

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
CLOVUS M. SYKES,) OTA NO. 18124079
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Monday, November 18, 2019

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPELLANT.)
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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 10:35 a.m. and concluding
at 11:15 a.m. on Monday, November 18, 2019,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ ANDREW KWEE
ALJ JOSHUA LAMBERT

For the Appellant: CLOVUS M. SYKES

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
By: MIRA PATEL
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I N D E X

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E X H I B I T S

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(Department's Exhibits were received at page 7.)

CLOSING STATEMENT

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By Mr. Sykes 27

1 Sacramento, California; Monday, November 18, 2019

2 10:35 a.m.

3

4 JUDGE STANLEY: We'll go on the record now.

5 MR. SYKES: May I ask a question?

6 JUDGE STANLEY: Oh, certainly.

7 MR. SYKES: Okay. In the prehearing conference
8 we talked about the management of additional exhibits.
9 There are some things that I'm going to speaking to. It
10 would probably be more beneficial to everybody involved if
11 they were to see what they are.

12 JUDGE STANLEY: Are you saying you brought more
13 exhibits today?

14 MR. SYKES: Well, yes, ma'am. I did.

15 JUDGE STANLEY: Okay. Can you specify what those
16 are? And as in the minutes and orders, tell me why you
17 couldn't have had them in before today?

18 MR. SYKES: Well, I prepared an actual statement
19 that I'm going to read, and there are some things that I'm
20 going to be referencing that I've already mentioned in my
21 original brief. So I thought that I would pull them out
22 and just actually show them or display them as I talk
23 about them in my statement.

24 JUDGE STANLEY: Okay. And you can refer to them
25 all you want. And I'll let you know a couple of reasons

1 why it's not necessary to admit your statement as evidence
2 because you're going to give testimony, and that will be
3 reading your message. And this nice young woman to my
4 right will be taking down every word you say. So that
5 will also give me and the Franchise Tax Board the
6 opportunity to adequately respond to what your testimony
7 is instead of having additional documents they don't know
8 necessarily what you're referring to. They can answer
9 what you're doing right now today.

10 MR. SYKES: Okay.

11 JUDGE STANLEY: Okay. And I'll let you know also
12 that all three panel members have read the entire file.
13 We have all your prior briefing and the documents that
14 you're going to refer to. We have access to them already.
15 Okay?

16 MR. SYKES: Okay.

17 JUDGE STANLEY: All right. So we'll go on the
18 record in the appeal of Clovus M. Sykes, Case
19 Number 18124079. It's November 18th, and the time is
20 10:37 a.m., and we're in Sacramento California. My name
21 is Judge Teresa Stanley. I have Judge Josh Lambert to my
22 right and Judge Andrew Kwee to my left.

23 And once again for the record, Mr. Sykes, could
24 you state and spell your name, please, for the court
25 reporter.

1 MR. SYKES: Sure. Clovus, C-l-o, v as in Victor,
2 u-s. Last name Sykes, S-y-k-e-s.

3 JUDGE STANLEY: Okay. And for the Franchise Tax
4 Board?

5 MS. PATEL: Mira Patel, M-i-r-a. Last name
6 Patel, P-a-t-e-l. And I'm here with Maria Brosterhous as
7 well. Maria, M-a-r-i-a, Brosterhous, B-r-o-h-s --

8 MS. BROSTERHOUS: B-r-o-s-t-e-r-h-o-u-s.

9 JUDGE STANLEY: Okay. Thank you.
10 This morning we are going to admit into evidence
11 Appellant's Exhibits 1 through 17 and the Franchise Tax
12 Board's Exhibits A through Y.

13 Are there any objections at this time to any of
14 those exhibits, Mr. Sykes?

15 MR. SYKES: No.

16 JUDGE STANLEY: Ms. Patel?

17 MS. PATEL: No objections.

18 JUDGE STANLEY: Okay.

19 (Appellant's Exhibits 1-17 were received
20 in evidence by the administrative Law Judge.)

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

23 JUDGE STANLEY: And the issues are whether the
24 Franchise Tax Board erred in its proposed assessment of
25 tax for the taxable year 2015; should the late filing

1 penalty be abated; should the notice and demand penalty be
2 abated; should the filing enforcement fee be abated;
3 should interest be abated; should a penalty be imposed on
4 Appellant pursuant to Revenue and Taxation Code Section
5 19714 for maintaining a proceeding that is frivolous or
6 groundless.

7 So at this time we're not going to do opening
8 statements in this case because we have only one witness.
9 So what I'm going to do is to swear you in so that you can
10 testify, and then anything you say is going to be in
11 evidence. Okay?

12 MR. SYKES: Great.

13 JUDGE STANLEY: All right.

14

15 CLOVUS M. SYKES

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

19

20 JUDGE STANLEY: Thank you. Okay. You had said
21 that you needed about 20 minutes, so you can begin
22 whenever you're ready.

23 MR. SYKES: Thank you.

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OPENING STATEMENT

MR. SYKES: Good morning, Panel. Again, my name is Clovus Maurice Sykes. For the record, I'm going to read my actual facts and circumstances.

My pay status is United States person. My status of citizenship is the State of California. My domicile has been within the State of California U.S.A. since 1976 where I have been permanently domiciled with no intent to abandon my domicile. My entire 2015 earnings were sourced within my California domicile. And my facts and circumstances never included either direct or indirect business connections or to the performing of any services within another state of the United States or another country outside of the United States.

Now, in a few minutes Mira Patel will list a number of things she will claim that I am required to do. However, other than events that she states are indications, she will not tell you why she has chosen not to dispel the assertions in ways permitted by federal regulations that directly control this matter. If we apply the facts to the law, as due process requires, Patel's assertions would bear no fruit.

Nonetheless, to establish perspective, there are two court cases which provide direct guidance on managing material facts illustrated in this case. The first being

1 a Supreme Court decision, United Dominion Industries, Inc.
2 versus the United States, where the court rendered two
3 quotations that I think are pertinent. "When the tax
4 gatherer puts his finger on the citizen, he must also put
5 his finger on the law permitted." The second one, "If the
6 words are doubtful, the doubt must be resolved against the
7 government and in favor of the taxpayer."

8 The second case is the Ninth Circuit case, which
9 I find extremely applicable, is John Farley Appellant
10 versus United States of America, where the Court states,
11 "We now turn to the ground upon which we decide no
12 regulation." The government quotes, "Men must turn square
13 corners when they deal with the government." In somewhat
14 of a melodramatic fashion, the Court continues, "Sure.
15 But if the government hides the corners, what should man
16 then do?"

17 This entire case, like prior cases brought
18 against me, is wrought with incidents where FTB's staff
19 attempts to hide the corners to withhold from me pertinent
20 factors regarding the disposition of this and prior cases.
21 The list is endless. Royce Larson's failure to disclose
22 the determination of any domicile state; to the liberal
23 use of the legal term frivolous when the facts of the case
24 do not match the prescribed criteria to support frivolous;
25 to the purported assertion that my actions were frivolous

1 when the Internal Revenue Service agreed to reduce my 2010
2 and 2012 adjusted gross income to zero based upon facts
3 that are present in this case; to the notion that my
4 presentations to the Internal Revenue Service for the
5 calendar years 2010 and 2012 were frivolous because they
6 were purportedly based upon defined frivolous positions
7 that were not disclosed to me, even though I requested the
8 information in writing.

9 To add insult to injury, Larson states in the
10 file note that even though Pham had chosen two arguments
11 from the secretary's listing, Pham was advised by some
12 undisclosed part to withhold from me the unidentified
13 arguments; to Larson's refusal to recognize under Revenue
14 and Taxation Code Section 18622, the services 2010, 2012
15 actions because according to Larson, I had 60 days to
16 appeal a notice of proposed assessment; to Brian Werking's
17 submission of a totally inaccurate analysis regarding
18 Treasury Decision 8734.

19 TD 8734 was key to the services complied to his
20 actions to reduce my gross income to zero. Again, adding
21 insult to injury, he refused to provide to me the basis
22 for introducing an analysis, that as a tax counsel, he
23 should have known was untrue and could not be
24 substantiated.

25 The one admission that can be supported,

1 regardless of the outcome, you will find that every step I
2 have taken in this matter is supported in fact and
3 governing law. However, in my quest to conduct my affairs
4 in a manner permitted by the governing provisions, two
5 very important facts have been acknowledged and disclosed,
6 placed on the record, and having direct impact upon this
7 matter.

8 The first acknowledged fact is documented in the
9 transcript of Case Number 817237 before the Board of
10 Equalization held July 28th, 2015. I ask that you follow
11 along with me. The issue focused on 26 United States
12 Code 6041 as it relates to the 26 U.S. Code Chapter 61,
13 reporting requirement. The section instructs persons who
14 have made payments to persons to report payments in excess
15 of \$600 as specified by regulations. The term person is
16 defined in 26 U.S. Code Section 7701(a) as an individual,
17 a trust, estate, partnership, association, company, or
18 corporation. With the exception of an individual, the
19 remaining entities are all fictitious entities.

20 As illustrated in 26 CFR1.1-1(a) in conjunction
21 with 26 U.S. Code 911(d), an individual who is a citizen
22 possesses within their facts and circumstance a tax home
23 outside of the United States. Please make note of this
24 fact because outside of the United States is a key element
25 listed in 26 CFR 1.1441-1(b) (3) called the presumption

1 rules.

2 The presumption rules are the legislated element
3 needed to support any presumption of correctness. When as
4 in my case, the reporting of 1099 miscellaneous by payors
5 is used as an indication of foreign payee status. Left
6 unchallenged, the prima fascia indication stands. The
7 transcript on the proceedings recorded the following
8 discourse. Page 19 and 17, Ms. Harkey speaking, "Okay.
9 Now that I'm thoroughly confused, I need to know two
10 things. I think Ms. Maud did a, kind of, summary of the
11 issues before us. But this is for the Department,"
12 meaning or referring to either FTB staff or BOE staff.
13 "Is he," referring to me, "presuming he's a nonresident
14 alien? Is that the argument here? Is that Bill's?"

15 And he says, "No." And then he's, I guess Bill,
16 he's referring to me shaking his head no.

17 Page 19 at 24 Sykes speaking, "I can best tell
18 you," here I was interrupted by Ms. Harkey, page 19 and
19 25. Ms. Harkey speaking, "Okay. What about the law in
20 10 -- 1099 reporting?"

21 Page 19 at 27 through page 20, Mr. Werking
22 speaking, "Under IRS Internal Revenue Section 6041 that,"
23 he hesitates, "that implies to reporting of payments in
24 excess of \$600." And he actually put this in writing,
25 "that are made to U.S. person, which Appellant," referring

1 to me, "suggested that he is a U.S. person."

2 And I want to make note here. It must be
3 observed that Werking could not then nor cannot now
4 support the contention that 6041, 6041(a) references U.S.
5 persons. The citation does reference persons. However,
6 26 USC 7701(a) does make a distinction between persons, as
7 we have covered, and U.S. persons found in section
8 7701(a) (30) (a).

9 And we continue to page 20 at 4, Ms. Harkey
10 addressing me, "Are you admitting that you're a U.S.
11 person?"

12 Page 20 at 6, Sykes, "I'm admitting I'm a U.S.
13 person."

14 But, again, interrupted by Ms. Harkey. Page 20
15 at 8, Ms. Harkey, "That's all I want to know, yes or no?"

16 Page 20 at 10, Mr. Sykes, "Yes, ma'am, I am."

17 In conclusion to this segment of my testimony,
18 and for the record, my status was entered into the record
19 for all intents and purposes regarding income taxation as
20 a U.S. payee as defined in 26 USC 7701(a) (30) (a) as a
21 citizen or resident of the United States. Unfortunately,
22 for the procedures at hand, Werking's indefensible faux
23 pas provide obscurity to an issue that should have been
24 settled.

25 In no way can I be acknowledged as a U.S. payee

1 and simultaneously an individual subject to these rules.
2 The importance of this issue is that according to the
3 provisions of Treasury Decision 8734, which have now been
4 deemed as the final regulation by Treasury Decision 9658,
5 the following procedural steps were required of each of
6 the payors listed in the proposed assessment issued by
7 Larson and today Patel.

8 The first element of responsibility states, "As a
9 generally matter, a withholding agent, whether U.S. or
10 foreign, must ascertain whether the payee is U.S. or
11 foreign person." Note emphasis must be placed upon
12 withholding agent because the third-party payors were
13 really not withholding agents because they were not
14 required to withhold under Chapter 3 provisions,
15 particularly Section 1441. Because as Brian Werking
16 states as an interpreted written piece dated 1/6/2015 that
17 we will focus on shortly, Section 1441 not apply.

18 However, the implementing regulation show that
19 Werking was only partially correct. Section 1441 and the
20 implementing regulations apply to the extent that the
21 implementing regulations stressed the importance of
22 distinguishing between a U.S. payee and a foreign payee as
23 the foundational and fundamental element to apply
24 Section 1441 as a withholding agent. Otherwise, 1441 in
25 the regulation do not apply.

1 The second acknowledged fact is illustrated by
2 Royce Larson's entries into the case file notes on
3 October 30th, 2017, at 8:24 a.m., same day at 8:36 a.m.,
4 and July 6th, '18 at 9:50 a.m. Each of the entries
5 acknowledges my status in California as a domicile. While
6 the entries states domicile and residence in the same
7 manner that I cannot be an individual and a U.S. payee
8 simultaneously, as a matter of fact, I cannot be a
9 domicile and a resident simultaneously, as a matter of
10 fact.

11 That is why we accepted that as a government
12 official, Mr. Larson had a duty to respond to my
13 correspondence pieces alleging the management of this
14 matter. However, as recorded in the record, some
15 undisclosed party put a muzzle on Pham, frivolous and
16 non-filer. And Larson instructed them to not disclose
17 information pertinent to my -- to the Feds, to me. I
18 would like to exercise my right to learn the identity of
19 the official who obstructed my due process and their basis
20 for so doing.

21 Nonetheless, official and direct testimony that's
22 placed into the record by Patel's claim directly affirming
23 my domicile status as a matter of a fact. According to
24 the decision rendered by the Board of Equalization in the
25 matter of Steven D. Bragg 2003-SBE-002, there are two

1 vital elements affirmed in and by the decision. An
2 individual may claim only one domicile at a time.

3 Number two, the burden of proof has to be a
4 change of domicile. It's on the party asserting such
5 change. If Patel wishes to challenge the established,
6 acknowledge, and affirmed fact that BOE -- that California
7 is my domicile, according to the BOE's decision, she has
8 the responsibility of introducing into these proceedings
9 factual evidence to the contrary.

10 But let's take the guesswork out of this
11 equation. Regardless of any attempts promoted by Patel,
12 outside of attempting a Brian Werking, she is incapable of
13 fulfilling that feat. And even she pulls a Brian Werking,
14 like Brian Werking, she would be incapable of supporting
15 the assertion.

16 The foregoing facts set the stage for the issues
17 involving this matter, Notice and Demand to file a tax
18 return. Patel's Exhibit A is a document entitled "2015
19 Demand for a Tax Return." Attention is directed to the
20 second section where I may advise as follows: To respond
21 to this notice, you must complete one of the following.

22 I am given three choices. One of which states,
23 "Provide information that you do not have a filing
24 requirement to file a 2015 tax return with further
25 instructions subsequent procedures."

1 After requesting and was granted a 30-day
2 extension, I provided my response dated 7/20/17. That
3 document is listed as Patel's Exhibit C and referenced as
4 Appellant letter to FTB 2015. The key point is that I
5 responded in a timely fashion. However, the verbiage of a
6 Notice of Proposed Assessment, dated 11/27/2017, issued by
7 Royce Larson states, "We have no record of receiving your
8 tax return, or information indicated that you do not have
9 a filing requirement."

10 Additionally, in Patel's brief I am advised as
11 follows, "because Appellant did not file a 2015 return or
12 explain why a 2015 return was not required in response to
13 the demand, respondent issued a Notice of Proposed
14 Assessment for the 2015 tax year on November 27th, 2017.
15 Yet, Patel provides, as an Exhibit C to her brief, a
16 document entitled "Appellant's Letter 7/20/2017."

17 This is the very set of documents in response to
18 the demand that Patel states I did not file. Therefore,
19 the reason stated in the brief as to why a Notice of
20 Proposed Assessment was issued has been directly
21 self-contradict by Patel.

22 So now I ask you the question. What was the
23 reason for filing the notice of proposed action? As a
24 matter of due process, stating a valid and appropriate
25 reason for an action is a fundamental piece according to

1 Revenue and Taxation Code Section 19133, in no case shall
2 the determination of the deficiency be arbitrary or
3 without foundation.

4 Additionally, the U.S. Supreme Court in United
5 States versus Janis states, "Certainly, a proof that an
6 assessment is utterly without foundation is proof that it
7 was arbitrary and erroneous, temporarily erroneous."
8 Accordingly, while fact circumstances and Royce Larson's
9 admission regarding my domicile status precludes me from
10 the term "resident." And as prescribed in 18 CCR Section
11 19133(a) (1), I did respond in a timely manner by using
12 option number three as illustrated and provided in the
13 second section of the demand for tax return.

14 Since Patel has illustrated my response as her
15 section -- in her Exhibit C, Patel has contradicted the
16 basis for issuing the Notice of Proposed Assessment with
17 evidence and testimony. Therefore, my status as a
18 domicile and my appearance to the demand for tax return,
19 makes both the issuance of the Notice of Proposed
20 Assessment and the Section 19133 penalty arbitrary and
21 without foundation.

22 I'm about to wrap it up, but I do want to touch
23 on the law summary then filed. Patel's Exhibit L, Item 1,
24 gives very specific instructions to every individual
25 subject to tax under the California personal income tax

1 law, et cetera. But the document falls short on
2 identifying the individuals. However, the
3 constitutionality letter, Exhibit 16-1, provides more
4 clarification by identifying the who that Item 1 is
5 referencing and what commodity is used to mention the tax.

6 The who incorporates the three classes of
7 individuals: Resident, nonresident, and part year
8 resident, that are also referred to as taxpayers
9 referenced by the law summary. Item 1 advises that the
10 individuals must file a return under penalty of perjury.
11 I declare that I have examined this tax return, including
12 accompanying schedules and statements. And to the best of
13 my knowledge and belief it is true, correct, and complete.

14 The document is an admission that the title,
15 "California Resident Income Tax Return," is an appropriate
16 form. That brings us to the "what is taxed in this
17 matter?"

18 JUDGE STANLEY: Mr. Sykes.

19 MR. SYKES: It states to the best of my knowledge
20 and belief --

21 JUDGE STANLEY: Mr. Sykes, you have gone on more
22 than 20 minutes. So if you're close to the end, I would
23 hope that you are quite ready to wrap it up.

24 MR. SYKES: Okay. Thank you.

25 What I want to -- if I may? I want to get to the

1 part about affirm because Patel is saying she has
2 affirmed -- she has affirmed the proposed assessment,
3 which is still based upon uncorroborated hearsay evidence.

4 Five more minutes, please. This is vital.

5 And then extends a plea to the OTA panel that
6 they must extend to her the presumption of correctness,
7 even though she has shown no evidence of authenticating or
8 vetting the evidence with the parties who have firsthand
9 knowledge. For example, the payors who reported the 1099
10 miscellaneous. No evidence confirms compliance or lack of
11 compliance with the presumption rules.

12 She has shown no evidence to disprove that she is
13 affirming nothing more than the fact that the evidence is
14 merely unconfirmed. Indication created by the payors who
15 determine they were withholding agent under 26 U.S.
16 Section 1461, when in fact, they were not. Now, as I
17 understand what affirming is, the only way she could have
18 done what she said was to have gone to the presumption
19 rules and specified in those rules or from those rules
20 where my facts and circumstances lay, because it says,
21 "Certain payment for services."

22 A payment for services presumed to be made to a
23 foreign person if the payee is -- is an individual. The
24 withholding agent does not know or have reason to know
25 that the payee is a U.S. citizen or resident, the

1 withholding agent does not know or have reason to know
2 that the income may be -- or is or may be effectively
3 connected with the conduct of a trade or business within
4 the United States, and all of the services for which the
5 payment is made were performed by the payee outside of the
6 United States.

7 Now, in order for Patel to affirm that I am an
8 individual, she first has to go through determining that
9 this was outside the United States, that the Franchise Tax
10 Board sent me information or correspondence outside the
11 United States, which she cannot do.

12 Now, regarding presumption of correction, the
13 Court -- there is a piece in the Internal Revenue Manual
14 that states that the Court does not -- tries not to decide
15 issues adversely to petitioner solely on the basis of the
16 statutory presumption of correctness, to assist the Court
17 and to represent the client, the field attorney should
18 offer all available evidence of material facts which
19 support Respondent's determination, rebut petitioner's
20 position or may help the court to make a proper ruling.

21 Respondent counsel's obligation as a public
22 servant is to assist the Court to reach the correct
23 result. I say that Patel has not affirmed anything. She
24 could not have. Given the rules of the presumption of
25 correctness in 1.1441(b)(3) as well as 1.1441(b)(3) of

1 subdivision (a), which allows me whatever facts that she
2 brings forward, I have the right to challenge.

3 This assessment cannot be approved. Thank you.

4 JUDGE STANLEY: Thank you.

5 Ms. Patel, do have any questions?

6 MS. PATEL: No questions.

7 JUDGE STANLEY: Judge Lambert?

8 JUDGE LAMBERT: No questions.

9 JUDGE STANLEY: Judge Kwee?

10 JUDGE KWEE: No questions.

11 JUDGE STANLEY: Okay. It sounds like the
12 statement that you read was testimony and argument all
13 wrapped into one. So I have allotted extra time which you
14 took for that statement and the closing statement.

15 MR. SYKES: Thank you.

16 JUDGE STANLEY: Is there any one thing you want
17 to say to wrap up your final comments?

18 MR. SYKES: The only thing is I ask that this be
19 done in conjunction with the rules. I have put my facts
20 on the table. She has not -- she has not objected to
21 them. She has not opposed them. She has not refuted
22 them. She's not denying them. Royce Larson and the rest
23 of the group there have put notations within the case file
24 that notates that my status is that of a domicile.

25 So thank you.

1 JUDGE STANLEY: All right. Thank you.

2 And Ms. Patel, would you like to present your
3 closing argument?

4 MS. PATEL: Yes, thank you.

5 JUDGE STANLEY: I believe Judge Kwee has a
6 question for the Franchise Tax Board before we proceed.

7 JUDGE KWEE: Yeah, I have two questions. So I
8 did have two questions. One is about Exhibits A through
9 C. And if I understand correctly, the taxpayer is arguing
10 that the demand penalty was not improperly imposed because
11 they provided a timely response. And I'm just curious, is
12 it FTB's position that the taxpayer did not provide a
13 timely response? Or is it the taxpayer's position --
14 FTB's position that the taxpayer did provide a timely
15 response, but the response is not in the required format
16 that is basically a return, and that's why the penalty was
17 being imposed?

18 MS. PATEL: Yeah. So Appellant did respond,
19 however, it wasn't in the manner prescribed. He did not
20 file a return or provide evidence suggesting one did not
21 have to file a return.

22 JUDGE STANLEY: Kwee. Okay. And I did have one
23 other question, and that was on Exhibit K, for the
24 Franchise Tax Board. And it looks like you provided the
25 IRS transcript, which indicates the 2015 tax was referred

1 for further review. And my question is, do we know if
2 there was a federal action taken on this account for the
3 2015 year? Or do we not know what is going on at this
4 time? Is there a final action?

5 MS. PATEL: As of right now, there is no
6 additional information from the IRS.

7 JUDGE KWEE: Okay. Thank you.

8 MR. SYKES: I gave her that information. I told
9 her specifically why there was no filing requirement.

10 JUDGE STANLEY: That's okay. We do have the
11 account transcript for that year in our files. So we can
12 refer to that when we're making our decision.

13 Ms. Patel, you may proceed.

14 MS. PATEL: Thank you.

15

16 CLOSING STATEMENT

17 MS. PATEL: Good morning, Judges.

18 This is Appellant's 7th appeal of this nature,
19 and Respondent has no record of Appellant filing a valid
20 tax return since 1995. Respondent's assessment is based
21 on Appellant's California domicile and based on
22 miscellaneous income and retirement income reported to the
23 internal revenue service by multiple payors.

24 They each reported that they paid income to
25 Appellant during the 2015 tax year. Based on these

1 resources, Respondent has met the initial burden to show
2 that the proposed assessment is reasonable and rational.
3 Appellant has not met his burden and has not provided
4 specific, credible, or relevant evidence that he did not
5 earn the income as reported.

6 Appellant raises arguments that consistently have
7 been rejected by the IRS, the federal courts, and the
8 Board of Equalization for many years. Based on
9 Appellant's arguments and compliance history, imposing a
10 frivolous appeal penalty may be proper as it has been in
11 previous appeals.

12 Because Appellant has not met his burden of
13 establishing that Respondent's assessment is incorrect by
14 filing a return or providing other evidence to show error,
15 Respondent requests that the Office of Tax Appeals sustain
16 the assessment. Thank you.

17 MR. SYKES: Name one case.

18 JUDGE STANLEY: Wait, wait. Mr. Sykes, please
19 address the panel.

20 MR. SYKES: I'm sorry.

21 JUDGE STANLEY: I'm going to give you another
22 five minutes if you want to respond to that briefly.

23 MR. SYKES: Thank you.

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1 some type of political point. I think it's outside to
2 state for other than a transitory purpose. So she does
3 not identify any facts to disallow assertions. So I will
4 ask her, just like I've asked all the other attorneys, why
5 can't we sit down and deal with facts? And why can't we
6 sit down and deal with the rules that manage those facts?
7 That to me is due process.

8 Thank you.

9 JUDGE STANLEY: Okay. That concludes the hearing
10 this morning. And so the case is now submitted for
11 decision, which we will mail no later than 100 days after
12 today. Thank you for participating, and we're going to
13 adjourn today as there are no more cases to be heard.
14 Thank you.

15 Off the record.

16 (Proceedings adjourned at 11:15 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 2nd day of December, 2019.

ERNALYN M. ALONZO
HEARING REPORTER