

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
R. PARCELL and T. PARCELL,) OTA NO. 230212520
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 APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 18, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:08 p.m. and concluding at 1:36 p.m. on
Wednesday, December 18, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH T. LONG

Panel Members: ALJ ANDREW WONG
ALJ TOMMY LEUNG

For the Appellant: T. PARCELL
JESSICA MONROE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

SARAH FASSETT
CYNTHIA KENT

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California; Wednesday, December 18, 2024

1:08 p.m.

JUDGE LONG: We're opening the record in the Appeal of Parcell. The OTA Case Number is 230212520. This matter is being held before the Office of Tax Appeals. Today's date is December 18th, 2024, and the time is approximately 9:30 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 Tommy Leung and Judge Andrew Wong are the other members of this tax appeals panel. All three judges will meet after the hearing and produce a written decision as equal participant. 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.

For the record, will the parties please state

1 their name and who they represent, starting with the
2 representatives for Franchise Tax Board.

3 MS. FASSETT: Sarah Fasset, from the Franchise
4 Tax Board.

5 MS. KENT: Cynthia Kent, with the Franchise Tax
6 Board.

7 JUDGE LONG: Thank you.

8 And for Appellant.

9 MS. MONROE: Jessica Monroe, representing the
10 Parcels.

11 JUDGE LONG: And, Ms. Parcel, can you just state
12 your name for the record, please.

13 MS. PARCELL: Certainly. Terry Parcell.

14 JUDGE LONG: Thank you.

15 And my apologies. I've just been notified. I
16 said that this hearing started at 9:30 a.m. It started at
17 approximately 1:00 o'clock. I apologize for any confusion
18 that may cause.

19 Today we have one issue in this appeal, and it's
20 whether Appellant's claim for refund for the 2017 tax year
21 is barred by the statute of limitations.

22 At the prehearing conference, Appellants
23 indicated that Appellant Terry Parcell may provide witness
24 testimony.

25 Would Appellants like to provide testimony?

1 MS. MONROE: Yes, Your Honor.

2 JUDGE LONG: Okay. Ms. Parcell, I'll go ahead
3 and take your oath now. So if you could just raise your
4 right hand.

5 MS. PARCELL: It is raised.

6

7 T. PARCELL,

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

11

12 JUDGE LONG: Thank you.

13 The exhibits for this appeal consist of FTB
14 Exhibits A through L and Appellant Exhibits 1 through 2.

15 Can Appellant please confirm that there are no
16 objections to FTB's exhibits?

17 MS. MONROE: We have no objections, Your Honor.

18 JUDGE LONG: Thank you.

19 And, Franchise Tax Board, can you please confirm
20 whether there are any objections to Appellants' exhibits.

21 MS. FASSETT: This is Sarah Fassett. No
22 objections.

23 JUDGE LONG: Thank you.

24 This hearing is expected to take approximately 45
25 minutes, and Appellants requested 15 minutes to make their

1 opening presentation and witness testimony.

2 Ms. Monroe, Ms. Parcell, you can begin when you
3 are ready.

4 MS. MONROE: Thank you, Your Honor.

5 MS. PARCELL: Thank you.

6

7

PRESENTATION

8 MS. MONROE: For the 2017 tax year. The Parcells
9 had multiple losses accumulating to over \$3 million for
10 California purposes. They still timely filed an
11 extension. But knowing that no taxes would be due because
12 of this loss and due to, not only financial but also
13 medical and family extenuating circumstances, they did not
14 file their tax return by October 15th for that -- on 2018
15 for the 2017 tax year.

16 I'm going to let Ms. Parcell speak a little bit
17 to that for a few minutes just to give a broader scope as
18 to some of those circumstances, and then I'll jump back
19 in.

20

21

WITNESS TESTIMONY

22 MS. PARCELL: Well, thank you.

23 The circumstances were extremely dire. Not only
24 did we have the bank sitting in our office and cooperating
25 with them 100 percent, but my husband had to have

1 emergency back surgery, which he did in late December.
2 And that was the time when the bank had their -- their
3 keeper in place, and he -- when I went back to work, after
4 trying to take care of my husband, they told me I had one
5 week to get my things in order and get out.

6 So we get home and so forth and, after a few
7 months, I learned that my son had O.D.'d at 51 years old.
8 So that was traumatic. And there were just a lot of
9 reasons, starting with the bank trying to sell all of our
10 assets out from under us, which they did. And we were in
11 complete compliance with what they wanted to do, so we
12 tried to do the best we could. But those were some of the
13 reasons that the return didn't get filed and -- or any of
14 that done in the -- in the proper time period.

15 And I appreciate your time.

16 MS. MONROE: And during this time, they -- the
17 Parcels were still receiving FTB collection notices that
18 continued over the next couple of years. So between all
19 of the hardships that they were facing, receiving FTB
20 notices showing a balance due, none of which ever
21 reflected a withholding payment on the sale of property of
22 almost \$80,000, despite that withholding being correctly
23 reflecting primary social security numbers and being
24 forwarded by the closing agent, they didn't have any
25 notice that they had actually had a credit balance with

1 FTB.

2 Had they had that notice, they would have acted
3 more quickly to file those tax returns. But really
4 believing it was going to be a zero balance, and they just
5 needed to provide the information to FTB on the tax return
6 to show that no taxes are due, please stop collection
7 activity, which was further stress for them. When they
8 did get around to filing those tax returns with a new CPA,
9 they realized that they had this withholding payment for
10 the same tax year.

11 As such, they quickly worked to file those tax
12 returns. They submitted them October 5th, '24. So that
13 was within four days -- four years of the automatically
14 extended due date. And at that point in time, FTB still
15 had not applied the payment of the -- to their account
16 from the withholding. FTB actually had sent a notice on
17 October -- sorry -- November 2nd showing still a balance
18 due of approximately \$3,500. And then finally upon
19 processing the full tax return, credited their account and
20 then said basically, you know, sorry, not sorry, but you
21 no longer can have those funds back for not being timely.

22 And I think it's important to note the inequity
23 that's resulted from this because the Parcels are relying
24 on FTB's notices. And at the same time, while FTB makes
25 the mistake on not applying that withholding payment,

1 which was significant, if the taxpayers had made such an
2 error, they would be held accountable for such an error.
3 And in this instance, while filing within the four years
4 of the extended tax deadline, we are respectfully
5 requesting that that withholding payment be, not just
6 credited to their account as it should have been from the
7 beginning and therefore, would have provided proper
8 notice, but be refunded to them, per the October '22 tax
9 return filing. And -- and, yeah. I think that this just,
10 you know, extenuating circumstances are clear in this
11 case.

12 So that is all for our opening statement.

13 JUDGE LONG: Thank you.

14 Before we move forward, does Franchise Tax Board
15 have any questions for the witness?

16 MS. FASSETT: This is Sarah Fassett. No
17 questions. Thank you.

18 JUDGE LONG: Thank you.

19 I just want to give my Co-Panelists the
20 opportunity to ask any questions, if they have any.

21 Judge Leung, do you have any questions?

22 Judge Leung, you're muted.

23 Now you're not muted, but we can't hear.

24 Something is going on.

25 JUDGE LEUNG: Okay. How's that?

1 JUDGE LONG: Got you now.

2 JUDGE LEUNG: Okay. Got too many mute buttons on
3 me.

4 I said no questions at this time. I will have
5 some at the end. Thank you.

6 JUDGE LONG: Thank you.

7 Judge Wong, do you have any questions?

8 JUDGE WONG: I have no questions at this time.
9 Thank you.

10 JUDGE LONG: Thank you.

11 I do just want to make sure that I clarify when
12 we're talking about the real estate withholding payment,
13 Ms. Monroe, you're discussing the payment that was made on
14 July 25th, 2017, that's related to Exhibit B of
15 Respondent's -- of your reply brief?

16 MS. MONROE: Yes, Your Honor. Thank you.

17 JUDGE LONG: Thank you.

18 And, Ms. Parcell, I'm sorry to ask questions
19 about your hard time. When all of this stuff was going
20 on, do you have a time frame for when you were working
21 with the bank and your husband's injury, your family --

22 MS. PARCELL: Well, that -- the issue with the
23 bank went on for some time because we had -- they were
24 selling every asset that we had. So that -- it just took
25 some time because it wasn't a very good time for real

1 estate.

2 JUDGE LONG: Okay.

3 MS. PARCELL: So they took a couple of years,
4 actually, until it was over. It was well into '18, and we
5 were asked to close up the business and get out by the end
6 of December 2016.

7 JUDGE LONG: Okay. Thank you. I don't have any
8 further questions.

9 Let's see. Just check my notes here real
10 quickly.

11 Franchise Tax Board, you requested 10 minutes to
12 make your presentation. So you can move forward with that
13 when you're ready.

14 MS. FASSETT: Thank you.

15

16 PRESENTATION

17 MS. FASSETT: Good afternoon. My name is Sarah
18 Fassett, and I, along with Cynthia Kent, represent
19 Respondent Franchise Tax Board, or FTB, in this manner.

20 As Judge Long said, the sole issue on appeal
21 today is whether Appellants' claim for refund for the 2017
22 tax year is barred by the statute of limitations. After
23 receiving no tax return for Appellants for 2017,
24 Respondent issued a Demand for Tax Return and a Notice of
25 Proposed Assessment, or NPA, based solely on

1 Appellant-husband's personal income sources. The NPA did
2 not include any income or credits related to the sale of
3 real property. After receiving no response from
4 Appellants, the NPA went final, and the balance became due
5 and payable.

6 For tax year 2017, Appellants made no payments,
7 other than withholding voluntarily or through collection
8 efforts. Respondent ultimately received Appellants'
9 untimely filed 2017 California tax return on
10 October 10th, 2022. Respondent treated the tax return as
11 a claim for refund but had to deny the claim because it
12 was filed after the statute of limitations had expired.
13 California law imposed a strict time limits and other
14 requirements for filing refund claims, including tax
15 returns that claim refunds. To be timely, a claim for
16 refund must be filed within the later of the three
17 following periods: Four years from the original due date
18 of the return; four years from the date of a timely filed
19 return; or one year from the date of an overpayment. The
20 taxpayer bears the burden to show that a claim for refund
21 was timely filed. An ignorance of the law does not excuse
22 the failure to file a timely claim for refund.

23 Additionally, Respondent does not have a duty to
24 discover an overpayment or notify a taxpayer of such
25 overpayment, nor does it have obligation to inform

1 taxpayers of the time within a claim must be filed. The
2 arguments made by Appellants in support of their assertion
3 that their claim for refund was timely all fail because
4 Appellants did not file a timely return for the 2017 tax
5 year, either by the original due date or within the
6 State's automatic six-month extension for filing. Their
7 claim for refund must have been filed either within four
8 years from the original due date or one year from the last
9 overpayment.

10 Here, the four-year statute of limitations
11 expired on April 15th, 2022, and the one year of statute
12 of limitations expired for the withholding credit on
13 April 15th, 2019. Appellants' claim for refund, again,
14 was filed on October 10th, 2022. Appellants appear to
15 argue that because a federal extension of time to file for
16 the 2017 tax year was sent to the Internal Revenue
17 Service, that grants the Appellants additional time to
18 file a claim for refund for state purposes. If the timely
19 return -- if the timely filed return is not received
20 within the extended due date, no extension exists. There
21 is nothing in the law, nor Appellants pointed to or
22 provide anything that allows for their submission of a
23 federal extension of time to file to extend California
24 statute of limitations for taxpayer to make a timely claim
25 for refund for state purposes.

1 Informal claims for refund, as defined in
2 Revenue & Taxation Code 19322.1, may toll the statute of
3 limitations if the informal claim is made within the
4 statute of limitations, but before the full amount of tax
5 penalties and interest have been paid. Here, the
6 Appellants' October 10th, 2022, income tax return cannot
7 toll the statute of limitations because it was made after
8 the expiration of the statute of limitations on
9 April 15th, 2022.

10 As previously mentioned, FTB has no duty to
11 discover or report overpayments to taxpayers. Contrary to
12 Appellants' assertions, their failure to file a timely
13 claim for refund was not due to FTB' error. Withholding
14 credits from sources other than wages, such as ones
15 related to sales of real property, are reported and then
16 applied when there is a valid return filed in the
17 corresponding income is reported. While Appellants tender
18 of the completed Form 593 for the 2017 tax year shows it
19 was filled out and a check was sent to FTB, it also shows
20 that Appellants were on notice of the over \$79,000 in
21 withholding when they signed that FTB Form 593 in July of
22 2017, which was related to a multimillion-dollar sale of
23 real property.

24 Further, Appellants were also put on notice to
25 file a tax return or to otherwise respond in regard to the

1 2017 tax year from FTB's Demand for Tax Return, the NPA,
2 or the approximately 10 notices related to FTB's
3 collection efforts for the 2017 tax year, all of which
4 spanned over two years. There's no record of Appellants
5 responding to any of the mentioned correspondence.

6 Finally, the statute of limitations cannot be
7 waived based on reasonable cause, and unfortunate
8 circumstances will not delay the expiration of the statute
9 of limitations for filing a claim for refund. While FTB
10 is sympathetic, refunds are only allowed to be granted to
11 the extent allowed by the statute of limitations.
12 Therefore, because Appellants claim for refund was filed
13 after all the statute of limitations periods had expired,
14 and California law bars refund claims made outside of the
15 statute of limitations period, Respondent's denial of the
16 claim for refund was proper and should be sustained.

17 I am happy to answer any questions you may have.
18 Thank you.

19 JUDGE LONG: Thank you. Judge Leung, any
20 questions?

21 JUDGE LEUNG: No questions at this time but at
22 the end. Thank you.

23 JUDGE LONG: Thank you.

24 Judge Wong, do you have any questions?

25 JUDGE WONG: No questions. Thank you.

1 JUDGE LONG: All right. Then we will move
2 forward with Appellants' presentation.

3 Ms. Monroe, you requested 10 minutes to make your
4 closing presentation. You may begin when ready.

5 MS. MONROE: Thank you.

6

7

CLOSING STATEMENT

8 MS. MONROE: While the full tax return wasn't
9 filed until October of '22 for that 2017 year, the entire
10 time FTB had indicated that the Parcels' account with FTB
11 still had a balance due. And therefore, when the tax
12 return was filed, upon filing that -- that return and
13 seeing that there was a credit -- that there was a
14 withholding payment that should have been credited to
15 their account, we're requesting that it be taken into
16 consideration that the claim for refund was timely filed
17 by the tolling because FTB wasn't applying that credit.
18 And as such, it was still showing a balance due and should
19 reflect refunding the taxpayers the amount that was taken
20 that entire time.

21 In addition, I'm going to just reiterate the
22 circumstances of when an error is made by FTB, again, the
23 taxpayers are continuously left in the lurch having to
24 kind of pick up the pieces, whether they have the
25 resources or not to do so. And we definitely understand

1 the requirements of the statute and that there are rules
2 to be followed. But in this instance, with all of the
3 pieces of evidence that we've brought forth in terms of
4 filing and how things were incorrectly not being reflected
5 on their account, we're going -- we still respectfully
6 request that these be taken into account, and the refund
7 be issued to the Parcels.

8 Thank you.

9 JUDGE LONG: Thank you.

10 Before we conclude today's hearing, I believe my
11 Co-Panelists do have questions now.

12 Judge Leung?

13 JUDGE LEUNG: Yes. Thank you, Judge Long. I
14 have questions for each party, and I'll start with
15 Ms. Monroe.

16 Ms. Monroe, you mentioned earlier that when the
17 new CPA took over and started filing the returns in 2022,
18 that CPA discovered the \$78, \$79,000 withholding payment.
19 How did that CPA discover that? What did he look at?

20 MS. MONROE: I believe the CPA pulled old
21 documentation from old files.

22 And, Ms. Parcel, you might want to correct me if
23 that is correct on how they found the withholding payment
24 from pulling old files.

25 MS. PARCELL: Well, it was -- it was found when

1 they looked at the closing statement, and that's what they
2 go off of. What they had done, they had sold my -- my
3 daughter's house out from under her and -- her condo,
4 actually. And they took the payment that was necessary
5 to -- within that closing statement, the \$79,000, I
6 believe it was. And that's how they did it. They said
7 that has to be done.

8 MS. MONROE: Right. And I'll add, actually, that
9 I know that the CPA they were working on several years at
10 the same time. So there was just a mass accumulation of
11 documents over all of those years, and they were able to
12 sort through what -- apply to what year. And that's when
13 we began the process of trying to correct the situation.

14 JUDGE LEUNG: Okay. So Ms. Parcell mentioned it
15 was her daughter's condo? So how does that --

16 MS. PARCELL: Yes.

17 JUDGE LEUNG: How does that withholding get
18 attributed to the Parcels' account, if it's the
19 daughter's condo?

20 MS. PARCELL: Well, when TAB Bank, who is out of
21 Utah, came into the company and said well, "You either put
22 \$400,000 into the company, or go the other direction and
23 start winding it down," so we had to wind it down. And
24 in doing so, they made us come to their attorney's office
25 and give them a quitclaim -- or whatever they call it. I

1 call it a quitclaim -- to every asset that we had any part
2 of, and we did it --

3 JUDGE LEUNG: Okay.

4 MS. PARCELL: -- without having an attorney with
5 us. We just --

6 JUDGE LEUNG: Okay.

7 MS. PARCELL: Way over equity. You know, they
8 took equity way over what we owed them and -- but that's
9 our deal.

10 JUDGE LONG: Okay. Thank you.

11 And, Ms. Monroe, were any federal returns filed
12 with their refund claims with the IRS? Any problems
13 there?

14 MS. MONROE: I apologize. There were federal
15 returns filed at the same time. They were filed
16 simultaneously. I'd have to take a look and see if there
17 was a refund on the federal side, which I can -- I can do
18 really quickly.

19 Terry, if you happen to know off the top of your
20 head and want to speak to that, but let me --

21 MS. PARCELL: I don't. We have never had any --
22 any issues with the Internal Revenue Service.

23 MS. MONROE: Let's see. I have a copy of that
24 federal return here, and I can quickly look. I believe it
25 was a huge loss for '17. Yeah. And on the federal side

1 for the 2017, the loss was over a million dollars.

2 JUDGE LEUNG: So there were no outstanding
3 withholding credits on the federal side then?

4 MS. MONROE: There were none. No.

5 JUDGE LONG: Okay. Thank you.

6 Ms. Fassett, when Franchise Tax Board issued the
7 NPA with Mr. Parcels sources of income, was one of the
8 sources the real estate that was sold?

9 MS. FASSETT: It was not. No -- nothing on the
10 NPA was connected to a sale of real property in 2017.

11 JUDGE LEUNG: Okay. And so when the FTB's reply
12 briefs talks about this courtesy of including withholding
13 credits on the NPA, it's only for income that the basis of
14 the estimate of income? Is that what you're talking
15 about? Because there's a portion in your reply brief that
16 talks about estimated income on the NPA, and then it goes
17 on to say, "As a courtesy, Franchise Tax Board would
18 include withholding amounts connected with the income."

19 MS. FASSETT: So it would just be connected to
20 the sources that were reported on the NPA.

21 JUDGE LEUNG: And so, in this instance the real
22 estate sale was not one of the sources reported on the
23 NPA?

24 MS. FASSETT: Correct. There was nothing
25 connected to that sale of real property on the NPA.

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JUDGE LEUNG: Okay. Thank you.

Judge Long, I'm done.

JUDGE LONG: Thank you.

Judge Wong, do you have any questions?

JUDGE WONG: No questions. Thank you.

JUDGE LONG: Thank you.

Well, then I believe we are ready to conclude our hearing. I want to thank you all for joining us today.

This case is submitted on Wednesday, December 18th, 2024. The judges will -- the record is now closed.

The judges will meet and decide your case later on, and we'll send you a written opinion of our decision within 100 days after the record is closed, which is today. Today's hearing in the Appeal of Parcell is now adjourned.

Thank you.

(Proceedings adjourned at 1:36 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 7th day of January, 2025.

ERNALYN M. ALONZO
HEARING REPORTER