

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
L. ALONZO, ) OTA NO. 230112388  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, September 22, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 10:17 a.m. and concluding at 10:38 a.m. on  
Friday, September 22, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ EDDY LAM  
ALJ VERONICA LONG

For the Appellant: L. ALONZO

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
TRISTEN THALHUBER  
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 at page 5.)  
(Department's Exhibits A-H were received at page 5.)

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California; Friday, September 22, 2023

10:17 a.m.

JUDGE LEUNG: This is Docket Number 230112388.  
Today is September 22nd, 2023, about 10:17 a.m. This is  
the Appeal of Alonzo. The issue to be determined is  
whether the 2015 refund claim filed by Ms. Alonzo is  
timely.

Pursuant to agreement between the parties, this  
hearing is being held electronically. And also, pursuant  
to a prehearing conference and prior to this hearing, we  
have Exhibits A through H and Exhibits 1 through 2 being  
admitted into the record and into evidence.

(Department's Exhibit A-H was marked  
and received into evidence by the  
Hearing Officer.)

(Appellant's Exhibits 1-2 were received  
in evidence by the Administrative Law Judge.)

JUDGE LEUNG: This hearing is being recorded live  
and is being live streamed. So I caution the parties to  
be careful about mentioning private matters, such as  
Social Security numbers and home addresses.

A verbatim hearing transcript is being prepared  
by our legal stenographer, Lynn Alonzo. Ms. Alonzo is in  
no way related to the taxpayer and has no interest in the

1 outcome of this hearing.

2 Because of the hearing transcript, we ask each  
3 party to speak clearly and at a regular pace. And we ask  
4 you to identify yourself before you speak. And it's also  
5 best practice to mute your microphones inactive when  
6 you're not speaking.

7 Any questions for me before we start?

8 Okay. Hearing none, the Panel members for  
9 today's hearing are myself, Judge Long and Judge Lam.  
10 Even though I am the lead judge for purposes of this  
11 hearing, all three of the Panel members will have an equal  
12 say in determining the outcome of this case.

13 Ms. Alonzo, you have 10 minutes for your  
14 presentation, as will the Franchise Tax Board. And,  
15 Ms. Alonzo, if you so choose, you'll have 5 minutes for a  
16 rebuttal.

17 Let me start by having the parties introduce  
18 themselves for the record, starting with you, Ms. Alonzo.

19 MS. LISSET ALONZO: Yes. Hi. My name is Lisset  
20 Alonzo.

21 JUDGE LEUNG: Thank you. And while I have you --

22 MS. LISSET ALONZO: And --

23 JUDGE LEUNG: Go ahead.

24 MS. LISSET ALONZO: Oh, I'm sorry. No, no, no.

25 I'm done.

1 JUDGE LEUNG: Okay. While I have you on the mic,  
2 let me ask you to raise your right hand and say after me.

3  
4 LISSET ALONZO,  
5 produced as a witness, and having been first duly sworn by  
6 the Administrative Law Judge, was examined, and testified  
7 as follows:

8  
9 JUDGE LEUNG: Thank you. We'll get to you in a  
10 minute.

11 And for the Franchise Tax Board, please introduce  
12 yourselves.

13 MR. THALHUBER: Good morning. This is Tristen  
14 Thalhuber, Tax Counsel with the Franchise Tax Board. And  
15 with me is Cynthia Kent, also Tax Counsel with the  
16 Franchise Tax Board.

17 JUDGE LEUNG: Good morning to you folks. Thank  
18 you very much.

19 Ms. Alonzo, I've sworn you in, You can begin your  
20 presentation and must be aware that after you finish you  
21 may have questions from the Franchise Tax Board and/or  
22 from this Panel. So please begin at your pleasure.

23 MS. LISSET ALONZO: Thank you, Your Honor. I'm  
24 just going to be reading the letter, if that's okay?

25 JUDGE LEUNG: That is fine.

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1 the 2015 1099 form that I did not receive from my previous  
2 employer. I then began a payment plan through my current  
3 employer with them. I believe the payment plan was \$120  
4 per paycheck, a total of \$240 per month. These payments  
5 were being directly garnished from my employer paychecks  
6 every payday.

7 During this time, my family needed help with  
8 taking care of my maternal grandmother physically and  
9 financially, which I was doing along with working full  
10 time and taking care of my nine-year old daughter. I had  
11 a lot of things on my mind at that time, including my debt  
12 to FTB as it was taking over \$200 from my paychecks per  
13 month at the time, and I was barely making ends meet.

14 My grandmother ended up succumbing to her illness  
15 April of 2019. Shortly after my maternal grandmother's  
16 passing that my paternal grandmother ended up falling down  
17 and broke her hip. Her health began to spiral down in  
18 which I also had to step in to take care of her physically  
19 and financially. In May of 2019 I found out I was  
20 pregnant with my second child. I then went into maternity  
21 leave from October 2019 to March 2020. During this time I  
22 was being paid by Family Leave Pay only a fraction of my  
23 salary, and the payment plan to FTB stopped for a short  
24 while until I came back from leave.

25 I went back to work March of 2020 and continued

1 my payment plan with FTB. But this time they wanted to  
2 renegotiate at a higher amount of \$155 per check, which  
3 came out to a total of \$310 a month, which I agreed to  
4 because I wanted to be in good standing with FTB and bring  
5 down my debt balance.

6 Plus the FTB representative refused to give me my  
7 previous payment plan rate at \$120 per paycheck, even  
8 though I had explained my situation to her and let her  
9 know that I had just come back from maternity leave and I  
10 was barely making it. But she would not budge to let me  
11 have the previous payment plan.

12 I was still making only a bit above minimum wage  
13 and making ends meet as I ended up being a single mother  
14 and had to pay rent, bills, food, school supplies,  
15 clothing, transportation, and now daycare, which is really  
16 expensive nowadays, especially for newborns. The rate is  
17 about \$210 to \$300 per week. On March 13, 2020, just  
18 about one to two weeks after I had gone back to work from  
19 maternity leave, the pandemic happened and everything  
20 shuts down and my job is on the line because there were  
21 layoffs happening. My hours were cut as my company was  
22 experiencing pandemic hardships.

23 However, even during the pandemic, I still kept  
24 my payment plan in place as agreed. During this time, I  
25 was struggling with not only financial issues, but

1 postpartum depression and a bacterial stomach infection  
2 called H-Pylori, which I had no idea about until 2023 when  
3 I was diagnosed and received treatment for and was  
4 affecting my thought process and daily activities.

5 Early 2021, I was asking around about my taxes  
6 because I felt that a lot of money had been paid, and my  
7 balance continued to look very large to me. And I was  
8 trying to figure out why it was so much money. I then  
9 spoke with a tax specialist, and they told me I could do  
10 my own taxes and send it in to FTB to be reassessed.

11 I did a 1099 form tax inquiry with a tax  
12 specialist, and they were charging me over \$3,000 per tax  
13 year. They explained that 1099 forms were more expensive  
14 to process than regular W-2. I certainly didn't have this  
15 amount of money to my name at that time due to my  
16 circumstance, so I decided to start saving up for it. I  
17 did not know before that I could file my own taxes, even  
18 if the FTB had filed my taxes for me. I was under the  
19 impression that I had to pay that amount of money. My  
20 fault was not reading the fine print thoroughly.

21 But when I found this out, I was determined to  
22 get it done. However, I was not aware there was a statute  
23 of limitations and was expecting to make things right,  
24 along with getting a refund for overpayments via payroll  
25 garnishment during 2015 to 2022. My 2015 taxes were

1 finally filed October of 2022 when the FTB processed them.  
2 My payment plan was not cancelled and one last payment I  
3 did not owe was taken from my paycheck.

4 I did not dispute or try to get payment back  
5 because I believe it would be included in my refund.  
6 However, I never got a refund or the last overpayment made  
7 by mistake after my taxes were processed. I was notified  
8 of this by our accounting department manager at my current  
9 employer. If I would not have called the FTB to give  
10 notice they had processed my own taxes already and did not  
11 owe anymore money, more payments would have been deducted  
12 from my paycheck unbeknownst to me.

13 I also believe that if the FTB rep I spoke with  
14 to renegotiate my payment plan after I came back from  
15 maternity leave would have honored my previous payment  
16 plan of \$120 per check, I would not have overpaid so much  
17 money.

18 I pray that Your Honor takes all of the above  
19 into consideration to grant the overpayment refund for tax  
20 year 2015 as I believe all my actions to make things right  
21 with FTB and pay my debt for tax year 2015 were and are in  
22 good faith.

23 Thank you.

24 JUDGE LEUNG: Thank you, Ms. Alonzo.

25 Mr. Thalhuber, any questions for Ms. Alonzo?

1 MR. Thalhuber: No questions. Thank you.

2 JUDGE LEUNG: To my Panel members, Judge Long,  
3 any questions for Ms. Alonzo?

4 JUDGE LONG: I don't have any questions. Thank  
5 you.

6 JUDGE LEUNG: Okay. Judge Lam, any questions?

7 THE STENOGRAPHER: Judge Lam, you were muted. I  
8 did not get an answer from you.

9 JUDGE LAM: Sorry. No questions. Thank you.

10 JUDGE LEUNG: Okay. Thank you, Judge Lam.

11 Okay. Mr. Thalhuber, would you please begin your  
12 presentation. Thank you.

13 MR. Thalhuber: Yes. Thank you.

14

15 PRESENTATION

16 MR. THALHUBER: This is Tristen Thalhuber.

17 The issue in this appeal is whether the Appellant  
18 has established that she filed a timely claim for refund  
19 for the 2015 tax year prior to the expiration of the  
20 statute of limitations. Unfortunately, the evidence will  
21 show that she did not as to the barred overpayments.

22 Under the applicable section of the Revenue &  
23 Taxation Code, the general statute of limitations provides  
24 that the last day to file a claim for refund is the latter  
25 of four years from the date the return was filed, if it

1 was filed within the extended due date, which does not  
2 apply here, four years from the due date of return without  
3 regard to, of extensions or one year from the date of the  
4 overpayment.

5 For the 2015 tax year, the four-year statute of  
6 limitations expired before Appellant filed her 2015 tax  
7 return, and the one-year statute of limitations expired as  
8 to the remaining barred over payment on Appellant's 2015  
9 tax year account. Appellant late filed her 2015 tax  
10 return on October 31st, 2022, well after the four-year  
11 statute of limitations period had expired in 2020.  
12 Payments made within one year of the filing of Appellant's  
13 2015 tax return were refunded to her. All remaining  
14 payments were made prior to the one-year statute of  
15 limitations. Therefore, the one-year statute of  
16 limitations is unavailable to allow a refund of  
17 Appellant's remaining overpayment for the 2015 tax year.

18 Appellant contends that various hardships caused  
19 her to late file her 2015 tax return and that she should  
20 still be eligible for the refund. Appellant also contends  
21 that she experienced difficulties obtaining her tax  
22 records from her former employer. While Appellant's  
23 situation is unfortunate, such hardships do not negate the  
24 Appellant's responsibility to timely file a return and  
25 will not extend the statute of limitations.

1           Further, there is no reasonable cause or  
2       equitable basis for suspending the statute of limitations.  
3       Additionally, if a taxpayer files a claim for refund or  
4       credit after the expiration of the statute of limitations  
5       because of difficulties in obtaining tax records, that  
6       refund or credit cannot be allowed. The Office of Tax  
7       Appeals in its precedential opinion in the Appeal of  
8       Benemi Partners found that the language of the statute of  
9       limitations is explicit and must be strictly construed.  
10      The United States Supreme Court in United States United  
11      States v. Dalm explain that this is even true when it is  
12      later shown that the tax was not owed in the first place.

13           Appellant has not provided any additional  
14      evidence that would allow FTB by law to grant her claim  
15      for refund. Therefore, FTB respectfully request that the  
16      Office of Tax Appeals sustain the Franchise Tax Board's  
17      claim for refund denial for the 2015 tax year.

18           Thank you and I'm happy to answer any questions.

19           JUDGE LEUNG: Thank you, Franchise Tax Board.

20           Judge Long, any questions for Mr. Thalhuber?

21           JUDGE LONG: I don't have any questions. Thank  
22      you.

23           JUDGE LEUNG: Thank you, Judge Long.

24           Judge Lam, any questions for Mr. Thalhuber?

25           JUDGE LAM: I do not have any questions. Thank

1       you.

2               JUDGE LEUNG: Thank you, Judge Lam.

3               Ms. Alonzo, you have the final say for five  
4 minutes. If you have any final comments, statements, or  
5 rebuttal, go right ahead.

6               MS. LISSET ALONZO: Yes. Thank you, Your Honor.

7

8                               CLOSING STATEMENT

9               MS. LISSET ALONZO: I'm just kind of confused  
10 because there would have been no way to get the 1099  
11 forms, unless my tax preparer requested them. And, you  
12 know, she requested them when I had the money to pay her  
13 to request them to represent me. That would be my only  
14 rebuttal, not being able to get the 1099s on my own and  
15 having to pay somebody, you know, to be able get them and  
16 to be able to file.

17               That's it.

18               JUDGE LEUNG: Okay. Thank you, Ms. Alonzo.

19               Judge Long, questions?

20               JUDGE LONG: I don't have any questions. Thanks.

21               JUDGE LEUNG: Okay. Judge Lam, any questions?

22               JUDGE LAM: No questions. Thank you.

23               JUDGE LEUNG: I will take this opportunity to ask  
24 some questions.

25               Ms. Alonzo, you mentioned that you have one last

1 payment that was made on your installment plan. Do you  
2 recall the date that payment was made on?

3 MS. LISSET ALONZO: I don't recall but I can  
4 found out from our accounting department.

5 JUDGE LEUNG: Well, let me try this. You filed  
6 your return or your claim for refund and return on  
7 October 31st, 2022. So was that payment made after that  
8 day or before that day?

9 MS. LISSET ALONZO: I believe the payment was  
10 made after because -- yeah, I think it was after they were  
11 filed.

12 JUDGE LEUNG: Okay. And, Mr. Thalhuber, looking  
13 at your transcript do you see that payment being refunded  
14 back to Ms. Alonzo or a payment coming in?

15 MR. Thalhuber: Yeah. FTB does not have any  
16 record of payment made after the filing date of October  
17 31st, 2022. And I can see that in Exhibit E, Tax Year  
18 Detail Account, and Exhibit H. So we don't have a record  
19 of payment.

20 JUDGE LEUNG: Okay. But every dollar that she  
21 paid before one -- in the one-year period before  
22 October 31st, 2022, Franchise Tax Board refunded that back  
23 to her?

24 MR. Thalhuber: That's correct.

25 JUDGE LEUNG: How much would that have been?

1           MR. Thalhuber: That was in the amount of  
2     \$1,649.11.

3           JUDGE LEUNG: Okay. And to Ms. Alonzo's point  
4     about having to pay someone to get her 1099s, FTB can  
5     provide that to her for free, right? Or the IRS could do  
6     that, correct?

7           MR. Thalhuber: Yes, I believe so. That's  
8     correct.

9           JUDGE LEUNG: Okay. Thank you.

10          I have no further questions. If my Panel members  
11     don't have anything else, then we can close this hearing.

12          Judge Long, any final questions or comments?

13          JUDGE LONG: No, I don't have any final  
14     questions. Thanks.

15          JUDGE LEUNG: Okay. Judge Lam, any final  
16     questions, comments?

17          JUDGE LAM: No final questions. Thank you.

18          JUDGE LEUNG: Okay. Then this hearing is now  
19     closed. The record is closed. And we will give the  
20     parties a written decision within 100 days of this date.

21          I believe our next hearing will be at 1:00 p.m.  
22     and this hear is -- this particular hearing is now closed.

23          Thank you very much. Have a great day. Goodbye.

24          (Proceedings adjourned at 10:38 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 23rd day of October, 2023.

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