

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
M. RIVERS and L. RIVERS, ) OTA NO. 230312840  
 )  
 )  
 APPELLANTS. )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, August 15, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:45 a.m. and concluding at 10:22 a.m. on  
Thursday, August 15, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ EDDY Y. H. LAM  
ALJ TERESA STANLEY

For the Appellant: M. RIVERS  
L. RIVERS

For the Respondent: STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
  
PAIGE CHANG  
MARIA BROSTERHOUS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-10 were received into evidence at page 5.)

(Department's Exhibits A-V were received into evidence at page 5.)

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California; Thursday, August 15, 2024

9:45 a.m.

JUDGE LEUNG: We're on the record.

Today is August 15th, 2024, approximately 9:45 in the morning. OTA case number 23012840, the Appeal of Rivers concerning the 2015, 2016, 2017 taxable years.

Prior to this hearing, during a prehearing conference and a little bit afterwards, the parties agreed to the following:

Number One, to conduct this hearing virtually.

Number Two, that the issue to be decided is whether the claims for refund for 2015, 2016, and 2017 were timely.

Number Three, exhibits submitted by both, parties, namely for the Appellant's, Exhibit 1 through 10, and for the Respondent, Exhibits A through V, as in Victor, are all admitted into evidence.

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

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

JUDGE LEUNG: This hearing is being live streamed. So everyone please be aware of that when discussing personal matters.

1           Before we begin, I would ask the parties to state  
2 their appearances, beginning with Lieutenant Rivers.

3           LIEUTENANT RIVERS: Yes. My name is Leslie  
4 Rivers, retired lieutenant from the City of Long Beach.

5           JUDGE LEUNG: Welcome.

6           Mr. Rivers.

7           LEFT two: I'm Mickey Rivers, husband and, I  
8 guess, Co-Appellant for Leslie.

9           JUDGE LEUNG: Yeah. Yeah. Sounds good.  
10 The Franchise Tax Board.

11          MS. CHANG: This is Paige Chang with the  
12 Franchise Tax Board. Good morning.

13          JUDGE LEUNG: Good morning.

14          MS. BROSTERHOUS: Good morning. This is Maria  
15 Brosterhous, also with the Franchise Tax Board.

16          JUDGE LEUNG: Good morning.

17          And with me on the panel today is  
18 Judge Teresa Stanley and Judge Eddy Lam.

19          We are going to -- at least before I let  
20 Lieutenant Rivers begin her presentation, I'm going to ask  
21 Lieutenant and Mr. Rivers to please raise your right  
22 hands, since you'll be witnesses today and please raise  
23 your right hand.

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L. RIVERS,

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

M. RIVERS,

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

JUDGE LEUNG: Okay. You can put your right hands down.

Lieutenant, you can begin your presentation when ready. You have 10 minutes to present. Mr. Rivers has 5 minutes to testify. So please begin when ready.

LIEUTENANT RIVERS: Yes, again, Your Honor, you're -- I don't know if it's my iPad or -- I'm virtually cutting in and out and there's some pictures frozen. So hopefully you can hear me.

JUDGE LEUNG: I can hear you.

LIEUTENANT RIVERS: Yes, I -- you can. Okay. Thank you.

PRESENTATION

LIEUTENANT RIVERS: Thank you, again, for the

1 Office of Tax Appeals for having this process for the  
2 Appellants, taxpayers, to appeal.

3 In my documents, I did present -- it's rather  
4 long -- of the history of what I went through with the  
5 City of Long Beach after retiring with many injuries.  
6 Through that process, I had to appear for several doctor  
7 appearances through that due to several injuries that  
8 included independent medical examiners certified through  
9 the State of California, regular doctors. I did obtain an  
10 attorney. And this started in December. The date I  
11 filed, December 31st, 2014, with the City of Long Beach,  
12 completing almost 31 years in the system -- of the CalPERS  
13 System, the retirement system.

14 Through this, as I said, going through the many  
15 different doctors there were several that were certified  
16 orthopedic surgeons that concluded that I could not  
17 continue service in my regular job occupation. I was not  
18 capable of doing that. That is when the criteria that the  
19 state of Workers' Comp requires that you cannot continue  
20 for, if it's 12 months or longer.

21 So -- and I'm trying to make this short because  
22 it's pretty redundant of all the pages that have been  
23 submitted to show my timeline.

24 So the pension system that I belong to, and  
25 including December when I first retired, had sent several



1 letters to the City stating they needed a response, their  
2 decision, whether they accepted or denied my application  
3 of retirement. There was no response. And in the  
4 documents I presented, obviously, they had to discontinue.  
5 The City did not answer. That is one tactic that the City  
6 has employed. And it's not only with me, but with several  
7 retired and currently to this day.

8 So we're now in 2016, and per my attorney I had  
9 to file another application for retirement. Those  
10 documents are in my evidence, and that was January of  
11 2016. So that's a year -- a year and a month that -- or  
12 2014, '15, yes -- a year and a month that, again, I had to  
13 wait. So I could not file amended taxes, obviously,  
14 because there was no decision. So this process continued  
15 going on and on and on. During this time, all these  
16 years, my husband and I have filed our regular taxes,  
17 sometimes early. Most of the times early, and I don't  
18 believe we were ever late.

19 As I had not -- I did not receive a decision on  
20 my disability. The City responded sometime in 20 -- late  
21 2016 to start going through doctors again to determine  
22 disability. This is a long process. And, again, my  
23 documents of evidence, I -- I -- there's quite a few  
24 pages -- have determined on the doctors that I was  
25 incapable of returning to my job in that capacity,

1 including one of their independent medical examiner who is  
2 certified by the State; so orthopedic surgeon.

3 Again, moving fast forward through this whole  
4 time of seven-and-a-half years until I had the response  
5 from the City, there was a virtual meeting of May. During  
6 all this time, the City continued to delay, reschedule for  
7 whatever reason, several doctor's appointments, hearings,  
8 Worker's Comp hearings. So again, you can see I had no  
9 control over this to file timely amended taxes because I  
10 had no decision. So in April of 2022, I believe, we  
11 finally had a virtual meeting. And luckily one of the  
12 independent medical examiners was available who was one of  
13 the ones that the City had agreed to and my attorney, to  
14 make this determination. It was the same one I had seen  
15 three -- three appointments prior since 2014.

16 He appeared in person. He determined, yes, I'm  
17 incapable. And after a lengthy virtual, the meeting was  
18 cut off, and about a week-and-a-half later received the  
19 call I was awarded that disability, and this was in May of  
20 2022; two weeks after the virtual. So, again, I filed  
21 December 2014, going through all the administrative  
22 process that I'm supposed to, cooperating, traveling to  
23 these doctor appointments. And finally, you see how long  
24 it took, and then not to mention COVID.

25 COVID kind of strained the system, and that was

1 all court systems, at least for Workers' Comp. I don't  
2 know about criminal or civil. I do know COVID delayed any  
3 type of appearance for the Workers' Comp hearing judge to  
4 hear my case, even in virtual. And that was about six  
5 months, I was told by my attorney. So by the time that  
6 went, again, you know, this was -- this was prior to the  
7 April -- May 22 decision. Out of my hands. Out of my  
8 control. I could not file anything. I couldn't even  
9 guess what to file they're all waiting for this.

10 So in May of 2022, I was finally granted the  
11 disability. I immediately got a hold of our tax person  
12 and did the amended taxes to file that. And that was on  
13 record from the State of OTA. And within a few months,  
14 basically got the ball rolling and was able to receive  
15 those that I could have, which was four years prior. And  
16 I'd like to note, even up to that April 22nd meeting,  
17 virtual meeting, that the City, again, tried to delay --  
18 delay the meetings for whatever reason. Again, I was  
19 ready and available.

20 Pretty much that sums up that whole process.  
21 Basically, it's delays by the City that I had no control  
22 of. We had no control of. I appeared as supposed to with  
23 no excuses. So come time to filing the appeal or the  
24 amended taxes for '15, '16, and '17, I did receive -- we  
25 did receive. We filed jointly. -- it was past the time

1 limit. Which I understand, because in normal  
2 circumstances that would be the case. As you could see,  
3 we had no information at all to file any amended taxes  
4 until April -- or May of 2022.

5 Here I am today. Here we are today trying to  
6 file for this. CalPERS has retro -- decided retroactively  
7 to award the disability -- industrial disability back to  
8 December 14th. So all -- any type of payments of refunds  
9 or claims is actually part of my retirement industrial  
10 medical disability that was basically owed to me by the  
11 City. It's not a case of two years that this was settled.  
12 It had been two years. We wouldn't be here today. We've  
13 been, you know, four years -- past four years. We  
14 wouldn't be here today.

15 So I appreciate your time, and I hope -- I hope  
16 that kind of clarified. I knew I had a lot of documents  
17 here. This is all I can present as my timeline of delay  
18 and -- which was basically and virtually out of my hands.  
19 Thank you.

20 JUDGE LEUNG: Thank you, Lieutenant.

21 Questions for Lieutenant Rivers from the  
22 Franchise Tax Board.

23 MS. CHANG: No questions. Thank you.

24 JUDGE LEUNG: Judge Stanley, any questions for  
25 Lieutenant Rivers?

1 JUDGE STANLEY: Thank you. I do not have  
2 questions at this time.

3 JUDGE LEUNG: Okay. Judge Lam, any questions for  
4 Lieutenant Rivers?

5 JUDGE LAM: No questions at this moment. Thank  
6 you.

7 JUDGE LEUNG: Okay. I'll hold my questions until  
8 Mr. Rivers testifies.

9 Lieutenant, do you plan to have Mr. Rivers  
10 testify?

11 LIEUTENANT RIVERS: Yes, I do Your Honor.

12 JUDGE LEUNG: Okay. Go right ahead.

13

14 WITNESS TESTIMONY

15 MR. RIVERS: Good morning, everybody.

16 You know, I -- I pretty much can't say anymore --  
17 anything better than what my wife has mentioned, but I do  
18 have a couple of points I'd like to throw out.

19 You know, again, in the beginning when she filed  
20 her retirement pending medical, I was actually there when  
21 she did it, and she put a big X in the box. And then two  
22 years later, basically, the City of Long Beach came back  
23 and called her a liar, and she had to resubmit that  
24 application. And then miraculously they found it, and  
25 went, oh. So that's a two-year delay that we didn't

1 have -- we had no control over.

2 But I was kind of appalled at the fact that here  
3 you got an employee whose 20 -- almost 30 years with the  
4 City, and they basically called her a liar; and turned out  
5 she didn't lie. You know, when she decided to retire,  
6 it's not that she went, oh, you know, I had enough. It's  
7 time to move on. No. She spent most of her time in the  
8 field. And I want to make this one quick comment.

9 When she got hired as a police officer -- this  
10 was the argument for the City in trying to -- partially  
11 why they were trying to delay awarding her is once she  
12 promoted, you know, she went to school and promoted up as  
13 a Sergeant and then Lieutenant -- you know, she spent most  
14 of her career out in the field, and that's why -- that's  
15 why she got hurt. She didn't have one or two injuries.  
16 She had quite a few. And I was kind of surprised when the  
17 City in her appeal for her medical retirement, they  
18 filed -- they -- they had a list of all her injuries, and  
19 she had quite a few, and she has.

20 I mean, she was a female motor officer. The  
21 first and only female motor officer in the history of the  
22 Department, and they've been around over 100 years. And  
23 some of the other injuries, including her back, her knees,  
24 what-have-you -- but I found it kind of surprising they  
25 left out the most important -- and as a husband -- the

1 most important significant injury that most people  
2 don't -- they kind of forgot, but my wife got shot on the  
3 job.

4 Her and her partner were ambushed by some  
5 gangsters and they shot at her police car with an AK47.  
6 And luckily my wife was only 5'4" because a bullet grazed  
7 the top of her head. And yet, she still came back and  
8 went to work. So even though she was -- she started out  
9 first and foremost as a police officer, she also promoted  
10 as a sergeant, as a supervisor, and lieutenant, she was  
11 still out in the field doing police work because that was  
12 her responsibility. She's still a Lieutenant but a police  
13 officer in doing her job.

14 And, you know, the City continued to delay and  
15 delay. We filed our taxes in timely manner, and they did  
16 everything they could. You know, it's kind of like they  
17 want to wear you down. And we know not it's not the State  
18 of California's fault. But we also know in every  
19 organization, you know, and even in the Civil Code, Penal  
20 Code, you do have laws. But are they enforced in the  
21 spirit of the law or the letter of the law? We know there  
22 are exceptions. When a police officer stops somebody for  
23 speeding, do you have to write them a citation? No. You  
24 have that discretion, and that where the spirit of the law  
25 comes in.

1           You know, it wasn't that anything we did on  
2           purpose, you know, to admit trying to hide something.  
3           We've always been law abiding and, you know, we pay our  
4           taxes on time. And, you know, we've both served our  
5           community. We both worked for the police department. I  
6           left early, you know, and took another job. But, you  
7           know, it's just -- but my wife has been through a lot, you  
8           know. Even some of the IME doctors that they had to go  
9           to. You know, they made her drive like 30, 40 miles just  
10          to go see a doctor, you know, because they want to wear  
11          you down. And that's how the City is.

12                 And I know it has nothing to do with the state  
13          or, you know, the court system. But, you know, when you  
14          add that, along with COVID and other delays, you know,  
15          they did what they could to wear her down, and luckily she  
16          had the fortitude, you know. And I -- I look back at the  
17          day when she got shot. You know, she was a fighter. She  
18          fought then, and she continues to fight. She's a strong  
19          woman. And, you know, I realized a lot of things that she  
20          does around here, it's because she's a strong individual,  
21          and I wouldn't have anybody else by my side but my wife.

22                 Thank you.

23                 JUDGE LEUNG: Thank you, Mr. Rivers.

24                 Any questions from the Franchise Tax Board for  
25          Mr. Rivers?



1 MS. CHANG: No questions. Thank you.

2 JUDGE LEUNG: Thank you.

3 Judge Stanley?

4 JUDGE STANLEY: I don't have questions. Thank  
5 you for your presentations.

6 MR. RIVERS: Thank you.

7 JUDGE LEUNG: Judge Lam?

8 JUDGE LAM: No questions. Thank you.

9 JUDGE LEUNG: Okay. I'm going to let the  
10 Franchise Tax Board make their presentation first, and  
11 then I will have questions at the end.

12 Ms. Chang.

13 MS. CHANG: Thank you.

14

15 PRESENTATION

16 MS. CHANG: Good morning. My name is Paige  
17 Chang, along with my co-counsel Maria Brosterhous  
18 representing the Franchise Tax Board.

19 The issue on appeal is whether Appellants timely  
20 filed their claims for refund for the 2015, 2016, and 2017  
21 tax years prior to the expiration of the statute of  
22 limitations. The statute of limitations prohibits  
23 Respondent from crediting or refunding an over payment  
24 when a claim for refund is not filed within four years of  
25 the due date of the return, within four years from the

1 date the return was filed, if it was filed within the  
2 extension period, or within one year from the date of  
3 overpayment, whichever is later. The statute of  
4 limitations does not have a reasonable cause exception.  
5 In a statute of limitations claim for refund, the taxpayer  
6 has the burden of proof.

7 Here in this case, Appellants explained that  
8 Appellant Leslie Rivers claimed Industrial Disability  
9 Retirement in 2014. However, due to delays and a lengthy  
10 dispute with her employer, she did not receive the  
11 determination of Industrial Disability Retirement until  
12 2022. In October of 2022, Appellants filed their amended  
13 tax returns for 2015, '16, and '17, which FTB treated as  
14 Appellants' claim for refund for each of their respective  
15 tax years. Appellants' amended tax returns reflected the  
16 Industrial Disability Retirement, such that the Industrial  
17 Disability payments were excluded from income as Workers'  
18 Compensation, which resulted in a credit of withholding  
19 payments on each tax year 2015, 2016, and 2017. However,  
20 payments made by withholding are deemed paid on the due  
21 date of the return.

22 Further, Appellants did not file a protective  
23 claim to protect the timeliness of their claims for  
24 refund. Therefore, Appellants filed their claims for  
25 refund after the expiration of both the one-year statute

1 of limitations and the four-year statute of limitations.

2 In addition, at the prehearing conference, OTA  
3 requested a response to the issue of whether claims for  
4 refund were filed with the IRS and, if so, what the  
5 outcome was? For tax year 2015, Appellants' account  
6 transcript does not reflect a claim for refund. For tax  
7 year 2016, the account transcript shows that the IRS  
8 denied a claim in 2023. And for the 2017 tax year, the  
9 account transcript shows that the IRS also denied a claim  
10 in 2023.

11 Based on the foregoing, Respondent's denial of  
12 Appellants' claims for refund was proper under the statute  
13 of limitations, and FTB's position should be sustained.

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

15 JUDGE LEUNG: Thank you, Ms. Chang.

16 Judge Stanley, any questions for the Franchise  
17 Tax Board?

18 JUDGE STANLEY: I do not have questions for the  
19 Franchise Tax Board. Thank you.

20 JUDGE LEUNG: You're welcome.

21 Judge Lam, any questions for the Franchise Tax  
22 Board?

23 JUDGE LAM: No questions at this time. Thank  
24 you.

25 JUDGE LEUNG: Okay. Thank you.

1           Lieutenant, you have five minutes to make any  
2 closing arguments or closing remarks.

3           Okay. Lieutenant, can you hear me?

4           LIEUTENANT RIVERS: Your Honor, I'm -- you're  
5 cutting -- yeah. Your Honor, you're cutting in and out  
6 again. All I heard was closing remarks.

7           JUDGE LEUNG: Yes. Do you have any? You have  
8 five minutes for closing, remarks, if you have any.

9           LIEUTENANT RIVERS: Yes, I just have -- I wanted  
10 to point out just a couple of things really quick. Hello.

11          JUDGE LEUNG: Yeah. I -- I'm not sure who's  
12 cutting out, but you -- we lost you for maybe a few  
13 seconds.

14          LIEUTENANT RIVERS: Yeah. I -- maybe it's the  
15 internet. I don't know.

16          JUDGE LEUNG: Yeah.

17          LIEUTENANT RIVERS: I do have -- I do have a  
18 couple of statements. I'm -- everybody is frozen on my  
19 screen. I don't hear anybody.

20          JUDGE LEUNG: I can hear you perfectly well right  
21 now, but you were about to say something. Right before  
22 that, you were having some sort of a -- what do you call  
23 those things when they are -- buffering issues.

24          LIEUTENANT RIVERS: Buffering. Yes. I do -- I  
25 do have a couple of statements.

1 JUDGE STANLEY: Lieutenant. Lieutenant, I'm  
2 sorry to interrupt, but --

3 LIEUTENANT RIVERS: Yeah.

4 JUDGE STANLEY: -- I think it's your computer  
5 because everybody else is clear, and you keep freezing.  
6 If you turn off your camera, you might be able to -- to  
7 speak better and have more bandwidth for speaking. Do you  
8 want to try that?

9 LIEUTENANT RIVERS: Okay. I'll do that. I'll do  
10 that.

11 JUDGE LEUNG: Thank you, Judge Stanley.

12 LIEUTENANT RIVERS: Thank you. Okay. So my --  
13 is this better?

14 JUDGE LEUNG: It's sounding good.

15 And we just lost her.

16 LIEUTENANT RIVERS: Still cutting out. Can you  
17 hear me, Judge?

18 JUDGE LEUNG: Yes. And we just lost her.

19 LIEUTENANT RIVERS: You can hear me?

20 JUDGE LEUNG: I can hear you now.

21 LIEUTENANT RIVERS: Okay. I'm just going to make  
22 a couple of quick closing statements. May -- may I go  
23 now?

24 JUDGE LEUNG: Yes.

25 ///



1           LIEUTENANT RIVERS:  I -- I -- it's really quick.

2           I appreciate this for the process again.  I do  
3 understand there are black and white rules.  We do  
4 understand.  This is an extenuating circumstance that was  
5 out of our control, as you can see my timeline.  Had this  
6 been within the four years, obviously, we wouldn't be in  
7 this position.  But I do want to make a point that the --  
8 the term "protection of claim" was never brought up to us  
9 by the City of Long Beach.  We had no knowledge of it in  
10 layman terms.  We don't go through the tax rules and stuff  
11 as we file.  We gather our taxes, and we -- we give them  
12 to our CPA, our accountant.

13           In this case, extenuating circumstances obviously  
14 prevented us from filing amended taxes as a decision was  
15 not made until 2022.  So us not even having the knowledge  
16 or even know what that was, going year to year thinking  
17 the next year would go, the next year would be it.  The  
18 next year -- here we are seven-and-a-half years later is  
19 when I was awarded that.  So I don't know how a regular  
20 layperson would know that, unless somebody of that  
21 occupation would advise us, which that did not.

22           So pretty much that's it.  There's -- I  
23 understand the rules.  I understand the rules of evidence.  
24 But, again, we were -- I was going year to year to finding  
25 thinking that this would be settled.  Had we known that,

1 obviously, we would have done that. We're very timely in  
2 all our documents and such and organized.

3 So basically that's it, and I thank you.

4 JUDGE LEUNG: Thank you, Lieutenant Rivers.

5 Judge Stanley, any questions for either party?

6 JUDGE STANLEY: No. Thank you. Not at this  
7 time.

8 JUDGE LEUNG: Thank you.

9 Judge Lam, any questions?

10 JUDGE LAM: No questions. Thank you.

11 JUDGE LEUNG: Okay. I do have some questions.  
12 I'll go first to the Franchise Tax Board.

13 Ms. Chang, you mentioned protective claim. So  
14 how would that have worked in this particular case?

15 MS. CHANG: Thank you. Generally, a protective  
16 claim can be filed by filing an amended return, and you  
17 can write or put a label at the top just saying  
18 "protective claim." And that would allow you to wait for  
19 any pending decisions that effect the tax return.

20 Thank you.

21 JUDGE LEUNG: So the taxpayer would file, I  
22 guess, a 540X, and then put down protective claim. Then  
23 they would have to explain why they're filing that claim.  
24 Is that the gist of it?

25 MS. CHANG: Yes, that's correct. Yes, that's



1 correct.

2 Thank you.

3 JUDGE LEUNG: Okay. Lieutenant, the Franchise  
4 Tax Board's account transcripts indicate IRS refund claims  
5 for 2017, 2016, but it doesn't tell us what those refund  
6 claims were. So were those refund claims to get the --  
7 get your disability pay, get the refund for that? Or was  
8 it for some other purpose?

9 LIEUTENANT RIVERS: No. That was -- that was  
10 done in 2022. That was refunds for the claims on  
11 disability.

12 JUDGE LEUNG: Okay. And the IRS denied you; is  
13 that correct?

14 LIEUTENANT RIVERS: Correct. Correct.

15 JUDGE LEUNG: So what happened to 2015? Did you  
16 did not file a claim for 2015?

17 LIEUTENANT RIVERS: No. We did file our regular  
18 taxes '15, '16, and '17, but having no knowledge of a  
19 protective claim at all. So we continued the years filing  
20 our regular taxes. And it wasn't --

21 JUDGE LEUNG: I --

22 LIEUTENANT RIVERS: Sorry. It wasn't until the  
23 amended -- amended -- the decision came out in 2022 that  
24 we went back to file for the claim of Industrial  
25 Disability.

1 JUDGE LEUNG: I was wondering. You filed the IRS  
2 refund claim for 2016, 2017, but there's nothing in the  
3 transcript that says you filed a refund claim with the IRS  
4 for 2015.

5 LIEUTENANT RIVERS: There -- for a regular tax  
6 claim there is. There is 2015, '16, and '17. And I  
7 believe Ms. Chang has submitted that maybe, the  
8 transcript. There is '15, '16, and '17, and we also filed  
9 '15, '16, and '17, regular -- regular tax refund.

10 JUDGE LEUNG: Interesting because her Exhibit T,  
11 as in Tom, shows no -- nothing filed -- no refund claims  
12 filed after 2022 for 2015 year. So you might want to  
13 double check with the IRS to see what happened with that  
14 refund claim.

15 Now, the process, I understand you started -- you  
16 filed for retirement in 2014 with the City. Tell me about  
17 how that works with CalPERS? I mean, CalPERS is the one  
18 who decided that, okay, we're going to give you amended  
19 1099s to make all these changes. So is it -- does CalPERS  
20 rely on the City to present all the documents? How does  
21 that work.

22 LIEUTENANT RIVERS: So from what -- my  
23 understanding, obviously, I-- Im over at CalPERS. But the  
24 pension system, they have a process, a due process. And  
25 that's in any type of disability or any type of claim with

1 the City. Since it's funded by -- the retirement is  
2 refunded by CalPERS paid by the City -- half-and-half, is  
3 what I understand -- its once you file for retirement or  
4 slash Industrial.

5 I actually, with my family, went to the City of  
6 Orange here in California, to personally file that to  
7 ensure that this process isn't disturbed. Which, in fact,  
8 it was because the City never said -- they stamp it.  
9 They send my exhibits, you know Industrial within a -- I  
10 think it was the 14th I filed -- December 14th of 2014. I  
11 don't have my paper with me. December 18th there's two  
12 letters that were sent by CalPERS that sent it to the City  
13 of Long Beach. They know we've received the Industrial  
14 Disability. You have six months to respond.

15 CalPERS cannot do anything without until the City  
16 determining the Industrial Disability. So it went on and  
17 on and then saying they never received, I never filed it,  
18 when, in fact, I had the stamped paper from CalPERS.  
19 Again, a delay tactic. Then I had to refile. So from  
20 there, the same process. They sent letters, and it took  
21 quite -- quite a few months for the City to basically up  
22 and acknowledge that I'm filing for Industrial.

23 And there's nothing -- there's nothing on the  
24 City at that time because there's a process that has to be  
25 determined by medical examiners, state-certified

1 orthopedic surgeons of the Workers' Comp system that's  
2 agreed by both parties. Basically CalPERS waits on the  
3 City. They can't make the determination on their own. So  
4 that's the process.

5 JUDGE LEUNG: So when did CalPERS ask for a  
6 ruling from the IRS? There's some mention in the letter  
7 from CalPERS that they -- they got some ruling from the  
8 IRS that said, yes, this qualifies. So when did CalPERS  
9 begin that process?

10 LIEUTENANT RIVERS: That -- so the -- they're  
11 quoting, if I believe -- again, I don't have my paper in  
12 front of me because I'm in a different room. Once --  
13 you're -- you're speaking of when -- when it was awarded  
14 and accepted, the industrial disability?

15 JUDGE LEUNG: Well, we know that. You -- you  
16 testified about when the City finally said, yes, you  
17 qualify. I'm wondering when CalPERS -- well, somebody  
18 wrote to the IRS and asked them for a ruling according to  
19 that CalPERS letter. And I'm curious as to when that  
20 request to the IRS was made.

21 LIEUTENANT RIVERS: I -- I'm a little confused on  
22 that. I'm not sure that Cal -- I don't know their  
23 procedure if they do, in fact, do that. I know they  
24 quoted some sections of IRS in the determination of an  
25 Industrial Disability. And I believe there's a section in

1 the Tax Code for Industrial Disability. And I, again, you  
2 know, I read all through this after fighting this, that  
3 CalPERS did state its retroactive to my retirement date,  
4 December 14th. I -- I can't answer for CalPERS  
5 administratively if they contact the IRS.

6 I know I did speak with a tax person there, and  
7 he went through the numbers and said, yes, you need to  
8 file amended taxes. But here, I have to compute the  
9 correct -- if you're going to file an amended for '15,  
10 '16, '17, all the way through '22. Here -- here's what  
11 this should be. This is what should have been done had  
12 you been awarded your Industrial Disability in December of  
13 2014. So me personally, I can't speak for them if  
14 administratively if they contact IRS, personally. I -- I  
15 don't think so. I think they're used to these procedures  
16 that -- and what they have to do.

17 So, obviously, and that wasn't done until I was  
18 awarded in May of 2020. So all through that before I  
19 filed in October of '22, these prior years, I was still  
20 waiting from them. So I know one of their letters did say  
21 the IRS requires something. So, obviously, their -- they  
22 detail with a daily basis with them because CalPERS is a  
23 rather large retirement pension system.

24 JUDGE LEUNG: Yes. When you filed your 2015,  
25 2016, 2017 tax returns, you did that through a CPA?

1           LIEUTENANT RIVERS: Correct. Our tax person,  
2           yes.

3           JUDGE LEUNG: And did you inform that CPA that  
4           you're going through this battle with the City to get your  
5           disability approved?

6           LIEUTENANT RIVERS: We did. Yes, sir, we did.

7           JUDGE LEUNG: Okay. I assume you're not  
8           appealing the 2018, 2019, 2020 years. You've got those  
9           refund claims approved.

10          LIEUTENANT RIVERS: Correct, because I believe  
11          the State goes back four years. So I was able to retrieve  
12          that.

13          JUDGE LEUNG: Okay. Thank you, Lieutenant.  
14          Back to Franchise Tax Board.

15          Ms. Chang, am I reading those transcripts, T, U,  
16          and V, correctly that T shows nothing regarding a refund  
17          claim for that year with the IRS?

18          MS. CHANG: Yes, that's correct. It looks like  
19          after the 2022 year, there is not another claim.

20          JUDGE LEUNG: Okay. That's all my questions.  
21          I'll go one more time to my colleagues.

22          Judge Stanley, anything?

23          JUDGE STANLEY: No questions. Thank you.

24          JUDGE LEUNG: Okay. Judge Lam, anything?

25          JUDGE LAM: Also no questions. Thank you.

1 JUDGE LEUNG: Okay. That will conclude our  
2 hearing for today. I'm going to close the record.

3 I want to thank everybody for appearing today. I  
4 apologize for technical difficulties. OTA and this Panel  
5 will strive to get a decision out to everybody within 100  
6 days. Again, the transcript, when finished, will appear  
7 on our web page. And again, this hearing will come to a  
8 close.

9 Thank you everybody and the next --

10 LIEUTENANT RIVERS: Your Honor.

11 JUDGE LEUNG: Yes, Lieutenant.

12 LIEUTENANT RIVERS: I'm sorry. I think my  
13 husband, if he's allowed, wanted to clear up something on  
14 my last -- on the 2015 statement. I don't know if you  
15 would allow that.

16 JUDGE LEUNG: Sure. I'll open it up for  
17 Mr. Rivers.

18 What would you like to testify to, sir?

19

20 CLOSING STATEMENT

21 MR. RIVERS: Actually one question. The -- you  
22 mentioned the 540X --

23 JUDGE LEUNG: Yes.

24 MR. RIVERS: -- state form, which I'm not aware  
25 of. But it looks, if I'm correct, that's the California

1 explanation of amended return change, is that correct --

2 JUDGE LEUNG: Well --

3 MR. RIVERS: -- according to the Franchise Tax  
4 Board?

5 JUDGE LEUNG: Well, a 540X is what you would file  
6 as a claim for refund.

7 MR. RIVERS: Correct.

8 JUDGE LEUNG: So your 540 is your original  
9 return. If you want to amend that return and change  
10 whatever to whatever you want to change to, you would file  
11 a 540X.

12 MR. RIVERS: All right. Well, the question I  
13 had, my concern was that the protection of claim, there's  
14 actually no official form that is a protection of claim  
15 that somebody in my wife's position would have filled out  
16 in order to make it a protection of claim. She would to  
17 have had to physically -- or her tax person, if he had  
18 knowledge -- would have had to write that information on  
19 top of that the form to submit. Is that your  
20 understanding, Your Honor?

21 JUDGE LEUNG: I'll let the Franchise Tax Board  
22 answer that.

23 Ms. Chang, what form, if any, can a taxpayer file  
24 for a protective claim?

25 MS. CHANG: The taxpayer can use the form 540X



1 that's used for amended returns, yes, and write or label  
2 "protective claim" at the top.

3 JUDGE LEUNG: Mr. Rivers.

4 MR. RIVERS: Yeah. And I guess that would be the  
5 concern I have. Because I guess, you know, it's -- it's  
6 a -- like most organizations, they have a standard form in  
7 which is -- to me if they had one that said "protection of  
8 a claim", then maybe that would have more -- more  
9 understanding on our part and would have been something we  
10 might have been able to research. But it seems like it's  
11 kind of like you're just throwing an audible out there and  
12 said, oh, well, you've got to file this, the 540X but just  
13 write on top, you know, "protection of claim."

14 And I think, you know, because that's not a  
15 standard form and maybe that's where there's some  
16 ambiguity as far as the, you know, the citizens are  
17 concerned. Because it seems to be, kind of, a one off.  
18 It's not something that appears to be, you know, oh,  
19 here's the form. Because I know you can go on the  
20 state -- Franchise Tax Board, and they have all those  
21 forms. And I'll bet -- I'm kind of challenging myself.  
22 But I bet I won't find one that says "protection of  
23 claim", that it's something that has to be written in  
24 after the fact.

25 And that's all I'm saying, Your Honor.

1           JUDGE LEUNG: Well, that's a good point. But  
2 like you said, it's an audible. So somebody watching the  
3 game on television may not understand what the audible  
4 means, but people within that game would know it. And I  
5 would assume most tax preparers would know what a  
6 protective claim is.

7           MR. RIVERS: Yeah. And, unfortunately, you know,  
8 you think dealing with CalPERS, dealing with a CPA, and  
9 lawyers, somebody would know, but nobody ever mentioned  
10 that. And it's like I said, it's something you have to  
11 write in, which kind of, you know, probably -- to me as a  
12 lay person, kind of questions a little bit, but -- but I  
13 understand.

14           Thank you, Your Honor. I appreciate your time.

15           JUDGE LEUNG: Thank you for your point.

16           So, yes, the record is closed.

17           Everybody have a great day.

18           (Proceedings adjourned at 10:22 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 September, 2024.

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