

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 RJRSJ PROPERTIES, LLC,) OTA NO. 21088430
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, January 27, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:35 a.m. and concluding at 9:58 a.m. on
Friday, January 27, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ TOMMY LEUNG
ALJ VERONICA LONG

For the Appellant: ZACHARY FISHER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ZACHARY FISHER
D. COWARD
CHRISTOPHER TUTTLE

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I N D E X

E X H I B I T S

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California; Friday, January 27, 2023

9:35 a.m.

JUDGE KLETTER: We're now going to go on the record, again, Appeal of RJRSJ Properties, LLC, OTA Case Number 21088430. Today is Friday, January 27th, 2023, and the time is approximately 9:35 a.m. We're holding this hearing electronically with the agreement of all the parties.

As a reminder OTA is not a court. We are an independent appeals body. The OTA is staffed by tax experts and is independent of the State's tax agencies. We do not engage in ex parte communication. Our decision is based on arguments and evidence provided by the parties on appeal in conjunction with the appropriate application of law. We have read the briefs and examined the submitted exhibits.

Again, my name is Judge Kletter. I will be the lead ALJ for this appeal. With me are Administrative Law Judges Tommy Leung and Veronica Long.

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

MR. FISHER: My name Zachary Fisher.

JUDGE KLETTER: Thank you.

1 MR. TUTTLE: My name is Topher Tuttle. I
2 represent Franchise Tax Board.

3 JUDGE KLETTER: This is the Judge Kletter. Thank
4 you.

5 And the issue for today's hearing is whether
6 Appellant has demonstrated reasonable cause to abate the
7 late filing and late penalties for the 2017 tax year.

8 With respect to the evidentiary record, FTB has
9 provided Exhibits A through W. And at the prehearing
10 conference, Appellant did not object to the admissibility
11 of these exhibits. Therefore, these exhibits are entered
12 into the record.

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

15 Appellant has not provided any exhibits, and no
16 additional exhibits were presented today.

17 So I will turn it over to Appellant, and you may
18 now please begin.

19

20 PRESENTATION

21 MR. FISHER: Sure. I mean -- sorry. This is
22 Zach Fisher.

23 The issue as we see it is that in 2017, we paid
24 our Franchise taxes timely. And in 2018, we paid our
25 Franchise taxes timely. And in 2019, we paid our

1 Franchise taxes timely. During that time, there had been
2 a transition to new software that our CPA was using. And
3 in submission of that -- of the documents -- sorry -- the
4 annual reports that we have to submit and the payments we
5 have to submit, the nine-digit string wasn't working --
6 whatever number it was -- for the submission of the
7 software. And so it evidently got lost in the ethers
8 somewhere.

9 So we, again, we filed the taxes, and we paid the
10 tax. We never received any notification from California
11 that the taxes were not being received and were not being
12 paid. And, in fact, we didn't even know about the issue
13 until when they were actually garnished out of our
14 accounts sometime in 2020, I believe. And, you know, so
15 we reached out and tried -- we didn't even know what it
16 was, what had been garnished from our account.

17 It took us a little while to determine that it
18 was, in fact, a drawing from the Franchise Tax Board for
19 the penalties. We asked why. It was determined that they
20 had not received our submissions for the reports those
21 three years. And so we then refiled all the taxes, and I
22 paid all the penalties in advance just to -- just as a
23 measure of good faith. So all the taxes and penalties
24 were paid at that time. All the paperwork had been filed
25 at that time.

1 It was determined the reason we didn't receive
2 any notifications is because for some reason the Franchise
3 Tax Board had our address wrong. And so any notifications
4 they sent out were not being received by us. And so
5 that's when we appealed our penalties because our belief
6 is that we paid the taxes. We weren't trying to dodge the
7 taxes. We weren't avoiding any taxes. We paid the taxes,
8 and we filed the paperwork. It was just not received
9 properly by the Franchise Tax Board.

10 We have remediated the problem at this point, and
11 moving forward, we've not had any issues. And so our
12 stance is that we should be and a measure of good faith
13 that comprised -- or whatever the term would be --
14 appealed for those penalties and fees. And, in fact, the
15 irony of all this is that FTB and OTA has probably spent
16 more money on these meetings and hearings than they would
17 have if they had just said okay.

18 I mean, how many of us are here and how much time
19 has been spent reviewing something that was clearly a
20 clerical error. And again, the taxes had been paid the
21 whole time, just not filed properly with the right
22 accounts, adjustments.

23 On its totally -- related to that, we just found
24 out last month that, in fact, this appeal hearing
25 evidently is only for 2017 and not for 2018 and for 2019.

1 Even though, again, we filed the appeal for all three
2 years, it turns out that no one bothered to let us know
3 that -- I'm frustrated with this. Sorry.

4 We filed the appeal after we were told that we
5 had penalties. And so we filed the appeal on the
6 penalties. But it wasn't until -- evidently, we filed the
7 appeal -- I don't know -- two weeks too early because we
8 had not technically received the paperwork about the
9 appeal. And so, therefore, we pre -- well, our appeal
10 paperwork that we filed was too early, so it didn't count
11 for 2018 and 2019.

12 And nobody bothered to tell us that appeal timing
13 was incorrect until we got a letter a year later saying,
14 oh, by the way, you filed your appeal too early, and now
15 it's too late to file the appeal because you had to file
16 your appeal 30 days after whatever notification California
17 sent. So now you're 11 months too late to file an appeal
18 on 2018 and 2019.

19 So, again, this has been cumbersome at best and
20 anti-taxpayer at worse. That's -- and I just feel like
21 it's a ridiculous process for considering that we were
22 law-abiding taxpayers who did pay our taxes on time.
23 Guess that's the end of my oral argument.

24 Thank you.

25 JUDGE KLETTER: Thank you, Mr. Fisher.

1 This is Judge Kletter at the Office of Tax
2 Appeals. I apologize for the background noise, if there's
3 any. I just want to turn it over to Mr. Tuttle to begin
4 his presentation.

5 MR. TUTTLE: Thank you.

6
7 PRESENTATION

8 MR. TUTTLE: The issue in this case is whether
9 Appellant has demonstrated reasonable cause, such as the
10 late-filing penalty imposed under Revenue & Taxation Code
11 Section 19172, may be abated for tax year 2017. I'll be
12 referring to this penalty as the "per member late-filing
13 penalty" in this presentation.

14 The facts for tax year 2017 are straightforward.
15 Appellant timely remitted payment of the minimum to
16 Franchise tax, but Respondent had no record of receiving
17 its tax return. Respondent sent notice of this fact on
18 February 20th, 2020, and Appellant subsequently filed its
19 tax return on April 15th, 2020. Respondent then imposed a
20 per member late-filing penalty of \$2,592 because the tax
21 return was more than 12 months late, and there were 12
22 members in the entity.

23 Although the per member late-filing penalty may
24 be abated upon a showing of reasonable cause, the United
25 States Supreme Court in United States versus Boyle

1 established the bright-line rule that the primary duty to
2 file a timely -- to timely file a properly prepared return
3 rests with the taxpayer, not a third-party tax
4 professional. It requires no special training or effort
5 to ascertain the deadline and make sure that it is met.

6 The Boyle bright-line rule has been cited in
7 California precedential opinions, for instance, by the
8 Board of Equalization in the Appeal of Curry and adopted
9 by the OTA in the precedential opinion Appeal of Quality
10 Tax and Financial Services. The OTA recently applied the
11 Boyle bright-line rule in the Appeal of Fisher, a
12 precedential opinion which specifically dealt with the per
13 member late-filing penalty.

14 Thus, Respondent asks OTA to follow the Boyle
15 rule in this case and sustain Respondent's action because
16 Appellant's reliance on their tax preparer is not
17 reasonable cause to abate the per member late-filing
18 penalty.

19 Thank you. I'm happy to answer any questions the
20 Panel may have.

21 JUDGE KLETTER: This is Judge Kletter at the
22 Office of Tax Appeals. I just want to turn it over to my
23 panel and see if they have any questions for either the
24 Appellant or Respondent, beginning with Judge Leung.

25 Judge Leung, do you have any questions for the

1 parties?

2 JUDGE LEUNG: Judge Kletter, I think I would like
3 to hear Mr. Fisher's rebuttal before I ask any questions.
4 I'm a bit -- I don't know if the word is confused or not,
5 but it seems to me that Mr. Fisher is talking about the
6 late payment and Mr. Tuttle is talking about the late
7 filing. So perhaps Mr. Fisher can clarify that on his
8 rebuttal. That would be great. Thank you.

9 JUDGE KLETTER: Okay. Thank you.

10 MR. FISHER: Sorry.

11 JUDGE KLETTER: This is Judge Kletter. I can
12 turn it over to Mr. Fisher to, you know, give you some
13 time for a rebuttal. Sorry.

14 MR. FISHER: No. Sorry.

15

16 CLOSING STATEMENT

17 MR. FISHER: This is Zach Fisher again. So, yes.
18 So maybe I'm confused too. Yes, the payments were made on
19 time. And it sounds like what Mr. Tuttle is saying is
20 that the payments were received on time. And then it was
21 our filing of the taxes to the electronic system that
22 somehow got lost in the process. So the filing wasn't
23 received on time.

24 So I apologize if I wasn't clear with my -- and
25 honestly, I wasn't even clear myself of the process. But

1 it sounds like the FTB did receive our payments. Again,
2 that's, to me, a showing that we intended to pay. And, in
3 fact, we did pay, right? You got the money, which is you
4 just did not receive the paperwork on time.

5 And so I guess this is a question of an error --
6 a clerical error on the paperwork that, again, had we
7 received the timely notice it would have been resolved.
8 And, ultimately, the paperwork matched up with the payment
9 we made. So, again, it was not us avoiding the payment.
10 We made the payment as required. It was just a clerical
11 error on the -- for the weeds of the detail, it's
12 evidently, we are -- because we're North Carolina, we have
13 a nine -- oh, sorry.

14 It's an RGR. It's a Florida entity. We have a
15 nine-digit temporary California ID code. And when you
16 submit it through the online system, it required a
17 12-digit code, and that wouldn't work. And so we tried
18 leading zeros, and that wouldn't work. And so we -- the
19 system wasn't setup well. And ultimately, I think what
20 our CPA ended up doing was using a sister company of ours
21 that's also in California that we pay Franchise tax on as
22 well and filed the paperwork with -- with that company
23 hoping that maybe it would get to the right place. I
24 don't know.

25 But we are able to use the electronic system to

1 successfully file. And when he never received an error on
2 it, he assumed it was successfully accepted. And it
3 wasn't again until 2020 that we found out it wasn't. But
4 again, ultimately, we did pay the taxes. We did pay the
5 taxes timely. It was just a difficult situation of trying
6 to get the right paperwork to the right place.

7 And we had believed that we had filed it
8 correctly in 2017 and 2018 and 2019. I'd like to point
9 out we had the same problem those three years, and no one
10 bothered to let us know we were having problems until
11 there was wage garnishments in 2020. And, again, the
12 whole time we were timely paying the correct amounts each
13 time, just the paperwork was not being received correctly
14 by the Franchise Tax Board.

15 I hope that helps clarify the situation a little
16 bit. Thank you.

17 JUDGE KLETTER: Thank you to the parties for
18 their presentation. I just want to turn it over to my
19 panel and see if there are any questions following.

20 So beginning with Judge Leung, do you have any
21 questions for the parties?

22 JUDGE LEUNG: Yes. Mr. Fisher, when you say it
23 was filed through some system, I imagine it's through your
24 own software, or did you use a commercial software
25 provider? How do you file?

1 MR. FISHER: This is Zach Fisher responding, with
2 whatever electronic commercial software that our CPA uses.
3 I apologize. I don't know the name of the software, but
4 he uses some commercially available software that he's
5 been using to file taxes for us for 20 years.

6 JUDGE LEUNG: Okay. This is Judge Leung again.
7 So when you say the digits got all messed up and you had
8 to use your sister affiliate, whatever, to file for you.
9 So when they filed for you, did they use your entity's
10 name and ID number, or how did that happen? What did they
11 do to file for you?

12 MR. FISHER: Sorry. When I said sister entity,
13 what I meant was another California company name. So we
14 have RJRSJ, which is the company in question here, has a
15 nine-digit temporary California State ID or whatever it's
16 called. We have two -- three other companies that have to
17 pay taxes in California that have their 12-digit
18 California ID because they were created in California.
19 They're not, you know -- so those have 12-digit IDs.

20 And so when Dean, our CPA -- so he filed those
21 three entities with their 12-digit numbers and then filed
22 RJRSJ with one of the 12-digit numbers of one of those
23 entities as well, I believe Mission Hills. So Mission
24 Hills, the other entity in question, would have received
25 both returns, both the RJRSJ return and the Mission Hills

1 return.

2 It's my understanding is what he did was he was
3 just trying to get this -- the assumption would be that
4 once the returns were received with the correct name on
5 the return, somebody would either say this is okay or hey,
6 wait a minute, this isn't quite right, and maybe we would
7 have received a notice at that point.

8 We never received any notice, so we assumed the
9 filing was acceptable. And so there's probably a filing
10 of those returns with that sister entity or I guess child
11 entity in this situation.

12 Does that answer your question.

13 JUDGE LEUNG: Yes, Mr. Fisher. Thank you.

14 Let me turn to the Franchise Tax Board with the
15 follow up on the same theme here.

16 Mr. Tuttle, tell us about this 9-digit versus
17 12-digit issue that the taxpayer is having. Well, first
18 of all, what kind of problem is it, and how do they solve
19 it if there's a problem?

20 MR. TUTTLE: Well, the -- we looked at the sister
21 entity's account to see if there was another return filed
22 under RJRSJ's name with that account number, and our
23 system did not receive any returns, you know, for RJRSJ
24 for tax year 2017 until we sent that February 2020 letter
25 and received the filing April 2020.

1 So we don't have a record of any -- any of the
2 returns that were reported to be file on time using an
3 alternative number. And without additional information,
4 it would just be conjecture to answer your question. We
5 don't know what software was used to prepare these
6 returns. We don't know what the software's electronic
7 system, you know, reported about whether they were --
8 whether the returns were accepted or not, or transmitted
9 successfully. We don't have any of those records.

10 JUDGE LEUNG: This is Judge Leung again. So let
11 me get back to a more basic question. So when the
12 taxpayer says for a nine California LLC, they get a
13 9-digit ID number from the Secretary of State and for
14 entities created within California as a 12-digit ID
15 number; is that correct?

16 MR. TUTTLE: So there -- what I can tell you is
17 there are lots of different types of ID numbers that are
18 used. I don't have specific answer to which -- where the
19 entity is located, to the length of the number, and what
20 effect that has on our filing system. I can't answer
21 that.

22 JUDGE LEUNG: So that leads me to my next
23 question. So as far as you know, there's no issue within
24 Franchise Tax Board receiving returns with different
25 digits -- number of digits and ID numbers. That's not

1 something that --

2 MR, TUTTLE: No. So --

3 JUDGE LEUNG: -- we would be able to check?

4 MR. TUTTLE: Right. So we don't. We do not --

5 I'm sorry. I didn't mean to speak over you. We don't

6 have an outstanding issue with, you know -- this isn't a

7 repeated, you know, pervasive issue that we have

8 experienced. To my knowledge this is the only occurrence.

9 JUDGE LEUNG: Okay. Thank you.

10 Judge Kletter, I'm done with my questions. Thank
11 you.

12 JUDGE KLETTER: Thank you so much.

13 This is Judge Kletter at Office of Tax Appeals.
14 I wanted to turn it over to Judge Long.

15 Judge Long, did you have any questions for the
16 parties?

17 JUDGE LONG: This is Judge Long. I do have one
18 or two questions. My first question is for Franchise Tax
19 Board. I'd like to confirm that in this case there is a
20 late-filing and a late-payment penalty.

21 MR. TUTTLE: So no. So for tax year 2017, the
22 only penalty is the late-filing penalty. There was no
23 late payment penalty imposed on this year. The record may
24 be a little muddled because there was the attempt to have
25 2018 and 2019 included.

1 JUDGE LONG: I understand. Thank you.

2 And then my next question is for Appellant.

3 Appellant, my understanding is that you've stated
4 you did not receive notice. However, Franchise Tax Board
5 has submitted exhibits that do include notices, and that
6 includes copies of your 2017 tax filing. I'd like to ask
7 how the address was insufficient for the notices.

8 MR. FISHER: So my understanding is when I first
9 reached out to Mr. Tuttle, we determined that the -- well,
10 maybe it wasn't Mr. -- well, whoever I spoke with at the
11 Franchise Tax Board, and I apologize if it wasn't you
12 Mr. Tuttle -- but the suite number. We have Suite 100-313
13 at the end of our address, and that suite number was not
14 on their address when I called them in 2020 and they had
15 to add to it.

16 And, again, it was on our address previously and
17 somewhere along the way it got dropped off the address.
18 And so I don't know if it was a transition in some
19 software system on some level, but the suite number was no
20 longer included in the mailing address of RJRSJ. And so
21 we never received any -- again, we didn't even know it was
22 a problem until they actually took money out of our Wells
23 Fargo account.

24 And even then, we didn't know what the issue was.
25 It took us several weeks of contacting Wells Fargo to

1 figure out who even took the money out. It's not very
2 clear. I've never -- I've never had money garnished
3 before. It's not a very clear process who is garnishing
4 it. And so it took a while to find out and track down
5 that it was the -- these penalties that had been
6 garnished.

7 JUDGE LONG: Okay. This is Judge Long again. So
8 if it says, for example, Suite 100, that's insufficient.
9 It has to have 100-313?

10 MR. FISHER: Correct. Suite 1 -- well, yes. I
11 mean, I don't know. The mailing address is one of those
12 UPS store locations where, you know, there's a bunch of
13 boxes and so 313 is our box. So if it doesn't have that
14 313 on there, you know, ultimately, they try to figure out
15 who it belongs to. And sometimes they get it to the right
16 person, and sometimes they don't.

17 So it's possible those got dropped into a
18 different box or just sat in a pile that eventually got
19 returned. I don't know. All I know is we did not receive
20 paper copies or any, you know, no email notification or
21 anything. I guess it would make sense for me not to have
22 an email on record for us or anything but there was --
23 and, again, we had paid the tax. We assumed -- we had
24 assumed incorrectly, and I'll admit that.

25 Obviously, we dropped the ball on verifying that

1 those forms had been received. I'm not trying to deny
2 that we aren't at least primarily at fault of it being
3 received. There has to have been some way to verify
4 somehow that those forms had been received. But A, you
5 took -- they took the money happily. So we assumed that
6 was okay. And B, we never received any money -- any
7 notices. So we had assumed obviously and incorrectly that
8 it had been filed correctly.

9 And, again, this appeal is simply a, you know,
10 kind of one-time good faith, which is my understanding
11 typical of most tax boards is if the IRS does it, North
12 Carolina does, is you have the ability to kind of call
13 back and say, hey, we messed up. We clearly trying to do
14 the right thing, do you mind waiving the penalty this one
15 time? And typically, the answer is you're a law-abiding
16 taxpayer. You've been paying taxes successfully for
17 30 years with this entity. Clearly a clerical mistake was
18 made somewhere along the way on the filing. Don't do it
19 again, you know, thanks for doing business in California.

20 That's kind of what we expected to happen. And,
21 again, had that happened, I'm sure California would have
22 saved \$6,000 in legal fees and attorney fees and timely
23 fees and whatever else we're all here spending time doing.
24 It's more than the penalties accrued. So it just -- I
25 don't. It seems like an unnecessary cumbersome system.

1 JUDGE LONG: That's all my questions. Thank you.

2 JUDGE KLETTER: This is Judge Kletter at the
3 Office of Tax Appeals. I just wanted to turn it over
4 to -- Judge Leung had a comment on the abatement of the
5 penalty.

6 JUDGE LEUNG: I have no further questions at this
7 point. I'm good, Judge Kletter. Thank you.

8 JUDGE KLETTER: Okay. Well, it looks like
9 since there are -- I don't have any questions myself.

10 So this concludes the hearing, and the Panel will
11 meet and decide the case based on the documents and
12 arguments that were present today. We will issue our
13 written decision no later than 100 days from today.

14 This case is submitted, and the record is now
15 closed. And that concludes this hearing session. Thank
16 you to all the attendees and have a great day.

17 (Proceedings adjourned at 9:58 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 2nd day
of March, 2023.

ERNALYN M. ALONZO
HEARING REPORTER