

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 H. LEE and C. LIAO,) OTA NO. 220710952
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, August 18, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:59 a.m. and concluding at 10:12 a.m. on
Friday, August 18, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Administrative Law Judge: JUDGE MIKE LE

For the Appellant: H. LEE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received in Judge Le's minutes and orders.)

(Department's Exhibits A-I were received in Judge Le's minutes and orders.)

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

	<u>P A G E</u>
By Mr. Lee	7
By Ms. Chang	10

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

	<u>P A G E</u>
By Mr. Lee	12

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California; Friday, August 18, 2023

9:59 a.m.

JUDGE LE: We are opening the record in the Appeal of Lee and Liao. This matter is being held before the Office of Tax Appeals. OTA Case Number is 220710952. Today's date is Friday, August 18, 2023, and the time is 9:59 a.m. This hearing is being conducted electronically with the agreement of the parties.

I am Administrative Law Judge Mike Le, and I will be hearing and deciding this case pursuant to OTA's Small Case Program. Now for introductions.

For the record, will the parties please state their names and who they represent, starting with Respondent Franchise Tax Board.

MS. CHANG: Page Chang with the Franchise Tax Board.

MS. KENT: Cynthia Kent with the Franchise Tax Board.

JUDGE LE: Thank you both.

This is Judge Le. Now turning to Appellant, please state your name for the record.

MR. LEE: Hao Lee.

JUDGE LE: Thank you, Mr. Lee.

Let's move on to my minutes and orders. As

1 discussed and agreed upon by the parties at a second
2 prehearing conference on July 25th, 2023, and notated in
3 my minutes and orders, the issues in this matter are:
4 First, whether Appellant's have established that their
5 failure to timely pay was due to reasonable cause; second,
6 whether Appellant's have established basis for abatement
7 of the underpayment of estimated tax penalty.

8 Appellant, Mr. Lee, will testify as a witness.
9 Appellant's Exhibits 1 and 2 were entered into the record
10 in my minutes and orders. Respondent's Exhibits A through
11 I were also entered into the record in my minutes and
12 orders. This oral hearing will begin with Appellant's
13 presentation and witness testimony for up to five minutes.

14 Does anyone have questions before we begin with
15 Appellant's presentation and testimony, starting with
16 Respondent Franchise Tax Board, any questions before we
17 begin?

18 MS. CHANG: No questions. Thank you.

19 JUDGE LE: This is Judge Le. Thank you.

20 And turning to Appellant, Mr. Lee, do you have
21 any questions before we begin with your presentation and
22 witness testimony?

23 MR. LEE: Okay. So in my presentation I should
24 state the reason for the appeal?

25 JUDGE LE: Yes.

1 MR. LEE: Okay. Got it.

2 JUDGE LE: Okay. Thank you. In that case, at
3 this point, I'm now going to swear you in, Mr. Lee. Would
4 you raise your right hand.

5

6 H. LEE,

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

10

11 JUDGE LE: Thank you. Mr. Lee, you have up to
12 five minutes for your presentation and testimony starting
13 at 10:01 a.m. Please proceed.

14

15 PRESENTATION

16 MR. LEE: Okay. Hi. My name is Hao Lee, and
17 this is for the year 2021 tax. I make the payment
18 electronically on time before the deadline, and it was
19 called from the penalty of Poppy Bank, which is a local
20 bank. And the -- I make the payment electronically, and I
21 got an email confirmation that said I have made the
22 payment. Okay.

23 However, the -- I cannot get a response until
24 maybe a couple of months later that said I did not -- I
25 still owe a tax on it because I -- somehow the Tax Board

1 did not receive the -- my payment. So I checked the -- my
2 bank. Yeah. The fund it was not withdrawn. So this
3 happened actually when I'm -- earlier a few month ago, I
4 have the similar issue with the payment paying the DMV,
5 and I couldn't figure what the reason. Also, I got a
6 confirmation from the DMV that say payment has gone
7 through. And I did not know, but finally I finally
8 negotiated with DMV office. It was April 2. They waived
9 my penalty. I only pay the late payment.

10 So and then when I went to my bank, Poppy Bank
11 and I talked to the staff there. And I ask the question,
12 I say, do you see any issue making the payment to the
13 California government agency? And they said they also got
14 some feedback from their customers say somehow their
15 payment has trouble dealing with California agency.
16 Because I have no issue paying the mortgage, the credit
17 card, anything. Okay. And so it looks like -- even the
18 IRS is okay. Federal income tax I have no issue, but
19 somehow the California payment system does not work
20 with the -- it's compatible with my bank, Poppy Bank.

21 So I try to see if you can waive the penalty
22 because I did not -- I got a notification maybe a couple
23 months later saying they did not receive my payment. So
24 that's the -- so I'm here to try to get the -- waive the
25 penalty. And I've been paying the California state income

1 tax on time for the last 20 years. Okay.

2 That's all my presentation. Yeah. Thank you.

3 JUDGE LE: It is Judge Le. Thank you.

4 Let me turn to Respondent Franchise Tax Board.

5 Do you have any questions for the witness?

6 MS. CHANG: This is Paige Chang. No questions.

7 Thank you.

8 JUDGE LE: After you attempted to make your
9 payment, did you check your bank account to see if the
10 payment actually went through?

11 MR. LEE: Actually, yeah, I did not because
12 usually, right. Yeah, I did not.

13 JUDGE LE: Okay. Thank you.

14 MR. LEE: But I did -- sorry. I did get the -- I
15 got an email that says payment has been made. Okay. But
16 there's no feedback. Just like the DMV, you know, they
17 don't respond. They don't say new payment. You only get
18 an immediate response, but I didn't get notification to
19 say fund is not either insufficient or the fund was bad or
20 something. I never get that form of email.

21 JUDGE LE: This is Judge Le. Thank you, Mr. Lee
22 for your presentation and for answering my questions.

23 Respondent Franchise Tax Board, it's now your
24 turn for your presentation. You have up to five minutes
25 starting at 10:06 a.m. Please proceed.

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The issues on appeal are: One, whether the Appellants have established they are entitled to abatement of the late payment penalty; and two --

MS. CHANG: Okay.

MS. CHANG: All right. I'll speak up. Okay.

Thank you.

And one more thing. Mr. Lee, can you mute yourself? Thank you.

STATE OF CALIFORNIA OFFICE OF TAX APPEALS

1 Appellants contend that they attempted to make a
2 timely payment on May 17th, 2021. However, the payment
3 was dishonored. Appellants later made a successful
4 payment on August 3rd, 2021. Based on the Office of Tax
5 Appeals' precedential decision, Appeal of Scanlon and
6 Appeal of Friedman, the Appellants have not established
7 reasonable cause to abate the late-payment penalty.

8 To establish reasonable cause, in the Appeal of
9 Scanlon the OTA held that reasonably prudent taxpayers are
10 expected to monitor their bank account and quickly
11 ascertain whether a scheduled payment was, in fact, paid.
12 Here in this case, Appellants did not appear to have
13 monitored their bank account because their successful
14 payment was remitted on August 3rd only after Appellants
15 received FTB's Notice of Tax Return Change on July 19th,
16 and after two months had passed since the attempted
17 payment was dishonored.

18 Appellants additionally cite their good payment
19 history. However, a good payment history alone does not
20 establish reasonable cause. And for tax years prior to
21 2022, California does not have first time abatement.
22 Regarding the estimate penalty, because FTB did not
23 receive any estimated tax payments from Appellants for the
24 2020 tax year, FTB properly imposed the estimate penalty.

25 There is no reasonable cause exception to the

1 estimate penalty, and neither of the two waiver provisions
2 of the estimate penalty apply to the facts of Appellants'
3 case. Thus, the estimate penalty cannot be abated.
4 Therefore, Respondent's denial of Appellants' claim for
5 refund of the late payment penalty and the estimate
6 penalty was proper, and FTB's position should be
7 sustained.

8 Thank you. I'm be happy to answer any questions.

9 JUDGE LE: Thank you, Ms. Chang for your
10 presentation.

11 Let me turn to, Mr. Lee. Would you like to make
12 a closing statement or any statements in response to the
13 Franchise Tax Board's argument? Mr. Lee?

14
15 CLOSING STATEMENT

16 MR. LEE: I -- I think it's -- the system should
17 be able to quickly -- right. You know, once the -- the
18 taxpayer make a payment on -- first of all, they have a
19 notification first, and then later on they should be able
20 to send say -- because I got later it says dishonor check.
21 Okay. That seems like the same kind of message same as
22 the one I got from DMV.

23 So I figure most of the commercial system they
24 have a way to, you know, they don't receive the fund, they
25 would notify right away. And in this case, they took

1 awhile until a couple of month later. So even though
2 it's -- it's hard for taxpayer to go back and monitor the
3 account to see whether the funds have been withdrawn.

4 So that's my -- yeah. That's what I can say.
5 Yeah. So I'm still seeking for the waiving of the
6 penalty. Yeah.

7 JUDGE LE: This is Judge Le. Thank you. Does
8 that conclude your total statement for today?

9 MR. LEE: Yes.

10 JUDGE LE: This is Judge Le. Thank you.

11 I want to thank everyone for coming in today. If
12 there's nothing further, I'm going to submit this case.

13 So this case is submitted on August 18th, 2023,
14 and the record is now closed. I will decide this case
15 later on, and I will send the parties a written opinion of
16 my decision within 100 days.

17 Today's hearing in the Appeal of Lee and Liao is
18 now adjourned.

19 Thank you and goodbye.

20 (Proceedings adjourned at 10:12 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 5th day
of September, 2023.

ERNALYN M. ALONZO
HEARING REPORTER