
17 will then make its presentation, not to exceed 10  
18 minutes. The parties can ask questions at any time.  
19 And if need be, Mr. Gorin will be allowed to make a  
20 five-minute rebuttal.

21 So if no one has any procedural questions, we  
22 will get started.

23 Okay. So Mr. Gorin, please stand and raise  
24 your right hand.

25 (The appellant was duly sworn.)

1 THE APPELLANT: I do.

2 ALJ ANGEJA: All right. Thank you.

3 When you're ready, please begin.

4 THE APPELLANT: Thank you.

5 I'll try to be brief. I just wanted to bring  
6 up a few highlights in the case -- I don't know the  
7 case, but the tax return in question is from 2010, and  
8 that's why I brought up the statute of limitations.  
9 I've been just -- a little background: I've been  
10 paying taxes for 35 years plus. This tax year 2010 is  
11 the only year I've ever had any issues with. It was  
12 almost ten years ago. One of the challenges I've had  
13 is, you know, difficulty of having access to records.  
14 In that ten-year period, I've been remarried; I've  
15 moved three times. I've been in Colorado for the last  
16 eight years.

17 And part of this -- it really came about and  
18 it was part of the 2008-2010 subprime mortgage crisis.  
19 The amount in question, the \$84,000, wasn't a lump-sum  
20 disbursement. You know, it was done several times a  
21 month, or monthly, you know. I was out of work for a  
22 year. It was to supplement the \$20,000 unemployment  
23 since I had lost my job. And it was really to pay the  
24 mortgage to prevent foreclosure. And I had three  
25 children that were attending college, and, you know, I

1 was helping them with that. So it was withdrawals from  
2 my 401(k) account. I was told -- I was under the  
3 impression that taxes were being withheld, both federal  
4 and state.

5 I came in early yesterday, flew in and met  
6 with my tax person that I had at the time, to go over  
7 paperwork, to find any information that would  
8 substantiate -- document that the taxes were paid. We  
9 were unable to find that.

10 Most of the funds were from Charles Schwab,  
11 and the summary statements that I got from them, you  
12 know, last year, since I've checked, I couldn't find  
13 any supporting documentation saying that state and  
14 federal taxes had been withheld.

15 So I don't want to waste a whole lot of time.  
16 I really want to put this behind me. It's been -- you  
17 know, it's been on my mind for the last several years.

18 Part of the problem, why I raised the statute  
19 of limitations is, the -- in looking at Exhibit M that  
20 I was sent a couple weeks ago, the interest is almost  
21 \$3,000. So in addition to the \$8,000 -- yeah, \$8,000  
22 tax that appears to be owed, you know, about a third of  
23 it is for interest.

24 And I bring that up -- one of the challenges  
25 I've had, it's taken such a long period of time to



1 resolve. I've been very timely with my responses. You  
2 know, I was notified three years after the filing that  
3 the taxes were due. You know, I was timely in filing a  
4 protest. You know, you can see Exhibit C, when I first  
5 received the information from the State of California,  
6 I protested it in a timely manner, Exhibit D. So there  
7 was a delay there of three years, just even knowing  
8 about it.

9           And then after I protested, you know, it took  
10 six months. Exhibits E and F shows it took six months,  
11 you know, 2015 that my letter was received. I request  
12 a telephone hearing, you know, in a timely manner, you  
13 know, two months after that. And then it just sat for  
14 three years. I didn't get a response back, you can see  
15 in Exhibit H, as in Henry, until March of 2017.

16           And so I'd really like -- I really -- you  
17 know, I'd like to pay the balance, the tax due, that  
18 8,438.99, but I'd really like some consideration in the  
19 amount of interest, especially since I don't believe it  
20 was handled in a timely manner and it's -- you know,  
21 again, the interest is almost \$3,000.

22           So I don't know if this is the right forum. I  
23 was advised yesterday by the tax person that I worked  
24 with that, you know, I could file a request for  
25 abatement of interest. So I've got a completed form

1 for that.

2 I'd like to know if this is -- you know, that  
3 would be an appropriate document to file at this time.

4 And that's it.

5 ALJ ANGEJA: Okay. Does that conclude your  
6 presentation?

7 THE APPELLANT: Yes.

8 ALJ ANGEJA: FTB, can I have you start with where  
9 he just finished? Can you address the interest issue  
10 and, procedurally, what he should or shouldn't do?

11 MR. NAM: Okay. This is separate from my opening  
12 argument?

13 ALJ ANGEJA: (Nods head.)

14 MR. NAM: Okay. So I can take a look at -- to see  
15 what form he has if the judges have no objections to  
16 that.

17 ALJ ANGEJA: If he's got it available.

18 THE APPELLANT: Yeah, Form 3701.

19 ALJ ANGEJA: If it will take more than a minute, I  
20 can do a recess. I want to not do that if we can  
21 because we've got other cases to do today. So. . .

22 MR. NAM: So, yes. I'll take this back with me and  
23 take it into consideration.

24 However, we will be addressing interest  
25 abatement in our opening argument.

1 ALJ ANGEJA: Okay. Well, with that, go ahead and  
2 begin your opening argument.

3 MR. NAM: So here appellant appeals respondent's  
4 assessment of additional tax of roughly \$8,400 and  
5 interest for the 2010 tax year. The IRS determined  
6 that appellant underreported his income by his early  
7 distribution retirement income. Here we found out it  
8 was 401(k) distribution and interest income for the  
9 2010 tax year. Respondent had to assess this  
10 underreporting because appellant did not notify  
11 respondent of the federal changes.

12 Here the assessment is timely because the  
13 assessment was sent on August 15, 2014, a year before  
14 the expiration of the general statute of limitations.  
15 The statute of limitations for deficiencies expires no  
16 later than four years after the original due date of  
17 the return or the date the return was filed. In this  
18 case, the statute of limitations expired on April 18,  
19 2015, four years after the return was filed.  
20 Therefore, the assessment is not barred by the statute  
21 of limitations.

22 The assessment is also correct. Here  
23 respondent mirrored the same federal adjustments to  
24 increase the appellant's California taxable income and  
25 assess the corresponding 2.5 percent premature

1 retirement distribution of tax. Furthermore, the  
2 record shows that appellant has not contested the  
3 federal adjustments and made payments on his federal  
4 liability. And as we've just heard, I believe the  
5 appellant does not contest the tax anymore.

6           As for interest, the assessment of interest on  
7 a tax deficiency is mandatory. Interest is not a  
8 penalty, but simply a compensation to the state for  
9 lost time value of money received after the due date.  
10 This being the case, there is no reasonable cause  
11 exception to the imposition of interest.

12           And the appellant here seems to allege that  
13 there were some delays with processing the protest  
14 during the procedure of contesting this assessment.

15           However, upon review of the time line, it  
16 doesn't seem there were any significant delays to merit  
17 interest abatement or to attribute any of these delays  
18 to FTB. Appellant just recently -- just now stated  
19 that there was a three-year delay. However, our  
20 records do not show any delays longer than a year.

21           With that, we believe respondent's assessment  
22 should be sustained.

23           I'll be happy to answer any questions.

24           ALJ ANGEJA: Mr. Gorin, would you like to make a  
25 rebuttal?

1 THE APPELLANT: Yes, I would, on that last  
2 statement.

3 Yeah. If you look at Exhibit H, I received  
4 the letter from the Franchise Tax Board on March 9 of  
5 2017. And it's stating that it was in response to the  
6 letter, the last letter that I sent, which is Exhibit E  
7 and F, saying "I received your letter dated  
8 10/17/2014," and the response wasn't until March 9,  
9 2017.

10 I had made several calls in that period of  
11 time to find out the status. And I kept being told  
12 that, you know, somebody would contact me, you know,  
13 that there were some administrative changes that were  
14 being made at the state level and that somebody would  
15 be contacting me. So it was a substantial amount of  
16 time.

17 You know, I responded on 10/17/2014, and I  
18 didn't get a letter back with a response until March 9,  
19 2017, with an analysis and a conclusion.

20 ALJ ANGEJA: FTB, do you have a response to that?

21 MR. NAM: Yes, we do.

22 So appellant just stated that he did not  
23 receive a response from the FTB. I have a -- I did a  
24 little time line for -- of all our correspondence to  
25 respondent. And just going off of this Exhibit H

1 letter, that was dated on March 9, 2017. If you look  
2 at page 2 of that same exhibit, the little analysis  
3 section sort of in the middle of the paragraph, it  
4 states that you were contacted on November 16, 2016,  
5 and was asked to provide information to support the  
6 withdrawal. And you stated you will contact FTB that  
7 day or the next day to schedule a hearing. So FTB was  
8 in contact with the appellant by phone.

9           And before that -- before the November 16,  
10 2016, date, Exhibit G is dated -- is dated June 15,  
11 2015.

12           So there was a regular course of communication  
13 throughout the protest process, and there weren't any  
14 significant delays, at least longer than -- all of them  
15 were less than one year.

16           ALJ ANGEJA: Can I have FTB address OTA's  
17 jurisdiction to relieve interest?

18           MR. NAM: Yes.

19           So the OTA has limited jurisdiction. So  
20 Section 19104(a)(1) gives respondent the authority to  
21 abate interest to the extent that any such interest is  
22 attributable to an error or delay by the employers of  
23 respondent in performance of a ministerial act. When  
24 respondent denies the request for refund of paid  
25 interest, the taxpayer has a right to appeal before the

1 OTA. The board then has authority to overturn  
2 respondent's failure to abate interest if they find  
3 abuse of discretion.

4 So there's a different standard, in terms of  
5 abating, under this subdivision.

6 ALJ ANGEJA: So, Mr. Gorin, do you understand what  
7 he explained?

8 THE APPELLANT: I somewhat follow.

9 I'd still like to go back to his last point,  
10 though, about not being less -- more than a year in  
11 between correspondence. I show a gap from the  
12 7/28/2015 date to 3/9/2017. I still don't see anything  
13 that was -- any correspondence in 2016.

14 MR. NAM: May I respond?

15 THE COURT: Sure.

16 MR. NAM: So we were -- if you look at Exhibit H,  
17 page 2, although it was not by letter, FTB responded by  
18 contacting you on November 16, 2016, where you said you  
19 would call back to schedule a oral hearing.

20 THE APPELLANT: I don't remember getting any phone  
21 calls or correspondence.

22 ALJ ANGEJA: Would it be appropriate, procedurally,  
23 if we held this open for additional briefing so the  
24 parties can address -- and I'll put the burden on the  
25 FTB first. Thirty days to address whether relief of

1 interest is appropriate. And do so if there is. If  
2 not, explain why not. Taxpayer could then have 30 days  
3 to reply. And then that's properly before us on an  
4 abuse-of-discretion standard to the extent that you  
5 don't relieve interest.

6 MR. NAM: We have no objections.

7 ALJ ANGEJA: Interest still accrues. I'm asking if  
8 it's okay with the parties. We're going to delay this  
9 by another 60 days. We'll have 100 days from that date  
10 to issue an opinion.

11 But my concern is we're going to have a  
12 back-and-forth that could go on unduly. Where if we do  
13 it for additional briefing, the parties, at their  
14 diligent leisure, can research the time line and the  
15 evidence and then --

16 THE APPELLANT: Yeah. This has been going on for  
17 almost ten years. I mean, it -- I would be willing to  
18 pay the tax amount and not, you know, dispute it if  
19 they could just dismiss that interest amount.

20 ALJ ANGEJA: We won't settle. That's a  
21 settlement --

22 THE APPELLANT: I hear what you're saying, but  
23 that's what I would like to propose.

24 MS. BROSTERHOUS: Additionally, you can pay the tax  
25 to stop the accrual of continual interest.



1 THE APPELLANT: All right. I understand that.

2 MS. BROSTERHOUS: Okay.

3 THE APPELLANT: You know, and just in closing, you  
4 know, it was an \$80,000 disbursement, and I'm paying  
5 over, you know, \$40,000 in taxes. I mean, it's --  
6 again, I'm asking for maybe some leniency or some  
7 consideration, and that's why I brought up the  
8 background information. You know, it's a hardship. It  
9 would be a hardship for me to pay an additional \$3,000  
10 in addition to the 8,000.

11 ALJ ANGEJA: Go ahead.

12 MS. BROSTERHOUS: Once the assessment is finalized,  
13 after the close of this appeal, we do have programs,  
14 such as installment agreements and offers in compromise  
15 that you could pursue -- I have the paperwork here --  
16 that take into consideration hardship and things like  
17 that.

18 THE APPELLANT: Yeah. I've spent so much time on  
19 this already, I would just -- I would like to be  
20 considered for that interest to be removed.

21 ALJ ANGEJA: Okay. So you're raising the interest  
22 relief issue for the first time today. The appropriate  
23 way for us to address that is with the additional  
24 briefing in the manner that I suggested.

25 So I'll have an order going out. We'll give

1 Franchise Tax Board 30 days to explain a time line and  
2 whether they believe relief of interest, if any, is  
3 warranted. You'll then have 30 days to respond to  
4 that, for why you believe that any delays were  
5 unreasonable and that interest should be relieved.

6 We would then close the record and then rule  
7 on that at that time.

8 THE APPELLANT: I think that's fair. Thank you.

9 ALJ ANGEJA: Do my colleagues have questions? I  
10 haven't given much latitude for you to ask questions  
11 yet.

12 ALJ ROJAS: I do not have any questions.

13 ALJ VASSIGH: I do not.

14 ALJ ANGEJA: With that, I will end the hearing but  
15 not close the record. We'll be issuing an order for  
16 the parties to do additional briefing.

17 I thank everybody for their time. I know  
18 you've traveled quite a distance, so thank you.

19 THE APPELLANT: Thank you.

20 ALJ ANGEJA: And I look forward to seeing what your  
21 briefs are.

22 MR. NAM: Thank you.

23 ALJ ANGEJA: With that, I will end the hearing but  
24 not close the record. Thank you.

25 (The proceedings adjourned at 10:21 a.m.)

1 STATE OF CALIFORNIA )  
2 ) ss  
3 COUNTY OF CALAVERAS )  
4

5 I hereby certify that the foregoing in the  
6 within-entitled cause was taken at the time and place  
7 herein named; that the transcript is a true record of  
8 the proceedings as reported by me, a duly certified  
9 shorthand reporter and a disinterested person, and  
10 was thereafter transcribed into typewriting by  
11 computer.

12 I further certify that I am not interested  
13 in the outcome of the said action, nor connected  
14 with, nor related to any of the parties in said  
15 action, nor to their respective counsel.

16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand this 18th day of August, 2019.

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MELINDA M. SELLERS, CSR NO. 10686  
STATE OF CALIFORNIA