OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19034560
	) CDTFA Case ID: 576185
M. HAYER	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant:	R. Todd Luoma, Attorney
For Respondent:	Nalan Samarawickrema, Hearing Representative Christopher Brooks, Tax Counsel IV Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Lisa Burke, Business Taxes Specialist III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561 and the State Board of Equalization's (board's) Rules for Tax Appeals,[1] M. Hayer (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[2] denying appellant's administrative protest of the Notice of Determination (NOD) dated April 18, 2011. The NOD is for a tax of $311,646.06, and applicable interest, plus a negligence penalty of $31,164.62, for the period January 1, 2007, through December 31, 2009 (liability period). In addition, CDTFA imposed a finality penalty of $31,164.51 because appellant did not pay or petition the NOD before it became final.

[1] There is no provision in the R&TC which specifically required or authorized the board to accept an untimely petition of a final sales tax liability. Under regulations promulgated by the board and applicable at the time the appeal was filed, if a petition for redetermination is filed after the 30-day time period authorized in R&TC section 6561 to file a petition, the board gave itself discretion to accept the appeal as an administrative (late) protest of a final liability. (Cal. Code Regs, tit. 18, § 5220 [superseded by Cal. Code Regs., tit. 18, § 35019].)

[2] Sales and use taxes were formerly administered by the board. In 2017, functions of 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.

Prior to this appeal, CDTFA conducted a reaudit and reduced the amount of taxable sales on which the NOD was based by $81,599 from $4,363,414 to $4,281,815.

Office of Tax Appeals (OTA) Administrative Law Judges Natasha Ralston, Huy "Mike" Le, and Keith T. Long held an oral hearing for this matter in Sacramento, California, on November 16, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUES

1. Whether appellant has established that any further reduction to the amount of unreported taxable sales is warranted.
2. Whether the negligence penalty was properly imposed.
3. Whether relief from the finality penalty is warranted.

FACTUAL FINDINGS

1. Appellant operates a gas station and market doing business as Lakeside Market in Oroville, California. The gas station sells both gasoline and diesel fuel. Appellant makes taxable sales in the market including sales of beer, wine, liquor, cigarettes, carbonated beverages, propane, and miscellaneous taxable merchandise. Appellant maintained a separate point-of-sales (POS) system for fuel sales made at the pump and paid by credit card.
2. At all relevant times appellant held a seller's permit for the business as a sole proprietor. During the liability period, appellant did not operate the business and was living in India. Appellant left day-to-day operation of the business to his family members.[3]
3. During the liability period, appellant reported total sales of $22,613,913, claimed deductions of $9,124,371 for nontaxable sales of food products, and $112,224 for "other deductions" consisting of money order and lottery ticket sales, which resulted in reported taxable sales of $13,377,318.

[3] Appellant asserts that the business was in fact a partnership with his father. Appellant contends that he retained 40 percent of the business, and provides a partnership agreement dated May 1, 2006. However, appellant concedes that the business was listed as a sole proprietorship on his seller's permit and that he filed sales and use tax returns as a sole proprietor. Appellant also concedes that the business's status as a general partnership does have any effect on the business's sales tax liability. Accordingly, OTA will not discuss this issue further.

4. Upon audit, appellant provided documents including the following: profit and loss statements (P&Ls); a general ledger; bank statements for 20 of the 36 months in the audit period;[4] an incomplete set of purchase invoices; daily POS reports for the market; and monthly sales spreadsheets prepared by appellant's bookkeeper for the period October 2007, through December 2009. The monthly sales spreadsheets were generated from POS reports that appellant provided to his bookkeeper.

5. For the audit, CDTFA examined appellant's February 2008 purchase invoices and found that 58.53 percent of appellant's purchases in that month were of taxable merchandise. CDTFA applied the 58.53 percent taxable merchandise ratio to the total purchases that appellant recorded in his P&Ls of $8,354,312 for the audit period and found audited taxable merchandise purchases of $4,889,381. CDTFA then compared the audited taxable merchandise purchases to audited taxable sales and calculated a book markup of 27.1 percent, which was within the expected range of markups for businesses of this type.[5] Based on this information, CDTFA accepted the accuracy of appellant's recorded taxable sales of store merchandise.

6. CDTFA examined appellant's P&Ls for 2008 and 2009 and found that appellant's recorded fuel purchases exceeded appellant's recorded fuel sales in those years. Based on this information, CDTFA found that the fuel sales that appellant recorded in his P&Ls were understated.

7. CDTFA determined that appellant calculated his sales of fuel for recording and reporting purposes as follows:

    a. When a customer made an in-store purchase of fuel, appellant rang up the fuel sale in the market's POS system as a nontaxable sale.

[4] Appellant provided bank statements for the periods December 2007 through November 2008, and January 2009 through September 2009. Appellant did not provide bank statements for the periods January 2007 through November 2007, December 2008, or October 2009 through December 2009.

[5] Markup is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is $0.70 and it charges customers $1.00, the markup is $0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent (0.30 ÷ 0.70 = 0.42857). A "Book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records. Markup and gross profit margin are different. The gross profit is the sales price minus the cost. The formula for determining the gross profit margin is profit amount ÷ sales price. In the above example, the gross profit margin is 30 percent (0.30 ÷ 1.00 = 0.3)

b. Appellant calculated and recorded gross receipts in his general ledger based on his bank statements. Appellant subtracted account transfers from total deposits and then added cash pay-outs.[6] During the liability period, appellant recorded total gross receipts of $23,332,092.

c. Appellant copied the sales recorded in the market's POS system into his general ledger under the categories taxable sales, propane sales, sales tax reimbursement, nontaxable sales, lottery sales, and money orders (collectively, market sales).

d. Appellant subtracted recorded market sales from recorded gross receipts and reported the difference as taxable fuel sales.

CDTFA concluded that this method likely resulted in unreported taxable sales.

8. CDTFA reviewed appellant's bank statements for the periods December 2007 to November 2008 and January 2009 through September 2009 to calculate audited gross receipts for these months. CDTFA's calculation accounted for bank transfers and cash pay-outs. For the months where no bank statement was available, CDTFA accepted the gross receipts that appellant recorded in his general ledger. For the liability period, CDTFA found audited gross receipts of $23,772,498.

9. CDTFA reduced audited gross receipts by recorded sales of store merchandise of $10,585,176,[7] recorded sales tax reimbursement collected on the market sales of $489,935, lotto sales of $369,460, and recorded sales of money orders of $368,021, and found audited fuel sales of $11,959,906, including sales tax reimbursement and the state excise tax on diesel fuel. CDTFA subtracted the sales tax reimbursement included in the fuel selling prices to compute audited taxable sales of fuel of $11,128,163.[8]

10. CDTFA added appellant's recorded taxable sales of store merchandise (including propane sales) of $6,504,731 to audited taxable fuel sales of $11,128,163 to establish

[6] Cash pay-outs are the recorded amounts of cash withdrawn from the cash register to pay vendors or for other use by the business owner, rather than being deposited into the bank with the other gross receipts.

[7] This amount includes the taxable and nontaxable sales, as well as propane sales, that appellant recorded in his monthly sales spreadsheet.

[8] As discussed below, CDTFA subsequently completed a reaudit and reduced audited taxable fuel sales by the state excise tax on diesel.

audited taxable sales of $17,632,894. When compared to appellant's reported taxable sales, CDTFA found unreported taxable sales of $4,255,576 for the liability period.

11. CDTFA then used an alternative method to verify and support its conclusion with regard to appellant's unreported taxable sales. CDTFA obtained data from the U.S. Energy Information Administration (EIA)[9] which shows the statewide weekly average selling prices of gasoline and compared it to appellant's records for seven weeks[10] during the period June 1, 2007, through March 23, 2010. Upon comparison, CDTFA found that, on average, appellant's recorded gasoline prices were 14.09 cents per gallon lower than the prices published by the EIA.

12. CDTFA used the prices published by the EIA to calculate the statewide average gasoline sales price for each month of the audit period. CDTFA reduced the statewide average sales price for each month by 14.09 cents per gallon to establish appellant's audited average monthly gasoline sales price. CDTFA then multiplied appellant's audited average gasoline sales price by the number of gallons of gasoline that appellant purchased in each month to calculate gasoline sales of $10,161,942. CDTFA adjusted the audited gasoline selling price to exclude sales tax reimbursement and found taxable sales of gasoline of $9,454,840 for the liability period.

13. CDTFA compared the statewide average sales price of diesel fuel that was published by the EIA to appellant's recorded diesel fuel prices on November 29, 2009, and March 23, 2010. Upon comparison, CDTFA found that, on average, appellant's recorded diesel fuel prices were 6.1 cents per gallon lower than the prices published by the EIA.

14. CDTFA used the prices published by the EIA to calculate the statewide average diesel fuel sales price for each month of the audit period. CDTFA reduced the statewide average sales price for each month by 6.1 cents to establish appellant's audited average monthly diesel sales price. CDTFA then multiplied appellant's audited average gasoline sales price by the number of gallons of diesel fuel that appellant purchased in each month

[9] The EIA publishes the statewide average prices of gasoline and diesel fuels.

[10] CDTFA compared appellant's recorded sales of unleaded fuel to the EIA published statewide average fuel prices during the period June 1, 2007, through March 23, 2010. CDTFA compared appellant's recorded sales of plus and premium fuel to the EIA published statewide average fuel prices for three weeks. It is unclear why CDTFA did not test appellant's sales of plus and premium fuel for the same period that it tested appellant's recorded sales of unleaded fuel.

to calculate diesel fuel sales of $1,679,405. CDTFA reduced appellant's audited diesel fuel sales to exclude the state excise tax on diesel fuel and sales tax reimbursement and found taxable sales of diesel of $1,471,900 for the liability period.

15. CDTFA compared its findings from the alternative method to the measure of sales from appellant's books and records and found that both methods were consistent for 11 of the 12 quarters in the audit period. However, for the third quarter of 2009 (3Q09), taxable sales of $936,909 based on statewide average fuel selling prices exceeded audited fuel sales of $829,071 by $107,838. CDTFA noted appellant's failure to provide bank deposit information for July 2009 and concluded that the difference resulted from appellant's failure to record his bank deposits for July 2009. Thus, CDTFA increased the audited measure of unreported taxable sales of fuel by $107,838 for 3Q09 from $4,255,576 to $4,363,414.

16. CDTFA issued the NOD on April 18, 2011. Because the determination remained unpaid when the NOD became final on May 19, 2011, a finality penalty was added to the liability. Appellant filed an administrative protest with CDTFA on June 24, 2011. In its decision, CDTFA recommended a reaudit to reduce audited fuel sales by the amount of the state excise tax on diesel fuel (18 cents per gallon) included in the audited selling price for diesel fuel. As a result of the reaudit, CDTFA reduced the measure of unreported fuel sales by $81,599 from $4,363,414 to $4,281,815. This appeal to OTA followed.

DISCUSSION

Issue 1: Whether appellant has established that any further reduction to the amount of unreported taxable sales is warranted.

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 the purpose 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*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

Here, appellant did not provide a complete set of books and records for the audit. When CDTFA cannot compute taxable sales from appellant's records, it is appropriate to use an indirect approach to calculate the taxable measure. (See *Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.) For the audit, CDTFA reviewed appellant's purchase invoices for February 2008, and recorded merchandise purchases, to calculate a book markup of 27.1 percent. Because this book markup was within the expected range of markups for businesses of this type, CDTFA accepted the accuracy of appellant's recorded taxable sales of store merchandise. However, an examination of appellant's P&Ls for 2008 and 2009 revealed discrepancies between appellant's recorded fuel purchases and recorded fuel sales that could not be explained.

To calculate appellant's taxable fuel sales, CDTFA relied on appellant's bank statements and general ledger to establish gross receipts. CDTFA reduced audited gross receipts by recorded sales of store merchandise, recorded sales tax reimbursement collected, nontaxable lottery sales, and sales of money orders. CDTFA reduced the result by the state sales tax reimbursement included in the selling price of fuel and found audited taxable fuel sales of $11,128,163. Upon reaudit, CDTFA reduced the measure of taxable fuel sales to exclude the excise tax on diesel fuel of 18 cents per gallon. CDTFA supported the audit findings by comparing statewide average fuel selling price information obtained from the EIA to project appellant's taxable sales of fuel. This method yielded a similar audit measure, except for 3Q09. Since appellant did not provide a bank statement for July 2009, CDTFA used the EIA method to establish taxable sales for 3Q09.[11]

[11] On appeal, appellant provided bank statements for each month of the audit period. CDTFA reviewed appellant's July 2009 bank statement and found that gross receipts recorded in appellant's bank statements exceeded gross receipts recorded in appellant's general ledger. This is further evidence that appellant's general ledger was inaccurate.

Considering the foregoing, OTA finds that it was reasonable for CDTFA to use appellant's bank statements, general ledger, and the EIA average fuel sales prices to calculate appellant's audited taxable sales subject to the adjustments made in the reaudit. Accordingly, the burden of proof shifts to appellant to show that adjustments are warranted. (*Appeal of Talavera*, *supra*.)

On appeal, appellant concedes to unreported taxable sales of $1,091,810. On appeal, appellant asserts that the taxable measure is incorrect. At the oral hearing, appellant asserted that CDTFA did not review relevant documents.[12] Additionally, appellant provided his own bank account analysis asserting that the remaining taxable measure consists of nontaxable transactions deposited into the bank including ATM processor deposits, lottery sales, and bank account transfers.[13] OTA addresses each of these alleged nontaxable transactions in turn.

ATM Processor Deposits.

Appellant asserts that the measure of unreported taxable sales should be reduced by ATM processor deposits of $1,524,518. Appellant asserts that these deposits are reimbursement for customer withdrawals from an in-store ATM, which appellant maintained. According to appellant, when a customer used the ATM, the ATM processor would withdraw funds from that customer's bank account and then deposit those same funds in appellant's bank account. Appellant argues that amounts deposited by the ATM processor are not subject to tax.

At the oral hearing, appellant testified that when the ATM needed to be replenished, one of the following would occur; appellant would refill the ATM with personal funds; appellant would fill the ATM with money that would otherwise be used for the business's check-cashing service; or, appellant would refill the ATM with money withdrawn from the bank. On the other hand, CDTFA argues that appellant replenished the ATM using money from appellant's cash

[12] At the oral hearing appellant stated that he had 35 boxes of books and records that CDTFA did not review. Appellant requested that CDTFA perform a reaudit based on these documents. Appellant asserts that he was out of the country during the audit, and his father was responsible for the audit result. However, OTA notes that the NOD was issued on April 18, 2011, and appellant had the benefit of CDTFA's appeals process. Also, appellant stated that he returned to California in 2017 for several months. As such, it is unclear why appellant did not provide these documents at any point in the previous ten years. Further appellant could not provide a clear explanation whether the boxes of evidence contained any documents that were different from those examined in the audit. CDTFA declined to perform a reaudit.

[13] On appeal to OTA, appellant argued that he was entitled to credit nontaxable sales of money orders totaling $363,285.58. However, during the audit appellant received credit for nontaxable sales of money orders in the amount of $368,021.00. Appellant does not dispute the audit measure for nontaxable sales of money orders.

register. CDTFA asserts that because appellant used the cash register funds to replenish the ATM, any amount deposited into the bank account by the ATM processor represents a taxable sale.

Here, if appellant replenished the business's ATM with funds from the cash register, rather than depositing such cash in the bank, the sales represented by that cash would have been missed by the bank deposit analysis. In that case, amounts deposited by the ATM processor would properly represent cash receipts from sales, which should not be deducted from the audited taxable measure.

Regarding appellant's testimony, OTA first notes the concession that appellant was not present at the business during the liability period. Appellant testified that he left the country and remained in India until 2017. Thus, OTA gives little weight to appellant's testimony about the business's daily operations during the liability period because he was not present to witness it. Appellant has not provided any evidence to support his contentions that the ATM was refilled with personal funds or funds derived from the business's check-cashing service. Indeed, appellant concedes that he does not have any documentation for the business's check-cashing service. Appellant's unsupported assertions are not sufficient to meet the burden of proof. (*Appeal of Talavera*, *supra.*)

Similarly, the evidence does not support appellant's contention that the ATM was replenished by corresponding bank withdrawals. For example, in September 2009, appellant received $42,680 in deposits from the ATM processor. A review of appellant's bank statement revealed no such withdrawal from the bank in that amount. OTA also cannot find corresponding cash withdrawals for smaller periods of time. For example, during the period September 23, 2009, through September 25, appellant received ATM deposits totaling $5,660 but OTA cannot find any cash withdrawals corresponding to any of these deposits. Indeed, the bank statements do not reflect any cash withdrawals during this period.[14] Without further evidence, it is not possible to determine where appellant obtained the funds to replenish the ATM. Appellant has not met his burden of proof and no adjustments are warranted with respect to ATM deposits.

[14] Although OTA uses September 2009 as an example, a review of bank statements for other months such as July 2009 and May 2009 yield the same results.

Lottery Ticket Sales

Appellant asserts that he is entitled to an additional $141,779 for nontaxable sales of lottery tickets. Appellant asserts that this amount accounts for lottery scratcher sales that were sold from a machine. Appellant also asserts that he replenished the machine by purchasing additional scratchers as evidenced by entries in his bank statements. Here, a review of appellant's bank statements does reveal that appellant made payments for lottery scratcher purposes. However, there is no way for OTA to determine whether these payments were included in appellant's P&L statements, which CDTFA relied on during the audit. As such, there is insufficient evidence to determine whether any adjustment is warranted for appellant's lottery sales.

Bank Account Transfers

As to bank account transfers, appellant contends that he is entitled to claim bank account transfers totaling $1,104,184. CDTFA reviewed appellant's exhibit and agrees that appellant made transfers totaling $880,128. However, CDTFA argues that after scheduling appellant's bank deposits net of allowable bank transfers for the liability period, appellant's gross receipts would increase by $198,155. Because of this, CDTFA states that it will not make any adjustments for bank account transfers which is a benefit to appellant. However, OTA notes that if appellant met his burden of proof with respect to the remaining claimed bank account transfers ($224,055) then gross receipts would be decreased. Accordingly, OTA reviews the remaining claimed bank transfers.

Appellant asserts that it is entitled to reduce gross receipts by alleged bank account transfers made on July 8, July 15, September 10, September 17, September 24, and October 14, 2008. Appellant asserts that in each of these cases his bank account was overdrawn or almost overdrawn. However, appellant only provided bank statements for one account from 2008. Thus, it appears that appellant did not have a second business account from which to transfer funds. Appellant acknowledges that these bank transactions were not actually transferred from one bank account to another but instead were in-person deposits made by either appellant or his father. However, appellant has not provided any evidence to show the source of these funds. Appellant has not met his burden of proof. (*Appeal of Talavera, supra.*) As such, no adjustments are warranted with respect to these transactions.

OTA's analysis with regard to the bank transactions ends here. In order to reduce the taxable measure, appellant was required to show entitlement to all of the remaining claimed bank transfers. Otherwise, the transfers were offset by the additional bank deposits reflected in the bank statements that appellant provided during this appeal. Accordingly, no adjustments are warranted with respect to bank transactions.

Issue 2: Whether appellant was negligent.

R&TC section 6484 provides for the imposition of a 10-percent penalty if any part of the deficiency for which a deficiency determination is made was due to negligence or intentional disregard of the law or authorized rules and regulations. Failure to maintain and keep complete and accurate records, including all bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account, is considered evidence of negligence and may result in the imposition of penalties. (Cal. Code Regs., tit. 18, § 1698(k).)

Generally, a penalty for negligence should not be added to determinations associated with the first audit of a taxpayer. (Cal. Code Regs., tit. 18, § 1703(c)(3)(A).) Nonetheless, a negligence penalty should be upheld in a first audit if the understatement cannot be attributed to a bona fide and reasonable belief that the bookkeeping and reporting practices were sufficiently compliant with the requirements of the Sales and Use Tax Law. (Cf. *Independent Iron Works, Inc. v. State Bd. of Equalization* (1959) 167 Cal App.2d 318, 321-324.)

Here, appellant did not provide a complete set of books and records for the audit. This is evidence of negligence. In addition, a comparison of unreported taxable sales of $4,281,815 established in the reaudit with appellant's reported taxable sales of $13,377,318 reveals a reporting error-rate of 32 percent. Additionally, a comparison of unreported taxable sales of $4,281,815 to the audited taxable sales of $17,659,133 reveals that appellant failed to report 24.25 percent of his taxable sales. These significant reporting errors are evidence of negligence. Further, appellant maintained a POS system that was dedicated to recording sales of fuel paid for at the pump, but failed to use reports from that system to accurately record and report his taxable sales of fuel. Instead, appellant chose an alternative method based on his bank statements to report taxable sales of fuel.

That appellant was negligent is further supported by the fact that appellant's recorded fuel purchases exceeded fuel sales for two years. OTA expects that a prudent businessperson would notice the flaws in computing fuel sales that are made evident by this fact. Thus,

appellant's failure to notice the obvious errors and to take immediate steps to correct them constitutes strong evidence that appellant was negligent.

Accordingly, OTA finds no basis to relieve the negligence penalty.

Issue 3: Whether relief from the finality penalty is warranted.

In his request for relief of the finality penalty, signed under penalty of perjury and filed on May 24, 2016, appellant alleged that the auditor's failure to fully explain how the testing of gross receipts was performed led to the delay in the payment of tax that triggered the finality penalty. Appellant asserts that communications among the auditor, the independent CPA, and his father proved to be ineffective since appellant's father was elderly, in poor health, and foreign born with limited understanding of the English language. Therefore, appellant contends that his failure to pay the determined tax amount before the liability became final was due to reasonable cause, and since he was out of the country during the audit, he claims that the circumstances of the audit were beyond his control.

Initially, in the June 24, 2011, letter that CDTFA accepted as an administrative protest, appellant claimed that he had filed a timely petition for redetermination that was never received by CDTFA. However, appellant was unable to provide a copy of a timely filed petition or any other evidence showing that a petition had been filed timely. Appellant no longer argues that he timely mailed a petition for redetermination that never was received by CDTFA, and he has provided no other explanation for his failure to timely file a petition. OTA finds that appellant's failure to file a timely petition was not due to reasonable cause and circumstances beyond his control, and conclude that relief of the finality penalty is not warranted.

While the foregoing is dispositive, OTA addresses appellant's contention that his failure to timely pay the determined tax amount before the liability became final was due to reasonable cause and circumstances beyond his control. While appellant claims that the auditor's failure to fully explain the audit calculations led to the delay in the payment of tax, CDTFA states that it discussed the audit findings with appellant's representative on October 25, 2010, and it has no record of any additional requests for explanations from appellant. Appellant has provided no records of phone calls or copies of written communications to CDTFA requesting further explanation of the audit methodology. In the absence of evidence showing that appellant asked CDTFA for an explanation of his audit liability that was not provided to him before the liability became final, appellant's failure to timely pay the liability was not due to reasonable cause.

Based on the foregoing, relief of the finality penalty is not warranted. Nevertheless, at the oral hearing, CDTFA stated that it would relieve the finality penalty if appellant paid his liability within 30 days of the redetermination. (See *Appeal of Davinder Singh Pabla, et al.* (SBE Memo.) 2005 WL 2377713.)

HOLDINGS

1. Appellant has not shown that any further reductions to the taxable measure are warranted.
2. Appellant was negligent.
3. Relieve the finality penalty if appellant pays the liability within thirty days of the redetermination. Otherwise, relief of the finality penalty is not warranted.

DISPOSITION

CDTFA's denial of appellant's administrative protest is sustained.

DocuSigned by:
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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 1/3/2023