

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
 T. JONES and J. JONES,) OTA NO. 230112315
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, November 15, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:39 a.m. on
Wednesday, November 15, 2023, reported by
Ernalyne M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE LAUREN KATAGIHARA

For the Appellant: WILLIAM FRIEDRICHSEN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC BROWN
MARIA BROSTERHOUS

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I N D E X

PRESENTATION

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California; Wednesday, November 15, 2023

9:30 a.m.

JUDGE KATAGIHARA: We're opening the record in Appeal of Jones before the Office of Tax Appeals. This is OTA Case No. 230112315. Today is Wednesday, November 15th, 2023. The time is 9:30 a.m. We're holding this hearing electronically with the agreement of all the parties.

I'd like to begin by asking the parties to please identify themselves by stating their name for the record. Let's begin with Appellant.

MR. FRIEDRICHSEN: Bill Friedrichsen.

JUDGE KATAGIHARA: And who is here for Respondent?

MR. BROWN: Eric Brown, California Franchise Tax Board.

MS. BROSTERHOUS: And Maria Brosterhous.

JUDGE KATAGIHARA: Thank you.

I am Judge Lauren Katagihara the Administrative Law Judge who will be hearing and deciding this case.

Today we're considering the following two issues: One, whether Appellants have established that the underpayment of estimated tax penalty should be abated; and two, whether Appellants have established a basis upon

1 which interest can be abated.

2 At the prehearing conference, Respondent
3 confirmed that it does not dispute Appellants' assertion
4 that they made estimated tax payments totaling \$11,800
5 towards the 2021 tax year, and that that amount is
6 143 percent more than Appellants' tax liability for the
7 2020 tax year.

8 Respondent has proposed Exhibits A through E.
9 Appellants have not proposed any exhibits.

10 Appellant, as you indicated that you'll be
11 referring to Respondent's exhibits today, I assume that
12 you do not have any objections to Respondent's exhibits;
13 is that correct?

14 MR. FRIEDRICHSEN: That is correct.

15 JUDGE KATAGIHARA: Thank you.

16 The parties did not identify any witnesses prior
17 to the October 31st, deadline, so there will not be any
18 testimony offered for this case. And with that, I think
19 we're ready to begin the presentations.

20 Appellant, you have the floor for the next ten
21 minutes.

22 MR. FRIEDRICHSEN: I won't need ten minutes.
23 It's a very simple ask on our part.

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12 I guess our response is we had no idea what the
13 tax liability or even the taxable income was for that year
14 until we were able to complete the underlying tax returns
15 two months after the due date of the estimate payment.
16 And so we made a good-faith payment to try to cover our
17 underpayment by paying in excess of the previous year's
18 tax and then hoping that we could get some relief on that
19 basis because we had other reasonable basis to make a
20 different estimate payment at the time in January. That's
21 basically the question.

22

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1 equitable allowance in a situation such as ours where
2 taxable income changes so drastically from one year to the
3 next and -- and asking us to make estimate payments on
4 unknown numbers. It does not seem to be equitable to the
5 taxpayer.

6 And that's my case. I mean, it's -- I'm going
7 for a mercy judgment here.

8 JUDGE KATAGIHARA: Okay. Thank you,
9 Mr. Friedrichsen. I may have questions for you, but if I
10 do, I'll wait to ask them until after Respondent's
11 presentation.

12 Respondent, you may proceed with your
13 presentation. You have ten minutes.

14 MR. BROWN: Thank you, Judge.

15
16 PRESENTATION

17 MR. BROWN: Good morning. I'm Eric Brown, Tax
18 Counsel with the Franchise Tax Board. And with me today
19 is Maria Brosterhous, also from the Franchise Tax Board.

20 In the present appeal, Appellants have failed to
21 show error in the Franchise Tax Board's imposition of the
22 underpayment of estimated tax penalty for the 2021 tax
23 year, and Appellants have also failed to show any reason
24 why interest should be abated.

25 Appellants are Colorado residents who filed a

1 California nonresident income tax return. For the 2021
2 tax year, Appellants reported over a million dollars
3 California adjusted gross income, over a million dollars
4 California taxable income, and \$110,925 total tax, and a
5 balance of \$99,125. They paid only \$11,800 in estimated
6 tax payments over the year, which represented a
7 significant underpayment of the estimated tax payment
8 obligation.

9 In their return, Appellants did not self-report
10 or self-assess an underpayment of estimated tax penalty.
11 The FTB subsequently sent a notice to Appellants in which
12 FTB imposed an estimated tax penalty. Appellants argue
13 the estimated tax penalty should be abated because they
14 paid the minimum required under the law based on their
15 interpretation of federal law, which provides a safe
16 harbor provision where a taxpayer pays estimated tax for
17 the year in an aggregate amount that is greater than 100
18 percent of the preceding taxable year.

19 However, while California conforms to most of the
20 federal law regarding the estimated tax penalty,
21 California expressly does not conform to the safe harbor
22 provision where the taxpayers report California adjusted
23 gross income over a million dollars. Because taxpayers
24 reported over a million dollars California AGI, the safe
25 harbor provision does not apply to them. As previously

1 discussed, Appellants were required to pay at least
2 90 percent of their current i.e. 2021 tax year, and their
3 \$11,800 total estimated tax payments was just over
4 ten percent of their estimated tax payment obligation.

5 Appellants state they are unfamiliar with
6 California law and implied that they should receive
7 leniency or sympathetic treatment. However, unfamiliarity
8 with the law is not an excuse for noncompliance with the
9 law, and unfamiliarity is not a basis for relief.

10 Appellants have not argued any reason for abatement of
11 interest. Under the law, interest can only be abated if
12 there is an unreasonable error or delay by an officer or
13 employee of the Franchise Tax Board acting in his or her
14 official capacity in performing a ministerial or
15 managerial act. In the present appeal, Appellants have
16 not argued any unreasonable error or delay by any officer
17 or employee of the FTB, nor in the performance of a
18 ministerial or managerial act.

19 I will be happy to respond to any questions the
20 Panel may have.

21 JUDGE KATAGIHARA: Thank you very much for your
22 presentation.

23 Appellant, before we move on to your closing
24 statements, if you would like to provide one, I do have a
25 few questions. It does sound like you do not dispute that

1 the penalty amount was properly calculated or imposed; is
2 that correct?

3 MR. FRIEDRICHSEN: I'm sorry. Could you say that
4 again?

5 JUDGE KATAGIHARA: Is there any dispute as to
6 whether the penalty amount was properly calculated or
7 imposed?

8 MR. FRIEDRICHSEN: No, none whatsoever.

9 JUDGE KATAGIHARA: And did the Appellants retire
10 or become disabled during the year 2020 or 2021?

11 MR. FRIEDRICHSEN: They did not.

12 JUDGE KATAGIHARA: Thank you. Those are the only
13 questions I have. Would you like to provide a rebuttal
14 and closing argument?

15 MR. FRIEDRICHSEN: No. The position is the same
16 as stated. We were asked to make an estimated payment
17 based on an unknown number and don't feel that that's an
18 equitable approach to enforcing tax estimated payments.
19 But rules are rules.

20 JUDGE KATAGIHARA: Thank you, Mr. Friedrichsen.

21 I don't have any further questions for either
22 party, so we can conclude this hearing.

23 I want to thank both parties for their
24 presentations today. This appeal will be decided based on
25 the evidence presented. The record is now closed, and the

1 case will be submitted today, which means that OTA will
2 send both parties my written decision no later than
3 100 days from today.

4 OTA will take a recess before the next hearing,
5 and everyone may now exit the hearing.

6 Thank you.

7 (Proceedings adjourned at 9:39 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 1st day
of December, 2023.

ERNALYN M. ALONZO
HEARING REPORTER