

## BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:           )  
   )  
E. ABRAM,   )Case No. 220710922  
   )  
                    Appellant.                         )  
   )

**CERTIFIED COPY**

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, May 17, 2023

Reported by:

JODI TILL,  
CSR No. 10381

Job No. :  
41729 OTA

1                   BEFORE THE OFFICE OF TAX APPEALS

2                   STATE OF CALIFORNIA

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4  
5   IN THE MATTER OF THE APPEAL OF:   )  
6   E. ABRAM,                            )  
7                                        )Case No. 220710922  
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TRANSCRIPT OF PROCEEDINGS, taken at  
400 R Street, Sacramento, California,  
commencing at 1:00 p.m. and concluding  
at 1:21 p.m. on Wednesday, May 17, 2023,  
reported by Jodi Till, CSR No. 10381, a  
Certified Shorthand Reporter in and for  
the State of California.

1 APPEARANCES

2  
3 Panel Lead: ALJ MICHAEL GEARY

4  
5 Panel Members: ALJ AMANDA VASSIGH  
6 ALJ MIKE LE

7  
8 For the Appellant: E. ABRAM

9  
10 For the Respondent: STATE OF CALIFORNIA  
11 DEPARTMENT OF TAX AND FEE  
12 ADMINISTRATION  
13 JOEL SMITH  
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I N D E X

E X H I B I T S

(Department's Exhibits A-G were received at page 6)

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

PAGE

By Mr. Abram

10

By Mr. Smith

11

1 Sacramento, California; Wednesday, May 17, 2023

2 1:00 p.m.

3 ---oOo---

4 JUDGE GEARY: Ms. Till, let's begin the stenographic  
5 record now. We will start by asking the parties to identify  
6 themselves by stating their names and who they represent,  
7 beginning with the Appellant.

8 MR. ABRAM: My name is Edward Abram, representing  
9 myself.

10 JUDGE GEARY: Thank you, Mr. Abram.

11 And Franchise Tax Board?

12 MR. SMITH: Good afternoon. Joel Smith for  
13 Franchise Tax Board.

14 JUDGE GEARY: Good afternoon, Mr. Smith.

15 The exhibits marked for identification in this  
16 appeal consists of Respondent's exhibits marked A through G  
17 for identification. Appellant has not disclosed any proposed  
18 physical evidence, documentary evidence. Respondent, however,  
19 provided copies of its proposed exhibits to Appellant and OTA,  
20 and OTA incorporated those exhibits into a digital hearing  
21 binder, which OTA made available to the parties for a  
22 download.

23 Does Appellant have any objection to the admission  
24 of Respondent's Exhibits A through G?

25 MR. ABRAM: Is A through G posted up on the screen?

1 JUDGE GEARY: No. We do not have the ability to  
2 post our binder on that screen. You would have been notified  
3 that the binder was available, and these are the exhibits that  
4 were attached to Franchise Tax Board's opening brief. If you  
5 have that brief or had that brief, it would have included all  
6 of those exhibits, A through G.

7 MR. ABRAM: I received an e-mail, I believe,  
8 yesterday or a few days ago. It might be in there. I see  
9 some documented from May 15th, but I'm not going to respond  
10 because I don't know exactly. I hadn't had time to  
11 specifically read over for this specific hearing with these  
12 questions.

13 JUDGE GEARY: I take that to mean you have no  
14 specific objection to state to any of those exhibits today; is  
15 that fair?

16 MR. ABRAM: That is fair.

17 JUDGE GEARY: All right. Those exhibits are all  
18 admitted into evidence.

19 (Exhibits A through G were marked and  
20 received in evidence.)

21 JUDGE GEARY: Appellant appeals from the Notice of  
22 Action that was issued to him by Respondent, and that Notice  
23 of Action affirmed items that were set forth in the Notice of  
24 Proposed Assessment that included a proposed tax of \$6,643, a  
25 failure-to-file penalty of \$1,600.75, a demand penalty of

1 \$1,600.75, and eventually it included a 97-dollar filing  
2 enforcement fee. When we spoke about this matter at a  
3 prehearing conference, I believe it was Appellant's intent to  
4 contest all four of those proposed assessments and fees and  
5 penalties. Is that still your intent, Mr. Abram, that you  
6 object to the additional tax, to the failure-to-file penalty,  
7 to the demand penalty, and to the filing enforcement fee?

8 MR. ABRAM: Yes. I agree with you.

9 JUDGE GEARY: You agree with it?

10 MR. ABRAM: No. I agree with what you stated to me.

11 JUDGE GEARY: Great. Thank you.

12 Also at the prehearing conference, we talked about  
13 how long the parties would need for their argument, and the  
14 Appellant indicated that you would require approximately  
15 15 minutes. I believe Respondent indicated that it would  
16 require less than 15 minutes.

17 Mr. Abram, do you still believe you will be able to  
18 provide your argument and any testimony you choose to give  
19 within about 15 minutes?

20 MR. ABRAM: No. I don't have the documents ready.

21 JUDGE GEARY: Okay. What do you mean by that?

22 MR. ABRAM: I believe you and the counselman talked  
23 on the phone prehearing. You indicated to me that you -- I  
24 had two weeks to get the -- file the taxes, get everything in  
25 order. Sent it to my accountant. Like I told you before, I

1 flew in from Las Vegas today from Oakland just to make sure I  
2 make it here. I sent an e-mail yesterday. My accountant did  
3 not prepare the taxes, which is no excuse, but it is not done,  
4 and I flew here for this hearing.

5 That was the whole issue, the 2019 taxes were never  
6 filed, and I was supposed to work directly with Joel to get  
7 this taken care of.

8 JUDGE GEARY: Right. I can ensure you that I made  
9 quite clear whatever documents you choose to submit to FTB  
10 for filing or submit to OTA as proposed evidence, they were to  
11 be submitted 15 days before this hearing, which is over two  
12 weeks ago, and you haven't done that, but I'm still going to  
13 allow you to offer any oral argument you want. If you choose  
14 not to offer oral argument, that's up to you. Do you think  
15 that any argument or testimony you give will take less than 15  
16 minutes?

17 MR. ABRAM: Definitely less than 15 minutes.

18 JUDGE GEARY: Okay. All right.

19 And I believe, Mr. Smith, your estimate is less than  
20 15 minutes. Is that still your estimate?

21 MR. SMITH: Yes.

22 JUDGE GEARY: Typically what we do, because the  
23 heavier burden rests typically with the taxpayer, we have the  
24 taxpayer give his or her testimony and argument first,  
25 followed by the tax agency in this case. In this case, FTB



1 will give its argument, and I typically turn back to the  
2 taxpayer and offer some additional time, something less than  
3 five minutes, for closing comments or rebuttal, and I'll do  
4 that in this case too.

5 Mr. Abram, you are not required to use any specific  
6 period of time. You are not required to offer rebuttal. It's  
7 just something we make available to taxpayers. Mr. Abram, do  
8 you want to testify today?

9 MR. ABRAM: Yes.

10 JUDGE GEARY: All right. And what I will do is --  
11 let me first clarify: Mr. Smith, FTB doesn't have any  
12 witnesses, does it?

13 MR. SMITH: That's correct.

14 JUDGE GEARY: What I will do is I will administer an  
15 oath or affirmation to you, and after that you can proceed,  
16 and you can give testimony in narrative form. Just tell us  
17 the facts that you think are important that you think we need  
18 to take into consideration. When you are done, I'll turn to  
19 Mr. Smith and let him give his argument, and then I'll turn  
20 back to you following that for a brief rebuttal or closing  
21 comments, if you choose to do that.

22 So, Mr. Abram, if you wouldn't mind raising your  
23 right hand, please.

24 ///

25 ///

1 EDWARD ABRAM

2 was thereupon called as a witness herein; and having been  
3 sworn to tell the truth, the whole truth, and nothing but the  
4 truth, testified as follows:

5 THE WITNESS: Yes.

6 JUDGE GEARY: Thank you, Mr. Abram. You can proceed  
7 with your testimony and argument, whenever you are ready.

8  
9 PRESENTATION

10  
11 MR. ABRAM: Yes. Thank you, sir. This whole hearing  
12 today is about my 2019 state taxes. They were never filed. I  
13 guess the State of California sent me an invoice bill and  
14 stated that I owed \$6,000, plus all of the fees that you just  
15 mentioned. I was like, okay, I will pay it. I just have to  
16 file the 2019 taxes.

17 We had an oral hearing with you and Joel two weeks  
18 ago. You informed me to file the taxes, to work specifically  
19 with Joel, to get the taxes to him ahead of time.

20 Sent it over to my accountant. For whatever reason,  
21 no excuses, it wasn't done, and this is where we are today. I  
22 still have to file it. I might have to go find someone else  
23 to prepare the taxes, but I found this out like two days ago  
24 that it wasn't completed.

25 I reached out to Joel yesterday before I flew in

1 from Las Vegas, Nevada, to let him know this is the issue I'm  
2 dealing with. And, you know, you spoke to me specifically to  
3 work with Joel to get this taken care of, and that's pretty  
4 much it.

5 JUDGE GEARY: Okay. Thank you, Mr. Abram. I can  
6 ask you questions now, and my fellow judges can ask questions  
7 too, but my inclination is to defer any questions until after  
8 Mr. Smith.

9 Judge Vassigh, do you want to ask questions now, or  
10 can we wait until Mr. Smith gives his presentation?

11 JUDGE VASSIGH: I'm fine with waiting.

12 JUDGE GEARY: Judge Le?

13 JUDGE LE: I can wait.

14 JUDGE GEARY: Thank you, Mr. Abram. I'm going to  
15 allow Mr. Smith to give his argument now.

16 Go ahead, Mr. Smith.

17  
18 PRESENTATION  
19

20 MR. SMITH: Good afternoon. My name is Joel Smith.  
21 I'm with Respondent Franchise Tax Board. As has been stated,  
22 the primary issue today is whether Appellant established error  
23 in Respondent's Notice of Proposed Assessment and then,  
24 related, whether reasonable cause has been established to  
25 abate the delinquent filing penalty, the demand penalty, as

1 well as reasons to abate the filing enforcement cost recovery  
2 fee.

3 As Appellant has a filing requirement based on wages  
4 earned, which were the bases for the proposed assessment; and  
5 no documentation has been provided to establish error in the  
6 proposed assessment; no reasonable cause arguments have been  
7 made to abate the penalties; and the record shows that the  
8 filing enforcement cost recovery fee was properly imposed,  
9 based on the evidence and California law, Respondent requests  
10 you sustain the position.

11 I can answer any questions the panel has. Thanks.

12 JUDGE GEARY: Thank you, Mr. Smith.

13 I will give you an opportunity for rebuttal,  
14 Mr. Abram, if you want it. First, I'm going to allow my  
15 judges to ask questions, if they have any, and I may have some  
16 questions.

17 Judge Vassigh, do you have any questions?

18 JUDGE VASSIGH: I do not. Thank you.

19 JUDGE GEARY: Judge Le, do you have any questions?

20 JUDGE LE: I do not. Thank you.

21 JUDGE GEARY: This hearing has gone a lot faster  
22 than I anticipated.

23 Before you give your closing, I want to make sure  
24 you understand what is going to be happening here.  
25 Obviously, you understand this is the time for the

1 presentation of evidence and argument. Typically, what I  
2 will do at the conclusion of a taxpayer's closing remarks is  
3 ask the parties if they submit the matter for opinion or a  
4 decision or decisions and close the record. Once I do that,  
5 once I close the record, that means OTA is not going to be  
6 receiving any other evidence, so that means we will be  
7 deciding the issues presented based upon the evidence that  
8 has been submitted, which is the -- which consists of the  
9 exhibits that have been offered by Franchise Tax Board.

10 If you, Mr. Abram, want me to hold the record open  
11 for a brief period of time to allow you an opportunity to  
12 submit your return, I will do that. The way it would work  
13 is if I allowed you a period of weeks, perhaps, to submit  
14 the return, you would be encouraged to provide that return  
15 directly to Mr. Smith, as he had offered to take it at the  
16 time of the prehearing conference. And then I would allow  
17 FTB to respond to that evidence.

18 Are you interested in having me do something like  
19 that?

20 MR. ABRAM: Absolutely.

21 JUDGE GEARY: Okay. Let me ask you first then, do  
22 you have any closing remarks other than any discussion we  
23 might have about keeping the record open?

24 MR. ABRAM: No closing remarks.

25 JUDGE GEARY: All right.

1           Mr. Smith, would you have an objection to OTA  
2 leaving the record open for a short period of time to allow  
3 the Appellant an opportunity to file his 2019 income tax  
4 return and then, of course, allowing Franchise Tax Board an  
5 opportunity to process and respond to that return?

6           MR. SMITH: Yeah. No, there is no objection to  
7 that. One note is the taxpayer can file a tax return at any  
8 time, so if you decide to close the record, that doesn't mean  
9 the FTB will not accept or review tax returns. I just wanted  
10 that to be clear that that authority is not placed on the OTA.  
11 A tax return can be filed with FTB at any time, and it will be  
12 processed accordingly. But no objection to your specific  
13 question. Thanks.

14           JUDGE GEARY: Let me ask you a question: If OTA  
15 closed the record and issued an opinion essentially sustaining  
16 Franchise Tax Board's action and notice of action, in essence,  
17 are you saying Franchise Tax Board would still, under those  
18 circumstances, accept a late return, process it, and if it  
19 concludes that adjustments are appropriate, would still make  
20 those adjustments?

21           MR. SMITH: Yes. I mean, there is so many  
22 possibilities. It could go final. It could be collection  
23 action and then a return filed, and then it could be a claim  
24 for refund. I mean, it just depends on when things are filed.  
25 Yes, when a tax return is filed, it will be reviewed by the

1     FTB.

2             As far as it relates to what collection action is  
3     taken, if any, in relation to this appeal, you know, only the  
4     future can tell what is going to happen, specifically.

5             JUDGE GEARY:   Okay.   Thank you.

6             And, Mr. Abram, I think what Mr. Smith is referring  
7     to is that when OTA issues an opinion in this case, after an  
8     appropriate period of time that's set forth in our rules,  
9     assuming there is no petition for rehearing, the liability  
10    goes final.   And when it goes final, the Franchise Tax Board  
11    is free to take collection and make collection efforts to  
12    collect the money that is owed.

13            Let me ask you, would two weeks be sufficient  
14    period of time for you to get your return filed?

15            MR. ABRAM:   Is that the minimum amount of time, or  
16    what are we --

17            JUDGE GEARY:   My next question to you would be how  
18    much time do you need to get this return filed?

19            MR. ABRAM:   Could I request on the safe end and say  
20    30 days?

21            JUDGE GEARY:   Yes, you may request it, and I would  
22    allow 30 days for you to get that document filed with  
23    Franchise Tax Board.   And what would happen is after today's  
24    hearing, I will issue a document that will confirm that the  
25    record was held open with Appellant, you, Mr. -- excuse me --

1 Abram.

2 MR. ABRAM: Abram.

3 JUDGE GEARY: Mr. Abram, being allowed 30 days to  
4 submit your return, and Franchise Tax Board being allowed  
5 30 days to submit any response to your return that it chooses  
6 to. Understood?

7 MR. ABRAM: Yes.

8 JUDGE GEARY: All right. In that case, this  
9 concludes the hearing in this matter. We are not closing the  
10 record. The record will be closed in something between 30 and  
11 60 days, depending upon when your document is submitted and  
12 when Franchise Tax Board submits its reply.

13 MR. ABRAM: I have a question, sir. So, do I -- so,  
14 file the taxes with the State and still send him the documents  
15 also?

16 JUDGE GEARY: Yes, but still send a copy also to us.  
17 The return itself won't be as useful to us as information from  
18 the Franchise Tax Board indicating that the return has been  
19 accepted, processed, and whether or not adjustments have been  
20 made.

21 Yes, send a copy to us. Send your original, however  
22 you file it, electronically. Just file it with Franchise Tax  
23 Board. As a matter of fact, file it directly with Mr. Smith,  
24 as we discussed at the prehearing conference.

25 If you need contact information, if you have



1 forgotten, I'll ask Mr. Smith to provide that information to  
2 you after we close the record and stop our stream in this  
3 hearing.

4 Understood?

5 MR. ABRAM: Yes.

6 JUDGE GEARY: Okay. Thank you.

7 Then that's what we will do. This hearing is  
8 concluded. This also concludes OTA's hearing for this  
9 afternoon. My understanding is we have hearings that will  
10 commence at 1:00 p.m. tomorrow afternoon on other cases. This  
11 is just for the benefit of those who may be watching our  
12 hearing on the livestream.

13 Thank you both for participating, and good luck in  
14 getting your documents filed, Mr. Abram.

15 MR. ABRAM: Thank you.

16 JUDGE GEARY: You're welcome.

17 We can stop the stream, and this concludes today's  
18 hearing.

19 (The proceedings concluded at 1:21 p.m.)

20 ---oOo---

1 REPORTER'S CERTIFICATE

2  
3 I, JODI TILL, certify that I was the official court  
4 reporter, pro tem, for the proceedings named herein, and that  
5 as such reporter, I reported in shorthand writing those  
6 proceedings to the best of my ability;

7 That I thereafter caused my shorthand writing to be  
8 reduced to typewriting, and the pages numbered 1 through 17,  
9 inclusive, constitute a complete, true, and correct transcript  
10 of the proceedings.

11 I further certify that I am not of counsel or attorney  
12 for any of the parties to said hearing, or in any way interested  
13 in the outcome of the said hearing.

14 IN WITNESS WHEREOF, I have subscribed this certificate  
15 at Sacramento, California, on this 23rd day of May, 2023.  
16  
17

18   
19 \_\_\_\_\_  
20 Certified Shorthand Reporter  
21 For The State of California  
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