

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
N. BASILIO and S. BASILIO, ) OTA NO. 230513269  
 )  
 )  
 APPELLANTS. )  
 )  
 )  
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 9, 2024

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Proceedings,  
taken at 12900 Park Plaza Drive, Suite 300,  
Cerritos, California, 90703, commencing at  
10:56 a.m. and concluding at 11:17 a.m. on  
Wednesday, October 9, 2024, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ EDDY Y. H. LAM  
ALJ NATASHA RALSTON

For the Appellant: N. BASILIO  
S. BASILIO

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT  
MINA MOHADDESS  
ADAM SUSZ

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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.)

O P E N I N G   S T A T E M E N T

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By Mr. Basilio	7
By Ms. Mohaddress	13

C L O S I N G   S T A T E M E N T

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By Mr. Basilio	16

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Cerritos, California; Wednesday, October 9, 2024

10:56 a.m.

JUDGE HOSEY: We're going on the record.

This is the Appeal of Basilio, OTA Case No. 230513269. The date is October 9th, 2024, and it is 10:56 a.m. This hearing is being held in Cerritos, California.

I am Judge Sara Hosey. I will be the lead for the purposes of this hearing. So if you have any questions during the hearing, please ask me. My Co-Panelists, Judge Ralston and Judge Lam, are equal participants in deliberating and determining the outcome of this appeal and may have questions for the parties at the end of the presentations.

I'm going to ask the parties to identify themselves for the record, starting with the Appellants.

MR. BASILIO: Noel M. Basilio.

JUDGE HOSEY: Oh, can you turn on your mic?  
There you go.

MRS. BASILIO: Sahlee Quezon Basilio.

JUDGE HOSEY: Thank you.

Franchise Tax Board.

MS. MOHADDESS: Mina Mohaddress for FTB.

MR. SUSZ: Good morning. Adam Susz for Franchise

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Tax Board.

JUDGE HOSEY: Thank you.

As stated in the Minutes and Orders. The issue to be decided in this appeal is whether one-half of Appellants' income is attributed to Appellant-wife subject to community property laws and subject to California tax.

Moving on to our exhibits, Appellants submitted Exhibit 1. FTB had no objections to the admissibility of this exhibit. Therefore, Exhibit 1 is admitted into the record as evidence.

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

JUDGE HOSEY: FTB submitted Exhibits A through H. Appellants did not object to the admissibility of these exhibits. Therefore, Exhibits A through H are admitted into the record as evidence.

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

JUDGE HOSEY: Any questions or concerns from the parties before we begin our presentations?

Mr. Basilio?

MR. BASILIO: I'm good.

JUDGE HOSEY: Okay. Ms. Mohaddress?

MS. MOHADDESS: No questions. Thank you.

JUDGE HOSEY: Okay. All right. Mr. Basilio, you

1 will have 15 minutes for your presentation. Before we  
2 begin, I need to place you under oath so we can consider  
3 your statements as testimony. And you will remain under  
4 oath until the close of the hearing. So please raise your  
5 right hand.

6 MR. BASILIO: Do I need to stand?

7 JUDGE HOSEY: No. You're okay.

8

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N. BASILIO,

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

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14 JUDGE HOSEY: Thank you. You may proceed when  
15 you're ready.

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PRESENTATION

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MR. BASILIO: Okay. Honorable Sarah Hosey, Tax  
Counsel Attorney Mina Mohaddress, Supervisor Attorney Adam  
Susz, the other two Judges, ladies and gentlemen, good  
morning. My name is Noel Basilio, and my wife here is  
Sahlee Basilio. This is our first oral hearing, and thank  
you for the opportunity to be able to participate and  
exercise this process of appeal.

Why are we here today? The only logical choice

1 is to file an appeal before OTA when the auditor in charge  
2 of the NPA was prematurely affirmed. In the Notice of  
3 Action, it was stated that, "We did not receive your  
4 response to our letter dated 2/20/2023. We explained our  
5 position and requested a response from you within 30 days.  
6 Since we did not receive your response, we have affirmed  
7 our NPA dated 8/30/2022."

8 My online FTB account ID 1111516078, the records  
9 online show that I submitted a response and accepted on  
10 March 7, 2023, titled, "Protest updated for the proposed  
11 assessment of the NPA, which is within 30 days of the  
12 notice of date of 2/20/23." The request for appeal before  
13 OTA could have been prevented if due diligence was  
14 exercised by the auditor. In May 10, 2023, I had a phone  
15 conversation with the same auditor, and he asked me to  
16 provide a proof that I did not stay for more than 45 days  
17 in California for the tax year 2018.

18 In June 16, 2023, I submitted a 33-page document,  
19 consist of my narrative, the table summary of the 26 time  
20 sheets showing vacations and holidays. Twenty-six time  
21 sheets itself, a collaboration letter from my landlord and  
22 a collaboration letter from younger daughter as my  
23 response to the auditor to substantiate that I did not  
24 stay more 45 days in California for the tax year 2018.  
25 These documents are titled Exhibit F of the appeal's



1 opening brief.

2 Sometime in August of 2023, I had a phone  
3 conversation with tax counsel attorney Mina Mohaddress  
4 informing me that the appeal was assigned to her. She  
5 also requested a copy of my 2018 Oregon income tax return,  
6 which I immediately provided. The next month, somewhere  
7 in September, I received the FTB's opening brief, which  
8 stated that there are two issues, namely whether you have  
9 met your burden to prove that the Appellant was a  
10 California nonresident pursuant to Revenue & Tax Code  
11 section 17014(d), the safe harbor for the 2018 tax year.

12 Issue No. 2, whether one-half of  
13 Appellant-husband income is attributed to Sahlee subject  
14 to community property laws. In the opening brief, page 3  
15 of page 6, it stated that the Franchise Tax Board has  
16 determined that Appellant met his burden to prove that he  
17 was a California nonresident for 2018 tax year.  
18 Furthermore, on page 6 it also stated that the FTB has  
19 previously considered the Appellant was not a California  
20 residence during 2018 tax year.

21 Since FTB has already considered that the  
22 Appellant is a California nonresident for the tax year  
23 2018, which satisfies the scope of the NPA. Therefore,  
24 the NPA should have been withdrawn or terminated. In  
25 continuation, the Appellants' introduction of Issue No. 2,

1       which is whether one of the Appellants' income is  
2       attributed to my wife subject to community property laws.

3               Your Honor, I hope that I'm wrong to think that  
4       the introduction of Issue No. 2 is to avoid an  
5       embarrassment of the auditor in charge for the premature  
6       affirmation.

7               In October 24, 2023, as my response in the  
8       opening brief, I respectfully asked OTA to make a decision  
9       whether to proceed using same NPA, or should we handle  
10      this differently since Issue No. 2 is not the in the scope  
11      of the original NPA? I believe that the appellee has the  
12      burden of proof to provide the basis of her claim. The  
13      Appellee shall be able to point out a specific section  
14      Publication 1031, the merits of her position that can be  
15      clearly understood by an average reader.

16              Your Honor, Publication 1031 section M, it states  
17      under Division of Income, California is a property state.  
18      The domicile of the spouse earnings determines the  
19      division of income between spouses when separate returns  
20      are filed. Each spouse must follow the laws in his or  
21      state of domicile to determine whether income is separate  
22      or community. When separate returns are filed, you and  
23      your spouse must each report half of the community income,  
24      plus of all your separate income on your return.

25              Another section under page 11 saying under

1 Community Income, income generated from community property  
2 is community income. Community income also includes  
3 compensation for services if the spouse earning the  
4 compensation is domiciled in the community property state.  
5 Divide the community income equally between you and your  
6 when separate returns are filed.

7 The introduction of Issue No. 2 and also the only  
8 issue of this oral hearing, whether my Oregon 2018 income  
9 tax is attributed to my wife subject to community property  
10 laws and subject to California tax. The FTB Publication  
11 31 clearly stated to divide the community property equally  
12 when separate returns are filed. The Appellee has failed  
13 to point out a specific section of the FTB Publication  
14 1031 to satisfy her position.

15 Technically, the tax counsel is telling me to  
16 file a marriage separate return for my wife. This is  
17 contrary to the FTB publication which stated in section D  
18 under Filing Status. The very first sentence state, use  
19 the same filing status for California that you use for  
20 your federal income tax return, unless you are RDP. I  
21 wondered why the position of the Appellee cannot be found  
22 explicitly in the FTB Publication 1031 where there are so  
23 many numerous examples.

24 Your Honor, allow me to have another point of  
25 interest. I also received the same NPA in 2015, tax year

1 NPA No. 04348075 with identical verbiage saying that I was  
2 not a California resident in 2015. The records will show  
3 that after submitting the requested documents, the  
4 decision of the auditor was withdrawn, and there's no  
5 other issue such as the issue of this oral hearing.

6 As I end my presentation, Your Honors, I  
7 respectfully submit to the wisdom of this Honorable Court.

8 Thank you.

9 JUDGE HOSEY: Thank you, Mr. Basilio.

10 I'm going to see if the Franchise Tax Board has  
11 any questions for Mr. Basilio?

12 MS. MOHADDESS: Not at this time. Thank you.

13 JUDGE HOSEY: Okay. Thank you.

14 I'm going to go to my Panel.

15 Judge Ralston, any questions?

16 JUDGE RALSTON: No questions. Thank you.

17 JUDGE HOSEY: Okay. Thank you.

18 Judge Lam?

19 JUDGE LAM: No questions. Thank you.

20 JUDGE HOSEY: Thank you.

21 Thank you so much for your presentation.

22 I'm going to go ahead and move to the Franchise  
23 Tax Board's presentation.

24 You will have 15 minutes, Ms. Mohaddress, for your  
25 presentation. Please begin when ready.

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MS. MOHADDESS: Thank you.

PRESENTATION

MS. MOHADDESS: Good afternoon, Judges. My name is Mina Mohaddess, and I, along with my Co-Counsel Adam Susz, represent Respondent Franchise Tax Board.

The first issue on appeal regarding Appellant-husband's residency in the 2018 tax year has been settled. The remaining issue is whether one-half of Appellant's income is attributed to Appellant-wife subject to community property laws and, therefore, subject to California income tax for the 2018 tax year.

As background, for the 2018 tax year, Appellants originally filed a joint California resident return and subtracted Appellant-husband's entire wages from their state taxable income. As a result of determining Appellant-husband was a California nonresident for the 2018 tax year, Respondent recalculated Appellant's California taxable income by splitting world-wide income in half in accord with California's community property laws, which govern both Appellants as California domiciliaries.

The Notice of Action was modified and only Appellant-wife's income was subject to California income tax for the 2018 tax year, as she was a California

1 resident throughout the year. The modified amount at  
2 issue on appeal is now \$4,340, plus interest. In email  
3 exchanges, as documented in Appellant's reply brief dated  
4 October 24th of 2023, Appellant-Husband agreed to the  
5 split of Appellant's Oregon-based wages and gambling  
6 income. Specifically, Appellant-Husband stated, "The  
7 split of my wages of \$112,316 has been agreed on," on  
8 page 2 of Appellants' reply brief. Appellant-Husband also  
9 stated, "I agree that this should be split," in reference  
10 to Appellant's gambling income on page 3 of their reply  
11 brief.

12 However, Appellants raise a new issue regarding  
13 the split and taxation of their retirement income they  
14 received in the 2018 tax year. Appellant-Husband objected  
15 to Appellant-Wife receiving one-half of the IRA  
16 distributions and the application of California income tax  
17 to this portion of Appellant's retirement income, citing  
18 to FTB Publication 1031. As a preliminary matter,  
19 Respondent is not legally bound by these publications. It  
20 is bound by the law and these publications are meant to  
21 supplement the law as guidance for taxpayer.

22 Second, Appellant-Husband's reading of  
23 Publication of 1031 attempts to apply the laws for the  
24 taxation of nonresidence retirement income to his resident  
25 spouse. Additionally, Appellants ignore FTB's guidance

1 regarding the application of community property laws  
2 stated in Publication 1031 on page 13 and on FTB's public  
3 site. As with Appellant's wages and gambling income,  
4 because Appellant-Husband and Appellant-Wife were  
5 California domiciliaries and married when the IRA  
6 distributions were issued, Appellant-Wife is entitled to  
7 one-half of the marital community's IRA distributions via  
8 California's community property laws.

9 As a resident, Appellant-Wife is subject to  
10 California income tax on her worldwide income, including  
11 the wages, gambling income, and retirement income she  
12 received in the 2018 tax year. Thus, on appeal, it is  
13 Respondent's position that FTB has properly applied  
14 California's community property laws to split Appellant's  
15 income with Appellant-Wife's half of the wages, gambling  
16 income, and retirement income being subject to California  
17 tax. For these reasons, Respondent requests that its  
18 action be affirmed.

19 Thank you.

20 JUDGE HOSEY: Thank you for your presentation.  
21 I'm going to see if my Panel Members have any questions  
22 for you.

23 Judge Ralston?

24 JUDGE RALSTON: No questions. Thank you.

25 JUDGE HOSEY: Thank you.

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Judge Lam?

JUDGE LAM: Also no questions. Thank you.

JUDGE HOSEY: Thank you.

Mr. Basilio, you have the chance to have a rebuttal, if you would like, to either respond to anything that Ms. Mohaddress presented, or if you have anything you'd just like to say while you're here.

CLOSING STATEMENT

MR. BASILIO: Yeah. I think in my mind I guess as I mentioned in the -- in our prehearing, the three items that the tax counsel has mentioned with respect to half of my earnings, half of the gambling winnings, and half of my IRA, which to me it will only follow if the Issue No. 2 has been favorably given. So what I'm trying to say here is, if in the event that Issue No. 2 favors the Appellant, then it's going to be moot in academic.

However, if it favors the other side, then I would like to -- that -- that is for -- for you guys to decide on that one. And if that will happen, I would like to have a guideline on how to do a separate tax to my wife in case that happens. Like, for example, what is the California guidance? What are the things that I -- what -- what tax table should I use? Mostly -- mostly details, and not just an ordinary worksheet and give it --



1 and given to me without any basis.

2 That's all I'm saying, Your Honors.

3 JUDGE HOSEY: Okay. Thank you, Mr. Basilio.

4 I don't think the Franchise Tax Board is asking  
5 you to refile changing you're filing status.

6 Is that correct, Ms. Mohaddress?

7 MS. MOHADDESS: Yes, that's correct. When we  
8 recalculated the income, it was still on a joint status  
9 but on a nonresident return.

10 JUDGE HOSEY: Okay. Thank you. I just wanted to  
11 clarify.

12 Are there any other questions that I --

13 MR. BASILIO: Yeah. I just --

14 JUDGE HOSEY: Go ahead.

15 MR. BASILIO: -- want to clarify that, Your  
16 Honor.

17 Technically, as a mentioned in my presentation,  
18 she's basically asking me -- that's the way I  
19 understood -- is to split my account, which is as if  
20 you're filing a separate return. And that's how I am  
21 looking at it, and that's why I'm here. And if her  
22 position is correctly identified in this Publication 1031,  
23 which I know these are the things that we all follow, at  
24 least the average citizen able to understand her position.

25 The fact that there are so many examples in this

1 publication, why is it that FTB has not given a better --  
2 better examples so the next person would not have  
3 difficulty understanding their position.

4 Thank you, Your Honor.

5 JUDGE HOSEY: Okay. Thank you.

6 Is there any other questions I can answer about  
7 the hearing or the process before we close for today?

8 MR. BASILIO: I think I'm good. I submit to the  
9 wisdom of the Honorable Court.

10 JUDGE HOSEY: Okay. Thank you. We appreciate  
11 it, Mr. Basilio.

12 Franchise Tax Board?

13 MS. MOHADDESS: No further questions. Thank you.

14 JUDGE HOSEY: Okay. Great. So -- sorry. I'm  
15 checking my notes to make sure I got everything.

16 Okay. All right. So evidence has been admitted  
17 into the record, and we have the arguments and your  
18 briefs, as well as the testimony and oral arguments  
19 presented today. We have now have a complete record from  
20 which to base a decision. So this concludes the hearing  
21 for this appeal. The parties should expect our written  
22 opinion no later than 100 days from today.

23 I wish to, again, thank both parties for  
24 appearing today. And now we are off the record.

25 (Proceedings adjourned at 11:17 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 24th day of October, 2024.

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