

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042692
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ARTURO SANOJA) Date Issued: March 13, 2019
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_____)

OPINION

Representing the Parties:

For Appellant: Arturo Sanoja

For Respondent (FTB): Andrew Amara, Tax Counsel III

THOMPSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Arturo Sanoja appeals an action by FTB denying his claim for refund for the 2012 tax year.¹

Appellant did not request an oral hearing or respond to a letter asking if he wished to have an oral hearing. Therefore, the matter is being decided based on the written record.

ISSUE

Whether FTB erred in imposing a collection cost recovery fee.

FACTUAL FINDINGS

1. On April 1, 2016, FTB issued a Notice of Proposed Assessment (NPA) for the 2012 tax year increasing appellant’s taxable income and proposing additional tax of \$329, plus interest.
2. Appellant did not protest or respond to the NPA. As a result, it became final on May 31, 2016.
3. On June 20, 2016, FTB credited appellant’s account with a \$50 payment.

¹ While appellant’s refund claim states an amount of \$258.03, it appears he is contesting FTB’s imposition of a collection cost recovery fee of \$266.

4. On June 27, 2016, FTB issued appellant a Notice of State Income Tax Due requesting payment of the full amount due. The notice indicated that FTB may impose a collection cost recovery fee if appellant did not pay the amount due.
5. On August 17, 2016, FTB issued another notice requesting payment.
6. Appellant then called FTB and stated that he was sending \$100, and FTB provided appellant with 90 days to pay the full amount due. FTB credited appellant with a \$100 payment on August 29, 2016.
7. On November 4, 2016, FTB issued a Final Notice Before Levy and Lien. FTB stated that it would undertake collection activity if it did not receive full payment within 30 days. FTB also stated that a collection fee might be imposed.
8. On November 22, 2016, appellant made another partial payment of \$100.
9. After FTB did not receive full payment within 30 days, it commenced collection action.
10. On December 20, 2016, FTB imposed a collection cost recovery fee of \$266.
11. FTB ultimately collected the full amount due, including the collection cost recovery fee.
12. On April 3, 2017, appellant filed a claim for refund of \$258.03. Appellant's refund claim states that his family was making payments but that they missed a payment. The claim indicates that the missed payment was due to appellant's difficulty in finding employment after moving outside of California. The claim also states that the family "takes its bills seriously so [it doesn't] know what happened."
13. On November 13, 2017, FTB denied appellant's refund claim.
14. Appellant then filed this timely appeal. To explain his position, appellant attached his refund claim to his appeal letter.²

DISCUSSION

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery when a person fails to pay amounts due and FTB has mailed a notice for payment that advises that continued failure to pay may result in collection action. The statute does not provide any exception for reasonable cause. (*Appeal of Myers*, 2001-SBE-001, May 31, 2001 (*Myers*)).³

² Appellant also provided what appears to be a copy his federal tax return for 2013. However, the year at issue in this appeal is 2012, so the tax return is not relevant.

³ Published decisions of the State Board of Equalization, designated as "SBE" in the citation, are generally available for viewing on the Board's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

Here, appellant failed to pay the full amount due and received two notices indicating that the fee would be imposed. As FTB mailed notice that the fee would be imposed, R&TC section 19254(a)(1) required that it impose the fee.

Appellant appears to argue that he had reasonable cause for failing to timely pay the full amount. Specifically, he indicates that trouble finding employment caused him to miss a payment. He also notes that he made some payments and states that his family takes its bills seriously. Appellant thus appears to suggest that he acted reasonably and in good faith.

The record shows that appellant made some payments and gives us no reason to doubt appellant's statements. However, the law requires imposition of the fee in the circumstances present here, and it does not provide any reasonable cause exception. (*Myers, supra.*) Therefore, we have no legal basis to abate the penalty.

R&TC section 19254(b) provides that the amount of the fee is set by the Legislature to reflect actual costs. Here, at the time the fee was imposed, the amount of the fee was set at \$266. Accordingly, FTB was required by law to impose a fee in this amount.

HOLDING

FTB correctly imposed the collection cost recovery fee.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge