

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A. NESTORAS,) OTA NO. 230312827
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, February 15, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
A. NESTORAS,) OTA NO. 230312827
APPELLANT.)
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Transcript of Proceedings,
taken at 12900 Park Plaza Dr., Suite 300,
Cerritos, California, 90703, commencing at
9:34 a.m. and concluding at 9:49 a.m. on
Thursday, February 15, 2024, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE EDDY Y. H. LAM

For the Appellant: A. NESTORAS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

SARAH FASSETT
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 6.)
(Department's Exhibits A-K were received at page 7.)

OPENING STATEMENT

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By Ms. Fassett	9

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By Mr. Nestoras	13

1 Cerritos, California; Thursday, February 15, 2024

2 9:34 a.m.

3
4 JUDGE LAM: We're opening the record in the
5 Appeal of Nestoras. This matter is being held before the
6 Office of Tax Appeals. The OTA case number is 230312827.
7 Today's date is Thursday, February 15th, 2024, and the
8 time is approximately 9:30.

9 Appellant elected to have this appeal determined
10 pursuant to the procedures of the Small Case Program. As
11 such, a single Administrative Law Judge would be assigned
12 to this appeal. My name is Eddy Lam, and I am the
13 Administrative Law Judge for this appeal.

14 Now, for introductions, can we please have
15 Appellant start introducing yourself on to the record.

16 MR. NESTORAS: Anastasios Nestoras.

17 JUDGE LAM: Thank you.

18 And Franchise Tax Board.

19 MS. FASSETT: Sarah Fasset for the Franchise Tax
20 Board.

21 MS. ZUMAETA: And Jackie Zumaeta for the
22 Franchise Tax Board.

23 JUDGE LAM: Thank you.

24 As discussed and agreed upon by the parties at
25 the prehearing conference on January 23rd, 2024, and

1 notated in my minutes and orders, the issues in this
2 matter are: whether the Appellant has demonstrated error
3 in FTB's proposed assessments; whether Appellant has
4 demonstrated reasonable cause to abate the late-filing
5 penalty; and whether Appellant established that interest
6 should be abated. No objections were raised, and these
7 are admitted through the prehearing conference minutes and
8 orders on January 23rd, 2024.

9 For exhibits, Appellant has identified Exhibits 1
10 through 4, and FTB has no objections to them. Appellant
11 then offered two separate new exhibits, which is a
12 resident ledger, which I have renumbered as Exhibit No. 5,
13 and a screenshot of Appellant's purported checking account
14 balance, which I renumbered it as Exhibit 6 for purposes
15 of this appeal.

16 And there are no other exhibits to offer as
17 evidence; is that correct, Mr. Nestoras?

18 MR. NESTORAS: Correct.

19 JUDGE LAM: Thank you.

20 Does FTB have any objections to them?

21 MS. FASSETT: No, we don't. Thank you.

22 JUDGE LAM: Great. Thank you. So Exhibit No. 1
23 through 6 are admitted into the record.

24 (Appellant's Exhibits 1-6 were received
25 in evidence by the Administrative Law Judge.)

1 JUDGE LAM: Now, for Respondent Franchise Tax
2 Board, Franchise Tax Board has identified Exhibits A
3 through K, and has no other exhibits to offer as evidence.
4 Appellant also has no objections to them pursuant to the
5 prehearing conference minutes and orders. Since no
6 objections were raised, Exhibits A through K are admitted
7 into the record.

8 (Department's Exhibits A-K were received in
9 evidence by the Administrative Law Judge.)

10 JUDGE LAM: Mr. Nestoras, you had indicated at
11 the prehearing conference that you will be testifying as a
12 witness at this oral hearing. Is this still true?

13 MR. NESTORAS: Yes.

14 JUDGE LAM: Okay. Thank you. I will then swear
15 you in, Mr. Nestoras.

16 Mr. Nestoras, would you raise your right hand.

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

22
23 JUDGE LAM: Thank you, Mr. Nestoras.

24 Okay. We have all the housekeeping items
25 completed. This oral hearing will begin.

1 Mr. Nestoras, you have about 15 minutes for your
2 presentation, which includes your witness testimony. As a
3 reminder, Mr. Nestoras, you will be offered a final
4 statement after FTB's closing remarks for about 10
5 minutes. You can begin whenever you're ready.

6 MR. NESTORAS: Okay.

7 JUDGE LAM: Thank you.

8
9 PRESENTATION

10 MR. NESTORAS: The money in question was from
11 life insurance value that was take without taken without
12 my knowledge by my ex, the beneficiary. When I call State
13 Farm and said I didn't get the money, they said you are
14 the policy-holder. On the divorce case, the first judge
15 allow me to take \$90,000 from the value of my insurance
16 policy because of my medical bills. The second judge,
17 though, he said that he's a community property, and she
18 actually took almost \$7,000 back and gave it to the
19 settlement. So I really got only \$12,000 from my
20 insurance policy, the total amount at this date.

21 Even though my ex is a State Farm Insurance
22 agent, and she had to display her income, which is more
23 than \$250,000 and I'm in a very bad hardship, the judge
24 didn't see that fit. So that went really the wrong way
25 against me. I'm 73-years old, way below property level,

1 as you see from my Social Security income that you have on
2 the forms in front of you, and as well as from the State
3 of California that I qualify for medical assistance
4 because the -- you know, the very low income.

5 Currently, I live on food stamps. I'm legally
6 handicap. I'm an ex-personal trainer. Even though I'm
7 73, I wish I could work, but I cannot. I am behind on my
8 rent, if you can see on the statements, and I'm in danger
9 of being homeless. The \$600 that the State of California
10 is asking from me is going to really mean of me not having
11 food, not having benefit, or even be homeless. That's an
12 extreme hardship that I am going through.

13 So I would very much appreciate everybody if you
14 can please dismiss that \$600 tax that the State of
15 California is asking me because of my extreme hardship.

16 Thank you.

17 JUDGE LAM: Thank you. Mr. Nestoras, is that
18 your argument and testimony?

19 MR. NESTORAS: Yes. Yes.

20 JUDGE LAM: All right. Franchise Tax Board,
21 whenever you're ready.

22 MS. FASSETT: Thank you, Judge Lam.

23

24 PRESENTATION

25 MS. FASSETT: So good morning.

1 So here, Appellant has made the same arguments
2 for all three issues that half of the life insurance
3 proceeds went to his ex-spouse as part of a divorce
4 settlement, and that this assessment of tax and penalty
5 presents an economic hardship due to his age, medical
6 conditions, and financial situation. His offered
7 documentation only speaks to his current financial
8 condition.

9 Appellant bears the burden of proving that FTB's
10 proposed assessment is incorrect, and Appellant has not
11 met this burden. None of Appellant's arguments or the
12 information presented by the Appellant establish error in
13 the proposed assessment, or show that he has established
14 that he does not have a filing requirement for the 2020
15 tax year. And while FTB is sympathetic to Appellant's
16 situation, there's no provision under the law that allows
17 FTB or OTA to either withdraw proposed assessment or abate
18 tax due to hardship.

19 FTB has provided Appellant in writing and
20 verbally with information regarding its collection
21 programs that address a taxpayer's financial hardship
22 concerns. After the appeal is concluded and is happy to
23 provide that information again.

24 With regard to the late-filing penalty, Appellant
25 has yet to file a 2020 California tax returns. And his

1 arguments and documentation concerning his limited income,
2 age, and medical issues do not constitute reasonable
3 cause, nor do they show that he has been continuously
4 prevented from filing a 2020 tax year return and,
5 therefore, do not meet his burden.

6 Finally, as to the interest, FTB's imposition
7 of interest is mandatory, and FTB is only authorized to
8 abate interest in certain very limited circumstances.
9 Appellant has not alleged, and the record does not reflect
10 any basis for interest abatement. Therefore, on the facts
11 and evidence in the record, Franchise Tax Board
12 respectfully request you sustain its position.

13 I'm happy to address any questions you may have.
14 Thank you.

15 JUDGE LAM: Thank you.

16 This is Judge Lam speaking. I have a question
17 for Appellant. You have indicated that the -- the
18 distribution from State Farm, only half of it belongs to
19 you; is that correct?

20 MR. NESTORAS: That's the judge -- yes, that is
21 what the judge -- that's what the judge admitted --
22 decided on the finalizing of the divorce.

23 JUDGE LAM: Thank you. And I noticed that in the
24 opening brief -- in FTB's opening brief and also as I
25 stated in my minutes and orders, is there a reason that

1 you didn't provide a copy of your divorce decree and the
2 payment made to your ex-spouse, half of the proceeds from
3 State Farm?

4 MR. NESTORAS: I was under the impression that I
5 did provide when I put the -- I had a copy of that, and I
6 did provide. I don't know why it's not here.

7 JUDGE LAM: This is Judge Lam speaking. FTB, do
8 you have a response?

9 MS. FASSETT: Yeah. We have not seen a copy of
10 the divorce decree. But I would mention that typically a
11 copy of the divorce decree would not bind FTB to any kind
12 of a finding on that. Typically that's an administrative
13 issue that would be resolved between the spouses, or
14 ex-spouses in this case.

15 JUDGE LAM: This is Judge Lam speaking. Thank
16 you.

17 And then, Franchise Tax Board, I have a question
18 on Exhibit F, which is the IRS transcript, specifically,
19 Exhibit F, page 7. I understand that it says a gross
20 distribution, which is around \$80,000, and then the
21 taxable amount, which is almost half of \$38,000. Does
22 that indicate that Appellant had received a distribution
23 in which half of it had already went to the spouse?

24 MS. FASSETT: From this information, all we can
25 ascertain is that, yes, there was a gross distribution of

1 \$80,000. And the only portion that was taxable to
2 Appellant was the \$38,000, which does appear to be half,
3 maybe with withholding as well.

4 JUDGE LAM: Thank you. This is Judge Lam
5 speaking.

6 This is Judge Lam Speaking. I don't have any
7 further questions.

8 Appellant, would you want to start your final
9 closing remarks?

10 MR. NESTORAS: Yes, please.

11

12 CLOSING STATEMENT

13 MR. NESTORAS: I would very much appreciate
14 talking to human beings. I understand the law. I
15 understand what you're supposed do and all that stuff.
16 But please consider the overall situation that you're
17 talking to a 73-year old legally handicap that is way
18 below the poverty level and cannot really afford the
19 medicine or be, you know, almost homeless if I don't make
20 arrangements with the landlord to start pay small amounts
21 and all that stuff; so that \$600 that State of California
22 is asking me to pay.

23 When I was in good shape throughout my life I
24 paid a lots of money on the State of California. This is
25 a hardship. This is a real hardship as is exhibited from

1 the State of California qualify me for the Medi-Cal, you
2 know, below the poverty level, and the Social Security,
3 and all the stuff. So I will appreciate the human beings
4 that I'm talking to right now, not what the actual letter
5 of the law says. Yes, it does say, and I understand it
6 has to be, but that's a very, very unique hardship
7 situation.

8 That \$600, if I have to pay that, you know, even
9 with arrangements, it means cutting my medicine in half
10 or, you know, minimizing the food that I eat or, you know.
11 So I will appreciate if you consider my hardship and
12 dismiss the \$600 that it makes a huge difference in my
13 life at this time.

14 Thank you. That's it.

15 JUDGE LAM: This is the Judge Lam speaking.
16 Thank you.

17 Does either party have any questions before we
18 conclude the hearing?

19 MS. FASSETT: This is Sarah Fassett from FTB. We
20 don't have a question, but we are, again, happy to explain
21 the collection programs that FTB has at the conclusion of
22 the appeal, if Appellant would like.

23 JUDGE LAM: Oh, sure. Thank you.

24 MS. ZUMAETA: And we just wanted to mention that
25 that would be the method for having those conversations

1 about financial hardship. We would be absolutely happy to
2 address the financial hardship through that route.

3 JUDGE LAM: Thank you.

4 Okay. We're ready to conclude this hearing.

5 So this case is submitted on February 15, 2024.

6 The record is now closed.

7 Thank you everyone for coming in today.

8 I will decide your case, and I will send you a
9 written opinion of the decision within 100 days.

10 Today's hearing in the Appeal of Nestoras is now
11 adjourned.

12 This concludes all of our oral hearing matters
13 for today. Thank you and goodbye.

14 (Proceedings adjourned at 9:49 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 8th day
of March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER