

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. FLYNN,) OTA NO. 220710845
)
APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, June 15, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
S. FLYNN,) OTA NO. 220710845
APPELLANT.)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:16 a.m. and concluding at 10:34 a.m.
on Thursday, June 15, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Judge: JUDGE VASSIGH

For the Appellant: S. FLYNN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

NOEL GARCIA-ROSENBLUM
BRADLEY COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received at page 6.)

(Department's Exhibits A-I were received at page 7.)

P R E S E N T A T I O N

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By Ms. Flynn	9
By Mr. Garcia-Rosenblum	10

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P A G E

By Ms. Flynn	14
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California; Thursday, June 15, 2023

10:16 a.m.

JUDGE VASSIGH: We're now on the record in the Appeal of Flynn, OTA Case Number 220710845. Today is June 15th, 2023, and the time is 10:16 a.m. I'm Judge Amanda Vassigh.

This hearing is being conducted electronically with the agreement of the parties. So I'm going to ask the parties to identify themselves on the record.

I will start with Appellant Ms. Flynn.

MS. FLYNN: Sonja Flynn.

JUDGE VASSIGH: Thank you.

And now we will go to Respondent.

MR. GARCIA-ROSENBLUM: This is Noel Garcia-Rosenblum for Respondent.

MR. COUTINHO: And Brad Coutinho also with the Franchise Tax Board. Thank you.

JUDGE VASSIGH: Thank you.

For the benefit of the public and the parties, I want to note that OTA is an independent agency, not a court but an independent appeals agency. So the only evidence in our record is what has been submitted in this appeal.

Appellant elected to have this appeal determined

1 pursuant to the procedures of the Small Case Program.
2 Those procedures require the assignment of a single
3 Administrative Law Judge and the decision issued in this
4 matter will not have precedential effect.

5 I have reviewed the exhibits and briefings
6 submitted by the parties and will issue an opinion based
7 on the briefing and today's presentations, as well as the
8 evidence.

9 So the issue to be decided in this appeal is
10 whether the statute of limitations bars Appellant's claim
11 for refund for the 2014 and 2015 tax years. Appellant
12 submitted an FTB notice titled "Final Notice Before Lien
13 and Levy" as her exhibit. I'm going to label that as
14 Exhibit 1.

15 Does FTB have any objections to Appellant's
16 exhibit?

17 MR. GARCIA-ROSENBLUM: This is Noel
18 Garcia-Rosenblum. No objections.

19 JUDGE VASSIGH: Okay. So Appellant's exhibit
20 will now be admitted into evidence as Appellant's
21 Exhibit 1.

22 (Appellant's Exhibit 1 was received in
23 evidence by the Administrative Law Judge.)

24 JUDGE VASSIGH: FTB submitted Exhibits A through
25 I.

1 Ms. Flynn, did you have any no objections to
2 FTB's exhibits?

3 MS. FLYNN: No.

4 JUDGE VASSIGH: Okay. Thank you.

5 So FTB's exhibits will now be admitted into
6 evidence.

7 (Department's Exhibits A-I were received in
8 evidence by the Administrative Law Judge.)

9 JUDGE VASSIGH: So I'd like to go over the order
10 of the proceedings today. During the prehearing
11 conference, we decided that Ms. Flynn would have ten
12 minutes for her presentation and her testimony after,
13 which FTB will be permitted to ask questions they may have
14 regarding Ms. Flynn's factual testimony. And if I have
15 any questions, I will do so when you're done. FTB will
16 then have ten minutes for their presentation.

17 After that, Ms. Flynn, you will have an optional
18 five minutes for a closing or rebuttal.

19 Does anyone have any questions before we move
20 onto presentations?

21 Ms. Flynn, yes.

22 MS. FLYNN: I think that the actual reason for
23 this hearing is not with whether or not I exceeded the
24 statute of limitations. My actual -- I mean, I don't know
25 if this should be part of my presentation or not, but the

1 actual request that I have is to be refunded for the
2 garnishment.

3 JUDGE VASSIGH: Okay. So I think that would be
4 part of your presentation.

5 MS. FLYNN: Okay.

6 JUDGE VASSIGH: It's a little different than what
7 we discussed in our prehearing conference, but if that's
8 the issue that you would like to focus on, that's fine.
9 Let me check in with FTB since that's a change from what
10 we discussed.

11 Are you prepared to discuss the garnishment and
12 whether that's eligible for a refund?

13 MR. GARCIA-ROSENBLUM: This is Noel
14 Garcia-Rosenblum. Yes, that's part of the presentation
15 and somewhat falls under the statute of limitations
16 discussion.

17 JUDGE VASSIGH: Okay. Thank you.

18 So we will go into Ms. Flynn's testimony and
19 presentation after I swear you in. As I explained in our
20 prehearing conference, Ms. Flynn, since you will be
21 providing us with factual testimony, I will put you under
22 oath. And you will remain under oath until the end of
23 this proceeding. Ms. Flynn, I'm asking you to raise your
24 right hand, please.

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S. FLYNN,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE VASSIGH: Thank you.

So we're ready to proceed with Appellant's opening presentation.

Ms. Flynn, whenever you are ready, go ahead and begin. You were given ten minutes for this.

MS. FLYNN: It'll probably be very quick.

PRESENTATION

MS. FLYNN: Hello. I am Sonja Flynn Grand Rising. Basically what I would like to do is request that the amount garnished in 2019 for tax years 2014 and 2015 be refunded back to me. I'm aware that the amounts of the original refund for those tax years, 2014 and 2015, in excess of \$3,000 was actually absorbed by the State due to the expiring of the statute of limitations. So I am aware of that, and I'm not requesting that refund.

However, I am requesting that I'm refunded the garnishment that was placed on my wages in 2019 due to the fact that I actually did not owe. But I am aware that that wasn't known at the time. However, when I did

1 receive the garnishment documentation or the Exhibit J
2 Final Notice Before Levy and Lien, I did call. And I was
3 told that once I did file, I would be reimbursed for the
4 garnishments once it was determined whether or not I owed
5 or not.

6 So that's pretty much all that I'm asking. So I
7 hope that that is something that can occur.

8 JUDGE VASSIGH: Thank you, Ms. Flynn.

9 I want to ask Mr. Coutinho and
10 Mr. Garcia-Rosenblum if you have any questions for
11 Ms. Flynn?

12 MR. GARCIA-ROSENBLUM: Hi. This is Noel
13 Garcia-Rosenblum. No questions.

14 JUDGE VASSIGH: Thank you.

15 And in that case, we can proceed with FTB's
16 presentation.

17

18 PRESENTATION

19 MR. GARCIA-ROSENBLUM: Thank you. Good morning.

20 My name is Noel Garcia-Rosenblum and I, along
21 with my co-counsel Bradley Coutinho, represent Respondent
22 Franchise Tax Board in this matter. The issue presented
23 before you today is whether Appellant's claim for refund
24 filed for the 2014 and 2015 tax years are barred by the
25 statute of limitations, including wage garnishments, which

1 occurred during the 2019 tax year.

2 In this case, Respondent had received information
3 indicating that the Appellant had received income and a
4 sufficient amount to create a tax return filing
5 requirement for the 2014 and 2015 tax years. However,
6 Respondent had no record of receiving the tax return from
7 the Appellant for either tax year.

8 Accordingly, Respondent issued two letters to the
9 Appellant requesting that she either file a tax return for
10 2014 and 2015 tax years or explain why she was not
11 required to file a tax return for those years. After no
12 response was received, Respondent issued Notices of
13 Proposed Assessments for both tax years. Respondent
14 again, did not receive the requested tax returns nor any
15 other communications from the Appellant in response to the
16 Notices of Proposed Assessments.

17 Respondent then commenced with collection action.
18 By August 12th, 2019, Respondent received two payments
19 totaling to \$714, which were applied to the Appellant's
20 2014 tax account balance. Additionally, by September 3rd,
21 2019, two payments in the total amount of \$939.33 were
22 received and applied to the 2015 tax balance. About
23 two-and-a-half years after this collection action took
24 place, Respondent received Appellant's 2014 and 2015 tax
25 returns on March 4th and March 14th of 2022.

1 Respondent accepted both returns as filed, and
2 overpayments were recorded in the amounts of \$898.01 for
3 the 2014 tax year and \$2,130.54 for the 2015 tax year.
4 Respondent treated these tax returns as claims were
5 refund. And because both claims were made outside the
6 statute of limitations, those claims were denied.

7 Revenue & Taxation Code Section 19306 requires a
8 taxpayer to file a claim for refund or a tax return
9 claiming a refund within the later of the following three
10 periods: Four years from the date the tax return was
11 filed, if filed on or before the extended due date; four
12 years from the original due date of the return; or one
13 year from the date of overpayment. Taxpayers bear the
14 burden of showing that their claims for refund was timely.
15 And even if a taxpayer is unaware, ignorance of the
16 statute of limitations does not excuse the taxpayer's
17 failure to file a timely claim for refund.

18 In this case, Appellant's 2014 and 2015 tax
19 returns were not filed within the respective extended due
20 dates. Therefore, in order to be within the statute of
21 limitations, her claims for refund must have been filed
22 either within four years from the original due dates of
23 the returns, or 1 year from the dates of overpayment.
24 Appellant's 2014 tax return was due on April 15th, 2015,
25 and the latest payment applied to this tax year was made

1 on August 12th, 2019.

2 Therefore, the latest statute of limitations
3 period expired on August 12th, 2020. For the 2015 tax
4 year, the original filing date was April 15th, 2016, and
5 the latest payment applied to that year's account was made
6 on September 3rd, 2019. Accordingly, the latest statute
7 of limitations period expired on September 3rd, 2020.
8 Because Appellant's claims for refund were filed in March
9 of 2022, both claims were filed after the statute of
10 limitations had expired.

11 In this appeal, it appears that Appellant does
12 not dispute that the claims for refund were filed outside
13 the statute of limitations period but rather, she contends
14 that the wages garnished through Respondent's collection
15 actions should be refunded to her. The statute of
16 limitations applies to all of her paid amounts, including
17 wage garnishments. As explained in *United States v Dalm*,
18 an untimely claim for refund for any reason bars the
19 refund even when the tax is erroneously, illegally, or
20 wrongfully collected.

21 Accordingly, the time to challenge an improper
22 garnishment and refund claim is within the statute of
23 limitations period. Therefore, because Appellant's claims
24 for refund were filed after the statute of limitations
25 period had expired for the respective years, Respondent's

1 actions in denying the claims were proper and should be
2 sustained.

3 I am happy to answer any questions you may have.
4 Thank you.

5 JUDGE VASSIGH: Thank you, Mr. Garcia-Rosenblum.
6 I don't have any questions for you. But I have been
7 thinking about our issue statement in this case, and I've
8 decided that I will not revise the issue statement because
9 Ms. Flynn's focus on the 2019 garnishment of the funds
10 would be considered an overpayment that falls under the
11 statute of limitations. So we will keep the issue
12 statement the same, and we will focus on the 2019
13 garnishment as Ms. Flynn requested.

14 Okay. So at this point, Ms. Flynn, I'd like to
15 go back to you and give you the opportunity to have five
16 minutes for either a closing or if you would like to
17 provide a rebuttal to anything FTB said.

18
19 CLOSING STATEMENT

20 MS. FLYNN: Well, I don't know that I was told
21 anything about a statute of limitations regarding a
22 garnishment. So basically, I'm wondering how would a
23 taxpayer know what the statute of limitations are
24 regarding a situation like this, and why it would be
25 something that the State would do to basically garnish

1 someone and also absorb their refund and put a statute of
2 limitations on both?

3 I'm just wandering how and why. Because I did
4 speak to somebody, but they never told me that I had a
5 specific period of time in order to be able to file my
6 taxes in order to receive a refund of overpayment. So
7 yes, I would just -- I would like to understand a little
8 better how that works.

9 JUDGE VASSIGH: Okay. Thank you, Ms. Flynn.

10 Back to you, Mr. Garcia-Rosenblum. I'm wondering
11 if you can offer any clarity. I know you spoke about the
12 law in your presentation. Can you offer any clarity to
13 those specific questions?

14 MR. GARCIA-ROSENBLUM: Yes. Under California
15 law, Franchise Tax Board is not obligated to inform
16 taxpayers of the timeframe in which a claim for refund
17 must be filed. And it's also there's no duty for
18 Franchise Tax Board to discover or disclose overpayments
19 on the accounts.

20 JUDGE VASSIGH: Okay. Thank you.

21 I've heard both parties' presentations. I have
22 your exhibits and your briefs. So all of that will be
23 taken into consideration as I apply the law in this case.
24 I will aim to mail a written opinion to the parties within
25 100 days from today. This concludes our hearing, and this

1 case is submitted for determination. The record is now
2 closed.

3 I would like to thank the parties for
4 participating in this hearing. I appreciate your time and
5 your presentations.

6 Thank you to Ms. Alonzo for transcribing this
7 hearing for us, and to the other OTA staff members who are
8 working behind the scenes to support this hearing.

9 OTA is going to take a recess, and our next
10 hearing will be at 11:00 a.m.

11 Thank you all and have a good day.

12 (Proceedings adjourned at 10:34 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 13th day
of July, 2023.

ERNALYN M. ALONZO
HEARING REPORTER