

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
WILLIFORD COMMERCIAL PROPERTIES,) OTA NO. 230312707
L.P.,)
)
)
APPELLANT.)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, June 19, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 9:47 a.m. on
Wednesday, June 19, 2024, reported by
Ernaly n M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE KEITH LONG

For the Appellant: R. WILLIFORD
L. CARL-OLIVER
AUDREY HORNING

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

LEOANGELO CRISTOBAL
BRAD COUTINHO

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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 9.)

(Department's Exhibits A-I were received into evidence at page 8.)

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

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By Ms. Carl-Oliver	9
By Mr. Cristobal	11

W I T N E S S T E S T I M O N Y

	<u>P A G E</u>
By Ms. Horning	10

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	<u>P A G E</u>
By Ms. Carl-Oliver	14
By Ms. Horning	14

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California; Wednesday, June 19, 2024

9:30 a.m.

JUDGE LONG: We're opening the record in the appeal of Williford Commercial Properties, LP. The OTA Case Number is 230312707. This matter is being held before the Office of Tax Appeals. Today's date is June 19th, 2023. The time is approximately 9:30 a.m. This hearing is being held electronically with the agreement of both the taxpayer and the agencies' representatives.

Today's hearing 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 an independent and neutral agency. It is not a Tax Court. My name is Keith Long, and I will be conducting the hearing and deciding the appeal.

Also present is a stenographer who is reporting this hearing verbatim. To ensure we have an accurate record, we ask that everyone speak one at a time and does not speak over each other. Also, speak clearly and loudly. 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.

2 I'd like to make a few reminders to help the
3 process run as smoothly as possible. First, please ensure
4 your microphone is not muted when you speak, otherwise
5 your voice will not be picked up on the live stream even
6 though we can hear you in the room. On the other hand,
7 please make sure that your microphone is muted when you
8 are not speaking. This will help avoid feedback issues.
9 You do need to speak into the mic for it to pick up on our
10 live stream. And as a reminder, these proceedings are
11 being broadcast live, and anything said today and any
12 information shared today is publicly viewable on the live
13 stream.

14 For the record, will the parties please state
15 their name and who they represent, starting with the
16 representatives for the Franchise Tax Board.

17 MR. CRISTOBAL: Hello this is Leo Cristobal
18 representing the Franchise Tax Board.

19 MR. COUTINHO: Good morning. This is Brad
20 Coutinho, also representing Respondent Franchise Tax
21 Board.

22 MS. CARL-OLIVER: This is Laurie Carl-Oliver.
23 I'm representing Roger Williford, one of the partners of
24 Williford Commercial Properties.

25 MR. WILLIFORD: I'm Roger Williford with

1 Williford Commercial Properties.

2 MS. HORNING: This is Audrey Horning, CPA for
3 Williford Commercial Properties.

4 JUDGE LONG: Thank you.

5 At the prehearing conference, Appellant indicated
6 that they may wish to provide witness testimony. I see
7 that we're joined here today by Ms. Horning. At the
8 prehearing conference, there were no objections to this
9 testimony.

10 I just want to confirm with Franchise Tax Board
11 that there are no objections at this time.

12 MR. CRISTOBAL: This is Leo Cristobal. Correct.
13 No objections.

14 JUDGE LONG: Thank you.

15 As background information, witness testimony is
16 not required in an appeal to OTA. However, testimony
17 given under oath may be considered as evidence.
18 Otherwise, statements made by Appellant are considered to
19 be argument about the case. In addition, when testimony
20 is provided under oath, FTB is given the opportunity to
21 cross-examine the witness.

22 Ms. Horning if you please raise your hand.

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A. HORNING,

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

JUDGE LONG: Moving forward, prior to this hearing, FTB submitted an exhibit index identifying Exhibits A through I. At the prehearing conference there were no objections to FTB's exhibits.

Would Appellant please confirm that there are no objections at this time.

You're on mute.

MS. CARL-OLIVER: No objections.

JUDGE LONG: Thank you. Accordingly, FTB's Exhibits A through I are admitted without objection.

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

JUDGE LONG: Additionally, Appellant previously submitted Exhibit 1, letter from A.M. Horning, CPA, dated April 5th, 2023. FTB did not have any objections to this exhibit. On June 4th, Appellant submitted additional exhibits labeled Exhibit 1 and 2. As there has already been an exhibit labeled Exhibit 1, these new exhibits will be renumbered as Exhibits 2 and 3.

The exhibits are: Exhibit 2, Pandemic Events and

1 Milestones in California; and Exhibit 3, Account Period
2 Summary for Tax Year 2016, 2017, 2018, 2019, 2021, and
3 2022.

4 Does Franchise Tax Board have any objections to
5 these exhibits?

6 MR. CRISTOBAL: This is Leo Cristobal for
7 Franchise Tax Board. We do not. No objections.

8 JUDGE LONG: Thank you.

9 The exhibits summarized above are admitted into
10 the evidentiary record.

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

13 JUDGE LONG: There are two issues in this appeal.
14 They are one, whether late-filing penalty should be
15 abated; and two, whether the per partner late-filing
16 penalty should be abated.

17 This hearing is estimated to take approximately
18 45 minutes, and we will begin with the taxpayer's opening
19 and witness testimony, which is -- should take
20 approximately 15 minutes.

21 Appellant may start when they are ready.

22

23 PRESENTATION

24 MS. CARL-OLIVER: Okay. Basically, we -- as we
25 all know, we've just went through a pandemic. And our

1 businesses, including Audrey's, was shut down for a
2 considerable amount of time for 2020 up through -- I
3 believe based upon new articles that we supplied, it was
4 well into 2022 before it was relieved.

5 We did pay our 2020 taxes, the \$800 plus some
6 fees, I believe, in April 15th of 2021. And then we did
7 pay the actual late-penalty fee in 2022. Even though
8 we've paid it, we do feel that we should not have to pay
9 it. We did the best that we could. I -- I know Audrey is
10 the person who helps us with our taxes, and that's kind of
11 where we -- where we sit.

12 JUDGE LONG: Okay. And did you want to present
13 your witness testimony now?

14 MS. CARL-OLIVER: Audrey, can you tell us what
15 was happening with your business at that time?

16
17 WITNESS TESTIMONY

18 MS. HORNING: Yes. I have an a very small CPA
19 firm with limited staff. And when we had to shut down, we
20 had -- we staggered hours, and we had limited people here.
21 And then we lost staff who -- through regular attrition,
22 plus people didn't want to work in close quarters. So we
23 were not able to replace them.

24 So we -- we did as much work as we could in our
25 limited time and staffing. And as Laurie said, we did the

1 best we could and filed as quickly as we could once we got
2 everything together. And we still are short staffed, but
3 we're coming out of it.

4 JUDGE LONG: Thank you.

5 Does that conclude your testimony?

6 MS. CARL-OLIVER: I believe so, yes.

7 JUDGE LONG: Okay. Franchise Tax Board, do you
8 have any questions for the witness?

9 MR. CRISTOBAL: This is Leo Cristobal. No. No
10 questions for the witness.

11 JUDGE LONG: Thank you.

12 Okay. We are going to move on then to Franchise
13 Tax Board's opening presentation, if Appellant's
14 presentation is complete.

15 Correct?

16 MS. CARL-OLIVER: Yes.

17 MS. HORNING: Yes.

18 JUDGE LONG: Yes. Okay. Then we will move on to
19 Franchise Tax Board.

20 Franchise Tax Board you have 10 minutes. You may
21 begin when you're ready.

22

23 PRESENTATION

24 MR. CRISTOBAL: Okay. Good morning. My name is
25 Leo Cristobal, and I represent Respondent Franchise Tax

1 Board.

2 This appeal is for the tax year 2020 and involves
3 the late-filing penalty and per partner late-filing
4 penalty. The issue is whether Appellant has met its
5 burden of proof to show reasonable cause for filing its
6 tax return late. As a partnership, Appellant's 2020
7 return was due on or before March 15, 2021. However,
8 Appellant did not file its return until September 1st,
9 2022, which was more than 17 months past this deadline.

10 When taxpayers fail to timely file their return,
11 FTB is required to impose a late-filing penalty. FTB must
12 also impose a per partner late-filing penalty when the
13 taxpayer is a partnership. When FTB imposes these
14 penalties, the law presumes the penalties were imposed
15 correctly. To overcome this presumption, California law
16 requires the taxpayer to establish that its failure to
17 file timely was due to reasonable cause and not due to
18 willful neglect. And ultimately the taxpayer has the
19 burden of proof to show that reasonable cause exists, and
20 unsupported assertions are not sufficient to satisfy that
21 burden of proof.

22 Here, Appellant contends it had reasonable cause
23 for filing late because it relied on its tax preparer to
24 file its 2020 return. But because there was a change in
25 Appellant's ownership as well as disruptions caused by the

1 COVID-19 pandemic, Appellant argues that its preparer's
2 ability to timely prepare and file the return -- timely
3 prepare and file the return for Appellant was delayed.

4 There's a well-established, bright-line rule
5 stating that taxpayers have a personal nondelegable duty
6 to timely file their tax return. Therefore,
7 notwithstanding a change in ownership or the impact of
8 COVID, failure of an agent, such as the tax preparer, to
9 timely file a return on behalf of Appellant does not
10 constitute reasonable cause. Additionally, to date,
11 Appellant has not provided evidence showing that despite
12 its own best efforts it was personally prevented from
13 honoring the deadline.

14 And unfortunately, other than citing to the
15 pandemic and providing the letter explaining the efforts
16 made by its taxpayer in the mist of the pandemic,
17 Appellant has not demonstrated the diligent actions it
18 personally took, if any, to try to comply across the
19 17-plus months that spanned between the deadline and the
20 day its return was filed.

21 In conclusion, because Appellant has not met its
22 burden of proof to establish that its failure to timely
23 file was due to reasonable cause, Appellant is not
24 entitled to penalty abatement. Accordingly, FTB's action
25 denying Appellant's refund claim should be sustained.

1 Thank you. And I'm happy to answer any questions
2 you may have.

3 JUDGE LONG: Thank you.

4 Okay. We will move right along.

5 Appellant has five minutes to make its final
6 statement and closing, and you may begin when ready.

7

8 CLOSING STATEMENT

9 MS. CARL-OLIVER: So as you know, these are not
10 past due taxes. They are -- these are just administration
11 fees that are imposed upon the taxpayer. I -- I do
12 understand the need to file timely and that -- we did
13 provide documentation. I -- I don't even believe that the
14 Franchise Tax Board was open during 2021. So unless I'm
15 mistaken, I -- I'm not sure how if you aren't open, how we
16 are supposed to also be open. We were ordered not to work
17 in some cases. I -- so -- I -- we do recognize that we
18 have to pay the \$800 fee, but the late fee and the filing
19 penalty, again, we just feel is burdensome and not fair.

20 MS. HORNING: I would like to add that this
21 return was on extension. We filed a timely extension.
22 So, in any case, it was not 17 months late. It was less
23 than 12 months late because they had until September 15th
24 to file a return.

25 MS. CARL-OLIVER: I believe we are done.

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MS. HORNING: Yes, I'm done.

JUDGE LONG: Thank you. Sorry. I was just making sure to write down everything that you had said so that it can be addressed properly in the opinion. Well, thank you.

I believe we're ready to conclude this hearing. This case is submitted on Wednesday, June 19th, 2024. The record is now closed.

I want to thank everyone for joining today.

OTA will send a written opinion of the decision within 100 days after the record is closed, which is today.

Today's hearing in the Appeal of Williford Commercial Properties, LP, is now adjourned.

(Proceedings adjourned at 9:47 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 5th day of July, 2024.

ERNALYN M. ALONZO
HEARING REPORTER