

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
H. NOURI and M. NOURI, ) OTA NO. 220911497  
 )  
 )  
 APPELLANTS. )  
 )  
 )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, August 22, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER



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APPEARANCES:

Panel Lead: ALJ KEITH LONG

Panel Members: ALJ SARA HOSEY  
ALJ JOSHUA LAMBERT

For the Appellant: EILEEN RAINS  
FRANK GOMEZ

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
ANDREA WATKINS  
CYNTHIA KENT

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received into evidence at page 9.)

(Department's Exhibits A-L were received into evidence at page 7.)

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

	<u>PAGE</u>
By Mr. Gomez	10
By Ms. Watkins	13

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Gomez	16

1  
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California; Thursday, August 22, 2024

10:50 a.m.

JUDGE LONG: We're opening the record in the Appeal of Nouri. The OTA Case Number is 220911497. This matter is being held before the Office of Tax Appeals. Today's date is August 22nd, 2024, and the time is 10:50 a.m. This hearing is being convened electronically.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Keith Long, and I will be the Administrative Law Judge. Judge Sara Hosey and Judge Josh Lambert are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written decision as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

As a reminder, the Office of Tax Appeals is not a Tax Court. It is an independent appeals body. The panel does not engage in ex parte communications with either party. OTA will issue an opinion based on the parties' arguments, the admitted evidence, and the relevant law.

For the record, will the parties please state their names and who they represent, starting with the

1 representatives for the Franchise Tax Board.

2 MS. WATKINS: Good morning. This is Andrea  
3 Watkins with the Franchise Tax Board.

4 MS. KENT: And I'm Cynthia Kent, also with the  
5 Franchise Tax Board. Good morning.

6 JUDGE LONG: Good morning.

7 And for the Appellant.

8 MR. GOMEZ: Yes. I'm Frank Gomez. I'm the CBIS  
9 DATATAX -- [INDISCERNIBLE]

10 JUDGE LONG: And, Ms. Rains, are you there?  
11 You're muted.

12 MS. RAINS: Yes. Good morning. This is Eileen  
13 Rains from CBIS DATATAX, and we were representing Hassan  
14 and Maryam Nouri.

15 JUDGE LONG: Thank you.

16 There's one issue in this appeal, and it is  
17 whether FTB's proposed assessment, which is based on a  
18 final federal audit determination, should be reduced.

19 There are several exhibits that were received  
20 from FTB. They consist of Exhibits A through L. At  
21 the prehearing conference, Appellant had no objections to  
22 Exhibits A, B, C, F, G, and H.

23 Can Appellant please confirm that there are no  
24 objections to those exhibits.

25 MR. GOMEZ: Yeah. There's no objection.

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JUDGE LONG: Thank you.

Additionally, Appellant requested copies of exhibits D, E, I, and J.

Did Appellant receive those exhibits, and are there any objections?

MR. GOMEZ: Yes. We received them, and no objections.

JUDGE LONG: Thank you.

Finally, after the prehearing conference, FTB provided Exhibit K, updated 2017 federal account transcript, and Exhibit L, 2017 California wages and withholding details.

Does Appellant have any objections to Exhibits K and L?

MR. GOMEZ: No objections.

JUDGE LONG: Okay. Thank you. Exhibits, FTB's Exhibits A through L are admitted without objection.

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

JUDGE LONG: After the prehearing conference -- or at the prehearing conference, Appellant indicated that they may be providing exhibits, and there may be a witness. No exhibits or witnesses were identified for this hearing.

I anticipate that to be correct. Is that

1 correct, Mr. Gomez?

2 MR. GOMEZ: There is no witnesses, but we did  
3 send in simply the W-2s that were added, I guess, also on  
4 wage transcripts [INDISCERNIBLE] --

5 JUDGE LONG: Okay. Let me just double check.  
6 Okay. I do not have those. When were those sent? Were  
7 they sent with the additional -- the opening brief, maybe?  
8 Or were those sent after the prehearing conference?

9 Mr. Gomez, you're muted.

10 MR. GOMEZ: It was sent on the deadline for the  
11 evidence to the evidence email.

12 JUDGE LONG: Okay. Was it sent through the  
13 portal or sent via fax or mail?

14 MR. GOMEZ: It was sent through an email to  
15 whoever -- I don't remember exactly the -- but it did  
16 start with evidence at [INDISCERNIBLE] to the  
17 [INDISCERNIBLE] port.

18 JUDGE LONG: Okay. Well, then --

19 MS. WATKINS: Judge Long, FTB did receive a copy  
20 of those W-2s.

21 JUDGE LONG: Okay. I am going to pause and go  
22 off the record and figure that out. Give me five minutes,  
23 please.

24 And so I'm going to turn off my camera and mute  
25 my microphone, and I ask that everyone else do the same as

1 well. And we will return here at 11 o'clock.

2 Thank you.

3 (There is a pause in the proceedings.)

4 JUDGE LONG: We're going to go back on the  
5 record.

6 Having heard no objections from Franchise Tax  
7 Board, Appellant's exhibits are admitted as Exhibit 1.

8 (Appellant's Exhibit 1 was received in  
9 evidence by the Administrative Law Judge.)

10 JUDGE LONG: Okay. Now, at the prehearing  
11 conference, FTB asked whether Appellant agreed that  
12 Appellant H. Nouri was the sole Shareholder of Sahar. FTB  
13 also asked whether Appellant agreed that the IRS assessed  
14 additional tax and had not revised its determination.  
15 Appellant did not provide an answer at the prehearing  
16 conference.

17 Does Appellant have answers to these questions  
18 now?

19 MR. GOMEZ: Yes. We do agree that --

20 JUDGE LONG: Mr. Gomez, I'm sorry. Real quickly,  
21 you're coming in staticky, and it's a little hard to  
22 understand you. If you could maybe speak a little closer  
23 to your microphone?

24 MR. GOMEZ: Okay. Yes. We do agree that  
25 Mr. Nouri is the only owner of the company. And we did

1 see the additional assessment on the IRS transcript, which  
2 has [INDISCERNIBLE] --

3 JUDGE LONG: Thank you. Okay. Then those items  
4 are considered not in dispute.

5 Today's hearing is expected to go for  
6 approximately 45 minutes with the taxpayer's opening  
7 presentation lasting approximately 30 minutes.

8 Mr. Gomez, Ms. Rains, you may start when you are  
9 ready.

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PRESENTATION

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MR. GOMEZ: Yeah. So the issue was surrounding  
additional unreported income. And initially, I spoke with  
the taxpayer who said that these second W-2s was issued in  
error, but the pay -- the payroll company has not made any  
corrections. And I can see the payroll taxes were paid.  
So if we are accounting for the additional income, we  
would account also for the additional withholding that the  
W-2s do state. And based on the W-2s, the withholding  
does exceed the amount of tax that stated the new balance  
FTB posted in the -- saying the collection is based on.

Additionally, the taxpayer did make a \$5,800  
estimated payment for that year as well. So considering  
those payments, there should be a refund for tax year  
2017. And I do understand the refund would be less than

1 what was on the original tax return. And I see that the  
2 amount that is requested as a balance is the difference  
3 between those refunds. And that would make sense if the  
4 client or the taxpayer had received a refund check, but  
5 they did not actually get payment.

6 It was requested to be rolled over into the  
7 estimated payments for 2018. And so if that was true, it  
8 would have been making a difference or come into play in  
9 the tax year 2018. So if that that higher amount was  
10 applied, potentially it could have a balance due for 2018.  
11 But there's no -- nothing was presented on -- if that  
12 amount was applied -- that the higher amount was applied,  
13 or if any changes were made after that by the taxpayer or  
14 the FTB, simply that 2017 would show there was no balance  
15 due.

16 And even if it did create a balance due for 2018,  
17 that would be due starting April 15 of 2019, instead of  
18 April 15 of 2018, as stated on the assessment notice. So  
19 as far as I can see there's not a balance for 2017.  
20 Potentially for 2018, but that's not -- has not been  
21 presented. So we would say that they did not have  
22 anything due for 2017.

23 JUDGE LONG: Thank you. I just wanted to clarify  
24 a few things real quickly before I turn it over to our  
25 Co-Panelists.

1           First, so to be clear here, are you now conceding  
2           to the additional income, but arguing that he's entitled  
3           to a refund because the withholding and estimated tax  
4           payments exceed the liability asserted by FTB?

5           MR. GOMEZ: Correct.

6           JUDGE LONG: Okay. And I'm sorry. For me, I  
7           just wanted to make sure that I heard you correctly. The  
8           asserted estimated payments were \$5,800; is that correct?

9           MR. GOMEZ: Yeah. It was 500 -- like, \$5,803.

10          JUDGE LONG: Okay. Okay. Thank you.

11          And do my Co-Panelists have any questions? Judge  
12          Lambert, Judge Hosey, do you have any questions, starting  
13          with Judge Hosey?

14          JUDGE HOSEY: No questions from me. Thank you.

15          JUDGE LONG: Thank you.

16          And, Judge Lambert, do you have any questions?

17          JUDGE LAMBERT: This is Judge Lambert. I don't  
18          have any questions. Thanks.

19          JUDGE LONG: Thank you.

20          Mr. Gomez, does that conclude your presentation?

21          MR. GOMEZ: Yes. Thank you.

22          JUDGE LONG: Okay. Well then at this time I  
23          would like to turn it over to Franchise Tax Board to make  
24          their presentation, and you may begin when ready.

25          MS. WATKINS: Thank you.



1           FTB requested and received wage and withholding  
2 details from the Employment Development Department shown  
3 in FTB's Exhibit L, which show that Mr. Nouri's employer  
4 reported a total of \$450,000 of wage income paid to him  
5 during 2017, and California tax, which was withheld from  
6 that wage income. The 2017 federal wage and income  
7 transcript, which is FTB's Exhibit D, shows 2 W-2s issued  
8 to Mr. Nouri; one, for \$138,000 and one for \$312,000  
9 totaling \$450,000, and both W-2s show federal tax  
10 withholding.

11           Further, although the Appellants claim to have  
12 filed an amended return with the IRS, a recent federal  
13 account transcript does not show that the IRS has accepted  
14 an amended return or abated any tax. Based on the  
15 Appellants presentation today, yes, it is true that there  
16 was additional tax withholding from the unreported income.  
17 And that tax withholding was actually credited to the  
18 Appellants. If you look at FTB's notice of proposed  
19 assessment -- let me see what exhibit that is. That would  
20 be --

21           MS. KENT: It's Exhibit F.

22           MS. WATKINS: -- Exhibit F. Yeah. You'll see  
23 that the additional withholding credit \$7,841.39 was  
24 credited to Appellant in the calculation of the additional  
25 tax. And then Appellants also mentioned that they had

1 estimated an estimated tax payment that they request be  
2 applied to tax year 2018; and that, in fact, was applied  
3 to tax year 20178. If you look at FTB's Exhibit B, which  
4 is the 2017 tax year detail, it does show that payment  
5 applied to tax year 2018. So the NPA, the notice of  
6 proposed assessment, does include that additional  
7 withholding credit, and it also does factor in the  
8 estimate payments.

9 So Appellants have not proven error in the  
10 proposed assessment. Therefore, it is presumed correct,  
11 and FTB respectfully requests that its position be  
12 sustained.

13 And I'm happy to answer any questions from the  
14 Panel.

15 JUDGE LONG: Thank you.

16 Judge Hosey, do you have any questions?

17 JUDGE HOSEY: This is Judge Hosey. No questions  
18 from me. Thank you.

19 JUDGE LONG: Okay. And, Judge Lambert, do you  
20 have any questions?

21 JUDGE LAMBERT: This is Judge Lambert. I just  
22 wanted to confirm, FTB, what was the amount of payments  
23 that Appellant made that were applied to 2017?

24 MS. WATKINS: Let me double check. So \$16,589  
25 was transferred to 2018.

1 JUDGE LAMBERT: Okay. Okay. Thanks. I think I  
2 see how it works. I don't have any more questions.  
3 Thanks.

4 JUDGE LONG: Okay. Thank you.

5 We're going to turn to our closing arguments and  
6 allow Appellants time to make their final statements.

7 You have five minutes, Mr. Gomez and Ms. Rains,  
8 and you may begin when ready.

9

10 CLOSING STATEMENT

11 MR. GOMEZ: Yeah. So our closing statements are  
12 actually that the -- I know the State said they gave  
13 credit and applied the estimated payments for 2018. But  
14 what we're saying is that the withholdings from the W-2s,  
15 which were totaling \$36,342, along with the \$5,803  
16 estimated payments, totals \$9,831 more than what they are  
17 saying the revised total balance due was for that year.  
18 So even with their numbers, it would result in a refund  
19 for that year.

20 I understand that normally if they got a  
21 refund -- if the taxpayer a refund, he could collect the  
22 difference between the smaller refund and the larger  
23 refund, but they did not actually receive a check for  
24 that. It was requested to be forward -- that refund  
25 forward to 2018. I don't see that it's forwarded to 2018.

1 And even if it was, the balance due that might be created  
2 if that number was, you know, supposed to be smaller and  
3 they did credit a higher number, it would create a balance  
4 due for 2018, not 2017.

5 So if you account for the payments, there should  
6 be a refund for 2017, not a balance due. And if, you  
7 know, there was a smaller refund, it would affect 2018.  
8 So if you were going to collect something, it would be for  
9 2018, not 2017. And then the start time where interest  
10 would begin would be a year later. So --

11 JUDGE LONG: Thank you. I just want to make sure  
12 that I'm clear with respect to your argument here. I'm  
13 looking at -- right now I'm looking at FTB Exhibit B. I  
14 have that on April 15, 2018, there is a transfer to the  
15 2018 account of \$16,589. Are you saying that then should  
16 have been -- how much are you saying should have been  
17 transferred?

18 MR. GOMEZ: I'm saying on the 2 W-2s that we  
19 submitted, there was withholding one of them for \$28,501,  
20 and the second one, which was that additional income,  
21 \$7,841. So that would total \$36,342. According to FTB,  
22 the revised balance due was \$32,314. So that means  
23 there's a refund there. In addition, there was an  
24 estimated payment of \$5,803 which would increase the  
25 refund.

1           Now, I understand on the original return the  
2           refund was higher than what this revised number would be,  
3           but it's still a refund. So there would be nothing due in  
4           2017. And they did not receive that refund check from  
5           2017. It was rolled over to 2018. So if there is a  
6           difference in what that number should be, smaller, and  
7           they applied the higher number, then yes, it could create  
8           a balance due in 2018. But no one has presented anything  
9           about 2018 right now. So the 2017 should be a refund.  
10          For 2018, possibly there is a balance due, but there's  
11          nothing showing.

12           JUDGE LONG: Okay. Thank you.

13           Before we close our hearing today, I just want to  
14          check with my Co-Panelists.

15           Judge Hosey, do you have any final questions?

16           JUDGE HOSEY: No questions from me. Thank you  
17          both for your presentations.

18           JUDGE LONG: And, Judge Lambert, do you have any  
19          final questions?

20           JUDGE LAMBERT: This is Judge Lambert. I don't  
21          have any final questions. Thanks.

22           JUDGE LONG: Thank you.

23           Okay. Thank you everyone.

24           We're ready to conclude this hearing. This case  
25          is submitted on Thursday, August 22nd, 2024. The record

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is now closed.

I want to thank everyone for making their presentations today.

The Judges will meet and decide your case later on, and we'll send you a written opinion of our decision within 100 days after the record is closed.

Today's hearing in the Appeal of Nouri is now adjourned, and this concludes today's hearings.

Thank you.

(Proceedings adjourned at 11:18 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 16th day of September, 2024.

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