

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
STEVEN E. REED, ) OTA NO. 18042786  
 )  
 )  
 APPELLANT. )  
 )  
 )  
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TRANSCRIPT OF PROCEEDINGS

Fresno, California

Thursday, November 21, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
855 M Street, Suite 960, Fresno, California, 93721,  
commencing at 10:25 a.m. and concluding  
at 10:38 a.m. on Thursday, November 21, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ AMANDA VASSIGH  
ALJ SUZANNE BROWN

For the Appellant: STEVEN E. REED

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: ELLEN SWAIN  
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

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

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

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1                   Fresno, California; Thursday, November 21, 2019

2   9:00 a.m.

3

4                   JUDGE LAMBERT: Let's go on the record and get  
5 started.

6                   We're now on the record in the Office of Tax  
7 Appeals' oral hearing for the appeal of Steven E. Reed,  
8 Number 18042786. We're in Fresno, California. The date  
9 is Thursday, November 21st, 2019, and the time is 10:25.  
10 My name is Josh Lambert, and I'm the lead Administrative  
11 Law Judge for this hearing. My co-panelists today are  
12 Suzanne Brown and Amanda Vassigh.

13                   Appellant, can you please identify yourself for  
14 the record.

15                   MR. REED: Steven E. Reed.

16                   JUDGE LAMBERT: Thank you.

17                   FTB, can you please introduce yourselves for the  
18 record.

19                   MS. SWAIN: Good morning, Your Honors. My name  
20 is Ellen Swain. I represent the Franchise Tax Board. And  
21 then Maria Brosterhous.

22                   JUDGE LAMBERT: Thanks.

23                   The issues in this appeal are: Whether Appellant  
24 established error in the proposed assessments for the 2014  
25 and 2015 tax years; whether Appellant established a basis

1 for abatement of a late-filing penalties for the 2014 and  
2 2015 tax years; whether Appellant established the basis  
3 for the abatement of the Notice and Demand penalties for  
4 the 2014 and 2015 tax years; and whether the Office of Tax  
5 Appeals should impose a frivolous appeal penalty.

6 The parties agreed to the admission into evidence  
7 of Appellant's Exhibits 1 through 27 and FTB's Exhibits A  
8 through R, and neither party had any objection. So I will  
9 hereby admit those exhibits into evidence.

10 (Appellant's Exhibits 1-27 were received  
11 in evidence by the Administrative Law Judge.)

12 (Department's Exhibits A-R were received in  
13 evidence by the Administrative Law Judge.)

14 We will begin with Appellant's arguments first,  
15 and you'll have 15 minutes to give your presentation. And  
16 after, FTB and the judges will ask questions if they want.  
17 Then FTB will make its presentation for 15 minutes. You  
18 can ask questions, and the judges will be allowed to ask  
19 questions. After that, Appellant, you can make a rebuttal  
20 for 10 minutes. And please try to speak slowly, both  
21 parties, so the stenographer can record what you say.  
22 She'll be providing a transcript after a couple of weeks.

23 And Appellant you want to be sworn in, I believe;  
24 is that correct?

25 MR. REED: Yeah. Everybody will be.

1 JUDGE LAMBERT: Okay. Well, you can be sworn in,  
2 but the FTB said that they won't be swearing in because  
3 they aren't going to be presenting any witnesses, only  
4 argument.

5 MR. REED: They can't present any arguments if  
6 they don't have witnesses.

7 JUDGE LAMBERT: Well, they don't need to.  
8 They're providing exhibits, and that's what we're looking  
9 at in the record. Whereas, when you provide your  
10 testimony, that provides the ability for us to use your  
11 testimony as a finding of fact. So what you state will  
12 carry more weight than their arguments. So we'll just  
13 have you swear in. That's it.

14 So, Stenographer, can you please swear in the  
15 Appellant.

16

17

STEVEN E. REED,

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

21

22 JUDGE LAMBERT: Okay. Thanks. You've got 15  
23 minutes.

24 MR. REED: Okay. I also would like to bring  
25 forth the copy that I received from Ellen on October 16th

1 prior for the Exhibits of A through R. I believe that's  
2 been recorded. Also I'd like the record to note that this  
3 is bringing forth the years of 2010, 2011, 2012 and 2013  
4 as well. So any and all of the exhibits that I have filed  
5 also addresses that within a timely fashion of -- per the  
6 state and federal rules of civil procedure. You have,  
7 apparently, the records and you have gone over it. So I  
8 have questions for you of a panel of three. Have you gone  
9 over the briefs and --

10 JUDGE LAMBERT: Yeah. We've read all the briefs.  
11 But I'd use this opportunity to present your argument  
12 instead of asking us questions. This is your time to  
13 present your argument. So we're here to listen to what  
14 you have to say.

15 MR. REED: Well, I submitted under affidavit an  
16 oath of all the evidence of fact from all the other  
17 agencies and of myself. So for me to go over it, the only  
18 think I can state would be is that to know you have and  
19 read my responses --

20 JUDGE LAMBERT: We have.

21 MR. REED: -- to a claim of someone -- I don't  
22 know -- as pursuant to the federal and state rules of  
23 civil procedure.

24 JUDGE LAMBERT: Yes. We've all read all of your  
25 briefs and the evidence.



1 MR. REED: Okay. Are you familiar with 18501?

2 JUDGE LAMBERT: I'm not sure, but --

3 MR. REED: Well --

4 JUDGE LAMBERT: -- what your trying -- I'm not  
5 sure what you're saying but present your argument.

6 Explain to us what you want to say, and then we can --

7

8 OPENING STATEMENT

9 MR. REED: Well, what I want to point out is that  
10 any of these -- and of the evidence they brought forward,  
11 they make claim of being part of and identifying an entity  
12 of some sort or some kind. My evidence has shown that I  
13 am not. And in the first paragraph of 18501 of the R&TCs  
14 clearly takes with my evidence provides a fact that I am  
15 not every individual taxable under Part 10, commencing  
16 with Section 17001 through whatever it is. They have not  
17 presented any evidence of being part of -- of a claim to  
18 even be able to be claiming a frivolous penalty. Because  
19 a frivolous penalty is then for businesses or  
20 self-employed or whoever it may be.

21 The evidence that I have presented is under fact,  
22 and that I am not anyone of what they have claimed. So  
23 under even this State's Rules of Civil Procedure, under  
24 the Evidence Codes, it -- my evidence is overwhelming.  
25 They haven't rebutted any part of it. So I stand on my

1 evidence and my claim of fact. And for anybody to rebut  
2 it and to be charged with something, they will have to  
3 have a greater weight of law or of evidence to do so.

4 I'm -- I stand and set in honor, and I stand and  
5 set before you that everything submitted is on the record  
6 and of the truth and of fact. Claims cannot be within any  
7 tribunal. They don't stand, and you have my time.

8 JUDGE LAMBERT: Okay. FTB do you have any  
9 questions?

10 MS. SWAIN: No, Your Honor.

11 JUDGE LAMBERT: Judges, do you have any  
12 questions?

13 JUDGE VASSIGH: I do not.

14 JUDGE BROWN: I do not.

15 JUDGE LAMBERT: Okay. FTB you have 15 minutes to  
16 make your presentation.

17 MS. SWAIN: Thank you.

18

19 OPENING STATEMENT

20 MS. SWAIN: The Franchise Tax Board has  
21 established that its estimated income in Mr. Reed's case  
22 was reasonable and rationale. Once we established that,  
23 the burden shifts at that point to Mr. Reed to establish  
24 where it was erroneous, and he has not shown that. His  
25 pleadings do not show that. Likewise, the demand penalty

1 and the delinquent filing penalties were both properly  
2 imposed in this case for 2014 and 2015.

3 And finally, the issue of the frivolous appeal  
4 penalty that's before this court, and it's -- excuse me --  
5 it's the agency's penalty to impose. The reason we  
6 brought up the -- to your attention is that it would  
7 appear to be warranted, given that in a precedential  
8 opinion by the OTA and in the opinion of Balch, they found  
9 that wages were taxable and they did impose a franchise --  
10 excuse me -- a frivolous appeal penalty. It also appears  
11 to be potentially brought along in this case to show -- to  
12 create delay because the taxes have not been paid.

13 In the case of -- if there's any questions, I'm  
14 happy to answer them.

15 JUDGE LAMBERT: Thank you.

16 Judges, do you have any questions?

17 JUDGE BROWN: No, I do not.

18 JUDGE VASSIGH: I do not have any questions.

19 JUDGE LAMBERT: Okay. Appellant, did you have  
20 any questions?

21

22 REBUTTAL STATEMENT

23 MR. REED: I want to enter into the effect an  
24 objection to what she has testified or claimed. The  
25 record shows that I filed on a proper date and proper

1 time. They were mailed by the United States Postal  
2 Service on a proper date and received. There is also  
3 company forms that they're not acknowledging to rebut  
4 anything of what was falsely paid. And there's evidence  
5 of that as well to where the payers have not even brought  
6 in here as witnesses to be -- to be presenting their  
7 signature of fact under a W2 or of a -- of a P3 or  
8 whatever 33 or 34, whatever those are, that they filed,  
9 and whoever it is that signs it to state that.

10 So again, a false claim that has already been  
11 rebutted by even their own filings. That's within the  
12 record of OTA of my mailings. I filed on time, and  
13 there's no corrections or anything on those forms.  
14 They're filled out just exactly how they're supposed to be  
15 and signed. So for anybody to come forth with anything  
16 that's different than what was said and what was done, the  
17 evidence of fact is there, that there was no -- how did  
18 she say -- delayed or not received in time. Sorry. The  
19 evidence is all there, the facts.

20 JUDGE LAMBERT: Okay. Thank you. So I guess  
21 that would be your rebuttal. Do you have anything else  
22 you want to add?

23

24

CLOSING STATEMENT

25

MR. REED: I just hope the law is followed out

1 here because I've got some other information here about  
2 these whole proceedings, and it's kind of boggling. And  
3 I'm not wanting to bring it to your attention, so we're --  
4 and this is not the time and place. But it just appalls  
5 me that I can be held for something that I am not. And  
6 then for anything like an earnings withholding where it's  
7 to be taken and done without due process -- it's the  
8 truth.

9           There is anything and everything was taken  
10 without due process before this date, and we're talking  
11 five, six years ago even. Never -- I got responses all by  
12 either certified mail or certification of mailing. It's  
13 all been put in the record, and I have responded. They  
14 never even looked at this thing. I've talked with --  
15 well, why isn't the plaintiff here? Which would be Royce  
16 Larson or M. Jennings. They're the ones who signed the  
17 frivolous penalty.

18           That was the first thing I get back in the mail  
19 once I mailed it on the 12th of April. I responded. They  
20 never come back. They never acknowledged when I talked to  
21 him on the phone. He never acknowledged the 4852 or a  
22 3525. That is the lawful form that they say, and it says  
23 right on it to fill it out and send it in on any kind of  
24 dispute. It's on the record.

25           They have sent it in. I've sent it in. There's

1 no delay. There's an EW. You know, they call them EWOTs.  
2 Several times taking my funds, putting my family in deep  
3 jeopardy when -- okay, enter into an agreement for  
4 hardship. No. That's an agreement. I never even  
5 willingly, knowingly, and intentionally entered into an  
6 account. That's stated here too. There's no evidence of  
7 such account created knowingly, willingly, and  
8 intentionally.

9 That means I have a business. That means I have  
10 some sort of business part of the State of California or  
11 some county or somewhere else. All the evidence shows  
12 that I'm not any part of them. I'm not a fiduciary. I'm  
13 not a trustee. I'm not any -- collecting any of that kind  
14 of stuff.

15 So then what am I? I'm a private citizen. So  
16 what I would expect is that the truth and the law to be  
17 brought forth. And I would think that it would be brought  
18 here at this -- at this quorum to show me where I am wrong  
19 or at least rebut the -- show where it is that I have.  
20 'Cause right now, all the evidence shows that I have not,  
21 and there has not been anything lawful under oath or  
22 certificate -- certified rebuttal.

23 And that's what the laws are created from, under  
24 the constitution to the United States Codes to the federal  
25 rules and State Rules of Civil Procedures, for those

1 authorities to follow to proceed of against a private. I  
2 expect it, please.

3 Thank you.

4 JUDGE LAMBERT: Thank you, Mr. Reed.

5 So at this point I'm going to close the record  
6 and conclude the hearing. And I want to thank both  
7 parties for coming in today. Following this hearing, my  
8 co-panelists and I will discuss the evidence and argument,  
9 and we'll issue a written opinion within 100 days. Thank  
10 you.

11 This hearing is now closed.

12 (Proceedings adjourned at 10:38 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 12th day of December, 2019.

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