

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. MANTAI,) OTA NO. 21119168
APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, September 27, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
M. MANTAI,) OTA NO. 21119168
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:45 a.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:

Administrative Law Judge: ASAF KLETTER

For the Appellant: M. MANTAI

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER COOK
ERIC YADAO

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I N D E X

E X H I B I T S

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

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

	<u>PAGE</u>
By Mr. Mantai	7
By Mr. Cook	11

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Mantai	14

1
2
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California; Tuesday, September 27, 2022
9:30 a.m.

JUDGE KLETTER: We're going to now go on the
record.

This is Appeal of Mantai, OTA Case Number
21119168. Today is September 27th, and the time is
approximately 9:30 a.m.

We are holding this hearing today electronically
with the agreement of all parties. As a reminder OTA is
not a court. We are an independent appeals body. The
Office of Tax Appeals is staffed by tax experts and is
independent of the State's tax agencies. We do not engage
in ex parte communication. Our decision is based on
arguments and evidence provided by the parties on appeal
in conjunction with appropriate application of law.

As mentioned, my name is Asaf Kletter. I will be
the lead Administrative Law Judge for this appeal. I have
read the briefs and examined the submitted exhibits.

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

MR. MANTAI: Michael Mantai.

JUDGE KLETTER: Thank you, Appellant.

And Respondent.

1 MR. COOK: This is Chris Cook with the Franchise
2 Tax Board.

3 MR. YADAO: This is Eric Yadao with the Franchise
4 Tax Board.

5 JUDGE KLETTER: Thank you.

6 And the issue in this case is -- this is
7 Judge Kletter. The issue in this case is whether
8 Appellant has established grounds to abate the
9 underpayment of estimated tax penalty for the 2019 year.
10 With respect to the evidentiary record, FTB provided
11 Exhibits A through F. And as noted in the prehearing
12 conference minutes and orders, Appellant did not object to
13 the admissibility of these exhibits. Therefore, Exhibits
14 A through F are entered into the record.

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

17 Appellant submitted Exhibits 1, and following the
18 prehearing conference, Exhibit 2, and FTB did not object
19 to the admissibility of these exhibits. Therefore, these
20 exhibits are entered into the record.

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

23 No additional exhibits were presented today.

24 Mr. Mantai, are you ready to begin your opening.

25 MR. MANTAI: Yes.

1 JUDGE KLETTER: Please begin.

2

3 PRESENTATION

4 MR. MANTAI: I'm going to try and keep this
5 brief. I don't think this is complicated issue. I
6 appreciate the opportunity to really just kind of state my
7 case.

8 So my position really revolves around the
9 instructions for estimating taxes that I did in -- after
10 following my 2018 tax return. So my Exhibit 2 are the
11 instructions. I believe as a taxpayer, who does my own
12 taxes, I should have a reasonable expectation that if I
13 follow the instructions provided by the FTB in estimating
14 my taxes and paying the correct amount or the amount
15 that's calculated using their instructions, that I
16 shouldn't be subjected to tax penalties, that I'm paying
17 the correct amount.

18 It's my contention that I did follow the
19 instructions. And I'd like to just kind of illustrate the
20 basis for why I'm saying that. So I don't know -- I
21 apologize. I'm not an attorney, obviously, but
22 procedurally do I share the screen if I want to talk about
23 Exhibit 2 or just read from it?

24 JUDGE KLETTER: Hi. This is Judge Kletter. So,
25 essentially, all the parties should have copies of the

1 exhibits. So the easiest way is if you describe Exhibit 2
2 we can all refer to the copies. We don't need to screen
3 share.

4 MR. MANTAI: Okay. Great.

5 So Exhibit 2 is the 20 -- the instructions for
6 Form 540-ES. Which, again, I completed after completing
7 my 2018 taxes to estimate how much I was required to pay
8 in estimated taxes for tax year 2019. And I highlighted a
9 couple of sections that I just wanted to talk about. On
10 page 1, Section C, it talks about the prior year's tax.
11 And the second paragraph of Section C states that
12 taxpayers of 2019 California adjusted gross income equal
13 to or greater than \$1 million must figure estimated tax
14 based on their tax for 2019, which to me is contradictory
15 because this form is intended to be filled out prior to
16 tax year 2019.

17 I am a sole proprietor of a business. My
18 business fluctuates every year. I don't have a really
19 good way to estimate my income for each year, and so I pay
20 taxes as I always have based on prior years and the
21 calculations. So I -- to me the form is a little
22 contradictory in that it's computing estimated taxes based
23 on past income. But then it's also saying that it's based
24 on 2019 income, which is to be determined.

25 So, specifically, if we go to page 3 of that

1 form, these numbers are not the actual numbers from my tax
2 return. I just fill these out as an example. But
3 following this worksheet -- so these are the calculations
4 that I did and that any taxpayer would do to estimate how
5 much to pay in 2019.

6 In summary, the entire form is based on 2018 tax
7 return number. So it's based on income figures from 2018.
8 Skipping, you know, a lot of the calculations because I
9 don't think they're pertinent. If we get down to line 19,
10 that's the crux of the calculation to estimate 2019 taxes.
11 So 19 has got some calculations. And then when you get
12 down to line 19.F, the instructions say to enter the
13 lesser line 19A or line 19E. Both of those calculations
14 are based on 2018 income. Then it says further in line F,
15 if your California A.D.I. is equal to or greater than
16 \$1 million you use line 19A.

17 So my contention is that the fact that it says
18 the A.G.I. is equal to \$1 million implies that income
19 already is and has exceeded \$1 million. The entire form
20 is based on past income from 2018 and it says if your
21 California A.G.I. is equal to. It doesn't say that if you
22 think that your A.G.I. might be greater than a million
23 dollars -- excuse me -- for tax year 2019, then you need
24 to follow 19A, and you need to estimate your income for
25 2019.

1 So to me when I filled out this form it seemed
2 pretty clear that everything on the form was based on
3 2018. Since I didn't make \$1 million or more in 2018, I
4 followed the instructions and used my 2018 income. I paid
5 my entire 2019 tax year estimated taxes using the form,
6 when I filed the form, so I didn't make any other payments
7 after that. I would suggest that if the intent of the
8 form was to require a taxpayer to anticipate that their
9 income is going to be above -- excuse me -- above
10 \$1 million and, therefore, pay estimated tax based on that
11 projected number, the language in 19F should say instead
12 of if your California A.G.I. is equal to or greater than.

13 It should say something like if you know or
14 anticipate that your 2019 California A.G.I. will or may
15 exceed \$1 million, then use line 19A. So I believe that
16 the instructions are not consistent with what the FTB has
17 since told me in that if income exceeds \$1 million, then
18 the estimated tax rules are retroactively applied,
19 basically, going back in time. So once my income exceeded
20 \$1 million, which by the way didn't happen until
21 December 20th of 2019, because my business accumulates
22 income during the year, that somehow I was expected to go
23 back in time and fill out this form and pay 90 percent of
24 my income tax for 2019.

25 So that's really the entirety of my argument as I

1 understand. I read the response that what the tax code
2 says for taxpayers making \$1 million. But I believe that
3 the form instructions are not consistent with that. It
4 was reasonable for me to expect that if I followed the
5 instructions, I would be paying the proper estimated
6 taxes, and that I followed the form using their
7 instructions properly.

8 And that's -- that's all I have to say.

9 JUDGE KLETTER: Thank you, Mr. Mantai for that
10 presentation.

11 I'd like to turn it over now to Respondent FTB.

12 Mr. Cook, are you ready to begin your
13 presentation?

14 MR. COOK: Yes. Thank you, Judge Kletter. This
15 is Chris Cook.

16 And thank you, Mr. Mantai.

17
18 PRESENTATION

19 MR. COOK: Appellant seeks to have the estimated
20 tax penalty abated in this case. The penalty was imposed
21 because Appellant's adjusted income or A.G.I. for the year
22 was over \$1 million. And by law, he is required to pay
23 90 percent of his tax through estimated tax payments, yet,
24 didn't do so. Appellant argues the penalty should not
25 apply because he did not anticipate his A.G.I. would

1 exceed \$1 million when he completed the Form 540-ES before
2 the estimated payments were due.

3 While it's understandable that Appellant did not
4 foresee having over \$1 million in A.G.I., his belief that
5 this is the reason to abate the penalty is, unfortunately,
6 contrary to the law. Appellant may have thought his
7 responsibility to comply with the law was complete when he
8 completed the Form 540-ES. But the law really dictates
9 that the penalty for underpayment of estimated tax is
10 determined on a taxpayer's actual income, not on what was
11 estimated beforehand. Appellant's responsibility was to
12 be aware of his income throughout the tax year and make
13 the proper estimated payments as the law requires when
14 they came due.

15 I will close with two final points. First, the
16 540-ES instructions for 2019, in fact, does state
17 taxpayers for 2019 adjusted gross income equal to or
18 greater than \$1 million must, and I quote, "Figure
19 estimated tax based on their tax for 2019."

20 Still, regardless of what the instructions say,
21 it is well established precedent that tax agencies'
22 publications, including instructions, are not the law.
23 The law is found in the statute, regulation, and court
24 decisions. The relevant law in this case is that the
25 penalty is determined on the taxpayer's actual income.

1 Finally, yet most important, the reasons that Appellant
2 gives not complying to the law really are not relevant
3 because they amount to the claim that reasonable cause
4 exists to abate the estimated tax penalty.

5 But the law provides for no general reasonable
6 cost exception to the imposition of the estimated tax
7 penalty. The law does provide that the penalty may not
8 apply if a casualty, disaster, or other unusual
9 circumstance makes its imposition against equity in good
10 conscious. But Appellant did not suffer from an
11 unexpected event that caused him hardship. Rather, he
12 made more money than he thought he would. So he did not
13 suffer the kind of harm where it would be against the
14 equity of good conscious to oppose the penalty.

15 To conclude, since reasonable cause cannot be the
16 basis to abate the estimated tax penalty in this case, and
17 Appellant has not otherwise demonstrated a legal basis to
18 abate the penalty, FTB request the OTA to find that FTB
19 properly imposed the penalty.

20 Thank you. I'm happy to answer any questions you
21 may have, Judge Kletter.

22 JUDGE KLETTER: This Judge Kletter. Thank you so
23 much, Mr. Cook, for your protection.

24 I do not have any questions at this time.

25 Mr. Mantai, would you like to make a final

1 statement, any sort of rebuttal to what Mr. Cook said, or
2 is there anything else that you would like to say before
3 this case is submitted into the record.

4 MR. MANTAI: Yes.

5

6 CLOSING STATEMENT

7 MR. MANTAI: The only thing I would like to
8 clarify is that -- he said the reason I didn't pay
9 estimated taxes based on anticipating making more than \$1
10 million was because I didn't even know I was going to make
11 that much. But, really, what I -- my contention is that I
12 interpreted the form. I think the instructions say that
13 they are completely based on 2018. So the even if I had
14 anticipated making more than \$1 million, to me the
15 instructions for the form would indicate that since I did
16 not make \$1 million or more in 2018, that I would not be
17 required to comply with that part.

18 So, again, I understand Mr. Cook referencing, you
19 know, the law and that the instructions are not part of
20 the law. But, again, to me as a taxpayer filing my own
21 taxes, I don't memorize the California tax code. It's
22 reasonable, I think, that the instructions should be
23 accurate, and I don't think that they are in this case.

24 JUDGE KLETTER: Thank you, Mr. Mantai.

25 I'm going to go ahead and submit this case into

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the record.

 This concludes this hearing, and the case will be decided based on the documents and testimony that was presented today. The written decision will be issued no later than 100 days from today, and the case is submitted and the record is now closed.

 I would like to thank the parties for their attendance.

 (Proceedings adjourned at 9:45 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 6th day
of October, 2022.

ERNALYN M. ALONZO
HEARING REPORTER