

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
R. MORRIS,) OTA NO. 18093839
)
 Appellant.)
)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 21, 2022

Reported by:

SARAH M. TUMAN, RPR
CSR No. 14463

Job No. :
38487 OTA(B)

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 400 R Street, Sacramento, California,
17 commencing at 1:00 p.m. and concluding
18 at 1:48 p.m. on Wednesday, September 21, 2022,
19 reported by Sarah M. Tuman, RPR, CSR No. 14463,
20 a Certified Shorthand Reporter in and for
21 the State of California.

1 APPEARANCES:

2
3 Panel Lead: ALJ TERESA STANLEY

4
5 Panel Members: ALJ JOHN JOHNSON
6 ALJ SUZANNE BROWN

7
8 For the Appellant: R. MORRIS

9
10 FOR THE RESPONDENT: STATE OF CALIFORNIA
11 FRANCHISE TAX BOARD
12 PHILLIP KLEAM
13 NANCY PARKER
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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 8)

(Department's Exhibits A-O were received at page 9)

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BY MR. KLEAM 28

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BY MR. MORRIS 38

1 Sacramento, California; Wednesday, September 21, 2022

2 1:00 p.m.

3 --oOo--

4 JUDGE STANLEY: Okay. Let's go on the record.

5 This is the Appeal of Morris, Case Number
6 18093839. The date is September 21, 2022, at 1:00 p.m. in
7 Sacramento, California.

8 I am Judge Teresa Stanley. I have on the panel
9 with me Judge Suzanne Brown and Judge John Johnson. I'm
10 the lead for purposes of conducting the hearing, but all
11 three Judges will meet, deliberate, and decide the matter.

12 I'm going to ask that the parties identify
13 themselves on the record, starting with Mr. Morris.

14 MR. MORRIS: Richard W. Morris.

15 JUDGE STANLEY: Good morning.

16 MR. KLEAM: Good morning. My name is Phillip
17 Kleam, and I'm with the Franchise Tax Board.

18 MS. PARKER: Good afternoon. I'm Nancy Parker.
19 I'm also with the Franchise Tax Board.

20 JUDGE STANLEY: Okay. And once again, for the
21 benefit of the public and the parties, I welcome everybody
22 here and note that the Office of Tax Appeals -- or
23 sometimes I may refer to it as OTA -- is independent of
24 the Franchise Tax Board and any other tax agency.

25 OTA is not a court but is an independent appeals

1 agency staffed with its own tax experts. The only
2 evidence in OTA's record is what was submitted in this
3 appeal.

4 We have four issues that we discussed at the
5 prehearing conference: One was the Franchise Tax Board's
6 proposed assessment for taxable year 2016 barred by the
7 statute of limitations. Two, has Appellant shown error in
8 FTB's proposed assessment, which is based on federal
9 adjustments.

10 I'm sorry. I refer to FTB -- I mean Franchise
11 Tax Board when I say that.

12 Number three, has Appellant shown that he's
13 entitled to abatement of the late-filing penalty. And
14 number four, has Appellant established a basis to reduce
15 or abate the accuracy-related penalty.

16 Mr. Morris, do you understand those to be the
17 issues today?

18 MR. MORRIS: Not really. But I understand
19 that -- what you're saying. I guess, what I have here
20 applies to that.

21 JUDGE STANLEY: Okay. And we did agree on these
22 issues at the prehearing conference. So --

23 MR. MORRIS: Sure. Sure.

24 JUDGE STANLEY: I'm -- I'm assuming that nothing
25 has changed.

1 Mr. Kleam, do you agree that these are the issues
2 today?

3 MR. KLEAM: Yes, Judge. Thank you.

4 JUDGE STANLEY: Thank you.

5 Appellant has -- has submitted two exhibits to
6 which the Franchise Tax Board did not object at the
7 prehearing conference. And Exhibits 1 and 2 will be
8 entered into evidence with -- without objection.

9 Number -- oh, okay. And then, Mr. Morris, you
10 submitted other exhibits pursuant to my minutes and
11 orders. Oh, there it is.

12 You submitted some Guy Cherry check copies?

13 MR. MORRIS: Yes.

14 JUDGE STANLEY: Exhibit 3 -- Exhibit 4,
15 organizational agreement; Exhibit 5, Guy Cherry statement;
16 Exhibit 6, tax position 2006 statement; and then, today
17 you've given us a certificate of a release of a federal
18 tax lien. So that'll be marked as Exhibit 7.

19 Mr. Kleam, does the Franchise Tax Board have any
20 objections or comments with respect to Exhibits 3 through
21 7?

22 MR. KLEAM: Judge, the only objection that we
23 have is to Exhibit 7, which is the document -- the
24 document that Mr. Morris submitted today.

25 We believe that this was already submitted as

1 Exhibit 2. And -- or at least it appears to be the same
2 as Exhibit 2 on direct.

3 JUDGE STANLEY: Okay.

4 MR. KLEAM: And our only grounds for objection is
5 that it's duplicative. If the OTA would like to add that
6 to the record anyway, we have no objection.

7 JUDGE STANLEY: Yes. And -- and it does appear,
8 Mr. Morris, that this is a duplicate.

9 Do you mind just keeping this to Exhibits 1
10 through 6?

11 MR. MORRIS: No. That's fine.

12 JUDGE STANLEY: Okay. And I'm going to let you
13 know that, before you speak, there's a little button on
14 your microphone that says "push," and the green light will
15 come on.

16 So when you speak, please press that button
17 and -- and try to speak directly into the microphone.

18 MR. MORRIS: Oh, okay.

19 JUDGE STANLEY: Because I've already been noticed
20 that they were having trouble hearing me, and I thought I
21 was close enough. So you really almost have to eat it.

22 Okay. So we'll admit Appellant's Exhibits 1
23 through 6 into the record.

24 (Appellant's Exhibit Nos. 1-6 were received in
25 evidence by the Administrative Law Judge.)

1 JUDGE STANLEY: And for Franchise Tax Board, they
2 submitted Exhibits A through O which, without objection,
3 will be admitted into evidence also.

4 And, Mr. Klean, the Franchise Tax Board doesn't
5 have -- have additional documents at this time?

6 MR. KLEAN: No, ma'am.

7 JUDGE STANLEY: Okay. So we'll admit
8 Respondent's Exhibits A through O into the record without
9 objection and move on to the presentation of the case.

10 (Department's Exhibit Nos. A-O were received in
11 evidence by the Administrative Law Judge.)

12 JUDGE STANLEY: So we talked about, Mr. Morris,
13 giving you 30 minutes to tell --

14 MR. MORRIS: That's --

15 JUDGE STANLEY: Tell the panel -- well -- well,
16 that's an outside number. You don't have to use it all.
17 But you still -- so that you have the opportunity to tell
18 the panel everything that you want us to hear.

19 And don't forget to push your button before you
20 talk.

21 MR. MORRIS: So I can do it now?

22 JUDGE STANLEY: Proceed when ready.

23 MR. MORRIS: Okay. Well, I want to apologize in
24 advance. I'm Google and YouTube trained. Okay? So I
25 apologize.

1 PRESENTATION

2 MR. MORRIS: Okay. Here's what happened.

3 In 2005, Guy Cherry -- he's just -- can you hear
4 me now?

5 JUDGE STANLEY: Yeah. Wait -- wait a second. I
6 forgot an important part.

7 Can you please raise your right hand.

8 --oOo--

9 RICHARD W. MORRIS,
10 called as a witness on behalf of the Appellant, having
11 first been duly sworn by the Administrative Law Judge, was
12 examined and testified as follows:

13 --oOo--

14 MR. MORRIS: Yes, I will.

15 JUDGE STANLEY: Thank you. You may proceed now.

16 MR. MORRIS: In 2005, Guy Cherry was a friend of
17 mine. I'm a general contractor. I'm an insurance
18 adjuster. I've been one for 30 years off and on.

19 I just -- anyway, he called me up, and he was
20 doing business with the Assemblies of God Church. And
21 they wanted to sell him a church for \$70,000.

22 And he called me up because I have experience --
23 I worked for Sacramento City on the board-up for drug
24 houses and -- as an insurance guy. And so I have that
25 background.

1 So he called me up and he says, "Hey. I got this
2 house -- I got this church over here. And they're
3 thinking about knocking it down. Go take a look at it and
4 tell me what you think."

5 And at the time, it had a dangerous building case
6 going on it. Actually, there's a picture of me at the
7 City of Sacramento because I was the first guy at the new
8 counter. And I tried -- anyway, I guess that's beating my
9 chest a little bit.

10 But anyway, so I go look at this building. It's
11 got a dangerous build, you know, it's got this case on it.
12 It's basically in North Sacramento.

13 And we start talking and he, like, he says,
14 "Well, what do you think?"

15 And I said, "Well, I don't know. I mean, I don't
16 know what's going to happen here."

17 And he says, "Well, I'll tell you what, man.
18 I'll make you my partner on it."

19 And so we had talked about being partners. And
20 we were supposed to be -- and he says, "Hey, man.
21 Whatever I can get out of it" --

22 Excuse me talking like that. I'm sorry. I'm a
23 little -- I'm a little affected. I have hyperthyroidism
24 from COVID. And my eyes are all watery. So I'm having a
25 hard time. So I apologize. And I'm here and -- anyway.

1 So to make a long story short, he -- we decide to
2 be partners. And I just jump into this thing. And I, you
3 know, he's a real estate broker. He's -- he died -- he
4 just died this last year. And he's a real estate broker.

5 And the other guy, if you see on the
6 Organizational Agreement, his name is Rick Ashley. He's
7 supposed to be an accountant.

8 So, you know, I'm the guy that's doing all the
9 leg work here. So I go to the Building Department -- so
10 it just wasn't me fixing this place. It was me, you know,
11 trying to get this thing to wherever we were going to get
12 it to be.

13 I was going to get whatever -- anything after
14 \$70,000, he was going to give me 50 percent; if I knocked
15 it down, He would have paid me to do it.

16 Well, I go to the Building Department. And I had
17 a background with the, you know, dangerous building --
18 boarding up drug houses and stuff. They kind of knew me
19 down there.

20 I met the guy, and he basically said, okay. If
21 you do this, this, and this, you know, we can pull this
22 dangerous building thing.

23 So, you know, out of nowhere, I made that happen.
24 And I didn't take a penny for it. Nothing. It was
25 just -- he was my partner. We shook hands.

1 I'm eastern European on my mom's side and Irish
2 on my dad's. I do a lot of -- I've done a lot of business
3 like that.

4 So we go and I start fixing the place. And I'm a
5 plumber. I'm an electrician. I'm a hands-on guy. And I
6 tore this building down. And then they listed it for
7 sale.

8 And I didn't -- and -- and in the meantime, I --
9 and I didn't have this when I went at it with the IRS --
10 the Organizational Agreement -- because what happened was
11 is I had moved it, and I had a fire in my garage -- a
12 little fire. And I moved some stuff, and I forgot where
13 I -- this went.

14 That's the Organizational Agreement you see
15 there -- that they put together in 2006. And I was kind
16 of upset about it because I had to give them a thousand
17 bucks to be a part of this partnership.

18 So -- and so then, there's a sale made. But the
19 sale was made, and all I got out of this thing after -- it
20 took, like, a year and a half to sell it.

21 The day they closed it, they -- they took a --
22 and Cliff Catlett, who's with Assemblies of God; Guy
23 Cherry, who's the real estate broker; Rick Ashley's the
24 accountant in this LLC partnership agreement -- you know,
25 I -- I just didn't know what to do.

1 I, you know, the only thing I really feel like
2 I'm guilty of is not filing the right insurance -- I mean,
3 the right tax return because I file my taxes on -- I was
4 late -- I'm always late, you know. I'm one of those guys,
5 you know? -- but I filed it, and I reported it.

6 And they did this thing. And I -- and I tell you
7 it'd be like Santeria. I have no clue other than I pay
8 this guy, and he takes care of it. And sometimes I like
9 seeing him, and sometimes I don't. Okay?

10 But I didn't have any -- but my actual money that
11 I got out of this deal -- and I tried to -- and the IRS,
12 when they came down on me, it got ugly, man. They were --
13 they were being -- they, you know, they were saying,
14 "Okay. Look, if you agree to \$80,000 --"

15 Well, I'm just like, "Are you kidding me?"

16 I don't even -- you know, there was no way. I
17 didn't -- all I got out of this deal was, like, \$11,000
18 in -- in total assets.

19 And then when they sold it, I got a 25 -- that --
20 and I got a 25 percent interest in a building on
21 Marysville Boulevard that was in a terrible neighborhood,
22 overrun with crime.

23 But we took the building. Or Guy -- Guy took the
24 building. I had no say in it. I, you know -- I -- I just
25 worked on it, waited on it.

1 And so me and Guy got into it, you know, over it.
2 I, you know -- hey, you know, and -- and I tell you what,
3 he was my friend, and I don't, you know -- and we were
4 friends before we were this. But you mix money with
5 friendship, and it gets kind of -- you know?

6 And so I told him. I said, "Hey. You know --"

7 And then all of a sudden, here comes the IRS out
8 of nowhere. And they're, like, saying, "Oh, by the way,
9 you owe us \$120,000."

10 I never made that much money in my life.

11 And that year that we did that, in 2006, a tree
12 hit a house over in North Highlands, and I rebuilt it.
13 It's the only job -- it was like \$130,000.

14 Well, the mortgage company -- they had a way of
15 paying it -- they paid me through a draw system. And then
16 they just basically threw my whole tax return out -- is
17 what it looked like to me.

18 But I couldn't afford to hire anybody. I didn't
19 have a, you know, I just didn't have the -- I -- this --
20 this thing I, like, got right here.

21 Hope I'm not bouncing around too much.

22 But this is the letter from Guy because he was --
23 wife had dementia. He wouldn't go to tax court with me.
24 I went all the way through federal tax court. And this --
25 this -- the IR -- the -- the -- the notice here. I paid,

1 like, 1500 bucks for this. And I don't even know if it's
2 going to work today. But that's what I could afford at
3 the time.

4 And then I -- the check -- I found -- like, I
5 just found this. But I didn't have this when I went to
6 the IRS. I didn't have -- I didn't -- wasn't able to show
7 them this. Because when that fire came, I couldn't find
8 it. And nobody believed me.

9 Well, I -- this is the copy here with the wet
10 signatures on it. And I found it. And that's the
11 Organizational -- because when this --

12 JUDGE STANLEY: Oh. May I ask you a question?
13 I'm sorry to interrupt.

14 MR. MORRIS: Sure. You can ask me whatever you
15 want.

16 JUDGE STANLEY: When you hold up documents, can
17 you tell us which one you're --

18 MR. MORRIS: Oh. Okay. I'm sorry.

19 JUDGE STANLEY: -- holding up or refer to the
20 exhibit number --

21 MR. MORRIS: Okay.

22 JUDGE STANLEY: -- so that everybody knows.

23 MR. MORRIS: Okay. I -- maybe I -- man, I don't
24 have a pen.

25 But this is the -- the explanation of -- of -- of

1 what I paid that tax person. I don't know -- she was like
2 a tax attorney from Humboldt County. I paid her 1,500
3 bucks.

4 JUDGE STANLEY: So that's not --

5 MR. MORRIS: I -- I can't -- what do I -- what do
6 I --

7 JUDGE STANLEY: So that's not an exhibit that we
8 have on file?

9 MR. MORRIS: Oh, yeah. Yeah, it is.

10 JUDGE STANLEY: It is one of them?

11 MR. MORRIS: Yeah. It is one of them.

12 JUDGE STANLEY: Okay.

13 MR. MORRIS: And here's the checks. And here's
14 the Organizational Agreement. And here's the letter from
15 Mr. Cherry that I took to tax court that didn't seem to
16 work. They didn't really believe me, I don't think.

17 But anyway, so here's what it all came down to in
18 my opinion. You know, I didn't know --

19 Me and Guy were not on good terms when he died.
20 Because, when the IRS started coming at me, they were --
21 they -- they --

22 Guy and this guy Rick Ashley -- I mean, I guess
23 you'd throw this in -- they were involved in some second
24 mortgage businesses up in Seattle. Guy was a millionaire;
25 I'm a -- I'm not. Okay?

1 And -- and -- and that they -- and the IRS was
2 saying, "Well, where's Rick Ashley at?"

3 I have no clue. I know -- I heard he had throat
4 cancer and he went to Mexico. But I didn't really know
5 him. All I knew of him was --

6 And then in 2006, they put this LLC Agreement
7 together. And that was because a sale was coming on. And
8 I didn't have any idea, you know -- like, all I did was --
9 I did all -- let me put it this way. I did all the heavy
10 lifting. And so this thing went from \$70,000 to --

11 And then he didn't want to give me 50 percent of
12 it. Because it went to \$800- -- or \$9- -- \$800,000 -- I
13 was, like -- what was I supposed to do?

14 I'd rather have \$200,000 of something than, you
15 know, zero of nothing. He could have just told me, "No.
16 I'm not going to give you anything."

17 So he did do that. But, you know, it's just --
18 so it's just been this nightmare, you know.

19 And -- and that's what happened. And -- you
20 know? And I could go on and on. My stories are slanted
21 my way. But it's all right here.

22 And I didn't have this when I went with the IRS.
23 Because, you know, they -- I went, you know -- I was,
24 like -- the -- it got very contentious because I didn't --
25 I just -- I just don't think it's right, you know.

1 And so I'm hoping you guys can see what happened
2 here. Because all I've got -- Cat --

3 And then Guy paid me off \$50,000 because -- and
4 he bought me out. I'll show you right here. He wrote me
5 these checks for \$50,000.

6 So what was supposed to be a \$200,000 -- one of
7 these days -- asset. In the meantime, he wanted to get me
8 off of -- he put me on the title -- on the note of the
9 main church on Taft Street.

10 And on the checks here it says, "Marysville
11 Boulevard, Taft, Baldwin." Baldwin was a church in
12 Orville. Marysville Boulevard was a church that the
13 congregation that bought Taft Street traded to me and Guy.
14 And when we took title on it -- and --

15 And like I said, all I -- when I went in, I got
16 \$11,000 in cash. And I reported that. And then, when I
17 sold it, I sold it for \$50,000 to Guy to get --

18 He had to get rid of me to get rid of my
19 signature because, you know, you know -- I -- at this
20 time, you know, things were, you know, closing in. I
21 could feel, you know -- it was -- it was -- it was a
22 nightmare in April.

23 And then after this, you know, we were not on
24 good terms. And when the Franchise Tax Board got
25 involved -- because Guy was always having kind of tax

1 stuff.

2 I helped him, you know. Him and I are very, you
3 know -- I don't -- he's a lot like me. We were very much
4 alike -- we, you know, as far as, you know -- like, I
5 helped him submit things to them. But I don't know what
6 it was for.

7 And so what -- I guess, to -- to sum it up, I had
8 a partnership that the IRS disqualified. At the time I
9 was fighting them, I did not have this -- this. I found
10 this in the meantime.

11 The checks from Guy showing that he sold it to
12 me -- I sold -- he sold -- he bought me out for 50 grand
13 in June of 2008.

14 This has been going on for 17 years. This was
15 2005. And the LLC was in October of 2006. And then they
16 put this together. And when they told me to come in, I
17 just came in and I signed it, you know?

18 And then when it came time -- and then I'm
19 telling Guy -- and the little voice in the head -- I
20 should have listened to him -- it said, "You maybe want to
21 talk to a lawyer." And I didn't do it because I didn't
22 want him to think I didn't trust him.

23 And I don't really think Guy meant to do this to
24 me. I don't think -- can -- you know, I don't think
25 anyone would. Who in their right mind would sign

1 something that, at the end of the day, "Oh, great. You
2 get \$900 bucks a month."

3 I got, like, checks for like \$900 bucks -- it was
4 great getting the check. Don't get me wrong. I'm a very
5 simple guy, you know. I didn't mind picking up that check
6 at Rick Ashley's place -- because he was the accountant.

7 But who would sign something that says, "Oh, by
8 the way, you owe us -- you owe the federal government
9 \$135,000 and the Franchise Tax Board \$50,000."

10 No way would anybody do that, I mean, and that's
11 what happened. And nobody -- and when I went to try to
12 deal with the IRS -- me and the IRS guy did not get along.

13 You know, the IRS attorney and I -- it was
14 really -- it got really contentious, you know. Because --
15 and so I don't think he liked the idea that I, you know,
16 took him to a hearing or something.

17 I don't really know how it works. But that's my
18 side of it, man. You know, I did not in any way shape or
19 form get \$200,000.

20 Now, I admit I took \$130,000 in on a major
21 insurance repair job that I spent a lot of money -- and on
22 a good day, if I played my cards right, I might have
23 netted \$40,000. And that's -- in 2006, that's not bad
24 money. Because I was so busy doing this stuff with these
25 guys.

1 I thought this was -- I thought this was my Willy
2 Wonka golden ticket. Christ, I got \$200,000. And then at
3 the end of the -- and then, when it all came down, it was,
4 like, "Well, you know, we carried the note."

5 And Guy loved carrying notes. That was his
6 thing. He was a hard-money lender. I used to help him.
7 I helped him up in Lake County. I did a lot of stuff in
8 this partnership. I never got paid for it.

9 He loaned -- he was a hard-money lender. He
10 would loan money to guys for -- put it this way -- Guy
11 was, like, the -- one of the guys -- I think one of the
12 pioneers of loaning money to flippers.

13 And I used to help him. Because he was in his --
14 he was older. And he was kind of a mentor to me, you
15 know. But, when this came --

16 So that's what happened. My -- my stand is that.
17 There's no way I would have ever, ever have signed that or
18 went along with this.

19 Because I remember telling him -- I said, "You
20 know, I bought a couple houses" -- I've had some houses in
21 my life, you know.

22 I said, "Hey, Guy. I don't have any title
23 insurance."

24 He said, "Don't worry about it. It's an
25 installment sale. You're only going to be taxed on the

1 installment sale."

2 And the other guy's supposed to be an accountant.
3 Now, did I ever check him out? No. Why did I need to?
4 Guy was a real estate broker. Hell, he -- he did real
5 estate deals, and we were -- we ran together for, like,
6 five, six, seven years.

7 So I'm kind of repeating myself. I'm a little
8 upset, you know. Because, you know, it'd be different if
9 I got that -- if I could have got that money, okay. But I
10 didn't.

11 And so my feeling on it is -- and I'm not going
12 to sit here and say that they meant to do it. Because I
13 don't think Guy meant to do it.

14 But I also -- I kind of think -- and the other
15 side of it was the other --

16 Oh. This is the other part that's interesting:
17 The real estate broker that Guy was tangled up with from
18 Assemblies of God handled both ends of the deal on that
19 sale of that church on Taft street.

20 And those people on -- they had a church on
21 Marysville Boulevard -- it wasn't really much of a church;
22 it was just a warehouse. And he -- and they -- he handled
23 both ends of that sale.

24 And he handled all of the sale of those three
25 that you see on -- I'm trying to show this to you again.

1 See, they had something going on that was -- I was not
2 privy to. And I cannot honestly say what it was. Okay?

3 But I know this much. That -- I'll show you on
4 these checks where it says it. The Baldwin sale, which
5 was in -- which I didn't have my name on that one --

6 On the Baldwin sale, which was out of Orville, he
7 was -- that Cliff Catlett and Guy -- he had both ends of
8 the real estate deal. At Marysville Boulevard, he had
9 both ends of the real estate deal -- at Taft Street, both
10 ends of the real estate deal.

11 Because he was, like, the -- the guy for --
12 Assemblies of God was sort of like the real estate broker.

13 Like I said, I was minding my own business when
14 this came around. And I was all -- and I'll tell you, I
15 was ecstatic. And I thought, "Oh, this was great."

16 I -- and I -- I had to trust him. And then he
17 didn't want to give me the 50 percent that he said on --
18 after it was \$70,000.

19 I was kind of hoping -- "Oh, crap. You know,
20 maybe -- oh, wow. If I can make ten grand off of this --
21 \$15,000" -- if I had to knock it down, I could make some
22 phone calls, you know, or -- or whatever.

23 That's what I was hoping for. And then this
24 thing blew up. And then it was Monopoly money. And then,
25 here I am, 17 years later.

1 Did I make sense? I hope -- did it -- did it --
2 do you have any questions for me? I'll answer anything
3 you'd like to know.

4 JUDGE STANLEY: That's -- that's my job to ask
5 that.

6 MR. MORRIS: What's that?

7 JUDGE STANLEY: That's my job to ask if you have
8 questions.

9 MR. MORRIS: Oh, okay. Wait a second. Wait a
10 second -- I don't know, you know. I'm not too skilled at
11 this.

12 JUDGE STANLEY: If you're -- if you're done
13 telling us everything that you want us to know.

14 MR. MORRIS: That's it. And my -- and -- and
15 whatever the -- the paperwork says, I don't have a clue
16 how to understand it or read it.

17 I know that I did -- I paid this guy. And he
18 took care of it. And, you know -- and I come to him like
19 anybody else would; right? I have no clue.

20 But that's what happened. And that's the whole
21 reason why I'm here -- is that thing right there. And
22 that was not presented at any time.

23 So I just got lucky and stumbled across it. It
24 was a weird thing. A friend of mine -- she got mad at me.
25 Because she was selling her house, and I went over there

1 to grab some stuff that I forgot that I'd taken over there
2 after I had our little fire. There it was.

3 Do you want to see the wet signature from these
4 guys?

5 JUDGE STANLEY: I don't think so. I don't think
6 Franchise Tax Board --

7 MR. MORRIS: Okay.

8 JUDGE STANLEY: The Franchise Tax Board has not
9 objected to the copies.

10 MR. MORRIS: All right. Cool.

11 JUDGE STANLEY: So I don't think we'll need to
12 see that.

13 MR. MORRIS: That's -- that's it. I hope I
14 presented it well. Because it's been very stressful.

15 JUDGE STANLEY: Okay. And with respect to your
16 eyes, you do have a box of tissues --

17 MR. MORRIS: Oh, thank you.

18 JUDGE STANLEY: -- on the table over there.

19 MR. MORRIS: Oh. I didn't see that. Thank you.

20 JUDGE STANLEY: And -- okay. Mr. Kleam, do you
21 have any questions for Mr. Morris?

22 MR. KLEAM: Not at this time, Judge. Thank you.

23 JUDGE STANLEY: Okay. Judge Brown, do you have
24 any questions?

25 JUDGE BROWN: Not at this time. Thank you.

1 JUDGE STANLEY: Judge Johnson, do you have any
2 questions?

3 JUDGE JOHNSON: No questions. Thank you.

4 JUDGE STANLEY: I just had one, Mr. Morris. You
5 submitted a Certificate of a Release of a federal tax
6 lien.

7 Do you know why it was issued?

8 MR. MORRIS: Oh, yeah. When it happened, I found
9 this, and I started to do the Offer and Compromise. And
10 they weren't having anything, really, much to do with it.

11 And then I sent a copy of it over to the lady.
12 And I think she -- and so she let me settle \$114- --
13 almost \$120,000 for 500 bucks. I think I won --

14 I should be on YouTube selling -- telling people
15 how to do that, you know. I got lucky. And she released
16 it.

17 And that -- and but my point being is -- is up
18 until -- I didn't have this -- this that I'm showing you
19 guys now. I didn't know where it was at.

20 And in the meantime, this pops up. And that was
21 in 2014, I guess. And I just been sitting on it staring
22 at it. I knew this day was going to come and COVID, you
23 know, so yeah. That's why.

24 But, like, the thing -- when I was dealing with
25 the Offer and Compromise, you know -- by that time, I lost

1 everything -- pretty much blown apart. My life was blown
2 apart.

3 I'm going to be all right now, though, I think --
4 I hope. You know, this, like, hyperthyroidism isn't any
5 good. The doctor said it's directly tied into having
6 COVID twice.

7 JUDGE STANLEY: I hope you're doing okay, at
8 least for the next hour or so.

9 MR. MORRIS: I'm cool.

10 JUDGE STANLEY: Since there aren't any more
11 questions, I'll turn it over to Mr. Kleam for the
12 Franchise Tax Board's presentation.

13 MR. KLEAM: Excuse me. Thank you, Judge.

14
15 PRESENTATION

16 MR. KLEAM: So good afternoon. Again, my name is
17 Phillip Kleam, and with me is Nancy Parker. And we
18 represent the Respondent, Franchise Tax Board.

19 I am unfamiliar with this mic system. So I just
20 want to make sure everybody -- I'm not too loud. I'm --
21 I'm okay? Sound good to you guys?

22 JUDGE STANLEY: I -- I can hear you. And we'll
23 get a message if people on YouTube can't hear you.

24 MR. KLEAM: Excellent.

25 JUDGE STANLEY: You can try your best at talking

1 into the microphone, and we'll let you know if it's not
2 working.

3 MR. KLEAM: Fantastic. Thank you so much.

4 So, you know, as -- as you can see from
5 Appellant's testimony just now, there's a lot going on
6 here, factually. So there's just a few things I -- I'd
7 like the panel to keep in mind as we go through this in
8 detail a little later on.

9 In 2006, Appellant sold real property but
10 understated the gain realized on his 2006 federal and
11 state tax returns. The IRS made an adjustment, and
12 Appellant challenged that adjustment in U.S. Tax Court.

13 The U.S. Tax Court issued an opinion upholding
14 the determination of the IRS with the exception of a small
15 adjustment to the amount of the accuracy-related penalty.

16 The Franchise Tax Board made a corresponding
17 adjustment based on this final determination assessing
18 additional tax and penalties. Appellant has not provided
19 any evidence showing error --

20 JUDGE STANLEY: You are -- you are fading.

21 MR. KLEAM: Okay.

22 JUDGE STANLEY: As you turn towards your
23 computer.

24 MR. KLEAM: There we go. I'm trying to take in
25 everybody, but it's costing me sound-wise.

1 JUDGE STANLEY: They're bendable. So if you turn
2 it, it might stay in front of you better.

3 MR. KLEAM: There we go. Okay.

4 So Appellant has not provided any evidence
5 showing error in the assessment or that he is not subject
6 to the penalties.

7 Now, a little bit more detail: So as Appellant
8 stated, in 2005, Guy Cherry purchased an old church
9 building to renovate. And he entered into an agreement
10 whereby Appellant, who had, through his skills as a
11 contractor, would renovate the church in exchange for
12 25 percent of the net proceeds of the sale.

13 In 2006, the church was sold for a total of
14 \$800,000. That included \$50,000 cash, \$500,000 in a note
15 secured by the property, and a trade-in building worth
16 \$250,000 for a total of -- again, for a total of \$800,000.

17 Appellant, as 25 percent owner in this, was
18 entitled to \$200,000, which he reported on his Schedule D
19 for his federal tax return.

20 Unfortunately, he also incorrectly reported that
21 he had a \$200,000 basis in that property. This led him to
22 incorrectly report -- I'm going to go ahead and read these
23 numbers so I get them right -- a California adjusted gross
24 income of -- of \$15,537, deductions of \$22,586, and a
25 taxable income of \$0.

1 The IRS subsequently audited and adjusted
2 Appellant's 2006 federal return and increased his Schedule
3 C income by \$278,808. After deductions, his revised
4 federal income was \$257,893.

5 As I previously stated, Appellant protested this
6 amount through a hearing in front of the U.S. Tax Court,
7 where the IRS's determination was upheld with the
8 exception of that adjustment to the amount of the
9 accuracy-related penalty.

10 Appellant -- Appellant -- the IRS notified the
11 Franchise Tax Board of this change. And the IRS --
12 Franchise Tax Board made a corresponding adjustment,
13 increasing his California taxable income to \$262,446 and
14 issuing an NPA proposing an additional \$22,279 in
15 additional tax, a delinquent-filing penalty of \$5,548, and
16 an accuracy-related penalty of \$4,455 plus interest.

17 Now, when I talk about the fourth issue -- the
18 accuracy-related penalty -- I'll discuss the stipulation
19 that the FTB made in our opening brief as well as
20 something Judge Stanley asked us to discuss regarding
21 whether or not we used the prorated tax schedules during
22 that calculation.

23 But for now, there are four issues on appeal.
24 The first issue is whether Respondent Franchise Tax
25 Board's proposed assessment is barred by the statute of

1 limitations for the 2006 tax year.

2 The second is whether Appellant has shown error
3 in Franchise Tax Board's proposed assessment based on the
4 federal adjustments.

5 Three, whether Appellant has shown reasonable
6 cause to abate the late-filing penalty.

7 And four, whether Appellant has established a
8 basis to reduce or abate the accuracy-related penalty.

9 We'll just go through these in order. We'll
10 start with the statute of limitations issue -- so whether
11 or not Franchise Tax Board's Notice of Proposed Assessment
12 was issued timely.

13 Normally, the Franchise Tax Board has four years
14 from the original due date of the return to issue a
15 proposed assessment. However, Franchise Tax Board is
16 allowed additional time after a federal determination is
17 made.

18 Under Section 19060 Subsection (b), when the
19 Franchise Tax Board is notified of the federal
20 determination more than six months after it is made, the
21 Franchise Tax Board has four years from the date it is
22 notified to issue its Notice of Proposed Assessment.

23 Here, the IRS notified the Franchise Tax Board of
24 the final determination on June 9, 2015, more than six
25 months after the final determination was made.

1 Because of this, they had -- the Franchise Tax
2 Board had until -- had four years until June 9, 2019, to
3 issue a Notice of Proposed Assessment. Since Franchise
4 Tax Board issued its proposed assessment on February 9,
5 2016, it was well within the four-year statute of
6 limitations under Section 19060 Subsection (b).

7 Since the Franchise Tax Board assessment is
8 timely, we can move on to the next issue, which is whether
9 or not Appellant has established error in that proposed
10 assessment.

11 When the Franchise Tax Board makes issues of
12 determination based on a federal determination, it is
13 presumed correct unless the Appellant presents
14 uncontradicted, credible, and relevant evidence showing
15 error in the Franchise Tax Board's determination.

16 This means that the Franchise -- the burden is on
17 the Appellant to -- to produce this evidence and show this
18 error. Appellant has not introduced any evidence showing
19 error in the Franchise Tax Board's determination.

20 The checks which show that he was bought out --
21 while they do show that he received income in 2008 in
22 regard -- relation to his interest in this -- don't take
23 away from the fact that he did realize gain in 2006, when
24 the property was sold.

25 He received a -- even though he didn't receive

1 cash payments in 2006, he still realized the gain. And he
2 had the value of the promissory note and the trade-in
3 building.

4 That was later -- now, that value of that was
5 later purchased for less than what it was worth by
6 Mr. Cherry, which is additional income in 2008. But it
7 doesn't change the fact that Franchise Tax Board's
8 assessment of the 2006 year is still correct.

9 The Organizational Agreement -- it doesn't appear
10 to change the fact that he realized gain. He reported
11 himself on the Schedule D income that he realized, you
12 know, \$200,000. Looking through it, it doesn't seem to
13 show anything that would -- would change the assessment --
14 that would establish error in it.

15 It discusses terms about this agreement, but it
16 doesn't specifically address, even, the Taft property from
17 what I can tell.

18 The other exhibits -- the other two exhibits that
19 Appellant has produced were both considered. One is
20 just -- one is argument. And the other was considered by
21 the tax court when it ultimately rejected Mr. -- the
22 Appellant's arguments.

23 So at the end of the day, he just has not --
24 unfortunately, Appellant has not met his burden of proof
25 in regards to showing error in the Franchise Tax Board's

1 determination. And the OTA should -- should -- should
2 sustain the assessment.

3 Now, on to -- the third issue is whether
4 Appellant has established reasonable cause for abatement
5 of the late-filing penalty.

6 The late-filing penalty can be abated if the
7 taxpayer has reasonable cause for filing late. The
8 taxpayer has the burden to show that the failure occurred
9 despite the exercise of ordinary business care and
10 prudence -- that and, you know -- even though he
11 ultimately filed late.

12 So here, he hasn't submitted any evidence to show
13 that he had a reason to do so. And -- and, you know, as
14 he stated earlier, he's just one of those guys that files
15 late. And that's okay. But you -- that still means that
16 you're subject to the tax -- to the penalty.

17 And finally, issue four -- and this is where
18 we're going to discuss the request by Judge Stanley. At
19 the prehearing conference, we noted that Franchise Tax
20 Board had agreed in our opening brief to reduce the amount
21 of the accuracy-related penalty pursuant to the U.S. Tax
22 Court's opinion from \$4,458 to \$1,194.

23 Judge Stanley had asked if our calculation was
24 correct based on using the progressive amounts indicated
25 on the 2006 Tax Rate Schedules -- and I'll read the amount

1 again -- and she also suggested that the penalty should
2 be -- based on this, the penalty should be reduced to
3 \$1,283.

4 Upon further review, we agree. And we are
5 willing to stipulate that the accuracy-related penalty
6 should be reduced to \$1,283.

7 Now, since the accuracy-related penalty is now
8 calculated correctly, it is presumed to be correct unless
9 Appellant can establish a basis to further reduce or abate
10 it.

11 And here, Appellant just has not come up with
12 any -- has not established -- produced evidence as to any
13 of the defenses for the accuracy-related penalty. And as
14 a result, the accuracy-related penalty should be sustained
15 by the panel as well.

16 Now, you know, at the end of the day, the FTB is
17 extremely sympathetic. It sounds like Appellant entered
18 into a very complicated agreement with this person who,
19 you know, may have acted poorly towards him and not
20 honestly and not in his best interest.

21 But it doesn't change the fact that Franchise Tax
22 Board issued a timely and accurate assessment within the
23 statute of limitations, that he has not shown error in the
24 Franchise Tax Board's assessment, and he has not provided
25 any evidence to show that he is entitled to reasonable

1 cause abatement of the late-filing penalty, or a basis --
2 or to establish a basis for abatement of the
3 accuracy-related penalty.

4 And so subject to the adjustment to the
5 accuracy -- of the accuracy-related penalty we stipulated
6 to, we ask that the -- that the panel sustain Franchise
7 Tax Board's action.

8 Thank you.

9 JUDGE STANLEY: Thank you, Mr. -- thank you
10 Mr. Klean.

11 Judge Brown, do you have any questions for
12 Franchise Tax Board?

13 JUDGE BROWN: I do not have any questions. Thank
14 you.

15 JUDGE STANLEY: Judge Johnson, do you have any
16 questions?

17 JUDGE JOHNSON: No questions. Thank you.

18 JUDGE STANLEY: Okay. And I also do not have any
19 questions.

20 So I'm going to turn it back to you, Mr. Morris,
21 so that you can respond to anything that you heard the
22 Franchise Tax Board say and have the final word.

23 ///

24 ///

25 ///

1 CLOSING ARGUMENT

2 MR. MORRIS: Well, it didn't sound good for me,
3 did it? I just noticed that.

4 Well, kind of what I said, you know, when they
5 adjust it from \$200- -- make it \$200,000 on this gain that
6 I was supposed to get. That's exactly what I'm saying.

7 And the problem I had was I didn't have this to
8 go to the IRS with. And so I -- sucks that I'm being, you
9 know -- that I stumbled across this, and now I have it.
10 So I would have had the evidence, I think, prior -- with
11 the IRS to show them because they just --

12 And -- and he -- he was right -- I got involved
13 in a complicated transaction in a partnership. I thought
14 partnerships were people make an agreement and they decide
15 to -- and I rolled the dice with this. And I did a lot
16 more than just mess with that house. I basically -- I
17 mean, with that -- that church.

18 So, you know -- and -- and -- that whole deal
19 would have never came about if I wasn't involved in it.
20 And now, I'm sitting here, you know, in this situation.
21 And I just don't think it's right.

22 I mean, I -- and when I read up on it, for what I
23 could -- and I said I was Google and YouTube trained -- it
24 didn't say there was any kind of formal partnership
25 agreement you had to have. The only thing I could see is

1 I should have --

2 And I thought -- and this is on me -- that Rick
3 Ashley -- who was in that Organizational Agreement, was
4 supposed to be an accountant -- he was the guy that all of
5 my payments -- and I got that 11,000 bucks over, like, a
6 year and a half before that place sold -- that I would
7 have filed a partnership agreement with Guy.

8 But they never did any of that. And so I think
9 that what I'm really guilty of is filing the wrong type of
10 insurance -- I mean, wrong type of tax return. That's
11 what's led to this mess.

12 I went and did a Schedule -- or whatever it was.
13 And I didn't understand -- I kind of -- now that Mr. Klean
14 explained it -- I kind of understand where they're coming
15 from, but I had no idea.

16 I couldn't afford to -- I ran -- basically, you
17 know, ran out of money, and I couldn't defend myself. And
18 that's why I'm here. I'm hoping that you guys -- that you
19 will see what happened to me here.

20 I didn't do -- I didn't get -- if I had any clue
21 that that was going to happen, there was no way that I
22 would ever sign that. And -- and -- and, you know -- and
23 in the meantime, I got these guys around me that are, you
24 know --

25 I can't really blame people; I'm a big boy, you

1 know. But the last thing I thought I would be doing is
2 sitting here 17 years later after I met that guy and he
3 shook my hand asked and me to help him.

4 And I was in on it. I was -- like I said, I was
5 looking for, you know, I would have been happy with ten
6 grand. It would have been worth my -- I don't know. I've
7 never made a lot of money. I never made that kind of
8 money. I never even come close to making that kind of
9 money.

10 I'm a worker bee. I just worked Hurricane Irma
11 as a remote desk adjuster, you know. And I'm 65, which is
12 crazy.

13 Like I said, I just hope you guys -- I -- I
14 understand what he's saying. And I get what they did.
15 But when it -- you get in the middle of this and it just
16 kind of, like -- it comes to you and you don't have any,
17 you know -- what do you have?

18 I tried to call around, and all I got was, you
19 know -- was "Sure. Yeah. Well, you need to bring a
20 retainer in." And if you don't have the retainer, what
21 are you supposed to do?

22 That's why I'm here. I hope to God you see what
23 happened to me here. Because this isn't right.

24 And I get where they're coming from, you know.
25 Because I'm just a guy that looks like I got, you know,

1 whatever it was. I don't know how it works. All I know
2 is it's out of nowhere.

3 And otherwise -- and on top of it, I lost
4 everything -- the housing crash, I lost my home,
5 everything else -- and then, out of nowhere, I get these
6 letters. "Oh, by the way, come here. Well, you owe us
7 this."

8 So anyway, that's what happened. I was not --
9 ever in my life get tangled up in something where I would
10 wind up being on the hook for \$150,000 on 11 grand that I
11 got.

12 I just can't get that out of my head. I
13 apologize, but it pisses me off.

14 And then, when I tried to work with the IRS, they
15 didn't work with me. It was very -- it was bad. And the
16 guy that was -- he didn't like --

17 Anyway, I don't want to sound like a victim here.
18 But -- but Guy didn't mean to do this to me. I know he
19 didn't.

20 The other dude -- the quote -- the accountant
21 guy -- I kind of liked him. Because he -- I picked up a
22 check for a year. I didn't know anything -- much about
23 him. I keep my mouth shut around those guys.

24 They were all -- they had all the money. Cliff
25 Catlett -- they all had all the money. I was just the guy

1 that's stuck here. And all -- and I don't know if Cliff's
2 dead. But Guy's dead; the other dude had throat cancer.
3 I don't know what happened to him. So -- but anyway.

4 Thank you for your time. I appreciate it.

5 JUDGE STANLEY: Okay. Thank you, Mr. Morris.

6 Judge Brown, do you have any follow-up questions
7 for either party?

8 JUDGE BROWN: I do not. Thank you.

9 JUDGE STANLEY: Judge Johnson, do you?

10 JUDGE JOHNSON: No questions, Judge. Thank you.

11 JUDGE STANLEY: I did want to ask Mr. Kleam to
12 please address one thing that Appellant raised. He noted
13 that he entered into an Offer and Compromise Agreement
14 with the IRS.

15 Would you please address whether and when he
16 might be able to take advantage of any programs like that
17 if he were to -- if we were not to agree with him today?

18 MR. KLEAM: Absolutely, Judge.

19 Mr. Morris can enter into an Offer and Compromise
20 Program once there is a final determination of
21 liability -- his tax liability here.

22 So once there is a decision by the OTA, if it is
23 not in his favor and once it is processed, he can contact
24 our representatives and enter into a similar -- hopefully
25 enter into an Offer and Compromise as he did with the IRS.

1 JUDGE STANLEY: Thank you. I don't have any
2 other questions.

3 And so we will close the record at this time.
4 The hearing is concluded. The Judges will meet and
5 deliberate after the hearing. And we will issue a written
6 opinion within 100 days.

7 And we do have another hearing that will be
8 starting at 2:05 p.m. So we'll recess now and reconvene
9 at that time.

10 Thank you all for your participation today. Have
11 a wonderful day.

12 (Proceedings concluded at 1:48 p.m.)
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1 REPORTER'S CERTIFICATION

2
3 I, Sarah M. Tuman, RPR, CSR No. 14463, a
4 Certified Shorthand Reporter in and for the State of
5 California, do hereby certify:

6 That the foregoing proceedings were taken before
7 me at the time and place herein set forth; that any
8 witnesses in the foregoing proceedings, prior to
9 testifying, were duly sworn; that a record of the
10 proceedings was made by me using machine shorthand, which
11 was thereafter transcribed under my direction; that the
12 foregoing transcript is a true record of the testimony
13 given.

14 Further, that if the foregoing pertains to the
15 original transcript of a deposition in a federal case,
16 before completion of the proceedings, review of the
17 transcript [] was [x] was not requested.

18 I further certify I am neither financially
19 interested in the action nor a relative or employee of any
20 attorney or party to this action.

21 IN WITNESS WHEREOF, I have this date subscribed
22 my name.

23 Dated: November 4, 2022

Sarah M. Tuman, CSR, RPR, CSR No. 14463

24 Certified Shorthand Reporter
25 For The State of California

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