

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 V. NICKERL,) OTA NO. 21098562
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, August 30, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
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 V. NICKERL,) OTA NO. 21098562
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 APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:06 p.m. and concluding at 1:24 p.m. on
Tuesday, August 30, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ AMANDA VASSIGH

Panel Members: ALJ ANDREAS LONG
ALJ SHERIENE RIDENOUR

For the Appellant: V. NICKERL

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
TOPHER TUTTLE
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 7.)
(Department's Exhibits A-N were received at page 7.)

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California; August 30, 2022

1:06 p.m.

JUDGE VASSIGH: We are opening the record in the Appeal of Nickerl. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 21098562. Today's date is Tuesday, August 30th, 2022, and the time is 1:06 p.m.

This hearing is being conducted electronically with the agreement of the parties. Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Amanda Vassigh, and I will be the lead Judge. Judges Ridenour and Judge Long join me as members of this panel. All three of us will meet after the hearing and produce a written decision as equal participants. Although, I will conduct the hearing today, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information we need to decide this appeal.

For the record, will the parties please state their names and who they represent, starting with the representatives for the Franchise Tax Board.

MR. TUTTLE: My name is Topher Tuttle representing Franchise Tax Board.

MS. BROSTERHOUS: Maria Brosterhous, also of the

1 Franchise Tax Board.

2 JUDGE VASSIGH: Okay.

3 And, Mr. Nickerl, can you do introductions for
4 yourself, please.

5 MR. NICKERL: Yeah. My name is Victor Nickerl,
6 the one that's the petitioner.

7 JUDGE VASSIGH: Okay. And you have someone with
8 you today?

9 MR. NICKERL: Yes, my wife Shannon.

10 MRS. NICKERL: Shannon Nickerl.

11 JUDGE VASSIGH: Okay. Thank you.

12 The parties were emailed the electronic exhibits binder,
13 the hearing binder. The exhibits for this appeal are
14 FTB's Exhibits A through N and Appellant's Exhibits 1
15 through 6. Earlier the parties indicated no objections to
16 any of the exhibits.

17 Can representatives for the FTB confirm that
18 remains correct.

19 MR. TUTTLE: Yes, that remains correct.

20 JUDGE VASSIGH: Okay. Thank you.

21 And, Mr. Nickerl, can you confirm you have no
22 objections.

23 MR. NICKERL: Yes, ma'am. I don't have any
24 objections.

25 JUDGE VASSIGH: Thank you. The exhibits I

1 summarized are now admitted and entered into the
2 evidentiary record, and we'll move onto the issue to be
3 heard in this appeal.

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

6 (Department's Exhibits A-N were received in
7 evidence by the Administrative Law Judge.)

8 The issue to be decided in this case is whether
9 Appellant's claim for refund is barred by the statute of
10 limitations.

11 Mr. Nickerl, you indicated in our prehearing
12 conference that you may be calling witnesses today, and I
13 see that you have Mrs. Nickerl with you. Mr. Nickerl,
14 intended to testify. Will Mrs. Nickerl be testifying as
15 well?

16 MR. NICKERL: Absolutely. Yes, ma'am.

17 JUDGE VASSIGH: Okay. And you indicated that you
18 might have another witness.

19 MR. NICKERL: Unfortunately, my son is not
20 available, but he wanted to be here.

21 JUDGE VASSIGH: Okay. So what I will do,
22 Mr. Nickerl, is before you testify I will swear you and
23 Shannon Nickerl in so that we can take her testimony into
24 the record and make that factual findings.

25 MR. NICKERL: Okay.

1 JUDGE VASSIGH: Okay. I'd like to quickly go
2 over the order of the proceedings today. As a reminder to
3 the parties, during our prehearing conference we decided
4 that Mr. Nickerl would have 15 minutes for his
5 presentation and witness testimony. After which FTB will
6 be permitted to ask questions they may have of Mr. Nickerl
7 and his witness regarding their factual testimony.

8 Following any questions by FTB, I will turn to my
9 panel so see if they have any questions. FTB will then
10 have ten minutes for their presentation. And again, I
11 will turn to the panel to see if they have any questions.
12 Finally, Mr. Nickerl, you will have an optional five
13 additional minutes for a closing or a rebuttal, and that
14 will be followed by any questions the panel may have for
15 either party.

16 Okay. Are there any questions before we move on
17 to the opening presentation.

18 MRS. NICKERL: No, I have none.

19 MR. NICKERL: None.

20 JUDGE VASSIGH: Okay. Great. So, Mr. Nickerl
21 and Mrs. Nickerl, I will swear you in together right now
22 so that we can consider your statements as testimony, and
23 you will remain under oath until the close of this
24 hearing. Please raise your right hands.

25 VICTOR NICKERL,

1 Produced as a witness, and having been first duly sworn by
2 the Administrative Law Judge, was examined and testified
3 as follows:
4

5 SHANNON NICKERL,

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 VASSIGH: Thank you. We are ready to
11 proceed with your opening, Mr. Nickerl, whenever you are
12 ready.
13

14 PRESENTATION

15 MR. NICKERL: This is pretty short and sweet.
16 For -- since 2004, 2005, I received notices just blowing
17 me up asking or demanding I make payments for something I
18 did not do. I kept responding via, you know, writing on
19 the back of it and calling up and saying I do not owe
20 money for these years. I did not live in the state after
21 these years, and kept getting at least -- you know, just
22 demand payments.

23 And I kept going over and over and over. I had
24 some issues when my grandfather passed away, and it put
25 this property in question. When he passed away, I paid a

1 death tax, and I just got slammed with all kinds of
2 responsibilities I wasn't expecting. At the time I was
3 running a tree service. I had the trailer park and trying
4 to be a family man. And when my grandfather passed away
5 it just added more difficulty because that was kind of
6 like apparent to me. I helped raise them, and they helped
7 raise me, so to speak.

8 And, when I kept getting tax bills, it was just
9 overwhelming. When I sold this property, I became an
10 addict. I became a horrible father, horrible husband, and
11 I had some issues. My wife had filed for divorce twice.
12 As you can see, she's still here with me. And these bills
13 that I kept getting just kept compiling issues for me.
14 And then at one point I had a \$9,000 bill, and ultimately,
15 I had tax liens put on me for something I didn't do.

16 And I file -- you know, I ended up getting a
17 tax -- I ended up having my taxes all done in 2010 or 2011
18 just to try to get things caught up because we went from
19 California to Maui, and from Maui to Oregon. And a lot of
20 our stuff was and/or disposed of, and I didn't have it
21 all. One of my exhibits is to show you that I lived in
22 Maui that the forwarding address came from the Tax Board,
23 and it was sent to 822 South Kihei, and I was enrolled in
24 a drug treatment. And so I was not all there.

25 So, I mean, when I finally got it resolved is

1 when my wife went to do the grocery shopping, and she
2 calls me up and, "I can't pay for groceries." There was a
3 hold on our account. At that point I called the Tax
4 Board, and they released funds. They released it and said
5 I had to file taxes again. Well, I went and found a lady
6 that actually did our tax returns for free, which was the
7 second person to do them.

8 And, ultimately, she says, "Oh, no. You don't
9 owe them nothing. In fact, they owe you \$33,000, which
10 was a shock to me because for years -- I mean, for
11 ten-plus years I was hounded for this.

12 JUDGE VASSIGH: Excuse me. I'm going to
13 interrupt you really briefly. I want to make sure that
14 Ms. Alonzo is able to get all of your testimony. And
15 since we're doing this electronically, I want to make sure
16 everything is coming through. So I'm going to ask you
17 maybe slow down a little bit.

18 And, Ms. Nickerl, I appreciate that you have
19 something to add. If you could wait so it's not both
20 voices at the same time. Thank you.

21 MR. NICKERL: I apologize for that. It's just
22 this is something that's just -- it's been a trigger for
23 me. I mean, like I said for years. I mean, I'm getting
24 these bills and then not knowing what I did wrong. And
25 proving -- you know, trying to prove my innocence of the

1 bill, and that I didn't live in the State of California
2 but to get a tax bill for 2003, 2004, 2005, 2006, 2007,
3 2008, 2009, 2010, and I kept saying I do not -- I have not
4 lived there.

5 And then like I say, they had my -- my credit
6 even ruined worse than it was to have a tax lien on me.
7 It caused me more harm than I can ever imagine. And like
8 I said, I have been in recovery for years now but this has
9 just been -- you know, I can't tell you how bad it's been
10 for me.

11 It's pretty much it, ma'am.

12 JUDGE VASSIGH: Thank you for sharing your
13 testimony, Mr. Nickerl.

14 Ms. Nickerl, would you like to present testimony
15 now?

16 MRS. NICKERL: Yes.

17 JUDGE VASSIGH: Okay. Thank you. You may begin
18 whenever you are ready.

19

20 PRESENTATION

21 MRS. NICKERL: Okay. Shannon Nickerl. I'm
22 pretty much not going to repeat verbatim but, you know, we
23 left California I think it was 2004? Yeah, 2004. When we
24 did we went to Maui for a year. We didn't receive any
25 statements from the California Tax Board or anything. We

1 didn't realize we owed supposedly, or that we were owed.
2 We were there for a year. Then we got to Oregon and then
3 repeatedly we received bills from California saying that
4 we owed money. Which, you know, my husband and I, like he
5 stated. We were separated.

6 So I was kind of in shock when -- okay. How
7 could we owe money when we paid so much money towards,
8 like, the death tax and sold all the businesses. And this
9 went on, I think, for 15 years to the point where as my
10 husband stated, I went to the grocery store and I had no
11 money. I couldn't get the groceries. So I called the
12 bank and they said that California tax got the money, and
13 they were going to repeatedly do this until they received
14 their full amount.

15 So I was in shock. And that's when my husband --
16 he stated that he got ahold of an accountant, which this
17 was our second accountant that we used in Oregon. The
18 first one never told us anything about possibly California
19 owing us money. We never received anything from
20 California saying that we were owed money. And so this
21 accountant cleared it up and said, like -- like my husband
22 said, you didn't owe money but you were owed.

23 So like I said, this was probably what -- yeah.
24 It was 15 years later that we'd left California. So
25 anyway it's money that we definitely could have used. I

1 mean, as you can see or heard from my husband's statement,
2 it's stressful. So yeah. So that's pretty much it. And
3 I -- I was looking up California laws and wondering, you
4 know, why didn't we receive anything regarding -- I'm not
5 sure we just didn't get it forwarded. But, yeah, it
6 definitely caused stress.

7 JUDGE VASSIGH: This is Judge Vassigh. Thank you
8 for your presentation.

9 I want to see if FTB has any questions for either
10 Mr. or Ms. Nickerl.

11 MR. TUTTLE: No questions from FTB.

12 JUDGE VASSIGH: Okay.

13 I would like to check with my panel members.

14 Judge Ridenour, do you have any questions?

15 JUDGE RIDENOUR: This is Judge Ridenour. No
16 questions at this time. Thank you very much.

17 JUDGE VASSIGH: Thank you.

18 Judge Long, do you have any questions?

19 JUDGE LONG: This is Judge Long. I have no
20 questions.

21 JUDGE VASSIGH: Okay. Thank you.

22 At this time we can move on to the Franchise Tax Board's
23 presentation whenever you're ready.

24 MR. TUTTLE: Thank you.

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1 statute of limitations law provides that there is no
2 waiver of the statutory period based on reasonable cause.
3 Accordingly, Respondent's denial for Appellant's claim for
4 refund is proper and should be sustained.

5 Thank you.

6 JUDGE VASSIGH: Thank you, Mr. Tuttle. I would
7 like to see if my co-panelists have any questions for you,
8 Mr. Tuttle.

9 Judge Long, do you have any questions?

10 JUDGE LONG: This is Judge Long. I have no
11 questions.

12 JUDGE VASSIGH: Thank you.

13 Judge Ridenour, do you have any questions?

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

16 JUDGE VASSIGH: Thank you very much.

17 Okay. At this point I would like to offer
18 Mr. Nickerl the option of providing a closing and
19 rebuttal, if you would like to take that opportunity right
20 now.

21 MR. NICKERL: This does not allow -- can you hear
22 me?

23 JUDGE VASSIGH: I can hear you. Thank you. Yes.

24 MR. NICKERL: I switched the camera and the
25 button. Can you see it all?

1 JUDGE VASSIGH: Your camera is off, Mr. Nickerl.

2 MR. NICKERL: Trying to make sure -- there it
3 goes. Me and technology don't get along.

4 JUDGE VASSIGH: Okay.

5

6 CLOSING STATEMENT

7 MR. NICKERL: Well, my question is -- I was an
8 addict. I mean, I was having a hard time with -- you
9 know, like Mr. Tuttle says, I had four years. I was never
10 aware of anything that I was owed any money. I left it to
11 the accountant that I had at the time when my wife was
12 wanting to leave me for my stupidity and my ignorance. I
13 was focused on my family. I was focused on trying to save
14 what I had left.

15 And as I said, I did not even -- I didn't get
16 caught up on my taxes for '04, '05, '06 until 2010, I
17 believe it was. I had Denise Bean of Bean Counter Taxes
18 do my taxes then and try to get things caught up and try
19 to get back on track. I was in treatment. I was a
20 recovering addict. So I wasn't all there. I mean, I
21 didn't work. I didn't do anything. I was just in
22 existence.

23 The other problem I had is all those years. I
24 mean, I checked periodically the sites for unclaimed
25 money. I found I had certain things owed to me. Nobody

1 once ever reached out or advertised or did anything to
2 say, "Hey, sir, you had \$33,000 owed to you." Nobody sent
3 me a notice. They had no problems sending me notices for
4 something I did not owe. And, you know, the interest and
5 penalties for that was ridiculous.

6 And like I said, my credit was even worse for
7 these tax liens put on me for \$9,000 at one point. And
8 then like I said, having to prove myself, I had some
9 problems. I still deal with them. You know, that's all I
10 have to say. It's like, you know, what's the statute of
11 limitations for you guys to constantly go after somebody
12 for something they didn't do? Nobody reached out and
13 said, "Hey, we owe you some money, sir."

14 That is all, ma'am.

15 JUDGE VASSIGH: Thank you, Mr. Nickerl.

16 I'd like to check one final time if my
17 co-panelists have any questions for either party.

18 Judge Ridenour, do you have any questions for
19 either party?

20 JUDGE RIDENOUR: This is Judge Ridenour. No
21 questions. Thank you.

22 JUDGE VASSIGH: Okay.

23 Judge Long, do you have any questions for either
24 party?

25 JUDGE LONG: This is Judge Long. No questions

1 for me. Thank you.

2 JUDGE VASSIGH: Okay.

3 At this point, we've heard both parties, and we
4 are ready to conclude this hearing. The record is now
5 closed. I'd like to thank everyone for participating
6 today.

7 This matter is now submitted to the panel to
8 privately confer and decide the issue. We will aim to
9 send you a written opinion of our decision within 100 days
10 after the record is closed today.

11 And today's hearing in the Appeal of Nickerl is
12 now adjourned.

13 (Proceedings adjourned at 1:24 p.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 12th day
of September, 2022.

ERNALYN M. ALONZO
HEARING REPORTER