

TAX APPEAL BOARD OF THE STATE OF DELAWARE

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| FRANCIS J. LUCIA, III, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 1745 |
| |) | |
| DIRECTOR OF REVENUE, |) | |
| |) | |
| Respondent. |) | |

BEFORE: Todd C. Schiltz, Esq., Steven R. Director, Esq., Joan M. Winters, CPA, and Robert Slavin

Francis J. Lucia, III, *pro se*, for Petitioner

Elizabeth R. McFarlan, Esq. Deputy Attorney General, for Respondent

DECISION AND ORDER

1. On May 1, 2018 and November 1, 2018, petitioner Francis J. Lucia, III (“Petitioner”) received notices from the Delaware Department of Labor, Division of Unemployment Insurance (“DUI”) notifying him of DUI’s contention that Petitioner had received overpayments of unemployment insurance. Petition Ex. A.

2. The November 1, 2018 notice advised Petitioner that, pursuant to 30 *Del. C.* § 545, DUI intended to submit his name to the Division of Revenue. The November 1 notice further stated that “any state income tax refund ... to which [Petitioner] may be entitled may be seized, in whole or in part, [by the Division of

Revenue] to satisfy” the amount Petitioner allegedly owed DUI for overpaid unemployment insurance benefits. Petition Ex. A.

3. Title 30, Section 545 of the Delaware Code addresses the seizure and use of tax refunds due to taxpayers to pay debts those taxpayers owe state agencies.

In part, Section 545 states:

Upon receiving notice from any claimant agency that a taxpayer owes a debt to such agency, the Director shall:

(1) Reduce the amount of any overpayment of tax payable to the taxpayer, during a period not to exceed 12 months from the date of the receipt of said notice, by the amount of such debt or unpaid portion thereof;

(2) Notify the taxpayer that such overpayment has been reduced by the amount of such reduction;

(3) Pay the amount by which such overpayment is reduced under paragraph (a)(1) of this section to such agency in an order of priority as determined by the Director of Revenue; [and]

(4) Pay to the taxpayer the remainder of such overpayment, if any....

“Claimant agency” means “Any department or agency of the State....” 30 *Del. C.*

§ 545(b)(1). The DUI is a claimant agency.

4. On January 14, 2019, Petitioner filed his petition before the Board contending that DUI had approved the unemployment insurance benefits he had received and that he had not been overpaid. Petition ¶¶ 5-6.

5. On January 25, 2019, the Director of Revenue (“Director”) filed a motion for judgment on the pleadings arguing that, to the extent Petitioner was

challenging DUI's determination that he had received undue unemployment benefits, the Board lacked jurisdiction over that dispute. The Director also argued that to the extent Petitioner was challenging her authority to use a tax refund to satisfy a debt due to a claimant agency pursuant to Section 545, she had not utilized any refund due Petitioner in this manner.

6. On or about February 1, 2019, the Director sent Petitioner a Notice of Intent to Set-Off Refund informing Petitioner that she intended to seize his \$523 tax refund for the period ending December 31, 2018, and turn the \$523 over to DUI pursuant to 30 *Del. C.* § 545.

7. On February 13, the Petitioner responded to the motion for judgment on the pleadings arguing that the Board had jurisdiction over this matter pursuant to 30 *Del. C.* § 545 because the Director had seized his \$523 tax refund.

8. On February 27, 2019, the Director filed a reply in further support of her motion arguing that "Section 545 of Title 30 of the Delaware Code precludes Petitioner from seeking relief from Respondent regarding the tax refund offset. Petitioner's only recourse is through the claimant agency – the DUI."

9. In support of that argument, the Director cited 30 *Del. C.* § 545(f), which provides:

Review of reductions. — No court of this State shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by

subsection (a) of this section. Except as otherwise provided in subsection (e) of this section, no such reduction shall be subject to review by the Director in any administrative proceeding. No action brought against this State to recover the amount of any such reduction shall be considered to be a suit for a refund of tax. *This subsection shall not be deemed to preclude:*

(1) *A prior hearing, upon request of the taxpayer, before the claimant agency as set forth in paragraph (c)(1)b. of this section; or*

(2) *Any legal, equitable or administrative action against the claimant agency after payment to it of such reduction.*

(emphasis added).

10. After considering the parties' submissions, the Board has determined that it lacks jurisdiction over this matter.

11. The Board has limited jurisdiction. It is empowered to "hear all appeals from determinations of the Director of all administrative protests including, but not necessarily limited to, determinations under §§ 525, 544 and 561 of this title, and such other statutes granting jurisdiction to the Board as may be hereafter enacted, and the Board may affirm, modify or reverse any such determination." 30 *Del. C.* § 329.

12. The Petitioner has not identified any "statutes granting jurisdiction to the Board" that permit the Board to address his contention that DUI approved the unemployment insurance benefits he received and that he has not been overpaid.

Petition ¶¶ 5-6. Likewise, he has not identified any determination of the Director that gives rise to jurisdiction before the Board.

13. To the extent Petitioner contends the Board has jurisdiction because of the Director's seizure of his \$523 tax refund, he is mistaken. Section 545 makes clear that in seizing a tax refund the Director is not reviewing the underlying action or making any determination. Rather, she is simply following the notice she received from DUI indicating that Petitioner owes a debt to DUI and pursuant to Section 545 is reducing Petitioner's refund as a result. Section 545 permits the Director to take this action and makes clear that Petitioner's sole recourse is either (i) a pre-reduction hearing before the DUI, or (ii) a legal, equitable or administrative action against the DUI after the Director reduces his refund. As the Director has now reduced his refund, Petitioner's only recourse is to pursue a legal, equitable or administrative action against the DUI.

14. As Petitioner failed to demonstrate that the Board has jurisdiction over this case, the Board grants the motion for judgment on the pleadings. This matter is dismissed.







SO ORDERED this 8th day of May, 2019.