

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
R. LI, ) OTA NO. 220510425  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, February 24, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF, )  
R. LI, ) OTA NO. 220510425  
APPELLANT. )  
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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 10:30 a.m. and concluding at 10:58 a.m.  
on Friday, February 24, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Administrative Law Judge:      AMANDA VASSIGH

For the Appellant:              R. LI  
   CHASE MOERY

For the Respondent:              STATE OF CALIFORNIA  
   FRANCHISE TAX BOARD  
  
   PAIGE CHANG  
   PHILIP KLEAM

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 6.)  
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California; Friday, February 24, 2023  
10:30 a.m.

JUDGE VASSIGH: Good morning and welcome to the  
Appeal of Li, Office of Tax Appeals Case Number 220510425.  
Today is February 24th, 2023, and the time is 10:30 a.m.

I am Administrative Law Judge Amanda Vassigh, and  
I will be making the determination in this matter and  
facilitating today's hearing.

I'm asking the parties to please now identify  
yourselves and who you represent. We will start with  
Appellant, please.

MR. MOERY: Yes. My name is Chase Moery, and I  
am Mr. Li's representative. He is the taxpayer and  
Appellant.

JUDGE VASSIGH: Thank you.

Okay. And we see that Mr. Richard Li is here  
with us today. We will move onto Franchise Tax Board's  
representatives, please.

MS. CHANG: Paige Chang for the Franchise Tax  
Board.

MR. KLEAM: And Phillip Kleam for the Franchise  
Tax Board as well, Judge.

JUDGE VASSIGH: Thank you very much.

For the benefit of the public and the parties, I

1 want to note that OTA is an independent agency and not a  
2 court. We are completely independent from FTB. So the  
3 only evidence in our record is what was submitted in this  
4 appeal. Appellant -- excuse me.

5 Appellant elected to have this appeal determined  
6 pursuant to the procedures of the Small Case Program.  
7 Those procedures require the assignment of a single  
8 Administrative Law Judge. Government code  
9 Section 15676.2(b) prohibits decisions by one  
10 Administrative Law Judge from having precedential effect.

11 I have reviewed the exhibits and briefings  
12 submitted by the parties, and I will issue an opinion  
13 based on the written record in addition to today's  
14 testimony. The issue in this appeal is whether Appellant  
15 has established that he timely filed his claim for refund  
16 for the 2015 tax year.

17 Appellant has not submitted exhibits other than  
18 an FTB notice titled "Statute of Limitations." FTB did  
19 not object to that exhibit. So that will now be admitted  
20 into evidence as Appellant's Exhibit 1.

21 (Appellant's Exhibit 1 was received in  
22 evidence by the Administrative Law Judge.)

23 FTB submitted Exhibits A through C. Appellant  
24 did not object to FTB's exhibits. So those will now be  
25 admitted into evidence.

1 (Department's Exhibits A-C were received in  
2 evidence by the Administrative Law Judge.)

3 We are ready now for the parties' presentations.  
4 As I explained in our prehearing conference, we will start  
5 with Appellant's opening statement.

6 Mr. Li, I understand that you will be testifying  
7 today. And when you are open to testify, I will swear you  
8 in.

9 Appellants can use their 15 minutes as they  
10 choose.

11 So Mr. Moery, can you clarify will you be  
12 starting with your opening statement?

13 MR. MOERY: Yes, ma'am, I will be starting, and I  
14 will be happy to let you know when Mr. Li's testimony is  
15 coming, if that is all right.

16 JUDGE VASSIGH: Very well. Thank you. Whenever  
17 you're ready, Mr. Moery.

18 MR. MOERY: Thank you very much.

19

20 PRESENTATION

21 MR. MOERY: I'm here as a zealous advocate for  
22 Mr. Li. I've enjoyed our time together, and I found  
23 myself in awe learning about the obstacles he and his son  
24 have overcome as a family. Like so many taxpayers here in  
25 California, Mr. Li has proven himself to be Californian

1 strong.

2 Our hope is that the OTA recognizes the obstacles  
3 Mr. Li and his son have faced as justification for filing  
4 late. That while reasonable cause might not toll the  
5 statute of limitations for filing a return, there are  
6 certain situations that rise to such a level as to justify  
7 a waiver. Mr. Li's son was diagnosed with ADHD and  
8 autism, and 2015 his son's systems worsened. As you know,  
9 neuro-typical kids alone can put parents under a great  
10 deal of stress.

11 As Mr. Li will share, this is especially so for  
12 parents like himself who are tasked with caring for a  
13 child with autism for the rest of the child's life. While  
14 caring for his son, ushering from doctor to doctor, from  
15 evaluation to evaluation, Mr. Li lost his job in 2017.  
16 Imagine for a moment the pressure that accompanies being  
17 responsible for a child. You may even be familiar with  
18 that pressure.

19 And imagine that pressure magnified. You have a  
20 child with special needs and all of a sudden you lose your  
21 job. Money begins flowing out faster and faster and each  
22 day you question whether you can continue to provide,  
23 whether you can take care of your child the way they  
24 deserve, whether you are fit as a parent. Helplessness  
25 consumes you.



1           While you are left imagining that, Mr. Li lived  
2     it. The last thing on his mind was filing a tax return.  
3     His mind was where any good parent's should be, with his  
4     child. After suffering through 15 months of unemployment,  
5     Mr. Li found a job in November of 2018. Finally, some of  
6     his concerns began to dissipate. Then Covid-19 hit.  
7     Mr. Li's hours were cut, and he was left again figuring  
8     out how to provide for him and his child. In Mr. Li's  
9     words, it was exhausting.

10           Indeed, still is. Last year Mr. Li's car, the  
11    car he uses to be a productive taxpayer, the car he uses  
12    to usher his son from doctor to doctor. Mr. Li's car was  
13    in need of repair. Mr. Li spent \$2,000 on the repairs and  
14    \$3,500 more for necessary home repairs, all of which he is  
15    still paying on for lack of a refund check. To boot,  
16    Mr. Li's son was recently diagnosed with additional  
17    medical diagnoses that will require even more of Mr. Li's  
18    time and money, and no doubt a working vehicle and secure  
19    home.

20           To pay for these necessary expenses, the FTB  
21    needs to release Mr. Li's money, the money he earned, the  
22    money that requires Mr. Li to leave his son so that he can  
23    provide financially, the money that requires him to leave  
24    the house at 7:00 a.m. and return at 7:30 p.m. That  
25    money, that money is not the money of the FTB or the

1 State. That money belongs to Mr. Li.

2 It is easy to think that Mr. Li, being want for  
3 money, should have thought to file his return, but data  
4 from the IRS suggest otherwise. In March of 2022, the IRS  
5 reported having \$1.5 billion -- that's with a "B" -- in  
6 relief funds for people who have not filed a 2018 federal  
7 income tax return. That is compared to \$1.3 billion in  
8 2017 and \$1.5 in 2016 with the average citizen receiving a  
9 federal refund of around \$2,800. That's around  
10 half-a-million taxpayers who did not file a 2018 federal  
11 income tax return.

12 Mr. Li acted in-line with these federal  
13 taxpayers, and he likely acted in-line with a proportion  
14 amount of California state taxpayers. Given this and  
15 given Mr. Li's circumstances, those of which were  
16 intensified by Covid-19 pandemic, we argue that while  
17 reasonable cause may not toll the statute of limitations,  
18 Mr. Li's situation certainly arises to such a level as to  
19 warrant it.

20 We argue additionally that the extraordinary  
21 stress Mr. Li experienced rendered him financially  
22 disabled, that as his son's symptoms snowballed, Mr. Li's  
23 stress rose to such a level as to render him unable to  
24 fully manage his financial affairs. Mr. Li did not file  
25 his 2015 state tax return, nor did he file his 2016 or

1       2017 state tax return.

2               Had he been financially able, Mr. Li would have  
3       known, based on prior years filings, that he would have  
4       received thousands of dollars in refund to go towards his  
5       son's care. Alas, Mr. Li's mind was where any good  
6       parent's should be, with the immediate health and  
7       wellbeing of his child. When Mr. Li's mind was not with  
8       his child, the extraordinary stresses of the day  
9       prevailed. Mr. Li was simply unable to fully manage his  
10      financial affairs.

11              With Mr. Li being financially disabled for the  
12      2015, 2016, and 2017 tax years, the statute of limitations  
13      for the 2015 tax year, we argue, should not start until  
14      Mr. Li filed his next state tax return in 2019. There  
15      would then be no need to waive the statute of limitations.  
16      Mr. Li's deadline to file would be around April of next  
17      year, making his 2015 filing timely.

18              The FTB will argue that a Form 1564 is needed to  
19      officially render a taxpayer financially disabled, that a  
20      doctor must sign off on it. We rebut by highlighting the  
21      lack of mental health services available to many taxpayers  
22      and the resulting inequity that stems from requesting the  
23      form be signed by a doctor. In environments of  
24      extraordinary stress, taxpayers are lucky to even be aware  
25      of the fact that they are financially disabled. Their

1 thoughts are elsewhere.

2 For those who are aware, for those who understand  
3 the importance of seeking care and who can actually find a  
4 provider, they often lack the requisite time, money, and  
5 resources. Put flatly, requiring that a taxpayer get a  
6 doctor to sign off on one's financial disability is  
7 impractical and burdensome, especially when one's  
8 financial disability can be proven given the  
9 circumstances.

10 As has been shown, Mr. Li's circumstances  
11 demonstrate a financial disability. After his son's  
12 symptoms worsened, Mr. Li did not file his return for  
13 three years. Instead stress consumed him, rendering him  
14 unable to manage his financial affairs. And importantly,  
15 Judge, we would also like to bring to your attention that  
16 the Franchise Tax Board abandons standard procedure as it  
17 pertains to Mr. Li's 2015tax return. In the years leading  
18 up to 2015, Mr. Li consistently received a tax refund from  
19 the State.

20 As you know Mr. Li did not file a 2015 tax  
21 return. The rest of 2016 past, 2017 past, 2018 past, 2019  
22 past, and 2020 past. The Franchise Tax Board never  
23 notified Mr. Li that he should file before it was too  
24 late. There was no file enforcement. In fact, it wasn't  
25 until Mr. Li filed his 2015 tax return that he was ever

1 notified of the issue. Instead, the FTB made great effort  
2 to notify Mr. Li of a mistake in his 2018 tax return, a  
3 mistake requesting he pay over \$3,000, a mistake for a  
4 year that he only worked one month.

5 If FTB had taken a quick glance at Mr. Li's file,  
6 they would have seen that Mr. Li was a W-2 wage earner who  
7 consistently over withheld year after year. Given  
8 Mr. Li's W-2, his nearly \$6,000 withholding was way too  
9 much based on his income and filing status. Even before  
10 deductions and credits, that's way too much, but they  
11 never notified him. What did FTB do? They just sat on  
12 Mr. Li's money, abandoning standard procedure and  
13 withholding nearly \$5,000 of money that Mr. Li earned.  
14 Had the FTB notified Mr. Li per protocol, we would likely  
15 not be here today spending even more money that taxpayers  
16 are owed.

17 Before Mr. Li shares his story, we would also  
18 like to bring attention to the many state tax bills which  
19 its stated purpose was to minimize taxpayer  
20 dissatisfaction. In fact, former California State  
21 Controller Kathleen Connell so much as stated that tax  
22 policy ought to be maximized in order to lower taxpayer  
23 dissatisfaction. The FTB have themselves recognized  
24 taxpayer dissatisfaction as an issue that requires  
25 managing.

1           After hearing Mr. Li's story, I kindly ask you to  
2       consider whether equitable tolling can be reconciled with  
3       the belief that tax policy ought to be maximized in order  
4       to lower taxpayer dissatisfaction. If the two cannot be  
5       reconciled, we ask that you side with Mr. Li based on his  
6       circumstances and based on the arguments made here today.  
7       Doing so long will go a long way towards providing care  
8       for Mr. Li's son, and it has the potential to help  
9       thousands of our fellow California who are similarly  
10      situated.

11           Thank you very much for your time, Judge. I  
12      think now Mr. Li would like to share his speech.

13           JUDGE VASSIGH: Thank you, Mr. Moery.

14           Mr. Li, I'm going to swear you in. You'll be  
15      under oath until the conclusion of this hearing today.  
16      Mr. Li, please raise your right hand.

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

22  
23           JUDGE VASSIGH: Thank you, Mr. Li. You may  
24      proceed with your testimony whenever you're ready.

25           MR. LI: Thank you, Judge, for the hearing today.

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1 money back to take carry of my son. I hope judge could  
2 help me get my refund and help my son in this very  
3 difficult time.

4 Thank you very much, Judge. Thank you everybody.

5 JUDGE VASSIGH: Thank you, Mr. Li, for sharing  
6 your personal story.

7 I'd like to ask if Franchise Tax Board's  
8 representatives have any questions for Mr. Li.

9 MS. CHANG: This is Paige Chang. No questions  
10 from the Franchise Tax Board. Thank you, Judge Vassigh.

11 JUDGE VASSIGH: Thank you.

12 In that case, as soon as you are ready FTB can  
13 proceed with its presentation.

14 MS. CHANG: Thank you Judge Vassigh. FTB is  
15 ready to begin.

16

17 PRESENTATION

18 MS. CHANG: Good morning. This is Paige Chang,  
19 along with my co-counsel Phillip Kleam representing  
20 Franchise Tax Board.

21 The issue on appeal is whether the Appellant has  
22 established that he timely filed his claim for the 2015  
23 taxable year prior to the extension of the statute of  
24 limitations.

25 JUDGE VASSIGH: I'm sorry for interrupting you.



1 It sounds a little bit like you're underwater. Are you  
2 able to get closer to your microphone?

3 MS. CHANG: Yes, Judge Vassigh, I can do that.

4 JUDGE VASSIGH: Thank you. I want to make sure  
5 that Ms. Alonzo is able to capture everything you're  
6 saying and that I'm able to hear all of it.

7 MS. CHANG: Yes. Thank you.

8 JUDGE VASSIGH: It's so much better. Thank you.

9 MS. CHANG: Okay. Thank you, Judge Vassigh.

10 The statute of limitations prohibits Respondent  
11 from crediting a refund of an overpayment when a claim for  
12 refund was not filed within four years of the due date of  
13 return or within one year from the date of overpayment,  
14 whichever is later. Here in this case, Appellant late  
15 filed his 2015 tax return on January 15, 2022, which FTB  
16 treated as his claim for refund.

17 The four-year statute of limitations for tax year  
18 2015 expired on July 15, 2020. In this case, Appellant  
19 filed his claim for refund more than 1 year and 6 months  
20 after the expiration of the four-year statute of  
21 limitations. The one-year statute of limitations expired  
22 on April 15, 2017. And in this case, Appellant's claim  
23 for refund was filed 4 years and 9 months after the  
24 expiration of this one-year statute of limitations.

25 Appellant contends that the statute of

1 limitations should not bar his claim for refund based on  
2 reasonable cause. However, there is no reasonable cause  
3 for equitable basis for suspending the statute of  
4 limitations. While FTB is sympathetic to the difficulties  
5 of Appellant's circumstances, those circumstances will not  
6 extend the statute of limitations.

7 The Office of Tax Appeals in its precedential  
8 decision Appeal of Gillespie found that the law provides  
9 that the statute of limitations is mandatory and there's  
10 no equitable tolling of the statute of limitations. The  
11 United States Supreme Court in United States versus Dalm  
12 explains that this is true, even when it is later shown  
13 that the tax is not owed in the first place.

14 Regarding the issue of financial disability that  
15 Appellant has raised, the Appellant has not provided  
16 evidence at this time, including a signed physician's  
17 affidavit demonstrating that he was unable to manage his  
18 financial affairs due to an impairment. A taxpayer, at a  
19 minimum, must provide a physician's affidavit in order to  
20 demonstrate financial disability as explained in the State  
21 Board of Equalization decision Appeal of James and  
22 Florence Meek, the predecessor tribunal to the Office of  
23 Tax Appeals.

24 Additionally, illness or other personal  
25 difficulties which prevents a taxpayer from filing a

1 timely return may be considered reasonable cause in some  
2 cases. However, if the difficulties cause the taxpayer to  
3 sacrifice the timeliness of one aspect of the taxpayer's  
4 affairs to pursue other aspects, the taxpayer must bear  
5 the burden of that choice as explained in the State Board  
6 of Equalization case Appeal of W. L. Bryant.

7 Lastly, the Franchise Tax Board is not obligated  
8 to inform the taxpayer of the time within which a claim  
9 must be filed, and the Franchise Tax Board does not have a  
10 duty to discover taxpayer's overpayment or to notify the  
11 taxpayer of such overpayment. Based on the foregoing, the  
12 Respondent's denial of Appellant's claim for refund was  
13 proper under the statute of limitations, and the Franchise  
14 Tax Board's position should be sustained.

15 I'm happy to address any questions from the  
16 Judge. Thank you.

17 JUDGE VASSIGH: Thank you for your presentation.

18 I have no questions, but I would like to turn  
19 back to Appellant and provide Mr. Moery with the  
20 opportunity to provide a rebuttal and just have the last  
21 word here.

22 So Mr. Moery, if you would like to take that  
23 time, please do so.

24 MR. MOERY: Thank you very much, Judge.

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1           Thank you again for your time. And I believe, if  
2       it's all right with you, Judge, Mr. Li would like to add a  
3       few comments and maybe ask a couple of questions, if  
4       possible.

5           JUDGE VASSIGH: Yes. So Mr. Li, I'm happy to  
6       give you some time to add some comments.

7           MR. LI: Thank you, Judge.

8           During the Covid-19 pandemic, the government help  
9       people and give people stimulus check and relief and  
10      extensions. I hope -- I wish the FTB will do the same and  
11      could do better. So I am wondering, does FTB have a  
12      responsibility to serve taxpayer better. Like in my case,  
13      I wish they could send a reminder letter telling the  
14      taxpayer they are due a refund, is going -- they are going  
15      to lose their refund soon.

16           But in my case instead they spend a lot of time  
17      sending me several letters on my 2018 tax return, which I  
18      work for about one month. And asking me to pay like about  
19      \$3,000 tax, which is their mistake. And I finally proved  
20      that I actually have paid the tax. I deserve to have \$569  
21      refund, but I haven't receive from FTB yet.

22           So I would like to ask and sincerely hope FTB  
23      like when -- better like IRS. I didn't receive a reminder  
24      letter from IRS for my return. They even give me. They  
25      say I earn interest. So I mean, in their mind they try to

1 help people better.

2 I was wondering when FTB check my account, they  
3 see I have over \$10,000 refund, and they didn't mention  
4 it. They asked -- they make a mistake, and ask me to pay  
5 more tax in 2018. So I think if FTB put their foot in  
6 taxpayer's shoe, they wouldn't let taxpayer's refund  
7 disappear. This could save families and help people in  
8 need like me to survive. And I want to add my son was  
9 diagnosed with high blood pressure last year, and I need  
10 this money to help my son and my family.

11 JUDGE VASSIGH: All right, Mr. Li. Your comments  
12 have been noted. Thank you for sharing your concern.

13 MR. LI: Thank you so much, Judge.  
14 Thank you, everybody.

15 JUDGE VASSIGH: Okay. So this concludes the  
16 hearing. This case is submitted for determination at this  
17 time. The record is now closed. OTA will mail a written  
18 opinion no later than 100 days from today.

19 I'd like to thank the parties for participating  
20 in the hearing and to Ms. Alonzo and other OTA staff  
21 members who provided their services in support of this  
22 hearing.

23 OTA will now recess and reconvene at 1:00 p.m.  
24 today. Thank you everyone, and have a good weekend.

25 (Proceedings adjourned at 10:58 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 9th day of March, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER