

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
BRYAN WU AND THY TRAN,) OTA NO. 19125538
)
)
 APPELLANTS.)
_____)

CERTIFIED COPY

VIRTUAL TRANSCRIPT OF PROCEEDINGS

State of California

Thursday, December 16, 2021

Reported by:

SHELBY K. MAASKE
Hearing Reporter

Job No. :
34631 OTA(B)

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1 appellants, Mr. Wu and Ms. Tran.
 2 JUDGE RALSTON: Okay. And for Respondent,
 3 Franchise Tax Board, please, state your name for the
 4 record and who you are.
 5 MS. SWAIN: Good morning. My name is
 6 Ellen Swain. I represent the respondent.
 7 JUDGE RALSTON: Thank you.
 8 The issue to be decided in this appeal is whether
 9 appellants have established a reasonable cause for
 10 abatement of the late payment penalty. Appellant has
 11 submitted Exhibits 1 through 15. Respondent has not
 12 raised any objections to Appellant's exhibits, therefore,
 13 Appellant's Exhibit 1 through 15 are admitted without
 14 objection.
 15 (Appellants' Exhibits 1 through 15 were received.)
 16 JUDGE RALSTON: Respondent has submitted
 17 Exhibits A through N, and Appellants did not raise any
 18 objections to those exhibits. Respondent's Exhibits A
 19 through N admitted without objection.
 20 (Respondent's Exhibits A through N were received.)
 21 JUDGE RALSTON: Does anyone have any questions
 22 before we move on to opening presentations?
 23 Okay. We are ready to proceed with Appellant's
 24 opening presentation.
 25 Mr. Lim, you have 20 minutes. Please begin when

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1 you are ready.
 2 MR. LIM: Mr. Lim. Thank you, Judge Ralston.
 3
 4 PRESENTATION
 5 MR. LIM: This is Michael Lim representing
 6 Appellants. The issue here today is whether Appellants
 7 have established sufficient reasonable cause for the
 8 abatement of the late filing penalty imposed on Appellants
 9 for tax year 2017. California Revenue and Taxation Code
 10 Section 19131 provides that a filing penalty must be
 11 imposed if the taxpayer fails to file a tax return by the
 12 due date unless it is shown that the failure is due to
 13 reasonable cause and not due to willful neglect.
 14 To show reasonable cause by reason of illness,
 15 you must present credible and competent proof that the
 16 circumstances of the illness prevented either the
 17 preparation or the signing of a timely return. The type
 18 of illness or debilitation that might create reasonable
 19 cause, because of severity or timing, makes it virtually
 20 impossible for the taxpayer to comply. Things like
 21 emergency hospitalization or other incapacity occurring
 22 around tax time.
 23 Illness or debilitation do not constitute
 24 reasonable cause when the difficulty caused the taxpayer
 25 to sacrifice the timeliness of one matter so that other

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1 matters could be pursued. Here, the events were extremely
 2 severe, as anyone knows who has experienced an illness or
 3 loss of a loved one.
 4 On October 2nd, 2018, Mr. Wu's mother was
 5 abruptly hospitalized due to an emergency. Her throat was
 6 blocked, and she had trouble breathing. This required
 7 Mr. Wu's mother to have a tracheostomy and a feeding tube
 8 inserted so she was able to breathe and, also, to eat.
 9 For those of you who do not know what a tracheostomy is,
 10 it is a severe procedure --
 11 JUDGE RALSTON: Mr. Lim? I apologize for
 12 interrupting. You seem to be cutting in and out a little
 13 bit. I want to make sure that we are able to get an
 14 accurate transcript, so I'm going to ask you to get a
 15 little closer to your microphone. I'll let you know if
 16 that solves the issue. I'm so sorry to interrupt, but,
 17 please, continue. Thank you.
 18 MR. LIM: I apologize. Can you hear me now?
 19 JUDGE RALSTON: Yes. Thank you.
 20 MR. LIM: Do you mind if I start at the beginning
 21 of the paragraph?
 22 JUDGE RALSTON: Please, start wherever you are
 23 comfortable.
 24 MR. LIM: Thank you.
 25 On October 2, 2018, Mr. Wu's mother was abruptly

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1 hospitalized due to an emergency. Her throat was blocked,
 2 and she had trouble breathing. This required his mother
 3 to have a tracheostomy and a feeding tube inserted for her
 4 to be able to breathe and, also, to eat.
 5 For those of you who do not know what a
 6 tracheostomy is, it is a severe procedure that is
 7 performed by creating an opening at the front of the neck
 8 so a tube can be inserted into the windpipe to help you
 9 breathe and, also, to be able to eat as liquid food is fed
 10 through the tube. If necessary, the tube can be connected
 11 to an oxygen supply and a breathing machine called a
 12 ventilator.
 13 As any good and loving son would do in a
 14 situation such as this, Mr. Wu jumped to the assistance of
 15 his mother. He would continually visit and assist his
 16 mother in the hospital until she was released nine days
 17 later on October 11, 2018. But Mr. Wu's mother's release
 18 from the hospital did not mean she was whole again. Her
 19 situation and condition were uncertain.
 20 It was a time of severe worry and stress. Mr. Wu
 21 had to step away from his work and craft as a freelancer
 22 and use his time to attend to his mother's emotional and
 23 physical needs. To add to the severity of Mr. Wu's
 24 mother's case once again hospitalized, and was diagnosed
 25 with throat cancer on October 31, 2018.

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1 if reasonable cause existed, is really out of parity to
 2 all taxpayers to the State of California because we are
 3 using the uniform standard.

4 During this time, Ms. Tran worked for the Jewish
 5 Community Center in San Francisco. She earned
 6 fourth-quarter wages of \$1,650.00 in 2018, and
 7 first-quarter wages of \$3,350.00 in 2019. The appellant's
 8 wife, she was employed outside of the home at the same
 9 time the appellants were saying they didn't have the
 10 bandwidth to file their California tax return.

11 This is an example of prioritizing one activity
 12 over another, which, let me emphasize, is certainly a
 13 taxpayer's choice. It's one that is going to result in
 14 the imposition of the penalty and the inability to raise a
 15 reasonable-cause argument to excuse its late filing. And
 16 Appellants have failed, here, to show reasonable cause
 17 existed for appellant wife by virtue of the fact that she
 18 was working.

19 In addition, the appellants were able to file
 20 their federal tax return before May 6. Their federal
 21 return, according to the federal tax transcript that's
 22 provide at Exhibit N, was filed on March 18, 2019, and
 23 they received a refund in the amount of \$4,411.00. In
 24 light of the fact that the appellants were able to file
 25 their federal on March 18, they have not established a

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1 reasonable cause existed for the later, May 6, 2019,
 2 California filing.

3 And, finally, Appellants themselves give us
 4 another window in the motivation behind their late filing
 5 in the supplemental brief at page 7. It had been their
 6 practice in 2013 and 2014 to, essentially, eyeball their
 7 tax liability and file the returns after the extended due
 8 date, because they had overpaid their tax liability and
 9 would be expecting a refund, and, therefore, because there
 10 was a refund, there would not have been a consequence for
 11 the late filing. There would be no penalty.

12 This is quote from the brief. "Mr. Wu was under
 13 the impression that he had overpaid for the 2017 tax year
 14 like he usually does and was expecting a refund and,
 15 therefore, was not worried about the delay in his tax
 16 filing. This was an honest accounting mistake, not a
 17 malicious nor wilfully neglectful." That is in the quote.
 18 But it's also not reasonable and ordinary business
 19 prudence. We have case law that says a mistake does not
 20 excuse a late filing.

21 Let me read that pertinent quote again. "Mr. Wu
 22 was under the impression that he had overpaid for the 2017
 23 tax year like he usually does and was expecting a refund
 24 and, therefore, was not worried about the delay in his tax
 25 filing."

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1 Now, this is a risky practice of eyeballing a tax
 2 liability, particularly in light of the fact that Mr. Wu
 3 has his own business. The income is not going to be as
 4 predictable as if he were a W-2 salaried employee with a
 5 regular paycheck. This is not an exercise of reasonable
 6 and prudent business practice.

7 The risk is that in this eyeballing, you might be
 8 incorrect, then when you do calculate the filing return on
 9 May 6, 2019, you will have tax overdue and you will be
 10 assessed a late filing penalty based on the overdue tax,
 11 which is exactly what happened in the case. Instead, it's
 12 a mistake. And a mistake is not reasonable cause.

13 Furthermore, the fact that Ms. Tran worked
 14 outside the home and that the couple were able to file
 15 their federal joint return on March 18, 2019, shows that
 16 they were over-prioritizing other activities over filing
 17 their California return. Appellants have failed to carry
 18 their burden to establish reasonable cause existed for the
 19 entire period until May 6, 2019, and Respondent's actions
 20 should be upheld.

21 JUDGE RALSTON: Thank you, Ms. Swain.
 22 Judge Hosey, did you have any questions?
 23 JUDGE HOSEY: No questions. Thank you.
 24 JUDGE RALSTON: And Judge Vassigh, did you have
 25 any questions?

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1 JUDGE VASSIGH: I do not. Thank you.
 2 JUDGE RALSTON: Mr. Lim, you have 10 minutes for
 3 your rebuttal if you would like?
 4 MR. LIM: Thank you, Judge Ralston.
 5
 6 CLOSING STATEMENT
 7 MR. LIM: In response to Ms. Swain's assertions,
 8 I would first ask her -- she claims that what we had
 9 presented was not valid or reasonable. And in response, I
 10 would like to ask if this is unreasonable -- if this isn't
 11 valid --
 12 JUDGE RALSTON: Mr. Lim, this is Judge Ralston
 13 again. We have lost you. Can you try speaking again so I
 14 can see if you're there?
 15 MR. LIM: I apologize.
 16 JUDGE RALSTON: Please, go ahead. You can start
 17 over with your rebuttal if you'd like.
 18 MR. LIM: Thank you, Judge Ralston.
 19 In response to Ms. Swain's assertions, I'd first
 20 ask her, When your mother is dying of cancer, what is
 21 reasonable to you, and what would be valid if this is not?
 22 We are not robots. The case here is about
 23 reasonable cause, not about perfection. There was a huge
 24 human element in this. It wouldn't be anything but
 25 reasonable to spend all the time that the appellants could

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1 in aid of Mr. Wu's sick mother.

2 To address what Ms. Swain said in regards to

3 Mr. Wu's wife working. We can't live without money. We

4 need money to live. Mr. Wu had the obligation and the

5 duty to attend to his mother's health, and to do so, he

6 had to step away from working and had to give up income.

7 Mr. Wu's wife, and Mr. Wu as well, is a

8 freelancer. She had certain obligations, certain

9 commitments, to fulfill in terms of the exhibits that

10 Ms. Swain presented, but she also had to step away and

11 assist Mr. Wu emotionally and in other ways as well, while

12 also meeting the commitments that she had to at work.

13 In addition to that, we can see that the work

14 that she did do here presented in the exhibits didn't

15 produce much income at all. But it was necessary income

16 in order for them to be able to support themselves. So it

17 was just a matter of necessity. People need money to

18 live. People need financial support, as well as emotional

19 support. That, Ms. Tran was able to do for Mr. Wu during

20 this troublesome time.

21 To wrap it up, I would just like to, in

22 conclusion, if we could all step into Mr. Wu's shoes and

23 imagine the unimaginable. Something I pray none of us

24 have to go through. But when your own mother is suffering

25 and passing in front of you, that desperate and helpless

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1 situation, what would you consider to be reasonable, and

2 what would you do? Thank you.

3 JUDGE RALSTON: Thank you, Mr. Lim.

4 I do have a question. Is there any reason why

5 Ms. Tran could not have filed the return on time?

6 MR. LIM: To answer your question, Judge Ralston,

7 I would respond to that. I would say there's only so many

8 hours in a day. Typically, Mr. Wu filed the taxes, and as

9 he was tending to his mother's health and needs, you know,

10 Ms. Tran was doing all she could to support the family and

11 also meet her obligations as well. And again, the

12 standard that we are basing this case off of today is

13 reasonableness and not perfection.

14 JUDGE RALSTON: Thank you, Mr. Lim.

15 Judge Hosey, did you have any questions?

16 JUDGE HOSEY: I have no questions. Thank you.

17 JUDGE RALSTON: And Judge Vassigh, did you have

18 any questions?

19 JUDGE VASSIGH: I do have a question for Mr. Lim.

20 Mr. Lim, I was wondering if you have any

21 information you can share with us about the federal tax

22 returns that were filed and why that same information was

23 not used to file the state returns at that time?

24 MR. LIM: Thank you, Judge Vassigh, for your

25 question.

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1 To clarify -- to make sure I understand

2 correctly. Are you referring to his extension within his

3 filing? Could you, please, clarify the question for me?

4 JUDGE VASSIGH: Sure. My understanding was that

5 Appellants were able to file their federal tax return.

6 Did I misunderstand that?

7 MR. LIM: My understanding is that Mr. Wu

8 typically overpays his taxes and, typically, files for an

9 extension; and, so, to my understanding, he did not file

10 his federal tax return in April as well.

11 JUDGE VASSIGH: Thank you for clarifying that.

12 MS. SWAIN: May I be heard, Judge Ralston?

13 JUDGE RALSTON: Ms. Swain, please, go ahead.

14 MS. SWAIN: I just wanted to clarify the facts.

15 So the date of the federal return transcript -- I just

16 wanted to draw your attention to that -- that was on

17 Exhibit N. That one shows the date that the federal

18 return was actually filed on March 18, 2019. Thank you.

19 JUDGE RALSTON: Thank you, Ms. Swain. It looks

20 like we are ready to conclude this hearing. This case is

21 submitted on December 16, 2021, at 10:07 a.m. Today's

22 hearing in the appeal of Wu and Tran is now adjourned and

23 the record is closed.

24 (Proceedings concluded at 10:07 a.m.)

25

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HEARING REPORTER'S CERTIFICATE

1

2

3 I, Shelby K. Maaske, Hearing Reporter in and for

4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was

6 taken before me at the time and place set forth, that the

7 testimony and proceedings were reported stenographically

8 by me and later transcribed by computer-aided

9 transcription under my direction and supervision, that the

10 foregoing is a true record of the testimony and

11 proceedings taken at that time.

12 I further certify that I am in no way interested


13 in the outcome of said action.

14 I have hereunto subscribed my name this 26th day

15 of December, 2021.

16

17

18 

19 Shelby K. Maaske,
Hearing Reporter

20 SHELBY K. MAASKE

21

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