

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**HEMOPET dba Pet Life Line**

) OTA Case No. 18011847  
)  
) Date Issued: May 7, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Charles Berman, General Counsel  
W. Jean Dodds, DVM, President

For Respondent: Kevin Smith, Attorney  
Stephen Smith, Attorney  
Kevin Hanks, Representative

A. KWEE, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 6561, appellant Hemopet dba Pet Life Line (Hemopet) timely appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA), on a petition for redetermination of a July 28, 2014, Notice of Determination (NOD). The NOD is for \$81,830.27 in tax, plus accrued interest, for the period January 1, 2008, through June 30, 2011.

Office of Tax Appeals (OTA) Administrative Law Judges Andrew Kwee, Amanda Vassigh, and Grant Thompson heard this appeal on December 11, 2018, in Van Nuys, California. At the conclusion of the oral hearing, the record was held open to allow the parties time to submit additional briefing on the issue of interest relief. Upon conclusion of the additional briefing period on February 12, 2019, the record was closed and this matter was submitted for decision.

**ISSUES**

1. Whether sales or use tax applies to the charges at issue?
2. Whether Hemopet established a basis for relief of interest?

## FACTUAL FINDINGS

1. Hemopet, a California corporation, operates a private non-profit animal blood bank in California. The blood bank is licensed by the California Department of Food and Agriculture as a “Commercial Blood Bank for Animals” (License No. 84). This license allows Hemopet “to engage in the production and distribution of animal blood and blood products.”
2. In conjunction with the blood bank, Hemopet operates a greyhound rescue and adoption facility in Orange County, California. The adoption facility rescues greyhounds deemed unsuitable for use in the racing industry. The rescued greyhounds donate approximately 250 mL of blood every two to three weeks, for approximately 12 to 18 months, to the animal blood bank. During the donation period, Hemopet regularly provides the blood donor dogs an iron-vitamin supplement to replenish their blood supply. After completion of the donation period, Hemopet places the blood donor dogs up for adoption.
3. After donation, the blood is separated into two different components: blood cells and plasma. Hemopet refrigerates blood cells and freezes plasma. Hemopet does not accept customer returns once the blood has been delivered and accepted by the customer. The blood products transferred to customers include printed medical and healthcare advice for its use in a transfusion.
4. Hemopet submitted a brochure further explaining how its blood products are used. The brochure explains that Hemopet “works with YOUR veterinarian by providing Blood Products to sustain [your pet’s] health.” Plasma “is used to treat . . . a variety of illnesses such as parvovirus disease, heat stroke, bleeding diseases, [and other illnesses.]” Blood cells are “used in treating both acute . . . and chronic autoimmune anemia.” The plasma “is sold in 12 ml plastic tubes.” In a declaration describing this brochure, Dr. Dodds declared that the amount charged to the customer for blood for use in transfusions is related to the number of blood units transferred to the customer (i.e., the veterinarian).
5. According to Hemopet, the animal blood bank provides these “blood components and supplies for transfusions to veterinary clinics nationwide.” Additionally, Hemopet “offers a 10% discount on all its products and services to all animal-related 501(c)(3) non-profits.” The products include “a variety of blood products from plasma to whole blood,” which are available to “order.” Additionally, Hemopet offers the following

services: Holistic Care (pet examinations), Diagnostic Services (comprehensive blood analysis for food sensitivity and intolerances), and Consultation Services (diagnosis and management of the pet's condition).

6. Hemopet's property qualifies for the welfare exemption from property taxation as provided by section 215 of the R&TC, which is applicable to property used exclusively for religious, hospital, scientific, or charitable purposes provided specified conditions are met. The State Board of Equalization (board) originally granted Hemopet's claim for the welfare exemption on or around January 22, 1993, superseding an earlier finding of ineligibility. A transcript of the oral hearing before the board on the 1993 property tax matter is not available.
7. Dr. Dodds filed a declaration stating that she represented Hemopet in the 1993 property tax matter, and the board ruled that "under the Sales and Use Tax provisions, non-profit animal blood banks should be considered equivalently to human blood banks." The board's January 22, 1993, notice of board action on this issue states, in pertinent part, that: "You are hereby notified that the above-entitled matter was acted upon by the Board in public session . . . By unanimous vote of those members present, the Board granted the Corporation's claim for the welfare exemption pertaining to its personal property at [address redacted.]"
8. In connection with this appeal, Mr. Richard Schumacher, DVM, former Executive Director of the California Veterinary Medical Association, provided a statement summarizing his recollection of the 1993 property tax matter. Mr. Schumacher states that he was present at the oral hearing in 1993. According to Mr. Schumacher, "Hemopet was granted a welfare exemption on the basis that human blood banks were exempt as an emergency medical resource – and so the parallel situation would apply to this animal blood bank counterpart."
9. On or around September 4, 2013, Hemopet filed untimely sales and use tax returns for the period at issue (July 1, 2007, through June 30, 2011) reporting no tax liability. On audit, CDTFA<sup>1</sup> determined that appellant made \$1,030,964 in taxable sales during this period, and owed sales tax for these sales. Thereafter, on July 28, 2014, CDTFA issued a

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<sup>1</sup> The underlying audit in this petition was handled by CDTFA's predecessor, the board. On July 1, 2017, CDTFA took over certain functions of the board, including administration of the sales and use tax law.

Notice of Determination in the amount of \$81,830.27, plus accrued interest, for the underreported taxable sales. Appellant timely petitioned the board to redetermine the liability.

10. On September 21, 2015, the board's Appeals Division<sup>2</sup> issued a Decision and Recommendation (D&R) that the board deny the appeal.
11. This matter was scheduled for oral hearing before the board on its March 29, 2016, oral hearing calendar. On March 10, 2016, the board's chair deferred this matter at the request of a board member. The deferral request stated that the member's office asked the board's Legislative and Research Division to put forth a legislative proposal that may impact this case. The request also indicated that the member's office had been in contact with Hemopet.
12. On March 14, 2016, a board member's office emailed both of Hemopet's representatives, thanking them for meeting with the member's office, and notifying them that a legislative proposal to add section 6358.6 to the R&TC was moving forward.
13. On April 19, 2016, Senate Bill (SB) 898 was introduced, to add section 6358.6 to the R&TC. As drafted, it would establish a sales tax exemption for the sale of animal blood products by a licensed, nonprofit, animal blood bank for specified purposes, and cancel certain existing sales tax determinations involving sales of animal blood products.<sup>3</sup>
14. By letter dated June 14, 2016, a board member sent a personally signed letter to the Chair of the Assembly Committee on Revenue and Taxation, supporting SB 898. The letter was sent using board letterhead, and stated that "there is only one nonprofit animal blood bank" licensed in California that sells animal blood products, and that "it is in the public interest to relieve from liability persons that have not paid tax on previous" sales of animal blood products that would have met the exemption proposed in SB 898.
15. On September 13, 2016, the then Governor vetoed SB 898.

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<sup>2</sup> The board's Appeals Division was renamed and transferred to CDTFA on July 1, 2017.

<sup>3</sup> The Senate Bill analysis raised a concern that: "the bill sets a dangerous precedent for future [sales and use tax (SUT)] exemptions. Taxpayers that believe a SUT exemption applies to a type of tangible personal property could forgo remitting SUT to [the state] and when a notice of determination is issued, attempt to push legislation through the process with both a SUT exemption and a cancellation of any current notice of determination provision." (Senate Committee Bill Analysis of SB 898 (4/19/2016).) The language requiring cancellation of existing tax determinations was eliminated in a subsequently amended draft of this bill.

16. On December 5, 2016, the board's Appeals Division issued a supplemental D&R, continuing to recommend that the board deny the appeal. CDTFA concedes that the board's Appeals Division requested that the case be deferred on September 26, 2016, in order to issue the Supplemental D&R, which it did on December 5, 2016. On December 26, 2016, Hemopet requested reconsideration of the Supplemental D&R. The board's Appeals Division considered the request and issued a second Supplemental D&R on May 25, 2017, continuing to recommend that the board deny this appeal.
17. Thereafter, this matter was rescheduled for oral hearing before the board during its September 26-28, 2017, oral hearing calendar. This matter was then postponed at Hemopet's request on July 6, 2017. On January 1, 2018, this appeal was transferred to the Office of Tax Appeals (OTA).<sup>4</sup>
18. On appeal, Hemopet does not dispute the amount of sales determined by CDTFA for the period at issue. Instead, Hemopet contends that these constituted nontaxable transfusion service transactions, or are otherwise exempt or nontaxable.
19. Hemopet also requests relief of all interest for the period at issue on the basis of unreasonable error or delay by the board. First, Hemopet contends that the board, during its 1993 hearing, advised it that human and animal blood products were taxed the same. Second, appellant contends that this matter was scheduled to be heard by the board in March 2016, and the board, "of its own volition," suspended the appeal process. Subsequently, appellant contends this appeal was further suspended for the issuance of two supplemental decisions. On November 27, 2018, Hemopet filed a statement under penalty of perjury supporting its request for interest relief.
20. By letter dated January 9, 2019, CDTFA concedes that there was an unreasonable error or delay eligible for interest relief during the following periods: (1) May 1, 2012, through August 31, 2012; (2) February 1, 2013, through June 30, 2014; and (3) September 26, 2016, through December 5, 2016. CDTFA recommends that OTA grant interest relief for these periods.
21. By letter dated February 7, 2019, Hemopet reaffirmed its request for relief of all interest.
22. On February 12, 2019, OTA notified the parties that the oral hearing record was closed.

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<sup>4</sup> Effective January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the board necessary or appropriate to conduct business, franchise, and income tax appeals. (Gov. Code, §§ 15600, 15672.)

## DISCUSSION

### 1 Hemopet’s claim for exemption or exclusion from sales tax

California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt or excluded from taxation by statute. (Rev. & Tax. Code §§ 6012, 6051.) A “sale” includes any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code, § 6006, subd. (a).) “Tangible personal property” means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses. (Rev. & Tax. Code, § 6016.) The sales tax is imposed on the retailer, who may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code, § 1651.1; Cal. Code. Regs., tit. 18, § (Reg.) 1700.)

A taxable sale generally includes the sale of an animal to any individual for use as a pet, unless the animal is transferred to that individual by a city, county, local government animal shelter, or nonprofit welfare organization. (See Rev. & Tax. Code, §§ 6010.40, 6012.) Tax does not apply to the sale of any form of animal life the products of which ordinarily constitute food for human consumption. (Rev. & Tax. Code, § 6358.) This sales tax exemption does not apply to the sale of dogs or other pets. (Reg. 1587(a).) CDTFAs (and its predecessor, the board) has historically considered the sale of animal blood products as taxable. (See, e.g., Business Taxes Law Guide Annotations 110.0060 (3/5/70) & 425.040 (10/2/89).)<sup>5</sup>

Subject to certain exceptions which are not relevant here, “[t]ax applies to the sales of such drugs, medicines and other items to licensed veterinarians.” (Reg. 1506, subd. (j)(2)(A).) Drugs and medicines includes “substances or preparations intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals and which is commonly recognized as a substance or preparation intended for this use.” (Reg. 1506, subd. (j)(1)(B).) This language is substantially similar to the definition of drugs under the Federal Food, Drug, and Cosmetic Act, which defines drugs to include “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.” (21 U.S.C. § 321(g)(1)(B).) Blood and blood products are classified as drugs within this substantially similar federal definition.

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<sup>5</sup> An annotation is a legal ruling of counsel that does not have the force or effect of law; however, a legal interpretation in an annotation is entitled to some consideration by OTA. (*Yamaha Corp. of America v. SBE* (1998) 19 Cal.4th 1, 15.)

(See Federal Register Volume 28, No. 20 Wednesday, January 31, 1973 [“blood and related blood products fall clearly within that definition” <sup>6</sup>].) Additionally, Hemopet is licensed by the by the California Department of Food and Agriculture as a commercial blood bank for animals. Under Food and Agriculture Code section 9205, the term commercial blood bank for animals “means an establishment that produces animal blood or blood component products to market and sell for use in the cure, mitigation, treatment, or prevention of injury or disease in animals.” Considering the above, we find that companion animal blood products are drugs within the meaning of R&TC section 6018.1. (See Reg. 1506, subd. (j)(1)(B).)

Veterinarians are statutorily regarded as consumers of drugs and medicines, such as companion animal blood products, that they furnish in the performance of their professional services. (Rev. & Tax. Code, § 6018.1; Reg. 1506, subd. (j)(2)(A).) Hemopet does not contend or provide any evidence to establish that it made any nontaxable sales of companion animal blood products to the veterinarians for purposes of resale. (See Rev. & Tax. Code, § 6091 [“it shall be presumed that all gross receipts are subject to the tax until the contrary is established”].) To the contrary, Hemopet admits that the veterinarians used the blood products to perform blood transfusions (as opposed to reselling the blood products), which establishes that the sales do not qualify as nontaxable sales for resale.

Although the Legislature has crafted specific statutory exceptions for the sale of companion animals by local governments and humane societies, and for the sale of food animals for human consumption, there is no specific exemption or exclusion from tax for the sale of companion animal blood products. Therefore, Hemopet is considered a retailer and, as such, made taxable retail sales when it sold, for a consideration, tangible personal property (companion animal blood products) to the veterinarians for use by the veterinarian in performing transfusions. (See Rev. & Tax. Code, § 6015.) As such, tax applies to Hemopet’s sale of companion animal blood products to veterinarians as specifically provided for in Regulation 1506. (Reg. 1506, subd. (j)(2)(A).)

Hemopet also contends that its companion animal blood products are used in connection with performing nontaxable professional services such as blood transfusions. It may be true, as described above, that the sales and use tax law does not recognize the furnishing of blood by a

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<sup>6</sup>This federal register goes on to explain: “ ‘The term ‘drug’ means (A) . . . ; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals: . . . ’ Blood is covered by both parts of this definition.”

licensed veterinarian in connection with a blood transfusion as a taxable sale. (See Rev. & Tax. Code, § 6018.1.) This is beside the point. Even if we accept that the purchaser was considered engaged in performing nontaxable services with respect to Hemopet’s companion animal blood products, “[t]he sales tax is imposed on the seller, not upon the buyer.” (*General Elec. Co. v. SBE* (1952) 111. Cal.App.2d 180, 185.) As such, “we are not interested in the nature of the property in the hands of the buyer, but in its nature in the hands of the seller.” (*Id.* at p. 185.) Here, Hemopet is the seller. Hemopet did not perform transfusions with any of the companion animal blood products that it sold to the buyers (i.e., veterinarians). As such, Hemopet cannot be said to be performing nontaxable blood transfusion services with respect to the companion blood products at issue. Therefore, Hemopet did not use the companion animal blood products in a nontaxable manner.

Hemopet alternatively contends that, as a non-profit organization, it made qualifying exempt sales within the meaning of R&TC section 6375. In order to qualify for this exemption, the taxpayer must establish that four elements are met:

1. The organization must be formed and operated for charitable purposes and must qualify for the “welfare exemption” from property taxation provided by section 214 of the Revenue and Taxation Code.
2. The organization must be engaged in the relief of poverty and distress.
3. The organization’s sales or donations must be made principally as a matter of assistance to purchasers or donees in distressed financial condition.
4. The property sold or donated must have been made, prepared, assembled or manufactured by the organization.

(Reg. 1570, subs. (a), (b).) Only the second and third elements are disputed in this appeal. These elements are met if the primary purpose of the organization is to relieve poverty and distress (i.e., element 2) and to aid purchasers and donees by selling its property at reduced prices or donating its property so as to be of real assistance to the purchasers and donees (i.e., element 3). (Reg. 1570, subd. (a)(4)(C).) “Incidental sales to persons other than indigents will not preclude the” the organization from claiming the exemption. (Reg. 1570, subd. (a)(4)(C).)

Although Hemopet contends that any companion animal receiving a blood transfusion would be in distress, the statute and regulation specifically require us to consider the condition of



the purchaser.<sup>7</sup> (Rev. & Tax. Code, § 6375, Reg. 1570, subd. (a)(3).) In this case, the purchasers are the veterinarians who pay for Hemopet’s companion animal blood products. There is no evidence or argument that these veterinarians are indigent, or that Hemopet’s sales are intended be made principally as a matter of assistance to veterinarians who are “in distressed financial condition.” (Reg. 1570, subd. (a)(3).) There is also no evidence that the customers of the veterinarians (i.e., the pet owners) are indigent, or that the sales were made as a matter of assistance to pet owners. Therefore, we have no basis to conclude that any of the disputed transactions qualify for exemption.

Finally, Hemopet contends that R&TC section 33 supports a finding that sales of animal blood products are nontaxable service transactions. This section provides that “Human whole blood, plasma, and blood products . . . held in a bank for medical purposes, shall be exempt from taxation for any purpose.” (Rev. & Tax. Code, § 33.) Nevertheless, the statutory language at issue is very specific and creates an exemption from tax for *human* blood products. It does not classify any blood products as part of a service transaction for tax purposes. Therefore, we have no basis to extend this exemption to products other than those specified in R&TC section 33.

## 2 Hemopet’s request for interest relief

There is no statutory right to interest relief. The law allows OTA,<sup>8</sup> in its discretion, to relieve all or any part of the interest imposed on a person under the sales and use tax law where the failure to pay the tax is due in whole or in part to an unreasonable error or delay by an employee of the board (or, after July 1, 2017, CDTFA) acting in his or her official capacity. (Rev. & Tax. Code, §§ 20, 6593.5, subd. (a)(1).) Such an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (Rev. & Tax. Code, § 6593.5, subd. (b).) Any person requesting interest relief must include a statement under penalty of perjury setting forth the facts on which the request is based. (Rev. & Tax. Code, § 6593.5, subd. (c).) Regulation 1703 restates, without adding further clarification to, the requirements for interest relief within the meaning of R&TC

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<sup>7</sup> Qualifying organizations meeting the elements described above may purchase tangible personal property for purposes of donating it to persons in distressed financial condition without payment of tax, in which case we would look to the condition of the person to whom the organization donates its products. (Reg. 1570, subd. (c)(1).)

<sup>8</sup> R&TC section 6593.5 says “board,” however, on and after January 1, 2018, the term “board,” with respect to an appeal, means the Office of Tax Appeals (OTA). (Rev. & Tax. Code, § 20(b).)

section 6593.5. (See Reg. 1703, subd. (b)(1)(E).) We are aware of no California court cases, precedential decisions, or regulations which further interpret or implement the interest relief provisions of R&TC section 6593.5.

Appellant first contends that all interest should be relieved based on erroneous advice provided by the board during a 1993 oral hearing. Specifically, appellant contends it was advised that human and animal blood are treated the same for sales tax purposes. Nevertheless, the only board record available from this time period confirms that the 1993 oral hearing involved a property tax matter, as opposed to a sales tax matter. Furthermore, Mr. Richard Schmacher, DVM, a person attending the oral hearing, submitted a letter stating that, from his recollection, the 1993 oral hearing discussed the application of the welfare exemption (a property tax matter). Similarly, appellant was unable to provide contemporaneous documentation, such as an audit report, to support its contention that three times between 2009 and 2010, a board inspector visited Hemopet unannounced and advised that everything was in order, or that any such visits pertained to sales tax. To the contrary, Hemopet filed its first sales tax return for its business (reporting no taxes) years later, on September 2013. In summary, we do not find persuasive evidence that the board ever advised appellant that sales tax was inapplicable to transactions involving animal blood products. As such, we decline to grant interest relief on this basis.<sup>9</sup>

Appellant alternatively requests interest relief on the basis that the board unreasonably postponed deciding its appeal, which was originally scheduled to be heard in March 2016. Here, a deferral request was made on March 10, 2016, and came from a board member's office. According to the request, the member's office had asked board staff "to put forth a legislative proposal that may impact this case." An email sent on March 14, 2016, from the board member's office to Hemopet, confirmed that the legislative proposal would add section 6358.6 to the R&TC. Shortly thereafter, on April 19, 2016, Senate Bill 898 was introduced to add section 6358.6 to the R&TC, which, in addition to creating a sales tax exemption, would cancel existing tax determinations involving sales of animal blood products. On June 14, 2016, a board member sent a letter to the Chair of the Assembly Committee on Revenue and Taxation, in support of SB

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<sup>9</sup> Based on our finding that there is insufficient evidence to conclude that the board ever advised Hemopet that sales tax was inapplicable to animal blood products, we do not address Hemopet's equitable estoppel argument, which is premised on Hemopet having detrimentally relied on such advice. (See *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.)

898. According to the letter, “there is only one nonprofit animal blood bank” licensed in California that sells animal blood products, and “it is in the public interest to relieve from liability persons that have not paid tax on previous” sales of animal blood products. Based on all the above, it appears that the board delayed Hemopet’s appeal in order to actively pursue legislation to retroactively cancel Hemopet’s determination.

In order for interest relief to be applicable, the board’s decision to delay Hemopet’s appeal must be unreasonable. (Rev. & Tax. Code, § 6593.5.) Here, the board was statutorily required to “enforce the provisions of” the Sales and Use Tax Law on Hemopet. (Rev. & Tax. Code, § 7051.) Instead, for whatever reason, it appears the board singled out Hemopet for special treatment and delayed this appeal. We believe that all taxpayers should be treated equally, regardless of financial or any other considerations, and that no taxpayer should be denied equal protection of the laws of this state. (See Cal. Const. Art. 1, § 7.) We find that delaying Hemopet’s appeal so as to avoid enforcing the provisions of the Sales and Use Tax Law on Hemopet, while at the same time attempting to pass a law, affecting only one taxpayer, which required the board to “cancel any notice of determination and any related penalties and interest” assessed against Hemopet on the transactions at issue in this appeal (see footnote 3, *supra*), was an unreasonable reason for the delay.

We believe interest relief appropriate for the period of time that the board postponed this appeal in order to pursue legislation that would retroactively impact this appeal. The Governor vetoed this legislation on September 13, 2016, and the board did not thereafter consider this matter ready for rescheduling until December 5, 2016, when the supplemental D&R was issued. At this point, Hemopet requested reconsideration of the matter and, as such, any additional delay cannot be attributed to the board. Therefore, we grant interest relief for the period March 10, 2016, until December 5, 2016.<sup>10</sup>

Lastly, Hemopet requests interest relief for periods after January 1, 2018, due to the passage of the Taxpayer Transparency and Fairness Act of 2016. Hemopet contends that there was a delay in hearing this appeal due to the transfer of cases from the board to OTA. Nevertheless, we do not have authority to grant interest relief for a delay resulting from a change in the law.

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<sup>10</sup> CDTFA concedes that there was an unreasonable error or delay during a portion of this time period: September 26, 2016, through December 5, 2016.

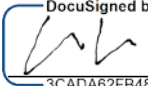
CDTFA concedes that there was an unreasonable error or delay eligible for interest relief from May 1, 2012, through August 31, 2012, and from February 1, 2013, through June 30, 2014. In light of CDTFA's concession and recommendation to grant relief, we will relieve interest for these additional periods. After reviewing the record, we do not believe there was any additional unreasonable error or delay warranting discretionary interest relief and, as such, we do not relieve any additional interest.

HOLDINGS

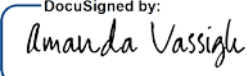
1. Hemopet failed to establish that sales tax is inapplicable to its sales or transfers of animal blood products.
2. Partial interest relief is warranted.

DISPOSITION

CDTFA's action in denying the petition for redetermination is sustained, except with respect to a portion of the accrued interest. Interest relief is granted for the period March 10, 2016, until December 5, 2016, due to an unreasonable delay by the board. Additionally, interest relief is granted for the following periods based on CDTFA's concession and recommendation that OTA relieve interest: (1) May 1, 2012, through August 31, 2012, and (2) February 1, 2013, through June 30, 2014.

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Andrew J. Kwee  
Administrative Law Judge

I concur:

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Amanda Vassigh  
Administrative Law Judge

**Concurring and dissenting opinion of Grant S. Thompson**

G. THOMPSON, Administrative Law Judge: I generally concur in the majority's opinion. However, I respectfully dissent from the majority's determination to abate interest from March 10, 2016 to December 5, 2016. In my opinion, appellant has not shown that it was an unreasonable error or delay for the Board of Equalization (board) or its employees to postpone an oral hearing due to the introduction of legislation that might have mooted the appeal and eliminated the need for the oral hearing. To me, the issue is not whether the legislation was advisable or whether it was appropriate for two members of the board to support the legislation. The issue is whether the administrative decision to postpone the oral hearing constituted an unreasonable error or delay for which we should exercise our discretion to abate interest. I note that I see no indication in the appeal record that appellant or any other party objected to the deferral at the time the appeal was deferred or during the deferral period. In these circumstances, I do not believe the appeal record establishes that we should exercise our discretion to abate interest.

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Grant S. Thompson  
Administrative Law Judge