

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. KRAMM,) OTA NO. 21118951
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, September 27, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
D. KRAMM,) OTA NO. 21118951
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:10 p.m. and concluding at 1:27 p.m. on
Tuesday, September 27, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ EDDY LAM
ALJ KEITH LONG

For the Appellant: D. KRAMM

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

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I N D E X

E X H I B I T S

(Appellant's unlabeled exhibit was received at page 7.)
(Department's Exhibits A-K were received at page 6.)

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California; Tuesday, September 27, 2022

1:10 p.m.

JUDGE KLETTER: Going on the record.

This is the Appeal of Kramm, OTA Case Number 21118951. Today is September 27th, 2022, and the time is approximately 1:10 p.m. We are holding this hearing today electronically with the agreement of all the parties.

As a reminder the Office of Tax Appeals is not a court. It's an independent appeals body. The Office of Tax Appeals is staffed by tax experts and is independent of the State tax agencies. We do not engage in ex parte communication. Our decision is based on arguments and evidence provided by the parties on appeal and is made in conjunction with the appropriate application of law. Please keep in mind that we have read the brief and examined the submitted exhibits.

My name is Asaf Kletter. I'm the lead ALJ from for this appeal. And with me are Administrative Law Judges Eddie Lam and Keith Long.

Can the parties please each identify yourself by stating your name for the record, beginning with the Appellant.

Mr. Kramm, if you wouldn't mind just stating your name for the record.

1 MR. KRAMM: David M. Kramm.

2 JUDGE KLETTER: Thank you.

3 And Respondent Franchise Tax Board.

4 MR. YADAO: Eric Yadao for the Franchise Tax
5 Board.

6 JUDGE KLETTER: Thank you.

7 This is Judge Kletter. The issue in this case is
8 whether Appellant has demonstrated that the statute of
9 limitations should be tolled because of his financial
10 disability for the 2010 through 2012 tax years.

11 With respect to the evidentiary record, FTB has
12 provided Exhibits A through K, and there was no objection
13 to the admissibility of these exhibits. So, therefore,
14 these exhibits are entered into the record.

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

17 Appellant provided an unlabeled exhibit with his
18 opening brief.

19 And I just wanted to confirm with Respondent
20 Franchise Tax Board, there's no objection to the admission
21 of that attachment to the opening brief; is that correct?

22 MR. YADAO: That's correct. Eric Yadao for the
23 Franchise Tax Board. No objection.

24 JUDGE KLETTER: Okay. Thank you.

25 So, therefore, this unlabeled exhibit is entered

1 into the record as well, and no additional exhibits were
2 presented today.

3 (Appellant's Unlabeled Exhibit was received
4 in evidence by the Administrative Law Judge.)

5 So with that background in mind, Mr. Kramm, are
6 you ready to begin your opening?

7 MR. KRAMM: Okay.

8 JUDGE KLETTER: Please can go ahead.

9

10 PRESENTATION

11 MR. KRAMM: David Kramm. I -- I -- I did not --
12 excuse me -- I didn't even know about this 17 -- well,
13 it's was actually \$17,000 because you're missing a tax
14 year of 2013 I couldn't get it sent in time because it
15 wasn't mailed to me on time. They were sending mail to a
16 different house that I got foreclosed on and no longer
17 owned. And I've been mentally and financially disabled
18 for at least ten years now and just trying to get back on
19 my feet now.

20 They took out \$17,000 that was a lien they put on
21 my house in Stanley Court in Santee, and I had signed that
22 house over to my wife somewhere around the 2010 area. But
23 the Records Office for some reason didn't get it
24 recorded. So when she sold the house in 2016, they took
25 it out of escrow. They just took out the \$17,000 lien

1 that was liened on me on that house.

2 And I didn't even know about this because I'd
3 been homeless and staying on friends' couches. And I
4 stayed out in Austin, Texas for a couple of years, 2014
5 through '17. And I didn't work. And so the soonest that
6 I even found out about this going on was 2020 when I came
7 back to California again. And then at that time I
8 contacted -- once I saw that she didn't get this money
9 back, I had contacted the Franchise Tax Board, and they
10 had said they had no record on file of taxes from me
11 through these years.

12 So I went down and provided them taxes for those
13 years and filed them. And then they sent me back the
14 letters for each year independently saying how much I
15 overpaid. But then they said, but we're not going to give
16 it back to you because of the statute of limitations.

17 Let's see. Anything else I need to say? I
18 didn't work, and that whole period of time I was living
19 couch to couch. So I had no way of getting this
20 information. My wife had no way of getting to me letting
21 me know that they took out that money. That's -- that's
22 my wife by the way.

23 So I think that's all I need to say.

24 JUDGE KLETTER: Okay. Thank you, Mr. Kramm, for
25 your statements.

1 I'll turn it over to the Franchise Tax Board.

2 Mr. Yadao, are you ready to begin your
3 presentation.

4 MR. YADAO: Eric Yadao with the Franchise Tax
5 Board. Yes.

6 JUDGE KLETTER: Pleas go ahead.

7

8 PRESENTATION

9 MR. YADAO: As set forth in FTB's opening brief,
10 FTB received Appellant's tax year 2010 through 2012
11 returns on February 25th, 2021, claiming refunds of
12 overpayments for each tax year. Under the law those
13 claims for refund were untimely because they needed to be
14 filed no later than the later of 1 year from the date of
15 overpayment or 4 years from the original filing deadline
16 for each tax year. Both the payment and filing statutes
17 had lapsed before receipt of Appellant's returns.

18 Appellant, as you've heard, is asserting he is
19 entitled to tolling of the statute because of disability
20 for the period of 2009 through the date he filed his
21 returns. As the Office of Tax Appeals decided in its
22 precedential decision in the Appeal of Gillespie, when an
23 Appellant alleges financial disability to suspend and
24 extend the statute of limitations, a physician's affidavit
25 must be provided that identifies the disability period

1 when Appellant was unable to manage financial affairs.

2 Without such evidence, it's not possible to
3 define the period when the statute of limitations were
4 filed, and the claim for refund must be suspended. As
5 you've heard Appellant has only provided argument without
6 any required evidentiary support. Therefore, FTB is
7 unable to grant Appellant's claims for refund. And it
8 also requests that OTA sustain that denial of those
9 claims.

10 I'm happy to answer any questions your panel may
11 have.

12 JUDGE KLETTER: Thank you so much for your
13 presentation, Mr. Yadao.

14 I'd like to turn it over to my panel.

15 Judge Long, do you have any questions for
16 Appellant or Respondent, for either of the parties?

17 JUDGE LONG: This is Judge Long. I just would
18 like to know from Mr. Kramm, is there -- I know that you
19 didn't submit exhibits as such with your briefs. Do you
20 have any sort of statements or affidavits that you can
21 give in support of your financial disability?

22 MR. KRAMM: This is David Kramm. No, I don't
23 have anything. I didn't have a doctor. I was just living
24 on the street and on couches and things like that. I
25 didn't even have a doctor. And so I couldn't get any

1 financial statement -- not financial statement --
2 affidavit. That's the word.

3 JUDGE LONG: Thank you. I don't have any further
4 questions.

5 JUDGE KLETTER: Thank you, Judge Long.

6 And, Judge Lam, do you have any questions for the
7 parties?

8 JUDGE LAM: This is Judge Lam speaking. I don't
9 have any questions so far. Thank you.

10 JUDGE KLETTER: Okay.

11 And I don't have any questions as well. Thank
12 you to my Panel.

13 I'd like to, Mr. Kramm, your -- would you like to
14 make a final statement or any rebuttal to what Mr. Yadao
15 said? Is there anything else you would like to say before
16 the case is submitted into the record?

17 MR. KRAMM: Yeah. Would a statement from my
18 ex-wife about how I was make it any better?

19 JUDGE KLETTER: So just a -- this is
20 Judge Kletter speaking. This is your time to -- you know,
21 you have five minutes to say -- to make your presentation.
22 So I think it's really your choice as to what you'd like
23 to present or not. So please go ahead, Mr. Kramm.

24 MR. KRAMM: I got five minutes?

25 JUDGE KLETTER: Hm-hm. Yeah. That's correct.

1 MR. KRAMM: Yeah. Would a statement from my
2 ex-wife make any difference?

3

4 CLOSING STATEMENT

5 MR. KRAMM: And I don't know what else to say.
6 You know just that I was here and there, living here and
7 there on the street -- not on the street but on couches
8 and all that. And I didn't have a doctor. I didn't have
9 any income. And I didn't know what timely things were
10 going on at the time, you know, after they -- you know,
11 they had that overpayment from my wife. And she couldn't
12 get ahold of me to let me know that I needed to do
13 something to try to get that back. So I don't know.
14 That's about all I can say.

15 JUDGE KLETTER: Mr. Kramm, I just want to
16 confirm. So the statement from your ex-wife is she
17 like --

18 MR. KRAMM: She's right here. I could have her
19 talk to you or could have something in writing done, but
20 she's right here. She can give you a statement.

21 JUDGE KLETTER: I'll turn it over -- do you have
22 any objection if -- Mr. Yadao?

23 MR. YADAO: Eric Yadao with the Franchise Tax
24 Board. I just would question her being a percipient
25 witness of anything when Mr. Kramm says he was in Texas

1 from 2014 to 2017.

2 JUDGE KLETTER: As you know, Mr. Yadao, the
3 Office of Tax Appeals will give any statement their due
4 weight. So I think it's really Appellant's choice of --

5 THE STENOGRAPHER: Judge Kletter, can I please
6 have you speak up. I'm having a really hard time hearing
7 you.

8 JUDGE KLETTER: Oh, I'm so sorry.

9 Just saying that the OTA will give any statements
10 their due weight. Just curious for Franchise Tax Board.
11 So it sounds like there's no objection.

12 MR. YADAO: No objection then. Thank you.

13 JUDGE KLETTER: And then, Mr. Kramm, did your
14 ex-wife want to be sworn in for testimony, or did she just
15 want to --

16 MR. KRAMM: Yeah. She's right here. I'm going
17 to let her sit down in my chair right now.

18 MRS. KRAMM: Hi. I'm Kathleen Kramm. Sorry.

19 JUDGE KLETTER: Hello, Mrs. Kramm.

20 MRS. KRAMM: Hello.

21 JUDGE KLETTER: So I'm just curious like are
22 you -- will you be testifying to facts, or are you just
23 going to be making a statement? If you're sworn in, that
24 will allow us to accept your statements as evidence.

25 MRS. KRAMM: I can be sworn in.

1 JUDGE KLETTER: Okay. So if you could please
2 raise your right hand.

3
4 K. KRAMM,
5 produced as a witness, and having been first duly sworn by
6 the Administrative Law Judge, was examined and testified
7 as follows:

8
9 JUDGE KLETTER: Please begin whenever you're
10 ready.

11
12 WITNESS STATEMENT

13 MRS. KRAMM: I'm sorry. I don't have a written
14 statement, but I was listening to when Dave talked to you.

15 I can tell you he did not -- David was homeless
16 and pretty much living under a house when this all
17 happened with the lien against my house. I couldn't
18 contact him. He did go -- he was from what I understand
19 now, he was moving back and forth. When we did find him,
20 at the time, we couldn't even get him to the doctor.
21 Because I notice one of these things was a doctor
22 statement for that period of time when he was not -- when
23 he was sick. We say he was sick during that time.

24 I -- I was just a witness to that. He did move.
25 He moved a couple of times when his family would find him,

1 they would take him in for a while, and then he'd take off
2 again. And it was just -- I -- I nobody really knew what
3 to do. For the past year now he kind of came back to us.
4 He's getting back on track now. He's still not quite all
5 ready, but I just -- I don't know really what else to say.

6 I wish we didn't -- I wish he -- I wish we could
7 have had a doctor that was watching -- looking at him back
8 then or taking care of him, but we just didn't, and we
9 couldn't. He wouldn't have allowed it any way, or he
10 wouldn't have okayed it. He still doesn't believe a lot
11 of things of what was happening back then, what he was
12 doing.

13 Well, I can say that I did contact the Franchise
14 Tax Board and the tax advocate when the lien was taken
15 against my -- was paid against -- from my home. And I
16 was, at that time -- I think within six months of it
17 happening, and I was told the only thing I could do would
18 be to take him to civil court and sue him. But that
19 was -- but I did attempt to see what we could do.

20 I think that's about all I can really -- I -- I
21 don't -- can't give you dates, exact dates. I just know
22 he was gone. People couldn't find him, and he wasn't --
23 he was mentally ill. But he's -- he's getting better now.
24 He's working again, slowly getting back to track. I think
25 that's all you could really say.

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JUDGE KLETTER: Okay. Thank you so much.

And I just wanted to turn it over to Respondent
FTB. Do you have any questions for the Appellant's
witness?

MR. YADAO: No questions.

JUDGE KLETTER: Okay. Thank you so much for your
testimony.

MRS. KRAMM: Okay. Well, thank you. Thank you
for letting me. I'll put David back here now.

JUDGE KLETTER: Okay. Great. Thank you.

MR. KRAMM: I'm back.

JUDGE KLETTER: So thank you everyone for your
participation today with -- and for your presentations.

This concludes the hearing, and this Panel will
meet and decide the case based on the documentation and
the testimony that was presented. We will issue our
written decision no later than 100 days from today. And
with that, the case is submitted, and the record is now
closed.

(Proceedings adjourned at 1:27 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 7th day
of October, 2022.

ERNALYN M. ALONZO
HEARING REPORTER