

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
C. AVILA,) OTA NO. 21129235
) 220610662
)
APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, May 10, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Dr., Suite 300,
Cerritos, California, 91401, commencing
at 1:03 p.m. and concluding at 1:25 p.m.
on Wednesday, May 10, 2023, reported by
Ernaly M. Alonzo, Hearing Reporter, in
and for the State of California.

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APPEARANCES:

Administrative Law Judge: ASAF KLETTER

For the Appellant: C. AVILA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

CHRISTOPHER COOK
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Department's Exhibits A-N were received at page 7.)

OPENING STATEMENT

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By Mr. Avila	8
By Mr. Cook	15

1 Cerritos, California; Wednesday, May 10, 2023

2 1:03 p.m.

3
4 JUDGE KLETTER: Welcome to our Office of Tax
5 Appeals hearing. This is the Appeal of C. Avila, OTA Case
6 Number 21129235. Today is Wednesday, May 10th, 2023, and
7 the time is approximately 1:03 p.m. My name is
8 Judge Kletter. I will be the Administrative Law Judge for
9 this appeal.

10 Also present is our stenographer, Ms. Alonzo, who
11 is reporting this hearing verbatim. To ensure we have an
12 accurate record, we ask that everyone speaks one at a time
13 and does not speak over one another. Also, speak clearly
14 and loudly. When needed, Ms. Alonzo will stop the hearing
15 process and ask for clarification. After the hearing
16 Ms. Alonzo will produce the official hearing transcript
17 which will be available on the Office of Tax Appeals
18 website. The hearing transcript and the video recording
19 are part of the public record.

20 Some general rules to please keep in mind before
21 this hearing. Please say your name before you speak and
22 speak directly into the microphone. As a reminder, this
23 proceeding is a live broadcast and any information shared
24 will be publicly viewable. If there are any questions
25 during this process or any issues that arise, please

1 direct them to me and just please wait for me to
2 acknowledge you before continuing.

3 And just as a general reminder, the Office of Tax
4 Appeals is not a court. We are an independent appeals
5 body staffed by tax experts and independent of the State's
6 tax agencies.

7 If I can now, please have the parties each
8 identify yourselves by stating your name for the record,
9 beginning with the Appellant.

10 MR. AVILA: Carlos Avila.

11 JUDGE KLETTER: Thank you.

12 MR. COOK: Chris Cook, Tax Counsel with the
13 Franchise Tax Board.

14 MS. ZUMAETA: Jackie Zumaeta from the Franchise
15 Tax Board.

16 JUDGE KLETTER: Thank you so much.

17 So the issues for today's hearing, there are two
18 issues. The first issue is whether Appellant has shown
19 error in FTB's determination that he has a filing
20 requirement and owes tax for 2018 and 2019 tax years; and
21 the second issue whether the Appellant has established
22 grounds to abate the late filing notice and demand
23 penalties, filing enforcement fees, and interest.

24 With respect to the evidentiary record, FTB has
25 provided consolidated -- I'm sorry -- Exhibits A

1 through N.

2 I just want to ask FTB, are there any new
3 exhibits for submission today?

4 MR. COOK: There's no more exhibits. Thank you.

5 JUDGE KLETTER: Thank you.

6 And there were no objections to those exhibits,
7 so those are read into the record.

8 (Department's Exhibits A-N were received in
9 evidence by the Administrative Law Judge.)
10 Appellant did not provide any exhibits.

11 I just want to confirm with Appellant, are there
12 any new exhibits that you wish to submit today?

13 MR. AVILA: No. Everything is the same.

14 JUDGE KLETTER: Okay. So as just a general
15 reminder for our hearing, there was an introduction,
16 opening remarks by the Office of Tax Appeals now
17 concluded, and then there's 10 minutes for Appellant's
18 presentation, 10 minutes for FTB's presentation, and then
19 5 minutes for Appellant's closing statement and rebuttal,
20 a chance to address anything that FTB raised.

21 Mr. Avila, are you ready to begin your
22 presentation?

23 MR. AVILA: Sure.

24 JUDGE KLETTER: Please begin. You'll have 10
25 minutes.

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1 because it's been, to me, it felt as though this was a
2 game that they were playing. Well, let's see how long we
3 can keep playing this game with him and not pay him. And
4 I had told them, if you have a piece of paper that you
5 want me to sign that's the first page that you want that I
6 haven't seen, it's the same exact paperwork that I sent
7 last time.

8 But like I said, when I was owed, I never got my
9 money. And it wasn't that much, but if I sit there and do
10 what the State does and interest and late fees and all the
11 rest of that, then they owe me a good change. So 2017
12 came around and then they ended up getting some money from
13 me because of some paperwork, but they ended up getting
14 some money. Then they later on said, well, you didn't
15 file, so you owe us more, or you need to file.

16 I was like wait a minute. You got some money out
17 of me. Why don't you just be happy and leave me alone?
18 No. And it continued. So now recently from the last time
19 we spoke on the video, they sent a letter to a house that
20 I got foreclosed on. And I haven't been there since 2010.
21 So as we were talking like in the first video meeting,
22 they ended up garnishing my wages. So they took that
23 money, which I think that was fraudulent for taking it
24 anyway because I was in protest on that one.

25 And then now we're at '18 and '19. And it's just

1 like, they just -- exuberant amount of money that they
2 keep charging. It's just -- I think it's unfair. And I
3 really don't know what I'm being charged for. I don't get
4 it. You know, if I go through my bills, and whatever
5 bills I owe I pay for services rendered. I haven't
6 received any services from the State.

7 Also, when I -- when I look at the name Franchise
8 Tax Board, I don't get it. I'm not a franchise. And when
9 I used to file my papers, when I used to file taxes, I
10 would save all these receipts and this and that and the
11 other. And at the end of the day, they were just trash.
12 They wouldn't take none of it into account. And I had
13 asked the tax expert what's going on? Why don't they
14 accept all this? He said, well, you're not a corporation.
15 That's why they don't accept it. If you were a
16 corporation, they would accept all of this.

17 I said, but I'm still paying taxes on everything.
18 Like gas right now, I live in Barstow. Just to come to
19 work it's an arm and a leg. And according to their
20 paperwork it's like disposable money that I have. Nobody
21 has disposable money as far as I'm concerned. I
22 personally don't. I live from paycheck to paycheck. And
23 as I was telling you guys before, I don't turn on the gas,
24 the heater even during winter. So I take cold showers.

25 And then recently they -- I was paying \$50 a

1 month for gas. Then all of a sudden during this process
2 when we're talking on the video, they raised it to \$200.
3 How? How is that possible when the usage comes up to the
4 most \$50. So I just told them turn it off. So I take
5 cold showers, and it's cold up there in the desert. It's
6 really cold.

7 So I go through suffering, but I don't think I
8 should be going through the rest of this, you know, with
9 this State stuff. Like I said, the child support owes me
10 over 20-something thousand that they took and was handed
11 to them by the other agencies. And I went in and tried to
12 get my money back. I got a little bit back. And then a
13 judge that I went to go see came up with some crazy math
14 I've never heard of. It didn't match with the paperwork
15 'cause I've got paperwork from the State's child support
16 and from my job and what they've taken out.

17 And I also said, you know what? You guys gave me
18 a refund for this money. I'm deducting that, but I want
19 the rest of my money, and I didn't get that. So they told
20 me something logarithms that that's the reason why I was
21 being charged. I said, but it's being taken out of my
22 check. So the thing is I was getting hit from everywhere.
23 I couldn't eat. I was digging in the trash to get my
24 food. And the judge gave me an extra day to see my
25 daughter because my ex took her away for seven months, so

1 he gave me an extra day.

2 I told him, that's kind of a hardship for me
3 because if I see her every Wednesday, I still got to
4 provide a meal for her, and I don't want to dig in the
5 trash for her. It's all right if I do it but not for her.
6 So it really hurt me even the most when I took her to
7 Costco to go buy a \$5 twin salad and I didn't have the
8 money. Why? Because I'm over taxed, and I'm just a
9 worker.

10 But I just don't get it. I mean, I need some
11 kind of relief. So the way I found relief was I kept
12 hitting them for my money from the '15. They wouldn't
13 give it to me, so I said all right. If this is the way
14 it's going to be, then why should I file if I'm going to
15 lose? I'm losing anyway. So I'm like, you know, I'm not
16 doing this because it's unfair.

17 You know, I'm not asking for you guys to give me
18 the world. I'm just saying be fare. If you charge me
19 interest and penalties, I charge you interest and
20 penalties. And that goes back to 2015. So now -- and
21 like I said, 2017 I'm looking for the paperwork of 2017
22 because I had filed the protest on that one. And who
23 knows where that paper went. And then I got the letter
24 from my job saying that my garnishes were being -- my
25 wages were being garnished, and they sent the paperwork to

1 my old address from 2010 when I got tossed out.

2 They've sent mail to my home in Barstow, and I
3 told them don't send it there because the mail carrier
4 drops it off at a mailbox at the street, not at my home,
5 not at the door. It's at the street. So it's windy up
6 there. They don't close it. It rains. I've found my
7 mail down the street. So I told them don't do it. They
8 still sent it over there, and they say, well, we sent you
9 some mail. I said, well, I didn't get it.

10 The place to send it to is a P.O. Box in Lynwood,
11 and that's where I'll pick up my mail. It's sure to get
12 there. You send it someplace else I'm not going to get
13 it. So, like I said, they send it to an address that
14 hasn't been used. Well, I haven't used it because I was
15 tossed out of there in 2010. And it wasn't because I
16 wasn't paying my bills, it's because I went through a
17 divorce.

18 So, you know, should I say anymore?

19 JUDGE KLETTER: Well, I just had a note which is
20 that, you know, one thing that maybe would be helpful is
21 if -- basically, we have a procedure where we can swear
22 you in and, you know, this is on me that I haven't offered
23 you that or I may have skipped over it. But basically,
24 that will allow us to take your statements as testimony,
25 as evidence. And so maybe I can swear you in, and that

1 way we can record your statements the way that it
2 deserves. So in order to do that, I would just have you
3 raise your right hand and say that you swear or affirm in
4 accordance with the Office of Tax Appeals rules and
5 regulations. Do you swear that you're telling the truth?

6 MR. AVILA: I do.

7 JUDGE KLETTER: Okay.

8 MR. AVILA: I do affirm that I'm telling the
9 truth, and I swear.

10 JUDGE KLETTER: Okay. And then I guess at this
11 point are there -- not to reiterate everything that was
12 said, but just sort of maybe you could go over the
13 salient, like, the important facts that you think are
14 relevant to the two issues that are under consideration
15 today. Just going over, like, the personal knowledge and
16 facts that you can maybe resay those briefly, if that's
17 all right. Sorry about that.

18 MR. AVILA: Yeah. Well, like I said earlier that
19 filing for taxes with the State has been very difficult.
20 Before 2015 --

21 JUDGE KLETTER: I'm so sorry to cut you off.
22 Maybe actually just you could affirm that what you had
23 previously said was true and then add anything just to
24 save you some time.

25 MR. AVILA: Okay. Yeah, everything that I said

1 was true. That's it.

2 JUDGE KLETTER: Okay. Thank you. And then --

3 MR. AVILA: Thank you.

4 JUDGE KLETTER: -- please continue if there's
5 anything else you wanted to say after that.

6 MR. AVILA: No, sir. I'm done.

7 JUDGE KLETTER: Okay. Thank you so much.

8 MR. AVILA: Thank you.

9 JUDGE KLETTER: I really appreciate your
10 preparation and your time today.

11 I want to turn it over to FTB. You'll have 10
12 minutes. Mr. Cook, are you ready to begin your
13 presentation?

14 MR. COOK: Yes, I am. Thank you.

15 MR. AVILA: Do I turn this mic off?

16 JUDGE KLETTER: Yes, please do.

17

18 PRESENTATION

19 MR. COOK: Okay. The issues in this case are the
20 same for both the 2018 and 2019 tax years. First, as
21 Mr. Avila provided evidence proving he was not legally
22 obligated to file tax returns and pay income taxes for
23 those years.

24 The Revenue & Taxation Code requires all
25 California residents to file income tax returns and pay

1 income tax when their income exceeds annually published
2 thresholds that are based on filing status, age, and the
3 number of dependents. The Revenue & Taxation Code also
4 authorizes FTB to estimate a taxpayer's income when no
5 return has been filed and to propose a tax assessment with
6 related interest and penalties.

7 Precedential opinion, such as the OTA's Appeal of
8 Bindley, deem it reasonable and rational for FTB to use
9 third-party reporting to estimate a taxpayer's income. In
10 this case, a third party, Mr. Avila's employer, reported
11 to FTB that it paid him over \$60,000 of wages each year at
12 issue. This is for an excess of the filing thresholds for
13 single individuals in those years. Since the law says
14 that it's reasonable for FTB to estimate his income and
15 his tax using the amounts the employer reported, it is now
16 Mr. Avila's burden under the law to show that the estimate
17 is wrong.

18 He's presented no evidence the amounts his
19 employer reported were wrong, nor has he provided evidence
20 that FTB's calculation of his tax, penalties, fees, and
21 interest are wrong. Since no evidence has been presented
22 to the contrary, FTB asks OTA to sustain the determination
23 that he was required to file returns and sustain FTB's
24 estimate of his tax liabilities.

25 The next issues relate to the two penalties,

1 fees, and interest that were assessed. A delinquent
2 penalty was assessed each year Mr. Avila did not timely
3 file the tax returns. The demand penalty was also
4 assessed each year because Mr. Avila did not timely
5 respond to FTB's demands to file tax returns, or otherwise
6 prove he was not required to file.

7 Both these penalties can be abated if reasonable
8 cause existed, and Mr. Avila did not willfully neglect to
9 file a respond to the demands. And Mr. Avila can prove
10 reasonable cause exists with evidence showing that he
11 exercised ordinary care and prudence concerning the
12 returns and the demand notices or was otherwise prevented
13 from filing the returns or responding to the demands.
14 Again, no such evidence has been provided. So FTB asks
15 the OTA to sustain the imposition of delinquent filing and
16 demand penalties.

17 Finally a filing enforcement fee was assessed
18 because Mr. Avila did not respond to the demand notices.
19 And the Revenue & Taxation Code provides no grounds to
20 abate the fee. Interest was also assessed and continues
21 to accrue and may only be abated under limited
22 circumstances like those spelled out in Sections 19104 and
23 19112 of the Revenue & Taxation Code. Mr. Avila has
24 provided no evidence that these statutes are applicable in
25 this case.

1 I want to close by saying that, like every other
2 Californian, Mr. Avila was legally obligated to file tax
3 returns and pay income tax when his income exceeded the
4 threshold to do so, but he has provided no evidence
5 proving that he's an exception under the law.

6 Thank you. I'm happy to answer any questions.

7 JUDGE KLETTER: This is Judge Kletter. I do have
8 a couple of questions. So, you know, please bear with me.
9 The first question is just I want to confirm. So the
10 Revenue & Taxation Code and the activities of the
11 Franchise Tax Board, that applies to all individuals, not
12 just corporations or franchises is in your view?

13 MR. COOK: It applies. Yeah, the Revenue &
14 Taxation Code applies and residents of California are
15 required to file returns and pay taxes if their income is
16 above a certain threshold.

17 JUDGE KLETTER: And the Franchise Tax Board
18 enforces those requirements?

19 MR. COOK: Yes, that's its mandate.

20 JUDGE KLETTER: Okay. Now, for the 2018 and 2019
21 tax year, the reasonable information that led you to issue
22 the Notice of Proposed Assessment, that was from
23 third-party wage withholding -- wage reporting; is that
24 correct?

25 MR. COOK: Yes. It's from W-2 reporting. It

1 reports the wages that Mr. Avila's employer paid him.

2 Yes.

3 JUDGE KLETTER: Okay. And then just one last
4 question in regards to the 2018 and 2019 tax years. So if
5 I understood correctly, the 2018 and 2019 returns were not
6 filed in your view. And then there was a demand letter
7 that was not responded to. But it looks like in the
8 briefing that a protest was received for both the 2018 and
9 2019 tax years; is that correct?

10 MR. COOK: That's correct.

11 JUDGE KLETTER: I don't have any more questions.

12 But Mr. Avila you have 5 minutes to respond to
13 anything that FTB said and to ask any questions you might
14 have or provide any closing statements.

15 MR. AVILA: No, I have nothing.

16 JUDGE KLETTER: Okay. Well, I just want to thank
17 the parties for their time today. Since there's no more
18 that -- or need to cover, this concludes the hearing.

19 And I will decide the case based on the testimony
20 and the discussion and argument today. And the written
21 decision will be issued no later than 100 days from today.
22 The case is submitted, and the record is now closed.

23 This concludes this hearing session. The next
24 one should begin shortly. Thank you so much for your
25 time, everyone.

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(Proceedings adjourned at 1:25 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 30th day
of May, 2023.

ERNALYN M. ALONZO
HEARING REPORTER