

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
W. KELLY and C. KELLY, ) OTA NO. 220410216  
 )  
 APPELLANT. )  
 )  
 )

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, December 5, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken at  
12900 Park Plaza Dr., Cerritos, California,  
91401, commencing at 1:05 p.m. and concluding  
at 1:33 p.m. on Tuesday, December 5, 2023,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ NATASHA RALSTON

Panel Members: ALJ OVSEP AKOPCHIKYAN  
ALJ MIKE LE

For the Appellant: W. KELLY  
C. KELLY

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
PARVIZ IRANPOUR  
JACLYN ZUMAETA

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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 7.)  
(Department's Exhibits A-G were received at page 7.)

OPENING STATEMENT

|                 | <u>PAGE</u> |
|-----------------|-------------|
| By Mr. Kelly    | 8           |
| By Mr. Iranpour | 15          |

CLOSING STATEMENT

|              | <u>PAGE</u> |
|--------------|-------------|
| By Mr. Kelly | 17          |

1 Cerritos, California; Tuesday, December 5, 2023

2 1:05 p.m.

3  
4 JUDGE RALSTON: We're opening the record for the  
5 hearing Appeal of Kelly, Office of Tax Appeals Case  
6 No. 220410216. Today's date is December 5th, 2023, and  
7 the time is approximately 1:05 p.m. My name is  
8 Judge Ralston, and I'm the lead Administrative Law Judge  
9 who will be conducting the hearing for this case. We also  
10 have Judge Akopchikyan and Judge Le here today. All three  
11 of the Judges will meet afterwards and issue our decision.

12 The Office of Tax Appeals is not a court but is  
13 an independent appeals body which is staffed by tax  
14 experts and is independent of any tax agency. This  
15 hearing will be live streamed to the public and is being  
16 recorded. The transcript and the video recording are part  
17 of the public record and will be posted on the Office of  
18 Tax Appeals website.

19 Also present is our stenographer Ms. Alonzo, who  
20 is reporting this hearing verbatim. To ensure that we  
21 have an accurate record, we ask that everyone speak one at  
22 a time and to not speak over each other. You'll see, when  
23 it's your turn to chat if you could just make sure that  
24 your microphone is on, you'll see the green light. And  
25 when you're not speaking, if you could make sure your

1 microphone is off that would be great.

2 Also, we ask that everyone speaks clearly and  
3 loudly. And if needed, Ms. Alonzo will stop the hearing  
4 process and ask for clarification. After the hearing,  
5 Ms. Alonzo will produce the official hearing transcript,  
6 and that will be verifiable on the Office of Tax Appeals  
7 website.

8 I'm going to ask the parties to introduce  
9 themselves on the record, and I'm going to start with the  
10 Respondent FTB.

11 MR. IRANPOUR: Good afternoon. My name is Parviz  
12 Iranpour and with me is Jaclyn Zumaeta.

13 JUDGE RALSTON: Thank you.

14 And now for the Appellants, if you could  
15 introduce yourselves.

16 MR. KELLY: William Kelly.

17 MRS. KELLY: And Cheryl Kelly.

18 JUDGE RALSTON: Thank you.

19 Okay. We had the prehearing conference in this  
20 matter on November 1st, 2023, and the Appellant submitted  
21 two exhibits labeled Exhibits 1 and 2. Respondent did not  
22 have any objections to Appellants' exhibits, and the  
23 Appellants, Exhibits 1 and 2 are admitted without  
24 objection.

25 ///

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

3           JUDGE RALSTON: Respondent FTB has submitted  
4 Exhibits A through G, and Appellant did not submit any  
5 objections to Respondent's exhibits. So Respondent's  
6 Exhibits A through G are admitted without objection.

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

9           JUDGE RALSTON: It's my understanding that both  
10 Appellants intend to testify under oath, and Respondent  
11 does not have an objection to this.

12           So before you begin your presentation, I will  
13 have you both sworn in.

14           The Appellants will have 20 minutes to present  
15 their case and for the witness testimony. And then the  
16 Respondent will also have 20 minutes to present their  
17 case. And then the Appellant will have five minutes for a  
18 rebuttal. During any time throughout these proceedings,  
19 the Panel will have questions for either party. And with  
20 the Appellants testifying under oath, the FTB may also  
21 have some questions for you.

22           So does anyone have any questions before we move  
23 onto our opening presentation?

24           Not seeing any questions, so let's go ahead and  
25 move on.

1           So Mr. and Mrs. Kelly, if you could please raise  
2       your right hands.

3  
4                               W. KELLY,  
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                               C. KELLY,  
10      produced as a witness, and having been first duly sworn by  
11      the Administrative Law Judge, was examined, and testified  
12      as follows:

13  
14               JUDGE RALSTON:   Thank you.

15               And just so the record is clear, both parties  
16      said yes.   They said, "I do."

17               So you have 20 minutes total for your  
18      presentation and witness testimony, and you can begin when  
19      you're ready.

20               MR. KELLY:   Thank you, Judge.   Forgive me if this  
21      appears a little loosey-goosey, but that's what it is.

22  
23                               PRESENTATION

24               MR. KELLY:   I have to say at the beginning that  
25      throughout our tax careers, which is pretty long, we've



1 never failed to pay our full assessed tax on time, never  
2 failed to file a return on time for whatever jurisdictions  
3 we're filing for. In this case, we have for many years  
4 relied upon the H&R Block Organizations programs to do  
5 both our federal and state returns. And lately in recent  
6 years, this has allowed electronic filing which we did in  
7 this case for 2017, both federal and California.

8 The electronic filing was done before the  
9 deadline, and the payments that followed from that were  
10 posted before the deadline. In the case of the State of  
11 Virginia, it was a single-item income. So I prepared that  
12 manually transcribing the appropriate information from the  
13 federal return. The capital gain in question from  
14 Virginia was entered on the 2017 California return,  
15 Line 13 of the adjustments form, and it was accepted by  
16 the H&R Block program without any red flags or overrides.  
17 And if there had been any of those, it would not have  
18 permitted electronic filing. And I took that as a go for  
19 filing those.

20 After that, it took the State of California  
21 three-and-a-half years plus to notify us that we had done  
22 something wrong, which I freely admit I did it wrong. But  
23 the delay in notifying us prohibited us from seeking a  
24 reimbursement from Virginia because their statute of  
25 limitations is three years instead of California's four.

1           I spoke with Mr. Dougherty at FTB a couple times  
2       early in this process, and he was very helpful to a point.  
3       But there was nothing mentioned about filing an amended  
4       return to account for this tax paid to another state. In  
5       any case, the time limit for California's amended return  
6       by then had expired. When FTB notified us of the  
7       discrepancy, \$30-some thousand dollars, 35 -- whatever, we  
8       paid the full amount on time before the deadline, which I  
9       think was two weeks. I don't have that letter in front of  
10      me. And sometime after that, FTB claimed that we had  
11      missed the deadline and assessed further interest. That  
12      further interest has been abated as we recognize, but it  
13      was -- it was another error.

14           In the meantime, it caused us considerable time  
15      and energy, much anxiety, and some expense. Our appeal  
16      is -- is simply for the amount of tax paid to the State of  
17      Virginia, plus the accrued interest on that amount. This  
18      is nothing more or less than what would have been  
19      reimbursed to us in the normal course of events had we  
20      filed -- had we been able to file an amended return with  
21      the form that includes taxes paid to another state.

22           We view this as not administrative solution that  
23      permits fulfilling the laws that govern payments to two  
24      states on the same taxable income. It would be nice to  
25      get a further reimbursement for the excess interest paid

1       because of the lengthy delay in notifying us of the  
2       discrepancy. And all along we've never failed to pay our  
3       proper taxes on time and in full, including this  
4       extraordinary amount, which took some doing, 30-plus K.

5               I mentioned two items which I thought might be  
6       considered errors or mistakes by the State of California,  
7       and I would like to point out a third, which is attached  
8       to this hearing binder that was mailed to us last week.

9       Attached to the back of this is a three-page letter  
10      addressed to Sabrina Lee, not us. It contains sensitive  
11      personal information, which we don't need and don't want,  
12      and I'll surrender this to whoever would care to take it  
13      and safeguard it.

14             That's pretty much all we have.

15             MRS. KELLY: We would like to know where our  
16      personal information went.

17             MR. KELLY: Oh, yeah. Yeah. If there's such a  
18      letter that should have been attached to our file, it  
19      would be nice to know where that is.

20             Thank you.

21             JUDGE RALSTON: Okay. Thank you. So just to  
22      make sure I understand clearly, there's a document  
23      attached to the file that's probably not part of the file.  
24      It's not labeled as an exhibit or anything. It was  
25      just --

1 MR. KELLY: Correct.

2 JUDGE RALSTON: Okay. Thank you.

3 MR. WILLIAMS: It has someone else's name on it.

4 JUDGE RALSTON: Okay. Thank you.

5 So I just am checking my notes. If you guys  
6 would excuse me for a minute.

7 JUDGE LE: May I?

8 JUDGE RALSTON: Yes, please.

9 JUDGE LE: What page are you referring to just so  
10 we're all on the same page?

11 JUDGE RALSTON: I think the document is not  
12 actually part of the hearing binder.

13 Does it have like -- on the hearing binder  
14 there's like page numbers and things. I don't know if  
15 this has anything 'cause I'm showing that it ends.

16 MR. KELLY: There -- excuse me, Judge. There are  
17 page numbers, but they're like of 1 of 1, 2 of 2, 7 of 9.  
18 This one does not have any such page number. Oh, well,  
19 page 1 and 1, which is an account transcript. So the  
20 letter is two pages, and the transcript is one page.

21 JUDGE RALSTON: Okay. Yeah. I'm asking if  
22 there's someone in our office who could maybe take a look  
23 at that and make sure we get it to the correct place.

24 MRS. KELLY: I'm sure she would like that.

25 JUDGE RALSTON: Yeah. Thank you.

1           So I am going to -- let's just take a break for  
2           few minutes, and I'm going to ask someone from our office  
3           to come get a copy -- take a look at that letter and see  
4           how we need to proceed.

5           So we're going to take a five-minute break. It's  
6           about 1:20, so let's come back at 1:25.

7           Just a reminder to the people that are in the  
8           room that we're still being live streamed and the  
9           microphones are still active. So just keep that in mind  
10          and thank you.

11          (There is a pause in the proceedings.)

12          JUDGE RALSTON: Okay. We're ready to go back on  
13          the record. Is everyone ready? Okay. Looks like  
14          everyone is ready.

15          Thank you everyone for your patience.

16          Thank you for providing us with that letter.

17          It was -- both parties are aware of the letter  
18          and the information. It is clearly not related to this  
19          appeal. So for the purposes of this appeal today, if  
20          everyone could disregard that information, and we will  
21          proceed with the matter before us today.

22          As far as for the Kellys, I don't think that  
23          there's another letter that wasn't sent to you. I've  
24          looked in the file and everything appears be up-to-date.

25          MR. KELLY: I'm not aware about any other.

1 JUDGE RALSTON: Okay. Yeah. Yeah. You had  
2 stated that you weren't sure if there was a letter. But,  
3 yeah, I don't think there's anything missing, so we can go  
4 ahead and proceed today. Yes, so you have just both given  
5 your testimony, and I'm going to check with the FTB.

6 Did you have any questions for either witness,  
7 Mr. Iranpour.

8 MR. IRANPOUR: No questions. Regarding the  
9 document, we've never seen that document. It wasn't part  
10 of our hearing packet. I just wanted to let you know.

11 JUDGE RALSTON: Okay. Thank you.

12 MR. IRANPOUR: Yup.

13 JUDGE RALSTON: I'm going to just check with --  
14 you know, I did have a question. I think I'm going to  
15 wait, but I'm going to check with my co-Panel to see if  
16 they have any questions.

17 Judge Akopchikyan, did you have any questions?

18 JUDGE AKOPCHIKYAN: No questions at this time.  
19 Thank you.

20 JUDGE RALSTON: And, Judge Le, did you have any  
21 questions?

22 JUDGE LE: No questions either. Thank you.

23 JUDGE RALSTON: Okay. So Mr. Iranpour, you have  
24 15 minutes for your presentation and can begin when you're  
25 ready.

1 MR. IRANPOUR: Thank you.

2 PRESENTATION

3 MR. IRANPOUR: Good afternoon, Judges.

4 This case concerns the following single issue:  
5 Whether Appellants are entitled to a 2017 California Other  
6 State Tax Credit for capital gains taxes paid to Virginia  
7 for the sale of Virginia real property. Appellants were  
8 California residents during the 2017 tax year and excluded  
9 from their California Resident 540, capital gains  
10 generated from a 2017 sale of Virginia real property.  
11 Appellants allegedly mistakenly paid capital gains taxes  
12 to Virginia, rather than California but acknowledged the  
13 error was theirs.

14 Appellants argue that because the statute of  
15 limitations for claiming a Virginia credit for the taxes  
16 paid to California has since expired, the Franchise Tax  
17 Board should waive the California income tax due.  
18 Generally, California residents may claim a California  
19 OSTC for net income taxes imposed by and paid to the  
20 income sourcing state. Of the income sourcing state,  
21 however, allows California residents a credit for net  
22 income taxes paid to California, then no California OSTC  
23 is permitted.

24 These states are known as reverse credit states.  
25 And because Virginia was a reverse credit state, the law

1 required Appellants to claim the credit from Virginia, not  
2 California. Because there's no provision allowing FTB to  
3 set aside a tax, otherwise correctly assessed, Appellants'  
4 request should be denied.

5 This concludes FTB' presentation. We're happy to  
6 take any questions Appellant may have.

7 JUDGE RALSTON: Okay. Thank you.

8 I have a question for either Appellant. You  
9 stated that you contacted FTB at some point and spoke to  
10 someone on the phone, but they didn't tell you that you  
11 could file an amended return. Do you know when  
12 approximately that was?

13 MR. KELLY: That was early in the process soon  
14 after we had received the -- well, there were two notices.  
15 One was a Notice of Proposed Assessment -- or whatever  
16 it's called -- and then assessment itself. I can't recall  
17 exactly when that was. I recall the name Dougherty, and  
18 he was very helpful procedurally. And -- but beyond that  
19 not much.

20 JUDGE RALSTON: Okay. Thank you.

21 Let me check with my co-Panelists.

22 Judge Akopchikyan, did you have any questions?

23 JUDGE AKOPCHIKYAN: I don't have any questions.

24 Thank you.

25 JUDGE RALSTON: Thank you.



1 And, Judge Le?

2 JUDGE LE: No questions. Thank you.

3 JUDGE RALSTON: Okay. So, for the Appellants,  
4 you have five minutes for your rebuttal. So you can begin  
5 when you're ready, if you want to respond to FTB's  
6 presentation, but you don't have to if you have already  
7 said your peace.

8

9 CLOSING STATEMENT

10 MR. KELLY: Only to the extent that we view these  
11 as circumstances that were laid upon us that we did not  
12 choose. We've never -- never tried to hide anything.  
13 And, in fact, the amount in question I'll reiterate was  
14 cited on the 540 adjustments page of the return on Line  
15 13, and it seem -- and filed electronically. It seems to  
16 me that discrepancy, as we clearly see now, should have  
17 been noticed right away. The return was accepted,  
18 probably within minutes of its submittal, over the  
19 internet. And so allowing lots and lots of time -- let's  
20 say a week or two weeks, would have been an appropriate  
21 time to notify us of that discrepancy.

22 MRS. KELLY: Not three-and-a-half years.

23 MR. KELLY: No. Excuse me, if I have any time  
24 left?

25 JUDGE RALSTON: Yes, go ahead.

1           MR. KELLY:  There's some possible reasons come to  
2   mind of why that might have happened, and the first would  
3   be a fault in the program.  I kind of doubt that since  
4   California is the seat of one of the technology centers of  
5   the nation, in the world as a matter of fact.  So I doubt  
6   that the program is at fault, but that leaves -- that  
7   leaves human intervention to -- to account for the delay.

8           JUDGE RALSTON:  Okay.  Okay.  Thank you very  
9   much.

10           I think we are ready -- well, we are ready to  
11   conclude this hearing.  So the Panel will meet, and we  
12   will issue our decision within a hundred days, and we'll  
13   send you our written decision.

14           Thank you everyone for attending, and that is it  
15   for today.  Thank you.

16           (Proceedings adjourned at 1:33 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 19th day  
of December, 2023.

---

ERNALYN M. ALONZO  
HEARING REPORTER