

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
ALICIA GAMARRA

) OTA Case No. 18010924
)
) Date Issued: June 24, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Frank Bellosprito, Representative

For Respondent: David Kowalczyk, Tax Counsel
Nancy Parker, Tax Counsel IV

N. DANG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Alicia Gamarra (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her claims for refund for the 2014 through 2016 tax years.

Office of Tax Appeals (OTA) Administrative Law Judges Nguyen Dang, Linda C. Cheng, and Kenneth Gast held an oral hearing for this matter in Los Angeles, California, on April 25, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUES

1. Whether appellant has established that she is entitled to the refund claimed for the 2015 tax year.
2. Whether OTA has jurisdiction to determine the propriety of FTB intercepts of appellant’s state tax refunds for the 2014 and 2016 tax years, and if so, whether they were proper.
3. Should a frivolous appeal penalty be imposed, and, if so, in what amount?

FACTUAL FINDINGS

2015 Tax Year

1. Appellant initially filed a 2015 California Nonresident or Part-Year Resident Income Tax Return, reporting \$1,159 tax, and withholding of \$1,546.
2. Appellant subsequently filed another 2015 California Nonresident or Part-Year Resident Income Tax Return, reporting \$0 tax, and withholding of \$1,546. Attached to this return, were arguments that appellant's wages are not income, the income tax is unconstitutional, and various other similar reasons justifying appellant's \$0 tax liability. FTB inadvertently processed this return, refunding appellant's entire withholding of \$1,546.
3. Thereafter, FTB discovered that it had erroneously refunded appellant \$1,157 (conceding that \$389 of the \$1,546 refunded to appellant was proper), and issued to appellant a written demand for repayment of the erroneous refund (demand).
4. Appellant did not respond to FTB's demand, and consequently, FTB levied appellant for the erroneous refund amount, plus applicable interest and a collection cost recovery fee.
5. Appellant filed a refund claim for the levied amount, which FTB denied.
6. On appeal, FTB agreed to cancel the collection cost recovery fee and abate interest for the period April 29, 2016 (the date of the erroneous refund), through November 15, 2017 (30 days following the demand).

2014 and 2016 Tax Years

7. Appellant filed California Resident Income Tax Returns for the 2014 and 2016 tax years, claiming overpayments of \$406 and \$898, respectively. FTB processed these returns, but pursuant to the California Interagency Intercept Collection Program (IICP), FTB intercepted and diverted appellant's tax refund for these years to the Internal Revenue Service (IRS).¹
8. In response, appellant filed refund claims for the 2014 and 2016 tax years with FTB for the intercepted amounts.
9. FTB denied appellant's refund claims, and this appeal followed.

¹ The statutory provisions of the IICP (Gov. Code, § 12419.2 et seq.), grants the State Controller the authority to offset a taxpayer's tax refund against his or her delinquent debts owed to various government agencies, including the IRS.

DISCUSSION

Issue 1 – Whether appellant has established that she is entitled to the refund claimed for the 2015 tax year.

When, under the Personal Income Tax Law (PITL), it is determined that there has been an overpayment of any liability or an amount not required to be paid, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, §§ 19301(a), 19302.) The taxpayer bears the burden of proving entitlement to any refund. (*Appeal of Durley* (82-SBE-154) 1982 WL 11831.)

Appellant’s contentions pertaining to her 2015 tax liability consist of patently frivolous and baseless arguments. These are boilerplate statements containing nonsensical legal-sounding jargon and a long litany of authorities taken wholly out of context to support the proposition that appellant is, for one reason or another, not subject to the PITL, or that her wages are not subject to tax. For instance, appellant asserts, inter alia, that she has no tax liability for the 2015 tax year because the PITL applies only to officers, employees and instrumentalities of the federal government, and that the requirement to pay tax through withholding is unconstitutional and tantamount to slavery and extortion.

Appellant’s contentions, and other similar arguments, have consistently been rejected by our predecessor in interest, the State Board of Equalization (SBE), as frivolous and without merit. (See, e.g., *Appeals of Wesley, et al.* (2005-SBE-002) 2005 WL 3106917; *Appeal of Hodgson* (2002-SBE-001) 2002 WL 245667; *Appeal of Myers* (2001-SBE-001) 2019 WL 1187160); *Appeal of Castillo* (92-SBE-020) 1992 WL 202571; *Appeals of Bailey* (92-SBE-001) 1992 WL 44503; *Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759; *Appeal of Balch*, 2018-OTA-159P, Oct. 9, 2018.) As such, we decline to discuss appellant’s contentions further, because “to do so might suggest that these arguments have some colorable merit.” (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417 [discussing the reason courts often decline to refute frivolous taxpayer arguments with “somber reasoning and copious citation of precedent”].)

Based on the foregoing, we find that appellant has not established that she is entitled to the refund she claims for her 2015 tax year.

Issue 2 – Whether OTA has jurisdiction to determine the propriety of FTB intercepts of appellant’s state tax refunds for the 2014 and 2016 tax years, and if so, whether they were proper.

Generally, OTA’s jurisdiction to hear and decide appeals involving actions taken by FTB extends only to tax-related matters, such as FTB’s denial of a refund claim, or an action on a proposed deficiency assessment. (Cal. Code Regs., tit. 18, § 30103(a)(1) – (9).) We are not aware of any authority that permits OTA to hear and decide issues relating to the IICP. In fact, OTA’s Rules for Tax Appeals expressly prohibits OTA from considering whether appellant is entitled to a remedy for FTB’s actual or alleged violation of *any* substantive or procedural right, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal, which are situations not present here. (Cal. Code Regs., tit. 18, § 30104(d).) Further, upon the transfer or payment of any amount pursuant to the IICP, the agency which had held the property or had owed the amount involved is relieved and discharged of *any and all liability*. (Gov. Code, § 12419.4.) This indicates that appellant’s remedy for any alleged issues concerning an IICP transfer or payment lies with the IRS, and not FTB. Therefore, we conclude that OTA is without jurisdiction to hear and decide issues involving FTB intercepts under the IICP.

Issue 3 – Should a frivolous appeal penalty be imposed, and, if so, in what amount?

R&TC section 19714 provides that whenever it appears that a proceeding before OTA has been instituted or maintained by the taxpayer primarily for delay, that the taxpayer’s position in the proceedings is groundless or frivolous, or that the taxpayer unreasonably failed to pursue available administrative remedies, a penalty in the amount of up to \$5,000 shall be imposed.

The following non-exclusive list of factors are considered in determining whether to impose the penalty, and in what amount: (1) whether the appellant is making arguments that OTA, in a precedential opinion, or SBE, in a precedential opinion, or courts have rejected; (2) whether the appellant is making the same arguments that the same appellant made in prior appeals; (3) whether the appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California’s tax laws; or (5) whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may

apply. (Cal. Code Regs., tit. 18, § 30217(b)(1) – (5).) The cost of processing an appeal is significant, and repeated appeals where the arguments have been previously considered and rejected will not be condoned. (*Appeals of Dauberger, et al., supra.*)

As discussed above in Issue 1, appellant’s contentions in this matter are entirely groundless, and were previously rejected by SBE in numerous precedential opinions. Also, prior to and during this appeal, appellant was notified that her contentions were without merit, and proceeding with her appeal on these grounds would result in the imposition of a frivolous appeal penalty of up to \$5,000. Despite these warnings, appellant chose to adhere to her frivolous position. Further, appellant’s filing in this appeal of numerous, lengthy briefs and motions based solely on frivolous arguments has been nothing but vexatious, to say the least, resulting in an undue consumption of time and resources in processing her appeal. Based on the foregoing, we impose a frivolous appeal penalty of \$1,000, and advise appellant that greater penalties may follow if she persists in submitting frivolous appeals to OTA.

HOLDINGS

1. Appellant has not established that she is entitled to an additional refund for the 2015 tax year.
2. OTA does not have jurisdiction to determine the propriety of FTB intercepts of appellant’s state tax refunds for the 2014 and 2016 tax years.
3. We impose a frivolous appeal penalty of \$1,000.

DISPOSITION

In accordance with FTB's concession on appeal, the collection cost recovery fee imposed for the 2015 tax year will be cancelled, and interest for the period April 29, 2016, through November 15, 2017, will be abated. Otherwise, FTB's action denying appellant's claims for refund for the 2014 through 2016 tax years is sustained, and a frivolous appeal penalty of \$1,000 is imposed.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge