

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
JONATHAN WARYCHA, ) OTA NO. 18093806  
 )  
 )  
 APPELLANT. )  
 )  
 )  
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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, September 19, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
355 S. Grand Ave. 23rd Floor, Los Angeles,  
California, 91401, commencing at 9:59 a.m.  
and concluding at 10:12 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: ALJ ALBERTO ROSAS

Panel Members: ALJ DOUGLAS BRAMHALL  
ALJ ANDREW KWEE

For the Appellant: JONATHAN WARYCHA  
TOPHER TUTTLE

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: TOPHER TUTTLE  
MARIA BROSTERHOUSE

TAX COUNSEL  
Legal Division  
P.O. Box 1720  
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I N D E X

OPENING STATEMENT

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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.)

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

2 9:59 a.m.

3

4 ADMINISTRATIVE LAW JUDGE ROSAS: Good morning.

5 We're on the record in the matter of the appeal of

6 Jonathan Warycha, OTA Case Number 18093806. We're in

7 Los Angeles, California, and it is September 19th, 2019.

8 The time is approximately 9:59 a.m.

9 The panel of Administrative Law Judges consist of

10 Douglas Bramhall, Andrew Kwee, and myself, Alberto Rosas.

11 We're going to state your names for the record.

12 We're going to start with taxpayer and move our way down.

13 Sir?

14 MR. WARYCHA: Jonathan Warycha.

15 MR. TUTTLE: Topher Tuttle.

16 MS. BROSTERHOUS: Maria Brosterhous.

17 ADMINISTRATIVE LAW JUDGE ROSAS: Good morning.

18 This hearing is being recorded by our stenographer. So I

19 do want to remind everyone to just speak slowly and to

20 speak one at a time.

21 I'm going to go over a few housekeeping matters.

22 Primarily, I want to talk about the telephonic prehearing

23 conference that was held on August 28th. I just want to

24 summarize a few of the key orders resulting from that

25 conference.

1           Number one, we agreed that Mr. Warycha's Exhibits  
2    1 through 3 were admitted into evidence. Number two, we  
3    agreed that FTB's Exhibits A, alpha, through O, Oscar,  
4    were admitted into evidence. We agree that only one  
5    witness, Mr. Warycha, is permitted to testify in today's  
6    oral hearing. We also agree that the parties will comply  
7    with specific time limits, and that today's hearing should  
8    take no more than one hour.

9           Mr. Warycha, is this an accurate summary of the  
10   prehearing conference orders?

11           MR. WARYCHA: Yes, sir.

12           ADMINISTRATIVE LAW JUDGE ROSAS: FTB?

13           MR. TUTTLE: Yes.

14           (Appellant's Exhibits 1-3 were received  
15    in evidence by the administrative Law Judge.)\*\*\*.

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

18           ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Warycha,  
19    we're going to get started with your testimony. I believe  
20    we discussed that you will read from a prepared statement.  
21    Before you begin, if you can please rise and our  
22    stenographer will administer the oath.

23           THE HEARING REPORTER: Please raise your right  
24    hand.

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JONATHAN WARYCHA,

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

ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Warycha, whenever you're ready you may begin.

OPENING STATEMENT

MR. WARYCHA: Okay. In the matter regarding my 2013 tax refund, I mailed in my tax return on April 11th, 2018, which is before the four-year statute of limitations on April 15th, 2018. I mailed in my tax returns for 2013, '14, '15, '16 and '17 on the same day. FTB claims that they received my tax returns for 2015, '16, '17 on April 15th, 2018 but did not receive my 2013 tax return until May 15th, 2018.

This is unusual, considering I sent this all in the same day. They should have received all of the tax returns on April 15th, 2018, within the statute of limitations. The reason I haven't been able to submit these tax returns previously is because I was in a motorcycle accident, and I was recovering. I was in a comma and was caught behind in the hospital recovery disability.

1           When I didn't receive my tax refund, FTB notified  
2 me that they never received my 2013 return. So I faxed it  
3 again on 5/30/2018. It's only upon reading FTB's opening  
4 brief that I discovered that they, in fact, did receive my  
5 original tax return on 5/15/2018. I'm not sure why I was  
6 told to fax it again when FTB clearly received it on  
7 5/15/2018. And I was never told I wouldn't get a refund  
8 when they told me to fax it again.

9           If FTB really did receive my tax return on  
10 5/13/2018, they wouldn't go through the trouble -- or I  
11 wouldn't think they'd go through the trouble of having me  
12 fax it again. They would have simply told me that I  
13 wasn't within the statute of limitations and wouldn't be  
14 getting a refund.

15           In addition, I never received notice on the levy  
16 prior to the collection of the \$121.18 on May 10th, 2017.  
17 FTB stated they will refund me this amount plus accrued  
18 interest, which I never received. The tax refund in  
19 question isn't a lot of money, but it means a lot for what  
20 I've been through and the hospital bills.

21           And I've already paid through my taxes and just  
22 don't really understand why this one year wasn't received,  
23 and I did fax it. I have that as well saying that it was  
24 received on September 18th.

25           That's all I really have right now.



1 ADMINISTRATIVE LAW JUDGE ROSAS: Thank you,  
2 Mr. Warycha.

3 At this point, I'll turn it to Franchise Tax  
4 Board in case they want to ask any questions of  
5 Mr. Warycha.

6 MR. TUTTLE: No questions.

7 ADMINISTRATIVE LAW JUDGE ROSAS: Okay.  
8 Mr. Bramhall, do you have any questions?

9 ADMINISTRATIVE LAW JUDGE BRAMHALL: Yeah. I  
10 noticed that the return that was faxed to the FTB on the  
11 30th had a signature date of 4/11. But the return that  
12 they received by mail had a signature date of 4/23. So is  
13 there an explanation why the two returns -- they're the  
14 same returns except for the date on the signature lines.  
15 Explanation as to why that's a different date?

16 MR. WARYCHA: I just could have made a mistake.  
17 It was -- so it was 4/11? Because I'm not aware of it.  
18 Is that 4/11 that was signed, and then they signed it  
19 back -- it came back on 4/23?

20 ADMINISTRATIVE LAW JUDGE BRAMHALL: The return  
21 that you faxed on the 30th had a -- at the bottom where it  
22 was signed had a signature date of 4/11. You were saying  
23 that you mailed it on 4/11, and they should have received  
24 it on 4/15.

25 MR. WARYCHA: Right.

1 ADMINISTRATIVE LAW JUDGE BRAMHALL: But the one  
2 they received by mail prior to the time that you faxed  
3 that return, they received by mail on May 14th. It had a  
4 signature date on it of 4/23, which is significantly later  
5 than 4/11. So I'm wondering what the explanation of the  
6 two different signature dates is.

7 MR. WARYCHA: I'm not sure to be honest with you.  
8 I sent the 2013 through 2017 on the same day, and then  
9 re-faxed it on -- it says September 18th. I'm not -- I  
10 really don't know what else to say, Your Honor.

11 ADMINISTRATIVE LAW JUDGE BRAMHALL: Okay. That's  
12 good. That's fine. Thank you. I just wondered if we  
13 could clarify that.

14 MR. WARYCHA: Yeah, I don't.

15 ADMINISTRATIVE LAW JUDGE BRAMHALL: Thank you.

16 ADMINISTRATIVE LAW JUDGE ROSAS: Anything else,  
17 Mr. Bramhall?

18 ADMINISTRATIVE LAW JUDGE BRAMHALL: No. That's  
19 all. Thank you.

20 ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Kwee, any  
21 questions?

22 ADMINISTRATIVE LAW JUDGE KWEE: Yes. So the copy  
23 of the return that you have is Exhibit 3 that you  
24 submitted. Is that a copy of the return that was mailed  
25 in on 4/11 or is that something that was prepared

1 separately and faxed on 5/30?

2 MR. WARYCHA: Well, it was sent in through the  
3 mail on April 11th and then re-faxed again on April 15th.

4 ADMINISTRATIVE LAW JUDGE KWEE: Oh, so then you  
5 made a photocopy of it before you sent it in to FTB?  
6 Because these are handwritten returns, I was just  
7 wondering if you just refilled out the return and then  
8 sent it?

9 MR. WARYCHA: I could have just made copies of  
10 it. That's all -- for the all the years, for all the  
11 statements.

12 ADMINISTRATIVE LAW JUDGE KWEE: Okay. And FTB,  
13 I'm just curious. I think the Appellant was saying that  
14 you -- FTB, doesn't dispute that the returns for '15, '16,  
15 and '17 were received on 4/15; is that correct?

16 MR. TUTTLE: Let me double check that. '14, '15,  
17 and '16. So I'm sorry. 2015, 2016, 2017 were received on  
18 April 15, 2018. 2014 was received on May 15th, 2015.

19 ADMINISTRATIVE LAW JUDGE KWEE: Okay. Thank you.

20 ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Kwee, do you  
21 have any other questions?

22 ADMINISTRATIVE LAW JUDGE KWEE: That's all at  
23 this time. Thank you.

24 ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Warycha, as  
25 for me, I don't believe I have any questions at this time.

1           So at this point we're going to turn it over to  
2 the Franchise Tax Board. You have up to 10 minutes for  
3 your presentation. You may begin whenever you're ready.

4

5

OPENING STATEMENT

6           MR. TUTTLE: Appellant's claim for refund for the  
7 2013 tax year is barred by the statute of limitations.  
8 Revenue and Taxation Code, Section 19306, prohibits  
9 Respondent from crediting or refunding an overpayment when  
10 a claim for refund was not filed within four years of the  
11 due date of the return, or within one year from the date  
12 of overpayment, whichever is later.

13           In this case, Appellant's tax return for 2013 was  
14 due on or before April 15th, 2014. However, Respondent  
15 did not receive Appellant's 2013 return until  
16 May 14th, 2018, which was more than four years after the  
17 due date. In addition, Respondent has already refunded,  
18 or will refund at the close of this appeal, all payments  
19 received within one year of the filing date of Appellant's  
20 claim for refund.

21           The remaining overpayment credit at issue relates  
22 to withholding amounts, which by operation of law, are  
23 treated as a payment received on the original due date of  
24 the return. Since this payment was received beyond both  
25 the four-year and one-year statute of limitations periods,

1 Respondent is barred from issuing a refund.

2 Although, Appellant argues that he filed an  
3 earlier 2013 tax return, he has not provided any evidence  
4 in support of this contention. Accordingly, Respondent's  
5 denial of Appellant's claim for refund is proper and  
6 should be sustained.

7 Thank you.

8 ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Warycha, as  
9 we mentioned, you do have a chance to present an  
10 additional argument -- a rebuttal argument to anything you  
11 just heard. You have up to five minutes, if you so  
12 choose.

13

14 CLOSING STATEMENT

15 MR. WARYCHA: Thank you. I had \$3,000 taken out  
16 as wage garnishments for 2013, for my taxes. My refund  
17 was only for \$2,400. Although, I did get the wage  
18 garnishments back, yet, I was never notified that they  
19 were going to be doing that. That's the \$121.18.

20 The \$2,400 that is due as a refund and is -- it  
21 came in as overdue but, actually, was sent out with all  
22 the other years. The reason -- I just want to explain.  
23 The reason why I had to file the 2013 all the way back  
24 there was that was the year I was in the hospital for a  
25 year.

1           And so I -- it was coming off of a lot of things  
2           that were behind that I was catching up on. But I believe  
3           that everything that I sent did go out on that date and  
4           did get confirmed that it went out on that date except  
5           2013. So I just don't understand why I wouldn't be  
6           refunded if I already paid those taxes any way from my  
7           checks.

8           ADMINISTRATIVE LAW JUDGE ROSAS: Thank you,  
9           Mr. Warycha.

10           At this point I'll turn it over to my  
11           co-panelists once again to see if they have any questions  
12           of either side.

13           Mr. Bramhall?

14           ADMINISTRATIVE LAW JUDGE BRAMHALL: I have no  
15           questions.

16           ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Kwee?

17           ADMINISTRATIVE LAW JUDGE KWEE: I don't have any  
18           questions. Thank you.

19           ADMINISTRATIVE LAW JUDGE ROSAS: FTB, is there  
20           anything else you would like to add?

21           MR. TUTTLE: No.

22           ADMINISTRATIVE LAW JUDGE ROSAS: Mr. Warycha, you  
23           are the taxpayer. You are the Appellant. So I want to  
24           give you the last word. Now, other than what you've  
25           already told us here today and other than what's included

1 in your appeal and in your exhibits, is there anything  
2 else that you think this panel needs to know in order to  
3 make a well-informed decision?

4 MR. WARYCHA: No, sir.

5 ADMINISTRATIVE LAW JUDGE ROSAS: Thank you very  
6 much.

7 In that case, this concludes today's hearing in  
8 the Matter of the Appeal of Jonathan Warycha. The record  
9 is now closed, and the matter is submitted as of today,  
10 September 19th, 2019. Both parties will receive this  
11 panel's written decision no later than 100 days from  
12 today.

13 Thank you all very much.

14 MR. WARYCHA: Thank you.

15 ADMINISTRATIVE LAW JUDGE ROSAS: Thank you.

16 (Proceedings adjourned at 10:12 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