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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received in Judge Vassigh's minutes and orders, page 6)

(FTB's Exhibits A-I were received in Judge Vassigh's minutes and orders, page 6)

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1 California; Tuesday, December 17, 2024

2 9:26 a.m.

3
4
5 JUDGE VASSIGH: This is the appeal of Teshara. OTA
6 case number 240115157. The date is December 17, 2024, and
7 the time is 9:26 a.m. This hearing is being held in
8 Sacramento, California.

9 I am Judge Vassigh. This case is being heard and
10 decided by a single administrative law judge under the
11 Office of Tax Appeals Small Case Program. I'm going to
12 ask the parties to identify themselves and who they
13 represent.

14 We'll start with the FTB.

15 MS. HO: This is Vivian Ho along with my Co-Counsel,
16 Maria Brosterhous, for the Franchise Tax Board.

17 JUDGE VASSIGH: Thank you.

18 MR. TESHARA: Gregory Teshara.

19 JUDGE VASSIGH: Thank you.

20 So as stated in the minutes and orders, the
21 parties have agreed that the issue decided in this appeal
22 is whether appellants have established reasonable cause to
23 abate the mandatory electronic payment, otherwise known as
24 e-pay, penalty for tax year 2022.

25 Appellants submitted Exhibit's 1 and 2, and FTB

1 did not object to the admissibility of these exhibits;
2 therefore, Exhibit's 1 and 2 are now admitted into
3 evidence.

4 (Appellant's Exhibit's 1 and 2 were admitted into
5 evidence.)

6 JUDGE VASSIGH: FTB submitted Exhibit's A through I,
7 and appellants did not object to these exhibits; and
8 therefore, Exhibit's A through I are admitted into
9 evidence.

10 (FTB's Exhibits A-I are admitted
11 into evidence.)

12 JUDGE VASSIGH: And Mr. Teshara, you indicated during
13 our prehearing conference that you will be testifying on
14 behalf of yourself and your wife, and FTB did not raise
15 any objection to this. So we have one witness, yourself
16 today, and I will swear you in before you begin your
17 presentation.

18 So if you could please raise your right-hand at
19 this time.

20
21 GREGORY TESHARA,

22 Produced as a witness, and having been first duly sworn by
23 The Administrative Law Judge, was examined and testified
24 as follows:

25 MR. TESHARA: I do.

1 JUDGE VASSIGH: Great. And you are under oath until
2 the end of this proceeding. You may lower your hand and
3 proceed with your presentation when you're ready.

4 And now that you've been sworn in, your
5 statements will be considered as testimony for the
6 evidentiary record.

7
8 PRESENTATION

9 MR. TESHARA: Thank you, Your Honor. Appreciate it.
10 Counsels, thank you very much for your time. Appreciate
11 the Court's time.

12 I'm extremely proud of my flawless 25 year tax
13 filing paying history with the state. In this specific
14 incident, I reasonably relied to my detriment that the
15 state received, processed, and cashed my check. Had it
16 been sent back, I would have ample time to remedy;
17 specifically given the fact that that specific tax payment
18 deadline in 2023 was extended a second time to November.

19 Ultimately, I stand by my equity arguments that
20 have been discussed and submitted previously. I'm happy
21 to go through them further if needed.

22 I think at this point, we're talking about a
23 process issue, and I stand on the concerns brought. And I
24 appreciate the time and consideration on this matter very
25 much.

1 JUDGE VASSIGH: Would you like to summarize your
2 equity arguments?

3 MR. TESHARA: Absolutely.

4 The comment for me at this point is threefold.
5 Number one, I have been given back the document where I
6 agreed to e-sign with my wife. Up until the time that I
7 have received that document, I have no memory signing it.
8 I absolutely did sign it when I received it back, so
9 that's my signature, Your Honor.

10 My father passed away in the fall of 2020 after a
11 very brutal fight with lymphoma. Four months later, my
12 mom was diagnosed with colon cancer and then bladder
13 cancer. And in this time, I was helping her not only
14 grieve, but go through multiple procedures including
15 chemo.

16 During this time, I signed that document. No
17 doubt about it. I don't recall signing it, but when I saw
18 it, it is my wife's and my signature.

19 Moving forward, I have a flawless history. I'm
20 very proud of that. I have only ever -- I think other
21 than one time or two -- paid via with my own personal
22 check. I have never written a tax check like this in my
23 entire life.

24 I'm very grateful to have the opportunity to
25 write it, but I worked really hard and stressed out a long

1 time about how I was going to get that payment done. And
2 in the year 2023, with the amount of electronic fraud,
3 wire fraud, bank fraud going on, I was personally
4 uncomfortable sending an electronic transfer of that
5 amount to anybody.

6 And so I, at the end of the day, relied on my gut
7 to write a check, as I have previously, to send it via
8 certified post, which showed where it was, when it was,
9 and how it was received.

10 Ultimately, at the end of the day, if the body is
11 incapable of accepting my check, then they should have
12 sent my check back. And even if it was sent back with a
13 fine or an administrative fee, I would have understood.
14 That was my mistake, so be it.

15 But the state cashed my check, took the funds out
16 of my account, and then later on decided to send me a
17 penalty.

18 So I think -- oh, I think the last thing that I
19 would bring up -- and I did bring up as mentioned
20 previously -- in the fall of 2023, I was diagnosed with a
21 very minor case of skin cancer myself, and I was being
22 treated. It was just emotionally a lot to add on to
23 everything else, and I think that's worth stating. I was
24 trying to do the best that I could do.

25 JUDGE VASSIGH: Thank you so much for sharing, Mr.

1 Teshara. And I want to let you know that after FTB's
2 presentation, I will give you the option to provide any
3 closing arguments you might want to respond to what they
4 say.

5 And, Ms. Ho, whenever you're ready, please
6 proceed.

7
8 PRESENTATION

9 MS. HO: Thank you.

10 Good morning, my name is Vivian Ho. I, along
11 with my Co-Counsel, Maria Brosterhous, represent
12 Respondent, the Franchise Tax Board.

13 (Reporter response.)

14 JUDGE VASSIGH: Make sure the green light is on.

15 MS. HO: It's on.

16 Good morning, my name is Vivian Ho. I, along
17 with my Co-Counsel, Maria Brosterhous, represent
18 Respondent, the Franchise Tax Board.

19 The issue presented before you today is whether
20 appellants established a reasonable cause for abatement of
21 the electronic payment penalty, also known as the e-pay
22 penalty, for tax year 2022.

23 The law requires taxpayers who make an estimated
24 tax or extension payment of more than \$20,000 dollars or
25 re-file an original tax return with a tax liability of

1 over \$80,000 dollars to make all future payments by e-pay
2 methods.

3 Appellants were notified by FTB that they met the
4 mandatory e-pay requirements and were required to e-pay
5 all tax liabilities. Appellants then made a payment by
6 paper check, and respondent correctly imposed the e-pay
7 penalty. Once imposed, the penalty may be abated if the
8 taxpayer establishes that failure to e-pay was due to
9 reasonable cause.

10 To establish reasonable cause, a taxpayer must
11 show that failure to e-pay occurred despite the exercise
12 of ordinary business care and prudence. The burden of
13 proof is on the taxpayer to show that reasonable cause
14 exist to support the abatement. Appellants have not
15 established reasonable cause for abatement of the penalty.

16 Appellants assert that appellant has been
17 suffering from health problems but have not submitted any
18 documentation to substantiate their claim that appellant
19 has been prevented from making a payment, that e-pay
20 method. Appellants have also not explained why
21 appellant's wife was unable to e-pay their liability.

22 Appellants also assert they were affected by
23 their mother's illness and by their father's passing;
24 however, they signed the documentation appellants
25 submitted. These difficulties did not occur in 2023, the

1 year where appellant made the payment by check.

2 Appellants also argue that they forgot about
3 their e-pay requirement as with other penalties with no
4 reasonable cause exception. There's no reasonable cause
5 abatement warranted when failure to comply with statutory
6 requirements is due to oversight by the taxpayer.

7 Another argument the taxpayers make is that they
8 have a history of timely complying with their tax
9 liability. Timely compliance is only relevant for the
10 first time penalty abatement. And under the law, the
11 first time penalty abatement is only applicable for
12 timeliness penalties and does not apply for the e-pay
13 penalty.

14 Lastly, appellant argues that e-pay is
15 susceptible to fraud. In addition to appellant's claim
16 being unfounded to FTB's use of secure technology,
17 appellant's are obligated to e-pay under statute, and the
18 statute must be enforced as written by the legislator.

19 As such, FTB respectfully request OTA's sustained
20 FTB's determination and deny appellants' claim for refund.

21 And thank you, I can take any questions if there
22 is any.

23 JUDGE VASSIGH: Thank you, Ms. Ho.

24 I know that Mr. Teshara mentioned that FTB did
25 accept the paper check that was mailed in. Can you speak

1 to that at all?

2 MS. HO: Yes. The e-pay penalty as provided under
3 statute does not provide for abatement based on whether
4 payment was accepted by FTB. The only basis for abatement
5 is reasonable cause, which as I discussed earlier,
6 unfortunately appellants have not established.

7 JUDGE VASSIGH: Thank you, Ms. Ho.

8 If FTB's presentation is concluded, I will come
9 back to Mr. Teshara and offer you an opportunity to
10 provide a five minute closing argument.

11
12 CLOSING STATEMENT

13 MR. TESHARA: Thank you. And thank you, Counselors.

14 Can I address some of the comments that were made
15 prior to closing? In case there was any comment back
16 -- I've never been in a setting before like this.

17 So there was just three --

18 JUDGE VASSIGH: Yes.

19 MR. TESHARA: -- there was just three distinct
20 documents -- actually, distinct statements that were made
21 that I found, I think, I should be allowed to comment on.

22 JUDGE VASSIGH: This is your opportunity to provide us
23 with the information you want us to have.

24 MR. TESHARA: Excellent.

25 I just want to make sure that subsequent to our

1 pre-meeting -- pretrial hearing that we had online
2 together, I did speak with the spokesman -- thank you for
3 putting me in touch with her. And I was able to upload
4 some additional health documents regarding my mother's
5 -- the timeline and her treatment and such. I just want
6 to make sure that FTB had the opportunity to review those
7 because there's a mention here that they're not
8 substantiating some of the health concerns.

9 JUDGE VASSIGH: So let me address that. I know that I
10 received your Exhibit 2, is that what you're referring to?

11 MR. TESHARA: Yes. Just want to make sure.

12 JUDGE VASSIGH: Let me just check with Ms. Ho and Ms.
13 Brosterhous.

14 MS. HO: Yes. Yes, we have that document from
15 appellant. Thank you.

16 JUDGE VASSIGH: Okay.

17 MR. TESHARA: Thank you.

18 There was a question about my wife's ability to
19 handle the payment. We are a team for 15 years. I very
20 proudly and very happily try and handle some of the
21 financial matters in our house.

22 And my mom -- my wife is an amazing mom, so we're
23 a team. She's here with me right now, in spirit, in
24 supporting me with our kids; so I don't think that's a
25 relevant comment.

1 And then to -- regarding reasonable cause
2 regarding e-pay, the comments about my father's passing,
3 my mother's treatment, that all occurred when I signed the
4 e-pay document. I don't recall that FTB sends out any
5 sort of annual reminder regarding the need to e-pay.

6 I get a lot of reminders about a lot of different
7 things from our state. I do not believe that that is one
8 of them.

9 So that'll be -- that's it. Thank you.

10 JUDGE VASSIGH: Okay. Thank you, Mr. Teshara.

11 I do not have questions for either parties. So
12 we are going to close the record in this case.

13 This case is submitted today, December 17th,
14 2024. And I would like to thank everyone for
15 participating today. I will deliberate on this case and
16 issue a written opinion within 100 days from today.

17 And today's hearing in the appeal of Teshara is
18 concluded.

19 (Proceedings concluded at 9:39 a.m.)
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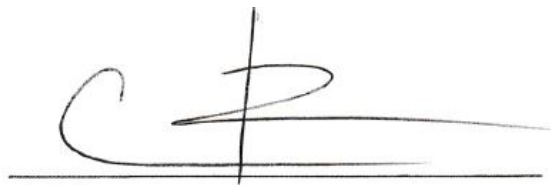
1 HEARING REPORTER'S CERTIFICATE

2
3 I, Christina L. Rodriguez, Hearing Reporter in and for
4 the State of California, do hereby certify:

5 That the foregoing transcript of proceedings was taken
6 before me at the time and place set forth, that the
7 testimony and proceedings were reported stenographically
8 by me and later transcribed by computer-aided
9 transcription under my direction and supervision, that the
10 foregoing is a true record of the testimony and
11 proceedings taken at that time.

12 I further certify that I am in no way interested
13 in the outcome of said action.

14 I have hereunto subscribed my name this 28th day
15 of December.

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21 Hearing Reporter

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