

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R. NAZARENKO and N. NAZARENKO,) OTA NO. 230212600
)
 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 1:02 p.m. and concluding at 1:10 p.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 TOMMY LEUNG

For the Appellant: R. NAZARENKO

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOSH RICAFORT
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 5.)

(Department's Exhibits A-E were received at page 5.)

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California; Friday, August 18, 2023

1:02 p.m.

JUDGE LEUNG: We're on the record, and we're being live streamed. This is OTA Case Number 230212600, the Appeal of Nazarenko for the 2018 tax year.

The sole issue for this hearing is whether interest should be abated.

Today's date is August 18th, 2023, and it is approximately 1:02 p.m. The sole issue for appeal is whether interest should be abated. And as far as exhibits are concerned, pursuant to the prehearing conference, the Nazarenko's Exhibit 1, which is the Notice of Action, will be admitted into evidence, into the record.

(Appellant's Exhibit 1 was received in evidence by the Administrative Law Judge.)

The Franchise Tax Board's Exhibits A through E will be admitted into evidence and into the record.

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

JUDGE LEUNG: Pursuant to the Appellants' agreement, this hear is being conducted under the Small Case Program, which essentially means there's one judge, myself, deciding this case instead of a panel of three judges. And also pursuant to and an election by

1 Mr. Nazarenko, this case is being conducted
2 electronically.

3 Before we start the presentations, Mr. Nazarenko,
4 please raise your right hand. I'll be swearing you in.

5

6 R. NAZARENKO,

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 LEUNG: Thank you, sir. Put your hand
12 down.

13 And since FTB will not be testifying, they'll
14 only be presenting, they will not be sworn in. So as
15 agreed prior to the hearing, we've allotted 10 minutes for
16 you, Mr. Nazarenko, for the presentation, for the
17 Franchise Tax Board 10 minutes. And if you should desire,
18 Mr. Nazarenko, 5 minutes at the end for your rebuttal.

19 So, Mr. Nazarenko, whenever you're ready, please
20 begin your presentation.

21

22 PRESENTATION

23 MR. NAZARENKO: Thank you for having me here
24 today.

25 I understand why I had to pay the \$5,284.91 in

1 interest -- or I'm sorry -- in tax and interest. I went
2 back and looked at my 2018 tax return, and I did find the
3 mistake, which I did not catch in -- when I was doing my
4 2018 taxes through TurboTax. But I do not understand why
5 FTB waited for about two years or three years before
6 notifying me that I owed money.

7 So that is why I think the interest should be
8 abated. I believe that had I been notified earlier as
9 soon as FTB did review my files and noticed that I owed
10 money, I would have paid it right away without accruing
11 interest. So I'm asking for it to be returned to me.

12 Thank you.

13 JUDGE LEUNG: Thank you, Mr. Nazarenko.
14 Franchise Tax Board.

15 MR. RICAFORT: I'm sorry. Can you repeat that,
16 Judge.

17 JUDGE LEUNG: Yes. Franchise Tax Board, your
18 presentation please.

19 MR. RICAFORT: Oh. Thank you.

20

21 PRESENTATION

22 MR. RICAFORT: Good afternoon. My name is Josh
23 Ricafort and along with Eric Yadao, we represent the
24 Respondent, Franchise Tax Board.

25 The issue on appeal is whether Appellants have

1 shown that they are entitled to abatement of interest
2 accrued on additional tax that they did not contest.
3 Appellants have not shown that they are entitled to
4 abatement of interest.

5 The law requires that interest is imposed if FTB
6 assesses an additional tax that becomes due and payable.
7 The additional tax assessed by FTB upon which the interest
8 at issue accrued was due to Appellants' error completing
9 their Schedule CA and essentially had the effect of
10 incorrectly reducing their taxable income. So
11 accordingly, interest was properly accrued on the
12 additional tax that became due and payable.

13 In this appeal, FTB first contacted Appellants
14 regarding the additional tax in a Notice of Proposed
15 Assessment that was issued on May 31, 2022. While
16 Appellants' refund claim, marked as Exhibit D, states that
17 Appellants are requesting abatement of interest from the
18 period of April 15, 2019, to April 15, 2022, the law
19 provides that interest accrued may only be abated after
20 FTB makes its first written contact regarding the
21 additional tax.

22 So accordingly, there's really no basis here to
23 abate any interest accrued on Appellants' additional tax
24 that prior to FTB's initial contact on May 31, 2022, as
25 found in the Office of Tax Appeals precedential decision

1 of the Appeal of Goren. And with regards to the interest
2 that accrued after FTB's initial contact, there are very,
3 very limited exceptions that allow for the abatement of
4 interest.

5 Appellants have not alleged any facts. They have
6 not provided any evidence or cited to any law that suggest
7 they would be entitled to interest abatement following the
8 first written contact. Most common is that taxpayers will
9 argue an error or delay in FTB's performance of a
10 managerial or ministerial act, which Appellants have not
11 argued here.

12 But even if they had, the law also requires that
13 the accrual of interest in any way cannot be attributed to
14 the acts of the Appellants, which here the accrual of
15 interest is entirely attributed to the Appellants'
16 Schedule CA errors. The appellant also acknowledged in
17 his testimony that he recognized and found that error that
18 he did not catch.

19 In their appeal, Appellants also appear to
20 suggest that the reason FTB denied their request for
21 interest abatement was due to FTB not receiving a response
22 from Appellants to FTB's letter dated November 2, 2022.
23 The reason FTB denied interest abatement is because the
24 law prohibits FTB from abating interest before the date of
25 the first written contact for the first time period, which

1 is essentially the period prior to the first written
2 contact.

3 And Appellants also have not established the
4 basis under the law to abate interest during the second
5 time period, which is after the first written contact. So
6 accordingly, the Office of Tax Appeals should sustain
7 FTB's denial of Appellants' claim for refund of interest.

8 Thank you. And at this time, I'm happy to answer
9 any questions you may have.

10 JUDGE LEUNG: Thank you, Mr. Ricafort.

11 Mr. Nazarenko, you have some time for a rebuttal,
12 should you care to say something at this point.

13

14 CLOSING STATEMENT

15 MR. NAZARENKO: The only thing I have to say is
16 as far as I remember, I responded to every letter I
17 received from FTB within that time frame given to me. And
18 the fact that interest accrued for -- well, one -- about
19 two to three years prior to notifying me, I don't think
20 it's fair. But, you know, I don't know all the laws and
21 regulations, so I don't have any other arguments.

22 JUDGE LEUNG: Okay. Let me ask Franchise Tax
23 Board this.

24 Was Mr. Nazarenko penalized for the error that he
25 made on his return? Were any penalties imposed?

1 MR. YADAO: Judge, this is -- Judge Leung, Eric
2 Yadao here. No penalties were imposed. It was just
3 interest. And really, interest is considered -- it's not
4 a penalty, but it's the value of having the money in the
5 taxpayer's possession, which should have been in the
6 State's possession for that period of time.

7 JUDGE LEUNG: Thank you very much.

8 I have no further questions for either of the
9 parties. So I think this will close the hearing.

10 I will endeavor to get the decision out to
11 everybody within 100 days. And without further comments,
12 this hearing is now closed. The record is closed, and the
13 case is submitted for decision.

14 And that concludes our hearings for today,
15 August 18th. You all have a great day. Take care.
16 Bye-bye.

17 (Proceedings adjourned at 1:10 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 11th day
of September, 2023.

ERNALYN M. ALONZO
HEARING REPORTER