

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. PARKHURST and) OTA NO. 21088443
L. ALTIS-PARKHURST,)
)
)
) APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, April 26, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:43 a.m. and concluding at 10:06 a.m. on
Tuesday, April 26, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JOHN JOHNSON

For the Appellant: G. PARKHURST
L. ALTIS-PARKHURST

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 1-7 were received at page 7.)

(Department's Exhibits A-N were received at page 7.)

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

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California; Tuesday, April 26, 2022

9:43 a.m.

JUDGE JOHNSON: We'll go on the record. This is the Appeal of Parkhurst and Altis-Parkhurst. It is OTA Case Number 21088443. It is 9:43, April 26, 2022. This appeal is being conducted electronically led by myself, Judge Johnson, here in Sacramento, California. The appeal is being heard and decided by a single Administrative Law Judge under the Office of Tax Appeals' Small Case Program.

A reminder to today's participants and viewers that the Office of Tax Appeals is not a court but is an independent appeals body. The office is staffed by tax experts and is independent of the State's tax agencies. We do not engage in any ex parte communications with either party. Our decision will be based upon the arguments and evidence provided by the parties on appeal and in conjunction with the appropriate application of the law.

We have read the briefs and examined the submitted exhibits and are looking forward to your arguments today. We know it's taken many steps to get to this point, and we appreciate your efforts and fully respect the decision to be made on this appeal.

Let's have the parties, representatives,

1 introduce themselves for the record. We'll start with
2 Appellants.

3 MRS. PARKHURST: I'm Lora Altis-Parkhurst.

4 MR. PARKHURST: I'm Gordon Parkhurst.

5 JUDGE JOHNSON: This is Judge Johnson. Thank
6 you.

7 And Franchise Tax Board.

8 MR. BROWN: I'm Eric Brown, California Franchise
9 Tax Board.

10 MS. BROSTERHOUS: I'm Maria Brosterhous, also of
11 the Franchise Tax Board.

12 JUDGE JOHNSON: This is Judge Johnson. Thank
13 you. The issues we have today are whether Appellant's
14 have shown error in Respondent's proposed assessment of
15 additional tax, which is based on federal assessment; and
16 whether any amount at issue on appeal has been satisfied
17 by Respondent's collection activity.

18 May I ask, Appellants, do those issues sound
19 correct to you?

20 MRS. PARKHURST: Yes, they do.

21 JUDGE JOHNSON: Okay. Great. And just to
22 rephrase this, the question is whether the amount being
23 proposed by FTB is correct and, if so, whether any of that
24 amount has already been paid by amounts you've been -- had
25 collected from Franchise Tax Board.

1 Franchise Tax Board, do those issues sound
2 accurate to you?

3 MR. BROWN: Yes, it does.

4 JUDGE JOHNSON: All right. Thank you. This is
5 Judge Johnson. With their briefing and response to the
6 prehearing conference minutes and orders, Appellants have
7 provided exhibits labeled 1 through 7. Respondent has
8 provided exhibits labeled A through N. There were no
9 objections made to those exhibits, and the exhibits are
10 hereby admitted as evidence into the record.

11 (Appellant's Exhibits 1-7 were received
12 in evidence by the Administrative Law Judge.)

13 (Department's Exhibits A-N were received in
14 evidence by the Administrative Law Judge.)

15 At this time we're ready for the parties to
16 present their case and arguments.

17 Let me ask if there are any questions before you
18 provide your presentation, Appellants?

19 Okay. I see heads shaking. And feel free to
20 reply verbally so that -- with our stenographer and on the
21 record as well.

22 JUDGE JOHNSON: All right. So now is going to be
23 the time when you have 10 minutes where you can provide
24 anything you would like to provide, anything that's
25 factual, arguments. Just basically tell your story to us,

1 and why we should find in your favor. You can also --
2 please feel free to summarize or read any of that one-page
3 additional brief that you provided outside the briefing
4 schedule. And before we do that, I'm going to go ahead
5 and swear you in, so that any kind of facts that you
6 provide to us we can consider as evidence to be weighed
7 against the record.

8 So if you can, please, Mr. Parkhurst and
9 Mrs. Altis-Parkhurst, raise your right hand.

10

11

GORDON PARKHURST,

12

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

15

16

LORA ALTIS-PARKHURST,

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

20

21

JUDGE JOHNSON: Okay. I heard a yes from both of
22 you. With that, if you're ready, please begin. And you
23 have 10 minutes.

24

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25

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1 and that we continue to pay on taxes before the audit was
2 even done -- until the audit was done, and that there is,
3 from the 2011 and 2012 tax period that we had paid the FTB
4 an excess of \$35,000 for tax penalties that really weren't
5 even due.

6 And this is on -- I'm sorry -- exhibit --
7 sorry -- we also feel that it should be recognized that
8 in -- in 2011, 2012, taxes that there was a sale of a
9 business that I was connected to, and that it was -- I
10 apologize -- that the -- that it was for \$850,000, which
11 Anthony Hake had included in his documents, had not taken
12 place that was not in our bank accounts. They traced that
13 all the way through. And so that these additional taxes
14 that were assessed were not appropriate, as the transfer
15 of money had never come to fruition, and that the tax
16 liability was reduced by \$650,000.

17 So that -- prior to the exoneration from Anthony
18 Hake that there was a tax liability was assessed for the
19 2011, 2012 original audit, there was payments made to the
20 FTB in 2014 for the amount of \$11,550 and \$5,643, totaling
21 \$17,193 which -- as well as an additional levy that was
22 placed against our Union Bank account, and which the bank
23 verifies this letter that \$5,162.1 in assets was forwarded
24 to the FTB.

25 These total payments of \$22,355.21 to the FTB

1 should have been refunded to us in whole with the findings
2 from the Tax Advocacy audit. These monies have not been
3 refunded and would, in fact, surpass any additional taxes
4 of the \$2,129 that the FTB now claims almost 11 years
5 later as due.

6 MR. PARKHURST: All the monies -- Gordon
7 Parkhurst. All the monies that the FTB had taken from us,
8 while the IRS audit of the 2011, 2012 tax years was
9 ongoing, I feel need -- that our position is those monies
10 need to be returned to the taxpayer. We put -- we paid
11 \$100 in one year -- like, I forget what year it was --
12 2013, and \$285 for another year that adds up to \$1,000,
13 and then the other one adds up to \$2,850. There's a lot
14 of monies that the FTB took from us during those -- during
15 the audit of the IRS, and we feel that those monies need
16 to be returned to the taxpayer.

17 MRS. PARKHURST: I believe that's all we have to
18 say at this point.

19 JUDGE JOHNSON: This is Judge Johnson. Thank
20 you.

21 I think we had some new facts there regarding
22 amounts paid, et cetera. And since we have that as
23 testimony coming in as evidence, I'll just ask Franchise
24 Tax Board, did you have any new questions about any facts
25 that were presented?

1 MR. BROWN: No, Judge. I think our presentation
2 covers the amounts paid during the respective tax years.

3 JUDGE JOHNSON: Thank you. With that, Franchise
4 Tax Board, are you ready to present?

5 MR. BROWN: I'm ready.

6 JUDGE JOHNSON: Please do so.

7 MR. BROWN: Thank you.

8

9 PRESENTATION

10 MR. BROWN: Good morning. I'm Eric Brown, Tax
11 Counsel with the Franchise Tax Board. With me is Maria
12 Brosterhous, also tax counsel with the Franchise Tax
13 Board.

14 This is a federal action. The tax year is 2011.
15 The Internal Revenue Service audited Appellants' federal
16 tax return and made several adjustments, including
17 addition of a \$500,000 capital gain involving sale of
18 stock in Appellants' business. There were several other
19 adjustments consisting of disallowed deductions from
20 Schedule C. The IRS reported the changes to the Franchise
21 Tax Board. And based on the federal adjustments, FTB
22 proposed additional taxes and imposed an accuracy-related
23 penalty.

24 Thereafter, Appellants sought reconsideration of
25 IRS's audit results, and the IRS reversed the \$500,000

1 capital gain. The IRS subtracted the \$500,000 amount from
2 Appellants' federal taxable income and also removed the
3 federal accuracy-related penalty. The IRS made no other
4 adjustments.

5 In December 2018, following its receipt of
6 information regarding the IRS' reversal of the \$500,000
7 capital gain, FTB likewise revised its position and
8 removed the \$500,000 capital gain from Appellant's taxable
9 income. FTB also removed the accuracy-related penalty.
10 However, since the IRS did not revise its adjustments to
11 Schedule C, FTB's revised position also did not include
12 any other adjustments. FTB's revised position is set
13 forth in the July 20, 2021, Notice of Action from which
14 Appellants appealed.

15 In their appeal brief, Appellant indicated they
16 did not dispute FTB's revised position and did not argue
17 that FTB erred by making adjustments to Appellant's
18 California tax liability based on IRS' adjustments to
19 their federal tax return. Instead, Appellants assert
20 without evidence that the FTB, quote, "Wrongfully seized,"
21 unquote, \$500,162.21 from their bank account in connection
22 with collection activities involving tax year 2011 and
23 seek a creditor offset against the balance demanded in the
24 NOA.

25 However, examination of Appellants' account for

1 2011 shows that there was no bank levy and no collection
2 activity. This is shown in the 2011 accounting period
3 detail attached to Respondent's opening brief as
4 Exhibit B. And, additionally, attached as Exhibit J to
5 Respondent's opening brief is an order to withhold
6 personal income tax dated February 2, 2016, sent to
7 Appellants' bank stating on its face that the tax years
8 are 2012 and 2013, not 2011.

9 To reiterate, the only tax year at issue on
10 appeal is 2011. Anything that happened in 2012 or 2013 is
11 not pending before the OTA in this appeal. The levy on
12 funds at Appellants' bank account involve tax years 2012
13 and 2013, not 2011, and thus have no relevance in the
14 present appeal. It is Appellants' burden to show that the
15 Franchise Tax Board erred in proposing an assessment of
16 additional tax based on federal action. It is well
17 settled that Appellants' burden requires evidence, not
18 unsupported assertions.

19 Absent, uncontradicted, credible, and competent
20 and relevant evidence showing that Respondent's
21 determination is incorrect, the proposed assessment must
22 be upheld. Appellants have not shown that the proposed
23 assessment of additional tax is incorrect.

24 I will be happy to answer any questions the panel
25 might have.

1 the FTB but the IRS also was collecting thousands and tens
2 and thousands of dollars while the audit was ongoing.

3 And it is my position -- it is our position that
4 those monies that was taken during that audit for 2011 and
5 2012 need to be returned to the taxpayer. And we have all
6 the documents. We have all the check stubs. We have all
7 the payments, the yearly payments, \$100 payments, \$285
8 payments, \$11,550 and so forth. And the monies that were
9 taken from the Union Bank when it was levied by the FTB,
10 yes, it was 2013, 2012, but it was done under the IRS
11 audit when it was ongoing.

12 And since the audit has been ruled in our favor,
13 those -- those monies need to be returned to the taxpayer.
14 And, yes, those years are relevant. It's not just for
15 2011. And the one in 2011 the FTB says that we still owe,
16 because the audit was ruled in our favor, we feel that
17 those monies need to be rescinded.

18 JUDGE JOHNSON: This is Judge Johnson. Thank
19 you, Mr. Parkhurst.

20 Anything else you would like to add from either
21 of you, Mrs. Parkhurst or Mr. Parkhurst?

22 MRS. PARKHURST: I do understand what -- that
23 Mr. Brown was saying, and we do understand about the 2011
24 and the penalty that you're assessing at this time, but
25 it's -- I feel that there's been a very narrow view of

1 this audit. We believe it's a very narrow view of how
2 this audit was interpreted, not only by the IRS but the
3 FTB.

4 These additional monies that were assessed
5 before -- because of a business, there was never a stock
6 sale. That's been repeated over and over again. And the
7 documents that were given to the FTB and to the IRS
8 throughout the audit, there was never an exchange of
9 monies. And so that's been shown over and over again as
10 well. And that it's -- so to not recognize that this goes
11 beyond this limited time frame that monies that were paid
12 possibly in another year but overpaid as not being
13 recognized nor being returned by either agency, but rather
14 just being held and saying, "Oh, you owe more on this time
15 or more on that time."

16 And so we do ask that it be viewed in a little
17 bit broader scope than what's being allowed right now.

18 JUDGE JOHNSON: This is Judge Johnson. Thank
19 you.

20 I think I might just have one question for
21 Franchise Tax Board. I note that the order to withhold
22 was in 2016. At that time -- let's see. I believe it was
23 actually -- the order to withhold was made before the NPA
24 for 2011 tax year came out. The 2000 tax year -- the 2011
25 tax year is still before, so it's obviously not the final.

1 Would FTB be trying to collect on the 2011 year
2 specifically, if the proposed assessment was not yet
3 final?

4 MR. BROWN: Thank you, Judge. And this is Eric
5 Brown, Franchise Tax Board. The order to withhold had
6 nothing to do with year 2011. In fact, it had to do with
7 tax years 2012 and 2013.

8 JUDGE JOHNSON: This is Judge Johnson. Thank
9 you. And going back to Appellants' question there as far
10 as kind of viewing this more basically to audit the
11 payments, all three years at issue, and only 2011 is
12 before us. So that we kind of are kind of narrowed down
13 to that. But is there any record, or do you have any
14 knowledge of any of the payments that were received for
15 2012 or 2013, during this time period? Were any of those
16 payments transferred over to 2011?

17 MR. BROWN: I'm sorry. Is that for Franchise Tax
18 Board?

19 JUDGE JOHNSON: That's for Franchise Tax Board,
20 yes.

21 MR. BROWN: Oh, I'm sorry. No, Judge, they were
22 not transferred to 2011.

23 JUDGE JOHNSON: Okay. Thank you very much. This
24 is Judge Johnson.

25 With that, let me ask one more time before I kind

1 of wrap up this hearing and conclude it, any final
2 questions or comments from Franchise Tax Board?

3 MR. BROWN: No, Your Honor. Only that there's no
4 penalty that's pending, and it's 2011. And the accounting
5 period detail and the detail regarding the payment is in
6 the record, and we just direct the Panel's attention to
7 those items.

8 JUDGE JOHNSON: This is Judge Johnson. Thank
9 you.

10 Any final questions or comments on the
11 Appellants' side?

12 MRS. PARKHURST: No, we have no further questions
13 or comments. Thank you.

14 JUDGE JOHNSON: This is Judge Johnson. Thank you
15 very much.

16 So we have the evidence that has been admitted
17 into the record, and we have the arguments and your
18 briefs, as well as your oral arguments and testimony
19 presented today. We now have a complete record from which
20 to base our decision.

21 I wish again to thank both parties for their
22 efforts in this matter. This will conclude the hearing
23 for the appeal. The parties should expect a written
24 opinion no later than 100 days from today.

25 And with that, we're now off the record.

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(Proceedings adjourned at 10:06 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 16th day of May, 2022.

ERNALYN M. ALONZO
HEARING REPORTER