

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeals of: )  
**HUNGRY VALLEY FUEL, INC.** ) OTA Case No. 19034464  
) CDTFA Account No. 101-040065  
) CDTFA Case IDs: 781898, 781899, 781900  
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**OPINION**

Representing the Parties:

For Appellant: Robert S. Kahn, Attorney  
Krista Dabbas, President

For Respondent: Kevin B. Smith, Tax Counsel III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Hungry Valley Fuel, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying, in substantial part, appellant's untimely<sup>2</sup> protest of three Notices of Determination (NODs) dated August 23, 2012, October 30, 2012, and February 21, 2013, respectively.<sup>3</sup> The August 23, 2012 NOD is for \$64,943 in tax, plus applicable interest, for the period July 1, 2009, through June 30, 2011. The October 30, 2012 NOD is for \$30,545 in tax, plus applicable interest, for the period July 1, 2011, through March 31, 2012. The February 21, 2013 NOD is for \$10,280 in tax, plus applicable

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<sup>1</sup> Sales taxes were formerly administered by the Board of Equalization (board). Effective July 1, 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) When this Opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to its predecessor, the board.

<sup>2</sup> Under regulations applicable at the time the petition was filed, if a taxpayer filed a petition for redetermination after the 30-day time period specified in R&TC section 6561, CDTFA could accept it as an administrative (late) protest. (Cal. Code Regs., tit. 18, § 5220 [superseded by Cal. Code Regs., tit. 18, § 35019].)

<sup>3</sup> The finality penalties imposed pursuant to R&TC section 6561 for failure to timely pay the NODs are not at issue in this appeal and are not discussed further. As relevant, CDTFA recommended conditional relief of the finality penalties, subject to appellant meeting certain payment conditions.

interest, for the period July 1, 2012, through September 30, 2012.<sup>4</sup> CDTFA issued a decision denying, in substantial part, appellant's protest of the NODs.

Appellant waived its right to an oral hearing; therefore, the matter is being decided based on the written record.

### ISSUES

1. Whether CDTFA timely assessed the liabilities at issue.
2. Whether appellant is liable for transactions and use (district) taxes imposed by Los Angeles County pursuant to the Transactions and Use Tax Law.
3. Whether appellant established a basis for relief of taxes, interest, and penalties pursuant to R&TC section 6596.
4. Whether appellant established a basis for relief of taxes, interest, and penalties based on CDTFA's failure to notify appellant of the correct tax rate.

### FACTUAL FINDINGS

1. Appellant, a California corporation, was incorporated on January 10, 2008.
2. Appellant is wholly owned by Krista Dabbas, its president.
3. On February 14, 2008, appellant's president, Krista Dabbas, applied for a seller's permit on behalf of appellant. On the application, Krista Dabbas reported that appellant's business address was: "49715 Gorman Road, Lebec, CA 93243." Krista Dabbas signed the application, as appellant's president, and certified that the statements made in the application were true and correct to the best of her knowledge and belief.
4. The true and correct address for appellant's business is: "49715 Gorman School Rd, Gorman, CA 93243" (the Gorman Property).
5. The address for the Gorman Property has not changed since December 18, 1962, when the Los Angeles County Board of Supervisors renamed "Quail Lake School Rd" to "Gorman School Rd."
6. The following facts are not disputed:
  - (a) Lebec is an unincorporated area located in Kern County, California.
  - (b) Gorman is an unincorporated area located in Los Angeles County, California.

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<sup>4</sup>The liability period includes a gap for the second quarter of 2012 (2Q12) because appellant reported the correct amount of tax for this quarter.

- (c) Zip code 93243 is shared by addresses located in Lebec and addresses in Gorman.
7. Appellant concedes that: “There is only one Gorman Road (or Gorman School Road) in the entire state of California. It is located in Gorman, CA ... in Los Angeles County.”
  8. According to appellant’s fuel suppliers, they had the following address on file as the address to deliver fuel to appellant: “49715 Gorman School Road, Gorman, CA.”
  9. Krista Dabbas holds legal title to the Gorman Property.
  10. Krista Dabbas obtained title to the Gorman Property as a gift from Jozfine Musa, pursuant to a grant deed dated July 2, 2008, which appellant filed with the Los Angeles County Recorder’s Office on July 7, 2008. The Legal Description, filed as Exhibit A to the Grant Deed, states that the Gorman Property is located “in the County of Los Angeles, State of California.”
  11. Jozfine Musa obtained title to the Gorman Property from K.E.L. Enterprises, Inc., pursuant to a grant deed dated October 26, 1998. Krista Dabbas’ father, Emil Dabbas, signed the grant deed on behalf of the corporation, as its President. The grant deed was filed with the Los Angeles County Recorder’s Office on October 28, 1998.
  12. On March 5, 2012, an entity representing Los Angeles County contacted appellant and CDTFA, and notified the parties that appellant was failing to pay to the state the district taxes for Los Angeles County.<sup>5</sup>
  13. Thereafter, CDTFA issued the NODs, which appellant protested. This timely appeal followed.

### DISCUSSION

#### Issue 1. Whether CDTFA timely assessed the liabilities at issue.

The law provides, in pertinent part, that every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. (R&TC, § 6487(a).)

The first NOD, dated August 23, 2012, is for the period July 1, 2009, through June 30, 2011, based on a deficiency determination. The due date for the earliest period, third quarter of 2009 (3Q09), was October 31, 2009. The three-year statute of limitation for this

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<sup>5</sup> CDTFA collects the district taxes on behalf of all districts which have adopted a district tax.

determination expired no earlier than October 31, 2012. Therefore, the NOD was timely issued on August 23, 2012.

The second NOD, dated October 30, 2012, is for the period July 1, 2011, through March 31, 2012, based on a deficiency determination. The due date for the earliest period, 3Q11, was October 31, 2011. The three-year statute of limitation for this determination expired no earlier than October 31, 2014. Therefore, the NOD was timely issued on October 30, 2012.

The third NOD, dated February 21, 2013, is for the period July 1, 2012, through September 30, 2012, based on a deficiency determination. The due date for earliest period, 3Q12, was October 31, 2012. The three-year statute of limitation for this determination expired no earlier than October 31, 2015. Therefore, the NOD was timely issued on February 21, 2013.

Appellant contends that all three NODs are barred by statute because “to this day [appellant] still has never been provided written notice from the [CDTFA] of a needed change in the tax rates charged. Without written notice, [appellant] cannot be held to a knowing [sic] standard.” Nevertheless, the law only requires CDTFA to give “written notice of its determination” in order to satisfy the statute of limitations. (R&TC, § 6486.) The NODs issued to appellant all include the following language:

**\*\*Notice of Determination\*\***

You are hereby notified of an amount due from you as shown below.

It is undisputed that appellant timely received these NODs. Instead, appellant challenges the validity of the NODs on the basis that they are not sufficient to constitute written notice or impart knowledge. First, the written notice requirement in R&TC section 6486 is merely a procedural requirement. Here, the NODs specify the amount of taxes and interest included in the determination, plus a total amount due. This is all that is required for purposes of the written notice requirement. (R&TC, § 6486.) Second, imparting actual knowledge of the correct application of the sales and use tax law is not required under R&TC section 6486. Furthermore, tax applies whether or not the taxpayer is aware of the correct application of the law.<sup>6</sup> (R&TC, §§ 6051, 6201.) Therefore, we conclude that appellant received timely and written notice of

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<sup>6</sup> Nevertheless, knowledge may still be relevant, for example, in determining whether to toll the statute of limitations or to impose a penalty, such as fraud. (R&TC, §§ 6485, 6487(a).)

CDTFA's determination of the amount of tax, for purposes of the three-year statute of limitations.

Issue 2. Whether appellant is liable for transactions and use (district) taxes imposed by Los Angeles County pursuant to the Transactions and Use Tax Law.

The district tax portion of any district tax ordinance adopted pursuant to the Transactions and Use Tax Law is required to include provisions identical to those imposing the Sales and Use Tax Law. (R&TC, §§ 7261, 7262.) As such, in any case in which the state sales tax is applicable, the state-administered district tax is also applicable, if the place of sale is in a district imposing a district tax. (Cal. Code Regs., tit. 18, § 1823(a)(1).) For purposes of the district tax, all retail transactions are consummated at the place of business of the retailer unless the property is delivered by the retailer to an out-of-state destination, or to a common carrier for shipment outside this state. (R&TC, § 7263.) CDTFA collects this tax on behalf of the districts. (R&TC, § 7270; Cal. Code Regs., tit. 18, § 1821.)

California imposes the sales tax measured by 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. (R&TC, § 6051.) All of a retailer's gross receipts are presumed subject to tax until the contrary is established. (R&TC, § 6091.) 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, § 1700.)

Here, appellant operated a gas station located in Los Angeles County, California. Los Angeles County imposes a district tax on transactions within its district. Appellant's sales occurred at its gas station in Los Angeles County. Nevertheless, appellant failed to report or pay the Los Angeles County district tax during the liability period. As such, we conclude that appellant is liable for the district tax.

Appellant contends that CDTFA is charging a retroactive tax to the collector (appellant) and not the payer (appellant's customer), and that "the language of the statute is clear and unambiguous, there is no authority given to the [CDTFA] to collect the extra tax amount(s) that were never collected." Contrary to appellant's contention, the transaction tax (like the sales tax) is imposed "for the privilege of selling tangible personal property at retail upon *every retailer* in the district." (R&TC, § 7261(a), emphasis added.) Appellant's customers have no legal liability to the state for unpaid sales or transaction tax, regardless of whether appellant collected

reimbursement from its customers for the tax.<sup>7</sup> (R&TC, §§ 6051, 7261(a).) This tax is imposed solely on appellant, and CDTFA has no authority to pursue appellant's customers for failing to reimburse the retailer on appellant's retail sales of tangible personal property in this state. (*Ibid.*) As such, we find that appellant's alleged failure to collect reimbursement for the tax is immaterial to the outcome of this appeal.<sup>8</sup>

Issue 3. Whether appellant established a basis for relief of taxes, interest, and penalties pursuant to R&TC section 6596.

R&TC section 6596 provides for relief of taxes, interest, and penalties under certain circumstances where a taxpayer's failure to timely pay the tax is due to reasonable reliance on written advice provided by CDTFA (or, prior to July 1, 2017, the board). (R&TC, §§ 20, 6596(a).) R&TC section 6596 imposes four general requirements in order to grant relief, which are summarized, in pertinent part, as follows: First, the taxpayer must request written advice on the application of tax from CDTFA and the request must set forth the specific facts and circumstances of the activity or transactions for which the advice is requested. (R&TC, § 6596(b)(1).) Second, CDTFA must respond in writing, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax. (R&TC, § 6596(b)(2).) Third, the taxpayer must reasonably rely on the written advice. (R&TC, § 6596(b)(3).) Fourth, the liability for taxes must occur before CDTFA rescinds the advice or a change in law renders the advice no longer valid. (R&TC, § 6596(b)(4).)

Here, the first element is not met because appellant provided erroneous facts to CDTFA on its application for a seller's permit, and the erroneous facts are the basis for the underreporting. Specifically, appellant erroneously stated on its application for a seller's permit that it was located in Lebec, a part of Kern County, when in fact appellant was located in Gorman, a part of Los Angeles County (which has a higher district tax rate). As such, we conclude that the first element of R&TC section 6596 is not met, and as a result we need not address the remaining elements. Furthermore, there is no provision under the law that would

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<sup>7</sup> On the other hand, use tax is imposed on the purchaser, and collected by the retailer. (R&TC, §§ 6201, 6202, 7262.) Use tax is not at issue in this appeal.

<sup>8</sup> CDTFA contends that appellant sold the fuel on a tax-included basis. Based on our finding that appellant's alleged failure to collect reimbursement for the tax is immaterial, we need not address this contention.

otherwise allow for relief of taxes, interest, and penalties based on reliance on oral or written advice from CDTFA. As such, OTA lacks statutory authority to grant the requested relief under R&TC section 6596.

Issue 4. Whether appellant established a basis for relief of taxes, interest, and penalties based on CDTFA’s failure to notify appellant of the correct tax rate.

Appellant contends that it cannot be held liable for unreported district taxes because CDTFA was required to inform appellant of the proper tax rate to charge its customers. CDTFA contends that, because appellant provided the correct address to its fuel suppliers, this is evidence that appellant knew that it was located in Los Angeles County. Here, appellant applied for a seller’s permit, and provided CDTFA with an incorrect address located in Kern County. The combined tax rate in Kern County was less than the rate in Los Angeles County. Appellant sold its fuel on a tax-included basis, which means that any underreporting of the tax to the state would have gone entirely to the benefit of appellant. We are unaware of any provision in the Sales and Use Tax Law, nor was appellant able to identify one, which authorizes relief of taxes, interest, and penalties based on CDTFA’s failure to notify a taxpayer that the taxpayer provided incorrect information to CDTFA, or that the taxpayer underreported its taxes to the state.<sup>9</sup> To the contrary, the legislature specifically enacted R&TC section 6481, to grant CDTFA the power to assess tax on such understatements:

If [CDTFA] is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis ... of any information within its possession or that may come into its possession.

(R&TC, § 6481.) The law does not impose the burden on CDTFA to inform the taxpayer how to correctly report its taxes. Instead, the law presumes that all of a taxpayer’s gross receipts are taxable, and the burden is on the taxpayer to establish otherwise. (R&TC, § 6091.)

Moreover, to the extent appellant requests relief of the taxes and interest on an equitable basis, as a general matter equitable powers can only be exercised by a court of general

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<sup>9</sup> Appellant cites to R&TC section 6066.3, “collection of information by cities and counties for seller’s permits,” for the proposition that CDTFA was required to inform appellant of the applicable tax rate. Nevertheless, this section concerns submission of information to CDTFA by a city or county. Here, appellant applied for the seller’s permit directly at a CDTFA district office. Furthermore, this section includes no requirement that CDTFA provide tax advice as part of its process of ascertaining whether there is sufficient information to issue a seller’s permit based on the information submitted by the city or county. Therefore, we do not address this section further.

jurisdiction. (See *Standard Oil Co. v. State Bd. of Equalization* (1936) 6 Cal.2d 557, 559.) As an administrative agency, we lack constitutional authority to exercise judicial powers. (Cal. Const., Art. 6, § 1.) Under limited circumstances where doing so is otherwise consistent with the law, a non-constitutional administrative agency may exercise equitable estoppel without violating Article 3, Section 3.5 of the California Constitution, which provides that an administrative agency may not refuse to enforce a statute. (*Lentz v. McMahan* (1989) 49 Cal.3d. 393, 402-403.) Thus, for example, the California Supreme Court has concluded that a statute authorizing an administrative agency to “fairly and equitably” construe the law conferred authority on that agency to apply the doctrine of equitable estoppel during an administrative hearing. (*Ibid.*)

In the instant appeal, the fact remains that OTA is an administrative agency and we have no authority under the California Constitution to decline to enforce the clear and unambiguous provisions of R&TC section 6596, which explicitly requires written advice, under conditions set forth therein, in order to grant relief of taxes. (Cal. Const., Art. 3, § 3.5.) Under these facts, applying the doctrine of equitable estoppel to grant relief under circumstances where we are explicitly barred by statute from granting such relief would directly contravene the clear language of R&TC section 6596. As such, we conclude that OTA lacks authority to apply the doctrine of equitable estoppel to grant relief of taxes based on written or oral advice, regardless of whether the elements of equitable estoppel were met. Furthermore, we cannot create an exemption that is not authorized by law. (See *Market Street Ry. Co. v. State Bd. of Equalization* (1955) 137 Cal.App.2d 87, 96-97.) Therefore, we find that even if appellant relied on erroneous advice from a board member, employee, or CDTFA, OTA lacks authority, in law or equity, to grant relief of the taxes on this basis unless specifically provided for by R&TC section 6596.

#### HOLDINGS

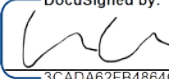
1. CDTFA timely assessed the liabilities.
2. Appellant is liable for district taxes imposed by Los Angeles County pursuant to the Transactions and Use Tax Law.
3. Appellant failed to establish a basis for relief of taxes, interest, and penalties pursuant to R&TC section 6596.



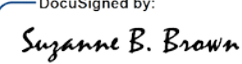
- 4. Appellant otherwise failed to establish a basis for relief of taxes, interest, and penalties based on CDTFA’s failure to notify appellant of the correct tax rate.

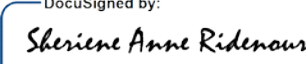
DISPOSITION

CDTFA’s action in denying the late protests is sustained.

DocuSigned by:  
  
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 Andrew J. Kwee  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 47F45ABE89E34D0  
 Suzanne B. Brown  
 Administrative Law Judge

DocuSigned by:  
  
 67E043D83EF547C  
 Sheriene Anne Ridenour  
 Administrative Law Judge

Date Issued: 3/25/2020