

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. WALVATNE,) OTA NO. 220410256
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, March 24, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
J. WALVATNE,) OTA NO. 220410256
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:04 p.m. and concluding at 1:34 p.m. on
Friday, March 24, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: EDDY LAM

For the Appellant: KATHLEEN A. WALVATNE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CAMILLE DIXON
TOPHER TUTTLE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 9.)
(Department's Exhibits A-I were received at page 9.)

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California; Friday, March 24, 2023

1:04 p.m.

JUDGE LAM: We are opening the record in the Appeal of J. Walvatne. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 220410256. Today's date is Friday, March 24, 2023, and the time is approximately 1:00 p.m.

Appellant has elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single Administrative Law Judge. My name is Eddy Lam, and I will be the Administrative Law Judge for purposes of this appeal.

Party introductions. Now for introductions, can we please have Appellant start introducing yourself on the record, Ms. Walvatne.

MS. WALVATNE: I'm Kathleen Walvatne. I'm the sister of the deceased taxpayer.

JUDGE LAM: Thank you. And I also believe that you are the trustee for the J. Walvatne Living Trust.

MS. WALVATNE: Yes, I am.

JUDGE LAM: Thank you.

And can we please have the Respondents start introducing themselves on the record.

1 MS. DIXON: Camille Dixon, Tax Counsel for the
2 Franchise Tax Board.

3 JUDGE LAM: Thank you, Ms. Dixon.

4 MR. TUTTLE: Topher Tuttle also from the
5 Franchise Tax Board. Thank you.

6 JUDGE LAM: Thank you, Mr. Tuttle.

7 Okay. Moving on. As discussed, and agreed upon
8 by the parties at the prehearing conference, that was in
9 February 28th, 2023, and noted in my minutes and orders,
10 the issue in this matter is whether Appellants' claim for
11 refund or credit for the 2015 tax year is barred by the
12 statute of limitations.

13 Are there any objections to this issue?

14 I'll start off with Respondents.

15 MS. DIXON: No objection, Judge Lam.

16 JUDGE LAM: Thank you, Ms. Dixon.

17 Are there any objections to this issue Appellant
18 Ms. Walvatne?

19 MS. WALVATNE: No. I think you've stated it
20 correctly. However -- well, it does involve an error that
21 was made on the Franchise Tax Board's part is part of what
22 I'm --

23 JUDGE LAM: Correct.

24 MS. WALVATNE: -- discussing today.

25 JUDGE LAM: That would be -- yes. You will be

1 discussing of -- of that with regards to defending that
2 issue. Thank you, Ms. Walvatne.

3 We'll move on. The issue is as agreed whether
4 Appellant's claim for refund or credit for the 2015 tax
5 year is barred by the statute of limitations.

6 Moving on, Appellant has identified Exhibits 1
7 through 6 with the opening brief, and it has no other
8 exhibits to offer as evidence.

9 Is that true, Ms. Walvatne.

10 MS. WALVATNE: That is correct.

11 JUDGE LAM: Thank you.

12 Does Respondent have any objections to the
13 Exhibits 1 through 6?

14 MS. DIXON: No objections.

15 JUDGE LAM: Thank you.

16 And moving onto Respondent's exhibits.
17 Respondent has identified Exhibits A through I and has no
18 other exhibits to offer as evidence.

19 Is that correct, Respondents?

20 MS. DIXON: That's correct, Judge Lam.

21 JUDGE LAM: Thank you, Ms. Dixon.

22 Does Appellant have any objections to the
23 Exhibits A through I?

24 MS. WALVATNE: Exhibit H was referencing the year
25 2013. So I'm not sure that it's even applicable to what

1 we're talking about today.

2 JUDGE LAM: Yeah. I do notice that. I will take
3 exhibit -- you're mentioning -- sorry -- Exhibit H? Is
4 that what you were --

5 MS. WALVATNE: H.

6 JUDGE LAM: Yes. Exhibit H for ham, right?

7 MS. WALVATNE: Yes, that's correct.

8 JUDGE LAM: Yeah. Okay. Sorry. I -- the
9 microphone is little bit off. Yes. So for -- I did
10 notice that. I believe -- I will take -- I believe that
11 it is irrelevant in terms of calculating the demand of
12 tax -- I'm sorry -- the demand penalties.

13 Is that right, Ms. Dixon?

14 MS. DIXON: That's correct, Judge Lam.

15 JUDGE LAM: Okay. Yes, I will consider that
16 as -- I'll take relevant -- the Exhibit H for whatever
17 weight it has. But you are right, Ms. Walvatne, that the
18 tax year that we are discussing at issue is 2015 and not
19 2013. So Ms. Walvatne, do you have any other further
20 objections?

21 MS. WALVATNE: No.

22 JUDGE LAM: Okay. Thank you.

23 Since no other objections were raised, these
24 exhibits, as I mentioned Exhibits 1 through 6 and Exhibits
25 A through I, are going to be -- are -- will be remitted

1 into the record.

2 (Appellant's Exhibits 1-6 were received
3 in evidence by the Administrative Law Judge.)

4 (Department's Exhibits A-I were received in
5 evidence by the Administrative Law Judge.)

6 Moving on. Ms. Walvatne, you've indicated at the
7 prehearing conference that you might consider testifying
8 as a witness at this oral hearing. Do you still want to
9 testify as a witness, Ms. Walvatne?

10 MS. WALVATNE: I'm not sure what the difference
11 is.

12 JUDGE LAM: Yeah. Okay. Let me -- let me walk
13 you through it since you are new to this type of hearing.
14 As we've talked about this during our prehearing
15 conference, if you are a witness, I can consider your
16 statements as testimonial evidence. But if you are -- if
17 you're not sworn in as a witness, then your statements in
18 the record would not be considered as testimony but just
19 purely arguments. So there's like a little bit of
20 different weights of your statements if you're sworn in as
21 a witness or not.

22 I just wanted to reiterate that when -- which is
23 what we have discussed at the prehearing conference, is
24 that once you are sworn in as a witness, you'll be open to
25 cross-examination by the FTB. Since FTB is not calling

1 any witnesses, there will not be a chance for you to
2 cross-examine FTB. With that information, do you still
3 want to be sworn in as a witness?

4 MS. WALVATNE: If -- if I wasn't able to
5 cross-examine, I don't really see an advantage.

6 JUDGE LAM: Okay.

7 MS. WALVATNE: Is there something that I'm not
8 understanding about this process?

9 JUDGE LAM: I mean, as I -- as we discussed at
10 the prehearing conference, the advantage is that your
11 statements would be considered as testimony, which has a
12 heavier weight than just purely statements as arguments
13 being made by you.

14 MS. WALVATNE: I'm not going to go with the
15 testimony then.

16 JUDGE LAM: Okay. Thank you, Ms. Walvatne.

17 Okay. Let's move on. Oh, I think we can begin
18 this oral hearing. As agreed from our prehearing
19 conference, Ms. Walvatne, you can begin your presentation
20 for about 5 minutes. And as a reminder, you would also be
21 offered a final statement of about 10 minutes. You can
22 begin your 5-minute presentation whenever you're ready.

23

24 PRESENTATION

25 MS. WALVATNE: Okay. I am seeking the return of

1 moneys taken by the Franchise Tax Board due to errors that
2 were made by their office. The error involves the 2015
3 1099R that was for monies that was received from a 401K
4 distribution from Principal Life Insurance Company.

5 The 1099R clearly states that \$400 was withheld
6 for California state income taxes. You can see this on
7 Exhibit 2. The notice of state income tax due listed a
8 tax due of \$167 and penalties, interest, and collections
9 cost of \$282.77, but it does not reflect the \$400 that was
10 withheld by principle. Based upon the income tax due of
11 \$167 at this point, had it reflected the \$400, my brother
12 did not owe any additional taxes for 2015. See Exhibit 3.

13 At the point that my brother became ill, it was
14 at the beginning of 2020, which as everybody knows was
15 right at the beginning of the pandemic. This was a
16 once-in-a-century event. The entire country was shut down
17 as I attempted to handle my brother's affairs. Once I got
18 into his paperwork, I noticed that -- I was concerned that
19 the information that I had was incomplete. So I was not
20 comfortable completing any tax returns until I had
21 complete information.

22 I first tried to contact Principal Life Insurance
23 to obtain the missing 1099R information. This involved
24 two phone calls and two letters, including a letter to the
25 president of the company. I had no response from any of

1 these attempts, other than at the phone call they said
2 they would create the information and send it to me. I
3 never received it.

4 After I tried Principal, I then contacted by way
5 of a letter the Franchise Tax Board to see if I can get
6 the 1099 information. Now, the 1099 information that I
7 was requesting involved other years besides 2015. It
8 included 2015, but it also included other years. The
9 Franchise Tax Board received my letter. It's included in
10 exhibit -- their Exhibit C. I had no reply from their
11 letter.

12 At this point, I contacted my personal CPA and
13 she said the only thing I could do at this point was to go
14 to the IRS and try to get the tax transcripts. I
15 completed the 4506-T. The process was supposed to take
16 two weeks. It took four months to receive the tax
17 transcripts which delayed creating the income tax returns.
18 I am not a California resident. To determine what I
19 needed to do for the State of California's tax returns, I
20 went to the Franchise Tax Board's web page on deceased
21 persons.

22 The instructions that I went by said the
23 administrator, executor, or beneficiary must file a final
24 tax return and file any past due tax returns and pay any
25 tax that was due. I completed all of the returns. The

1 instructions, had any tax been due, I would have paid it.
2 But the instructions should have been more complete. If
3 you're not going to pay anything because of the statute of
4 limitations, it should clearly state what tax returns are
5 due.

6 I don't think it's right to penalize me because
7 of a once in a century pandemic that I had no control over
8 in completing what the State of California wanted for my
9 deceased brother.

10 JUDGE LAM: This is Judge Lam speaking.
11 Ms. Walvatne, does that conclude your opening
12 presentation?

13 MS. WALVATNE: Yes.

14 JUDGE LAM: Okay. Thank you.

15 I will move this forward with FTB's opening
16 presentation.

17 FTB, you may begin.

18 MS. DIXON: Thank you Judge Lam.

19

20 PRESENTATION

21 MS. DIXON: Good afternoon. My name is Camille
22 Dixon. I am Tax Counsel with the Franchise Tax Board and
23 will be representing the Franchise Tax Board. Along with
24 me is my Co-Counsel Topher Tuttle, Tax Counsel III, also
25 with the Franchise Tax Board.

1 The evidence shows that Appellant's
2 representative has failed to establish that a timely claim
3 for refund was filed for the 2015 tax year before the
4 statute of limitations expired. Under the applicable
5 section of the Revenue & Taxation Code, the general
6 statute of limitations provides that the last day to file
7 a claim for refund is the later of four years from the
8 date the return was filed if filed within the extended due
9 date, which does not apply here, four years from the due
10 date of the return without regard to extensions, or one
11 year from the date of overpayment.

12 For the 2015 tax year, both the four-year and
13 one-year statute of limitations expired before Appellant's
14 return was filed. The return due date for the 2015 tax
15 year was on April 15th, 2016. And here the Appellant's
16 return was late filed on September 15th, 2021, well after
17 the four-year statute of limitations had expired. And the
18 last payment that FTB received was on November 13th, 2018.
19 Therefore, the one-year statute of limitations is also
20 unavailable to allow a refund for the Appellant for the
21 2015 tax year.

22 Appellant's representative appears to argue the
23 Appellant became ill in 2020 and the amount paid by
24 Appellant was an error. Unfortunately, the \$400
25 withholding credit information was not available to FTB

1 until the Appellant's return was filed after the statute
2 of limitations had expired. While FTB is sympathetic to
3 Appellant's situation, such hardships do not change the
4 responsibility to timely file a return and will not extend
5 the statute of limitations.

6 Further, there is no reasonable cause or
7 equitable basis for suspending the statute of limitations,
8 and FTB did not receive any financial disability
9 documentation from Appellant's representative. The Office
10 of Tax Appeals on its precedential opinion, Appeal of
11 Benemi Partners found that the language of the statute of
12 limitations is explicit and must be strictly construed.
13 And the United States Supreme Court in United States
14 versus Dalm explain this is true when it is later shown
15 that the tax was not owed in the first place.

16 Unfortunately, FTB is prevented by law from
17 granting the claim for refund. FTB, therefore,
18 respectfully request that the Office of Tax Appeals
19 sustain the Franchise Tax Board's claim for refund denial
20 for the tax year 2015.

21 Thank you and I am happy to answer any questions.

22 JUDGE LAM: Thank you, Ms. Dixon. Does that
23 conclude your opening presentation and concluding
24 presentation?

25 MS. DIXON: It does, Judge Lam. Thank you.

1 JUDGE LAM: Thank you.

2 I have a question with FTB. I wanted to switch
3 over to Exhibit 4 from as -- you know, produced by
4 Ms. Walvatne. In Exhibit 4 there's a sentence that says,
5 "Less withholding credits reported to FTB." Ms. Walvatne
6 had circled that amount, that zero amount to indicate that
7 Form 1099R, you know, should have -- there should have
8 been like a \$400 withholding payment.

9 Is there a reason that FTB, as you stated
10 previously, that FTB don't have that information to be --
11 you know, to take into account that this credit, you know,
12 the state credit is -- since it's reported on 1099, why
13 wouldn't FTB know that there's a \$400 payment?

14 MS. DIXON: I'm going to call on my co-counsel
15 Topher Tuttle to answer this question.

16 MR. TUTTLE: I'm happy to answer this question.
17 This is Topher Tuttle.

18 The 1099 information that FTB receives does not
19 include the withholding information. We received limited,
20 you know, fields that are reported through its information
21 sharing agreements, but that does not include the
22 withholding. The time FTB issued its notices, there
23 were -- there was no indication that the withholding was
24 reported or remitted to FTB.

25 JUDGE LAM: Thank you, Mr. Tuttle.

1 And thank you, Ms. Dixon.

2 I don't have any further questions now, but I may
3 have questions after Ms. Walvatne's closing remarks.

4 Ms. Walvatne, I want to offer you the 10-minute
5 closing remarks for you. You can begin at any time.

6 MS. WALVATNE: I need to make a quick referral to
7 another year's return based upon what was just told by
8 Topher Tuttle. The question that I have is, you know,
9 they say they don't get the \$400 tax amount that was
10 withheld for California from the 1099R. I assume this is
11 coming from the Internal Revenue Service. How on earth do
12 you then verify that what's put on a return if it's filed
13 electronically is what you actually received in the way of
14 taxes?

15 And I want to reference another statement that I
16 have because I think that there was other information in
17 my brother's records that show that other years that
18 amount did come through.

19 JUDGE LAM: Oh, this is Judge Lam speaking.
20 Ms. Walvatne, since at -- since the issue that we -- the
21 tax year at issue right now is 2015. We would want to
22 stick with any information that is within the record,
23 which is -- which is all the evidence as admitted today.
24 And Ms. Walvatne, I want to take it -- I want to turn it
25 over to FTB to see if they wanted to respond to your

1 question.

2 FTB, do you have any response to Appellant's
3 questions?

4 MS. DIXON: I'm going to call on my Co-Counsel
5 Topher Tuttle to find out if he had a response to the
6 question. I'm not sure that the question is clear at this
7 point.

8 MR. TUTTLE: I agree.

9 JUDGE LAM: Sure. Ms. Walvatne, can you --

10 MS. WALVATNE: Okay. Within Exhibit H, which is
11 that one that references 2013 that you said was included
12 for another reason. If you look at page 5, it clearly
13 shows that for that year that withholding -- it shows a
14 withholding credit of \$740 that was reported to the FTB.
15 So you're getting that information. It just wasn't picked
16 up for 2015 and applied.

17 MS. DIXON: As Judge Lam mentioned, 2013 is not
18 at issue. The document was only submitted --

19 MS. WALVATNE: No. I -- I know it's not. What
20 I'm bringing --

21 JUDGE LAM: Sorry. This is Judge Lam speaking.
22 Can we have everyone speak one at a time.

23 Ms. Walvatne, can you -- I'll give it over to you
24 to speak right now.

25 MS. WALVATNE: Okay. The only reason that I'm

1 bringing this up is that a statement was made that you
2 don't get the \$400 until it's recorded on the tax return.
3 I'm showing this as an example that you do get the
4 information because you've gotten it in prior years, and
5 it was correctly applied in that year. So at issue is why
6 was it not picked up for 2015, and it is clearly stated in
7 your Exhibit H at page 5 that -- I'm showing that as an
8 example that you do get the information.

9 JUDGE LAM: Thank you, Ms. Walvatne. This is
10 Judge Lam speaking. I'm going to turn it over to FTB.

11 I have a question for FTB. For Exhibit H, page 5
12 it lists a less withholding credit reported to FTB. I do
13 see an amount there. Is this -- is this real -- this type
14 of amount, would this be related to a 1099 withholding
15 amount that you're -- that -- would it be related to a
16 1099R payment, or is it a payment that you get somewhere
17 else?

18 MR. TUTTLE: Judge Lam, I'll be responding to the
19 question. If you'll just give me just a moment, I'm
20 having trouble pulling up my exhibits.

21 JUDGE LAM: Sure.

22 MR. TUTTLE: I'm thinking about 30 seconds I'll
23 have that ready.

24 JUDGE LAM: No worries.

25 MS. WALVATNE: Judge Lam, can I make a comment

1 while we're waiting?

2 JUDGE LAM: Hi, Ms. Walvatne. Sorry,
3 Ms. Walvatne. Yes, you may.

4 MS. WALVATNE: The only taxable income that my
5 brother had taxes taken out of were 1099R distributions
6 from Principal Life Insurance Company. So that had to
7 come from the 1099R.

8 JUDGE LAM: Thank you for that comment,
9 Ms. Walvatne. We'll wait for Mr. Tuttle.

10 MR. TUTTLE: All right. Thank you. I have got
11 the exhibit in front of me now. And I do want to point
12 out that there's a difference in the -- at least in our
13 system, between the types of income that was reported in
14 both years. In 2013, it appears that the income was W-2
15 income, rather than 1099. So the -- our system picked it
16 up as wages reported by an employer. And again, the
17 different information sharing agreements means we get
18 different types of information depending on the source of
19 income. And so we did not receive withholding information
20 on the 1099 that was reported. We did in the case where
21 wages were reported.

22 Unfortunately, we have, you know, systems that
23 don't always, you know, share the full information in the
24 fields for every type of document. And this is one of
25 those cases where we didn't know about the withholding on

1 the 1099.

2 JUDGE LAM: This is Judge Lam speaking. Thank
3 you. I have another question. It should be very quick.

4 Mr. Tuttle, as you said, the FTB doesn't have --
5 they have different sharing agreements. For 1099 FTB
6 don't normally have -- or don't have information for tax
7 withheld, and that is -- that is not a -- that is not an
8 error, is that right for FTB?

9 MR. TUTTLE: Right. This isn't a one-time error.
10 This is a systematic program where this is just not
11 information that's included for the 1099.

12 JUDGE LAM: And that it is common practice for
13 FTB that you do not include information that is not
14 available to FTB; is that correct?

15 MR. TUTTLE: Correct.

16 JUDGE LAM: Thank you. Ms. Walvatne, do you have
17 any further comments?

18 MS. WALVATNE: Well, I'm confused because my
19 brother retired in 2012. He did not work after 2012. So
20 I'm not sure how that could be picked up as wages for
21 2013.

22 JUDGE LAM: We can -- sorry. This is Judge Lam
23 speaking. We can -- we can -- I think we can move onto
24 sticking with the 2015 tax year.

25 MS. WALVATNE: Okay. Well, that's fine. I just

1 included that as an example that you were picking it up.
2 And, you know, I didn't know this was going to be an
3 issue. I would have provided proof. Like I said, my
4 brother retired in 2012. He had no wages in 2013 that I'm
5 aware of.

6 JUDGE LAM: Thank you, Ms. Walvatne.

7 MS. WALVATNE: And just as another comment, I
8 could put down that, you know, for one of the years that
9 was after say 2018, that \$4,000 was withheld from his
10 distribution. You have to -- you know, I found it hard to
11 believe that you don't have some way that you are matching
12 and validating information that goes on the return. I
13 think this was just simply missed.

14 JUDGE LAM: Thank you, Ms. Walvatne.

15 Ms. Walvatne, this is Judge Lam speaking. I would like to
16 turn it over back to you for your closing remarks.

17

18 CLOSING STATEMENT

19 MS. WALVATNE: Okay. Under normal circumstances,
20 had this had been a normal year that I could have gotten
21 the information in a timely manner from the different
22 parties involved, I could, you know, accept your denial of
23 payment for the refund. But I was handling everything in
24 the middle of a pandemic, including dealing with trying to
25 even get my brother's body returned from the State of

1 California.

2 So, you know, it's fine to have these rigid
3 timeframes, but the pandemic was a once-in-a-century
4 event. And I think things need to be allotted for because
5 of the difficulties that I encountered trying to follow
6 your instructions to get his tax returns done. I'm not
7 appealing the earlier years, you know, because that's way
8 out of the statute of limitations. But I think for 2015,
9 the pandemic does come into play.

10 And thank you for hearing the case.

11 JUDGE LAM: Thank you, Ms. Walvatne. That
12 concludes your closing presentation; is that right,
13 Ms. Walvatne?

14 MS. WALVATNE: Yes, it does.

15 JUDGE LAM: Okay. Thank you so much. I want to
16 confirm with FTB that they don't have any other closing
17 remarks.

18 MS. DIXON: Judge Lam, we do not.

19 JUDGE LAM: Thank you, Ms. Dixon.

20 Okay. We're ready to conclude this hearing.
21 This case is submitted on March 24, 2013. The record is
22 now closed.

23 Thank you everyone for coming in today. And we
24 will send you a written opinion of the decision within 100
25 days. Today's hearing in the Appeal of J. Walvatne is now

1 adjourned. The next hearing will begin at 2:00 p.m.

2 Thank you and goodbye.

3 (Proceedings adjourned at 1:34 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 21st day
of April, 2023.

ERNALYN M. ALONZO
HEARING REPORTER