OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A-1 PORTABLES, INC.**	OTA Case No. 19095258 CDTFA Case ID: 032-005

OPINION

For Appellant:	Joseph P. Wilson, Attorney Richard Stark, Attorney Darlinda Bishop, Owner
For Respondent:	Sunny Paley, Tax Counsel III Stephen Smith, Tax Counsel IV Jason Parker, Chief of Headquarters Ops.

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, A-1 Portables, Inc., (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's petition of a Notice of Determination (NOD) dated November 18, 2016. The NOD is for $225,112.79 in tax,[2] plus applicable interest, for the period July 1, 2013, through May 27, 2016 (liability period). Administrative Law Judges Andrew J. Kwee, Josh Aldrich, and Keith T. Long held an oral hearing for this matter in Cerritos, California, on November 8, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

[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 events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] CDTFA's decision lists a tax amount of $194,493.79. The NOD is for $225,112.79 in tax; however, after applying $30,619.00 in tax payments, the remaining tax due is $194,493.79.

ISSUES

1. Whether appellant established a basis for deducting all or any portion of the invoiced charges that it billed customers in connection with the lease of portable chemical toilets.
2. Whether appellant established a basis for relief of taxes, interest, and penalties pursuant to R&TC section 6596.

FACTUAL FINDINGS

1. Appellant, a corporation located in the city of Hesperia, California, has been leasing portable chemical toilets in this state since April 1, 2006. Prior to its incorporation, the business was operated from November 1, 1985, to March 31, 2006, as a partnership consisting of D. Bishop and P. Bishop, doing business as A-1 Portables Drain & Sewer (partnership).[3] The business was incorporated and, effective April 1, 2006, appellant operated the business under its own seller's permit. D. Bishop and P. Bishop are the owners and officers of appellant.
2. The partnership filed claims for refund for the periods April 1, 1999, through April 30, 2002, and May 1, 2002, to September 30, 2002. In response, CDTFA initiated a limited audit or examination of the partnership (audit or examination).
3. On July 3, 2003, CDTFA issued a Field Billing Order,[4] identifying an overreporting of $79,941, which was disclosed by examination of the partnership's claimed tax-paid purchases for purposes of resale. The Field Billing Order covers the period July 1, 1998, through December 31, 2002.
4. According to the Field Billing Order, the partnership was engaged in the business of leasing portable toilets from a third party, and then subleasing the toilets to its own customers. To verify that appellant was entitled to a tax-paid purchases resold deduction, CDTFA examined lease agreements, invoices, and other related information. Based on

[3] CDTFA has referred to this partnership as "A 1 Portables," "A-1 Drain & Sewer," and "A-1 Portables Drain & Sewer." The precise name of the dba is not pertinent.

[4] According to CDTFA, a Field Billing Order is used "to recommend an additional tax liability or refund from procedures other than those used in regular audits. It is not an audit report and does not change the audit status of the account." (CDTFA Audit Manual § 0201.09 (February 2015).) While the record does not contain a prior version of the Audit Manual, the definition of a Field Billing Order is not in dispute or at issue in this appeal.

its examination of this documentation, CDTFA also confirmed that cleaning services were optional.

5. By letter dated August 1, 2003, CDTFA informed the partnership that it was recommending a credit or refund based on the Field Billing Order. The letter further advises that: "although we have applied commonly accepted auditing procedures during the course of this examination, the auditor may not have examined all of your transactions. There may still be transactions that you are not reporting correctly."

6. During the liability period, appellant provided cleaning and maintenance services for portable toilets that it leased to its customers. In addition, appellant also provided cleaning and maintenance services for customers who owned their own portable toilets and did not lease toilets from appellant. Appellant also leased portable sinks, portable combo sinks and toilets, accessible portable toilets, and trailers for its portable bathroom equipment.

7. Effective May 27, 2016, appellant closed out its seller's permit and sold its business to a different portable toilet rental company. As a part of the sale agreement, appellant sold all its portable bathroom equipment, trailers, and towing vehicles.

8. Starting on or about August 4, 2016, CDTFA performed a closeout audit of appellant for the liability period (closeout audit). This was appellant's first audit. During the liability period, appellant reported $2,950,977 in gross sales. From this measure, appellant deducted $2,628,122 as nontaxable labor.

9. During the closeout audit CDTFA determined, and appellant has not disputed, the following facts:

   - Appellant entered into oral lease contracts with its customers during the liability period. Appellant did not enter into written lease contracts with any of its customers.
   - CDTFA examined appellant's invoices for the first quarter of 2016 (1Q16). During this period, appellant reported $213,951.00 in gross sales, and deducted $208,680.00 as nontaxable labor. Of the labor deduction, 3.74 percent of the invoiced charges pertained to service-only transactions, and 96.26 percent pertained to an invoice involving both a lease of tangible personal property in addition to a claimed nontaxable charge related to the lease.

- Appellant provided written invoices to its customers. The available invoices included four sample invoices provided by appellant to demonstrate a transaction involving a charge for leasing a portable toilet and an additional claimed nontaxable charge. Each of these four invoices include two separately stated charges. The first charge is $15 per month per toilet. This charge is itemized on the invoice only as "taxable rental." Appellant collects and remits use tax on this charge. The second charge is approximately $60 (or more) per month per toilet. The second charge is itemized on the invoice in the following format: "Portable Toilet ([location of toilet]) [date covered by the invoice]." There is no further description of this charge. Appellant does not collect or remit use tax on the second charge.
- Neither appellant nor its customers provided any invoices to CDTFA which would show that appellant ever leased a toilet to a customer for $15 without also invoicing the customer for the additional claimed nontaxable charge.[5]

10. During the closeout audit, appellant contended that the $15 monthly charge is for the taxable lease of the toilet, and the second claimed nontaxable charge of approximately $60 per month represents miscellaneous expenses incurred in connection with the toilet (hereinafter miscellaneous expense charge).

11. Appellant's invoices do not include a breakdown or description of the claimed nontaxable miscellaneous expense charge (the primary issue in the instant appeal).

12. In a letter dated March 13, 2019, and addressed to the author of CDTFA's decision,[6] appellant describes the reimbursement items that appellant included in the claimed nontaxable miscellaneous expense charge as follows:

> The nontaxable amount includes, but is not limited to, the following costs of the portable unit:
> - Employee wages, payroll fees, and insurance;
> - Plumbing and replacing any damaged parts of the portable unit;
> - Delivery of the portable unit, including fuel surcharge based on destination;
> - Installation of the portable unit onsite;

[5] CDTFA's audit working papers indicated that CDTFA examined all invoices for 1Q16; however, these invoices are not contained in the evidentiary record. The only invoices contained in the evidentiary record for this appeal are the invoices that were attached as exhibits to CDTFA's August 16, 2019, decision to deny the petition.

[6] CDTFA submitted the March 13, 2019, letter as an exhibit.

- Service and waste disposal during the rental term;
- Septic tank pumping;
- Pickup of the portable unit. . .;
- Use and maintenance of the delivery/pickup vehicle. . .;
- Restocking toilet paper, toilet deodorizer, soap, paper towels, and hand sanitizer pumps; and
- Additional fees involved in renting the units, such as cellphones for the drivers, highway tolls, and theft of parts in the portable units.

¶ . . . ¶ The taxpayer's invoices show taxable and nontaxable amounts charged to the customer. The taxable amount is the rental charge for the portable unit. The nontaxable amount is the various costs associated with renting the portable units [as described above.]

13. Appellant clarified in a subsequent letter to CDTFA, dated April 18, 2019, that cleaning and maintenance charges were optional because the customer could choose not to purchase these services from appellant, and if these services were not purchased, the total amount of appellant's nontaxable charge to the customer would be reduced to reflect appellant's reduced costs.[7] In support, appellant provided a predefined (boilerplate) statement signed by ten of its former customers stating that they entered into oral arrangements with appellant, and appellant gave the customer the option to purchase cleaning and maintenance services from a third party. In response, CDTFA separately contacted one of appellant's former customers, who stated that he believed the claimed nontaxable miscellaneous expense charge was for the portable toilet rental, and he did not know the purpose of the $15 taxable rental charge.
14. CDTFA allowed a deduction for the service-only transactions (representing 3.74 percent of the claimed nontaxable labor). CDTFA otherwise determined that the claimed nontaxable miscellaneous expense charge described above was mandatory and taxable as a part of the lease of the toilet and denied the balance of the claimed nontaxable labor.
15. On November 18, 2016, CDTFA issued the NOD for the liability disclosed by the closeout audit.
16. In a decision dated August 16, 2019, CDTFA denied the petition. This timely appeal followed.

[7] According to CDTFA's Report of Discussion of Audit Findings, CDTFA asked appellant to provide invoices or other documentation segregating the charges for cleaning services; and appellant failed to provide any such documentation.

DISCUSSION

Issue 1: Whether appellant's claimed nontaxable charges are taxable as a part of the lease of portable toilets.

California imposes sales tax on a retailer's retail sales in this state of tangible personal property, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) Sales tax does not apply to the rentals payable under a lease of tangible personal property when such rentals are required to be included in the measure of use tax. (R&TC, §§ 6390, 6401.) The use tax is measured by the sales price of property purchased from a retailer for storage, use or other consumption in this state. (R&TC, §§ 6201, 6401.) No deduction is allowable from the measure of use tax for the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expenses. (R&TC, § 6011(a)(1), (2).) The measure of use tax also includes the cost of transportation of the property; however, certain transportation charges may be excluded provided all the statutory requirements are met, including that they are separately stated. (R&TC, § 6011(a)(3), (c)(7).)

Subject to certain exceptions which are not relevant here, a "purchase" means and includes a lease of tangible personal property in any manner or by any means whatsoever, for a consideration. (R&TC, §§ 6010(e), 6010.1.) The use tax is imposed on the person storing, using, or otherwise consuming the property. (R&TC, § 6202.) A lessor deriving rentals from a lease of tangible personal property in this state is required to collect and remit the use tax from the lessee at the time amounts are paid by the lessee under the lease. (R&TC, §§ 6203, 6204.)

In addition to the law summarized above, special rules apply with respect to a lease of a portable chemical toilet. (R&TC, § 6010.7.) California Code of Regulations, title 18, (Regulation) section 1660 provides, in pertinent part:

> (d)(1) Portable Toilets. A lease of a portable toilet unit is a sale or purchase and tax applies measured by the lease or rental price regardless of whether the unit is leased in substantially the same form as acquired and regardless of whether sales tax reimbursement or use tax has been paid.
>
> Charges for mandatory maintenance or cleaning services of portable toilet units are subject to tax as part of the rental price. Charges for optional maintenance or cleaning services of portable toilet units are not part of the rental price of the portable toilet units and are not subject to tax. Maintenance or cleaning services are mandatory within the meaning of this regulation when the lessee, as a

> condition of the lease or rental agreement, is required to purchase the maintenance or cleaning service from the lessor. Maintenance or cleaning services are optional within the meaning of this regulation when the lessee is not required to purchase the maintenance or cleaning service from the lessor.
>
> Charges for maintenance or cleaning services will be considered mandatory and therefore part of the taxable rental price, unless the lessor provides documentary evidence establishing that such charges are optional. The terms of the lease or rental agreement determine whether the maintenance or service charges are mandatory or optional. In the absence of a lease or rental agreement, or in the absence of language in the lease or rental agreement specifying whether the maintenance or service charges are mandatory or optional, an invoice stating that the maintenance or cleaning charges are optional, and separately stating these charges from the rental charge, will be sufficient to support the exemption from tax.[8]
>
> Other documentary evidence may be accepted by the Board to establish that the maintenance or cleaning is performed at the option of the lessee.
>
> When the maintenance or cleaning services are subject to tax, the supplies used to perform these services are considered to be sold with the services and may be purchased for resale. When the maintenance or cleaning services are not subject to tax, the provider of these services is the consumer of the supplies, and tax generally applies to the sale to or the use of these supplies by the provider of the maintenance or cleaning services.

(Cal. Code Regs., tit. 18, § 1660(d)(1).)

For purposes of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the tax, the law presumes that a lessor's rental receipts are subject to tax until the contrary is established. (See R&TC, §§ 6091, 6241.) It is the taxpayer'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).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (See *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 616; see also *Appeal of Gorin,* 2020-OTA-018P.)

[8] California courts have concluded that statutes granting exemption from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. The taxpayer has the burden of showing that the taxpayer qualifies for the exemption. An exemption will not be inferred from doubtful statutory language; the statute must be construed liberally in favor of the taxing authority, and strictly against the claimed exemption. (*Standard Oil Co. v. State Bd. Of Equalization* (1974) 39 Cal.App.3d 766.)

In the instant case, appellant contends, and CDTFA does not dispute, that appellant entered into oral lease contracts with its customers.[9] In any event, appellant was not able to provide any written lease agreements and contends that there were none. Under such circumstances, the law requires documentary evidence to establish that charges for maintenance or cleaning are at the option of the lessee, such as "an invoice stating that the maintenance or cleaning charges are optional, and separately stating these charges from the rental charge." (Cal. Code Regs., tit. 18, § 1660(d)(1).) First, appellant's invoice did not indicate that any of the charges were optional. Second, there are no invoices in the record to support that appellant ever provided toilet rentals without also including cleaning and maintenance for them. Third, appellant's invoices did not separately state or even account for maintenance and cleaning costs. To the contrary, appellant bundled all "nontaxable" expenses into a lump sum miscellaneous expense which also included expenses incurred for employee wages, payroll fees, fuel, maintenance of the delivery vehicle, fees to cover costs incurred due to theft, insurance, transportation, and other non-deductible expenses which were required to be included in taxable gross receipts. (R&TC, § 6012.) Appellant separately charged and collected tax only on the $15 per month charge for the "Taxable Rental" of the toilets. Under these facts, any amounts for maintenance and cleaning charges cannot be readily ascertainable nor excluded from the measure of tax.

Regulation section 1660(d)(1) also provides that other "documentary evidence" may be accepted to establish that maintenance or cleaning services were optional. In other words, the law requires "documentary evidence" to establish that the services are optional. Here, appellant provided statements from 10 persons, purportedly former customers, stating that they were not required to obtain maintenance and cleaning services from appellant. As a preliminary matter, witness declarations are generally required to be made under penalty of perjury. (Cal. Code Regs., tit. 18, § 30214(b).) In the instant case, appellant's written witness statements consisted of predefined boilerplate, were not sworn, and did not include contact information for the persons or entities signing the statement. These statements are contrasted with the fact that there is no evidence in the record to indicate appellant ever leased portable toilets without also providing maintenance and cleaning services. Therefore, we find these predefined boilerplate

[9] Appellant's owner testified that occasionally there were email communications with customers regarding the leases; however, appellant was unable to provide any such correspondence.

statements to be of little evidentiary value.[10] Even if these statements were reliable, and we were to conclude that appellant provided optional services for at least some customers, there is no way to connect these statements to any disallowed transactions in this appeal. Furthermore, there is no evidence in the record to indicate how much of the disallowed miscellaneous expense charges, if any, are allocable to cleaning and maintenance services because appellant only invoiced customers for a lump sum charge for all elements of the lease that appellant believed to be nontaxable.[11]

Prior to the hearing, appellant provided four additional declarations: one from each of the two owners of appellant, and two additional declarations dated October 25, 2022, and signed by former customers of appellant. As with the prior statements from other customers, neither of these recent declarations from former customers included contact information for the declarant. The declarations also did not include supporting documentation, such as an invoice, to connect the declarant's statements to a specific lease transaction occurring during the liability period. These declarations, signed more than six years after appellant terminated, are insufficient to meet the requirement of documentary evidence establishing that cleaning services are optional.

With respect to the balance of the miscellaneous expense charge, all the claimed nontaxable elements (e.g., maintenance, cleaning, insurance, transportation, payroll, etc.) were bundled together. Appellant's bundled miscellaneous expense charge consisted entirely of nondeductible items such as non-separately stated charges for: transportation, payroll, insurance,[12] highway tolls, cellular phone service, and other such costs of engaging in the business of renting portable toilets in this state. (R&TC, § 6012(a)(3), (c)(7).) Therefore, appellant's documentation is insufficient to support a deduction for any amount of nontaxable expenses incurred in the conduct of its rental business.

---

[10] The panel may apply the California Rules of Evidence when evaluating the weight to afford evidence presented at an oral hearing. (Cal. Code Regs., tit. 18, § 30214(e)(4).)

[11] Based on our finding that appellant failed to establish any amount of deduction for nontaxable services, we need not address CDTFA's contention that, if a deduction is allowed for nontaxable cleaning services, CDTFA is entitled to an offset due to appellant's failure to pay tax on its purchases of cleaning supplies. (Citing Cal. Code Regs., tit. 18, § 1660(d)(1) [providing that "tax generally applies to the sale to or the use of [cleaning] supplies by the provider of [optional] maintenance or cleaning services."])

[12] In order to be deductible, charges for optional insurance must be separately stated in the lease. (Cal. Code Regs., tit. 18, § 1660(c)(1)(F).)

In summary, we find that appellant failed to establish a basis for any further adjustments to the measure of disallowed claimed nontaxable miscellaneous expense charges.

Issue 2: 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, in reasonable reliance on the written advice, the taxpayer did not charge or collect sales tax reimbursement, or did not pay use tax on the storage, use, or other consumption in this state of tangible personal property. (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).) Any person requesting relief of the taxes must file a statement under penalty of perjury setting forth the facts on which a request for relief of the taxes is based. (R&TC, § 6596(c).)

In the instant case, the claim for relief under R&TC section 6596 is based upon written advice provided in a prior audit or examination of the partnership (a different taxpayer).[13] The prior audit or examination covers the period July 1, 1998, through December 31, 2002. For purposes of R&TC section 6596, the presentation of a person's books and records for examination by an auditor is deemed to be a written request for the audit report for purposes of the first requirement (requesting written advice). (Cal. Code Regs., tit. 18, § 1705(c).) It is undisputed that CDTFA produced written work papers (titled "Field Billing Order" and

[13] Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. (Cal. Code Regs., tit. 18, § 1705(a).) CDTFA does not dispute that appellant is a legal or statutory successor of the partnership.

described in the same document as an "Audit Report")[14] as a part of its prior examination of appellant; therefore, we find that the first element is met.

With respect to the second element, for written advice contained in a prior audit to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the period audit. (Cal. Code Regs., tit. 18, § 1705(c).) Audit comments, schedules, and other writings prepared by CDTFA that become part of the audit work papers which reflect that the activity or transaction in question was properly reported, and no tax amount was due, are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous. (Cal. Code Regs., tit. 18, § 1705(c).)

Ownership of the portable toilets

In the prior audit or examination, appellant did not own the portable toilets. The prior audit or examination comments state: "The chemical toilets that [appellant] rents are leased from a leasing company." In the current liability period, appellant owned the portable chemical toilets. This is demonstrated by the fact that when appellant sold the assets of the business in 2016, the sales agreement allocated a portion of the purchase price to the sale of the portable toilets. Appellant's owner testified that appellant had purchased the portable toilets at the end of the leases. Thus, the issue in the closeout audit involved the application of tax to a miscellaneous itemized expense charge in two-way leases (between appellant and its customers). On the other hand, the issue examined in the prior audit or examination was the proper application of tax to charges for the lease of a portable toilet a three-way lease (lessee, sub-lessor, and prime lessor).

Changed treatment of cleaning supplies

In addition, the available written documentation shows that the facts and conditions relating to the leasing activity changed since the prior audit or examination. First, appellant contends that "After the [prior] audit . . . I was careful not to pay taxes on supplies and equipment." Appellant's owner testified that in the current liability period appellant purchased

[14] The Field Billing Order states "The Audit findings were discussed with: Partner [D.] Bishop," who is also an owner and corporate officer of appellant. The Field Billing Order also states that "A copy of this Audit Report was furnished to the taxpayer."

the cleaning supplies without payment of tax by issuing a resale certificate. Nevertheless, nowhere in the Field Billing Order does CDTFA advise that appellant's purchases of cleaning supplies are nontaxable, or for that matter even mention the taxability of cleaning supplies. Furthermore, in the current liability period appellant did not report or pay tax on a monthly reimbursement charge that included miscellaneous fees for appellant's cleaning services and appellant ceased paying tax on its purchases of cleaning supplies. In other words, tax was not charged on either appellant's purchase or consumption of the cleaning supplies, which is an improper application of tax. (Cal. Code Regs., tit. 18, § 1660(d)(1).) It would only have been proper for appellant to purchase the cleaning supplies without payment of tax if appellant were treating the cleaning services as mandatory and reported them as taxable, which appellant did not do. (Cal. Code Regs., tit. 18, § 1660(d)(1).) Thus, appellant could not have relied on the prior audit or examination in its failure to report or pay tax on its consumption of cleaning supplies.

The uncertainty over the reference to "lease agreements"

Third, the prior audit or examination comments state that "the auditor examined the lease agreements." The kind and nature of the lease agreements, referenced by the auditor, remain unclear since they have not been introduced into the evidentiary record. Based on the comment, one could make a reasonable inference that appellant had written agreements with its customers for the lease of portable toilets. However, in the current liability period, it is undisputed that there were no written lease agreements and that the parties relied upon oral lease agreements. As stated above, when there is a written lease agreement, the application of tax depends on the terms set forth in the written lease agreement. (Cal. Code Regs., tit. 18, § 1660(d)(1).) Furthermore, appellant's owner testified that the reference to lease agreements in the prior audit or examination must have been a reference to the agreements between appellant and the owner of the portable toilets because appellant did not have written lease agreements at that time, as discussed below. Depending on the weight we afford appellant's testimony, there could be sufficient doubt to question whether there were written lease agreements with the customers in the prior audit or examination. Appellant has the burden to establish that the facts were unchanged, and appellant's testimony more than twenty years after the close of the prior audit or examination period (which ended April 2002) is insufficient to meet this burden in light of the uncertainties with the contemporaneous written documents.

Scope of the Field Billing Order examination

Finally, there is no indication in the July 3, 2003 Field Billing Order that CDTFA ever examined a miscellaneous expense charge on appellant's sales invoices. For that matter, there is no indication in that Field Billing Order that appellant even included a miscellaneous expense charge on its sales invoices in the prior audit or examination. As noted above, the issue examined in 2003 was a deduction for tax-paid purchases resold (as opposed to a miscellaneous expense charge). Even if appellant had established that its cleaning services were optional, by appellant's own admission the cleaning services are only one component of the miscellaneous expense charge, and there is no evidence that CDTFA ever considered the application of tax to the other miscellaneous reimbursement items in the prior audit or examination. These additional items are properly includible in gross receipts irrespective of the taxability of the cleaning charge. (R&TC, § 6012.) Therefore, appellant failed to establish that CDTFA examined the application of tax to appellant's miscellaneous expense charge in the prior audit or examination.

Accordingly, because statements in the Field Billing Order do not pertain to the issue in the closeout audit (the taxability of the miscellaneous expense charge), appellant's failure to charge or collect tax was not due to reasonable reliance on that written advice. In summary, we find that appellant is ineligible for relief under R&TC section 6596.[15]

[15] In reaching the conclusions herein, this Opinion makes no finding on whether appellant is a qualifying legal or statutory successor to the partnership.

HOLDINGS

1. Appellant failed to establish any adjustments are warranted for claimed nontaxable charges.
2. Appellant failed to establish a basis for relief under R&TC section 6596 under the facts of this case.

DISPOSITION

CDTFA's action as set forth in CDTFA's decision is sustained.

DocuSigned by:
3CADA62FB4864CB...

Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:
48745BB806914B4...

Josh Aldrich
Administrative Law Judge

DocuSigned by:
DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

Date Issued: 1/19/2023