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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. FLORES,) OTA NO. 230513256
)
)
 APPELLANT.)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:00 a.m. and concluding at 10:39 a.m. on
Wednesday, July 24, 2024, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Administrative Law Judge: VERONICA LONG

For the Appellant: J. FLORES
ANGELICA FLORES

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

PAIGE CHANG
MARIA BROSTERHOUS

The Interpreter: Mary Jane Johnson

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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-J were received into evidence at page 6.)

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

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California; Wednesday, July 24, 2024

10:00 a.m.

JUDGE LONG: Good morning. We are now on the record.

This is the appeal of Flores, OTA Case Number 230513256. Today is Wednesday, July 24th, and the time is 10:00 a.m.

My name is Judge Veronica Long, and I will be the Administrative Law Judge for this appeal.

We also have Ms. Johnson who is an interpreter, and is interpreting this hearing from English to Tagalog to Tagalog in English. Ms. Johnson was sworn in prior to going on the record.

We are holding this hearing today electronically with the agreement of all the parties. As a reminder, the OTA is not a court. We are an independent appeals body. The OTA is staffed by tax experts and is independent of the State's tax agencies. We do not engage in ex parte communication. Our decisions are made on arguments and evidence provided by parties on appeal, in conjunction with appropriate application of law. I have read the briefs and examined the submitted exhibits in this case.

Can the parties please each identify yourselves by stating your name for the record, beginning with

1 Franchise Tax Board.

2 MS. CHANG: Good morning. This is Paige Chang
3 representing the Franchise Tax Board.

4 MS. BROSTERHOUS: Good morning. This is Maria
5 Brosterhous, also representing the Franchise Tax Board.

6 JUDGE LONG: And now I'll move to Ms. Flores.

7 MS. FLORES: Hi. My name is Angelica Flores, and
8 I'm representing my brother-in-law Juvencio Flores.

9 JUDGE LONG: All right. So I'm going to restate
10 the issue in this case. The issue is whether Appellant's
11 claim for refund for 2017 is barred by the statute of
12 limitations.

13 With respect to the evidentiary record, FTB has
14 provided Exhibits A through J. Appellant did not object
15 to the admissibility of these exhibits. Therefore, the
16 exhibits are entered into the record.

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

19 JUDGE LONG: Appellant has provided Exhibits 1
20 through 5. FTB did not object to the admissibility of
21 these exhibits. Therefore, the exhibits are entered into
22 the record.

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

25 JUDGE LONG: All right. And no additional

1 exhibits were present today.

2 All right. Now, we're going to go ahead and
3 start presentations. Ms. Flores, you have 10 minutes and
4 may begin whenever you are ready.

5 MS. FLORES: I'm asking, am I going to start my
6 arguments or --

7 JUDGE LONG: Yes. Please, whenever you're ready.

8

9 PRESENTATION

10 MS. FLORES: Okay. I was just -- I was just
11 going to say, you know, the -- I know the statute of
12 limitations, the one that they're talking about. But when
13 we start receiving the paperwork on the mail, we didn't
14 react right away because my brother-in-law is Alaska
15 employee. He comes home at six months. After six months,
16 then he goes arrive in my house and open the mail. So
17 when we open the mail, I saw the mail. And I told him. I
18 said, hey, you have this problem, you know. And we start
19 talking to the lady -- the lady in the tax office. And
20 she was giving us, like, a run -- a runaround.

21 First time we called, they said they need the
22 2019 and everything is going to be okay.

23 JUDGE LONG: Ms. Flores. I'm sorry. I have to
24 interrupt you because it sounds like you're talking about
25 facts in this case. And in order to consider what you're

1 saying as testimony as compared to argument, I have to
2 swear you in as a witness. May I do that?

3 MS. FLORES: Yes, yes. You can do that.

4 JUDGE LONG: Great. Ms. Flores, I'm going to
5 swear you in for your testimony. Please raise your right
6 hand. I will swear you in in accordance with OTA's
7 regulations to accept your statements as evidence.

8

9

A. FLORES,

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 LONG: All right. Ms. Flores, please go
15 ahead and continue.

16 MS. FLORES: And then so we received the paper,
17 and we talked to lady on the other side, the tax side.
18 And they said to us that they only need the 2019 and the
19 statement of the -- of the paycheck. So we -- we did
20 that. We send that, and we -- we did. Later on, I would
21 call again. The lady said oh, no. We talk to the other
22 lady, and she said to us, no, it's not. We need the 2017.

23

24 So we -- we went to the tax office and said to
25 them, we need 2017. This time they were asking for 2017.
So we -- we back and forth, back and forth with the facts.

1 We -- as I showed you on the paperwork that I sent to OTA,
2 I send like 32 pages or 35 pages, it's a back and forth
3 back and forth facts of -- of what they were asking. So
4 when they told us that's in the limit of -- statute of
5 limitations, that's why I decided no, it's not. Because
6 from the beginning when they were asking for paperwork and
7 for -- for the process.

8 The tax -- the people who made the taxes for my
9 brother-in-law, they were helping us. Every time I
10 received a paperwork from tax. I would go to them because
11 they were responsible for doing the tax for my
12 brother-in-law. I would go to them, and I said, hey, I
13 received this, and they were asking this. And they go.
14 And I was sitting there in the office with -- with the
15 lady in the taxes. And she would go fax, and then she
16 would tell me, okay, we fax this. Okay.

17 So we waited and waited, and waited, you know,
18 like what -- what they going to do, you know. And so now
19 they -- they decided that they're not going to refund the
20 money because like they said, the limitation, you know.
21 But as you can see on my paperwork, we never -- never
22 stopped, like, back and forth back and forth with them.
23 And they're the one who was like -- like I said, the other
24 lady told us this information. We send it, and then later
25 on, no, that's not it, 2019, 2017, you know.

1 refunding an overpayment when a claim for refund was not
2 filed within the following: One, within four years of the
3 due date of the return; two, within four years from the
4 date the return was filed, if it was filed within the
5 extension period; or three, within one year from the date
6 of overpayment, whichever of the three is later.

7 Here in this case, Appellant late filed his 2017
8 tax return on March 27th, 2023, which FTB treated as
9 Appellant's claim for refund. Appellant filed his claim
10 for refund after the expiration of both the four-year
11 statute of limitations and the one-year statute of
12 limitations. In a statute of limitations claim for
13 refund, the taxpayer has the burden of proof. There is no
14 reasonable cause exception to the statute of limitations,
15 as the law does not provide a waiver of the statutory
16 period based on reasonable cause or other extenuating
17 exceptions.

18 Here in this case, Appellant explains that he was
19 not a resident of California because he was living in
20 Alaska and the Philippines. However, Appellant has filed
21 a 2017 California resident income tax return using a
22 California address. In addition, California residents are
23 taxed on all worldwide income. Further, Appellant
24 explains that he relied on his tax preparer as to filing a
25 claim for refund. However, there is no reasonable cause

1 exception to the statute of limitations. Therefore,
2 Respondent's denial of Appellant's claim for refund was
3 proper under the statute of limitations, and FTB's
4 position should be sustained.

5 Thank you. I'm happy to answer any questions.

6 JUDGE LONG: All right.

7 MS. FLORES: Can I ask questions?

8 JUDGE LONG: Ms. Flores, you're welcome to ask
9 me. But normally, only I'm the one, the Judge, to ask
10 questions of Franchise Tax Board. But you can ask me, and
11 I may incorporate your questions into my questions.
12 What's your question?

13 MS. FLORES: My question is, they were saying
14 that my brother-in-law filed a late 2017. But I'm
15 confused because when they were doing the taxes of my
16 brother-in-law, they said -- they're the one said to us
17 that he' doesn't supposed to file a California -- a
18 California tax because he was working in Alaska. So --

19 JUDGE LONG: All right. Thank you for your
20 question, Ms. Flores.

21 So I'm going to ask Franchise Tax Board a
22 question.

23 So, Franchise Tax Board, I'd like to confirm my
24 understanding. Even if Ms. Flores had filed -- or
25 Mr. Flores, the Appellant, had filed the claim for refund

1 within the statute of limitations, it's your position that
2 it would still have been denied because he -- of the
3 nature of his work; is that correct? And by the nature of
4 the work, I mean his California residency.

5 MS. CHANG: This is Paige Chang with the
6 Franchise Tax Board. If it were the case that Appellant
7 filed his claim for refund within the statute of
8 limitations and there was a decision that the claim for
9 refund was timely, then FTB would request that we were
10 allowed to examine the return in order to determine the
11 correct amount of the refund. FTB at this time has not
12 examined the return because the claim for refund looks
13 like it's not within the statute of limitations.

14 Thank you.

15 MS. FLORES: Can I say something?

16 JUDGE LONG: All right. Go ahead, Ms. Flores.

17 MS. FLORES: Because he was telling -- she was
18 telling us that the reason why they're not looking at his
19 taxes is because of the limitation, but what about when
20 they received the paperwork? They should -- they should
21 look at it, not just -- not just make the decision based
22 on the statute of limitations. They should look on the
23 paperwork. And like what she said, they didn't look at
24 the paperwork because it's the -- it's the statute of
25 limitations.

1 Now, when we asked for -- for them to -- to, you
2 know, they were asking paperwork from us from that
3 beginning. They should look at the paperwork already, but
4 they didn't do that. They left the paper probably late
5 over there. They didn't look at. Because if they look at
6 it -- it was just confusing for me because like I said, my
7 brother-in-law works in Washington, Alaska. He's supposed
8 to file over there. But since he comes here in -- in San
9 Diego to reside from us, he used our -- our address, the
10 California. But when we filed the taxes, the taxes
11 already told us that he don't suppose to file California
12 because he doesn't work over here.

13 So when the taxes -- when the Tax Franchise said,
14 no, he needs to file the California because he reside
15 here, then we start -- we start filing the paperwork, you
16 know. So for the Franchise Board saying because of the
17 statute of limitations, they didn't -- they didn't look at
18 the paperwork. So that -- that from there you can see,
19 you know. They should, because I was -- I'm a California
20 resident, and I'm confused because my brother-in-law, he
21 doesn't live actually in the California. He works in
22 Alaska. He's supposed to pay the taxes in Alaska, not in
23 California.

24 So, Your Honor, I would like to hear from them
25 because the next year that my brother-in-law will file the

1 tax I have an idea, because right now I'm confused.

2 JUDGE LONG: All right. Thank you, Ms. Flores.

3 I'm going to take a moment here and go over my
4 notes before I have any more questions. So just give me a
5 minute.

6 Okay. Franchise Tax Board, I'd like to ask a
7 question. I understand it's your position that the claim
8 for refund in this case occurred when taxpayer filed his
9 2017 return on March 27th, 2023; is that right?

10 MS. FLORES: Yes, Your Honor.

11 JUDGE LONG: Ms. Flores, can I have you hold your
12 questions until after I finish questioning FTB, and I'll
13 come back to you for your rebuttal. Thanks.

14 MS. FLORES: I'm sorry.

15 MS. CHANG: This is Paige Chang. Yes, that's
16 correct. FTB treated Appellant's 2017 tax return as his
17 claim for refund.

18 JUDGE LONG: All right. So, Franchise Tax Board,
19 my question for you next is, is there any point at which
20 any of Appellant's previous contacts or communications
21 with Franchise Tax Board would have risen to the level of
22 claim for refund? Or does the claim for refund not occur
23 until that return is filed?

24 MS. BROSTERHOUS: In general, when looking at a
25 statute of limitations case, we always check the record to

1 see if there had been previous communications that could
2 have been deemed to be a claim for refund prior to what we
3 consider to be out-of-statute claim. Here, we did, in
4 fact, looked at the comments and the correspondence we
5 received, and there was no other way but to construe it
6 this way.

7 JUDGE LONG: All right. That's all the questions
8 for my Franchise Tax Board right now. I'm going to go
9 ahead and let Ms. Flores begin her rebuttal.

10 Ms. Flores, you have 5 minutes and may begin
11 whenever you're ready.

12

13 CLOSING STATEMENT

14 MS. FLORES: Your Honor, she was saying that they
15 never -- they never had the paperwork, or never had the
16 paperwork responding to their -- to what they're asking
17 us. That's not true. As you can see on the 35 pages that
18 we send you, the OTA, we send 35 pages. It's a back and
19 forth faxing, the paperwork, the one that they were
20 asking. You know, like I said, they started asking. Even
21 in one of my 35 pages that I -- I send it to OTA, I had
22 jotted down. I had jotted down the name of the person
23 that we were dealing. The first time she was really nice
24 to us and trying to help us. Her name is over there on
25 the 35 pages, and she's the one who told us 2017.

1 The other person that we -- we called, the other
2 person she told us 2019. See what happened is we don't
3 know what paperwork we should send it to them. So what we
4 were doing, when they asked for 2017 or 2019, we faxed
5 them. We faxed whatever they asked. And on the 35 pages
6 you can see the fax number they receive, okay, okay, okay.
7 If you could do me a favor, look at the 35 pages. It's
8 all in there, all the fax number, all the dates, and all
9 the persons that we -- we were talking between the tax
10 preparer and me. The person is there. I jot it down.

11 I started -- I started dealing with them, you
12 know, in 2000 -- I think -- I don't -- I don't really
13 remember what year I started dealing with them. So that's
14 what happened. They were -- they were like asking us
15 different paperwork. And that's why it takes a long time,
16 you know, because we -- we had to find out what we really
17 needed. And then I go to the tax preparer, hey, they said
18 they need this. They need the income -- the income
19 paperwork and the 2000-something. They fax it to them.
20 So the -- the Franchise Board saying that they didn't
21 receive anything, you can see on the 35 pages that I send
22 to you guys, the OTA people.

23 Thank you very much, Your Honor.

24 JUDGE LONG: All right. Thank you, Ms. Flores.

25 I'm going to turn back to Franchise Tax Board and

1 just ask. I want to confirm, did you receive the faxes
2 that Ms. Flores was referencing?

3 MS. CHANG: This is Paige Chang with the
4 Franchise Tax Board. We received the faxes that were
5 attached to Appellant's appeal letter. However, a review
6 of our records prior to the filing of the appeal letter,
7 it doesn't look like we have any other faxes in our
8 records.

9 Thank you.

10 JUDGE LONG: All right. So, FTB, I want to
11 confirm. Prior to this appeal, you hadn't received -- you
12 have no record of receiving these faxes from Appellant?

13 MS. CHANG: Yes, that's correct. Prior to the
14 appeal letter, we hadn't received any other faxes.

15 Thank you.

16 JUDGE LONG: All right. That's just about all of
17 my questions here. Let's see. I am just about ready to
18 go ahead and conclude this hearing then.

19 MS. FLORES: Your Honor, can I say something?

20 JUDGE LONG: Yes. Ms. Flores, you still have
21 time left in your rebuttal, if you have any further
22 comments.

23 MS. FLORES: Okay. I was just confused. Do I
24 need to send all the 35 pages that I send you guys to OTA
25 and also the Franchise too? Did I supposed to do that?

1 Because I -- I only send the 35 pages in the OTA because
2 that's what they said on the OTA letter. I didn't know
3 that I supposed to send it to them because I could have
4 sent it to them so they can look at it.

5 JUDGE LONG: Oh, Ms. Flores, you're fine. When
6 you send something to OTA and, like, it's been considered
7 an exhibit in this case, Franchise Tax Board has been
8 provided a copy. The question that they had that I was
9 confirming is that, whether or not they had received it
10 from you -- if they had a record of receiving it from you
11 before you filed this appeal.

12 MS. FLORES: Okay. Okay, Your Honor. But like I
13 said, you can see on our paperwork, you know, the back and
14 forth the fax. It's in there. So if you just like
15 consider it, you know, like read it and -- and, you know,
16 decide, you know, I would appreciate it.

17 JUDGE LONG: All right. Thank you, Ms. Flores.
18 And to confirm, yes, I do have the exhibits that we've
19 discussed in this case. They have been submitted and are
20 part of the evidentiary record.

21 Okay. I'm going to go ahead and close this case.
22 This will conclude our hearing. I'm going to decide the
23 case based on the documents and testimony presented. I
24 will issue a written decision no later than 100 days from
25 today. This case is submitted and the record is now

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closed.

This concludes our hearing.

(Proceedings adjourned at 10:39 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 15th day of August, 2024.

ERNALYN M. ALONZO
HEARING REPORTER