

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. KERSEY (DEC'D),) OTA NO. 230813968
)
)
 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, June 20, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:33 a.m. and concluding at 9:45 a.m. on
Thursday, June 20, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: TOMMY LEUNG

For the Appellant: MURRAY MALONEY

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

VIVIAN HO
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received into evidence at page 6.)

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

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California; Thursday, June 20, 2024

9:33 a.m.

JUDGE LEUNG: This is the hearing on the Appeal of James Ray Kersey, Docket Number 230813968. The tax year is 2018.

I'd like the parties to please introduce themselves for the record, starting with the taxpayer's representative, please.

MR. MALONEY: Yes. My name is Murray Maloney.

JUDGE LEUNG: Good morning, Mr. Maloney.

And for the Franchise Tax Board.

MS. HO: This is Vivian Ho, along with my Co-Counsel Maria Brosterhous, for the Franchise Tax Board.

JUDGE LEUNG: Good morning, Ms. Ho.

Good morning, Ms. Brosterhous.

MS. HO: Good morning.

JUDGE LEUNG: Prior to this hearing, the parties have agreed to certain items: Number one, the parties agree to have this hearing held electronically; number two, the parties agree to have this hearing be conducted under the rules of the Small Case Program, which essentially means that I will be the only judge assigned the case; number three, there was one stipulation that Mr. Kersey passed away on July 12th, 2021; number four,

1 the tax year at appeal is 2018; number five, the issue to
2 be decided is whether the Franchise Tax Board's proposed
3 assessment, which is based on a federal action, is
4 erroneous; number six, we have exhibits from both parties,
5 for the Appellant Exhibits 1 through 5, for the Franchise
6 Tax Board Exhibits A through H, as in Henry. All those
7 exhibits were agreed to be submitted into evidence, and
8 they are now being so submitted.

9 (Appellant's Exhibits 1-5 were received
10 in evidence by the Administrative Law Judge.)

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

13 JUDGE LEUNG: And I think that's all the
14 stipulations we have.

15 Mr. Kersey [sic], you are the rep for the
16 trustee, and I think I'm going to swear you in. I know
17 you are the rep, but you might start talking about facts
18 that may have happened back in the day. Would you please
19 raise your right hand and repeat after me.

20

21 M. MALONEY,

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

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JUDGE LEUNG: Thank you.

Mr. Kersey [sic], you have five minutes. The Franchise Tax Board has ten minutes, and then you will have five minutes for rebuttal.

Mr. Maloney, please begin at your disposal. Thank you.

PRESENTATION

MR. MALONEY: Okay. So, again, my relationship is that I am the trustee for the estate of James Kersey, who I might refer to as Ray, since that's how I knew him. So if I say Ray, I mean Mr. Kersey.

I was notified that this all started. I did get a notification from the IRS. I do not have the exact date because I can't seem to find that notification about a discrepancy in his 2018 tax return. They gave me some methods for responding to that. And I did respond and gave, essentially, the same information to them that I'm giving you today. And I never heard from them again. So from my point of view, there was no further action taken by the IRS to try and collect this back tax.

The statement that I gave them, essentially, is this, and I'll give it again today for our record. I have no record of his 2018 taxes. So I cannot validate whether the claim is correct or not. In addition, the trust that

1 I was responsible for was completely depleted. The
2 evidence that I had submitted shows a statement from the
3 attorney I worked with in handling the trust of the amount
4 of money that was available in the trust at that time,
5 which was a little over \$6,000. That went towards his
6 outstanding expenses, including paying his taxes for the
7 year he died, 2018.

8 And all those expenses actually exceeded the
9 value of the trust. I have included a document from the
10 CPA that I worked with to do his taxes for 2018 -- or
11 for -- I'm sorry -- for 2021. And you can see that
12 between the federal and the state expenses there, that
13 alone exceeded the value of the trust. And, therefore,
14 that and the other expenses that I had to deal with after
15 his death, completely depleted the trust.

16 So that's kind of my statement. I'll let it sit
17 there, and we can move on.

18 JUDGE LEUNG: Thank you, Mr. Maloney.

19 Ms. Ho, do you have any questions for
20 Mr. Maloney?

21 MS. HO: No questions. Thank you.

22 JUDGE LEUNG: Okay. I have none at this point,
23 Mr. Maloney.

24 So, Ms. Ho, do you want to begin your
25 presentation?

1 MS. HO: Yes. Thank you, Judge Leung.

2 JUDGE LEUNG: Go ahead.

3

4 PRESENTATION

5 MS. HO: Good morning. My name is Vivian Ho. I,
6 along with my Co-Counsel Maria Brosterhous, represent
7 Respondent, the Franchise Tax Board.

8 The issue in this appeal is whether Appellant
9 demonstrated error in FTB's proposed assessment for tax
10 year 2018. FTB proposed the current assessment based on
11 information provided by the Internal Revenue Service of
12 its federal adjustment of Appellant's 2018 tax return.
13 The adjustment is of unreported pension income. And as a
14 result of the increase in income, Appellant's itemized
15 medical deductions was also modified.

16 Under precedent, when FTB proposes an assessment
17 based on a final federal determination, it is
18 presumptively correct --

19 THE STENOGRAPHER: Judge Leung, it seems Ms. Ho
20 has gone offline.

21 JUDGE LEUNG: So is the Franchise Tax Board
22 offline now? Is that what happened?

23 MS. BROSTERHOUS: I apologize, but it looks like
24 she's back now, actually. I see her.

25 JUDGE LEUNG: Okay. Ms. Ho, we lost you for a

1 few seconds there. So you're about to say something about
2 competence or something like that?

3 THE STENOGRAPHER: Ms. Ho, if I may, can you
4 please start at, "Appellant's itemized medical
5 deductions."

6 MS. HO: Yes. Of course.

7 THE STENOGRAPHER: Thank you.

8 MS. HO: And I just want to confirm my audio and
9 visual is -- is fine now?

10 THE STENOGRAPHER: Yes, it is.

11 MS. HO: Thank you.

12 Appellant's IRS adjustment is of unreported
13 pension income. And as a result of the increase in
14 income, Appellant's itemized medical deductions were also
15 modified.

16 Under precedent, when FTB proposes an assessment
17 based on the final federal determination, it is
18 presumptively correct, and the taxpayer bears the burden
19 of proving the determination is erroneous. In the absence
20 of credible, competent, and relevant evidence showing that
21 FTB's determination is incorrect, it must be upheld.
22 Appellant has not met his burden of proof in establishing
23 error in FTB's determination. Appellant is deceased and
24 Appellant's representative argues that the estate does not
25 have sufficient funds to pay the tax liability.

1 obviously I'm not a lawyer to understand the legal
2 implications.

3 JUDGE LEUNG: Okay.

4 MR. MALONEY: Simply stated, there -- there's no
5 money left in that trust. So --

6 JUDGE LEUNG: Okay. Mr. Maloney, the Franchise
7 Tax Board seems to think that you told them that the IRS
8 changed their modifications or is that actually what
9 happened? Or the IRS just never issued the assessment,
10 and that was it?

11 MR. MALONEY: So to recap, I -- I had an initial
12 letter from the IRS with the same assessment that you're
13 referring to. I responded to that one with the same
14 explanations that I've given to you here today, and I
15 haven't heard anything since then. And that's been over
16 two years because it was some time after that that I heard
17 from -- from the Franchise Tax Board. So it had been
18 dormant even for a while since before I even heard from
19 FTB.

20 JUDGE LEUNG: Okay. I have nothing to add or to
21 ask either of the parties.

22 Seeing that, then Ms. Alonzo will be preparing a
23 verbatim transcript, like I mentioned before. And when
24 that transcript is ready, it will be on OTA's web page.

25 For now, I'm closing the record and submitting

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the case for decision, and I'll have a written decision out to the parties within 100 days.

Thank you for taking the time to participate in this appeal.

(Proceedings adjourned at 9:45 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 12th day of July, 2024.

ERNALYN M. ALONZO
HEARING REPORTER