

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
PEAR, LLC, ) OTA NO. 240315652  
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 )  
 APPELLANT. )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, August 21, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 10:15 a.m. and concluding at 10:37 a.m. on  
Wednesday, August 21, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Administrative Law Judge:       TERESA STANLEY

For the Appellant:               MATTHEW ROBERTS

For the Respondent:              STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

LEOANGELO CRISTOBAL  
MARIA BROSTERHOUS

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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-H were received into evidence at page 7.)

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

	<u>P A G E</u>
By Mr. Roberts	8
By Mr. Cristobal	11

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California; Wednesday, August 21, 2024

10:15 a.m.

JUDGE STANLEY: Let's go on the record.

This is the matter of the Appeal of Pear, LLC, OTA Case Number 24031562. The date is August 21st, 2024, and the time is 10:15 a.m. Again, I am Judge Teresa Stanley who will be the single judge hearing this appeal under the procedures of Office of Tax Appeals Small Case Program.

I'm going to ask the parties to identify themselves for the record and who they represent, if anyone, starting with Appellant.

Mr. Roberts?

MS. ROBERTS: I'm sorry. You said the pilot?

JUDGE STANLEY: Appellant. I'm sorry.

MS. ROBERTS: Got it. Sorry. Yeah. My name is Matthew Roberts. I started Pear, LLC.

JUDGE STANLEY: Okay. And Franchise Tax Board.

MR. CRISTOBAL: Good morning. This is Leo Cristobal representing Respondent Franchise Tax Board.

JUDGE STANLEY: Ms. Brosterhous you have -- we could barely any noise, any sound coming from your mic.

MS. BROSTERHOUS: Okay. Let me -- is this a little better?

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JUDGE STANLEY: Yes.

MS. BROSTERHOUS: Okay.

JUDGE STANLEY: Okay. What Ms. Brosterhous said was her own name, Maria Brosterhous, for the record.

So the issue today -- excuse me. The issue today, as stated in the Minutes and Orders, are whether Appellant has established reasonable cause to abate the late-filing penalties for taxable years 2019 and 2020; and whether Appellant has established reasonable cause to abate the late-payment penalty for taxable year 2021.

Mr. Roberts, do you agree that that's the issue?

MS. ROBERTS: Yes.

JUDGE STANLEY: And Mr. Cristobal.

MR. CRISTOBAL: Yes. This is Lee Cristobal. I agree those are the issues.

JUDGE STANLEY: This is Judge Stanley speaking again. Thank you.

For exhibits, Appellant submitted Exhibits 1 through 3, which includes denials of claims for refund for the three taxable years at issue. The Franchise Tax Board did not object to those exhibits, and they are admitted into evidence.

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

JUDGE STANLEY: The Franchise Tax Board submitted

1 Exhibits A through H. Appellant did not object to those  
2 exhibits, and those exhibits are also admitted into  
3 evidence.

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

6 JUDGE STANLEY: So we're going to begin with the  
7 Appellant's presentation, and I need to place Mr. Roberts  
8 under oath so that we can consider any statements he makes  
9 as evidence in this matter. Witnesses remain under oath  
10 until the close of the hearing.

11 So, Mr. Roberts, I'm going to ask you to raise  
12 your right hand, please.

13

14

M. ROBERTS,

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

18

19 JUDGE STANLEY: Thank you. You requested -- this  
20 is Judge Stanley speaking.

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Mr. Roberts, you requested 5 minutes at the  
prehearing conference, and I believe I said I would give  
you 10 minutes but did not include that in my Minutes and  
Orders. You may take up to 10 minutes, if you need to do  
so. So you can proceed when you're ready.

1 MS. ROBERTS: Okay. Thank you very much,  
2 Judge Stanley.

3

4 PRESENTATION

5 MR. ROBERTS: This is Matthew Roberts speaking.

6 So, yeah. So we started Pear, LLC. We were  
7 under the impression that we didn't have to file tax  
8 returns unless we made over a certain amount, \$10,000 per  
9 year or turned a profit. We never did either of those  
10 things. We ran Pear, which stands for Positive Engagement  
11 and Response, more like a nonprofit than a business, as we  
12 donated our time to elementary schools, junior high  
13 schools, prisons, mental health facilities, to share our  
14 new positive-based card game.

15 We created the LLC to legitimize us so that we  
16 could work with schools and mental health companies, which  
17 we donated a dollar from each sale of our box of cards to  
18 Mental Health America, American Foundation for Suicide  
19 Prevention, and other charitable organizations. And we  
20 paid the --

21 THE STENOGRAPHER: Mr. Matthews -- I'm sorry.  
22 Mr. Roberts, may I please slow you down just a little bit.

23 MS. ROBERTS: Yes. Sorry.

24 THE STENOGRAPHER: Thank you.

25 MR. ROBERTS: This is Mathew Roberts speaking



1 again. So yeah, we paid the \$800 yearly fee in California  
2 to keep it in good standing each and every year in which  
3 we operated, which was around 2017 to about 2020. When  
4 COVID hit, it impacted our ability to go into these  
5 facilities. So we did not pursue this any further. When  
6 we decided to shut down Pear is when we found out that we  
7 need close our LLC. So we hired somebody to come in and  
8 file the necessary paperwork.

9 This is when we then went to close our bank  
10 accounts with Chase, which is when we saw the C-O-A-L,  
11 COAL Levy for the amount of \$3,110.27. This was on  
12 June 15th of 2023. This was a shock to us as we'd never  
13 received any sort of documentation or notice from the  
14 Franchise Tax Board and, therefore, had no idea that we  
15 were late or had outstanding penalty fees.

16 JUDGE STANLEY: Mr. Roberts. I'm sorry to  
17 interrupt. You sped up an again. So just please slow  
18 down a little.

19 MS. ROBERTS: Okay. Would you like me to go back  
20 a little bit?

21 JUDGE STANLEY: No. The Stenographer is  
22 indicating that she did catch what you said.

23 MS. ROBERTS: Okay. Thank you. Again, this is  
24 Matthew Roberts speaking.

25 So yeah, we had never received documentation or

1 notice from the Franchise Tax Board, so we did not know  
2 that we had late or outstanding fees. We then filed a  
3 request for an abatement of the penalty, which was in the  
4 tens and thousands of dollars for the tax years of 2019,  
5 2020, 2021. We also had a similar issue with the IRS when  
6 we had found out and started to close the accounts down,  
7 in which we sent back a very similar story or request  
8 mentioning of the lack of understanding of about filing,  
9 as well as the lack of notices that were sent to the  
10 parties involved, myself and two cofounders, in which they  
11 then waived the late fees and the incurring interest for  
12 Pear.

13 This \$3,110 was, again, taken from the COAL Levy  
14 from our bank account. And this was essentially our break  
15 even project with Pear that, again, was a passion project  
16 to really, you know, better society through helping the  
17 youth communicate stronger and sharing this with the  
18 education system and mental health programs of our  
19 communities in Northern California.

20 I guess that is essentially the story in what  
21 we're hoping to receive back. I don't have anything else  
22 further to share.

23 JUDGE STANLEY: This is Judge Stanley speaking.  
24 Thank you, Mr. Roberts.

25 Mr. Cristobal, does the Franchise Tax Board have

1 any questions for Mr. Roberts?

2 MR. CRISTOBAL: This is Leo Cristobal. The  
3 Franchise Tax Board does not have any questions at this  
4 time.

5 JUDGE STANLEY: Okay. This is Judge Stanley  
6 speaking. I do not have any questions for Mr. Roberts at  
7 this time either. So we're going to move to the Franchise  
8 Tax Board and their presentation.

9 Mr. Cristobal, you requested 10 minutes, and you  
10 may proceed when ready.

11 MR. CRISTOBAL: Thanks, Judge Stanley.

12

13 PRESENTATION

14 MR. CRISTOBAL: Good morning. My name is Leo  
15 Cristobal, and I represent Respondent Franchise Tax Board.

16 This appeal involves the per-partner late-filing  
17 penalty and the late-payment penalty. As has been  
18 mentioned, the issues being considered are Appellant not  
19 meeting its burden of proof to show reasonable cause for  
20 filing its 2019 and 2020 tax returns late; and Appellant  
21 not meeting its burden of proof to show reasonable cause  
22 for making it's 2021 tax payment late. Appellant is an  
23 LLC. Appellant filed its 2019 return 21 months after the  
24 due date, filed its 2020 return 13 months after the due  
25 date, and paid its tax due for to 2021, 27 months after

1 the due date.

2 When an LLC fails to timely file its return, FTB  
3 is required to impose a per-member late-filing penalty.  
4 And when an LLC fails to timely pay its tax, FTB is  
5 required to impose a late-payment penalty. When FTB  
6 imposes these penalties, the law presumes the penalties  
7 were imposed correctly. To overcome this presumption,  
8 California law requires the taxpayer to establish that its  
9 failure to file or pay timely was due to reasonable cause  
10 and not due to willful neglect. And you know, ultimately,  
11 the taxpayer has the burden of proof to show that  
12 reasonable cause exists, and unsupported assertions are  
13 not sufficient to satisfy a taxpayer's burden of proof.

14 So here, Appellant contends in its briefings  
15 that, you know, partly due to the COVID-19 pandemic  
16 disrupting its operations that, you know, that it was  
17 unaware it had a filing obligation until it decided to  
18 close. Importantly, even if a taxpayer is unaware of a  
19 filing a requirement, it is well-established law that  
20 ignorance of the law is not an excuse for failing to file  
21 a timely return.

22 Additionally, to date, Appellant has not provided  
23 evidence showing that, despite its own best efforts, it  
24 was prevented from meeting its tax compliance deadlines.  
25 Other than generally citing to the pandemic and submitting

1 that it was unaware it had tax compliance requirements to  
2 begin with, Appellant has not demonstrated diligent  
3 actions or attempts to comply across the 2713 [sic] and  
4 27-month stretches that span between Appellant's deadline  
5 to file or pay and the dates Appellant's returns or  
6 payment were actually filed or paid.

7 Appellant contends, you know, it immediately  
8 attempted to come into compliance once it became aware of  
9 its tax obligations. Unfortunately, although a good-faith  
10 attempt to remedy, compliance issues may lend credibility  
11 to a taxpayer's assertions. Good faith alone does not  
12 establish ordinary business care and prudence. Therefore,  
13 the evidence remains insufficient to demonstrate that  
14 Appellant exercised the kind of care and prudence required  
15 to find reasonable cause.

16 In conclusion, because Appellant has not met its  
17 burden of proof and has not established that its failure  
18 to file and timely pay were due to reasonable cause,  
19 Appellant is not entitled to penalty abatement under the  
20 law. Accordingly, the FTB's action denying the refund  
21 claim should be sustained.

22 Thank you, and I'm happy to answer any questions  
23 you may have.

24 JUDGE STANLEY: This is Judge Stanley speaking.  
25 I do not have any questions, Mr. Cristobal.

1 I'm going to turn it back to Mr. Roberts to have  
2 the final say and to rebut anything the Franchise Tax  
3 Board may have said, if he chooses to do so.

4 MS. ROBERTS: This is Matthew Roberts speaking.  
5 I do not have any questions for Mr. Cristobal.

6 JUDGE STANLEY: If you have any responses to  
7 anything he said, you can make those responses and have  
8 the final say.

9 MS. ROBERTS: I don't -- this is Matthew Roberts  
10 speaking. I believe I don't have any responses. That is  
11 essentially the story. I guess the one question would be  
12 what is the difference between the forgiveness for the  
13 explanation from the IRS compared to the lack of from the  
14 California Franchise Tax Board?

15 JUDGE STANLEY: Well, let me -- this is  
16 Judge Stanley speaking. Let me ask you a question,  
17 Mr. Roberts. We do not have anything in our file that  
18 reflects abatement of any IRS penalty. Are you saying  
19 that the IRS did abate the penalty for Pear, LLC.

20 MS. ROBERTS: Yes, for the -- this is Matthew  
21 Roberts speaking. Yes, for the tax years of 2019, 2020,  
22 2021, when we found out the information of needing to file  
23 because of looking into our bank accounts and the COAL  
24 Levy. We had submitted similar abatement documentation to  
25 the IRS as we did to the California Franchise Tax Board.

1 The IRS ones were forgiven. The California Franchise Tax  
2 Board's were not, which is why we're speaking.

3 JUDGE STANLEY: This is Judge Stanley speaking.  
4 Do you have anything that shows the basis for that  
5 abatement?

6 MS. ROBERTS: This is Matthew Roberts speaking.  
7 By that question, do you mean do I have documentation from  
8 the IRS saying that it is cleared?

9 JUDGE STANLEY: This is Judge Stanley speaking.  
10 Yes, do you have that documentation? Do you have a letter  
11 from them or anything that would show the reason for the  
12 abatement?

13 MS. ROBERTS: This is Matthew Roberts speaking.  
14 Yes, I do.

15 JUDGE STANLEY: This is Judge Stanley speaking.  
16 Would you like me to hold the record open so that you can  
17 submit that for consideration?

18 MS. ROBERTS: This is Matthew Roberts speaking.  
19 If possible, yes.

20 JUDGE STANLEY: Okay. This is Judge Stanley  
21 speaking.

22 Mr. Cristobal, do you have any objection to  
23 holding the record open to obtain documentation regarding  
24 the IRS abatement?

25 MR. CRISTOBAL: This is Leo Cristobal. No

1 objection.

2 JUDGE STANLEY: This is Judge Stanley speaking.  
3 Mr. Cristobal, also, would the Franchise Tax Board have  
4 access to a transcript that would show the reason for the  
5 abatement?

6 MR. CRISTOBAL: This is Leo Cristobal. Franchise  
7 Tax Board would typically have access to that information.  
8 Also, I think at this point we would -- since we're  
9 talking about it, I would ask if Mr. Roberts is able to  
10 share what the reason is indicated on the -- obviously, we  
11 would have to wait for the actual record, but if  
12 Mr. Roberts want to share what the reason, if any, is  
13 indicated on the letter from the IRS.

14 MS. ROBERTS: This is Matthew Roberts.

15 JUDGE STANLEY: Okay. Go ahead, Mr. Roberts.

16 MS. ROBERTS: This is Matthew Roberts.

17 Apologies, Judge Stanley.

18 The -- so it's my impression it was essentially  
19 negligence of similar to the conversation here, but I  
20 don't want to speak exactly for. It's in a file cabinet  
21 that I'd go look through.

22 JUDGE STANLEY: Okay. I think what I will do in  
23 this case is hold the record open so that Mr. Roberts can  
24 submit what he has, and then I'll allow 30 days after  
25 that's received for the Franchise Tax Board to respond to



1       whatever Mr. Roberts submits.

2               How long do you think, Mr. Roberts, you would  
3       need to get any documentation to us? There would at least  
4       three for the three different tax years, I assume.

5               MS. ROBERTS: This is Matthew Roberts. I can  
6       send that over within the next few hours.

7               JUDGE STANLEY: Okay. Well, why don't I give you  
8       two weeks just to give you a time cushion, and Franchise  
9       Tax Board's 30 days would just start from whenever we  
10      acknowledge receipt of your documentation.

11              MS. ROBERTS: This is --

12              JUDGE STANLEY: Okay. Mr. Roberts, do you have  
13      anything further to present?

14              MS. ROBERTS: This is Matthew Roberts speaking.  
15      The only question is how to submit. I'm not sure if  
16      that's something that we'll follow up with. But yeah, I  
17      can submit it as early by the end of today.

18              JUDGE STANLEY: If you -- this is Judge Stanley  
19      speaking. If you look at your Minutes and Orders, we have  
20      all the different ways to submit documentation to us  
21      listed in those Minutes and Orders. So we have an email  
22      address, a mailing address, a fax number. So however you  
23      choose to do that. You can get all the information from  
24      the Minutes and Orders.

25              MR. ROBERTS: Thank you.

1           JUDGE STANLEY: Okay. I want to say first of all  
2 I missed an important part of my statement -- my opening  
3 statement that it is I think is important for Mr. Roberts  
4 and for the public who views this to understand that the  
5 Office of Tax Appeals is not a court. It's an independent  
6 agency that is not in any way affiliated with the  
7 Franchise Tax Board or any other tax agency. OTA is  
8 staffed with tax experts.

9           The only information that can be considered is  
10 what is included in OTS's record. So that is why I'm  
11 requesting the additional documentation since it was  
12 brought up and deserves consideration in the -- before the  
13 final opinion comes out. So we will hold the record open  
14 for two weeks and allow Mr. Roberts to submit the  
15 additional evidence, and then the Franchise Tax Board will  
16 have 30 days after that to file a response. And, at that  
17 point, the record will be closed, and you'll receive a  
18 letter indicating that the record is now closed. Within  
19 100 days of closing the record, the Office of Tax Appeals  
20 will issue a written opinion.

21           Today's hearing in the Appeal of Pear, LLC, it is  
22 now concluded, and this is the last hearing of the today.

23           So the hearing is adjourned. Thank you all for  
24 participating and enjoy the rest of your day.

25           (Proceedings adjourned at 10:37 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