

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
F. VENEGAS, ) OTA NO. 220810986  
 )  
 ) APPELLANT.  
 )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, September 20, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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F. VENEGAS, ) OTA NO. 220810986  
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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:35 a.m. and concluding at 10:04 a.m. on  
Wednesday, September 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 VERONICA LONG

For the Appellant: F. VENEGAS  
C. VENEGAS

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
JOEL SMITH

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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 7.)

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

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California; Wednesday, September 20, 2023  
9:35 a.m.

JUDGE LONG: We are now going on the record.

This is the Appeal of Venegas, OTA Case No. 220810986. Today is Wednesday, September 20th, and the time is approximately 9:35 a.m. We're holding this hearing today electronically with the agreement of all of the parties.

As a reminder the OTA is not a court. We are an independent appeals body. OTA is staffed by tax experts and is independent of the State's tax agencies. We do not engage in ex parte communication. Our decisions are based on arguments and evidence provided by the parties on appeal in conjunction with the appropriate application of law.

I have read the briefs and examined the submitted exhibits. My name is Judge Veronica Long, and I will be the Administrative Law Judge for this appeal.

I'm going to have the parties please each identify yourselves by stating your name for the record. I'm going to begin with the Appellants.

Mr. Venegas.

MRS. VENEGAS: State your name.

MR. VENEGAS: Fernando Venegas.

1 JUDGE LONG: All right. And is that -- sorry --  
2 Mrs. Venegas or Ms. Venegas?

3 MRS. VENEGAS: Mrs. Cindy Venegas.

4 JUDGE LONG: Mrs. Cindy Venegas. All right.  
5 And Franchise Tax Board?

6 MR. SMITH: Good morning. Joel Smith with  
7 Franchise Tax Board.

8 JUDGE LONG: All right. I'm going to go ahead  
9 and restate the issues that were agreed on in this case.  
10 The first issue is whether Appellant has established that  
11 he did not have a filing requirement for the 2019 tax  
12 year. The second issue is whether Appellant has  
13 demonstrated reasonable cause to abate the late-filing  
14 penalty.

15 With respect to the evidentiary record, FTB has  
16 provided Exhibits A through G. Appellants have not  
17 objected to the admissibility of the exhibits. Therefore,  
18 the exhibits are now admitted into the record.

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

21 JUDGE LONG: Appellant has provided Exhibit 1.  
22 FTB did not object to the admissibility of this exhibit  
23 and therefore, that exhibit is now entered into the  
24 record.

25 ///

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

3 JUDGE LONG: No additional exhibits have been  
4 presented today.

5 And with that, Mr. And Mrs. Venegas, you have 10  
6 minutes, and you may begin whenever you are ready.

7

8 PRESENTATION

9 MRS. VENEGAS: So our objection is Fernando  
10 Venegas was unemployed. He became unemployed in October  
11 of 2018 by his employer Mark Christopher Chevrolet, and  
12 through the entire year of 2019 he remained unemployed.  
13 In -- also in October of 2018, I was diagnosed with  
14 ovarian -- an advanced stage of ovarian cancer, and  
15 Fernando made the decision to attempt to collect  
16 unemployment while I was going to attempt to begin  
17 chemotherapy and undergo emergency -- a surgery for the --

18 JUDGE LONG: Mr. And Mrs. Venegas, I'm going to  
19 interrupt you for just a moment. What you're currently --  
20 it sounds like what you're currently offering is  
21 testimony, and I want to swear you both in as witnesses.  
22 That way your testimony can be considered as evidence. If  
23 I don't swear you in, then it's considered argument.

24 MRS. VENEGAS: Okay.

25 JUDGE LONG: So I'm going to go ahead and swear

1       you in, if that is fine with you?

2               MR. VENEGAS:   Yes.

3               MRS. VENEGAS:   Okay.

4               JUDGE LONG:   All right.   Mrs. Cindy Venegas, can  
5       you please raise your right hand.

6

7                               C. VENEGAS,

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

11

12               JUDGE LONG:   All right now Mr. Venegas.

13

14                               F. VENEGAS,

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

18

19               JUDGE LONG:   All right.   Thank you.   I'll let you  
20      go ahead and resume.   Thanks.

21               MRS. VENEGAS:   Should I start in the beginning?

22               MR. VENEGAS:   Should she start over?

23               JUDGE LONG:   Yes, please.

24               MRS. VENEGAS:   Okay.   So in October of 2018

25      Fernando became unemployed by his employer Mark



1 Christopher Chevrolet --

2 MR. VENEGAS: In Ontario.

3 MRS. VENEGAS: -- in Ontario, California. Also  
4 in October of 2018, I was diagnosed with an advanced stage  
5 of ovarian cancer. Fernando made the decision to attempt  
6 to apply for unemployment and stay with me throughout the  
7 beginning of the process of chemotherapy and also surgical  
8 procedures for my diagnoses. Fernando attempted to apply  
9 for unemployment several times, and I believe that once or  
10 twice he was denied. So what we did was we had to  
11 resource -- he resourced to apply for financial assistance  
12 with the State for monetary assistance, food assistance,  
13 and for medical health insurance.

14 Also, at that time, I was employed. And I was  
15 due to go back to work in January of 2019. But due to the  
16 severity of the chemotherapy treatments, I was unable to  
17 go back when the date that my employer requested.  
18 Therefore, my employer decided to terminate my employment,  
19 and I had to also resource to -- it was temporary  
20 disability that I became eligible for and also became  
21 eligible for state medical health insurance. At that  
22 time, the funds that we had were simply state -- state  
23 assistance, government assistance, and later on disability  
24 kicked in for me.

25 My -- our children also became eligible for state

1     disability because they are minors. And so due to my work  
2     history, they became eligible to receive monthly monetary  
3     assistance. And for the year of 2019 what we were living  
4     off was my Social Security benefits, including the  
5     monetary monthly payments that my children were receiving.

6             So, all myself, my two children were receiving  
7     monthly Social Security payments. And that's how we were  
8     able to scrape by and pay our mortgage. With the food  
9     assistance programs with the State, we were able to  
10    purchase food. And with family support, we were able to  
11    pay some of our bills because our family did start a  
12    GoFundMe account. And we collected some funds and that  
13    went to -- towards the assistance of paying our utility  
14    bills and stuff like that.

15            So, yes, the entire year of 2019 Fernando was  
16    unemployed. And the payments for the mortgage, which I  
17    believe is what is in question, they were paid with my --  
18    with the combination of my Social Security and the Social  
19    Security benefits that my two -- our two minor children  
20    were receiving.

21            The last detail is that we decided to rent a room  
22    in our home to a known person. We put an ad online and  
23    somebody -- we interviewed a few people, and we decided to  
24    rent the room -- a room in our home to a family, a couple  
25    with three children. And they lived in our home and paid

1       us rent for about -- for about approximately the entire  
2       year -- a little bit over a year of 2019, going into 2020.  
3       And that's really what helped us stay afloat.

4               I do have still the contact information for the  
5       renters. So they are able to provide testimony that, you  
6       know, they were be renting from us at that time. They --  
7       they are able to provide testimony that they witnessed  
8       that I was undergoing really aggressive chemo therapy  
9       treatments and that Fernando was at home during that time.

10              JUDGE LONG: All right. Mr. and Mrs. Venegas,  
11       does that include your presentation?

12              MRS. VENEGAS: Yes.

13              JUDGE LONG: I'd like to ask you just a couple of  
14       questions. I want to confirm. Have you filed a return  
15       for 2019?

16              MRS. VENEGAS: No, we did not. We did not  
17       because Fernando did not have a W-2. So from our  
18       understanding -- I mean, how would we?

19              JUDGE LONG: I understand what you're saying.  
20       All right. Let's see. And I also would like to ask. You  
21       said you received rental income for the room. Could you  
22       approximate how much -- well, let me ask instead, how many  
23       dependent children did you have in 2019?

24              MRS. VENEGAS: Two minor children.

25              JUDGE LONG: Two minor children. All right. And

1       how much did you rent the room out for? Do you recall?

2               MRS. VENEGAS: Yes. I believe that we rented the  
3 room out for \$800 a month.

4               JUDGE LONG: And I'm assuming that included  
5 utilities?

6               MRS. VENEGAS: Everything. Yes.

7               JUDGE LONG: All right. FTB, do you have any  
8 questions for Mr. and Mrs. Venegas related to the  
9 testimony they've offered?

10              MR. SMITH: I do not.

11              JUDGE LONG: All right. Thank you, Mr. and  
12 Mrs. Venegas.

13              We're going to go ahead and let FTB begin their  
14 case presentation.

15              FTB, you may begin whenever you're ready.

16              MR. SMITH: Thank you.

17

18                               PRESENTATION

19              MR. SMITH: Good morning. My name is Joel Smith.  
20 I'm Respondent Franchise Tax Board.

21              The primary issue is whether Appellant  
22 demonstrated error in Respondent's proposed assessment for  
23 the 2019 tax year, and a related issue, depending on how  
24 the OTA handles the first issue, is whether Appellant  
25 demonstrated reasonable cause to abate a delinquent filing

1 penalty.

2           The relevant facts as they have been presented to  
3 this point -- a lot of new information came out in  
4 Appellants' oral argument just now. But up until this  
5 point, relevant facts were very straightforward.  
6 Appellant did not file a 2019 tax return. Respondent did  
7 receive information that indicated Appellant made mortgage  
8 interest payments for 2019 that totaled \$12,349. So based  
9 on that, Respondent issued a proposed assessment. The  
10 information that Respondent relied on for calculating the  
11 estimated income is provided in Respondent's Exhibit D,  
12 which is a summary of income studies related to mortgage  
13 interest paid. And then from that point on, Appellant has  
14 not provided any documentation to support the position  
15 that there's no filing requirement.

16           With regard to Issue No. 1, whether Appellant has  
17 established error in the proposed assessment, Revenue &  
18 Taxation Code Section 19087 provides Respondent with the  
19 authority to propose an assessment from any available  
20 information which indicates that a taxpayer has a filing  
21 requirement. Respondent must establish that the  
22 assessment is reasonable and rational. And this is done  
23 by introducing evidence linking Appellant with the  
24 unreported income. As stated, the income is based on  
25 mortgage interest paid reported on IRS Form 1098. This is

1 provided in Exhibit A.

2 The OTA and its predecessor the BOE have held  
3 that this is a reasonable and rational estimate of income  
4 source. So the next step is that the presumption of  
5 correctness places the burden on Appellant to show error  
6 in the assessment by a preponderance of the evidence.  
7 Unsupported assertions are not sufficient to satisfy this  
8 burden and failure to produce evidence that's within  
9 Appellants' control gives rise to a presumption that such  
10 evidence is unfavorable to Appellants' case.

11 Now, as it relates to the information that's just  
12 been shared today, if Appellant has some documentation to  
13 support these alternative sources of income, Respondent  
14 would review it. I point the parties to Exhibit F, which  
15 was a letter the FTB sent during the protest process  
16 requesting some financial documentation to show how  
17 Appellant survived financially through 2019 despite not  
18 having employment. Sounds like there were some alternate  
19 ways -- sources of income outside of W-2 employment that  
20 Appellant relied on.

21 There may still be a filing requirement as it  
22 relates to the rental income that was received. But if  
23 there is documentation to support Appellants' arguments  
24 today, Respondent would certainly review that. That  
25 documentation could include a tax return that shows what

1 income was received. Absent this documentation, Appellant  
2 does not meet the burden to show error in the assessment.  
3 So in the event that no documentation is provided, we can  
4 discuss -- when my presentation is over -- if there's an  
5 ability for OTA to hold the record open. Respondent would  
6 certainly be amenable to that.

7 Absent additional documents, the second issue is  
8 delinquent filing penalty imposition if this penalty is  
9 presumed proper, unless Appellant shows its failure to  
10 timely file is a result of reasonable cause and not  
11 willful neglect. Again, just as with the first, there has  
12 been no documentation or argument to support abatement of  
13 this penalty, though, it sounds like there may be  
14 documentation that would support it. In the event that  
15 the assessment is adjusted, the delinquent filing penalty  
16 would be adjusted accordingly.

17 So, in conclusion, based on California law and  
18 the evidence in the record, Respondent requests you  
19 sustain its position.

20 I am available for questions at this time. Thank  
21 you.

22 JUDGE LONG: All right. Thank you, Mr. Smith.

23 So I'd like to ask Mr. Smith to confirm. It  
24 sounds like FTB's position may change if Mr. and  
25 Mrs. Venegas are able to provide documentation to support

1 the testimony that they have offered here today; is that  
2 correct?

3 MR. SMITH: Yes, that's correct.

4 JUDGE LONG: All right. Mr. and Mrs. Venegas,  
5 are you prepared to provide additional documentation to  
6 Franchise Tax Board to support what you've testified to  
7 here today?

8 MRS. VENEGAS: We have a few questions. I  
9 assume -- we -- I understood a lot of what was said, but a  
10 lot of it I didn't comprehend.

11 JUDGE LONG: All right. All right. Let me see  
12 if I can break this down.

13 MRS. VENEGAS: Okay.

14 JUDGE LONG: So FTB got information that you made  
15 these mortgage payments, so FTB estimated that you had  
16 income. FTB sent letters to you asking for you to file a  
17 return. And when they didn't hear anything back, they  
18 issued an assessment. So the information that you're  
19 providing FTB today was new to them. And if you can  
20 provide anything to substantiate or support that, FTB may  
21 be willing to revise its assessment.

22 So what they are looking for, it sounds like,  
23 would be a 2019 return. May I ask, Mr. and Mrs. Venegas,  
24 do you normally file a joint return?

25 MRS. VENEGAS: Yes.



1 JUDGE LONG: All right. So what it sounds like  
2 FTB might be looking for from you is information, such as  
3 if you were fill out a 2019 tax return or if you could  
4 provide any information. And if you look at the  
5 information that was sent to you by Franchise Tax Board,  
6 the Exhibit B or request for tax return, includes a list  
7 of filing requirements, which includes that for a married  
8 filing jointly couple of taxpayers with two or more  
9 dependents, you have a filing requirement if you have --  
10 let's see -- California gross income equal to or greater  
11 than \$58,535. Based on your testimony here today, it  
12 sounds like that was not the case?

13 MRS. VENEGAS: Perhaps. We don't believe that we  
14 met --

15 JUDGE LONG: You didn't make more than \$58,000 in  
16 2019.

17 MRS. VENEGAS: We didn't.

18 JUDGE LONG: All right. So I think where we're  
19 at this point is that it sounds like it might be a good  
20 idea for Mr. Smith and for Appellants to perhaps meet and  
21 confer, perhaps a phone call or some email exchanges, to  
22 see if there is additional documentation. OTA can  
23 facilitate that. However, we ask the parties to  
24 participate and cooperate in discovery purposes, rather  
25 than going through our office. But if it's necessary, we

1       can arrange to have that evidentiary process take place  
2       through our office. But if you're able to provide  
3       documentation to support your testimony, it looks like FTB  
4       is very interested in hearing and seeing that  
5       documentation.

6               So, to that extent, let me go ahead and ask Mr.  
7       and Mrs. Venegas, do you have any additional questions for  
8       me today?

9               MRS. VENEGAS: Yes. We did not respond in the  
10       beginning to Mr. Smith, but afterwards we did communicate  
11       via email and we did -- I did send -- Fernando and I sent  
12       a letter to Mr. Smith that stated -- a written document  
13       stating what we stated now just a few moments ago with the  
14       exception of not including the details that we had rented  
15       a room. I don't believe it might have included those  
16       details. But that reinstatement does not make any  
17       difference? That's a question.

18              JUDGE LONG: Well, let me ask.

19              Mr. Smith, did you receive that information, that  
20       letter from Appellants?

21              MR. SMITH: No. I have no record of receiving  
22       anything from Appellants, which is not a problem moving  
23       forward. But no, I have not received that.

24              MRS. VENEGAS: So I -- I do have -- I do have a  
25       copy of that letter. I have a packet that was sent. I

1 don't know if was from Mr. Smith directly or from his  
2 offices, but within that packet there's a copy of that  
3 statement that I made. I don't have it available with me  
4 because what I'm using right now is an Android tablet.  
5 But I would -- I can definitely provide a copy of that if  
6 it makes any difference.

7 But if not, the second -- the second thing is --  
8 or the second detail is that we had -- when we received  
9 that letter that we responded to with a mailed statement  
10 from Mr. Joel Smith, we took that letter to our CPA who  
11 does our annual tax returns, and we asked him what does  
12 this mean? Do we need to respond to that? But maybe  
13 it -- we really did base ourselves on what our CPA's  
14 answer was. And what his answer was, we did not need to  
15 file because there was no employment on Fernando's behalf.

16 Now, if our CPA was wrong and he didn't -- and  
17 directed us incorrectly, then we did not know. That being  
18 that Fernando and I are not CPAs, we don't know the  
19 regulations of annual tax returns. And we did not know  
20 that he, Fernando, would have needed to file a tax return  
21 being unemployed the entire year of 2019.

22 So the third detail is that because Fernando was  
23 unemployed, our oldest son who is an adult and was an  
24 adult in 2018 and '19 and was working in 2018 and '19,  
25 he -- he filed his taxes, and he put myself and his two

1 brothers and sisters as his dependents because he was  
2 helping us financially during that time of -- the ending  
3 of the last quarter of 2019. He helped us a lot those  
4 first few months that -- in October, November, December.

5 We did not have any savings to fall back on when  
6 I was diagnosed and couldn't go back to work, and he lost  
7 his job. And so our son came in to kind of rescue us. So  
8 is that a question for our CPA to answer what do we do, or  
9 is that -- I mean we don't --

10 JUDGE LONG: All right. I'd like just to confirm  
11 my understanding. It sounds like you have -- so -- you  
12 had 2019, you said earlier you had two dependent children.  
13 And this is an additional child who is not dependent on  
14 you?

15 MR. VENEGAS: Yes.

16 MRS. VENEGAS: This third child is a nondependent  
17 because he's an adult.

18 JUDGE LONG: And you said that he claimed your  
19 two children as dependents on his return?

20 MRS. VENEGAS: Yes.

21 JUDGE LONG: Did he claim both of you as  
22 dependents on his return?

23 MRS. VENEGAS: No. I don't -- and I don't know if  
24 he was able to claim me or not. I'm -- I don't remember  
25 at this time, but I do remember --

1 JUDGE LONG: All right. It sounds like what I  
2 need to do at this point in the case, it sounds like  
3 there's some communication that needs to happen so that  
4 FTB has an opportunity to revise its position. And also  
5 so that OTA can have documentation to support our opinion.  
6 So what I'm going to do is I'm going to conclude the  
7 hearing, but I'm going to keep the record open in this  
8 case.

9 And what that means is that I am going to send  
10 out a request for additional information. And when you  
11 get that, I'm going to ask you to respond by the date that  
12 it says there with whatever documentation you have. So  
13 everything you need is going to be in that letter. So  
14 that is what I'm going to do to hopefully facilitate a  
15 resolution in this case.

16 So do we have any questions from either party  
17 before I conclude the hearing?

18 MRS. VENEGAS: No.

19 JUDGE LONG: No. All right.

20 FTB, questions?

21 MR. SMITH: No questions.

22 JUDGE LONG: All right. Thank you.

23 Well that concludes the hearing. I will decide  
24 this case based on the documents and testimony presented.  
25 And I will maintain the -- I will keep the record open for

1 additional briefing in this matter.

2 That concludes our hearing, and let's see. OTA  
3 will reconvene in 15 minutes for our next case on the  
4 morning calendar. We thank everyone for your  
5 participation today.

6 Thank you.

7 (Proceedings adjourned at 10:04 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 12th day  
of October, 2023.

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