

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ART ASYLUM,) OTA NO. 19115434
) APPELLANT.)
)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, December 17, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ SHERIENE RIDENOUR
ALJ JOSHUA LAMBERT

For the Appellant: ROLAND BIEGLER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
CHRISTOPHER COOK
NATASHA PAGE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-15 were previously received in evidence at the prehearing conference.)

(Department's Exhibits A-H were previously received in evidence at the prehearing conference.)

(Department's Exhibit I was received in evidence at page 10.)

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1 Cerritos, California; Thursday, December 17, 2020

2 1:09 P.m.

3

4 JUDGE ROSAS: We're on the record in the matter
5 of the appeal of Art Asylum, OTA Case Number 19115434. It
6 is December 17, 2020, and the time is approximately 1:09
7 p.m. This hearing was originally scheduled to take place
8 in Sacramento, California, but due to ongoing concerns
9 regarding Covid and with the agreement of all the parties,
10 we're holding this hearing remotely using video
11 conferencing.

12 The panel of Administrative Law Judges includes
13 Josh Lambert Sheriene Ridenour and me Alberto Rosas.
14 Although, I may be the lead Administrative Law Judge for
15 purposes of conducting this hearing, please know that the
16 three of us on this panel, we are all equal participants
17 and equal decision makers. I'm going to ask for everyone
18 to please state their appearance, and we'll start with the
19 Appellant's representative.

20 MR. BIEGLER: Roland Biegler with Biegler CPA.

21 JUDGE ROSAS: This is Judge Rosas. Thank you,
22 Mr. Biegler.

23 And now to FTB's representatives.

24 MR. COOK: This is Chris Cook. I am tax counsel
25 with the Franchise Tax Board.

1 MS. PAGE: I am Natasha Page also representing
2 FTB as Tax Counsel IV.

3 JUDGE ROSAS: This is Judge Rosas. Thank you all
4 very much. And once again, just as a reminder, this
5 hearing is being recorded. So please remember to state
6 your name, speak slowly, speak clearly, and speak one at a
7 time.

8 Before we discuss the exhibits, I do want to say
9 something about virtual hearings and the visual optics on
10 screen. Eye contact is very important for me. If we were
11 holding this hearing in person, there would be no doubt
12 that I'm looking at you and maintaining eye contact and
13 listening to what you have to say. But in this Covid-19
14 world as we made the move to video conferencing and
15 virtual hearings, maintaining eye contact is a tad more
16 difficult.

17 Because of the optics inherent in this virtual
18 world, it may sometimes seem that I'm not looking at you,
19 or that I am distracted, but that is not the case. I have
20 multiple screens here in front of me. I have a Skype
21 Instant Messenger app open where I can communicate with my
22 Co-Panelists, with the tech support, and with the many
23 staff members and management who work behind the scenes to
24 make this hearing possible. So regardless of how I may
25 come across on screen, I assure you I am listening to you,

1 and I am taking notes.

2 Before we continue, I want to ask whether there
3 is anything that either one of my co-panelists wishes to
4 add. Judge Lambert?

5 JUDGE LAMBERT: This is Judge Lambert. I have
6 nothing to add. Thanks.

7 JUDGE ROSAS: This is Judge Rosas.
8 Judge Ridenour?

9 JUDGE RIDENOUR: This is Judge Ridenour.
10 Hopefully everyone can hear me, and I look forward to
11 today's hearing. Thank you.

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

14 I do want to discuss one thing; a few matters of
15 housekeeping. We had a prehearing conference on
16 October 29th this year, and it resulted in the issuance of
17 six orders. But I just want to read the first four
18 orders, which are the most relevant to today's hearing.

19 Number One, Appellant's Exhibits 1 through 15,
20 inclusive, were admitted into evidence without objection.

21 Number Two, Respondent's Exhibits A, alpha,
22 through H, hotel, inclusive, were admitted into evidence
23 without objection.

24 Number Three, no witnesses shall testify at
25 today's oral hearing.

1 And Number Four, the parties agree to comply with
2 specific hearing time limits that we discussed during the
3 prehearing conference.

4 Is this an accurate summary of the prehearing
5 minutes and order, Mr. Biegler?

6 MR. BIEGLER: Yes.

7 JUDGE ROSAS: This is Judge Rosas. Mr. Cook?

8 MR. COOK: This is Chris Cook. Yes, this is
9 accurate.

10 JUDGE ROSAS: We held a second prehearing
11 conference on November 19th. At this prehearing
12 conference we discussed the matter of opening and
13 consolidating Appellant's 2017 tax year with the 2018 tax
14 year currently on appeal. All of the parties agree
15 that -- I'm sorry. All of the parties were in agreement
16 and stipulated to consolidate tax years 2017 and 2018. It
17 is also my understanding that the parties agreed to waive
18 all jurisdictional, procedural, and briefing requirements
19 as to tax year 2017; is that correct?

20 And I'll start with Mr. Biegler.

21 MR. BIEGLER: Roland Biegler. Yes.

22 JUDGE ROSAS: This is Judge Rosas. Thank you,
23 Mr. Biegler.

24 Mr. Cook?

25 MR. COOK: This is Chris Cook. Yes, that's

1 correct, Judge Rosas.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,
3 Mr. Cook. And Mr. Cook, I know that you're -- it was your
4 original request, and you brought it to our attention,
5 regarding consolidating tax year 2017. Is there anything
6 else that you want to add on the record regarding the
7 consolidating of tax year 2017?

8 MR. COOK: This is Chris Cook. We have nothing
9 more to add regarding that. Thank you.

10 JUDGE ROSAS: This is Judge Rosas. Thank you,
11 Mr. Cook.

12 In terms of one minor matter regarding
13 jurisdiction, I know there was an additional document that
14 was submitted. It was submitted on December 7th. It's a
15 Notice of Action of the Franchise Tax Board upon
16 taxpayer's claim for refund, dated December 3rd, and it
17 pertains to tax year 2017. I'm marking this as Exhibit I,
18 India, for identification. This is a jurisdictional
19 document pertaining to tax year 2017.

20 Mr. Biegler, I assume you have no objections to
21 this jurisdictional document; is that correct?

22 MR. BIEGLER: Roland Biegler. Correct.

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

25 In that case we're going to admit Exhibit I,

1 India, into evidence without objection.

2 (Department's Exhibit I was received in
3 evidence by the Administrative Law Judge.)

4 The parties disagreed as to the specific issues
5 in this appeal. Appellant identified one issue.
6 Respondent identified three issues. And as I mentioned,
7 that is fine. Parties can agree to disagree. In fact,
8 that's the reason why we're here because there was a
9 disagreement. For purposes of efficiency, I'm not going
10 to read the different issue statements into the record.
11 Those are already in the prehearing conference minutes and
12 orders.

13 However, if either representative wish, during
14 your presentation feel free to make a brief statement as
15 to the issues on appeal. And I do want to point that
16 although the parties disagree on the issues or how those
17 issues should be worded, please note that eventually it
18 will be up to this Panel as we deliberate to determine how
19 best word and describe the issues on appeal.

20 Mr. Biegler, do you have any questions before we
21 move onto your presentation?

22 MR. BIEGLER: Mr. Biegler. No.

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

25 Mr. Cook, do you have any questions before we

1 move on?

2 MR. COOK: This is Chris Cook. No questions.
3 Thank you.

4 JUDGE ROSAS: This is Judge Rosas. Mr. Biegler,
5 whenever you're ready you may proceed. We allotted up to
6 15 minutes for your presentation. Take your time and you
7 may please begin whenever you're ready.

8

9 PRESENTATION

10 MR. BIEGLER: All right. So this is Roland
11 Biegler. I'd like to thank Mr. Cook and Susana at the
12 Office of Tax Appeals for moving this hearing to today,
13 December 17th, 2020. December 17, 2020, is a big day in
14 the Franchise Tax Board law. Today December 17, 2020, is
15 an appropriate day to cover this hearing.

16 In Exhibit 10 is the Franchise Tax Board
17 Publication 1060. Page 7 states that the corporation with
18 a first year -- tax year of 15 days or less will not have
19 a filing requirement if they meet the following -- both of
20 the following: Incorporated within the last 15 days of
21 the tax year and conducted no business during those
22 15 days.

23 Today is December 17th, 2020. There are eight
24 days until Christmas and 14 days to New Year's. However,
25 actually from today, December 17th through December 25th,

1 there are 9 calendar days, and there are 15 calendar days
2 from today, December 17th to December 31st.

3 So the Franchise Tax Board law, if a taxpayer
4 files the Articles of Incorporation with the California
5 Secretary of State between December 17th and December 31st
6 and did not conduct any business, the entity is not
7 required to file a tax return for the short year.

8 Likewise, if the Articles of Incorporation is dated on or
9 before December 16th, the corporation must file a tax
10 return for the short year. The Articles of Incorporation
11 are filed with the California Secretary of State if the
12 corporation conducted any business or not.

13 In Exhibit 11 are two pages from the instructions
14 for Franchise Tax Board Form 100-F, and S Corporation Tax
15 Booklet. The first year of a corporation's tax filing
16 requirement is very important because the corporation are
17 not subject to a minimum Franchise tax of \$800 for its
18 first taxable year. When the California Secretary of
19 State was approving Articles of Incorporation with one --
20 within one hour, these two California Franchise Tax Board
21 laws were fair and appropriate.

22 If the California -- the corporation filed and
23 received the Articles of Incorporation back on
24 December 16th, the new corporation would need to file the
25 corporate tax return, but the corporation would not owe

1 the \$800 minimum tax for the first year of more than 15
2 calendar days. The second year would be the full 12-month
3 calendar year, and the corporation would be required to
4 pay the minimum tax of \$800, even if the corporation had a
5 net loss or had an S corporation net income of less than
6 \$55,000.

7 However, if the new corporation filed and
8 received the approved Articles of Incorporation on
9 December 17th and conducted no business activity, the new
10 corporation would not be required to file a tax return for
11 the short year of 15 days or less. The first year -- the
12 first tax year would be the full calendar year of
13 12 months, and the corporation would not be required to
14 pay the minimum Franchise tax of \$800 if the corporation
15 had a net loss or S corporation net income of less than
16 \$55,000.

17 I'm sure you can see the difference in
18 requirements for the corporation that files and receives
19 the approved Articles of Incorporation on December 16th
20 and December 17th. There could be a tax savings of \$800
21 for a corporation that filed and received the Article of
22 Incorporation on December 17th if they had a net income in
23 the first full calendar year of 12, months.

24 We did a little history of filing process by the
25 California Secretary of State. On January 1st -- before

1 January 1st of 2010, the California Secretary of State was
2 a magical place. A taxpayer could walk into the
3 California Secretary State, hand the Articles of
4 Incorporation to a California Secretary of State employee,
5 sit down in the chairs provided, and leave with the
6 approve Articles of Incorporation within one hour.

7 In Exhibit 13 is a letter from the office of Alex
8 Padilla, current California Secretary of State, signed by
9 the Legal Review Union. In this letter, the California
10 Secretary of State Legal Review Unit state, pursuant to
11 Section 1502, the date of filing shall be the date the
12 instrument is received by the Secretary of State. Filing
13 date should be the date for all forms dropped off by the
14 California Secretary of State, except for the Articles of
15 Incorporation, dissolutions, name changes, and statement
16 of information should be dated by the California Secretary
17 of State for the date that they are filed.

18 However, if the California Secretary of State is
19 going to process the Articles of Incorporation on the same
20 day, like they did over 100 years, the California
21 Secretary of State should date the Articles of
22 Incorporation for the date they are completed and returned
23 to the taxpayer. On January 1st, 2010, the California
24 Secretary of State changed the processing time of the
25 Articles of Incorporation.

1 On January 1st, 2010, the California Secretary of
2 State started to charge for expedited filing service,
3 which is included in Exhibit 1. Starting January 1st of
4 2010, California Secretary of State started to charge \$750
5 for same day filing service and \$350 for 24-hour filing
6 service. Starting on January 10, 2010, the California
7 Secretary of State started to take 7 to 14 days to approve
8 and return the Articles of Incorporation to a taxpayer.

9 On page 4 in the Exhibit 1, you can see that on
10 December 16th, 2016, the California Secretary of State was
11 approving the Articles of Incorporation that were dropped
12 off in person on December 9th of 2016. On December 16th
13 of 2016, it was taking the California Secretary of State
14 eight calendar days to process the Articles of
15 Incorporation. In Exhibits 15, I have included the
16 processing times for the California Secretary of State
17 from December 17th, 2019, through January 3rd of 2020.

18 On December 17th, 2019, the California Secretary
19 of State was processing the Articles of Incorporation
20 dropped off in person on December 6, 2019. So on
21 December 17th, 2019, the California Secretary of State was
22 taking 12 calendar days to process the Articles of
23 Incorporation. In 2019 the California Secretary of State
24 was processing Articles of Incorporation dropped on
25 December 16th, 2019, until December 27th, 2019.

1 When the taxpayer dropped off the Articles of
2 Incorporation on December 16th of 2016, it took the
3 California Secretary of State 12 calendar days to process
4 the Articles of Incorporation when the taxpayer did not
5 pay for expedited service. Today is December 17th, 2020.
6 The California Secretary of State is showing that they are
7 processing the Articles of Incorporation dropped off
8 in-person on December 4th, 2020. As of today, it is
9 taking the Secretary of State 14 calendar days to approve
10 the Articles of Incorporation.

11 The California Secretary of State is now allowing
12 Articles of Incorporation to be requested online. Per the
13 California Secretary of State website, today the
14 California Secretary of State is processing the Articles
15 of Incorporations requested online on December 8th, 2020.
16 As of today when the Articles of Incorporation are
17 requested online, it is taking the California Secretary of
18 State 10 calendar days to complete and return an approved
19 Articles of Incorporation to a taxpayer.

20 The Articles of Incorporation for Art Asylum was
21 taken to the California Secretary of State on Friday,
22 December 16, 2016, knowing that the approved Articles of
23 Incorporation would not be returned until Monday,
24 December 19th, 2016, with expedited 24-hour service. In
25 Exhibit 7, page 2, is the date and timestamp when the

1 California Secretary of State approved and completed the
2 Articles of Incorporation, showing a completion date of
3 December 19th, 2016.

4 Even though Art Asylum received the approved
5 Articles of Incorporation on December 19th, 2016, the
6 entity could not open a bank account because the entity
7 needed to apply for a federal identification number from
8 the Internal Revenue Service. And in Exhibit 8 is the
9 approved application of the employer identification number
10 faxed back from the Internal Revenue Service on
11 December 30th, 2016.

12 I may be the first taxpayer to request a claim
13 for refund for a client in this situation, but the client
14 could not pay an attorney to fight for a refund of only
15 \$800 to \$1,200. An attorney would charge several thousand
16 dollars for their time and effort to handle a case like
17 this. In Exhibit 14 is memorandum from the Office of Tax
18 Appeals dismissing a case for Watzthis. Watzthis was one
19 of my clients that filed an appeal with the Office of Tax
20 Appeals for a claim of refund that was denied by the
21 Franchise Tax Board for a short year of 2015.

22 Watzthis received a refund for their penalties
23 and interest for filing their 2013 tax return late.
24 Watzthis filed their Articles of Incorporation on
25 December 16th, 2015, and originally did not file a tax

1 return for the short year of 2015. The Franchise Tax
2 Board requested a tax return for the tax year 2015. And
3 in 2016, Watzthis added an S corporation net income of
4 more than \$55,000, which was the first calendar year of
5 12-month. This is a discrimination against an entity with
6 net loss in the first full calendar year of 12 months.

7 Dating the Articles of Incorporation for the date
8 completed and returning to the -- and returned to the
9 taxpayer by the California Secretary of State is an easy
10 fix to this conflict between the California Secretary of
11 State and the California Franchise Tax Board. This
12 conflict has caused \$882.59 of tax penalties and interest
13 by Art Asylum. This conflict in law is causing the
14 minimum in franchise tax penalties and interest for
15 hundreds to thousands of entities each year. This
16 conflict is not just on the Articles of Incorporation for
17 corporations, but also an LLC signing the Articles of
18 Organization during these two weeks in December of each
19 year.

20 I'm requesting a refund of tax penalties and
21 interest posed on Art Asylum because of this conflicting
22 law between the California Secretary of State and the
23 California Franchise Tax Board. Mr. Cook requested a
24 postponement of this hearing because there is confusion on
25 which year I'm requesting a refund for Mr. Cook.

1 Exhibit C, please note Art Asylum never filed a tax return
2 for the tax year 2016, and Art Asylum never received a
3 letter from the Franchise Tax Board to prepare a tax
4 return for the short year of 2016.

5 In Exhibit 5 are two pages from the 2017 S corp
6 tax return filed by Art Asylum showing the overpayment of
7 the \$800 minimum tax payments for 2017 to be applied to
8 the tax year 2018. In Mr. Cook's Exhibits B and D are the
9 2017 and 2018 tax return filed by Art Asylum showing a net
10 loss of \$11,344 and \$11,264 respectively. This is a
11 discrimination against entities with a net loss in the
12 first full calendar year of 12 months.

13 Dating the Articles of Incorporations with the
14 date completed and returned to the taxpayer by the
15 California Secretary of State is an easy fix for the
16 conflict between the California Secretary of State and the
17 Franchise Tax Board laws.

18 Once again, I'd like to thank Mr. Cook and Susana
19 of the Office of Tax Appeals for moving this hearing to
20 today, December 17th, 2020. December 17th is a big day in
21 the Franchise Tax Board. Today is the appropriate day to
22 cover this hearing.

23 That's all I have to say.

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

1 I'm going to turn it over to my colleagues to see
2 if either of them have any questions. Judge Lambert?

3 JUDGE LAMBERT: This is Judge Lambert. I don't
4 have any questions. Thanks.

5 JUDGE ROSAS: This is Judge Rosas. Thank you.
6 Judge Ridenour.

7 JUDGE RIDENOUR: This is Judge Ridenour. No
8 questions at this time. Thank you very much.

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

11 And as for, me, Mr. Biegler, I also do not have
12 any questions at this time.

13 I'm going to turn it over to the Franchise Tax
14 Board. Mr. Cook, you have up to 15 minutes to make your
15 case presentation. You may begin whenever you're ready.

16 MR. COOK: Thank you Judge Rosas.

17

18 PRESENTATION

19 MR. COOK: This is Chris Cook from the FTB. The
20 only conclusion that can be made in this case is that
21 Appellant's first taxable year was 2016. What follows
22 from this necessary conclusion is that Appellant was then
23 subject to the minimum franchise tax in the years after
24 2016, including 2017 and 2018.

25 In order to arrive at this necessary conclusion

1 that Appellant's taxable year was 2016, we must first
2 acknowledge that under the Revenue & Taxation Code,
3 California corporations are subject to the minimum
4 franchise tax beginning the date they are incorporated.
5 Meanwhile, the California corporation code says that a
6 corporation's existence begins upon the filing of its
7 Articles of Incorporation.

8 So reading about the Revenue & Taxation Code and
9 the Corporation Code, we know that a corporations -- we
10 know that corporations are subject to the minimum
11 franchise tax when they file their Articles of
12 Incorporation. Mr. Biegler pointed out that there's a
13 conflict of law in here, but in the statutes there
14 actually is no conflict. They work in tandem.

15 In this case, the Appellant filed its Articles of
16 Incorporation on December 16, 2016. We know that
17 Appellant filed its Articles of Incorporation on that date
18 because the copy of the Articles of Incorporation filed
19 with the Secretary of State are on the record at
20 Exhibit 6. There's also a letter from the Secretary of
21 State which confirms the incorporation date in Exhibit 15.
22 And we know that Appellant knows it was incorporated on
23 December 16th, 2016, because it reports on its tax returns
24 include Exhibits B and D at the same date of
25 incorporation.

1 I also want to point out that the letter from the
2 Secretary of State, on the record, declined to change the
3 incorporation date from December 16th, 2016. So knowing
4 that Appellant was incorporated on December 16th, 2016, we
5 can count the number of days between that date and the end
6 of the year to determine that Appellant's 2016 calendar
7 tax year was 16 days.

8 Under the Revenue & Taxation Code, a corporation
9 is not subject to taxation if it did not conduct business
10 in California and its taxable year was 15 days or less.
11 But since Appellant's 2016 calendar tax year was
12 16 days -- oops, I'm sorry -- 15 days or less -- since
13 Appellant's 2016 calendar tax year was 16 days, that is
14 greater than the 15-day exception period. Appellant was
15 subject to tax in 2016.

16 So since Appellant was both incorporated in 2016
17 and subject to tax in 2016, this leads to our necessary
18 conclusion that 2016 was Appellant's first taxable year.
19 This is important. Revenue & Taxation Code states that
20 corporations are not subject to the minimum franchise tax
21 their first taxable year. So Appellant's first taxable
22 year is 2016 and is not subject to the minimum franchise
23 tax in 2016. But nonetheless, it was subject to the tax
24 the following years, particularly 2017 and 2018.

25 Appellant is asking the Office of Tax Appeals to

1 hold that 2017, not 2016, was its first taxable year.
2 However, you can only make such a decision if you
3 determine that Appellant's 2016 tax year was not a taxable
4 year. And you can only hold that 2016 was not a taxable
5 year if you determine that Appellant's 2016 tax year was
6 15 days or less. Appellant asks you to consider that a
7 misunderstanding with the Secretary of Secretary of State
8 caused Appellant's article to be filed too soon which
9 caused the articles to be filed in a manner to make 2016
10 15 days or less.

11 Before you make this determination, you have to
12 ignore the Revenue & Taxation Code and the Corporation
13 Code and the documents on the record, including a letter
14 from the Secretary of State which declines to change the
15 incorporation date. In other words, given the long facts
16 on record, there's no way to hold that Appellant's date of
17 incorporation was any day other than December 16th, 2016.

18 So you must hold that Appellant's 2016 tax year
19 was greater than 15 days, and hold that Appellant's first
20 taxable year was 2016, and hold that Appellant was subject
21 to the tax for the following years; 2017 and 2018. And
22 thus hold, that any refund Appellant seeks for the tax
23 paid in those years should not be allowed.

24 I'm going to conclude by noting that the FTB
25 received a payment from Appellant during year 2017 and

1 applied this payment to Appellant's 2017 tax year.
2 Appellant's 2018 minimum franchise tax payment was due on
3 its corporate filing day of March 15th, 2019. This
4 payment was not received until April, so that could be
5 assessed a late payment penalty and estimated tax penalty.

6 Since Appellant has not made a demonstration of
7 reasonable cause to abate late payment penalty nor
8 demonstrate a statutory reason to abate the estimated tax
9 penalty, the Office of Tax Appeals should also sustain the
10 assessment of these penalties.

11 Thank you.

12 JUDGE ROSAS: This is Judge Rosas. Thank you,
13 Mr. Cook.

14 I'm going to turn it over to my colleagues to see
15 if either one of them have any clarifying questions for
16 FTB. Judge Lambert?

17 JUDGE LAMBERT: This is Judge Lambert. I don't
18 have any questions. Thanks.

19 JUDGE ROSAS: This is Judge Rosas. Thank you.
20 Judge Ridenour?

21 JUDGE RIDENOUR: This is Judge Ridenour. No
22 questions. Thank you very much.

23 JUDGE ROSAS: This is Judge Rosas. Mr. Biegler,
24 I'm going to turn it back to you. If you wish, you now
25 have a brief opportunity of up to five minutes to address

1 anything you just heard by making a closing presentation.

2

3

CLOSING STATEMENT

4 MR. BIEGLER: Mr. Biegler talking now. When the
5 California Secretary of State was processing Article of
6 Incorporation in one hour, the Franchise Tax Board law
7 requiring tax returns -- requiring tax returns for more
8 than 15 days was fair and appropriate. Now that the
9 California Secretary of State does not process articles of
10 incorporation in one hour, the Franchise Tax Board law
11 requiring tax returns filed for more than 15 days is not
12 fair and is not appropriate.

13 Dating the Articles of Incorporation with a date
14 completed and returned to the taxpayer by the California
15 Secretary of State is a very easy fix to this conflict
16 between the California Secretary of State law and the
17 Franchise Tax Board law.

18 Thank you.

19 JUDGE ROSAS: This is Judge Rosas. Thank you
20 very much. Mr. Biegler.

21 At this point I'm going to turn it back to my
22 colleagues to see if they have any questions of either
23 side. Judge Lambert?

24 JUDGE LAMBERT: This is Judge Lambert. I don't
25 have any questions. Thanks.

1 JUDGE ROSAS: This is Judge Rosas.

2 Judge Ridenour?

3 JUDGE RIDENOUR: This is Judge Ridenour. No
4 questions. Thank you very much.

5 JUDGE ROSAS: This is Judge Rosas. Mr. Biegler,
6 I just have one question. I know you addressed this
7 during your initial case presentation. Regarding
8 Exhibit 15 the filing dates and how long it's taken
9 Secretary of State, can you just walk me through that
10 again. I just want to make sure. Obviously, it's an
11 important exhibit for you. You submitted it as part of
12 your prehearing conference statement.

13 I want to make sure that I'm not overlooking or
14 missing these key arguments that are important for your
15 presentation. So if you could just briefly address
16 Exhibit 15 and how that ties into your overall argument
17 one more time.

18 MR. BIEGLER: All right. So when I was preparing
19 for this case, I decided to printout all the processing
20 times from the Secretary of State website from
21 December 16th to January 3rd, so that I can get a feel for
22 how long it was taking the California Secretary of State
23 to process the Articles of Incorporation. And so you can
24 see that there is the online column, the in-person column,
25 and mailed-in column, and it tells you the date that they

1 were working on the Articles of Incorporation to be
2 dropped off in person, mailed to them, or current. Of
3 course, back in 2019 they weren't doing online. Since the
4 pandemic, they now do online servicing of Articles of
5 Incorporation. It started out with only taking a couple
6 of days. Now, it's up to taking a week or more.

7 That's all I have to say.

8 JUDGE ROSAS: Thank you, Mr. Biegler.

9 Looks like we're getting close to wrapping this
10 hearing up. Mr. Cook, is there anything else that FTB
11 wishes to add?

12 MR. COOK: No. Thank you, Judge Rosas.

13 JUDGE ROSAS: Mr. Biegler, you represent the
14 Appellant. The Appellant has the burden of proof, so I do
15 want to give you the last word. Now, I don't need you to
16 repeat yourself. So my question is other than what you've
17 argued here today and other than the 15 exhibits that you
18 submitted into evidence, is there anything else that you
19 think this panel needs to know in order for us to make a
20 well-informed decision?

21 MR. BIEGLER: Roland Biegler. No.

22 JUDGE ROSAS: This is judge Rosas. Thank you,
23 Mr. Biegler.

24 In that case that concludes the hearing in the
25 appeal of Art Asylum. The record is now closed, and the

1 matter is submitted as of today, December 17th, 2020. The
2 parties will receive our written decision no later than
3 100 days from today.

4 I want to thank all the representatives, my
5 Co-Panelists, the stenographer, and all of the OTA team
6 members who work behind the scenes. Lastly, I do want to
7 take moment to wish all of you a happy holiday season.
8 Please stay safe, stay healthy, and this hearing is now
9 adjourned. Thank you.

10 (Proceedings adjourned at 1:40 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 28th day of January, 2021.

ERNALYN M. ALONZO
HEARING REPORTER