

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. GOZUKARA¹

) OTA Case No. 19085195
) CDTFA Account No. 053-006804
) CDTFA Case ID 1051849
)
)
)

OPINION

Representing the Parties:

For Appellant:

Daniel Cooper, Attorney
S. Soylemez, Witness
C. Gozukara, Appellant

For Respondent:

Joseph Boniwell, Tax Counsel
Monica Silva, Tax Counsel IV
Jason Parker, Hearing Representative

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, C. Gozukara (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)² denying appellant’s claim for refund of \$141,298.26.

Office of Tax Appeals (OTA) Administrative Law Judges Daniel K. Cho, Nguyen Dang, and Andrew Wong held an oral hearing for this matter in Cerritos, California, on July 21, 2020.³ At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

¹ Although this taxpayer did not appeal his liability, the underlying tax liability is attributed to this taxpayer and account number. Therefore, we continue to use the taxpayer’s name and account number for purposes of this appeal even though the appellant is the taxpayer’s ex-spouse.

² Sales taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to acts or events that occurred before July 1, 2017, “CDTFA” shall also refer to BOE.

³ The oral hearing was noticed for Cerritos, California, but conducted electronically by video conference due to COVID-19.

ISSUES

1. Whether OTA has jurisdiction over this appeal.
2. Whether appellant is entitled to a refund.

FACTUAL FINDINGS

1. At all relevant times, appellant was not liable for any unpaid sales or use taxes administered by CDTFA.
2. At all relevant times, A. Gozukara, appellant's ex-spouse, was personally liable for the unpaid taxes of Urban Automotive Group, LLC in the amount of \$79,833 tax, plus accrued interest, and penalties of \$7,983.30.
3. In connection with A. Gozukara's tax liability, CDTFA recorded a state tax lien with the Orange County Clerk-Recorder on August 12, 2011, against real property located in Orange County.
4. On December 14, 2017, appellant sold the real property located in Newport Beach that had CDTFA's lien attached to it, and CDTFA received \$141,298.26 from the sale proceeds.
5. Appellant filed a timely claim for refund.
6. CDTFA issued a Decision dated July 23, 2019, denying appellant's claim for refund.
7. This timely appeal followed.

DISCUSSION

In general, OTA has jurisdiction to hear and decide an appeal that has been timely submitted pursuant to an Appeals Bureau decision that is adverse to the taxpayer, in whole or in part. (Cal. Code Regs., tit. 18, § 30103(b)(1).) However, OTA does not have jurisdiction to consider whether a taxpayer is entitled to a remedy for CDTFA'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. (Cal. Code Regs., tit. 18, § 30104(d).) In other words, "the only power that [OTA] has is to determine the correct amount of appellant's ... tax liability for the appeal years." (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

Although appellant appealed an adverse Appeals Bureau decision, the issue in the appeal does not involve a dispute as to a tax liability. Instead, appellant is asserting that CDTFA's levy

was improper because appellant was the sole owner of the levied property and not the tax debtor. This argument does not affect the adequacy of a Notice of Determination, the validity of any action from which a timely appeal was made, or the amount at issue in the appeal. In fact, there is no dispute as to the tax liability amount and person responsible for the tax. Thus, the sole issue in this appeal is related to CDTFA's collection activities, which is explicitly excluded from OTA's jurisdiction. (See Cal. Code Regs., tit. 18, § 30104(d).)

Appellant's only argument is that she was bringing this appeal to OTA in order to exhaust all of her administrative remedies. While it is true that a taxpayer must exhaust all administrative remedies before pursuing a suit in court (see *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1108), this requirement does not give OTA jurisdiction to decide the propriety of CDTFA's levy. Therefore, we conclude that OTA lacks jurisdiction to decide this matter. Furthermore, because OTA lacks jurisdiction to hear this matter, we do not address issue 2.

HOLDING

OTA lacks jurisdiction over this appeal.

DISPOSITION

This appeal is dismissed for lack of jurisdiction.

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Nguyen Dang

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Nguyen Dang

Administrative Law Judge

DocuSigned by:

Andrew Wong

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Andrew Wong

Administrative Law Judge

Date Issued: 8/25/2020