

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
)  
L. CARPENTER and C. CARPENTER, ) OTA NO. 21119096  
)  
APPELLANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, July 27, 2022

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 10:59 a.m. and concluding at 11:19 a.m. on  
Wednesday, July 27, 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: L. CARPENTER

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

LEOANGELO CRISTOBAL  
MARIA BROSTERHOUS

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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 7.)

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

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California; Wednesday, July 27, 2022

10:59 a.m.

JUDGE JOHNSON: So we'll go on the record.

This is the Appeal of Carpenter. It is OTA Case Number 21119096. It is 10:59 on July 27th, 2022. This appeal is being conducted electronically led by myself, Judge Johnson, here in Sacramento, California.

This appeal is being heard and decided by a single Administrative Law Judge under the Office of Tax Appeals Small Case Program. I remind today's participants that the Office of Tax Appeals is not a court. It's an independent appeals body staffed by tax experts who is independent of the State's tax agencies. OTA does not engage in any ex parte communications with either party. Our decision will be based on the arguments and evidence provided by the parties on appeal in conjunction with the appropriate application of the law.

And as you asked, Mr. Carpenter, I have read the briefs and examined submitted exhibits and looking forward to your arguments today.

Let me have the parties introduce themselves for the record, starting with Mr. Carpenter.

MR. CARPENTER: Yes. I'm Leonard Carpenter. I'm age 74. I'm a retired -- well, I've been a federal

1 auditor. I've also been a novelist, and I'm still  
2 pursuing that, although, not with any income recently.

3 JUDGE JOHNSON: All right. Thank you,  
4 Mr. Carpenter.

5 MR. CARPENTER: But I have worked on a couple of  
6 books and --

7 JUDGE JOHNSON: Let me turn it over so that  
8 Franchise Tax Board can introduce themselves as well.

9 MR. CARPENTER: Yeah.

10 JUDGE JOHNSON: Okay. Franchise Tax Board.

11 MR. CRISTOBAL: Hi. My name is Leo Cristobal,  
12 Tax Counsel for Franchise Tax Board.

13 MS. BROSTERHOUS: Good morning. Maria  
14 Brosterhous, also Tax Counsel for Franchise Tax Board.

15 JUDGE JOHNSON: This is Judge Johnson. Thank  
16 you.

17 Mr. Mr. Cristobal, are you able to -- sorry.

18 Mr. Carpenter, are you able to hear Mr.  
19 Cristobal, okay? Does he come through a little soft?

20 MR. CARPENTER: Yeah.

21 JUDGE JOHNSON: Can you hear him fine. Okay. I  
22 saw you lean forward, so I just wanted to check.

23 The issues we have on appeal are whether  
24 Respondent's proposed assessment is barred by the statute  
25 of limitations; if the proposed assessment is not barred

1 by the statute of limitations, and whether Appellant has  
2 shown error in Respondent's proposed assessment, which is  
3 based on a federal determination; and, finally, whether  
4 interest should be abated beyond the interest abatement  
5 already allowed by Respondent as reflected in its brief.

6 Parties have provided Exhibits 1 and 2 for  
7 Appellant and Exhibits A through U for Respondent. Those  
8 are now admitted into the record as evidence.

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

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

13 At this stage we are ready for the presentations.

14 Mr. Carpenter, if you're ready, I can swear you  
15 in. Would you raise your right hand.

16

17 LEONARD CARPENTER,

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

21 JUDGE JOHNSON: Great. You have 10 minutes.  
22 Please begin whenever you're ready.

23

24 PRESENTATION

25 MR. CARPENTER: Well, I might -- well I'll read

1 through my -- what I call my final summation or whatever.  
2 Let's see.

3 Nine years later, after my original filing, I  
4 deserve full or partial forgiveness due to unconscionable  
5 delays by the State. I have suffered damage to my peace  
6 of mind, my former marriage, my time and reputation. My  
7 creative life as a struggling author has also been  
8 damaged, delayed, and distracted. This, in an era when I  
9 struggle to stay middle class while corporate plutocrats  
10 pay no tax at all. Age 74 now, I'm healthy and alert with  
11 decades more to make my retirement income last.

12 It all results from a unique and probable  
13 confusion of two audit years concurrent due to State  
14 delays. See the attached timeline for this credible  
15 chronicle. And I'll just point out that as -- as  
16 evidenced by the transcript that you folks just sent me of  
17 the federal deficiency for 2013, I finally paid it off on  
18 August 17th of 2015. Okay.

19 Well, I don't know. It's hard to coordinate.  
20 There were two concurrent audits, and it's easy to get  
21 mixed up between the two, you know. But the 2013 one was  
22 my error, and I paid the Feds promptly. The 2014 was a  
23 bank error, and I owed no tax. And by the State was  
24 auditing the 2013, I had just received the notice from the  
25 feds that there was no tax due. So I assume that the 2013

1 State audit was relevant to the -- you know, just within  
2 two days I received clearance on the federal audit.

3 So I sent you a copy of the federal balance  
4 showing zero tax owed. And I didn't notice that it was  
5 for the subsequent year, not the year in question. And to  
6 me that was not intended as a protest. I didn't have --  
7 you know, if I had realized this was for the previous  
8 year, I would have paid it promptly as I had paid  
9 everything, you know, filing and paying my deficiency  
10 promptly to the feds.

11 So anyway, I think -- I hope everybody  
12 understands that peculiar coincidence of two audits  
13 crossing in the same month that gave rise to my  
14 deficiency. Anyway, and so whether it's a protest or  
15 whether it's just sending the wrong piece of paper, that's  
16 maybe a judgment error.

17 Now, another area of judgement, I was told that  
18 the State left me a phone message regarding that  
19 deficiency. I don't know the date of when that would have  
20 been. But during those years, I traveling the world. I  
21 went to Ireland. I went to France -- pardon me -- Spain  
22 and Cuba several times. And was promoting my books on the  
23 European trips, and one was a writer's conference in Spain  
24 and one was the 100th centenary of the sinking of the  
25 Lusitania, which is my greatest novel, Lusitania Lost,

1 that I have written so far.

2           Anyway, so I'll try to wrap it up here quickly.  
3 It was never my intent to dispute or protest the State  
4 liability. I paid the federal deficiency promptly. If  
5 notified timely when I was richer, I would have paid the  
6 State instantly. My 2013 error was unique and an apparent  
7 duplication between a W-2 and 1099 for identical amounts.  
8 The later 2014 audit was dropped due to bank errors on  
9 1099R's.

10           As a 15-year federal auditor I tried to resolve  
11 audits promptly and avoid prolonged anxiety to the  
12 taxpayers. Where timely records failed, we were urged to  
13 reconstruct fairly based on facts and circumstances. And  
14 before the Reagan years, our mission was to promote  
15 voluntary compliance with the tax law. In training we  
16 were told, "Get the fast buck, not the last buck."

17           Since California's code is piggybacked based on  
18 the feds, I assumed the same principles might apply. I  
19 now appreciate the State's efforts to be fair, but your  
20 system may be overlooking vital concerns. Namely, I  
21 deserve consideration for my grievance based on your  
22 preposterous monstrous negligent delays. And now when I  
23 say monstrous, I don't mean to villainize, to demonize  
24 anybody. But monstrous is based on the Latin root  
25 "monstrar," to show or display. And something that's

1 monstrous is something that is freakish and abnormal that  
2 deserves public display to draw attention and maybe dread  
3 and disgust.

4 Nothing personal but that's my feeling about my  
5 current situation. And like I say, I'm well, getting it  
6 at all sides by web frauds, by -- I resisted a bank fraud  
7 which would have cost me \$4,000. And just the other day I  
8 had to pay \$1,800 to keep my old -- my newest car running,  
9 a 2007 vehicle, for breakdown repairs. So anyway, I'm not  
10 as rich as I once was, and I'm able to maintain, but just  
11 barely.

12 I better shut up at this point.

13 JUDGE JOHNSON: This is Judge Johnson. Thank you  
14 very much, Mr. Carpenter.

15 Let me ask, Mr. Cristobal, did you have any  
16 questions you would like to ask Mr. Carpenter?

17 MR. CRISTOBAL: This is Leo Cristobal. No  
18 questions.

19 JUDGE JOHNSON: Okay. Thank you.

20 MR. CARPENTER: No cross-examination. Okay.

21 JUDGE JOHNSON: I just had a question for you,  
22 Mr. Carpenter, just for clarification.

23 MR. CARPENTER: Yes.

24 JUDGE JOHNSON: I know you've clearly gone over  
25 the concurrent year of appeals causing some confusion

1 there in IRS versus the State. And, clearly, you hit on  
2 the length of delays that have happened on this appeal.  
3 But talking about the actual tax amount at issue, were you  
4 arguing that tax amount is incorrect?

5 MR. CARPENTER: No. The tax amount was correct,  
6 you know, and it technically I'm sure it still is. I'm  
7 not -- yeah. Now, as far as the statute of limitations,  
8 if that phone call was supposed to extend the statute of  
9 limitations, I certainly never got it. And you don't have  
10 proof of service. I was traveling like I say and changing  
11 cell phones and having cell phone breakdowns. One time I  
12 got a \$900 bill from the cell phone provider which  
13 state -- would only allow me about \$80 recognition of  
14 possible error. So, yeah, a phone message was not a good  
15 way to reach me in those days.

16 JUDGE JOHNSON: Okay. This is Judge Johnson  
17 again. Thank you very much.

18 Let me turn over now to Respondent.

19 Mr. Cristobal, you have up to 10 minutes for your  
20 presentation.

21 MR. CRISTOBAL: Thank you, Judge.

22

23 PRESENTATION

24 MR. CRISTOBAL: Good morning. My name is Leo  
25 Cristobal. I am tax counsel representing Respondent

1 Franchise Tax Board. And with me this morning is Maria  
2 Brosterhous, also tax counsel for Respondent.

3 The issues in this case are whether Respondent  
4 may properly assess Appellant's 2013 deficiency; whether  
5 Appellant has met the burden of proving error in  
6 Respondent's assessment; and whether Appellant is entitled  
7 to any further interest abatement.

8 Respondent received information from the Internal  
9 Revenue Service indicating Appellant underreported income  
10 for the 2013 tax year. Accordingly, Respondent issued a  
11 Notice of Proposed Assessment or NPA to Appellant on  
12 August 11, 2016, adjusting his taxable income and  
13 increasing his California tax liability.

14 As to the first issue, whether Respondent may  
15 properly assess the 2013 deficiency, California law allows  
16 Respondent to assess and collect on a taxpayer's  
17 deficiency so long as it mailed an NPA to the taxpayer  
18 within four years of the filed return. Now, here  
19 Appellant filed his 2013 return on March 15, 2014, and  
20 less than four years later Respondent mailed a 2013 NPA to  
21 Appellant on August 11, 2016.

22 Appellant argues that the statute of limitations  
23 already expired. However, Respondent mailed the NPA to  
24 Appellant within four years of the filed return.  
25 Therefore, it may properly assess Appellant's 2013

1 deficiency.

2 As to the second issue, whether Appellant has met  
3 the burden of proving error in Respondent's assessment,  
4 California law requires taxpayers to report any federal  
5 adjustments that result in additional tax to Respondent,  
6 and to either acknowledge their accuracy or prove that the  
7 federal adjustments are incorrect. Federal determinations  
8 are presumed correct, and the burden of overcoming that  
9 presumption belongs to the taxpayer.

10 Furthermore, Respondent's assessment is presumed  
11 correct when it is based on a final federal determination.  
12 Therefore, unless the taxpayer provides sufficient  
13 documentation showing that the federal adjustment are  
14 incorrect, Respondent's tax assessment is also presumed to  
15 be correct. Now, in this case, a recent copy of  
16 Appellant's federal account transcript dated June  
17 21st, 2022, confirms that the IRS still has not canceled  
18 or reduced its assessment. Additionally, Appellant  
19 submits that he already paid his federal deficiency and  
20 has not argued any error in the federal assessment.

21 Instead, Appellant states that he assumed he had  
22 also paid his State deficiency. However, he has not  
23 provided proof of payment, and Respondent has no record of  
24 receiving payment from Appellant. Appellant argued that  
25 he did not receive the NPA, did not intend to file a

1 protest, did not receive a phone call or a message from  
2 Respondent, however, Respondent has provided exhibits that  
3 can demonstrate the contrary.

4 And, ultimately, Appellant has not provided  
5 documentation or other evidence establishing error with  
6 either the IRS assessment or Respondent's assessment that  
7 is based on that final federal determination.  
8 Accordingly, Appellant has not carried the burden of  
9 proving error in Respondent's tax assessment.

10 Finally, as it relates to interest, other than  
11 the period already conceded by Respondent, which is  
12 September 12, 2016, to April 6, 2021, Appellant has not  
13 alleged any other facts indicating an unreasonable error  
14 or delay by Respondent in the performance of ministerial  
15 or managerial act under Revenue & Taxation Code Section  
16 19104. Accordingly, Appellant is not entitled to any  
17 further interest abatement.

18 Thank you. I'm happy to answer any questions.

19 MR. CARPENTER: Well, okay. A couple of  
20 comments.

21 JUDGE JOHNSON: Sorry, Mr. Carpenter.

22 Just real quick, Judge Johnson.

23 I know you have something to say, so I'll turn it  
24 over to you right away, and you have up to 5 minutes. Go  
25 ahead.

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MR. CARPENTER: Now?

JUDGE JOHNSON: Yes, please start.

CLOSING STATEMENT

MR. CARPENTER: Okay. Well, I didn't claim to have paid this deficiency, but I -- when I first, you know, five years later when I first got the contact, I thought that I might have paid it and forgotten or might have been withheld from one of my refunds or something like that, and I was -- once I realized how I overlooked paying it initially, that I no longer believe I had ever paid it. And -- yeah. I can see that you did get to me within four years. It was getting close but, yeah, you did.

And then so after that it's contingent on my reply whether it's regarded as a protest. And, apparently, the phone call was not -- that was a courtesy or something that was not essential to the statute -- maintaining the statute of limitations. So, yeah. There was a lot of confusion, you know. Like, it took almost a year to figure out exactly what happened once I was contacted early last year in 2021.

And, of course, I wasn't even certain that my initial contacts were genuine. I thought they might be another form of tax -- you know, bank or tax fraud or

1 something like that. And I apologize. It just -- the  
2 tone was not totally professional. It struck me as  
3 somebody who was rescue a case that had already lapsed  
4 from the statute. I didn't know if you might have a  
5 special office set aside to collect money without  
6 authority if it was a genuine adjustment.

7 But anyway, that's just my paranoid conspiracy  
8 theories. I apologize.

9 JUDGE JOHNSON: This is Judge Johnson.

10 MR. CARPENTER: That's it for me.

11 JUDGE JOHNSON: Thank you, Mr. Carpenter. I  
12 don't have any further questions now. We'll review your  
13 evidence and get you an opinion no later than 100 days  
14 from today. We have --

15 MR. CARPENTER: Wait, wait. So you'll issue an  
16 opinion 100 days from now?

17 JUDGE JOHNSON: Within 100 days from today,  
18 correct.

19 MR. CARPENTER: Oh, I was hoping it might be  
20 final today. But yeah. Well, yeah. I don't think I'm  
21 leaving out any recent tales. The earlier questions and  
22 issues have been pretty well resolved. So I'll leave it  
23 over to you folks.

24 JUDGE JOHNSON: All right. Thank you. We'll do  
25 our best to get that to you as fast as possible.

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MR. CARPENTER: Okay.

JUDGE JOHNSON: We have a complete record, so we'll close the record on this appeal. I wish to again thank both parties for their efforts in this matter. This concludes the oral hearing for this appeal.

And with that, we are now off the record.

(Proceedings adjourned at 11:19 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 11th day of August, 2022.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER