

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
C. RAYNER and A. RAYNER,) OTA NO. 221212009
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, October 17, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:34 a.m. and concluding at 9:59 a.m. on
Thursday, October 17, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SUZANNE BROWN

Panel Members: ALJ ASAF KLETTER
ALJ TOMMY LEUNG

For the Appellant: C. RAYNER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRAD COUTINHO

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I N D E X

E X H I B I T S

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

(Department's Exhibits A-E were received into evidence at page 8.)

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California; Thursday, October 17, 2024

9:34 a.m.

JUDGE BROWN: Let's go on the record in the Appeal of Rayner, OTA Case No. 221212009. Today is Thursday, October 17th, 2024, and it's approximately 9:34 a.m.

My name is Suzanne Brown. With me today are my Co-Panelists, Judge Tommy Leung and Judge Asaf Kletter. Although I'm the lead Administrative Law Judge who will be conducting the hearing for this case, my Co-Panelists and I are equal participants in deliberating and determining the outcome of this appeal.

First, I will ask each party to identify themselves and all of the representatives who are here today, for the record.

I will start by asking Franchise Tax Board representatives to please identify themselves for the record.

MR. COUTINHO: Good morning. Brad Coutinho, representing Franchise Tax Board in this matter. Thank you.

JUDGE BROWN: Thank you.

And next, I will ask Appellant's representative to identify himself for the record.

1 Mr. Rayner, if you are here, you may need to
2 unmute yourself and then speak up.

3 MR. RAYNER: Hi. My name is Collin Rayner, and
4 I'm the Appellant.

5 JUDGE BROWN: All right. Thank you very much.

6 This hearing is being conducted today before the
7 Office of Tax Appeals. OTA is not a court but is an
8 independent appeals body. OTA is staffed by tax experts
9 and is independent from the Franchise Tax Board or any
10 other state tax agencies. Because OTA is a separate
11 agency from Franchise Tax Board, arguments and evidence
12 heard before FTB are not necessarily part of the record
13 before OTA.

14 OTA's written opinion for this appeal will be
15 based on the briefs the parties have submitted to OTA, the
16 exhibits that will be admitted into evidence today, and
17 the arguments presented at the hearing today.

18 Now, a few weeks ago, on September 24th, we had a
19 prehearing conference in this matter, and we confirmed
20 that the issue for hearing is whether Appellants have
21 shown error in FTB's proposed assessment for the 2017 tax
22 year. Can I just confirm with the parties?

23 I'll ask Mr. Rayner first. Is that Appellant's
24 understanding of the issue?

25 MR. RAYNER: Yes, Judge.

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JUDGE BROWN: Thank you.

And can I ask FTB, is that FTB's understanding of the issue?

MR. COUTINHO: This is Brad Coutinho. Yes, that's correct.

JUDGE BROWN: Thank you.

Next, we had documentary exhibits that both parties have submitted that they're proposing to be admitted into evidence. As I explained during the prehearing conference, OTA's regulations require that proposed exhibits must be submitted at least 15 days in advance of the hearing. Appellant submitted a document that we've marked as Exhibit 1, and FTB submitted exhibits that are marked as Exhibits A through E. The parties submitted their exhibits with their opening briefs. At Appellant's request, OTA provided additional copies of these exhibits that were attached to the prehearing conference Minutes and Orders that we issued on September 27th.

Let me ask first, Mr. Rayner, did you receive the prehearing conference Minutes and Orders with the exhibits attached?

MR. RAYNER: I did earlier this week, maybe Monday or Tuesday.

JUDGE BROWN: It could have been sent to you on

1 September 27th, but as long as you received it.

2 MR. RAYNER: I did. I've looked at it a couple
3 of times.

4 JUDGE BROWN: Okay. So if you recall, when we
5 had the prehearing conference, I said that I was going to
6 ask everyone at the hearing in the beginning whether you
7 had any objection to any of the exhibits being admitted
8 into evidence. If we admit them into evidence, that just
9 means that they are part of the record that the panel of
10 judges can consider in making our findings in this case.
11 So in a moment I'm going to ask if you have any objection.
12 Actually, I'll ask that now.

13 Do you have any objection to any of FTB's
14 Exhibits A through E being admitted into this case as part
15 of the record?

16 MR. RAYNER: I -- I do not.

17 JUDGE BROWN: Okay. Thank you. Then I will say
18 that FTB's Exhibits A through E are admitted into
19 evidence.

20 (Department's Exhibits A-E were received into
21 evidence by the Administrative Law Judge.)

22 JUDGE BROWN: And next I'm going to ask FTB the
23 same question, if FTB has any objection to Appellant's
24 Exhibit 1 being admitted into evidence.

25 Mr. Coutinho?

1 MR. COUTINHO: This is Brad Coutinho. Respondent
2 Franchise Tax Board has no objection to Appellant's
3 exhibits.

4 JUDGE BROWN: Thank you.

5 Appellant's Exhibit 1 is admitted into evidence.

6 (Appellant's Exhibit 1 was received into
7 evidence by the Administrative Law Judge.)

8 JUDGE BROWN: We talked at the prehearing
9 conference about whether anyone will be calling witnesses.
10 FTB is not calling any witnesses, but Appellant is
11 planning -- Mr. Rayner is planning on testifying as a
12 witness. And I'll just confirm with everyone that that is
13 still correct.

14 FTB, you are not calling any witnesses; correct?

15 MR. COUTINHO: This is Brad Coutinho. Yes,
16 that's correct.

17 JUDGE BROWN: Okay. And, Mr. Rayner, you
18 understand that you will be testifying as a witness, and I
19 will swear you in before you give your presentation?

20 MR. RAYNER: Yes, Judge.

21 JUDGE BROWN: Okay. Thank you very much.

22 I'm just going to briefly go over the logistics
23 of the hearing today. The order of events will be as
24 follows: First, we'll have Appellants' presentation,
25 which includes Mr. Rayner's testimony, and then we will

1 have -- oh, and there may be questions for the witness
2 either from FTB or from the panel. And then we'll have
3 FTB's presentation and, again, there may be questions from
4 the Panel. But because FTB is not calling any witnesses,
5 Appellants will not have any cross-examination of
6 witnesses. After the Panel has completed questions, we
7 will have a brief rebuttal from Appellant, and then I
8 anticipate, at that time, we will close the record, and
9 the matter will be submitted for hearing.

10 Does anyone have any questions about anything
11 about this proceeding that you would like to raise before
12 we go ahead with Appellants' presentation?

13 Then if no one has any questions, I will say,
14 Mr. Rayner, we will ahead with your presentation on behalf
15 of Appellants. First if you can -- you can unmute and
16 raise your right hand, and I will swear you in as a
17 witness.

18 MR. RAYNER: Okay.

19
20 C. RAYNER,
21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined, and testified
23 as follows:

24
25 JUDGE BROWN: Thank you very much. You may begin

1 your presentation.

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PRESENTATION

4 MR. RAYNER: So about three years ago, I guess, I
5 started getting some letters from the Tax Board, and -- so
6 after, saying I owed money. And I talked with TurboTax,
7 and they said that there was a glitch in their system
8 online when doing the taxes that duplicated from Part A to
9 Part B. And I explained that the California said I owed
10 them, like, \$10,000, and they were saying -- they looked
11 at it, and they said, no, you don't owe them money. They
12 don't you owe money. It's just basically paper that's
13 not -- it doesn't -- it doesn't look proper.

14 And so they said, this is what you do to amend
15 it. And so I sent in an amended one, and then based on
16 that, they still said it wasn't right. But TurboTax still
17 to this day -- I talked to them last month. They still
18 say it's not me owing them or them owing me. And I said,
19 well, they're saying that -- that I owe them, and they're
20 saying from their side I don't. And I -- and I explained
21 this whole three-year process of I'm in the middle of two
22 big companies, basically of one saying one thing, and one
23 saying the other and -- and I'm the small man.

24 And I don't know how else to explain it, other
25 than TurboTax is saying that the glitch duplicated it and

1 in -- like, you know, visually on the paper, but in the
2 end there's not -- not me owing money, and not California
3 owing me money. It's, you know, nobody -- it's just
4 basically cosmetic on the paper that -- so I don't know
5 what else to say other than that.

6 They did admit, you know, they said it shouldn't
7 have done that where it duplicated, but they said somehow
8 there is a glitch. It -- it double did something, but in
9 the end money -- money is not owed either way. But
10 California says I owe it.

11 JUDGE BROWN: Thank you, Mr. Rayner. Does that
12 complete your presentation?

13 MR. RAYNER: As far as I know. Maybe next time
14 I'll be better at it.

15 JUDGE BROWN: All right. Now, we will have -- we
16 may have questions for the witness.

17 FTB, do you have any questions for the witness?

18 MR. COUTINHO: This is Brad Coutinho. No
19 questions for the witness.

20 JUDGE BROWN: Okay. Then I will turn to my
21 Co-Panelists and ask if they have any questions.

22 Judge Kletter, do you have any questions at this
23 time?

24 JUDGE KLETTER: This is Judge Kletter. I just
25 have one question, and it may be some years ago,

1 Mr. Rayner. But you mentioned that TurboTax told you
2 here's how you amend the error or whatever it was. Can
3 you explain when -- did you submit the amended returns?
4 Did you prepare it yourself? What did you amend on it?

5 MR. RAYNER: Through -- and like I said, it's
6 been a little bit of time. But with their tax people on
7 the phone, I guess when we amended it, we moved it off of
8 B and put it back on to A, and then sent it back in that
9 way, if I remember correctly.

10 JUDGE KLETTER: So just to the confirm, was it
11 submitted through TurboTax, or did you prepare it
12 yourself?

13 MR. RAYNER: I believe it was printed and mailed
14 in under it being amended, however that process is.

15 JUDGE KLETTER: And was that something that you
16 did yourself, or is that something that TurboTax did?

17 MR. RAYNER: I did it with them on the phone with
18 me to show me how to do it.

19 JUDGE KLETTER: Okay. Thank you. I just wanted
20 to clarify that. Thank you. No more questions.

21 JUDGE BROWN: Thank you.

22 And, Judge Leung, do you have any questions for
23 the witness at this time?

24 JUDGE LEUNG: This is Judge Leung. Judge Brown,
25 no questions at this time for Mr. Rayner. Thank you.

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JUDGE BROWN: Okay. Thank you.

I will hold my questions until after I have heard FTB's presentation. So we will move onto hearing FTB's presentation.

Mr. Coutinho, you can proceed whenever you are ready. Thank you.

PRESENTATION

MR. COUTINHO: Good morning. My name is Brad Coutinho, and I represent Franchise Tax Board in this matter.

The only issue on appeal is whether Appellants have established error in FTB's proposed assessment for the 2017 tax year. In this case, Appellant's timely filed their 2017 California tax return and subtracted wages on their Schedule CA. In part, due to this subtraction, Appellants reported an overpayment of approximately \$12,000 that they requested be refunded to them. FTB issued a refund of the amount requested by Appellants.

Subsequently, FTB examined Appellants' tax return and determined that Appellants incorrectly subtracted wages on the Schedule CA. As such, FTB issued a Notice of Proposed Assessment that added back Appellants' wages and proposed additional tax. Appellants timely protested and continue to assert on appeal that they were informed by

1 TurboTax that their tax return is correct, despite the
2 exclusion of W-2 wages at taxable income.

3 Pursuant to California Revenue & Taxation Code
4 section 17041 subsection (a)(1), a tax is imposed on the
5 entire taxable income for each taxable year of every
6 California resident. The address Appellants entered on
7 return and the address listed on Appellant-husband's W-2
8 both reflect a California address. Appellants have not
9 provided any argument or documentation that either one of
10 them were not California residents for the entire 2017 tax
11 year.

12 Therefore, as residents of California, they are
13 taxed on their entire taxable income. Accordingly,
14 Appellants' exclusion of W-2 wages was improper, and this
15 amount should be included in their California adjusted
16 gross income. Therefore, the proposed assessment issued
17 is correct, and FTB's position should be sustained.

18 I'm happy to answer any questions or concerns the
19 Panel may have. Thank you.

20 JUDGE BROWN: Thank you, Mr. Coutinho.

21 Let me begin with a question. Has OTA received
22 the amended return that Appellant was describing?

23 MR. COUTINHO: I -- I don't know for certain, but
24 I know that Appellant -- Appellants, when they protested
25 the initial proposed assessment -- it's Exhibit D of

1 Respondent's opening brief. Attached to that Exhibit D,
2 there is a handwritten, what appears to be an amended
3 return. The information on that return seems to be
4 similar to what Appellants are suggesting.

5 It backs out -- on the Schedule CA, the
6 subtraction to -- of W-2 income. However, on the first
7 page of that -- I believe it's page 3 of Exhibit D -- it
8 still shows a subtraction of \$118,000 on line 14 of that
9 exhibit. Again, Respondent is not sure if that is exactly
10 what Appellants are referring to when they say the amended
11 return. But that is a copy that Respondent has received
12 in Appellants' protest letter.

13 JUDGE BROWN: So this amended return would not
14 make a difference in Appellants' tax liability?

15 MR. COUTINHO: Based off the information
16 reported, Respondent treated it as correspondence, and
17 still reflects that it appears the W-2 wages that
18 Appellant-husband received was excluded from California
19 taxable income. And it does not appear that there's any
20 reason for why that income was excluded.

21 JUDGE BROWN: Thank you.

22 Now, I will turn to my Co-Panelists.

23 Judge Leung, do you have any questions for FTB at
24 this time?

25 JUDGE LEUNG: Judge Brown, no questions at this

1 time. I'm still going to wait for Mr. Rayner to make his
2 rebuttal, and then I will have some questions later.
3 Thank you.

4 JUDGE BROWN: Thank you.

5 Judge Kletter, do you have any questions at this
6 time?

7 JUDGE KLETTER: I do not have any questions at
8 this time. Thank you.

9 JUDGE BROWN: Okay. Let me turn back to
10 Mr. Rayner, briefly.

11 Mr. Rayner, if you could unmute and be prepared
12 to address what FTB just said. I'll still give you time
13 for rebuttal, but this seems like a good time to ask if
14 your amended return still shows that you're not -- that
15 you're subtracting your wages from your taxable income, is
16 there a reason for that, that you believe your wages are
17 not taxable?

18 MR. RAYNER: I believe my wages are taxable, but
19 talking -- again, going back, you know, that three years
20 or whatever it was, they walked me through. Like, I
21 remember getting a piece of paper -- a letter saying what
22 was wrong. So they walked me through how to fix that part
23 that was wrong, and then that part was sent in. They are
24 saying that it is correct, you know, of me not owing them,
25 but they walked me through step-to-step how -- how to do

1 it. And from their side, they're saying I do not owe
2 but -- and, again, none of this is like trying to be fraud
3 or -- it's just literally the TurboTax tells you what to
4 plug in. You plug it in, but TurboTax company still says
5 it's right, based on the amendment. But California says
6 different.

7 And I did live in California for that year, just
8 to be clear.

9 JUDGE BROWN: All right. If no one has -- if the
10 Panel does not have any further questions at this time, I
11 will say, Mr. Rayner, you can go ahead and proceed.

12 Oh, sorry. Judge Leung, do you have -- no.
13 Okay.

14 Mr. Rayner, if you are ready, you can go ahead
15 and proceed with your rebuttal, and we may have additional
16 questions for you.

17 MR. RAYNER: Explain rebuttal. I'm not --

18 JUDGE BROWN: Now, that you've heard FTB's
19 presentation, if you have anything that you want to add,
20 or clarify, or say in response, any final argument, you
21 can go ahead and tell us that now.

22

23 CLOSING STATEMENT

24 MR. RAYNER: I mean, it's gonna just kind of go
25 back to what I've already said. I mean, they're saying

1 that it wasn't taxable. TurboTax says it was. And
2 that's -- that's -- that's -- I don't know what else to
3 do, other than I'm in the middle of two strong people.

4 JUDGE BROWN: All right. If that completes your
5 rebuttal, then I will turn back to my Co-Panelists and see
6 if they have any additional questions for either party.

7 Judge Leung, do you have any questions?

8 JUDGE LEUNG: Yes. Thank you, Judge Brown.

9 Mr. Rayner, I'd like to go back to basics here.
10 The one-hundred-and-fifteen or so thousand in wages you
11 received, who was the employer?

12 MR. RAYNER: I worked for two companies. I guess
13 Kaiser -- Kaiser would be the one for the \$115,000.

14 JUDGE LEUNG: Okay.

15 MR. RAYNER: That's the one I'm aware about.

16 JUDGE BROWN: Well, that's the big one. So let's
17 stick with that. So at that point you were -- in 2017 you
18 were residing in California; correct?

19 MR. RAYNER: Yes, Judge.

20 JUDGE LEUNG: Okay. Now, which specific
21 instruction from the TurboTax software told you to
22 subtract out the \$115,000? What did they tell you in the
23 software? Why did they tell you to do that?

24 MR. RAYNER: Do you mean when it was originally
25 done?

1 JUDGE LEUNG: Yeah. Do you remember?

2 MR. RAYNER: Well, they don't tell you. It --
3 it's a -- like an A through Z. You go through the program
4 of plugging in numbers, and it asks -- it ask questions.
5 It's just a computer program, and you just plug it in as
6 you go. And as you finish each area, it says complete.
7 It says good. It says -- you know, until you get to the
8 end. And if it says it looks good, you know, the computer
9 says it looks good. The program says it looks good, and
10 then they -- they filed it.

11 JUDGE LEUNG: And -- and you did say in the
12 program that you were a California resident, but they
13 still told you to subtract out your Kaiser wages?

14 MR. RAYNER: I followed program as it prompted me
15 to do so.

16 JUDGE LEUNG: Okay. And when --

17 MR. RAYNER: I didn't try to finagle or --
18 literally, it's plug and play. Plug and play. Plug and
19 play all the way from A through Z. And then you're done,
20 and it sends it off.

21 JUDGE LEUNG: Okay. So when you got them on the
22 phone and they walked you through the amended return, did
23 you actually use the TurboTax software to prepare your
24 amended return?

25 MR. RAYNER: No. Because the software, I guess

1 from being -- they had a new system, and they actually --
2 it was hard to get those taxes originally. So there
3 wasn't a way to redo it through TurboTax. It, externally,
4 was the only way to do it, per TurboTax.

5 JUDGE LEUNG: Okay. Thank you, Mr. Rayner.

6 Mr. Coutinho, I'm assuming that when the
7 taxpayer's original return was filed requesting a refund,
8 that refund was granted?

9 MR. COUTINHO: This is Brad Coutinho. Yes, that
10 is correct.

11 JUDGE BROWN: Okay. And so that's basically the
12 entire amount, the proposed assessment today; right?

13 MR. COUTINHO: Roughly. The refund amount is
14 Exhibit B. It was a refund of approximately \$12,000. The
15 proposed assessment is about \$10,000, approximately. And
16 so yes, that is the -- the difference, essentially.

17 JUDGE LEUNG: Okay. Okay. Thank you very much.

18 Judge Brown, I am finished. Thank you.

19 JUDGE BROWN: Thank you.

20 And now I will turn to Judge Kletter.

21 And, Judge Kletter, do you have any additional
22 questions for either party?

23 JUDGE KLETTER: This is Judge Kletter. I do not
24 have additional questions. Thank you.

25 JUDGE BROWN: Okay. Thank you everyone.

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I believe then we completed questions.

And, Mr. Rayner, if you don't have anything further, I believe I can say that we can close the record.

I have heard the witness testimony. I have heard arguments. I have admitted the evidence. And so if no one has anything further to raise, I can say that this closes this hearing, and the record is closed, and we will -- the Panel will decide the case based on the evidence, arguments, and applicable law, and OTA will mail both parties the written decision no later than 100 days from the close of the record, which is today.

Thank you everyone for participating today. The hearing is now adjourned, and I believe this concludes OTA's hearings for this morning. Hearings will resume this afternoon.

Thank you very much.

(Proceedings adjourned at 9:59 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 November, 2024.

ERNALYN M. ALONZO
HEARING REPORTER