

IN THE MATTER OF THE APPEAL OF:)
)
ANTHONY SPANN,) OTA NO. 22029632
)
 APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS
SACRAMENTO, CALIFORNIA
TUESDAY, APRIL 18, 2023

REPORTED BY:
ANGEL LOVE
CSR NO. 13845
JOB NO.:
41354 OTA(A)

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

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5 IN THE MATTER OF THE APPEAL OF)
6 ANTHONY SPANN,) OTA NO. 22029632
7 APPELLANT.)
8 _____)

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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 400 R Street, Sacramento, California,
17 commencing at 9:32 a.m. and concluding at
18 10:00 a.m. on Tuesday, April 18, 2023,
19 reported by ANGEL LOVE, CSR No. 13845, a
20 Certified Shorthand Reporter in and for
21 the State of California.
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1 APPEARANCES:

2
3 Panel Lead: HON. TERESA STANLEY

4
5 Panel Members: HON. MIKE LE
6 HON. KEITH LONG

7 For the Appellant: ANTHONY SPANN

8
9 For the Respondent: TRISTEN THALHUBER
10 Tax Counsel

11 BRADLEY COUTINHO
12 Hearing Representative
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1 SACRAMENTO, CALIFORNIA; TUESDAY, APRIL 18, 2023

2 9:32 a.m.

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5 JUDGE STANLEY: All right. Let's go on the
6 record in the Appeal of Spann. Case Number 22029632.
7 The date is April 18, 2023. The time is approximately
8 9:30. The location is Sacramento, California.

9 And once again on the record, I'm Judge Teresa
10 Stanley. And I have on the panel with me Judge Mike Le
11 and Judge Keith Long.

12 I'm going to conduct the hearings, but the panel
13 will equally deliberate and issue a written opinion
14 within 100 days after the record closes.

15 I'm going to ask the parties to identify
16 themselves on the record, starting with Appellant.

17 MR. SPANN: Anthony Spann.

18 JUDGE STANLEY: And Franchise Tax Board, please.

19 MR. THALHUBER: Tristen Thalhuber.

20 MR. COUTINHO: And Bradley Coutinho, for the
21 Franchise Tax Board.

22 JUDGE STANLEY: Thank you. Welcome to the
23 Office of Tax Appeals or, as we call it for short, OTA.
24 OTA's independent of the Franchise Tax Board and any
25 other tax agency. We're not a court, but we are an

1 independent appeals body that is staffed with its own
2 subject matter experts.

3 The only evidence that we have in the record is
4 what the parties have submitted during this appeal.

5 These proceedings are being live streamed and
6 will be on YouTube.

7 Our stenographer, Ms. Love, is recording the
8 proceeding and will produce a transcript of the hearing.

9 The issue in this matter is whether the
10 Franchise Tax Board correctly calculated Appellant's 2017
11 part-year resident tax.

12 Do you agree that that's the issue, Mr. Spann?

13 MR. SPANN: Yes.

14 JUDGE STANLEY: And, Mr. Thalhuber.

15 MR. THALHUBER: Yes. That's correct.

16 JUDGE STANLEY: Okay. The exhibits that were
17 submitted, Appellant's exhibits, were marked 1 through 9
18 on the exhibit log, but OTA has renumbered -- I'm sorry.
19 We didn't renumber those.

20 We did send out a hearing binder with all the
21 parties' exhibits in it. There was no objection at the
22 prehearing conference, so Appellant's exhibits will be
23 admitted into evidence.

24 (Appellant's Exhibits 1-9 admitted.)

25 JUDGE STANLEY: And Franchise Tax Board

1 identified Exhibits A through N, and Appellant did not
2 object to those exhibits. So they will also be admitted
3 without objection.

4 (Respondent's Exhibits A-N admitted.)

5 JUDGE STANLEY: And then following the
6 prehearing conference, Franchise Tax Board submitted
7 additional Exhibits O and P.

8 And, Mr. Spann, do you have any objections to
9 those exhibits?

10 MR. SPANN: I object to the timeliness of those
11 exhibits.

12 JUDGE STANLEY: Well, my records do indicate
13 that they submitted them by the deadline I had in the
14 minutes and orders. So I don't know if you got -- if you
15 got access to them a little bit later --

16 MR. SPANN: I did --

17 JUDGE STANLEY: -- than they were submitted to
18 us.

19 MR. SPANN: They showed up in my post office box
20 on the 5th.

21 JUDGE STANLEY: Okay. So that's just a couple
22 of days after we got it. So did you have an opportunity
23 to review them?

24 MR. SPANN. I just reviewed them yesterday.

25 JUDGE STANLEY: Okay.

1 MR. SPANN: That's why I was objecting to it
2 because I wasn't aware there were any other exhibits
3 being submitted and a question why that is coming into
4 the record. I'm sure somebody will explain that.

5 JUDGE STANLEY: Well, I'm sure that -- when the
6 Franchise Tax Board does their presentation, I'm sure
7 they'll state why those records are relevant to the case
8 and how they're being -- how they're being used.

9 And as we discussed at the prehearing conference
10 also, I'm going to give you an opportunity to have the
11 last word. So after they do their presentation, you can
12 renew any objection based on something other than
13 timeliness if you want to do so, but I'm going to admit
14 them because we received them in a timely manner, and
15 their only requirement is to send you a copy that can be
16 reasonably quickly received.

17 So I'm sorry to put you in that position, but
18 I'm going to go ahead and admit them, and I'll let you
19 speak to them in your presentation or in your rebuttal.
20 Okay.

21 MR. SPANN: Uh-huh.

22 JUDGE STANLEY: Okay. So Exhibits O and P will
23 be admitted into evidence at this time.

24 (Respondent's Exhibits O-P admitted.)

25 JUDGE STANLEY: And today, Mr. Spann, you

1 indicated that you are going to testify. So would you
2 please raise your right hand.

3 ANTHONY SPANN

4 (The witness in this matter, having
5 been duly sworn to tell the truth,
6 testified as follows:)

7 MR. SPANN: Yes.

8 JUDGE STANLEY: Thank you. So I'm going to --
9 I'm going to just let you start your presentation and
10 tell us all the facts that you think the panel needs to
11 know right now.

12 MR. SPANN: Well, I don't want to waste
13 everybody's time. The original objection to this
14 additional assessment was based on things I wasn't aware
15 of. And these things are not well demonstrated in the
16 documentation I received.

17 JUDGE STANLEY: Can I stop you a second. We're
18 not hearing you very well. Is the green button on?

19 MR. SPANN: Yeah.

20 JUDGE STANLEY: Okay. These microphones aren't
21 that great. You might have to just put it really close
22 to you. And if you need to read something, they bend
23 too. Okay.

24 MR. SPANN: Thank you. So the question I'm
25 being presented with is how much do I actually owe the

1 Franchise Tax Board for the tax year 2017. I believe
2 what I submitted was correct. I was not aware that there
3 was any other way of calculating tax for that year.

4 And in the documentation that is part of this
5 exhibit, it does show a dialog that was happening between
6 me and somebody at the Franchise Tax Board. It's not
7 readable in the copy that is presented in the binder, but
8 I think it's relevant to the issue at hand.

9 When I -- I realized that one of the
10 stipulations in this case was that my residency was not a
11 question, but I believe it is because what I filed for
12 return in 2017 was based on facts. I did not live in the
13 State of California prior to May. So when I did my taxes
14 at the end of the year, I filed what I believed to be
15 correct, which was a resident tax return for only the
16 funds that I received through work while I was in
17 California.

18 Then I received something years later, literally
19 years later, and it's documented here that the IRS has
20 made the Franchise Tax Board aware that there was more
21 funds that I received in that year.

22 Yes, there was more funds I received in that
23 year because I worked in the State of Washington from
24 January to May. So the return I filed was based on my
25 understanding of every other tax return I filed ever

1 since I've started to work, which is a resident tax
2 return. I was not aware that there was any other special
3 circumstance or any special California tax rate.

4 So I realize that we're not really here to talk
5 about that special assessment, but I'm -- in the
6 documentation that I looked at and the opinions, I see
7 that this has been talked about several times, which is
8 why I don't really want to waste everybody's time at this
9 point because it looks like it's been beat to death. I
10 don't think it's fair. I don't understand the logic
11 behind it.

12 And if you look at the return that was prepared
13 that's in this exhibit, which I was not given a copy of
14 until this exhibit binder was provided to me, I didn't
15 get to see the calculation. They never told me how they
16 came to the numbers that they came to.

17 So on top of what they're saying that I owe, I
18 was assessed interest and penalties, which I've never
19 objected to paying my share. I'm a federal employee. I
20 always pay my taxes. If you look at the return, you see
21 there's nothing in there that would indicate that I was
22 ever trying to mislead anyone about anything. I did what
23 I believed to be correct.

24 In all of the documentation I received, it
25 appears that the people I was dealing with may not have

1 understood their own regulations, guidance, laws. I
2 don't know what you want to call it. But in the
3 communication, there was a point where there was an
4 admission that, yes, we see what's going on here. You
5 did not receive -- and I'm talking specifically about the
6 \$12,500 that shows up in here. We see that you did not
7 receive that in California. You received it in
8 Washington. Therefore, it's not going to count in the
9 calculation.

10 What I'm talking about is -- pardon me for a
11 second while I find this.

12 It's labeled Exhibit I in the binder. The one
13 that's not really readable. And I don't know if anybody
14 here has been able to read what that says, but I can read
15 it if you'd like.

16 JUDGE STANLEY: I just -- I will let you know
17 that we -- since we have it electronically here, we can
18 blow it up. We can zoom in. So we can read it.

19 MR. SPANN: Well, that -- I don't even know if
20 that's the full email string or not, but this
21 conversation happened between Maria Brosterhous; is that
22 correct?

23 So in that letter, Ms. Brosterhous explains her
24 position and says, yes, we see that that \$12,500 was not
25 received in California. It is not taxable.

1 What I don't understand here is, according to
2 the return, the nonresident return that was calculated,
3 which is Exhibit N in the binder -- like I said. I did
4 not see that exhibit until I received this because it was
5 never provided to me. And I don't know who prepared it,
6 but that number is even higher than the original number.

7 So when Ms. Brosterhous -- in that email, when
8 she admits there that there was an error made, she also
9 goes on to say it's not -- I'll read this so you know.

10 It says:

11 "It's FTB policy not to assess
12 any additional tax beyond that" --
13 "beyond what was previously assessed
14 on the NPA. I know this is not the
15 outcome you expected, but it does
16 resolve the issue in the initial
17 appeal, the inclusion of settlement
18 income."

19 It says:

20 "In spite of the calculation,
21 the FTB will not increase your tax
22 due beyond the amount previously
23 assessed on the Notice of Proposed
24 Assessment, parenthesis, NPA, here.
25 \$1,141" --

1 I'm sorry. I added the highlighted part before
2 that. I didn't say that before.

3 "It is FTB policy not to assess
4 additional tax beyond what was
5 previously assessed on the NPA. I
6 know this is not the outcome you
7 expected, but it does resolve the
8 issue you initially appealed. The
9 inclusion of the settlement income."

10 So as I said, I did a lot of reading on this,
11 and I see that this has been pretty much beat to death,
12 and I don't honestly feel that I'm going to -- I don't
13 want to say come out ahead, but I don't think I'm going
14 to be treated fairly in this position. And that's
15 reinforced by something that was told to me in our
16 pre-meeting, which is anything I say can be held against
17 me, but nothing that the Franchise Tax Board says can be
18 held against them. That was explicitly stated to me.

19 JUDGE STANLEY: Can I just correct that because
20 that would have been me that you believe said that. What
21 I was trying to explain is that, since you're testifying
22 to actual facts that occurred, like the fact that you
23 moved to California in May of 2017, those -- you are
24 sworn in and you're under oath when you testify so that
25 we can accept your facts for the truth of them. They're

1 not going to be stating any facts. They're going to be
2 just arguing the law. Okay.

3 So that's not -- not holding anything against
4 anybody. I'm sorry you felt that that's what I was
5 saying to you, but all I was doing was trying to explain
6 to you why one side is being sworn in and one is not.

7 Does that help at all?

8 MR. SPANN: It helps clarify, but I'm not sure
9 it helps my position at all.

10 JUDGE STANLEY: Okay. You can go ahead and
11 continue with your presentation.

12 MR. SPANN: So my question at this point is what
13 exactly is the Franchise Tax Board saying that I owe at
14 this particular moment in time?

15 JUDGE STANLEY: We are -- I'm going to go ahead
16 and leave that up to them in their presentation, and they
17 can tell you that exact number.

18 Also, there -- the Notice of Action, that is the
19 notice that you received around December 30 of 2021, that
20 is the document that allows you to bring this appeal. So
21 the amount in the Notice of Action in Exhibit N -- I'm
22 sorry. Not Exhibit N. Where am I? Exhibit N is your --

23 Exhibit H. The amount in Exhibit H would be the
24 amount at issue here. And you may continue when you're
25 ready.

1 MR. SPANN: I see that. So basically this is
2 where I'm at. I don't honestly think that I'm going to
3 be able to change anybody's mind today. I just want to
4 know what Franchise Tax Board is going to charge me at
5 this point.

6 JUDGE STANLEY: Okay. Does that conclude your
7 presentation --

8 MR. SPANN: Yes.

9 JUDGE STANLEY: -- for now? Okay. Then I'm
10 going to turn to Mr. Thalhuber.

11 Do you have any questions for Mr. Spann?

12 MR. THALHUBER: No, I do not have any questions.
13 Thank you.

14 JUDGE STANLEY: Judge Long, do you have any
15 questions for Mr. Spann?

16 JUDGE LONG: I have no questions. Thank you.

17 JUDGE STANLEY: And, Judge Le.

18 JUDGE LE: No questions. Thank you.

19 JUDGE STANLEY: Okay. Then I'm going to turn it
20 over to Mr. Thalhuber to make the Franchise Tax Board's
21 presentation.

22 MR. THALHUBER: Good morning. My name is
23 Tristen Thalhuber, and I, along with my co-counsel,
24 Bradley Coutinho, represent the Franchise Tax Board.

25 The issue in this case is whether Appellant has

1 met his burden of proof to establish error in
2 Respondent's assessment of additional tax for the 2017
3 tax year.

4 Specifically, it is whether Respondent properly
5 utilized Appellant's non-California source income to
6 determine his --

7 JUDGE STANLEY: Excuse me, Mr. Thalhuber. I
8 know you're reading, but you need to slow down for our
9 stenographer to be able to catch it all.

10 MR. THALHUBER: Sure. Would you like me to
11 start from the top?

12 The issue in this case is whether Appellant has
13 met his burden of proof to establish error in
14 Respondent's assessment of additional tax for the 2017
15 tax year.

16 Specifically, it is whether Respondent properly
17 utilized Appellant's non-California source income to
18 determine his tax rate to apply to his California taxable
19 income.

20 For the 2017 tax year, the Appellant was a
21 part-year resident of California. He earned wage income
22 in California. And as a nonresident, he earned wage
23 income and received settlement income from the Bureau of
24 Indian Affairs.

25 Part-year California residents are taxed on

1 their entire taxable income for the period of their
2 residency and only on income from California sources for
3 the period of their nonresidency.

4 California, nevertheless, determines the
5 applicable California tax rate of a part-year resident
6 based on the part-year resident's income from all sources
7 during the taxable year using a formula commonly referred
8 to as the "California method." This is necessary due to
9 California's progressive tax rate schedule where
10 individuals with higher income pay tax at a higher rate
11 than individuals with lower income.

12 The Office of Tax Appeals, in the presidential
13 opinions of the Appeal of Bracamonte and the Appeal of
14 Williams, has consistently held that the use of a
15 taxpayer's non-California sourced income to calculate
16 their California tax rate does not result in an
17 assessment of tax on income sourced outside of
18 California. The law requires that income from all
19 sources must be used to determine the correct tax rate.

20 In the ratio computation, Appellant's
21 non-California source income is not included in the
22 California adjusted gross income, but it must be included
23 in the adjusted gross income from all sources in order to
24 compute the statutorily mandated ratio.

25 Thus, Respondent properly utilized Appellant's

1 non-California source wages and settlement income in
2 determining the correct tax rate to then apply to
3 Appellant's wage income earned in California.

4 Thank you.

5 And I'm happy to answer any questions that the
6 panel may have.

7 JUDGE STANLEY: Judge Long, do you have any
8 questions?

9 JUDGE LONG: No questions. Thank you.

10 JUDGE STANLEY: Judge Le.

11 JUDGE LE: I do have a question. Appellant says
12 that he was assessed penalties. I just wanted to confirm
13 with you whether or not he was or not assessed penalties.

14 MR. THALHUBER: I believe in the initial Notice
15 of Proposed Assessment there was an assessment of
16 additional -- of penalties and interest.

17 However, the amount at issue today is the
18 additional tax assessed in the Notice of Proposed
19 Assessment.

20 JUDGE LE: Okay. Thank you. No further
21 questions.

22 JUDGE STANLEY: Okay.

23 Mr. Spann, I'm going to give you the last word
24 so you can respond to anything that they said or to any
25 of the exhibits or give us any more information that you

1 think might be important for us.

2 MR. SPANN: Well, I guess the only thing I can
3 say at this point is I don't -- I realize that that's
4 what the tax law says. I don't think it's fair.

5 Again, I just want to know, because based on
6 this notice, it says it will not increase my tax beyond
7 \$1,141. That's in that Exhibit I.

8 So I did have a separate argument before I read
9 the documents that you recommended that I read, which is
10 why I said I believe this has been talked about numerous
11 times, and I don't think I'm in any position to change
12 anyone's opinion.

13 At this point, I would like to ask Franchise Tax
14 Board if they would be willing to settle this rather than
15 assess the taxes as they are assessed in these documents.

16 JUDGE STANLEY: Okay. And I can explain to you
17 that, while a case is on appeal with the Office of Tax
18 Appeals, they don't have any settlement authority or
19 any -- any mechanism to have you pay in payments like
20 installment payments, but after the opinion here is
21 issued, then you can go to back to Franchise Tax Board
22 and look into one of their programs.

23 MR. SPANN: Okay.

24 JUDGE STANLEY: And as far as your question, the
25 amount of tax in the Notice of Action is the amount at

1 issue. So it is the \$1,141. And there are no penalties
2 in this notice, and there is only additional interest
3 that's probably accrued since this notice. So that's the
4 amount at issue. That's the amount we're deciding.

5 Okay.

6 Do you have anything else to add?

7 MR. SPANN: No, I don't.

8 JUDGE STANLEY: Okay.

9 Judge Long, do you have any final questions?

10 JUDGE LONG: No questions. Thank you.

11 JUDGE STANLEY: Judge Le.

12 JUDGE LE: No questions. Thank you.

13 JUDGE STANLEY: Okay.

14 This will conclude the hearing. The record is
15 now closed, and the matter is submitted for deliberation.

16 The panel, as I said, will meet to jointly
17 deliberate and decide the appeal, and we will issue a
18 written opinion no later than 100 days from today. I
19 almost said ten.

20 And I believe that we're going to recess and
21 reconvene at 1:00 p.m. That's confirmed.

22 Okay. So we'll be in recess until 1:00 p.m.

23 Thank you all for coming and participating.

24 MR. SPANN: Thank you.

25 MR. COUTINHO: Thank you for your time.

1 MR. THALHUBER: Thank you.

2 (Off the record.)

3 (Proceedings concluded.)

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1 REPORTER'S CERTIFICATE

2
3 STATE OF CALIFORNIA)

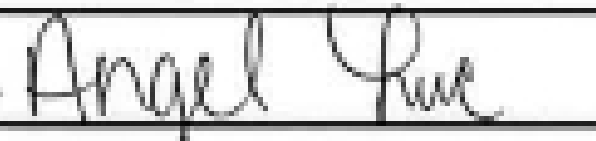
4) ss.

5 COUNTY OF ALAMEDA)
6
7

8 I, Angel Love, a Certified Shorthand Reporter of
9 The State of California, do hereby certify that I am a
10 disinterested person herein; that I reported the
11 foregoing hearing to the best of my ability in shorthand
12 writing; that I thereafter caused my shorthand writing to
13 be transcribed into typewriting.
14

15 I further certify that I am not of counsel or
16 attorney for any of the parties to said hearing, or in
17 any way interested in the outcome of the said hearing.
18

19 IN WITNESS WHEREOF, I have subscribed this
20 certificate at Sacramento, California, on this 1st day of
21 May 2023.

22 
23

24 Angel Love, CSR NO. 13845
25

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