

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 TEXICON INC.,) OTA NO. 220410111
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, December 29, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:34 a.m. and concluding at 10:56 a.m. on
Thursday, December 29, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: ALJ SUZANNE BROWN

For the Appellant: BARRY R. DEVORZON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER COOK
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-4 were received at page 8.)
(Department's Exhibits A-J were received at page 10.)

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California; Thursday, December 29, 2022
10:34 a.m.

JUDGE BROWN: We are on the record in the Appeal of Texicon, Inc. This is OTA Case Number 220410111. Today is Thursday, December 29th, 2022, and it is approximately 10:34 a.m. My name is Suzanne Brown. I'm the Administrative Law Judge who will be conducting the hearing for this case. This case is being heard by a single Administrative Law Judge under the Office of Tax Appeals Small Case Program.

Next, I will ask each parties' representatives to identify themselves for the record. I will start with the Franchise Tax Board representatives.

Could you each please state your name and identify yourself for the record.

MR. COOK: Hello. This is Chris Cook. I'm a Tax Counsel with the Franchise Tax Board.

MR. YADAO: Good morning. This is Eric Yadao. Tax Counsel IV with Franchise Tax Board.

JUDGE BROWN: This is Judge Brown. Thank you. And now I will ask Appellant's representative to identify himself for the record.

MR. DEVORZON: Barry DeVorzon.

JUDGE BROWN: Thank you all very much, and thank

1 you for being here today.

2 I will remind everyone that this hearing is being
3 conducted before the Office of Tax Appeals or OTA. OTA is
4 not a court. It is not independent appeals body. OTA is
5 staffed by tax experts and is independent from the State's
6 tax agencies, including independent from the Franchise Tax
7 Board. Because OTA is a separate agency from the
8 Franchise Tax Board, arguments and evidence heard before
9 FTB are not necessarily part of the record before OTA
10 today.

11 OTA's written opinion for this appeal will be
12 based upon the briefs the parties have submitted to OTA,
13 the exhibits that will be admitted into evidence today,
14 and the arguments presented at the hearing today. I have
15 read all the briefs and exhibits, and I will remind
16 everyone that, as the ALJ in this case, I do not engage in
17 ex parte communications with either party.

18 Now earlier this month we had a prehearing
19 conference in this matter, and afterwards I issued a
20 document titled "Minutes and Orders of Prehearing
21 Conference," which was sent to the parties by email on
22 December 8th and confirmed the various topics that we had
23 discussed during the prehearing conference.

24 As we discussed during the prehearing conference
25 and confirmed in the minutes and orders, the issue for

1 hearing today is whether Appellant has established
2 reasonable cause to abate the late-filing penalties
3 imposed under Revenue & Taxation Code Section 19131 for
4 the 2018, 2019, and 2020 tax years and under Revenue &
5 Taxation Code Section 19172.5 for the 2017, 2018, 2019 and
6 2020 tax years.

7 I'll just confirm with Franchise Tax Board that
8 you understand, and that you agree that's the issue before
9 us today.

10 MR. COOK: This is Chris Cook. We agree that
11 this is the issue.

12 JUDGE BROWN: And I'll ask Appellant as well.
13 Mr. DeVorzon, do you agree that is the issue today?

14 MR. DEVORZON: Yes.

15 JUDGE BROWN: Okay.

16 Next, I want to just briefly address the
17 documentary exhibits that we have. I attached copies of
18 each parties' exhibits to the prehearing conference
19 minutes and orders. Everyone submitted their exhibits
20 well in advance, and we did not receive any additional
21 exhibits after the prehearing conference. As I explained
22 during the prehearing conference, OTA's regulation
23 requires that proposed exhibits must be submitted at least
24 15 days in advance of the hearing, and these documents
25 were.

1 First, I'll address Appellant's exhibits, and
2 then I'll address FTB's exhibits. Appellant submitted
3 exhibits that we marked as Exhibits 1 through 4. And
4 during the prehearing conference, the Franchise Tax Board
5 indicated no objection to these exhibits being admitted
6 into evidence.

7 First, I will confirm with FTB that there's no
8 objection to Appellant's Exhibits 1 through 4 being
9 admitted.

10 MR. COOK: This is Chris Cook. There's no
11 objection.

12 JUDGE BROWN: Okay.

13 And Mr. DeVorzon, I will just confirm that these
14 are the only exhibits, 1 through 4, that you submitted as
15 a -- you originally submitted them back in March of this
16 year. It was eight pages. I numbered them as Exhibits 1
17 through 4. I'll just confirm that these are the only
18 exhibits that you are submitting for the hearing; correct?

19 MR. DEVORZON: Yes.

20 JUDGE BROWN: Okay.

21 And given that these were timely submitted and
22 there's no objection, I will say that Appellant's
23 Exhibits 1 through 4 are admitted into evidence.

24 (Appellant's Exhibits 1-4 were received
25 in evidence by the Administrative Law Judge.)

1 And then I will next address FTB's Exhibits A
2 through J, which were, again, submitted well in advance.
3 And Appellant indicated during the prehearing conference
4 that he had no objection to FTB's exhibits being admitted
5 into evidence as part of the record that I can consider
6 when making my findings on this case.

7 Is that correct, Mr. DeVorzon? Appellant has no
8 objection to FTB's exhibits being admitted?

9 MR. DEVORZON: You know, I really don't know what
10 they are, but I'm sure they're acceptable.

11 JUDGE BROWN: Did you receive the prehearing
12 conference minutes and orders that we emailed you on --
13 about December 8th?

14 MR. DEVORZON: Yes. Oh, and they were included
15 in there?

16 JUDGE BROWN: They were included in that.

17 MR. DEVORZON: Well, I'm sorry. I didn't realize
18 that. But yes, I accept.

19 JUDGE BROWN: Okay. You don't have objection to
20 them being admitted?

21 MR. DEVORZON: No.

22 JUDGE BROWN: And it doesn't mean you necessarily
23 agree with the contents. It just means that these are
24 things I can consider when I'm making my findings in this
25 case.

1 MR. DEVORZON: Yes. Yes.

2 JUDGE BROWN: Okay.

3 And I'll just confirm with the Franchise Tax
4 Board that Exhibits A through J are the only exhibits that
5 FTB has submitted for admission into evidence; correct,
6 Mr. Cook?

7 MR. COOK: I'm sorry, Judge Brown. Can you
8 repeat the question.

9 JUDGE BROWN: Oh, I'm just confirming FTB's
10 Exhibits A through J are the only exhibits. You haven't
11 submitted anything new?

12 MR. COOK: That's correct, Judge Brown. Sorry.

13 JUDGE BROWN: Okay. That's fine. This is
14 Judge Brown.

15 And I will say that FTB's Exhibits A through J
16 are admitted into evidence.

17 (Department's Exhibits A-J were received in
18 evidence by the Administrative Law Judge.)

19 All right. And FTB is not calling any witnesses.
20 As we discussed during the prehearing conference, the only
21 witness is Appellant's witness. Mr. DeVorzon is going to
22 testify. And the order of the events today are that
23 Appellant goes first, and Appellant can make its
24 presentation, including Mr. Devorzon's testimony. And
25 when Appellant's presentation is done, then we have the

1 Franchise Tax Board's presentation. And then after that,
2 Appellant has time for a rebuttal to address any arguments
3 that the Franchise Tax Board raised, and I may have
4 questions for the parties. I may hold my questions until
5 the end. We'll see.

6 I think that covers everything, and now I'm going
7 to pause and ask if anyone has questions or is there
8 anything else that you want to address before we start
9 with the presentations.

10 Mr. DeVorzon, do you have any questions?

11 MR. DEVORZON: No. I don't think so.

12 JUDGE BROWN: Okay.

13 And Franchise Tax Board?

14 MR. COOK: This is Chris Cook. We don't have no
15 questions.

16 JUDGE BROWN: Thank you. This is Judge Brown. I
17 will say, then, we can proceed with Appellant's
18 preparation. I will ask the other participants to mute
19 you're microphones, if you can, and remember to unmute
20 them when it's time for you to speak. Before Appellant
21 begins its preparation, I will swear in Mr. DeVorzon as a
22 witness.

23 Mr. DeVorzon, can you please raise your right
24 hand.

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BARRY R. DEVORZON,

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

JUDGE BROWN: Thank you. And you my begin your presentation whenever you are ready.

PRESENTATION

MR. DEVORZON: Well, Your Honor and State officials, I -- listen. You are certainly within your right to assess penalties because that's the law. I'm hoping that when you understand the circumstances fully that you might consider abating those penalties.

I am a retired songwriter. I'm 89 years old. I'm a veteran with disabilities. I have asbestosis from an engine room on a destroyer. Anyway, I've been fortunate enough to have made a living as a songwriter, but that was quite a while ago. And so I started a software company with my son for songwriters. And we created a company, and we had a gentleman working in that company, called Texicon, whose responsibility it was to provide content for the software for songwriters, and he passed away.

And therefore, that function for the company

1 ceased to be. And then it was just one of those series of
2 events. Our account -- I have a number of accounts with
3 the accountant. I had my software company. I had
4 Texicon. I had my music company, which is a holding
5 company for my royalties. And then I had a real estate
6 venture which went south and didn't work out. And then my
7 personal and my children.

8 So the accountant had a number of accounts that
9 he was responsible for, and he passed away suddenly and
10 unexpectedly. Another accountant supposedly took over all
11 of his accounts, but I think this person, Van Buren, just
12 took on more than he was capable of handling. And it was
13 just a terrible mess. Everything was disorganized. I was
14 frustrated. I was going to miss all the tax deadlines. I
15 couldn't get this man on the phone.

16 And so I reached out to another accountant called
17 Neal Choi. And supposedly Mr. Van Buren was supposed to
18 turn over all my accounts to him, and somewhere in the mix
19 he did not turn over Texicon. Now, I know this is a poor
20 excuse, but I just -- I don't pay attention to this stuff.
21 In the past, my accountant sent me things. I signed them.
22 I did what they asked me to do and, you know, send in the
23 checks and the returns.

24 And somewhere in that confusion, since Texicon
25 had ceased to be active, so since the time that person

1 passed away, there's no activity in Texicon. No expenses.
2 No income. Nothing. It just slipped through the boards.
3 I -- I -- I didn't notice that we hadn't filed the return,
4 and especially since the company was completely inactive
5 and just out of sight as far as I was concerned. When
6 this new accountant by accident discovered that there was
7 a Texicon and that we hadn't filed returns, we immediately
8 filed all the returns that we were delinquent on.

9 So we tried to do the right thing. I certainly
10 didn't try to avoid taxes or any obligations because there
11 was no activity, so there was no income or anything. So
12 it wasn't trying to avoid taxes. It was just an honest
13 mistake. So we filed all the taxes. I believe we're
14 current, and in view of these circumstances, I just would
15 like -- I would like to ask if the State would consider
16 abating the penalties, even though I know my excuse for
17 not making the return isn't exactly acceptable to you, I
18 just hope you might make an exception in this case.

19 I think that's it.

20 JUDGE BROWN: This is Judge Brown. I was going
21 to say if -- ask if that was the end of your presentation.
22 Thank you very much, Mr. DeVorzon.

23 Franchise Tax Board, first I will ask if you
24 have any --

25 MR. DEVORZON: Oh, wait a minute. I'd like to

1 say one more thing. And needless to say, at this state of
2 the game as a retired songwriter, money is a
3 consideration. And so, you know, the charges are really
4 prohibitive for me at this stage of my life based on the
5 fact that I overlooked filing these returns.

6 That's it.

7 JUDGE BROWN: This is Judge Brown. I will say
8 thank you very much for your presentation.

9 And now I will turn to Franchise Tax Board and
10 remind them to unmute. And now I will ask first if they
11 have any questions for the witness.

12 MR. COOK: This is Chris Cook. I don't have any
13 questions.

14 JUDGE BROWN: All right. Then I will say
15 Franchise Tax Board, if you are ready to begin your
16 presentation, you may go ahead at any time.

17 MR. COOK: Thank you, Judge Brown.

18

19 PRESENTATION

20 MR. COOK: First, it must be emphasized that
21 Mr. DeVorzon is not the taxpayer in this case. Texicon is
22 and reports having six shareholders. There's no dispute
23 that Texicon filed its returns late. So the only issue in
24 this case is whether reasonable cause exists to abate the
25 penalties that were assessed for the late-filings.

1 The well-established legal standard for finding
2 that reasonable cause exists is the taxpayer providing
3 evidence showing that an ordinarily intelligent and
4 prudent business person would have acted similarly under
5 the same circumstances. It is also well-established law
6 that the duty to timely file a return belongs only to the
7 taxpayer. So reliance on a taxpayer preparer to file a
8 tax return is not reasonable.

9 Texicon's evidence in this case are letters from
10 tax preparers, which are included in the record as
11 Exhibits 2 and 3. These letters clearly reveal that
12 Texicon's officers and Texicon's tax preparers overlooked
13 Texicon's very existence for the years at issue in this
14 case, and this oversight was the cause of the late
15 filings. So the tax preparer's letters and Texicon's
16 officers' explanation are simply proof and admissions by
17 Texicon that the legal standard for reasonable cause has
18 not been met.

19 First, the fact that Texicon's officers relied on
20 tax preparers to file the corporate returns is legally not
21 reasonable cause. And second, Texicon has not proven how
22 its own officers overlooking the corporation's very
23 existence parallels the actions of an ordinary,
24 intelligent, and prudent business person concerning a
25 corporation's tax-client's obligations.

1 Since the evidence and explanation Texicon
2 provides are merely admissions that the legal standard for
3 the reasonable cause has not been met, FTB asks the OTA to
4 sustain the penalties assessed for Texicon filing its
5 returns late.

6 Thank you.

7 JUDGE BROWN: All right. This is Judge Brown.
8 Thank you, Mr. Cook.

9 I will say that I believe that I can go ahead and
10 hear Appellant's rebuttal at this time.

11 Mr. DeVorzon, if you are ready, you now have the
12 opportunity to make a rebuttal and add anything in
13 response, address anything that the Franchise Tax Board
14 has raised, if you have anything that you want to add.

15
16 CLOSING STATEMENT

17 MR. DEVORZON: Well, my rebuttal is that
18 songwriters are not known to be the greatest businessmen.
19 So we can't assume that everyone has business acumen the
20 way you would think that somebody that has a business. I
21 know a lot of people that have businesses that shouldn't
22 be in business, and I'm probably one of them.

23 Number two, I have faithfully always paid my
24 taxes and obeyed the law. I'm 89. That's a long time to
25 pay my dues without any problems. And now there was -- I

1 made a mistake. And I just feel the law is the law, but
2 somewhere in there there should be some consideration for
3 an honest mistake, especially, since it didn't involve not
4 reporting income or trying to get around paying taxes. It
5 was just a filing mistake.

6 So I would hope there is some modicum of mercy
7 and understanding on the part of the State that would at
8 least seriously consider, you know, offsetting these
9 penalties.

10 That's all I think I have to say.

11 JUDGE BROWN: This is Judge Brown. Thank you
12 very much, Mr. DeVorzon.

13 I believe I have covered everything. I have
14 admitted the evidence. I have heard the arguments from
15 both parties. I don't have any questions at this time.
16 So I believe I can say, if no one has anything further to
17 raise, then I can close the hearing and say that this
18 concludes the hearing. The record is closed, and the case
19 is submitted today.

20 I will decide the case based on the evidence, the
21 arguments, and applicable law, and the Office of Tax
22 Appeals will mail both parties the written decision no
23 later than 100 days from today.

24 The hearing is, adjourned, and the next hearing
25 will begin at 1:00 o'clock today. I thank everyone very

1 much for their participation in the hearing today, and we
2 have concluded.

3 Thank you.

4 (Proceedings adjourned at 10:56 a.m.)
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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 9th day
of January, 2022.

ERNALYN M. ALONZO
HEARING REPORTER