

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. WRIGHT

) OTA Case No. 220911327
) CDTFA Case ID: 01-555-342
)
)
)
)

OPINION

Representing the Parties:

For Appellant: C. Wright
For Respondent: Courtney Daniels, Attorney
Chad Bacchus, Attorney
Jason Parker, Chief of Headquarters Ops.

L. KATAGIHARA, Administrative Law Judge: Pursuant to California Code of Regulations, title 18, section 30103(b)(1), C. Wright (appellant) appeals a Decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s request for relief of the interest assessed in a Demand for Immediate Payment (Demand) dated February 12, 2020, and a subsequently imposed collection cost recovery fee (CCRF) of \$570. CDTFA’s Demand was based on appellant’s self-assessed sales and use tax return (return) reporting the purchase of an aircraft on May 22, 2018, for \$595,000.¹

Office of Tax Appeals (OTA) Administrative Law Judges Suzanne B. Brown, Keith T. Long, and Lauren Katagihara held an oral hearing for this matter electronically on December 14, 2023. At the conclusion of the hearing, OTA held the record open for additional briefing. After the additional briefing period ended, OTA closed the record and this matter was submitted for an Opinion.

¹ CDTFA did not issue a Notice of Determination in this case as the tax assessment was based on appellant’s return.

ISSUE

Whether interest relief is warranted.

FACTUAL FINDINGS

1. Appellant purchased an aircraft on May 22, 2018, for \$595,000.
2. On or about October 10, 2018, CDTFA received information from the Federal Aviation Administration regarding appellant's purchase of the aircraft.
3. By letter dated January 14, 2020, CDTFA advised appellant of his obligation to, as relevant here, pay the use tax.
4. In response, that same month, appellant filed a return reporting his purchase of the aircraft and paid the associated use tax.
5. Appellant also submitted a request to CDTFA for relief of a failure-to-file penalty and interest that CDTFA was imposing.
6. CDTFA sent appellant the Demand on February 12, 2020, demanding payment of the unpaid failure-to-file penalty and interest.
7. The next day, CDTFA notified appellant that it granted his request for relief of the failure-to-file penalty but denied his request for relief of interest.
8. On May 13, 2020, CDTFA assessed a CCRF of \$570 against appellant because the interest remained unpaid.
9. Thereafter, appellant filed a request for an appeals conference with CDTFA to dispute the interest and CCRF. CDTFA granted appellant's request.
10. On July 26, 2022 (after the appeals conference), CDTFA issued a Decision denying appellant's request for relief of the interest and CCRF, and this timely appeal followed.
11. Prior to the oral hearing, CDTFA conceded and refunded the CCRF to appellant; therefore, the CCRF is no longer in dispute.

DISCUSSION

There is no dispute that appellant's purchase of the aircraft was subject to use tax. The purchaser of an aircraft whose purchase is subject to use tax must report and pay the tax to CDTFA. (R&TC, § 6291; Cal. Code Regs., tit. 18, § 1610(c)(2)(A).)² As relevant here, a purchaser shall make a return and pay use tax, measured by the sales price of the aircraft, on or before the last day of the twelfth month following the month during which the aircraft was purchased. (Cal. Code Regs., tit. 18, § 1610(c)(2)(A).) When a tax remains unpaid, the imposition of interest is mandatory. (R&TC, § 6482.) Interest with respect to use tax for an aircraft is imposed as if the due date of the tax was on or before the last day of the month next succeeding the quarterly period in which the aircraft was purchased. (R&TC, §§ 6291, 6451.)

The law allows CDTFA, in its discretion, to grant relief of 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 CDTFA acting in his or her official capacity. (R&TC, § 6593.5(a)(1).) Such a delay means, for example, an unreasonable failure to work on an appeal. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) The mere passage of time does not establish error or delay. (See *Appeal of Eichler*, 2022-OTA-029P.) In addition, an unreasonable 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, appellant. (R&TC, § 6593.5(b).)

In reviewing CDTFA's decisions to deny interest relief, OTA applies an abuse of discretion standard. (*Appeal of Micelle Laboratories, Inc.*, *supra*; *Appeal of Eichler*, *supra*.) To show an abuse of discretion, appellant must establish that, in refusing to relieve interest, CDTFA exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Eichler*, *supra*.)

Appellant contends that he is entitled to interest relief because his failure to timely pay the tax was caused by CDTFA's unreasonable error or delay in informing him that the tax was due. Specifically, appellant argues that by October 10, 2018, CDTFA was aware of his aircraft

² R&TC section 6202 and California Code of Regulations, title 18, section 1610(c)(2)(C) provide that when a person purchases an aircraft from another person through a broker, the purchaser's liability for use tax is relieved if the purchaser paid an amount as sales or use tax to the broker, and the purchaser obtains and retains a receipt from the broker showing the payment of such tax. Although appellant purchased the aircraft from a broker, appellant does not dispute that he owed the use tax.

purchase, but waited until January 14, 2020, to inform him that he needed to file a return and pay the tax owed. In addition, appellant asserts that he was advised by the aircraft broker to wait to pay the tax until CDTFA provided a bill. Appellant notes that upon receipt of CDTFA's January 14, 2020 letter, he immediately paid the tax.

Although nearly 15 months passed between the time CDTFA learned of appellant's purchase of the aircraft and when CDTFA advised appellant of his obligation to pay the use tax, the mere passage of time does not establish error or delay. (See *Appeal of Eichler, supra.*) The record does not indicate that there was any unreasonable error or delay by a CDTFA employee acting in his or her official capacity that contributed to appellant's failure to pay the tax, as it was appellant, not CDTFA, that had the obligation to take affirmative steps to report and pay the use tax associated with his purchase of the aircraft. (R&TC, § 6291; Cal. Code Regs., tit. 18, § 1610(c)(2)(A).)

Furthermore, appellant's reliance on the advice of the aircraft broker does not constitute grounds for interest relief.³ Instead, appellant's assertion confirms that at or near the time of his purchase of the aircraft, he was aware that use tax was owed but chose not to pay the use tax until he received the Demand. As appellant's delay in the payment of the use tax was attributable to his failure to act, there cannot be a finding of unreasonable error or delay on the part of CDTFA. (R&TC, § 6593.5(b).)

Based on the foregoing, OTA finds that CDTFA did not abuse its discretion in denying appellant's request for interest relief.

³ OTA notes that there is nothing in the Sales and Use Tax Law that provides for relief of interest based on a taxpayer's reliance on advice from a tax professional. Even if there was, appellant has not shown that his aircraft broker was a tax professional with competency in this area of tax law. (See *Appeal of Summit Hosting LLC*, 2021-OTA-216P (citing *U.S. v. Boyle* (1985) 469 U.S. 241, 250-251).)

HOLDING

Interest relief is not warranted.

DISPOSITION

CDTFA's actions are sustained.

DocuSigned by:
Lauren Katagihara
F595B34610D6470...
Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:
Suzanne B. Brown
47F45ABE39E34D0...
Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Keith T. Long
DC88A00D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 2/28/2024