

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R.MENGHANI,) OTA NO. 20096625
)
 APPELLANT.)
)
)

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, August 17, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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R. MENGHANI,) OTA NO. 20096625
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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 10:14 a.m. and concluding at 10:27 a.m. on
Tuesday, August 17, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and for
the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREA LONG

Panel Members: ALJ ALBERTO ROSAS
ALJ DANIEL CHO

For the Appellant: R. MENGHANI

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 6.)

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

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By Mr. Menghani	7
By Mr. Garcia	9

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P A G E

By Mr. Menghani	13
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California; Tuesday, August 17, 2021

10:14 a.m.

JUDGE LONG: So good morning, again.

I'm Andrea Long the lead ALJ for this appeal.
We're here today for the Appeal of Menghani, OTA Case
Number 20096625. Today is Tuesday, August 17, 2021, and
it's approximately 10:14 a.m. This hearing was noticed to
be held virtually via Webex.

We will begin with the parties stating their
names and who you represent for the record, starting with
Appellant.

Mr. Menghani, can you state your name please.

MR. MENGHANI: Oh, yes. My name is Rajan
Menghani.

JUDGE LONG: And FTB.

MR. GARCIA: My name is Noel Garcia for
Respondent Franchise Tax Board.

MS. SWAIN: Good morning, Judge Long. My name is
Ellen Swain for the Franchise Tax Board.

JUDGE LONG: Thank you. With me today on the
panel is Judge Alberto Rosas and Judge Daniel Cho, and
Judge Cho is replacing Judge Nguyen Dang for today's
hearing. The parties have stated that they do not have
any objections to this substitution.

1 The parties have agreed that the issue before
2 today is whether the late-filing penalty and interest
3 should be abated. With respect to the exhibits, pursuant
4 to the July 28, 2021, minutes and orders, we admitted
5 Exhibit 1 for Appellant and Exhibits A through E for FTB.
6 Exhibits were admitted without objection. The parties
7 have indicated that they have no additional exhibits to
8 submit today.

9 (Appellant's Exhibit 1 was received
10 in evidence by the Administrative Law Judge.)

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

13 So we will continue on with the presentations.

14 Mr. Menghani, you have 15 minutes to present your
15 argument. Before we begin, I will swear you. So we
16 cannot see you today, please raise your right hand.

17 MR. MENGHANI: Yes.

18 JUDGE LONG: Okay.

19
20 R. MENGHANI,
21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined and testified
23 as follows:

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25 JUDGE LONG: You may begin when you're ready.

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11 And the penalty that I'm -- the penalties that I
12 wanted to be removed or canceled or refunded from --
13 excuse me. The penalty -- I wanted to receive a refund
14 from -- a refund from would be the late penalty and the
15 interest because I'm -- my basic argument is that it was
16 not my fault that my tax consultant had submitted the tax
17 returns late.

19 JUDGE LONG: Thank you.

21 MR. GARCIA: This is Noel Garcia. We do not have
22 any questions.

24 Judge Rosas, do you have any questions?

1 I do have a few questions.

2 Mr. Menghani, in your briefs I believe there is
3 also a discussion of a delay related to you wanting to
4 wait for confirmation from the Internal Revenue Service
5 whether your entity had been properly converted into an
6 S-corp. Just to be clear, Mr. Menghani, is your focus
7 today just on your tax preparer and the tax preparer's
8 delays, or are you still alleging issues with waiting for
9 the Internal Revenue Service to get back to you?

10 MR. MENGHANI: Oh, no, no. The issue for me has
11 nothing to do with the S-corporations. It was just about
12 the -- the -- I was hoping to get a refund of the late
13 penalty and the interest. That's it. It has nothing to
14 do with the S-corporations.

15 JUDGE ROSAS: This is Judge Rosas. Thank you,
16 Mr. Menghani.

17 MR. MENGHANI: Thank you.

18 JUDGE ROSAS: I have a follow-up question
19 regarding you reaching out to your tax consultant. Your
20 Exhibit 1 is a receipt for \$500 dated December 17th, 2018.
21 So it seems you made contact with a tax consult before the
22 end of the tax year. Can you elaborate and shed some
23 light on discussions you had with your tax consultant
24 around December 17th, 2018.

25 MR. MENGHANI: Yes. If I recall properly, he was

1 just helping me to convert to the -- I think it was to
2 start the S-corporation. And also, he agreed to submit my
3 tax returns. So I agreed to pay him for his services.

4 JUDGE ROSAS: This is Judge Rosas. Thank you,
5 Mr. Menghani. And a follow-up question, just so that I'm
6 clear. Exhibit 1, a receipt from December 17, 2018, that
7 \$500 receipt also involved the preparation of your 2018
8 California tax return; is that correct?

9 MR. MENGHANI: Yes.

10 JUDGE ROSAS: Thank you, Mr. Menghani. I have no
11 further questions.

12 JUDGE LONG: This is Judge Long. Judge Cho, do
13 you have any questions for Mr. Menghani?

14 JUDGE CHO: This is Judge Cho. I don't have any
15 questions. Thank you.

16 JUDGE LONG: This is Judge Long. We will move on
17 to FTB's presentation. Mr. Garcia, you have 15 minutes,
18 and you may begin whenever you're ready.

19 MR. GARCIA: Thank you Judge Long.

20

21 PRESENTATION

22 MR. GARCIA: Good morning. My name is Noel
23 Garcia and I, along with Ellen Swain, represent Respondent
24 Franchise Tax Board in the appeal of Rajan Menghani for
25 the 2018 tax year.

1 In this case there are two issues. First, has
2 Appellant established reasonable cause for the abatement
3 of the delinquent filing penalty. Second, has Appellant
4 established any basis to abate interest. For the reasons
5 set forth in Respondent's opening brief and for the
6 reasons I shall go over shortly, FTB's actions should be
7 sustained on both accounts.

8 With respect to the first issue, it is well
9 established that when Franchise Tax Board imposes a
10 delinquent filing penalty under Revenue & Taxation Code
11 Section 19131, the law presumes that the penalty was
12 correct, and the burden of proof is on the taxpayer to
13 show that reasonable cause existed to support abatement of
14 this penalty.

15 In his appeal, there's no dispute that
16 Appellant's tax return for the 2018 tax year was filed
17 late. Appellant's only contention is that the delinquent
18 filing penalty should be abated due to reasonable cause
19 because he retained and relied on a registered tax
20 preparer. However, the preparer failed to file his return
21 by its due date.

22 In support of his position, Appellant relies on
23 Appeal of Estate of Anna Armstrong wherein the State Board
24 of Equalization held that reasonable cause was established
25 when the taxpayer relied on the erroneous advice of a tax

1 expert concerning a complex question of law.

2 Excuse me. In the current appeal, the Appellant
3 did not rely on his tax preparer's advice concerning a
4 complex question of law, but rather relied on the preparer
5 for routine tax compliance. This office has consistently
6 held that each taxpayer has a personal nondelegable
7 obligation to file his or her own tax return by its due
8 date. And a taxpayer's reliance on an agent, such as a
9 registered tax preparer, cannot function as a substitute
10 for compliance with an unambiguous statute, such as fixed
11 due date of a tax return.

12 As the Supreme Court held in *United States v.*
13 *Boyle*, it takes no special training or effort to ascertain
14 a tax filing deadline and make sure it is met. While the
15 Franchise Tax Board sympathizes with the Appellant, the
16 law is well settled that it is a nondelegable duty to file
17 his own tax return timely. And reliance on an agent is
18 not reasonable cause for late filing. Therefore, because
19 Appellant relied on his tax preparer to file his tax
20 return timely does not constitute reasonable cause. FTB's
21 imposition of the delinquent filing timely should be
22 sustained.

23 Lastly, in regard to the abatement of interest,
24 the imposition of interest is mandatory as that it is not
25 a penalty but rather, the compensation for the taxpayer's

1 use of money. The Revenue & Taxation Code provides for a
2 certain exception where the Franchise Tax Board may
3 exercise its discretion to abate interest for errors or
4 delays in the performance of administrative or managerial
5 acts performed by the Franchise Tax Board employee or
6 officer. Here Appellant does not allege or substantiate
7 any issues allowing for the abatement of interest.

8 Further, a review of this matter shows that there
9 were no irregularities in the processing or treatment of
10 Appellant's case that would warrant interest to be abated
11 under the law. Therefore, interest was properly applied
12 and may not be abated. In conclusion, on the facts and
13 evidence in the record, Franchise Tax Board respectfully
14 request you sustain its position in this appeal.

15 I'm happy to address any questions this panel may
16 have. Thank you.

17 JUDGE LONG: Thank you. This is Judge Long.

18 Judge Rosas, do you have any questions for
19 Mr. Garcia?

20 JUDGE ROSAS: This is Judge Rosas. I do not have
21 any questions. Thank you.

22 JUDGE LONG: This is Judge Long again. And,
23 Judge Cho, do you have any questions for Mr. Garcia?

24 JUDGE CHO: This is Judge Cho. I don't have any
25 questions either. Thank you.

1 JUDGE LONG: Okay. This is Judge Long again.
2 Mr. Menghani, would you like to make a rebuttal to address
3 any of FTB's arguments or provide us with any additional
4 information?

5
6 CLOSING STATEMENT

7 MR. MENGHANI: No. No. I don't have any
8 rebuttal. My only response would be I don't think it is
9 appropriate for the taxpayer to be held responsible for
10 the tax consultant's error when the taxpayer pays a tax
11 consultant or tax preparer in good faith on the assumption
12 that the tax preparer or tax consultant will faithfully
13 follow through with their duties.

14 That is all.

15 JUDGE LONG: Thank you, Mr. Menghani.

16 My apologies. That's the wrong button.

17 Well, that will conclude today's hearing. The
18 panel will meet and decide the case based on the
19 briefings, the arguments presented, and the exhibits
20 admitted into evidence. We will send both parties our
21 written opinion no later than 100 days from today.

22 Thank you for your participation. This case is
23 now submitted, and the record is closed.

24 (Proceedings adjourned at 10:27 a.m.)
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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 23rd day
of August, 2021.

ERNALYN M. ALONZO
HEARING REPORTER