

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
E. LEBRUN,) OTA NO. 230112506
)
)
 APPELLANT.)
)
)
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, March 13, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ EDDY Y. H. LAM
ALJ LAUREN KATAGIHARA

For the Appellant: E. LEBRUN
GUY COULOMBE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
NOEL GARCIA-ROSENBLUM
JACLYN ZUMAETA

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I N D E X

E X H I B I T S

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(Department's Exhibits A-BBB were received into evidence at page 7.)

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Cerritos, California; Wednesday, March 13, 2024

9:51 a.m.

JUDGE TAY: We're opening the record in Appeal of LeBrun before the Office of Tax Appeals, Case No. 230112506. The hearing is being convened here in Cerritos at approximately 9:51 a.m. on March 13th, 2024.

Today's case is being heard and decided equally by a panel of three judges. My name is Richard Tay, and I'll be acting as the lead Judge for purposes of conducting this hearing. Also on the panel with me are Judges Lauren Katagihara and Judge Eddy Lam.

Will the parties please just introduce themselves for the record.

We'll start with Appellant.

MR. COULOMBE: Well, Your Honor my Guy Coulombe. I'm an EA. I've been doing tax accounting for over 20 years. And this is my -- I'm sorry. She's supposed to introduce herself.

JUDGE TAY: Thank you.

MS. LEBRUN: My name is Elsa LeBrun, and I worked as a payroll manager.

JUDGE TAY: Okay. Thank you. Thank you, Ms. LeBrun. And my apologies for mispronouncing your name.

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MS. LEBRUN: No problem.

JUDGE TAY: Franchise Tax Board.

MR. GARCIA-ROSENBLUM: Hi. Good morning my name is Noel Garcia-Rosenblum, attorney for Franchise Tax Board Respondent.

MS. ZUMAETA: And my name is Jackie Zumaeta. I'm also for the Franchise Tax Board.

JUDGE TAY: Thank you, Franchise Tax Board.

The issue we'll discuss today is whether Appellant timely filed her claim for refund for the 2008, 2009, 2011, 2012, 2013, 2016, and 2017 tax years.

Prior to the hearing, we circulated exhibits submitted by both parties. The exhibits are Appellant's Exhibits 1 through 6 and Franchise Tax Board's Exhibits A through BBB. There were no objections to admitting the exhibits into evidence.

Is that right, Appellants?

MR. COULOMBE: Yes, Your Honor.

JUDGE TAY: Thank you.

And Franchise Tax Board?

MR. GARCIA-ROSENBLUM: That's correct.

JUDGE TAY: Okay. The exhibits will now be admitted into evidence.

(Appellant's Exhibits 1-6 were received in evidence by the Administrative Law Judge.)

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

JUDGE TAY: We're going to start Appellant's presentation, which includes potentially the testimony of Ms. LeBrun. And so I'd like to swear in Ms. LeBrun right now as a witness.

Ms. Lebrun, if you would just stand for me and raise your right hand.

E. LEBRUN,

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

JUDGE TAY: Thank you very much.

Appellant, you have 20 minutes. Please begin whenever you're ready.

MR. COULOMBE: Well, thank you, Your Honor. I really do appreciate that. Can I do a little background on the case?

JUDGE TAY: You may. You have 20 minutes for your presentation.

PRESENTATION

MR. COULOMBE: Okay. So I took on Ms. LeBrun as

1 a tax client a year ago to file some delinquent tax
2 returns going back 15 years. And that's why I included in
3 the exhibits the issue with the IRS, that she does owe a
4 substantial sum to the IRS. So we filed all the
5 delinquent tax returns and settled the Franchise Tax Board
6 debt. But the basis of my appeal is not that we're
7 contesting the late filing of the returns or even the
8 expiration of the refund statute.

9 The basis of my appeal is that extra garnishments
10 were taken over and above those expired refund statutes
11 and delinquent filings to over \$20,000. And she had
12 talked to a collection agent at Franchise Tax Board, my
13 client, before I took her on. And the nice lady said,
14 "Well, you really do need get your returns filed, get the
15 taxes paid. If you think the IRS can be a challenge to
16 work with, well, the Franchise Tax Board can be quite a
17 challenge."

18 And they had a good conversation, and she
19 basically told her that once her returns were filed any
20 excess garnishments will be refunded at some point. And
21 so that's the basis of our appeal and all these exhibits
22 just to basically prove that, you know, we're not
23 contesting the expired refund. We're contesting that the
24 extra \$20,000 of overpayments were never refunded, which
25 she actually desperately needs for medical treatment and

1 for negotiation with the IRS as they turned down our offer
2 and compromise. So we're having to start all over again,
3 and the IRS never responded to our appeal for the rejected
4 offer and comprise. And it's a lot of paperwork as you
5 can imagine.

6 That's really all I have for the moment, Your
7 Honor.

8 JUDGE TAY: Thank you, Mr. Coulombe. Just to
9 make you aware of the, kind of the schedule for the
10 hearing. You have your presentation and then Franchise
11 Tax Board will have an opportunity for their presentation,
12 and then you'll have just a short period on rebuttal.
13 Would you like Ms. LeBrun to say her piece now, or would
14 you like to save it for the rebuttal?

15 MR. COULOMBE: Yes, please, Your Honor. I think
16 she would like to speak.

17 JUDGE TAY: Okay. Ms. LeBrun, please, whenever
18 you're ready.

19

20 WITNESS TESTIMONY

21 MS. LEBRUN: Sure. So what happened was I -- I
22 called the IR -- the Tax Franchise Board to try to get
23 this taken care of. This is several years back. And I
24 just explained, you know, my mother had passed away. My
25 brother's business failed. Just a whole bunch of stuff

1 was going on. I said I'm just going through a lot of hard
2 times.

3 And so the lady -- the first lady at the Tax
4 Franchise Board says, "You have no idea what trouble is
5 until you start dealing with us."

6 From there, I'll be honest, I was intimidated.
7 And I just pretty much shut down 'cause I'm like, what am
8 I supposed to do, you know. They're telling me that I
9 have no idea what you guys can do to me. So I shut down
10 and pretty much put my head in the sand and just decided
11 not to deal with anything.

12 Then the second person, several years later, she
13 said, "Oh, no. Once you get everything filed, we will
14 return the excess amount to you."

15 And I was like, okay, at least she's not willing
16 to throw me into the dungeon like the other lady did. So
17 I -- I just been intimidated by you guys, so I try to let
18 it go. That's all I have to say.

19 JUDGE TAY: Thank you, Ms. LeBrun. I appreciate
20 you coming here to share your story with us, and I know it
21 can be a difficult situation.

22 Before I turn to Franchise Tax Board, let me just
23 confirm that concludes your presentation for now?

24 MR. COULOMBE: It does, Your Honor, unless
25 something else comes to mind that I might have forgotten.

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JUDGE TAY: Okay. Thank you.

Let me turn -- before I turn it over to the Franchise Tax Board, let me turn to my Panelists to see if they have any questions.

Judge Lam, any questions?

JUDGE LAM: This is Judge Lam speaking. I don't have any questions.

JUDGE TAY: Thank you.

Judge Katagihara?

JUDGE KATAGIHARA: No questions at this time.

JUDGE TAY: Thank you.

I just have a couple of clarifying questions. The first question is, it sounds like Ms. LeBrun contacted Franchise Tax Board prior to the filing of her tax returns for this year. Did she ever do so in writing at all with regard to these tax years?

MS. LEBRUN: No. I just called them because it said to call and that they could help me. So I only did it by -- by phone.

JUDGE TAY: Okay. Thank you. That's all the questions I have.

I'll turn it over to Franchise Tax Board.

You have 15 minutes. Feel free to begin whenever your ready.

MR. GARCIA-ROSENBLUM: Thank you.

1 at issue, and Appellant filed this timely appeal.

2 California law provides that a claim for refund
3 or credit, including tax returns that claim refunds must
4 be filed within the specified time limit, otherwise known
5 as the statute of limitations. The Appellant does not
6 dispute that the claims for refunds for the years at issue
7 were filed after the statute of limitations had expired,
8 but instead argues that the statute of limitations should
9 not apply to the Appellant's claims, and that the
10 Appellant was not informed of her overpayments or the
11 limitation periods.

12 California law is clear that no refund or credit
13 may be allowed unless a claim for refund is filed within
14 the statute of limitations. Excuse me. This is true even
15 if a taxpayer is unaware of an overpayment or the statute
16 of limitations period. The law does not provide for the
17 waiver of the statutory period based on reasonable cause
18 or other extenuating circumstances. The untimely filing
19 of a claim for any reason bars a refund even if the tax is
20 alleged to be erroneously, illegally, or wrongfully
21 collected. As stated in *United States v Dalm*, the time to
22 challenge an improper levy and a refund claim is within
23 the statute of limitations period.

24 While Respondent sympathizes with Appellant's
25 circumstances, the harshness of the strict statute of

1 limitations period is outweighed by having clear
2 deadlines. Therefore, because Appellant's claims for the
3 tax years at issue were not filed within the statute of
4 limitations period, Respondent's denials of Appellant's
5 claims for refund should be sustained.

6 I'm happy to answer any questions you have.

7 Thank you.

8 JUDGE TAY: Thank you, Franchise Tax Board.

9 Again, I'm going to turn to my Panelists for any
10 questions for Franchise Tax Board.

11 Judge Lam?

12 JUDGE LAM: No questions. Thank you.

13 JUDGE TAY: Judge Katagihara?

14 JUDGE KATAGIHARA: No questions.

15 JUDGE TAY: Okay. I'm going to turn it back over
16 to Appellant now on rebuttal.

17 So, Mr. Coulombe, you have 5 minutes on rebuttal.
18 Please feel free to begin whenever you're ready.

19

20 CLOSING STATEMENT

21 MR. COULOMBE: Well, yes, Your Honor, obviously,
22 I strongly disagree. There are definitely extenuating
23 circumstances besides recent diagnoses of illnesses that
24 my tax client is having to do deal with to remain to be
25 able to work. It's doubtful that she'll be able to work

1 another 20 years, you know, to pay off the IRS. And,
2 basically, she never was informed of the excess
3 garnishments being taken.

4 And I don't believe the excess garnishments have
5 anything to do with the expired refund statute that we're
6 not even contesting. You'll see in one of the exhibits
7 that line-by-line, year-by-year, day-by-day, I backed out
8 all the interest and penalties and expired refunds out of
9 the excess garnishments amounts. I do believe some
10 consideration should be taken in this extenuating
11 circumstance, Your Honor.

12 JUDGE TAY: Does that conclude your rebuttal?

13 MR. COULOMBE: That's all I have to say, Your
14 Honor.

15 JUDGE TAY: Okay. I'm going to turn one more
16 time to my Panel for any questions.

17 Judge Lam, any questions for Appellant or
18 Franchise Tax Board?

19 JUDGE LAM: No questions for me. Thank you.

20 JUDGE TAY: Judge Katagihara, any questions for
21 the parties?

22 JUDGE KATAGIHARA: No questions.

23 JUDGE TAY: Okay. I have one question.

24 Mr. Coulombe, are you arguing -- sorry. Let me back up.

25 You submitted some documents, including like a

1 doctor's note regarding Ms. LeBrun's treatment. Are you
2 arguing any tolling of the statute of limitations? In
3 other words, are you arguing anything that would extend
4 the statute of limitations to file claims for refund for
5 any of the tax years at issue here?

6 MR. COULOMBE: Your Honor, not strictly speaking
7 for refunds, but I am arguing that the statute should not
8 apply to the excess garnishments for several reasons. Her
9 financial ability to be able settle with the IRS is
10 jeopardized. She needed that \$20,000 extra dollars for us
11 to settle with the IRS offer and comprise. She's been
12 diagnosed with four different illnesses yet, is still
13 working full time. And, again, I don't feel that my
14 taxpayer client was given any proper notification of
15 excess garnishments that just sat on the account. And
16 they're still sitting as excess credits on the account to
17 this day with all taxes paid off.

18 And that's all I have to say, Your Honor.

19 JUDGE TAY: Okay. What I'm hearing from you is
20 that Appellant's difficulty resolving some of her other
21 tax debts are at issue or a concern here.

22 MR. COULOMBE: It's the major issue, Your Honor.

23 JUDGE TAY: Okay. Franchise Tax Board, anything
24 to add?

25 MR. GARCIA-ROSENBLUM: I have nothing to add.

1 JUDGE TAY: Okay. I do believe that Franchise
2 Tax Board does offer various collection options that might
3 be available to Appellant and so --

4 MR. GARCIA-ROSENBLUM: I'll add one thing. It's
5 not in the record, but according to Respondent's records,
6 the only year that has a balance due is 2022, which is
7 currently in an, I believe, in an installment agreement
8 with the Appellant.

9 JUDGE TAY: Okay. All right. Thank you.

10 MS. ZUMAETA: To the extent that they -- the
11 Appellant would like to pursue any kind of offer and
12 compromise that we'd certainly be happy to chat with them
13 about that.

14 JUDGE TAY: Okay. All right. That is all the
15 questions I have. And so I believe we're at the end of
16 our hearing. I want to thank everyone for their
17 presentations.

18 The record in this appeal is now closed, and the
19 appeal will be submitted for decision. We will endeavor
20 to send you our written decision no later than 100 days
21 from today.

22 The hearing is now adjourned.

23 Thank you everyone, again, for coming today.

24 And I believe our next hearing will be in the
25 afternoon session.

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(Proceedings adjourned at 10:06 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 2nd day of April, 2024.

ERNALYN M. ALONZO
HEARING REPORTER