

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083592
LUTHRA FOODS, INC.) CDTFA Case ID: 864581
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OPINION

Representing the Parties:

For Appellant: Marc Brandeis, C.P.A.

For Respondent: Kimberly Wilson, Hearing Representative
Stephen Smith, Tax Counsel IV

For Office of Tax Appeals: Corin Saxton, Tax Counsel IV

M. GEARY, Administrative Law Judge: Pursuant to California Code of Regulations, title 18, section 30103(b)(1), Luthra Foods, Inc. (appellant) appeals from an October 17, 2016 Decision and Recommendation (Decision) issued by the California Department of Tax and Fee Administration (respondent)¹ denying appellant’s petition for redetermination of a February 19, 2015 Notice of Determination (NOD). The NOD is for a tax of \$1,379,692.15, applicable interest, and penalties totaling \$516,115.02, for the period January 1, 2003, through March 31, 2011 (liability period).²

Office of Tax Appeals (OTA) Administrative Law Judges Andrew J. Kwee, Richard Tay, and Michael F. Geary held an oral hearing for this matter in Cerritos, California, on July 12, 2022. At the conclusion of the hearing, the parties submitted this matter for decision, and the record was closed.

¹ Prior to July 1, 2017, sales and use taxes (and other business taxes and fees) were administered by respondent’s predecessor, the State Board of Equalization (BOE). When this Opinion refers to events that occurred before July 1, 2017, “respondent” refers to BOE.

² As explained below, appellant does not contest the liability.

ISSUES

1. Does OTA have the authority to compel respondent to take payments already applied to an account that does not belong to appellant and instead apply those payments to appellant's account?
2. If respondent has such authority, must respondent take payments already applied to an account that does not belong to appellant and instead apply those payments to appellant's account?³

FACTUAL FINDINGS

1. Appellant owned and operated a fast-food franchise.
2. Respondent issued NODs to appellant and other related entities, including Luthra Corp., R&V Group, Inc., B&L Foods, Inc., Luthra Enterprises, Inc., and Luthra Group, Inc., (collectively, the Luthra entities) all of which also owned and operated fast-food franchises. At all relevant times, the same person owned and controlled the Luthra entities.
3. Appellant filed a petition for redetermination contesting the NOD issued to it.⁴
4. Payments were made toward the liabilities of at least some of the Luthra entities. The liabilities of Luthra Enterprises, Inc., and Luthra Group, Inc., which included tax, penalties, and interest, were paid in full. The three remaining Luthra entities identified above have unpaid liabilities. Appellant's unpaid liabilities include substantial tax, interest, and penalties.
5. The parties participated in an appeals conference as part of respondent's internal appeals process. Appellant indicated at that conference that it did not contest its liability for tax, interest, or penalties. Instead, appellant sought to compel respondent to take all payments that respondent had applied to interest and penalties due on the accounts of Luthra

³ The parties acknowledged that OTA will reach Issue 2 only if it answers Issue 1 in the affirmative.

⁴ B&L Foods, Inc. also filed a petition for redetermination, but it voluntarily withdrew that appeal.

Enterprises, Inc., and Luthra Group, Inc. and to then apply or reallocate those amounts to appellant's unpaid tax.⁵

6. On October 17, 2016, respondent issued its Decision denying the appeal, finding that there was no legal authority for the requested relief. This timely appeal followed.

DISCUSSION

Issue 1: Does OTA have the authority to compel respondent to take payments already applied to an account that does not belong to appellant and instead apply those payments to appellant's account?

If respondent is not satisfied with the amount of tax reported by the taxpayer, or in the event a taxpayer fails to file a return, respondent 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. (Rev. & Tax. Code (R&TC), § 6481.) After respondent determines that a deficiency exists, it issues an NOD to notify the taxpayer regarding the determined deficiency. (R&TC, § 6486.)

R&TC section 6561 states, in pertinent part: "Any person against whom a determination is made under Article 2 (commencing with Section 6481) ... may petition for a redetermination within 30 days after service upon the person of notice thereof." The regulations governing respondent's internal appeals process are found in the California Code of Regulations, title 18, (Regulation) section 35001 and following. Chapter 1 of those regulations applies to appeals filed with respondent under the Sales and Use Tax Law. (Cal. Code Regs., tit.18, § 35001(a).) Regulation section 35005 provides, in part, that "A person who disagrees with any item included in a notice of determination issued to that person may file a petition for redetermination requesting that [respondent] reconsider the notice of determination. [Respondent] will not, however, consider any item outside the scope of its review, such as specified in [R]egulations 35011 through 35014."⁶ (Cal. Code Regs., tit. 18, § 35005(a).)

OTA's Rules for Tax Appeals provide, in pertinent part, that OTA has jurisdiction to hear and decide an appeal when respondent's Appeals Bureau decision is adverse to the taxpayer, in

⁵ Penalty and interest payments made to the accounts of Luthra Enterprises, Inc., and Luthra Group, Inc. total \$119,742.13. Appellant's unpaid tax is \$1,379,692.15.

⁶ Regulation sections 35011 through 35014 discuss the scope of a petition for redetermination filed with respondent under the Hazardous Substances Tax Law, the Covered Electronic Waste Recycling Fee Law, the Water Rights Fee Law, and the Lead-Acid Battery Recycling Act, respectively.

whole or in part.⁷ (Cal. Code Regs., tit. 18, § 30103(b)(1).) However, there are limitations on that jurisdiction described in the regulation that follows. As relevant here, Regulation section 30104(d) states that OTA does not have jurisdiction to decide whether a taxpayer is entitled to a remedy for respondent's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.

As stated in Regulation section 35001(a), taxpayers file petitions for redetermination with respondent under the Sales and Use Tax Law because they disagree with an item included in the NOD. Such petitioners seek a redetermination of the amount respondent claims is due or they challenge the adequacy of the notice asserting the liability. The NOD issued to appellant included tax, interest, and penalties. No payments of any kind are included on the NOD. Appellant argued at the hearing that unapplied or misapplied payments are "included in the NOD" because they result in an overstated liability; but that is not what occurred here. There is no evidence that the NOD issued to appellant overstates the liability. On the contrary, appellant does not contest the liability. The arguments presented to respondent for decision were not included in its petition for redetermination and would not have been properly includable in a petition for redetermination. Nevertheless, respondent issued its Decision denying the petition. Pursuant to Regulation section 30103(b)(1), OTA accepted that Decision as appropriate for review.⁸

Appellant argues, in essence, that regardless of the Luthra entity account to which a payment was directed, respondent should have applied such payment to tax due only, and not to penalties or interest, automatically applying the remainder to tax due on appellant's account until

⁷ Respondent's Appeals Bureau issued the Decision referred to above.

⁸ OTA was not required to accept the Decision as an adequate basis for exercising its jurisdiction. As explained above, appellant's petition, on its face, sought a redetermination of the amount respondent claimed was due. It is unclear whether appellant ever intended to contest the liabilities included in the NOD, but it is clear that those amounts were not at issue from the time of the appeals conference, when appellant sought to compel respondent to, among other things, take payments that respondent had applied to other Luthra entities and to apply those payments instead to appellant's account. A reasonable interpretation of Regulation section 30103(b)(1) would have supported OTA had it declined to accept this appeal on the grounds that the issues presented were beyond the proper scope of OTA's jurisdiction.

all such tax was paid in full.⁹ Appellant contends that only after tax was paid in full on its account should respondent have applied such payments to penalties and interest due on the account to which the payment was directed. Appellant argues that as a direct result of respondent not allocating payments as stated above, the owner of the Luthra entities, who was the source of all payments to the various accounts, will incur substantial interest charges unless the requested relief is granted.¹⁰ Appellant asserts that respondent's refusal to reallocate payments in a manner that will reduce appellant's liability for interest violated appellant's substantive or procedural right to due process and that respondent's violations affected the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal. Appellant has cited no other authority to support its claim that OTA has jurisdiction to review and order changes to the way that respondent applied payments.

While appellant may correctly characterize its argument as one based on a denial of due process,¹¹ the evidence does not support the claim that such alleged denial affected the adequacy of the notice or the amount at issue. There is no dispute regarding the adequacy of notice or the amount at issue. OTA has no jurisdiction to grant the requested relief. This conclusion is dispositive of the appeal.

⁹ It is undisputed that respondent applied all payments to the accounts to which appellant directed them and as prescribed in respondent's written policies.

¹⁰ Respondent charges interest on overdue tax, but it does not charge interest on overdue penalties. (R&TC, § 6482.) Thus, only payments applied to taxes due have the potential to minimize interest charges.


¹¹ We make no such finding here.

HOLDING

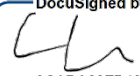
OTA does not have the authority to compel respondent to take payments already applied to an account that does not belong to appellant and instead apply those payments to appellant’s account.

DISPOSITION


Respondent’s action denying appellant’s appeal is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:
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Andrew J. Kwee
Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 10/12/2022