

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
PAUL A. HURST, SR., AND ) OTA NO. 19034399  
JOYCE A. HURST, )  
 )  
 )  
 ) APPELLANT. )  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, January 22, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California, 90703,  
commencing at 10:04 a.m. and concluding  
at 10:29 a.m. on Wednesday, January 22, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ KENNY GAST

Panel Members: ALJ LINDA CHENG  
ALJ NGUYEN DENG

For the Appellant: PAUL A. HURST, SR.  
JOYCE A. HURST  
JAY SONI

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: BRAD COUTINHO  
MARGUERITE MOSNIER

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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 7.)

OPENING STATEMENT

PAGE

By Mr. Soni 7

CLOSING STATEMENT

PAGE

By Mr. Coutinho 17

REBUTTAL STATEMENT

PAGE

By Mr. Soni 19

1 Cerritos, California; Wednesday, January 22, 2020

2 10:04 a.m.

3

4 JUDGE GAST: We're on the record.

5 This is the appeal of Paul A. Hurst, Sr. and  
6 Joyce A. Hurst, OTA Case Number 19034399. It is Wednesday  
7 January 22nd, 2020. The time is approximately 10:04 a.m.  
8 We're in Cerritos, California.

9 My name is Kenny Gast. I'm the lead  
10 Administrative Law Judge on today's case. Joining me on  
11 the panel are Judges Linda Cheng and Nguyen Dang. We ask  
12 the parties to please state your names and titles for the  
13 record, starting with the taxpayer, Mr. Soni.

14 MR. SONI: Oh, my name is Jay Soni. And I'm an  
15 enrolled agent representative for Paul and Joyce Hurst.

16 JUDGE GAST: Okay. And do you want to state your  
17 name?

18 MRS. HURST: Joyce A. Hurst, and I'm the  
19 taxpayer.

20 JUDGE GAST: Okay. Thank you.

21 MR. COUTINHO: Brad Coutinho for the Franchise  
22 Tax Board. The spelling of my last name is  
23 C-o-u-t-i-n-h-o.

24 MS. MOSNIER: Marguerite Mosnier for the  
25 Franchise Tax Board, M-o-s-n-i-e-r.

1 JUDGE GAST: Okay. Thank you.

2 We have three issues for today's case. The first  
3 is: Whether for the 2008, 2009 tax years, Appellants have  
4 shown error in FTB's proposed assessment; whether, for the  
5 2008 tax year, Appellants are liable for the late-filing  
6 penalty; and, the third issue is whether for the 2008 and  
7 2009 tax years, Appellants are liable for the  
8 accuracy-related penalty.

9 Both parties submit exhibits for this case.  
10 Taxpayer submit Exhibits 1 through 10, and FTB has no  
11 objection; is that correct?

12 MR. COUTINHO: That is correct.

13 JUDGE GAST: Thank you. Therefore, all of  
14 taxpayer's exhibits will be admitted into the record as  
15 evidence.

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

18 JUDGE GAST: And FTB has submitted Exhibits A  
19 through J, and taxpayer has no objections to them; is that  
20 correct?

21 MR. SONI: Yes, that's correct.

22 JUDGE GAST: Thank you. Therefore, all of FTB's  
23 exhibits will be admitted into the record as evidence.  
24 However, note that Exhibit J is argument and not evidence,  
25 the law summary. I'll just note that.

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

3 JUDGE GAST: Okay. Why don't we go ahead and  
4 start with the taxpayer's presentation for 30 minutes.

5 Before you begin, I'd like to swear in  
6 Mrs. Hurst. So if you could please stand and raise your  
7 right hand.

8

9

JOYCE A. HURST,

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

13

14

JUDGE GAST: Okay. Thank you.

15

Whenever you're ready, Mr. Soni, you may begin.

16

17

OPENING STATEMENT

18

19

MR. SONI: Please forgive me because this is the  
20 first time in front of a judge. I've been in front of an  
21 agent, but it's just one-on-one. So this is something new  
22 to me.

23

24

This whole case is based on the fact that the IRS  
25 increased the income for the taxpayers for 2008 and 2009.

26

That increase, I guess maybe it was done in 2015, but the  
FTB was informed by IRS in 2016. But like Exhibit 3

1 shows, that in 2015 the taxpayer submitted an offer and  
2 compromise to the IRS. And subsequently, that offer was  
3 accepted and was accepted November 30th, 2016.

4 So -- so, you know, it was like about six years  
5 since the tax year. For, like, 2008 to 2016, that's eight  
6 years. And 2009 is almost seven years. The taxpayers do  
7 not have records of all that the IRS said that that they  
8 had increased. And this is the reason they don't have  
9 those records is firstly, the tax returns were prepared by  
10 Mr. Hurst. As has been stated, Mr. Hurst is now suffering  
11 from, you know, cancer.

12 And because of that, he's not able to be here.  
13 But not only that, he does not -- or he can't even  
14 remember where he put the paperwork, like, mortgage  
15 statements, you know, invoices, bills, or whatever. So  
16 FTB, you know, obviously needed those records so that they  
17 could accept the numbers of the taxpayer, but we don't  
18 have it. And -- and a lot of the expenses that the IRS  
19 did not accept, they, you know, like 100 percent left them  
20 out.

21 But when -- you know, when you're a business  
22 there's always some kind of expense. And, you know, we  
23 would have thought at least some expense should be given.  
24 Now, we did not fight the IRS contention on the income and  
25 expenses. And that was because at that time, Mr. Hurst



1 just got the news that he had Stage 4 cancer.

2 Rather than go through a protracted thing to  
3 prove, you know, all the expenses, he entered into an  
4 offer and compromise with the IRS, and the IRS accepted.  
5 It seems like unfair for the FTB to now say that the  
6 taxpayers owe all this money, plus all the penalties and  
7 interest. You know, maybe we can concede, okay, because  
8 we can show you the proof of the expenses, maybe you  
9 could, you know, increase the taxes.

10 But to almost double it by the penalties and the  
11 interest seems to be a little unfair because, you know,  
12 it's now almost 20 years. And, you know, people don't  
13 keep these documents, you know, as they should. And --  
14 and also after they filed the taxes in 2008 and 2009,  
15 which they filed in 2010, you know, they didn't think  
16 anything about it. Now, it comes up in 2016 that the IRS  
17 said it's incorrect. By that time a lot of the paperwork  
18 was lost.

19 And -- and then to try to talk with Mr. Hurst  
20 about the paperwork was -- was really a difficult time.  
21 Even now Mrs. Hurst is going through a difficult time  
22 because she has to look after Mr. Hurst. And, you know,  
23 he needs medication. He needs attention. His mind, you  
24 know, is like he's in and out. So sometimes we are just  
25 talking to him he understands, and sometimes, you know, he

1 doesn't understand it.

2           So for -- for the taxpayers to pay a little over  
3 \$60,000, I think it's a little harsh because it -- it took  
4 both the IRS and the FTB such a long time to -- to correct  
5 the tax returns that were filed. The FTB got the new  
6 numbers from the IRS in 2016. They sent notice of  
7 proposal in 2018, you know, two years later. And during  
8 that time, the penalties and the interest accrued and so  
9 there's an extra two years of penalty and interest.

10           And -- and I say the taxpayers are not so much  
11 concerned about the tax that they owe because, you know,  
12 they can't prove they don't owe the taxes. But what  
13 they -- what's really tough on them are the penalties and  
14 interest that accrued in all this time.

15           So with that, Mrs. Hurst has a statement and  
16 something to present to the Court, and it has to do with  
17 the -- I think it was Exhibit 10 where we sent the bank  
18 statements that showed that they paid interest. The --  
19 the -- the loan was in the son's name. And I'll allow  
20 Mrs. Hurst to tell the Court why they paid it instead of  
21 the son.

22           And they feel since they paid the interest and  
23 they own the house, that that interest should be, you  
24 know, accepted as part of the expense. So with that I'll  
25 put it over to Mrs. Hurst, and she could talk about that.

1           MRS. HURST: Yeah. We were initially denied  
2 mortgage interest and property taxes as far as --

3           JUDGE DANG: I'm sorry, Mrs. Hurst. If I may  
4 just interrupt you briefly. I apologize for doing this.  
5 I'd like to clear up an issue before you proceed with your  
6 testimony.

7           MRS. HURST: Okay.

8           JUDGE GAST: It's my understanding, based on a  
9 review of this file, that the FTB has not disallowed any  
10 of your expenses that you provided here in Exhibit 8, 9,  
11 and 10 relating to the Wisteria property. It's my  
12 understanding that those expenses were allowed. Deduction  
13 for them against ordinary income, however, was not  
14 allowed. That those expenses were actually not.

15           MR. COUTINHO: From reviewing the record and  
16 Appellant's tax returns, it's hard to determine what was  
17 allowed and what was disallowed. FTB followed the IRS'  
18 determination in proposing additional tax, and it appears  
19 there's multiple properties on Schedule E that were  
20 claimed. Unsure if those were -- some of those were  
21 disallowed and some of them were allowed.

22           And for Schedule C, it appears that there was a  
23 substantial mortgage interest deduction that was claimed.  
24 And for that, it appears some was allowed, and some was  
25 not. But it was unclear to FTB which ones and for which

1 properties were allowed and disallowed.

2 JUDGE DANG: Okay. I'm looking at Schedule E,  
3 column C.

4 MR. COUTINHO: For the 2008?

5 JUDGE DANG: Correct. Let's say for the 2008,  
6 for example.

7 MR. COUTINHO: Yes. It appears that there's  
8 three properties that were claimed in that there was the  
9 Wisteria Lane -- Avenue, the Moreno Valley, and the first  
10 Moreno Valley. I don't know -- I don't know if there was  
11 a breakdown from that as to which ones were allowed or  
12 disallowed.

13 JUDGE DANG: Mr. Soni, those were the expenses  
14 for which you submitted, Exhibit 8, 9, and 10 pertaining  
15 to --

16 MR. SONI: The -- the IRS did disallow, according  
17 to Mrs. Hurst, the mortgage interest of \$23,925. And the  
18 FTB is going according to what the IRS has determined. So  
19 that means it was not accepted.

20 JUDGE DANG: Was the interest itself disallowed  
21 on Schedule E, or was the fact that you had deducted those  
22 amounts against ordinary income the deduction itself was  
23 disallowed, but they allowed you a net operating loss  
24 carried over for those mortgage interest and the other  
25 related rental expenses?

1           MR. SONI: See -- no. The -- on the ordinary  
2 income, Mr. And Mrs. Hurst were and are professional real  
3 estate people. And I thought that the -- the expenses,  
4 like for an ordinary person like me, it's up to 25 percent  
5 where you would get the deducted 25 percent.

6           JUDGE GAST: You mean \$25,000?

7           MR. SONI: \$25,000. Sorry, yes. And they --  
8 they deducted \$77,000. But they are professionals, and I  
9 thought that that the IRS code that they can deduct it.

10          JUDGE DANG: Right.

11          MR. SONI: But they didn't allow that.

12          JUDGE GAST: So if I'm understanding you  
13 correctly, the IRS disallowed the deduction, but they  
14 didn't question you as to the -- whether or not the  
15 taxpayers had incurred those expenses and whether or not  
16 you're entitled to a net operating loss carry over for  
17 those?

18          MR. SONI: Okay. Sir, that I don't know. And  
19 the reason I don't know, is like you said. The IRS  
20 corrected the numbers, or they say they corrected the  
21 numbers. We did not fight it. As a matter of fact, I  
22 wasn't the one that prepared the OIC. It was someone else  
23 in the office that did that because he was in charge. But  
24 since he left, you know, I took over the case.

25          But so they decided not to fight anything. They

1 said the best thing to do is to do an offer and comprise  
2 and ETA offer, you know.

3 JUDGE DANG: Okay.

4 MR. SONI: And so we didn't fight anything.  
5 And -- and that is where the problem is between the FTB  
6 and, I guess, IRS. Because on the one hand they accept  
7 the IRS' numbers, then on the other hand they don't  
8 because the IRS shows on the account transcripts,  
9 Mr. and Mrs. Hurst owe no money.

10 And that's when I called the FTB with the notice  
11 that proposed assessment. When I called them, the agent  
12 told me that all -- you know, what I would have to do is  
13 submit the OIC, submit that paperwork, and say that the  
14 IRS accepted the OIC. But when I sent it, it was rejected  
15 and then, you know, we had to, kind of, escalate.

16 JUDGE DANG: I understand. Yeah. But my concern  
17 is that you may be expending effort on an issue that's not  
18 at issue here. My understanding is that -- and I'm going  
19 to ask the Franchise Tax Board -- is that California does  
20 not conform to the real estate professional provisions of  
21 the IRC, that these passive activity expenses would not be  
22 deductible in any case regardless.

23 MR. COUTINHO: I believe that's correct, but I --

24 JUDGE DANG: Okay. So it sounds as if even if  
25 you were to substantiate, even if we all agreed here, that

1 it would not reduce Mr. and Mrs. Hurst's tax liability in  
2 this case?

3 MR. SONI: Okay.

4 JUDGE GAST: If I may interject there? I  
5 think -- so Exhibits A -- 8 through 10 relate to the  
6 Wisteria, Moreno Valley property?

7 MRS. HURST: Correct.

8 JUDGE GAST: That was claimed as rental property  
9 income expenses on the file Schedule E returns for 2008,  
10 2009?

11 MRS. HURST: Correct. And those expenses were  
12 denied because the loan is not in our name.

13 JUDGE GAST: Well, I think that's where Judge  
14 Dang was asking questions around. Because when you look  
15 at the -- well, just focusing on what FTB did on the NPAs  
16 for 2008. We're just focusing on the 2008 NPA, there is a  
17 disallowed deduction of \$77,717.

18 But that's just the excess deduction from  
19 Schedule E, which means that the FTB has allowed all of  
20 the claimed expenses on Schedule E. They're just  
21 disallowing an excess passive loss from offsetting  
22 ordinary income. That's what I think Judge Dang was  
23 getting at.

24 Judge Dang: That might be a bit difficult for  
25 you to understand. I think the gist of what this comes

1 down to is that even accepting everything that you  
2 provided today, it would not change your tax liability.  
3 That's the ultimate result. Would you like a few minutes  
4 to discuss this with your representative? He might be  
5 able to better explain this to you.

6 MR. SONI: Okay. It seems like Mrs. Hurst now,  
7 kind of, gets what's going on.

8 JUDGE GAST: Okay. Would you like to proceed  
9 with additional time you have, 10 more minutes for your  
10 opening presentation?

11 MR. SONI: No. I'm done, unless Mrs. Hurst wants  
12 to say something.

13 JUDGE GAST: Okay.

14 MRS. HURST: As Mr. Soni explained, my husband  
15 actually did the taxes. I know we're both liable, but he  
16 did everything. He did taxes. He paid bills. He did  
17 everything. So he was diagnosed in, actually, 2013. And  
18 since then, it's been a strain. He was diagnosed with  
19 Stage 4. He has cancer of the bone.

20 So it's been a lot of strain on us so much so  
21 that he can't help me dig out what he did in 2008 and  
22 2009. So what I am asking is if we could resolve this as  
23 soon as possible so that we can probably get to an offer  
24 and comprise or something because --

25 JUDGE GAST: I'm sorry. Do you need a few



1 minutes?

2 MRS. HURST: No. I just want to get it resolved  
3 as soon as possible, so that I can focus on our family and  
4 taking care of his needs.

5 JUDGE GAST: Okay.

6 MRS. HURST: That's all.

7 JUDGE GAST: Do you have anything, Mr. Soni?

8 MR. SONI: No, sir.

9 JUDGE GAST: Okay. Thank you.

10 Mr. Coutinho, do you have any questions for the  
11 witness?

12 MR. COUTINHO: We do not.

13 JUDGE GAST: Okay. Panel members, any questions?

14 Judge Dang: I have no questions.

15 JUDGE CHENG: No questions.

16 JUDGE GAST: Okay. I have no questions.

17 Mr. Coutinho, you'll have 10 minutes.

18 MR. COUTINHO: Thank you.

19

20 CLOSING STATEMENT

21 MR. COUTINHO: In light of the testimony today,  
22 FTB will keep it short and rest on most of its opening  
23 brief. However, we would state that while Appellants'  
24 circumstances is certainly a sympathetic situation and  
25 Appellant's health is obviously a circumstance that

1 dictates in this appeal.

2           However, in regard to the federal assessment and  
3 penalties imposed, Appellants haven't established any  
4 evidence to show why the federal assessment on a legal  
5 basis is incorrect, or any basis for the abatement of the  
6 penalties or interest in this matter, and we don't have  
7 discretion in regard to those penalties and interest.

8           FTB would like to note that Appellants provide an  
9 offer of compromise entered into with the IRS, but the offer  
10 and compromise explains that Appellants agree to a  
11 deficiency with the exceptional circumstances of  
12 Appellant's health. If sustained in this action, FTB can  
13 provide Appellants information at the conclusion of this  
14 hearing or at the conclusion of the OTA's decision,  
15 information regarding its offer and compromise program and  
16 walk them through that.

17           The offer and compromise program looks into the  
18 ability to pay and as well as the future ability to make  
19 income in this case. If sustained FTB would be willing to  
20 discuss further its offer and compromise program with  
21 Appellants.

22           Thank you. If you have any questions, I'll be  
23 happy to answer them.

24           JUDGE GAST: Thank you. Any questions from the  
25 panel to FTB?

1 Judge Dang: No questions.

2 JUDGE CHENG: No questions.

3 JUDGE GAST: Okay. Mr. Soni, you will have five  
4 minutes if you would like, on rebuttal.

5 MR. SONI: Okay.

6

7

REBUTTAL STATEMENT

8 MR. SONI: So we are just thrilled that the FTB  
9 is willing to give the taxpayers an offer and compromise  
10 submission, and that's what the taxpayer would like to do.  
11 Obviously, you know, she's been going through a lot of  
12 stuff. She said that Mr. Hurst was diagnosed in 2013. So  
13 it's about seven years now, and, like, she wants to put  
14 it, you know -- but also, we want to do a payment or  
15 compromise, you know, according to what her finances will  
16 allow because Mr. Hurst cannot work. Mrs. Hurst is --

17 JUDGE GAST: Mr. Soni, we understand that. This  
18 body is to determine if the tax is properly imposed.  
19 That's something you would have to discuss with FTB, but I  
20 appreciate your comments on.

21 MR. SONI: Okay. All right. Thank you, sir.  
22 That's it.

23 JUDGE GAST: Okay. Okay. Thank you.

24 MR. SONI: We will be talking to FTB after the  
25 hearing.

1           JUDGE GAST: Okay. Thank you. One question we  
2 do have, Mr. Soni and Mrs. Hurst, are you prepared here to  
3 concede the entire liability tax penalty and interest for  
4 the 2008 and 2009 tax years.

5           MR. SONI: The penalties and the interest is  
6 something we are not happy with. And -- and the reason  
7 is, is that it took so long for it to be amended or  
8 corrected. And so in the meantime, the taxpayers are  
9 accruing the penalty and the interest. And it, kind of,  
10 seems a little unfair to the taxpayers that -- that's  
11 going on. So if some of the penalties could be abated,  
12 the taxpayers are willing to -- to work through the whole  
13 thing.

14           Judge Dang: And, Mr. Soni, I think we are  
15 willing to consider the penalty of abatement as you  
16 mentioned, but as Franchise Tax also mentioned, we don't  
17 have the discretion to do that based solely on any type of  
18 equitable reasons that you may have provided. Do you have  
19 perhaps a legal argument?

20           MR. SONI: No, sir.

21           Judge Dang: Okay. Thank you.

22           JUDGE GAST: Okay. I think that is it. Did you  
23 have something else Mr. Coutinho?

24           MR. COUTINHO: No.

25           JUDGE GAST: Okay. All right. So this concludes

1 the hearing. I want to thank both parties for coming here  
2 today. The judges will meet and decide the case based on  
3 the documents and testimonies presented and admitted as  
4 evidence. We will aim to send both parties our written  
5 decision no later than 100 days from today and the case is  
6 now submitted, the record is close, and the hearing is now  
7 adjourned.

8 (Proceedings adjourned at 10:29 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 5th day of February, 2020.

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ERNALYN M. ALONZO  
HEARING REPORTER