

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. DULIAN EXEMPTION TRUST,) OTA NO. 221111754
)
)
 APPELLANT.)
)
)
 _____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 18, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
F. DULIAN EXEMPTION TRUST,) OTA NO. 221111754
)
)
 APPELLANT.)
)
)
 _____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:00 a.m. and concluding at 10:18 a.m. on
Wednesday, December 18, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ KEITH T. LONG

Panel Members: ALJ NATASHA RALSTON
ALJ ASAF KLETTER

For the Appellant: STEPHEN R. MCLEOD

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
ARATHIA RAMALINGAM
BRAD COUTINHO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received into evidence at page 8.)

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

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

	<u>PAGE</u>
By Mr. McCleod	8
By Ms. Ramaligam	13

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. McCleod	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Wednesday, December 18, 2024

10:00 a.m.

JUDGE LONG: We are opening the record in the Appeal of Franklin J. Dulian Exemption Trust. The OTA Case Number is 221111754. This matter is being held before the Office of Tax Appeals. Today is December 18th, 2024, and the time is approximately 10:00 a.m. This hearing is being convened electronically.

Today's hearing is being heard by a panel of three Administrative Law Judges. My name is Keith Long, and I will be the lead Administrative Law Judge. Judge Natasha Ralston and Judge Asaf Kletter are the other members of this Tax Appeals panel. All three judges will meet after the hearing and produce a written decision as equal participants. Although the lead judge will conduct the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

As a reminder, the Office of Tax Appeals is not a Tax Court. It is an independent appeals body. The panel does not engage in ex parte communications with either party. OTA will issue an opinion based on the parties' arguments, the admitted evidence, and the relevant law.

1 For the record, will the parties please state
2 their names and who they represent, starting with the
3 representative for Franchise Tax Board.

4 MS. RAMALIGAM: Good morning. My name is Arathia
5 Ramaligam, and I represent the Franchise Tax Board.

6 MR. COUTINHO: Good morning. This is Brad
7 Coutinho, also representing Franchise Tax Board.

8 JUDGE LONG: Thank you.

9 And for the Appellant.

10 MR. MCLEOD: Yes. Stephen McCleod, appearing on
11 behalf of Franklin J. Dulian Exemption Trust. I'm the
12 actual trustee.

13 JUDGE LONG: Thank you.

14 There are two issues in this appeal: First,
15 whether Appellant has established reasonable cause for the
16 late-filing of its return for the 2019 tax year; and
17 second, whether interest abatement is warranted.

18 There are no witnesses for this appeal.

19 The exhibits for this appeal consistent of FTB
20 Exhibits A through F. At the prehearing conference there
21 were no objections to these exhibits.

22 Can Appellant please confirm that there are no
23 objections?

24 MR. MCLEOD: I have no objections to the
25 exhibits.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE LONG: Thank you.

After the prehearing conference, Appellant timely provided an exhibit index identifying Exhibits 1 through 8, including:

- One, Declaration of Taraneh Torbati;
- Two, Reasonable Cause Memorandum;
- Three, Request for Appeal;
- Four, Income Tax Due Notice;
- Five, Bill of Rights and Penalty Information;
- Six, Appellant Reply Brief, dated 6/21/23;
- Seven, Appellant Reply Brief, dated 7/14/2023;
- And Eight, all exhibits designated by the Franchise Tax Board, Exhibits A through F.

Mr. McCleod, did I summarize those exhibits correctly?

MR. MCLEOD: You did.

JUDGE LONG: And, Franchise Tax Board, do you have any objection to those exhibits?

MS. RAMALIGAM: We don't have any objections. Thank you.

JUDGE LONG: Thank you.

Franchise Tax Board Exhibits A through F and Appellant's Exhibits 1 through 8 are admitted into evidence.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Department's Exhibits A-F were received into evidence by the Administrative Law Judge.)
(Appellant's Exhibits 1-8 were received into evidence by the Administrative Law Judge.)

JUDGE LONG: Today's hearing is expected to take approximately 45 minutes. Appellant requested 20 minutes to make his presentation.

Mr. McCleod, you may begin when ready.

MR. MCLEOD: Yes.

PRESENTATION

MR. MCLEOD: To the Board, to the Administrative Law Judges, let me tell you that this was a quite difficult trust that we had because there was an issue about capital gains tax. And initially, as indicated in the exhibits of both the FTB and myself, there was some confusion on the part of the account concerning the capital gains treatment; but that isn't the primary reason why this was delayed. And I'm asking you to receive all of my exhibits. I guess you have. And I don't want to be redundant with what's contained therein.

But my principal concern was that the primary reason why the accountant didn't get this done was the issue of the COVID, which we're all well aware of. And I was thinking on my way in today that very likely I assume

1 you're somewhere in Sacramento, but very likely you
2 probably drove by a number of closed or shuttered
3 businesses and restaurants that closed because of the
4 pandemic. And I know that's certainly true here in
5 Los Angeles where we -- we saw terrible financial
6 dislocation because of COVID. And in a sense, this case
7 is similar to those businesses.

8 And, you know, one thing I wanted to take a look
9 at was the Governor's statement of emergency in
10 California. And one of those provisions that the
11 Governor, our Chief Executive Officer, said that, "We were
12 to support consistent practices across California State
13 Departments in coordination with the Office of Emergency
14 Services, shall provide updated and specific guidance
15 related to preventing and mitigating COVID-19 to schools,
16 employers, employees, first responders, and community care
17 facilities by no later than March 10, 2020." This is
18 dated March 4, 2020, and the Governor didn't lift it until
19 February of -- February of 2023.

20 So by definition, all businesses were subject to
21 this emergency declaration. And here you have the
22 declaration of the accountant indicating that she was ill,
23 and that was the predominant reason why the filing was
24 late. And I think just as a matter of comedy, that
25 there's really no reason to hold the trust as not in

1 compliance with the reasonable cause and citing
2 authorities of 40, 50 years ago. My goodness. The
3 pandemic was a unique event that has not occurred for
4 100 years. I'm thinking of the -- the famous 1918 flu
5 epidemic. So all California businesses -- and this
6 certainly must be things you're seeing regularly -- were
7 under tremendous pressure. And our own Governor indicated
8 that you should consider that in making any decisions on
9 behalf of whether the Franchise Tax Board was correct or
10 not.

11 And it just seems to me under the circumstances
12 here, that with Ms. Torbati's declaration, she asserts her
13 right -- which, of course, is her right -- to not have to
14 disclose her evidence, but I will tell you. I office in
15 the building here with her, and she was out of her office
16 for -- it had to be about a year. And as such, with all
17 of that, I think under those circumstances, it was
18 reasonable cause. And I don't think that we should be
19 subject to having to pay a penalty plus interest under
20 those circumstances. I think it is uniquely due to the
21 pandemic and as such, I don't think that -- and I did
22 brief, incidentally, the paperwork, the issue reasonable
23 cause. I think reasonable cause was here.

24 But, certainly, in addition to the pandemic and
25 what Governor Newsom did about for -- what, three years or

1 so -- having us under a statement of emergency. I think
2 all those taken together excuses this late-filing, and
3 there certainly wasn't any intent. And as such, I think
4 the trust should be -- get returned the penalty and the
5 interest. Of course, we're not talking about a huge sum
6 of money, but it's more a thing of principal than anything
7 else. And as such, I think that should be returned to the
8 trust.

9 And I just want to be sure that the -- that
10 the -- that you are receiving -- Your Honors are receiving
11 the -- all our exhibits, which we would ask that you -- I
12 don't want to go over them. I could read them, but I don't
13 want to take your time to do that. But I think, in
14 particular that last exhibit, the reply brief of 9/14/23,
15 I would ask that you look at that very carefully because I
16 think that's the -- really the key argument that we're
17 making here.

18 JUDGE LONG: Okay. Thank you. Yes, everyone on
19 this panel has access to those exhibits. So we'll all
20 take a look at that briefing. Does that conclude your
21 presentation?

22 MR. MCLEOD: My opening, yes. I reserve the
23 right to respond to the Franchise Tax Board, of course.

24 JUDGE LONG: Yes. Okay.

25 Well, before we move forward with Franchise Tax

1 Board's presentation, I just want to follow up with my
2 Co-Panelists.

3 Does -- do you have any questions, Judge Ralston?

4 JUDGE RALSTON: Not at this time. Thank you.

5 JUDGE LONG: Thank you.

6 And, Judge Kletter, do you have any questions?

7 JUDGE KLETTER: This is Judge Kletter. I will
8 hold any questions until after the parties finish their
9 presentation. Thank you.

10 JUDGE LONG: Thank you.

11 Mr. McCleod, I did just have one question with
12 respect to the CPA's illness. I know that she's asserting
13 her right to not disclose medical history, and that's
14 fine. Is there any evidence in the file that would
15 indicate that she was sick during the extended due date
16 time for filing return of July 15th, 2020, or even
17 October 15th, 2020?

18 MR. MCLEOD: Well, I don't have any evidence, but
19 my recollection is -- I mean, I can testify that she was
20 not in her office in that period of time when those
21 returns were due. I would go to her office periodically,
22 and she was never there. She is literally just down the
23 hall of my building here. And so I would go down, and she
24 wasn't there. I was unaware that she was ill, though.
25 I'd have to say that quite frankly. I -- I just figured

1 she was out visiting her clients and so on and so forth.
2 So it would only be my understanding that she was ill
3 during the period of time that the return was due.

4 JUDGE LONG: Gotcha. Okay. Thank you. That
5 concludes my questions.

6 Franchise Tax Board, I believe that you
7 requested -- let me just pull my notes up here again with
8 going between screens -- 10 minutes, and you may begin
9 when ready.

10

11

PRESENTATION

12

13

14

MS. RAMALIGAM: Good morning. My name is Arathia
Ramaligam. With me is my Co-Counsel Brad Coutinho, and we
represent the Franchise Tax Board in this matter.

15

16

17

18

19

20

21

22

23

24

25

This case is about Appellant not establishing
reasonable cause to abate its delinquent filing penalty
because the justification provided do not rise to
reasonable cause. Respondent imposed late-filing
penalties for the 2019 tax year because Appellant filed a
2019 tax return in June of 2021. Appellant argues they're
entitled to reasonable cause because their accountant was
unable to file timely due to Covid-19, despite Appellant
providing their accountant with the necessary documents in
advance. Although it is unfortunate, an accountant with
COVID-19 does not qualify for reasonable cause.

1 In United States versus Boyle, the U.S. Supreme
2 Court held that a taxpayer's reliance on an agent, such as
3 an accountant, to file a return by the due date is not
4 reasonable cause. In the Appeal of Belcher, the OTA Panel
5 held that to establish reasonable cause the taxpayer must
6 present proof that they were continuously prevented from
7 filing a tax return. Although reliance on advice of an
8 accountant on matters of complex tax law may constitute
9 reasonable cause, the Supreme Court in Boyle held that
10 reliance cannot be a substitute for compliance with an
11 unambiguous statute.

12 While Appellant contends that its failure to
13 timely file its 2019 tax return is due to external
14 factors, including the health of its accountant, he has
15 not provided any evidence of these circumstances. The
16 fact that Appellant provided its tax documents to its
17 accountant prior to the filing deadline does not by itself
18 constitute reasonable cause. Further, Appellant has not
19 provided any evidence regarding the health of their
20 accountant. Appellant has not provided the dates of its
21 accountant's illnesses, the dates Appellant became aware
22 of the accountant's illness, or what efforts, if any,
23 Appellant took to find another accountant to timely
24 prepare and file its return.

25 Furthermore, Appellant did not file its return

1 until approximately one year after the due date. Even if
2 the accountant's illness extended throughout this period,
3 we would expect an ordinarily intelligent and prudent
4 businessperson to seek out another accountant or make
5 other arrangements to timely file its returns soon after
6 discovering its accountant was unavailable, and that its
7 return would not be timely filed. Appellant has not
8 established that it did so. Appellant also has not
9 presented any evidence -- any argument or evidence
10 supporting the abatement of interest.

11 In summary, Appellant has not shown that it acted
12 as an ordinarily intelligent and prudent businessperson
13 would have acted under similar circumstances. Therefore,
14 Appellant has failed to establish reasonable cause for the
15 late-filing of its 2019 tax return. Accordingly, there
16 are no grounds to abate the delinquent filing or interest
17 in this case, and the Franchise Tax Board respectfully
18 request that it be sustained.

19 I would be happy to address any questions you may
20 have. Thank you.

21 JUDGE LONG: Thank you.

22 Judge Ralston, do you have any questions?

23 JUDGE RALSTON: No questions. Thank you.

24 JUDGE LONG: Thank you.

25 Judge Kletter, do you have any questions?

1 JUDGE KLETTER: No questions at this time. Thank
2 you.

3 JUDGE LONG: Thank you.

4 Okay. I also don't have any questions.

5 Mr. McCleod, you requested 10 minutes to respond
6 to Franchise Tax Board.

7 MR. MCLEOD: Yes.

8

9

CLOSING STATEMENT

10 MR. MCLEOD: First of all, assuming Counsel has
11 said -- I guess I'm criticized for not being ordinarily
12 intelligent, but I suppose that's probably the legal
13 standard, and that's why she's using that verbiage. But I
14 would say this. Has anybody been around for the last
15 three or four years? Counsel has not addressed at all
16 that we were under this terrible situation with the
17 pandemic, which has led to, you know, some pretty
18 difficult things that have occurred in the country in
19 terms of politics and the social distortion caused by
20 COVID but most, especially, the disaster it was to the
21 economy of not just California but the entire country, the
22 entire world.

23 And in spite of this huge event that impacted
24 this particular case, this modest little case, the
25 Franchise Tax Board says nothing about that and goes back

1 to, you know, the argument about reasonable cause on cases
2 of 40, 50 years ago, not in the environment that we were
3 in as of March of 2020 when the Governor -- the Governor,
4 the Chief Financial Officer of this state made a
5 determination we were under an emergency. During that
6 time of an emergency as when the delay was caused by the
7 illness to the accountant, and I can only present what I'm
8 able to present. And under those circumstances, to just
9 ignore it and to say you weren't ordinarily -- and again,
10 I understand this is probably the legal standard, but you
11 were not -- you were not ordinarily intelligent. Well, my
12 goodness gracious. What -- you know the environment we
13 went through, and I don't doubt there are probably a lot
14 of appeals that come up with much of the same argument.

15 And it just seems to me, since the Governor did
16 not take away that emergency declaration until three years
17 later, that under these circumstances it is reasonable
18 cause, all that happened in this case; and with the
19 backdrop that we were under, this emergency declaration of
20 the Governor. So again, I would argue that we are
21 entitled to get back the penalty as well as the interest
22 for those reasons.

23 JUDGE LONG: Okay. Thank you.

24 Before we conclude today's hearing, I just want
25 to check with my Co-Panelists.

1 Judge Ralston, do you have any questions before
2 we conclude?

3 JUDGE RALSTON: Yes, just a question for
4 Mr. McCleod. Do we know when the Appellant found out
5 about their CPA's illness in relation to the due date for
6 the return?

7 MR. MCLEOD: It was sometime after the due date.
8 And I -- you know, my recollection it was later after the
9 return was due. I had provided all of the materials, and
10 it was later. But I did not know at the time that the
11 return was due. I found out about it later.

12 JUDGE RALSTON: Thank you.

13 JUDGE LONG: Thank you.

14 And, Judge Kletter, do you have any questions
15 before we conclude?

16 JUDGE KLETTER: This is Judge Kletter. I just
17 have a follow-up question on the last question. So this
18 is a question for Mr. McCleod.

19 So, you know, as the due date for that return was
20 approaching and you were not hearing back from the
21 accountant, what course of action did you take, if any?

22 MR. MCLEOD: Well, Your Honor, I addressed that
23 in the attachment that is in both sets of documents. I
24 contacted her. I made efforts to find out what was going
25 on. As I indicate in that statement, I was quite

1 concerned. And, you know, I'd never got a clear statement
2 from her until later when I found out that she was ill and
3 had not -- because of -- even though she had the
4 materials, that she'd been unable to submit it because of
5 her illness. So that's all I can tell you, Your Honor.

6 JUDGE KLETTER: This is Judge Kletter. No
7 further questions.

8 JUDGE LONG: Thank you.

9 All right. Then we are ready to conclude this
10 hearing. This case is submitted on Wednesday,
11 December 18th, 2024. The record is now closed.

12 I want to thank everyone for joining us today.
13 The ALJs will meet and decide your case later on, and
14 we'll send you a written opinion of our decision within
15 100 days from today.

16 Today's hearing in the Appeal of Franklin J.
17 Dulian Exemption Trust is now adjourned.

18 (Proceedings adjourned at 10:18 a.m.)
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 December, 2024.

ERNALYN M. ALONZO
HEARING REPORTER