

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
S. LAMB,) OTA NO. 221212007
)
) APPELLANT.
)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, August 8, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 91401, commencing at 1:03 p.m.
and concluding at 1:23 p.m. on Tuesday,
August 8, 2023, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Administrative Law Judge: RICHARD TAY

For the Appellant: S. LAMB

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

SARAH FASSETT
JACKIE ZUMAETA

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 6.)

(Department's Exhibits A-H were received at page 6.)

OPENING STATEMENT

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1 Cerritos, California; Tuesday, August 8, 2023

2 1:03 p.m.

3
4 JUDGE TAY: We are on the record.

5 This is appeal of Sarah L. Lamb, OTA Case Number
6 221212007. It is approximately 1:03 p.m. on August 8th
7 2023. This appeal is being conducted here in Cerritos,
8 California, led by myself Judge Richard Tay. And this
9 appeal is being heard, and this will be decided by a
10 single Administrative Law Judge under the Office of Tax
11 Appeals Small Case Program.

12 Just a reminder for today's participants and
13 viewers that the Office of Tax Appeals is not a court but
14 is an independent appeals body. The office is staffed by
15 tax experts and is independent of the State's agencies.
16 OTA does not engage in any ex parte communications with
17 either party, and my decision will be based on the
18 arguments and evidence provided here and in the briefing
19 on appeal, in conjunction with any appropriate application
20 of law.

21 So if I could just start off having the parties
22 introduce themselves for the record. So I'll start with
23 the Appellant.

24 If you could just introduce yourself, please, for
25 the record.

1 MS. LAMB: I'm Sarah L. Lamb.

2 JUDGE TAY: Thank you.

3 And Franchise Tax Board.

4 MS. FASSETT: Sarah Fasset.

5 MS. ZUMAETA: And Jacqueline Zumaeta.

6 JUDGE TAY: Okay. Thank you very much.

7 The issue on appeal is whether Appellant has
8 shown that her claims for refund are not barred by the
9 statute of limitations for the 2013 and 2014 tax years.

10 Now, we have received exhibits from both parties.
11 Appellant has Exhibits 1 through 5, and Franchise Tax
12 Board submitted Exhibits A through H.

13 There were no objections to the exhibits; is that
14 correct, Ms. Lamb?

15 MS. LAMB: Correct.

16 JUDGE TAY: And Franchise Tax Board?

17 MS. FASSETT: Correct.

18 JUDGE TAY: Okay. So those exhibits are now
19 admitted into the record.

20 (Appellant's Exhibits 1-5 were received
21 in evidence by the Administrative Law Judge.)

22 (Department's Exhibits A-H were received in
23 evidence by the Administrative Law Judge.)

24 JUDGE TAY: Question for the Appellant, Ms. Lamb.
25 Now, are you -- will you be testifying to any facts that

1 you would like to -- well, are you going to be speaking
2 about facts that you would like to be entered into the
3 record? In other words, are you going to be -- in your
4 presentation, would you like that to be considered
5 testimony, in which case, I would just need to swear you
6 in. And it seems like that is something that you would
7 like to do?

8 MS. LAMB: Yes.

9 JUDGE TAY: Okay. Then why don't we do that now.
10 And I just want to make sure, Franchise Tax
11 Board, you have no witnesses today?

12 MS. FASSETT: That's correct.

13 JUDGE TAY: Okay. So Ms. Lamb, if you don't mind
14 just standing and raising your right hand for me.

15
16 S. LAMB,
17 produced as a witness, and having been first duly sworn by
18 the Administrative Law Judge, was examined and testified
19 as follows:

20
21 JUDGE TAY: Great. Thank you very much. Please
22 feel free to sit.

23 I'm going to start with Appellant's opening
24 presentation, and she will have 10 minutes.

25 And then Franchise Tax Board, I'll give you 10

1 minutes.

2 And then, Appellant, I'll give you five more
3 minutes on rebuttal. Okay. Why don't we start with your
4 first opening presentation. You have 10 minutes. Feel
5 free to begin when you are ready.

6 MS. LAMB: Thank you.

7

8 PRESENTATION

9 MS. LAMB: Well, reviewing this, this is for the
10 tax year 2013 and 2014. I filed my taxes outside the
11 mandated time frame allowed. I filed them in August of
12 2022, for the reason was neglect on my part. I should
13 have done it. I'm old enough to know better, but I had
14 situations in my life that prevent -- it didn't really
15 prevent me, but it was just negligence. It is not going
16 to pay my tax accountant who did my taxes, it's money.

17 And so when I did, I said okay, I'm getting my
18 life together. So I went and paid to get my taxes, and
19 then I sent them off in August of 2022. And then it
20 says -- I say I received on -- due to my neglect, I
21 received an earnings withholding audit order for taxes
22 through my employer for those tax years, for 2013, '14,
23 and '15 in the amount of \$5,355.48. This order was dated
24 May 11, 2018, and the total amount paid -- I paid it on
25 July the 29th, 2022.

1 When the Tax Board received my taxes and
2 evaluated them and proceeded to send a letter stating I
3 won't be allowed a refund because the amount -- the -- it
4 was outside the statute of limitations. The refund for
5 2013 was supposed to be \$1,826.46. And for 2014 I was due
6 \$1,438.47. And I received this letter on September 29th,
7 2022, which I already sent my taxes out in August of 2022.

8 So they had my taxes back before they sent this
9 letter out stating that I would not receive a refund. But
10 my -- the garnishment on my job for the \$5,000 included
11 these tax years. Since I didn't file my taxes, they
12 proceeded to file my taxes for me for the 2013 and '14.
13 And that's how they came up with the figure that I owed
14 \$5,355. But I -- not knowing that I wasn't going to
15 receive -- I didn't really even know I was to be receiving
16 this money back until I sent in my taxes.

17 But before they concluded I wasn't getting this
18 money, they should have said okay, it was paid in the
19 garnishment of \$5,355. So what I'm saying is, since I
20 paid this \$5,355 and then not receiving the refunds, the
21 refunds totaled \$3,264, which meant a total -- I paid the
22 California Tax Board was \$8,620.41. So it seems to me
23 they're double dipping. They're getting some -- they're
24 getting more money that was due to them. Okay.

25 So that's -- that's how I feel about it. It was

1 negligence on my part, but they should have considered the
2 money that I had already paid in through the garnishment
3 that was paid off in 2022, in July.

4 Okay. That's the conclusion. Plus, I have -- I
5 have evidence too.

6 JUDGE TAY: Okay. Thank you, Appellant. Would
7 you like to discuss any of that evidence? You still have
8 approximately five minutes left of time, so you're free to
9 do so. If you would not like to or it's redundant to what
10 you have already said about it in your briefs, then that's
11 fine also. But you do have five more minutes of your time
12 available if you would like to.

13 MS. LAMB: No. I think everything speaks for
14 itself.

15 JUDGE TAY: Okay. All right. In that case, can
16 I just ask you a clarifying question?

17 MS. LAMB: Yes.

18 JUDGE TAY: So what I'm hearing from you is that
19 you filed your return, and did you also include a payment
20 with that return?

21 MS. LAMB: No, I didn't.

22 JUDGE TAY: Okay. So then the payments that
23 you're referring to are, like, withholding payments as
24 well as the payments that were -- that Franchise Tax Board
25 received based on the earnings withholding?

1 MS. LAMB: Right. Exactly.

2 JUDGE TAY: Okay. Okay.

3 MS. LAMB: And so I figured it was included in
4 the garnishment in 20 -- you know, 2013 and 2014. Because
5 if you -- I see. If you don't file your taxes on time,
6 they give you so many years, and then they will file them
7 for you. Am I correct? Yes. That's what happened here.
8 They filed them for me. How would they come up with the
9 garnishment of \$5,355 if I had never filed my taxes?

10 JUDGE TAY: Right. Okay.

11 MS. LAMB: Okay.

12 JUDGE TAY: Thank you. I understand what you're
13 saying.

14 I'm going to turn to Franchise Tax Board and
15 allow them 10 minutes to give their presentation, and then
16 I'll come back to you, Ms. Lamb, for your rebuttal.

17 MS. LAMB: Okay.

18 JUDGE TAY: So Franchise Tax Board, ready for
19 your presentation whenever you're ready.

20 MS. FASSETT: Thank you, Judge Tay.

21

22 PRESENTATION

23 MS. FASSETT: Good afternoon. My name is Sarah
24 Fassett and I, along with my co-Counsel Jacqueline
25 Zumaeta, represent Respondent Franchise Tax Board in this

1 matter.

2 The sole issue on appeal today is whether
3 Appellant's claims for refund for the 2013 and 2014 tax
4 years are barred by the statute of limitations. After
5 receiving no tax returns from Appellant for 2013 or '14,
6 Respondent issued Notices of Proposed Assessments, which
7 went final and the balances became due and payable. For
8 tax year 2013, Appellant satisfied the balance due on
9 July 18th, 2018. And for the 2014 tax year, Appellant
10 satisfied that balance on July 1st, 2020.

11 Respondent received Appellant's 2013 and 2014 tax
12 returns on August 15th, 2022. Respondent accepted the
13 returns as filed, reduced the imposed penalties to
14 correspond with the reported tax and applied the payments
15 made by Appellant resulting in overpayments of \$1,826.46
16 for 2013 and \$1,438.47 for 2014. Respondent treated the
17 claims -- the tax returns as claims for refund, but had to
18 deny the claims because both were filed after the statute
19 of limitations had expired.

20 California law imposes time limits, another
21 requirement for filing a refund claims, including tax
22 returns that claim refunds. To be timely, a claim for
23 refund must be filed within the later of the three filing
24 periods: Four years from the original date of the return;
25 four years from the date of a timely filed return; or one

1 year from the date of an overpayment.

2 The taxpayer bears the burden to show that a
3 claim for refund was timely, and ignorance of the law does
4 not excuse the failure to timely file a claim for refund.
5 Additionally, Respondent does not have a duty to discover
6 an overpayment or to notify a taxpayer of such an
7 overpayment. Because Appellant did not timely file a
8 return for either the 2013 or 2014 tax year, her claims
9 for refund must have been filed within either four years
10 from the original due date of the return or one year from
11 her last overpayment.

12 For 2013, the four-year statute of limitations
13 expired on 20 -- April 15th, 2018. For 2014 the four-year
14 statute of limitations expired on April 15th, 2019, and
15 the one-year statute of limitations expired for all
16 payments on July 1st, 2021. Appellant's claims for refund
17 were filed on August 15th, 2022. It does not appear that
18 Appellant disputes her claim for refund was filed outside
19 the statute of limitations but, instead, contends that a
20 refund claim should be allowed and credited to the
21 balances she owes for other tax years.

22 The Seventh Circuit and the Prussner case
23 eloquently captured what the statute of limitations means.
24 It states, "All fixed deadlines seem harsh because all can
25 be missed by a whisker, by a day, or for that matter, by

1 an hour or a minute. They are arbitrary by nature. The
2 legal system lives on fixed deadlines. The occasional
3 harshness is redeemed by the clarity which they impart to
4 legal obligation.

5 Therefore, because Appellant's claims for refund
6 filed after all the statute of limitations periods had
7 expired, and California law bars refund claims made
8 outside of the statute of limitations period, Respondent's
9 denial of Appellant's claims for refund were proper and
10 should be sustained.

11 I'm happy to answer any questions you may have.
12 Thank you.

13 JUDGE TAY: Thank you, Franchise Tax Board. I do
14 have one question. So I noticed that for 20 -- excuse
15 me -- 2013 the collection action began sometime in 2016,
16 and then in 2014 the collection action began somewhere in
17 2018. Now, I was just wondering if you were aware of any
18 attempt by Appellant to contact you regarding the
19 withdrawals from her earnings, or if Appellant had made
20 any contact with you at all during that time.

21 MS. FASSETT: If she has, Respondent will have to
22 enter that into the record after this hearing.

23 JUDGE TAY: Okay. Maybe I'll just turn to
24 Appellant then and ask if you had attempted to contact
25 Franchise Tax Board, if you had written them anything to

1 discuss the 2013 or 2014 tax years?

2 MS. LAMB: Well, I remember coming -- going to
3 the Tax Board. That was back in -- it was just sometime
4 last year. And they told me I still owed, what, maybe
5 \$1,600. And so I was just going to pay it off, but then
6 the payment system is crazy to me. Either you pay it by
7 check because if I paid it by a credit card, they wanted
8 to charge me \$32 extra just to pay through my credit card.

9 And that -- and I said I'm not going to do that.
10 That's just giving money away. So I told them I would
11 just send them a check. So that was added on. And then I
12 received another garnishment for 2022 for 4,600-and-some
13 dollars. So that balance was included in also. And
14 that's the only time I contacted them regarding the first
15 garnishment that included this 2013, '14, and '15.

16 JUDGE TAY: Okay. Okay. Thank you very much.

17 That's all the questions I had. I'm going to
18 turn it over to Appellant for her rebuttal and closing
19 statement.

20 So you can have five minutes for your rebuttal
21 and your closing statement.

22

23 CLOSING STATEMENT

24 MS. LAMB: Okay. My closing statement is okay, I
25 paid them this money. Okay. It's over 8,000-some dollars

1 just for that one tax year. So it's just becoming money
2 for California to use, and so I -- you know what, I filed
3 my taxes. Because you know what, you pay -- don't pay all
4 that much money out in your taxes, unless you make a huge
5 salary, which I really don't consider myself making a huge
6 salary.

7 Because right now I see where the State of
8 California, since I only work part-time, they only take --
9 take out maybe what, about \$30 or \$40 a paycheck. And
10 that's nothing compared to the money that I paid in. And
11 so it's just -- I just feel -- I mean, violated for
12 them -- for giving them 8,000-some dollars on something
13 that I already have paid.

14 JUDGE TAY: Okay.

15 MS. LAMB: Okay.

16 JUDGE TAY: Okay. Yes. Thank you very much. I
17 know that this can be a difficult and frustrating process.
18 So I really appreciate you coming today and explaining
19 your side of this dispute.

20 Any final questions before we conclude today,
21 either from Appellant or Franchise Tax Board?

22 MS. LAMB: Well, I have just one question. Why
23 is their limitations so much less than the IRS? The IRS
24 gives you at least ten years. I think they only give you,
25 what, five -- five years?

1 JUDGE TAY: Well, the IRS actually gives you
2 three years, and the Franchise Tax Board gives you four
3 years to, generally speaking, to file a claim for refund
4 or a tax return, you know, to do things like that. And so
5 the Franchise Tax Board, if you look at it that way, does
6 give you one extra year than the IRS does. So --

7 MS. LAMB: Well, why isn't the IRS on me like the
8 Franchise Tax Board?

9 JUDGE TAY: That's another question I can't
10 answer nor have enough wisdom to fully respond to that.

11 But I'll just open it up one more time. Any
12 other question from either party? Seeing none from
13 Franchise Tax board.

14 Ms. Lamb, any other questions?

15 MS. LAMB: No.

16 JUDGE TAY: Okay. Thank you. Very much. And
17 again thank you both parties for appearing today and
18 making your presentation.

19 This will conclude the hearing for this appeal.
20 The record is closed, and I will endeavor to issue a
21 written opinion no later than 100 days from today. That
22 concludes the hearing. We're off the record.

23 And I believe that concludes all the hearing
24 matters for today. Thank you again very much.

25 (Proceedings adjourned at 1:23 p.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 15th day
of August, 2023.

ERNALYN M. ALONZO
HEARING REPORTER