

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF.)
)
R. TRUTNA,) OTA NO. 21108825
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, July 26, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

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IN THE MATTER OF THE APPEAL OF,)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 11:09 a.m. and concluding at 11:33 a.m. on
Tuesday, July 26, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Administrative Law Judge: ANDREW WONG

For the Appellant: R. TRUTNA

For the respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOEL SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at page 6.)
(Department's Exhibits A-D were received at page 6.)

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

	<u>PAGE</u>
By Mr. Trutna	7
By Mr. Smith	15

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Trutna	18

1
2
3
4
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California; Tuesday, July 26, 2022

11:09 a.m.

JUDGE WONG: We are now going on the record.

We're opening the record in the Appeal of Trutna before the Office of Tax Appeals. This is OTA Case Number 21108825. Today is Tuesday, July 26th, 2022. The time is -- let's see -- 11:09 a.m. We're holding this hearing by video conference.

I'm Administrative Law Judge Andrew Wong, and I'll be hearing and deciding this case pursuant to the procedures of OTA's Small Case Program.

Individuals representing Appellant, please identify yourselves for the record.

Mr. Trutna?

MR. TRUTNA: Yes. Yes.

JUDGE WONG: Could you please identify yourself for the record.

MR. TRUTNA: Richard Trutna here.

JUDGE WONG: Thank you.

Individuals representing FTB, Franchise Tax Board.

MR. SMITH: Joel Smith. Good morning. This is Joel Smith with the Franchise Tax Board.

JUDGE WONG: This is Judge Wong. Thank you.

1 We're considering one issue today, whether
2 Appellant's claim for refund for the 2011 tax year is
3 barred by the statute of limitations.

4 Mr. Trutna, is that correct?

5 MR. TRUTNA: Richard Trutna here. That's
6 correct.

7 JUDGE WONG: This is Judge Wong. FTB, is that
8 correct?

9 MR. SMITH: Joel Smith. Yes, that's correct.

10 JUDGE WONG: This is Judge Wong. Appellant has
11 identified proposed Exhibits 1 through 2 and has no other
12 exhibits to offer as evidence. FTB had no objections to
13 them, but since they were late filed, reserves the right
14 to address them in post-hearing briefing. FTB has
15 identified and submitted proposed Exhibits A through D as
16 evidence, and Appellant has not objected to them. And so
17 we will admit both proposed Exhibits 1 through 2 and
18 Exhibits A through D into the record.

19 (Appellant's Exhibits 1-2 were received
20 in evidence by the Administrative Law Judge.)

21 (Department's Exhibits A-D were received in
22 evidence by the Administrative Law Judge.)

23 Appellant has one witness, Mr. Trutna. And so I
24 will swear Mr. Trutna in. FTB has no witnesses.

25 And, Mr. Trutna, I'm about to turn it over to you

1 to begin your presentation. Let me swear you in so that
2 any factual statements you make can be taken as evidence.
3 Please raise your right hand.
4

5 R. TRUTNA,
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 WONG: This is Judge Wong. Thank you.
11 Okay. Mr. Trutna, you have 25 minutes. Please proceed
12 with your presentation.
13

14 PRESENTATION

15 MR. TRUTNA: Okay. So I'll begin by just
16 describing what the medical -- what the one-page document
17 for medical records were. They were an excerpt from
18 medical records that I requested from each individual
19 medical provider. And particularly, you know, I guess,
20 you know, regarding the case that I made -- or was making
21 was that, you know, prior to 2010, I had submitted returns
22 that were fairly complex, included multiple schedules,
23 Schedule C and depreciation and business expenses and so
24 on, you know.

25 So basically, you know, I, for a number of

1 purposes -- none may be that substantial -- I submitted,
2 you know, I guess what I considered for a lack of time and
3 energy, basically to satisfy my requirements to file tax
4 returns on time, I submitted the simple form of tax
5 returns that weren't recognizing, you know, all the
6 deductions that I was properly entitled to.

7 I, you know, I guess -- and my medical
8 conditions, they're also sort of hard to recognize, you
9 know. But, you know, I guess what I just had noticed was
10 that, you know, I was extremely fatigued. You know, at
11 one of my jobs I, in fact, had episodes where I'd fallen
12 asleep practically for a minute or so, you know, at a stop
13 sign and, actually, in office settings. Excuse me. And,
14 you know, so, you know, plus the time after the financial
15 crisis was kind of a difficult time because of the kind of
16 work that I did.

17 It kind of had sort of was drying up, so I had
18 to -- to really struggle to kind of, you know, maintain
19 income. In any event -- excuse me -- I -- you know, I
20 guess that went on for a number of years. And then,
21 basically, you know, I had -- you know, I guess my income
22 improved over time but, I realize that I had this
23 situation hanging over me where I -- I felt that I needed
24 to go back to the point where I had stopped doing complete
25 returns.

1 However, you know, I guess with work
2 requirements, you know, I felt I'd never really had the
3 time to do it. So at the end of 2017, I moved out of the
4 State of California to sort of cut down expenses, and I
5 actually took several months off in terms of being able to
6 reorganize all my records. And -- and I had contacted the
7 IRS and had gotten records of complete income so that I
8 could accurately, you know, complete amended returns, and
9 they sent those to me.

10 And then I went about really, kind of, you know,
11 putting together the records and submitting -- sorry --
12 creating and submitting the proper forms for what I --
13 what I should, you know, could have been originally done
14 if I had done them on time so -- and then following that,
15 you know, I guess with -- there was this -- I listed in
16 the summary, basically, some of the timelines. I think
17 that, you know, I guess with Covid, you know, I think that
18 there was a delay in their processing. And also, kind of,
19 I think things were not done in sequence and also, kind
20 of, done by different offices.

21 But in any event, there was a delay between
22 filing my fed tax returns and then, kind of, you know,
23 actually after, kind of, going back to work and doing
24 various things, then I filed my State amended tax returns
25 to match those that, you know, based on my -- on my

1 revised federal tax returns. And so I think that that is
2 the situation. I think, in fact, I'm still getting, you
3 know, even as of the end of May, you know, that I'm
4 getting adjustments at the federal level to -- to, you
5 know, it seemed to indicate that they were accepting those
6 amended returns.

7 And then I even received some statements recently
8 about, kind of, some payments at the State level where
9 some of those returns might have been considered as well.
10 So in any event, you know, I guess, you know, what I'm
11 just wondering about is -- is, you know, based on what
12 I -- the content that I read from the brief, that really
13 there is -- it says there are no exceptions to the statute
14 of limitations, you know. But also, you know, as I am
15 currently making payments. For what, I'm not exactly sure
16 or what my balances are.

17 But, you know, I guess even if the amended
18 returns weren't accepted that maybe I might get adjustment
19 on any tax penalties and things like that that might be
20 considered. So I think that's in conclusion to what I
21 have to say.

22 Thank you.

23 JUDGE WONG: This is Judge Wong. Thank you,
24 Mr. Trutna.

25 Mr. Smith, did you have any questions or

1 cross-examination for Mr. Trutna?

2 MR. SMITH: Joel Smith. I do not have any
3 questions for cross-examination.

4 JUDGE WONG: This is Judge Wong. Thank you.

5 Mr. Trutna, I did have a few questions about --
6 for you. So based on your summary of argument, you
7 weren't sure when your medical condition started or were
8 first diagnosed; is that correct?

9 MR. TRUTNA: That's roughly correct. I was
10 looking through the complete medical -- Richard Trutna
11 here. And I was looking through the medical report and
12 didn't actually see a statement from the doctor when the
13 condition started. I did, however, see, you know, I -- I
14 had taken blood tests at various times. And I guess
15 the -- what I indicated in the evidence, that one-page PDF
16 from -- was that basically, you know, it had indicated
17 that I had this condition and basically started a process
18 where they -- they really tried to just -- medication that
19 basically brings you to a proper level.

20 The second document that I provided really
21 indicated, sort of, you know, basically I think I still
22 suffer a little bit from that condition. And since it was
23 diagnosed with having sleep apnea and -- and then very low
24 testosterone level. So then I was prescribed medication
25 for that.

1 JUDGE WONG: This is Judge Wong.

2 MR. TRUTNA: I think --

3 JUDGE WONG: Sorry. Go ahead finish, please.

4 MR. TRUTNA: This is Richard Trutna. That's it
5 for me.

6 JUDGE WONG: This is Judge Wong. Thank you. And
7 I noticed in your summary of argument you had mentioned
8 that were getting medication and treatment for your
9 medical conditions in 2012 or 2013; is that correct?

10 MR. TRUTNA: The first indicate -- sorry.
11 Richard Trutna here. And the first indication I got from
12 the medical report was that from that 2000 -- from the
13 2013 date where I had been prescribed Synthroid, and then
14 it takes some amount of time to kind of -- and I don't
15 know that was indicated in the medical report where it
16 takes some time to adjust the prescription level. Because
17 I guess, apparently, you don't want to go either too high
18 or too low.

19 But I guess I noticed it I in -- I was looking at
20 my employment report. I guess when I made a transition
21 from contracting at the VMware to a company called
22 Parexcel that I noticed the condition particularly at work
23 in either 2011 or 2012 where it's, you know, basically
24 even when my manager kind of commented on some of my
25 behavior --

1 JUDGE WONG: This is Judge Wong.

2 MR. TRUTNA: -- but I'm not -- sorry. But I'm
3 not providing that as any evidence. I didn't bother to
4 contact that person and indicate that. Sorry for the
5 interruption.

6 JUDGE WONG: No. This is Judge Wong. No
7 worries. I noticed in FTB's Exhibit D you did timely file
8 your tax returns for tax years 2012, 2013, and 2014; is
9 that correct?

10 MR. TRUTNA: Richard Trutna here, and I basically
11 I believe I had filed amended returns for 2010
12 through 2015. And I had basically, you know, received
13 notices from the State that -- that I hadn't filed for
14 2016 and 2017. It may be correct that I didn't submit
15 2015 in that first tranche. But, you know, I guess what I
16 did do after completing the revisions of 2010
17 through 2015, then I completed the, you know, remaining
18 outstanding returns for 2016 and 2017.

19 JUDGE WONG: This Judge Wong. I was just
20 referring to your original filings for 2012 through 2014.
21 It looks like you filed before the automatic extended
22 deadline. I guess so my question just is, like, did this
23 medical condition -- your medical conditions prevent you
24 from timely filing financial documents? Because it seems
25 like for -- at least for 2013 -- for 2012 through 2014 you

1 did file them on time.

2 MR. TRUTNA: Richard Trutna here. That's
3 correct. I know maybe what I would say is that, kind of,
4 I was afraid perhaps. And I can't recall about 2015. But
5 I know when it came to 2016 and 2017 I -- knowing that I
6 couldn't, kind of, file really a -- my income had improved
7 by that time, and I know that if I had filed a simple
8 return or didn't take into account the previous amended
9 returns, that I would be assessed, kind of, amounts that
10 were much higher than what I expect was accurate. So I
11 know that I did not file 2016 and 2017 in a timely manner.

12 JUDGE WONG: This is Judge Wong. Thank you.
13 Just a couple of more questions, maybe just one. So
14 throughout the period of time we're talking about, say
15 2011 and onward, you were -- were you employed throughout
16 that time continuously?

17 MR. TRUTNA: I think pretty much. I basically
18 had kind of a longstanding, kind of, relationship working
19 through an agency for VMware working in various
20 departments within that group and had a good reputation.
21 However, you know, I guess going back to that time period
22 it was sort of spotty employment in terms of, you know,
23 there were -- it was very difficult for them to justify
24 keeping contractors. And then I actually transitioned to
25 working for a company Parexcel, which provided more steady

1 employment.

2 JUDGE WONG: This is Judge Wong. Thank you. I
3 had no further questions at this time, Mr. Trutna.

4 So I will now turn it over to Mr. Smith for FTB's
5 presentation.

6 Mr. Smith, you have five minutes. Thank you.

7 MR. SMITH: Thank you.

8

9 PRESENTATION

10 MR. SMITH: As stated, this is Joel Smith with
11 the Franchise Tax Board, and the issue is whether
12 Appellant filed a timely claim for refund for the 2011 tax
13 year. The facts are not in dispute. Mr. Trutna filed an
14 original 2011 tax return on December 2nd, 2012. He then
15 filed an amended 2011 tax return on January 15th, 2021,
16 reporting an overpayment. The FTB accepted the amended
17 return but could not issue a refund because the
18 overpayment was barred by the statute of limitations.

19 Under Revenue & Taxation Code Section 19306,
20 taxpayers must file a claim for refund four years from the
21 date of the original due date of the tax return or one
22 year from the date of overpayment. Here, for Mr. Trutna's
23 2011 tax year, the four-year statute of limitations
24 expired on April 15th, 2016, and the one-year statute of
25 limitations expired on April 15th, 2013. These dates are

1 not in dispute.

2 California law does not provide for the waiver of
3 the statutory period based on reasonable cause or
4 extenuating circumstances. Based on documentation
5 received this morning and today's hearing, it appears
6 Mr. Trutna is arguing statute of limitations should be
7 suspended due to his medical conditions. Under Revenue &
8 Taxation Code Section 19316, in rare circumstances the
9 statute of limitations may be suspended if taxpayer shows
10 they're unable to manager their financial affairs due to a
11 physical or mental impairment that is considered terminal
12 or expected to last for a continuous period of at least
13 12 months.

14 Admittedly, this is a high standard imposed by
15 the legislature. In addition, taxpayers must provide a
16 signed affidavit from a physician to establish financial
17 disability as defined under Revenue & Taxation Code
18 Section 19316. The FTB does not question the veracity of
19 Mr. Trutna's documented medical conditions; however, the
20 facts and documentation do not support the application of
21 Revenue & Taxation Code Section 19316.

22 The FTB's Exhibit D shows Mr. Trutna timely filed
23 numerous tax returns following the 2011 tax year.

24 Judge Wong, you brought that question up moments
25 ago.

1 And also, Mr. Trutna admits we worked during the
2 relevant time period. This indicates Mr. Trutna could
3 manager his financial affairs during the time period at
4 issue. Further, Mr. Trutna has not provided a physician's
5 signed affidavit to establish financial disability. Based
6 on California law and the evidence in the record, the FTB
7 properly denied Mr. Trutna's claim for the refund under
8 the statute of limitations.

9 I can answer any questions you may have.

10 JUDGE WONG: This is Judge Wong. Thank you,
11 Mr. Smith. I did have one question. Mr. Trutna had
12 referred to his 2015 return, which would have been due
13 April 15th, 2016, the same date as the four-year statute
14 of limitations would have expired. Do you know if he
15 filed a 2015 return by that date or, if not, when he did
16 file one -- the original one? I didn't see that quite in
17 the exhibits for FTB.

18 MR. SMITH: Okay. Joel Smith. The Exhibit D
19 shows that the 2015 tax return was -- the original 2015
20 tax return was file on January 15th, 2021.

21 JUDGE WONG: Okay.

22 MR. SMITH: And then real quick, just as a
23 relates to Mr. Trutna's comment about interest, penalties,
24 outstanding balances, that 2011 as shown by Exhibit C
25 there's no -- there are no penalties. There is no

1 interest. There's no outstanding balance. So that's not
2 relevant to the tax year on appeal today.

3 JUDGE WONG: This is Judge Wong. Thank you,
4 Mr. Smith.

5 Okay. I have no further questions for FTB.

6 So now, Mr. Trutna, we will turn it over to you
7 for the last word, for your rebuttal and closing remarks
8 and for anything -- sorry -- for anything you wanted to
9 tell us. You have five minutes. Please proceed.
10

11 CLOSING STATEMENT

12 MR. TRUTNA: Richard Trutna here again. And
13 maybe when it came to, you know, asking about the taxes,
14 penalties, and anything like that, I guess when I filed
15 the amended returns, basically, I didn't ask for a refund.
16 I basically had -- had wanted to apply it to future
17 returns, and I believe that's what I stated in my amended
18 returns. So, you know, I guess, basically, the fact that
19 the refund was denied basically kind of created, sort of,
20 additional tax liability for which I was probably paying
21 penalties on.

22 And then the second thing was is that, you know,
23 based on the complexity of the returns granted, you know,
24 I think -- I mean, to a certain extent, I think I -- I'm
25 financially able to handle most things. It was just that

1 the amount of preparation that it takes to prepare all the
2 schedules, particularly when I got kind of behind and
3 needed to prepare multiple years, it -- essentially, I
4 didn't really have it -- a substantial block of time where
5 I could prepare those returns until I actually took -- you
6 know, only after I moved and basically, you know, really
7 took the time off; took, essentially, months off to -- to
8 do that preparation because I thought that that's what it
9 required.

10 And that's, I think, the only comments that I
11 have. Thank you.

12 JUDGE WONG: This is Judge Wong. Thank you,
13 Mr. Trutna.

14 Okay. This will conclude the hearing. The
15 record is closed, and the case is submitted today.

16 I want to thank Mr. Trutna and Mr. Smith, both of
17 you for your time and your presentations.

18 I will decide the case based on the exhibits
19 presented and the testimony -- exhibits presented as
20 evidence as well as the testimony.

21 Oh, Mr. Smith, FTB had reserved the right to
22 address the late-submitted exhibits. Did you want an
23 opportunity to comment on that in post-hearing briefing,
24 or are you fine with the record as is?

25 MR. SMITH: Joel Smith. I do not anticipate

1 needing to file an additional briefing to address those
2 documents. Thank you.

3 JUDGE WONG: This is Judge Wong. Okay. Thank
4 you.

5 Then I'll decide the case based on the exhibits
6 presented and admitted as evidence as well as Mr. Trutna's
7 testimony. I will send both parties my written decision
8 no later than 100 days from today.

9 The oral hearing is now adjourned. We'll go off
10 the record now.

11 (Proceedings adjourned at 11:33 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 4th day
of August, 2022.

ERNALYN M. ALONZO
HEARING REPORTER