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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. ESTER,) OTA NO. 21129246
)
)
 APPELLANT.)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:49 a.m. on
Tuesday, June 28, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Panel Lead: ALJ KEITH LONG

For the Appellant: K. ESTER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

SARAH FASSETT
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received at page 6.)
(Department's Exhibits A-K were received at page 6.)

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California; Tuesday, June 28, 2022

9:30 a.m.

JUDGE LONG: We're ready to go on the record.

This hearing is for the Appeal of K. Ester, OTA Case Number 2112946. It is Thursday, June 28th, 2022, at 9:30 a.m. This appeal is being heard electronically.

I am Administrative Law Judge Keith Long. I will be hearing the matter this morning. I'm the ALJ, meaning I will be conducting the proceedings, reviewing the evidence, asking questions, and reaching a determination in this case.

Parties, please state your name and who you represent for the record.

We'll start with you, Ms. Ester.

MS. ESTER: My name is Keshia Ester, and I represent myself.

JUDGE LONG: Thank you.

And Franchise Tax Board.

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

MS. KENT: This is Cynthia Kent for the Franchise Tax Board.

JUDGE LONG: Thank you.

Today we are determining whether Appellant has

1 established error in FTB's proposed assessment of
2 additional tax of \$966 for the 2017 tax year. Appellant
3 has submitted Exhibits 1 through 10, which are admitted
4 into evidence with no objection.

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

7 FTB has submitted Exhibits A through K, which are
8 also admitted into evidence with no objections.

9 (Department's Exhibits A-K were received in
10 evidence by the Administrative Law Judge.)

11 We'll begin with opening presentations.

12 Ms. Ester, you have up to 10 minutes, and you may
13 begin whenever you are ready.

14

15 PRESENTATION

16 MS. ESTER: Okay. Good morning. My name is
17 Keshia Ester.

18 In 2017 was the first year for the IHSS, In-Home
19 Supportive Services, to be nontaxable if the recipient and
20 the provider lived in the same household. That particular
21 year in 2017 I filled out and mailed in the live-in
22 self-certification form for the federal and state tax wage
23 exclusion in 2017, which is the form SOC2298. I expected
24 the IHSS W-2 was exempt. After mailing in my form, I
25 filled out my 2000 -- when I filled out my 2017 taxes the

1 following year.

2 In 2019 I received a proposed amount due from
3 IRS. That's Exhibit H. And that was on March 11, 2019.
4 At that time, I amended my taxes, and I added Notice
5 2014-7 to my amended taxes. As well, I amended my
6 California taxes, but I didn't mail those in. I assumed,
7 since IRS sent me a letter, I was going to get one right
8 away from the Tax Board but didn't get one until two years
9 later. And when I received my letter, my notice, stating
10 the amount -- oh, excuse me.

11 I received -- the Franchise Tax Board sent me my
12 proposed assessment on April 29th, 2021, and at that time
13 I went on and I faxed them over my amended taxes. And I
14 informed them that I amended my IRS taxes. They said they
15 did not see -- they stated that they did not see that in
16 their system. They did not see my amended taxes. I
17 called the IRS -- where am I at? I called the IRS twice
18 and was informed both times when I amended my taxes in
19 2017 it fixed my error. They didn't file my amended for
20 2017. They just fixed it in their system.

21 I was told that the State of California should
22 have been able to see the error in their system and that
23 it was corrected. I also mailed out when I faxed over the
24 Franchise Tax Board the notice stating that the amount
25 that I owe the IRS is zero, and that was on June 24th,

1 2019, and my inquiry was closed.

2 So I did not owe the IRS anymore when I did my --
3 I faxed them over my amended taxes. So I've known from
4 that point on, when I amended my taxes for the Franchise
5 Tax Board, that it should have been -- I should not had
6 owed any more money as well. Excuse me. In 2021 when I
7 received the information from the Franchise Tax Board last
8 year, I went on and logged into the In-Home Supportive
9 Services' electronic services portal and reapplied for
10 live-in certification because I had to do my research and
11 find out that they said they never received my
12 certification from back in 2017.

13 I didn't know what to expect what my W-2 was
14 supposed to look like as far as being exempt or anything.
15 I just thought I was supposed not to have put it on my
16 taxes. But when I did my search with the IRS, I noticed
17 I'm supposed to put Notice 2014-7. So I thought that was
18 sufficient for the State of California as well.

19 Thank you.

20 JUDGE LONG: Thank you. And then -- my
21 apologies.

22 MS. ESTER: That's okay.

23 JUDGE LONG: I actually need to swear you in --
24 swear your statement in as a witness retroactively.

25 MS. ESTER: Okay.

1 JUDGE LONG: So can you please raise your right
2 hand?

3 MS. ESTER: Of course.

4

5

KESHIA ESTER,

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 LONG: Thank you. And you may lower your
11 hand.

12 MS. ESTER: Okay.

13 JUDGE LONG: Thank you. And so Franchise Tax
14 Board has the opportunity to ask you questions now.

15 MS. ESTER: Yes.

16 JUDGE LONG: Franchise Tax Board, do you have any
17 questions for Ms. Ester?

18 MS. FASSETT: This Sarah Fasset. At this time
19 Franchise Tax Board does not have any questions for
20 Ms. Ester.

21 JUDGE LONG: Okay. Thank you.

22 I do have some questions myself. With respect to
23 the IHSS income included on your -- did you include that
24 on your original federal income tax return, Ms. Ester?

25 MS. ESTER: No. This is Ms. Ester speaking. On

1 2017 I did not include that on my original. I did it
2 amended. And when I amended it -- when I did the
3 amendment, I faxed it over to IRS. And what IRS told me
4 both times was that they didn't file it because they saw
5 the error, and they just wanted the error corrected.

6 JUDGE LONG: Okay. Thank you. So -- but then
7 you didn't file the amended California return.

8 MS. ESTER: When California sent me the
9 information in March of 2021 -- April -- excuse me -- of
10 last year, I went on and faxed them over my amendment as
11 well, my amended taxes. But then they stated to me that
12 they couldn't see it in the system. That was the problem
13 that Ms. Caroline was having, was that she couldn't see it
14 in their system that my amended was even filed.

15 JUDGE LONG: Okay. Okay. And so then on the
16 amended return, did you include the IHSS income in your
17 federal adjusted gross income?

18 MS. ESTER: Yes, I did. And when I included that
19 in my amended, that's when IRS said they were sufficient.
20 They were okay with me because I corrected the error
21 because I added the IHSS.

22 JUDGE LONG: Gotcha. Sorry. I'm just making
23 sure I type out your answer for my notes.

24 MS. ESTER: It's okay.

25 JUDGE LONG: Okay. I do not have any more

1 questions at this time. So we will turn to the Franchise
2 Tax Board and -- who also requested 10 minutes.

3 So you may begin your presentation when you are
4 ready, Ms. Fassett.

5 MS. FASSETT: This is Sarah Fassett. Thank you
6 Judge Long.

7

8 PRESENTATION

9 MS. FASSETT: So good morning. My name is Sarah
10 Fassett and I, along with Cynthia Kent, represent the
11 Franchise Tax Board or FTB.

12 For the reasons set forth in FTB's opening brief
13 as well as what I'm going to discuss today, FTB's action
14 should be sustained as the evidence in the record clearly
15 shows that Appellant did not and has not established error
16 in FTB's proposed assessment of additional tax for the
17 2017 tax year. And because Appellant did not establish
18 error in the proposed assessment, FTB correctly proposed
19 an assessment of \$966 of additional tax.

20 Here as Appellant has explained that she -- that
21 because the Internal Revenue Service, or IRS, closed its
22 inquiry into her 2017 federal return, FTB should do the
23 same. Appellant also claims that the income she
24 subtracted is nontaxable and excludable because it is wage
25 income paid by In-Home Support Services or IHSS. And

1 while Respondent Franchise Tax Board agrees that IHSS
2 income may be excluded from a taxpayer's federal adjusted
3 gross income and from the calculation of California
4 taxable income, there is no indication that any of
5 Appellant's \$15,086 of IHSS income was ever included in
6 her federal AGI.

7 Appellant's federal tax return found in Exhibit A
8 shows wage income and a federal AGI of \$73,776, the exact
9 amount of her wage income from the County of Los Angeles.
10 Because she did not report her IHSS wages anywhere on the
11 original filed 1040, and the IHSS wages were not included
12 in Appellant's federal AGI, she subsequently and
13 improperly subtracted an amount equal to her IHSS wages
14 from the wage income earned from the County of L.A. on her
15 2017 California income tax return.

16 And as to discuss the error for the federal
17 return is not the same as the error for California tax
18 purposes. As to her -- Appellant's arguments that her
19 IHSS wages are also not taxable for federal income tax
20 purposes, and that's why the IRS closed the inquiry into
21 her 2017 federal return, that is true. And FTB agrees
22 with that. As seen on her original filed 1040, the only
23 amounts used to reduce her federal AGI were the standard
24 deductions and her exemption credits.

25 Because Appellant did not attempt to reduce her

1 federal AGI, i.e. the amount of her wages from L.A. County
2 by her IHSS wage income, there would be and could be no
3 change to the federal return, and the IRS would not have
4 had a basis upon which to assess any additional tax.

5 As seen in Exhibit K, the refund amount seen on
6 the pro forma federal return is the same as Appellant's
7 originally filed federal return, even when the IHSS income
8 is reported and then subsequently excluded from her
9 federal AGI and, ultimately, taxation. The same is not
10 true for Appellant's California return because she
11 improperly excluded an amount equal to her IHSS income,
12 \$15,086, from her L.A. County income of \$73,776 to reach
13 the incorrectly reported California AGI of \$58,690.

14 Appellant has not provided any documentation or
15 argument that her subtraction of income from her L.A.
16 County wages was proper or allowed, and that she has not
17 established error in FTB's proposed assessment of
18 additional tax. To be very clear, Respondent is not
19 attempting to tax Appellant's IHSS income in any way.
20 Respondent's actions reflect a correction to Appellant's
21 improper subtraction from her L.A. County wage income,
22 income which is fully taxable to Appellant as a California
23 resident, and which Appellant has provided no support for
24 any reduction. Therefore, on the facts and evidence in
25 the record, Franchise Tax Board respectfully request you

1 sustain its position.

2 I'm happy to address any questions you may have.
3 Thank you.

4 JUDGE LONG: Thank you.

5 This is Judge Long. I do not have any questions.
6 So we will turn to Ms. Ester for her closing argument.

7 Ms. Ester, you requested five minutes, and you
8 may begin whenever you're ready.

9 MS. ESTER: Okay. This is Ms. Ester. My
10 understanding, if you're saying -- can I -- may I ask a
11 question? No.

12 JUDGE LONG: You may ask a question to me.
13 Franchise Tax Board is not appearing as a witness.

14 MS. ESTER: Okay.

15 JUDGE LONG: So only I may ask them questions.
16 But if you ask me a question, I can -- they can choose to
17 answer if they would like to.

18 MS. ESTER: Okay. Well -- okay. I'll do my
19 closing statement.

20

21 CLOSING STATEMENT

22 MS. ESTER: From what I understood from the
23 Franchise Tax Board, she's saying that I did not subtract
24 my county wages. I did subtract my county wages from my
25 first original. I amended. I amended. I added. I

1 subtracted. If I did amend -- if I did the same thing for
2 IRS, I did the same thing for the Franchise Tax Board.
3 And I still feel that I don't owe anything because I did
4 my taxes correctly.

5 JUDGE LONG: Okay. I think I understand your
6 position.

7 Franchise Tax Board, did you want to respond to
8 that at all?

9 MS. FASSETT: This is Sarah Fassett. Yes, I
10 would like to respond.

11

12 CLOSING STATEMENT

13 To Ms. Ester's point, or I think the question is
14 that -- that we -- that amended return was never
15 officially filed with the Franchise Tax Board. And if
16 you're talking about the amended return in Exhibit D,
17 which was sent over to Franchise Tax Board, looks like on
18 June 7th, 2021, that amount on the back end, Schedule CA,
19 does show a \$73,776. It shows the same subtraction to the
20 \$73,776. There is -- that is the issue.

21 You needed to add \$73,776 plus \$15,086 and then
22 subject \$15,086 to stay at \$73,776, which would match your
23 federal adjusted gross income. That's not what has
24 happened, and that amended return was never accepted as a
25 filed return. So even that amended return was correct,

1 which it is not, it was never properly filed with the
2 Franchise Tax Board.

3 Thank you.

4 JUDGE LONG: Thank you.

5 This is Judge Long. Before we conclude I do want
6 to make sure Ms. Ester is given her full five minutes to
7 make a closing argument.

8 Ms. Ester, do you have anything more that you
9 would want to add?

10 MS. ESTER: No. I don't have anything else to
11 say.

12 JUDGE LONG: Okay. And so we will go ahead and
13 conclude the hearing. The -- I will prepare a written
14 decision no later than 100 days from today. It will be
15 issued to both parties. Thank you for your participation.

16 The case is now submitted, and the record is
17 closed. The next hearing will begin at 10:00 a.m., and
18 this hearing is now adjourned. Thank you.

19 (Proceedings adjourned at 9:49 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