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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
T. HARRINGTON and G. HARRINGTON,) OTA NO. 230613495
)
APPELLANTS.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:21 a.m. and concluding at 10:46 a.m.
on Wednesday, May 22, 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: G. HARRINGTON

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received into evidence at page 7.)

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

P R E S E N T A T I O N

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By Ms. Chang	10

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California; Wednesday, May 22, 2024

10:21 a.m.

JUDGE KLETTER: I'd like to ask we please go on the record.

This is the Appeal of Harrington. It's OTA Case Number 230613495. Today is Wednesday, May 22nd, 2024, and the time is approximately -- is -- sorry -- is 10:21 a.m. I am Judge Kletter, and I'm the Administrative Law Judge conducting this hearing.

Also present is our Stenographer Ms. Alonzo who is reporting this hearing verbatim. I ask that to ensure that we have an accurate record, please speak one at a time and don't speak over each other. Please speak clearly and loudly. And 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 OTA website. The hearing transcript and the video recording are part of the public record, and this proceeding is a live broadcast. So please be conscience of any information shared on your screen.

The Office of Tax Appeals is not a court. We are an independent appeals body. The Office of Tax Appeals is staffed by tax experts and is independent of the State's

1 tax agencies.

2 And, lastly, if there are any questions during
3 the process or any issues with the technology, please
4 direct them to me. I just ask that you please wait for me
5 to acknowledge you.

6 Now, I'd like to ask the parties to each identify
7 themselves by stating their name for the record, beginning
8 with Appellant.

9 Ms. Harrington, if you can you please just --

10 MS. HARRINGTON: Yes. Yes. I'm sorry. Gina
11 Buccieri Harrington.

12 JUDGE KLETTER: Thank you.

13 And for Respondent Franchise Tax Board.

14 MS. CHANG: Good morning. This is Paige Chang
15 for the Franchise Tax Board.

16 MS. BROSTERHOUS: And Maria Brosterhous, also for
17 the Franchise Tax Board.

18 JUDGE KLETTER: Thank you.

19 Now, the issue that we're hearing today is
20 whether Appellants have shown reasonable cause to abate
21 the late-payment penalty for the 2021 tax year, and also
22 whether Appellants are entitled to interest abatement.

23 With respect to the evidentiary record, FTB
24 provided Exhibits A through F, and there were no
25 objections to those exhibits. Therefore, these exhibits

1 are entered into the record.

2 (Department's Exhibits A-F were received in
3 evidence by the Administrative Law Judge.)

4 JUDGE KLETTER: And Appellants provided
5 Exhibits 1 through 2 and also exhibits -- Exhibit 3 on
6 May 6th, 2024. That was an email exchange. So those
7 Exhibits 1 through 3 are entered into the record.

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

10 JUDGE KLETTER: And as a reminder for today's
11 hearing, we have 10 minutes for Appellants' presentation.
12 We have 10 minutes for FTB's presentation, and then we
13 also have 5 minutes for Appellant to provide a closing
14 statement and rebuttal.

15 So, Ms. Harrington, are you ready to begin your
16 presentation?

17 MS. HARRINGTON: Sure.

18 JUDGE KLETTER: Please go ahead. Thank you so
19 much.

20 MS. HARRINGTON: Thank you.

21

22 PRESENTATION

23 MS. HARRINGTON: I originally sent in an appeal
24 regarding a penalty of the 2021 taxes due to several
25 illnesses throughout 2022 that didn't allow us to not only

1 we had to file an extension, but within that extension --
2 with that extension, not knowing that we had a penalty
3 associated with that. When we started in 2021, it was a
4 rough year also, not realizing how much we had to sell to
5 pay some debt down. So -- but speaking to our CPA, we
6 thought that there wouldn't be filing an extension, which
7 we were not used to doing. As you can tell by our record,
8 we have been -- paid our taxes and filed on time, that we
9 didn't think we were going to be experiencing any payment
10 that you would pay prior to -- you would pay when you
11 filed your extension.

12 In doing that and after not filing the extension
13 but not paying ahead of time knowing how much that was
14 during that year in 2022. As I've stated, and if you've
15 read my briefs, we've had a series of medical issues
16 throughout the year that prevented -- prevented us from
17 filing our taxes until almost -- well, actually, to the
18 deadline of October 15th. I felt that I -- when I
19 originally -- I focused more on my husband's health and
20 his issues, not focusing enough on mine, is what made me
21 incapable of filing our taxes. And that's -- hence, the
22 additional to the email and the letter that was done after
23 our prehearing, to focus more on my health.

24 And what I failed to mention that I did injure my
25 foot severely, which left me on crutches also and not

1 mobile. So I was asking -- we have never asked for a
2 penalty waiver of interest or -- you know, this is new.
3 But I felt strongly about that. That is why I re-appealed
4 after the first -- appealed to FTB but then appealed again
5 because I felt strongly that we had cause for an abatement
6 of our penalties.

7 If there's anything that I need to be asked to
8 clarify, as I said in my notes, I had COVID twice besides
9 injuring my foot that I couldn't put pressure on for --
10 and I sent a picture of it. Just so I want to make sure
11 that you -- I'm not -- showing visual of what has occurred
12 too to understand the severity of -- of what occurred to
13 us. It was a very eventful year I must say.

14 And if you have any questions?

15 JUDGE KLETTER: This is Judge Kletter. Thank you
16 so much for your presentation, Ms. Harrington. I have a
17 request that, you know, what you provided is your
18 testimony, and I will be asking you some questions. So if
19 you could please -- I would like to swear you in in
20 accordance with the Office of Tax Appeals regulations. We
21 did discuss that at the prehearing conference. I will
22 allow us to accept your statements as evidence.

23 MS. HARRINGTON: Sure.

24 JUDGE KLETTER: So if you could please just raise
25 your right hand.

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G. HARRINGTON,

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

JUDGE KLETTER: Thank you. Now, I do have some questions that I would like to ask, but I'm going to wait until FTB has an opportunity to make their presentation.

So I'm going to turn it over to Ms. Chang.

Ms. Chang are you ready to begin your presentation?

MS. CHANG: Yes. Thank you.

JUDGE KLETTER: And also, I'd like to say, you know, if you do have any questions yourself, you may ask them of Appellant.

MS. CHANG: No questions at this time. Thank you.

JUDGE KLETTER: So please begin. Thank you.

MS. CHANG: Thank you.

PRESENTATION

MS. CHANG: Good morning. My name is Paige Chang, along with my co-counsel Maria Brosterhous, representing the Franchise Tax Board.

At issue today is: First, whether Appellants

1 have established reasonable cause to abate the
2 late-payment penalty for tax year 2021; and second,
3 whether interest may be abated for 2021.

4 FTB imposed the late-payment penalty because FTB
5 received Appellants' payment of tax for the 2021 tax year
6 late. When FTB imposes a late-payment penalty, the burden
7 of proof is on the taxpayer to establish reasonable cause
8 to abate the penalty. Based on the Office of Tax Appeals'
9 precedential decisions, the Appeal of Triple Crown
10 Baseball LLC, and the Appeal of Head and Feliciano,
11 Appellants have not established reasonable cause to abate
12 the late-payment penalty.

13 Here, in this case, Appellants jointly filed
14 their 2021 tax return and thus, Appellants are jointly and
15 severally liable for the payment of their tax, such that
16 each Appellant has a duty to timely pay their tax
17 liability. As well, in order to establish reasonable
18 cause due to illness, the taxpayer must present credible
19 and competent proof that the illness prevented the timely
20 payment of tax for each Appellant.

21 In this case, Appellants provided medical
22 documentation to demonstrate that Appellant Timothy
23 Harrington was ill and became permanently disabled during
24 2021 and 2022. Appellants explained that Appellant Gina
25 Harrington had COVID-19 twice and suffered a foot injury

1 during the period from April 2022 through October 2022.

2 However, while FTB is sympathetic to the
3 difficulties that Appellants have experienced, Appellants
4 have not provided sufficient information, for example, any
5 medical records to substantiate that the illnesses that
6 Gina Harrington experienced prevented her from timely
7 paying Appellants' tax. In addition, Appellants have not
8 indicated that Gina Harrington was unable to conduct
9 business affairs, such as earning income. Appellants
10 explained that Gina Harrington was providing care for her
11 mother and for Timothy Harrington and that she was unable
12 to access tax records for the 2021 tax year.

13 However, generally, the lack of necessary tax
14 documents or tax information is not considered reasonable
15 cause. Where illness or other difficulties cause a
16 taxpayer to sacrifice the timeliness of one aspect of
17 their affairs to pursue other aspects, the taxpayer must
18 bear the consequences of that choice. Thus, Appellants
19 have not met their burden to establish reasonable cause to
20 abate the late-payment penalty.

21 Regarding the issue of interest, there is no
22 reasonable cause exception to the imposition of interest,
23 and Appellants have not alleged or established any of the
24 statutory grounds for interest abatement. Thus, interest
25 may not be abated.

1 In conclusion, because Appellants have not
2 established reasonable cause to abate the late-payment
3 penalty or any basis to abate interest, Respondent's
4 action should be sustained.

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

6 JUDGE KLETTER: This is Judge Kletter. Thank you
7 for your presentation, Franchise Tax Board. I do have a
8 couple of questions and, you know, the answers may not be
9 known. So if you don't know the answers, that's okay.

10 So -- and some of them are for both parties so
11 I'll just indicate, you know, who the question is for.
12 So -- and, you know, if you would like to add a comment,
13 you can also respond. But the first question I have is
14 for Franchise Tax Board.

15 So in the briefing, it seems to me that Franchise
16 Tax Board agrees that Appellant-husband was -- has
17 established reasonable cause, but the, you know, disputes
18 centers around whether Ms. Harrington has established
19 reasonable cause. So I just wanted to confirm. Does FTB
20 concede that, you know, with respect to
21 Appellant-husband's medical condition, you know, there was
22 reasonable cause for the late payment.

23 MS. CHANG: This is Paige Chang. Yes, it appears
24 from the medical documentation that Appellants provided
25 that Appellant-husband was ill and was unable -- had

1 reasonable cause to be unable to timely make the payment.
2 Yes.

3 JUDGE KLETTER: Thank you, Ms. Chang.

4 Now, Ms. Harrington, I have a couple of questions
5 based on what I've looked at in the briefing. So with
6 respect to the records that were in storage, when were you
7 able -- like, what period of time were those in storage?
8 It sounds like they were put in 2021, but when were you
9 able access them?

10 MS. HARRINGTON: I accessed them at the end of
11 September in 2022. We -- it was hard. I couldn't lift
12 anything. Of course, as you can see from the medical
13 records Tim couldn't lift anything. So they were in
14 storage. We, you know, all our filing, all our -- our --
15 we had -- when we moved, we actually had to move twice in
16 2021. So that's where we stored -- you know, we were
17 limited. We, you know, not to get into too much detail.

18 We moved from a fairly large house to a fairly
19 small. So it caused us to have to put quite a bit of
20 things in storage, all of our paperwork and, you know,
21 most of our things. So it -- you know, to provide access
22 to going through all the boxes, doing that, it just caused
23 a lot of difficulty for us.

24 JUDGE KLETTER: And then my other question that
25 wasn't clear to me from the briefing was how old is your

1 daughter that sometimes she assists you or --

2 MS. HARRINGTON: She does. Well, she lives out
3 of time. My daughter is currently -- she'll be 26 in a
4 month. So she was able to drive me -- you know, when she
5 could 'cause she was working -- drive me to Fresno or come
6 and help me with her dad when she could.

7 JUDGE KLETTER: But she was not able to access
8 the storage unit or that was --

9 MS. HARRINGTON: No, she didn't. It wasn't like
10 she would know what boxes. We had a lot of stuff. Like I
11 said, we moved from a fairly large home to a small home.
12 So we have lots of boxes in the storage unit. So it was
13 really difficult for her to be able to go there and pull
14 boxes and know, you know, personally what we needed to get
15 through. So --

16 JUDGE KLETTER: Okay. And then this is a
17 question for both parties, is I noticed that there was
18 some amount of wage withholding, and that was the
19 withholding that was paid, you know, by -- was prepaid of
20 the tax liability and the remaining amount. I'm just
21 wondering, like, what was the form of that income. Was it
22 other wage income? Was it business income? I couldn't
23 tell from the record. Like, were you aware that you had
24 this in income, and that there was no --

25 MS. HARRINGTON: Well, it was the -- the -- it

1 was the sale of stocks. The income came from the sale of
2 stocks to pay some debt off. So is that what you're
3 referring to?

4 JUDGE KLETTER: So I guess what I'm asking is,
5 like, so you were aware that you had received that income?
6 That you had sold the stock and you had the income?

7 MS. HARRINGTON: Well, we had thought there was
8 enough to set what was sold. It was ignorance on our part
9 because we've never had to do this before. And as far as
10 my work goes, you know, fortunately, knock on wood, I was
11 able to work from home like most people did during those
12 period of time. So, you know, being incapacitated and
13 being quarantined, it was still easy for me to be able to
14 do my job at home when I could. So -- but as far as the
15 sales, it was the sales to pay off some debt that was
16 owed.

17 JUDGE KLETTER: Okay. And, Ms. Harrington, you
18 mentioned that in the briefing that there was some
19 hardship, particularly, with respect to your husband's
20 business.

21 MS. HARRINGTON: Yes.

22 JUDGE KLETTER: So I was wondering if you could
23 just elaborate on that, like, when you were -- you
24 mentioned that there was some amount you were planning on
25 setting aside to pay for when you sold the stock that you

1 would have --

2 MS. HARRINGTON: When he -- he actually had to
3 stop working. So there was debt that was owed on some of
4 his business too that we had to pay out of our personal,
5 and to keep it -- I had to help keep it running. So I'd
6 get up very early in the morning to try to close out the
7 outstanding things that he had going on.

8 JUDGE KLETTER: So my question is if you
9 had whatever amount that you had set aside for the payment
10 of the tax liability when you sold the stock or, you
11 know --

12 MRS. HARRINGTON: Yes.

13 JUDGE KLETTER: -- had receipt of income, would
14 it have been -- you know, was it like an undue hardship to
15 pay that?

16 MS. HARRINGTON: Yes. Well, I -- I almost fell
17 on the ground when I found out how much it was. And yes,
18 we had to use what was remaining to pay the taxes 'cause I
19 wasn't not going to pay my taxes 'cause I'd never done
20 that before. So it was very much a learning lesson and a
21 shock to know how much we actually owed in taxes. It was
22 not -- trust me. It was not preplanned at all. So it was
23 very much of a hardship.

24 JUDGE KLETTER: And that you only found that out
25 in September or October when the --

1 MS. HARRINGTON: Yes. Yes.

2 JUDGE KLETTER: Okay. And then I have a couple
3 other questions about the COVID. I know, like, there were
4 different periods, but it sounds like maybe there were
5 four instances of COVID. So I had a question about --
6 there was what I believe to be the third instance based on
7 briefing. Maybe I have the numbering wrong. But between
8 April and May --

9 MRS. HARRINGTON: Yes.

10 JUDGE KLETTER: -- you know, you were having some
11 issues with COVID. And I'm just wondering, do you have
12 any -- did you see a doctor? Did you call a doctor? Did
13 you --

14 MS. HARRINGTON: No. I did the -- I did the
15 testing, but I don't have those tests anymore to show you.
16 Of course you throw them away. I have just the testing.
17 At the time, they did not put me on any medication for it
18 at all. So I -- but I did have it. And then I had it
19 again, unfortunately, and that's -- that's when I lost my
20 taste and my smell. And I have not regained that back.

21 JUDGE KLETTER: And between May and June -- so
22 there was COVID that you experienced in April and May and
23 then in May and June. I'm just looking at the
24 documentation. You know, I think --

25 MS. HARRINGTON: In my mind I know.

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JUDGE KLETTER: Yeah.

MS. HARRINGTON: Also, remember my -- my mother -- I mean, I showed a picture of her, which was this. But I had to go down and also tend to her, besides Tim. So when I was well enough to go down there -- of course because she was in a nursing fatality -- I would go down there to take care of her. So there was a combination of things that happened all at one time.

JUDGE KLETTER: Okay. Understood.

MS. HARRINGTON: I can -- I need to show proof that she' is in a -- she's full-time care facility. She doesn't speak. And so it's -- if I need to show. I also have the medical. I can get the medical of my foot when I went in to get that done. I do have those. I could show evidence that I -- it was me and my foot, if -- if necessary.

JUDGE KLETTER: Understood. Yeah. I think the focus of my questions is really that period before your foot, like from April to July. And I know that in April and May you had some, you know, like breathing issues and coughing. I don't want to go into all of your medical history. But I'm just wondering, like, you wouldn't have any -- I guess you were able -- I guess what I want to focus on is like were you able to work during that period, or did you take that time off work?

1 MS. HARRINGTON: No. I worked from home. So I
2 was able to work. When I felt good, I worked from home.
3 Yes. And I also -- like I said, Tim -- Tim was -- I had
4 to help him and also not only see my -- care for my
5 mom's -- I'm the only daughter -- so care for my mom's
6 health also. So it -- you know, at the time it wasn't
7 just about me.

8 JUDGE KLETTER: Understood. That really helps me
9 understand the record a little bit more, and I don't have
10 anymore questions.

11 So I just want to thank the parties for their
12 presentation.

13 Unless there was anything that you want to add,
14 Ms. Harrington. I didn't mean to cut you off.

15 MS. HARRINGTON: No. No. Not at all. I -- I
16 just -- you know, I just find it interesting that 2022
17 penalty waivers are given out, you know, as first time.
18 And it just seems that -- for 2021, of course, there
19 wasn't. But, you know, like I said, I -- I felt that I'd
20 given reasonable cause. It was a hell of a year, well,
21 hell of a two-year period for us. And this is the first
22 time. I'm not asking for a second time or a third time.
23 So --

24 JUDGE KLETTER: Understood.

25 So I appreciate everyone's time today. That

1 concludes this hearing, and the case will be decided based
2 on the presentations today and testimony and the
3 documentation in the record. And the Office of Tax
4 Appeals will issue our written decision no later than
5 100 days from today.

6 This case is submitted and the record is now
7 closed. And that concludes this hearing session.

8 (Proceedings adjourned at 10:46 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 13th day of June, 2024.

ERNALYN M. ALONZO
HEARING REPORTER