

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
 D. HAMILTON and J. HAMILTON,) OTA No. 220811014
)
 Appellant.)
 _____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, June 6, 2023

Reported by:

MARCENA M. MUNGUIA,
CSR No. 10420

Job No. :
42313 OTA(B)

BEFORE THE OFFICE OF TAX APPEALS

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TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 1:00 p.m. and
concluding at 1:28 p.m., on Tuesday,
June 6, 2023, reported by MARCENA M. MUNGUIA,
CSR No. 10420, a Certified Shorthand Reporter
in and for the State of California.

1 APPEARANCES:

2
3 Panel Lead: ALJ EDDY LAM

4
5 Panel Members: ALJ ANDREW WONG
6 ALJ TERESA STANLEY

7
8 For the Appellant: AMY SANCHEZ

9
10 For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD:
11 TOPHER TUTTLE
12 JACLYN ZUMAETA
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 7)

(Respondent's Exhibits A-J were received at page 7)

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

P A G E

By Ms. Sanchez

8

By Mr. Tuttle

13

1 Cerritos, California, Tuesday, June 6, 2023

2 1:00 p.m.

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5 JUDGE LAM: We're opening the record in the appeal of
6 D. Hamilton and J. Hamilton. This matter is being held
7 before the Office of Tax Appeals. The case number is
8 220811014.

9 Today's date is Tuesday, June 6, 2023. The time
10 is approximately 1:00 p.m.

11 Today's hearing is being heard by a panel of
12 three administrative law judges. My name is Eddy Lam and
13 I will be the lead judge. With me are Judge Teresa
14 Stanley and Judge Andrew Wong.

15 All the three members of the judges will meet
16 after this hearing and produce a written opinion as equal
17 participants. Although the lead judge will conduct the
18 hearing, any judge on this panel may ask questions or
19 otherwise participate to ensure that we all have all the
20 information needed to decide this appeal.

21 Now, for party introductions, can we please have
22 Appellant start introducing yourself on the record.

23 MS. SANCHEZ: Amy Sanchez, representative.

24 JUDGE LAM: Thank you. And FTB?

25 MR. TUTTLE: Topher Tuttle, FTB.

1 MS. ZUMAETA: Jaclyn Zumaeta, FTB.

2 JUDGE LAM: Thank you. Can you please spell your
3 name again on record.

4 MS. ZUMAETA: Sure. It's Jaclyn, J-a-c-l-y-n, and
5 then Zumaeta is Z as in zebra, u-m as in Mary, a-e-t, as
6 in Tom, a.

7 JUDGE LAM: Thank you.

8 As discussed and agreed upon by the parties at
9 the prehearing conference on May 16, 2023 and notated in
10 my minutes and orders, the issue in this matter are:
11 Whether Appellant demonstrated reasonable cause to abate
12 the late payment penalty and, number two, whether
13 Appellant are entitled to interest abatements.

14 Appellant has identified Exhibits 1 through 2
15 and provided four pages of what seems to be the proof of
16 payment, which -- for which I have numbered -- renumbered
17 them all as Exhibit 3, and there are no other exhibits to
18 offer as evidence. Is that right, Appellant?

19 MS. SANCHEZ: That is correct.

20 JUDGE LAM: Thank you. And does FTB have any
21 objections to Exhibits 1 through 3?

22 MR. TUTTLE: No objections.

23 JUDGE LAM: Thank you.

24 Respondent Franchise Tax Board, FTB, on the
25 other hand, has identified Exhibits A through J and has

1 no other exhibits to offer as evidence.

2 Is that correct, FTB?

3 MR. TUTTLE: Correct.

4 JUDGE LAM: Thank you. Does Appellant have any
5 objections to them?

6 MS. SANCHEZ: No objections.

7 JUDGE LAM: Thank you. No objections were raised and
8 these exhibits are admitted into the record.

9 (Appellant's Exhibits 1 through 3 were
10 received in evidence by the Administrative Law
11 Judge.)

12 (Respondent's Exhibits A through J were
13 received in evidence by the Administrative Law
14 Judge.)

15 JUDGE LAM: As discussed and agreed upon by the
16 parties at the prehearing conference and noted -- and
17 also notated in my minutes and orders, there will not be
18 any witnesses testifying today.

19 Okay. Well, so we're going to go ahead and
20 conduct our hearing now and this oral hearing will begin.
21 Ms. Sanchez, you have -- you can begin your presentation
22 for about 15 minutes. As a reminder, Ms. Sanchez, you
23 will be offered a final statement after FTB's
24 presentation and closing remarks for about 10 minutes.

25 MS. SANCHEZ: Okay.

1 JUDGE LAM: Thank you. You can begin whenever you're
2 ready.

3 MS. SANCHEZ: Okay. So the Hamiltons, just to recap,
4 they got assessed the penalty and interest of 198,560,
5 which they paid on January 7th, '22. We are here to
6 appeal that penalty and request a refund, which we had
7 did with FTB but it was denied.

8 Just to give you a little background, on
9 December 8th, 2020, MNET Inc., which is an S. corp, which
10 the owners of that were David and Julia Hamilton, they
11 sold their stock in that corporation for 32 million. The
12 sale of the stock was structured as an F free
13 organization in which multiple holding companies were
14 created.

15 In doing that reorganization, there were
16 multiple CPAs and attorneys involved. Because of COVID,
17 in 2020 and 2021, it took several months for all parties
18 involved to coordinate and get all the filings and facts.

19 Also, MNET itself was licensed in multiple
20 states. We had to file 26 state tax returns every year,
21 including 2020.

22 So by the time we got all this information
23 gathered and accurate enough to do an estimate of the
24 taxes due, I had them pay a \$3,000,000 extension tax
25 payment on 5/15/21. With their extension, we had that

1 COVID extension that was due May 15th; however, this
2 payment did not clear the account that they paid it from.
3 It was brought to Ms. Hamilton's attention that it was an
4 investment account, which was through UBS Financial.

5 UBS Financial gave them this account number to
6 pay it from, which she did. It had an accounting number
7 and a routing number; however, it was a nonwithdrawal
8 account. At the time, she wasn't aware of that.

9 The FTB stated in their denial that we did not
10 exercise ordinary business care and prudence; however,
11 since it was a new account set up when the company sold,
12 that's where all the money went in when they sold the
13 stock. They set up these investment accounts and she
14 hadn't used that money for anything yet, as it was set
15 aside for the taxes. So we had no proof to show that she
16 had used that account for previous business transactions.

17 I had submitted to you guys the UBS Financial
18 statement showing that there were plenty of funds in the
19 account to cover the 3 million. It was just it wasn't
20 able to come out of that account at the time.

21 So FTB stated the taxpayers didn't provide any
22 evidence to establish this, for example, by using the
23 account to make other payment transactions. But as I
24 stated before, this account was opened just to pay the
25 tax liability, so there is no proof for us to give to

1 them to show that it was a business account.

2 As soon as Ms. Hamilton realized it, that it
3 didn't come out when she was contacting UBS bank multiple
4 times throughout like -- she contacted them on May 14th
5 to get the account. May 18th, she contacted them through
6 e-mail and said it hadn't come out yet. By the time they
7 got it squared away, she repaid the 3 million.
8 Unfortunately, it didn't post until June 3rd, so it was
9 late with the extension.

10 Then once I filed the return on September 30th,
11 it showed a balance due of 360,000, which we had
12 self-assessed a 5 percent underpayment penalty on the tax
13 that was due, which was 333,507.

14 The FTB states in their briefing on page four
15 that even if the failed payment of 3 million had been
16 successful, it would have still not been enough to pay
17 the tax due, so -- however, according to the Revenue and
18 Taxation Code of 19132 requires FTB to impose a penalty
19 for a late payment if you do not pay the total amount due
20 as shown on the return.

21 When the return was completed with a balance due
22 of 333,507, that is what the penalty was assessed on. So
23 the FTB's statement saying if the payment hadn't failed,
24 we would have still been charged 5 percent doesn't make
25 sense to me on that part. The Hamiltons --

1 JUDGE STANLEY: Ms. Sanchez, can you just slow down?
2 I know you're reading, so can you just slow down a little
3 bit so that --

4 MS. SANCHEZ: Sorry.

5 JUDGE STANLEY: -- she doesn't have to get all those
6 numbers you're rattling off so quickly?

7 MS. SANCHEZ: Sorry. Do you need me to repeat
8 anything? No?

9 THE REPORTER: No.

10 MS. SANCHEZ: Okay. I'm just a little nervous.
11 Sorry.

12 So the Hamiltons, looking at reasonable cause,
13 they also have a good standing with the FTB. They have
14 never filed returns late. They have never paid their
15 taxes late. I know that FTB said that we can't use that
16 for reasonable -- for penalty abatement, but I think that
17 should be considered, considering that they've paid a lot
18 of tax in the past and this has never been an issue. It
19 was just an unusual circumstance that because they sold
20 their S. -- excuse me -- their S. corp, it just was an
21 unusual year. We had a lot of things to figure out
22 before we could accurately file the returns.

23 So please consider all the facts here in our
24 appeal for penalty abatement, that the Hamiltons did
25 exercise good business practice and their intent to pay

1 the 3 million extension payment.

2 And also, please take a look at the FTB response
3 on page four in depth that even if the payment had been
4 good, there would still be a penalty of 5 percent, which
5 isn't correct according to their Tax Code 19132.

6 So in summary, we are requesting the penalty
7 refund of 183,342 for the 5 percent penalty assessed on
8 the full tax liability of the 3,333,507.

9 We agree with the penalty of 5 percent for four
10 months on the balance of 333,507.

11 The interest assessed, you know, again, that
12 would be adjusted if we can get credit for the 3 million
13 paid timely. So I don't know how that would be
14 calculated, but I think that's all that I have. It's
15 pretty straightforward.

16 The 3 million was paid late, but they do have
17 reasonable cause that -- you know, you have proof of
18 payment that they did attempt to pay it online on, you
19 know, May 17th and unfortunately, it was, you know, just
20 an error on Julia's part for, you know -- and the bank's
21 part for not getting -- they didn't know that it was a
22 financial institute that didn't have a -- their normal
23 checking account is from Farmers and Merchants. So this
24 account that was set up for the tax liability, she wasn't
25 aware that it wasn't a withdrawal account. She wasn't

1 familiar with that, so it was just an unusual
2 circumstance and she did have -- you know, she did
3 attempt to make the 3 million.

4 Like I said, we had a lot of facts to consider
5 when doing that and when we did a return, the 3 million
6 was a good estimate at that time to pay with the
7 extension, but it -- unfortunately, the circumstances, it
8 didn't come out of the bank.

9 So I think that's all that I have.

10 JUDGE LAM: Okay. Well, thank you, Appellant.

11 I'm going to move over to Respondent to see if
12 they're ready.

13 MR. TUTTLE: Yes.

14 JUDGE LAM: Okay. Respondent, you can begin.

15 MR. TUTTLE: Thank you.

16 Good afternoon. My name is Topher Tuttle and
17 I'm representing Respondent Franchise Tax Board today.
18 With me is Jaclyn Zumaeta, also with the Franchise Tax
19 Board.

20 At issue is whether Appellant has demonstrated
21 reasonable cause to abate the late payment penalty and
22 whether interest may be abated.

23 The facts in this case are straightforward.
24 Appellant's total tax due for the tax year 2020 was in
25 excess of 3.3 million dollars and the due date for

1 payment of tax was May 17th, 2021.

2 Although Appellants attempted to make a timely
3 payment of 3 million dollars on the due date, this
4 payment failed because Appellants attempted to draw from
5 an ineligible investment account.

6 Appellants sent another 3-million-dollar payment
7 on June 3rd, 2021 and then remitted the remaining tax due
8 on October 7th, 2021. Both of these successful payments
9 were from valid checking accounts.

10 A taxpayer has the burden of proof to show that
11 reasonable cause exists to support abatement of the late
12 payment penalty. To establish reasonable cause,
13 Appellants must demonstrate that the failure to timely
14 pay occurred despite the exercise of ordinary business
15 care and prudence. In this case, Appellants have not
16 provided any evidence to demonstrate that it was
17 reasonable for them to expect to make a payment from an
18 ineligible investment account.

19 A taxpayer exercising ordinary business care and
20 prudence would have selected a bank account from which
21 payment could be made. Furthermore, FTB's web page
22 requires taxpayers to enter the bank account number twice
23 and select whether it is a valid checking or savings
24 account from which payment may be drawn, and Appellants
25 have admitted that the investment account that they

1 initially used was not a valid checking or savings
2 account.

3 In addition, Appellants have not provided any
4 explanation as to why their final tax payment was not
5 submitted until October 7th, 2021.

6 Thus, Appellants have not met their burden of
7 proof to establish reasonable-cause abatement of the
8 late-payment penalty because they have not established
9 ordinary business care and prudence for either of these
10 late payments.

11 Finally, there is no reasonable-cause abatement
12 for interest and Appellants have not alleged or
13 established any of the statutory grounds for interest
14 abatement. As a result, the late-payment penalty and
15 interest may not be abated and FTB's denial of
16 Appellant's claim for refund should be sustained.

17 I'm happy to answer any questions the panel may
18 have. Thank you.

19 JUDGE LAM: Thank you, Respondent.

20 I'm going to turn over to my copanelists to see
21 if they have any questions. We'll start out with
22 Judge Wong.

23 JUDGE WONG: I have no questions. Thank you.

24 JUDGE LAM: Thank you.

25 Judge Stanley?

1 JUDGE STANLEY: I don't have any questions at this
2 time. Thank you.

3 JUDGE LAM: Thank you.

4 I do have a question for Appellants. Appellant,
5 you said that -- was it Mrs. Hamilton that set up the
6 bank account and she was basically setting up a bank
7 account for the purpose of paying taxes; is that right?

8 MS. SANCHEZ: That is correct.

9 JUDGE LAM: Okay. And at the time when she entered
10 in the bank account information, did she -- did she
11 exercise due diligence in making sure that these funds
12 were withdrawn from her account?

13 MS. SANCHEZ: Yeah. So I have an e-mail. I know
14 it's not submitted to you guys, but I have an e-mail
15 chain from UBS Financial and on May 14th, she sent them
16 an e-mail confirming the information and they replied
17 back from -- I have her name. It was Elizabeth Madden,
18 who's a senior client service rep, and they confirmed the
19 account information.

20 So I think what -- I don't know if it was like a
21 wire transfer routing number and account number instead
22 of an actual bank routing and account number, but that
23 was so -- so she did enter it on the FTB's website based
24 on the information she was given.

25 JUDGE LAM: And what about after she entered in the

1 information given? Did she check whether or not these
2 funds were, like, cleared from the bank account --

3 MS. SANCHEZ: Yeah.

4 JUDGE LAM: -- that 3 million dollars?

5 MS. SANCHEZ: Yeah. So on May 17th, I believe it
6 was, she contacted UBS Financial. I have that e-mail,
7 but I didn't -- I don't have it submitted to you guys,
8 but she said that she noticed that it hadn't come out
9 yet. So by the time UBS Financial did their research and
10 figured out that it wasn't the right account, that's why
11 it wasn't paid until June 3rd, but she was checking it
12 diligently to see if it was coming out and as soon as she
13 realized it didn't, she contacted them.

14 JUDGE LAM: Thank you.

15 MR. TUTTLE: If I may, I'll point out that these
16 facts are not in the record and we have not seen a copy
17 of any of this correspondence.

18 JUDGE LAM: That's correct. Thank you.

19 MS. ZUMAETA: Judge Lam, to the extent that the
20 Appellant has that information, we'd be happy to take a
21 look at it and consider our position in regards to the
22 case in light of those e-mails.

23 JUDGE LAM: Thank you, Respondent, for that.

24 Respondent -- Appellant, would you like to
25 submit those as evidence into the record?

1 MS. SANCHEZ: Yeah. If it's not too late, I can
2 submit this.

3 JUDGE LAM: Okay. And FTB, do you have any
4 objections to them?

5 MR. TUTTLE: No.

6 JUDGE LAM: Thank you.

7 Then let me take a five-minute recess with my
8 copanelists. Thank you.

9 (Recess)

10 JUDGE LAM: All right. We're back on the record.

11 So FTB, do you have any objections for admitting
12 this as evidence?

13 MR. TUTTLE: No. And if I may, we spoke with
14 taxpayer's representative during the recess and we
15 believe we've come to a stipulated agreement.

16 Perhaps we could postpone the remainder of the
17 hearing pending this agreement.

18 JUDGE LAM: Okay. Let me discuss this with my
19 panelists.

20 (Discussion off the record)

21 JUDGE LAM: Okay. The panelists have concluded that
22 we will continue this hearing for an unspecified date
23 until we've reached or until FTB provide us your
24 conclusion of the stipulation. Thank you so much.

25 MR. TUTTLE: Thank you.

1 MS. SANCHEZ: Thank you for your time.

2 MS. ZUMAETA: Thank you.

3 JUDGE LAM: So this will conclude the hearing for
4 today. Thank you so much for everyone to attend.

5 (Proceedings adjourned at 1:28 p.m.)
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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

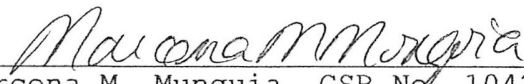
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of any
19 attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: June 6, 2023

23 
24 Marcena M. Munguia, CSR No. 10420
25 Certified Shorthand Reporter
For The State Of California

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