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2023 – OTA – 191
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **HEAVENLY COUTURE, INC.**[1]	OTA Case No. 21088424 CDTFA Case ID 2-247-670

OPINION

Representing the Parties:

For Appellant: James Han, CPA

For Respondent: Mari Guzman, Tax Counsel III
Chad T. Bacchus, Tax Counsel IV
Jason Parker, Chief of Headquarters Ops.

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, J. Ha (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[2] CDTFA's decision denies appellant's timely claim for refund of $282,791.23, which CDTFA applied to the unpaid liabilities of Heavenly Couture, Inc. (Heavenly), following the termination of its business. Heavenly is not a party to this appeal and it is undisputed that Heavenly incurred $282,791.23 in liabilities to CDTFA.[3]

Office of Tax Appeals (OTA) Administrative Law Judges Andrew J. Kwee, Suzanne B. Brown, and Sheriene Anne Ridenour held an electronic oral hearing for this matter on

[1] Both parties agree that the appellant in this appeal is J. Ha, an individual, as opposed to Heavenly Couture, Inc., and that J. Ha timely filed the claim for refund at issue in this appeal. Nevertheless, the jurisdictional document identifies Heavenly Couture, Inc. as the taxpayer in the case caption because the funds were applied to its account with CDTFA. Accordingly, for purposes of consistency, this matter is identified as "Appeal of Heavenly Couture, Inc."

[2] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board 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 refer to the board.

[3] Heavenly owed unpaid taxes, interest, and penalties upon its termination. The record does not indicate the specific allocation of appellant's payment between Heavenly's unpaid taxes, interest, penalties, and fees. Such a breakdown is immaterial to the resolution of this appeal.

August 31, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for a decision.

ISSUE

Whether appellant is entitled to a refund for a $282,791.23 payment that he made to CDTFA, and which CDTFA applied to the unpaid liabilities of Heavenly.

FACTUAL FINDINGS

1. Heavenly operated several retail clothing stores in California.
2. Appellant was president and a majority shareholder of Heavenly.
3. Heavenly accrued unpaid taxes for reporting periods beginning October 1, 2017.
4. Heavenly filed for Chapter 11 bankruptcy protection on May 14, 2018. Heavenly continued operating the business as a debtor in possession.
5. During February 2019, CDTFA received a notice of sale, informing CDTFA that Heavenly was selling the assets of the business for $800,000. CDTFA did not object.
6. Thereafter, the bankruptcy trustee filed a motion to dismiss the bankruptcy case, which was granted on March 13, 2019.
7. CDTFA closed out Heavenly's seller's permit effective March 13, 2019, and the corporation subsequently dissolved.
8. Upon the termination of the business of the corporation, CDTFA initiated a responsible person dual investigation to determine if anyone was personally liable for the unpaid liabilities of Heavenly pursuant to R&TC section 6829.
9. During the same time period as the dual determination investigation, appellant filed amended returns on behalf of Heavenly, which CDTFA accepted as filed.
10. On July 9, 2020, appellant provided CDTFA a mail-forwarding address for Heavenly.
11. According to entries in CDTFA's Centralized Revenue Opportunity System (CROS) on July 14, 2020, CDTFA noted that appellant may be held liable for $189,266.28, representing the unpaid fourth quarter of 2017 (4Q17) and 1Q18 liabilities of Heavenly. CDTFA also noted that appellant might not be personally liable for the balance of Heavenly's unpaid liabilities due to lack of authority. CDTFA did not issue a dual determination to appellant at that time and, instead, made a note in CROS to follow up on the dual investigation the following month, in August.

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12. Using the forwarding address appellant had provided, CDTFA mailed Heavenly a Statement of Account dated August 6, 2020, reporting an "Amount Due" of $282,791.23. The Statement of Account was addressed to Heavenly, the corporation, and did not identify appellant by name.
13. The parties agree that the following facts are undisputed:
    a. On August 25, 2020, appellant made a $282,791.23 payment from his own bank account with JP Morgan and Chase (Chase).
    b. Heavenly was not the owner of the Chase account.
    c. CDTFA applied the entire payment to the account of Heavenly.
    d. Appellant electronically submitted the payment at issue to CDTFA via CDTFA's online payment platform.
    e. Appellant made the payment after CDTFA issued the August 6, 2020 Statement of Account to Heavenly, which showed an amount due of $282,791.23.
    f. CDTFA did not issue a responsible person dual determination to appellant, and appellant was never held personally liable as a responsible person for Heavenly pursuant to R&TC 6829.
14. When making the payment, appellant wrote in the payment reference section "Letter L0007319596." This letter number is the same as the "Letter ID" on the August 6, 2020 Statement of Account issued to Heavenly.
15. CDTFA did not follow up further on the dual investigation because the liability was paid. Instead, CDTFA closed the investigation.
16. There is no evidence in the record that CDTFA ever issued a billing statement to appellant in his own name.
17. On October 21, 2020, appellant filed a claim for refund stating that he made the payment in error and used personal funds to pay Heavenly's liabilities.
18. On July 30, 2021, CDTFA issued a decision denying the claim. This timely appeal followed.

DISCUSSION

The law provides, in pertinent part, that a claim for refund may be granted when it is determined that an amount of tax, interest, or penalty was not required to be paid. (R&TC, § 6901.) To reach such a determination, it must first be established that the amount, penalty, or

interest has been paid more than once or has been erroneously or illegally collected or computed. (R&TC, § 6901.) An illegal collection may include a lien, levy, or other involuntary enforcement procedure against the wrong person, or a payment by the wrong person in response to such an involuntary enforcement procedure. (See, e.g., CDTFA Business Taxes Law Guide (BTLG) Annotation 465.0040 (9/4/64).)[4]

When a taxpayer files a claim for refund, the entire period subject to the claim may be examined. (See *Sprint Communications Company v. State Bd. of Equalization* (1995) 40 Cal.App.4th 1254.) Thus, CDTFA may properly set off an underpayment of taxes barred by the statute of limitations against any overpayment determined to have been made, so long as both the overpayment and setoff occurred during the period at issue in the taxpayer's refund claim. (*Sprint Communications Company v. State Bd. of Equalization*, *supra*, 40 Cal.App.4th at p. 1264; see also *Owens-Corning Fiberglass Corporation v. State Bd. of Equalization* (1974) 39 Cal.App.3d 532.) The taxpayer has the burden of proof to show that the taxpayer is entitled to the refund claimed. (*Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal.App.3d 739, 744.)

As a preliminary matter, we note that by July 14, 2020,[5] CDTFA's collector reached a tentative conclusion that appellant may be held personally liable for Heavenly's 4Q17 and 1Q18 liabilities ($189,266.28). Although CDTFA did not ultimately issue a determination for those quarters because the liability was paid, the analysis of whether there was an "illegal" collection would be different as to the 4Q17 and 1Q18 liabilities, as a setoff could be asserted for these quarters (even if now outside the statute of limitations). Nevertheless, this Opinion need not address any issues involving a setoff in light of our finding, below, that the payment was voluntary, and CDTFA did not take any action against appellant, as an individual, that could potentially constitute an erroneous or illegal collection within the meaning of R&TC section 6901.

In the instant case, there is neither allegation nor evidence that CDTFA billed appellant for the liability at issue. To the contrary, CDTFA mailed and addressed the account statement to

[4] Annotations do not have the force or effect of law. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 25.) Nevertheless, OTA may still afford weight to an annotation. (See *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.)

[5] This is the date of the entry in CDTFA's CROS records, although the tentative conclusion could have been made earlier. In any event, this conclusion was made prior to the August 25, 2020 payment.

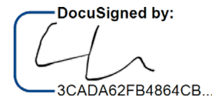
Heavenly. At the time of appellant's August 25, 2020 payment, no determination was issued to appellant. Thus, we find that appellant made a voluntary tax payment on behalf of his former business. It appears from the record that CDTFA likely would not have been able to pursue appellant individually as to at least a portion of Heavenly's liability (i.e, periods other than 4Q17 and 1Q18). Nevertheless, at the time appellant made the payment to CDTFA, he specifically directed that the payment be applied to the account of Heavenly, as opposed to his own potential responsible person liability. Thus, the pertinent inquiry is whether Heavenly owed this amount. Here, it is undisputed that Heavenly owed this amount and, to wit, CDTFA accepted Heavenly's amended returns as filed by appellant. Thus, there is no basis to conclude there was an "erroneous" collection. Furthermore, at the time of appellant's August 25, 2020 payment, CDTFA had not even asserted a liability against appellant, let alone taken an "involuntary" collection action such as a lien, levy, or wage garnishment against appellant. In summary, there is no basis to conclude there was an erroneous or illegal collection as to any portion of appellant's payment. (R&TC, § 6901.) The law does not authorize a refund of a voluntary payment for a lawfully due and payable amount based on remorse, regret, or mistake in prioritizing which bills to pay. As such, we find that appellant made a voluntary payment on behalf of his former business and there is no basis to refund that payment.

HOLDING

Appellant is not entitled to a refund for the $282,791.23 payment that he made on behalf of Heavenly.

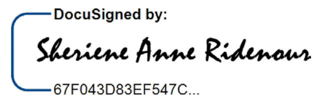
DISPOSITION

CDTFA's action is sustained.

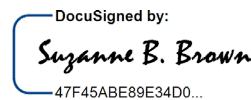


Andrew J. Kwee
Administrative Law Judge

We concur:



Sheriene Anne Ridenour
Administrative Law Judge



Suzanne B. Brown
Administrative Law Judge

Date Issued: 10/24/2022