

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
J. JIMENEZ,) OTA NO. 21017114
APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, September 15, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
J. JIMENEZ,) OTA NO. 21017114
APPELLANT.)
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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 9:38 a.m.
and concluding at 9:51 a.m. on Thursday,
September 15, 2022, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Panel Lead: ALJ CHERYL AKIN

Panel Members: ALJ MIKE LE
ALJ OVSEP AKOPCHIKYAN

For the Appellant: R. JIMENEZ

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PAIGE CHANG
ERIC YADAO

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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-F were received at page 7.)

OPENING STATEMENT

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By Ms. Chang	10

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By Mr. Jimenez	12

1 Cerritos, California; Thursday, September 15, 2022

2 9:38 a.m.

3
4 JUDGE AKIN: We are opening the record in the
5 Appeal of Jimenez, OTA Case Number 21017114. This matter
6 is being held before the Office of Tax Appeals. Today's
7 date is Thursday, September 15th, 2022, and the time is
8 approximately 9:38 a.m.

9 My name is Cheryl Akin, and I'm the lead
10 Administrative Law Judge for this appeal. With me today
11 are Administrative Law Judges Mike Le and Ovsep
12 Akopchikyan.

13 As I previously noted, Judge Akopchikyan is
14 replacing Judge Lam today. Parties confirm on the record
15 any objections to the substitution, starting with
16 Appellant. As I previously noted, Judge Akopchikyan is
17 replacing Judge Lam on the panel today.

18 Can the parties please confirm on the record
19 whether there are any objections to this substitution,
20 starting with Appellant.

21 MR. JIMENEZ: No objection.

22 JUDGE AKIN: Thank you.

23 Franchise Tax Board.

24 MS. CHANG: No objections. Thank you.

25 JUDGE AKIN: Thank you.

1 As a reminder, the Office of Tax Appeals is not a
2 court. It's an independent appeals body. The office is
3 staffed by tax experts and is independent of the State tax
4 agencies. Also, while I am the lead Administrative Law
5 Judge for the purpose of conducting this hearing today,
6 all three Administrative Law Judges are coequal decision
7 makers and all will participate equally in asking any
8 questions at the hearing today and in reaching a decision
9 in this appeal.

10 With that, let me please have the parties
11 introduce themselves for the record, starting with
12 Appellant.

13 MR. JIMENEZ: Robert Jimenez, Appellant.

14 JUDGE AKIN: Thank you.

15 And Franchise Tax Board.

16 MS. CHANG: Page Chang, Franchise Tax Board.

17 MR. YADAO: Eric Yadao, with Franchise Tax Board.

18 JUDGE AKIN: Thank you.

19 Okay. The issue to be decided in this appeal is
20 whether Appellant has established error in Franchise Tax
21 Board's disallowance of the water conservation credit
22 carryover for the 2016 tax year.

23 With that, I'm going to move on to the evidence
24 in this appeal. As previously noted, Appellant submitted
25 Exhibits 1 through 7 and FTB did not have any objections

1 to the admission of these exhibits. As such, Appellant's
2 Exhibits 1 through 7 are now admitted and entered into the
3 record.

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

6 Franchise Tax Board submitted Exhibits A
7 through F. Appellant did not object to the admission of
8 these exhibits, and Franchise Tax Board's Exhibits A
9 through F are now admitted and entered into the record.

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

12 With that, we are ready for the parties'
13 presentations.

14 Mr. Jimenez, you have ten minutes and may begin
15 when you are ready.

16
17 PRESENTATION

18 MR. JIMENEZ: Good morning, Your Honors.

19 This case is not a question of fact but a
20 question of law. The Franchise Tax Board alleges in its
21 brief that tax credits for water conservation is limited
22 only to 1980 to 1982 and cites the California Revenue &
23 Tax Code 17052.8, along with Revenue & Tax Code 17052.4
24 subsection (h), 170052.5 subsection (h), and citing
25 17052.8 subsection(e) as, quote, "In the case where the

1 credit allowed under this section exceeds the net tax, the
2 excess may be carried over to reduce the net tax in the
3 following year and succeeding years, if necessary, until
4 the credit has been exhausted," unquote.

5 Incidentally, the FTB's citation of this
6 subsection should be Revenue & Tax Code 17052.8 subsection
7 (c). It can be argued that the FTB's citation supports my
8 position. FTB's citation does not support its position
9 that tracks credits for water conservation is only limited
10 to 1980 through 1982. California's laws are highly
11 codified and nothing in the statutes cited by the FTB
12 states tax credits for water conservation efforts is
13 limited only to years 1980 to 1982.

14 In a letter to FTB by me, dated
15 September 25th, 2019 -- that's my Exhibit Number 5 -- I
16 requested from FTB to provide me the actual wording and
17 text of the Revenue & Tax Code of 17052.8. That's -- they
18 stated -- FTB stated that it was the reason for my denial
19 of the tax credit, which FTB never provided nor cited
20 verbatim in sufficient detail to support its position.

21 On the other hand, the Revenue & Tax Code 17052.8
22 subsection (c), which would have FTB being negligent and
23 wrong for having a tax credit for water conservation on
24 the California tax forms at all since, quote, "The excess
25 may carry over to reduce the net tax for the succeeding

1 15 years not approximately 34 years."

2 The FTB has no statutory footing to claim its tax
3 credit for water conservation efforts only pertains to
4 1980 through 1982. I challenge anyone to produce a
5 California statute in the actual text. The FTB has an
6 unsupported assertion and is extending its reach beyond
7 the law to claim a law where there is none. On the other
8 hand, I provide California legislative findings and intent
9 to provide an income tax credit for the purchase of
10 outdoor water use efficiency improvements during the
11 exceptional drought year that California is facing. As
12 public policy on their Assembly Bill 2040 and Assembly
13 585, they're on California's legislative intent and public
14 policy, not the FTB's intent and policies.

15 I request this Panel find in favor to allow the
16 water conservation tax credit for installation of turf
17 since FTB has not established a statutory footing stating
18 said tax credit only applies from 1980 through 1982.

19 Thank you.

20 JUDGE AKIN: Thank you, Mr. Jimenez.

21 I'm going to turn it over to my Panel to see if
22 they have any questions.

23 Judge Le, did you have any questions for
24 Appellant?

25 JUDGE LE: This is Judge Le. I have no

1 questions.

2 JUDGE AKIN: Okay.

3 And, Judge Akopchikyan?

4 JUDGE AKOPCHIKYAN: This is Judge Akopchikyan. I
5 don't have any questions. Thank you for your
6 presentation, and I understand your position, Mr. Jimenez.

7 JUDGE AKIN: Okay. Thank you.

8 I also don't have any questions. Thank you again
9 for your presentation. I'm going to turn it over to
10 Franchise Tax Board for their presentation, after which
11 you will have five minutes again for your rebuttal.

12 I believe, Ms. Chang, are you presenting FTB's
13 argument?

14 MS. CHANG: Yes, I am. Thank you.

15 JUDGE AKIN: Okay. You have five minutes and may
16 begin when you're ready.

17

18 PRESENTATION

19 MS. CHANG: Good morning. This is Paige Chang,
20 along with my co-counsel Eric Yadao, representing the
21 Franchise Tax Board.

22 The issue on appeal is whether the Appellant has
23 established error in FTB's proposed assessment based on
24 disallowance of the water conservation credit carryover
25 for the 2016 tax year.

1 The former provision for the water conservation
2 credit provided a tax credit to taxpayers for a portion of
3 taxpayer's cost for water conservation measures installed
4 on California premises owned by taxpayer that were
5 incurred from the year 1980 to 1982. Here in this case
6 the Appellant and FTB have stipulated to the fact that the
7 water conservation improvements installed on Appellant's
8 property were not installed between January 1st, 1980, and
9 December 31st, 1982.

10 Additionally, the former statute generally
11 requires taxpayers to claim the credit in the tax year
12 that the water conservation measures were installed.
13 However, if the credit exceeded the net tax, then the
14 excess could be carried forward. Here in this case the
15 Appellant and FTB have also stipulated to the fact that
16 the Appellant did not have any water conservation credit
17 carryover from the tax year 1980 through 1982.

18 With regard to the 2016 California Assembly Bill
19 2040, it was proposed legislation in 2016 but failed on
20 November 30th, 2016, and did not become law. Generally,
21 FTB's determination is presumed correct and the taxpayer
22 has the burden of proving error. Unsupported assertions
23 are not sufficient to satisfy a taxpayer's burden of
24 proof. Here in this case, Appellant has not provided
25 records to show error in FTB's determination, and the

1 Appellant failed to meet the Appellant's burden of proof.

2 Accordingly, we respectfully request that FTB's
3 assessment be affirmed, and that FTB's position be
4 sustained in this matter. I'm happy to address any
5 questions from the Panel.

6 Thank you.

7 JUDGE AKIN: Thank you, Ms. Chang.

8 I'm going to again turn to my Panel to see if
9 they have any questions for the Franchise Tax Board.

10 Judge Le, any questions?

11 JUDGE LE: No questions for me. Thank you.

12 JUDGE AKIN: Okay.

13 And Judge Akopchikyan?

14 JUDGE AKOPCHIKYAN: This is Judge Akopchikyan
15 speaking. No questions. Thank you.

16 JUDGE AKIN: Okay.

17 And I also don't have any questions. So I think
18 we're ready for your closing, Mr. Jimenez. You have five
19 minutes, and you may begin.

20

21 CLOSING STATEMENT

22 MR. JIMENEZ: I questioned FTB's former
23 prohibition of the former statutes. They have not
24 provided any to me, nor the text, nor cited any of the
25 actual wording. What they did provide in their opening

1 brief is the Revenue & Tax Code 17052.8. Subsection (c)
2 specifically states that it succeeding within 15 years,
3 and the effective date of that is September 26th, 1996.

4 So -- and on the forms it neither states that
5 it's limited to 1980 to 1982, and I can't find anything
6 nor have they provided anything other than what they've
7 stated on the record and what they've written to me in
8 documents. But there's no law that says it only pertains
9 to 1980 to 1982. As for the assembly bills, although they
10 are not law, it identifies the legislative's intent and
11 their findings and declarations.

12 And that's all I have to say. Thank you.

13 JUDGE AKIN: Okay. Thank you, Mr. Jimenez. I
14 understand your argument and your position.

15 I'm going to, again, turn to my Panel to see if
16 they have any questions for either party.

17 Judge Le.

18 JUDGE LE: This is Judge Le. No questions.
19 Thank you.

20 JUDGE AKIN: Okay.

21 Judge Akopchikyan?

22 JUDGE AKOPCHIKYAN: Judge Akopchikyan speaking.
23 No questions. Thank you.

24 JUDGE AKIN: All right.

25 I also do not have any questions. So I think

1 we're ready to conclude the hearing, unless there is
2 anything additional at this point.

3 I would like to thank the parties for their
4 presentation today.

5 The Panel of Administrative Law Judges will meet
6 and decide the case based upon the arguments, testimony,
7 evidence in the record, and the briefing. We will issue a
8 written decision no later than 100 days from today. The
9 case is now submitted, and the record is now closed.

10 (Proceedings adjourned at 9:51 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 3rd day
of October, 2022.

ERNALYN M. ALONZO
HEARING REPORTER