

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
J. MANSON and A. KERR, ) OTA NO. 230713813  
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 )  
 APPELLANTS. )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, March 20, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:05 p.m. and concluding at 1:18 p.m. on  
Wednesday, March 20, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE ASAF KLETTER

For the Appellant: ELLEN HARRISON  
CATHERINE HORLING

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
NOEL GARCIA-ROSENBLUM  
BRAD COUTINHO

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I N D E X

E X H I B I T S

(Department's Exhibits A-H were received into evidence at page 7.)

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California; Wednesday, March 20, 2024

1:05 p.m.

JUDGE KLETTER: Let's go ahead and go on the record.

This is the Appeal of Manson and Kerr. It's OTA Case Number 230713813. Today is Wednesday, March 20th, 2024, and the time is 1:05 p.m.

I am Administrative Law Judge Asaf Kletter, and I will be conducting this hearing. Also present is our stenographer, Ms. Alonzo, who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speaks one at a time and does not speak over each other. Please say your name before you speak, and this especially for Appellants because you're calling in on a phone line. You know, just please identify who the speaker is if there are multiple speakers. Try to speak clearly and loudly, and also please mute your microphone when you are not speaking to avoid feedback or background noise. And I believe on a phone you can press star 6 to mute yourself.

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

1 website. The hearing transcript and the video recording  
2 are part of the public record. And this proceeding is  
3 live broadcast and any information shared on your screen  
4 is publicly viewable.

5 As a the reminder, the Office of Tax Appeals is  
6 not a court. We are an independent appeals body. The  
7 Office of Tax Appeals is staffed by tax experts and is  
8 independent of the State's tax agencies. And if anyone  
9 has any questions during the process or any questions  
10 regarding technology, please direct them to me. I only  
11 ask that you wait for me to acknowledge you before  
12 continuing with your question.

13 Now, I'd like to begin by having the parties each  
14 identify yourself by stating your name for the record,  
15 beginning with Appellants.

16 MS. HARRISON: Okay. Good afternoon my name is  
17 Ellen Harrison.

18 JUDGE KLETTER: Thank you.

19 MS. HORLING: Catherine Horling.

20 JUDGE KLETTER: Thank you.

21 And for Respondent Franchise Tax Board.

22 MR. GARCIA-ROSENBLUM: Good afternoon. This is  
23 Noel Garcia-Rosenblum for Respondent Franchise Tax Board.

24 MR. COUTINHO: Good afternoon. This is Brad  
25 Coutinho, also appearing for -- with Franchise Tax Board.

1 Thank you.

2 JUDGE KLETTER: Thank you so much.

3 This is Judge Kletter. So as a background, we  
4 met for a prehearing conference to discuss this appeal on  
5 February 26th, 2024. And as reflected in the minutes and  
6 orders that were issued on March 5th, 2024, the issue in  
7 this appeal is whether Appellants have shown reasonable  
8 cause to abate the late-payment penalty for the 2021 tax  
9 year.

10 With respect to the evidentiary record, Franchise  
11 Tax Board has provided Exhibits A through H with its  
12 opening brief, and Appellant did not object to the  
13 admissibility of those exhibits. Therefore, Exhibits A  
14 through H are entered into the record.

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

17 JUDGE KLETTER: And I just want to confirm with  
18 Franchise Tax Board, do you have any new exhibits that you  
19 wish to submit today?

20 MR. GARCIA-ROSENBLUM: This is Noel  
21 Garcia-Rosenblum. Franchise Tax Board does not have any  
22 new exhibits. Thank you.

23 JUDGE KLETTER: Great. Thank you.

24 And with respect to Appellant, Appellant is  
25 primarily arguing today, and so provided no exhibits into

1 the record.

2 And I just want to confirm with Appellant are  
3 there any new exhibits that you are submitting today.

4 MS. HARRISON: No.

5 JUDGE KLETTER: Great. Thank you. And as a  
6 reminder, we have 30 minutes today for --

7 THE STENOGRAPHER: Excuse me. I need to know who  
8 said "no".

9 MS. HARRISON: Oh, I'm sorry. Ellen Harrison. I  
10 didn't listen to the instructions. My fault. Okay.

11 JUDGE KLETTER: No problem.

12 So as a reminder, we have 30 minutes today for  
13 Appellant's presentation, 30 minutes for Franchise Tax  
14 Board's presentation, and then we'll also have five  
15 minutes for Appellant's closing statement and rebuttal.

16 So I'd like to turn it over to Appellant. Please  
17 just remember to state your name before you speak. And  
18 are you ready to begin your presentation?

19 MS. HARRISON: Yes.

20 JUDGE KLETTER: Please go ahead.

21

22 PRESENTATION

23 MS. HARRISON: My name is Ellen Harrison.

24 We are the tax preparers for the couple Manson  
25 and Kerr. And during the COVID period, there was



1 confusion, not only on our part, but on the part of many  
2 tax practitioners as to when the due dates for various  
3 payments were extended to. There were overlapping due  
4 dates for various years, which we submitted to in our  
5 written appeal.

6 It was completely our problem that we  
7 accidentally credited two payments to two various -- one,  
8 to an extension and one to a first quarter estimate. When  
9 all of this sorted itself out, it turned out that the  
10 taxpayers owed \$30,000 for the '21 tax year because we had  
11 duplicated payments. Completely un-willful. Completely  
12 in good faith.

13 It was just the confusion of the COVID era, not  
14 only for California but the IRS as well, who by the way  
15 has been very, very lenient in relieving penalties -- you  
16 probably read about this -- for the '20 and '21 tax years  
17 because it was understandable from their point of view  
18 that people were confused as to when the extension  
19 payments were due and when the first quarter for the  
20 subsequent year were due.

21 The taxpayer was completely agnostic. He left it  
22 to us to make the payments. He would have paid anything  
23 we told him to pay. So we take full responsibility. The  
24 penalty should not be levied at the taxpayer because he  
25 was innocent, completely.

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That's my case.

JUDGE KLETTER: This is Judge Kletter. Thank you so much for your presentation.

I'm going to turn it over to the Franchise Tax Board, and they will have 30 minutes. And to the extent, you know, you would like to add anything or respond, you'll have five minutes after FTB's presentation.

MS. HARRISON: Okay.

JUDGE KLETTER: Mr. Garcia-Rosenblum, are you ready to begin your presentation?

MR. GARCIA-ROSENBLUM: This is Noel Garcia-Rosenblum. Yes, I'm ready.

JUDGE KLETTER: Please go ahead.

MR. GARCIA-ROSENBLUM: Thank you.

PRESENTATION

MR. GARCIA-ROSENBLUM: My name is Noel Garcia-Rosenblum and I, along with my Co-Counsel Bradley Coutinho, represent Respondent Franchise Tax Board in this matter.

The only issue before you today is whether the Appellants have demonstrated reasonable cause to abate the late-payment penalty imposed during the 2021 taxable year. California law requires Respondent to impose a late-payment penalty when a taxpayer fails to pay the

1 amount shown as tax on their return on or before the  
2 payment due date.

3 In the current appeal, Appellants do not dispute  
4 that their 2021 tax balance due was not paid in full until  
5 nine months after the payment deadline. Instead,  
6 Appellants contend that the late-payment penalty should be  
7 waived due to reasonable cause because their accountants  
8 were responsible for their mistake, rather than the  
9 Appellants. In order to establish reasonable cause, the  
10 taxpayer must show that the failure to timely pay their  
11 tax occurred despite the exercise of ordinary business  
12 care and prudence.

13 The burden of proof is on the taxpayer to show  
14 that reasonable cause exists. It is well-settled that  
15 taxpayers have a nondelegable duty to pay their taxes by  
16 the due date, and reliance on an agent, such as an  
17 accountant, to pay timely is not reasonable cause.  
18 According to the Ninth Circuit in *Knappe v United States*,  
19 if taxpayers delegate their duty to fulfill their  
20 obligations by the respected deadlines -- excuse me. If  
21 representatives could delegate -- excuse me.

22 If taxpayers could delegate their duty to fulfill  
23 their obligations by their respective deadlines, then  
24 representatives would accept blame for their missed  
25 deadlines to help taxpayers escape penalties. Therefore,

1 because their reliance on their accountants does not  
2 constitute reasonable cause, the imposition of the  
3 late-payment penalty was proper and should be sustained.

4 I'm happy to answer any questions you may have.  
5 Thank you.

6 JUDGE KLETTER: This is Judge Kletter.

7 MS. HARRISON: Well, I --

8 JUDGE KLETTER: Oh, I'm so sorry.

9 MS. HARRISON: This is Ellen Harrison. I think  
10 that your statement that the taxpayers could always --  
11 I'll paraphrase -- blame the preparer is a little bit --  
12 there -- there's some malice in that. Oh, I'll just go  
13 blame my tax preparer. That's not the case here. They're  
14 completely innocent. They didn't construct an argument,  
15 whereby, they would blame us. We took the blame.

16 JUDGE KLETTER: Ms. Harrison?

17 MS. HARRISON: So I think there's something  
18 skewed about this argument, oh, you could always get  
19 relief because it wasn't my fault, meaning the taxpayers.

20 JUDGE KLETTER: Ms. Harrison, I'm so sorry.

21 MS. HARRISON: There's a certain amount of  
22 willfulness in that comment, which is simply not present  
23 here.

24 JUDGE KLETTER: Ms. Harrison, I'm so sorry to  
25 interrupt you. But, actually, you know, you'll have

1 5 minutes to respond.

2 MS. HARRISON: Oh.

3 JUDGE KLETTER: I just wanted to ask FTB, you  
4 know, if they were finishing their presentation. So --

5 MS. HARRISON: Oh, okay.

6 JUDGE KLETTER: -- it looks like it had  
7 concluded, and I did not have any questions.

8 But, FTB, you know, did you have any response to  
9 that?

10 And then, Ms. Harrison, you'll be able to respond  
11 to that in the closing statement because it sounded --  
12 yeah.

13 So, Mr. Noel Garcia-Rosenblum, do you wish to  
14 address that inquiry before we move on to the closing  
15 statement or not?

16 MR. GARCIA-ROSENBLUM: This is Noel  
17 Garcia-Rosenblum. Franchise Tax Board doesn't wish to  
18 respond, and that was the conclusion of our presentation.

19 JUDGE KLETTER: Okay. Great. Thank you so much.

20 And, Ms. Harrison, sorry to interrupt you, but  
21 you will have five minutes from this point on if there's  
22 anything you wish to add. You know, what you said earlier  
23 was noted. But if there's anything else, you'll have  
24 5 minutes.

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(Proceedings adjourned at 1:18 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 11th day of April, 2024.

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