

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
K. KELLEY, ) OTA NO. 230112270  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, July 20, 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, )  
K. KELLEY, ) OTA NO. 230112270  
APPELLANT. )  
\_\_\_\_\_ )

Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:00 p.m. and concluding at 1:29 p.m. on  
Thursday, July 20, 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 EDDY LAM

For the Appellant: K. KELLEY

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
TOPHER TUTTLE

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

PRESENTATION

PAGE

By Mr. Kelley	9, 15
By Mr. Tuttle	10

CLOSING STATEMENT

PAGE

By Mr. Kelley	19
By Mr. Tuttle	18

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; Thursday, July 20, 2023

1:00 p.m.

JUDGE LAM: We are opening up the record for the Appeal of K. Kelley. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 230112270. Today's date is Thursday, July 20th, 2023, and the time is approximately 1:00 p.m.

Appellant elected to have this appeal determined pursuant to the procedures of the small case program. Those procedures require the assignment of a single Administrative Law Judge. My name is Eddie Lam, and I will be the Administrative Law Judge for the purposes of this appeal.

Now for introductions. Can we please have Appellant's start introducing yourself on the record.

Mr. Kelley, can you please introduce yourself?

MR. KELLEY: Yes. Keith Kelley.

JUDGE LAM: Thank you.

MR. KELLEY: I'm in Las Vegas, Nevada.

JUDGE LAM: Thank you.

And now I want to move to Respondent, if can you please introduce yourself on the record.

MR. TUTTLE: My name is Topher Tuttle for Franchise Tax Board.

1 JUDGE LAM: Thank you, Mr. Tuttle.

2 As discussed, and agreed upon by the parties at  
3 our prehearing conference on June 22nd, 2023, and notated  
4 in my minutes and orders, the issue in this matter is  
5 whether Appellant has demonstrated error in FTB's proposed  
6 assessment for the 2017 tax year, which is based on a  
7 federal determination.

8 Are there any objections to the issue,  
9 Respondent, Mr. Tuttle?

10 MR. TUTTLE: No.

11 JUDGE LAM: Thank you.

12 MR. TUTTLE: No, no objections.

13 JUDGE LAM: Thank you.

14 And are there any objections to this issue  
15 Appellant, Mr. Kelley?

16 MR. KELLEY: Well, throughout the proceedings I'm  
17 definitely going to object to the current balance of the  
18 \$2,153.

19 JUDGE LAM: That's fine.

20 MR. KELLEY: So throughout the proceeding, so  
21 yeah, there will be some objections. Currently, no.

22 JUDGE LAM: That's fine. Thank you.

23 And then Appellant has identified Exhibits 1 and  
24 2 with the opening brief and has no other exhibits to  
25 offer as evidence. FTB has no objections to the admission

1 of these exhibits at our prehearing conference.  
2 Respondent has identified -- on the other hand, Respondent  
3 has identified Exhibits A through K and has no other  
4 exhibits to offer as evidence.

5 Does Appellant have any objections to  
6 Respondent's Exhibits A through K, Mr. Kelley?

7 MR. KELLEY: I don't have those actually in front  
8 of me. So if there's a dollar amount, throughout this  
9 proceeding I'm definitely going to object to the dollar  
10 amounts.

11 JUDGE LAM: That's fine. I -- I just wanted to  
12 let you know about the Exhibits A through K that were sent  
13 to you with -- along with the minutes and orders that you  
14 received.

15 MR. KELLEY: Okay. Yeah. I don't have those in  
16 front of -- I have all my tax documents from 2017. I  
17 don't have the actual -- do you have those in front of you  
18 there --

19 JUDGE LAM: Yes, I do.

20 MR. KELLEY: -- actually. Okay.

21 JUDGE LAM: And what about you, Mr. Kelley? I  
22 just wanted to make sure you receive -- you did indeed  
23 receive Exhibits A through K, and do you have any  
24 objections to them?

25 MR. KELLEY: I'm going to say yes.

1 JUDGE LAM: Okay. And which one are there?

2 MR. KELLEY: Well, I don't have them actually in  
3 front of me. Is there -- is there a way you can pull them  
4 up on your end so I can take a look at those?

5 JUDGE LAM: That was sent to you with our  
6 prehearing conferences. So I will, if -- I will give  
7 you -- it seems like you haven't reviewed them before this  
8 hearing and after our prehearing conference. I will open  
9 this record up for an opportunity for you to object. Does  
10 that sound good for you, Mr. Kelley?

11 MR. KELLEY: Yes. I appreciate that.

12 JUDGE LAM: Okay. All right. And I'll notate  
13 that in my notes, and I will keep this -- the record open.  
14 Okay.

15 MR. KELLEY: And then a really quick question for  
16 you. The A through K, which we're going to go over each  
17 of those, okay, do each of those have a specific dollar  
18 amount?

19 JUDGE LAM: Mr. Kelley, each of them have  
20 numerical numbers, which I would have expected you to have  
21 already reviewed them. But I will open the record and --  
22 after this hearing for an opportunity for you to respond  
23 to the objections. Okay?

24 MR. KELLEY: Okay.

25 JUDGE LAM: Thank you, Mr. Kelley.



1           MR. KELLEY: Yeah. Okay.

2           JUDGE LAM: All right. Moving forward, let me  
3 see. Give me one second here. Sorry.

4           I think we're ready to conduct the hearing. As  
5 agreed from our prehearing conference, Mr. Kelley, you can  
6 begin your presentation for about five minutes. As a  
7 reminder, Mr. Kelley, you will be offered a final  
8 statement after FTB's closing remarks for about five  
9 minutes.

10          So Mr. Kelley, you're -- you can begin your  
11 presentation at any time when you're ready.

12

13                           PRESENTATION

14          MR. KELLEY: Okay. Well, once again my name is  
15 Keith Kelley from Las Vegas, Nevada. And basically, I  
16 just want to open up by stating I -- I totally disagree  
17 with the amount owed to the California State Board there.  
18 I'm under the impression that your numbers represent that  
19 I owe \$2,153, and I totally disagree. And I have  
20 documentation here which I will share throughout this  
21 proceeding. And that's pretty much it.

22          JUDGE LAM: Mr. Kelley, does that conclude your  
23 presentation?

24          MR. KELLEY: Yes, that's correct.

25          JUDGE LAM: Okay. I will move onto Franchise Tax

1 Board.

2 Franchise Tax Board, I would -- do you have  
3 any -- are you ready for your presentation?

4 MR. TUTTLE: I am. Thank you.

5 JUDGE LAM: Thank you.

6

7 PRESENTATION

8 MR. TUTTLE: Good afternoon. My name is Topher  
9 Tuttle, and I'm representing Respondent, the Franchise Tax  
10 Board today.

11 The issue in this appeal is whether Appellant has  
12 established error in FTB's proposed assessment for the  
13 2017 tax year, which was based on a federal assessment.  
14 Revenue & Taxation Code Section 18622 requires a taxpayer  
15 to concede the accuracy of federal changes or state where  
16 the changes are erroneous. Under *Todd v McColgan*, it  
17 is well settled that FTB's deficiency assessment is  
18 presumed correct, and the taxpayer bears the burden of  
19 proving error in FTB's determination.

20 In this case, FTB received notice from the IRS  
21 that it had audited Appellant for tax year 2017 and  
22 increased his federal adjusted gross income or AGI by  
23 \$31,362. FTB then made corresponding adjustments in its  
24 proposed assessment. FTB has requested up-to-date federal  
25 account transcripts from the IRS on multiple occasion to

1       verify that there have been no further federal changes.  
2       As demonstrated in FTB's Exhibit D, the IRS has not made  
3       any further adjustment to Appellant's federal AGI.

4               FTB is not bound to follow the IRS's adjustments  
5       if Appellant was to establish that any or all of them are  
6       erroneousness. However, Appellant has not provided any  
7       documentation to establish that the IRS' adjustments are  
8       erroneousness. Thus, Appellant has failed to satisfy his  
9       burden of proof and FTB's proposed assessment should be  
10      sustained.

11             I'm happy to answer any questions you may have.  
12      Thank you.

13             JUDGE LAM: Thank you, Mr. Tuttle. I don't have  
14      any questions. I want to move on with Mr. Kelley.

15             Mr. Kelley, can you begin your presentation?

16             MR. KELLEY: Okay. So should I just share what I  
17      have here and my findings as of the 2017 tax years?

18             JUDGE LAM: Yes, Mr. Kelley. Are you speaking  
19      about -- can you identify which specific exhibit that  
20      you're going to be presenting because I see that we only  
21      have Exhibits A through K and Exhibits 1 and 2 from you.  
22      Is there any additional exhibit that you want to submit?

23             MR. KELLEY: See, I'm not really sure, what you  
24      have in front of you, but I have my W-2s from 2017. I  
25      have, you know, Schedule A itemized deductions for 2017.

1       The actual tax returns through Tax Slayer for 2017, so I  
2       have the actual numbers in front of me. So I wanted to  
3       share those with everyone so we can all, I guess, be on  
4       the same page here.

5               JUDGE LAM: Mr. Kelley. I think I -- we've --  
6       we've talked about this in our prehearing conference. Any  
7       new exhibits that's not Exhibits A through K or Exhibits 1  
8       and 2 would need to be presented to us 15 days before the  
9       hearing.

10              MR. KELLEY: Okay. So --

11              JUDGE LAM: Absent any reasonable cause, we would  
12       not let these exhibits come in.

13              MR. KELLEY: Okay. So that's what I meant in my  
14       previous question to you and Mr. Tuttle is can you share  
15       what A through K is? Or let's go take them one by one so  
16       then I can let you know what information I have, and you  
17       can share what information you have. Is that -- is that  
18       the way this process works? Or -- I mean, I don't -- I  
19       mean, please share. Let's go one by one so we can -- we  
20       can knock these out.

21              JUDGE LAM: Mr. Kelley, are you able to -- do you  
22       want to take a five-minute break for yourself to look at  
23       what we had sent you with our minutes and orders?

24              MR. KELLEY: I don't think I can do that. I  
25       mean, I'd have to get off line and come back online. Did

1       you want to do that? Do you want -- did you want to do  
2       that, and then I can review A through K?

3               JUDGE LAM: We can take a five-minute recess,  
4       Mr. Kelley, and then we can come back on this chat  
5       platform. Would that work with you?

6               MR. KELLEY: Okay. Yeah. That works. That  
7       works. And also if I may --

8               JUDGE LAM: Okay. And I'll also have my legal  
9       assistant to resend the hearing binder to you.

10              MR. KELLEY: Okay. Okay.

11              JUDGE LAM: Is that fine?

12              MR. KELLEY: That sounds good.

13              JUDGE LAM: Okay. We'll take a five-minute  
14       break. Thank you.

15              (There is a pause in the proceedings.)

16              JUDGE LAM: Okay. I will resume the hearing.

17              Mr. Kelley, have you had a chance to review  
18       Exhibits A through K? Mr. Kelley, I think you're on mute.

19              MR. KELLEY: Can you hear me all right?

20              JUDGE LAM: Yes. Mr. Kelley, yes, I can hear  
21       you.

22              MR. KELLEY: Yeah. I can barely hear you. Can  
23       you --

24              JUDGE LAM: Mr. Kelley, is this better?

25              MR. KELLEY: No. You're still kind of faint.

1 JUDGE LAM: Mr. Tuttle, can you hear me?

2 MR. TUTTLE: Your volume is normal to me,  
3 Judge Lam.

4 JUDGE LAM: Okay. Thank you.

5 Mr. Kelley, can you check if your volume is  
6 turned up?

7 MR. KELLEY: Yeah. Let me -- let me log off and  
8 then log back in. I can barely hear you and Mr. Tuttle.  
9 You're very faint. Can you hear me pretty clearly?

10 JUDGE LAM: I can hear you clearly, Mr. Kelley.

11 MR. KELLEY: Okay. Let me see. Okay. Let me --  
12 let me see if she sent this over to me, cause she sent me  
13 a read only copy. I can't print that out. You want to  
14 give me one second to check the records here?

15 JUDGE LAM: This is Judge Lam. Yes, Mr. Kelley.  
16 Do you need another -- a few more minutes?

17 MR. KELLEY: I just -- I just need like two  
18 minutes just to print off what she sent over to me.

19 JUDGE LAM: That's fine. Thank you. We'll take  
20 a two-minute recess.

21 (There is a pause in the proceedings.)

22 JUDGE LAM: Thank you. So let me step back. And  
23 since you have all the documents with you and you had a  
24 chance to review them, Exhibits A through K, do you have  
25 any objections to them?

1 MR. KELLEY: Currently no.

2 JUDGE LAM: Okay. That makes sense for me. And  
3 since you have no objections to them, then I would not  
4 hold the record open at the conclusion of this hearing.  
5 Mr. Kelley, with these exhibits -- with Exhibits A through  
6 K and Exhibits 1 and 2, you can present -- you can now  
7 present your -- your -- you can start your presentation.

8

9 PRESENTATION

10 MR. KELLEY: Well, as I'm kind of flipping  
11 through the pages here and just kind of looking at some of  
12 the numbers that are represented here, A through K, I'm --  
13 I'm going to have to disagree. I'm going to have to  
14 disagree with the -- with the findings that were, I guess  
15 based from my federal tax, and I guess spilling over, so  
16 to speak, into the state tax.

17 And -- and just in a summary, I disagree with  
18 the -- with the -- I'm on page 2, and it states that NPA  
19 is imposing an additional tax of \$2,153, plus interest.  
20 My -- my records indicate I owe roughly about \$269.18  
21 based on my income and all the income that I received for  
22 the year of 2017.

23 Yes, if you would like to chime in at any time,  
24 Mr. Tuttle, and present what you feel as if I'm wrong  
25 somewhere. But please, just chime in at any time.

1 JUDGE LAM: This is Judge Lam speaking. I do not  
2 have any questions at this moment. Mr. Kelley, would you  
3 want to continue your presentation?

4 MR. KELLEY: Well, just -- just in summary I just  
5 totally disagree. But based on all my medical expenses,  
6 my charity, all -- everything that I have itemized for the  
7 year of 2017 is -- is correct. And so my -- my final tax  
8 with my state on page 3, the tax that I owe was \$269.18 as  
9 opposed to your \$2,153. And that's -- that's mainly  
10 because I itemized everything for that year.

11 And like I said, I had medical expenses totaling  
12 \$29,310. I have got -- I had other exceeding expenses of  
13 \$6,800 and \$8,340 for other expenses, which will reduce my  
14 tax liability down to where it should be \$269.18.

15 JUDGE LAM: This is Judge Lam. Mr. Kelley, does  
16 that conclude your presentation?

17 MR. KELLEY: Yes, that -- that concludes my, I  
18 guess, my opening statements here.

19 JUDGE LAM: Okay. Thank you. And I do have a  
20 question now that your -- that the numbers that you have  
21 mentioned.

22 MR. KELLEY: Okay.

23 JUDGE LAM: Can you go to Exhibit F?

24 MR. KELLEY: Okay. What page are you on?

25 JUDGE LAM: It's like PDF page 18.



1 MR. KELLEY: Page 18.

2 JUDGE LAM: You see on the bottom right-hand

3 corner. It has the exhibit -- it says Exhibit F.

4 MR. KELLEY: Exhibit D, E, and F. Yes, Notice of

5 Proceed Assessment?

6 JUDGE LAM: Correct.

7 MR. KELLEY: Okay. Then I'm with you.

8 JUDGE LAM: And I see that you've crossed out on

9 your California income as reported or revised. It listed

10 this \$26,521.

11 MR. KELLEY: Okay.

12 JUDGE LAM: If you crossed it out as -- let me

13 see the number --

14 MR. KELLEY: 16.

15 JUDGE LAM: Is it 16 or is it 10.

16 MR. KELLEY: It's 16.

17 JUDGE LAM: Okay. It's 16.

18 MR. KELLEY: \$16,521.

19 JUDGE LAM: Okay. And that is the -- the

20 California taxable income. This is income that you --

21 that you disagree on; is that correct?

22 MR. KELLEY: Yes.

23 JUDGE LAM: Okay. Thank you. I do not have any

24 questions. And I want to turn it over to FTB.

25 Mr. Tuttle, do you -- it -- would you like to

1 present your closing arguments? I mean, not arguments,  
2 but closing presentation? Or do you -- are you -- have  
3 you already done so in your previous presentation?

4 MR. TUTTLE: Well, my understanding from the  
5 prehearing conference is that I would have the -- only the  
6 one 5-minute presentation.

7 JUDGE LAM: Right.

8 MR. TUTTLE: But I'm happy to provide a closing  
9 statement.

10 JUDGE LAM: Okay. Whenever you're ready,  
11 Mr. Tuttle.

12 MR. TUTTLE: Great.

13

14 CLOSING STATEMENT

15 MR. TUTTLE: So FTB continues to assert that  
16 Appellant has not provided documentation in support of his  
17 assertions. He has not provided documentation that  
18 establishes the IRS' adjustments are erroneous, and  
19 that is the basis for FTB's proposed assessment. As such,  
20 FTB requests that the OTA sustain its action and -- its  
21 notice of action affirming the proposed assessment.

22 Thank you.

23 JUDGE LAM: Thank you, Mr. Tuttle.

24 Mr. Kelley, you are now offered your closing  
25 argument for five minutes.

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

CLOSING STATEMENT

MR. KELLEY: Okay. Just in sum, I'd just like to say that the numbers that you currently have I feel are definitely incorrect. It appears that I may need to get some receipts, maybe some bank statements over to you guys just to kind of prove my case a little better since -- since we don't have really the access, so you can see my documents that I have here in front of me based on my W-2 for 2017 -- 2017 I should say.

So where do we go from here? I mean, you know, I disagree and -- and you feel as if you're numbers are correct. I feel as if my numbers are correct. So what -- what do we do at this point, Judge Lam?

JUDGE LAM: This is Judge Lam speaking. Let me turn it over to Mr. Tuttle.

Do you have a -- would you like to respond to Mr. Kelley's question?

MR. TUTTLE: I'm sorry. Could you repeat? So I am a little confused about the process that we are engaged in the --

JUDGE LAM: I understand.

MR. TUTTLE: -- in this hearing.

MR. KELLEY: This is my first doing this too, Mr. Tuttle. I have never --

MR. TUTTLE: This has been -- this has been an

1 unconventional discussion between Appellant and FTB.

2 So can you repeat the question, Mr. Kelley?

3 MR. KELLEY: Yes. My records -- just to kind of  
4 reiterate, my records indicate that I owe \$269.18 based on  
5 my itemized for 2017. So I'm -- I'm referring to all of  
6 my medical records, my charity, my business expenses,  
7 everything that I paid out during 2017 comes to a total of  
8 only owing the IRS \$269.18 as far as it -- as far as the  
9 State of California.

10 So -- so my question to you is your -- your  
11 records indicate quite a bit. You're at \$2,153 and I'm at  
12 \$269.18. So I guess my question is how do we come to a  
13 happy medium so we can kind of resolve this entire 2017  
14 tax issue?

15 MR. TUTTLE: So thank you. Let me -- let me  
16 explain FTB's response to that. The information you  
17 provided is the same information that was included in  
18 your -- presumably makes up your federal return. When you  
19 filed your tax return --

20 MR. KELLEY: Yes.

21 MR. TUTTLE: -- that information you're  
22 discussing was included on that return.

23 MR. KELLEY: Okay.

24 MR. TUTTLE: What happened after you filed your  
25 return is the IRS was not satisfied with the numbers that

1       you reported and made changes.

2               MR. KELLEY:   Okay.

3               MR. TUTTLE:   The changes the IRS made FTB is  
4       following.   We made the same changes.   And so that means  
5       that unless you have documentation showing that those  
6       changes are wrong, the assessment has to stand.

7               JUDGE LAM:   Thank you.   This is Judge Lam  
8       speaking.

9               Mr. Kelley, it looks like you have -- you have  
10      received our minutes and orders, and you were given  
11      additional time, 15 days before the hearing to submit any  
12      additional evidence.   Absent -- because these receipts  
13      weren't submitted before OTA, we are not able to have that  
14      evidence on the record.   And I am -- I'm -- I just wanted  
15      to let you know that today, at this hearing, I understand  
16      your arguments and your presentation.   And do -- do you  
17      have any more -- do you have any more arguments that you  
18      wanted to present to us?   If not, I can conclude this  
19      hearing.

20              MR. KELLEY:   Okay.   Yeah, no.   That covers it for  
21      me.

22              JUDGE LAM:   Okay.   Well, thank you so much, and  
23      we're ready to conclude this hearing.

24              This case is submitted on July 20th, 2023.   The  
25      record is now closed.   Thank you everyone for coming in

1       today, and we will send you a written opinion of this  
2       decision within 100 days from today. Today's hearing in  
3       the Appeal of K. Kelley is now adjourned.

4                       (Proceedings adjourned at 1:29 p.m.)

5

6

7

8

9

10

11

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 9th day  
of August, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER