

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
AFGHAN TRADE CENTER
INCORPORATED

) OTA Case No. 18083571
) CDTFA Account No. 101-180592
) CDTFA Case ID 986424
)
) Date Issued: September 25, 2019
)

OPINION

Representing the Parties:

For Appellant: Basir Dadajan, Representative
For Respondent: Joshua Aldrich, Attorney

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 6561, Afghan Trade Center Incorporated (appellant) appeals a Decision and Recommendation (decision) issued by the California Department of Tax and Fee Administration (CDTFA) denying appellant’s petition for redetermination of an October 19, 2016, Notice of Determination (NOD). The NOD is for \$82,030.93 in tax, a negligence penalty of \$8,203.12, plus applicable interest, for the period January 1, 2013, through June 1, 2015.

ISSUE

Whether appellant has capacity to maintain this appeal with the Office of Tax Appeals (OTA).

FACTUAL FINDINGS

1. On July 5, 2018, CDTFA issued a decision denying appellant’s petition for redetermination.
2. Appellant timely appealed CDTFA’s decision to OTA.
3. Appellant is a suspended corporation. The Franchise Tax Board (FTB) suspended appellant’s corporate status for failing to meet tax requirements with the FTB. The California Secretary of State’s records further reflect that appellant’s corporate powers, rights and privileges are currently suspended in this state.

4. By Order dated July 11, 2019, appellant was given until Monday, August 26, 2019, to provide evidence that appellant's status with the California Secretary of State is no longer suspended. Appellant was informed that in absence of such evidence, the liability would be redetermined as provided in CDTFAs decision.
5. Appellant failed to timely provide any evidence that it has capacity to maintain this appeal.

DISCUSSION

A suspended corporation is without the capacity to defend against or prosecute a civil action.¹ (*City of San Diego v. San Diegans for Open Government* (2016) 3 Cal.App.5th 568, 577.) 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.) As relevant here, in the case of an FTB suspension, a suspended corporation can regain its corporate powers by filing all required tax returns, paying all necessary tax liabilities, and applying to FTB for a certificate of revivor. (Rev. & Tax. Code, § 23305.) The timely revival of corporate powers is generally sufficient to retroactively validate actions taken in the prosecution or defense of an appeal while the corporation was under suspension. (See *Tabarrejo v. Superior Court* (2014) 232 Cal.App.4th 849, 862.)

Appellant's corporate powers, rights and privileges are currently suspended in this state, and appellant is unable to maintain an appeal before OTA. (See Rev. & Tax Code, § 23301.) Despite being afforded an opportunity to do so, appellant failed to present argument or evidence that it has capacity to maintain this appeal, or to timely revive its corporate powers. Therefore, we must find in favor of CDTFAs.

HOLDING

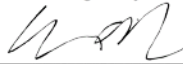
Appellant failed to establish that it has capacity to maintain this appeal with OTA.

¹ As relevant, it is also a crime for any person to attempt or purport to exercise the powers, rights, and privileges of a corporation that has been suspended pursuant to Revenue and Taxation Code Section 23301 for failing to meet specified tax requirements with the Franchise Tax Board (FTB). (Rev. & Tax Code, § 19719(a).)

DISPOSITION

CDTFA's action denying the petition is sustained.

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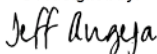
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Andrew J. Kwee

Administrative Law Judge

We concur:

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Jeffrey G. Angeja

Administrative Law Judge

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Teresa A. Stanley

Administrative Law Judge