

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
1 STOP POOL PROS #5, INC.,) OTA NO. 21057872
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, March 30, 2022

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,)
)
1 STOP POOL PROS #5, INC.,) OTA NO. 21057872
)
APPELLANT.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:00 p.m. and concluding at 1:18 p.m. on
Wednesday, March 30, 2022, 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 MIKE LE
Panel Members:	ALJ NATASHA RALSTON ALJ ANDREW WONG
For the Appellant:	BRIAN A. BENTSON
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD SARAH 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 1-4 were previously received at the prehearing conference.)

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

(Department's Exhibit E was received at page 6.)

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

P A G E

By Mr. Bentson	7
By Ms. Fassett	10

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

P A G E

By Mr. Bentson	15
----------------	----

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; Wednesday, March 30, 2022

1:00 p.m.

JUDGE LE: We are opening the record in the Appeal of 1 Stop Pool Pros #5, Inc. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 21057872. Today's date is Wednesday, March 30th, 2022, and the time is approximately 1:00 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 Mike Le, and I will be the lead judge. Judge Natasha Ralston and Judge Andrew Wong are the other members of this tax appeal panel. All three judges will meet after the hearing and produce a written opinion as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure we have all the information needed to decide this appeal.

Now for introductions. For the record, will the parties please state their name and who they represent, starting with Respondent Franchise Tax Board.

MS. FASSETT: This is Sarah Fassett representing the Franchise Tax Board.

JUDGE LE: Thank you, Ms. Fassett.

1 MS. KENT: This is Cynthia Kent representing the
2 Franchise Tax Board.

3 JUDGE LE: Thank you, Ms. Kent.

4 This is Judge Le. And for Appellant?

5 MR. BENTSON: This is Brian Bentson, CPA
6 representing 1 Stop Pool Pros #5, Incorporated.

7 JUDGE LE: Thank you, Mr. Bentson.

8 This is Judge Le. Let's move on to my minutes
9 and orders. As discussed with the parties at the
10 prehearing conference on March 9, 2022, and noted in my
11 minutes and orders, the issue in this matter is whether
12 Appellant has established reasonable cause to abate the
13 late-payment penalty for the 2019 tax year. No witnesses
14 will testify at this hearing for either party.

15 Appellant's Exhibits 1 through 4 were entered
16 into the record in my minutes and orders. Respondent's
17 Exhibits A through D were also entered into the record in
18 my minutes and orders on March 15, 2022. Respondent
19 timely submitted an additional exhibit, which is a federal
20 account transcript. Appellant did not submit any
21 objection, so this exhibit is also entered into the record
22 as Exhibit E.

23 (Department's Exhibit E was received in
24 evidence by the Administrative Law Judge.)

25 This oral hearing will begin with Appellant's

1 presentation for up to 10 minutes. Does anyone have any
2 questions before we begin?

3 Starting with Franchise Tax Board, do you have
4 any questions.

5 MS. FASSETT: This is Sarah Fassett. I have no
6 questions, Judge Le.

7 JUDGE LE: Thank you, Ms. Fassett.

8 MS. KENT: This is Cynthia Kent. No questions.
9 Thank you.

10 JUDGE LE: Thank you very much.

11 This is Judge Le. And for Appellant Mr. Bentson,
12 do you have any questions before you begin?

13 MR. BENTSON: Brian Bentson. No questions.
14 Please proceed.

15 JUDGE LE: Thank you. Okay. Mr. Bentson, you
16 have up to 10 minutes for your presentation starting at
17 1:03 p.m. Please proceed.

18 MR. BENTSON: Thank you, Judge Le.

19

20 PRESENTATION

21 MR. BENTSON: First and foremost, I'd like to
22 thank everybody for their time and attention to this
23 matter. We saw it as a small matter, but it was important
24 to our client that this was a result of a couple of
25 different issues that were changing rapidly during the

1 date and administrative changes for the filing and payment
2 of tax returns during the initial stages of the pandemic.

3 The tax software which we rely upon did not keep
4 step with the changes that were made. And when the
5 initial instructions were sent to the client, they
6 indicated a payment -- even though the tax return was
7 going to be filed shortly after the extension, the
8 instructions indicated that a payment date was not due
9 until October 15th of the same year.

10 Upon discovering the error in the software and in
11 the instructions, the taxpayer made the payment in August
12 of 2020 immediately upon learning upon the fact pattern
13 not being accurate. We sent a letter in May of 2021 to
14 the Franchise Tax Board and the Office of Appeals trying
15 to explain that this penalty was on a small business that
16 has a clean prior track record, that had no intention of
17 paying late, was just merely trying to follow
18 instructions.

19 And those instructions were, in fact, provided by
20 a CPA from our CPA firm, and we relied upon the tax
21 software. We didn't notice the tax software had not been
22 updated properly. So that's a summation of the facts that
23 had occurred in terms of how the liability came about, how
24 the taxpayer interpreted that liability, how he was
25 instructed to pay it, and how he corrected the situation

1 upon discovering the error.

2 We feel that the penalty would be punitive to the
3 taxpayer as it is a small business that struggles to meet
4 its day-to-day obligations. The taxpayer paid its tax on
5 time and paid any interest that was due as a result of the
6 payment being after the deadline. And for those reasons,
7 we think the penalty is extraordinary and meets the
8 standard for relief because of changes that American
9 taxpayers have never encountered in my lifetime and this
10 taxpayer's lifetime.

11 Thank you.

12 JUDGE LE: This is Judge Le. Thank you,
13 Mr. Bentson, for your presentation.

14 Let me turn to my ALJ panel to see if they have
15 any questions for you. Turning first to Judge Ralston.
16 Do you have any questions for Appellant?

17 JUDGE RALSTON: This is Judge Ralston. I don't
18 have any questions. Thank you.

19 JUDGE LE: Thank you.

20 This is Judge Le. Turning now to Judge Wong. Do
21 you have any questions for Appellant?

22 JUDGE WONG: This is Judge Wong. I did have just
23 a couple of questions. How did the taxpayer discover that
24 there was -- when the deadline was, if you know?

25 MR. BENTSON: This is Brian Bentson. That's a

1 good question, Your Honor. I believe that it was an
2 iteration of things that were changing under our very feet
3 at the time. And it might have been we were told about
4 the correction based upon other clients that were
5 receiving the same information. As you know, a CPA firm
6 handles many, many corporate partnerships and individual
7 clients. And I think during the evolution of the changes
8 that were being made, we became aware of the error and
9 brought it to the attention of our client.

10 JUDGE WONG: This is Judge Wong. I have no
11 further questions. Thank you.

12 JUDGE LE: This is Judge Le. Thank you,
13 Judge Wong.

14 I have no questions at this time. So let's go
15 ahead and turn it over to the Respondent, Franchise Tax
16 Board, for their presentation. You have up to 10 minutes
17 starting now at 1:07 p.m. Please proceed. Thank you.

18
19 PRESENTATION

20 MS. FASSETT: This is Sarah Fassett. So good
21 afternoon. As I mentioned my name is Sarah Fassett. I,
22 along with Cynthia Kent, represent the Franchise Tax Board
23 or FTB. As Judge Le indicated we are here to discuss the
24 only one issue, and that is whether Appellant has
25 established its late payment of taxes is due to reasonable

1 cause.

2 Because Appellant did not timely pay its tax for
3 the 2019 tax year, Franchise Tax Board properly imposed a
4 late-payment penalty pursuant to Revenue & Taxation Code
5 Section 19132. For the reasons set forth in FTB's opening
6 brief, as well as what I'm going to discuss today, FTB's
7 action should be sustained.

8 It is well established that when FTB imposes a
9 penalty, the law presumes the penalty is correctly
10 imposed, and Appellant bears the burden of proving that
11 FTB's determination is incorrect. A properly imposed
12 late-payment penalty may only be abated if the taxpayer
13 establishes with credible and competent evidence that the
14 failure to timely pay their tax was due to reasonable
15 cause and not due to willful neglect. Unsupported
16 assertions are never sufficient to satisfy a taxpayer's
17 burden.

18 In this case Appellant has not met its burden.
19 Appellant does not contest whether the late-payment
20 penalty was properly imposed or computed, rather,
21 Appellant asserts that reasonable cause exist to abate the
22 penalty. Appellant argues that it relied on its tax
23 preparer's incorrect filing instructions on when to pay
24 its tax liability for the 2019 tax year. The tax
25 preparer's firm attributes its mistake to providing an

1 incorrect due date to its tax software and the pandemic.

2 Appellant's preparer argues that its tax
3 software's erroneous filing instructions for Appellant's
4 California tax return was caused by a software glitch that
5 they attribute to the changing of the due date by the
6 taxing authorities in response to the Covid-19 pandemic.
7 Appellant or preparer have not provided what the federal
8 filing instructions gave as a due date. But as seen in
9 FTB's Exhibit E, Appellant filed its 2019 federal return
10 on June 1st, 2020, and paid its federal tax timely on
11 July 15th, 2020. Thus, there was no late-payment penalty
12 at the federal level.

13 Appellant's argument concerning its reliance on
14 its tax preparer's instructions to timely pay its tax does
15 not establish its failure to timely pay was due to
16 reasonable cause. The Supreme Court in the United States
17 versus Boyle, which explain that one does not have to be a
18 tax expert to know that tax returns have filing dates and
19 that taxes must be paid when they are due. The Court went
20 on to explain that reliance by a lay person on an agent
21 is, of course, common. But that reliance cannot function
22 as a substitute for compliance with and unambiguous
23 statute.

24 As discussed in Boyle and in the precedential
25 opinion by this office, the Appeal of Summit Hosting, LLC,

1 and some very limited cases with certain conditions met,
2 if taxpayer relies on improper substantive advice of an
3 accountant or tax attorney as to a matter of tax law, such
4 as whether the taxpayer has a tax liability, failing to
5 pay the tax shown on the return by the due date may be
6 considered reasonable cause if certain conditions are met.

7 However, as is the case here, advice on a due
8 date of a payment of tax is not a question of substantive
9 tax law. So even if Appellant sincerely relied on its
10 preparer's filing instructions as to when to timely pay
11 its tax, that reliance will not establish reasonable
12 cause. Further, Appellant's reliance on its tax preparer
13 cannot and does not replace Appellant's personal and
14 non-delegable duty to pay its tax by the due date.

15 Appellant's preparer's unsubstantiated arguments
16 that a software glitch caused the filing instructions to
17 show a due date of October 15th, 2020, instead of
18 July 15th, 2020, and which Appellant relied upon as the
19 due date for its payment of tax also does not establish
20 reasonable cause. Appellant or its preparer have not
21 established a software glitch existed or that the due date
22 on the filing instructions responds to a payment due date
23 as opposed to a filing due date.

24 October 15th has long been recognized as -- has
25 been a long recognized extended due date for filing both

1 federal and state returns. And it is also well
2 established that the October 15th, filing extension has
3 not been an extension to pay tax. Additionally,
4 Appellant's California return was filed on May 12th, 2020,
5 just leaving just over two months for Appellant to make a
6 timely payment of tax before the postponed due date for
7 payments, July 15th, 2020, or for its tax preparer to fix
8 their misunderstanding of the payment due date for the
9 2019 tax year.

10 A simple internet search shows that starting on
11 March 18th, 2020, both the IRS and the FTB made multiple
12 efforts to announce the extended due date in response to
13 the pandemic, and that once the payment and filing due
14 date was changed for the 2019 tax year in mid-March 2020,
15 those dates did not further change. Appellant has not
16 established that its failure to timely pay its tax was due
17 to reasonable cause unless it is not established
18 entitlement to abatement of the late-payment penalty.

19 Therefore, on the facts and evidence in the
20 record, Franchise Tax Board respectfully requests you
21 sustain its position. I'm happy to address any questions
22 the panel may have. Thank you.

23 JUDGE LE: This is Judge Le. Thank you,
24 Respondent, for your presentation.

25 Let me again turn to my panel to see if they have

1 any questions for Respondent.

2 Turning first to Judge Ralston, do you have any
3 questions for Respondent?

4 JUDGE RALSTON: This is Judge Ralston. No
5 questions. Thank you.

6 TH COURT: This is Judge Le. Thank you,
7 Judge Ralston.

8 Turning now to Judge Wong, do you have any
9 questions for Respondent?

10 JUDGE WONG: This is Judge Wong. I also had no
11 questions. Thank you.

12 JUDGE LE: Thank you, Judge Wong.

13 This is Judge Le. I also have no questions for
14 Respondent at this time. So now, let's turn to Appellant
15 for its rebuttal to Respondent's arguments.

16 MR. BENTSON: Yes. Thank you.

17 JUDGE LE: You have up to 10 minutes starting at
18 1:14 p.m. Please proceed. Thank you.

19 MR. BENTSON: Thank you.

20

21 CLOSING STATEMENT

22 MR. BENTSON: Brian Bentson speaking. In
23 response to the Franchise Tax Board's position, we will
24 reiterate that the taxpayer had no neglect, did not
25 willfully neglect. Covid, in fact, something new, which

1 made changes in the tax law and the dates that were relied
2 upon for decades prior to this event. And while the
3 government federal and state did publish the dates,
4 taxpayers late -- small taxpayers rely upon their service
5 providers who in turn also rely on their software to
6 promulgate the instructions so that our taxpayers are
7 compliant.

8 Our taxpayer has a history of never being late,
9 always paying in full, and on time. This -- the ambiguity
10 or the context of ambiguity is because of the particular
11 date changes that were made during the Covid period by the
12 government. It is not an absolute absorption of the first
13 time it was done that everyone subjected to these
14 standards was going to understand and absorb them.

15 Again, the taxpayer upon being told about the
16 tardiness of the payment, corrected the payment
17 immediately. That is, you know, a tremendous amount of
18 changes that were going on in a rapid period of time, and
19 the taxpayer response rate was very quick in order to
20 remedy the situation. The Franchise Tax Board brings up
21 the fact that the -- there was no federal -- that the
22 federal payment was made timely. The federal instructions
23 were correct in the software.

24 So it is an unintentional error. It is
25 accidental in its application. It was corrected in a

1 mature adult professional fashion under the circumstances
2 which were different than any other period prior to this.
3 And for those reasons we appeal to the government taxing
4 agencies that the penalty and only the penalty is the
5 problem here. We have no problem with the interest on the
6 late payment as that is the time value of money.

7 Thank you.

8 JUDGE LE: This is Judge Le. Thank you for your
9 rebuttal.

10 Let me, for a final time, turn to my panel to see
11 if they have questions for either party before we conclude
12 the hearing.

13 Turning again first to Judge Ralston, do you have
14 any final questions for either party?

15 JUDGE RALSTON: This is Judge Ralston. No
16 questions. Thank you.

17 JUDGE LE: This is Judge Le. Thank you.

18 Now turning to Judge Wong. Do you have any final
19 questions for either party?

20 JUDGE WONG: This is Judge Wong. No questions.
21 Thank you.

22 JUDGE LE: Thank you, Judge Wong.

23 This is Judge Le. I do have one question for
24 Appellant, and that's -- I was wondering if you can
25 respond to what FTB -- I think what FTB is arguing that

1 the filing instructions were unclear on whether the
2 October 15, 2020, due date was regards to a filing
3 deadline or a payment deadline?

4 MR. BENTSON: Yes. I have a copy of the
5 instructions in front of me that are -- that are somewhat
6 unclear, Judge, with regards to that. It does just say
7 due date. And we are -- and we don't take exception with
8 the fact that the taxpayer was -- I shouldn't say that.
9 We take our -- historically this taxpayer when told to
10 file timely, files and pays timely. And if the date did
11 say July 15th, initially, it would have been handled in a
12 timely fashion.

13 And it's for those reasons that the taxpayer --
14 like many in managing their capital and their cash flow --
15 looked at the October 15th date, and it said due date
16 October 15, 2020. And they relied on that date until they
17 were advised otherwise, at which time they corrected
18 immediately.

19 Thank you.

20 JUDGE LE: This is Judge Le. Thank you for
21 answering my question.

22 And with that, since there's no more questions
23 from the panel, I think we're ready to conclude this
24 hearing. This case is submitted on March 30th, 2022, and
25 the record is now closed.

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

Thank you everyone for coming in today. The judges will meet and decide your case later on, and we will send you a written opinion of our decision within 100 days.

Today's hearing in the Appeal of 1 Stop Pool Pros #5, Inc., is now adjourned. And that also concludes our hearings for this month. Thank you everyone and goodbye.

(Proceedings adjourned at 1:18 p.m.)

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 11th day
of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER