

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
T. KALILI)
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OTA Case No. 20116888

OPINION

Representing the Parties:

For Appellant: Thomas D. Carter, CPA
 Robert E. Young, Attorney

For Respondent: Joel M. Smith, Attorney III
 Bradley J. Coutinho, Attorney III

For Office of Tax Appeals: Steven Kim, Attorney III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19331, T. Kalili (appellant) appeals respondent Franchise Tax Board’s (FTB’s) deemed denial of appellant’s claim for refund totaling \$346,884 for the 2007 through 2009 tax years.¹

Office of Tax Appeals (OTA) Administrative Law Judges Kenneth Gast, Richard Tay, and Ovsep Akopchikyan held an electronic oral hearing for this matter on June 16, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

¹ In his request for appeal to the Office of Tax Appeals (OTA), appellant claimed a refund totaling \$800,000 for the 2007 through 2009 tax years. During briefing, appellant claimed a refund of \$857,000. However, OTA considers the amount in dispute as \$346,884 because that is the only amount appellant paid to FTB. The amount in excess of \$346,884 involves criminal restitution payments appellant made to insurance carriers related to alleged fraudulent insurance claims. OTA is not a court and does not have jurisdiction to address appellant’s payments to insurance carriers. (Gov. Code, § 15672; Cal. Code Regs., tit. 18, § 30103.)

ISSUE^{2,3}

Whether OTA has jurisdiction to decide whether appellant is entitled to a refund of restitution payments made for the 2007 through 2009 tax years pursuant to a criminal plea agreement.

FACTUAL FINDINGS

1. On April 10, 2014, appellant entered a plea of no contest to criminal charges, including alleged tax evasion in violation of R&TC section 19706, in the Los Angeles County Superior Court of California. As part of the plea agreement, appellant agreed to pay \$346,884 in restitution to FTB. FTB applied \$95,664 of the restitution as additional tax for the 2007 tax year; \$112,817 as additional tax for 2008; \$126,570 as additional tax for 2009; and \$11,833 as FTB's costs of investigation.
2. By letter dated July 28, 2017, appellant requested a refund of the restitution payment on the basis that appellant was the victim of identity theft; appellant did not owe \$346,884 to FTB; and appellant only paid restitution to FTB as part of a plea agreement to avoid jail.
3. FTB notified appellant that FTB does not have jurisdiction to refund appellant's restitution payment.
4. Appellant treated FTB's notification as a deemed denial of his claim for refund and subsequently filed this timely appeal.

DISCUSSION

FTB may collect restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses that are due and payable to FTB. (R&TC, § 19722(a)(1).) These court-ordered amounts are treated as final and due and payable to the State of California on the date the amounts are established on FTB's records. (R&TC, § 19722(a)(2).) FTB may retain these court-ordered amounts for FTB's costs of investigation. (R&TC, § 19722(g).) Critically, notwithstanding Chapter 6 of Part 10.2 of the Revenue and Taxation Code

² OTA severed the issues in this appeal pursuant to California Code of Regulations, title 18, section 30212.1(b). The only issue addressed at the June 16, 2023 hearing was the issue decided in this Opinion.

³ Before the June 16, 2023 hearing, FTB conceded an unrelated issue in this appeal—whether appellant's claims for refund for the 2010 and 2011 tax years are barred by the statute of limitations—and allowed a refund/credit of \$3,697.77 for the 2010 tax year and \$456.43 for the 2011 tax year.

(commencing with R&TC section 19301), no refund or credit may be allowed for any court-ordered restitution payment. (R&TC, § 19722(c).)

Here, as part of his plea agreement, appellant agreed to pay court-ordered criminal restitution to FTB. Appellant subsequently requested a refund of the restitution payment on the basis that appellant was a victim of identity theft and did not in fact owe additional tax to FTB. However, OTA does not have jurisdiction to decide whether appellant is entitled to a refund of a court-ordered restitution payment. (See R&TC, § 19722(c).)

HOLDING

OTA does not have jurisdiction to decide whether appellant is entitled to a refund of restitution payments made pursuant to a criminal plea agreement. OTA’s holding in this Opinion renders the severed issue—whether appellant has established that he is entitled to a refund of restitution payments—moot. Therefore, OTA will not hold a separate hearing or issue a separate opinion for the severed issue.

DISPOSITION

FTB’s action denying appellant’s claim for refund is modified to grant appellant’s refund claim for the 2010 and 2011 tax years, in accordance with FTB’s concession on appeal. FTB’s action is otherwise sustained.

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 9/18/2023