

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. GRECO,) OTA NO. 230412982
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, January 24, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:07 p.m. and concluding at 1:27 p.m. on
Wednesday, January 24, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: ASAF KLETTER

For the Appellant: J. GRECO

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
BRAD COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 9.)
(Department's Exhibits A-H were received at page 8.)

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California; Wednesday, January 24, 2024
1:07 p.m.

JUDGE KLETTER: Let's go on the record.

This is Appeal of Greco, OTA Case Number
230412982. Today is Wednesday, January 24th, 2022 --
2024. My apologies. And the time is approximately
1:00 p.m.

I am Administrative Law Judge Kletter, and will
be conducting this hearing. Also present is our
stenographer, Ms. Alonzo, who is reporting this hearing
verbatim. To ensure that we have an accurate record, we
ask that everyone speak one at a time and does not speak
over each other. Please say your name before you speak
and try to speak clearly and loudly. And when you are not
speaking, please mute your microphone to avoid feedback or
background noise. When needed, Ms. Alonzo will stop the
hearing process and ask for clarification. After the
hearing, Ms. Alonzo will produce the official hearing
transcript, which will be available on the Office of Tax
Appeals website. The hearing transcript and video
recording are part of the public record. This proceeding
is a live broadcast and any information shared on your
screen is publicly viewable.

The Office of Tax Appeals is not a court. We are

1 an independent appeal body. The Office of Tax Appeals is
2 staffed by tax experts and is independent of the state's
3 tax agencies. If there are any questions during this
4 process or any questions regarding technology, please
5 direct them to me. I just ask that you please wait for me
6 to please acknowledge you before you continue with your
7 question. And if you become disconnected or have
8 technical difficulties, please wait and Office of Tax
9 Appeals will contact you.

10 Now, on the record, can the parties please each
11 identify yourself by stating your name for the record,
12 beginning with Appellant.

13 MR. GRECO: Yes. This is John Vincent Greco.

14 JUDGE KLETTER: This is Judge Kletter. Thank
15 you.

16 And for Respondent Franchise Tax Board.

17 MS. CHANG: Paige Chang representing THE
18 Franchise Tax Board. Good afternoon.

19 JUDGE KLETTER: Good afternoon.

20 And Mr. Coutinho, if you could just please
21 identify yourself for the record.

22 MR. COUTINHO: Brad Coutinho, representing the
23 Franchise Tax Board.

24 JUDGE KLETTER: This is Judge Kletter. So for
25 some background, we met for a prehearing conference to

1 discuss this appeal on December 20th, 2023. We discussed
2 two issues. The first issue is whether Appellant has
3 shown error in Franchise Tax Board's proposed assessment
4 of additional tax for the 2018 tax year; and the second
5 issue is whether Appellant is entitled to interest
6 abatement. OTA also noticed the issue of whether --
7 because Franchise Tax Board's proposed assessment is based
8 on issuance of an erroneous refund, if there is any
9 impact on the tax assessment or interest in this appeal.

10 The parties were invited to suggest alternative
11 issue statements during their presentation. And my
12 understanding is that off the record there, you know, was
13 some adjustment to the interest. So please mention that
14 during your presentation.

15 Now with respect to the evidentiary record, the
16 Franchise Tax Board has provided Exhibits A through F with
17 its opening brief and Exhibits G and H in response to the
18 prehearing conference minutes and orders.

19 Mr. Greco, do you object to those new Exhibits G
20 or H? They were about the refunded amount.

21 MR. GRECO: No. I do not object. In fact, I
22 actually found them helpful because I was unable to track
23 down that transaction. And they helpfully showed up in
24 the mail detailing exactly what the refund amount was and
25 when it was issued. So, no, I do not object.

1 JUDGE KLETTER: This is Judge Kletter. Thank
2 you, Mr. Greco.

3 I just wanted to confirm with Franchise Tax
4 Board, are there any new exhibits today?

5 MS. CHANG: No new exhibits today. Thank you.
6 This is Paige Chang.

7 JUDGE KLETTER: This is Judge Kletter. Thank
8 you.

9 So Appellant does not object to these Exhibits A
10 through H. Therefore, these exhibits are entered into the
11 record.

12 (Department's Exhibits A-H were received in
13 evidence by the Administrative Law Judge.)

14 Now, Appellant provided Exhibits A through C,
15 which I will number 1 through 3, in response to the
16 prehearing conference minutes and orders.

17 Appellant, are there any new exhibits that you
18 wanted to provide or just those three exhibits?

19 MR. GRECO: This is John Greco. I do not have
20 any new exhibits as such, no.

21 JUDGE KLETTER: This is Judge Kletter. Franchise
22 Tax Board, do you have any objection to those Exhibits 1
23 through 3?

24 MS. CHANG: This is Paige Chang. No objections
25 at this time. Thank you.

1 JUDGE KLETTER: Okay. Great. So those
2 Exhibits 1 through 3 are entered into the record.

3 (Appellant's Exhibits 1-3 were received
4 in evidence by the Administrative Law Judge.)

5 JUDGE KLETTER: Now, before we go into the
6 presentations, in response to the prehearing conference
7 minutes and orders, Appellant indicated that he would like
8 to testify. Testifying allows the Office of Tax Appeals
9 to accept your statements as evidence to the extent they
10 concern facts of which you have personal knowledge.

11 So, Mr. Greco, I'd like to swear you in for your
12 testimony. Can you please raise your right hand.

13
14 J. GRECO,
15 produced as a witness, and having been first duly sworn by
16 the Administrative Law Judge, was examined, and testified
17 as follows:

18
19 JUDGE KLETTER: This is Judge Kletter. Thank
20 you. Before I turn it over to you, Mr. Greco, for your
21 presentation, just as a brief reminder, we have five
22 minutes for Appellant's presentation, five minutes for the
23 Franchise Tax Board's presentation, and five minutes for
24 Appellant to respond to FTB's presentation, provide a
25 closing statement, and then your rebuttal.

1 So, Mr. Greco, are you ready to begin your
2 presentation?

3 MR. GRECO: This is John Greco. I am.

4 JUDGE KLETTER: Please begin.

5

6 PRESENTATION

7 MR. GRECO: Okay. Just to recap kind of the
8 basis of this and Exhibits 1 through 3. Exhibit 1 -- and
9 so this is kind of where this thing gets started is this
10 transposed number on Line 14. This is Exhibit 1. So my
11 take on this is, obviously, I have accidentally put
12 \$114,052 as a deduction, when, in fact, it was supposed to
13 just be a carried over zeroed out number. And, in fact,
14 if you go through the rest of the return, it does come out
15 correct as I was treating it as zero. I will also note
16 that there was no schedule C with this. So there's no
17 basis for this \$114,052 deduction. I would have thought
18 that that would have been immediately obvious to anybody
19 reading it.

20 And then Exhibit 2 or B-2 is showing that the
21 transposed line on Line 14 did not affect the ultimate
22 taxable income entry of \$109,651. And Exhibit C or 3 is
23 the calculated amount due of \$898, which I do not believe
24 is it in dispute. So that's what I sent in. And,
25 apparently, this is -- as I said helpfully said --

1 Exhibit G on May 14th, 2019, the FTB issued me a refund in
2 the amount of \$2,593.33, well in excess of my original
3 \$898 refund claim.

4 And so this is where the problem starts, and this
5 is where the overpayment is, and this is where the
6 interest starts accruing. I -- I did, when I saw this --
7 let me back up. So, initially, my main focus was to go
8 with the interest. Because, in my opinion, charging
9 interest on a debt that I did not know existed for the
10 better part of what, four years, seemed a little
11 excessive. I'm also contesting any interest from the
12 point of notification on, like, as I'm contesting this. I
13 don't think it's fair that I'm paying interest on the debt
14 continuing until today.

15 So that was initially my reason for coming was to
16 more go with that. But then when I saw the refund amount
17 and I'm questioning, was my original \$898 deduction ever
18 pulled from that number? Because it looks like they
19 refunded me \$2,593.37, and I'm just wondering where the
20 \$898 refund that I was entitled to, if that's been
21 subtracted from that amount. So I'm wondering if the
22 actual debt isn't \$1,695.37. I don't -- I'm not sure how
23 that calculation was made.

24 And that's about all I've got.

25 JUDGE KLETTER: Thank you, Mr. Greco, for your

1 presentation. Hopefully FTB may be able to answer that
2 during their presentation. They will have five minutes,
3 and I'm holding my questions to the end of the
4 presentation.

5 Ms. Chang, are you ready to begin?

6 MS. CHANG: This is Paige Chang. Yes, I'm ready.

7 JUDGE KLETTER: Please go ahead.

8

9 PRESENTATION

10 MS. CHANG: Good afternoon. My name is Paige
11 Chang, along with my co-Counsel Brad Coutinho,
12 representing the Franchise Tax Board.

13 The issues on appeal are first, whether Appellant
14 has met his burden of proof to establish error in FTB's
15 proposed assessment; and second, whether Appellant is
16 entitled to interest abatement. Additionally, the Office
17 of Tax Appeals is considering whether the issue of
18 interest is affected by FTB's proposed assessment being
19 based on an erroneous refund.

20 Regarding the issue of interest first, FTB has
21 revised its position to abate interest for the period of
22 April 15th, 2019, until November 14th, 2022. Because the
23 May 2019 refund is considered an erroneous refund, the
24 Notice of Proposed Assessment, which was issued on
25 October 14th, 2022, is deemed the erroneous refund letter,

1 the document in which FTB demanded repayment of the
2 erroneous refund from Appellant.

3 And because no interest is charged if the refund
4 returned within 30 days from the date of the erroneous
5 refund letter, FTB has abated interest until 30 days after
6 the date of the NPA, November 14th, 2022. Thus, the
7 correct amount on appeal is additional tax in the amount
8 of \$2,676 and accrued interest from the date of
9 November 14th, 2022, until today. FTB has also prepared a
10 computation of the interest.

11 With regard to the remaining period of accrued
12 interest, Appellant has not established any basis to abate
13 the remaining interest, and FTB cannot abate any
14 additional interest. Regarding the proposed assessment,
15 Appellant has not met his burden of proof to establish
16 error in the proposed assessment for the 2018 tax year.
17 Here, Appellant erroneously reported California
18 subtractions on Line 14 of his return. Because Appellant
19 filed his return as a California resident, and wage income
20 is included in the calculation of taxable income, it was
21 an error to enter any amount on Line 14. Thus, FTB's
22 proposed assessment disallowing the subtraction is
23 correct.

24 Appellant explains that the subtraction was a
25 transposition error and does not appear to dispute the

1 amount of tax owed. Although, I will go over the proposed
2 assessment in the Notice of Action in response to
3 Appellant's question in his presentation. So the amount
4 on the return that was due a refund is a calculation from
5 the total tax. The amount of total tax reported on
6 Appellant's return is \$6,966, which is the same amount of
7 total tax shown on the Notice of Action. And the reason
8 that that comes out to a refund of around \$2,000 is that
9 there were withholding credits. And this is shown on the
10 Notice of Action, which is Exhibit E, I believe. And so
11 there were additional withholding credits as well as
12 interest added to the computation. And so then the math
13 comes out to the \$2,676 amount. FTB is happy to answer
14 questions about that issue as well.

15 In conclusion, because Appellant has not
16 established error in FTB's proposed assessment, nor
17 established a basis to abate interest beyond the interest
18 abatement period from April 15th, 2019, until
19 November 14th, 2022, Respondent's action should be
20 sustained.

21 Thank you. I'm happy to answer any questions.

22 JUDGE KLETTER: Thank you, Ms. Chang. This is
23 Judge Kletter. I just have a quick question in regards to
24 the interest. You mentioned that a computation was
25 prepared. So the interest that is accrued from

1 November 22nd, 2022, do you know how much the amount of
2 interest is as of today?

3 MS. CHANG: Yes. This is Paige Chang speaking.
4 The interest computation was calculated until January
5 the 19th, so I don't have it until exactly today, but
6 until January 19th, is \$187.07.

7 JUDGE KLETTER: This is Judge Kletter. Thank you
8 for that.

9 Now, I'd like to turn it over to Mr. Greco.

10 Mr. Greco, would you like to make a final
11 statement, a rebuttal to what Ms. Chang said, or is there
12 anything else that you've prepared or would like to say in
13 your closing statement?

14

15 CLOSING STATEMENT

16 MR. GRECO: This is John Greco. I would point
17 out the referenced notice date of October 14th, 2022.
18 That was an initial assessment that I received with a
19 total additional tax and interest figure of an eye-popping
20 \$7,927.37. So that's the initial notice on October 14th
21 that I received. I then contacted and disputed it at that
22 time, and I got a new assessment on February 28th, 2023,
23 which is where we come up with the new and current number.
24 So I would say that if we are going to calculate interest
25 from a notice of proposed amount, it should be based on

1 the current proposed amount and not the one that was sent
2 out in October. That's a small point and small dollar
3 amount, I'm sure.

4 I'm still not understanding, I guess, how if I
5 paid \$7,451 for the tax year of 2019 and my total tax due
6 was \$6,996, I'm not understanding still where that --
7 where that \$800 refund went. And it doesn't seem that
8 it's being subtracted from the erroneously issued return,
9 I guess. I guess I'm still a little confused on that.
10 But other than that, I do not have anything further.

11 MR. COUTINHO: Judge Kletter, can I respond to
12 Appellant's question?

13 JUDGE KLETTER: This is Judge Kletter. Please,
14 Mr. Coutinho.

15 MR. COUTINHO: This is Brad Coutinho with the
16 Franchise Tax Board. Attached to Respondent's opening
17 brief, Exhibit C, there's a notice of intercepted funds
18 notice. And it appears that \$980 was intercepted and sent
19 to another agency. I don't want to get into too many
20 specifics during the oral hearing, but if you need any
21 other information, please let me know. Thank you.

22 MR. GRECO: This is John Greco. Thank you.
23 Thank you. That is correct, and I had forgotten about
24 that. Thank you.

25 JUDGE KLETTER: This is Judge Kletter. I'd like

1 to thank the parties for their presentations today. This
2 concludes our hearing. And the case will be decided, and
3 our written decision will be issued no later than 100 days
4 from today. The case is submitted, and the record is now
5 closed, and this concludes this hearing session.

6 Thank you so much, everyone.

7 (Proceedings adjourned at 1:27 p.m.)

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