

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. RIDGE and S. RIDGE,) OTA NO. 220811237
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, May 18, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
S. RIDGE and S. RIDGE,) OTA NO. 220811237
APPELLANT.)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:00 p.m. and concluding at 1:16 p.m. on
Thursday, May 18, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Administrative Law Judge: ALJ OVSEP AKOPCHIKYAN

For the Appellant: S. RIDGE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOSH RICAFORT
ERIC YADAO

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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 6.)
(Department's Exhibits A-K were received at page 6.)
(Department's Exhibit L was received at page 16.)

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CLOSING STATEMENT

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California; Thursday, May 18, 2023
1:00 p.m.

JUDGE AKOPCHIKYAN: We are going on the record in the Appeal of S. Ridge and S. Ridge before the Office of Tax Appeals. The OTA Case Number is 220811237. Today is Thursday, May 18, 2023, and the time is approximately 1:00 p.m. We are holding this appeal electronically via Webex by the consent of all parties.

My name is Ovsep Akopchikyan, and I'm the Administrative Law Judge who will be deciding this appeal. I have reviewed each side's brief and exhibits and may ask questions after your presentations to make sure I have all the information I need to decide this appeal.

Now for introductions. Will the parties please identify yourself by stating your name for the record, beginning with Appellant.

MR. RIDGE: Steve Ridge.

JUDGE AKOPCHIKYAN: Thank you, Mr. Ridge.

MR. RICAFORT: Josh Ricafort on behalf of the Franchise Tax Board.

JUDGE AKOPCHIKYAN: Thank you, Mr. Ricafort.

MR. YADAO: Eric Yadao with the Franchise Tax Board.

JUDGE AKOPCHIKYAN: Thank you, Mr. Yadao.

1 As discussed and agreed upon by the parties at
2 the prehearing conference on April 26, 2023, and as noted
3 in my prehearing conference minutes and orders, the issue
4 in this appeal is whether there's reasonable cause to
5 abate the mandatory electronic payment, e-pay penalty, for
6 the 2021 tax year.

7 With respect to the evidentiary record, FTB
8 provided Exhibits A through K during the briefing process.
9 Appellant did not object to the admissibility of these
10 exhibits at the prehearing conference. Therefore, all of
11 the exhibits are entered into the record.

12 (Department's Exhibits A-K were received in
13 evidence by the Administrative Law Judge.)

14 Appellant provided three exhibits during the
15 briefing process, which I relabeled as Exhibits 1
16 through 3, during the prehearing conference. FTB did not
17 object to the admissibility of these exhibits at the
18 prehearing conference. Therefore, all of Appellant's
19 exhibits are entered into the record.

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

22 Lastly, as discussed, Mr. Ridge will be
23 testifying today at the hearing. As agreed, the hearing
24 will begin with Appellant's presentation, including
25 Mr. Ridge's testimony for a total of up to 30 minutes.

1 FTB will then have 10 minutes for its presentation, and
2 Appellants will have 5 minutes for rebuttal.

3 Any questions before I swear in Mr. Ridge for his
4 testimony? Hearing none, Mr. Ridge, will you please raise
5 your right hand.

6

7 S. RIDGE,

8 produced as a witness, and having been first duly sworn by
9 the Administrative Law Judge, was examined and testified
10 as follows:

11

12 JUDGE AKOPCHIKYAN: Thank you, Mr. Ridge. Please
13 proceed with your preparation when you are ready.

14

15 PRESENTATION

16 MR. RIDGE: Very good. Steve Ridge as we said,
17 and my goal will be to use a lot less than 30 minutes.

18 But first, I did want to thank everyone for your
19 time and really considering my request to waive all or a
20 portion of the Franchise Tax Board imposed \$950.40
21 e-payment penalty. I had filed the reasonable cause
22 individual fiduciary claim for a refund on October 25th,
23 of 2021. I do feel like the document that was written in
24 Respondent's opening brief, which was written by Josh
25 Ricafort, the Tax Counsel on November 16th, 2022, provides

1 a lot of good information, a lot of good data on the
2 situation.

3 In summary, I feel my failure to pay
4 electronically was for reasonable cause and not the result
5 of willful neglect. And therefore, I am asking for that
6 refund, if you will, of the e-payment penalty. I would
7 like to give a summary of the situation.

8 In 2021 my company had made two large payments
9 for a multiyear work effort that I was involved in. The
10 payments were made in August of '21 and then again in
11 September of '21. Those two payments totaled over
12 \$740,000. And I had some additional earnings outside of
13 my work environment that created a challenge on my tax
14 side.

15 But I had realized at one point that I felt my
16 company may not have been holding enough for my tax
17 liability, and I contacted my accountant. It just so
18 happens to be he was also my 8th grade math teacher. But
19 from that point, I worked with him to really identify the
20 potential tax and arrange, you know, what prepayment I
21 would, in fact, need to make both to the Franchise Tax
22 Board as well as to the IRS to fulfill my tax obligation.

23 My accountant ran the numbers and provided me
24 with payment stubs for both the Franchise Tax Board and
25 the IRS. When I received them, I was surprised at the

1 amount. It was \$95,000 for the Franchise Tax Board in
2 particular. But I was leaving for a business trip the
3 next day, and I didn't want to delay making the payment.
4 So I did write the checks to both the FTB and the IRS that
5 evening. I mailed them the next day on my way to the
6 airport.

7 So I was unaware that my tax situation required
8 me to make the FTB payment electronically. I do want to
9 acknowledge that in 2020 I incurred a \$50 penalty as a
10 result of making the FTB prepayment via check in June of
11 2020. I simple didn't understand that fact that a penalty
12 was incurred for making the payment via check.

13 In the discussions with my accountant at the
14 time, I was under the impression it was due to the timing
15 of the issue of the payment, and the fact that it was \$50.
16 Frankly, we didn't spend a lot of focus on it. I had some
17 other significant payments to make that year when I was
18 working with my accountant. So we, frankly, went over
19 that pretty quickly. But even beyond the fact that was
20 certainly not a willful intent, and I didn't write the
21 check with any understanding that there was a penalty to
22 be associated with it.

23 I would further contend that the e-payment
24 penalty assessed by FTB should be abated because although
25 I made that estimated payment of \$95,000 via check, none

1 of that money was actually applied to my actual tax
2 liability. And that's due to the fact that I received a
3 refund that year in the tune of \$143,164 in the 2021 tax
4 year.

5 I did exercise ordinary business care and prudence
6 by contacting my accountant to make sure I had made the
7 appropriate payments based upon my income, and that I made
8 my tax payments in advance. Therefore, I hope you would
9 agree that my failure was not reasonable cause and not the
10 result of willful neglect and are willing to refund in
11 part or in whole, frankly, the \$950.40 e-payment.

12 Again, I just really emphasize the fact that had
13 I not made the payment, I would not have had any penalties
14 because I still would have had a refund in excess of
15 \$45,000. I just simply overpaid by making that payment.
16 So with that, I think that concludes.

17 If there's any questions, I'm happy to answer
18 them. Or if you have the process and want to table that
19 for now, I'm good with that also.

20 JUDGE AKOPCHIKYAN: Thank you, Mr. Ridge, for
21 your presentation and your testimony.

22 Does Mr. Ricafort of the Franchise Tax Board have
23 any questions for Mr. Ridge?

24 MR. RICAFORT: Not at this time, Judge.

25 JUDGE AKOPCHIKYAN: Thank you.

Okay. Well, it is now the Franchise Tax Board's turn to make their presentation.

Mr. Ricafort, you have 10 minutes. Please proceed when you are ready.

MR. RICAFORT: Thank you, Judge.

PRESENTATION

MR. RICAFORT: My name is Josh Ricafort, and along with Eric Yadao we represent the Respondent, Franchise Tax Board.

The issue on appeal here is whether there is reasonable cause to abate the mandatory electronic payment penalty. Revenue & Taxation Code Section 19011.5 requires individual taxpayers to remit payments to FTB electronically when a taxpayer's total tax liability exceeds \$80,000. A penalty of 1 percent of that amount paid is imposed for failure to pay electronically, unless the failure was due to reasonable cause and not willful neglect.

In this appeal Appellant's total tax liability for the tax year 2014 has shown in Exhibit A, line 64, was \$147,113, exceeding the \$80,000 threshold set forth by law requiring to make all future payments to FTB electronically. Accordingly, FTB issued a notice advising Appellant's that based on their liability they were

1 required to make all future payments electronically.

2 On September 10, 2021, FTB received from
3 Appellant's an estimate payment of \$95,000 for the 2021
4 tax year by check. As a result of Appellant's failure to
5 make their estimate payment electronically, FTB imposed an
6 electronic payment penalty of \$950.47, 1 percent of the
7 payment amount Appellants made by check.

8 Appellants assert that the electronic payment
9 penalty should be abated because the payment they made by
10 check which resulted in the electronic payment penalty
11 being imposed on them was refunded as an overpayment of
12 tax. Under the law however, Appellants are required to
13 make all payments electronically regardless of whether a
14 payment later amounts to an overpayment.

15 Accordingly, Appellant's have not established
16 reasonable cause and are therefore, not entitled to
17 abatement of the mandatory e-pay penalties. Although
18 Appellant argues that he was not aware of the electronic
19 filing payment penalty, the notice issued by FTB on
20 June in 2020 indicates that the penalty issued to the
21 taxpayer for due to payments being made by check and not
22 electronically.

23 Even if Appellants could establish however, that
24 they were unaware of their electronic payment requirement,
25 it is a well settled law that ignorance of the law is not

1 reasonable cause for failure to comply with statutory
2 requirements. As established in the precedential Office
3 of Tax Appeal opinion in the Appeal of Porreca, a taxpayer
4 does not exercise ordinary business care and prudence when
5 he fails to acquaint himself with the requirements of
6 California tax law.

7 Thank you. And at this time, I'm happy to answer
8 any questions you may have.

9 JUDGE AKOPCHIKYAN: Thank you.

10 I don't have questions for either party. So I'm
11 going to go ahead and turn this over to Mr. Ridge for his
12 final statements.

13 Mr. Ridge, you have five minutes. Please proceed
14 when you are ready.

15
16 CLOSING STATEMENT

17 MR. RIDGE: So I don't really have anything
18 additionally to add. I absolutely would tell you that I
19 was not aware of it when I wrote the check. I understand
20 I was previously paid a penalty. It was \$50. And in
21 working with my accountant at the time, I remember the
22 conversation with him, and it wasn't clear that that's why
23 I was imposed a fee. And given the amount that was due
24 that year it was a small relative number.

25 I was very surprised. I didn't know I was -- I

1 had made a mistake in this instance until I received that
2 notice, which was the following year. I forget the exact
3 date, but it was January-ish. And when I received it, I
4 was thoroughly confused what that amount was -- why that
5 amount was billed to me in the penalty. And it took me
6 quite a while to get it -- to figure out on exactly what
7 it was.

8 I had to call. I actually went out to the
9 Franchise Tax Board and met with them in Long Beach and
10 worked through it to identify and understand this. So it
11 absolutely was a surprise to me. And obviously, I know it
12 well now and had since made all payments electronically.
13 So I simply ask that it be considered in -- you know,
14 certainly \$950 penalty or payment that I didn't have to
15 make to me does feel very excessive.

16 JUDGE AKOPCHIKYAN: Thank you, Mr. Ridge.

17 MR. YADAO: Judge Akopchikyan, if I can add
18 something to that? I don't want to deprive Appellant of
19 his last word, so please allow him time to comment on
20 this.

21
22 CLOSING STATEMENT

23 MR. YADAO: But both of our bill notices, the
24 first penalty notice, I believe you had mentioned Exhibits
25 A through K were entered into the record, but we had

1 submitted additional Exhibit L after the prehearing
2 conference. And that is actually a copy of the first bill
3 we issued, the \$50 e-pay penalty bill. And that bill
4 clearly states we imposed a penalty for the mandatory
5 e-pay penalty, as does our second bill. So it seems to be
6 just a matter of not reading the correspondences we sent.
7 And that's all in --

8 JUDGE AKOPCHIKYAN: Thank you, Mr. Yadao. Give
9 me one moment while I look at any subsequent submission.

10 MR. YADAO: I believe that was -- we transmitted
11 that on April 26th.

12 JUDGE AKOPCHIKYAN: Okay. I see that here.

13 MR. YADAO: Okay.

14 JUDGE AKOPCHIKYAN: Well, I'm going to ask
15 Mr. Ridge if there are any objection to submitting that
16 exhibit into the record.

17 MR. RIDGE: I don't have any.

18 JUDGE AKOPCHIKYAN: Thank you. Well, I'll go
19 ahead and enter Exhibit L, which would be the notice sent
20 on July 14th, 2020.

21 Right, Mr. Yadao? That's the one you're
22 referring to?

23 MR. YADAO: That's correct. Thank you.

24 JUDGE AKOPCHIKYAN: Okay. So I entered that into
25 the record, and I appreciate your comment regarding that

1 notice.

2 (Department's Exhibits L was received in
3 evidence by the Administrative Law Judge.)

4 I'll give Mr. Ridge an opportunity to respond to
5 Mr. Yadao's comment. And if there's no comment then I'm
6 ready to conclude the hearing.

7 MR. RIDGE: I don't have any further comment.

8 JUDGE AKOPCHIKYAN: Thank you. Does either party
9 have any questions before we conclude the hearing?

10 MR. RICAFORT: No, Judge.

11 JUDGE AKOPCHIKYAN: Thank you.

12 We are ready to conclude this hearing. This case
13 is submitted on May 18th, 2023, and the record is now
14 closed.

15 I want to thank the parties for their
16 presentation today, and Mr. Ridge for his testimony. We
17 will decide this case based on the arguments and evidence
18 presented to the Office of Tax Appeals. And I will issue
19 my decision within 100 days of today.

20 We will take a brief recess before the next
21 hearing, which is scheduled to begin at approximately 2:00
22 p.m. Thank you.

23 (Proceedings adjourned at 1:16 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 3rd day
of June, 2023.

ERNALYN M. ALONZO
HEARING REPORTER