

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
L. RIOS and L. RIOS,) OTA NO. 220911299
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, July 20, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:37 a.m. on
Thursday, July 20, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Administrative Law Judge: JUDGE OVSEP AKOPCHIKYAN

For the Appellant: L. RIOS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRIAN WERKING

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 & 2 were received at page 6.)

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

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California; Thursday, July 20, 2023

9:19 a.m.

JUDGE AKOPCHIKYAN: We are going on the record in the Appeal of L. Rios and L. G. Rios before the Office of Tax Appeals. The OTA Case Number is 220911299 today is Thursday, July 20, 2023, and the time is approximately 9:30 a.m. We're 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 decide this appeal. I have reviewed each side's briefs and exhibits and may ask questions after your presentation to make sure I have all the information I need to decide this appeal.

Now for introductions, will the parties please identify themselves by stating their name for the record, beginning with the Appellant.

MR. RIOS: Yes. Good morning. My name is Louie Rios Jr.

JUDGE AKOPCHIKYAN: Thank you, Mr. Rios.

MR. WERKING: Brian Werking, representing Franchise Tax Board Respondent.

JUDGE AKOPCHIKYAN: Thank you, Mr. Werking.

As discussed, and agreed upon by the parties at the prehearing conference and as noted in my prehearing

1 conference minutes and orders, the issue in this appeal is
2 whether Appellants' claim for refund for the 2017 tax year
3 is barred by the statute of limitations.

4 With respect to the evidentiary record, FTB
5 submitted Exhibits A through D during the briefing
6 process. Appellant did not object to the admissibility of
7 these exhibits. Therefore, all of these exhibits are
8 entered into the record.

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

11 JUDGE AKOPCHIKYAN: Appellant provided two
12 exhibits during the briefing process, which I relabeled as
13 Exhibits 1 and 2 during the prehearing conference. FTB
14 did not object to the admissibility of these exhibits and
15 therefore, all of these exhibits are entered into the
16 record.

17 (Appellant's Exhibits 1 & 2 were received
18 in evidence by the Administrative Law Judge.)

19 JUDGE AKOPCHIKYAN: Lastly, as discussed,
20 Mr. Rios will be testifying at this hearing.

21 Is that correct, Mr. Rios? Do you still plan on
22 testifying?

23 MR. RIOS: Yes. That is correct. Thank you.

24 JUDGE AKOPCHIKYAN: Thank you.

25 With that, our hearing will begin with

1 Appellant's presentation, including Mr. Rios' testimony
2 for a total of 20 minutes. FTB will then have 10 minutes
3 for its presentation. And Mr. Rios will have 5 minutes
4 for rebuttal and closing statement.

5 Does anyone have any questions before I swear in
6 Mr. Rios for his testimony?

7 Hearing none --

8 MR. WERKING: No questions.

9 JUDGE AKOPCHIKYAN: Thank you.

10 Mr. Rios, will you please raise your right hand.

11

12 L. RIOS,

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

16

17 JUDGE AKOPCHIKYAN: Thank you. Mr. Rios, please
18 proceed with your presentation when you are ready.

19 MR. RIOS: Okay. Very good.

20

21 PRESENTATION

22 MR. RIOS: Good morning to everybody.

23 My name is Louie Rios Jr. I am representing
24 myself in regards to this, I guess, proposal to receive
25 the overpayment of taxes that I paid for the 2017 year,

1 approximately \$4,238.

2 Per my statement that I provided on 8/29/2022 as
3 I appealed, all I can say is in my profession I am a
4 post-acute hospital administrator. And because of the
5 world pandemic, I was affected personally pretty much for
6 not just a little while but for about three years where I
7 was working 18 to 20 hours a day trying to keep patients
8 safe, staff safe. And my whole personal life and dealings
9 were put on hold to be able to combat this pandemic. And
10 unfortunately it put some of my personal things that I
11 usually take care of in a timely matter within the
12 perimeters allowed and get those things done.

13 So it's because of what occurred worldwide and
14 nationwide that it made me late. If there was no
15 pandemic, we wouldn't be wasting -- I wouldn't be wasting
16 your time. I would understand the laws of the land and
17 the deadlines that had to be made. But because of the
18 pandemic, it pulled on me in a way that I'd never
19 experienced in my life. But I am happy to say that we
20 were able to protect all of our patients during the --
21 pretty much the last three years and staff. We didn't
22 lose one patient due to the Covid-19 because of all the
23 things we were working hard to do myself and others in the
24 hospital.

25 So that's pretty straightforward. I mean, I'm

1 just requesting that the overpayment that was paid that
2 year of \$4,238 be dispersed to myself and my wife. And
3 it's not really a big long explanation that I can provide
4 besides just due to my profession and the demands of the
5 pandemic that this filing didn't get filed per the regular
6 standard timetable.

7 JUDGE AKOPCHIKYAN: Thank you, Mr. Rios for your
8 presentation and your testimony.

9 Does the Franchise Tax Board have any questions
10 for Mr. Rios?

11 MR. WERKING: No questions.

12 JUDGE AKOPCHIKYAN: Thank you, Mr. Werking. It's
13 now your turn to make your presentation. Please proceed
14 when you are ready.

15

16 PRESENTATION

17 MR. WERKING: Thank you.

18 The issue in this appeal is whether Appellants
19 filed their 2017 claim for refund within an open statute
20 of limitations, such that Respondent is authorized to
21 credit or refund to Appellants their 2017 overpayment.
22 Unfortunately, their 2017 claim for refund was filed on
23 May 2nd, 2022, 17 days after the expiration of the
24 four-year statute of limitations and three years and 17
25 days after the expiration of the one-year statute of

1 limitation. And Respondent is prohibited by law from
2 crediting or refunding to Appellants their 2017
3 overpayment.

4 The general statute of limitations prohibits the
5 Franchise Tax Board from crediting or refunding to a
6 taxpayer their overpayment for the taxable year, if the
7 taxpayer's claim for refund is not filed within four years
8 from the original due date of the tax return, or if the
9 claim for refund is not filed within one year from the
10 effective date of the overpayment. Payments from
11 withholding are effective as of the original due date of
12 the return.

13 The statute of limitations is mandatory. The law
14 does not provide for the waiver of the statutory period
15 based on reasonable cause or extenuating circumstances.
16 Unfortunately, Appellants filed their 2017 claim for
17 refund after the expiration of the statute of limitations.
18 And as such, Respondent is prohibited from crediting a
19 refund to Appellants' their 2017 overpayment.

20 Thank you, and I'd be happy to answer any
21 questions the OTA may have.

22 JUDGE AKOPCHIKYAN: Thank you, Mr. Werking.

23 I don't have any questions for either party.

24 So, Mr. Rios, it is now your turn to make your
25 final statement.

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10 I'm just asking, I guess, for an exception. I
11 mean, that's all I can ask for. I mean, if it's 17 days,
12 that's still after the deadline. However, it wasn't
13 because I just procrastinated. There was a substantial
14 reason that my -- again, my whole life seven days a week
15 was turned upside down and focusing on fighting the
16 pandemic and protecting patients and staff to save a life.
17 So I can plead with this group to make that exception,
18 that's my request.

20 I think that concludes the hearing.

23 MR. WERKING: No questions.

24 JUDGE AKOPCHIKYAN: Okay. Well, we are ready to
25 conclude this hearing. This case is submitted on

1 July 20th, 2023, and the record is now closed.

2 I want to thank the parties for their
3 presentation today.

4 And thank you, Mr. Rios, for your testimony.

5 I will decide the case based on the arguments and
6 evidence presented to the Office of Tax Appeals and issue
7 our written decision within 100 days from today.

8 We will take a brief recess before the next
9 hearing, which is scheduled to begin at 10:15 a.m.

10 Thank you.

11 (Proceedings adjourned at 9:37 a.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 1st day
of August, 2023.

ERNALYN M. ALONZO
HEARING REPORTER