

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:) OTA Case No. 18011905
TOOTS TAVERN, LLC) CDTFA Case ID: 810296
) CDTFA Acct. No. 101-281824
)
) Date Issued: July 10, 2019
)

OPINION

Representing the Parties:

For Appellant: Joseph M. Bray, Esq.

For Respondent: Kevin B. Smith, Tax Counsel III

For Office of Tax Appeals: Josh Lambert, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Toots Tavern, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA),¹ denying appellant’s timely petition of redetermination of CDTFA’s Notice of Determination that assessed \$33,794.40 tax and a negligence penalty of \$3,379.45, plus accrued interest, for the period July 1, 2010 through June 30, 2013. Subsequently, CDTFA issued a Decision and Recommendation in which it recommended adjustments to: (1) reduce the measure of unreported taxable sales by \$33,971 from \$380,445 to \$346,474; (2) remove the negligence penalty of \$3,379.45; and (3) reduce the separate measure of district tax from \$110,600 to \$55,300.

Appellant requested an oral hearing in this matter; however, the record in this matter indicates that appellant is a Nevada limited liability company (LLC) whose status in California has been forfeited by the California Secretary of State. Foreign LLC’s that have been forfeited have lost the privilege of exercising the powers, rights, and privileges of a foreign LLC in this

¹ Sales taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22; 2017 Stats. 2017, ch. 16, § 5.) The term “CDTFA” shall refer to both, depending on the context and timing. When referring to acts or events that occurred before June 1, 2017, “CDTFA” shall refer to the board; and when referring to acts or events that occurred on or after June 1, 2017, “CDTFA” shall refer to CDTFA.

state. (Corp. Code, § 17713.11.) A forfeited or suspended corporation or LLC is without the capacity to defend against or prosecute a civil action. (*Tabarrejo v. Superior Court* (2014) 232 Cal.App.4th 849, 861.) This includes prosecuting an appeal before the Office of Tax Appeals. (See *Appeal of Western Miracle Water Softener, Inc.* (59-SBE-032) 1959 WL 1320.)


We allowed appellant 60 days to provide evidence that appellant’s status with the California Secretary of State is no longer forfeited, and appellant failed to do so. Accordingly, we dismiss this appeal without oral hearing.

HOLDING


Appellant’s status with the California Secretary of State is forfeited, and thus appellant lacks the capacity to prosecute an appeal before the Office of Tax Appeals. Thus, we dismiss this appeal.


DISPOSITION

CDTFA’s action in reducing the measure of unreported taxable sales by \$33,971, from \$380,445 to \$346,474; deleting the negligence penalty of \$3,379.45; and reducing the separate measure of district tax from \$110,600 to \$55,300, but otherwise denying the petition, is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Neil Robinson
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge