

BEFORE THE OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
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SOWILA KHAN, ) OTA NO. 19024361  
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TRANSCRIPT OF PROCEEDINGS  
Sacramento, California  
Friday, December 13, 2019

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

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IN THE MATTER OF THE OF, )  
SOWILA KHAN, ) OTA NO. 19024361  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Proceedings, taken at  
400 R Street, Sacramento, California, 95811,  
commencing at 10:06 a.m. and concluding  
at 10:45 a.m. on Friday, December 13, 2019,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ JEFFREY MARGOLIS  
ALJ ELLIOTT SCOTT EWING

For the Appellant: SOWILA KHAN

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: SHANON PAVAO  
NATASHA PAGE

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I N D E X

OPENING STATEMENT

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By Mr. Pavao	12

E X H I B I T S

(Appellant's Exhibits were received at page 6 and 8.)

(Department's Exhibits were received at 6.)

CLOSING STATEMENT

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By Ms. Khan	18

1 Sacramento, California; Friday, December 13, 2019

2 10:06 a.m.

3

4 JUDGE HOSEY: We're going on the record.

5 This is the appeal of Sowila Khan, Case Number  
6 19024361. Today is December 13, 2019. It's approximately  
7 10:06 a.m. We're in Sacramento, California.

8 I am lead Administrative Law Judge, Sara Hosey.  
9 And with me today are Judges Jeffrey Margolis and Elliot  
10 Scott Ewing.

11 Parties, can I have you state your names for the  
12 record.

13 MS. KHAN: Sowila Khan.

14 MR. PAVAO: Shanon Pavao, tax counsel for FTB.

15 MS. PAGE: And Natasha Page for FTB.

16 JUDGE HOSEY: Thank you.

17 The issue we have before us today is: Whether  
18 Appellant's claim for refund for the 2012 tax year was  
19 filed prior to the expiration of the statute of  
20 limitations.

21 Ms. Khan, is that correct?

22 MS. KHAN: Yes, Your Honor.

23 JUDGE HOSEY: Thank you.

24 Mr. Pavao?

25 MR. PAVAO: Yes, Your Honor.

1 JUDGE HOSEY: Great. We marked Exhibits 1  
2 through 3 for Appellant and A through J for Respondent,  
3 FTB, at the prehearing conference held on December 3rd,  
4 2019. No objections were raised by either party and  
5 Exhibits 1 through 3 and A through J were admitted at a  
6 prehearing conference minutes and orders issued on  
7 December 4th, 2019.

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

10 (Department's Exhibits A-J were received in  
11 evidence by the Administrative Law Judge.)

12 JUDGE HOSEY: All right. Ms. Khan, are you  
13 ready? We're going to swear you in. Will you please  
14 stand and raise your right hand.

15

16 SOWILA KHAN,  
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 HOSEY: Thank you. Please begin.

22

23 OPENING STATEMENT

24 MS. KHAN: I just -- I was going over everything,  
25 and I understand the extensions and the time frames. And

1 I think that maybe there's a miscalculation that I was  
2 going off of, because my contract -- my contract ended in  
3 2014.

4 So as I was calculating, I was going over all the  
5 extensions that were being applied, and it looked okay to  
6 me. And so I'm kind of confused of why it was still  
7 denied. Like, I had called three or four times, and every  
8 representative from FTB had explained to me that, yes,  
9 there's no reason you should be denied. They said, "Do a  
10 claim for refund," more than once.

11 So I have applied for that three times. And I  
12 even have the, you know, letters. And I only got a reply  
13 one time from FTB after filing three times with them.

14 JUDGE HOSEY: And when you say filing, is that  
15 a -- an actual return?

16 MS. KHAN: It's the claim for refund.

17 JUDGE HOSEY: The claim for refund itself?

18 MS. KHAN: No.

19 JUDGE HOSEY: Okay.

20 MS. KHAN: Yeah.

21 JUDGE HOSEY: Do you have the dates of the claim  
22 for refund letters that you sent?

23 MS. KHAN: I have the -- I have -- I have these  
24 that came back to me. I --

25 JUDGE HOSEY: Are those -- I don't see those in

1 the documents we have. Are those proofs of service?

2 MS. KHAN: Yes. Yes, Your Honor.

3 JUDGE HOSEY: Would you like to put those in the  
4 record?

5 MS. KHAN: Yes, Your Honor.

6 JUDGE HOSEY: Okay. Let's do that. I'm going to  
7 have copies made so everybody -- we can give some to the  
8 Franchise Tax Board and the panel members.

9 Let's take five minutes to do that.

10 MS. KHAN: Thank you, Your Honor.

11 JUDGE HOSEY: All right. We're going to go off  
12 the record for a few minutes.

13 (There is a pause in the proceedings.)

14 JUDGE HOSEY: We're going back on the record.

15 We have previously identified additional  
16 documents. We have Appellant's Exhibit 4, a Letter of  
17 Authorization, and Appellant's Exhibit 5, several  
18 certified mailing receipts.

19 We have no objections from the Franchise Tax  
20 board. Is that correct, Mr. Pavao?

21 MR. PAVAO: That's correct, Your Honor.

22 JUDGE HOSEY: Okay. We're going to go ahead and  
23 admit Exhibit 4 and 5 into evidence in the record.

24 (Appellant's Exhibits 4-5 were received in  
25 evidence by the Administrative Law Judge.)



1 Ms. Khan, you're still under oath. Please  
2 continue with your presentation.

3 MS. KHAN: Okay. In one of the -- it states that  
4 the original return was filed February 22nd, 2013. It  
5 says, "You reported you left Pakistan on  
6 February 10, 2013," and which marked -- which it says that  
7 I had left the combat zone. But that's where the mistake  
8 is. I never specified, even in my statement to FTB, the  
9 years.

10 It doesn't -- I relied on my LOA for the -- for  
11 it to be calculated. I thought they would go off of the  
12 LOA for the years because it -- my contract ended in 2014.

13 JUDGE MARGOLIS: When in 2014 did that happen?

14 MS. KHAN: October 1st, 2014.

15 JUDGE MARGOLIS: October 1st, 2014. That seems  
16 to be a little bit different than the LOA that you gave us  
17 today, which it has a -- in the middle of the page it has  
18 a contract to end date of 9/16/2015. So that's, you know,  
19 that might be respective, but it's your recollection that  
20 your contract ended in 2014?

21 MS. KHAN: Yes, Your Honor.

22 JUDGE HOSEY: And you didn't have additional work  
23 through September 2015?

24 MS. KHAN: Not with MEP anymore, no.

25 JUDGE HOSEY: Oh, okay. Did you have anything

1 else you'd like to tell us or explain?

2 MS. KHAN: Just that like the statement -- in the  
3 statement it doesn't have the time frames as it states in  
4 this. So I don't know where the time frame had come from.

5 JUDGE HOSEY: That's stated in the Letter of  
6 Authorization?

7 MS. KHAN: No. On the --

8 JUDGE HOSEY: Franchise Tax Board's  
9 authorization?

10 MS. KHAN: Yes. Yes, Your Honor.

11 JUDGE HOSEY: Okay. And --

12 JUDGE EWING: I'm sorry. I have a question.

13 JUDGE HOSEY: I'm sorry. Go ahead.

14 JUDGE EWING: The four certified mail receipts  
15 that you have provided to us, can you relay to us what was  
16 filed with -- when you mailed these documents?

17 MS. KHAN: Yes. So the first one was the -- me  
18 amending the 540. And the second one was a claim for  
19 refund, which I had called, and the representative said  
20 they hadn't received anything, so to refile again. And  
21 then I had refiled again twice.

22 JUDGE MARGOLIS: And from my brief look at these  
23 correspondence receipts you gave us today, they were all  
24 in 2019; is that correct?

25 MS. KHAN: No. I believe two -- I believe they

1 were for 2018.

2 JUDGE MARGOLIS: Well, if you could take a look  
3 at it, they all seemed to be stamped 2019.

4 MS. KHAN: That's when it came back received by  
5 them. One of them is they received it, and they sent it  
6 back.

7 JUDGE MARGOLIS: And about how long did it take  
8 for you to get it back after you sent it, in your  
9 recollection? A couple of weeks? A month?

10 MS. KHAN: No. It -- it took months.

11 JUDGE MARGOLIS: It took months. Okay.

12 MS. KHAN: It took months. I got these after  
13 months.

14 JUDGE MARGOLIS: Okay.

15 MS. KHAN: Yeah, it states when I got them. One  
16 says February, June, and April. I got them back after I  
17 filed these before.

18 JUDGE MARGOLIS: And did you send any earlier  
19 correspondence of any kind to the FTB informing them that  
20 you had overpaid your taxes for the year at issue or that  
21 you wanted a refund for that year? Or is it just these  
22 three? Or is it just these three letters that you gave  
23 us?

24 MS. KHAN: Just these three.

25 JUDGE MARGOLIS: Just these three. Okay.

1 JUDGE HOSEY: Okay. Thank you.

2 Mr. Pavao, did you have any questions for  
3 Ms. Khan?

4 MR. PAVAO: No, Your Honor.

5 JUDGE HOSEY: Okay. And are there any other  
6 questions from the panel?

7 JUDGE EWING: No.

8 JUDGE HOSEY: Okay. Mr. Pavao, are you ready for  
9 your presentation?

10 MR. PAVAO: Yes, Your Honor.

11 JUDGE HOSEY: Okay. Please begin.

12

13 OPENING STATEMENT

14 MR. PAVAO: Good morning.

15 This panel should affirm the FTB's determination  
16 that the amended 540X was filed outside of the applicable  
17 statute of limitations as defined by Section 19306 of  
18 Revenue and Taxation Code.

19 In this matter, the tax year in question is 2012.  
20 The original tax return was filed on February 22nd, 2013.  
21 That's Exhibit A. An amended 540X was filed by the  
22 Appellant on October -- October 1st, 2018, which is  
23 outside of the four-year statute of limitations. With the  
24 original return, there was state income tax withheld in  
25 the amount of \$16,104. That state income tax is deemed

1     paid at the time the return was due, which would be  
2     April 15th, 2013, pursuant to Revenue and Taxation Code  
3     19002(c)(1).

4             And so the amended return filing on October 1st  
5     of 2018 bars the FTB from issuing any claim for refund  
6     under the one-year statute of limitations as well, which  
7     states that you're allowed to give a refund from one year  
8     of the date of the overpayment. If the state income tax  
9     is deemed paid as of April 15th, 2013, there is -- the  
10    claim for the refund must be barred under the one-year  
11    statute of limitations as well.

12            The FTB has looked at the combat zone exceptions  
13    in this matter to see if the Appellant was entitled to a  
14    grant of her claim for refund. The combat zone exceptions  
15    are contained in Internal Revenue Code Section 7508 and  
16    are made applicable under the Revenue and Taxation Code  
17    Section 18571. Sections 7508 provides extensions of time  
18    for individuals that are in the armed services or  
19    supporting the armed services. And the combat zone  
20    exceptions toll the time periods while the individual is  
21    within a combat zone and after they leave the combat zone  
22    for an additional 180 days.

23            In this matter if you turn to Exhibit A, page 13,  
24    at the top of the page -- and for the record, Exhibit A is  
25    the original file return for the Appellant. If you turn

1 to the page, it asks for taxpayers qualifying under  
2 physical presence test. And it says, "Enter your  
3 principal country of employment during your tax year," and  
4 Pakistan is listed. The date is 1/26/2012, which you will  
5 see matches -- my apologies. It does not match.

6 But the point I was making was that it has a date  
7 left. And the date that was provided was  
8 February 10th, 2013, and that's the date that the FTB used  
9 for evaluating a combat zone exception. Today we've  
10 received additional evidence that says in Exhibit 4 --  
11 this is the deployment end will be 10/1/2014. So assuming  
12 that the Appellant left the combat zone on 10/1/2014, it  
13 would have had another 180 days at that point. And so the  
14 combat zone in this case is not applicable in regards to  
15 the claim for refund.

16 And so the FTB has looked at the four-year  
17 statute of limitations which expired on 4/15/2017. So  
18 that is not within the statute of limitations. The FTB  
19 has looked at the one-year statute of limitations.  
20 There's no payments made within one year of the amended  
21 filing of October 1st, 2018. And the FTB has looked at  
22 the combat zone exceptions, and we cannot find any law  
23 that would allow the FTB to grant the Appellant's refund.

24 And while we are sympathetic to the Appellant,  
25 the statute of limitations is a portion of the law that

1 may seem harsh and arbitrary, but it's needed for  
2 effective tax administration. Just recently in an OTA  
3 precedent decision, the estate of Barbara D. Gillespie  
4 2018 OTA-052P, the OTA just reaffirmed the legal principal  
5 that absent congressional authorization, the courts do not  
6 have general authority to abrogate the statute of  
7 limitations for a refund claim based on equitable  
8 arguments.

9           And so there's nothing that the FTB could do in  
10 this case, and it's our position that this panel should  
11 take the same position that as the absent congressional  
12 authority, the OTA is bound to follow the statute of  
13 limitations as set forth in the Revenue and Taxation Code.  
14 In the OTA decision, both the Dalm Case and Prussner Case  
15 are cited.

16           In United States versus Dalm, it reinforced the  
17 principal that even when a tax is erroneously, illegally,  
18 or wrongfully collected, if it's -- if a refund claim is  
19 not filed within the statute of limitations, it cannot be  
20 granted. In addition, the Seventh Circuit in the Prussner  
21 Case eloquently captured what the statute of limitations  
22 means. And I'll just read it into the record for your  
23 consideration.

24           It states, "All fixed deadlines seem harsh  
25 because all can be missed by a whisker, by a day. Or for

1 that matter, by an hour or a minute. They are arbitrary  
2 by nature. The legal system lives on fixed deadlines.  
3 The occasional harshness is redeemed by the clarity which  
4 they impart to legal obligation."

5 The government has millions of taxpayers to  
6 monitor, and our system of self-assessment in the initial  
7 calculation of tax simply cannot work on any basis other  
8 than one of strict filing standards.

9 And they're citing United States versus Boyle,  
10 citation 469 U.S. 241. Upholding penalty for a late  
11 filing of a state tax return to extend the time for filing  
12 a claim for refund beyond the limits prescribed in the act  
13 is a legislative, not a judicial function.

14 And so, again, while sympathetic to the  
15 Appellant, there's just no basis to grant the claim for  
16 refund. And with that the FTB submits. Thank you.

17 JUDGE HOSEY: Okay. Thank you.

18 Judge Margolis, do you have any questions?

19 JUDGE MARGOLIS: Yes. I realize the statute of  
20 limitations are harsh, but the case you cite doesn't  
21 involve a tolling provision. I'm just wondering, do you  
22 have any authorities to discuss how the tolling provision  
23 is applied in this case? I mean, if she had four years  
24 from the date of the return was due to file a claim for  
25 refund and she was overseas for, you know, several years,



1 does that add to the four-year provision, or does it --  
2 does it somehow -- does it sort of end?

3 Does it not apply because as it turns out, she  
4 was back in the country at the end of the four-year  
5 period? I'm not sure. I'm just asking if there is any  
6 authorities to say how tolling applies here.

7 MR. PAVAO: Well, the record is not clear of  
8 when -- we have Exhibit A saying that -- that the  
9 Appellant left the combat zone on 2/10/2013. And we have  
10 a Letter of Authorization saying the deployment date ended  
11 in 2014. It does allow for additional time to file a  
12 claim for refund, but it's limited to the period of time  
13 you're in the combat zone. And then after you're out of  
14 the combat zone, it gives you another 180 days.

15 And so there is -- in this case, the Appellant  
16 did not meet either of those deadlines. Let's assume that  
17 she was in the combat zone until the deployment end date  
18 of October of 2014. Then after leaving the combat zone,  
19 then she would have another 180 days to file a claim for  
20 refund. But that's kind of nonsensical because she was  
21 already -- if she would have filed in 2014, then she would  
22 have been within the statute of limitations. But here  
23 she -- she filed the amended return of 2018.

24 And so the general law in that -- and I don't  
25 have any cites -- but equitable tolling provisions

1 generally don't apply unless there's some specific law.  
2 And right now I don't see any specific law that allows for  
3 any tolling of the statute of limitations besides what  
4 we've looked at.

5 JUDGE MARGOLIS: Thank you.

6 MR. PAVAO: I hope that answers your question.

7 JUDGE MARGOLIS: Well, I understand your  
8 position. Thank you.

9 JUDGE HOSEY: Judge Ewing, do you have any  
10 questions?

11 JUDGE EWING: I do not.

12 JUDGE HOSEY: Okay. Thank you, Mr. Pavao.

13 Ms. Khan, you have a time for a final statement  
14 if you'd like one.

15

16 CLOSING STATEMENT

17 MS. KHAN: I would just like to address the  
18 Franchise Tax Board's mission is to promise the citizens  
19 of California to help taxpayers file timely, accurately,  
20 and pay correct funds. But you have failed me because we  
21 file taxes, and it goes back to two, Internal Revenue and  
22 State. And so when it comes back that's when it's okay.  
23 But if it's wrong on our end, they don't catch it. So  
24 then we get -- you know, it's worse. It's out on us. So  
25 then that's it.

1           So even though I go back. I do my duty in the  
2 combat zone. I help, but the extensions don't apply. I  
3 read that there were extensions. It's automatic. Even  
4 six months automatic extension after you leave the combat  
5 zone, which states I did leave at that time. I was going  
6 off of the LOA.

7           Again, there's a mistake where it states that I  
8 had left. I didn't leave. That's how it was filed.  
9 That's not my fault that it just -- they're -- it was  
10 filed. She put 2012 to 2013. That doesn't mean I had  
11 left my combat zone. So just -- I don't know.

12           JUDGE HOSEY: So just to clarify, the date that  
13 you left the combat zone is the October 1st, 2014 date?

14           MS. KHAN: I had left a week prior to that.

15           JUDGE HOSEY: Okay. So that's when you returned?

16           MS. KHAN: Hm-hm.

17           JUDGE HOSEY: And the entry on your return,  
18 that's dated 2013 wasn't accurate?

19           MS. KHAN: That's just when I came back. I  
20 always come back every year for at least a week or two --

21           JUDGE HOSEY: Oh, I see.

22           MS. KHAN: -- because my daughter is here. So I  
23 come back for her, and then I leave.

24           JUDGE HOSEY: And then you return?

25           MS. KHAN: Then I return because of the contract.

1 JUDGE HOSEY: Okay. And the Letter of  
2 Authorization, the September 16, 2015 date, you were  
3 already here. Are you saying the contract end date on the  
4 Letter of Authorization on Exhibit 4 is inaccurate? So  
5 the Letter of Authorization you brought us today -- I  
6 think you have a redacted version there too.

7 MS. KHAN: Yeah.

8 JUDGE HOSEY: On the third column over six, eight  
9 rows down it says, "Contract to end date," and there's a  
10 9/16/2015 date.

11 MS. KHAN: Yeah. That's when you renew with the  
12 contract again, but I --

13 JUDGE HOSEY: That's the date to renew?

14 MS. KHAN: Hm-hm. Hm-hm.

15 JUDGE MARGOLIS: I have a question.

16 JUDGE HOSEY: Please, Judge Margolis.

17 JUDGE MARGOLIS: Did you file an amended return  
18 with the IRS as well?

19 MS. KHAN: No.

20 JUDGE MARGOLIS: Okay.

21 MS. KHAN: Because, actually, somebody from --  
22 that worked with FTB, prior had just recently left, had  
23 helped me, and that's how I understood everything.

24 JUDGE MARGOLIS: Okay.

25 JUDGE HOSEY: Okay. Thank you. Is there

1 anything else you would like to add that you would like us  
2 to know before we close the record?

3 MS. KHAN: No, Your Honor.

4 JUDGE HOSEY: Okay. Judges, do you have any  
5 questions? Judge Ewing?

6 JUDGE EWING: No.

7 JUDGE HOSEY: Okay. Judge Margolis?

8 JUDGE MARGOLIS: No.

9 JUDGE HOSEY: Thank you. Okay. We're ready  
10 to -- Mr. Pavao? Sorry.

11 MR. PAVAO: Oh, I just want to provide Judge  
12 Margolis the cite for equitable tolling.

13 JUDGE MARGOLIS: Okay.

14 MR. PAVAO: 83 SBE 260 1983. Okay. That's it.  
15 Thank you.

16 JUDGE MARGOLIS: What's the name of the case?

17 MR. PAVAO: It is the Appeal of Richard M. and  
18 Claire P. Hammerman, H-A-M-M-E-R-M-A-N.

19 JUDGE MARGOLIS: Okay.

20 JUDGE HOSEY: Okay. Thank you. We're ready to  
21 submit the case. The record is now closed. This  
22 concludes the hearing. The judges and I will meet and  
23 decide the case based on the documents and the testimony  
24 that you provided today. We will aim to send both parties  
25 our written decision no later than 100 days from today.

1 Thank you all.

2 The hearing is now adjourned. Have a good day.

3 (Proceedings adjourned at 10:45 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 January, 2020.

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