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2022 – OTA – 225
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

TIGER VITALITY CORPORATION
dba Tiger Vitality Collective

OTA Case No. 21119088
CDTFA Case ID 2-328-223

OPINION

Representing the Parties:

For Appellant:	Graham Hoad, Representative
For Respondent:	Jason Parker, Chief of Headquarters Operations
For Office of Tax Appeals:	Deborah Cumins, Business Taxes Specialist III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6538.5, Tiger Vitality Corporation dba Tiger Vitality Collective (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[1] CDTFA's decision denies appellant's timely application for an administrative hearing to protest a Notice of Jeopardy Determination (jeopardy determination) dated September 24, 2020.[2] The jeopardy determination is for tax of $1,640,826.00, applicable interest, and a negligence penalty of $164,082.62, for the period July 1, 2017, through March 31, 2020 (liability period). Pursuant to R&TC section 6537, CDTFA assessed a finality penalty of $164,082.60 on October 5, 2020.[3]

[1] Sales and use 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.) For ease of reference, when this Opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] A petition for redetermination must be filed within 10 days along with payment of the security, whereas an application for an administrative hearing must be filed within 30 days and does not require a payment. (R&TC, §§ 6538 [petition], 6538.5 [application for administrative hearing].) CDTFA's Decision identifies appellant's appeal as an untimely petition for redetermination. However, the first sentence of appellant's appeal to CDTFA specifically states "[Appellant] hereby applies for an administrative hearing of the audit liability under [R&TC] § 6538.5." As such, we refer to the appeal as a timely application for an administrative hearing.

On December 29, 2020, CDTFA assessed a collection cost recovery fee (CRF) of $950 pursuant to R&TC section 6833, to reimburse its costs for collection of the unpaid liability.

Appellant waived the right to an oral hearing. Therefore, the matter is being decided based on the written record.[4]

ISSUE

Whether appellant established that an adjustment is warranted to the audited measure of unreported taxable sales.

FACTUAL FINDINGS

1. Appellant began operating as an unlicensed retailer of cannabis products during March 2014.[5] Appellant sold cannabis products throughout the liability period.
2. For the liability period, appellant filed sales and use tax returns reporting total sales of $1,186,635, claiming deductions totaling $77,466 for sales tax included, and reporting taxable sales of $1,109,169. This amounts to reported taxable sales of approximately $1,104 per day.
3. On May 23, 2018, CDTFA visited the business and observed 10 employees working. Appellant's employees recorded sales on a paper log. Additionally, CDTFA observed the entrance for 20 minutes and counted 19 patrons who entered the business. Based on this observation, CDTFA estimated that appellant made $871,848 in sales per month, or $10,462,174 in sales for the liability period. Due to the substantial discrepancy with reported amounts, CDTFA determined additional investigation was warranted.

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[3] The finality penalty was imposed because appellant did not either pay the liability, or file a petition for redetermination and pay the required security deposit, within 10 days. (R&TC, §§ 6537, 6538.) CDTFA's jeopardy determination required payment of the entire liability as a security deposit.

[4] Appellant disputes the calculation of the tax liability. Appellant did not dispute the negligence penalty, CRF, or finality penalty in its appeal to the Office of Tax Appeals (OTA). As such, OTA will not address those items further.

[5] Appellant failed to obtain the required license with the California Bureau of Cannabis Control to sell cannabis products in this state. (Bus. & Prof. Code, § 26037.5.)

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4. CDTFA conducted a Field Billing Order (FBO) examination of the business operations for the period July 1, 2017, through March 31, 2020.[6]
5. According to CDTFA's records, on March 3, 2020, deputies from the Kern County Sheriff's Office entered appellant's business premises and seized the following property: (1) 29.6 lbs. of cannabis flower; (2) 637 grams of cannabis concentrate; (3) 490 edibles; and (4) $2,112 in cash.
6. It is undisputed that appellant operated from 9 a.m. to 10 p.m., seven days a week.
7. During June 2020, CDTFA made four one-hour observations from a nearby parking lot and observed an average of 44.25 patrons per hour enter the business.[7]
8. By letter dated July 29, 2020, CDTFA asked appellant to make its records available for audit. Appellant failed to provide any records to CDTFA, or make any records available to CDTFA, during the FBO examination.
9. CDTFA researched menus of similar businesses in the area and found an average retail selling price of $35 for 1/8 ounce (3.5 grams) of cannabis flower or 1 gram of concentrate. CDTFA used this as the average estimated sale amount per patron.
10. CDTFA computed average quarterly sales of $1,832,171, based on appellant's operating hours, the average number of patrons observed entering the business per hour, and the average estimated sale amount per patron.[8] CDTFA increased the average quarterly sales by 15 percent, to $2,106,997, for quarterly reporting periods on and after January 1, 2018. The 15 percent increase represents the cannabis excise tax which cannabis retailers are required to collect from purchasers; this amount is subject to sales tax. (See R&TC, § 34011(b)(1), (d).)
11. CDTFA computed audited taxable sales of $22,627,315 for the liability period, using average quarterly taxable sales of: $1,832,171 for the third and fourth quarter of 2017;

[6] The jeopardy determination was based on an FBO examination. CDTFA uses an FBO examination to recommend an additional tax liability using procedures that are not as comprehensive as those used in a regular audit. (CDTFA Audit Manual, §§ 0213.01, 0201.09.)

[7] The observations were on Tuesday, June 16, 2020, from 1 p.m. to 2 p.m. (48 patrons); Thursday, June 18, 2020, from 3:30 p.m. to 4:30 p.m. (45 patrons); Friday, June 19, 2020, from 11 a.m. to Noon (36 patrons); and Monday, June 22, 2020, from 3:15 p.m. to 4:15 p.m. (48 patrons).

[8] Number of patrons CDTFA observed per hour (44.25) x average sale amount ($35) = sales per hour ($1,548.75). Sales per hour x 13 (hours per day) x 91 (days per quarter) = $1,832,171.

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and $2,106,997 for all remaining quarters in the liability period. Audited taxable sales exceeded appellant's reported taxable sales for the liability period by $21,518,146.

12. CDTFA determined it was appropriate to issue a jeopardy determination because: (1) appellant was operating illegally without a cannabis license; (2) the size of the underreporting was substantial; (3) appellant failed to make its records available to CDTFA; and (4) it would be difficult for CDTFA to collect the unpaid taxes because CDTFA found no assets or bank accounts held in appellant's name.[9]

13. On September 24, 2020, CDTFA issued the jeopardy determination to appellant.

14. On September 25, 2020, CDTFA obtained a Warrant for Collection of Amounts Due (writ of execution). The writ of execution specified a total amount due of $1,972,394.13. Later that day, California Highway Patrol officers and a CDTFA investigator (peace officers) entered appellant's business premises and seized the following property: $871 in cash from a drop box, $1,092 in cash from the cash register; 15 boxes of cannabis products; and a bag of cannabis products. The cannabis products were seized for purposes of inspection and destruction. The cash was seized in partial satisfaction of the unpaid tax liability.

15. On October 22, 2020, appellant filed a timely application for an administrative hearing. Appellant's application raises three issues: (1) the $35 purchase price per patron applied in the audit is arbitrary and overstated; (2) an allowance should be afforded because not every person who entered the business made a purchase; (3) a significant number of purchases qualified as exempt sales of medical cannabis to qualified patients. Based on the above, appellant requests an administrative hearing to establish that the jeopardy determination is excessive, to delay the sale of any property seized, and to request a stay of collection activities.

16. To support a lower average purchase price per patron, appellant provided an Affidavit and Probable Cause Statement signed by a deputy sheriff (peace officer) with the Kern County Sheriff's Office. The affidavit states that the peace officer conducted two enforcement stops involving patrons of a different cannabis collective located in Kern

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[9] Unlike a notice of deficiency determination, the amount in a jeopardy determination is immediately due and payable. (R&TC, § 6536.) A jeopardy determination may be issued when an amount of tax required to be paid to the state would be jeopardized by delay. (R&TC, § 6536.) In addition, a jeopardy determination becomes final if not paid, or petitioned with payment of a security deposit, within 10 days. (R&TC, §§ 6538, 6538.5.)

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County. While being detained and questioned, the patrons in each enforcement stop informed the peace officer they purchased a gram of cannabis from that cannabis collective for $10.

17. CDTFA contends that even if it used an average purchase price of $15 per gram (instead of $35 per patron), the liability would still be understated. In support, CDTFA calculated that appellant had $217,962 worth of cannabis products on hand during the March 3, 2020 seizure by the Kern County Sheriff's Office. CDTFA's revised calculation was based on a price of $15 for 1 gram of cannabis flower or 1 gram of concentrate, and $10 per edible. Projecting that it takes appellant a full week to sell inventory on hand, CDTFA projected taxable sales of $28,770,977 for the liability period, which exceeds the taxable measure of $22,627,315 in the jeopardy determination.

18. On October 14, 2021, CDTFA issued a Decision denying the appeal. Appellant timely appealed CDTFA's decision to the Office of Tax Appeals.

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) For purposes of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)1).)

When CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid*.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of*

Estate of Gillespie, 2018-OTA-052P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

Here, appellant failed to maintain or provide any records to support reported amounts, as required by law. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)1).) In absence of supporting documentation from appellant, CDTFA computed an estimated liability based on three factors: (1) an estimated average purchase amount per patron based on CDTFA's experience with comparable businesses; (2) an estimated number of patrons per hour based on CDTFA's observations of appellant's business; and (3) the number of hours the business operated based on information provided to or obtained by CDTFA. In a different appeal involving a cannabis dispensary that failed to maintain or provide adequate records, we previously concluded the above approach (three-factor method) was reasonable and rational. (*Appeal of AMG Care Collective*, 2020-OTA-173P.)

As such, except as further clarified below, we find that using this three-factor method to estimate taxable sales (based on patrons observed per hour, an average estimated purchase price, and hours of operation) is a reasonable and rational method for purposes of meeting CDTFA's initial burden to establish underreported taxable sales by the cannabis dispensary.

CDTFA increased the estimated average quarterly taxable sales amount by 15 percent for reporting periods starting January 1, 2018. Effective January 1, 2018, a 15 percent cannabis excise tax is imposed on in-state purchasers of cannabis products. (R&TC, § 34011(a).) The cannabis retailer is responsible for collecting this tax from the purchaser, and a cannabis distributor collects it from the cannabis retailer. (R&TC, § 34011(b).) A cannabis retailer may separately state a charge for the cannabis excise tax when the cannabis products are sold to a purchaser, equal to the cannabis excise tax required to be paid to the cannabis distributor. (Cal. Code. Regs., tit. 18, § 3700.) This 15 percent cannabis excise tax is subject to sales tax. (R&TC, § 34011(d).) The 15 percent cannabis excise tax was not applicable in *Appeal of AMG Care Collective, supra*, because that appeal only included reporting periods prior to January 1, 2018. It is reasonable and rational to infer that appellant's distributor would collect a statutorily required excise tax from appellant, and that appellant would in turn collect such amounts from its customers, as required by R&TC section 34011(b)(1), to reimburse the costs appellant paid to its distributor. Therefore, we find it was reasonable and rational for CDTFA to increase the

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estimated unreported taxable sales starting January 1, 2018, to account for the 15 percent excise tax. Accordingly, appellant has the burden of establishing that adjustments are warranted.

Appellant raises three contentions to support that the liability is excessive: (1) the estimated average selling price is overstated; (2) an adjustment should be made for individuals who entered the business and who did not make a purchase; and (3) the majority of appellant's sales qualified as exempt sales of medicinal cannabis and medicinal cannabis products.

The estimated average selling price per hour

Appellant contends that the taxable measure for the liability period is $11,287,777 (an understatement of $10,178,608), rather than the understatement of $21,518,146 determined by CDTFA. Appellant agrees that the business operated 13 hours per day; however, appellant's calculation estimated $732 in sales per hour.[10] Appellant contends that the business opened at 9:00 a.m. and was only open for two hours when CDTFA seized $1,962 on September 24, 2020. Appellant contends, without providing support, that it started the day with $500, and, as such, the business averaged $732 in sales per hour, during the two hours of operation.[11]

We find this argument unpersuasive. The seizure report for the cash register was written at 10:40 a.m., the report for the drop box at 10:55 a.m., and the report for the cannabis products at 11:21 a.m. The seizure report for the cash register identifies the total number of each bills seized, from one-dollar bills to fifty-dollar bills. We surmise that it would have taken the peace officers time to enter the premises, secure the area, explain the seizure procedure (till tap), and then seize and count all the money. As such, it would be equally reasonable to conclude from the available evidence that the peace officers first entered the premises on or before 10:00 a.m., at which time appellant operated for an hour or less. If we were to accept the remaining figures provided by appellant, applying sales of $1,434 for one hour of operation results in an understatement of $20,357,216, based on appellant's analysis of the till tap. This amount is approximately 94.6 percent of CDTFA's determination ($21,518,146).

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[10] The calculation was: 170 weeks x 92 hours per week x $732 sales per hour = $11,287,777. We note that there are some issues with appellant's calculations. For example, there are 143 weeks in the liability period. However, appellant's calculation includes 170 weeks in the liability period. Additionally, appellant reduced the sales per hour to account for cash on hand of $500, but there was no evidence to document the starting cash on hand.

[11] (Cash register ($1,092) + drop box ($871) – starting cash ($500)) ÷ 2 = $732 sales per hour.

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Nevertheless, CDTFA's three-factor method uses observations on different days and times of the week. This is an important consideration because it accounts for and averages out variations in daily or hourly sales volume. For example, late afternoons may be busier than early mornings, and Saturdays may be busier than Mondays. Additionally, there is no evidence in the record to support that the business started the day with $500 in the cash register, or to conclude that there were no cash pickups before the till tap. These are two aspects which could, if ascertained, increase the liability. CDTFA's three-factor method does not rely on making these types of assumptions, which are not supported by evidence in the record. We find CDTFA's three-factor method is more reliable and representative of the liability period because it accounts for daily and hourly variations in the sales volume. As such, we find no reason to order a redetermination based on the cash register and drop box totals, in place of the three-factor method used by CDTFA.

Appellant also argues that the average selling price ($35) used by CDTFA is arbitrary and overstated. As support, appellant cites to the Affidavit and Probable Cause Statement, summarizing two enforcement stops involving an unrelated cannabis dispensary also in Kern County. There, as one example, a patron reportedly informed a peace officer that he "purchased $10 a gram of cannabis from the business." Based on this affidavit, appellant contends that the average purchase price of $35 per patron is overstated.

In response, CDTFA contends that even if we changed the price to $15 for 1 gram of cannabis flower or 1 gram of concentrate, and $10 per edible, the liability would still be understated. In support, CDTFA projected taxable sales of $28,770,977 for the liability period, based on the quantity of cannabis products seized on March 3, 2020, and CDTFA's estimation that it takes appellant a week to clear out inventory.[12]

Here, the Affidavit and Probable Cause Statement does not specify whether the product purchased was concentrate or flower. Thus, it is important to emphasize that 1/8 ounce of cannabis flower equals 3.5 grams. At the price point of $10 per gram stated in the affidavit, this equals exactly $35 for 1/8 ounce of cannabis flower. In other words, the affidavit supports the same selling price that CDTFA applied in its determination. As such, we find the price point used by CDTFA ($35 per 1/8 ounce) is reasonable and supported by appellant's own evidence.

[12] This projection relies on certain assumptions. For example, there is no evidence in the record to ascertain the frequency with which appellant cleared its inventory, or how long it would take to clear the seized inventory. Nevertheless, CDTFA is not asserting an increase or offset, so we will not address this argument further.

Furthermore, appellant provided a sample size of only two patrons, for a different business, for us to consider an average selling price of $10 per patron. CDTFA observed, on average, 44.25 patrons per hour enter appellant's business, and appellant's own till tap projection (discussed above) is in line with CDTFA's calculation.

Appellant likely made sales for amounts less than $35. However, it is equally reasonable that appellant likely also made sales exceeding $35. The $35 selling price used by CDTFA is intended to represent an average sales amount, a composite of sales amounts both lower and higher than $35. Appellant provided no evidence of the selling prices it charges for various quantities of cannabis or for other cannabis products, or of the average sales amount per patron. It has provided no record of actual sales, for any period, even one day. Appellant's unsupported assertion that the average selling price appears to be overstated is not sufficient to meet its burden of proof. (*Appeal of Talavera, supra*.) Based on the above, we do not find appellant's argument that it sold, on average, $10 per patron representative of the liability period or supported by the evidence. We find that appellant failed to establish that an adjustment is warranted to CDTFA's calculation of the average sale amount ($35 per patron).

Individuals entering the business and not making a purchase

During its observations of the business, CDTFA remained outside and counted the number of patrons who entered the building. For purposes of calculating the underreporting, CDTFA determined that each patron made, on average, a $35 purchase.

Appellant contends that an allowance is warranted for patrons who did not make a purchase. CDTFA contends that no adjustment is warranted. CDTFA's audit working papers do not explain CDTFA's reasoning for its assumption that every patron made a purchase.

As a general matter, the taxpayer bears the burden of proof with respect to establishing an adjustment, and unsupported assertions are not sufficient to meet this burden. (R&TC, § 6091; *Appeal of Estate of Gillespie, supra*.) In the instant case, CDTFA estimated the liability based on an audit assumption that every patron made a $35, on average, purchase. Appellant contends that not every patron made a purchase, that it turned some patrons away due to lack of documentation, and that some patrons were "window shoppers." CDTFA has not offered any specific evidence or argument in rebuttal.

CDTFA observed 177 people enter the building over a period of 4 days. It is undisputed that CDTFA did not actually observe a single patron make a purchase from appellant.

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Additionally, CDTFA did not distinguish between patrons exiting the building with or without property, such as paper bags in their hands, or patrons entering in groups versus singly. Under these facts, we do not believe it would be reasonable or rational to include in the audit calculations an assumption that every single patron who enters a cannabis dispensary makes a purchase. Some patrons may have entered the premises with a partner, or in a group. For example, in the Kern County Sheriff's Office affidavit provided by appellant, which describes two enforcement stops involving a nearby cannabis dispensary, one of the stops involved a group of two patrons who (as a couple) purchased 1 gram of cannabis, and the other involved a single patron who purchased 1 gram of cannabis. Appellant did not otherwise provide evidence on what amount of an allowance may be reasonable. Nevertheless, we agree some patrons observed entering the premises would have been a part of a group consisting of purchasers and non-purchasers, and not all patrons would have made a purchase.

CDTFA's audit and policy manuals provide useful information on accepted audit procedures and policies which we may look to for guidance. (*Appeal of Micelle Laboratories*, 2020-OTA-290P.) CDTFA does not have specific published policies or procedures in the case of auditing or observing a cannabis dispensary. However, for markup audits CDTFA's Audit Manual acknowledges that, when common issues are present, standard allowances are appropriate without complete justification for a specific dollar amount. When performing an audit based on the markup method, CDTFA's Audit Manual provides that standard allowances of up to 3 percent of cost for self-consumption, and 1 percent of cost for shrinkage, are allowable when these items are present, without complete justification for a specific dollar amount. (CDTFA Audit Manual, § 0407.10.) While the instant case does not involve a markup audit, it is relevant to note that CDTFA's audit policies and procedures acknowledge there are circumstances where standard allowances are appropriate without complete documentation.

Here, aside from the Kern County Sheriff's Office affidavit and appellant's general argument that some patrons enter cannabis dispensaries in groups consisting of non-purchasers and purchasers, appellant provided no specific documentation on the number of non-purchasers per hour. Nevertheless, we find that it is not reasonable to assume that all 177 persons observed entering appellant's premises made a purchase. Absent specific documentation to support a higher allowance, we believe that a standard allowance not exceeding 5 percent for non-purchasers would be reasonable and rational where, as here, there is a rational basis to find,

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based on the record, that not every patron made a purchase. Furthermore, a 5 percent allowance for appellant is also consistent with our finding above that, after adjusting for 1 hour of operation, appellant's own estimate of its audit liability was approximately 5 percent less than CDTFA's calculations. As such, we find that the average number of purchasers per hour should be reduced by 5 percent: from 44.25 to 42.04, to account for non-purchasers included in CDTFA's observation test.[13] This will result in a reduction to the audited taxable sales of approximately 5 percent.

<u>*Sales of medicinal cannabis or cannabis products*</u>

Appellant argues that most of its patrons had medical marijuana cards and were making exempt purchases of cannabis for medicinal purposes. The law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091; Cal. Code. Regs., tit. 18, § 1667(a).) Unsupported assertions are not sufficient to establish entitlement to an exemption or exclusion. (See *Appeal of Talavera, supra.*) Retail sales of medicinal cannabis products are exempt from sales and use tax when sold at retail to a qualified patient, or primary caregiver for a qualified patient, who provides a medical marijuana card issued by the California Department of Public Health pursuant to Section 11362.71 of the Health and Safety Code, along with a valid government-issued identification card. (R&TC, § 34011(f).)

Appellant failed to provide any documentation, such as a photocopy of a medical marijuana card, to support any claimed exempt sales of cannabis. Above, we concluded that a standard 5 percent audit allowance for non-purchasing patrons was allowable in absence of complete supporting documentation. However, that earlier conclusion was the result of finding that an audit procedure applied by CDTFA in estimating the tax liability was not reasonable or rational. Having concluded that the gross receipts as determined is, after applying that allowance, reasonable and rational, we are now faced with a legal presumption that all those gross receipts are taxable until the contrary is established. Here, it is well-settled law that appellant has the burden of proof in establishing entitlement to an exemption or exclusion, and an unsupported assertion is not sufficient to carry that burden. (See *Appeal of Talavera, supra.*) As such, we find no adjustment is warranted for exempt sales of medicinal cannabis products.

[13] The calculation of 44.25 patrons per hour is on CDTFA Audit Schedule 12A-1b.

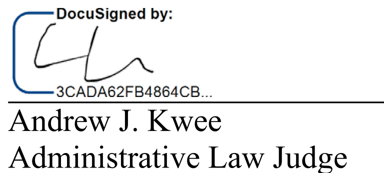
In summary, we order a 5 percent allowance to the average number of patrons per hour, to account for non-purchasing patrons counted by CDTFA during the observation test. Otherwise, we find that appellant failed to establish that the jeopardy determination was excessive. After accounting for the adjustment, there is still a substantial liability. As such, we have no basis to order a delay in the sale of any seized property,[14] or to order a stay in collection activities.

HOLDING

Appellant established that a 5 percent allowance to the average number of patrons per hour is warranted to account for non-purchasing patrons observed entering appellant's business during the observation test period; otherwise CDTFA met its initial burden of establishing the liability and appellant failed to establish any further adjustments are warranted.

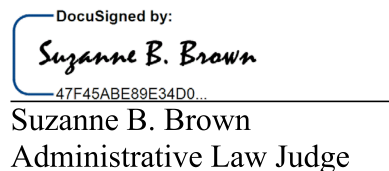
DISPOSITION

CDTFA shall reduce the average number of patrons per hour by 5 percent, from 44.25 to 42.04, and recompute the liability accordingly. Otherwise, CDTFA's action as set forth in the Decision is sustained.



Andrew J. Kwee
Administrative Law Judge

We concur:



Suzanne B. Brown
Administrative Law Judge

Natasha Ralston
Administrative Law Judge

Date Issued: 5/24/2022

[14] This is a moot issue because CDTFA seized the cannabis for purposes of destruction. The property was not seized to apply towards appellant's unpaid tax liability.