

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21088405
J. BESCOS AND)
Z. BESCOS)
_____)

OPINION

Representing the Parties:

For AppellantsAppellants: J. Bescos

For Respondent: Noel Garcia, Tax Counsel

For Office of Tax Appeals: Steven Kim, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Bescos and Z. Bescos (appellants) appeal an action by respondent Franchise Tax Board (FTB)respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$574.36 for the 2019 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellants have established that an overpayment exists for the 2019 tax year.
2. Whether appellants are entitled to a refund of the collection cost recovery fee.
3. Whether the Office of Tax Appeals (OTA) has jurisdiction to consider a claim for reimbursement of bank fees related to FTB’s collection action.

FACTUAL FINDINGS

1. Appellants filed a California income tax return for the 2019 tax year. Appellants reported zero tax due (after exemptions) and withholding of \$336, resulting in an overpayment of \$336.
2. On March 26, 2020, FTB notified appellants that the IRS had intercepted appellants' state tax refund of \$336.¹
3. On September 15, 2020, appellants filed an amended 2019 return. Appellants reported "other tax" of \$300² and withholding of \$337,³ resulting in a reduced overpayment of \$37.⁴ Because FTB had already accepted appellants' 2019 as filed and the IRS had already intercepted appellants' state tax refund of \$336, FTB issued appellants a Notice of Tax Return Change-Revised Balance, dated November 12, 2020, informing appellants that there was a change to their 2019 return resulting in a balance due of \$299 and accrued interest.
4. On December 28, 2020, FTB issued appellants an Income Tax Due Notice showing a balance due of \$299 in tax and accrued interest.
5. On February 12, 2021, FTB issued appellants a Final Notice Before Levy and Lien informing appellants that FTB would take collection action if appellants did not pay the balance due within 30 days, and that FTB may impose a collection fee.
6. On May 10, 2021, FTB transferred a credit of \$51.10 from appellants' 2020 tax year to their 2019 tax year.
7. FTB initiated collection action and imposed a collection cost recovery fee of \$316. On May 12, 2021, and May 19, 2021, FTB issued orders to appellants' banks to withhold funds from appellants' bank accounts to satisfy the amount due.

¹ Through the State Controller's Office's Interagency Intercept Collection Program, FTB is authorized to offset a taxpayer's tax refund against any delinquent debts owed to participating agencies, including the IRS. (See Gov Code, §§ 926.8; 12419.)

² Appellants indicated that the "other taxes" were related to Form FTB 3805P (Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts), but they did not provide a copy of the form.

³ Appellants provided no explanation for the \$1 change in withholding.

⁴ Appellants also reported other changes on the amended return, including more federal adjusted gross income (AGI), new California adjustments, and less California AGI.

8. On June 7, 2021, FTB received a payment of \$574.36.⁵
9. Appellants filed a timely claim for refund of \$574.36 and a \$75 bank fee.
10. FTB denied the claim for refund.
11. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established that an overpayment exists for the 2019 tax year.

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Li*, 2020-OTA-095P; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) The taxpayer must prove not only that FTB’s determination of his tax liability is incorrect but also the correct amount of tax that he owes. (*Appeal of Jali*, 2019-OTA-204P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, appellants filed their original 2019 tax return, reporting an overpayment of \$336. FTB accepted that return as filed and issued a \$336 refund, which was intercepted by the IRS. Subsequently, appellants filed an amended 2019 tax return reporting several changes, including additional “other taxes” of \$300 and a reduced overpayment of \$37. FTB accepted the amended return as filed, but because the \$336 refund had already been intercepted by the IRS, FTB found that appellants had a deficiency of \$299 for the 2019 tax year.

Appellants contend that they do not have taxable income other than their retirement benefits, from which California tax was withheld. However, appellants reported other changes to their income on the amended return, including additional federal adjusted gross income, for which they have provided no explanation. Furthermore, appellants *self-assessed* the “other tax” of \$300 and the reduced overpayment of \$37 on their amended return, which resulted in the \$299 deficiency. Although appellants indicated “FTB 3805P” next to line 63 of the return (“other taxes”), they did not provide a Form FTB 3805P or any other explanation or information about the additional \$300 of other taxes. Accordingly, OTA finds that appellants have not satisfied their burden to prove that an overpayment exists for the 2019 tax year.

⁵ The total amount paid consists of \$299 in tax (and a credit of \$51.10), a \$316 collection cost recovery fee, and accrued interest.

Issue 2: Whether appellants are entitled to a refund of the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when any person fails to pay any amount of tax and FTB has notified that person that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee.⁶ Once properly imposed, there is no reasonable cause exception or any other provision in the statute allowing for relief from the collection cost recovery fee. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, FTB issued appellants a Final Notice Before Levy and Lien on February 12, 2021, informing appellants that the continued failure to pay the liability within 30 days may result in collection action and the imposition of a collection cost recovery fee. Appellants failed to pay the liability within 30 days. Accordingly, OTA finds that the collection cost recovery fee was properly imposed.

Issue 3: Whether OTA has jurisdiction to consider a claim for reimbursement of bank fees related to FTB's collection action.

R&TC section 21018(a) provides that a person may file a claim with FTB for reimbursement of charges or fees imposed on that person by an unrelated business entity (e.g., a bank) as a direct result of an erroneous levy by FTB. Such reimbursement claims must be filed within 90 days from the date of the erroneous levy. (R&TC, § 21018(b).)

Here, appellants contend they are entitled to reimbursement of a \$75 bank processing fee, which they incurred as a result of FTB's allegedly erroneous levy.⁷ FTB received a payment from appellants' bank on June 7, 2021, and appellants timely submitted a claim for refund, which included reimbursement of the bank processing fee to FTB on July 1, 2021. FTB denied the claim for reimbursement of the bank fee, finding that the levy was not erroneous.

R&TC section 21018 does not provide OTA with jurisdiction to review FTB's determination regarding reimbursement claims for bank fees. Appellants have not cited to any authority, either in OTA's Rules of Tax Appeals (Cal. Code Regs., tit. 18, § 30000 et seq.) or elsewhere, that would broaden OTA's jurisdiction to review denied reimbursement claims for bank fees. In fact, OTA is expressly prohibited from considering whether appellants are entitled

⁶ The amount of the fee is adjusted annually to reflect actual enforcement costs. (See R&TC, § 18501(d).)

⁷ The record does not contain any documentary evidence that appellants were charged a \$75 processing fee, such as a letter or notice from the bank.

to a remedy for FTB's actual or alleged violation of any substantive or procedural right to due process under the law, 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).) The denial of a claim for reimbursement of bank fees incurred as a result of FTB's collection action under R&TC section 21018(a) has no bearing on 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.


Accordingly, OTA does not have jurisdiction to consider FTB's denial of appellants' claim for reimbursement of bank fees incurred as a result of FTB's collection action.

HOLDINGS

1. Appellants have not established that an overpayment exists for the 2019 tax year.
2. Appellants are not entitled to a refund of the collection cost recovery fee.
3. OTA does not have jurisdiction to consider appellants' claim for reimbursement of bank fees.

DISPOSITION

FTB's action is sustained in full.

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Sara A. Hosey
Administrative Law Judge

Date Issued: 6/28/2022