

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. ESCHEMAN and N. ESCHEMAN,) OTA NO. 230413125
)
)
 APPELLANTS.)
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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 1:08 p.m. and concluding at 1:48 p.m. on
Wednesday, June 19, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ KEITH LONG
ALJ JOSHUA LAMBERT

For the Appellant: F. ESCHEMAN
ELIZABETH SHOUSE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ERIC YADAO
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-4 were received into evidence at page 7.)

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

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California; Wednesday, June 19, 2024

1:08 p.m.

JUDGE STANLEY: This is Judge Stanley, again. We're going on the record in the matter of the Appeal of Escheman, Case Number 230413125, and it's June 19th at 1:08 p.m. I am Judge Teresa Stanley as I stated, and my Co-Panelists are Judge Keith Long and Judge Josh Lambert.

I'm going to ask the parties to identify themselves and who you represent, if you're a representative, beginning with the Appellant -- Appellants, plural.

MS. BARLEAN: Are you asking for Jim Escheman and Carrie Barlean? Is that who you're wanting to speak up now?

JUDGE STANLEY: Yes. I'm asking you to identify yourselves on the record so that Ms. Alonzo can note your appearance.

MR. ESCHEMAN: This is Jim Escheman, Fredrick James Escheman.

MS. BARLEAN: And I'm Carrie bar, his daughter, who is assisting with some technical.

JUDGE STANLEY: Carrie -- how do you spell your last name, Carrie?

MS. BARLEAN: B as in boy, A as in Adam, R as in

1 Robert, L as in Leroy, E as in Edward, A as in Adam, N as
2 in Nora, Barlean.

3 JUDGE STANLEY: Okay. Thank you. And your
4 representative is here too?

5 MS. BARLEAN: That is Elizabeth Shouse.

6 MS. SHOUSE: Yes.

7 MS. BARLEAN: Yes.

8 MS. SHOUSE: Yes. This is Elizabeth Shouse, and
9 I am Mr. Escheman's representative.

10 JUDGE STANLEY: Okay. Thank you.

11 This is Judge Stanley speaking again. Franchise
12 Tax Board, can you please identify yourselves for the
13 record.

14 MR. YADAO: Good afternoon. Eric Yadao with the
15 Franchise Tax Board. With me also is Jackie Zumaeta.

16 JUDGE STANLEY: Okay. First a couple of
17 preliminary matters. I want to welcome everybody to the
18 Office of Tax Appeals or OTA. OTA is an independent
19 California agency that is not affiliated with the
20 Franchise Tax Board or any other tax agency. OTA is not a
21 court. We're an independent appeals agency staffed with
22 our own tax experts. And the parties should know that the
23 only evidence that is in OTA's record is what has been
24 submitted with the briefing -- during the briefing process
25 with OTA. These proceedings are being live streamed and

1 will be on OTA's YouTube channel.

2 The issue today is whether the Appellants have
3 established reasonable cause to abate the late-filing
4 penalty. At the prehearing conference, Appellants did
5 confirm that they're not contesting the self-assessed
6 penalty for underpayment of estimated tax. And Appellants
7 also confirmed that they're only contesting interest as it
8 relates to the late-filing penalty.

9 Ms. Shouse, do you agree that is the one issue?

10 MR. ESCHEMAN: Yes. This is Elizabeth. I agree.

11 JUDGE STANLEY: Okay. And Franchise Tax Board,
12 Mr. Yadao, do you agree as well?

13 MR. YADAO: This is Eric Yadao. Franchise Tax
14 Board agrees as well. Thank you.

15 JUDGE STANLEY: Okay. This is Judge Stanley
16 speaking.

17 At the prehearing conference, Franchise Tax Board
18 did not object to Appellants' Exhibits 1 through 4, and
19 those are admitted without objection.

20 (Appellant's Exhibits 1-4 were received
21 in evidence by the Administrative Law Judge.)

22 JUDGE STANLEY: Also at the prehearing
23 conference, Appellants did not object to Franchise Tax
24 Board's Exhibits A through L, and those are admitted into
25 evidence as well.

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

3 JUDGE STANLEY: Do I understand that only
4 Mr. Escherman is going to testify today, Ms. Shouse?

5 MS. SHOUSE: Yes. That is correct.

6 JUDGE STANLEY: Okay. I can't see you do so,
7 Mr. Escherman, but can you please raise your right hand.

8
9 F. ESCHEMAN,
10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined, and testified
12 as follows:

13
14 JUDGE STANLEY: Okay. Thank you.

15 Appellants requested 30 minutes to present the
16 matter to the Panel here today.

17 And, Ms. Shouse, you can proceed in a narrative
18 or question and answer format, whatever is most
19 comfortable for you and Mr. Escherman. And you can proceed
20 when ready.

21
22 PRESENTATION

23 MS. SHOUSE: Okay. This is Elizabeth speaking.
24 So I'll go for the narrative format.

25 You know, the reason that we are here is because

1 of the, you know, the penalty as we've clarified. And the
2 narrative here is that Mr. Escherman did make a payment on
3 July 9th, 2020, which was six days prior to the due date
4 of the payment. We have submitted the documentation for
5 that. It was not until later that Mr. Escherman was made
6 aware that that payment never went through. The Franchise
7 Tax Board notified him by letter in October of 2021, quite
8 a while later. And upon receiving that letter he did pay
9 the liability in full, including the penalty.

10 We requested that the penalty be abated under
11 reasonable cause. He did show and exercise ordinary
12 business care and prudence. You know, this is a clerical
13 error, not anybody's ill intent. That was the basis for
14 our request. That request was denied. We appealed it,
15 and now we're here with you all today.

16 JUDGE STANLEY: Okay. This is Judge Stanley
17 speaking. Would you -- Ms. Shouse, would you like
18 Mr. Escherman speak now?

19 MS. SHOUSE: Yes.

20 Jim, would you like to elaborate on the, you
21 know, the payment that you made and, you know, the timely
22 payment that you made, the one initially that was by the
23 due date and subsequently the payment that you made after
24 you learned that the original one had not gone through?

25 ///

1 And so this is why I don't feel I need to pay this
2 penalty.

3 JUDGE STANLEY: This is Judge Stanley speaking.

4 Mr. Escheman, is that all that you wanted to
5 present at this time?

6 MR. ESCHEMAN: Yes, this is Jim Escheman again.
7 Yes, it's all I know. Like I said, there was no ill
8 intent, that we had the money and available which we made
9 it available. And it was not my intent to defraud or
10 anything else. We had taxes to pay and thought we had
11 paid them. We did not understand why it had not cleared
12 our bank account yet, but we had it. And as far as I knew
13 we had a check sitting in the office -- or your offices,
14 tax office, for the amount. And I had not received
15 anything, notice, to my knowledge that anybody tried to
16 tell me no.

17 The banks -- I went to the bank afterwards saying
18 I wasn't notified. And the bank said, well, if the number
19 was wrong, it takes it back, and we have no recollection
20 of it. So we did not know there was a problem until we
21 were notified. It was an error made by my employee at the
22 time that he did not put the zero instead of a one. We're
23 not aware of that. And this is all I -- I can say.

24 JUDGE STANLEY: This is Judge Stanley speaking.

25 Hold on one second, please. I need to go off the record

1 for a minute and speak with my Co-Panelists. So I'm going
2 to go off the record for just a couple of minutes.

3 (There is a pause in the proceedings.)

4 JUDGE STANLEY: This is Judge Stanley speaking.
5 Can everybody please return to the meeting, and we'll go
6 back on the record.

7 Ms. Shouse, Mr. Escherman, the reason that we took
8 a break was because it appears that you're addressing the
9 wrong -- the wrong penalty. You're talking about a late
10 payment, but the penalty is a late-filing penalty because
11 the 2019 tax return wasn't filed until September 13 of
12 2021. We wanted to point that out in case you wanted to
13 address reasonable cause as it relates to why the return
14 was filed late.

15 Ms. Shouse, would you like to respond?

16 MS. SHOUSE: Yes. This is Elizabeth. Give me
17 one moment, actually, to pull that up in my records here.
18 One moment, please. Okay. This is Elizabeth again. It's
19 been our understanding all along that this has been a
20 late-payment penalty, not a late-filing penalty. So this
21 is new information to me right now.

22 JUDGE STANLEY: Would you like to take a break
23 and discuss this with your clients?

24 MS. SHOUSE: If that would be allowed, I think
25 that would be -- that would be appreciated. Yeah.

1 JUDGE STANLEY: Do you think 15 minutes would be
2 sufficient?

3 MS. SHOUSE: Yes, that should be fine.

4 JUDGE STANLEY: Okay. Let's go off the record
5 and take a 15-minute break, and we'll return at
6 approximately 1:35.

7 (There is a pause in the proceedings.)

8 JUDGE STANLEY: Okay. This is Judge Stanley
9 speaking. Looks like we've got everybody back on camera
10 that will be on camera. So we can go back on the record.

11 And I will hand it over to you, Ms. Shouse, if
12 you want to address the late-filing penalty.

13 Yes. This is Elizabeth Shouse again. So I
14 pulled up some things, when I had a couple of minutes to
15 do so. And it had not been brought to our attention prior
16 to today that the penalty was both a late-filing and a
17 late-payment penalty. We were of the impression all of it
18 was a late-payment penalty. However, we still argue that
19 it shouldn't be charged simply due to there having been an
20 extension on file with the IRS, which is actually part
21 of -- part of the evidence in this case with the IRS
22 account transcript that clearly shows there was an
23 extension.

24 And if the return was filed in September of 2021,
25 I think that it -- yeah. I mean, it -- we -- we would

1 still ask that all of the penalty be evaluated for
2 abatement. And if Jim wants to speak on the timing of the
3 filing of the return, he is -- he's prepared to do so.

4 JUDGE STANLEY: This is Judge Stanley speaking.

5 Yes, I think it would be helpful for the Panel if
6 Mr. Escheman explain why there was reasonable cause to
7 file a 2019 return in September of 2021 to see if he can
8 show reasonable cause to abate the penalty.

9 So, Mr. Escheman, you can proceed when you are
10 ready.

11 MR. ESCHEMAN: Yes, this is Jim Escheman. The
12 reason why it was extended was due to COVID that they gave
13 us -- everybody extra time to file their taxes, which we
14 took it. As the CPA sent the papers to me, we filed it or
15 assumed it was filed. We wrote the check. We sent it in
16 on time. And so the money was there. I don't understand
17 why I got a late-filing penalty because as far as I'm
18 concerned, we had filed everything on time or ahead of
19 time. I was not aware that it was not filed. The CPA
20 filed it. Andy Lundholm was the CPA at the time, which
21 he's not anymore. But -- and we filed, sent the check in
22 at his request. So we were not aware that we had -- did
23 not filed our taxes.

24 JUDGE STANLEY: Okay. This is Judge Stanley
25 speaking.

1 Ms. Shouse, do you have anything to add?

2 MS. SHOUSE: This is Elizabeth Shouse. No, I
3 don't believe that we have anything more to add.

4 JUDGE STANLEY: Okay. This is Judge Stanley
5 speaking.

6 Judge Long, do you have any questions for the
7 witness?

8 JUDGE LONG: This is Judge Long. I do have --

9 JUDGE STANLEY: Excuse me. I'm sorry to
10 interrupt, Judge Long. I should have asked the Franchise
11 Tax Board first.

12 Mr. Yadao, do you have any questions for the
13 witness?

14 MR. YADAO: Mr. Yadao -- this is Eric Yadao,
15 Franchise Tax Board. We have no questions. Thank you.

16 JUDGE STANLEY: Okay. Now, Judge Long. I'm
17 sorry.

18 JUDGE LONG: Thank you.

19 This is Judge Long. I do have a couple of
20 questions. So with respect to the filing of the 2019
21 return, it was mentioned that was under extension; is that
22 correct.

23 MR. ESCHEMAN: This is Jim Escherman. Yes, it was
24 under extension.

25 JUDGE LONG: Okay. Thank you. And you relied on

1 your CPA to file the return --

2 MR. ESCHEMAN: Yes.

3 JUDGE LONG: -- with an extension period?

4 MR. ESCHEMAN: Through the COVID extension.

5 JUDGE LONG: Okay. And then do you have any - is
6 there any exhibit or anything in the file showing that the
7 extension date was in September 2021?

8 MR. ESCHEMAN: I do not have it on hand, no. I'd
9 have to go back to the CPA, and hopefully he had it.

10 JUDGE LONG: Okay. And I don't think that's
11 necessary, but all right. Thank you. I don't have any
12 questions further.

13 JUDGE STANLEY: This is Judge Stanley.

14 Judge Lambert, do you have any questions for the
15 witness?

16 JUDGE LAMBERT: This is Judge Lambert. I don't
17 have any questions. Thanks.

18 JUDGE STANLEY: Okay. This is Judge Stanley
19 speaking.

20 What we'll do now is move to Franchise Tax
21 Board's presentation, which will be 15 minutes.

22 Mr. Yadao, you can begin when you're ready.

23 MR. YADAO: Thank you.

24 ///

25 ///

1 late-filing penalty. Furthermore, even if Appellants
2 mistakenly believe that their liability was paid in full,
3 the Office of Tax Appeals held in the Appeal of Tao Xie
4 that a belief that no tax will be due does not constitute
5 reasonable cause sufficient to abate the late-filing
6 penalty.

7 With respect to any extension time to file that
8 return, for the IRS you have to apply for that -- that
9 extension to file. California, however, has no automatic
10 extension to file. And for the 2019 tax year, that
11 extension lapsed on October 15th, 2020. And as we set
12 forth in evidence, the Appellants didn't file their return
13 until September of 2021. And when you don't file by the
14 extended period, no extension exist. So the return that
15 they filed in September of 2021 was more than one year
16 late. And, therefore, the penalty is correctly imposed.
17 And the Appellants' reliance on their accountant to timely
18 file that is not reasonable cause.

19 We added into evidence Exhibit L, which is
20 Appellants' federal account transcript. And it shows that
21 whatever circumstances caused their late California
22 return, those circumstances did not prevent Appellants
23 from filing their federal return timely. Under the facts
24 and the law as I presented to you this afternoon, FTB
25 respectfully request that you sustain its denial of

1 Appellants' claim for refund.

2 Thank you, and I'm available to address any
3 questions you may have.

4 JUDGE STANLEY: This is Judge Stanley speaking.

5 Judge Long, do you have any questions for the
6 Franchise Tax Board?

7 JUDGE LONG: This is Judge Long. I do not have
8 any questions. Thank you.

9 JUDGE STANLEY: This is Judge Stanley.

10 Judge Lambert, do you have questions for
11 Mr. Yadao?

12 JUDGE LAMBERT: This is Judge Lambert. I don't
13 have any questions. Thanks.

14 JUDGE STANLEY: Okay. This is Judge Stanley
15 speaking.

16 I'm going to give Ms. Shouse five minutes if she
17 wants to make any final closing statement.

18 Ms. Shouse, you can proceed if you'd wish to make
19 a comment.

20

21 CLOSING STATEMENT

22 MS. SHOUSE: Yes. This is Elizabeth Shouse. So
23 I -- I would conclude here that there's still a
24 late-payment penalty on the table, whether or not any of
25 portion of this is late filing that, you know, that should

1 be still considered in this case, in my opinion.

2 And that's my feedback.

3 JUDGE STANLEY: Okay. Thank you, Ms. Shouse.

4 This is Judge Stanley speaking.

5 This is going to conclude this hearing. The
6 record is now closed, and the matter is submitted to the
7 Panel for deliberations. The Panel will meet to jointly
8 deliberate and decide the appeal. And the Office of Tax
9 Appeals will mail a written opinion no later than 100 days
10 from today.

11 I want to thank you all for coming and
12 participating and for having to act kind of on the fly
13 here, Mr. Escheman.

14 So we're going to recess and reconvene at 2:30
15 for the next hearing, and you all have a nice day.

16 (Proceedings adjourned at 1:48 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 9th day of July, 2024.

ERNALYN M. ALONZO
HEARING REPORTER