

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. MAGANA,) OTA NO. 220811109
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, June 16, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
M. MAGANA,) OTA NO. 220811109
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:46 a.m. on
Friday, June 16, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Administrative Law Judge: JUDGE KEITH LONG

For the Appellant: M. MAGANA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DI NGUYEN
BRADLEY COUTINHO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-4 were received at page 8.)
(Department's Exhibits A-I were received at page 8.)

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

	<u>P A G E</u>
By Mr. Magana	8
By Mr. Nguyen	12

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Mr. Magana	14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Friday, June 16, 2023

9:30 a.m.

JUDGE LONG: Let's go on the record.

We are opening the record in the Appeal of M. Magana. The OTA Case Number is 2119246 [sic]. This matter is being held before the Office of Tax Appeals. Today's date is June 16th, 2023. And the time is approximately 9:30 a.m. This hearing is being held electronically with the agreement of both the taxpayer and the agency's representative.

Today's hearing is being heard and decided by a single Administrative Law Judge under the Office of Tax Appeals Small Case Program. The Office of Tax Appeals is an independent and neutral agency. It is not a tax court. My name is Keith Long, and I will be conducting the hearing and deciding the appeal.

Also present is a stenographer, Ms. Alonzo, who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speaks one at a time and does not speak over each other. Also, speak clearly and loudly. When needed, Ms. Alonzo will produce the official hearing transcript which will be available on the Office of Tax Appeals website.

I'd like to offer a few reminders to help the

1 process run as smoothly as possible. First, please ensure
2 your microphone is not muted when you speak. Otherwise
3 your voice will not be picked up on the live stream even
4 though we can hear you in the room. As a reminder these
5 proceedings are being broadcast live and anything said
6 today and any information shared today is publicly
7 viewable on the live stream. Please do not use the chat
8 function within Webex.

9 For the record parties, will the parties please
10 state their name and who they represent, starting with the
11 representatives for FTB.

12 MR. NGUYEN: My name is Di Nguyen. I'm
13 representing the FTB.

14 MR. COUTINHO: And I'm Brad Coutinho. Also
15 representing the Franchise Tax Board. Thank you.

16 JUDGE LONG: Thank you.

17 And for Appellant, Mr. Magana?

18 MR. MAGANA: Is it me? Moises Magana.

19 JUDGE LONG: Thank you.

20 Today Mr. Magana will be testifying as a witness.

21 Is that correct; Mr. Magana?

22 MR. MAGANA: Yes.

23 JUDGE LONG: Okay. Before we go forward, please
24 raise your right hand.

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

M. MAGANA,

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

JUDGE LONG: Okay. Thank you.

The exhibits for this appeal consist of FTB Exhibits A through I. At the prehearing conference and in our May 25th, 2023, minutes and orders, the Office of Tax Appeals acknowledged FTB Exhibits A through H. At the prehearing conference, Appellant did not have any objection to these exhibits. Thereafter, FTB submitted Exhibit I consisting of a federal tax transcript for the tax year 2020.

Mr. Magana, do you have any objections to this exhibit?

MR. MAGANA: No.

JUDGE LONG: Thank you.

Additionally, at the prehearing conference, Appellant's Exhibits 1 through 4 were identified. FTB did not have any objection to Appellant's exhibits at that time.

FTB, is this still correct?

MR. NGUYEN: That's correct.

JUDGE LONG: Thank you.

Accordingly, FTB's Exhibits A-I and Appellant's exhibits 1-4 are admitted without objection.

(Appellant's Exhibits 1-4 were received
in evidence by the Administrative Law Judge.)

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

JUDGE LONG: The issue in this appeal is whether Appellant has established reasonable cause for the late payment of tax, such that's the late-payment penalty should be abated.

Mr. Magana, you requested 15 minutes to make your presentation, and you may begin when you are ready.

PRESENTATION

MR. MAGANA: Okay. So I am making this request. I made this request a long time ago. Basically to summarize, 2022 was a tough year for me. My sister got diagnosed with cancer. My mother -- as my sister was going through treatment, my mother then got diagnosed with cancer. My sister was going through chemo. She was making that okay. Then we got surprised with my mother getting diagnosed, and then she passed three months after. It was very sudden.

So there was just a lot of personal time commitments and challenges and me just getting required

1 deadlines in order. And obviously, paid -- got everything
2 together, paid when I could, but obviously it was late
3 based on the respective time lines. I, you know, have
4 never requested any kind of abatement of fees or penalties
5 or whatever the case may be.

6 You know, I've always been a timely taxpayer, if
7 you will, and I submitted the request in to the IRS and in
8 to the state. Luckily, the IRS accepted and waived some
9 of the fees or penalties, and I was hoping the State would
10 as well, but here we are today. So it's a request as, you
11 know, extraordinary situation where, you know, I'm just
12 asking for it to be waived.

13 JUDGE LONG: Okay. Thank you.

14 Sorry. I hit the mute button too many times
15 there.

16 Okay. Before I ask my questions, since you
17 testified as a witness, I forgot to ask. Does FTB have
18 any questions for Mr. Magana before we go forward?

19 MR. NGUYEN: No, Your Honor.

20 JUDGE LONG: Thank you.

21 Mr. Magana, I understand from -- from your
22 appeals request that you were flying back and forth to
23 take care of your relatives; is that correct?

24 MR. MAGANA: That's right.

25 JUDGE LONG: And you live where?

1 MR. MAGANA: L.A. and my mother and sister in
2 San Francisco.

3 JUDGE LONG: Okay. And about how frequently were
4 you traveling back and forth?

5 MR. MAGANA: At one point every four days,
6 five days.

7 JUDGE LONG: Wow. Okay. And do you know -- I'm
8 sorry. Can you tell me what months that were? What time
9 period in 2022 was that?

10 MR. MAGANA: So my sister -- let's see. My
11 sister got diagnosed March of 2020, and she went through
12 chemo basically through the end of 2020 but into 2021. My
13 mother got diagnosed July of 2020 and passed at the end of
14 October 2020.

15 JUDGE LONG: Okay. And when you were in San
16 Francisco, were you providing full time care for them
17 or --

18 MR. MAGANA: Yeah. We tried to do like not
19 hospice, but we tried to do like in-nurse care. Then we
20 tried to do hospice care. It wasn't working out. When
21 you have limited time with your loved ones, then you --
22 excuse me. You make the time to be there. So.

23 JUDGE LONG: I understand, and I'm sorry for
24 everything that you went through. I know this is hard to
25 talk about, but I just want to make sure I understand

1 everything that's going on. Okay?

2 MR. MAGANA: I understand.

3 JUDGE LONG: Okay. And so do you know -- so you
4 were -- just so I'm clear, you were flying back and forth
5 from Los Angeles to San Francisco roughly every week from
6 March 2020 through 2021?

7 MR. MAGANA: No. The traveling didn't spike
8 until like June where I had to go constantly. But prior
9 to that, it was like every two weeks, not as frequent. It
10 wasn't until they were both in their condition, where I
11 felt I had to be there because I didn't know how much time
12 I had.

13 And, you know, my mother had to go to the ER a
14 couple of times, was in and out of the hospital. It was
15 during the year of Covid. So, you know, not many people
16 could go into the hospital. If one person went in, then
17 that was it for the day. So there was a lot of logistical
18 challenges during that year that made it very, very tough.

19 JUDGE LONG: Okay. Thank you. I don't have any
20 additional questions at this time. So I'm going to move
21 forward with FTB's presentation.

22 Franchise Tax Board, you can -- you have
23 15 minutes, and you may begin when you are ready.

24 MR. NGUYEN: Thank you.

25 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2
3
4
5
6
7

8
9
10
11
12
13
14
15
16

17
18
19
20
21
22
23
24
25

1 simply caused the taxpayer to sacrifice one aspect of his
2 affairs to pursue another.

3 Again, FTB is very sympathetic to Appellant's
4 circumstances, however, the record shows that illness did
5 not prevent Appellant from complying with the law.
6 Appellant's mother had passed away about seven months
7 prior to FTB's filing and payment deadline. Furthermore,
8 the records show that Appellant reported W-2 and rental
9 and royalties' income in tax year 2020. As Appellant was
10 able to work, Appellant should have also been able to make
11 arrangements with compliance to the law.

12 As previously stated, under the Appeal of Triple
13 Crown Baseball, illness does not constitute reasonable
14 cause where the taxpayer merely sacrifices one aspect of
15 his affairs for another. Here, the fact that Appellant
16 was able to work suggest that the Appellant sacrificed
17 complying with the law for his other affairs.
18 Consequently, it's our position that there are no grounds
19 for abatement of the late-payment penalty.

20 Thank you. And I'll gladly address any questions
21 or concerns that you may have.

22 JUDGE LONG: Thank you.

23 I do not have any questions for Franchise Tax
24 Board. So we will move straight to Mr. Magana's final
25 statement.

1 Mr. Magana, you have five minutes to let us know
2 anything else you would like us to know before we close
3 this appeal, and you may begin when you're ready.

4
5 CLOSING STATEMENT

6 MR. MAGANA: Sure. So I mean it wasn't when
7 somebody passes the time doesn't end there. There are
8 other responsibilities and arrangements that need to
9 happen. Not only did my sister continue to have chemo
10 throughout the end of 2020 into 2021, but I also had to
11 take care of all of my mother's information and order, and
12 filing doesn't take, you know, five seconds. It took me
13 awhile to get everything together and file.

14 So even though it was extended to May, and I
15 filed in -- whenever you say I filed -- October. You
16 know, it wasn't that -- it wasn't that I was not able to
17 handle both or juggle both in terms of getting thing in
18 order. I mean, whatever you stated in terms of whatever
19 the rules or requirements are or comparative judgement,
20 you know. It is what it is. I just had to ask and see if
21 it would be a consideration. And if this is all a big-ass
22 waste of time and I get nothing, then -- then so be it.

23 JUDGE LONG: Okay. Thank you.

24 While we -- I don't have any further questions,
25 and so I think we're ready to conclude this hearing. This

1 case is submitted on Friday, June 16th, 2023. The record
2 is now closed.

3 I want to thank everyone for coming today. I
4 will consider everything that was said today and send you
5 a written opinion of OTA's decision within 100 days from
6 today.

7 Today's hearing in the Appeal of M. Magana is now
8 adjourned.

9 OTA's next hearing will resume at 10:30. Thank
10 you all, and have a good rest of your day.

11 (Proceedings adjourned at 9:46 a.m.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 18th day
of July, 2023.

ERNALYN M. ALONZO
HEARING REPORTER