

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
CASIANO LANCASTER INVESTMENTS, LLC, ) OTA NO. 220811240  
 )  
 )  
APPELLANT. )  
 )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, August 13, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 1:07 p.m. and concluding at 1:26 p.m. on  
Tuesday, August 13, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ JOHN JOHNSON  
ALJ SETH ELSOM

For the Appellant: MICHAEL SCHWARTZ

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
CHRISTOPHER COOK  
TOPHER TUTTLE

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received into evidence at page 6.)

(Department's Exhibits A-T were received into evidence at page 6.)

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

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California; Tuesday, August 13, 2024

1:07 p.m.

JUDGE KLETTER: So let's go ahead and go on the record now that we've covered those preliminary matters.

I'd like for the parties to please each identify themselves for the record, beginning with Appellant.

MR. SCHWARTZ: This is Michael Schwartz, and I apologize. My video doesn't connect. We did try to troubleshoot after the preliminary hearing. It just doesn't work on zoom. So I'm just here on my audio.

JUDGE KLETTER: Thank you.

And for Respondent Franchise Tax Board.

MR. COOK: This is Chris Cook, attorney with the Franchise Tax Board.

MR. TUTTLE: My name is Topher Tuttle, also an attorney with Franchise Tax Board.

JUDGE KLETTER: Thank you.

And the issues that we have for today, there's six of them, I believe. Issues 2 through 5 -- I'm sorry. Issues 1 through 4 are whether Appellant has established reasonable cause to abate late-filing penalties, the demand penalties, the late-payment penalties, and then that last one is whether Appellant has established any basis to abate the late payment of the estimated LLC fee.

1 And the other two issues are whether FTB properly imposed  
2 the filing enforcement cost recovery fees, and whether  
3 Appellant entitled to interest abatement.

4 With respect to evidentiary record, FTB provided  
5 Exhibits A through T. Appellant did not object to those  
6 exhibits. Therefore, those exhibits are entered into the  
7 record.

8 (Department's Exhibits A-T were received in  
9 evidence by the Administrative Law Judge.)

10 JUDGE KLETTER: And Appellant provided Exhibit 1  
11 through 3. FTB, did not object to the admissibility of  
12 these exhibits and, therefore, those exhibits are entered  
13 into the record.

14 (Appellant's Exhibits 1-3 were received  
15 in evidence by the Administrative Law Judge.)

16 JUDGE KLETTER: As a reminder for our time today,  
17 we have 10 minutes for Appellant's presentation, 10  
18 minutes for Franchise Tax Board's presentation, and then  
19 five minutes for Appellant.

20 You can have a closing statement and rebuttal, as  
21 you wish.

22 So, Mr. Schwartz, before you begin, I just like  
23 would -- I would like to swear you in for your testimony.

24 MR. SCHWARTZ: Sure.

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M. SCHWARTZ,

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

JUDGE KLETTER: So now that I have you sworn in, I ask that you can begin your presentation as you like, and you'll have 10 minutes.

MR. SCHWARTZ: Okay. Sure.

PRESENTATION

MR. SCHWARTZ: So I appreciate everything and the discussions up to now. I think that everyone was involved up until today, understand and agrees that I paid the full amount, the taxes, the penalties, and interest as soon as I found about it, which was January 2022. I think we also all know that I'm not some criminal trying to gain the system and avoid paying my taxes.

I presented evidence from my CPA. Basically, she just screwed up. She filed 2015 or '13, '14, and '15 and then forgot to file the subsequent years until you guys notified us. Then we filed 2016 through 2019 immediately and paid everything. At that time, I filed about 15 tax returns a year, and I just sign what she sends me. I don't, you know, keep track of -- like, I wasn't where

1 I -- situation where I said, hey, why do we not have a  
2 2016 California return for Casiano Lancaster?

3 So, you know -- and so my question is -- I have a  
4 couple of questions or I guess arguments. I don't  
5 understand why Franchise Tax Board comes to me at the end  
6 of 2021 with a bill going back from 2016. That's like six  
7 years after the fact. To me it seems unreasonable that  
8 Franchise Tax Board did not notify me of a late fee -- of  
9 unpaid taxes in a timely manner. Just to use a crazy  
10 example, I mean, what if they sent me a letter today about  
11 something in tax year 1999, come 25 years after the fact,  
12 and say, well, it was \$100 that you owed from 1999. But  
13 with interest and penalties now, you have to pay \$25,000.  
14 I mean, that's kind of how I'm feeling.

15 I don't know how much interest and penalties  
16 accrued between 2016 and the end of 2021 when I was  
17 notified of the problem. And I know it's all my  
18 responsibility and everything, but it just seems to me,  
19 you know, unreasonable or unfair that you guys come to me  
20 six years after the fact and say, well, you owe us from  
21 six years ago, and now there's interest and penalties on  
22 that.

23 Let's see. So in my mind that's just not right  
24 and -- but I paid it all. I paid it in full the day that  
25 I knew about it and I asked questions later and filed an



1 appeal. I feel that the Franchise Tax Board's delay in  
2 notifying me of, you know, unpaid taxes from six years ago  
3 has unfairly increased my official burden.

4 Lastly, the LLC. I talked to Chris like a week  
5 ago and that's when I sent my operating agreement.  
6 Casiano Lancaster, LLC, was a single-member LLC. There  
7 were not four members. I guess that's another area that  
8 my CPA screwed up. And in the letter she provided most  
9 recently, she says it's a single member. So if that can,  
10 you know, save me a little bit. I'd really like to not  
11 have to pay any of the interest and penalties, but I'll  
12 throw that out there.

13 And in conclusion, I feel I should not have to  
14 pay any interest or penalties had the FTB notified me in  
15 2017 about, you know, about back taxes from 2016, and I  
16 neglected to pay. That would have been a different story.  
17 I just feel like I've done nothing wrong, and now I have  
18 to pay 11 -- \$10,900 and change between interest and  
19 penalties.

20 I thank you for your guys' time.

21 JUDGE KLETTER: This is Judge Kletter. Thank you  
22 Mr. Schwartz, for your presentation. I'd like to turn it  
23 over to Franchise Tax Board.

24 I'd like to turn it over to Franchise Tax Board.

25 Mr. Cook, are you ready to begin your

1 presentation?

2 MR. COOK: I am.

3 JUDGE KLETTER: Please begin.

4 MR. COOK: Thank you.

5

6

PRESENTATION

7

8 MR. COOK: Appellant Casiano Lancaster  
9 Investments, LLC, was organized in California in 2012.  
10 FTB's records show that Appellant timely filed its tax  
11 returns each year from 2013 through 2015. But beginning  
12 with his 2016 tax year, it failed to timely file its  
13 returns, or timely pay its taxes. That is why at issue in  
14 this case are the penalties and related costs and  
15 interests that the law required FTB to assess for  
16 Appellant's failure to timely file and pay for tax years  
17 2016, 2017, 2018, and 2019.

18 Particularly at issue is whether Appellant has  
19 demonstrated reasonable cause to abate the penalties for  
20 delinquent filing of the tax returns; the per member  
21 late-filing penalties, the demand penalties, late-payment  
22 penalties or whether a law permits abatement of the  
23 penalties for the late payment of the estimated LLC fees,  
24 cost recovery fees, or interest.

25 First, to address the penalties caused by  
Appellant's filing its returns late. The demand penalty

1 was assessed for 2016 and 2018 because FTB had sent  
2 Appellant demands for tax returns that went unanswered by  
3 the response deadlines on these notices. Delinquent  
4 filing penalties were also assessed because, as summarized  
5 in Respondent's opening brief at page 5, the tax return  
6 for each year at issue was filed late. And the additional  
7 per-member late-filing penalty was also assessed because  
8 Appellant self-reported on each one of its returns having  
9 four members. There was no dispute that Appellant did not  
10 timely respond to FTB's demand notices, nor any dispute  
11 that it did not timely file its returns.

12 So the only legal pathway for these penalties to  
13 be abated is if Appellant can demonstrate with evidence  
14 that there was reasonable cause for the delays. Appellant  
15 needs to provide evidence showing that it made efforts to  
16 timely file its returns or respond to FTB's demand notices  
17 but was otherwise prevented from doing so. The standard  
18 of reasonable cause is evidence that Appellant exercised  
19 ordinary care and prudence and evidence that cause existed  
20 that would prompt an ordinarily intelligent and prudent  
21 businessperson to have acted as Appellant did under  
22 similar circumstances.

23 But Appellant has only argued that the returns  
24 were not filed on time because Appellant relied on its tax  
25 preparer to file the California returns. But there is a

1 longstanding legal precedent that a taxpayer's reliance on  
2 a tax preparer or agent to timely file or pay taxes is not  
3 reasonable cause. Exercising ordinary care -- ordinary  
4 business care and prudence required Appellant to do more  
5 than just delegate the task to file a return. Because  
6 under the U.S. Supreme Court precedent adopted by this  
7 Board, Appellant's duty to file cannot be delegated.

8 And if Appellant itself was unaware that it had a  
9 filing requirement, that is simply an admission of the  
10 lack of ordinary business care prudence concerning its tax  
11 obligations. So Appellant has not established reasonable  
12 cause and if -- so if Appellant -- pardon me. Appellant  
13 has not established reasonable cause and FTB ask OTA to  
14 sustain the assessment for the demand, delinquent filing,  
15 and per-member late-filing penalties.

16 As for the penalties related to Appellant paying  
17 its taxes late, there's no argument that Appellant paid  
18 its \$800 LLC tax and LLC fee late for each year at issue.  
19 Like the filing penalties in this case, late-payment  
20 penalties may be abated with a showing of reasonable  
21 cause. And since, again, Appellant has not demonstrated  
22 reasonable cause, only asserting that it did not know it  
23 had to pay taxes and its reliance on return preparer, FTB  
24 asks OTA to sustain the assessment of the late-payment  
25 penalties.

1           Relatedly, the penalty for the underpayment of  
2           the estimated LLC fee was also assessed on tax years 2016,  
3           '17, and '18. The law requires an estimate of the LLC fee  
4           to be paid during the LLC's tax year. There was no  
5           reasonable cause exception to the imposition of this  
6           estimated fee penalty, and there is no question that  
7           Appellant did not timely pay the estimated LLC fees. So  
8           FTB asks OTA to sustain assessment of the estimated LLC  
9           fee penalty.

10           Further, cost recovery fees were assessed on tax  
11           years 2016 and 2018 because Appellant did not timely  
12           respond to FTB's demand notice. There is no law allowing  
13           abatement for the cost recovery fees. And since Appellant  
14           has not demonstrated reasonable cause to abate the related  
15           demand penalties, FTB asks OTA to sustain assessment of  
16           the cost recovery fees.

17           Finally, the law provides that interest may be  
18           abated in limited circumstances described in the Revenue &  
19           Taxation Code depending on whether FTB committed an  
20           unreasonable error or delay, whether Appellant was unable  
21           to pay interest due to extreme financial hardship, or the  
22           charge of interest was caused by reasonable reliance on  
23           FTB's prudent advice. Appellant raises for the first time  
24           in this hearing that the argument that FTB committed  
25           unreasonable error or delay in this case and notified

1 Appellant too late about its filing requirements and its  
2 taxes.

3           However there's no argument, and briefing may be  
4 done if requested, that FTB did not follow the law and  
5 issue its notices within the statute of limitations  
6 required or there any other delays were caused  
7 unreasonably other -- you know, that contravene the law.  
8 Since Appellant has made no contention or any other  
9 evidence that any one of these other circumstances to  
10 abate interest applies in this case, FTB asks OTA to  
11 sustain that interest was assessed and paid properly.

12           To summarize, there's no legal basis exempting  
13 Appellant from its tax obligations for the years at issue,  
14 no showing of reasonable cause, or any other basis to  
15 related penalties, the related costs, and interest.

16           Thank you, and I'm happy to answer any questions.

17           JUDGE KLETTER: Thank you, Mr. Cook, for your  
18 presentation. I did have just one question for you. When  
19 we were off the record, you mentioned that with respect to  
20 the 2017 tax year, there was a refunded amount. So I was  
21 wondering if you could please state that on the record and  
22 clarify which late payment -- like which statutory penalty  
23 the abatement is for.

24           MR. COOK: Yes. It's for the 2017 tax year, and  
25 FTB has determined that \$76 of the monthly portion of the

1 late-payment penalty should be removed from the assessment  
2 and refunded to Appellant.

3 JUDGE KLETTER: Thank you, Mr. Cook.

4 I'm just going to turn to my panel and ask them  
5 if they have any questions for the parties.

6 Judge Johnson, do you have any questions for  
7 either of the parties?

8 JUDGE JOHNSON: This is Judge Johnson. I just --  
9 one question going back to the \$76. That's the penalty  
10 imposed under 19132; is that right? There's several  
11 penalties at issue. I want to make sure I get the right  
12 one.

13 MR. TUTTLE: Yes. It's under the late-payment  
14 penalty 19132.

15 JUDGE JOHNSON: Okay. That's all. Thank you.

16 JUDGE KLETTER: Thank you for that clarification.

17 Hearing Officer Elsom, do you have any questions  
18 for either of the parties?

19 HEARING OFFICER ELSOM: This is Hearing Officer  
20 Seth Elsom. I don't have any questions at this time.

21 JUDGE KLETTER: Okay. So we're allotting your  
22 five minutes for Appellant. You'll be able to provide a  
23 closing statement and rebuttal. We just ask that before  
24 you speak you may need to press star 6 to unmute yourself.  
25 I am wondering if you could try that to see if that works

1 for you.

2 MR. SCHWARTZ: Okay.

3 JUDGE KLETTER: We can hear you. So if you would  
4 like to make a final statement or any rebuttal to what FTB  
5 has presented here or anything else you've prepared before  
6 the case is submitted --

7

8 CLOSING STATEMENT

9 MR. SCHWARTZ: Just that Chris had done some good  
10 research. But I'm just -- you know, my whole point is  
11 that I paid in full the minute that I became aware of  
12 this. And I just think that it's not fair that I would  
13 have to pay \$10,900 in interest and penalties. Any relief  
14 I can get is appreciated.

15 Thank you.

16 JUDGE KLETTER: Thank you so much, Mr. Schwartz.  
17 And I just want to ask my Panel members one more  
18 time.

19 Judge Johnson, do you have any other questions?

20 JUDGE JOHNSON: This is Judge Johnson. No  
21 questions. Thank you.

22 JUDGE KLETTER: And, Hearing Officer Elsom, do  
23 you have any questions?

24 HEARING OFFICER ELSOM: This is Hearing  
25 Office Elsom. Mr. Schwartz, I did have just a couple of



1 questions to understand the, kind of, historical context  
2 behind your operation of this entity.

3 MR. SCHWARTZ: Sure.

4 HEARING OFFICER ELSOM: I did notice that your  
5 preparer has a Florida address, and is this a preparer  
6 that's based in Florida? And if so, does she have  
7 knowledge of California filing requirements, or did she  
8 provide any written statement or, you know, any -- any  
9 legal basis for filing or paying fees? Anything of that  
10 nature?

11 MR. SCHWARTZ: She's been the family CPA for many  
12 years prior to me even moving to California. And, you  
13 know, she told me that she knew everything. And we  
14 haven't had any other problems. I've been living here and  
15 operating many entities since 1995. So she seems to be  
16 doing a pretty good job except for this one.

17 HEARING OFFICER ELSOM: And then I wanted clarify  
18 just a couple of statements in your reasonable cause  
19 statement to FTB. You stated that the LLC had not made  
20 money and had losses for each year.

21 MR. SCHWARZ: Correct.

22 HEARING OFFICER ELSOM: And I wanted to clarify,  
23 were those losses for the year at issue or was that since  
24 the inception of the entity?

25 MR. SCHWARTZ: Every year from when it started

1 2012 until it closed in early 2020.

2 HEARING OFFICER ELSOM: Okay. The last question,  
3 I just want to understand the filing. For 2015, it looks  
4 like you timely filed on an extension on September 15th,  
5 2016, and then you made timely payments of the LLC fee of  
6 \$2,500, and the LLC tax of \$800 on 4/15 of 2015. So I  
7 just kind of like to understand what the difference was  
8 between that year and the subsequent years. I know your  
9 CPA had mentioned that she believed that there was no  
10 federal filing requirement, and so the files for the  
11 California side may have gotten deleted. Could you just  
12 kind of clarify some of those items or speak on that?

13 MR. SCHWARTZ: Well, I mean, that's exactly it.  
14 She just either lost the file, or they, you know, took it  
15 out of the filing system. And, you know, she forgot, and  
16 I forgot, and that's where we're at.

17 HEARING OFFICER ELSOM: Thank you, Mr. Schwartz.

18 MR. SCHWARTZ: Thank you.

19 JUDGE KLETTER: This is Judge Kletter.

20 Hearing Officer Elsom, I'm assuming you have no  
21 more questions.

22 HEARING OFFICER ELSOM: That's correct. No more  
23 questions.

24 JUDGE KLETTER: Okay. So then that concludes  
25 this hearing.

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The Panel members will meet and decide this case based upon the documents and the testimony that was presented today. We'll issue our written decision no later than 100 days from today. The case is submitted and the record is now closed.

I believe that this concludes this hearing session. Thanks, everyone.

(Proceedings adjourned at 1:26 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 23 day of August, 2024.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER