

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
W.P. HANIES, INC.,) OTA NO. 18010986
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)
) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, July 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 10:45 a.m. and concluding
at 11:14 a.m. on Tuesday, July 23, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. KENNY GAST

Panel Members: Hon. SARA HOSEY
Hon. LINDA CHENG

For the Appellant: CHRIS HAMILTON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
By: BRIAN WERKING
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(Appellant's Exhibits were received at page 6.)

(Franchise Tax Board's Exhibits were received at 6.)

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Los Angeles, California; Tuesday, July 23, 2019

10:45 a.m.

ADMINISTRATIVE LAW JUDGE GAST: We're on the record.

This is appeal of W.P. Haines, Inc., OTA Case Number 18010986. It's Tuesday, July 23rd, 2019, approximately 10:38 a.m. We're in Los Angeles, California. My name is Kenny Gast. I'm the lead Administrative Law Judge for today's hearing. Joining me on the panel is Judge Sara Hosey and Judge Linda Cheng.

At this point, I'd like to ask the parties to please state your names and titles for the record, starting with the taxpayer.

MR. HAMILTON: I am Chris Hamilton, CPA for the appellant.

ADMINISTRATIVE LAW JUDGE GAST: Thank you.

MR. WERKING: Brian Werking, tax counsel for respondent.

MS. MOSNIER: Marguerite Mosnier tax counsel for respondent.

ADMINISTRATIVE LAW JUDGE GAST: Thank you very much.

Okay. We have two issues for today's case. The first is whether the statute of limitations were suspended

1 for the 1999, 2005, and 2006 tax years under Revenue and
2 Taxation Code Section 19316, such that appellant timely
3 filed a refund claim for these years, and, if so, whether
4 appellant is entitled to a refund of various penalties,
5 interest, fees, and excess funds, as applicable for the
6 disputed tax years.

7 For the exhibits, taxpayer submitted Exhibits 1
8 through 14. FTB has no objection. Therefore, all of
9 taxpayer's exhibits will be admitted into the record. But
10 note, Exhibits 5, 6, 7, and 12 through 14 relate to
11 arguments and not facts and will not be considered as
12 evidence, but it will still be in the record.

13 (Appellant's Exhibits 1-14 were received
14 in evidence by the Administrative Law Judge.)

15 ADMINISTRATIVE LAW JUDGE GAST: FTB submitted
16 Exhibits A through Z, and taxpayer has no objections to
17 them. Therefore, all of FTB's exhibits will be admitted
18 into the record. But note, Exhibits O, P, R, and Y relate
19 to arguments and not facts and will not be considered as
20 evidence, but are still in the record.

21 (Department's Exhibits A-Z were received
22 in evidence by the Administrative Law Judge.)

23 ADMINISTRATIVE LAW JUDGE GAST: All right. That
24 brings us to our presentations. Mr. Hamilton, you'll have
25 30 minutes. But before you go, I forgot to ask. Are you

1 going to be testifying to any facts?

2 THE WITNESS: No.

3 ADMINISTRATIVE LAW JUDGE GAST: Okay. So just
4 arguments here?

5 MR. HAMILTON: Yes.

6 ADMINISTRATIVE LAW JUDGE GAST: Okay. All right.
7 Well, whenever you are ready you may begin.

8

9 OPENING STATEMENT

10 MR. HAMILTON: Okay. And thank you for your time
11 today to hear this appeal. I do appreciate it. I need to
12 clarify that I'm not an attorney. So your patience with
13 me in not knowing all the procedures is greatly
14 appreciated. I am a CPA who has been involved in tax
15 preparation and compliance issues for almost 40 years now.
16 And I'm also a certified fraud examiner involved in
17 forensic accounting extensively at this point.

18 There are two issues I'm going to address today.
19 One is, was a timely refund claim made, and was the
20 statute suspended under 19316. The two California Revenue
21 and Taxation Code sections that are relevant today are
22 19306 and 19316. 19306 says in part, "No credit or refund
23 shall be allowed or made after a period ending four years
24 from the date the return was filed, four years from the
25 last day prescribed for filing the tax return, or after

1 one year from the date of the overpayment, which period
2 expires later, unless before the expiration of that
3 period, a claim, therefore, is filed by the taxpayer. Or
4 Franchise Tax Board allows a credit, makes a refund, or
5 mails in notice of proposed overpayment on a preprinted
6 form prescribed by the Franchise Tax Board."

7 19316 says in part, "The running of any period
8 specified in 19306 shall be suspended during any period
9 during which that individual taxpayer is financially
10 disabled as defined in Subdivision (b)."

11 Subdivision (b) reads in part, particularly
12 paragraph two, for purposes of this section, "Except as
13 otherwise provided in paragraph two, an individual
14 taxpayer is financially disabled if that individual
15 taxpayer is unable to manage his or her financial affairs
16 by reason of a medically determinable physical or mental
17 impairment that is either deemed to be terminal impairment
18 or is expected to last for a continuous period of not less
19 than 12 months."

20 We're here to talk today to talk about a quarter
21 of a million dollars that the State of California
22 acknowledges they took from the taxpayer. And they
23 acknowledge that amount is not due to the State of
24 California. This is not in dispute, which makes the rest
25 of all of whole thing actually even more remarkable.

1 The taxpayer, in other words, does not owe any
2 money to the State of California. There's no current
3 existing or potential liability. Yet, California is here
4 today to continue to fight to keep money they know is not
5 theirs. The evidence shows that the State killed the
6 business and consigned a sick elderly couple to a level of
7 poverty in their final days that could have and should
8 have been avoided. Some, actually, could call this elder
9 abuse.

10 I wonder how each of you would respond if the
11 all-powerful State took a quarter of a million dollars
12 away from your elderly parents when they were terminally
13 ill, thus, killing their ability to earn an income or pay
14 medical bills. The facts of this case are shocking. They
15 offend any sense of reasonableness or equity. But
16 moreover, this case shows the ability of the government
17 agency to rig circumstances to their advantage.

18 I'm going to be referring to Exhibits 13 and 14
19 in the remainder of my comments. Exhibit 13 gives a
20 timeline of relevant financial advance related to the
21 three tax years we're here to address today. At the
22 bottom of Exhibit 13 is a summary. The total tax we're
23 talking about for the three years was \$9,912. That's it.

24 Penalties were assessed and paid, and those were
25 about nearly 100 percent of the tax. Interest was

1 assessed and paid, and that ended up 38 percent of the
2 tax. All the tax, all the penalties, and all the interest
3 was paid. The State does not dispute this. In fact, the
4 State does not dispute that all taxes, all penalties, and
5 all interest for all years at this corporation existed had
6 been paid. It made no claim either that any of the tax
7 returns that were filed were incomplete or inaccurate.

8 Along the way in this case, Franchise Tax Board
9 did their best to justify extreme behavior of now
10 nameless, faceless bureaucrats. For example, the
11 Franchise Tax Board issued Notices of Proposed Assessments
12 as detailed in their brief. As an example, 2005, they
13 issued an NPA showing taxable income of \$2.6 million with
14 unpaid tax of \$238,000. You can look at the record. The
15 tax return for 2005 gross receipts total cash flow for
16 this corporation for that year was \$496,000. And yet,
17 taxable income somehow was 2.6 million dollars.

18 2006, their NPA showed taxable income of 1.8
19 million dollars, tax due of \$166,000. Again, gross
20 receipts for the business for that entire year was
21 \$539,000. You can see Exhibit 13 for the actual taxable
22 income and tax numbers. These are absurd amounts to
23 justify seizing absurd amounts of money. Some maybe would
24 call this as fraudulent. I understand this is not the
25 form to deal with fraud, but fraud is intentional

1 misrepresentation of material fact that's relied on to the
2 detriment of others.

3 Well, after all that, Franchise Tax Board is
4 intent on keeping it. So why are we here? We're here
5 because the State of California insist that a timely
6 refund claim was not made. Yet, in their own brief they
7 acknowledge this is not true. A timely refund claim was
8 made, but the State of California hid behind a rule that
9 says if a corporation is suspended, then they get to
10 pretend they didn't hear that request for a refund.

11 Then once the corporation is released from
12 suspension, the State believes they then get to say the
13 statute of limitations expired while the corporation was
14 under suspension. So this is how the game is played. The
15 government gets to seize the funds of a suspended
16 corporation, but doesn't have to give the money back to a
17 suspended corporation even when they know they
18 overreached.

19 By any definition, this a scheme completely
20 controlled by the State for the State's benefit. Page 5
21 of the respondent's brief acknowledges that there were
22 claims for a refund, but that they were invalid because
23 the corporation was suspended. Page 7 of their brief
24 says -- I'm quoting -- "because appellant's corporate
25 status was suspended, the 2005 return filed on

1 August 5th, 2011, cannot constitute a valid claim for
2 refund."

3 That statement is footnoted, referencing Section
4 19307. I went and looked up Section 19307. It does not
5 say that. On page 6 of the brief from the Franchise Tax
6 Board, there's a lot of discussion about suspended
7 corporations, much of which is not relevant to this case.
8 But to the point of whether they can actually take money
9 but not return it to a suspended -- to a corporation that
10 has a suspended status. All I see as supposed authority
11 for that is a 1956 internal legal ruling by the Franchise
12 Tax Board.

13 That might be Franchise Tax Board policy, but
14 it's not the law. The Franchise Tax Board has not made a
15 persuasive case that the law prohibits the refund of
16 seized funds while the corporation is suspended. Nor have
17 they made the case that they could not have allowed the
18 credits. I'm quoting Section 19306, "Allow the credit,
19 made a refund, or mailed a notice of proposed overpayment
20 on a preprinted form proscribed by the Franchise Tax Board
21 in accordance with Section 19306."

22 Further, page 5 of the respondent's brief also
23 states -- and I'm quoting, "Respondent was in regular
24 continuous telephone and/or in-person contact with the
25 appellant."

1 You can imagine there was repeated and probably
2 emotional requests for refunds. And we know that there
3 was acknowledgment by the State that they did not owe a
4 quarter of a million dollars. Why do I say repeated and
5 emotional? The Franchise Tax Board was like the snake
6 wrapped around the neck slowly squeezing the life out of
7 this corporation and the elderly and sick shareholders.
8 And I actually think the Franchise Tax Board knew it.

9 But a quarter of a million dollars being held in
10 an account by the State of California, some nameless,
11 faceless vindictive bureaucrat saw an opportunity to take
12 money and never return it. Franchise Tax Board, I
13 believe, lost patience with these taxpayers and decided to
14 stick it to them. The timeline demonstrates that.

15 By March 30, 2011, as it shows on Exhibit 13, the
16 State had seized over \$192,000. Someone somewhere had to
17 know this was overkill. As noted earlier, all indications
18 are that the decision was made to take this business down.
19 Two weeks later they published the name of the business as
20 one of California's top delinquent tax debtors. So just
21 in case starving the business of all of its cash doesn't
22 kill it, perhaps destroying their name and reputation
23 might.

24 And based on that publication, these taxpayers
25 decided to move out of the state. They were utterly

1 ashamed. Part of the shame of that, is that the Orange
2 County Register showed a ridiculous amount of money due to
3 State of California, \$607,000. If you look at Exhibit 14,
4 there is not a year in which the taxpayer showed anywhere
5 near that much taxable income, much less tax.

6 In fact, most years you'll see their gross
7 receipts were at or below that number, but California
8 wasn't done. Between April 14, 2011, and August 2, 2011,
9 the State took another \$45,000. The business was dead.
10 Exhibit 14, you can look at it. It shows that the company
11 never made another dollar of profit. In fact, it lost
12 huge amounts of money and eventually closed. What
13 significant illness and age didn't do to the taxpayers,
14 the Franchise Tax Board did.

15 That brings us to 19316. Was the taxpayer
16 financially disabled by reason of a medically determinable
17 physical or mental impairment that was deemed to be
18 terminal? I'll be blunt, unlike the rest of my statement.
19 They're both dead. Their impairment was caused by
20 terminal medical issues compounded by the relentless
21 difficulty of not having access to their own money.

22 They were both on chemotherapy as the evidence
23 shows. They're unable to address day-to-day issues. The
24 business continued to limp along and operate, but there
25 was no ability of the shareholders and managers to provide

1 oversight accounting. And nobody denies that they did not
2 comply timely with tax rules.

3 It's interesting to note, the State has not made
4 an issue, and they can't if there was ever a history of
5 filing issues until the period beginning with the 1998 tax
6 year when it is documented that there had been a diagnosis
7 of cancer.

8 So I'll summarize. California suspended a
9 corporation for noncompliance during a period when the
10 taxpayers were mortally ill. The Franchise Tax Board knew
11 this contemporaneously. Those illnesses eventually killed
12 both of the shareholders. California seized more than 11
13 times the amount of tax, penalties, and interest assessed
14 for the three years in question.

15 California also very publicly slandered the
16 business and the taxpayer and the shareholders with a
17 vastly overstated claim of taxes due. Taxpayers were, by
18 their own admonition, in regular and continuous contact
19 with the State of California. They weren't running. They
20 were not hiding. They wanted to comply, and they wanted
21 their money back. California now claims that all those
22 requests for their money back in that period don't count.
23 They even try to make it appear as if those requests
24 didn't happen.

25 California finally released the corporation from

1 suspension at the end of 2014 having never issued a credit
2 or a notice -- or a formal written notice of overpayment.
3 Nothing prohibited them from doing that. Within 100 days
4 of the corporate status being revived, a formal request
5 for refund was filed. California, like it always knew it
6 would do said, "Sorry. The statute of limitations has
7 expired."

8 And here we are in 2019. The State continues to
9 tighten its grip on money that they know is not theirs. I
10 must say that the Franchise Tax Board people I've dealt
11 with, on the short time I've been involved in this matter,
12 have been professional, empathetic, and human. But
13 there's none of that on the collection side and the
14 enforcement side of this case. And I recognize nobody in
15 this room had anything to do with the series of events
16 I've just described, but the people in this room can,
17 however, right a very terrible wrong.

18 Thank you.

19 ADMINISTRATIVE LAW JUDGE GAST: Thank you,
20 Mr. Hamilton.

21 FTB, whenever you're ready.

22

23 OPENING STATEMENT

24 MR. WERKING: The facts in this case are not in
25 dispute. Appellant is a corporation. Appellant filed its

1 claims for refund in the 1999, 2005, and 2006 tax years on
2 April 10th, 2015, which respondent denied as being barred
3 by the statute of limitations. The threshold issue in
4 this case is whether the financial disability statute,
5 Section 19316, applies to corporations such that the
6 statute of limitations could be tolled for a period, which
7 could render appellant's April 10th, 2015 claim to be
8 timely.

9 At the prehearing conference, appellant conceded
10 that its claim for refund is barred by the statute of
11 limitations under any other legal theory. In limited
12 circumstances, only applicable to individuals and not
13 applicable to corporations, Section 19316 will suspend the
14 running of statute of limitations during any period in
15 which an individual taxpayer is financially disabled. The
16 statute's conditional language makes it clear that its
17 provisions only apply in the case an of an individual
18 taxpayer under the personal income tax law, Part 10 of the
19 code, and do now apply to the corporation.

20 The word "individual" is defined as a natural
21 person under Part 10 of the code in Section 17005.
22 Appellant is not an actual person. Appellant is a
23 corporation. Federal courts in interpreting the analogous
24 Federal Financial Disability Provision under Internal
25 Revenue Code Section 6511(h), for which the California

1 financial disability statute is patterned after, have
2 found that financial disability provisions only apply to
3 an individual taxpayer and cannot apply to a corporation.

4 In Lawrence S. Deutsch M.D. and Associates, Civil
5 Action Number 165257, the Court found that even though the
6 individual who is the sole officer and sole director of
7 the professional corporation was financially disabled, the
8 tolling under Section 6511 only applies to an individual
9 taxpayer, not to a corporation. The Court explained,
10 though, it may be true in the everyday sense that
11 Dr. Deutsch as the medical practice's sole officer and as
12 sole director was the medical practice. That is, has no
13 bearing on whether the medical practice can seek refuge
14 under 6511(h). The Court found that because the
15 professional corporation was not an individual, 6511(h)
16 could not toll the statute of limitations.

17 Respondent is sympathetic to appellant's
18 circumstances in this case, but unfortunately the
19 financial disability provisions do not apply to a
20 corporation because the corporation is not an individual
21 under Part 10.

22 The secondary issue of whether appellant has met
23 its burden to establish reasonable cause for the abatement
24 of the demand -- corporate demand or delinquent filing
25 penalties or any basis for the abatement of the

1 post-amnesty penalty, estimate penalty, filing enforcement
2 fee, lien fee, or interest, appellant has not met its
3 burden to establish a basis to abate any of these
4 penalties, fees, or interest. And respondent has fully
5 briefed this secondary issue and relies on its arguments
6 provided in its brief.

7 Thank you.

8 ADMINISTRATIVE LAW JUDGE GAST: Thank you. Thank
9 you.

10 Mr. Hamilton, you'll have five minutes if you'd
11 like on rebuttal, and then we'll open it to questions from
12 the panel.

13 MR. HAMILTON: Okay.

14 ADMINISTRATIVE LAW JUDGE GAST: Thank you.

15

16 CLOSING STATEMENT

17 MR. HAMILTON: I'll just say one thing. The
18 opening statement or the opening sentence, I think, that
19 there was only one formal claim for refund and that it
20 took place in 2015, not only is not true, it directly
21 contradicts, as you can see for yourself, their own brief
22 where they repeatedly state that there were claims for
23 refunds within the statute of limitations period.

24 They did not consider as valid claims for refund,
25 only because the corporation was suspended. I still do

1 not see -- I see procedural precedence. I see no law that
2 says that they could not have issued a refund of funds
3 they clearly know. And the one line he just said is the
4 one line in their brief. They are sympathetic.

5 That's really nice, but they destroyed a
6 business. And this elderly couple died unable to pay
7 bills because the State of California wouldn't give their
8 own money back. It was asked for well before 2015. The
9 State acknowledges that in their brief.

10 Thank you.

11 ADMINISTRATIVE LAW JUDGE GAST: Thank you. All
12 right.

13 Questions from panel members? Okay.

14 ADMINISTRATIVE LAW JUDGE HOSEY: Yes.

15 ADMINISTRATIVE LAW JUDGE GAST: Okay. Go ahead.

16 ADMINISTRATIVE LAW JUDGE HOSEY: Mr. Hamilton,
17 can you explain how or why 19316 should encompass
18 corporations in addition to individuals?

19 MR. HAMILTON: I -- I think it's obvious that a
20 small closely-held business -- corporations are people.
21 And I heard him reference a Federal Revenue Code section
22 and legal precedence as related to a federal or an IRS
23 position. I don't think there's any separation between
24 taxpayers whose money was actually taken and the
25 corporation. I think it's a legal distinction without any

1 difference.

2 ADMINISTRATIVE LAW JUDGE GAST: Okay. Thank you.

3 ADMINISTRATIVE LAW JUDGE HOSEY: Yes. Thank you.

4 No more questions.

5 ADMINISTRATIVE LAW JUDGE GAST: Okay.

6 Judge Cheng?

7 ADMINISTRATIVE LAW JUDGE CHENG: No questions.

8 ADMINISTRATIVE LAW JUDGE GAST: Okay. I have two
9 questions. First one for the taxpayer. I was a little
10 confused in your presentation. You talked about IRC
11 Section 19306 about the general statutes of limitations to
12 file a refund claim. When we had the prehearing
13 conference, though, I thought that was conceded that there
14 was no timely claim for refund, and that the sole issue we
15 have here is whether 19316 tolls that statute.

16 MR. HAMILTON: I was utterly confused, and I
17 think other people on that call were also confused by what
18 happened on that call.

19 ADMINISTRATIVE LAW JUDGE GAST: Okay.

20 MR. HAMILTON: My point in that call and to this
21 day is, we are not challenging penalties. We're not
22 charging the interest. We're not challenging the assessed
23 tax. What we're saying is that the Franchise Tax Board
24 has money that's not theirs. When you consider all of
25 that, everything has been paid. What I conceded in the

1 conference call was all of those issues. And I conceded
2 that I understood the basis of why the Franchise Tax Board
3 was saying there were no timely refund claims. But in
4 that, I'm saying it is obvious to me as you read their
5 brief, there were timely refund claims. They just
6 didn't -- they got to pretend like they didn't hear them.

7 ADMINISTRATIVE LAW JUDGE GAST: Okay. So
8 understood. So -- so the 19316, you're saying the statute
9 was tolled --

10 MR. HAMILTON: Yes.

11 ADMINISTRATIVE LAW JUDGE GAST: -- such that
12 there were timely refund claims.

13 MR. HAMILTON: And I'm also saying that there
14 were -- I want the panel to understand that these
15 taxpayers were begging for their money back well before
16 2015.

17 ADMINISTRATIVE LAW JUDGE GAST: Okay.

18 MR. HAMILTON: If you just hear the statement
19 that was just stated, taxpayer didn't ask for it until
20 2015. That is not the case.

21 ADMINISTRATIVE LAW JUDGE GAST: Okay. All right.
22 Thank you.

23 And for FTB, in Exhibit U -- and I think it was
24 in your opening brief too. I'm not -- I just need
25 clarification on the interest amount for the 2006 tax

1 year. What is the interest that was paid that was subject
2 to a potential refund claim?

3 MR. WERKING: Yes, I do have that number for you.
4 For the 2006 tax year, the amount of interest that was
5 paid is \$2,239.39.

6 ADMINISTRATIVE LAW JUDGE GAST: Okay. So it's
7 not the \$2,236.97, that's on page 1 of Exhibit U?

8 MR. WERKING: Let me double check that.

9 ADMINISTRATIVE LAW JUDGE GAST: I just wanted
10 clarification.

11 MR. WERKING: I see now, and I actually -- I
12 think that number you cited, the \$2,236.97, I do believe
13 that's the correct number. I think the discrepancy in
14 between the two may have been a written off dollar amount.

15 ADMINISTRATIVE LAW JUDGE GAST: Okay. So that's
16 the correct number?

17 MR. WERKING: Correct.

18 ADMINISTRATIVE LAW JUDGE GAST: Okay. All right.
19 That's all my questions.

20 Anything else from the parties?

21 MR. HAMILTON: No.

22 ADMINISTRATIVE LAW JUDGE GAST: Okay. All right.
23 With that, this concludes the hearing. And the judges
24 will meet and decide this case based on the documents
25 presented and the arguments we heard today. We will aim

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to send our decision within 100 days of today.

The case is now submitted. The record is closed,
and this hearing is now adjourned. Thank you.

(Proceedings adjourned at 11:14 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 August, 2019.

ERNALYN M. ALONZO
HEARING REPORTER