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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE OF,)
)
A GIRL'S EMPIRE,) OTA NO. 19105409
)
)
) APPELLANT.
)
)
)
_____)

Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 10:15 a.m. and concluding
at 10:38 a.m. on Thursday, May 28, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ CHERYL AKIN

Panel Members: ALJ AMANDA VASSIGH
ALJ KEITH LONG

For the Appellant: ROLAND BIEGLER,
Representative

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
By: PAUL KIM,
Tax Counsel
CHRISTOPHER CASSELMAN,
Tax Counsel IV

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-13 were received into evidence at page 6.)

(Appellant's Exhibits 14-17 were marked for identification at page 7.)

(Appellant's Exhibits 14-17 were received into evidence at page 7.)

(Department's Exhibits A-E were received into evidence at page 6.)

OPENING STATEMENT

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By Mr. Biegler	8
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CLOSING STATEMENT

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By Mr. Biegler	20
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1 Sacramento, California; Thursday, May 28, 2020

2 10:15 a.m.

3

4 JUDGE AKIN: We are now on the record.

5 Good morning. I am Judge Akin. We are opening
6 the record in the appeal of A Girl's Empire, Office of Tax
7 Appeals Case Number 19105409. This hearing is being
8 convened telephonically on Thursday May 28th, 2020, at
9 approximately 10:15 a.m. The hearing location was
10 originally scheduled for Sacramento, California.

11 I am lead Administrative Law Judge Cheryl Akin,
12 and with me today is Judge Vassigh and Judge Long, and we
13 will be hearing the matter this morning. I am the lead
14 administrative law judge, meaning, I will be conducting
15 the proceedings, but my co-panelists and I are equal
16 participants, and we will all be reviewing the evidence
17 asking questions and reaching a determination in this
18 case. We three will deliberate and decide all the issues
19 presented. Each of us will have an equal vote in those
20 deliberations.

21 Can the parties please state their appearances
22 for the record, starting with the Appellant or its
23 representative; in other words, who you are and who you
24 are representing.

25 MR. BIEGLER: Roland Biegler representing A

1 Girl's Empire.

2 JUDGE AKIN: Okay. Franchise Tax Board.

3 MR. KIM: Paul Kim and Chris Casselman for
4 Respondent Franchise Tax Board.

5 JUDGE AKIN: Okay. Thank you. This is
6 Judge Akin speaking. The parties have agreed that the
7 issues before us today are: One, whether the late-filing
8 penalty was properly imposed for the 2016 taxable year,
9 which includes consideration of whether the exception
10 provided under Revenue and Taxation Code 23114(a) applies
11 to Appellant's 2016 taxable year; and two, whether
12 Appellant owed the \$800 minimum franchise tax for the 2017
13 taxable year, which also includes the estimated tax
14 penalty for this year.

15 Now with respect to exhibits, pursuant to the
16 May 8th, 2020, minutes and orders, we admitted Exhibits 1
17 through 13 for Appellant and Exhibits A through E for
18 Franchise Tax Board. These exhibits were admitted without
19 objection.

20 (Appellant's Exhibits 1-13 were received
21 in evidence by the Administrative Law Judge.)

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

24 JUDGE AKIN: Subsequent to the prehearing
25 conference, Appellant submitted four additional proposed

1 exhibits to the Office of Tax Appeals on May 7th and
2 May 8th, 2020, with copies provided to Franchise Tax
3 Board.

4 The proposed exhibits have been marked for
5 identification purposes as Appellant's Exhibits 14
6 through 17.

7 (Appellant's Exhibits 14-17 were marked
8 for identification by the Administrative
9 Law Judge.)

10 JUDGE AKIN: Franchise Tax Board has indicated
11 that they do not have any objections to Appellant's
12 proposed Exhibits 14 through 17, and Appellant's
13 Exhibits 14 through 17 are now admitted as evidence into
14 the record at this time.

15 (Appellant's Exhibits #14-17 were received
16 in evidence by the Administrative Law Judge.)

17 JUDGE AKIN: No additional exhibits have been
18 presented by the parties today. The parties have
19 indicated they will not be calling any witnesses. And in
20 the May 8th, 2020, minutes and orders, I indicated that
21 the time and order of the proceedings would be as follows:

22 Mr. Biegler, you'll first present your position,
23 and you will have 20 minutes to do so. This will be
24 followed by any questions the panel may have for
25 Appellant.

1 This is important because Franchise Tax Board and
2 Internal Revenue Service requires a tax return in the tax
3 year at 16 days or more, even if no business activity was
4 conducted during that tax year. However, if the tax year
5 is 15 days or less, the corporation is only required to
6 file a corporate tax return if the corporation conducted
7 business during those 15 days.

8 The second California corporate law is, that is
9 California corporations is not subject to a minimum tax --
10 franchise taxes or minimum taxes -- franchise tax of \$800
11 in its first taxable year. So if the first taxable
12 year -- the first taxable year is very important for all
13 corporations that are starting a business venture. A
14 Girl's Empire paid \$217.28 for tax year 2016 and paid
15 \$848.62 for tax year 2017 for a total of \$1,065.90.

16 The purpose of this hearing today is, does the
17 tax year start for the first tax year of a corp -- when
18 does the -- when does the tax year start for a first tax
19 year of a corporation? Should the tax year start on the
20 day the Articles of Incorporation are dropped off at the
21 Secretary of State? Or should the tax year start on the
22 date the corporation -- the corporate officer receives the
23 approved Articles of Incorporation back from the Secretary
24 of State?

25 I have filed three claims of refund for three

1 different California corporations for the tax years 2017,
2 2016, 2015 in August of 2019. The first client's claim
3 for refund was allowed, and they received their refund on
4 the same day I received the response regarding the claim
5 for refund for A Girl's Empire. A Girl's Empire in the
6 third claim for a refund were denied. I reviewed the
7 three claims to see why one client's refund was allowed
8 and two claims of refund were denied.

9 The first client that received the refund
10 reported a net income in the first-full calendar year of
11 more than \$55,000. The client owed more than the minimum
12 tax of \$800 in the first-full calendar year, whereas, A
13 Girl's Empire and the third client's claim for refund were
14 denied. Both had a net loss in the first-full calendar
15 year.

16 The Franchise Tax Board is saying that A Girl's
17 Empire started on December 16th of 2016 based on the
18 California Secretary of State's file date. However, the
19 approved Articles of Incorporation for A Girl's Empire was
20 not completed and given back to the corporate officer of
21 A Girl's Empire until December 22nd of 2016. An Article
22 of Incorporation for A Girl's Empire is in -- is provided
23 in Exhibit 6.

24 This problem was started by the California
25 Secretary of State. Before January 1st of 2010, the

1 California Secretary of State completed Articles of
2 Incorporation in one hour. The corporate officer would
3 walk to the Secretary of State with a signed Article of
4 Incorporation to give to the Secretary of State employee.
5 The corporate officer would sit in their lobby for one
6 hour and leave with an approved Article of Incorporation.

7 Starting in January of 2010 the California
8 Secretary of State started to charge for expedited
9 services. Now, an approved Article of Incorporation takes
10 7 to 10 days to process without expedited services.
11 During the busiest time of year, the California Secretary
12 of State can take up to a month to approve an Article of
13 Incorporation.

14 The California Secretary of State charges \$350
15 for 24-hour service and \$750 for same-day service. For
16 same day service, the Article of Incorporation must be
17 received by the Secretary of State by 8:00 -- by 9:30 a.m.
18 and will be available the same day by 4:00 p.m. The
19 California Secretary of State's fee schedule is provided
20 in Exhibit 3.

21 In Exhibit 16 is a printout from the California
22 Secretary of State's website showing on December 16, 2016,
23 the California Secretary of State was processing the
24 Articles of Incorporation dropped off in person on
25 December 9th, 2016. The California Secretary of State was

1 taking 7 days to approve the Articles of Incorporation
2 when the person dropped off the Articles of Incorporation
3 on December 16, of 2016.

4 I do not have the detail of processing times for
5 each day in 2016. However, I printed out the processing
6 time for each day from December 17, 2019, to
7 January 3rd, 2020, from the California Secretary of State
8 website provided in Exhibit 17. In Exhibit 17, you can
9 see that on the December 17, 2019, the California
10 Secretary of State was processing the Articles of
11 Incorporation dropped off on December 6th of 2019. It was
12 taking 11 days for the Secretary of State to approve
13 Articles of Incorporations dropped off on
14 December 6th, 2019.

15 It was not until December 3rd of 2020, that the
16 Secretary of State's website was showing that they were
17 processing the Articles of Incorporation dropped off on
18 December 17th, 2019. It was taking 17 days for the
19 California Secretary of State to approve the Articles of
20 Incorporation dropped off on December 17th of 2019.
21 Please note that a corporation is not required to file an
22 entity tax return if the tax return is 15 days or less,
23 and entity -- and the entity did not -- did not do
24 business during the 15 days.

25 In Exhibit 14 and 15 are the 2016 and 2017

1 S corporation tax return for A Girl's Empire. You can see
2 that a Girl's Empire did not have any business activity
3 either year. The corporation never had a product that a
4 corporate officer wanted to sell, even though the
5 corporate office pursued several options. A Girl's Empire
6 is claiming the 2017 as the first year because in 2016 it
7 is less than 15 days because the approved Articles of
8 Incorporation was completed on December 21st of 2016, and
9 there was no activity in the tax year of 2016.

10 Please note when a corporation files the Articles
11 of Incorporation, the corporation is not an active
12 business. The Articles of Incorporation is the first step
13 for corporations in California. The corporation needs the
14 approved Articles of Incorporation to request a federal ID
15 number from the Internal Revenue Service. To open a bank
16 account, a corporation must have a federal identification
17 number and the approved Articles of Incorporation.

18 The A Girl's Empire applied for the federal
19 identification number on December 27th, 2016, which is
20 provided in Exhibit 8. Since A Girl's Empire was going to
21 sell a product, the corporation needs the approved
22 Articles of Incorporation, a federal identification
23 number, and a bank account to apply for a California
24 Resale License with the California Department of Fee and
25 Administration.

1 Once again, the purpose of this hearing is that
2 when does the tax year start for the first year of a
3 corporation? Should the tax year start on the day the
4 Articles of Incorporation are dropped off with the
5 Secretary of State, or should the tax year start on the
6 date the corporation officer received the approved
7 Articles of Incorporation back from the California
8 Secretary of State?

9 In conclusion, the problem can be avoided if the
10 California Secretary of State would approve the Articles
11 of Incorporation on the date completed and given back to
12 the officer of the corporation. Since the State of
13 California continues to date the Articles of Incorporation
14 on the date dropped off, the Franchise Tax Board is using
15 the drop off date to take advantage to charge minimum tax,
16 penalties, and interest on corporations in the State of
17 California.

18 I do not believe there is a collusion between the
19 California Secretary of State and the Franchise Tax Board.
20 But the Secretary of State and the Franchise Tax Board
21 need to change their procedures since the State of
22 California is no longer processing the Articles of
23 Incorporation within one hour like the Secretary of State
24 did for over 100 years before January 1st of 2010.

25 Thank you.

1 JUDGE AKIN: Okay. Thank you, Mr. Biegler.
2 Okay. This is Judge Akin speaking. Panel, do we
3 have any questions for Appellant? Judge Vassigh?
4 JUDGE VASSIGH: No, I do not. Thank you.
5 JUDGE AKIN: Okay. Judge Long?
6 JUDGE LONG: Hi, this is Judge Long. To confirm,
7 there's no dispute that the Articles of Incorporation were
8 turned in to the Secretary of State on December 16th;
9 correct?
10 MR. BIEGLER: Correct. Ronald Biegler. Correct.
11 MR. KIM: Paul Kim. Correct.
12 JUDGE LONG: And so your position is that the
13 Articles of Incorporation were turned in on December 16th,
14 however, the business should not be treated as
15 incorporated until December 22nd when they were returned
16 to the corporate officer; correct?
17 MR. BIEGLER: Roland Biegler. Correct.
18 JUDGE LONG: Okay. And that is all I have.
19 Thank you.
20 JUDGE AKIN: Judge Akin speaking, and I don't
21 have any questions for Appellant.
22 So I think, Mr. Kim, we're ready for your
23 statement. As a reminder please state your name before
24 speaking and you have up to 20 minutes. You may begin
25 when you're ready.

1 Appellant's date of incorporation should be designated as
2 December 2nd -- 22nd, 2016.

3 The issue with Appellant's argument is that none
4 of these reasons provided -- addressed why Appellant filed
5 his 2016 tax return on October 24th, 2018, and why that
6 should be excused for reasonable cause. The law states
7 the person subject to the tax by way of incorporation must
8 file a return by the end of the 15th day of the third
9 month following close of taxable year regardless of
10 whether or not it was or wasn't doing any business.

11 Moreover, the 15-day rule isn't applicable. As
12 stated previously, Appellant's date of incorporation was
13 December 16th, 2016. And the law states that for the
14 15-day rule to apply, Appellant must have filed on the
15 7th -- December 17th or later. I'll also note in
16 Regulations and also FTB Publication 1060, it clearly
17 states that for the 15-day rule to apply, taxpayers must
18 have filed on December 17th or later. This publication --
19 FTB Publication 1060 is also issued to all new registry
20 upon incorporation.

21 Lastly, the law states and the California
22 Secretary of State confirmed, via Exhibit 12 of
23 Appellant's list of exhibits, that the date of
24 incorporation is established upon filing, not when the
25 Appellant receives confirmation of the filing of their

1 Articles of Incorporation. Therefore, Appellant's reasons
2 failed to establish reasonable cause.

3 Second, regarding the imposition of the minimum
4 franchise tax in 2017, Appellant argues that 2017 was its
5 first taxable year, per the application of the 15-day rule
6 and, therefore, not subject to minimum franchise tax.
7 This is incorrect. As discussed above, Appellant's first
8 year began in 2016. And, thus, the waiver of tax provided
9 under the code for the first year corporations -- that's
10 specifically, RTC 23153(f)(1) -- was applied in 2016.
11 That being the case, Appellant is subject to the minimum
12 franchise tax in 2017.

13 In conclusion, the facts and laws state that
14 Appellant is subject to late-filing penalty in 2016 for
15 failure to timely file a return, and further, that
16 Appellant is subject to the minimum franchise tax in 2017.

17 That concludes my presentation.

18 JUDGE AKIN: Okay. Thank you, Mr. Kim. This is
19 Judge Akin speaking.

20 Panel, do we have any questions for Franchise Tax
21 Board? Judge Vassigh?

22 JUDGE VASSIGH: No, I do not. Thank you.

23 JUDGE AKIN: Okay. Judge Long?

24 JUDGE LONG: I don't have any questions.

25 JUDGE AKIN: I think I actually do have a

1 question for Franchise Tax Board. Let me formulate my
2 thought here for a second. Okay. So if I understand
3 correctly, Franchise Tax Board, it's your position that
4 the 15-day rule under 23114(a) does not apply to
5 Appellant's 2016 taxable year, but that Appellant would
6 not be subject to the minimum franchise tax in 2016
7 because that's their first taxable year. If that's the
8 case, I guess I'm wondering if FTB can explain why
9 Appellant has a filing requirement for 2016.

10 MR. KIM: Thank you for the question, Judge Akin.
11 If you can give me a second, let me get to that section.
12 So according to RTC Sections 23153 and 18601(a), that
13 specifically -- well, I'm paraphrasing -- but that
14 specifically states that the taxpayer is subject to tax,
15 commencing with Section 23001, must file a return. And so
16 if per RTC Section 23153 states that corporations that are
17 incorporated are subject to minimum tax, then they just
18 need to file a return by the 15th day of the fourth month.

19 So regardless of whether or not Appellant was
20 subject to the tax or wasn't due to -- for lack of a
21 better term -- a waiver, then they are still required to
22 file a return and show zero income.

23 JUDGE AKIN: Okay. Judge Akin speaking. Thank
24 you.

25 With that, I believe, Mr. Biegler, we're ready

1 for your final statement. This can include a rebuttal to
2 Franchise Tax Board or, if you'd like, further address any
3 questions the panel had for you. You have up to five
4 minutes, and you may begin when you are ready.

5

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CLOSING STATEMENT

7 MR. BIEGLER: All right. So this is Roland
8 Biegler again. I understand the Franchise Tax Board's
9 position. This problem is really caused by the Secretary
10 of State. I mean, the Secretary of State used to provide
11 the Articles of Incorporation in one hour. And so that
12 would be true if you went on the 16th, you would leave
13 with it on the 16th.

14 But the Secretary of State doesn't do that
15 anymore. The Secretary of State now takes 7 to 10 days to
16 prepare an Articles of Incorporation. So until the
17 Secretary of State changes their ruling or changes the way
18 that they date the Articles of Incorporation, the
19 Franchise Tax Board is going to be able to bill many
20 thousands of corporations and LLCs thousands of dollars
21 each year because the fact the Secretary of State is not
22 dating the Articles of Incorporation and the Articles of
23 Organization correctly for S corporations and LLC.

24 So true, I will probably lose today and then just
25 have to take it up with the Secretary of State, the

1 Attorney General, or even the President of the United
2 States until the Secretary of State can then possibly file
3 and date the Articles of Incorporation and the Articles of
4 Organization for the proper date, which is the date that
5 they give to the taxpayer.

6 Thank you.

7 JUDGE AKIN: Okay. Judge Akin speaking. Thank,
8 you Mr. Biegler. We now have your evidence and argument
9 in the record. Is there anything else you've prepared or
10 anything else you would like to tell us before we conclude
11 this case?

12 MR. BIEGLER: No, thank you. Roland Biegler.
13 No, thank you.

14 JUDGE AKIN: Okay. Judge Akin speaking again.
15 To wrap up, I really want to thank both parties,
16 Mr. Biegler and Mr. Kim, for your participation and
17 presentations today and for being flexible with the
18 hearing format. I know it's a little tricky over the
19 telephone, but both of you have done a great job
20 presenting your cases, and I appreciate your time.

21 We are ready to submit the case. The judges will
22 meet and decide the case based on the briefs, the evidence
23 in the record, and the arguments presented today. We will
24 aim to send both parties our written decision no later
25 than 100 days from today. The record is now concluded --

1 excuse me. The record is now closed, and this concludes
2 the hearing and the hearing calendar for today.

3 Thank you. We very much appreciate your time.
4 Goodbye.

5 (Proceedings adjourned at 10:38 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 11th day of June, 2020.

ERNALYN M. ALONZO
HEARING REPORTER