

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
C. GOLDFARB,                                   ) OTA NO. 21098546  
   )  
                            APPELLANT.        )  
   )  
   )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, January 27, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
C. GOLDFARB, ) OTA NO. 21098546  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 2:00 p.m. and concluding at 2:12 p.m. on  
Friday, January 27, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ SUZANNE BROWN  
ALJ OVSEP AKOPCHIKYAN

For the Appellant: C. GOLDFARB

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
CAMILLE DIXON  
CHRISTOPHER TUTTLE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at the prehearing conference.)

(Appellant's Exhibits 3-8 were received at page 6.)

(Department's Exhibits A-G were received at the prehearing conference.)

(Department's Exhibit H was received at page 7.)

P R E S E N T A T I O N

P A G E

By Ms. Goldfarb 7

By Ms. Dixon 11

C L O S I N G   S T A T E M E N T

P A G E

By Ms. Goldfarb 13

1 California; Friday, January 27, 2023

2 2:00 p.m.

3  
4 JUDGE HOSEY: We are now on the record. This is  
5 the Appeal of C. Goldfarb, Case Number 21098546. Today is  
6 January 27, 2023, and it's approximately 2:00 p.m. This  
7 hearing is being held virtually via Webex with the consent  
8 of the parties.

9 I am lead Administrative Law Judge Sara Hosey,  
10 and with me today are Judge Suzanne Brown and Judge Ovsep  
11 Akopchikyan. I want to remind today's participants that  
12 the Office of Tax Appeals is an independent appeals body  
13 staffed by tax experts and is independent of the State tax  
14 agencies.

15 Our decision will be based on the arguments and  
16 evidence provided by the parties on this appeal in  
17 conjunction with the appropriate application of the law.  
18 We have read the briefs and examined the submitted  
19 exhibits and are looking forward to the presentations  
20 today.

21 Can I have the parties please state your names  
22 for the record, starting with Ms. Goldfarb, please.

23 MS. GOLDFARB: Carina Goldfarb.

24 JUDGE HOSEY: And for the Franchise Tax Board.

25 MS. DIXON: Camille Dixon, Tax Counsel.

1           MR. TUTTLE: Topher Tuttle for the Franchise Tax  
2 Board.

3           JUDGE HOSEY: The issue on appeal today is  
4 whether the claim for refund for the 2016 tax year is  
5 barred by the statute of limitations and the amounts are  
6 also in dispute.

7           As for the exhibits, we have marked Exhibits 1  
8 and 2 for Appellant and A through G for Respondent at the  
9 prehearing conference held on November 30th, 2022. No  
10 objections were raised by either party, and Exhibits 1 and  
11 2 and A through G were admitted into the record. We have  
12 also marked Exhibits 3 through 8 for Appellant and Exhibit  
13 H for Respondent.

14           Ms. Goldfarb, were there any objections to those  
15 exhibits?

16           MS. GOLDFARB: No.

17           JUDGE HOSEY: Ms. Dixon, were there any  
18 objections to those exhibits?

19           MS. DIXON: No.

20           JUDGE HOSEY: Hearing no objections, Exhibits 3  
21 through 8 and Exhibit H are now admitted as evidence into  
22 the record.

23           (Appellant's Exhibits 3-8 were received  
24 in evidence by the Administrative Law Judge.)

25        ///

1 (Department's Exhibits H is received in  
2 evidence by the Administrative Law Judge.)  
3 All right. Ms. Goldfarb, we're going to swear  
4 you in. Can you please raise your right hand.

5  
6 C. GOLDFARB,  
7 produced as a witness, and having been first duly sworn by  
8 the Administrative Law Judge, was examined and testified  
9 as follows:

10  
11 JUDGE HOSEY: Okay. You have 15 minutes for your  
12 testimony and arguments. Please begin.

13  
14 PRESENTATION

15 MS. GOLDFARB: So I agree that I was late filing  
16 taxes for 2016, and I agree that I should have a penalty  
17 for being late. At that time I started receiving all  
18 these notices. I was pretty overwhelmed with the  
19 language, and it's something I'm not used to. At some  
20 point I requested my accountant -- my former accountant,  
21 Steve Temple, to help me with these notices to take care  
22 of it. He answered back that he was busy taking care of  
23 other customers and couldn't take care of it for me.

24 So until I got actually another accountant firm  
25 to help me out, it was too late. It was past the statute

1 of limitation time and the money was already pulled out of  
2 my account. So this new accountant helped me appeal, and  
3 that's why we're here. But initially, the problem was  
4 that my former accountant didn't help me, and I didn't  
5 know how to manage.

6 There were difficult times for my business. I  
7 had to let go of my bookkeeper. I had to take care of  
8 everything on my own for my business and my priority was  
9 to keep going and keep the business running and having new  
10 collections and everything else but the taxes. And my  
11 major mistake was assuming that knowingly that eventually  
12 I would take care of the taxes. I thought even if I don't  
13 do it timely I will be able to recover the money that was  
14 levied from the account, and that's my mistake because I  
15 was ignorant. I didn't know any better.

16 I just assumed, wrongly, that that's the way it  
17 would be, and now I'm hurting. I have less money in my  
18 account because the money was levied, and I didn't  
19 understand how this account -- how this amount came out to  
20 be. Somebody explained to me the other day in the  
21 prehearing conference, and I understand the several forms  
22 of coming up to this amount. But I think that's unfair  
23 that nobody looked exactly into my situation and my -- my  
24 tax returns from previous years that shows that I  
25 didn't -- I wasn't paying that much money for taxes.



1           So I know I owe money for the penalties, but I  
2   took care of the 2016 taxes eventually and didn't have the  
3   type of income to have -- to pay this much money that was  
4   calculated. And that's my main request that it will  
5   calculate this amount based on the reality of my business  
6   and not compared to other types of businesses that I'm not  
7   even sure what type of businesses those are that were  
8   compared to mine. It looks to me like they were not  
9   applying all the expenses that it takes to manage this  
10   business.

11           So I request an explanation of what type of  
12   business this -- my business was compared to -- to come up  
13   with this amount that I feel is unfair. This is what I'm  
14   requesting. Not -- I'm not saying that the statute of  
15   limitation time didn't pass. I'm not saying that I  
16   shouldn't be paying a penalty. I'm saying that I feel  
17   it's not the actual reality of my business, the amount  
18   that was charged at the time. And that's what I'm  
19   requesting to be reviewed basically, is -- it's just that.

20           I think I was pretty clear. I mean, my fault for  
21   being ignorant about the way things are with the IRS and  
22   the taxes of how things are. It's the first time I go  
23   through this. And also the lack of knowledge legal  
24   terminology, that didn't help me to take care of this  
25   timely. So that's basically --

1           So I did submit this Excel sheet proving that,  
2           and there's all the documentation attached that the  
3           previous years the adjusted gross income were under  
4           \$10,000 from 2012 to 2016, 2016 included. I'm not what  
5           was calculated by the Franchise Board of Equalization  
6           [sic], and I conclude my explanation.

7           JUDGE HOSEY: Thank you, Ms. Goldfarb.

8           Let me see if the Franchise Tax Board has any  
9           questions.

10          MS. DIXON: No questions.

11          JUDGE HOSEY: Then let me check with my Panel  
12          members as well.

13          Judge Brown, do you have any questions?

14          JUDGE BROWN: I do not. No.

15          JUDGE HOSEY: Judge Akopchikyan, do you have any  
16          questions?

17          JUDGE AKOPCHIKYAN: No questions here. Thank  
18          you.

19          MS. GOLDFARB: We can't hear you.

20          JUDGE HOSEY: Can you hear me?

21          THE STENOGRAPHER: We can hear you now, but I  
22          think there are issues when you come back on that we're  
23          not able to hear you.

24          JUDGE HOSEY: Okay. I will just yell into the  
25          microphone here. Let's go ahead. Thank you,

1 Ms. Goldfarb. We will have five minutes for another  
2 statement after the Franchise Tax Board has their  
3 presentation.

4 So, Ms. Dixon, are you ready to begin your  
5 presentation?

6 MS. DIXON: Yes.

7 JUDGE HOSEY: Please, again when ready. Thank  
8 you.

9  
10 PRESENTATION

11 MS. DIXON: Good afternoon. My name is Camille  
12 Dixon. I am tax counsel with the Franchise Tax Board and  
13 will be representing the Franchise Tax Board. Along with  
14 me is my co-counsel Topher Tuttle, Tax Counsel III with  
15 the Franchise Tax Board.

16 The evidence shows that the Appellant has failed  
17 to establish that a timely claim for refund was filed for  
18 the 2016 tax year before the statute of limitations  
19 expired. Under the applicable section of the Revenue &  
20 Taxation Code, the general statute of limitations provides  
21 that the last day to file a claim for refund is the later  
22 of four years from the date the return was filed, if filed  
23 within the extended due date, which does not apply here,  
24 four years from the due date of the return without regard  
25 to extensions, or one year from the date of over payment.

1           For the 2016 tax year, both the four-year and  
2           one-year statute of limitations expired before Appellant  
3           filed her return. She late filed her return on  
4           August 4th, 2011, well after the four-year statute of  
5           limitations. And the last payment FTB received was on  
6           April 19th, 2019. Therefore, the one-year statute of  
7           limitations is also unavailable to allow a refund for the  
8           Appellant for the 2016 tax year.

9           Appellant contends she gave the tax information  
10          to her accountant, the accountant late-filed the return,  
11          and she should still be eligible for the refund. And  
12          while FTB is absolutely sympathetic to Appellant's  
13          unfortunate situation, such hardships do not change her  
14          responsibility to timely file a return and will not extend  
15          the statute of limitations. Further, there is no  
16          reasonable cause or equitable basis for suspending the  
17          statute of limitations.

18          The Office of Tax Appeals in its precedential  
19          opinion in Appeal of Benemi Partners found that the  
20          language of the statute of limitations is explicit and  
21          must be strictly construed. And the United States Supreme  
22          Court in United States versus Dom explain that this is  
23          true even when it is later shown that the tax is not owed  
24          in the first place.

25          Unfortunately, FTB is prevented by law from

1 granting Appellant's claim for refund. FTB, therefore,  
2 respectfully request that the Office of Tax Appeals  
3 sustain the Franchise Tax Board's claim for refund denial  
4 for the 2016 tax year.

5 Thank you, and I'm happy to answer any questions.

6 JUDGE HOSEY: Thank you, Ms. Dixon.

7 Let me check with my Panel to see if there are  
8 any questions. Judge Brown?

9 JUDGE BROWN: No questions at this time. Thank  
10 you.

11 JUDGE HOSEY: Judge Akopchikyan?

12 JUDGE AKOPCHIKYAN: No questions here. Thank  
13 you.

14 JUDGE HOSEY: Thank you.

15 I have no questions right now either. But  
16 Ms. Goldfarb, you do have 5 minutes for any final  
17 statements you would like to make before we close the  
18 record for the case. Do you have any other comments you  
19 would like to make?

20

21 CLOSING STATEMENT

22 MS. GOLDFARB: No, just the matter of timing. I  
23 mean the -- I have requested help from the accountant. It  
24 was March 2019. Then the statute of limitations end up by  
25 April 15, 2021, and I did file. You know, it was 2021

1       which was a few months after the statute of limitation had  
2       ended. And it's a shame for a few months that I didn't  
3       get my act together and taking care of -- you know,  
4       finding a new person who did take care of my taxes and  
5       help me through this that I had been punished that way  
6       because I really -- that money makes a big difference.  
7       I'm struggling with the business, and most likely the  
8       business is not going to stay open. So I just ask for  
9       consideration.

10               That's all.

11               JUDGE HOSEY: Ms. Goldfarb, we really appreciate  
12       you being here today. I'm going to check with my Panel.

13               Can you hear me?

14               MS. GOLDFARB: Now we can.

15               JUDGE HOSEY: I'm sorry. Thank you for coming  
16       today. We really appreciate your time in this manner.

17               I'm going to check with my Panel one last time  
18       just to make sure we don't have any further questions.

19               Judge Brown, do you have any questions?

20               JUDGE BROWN: No, I do not. Thank you.

21               JUDGE HOSEY: Judge Akopchikyan?

22               JUDGE AKOPCHIKYAN: I have no questions either.  
23       Thank you.

24               JUDGE HOSEY: Okay. Thank you.

25               So evidence has been submitted into the record,

1       and we have the arguments and your briefs, as well as the  
2       oral argument and testimony presented today. We now have  
3       a complete record from which to base our decision, and  
4       we're ready to submit the case.

5               The record is now closed. This concludes the  
6       hearing for this appeal. The party should expect our  
7       written opinion no later than 100 days from today.

8               With that, we're now off the record, and the  
9       hearing is adjourned.

10              Thank you everyone.

11              (Proceedings adjourned at 2:12 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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