

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
BARBARA DONAHUE, ) OTA NO. 18011785  
 )  
 )  
 ) APPELLANT.  
 )  
 )  
 )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, December 17, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF, )  
BARBARA DONAHUE, ) OTA NO. 18011785  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Proceedings, taken at  
12900 Park Plaza Dr. Cerritos, California, 90703,  
commencing at 10:02 a.m. and concluding  
at 10:16 a.m. on Tuesday, December 17, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Panel Lead: ALJ DANIEL CHO

Panel Members: ALJ SARA HOSEY  
ALJ RICHARD TAY

For the Appellant: BARBARA DONAHUE

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: JOEL SMITH  
NANCY PARKER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 7.)

OPENING STATEMENT

	<u>PAGE</u>
By Ms. Donahue	8
By Mr. Smith	11

REBUTTAL STATEMENT

	<u>PAGE</u>
By Ms. Donahue	15

1 Cerritos, California; Tuesday, December 17, 2019

2 10:02 a.m.

3

4 JUDGE CHO: Let's go on the record.

5 This is the appeal of Barbara Donahue, OTA Case  
6 Number 18011785. Today is December 17th, 2019, and the  
7 time is approximately 10:02 a.m. We're holding this  
8 hearing in Cerritos, California. My name is Daniel Cho.  
9 I'm going to be the lead Administrative Law Judge for this  
10 hearing. With me are the Administrative Law Judges, Sara  
11 Hosey and Richard Tay.

12 Can the parties please introduce and identify  
13 yourself for the record, beginning with Appellant.

14 MS. DONAHUE: Barbara Donahue.

15 JUDGE CHO: Thank you. FTB.

16 MR. SMITH: Joel Smith.

17 MS. BROSTERHOUS: And Maria Brosterhous.

18 JUDGE CHO: Thank you. The issues in this appeal  
19 are: Whether Appellant has demonstrated error in the  
20 proposed assessment; and whether Appellant has  
21 demonstrated that her failure to file a return for the  
22 2015 taxable year was due to reasonable cause and not  
23 willful neglect.

24 With respect to the evidentiary record, FTB has  
25 provided Exhibits A through L, and Appellant has provided

1 objections to those exhibits. However, we're going to be  
2 overruling those objections, and we'll be admitting all of  
3 the exhibits into the evidentiary record.

4 (Department's Exhibits A-L were received in  
5 evidence by the Administrative Law Judge.) \*\*\*

6 JUDGE CHO: Appellant has submitted Exhibits 1  
7 through 12. FTB has not objected to Exhibits 1  
8 through 12. With the exception of Exhibit 6, we'll be  
9 admitting all those exhibits into the record. In lieu of  
10 Exhibit 6, both FTB and Appellant has stipulated that as  
11 of May 2018, Appellant was diagnosed with a medical  
12 condition that caused cognitive medical impairment  
13 disfunction. This affects Appellant's ability to recall  
14 facts.

15 Is that an accurate description of the  
16 stipulation?

17 MS. DONAHUE: Yes, sir.

18 JUDGE CHO: FTB?

19 MR. SMITH: Yes.

20 JUDGE CHO: Okay. So we'll be admitting Exhibits  
21 1 through 12 with the evidentiary record with the  
22 exception of Exhibit 6. Instead, we will be using the  
23 stipulation.

24 ///

25 ///

1 (Appellant's Exhibits 1-5 and 7-12  
2 were received in evidence by the  
3 Administrative Law Judge.)\*\*\*

4 MS. DONAHUE: Thank you.

5 JUDGE CHO: All right. We'll now begin with  
6 Appellant's presentation. Ms. Donahue, you'll have  
7 15 minutes to provide your testimony and your  
8 presentation. I will put you under oath of affirmation.  
9 At the conclusion of your testimony, FTB will be given an  
10 opportunity to cross-examine you with respect to any facts  
11 that you may have stated, along with the panel members.

12 MS. DONAHUE: Okay.

13 JUDGE CHO: So if you don't mind, would you  
14 please stand and raise your right hand.

15

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

20

21 JUDGE CHO: Thank you. Please have a seat. And  
22 whenever you're ready, please begin.

23 MS. DONAHUE: Okay.

24 ///

25 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

OPENING STATEMENT\*\*\*

MS. DONAHUE: I think some of mister -- there's misunderstanding in reference to my industry and my business. But there's also misunderstanding in references to reasonable cause.

I tried to become a California resident. I did everything I could to become -- I thought I was a California resident, but I was overruled by an L.A. Superior Court judge who told me that I was not a resident. So when the judge told me I was not a resident, I went with what he said because he's an L.A. Superior Court judge.

So that was one of the reasons for not filing in a timely fashion because I went with what a judge said. I needed to become a California resident, but at that point it was like, well, if I'm not a California resident for enforcing a judgement that I had, then I can't be a California resident for paying taxes. It made no sense to me whatsoever.

In reference to my company, we're not a California company. We -- we are registered in another state. Where the confusion, I think, exists is that on my resume or CV I list various jobs that my company does. And the Tax Franchise Board is taking that to mean that every single thing listed is something I did, and that's



1 not true. It's what my company does.

2 For example, this past week we got a call about  
3 an assignment which we get all the time. I got the phone  
4 call in New York. I responded in New York. I sent the  
5 e-mail from New York, and we filled the position with  
6 someone else. Now, that's going to appear on my CV as  
7 though we did the show because that's the way my business  
8 works. But I didn't physically do the show, and I didn't  
9 do any work to fill the assignment in California. It was  
10 all done out of state.

11 But according to their terminology -- and I don't  
12 understand this word at all because it makes no sense to  
13 me -- that it was sourced to California. I don't even  
14 know how that's applicable because nothing happened in  
15 California even though it's going to appear under my  
16 company name.

17 So I think the big issue is that everything that  
18 appears under the company they think is me, when it's not.  
19 That's -- that is -- as I understand it, I think that's  
20 pretty much the issue.

21 JUDGE CHO: Okay. Does that end your  
22 presentation?

23 MS. DONAHUE: Yes, Your Honor.

24 JUDGE CHO: Thank you.

25 FTB, do you have any questions for Appellant?

1 MR. SMITH: No.

2 JUDGE CHO: Judge Hosey, do you have any  
3 questions for Appellant?

4 JUDGE HOSEY: I do not. Thank you.

5 JUDGE CHO: Judge Tay, do you have any questions?

6 JUDGE TAY: No.

7 JUDGE CHO: I just have just one quick question.

8 MS. DONAHUE: Please.

9 JUDGE CHO: Do you know which document you're  
10 referring to when you said the LA Superior Court judge  
11 ruled that you weren't a California resident?

12 MS. DONAHUE: Which one of my exhibits?

13 JUDGE CHO: Yes. Which one of your exhibits?

14 MS. DONAHUE: I apologize. I do not. It's the  
15 big thick exhibit. It was my -- I supplied it to you. It  
16 was my -- I went to court to try to get a judgment  
17 against -- it was against my ex-husband, and it was for --  
18 well, they kept calling it child support. It's not child  
19 support. It's actually to be reimbursed for medical  
20 bills; all things that were in my divorce decree that he  
21 was supposed to pay.

22 And so I thought I was a California resident. So  
23 I went to court. I said great, I'm a California resident  
24 I want to file my judgment with you. Judgment came from  
25 Connecticut. I want to file my judgement with you. I'd

1 like you to please enforce it, on and on and on.

2 I was summarily thrown out of court, and the  
3 judge said, "But you're not a California resident. You  
4 don't have jurisdiction. We won't enforce it. We won't  
5 do anything about it. You're on your own."

6 So I took that to mean exactly what the judge  
7 said. You're not a California resident. You do not have  
8 jurisdiction.

9 JUDGE CHO: Okay. Thank you. That's the only  
10 question I had. So FTB, when you're ready please present  
11 your presentation.

12 MR. SMITH: Thanks.

13

14 OPENING STATEMENT\*\*\*

15 MR. SMITH: Regarding Appellant's 2015 tax year  
16 California filing requirement under Revenue and Taxation  
17 Code Section 18501, every individual has a gross income or  
18 adjusted gross income that exceeds minimum income levels  
19 for a particular tax year, must file a California tax  
20 return.

21 And information from multiple sources reported to  
22 the Internal Revenue Service, established that Appellant  
23 received wages and miscellaneous income in 2015 totaling  
24 \$36,743. This exceeded the minimum income levels required  
25 to file a tax return. Despite receiving this income,

1 Appellant did not file a 2015 California tax return.  
2 Revenue and Taxation Code Section 19087 provides  
3 Respondent with the authority to propose an assessment  
4 from any available information which indicates that the  
5 taxpayer who fails or refuses to file a tax return has a  
6 filing requirement.

7 Here Respondent issued its assessment under the  
8 authority granted in Section 19087. Since Respondent made  
9 a tax assessment based on estimate of income, Respondent  
10 needs to establish that the assessment is reasonable and  
11 rational. In order to meet this burden, Respondent needs  
12 to introduce evidence linking Appellant with the  
13 unreported income. And once that link is established, the  
14 presumption of correctness places the burden on Appellant  
15 to show error in the assessment by the preponderance of  
16 the evidence.

17 As mentioned, the assessment in this appeal was  
18 based on wages and miscellaneous income reported to the  
19 IRS in Appellant's name at California addresses for the  
20 2015 tax year. This links Appellant with the unreported  
21 income and means Respondent's assessment is reasonable and  
22 rational. Therefore, it's Appellant's burden to show  
23 error in the assessment. In order to do that, Appellant  
24 must present uncontradicted, credible, competent, and  
25 relevant evidence.

1           Unsupported assertions are not sufficient to  
2 satisfy this burden. In support of her position,  
3 Appellant has provided a number of documents that have no  
4 relevance to the tax year at issue. However, Appellant  
5 has provided documentation that supports Respondent's  
6 assessment. Appellant provided a declaration in  
7 Exhibit G, page 14, signed under penalty of perjury and  
8 filed in Los Angeles County Superior Court in 2016,  
9 indicating that she had been a resident of California  
10 since 1999.

11           Also, Appellant's own list of production work  
12 during 2015 indicates she worked approximately 15 sporting  
13 events that were held in California. In short, Appellant  
14 has not met her burden to prove by a preponderance of the  
15 evidence that Respondent issued its assessment in error.

16           As for the delinquent filing penalty, should your  
17 office find Appellant has a 2015 California filing  
18 requirement response in position of the penalties is  
19 presumed proper, unless Appellant is able to show that her  
20 failure to timely file a tax return was due to reasonable  
21 cause and not willful neglect. Appellant must show that a  
22 prudent businessperson would have acted similarly under  
23 the circumstances.

24           And finally, Appellant must again provide  
25 credible and competent evidence to support her

1 contentions. Here Respondent is in position of the  
2 delinquent filing penalty is proper, as Appellant has not  
3 made any reasonable cause of arguments that would support  
4 abatement of the penalty. As such, on the facts and  
5 evidence in the record, Respondent request you sustain its  
6 position.

7 I can answer any questions you may have.

8 JUDGE CHO: Thank you very much.

9 Panel members, do you have any questions for the  
10 FTB? Judge Hosey?

11 JUDGE HOSEY: No questions. Thank you.

12 JUDGE CHO: Judge Tay?

13 JUDGE TAY: No questions.

14 JUDGE CHO: Okay. I don't have any questions  
15 either. In that case, Appellant you'll be given five  
16 minutes on rebuttal. Please feel free to discuss anything  
17 you would like.

18 MS. DONAHUE: Do I just rebut, or do I ask  
19 questions? I'm sorry.

20 JUDGE CHO: So you're not allowed to ask  
21 questions of FTB because what they're presenting is  
22 argumentative.

23 MS. DONAHUE: Okay.

24 JUDGE CHO: The reason why they're allowed to ask  
25 you questions earlier is because you're presenting facts.

1 MS. DONAHUE: Sure. No problem. So just rebut  
2 it, in other words. Okay. Great.

3 JUDGE CHO: If you don't mind. Thank you.  
4

5 REBUTTAL STATEMENT\*\*\*

6 MS. DONAHUE: So this is the key issue, and they  
7 keep getting this confused and I don't know how to say it  
8 any other way. I wanted to be a California resident. So  
9 yes, I signed a declaration under perjury saying that I  
10 thought I was a California resident. I thought I was a  
11 California resident. But when I go to court and a judge  
12 says, "You're not a California resident," and I do a  
13 motion to vacate and a motion to reconsider and a motion  
14 to set aside, and he overrules me on all of them, doesn't  
15 rule on the judgement and won't let me enforce my  
16 judgment, then, yeah, that's reasonable cause,  
17 unfortunately, that -- that he's telling me I'm not a  
18 California resident.

19 Of course, I wanted to be. Yes, I signed all of  
20 that. So that's not something that can be held against me  
21 because I was trying to do that. It was an L.A. judge  
22 that said, "No, you are not."

23 So when he said I'm not, okay. You're a judge.  
24 I go by what you say. What am I supposed to do? And then  
25 I did take other shots at it. I did file a motion to

1 reconsider, as I said, motion to set aside, motion to  
2 vacate, and he overruled me on all of them. He said, "You  
3 don't have jurisdiction."

4 So okay. I think it makes no logical sense, but  
5 here's a judge telling me. So I have to go by what a  
6 judge says. So if that's not reasonable, I don't know  
7 what is. I did file in 2015. They're saying I didn't,  
8 but I did. I had huge tax losses, which I did not put.  
9 So if they want me to amend it and put these tax losses  
10 down, then California is going to owe me money. So I'm  
11 happy to do that.

12 And he keeps talking about the income. Not once  
13 did they say where the income was derived. I only owe to  
14 California if it was derived in California, which it was  
15 not, and they didn't say that it was. They kept saying  
16 36, 36. But not once did they say in California. And  
17 even the Supreme Court has ruled that you can't pay tax --  
18 they can't make you pay state taxes in two states.

19 So since my company is a Connecticut company and  
20 I paid in Connecticut, the Supreme Court even says I can't  
21 pay in California. You don't have to pay in two states.  
22 That's like double taxation sort of thing, and that went  
23 to the Supreme Court.

24 Lastly, they just mentioned a list of my events  
25 that I did. I'd like to see that list, or I'd like to



1 know what that list is. Because as I said to you, the  
2 list that they submitted is a list for Grand Prix  
3 Productions, my company. It is not a list for me.

4 JUDGE CHO: Okay. Thank you very much.

5 MS. DONAHUE: Thank you.

6 JUDGE CHO: Let me just ask the panelist really  
7 quick.

8 Do you have any questions at this point in time,  
9 Judge Hosey?

10 JUDGE HOSEY: No. No questions. Thank you.

11 JUDGE CHO: Judge Tay?

12 JUDGE TAY: No questions.

13 JUDGE CHO: Okay. I just want to double check  
14 because you did state a couple of things, but I don't have  
15 any questions either at this point.

16 So this will conclude the hearing. The panel  
17 members will meet and confer based on the documents and  
18 the testimony presented today. We'll issue a written  
19 decision no later than 100 days from today. So this case  
20 is submitted, and the record is now closed.

21 (Proceedings adjourned at 10:16 a.m.)

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 January, 2020.

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