

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. MILLER and C. MILLER,) OTA NO. 230513393
)
 APPELLANTS.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, March 11, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings,
taken at 12900 Park Plaza Drive, Cerritos,
California, 90703, commencing at 12:55 p.m.
and concluding at 1:22 p.m. on Tuesday,
March 11, 2025, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA A. STANLEY

Panel Members: ALJ JOSH ALDRICH
ALJ STEVEN KIM

For the Appellants: D. MILLER
C. MILLER

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

ANDREA WATKINS
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-23 were received into evidence at page 8.)

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

OPENING STATEMENT

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CLOSING STATEMENT

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By Mr. Miller 18

1 Cerritos, California; Tuesday, March 11, 2025

2 12:55 p.m.

3
4 JUDGE STANLEY: Okay. We're going on the record
5 in the Appeal of Miller, Office of Tax Appeals Case
6 No. 230513393. The date is March 11th, and the time is
7 12:55 p.m. I'm Judge Stanley, and I'll be the lead for
8 purposes of conducting the hearing. My Co-Panelists
9 Judge Aldrich and Judge Kim will be equal participants in
10 deciding the case. So we will meet after the hearing and
11 deliberate and determine the outcome of the appeal.

12 Just as a reminder, we are not -- the Office of
13 Tax Appeals is not a court. We're an independent appeals
14 body staffed by our own subject matter experts, and we're
15 independent of any of the other state tax agencies. We
16 don't have anything to do with the Franchise Tax Board,
17 for example, other than what we're doing right now. We
18 deal with them through the appeals process.

19 I'm going to ask the parties to identify
20 themselves, starting with Mr. Miller.

21 MR. MILLER: I am Mr. Miller.

22 JUDGE STANLEY: Okay. And Franchise Tax Board.

23 MS. WATKINS: Andrea Watkins with Franchise Tax
24 Board.

25 MS. ZUMAETA: Jackie Zumaeta with Franchise Tax

1 Board.

2 JUDGE STANLEY: Okay. I wanted to go over the
3 issues.

4 And, Mr. Miller, before I go into the issue, I do
5 realize that your main issue is that you believe the
6 amount that you owe has already been paid. So when I ask
7 for your agreement, you don't have to restate that part of
8 it. What I understand the issues, from our perspective,
9 is whether or not you established that the Franchise Tax
10 Board made an error in disallowing deductions for repairs
11 or improvements to your residence, and whether you're able
12 to offset any disallowed deductions by the home office
13 deduction that you didn't claim in 2016; is that correct?

14 MR. MILLER: That is correct.

15 JUDGE STANLEY: Okay. Thank you.

16 And, Ms. Watkins, do you agree?

17 MS. WATKINS: Yes, I agree.

18 JUDGE STANLEY: Okay. And I also wanted to state
19 a couple of things that the parties don't dispute.
20 Appellants did not dispute the addition of deferred gain
21 on a sale of a home acquired in 2007 in a 1031 exchange
22 for a house that was sold in 2016. They also do not
23 separately contest the accuracy-related penalty.

24 That's correct still, Mr. Miller?

25 MR. MILLER: Your Honor, I'm not disputing

1 anything that I owed, just like I didn't dispute it for
2 the IRS. I think I paid it.

3 JUDGE STANLEY: Right. Right. I think we all
4 understand that position, and I'll let you talk more about
5 that when we get to your presentation.

6 But we also, at the prehearing conference, had
7 some stipulations that the IRS assessed additional tax and
8 an accuracy-related Appellant -- on Appellants' penalty on
9 a 2016 tax account on June 24th, 2019. We also have an
10 agreement that the additional tax and penalty assessed on
11 Appellants' 2016 federal tax account has not been abated
12 or reduced by the IRS.

13 And I know, Mr. Miller, you've already stated
14 that you're not disputing that either, what the IRS did.

15 MR. MILLER: I attempted to dispute it, but they
16 wouldn't let me.

17 JUDGE STANLEY: Okay.

18 MR. MILLER: So it didn't work out. Let's put it
19 that way.

20 JUDGE STANLEY: Okay. And that the Franchise Tax
21 Board agrees to abate interest from May 6th, 2021, through
22 February 24th, 2023, which totals \$993.53. And that's
23 because the Franchise Tax Board did not send Appellants
24 the May 6th, 2021 Imposition letter until
25 February 24th, 2023. So that's why that interest is --

1 will be abated.

2 Is that correct, Ms. Watkins?

3 MS. WATKINS: Yes, that's correct.

4 JUDGE STANLEY: Okay. Well, let's get to
5 exhibits then. Appellants submitted Exhibits 1
6 through 23, and the Franchise Tax Board did not object to
7 the admissibility, so those exhibits are admitted into
8 evidence.

9 (Appellant's Exhibits 1-23 were received
10 into evidence by the Administrative Law Judge.)

11 JUDGE STANLEY: The Franchise Tax Board submitted
12 Exhibits A through K, and Appellants did not object to the
13 admissibility of these exhibits, and they are admitted
14 into evidence.

15 (Department's Exhibits A-K were received
16 into evidence by the Administrative Law Judge.)

17 JUDGE STANLEY: And just one note for our
18 stenographer. I am saying Appellants, plural, because
19 Ms. Miller is also an Appellant in this case. So even
20 though we see Mr. Miller, I'm not calling him "Appellant."

21 And Mr. Miller is going to be the only witness
22 for the Appellants. Franchise Tax Board does not intend
23 to call any witnesses.

24 Is that correct, Ms. Watkins?

25 MS. WATKINS: Yes, that's correct.

1 JUDGE STANLEY: Okay. So, Mr. Miller, I'm going
2 to ask you to raise your right hand.

3
4 D. MILLER,
5 produced as a witness, and having been first duly sworn by
6 the Administrative Law Judge, was examined, and testified
7 as follows:

8
9 JUDGE STANLEY: Thank you. You asked for
10 30 minutes for your presentation, so you may proceed when
11 you're ready.

12
13 PRESENTATION

14 MR. MILLER: All right I sent via email notes to
15 this case that I plan to read. And what it is, is where
16 to find all the rest of the material that's already been
17 sent as evidence. Okay. And this went to evidence OTA,
18 Andres Rios and Nia, for you, Judge Stanley and
19 Ms. Watkins and Cynthia Kent.

20 Are you Kent?

21 MS. ZUMAETA: I am not, no.

22 MR. MILLER: Okay. That's fair enough.

23 Anyway, this has theoretically been sent to you.

24 This is not new evidence. The Appellant accepted
25 both the IRS decision, under protest, and the California

1 FTB tax, and has paid both using already evidence sent.
2 It should be at least acknowledged that California EDD
3 accepted my \$17,500 CARES Act money solicited on my behalf
4 from the U.S. Government -- and that refers to page 67 --
5 and did not distribute the funds to me or 33,000 other
6 California residents. This total is in the range of
7 \$450 million missing dollars. This comes from Steve Lopez
8 of the LA times.

9 In addition, it's estimated that between \$55 and
10 \$114 billion additional dollars are missing. Copies
11 available or California -- just Google "California lost
12 EDD money." It's well documented. See exhibit sheets A
13 through L, and it's speculated that when after two years
14 of trying -- this is speculated. You could help me out on
15 this. The Franchise Tax Board and then the OTA could not
16 collect the funds from EDD, and they returned to me for
17 collection. If OTA cannot collect the California funds
18 held for me by EDD, I can't collect them. I believe other
19 people have tried to collect it. And that's what the two
20 years were between the time that I sent in both my check
21 for \$10,000 and the \$15,000 that EDD owed me, and that's
22 where I thought we had paid.

23 All right. Can the judges cancel out the money
24 owed? This is a California problem not -- not mine. I
25 realize you're not going to get the money from EDD.

1 Nobody can. If you can cancel out, thank you. California
2 can keep my \$10,000 already paid to the federal -- the
3 Franchise Tax Board. If my estimated time of 1,000 hours
4 of correspondence is calculated at my last consultation
5 rate, then I'm behind about \$250,000, while all the
6 government employees have been getting paid.

7 I returned all asked for correspondence in one or
8 two days. Then it took months for the federal -- for the
9 Tax Board or the OTA to return any correspondence. I do
10 believe I should not be charged for interest on the return
11 wait time and should be getting interest paid on my
12 \$10,000. Since this was written last week, I received
13 another input and -- from Ms. Watkins, and it does show it
14 on a -- on a credit. The tax money owed was paid using
15 the old EDD money and was accepted by OTA, and a refund
16 check sent by OTA -- actually, that would be Federal Tax
17 Board, with the tax year clearly noted. See the check,
18 and that's on page 23. I also have, if you desire, some
19 of my notes here if you wanted to follow along.

20 Would you like to --

21 JUDGE STANLEY: That's okay. You can just
22 continue with your presentation, but you can rest assured
23 that we've all read the whole file and everything that
24 you've sent in. The judges have all read that, so just --
25 so that you know that.

1 MR. MILLER: Good. Thank you.

2 It's also -- so -- so page -- page 23 in here and
3 also page 67. So proof that it was received. A check was
4 sent to me paid off on a refund check, and then we waited
5 two years. California EDD CARES Act money was a fraud.
6 California made arrangements to pay me the \$15,000 --
7 turns out that \$17,550. Had to go back over my notes --
8 but never did. In response to Judge Stanley's suggestion
9 to contact the EDD Fraud line that I had previously
10 contacted the first time, indicated that the day before my
11 first check was sent, my address to where to send the
12 check was changed. My file was still under the real
13 address. Again, it's believed that 33,000 Californians
14 had the same problems.

15 On my second phone call -- and my second phone
16 call, California EDD Fraud line agreed to fix the "send
17 to" address but never did. Cal EDD refused to give me my
18 new check address. I said, "Where did you send my check?"
19 "We can't tell you," while still referencing my original
20 account. They had my account, and they saw where -- where
21 the checks had been changed. When the checks that were
22 agreed to -- agreed to fix still didn't arrive, EDD Fraud
23 was again contacted with my correct address noted. They
24 found my file. However, the phone operator indicated he
25 could not open my file unless I knew my new address the

1 checks were sent to.

2 My phone call -- my phone call to EDD last
3 month -- and on the side, I looked up EDD and the one with
4 the most stars for satisfaction was actually close to me
5 down in -- in -- at the beach. And the operator said he
6 never heard of any lost funds. Period. All right. The
7 failure -- Oceanside. It was the Oceanside office. The
8 failure of the IRS to recognize the money spent for safety
9 improvements has already been documented, and this is
10 pages 43 through 55. The not used office in the house for
11 2016 has already been documented, page 56 through 108.
12 The IRS contention that the improvements would raise the
13 house price is wrong, and the documents are on page 49
14 through 53 with the photos.

15 Thank you. Looking forward to being here today.

16 JUDGE STANLEY: I have a follow-up question. You
17 mentioned that you don't think you should be charged
18 interest. Were you talking about a time period other than
19 what the Franchise Tax Board --

20 MR. MILLER: I believe --

21 JUDGE STANLEY: -- has already agreed to?

22 MR. MILLER: Yeah. I -- I believe that I paid
23 the entire amount, but I used the EDD funds which
24 California had of mine. The -- and I received a refund
25 check for that year, and it's in here. Plus it's in the

1 little notes I have. And then we went for two years. I
2 was happy. And then the Franchise Tax Board came back and
3 said we're not going to count it. So I believe -- this is
4 conjecture. I believe that they tried to get the money
5 from EDD, just like I did. And two years later they gave
6 up.

7 JUDGE STANLEY: Okay. So I think I understand
8 what you're saying now. You're talking about the two-year
9 period before the IRS made an adjustment.

10 MR. MILLER: Well, the IRS never made any
11 adjustments. When the IRS -- the IRS made the
12 adjustments, and then there was a two-year period until
13 California -- I thought it was pretty automatic. But
14 California then came back and said you owe us, you know,
15 the money. And I agreed, and I paid it.

16 JUDGE STANLEY: Okay. Thank you.

17 Ms. Watkins, do you have any questions for
18 Mr. Miller?

19 MS. WATKINS: No, I don't have any questions.

20 JUDGE STANLEY: And, Judge Aldrich, do you have
21 any questions?

22 JUDGE ALDRICH: No questions. Thank you.

23 JUDGE STANLEY: Judge Kim?

24 JUDGE KIM: No questions. Thank you.

25 JUDGE STANLEY: Okay. And I don't have any

1 follow-up questions at this time either. So we'll turn
2 the Franchise Tax Board.

3 And, Ms. Watkins, you asked for 10 minutes for
4 your presentation, and you may proceed when you're ready.

5

6 PRESENTATION

7 MS. WATKINS: Good afternoon. My name is Andrea
8 Watkins, and I represent the Respondent, Franchise Tax
9 Board, along with my co-counsel, Jackie Zumaeta.

10 There are two issues on appeal: One, whether the
11 Appellants have met their burden of proof to establish
12 error in FTB's 2016 proposed assessment of additional tax;
13 and two, whether the Appellants have established a basis
14 to abate the accuracy-related penalty, both which are
15 based on federal action. Appellants do not contest the
16 accuracy-related penalty, so I will only address the first
17 issue.

18 The law provides that a proposed assessment,
19 based on federal action, is presumed correct and the
20 taxpayer bears the burden of proving error. In this case,
21 the IRS reviewed the Appellants' 2016 federal return and
22 assessed additional tax and penalty based on unreported
23 dividend income and adjustments to Appellants' federal
24 schedules C, D, and E income and deductions.

25 Per the most recent federal account transcript,

1 there has been a final federal determination, and no tax
2 has been subsequently abated by the IRS. FTB followed the
3 federal assessment to the extent allowable under
4 California law resulting in a proposed assessment of
5 additional California tax of \$19,611, and an
6 accuracy-related penalty of \$3,922.20. Appellants argue
7 that they have paid the proposed assessment in full. They
8 claim that they are entitled to funds from the Employment
9 Development Department, which they never received. And
10 they believe the purported missing EDD funds should be
11 used to help satisfy their additional California tax.

12 However, FTB and the EDD are two separate state
13 agencies, and any potential claim that Appellants believe
14 they have regarding EDD funds is not applicable to this
15 tax appeal. FTB is in receipt of a partial payment from
16 Appellants in the amount of \$10,661.90, which is currently
17 being held in suspense pending the outcome of this appeal.
18 And to be clear in response to the Appellants'
19 presentation, FTB has not tried to collect any EDD funds.

20 Appellants also argue that \$41,365 of repairs to
21 their personal residence should be tax deductible.

22 However, these home remodeling costs are a personal
23 expense and are not tax deductible. Therefore, the IRS
24 and FTB properly disallowed the claim deduction. In
25 addition, Appellants claim that they are entitled to a

1 business use of home deduction, although, they did not
2 claim it on their original tax return. They would now
3 like to claim a home office deduction to offset their
4 additional California tax. They would like FTB to apply
5 an average home office deduction based on amounts they
6 claimed in previous and subsequent tax years.

7 In order for such a deduction to be allowed, the
8 Appellants are required to provide evidence of the
9 expense. As deductions are a matter of legislative grace,
10 and the taxpayer who claims the deduction has the burden
11 of proving they're entitled to it. Appellants have not
12 provided a Schedule 8829 or other documentation to
13 establish their entitlement to such a deduction, nor where
14 they allowed a home office deduction at the federal level.

15 Appellants have not met their burden of proof to
16 establish error in FTB's proposed assessment, nor the
17 federal assessment on which it is based. Therefore, I
18 respectfully request that FTB's proposed assessment be
19 affirmed.

20 I'm happy to answer any questions from the panel.
21 Thank you.

22 JUDGE STANLEY: Judge Aldrich, do you have any
23 questions for the Franchise Tax Board?

24 JUDGE ALDRICH: No questions. Thank you.

25 JUDGE STANLEY: And, Judge Kim, do you have any

1 questions?

2 JUDGE KIM: No questions.

3 JUDGE STANLEY: Okay. And I don't have any
4 questions either.

5 So we'll turn back to you, Mr. Miller, and you
6 can have the final say. You can rebut anything that
7 Ms. Watkins said or just conclude -- just make final
8 statement.

9

10 CLOSING STATEMENT

11 MR. MILLER: All right. In -- in the notes that
12 have been sent previously, one piece in there is my appeal
13 to the IRS. And the individual that I trusted that did my
14 IRS audit that I sent it to was no longer available.
15 Instead, they sent me a 1040X, which was impossible to
16 fill out, just because there were so many items in Ms.
17 Chen's input. And 2016, that was the year we moved. And
18 so there are two separate sets of -- of -- you know,
19 houses. But it turns out that when I'm asking for the
20 home deduction, which I did not use because I did not need
21 it. Because one of the reasons I was audited is I had
22 zero income that year. And so they -- big red flag, and
23 they audited me.

24 And so 1040X is, what in the audit did you not
25 like? Well, there was lots of it in the audit. In

1 addition, you will find that I -- after Ms. Chen said that
2 the house value would go up by the amount of money that we
3 spent for safety reasons -- and we have picture in there.
4 I mean, the house was unsafe when we moved in, and all the
5 photos are in there and everything else. So I am asking
6 that that be reinstated. All right. I couldn't do it at
7 the IRS level because there was no means for me to appeal
8 it that worked. The 1040X, I couldn't figure out a way to
9 fill it out.

10 Now, I paid it. Then when I got your inputs, I
11 paid it. And then we had two years everybody was happy,
12 right. And then all of a sudden they changed their minds.
13 One of the inputs here, that Ms. Watkins sent here about a
14 week or so ago, was the account transcript for the
15 Internal Revenue Service indicating that I owed nothing
16 for that year. It was paid, just like I paid the
17 California. Her second input here, which is K, they have
18 listed down the interest and the one payment of \$10,000.

19 My question is, if you took, for two years, the
20 \$15,000, where is it? Nowhere on here does it have the
21 refund check that I was sent back for that year. And
22 it's -- it's both here, the handout that I have and, of
23 course, it's in the documents. Where's that? There
24 should be credits and debits for that. It appears that
25 the Franchise Tax Board is just ignoring the fact that

1 they had, for two years, the \$15,000. So for two years I
2 thought it was paid. And then when they couldn't collect
3 the money, I believe -- and this is conjecture -- from
4 EDD, they just came back and said, okay, you have to pay
5 it because we can't get it. No one is going to get any
6 money from EDD. It's gone. I think it was fraud.

7 I think that covers it. I'm up to the panel here
8 to go through the evidence and recognize that I was
9 frauded [sic], and California has \$17,000 of my money. I
10 only used \$15. So in my mind, you should send me a check
11 for \$2,000.

12 JUDGE STANLEY: Okay. That concludes your
13 presentation?

14 MR. MILLER: That -- that's good enough. I wish
15 you luck in going through the years of correspondence we
16 have had.

17 JUDGE STANLEY: I can guarantee you we've all
18 been through everything that you've sent us. We've all
19 read through it already, but we'll probably go back
20 through it while we're deliberating. So we -- I think we
21 have your story down now.

22 MR. MILLER: Well, on our conference call that we
23 had, you indicated I should have contacted EDD Fraud. I
24 did.

25 MS. ZUMAETA: And, Judge Stanley, to the extent

1 that the opinion should come out in this case and it would
2 not be in Mr. Miller's favor, we would be happy to discuss
3 the option of how to file a government claim if he
4 believes that there's an issue with the Employment
5 Development Department's payment.

6 JUDGE STANLEY: Oh, thank you.

7 MR. MILLER: Thank you. And that was tried.
8 You'll find -- you'll find it in here.

9 JUDGE STANLEY: I think Ms. Zumaeta is offering
10 that the Franchise Tax Board can help you maybe get
11 somewhere with EDD. So what she's saying is if the
12 opinion doesn't come out in your favor, that you should
13 contact someone from her office and that they'll help --

14 MR. MILLER: I certainly --

15 JUDGE STANLEY: -- take you through the program.

16 MR. MILLER: I certainly appreciate that.

17 JUDGE STANLEY: Okay. And I can footnote that in
18 the opinion too --

19 MR. MILLER: Okay.

20 JUDGE STANLEY: -- so that --

21 MR. MILLER: There was a -- her name was Jenny,
22 from the free advice thing, and she had all of the -- the
23 inputs, and she said she couldn't help me. So that was
24 another avenue that was tried, compliments of Franchise
25 Tax Board.

1 JUDGE STANLEY: And I'll ask you, when we're not
2 on live stream, what kind of contact information
3 Mr. Miller would need for that.

4 Judge Aldrich, do you have any final questions?

5 JUDGE ALDRICH: I do not. Thank you.

6 JUDGE STANLEY: Okay. And, Judge Kim, do you
7 have final questions?

8 JUDGE KIM: No. I don't.

9 JUDGE STANLEY: No.

10 MR. MILLER: I -- I have a final question.

11 JUDGE STANLEY: Okay.

12 MR. MILLER: Can you eliminate the -- what I owe?
13 Can this Board have the power to eliminate what I owe?

14 JUDGE STANLEY: Well, we'll have to get together
15 after this. We have to review all the evidence. And
16 then, you know, we will -- that's going to be my next
17 thing that we're closing the record now, but we do have a
18 record. We have everything that you gave us, and we have
19 everything that the Franchise Tax Board gave us. And
20 we'll get together after the hearing, and we'll
21 deliberate, and we'll reach a conclusion on the issues
22 that you've raised. And then we'll issue a written
23 opinion within 100 days.

24 So the record is closed, and today's hearing in
25 the Appeal of Miller is now concluded.

1 The next hearing will -- nope. There is no next
2 hearing today. So we're adjourned for today. So thank
3 you for coming and participating, and enjoy the rest of
4 your afternoon.

5 (Proceedings adjourned at 1:22 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 21st day
of March, 2025.

ERNALYN M. ALONZO
HEARING REPORTER