

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MICHAEL M. CEROLI,) OTA NO. 18113968
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, March 17, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza, Cerritos, California, 91401,
commencing at 10:04 a.m. and concluding
at 10:49 a.m., on Tuesday, March 17, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: JUDGE TERESA STANLEY

Panel Members: JUDGE NGUYEN DANG
DANIEL CHO

For the Appellant: MICHAEL CEROLI
ILEANE POLIS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
By: LEOANGELO CRISTOBAL
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits were received at page 5.)

(Franchise Tax Board's Exhibits were received at page 5.)

APPELLANT'S

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By Ms. Polis 32

1 Cerritos, California; Tuesday, March 17, 2020

2 10:04 a.m.

3

4 JUDGE STANLEY: This the appeal of
5 Michael M. Ceroli, Case Number 18113968. The date is
6 March 17th and the time is 10:04 a.m. The location of the
7 hearing is supposed to be in Cerritos, California.
8 However, while some of the panel is there, other people
9 are meeting electronically from different locations, and
10 I'm in Sacramento.

11 I'm judge Teresa Stanley. The other panel
12 members who are in the Cerritos office are
13 Judge Daniel Cho and Judge Nguyen Dang. I will be
14 conducting the hearing, but all three of us will be
15 equally participating, and we will all decide mutually on
16 the outcome of this.

17 I'm going to admit into evidence Appellant's
18 Exhibits 1 through 16 without objection and the Franchise
19 Tax Board Exhibit A through X and Double A through
20 Double C, are admitted in evidence without objection.

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

23 (Department's Exhibits A-X and AA-CC were
24 received in evidence by the Administrative
25 Law Judge.)

1 JUDGE STANLEY: Does anybody have any other
2 exhibits that they think they left out and couldn't have
3 gotten before today?

4 MR CRISTOBAL: Yeah. No.

5 JUDGE STANLEY: Okay. That was Mr. Cristobal.
6 Thank you.

7 For the record the issues that we talked about
8 are whether the statute of limitations expired with
9 respect to payments made for the 2010 taxes. And if so,
10 should the statute of limitations be tolled based on
11 financial disability of the appellant Mr. Ceroli.

12 Mr. -- oh, do we have -- did we have the rep on
13 the line with us?

14 MS. POLIS: Yes.

15 JUDGE STANLEY: Ms. Polis, you're here?

16 MS. POLIS: Yes, I'm here.

17 JUDGE STANLEY: So I'll ask you if that correctly
18 state the issues?

19 MS. POLIS: Yes, it does.

20 JUDGE STANLEY: Okay. And Mr. Cristobal, do you
21 agree?

22 MR. CRISTOBAL: Yeah. This is Mr. Cristobal, I
23 agree.

24 JUDGE STANLEY: Thank you. And one of the
25 co-panelists wanted to make it clear or make sure that --

1 Ms. Polis that Mr. Ceroli doesn't think that the Office of
2 Tax Appeals can deal with the issue of whether or not the
3 IRS money that was -- the money that was intercepted and
4 handed over to the IRS, that we have any authority over
5 that.

6 MS. POLIS: All right. Understood.

7 JUDGE STANLEY: Okay. Thank you.

8 Okay. We had decided at the prehearing
9 conference that we weren't going to have opening
10 arguments -- I mean, opening statements. So for witness
11 testimony, Ms. Polis, which of the witnesses would you
12 like to testify first?

13 MS. POLIS: I would like Mr. Ceroli to testify
14 first. Mr. Ceroli, if you're ready?

15 MR. CEROLI: Yes.

16 JUDGE STANLEY: Okay. This is Judge Stanley
17 again. You may proceed with Mr. Ceroli.

18 MS. POLIS: All right. Mr. Ceroli, I'm going to
19 ask to testify as to your financial disability. I would
20 like to start from the beginning and your views as to how
21 you qualify for financial disability. Do you have any
22 response to that?

23 JUDGE STANLEY: Wait. Hold on a second. I'm
24 sorry. I forgot a very important step.

25 MS. POLIS: Oh, okay.

1 JUDGE STANLEY: Mr. Ceroli, this is Judge
2 Stanley, again, by the way.

3

4

MICHAEL M. CEROLI,

5 produced as a witness, and having been first duly sworn by
6 the Administrative Law Judge, was examined and testified
7 as follows:

8

9 JUDGE STANLEY: Okay. I'm sorry, Ms. Polis. You
10 may proceed.

11

12

DIRECT EXAMINATION

13 BY MS. POLIS:

14 Q Mr. Ceroli, as I said I would like you to explain
15 for everyone your financial disability, and you can start
16 from the beginning. Mr. Ceroli?

17 A My financial disability is I am a seizure
18 patient.

19 Q And when did you first learn that you were
20 seizure patient?

21 A 1997.

22 Q And how does it come about?

23 A I was a victim of a violent crime.

24 Q All right. Did you receive treatment for your
25 seizures after this violent incident?

1 A Yes, I did. I was a victim of a violent crime.
2 I stayed in a hospital over 10 days, St. Joseph's
3 Hospital, and was in ICU for at least two days; and stayed
4 in the hospital for about 10 days as a victim of that
5 violent crime.

6 Q And so those seizures from that time, have they
7 ever been cured? Have they ever gone away?

8 A No, they have not. I've been a seizure patient
9 since 1997.

10 Q And so are you actively undergoing treatment for
11 your seizures?

12 A Yes, I am.

13 Q Can you please describe what some of that
14 treatment entails?

15 A That entails constant medication I take twice a
16 day, Lamictal and Topamax. And I see neurologists
17 throughout my life, and I have been consistently trying to
18 get disability for the last two to three years. And it's
19 been in -- in constant nature of trying to get state
20 disability, actually, for more than three or four years
21 and been in the process of doing so as we speak.

22 Q Now, how much of your seizure disability affected
23 your daily life since the moment that you were effected
24 with this condition?

25 A It has changed my life drastically. There's

1 numerous different ways it's changed my life. It's a --
2 it's been a handicap.

3 Q Can you please describe in general terms how this
4 has affected you?

5 A In general terms, it's been -- first of all, it's
6 been a situation that there's no way I could have been
7 able to do my taxes. I'll leave it like that.

8 Q What do you mean by not being able to do your
9 taxes?

10 A Well, there's no way I could mentally or
11 physically do my taxes. And it's left me in a situation
12 where it's left me in the situation here today.

13 Q Are you able to add numbers or --

14 A No, no.

15 Q -- compute numbers?

16 A Addition and subtraction and multiplication is
17 completely out of the question.

18 Q Are you able to keep track of your finances?

19 A No.

20 Q Are you able to convey your finances to someone
21 like a taxpayer or a tax professional of any sort?

22 A Yes. I can -- I can deal with my taxes and send
23 away my tax dollars to a -- to an E.A. or a CPA. Jerry
24 Streeter was in charge of all my taxes and has left me
25 with this mess that I deal with today.

1 Q Now, in your communications with Jerry Streeter,
2 were you able to communicate and actively participate in,
3 you know, relaying to him your finances or helping him at
4 all with the taxes, giving him information that would help
5 with the taxes?

6 A Basically, I relied on Jerry Streeter to take
7 care of all my finances and do all my taxes for years and
8 years and years until he was negligent in doing so, and
9 left me this migraine headache to deal with, you know.
10 And he's left me in this situation today. They --

11 Q And when you --

12 A -- in his office for years and years until he
13 was -- neglected them and left me with this mess, again,
14 like I keep repeating.

15 Q When you say that your information regarding your
16 taxes were sent directly to his office, can you describe
17 how that happened?

18 A Basically, the State and the feds mailed
19 everything of mine, that had to do with tax relations, to
20 his office directly. The -- due to a power of attorney
21 that has been in his hands over a decade or two since the
22 passing of my father, I believe, in 1985.

23 Q All right. So you never -- since this violent
24 incident that caused the seizure condition, have you ever
25 receive tax documents from the State and attempted to do

1 your own taxes, filed your own taxes, looked at your own
2 tax document?

3 A No, no. Never, Counselor, not since 1997. And
4 even previous to that, the majority of my taxes were taken
5 care by Jeremy Streeter since, say, 1987, 1986.

6 Q All right. Now, I'm going to shift the
7 conversation a little. Since 1997, have you been
8 employed?

9 A Come one more time?

10 Q Since your accident, have you been employed?

11 A I tried to teach golf for a while and I couldn't
12 handle it. Physically, I was too much for me because it
13 took like --

14 Q All right. Did you try any other means of
15 employment?

16 A No. It was too much for me. Just -- just the
17 income that I received through Nick Ceroli as a musician.
18 So now --

19 Q Can you please describe that?

20 A That would be small amounts of income through
21 Nick Ceroli as a musician.

22 Q All right. Do you have any other sources of
23 income?

24 A Negative.

25 Q And why do you feel -- even if it's just

1 reiterating what you said. Why do you feel like you don't
2 have any other source of income or other means of income?

3 A There's no way I can maintain it physically and
4 mentally.

5 Q What do you think would happen if you were to
6 attempt to have employment?

7 A Oh, I would have a physical and mental breakdown.
8 There's no way I could -- I could maintain it.

9 Q Have you discussed this with doctors?

10 A Yes. I've discussed it, and they have both
11 agreed neurologically and physically it could not take
12 place.

13 Q All right. Is there anything that you would like
14 to add for the Judges or the FTB to hear about financial
15 disability or your condition?

16 A No, not at this time, other than it's quite
17 frustrating this has taken so long with this
18 reimbursement. It's just added a great deal of mental
19 stress to this situation.

20 Q All right. And I'm going to ask again what you
21 were supposed to undergo today, which ended up being
22 canceled. What is this EMU that was included in the
23 exhibits that you were supposed to undergo today?

24 A It was a six or seven-day hospital stay that
25 revolved around state disability. And it was six or seven

1 hospital -- six or seven-day hospital stay in, I believe,
2 Rancho Cucamonga, that was obviously scrapped and pushed
3 aside due to Covid-19, which taken over this state and has
4 taken over this nation in this terrible virus that this
5 nation faces. It would have been, you know, a six or
6 seven-day hospital stay to verify further mental and
7 physical state of your client.

8 Q All right. And what procedures were you going to
9 undergo, if you knew?

10 A Probably more -- probably more MRIs and more EEGs
11 and more physical and mental proof of my seizure condition
12 for the State of California for disability purposes.

13 Q And have you undergone anything similar since
14 your accident decades ago?

15 A Oh, quite a bit. Quite a bit.

16 Q All right. As of right now I don't have anymore
17 questions for you. I don't know if the FTB or the Judges
18 have any questions for you?

19 A Please.

20 JUDGE STANLEY: Okay. Thank you, Ms. Polis.

21 Mr. Cristobal, do you have any questions for
22 Mr. Ceroli?

23 MR. CRISTOBAL: This is Mr. Cristobal. I don't
24 have any questions of Mr. Ceroli.

25 JUDGE STANLEY: Thank you.

1 Judge Cho, do you have any questions?

2 JUDGE CHO: Hi. Good morning. This is
3 Judge Cho, I have a couple of quick questions.

4 Mr. Ceroli, when did you first realize that you needed to
5 file a claim for refilling in this action?

6 MR. CEROLI: Your Honor, I could barely hear you.
7 Can you ask him to speak up?

8 JUDGE CHO: I'm sorry. Let me try that again.
9 Mr. Ceroli, when did you realize that you needed to file a
10 claim for refund in this action?

11 MR. CEROLI: For reimbursement, sir. And when I
12 realized that my E.A. had failed me and I had not received
13 back that reimbursement, which is probably three or
14 four months after I had asked him, "Should I be getting
15 this reimbursement?"

16 And he neglected to answer and then told me, "I
17 thought you took care of it, Mike." And I was greatly let
18 down upon that.

19 JUDGE CHO: Around what time is that, just
20 curious?

21 MR. CEROLI: Oh, I -- I'm not too sure at this
22 point, sir. It was over two years ago, probably more like
23 four years ago. This has gone on for quite sometime now,
24 sir. It's -- it's been quite a process -- over three
25 years ago.

1 JUDGE CHO: Okay. So you said you were in
2 contact with your E.A., Mr. Streeter; correct?

3 MR. CEROLI: That -- that's correct. He is -- he
4 is gone now. He is no longer with us.

5 JUDGE CHO: Okay. And when you were in contact
6 with him, I'm assuming that you noticed that something had
7 been taken away from you or there may be funds levied.
8 That's why your referring to a reimbursement; is that
9 correct?

10 MR. CEROLI: I believe so, yes.

11 JUDGE CHO: How did you find out about the funds
12 being taken away from you?

13 MR. CEROLI: When I went to do some banking, they
14 had levied some money and put a freeze on the account.

15 JUDGE CHO: How often did you go to the bank?
16 What was your banking?

17 MR. CEROLI: At least once a month online or at
18 least one a month to pay my rent, something like that.

19 JUDGE CHO: Okay. Thank you. And did you notice
20 that they had levied -- that somebody had levied your
21 account, and then you contacted Mr. Streeter to figure out
22 how to deal with that; is that correct?

23 MR. CEROLI: Yes, sir.

24 JUDGE CHO: And I believe that's when -- that's
25 when you and Mr. Streeter filed the -- your W10 (??**) tax

1 return with the State of California; is that correct?

2 MR. CEROLI: Again, sir, I can barely hear you.
3 But yes, sir. I believe so.

4 JUDGE CHO: Okay. Those are all the questions I
5 have, Judge Stanley.

6 JUDGE STANLEY: This is Judge Stanley. Thank
7 you, Judge Cho.

8 And I'll ask Judge Dang, if you have any
9 questions at this time?

10 JUDGE DANG: Hello. Good morning. This is Judge
11 Dang. I just have one question for you, Mr. Ceroli, that
12 touches upon what you meant -- what you spoke about
13 earlier in the hearing today. You had mentioned that you
14 were employed part-time as a musician, and that's how you
15 are supporting yourself after this tragic accident which
16 had occurred to you in 1997 -- I'm sorry, assault in this
17 case.

18 My question is, you had noted that you were
19 unable to perform any kind of math or handle any type of
20 financial responsibilities. And I'm wondering, when these
21 things do occur, as they occur in everyday regular life,
22 what do you do in those instances? If you have to, for
23 example, I noticed that you had sold -- it appears that
24 you had sold real property in 2010. It looks like there
25 may have been sales of securities or things of that

1 nature.

2 Is there some individual that you rely upon for
3 that? I mean, what do you do in these situations?

4 MR. CEROLI: I had a realtor, Jamie Pearson -- my
5 realtor, Jamie Pearson.

6 JUDGE DANG: Okay. So any time that you would be
7 in a situation involving your finances you would --
8 there's another individual that you can rely upon to
9 handle that for you?

10 MR CEROLI: Absolutely.

11 JUDGE DANG: Okay. Thank you. That was my only
12 question.

13 MR. CEROLI: Thank you, Your Honor.

14 JUDGE STANLEY: Okay. This is Judge Stanley. I
15 just have a follow up for Mr. Ceroli. So we see in our
16 record that we have exhibits that show that during 2012
17 you were mailed several notices by the Franchise Tax
18 Board. Did you respond to those in any manner?

19 MR. CEROLI: I never got those. They went to
20 Jerry Streeter.

21 JUDGE STANLEY: So the address on Morrison Street
22 in North Hollywood, that was Jerry Streeter's address?

23 MR. CEROLI: Morrison Street is my address, old
24 address.

25 JUDGE STANLEY: Okay. So that notice would have

1 gone to your former address. Were you still living there
2 in 2012 or had you moved by then?

3 MR. CEROLI: We had moved by then. I was not
4 currently at that address.

5 JUDGE STANLEY: Okay. And is your current
6 address on Collins Street?

7 MR. CEROLI: Affirmative.

8 JUDGE STANLEY: Okay. So --

9 MR. CEROLI: Yes.

10 JUDGE STANLEY: Let's see what the date is on
11 that notice.

12 MR. CEROLI: And I would just like to clear one
13 thing up now with these Judges?

14 JUDGE STANLEY: Go ahead.

15 MR. CEROLI: I never made any money as a
16 musician, which never paid as a drummer. I was never paid
17 as a musician. That was my father. He was the
18 professional musician and was paid as so. I never -- I
19 never was a professional musician. I was never good
20 enough to be a professional musician.

21 JUDGE STANLEY: Okay. Thank you.

22 Does anybody else have any follow up questions?
23 Okay. Hearing none of those, I'll go back to Ms. Polis.

24 You have another witness that you would like to
25 have testify at this time?

1 MS. POLIS: Yes, I have Theresa Tannett.

2 Ms. Tannett?

3 MS. TANNETT: Hi, my name is Theresa Tannett.

4 Yes.

5 JUDGE STANLEY: Okay. This is Judge Stanley.

6 I'm going to swear you in, if you don't mind.

7 MS. TANNETT: Okay.

8

9 THERESA TANNETT,

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 STANLEY: Okay. Thank you.

15 Ms. Polis, you may proceed.

16

17 DIRECT EXAMINATION

18 BY MS. POLIS:

19 Q Hi, Ms. Tannett.

20 A Hi.

21 Q So as I understand it, you are very familiar with
22 Mr. Ceroli, and you reside with him?

23 A Yes, I do.

24 Q And how long have you known Mr. Ceroli?

25 A I've known Michael for 17 years now.

1 Q All right. And what point did you begin living
2 with him?

3 A About 15 years ago.

4 Q Okay. So you knew him after the assault that
5 caused the seizures?

6 A Yes, I did.

7 Q Now, as someone who lives with him, do you -- do
8 you take it upon yourself or are asked by him to take care
9 of everyday matters for him?

10 A Yes, I do, and including holding him in my arms
11 when he has those seizures.

12 Q And how often are these seizures?

13 A Yeah. When I first met him, he had them -- I
14 held him dozens of times in my arms. The stress of the
15 economy and so many times like before, because he had to
16 sell the house he was having so many too often, two to
17 three a week at that time, seizures. And -- and I loved
18 him and held him in my arms, and now I still do.

19 Q Do you ever take care of any financial issues for
20 him or anything that might have to do with money for him?

21 A Well, I'm on disability as well, and we're trying
22 to handle this as best we can. And like he said, his real
23 estate agent handled the money, and we've been trying to
24 get by and get him on disability as well. This whole tax
25 thing is a fiasco because I remember during this whole

1 time calling Jeremy Streeter up and he goes, "It's
2 alright, Michael. It's alright, Michael."

3 If he was just an old man, they would just -- it
4 was not good. He was not a good man, and he shouldn't
5 have been taking care of people's taxes at that time.
6 Michael had no idea how bad his health had gotten and
7 detrimental. And it ended up making this whole fiasco
8 into a nightmare.

9 Q So for as long as you've known Mr. Ceroli, has he
10 always relied on other people when it came to finances or
11 money?

12 A Yes.

13 Q All right. Is there anything else you would like
14 to add about Mr. Ceroli's financial disability or your
15 firsthand knowledge of that?

16 A I know that he would love to work, but he can't.
17 I know that he needs help. He needs his money back. And
18 other than that, I just know that this is so unfair to do
19 all this where his own money that was taken from him by
20 the mistakes of the -- by the disrespecting disregard of
21 his E.A., that he had no idea was doing this to Michael
22 Ceroli, and Michael is going through this -- going through
23 all the needs of trying to find doctors for this, doctors
24 back then.

25 This is a nightmare. And I leave it to the

1 Judges, and we ask for guidance and for your -- please,
2 we're appealing to you for your judgment that Michael
3 didn't deserve that then, and he doesn't deserve this now.

4 And thank you so much, Judges. I do appreciate
5 your time in listening to me.

6 MS. POLIS: All right. I'd like to turn it over
7 to the FTB or any Judges that have questions for
8 Ms. Tannett.

9 JUDGE STANLEY: Okay. This is Judge Stanley.
10 Mr. Cristobal, do you have any questions?

11 MR. CRISTOBAL: This is Mr. Cristobal. I do not
12 have any questions.

13 JUDGE STANLEY: Okay. Judge Cho, do you have
14 questions?

15 JUDGE CHO: This is Judge Cho. No, I don't have
16 any questions either.

17 JUDGE STANLEY: Judge Dang, do you have any
18 questions?

19 JUDGE DANG: This is Judge Dang, I do not have
20 any questions.

21 JUDGE STANLEY: Okay. And this is Judge Stanley
22 again. Ms. Tannett, I just have one question for you.
23 Since you've known Mr. Ceroli so long, were you helping
24 him to relay tax information to Mr. Streeter?

25 MS. TANNETT: This is Theresa Tannett. And as I

1 said, as I heard Michael, Michael said he didn't get any
2 tax information. It was Jeremy Streeter, and it was --
3 and he said when the -- in a couple of years ago when the
4 money was taken from the bank that -- that was the first
5 notice. But other than that, I don't know anything on --
6 there was nothing sent to him. It was Jeremy.

7 JUDGE STANLEY: Okay. This is Judge Stanley
8 again. May I just ask that question of Mr. Ceroli. Did
9 anyone help you to relay tax information to Mr. Streeter?
10 Because unless somebody gives it to him, he doesn't have
11 the information that he would need to file your tax
12 return.

13 MS. TANNETT: This is Theresa Tannett. I didn't
14 know. I'm sorry. Did you ask that of Michael? This is
15 Theresa. Here's Michael.

16 MR. CEROLI: One more time, Your Honor. What was
17 the question, Your Honor?

18 JUDGE STANLEY: Mr. Streeter would not have had
19 information unless somebody gave it to him to prepare your
20 tax return. Did anyone help you to get information to
21 Mr. Streeter so that he could prepare those returns?

22 MR. CEROLI: Of course, Your Honor. If the
23 information was sent to my residence, it would have been
24 forwarded to Mr. Streeter CPA, E.A. If the information
25 was not sent directly to Mr. Streeter, my CPA, it would

1 have been sent to my residence and forwarded to Jerry
2 Streeter E.A., or it would have been sent directly to
3 Jerry Streeter's office, my CPA, in which he neglected it,
4 therefore, leaving it undone.

5 JUDGE STANLEY: Okay. This is Judge Stanley.
6 Thank you, Mr. Ceroli.

7 MR. CEROLI: You're welcome.

8 JUDGE STANLEY: Ms. Polis, do you have any
9 additional witnesses?

10 MS. POLIS: No those are my only two witnesses.

11 JUDGE STANLEY: Okay. And Mr. Cristobal, I
12 assume you have no witnesses today; correct?

13 MR. CRISTOBAL: This is Mr. Cristobal. That's
14 correct. We have no witnesses.

15 JUDGE STANLEY: Okay. So at this time, I'm going
16 to give the Appellant the first opportunity to make
17 closing argument. So Ms. Polis, you can proceed.

18

19 CLOSING STATEMENT

20 MS. POLIS: All right. So today we have
21 Mr. Ceroli and Ms. Tannett testify as to Mr. Ceroli's
22 financial disability. Financial disability include when a
23 taxpayer is unable to handle his own affairs because of
24 mental or physical strain or documented disability. We
25 had Mr. Ceroli talk about how his disability started; how

1 it's affected his everyday life; how he absolutely cannot
2 under any circumstance do basic math, let alone comprehend
3 his taxes; how he relied on others for anything having to
4 do with his finances, having to do with taxes; how
5 everything was forwarded directly to his taxpayer; and how
6 he didn't even see those documents most of the time.

7 Ms. Tannett also testified to the same. And as
8 for any income that Mr. Ceroli may or may not have
9 received during the time of his disability up until now,
10 he really didn't have control over that. He is not able
11 to be gainfully employed. He is not able to handle
12 finances in a way that benefited him.

13 And with that, I will submit.

14 JUDGE STANLEY: Thank you.

15 I'll turn to Franchise Tax Board. Mr. Cristobal,
16 you may proceed.

17

18 CLOSING STATEMENT

19 MR. CRISTOBAL: This is Mr. Cristobal. So today
20 the issue before us whether Appellant met his burden of
21 proof to establish that he filed a timely claim for refund
22 for tax year 2010. To be even more specific, the issue,
23 really, is whether Appellant has provided an adequate
24 physician's affidavit demonstrating his financial
25 disability, which is necessary to suspend the statute of

1 limitations.

2 The four-year statute of limitations to file a
3 claim for refund for the 2010 tax year began on
4 April 15, 2011, and ended on April 15, 2015. Appellant
5 acknowledges that he filed a claim for refund on
6 March 10, 2017, just outside the four-year statute of
7 limitation to file a claim for refund for the 2010 tax
8 year.

9 Appellant does not argue that a reasonable may
10 toll the statute of limitations, and that Appellant argued
11 that he was financially disabled long enough to suspend
12 the statute of limitations that make these otherwise
13 untimely claim for refund timely.

14 Revenue and Taxation Code Section 19316, provide
15 that the period for filing a timely claim for refund shall
16 be suspended for any period in which the taxpayer is
17 financially disabled. To be financially disabled, the
18 taxpayer must show that one, he was unable to manage his
19 financial affairs because of a medically determinable
20 physical or mental impairment that is either terminal or
21 expected to last for a continuous period of no less than
22 12 months; and two, there's no spouse or other legally
23 authorized person to act on the taxpayer's behalf in
24 financial matters.

25 For the same statute, a taxpayer's financial

1 disability shall be established in accordance with the
2 procedures and requirements specified by the Franchise Tax
3 Board. Now, in order to determine if a taxpayer was
4 financially disabled, the Franchise Tax Board requires
5 taxpayers to submit a proper declaration and a physician's
6 affidavit.

7 In the precedential opinion of Estate of
8 Gillespie, the Office of Tax Appeals held and confirmed
9 that in order to establish financial disability, taxpayers
10 must provide a physician's affidavit. This physician's
11 affidavit must state the nature and duration of the
12 impairment, and the physician's opinion that the taxpayer
13 was unable to manage his financial affairs in the period
14 in which the taxpayer was unable to manage his financial
15 affairs.

16 In this case, although, Appellant made several
17 arguments regarding the nature of his medical condition
18 and his inability to prepare his taxes, he simply has not
19 provided the required physician's affidavit containing the
20 essential information to demonstrate financial disability
21 as required by law.

22 On multiple occasions, in his opening briefs, in
23 his reply briefs, in his additional briefs, and most
24 recently via phone discussions with Appellant's
25 representative, Respondent has asked Appellant for this

1 form, and Appellant has not been able to provide it.
2 Therefore, Appellant has not established financial
3 disability. The statute of limitation was not suspended,
4 and the claim for refund remains untimely.

5 Accordingly, Appellant has not met his burden of
6 proof to establish that he filed a timely claim for
7 refund, and Respondent's action must be sustained.

8 MS. TANNETT: Hold on. Excuse me. This is
9 Theresa Tannett. Okay. May I please, please plead and
10 make a statement on that regard?

11 JUDGE STANLEY: No. Hang on. Hang on.
12 Ms. Tannett, this is not appropriate at this time. This
13 is Judge Stanley. We're doing closing arguments, and I'll
14 let your representative have a follow-up statement in a
15 minute. Right now I want to --

16 MS. TANNETT: We tried getting that.

17 JUDGE STANLEY: Ms. Tannett, please don't
18 interrupt.

19 MS. TANNETT: I mean -- I'm sorry.

20 JUDGE STANLEY: We understand you're passionate
21 about this, but we need to proceed efficiently and make
22 sure everybody can hear everything.

23 Judge Dang, do you have a question?

24 JUDGE DANG: Hi, this is Judge Dang speaking. I
25 have my question for the Franchise Tax Board relates to

1 Revenue and Taxation Code Section 19316, and this would be
2 subdivision (b)(1), that you had just read as part of your
3 closing argument. You had stated that an individual
4 taxpayer's is financially disabled if that individual
5 taxpayer is unable to manage his or her financial affairs.

6 I'm wondering what the Franchise Tax Board's
7 position is as far as the word managing the financial
8 affairs. Would that be narrowly construed in the sense
9 that the taxpayer himself would be unable to personally
10 direct the financial affairs? Or would it be, for
11 example, that the taxpayer -- would it permit, for
12 example, the taxpayer to manage affairs with the help of
13 others?

14 MR. CRISTOBAL: This is Mr. Cristobal. Judge, as
15 far as the requirement that the, you know, taxpayer or
16 Appellant demonstrate that they were impaired from being
17 able to manage their financial affairs, as far as it
18 relates to the statute and what's required, as long as that
19 physician's affidavit has that box checked saying that the
20 taxpayer was unable to manage their financial affairs in a
21 physician's opinion, that would really be all that would
22 be required.

23 MR. CEROLI: Thank you, Your Honor.

24 JUDGE DANG: Okay. And my follow-up question to
25 that would relate to subdivision (b)(2) in the case. Did

1 the phrase legally -- other person is legally authorized
2 to act on that individual's behalf. And again, I'm
3 wondering what the Franchise Tax Board's position would be
4 as to the scope of what is legally authorized. Would that
5 necessitate a power of an attorney or some other form of
6 signed document? Or would it be sufficient if someone
7 merely assisted the taxpayer?

8 MR. CRISTOBAL: This is Mr. Cristobal. In terms
9 of RTC 19316(b)(2), yeah. So in terms of being able to
10 being legally authorized on an individual's behalf on
11 financial matters, it would have to be a specific legal
12 authorization i.e., via power of attorney that
13 specifically enumerates that that person would be legally
14 authorized to act on the taxpayer's behalf.

15 Perhaps an E.A., you know, presumably could have
16 that authorization. But merely having the authorization
17 to file returns doesn't necessarily grant that legal
18 authorization. It would just have to be specific in power
19 of attorney.

20 JUDGE DANG: Thank you so much. This is
21 Judge Dang again -- speaking again. I have no further
22 questions.

23 JUDGE STANLEY: This is Judge Stanley. Thank
24 you.

25 And I want to ask Mr. Cristobal one question too.

1 Is it the Franchise Tax Board's position that without --
2 without a physician's affidavit that states specifically
3 the things that you said, even with other evidence of
4 incapacity or disability, you're saying that without the
5 affidavit that he has not proven that he's financially
6 disabled?

7 MR. CRISTOBAL: This is Mr. Cristobal. Yes,
8 Judge Stanley. Per the law and OTA precedent, FTB is not
9 in position to make any legal determinations or
10 conclusions. So as per the law and OTA precedent, you
11 know, Appellant must provide that physician's affidavit
12 stating, you know, the points I mentioned previously.

13 JUDGE STANLEY: Okay. Thank you.

14 And Ms. Polis, I'll have you give us the last
15 word on this.

16

17 REBUTTAL STATEMENT

18 MS. POLIS: Okay. So I will ask the OTA to
19 reconsider the prior findings that a doctor needs to file
20 a 1554 Form (??**). I understand that some taxpayers who
21 are disabled may be able to relate their financial
22 information and communicate with their doctors enough so
23 that a doctor will feel comfortable signing that form.

24 However, in Mr. Ceroli's case, he does not have a
25 grasp of his finances. He does not have a grasp of tax

1 liability or anything relating to taxes so much so that he
2 forwarded all these documents to a preparer. He had
3 people throughout this time of his disability handle
4 everything financially for him.

5 So I would argue that previous ruling does not
6 apply to Mr. Ceroli. He is unable to sit down with a
7 doctor and say, "Listen, this is my understanding of my
8 finances. I'm unable to do that." He is not able to
9 communicate that to a doctor enough for a doctor to sign
10 this affidavit.

11 And with that, I will submit.

12 JUDGE STANLEY: Thank you.

13 So this concludes our hearing today. After this
14 hearing, the Judges are going to meet and decide the case
15 based on the documents and testimony that was presented
16 today.

17 So the record is now closed, and we will mail the
18 parties a written decision no later than 100 days after
19 the close of the hearing today. And if there are no other
20 issues, I'm going to adjourn. So thank you all for
21 coming.

22 We are adjourned.

23 (Proceedings adjourned at 10:49 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 27th day of March, 2020.

ERNALYN M. ALONZO
HEARING REPORTER