

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Claim for Refund)	
4 Under the Sales and Use Tax Law of:)	
5 ANN L. DILEY)	Account Number SR OH 52-034763
6 Claimant)	Case ID 416784
	Glendale, Arizona

8 Type of Business: Seller of motor vehicle fuel

9 Audit period: 01/01/96 – 03/31/98

<u>Item</u>	<u>Claimed Refund</u>
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11 Funds obtained by levy on a personal bank account	\$37,353.26
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12 Claimant filed a claim for refund of funds obtained by levy on a personal bank account and
13 applied to a sales and use tax liability determined against her spouse.

UNRESOLVED ISSUES

15 **Issue 1:** Whether the Board's levy was invalid. We find that the levy was valid.

16 A Notice of Determination was issued against claimant's spouse, Douglas E. Diley (SG OH
17 78-020243) for the period January 1, 1996, through March 31, 1998. He filed a timely petition for
18 redetermination, and the matter became final on January 14, 2006, after it had been heard by the
19 Board. On February 1, 2007, the Sales and Use Tax Department (Department) served a Notice of Levy
20 (NOL) by mail on "Wells Fargo Bank/Levy Proc." (Wells Fargo), located in Phoenix, Arizona,
21 indicating that tax debtor Douglas E. Diley, located in Phoenix, Arizona, then owed the Board unpaid
22 tax of \$48,809.01. The NOD also indicates that the property to be levied upon includes all monies,
23 debts, credits and other personal property in Wells Fargo's control and belonging to Mr. Diley, and any
24 and all of Mr. Diley's community property interest in any account held in the name of his spouse,
25 Ms. Ann L. Diley (claimant). Subsequently, pursuant to the NOL, Wells Fargo remitted \$37,353.26 to
26 the Board, and the Board applied those funds to Mr. Diley's unpaid liability on February 15, 2007.

1 Claimant contends that the Board's levy is invalid, arguing that, in order to collect from an
2 Arizona resident, the Board must sue in an Arizona court. Also, claimant questioned the validity of the
3 levy with respect to property located outside California and owned by an Arizona resident.

4 The NOL correctly named the tax debtor, indicated the amount owed, and was served by mail
5 on Wells Fargo Bank's Levy Processing Department at its headquarters in Phoenix, as requested by
6 Wells Fargo. Therefore the NOL was properly prepared and served. (Rev. & Tax. Code, § 6703.)
7 Although the Board's Compliance Policy and Procedures Manual states that Board NOLs may not be
8 served on out-of-state entities holding property outside California, the registration of an agent for
9 service of process within this state, as Wells Fargo has done, is an established basis for California's
10 jurisdiction over a foreign person or legal entity. Accordingly, we find that the NOL was valid.

11 **Issue 2:** Whether the claim for refund should be granted because claimant is entitled to relief
12 from liability as an innocent spouse. We conclude claimant is not entitled to relief.

13 Claimant contends that she qualifies for relief from liability as an innocent spouse. However,
14 the determination was issued against Mr. Diley, not against claimant. Accordingly, there is no basis to
15 consider a claim for relief for claimant as an innocent spouse. (Rev. & Tax. Code, § 6456, subd.
16 (a)(1); Cal. Code Regs., tit. 18, § 1705.1, subd. (a)(1).)

17 **Issue 3:** Whether the levied funds represent claimant's sole and separate property, which
18 cannot be taken to satisfy Mr. Diley's unpaid tax debts. We conclude claimant has not shown that the
19 levied funds represent her sole and separate property.

20 Claimant contends that the funds obtained by levy were her sole and separate property. As
21 support, she has provided a copy of a letter from Wells Fargo informing her that the bank had debited
22 her account the amount of \$30,257.78. Claimant has not provided any information regarding the
23 source of the remaining \$7,095.48 of the levy. The Department has traced the \$30,257.78 to the "cash-
24 out refinancing" of certain real property, noting that claimant and Mr. Diley had signed a deed of trust
25 on the property in November 1995, as husband and wife, and in May 1998 had again signed a deed of
26 trust for a home equity line of credit. The Department asserts that this chain of events shows that the
27 property originated as community property of Mr. Diley and claimant. In June 1999, after the U.S.
28 Department of Justice's (DOJ) office in Arizona recorded a notice of lien listing Mr. Diley as the

1 defendant, with the same address as the property at issue, Mr. Diley quitclaimed the property to
2 claimant as sole and separate property in April 2006. Claimant then refinanced the property as the sole
3 and separate owner in September 2006, which resulted in a net payout to claimant of \$115,651.81.
4 DOJ concluded that the quitclaim to claimant was fraudulent because DOJ had previously placed a lien
5 on the property, and it intended to pursue legal action against claimant.

6 It is undisputed that the payout from the refinancing was the source of the \$30,257.78 obtained
7 by levy from a Wells Fargo account of claimant's. The Department asserts, however, that the property
8 re-financed had retained its status as community property because the transfer into claimant's separate
9 property was a fraudulent transfer intended to circumvent the lien filed by DOJ.

10 To prevail, claimant must show that the \$37,257.78 was levied from her separate property.
11 Except for stating she disagrees that the real property that was refinanced was held as community
12 property by her and Mr. Diley, claimant has not attempted to refute the Department's assertions or its
13 supporting documentation. We therefore reject claimant's assertion that the funds "rightfully and
14 legally belonged solely" to her, and find instead, based on the evidence, that the levied funds were
15 community property funds that were properly levied to satisfy Mr. Diley's debt to the Board. Also,
16 since claimant has provided no evidence to show the source of the remaining \$7,095.48 of levied
17 funds, we find that these amounts were properly levied.

18 **Issue 4:** Whether the levied funds were protected under the Homestead Act. We find claimant
19 has failed to show that the funds were protected by the Homestead Act at the time of levy.

20 As noted above, it is undisputed that the source of at least \$30,257.78 of the funds obtained by
21 levy was the refinancing of property, and claimant asserts that the property was her principal residence
22 in Arizona. Arizona's homestead laws provide a homestead exemption that attaches to a person's
23 interest in identifiable cash proceeds from the voluntary or involuntary sale of the property, and the
24 exemption continues for eighteen months after the date of sale or until the person establishes a new
25 homestead with the proceeds, whichever period is shorter. However, we are unable to find any
26 provision in the Arizona laws that might protect the proceeds of claimant's refinancing of her principal
27 residence, since the proceeds would not be identifiable as cash proceeds from the sale of the property.
28 Accordingly, we find that the funds were not protected under the Homestead Act.

