

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
N. SAIFAN JR. and N. SAIFAN,) OTA NO. 19115451
)
APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 12, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 1:23 p.m.
and concluding at 2:07 p.m. on Wednesday,
October 12, 2022, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ ANDREA LONG

Panel Members: ALJ RICHARD TAY
ALJ ASAF KLETTER

For the Appellant: N. SAIFAN JR.
N. SAIFAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID HUNTER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-11 were received at page 6.)

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

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1 Cerritos, California; Wednesday, October 12, 2022

2 1:23 p.m.

3
4 JUDGE LONG: We are now on the record.

5 So good afternoon. I'm Judge Andrea Long the
6 lead ALJ for this appeal. We're here today for the Appeal
7 of Saifan, OTA Case Number 19115451. Today is Wednesday,
8 October 12th, 2022, and it is 1:23 p.m. This hearing take
9 place in Cerritos, California.

10 And we will begin with the parties introducing
11 themselves, and we'll start with FTB.

12 MR. HUNTER: Good afternoon. David Hunter on
13 behalf of Respondent Franchise Tax Board.

14 JUDGE LONG: And for Appellants.

15 MR. SAIFAN: Good afternoon. My name is Nadim
16 Nick Saifan Jr. I'm here with my wife Nada Saifan.

17 JUDGE LONG: With me today on the Panel are
18 Judges Asaf Kletter and Richard Tay. The parties say they
19 have no objections to Judge Kletter substituting in for
20 Judge Ridenour. As the lead ALJ for this appeal, I'll be
21 conducting the proceedings in this matter, but my
22 co-panelist and I are equal participants. We will be
23 reviewing the evidence, asking questions, and reaching a
24 determination in this case.

25 The parties have agreed that the issue before us

1 today is whether Appellants have shown error with the
2 proposed assessment for the 2006 tax year. Appellant
3 submits Exhibits 1 through 10, which is admitted without
4 objection. And then this additional exhibit brought to us
5 today will be submitted as Exhibit 11 and admitted into
6 the record.

7 (Appellant's Exhibits 1-11 were received
8 in evidence by the Administrative Law Judge.)

9 And FTB submits Exhibits A through G, which are
10 hereby submitted without objection. FTB brought Exhibits
11 marked as Exhibits H through N as additional exhibits, and
12 Appellant say they have no objections, so they will also
13 be admitted into the record.

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

16 Okay. I think we're ready to begin each party's
17 presentation.

18 Mr. Saifan, you have ten minutes to make your
19 presentation. I will swear you in before you begin, so
20 please raise your right hand.

21
22 NADIM NICK SAIFAN, JR.

23 produced as a witness, and having been first duly sworn by
24 the Administrative Law Judge, was examined and testified
25 as follows:

1 JUDGE LONG: Thank you. You may begin.

2

3 PRESENTATION

4 MR. SAIFAN: I wanted to begin to confirm that we
5 are here for the dividends of the year 2006 tax year.

6 This is an old case that originated in 2006. And as a
7 legal strategy during my plea, I pled guilty which allowed
8 me to continue to resolve the case without having to
9 pursue an expensive trial that benefited the IRS as well.
10 I went to jail, and I came home. And I followed what the
11 judge's orders were, that I needed to work with the IRS to
12 resolve the taxes. I did.

13 I then submitted my records to an IRS civil audit
14 and appeal which was conducted. The IRS confirmed that
15 there was no fraud committed nor taxes owed. This was all
16 submitted to the FTB and that stating the case has been
17 resolved and closed, and that there was no deficiency in
18 income tax owed. It was because of the due diligence and
19 completion by the IRS and what they collected from
20 third-party companies and individuals.

21 What later happened is communications between us
22 and the FTB, and they have requested that -- to explain
23 the resolution of the IRS. So I contacted the IRS, and we
24 were told that we were not allowed to get those records.
25 In turn, the FTB requested those records numerous times.

1 And at one -- what time? I believe, it was around
2 January 2022, is when the FTB recognized that they did ask
3 the IRS. The IRS confirmed that they were going to send
4 the information but never did.

5 In March of '22, the FTB then said that even if
6 the IRS does not respond to the document request during
7 the new deferral period, that they were going to ask for
8 another extension and won't ask for any other extensions.
9 So the dividends in question today, these dividends were
10 given to the FTB by the Treasury Department and the
11 prosecution during my trial. And they were created by
12 them, not the FTB.

13 So the FTB never really created this document.
14 It's the same document, the same amount down to the penny.
15 So the question is after several years why isn't the
16 Treasury Department sharing the results of the appeal with
17 them. I'm not really sure, but I'm not privy to that
18 information. And the IRS promised to send them, but they
19 didn't. The dividends were incorrect and that was the
20 discussion with the IRS appeal individual, and that we
21 were issued the resolution from the U.S. Tax Court.

22 The FTB, after several years trying to get this
23 information, were not able to. During this time in 2006,
24 I was on active duty in a war zone and some of the
25 deductions or income or whatever that they're referring to

1 is a big mistake filing the taxes. So when I started the
2 audit, I had already refiled my taxes correctly, but the
3 FTB had only the question on the dividends and claimed
4 that these dividends that they're asking about are
5 different from the IRS' dividends that they reported. But
6 in fact, they are exactly the duplicate of it; same
7 numbers down to the penny.

8 At this time, I think -- yeah. So the whole
9 appeal started with the Notice of Action from the FTB
10 about the dividends themselves. Yeah. So they have
11 always asked to prove to the FTB that these dividends were
12 exactly the same, but most of the documents that came from
13 the FTB were from the original trial that the IRS Treasury
14 Department filed against me in the criminal case. So
15 that's pretty much how everything started.

16 And I mean, how do I prove something that's on
17 paper and it's the same thing over and over? Most of
18 these documents are duplicates through the years. So if
19 the IRS doesn't send us any paperwork, how they came to
20 that decision, I'm not really sure. But that's the
21 decision, and the decision was on the dividends. Nothing
22 else. I mean my whole untaxed year while on active duty
23 in a combat zone shouldn't be in question because of my
24 active duty there while I was deployed. I think I'm
25 exempt, but that's another thing.

1 That's all I have right now.

2 JUDGE LONG: Thank you.

3 Mr. Hunter, do you have any questions for the
4 taxpayer?

5 MR. HUNTER: No, Judge Long, I do not.

6 JUDGE LONG: All right. I will turn to my Panel
7 members. Judge Kletter, do you have any questions?

8 JUDGE KLETTER: This is Judge Kletter speaking.
9 I do not have any questions. Thank you.

10 JUDGE LONG: Judge Tay, do you have any
11 questions?

12 JUDGE TAY: One clarification question,
13 Mr. Saifan. You mentioned that -- and correct me if I'm
14 wrong, if I misheard. But during the audit of your tax
15 return with the IRS, you mentioned something about filing
16 your taxes correctly. Can you -- like, what does that
17 mean? Did you file an amended return?

18 MR. SAIFAN: Yes, Your Honor. So when I pled
19 guilty to the charge, I knew that there was a few items
20 that were incorrectly filed on the taxes. So I refiled
21 them, and I ended up with a new tax -- an amended tax
22 return for the 2006, which I owed \$10,000 and I paid.
23 So --

24 JUDGE TAY: Oh, yes. I remember.

25 MR. SAIFAN: Yes.

1 JUDGE TAY: I'm sorry. I don't mean to cut you
2 off.

3 MR. SAIFAN: No, that's okay.

4 JUDGE TAY: That -- that jogged my memory. Okay.
5 Thank you. No further questions for now.

6 JUDGE LONG: Okay. Then we'll move onto FTB's
7 presentation.

8 Mr. Hunter, you have 15 minutes. You can begin
9 whenever you're ready.

10 MR. HUNTER: Thank you.

11

12 PRESENTATION

13 MR. HUNTER: This case involved additional
14 constructive dividends received but not reported during
15 tax year 2006. Appellant contends that the IRS Appeals
16 Officer's decision that resolved the matter should also
17 involve Respondent's assessment being withdrawn. That is
18 wrong. Respondent's assessment is based on Appellants
19 guilty plea, and Department of Justice information
20 developed during the criminal case, and his settlement
21 with the IRS is not binding on the Respondent.

22 In March 2007, Appellant timely filed his 2006
23 federal state income tax returns. He reported receiving
24 \$54,000 from Defense Logistical Support and Services
25 Corporation or DLSS. DLSS was a company that was wholly

1 owned by Appellant formed to assist Americans fighting in
2 the Middle East. There was a minor adjustment to the 2006
3 California tax return for a minimal amount of foreign
4 earned income, which was paid.

5 Subsequently, the U.S. Government investigated
6 Appellant and found that he used corporate funds to
7 purchase a home in Huntington Beach, two Rolls Royce
8 luxury vehicles, and a Ferrari. Appellant did not report
9 his income on his tax returns. In December 2011,
10 Appellant was indicted for six counts of federal tax
11 evasion. In May 2014, Appellant pled guilty in U.S.
12 District Court to tax evasion for tax year 2006.

13 The record states as to Count III, on or about
14 March 6, 2007, defendant did willfully attempt to evade
15 and defeat the payment of individual income tax due and
16 owing by himself and his spouse for 2006 by filing a
17 Form 1040 with the IRS that did not declare additional
18 income tax that defendant knew was due and owing. Those
19 are the elements. In Appellant's position resentencing in
20 this criminal case -- which is a document I submitted --
21 he indicated that he fully and unequivocally accepted
22 responsibility for this fact, and his guilty plea was
23 never withdrawn.

24 The government submitted a sentencing supplement
25 to the Court -- which is another document I submitted --

1 and a \$400,000 adjustment was made for constructed
2 dividends Appellant received from DLSS. This figure was
3 authenticated by a special agent and accepted by the
4 Court. Appellant was sentenced to 48 months in federal
5 prison and was ordered to file a correct return with the
6 IRS post-incarceration. In May 2015, Respondent issued
7 Appellant a Notice of Proposed Assessment to include
8 constructive dividends. Yes, these same constructive
9 dividends.

10 Now, we're talking tax year 2006 and an NPA that
11 went out in 2015. Revenue & Taxation Code Section 19087
12 allows that Respondent may make an estimate of net income
13 from any available information. It may propose to assess
14 the amount of tax, interest, and penalties due when a
15 taxpayer files a false or fraudulent return with intent to
16 evade tax. Here, Appellant pled guilty to filing a false
17 return and confirmed his intent to evade tax.

18 His pleading in the underlying case specifically
19 stated Mr. Saifan accepts that he used a large quantity of
20 money from his DLSS proceeds to purchase homes, cars, and
21 the other items referenced by the government. Again, he
22 fully and unequivocally accepted responsibility for this
23 fact. Since Appellant was indicted on and plead guilty to
24 filing a false and fraudulent tax return, and the
25 California return is based on the federal return,

1 Respondent's assessment is both reasonable and timely
2 under the statute.

3 In terms of this criminal case, Appellant filed
4 an appeal with the Ninth Circuit of Appeals and claimed
5 that he didn't receive the benefit of corporate expenses
6 that he paid from his personal account while overseas. He
7 claimed that he spent his personal money for company
8 business and, therefore, if he later on withdrew money
9 from the company, he was being paid back. He's entitled
10 to a deduction for that. However, Appellant failed to
11 provide any support for this contention. Ninth Circuit
12 Court of Appeals rejected this argument and upheld the
13 District Court's finding. That is a decision I also
14 submitted today.

15 In November 2017, the IRS Examine Division
16 adjusted Appellant's 2006 account and reduced the
17 constructive dividends in the amount of \$400,000, and the
18 associated fraud penalty in the amount of \$56,000 --
19 strike that.

20 The IRS Exam Division -- this is the new return
21 that was being discussed -- a return was compiled to
22 coincide or reflect the increase in constructive dividends
23 stemming from the criminal court case. As a result, the
24 IRS issued a Notice of Deficiency. In April of 2018,
25 Appellant filed an action against the IRS in Tax Court.

1 So while the 2006 was being examined or audited by exam,
2 he also filed a Tax Court case.

3 He challenged this Notice of Deficiency because
4 the dividends assessed in the 2006 audit were partially
5 for ordinary and necessary business expenses. This is the
6 same argument that was rejected by the Ninth Circuit. In
7 Tax Court the matter was set for trial. And that meant
8 that the IRS assigned a litigation attorney to the matter.
9 But at the same time or in the meantime, Appellant's audit
10 case was still before the IRS Appeals Unit. In January of
11 2019, the IRS Appeals Office decided to resolve the case.
12 And this is clear from the letter that's enclosed with
13 Appellant's opening brief and reply brief.

14 There's a letter from David Bollenberg IRS
15 Appeals that found that there was no federal deficiency
16 for 2006, and the fraud penalty was removed. The U.S. Tax
17 Court closed the case by entering a decision based on
18 agreement of the parties in the case. This is important
19 to note the IRS Appeals Division is akin to the FTB
20 Settlement Division. I work for the legal department.
21 We're broken down into bureaus, but there's a Settlement
22 Division where matters resolved on a different track, and
23 that division is walled off. I don't know what's going on
24 over there.

25 Same here, which explains why when FTB was

1 requesting information in terms of why this case was
2 resolved, whether anything was discussed about these
3 constructive dividends, whether the merits were ever
4 touched, we received nothing. The final note I got back
5 in July was that the information requested is not in the
6 file. At first blush it didn't make sense to me, but
7 appeals -- IRS Appeals resolved the matter, and that does
8 make sense because they settled it.

9 The law is clear that Respondent is not bound by
10 a federal determination. Please see the precedential
11 cases of Der Wienerschnitzel International and David G.
12 Bertrand. I submitted copies today. They are available
13 electronically. You have the citations. These cases hold
14 that it is well established that Respondent and the OTA
15 are not bound to adopt a conclusion reached by the IRS in
16 any particular case, even when the determination results
17 from a detailed audit. Appellant cites no relevant
18 authority in this case to support his position that FTB is
19 bound to accept the IRS settlement.

20 The Tax Court record is devoid of any discussion
21 or evidence to show that the court was even aware of the
22 Tax Court, that they were aware of or considered
23 Appellant's position regarding his personal payment of
24 corporate expenses. Appellant's settlement with the IRS
25 does not mean Respondent must withdraw this assessment.

1 Our assessment is based on the guilty plea and the finding
2 that Appellant received \$400,000 in unreported
3 constructive dividends.

4 A question was raised about collateral estoppel
5 and I have to say, I appreciate the way the Panel
6 addressed this case and asked a couple of extra questions
7 because it really got me to think about this case and
8 going to the record of the criminal matter and provide you
9 documents which answer the questions, like, why personal
10 income tax liability for 2006 and not the S Corp for other
11 years. Well, that's because Appellant only pled guilty to
12 Count III, which was for 2006.

13 In terms of collateral estoppel, the Supreme
14 Court determined that collateral estoppel does not apply
15 to issues that were settled and not litigated. And the
16 case on point is U.S. v. International Building Company,
17 also submit. With facts exactly on point with this
18 appeal, the taxpayer and the IRS had a matter pending in
19 Tax Court when the parties reached a settlement of the
20 matter with appeals. The Tax Court then entered a formal
21 decision consistent with the settlement.

22 The U.S. Supreme Court held that collateral
23 estoppel did not apply as the matter had not been decided
24 by the court on the merits. The same situation arose
25 almost 40 years later Warren Jones v. Commissioner with

1 the Ninth Circuit reaching the same conclusion. As the
2 Appellant and the IRS reached a settlement of his 2006
3 liability, for reasons we don't know, the Tax Court then
4 used this agreement to declare that the case was over.
5 Collateral estoppel does not apply.

6 We have one more exhibit that was introduced
7 today by Appellant, and it's an excerpt from the criminal
8 court case transcript September 5th, 2014. And in that
9 excerpt, Appellants' attorney is arguing that the
10 government picked up \$400,000 of additional constructive
11 dividends, but there are other deductions that maybe could
12 offset that. And the Court states, yeah, maybe, but we
13 don't have a definite number. The Court did not have it
14 presented during that hearing, and the Court said it
15 considered everything, and the Court made the call.

16 This decision was appealed, and the Ninth Circuit
17 stated no, without anything -- without a grain of
18 specificity, we do not have a number to give Appellant the
19 benefit of any further deduction against this additional
20 income. This argument has been raised. It has been
21 dispensed with. So based on the foregoing, Respondent's
22 action should be sustained.

23 Thank you.

24 JUDGE LONG: Thank you.

25 I'm going to turn to my Panel members.

1 Judge Kletter, do you have any questions for the
2 parties?

3 JUDGE KLETTER: I have two questions for FTB.
4 The first question is in Appellants' -- or I'm sorry -- in
5 FTB's reply brief, that's the most recently filed one on
6 March 27th, 2020, there's reference to the fact that when
7 an adjustment is made by the IRS, that taxpayer should
8 either concede the accuracy of the federal determination
9 or state where in that determination is erroneous. So I
10 just want to confirm that the assessment in this case is
11 not based on a federal assessment under Revenue & Taxation
12 Code 1862. It's based solely on the guilty plea and the
13 finding in that criminal case; is that correct?

14 MR. HUNTER: That is most correct, Judge Kletter.
15 I'm glad you brought up that very important distinction.
16 The basis -- the statutory basis for Respondent's
17 assessment is Section 19087, any and all available
18 information, we're going back to the guilty plea.

19 JUDGE KLETTER: Thank you. And then I wanted to
20 ask whether FTB had any indication that the California
21 return that was filed for 2006 was fraudulent aside from
22 that guilty plea.

23 MR. HUNTER: That is the information that
24 Respondent based its assessment on. No other information,
25 Judge Kletter.

1 JUDGE KLETTER: Thank you. I don't have any
2 further questions.

3 JUDGE LONG: Judge Tay, do you have any
4 questions?

5 JUDGE TAY: I have no questions for Respondent.

6 JUDGE LONG: Thank you.

7 And, Mr. Saifan, would you like five minutes to
8 make final remarks?

9 MR. SAIFAN: Yes, Your Honor.

10

11 CLOSING STATEMENT

12 MR. SAIFAN: So with the IRS Appellant or the
13 Examination Division when I went through with David
14 Bollenberg, I think his name was, there was no settlement.
15 This was something that they did. They came back with us.
16 They said there's nothing. If we agree with their
17 assessment, to sign the documents so they can go to the
18 U.S. Tax Court, and the U.S. Tax Court makes a decision
19 from there. So there was no settlement. We didn't settle
20 with them. We didn't agree to move forward with the -- I
21 just want to make that very clear.

22 There were five counts, not six counts, just for
23 the record. I pled guilty for the 2006 because I believe
24 that the tax returns were incorrectly submitted. And
25 that's why, after I came home after a little over two

1 years, I refiled them. The only issue the FTB had with me
2 was the dividends in question. That's why the appeal
3 occurred with the IRS. It's because of the dividends.
4 Nothing else.

5 So I'm not saying I didn't plead guilty. I did
6 plead guilty. I took responsibility for the filing, which
7 were incorrect, but then I amended them to correct them.
8 The FTB never came back and told me the amendments are
9 incorrect. They just made it very clear that they were
10 more interested in the dividends than anything else. So
11 that's why the appeal occurred with the IRS, and that's
12 why we resolved it at the IRS appeal, and the U.S. Tax
13 Court signed off on it.

14 What was mentioned here today about my pleading
15 guilty and all the purchases and everything, to me it's
16 irrelevant over here because I'm here for my 2006
17 dividends in question. And mostly, I didn't answer the
18 three questions that I had over here to be prepared for it
19 because I thought that I was going to be asked those
20 questions. But as far as the 2007 tax returns, we filed
21 them. There was no objection to them, and I wasn't -- it
22 wasn't part of my charge.

23 I looked at the five counts that I got. I was
24 never charged personally with the 2007 return. And if I
25 was, I didn't plead guilty to that charge. So today I

1 came here to discuss the dividends and nothing else. But
2 then the document I did file today as an exhibit talks
3 about the YIP, which is why the IP that relied on the
4 sentencing guidelines, and that it was incorrect the
5 prosecution was using it, and they were using all of these
6 amounts. They didn't allow me any deductions later on.

7 So all the deductions that they base this on
8 were -- I mean, they didn't allow me any deductions. And
9 they claimed, after looking at, because they were using
10 the same documents that the government gave them for all
11 the contracts. We never disputed those contracts or the
12 amount of money we received from the U.S. government. But
13 what we disputed is the amounts that they claimed were for
14 profit. They had me at a 92 percent profit margin, net
15 profit, which is impossible.

16 I mean, they didn't allow me any deductions for
17 employees, materials used, other expenses that were used
18 for an overseas operation supporting the United States
19 Government. In the contracts themselves, they were issued
20 to me as a firm fixed price contract. They didn't add --
21 it wasn't a cost-plus contract where, in fact, you itemize
22 your expenses. It was one lump sum. So what we did is we
23 calculated it in-house. We came up to how much our cost
24 would be and how much our profit would be.

25 And nothing over here mentions the fact that I

1 even had a 50 percent partner that took 50 percent of the
2 profits. So, if anything, if they didn't even allow me
3 the deductions, they have to take into consideration that
4 50 percent of it up front was to my partner, not to me.
5 This is all in the exhibits that I submitted here. And
6 then when they did ask for an itemized deduction, it was
7 they -- I got indicted five years after I sold my company
8 and dissolved it.

9 It was legally dissolved, and there was no
10 records. They had the opportunity to get the records from
11 the person I sold it to. They never requested those
12 documents, and they never got the documents, but they were
13 all present with them. But they were all overseas. This
14 is the issue that I have. And when, you know, it was
15 nothing except the dividends. There was nothing else here
16 that I came here for today.

17 As far as the collateral estoppel, what I believe
18 it to be is that these dividends are exactly the same as
19 what the State is asking for. If they resolved it over
20 there, I shouldn't be responsible for them. That's how I
21 truly believe it is, after looking the definition up, and
22 studying it, and looking at it. I'm not an expert on
23 this, but I believe that that should be taken into
24 consideration, that it's the same item, the dividends.
25 And I hope I'm not mistaken about that.

1 That's all I have to say, Your Honor.

2 Yeah, I mean, all the exhibits that you have
3 gotten from the protesting, closing letter, to the IRS
4 requesting the -- I mean -- I mean, the State has based
5 everything on what the IRS was asking for to begin with.
6 There's no difference. So the dividends are exactly the
7 same. There's no difference here.

8 And that's it.

9 JUDGE LONG: Thank you.

10 Mr. Hunter, was Appellants' NOA based on the
11 original return or the amended return? And did you
12 accept -- did FTB accept the amended return?

13 MR. HUNTER: The NOA is based on the guilty plea
14 in that information and the calculations that were
15 performed in the connection with the sentencing in the
16 criminal case. When you're referring to an amended
17 return, that's a federal amended return that was prepared
18 by IRS exam. He never -- Appellant did not submit an
19 amended tax year 2006 California personal income tax
20 return.

21 JUDGE LONG: Thank you.

22 And, Judge Kletter, do you have any final
23 questions.

24 JUDGE KLETTER: This is Judge Kletter. I have no
25 further questions. Thank you.

1 JUDGE LONG: Judge Tay?

2 JUDGE TAY: Mr. Saifan, you seem to dispute what
3 Respondent said about an amended California return. Do
4 you want to speak to that?

5 MR. SAIFAN: Yes, Your Honor. Thank you very
6 much. I was going to ask if I could make a comment about
7 that. The amendment was full -- full submission. It was
8 the federal and the state. It was a full submission by my
9 accountant, same accountant that was with me from the
10 beginning. So they understood exactly what needed to be
11 done, and that's how they filed it. And as a matter of
12 fact, I refer to it to the FTB in the letters, and part of
13 their exhibits is they did acknowledge that it was
14 refiled.

15 JUDGE TAY: Do you know where they mention that,
16 like an exhibit or anything that we have in our records?

17 MR. SAIFAN: I would have to look through all the
18 exhibits to find it. It might take a little time, but
19 I --

20 JUDGE TAY: Okay. Well, let me -- maybe I can
21 ask you another question. At IRS Appeals, did you provide
22 any documents or information with regards to these
23 constructive dividends, the \$200,000 for the house, the
24 money for the cars; did you provide IRS Appeals any
25 documents to explain those payments that maybe you've not

1 provided here?

2 MR. SAIFAN: Yes, Your Honor. When we first went
3 into the audit, the first thing -- I don't want to butcher
4 his name -- David Bollenberg was the assigned agent for
5 this appeal with his supervisor, and they asked me for all
6 the exhibits, all the paperwork that I might have, the
7 names, contact information. And I had to write letters of
8 explanation with all this information on it that they
9 received. And the Ford dealership that they received the
10 money directly from my personal account, and I was given
11 back the money, they were contacted. And they had a sworn
12 statement from them direct.

13 That's why I couldn't get any of this
14 information. They did most of the work to receive the
15 information. They also looked at DLSS' paperwork. One
16 second. I'm sorry. May I?

17 So my wife was adding that, you know, like I was
18 saying, the explanation letters and everything that I
19 wrote, I submitted to the FTB. It was part of the letter
20 dated 9, February 2020. That was to the tax appeals, the
21 California -- or State of California Office of Tax
22 Appeals. That's letter dated 9, February 2020. And I had
23 to respond in January 13, 2020. That explanation letter
24 of all where -- how the money was spent, where it was
25 spent from, who I paid personally.

1 In Baghdad in 2004, 5, 6, 7, when I worked over
2 there, there were no banks. I didn't have access to
3 checking, and everything was ordered from the U.S. for the
4 GSA vehicles that they used, which is the non-tactical
5 vehicles, were bought from Chevy and Ford dealerships that
6 I had contracts with here in the U.S. in Virginia. And
7 they shipped the parts by a company called EGL. EGL was
8 the logistics company that I also paid from my bank
9 accounts here in California to them, my personal accounts.

10 So all the money that I spent from my personal
11 accounts through the years of contracting overseas, was
12 given back to me because the payments for all these
13 contracts were in cash. I mean, we bought vehicles from
14 Canada, paid from our credit cards, our savings accounts,
15 whatever we could do to make the payments so we could
16 purchase these items. They were shipped on Air France to
17 Dubai. And from Dubai we contracted out Russian-operated
18 planes because they were the only ones that come into
19 Baghdad.

20 And after we delivered the vehicles, the United
21 States Government paid us in cash. And we put them in
22 duffel bags, and we went back on the same planes that
23 brought the vehicles to Bagdad, to Dubai to pay in cash
24 money to the individuals that gave us that. But most of
25 the money that was already down payments for the vehicles

1 were out of my personal accounts; money I borrowed from my
2 mother-in-law; money that we used credit cards for. I had
3 no business accounts back then here in the U.S. until
4 later.

5 So when I got activated and went into active
6 duty, there was no other way to purchase items from the
7 U.S. unless I used my personal accounts. I couldn't
8 travel outside the country like I used to and take cash
9 from government money to go pay for it. And at the end
10 when I sold my company in 2007, all the cash, all the
11 money that they gave me that they paid me, I turned into
12 treasury checks and brought it right back here and
13 deposited it into my business accounts.

14 So that's a really synopsis of how the cash went
15 back and forth to pay for items, but there was no
16 financial institutions in place for us to use to keep
17 track of checks that were paid or wire transfers. It
18 didn't exist.

19 JUDGE TAY: Thank you for explaining that,
20 Mr. Saifan. Excuse me. Do you have any other documents
21 or records of these shipments of parts from Ford and
22 Chevy?

23 MR. SAIFAN: We have emails. We have some
24 documents to show you that was what the case would be.
25 And the IRS received most of the documents directly from

1 the dealers to them. I gave them all the information.
2 They contacted them direct and got that information from
3 EGL, from Ford. And then there was a lot of other
4 materials bought here locally from Chevy that we shipped.

5 Later on in '07, you know, we opened up the
6 business accounts. We opened up an office in Huntington
7 Beach, and that's when we started to use some of the
8 business funds. But prior to that, we didn't have that
9 luxury. But we -- I do have some of those documents, and
10 they were given to the IRS. And they were explained in
11 the letter that I sent, and it was exhibits that were
12 given to them.

13 JUDGE TAY: Okay. Thank you. And do you have
14 copies of those things that you provided to the IRS?

15 MR. SAIFAN: No. I have some, but I don't have
16 all of them.

17 JUDGE TAY: Okay. Thank you.

18 MR. SAIFAN: I did contact the IRS to get copies
19 of things I gave them, and they told me I couldn't get
20 anything anymore.

21 JUDGE TAY: Right. I understand. I have no
22 further questions.

23 JUDGE LONG: Thank you.

24 Give me one second to review if we have any
25 additional questions.

1 Mr. Saifan, if you have those additional
2 documents, obviously, we can't -- we can't decide without
3 any evidence before us. But if you have any additional
4 documents to provide for us, is that something you can get
5 to us? You said you had some.

6 MR. SAIFAN: At home I might have some documents
7 showing receipts of previous purchases from them but not
8 all of the documents. I gave all the documents and
9 anything in between that we didn't have, they received
10 directly from them.

11 JUDGE LONG: Well, if you have any additional
12 documents that you are comfortable providing to us, we
13 could leave the record open.

14 MR. SAIFAN: I do have a document here that was
15 sent to the IRS Appeals. I do have some extra copies.

16 JUDGE LONG: Can you describe them for me?

17 MR. SAIFAN: This was addressed to Mr. David
18 Bollenberg, and it was sent in 16, November 2018. The
19 first -- there were three items that they asked me for.
20 The first one was an explanation of Item 1 on Exhibit
21 Number 2, which they gave me, that I don't have. But they
22 wanted to know -- because part of the dividends were there
23 was a \$9,500 check. They wanted an explanation where that
24 check was, and why did I pay it. And it was because of
25 debt for oil supplies and filters for the generators that

1 we had sold to the United States Government for a
2 maintenance package.

3 And the second subject was explanation of Ramsey
4 the auto supplier which is what I discussed. And they --
5 his name is Ramsey Handle, and he worked for Koons College
6 Park Ford. They are in Baltimore, Maryland -- regarding
7 the history that we've had in the past regarding the
8 purchase of auto parts from him, from the Koons Ford, and
9 it was a contract we had drawn between us. He confirms
10 this relationship, and confirmed that they were picked up
11 from the dealership and shipped to DLSS for Iraq.

12 JUDGE LONG: Yeah. So I think any documents to
13 show was provided to the IRS would be helpful for us in
14 making our decision. Is that something you would like to
15 submit? If you have that or anything else we'll --

16 MR. SAIFAN: I have this at this time, yes, Your
17 Honor.

18 JUDGE LONG: Okay. We can leave the record open
19 so you can submit that or anything else that you might
20 have, as you said. And then FTB will also have a chance
21 to respond to anything else that's been submitted.

22 MR. SAIFAN: And, Your Honor, also the account
23 that I paid from USAA, it's one of my accounts. It's
24 still on there until today. It shows the bill pay
25 registration to pay for the parts. So, you know, the IRS

1 does have record, all my banking records from back then
2 through my criminal case. Those bank accounts show the
3 payment to Koons Ford from my savings -- from my USAA bank
4 account.

5 JUDGE LONG: Okay. Again, anything that would
6 help us clarify what happened that we can see based on the
7 evidence would be helpful.

8 And I will check with my Panel members. Is there
9 anything else you would like to add?

10 Judge Kletter?

11 Judge Tay?

12 JUDGE TAY: I have no further questions.

13 JUDGE LONG: Okay.

14 All right. Then we will conclude this hearing.
15 We're going to leave the record open just for Appellants
16 to submit any additional evidence to show what happened
17 with -- to support his -- the dividends in this case. And
18 then FTB will also have a chance to respond to those as
19 well. So you'll be given 30 days from today. It looks
20 like 30 days from today is Friday, November 11th, but
21 since that's a holiday, you'll have until Monday,
22 November 14th. And once we receive that, FTB will have a
23 chance to respond within 30 days.

24 Are there any questions, Mr. Saifan?

25 MR. SAIFAN: Yes, Your Honor. You said

1 November 14th by close of business 5:00 p.m.?

2 JUDGE LONG: Yes.

3 MR. SAIFAN: Thank you, Your Honor.

4 JUDGE LONG: Any questions, Mr. Hunter?

5 MR. HUNTER: No. Works for me, Judge.

6 JUDGE LONG: Okay. And I will also issue a
7 post-hearing order with those dates as well.

8 Okay. Thank you for your participation today.
9 I'm going to double check here if there's another hearing
10 happening after this. There will be another hearing.
11 There is no estimated start time that I see. So the next
12 one will happen shortly.

13 Thank you for your time, everyone.

14 (Proceedings adjourned at 2:07 p.m.)

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I have hereunto subscribed my name this 4th day
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