

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
P. MRKAICH and S. MRKAICH, ) OTA NO. 230713930  
 )  
 )  
 APPELLANTS. )  
 )  
 )  
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TRANSCRIPT OF PROCEEDINGS

Fresno, California

Wednesday, April 17, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings, taken  
at 855 M Street, Suite 960, Fresno, California,  
90703, commencing at 12:58 p.m. and concluding  
at 1:06 p.m. on Wednesday, April 17, 2024,  
reported by Ernalyn M. Alonzo, Hearing Reporter,  
in and for the State of California.

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APPEARANCES:

Administrative Law Judge: JOHN JOHNSON

For the Appellant: S. MRKAICH

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

BRAD COUTINHO  
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received into evidence at page 6.)

(Department's Exhibits A-F were received into evidence at page 6.)

O P E N I N G   S T A T E M E N T

	<u>P A G E</u>
By Ms. Mrkaich	7
By Mr. Coutinho	8

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Fresno, California; Wednesday, April 17, 2024

12:58 p.m.

JUDGE JOHNSON: We are now on the record in the Appeal of Mrkaich. It is OTA Case Number 230713930. It is 12:58 on April 17th, 2024. This appeal is being led by myself, Judge Johnson, here in beautiful Fresno, California. The appeal is being heard and decided by a single Administrative Law Judge under the Office of Tax Appeals Small Case Program.

The Office of Tax Appeals is not a court but is an independent appeals body. The office is staffed by tax experts and is independent of State's tax agencies. In other words, the decision on appeals is going to be based solely on evidence and arguments provided by the parties, in conjunction with an appropriate application of the law. Okay. I've reviewed the briefs and examined the exhibits. Looking forward to your arguments today.

Let me have the parties introduce themselves by name. We could start with Appellant.

MS. MRKAICH: Sharon Mrkaich, taxpayer.

JUDGE JOHNSON: Thank you.

And Respondent?

MR. COUTINHO: Good afternoon. Brad Coutinho for Respondent, along with Jaclyn Zumaeta.

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JUDGE JOHNSON: Thank you.

The issue on appeal is whether Appellants have shown Respondent abused its discretion in determining not to abate interest for the 2018 tax year. Appellants have submitted Exhibits 1 through 10. Respondent has submitted Exhibits A through F, and those were all entered into the record as evidence.

(Appellant's Exhibits 1-10 were received in evidence by the Administrative Law Judge.)  
(Department's Exhibits A-F were received in evidence by the Administrative Law Judge.)

JUDGE JOHNSON: And with that, we're ready for the parties' presentations.

Ms. Mrkaich, if you're ready, I can swear you in. If you could please stand and raise your right hand.

S. MRKAICH,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE JOHNSON: Okay. You have 10 minutes. You could begin whenever you are ready.

///  
///



1 let Respondent have their 10 minutes.

2 I guess I can ask real quickly.

3 Did you have any questions of Ms. Mrkaich as to  
4 anything she might have presented as testimony?

5 MR. COUTINHO: This is Respondent. No questions.

6 JUDGE JOHNSON: Okay. And you may begin with  
7 your 10 minutes.

8

9

PRESENTATION

10 MR. COUTINHO: Good afternoon. My name is Brad  
11 Coutinho, and I, along with Jackie Zumaeta, represent  
12 Franchise Tax Board in this matter.

13 Appellants are not entitled to abatement of  
14 interest for the 2018 tax year because there was no  
15 unreasonable error or delay in the performance of  
16 managerial or ministerial act by Respondent. In this  
17 case, Respondent issued a notice of proposed assessment  
18 disallowing a Schedule CA 540 subtraction of pension  
19 income. Appellants timely protested and acknowledged  
20 their mistake, did not contest the additional tax  
21 assessed, but instead requested interest abatement. For  
22 the record, there were no penalties imposed on the Notice  
23 of Proposed Assessment. Respondent issued a Notice of  
24 Action affirming its position and Appellants then filed  
25 this timely appeal.



1           Based on the precedential opinions from the  
2 Office of Tax Appeals, Appellants are not entitled to  
3 interest abatement. In the Appeal of Moy, the Office of  
4 Tax Appeals held that interest is not a penalty but  
5 rather, compensation for the taxpayer's use of money after  
6 it was due to the State of California. Respondent is  
7 sympathetic that Appellants did not know that the  
8 distributions received were taxable for California.  
9 However, the Office of Tax Appeals has held that there's  
10 no reasonable cause exception to the imposition of  
11 interest. Rather, interest can only be abated in certain  
12 limited circumstances.

13           To obtain relief, taxpayers must qualify under  
14 one of the following: One, unreasonable error delay  
15 caused by a managerial or ministerial act by Respondent  
16 under Revenue & Taxation Code section 19104; two, extreme  
17 financial hardship under Revenue & Taxation Code section  
18 19112; or three, the written advice from Respondent under  
19 Revenue & Taxation Code section 21012. With respect to  
20 abatement, under Revenue & Taxation Code section 19104,  
21 Revenue & Taxation Code section 19104 subsection (b) (1)  
22 states that no interest may be abated for any period  
23 accruing before the date FTB first contacted appellant in  
24 writing about the deficiency assessment.

25           Here, Respondent first provided written notice of

1 deficiency assessment to Appellants via Notice of Proposed  
2 Assessment issued on December 1, 2022. Therefore, the  
3 earliest date interest could be abated from is  
4 December 1, 2022. The record reflects that Appellant paid  
5 most of the deficiency assessment and interest accrued on  
6 January 9th, 2023, a little over a month after Respondent  
7 issued its December 1, 2022, Noticed of Proposed  
8 Assessment.

9           Given the short time frame from December 1, 2022,  
10 to January 9, 2023, there's not an unreasonable error or  
11 delay in the performance of a managerial or ministerial  
12 act by Respondent that would warrant abatement of interest  
13 during this period. Further, Appellants have not raised  
14 any arguments of extreme financial hardship rendering them  
15 unable to pay interest. And no fit facts exist to support  
16 that Appellants reasonably relied on the written advice  
17 from Respondent.

18           Therefore, there's no basis to abate interest  
19 under Revenue & Taxation Code sections 19112 or 21012.  
20 Accordingly, Appellants are not entitled to interest  
21 abatement for the 2018 tax year, and Respondent's position  
22 should be sustained.

23           I'd be happy to address any questions or concerns  
24 the Panel may have. Thank you.

25           JUDGE JOHNSON: Okay. Thank you.

1           We then can turn back to Appellants.

2           Ms. Mrkaich, you have another five minutes with  
3 anything else you would like to add.

4           MS. MRKAICH: Nothing additional.

5           JUDGE JOHNSON: Okay. Thank you very much.

6           I don't have any questions myself. So we have  
7 the evidence that's been admitted into the record. We  
8 have the arguments and your briefs, as well as your  
9 arguments and testimony today. Thank you. With the  
10 complete record now, we can base our decision.

11           I do want to ask if there's any final questions  
12 before we conclude today. I'll start with Appellants.

13           MS. MRKAICH: I'm sorry I wasted everyone's time.

14           JUDGE JOHNSON: No.

15           MR. COUTINHO: No.

16           JUDGE JOHNSON: This is your time, so it's  
17 perfectly okay. We're here for you.

18           And, Respondent, any final questions?

19           MR. COUTINHO: No questions. Thank you.

20           JUDGE JOHNSON: Thank you.

21           I wish again to thank both parties for their  
22 efforts in this matter. This concludes the hearing for  
23 this Appeal. The parties should expect our written  
24 opinion no later than 100 days from today.

25           And with that, we are now off the record, and

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this concludes the Office of Tax Appeals hearings for  
Fresno for this month.

All right. Thank you everyone.

(Proceedings adjourned at 1:06 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 3rd day of May, 2024.

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