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APPEARANCES:

Panel Lead: Hon. LINDA CHENG

Panel Members: Hon. RICHARD TAY
Hon. NGUYEN DANG

For the Appellant: ILEANE POLIS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
By: MEGHAN MCEVILLY
MARIA BROSTERHOUS

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DEPARTMENT'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

(None offered)

APPELLANT'S WITNESSES:

DIRECT CROSS REDIRECT RECROSS

Ashraf Ibrahim 8
Abdelkerim

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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1 Van Nuys, California; Monday, October 28, 2019

2 10:02 a.m.

3

4 JUDGE CHENG: We're opening the record in the
5 appeal of Ashraf Ibrahim Abdelkerim before the Office of
6 Tax Appeals. The Case Number is 18011787. The hearing is
7 being convened in Van Nuys on October 28, 2019, at
8 10:02 a.m.

9 Today's case is being heard and decided equally
10 by a panel of three judges. My name is Linda Cheng, and I
11 will be acting as the lead judge for the purposes of
12 conducting this hearing. On the panel today with me are
13 Judges, Nguyen Dang and Richard Tay.

14 JUDGE DANG: Good morning.

15 JUDGE TAY: Good morning.

16 JUDGE CHENG: Will the parties please introduce
17 yourselves for the record, starting with Appellant.

18 MS. POLIS: Ileana Polis on behalf of
19 Mr. Abdelkerim, seated to my left.

20 JUDGE CHENG: Thank you.

21 MR. ABDELKERIM: Ashraf Ibrahim Abdelkerim.

22 JUDGE CHENG: Welcome.

23 FTB?

24 MS. MCEVILLY: Meghan McEvilly on behalf of
25 Respondent, and to my left is Maria Brosterhaus.

1 JUDGE CHENG: Welcome. Thank you.

2 Okay. The only issue on appeal is: Whether
3 Appellant has shown a reasonable cause for the abatement
4 of the late-filing penalty for tax year 2014.

5 Is that still correct?

6 MS. POLIS: Yes.

7 MS. MCEVILLY: Yes.

8 JUDGE CHENG: Thank you.

9 Prior to the hearing, the parties have agreed
10 that FTB will introduce Exhibits A through G as part of
11 their evidence, and Appellant will introduce Exhibits 1
12 through 3 as part of their evidence.

13 Any objections to that, Appellant?

14 MS. POLIS: No objection.

15 JUDGE CHENG: FTB?

16 MS. MCEVILLY: No objection.

17 JUDGE CHENG: Thank you.

18 Okay. So those exhibits as stated will be marked
19 as evidence and admitted into the record.

20 (Appellant's Exhibits 1-3 were received
21 in evidence by the Administrative Law Judge.)

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

24 JUDGE CHENG: Okay. Ms. Polis, you will have
25 25 minutes to present your case, including testimony by

1 your client.

2 Mr. Abdelkerim, you're testifying today?

3 MR. ABDELKERIM: Yes.

4 JUDGE CHENG: Will you please stand up so I can
5 swear you in?

6 MR. ABDELKERIM: Yes.

7

8 ASHRAF IBRAHIM ABDELKERIM,

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

12

13 JUDGE CHENG: Thank you. Please be seated.
14 Begin when you're ready.

15

16 OPENING STATEMENT

17 MS. POLIS: This is an abatement of a late-filing
18 penalty, specifically, a delinquency penalty in the amount
19 of \$3,816.50. Mr. Abdelkerim has reasonable cause to
20 abate this penalty because he reasonably relied on a tax
21 preparer, Mr. Rhind his CPA, for advice.

22

23 Mr. Rhind informed him of a federal tax
24 extension. They have a history together of discussing
25 both state and federal taxes. However, Mr. Rhind and
Mr. Abdelkerim are not in a specific habit of technically

1 talking about the specifics of state taxes.
2 Mr. Abdelkerim is not a sophisticated tax preparer. He is
3 an average taxpayer. As I said before, Mr. Rhind was
4 comfortable handling the state tax portion of
5 Mr. Abdelkerim's taxes in the past as well as federal
6 taxes, and they had talked of the federal extension.

7 Mr. Abdelkerim didn't rely on Mr. Rhind to file
8 the taxes but to advise him about both state and federal
9 taxes as, you know, they have in years past. Now,
10 Mr. Rhind's admission in discussing the extension for
11 state taxes is his advice. Mr. Abdelkerim relied on that
12 omission and, therefore, did not ask for an extension in
13 his state taxes. The average taxpayer would rely on
14 silence or an omission as advice when dealing with his CPA
15 that he has known for years.

16 At this time I would like to ask for the
17 testimony of Mr. Abdelkerim.

18

19

DIRECT EXAMINATION

20 BY MS. POLIS:

21 Q Mr. Abdelkerim, would you please describe your
22 relationship with Mr. Rhind?

23 A So Mr. Rhind was my CPA from 2010 through this
24 tax year. He had filed my federal and state taxes, so for
25 four consecutive years prior to this tax return. That

1 would describe our relationship.

2 Q And what is the nature of your discussions with
3 Mr. Rhind?

4 A So we will periodically meet to discuss the
5 federal and state tax returns. Generally, he'll ask for
6 information from me in terms of my income. I'm a
7 physician. So I work within -- in that year and, kind of,
8 previously since I finished my medical training, the
9 emergency physician groups that I work with require me to
10 be -- to have a corporation.

11 So I had a corporation, and I was the sole
12 employee of that corporation. Because of the complexity
13 of that situation, I had a -- excuse me -- an accountant
14 filing my federal and state tax returns from the beginning
15 of the -- from 2007, essentially, but he was my accountant
16 from 2010. So we would typically meet, and I would
17 present him information.

18 We would have discussions regarding my tax
19 returns. He would prepare an initial return. I would
20 review it. And then once -- once I had reviewed it, then
21 we would move towards submitting it, and he would assist
22 me with that.

23 MS. POLIS: Nothing further at this time.

24 JUDGE CHENG: Okay. FTB, any questions for
25 Appellant?

1 MS. MCEVILLY: No.

2 JUDGE CHENG: Panel, any questions?

3 JUDGE DANG: No.

4 JUDGE TAY: No.

5 JUDGE CHENG: FTB, you're up.

6

7

OPENING STATEMENT

8 MS. MCEVILLY: Thank you for your time today,
9 panel.

10 The sole issue in this case is whether Appellant
11 has established reasonable cause to support abatement of
12 the late-filing penalty. The Respondent's position of the
13 penalty is presumed correct, unless the Appellant can show
14 that the failure to file 2014 tax return was due to
15 reasonable cause and not willful neglect. Appellant must
16 provide credible and competent evidence that his failure
17 to timely file occurred despite the exercise of ordinary
18 business care and prudence. Appellant has a personal
19 non-delegable duty to file his tax return timely.

20 As we heard here today, Appellant has testified
21 that he relied on his CPA to provide him advice. And in
22 the record, it indicated that he received advice to file
23 his federal return late by the federal extension date in
24 order to determine whether he could qualify for some
25 federal exclusions. Nothing in the record and nothing

1 stated today, nor is there any supporting evidence
2 indicates or supports that Appellant actually asked for
3 advice with respect to his California tax obligations, or
4 that he received advice from his CPA.

5 His testimony today admitted that he received
6 advice in four consecutive tax years from the same CPA.
7 He filed prior tax returns in California. A reasonable
8 person would have asked his CPA for advice in 2014 because
9 he filed his California tax returns in the prior three
10 years.

11 Now, this leads me to the issue of reliance. As
12 the U.S. v. Boyle Case, which was adopted and applied in
13 recent precedential cases, such as the Appeal of Porreca
14 to the Office of Tax Appeals, the failure to make a timely
15 filing of a tax return is not excused by the taxpayer's
16 reliance on an agent. And such reliance is not reasonable
17 care. It is well settled that one does not have to be a
18 tax expert or have a sophisticated understanding of tax
19 laws to know that they need to file timely.

20 Reasonable cause may exist, true, if the taxpayer
21 provider provides advice on a substantive tax law with
22 respect to the filing of his California tax return.
23 Appellant has provided no evidence to establish that he
24 asked for or received advice of a substantive -- in the
25 area of substantive tax law with respect to the filing of

1 his 2014 tax return.

2 This leads me to the letter provided by
3 Mr. Rhind, his CPA, which is Appellant's Exhibit 3.
4 There's nothing in that letter that indicates, again, that
5 he asked for or received advice from the CPA. The CPA
6 only states that he provided advice with respect to his
7 federal obligations.

8 Now, to the extension that he received for his
9 fail to return, the record reflects that he -- that
10 Appellant thought he had until January 30th to file his
11 fail to return. The IMF in Exhibit G, Appellant's --
12 Respondent's Exhibit G, indicates that he had until
13 October 15th, 2015. Respondent provides an automatic
14 extension of six months. And for those living abroad on
15 April 15th, such as Appellant, he would have received
16 another two months.

17 So had he filed his return by June 15, 2015, it
18 would have been timely. But in this case, although, the
19 record reflects he thought he had until January 30, 2016,
20 to file his return, he didn't file his California return
21 until March 1st, 2016, and has provided no competent or
22 credible evidence to establish why that delay constitutes
23 reasonable cause.

24 Now, the record indicates in his protest letter,
25 which is Appellant's -- Respondent's, excuse me, exhibit.

1 Appellant's Exhibit 1, he indicates, "I'm sorry for making
2 this mistake."

3 To the extent that his claim in the record is
4 that he made a mistake and this misunderstanding
5 constitute reasonable cause, it is well settled that
6 mistake in and of itself is not enough to establish
7 reasonable cause.

8 In closing, Appellant has not overcome the
9 presumption of correctness attached to the penalty. He
10 has not provided credible or competent evidence that his
11 failure to timely file occurred, despite the exercise of
12 ordinary business care and prudence. He has not
13 established that the failure to timely file was due to
14 reasonable cause.

15 Based on the controlling law, the evidence in the
16 record, and the testimony we heard here today, Respondent
17 request that its action be sustained.

18 And I'm open to any questions, should you have
19 any.

20 JUDGE CHENG: Thank you.

21 Any questions, panel?

22 JUDGE DANG: No. Thank you.

23 JUDGE TAY: No questions.

24 JUDGE CHENG: Okay. Ms. Polis, you have five
25 minutes on rebuttal.

1 MS. POLIS: Yes.

2

3 CLOSING STATEMENT

4 MS. POLIS: Now, Mr. Abdelkerim relied on his CPA
5 for expert tax advice. This is reasonable cause. He did
6 not neglect his duty but rather, acted with ordinary and
7 reasonable business prudence by relying on a CPA. Now,
8 the CPA, Mr. Rhind's omission, constituted advice,
9 especially, when talking about extensions with an average
10 taxpayer. A reasonably prudent businessperson, who is an
11 average taxpayer, wouldn't challenge a CPA and would not
12 believe that when a CPA gives advice as to the state tax
13 return that that advice is incomplete.

14 He would believe that advice is full and
15 complete, and that he could reasonably rely on that. Now,
16 as per U.S. v Boyle, Mr. Abdelkerim did not rely on a CPA
17 to just file taxes. He relied on a CPA for expert advice,
18 and it is that reliance that constitutes reasonable cause.

19 Thank you.

20 JUDGE CHENG: Thank you.

21 Questions, panel?

22 JUDGE TAY: No questions.

23 JUDGE DANG: No questions.

24 JUDGE CHENG: Okay. Seeing that there are no
25 questions, we are ready to close the record and submit

1 this case for consideration.

2 Mr. Abdelkerim, did you have any questions?

3 MR. ABDELKERIM: Yes. Can I respond to what was
4 said from FTB?

5 JUDGE CHENG: Yes, of course.

6 MR. ABDELKERIM: Okay. So in this instance we
7 did discuss that, filing my state tax return, just as we
8 had the four previous years. In fact, there are -- one of
9 my review of my communications with my accountant, you
10 know, I don't recall the specific e-mails that were sent.
11 But on my review on them, there were multiple e-mails sent
12 that -- where we were discussing my state tax returns, and
13 he also helped me in filing.

14 There's, I guess, a California nonresident form
15 when you move and establish residence abroad. So he
16 helped me file that in early 2015. My understanding when
17 we had just discussed the extension, which was with the
18 purposes of -- it was more for the purposes of my federal
19 tax return that the extension was for -- for all of my
20 returns.

21 And it wasn't really until almost -- when I
22 start -- when I -- it wasn't until much later, and
23 I can't -- when I -- I'm trying to remember the time that
24 I became aware of this penalty. But that was, I think,
25 in, like, mid-2016. That's when I first became aware

1 that -- that there was even, like, an issue regarding my
2 late filing.

3 So she had mentioned that I filed in March. That
4 delay was related to my accountant telling me that was the
5 time to file, and I don't know why he had made that
6 determination. There were preliminary preparations of my
7 state tax return for that year that were done in, I think,
8 in April or May of 2015. So I'm not sure why he delayed
9 until, essentially, 10 to 11 months later in terms of
10 actually preparing to submit or preparing the documents
11 for me to submit for my state tax return.

12 I did acknowledge that it was a mistake, and I
13 feel -- I feel that, you know, in retrospect it's obvious
14 to me that this should have been done earlier. And -- and
15 I really wish it had been done earlier. The -- I think
16 the reason that I didn't do this on time was because I was
17 relying on his advice, and I thought we had filed an
18 extension and that we were not in delinquency,
19 essentially, is -- is, I guess, what I would have to say.

20 JUDGE CHENG: Understood. Thank you.

21 MR. ABDELKERIM: Thank you.

22 JUDGE TAY: Can you elaborate a little bit on the
23 maybe the filling out of the return? Were you waiting on
24 documents? Were you -- did you have the information?
25 Were you waiting on information in some way for you to

1 file your state tax return?

2 MR. ABDELKERIM: No. The -- the -- I wasn't
3 waiting on any specific information. The -- as I
4 mentioned he -- so I had provided him in -- so April of
5 2015 I had provided him with all the information that he
6 would need to fill -- to complete my tax return. He did
7 that, and I reviewed it.

8 And then there were some -- I don't believe, with
9 respect to the state tax return, there was any kind of
10 revisions. But regarding my corporate tax return, there
11 was a little bit of back and forth to -- to kind of
12 finalize that. But in terms of the state tax return, I
13 don't believe that there were any corrections. Like, had
14 he said to me in April when he had all the information,
15 "Okay, let's go ahead and submit it," it would have been
16 submitted.

17 It just was not -- like I said, I don't know why
18 there's a delay, but it wasn't related to any additional
19 information that I needed to provide or further revisions
20 of what he had prepared initially.

21 JUDGE TAY: Okay. Thank you.

22 MR. ABDELKERIM: Thank you.

23 JUDGE CHENG: Okay. If there's nothing further
24 from either party, we will now be closing the record, and
25 the case is submitted for decision.

1 FTB?

2 MS. MCEVILLY: Does FTB have an opportunity to
3 respond to what he just said?

4 JUDGE CHENG: If you wish, sure.

5

6 CLOSING STATEMENT

7 MS. MCEVILLY: Much of what he said, including
8 reference to e-mails, is unsupported and uncorroborated.
9 So if there were e-mails, there was evidence of actual
10 advice where he asked for the advice, these things his
11 recent testimony referred to aren't in the record. And
12 without supporting evidence, they're just unsupported
13 statements, unfortunately. They weren't provided. No
14 such e-mails or conversations or even phone records were
15 provided to Respondent for consideration.

16 Thank you.

17 JUDGE CHENG: Okay. Now, we're really closing
18 the record, and the case is being submitted for decision.
19 The panel will meet and discuss the case following the
20 hearing, and we will strive to issue a written decision
21 within one 100 days of today.

22 The hearing is now adjourned, and we will be
23 taking a 10-minute break until the next hearing. Thank
24 you.

25 (Proceedings adjourned at 10:21 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 6th day of October, 2019.

ERNALYN M. ALONZO
HEARING REPORTER