OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18043017
	) CDTFA Case ID 674647
PAKWAN RESTAURANT, LLC,	)
dba Pakwan Restaurant	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Elliott R. Speiser, Attorney

For Respondent: Randy Suazo, Hearing Representative
Chad Bacchus, Tax Counsel IV
Jason Parker, Chief of Headquarters Ops.

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Pakwan Restaurant, LLC (appellant) appeals a decision issued by the respondent California Department of Tax and Fee Administration[1] (CDTFA) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) on October 29, 2012. The NOD was for tax of $268,533.98, plus applicable interest, and a negligence penalty of $26,853.55 for the period October 1, 2008, through March 31, 2012 (audit period).[2]

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Suzanne B. Brown, and Daniel K. Cho held an oral hearing for this matter in Cerritos, California, on September 13, 2022. At the conclusion of the hearing, the record was held open for the

[1] Sales taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22; Stats. 2017, ch. 16, § 5.) For ease of reference, when this Opinion refers to acts or events that occurred before January 1, 2018, "CDTFA" shall refer to BOE; and when this Opinion refers to acts or events occurring on or after January 1, 2018, "CDTFA" shall refer to CDTFA. However, because OTA is the successor to BOE with respect to conducting tax appeals, when addressing functions of BOE which were transferred to OTA, this Opinion will use the term "BOE."

[2] The audit period concludes on this date because appellant closed out the seller's permit effective March 31, 2012, and thereafter ownership of appellant's restaurants reorganized from an LLC to three corporations, one for each business location, and appellant opened a new seller's permit for each of those entities.

parties to address interest relief. At the conclusion of additional briefing, OTA closed its record on November 1, 2022, and this matter was submitted for an opinion.

ISSUES

1. Has appellant shown that adjustments are warranted to the audited understatement of reported taxable sales?
2. Was the understatement the result of negligence?
3. Has appellant established that additional interest should be relieved based on unreasonable error or delay by CDTFA?

FACTUAL FINDINGS

1. Appellant operated four restaurants during the audit period, specializing in Pakistani and Indian style cuisine. Appellant obtained its seller's permit on January 1, 2005. During various portions of the audit period, appellant operated a restaurant in Hayward, one in Fremont, and two in San Francisco.
2. One of the San Francisco restaurants and the Fremont restaurant only accepted cash during the audit period, while the other two restaurants accepted cash and credit cards.
3. For the audit period, appellant reported total and taxable sales of $4,084,707.
4. For audit, appellant provided federal income tax returns (FITRs) for 2008, 2009 and 2010; bank statements for October 1, 2008, through September 30, 2011, for three of the restaurants and for April 1, 2009, through September 30, 2011, for the Hayward location; daily sales summaries for most of the audit period (excluding the period October 1, 2011, through January 31, 2012); point of sale (POS) reports for the period February 15, 2012, through March 31, 2012; POS reports for May 30, 2012, taken from records of the corporations that succeeded the LLC (because CDTFA conducted observation tests at each location on that day); and guest checks and cash register z-tapes for the months of February and March 2012.[3]
5. Taxable sales recorded in the daily summaries substantially reconciled with reported taxable sales. Gross receipts reported on FITRs reconciled with total sales reported on

[3] As noted in CDTFA's Decision and Recommendation, there is no mention in the audit report of a purchase journal, but CDTFA did not definitively state that this was not provided. Appellant asserted at the appeals conference that all its records, excluding cash register z-tapes for the period October 1, 2008, through January 31, 2012, were available for examination.

sales and use tax returns (SUTRs) for 2010, but exceeded total sales reported on SUTRs by $78,900 for 2009. Book markups, using gross receipts and cost of goods sold reported on appellant's FITRs, were approximately 501 percent for 2008, 311 percent for 2009, and 397 percent for 2010.[4] Because of the broad variation in the book markups, CDTFA determined that the FITRs were not reliable for audit purposes.

6. Reported taxable sales exceeded bank deposits for the period October 1, 2008, through September 30, 2011, by $137,418. Because of the discrepancy, CDTFA did not use bank deposits for audit purposes.[5] POS reports provided by appellant (for the last six weeks of the audit period) did not include transaction numbers, and CDTFA concluded that these reports were not a reliable representation of appellant's sales.

7. CDTFA conducted observation tests at the four restaurants. The observation tests were conducted for a full day at each location on Wednesday, May 30, 2012, which was after the audit period.[6] The POS reports provided by appellant for the same timeframe reconciled with CDTFA's schedules of sales for that day. Recorded taxable sales (excluding sales tax reimbursement) totaled $6,106 for all restaurants combined.

8. CDTFA compared the observation test results with taxable sales recorded in appellant's sales summaries for certain Wednesdays during the audit period. CDTFA computed average recorded taxable sales (for all restaurants combined) of about $2,889 for four Wednesdays in February 2012 and $3,083 for four Wednesdays in March 2012. Average recorded taxable sales for two Wednesdays, May 25, 2011, and June 1, 2011, of $3,573 ($3,814 and $3,332, respectively) were higher than the averages for February and March 2012.

9. Based on the observation test, CDTFA estimated that the reported taxable sales for Wednesdays averaged $6,106 during the liability period. CDTFA selected the higher average of recorded taxable sales of $3,573 as the baseline for the Wednesdays within the

[4] The book markups using total sales reported on the SUTRs resulted in different markups for 2008 and 2009 (about 508 percent and 282 percent, respectively), which is a large variation.

[5] Recorded sales for the Hayward location were $68,870 for the fourth quarter of 2008 (4Q08) and $69,120 for 1Q09, which total $137,990. Thus, it appears that the entire discrepancy between bank deposits and reported taxable sales is explained by the absence of bank statements for Hayward for those two quarters.

[6] The audit work did not begin until February 2012, and appellant closed its seller's permit March 31, 2012. Thus, the observation tests were conducted after the restaurants' ownership was transferred to three corporations.

liability period, which benefitted appellant. CDTFA compared the average recorded taxable sales for the selected Wednesdays during the audit period in 2011 ($3,573), with projected taxable sales of $6,106 for Wednesdays to determine that, on average, appellant failed to report $2,533 on those days. Dividing the average unreported taxable sales ($2,533) by the average recorded taxable sales ($3,573), resulted in an unreported taxable sales ratio of 70.89 percent of the recorded taxable sales for the two months tested.[7]

10. CDTFA applied 70.89 percent to reported total sales for the audit period of $4,084,707 for the entire audit period to compute audited unreported taxable sales of $2,895,649.
11. On October 29, 2012, CDTFA issued an NOD for tax of $268,533.98 and a negligence penalty of $26,853.55.
12. On November 7, 2012, appellant filed a timely petition for redetermination.
13. On August 27, 2014, CDTFA issued a Decision and Recommendation (D&R) recommending denial of the petition.
14. Appellant requested an oral hearing before OTA's predecessor, the State Board of Equalization (BOE). In the process of reviewing the case for an oral hearing, CDTFA's Appeals Bureau requested that the hearing be postponed in order to prepare a Supplemental D&R (SD&R).
15. The SD&R addressed appellant's assertion that the merchant credit card statements for the Hayward location for the first nine months of 2011 supported the recorded amounts of taxable sales. At the time, CDTFA was unable to locate the credit card statements and concluded that in the absence of evidence of the percentage of credit card sales to total sales, the merchant credit card statements would be of limited value in an analysis of total sales.
16. The SD&R also provided an analysis of the reasonableness of the audit findings, which had not been provided in the audit or in the D&R. Using information from the one-day observation test, CDTFA computed an average price of $12 for a meal. Using that price and audited taxable sales of $6,980,356 ($4,084,747 reported taxable sales and $2,895,649 unreported taxable sales) resulted in sales of $581,696 of sales of meals

[7] $6,106 - $3,573 = $2,533. $2,533 ÷ $3,573 = 70.89 percent.

during the audit period, or 497 meals per day.[8] With a seating capacity of 260 at all four restaurants, the audited sales represent slightly less than two meals for each seat for each day the restaurants were open, which CDTFA found to be reasonable.

17. Appellant again requested an oral hearing before BOE. Before the hearing, appellant requested settlement, and CDTFA referred the appeal to its Settlement Bureau on April 28, 2016. The appeal was removed from settlement on March 19, 2018, when the parties were unable to reach an agreement.

18. On July 23, 2018, OTA placed the appeal in deferred status so that CDTFA could issue a second SD&R (SSD&R), which it did on May 8, 2019.

19. The purpose of the SSD&R was to address CDTFA's reasoning for impeaching appellant's books and records. The SSD&R reiterated the various deficiencies in the records (absence of numbered POS reports, guest checks and cash register z-tapes for most of the audit period and absence of purchase summary records or purchase invoices and the lack of reliability of the various records as noted above). CDTFA concluded in the SSD&R that an alternate audit method was necessary.

20. After the SSD&R was issued, appellant filed this timely appeal.

21. Prior to the OTA hearing, CDTFA obtained Form 1099-K data for the two restaurants that accepted credit cards.[9] Applying credit card to sales ratios CDTFA computed during the observation tests, the combined sales for the two locations totaled $993,849 over a nine-month period in 2011. Reported taxable sales of $449,401 to CDTFA for the same two locations over the same nine months totaled less than half of the $993,849 calculated using credit card ratios observed by CDTFA.

22. After the hearing, appellant submitted a request for relief of interest. CDTFA conceded to relieve interest for the period from April 1, 2017, through June 30, 2017; for the period from April 1, 2018, through July 31, 2018; and for the period from August 1, 2018, through January 31, 2019.

[8] CDTFA used 360 days of operation per year for the San Francisco locations (which were open every day) and 308 days of operation for the Hayward and Fremont locations (which were closed on Tuesdays). The resulting average number of days of operation per year totaled 334 and 1,169 days of operation in the audit period.

[9] Form 1099-K is used to report a taxpayer's income received from payment card and third-party network transactions, including credit card payments. It is authorized by the IRS for tax administration.

DISCUSSION

Issue 1: Has appellant shown that adjustments are warranted to the audited understatement of reported taxable sales?

California sales tax is imposed on a retailer's retail sales of tangible personal property in this state, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) It is the retailer's responsibility to maintain complete and accurate records and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, CDTFA may determine the amount required to be paid based on any information which is in its possession or may come into its possession. (R&TC, § 6481.) 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*.)

In general, sales of food for human consumption are exempt from tax. (R&TC, § 6359.) However, certain sales of food are excluded from the exemption (and are thus subject to tax). As relevant here, sales of food are subject to tax if the food is sold for consumption at facilities provided by the retailer (R&TC, § 6359(d)(2)) or if the food is sold as hot prepared food products (R&TC, § 6359(d)(7)).

When more than 80 percent of a retailer's gross receipts are from sales of food products, and over 80 percent of its retail sales of food are subject to tax, then all sales are presumed subject to tax even if it is cold food sold in a form suitable for consumption on the retailer's premises or is purchased "to-go." (R&TC, § 6359(d)(6).) When a retailer's sales fit within this provision, known as the "80/80 rule," the retailer may avoid its application by keeping a separate accounting of its sales to-go of cold food in a form suitable for consumption on the retailer's premises. (R&TC, § 6359(f); Cal. Code Regs., tit. 18, § 1603(c)(1)(A).)

Based on its review of appellant's menus and the available guest checks and cash register z-tapes, CDTFA concluded that appellant's sales met the requirements of the 80/80 rule. Appellant has not specifically disputed that conclusion, and appellant did not claim any deductions on its SUTRs. Accordingly, it is undisputed that all of appellant's sales are taxable.

Here, CDTFA found a material difference between the gross receipts reported on the 2009 FITR and the total sales reported on SUTRs for 2009. Also, it computed book markups that fluctuated broadly, and CDTFA noted that it is more typical for a business's markups to remain relatively consistent from year to year. In addition, appellant did not provide complete records, and the available records were found to be deficient for various reasons (e.g., the POS reports did not include transaction numbers, which represent a key piece of information regarding each sale). Under these circumstances, it was appropriate for CDTFA to utilize an alternate audit approach.

Appellant asserts that a one-day observation test is unreliable, particularly since the tests were done after appellant changed its menu, began to accept credit cards, and made upgrades to the premises that made the restaurants more appealing. Appellant contends that CDTFA should have used an alternate audit method other than the single-day observation tests, such as the markup method or bank deposit analysis. CDTFA did not find the records provided by appellant to provide reliable information with respect to purchases (in order to do a markup analysis) and bank statements (because CDTFA believed that not all cash was deposited).

It is not OTA's role to select the indirect audit method utilized by CDTFA. Rather, OTA need only determine that the audit method used was reasonable and rational. Observation tests are commonly used to audit food establishments and are an approved method in CDTFA's Audit Manual. (See Audit Manual, § 0810.30.) In this case, CDTFA attempted to expand the number of observation days, but appellant declined to allow additional days. Because CDTFA believed the observation test results were the most reliable records, it used those records and performed additional tests to verify the results. For example, CDTFA compared recorded sales for 2009, 2010, and 2011 to recorded sales in February and March 2012, which is shortly before the observation tests were completed. CDTFA found that there were minimal differences, which suggests that any alleged changes appellant made at the restaurants did not make a significant difference in sales. Moreover, CDTFA applied the credit card to sales ratio, as observed at the two restaurants that accepted credit cards during the audit period, to the credit card purchases recorded on Forms 1099-K and calculated total sales for those two locations. For the nine-month period tested, appellant reported $449,401 in taxable sales. During the same nine-month period, however, CDTFA calculated taxable sales of $993,849, which produces a higher error rate than established using the observation tests. Accordingly, OTA finds that CDTFA has shown that its

determination is reasonable and rational. Therefore, appellant has the burden to show that adjustments are warranted.

Appellant argues that reported taxable sales were accurate, although it seems to concede, based on the difference between gross receipts reported on FITRs and total sales reported on SUTRs, and on certain other differences in the records, that there may be a minor understatement to CDTFA. For the most part, however, appellant argues that its records are accurate. Appellant refers to the SSD&R, in which CDTFA's Appeals Bureau recognized that the observation test did not meet the standards of CDTFA's Audit Manual section 0810.30, which states that, if an observation test is used to establish audited taxable sales, the test should include several days, one of which should be a weekend if the business is operated on weekends.

Appellant is correct that the observation test should have encompassed more than one day. However, appellant opposed the expansion of the test to include additional days even after receiving the audit report. Thus, at this time there is no remedy to cure the deficiency in the size of the test, as a result of appellant's own choice. Given that appellant refused to have additional testing done, OTA finds unpersuasive appellant's argument that the lack of additional testing warrants rejecting the existing test results.

On this issue, OTA notes that restaurants are typically busier on weekends than they are on Wednesdays. In fact, appellant's recorded sales reflect the truth of this generalization. For the month of March 2012, the recorded sales for Wednesdays range from $669 to $967, while the recorded sales for Saturdays range from $1,084 to $1,293. Thus, it is highly probable that a second day of observation, which would have been on a weekend day in order to conform to the requirements in Audit Manual section 0810.30, may have resulted in an increase in the observed daily sales. OTA makes this observation only to note that, if the test were expanded to include additional days, with at least one Saturday or Sunday, the audited understatement may increase rather than decrease.

More significantly, CDTFA used the information from the observation test in a manner that minimized any detrimental effect of using a test of a single day. Specifically, CDTFA compared the sales on the observation day (Wednesday, May 30, 2012) to Wednesdays during the audit period, thus comparing sales on similar days. CDTFA first computed the average amount of recorded sales for all Wednesdays in February 2012 and March 2012, which were $2,889 and $3,083, respectively. CDTFA then used the sales recorded on two Wednesdays in

2011, May 25 and June 1.[10] The average of the recorded sales for those two days was $3,573, and CDTFA computed a percentage of error of 70.89 percent. If CDTFA had used the average recorded sales for Wednesdays in February or March 2012, the percentage of error would have been 111 percent or 98 percent, respectively (which is higher than the 70 percent used in the audit).[11] The fact that the average daily sales on the day of observation was substantially greater than the recorded sales for Wednesdays throughout the audit period offers strong support for the audit findings.

As part of its argument that the sales observed on May 30, 2012, should not be used to establish the audited understatement, appellant notes that the observation day was outside the audit period. Appellant also states that the business had materially changed by the date of the observation test. Appellant asserts that its businesses were "cash only" during the audit period but began to accept credit cards at two locations.[12] Appellant also states that it renovated its restaurants and increased its marketing and advertising in 2011. For these reasons, appellant asserts that any observation after the renovation date would not be representative of the business during the audit period. Appellant's implication is that sales would have increased as a result of the renovations and increased advertising, but that suggestion is not supported by appellant's recorded sales. As noted above, the average daily sales on two Wednesdays in 2011 (May 25, 2011, and June 1, 2011) were materially higher than the average daily sales in February 2012 and March 2012. Thus, the available evidence does not support appellant's claim that the sales increased markedly from the audit period until the date of observation, May 30, 2012, only two months after the end of the audit period.

[10] It is not clear why CDTFA chose these two days, but they are dates in the previous year that are close to the observation date of May 30, 2012.

[11] $6,106 - $2,889 = $3,217. $3,217 ÷ $2,889 = 111 percent.
$6,106 - $3,083 = $3,023. $3,023 ÷ $3,083 = 98 percent.

[12] It is unclear whether the restaurants that had been cash only started accepting credit cards during the audit period or whether all four restaurants accepted credit cards after appellant incorporated the restaurants.

Appellant notes that the difference between sales reported on FITRs and SUTRs is relatively minor (appellant computes 3.79 percent). In addition, appellant argues that any differences between the bank deposits and reported sales are timing differences or due to retaining cash register funds and petty cash.[13] Further, appellant asserts that the average book markup for the audit period of 388 percent is within the range CDTFA expects for a restaurant and argues that it was unreasonable for CDTFA to refer to the markup in its explanation for impeaching appellant's records. CDTFA, however, was concerned by the fluctuation of the markups (508 percent for 2008, 282 percent for 2009, and 397 percent for 2010) and did not find using an average of 388 percent to be reasonable. OTA would typically expect a business's book markup to remain relatively consistent, and such broad fluctuations as seen here may be evidence of inconsistencies, and likely errors, in the records. In any event, CDTFA used its review of the markups only in its decision to conduct further investigation (the markups were not used in any way in the audit computations).

Appellant refers to a comparison of recorded sales for February 2012 to recorded sales for the years 2009 through 2011 and argues that the comparison reflects an error rate of less than 15 percent. Appellant also asserts that a review of the POS reports for February and March 2012 yielded an error rate of about 11 percent. The problem with these comparisons is that CDTFA did not observe the sales for any of the days in February or March 2012, and there is no certainty that the recorded sales are correct. In that regard, there are reasonable concerns raised by CDTFA regarding the POS reports appellant provided for the period February 15, 2012, through March 31, 2012. CDTFA noted that the POS reports did not include transaction numbers. Transaction numbers are key information in a report of sales because, without them, there is no available procedure for determining if some of the sales were not recorded or that some POS records were not provided. A POS report without transaction numbers is of little evidentiary value. Thus, OTA is not persuaded by appellant's reference to any differences it has calculated between recorded, but unverified, figures for February 2012 and recorded figures for the earlier years of the audit period.

Based on the foregoing, OTA finds that appellant has not shown that adjustments to the audited understatement of reported taxable sales are warranted.

[13] The record does not reflect how appellant paid its vendors, but it is reasonable to infer that cash proceeds were used for this purpose rather than depositing the cash and paying out of the bank account.

Issue 2: Was the understatement the result of negligence?

R&TC section 6484 provides that if any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the law or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto. Taxpayers are required to maintain and make available for examination on request by CDTFA, or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax returns. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include but are not limited to: (a) the normal books of account ordinarily maintained by the average, prudent businessperson engaged in the activity in question; (b) bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account; and (c) schedules or working papers used in connection with the preparation of the tax returns. (Cal. Code Regs., tit. 18, § 1698(b)(1).) 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, will be considered evidence of negligence and may result in the imposition of penalties. (Cal. Code Regs., tit. 18, § 1698(k).)

Generally, a penalty for negligence or intentional disregard should not be added to determinations associated with the first audit of a taxpayer. (Cal. Code Regs, tit. 18, § 1703(c)(3)(A); also see *Independent Iron Works, Inc. v. State Bd. Of Equalization* (1959) 167 Cal.App.2d 318, 321-324.) However, 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. (Cal. Code Regs., tit. 18, § 1703(c)(3)(A).)

Appellant contends with respect to the negligence penalty that if CDTFA had requested purchase records from vendors and applied a markup, then perhaps the negligence penalty would not have been imposed. Appellant further argues that any understatement in its reported taxable sales was minimal.

In its D&R, CDTFA notes that the audited understatement of $2,895,649 represents an error rate of 70.89 percent when compared with reported taxable sales of $4,084,707 for the audit period. CDTFA also observes that appellant did not provide basic books and records. In that regard, appellant did not provide POS reports, guest checks or cash register z-tapes for most of

the audit period,[14] and there is no evidence in the record that appellant provided a purchase journal or purchase invoices. CDTFA contends that an experienced restaurant operator of four locations would have to have known that taxable sales were substantially and consistently being understated.

The absence of purchase records and source documents related to sales is evidence of negligence in recordkeeping. Moreover, an error rate greater than 70 percent is evidence of negligence in reporting. When, as here, appellant appears to have reported approximately one-half of its gross receipts, OTA cannot find that appellant had a good faith and reasonable belief that it was properly recording and reporting its sales. Therefore, OTA finds that the understatement was the result of negligence, and the penalty was properly applied, even though appellant had not been audited previously.

Issue 3: Has appellant established that additional interest should be relieved based on unreasonable error or delay by CDTFA?

The law provides that the amount of the determination shall bear interest from the last day of the month following the quarterly period for which the amount should have been paid to the date of payment. (R&TC, § 6482.) Interest may be relieved where the failure to pay the tax was due to an unreasonable delay or error on the part of a CDTFA employee. (R&TC, § 6593.5.) A taxpayer seeking relief from the interest must file a statement under penalty of perjury setting forth the facts upon which the request for relief is based. (R&TC, § 6593.5(c).) 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 a failure to act by, the taxpayer. (Cal. Code Regs., tit. 18, § 1703(b)(1).) The standard of review of a denial by CDTFA of a request for interest relief is for abuse of discretion. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

After the hearing, appellant submitted a request to relieve interest signed under penalty of perjury as required by R&TC section 6593.5(c). Specifically, appellant asserts that it took four years to issue the SSD&R after removing the appeal from BOE's oral hearing calendar, which had been set to hear this matter on April 13, 2016. CDTFA concedes that unreasonable administrative delays occurred. Thus, CDTFA conceded to relieve interest for the period from

[14] As noted previously, appellant provided POS reports without transaction numbers for the period February 15, 2012, through March 31, 2012, only and provided guest checks and cash register z-tapes only for the months of February and March 2012.

April 1, 2017, through June 30, 2017; and for the period from April 1, 2018, through January 31, 2019.

OTA's review of the record reveals that the unreasonable delays by CDTFA have been conceded and that CDTFA's denial of the remaining interest relief was not an abuse of discretion. Specifically, CDTFA is relieving interest from April 1, 2017, through June 30, 2017, because the matter was under review by CDTFA's Settlement Bureau for a year when it should have been no more than nine months. CDTFA is additionally relieving interest from April 1, 2018, through July 31, 2018, because it made an error by referring the appeal to OTA instead of sending it back to CDTFA's Appeals Bureau. Lastly, CDTFA is relieving interest from August 1, 2018, through January 31, 2019, due to its unexplained delay in issuing its SSD&R. Appellant has not established any additional unreasonable delays or errors by a CDTFA employee. Accordingly, OTA concludes that CDTFA's denial of the remaining interest relief was not an abuse of discretion.

HOLDINGS

1. Appellant has not shown that adjustments are warranted to the audited understatement of reported taxable sales.
2. The understatement was the result of negligence.
3. Appellant has not established that additional interest should be relieved based on unreasonable error or delay by CDTFA other than that conceded by CDTFA.

DISPOSITION

As conceded by CDTFA, interest will be relieved as indicated above. Otherwise, CDTFA's decision to deny the petition is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
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Suzanne B. Brown
Administrative Law Judge

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Daniel K. Cho
Administrative Law Judge

Date Issued: 1/26/2023