

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
C. WRIGHT, ) OTA NO. 220911327  
 )  
 APPELLANT. )  
 )  
 )

## 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 1:01 p.m. and concluding at 1:24 p.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:

Panel Lead: ALJ LAUREN KATAGIHARA

Panel Members: ALJ SUZANNE BROWN  
ALJ KEITH LONG

For the Appellant: C. WRIGHT

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION

COURTNEY DANIELS  
CHAD BACCHUS  
JASON PARKER

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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-B were received at page 7.)

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California; Thursday, December 14, 2023  
1:01 p.m.

JUDGE KATAGIHARA: Let's go on the record.

We're opening the record in the Appeal of Charles Wright before the Office of Tax Appeals. This is OTA Case No. 220911327. Today is Thursday, December 14th, 2023. The time is 1:01 p.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. WRIGHT: I'm the Appellant. My name is Charles Wright.

JUDGE KATAGIHARA: Thank you.

And who is here for Respondent CDTFA.

MS. DANIELS: Courtney Daniels here for CDTFA.

MR. BACCHUS: Chad Bacchus also with CDTFA's legal division.

MR. PARKER: And Jason Parker, Chief of Headquarters Operations Bureau with CDTFA.

JUDGE KATAGIHARA: Thank you.

I'm Judge Lauren Katagihara the lead Administrative Law Judge for this case. And with me today are Judges Suzanne Brown and Keith Long. We are the panel

1       that will be hearing and deciding the case. We discussed  
2       at the prehearing conference that there is no dispute  
3       regarding the amount of tax associated with the liability  
4       in this appeal. And we also confirmed today that the  
5       parties do not dispute that Appellant provided a statement  
6       signed under penalty of perjury requesting relief of the  
7       interest and the failure to file penalty, the latter of  
8       which is not at issue today.

9               The two issues that we were originally supposed  
10       to address today was whether interest relief is warranted  
11       and whether relief of the collection cost recovery fee is  
12       warranted. However, Respondent has since conceded the  
13       collection cost recovery fee, so the only issue today is  
14       whether interest relief is warranted.

15              Is that accurate, Appellant?

16              MR. WRIGHT: That's correct.

17              JUDGE KATAGIHARA: Okay.

18              And, Respondent, do you agree?

19              MS. DANIELS: Yes, we agree.

20              JUDGE KATAGIHARA: Thank you.

21              At the prehearing conference, Appellant proposed  
22       to admit Exhibit 1, and Respondent proposed to admit  
23       Exhibits A and B. Neither party submitted any objections,  
24       so all of those exhibits are admitted into the record as  
25       evidence.

1 (Appellant's Exhibit 1 was received in  
2 evidence by the Administrative Law Judge.)  
3 (Department's Exhibits A-B were received in  
4 evidence by the Administrative Law Judge.)  
5 JUDGE KATAGIHARA: As we previously discussed,  
6 neither party is producing a witness today.

7 So, Appellant, you may now proceed with your  
8 presentation. You have 10 minutes.

9 MR. WRIGHT: Thank you.

10

11 PRESENTATION

12 MR. WRIGHT: So, first of all, thank you very  
13 much for your time for hearing my appeal. I'm not a  
14 lawyer, so please forgive if I say the wrong words, or I  
15 don't do this in order.

16 I'm asking for interest relief. I bought a plane  
17 back in May of 2018 and did not receive a tax bill until  
18 20 months later and was charged interest and penalty on  
19 that. So the crux of my appeal is that this was an  
20 unreasonable delay, which is put forth in Revenue & Tax  
21 Code 65935. So let me go through my -- the timeline, and  
22 then we talked about this.

23 So in May 22 of 2018, I purchased a plane. At  
24 the time the broker told me that I would expect a bill  
25 from CDTFA for the sales tax. So I waited for that. The

1 FFA notified CDTFA in October 10th of 2018 about the plane  
2 being purchased, and then CDTFA contacted me January 14th  
3 of 2020. So that's 15 months after they were aware with  
4 the notification from the FFA about the purchase of the  
5 plane and that tax was due.

6 So I then received a tax bill, which included a  
7 penalty and interest. This was after 20 months after I  
8 purchased the plane. So immediately I paid the tax. I  
9 paid it within two weeks, but I appealed the penalty and  
10 the interest. CDTFA agreed to waive the penalty, but they  
11 did not agree to waive the interest. So I've appealed a  
12 couple of times and now in front of you for this final  
13 appeal.

14 The Revenue & Tax Code, which is 65935 reads, the  
15 Board in its discretion may relieve all or any part of the  
16 interest, a failure to pay any taxed due in whole or in  
17 part due to on unreasonable delay by the CDTFA. I contend  
18 that this 15-month delay after they are aware of the sale  
19 of plane is an unreasonable delay. I -- you know, I've  
20 never bought a plane before, so I kind of expected a bill  
21 to come in the mail, and I would pay it. Had CDTFA sent  
22 me a bill immediately, I would have paid it. The penalty  
23 and interest wouldn't have been involved, and we wouldn't  
24 be here at this hearing.

25 I'm used to getting tax bill for my house. I



1 even get a tax bill for my plane. When I get a tax bill  
2 from San Diego County for the tax on the plane that I pay  
3 every year, tax -- property tax that they hand out, the  
4 bill is presented with the deadline for payment and then,  
5 you know, penalty and interest after that. So it's very  
6 clear. To get a bill from CDTFA immediately assessing the  
7 penalty and interest seems unreasonable to me, and my  
8 contention that the 15-month delay is an unreasonable  
9 delay. I don't know legally what the definition of  
10 unreasonable is, but to me as a lay person, that seems  
11 unreasonable.

12 And so that's my short and easy summary of the  
13 case.

14 JUDGE KATAGIHARA: Thank you for your  
15 presentation.

16 I'm going to reserve questions from the Panel  
17 until after Respondent's presentation.

18 Respondent, you can proceed with your  
19 presentation. You have 10 minutes.

20 MS. DANIELS: Thank you.

21  
22 PRESENTATION

23 MS. DANIELS: Good afternoon.

24 Upon further review and preparation for this  
25 hearing, the Department has removed the collection cost

1 recovery fee in the amount of \$570 associated with this  
2 matter. Thus, the only remaining issue to be decided  
3 today is whether Appellant is entitled to relief of  
4 interest in the amount of \$2,651.51 in connection with the  
5 aircraft that Appellant purchased on May 22nd, 2018. The  
6 interest and collection cost recovery fee were paid by  
7 Appellant through an offset of Appellant's tax refund from  
8 the Franchise Tax Board on March 27th, 2002. As the  
9 Department has issued a refund for the \$570 fee, the only  
10 remaining issue is whether Appellant is entitled to a  
11 refund of the interest amount.

12           Upon Appellant's purchase of the aircraft on  
13 May 22nd, 2018, he did not report the purchase or pay use  
14 tax. Subsequently, the Department became aware of  
15 Appellant's purchase upon receiving information from the  
16 Federal Aviation Administration and thus, created a  
17 discovery case in the Consolidated Revenue Opportunity  
18 System, referred to as CROS, on October 10th, 2018. By  
19 letter dated January 14th, 2020, the Department advised  
20 Appellant of his obligation to report the aircraft  
21 purchase and either pay the use tax or claim an exemption  
22 and provide supporting documents to the Department.

23           Appellant filed a sales and use tax return on  
24 January 23rd, 2020, in which he remitted full payment of  
25 the use tax totaling \$46,113 with respect to the aircraft

1 purchase. At such time, Appellant also submitted a  
2 Request For Relief of both the failure to file penalty and  
3 the interest imposed against Appellant with respect to the  
4 tax. By letter dated, February 13th, 2020, the Department  
5 notified Appellant that it granted his request for relief  
6 of the failure to file penalty but that it denied relief  
7 of interest because Appellant's request did not include  
8 any evidence or other information as to why relief was  
9 appropriate under Taxation Code section 6593.5.

10 Appellant responded by letter contending that  
11 relief from interest should be granted to the extent that  
12 it accrued during the 18-month period between the filing  
13 due date to report the purchase, which was on  
14 July 31st, 2018, and the date of the Department's first  
15 letter to Appellant regarding the tax liability on  
16 January 14th, 2020. Appellant contended and continues to  
17 argue that there was an unreasonable delay by the  
18 Department in notifying Appellant of his tax liability  
19 during this 18-month period. After further review of  
20 Appellant's request, the Department informed Appellant of  
21 its determination that interest relief was not warranted.

22 Appellant requested reconsideration of the  
23 Department's determination but was again informed that  
24 Appellant's request for relief of interest was denied. So  
25 Section 6291 provides that use tax imposed with respect to

1 the storage, use, or other consumption in this state of a  
2 vessel or an aircraft is due and payable by the purchaser  
3 at the time of storage, use, or other consumption of the  
4 property first becomes taxable. Further, Section 2692  
5 subdivision (d) provides that interest shall apply with  
6 respect to the unpaid tax amount if a purchaser does not  
7 timely file a return. Under Section 6482, the imposition  
8 of an interest is mandatory.

9 While the Department may in its discretion  
10 relieve all or part of interest imposed on a person, it  
11 may only do so under very limited circumstances, including  
12 disaster under Section 6593, or where the failure to pay  
13 taxes due in whole or in part to an unreasonable error or  
14 delay by an employ of CDTFA acting in his or her official  
15 capacity. And that's 6593.5 subdivision (a)(1). An error  
16 or delay will be deemed to have occurred for these  
17 purposes only if no significant aspect of the error or  
18 delay was attributable to an act of or a failure to act by  
19 the taxpayer, and that's subdivision(b). A taxpayer  
20 seeking relief of interest must submit a signed statement,  
21 under penalty of perjury, setting forth the facts on which  
22 it basis its claim for relief, and that's subdivision (c).

23 In the instant matter, the 18-month period begins  
24 on the date the tax is due, which was July 31st, 2018.  
25 Initially, we note that Appellant did not report his

1     aircraft purchase or pay the tax when the tax was due.  
2     Therefore, because of Appellant's failure to report his  
3     purchase and pay the tax was the sole reason for the  
4     alleged delay and imposition of interest, Appellant is not  
5     entitled to relief of such interest.

6             While the foregoing is dispositive, we also note  
7     the following. There is no evidence or other information  
8     to suggest that the Department was aware of the aircraft  
9     purchase until October 10th, 2018, when the Department  
10    created a discovery case in CROS with respect to the  
11    purchase. The Department issued the January 14th, 2020,  
12    letter to Appellant within approximately 15 months of  
13    knowing about the aircraft purchase. Pursuant to section  
14    6487 subdivision (a), when a taxpayer fails to file a  
15    return, the Department has eight years from the last day  
16    of the calendar month following the quarterly period for  
17    which the amount is proposed to be determined to then mail  
18    Notice of the Deficiency determination. Because Appellant  
19    untimely filed a return in January 2020 and paid the tax  
20    due, the Department had no need to issue a deficiency  
21    determination.

22             Accordingly, there is no evidence that the  
23    Department caused an unreasonable delay such that relief  
24    of interest is warranted in this matter. While Appellant  
25    argues that he was advised by the broker who sold him the

1        aircraft that he should wait to pay the tax on his  
2        purchase until he received a bill from the Department for  
3        his tax liability, and that Appellant then replied to the  
4        Department promptly after receiving the January 14th,  
5        2020, letter, this is not a viable basis for relief of  
6        interest. Section 6291 explicitly provides that the  
7        purchaser must pay the use tax at the time of use and/or  
8        storage of the property within the state.

9                Taxpayers are charged with knowledge of the law,  
10       and ignorance of the law is no defense for failure to  
11       comply with statutory requirements. Appeal of GEF  
12       Operating, Inc. 2020-OTA-057P. And you can also see  
13       McFarlane v. Department of Alcoholic Beverage Control 1958  
14       case available at 51 Cal.2d 84 at page 90. Here,  
15       Appellant waited 18 months to report his purchase and pay  
16       the tax. He is liable for the interest that accrued  
17       during that period.

18               So based on the foregoing, Appellant has not met  
19       his burden of establishing entitlement for relief of any  
20       interest in regards to the aircraft that he purchased on  
21       May 22nd, 2018. And as such, we ask that you deny this  
22       appeal.

23               Thank you.

24               MR. BACCHUS: And can I just make one  
25       clarification? The return was due May 31st, 2019, not in

1 July of 2018, and interest began accruing in June of 2019.  
2 So all of that lines up. I just want to clarify when the  
3 return was due.

4 JUDGE KATAGIHARA: Thank you.

5 Before we move to Appellant's rebuttal and  
6 closing remarks, I'd like to ask a few questions and also  
7 give my co-Panelists the opportunity to ask any questions  
8 they may have. My first question is for the Appellant.

9 Will you please confirm that you did not report  
10 or pay the use tax associated with your aircraft purchase  
11 in your 2018 California income tax returns.

12 MR. WRIGHT: That's correct.

13 JUDGE KATAGIHARA: And then for Respondent, from  
14 what I'm hearing, it sounds like the demand letter was  
15 sent January 2020. And then there's a February 12th,  
16 2020, letter as well. Was that just for the interest and  
17 penalties?

18 MR. BACCHUS: So the demand letter was actually  
19 the February 12th, 2020, letter. The January 14th, 2020,  
20 letter was just a -- like an information gathering type of  
21 letter letting the taxpayer know that -- that the  
22 Department was aware of the purchase, and that he needed  
23 to file a return and either explain why tax wasn't due or  
24 pay the tax. And then once he filed the return a few days  
25 later but didn't pay the interest and penalty, then the

1 demand went out for the interest and penalty. However,  
2 the interest and the penalty was relieved.

3 JUDGE KATAGIHARA: Thank you.

4 And if Respondent could explain, if you learned  
5 about the purchase in October 2018, why was there a gap  
6 between sending the bill until 2020 -- or perhaps not the  
7 bill, but the information gathering letter?

8 MR. PARKER: Yeah. So this is Jason Parker. We  
9 do get a lot of leads to be worked from the FFA on  
10 aircraft and vessels and motor vehicles. We obviously, if  
11 a taxpayer hasn't filed a return for that, we have eight  
12 years for statute on those. We try to work them as quickly  
13 as we can. But based on the number of leads we have and  
14 the workload we have, a lot of times we rely on taxpayers  
15 to voluntarily file their return, and we will not work  
16 those leads because then tax has already been paid. In  
17 this situation, we have the lead but we just didn't have  
18 the man power to work all the leads that we have within  
19 the filing deadline.

20 JUDGE KATAGIHARA: Thank you.

21 Do my co-Panelists have any questions?

22 MR. BACCHUS: Sorry. If I could just add onto  
23 that. And to be clear, because the return wasn't due  
24 until May of 2019, the following year, really as  
25 Mr. Parker said, we rely on taxpayers to voluntarily file



1       their return and pay their tax. And it wouldn't have been  
2       until June of 2019 when that return wasn't filed and  
3       interest applied that we -- the Department would have  
4       started looking into it anyway. So the 18 months or the  
5       15 months is a little misleading in that regard.

6               JUDGE KATAGIHARA: Thank you for the  
7       clarification.

8               Do my co-panelist have any questions?

9               JUDGE BROWN: I'll go ahead with a question. My  
10      question is for Appellant.

11              Mr. Wright, I want to follow up on the earlier  
12      question that you answered about how you did not pay or  
13      report the use tax on your California income tax return.  
14      So on the California resident income tax return, on Line  
15      91 where it says use tax, it asked each taxpayer to enter  
16      an amount, and it says, "Do not leave blank regarding how  
17      much use tax do you owe."

18              Do you know what you put in that box?

19              MR. WRIGHT: I don't remember filling it out, and  
20      I wouldn't know how much to put in there. I mean, I  
21      hadn't received any information from CDTFA as to what I  
22      have to pay. So how would I know what to put in that box?  
23      So I imagine -- I don't have that return in front of me.  
24      I wouldn't know what to put in there because I had not  
25      received a bill.

1 JUDGE BROWN: So you would have entered zero?

2 MR. WRIGHT: I imagine so. I don't -- I'm sorry.  
3 I don't have it. I didn't know I needed that information.

4 JUDGE BROWN: I think that was my only question.  
5 Thank you.

6 JUDGE KATAGIHARA: Thank you.

7 Appellant, you can move forward with your  
8 rebuttal and closing remarks. You have 5 minutes.

9

10 CLOSING STATEMENT

11 MR. WRIGHT: Okay. Well, again, thank you  
12 everyone for your time in hearing this.

13 I think you heard from CDTFA, and the question  
14 was asked, why wasn't the request for payments sent out in  
15 a timely manner. They claim workload and manpower issues.  
16 I -- you know, they could have just sent out a simple  
17 letter saying, you know, have you paid this tax? Where  
18 you at? Just a simple letter, what's up. Have you paid  
19 it? It would have solved all this. And they had  
20 18 months to do that, and they didn't.

21 So I don't think manpower or lack of workload  
22 issues makes it okay. I mean, that's an unreasonable  
23 delay. They could have done it well before -- what was  
24 it? -- June of 2019 before the interest even started  
25 accruing. A simple letter to me would have solved all

1       this. I would have paid it immediately, and we wouldn't  
2       be here. So I consider this still an unreasonable delay.

3               And that's the end of my rebuttal.

4               JUDGE KATAGIHARA: Mr. Wright, I do have a  
5       follow-up question for you.

6               MR. WRIGHT: Perfect.

7               JUDGE KATAGIHARA: The January 12th letter that  
8       you -- oh, I'm sorry -- January 14th letter that you  
9       received from CDTFA, did that include an amount of use tax  
10      specifically? Or how did you figure out how much to pay,  
11      if it didn't?

12              Oh, you're on mute Mr. Wright.

13              MR. WRIGHT: I'm sure the CDTFA has that letter.  
14      I don't have it in front of me, but I don't think it did.  
15      It was just more information about the plane, and then  
16      the -- I think so. And then as soon as I got the amount,  
17      I paid within a week or two. I mean, I paid the full  
18      amount, except for the penalty and the interest. So there  
19      was really no delay in my payment as soon as I got the  
20      amount. Whether that was in the January or February  
21      letter, I don't remember clearly, but I paid practically  
22      immediately.

23              JUDGE KATAGIHARA: Respondent, do we have a copy  
24      of the January 14th letter in the exhibits?

25              MS. DANIELS: We do not. I can provide it. I

1       have it right in front of me. It does not include an  
2       amount.

3               JUDGE KATAGIHARA: Okay. Since Mr. Wright does  
4       not have a copy of that, I guess it would be best to have  
5       him be able to take a look at that. So I'll probably send  
6       a -- or I will send out a post-hearing order to have CDTFA  
7       provide that document to OTA.

8               Okay. Are there any follow-up questions from my  
9       co-panelists? And that's a no.

10              Okay. Thank you very much. This concludes the  
11       hearing. I want to thank the parties for their  
12       presentation.

13              This appeal will be decided based on the evidence  
14       presented, and I will be sending out a post-hearing order  
15       requesting the January 14th, 2020, letter. The  
16       post-hearing order will have additional details, such as  
17       the deadlines, to provide that document that you will have  
18       at least 30 days from today to produce it. In  
19       anticipation of this, we'll leave the record open at this  
20       time, and you'll be notified when the record is closed.  
21       And our opinion will be issued no later than 100 days from  
22       that date.

23              We will take a brief recess before the next  
24       hearing, which is scheduled to begin at approximately  
25       2:00 p.m. You may all exit the meeting. Thank you very

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(Proceedings adjourned at 1:24 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 12th day  
of January, 2024.

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