

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. ADAMYAN,) OTA NO. 230713953
) 230914357
)
 APPELLANT.)
)
 _____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, September 10, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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S. ADAMYAN,) OTA NO. 230713953
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Transcript of Proceedings, taken
at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing
at 2:59 p.m. and concluding at 4:12 p.m.
on Tuesday, September 10, 2024, reported
by Ernaly M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: H.O. KIMBERLY WILSON
ALJ EDDY Y. H. LAM

For the Appellant: S. ADAMYAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
ERIC BROWN
JACKIE ZUMAETA

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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.)

(Appellant's Exhibits 4-5 were received into evidence at page 12.)

(Department's Exhibits A-J were received into evidence at page 13.)

OPENING STATEMENT

	<u>PAGE</u>
By Ms. Adamyan	14
By Mr. Brown	34

CLOSING STATEMENT

	<u>PAGE</u>
By Ms. Adamyan	38

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Cerritos, California; Tuesday, September 10, 2024

2:59 p.m.

JUDGE STANLEY: We'll go on the record in the Appeals of Adamyan, Case Number 230713953. The date is September 10th, 2024. The time is 2:59 p.m., and we're in Cerritos, California.

Once again, I'm Judge Teresa Stanley, and with me is Hearing Officer Kim Wilson and Judge Eddy Lam.

Please identify yourselves and who you represent, and I'm going to start with the Appellant.

MS. ADAMYAN: Susan Adamyan. I represent myself.

JUDGE STANLEY: Thank you.

And Franchise Tax Board.

MR. BROWN: Eric Brown, California Franchise Tax Board.

MS. ZUMAETA: Jackie Zumaeta, Franchise Tax Board.

JUDGE STANLEY: Thank you.

Just some preliminary matters, the Office of Tax Appeals is independent of the California Franchise Tax Board and any other tax agency. We are not a court, but we are an independent appeals agency that is staffed with its own tax experts. The only evidence that we have in the Office of Tax Appeals record is what was submitted by

1 the parties in this appeal. These proceedings will be
2 live streamed and will be posted on OTA's YouTube channel.
3 So be careful not to share personal information.

4 The issues, as we discussed at the prehearing
5 conference, are whether Appellant has established error in
6 the Franchise Tax Board's denial of claims for refund for
7 taxable years 2020, 2021, and 2022. And the second issue
8 is whether the Office of Tax Appeals should impose a
9 frivolous appeal penalty.

10 Ms. Adamyan, do you agree that those are the
11 issues here today?

12 MS. ADAMYAN: Yes.

13 JUDGE STANLEY: And Mr. Brown?

14 MR. BROWN: Yes.

15 JUDGE STANLEY: Okay. For exhibits, prior to the
16 prehearing conference, Appellant submitted an amended
17 California resident income tax return in substitute forms
18 W-2, which would be Form 3525 for the three taxable years
19 at issue, which OTA marked as Exhibit 1 for taxable year
20 2020, Exhibit 2 for taxable year 2021, and Exhibit 3 for
21 taxable year 2022. Franchise Tax Board did not object and
22 those exhibits are admitted into evidence.

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

25 JUDGE STANLEY: Since the prehearing conference,

1 Appellant has submitted objections to Respondent's opening
2 brief on August 21st, 2024, and the same title document
3 here today.

4 Ms. Adamyan, are they the same? Is that the same
5 packet of documents?

6 MS. ADAMYAN: It has very slight changes because
7 I wanted it to stay within my timeline. So majority of
8 it, it is exactly the same. Very few highlights that I
9 have to adjust, again, to stay within my timeline that I
10 was given.

11 JUDGE STANLEY: Okay.

12 JUDGE LAM: This is Judge Lam speaking. Ms.
13 Adamyan, can you speak closer to the microphone. I can't
14 really hear you. Thank you.

15 MS. ADAMYAN: Can you hear me now?

16 JUDGE LAM: Yes.

17 MS. ADAMYAN: Okay. Thank you.

18 JUDGE STANLEY. Okay. So you just left some
19 things out of the second packet that were in the original
20 one in order to save time?

21 MS. ADAMYAN: I actually made sure that I'm more
22 in line just not to have too much, you know, outside.
23 I -- I just stayed focused to the main points, and I
24 adjusted my time, like I said, to stay within 45 minutes.
25 With that, I had additional information since the time

1 that I send my -- send in my first copy. I also added
2 that portion that I, you know, received additional
3 information.

4 JUDGE STANLEY: Can you identify which portion
5 that would be?

6 MS. ADAMYAN: Yes. That portion is under Number
7 5 where it says, "Respondent's Position." This is where
8 I -- Appellant's position. This is where I had additional
9 information I brought to your attention from IRS, just
10 FYI.

11 JUDGE STANLEY: So that's on page 2?

12 MS. ADAMYAN: On page 4. Page 4 on the bottom
13 section.

14 JUDGE STANLEY: Okay. And the things that you
15 added here are just your -- it looks like they're just
16 your arguments against -- that Franchise Tax Board is
17 saying; is that correct?

18 MS. ADAMYAN: It -- it does, you know, matter to
19 this case. And since that information came to me later
20 on, I thought it was important to bring it to your
21 attention.

22 JUDGE STANLEY: Okay. First, I'm going to turn
23 to Mr. Brown and ask if the Franchise Tax Board has any
24 objections to what was submitted by the deadline in the --
25 noted in the Minutes and Orders or to the -- what is a

1 little bit revised edition of that.

2 MR. BROWN: Well, I -- I do object on behalf of
3 FTB because this is -- really, I didn't -- there aren't
4 any objections in per se to any exhibits that FTB
5 present in -- in its Minutes and Orders and previously in
6 its briefing. This is all really consists of new -- of
7 just argument, and briefing had been closed a long time
8 before this had been submitted.

9 JUDGE STANLEY: So would the Franchise Tax Board
10 object to accepting it as additional argument?

11 MR. BROWN: We haven't had an opportunity to
12 address it, to review it and write -- I mean, to address
13 it if we did have any -- any counter arguments to it.

14 MS. ZUMAETA: Judge Stanley, I think to the
15 extent that OTA wanted to accept that as an additional
16 briefing document, then we would ask for additional time
17 to also be able to provide a reply to that document.

18 JUDGE STANLEY: Can you give me a minute.

19 MS. ADAMYAN: If I may address, it's not an
20 additional document to this case. It's just additional
21 information I did receive from IRS, and I thought it was
22 important just to showcase the information that I
23 received.

24 JUDGE STANLEY: Okay. And what we're talking
25 about is here's -- that when we refer to exhibits, that's

1 the documentary evidence.

2 MS. ADAMYAN: Correct.

3 JUDGE STANLEY: When you get new information from
4 the IRS, those are statements of law, which is argument.
5 So there -- the Franchise Tax Board is concerned about
6 what kind of arguments you're making that are new that
7 they haven't been able to address.

8 MS. ADAMYAN: I'm not making any arguments based
9 on that. It's just simply stating I just received this
10 additional letter. That's all. It's not an argument that
11 I'm presenting, but I will cover all of the FTB's exhibits
12 as we discussed during our prehearing conference.

13 JUDGE STANLEY: Okay. Just one minute. Okay.
14 I'm sorry. I'm having a technical issue. I can't get
15 connected to the internet, so I need to take a five-minute
16 recess.

17 (There is a pause in the proceedings.)

18 JUDGE STANLEY: All right. Let's go back on the
19 record in the Appeals of Adamyan case and -- okay. When
20 Ms. Alonzo is ready. And thank you for your patience.

21 While we were indisposed, we took the time to
22 discuss the proposed additional documentation.

23 And what we'd like to do, Ms. Adamyan, is not
24 accept this last document that you sent us today as
25 evidence here. But you may feel free, in your testimony,

1 to address whatever you want in here. And if you need
2 extra time to do it, we're okay to give you extra time
3 because we don't have a hearing following this one. So
4 you'll be testifying under oath or affirmation. So
5 anything you say can be taken as evidence, if it's
6 testimony as to facts. Okay.

7 MS. ADAMYAN: Okay.

8 JUDGE STANLEY: Do you have any continuing
9 objection, if you can address the Franchise Tax Board's
10 briefing? Do you have any continuing objection to their
11 opening brief, or just the contents of it?

12 MS. ADAMYAN: I would like to address, just like
13 we discussed. I thought that's what I'm here for to
14 address all of their exhibits and to showcase why I do not
15 agree with their statements.

16 JUDGE STANLEY: Okay. Okay. Okay. So we're not
17 going to admit that, but we're going to allow time to
18 address anything that's in this document that you want to
19 address. So when the original document was submitted
20 timely there were three new exhibits attached to the
21 brief, a copy of U.S. Treasury check for taxable year '23,
22 dated, August 26th, 2024. I've marked that as Exhibit 4.
23 And there was a seller's final settlement statement dated,
24 November 25th, 2020, showing real estate withholding of
25 \$17,703 paid to the Franchise Tax Board. I've marked that

1 as Exhibit 5. And there was a one page of an unidentified
2 tax return showing claimed real estate withholding of
3 \$17,703.

4 Mr. Brown, did the Franchise Tax Board receive
5 that document with those attachments?

6 MR. BROWN: We did receive those.

7 JUDGE STANLEY: Okay. And do you object to
8 admitting those into evidence?

9 MR. BROWN: Yes, on grounds that they're not
10 relevant.

11 JUDGE STANLEY: Grounds of irrelevance?

12 MR. BROWN: Correct.

13 JUDGE STANLEY: So in general, I -- without
14 Ms. Adamyan testifying, I don't know that they don't have
15 any relevance. One of the items is related to the IRS,
16 not to the Franchise Tax Board, and is for taxable year
17 outside of the taxable years at issue here, but perhaps
18 she has a way of tying it in. So I'm going to go ahead
19 and accept Exhibits 4, 5 and 6 into evidence. And
20 we'll -- we'll consider them. You know, we'll give them
21 the weight that they deserve if there's relevance to them.

22 (Appellant's Exhibits 4-5 were received
23 in evidence by the Administrative Law Judge.)

24 MR. BROWN: Judge Stanley, may I ask also if
25 there's -- if we would have an opportunity to address

1 these new exhibits in writing, because we haven't had a --
2 we hadn't -- we had seen them before. But, again, the
3 time for briefing had closed by the time we had received
4 these. So I would like to, if they are going to be
5 considered, I'd like to give an opportunity to discuss
6 our -- our points in writing.

7 JUDGE STANLEY: Well, they were submitted by the
8 deadline in the Minutes and Orders, those additional
9 items. And so why don't you reserve that request and see
10 what the testimony is and see if you have a response today
11 or if you really would like additional time.

12 MR. BROWN: Thank you.

13 JUDGE STANLEY: Okay. FTB submitted Exhibits A
14 through J, and Appellant had requested time to file
15 objections, if any, to Franchise Tax Board's exhibits.
16 The document that was submitted does not include
17 objections to Franchise Tax Board's exhibits, so I'm going
18 to admit those into evidence as well.

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

21 JUDGE STANLEY: So today, Ms. Adamyan, you said
22 you were going to testify. Can you please raise your
23 right hand.

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S. ADAMYAN,

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

JUDGE STANLEY: Thank you.

And just to be fair, only people who are testifying as to facts are sworn in as witnesses. Franchise Tax Board is only arguing facts, they're not testifying, so they're not sworn in. Okay. We had initially given you 45 minutes, but as I said today, we're willing to give you more if you need it. So you may proceed when ready.

MS. ADAMYAN: Thank you.

PRESENTATION

MS. ADAMYAN: Statement of facts: May 20th, 2023, I, Susan Adamyan Appellant, submitted an amended return for the year 2020, return 540 Schedule X. I also submitted on May 22nd, 2023, amended return for the year of 2021, 2022, 540 Schedule X. For the purpose of covering all basis, I'm citing both RTC and IRC statutes as Respondent often cites. Also, to address the assertion from FTB that California FTB is not interconnected to the Department of the Treasury Internal Revenue Services, I

1 provide you with the following facts:

2 Fact No. 1, when submitting any California 540
3 tax return, it is determined that a federal 1040 return is
4 required.

5 Fact No. 2, federal adjusted gross income is
6 reflected on Line 13 of the California Form 540. That
7 amount is taken from federal Form 1040, Line 37. If you
8 please see Exhibit A on page 10, Line 13, it clearly
9 states, enter federal adjusted gross income from federal
10 Form 1040. It is impossible to use a different AGI amount
11 on the 540 than the one calculated and used on 1040 or for
12 the same tax year. So as you can see the Franchise Tax
13 Board is undoubtedly interconnected to Internal Revenue
14 Services.

15 Fact No. 3, state wages from the federal -- from
16 your federal. This is given on 540, Line 12, but it's not
17 used in subsequent calculation in determining the final
18 tax due or tax overpayment. Relevant calculations use
19 Line 13 federal AGI.

20 Fact No. 4, as stated in the California Revenue &
21 Taxation Code gross income, adjusted gross income, and
22 taxable income are as defined by IRC section 61, 62, 63.
23 According to California Revenue & Taxation Code 17071,
24 17072, 17073, it states -- if you take a look at Exhibit B
25 on page 11, California code RTC directs to section 61 of

1 the Internal Revenue Code. Same thing goes for 17072(a).
2 Please take a look at Exhibit 12, section C. California
3 Code RTC directs to section 62 of the Internal Revenue
4 Code. Same thing is also true for 17073(a). Please take
5 a look at Exhibit D, page 13. California Code RTC directs
6 to section 63 of the Internal Revenue Code.

7 Fact No. 3, IRS honored my 1040 return for the
8 2023 tax year and has processed a refund. Please take a
9 look at Exhibit E, page 14, the top portion of this
10 exhibit. I included the actual letter I received from IRS
11 that says, "We found an error on your 2023 Form 1040,
12 which effects the following areas of your return. We
13 changed the amount claimed as federal income tax withhold
14 on your tax return." In the highlighted area of the
15 dollar amount, you can clearly see \$7,551 was returned to
16 me, plus interest of \$192.19. The below is the actual
17 copy of the check of \$7,743.19.

18 This on its own should be good enough proof for
19 my case as IRS refunded my overpayment by making zero
20 dollar amount on the Form 1040, Line 37. That means there
21 is no amount to be transferred to California RTC 540,
22 Line 13. However, I will go on to address the
23 Respondent's erroneous exhibits.

24 No. 2, Respondent's position regarding their
25 Exhibit A, Exhibit B, Exhibit C. Respondent pointing to

1 the overpayment via escrow, \$28,380, and Franchise Tax
2 Board's returned portion of it, \$18,847. Appellant's
3 position, I paid \$17,703 in advance withheld from escrow.
4 Please take a look at Exhibit F-1 on page 15. This is the
5 actual escrow document. And on the bottom where I
6 highlighted the withhold -- tax withhold to Franchise Tax
7 Board, \$17,703.

8 On my 2020 tax return later on that year, my
9 total payment were \$28,380. There is still an overpayment
10 of \$9,533 that I have not yet received. Please take a
11 look at Exhibit F-2 on page 16. On Line 48, it shows that
12 I paid \$9,533. On page 73, it shows \$17,703 that escrow
13 sent directly to Franchise Tax Board. And on Line 78, it
14 shows \$28,380 of total payment.

15 I also -- also please see statement of rebuttal
16 that I submitted with my 2020 return to correct
17 incorrectly reported trade or business activities. Please
18 take a look at Exhibit F-3 on page 17, statement to
19 correct incorrectly reported Form 4797, Sell of Business
20 Property. Also please see IRC 1221, Capital Asset Define
21 A in General. Please take a look at Exhibit F-4 on
22 page 18, and I highlight it.

23 No. 3, Respondent's position regarding Exhibit D
24 and I, quote, "On June 13, 2023, Appellant resubmitted the
25 previously submitted amended 2020 California resident

1 income tax return. However, she included other documents
2 with her tax return, including correspondence, as well as
3 selected documents purporting to represent her amended
4 federal income tax return," end quote.

5 Appellant's position, documents of federal
6 amended 2020 return were submitted as per your
7 instructions on Franchise Tax Board website. I presented
8 document to rebut and correct erroneous forms of payments
9 known to have been submitted to IRS and Franchise Tax
10 Board by the parties identified on documents.

11 And the following are what I submitted: Letter
12 of explanation, two pages; Form 540 California Plus
13 Schedule X 2020, 6 pages; original tax return, 11 pages
14 from original tax return explaining all changes made
15 attaching forms and schedules; Form 3525, 1 page to
16 correct incorrectly reported W-2; statement to correct
17 California adjustment resident schedule, no trade or
18 business activities, 1 page; statements from to --
19 statements form to correct incorrectly reported 1099,
20 4 pages; additionally, 2-page copy of federal Form 1040 X;
21 and one federal Form 4852 were attached, including with
22 18 pages of federal original tax return explaining all
23 changes made attaching forms and schedules. Again, I
24 followed the process from Franchise Tax Board's website on
25 how to rebut and correct past tax returns.

1 No. 4, Respondent's position regarding Exhibit E
2 and I, quote, "Appellant's gross income is subject to
3 taxation under Section 17071 and IRC section 61,
4 section 17071 states that IRC Section 61 relating to gross
5 income shall apply unless otherwise specified," end quote.
6 Appellant's position on gross income, RTC 17071 section 61
7 and 26 IRC 3401(c), 7701 Title 26 regarding IRC
8 section 61. It would suffice to show what it cannot mean.
9 The Supreme Court has repeatedly stated that the income
10 tax is not and cannot be an unapportioned direct tax.
11 Please see United States Court versus Union Pacific in
12 1916, Stanton versus Baltic Mining Company in 1916, and
13 Peck versus Lowes in 1918, such that and I, quote, "The
14 income tax is, therefore, not a tax on income as such. It
15 is an excise tax with respect to certain activities and
16 privileges, which is measured by reference to the income
17 which they produce. The income is not the subject of the
18 tax. It is the basis for determining the amount of tax,"
19 end quote.

20 Congressional records proceeding and debates of
21 78th Congress, March 2nd, 1943, to April 5th, 1943. It
22 can be clearly shown that Congress has never meant for the
23 income tax to be a direct tax. Section 61 is derived from
24 the Revenue Act of 1928, which had the benefit of The
25 Classification Act of 1923. The first item listed in

1 section 61 is compensation for services. When the meaning
2 of the term "compensation and services", as well as then
3 "position and employee", and substituted -- are
4 substituted from The Classification Act, compensation for
5 services has virtually identical meaning to wages as
6 defined in IRC section 3401(a) and 3121(a). That is under
7 the principle of ejusdem generis. Please see United
8 States Supreme Court Circuit City Stores versus Adams in
9 2001 and Norfolk and Western Company versus Train
10 Dispatchers in 1991.

11 The following items in section 61 would likewise
12 be inherently restricted to sources of income derived from
13 federal privileges and thus, an excise tax, not a direct
14 tax. As to the items of income I declared on my original
15 return, I had received Form 1099s for the payers or
16 entities. Making those payments, I included those
17 Form 1099s with my return. According to the directions of
18 the use of the Form 1099, this form is only to be used by
19 a trade or business, performing the function of public
20 office. Please see IRC Section 770126.

21 No. 5, Respondent's position regarding Exhibit F,
22 Exhibit G, Exhibit H. And I, quote, "Appellant's attempt
23 at substitution of FTB Form 3525 for her W-2 to reflect
24 zero wages is based on position identified and rejected as
25 frivolous. The term "employee and wages" as used in

1 Internal Revenue Code apply to all employees, unless
2 specifically exempted by the Internal Revenue Code,"
3 quote.

4 Appellant's position, I asked for FTB to honor
5 and stand beyond their own statement above due to, in
6 fact, to the Respondent's point above, the IRS exempted my
7 2023 tax returns and refunded my overpayment stating I did
8 not make wages, income, or taxable income. In addition, I
9 just received a letter from the IRS stating they are in
10 process of correcting my 2020 tax returns, and that I
11 shall be expecting a refund in four to six weeks. As they
12 already refunded my 2023 overpayment and in process of
13 refunding my 2020 overpayment based on the same facts I am
14 providing to you today. I'm certain they will also honor
15 my 2021 and 2022 as the FTB should as well.

16 Since individual does not necessarily mean
17 natural person, and I quote from Black's Dictionary of
18 Law, 2nd edition. As a noun, this term denotes a single
19 person as distinguished from a group of class and also,
20 very commonly, a private or natural person as
21 distinguished from a partnership corporation or
22 association. But it is said that this restrictive
23 signification is not necessarily inherent in the word, and
24 that it may, in proper classes, include artificial
25 persons," again, end quote; Black's Dictionary of Law, 2nd

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edition.

And since Congress must be taken to have made the change deliberately, I, quote, "Where Congress includes particular language in one section of the statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," end quote. Please see United States case Russello versus United States in 1983. Under the doctrine that the 1954 code is itself the law, it must be presumed that natural persons are no longer included when the term "person" is used therein. I am in fact a natural living being. Thus, if the contention that the IRC of 1954 is now the law is allowed to stand and without regards to any other consideration, I am not within the class of any person, either for purpose of the summons authority or any other provision of Internal Revenue or Franchise legislation.

Wages -- oh, one second. I lost one page.
Excuse me. One second.

JUDGE STANLEY: You skipped page 5, if that's what you're looking for.

MS. ADAMYAN: I skipped -- I skipped page 5. I think -- oh, gosh. Okay. Thank you. Sorry about that. My apologies.

Revenue & Taxation Code section 17071, 17072, and

1 others, and per the statutory language behind IRC
2 Section 3401(a), 3401(c), 770110, and others I, quote, "On
3 behalf of the government, it is urged that taxation is a
4 particular matter and concern itself with the substance of
5 the thing upon which the tax is imposed, rather than with
6 legal forms of expression. But the statutes levying
7 taxes, the literal meaning of the word employed is most
8 important, for such statutes are not to be extended by
9 implication beyond the clear import of the language used.
10 If the words are doubtful, the doubt must be resolved
11 against the government and in favor of the taxpayer," end
12 quote. Please see Gould versus Gould, 245 US 151, 153.

13 A term of art is a legal term that is defined in
14 the law itself. Such terms must be -- must be understood
15 in their legal sense and not their dictionary meanings.
16 There are some examples of income tax terms of art:
17 United States, states, U.S. person, wages, employees,
18 employer, trade or business, taxpayer, includes including,
19 and many more. These are some of the ordinary words, but
20 each of those has a specific definition provided within
21 the tax code itself, and which the defense -- differs from
22 the ordinary dictionary meaning. They become legal terms
23 of art.

24 For example, the term "United States," please see
25 Exhibit 19 on -- I mean Exhibit G on page 19. The term

1 "United States," when used in a geographical sense,
2 includes only the state and the District of Columbia.
3 Term "state" -- same exhibit on page 19 -- according to
4 7701(10), and I, quote, "The term 'state' shall be
5 construed to include the District of Columbia." The term
6 "person," Section 19, Section 17021, please see Exhibit H
7 on page 20.

8 2023 California Code, Revenue & Taxation Code,
9 RTC, General Provisions, No. 19, and I, quote, "Person
10 includes any person, firm, partnership, general partner of
11 the partnership, limited liability company, registered
12 liability partnership, foreign limited liability
13 partnership, association, corporation, company, syndicate,
14 estate, trust --

15 JUDGE STANLEY: Ms. Adamyan.

16 MS. ADAMYAN: Yes.

17 JUDGE STANLEY: I'm sorry to stop you. Can you
18 start that No. 19 over because you started talking
19 superfast, and our stenographer can't keep up.

20 MS. ADAMYAN: I'm sorry.

21 No. 19, quote, "Person includes any person, firm,
22 partnership, general partner of a partnership, limited
23 liability company, registered limited liability
24 partnership, foreign limited liability partnership,
25 association, corporation, company, syndicate, estate,

1 trust, business trust, or organization of any kind. As
2 used in Division 2 commencing with Section 6001, person
3 shall include, in addition to the terms of definition
4 contained in the first sentence, trustee, trustee in
5 bankruptcy, receiver, executor, administrator, or
6 assignee.

7 "The term person shall be construed to mean and
8 include an individual, a trust, estate, partnership,
9 association, company, or corporation." This is according
10 to IRC of 1954, 1986 26 IRC, and 7701(a)(1). Since
11 individual does not necessarily mean natural person, and
12 I, quote -- or I think you went through this. Yeah I
13 covered this portion.

14 Term "wages" according to 3401(a) remuneration of
15 any kind, and by any name, including salary, fee, paid to
16 any employee and to others in position in the federal,
17 civil, or military services. The term "employee" 3401(c),
18 please see Exhibit I, page 21. And I, quote, "For purpose
19 of this chapter, the term "employee" includes an officer,
20 employee, or elected official of the United States,
21 estate, or any political subdivision thereof, or the
22 District of Columbia, or any agency or instrumentality of
23 any one or more of the foregoing. The term "employee"
24 also includes an officer of corporation.

25 The term "employer", according to 3401(b), same

1 exhibit, page 21. For the purpose of this chapter, the
2 term "employee" means the person for whom an individual
3 performs or perform any services of whatever nature as the
4 employee of such person except that.

5 Forgive me for one more second. My pages are
6 running away from me today. I apologize.

7 The term "trade or business," according to 26 IRC
8 7701, please take a look at Exhibit J, page 22. And I,
9 quote, "The term 'trade or business' includes the
10 performance of the functions of a public office." The
11 term "taxpayer," according to RTC 17004, please take a
12 look at Exhibit K, page 43. Quote, "Taxpayer includes any
13 individual, fiduciary, estate, or trust subject to any tax
14 imposed by this part or any partnership." The term
15 "includes and including," according to Black's Law
16 Dictionary, 6th edition. Please take a look at Exhibit L,
17 page 24. In light of the basic legal principle of Black's
18 Law Dictionary, page 763, the inclusion of one is the
19 exclusion of another. The certain destination of one
20 person is an absolute exclusion of all others. This
21 doctrine decrees that where law expressly describes a
22 particular situation to which it shall apply, an
23 irrefutable inference must be drawn that what is omitted
24 or excluded was intended to be omitted or excluded.

25 No. 6, Respondent's position regarding Exhibit G,

1 Exhibit H, and I, quote, "Universal Media" -- I mean, "NBC
2 Universal Media LLC indicated that its business is
3 entertainment. Accordingly, Appellant's argument that
4 neither she nor her employer is engaged in a trade or
5 business within the meaning of the federal or California
6 law," end quote.

7 Appellant's position, No. 1, that is correct.
8 NBC Universal Media is an entertainment company, and, in
9 fact, no way is connected to federal or any government
10 entity or in any trade or business within the meaning of
11 federal or California law.

12 No. 2, in fact, we are under a strict regulation.
13 I must take a mandatory anticorruption annual test and
14 swear under oath that I am not connected or engaged with
15 any government office or entity. Please see Exhibit M,
16 pages 25, 26, 27, 28, and I will address them all
17 separately regarding mandatory compliance training. If
18 you take a look at page 25, the top portion is an email
19 that I received from my management on compliance training;
20 and it states, "As a company this mandatory training is a
21 must for all to complete."

22 The bottom portion I just included because the
23 whole -- the entire training was two-hour long. I just
24 bring you some examples of two highlighted areas of risk.
25 If Kate is working with a government official, that is

1 absolutely no-no for us. If Kate is working with a
2 consultant and the consultant happens to be working with
3 the government official, again, that is absolutely against
4 the compliance training ruling.

5 On page 26, here's another example. Kate is
6 being asked to offer an internship to return -- I mean, to
7 return for a meeting -- in return for a meeting with a
8 government official, what should Kate do? If we happen to
9 answer option No. 1, which states, Kate should agree to
10 give the government official's nephew a company internship
11 because it's not considered a bribe if no cash is paid.
12 That is absolutely against our compliance.

13 If we happen to answer No. 2, which states Kate
14 should agree to give the government official's nephew a
15 company internship out of respect for the other country's
16 cultural norms, again, that would be against our
17 compliance. Number three is the only option that is
18 correct. Kate should report the government official's
19 request and the consultant's advice to the compliance
20 professional in her legal department and ask for help on
21 how to proceed.

22 After two hours of training and many information
23 given to us at the end, we are provided with this to be
24 specific what qualifies government official, as well as
25 what qualifies government entity. Under government

1 official: No. 1, any elected, appointed or nominated
2 officer or official; No. 2, declare candidate for public
3 office; no. 3, officer, employee, or other person acting
4 as a representative of any government entity; no. 4,
5 representative of judicial body; No. 5, royal family.

6 Under government entity, any government agency,
7 department, board instrumentally, or commission, including
8 judicial authority; No. 2, any government owned or
9 government controlled entity; No. 3, government
10 association, organization, or businesses; No. 4, public
11 international organizations; No. 5, political parties. If
12 after all this we're still not sure, we are asked -- ask
13 compliance if you are unsure of anyone if they are
14 government official or government entity.

15 And page 28, this is a portion of a consent form
16 with my testimony I have to submit that I'm not connected
17 to any government agency. And one area that I
18 highlighted, "Are you currently a government employee, or
19 elected or appointed public official, or a candidate for a
20 national state or local public office? Or have you been
21 nominated by a government official to hold position of any
22 kind?" The definition of public office is interpreted
23 broadly and includes, but not limited to, school boards,
24 local government, counsels, and all other governmental
25 offices and positions.

1 The legal fact of the matter is that if the
2 enterprise that I -- hired me has no connection to the
3 federal government in some privileged way, and if other of
4 my earnings also have no connection to the federal
5 government, then I'm not obligated by law to pay any
6 tax -- I mean, to pay tax no matter how much I'm earning.
7 The basic law of the land holds your private property as
8 sacrosanct, and the most important property right you have
9 is to determine for yourself who you are and what you are.
10 That encompasses the right to sell your labor in order to
11 make a living. No one can tax you for doing that. That's
12 because you own yourself and have an unbridged right to
13 enter or not into a contract.

14 No. 3, regarding third-party W-2 information
15 return form. In determining that my W-2 private sector
16 payments, the Form 3525 I presented to rebut and correct
17 an erroneous amounts originally shown as income, I
18 mistakenly reported the private sector pay I received in
19 2020, 2021, 2022 as income from taxable federal activities
20 as defined, as stated above by applicable tax law when, in
21 fact, it was not. None of the payments I received were
22 connected in any way to a trade or business federal or
23 federally connected, or otherwise constitute capital gain,
24 profit, or income within the meaning of relevant law.

25 If the information return W-2 filed by a third

1 party to the relationship between the Franchise Tax Board
2 and the taxpayer, which reported income as that third
3 party believes it to be, the IRC makes it clear that a
4 form W-2 is not the final word or what a taxpayer's
5 taxable income is as provided in 26 USC 6201(d). And I,
6 quote, "In any court proceedings, if a taxpayer asserts a
7 reasonable dispute with respect to any item of income
8 report -- reported on -- reported on an information return
9 field with the Secretary under subpart (b) or(c), or part
10 three of subchapter (a) of Chapter 61 by a third party,
11 and the taxpayer has fully cooperated with the Secretary,
12 including providing, within a reasonable period of time,
13 access to and inspection of all witnesses, information,
14 and documents within the control of the taxpayer's
15 responsibly requested by the Secretary. Then the
16 Secretary shall have the burden of producing reasonable --
17 reasonable and probative information concerning such
18 deficiency, in addition to such information return," end
19 quote.

20 Prove that my private sector payments are
21 connected to federal or federally connected privileges.
22 Petitioner saw that form W-2 had been erroneously issued.
23 Erroneously indicating that payments were made to me in
24 the course of a trade or business, and that I may have
25 been guilty of a felony by acting though I were a federal

1 officer or employee. According to 18 USC 192, officer or
2 employee of the United States, and I, quote, "Whoever
3 falsely assumes or pretends to be an officer or employee
4 acting under the authority of the United States or in any
5 department, agency or officer thereof, and acts as such,
6 or in such pretend character demands or obtains any money,
7 paper, document, or things of value, shall be fined under
8 this title or imprisoned not more than three years, or
9 both," end quote.

10 Again, I am not an officer of a United States
11 corporation, or in the armed forces, or an employee with
12 any of the above mentioned entities, or an elected
13 official. I do not perform the functions of a public
14 servant office of the United States, District of Columbia,
15 or any agency, or instrumentally of either during 2020,
16 2021, 2022, or through the present for that matter. If
17 the federal income tax does not apply to my private sector
18 payments, then neither does state income tax.

19 I am in a nonfederally connected private sector
20 work arrangement, an entirely private agreement to trade
21 my personally owned skills, time, and effort for some of
22 the other parties supply of negotiable IOUs, which can be
23 in any form other than money.

24 In conclusion and prayer, I, Susan Adamyam,
25 Appellant prays this Honorable Court to honor the RTC and

1 IRC statutes I brought to your attention; grant my
2 overpayment and refund for 2020, 2021, and 2022 tax years,
3 which I, Appellant, am justly entitled. Also as mentioned
4 above, the IRS honored my 1040 return 2023 refund based on
5 the same information I'm bringing to your attention.

6 I appreciate your time.

7 JUDGE STANLEY: Thank you,
8 Ms. Adamyan. I'm going to turn to my Panel to see if they
9 have any questions of you at this -- oh, wait. First, let
10 me turn to Mr. Brown and see if the Franchise Tax Board
11 has any questions for you.

12 Did you have your microphone on?

13 MR. BROWN: We have no questions at this time.

14 JUDGE STANLEY: Thank you.

15 Judge Lam, do you have any questions?

16 JUDGE LAM: I have no questions at this time.

17 Thank you.

18 JUDGE STANLEY: And, Hearing Officer Wilson, do
19 you have any questions?

20 HEARING OFFICER WILSON: No questions. Thank
21 you.

22 JUDGE STANLEY: Okay. I don't have any questions
23 either at this time. So I'll turn to Mr. Brown for
24 Franchise Tax Board's presentation. You may begin when
25 you're ready.

1 In its Minutes and Orders, the OTA encouraged the
2 parties to review the 2018 OTA precedential opinion of
3 Appeal of Balch, in which the OTA, again, rejected the
4 argument that the Balch Appellant did not receive wages
5 and that wage income was not taxable. The OTA
6 reemphasized that the argument was frivolous and rejected
7 it in its entirety. Also, in the Appeal of Balch, the OTA
8 imposed a frivolous appeal penalty on the Appellant.

9 In the present appeal, Appellant's arguments are
10 identical to those presented in Appeal of Balch and
11 warrant the OTA's emphatic rejection. In its August 8,
12 2023, and September 20, 2023 letters in which the OTA
13 acknowledged Appellant's appeals, the OTA also advised
14 Appellant that continuing her arguments might result in an
15 imposition of a frivolous appeal penalty. Because
16 Appellant's arguments are clearly frivolous and because
17 Appellant received prior notice of imposition of the
18 frivolous appeal penalty, Respondent believes an
19 imposition of the penalty is appropriate in the present
20 appeal.

21 I would be happy to respond to any questions.

22 JUDGE STANLEY: Thank you, Mr. Brown. During
23 Ms. Adamyan's presentation, she did state her opinion as
24 to what the relevance of those Exhibits 4, 5, and 6 were.
25 Do you have any response to what she said?

1 MR. BROWN: Exhibits 4, 5, and 6 from which
2 document or brief?

3 JUDGE STANLEY: So Exhibit 4 was the copy of the
4 U.S. Treasury check for taxable year 2023, and she
5 explained why she thinks she should get a refund in this
6 case because the IRS refunded her for 2023. And then she
7 talked about the seller -- Exhibit 5, seller's financial
8 statement showing real estate withholdings of \$17,703.
9 And I believe she was expressing that capital gains are
10 also not taxable to her. And then the one -- Exhibit 6
11 was one page of an unidentified tax return. It doesn't
12 show the year, but it shows claimed real estate
13 withholding of \$17,703. Do you have any responses to her
14 arguments with respect to those?

15 MR. BROWN: I can address those issues. Number
16 one, the letter from the IRS and the check from the IRS
17 are both for tax year 2023 and don't have any relevance to
18 any of the tax years in question. To the extent, perhaps
19 she's arguing that -- that they may show a similar
20 validation of whatever her position is, there's simply no
21 evidence to demonstrate that. There's no foundation for
22 any -- or for that assumption.

23 Regarding -- regarding the next page, which I see
24 is Exhibit F-1, that's a settlement statement of the
25 escrow that resulted in tax withholding of \$17,703. And I

1 see that is reported accurately on page -- or the next
2 page, Exhibit F-2 on Line 73, which indicated that that
3 was a withholding. That means that it was a payment.
4 It's reported under the section marked "payments," as was
5 the California tax or income tax withheld of \$10,677. And
6 added together the sum is \$28,380.

7 She calculated her taxes on that same form on
8 Line 65 at \$9,533. And as we indicated, we refunded
9 \$18,000 -- I forget the exact number. But those numbers
10 were -- were computed accurately and -- just a moment.

11 MS. ZUMAETA: Judge Stanley, I think to the
12 extent that your question was asking do we continue to
13 have an objection to the relevance of those documents, I
14 think we maintain that they're not relevant, but we
15 withdraw our objection on those.

16 JUDGE STANLEY: Okay. Thank, you, Ms. Zumaeta.

17 Judge Lam, do you have any questions for the
18 Franchise Tax Board?

19 JUDGE LAM: No questions. Thank you.

20 JUDGE STANLEY: Hearing Officer Wilson, do you
21 have any questions for FTB?

22 HEARING OFFICER WILSON: I do. I'm not sure if
23 you had a chance, but is there a transcript for this 2023
24 tax year that show the change? Or --

25 MR. BROWN: No, we don't have an account

1 transcript for 2023. Again, it's -- it's not a tax year
2 at issue in this -- in this proceeding.

3 HEARING OFFICER WILSON: And along the same
4 lines, is there a transcript for the tax years at issue
5 that shows a change?

6 MR. BROWN: The was no -- yes. The answer is we
7 do have accountant transcripts, even current ones that
8 we -- we obtained last month, and there are no changes in
9 the transcripts for 2020, 2021, and 2022.

10 HEARING OFFICER WILSON: Great. Thank you.

11 JUDGE STANLEY: Okay. And the only follow-up
12 question I would have, Mr. Brown, is, even if the IRS did
13 accept zero returns from Appellant, does that effect
14 Franchise Tax Board's position?

15 MR. BROWN: What would effect Franchise Tax
16 Board's position is if there were any changes. However,
17 the transcripts all indicate there were no changes.

18 JUDGE STANLEY: Okay. Thank you.

19 Ms. Adamyan, I'm going to turn back to you and
20 give you a chance to have a final rebuttal and respond to
21 anything that the Franchise Tax Board said.

22 MS. ADAMYAN: Thank you. I appreciate that.

23

24 CLOSING STATEMENT

25 MS. ADAMYAN: All I'm hearing is I'm here with so

1 many facts and proofs from the actual law from both FTB
2 and IRS, and the only thing I'm hearing back is everything
3 is rejected because it's frivolous. However, when you
4 look at the definition of frivolous, I was not late. I
5 was not trying not to pay any taxes, and that is the
6 definition of being frivolous. I'm not hearing any
7 specific law or arguments against what information I
8 brought to you today.

9 JUDGE STANLEY: Okay. Thank you.

10 Judge Lam, do you have any final questions?

11 JUDGE LAM: No questions. Thank you.

12 JUDGE STANLEY: And Hearing Officer Wilson?

13 HEARING OFFICER WILSON: No. Thank you.

14 JUDGE STANLEY: Okay. Then this concludes our
15 hearing. I thank you all for participating.

16 Mr. Brown, just to make clear, the Franchise Tax
17 Board is not requesting any additional time to hold the
18 record open for briefing; correct?

19 MR. BROWN: That is correct. That is correct.

20 JUDGE STANLEY: Okay. Okay. So this hearing is
21 concluded. The record is now closed, and the matter is
22 submitted for deliberation.

23 The Panel will meet to jointly deliberate and
24 decide the appeal, and the Office of Tax Appeals will mail
25 a written opinion no later than 100 days from today.

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I want to thank you for participating, and we're going to adjourn and reconvene tomorrow at 9:30 a.m.

(Proceedings adjourned at 4:12 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 30th day of September, 2024.

ERNALYN M. ALONZO
HEARING REPORTER