

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. BOSKER-BROWN,) OTA NO. 230112349
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, August 17, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:00 p.m. and concluding at 1:40 p.m. on
Thursday, August 17, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: ALJ KEITH LONG

For the Appellant: M. BOSKER-BROWN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 7.)
(Department's Exhibits A-I were received at page 7.)

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1 California; Thursday, August 17, 2023

2 1:00 p.m.

3
4 JUDGE LONG: We're opening in the record in the
5 Appeal of M. Bosker-Brown. The OTA Case Number is
6 230112349. The matter is being held before the Office of
7 Tax Appeals. Today's date is August 17th, 2023, and the
8 approximate time is 1:00 o'clock p.m. This hearing is
9 being held electronically with the agreement of both the
10 taxpayer and agency's representatives.

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

17 Also present is a stenographer, Ms. Alonzo, who
18 is reporting this hearing verbatim. To ensure we have an
19 accurate record, we ask that everyone speaks one at a time
20 and does not speak over each other. Also please speak
21 clearly and loudly. When needed, Ms. Alonzo will stop the
22 hearing process and ask for clarification. After the
23 hearing Ms. Alonzo will produce the official hearing
24 transcript, which will be available on the Office of Tax
25 Appeals website.

1 I'd like to offer a few reminders to help the
2 process run as smoothly as possible. Please ensure that
3 your microphone is not muted when you speak, otherwise
4 your voice will not be picked up on the live stream. In
5 addition, please make sure that your microphone is muted
6 when you are not speaking to avoid any sound interference.
7 As a reminder these proceedings are being broadcast live
8 and anything said today and any information shared today
9 is publicly viewable on the live stream.

10 For the record, will the parties please state
11 their name and who they represent, beginning with
12 Franchise Tax Board.

13 MS. CHANG: Paige Chang representing the
14 Franchise Tax Board.

15 JUDGE LONG: Okay. Ms. Chang, I'm going to ask
16 you just to speak up a little louder when you talk into
17 the microphone. I'm not sure if it's inference or if
18 you're just being quiet. I can hardly hear you.

19 MS. CHANG: Paige Chang representing the
20 Franchise Tax Board.

21 JUDGE LONG: Okay. I think that was better.

22 MS. BROSTERHOUS: I'm Maria Brosterhous from the
23 Franchise Tax Board.

24 JUDGE LONG: And for Appellant.

25 DR. BOSKER: Mary Bosker representing myself.

1 JUDGE LONG: Okay. And today Dr. Bosker will be
2 testifying as a witness. So before we go forward,
3 Dr. Bosker can you please raise your right hand.
4

5 DR. BOSKER-BROWN,
6 produced as a witness, and having been first duly sworn by
7 the Administrative Law Judge, was examined and testified
8 as follows:
9

10 JUDGE LONG: Okay. Thank you. You can lower
11 your hand.

12 The exhibits for this appeal consist of FTB
13 Exhibits A through I and Appellant Exhibits 1 through 6.
14 At the prehearing conference neither party had any
15 objections to these exhibits. Accordingly, they are
16 admitted without objection.

17 (Appellant's Exhibits 1-6 were received
18 in evidence by the Administrative Law Judge.)

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

21 JUDGE LONG: The issue to be heard on this appeal
22 is whether Appellant's claim for refund for the 2017 tax
23 year is barred by the statute of limitations. This
24 hearing is expected to take approximately 45 minutes, and
25 with the taxpayer providing a 30-minute presentation,

1 Franchise Tax Board 10 minutes, and then an additional 5
2 minutes for Appellant's final statement.

3 Does anyone have questions before we move onto
4 opening presentations?

5 Okay. Everyone says no.

6 So we're ready to move onto opening
7 presentations, beginning with Dr. Bosker, and Doctor, you
8 may begin when you are ready.

9

10 PRESENTATION

11 DR. BOSKER: Thank you. I just realized as we
12 had that meeting a few weeks ago, and I'm completely new
13 to this process so I requested the maximum amount of time,
14 I will not need the entire 30 minutes.

15 Where are my talking points? Here we go.

16 So as stated in my letter of appeal, I believe
17 that I'm entitled to a tax refund for 2017 and 2018. I
18 recognize that in our meeting today we will just be
19 discussing 2017. Just so you all know a little bit more
20 about me, I have always filed my taxes on time up until
21 2017, which is the first year that I was married to
22 Alexander Brown. And that is the spouse listed on the tax
23 return, and we've certainly had some ups and downs over
24 the years. We' are no longer married at this point.

25 We filed jointly because as I crunched the

1 numbers that seemed like the better option as far as being
2 able to get a tax refund. I was the primary wage earner
3 for that year and other years as well, but we'll just talk
4 about 2017. And so I really wanted to get my money back.
5 A lot of things going on got in the way. I did at least
6 file for an extension.

7 So that is -- well, first I want to refer to
8 Exhibit E from Franchise Tax Board, which says, "A Final
9 Notice Before Levy and Lien," and that was not pleasant to
10 find in the mail. That was in the fall of 2020. Of
11 course the pandemic was going on at this time. Alexander
12 and I had talked about reconciliation. He was supposed to
13 come back and that fell through in September and October.
14 So it was pretty tumultuous.

15 But I do recall speaking -- calling Franchise Tax
16 Board, speaking with a representative, and she reassured
17 me that if I file and I'm actually due a refund, then the
18 fees and the interest charged and all of that would just
19 be waived. And so that -- I got -- I guess relaxed a
20 little bit on that.

21 So I want to look at Exhibit I, which is the
22 statute of limitations. So that's, of course, the issue
23 that we're discussing here. On Point Number 3, it's at
24 the top of that page, "Computing the Statute of
25 Limitations Date." Obviously, I'm not a law expert, but

1 I'm educated. So as I read this, "The statute of
2 limitations expiration date or claim for refund is the
3 later, which is in bold print, of four years from the date
4 the return was filed, if filed on or before the extended
5 due date."

6 And I guess I had understood so long as it was
7 filed within four years of the extended due date, which I
8 did do. It was definitely late in the game. Not
9 typically how I do things with my taxes, but that's what
10 happened with 2017. And so as such, I believe that I am
11 entitled to the refund for the 2017 tax year.

12 If you look at Exhibit I -- no. Sorry not
13 Exhibit I. Exhibit 2, which I had submitted, that is a
14 copy of the extension request for 2017 tax year. And per
15 the Franchise Tax Board website it says, "If there is a
16 federal extension, California extension is automatically
17 granted." So I do not have a copy of a California
18 extension request.

19 Exhibit H, which is a copy of the actual tax form
20 mailed in. Now, I've been a California resident full time
21 since I moved here in 1998. So I've been here a very long
22 time. I paid my taxes on time every year up until 2017 as
23 noted earlier. And the reason that it states at the top
24 of this form that is, "California nonresident or part-year
25 resident," is because my now ex-husband was a part-year

1 resident for 2017. He was not here for the latter of the
2 two months of the year, actually, the last month of the
3 year he left early December. So that's what that is.

4 The amount due at that time was only \$1,600. A
5 long time waiting for that. When I did finally apply
6 for -- or submit my tax return, less than four years from
7 the extension date, I was given a response that -- let's
8 see that would be Exhibit G -- no, sorry. We will talk
9 about Exhibit G in a moment. Sorry. -- that it was
10 denied. Sorry. I got this all organized, and now I'm
11 nervous and less organized.

12 Oh, Exhibit 1. I apologize. Exhibit 1 saying
13 that the refund was denied because of the statute of
14 limitations. And the amount actually listed of
15 overpayment was \$3,001.34, which is significantly more
16 than the original \$1,600.

17 Here's where Exhibit G comes in. It is the tax
18 year detail and near the bottom on the -- in the ledger
19 section, effective date April 20th, 2021. It says
20 T-Y-T-R-F-R 20, credit amount \$2,070.34. And I went back
21 and checked my tax records for my 2020 taxes, and I was
22 due a nice big refund, \$2,446. And I actually received
23 only \$376. And that is because a lot of that had been
24 taken out for what the FTB assumed I owed for 2017 because
25 that hadn't been filed yet.

1 So I don't know what T-Y-T-R-F-R. I took that to
2 mean just based on context that it was tax year tax refund
3 from '20. Please let me know if I assumed incorrectly on
4 that. Does that sound right?

5 MS. BROSTERHOUS: May I speak, Judge?

6 JUDGE LONG: Yes, you can.

7 MS. BROSTERHOUS: This is Maria Brosterhous.
8 That means tax year transfer.

9 DR. BOSKER: Okay. Thank you. Okay.

10 So I would like my -- since I did not actually
11 owe taxes for 2017, I would like that money back from 2020
12 as well that had been taken out for 2017. Now that
13 everything has finally been filed, and I'd like to get
14 everything squared away.

15 So I guess I have a question, and that is do I
16 need to submit a separate appeal for that transfer that
17 was taken out of my 2020 refund to cover 2017, since I did
18 not owe for 2017? Or is that something that we can decide
19 since it's all connected in our discussion today?

20 JUDGE LONG: Franchise Tax Board, correct me if I
21 am wrong, but that money is considered paid towards 2017,
22 and so it is part of this claim for refund is the --
23 because it's been credited, it's the 2017 year. And if
24 taxpayer prevailed on the 2017 year, she would get that
25 money back. Is that FTB's understanding as well?

1 MS. CHANG: Yes. And so the payment was credited
2 to the 2017 tax year account, and it is the 2017 tax year
3 on appeal, and so that amount is on appeal for today.

4 JUDGE LONG: Okay. So nothing in addition would
5 have to be filed for 2020 because it's been credited to
6 the 2017 tax year?

7 MS. CHANG: Yes, that's correct.

8 JUDGE LONG: Okay. Thank you.

9 DR. BOSKER: Okay. So does that mean that this
10 is essentially all or nothing? Like, I get -- if it's
11 decided in Franchise Tax Board's favor, that I get -- I do
12 not get the \$1,600 that was originally on my tax return,
13 and I would also not get the \$2,070 and some change from
14 2020, which had been credited to 2017? Or are those --
15 can those be decided separately? I just --

16 JUDGE LONG: So they're both -- the full amount
17 is on appeal. If any payments remain outside of
18 the statute -- of if the claim for refund -- sorry. Let
19 me rephrase that.

20 If the statute of limitations is passed with
21 respect to any payments or all of the payments, then you
22 would get nothing back. However, if we find that the
23 statute of limitations did not pass with respect to any
24 payments, then you would prevail with respect to those
25 payments.

1 DR. BOSKER: Okay. Well, as that payment was
2 done in 2021, that certainly would be within the time
3 frame. So at the very least, I should be able to get that
4 \$2,070 and I guess 34 cents.

5 JUDGE LONG: Okay. Does that conclude your
6 presentation or --

7 DR. BOSKER: Um, yes. Sorry. That was not the
8 most polished presentation. So I -- I -- I believe in
9 this, and this is why we're here today. I'm entitled to
10 the tax refund from 2017 and the transfer from the 2020
11 tax return of \$2,070.34 that had been credited to 2017 as
12 taxes due, which I ultimately ended up not owing. I'd
13 like to get all of that back.

14 If my reading of the four-year deadline does not
15 include the extension, that kind of stinks for me as far
16 as that \$1,600. But as that \$2,070 and change was applied
17 towards 2017, but it was in a -- from a tax return that
18 was filed in a timely manner, and it was within that
19 four-year time frame, at the very least I think I should
20 get that 2,070 and change.

21 Thank you.

22 JUDGE LONG: Okay. Before we go forward, I just
23 want to check in with Franchise Tax Board because
24 Dr. Bosker is here as a witness, you have the opportunity
25 to ask questions if they would like.

1 Do you have any questions for Dr. Bosker?

2 MS. CHANG: No questions from Franchise Tax
3 Board. Thank you.

4 JUDGE LONG: Okay. Thank you.

5 Doctor, I do have one question for you with
6 respect to the statute of limitations the four years that
7 you discussed with respect Exhibit I. The statute of
8 limitations with respect to Exhibit I was four years from
9 the extended due date if the return was filed timely.
10 There's no dispute the return was not filed timely;
11 correct?

12 DR. BOSKER: It was -- well. It was --

13 JUDGE LONG: I'm sorry. It wasn't filed by the
14 extended due date?

15 DR. BOSKER: No, it was not filed by the extended
16 due date. That would have been in 20 -- October 2018,
17 right. Obviously, it was not filed in 2018.

18 JUDGE LONG: Okay. Thank you. I don't have any
19 further questions.

20 So we'll move onto Franchise Tax Board's
21 presentation. Franchise Tax Board, you have 10 minutes
22 and may begin when you are ready.

23 MS. CHANG: Thank you.

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The issue on appeal is whether Appellant has established that she timely filed her claim for refund for the 2017 tax year prior to the expiration of the statute of limitations. The statute of limitations prohibits Respondent from crediting or refunding an overpayment when a claim for refund was not filed within four years of the due date of the return, within four years from the date the return was filed, if it was filed within the extension period, or within one year from the date of overpayment, whichever is later.

Here in this case, Appellant late filed her 2017 tax return on September 15, 2022, which FTB treated as her claim for refund. With regard to the extended due date, California grants an automatic six months extension to October 15th of the tax year in which the return is due for taxpayers to file their return. Appellant --

MS. CHANG: Yes.

MS. CHANG: Okay.

1 JUDGE LONG: Let's try again here.

2 MS. CHANG: Okay. I'll try to speak louder.

3 JUDGE LONG: That's a lot better, at least for
4 me.

5 MS. CHANG: Okay. All right. So with regard to
6 the extended due date, Appellant did not file her tax
7 return within the automatic six-month extension, and so
8 this exception does not apply. With regard to the
9 one-year statute of limitations, Appellant's last date of
10 payment was April 20th, 2021, which was after -- excuse
11 me -- and so Appellant's claim for refund filed on
12 September 15, 2022, was filed after April 20th, 2022,
13 which is the due date for the one-year statute of
14 limitations.

15 Thus, Appellant filed her claim for refund after
16 the expiration of both the four-year statute of
17 limitations and the one-year statute of limitations. In
18 an action for refund, generally, the taxpayer has the
19 burden of proof. Appellant contends that the statute of
20 limitations should not bar her claim for refund based on
21 reasonable cause. However, there is no reasonable cause
22 exception or equitable basis for suspending the statute of
23 limitations.

24 While FTB is sympathetic to the difficulties that
25 Appellant has experienced, such circumstances cannot

1 extend the statute of limitations. Appellant additionally
2 contends that she had difficulties obtaining records in
3 order to file her 2017 return, however, such difficulty
4 can allow the credit or refund.

5 The Office of Tax Appeals in its precedential
6 decision, Appeal of Gillespie, found that the law provides
7 that the statute of limitations is mandatory and there's
8 no equitable tolling for the statute of limitations.
9 Therefore, Respondent's denial of Appellant's claim for
10 refund was proper under the statute of limitations, and
11 FTB's position should be sustained.

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

13 JUDGE LONG: Thank you.

14 I don't have any questions for Franchise Tax
15 Board. So we will move straight to Dr. Bosker's closing
16 presentation.

17 Doctor, you may begin when you are ready.

18 Dr. Bosker, I understand. I was going to say if
19 you want to take a minute, we can take a quick break and
20 turn off our cameras and give you five minutes, if you
21 would like?

22 Let's go ahead and do that. We're going to take
23 a five-minute recess, okay. We'll come back at 1:33 --
24 1:35.

25 (There is a pause in the proceedings.)

1 JUDGE LONG: Dr. Bosker, you would like to make
2 your closing presentation for five minutes for you, but
3 there's additional time if you need to go over, okay.
4

5 CLOSING STATEMENT

6 DR. BOSKER: Okay. To say it's a little
7 frustrating that the law is very, I guess -- that it
8 doesn't allow for reasonable accommodations. I did file
9 within four years of the extension. I thought that I
10 would be able to get this all cleared up, even though it's
11 like way after the fact when it was originally due. And I
12 had no idea even how to address the situation from the
13 transfer of my 2020 taxes. I thought there would be the
14 four years on that too, and I did file on time.

15 I filed by the deadline, so the claim for refund
16 was April 15th for the 2020 tax year. Or is it just maybe
17 takes a couple of days for things to get credited, but I
18 mean, literally, it's just a matter of a few days. So I
19 am willing to, I guess, forfeit the \$1,600 from the 2017.
20 But I feel very strongly that because I filed on time for
21 2020 tax year that I should be able to get my full refund
22 for that year, which -- some of which was applied to 2017,
23 which I ultimately did not know.

24 And I am requesting that -- I don't even know how
25 to say this. The Office of Tax Appeals, the Court -- I

1 apologize for not using proper terminology if I'm off base
2 here, but I request that you find that I am entitled to
3 get that \$2,070.34 back because the 2020 tax return was
4 filed by April 15th.

5 Thank you.

6 JUDGE LONG: Thank you.

7 We are ready to conclude this hearing. Thank you
8 everyone for joining us today. I will consider your
9 presentations and testimony. This case is submitted on
10 Thursday, August 17th, 2023. The record is now closed.

11 I will issue a written opinion with OTA's
12 decision within 100 days from today. Today's hearing in
13 the Appeal of M. Bosker-Brown is now adjourned.

14 The next hearing will resume at 2:00 p.m.

15 Thank you and everyone have a good rest of your
16 afternoon.

17 (Proceedings adjourned at 1:40 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 30th day
of August, 2023.

ERNALYN M. ALONZO
HEARING REPORTER