

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) OTA Case No. 18012004 |
| DEPOT REPAIR SERVICES, LLC |) CDTFA Case ID: 759998 |
| |) CDTFA Acct. No. 101-107526 |
| |) |
| |) Date Issued: July 12, 2019 |
| |) |

OPINION

Representing the Parties:

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| For Appellant: | Shai Rebichia, Managing Member |
| For Respondent: | Jarrett Noble, Tax Counsel III |
| For Office of Tax Appeals: | Lisa Burke, Business Taxes Specialist III |

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 6561, Depot Repair Services, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA),¹ denying appellant’s petition for redetermination of the Notice of Determination (NOD) issued on August 13, 2013, which assessed tax of \$593,755.69, plus applicable interest, for the period August 1, 2008, through June 30, 2011. The NOD is based on a January 10, 2013 audit report showing an aggregate measure of tax of \$6,891,531, consisting of three audit items: (1) disallowed claimed nontaxable sales of \$6,483,436; (2) unreported taxable shipping charges of \$347,663²; and (3) fixed asset purchases subject to use tax of \$60,432.

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

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.

² In the audit, respondent established unreported taxable shipping charges of \$347,663. However, during a review of the audit, CDTFA found that adjustments were warranted, and the amount of unreported taxable shipping charges was reduced to \$242,038 in a reaudit.

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 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 its 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. Therefore, we dismiss this appeal.

DISPOSITION

CDTFA’s action in reducing the measure for unreported taxable shipping charges from \$347,663 to \$242,038, but otherwise denying appellant’s petition for redetermination, is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge