

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. ABIPRABOWO and W. BUDIMAN,) OTA NO. 230312940
)
APPELLANTS.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, December 14, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:27 a.m. and concluding at 9:53 a.m. on
Thursday, December 14, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE TERESA STANLEY

For the Appellants: F. ABIPRABOWO
W. BUDIMAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ARIANA MACEDO
BRADLEY COUTINHO

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-5 were received at page 6.)
(Department's Exhibits A-E were received at page 7.)

P R E S E N T A T I O N

	<u>P A G E</u>
By Ms. Budiman	8
By Ms. Macedo	12

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Ms. Budiman	14

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California; Thursday, December 14, 2023

9:27 a.m.

JUDGE STANLEY: This is Judge Stanley speaking.
This is the Appeal of Abiprabowo and Budiman, Case No.
230312940. The date is December 14th, 2023, and the time
is close to 9:30 a.m. The location is a virtual hearing,
and I'm going to ask that the parties introduce themselves
and who they represent, if there are representatives,
starting with Appellant, please.

MS. BUDIMAN: Hello. Hi. Good morning. I'm
Winny Budiman, and I'm here to represent my husband,
Frederick Abiprabowo, and myself, Winny Budiman in the
appeal of the -- for the tax year 2021.

JUDGE STANLEY: Thank you.
And Franchise Tax Board.

MS. MACEDO: Hi. My name is Ariana Macedo, and I
represent Franchise Tax Board.

MR. COUTINHO: And my name is Brad Coutinho, and
I also represent Respondent Franchise Tax Board.

JUDGE STANLEY: Okay. And which one is the
hearing representative for today? Who do I address?

MS. MACEDO: Ariana Macedo speaking.

JUDGE STANLEY: Okay. Thank you.

Welcome everyone to the Office of Tax Appeals. I

1 want to just give a little bit of background for those who
2 don't know about us, but we are not affiliated with the
3 Franchise Tax Board or any other tax agency. OTA, as in
4 the Office of Tax Appeals, is not a court but is an
5 independent appeals agency staffed with its own experts.
6 The only evidence that we have in our record is what was
7 submitted in this appeal.

8 And once again, these proceedings are being live
9 streamed on YouTube, so please do not share your screen
10 and please do not give out any information that you don't
11 want to have the public hear you. If you have something
12 sensitive, we can deal with that. We can go offline and
13 deal with that.

14 Okay. The issue -- the issue to be decided in
15 this appeal is whether Appellants have established
16 reasonable cause to abate the late-payment penalty.

17 Appellants submitted Exhibits 1 through 5. The
18 Franchise Tax Board did not object, so those exhibits are
19 admitted into evidence.

20 (Appellants' Exhibits 1-5 were received
21 in evidence by the Administrative Law Judge.)

22 JUDGE STANLEY: Franchise Tax Board submitted
23 Exhibits A through E. Appellants did not object, so those
24 will also be admitted without objections.

25 ///

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

3 JUDGE STANLEY: Do we have any -- does anyone
4 have any issues with exhibits to address?

5 MS. MACEDO: Ariana Macedo speaking on behalf of
6 Respondent. No issues.

7 MS. BUDIMAN: Winny Budiman and yeah, no issue.

8 JUDGE STANLEY: And also I failed to verify.
9 Ms. Budiman, the issue is the one that I stated; is that
10 correct?

11 MS. BUDIMAN: Yes. Like the abatement for the
12 late-payment penalty, yes.

13 JUDGE STANLEY: And, Ms. Macedo, do you agree?

14 MS. MACEDO: Ariana Macedo speaking. Yes, I
15 agree.

16 JUDGE STANLEY: Okay. The only witness we have
17 today is Ms. Budiman, and so I'd to like to -- okay.
18 Ms. Budiman, can you raise your right hand, please.

19

20 W. BUDIMAN,
21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined, and testified
23 as follows:

24

25 JUDGE STANLEY: Okay. Thank you. You requested

1 15 minutes. You can put your hand down. Sorry.

2 MS. BUDIMAN: Oh, okay.

3 JUDGE STANLEY: This is Judge Stanley speaking.
4 You had requested 15 minutes to present your case,
5 Ms. Budiman, so I'll let you proceed when you're ready.

6 MS. BUDIMAN: Okay. Yeah sure.

7

8 PRESENTATION

9 MS. BUDIMAN: So, yeah, I guess -- I'm Winny
10 Budiman, and we are -- me and my husband are seeking an
11 abatement for the late-payment penalty imposed by the FTB
12 for the tax year 2021 based on the reasonable cause due to
13 factors beyond our control. So the FTB has imposed a
14 late-payment penalty despite our compliance with tax law
15 and timely filing.

16 If you can look at the exhibit, Exhibit 1 shows
17 the proof that we signed this document on Friday,
18 April 8th, 2022, before the filing deadline. And
19 Exhibit 2 provide the evidence that electronic tax return
20 was timely filed. We filed both the IRS 1040 as well as
21 the FTB 540. And it shows that the IRS 1040 was accepted
22 on April 15, 2022, and electronic fund payment request was
23 accepted for processing. But for the reason that was
24 beyond our control, the FTB 540 electronic filing request
25 was rejected the same day that our tax preparer submitted

1 both the 1040 and the 540.

2 Then after the rejection, which was beyond our
3 control, our tax preparer necessitate the subsequent
4 mailing of the tax return to the FTB. And we also show in
5 the exhibit. Exhibit 3 and Exhibit 4 show part of the
6 documents that were mailed to the FTB. And Exhibit 3
7 shows the date, which was signed on April 12, 2022, and
8 postmarked before the filing deadline. And then Exhibit 4
9 further support our argument by demonstrating that our tax
10 preparer had provided our bank account and routing number
11 for the purpose of direct debit, as is common practice.
12 And the purpose of including this account information was
13 to have the FTB direct debit the amount due for tax year
14 2021.

15 Our tax preparer later also indicate they have
16 mailed dozens of tax return to FTB annually with
17 taxpayers' accounts and routing numbers on Form 540, and
18 the FTB debits the taxpayer account upon processing the
19 tax return. However, in our case, the FTB did not process
20 payment due upon processing the tax return. We have
21 provided all necessary information to our tax preparer, as
22 they have filed the necessary return and provided our
23 account and routing information to the FTB.

24 We have all the intent to pay tax as we have
25 prepared the amount in our bank account before the

1 deadline. So in August, when we received the notice -- in
2 August 2022 when we received the notice from FTB about
3 underpayment and penalties, we were beyond surprise. And
4 we also include in the exhibit, Exhibit 5 shows that the
5 FTB notice, and they charge the taxpayer \$1,899 in
6 underpayment and penalties, as well as \$369 in interest.

7 And Exhibit 6 indicates that we, upon receiving
8 this surprising notice, immediately make the entire
9 payment for tax year 2021 and assessed penalties and
10 interest stemming from FTB not processing payment upon the
11 receipt. So we have a longstanding record of timely and
12 full compliance with our tax obligation. We never missed
13 a payment or filed late in previous years. This
14 unexpected Notice of Penalty was, therefore, particularly
15 surprising and did not align with our diligent history of
16 tax dealings. Upon receiving the notice, we acted
17 immediately without any delay reflecting our commitment to
18 rectify this situation promptly and our serious approach
19 to tax compliance.

20 And then the FTB brief later contended we did not
21 demonstrate timely attempts to pay our tax. However, we
22 emphasize in this exhibit that our payment method was
23 provided well in advance and tax return was timely filed.
24 We should have facilitate the payment on the due date.
25 And then the FTB later asserted reliance on tax

1 professional does not constitute reasonable cause yet, in
2 our situation, we did not rely on the tax professional for
3 substantive tax law advice but for filing and payment
4 process, which is customary and was executed correctly on
5 our part.

6 The FTB made reference to United States versus
7 Boyle, and in United States versus Boyle, the court made a
8 distinction between the reliance on the professional for
9 advice on a matter of law, and reliance on a professional
10 to undertake a task, such as filing a tax return or making
11 a payment. So, in our case, we relied on our tax
12 professional not for legal advice but for execution of
13 administrative tasks, specifically to file our return and
14 facilitate the payment of tax, which we provided necessary
15 for far-well in advance. So when the FTB system failed to
16 process our payment, this was an administrative error
17 outside of our control and not a failure to exercise
18 ordinary business care and prudence.

19 So, through the Exhibit 1 through 6 [sic], they
20 clearly demonstrate that all actions were taken with
21 ordinary business care and prudence. And notably the
22 rejection of electronic filing and FTB's failure to debit
23 the account were events beyond our control, which meet the
24 criteria for reasonable cause. We feel that we have met
25 all the criteria for penalty abatement, and that the

1 failure to process our payment was due to systemic issues,
2 not neglect on our part. So we really request the Office
3 of Tax Appeals to recognize our efforts and abate the
4 late-payment penalty as justly warranted.

5 Okay. I think I'm done with the presentation.

6 JUDGE STANLEY: Okay. This is Judge Stanley
7 speaking. Thank you, Ms. Budiman.

8 Ms. Macedo, do you have any questions for
9 Ms. Budiman?

10 MS. MACEDO: Ariana Macedo speaking. No, I do
11 not. Thank you.

12 JUDGE STANLEY: Okay. This is Judge Stanley
13 speaking. We'll move on then to the Franchise Tax Board's
14 presentation.

15 And, Ms. Macedo, you requested 10 minutes, and
16 you can proceed when you're ready.

17 MS. MACEDO: Thank you, Judge Stanley.

18

19 PRESENTATION

20 MS. MACEDO: My name is Ariana Macedo, and I
21 represent Respondent Franchise Tax Board in this matter.
22 I'm joined today by my colleague Brad Coutinho.

23 The issue on appeal is whether Appellants have
24 established reasonable cause to abate the late-payment
25 penalty imposed for the 2021 tax year. The law requires

1 that Respondent impose a penalty for the late payment of
2 tax when a taxpayer fails to pay the amount shown as tax
3 on the return on or before the payment due date.

4 Appellants did not pay their 2021 tax liability in full
5 until August 24th, 2022, more than four months after the
6 payment was due. Therefore, Respondent properly imposed
7 the late-payment penalty.

8 On appeal, Appellants contend that they're
9 entitled to abatement of the late-payment penalty based on
10 reasonable cause due to Respondent's rejection of their
11 tax preparer's attempted submission of a timely filed tax
12 return. However, Appellants have not provided an
13 explanation as to why they were unable to satisfy their
14 tax liability by the April 15th, 2022, due date. Nor have
15 Appellants explained why their payment was delayed until
16 August 24th, 2022. Accordingly, Appellants have failed to
17 establish reasonable cause such that the late-payment
18 penalty may be abated. Based on the relevant case law,
19 facts, and evidence in the record, Respondent respectfully
20 request that the OTA sustain Respondent's position.

21 Thank you. That concludes my presentation. I'm
22 happy to address any questions that you may have at this
23 time.

24 JUDGE STANLEY: This is Judge Stanley speaking.
25 Thank you, Ms. Macedo. I do not have any questions for

1 you at this time. So I will move back to Ms. Budiman and
2 let her respond to what the Franchise Tax Board has
3 presented.

4 Ms. Budiman, you can have 5 minutes to respond.

5 MS. BUDIMAN: Sure. So respond or can I ask a
6 question or --

7 JUDGE STANLEY: You can direct a question to me,
8 and I'll see if I can --

9 MS. BUDIMAN: Okay. Sure.

10 JUDGE STANLEY: Go ahead.

11

12 CLOSING STATEMENT

13 MS. BUDIMAN: Okay. Yeah. This is Winny
14 Budiman. And I guess the Respondent mentioned that we
15 electronically filed and it was rejected. And after that,
16 we actually opened the rejection mailed in, all the forms,
17 Form 540, with the account information so the FTB can
18 direct debit the account as is customary. So we have
19 provided, and we made full attempt to pay the tax. And it
20 was postmarked before the filing deadline of April 18th,
21 2022. So that's I guess why we are wanting, like, a
22 reasonable cause for this abatement of this late-payment
23 penalty.

24 And I guess my question is, we did mail it in
25 with the information for the direct debt. So when we

1 received the notice, we were surprised, and we immediately
2 made the payment to satisfy that and, you know, to argue
3 about this late-payment penalty. So, yeah. I guess --

4 JUDGE STANLEY: This is --

5 MS. BUDIMAN: Yeah.

6 JUDGE STANLEY: This is Judge Stanley speaking.
7 Is there -- do you have a particular question, or is that
8 just your response to what the Franchise Tax Board was
9 saying?

10 MS. BUDIMAN: Yeah. I guess that's just my
11 response. And I also want to add that after the debit did
12 not reflect on April 15th, I actually immediately reached
13 out to my -- to tax preparer who advised waiting for a few
14 weeks due to maybe potential processing delay. And then
15 in the meanwhile, I also made, you know, several attempts
16 to contact the FTB directly through phone calls, but I was
17 unable to speak with a representative.

18 And, actually, it was in the record of FTB
19 because I just logged in yesterday. And, actually, on
20 July 15th when the issue unresolved, I actually
21 intensified the effort to contact FTB because I couldn't
22 reach anyone. So I actually send message through the
23 online system asking why my account hasn't been debited.
24 And then it was only in August, when I received the late
25 notice, that I, you know, address balance in full directly

1 because I did not know what do at the situation because we
2 remain in limbo until the notice actually arrived.
3 Because we did provide the account information and the
4 routing when my tax preparer filed the Form 540 to FTB
5 before the filing deadline of April 18th.

6 So, I guess, yeah, I just want to clarify that,
7 again, and that, you know, as -- I think just to add we
8 never missed a payment, and we actually did file the tax
9 on time and provide our account information, and we had
10 the amount since that day. So we have all the intent to
11 pay. We were just not debited, and there's no way to
12 contact FTB during the time until we received the notice,
13 and we made the payment immediately right after. And we
14 only want to argue for the late-payment of \$1,899 to be
15 abated.

16 So, yeah, I think I just want restate, you know,
17 our position in this case.

18 JUDGE STANLEY: Thank you. This is Judge Stanley
19 speaking. Thank you, Ms. Budiman. I do have a question
20 about something that you just said.

21 MS. BUDIMAN: Yeah.

22 JUDGE STANLEY: You stated that you have seen
23 through the portal, through the Franchise Tax Board portal
24 that they recognize at least one attempt to contact them.
25 That is not one of the exhibits in the record. Is that

1 something that you can provide?

2 MS. BUDIMAN: Yeah, I could provide that. I was
3 just talking about it yesterday because, you know, I'm
4 reading the case again and they say I did not make any
5 attempt. Well, I did make attempt. Like, I asked my tax
6 preparer right away why it wasn't debited. And it was
7 through email, so I can also provide that. And I also
8 contact the FTB on July. It was in the system.

9 I didn't need to include that because, you know,
10 all the exhibits were already very strong with, you know,
11 what we submit, the Form 540, which include our account
12 information. And it's customary for FTB to direct debit
13 that account information that we provided.

14 But is it possible to submit? I mean, I guess I
15 can screenshot FTB portal. Does that count, like, as an
16 attempt that --

17 JUDGE STANLEY: Would you like -- this is Judge
18 Stanley speaking again.

19 MS. BUDIMAN: Yeah.

20 JUDGE STANLEY: Would you like to have some time
21 to try to screenshot it and upload it after the hearing,
22 Ms. Budiman?

23 MS. BUDIMAN: Yeah, I can do that today.

24 JUDGE STANLEY: If you think that your evidence
25 is strong enough without it, I don't necessarily need to

1 hold the record open for that one piece of paper. To
2 clarify, Ms. Budiman, did you reach them or do the notes
3 just say that you attempted to contact them?

4 MS. BUDIMAN: Well, the notes just say my
5 message. I just message like, oh, I was wondering why my
6 account hasn't been debited for the tax, you know, payment
7 for the tax 2021. And that was the message on, I think,
8 July 5th, 2022. But before that, right after, you know,
9 my tax prepare -- the tax filing deadline past like one
10 week after that, like, you know, I asked my tax preparer
11 and emailed them why it hasn't been debited. And they
12 told me to wait, and I actually did call FTB a few times
13 with my phone, but I couldn't reach a representative.
14 But, yeah, the note will just say with I'm only reaching
15 out. And then I only received the notice in August as a
16 reply.

17 JUDGE STANLEY: Okay. This is Judge Stanley
18 speaking. Since you did just testify to that information
19 that you tried to contact the Franchise Tax Board on --
20 give me the dates again.

21 MS. BUDIMAN: So on multiple phone calls I made
22 after the filing deadlines of April 18th, 2022, but the
23 message on the portal was sent on July 5th, 2022.

24 JUDGE STANLEY: Okay. This is Judge Stanley
25 speaking. Thank you, Ms. Budiman. I think that we can

1 just go by your testimony that you tried to reach out to
2 them and were unable to contact them on July 5th and other
3 times as well that aren't noted in the documents and the
4 portal.

5 MS. BUDIMAN: Yes.

6 JUDGE STANLEY: So I don't think you will need to
7 submit any additional evidence at this time.

8 MS. BUDIMAN: Okay.

9 JUDGE STANLEY: Do you have anything else to add
10 before we conclude the hearing, Ms. Budiman?

11 MS. BUDIMAN: No. Yeah. I guess one more thing
12 to add is I guess previously -- I mean, you already made
13 clear in the prehearing, but -- okay. This is Winny, and
14 I guess the FTB provided a few exhibits that includes the
15 actual calculation of the late-payment. But I guess I
16 want to clarify that our contention is not with the method
17 of calculating the late penalty. Our argument is rooted
18 in the belief that we have reasonable cause to request the
19 abatement of underpayment penalty in its entirety.

20 JUDGE STANLEY: Okay. This is Judge Stanley
21 speaking. Thank you, Ms. Budiman.

22 Ms. Macedo, do you have anything else to add
23 before we conclude the hearing?

24 MS. MACEDO: Ariana Macedo speaking. No, I do
25 not. Thank you.

1 JUDGE STANLEY: Okay. Then this concludes the
2 hearing, and the record is now closed for this appeal, and
3 the matter is submitted for deliberation. I will -- well,
4 the Office of Tax Appeals will mail a written opinion no
5 later than 100 days from today. And that will also be
6 posted on our website 30 days thereafter if there's no
7 petition for a rehearing.

8 We're going to take a brief recess before the
9 next case begins. So I want to thank you all for coming
10 and participating, and enjoy the rest of your day.

11 (Proceedings adjourned at 9:53 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 27th day
of December, 2023.

ERNALYN M. ALONZO
HEARING REPORTER