

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. PRIYADARSHI and A. PRIYADARSHI,) OTA NO. 21088419
)
APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, June 29, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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S. PRIYADARSHI and A. PRIYADARSHI,) OTA NO. 21088419
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:29 a.m. and concluding at 9:47 a.m. on
Wednesday, June 29, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ ASAF KLETTER
ALJ SHERIENE RIDENOUR

For the Appellant: S. PRIYADARSHI

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ALISA PINARBASI
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 7.)
(Department's Exhibits A-M were received at page 7, and
Exhibit N was received at page 9.)

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

	<u>P A G E</u>
By Mr. Priyadarshi	9
By Ms. Pinarbasi	12

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

	<u>P A G E</u>
By Mr. Priyadarshi	16

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California; Wednesday, June 29, 2022

9:29 a.m.

JUDGE LEUNG: This is Appeal Number 21088419, Appeal of Priyadarshi for the tax year 2021. Today is June 29th, 2022. It's approximately 9:35 a.m.

Good morning. Please introduce yourselves for the record, starting with you, Mr. Priyadarshi.

MR. PRIYADARSHI: Yes. So good morning, Judges, and good morning, everyone. Thanks for giving me this opportunity to present my case here. You have seen the exhibit. My appeal to the Court is, I had the right intention to pay all the --

JUDGE LEUNG: Please, Mr. Priyadarshi, just introductions. So we'll get into your case in a few minutes. So --

MR. PRIYADARSHI: Okay. Sorry.

JUDGE LEUNG: -- let's let the Franchise Tax Board introduce themselves first. Thank you.

MS. PINARBASI: Good morning. This is Alisa Pinarbasi, Tax Counsel for the Franchise Tax Board.

JUDGE LEUNG: Good morning.

MS. BROSTERHOUS: And Maria Brosterhous also of the Franchise Tax Board.

JUDGE LEUNG: Good morning. And I'm Judge Tommy

1 Leung. With me is Judge Sheriene Ridenour. Good morning,
2 Judge Ridenour.

3 JUDGE RIDENOUR: Good morning.

4 JUDGE LEUNG: And good morning to Judge Kletter.

5 JUDGE KLETTER: Good morning.

6 JUDGE LEUNG: Okay. Thank you.

7 And the three of us will be deciding your case,
8 Mr. Priyadarshi. We each have an equal say in deciding
9 your case. This will be your panel for this appeal. And,
10 Mr. Priyadarshi, I'll let you start in a minute, but first
11 I need to get you sworn in. So would you please raise
12 your right hand and repeat after me.

13

14 SUDHANSHU PRIYADARSHI,

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

18

19 JUDGE LEUNG: Thank you. And you have 10 minutes
20 for your presentation. After your presentation, the
21 Franchise Tax Board and/or the Judges may have questions
22 for you. After that, the Franchise Tax Board has 10
23 minutes, and then the Judges will have questions for the
24 Franchise Tax Board. And then after that,
25 Mr. Priyadarshi, you have the final say for about 5

1 minutes.

2 Before we go into that, I will admit into the
3 record Exhibits A through M, as in Mary, for the Franchise
4 Tax Board. I will admit into the order, order -- three
5 exhibits from the taxpayer: Number 1, being the request
6 for reasonable cause, the refund. Number 2, being the
7 FTB's denial of the refund; and Number 3, being a
8 declaration from Mr. Priyadarshi to somebody named Debra
9 at the Franchise Tax Board, dated August 12, 2021.

10 (Appellant's Exhibits 1-3 were received
11 in evidence by the Administrative Law Judge.)

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

14 This issue for the decision this morning, whether
15 the electronic -- the mandatory electronic penalty should
16 be imposed, and whether interest should be abated. We do
17 have one late submission from the Franchise Tax Board,
18 Exhibit N. A little background about this exhibit. We --
19 I had issued an instruction back in April -- about April
20 28th, directing the parties to provide declarations on or
21 before May 31st, 2022, and also include a list of -- be
22 prepared to bring a list of witnesses to our prehearing
23 conference on June 17th, 2022.

24 No such declaration was provided to OTA by
25 May 31st, 2022. And at our June 17th, 2022 prehearing

1 conference, the parties were asked whether there were any
2 witnesses. And after discussion, it was determined that
3 no witnesses were going to be called for this hearing.

4 OTA received Exhibit N, as in Nancy, from the
5 Franchise Tax Board, which is a declaration of a witness
6 on June 21st, 2022, about eight days before today's
7 hearing. Regulation 30214 requires the admission of the
8 declarations at least 15 days before hearing, unless good
9 cause is shown.

10 Ms. Pinarbasi, can you show good cause why
11 Exhibit N should be admitted into the record?

12 MS. PINARBASI: Good morning. This is Alisa
13 Pinarbasi. We submitted the exhibit after the due date.
14 I apologize. In the interest of having all facts
15 available, the exhibit demonstrates that
16 Mr. Priyadarshi --

17 JUDGE LEUNG: Ms. Pinarbasi, please hold on.
18 Please, restrict your response to the timeliness and not
19 go into the details of the exhibit. We don't want those
20 details in the record if they're going to be excluded from
21 the record. So just tell us why it was submitted so late.

22 MS. PINARBASI: It was submitted late because we
23 did not know of its necessity until -- until that date.

24 JUDGE LEUNG: Mr. Priyadarshi, do you have any
25 objections to admitting FTB's Exhibit N into the record?

1 MR. PRIYADARSHI: No, I don't.

2 JUDGE LEUNG: Okay. Having no objection to its
3 submission, I will admit Exhibit N into the record.

4 (Department's Exhibit N was received in
5 evidence by the Administrative Law Judge.)

6 It's a statement from Chris Reali from the
7 Franchise Tax Board, and we'll get into that once
8 Franchise Tax Board begins its presentation.

9 Mr. Priyadarshi, you have the floor. You have 10
10 minutes for your presentation. Please proceed at your
11 pleasure.

12

13 PRESENTATION

14 MR. PRIYADARSHI: Thank you, Judge, and good
15 morning, everyone.

16 As you can see from the different exhibits, I had
17 to travel to India due to family emergency because of
18 Covid in December 2020. Plus, I was supposed to go via UK
19 to India, but due to Covid, the flights from UK was
20 banned. Then in the emergency I had to travel -- I
21 changed my flight from United Airways to go to India
22 because that was the number one thing in my mind when you
23 have a family suffering from Covid.

24 But at the same time, I had the right intention
25 to pay the taxes. I had paid first three-quarter taxes

1 online. And India was also going through political
2 unrest. There were some farmers protests where India was
3 shutting internet for a long time. So I wasn't sure
4 whether I will have internet access to pay the taxes. And
5 I wasn't sure when I'll be able to come back to U.S.
6 because of Covid emergency, and the government was banning
7 both U.S. and India traveling to different countries.

8 But my intention was correct that I wanted to pay
9 the taxes on time. I missed paying online, and I just
10 wrote the check and gave it to my wife and two daughters
11 who did not travel to India because my -- my daughters
12 were not vaccinated at that time. So I -- I didn't want
13 to take a risk. So we left with the check with my wife,
14 and I went to India to attend to my personal matter. And
15 that's the reason because of Covid, because of the
16 different governments had different regulations about
17 banning and India was banning internet.

18 I request the FTB to waive the penalty because of
19 the special circumstances. I have paid the taxes on time.
20 My intention was clear and pay the taxes before the 15th.
21 So that's my position. I have written a letter as well as
22 I've talked a couple of times with FTB. So that's my
23 request to just pay the penalty. I already paid the
24 penalty on time, penalty 2, but I requested to FTB to just
25 waive the penalty because I paid the taxes. It was more

1 due to circumstances I was dealing with and because of
2 special circumstances of Covid across different countries
3 and regulation.

4 That's all I have to say.

5 JUDGE LEUNG: Thank you, Mr. Priyadarshi.

6 Does the Franchise Tax Board have any questions
7 for Mr. Priyadarshi?

8 MS. PINARBASI: This is Alisa Pinarbasi. No
9 questions from the Franchise Tax Board.

10 JUDGE LEUNG: Thank you.

11 And, Judge Ridenour, any questions for
12 Mr. Priyadarshi?

13 JUDGE RIDENOUR: Actually I do. Thank you very
14 much.

15 You mentioned leaving the check with your wife.
16 Was there any reason why you didn't instead instruct her
17 to do it electronically?

18 MR. PRIYADARSHI: She was here with two little
19 kids, and we were dealing with Covid emergencies in India.
20 And I managed all the finances in my house. I deal with
21 the taxes. So she just didn't have the access, and she
22 didn't know all the accounts, how to do it. And I just
23 didn't think about training them or telling them how to do
24 those things because of the health emergency issues.

25 JUDGE RIDENOUR: Okay. Thank you. This is

1 Judge Ridenour. No further questions.

2 JUDGE LEUNG: Okay. Judge Kletter, any questions
3 for Mr. Priyadarshi from you?

4 JUDGE KLETTER: No. I don't have any questions
5 for Mr. Priyadarshi. Thank you.

6 JUDGE LEUNG: Thank you.

7 Okay. Franchise Tax Board, you can commence your
8 presentation.

9

10 PRESENTATION

11 MS. PINARBASI: Good morning. My name is Alisa
12 Pinarbasi, and I, along with Maria Brosterhous, represent
13 the Franchise Tax Board.

14 The issue in this case is whether Appellants have
15 met their burden of proof to establish reasonable cause to
16 abate the mandatory e-pay penalty for the 2020 tax year.
17 Appellants paid their fourth quarter estimate payment by
18 check. And because they were required to make payments
19 electronically, FTB imposed the e-payment penalty.
20 Taxpayers are required to make electronic payments when
21 either their estimated tax or extension payment exceeds
22 \$20,000, or their tax return has more than \$80,000 of tax
23 liability.

24 Once this requirement is triggered, taxpayers
25 must make all of their future payments electronically. If

1 they do not, they are subject to a penalty. This penalty
2 can be abated upon a finding of reasonable cause and the
3 lack of willful neglect, which the taxpayer has the burden
4 to prove. To demonstrate reasonable cause, Appellants
5 must show that their failure to pay electronically
6 occurred despite the exercise of ordinary business care
7 and prudence. Ignorance of the law is not reasonable
8 cause.

9 In this case, Appellants were notified by letter
10 on November 8th, 2019, that all future payments to FTB
11 must be paid electronically. Appellants argue that they
12 made their estimate payment by check because
13 Mr. Priyadarshi had a family emergency that required him
14 to leave the country. He was unsure whether he would have
15 internet access while he was gone, or when he would be
16 able to return. Because Appellants did not have the full
17 amount of the estimate penalty -- or excuse me -- the
18 estimate payment available in their account, Mr.
19 Priyadarshi wrote a check to allow them time to fund the
20 account before FTB withdrew the payment.

21 Mrs. Priyadarshi was not traveling, but Appellant
22 states she could not make the payment electronically
23 because she was focusing on child care, and she was not
24 familiar with the account information and passwords.
25 Unfortunately, these facts do not demonstrate that

1 Appellants exercised ordinary business care and prudence
2 in attempting to make their payment electronically.

3 First, FTB has included, as an additional
4 exhibit, a declaration from a web pay coordinator at FTB,
5 which states Appellants could have scheduled their payment
6 on web pay. Additionally, Form 540-ES, which contains the
7 vouchers that Appellants submitted with their check states
8 that taxpayers can schedule their payments online up to
9 one year in advance. Therefore, Appellants could have
10 scheduled their payment online for a future date if they
11 were concerned funds were not immediately available.

12 Additionally, if Appellants were unaware that
13 they could schedule their payments online, they have not
14 sufficiently demonstrated why Mr. Priyadarshi did not
15 share passwords and instructions with Mrs. Priyadarshi so
16 she could make the payment electronically once the
17 transfers were complete. Taxpayers with a filing status
18 married filing jointly have a joint and several liability
19 to ensure taxes are paid timely and correctly. Therefore,
20 a reasonably prudent person in this situation would ensure
21 both spouses were capable of making payments.

22 Lastly, Mrs. Priyadarshi did not need any
23 passwords to make the estimated payment on line. She
24 simply needed to know her and her husband's social
25 security numbers, the amount of the estimate payment, and

1 the banking information, which can generally be found on a
2 blank check. FTB greatly appreciates Appellants' efforts
3 to timely pay their estimate tax, but their arguments do
4 not establish reasonable cause to abate the e-payment
5 penalty.

6 Therefore, based on the facts and evidence in the
7 record, FTB would respectfully request that you sustain
8 its position.

9 I'm happy to address any questions the panel may
10 have. Thank you.

11 JUDGE LEUNG: Thank you, Ms. Pinarbasi.

12 Judge Ridenour, any questions for the Franchise
13 Tax Board?

14 JUDGE RIDENOUR: This is Judge Ridenour. No
15 questions. Thank you very much.

16 JUDGE LEUNG: Thank you.

17 And for Judge Kletter, any questions for the
18 Franchise Tax Board?

19 JUDGE KLETTER: This is Judge Kletter. No, I
20 don't have any questions for the Franchise Tax Board.
21 Thank you.

22 JUDGE LEUNG: Okay. Thank you.

23 Thank you, Franchise Tax Board.

24 Mr. Priyadarshi, you have five minutes for your
25 closing or any other questions or statements you may have.

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1 JUDGE RIDENOUR: This is Judge Ridenour. No
2 questions. Thank you.

3 JUDGE LEUNG: Judge Kletter?

4 Thank you, Judge Ridenour.

5 Judge Kletter?

6 JUDGE KLETTER: This is Judge Kletter. No
7 questions. Thank you so much.

8 JUDGE LEUNG: This is Judge Leung. I do have a
9 question for the Franchise Tax Board. The section that
10 has the electronic -- mandatory electronic payment
11 requirement 19011.5 talks about telephonic payment. Is --
12 or was that option available around December 2020?

13 MS. PINARBASI: I am unsure of the status of the
14 telephonic payments. I -- but I do note that the option
15 was available for the taxpayer to schedule his payment
16 online. So he could have done the exact same process that
17 he made for all of his previous estimate tax payments.
18 And instead of scheduling an immediate payment, just
19 schedule it to be paid in approximately 7 to 10 days when
20 his funds would be available.

21 However, I would be happy to brief the
22 telephonic, whether there was an option to pay by
23 telephone, if necessary.

24 JUDGE LEUNG: I don't think we need any brief
25 about that. I think that's my only question, and I

1 believe that completes our hearing for today.

2 The record is being closed. We will have a
3 decision for the parties within 100 days of this date.

4 And if there are no other matters to discuss, we
5 will close this hearing. Our next hearing is scheduled
6 for 1:00 p.m. this afternoon. Thank you everybody, and
7 we'll be in touch with you.

8 JUDGE RIDENOUR: This is Judge Ridenour. I do
9 believe the next hearing is scheduled for 11:00 a.m.

10 JUDGE LEUNG: Oh, 11:00 a.m. for the next
11 hearing. Okay. Very good. Thank you, Judge Ridenour,
12 for that correction. Thank you.

13 Thank you very much. Bye, everybody.

14 (Proceedings adjourned at 9:47 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 7th day
of July, 2022.

ERNALYN M. ALONZO
HEARING REPORTER