BEFORE THE OFFICE OF TAX APPEALS STATE OF CALIFORNIA

IN THE MATTER	OF THE APPEAL OF,)
J. HICKINGBOTH	HAM and)) OTA NO. 230513431
J. HICKINGBOTH	HAM,)
	APPELLANTS.)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, June 19, 2024

Reported by: ERNALYN M. ALONZO HEARING REPORTER

1	BEFORE THE OFFICE OF TAX APPEALS
2	STATE OF CALIFORNIA
3	
4	
5	
6	IN THE MATTER OF THE APPEAL OF,)
7	J. HICKINGBOTHAM and) OTA NO. 230513431 J. HICKINGBOTHAM,)
8	APPELLANTS.)
9)
10	
11	
12	
13	
14	Transcript of Electronic Proceedings,
15	taken in the State of California, commencing
16	at 10:39 a.m. and concluding at 10:57 a.m. on
17	Wednesday, June 19, 2024, reported by
18	
19	Ernalyn M. Alonzo, Hearing Reporter, in and
20	for the State of California.
21	
22	
23	
24	
25	

1	APPEARANCES:	
2		
3	Panel Lead:	ALJ JOSHUA LAMBERT
4	Panel Members:	ALJ TERESA STANLEY ALJ JOHN JOHNSON
5		
6	For the Appellant:	FRANCINE PROPHET
7	For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD
9		JOSH RICAFORT
10		MARIA BROSTERHOUS
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
21		
23		
24		
25		

1		INDEX
2		
3		EXHIBITS
4		
5		ts A-D were received into evidence at
6	page 6.)	
7	page 6.)	its A-F were received into evidence at
8		
9		PRESENTATION
10		
11		<u>PAGE</u>
12	By Ms. Prophet	7
13	By Mr. Ricafort	11
14		
15		CLOSING STATEMENT
16		PAGE
17	By Ms. Prophet	15
18		
19		
20		
21		
22		
23		
24		
25		

1	California; Wednesday, June 19, 2024
2	10:39 a.m.
3	
4	JUDGE LAMBERT: We are now on the record in the
5	Office of Tax Appeals oral hearing for the Appeal of
6	Joseph Hickingbotham IV and Jessica Hickingbotham, Case
7	Number 230513431. The date is June 19th, 2024, and the
8	time is 10:39 a.m. My name is Josh Lambert, and I'm the
9	lead Administrative Law Judge for this hearing. And my
10	co-panelists today are Judge Stanley and Judge Johnson.
11	For FTB, could you please introduce yourselves
12	for the record.
13	MR. RICAFORT: Good morning. Josh Ricafort with
14	the FTB.
15	MS. BROSTERHOUS: And Maria Brosterhous, also
16	with the FTB.
17	JUDGE LAMBERT: Thanks.
18	And for Appellants could you please introduce
19	yourselves for the record.
20	MS. PROPHET: I'm Francine Prophet, a Certified
21	Public Accountant.
22	JUDGE LAMBERT: Hi. Thanks for coming.
23	The issue in this appeal is whether Appellants
24	have established a basis to abate the late-filing penalty
25	In terms of exhibits, FTB provides Exhibits A through F,

25

and Appellants provided Exhibits A through D.

2.1

2.4

Although, I just wanted to add a couple of exhibits from Appellants' opening brief that weren't included in their -- in your submission of exhibits with the prehearing conference statement, which is the Claim For Refund Denial, which is Exhibit C in Appellants' opening brief. And there's a bank statement, which is Exhibit F in the opening brief.

And could I add, Ms. Prophet, does that sound okay.

MS. PROPHET: Yes.

JUDGE LAMBERT: And Mr. Ricafort, would you have any objections to that?

MR. RICAFORT: No objections, Judge.

JUDGE LAMBERT: Okay. And there were no previous objections to the other exhibits, so those exhibits are -- so that evidence is now in the record.

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

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

JUDGE LAMBERT: So at this time, Ms. Prophet, this is your opportunity to explain Appellants' position, and you'll have 15 minutes. So whenever you're ready, you can proceed.

PRESENTATION

MS. PROPHET: Do you have Mr. Ricafort's letter, under the facts? Do you have my Exhibit D?

2.4

JUDGE LAMBERT: Yes, we have all the exhibits.

MS. PROPHET: So under the facts in

Mr. Ricafort's letter, dated July 26, 2023, he lists

expenses -- I mean, I'm sorry -- tax payments, and they're

listed on Exhibit D. He listed the \$8,983 overpayment,

the September 15th, 2019, estimated tax payment, \$228

payment on October 28th of 2019, and then a July 15th,

2020, extension payment of \$71,840. Though in his letter

he says \$66,105, he does have a Footnote 3 that's saying

the Appellants' bank statement reflects \$840 made on

July 27th, 2020, \$66,105 of this payment was applied to

Appellants' tax year 2019. And the remaining \$5,735 was

applied to the Appellants' tax year 2020, and that

So those payments add up to \$88,520. Their tax liability was \$82,515. The overpayment of \$5,735 was applied to 2020. But in his -- under the FTB's position, he states that the tax due after the due date of July 15th, 2021, which is actually July 15th, 2020, that the Appellants owed \$65,835. Since the Hickingbothams' tax liability was \$82,515, and he himself listed payments of \$82,785, the only way -- the only explanation -- and I

overpayment was applied to 2020.

didn't even realize this until his letter because I've been calling the FTB for a year asking about the penalty and nobody could explain it.

2.1

2.4

If you look at my Exhibit D, if you take all the payments, except for the extension payment of \$71,840, you get total payments of \$16,680 of which, if they hadn't paid the extension payment of \$71,840, the client would have owed \$65,835, and they would have been subject to a 25 percent late-filing penalty. But they were overpaid. And in my Exhibit A, off of the Franchise Tax Board website, it says, "What happens if you file your taxes late but don't owe anything?"

And it says, "There's no penalty of filing a late tax return after the tax deadline if a refund is due. If you didn't file and owe tax," -- oh, okay.

So that's just my full position. They had an overpayment. They didn't owe \$65,835 with their tax return. That's my position. I'm sorry. This is my first time with the Office of Tax Appeals.

JUDGE LAMBERT: Okay. Thanks. Thank you, Ms. Prophet.

So at this time I'll turn to the Panel to see if they have any questions.

Judge Johnson, did you have any questions?

JUDGE JOHNSON: This is Judge Johnson. No

1 questions at this time. Thank you. 2 JUDGE LAMBERT: Okay. And, Judge Stanley, did 3 you have any questions? JUDGE STANLEY: Yes. 4 I want to clarify 5 Appellants' position, if I could. The penalty that is at 6 issue is not for a late payment but for late filing. Is 7 it your position that it should be that the late-filing penalty should be abated because they overpaid taxes 8 9 instead of filing on time? 10 MS. PROPHET: Oh, well, a late-filing penalty is based on whether you -- on the tax you owe and you file 11 12 late. But per the Franchise Tax Board's website, there is no late-filing penalty if you don't owe tax and you have 13 14 an overpayment. 15 JUDGE STANLEY: Okay. So --16 MS. PROPHET: That's on the Franchise Tax Board website. 17 18 JUDGE STANLEY: Okay. So your position is that 19 if they don't owe taxes, they shouldn't get a late 20 payment-penalty or a late-filing penalty? 21 MS. PROPHET: That's correct. 22 JUDGE STANLEY: Okay. Thanks for the 23 clarification. 2.4 JUDGE LAMBERT: Okay. This is Judge Lambert, and 25 I just had one question. Could you clarify the statement

you're making in your briefing that the software being used was unable to make electronic payments because the extension date was July 15th, not April 15th?

2.4

MS. PROPHET: That was -- that was Lacerte. I wasn't able -- you know, this client is required to pay their taxes electronically. So I couldn't withdraw it from their bank account. So I went to them and they had trouble making the payment, but they did make the payment. But that's -- that's why it was not done exactly on July 15th.

But also -- I mean, in reference to software errors, I had another client that went through the same thing as the Hickingbothams that FTB didn't give them credit for the extension payments. So when I called the Franchise Tax Board, the representative said that that was common, that the Franchise Tax Board's software couldn't handle July 15th, extension payments. And that was why my other client didn't get credited for their extension payment. It was easily corrected and without any issue, just a phone call. But that was not what happened. I was not able to correct it that easily in this situation, unfortunately.

JUDGE LAMBERT: Okay. Okay. Thank you, Ms. Prophet.

At this time I'll turn to FTB.

Mr. Ricafort, if you're ready for your presentation for 15 minutes, you can proceed when ready. Thanks.

MR. RICAFORT: Thank you, Judge Lambert.

2.4

PRESENTATION

MR. RICAFORT: Good morning. And my name is Josh Ricafort. Along with my Co-Counsel Maria Brosterhous, we represent the Respondent Franchise Tax Board.

The issue on appeal is whether Appellants have met their burden for showing a legal basis to abate their late filing for delinquent penalty.

California law requires FTB to access the late-filing penalty when a returned is filed after the due date. For the tax year 2019 personal income tax returns and payments were due on July 15th, 2020, because of the COVID pandemic. It is an undisputed fact, and it's reflected in FTB's Exhibit B, that Appellants filed their 2019 income tax return on February 12, 2021, more than six months after the due date had passed.

So, additionally, Appellants' representative stated in her prehearing conference statement that her software was unable to make the electronic payments by the July 15th due date for payment of taxes. So, consequently, FTB received Appellants' extension payment

of \$71,840 on July 24t, 2020, which essentially nine days after the due date for payment of taxes had passed. And as Ms. Prophet pointed out, the \$71,000 -- of the \$71,840 payment made on July 24, 2020, nine days after the due date for the payment of taxes, FTB applied \$66,105 to that -- to the taxes as reported on Appellants' income tax return that was filed more than six months late, and the remaining \$5,735 of the aforementioned extension payment was applied as an estimated payment to Appellants' tax year 2020 return in accordance to their request on their 2019 return.

2.4

You know, as such, the record reflects that

Appellants filed their 2019 return more than six months

late and paid the balance due nine days after the due date

for payment of taxes. Therefore, FTB assessed the

late-filing penalty as required by law. California law

requires that a late-filing penalty is computed at

5 percent of the tax due allowing for timely payments and,

for every month the return is late, up to a maximum of

25 percent.

Here in this appeal, Appellants' return was filed more than six months late. Therefore, the maximum penalty of 25 percent of the taxes unpaid by the due date was imposed. Appellants' unpaid tax liability by the due date of July 15, 2020, was \$66,105. It was conceded by

Ms. Prophet this made on July 27 -- around July 27, which was around nine days after the due date, 25 percent of the \$66,105, \$16,526.25. Therefore, FTB properly calculated the late-filing penalty as prescribed by statute.

2.4

It is also well-established law that the late-filing penalty can only be abated for reasonable cause, and that the taxpayer bears the burden of establishing reasonable cause for the abatement of the late-filing penalty. While Appellants disagree with the calculation and the imposition of the late-filing penalty, Appellants have not really raised any reasonable cause arguments or established reasonable cause.

Additionally, like, while Appellants referred to FTB's web page that states there's no penalty for filing a late return if a refund is due, Appellant fails to address the fact that on the due date of their return, on July 15th, there was a balance of \$66,105 that remain unpaid, which was not received by FTB until nine days after the due date for payment of taxes.

Because Appellants have failed to establish reasonable cause for the abatement of the late-filing penalty, FTB proper -- for which FTB properly imposed and calculated, FTB asks the OTA to -- respectfully asks the OTA to sustain the late-filing penalty.

And at this time, I'm happy to answer any

1 questions the OTA may have. Thank you, Mr. Ricafort. 2 JUDGE LAMBERT: 3 I'll turn to the Panel to see if they have any questions. 4 5 Judge Johnson, did you have any questions? 6 JUDGE JOHNSON: Judge Johnson. No questions. 7 Thank you. 8 Okay. And, Judge Stanley, did JUDGE LAMBERT: 9 you have any questions? 10 No, I do not. Thank you. JUDGE STANLEY: 11 JUDGE LAMBERT: Okav. Thanks. This is 12 Judge Lambert. Just one question to clarify. So the 13 penalty is based on the tax that was due after the payment 14 due date, but the previous estimated payments were removed 15 from that amount according to the statue. So it doesn't 16 take into account, like, estimate payments from before 17 July 15th. Is that it? 18 MR. RICAFORT: It could take into account the 19 payments that were made prior to July 15th, and then the 20 penalty is only based on the \$66,105 that was due after 2.1 July 15th. 22 JUDGE LAMBERT: Okay. Okay. Thanks. 23 So, at this time, I'll move to Ms. Prophet. 24 if you'd like to make some closing remarks, Ms. Prophet, 25 for five minutes, this is your opportunity to do that.

CLOSING STATEMENT

MS. PROPHET: That is Francine Prophet.

If that client had not paid \$71,840 in July of 2020 and filed his tax return six months late, I agree that they would have owed a 25 percent penalty on the \$65,835 that they would have paid in January of 2021. they did make a \$71,840 payment in July 24th, 2020. I feel like they're being penalized the exact same as if they've never paid that \$71,840. And it was during the pandemic. It was -- it was a difficult time. My software did not withdraw the extension payment on July 15th. had to pay it electronically. They had to -- I mean, some people find it difficult to go to the Franchise Tax Board website and make payments. I mean, I'm not excusing it, but it was just a difficult time. It was right in the heart of the pandemic, and I just feel like they're being penalized the same 25 percent penalty on \$65,000 than if they hadn't made the extension payment at all.

And I -- I just find that hard to understand when they were overpaid when they filed their tax return and their overpayment was applied to 2020. It wasn't reduced by the penalty or anything. And there never was in any of the notices that we got, there never was any detail on how they calculated that penalty. I didn't know until I received Mr. Ricafort's letter when he said that they owed

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

2.4

1	\$65,000 with their tax return, which isn't true. But I'm
2	just puzzled by there's no acknowledgment that a
3	\$71,840 payment in July of 2020 was made.
4	So that's my end of my position.
5	JUDGE LAMBERT: Thank you, Ms. Prophet.
6	So I'll turn to the Panel now to see if check
7	one more time to see if there's any final questions.
8	So, Judge Johnson, did you have any questions?
9	JUDGE JOHNSON: No questions. Thank you.
10	JUDGE LAMBERT: Thanks.
11	And, Judge Stanley, did you have any questions?
12	JUDGE STANLEY: I do not have anymore questions.
13	Thank you.
14	JUDGE LAMBERT: Thanks.
15	And this is Judge Lambert, and I have no further
16	questions. So if there's nothing further, I want to thank
17	both parties for appearing today.
18	We will issue a written opinion within 100 days.
19	Thank you.
20	The record is now closed.
21	(Proceedings adjourned at 10:57 a.m.)
22	
23	
24	
25	

1 HEARING REPORTER'S CERTIFICATE 2 I, Ernalyn M. Alonzo, Hearing Reporter in and for 3 the State of California, do hereby certify: 4 5 That the foregoing transcript of proceedings was 6 taken before me at the time and place set forth, that the 7 testimony and proceedings were reported stenographically 8 by me and later transcribed by computer-aided 9 transcription under my direction and supervision, that the 10 foregoing is a true record of the testimony and 11 proceedings taken at that time. 12 I further certify that I am in no way interested 13 in the outcome of said action. 14 I have hereunto subscribed my name this 5th day 15 of July 2020. 16 17 18 19 ERNALYN M. ALONZO 20 HEARING REPORTER 21 2.2 23 2.4 25

1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		