

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
609 N. HAYWORTH LP, ) OTA NO. 18093719  
)  
APPELLANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, September 19, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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609 N. HAYWORTH LP, ) OTA NO. 18093719  
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Transcript of Proceedings, taken at  
355 S. Grand Ave. 23rd Floor, Los Angeles,  
California, 91401, commencing at 10:25 a.m.  
and concluding at 10:40 a.m. on Thursday,  
September 19, 2019, reported by  
Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: Hon. JOHN JOHNSON

Panel Members: Hon. ANDREW KWEE  
Hon. DANIEL CHO

For the Appellant: JOHN SAUNDERS

For the Respondent: STATE OF CALIFORNIA  
Franchise Tax Board  
By: GI BAN  
NATASHA PAGE  
  
TAX COUNSEL  
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P.O. Box 1720  
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916-845-2498

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I N D E X

OPENING STATEMENT

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Mr. Saunders	7
Mr. Nam	9

E X H I B I T S

(Appellant's Exhibits were received at page 6.)

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

CLOSING STATEMENT

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Mr. Saunders	15

1 Los Angeles, California; Thursday, September 19, 2019

2 10:25 a.m.

3

4 ADMINISTRATIVE LAW JUDGE JOHNSON: We'll now go  
5 on the record.

6 This is the appeal of 609 N. Hayworth LP, OTA  
7 Case Number 18093719. It is 10:25 a.m. on  
8 September 19th, 2019, here in lovely Los Angeles,  
9 California. I'm lead ALJ for this hearing, John Johnson.  
10 And let me say good morning to my co-panelists.

11 Good morning, Judge Kwee.

12 ADMINISTRATIVE LAW JUDGE KWEE: Good morning.

13 ADMINISTRATIVE LAW JUDGE JOHNSON: And good  
14 morning, Judge Cho.

15 ADMINISTRATIVE LAW JUDGE CHO: Good morning.

16 ADMINISTRATIVE LAW JUDGE JOHNSON: Let me ask the  
17 parties to introduce themselves. We'll begin with  
18 Appellant.

19 MR. SAUNDERS: John Saunders, power of attorney  
20 for 609 N. Hayworth LP.

21 MR. NAM: Gi Nam for Franchise Tax Board.

22 MS. PAGE: Natasha Page, Franchise Tax Board.

23 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

24 While I'm the lead for purposes of conducting  
25 this appeal, the panel with three of us will make a

1 decision on the appeal. We've read the briefs. We've  
2 seen the exhibits, and we'll make our decision based on  
3 what's been submitted in the briefs and admitted as  
4 evidence as well as what you present to us today. If  
5 there's anything you want us to consider, make sure you do  
6 have it stated today or in your briefs and exhibits.

7 The issue we have on appeal is: Whether  
8 Appellant had reasonable cause for the late filing of its  
9 return for the 2016 year.

10 We are going to admit into evidence Appellant's  
11 Exhibits 1 through 8 and Respondent's Exhibits A  
12 through I. Before we went on the record, the parties  
13 indicated they had not objections to those exhibits.

14 (Appellant's Exhibits 1-8 were received  
15 in evidence by the administrative Law Judge.)

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

18 We're now ready to move on to the party's  
19 arguments. We'll start with Mr. Saunders.

20 Are you ready to begin?

21 MR. SAUNDERS: I am.

22 ADMINISTRATIVE LAW JUDGE JOHNSON: Let me start  
23 by swearing you in then. If you could stand and raise  
24 your right hand.

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JOHN SAUNDERS,

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

ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you very much. You can begin.

OPENING STATEMENT

MR. SAUNDERS: Thank you. The facts of this case are that the Appellant filed a tax return late. The Appellant filed for a limited partnership on December 1st, 2016. He conducted no business during the year of 2016, and believed that because there was no business conducted they did not need to file a tax return.

The first monies that were deposited into the bank account -- which is Exhibit, I believe, 7 -- were on December the 20th. And those dollars represented investments by some of the limited partners, but no income or expenses were paid during the year. The property that was intended to be purchased for this partnership were -- was purchased in 2017.

In looking at Revenue and Taxation Code 17936, in part it says that, "A limited partnership shall not be subject to taxes imposed if the limited partnership did no

1 business in California during the taxable year."

2 What constitutes doing business? Doing business,  
3 per Section 23101 and 19317 states, "Doing business means  
4 actively engaged in any transaction for the purpose of  
5 financial or pecuniary gain or profit within the State of  
6 California."

7 Clearly there was no intent for profits or income  
8 or gain during the year 2016. The issue is whether the  
9 taxpayer was willfully negligent in that following -- in  
10 not filing the tax return. They believe that what they  
11 had done was correct. In addition, the purpose of a  
12 partnership return of income is not to tax -- is not a tax  
13 return to compute tax, but to provide the partners with  
14 their share of income and loss from partnership  
15 activities.

16 The purpose of the penalty for failure to file is  
17 to encourage partnerships to file so that all partners  
18 will be able to file after it and complete tax returns.  
19 Since there was no business engaged and no profit or loss  
20 passed through to the partners, the failure to file had no  
21 impact on any partner's tax liability. The assessment of  
22 the penalty in this case does nothing to further such  
23 purpose.

24 The \$200 delinquent penalty for non-filing is  
25 appropriate in the taxpayer's opinion. The penalties per



1 partner are not and would seem inappropriate. It seems  
2 that we have form over substance here, rather than  
3 substance over form.

4 In addition, the IRS -- and I provide you with a  
5 copy of the letter from the IRS dated -- I'm not sure what  
6 the date is -- May the 1st, 2018, reflects that the IRS  
7 abated the penalty for the same neglect of filing the tax  
8 return.

9 That's all I have at this time.

10 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

11 Let me ask first. Franchise Tax Board, were  
12 there any factual statements in there that you need to ask  
13 questions and clarify to Mr. Saunders?

14 MR. NAM: No.

15 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Thank  
16 you. Are you ready to proceed with your presentation?

17 MR. NAM: Yes.

18 ADMINISTRATIVE LAW JUDGE JOHNSON: You may begin.

19

20 OPENING STATEMENT

21 MR. NAM: Appellant received late return filing  
22 penalties for the 2016 short-period year. Appellant  
23 alleges that it thought it did not have a filing  
24 requirement for the 2016 short period because it did not  
25 have any considerable business activities. However, the

1 law as a brief, clearly states that Appellant has a  
2 filing -- return filing requirement as soon as it filed a  
3 certificate of limited partnership with the Secretary of  
4 the State on December 1st, 2016.

5 Case law also supports that the ordinary and  
6 prudent act in these types of situations is to follow the  
7 law. Not being aware of the laws is not a basis for  
8 abatement. Furthermore, unlike the IRS, Respondent does  
9 not have any authority to abate the penalty solely based  
10 on compliance history. Therefore, Respondent properly  
11 deny Appellant's claim for refund.

12 And Appellant further stated and cited to Revenue  
13 and Taxation Code 17936, which is a 15-day rule. However,  
14 that statute doesn't apply here because Appellant was late  
15 for 30 days. Accordingly, Respondent properly denied  
16 Appellant's claim for refund.

17 I'll be happy to answer any questions.

18 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

19 Let me see if the panel have any questions for  
20 you, Mr. Sanders, before we move on to your rebuttal.

21 Do you have any question, Mr. Cho?

22 ADMINISTRATIVE LAW JUDGE CHO: I don't have any  
23 questions for Mr. Saunders.

24 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. And  
25 Mr. Kwee?

1 ADMINISTRATIVE LAW JUDGE KWEE: Yes, I did have a  
2 question. Were you the return preparer for the Appellant?

3 MR. SAUNDERS: Yes. We were the return preparer.  
4 The facts were that the Appellant did not provide us with  
5 any information for 2016. They believed there was no  
6 return required. So they did not provide us with any  
7 documentation.

8 We did prepare it in 2018 when we received  
9 information from 2017 showing that they had received  
10 approximately \$800,000 in investor contributions. We then  
11 informed them that they needed to file a tax return for  
12 2016, and we did so.

13 ADMINISTRATIVE LAW JUDGE KWEE: Okay. So then  
14 the Appellant's belief that they didn't have a filing  
15 obligation, based on only receiving capital contributions,  
16 that wasn't based on any reliance on advice provided to  
17 them? That was just via an accountant or a CPA or your  
18 firm, that was just their belief that they did not have to  
19 file; is that correct?

20 MR. SAUNDERS: Correct. When they provided us  
21 the general ledger for 2017, we noticed that they had  
22 balance forward in the bank account. And then we explored  
23 it further and realized that they had received  
24 contributions in 2016. I think the first one was December  
25 the 20th.

1 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And I did  
2 have question for FTB, if you don't mind?

3 ADMINISTRATIVE LAW JUDGE JOHNSON: Let's go to  
4 the rebuttal real quickly, and then we'll do questions  
5 before the closing.

6 ADMINISTRATIVE LAW JUDGE KWEE: Okay.

7 ADMINISTRATIVE LAW JUDGE JOHNSON: Mr. Saunders,  
8 you have five minutes for rebuttal, if you have anything  
9 you want to address that FTB stated. You will also have  
10 your five-minute closing later on. So you could also save  
11 it for then. Would you like to give a rebuttal now?

12 MR. SAUNDERS: No. I'll save it for then.

13 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay. Then  
14 let's go back to Judge Kwee with your question.

15 ADMINISTRATIVE LAW JUDGE KWEE: Thank you.

16 I was just curious. I noticed that there is two  
17 late-filing penalties, the 19131 and also the 19172, the  
18 per-partner penalty and, I guess, the delinquent filing  
19 penalty. I'm just curious if there is any issue with  
20 stacking two late filing penalties for the same tax year?

21 MR. NAM: There are no issues, and the statute  
22 clearly provides for partnerships. They're charged with  
23 two different types of late-filing penalties. One, as you  
24 stated, the delinquent filing penalty, 19131. And the  
25 other one is a per-partner penalty. In reading of the

1 statute, it doesn't say that you are -- that FTB should  
2 only impose one penalty over the other. Both apply here.

3 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE JOHNSON: Any further  
5 questions?

6 ADMINISTRATIVE LAW JUDGE KWEE: No further  
7 questions that I have.

8 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay.  
9 Judge Cho?

10 ADMINISTRATIVE LAW JUDGE CHO: Just a couple of  
11 quick questions, I hope. With respect to the 17936 Code  
12 Section -- and this is to FTB.

13 MR. NAM: 17936. Okay.

14 ADMINISTRATIVE LAW JUDGE CHO: The one that  
15 Mr. Saunders just referenced, he said that the limited  
16 partnership did no business in this state during the  
17 taxable year. And the taxable year was 15 days or less,  
18 and the partnership is not subject to tax; is that  
19 correct?

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

21 ADMINISTRATIVE LAW JUDGE CHO: Okay. And I think  
22 you just said that the FTB's position is that because this  
23 was 30 days, that this section would not apply?

24 MR. NAM: Yes. It wouldn't apply. And as  
25 briefed, Appellant has a filing requirement regardless

1 because Appellant filed a certificate of the limited  
2 partnership.

3 ADMINISTRATIVE LAW JUDGE CHO: Okay. So the day  
4 limit doesn't really matter. It's the fact that Appellant  
5 filed a certificate of registration with the Secretary of  
6 State on December 1st; is that correct?

7 MR. NAM: Yes.

8 ADMINISTRATIVE LAW JUDGE CHO: Okay.  
9 Mr. Saunders, do you have a response to that?

10 MR. SAUNDERS: I'm only using that code section  
11 for the purpose of my client's issue of willful neglect.  
12 They believed -- and, again, ignorance is not an excuse --  
13 but they believed at the time, because they did not  
14 receive any funds from other than partners contributions,  
15 and it didn't occur until December the 20th, that they did  
16 not have any business activity in the State of California.

17 So my argument is that they were not willfully  
18 neglectful in the non-filing, which is the reason for the  
19 penalty.

20 ADMINISTRATIVE LAW JUDGE CHO: Okay. Thank you  
21 for that response.

22 That's the only questions I have.

23 ADMINISTRATIVE LAW JUDGE JOHNSON: I have no  
24 questions at this time. I have no questions, so we can  
25 move to closing arguments. Franchise Tax Board, are you

1 ready for your closing argument?

2 MR. NAM: We have no closing argument.

3 ADMINISTRATIVE LAW JUDGE JOHNSON: Okay.

4 Mr. Saunders, you have five minutes if you would like to  
5 provide a closing argument.

6 MR. SAUNDERS: Thank you.

7

8 CLOSING STATEMENT

9 MR. SAUNDERS: Again, I think it comes down to  
10 the issue of the willful neglect involved, and that the  
11 client voluntarily took the corrective measure to file a  
12 tax return when they came to the realization that they had  
13 not followed the law. And again, the issue of the purpose  
14 of the penalties -- per-partner penalties was that that  
15 partners have all the information they needed to file  
16 their personal returns for the year 2016.

17 And since there were no profit or loss income or  
18 expenses, that they did not need a K1 from the return of  
19 income to make that determination, and that they were able  
20 to file their personal tax returns in a timely manner.  
21 And they were complete and accurate returns to the best of  
22 our knowledge.

23 That's it.

24 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

25 Okay. We have evidence in the record, arguments

1 in our briefs, and oral arguments today. We have complete  
2 records from which to base our decision.

3 Let me ask Franchise Tax Board, any final  
4 questions before we close this matter?

5 MR. NAM: No questions.

6 ADMINISTRATIVE LAW JUDGE JOHNSON: And Appellant,  
7 any final questions?

8 MR. SAUNDERS: No final questions.

9 ADMINISTRATIVE LAW JUDGE JOHNSON: Thank you.

10 I want to thank both parties on the appeal. The  
11 record is now closed. This concludes the hearing on this  
12 appeal. Parties should expect our written decision no  
13 later than 100 days from today, September 19th, 2019.

14 And with that, we're now off the record.

15 (Proceedings adjourned at 10:40 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 14th day of October, 2019.

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