

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. MORGAN,) OTA NO. 20025878
)
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)

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APPELLANT.

TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Tuesday, October 19, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

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J. MORGAN,) OTA NO. 20025878
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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 1:07 p.m. and concluding at 1:30 p.m. on
Tuesday, October 19, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ AMANDA VASSIGH

Panel Members: ALJ CHERYL AKIN
ALJ JOHN JOHNSON

For the Appellant: J. MORGAN
A. BILLOUPS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC BROWN
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 9.)
(Department's Exhibits A-D were received at page 9.)

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California; Tuesday, October 19, 2021
1:07 p.m.

JUDGE VASSIGH: We'll go on the record.

We're opening the record in the Appeal of Morgan.
This matter is being held before the Office of Tax
Appeals. The OTA Case Number is 20025878. Today's date
is Tuesday, October 19th, 2021, and the time is
approximately 1:07 p.m. This hearing is being conducted
electronically with the agreement of the parties.

Today's hearing is being heard by a panel of
three Administrative Law Judges. My name is Amanda
Vassigh, and I will be the lead judge. I am joined by my
co-panelists, Judges Akin and Johnson. All three of us
will meet after the hearing and produce a written decision
as equal participants. Although I will conduct the
hearing, any judge on this panel may ask questions or
otherwise participate to ensure that we have all the
information needed to decide this appeal.

For the record, will the parties please state
their names and who they represent, starting with the
representatives for the Franchise Tax Board.

MR. BROWN: I'm Eric Brown, Tax Counsel with the
Franchise Tax Board.

JUDGE VASSIGH: Thank you.

1 MS. BROSTERHOUS: And I'm Maria Brosterhous, also
2 with the Franchise Tax Board.

3 JUDGE VASSIGH: Thank you.

4 And for the taxpayer, can you please state your
5 name please.

6 MR. MORGAN: Justin David Morgan.

7 JUDGE VASSIGH: Thank you. And you have with you
8 today?

9 MR. MORGAN: Alicia --

10 MS. BILLOUPS: Sorry. Alicia Billoups.

11 JUDGE VASSIGH: Thank you. Okay. And Ms.
12 Billoups, will be presenting testimony today; correct?

13 MS. BILLOUPS: Correct.

14 JUDGE VASSIGH: Yes. Okay. So we'll move on to
15 discussion of exhibits. The parties have been emailed the
16 electronic exhibits binder containing all submitted
17 exhibits. At this point, neither of the parties have
18 objected to any exhibits. The exhibits for this appeal
19 consist of, for the agency, FTB's exhibits are numbered A
20 through D.

21 Are these the correct exhibits FTB intends to
22 submit into the record?

23 MR. BROWN: Yes.

24 JUDGE VASSIGH: Okay. And for the Appellant,
25 Mr. Morgan, your exhibits are numbered 1 through 6. Are

1 these the correct exhibits you intend to submit into the
2 record?

3 MS. BILLOUPS: We did not receive the copies of
4 the Exhibits 1 through 6.

5 JUDGE VASSIGH: I'm so sorry. This is Amanda
6 Vassigh. It's hard for me to hear you. Is there anything
7 you can do on your end?

8 MR. MORGAN: We did not receive any copies of the
9 exhibits.

10 JUDGE VASSIGH: Ms. Alonzo, you're not hearing
11 that either.

12 THE STENOGRAPHER: No. I'm unable to hear them.
13 It's very soft.

14 JUDGE VASSIGH: Yeah. Is it possible for you to
15 speak closer to your microphone or louder?

16 MS. BILLOUPS: So I don't have any of the
17 Exhibits 1 through 6. We were only given the exhibits --
18 the alpha exhibits.

19 JUDGE VASSIGH: Okay. And thank you. This is
20 Judge Vassigh. Thank you for speaking louder. You should
21 have received an exhibit log, 23 pages. It should have
22 been emailed and mailed to you. Can you check? Can we
23 take a moment so you can check your e-mail, and I will
24 check with our secretary.

25 MR. MORGAN: Yes.

1 MS. BILLOUPS: Yes, please.

2 JUDGE VASSIGH: Thank you. Okay. I just sent
3 a -- this is Judge Vassigh. I just sent a message to our
4 secretary. I just want to make sure. Have you been able
5 to check your e-mail? We can have them resent as well,
6 and it should be six exhibits that were yours, that you
7 sent in, Mr. Morgan, and four exhibits from the Franchise
8 Tax Board.

9 MS. BILLOUPS: This is Alicia Billoups. I'm not
10 finding anything in my e-mails. He's also checking his.
11 I don't know if they could possibly resend it real quick
12 while we're waiting, or if need to, we can move forward.

13 JUDGE VASSIGH: Okay. Let's get your e-mail
14 address offline, and we'll have our secretary send it to
15 whichever e-mail is best for you. So we will take a
16 moment.

17 Okay. So this is Judge Vassigh. Mr. Morgan and
18 Ms. Billoups, someone from Office of Tax Appeals will be
19 calling you to get the correct email address from you.

20 Can we pause the recording?

21 Let's go off the record for that.

22 Okay. So we are going off the record. So you
23 can mute yourselves and shut your cameras off please,
24 everyone.

25 (There is a pause in the proceedings.)

1 JUDGE VASSIGH: So we will go back on the record
2 in the Appeal of Morgan. This is OTA Case Number
3 20025878.

4 I'm going to Ms. Billoups a minute just to check
5 those exhibits. We were discussing the exhibits, and
6 FTB's exhibits are numbered A through D. And FTB has
7 confirmed that these are the exhibits that they intend to
8 submit into the record. We should also have Appellant's
9 Exhibits 1 through 6.

10 Ms. Billoups, can you confirm these are the
11 exhibits that Mr. Morgan intends to submit into the record
12 or, Mr. Morgan, can you confirm that?

13 MS. BILLOUPS: Yes.

14 MR. MORGAN: Yes, they are.

15 JUDGE VASSIGH: Okay. And are there any
16 objections to any of the exhibits I listed?

17 MS. BILLOUPS: No.

18 MR. MORGAN: No.

19 JUDGE VASSIGH: No objections. Okay. Wonderful.
20 The exhibits summarized above are now admitted
21 into the evidentiary record.

22 (Appellant's Exhibits 1-6 were received
23 in evidence by the Administrative Law Judge.)

24 (Department's Exhibits A-D were received in
25 evidence by the Administrative Law Judge.)

1 The issues to be decided in this case are: One,
2 whether Appellant has met his burden to show that the late
3 payment penalty should be abated; two, whether Appellant
4 has established a basis for abatement of the estimated tax
5 penalty; and three, whether Appellant has shown a basis to
6 abate the interest.

7 As a reminder to the parties, during our
8 prehearing conference, we decided that Mr. Morgan will
9 have up to 20 minutes to make his opening presentation and
10 provide witness testimony. The parties will each have 10
11 minutes to make their arguments, and Mr. Morgan will have
12 5 minutes to provide a rebuttal argument if he chooses.

13 Does anyone have any questions before we move
14 onto opening presentations?

15 Okay. We're ready to proceed with Appellant's
16 opening presentation.

17 Mr. Morgan, since you will be testifying as to
18 facts, I need to place you under oath so we can consider
19 your statements as testimony. And you will remain under
20 oath until the close of this hearing. When you're ready
21 to present your witness, please let me know and I will
22 swear Ms. Billoups in as well.

23 So, Mr. Morgan, please raise your right hand.

24 J. MORGAN,
25 produced as a witness, and having been first duly sworn by

1 the Administrative Law Judge, was examined and testified
2 as follows:

3
4 JUDGE VASSIGH: Thank you, Mr. Morgan. This is
5 your opportunity to tell us the reasons for this appeal.
6 When you are ready, please begin your presentation and
7 testimony.

8
9 PRESENTATION

10 MR. MORGAN: Well, I paid the tax bill online,
11 and actually got a confirmation that it was paid and
12 didn't realize until the next tax period that it hadn't
13 come out. It hadn't been debited out of my account for
14 some reason. I never got any notice or anything, and it
15 just had tacked on a good amount of money for penalties
16 and late fees and interest. And I just don't know where
17 that -- because it's not like there wasn't money in the
18 bank. There was not debit that ever tried to happen, and
19 I'm not sure why I got -- why I was able to get a
20 confirmation that it was paid if nothing ever happened on
21 you -- on your guys' end, essentially.

22 JUDGE VASSIGH: Okay. Mr. Morgan, would you like
23 to have Ms. Billoups present her testimony now?

24 MR. MORGAN: Yes.

25 JUDGE VASSIGH: Okay. So Ms. Billoups, I will

1 place you under oath as explained, and you will remain
2 under oath until the close of this hearing. Will you
3 please raise your right hand.
4

5 A. BILLOUPS,

6 produced as a witness, and having been first duly sworn by
7 the Administrative Law Judge, was examined and testified
8 as follows:
9

10 JUDGE VASSIGH: Thank you. You may proceed.

11 And, Mr. Morgan, as I discussed you can ask
12 Ms. Billoups questions, or Ms. Billoups can just speak and
13 share with us. It's up to you.
14

15 WITNESS TESTIMONY

16 MS. BILLOUPS: I think because he had made
17 payments before the extension period, and that was the
18 payment in question that didn't actually go through. So
19 once it --

20 JUDGE VASSIGH: Excuse me. I'm so sorry to
21 interrupt you, Ms. Billoups. This is Judge Vassigh. Can
22 you speak up? I want to make sure that we can hear
23 everything and that Ms. Alonzo can capture every word
24 you're saying.

25 MS. BILLOUPS: Okay.

1 JUDGE VASSIGH: Thank you.

2 MS. BILLOUPS: So the payment that he mentioned
3 was the first due date for the taxes, but he actually had
4 an extension. And what happened, when that payment didn't
5 go through at the time that his extension was filed, there
6 was late fees, is what it look like. So because he made
7 the payment and received the confirms, he doesn't think
8 the late fees are fair, the penalties that were applied to
9 that. So it's not so much the amount of taxes as just the
10 penalties and late fees.

11 JUDGE VASSIGH: Okay. Ms. Billoups, do you have
12 anything else you would like to share with us?

13 MS. BILLOUPS: Not at this time.

14 JUDGE VASSIGH: Okay. So at this point I would
15 like to see if the representatives from the Franchise Tax
16 Board have any questions for Ms. Billoups on her witness
17 testimony.

18 MR. BROWN: Not at this time, Judge.

19 JUDGE VASSIGH: Okay. And I'd like to check in
20 with my panel members.

21 Judge Akin, do you have any questions for
22 Ms. Billoups or Mr. Morgan?

23 JUDGE AKIN: Thank you both for your testimony.
24 I don't have any questions at this time.

25 JUDGE VASSIGH: Thank you.

1 Judge Johnson, do you have any questions?

2 JUDGE JOHNSON: This is Judge Johnson. I have no
3 questions at this time also. Thank you.

4 JUDGE VASSIGH: Thank you.

5 This is Judge Vassigh. We will now look to the
6 Franchise Tax Board for their argument.

7 MR. BROWN: Thank you.

8

9 PRESENTATION

10 MR. BROWN: Good afternoon. I am Eric Brown, Tax
11 Counsel with the Franchise Tax Board. My co-counsel today
12 is Maria Brosterhous, also Tax Counsel with the Franchise
13 Tax Board. I have a cold, so please indulge me.

14 Anyhow, the issues in this appeal have been
15 correctly identified, and it is whether Appellant has
16 shown reasonable cause to abate the late payment penalty;
17 whether Appellant has shown error in the FTB's imposition
18 of the estimated tax; and whether Appellant has shown that
19 interest should be abated.

20 These are the facts. For the 2018 tax year,
21 Appellant attempted to make an electronic extension
22 payment of \$500,000 on April 15, 2019. The payment would
23 have been timely if successful. Appellant's attempted
24 payment was not received by FTB. Appellant filed his 2018
25 California income tax return within the extension period

1 on October 15, 2019. He reported tax liability of
2 \$423,502 and payments of \$500,000 and no payment due.

3 Having received no payment, on November 14, 2019,
4 FTB sent a Notice of Tax Return Change, which reflected
5 tax due and in which FTB imposed a late-payment penalty
6 and estimate penalty and interest. Appellant paid the
7 balance due and filed his claim for refund. FTB denied
8 Appellant's claim for refund, and Appellant timely
9 appealed.

10 The first issue is whether Appellant has
11 failed to show reasonable -- that Appellant has show --
12 failed to show reasonable cause to abate the late payment
13 penalty. It is well settled that it is not reasonable
14 cause when taxpayers unsuccessfully attempt to make
15 electronic payments. The holdings in the 2018 OTA
16 precedential appeals of Friedman and Scanlon make that
17 clear.

18 It is also well settled that a taxpayer who fails
19 to notice that a tax payment is not debited from his or
20 her bank account is deemed to have not exercised due care
21 or diligence and, thus, has not established reasonable
22 cause. In the present appeal, the taxpayer did not
23 monitor his bank account for an eight-month period and
24 admits he was unaware that the payment had been
25 unsuccessful.

1 Appellant argues that the confirmation he
2 received was tantamount to a confirmation that his payment
3 was received. The FTB WebPay confirmation merely
4 acknowledges that the taxpayer has attempted to make an
5 electronic payment but cannot know whether there are
6 sufficient funds in the bank account, nor whether the
7 taxpayer has entered the correct bank account information,
8 nor even whether the bank account is one of the permitted
9 types of account from which payments may be made.

10 Moreover, the WebPay confirmation screen
11 specifically directs the taxpayer to follow up by checking
12 his or her bank account with the following language:
13 Allow up to two business days from the payment date for
14 your bank account to reflect your payment. To confirm
15 your payment has been cleared, review your bank account
16 statement or contact your bank.

17 The second issue is that Appellant has not shown
18 that the estimated tax penalty should be abated. Payments
19 for the 2018 tax year were due in quarterly installments,
20 the last of which was due January 15, 2019. Appellant had
21 made no estimate tax payments when the installment payment
22 was due on January 15, 2019. In his tax return, Appellant
23 reported and self-assessed payment due for the estimated
24 tax penalty. Since the last installment payment for 2018
25 was due January 15, 2019, then even if the

1 April 15, 2000 [sic] payment had been successful, it would
2 not have been timely, and a penalty would have been
3 appropriate.

4 There are limited basis for abating the estimate
5 tax penalty, and Appellant has not presented facts or
6 legal argument that any of those basis apply. Appellant
7 has, thus, failed to establish why the penalty should be
8 abated.

9 The third and final issue is interest. The law
10 requires imposition of interest on unpaid balances of tax
11 and penalties. Interest is not a penalty and is simply
12 compensation to the State of California for the use of
13 money. In the present appeal, Appellant has not argued
14 why interest should be abated. In view of the above,
15 FTB's denial of Appellant's claim for refund should be
16 sustained.

17 And I'd be happy to respond to any questions the
18 panel might have.

19 JUDGE VASSIGH: Thank you, Mr. Brown.

20 This is Judge Vassigh. I'd like to check in with
21 my co-panelists.

22 Judge Akin, do you have any questions for
23 Mr. Brown?

24 JUDGE AKIN: Thank you. I do not have any
25 questions.

1 JUDGE VASSIGH: Thank you.

2 Judge Johnson, do you have any questions for
3 Mr. Brown?

4 JUDGE JOHNSON: This is Judge Johnson. No
5 questions. Thank you.

6 JUDGE VASSIGH: Thank you very much.

7 This is Judge Vassigh again. I'd like to give an
8 opportunity to Mr. Morgan.

9 Do you have a rebuttal you would like to present?
10 That's completely optional.

11 MR. MORGAN: No.

12 JUDGE VASSIGH: Okay. So I hear that Mr. Morgan
13 has declined the opportunity to close us out.

14 I'm just going to check back in with my panel
15 members.

16 Do you have any questions for either party at
17 this point, Judge Akin?

18 JUDGE AKIN: No questions. Thank you.

19 JUDGE VASSIGH: Okay. And, Judge Johnson, just
20 checking in one last time.

21 JUDGE JOHNSON: Hi. This is Judge Johnson. I do
22 have one question actually. I know Mr. Morgan said that
23 there's no indication -- notification that the payment
24 didn't go through and no indication as to why it didn't go
25 through. And, you know, on his end it seemed like it

1 should have gone through. So let me ask Franchise Tax
2 Board, with what's been provided here and what you have on
3 your system, do you have any indication of why the payment
4 didn't go through?

5 MR. BROWN: We do not know that. I just -- it
6 doesn't indicate that on the payment screen. So I don't
7 have -- I don't understand why that is the case.

8 JUDGE JOHNSON: Okay. That's all. Thank you.

9 JUDGE VASSIGH: Thank you, Judge Johnson.

10 We are now ready to conclude this hearing. The
11 record is closed.

12 Thank you everyone for appearing today. And
13 thank you to our staff at OTA who made sure that today's
14 web hearing ran as smoothly as possible.

15 This matter is now submitted to the panel to
16 privately confer and decide the issues. We will aim to
17 send you a written opinion of our decision within
18 100 days.

19 Again, thank you everyone for all your
20 cooperation in dealing with this online experience.
21 Today's hearing in the Appeal of Morgan is now adjourned,
22 and OTA will now adjourn hearings for the day.

23 Thank you very much. Have a good day.

24 (Proceedings adjourned at 1:30 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 1st day
of November, 2021.

ERNALYN M. ALONZO
HEARING REPORTER