



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
PINKSTON PRODUCTIONS, INC., ) OTA NO. 19075078  
 )  
 )  
 ) APPELLANT. )  
 )  
 )  
\_\_\_\_\_ )

Transcript of Proceedings, taken at  
400 R Street, Sacramento, California, 95811,  
commencing at 10:00 a.m. and concluding  
at 10:19 a.m. on Wednesday, September 30, 2020,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ KENNY GAST  
ALJ CHERYL AKIN

For the Appellant: LINDA PINKSTON

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

JOEL SMITH

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received at page 6.)  
(Department's Exhibits A-F were received at page 6.)

P R E S E N T A T I O N

	<u>PAGE</u>
By Ms. Pinkston	7
By Mr. Smith	14

C L O S I N G S T A T E M E N T

	<u>PAGE</u>
By Ms. Pinkston	18

1 Sacramento, California; Wednesday, September 30, 2020

2 10:00 a.m.

3

4 JUDGE TAY: Good morning again. We are opening  
5 the record in the Appeal of Pinkston Productions, Inc.,  
6 before the Office of Tax Appeals, Case Number 19075078.  
7 The official location on the Notice of Hearing is  
8 Sacramento, California. This hearing is being held  
9 electronically.

10 A panel of three judges is hearing this appeal,  
11 and we' are coequal decision makers. My name is Richard  
12 Tay, and I'll be acting as the lead judge for the purposes  
13 of conducting this hearing. Also on the panel with me  
14 today are Judges Cheryl Akin and Kenny Gast.

15 Will the parties please introduce themselves for  
16 the record, beginning with the Appellant. And please  
17 state any title that you would like to have as part of the  
18 record.

19 MS. PINKSTON: My name is Linda Pinkston, and I'm  
20 the president of Pinkston Productions, Inc.

21 MR. SMITH: My name is Joel Smith. I'm a tax  
22 counsel with Respondent Franchise Tax Board.

23 JUDGE TAY: Thank you very much.

24 The issue today is whether Appellant is entitled  
25 to interest abatement for the 2004 tax year. Prior to the

1 hearing we circulated the exhibits submitted by both  
2 parties in a file we call the hearing binder. It contains  
3 Appellant's Exhibits 1 through 11 and Respondent's  
4 Exhibits A through F. Appellant also submitted an exhibit,  
5 Exhibit 12, which we will allow into submission into the  
6 record. There were no objections to these -- to these  
7 exhibits.

8 Is that right, Appellant?

9 MS. PINKSTON: That's correct.

10 JUDGE TAY: And Respondent?

11 MR. SMITH: Joel Smith. Correct. No objections.

12 JUDGE TAY: Thank you.

13 The exhibits will now be admitted into evidence.

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

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

18 We'll start with Appellant's presentation, which  
19 includes testimony from Ms. Pinkston. You will have  
20 15 minutes. I'd like to swear you in at this time. Would  
21 you please raise your right hand;

22 ///

23 ///

24 ///

25 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

LINDA PINKSTON,

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

JUDGE TAY: Great. Thank you very much.

Ms. Pinkston, feel free to begin your presentation when you're ready. You'll have 15 minutes.

MS. PINKSTON: Okay. And I apologize. I'm not good at speaking, so I've just kind of written it out. I'm going to read it out if that's okay?

JUDGE TAY: That would be perfectly fine. Thank you.

PRESENTATION

MS. PINKSTON: Okay. Well, first I'd like to thank you, Judge Tay and the panel and Mr. Smith from the Franchise Tax Board for allowing me to be here today and plead my case. As you know I'm here requesting a refund of interest paid associated with our 2004 state tax return. The state.

A quick history. Pinkston Production, Incorporated, is an entertainment corporation, which consist of one employee, and actor, and my son Ryan Pinkston. We were incorporated in Maryland on

1 February 12, 2004, with the right to work in California in  
2 July of 2004. So really the year in question was only six  
3 months as noted on Exhibit 4, page 10.

4 We proceeded as a corporation, and from 2004 to  
5 2007 with our Maryland accountant filing on time our  
6 federal and Maryland State tax returns. Shortly after we  
7 were notified that we were being audited by the IRS for  
8 that 2004 year. Simultaneously, with the advice of Ryan's  
9 people, his manager, agent, and lawyer, it was suggested  
10 that we obtain a California accountant. Someone with the  
11 knowledge of entertainment field that would allow us to  
12 reap the benefits and understand the process better in  
13 California.

14 The new accountant began filing our past state  
15 taxes for California State but informed me that we should  
16 not file 2004 until the audit was complete. Moving  
17 forward, I was in contact with the California Franchise  
18 Board consistently, and sometimes it became a little  
19 frustrating. If you could understand my notes on page 13  
20 and 16, Exhibit 6, it shows that I was told different  
21 answers on different days to the same questions. Or on  
22 many occasions it would literally take me all day to reach  
23 a representative just to be told that I was speaking to  
24 the wrong person.

25 This was an individual, not this corporate line;



1 or I need to speak to the polling department, not this  
2 department. On page 17, Exhibit 7, it show I even tried  
3 sending a message to the California Franchise Board  
4 through their website under our account. This was a few  
5 years ago, and to this day I've never received a response.

6 Again, my main reason for these exhibits is to  
7 show that throughout the years I was in constant contact  
8 with the Franchise Board and in good faith try to clear  
9 our account with the goal of getting back into good  
10 standings. On page 18, exhibit 7, it's an example that  
11 shows that I would send a letter to be very specific on  
12 whatever year it applied to and apply to it. Otherwise,  
13 it would be credited to the oldest year, which a few times  
14 it was. I did this quite often and pay one or two years  
15 off at a time after receiving a notice or reaching a  
16 representative for balances.

17 The IRS audit was completed at the end of 2011.  
18 Immediately, the California return was prepared for 2004.  
19 Prior to the accountant doing so, I received an e-mail,  
20 Exhibit 12, that explained to me -- that was dated  
21 December 6th, 2011, which explained to me and was, quoted,  
22 "Luckily you sourced all the income to Maryland thus,  
23 would file a California return that reflects this.  
24 Nothing sourced to California. You will pay the minimum  
25 tax plus penalties," unquote.

1           The original California return was sent to me on  
2           12/07/2011, Exhibit 7, page 2. And on page 6, Exhibit 2,  
3           on line 43, the tax owed to California was \$2,751. Before  
4           it even reached me in Maryland, I received a call telling  
5           me to hold off on the return since another one was coming.  
6           Now, please refer to page 8, Exhibit 2, line 43, that now  
7           states the new tax return, that we owed \$5,892. I'm not  
8           100 percent sure what day this letter arrived, but I'm  
9           assuming it's close to the date I mailed it to California  
10          on 12/22/11. It was filed by the California Franchise Tax  
11          Board on 1/5/2012.

12           Over the next few years whenever a job was  
13          booked, I would pay what we could to clear our account.  
14          Although every year after 2004 there was only the minimum  
15          \$800 tax due, historically, we paid many penalties, late  
16          fees, and interest on those years. And since we were not  
17          in good standing because of the past tax owed, all jobs  
18          booked through Ryan and loaned out through Pinkston  
19          Productions had a 7 percent withholding attached.

20           Several times our \$800 minimum was paid through  
21          the withholding and not a personal check or web pay. This  
22          was always hard to explain to a representative whenever I  
23          called for updates or balances. By 2017 the only back tax  
24          left was for 2004. Several payments were made, including  
25          a payment of \$5,767 on page 19, Exhibit 8. This was paid

1 on 5/22/2017, which represented the balance of the  
2 original tax due.

3 On several occasions I would inquire about the  
4 penalties and interest of these charges and was always  
5 told that we couldn't even entertain the thought of having  
6 them reduced until all was completely paid in full. In  
7 July 17, 2017, I arranged an installment agreement,  
8 page 20, Exhibit 9. Beginning August 2017, all monthly  
9 payments of \$415 were made. A one-time payment and a last  
10 payment of \$474.58 was paid on 7/5/2018. Total payment  
11 for 2004 California tax \$13,981.84. You'll see that on  
12 page 21, Exhibit 10.

13 On page 11, Exhibit 4, you will see that on  
14 12/17/2018 I filed an application for Certificate of  
15 Revivor for Pinkston Productions. I received confirmation  
16 on 1/11/2019 that we were back in good standings. On  
17 February 20th, 2019, I filed a Form 2924, page 23 and 24,  
18 Exhibit 11, requesting a refund of interest paid. More  
19 than -- without any contact, more than four months later  
20 on 6/29/19, I received a form letter stating that my  
21 statute of limitations expired three years earlier on  
22 1/6/2016. You'll see page 22, Exhibit 11.

23 I immediately called the number on the form. The  
24 lady, Janet, was not very kind, and said it's a final  
25 letter and that nothing could be done. She would not put

1 me through to her supervisor, but it was too late --  
2 because it was too late in the day but assured me that  
3 somebody would call back. 20 days later I never received  
4 a call. I called back again, and I reached Joanie. She  
5 was very helpful and suggested that I appeal, which brings  
6 us here today.

7 So in closing, I just wanted to say that it's  
8 been a long drawn-out process for all of us. I know I've  
9 made some mistakes along the way; so did my accountant in  
10 Maryland and California; so did the California Franchise  
11 Board. But I want to make clear that at no time were we  
12 ever trying to get over on the system, cheat, or pay  
13 our -- not pay our fair share.

14 Actually, as you will see on page 3 and 4,  
15 Exhibit 1, we filed our original Maryland taxes in 2005 on  
16 time and paid the State \$3,975. By the time we filed  
17 California, the statute of limitations had closed, and it  
18 was too late to recoup those funds. In summary, Pinkston  
19 Productions paid a total of \$17,960 in state taxes for  
20 2004. I would have much rather paid the \$6,994 and called  
21 it a day.

22 Thank you and I welcome your questions.

23 JUDGE TAY: Thank you, Ms. Pinkston, for that  
24 presentation.

25 MS. PINKSTON: Thank you.

1 JUDGE TAY: I'm going to give an opportunity for  
2 Franchise Tax Board to ask any questions of the witness  
3 testimony. Mr. Smith do you have any questions?

4 MR. SMITH: Joel Smith. No I do not have any  
5 questions.

6 JUDGE TAY: Okay. Thank you.

7 I'm going to open it up to my panelists.  
8 Judge Akin, do you have any questions for Appellant?

9 JUDGE AKIN: Judge Akin speaking. No questions  
10 at this time. Thank you.

11 JUDGE TAY: And Judge Gast?

12 JUDGE GAST: Thank you. This is Judge Gast.  
13 Ms. Pinkston, I had a question about Exhibit 12 that you  
14 submitted. It seems to indicate that all the income was  
15 going to be sourced for the 2004 tax year to Maryland.  
16 Did you file a return sourcing all of that income outside  
17 of California? Because the amended return -- or I should  
18 just say the return we have in the record seems to suggest  
19 there was income sourced to California, and it wasn't just  
20 the \$800.00 minimum tax.

21 MS. PINKSTON: We originally in 2005 filed  
22 Maryland 2004. My Maryland accountant did not know that  
23 we should be filing in California. Years later my  
24 California accountant says we need to file. His e-mail  
25 says to me right before -- two days before he was getting

1 ready to file the California tax, he -- and I quoted, and  
2 that's what Exhibit 12 is, saying this is what's going to  
3 happen.

4 Then he sent me one that said he sourced -- it  
5 looked like he sourced half of it to California, half to  
6 Maryland. And then the one that we finally filed, he  
7 sourced it all to California. I hope that answered your  
8 question.

9 JUDGE GAST: Yes, it does. Thank you very much.  
10 I'll turn it back to Judge Tay.

11 JUDGE TAY: Thank you Judge Gast.

12 I have no questions for Appellant. So at this  
13 time I'd like to give Franchise Tax Board the opportunity  
14 to make its presentation and closing statement.

15 You'll have 10 minutes, Mr. Smith.

16

17 PRESENTATION

18 MR. SMITH: Joel Smith. Thank you.

19 As stated, the issue on appeal is whether  
20 Appellant has shown she is entitled to an abatement of  
21 interest under Revenue & Taxation Code Section 19104. The  
22 relevant facts are not in dispute.

23 Appellant filed its 2004 California tax return on  
24 January 5th, 2012. Appellant entered into an installment  
25 agreement to pay its balance -- to pay the balance in full

1 on July 5th, 2018. Interest accrued on Appellant's 2004  
2 tax year from the tax due date. March 15th, 2005, the  
3 balance was paid. If tax is not paid by the due date, as  
4 was the case for Appellant's 2004 tax year, interest  
5 accrues on the balance until the balance is paid. The  
6 position of interest is mandatory, and Respondent can only  
7 abate interest as authorized by law.

8 As explained in the precedential Appeal of Moy  
9 (sp\*) under Section 19104, the Office of Tax Appeals has  
10 jurisdiction to determine if Respondent's decision not to  
11 abate interest was an abuse of discretion. Section 19104  
12 grants abatement of interest if Appellant can establish  
13 interest accrued due to an unreasonable error or delay  
14 committed by Respondent in performance of a managerial or  
15 ministerial act, provided no significant aspect of the  
16 delay is attributable to the taxpayer.

17 Appellant has cited to Exhibit 7, page 1, as a  
18 potential example of an error or delay. This is a screen  
19 shot of an online message regarding the potential for an  
20 installment agreement that Appellant sent to Respondent on  
21 July 24, 2017 at 9:00 a.m. That being the -- the message  
22 was sent at that time. In fact, Respondent did respond to  
23 this message. Review of Appellant's account indicates  
24 Respondent talked to Appellant's representative at  
25 10:00 a.m., an hour later, on that same day. I can

1 provide a printout of that contemporaneous record if the  
2 panel would like.

3 In addition, Appellant's Exhibit's 9, which  
4 Appellant referenced in its argument, this is further  
5 evidence that Respondent did respond to Appellant's  
6 message. Exhibit 9 is an installment agreement  
7 acceptance, which was issued on July 28, 2020; four days  
8 after Appellant's online message was sent. Appellant has  
9 not made any other allegation, and there's nothing in the  
10 record to suggest Respondent made any error or delay  
11 throughout the processing of the 2004 tax year balance.

12 Therefore, consistent with the law, there was not  
13 an abuse of discretion for Respondent to deny Appellant's  
14 request to abate interest. Based on statutory authority  
15 and the evidence and the record, Respondent request you  
16 sustain its position. I can answer any questions you  
17 might have.

18 JUDGE TAY: Thank you, Mr. Smith.

19 I'd like to turn to my panelists. Judge Akin, do  
20 you have any questions for Respondent?

21 JUDGE AKIN: Judge Akin, speaking. No questions  
22 for Respondent.

23 JUDGE TAY: Thank you, judge Akin. And  
24 Judge Gast, any questions?

25 JUDGE GAST: Thank you. This is Judge Gast. I



1 do have a question for Mr. Smith. What is the basis of  
2 FTB's denial of the refund claim? Because in the opening  
3 brief, it seems to be suggested that the refund claim was  
4 not timely filed. So is this a statute of limitations  
5 issue or interest abatement issue?

6 MR. SMITH: Joel Smith. The initial appeal claim  
7 for refund referenced a \$60 tax overpayment. And so that  
8 is what the reference to statute of limitations applies  
9 to. Throughout the course of this appeal, it's determined  
10 that request for additional overpaid tax was not at issue.

11 However, interest abatement and statute of  
12 limitation are separate issues. And if the panel were to  
13 determine if there was an abusive discretion and reason to  
14 abate interest, that may -- the statute of limitations may  
15 then apply.

16 JUDGE GAST: Okay. Thank you. No further  
17 questions.

18 JUDGE TAY: Thank you, Judge Gast.

19 I have no additional questions for Franchise Tax  
20 Board. So at this time I'd like to give Appellant an  
21 opportunity to present her rebuttal and a closing  
22 statement.

23 So Ms. Pinkston, you have five minutes whenever  
24 you're ready.

25 MS. PINKSTON: Thank you, Judge Tay. Am I

1 allowed to ask Mr. Smith a question?

2 JUDGE TAY: No. That's not allowed because  
3 Mr. Smith is not testifying. He's not a witness. So you  
4 can just state your presentation to the panel.

5 MS. PINKSTON: Okay. I -- I had it as a  
6 question. So I'm going to try to reform it.

7

8 CLOSING STATEMENT

9 MS. PINKSTON: On Exhibit E on page 39 of  
10 California Franchise Board, it was suggested that I had  
11 filed an amended return, which I have never done. So I  
12 was a little confused about that. So I just wanted to  
13 make it clear. And in his exhibit, it was just a blank  
14 form. So I wanted to make it clear that we had never. It  
15 was the only -- it was the 2934 Form for a request for  
16 refund, not a, I guess, 100-X or something.

17 JUDGE TAY: Okay. Thank you for that  
18 clarification.

19 MS. PINKSTON: Thank you.

20 JUDGE TAY: Is there anything else you would like  
21 to make in your presentation to end your presentation?

22 MS. PINKSTON: No, sir. It's just been a  
23 learning experience. So I just want to thank everybody  
24 for taking the time today.

25 JUDGE TAY: Okay. I will turn it over to my

1 panelist one more time just to ask any remaining  
2 questions.

3 Judge Akin, any last questions before we include?

4 JUDGE AKIN: Judge Akin speaking, no questions  
5 for either party. Thank you.

6 JUDGE TAY: And Judge Gast?

7 JUDGE GAST: This is Judge Gast. No further  
8 questions. Thank you.

9 JUDGE TAY: Okay. Thank you everyone for your  
10 presentations.

11 I'd like to keep the record open for another  
12 15 days to allow Franchise Tax Board to submit the  
13 evidence in their response. And after that we will close  
14 the record, and the appeal will be submitted for decision.  
15 After the record is closed, we will endeavor to send our  
16 written decision no later than 100 days.

17 The hearing is now adjourned, and we're  
18 completely concluded.

19 (Proceedings adjourned at 10:19 a.m.)  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 20th day of October, 2020.

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