

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A'MON'S MC, LLC,) OTA NO. 20015773
)
)
) APPELLANT.
)
)
)
_____)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, April 20, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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,)
)
A'MON'S MC, LLC,) OTA NO. 20015773
)
) APPELLANT.)
)
)
_____)

Transcript of Virtual Proceedings, taken
in the State of California, commencing at
10:12 a.m. and concluding at 10:59 a.m. on
Tuesday, April 20, 2021, 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 ALBERTO ROSAS

Panel Members: ALJ AMANDA VASSIGH
ALJ JOSHUA LAMBERT

For the Appellant: S. ANDEWEG
C. CAMACHO

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

SARAH J. FASSETT
CYNTHIA KENT

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 1-6 were previously received into evidence during a prehearing conference.)

(Department's Exhibits A-N were previously received into evidence during a prehearing conference.)

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

	<u>P A G E</u>
By Mr. Andeweg and Mr. Camacho	10
By Ms. Fassett	20

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

	<u>P A G E</u>
By Mr. Andeweg and Mr. Camacho	29

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

California; Tuesday, April 20, 2021

10:12 a.m.

JUDGE ROSAS: We are on the record in the matter of the appeal of A'MON'S MC, LLC, OTA Case Number 20015773. Today is April 20th, 2021, and the time is approximately 10:12 a.m. This hearing was originally scheduled for Sacramento, California, to take place in person. But due to ongoing concerns regarding Covid and with the agreement of all the parties, we are holding this hearing remotely using video conferencing.

The panel of Administrative Law Judges includes Amanda Vassigh, Josh Lambert, and myself, Alberto Rosas. Although I may be the lead Administrative Law Judge for purposes of conducting this hearing, please know that the three of us, all three of the judges on this panel, are equal participants and equal decision makers.

For the record, I'm going to ask the representatives to please state your name for the record, starting with Appellant's representatives.

MR. ANDEWEG: My name is Steven Andeweg.

MR. CAMACHO: And I'm Carlo Camacho.

JUDGE ROSAS: And now for Respondents' representatives.

MS. FASSETT: Sarah Fassett.

1 MS. KENT: Cynthia Kent.

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

4 Before we discuss the exhibits that have been
5 admitted into evidence, I do want to say something about
6 virtual hearings. If we were holding this hearing in
7 person, there would be no doubt that when you are
8 speaking, I'm making eye contact with you, that I'm
9 looking straight at you and listening to what you have to
10 say. During today's virtual hearing, it may sometime seem
11 that I'm not looking at you or that I am distracted, but
12 that's not the case.

13 I have multiple monitors. I have a Skype Instant
14 Messenger app open where I can communicate with my
15 co-panelists, with tech support, and with the management
16 and staff members who work behind the scenes to make these
17 virtual hearings as efficient as possible. Regardless of
18 how I may come across on-screen, I assure you. I am
19 listening to you, and I am taking notes.

20 Now, before we continue, I want to ask whether
21 there is anything that my co-panelists wish to add.
22 Judge Vassigh?

23 I'm sorry, Judge Vassigh. It seems like we're
24 unable to hear you. I don't know if you are muted.

25 JUDGE VASSIGH: Excuse me. I was muted. Thank

1 you. I just want to let you know that I wear progressive
2 lenses, and I sometimes have to look through the bottom of
3 my lenses to see more clearly. I am paying attention and
4 listening to everything you're saying.

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

7 Judge Lambert, by any chance, anything you'd care
8 to add?

9 JUDGE LAMBERT: This is Judge Lambert. I have
10 nothing to add. Thanks.

11 JUDGE ROSAS: This is Judge Rosas. Thank you,
12 Judge Lambert.

13 I want to take a moment to discuss the fact that
14 the parties and I held a prehearing conference last month
15 on March 30th, 2021. That prehearing conference resulted
16 in the issuance of six orders. Four of those orders are
17 relevant to today's hearing. So I'd like to just go over
18 those four orders.

19 Number One, Appellant's Exhibits 1 through 6 were
20 admitted into evidence without objection.

21 Number Two, Respondent's Exhibits A through N --
22 that's Alpha through November -- were admitted into
23 evidence.

24 Number Three, we agreed that only two witnesses
25 shall testify at today's hearing, Mr. Steven Andeweg and

1 Mr. Carlo Camacho.

2 Number Four, the parties were asked to comply
3 with specific hearing time limits.

4 Mr. Andeweg and Mr. Camacho, is this an accurate
5 summary of the prehearing conference minutes and orders?

6 MR. ANDEWEG: This is Mr. Andeweg. Yes, indeed.

7 MR. CAMACHO: This is Mr. Camacho. Yes.

8 JUDGE ROSAS: This is Judge Rosas. Thank you,
9 gentlemen.

10 And for FTB's representatives, is this an
11 accurate summary of the prehearing conference minutes and
12 orders?

13 MS. FASSETT: Yes, sir.

14 JUDGE ROSAS: This is Judge Rosas. Thank you
15 very much.

16 As we discussed at last month's prehearing
17 conference, there are two issues for this panel to decide.

18 Number One, whether Appellant's 2016 tax return
19 was filed timely. If not, whether the late filing was due
20 to reasonable cause and not willful neglect.

21 Issue Number Two, whether Appellant is entitled
22 to interest abatement.

23 Mr. Andeweg and Mr. Camacho, do you have any
24 questions before we move onto your testimony?

25 MR. CAMACHO: This is Mr. Camacho. I do not.

1 MR. ANDEWEG: Mr. Andeweg. No, I do not.

2 JUDGE ROSAS: This is Judge Rosas. And for FTB's
3 representatives, any questions before we move on?

4 MS. FASSETT: No questions.

5 JUDGE ROSAS: This is Judge Rosas. Mr. Andeweg
6 and Mr. Camacho, may you please raise your right hands.
7 I'm going to swear you in before you begin your testimony.

8

9

STEVEN ANDEWEG,

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

13

14

CARLOS CAMACHO,

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

18

19 JUDGE ROSAS: Thank you, gentlemen. Gentlemen,
20 which of the two of you would like to testify first?

21 MR. ANDEWEG: Go ahead.

22 MR. CAMACHO: Why don't we -- okay. I was going
23 to say why don't you go first because you -- you filed
24 the --

25 ///

1 we'd used a form to -- incorrect form, or our tax preparer
2 had used the incorrect form and refiled it with the proper
3 form. And I'm guessing that's -- that's it.

4 MR. CAMACHO: Yeah. And we have the -- and you
5 have the -- we have the checks here that show when things
6 were written out and all that good stuff; all that which
7 was on exhibit -- that's Exhibit E. Exhibit E. Is that
8 for '17? Yeah, '17 would be '16s taxes. So yeah, that
9 would be Exhibit E, and that's check dated -- 2649 made
10 out to the Franchise Tax Board. And that check was
11 actually dated on 4/14 of '17, and it --

12 JUDGE ROSAS: Mr. Camacho, this is Judge Rosas.
13 My apologies for the interruption. I have a quick
14 question for our stenographer.

15 Ms. Alonzo, is it fine for you for the two
16 witnesses to go back and forth this way, or would you
17 prefer that just one of them? I'm fine either way, but I
18 want to be courteous to your job, Ms. Alonzo.

19 THE STENOGRAPHER: I'm fine with them both
20 speaking at the same time. I'm sorry. I'm fine with them
21 both speaking, but not on top of each other.

22 JUDGE ROSAS: This is Judge Rosas. Thank you,
23 Ms. Alonzo.

24 So gentlemen, our stenographer is very talented,
25 and she's fine with you speaking in conjunction. But as

1 she indicated, do not speak over one another. So if you
2 can try to wait for one of you to finish speaking before
3 the other can chime in. But we're fine with a tag-team
4 approach, for lack of a better word.

5 MR. ANDEWEG: Okay. Thank you. Thank you.

6 JUDGE ROSAS: And for everyone involved we seem
7 to be having a lot of feedback noise. I'm getting a
8 message on the instant messenger app. I seem to have
9 quite a bit of background noise. So whoever is not
10 speaking, if you could mute your microphone, that will be
11 very appreciative, and that might help cut down on the
12 background noise.

13 Mr. Andeweg and Mr. Camacho, you may continue.

14 MR. ANDEWEG: So what do you have? I --

15 MR. CAMACHO: We just wanted to just -- that was
16 pretty much what we really had. Really our point there
17 was --

18 MR. ANDEWEG: In a nutshell.

19 MR. CAMACHO: -- in a nutshell. That was
20 attested to Mr. Andeweg, how he went about the filing in
21 due time within the time frame to be earlier, not later,
22 not extension needed. Myself, as far as we were diligent.
23 Once we found an error, that's when I did step back into
24 the situation here for the clerical things we had here.
25 And, obviously, Franchise Tax Board, there was an issue.

1 The payment was not received.

2 The checks were all cashed on time. That was not
3 a problem. The little envelope, everyone got the little
4 envelope. The big envelope gets misplaced or, you know,
5 goes a different route. I'm assuming. I don't know for a
6 fact, it's just my observation. And so the -- like
7 historically here, you know, even on Exhibit C that we
8 have, we have always -- unless some law has changed, but I
9 mean, we are \$800 going in, unless we had incurred -- I'm
10 not sure what happened in 2015 and '17.

11 We obviously have some extra money that went in
12 there, \$103.03 and stuff like that. But we're a very, you
13 know, small LLC, a club. We're not an active business for
14 profit. I mean, we're not a nonprofit, but we're not
15 making money hand over fist here. We're regular guys
16 working regular jobs here, taking time off and handle and
17 deal with this and something we like to do as a hobby and,
18 you know, addition to our lifestyle.

19 So this -- this \$800 fees and fines and the
20 amount of \$17.36 and other payments here that we've had,
21 you know, those are a big blow to us in our operating
22 expenses here to keep this, you know, whole and up-to-date
23 and current and prudent and being responsible and not
24 falling behind in our obligations. And one obligation we
25 very much -- between the IRS and, obviously, the State of

1 California to make sure we keep these debts and bills and
2 balances cleared up and zeroed out.

3 So in no way do we neglect, or do we sit here and
4 say, "Hey, how can we pull a fast one on the Board or, you
5 know, State of California," is absolutely the furthest
6 thing, not even a -- to even go down that wormhole. So
7 we're just trying to stay diligent, stay prudent, and stay
8 on top of it, which is the summation of really what I have
9 to say here. And we've had, you know, an issue before,
10 and we've been successfully showing that. And so here we
11 are again the second time around trying to do the same.

12 JUDGE ROSAS: Thank you, Mr. Camacho, and thank
13 you, Mr. Andeweg. Anything else you would like to add
14 before I turn it over to FTB to see if they have any
15 questions?

16 MR. ANDEWEG: I think not.

17 MR. CAMACHO: No, sir. No, Your Honor.

18 JUDGE ROSAS: Thank you, gentlemen. This is
19 Judge Rosas.

20 For FTB's representatives, do either of you have
21 any questions for these two witnesses?

22 MS. FASSETT: This is Sarah Fassett, I don't have
23 a question, but I would just like to remind Appellant
24 representatives that this is not an appeal on your payment
25 history. We acknowledge that you have a timely payment

1 history, and so we would just like to -- this is about the
2 late filing of your 2016 return.

3 JUDGE ROSAS: This is Judge Rosas. Thank you,
4 Ms. Fassett, for that clarification.

5 At this point I'm going to turn it over to my
6 colleagues to see if either of them have any questions for
7 these witnesses. Judge Vassigh?

8 JUDGE VASSIGH: This is Judge Vassigh. I do not
9 have any questions.

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

12 Judge Lambert, do you have any questions for
13 Mr. Andeweg or Mr. Camacho?

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

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

18 Mr. Andeweg and Mr. Camacho, I have just a few
19 clarifying questions. Looking over my notes here, it
20 indicated that an incorrect form was filed. I believe
21 you're referring to partnership return as opposed to the
22 LLC tax return. What is your testimony in terms of when
23 do you believe that the partnership tax return was filed?

24 MR. CAMACHO: That was a mistake in partnership.
25 It should have been an LLC form. That was filed -- I

1 believe she started work on that. I know it was signed.
2 Mr. Andeweg signed it on the 11th. I believe April 11th.

3 MR. ANDEWEG: No. I think we're talking the --
4 oh. You're talking about the --

5 MR. CAMACHO: He's talking about the partnership.
6 Because the partnership one was the intent where we
7 thought we had -- you see what I'm saying?

8 MR. ANDEWEG: Yes.

9 MR. CAMACHO: Okay. So that was signed on the
10 11th. In addition with that also, the little voucher goes
11 out too. So that's why the payment is relevant to our
12 argument on this because the little envelope goes out with
13 the big envelope. So and we -- that's how we always
14 the -- that's why I do bring up the check because those
15 all get written and stamped and delivered and dropped at
16 the mail. It's been the policy of this charter at the
17 same time; not one without the other.

18 Once we realized after an appeal in 2014, we have
19 done even more follow-through with this and had certified
20 mail with the little green receipt that you have to get
21 and pay for extra postage to make sure these mishaps don't
22 continue to happen where we can know, we can say at the
23 end of the day we did everything to push that through.
24 We've even gone a step further and we're now -- we try to
25 go in person to Oakland and drop them off and hand them in

1 to somebody that we see through the glass and slide them
2 in.

3 We -- we are doing everything we can. We take
4 time off work to do this. So, yes, it is all, you know,
5 relevant to what the other representative said because
6 they all go together hand-in-hand.

7 JUDGE ROSAS: This is Judge Rosas. Thank you,
8 Mr. Camacho. Just to clarify, because you mentioned the
9 11th, is that April 11th, 2017?

10 MR. CAMACHO: 2017. Yes. Yes. Yes, Your Honor.

11 JUDGE ROSAS: This is Judge Rosas. Mr. Camacho,
12 so it is your testimony -- and, again, I just want to make
13 sure that I clearly understand your position. Is it your
14 testimony that A'MON'S filed a partnership tax return on
15 April -- sorry -- for 2016, on April 11th, 2017?

16 MR. CAMACHO: That is correct. And that was a
17 misfile, a clerical error on our tax preparer. You know,
18 she's saying, "Hey, I think when I scrolled," -- this is
19 what she said in our conversation between me and her, mind
20 you, that, "Hey, this is what happened. I must have
21 clicked it. I don't know why."

22 We've been an LLC. We incorporated as an LLC
23 since we've been registered here. LLP, I mean, it's the
24 one outlier of this whole situation. So yes, it was --
25 that's when it was. That was the intent for it to be an

1 LLC.

2 It's when -- we're, like, okay. Sign here.
3 Like, it was just another year at the tax preparer. Sign
4 here. Great. Pay her her money. Cool. We owe this
5 much. Great. Moving forward. And well, obviously not
6 because now we're here.

7 JUDGE ROSAS: This is Judge Rosas. Thank you,
8 Mr. Camacho. One other point of clarification because you
9 mentioned big envelope versus little envelope. Is it your
10 testimony that the 2016 tax return -- the partnership tax
11 return was -- was a paper return? Essentially, it was
12 submitted via U.S. mail?

13 MR. CAMACHO: We did -- did she file that?

14 MR. ANDEWEG: I don't know the answer to that.

15 MR. CAMACHO: How did she file that one, brother?

16 MR. ANDEWEG: I do not know the answer to that.

17 Let me. I'm afraid I don't know the answer to that.

18 MR. CAMACHO: I don't know. Did we file -- yeah.
19 How did we file that one? That's a great question. That
20 says -- is there an electronic -- let's see. I don't
21 believe she would e-file it. I don't see. I know she --
22 I know it's an e-file.

23 MR. ANDEWEG: I believe it's paper but --

24 MR. CAMACHO: Yeah. What -- do you want to speak
25 on that, brother?

1 MR. ANDEWEG: Well, I -- I -- yeah. But I in all
2 reality -- you've got to --

3 MR. CAMACHO: No. We are.

4 MR. ANDEWEG: Oh, we are unmuted?

5 MR. CAMACHO: We are unmuted.

6 MR. ANDEWEG: Okay. This is Mr. Andeweg. In all
7 honesty, I do not recall whether she e-filed it or whether
8 it was a paper handed in. With these problems from this
9 point forward, as he said, we're hand-carrying them down
10 to the Franchise Tax Board except for this year because of
11 the Covid situation. Well, yeah, we're -- I honestly just
12 don't have the answer to that question.

13 JUDGE ROSAS: This is Judge Rosas. Thank you,
14 gentlemen. I have nothing further.

15 Do the representatives from FTB have any
16 questions for these witnesses based on my questions, based
17 on the additional information they just provided?

18 MS. FASSETT: This is Sarah Fassett. No
19 questions.

20 JUDGE ROSAS: This is Judge Rosas. Thank you,
21 gentlemen. We'll get back to you with a rebuttal after
22 FTB's presentation.

23 At this point we're going to turn it over to the
24 Franchise Tax Board. They have up to 15 minutes to make
25 their case presentation.

1 that its failure to timely file its return was due to
2 reasonable cause and not due to willful neglect such that
3 it is entitled to abatement of the late filing penalty.
4 And second, Appellant has not established a basis for
5 abatement of the interest imposed on the late filing
6 penalty for the 2016 tax year.

7 With the respect to Issue One, it is
8 well-established that when FTB imposes a penalty, the law
9 presumes that the penalty is correctly imposed, and
10 Appellant bears the burden of proving that FTB's
11 determination is incorrect. A properly imposed late
12 filing penalty may only be abated if the taxpayer
13 establishes with credible and competent evidence that the
14 failure to timely file the return was due to reasonable
15 cause and not due to willful neglect.

16 Unsupported assertions are never sufficient to
17 satisfy a taxpayer's burden. And, in this case, Appellant
18 has not met its burden. Appellant asserts that it timely
19 paid its tax liability, which FTB acknowledges, and relied
20 on its tax preparer to timely electronically file its 2016
21 return. Specifically, Appellant maintains with
22 unsupported assertion that Appellant's 2016 tax return was
23 timely filed electronically by its tax preparer, but a
24 clerical or administrative error made by that tax preparer
25 is the reason FTB had no record of its return.

1 Appellant argues that its tax preparer's software
2 defaults to the Form 565, a partnership return, and its
3 preparer mistakenly did not choose the correct form, Form
4 568, the return required for LLCs. So this is Appellant's
5 argues the return was -- excuse me. The return was timely
6 filed just on the incorrect form. And Appellant did not
7 know that its 2016 return was not received until FTB
8 notified Appellant about the missing return in February of
9 2019.

10 However, as discussed further in a moment,
11 noticeably absent from Appellant's submission during this
12 appeal is any evidence of its purported electronic filing
13 history or a transmission acknowledgment for the 2016 tax
14 year. Lastly, Appellant has cited to its filing and
15 payment history as support for its belief that a return
16 was timely filed. And as shown in FTB's Exhibits L and N,
17 Appellant has not been diligent and timely filing for each
18 and every tax year over the last eight years.

19 Appellant's unsupported arguments do not
20 establish its failure to timely file was due to reasonable
21 cause. Appellant has provided no evidence of the
22 assertion that a return for the 2016 tax year was
23 electronically filed on either a Form 565 or Form 568.
24 And FTB has no record of a 2016 return for Appellant until
25 Appellant filed its return on a Form 568 on

1 April 5th, 2019.

2 As discussed in the precedential opinion by this
3 office, the Appeal of Quality Tax and Financial Services
4 Incorporated, a facts and circumstances analysis is needed
5 to properly determine whether a taxpayer who uses e-file
6 technology can establish reasonable cause. In that case,
7 the taxpayer tried to timely e-file it's return twice on
8 the same day and provided the e-file history, which
9 ultimately showed that while it tried to transmit its
10 return, through some error, the return failed to transmit.
11 Here Appellant has not provided an e-file history of its
12 supposed transmission of any tax return for the 2016 tax
13 year.

14 Appellant claims that it e-filed its federal
15 return Form 1065 and state return on a Form 565 in
16 April 2017. However, the IRS records as reflected in
17 FTB's Exhibits K and N, show that the IRS has no history
18 of Appellant filing a return for the 2016 tax year.
19 Appellant has only provided documents that are create with
20 a tax return but are not actually included in any
21 transmitted-electronically filed return.

22 Further, these documents provided by Appellant do
23 not show any return transmission, confirmation numbers,
24 acceptance, or even rejection acknowledgments. And
25 ordinarily prudent taxpayer would ask for both and check

1 the e-file history and acknowledgment records to ensure
2 successful transmission and be able to produce its
3 e-filing history.

4 Finally, Appellant has not discussed or
5 substantiated what efforts, if any, it took to verify that
6 its 2016 return was timely filed. Appellant's argument
7 concerning its reliance on its tax preparer to timely file
8 its return also does not establish that its failure to
9 timely file is due to reasonable cause. The Supreme Court
10 of the United States versus Boyle and discussed in Quality
11 Tax and another precedential opinion from this office, the
12 Appeal of Auburn Old Town Gallery, LLC, showed that Boyle
13 established the long-standing bright-line rule that a
14 taxpayer's reliance on an agent to file a return by the
15 due date is not reasonable cause.

16 So even if Appellant sincerely relied on their
17 preparer to timely file its return for the 2016 tax year,
18 that reliance will not establish reasonable cause.
19 Further, Appellant's reliance on their tax preparer cannot
20 and does not replace Appellant's personal and nondelegable
21 duty to file its tax return by the due date.

22 Based on the unsubstantiated arguments made by
23 Appellant on appeal, Appellant has not established that it
24 timely filed its 2016 return, nor has it shown that its
25 failure to timely file that return was due to reasonable

1 cause, and, thus, it has not established entitlement to
2 abatement of the late filing penalty imposed for the 2016
3 tax year.

4 With respect to Issue Two, the imposition of
5 interest is mandatory and is not a penalty but simply
6 compensation for a taxpayer's use of money. FTB's
7 determination not to abatement interest is presumed
8 correct, and the burden is on the taxpayer to prove error.
9 The Revenue and Taxation Code provides for certain
10 situations where FTB may exercise its discretion to abate
11 interest for errors or delays in the performance of
12 ministerial or managerial acts by a Franchise Tax Board or
13 Internal Revenue Service employee or officer.

14 Here Appellant does not allege or prove that any
15 of the limited exceptions to allow for abating interest
16 apply. Furthermore, a review of this matter shows no
17 irregularities in the processing or treatment of
18 Appellant's case such that an abatement of interest is
19 warranted under the law. Therefore, interest properly
20 accrued and may not be abated.

21 So in conclusion, on the facts and evidence in
22 the record, Franchise Tax Board respectfully request you
23 sustain its position. I'm happy to address any questions
24 the panel may have.

25 Thank you.

1 JUDGE ROSAS: This is Judge Rosas. Thank you,
2 Ms. Fassett.

3 Judge Vassigh, do you have any questions for FTB?

4 JUDGE VASSIGH: This is Judge Vassigh. Thank
5 you. I do not have any questions.

6 JUDGE ROSAS: This is Judge Rosas. Thank you,
7 Judge Vassigh.

8 Judge Lambert, do you have any questions for FTB?

9 JUDGE LAMBERT: Hi. This is Judge Lambert. I
10 don't have any questions. Thanks.

11 JUDGE ROSAS: This is Judge Rosas. Thank you,
12 Judge Lambert.

13 Ms. Fassett, I just have one point of
14 clarification. We heard from Mr. Andeweg and Mr. Camacho
15 indicating in their testimony that an incorrect return was
16 filed. They're referring to the partnership return.
17 Their testimony indicated that the partnership return was
18 filed for tax year 2016, and that it was filed on
19 April 11, 2017. Just for clarification, Ms. Fassett, are
20 you stating that no partnership return was ever filed for
21 tax year 2016?

22 MS. FASSETT: This is Sarah Fassett. Yes. FTB
23 has no records of a mailed or electronically filed
24 partnership return, which is a Form 568 for the 2016 tax
25 year, either filed in 2017 or later. As I mentioned in

1 the briefing for the tax year 2017, that mistake was made.
2 And that's shown in Exhibits L and M, as in Mary.

3 JUDGE ROSAS: This is Judge Rosas. Thank you,
4 Ms. Fassett.

5 Mr. Andeweg and Mr. Camacho, I'm going to turn it
6 back to you. If you wish, you now have a brief
7 opportunity, up to five minutes combined, to respond to
8 anything that you just heard from the Franchise Tax Board.

9 MR. ANDEWEG: Well, I would like to respond. I
10 did -- I did find the paper, our authorization. May I
11 show this document to the Court? It is a Form 8453-P. It
12 is a California e-file return authorization for
13 partnerships.

14 JUDGE ROSAS: Mr. Andeweg, this is Judge Rosas.
15 The document you are describing, is this a document that
16 has already been submitted into evidence?

17 MR. CAMACHO: Yes. Oh, sorry.

18 MR. ANDEWEG: Yes. This is Mr. Andeweg. Yes.

19 JUDGE ROSAS: This is Judge Rosas. In that case,
20 Mr. Andeweg, I'd rather -- since that exhibit has already
21 been submitted into evidence, you could just refer to the
22 exhibit number or exhibit letter. But I'm concerned of
23 you showing that document on the screen because of privacy
24 concerns.

25 MR. ANDEWEG: Okay. This is Mr. Andeweg. Yeah.

1 It just shows that we authorized the e-file and, again,
2 for partnership. It was for partnership, which I did not
3 realize at the time that it was the wrong form. But this
4 was dated 4/11/17.

5 MR. CAMACHO: This is Carlo Camacho here. I'm
6 just looking for the key to where to find that more
7 readily. We pulled that out of our return. It's enclosed
8 in our return. It's towards the back end of it. I'm just
9 trying to find exactly where -- where is the return key.
10 I just had it here. That would say all the -- that would
11 be more readily available for you folks to look up and
12 refer to. Okay. I'll look in here, but I cannot find it
13 right now.

14 JUDGE ROSAS: This is Judge Rosas. By any chance
15 are you referring to Exhibit 3?

16 MR. CAMACHO: Off the top of my head that sounds
17 correct. It is in -- let's see. I just want to make sure
18 I don't -- where is the key at? I just had the darn thing
19 here right in front of me so that I can look for this.
20 Yeah -- I believe so. It is in our tax. Yeah. It was in
21 our actual copy of our return for '16, and it was with the
22 LLP, not the LLC.

23 JUDGE ROSAS: This is Judge Rosas. The good
24 thing is all the of the exhibits that were submitted to
25 the Office of Tax Appeals, everything was admitted into

1 evidence.

2 MR. CAMACHO: Right.

3 JUDGE ROSAS: So with your description we'll be
4 able to find it. But thank you very much, gentlemen,
5 for --

6 MR. CAMACHO: Okay. I apologize not to have it
7 directly. I can't find that key to save my life right
8 now. Sorry about that. Apologies.

9 JUDGE ROSAS: Not a problem. This is Judge
10 Rosas. Gentlemen, anything else you would like to add in
11 addition to that exhibit, in rebuttal, in response to what
12 you just heard from the Franchise Tax Board?

13

14 CLOSING STATEMENT

15 MR. ANDEWEG: This is Mr. Andeweg. I would just
16 like to reiterate. I mean, we're doing everything we can
17 to comply. Here's the authorization for the e-file. Now,
18 Franchise Tax Board is saying they did not receive it. I
19 guess we're not, you know, being just regular working
20 folks. We're not aware of -- hey, you. You have to get
21 something back from the Franchise Tax Board that says they
22 received it or -- I mean, we've done everything that, at
23 least at the time, we thought we could possibly do.

24 MR. CAMACHO: This is Mr. Camacho here. Yeah.
25 Just to reiterate on that statement that we're not being

1 diligent. We have a standing appointment every year,
2 every year with our accountant to go through these things.
3 So don't say we're not being prudent. There might be the
4 law that -- we are doing everything as a citizen. Hey,
5 you go to the tax person. You give them your forms. They
6 sort it out. They tell you what you owe or what you got
7 coming back and what your liability is, and they set it
8 up.

9 You cut your check to them. You cut your check
10 to the respective entities, IRS, FTB if it's owed or
11 you're getting one back, and that's -- it should be cut
12 and dry. And then now we're finding out, oh, well there's
13 this. Oh, well there's that. Oh, well there's this.
14 Well, I mean, what else are we supposed to do? Is there a
15 receipt? Oh, you're supposed to get a transmission, and
16 there's an e-file this, and we're supposed to have -- am I
17 supposed to have, like, a minor law degree to be an LLC or
18 something, where I have to go and pull an e-file receipt
19 of every e-file that came through?

20 Like, we're not being -- we thought well, we have
21 our check. Our check goes to this. It's logical everyday
22 folks what a logical thing would be. If we need to start
23 hiring an attorney for this, then we absolutely will. And
24 we're not -- it's a very frustrating thing to have to, you
25 know, go down this path that we think we're on. We -- you

1 said pay us this, and then we didn't argue. We sent
2 \$1,700 or whatever, their 32 -- whatever the fine was, we,
3 as much as it hurt us financially, we wrote it to stay
4 correct.

5 We're doing everything we can to be prudent in
6 this. We're sorry if it doesn't meet, you know, another
7 person's interpretation or what they are reading there and
8 there's more to it. Well, then maybe there needs to be
9 more education on how to properly file as an LLC when
10 somebody becomes an LLC instead of just a way to just get
11 800 bucks from somebody towards the tax liability for the
12 year.

13 MR. ANDEWEG: Okay.

14 MR. CAMACHO: Anyway, that's all I have to say
15 about that.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,
17 gentlemen. At this point I'm going to turn it over to my
18 co-panelist to see if they have any questions for either
19 side. Judge Vassigh?

20 JUDGE VASSIGH: Thank you. This is
21 Judge Vassigh. I do not have any questions for either
22 side.

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

25 Judge Lambert, do you have any questions for

1 either party?

2 JUDGE LAMBERT: This is Judge Lambert. Yeah, I
3 just had a question for Appellants. I was just curious
4 when you said you filed the wrong return by mistake and
5 was just wondering what happened exactly. Just give
6 background in terms of why it was filed as partnership and
7 then you figured out later it was supposed to be an LLC
8 return.

9 MR. CAMACHO: Yes, Your Honor. We -- why we did?
10 Our accountant made a clerical error I guess with their
11 software. Maybe she clicked the wrong box to prepare our
12 tax. We -- we weren't there. We dropped off the
13 information, like I said to Angelia our tax preparer and
14 signed off on our -- you know, pay this or owe this,
15 whatever, and moved on with it.

16 Once we realized, LLP, like, this isn't the same
17 form. And once we started realizing that there was
18 something -- something went awry. So that's how that came
19 about because we're an LLC. We are not an LLP.

20 MR. ANDEWEG: Yeah. This is Mr. Andeweg. Again,
21 I think that's why you go to a professional. You don't go
22 online and get some -- you know, try to do it yourself.
23 We take it to somebody who we believe, you know, does
24 things properly. And when you go and pick them up, they
25 say sign here, sign here, sign here. You do that and

1 maybe -- you would need more education in this than we
2 have in order to say okay, this here isn't right. I don't
3 know. I mean, we put our faith in our tax preparer, and I
4 guess that's it.

5 MR. CAMACHO: Yup. That's it.

6 JUDGE LAMBERT: Thank you. I have no more
7 questions. Thanks.

8 JUDGE ROSAS: This is Judge Rosas. Thank you,
9 Judge Lambert.

10 Gentlemen, I do have one question. I just wanted
11 to clarify one thing. Again, if you can refer to that
12 exhibit that you were describing, I believe it's
13 Exhibit 3; but what was on the title page on the top of
14 that document? Can you read that name once again? I want
15 to make sure I fully understand where you're coming from.

16 MR. ANDEWEG: It says, "2016 California E-File
17 Return Authorization For Partnerships Form 8453-P." It
18 also says on the top, "Do not mail this form to the
19 Franchise Tax Board."

20 JUDGE ROSAS: Okay. Gentlemen, I misspoke. That
21 is not Exhibit 3. That is Exhibit 4, page 7 of 8.

22 MR. CAMACHO: Okay.

23 JUDGE ROSAS: I just wanted to clarify for the
24 recorder. We're on the same page. We understand what
25 exhibit you're referring to, but I just want to make sure

1 our record, our transcript correctly refers and identifies
2 the exhibit that you're referring to. Okay. Thank you,
3 gentlemen.

4 Now one follow-up question, gentlemen. There's
5 an additional exhibit you submitted. It's the one that I
6 referred to earlier, Exhibit 3. And that one is the IRS
7 E-File Signature Authorization Form 1065. It's for the
8 tax year at issue. We're talking about tax year 2016.
9 This is an IRS document. This document has its signature
10 line of April 11, 2017.

11 Can you discuss a fact that FTB mentioned that
12 for the records there are -- I'm sorry. Per the IRS
13 records, there's no history that the Appellant filed a tax
14 return for 2016. Can you address that point, please?

15 MR. CAMACHO: Can you address the IRS?

16 MR. ANDEWEG: No. I was not aware of this
17 before.

18 MR. CAMACHO: Well, it's to our understanding
19 we've always been straightened out with the IRS. When we
20 started having these tax issues here in California on a
21 prior case, we checked in with IRS, and they told us -- I
22 believe they told you when you called that we were all
23 squared up over the phone. There was something that was
24 off, but they were able to clear it up right there. Oh,
25 we see what happened here.

1 MR. ANDEWEG: Because it was also filed to them
2 as a partnership.

3 MR. CAMACHO: Got it. Got it. Okay. Is that
4 what that was?

5 MR. ANDEWEG: And I made the call to the IRS, and
6 they said, "Okay. We see what happened here. We're all
7 straightened out."

8 MR. CAMACHO: That was according to them from
9 their -- quote, unquote, proverbial horse's mouth, it got
10 straightened out. And, you know, if not, then they'll
11 probably send us a letter and we could just do this again
12 with them.

13 MR. ANDEWEG: No. It was straightened out on the
14 phone call.

15 MR. CAMACHO: Yeah.

16 MR. ANDEWEG: He saw what the mistake was, and he
17 corrected the mistake and --

18 JUDGE ROSAS: This is Judge Rosas. Thank you,
19 gentlemen. I want to follow up on the point you just
20 made. You were referring to the mistake that was made.
21 I'm hoping you could shed some lights on something that
22 the evidence indicates and something that Ms. Fassett
23 pointed out. She mentioned that for tax year 2017, that
24 there's no doubt that the wrong form was submitted, a
25 partnership return for 2017 but that there's no indication

1 that that was the case for 2016.

2 So, gentlemen, my question is, when you're
3 referring to conversations with the IRS about the wrong
4 form, the partnership tax return, are you absolutely
5 certain that you're referring to tax year 2016 and not
6 2017?

7 MR. ANDEWEG: No. Absolutely, no I actually
8 can't say I am absolute -- oh, are we on?

9 MR. CAMACHO: Yeah, you are. We're on.

10 MR. ANDEWEG: I can't say I'm absolutely sure
11 that -- however -- that we refiled for '17?

12 MR. CAMACHO: No.

13 MR. ANDEWEG: I thought this only happened the
14 one year, and that would have been '16. It was her first
15 year of doing our taxes. Yeah. Am I absolutely sure?
16 No. No, I'm not, but I'm relatively confident. Or they
17 would have certainly gotten ahold of us if there was a
18 problem with a no file situation, and they have not done
19 that.

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

22 We're getting close to wrapping this up. It's a
23 few minutes before 11:00 a.m. Before we do, a few final
24 questions to the Franchise Tax Board. Based on any of the
25 additional information and testimony from the witnesses,

1 is there anything else that FTB would like to add?

2 MS. FASSETT: This is Sarah Fassett. So I just
3 want to let the Appellant -- so the tax year 2017 return
4 both 565, 568, and the 1065 were filed on June 1st, 2018.
5 And that's our -- shown in the records, FTB's Exhibits L,
6 M, and N.

7 JUDGE ROSAS: This is Judge Rosas. Thank you,
8 Ms. Fassett. Anything else you would like to add,
9 Ms. Fassett?

10 MS. FASSETT: This is Sarah Fassett. No, sir.
11 Thank you.

12 JUDGE ROSAS: This is Judge Rosas. Thank you,
13 Ms. Fassett.

14 Mr. Andeweg and Mr. Camacho, you represent
15 Appellant, and the Appellant has the burden of proof. So
16 I do want to give you the last word. Now, you do not need
17 to repeat yourself. My question is, other than the
18 exhibits that have already been submitted into evidence,
19 and other than the testimony you have provided here today,
20 is there anything else, gentlemen, that you believe this
21 panel needs to know in order for us to make a
22 well-informed decision?

23 MR. CAMACHO: This is Mr. Camacho. I do not have
24 no further addition.

25 MR. ANDEWEG: This is Mr. Andeweg. I have no

1 further addition.

2 JUDGE ROSAS: This is Judge Rosas. In that case,
3 that concludes the hearing in the Appeal of A'MON'S MC,
4 LLC. The record is now closed, and the matter is
5 submitted as of today April 20, 2021.

6 The parties will receive this panel's written
7 decision no later than 100 days from today.

8 I want to thank the representatives, my
9 co-panelists, the stenographer, and all of the OTA team
10 members who have been working behind the scenes. Stay
11 safe, stay healthily.

12 This hearing is now adjourned, and that concludes
13 today's calendar. Thank you all very much, and we are now
14 off the record.

15 (Proceedings adjourned at 10:59 a.m.)

16

17

18

19

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 26th day of April, 2021.

ERNALYN M. ALONZO
HEARING REPORTER