

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
K. SARAIYA and M. SARAIYA,) OTA NO. 230112377
)
 APPELLANTS.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, February 21, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 3:30 p.m. and concluding at 4:03 p.m. on
Wednesday, February 21, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE VERONICA LONG

For the Appellants: K. SARAIYA
M. SARAIYA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

JOSH RICAFORT
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Appellants' Exhibits 1-8 were received at page 7.)
(Department's Exhibits A-H were received at page 6.)

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California; Wednesday, February 21, 2024

3:30 p.m.

JUDGE LONG: So we are going to open the record.

This is the Appeal of Saraiya, OTA Case No. 230112377. Today is Wednesday, February 21st, and the time is approximately 3:30 p.m. We are holding this hearing today electronically with the agreement of the parties.

As a reminder, the OTA is not a court. We are an independent appeals body. The OTA is staffed by tax experts and is independent of the State's tax agencies. We do not engage in ex parte communications. Our decisions are based on arguments and evidence provided by the parties on appeal, and are in conjunction with the appropriate application of law. I have read the briefs and examined the submitted exhibits.

Once, again, my name is Judge Veronica Long. I will be the Administrative Law Judge for this appeal.

I'm going to have the parties please identify themselves by stating their name for the record, beginning with Appellants.

MR. SARAIYA: Yeah. Thank you. My name is Kamlesh Saraiya and my wife Manisha Saraiya. We are the Appellant. We have both have a slight sore throat. So in

1 case there is something you want us to repeat, we will do
2 so. Okay. We thank you for the --

3 JUDGE LONG: Oh, let me stop you right there.
4 Right now we're just doing introductions. I'll let you
5 now when it's your turn to present. Thank you.

6 And, FTB, can I have you introduce yourself for
7 the record.

8 MR. RICAFORT: Yes. Good afternoon my name is
9 Josh Ricafort and, along with my Co-Counsel Jackie
10 Zumaeta, we represent the Franchise Tax Board.

11 JUDGE LONG: All right. And I'm going to restate
12 the issue that we agreed at the prehearing conference, and
13 that was stated in my minutes and orders. The issue for
14 the case is whether Appellants have shown error in the
15 proposed assessment for the 2017 tax year.

16 With respect to the evidentiary record, FTB has
17 provided Exhibits A through H. Appellants did not object
18 to the admissibility of these exhibits. Therefore, the
19 exhibits are entered into the record.

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

22 JUDGE LONG: Appellant has provided Exhibits 1
23 through 8. FTB did not object to the admission of these
24 exhibits. Therefore, the exhibits are entered into the
25 record.

1 (Appellants' Exhibits 1-8 were received
2 in evidence by the Administrative Law Judge.)

3 JUDGE LONG: No additional exhibits were
4 presented today.

5 With that, I'm go to swear in
6 Mr. And Mrs. Saraiya. I'm going to do Mr. Saraiya first.

7 May I have you please raise your right hand.

8
9 K. SARAIYA,
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 LONG: All right. Now, Mrs. Saraiya, can I
15 have you please raise your right hand.

16

17 M. SARAIYA,
18 produced as a witness, and having been first duly sworn by
19 the Administrative Law Judge, was examined, and testified
20 as follows:

21

22 JUDGE LONG: All right. With that, Appellants
23 you have 25 minutes, and you may begin whenever you're
24 ready.

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1 paid in prior years where the income was generated.

2 Subjecting the same prior year income to California tax in
3 2017 would amount to multiple state-level taxation. Point
4 number two is that the Form S is not applicable in this
5 case. Point number three, in the Final Notice of Action,
6 interest is charged incorrectly. These are the three
7 points we want to make.

8 Point number one, I'll reference Exhibits 5, 6,
9 7, and 8. These are the tax returns from 2010 to 2013.
10 The federal tax and the opportunity to save for retirement
11 in 401-K, in the exhibit I will show that the years 2010
12 through 2013 IRS rules allowed us, the taxpayer, to fund
13 our employer retirement savings act, 401-K, from our
14 income and defer the tax until such time the funds are
15 withdrawn at retirement. The trustee for this 401-K
16 account ensure that the deposits conform to the IRS rules
17 and regulations and report withdrawals to IRS as deferred
18 federal taxes would become due when we withdraw.

19 State tax, Pennsylvania, the exhibits that I'll
20 show that the income was added back in at the state level,
21 and income taxes were paid to Pennsylvania as Pennsylvania
22 did not allow us to defer contributions to this account.
23 Okay. I have noted at the bottom of the page. I'm
24 assuming that these documents were circulated. Hence, I'm
25 referring to the notes at the bottom. As California

1 residents we do not make any additional contributions to
2 the 401-K accounts as we were not employed. We were
3 retired, and we have had no income since we have become
4 residents.

5 FTB also has not disputed that the Pennsylvania
6 taxes have been paid in the years the income was
7 generated. That is the years 2010 through 2013. Okay.

8 The next -- I don't -- I refer to Exhibit H, The
9 Wage and Income Transcript and also the FTB's opening
10 brief. In the year 2017 when we filed our federal taxes,
11 we made a withdrawal of \$75,000 from our 401-K retirement
12 account and paid federal taxes that were deferred. The
13 Exhibit H, page 3, shows that the account trustees
14 reported this withdrawal to the IRS. It's sort of like a
15 loan from the IRS when they didn't charge us the tax in
16 the year, and we're kind of paying the loan back now.

17 The state tax, California, Pennsylvania state
18 taxes were paid on these funds. There is no outstanding
19 state tax liability or obligation at this point, in 2017.
20 We have filed no Pennsylvania state tax returns. Please
21 note that in the FTB opening brief, paragraph 6, sentence
22 number 2, they stated that while -- this is -- I'm reading
23 their statement -- while you state 401-K has been subject
24 to Pennsylvania state income tax for the 2017 tax year --
25 well, this statement is not correct. We have not made any

1 such claim, and we have not paid any taxes in Pennsylvania
2 in the year 2017.

3 The proposed -- the second point, the proposed
4 assessment is based on income correct premise that this
5 \$75,000 was 2017 income. Again, I'll refer to Exhibit H
6 and to Exhibit No. 3, the Form S instructions. The Form S
7 that we had to fill out, instructions said -- on the first
8 page -- general information paragraph number 2 that
9 taxpayers may qualify for a credit of income tax paid to
10 another state when some income that is taxed by another
11 state is also taxed by California. Note, in the years
12 when this income was generated, it was not subject to
13 California tax. We had nothing to do with California. We
14 did not live in California.

15 Section B, application for credit. Again, in the
16 instructions. Section B, application for credit,
17 paragraph 3, where it says when joint return is filed in
18 the other state and the separate California tax returns
19 are filed, the credit is allowed in proportion to the
20 income reported on each California tax return. Well,
21 please note we have not filed Pennsylvania tax return in
22 2017. We have neither -- we are neither residents of
23 Pennsylvania nor have sourced any income in Pennsylvania.
24 So there is nothing that we can properly follow
25 instructions and complete the form.

1 In Exhibit H, the wage and income transcript from
2 IRS, page 3, the IRS accepts reports of all of our
3 withdrawals from this retirement saving account from the
4 trustees. FTB required copies of all of our past tax
5 returns for the same information. This places a very
6 undue burden on the taxpayer. We have saved 7 to 10 years
7 as we were advised to keep, and this would start to go
8 back and, you know, provide information that we might not
9 had anymore.

10 Next page, the FTB Exhibit F, letter from the
11 auditor. Naisin Embry was our auditor. And also, I will
12 refer to Exhibit No. 2, our letter dated July 6th. In the
13 Exhibit F, the letter we received from the auditor, it
14 says, "In order to proceed with applying other state
15 credit, please complete a copy of the Schedule S and
16 provide a copy of the Pennsylvania return reflecting a
17 taxation of the IRA withdrawal along with the proof of
18 payment. This information can be used to offset your
19 California tax."

20 Once again, there is no Pennsylvania tax return
21 filed in 2017. Exhibit No. 2, Form S resubmitted with the
22 disclaimer. We had many conversations with the auditor --
23 and I'm sure they might have recording -- where she at one
24 point seem to acquiesce and then put a hold on the
25 timeline. This is, again, my contemporaneous notes on

1 May 23rd, 2022. She put a hold on the timeline until she
2 had a chance to review with her supervisor. But
3 eventually she came back and asked us to complete the form
4 again as best as we can, and their experts will review it.
5 If you'll notice on Exhibit No. 2, which is my letter --
6 our letter dated July 6th in the last page, we submitted
7 Form S again with a disclaimer that we cannot complete
8 this form as it is per instructions. And we did our best
9 as we were required, what we were asked to do.

10 Exhibit No. 1, now point number three, interest
11 charges. Exhibit 1, Notice of Action. I'll also refer to
12 Notice of Proposed Assessment and Form 7275, which is the
13 standard FTB publication. Exhibit No. 1, the Notice of
14 Proposed Assessment required that even if we file a
15 protest to immediately pay the full amount. And the
16 amount came to about \$3,547. We paid the amount in full
17 in order for the interest to stop accruing. In making the
18 arrangements and calling back, we were a few days late and
19 added \$39. I'm sorry. They added, actually, \$7 and
20 something for the few days that we were late.

21 The Notice of Action as shown in Exhibit 1,
22 recalculates the interest and adds another \$39.88 from
23 July 14, 2021, to December 28, 2022. But since we have
24 made the full payment in July 16th, 2021, we should -- the
25 accrual of interest should have stopped. And why this

1 second addition of interest? California -- State of
2 California required that we pay that amount \$3,500 -- it
3 was actually slightly more than \$3,500 -- in
4 July 2021st -- 2021, sorry. They now held that money for
5 940 days.

6 Now, I refer to the citations that were on the
7 opening briefs from the FTB. FTB cited OTA Case
8 No. 18042752, Appeal of Dandridge. This is a dispute
9 about deduction of mortgage insurance premium. We don't
10 believe this is relevant to our situation. They also cite
11 OTA Case No. 19054784, Appeal of Vardell. This issue here
12 is a tax application of business loss. Once again,
13 nothing to do with our case. FTB citation of OTA Case No.
14 18053138, Appeal of Head and Feliciano, this case is about
15 tax implications of proceeds from a lawsuit settlement.
16 Once again, nothing to -- it doesn't seem to be relevant
17 in our case.

18 We have submitted as cited the State's multiple
19 taxation of personal income, a law review article from
20 Case Western Reserve and -- sorry that is exhibit
21 number -- yeah. Just want to make sure I refer to the
22 exhibit before I go on. Let's see. Exhibit No. 4. So in
23 our Exhibit No. 4, we cite this particular law review
24 article. Page 122, 123 says, "First it is formally
25 established that the states have the power to tax any

1 income that is earned within their borders. If a taxpayer
2 avails herself of the opportunity to engage in
3 income-earning activity with the given state, the state
4 has jurisdiction to tax her income earned there. This is
5 often called source-based tax jurisdiction."

6 I cite this because we never had any income in
7 those years within California. Page 124, "The first part
8 of the Court's analysis in Wynne invoke three decisions
9 invalidating state taxes that had subjected taxpayers to
10 the risk of multiple taxation. Remarking that these cases
11 were particularly instructive, the Court seemed to
12 intimate that the tax schemes producing this sort of
13 double taxation of income earned out of State are
14 necessarily unconstitutional." Note, our income was
15 entirely earned in Pennsylvania, the state we lived and
16 worked in at that time.

17 Page 131, which I think is very important, in
18 exercising this source-based jurisdiction, a state must
19 have some rational basis for determining that the income
20 it seeks to tax is indeed attributable to activities that
21 occurred within its borders. As the Supreme Court has
22 phrased it, "The income attributed to the State for tax
23 purposes must be rationally related to the values
24 connected to the taxing state."

25 And lastly there's an example. It says, for

1 example, suppose California -- this is page 145-146. This
2 page numbers are at the bottom of this article. For
3 example, suppose California imposed an income tax on a
4 Nevada resident -- in this case, it's a Pennsylvania
5 resident. California's only jurisdictional basis for
6 imposing this action would be that the taxpayer had earned
7 that income in California. The taxpayer would be
8 subjected to multiple-state level taxation, and
9 California's tax would be unconstitutional, of course if
10 we were not -- if this was not so.

11 Finally, our -- some comments and considerations.
12 So we are at an a point in our life when we can expect
13 medical emergencies. My wife had a heart-valve surgery
14 last year and is a potential candidate for open-heart
15 surgery. So theoretically if we are forced to withdraw a
16 large chunk from our retirement savings for medical
17 expenses, the State of California would tax us a second
18 time, and that too at a rate paid by highest tax earners--
19 the highest wage earners in the state, because we would
20 sit on top of the income.

21 We believe this policy is being misinterpreted
22 and misapplied, and it disproportionately impacts the
23 average middle-class elderly taxpayers -- that is us --
24 that move to California in retirement from states like
25 Pennsylvania. They are faced with unexpected multiple tax

1 burden at the state level on their retirement savings, and
2 we are the least resourceful and are unable to generate
3 additional sources of income. We believe that this
4 misinterpretation, miscalculation of income, causes great
5 harm to this wonderful population in California. It is
6 unfair, unjust, and unconscionable.

7 So in conclusion let me just say that the point
8 number one, we have tried to show that point number one,
9 our withdrawal of the funds from the retirement savings in
10 2017 is not current income in 2017 at the state level. It
11 has already been taxed by the state where the income was
12 generated. It is not California-based income and should
13 not be subjected to California tax.

14 Point number two, the Form S does not apply in
15 this case. As we have tried to show, it is -- it has
16 placed undue burden of proof on us, the taxpayer, when
17 alternate federal sources, federal tax return, wage and
18 income transcripts from IRS is available to validate this
19 information.

20 Point number three, since payment was made in
21 full, interest accrual was supposed to stop. However, the
22 Notice of Action has shown that interest from 7/2021
23 through 12/28/23 being added again. The State has the use
24 of our \$3,500 of our funds for 940 days now, and I think
25 we should be paid interest.

1 I thank you very much for the opportunity to
2 present our case, and I look forward to the next steps.

3 JUDGE LONG: All right. Thank you. Now, because
4 you have offered witness testimony, I have to give FTB the
5 opportunity to ask you questions --

6 MR. SARAIYA: Sure.

7 JUDGE LONG: -- about your testimony.

8 MR. SARAIYA: Yeah.

9 JUDGE LONG: So, FTB, do you have any questions
10 for Appellants about their witness testimony?

11 MR. RICAFORT: No questions at this time, Judge.

12 JUDGE LONG: All right. In that case, I'm going
13 to hold my questions until after FTB has presented their
14 case.

15 So, FTB, you can begin whenever you're ready.

16 MR. RICAFORT: Thank you very much, Judge Long.

17

18 PRESENTATION

19 MR. RICAFORT: And good afternoon again. My name
20 is Josh Ricafort. And along with my Co-Counsel Jackie
21 Zumaeta, we represent the Respondent Franchise Tax Board.

22 The issue on appeal is whether Appellants have
23 met their burden of showing error in FTB's proposed
24 assessment for the tax year 2017. FTB's determination of
25 tax -- excuse me. Sorry.

1 Here, Appellants state that they should not be
2 taxed by California on their 2017 taxable retirement
3 distribution because they already paid state income tax to
4 Pennsylvania on their retirement contributions during the
5 tax years 2010 through 2013. FTB's determination of tax
6 is presumed correct, and Appellants bear the burden of
7 proving error. Appellants also bear the burden of proving
8 entitlement to a deduction or exclusion of income, and
9 mere assertions of error or entitlement are never
10 sufficient to meet the taxpayer's burden of proof.

11 California law provides that income from all
12 sources earned by a California resident is taxable in
13 California. As California residents, all of Appellants
14 income is subject to California taxations. While
15 Appellants assert that they paid income taxes to
16 Pennsylvania for their retirement contributions from 2010
17 through 2013, Appellants have not provided any evidence or
18 legal theories to support that they have properly excluded
19 the \$75,000 taxable distribution they received in 2017
20 from their California resident income.

21 Appellants state that they paid tax when they
22 made their taxable -- when they made their 401-K
23 contributions. However, Appellants' wage -- federal wage
24 and income transcript admitted into the record as FTB's
25 Exhibit H reflects the taxable amount of \$75,000. To the

1 extent that the Appellants argue that they are being
2 double taxed on their retirement distribution, FTB has
3 granted Appellants an other state credit, although,
4 Appellants have not provided any substantiation that they
5 specifically paid another state any income tax on the
6 taxable retirement distribution they received in the 2017
7 tax year. Appellants have not met their burden of showing
8 that they are entitled to exclude the \$75,000 taxable
9 retirement distribution from their California resident
10 income.

11 And with regards to the interest reflected in the
12 Notice of Action raised by Appellants, the interest
13 calculation does reflect the proposed assessment payment
14 Appellants made on July 26, 2021. Based on the outcome of
15 this appeal, Appellants will receive credit for said
16 payment and interest will be adjusted accordingly. As
17 such, Appellants have not shown error in FTB's proposed
18 assessment, and FTB respectfully asks the Office of Tax
19 Appeals to sustain its position.

20 Thank you. And at this time, I'm happy to answer
21 any questions the Office of Tax Appeals may have.

22 JUDGE LONG: All right. So just to confirm, FTB,
23 that was your case presentation?

24 MR. RICAFORT: Correct.

25 JUDGE LONG: All right. FTB, you said Appellants

1 have not provided substantiation that they paid tax on the
2 2017 distribution. Can you clarify that statement?

3 MR. RICAFORT: Yes. While the Appellants have
4 provided copies of their 2010 through 2013 federal and
5 Pennsylvania state income tax returns, the returns do not
6 specifically show the amounts that Appellants paid as
7 retirement -- tax retirement contributions. They have not
8 provided any statements showing such, and that support
9 such assertion as well.

10 MS. ZUMAETA: Judge Long, if I may jump in as
11 well. I think that the difficulty is that Pennsylvania's
12 taxing regime is different from California's. So
13 Pennsylvania tax -- taxes the income does not allow the
14 exemption of the income from the taxable income when it's
15 contributed. California allows an exemption of the income
16 on the contribution end but taxes the distribution end.
17 So while Pennsylvania would have exempted this income if
18 it had been received while he was a Pennsylvania resident,
19 it was actually received while he was a California
20 resident, which does tax that distribution income.

21 JUDGE LONG: All right. Thank you.

22 Now, I want to confirm my understanding here.
23 When I looked at the returns, I could see a difference
24 between the amount of federal wages reported and
25 Pennsylvania wages reported. And at least for the first

1 couple of tax years, there were W-2s included that had the
2 amount of that difference as listed as retirement
3 contributions. So that's not sufficient? I just want to
4 ask the question. Is that not sufficient to demonstrate
5 that the amount was attributable to retirement
6 contributions?

7 MS. ZUMAETA: We have, in fact, given the other
8 state tax credit in the 2017 year based on those amounts.
9 While generally speaking, the other state tax credit would
10 be for the year at issue. We did go ahead and give it to
11 them in this case.

12 JUDGE LONG: All right. Thank you.

13 And that brings me to another question I wanted
14 to ask. Are the parties in agreement with the other state
15 credit calculation? I know it's complicated because it
16 requires matching up prior years to a current year.

17 So I want to ask, Appellants, are you in
18 agreement with FTB's calculation of the other state tax
19 credit?

20 MR. SARAIYA: No. With we're totally confused,
21 Your Honor.

22 JUDGE LONG: Okay.

23 MR. SARAIYA: Okay.

24 JUDGE LONG: All right. I do note that it looks
25 like the other state credit form was filled out by

1 Appellants.

2 FTB, were you in agreement with the form as
3 filled out by Franchise Tax Board? I see the amount of
4 credit was allowed. I'd just have to confirm.

5 MS. ZUMAETA: We did allow the credit as
6 purported, yes.

7 JUDGE LONG: All right. In that case let me ask.
8 FTB, is there a procedure or a way for taxpayers to fill
9 out a Schedule S in instances like this where the tax
10 years are different tax years between the year the tax was
11 paid in the other state and the year the tax is being paid
12 in California?

13 MS. ZUMAETA: There's not. Typically, the other
14 state tax credit is not meant to address a situation like
15 this. And other state tax credit would be meant to
16 address a situation where the income was taxed in the same
17 taxable year in both jurisdictions. Double taxation is
18 not unconstitutional. It's not prohibited. Obviously, we
19 try to avoid it. But in a situation like this where the
20 state tax laws are different, it is possible that a
21 taxpayer would experience double taxation because we don't
22 control Pennsylvania's laws, obviously.

23 JUDGE LONG: All right. I understand. So I just
24 want to confirm. It sounds like the other state tax
25 credit computation is still in dispute because Appellants

1 do not agree to that amount of other state tax credit. So
2 I'm going to go back and ask Appellants some questions
3 about their presentation and testimony.

4 Mr. Saraiya, you stated that you worked for the
5 same company for many years. We have copies here of the
6 tax that you paid to Pennsylvania for 2010 through 2013.
7 Were those the only years that you contributed to this IRA
8 account?

9 MR. SARAIYA: No. We contributed for my entire
10 career with the same company. Every year they allowed us
11 to put some money aside, and we did to the fullest extent
12 fund that account what was allowed by law.

13 JUDGE LONG: All right. And did you begin
14 withdrawing from that IRA when you moved to California or
15 at a different time?

16 MR. SARAIYA: No. That was the first time we
17 withdrew. That was our first withdrawal. We needed some
18 cash. We withdrew that for the first time.

19 JUDGE LONG: All right. And as I stated, I see
20 that you have given copies of your 2010 through 2013
21 Pennsylvania returns.

22 MR. SARAIYA: Right.

23 JUDGE LONG: Did you have other returns that you
24 wanted to provide that would show that you paid tax to
25 Pennsylvania on the amount of the IRA contributions?

1 MR. SARAIYA: Well, the -- I would just want to
2 make sure the Exhibits 5 through 8, the tax returns, do
3 show that we paid taxes. And the --

4 JUDGE LONG: Yes.

5 MR. SARAIYA: -- federal taxes was allowed to be
6 deferred. It's almost like a loan. Federal government
7 allowed us not to pay it and pay later, which is what we
8 did later. The state did not allow and we paid them, and
9 this shows in the tax returns.

10 JUDGE LONG: All right. I understand. My only
11 question is, if we are looking at the amount of the other
12 state tax credit that you're receiving --

13 MR. SARAIYA: Right. Yeah.

14 JUDGE LONG: -- the amount of tax that you paid
15 to Pennsylvania is important in determining the amount of
16 the credit.

17 MR. SARAIYA: Yeah.

18 JUDGE LONG: So the amount of tax that you paid
19 to Pennsylvania is figured out by looking at the tax
20 returns from Pennsylvania that you submitted.

21 MR. SARAIYA: Right.

22 JUDGE LONG: And we have 2010 through 2013. And
23 I'm only asking if you had any additional years in which
24 you made contributions that you would like to have
25 included in that calculation.

1 MR. SARAIYA: Yeah. The reason these four years
2 are included is because that contribution totaled \$75,000.
3 Yes, we made other contributions, but so far we've
4 withdrawn only these \$75,000. So that is why we limited
5 that, and it shows in the wage transcript in the amount
6 that matches up. Hence, we do have other years. But as I
7 pointed in my presentation that this puts an undue burden
8 because as we kept moving, we kept only 10 years of tax
9 returns, hard copies. Neither state nor federal
10 government keeps more than that. We have signed up with
11 IRS and Pennsylvania. They will not provide or go back
12 and give us our history.

13 JUDGE LONG: All right. Thank you.

14 MR. SARAIYA: But, yes, we have more tax returns
15 still to provide. Thank you.

16 JUDGE LONG: All right. Let me ask you another
17 question. I understand that you filled out the Schedule S
18 yourself, and I also understand that the instructions were
19 difficult because this is a complex and unique situation.
20 I want to ask you, when you filled out the Schedule S -- I
21 believe that's your Exhibit 3 -- you stated at Line 7 that
22 the amount of income tax liability you paid to
23 Pennsylvania was \$2,303.

24 MR. SARAIYA: Correct.

25 JUDGE LONG: Are you able to tell me how you

1 calculated that amount?

2 MR. SARAIYA: Yes. Every time in the state tax
3 return they showed that the percentage tax they were
4 charging on that amount, and it did say 3.07 percent or
5 something. So we started to add that up as individual
6 year by year, and that's the amount we came with. Now, it
7 is -- it is sort of very -- to us, it's very unfair that
8 now if you take the lump sum and set it on top of the
9 income, the bracket will change.

10 So to compare what was being contributed as a,
11 sort of, nickels and dimes, suddenly it now added to some
12 amount and you're charging in one you're setting on top of
13 everything. It is taken at a very high interest rate --
14 and I'm sorry -- tax rate and takes a big chunk of the
15 savings. But anyways this is not even 2017 income, which
16 is what our main argument is, why is it considered 2017
17 income which doesn't make sense to us.

18 JUDGE LONG: All right. And then I have, I
19 think, one more question for you. Can you confirm with me
20 the date that you made the total payment --

21 MR. SARAIYA: Yes.

22 JUDGE LONG: -- of the amount of the Notice of
23 Proposed Assessment? What was that date?

24 MR. SARAIYA: Right. The total paid is \$3,500 on
25 July 26. Yeah.

1 MRS. SARAIYA: I'm sorry. I can pull it up
2 again.

3 MR. SARAIYA: Yeah. We --

4 MS. ZUMAETA: That is what our records reflect as
5 well, July 26.

6 MR. RICAFORT: July 26, 20 --

7 MRS. SARAIYA: July 26, yes.

8 MR. SARAIYA: Yeah. And it was --

9 MRS. SARAIYA: And I can even give the exact
10 amount.

11 JUDGE LONG: That -- that's fine. So July 26th
12 of 2022. And the parties are in agreement that the total
13 amount was paid that day?

14 MR. SARAIYA: No. '21.

15 MRS. SARAIYA: '21.

16 MR. RICAFORT: '21, yes.

17 JUDGE LONG: '21. Thank you.

18 MR. SARAIYA: '21.

19 JUDGE LONG: And let me confirm. So both parties
20 are in agreement that the amount of interest that is
21 stated on the Notice of Action will be amended to reflect
22 for payment?

23 Okay. I see FTB nodding. All right. Thank you.

24 All right. I think that that's going to conclude
25 my questions. I realize this was a complex factual case,

1 so I thank you all for answering my questions.

2 So with that, Appellants, you have 5 minutes for
3 your closing remarks or rebuttal. You may begin whenever
4 you're ready.

5

6 CLOSING STATEMENT

7 MR. SARAIYA: Right. Yeah. Well, I think -- I
8 thank you Josh for his -- his presentation. He said a lot
9 of things that are in the opening brief. But the
10 fundamental question I think remains open that they have
11 considered \$75,000 as if it income -- current income in
12 2017. If I owned that income, they would tax it. That
13 income is -- it is not 2017 income. It is almost like the
14 federal government loaned us that amount, allowed us to
15 kind of have a little extra time before we can pay the
16 tax, and we did that. It is a business between federal
17 government and the saver, which is us.

18 The state obligation was removed and there's
19 nothing to do with the state. California wants to come in
20 2017 and grab a piece of the pie. I don't understand, and
21 I fully -- I'm totally confused as to how California has
22 any right to claim a piece of the pie that have -- as I
23 cited in our law review article, there was nothing that we
24 gained from California. There was no services. We have
25 not been here during those years. How do they come in and

1 try to claim?

2 The law, that is why I feel, is being
3 mischaracterized, misinterpreted, and misapplied to a
4 group that is the most unable to, sort of, deal with this
5 kind of sudden income because we don't have sources to
6 generate additional income. We are retired, and we just
7 have to do with fixed income. I -- I totally feel like
8 this has been misapplied. The law is not clear, and FTB
9 has chosen to interpret it in a way that is most egregious
10 to these group of people, to us.

11 JUDGE LONG: All right. Thank you. Just to
12 confirm, Appellants, that concludes your closing remarks?

13 MR. SARAIYA: Yes.

14 JUDGE LONG: All right. With that, I am ready to
15 conclude the hearing. I will decide this case based on
16 the documents and testimony presented. I will issue a
17 written decision no later than 100 days from today. The
18 case is submitted, and the record is now closed. And this
19 includes our hearing, and our hearing calendar for today.

20 Thank you.

21 (Proceedings adjourned at 4:03 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 15th day
of March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER