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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. HICKINGBOTHAM and) OTA NO. 230513431
J. HICKINGBOTHAM,)
)
)
APPELLANTS.)
)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:39 a.m. and concluding at 10:57 a.m. on
Wednesday, June 19, 2024, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ TERESA STANLEY
ALJ JOHN JOHNSON

For the Appellant: FRANCINE PROPHET

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
JOSH RICAFORT
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits A-D were received into evidence at page 6.)

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

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California; Wednesday, June 19, 2024

10:39 a.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the Appeal of Joseph Hickingbotham IV and Jessica Hickingbotham, Case Number 230513431. The date is June 19th, 2024, and the time is 10:39 a.m. My name is Josh Lambert, and I'm the lead Administrative Law Judge for this hearing. And my co-panelists today are Judge Stanley and Judge Johnson.

For FTB, could you please introduce yourselves for the record.

MR. RICAFORT: Good morning. Josh Ricafort with the FTB.

MS. BROSTERHOUS: And Maria Brosterhous, also with the FTB.

JUDGE LAMBERT: Thanks.

And for Appellants could you please introduce yourselves for the record.

MS. PROPHET: I'm Francine Prophet, a Certified Public Accountant.

JUDGE LAMBERT: Hi. Thanks for coming.

The issue in this appeal is whether Appellants have established a basis to abate the late-filing penalty. In terms of exhibits, FTB provides Exhibits A through F,

1 and Appellants provided Exhibits A through D.

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

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

11 MS. PROPHET: Yes.

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

14 MR. RICAFORT: No objections, Judge.

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

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

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

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

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

4 If you look at my Exhibit D, if you take all the
5 payments, except for the extension payment of \$71,840, you
6 get total payments of \$16,680 of which, if they hadn't paid
7 the extension payment of \$71,840, the client would have
8 owed \$65,835, and they would have been subject to a
9 25 percent late-filing penalty. But they were overpaid.
10 And in my Exhibit A, off of the Franchise Tax Board
11 website, it says, "What happens if you file your taxes
12 late but don't owe anything?"

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

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

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

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

24 Judge Johnson, did you have any questions?

25 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?

4 JUDGE STANLEY: Yes. 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
8 penalty should be abated because they overpaid taxes
9 instead of filing on time?

10 MS. PROPHET: Oh, well, a late-filing penalty is
11 based on whether you -- on the tax you owe and you file
12 late. But per the Franchise Tax Board's website, there is
13 no late-filing penalty if you don't owe tax and you have
14 an overpayment.

15 JUDGE STANLEY: Okay. So --

16 MS. PROPHET: That's on the Franchise Tax Board
17 website.

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.

24 JUDGE LAMBERT: Okay. This is Judge Lambert, and
25 I just had one question. Could you clarify the statement

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

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

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

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

25 At this time I'll turn to FTB.

1 of \$71,840 on July 24^t, 2020, which essentially nine days
2 after the due date for payment of taxes had passed. And
3 as Ms. Prophet pointed out, the \$71,000 -- of the \$71,840
4 payment made on July 24, 2020, nine days after the due
5 date for the payment of taxes, FTB applied \$66,105 to
6 that -- to the taxes as reported on Appellants' income tax
7 return that was filed more than six months late, and the
8 remaining \$5,735 of the aforementioned extension payment
9 was applied as an estimated payment to Appellants' tax
10 year 2020 return in accordance to their request on their
11 2019 return.

12 You know, as such, the record reflects that
13 Appellants filed their 2019 return more than six months
14 late and paid the balance due nine days after the due date
15 for payment of taxes. Therefore, FTB assessed the
16 late-filing penalty as required by law. California law
17 requires that a late-filing penalty is computed at
18 5 percent of the tax due allowing for timely payments and,
19 for every month the return is late, up to a maximum of
20 25 percent.

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

1 Ms. Prophet this made on July 27 -- around July 27, which
2 was around nine days after the due date, 25 percent of the
3 \$66,105, \$16,526.25. Therefore, FTB properly calculated
4 the late-filing penalty as prescribed by statute.

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

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

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

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

1 questions the OTA may have.

2 JUDGE LAMBERT: Thank you, Mr. Ricafort.

3 I'll turn to the Panel to see if they have any
4 questions.

5 Judge Johnson, did you have any questions?

6 JUDGE JOHNSON: Judge Johnson. No questions.

7 Thank you.

8 JUDGE LAMBERT: Okay. And, Judge Stanley, did
9 you have any questions?

10 JUDGE STANLEY: No, I do not. Thank you.

11 JUDGE LAMBERT: Okay. 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 statute. 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
21 July 15th.

22 JUDGE LAMBERT: Okay. Okay. Thanks.

23 So, at this time, I'll move to Ms. Prophet. So
24 if you'd like to make some closing remarks, Ms. Prophet,
25 for five minutes, this is your opportunity to do that.

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.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

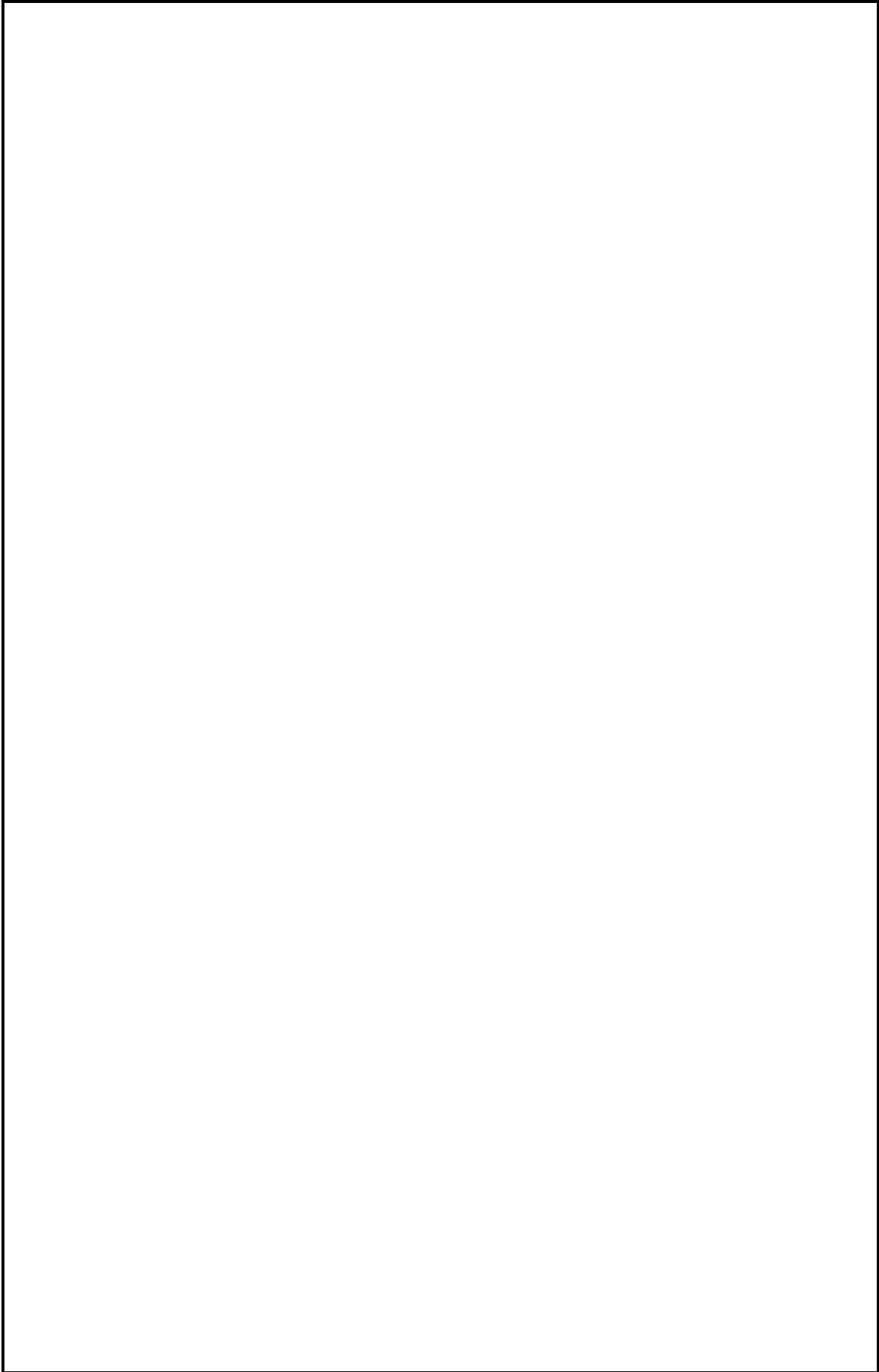
That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the 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 2020.

ERNALYN M. ALONZO
HEARING REPORTER

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