OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:	OTA Case Nos. 18011830, 18012048
	CDTFA Case IDs 870553, 625348
YOGURT TIME, LLC	

OPINION

Representing the Parties:

For Appellant:	Amin Kazemini, Attorney
For Respondent:	Ravinder Sharma, Hearing Representative Jason Parker, Chief of Headquarters Ops. Cary Huxsoll, Tax Counsel IV
For Office of Tax Appeals:	Casey Green, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 6561, Yogurt Time, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's petition for redetermination of a Notice of Determination (NOD), dated July 23, 2012, which assessed a tax liability of $82,730.79, plus accrued interest, and a negligence penalty of $8,273.07, for the period January 1, 2008, through March 31, 2011 (Audit Period 1).[2] In its subsequent decisions, CDTFA reduced the tax liability from $82,730.79 to $30,839.00, removed the measure of use tax, deleted the negligence penalty, and denied the remainder of appellant's petition.

Appellant also appeals a decision issued by CDTFA in response to appellant's timely petition for redetermination of an NOD dated April 23, 2015, which assessed a tax liability of

[1] Sales taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of the BOE 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 BOE; and when this Opinion refers to acts or events that occurred on or after July 1, 2017, "CDTFA" shall refer to CDTFA.

[2] OTA Case No. 18012048.

$31,753.79, plus accrued interest, and a negligence penalty of $3,175.51, for the period July 1, 2011, through June 30, 2014 (Audit Period 2). In its decision, CDTFA reduced the measure of tax liability to $308,757.00, deleted the negligence penalty, and denied the remainder of appellant's petition.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Josh Lambert, and Keith T. Long held an oral hearing for this matter in Sacramento, California, on June 21, 2022. Upon the conclusion of post-hearing additional briefing, OTA closed the record on September 30, 2022, and this matter was submitted for an opinion.

ISSUES

1. For Audit Period 1 (OTA Case No. 18012048):
    a. Are further reductions to the measure of disallowed claimed exempt food sales ($448,470) warranted?
    b. Is a reduction to the tax based on unreported taxable food sales ($30,839) warranted?
2. For Audit Period 2 (OTA Case No. 18011830), are further reductions to the measure of disallowed claimed exempt food sales ($308,757) warranted?
3. Has appellant established that relief from interest is warranted?

FACTUAL FINDINGS

Facts Related to Both Audits

1. Starting on or about January 1, 2008, appellant operated four self-serve frozen yogurt shops, with three locations in Santa Rosa (Farmer's Lane, Mark West Springs Road (Mark West Springs), and Summerfield Lane (Summerfield)) and one location in Healdsburg. The Healdsburg location closed November 27, 2013.
2. Each of appellant's locations had indoor and outdoor seating, and appellant provided cups and utensils to customers, which they used to serve themselves frozen yogurt.

Audit Period 1

3. For the audit period, appellant reported total sales of $2,415,696, claimed exempt sales of food products of $2,336,036, and reported taxable sales of $79,660.

4. For the audit, appellant provided CDTFA with copies of their 2008 and 2009 federal income tax returns (FITRs); sales reports showing gross (but not taxable) sales for the audit period; bank statements for the first quarter of 2010 (1Q10) and 2Q10; and depreciation schedules for 2008 and 2009.
5. Appellant did not maintain a separate cash register key or otherwise separate account for to-go sales. Instead, appellant computed its reported taxable sales using estimates for dine-in sales of 3 to 5 percent of total sales.
6. CDTFA conducted observation tests to establish the audited percentage of taxable to total sales. CDTFA observed appellant's sales for one full day at the Farmer's Lane location, and for one full day at the Healdsburg location.[3] Based on the observations, CDTFA computed that 35.14 percent of appellant's sales at the Farmer's Lane, Summerfield, and Mark West Springs locations were consumed at its facilities and were therefore subject to tax, and 12 percent at the Healdsburg location.
7. CDTFA disallowed claimed exempt sales of $723,700.00[4] and established $223,535.00 of unreported ex-tax purchases of fixed assets. On July 23, 2012, CDTFA issued an NOD assessing $82,730.79 in tax, plus interest, and a negligence penalty of $8,273.07.
8. CDTFA issued a Decision and Recommendation (D&R) finding that no adjustments were warranted to the disallowed claimed exempt sales of cold food to-go, unreported purchases of fixed assets, or the negligence penalty.
9. CDTFA issued a Supplemental Decision and Recommendation (SD&R) on November 24, 2014, recommending denial of appellant's petition for redetermination.
10. A hearing before the State Board of Equalization (BOE) was initially set to take place on April 29, 2015. It was removed from BOE's calendar to allow CDTFA to review unreported purchases of fixed assets.

[3] Appellant would not allow CDTFA's auditor to observe from inside the restaurant, so the auditor sat inside a vehicle at each location's parking lot. The auditor recorded whether customers ate at appellant's tables (dine-in) or took the food to-go. The auditor then used appellant's daily sales reports and records of the day's sales to determine the total amounts of sales for dine-in and to-go.

[4] The total includes disallowed claimed exempt food sales of $693,304 for three of appellant's locations and an additional $30,396 for unreported taxable sales during 1Q11 at the Summerfield location.

11. On June 25, 2015, CDTFA issued a second SD&R recommending a reaudit to perform additional observation tests and to reexamine whether the fixed assets at issue constituted taxable transactions.
12. Appellant declined to allow CDTFA to perform the recommended observation tests.[5]
13. On January 28, 2016, CDTFA issued a third SD&R using data obtained from appellant during Audit Period 2. Using appellant's sales records with the most reliable data, CDTFA computed taxable sales percentages of 7.17 percent for Healdsburg, 22.79 percent for the Mark West Springs location, 25.97 percent for the Farmers Lane location, and 35.65 percent for the Summerfield location.[6]
14. CDTFA recommended reduction of disallowed claimed exempt sales from $475,626 to $448,470; reduction of tax based on unreported taxable sales from $33,080 to $30,839; and reduction of the measure of unreported ex-tax purchases of fixed assets to zero.
15. On June 26, 2016, CDTFA issued a summary analysis in anticipation of a BOE hearing.
16. On February 25, 2016, appellant filed for settlement consideration, which CDTFA granted in June 2016. On August 5, 2016, the appeals[7] were removed from settlement at appellant's request.
17. A BOE hearing was scheduled for December 14, 2016.
18. On December 2, 2016, CDTFA issued a Board Hearing Summary recommending deletion of the negligence penalty.

[5] Appellant would not allow CDTFA to conduct additional observations because it claimed the statute of limitations for CDTFA to conduct a reaudit (i.e., additional observation tests) had expired for this audit period. On appeal, appellant asserts that had it known the ramifications of its refusal, it would not have refused. Accepting that as a fact for purposes of argument, OTA has no basis upon which to determine whether appellant would have made a different decision in 2015, nor if further observation tests were conducted, whether and how the ratios would have been different. In any event, a different method was ultimately used to determine appellant's tax liability, and the observation tests are moot.

[6] CDTFA found that the recorded percentages of taxable to total sales were reasonably consistent (within a 10 percent range) for the following periods:

Healdsburg location: January 1, 2012, through November 27, 2013;
Mark West Springs location: Only the last three quarters (October 1, 2013, through June 30, 2014);
Farmers Lane location: April 1, 2012, through June 30, 2014;
Summerfield location: January 1, 2013, through June 30, 2014.

[7] It is unclear from OTA's record when the two audit period cases were consolidated, but most likely the consolidation occurred following appellant's petition for redetermination for Audit Period 2 filed on April 29, 2015.

19. Appellant filed an opening brief for the BOE hearing. CDTFA requested that the hearing be removed from BOE's calendar in order for it to "review the figures used to establish the ratio[] of taxable to non-taxable sales." No further SD&R was issued by CDTFA.
20. On January 1, 2018, the consolidated appeals were transferred from BOE to OTA.

Audit Period 2

21. For Audit Period 2, appellant reported total sales of $3,642,721, claimed deductions for exempt sales of food products of $2,985,311, and reported taxable sales of $657,410.
22. For the audit, appellant provided quarterly sales analysis reports for each of the four locations and FITRs for 2011, 2012 and 2013.
23. During the first quarter of 2012, appellant began using a new point-of-sale system that required employees to record whether purchases were dine-in sales or to-go sales.
24. Appellant's records of sales to-go and sales for dine-in were complete and accurate for most of the audit period. CDTFA computed percentages of taxable to total sales as noted in Finding of Fact 12.
25. CDTFA applied those percentages of taxable sales to recorded total sales to determine total taxable sales, which after subtracting reported taxable sales, resulted in disallowed claimed exempt sales of food of $378,370.
26. On April 23, 2015, CDTFA issued an NOD assessing $31,753.79 in tax, plus interest, and a negligence penalty of $3,175.51.
27. On August 28, 2015, CDTFA issued a revised audit deleting the negligence penalty.
28. On June 12, 2017, CDTFA issued a D&R, recommending that the disallowed claimed exempt sales of food be reduced by $69,613.00, from $378,370.00 to $308,757.00,[8] and on July 3, 2017, CDTFA issued a reaudit report showing an understatement of tax of $25,775.62 and no penalty.
29. This timely appeal followed.

[8] In quarters for which the recorded percentage of taxable to total sales were reasonably consistent (within a range of 10 percent), CDTFA used the recorded percentage. It used those quarterly percentages to compute averages that it applied to the remainder of the audit period. (See Finding of Fact 13.)

DISCUSSION

Issue 1a: For Audit Period 1, are further reductions to the measure of unreported taxable sales ($448,470) warranted?

California imposes a 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, § 6051.) A retailer's gross receipts are all presumed subject to tax unless the retailer can prove otherwise. (R&TC, § 6091.) R&TC section 6359 generally exempts the sale of food products from taxation. However, the law provides several exceptions to the exemption for the sale of food products. (R&TC, §6359(d).) Specifically, R&TC section 6359(d)(2) provides that sales of food products for consumption on the premises of the retailer are not exempt and are subject to tax. As such, when food is served and consumed at a retailer's premises, it is not an exempt sale and it is irrelevant whether the food is served as a meal, or if it is a cold food product.

When CDTFA is not satisfied with the accuracy of the sales and use tax returns filed, it may base its determination of the tax due upon the facts contained in the returns or upon any information within its possession or that may come into its possession. (R&TC, § 6481.) It is the taxpayer's responsibility to maintain and make available for examination on request all records necessary to determine the correct tax liability, including bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

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 failed to provide complete records and did not record whether its sales were for dine-in or to-go during Audit Period 1. Instead, appellant estimated its percentages of dine-in and to-go sales for Audit Period 1 and part of Audit Period 2. During the first quarter of 2012, appellant began using a new point-of-sale system that required employees to record whether purchases were dine-in sales or to-go sales. CDTFA initially used observation tests to establish unreported taxable sales but determined that the limited number of observations tests

did not produce reliable taxable sales ratios. CDTFA then used appellant's recorded information from parts of Audit Period 2 (after appellant adopted a new point-of-sale system that recorded whether sales were dine-in or to-go). OTA finds that CDTFA's use of appellant's most accurate and complete records to establish unreported taxable sales for both audit periods was reasonable and rational. Therefore, the burden of proof shifts to appellant to provide evidence to refute CDTFA's calculation of taxable sales.

Appellant contends that all its sales are exempt from sales tax because it sells dairy products and sorbet that contains no juice.[9] Appellant argues that frozen yogurt is not sold as a meal, and that yogurt is a cold food product, either of which makes its sales exempt. Appellant further contends it should be granted relief from the tax liability because CDTFA advised it that sales of frozen yogurt are exempt. Later, when appellant obtained a seller's permit, appellant claims that CDTFA advised that it could estimate its taxable sales at 3 to 5 percent.

Appellant makes sales of cold food products and asserts that sales of yogurt are exempt as they fall within the definition of food products exempted by statute, and they are not served as meals. (See R&TC, § 6359(b)(2).) However, whether appellant's products constitute a "meal" is not relevant. The exception for meals served on premises at tables and chairs provided by appellant is covered under a separate subsection of R&TC section 6359(d). Those sales of cold food products consumed on appellant's premises (dine-in sales) fall under the exception to the exemption provided by R&TC section 6359(d)(2). (*Cf.* R&TC § 6359(d)(1).) Appellant also argues that sorbet is not taxable because it is not a food product, but the definition of "food products" specifically includes "flavored ice products, including popsicles and snow cones." (Cal. Code Regs., tit. 18, § 1601(a)(1).)[10]

[9] Appellant listed several contentions regarding CDTFA's observation tests, but CDTFA's final audits did not use the information from the observation tests and instead used appellant's records.

[10] Regarding its sales of sorbet, appellant argues that sorbet contains no dairy, no juice, or any fruit, and thus is not a food product as defined in R&TC section 6359. As such, appellant argues those sales are not subject to tax regardless of whether they are for dine-in or to-go. R&TC section 6359 creates an *exemption from tax* for sales of certain food products. That is, if a product is inconsistent with the category of items described in R&TC section 6359(b)(2) and (b)(3), then the sale of the product does not qualify for the exemption and is taxable. In arguing that sorbet is not included in the category of items listed in R&TC section 6359(b)(2) and (b)(3), appellant is essentially arguing that the exemption for sales of food products does not apply to its sales of sorbet and that all its sorbet sales are taxable. Thus, OTA finds this argument without merit.

Appellant sells food products as defined by statute that are exempt from sales tax unless the cold food is consumed on appellant's premises.[11]

Appellant makes several assertions with respect to the audit and determination of disallowed claimed exempt sales. Appellant contends that it should be granted relief from the tax liability based on the allegation that CDTFA first advised it that its sales were exempt from sales tax and then later advised appellant that it required a seller's permit but could estimate taxable sales between 3 and 5 percent. R&TC section 6596 provides that a taxpayer may be relieved of tax when the taxpayer relied on written advice from CDTFA. Appellant admitted that it did not rely on any written advice but rather relied on alleged verbal statements made by CDTFA employees. Even if, hypothetically, OTA found those allegations to be accurate, there is no provision in the law that would relieve appellant from payment of the tax based on incorrect verbal advice.

Appellant argues that CDTFA's initial use of observation tests was flawed. CDTFA agreed and recommended a reaudit to include more observation tests. Appellant declined based on its mistaken belief that the audit could not be re-opened because the statute of limitations to assess the tax had expired. Ultimately, CDTFA did not use the observation tests but rather calculated percentages of taxable sales for each location based on appellant's own records. Therefore, OTA does not address this contention further.

Lastly, appellant argues that CDTFA violated its own procedures by (1) not preparing an audit plan for Audit Period 2, (2) not inviting appellant to an exit conference at the end of the audit, and (3) holding the first audit in abeyance until the completion of the second audit.[12] OTA lacks jurisdiction to determine whether appellant is entitled to a remedy for CDTFA's actual or alleged violation of any substantive or procedural right to due process 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. (See Cal. Code Regs., tit. 18, § 30104(d).) None of the alleged

[11] Regarding appellant's argument that the law is unclear in this area as it does not specifically mention frozen yogurt, there are myriad foods not specifically mentioned by name in the statute. Moreover, if appellant's products were not cold food products, all sales would be subject to sales tax as the exemption would not apply.

[12] Appellant also contends that CDTFA's August 28, 2015 reaudit report is time-barred because the reaudit was not completed within three years of the audit's 2011 commencement. There is no statute of limitations for completing an audit (or a reaudit). The timeframe for conducting an audit is essentially controlled by the statute of limitations for issuing an NOD, which, as relevant here, is three years. (R&TC, § 6487(a).) There is no dispute that CDTFA timely issued the NODs herein. As such, OTA does not further discuss these contentions.

failures by CDTFA affect the adequacy or validity of the NOD nor do they change the amount at issue in this appeal. Therefore, OTA has no jurisdiction to address appellant's claims.

Appellant has not established a basis for further reduction to the measure of disallowed claimed exempt sales of its cold food products.

Issue 1.b: Is a reduction to the tax based on unreported taxable food sales ($30,839) warranted?

Appellant did not report sales at the Summerfield location for 1Q11. Since the Summerfield location is similar in size to the Farmer's Lane location, CDTFA initially applied the percentage for the Farmer's Lane location to establish 1Q11 taxable sales. Later, CDTFA was able to use appellant's records (for 1Q13 through 2Q14) at the Summerfield location to compute a taxable percentage of 35.65 percent. CDTFA applied the percentage to the location's recorded sales for 1Q11 of $86,506, resulting in a measure of unreported taxable sales of $30,839.

As indicated above, CDTFA's audit methodology was reasonable, and the burden of proof is on appellant to establish that adjustments are warranted. (See *Appeal of Talavera*, *supra*.) Appellant has not provided any separate arguments with respect to the Summerfield Road location. Similarly, OTA finds that appellant has not shown that a reduction to the measure of unreported taxable sales is warranted.

Issue 2: For Audit Period 2, are further reductions to the measure of disallowed claimed exempt food sales ($308,757) warranted?

Using appellant's records for three quarters of Audit Period 2, CDTFA computed taxable sales ratios for each of appellant's locations. CDTFA applied those ratios to recorded total sales during the audit period. Subsequently, CDTFA issued a decision recommending adjustments based on the third SD&R issued for Audit Period 1. This resulted in a reduction of disallowed claimed exempt sales of cold food products from $378,370 to $308,757.

Appellant's only argument with respect to the percentages established pursuant to the third SD&R is that all quarters for which it recorded point-of-sale information should be used for the audit.[13] Had CDTFA used appellant's records using all quarters starting in 2Q12, the ratios of taxable to nontaxable sales would have been approximately 10.6 percent for the Mark West

[13] Appellant does not suggest that the partial data collected using the new system should be used for 1Q12.

Springs location (instead of 25.97 percent) and approximately 26.7 percent for the Summerfield location (instead of 35.65 percent).

CDTFA responds that using just the last three quarters of Audit Period 2 to calculate the ratio is more reasonable than using all quarters from 2Q12 through 2Q14. Consistent with the quarterly periods used to determine the taxable ratios for the other locations, CDTFA used only those quarters that were within 10 percentage points of the highest quarterly ratio of taxable to nontaxable sales.

The percentages calculated for several of the quarters for these two locations deviated more than 10 percentage points from the highest rate. Thus, OTA finds that it was reasonable and rational for CDTFA to use the quarters that did not deviate from each other by more than 10 percentage points; namely, 4Q13, 1Q14, and 2Q14. Because CDTFA's audit method was reasonable, the burden shifts to appellant to show why CDTFA's use of only three quarters was incorrect. (See *Appeal of Talavera*, *supra*.)

Appellant failed to explain why these larger variances would have occurred although there were no changes to the businesses. Appellant asserts that it is impossible to ring up a sale without pressing the to-go or dine-in buttons but has not verified whether those entries were made accurately. Appellant has not established that it is more likely than not that dine-in and to-go sales were accurately reported for all quarters from 2Q12 through 4Q14 for the Mark West Springs and Summerfield locations. Therefore, appellant has not established that an adjustment to the measure of disallowed claimed exempt sales is warranted.

Issue 3: Has appellant established that relief of interest is warranted?

The law allows OTA, in its discretion, to relieve all or any part of the interest imposed on a person under the Sales and Use Tax Law where the failure to pay the tax is due in whole or in part to an unreasonable error or delay by an employee of BOE (or, after July 1, 2017, CDTFA) acting in his or her official capacity. (R&TC, § 6593.5 (a)(1); see R&TC, § 20.) Such an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (R&TC, § 6593.5(b).) Any person requesting interest relief must include a statement under penalty of perjury setting forth the facts on which the request is based. (R&TC, § 6593.5(c).)

Appellant contends that all interest for both audit periods should be relieved based on unreasonable delays by CDTFA, and that CDTFA's delays were a violation of appellant's constitutional rights.[14]

In response, CDTFA provided a timeline for the duration of these appeals and asserts in its most recent brief that relief from interest is not warranted for any time period. However, in a letter dated January 1, 2020, CDTFA conceded that relief of interest is warranted for the period April 1, 2017, through December 31, 2017.[15] CDTFA calculates the interest to be relieved at $2,230.11, but only if appellant files a request for relief of interest under penalty of perjury as required by law.[16] CDTFA found an unreasonable delay when it deferred the BOE oral hearing which had been set for December 14, 2016. CDTFA states that rescheduling the board hearing should only take 90 days, but for unknown reasons, it took approximately a year.

OTA additionally finds it took CDTFA's Petitions Section an unreasonable amount of time to prepare a summary analysis for Audit Period 1. Petitions Section received the SD&R on September 24, 2015, yet the summary analysis was not sent to CDTFA's Case Management group to set a conference with appellant until June 23, 2016, nine months later. The record establishes no reasonable explanation for why the Petitions Section required nine months to complete and move along the five-page summary analysis. Appellant is therefore relieved of interest for Audit Period 1 from December 23, 2015, through June 23, 2016, due to unreasonable error or delay by CDTFA.

OTA's review of the briefing and timelines submitted by the parties reveals that any potential remaining delays are attributable to factors such as appellant's requests for redetermination, CDTFA's completion of several reaudits, appellant's request to enter settlement, and the active processing of this appeal in due course. Specifically, in appellant's requests for reconsideration, in appellant's brief to BOE, and appellant's arguments to OTA,

[14] Appellant asserts delays by OTA; however, any alleged delays by OTA do not constitute errors or delays by an employee of CDTFA. OTA is an independent tax appeals agency separate from CDTFA and any other tax agency. Appellant has not provided authority for relief of interest based on OTA's actions, and OTA is not aware of any such authority that applies here.

[15] On January 1, 2018, the appeal was transferred to OTA.

[16] Following the close of the oral hearing, appellant submitted two forms CDTFA-735, one for each audit period.

appellant repeatedly argues that its sales are not taxable, among a plethora of other arguments, most of which are without merit, as discussed herein.

Regarding the numerous reaudits and the time it took CDTFA to complete them, OTA first notes that appellant maintained no record of its taxable sales for Audit Period 1 and instead reported an amount based on what appears to be an arbitrary percentage between 3 and 5 percent. Thus, the ultimate cause of CDTFA having to complete several reaudits is due to appellant's failure to keep accurate records of dine-in sales, requiring CDTFA to resort to alternate audit methods. It was only after appellant started reporting accurately for some of the periods of Audit Period 2 that CDTFA was able to then use appellant's records and discard the observation tests. As explained above, CDTFA was initially justified in using the observation tests, as they were the most reliable evidence at the time. CDTFA then reduced the liabilities in the reaudits once it had more reliable records to make said reductions.

As for the deletion of the liability for appellant's purchases of fixed assets, CDTFA did its own independent research, and even though the evidence was not conclusive, gave appellant the benefit of the doubt, as explained in CDTFA's third SD&R.

Based on the foregoing, OTA concludes that relief of accrued interest is warranted only for Audit Period 1 from December 23, 2015, through June 23, 2016, and for the time period conceded by CDTFA, from April 1, 2016, through December 31, 2017.

HOLDINGS

1. For Audit Period 1 (OTA Case No. 18012048):
    a. No further reductions to the measure of disallowed claimed exempt food sales is warranted.
    b. No reduction to the measure of unreported taxable food sales is warranted.
2. For Audit Period 2 (OTA Case No. 18018130), no further reductions to the measure of disallowed claimed exempt food sales is warranted.
3. Relief of interest is warranted for the period from December 23, 2015, through June 23, 2016, and for the period from April 1, 2017, through December 31, 2017.[17]

DISPOSITION

CDTFA's decision to delete the negligence penalties for both audits is sustained. Relief of interest is warranted for Audit Period 1 from December 23, 2015, through June 23, 2016, and for both audit periods from April 1, 2017, through December 31, 2017. CDTFA's reduction of the measure of tax as stated in the third SD&R for Audit Period 1, but otherwise denying appellant's petition for redetermination, is sustained. CDTFA's decision to reduce the assessed tax liability and to delete the assessed penalty for Audit Period 2, but otherwise denying appellant's petition for redetermination, is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
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Josh Lambert
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 1/18/2023

[17] Interest relief only applies to the first audit, OTA Case No. 18012048.