

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
J. NAVAR, ) OTA NO. 18042970  
)  
APPELLANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, July 23, 2020

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Suite 300, Cerritos,  
California, 90703, commencing at 1:17 p.m.  
and concluding at 2:02 p.m. on Thursday,  
July 23, 2020, reported by Ernalyn M. Alonzo,  
Hearing Reporter, in and for the State of  
California.

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS  
Panel Members: ALJ JEFFREY MARGOLIS  
ALJ ANDREA LONG  
For the Appellant: J. NAVAR  
For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
By: BRYAN WERKING

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-7 were received at page 6.)

(Department's Exhibits A-G and J were received at page 6.)

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1 Cerritos, California; Thursday, July 23, 2020

2 1:17 p.m.

3

4 JUDGE ROSAS: We are on the record in the matter  
5 of the appeal of J. Navar, OTA Case Number 18042970. This  
6 appeal was originally scheduled to take place in person in  
7 Cerritos, California, but because of Covid-19 it is being  
8 conducted virtually.

9 It is July 23rd, 2020, and the time is  
10 approximately 1:17 p.m. The panel of administrative law  
11 judge includes Andrea Long, Jeffrey Margolis and me,  
12 Albert Rosas. And, although, I may be the lead ALJ for  
13 purposes of conducting this hearing, please know that this  
14 panel, the three of us, we are all equal participants and  
15 equal decision makers.

16 I'm going to ask everyone to please state your  
17 names for the record.

18 Mr. Navar, please state your full name.

19 MR. NAVAR: Joel Navar. Joel Navar.

20 JUDGE ROSAS: This is Judge Rosas. Thank you,  
21 Mr. Navar.

22 And Mr. Werking.

23 MR. WERKING: Brian Werking.

24 JUDGE ROSAS: This is Judge Rosas. Thank you,  
25 Mr. Werking.

1           As mentioned, the hearing is being recorded. We  
2 have a stenographer. So please remember to state your  
3 name each time before you speak. Remember to speak  
4 slowly, speak clearly, and speak one at a time.

5           A few housekeeping matters. We held a prehearing  
6 conference on July 2, 2020, which resulted in the issuance  
7 of four orders. I'm going to discuss those four orders  
8 now.

9           Order 1 was Appellant's Exhibits 1 through 7 were  
10 admitted into evidence without objection.

11           (Appellant's Exhibits 1-7 were received  
12 in evidence by the Administrative Law Judge.)

13           Number 2, respondent's Exhibits A through G,  
14 alpha through golf, as well as Exhibit J, Juliet, were  
15 admitted into evidence over Appellant's objection.

16           (Department's Exhibits A-G and J were received  
17 in evidence by the Administrative Law Judge.)

18           Number 3, Appellant's objections to Exhibits H,  
19 hotel, and I, India, were sustained, and these two  
20 exhibits were not admitted into evidence.

21           Four, the parties agreed to comply with specific  
22 time limits set forth for this hearing.

23           Mr. Navar, is that an accurate summary of the  
24 prehearing conference orders?

25           MR. NAVAR: Yes, I believe so.

1           JUDGE ROSAS: This is Judge Rosas. Thank you,  
2 Mr. Navar.

3           And Mr. Werking?

4           MR. WERKING: Brian Werking. Yes, that is  
5 accurate. Thank you.

6           JUDGE ROSAS: This is Judge Rosas. Thank you  
7 very much.

8           One issue that came up during the prehearing  
9 conference there was a disagreement between the parties in  
10 terms of the specific language of the first issue in  
11 dispute. I'm going to recite what my understanding is of  
12 the issues, but I'm going to let both of you chime in and  
13 restate that issue in your own words.

14           Issue Number 1, whether Respondent can establish  
15 that the proposed assessment, based on estimated income,  
16 was reasonable and rationable; and, if so, whether  
17 Appellant can establish that the proposed assessment was  
18 erroneous.

19           Mr. Navar, I recall you had a disagreement with  
20 that statement. So please in your own words, no more than  
21 20 to 30 seconds, please tell us what you believe is the  
22 first issue.

23           MR. NAVAR: Thank you. The first issue will be  
24 proof, burden of proof, and that is the most -- if I see  
25 something wrong, but it's for them to prove that it

1 belongs to me.

2 JUDGE ROSAS: This is Judge Rosas. Thank you  
3 very much.

4 And Mr. Werking, please feel free to chime in and  
5 discuss what you believe is the first issue to be decided.

6 MR. WERKING: Brian Werking here. The first  
7 issue Respondent feels is, has Appellant met his burden to  
8 show error in the proposed assessment.

9 JUDGE ROSAS: This is Judge Rosas. Thank you  
10 very much.

11 In terms of Issues 2 and 3, there was no  
12 disagreement between the parties.

13 Issue 2 is whether there is reasonable cause to  
14 abate the failure to file penalty.

15 And Issue Number 3, whether interest should be  
16 abated.

17 Mr. Navar, is this your understanding of Issues 2  
18 and 3?

19 MR. NAVAR: Yes. Again, this is --

20 JUDGE ROSAS: This is Judge Rosas. Go ahead,  
21 Mr. Navar.

22 MR. NAVAR: Thank you. Navar. It's related.  
23 It's arbitrarily or assumption, and that's a mistake  
24 against me to have to prove. And the burden of proof that  
25 should be or belongs to me. It's the burden of proof on



1       them that that it belongs to me, and not a computer  
2       hearsay.

3               JUDGE ROSAS: This is Judge Rosas. Thank you  
4       very much Mr. Navar. You're diving into a little bit of  
5       argument. Please save it for your testimony and  
6       presentation.

7               Mr. Werking, is that your fair understanding in  
8       terms of Issues 2 and 3 as I recited them?

9               MR. WERKING: Brian Werking here. Yes, that is.

10              JUDGE ROSAS: This is Judge Rosas. Thank you  
11       very much.

12              Mr. Navar, we're going to move forward into your  
13       testimony and presentation. Mr. Navar, may you please  
14       raise your right hand. Mr. Navar?

15              MR. NAVAR: Okay.

16              JUDGE ROSAS: Are you raising your right hand?

17              MR. NAVAR: Yes.

18              JUDGE ROSAS: Mr. Navar, pardon the question but  
19       I have to ask because I've seen this before. Mr. Navar,  
20       are you sure you're raising your right hand and not your  
21       left hand?

22              MR. NAVAR: One question. Hold on. I have a  
23       question.

24              JUDGE ROSAS: Certainly.

25              MR. NAVAR: I decide not to testify just go with

1 the evidence that have other than the opening statement  
2 and maybe closing. The evidence admitted is the one I'd  
3 like to apply for you, written evidence. So we'll make it  
4 shorter and faster. I sustain the same declaration that I  
5 made in writing.

6 JUDGE ROSAS: This is Judge Rosas. Very well.  
7 As we discussed that in our prehearing conference,  
8 Mr. Navar, you have the option of just providing argument,  
9 which does not require you to take an oath, or you could  
10 be sworn as a witness. That way the testimony that you  
11 provide may form the basis of a factual finding.

12 But I did explain the difference between factual  
13 findings, between testimony, between argument. But as I  
14 understand it, you do not want to be sworn as a witness  
15 today and you just want to present oral argument; is that  
16 correct?

17 MR. NAVAR: Yes, Judge, Your Honor. That's  
18 correct.

19 JUDGE ROSAS: This is Judge Rosas. Thank you  
20 very much, Mr. Navar. In that case, as we discussed, you  
21 have a total of 30 minutes. Whatever time you do not use  
22 during your initial argument will be reserved for  
23 rebuttal. Please take your time, and you may begin  
24 whenever you're ready.

25 MR. NAVAR: Very well. Thank you all. And thank

1 you, Your Honor. I'll make it brief, short, and simple or  
2 at least I'll try. And then we'll wrap it up sooner.

3

4

OPENING STATEMENT

5 MR. NAVAR: On the opening, I -- the evidence --  
6 not the evidence percent, it would explain, it would show  
7 that this is a case where it's arbitrarily on their  
8 presumption of the State and other people that this  
9 interest alleged of being paid by me is beyond -- beyond  
10 the proof of the State. It's mostly hearsay.

11 We -- I was able to find some evidence from other  
12 payers that it did not belong to me. So it's like three  
13 items or four items according to the computer record. And  
14 that shows it belongs to be mine or supposed to be mine  
15 arbitrarily. I will -- the proof as I said on the  
16 writing, not automatically. There was a mistake, and the  
17 others, I couldn't find the proof. I felt that something  
18 was not right, and that's why I continue and fight this  
19 case for lack of better words. And that did not belong to  
20 me.

21 Now, on the case of the evidence, the State  
22 doesn't have the -- a sworn witness -- live witness from  
23 Chase to present that that belongs to me, and that is  
24 mortgage in this case. It could be credit card, and it  
25 could be for another family. But I couldn't find, for

1 various things, the evidence. But it's the State's proof  
2 or burden of proof that it's mine. They have the time to  
3 get a Chase representative where they can testify live and  
4 not hearsay or declaration. It could be a computer, and  
5 it's hearsay. So I oppose to that.

6 Give me 1 -- 30 seconds to gather my thoughts.

7 Okay.

8 Secondly, it is more customary -- and I feel it's  
9 more of a fraud from the State that they alleged to me and  
10 they put the burden on me, and I'm the one who needs to  
11 tell them that it doesn't belong to me and the proof. And  
12 this is like when somebody said to another party, "You  
13 stole money. Prove me you that you didn't steal my  
14 money."

15 That doesn't -- in reality, that doesn't work  
16 that way. When somebody claims you stole me and here's  
17 the evidence and not hearsay or declaration, then it's  
18 questionable. So the same principle, I would think, that  
19 it applies here. The computer might show in there they  
20 made a mistake when some of the interest been alleged.  
21 And the others to be in the same position, the same  
22 situation.

23 So I will -- I will ask that that should not be  
24 the case or to be applied in the same principle to me.  
25 And that's -- that will conclude my opening and reserve

1 the rest for the closing. I think I cover -- I cover  
2 pretty much everything that I thinking of.

3 Thank you.

4 JUDGE ROSAS: This is Judge Rosas. Thank you  
5 very much, Mr. Navar. You reserved approximately  
6 25 minutes for your rebuttal. At this point I'm going to  
7 turn it over to my co-panelist to see if either of them  
8 have any questions for you, Mr. Navar.

9 I'm going to start with Judge Long. Judge Long,  
10 any questions?

11 JUDGE LONG: This is Judge Long. No questions.

12 JUDGE ROSAS: This is Judge Rosas. Thank you  
13 very much, Judge Long.

14 Judge Margolis do you have any questions?  
15 Judge Margolis, we're not able to hear you.

16 JUDGE MARGOLIS: I'll ask the questions after the  
17 FTB makes its presentation, if you don't mind.

18 JUDGE ROSAS: This is Judge Rosas. Of course, I  
19 do not mind, Judge Margolis. Thank you.

20 MR. NAVAR: May I ask -- Navar.

21 JUDGE ROSAS: Mr. Navar, go ahead.

22 MR. NAVAR: I couldn't understand clear what  
23 Judge Margolis said, if you can repeat the question.

24 JUDGE ROSAS: This is Judge Rosas. Mr. Navar,  
25 Judge Margolis says he's going to wait and ask you

1 questions later after the Franchise Tax Board has  
2 completed their presentation.

3 MR. NAVAR: Very well. Thank you.

4 JUDGE ROSAS: This is Judge Rosas. Mr. Navar, I  
5 did have a few questions, but considering that you are not  
6 sworn in as witness, the answers to these questions really  
7 wouldn't be helpful because it's more -- my questions were  
8 more factual in nature. But I'm going to wait to see if I  
9 have any questions for you after FTB completes their  
10 presentation. Thank you very much, Mr. Navar.

11 At this point we are going to turn it over to  
12 Mr. Werking. Mr. Werking, you have up to 10 minutes for  
13 your presentation. You may begin whenever you're ready.

14 MR. WERKING: Thank you. Brian Werking here.  
15 Thank you, Judge Rosas.

16

17 OPENING STATEMENT

18 MR. WERKING: The issues in this case are: One,  
19 has Appellant met his burden to show error in the proposed  
20 assessment; two, has Appellant established reasonable  
21 cause to abate the delinquent filing penalty; and three,  
22 has Appellant established any basis for the abatement of  
23 interest.

24 Appellant has not met his burden to show error  
25 because Appellant has not filed a return or otherwise

1 established his income for the taxable year. Although,  
2 the initial burden is on Respondent to establish that the  
3 assessment is based on the reasonable and rational  
4 estimate of Appellant's income, once established, the  
5 assessment is presumed correct and the taxpayer bears the  
6 burden to show that the assessment is erroneous.

7           The courts have held that if a taxpayer files no  
8 return or otherwise refuses to cooperate in the  
9 ascertainment of his income, the taxing agency may  
10 determine a reasonable and rational assessment based on  
11 statistical information rather than actual direct evidence  
12 of income.

13           Where the government's deficiency determination  
14 rests on the reasonable inference that the taxpayers must  
15 have had sufficient income to support themselves for years  
16 when no income was reported and statistics are used to  
17 reconstruct income, the evidentiary foundation necessary  
18 for the presumption of correctness to attach is minimal.

19           Here, in the absence of Appellant filing his 2015  
20 return, Respondent estimated Appellant's income based on  
21 the amount of mortgage interest he paid as reported on  
22 federal Form 1098 and statistical data. The reasonable  
23 inference being that Appellant's unreported income allowed  
24 Appellant to maintain substantial principle and mortgage  
25 interest payments in addition to supporting himself.

1           The statistical data is backwards-looking and is  
2           comprised of income and mortgage interest data from all  
3           individuals who filed California returns and claimed a  
4           mortgage interest deduction on their Schedule A. The most  
5           recent study, Respondent's Exhibit J, was conducted in  
6           2019 and compiled mortgage interest and income information  
7           from returns filed for tax years 2007 through 2016 and  
8           found the average total income to mortgage interest ratio  
9           was 10.13 to 1.

10           As such, Respondent's use of a 6 to 1 income to  
11           mortgage interest ration provides a reasonable and  
12           rational yet, conservative estimate of Appellant's  
13           unreported income. Accordingly, Respondent's estimate of  
14           Appellant's income, based on the mortgage interest he  
15           paid, is reasonable and rational, and the burden shifts to  
16           Appellant to prove that the tax assessment is  
17           erroneousness.

18           It lay in Appellant's power to prove his actual  
19           income and to controvert the statistics, but Appellant has  
20           chosen not to do so. On numerous occasions, Respondent  
21           has requested that Appellant file his return to properly  
22           report his income, but Appellant has refused.  
23           Accordingly, the Appellant has not met his burden to show  
24           error in the proposed deficiency assessment, and the  
25           assessment should be sustained.



1           Regarding the delinquent filing penalty,  
2 Appellant has not made no arguments as to why he has  
3 failed to timely file his return and, as such, has not  
4 established reasonable cause. And regarding interest,  
5 Appellant has not argued or established any basis for the  
6 abatement of interest. Accordingly, based on reasons  
7 articulated, Respondent respectfully request that the OTA  
8 sustains its actions.

9           Thank you.

10           JUDGE ROSAS: This is Judge Rosas. Thank you  
11 very much, Mr. Werking.

12           I'll turn it over to my co-panelists.  
13 Judge Long, do you have any questions for Mr. Werking?

14           JUDGE LONG: This is Judge Long. I have no  
15 questions.

16           JUDGE ROSAS: This is Judge Rosas. Mr. Margolis,  
17 do you have any questions for Mr. Werking?

18           JUDGE MARGOLIS: Yes, I do. Thank you. This is  
19 Judge Margolis.

20           Mr. Werking, I understand that you actually --  
21 that the Franchise Tax Board has reduced its proposed  
22 assessment in this matter; is that correct?

23           MR. WERKING: That is correct.

24           JUDGE MARGOLIS: And could you state on the  
25 record what the reduced amounts are?

1           MR. WERKING: Brian Werking here. The Respondent  
2 has -- based on additional evidence provided by Appellant,  
3 Respondent has determined at \$22,172 of the original  
4 mortgage interest that was used to make the calculation  
5 was not paid by Appellant. And so Respondent has revised  
6 its estimation of income based on the mortgage interest  
7 paid of \$16,126.

8           So to make that estimation, we multiplied that  
9 \$16,126 by 6, which gives you an estimated income of  
10 \$96,756. We allowed an itemized deduction of \$16,126,  
11 which gave a taxable income of \$80,630. The tax, based on  
12 a single filing status of that taxable income, is \$4,972,  
13 less an exemption credit of \$109, makes a total tax of  
14 \$4,863. Based on that revised total tax, the delinquent  
15 filing penalty would be \$1,215.75, 25 percent at total  
16 tax.

17           JUDGE MARGOLIS: Okay. Thank you. This is  
18 Judge Margolis. Thank you, Mr. Werking. I noticed in  
19 your brief you also found that Appellant had -- there was  
20 a 1099 information regarding a property sale by Appellant  
21 for \$500,000. Does that play into your deficiency  
22 computations at all?

23           MR. WERKING: At this time the Respondent had not  
24 used that as a basis to estimate Appellant's income. We  
25 relied on the mortgage interest information that we

1 received from the federal government.

2 JUDGE MARGOLIS: Okay. Thank you. Now, I  
3 appreciate you providing the study that Mr. Navar kept  
4 asking for, you know, the basis for your 6 to 1 ratio. I  
5 know we've had at the OTA lots of cases, and very  
6 rarely -- personally, I've never seen that study before,  
7 and I found it very interesting. But I appreciate  
8 Mr. Navar's comment that it doesn't really relate -- you  
9 know, may not relate to his situation. Because when I  
10 read the study, what they looked at was interest on  
11 Schedule A properties.

12 And from what I understand, you agree that  
13 Mr. Navar did not live at any of these properties. These  
14 were not Schedule A properties. This was not his home  
15 mortgage. So I'm just not sure whether or not the study,  
16 which is based upon Schedule A interest, applies here.  
17 Because this would be, you know, investment property or  
18 Schedule C property.

19 MR. WERKING: Well, I --

20 JUDGE MARGOLIS: I just want you to respond to  
21 that.

22 MR. WERKING: I believe the -- Brian Werking  
23 here. I believe the -- it's -- the study is grabbing the  
24 returns of those individuals who have reported Schedule A  
25 deductions. But I believe they're looking at all mortgage

1 interest deductions as it relates to total income reported  
2 on those returns. So would that -- that -- would include  
3 the mortgage interest that is reported from investment  
4 properties.

5 JUDGE MARGOLIS: I couldn't tell that for sure  
6 from looking at the study. I really couldn't, to be  
7 honest with you. I mean, it doesn't -- I know with banks,  
8 when you're buying a house for your personal use, they  
9 look at whether or not you have a sufficient multiplier of  
10 the interest charge to pay off the mortgage. I'm not sure  
11 they use the same standards when you're buying investment  
12 property where you're going to have tenants to pay the  
13 rents.

14 So I just -- I do have a problem with the 6 to 1  
15 ratio here. And I think that perhaps the property sale  
16 might be sufficient to validate what the FTB has done, but  
17 we don't know whether or not Mr. Navar had any gain on  
18 that. That's why I have a question for Mr. Navar.

19 Mr. Navar, can you hear me? This is  
20 Judge Margolis.

21 MR. NAVAR: Yes. Yes. I do. I can hear.

22 JUDGE MARGOLIS: The FTB put in evidence, and  
23 it's been admitted. It's not hearsay for purposes of our  
24 consideration, showing that you sold a property for about  
25 \$500,000. I believe it was January of the year in

1 question. Do you -- I don't know. I guess, do you have  
2 any information that you can give us about, you know, the  
3 basis, you know, whether or not that property was sold at  
4 a gain or a loss?

5 MR. NAVAR: Right. No, I don't have any  
6 information on that.

7 JUDGE MARGOLIS: Would it possible for you to get  
8 it?

9 MR. NAVAR: I probably can investigate and find  
10 out about that, but no, I don't have any right now.

11 JUDGE MARGOLIS: Okay. Also, Mr. Navar, the  
12 evidence -- although, your prior years' tax returns were  
13 excluded from evidence, you did -- you did tell the FTB --  
14 the evidence is in the record -- you thought you had  
15 already filed for the year in question. So why did you --  
16 were you unable to find your return, or why didn't you  
17 actually file?

18 MR. NAVAR: Well, my belief is that I don't  
19 require, and they want me to accommodate, for a lack of  
20 better terms, for them. And as the presentation of  
21 Mr. Brian, the way he accommodate, well, of course I have  
22 to accommodate that make sense. But it doesn't pertain to  
23 me or doesn't fit to me. And I don't have that  
24 information, and I don't want or can't.

25 I don't have it all squared to present something

1 that I'm comfortable with. I am in the belief that, as I  
2 argue several times, I'm not required to, and he's  
3 assuming I am, and I'm supposed to convince them. So  
4 it's -- it wouldn't be in my part to prove anything.

5 JUDGE MARGOLIS: Okay.

6 MR. NAVAR: At the same time it will be in the  
7 closing that the study that we've been talking about is  
8 rather bogus. It would fit to some people, but it doesn't  
9 apply, especially, to California. Even if that was the  
10 case, probably 3 to 1. Some of the people are losing  
11 their property to foreclosure or what-have-you. But as a  
12 general it doesn't apply. I believe it's bogus, and they  
13 put the burden on me when it shouldn't be on me.

14 JUDGE MARGOLIS: Okay. I have no further  
15 questions.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,  
17 Mr. Margolis.

18 Mr. Werking, I do have a few questions for you.  
19 Do you have the exhibit binder that was e-mailed to you  
20 last week? It was the one that was e-mailed to both  
21 parties.

22 MR. WERKING: Brian Werking here. Yes, I do,  
23 Judge Rosas.

24 JUDGE ROSAS: This is Judge Rosas. I have a  
25 question regarding Exhibit A, the IRS Wage and Income

1 Transcript. I'm looking at page 5 of 6 in reference to  
2 one of the JPMorgan Chase Bank mortgage interest in the  
3 amount of \$723. Now, I'm not a mathematician, but when I  
4 multiple that by 6, I get \$4,338, which is slightly less  
5 than \$4,344 listed on the Notice of Proposed Assessment.  
6 My question is, may you please explain this slight  
7 discrepancy.

8 MR. WERKING: Brian Werking here. I believe that  
9 is because of a rounding issue that the amount of the 1098  
10 reporting that \$723 was -- it included something after the  
11 decimal point in the amount of cents when multiplied by 6  
12 results in the number that's reported on the NPA.

13 JUDGE ROSAS: This is Judge Rosas. Thank you,  
14 Mr. Werking. Mr. Werking, I have a question regarding  
15 Exhibit 5. I realize this is not one of your exhibits.  
16 Exhibit 5, I'm looking at page 18 of 21. When you are  
17 there, would you please tell me what it is I'm looking at  
18 here. What is Exhibit 5 page 18?

19 MR. WERKING: Judge Rosas, Brian Werking here.  
20 Is that the filing -- 2015 California Filing Requirement  
21 Guidelines?

22 JUDGE ROSAS: This is Judge Rosas. Give me one  
23 second. It is Exhibit 5. In particular, it is not those  
24 guidelines. It is -- well, let me ask you this. It  
25 contains on -- just for purposes of maintaining a clear

1 record, on Exhibit 5, page 18, it contains some income  
2 record information, and there is a reference to an income  
3 record. The source is EDD, and the case amount is  
4 \$115,449. And I'm wondering if you may perhaps be able to  
5 shed some light on this income record reference?

6 MR. WERKING: Sorry. I -- I do not know where  
7 that income record was received.

8 JUDGE ROSAS: This is Judge Rosas. I'm looking  
9 at the exhibit binder of all the exhibits that were  
10 admitted into evidence. And I'm specifically looking at  
11 Exhibit 5, page 18. And give me one second. I can  
12 describe the top of that document for you.

13 MR. WERKING: Brian Werking here. May I  
14 interrupt, Judge Rosas?

15 JUDGE ROSAS: This is Judge Rosas. Please.

16 MR. WERKING: Brian Werking here. I do -- I am  
17 looking exactly at what you are looking at. I believe  
18 this -- this amount may have been received. I -- I was  
19 not -- I'm not exactly certain of what this -- what this  
20 item of income represents. It appears that this would be  
21 wage income received by Appellant in the amount of  
22 \$115,449.

23 JUDGE ROSAS: This is Judge Rosas. Thank you,  
24 Mr. Werking.

25 Mr. Navar, would you like to be heard on this



1 matter in regards to that exhibit. It's your exhibit,  
2 Exhibit 5, page 18. And there's a reference to a source  
3 from the EDD. And there is a reference to a case amount  
4 in the sum of \$115,449.

5 MR. NAVAR: Yes. Those, if I understand  
6 correctly, I believe I heard that he's thinking salary or  
7 employment or something. Is that what he's trying to say,  
8 Mr. Brian?

9 JUDGE ROSAS: This is Judge Rosas. Mr. Werking  
10 does not have the information to answer that specific  
11 question. So I'm going to give you an opportunity to be  
12 heard on this. I asked both sides the same question.

13 MR. NAVAR: Okay.

14 JUDGE ROSAS: It is your exhibit. I'm just  
15 trying to ask if you could shed some light on that  
16 specific reference.

17 MR. NAVAR: Okay. Yes. Navar. No, that's not  
18 employment or income or salary, none of that. I don't  
19 know what that is.

20 JUDGE ROSAS: This is Judge Rosas. Thank you  
21 very much, Mr. Werking. And thank you very much,  
22 Mr. Navar.

23 Mr. Navar, at this point I'm going to turn it  
24 back to you for your rebuttal. As I mentioned, you have  
25 plenty of time. You have up to 25 minutes if you so

1 choose. Feel free to begin your rebuttal whenever you are  
2 ready.

3 MR. NAVAR: Very well. Thank you.

4

5

REBUTTAL STATEMENT

6 MR. NAVAR: Mr. -- the State, Mr. Brian -- again,  
7 Navar. The State was claiming or asking for me to show  
8 proof, and that the interest assuming that belongs to me  
9 and -- and absolutely -- not absolutely but arbitrarily.  
10 And they had a chance to prove with a witness that -- a  
11 live witness from Chase. They had an opportunity to  
12 subpoena testify to it could be a mistake or just  
13 arbitrarily thinking that belongs to me, those amounts  
14 that were discussed.

15 And he probably guess in that 115. He has no  
16 explanation and assume that it's employment or see what  
17 sticks. For the most part, it's hearsay, and it belongs  
18 to them for show the proof. Also, he was talking that I  
19 am the one who is supposed to show the error because they  
20 assume what they wanted to assume or they think, and  
21 that's unfair to me, and that I have to show reasonable  
22 cause not to be -- how would I -- not to be responsible  
23 for that.

24 And he had mention that I have to establish, and  
25 I didn't establish. I -- my belief is that it's all

1 established on the record and nobody has the proof or the  
2 evidence as he claimed that it's supposed to be the facts.  
3 He's putting assumption over facts. And on the statistic,  
4 I keep asking for the statistic and he -- he liked that,  
5 and he wanted to apply, but that is statistics to be made  
6 about anybody. We can make a run of statistics and that  
7 throws everything off. That will be a bogus statistic.  
8 Maybe for many people it might -- might be, of course  
9 might be that they -- it applies but not everybody.

10 And as far as the proving that I am supposed to  
11 prove, and I mention before for the important, that if my  
12 neighbor claims that I stole from him \$100,000 or \$10,000,  
13 and I have to prove I didn't. It doesn't go like that.  
14 Same principle applies to his plan because he got a  
15 transcript for most of the parties to be a mistake as they  
16 did at the very beginning for all the mistakes that they  
17 made to be credit card interest or it could be anything  
18 else but mortgage.

19 So it's not the proof of me to find. I did try.  
20 I lost my wallet. I lost some information, and I couldn't  
21 trace some of the information. And I think he talk about  
22 the statistics or the study that they made from 2007 to  
23 '10. Every year changes. If I understand correctly, he  
24 was claiming that should apply because that study made in  
25 2007. And cases in 2010, everything is changing. Even at

1 this time it's changing. This the world is changing every  
2 time and every day. And -- one second.

3 As far as the tax assessment, that shall not be  
4 sustained, for opinions and concept are not facts. It is  
5 not evidence. And my obligation to provide any  
6 information is it's individual right to present, to give,  
7 to volunteer, or not. Especially, if we don't have the  
8 evidence, how can we make or produce one that we think is  
9 the right one. That is also incorrect for one, for me or  
10 anybody in this situation. And I think that's the  
11 argument.

12 Oh, the \$115,000 that he's talking about is not  
13 salary. I don't know what that is, assumption that I  
14 received that amount. I don't know where that came from.  
15 I think that concludes my rebuttal.

16 JUDGE ROSAS: This is Judge Rosas. Thank you  
17 very much, Mr. Navar.

18 At this point I'm going to open it up to  
19 questions from the panel.

20 Judge Long, do you have questions of either  
21 party?

22 JUDGE LONG: This is Judge Long. I have no  
23 questions.

24 JUDGE ROSAS: This is Judge Rosas. Thank you  
25 very much, Judge Long.

1 Judge Margolis, do you have any questions of  
2 either party?

3 JUDGE MARGOLIS: No I don't.

4 JUDGE ROSAS: This is Judge Rosas. Thank you  
5 very much, Judge Margolis.

6 I only have one question for you, Mr. Navar. I  
7 know that my colleague, Judge Margolis, in passing  
8 mentioned whether you wanted an opportunity to submit  
9 additional documentations regarding real property that was  
10 sold in 2015. Do you want to be granted that opportunity?  
11 If not, I'd rather be able to close the record and move  
12 on. But I'm going to give you the opportunity to turn it  
13 in.

14 MR. NAVAR: Thank you. Navar. No, I don't have  
15 anything to provide or say.

16 JUDGE ROSAS: This is Judge Rosas. Thank you  
17 very much, Mr. Navar.

18 Mr. Werking, before we wrap up, is there anything  
19 else you would like to add?

20

21 CLOSING STATEMENT

22 MR. WERKING: I do just want to make the comment  
23 that, although, Appellant contends that this 6 to 1  
24 mortgage interest ratio results when applied to the  
25 interest reported on a federal Form 1098 does not

1 represent his actual income. That may be the case, and  
2 Respondent does recognize that. But that is why  
3 Appellant -- all the information rests with Appellant for  
4 Appellant to provide what his actual income is by filing a  
5 return. And -- and for whatever reason Appellant has  
6 chosen not to do that to this date.

7 No other comments from Respondent.

8 JUDGE ROSAS: This is Judge Rosas. Thank you  
9 very much, Mr. Werking.

10 Mr. Navar, you are the Appellant, so I do want to  
11 give you the last and final word. Other than what you've  
12 already argued here today, and other than what you've  
13 already provided to us, via your exhibits, is there  
14 anything else you think this panel need to know in order  
15 to make a well-informed decision?

16 MR. NAVAR: Yes. I don't know if I do have. If  
17 this is a rebuttal and the closing, or I still have at a  
18 different time to closing? Or was that combined together?  
19 Closing and rebuttal is that the same thing?

20 JUDGE ROSAS: This is Judge Rosas. Yes, your  
21 rebuttal and closing are the same thing. And we're in the  
22 process of wrapping this up but, again, I just want to  
23 give you the final word. And other last information you  
24 think this panel needs to know?

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CLOSING STATEMENT

MR. NAVAR: Navar. Very well. In that case I do have something else. I -- what I can see here is that it's pretty much assumption and status quo and customary; not fact, not evidence. In my name I felt that something is not right or fair. If something is, despite personal issues and problems that doesn't come to play on this matter, it still exists. And the tax should not be assumed or even punished on the penalties and the interest while we clear this up.

Even if the panel decide it is dubious or what idea they might perceive or what the fact that they can perceive, that's put on the penalty for asking or for revising or checking my right numbers, if I were to be responsible for some tax because I -- I didn't put -- couldn't get the number right. I still get punished in penalties and fees, which I the first time -- to begin with when I shouldn't be assessed.

I don't -- to this time I still believe I'm not qualified -- not that I'm qualified, but I don't need to file, and I don't need to make numbers to go with the flow. And I would ask the panel to consider all these opinions and not take too much tax. And this should be not -- let me find the word -- not granted to the State or not punish me or not rule against me and consider that the

1 evidence the State couldn't prove beyond only that  
2 assumptions and opinions for them and analyses that they  
3 did.

4           And most people might not check or investigate or  
5 appeal or fight, for lack of better words, again. And I  
6 happen to be in a different position. When I felt  
7 something was not right, I should at least ask and find  
8 out and defend my position. I hope that the panel will  
9 consider all these facts that were not facts, and all that  
10 was presented. And I did try to work as best as I could,  
11 even with the State and the society in general, and with  
12 my hearing, and, of course, with me and my family.

13           That will conclude. And 1 -- 30 seconds. Let me  
14 see if I'm missing something.

15           JUDGE ROSAS: This is Judge Rosas. If you can  
16 make it quick, Mr. Navar.

17           MR. NAVAR: Yes. Very well. I'm -- I am  
18 wrapping it up. All this would be, if it is a rule  
19 against me, it will be fraud and bogus in my thinking  
20 because the numbers were just made up and should be -- to  
21 make me responsible without any facts or evidence well  
22 established and proven.

23           Thank you. That will conclude.

24           JUDGE ROSAS: This is Judge Rosas. Thank you  
25 very much, Mr. Navar.



1           I want to thank both parties. That concludes the  
2 hearing in the appeal of J. Navar. The record is now  
3 closed, and the matter is submitted as of today,  
4 July 23, 2020.

5           Each party will receive our written decision, and  
6 we hope we will issue that decision no later than 100 days  
7 from today. Thank you all very much.

8           We are now off the record.

9           (Proceedings adjourned at 2:02 p.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 17th day of August, 2020.

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ERNALYN M. ALONZO  
HEARING REPORTER