

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. MOOK and L. MOOK,) OTA NO. 230413157
)
)
 APPELLANTS.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, August 14, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:04 p.m. and concluding at 1:19 p.m. on
Wednesday, August 14, 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 CHERYL AKIN
ALJ TERESA STANLEY

For the Appellant: M. MOOK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
TRISTEN THALHUBER
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 6.)

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

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

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| By Mr. Thalhuber | 8 |

C L O S I N G S T A T E M E N T

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California; Wednesday, August 14, 2024

1:04 p.m.

JUDGE KLETTER: Let's go ahead and go on the record.

I would like for the parties to please each identify yourself by stating your name for the record, beginning with Appellant. So if you can just go ahead and state your name --

MR. MOOK: Michael Mook.

JUDGE KLETTER: -- for the record.

MR. MOOK: Michael Mook. And feel free to call me -- if it's appropriate, you can call me Michael.

JUDGE KLETTER: Oh, thank you.

And for Franchise Tax Board.

MR. THALHUBER: Yes. My name is Tristen Thalhuber. With me is Cynthia Kent on behalf of Franchise Tax Board.

JUDGE KLETTER: Great. Thank you.

And the issue that we are deciding today is whether Appellants have established reasonable cause to abate the late-payment penalty for the 2021 tax year.

With respect to the evidentiary record, FTB provided Exhibits A through H, and Appellants did not object to those exhibits. Therefore, those exhibits are

1 entered into the record.

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

4 JUDGE KLETTER: With respect to Appellants
5 exhibits, they provided Exhibit 1, and Franchise Tax Board
6 did not object to the admissibility of those exhibits.
7 And, therefore, those exhibits -- or sorry -- that
8 Exhibit 1 is entered into the record.

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

11 JUDGE KLETTER: Now, as a reminder, for today we
12 are scheduled for about 25 minutes, 10 minutes for
13 Appellants' presentation, 10 minutes for Franchise Tax
14 Board's presentation, and 5 minutes for Appellants to
15 provide a closing statement or rebuttal to anything that
16 Franchise Tax Board brought up during their presentation.

17 So with that being said, Michael, I'll swear you
18 in for your testimony and for your presentations. So if
19 you could just please raise your right hand.

20

21 M. MOOK,

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

25 ///

1 money was paid late, but the penalty is -- is so onerous
2 that, obviously, it's meant as a deterrent. But it seems
3 that amount and given the situation, this seems like an
4 appropriate case for abatement.

5 So that -- that's really the point of this.

6 JUDGE KLETTER: This is Judge Kletter. Thank you
7 for that.

8 I will now turn it over to Franchise Tax Board,
9 and they'll be able to present their argument.

10 Mr. Thalhuber, are you ready to begin?

11 MR. THALHUBER: Yes, I am. Thank you,
12 Judge Kletter.

13

14 PRESENTATION

15 MR. THALHUBER: Again, this is Tristen Thalhuber
16 on behalf of Franchise Tax Board.

17 The issue in this appeal is whether Appellants
18 have established that their late payment of tax is due to
19 reasonable cause. Because Appellants did not timely pay
20 their tax for the 2021 tax year by the April 2022
21 deadline, the Franchise Tax Board properly imposed a
22 late-payment penalty. When the Franchise Tax Board
23 imposes a penalty, the law presumes the penalty is
24 correctly imposed, and the Appellants bear the burden of
25 proving that the failure to timely pay their tax was due

1 to reasonable cause. Unsupported assertions are never
2 sufficient to satisfy that burden of proof.

3 Here, Appellants have not met their burden.
4 Appellants do not contest whether the late-payment penalty
5 was properly imposed or computed but, rather, assert that
6 reasonable cause exist to abate the penalty. Appellants
7 argue that they were unable to timely pay their 2021 tax
8 due to a lack of information from their passive
9 partnership interest as to their California source income.
10 They indicated that the partnerships did not provide them
11 with enough information at the time their California tax
12 payment was due, and that they did not have access to the
13 books or records of the partnerships.

14 Appellants' argument concerning their lack of
15 relevant tax information does not establish that their
16 failure to timely pay was due to reasonable cause. In its
17 precedential opinion in the Appeal of Harry J. Moren, the
18 Office of Tax Appeals weighed heavily the taxpayer's
19 efforts to acquire the information necessary to determine
20 the tax liability associated with the distribution from
21 the estate and directly stated, an assertion that records
22 were difficult to obtain without any substantiation of
23 efforts made to retrieve those records or otherwise
24 showing that they were unobtainable, is insufficient to
25 show reasonable cause.

1 To establish reasonable cause, a taxpayer must
2 show that he or she could not have acquired the
3 information necessary to make an estimate of their tax
4 liability. Here, however, while Appellants claim that the
5 partnerships failed to provide them with timely relevant
6 tax information, Appellants have not explained or provided
7 any evidence regarding what steps they undertook prior to
8 the due date of the tax to obtain the information, or to
9 ascertain their tax liability.

10 Moreover, Appellants have not provided any
11 explanation as to what prevented them to make timely
12 payment of their tax based on a reasonably accurate
13 estimate of their tax liability. Appellants have not
14 established that their failure to timely pay their tax was
15 due to reasonable cause. And as such, they have not
16 established entitlement to abatement of the late-payment
17 penalty. Therefore, Franchise Tax Board respectfully
18 requests you sustain its position.

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

20 JUDGE KLETTER: Thank you, Mr. Thalhuber. I just
21 wanted to confirm with you, since Appellants were sworn
22 in, do you have any questions for them or no?

23 MR. THALHUBER: I do not. Thank you.

24 JUDGE KLETTER: Okay. Thank you.

25 Now, I'm going to turn it over to my Panel to ask

1 any questions that they might have.

2 Judge Stanley, do you have any questions for
3 either of the parties?

4 JUDGE STANLEY: Yes. Thank you.

5 Mr. Mook, do you know when you received the K-1s?

6 MR. MOOK: I don't have that in front of me. As
7 I said, I do know, because I stated in the letter, I was
8 sick during this period, and it's possible that I missed
9 something. We're -- we're -- again, I appreciate
10 Tristen's explanation and everything. And he's very
11 correct legal-wise, but I don't remember. And I -- I
12 think the key here is that if I knew I owed the money, the
13 money would have been paid. So, obviously, there was a
14 mistake. Either, my head wasn't clear; my accountant
15 wasn't clear. Something went wrong, because I've been
16 taxes to California and to the federal government for
17 probably about 30 years, and -- and I'm never late.

18 I'm not late because the idea is I owe the money,
19 and I pay the money. I do this every year. I'm working
20 on my estimates for the coming year. It's a full-time
21 job. So I don't know. So, again, we're not debating --
22 we're not trying to make this into a giant legal argument.
23 We're making this into a mistake was made, and if there's
24 no latitude for an honest mistake and that's the way the
25 penalty works and that's just how it is, then as I said,

1 I'll lose my case.

2 But the answer is I try my best to always pay my
3 taxes. This was not about me not having me the money.
4 This wasn't about me not wanting to pay the money. It's
5 just due to circumstances at that moment, either because I
6 was sick and didn't realize something was miscommunicated,
7 I did not end up paying what was owed at that moment.

8 JUDGE STANLEY: Okay. And I'm just trying to --

9 MR. MOOK: Keep in mind -- I'm sorry to interrupt
10 you, Judge. This is two -- well, this is over two years.
11 So, unfortunately, I'm trying to tell you the best I can
12 based on my memory.

13 JUDGE STANLEY: Okay. And I'm just trying to
14 ascertain, just like Mr. Thalhuber said, what steps you
15 took and when you figured it out and how close to when you
16 figured out that you owed the money and you made the
17 payment. So if you don't have any explanation for that --

18 MR. MOOK: Well, I can give you -- I can give you
19 a rough explanation that -- well, let me check one -- if
20 you give me one second, I'd like to look at one document.
21 So just bear with me one second, please. Thank you.

22 So what I can tell -- I mean, again, based on my
23 memory or based on my typical pattern, probably after
24 April at some point. Because it was missed or a mistake,
25 it would have been picked up when my final return was

1 filed, call it late September. Because all these -- all
2 my returns are always on extension. So somewhere during
3 that period, the information would have been brought to my
4 attention by my accountant. Again, she's not responsible.
5 I ultimately am the taxpayer, and I would have paid it
6 with the final -- final tax return that was sent in.

7 The odds are I probably didn't talk to her in
8 between that much. So somewhere between April and --
9 well, September there's not a lot of communication. So
10 for argument sake, I'm guessing this was paid around
11 September. And at that point, it wasn't until -- that
12 would have been September of '22. It wasn't until
13 February 23rd that I received the letter regarding the
14 penalty. So it's already been paid, but then I received
15 the letter on February 23rd that I was, I guess, being
16 penalized.

17 JUDGE STANLEY: Okay. Thank you, Mr. Mook. I
18 don't have additional questions at this point.

19 JUDGE KLETTER: This is Judge Kletter. I also
20 wanted to ask Judge Akin if there were any questions that
21 you had for either of the parties.

22 JUDGE AKIN: Thank you, Judge Kletter.
23 Judge Stanley covered the questions I was going to ask.
24 So no additional questions from me at this time. Thank
25 you.

1 JUDGE KLETTER: Okay. And I do not have any
2 questions myself. So that means we'll move into
3 Appellants' closing statement and rebuttal.

4 So, Michael, if you want to make a final
5 statement or rebuttal to anything that Mr. Thalhuber said
6 you --

7 MR. MOOK: No. I think I --

8 JUDGE KLETTER: -- have 5 minutes.

9

10 CLOSING STATEMENT

11 MR. MOOK: I think we've stated everything. I
12 think it's all pretty clear. I mean -- yea. I've
13 explained the situation, you know. There's nothing more I
14 can add at this point. I mean, again, I'll just
15 reiterate. I guess I'm reiterating the same thing that --
16 that, again, there was no fault, not bad actor, all the
17 same thing I said, and don't need to waste anymore of the
18 group's time. I think we can leave it at that.

19 JUDGE KLETTER: Okay. Well, I appreciate the
20 parties' time today and your explanations. With that,
21 this concludes this hearing.

22 The Panel will meet and decide the case based on
23 the documents and also the testimony that was presented
24 today. We will issue our written decision no later than
25 100 days from today. The case is submitted, and the

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record is now closed, and this concludes this hearing.

Thank you.

(Proceedings adjourned at 1:19 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 29th day of August, 2024.

ERNALYN M. ALONZO
HEARING REPORTER