

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. BARTOK and S. TANAKARNKORN,) OTA NO. 20086568
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, November 17, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:02 p.m. and concluding at 1:24 p.m. on
Thursday, November 17, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and for
the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ ASAF KLETTER
ALJ EDDY LAM

For the Appellant: M. BARTOK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
BRIAN WERKING

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I N D E X

E X H I B I T S

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

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California; Thursday, November 17, 2022
1:02 p.m.

JUDGE LAMBERT: We are now on the record in the
Office of Tax Appeals oral hearing for the Appeal of
Michael Bartok and Sunanta Tanakarnkorn, Case Number
20086568. The date is November 17th, 2022, and the time
is 1:02 p.m.

My name is Josh Lambert, and I'm the lead
Administrative Law Judge for this hearing. And my
co-Panelists today are Judge Asaf Kletter and
Judge Eddy Lam.

FTB, can you please introduce yourself for the
record.

MR. WERKING: Brian Werking for Franchise Tax
Board.

JUDGE LAMBERT: Thanks.

And for Appellant, can you please introduce
yourself for the record.

MR. BARTOK: Michael Bartok, Appellant.

JUDGE LAMBERT: Thank you. Thank you both for
attending.

As discussed at the conference, the issue in this
appeal is as follows: Whether Appellants have shown error
of FTB's disallowance of alimony payment deductions for

1 the 2015 tax year.

2 FTB provides Exhibits A through L. Appellants do
3 not provide exhibits, or Mr. Bartok did not present any
4 representing Appellants. And there were no objections to
5 the exhibits at the conference, so that evidence is now in
6 the record.

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

9 FTB won't be presenting any witness, but
10 Mr. Bartok plans to testify as a witness.

11 Mr. Bartok, I can swear you in now.

12 MR. BARTOK: Okay.

13 JUDGE LAMBERT: Can you please raise your right
14 hand.

15

16 MICHAEL BARTOK,

17 produced as a witness, and having been first duly sworn by
18 the Administrative Law Judge, was examined and testified
19 as follows:

20

21 JUDGE LAMBERT: Thanks. And this will be your
22 opportunity to explain your position. So you will have
23 15 minutes, and you can proceed when you're ready.

24 MR. BARTOK: I'm ready, and I don't know if I'll
25 need 15 minutes, but I appreciate the time. So I will go

1 ahead now.

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PRESENTATION

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MR. BARTOK: Yeah. I appreciate the Tax Board and all of you participating and Mr. Werking on behalf of the Franchise Tax Board. I'm obviously not a tax expert whatsoever. I'm representing myself and my wife in this matter, and I don't necessarily have experience. I used to be a practicing attorney, but I've not practiced any form of tax law in a long time.

But I'm doing the appeal, and I will just also note for the record that I appreciate the offer -- that I was made aware that offers and comprise can be made only after an appeal is done. But I made a decision that I would rather try the appeal, and if it's not successful, then would institute an offer and comprise.

I know that you have all the facts, and Mr. Werking put together an accurate set of exhibits, which I have no objection to. I will just summarize very quickly the situation because even sometimes reading the timeline it doesn't always make so much sense. But I was employed for 20 -- almost 28 years with Paramount Pictures Viacom. I was an executive with the company and was generally doing reasonably well financially.

In 2015 I was terminated from the company and was

1 given a package based on my longevity, which was paid out
2 to the bulk of it in 2015. Also, in 2015 I was in the
3 process of getting divorced, which I entered into a
4 property settlement in April of that month. I was
5 terminated from my position from Paramount in February. I
6 think the effective day may have been actually been in
7 March.

8 And then I was also remarried to Sunanta
9 Tanakarnkorn later that year, which is why, you know, this
10 is -- she's listed as part of this as well, even though we
11 had sort of the oddity of only being married part of the
12 year. And I will say that my divorce attorney on the
13 property settlement agreement did not get a great
14 settlement for me, which is sort of irrelevant to this but
15 also didn't really properly explain to me that the way the
16 agreement was drafted that I would not be entitled to
17 declare anything under the property settlement agreement
18 alimony once the divorce was affected.

19 And I obviously realize that up until the time of
20 the divorce that it was impossible even though I was -- a
21 large percentage of my income while I was still married
22 was going to my now ex-wife. But I was under the
23 misbelief that the -- after that that, you know, some
24 considerable money that was paid to my ex-wife, and she
25 kept the house and my boys, who at that time were minors,

1 were living with her. I didn't object to that.

2 But as it turned out in 2015, I had probably my
3 highest income throughout my career, and then after that
4 was left with no income for the next couple of years. I
5 had a very difficult time. And even now I'm making, you
6 know, a fraction of what I -- what I used to make. So
7 my -- my issue is not necessarily of -- that I dispute
8 what the tax laws are in the State of California.

9 You know, at this point I'm no longer living in
10 California. And to bring some sort of action against the
11 divorce attorney for, you know, improper representation is
12 probably not going to do me much good at this stage. But
13 I, you know, was in that situation. I want to also note
14 that I think very shortly after, I learned from the
15 Franchise Tax Board that they were saying that I had a
16 deficiency based on the disallowance of the alimony. I
17 got a similar notice from the IRS, I think, pertaining to,
18 you know, effectively the same issue.

19 I had discussed back and forth with the IRS quite
20 a bit. Their process was different in terms of the offer
21 and compromise had to be made in advance of an appeal, not
22 the way it is for the State of California. And I did end
23 up getting a -- what I viewed as a reasonable offer and
24 compromise. It took quite a while. So, you know, I
25 still -- from the point in the IRS amount was considerably

1 larger than the California amount, I did want to pursue it
2 first an appeal, but that would have eliminated my
3 opportunity for the offer and compromise. And so I didn't
4 feel I could afford to do so, and it probably turned out
5 to be a good decision.

6 But, you know, I'm in a very odd position, and
7 I'm sure you've seen probably quite a few things. But
8 going to effectively double my previous annual income in
9 2015 as a result of my severance payments and being a
10 divorced and married in the same year and then not having,
11 you know, income to speak of after that, and even now
12 several years later at a fraction of that.

13 So that's really the basis of it. I don't, you
14 know, know enough to dispute anything, you know -- and
15 Mr. Werking or FTB's documents regarding what is allowed
16 and disallowed. My accountant, I don't have an accountant
17 anymore, but at that point had filed the taxes for me, and
18 didn't tell me anything about that, you know, that --
19 these amounts weren't legitimate amounts. So I know
20 ignorance is no excuse of the law, but I feel like I've
21 been put in a very difficult financial situation.

22 I understand that the appeal doesn't hinge on my
23 financial situations, but I do feel like several of the
24 facts of this matter are somewhat extraordinary basis, and
25 I just present, you know, that as part of this appeal.

1 And, like I said, if the appeal is ultimately not
2 successful, I will most certainly pursue an offer and
3 compromise.

4 But that's really the only statement I have to
5 make. I don't have any other material facts to present,
6 and I'd be happy to answer any -- any questions that you
7 may have. But that is really all I have at this point.

8 JUDGE LAMBERT: This is Judge Lambert. Thank
9 you, Mr. Bartok for your presentation and testimony.

10 I'm going to turn to FTB.

11 Mr. Werking, did you have any questions for
12 Mr. Bartok?

13 MR. WERKING: I do not have any questions.

14 JUDGE LAMBERT: Thank you.

15 And I'm going to turn to the Panel and ask them
16 as well.

17 Judge Kletter, did you have any questions for
18 Mr. Bartok?

19 JUDGE KLETTER: This is Judge Kletter speaking.
20 I do not have any questions for Mr. Bartok.

21 Thank you, Mr. Bartok, for your presentation
22 though.

23 MR. BARTOK: Thank you.

24 JUDGE LAMBERT: Thanks.

25 And Judge Lam, did you have any questions?

1 JUDGE LAM: Hi. This is Judge Lam speaking. I
2 don't have any questions.

3 JUDGE LAMBERT: This is Judge Lambert. Thank
4 you.

5 And I had a question for Mr. Bartok or a couple.
6 So based on what you're stating, did you dispute the FTB's
7 determination, or were you more arguing that there's these
8 other circumstances such as the advice of your attorney or
9 your financial circumstances?

10 MR. BARTOK: I did originally dispute it because
11 I was completely unaware. And I thought, oh, this is just
12 some, you know, error. But I said, in the way I read the
13 property settlement agreement, that it was permitting me
14 to declare the amounts, you know, from the time I was
15 divorced to have those payments be deemed as alimony.
16 But -- so I did dispute it to the FTB and went back and
17 forth and received a letter saying that, no, that's not
18 the case and that, you know, they are ordering the
19 deficiency, which is how the appeal process started.

20 There was also a period of time where I felt that
21 with my wife, because she wasn't a party to this, that I
22 believe that she filed -- and, actually, I wish I could
23 remember if she filed for California. I know with the IRS
24 she filed an innocent spouse paperwork because she had
25 nothing to -- was uninvolved here, other than having to be

1 married to me later in the year. But that's sort of
2 irrelevant to the issue at hand.

3 JUDGE LAMBERT: Thank you. And I was wondering
4 these payments that were paid out, were they made
5 periodically or was there mainly just like a lump sum
6 payment?

7 MR. BARTOK: No. They were made -- they were
8 made every two weeks. Effective from the time I think it
9 was from -- if I recall, from March 2015 for about, I
10 think, 6 or 7 months every two weeks. And they were
11 effectively at the rate of about double my normal annual
12 compensation -- you know, normal compensation because they
13 were, I think, effectively paying me a year's worth of
14 severance, you know, over the course of a six or
15 seven-month period. Plus there were some other monies
16 that were owed to me. A lot of it as a result, as I
17 mentioned, I had been with the company for 28 years.

18 JUDGE LAMBERT: Okay. Thanks. And the amount
19 that was paid to her out of the severance, did you just
20 take your severance and divide it in half?

21 MR. BARTOK: I was pretty much dividing by half.
22 And in some cases, you know, more because I think whatever
23 the net amounts that were being withheld, I was, you know,
24 feeling like I was going to be, you know, more -- more
25 responsible in some cases. But until up to the point that

1 the divorce was final, it wasn't an issue. And then I
2 was -- I think after that point, I was just paying half.
3 Yes.

4 JUDGE LAMBERT: Okay. And that's all the
5 questions I have for now. Thank you very much. I
6 appreciate it.

7 MR. BARTOK: Okay. Thank you very much.

8 JUDGE LAMBERT: And we can move on to FTB's
9 presentation, which is for 10 minutes.

10 And, Mr. Werking, if you're ready, you can
11 proceed.

12 MR. WERKING: Thank you, Judge Lambert.

13

14 PRESENTATION

15 MR. WERKING: The issue in this case is whether
16 Appellants have met their burden to show error in the 2015
17 proposed deficiency assessment. Specifically, whether
18 Appellants have established entitlement to their alimony
19 deduction. Based on Mr. Bartok's testimony today, it
20 appears Appellants do not dispute the propriety of the
21 proposed deficiency assessment.

22 In any event, Appellants have not established
23 that the payment of Mr. Bartok's Paramount severance to
24 Mr. Bartok's ex-wife, pursuant to a marital settlement
25 agreement, was alimony and not a payment in satisfaction

1 of his ex-wife's property rights.

2 Alimony payments are deductible by an individual
3 if the payments are required as alimony or separate
4 maintenance under a divorce or separation instrument, are
5 not payments in satisfaction of the other spouse's
6 property rights, and the payments are taxable to the
7 recipient spouse.

8 The payment at issue in this case is the payment
9 made to Mr. Bartok's ex-wife to equal Mr. Bartok's
10 severance from Paramount Pictures in satisfaction of his
11 ex-wife's property rights under the marital settlement
12 agreement. I direct you to Respondent's Exhibit C,
13 page 1, number 2. This a letter received from Appellants
14 in which Mr. Bartok specifically indicates the alimony
15 deduction at issue in this appeal represents a portion of
16 his severance pay to his ex-wife as required and
17 acknowledged in their marital settlement agreement, which
18 he notes with an asterisk.

19 Moving to page 4 you will see Section number 2
20 which denotes the beginning of the property division
21 section of the agreement. Moving on to page 5, you will
22 see Mr. Bartok's asterisk in brackets indicating the
23 alimony deduction at issue represents the payment made to
24 Mr. Bartok's ex-wife in satisfaction of her property
25 rights to one-half of Mr. Bartok's severance from

1 Paramount Pictures, which is provided under the "Property
2 Division Section" of the marital section agreement.

3 The agreement does contemplate potential for
4 alimony payments. I direct you to Respondents Exhibit D,
5 page 7, number 3 and subparagraph B. In the event
6 Mr. Bartok becomes employed or receives income from
7 another venture after Paramount, Mr. Bartok would have an
8 obligation for spousal support. But there's no indication
9 that Mr. Bartok became employed or received income from
10 another venture in 2015 or had any obligation under the
11 provision of this agreement or made any payments pursuant
12 to this provision of this agreement.

13 Next, I direct you to Respondent's Exhibit E.
14 This is a letter from Mr. Bartok received during the
15 examination of the reported alimony deduction in which
16 Mr. Bartok informs Respondent that the payment made to his
17 ex-wife in 2015, pursuant to the marital settlement
18 agreement, is not an alimony payment. And he is solely
19 responsible on the tax on the income relating to his
20 employment with Paramount Pictures and the severance
21 payment paid to his ex-wife.

22 As such, the payment made to Mr. Bartok's ex-wife
23 is not alimony or a maintenance payment required by the
24 marital settlement agreement. The payment is in
25 satisfaction of Mr. Bartok's ex-wife's property rights as

1 provided by the marital settlement agreement, and the
2 payment is not taxable to Mr. Bartok's ex-wife.

3 Accordingly, Appellants are not entitled to a
4 deduction for this payment and have not met their burden
5 to show error in the 2015 proposed deficiency assessment.
6 Respondent respectfully request that the Panel sustain the
7 proposed assessment.

8 Respondent is sympathetic to Appellants' concerns
9 over making, you know, full payment of any resulting
10 liability, and Respondent has provided as its Exhibit L
11 the offer and compromise booklet. And also an option for
12 Appellant may be to actually enter into an installment
13 agreement at the conclusion of this appeal should the
14 Office of Tax Appeals affirm the proposed deficiency
15 assessment. And more information on both of those items
16 may be available on our website.

17 And thank you, and I will be happy to answer any
18 questions that the Panel may have.

19 JUDGE LAMBERT: Thank you, Mr. Werking.

20 I'm going to ask the Panel if they have any
21 questions.

22 Judge Kletter, do you have any questions?

23 JUDGE KLETTER: This is Judge Kletter speaking.

24 I don't have any questions for FTB. Thank you.

25 JUDGE LAMBERT: Thanks.

1 And, Judge Lam, do you have any questions?

2 JUDGE LAM: This is Judge Lam. I don't have any
3 questions.

4 JUDGE LAMBERT: And this is Judge Lambert. I
5 have no questions as well. So thank you, Mr. Werking.

6 MR. WERKING: Thank you.

7 JUDGE LAMBERT: We're going to turn to
8 Mr. Bartok, if you want to take 5 minutes for any closing
9 remarks or respond to anything that was stated by the FTB.
10 You could proceed.

11 MR. BARTOK: I don't think I have anything
12 further. I appreciate Mr. Werking. He's been fair in his
13 assessment of everything. And I feel like I've already
14 shared all the facts and the circumstances clearly, even
15 at the time in 2018 when I -- you know, basically three
16 years after the fact, I started learning more about this
17 situation.

18 And, again, I say I'm very displeased with the
19 way that my divorce agreement was -- property settlement
20 agreement was handled because it has put me in a very, you
21 know, even more difficult financial situation than I was
22 before. But I appreciate the time that all you Judges on
23 the Panel and court staff and Mr. Werking. So I don't
24 want to take up any further of your time, but thank you.

25 JUDGE LAMBERT: Thank you, Mr. Bartok.

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So if there's nothing further, I'm going to
conclude the hearing.

And I want to thank both parties for appearing
today and also for Mr. Bartok for testifying.

We'll issue a written opinion within 100 days.

Thank you. The record is now closed. Have a
nice day.

And the next hearing will start at 2:00 p.m.
Thank you.

(Proceedings adjourned at 1:24 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 19th day
of December, 2022.

ERNALYN M. ALONZO
HEARING REPORTER