

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
N. MCCOY,) OTA NO. 220811153
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, August 18, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:27 a.m. and concluding at 9:42 a.m. on
Friday, August 18, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the State
of California.

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APPEARANCES:

Administrative Law Judge: JUDGE EDDY LAM

For the Appellant: N. MCCOY

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

NOEL GARCIA-ROSENBAUM
BRADLEY COUTINHO

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 7.)
(Department's Exhibits A-G were received at page 7.)

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California; Friday, August 18, 2023

9:27 a.m.

JUDGE LAM: We are opening the record in the Appeal of McCoy. This matter is being held before the Office of Tax Appeals. The OTA Case Number is 220811153. Today's date is Friday, August 18, 2023, and the time is approximately 9:30 a.m.

Appellant 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. My name is Eddy Lam, and I will be the Administrative Law Judge for purposes of this appeal.

Now for introductions, can we please have the Appellant start introducing yourself onto the record, Ms. McCoy.

MS. MCCOY: Okay. Hi. My name is Nikesha McCoy.

JUDGE LAM: Thank you.

And can we have FTB introduce yourself on the record.

MR. GARCIA-ROSENBLUM: Good morning. This is Noel Garcia-Rosenblum.

MR. COUTINHO: Good morning. This is Brad Coutinho, also with the Franchise Tax Board.

1 JUDGE LAM: Thank you.

2 As discussed and agreed by the parties at our
3 prehearing conference on July 26, 2023, and as noted in my
4 minutes and orders, the issue is -- for this appeal is
5 whether Appellant's claim for refund is barred by the
6 statute of limitations for the 2015 tax year.

7 Appellant had identified Exhibit 1 with the
8 opening brief, and FTB confirmed that there is no
9 objections to this admittance. Subsequently, Appellant
10 identified Exhibits 2, which is the determination of order
11 to withhold tax dated May 18, 2020, and Exhibit 3 the
12 personal income tax withholding order for taxes dated
13 April 19, 2021.

14 Appellant, can you confirm that there are no
15 other exhibits that were submitted.

16 MS. MCCOY: No. That was it, just the three.
17 Yeah.

18 JUDGE LAM: Okay. Thank you, Ms. McCoy.

19 Does FTB have any objections to Exhibits 2 and 3?

20 MR. GARCIA-ROSENBLUM: This is Noel
21 Garcia-Rosenblum. No objections.

22 JUDGE LAM: Thank you.

23 Then for the record Exhibits 1 through 3 are
24 admitted into the record.

25 ///

1 (Appellant's Exhibits 1-3 were received
2 in evidence by the Administrative Law Judge.)
3 Moving onto Respondent's exhibits. Respondent
4 identified Exhibits A through G and has no other exhibits
5 to offer as evidence. Appellant confirmed that there were
6 no objections at the prehearing conference, and these
7 exhibits are admitted into the record.

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

10 All right. And both parties in this appeal have
11 indicated that they would not be calling any witnesses.
12 And so before we begin the hearing, does either parties
13 have any questions so far?

14 I want to start with Appellant, Ms. McCoy.

15 MS. MCCOY: No questions at this time.

16 JUDGE LAM: Okay. Thank you.

17 And Franchise Tax Board?

18 MR. GARCIA-ROSENBLUM: No questions. Thank you.

19 JUDGE LAM: Thank you. Okay. As agreed from our
20 prehearing conference, Appellant you will begin your
21 presentation for about 10 minutes. And then, Appellant,
22 you will be offered a final rebuttal or statement after
23 FTB's closing remarks for about 5 minutes. You can begin
24 at any time, Ms. McCoy.

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PRESENTATION

MS. MCCOY: Okay. After filing my taxes, which were late, they stated that a refund was due once I filed my taxes. They were already garnishing my wages at work. And then I got the response back that the statute of limitations had past for the time frame for them to give me a refund, but they were still coming after my wages. They started coming after my wages, and then they stopped the order in 2020. And then they went ahead and started back again in 2021.

So, you know, I guess my question or my concerns is if the statute of limitations is up, why are they still attacking my wages?

JUDGE LAM: Thank you, Ms. McCoy is that all -- is that your preparation?

MS. MCCOY: Yes. Yes, that's it.

JUDGE LAM: Okay. Thank you.

And I'll move on with Franchise Tax Board for their presentation.

You can begin whenever you're ready.

PRESENTATION

MR. GARCIA-ROSENBLUM: Thank you.

Good morning. My name is Noel Garcia-Rosenblum, and I along with my co-Counsel Bradley Coutinho represent

1 Respondent Franchise Tax Board in this matter.

2 The only issue on appeal today is whether
3 Appellant's claim for refund filed for the 2015 tax year
4 is barred by the statute of limitations. Respondent
5 received information indicating that the Appellant earned
6 income in a sufficient amount to create a filing
7 requirement for the 2015 tax year. However, no return had
8 been received for that year.

9 Respondent issued a Demand For Tax Return to the
10 Appellant requesting that she either file a 2015 tax
11 return or explain why she did not have a filing
12 requirement for that year. When no response was received,
13 a Notice of Proposed Assessment or NPA was issued to the
14 Appellant on July 31st, 2017, proposing tax, penalties,
15 and interest in the total amount of \$1,707.74. After no
16 correspondence was received in response to this NPA or
17 subsequent notice, Respondent initiated collection action
18 via wage garnishments, receiving 13 payments beginning
19 July 3rd, 2019, through December 18th, 2019, in the total
20 amount of \$1,878.95.

21 Respondent received Appellant's 2015 California
22 tax return on May 31st, 2022, reporting an overpayment of
23 \$1,047. Respondent accepted the return, abated the
24 imposed penalties, and applied the payments made pursuant
25 to the wage garnishments resulting in a total overpayment

1 of \$2,925.95. Respondent treated the tax return as a
2 claim for refund. It denied the claim because it was
3 filed after the statute of limitations had expired.

4 California law imposes time limits and other
5 requirements for filing refund claims, including tax
6 returns that claim refunds. Revenue & Taxation Code
7 Section 19306 provides that a claim for refund must be
8 filed within the later of the following three periods:
9 Four years from the original due date of the return, four
10 years from the date of a timely filed return, or one year
11 from the date of overpayment.

12 The taxpayer bears the burden to show that a
13 claim for refund was timely filed, and ignorance of the
14 law does not excuse the failure to file a timely claim for
15 refund. Appellant did not file a timely claim for refund
16 for the -- excuse me -- a timely tax return for the 2015
17 tax year. Therefore, her claim for refund must have been
18 filed within four years from the original due date of the
19 return or one year from her last overpayment.

20 Appellant's 2015 tax return was due on April
21 15th, 2016, and the latest overpayment applied to her
22 account was made on December 18th, 2019. Therefore, the
23 latest statute of limitations period ended on December
24 18th, 2020, one year after the last overpayment was
25 applied. Appellant's claim for refund was filed on

1 May 31st, 2022, approximately one year and six months
2 after the statute of limitations had expired.

3 It does not appear that Appellant disputes that a
4 claim for refund was filed outside of the statute of
5 limitations but instead, contends that a refund claim
6 should be allowed because there is no tax due with the
7 return, and Respondent's collection actions in the form of
8 wage garnishments should not have occurred in the first
9 place. As explained in United States v. Dalm, an untimely
10 claim for refund for whatever reason bars a refund even if
11 the tax is erroneously, illegally, or wrongfully
12 collected.

13 The time to challenge an improper garnishment and
14 a refund claim is within the statute of limitations
15 period. Therefore, because Appellant's claim for refund
16 was filed after the statute of limitations had expired and
17 California law bars refund claims made outside of the
18 statute of limitations period, Respondent's denial of the
19 claim for refund should be sustained.

20 I'm happy to answer any questions you may have.
21 Thank you.

22 JUDGE LAM: Thank you.

23 This is Judge Lam speaking. I have a question
24 for Appellant.

25 Ms. McCoy is there a reason that you've filed the

1 2015 tax year return late?

2 MS. MCCOY: Well, actually, I thought I had
3 filed. I thought I was caught all the way up until 2019.
4 But once I started digging through my paperwork and
5 everything, I see that they weren't filed. So I went
6 ahead and filed all -- everything that I didn't see online
7 once I registered with the Franchise Tax Board online. I
8 went and got my W-2s from my employers and filed. So I
9 thought my taxes were filed.

10 JUDGE LAM: Okay. Thank you. I don't have any
11 other questions. Okay. This is Judge Lam speaking again.
12 Ms. McCoy, do you want to proceed with your final closing
13 arguments?

14 MS. MCCOY: Yes.

15

16 CLOSING STATEMENT

17 MS. MCCOY: If -- if I owed taxes, why was the --
18 why were they stopped in 2020 and then picked back up in
19 2021. How could they come back once to send -- stop with
20 the wage garnishments and then continue to kind of come
21 back and collect on them if the limitation was up? That's
22 my thing. Even if -- what's the limitation on the
23 collection law? Maybe I should ask that.

24 JUDGE LAM: Does that conclude your final
25 remarks, Ms. McCoy?

1 MS. MCCOY: Yup. Yes.

2 JUDGE LAM: Okay. Thank you. Ms. McCoy, I know
3 you asked us some questions, but it's after the hearing --

4 MS. MCCOY: Okay. I realize that.

5 JUDGE LAM: -- we will send you the decision.

6 Are there any other, I would say, final rebuttal that you
7 would like to add or is that it?

8 MS. MCCOY: No, that's it.

9 JUDGE LAM: Okay. Okay.

10 Well, and FTB, do you have any questions about
11 the -- for this hearing?

12 MR. GARCIA-ROSENBLUM: This is Noel
13 Garcia-Rosenblum. No questions. I just wanted to offer
14 one clarifying remark. For this year, the 2015 tax year
15 referring to Exhibit E, the last garnishment was collected
16 December 18th, 2019. I believe that there were future
17 garnishments that Appellant referred to, and that was for
18 a different tax year, the 2018 tax year. So since this
19 claim for refund is regarding the 2015 tax year, those
20 garnishments aren't an impact to this claim for refund or
21 its denial.

22 JUDGE LAM: Thank you.

23 And Ms. McCoy, do you have any final remarks with
24 what FTB just stated?

25 MS. MCCOY: Well, kind of confused, I guess. I

1 did have other garnishments where they were paid through,
2 you know, my wages for the employer. However, I'm
3 specifically, I guess, speaking with the 2015 due to the
4 fact, you know, once I did file my taxes you guys were
5 still taking money that was being applied to the 2015
6 taxes.

7 MR. COUTINHO: Ms. McCoy, it looks like the
8 return that was filed -- this is Brad Coutinho with the
9 Franchise Tax Board. It looks like the return that was
10 filed for the 2015 tax year was in May 2022. And as my
11 co-Counsel pointed out, I think the last payment that was
12 applied for the 2015 tax year was sometime in 2019. And
13 so once that payment was made, there was no further
14 collection on that year. And then your return, I believe,
15 was filed in 2022 for the 2015 tax year.

16 JUDGE LAM: This is Judge Lam speaking. Thank
17 you for everyone's comments on this.

18 For -- Ms. McCoy, for your final presentation or
19 your final remarks, do you have any other statements that
20 you wanted to add?

21 MS. MCCOY: No, sir.

22 JUDGE LAM: Okay. Thank you.

23 Let me check one more thing. Okay. Well, thank
24 you everybody for participating in the Small Case Program.

25 Before we conclude this hearing, I just wanted to

1 ask Ms. McCoy one last, you know, one last question. Do
2 you have any other considerations, or I want to say --
3 sorry. Let me back up. Do you have any other
4 considerations -- oh, sorry. Let me back up. Do you have
5 any questions before I close the record for this hearing?

6 MS. MCCOY: No. I believe they answered them for
7 me.

8 JUDGE LAM: Okay. Thank you.

9 Okay. We're ready to conclude this hearing.
10 This hearing is submitted today on Friday, August 18,
11 2023. The record is now closed.

12 Thank you everyone for coming in today, and we
13 will send you a written opinion of the decision within
14 100 days. Today's hearing for the Appeal of N. McCoy is
15 now adjourned.

16 The next hearing will begin soon. Thank you
17 everyone and goodbye.

18 (Proceedings adjourned at 9:42 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 11th day
of September, 2023.

ERNALYN M. ALONZO
HEARING REPORTER