

13 minutes

I. PURPOSE OF CASE

Ms. Barsegyan has falsely stated the purpose of this lawsuit. The purpose is for Your Honor to make a precedential ruling determining whether FTB's standard operating practice of withholding estimated tax payments is lawful. FTB takes timely made payments and does not apply them to the taxpayers account right away. FTB then demands payments of monies that would not have been due had the payment been applied, and also imposes penalties, late fees, and interest that – per Revenue and Tax Code 19087 -- would not have been imposed had the estimated tax payments not been withheld.

This case has been pending for 16 months and FTB has yet to acknowledge the existence of this withholding practice, neither to confirm nor to deny it. FTB also consistently refuses to acknowledge the contents of Revenue & Tax Code 19087. When I bring up Revenue and &Tax Code 19087, FTB usually changes the subject or glosses over it without acknowledging the contents of the law.

I would also like to point out that Ms. Barsegyan made numerous deceptive and a few outright false statements in her Opposition to Plaintiff's Motion.

The first topic that I am going to address are two deceptive statements she made on page 11. The first statement is "the demand penalty may be imposed if the taxpayer fails to timely respond to a current Demand For Tax Return in the manner prescribed." Ms. Barsegyan omitted the part about "pursuant to Revenue and Tax Code 19087" and omitted the additional requirements contained within 19087. One of those requirements is that the tax liability has to still be outstanding and another requirement is a Notices of Proposed Assessment had to be issued in the four years prior. I believe that omitting those other requirements – which would prove that the penalties had been improperly imposed on us -- qualifies as lying by omission.

The second deceptive statement on page 11 is "Plaintiff is under the impression that any payments or withholding credits made reducing the tax liability will prevent demand penalties from being issued under California law." Ms. Barsegyan is well aware that per Revenue & Tax Code 19087, penalties are only to be imposed on accounts whose tax liability **is not paid in full**. It is a true statement that *if* I had only partially paid our tax liability, a demand penalty would still have been imposed. However, in my case, the tax liabilities **were paid in full** and yet the penalties were imposed anyway.

I believe that Ms. Barsegyan has misrepresented Revenue & Tax code 19087 by blurring the line between "reducing liability" and "paying in full." FTB's own records prove that we had timely paid in full, yet FTB did not apply those funds to our account timely. I believe it is reasonable for FTB to document when the money was actually applied to our account.

II. BARSEGYAN PROVED HERSELF COST COLLECTION FEE FALSELY IMPOSED

In her Opposition to Plaintiff's Motion, Ms. Barsegyan herself has proven why it is imperative that FTB disclose the requested records. At the bottom of page 11, she stated that the Cost Recovery Fee was properly imposed because we had failed to make the payment in response to the Notice that was sent. In the very next sentence, Ms. Barsegyan acknowledged that we had made the payment and said the fact that the payment had not been applied to our account had no bearing on this case! Clearly, FTB has maintained records of the date the payment was actually applied to our account or else Ms. Barsegyan could not have confirmed that the payment had been made but not yet applied.

Furthermore, I'd like to remind Your Honor that FTB employee Chelsea Hubbard stated under penalty of perjury that the payment was both received and applied to our account on April 15, 2011, more than two years before the Notice was even sent. If Ms. Hubbard told the truth, then the Cost Recovery Fee was indeed falsely imposed.

Let's review the facts that FTB themselves have presented regarding the Cost Recovery Fee: both Ms. Hubbard and Ms. Barsegyan have confessed that the payment was received prior the imposition of the fee. Ms. Hubbard stated it was applied to our account two years prior to the imposition of the fee. Ms. Barsegyan stated that it was irrelevant that the payment had not been applied to our account, which confirms that Ms. Hubbard had lied when she said the money had been applied to our account on April 15, 2011. Ms. Barsegyan also confirmed that the penalty was imposed solely because the payment had not been applied to our account. Given that FTB can't keep its own story straight, I think it is reasonable for Your Honor to order FTB to disclose the actual date that the payment was applied to our account.

III. MORE MISLEADING AND FALSE INFORMATION

Ms. Barsegyan has also deceived Your Honor about the documents FTB provided by omitting pertinent information and making false statements in her Opposition to the Motion.

1. Before I get into what FTB hasn't yet provided, I do want to clarify what FTB has provided since this Motion was filed:

- FTB has confirmed that two of the line items on the 2002 accounting ledger are fraudulent. However, FTB refused to provide information regarding the remaining line items on the 2002 ledger that I believe are also fraudulent.
- FTB has also confirmed that no bill was generated for tax year 2009, but would not address the alleged bills that appear on tax year 2002.
- I have pieced together on my own that the \$9,000 payment made in January 2014 that vanished for 7 months was ~~probably~~ applied to tax year 2012. It looks like the payment was never moved from 2012, so that means that the line items on the 2010 and 2011 accounting ledgers stating the \$9,000 was applied to 2010 and then later moved to 2011 are both fraudulent.
- These alleged bills, proof the questionable line items are legitimate, and full disclosure ~~of what happened to that \$9,000 payments~~ are amongst the records that I am requesting today.

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locations
our payments
were applied

- I did attempt to garner this information via other methods. In Plaintiff's Specially Prepared Interrogatories #002, I asked for clarification of all these issues, but FTB refused to answer any of the interrogatories. I have already submitted Plaintiff's Specially Prepared Interrogatories #002 as exhibit 49 that is attached to the new Motion to Compel that I filed on Monday, May 24th.

2. Ms. Barsegyan falsely stated that FTB has previously turned over the documents I am requesting. That is not true. The real facts are:

- No information has been provided regarding the actual dates that the withheld payments were applied to our accounts. Those dates are the lynchpin of this case, and without those dates, Your Honor will not be able to make an accurate verdict on the lawfulness of the withholding practice.
- Ms. Barsegyan has acknowledged that, for the most part, FTB has only provided records about the three years in dispute. However, as we have documented, the accounting irregularities on years not in dispute directly led to the imposition of the penalties on the years that are being contested. I believe that failure to turn over documents for these other years constitutes the withholding of critical evidence. In her Opposition, Ms. Barsegyan repeatedly said that there were no more records to turn over, despite the fact that she had already acknowledged there are 7 years of records that have yet to be turned over!
- Ms. Barsegyan made three false statements, on Pages 10, 12 and 14, where she said that FTB had turned over all documents for the years in dispute. Exhibit 52, which is attached to the Motion to Compel that I filed with the court on Monday, May 24th, confirms that I have caught FTB withholding two documents from the years in question, both of which are pertinent evidence in this case. Ms. Barsegyan has known this fact about FTB not turning over all evidence since early May, and she wrote this Opposition on May 17, so I believe that the false statement was intentional.

3. Ms. Barsegyan also argued that since FTB has sent me tons of different records, they don't need to provide the specific records that I have requested. I will acknowledge that FTB has sent me a lot of information, and as both Ms. Barsegyan and Ms. LeBleu have confirmed, instead of sending the specific records that I had asked for, FTB instead sent me the same records over and over and over again.

I believe that the documents that I am requesting today will expose the nature of FTB's withholding practices, along with FTB's other accounting irregularities that gave us reasonable cause to file our tax year 2011 and subsequent years returns late. I believe it will be impossible for Your Honor to make a proper determination about the lawfulness of the withholding practices and our claims of reasonable cause unless the true accounting records disclosing the withholding of our payments are propounded.

IV. DECEPTION VIA CONFLATION

Another issue of that I want to bring to Your Honor's attention is that Ms. Barsegyan has conflated two separate issues to make FTB's policies and procedures appear different than they really are. In doing so, she hid that the demand penalties were imposed on us in violation of Revenue and Tax Code 19087. On page 9 she made a deceptive statement and on page 11 she made a false statement.

The false statement was "Since the Demand Penalty is computed without regard to payments and withholding credits, Plaintiff's requests for any information relating to these payments are not reasonably calculated to lead to the discovery of admissible evidence." The deceptive statement was "The Demand Penalty is computed without regards to payment and withholding credits."

I go into detail about this in the Motion to Compel Further Response to ^{new} ~~Specially Prepared~~ ^{that I filed on Monday May 24} ~~Interrogatories~~ ^{demands}, but the summary is that the computation to determine if a Penalty should be imposed has no correlation with the computation of how much the penalty should be. She conflated the two issues to make it falsely seem that the two calculations were one and the same. In doing so, she made it falsely appear that the actual dates that the payments were applied to our account are irrelevant. As I said before, the penalties would not have been imposed if FTB had applied the payments when FTB received the money, ^{from U.S.} and disclosure of the actual dates that FTB applied the money to our account are the lynchpin of this case.

I brought this flagrant misrepresentation of how the penalties are to be calculated per Revenue and Tax Code 19087 to Ms. Barsegyan's attention on May 10, 2021. This means that she knew these were a false and a deceptive statement at the time she wrote them on May 17, 2021.

In closing, I'd like to clarify that I have not yet asked for sanctions, so I believe that your ruling denying sanctions was premature. I merely reserved the right to ask for sanctions in the future based on Ms. Hubbard's count of perjury.

I appreciate your reconsideration of your ruling. Thank you.
