

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeals of:

**R. PERRILLO AND**  
**K. WHITEMAN**

) OTA Case Nos.: 19024329; 19024331  
) CDTFA Case ID: 932539; 9347978; 937826;  
) 937829; 1008157  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellants:

R. Perrillo  
K. Whiteman

For Respondent:

Sunny Paley, Tax Counsel III  
Stephen Smith, Tax Counsel IV  
Jason Parker, Chief of Headquarters Ops.

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, R. Perrillo (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant's petition for redetermination of two Notices of Determination (NODs) dated June 18, 2015, and December 16, 2015, respectively. The June 18, 2015 NOD is for tax of \$7,213.00, plus applicable interest, and a penalty of \$721.30, for the period May 3, 2012, through December 31, 2012 (liability period 1). The December 16, 2015 NOD is for tax of \$5,477.68, plus applicable interest, and a penalty of \$478.40, for the period of January 28, 2014, through December 31, 2014 (liability period 2).

Pursuant to R&TC section 6901, K. Whiteman (appellant) appeals a decision issued by CDTFA denying appellant's petition for redetermination of three NODs dated January 21, 2016, January 28, 2016, and April 17, 2017, respectively. The January 21, 2016 NOD is for tax of \$2,809.18, plus applicable interest, for the period of April 5, 2013, through December 31, 2013 (liability period 3). The January 28, 2016 NOD is for tax of \$2,673.00, plus applicable interest,

---

<sup>1</sup> 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.

for the period of January 1, 2014, through December 31, 2014 (liability period 4). The April 17, 2017 NOD is for tax of \$520.00, plus applicable interest, for the period of January 1, 2015, through December 31, 2015 (liability period 5).

Consistent with California Code of Regulations, title 18, section 30212(a), the Office of Tax Appeals (OTA) consolidated these appeals on January 15, 2020.

OTA Administrative Law Judges Josh Lambert, Keith T. Long, and Josh Aldrich held an electronic oral hearing for this matter on November 16, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

### ISSUES<sup>2</sup>

1. Whether appellants are liable for use tax on the purchase and use of the imported tangible personal property (TPP).
2. Whether any adjustment is warranted to the determined sales prices of the TPP.
3. Whether appellants are entitled to relief based upon reasonable reliance of written advice.
4. Whether relief of interest is warranted.
5. Whether R. Perrillo is entitled to relief from the failure-to-file penalty.
6. Whether R. Perrillo is entitled to relief from the collection cost recovery fee (CCRF).

### FACTUAL FINDINGS

#### *Liability period 1*

1. CDTFA obtained copies of various *Entry Summary* forms from the Department of Homeland Security, U.S. Customs and Border Protection (U.S. Customs) as follows:
  - a. A May 17, 2012 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported items, destined for California, on May 3, 2012. There are two line-items for antiques (e.g., a tea caddy, a parchment stand, a perfume burner, a games table, and a bronze candlestick). For the first line-item, the declared value of the

---

<sup>2</sup> During the oral hearing, appellants raised an issue not properly before OTA. Specifically, a purportedly improper lien on their real property. (Cal. Code Regs., tit. 18, § 30104(d).) OTA does not discuss the issue further.

- items was €25,740.<sup>3</sup> For the second line-item, the declared value of the items was €910. The total value of €26,650.00 was converted to \$35,055.40 (€1:\$1.3154).<sup>4</sup>
- b. An August 3, 2012 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported items (a Danish silver five-piece coffee set), destined for California, on July 20, 2012. The declared value of the items was €19,462.50, which was converted to \$23,862.97 (€1:\$1.2261).
  - c. A September 6, 2012 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported items (a Danish silver five-piece coffee set), destined for California, on August 22, 2012. The declared value of the items €19,462.50, which was converted to \$24,273.63 (€1:\$1.2472).
  - d. A September 12, 2012 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported an item (an antique lamp), destined for California, on August 28, 2012. The declared value of the item was SEK 20,000, which was converted to \$2,890.64 (SEK.144532:\$1).<sup>5</sup>
2. CDTFA determined the taxable measure of \$84,886 for liability period 1 based on the converted value of the imported items.
  3. On June 18, 2015, CDTFA issued the NOD for liability period 1. The NOD is for tax of \$7,213.00, plus applicable interest, and a penalty of \$721.30.
  4. On August 4, 2015, CDTFA issued R. Perrillo a *Demand for Immediate Payment*.
  5. On September 9, 2015, CDTFA determined that the imported items recorded on the July 20, 2012 *Entry Summary* and the August 22, 2012 *Entry Summary* were duplicates. CDTFA reduced the measure of tax by \$24,274. This resulted in a reduction of total tax due to \$5,149.
  6. CDTFA sent R. Perrillo a *Notice of Collection Fee* and imposed a CCRF of \$570 because the liability remained unpaid for more than 90 days.
  7. On December 22, 2015, R. Perrillo submitted payment of \$5,149.

---

<sup>3</sup> The euro sign (€) is the currency sign used for the euro.

<sup>4</sup> OTA infers from the documents that the exchange rates and converted amounts were determined by U.S. Customs at the time of importation.

<sup>5</sup> The Swedish krona (SEK) is the currency of Sweden.

8. On January 27, 2016, CDTFA agreed to remove the failure-to-file penalty of \$721.30 but did not agree to relief of the CCRF or interest.

*Liability period 2*

9. CDTFA obtained *Entry Summary* forms from U.S. Customs as follows:
  - a. A February 11, 2014 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported items (a pair of antique wall lights), destined for California, on January 28, 2014. The declared value of the items was £16,900, which was converted to \$27,785.29 (£1:\$1.6441).<sup>6</sup>
  - b. A June 11, 2014 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported an item (an antique marble mantel timepiece), destined for California, on May 28, 2014. The declared value of the item was £11,875, which was converted to \$19,758.81 (£1:\$1.6639).
  - c. An August 29, 2014 *Entry Summary* from U.S. Customs, reports that R. Perrillo imported an item (a regency giltwood and ebonized convex girandole), destined for California, on August 15, 2014. The declared value of the item was £4,160, which was converted to \$7,133.15 (£1:\$1.7147).
10. CDTFA determined the taxable measure of \$54,677 for liability period 2 based on the converted value of the imported items.
11. On December 16, 2015, CDTFA issued the NOD for liability period 2. The NOD is for \$4,785.00 in tax, plus applicable interest, and a 10 percent failure-to-file penalty of \$478.40.
12. On May 10, 2016, CDTFA acknowledged that it received documentation that Sotheby's collected \$1,728.00 in California sales tax reimbursement on R. Perrillo's purchase of the marble mantel timepiece for \$19,759.00. Based on Sotheby's information, CDTFA adjusted the determination from \$4,784.00 to \$3,055.00 and the corresponding failure-to-file penalty was reduced to \$305.50.

---

<sup>6</sup> The pound sign (£) is the symbol for the currency of the United Kingdom.

*Liability period 1 & 2*

13. On January 12, 2016, R. Perrillo submitted a *Request for Relief from Penalty, Collection Cost Recovery Fee, and /or Interest* (CDTFA-735) requesting relief from penalties, cost collection recovery fees, and interest.
14. On January 27, 2016, appellant filed a timely claim for refund disputing the NODs.
15. CDTFA requested that R. Perrillo provide supporting documentation regarding the claimed gifts (passport entries, travel itineraries, or related documents).
16. On August 31, 2018, CDTFA issued its decision, which deleted the \$721.30 failure-to-file penalty for liability period 1, but otherwise denied R. Perrillo's petition for redetermination.
17. R. Perrillo timely appealed to OTA.

*Liability period 3*

18. CDTFA obtained an *Entry Summary* from U.S. Customs dated April 19, 2013. The *Entry Summary* reports that K. Whiteman imported a painting, destined for California, on April 5, 2013. The declared value of the item was £12,500, which was converted to \$19,040 (£1:\$1.5232).
19. CDTFA obtained an *Entry Summary* from U.S. Customs dated October 9, 2013. The *Entry Summary* reports that K. Whiteman imported antiques (a set of four armchairs), destined for California, on September 25, 2013. The declared value of the item was £8,125, which was converted to \$13,065 (£1:\$1.608).
20. CDTFA determined the taxable measure of \$32,105 for liability period 3 based on the converted value of the imported items.
21. On January 21, 2016, CDTFA issued the NOD for tax of \$2,809.18, plus applicable interest, for liability period 3.
22. On February 12, 2016, K. Whiteman timely filed a petition for redetermination appealing the NOD.

*Liability period 4*

23. CDTFA obtained an *Entry Summary* from U.S. Customs dated May 12, 2014. The *Entry Summary* reports that K. Whiteman imported antique furniture (an antique collector's cabinet), destined for California, on April 28, 2014. The declared value of the item was

£12,350, which was converted to \$20,549.16 (£1:\$1.6639).

24. CDTFA obtained an *Entry Summary* from U.S. Customs dated October 30, 2014. The *Entry Summary* reports that K. Whiteman imported items (porcelain figurines), destined for California, on October 16, 2014. The declared value of the items was \$10,000.
25. CDTFA determined the taxable measure of \$30,549 for liability period 4 based on the converted value, where applicable, of the imported items.
26. On January 28, 2016, CDTFA issued the NOD for tax of \$2,673, plus applicable interest, for liability period 4.
27. On February 12, 2016, K. Whiteman timely filed a petition for redetermination appealing the NOD.

#### *Liability periods 3 & 4*

28. On September 14, 2015, CDTFA sent K. Whiteman a consumer use tax return and a request to report and pay any applicable use tax on his purchases. CDTFA did not receive a response.
29. On November 19, 2015, CDTFA sent a *Notice of Delinquency – Use Tax*.
30. On November 26, 2015, K. Whiteman responded stating that he did not need to file a return because all of the imported items were gifted to him by R. Perrillo.
31. On December 3, 2015, CDTFA requested supporting documentation.

#### *Liability period 5*

32. CDTFA obtained an *Entry Summary* from U.S. Customs dated April 29, 2015. The *Entry Summary* reports that K. Whiteman imported items (glass beads, and a marble washbasin), destined for California, on April 17, 2015. The declared value of the items was €3,569, which was converted to \$3,808.48 (€1:\$1.0671).
33. CDTFA obtained an *Entry Summary* from U.S. Customs dated May 12, 2015. The *Entry Summary* reports that K. Whiteman imported items (Italian linens or bedding and glass beads), destined for California, on April 28, 2015. The declared value of items was €1,945, which was converted to \$2,135 (€1:\$1.0979).
34. On February 19, 2016, CDTFA sent K. Whiteman a consumer use tax return and a request to report and pay any applicable use tax on his purchases.

35. On April 10, 2016, K. Whiteman responded stating that the imported items were gifted to him outside of California by R. Perrillo.
36. On December 1, 2016, CDTFA requested copies of shipping records related to the imported items. In response, CDTFA received copies of invoices and brokerage documents.
37. On December 7, 2016, CDTFA received a letter from R. Perrillo stating that he purchased the imported items in Europe and sent them to K. Whiteman by mail.
38. On May 17, 2017, CDTFA sent appellant a request for supporting documentation, but received no response.
39. CDTFA determined the taxable measure of \$5,943 for liability period 5 based on the converted value of the imported items.
40. On April 17, 2017, CDTFA issued the NOD for tax of \$520, plus applicable interest, for liability period 5.
41. On May 1, 2017, K. Whiteman filed a timely petition for redetermination appealing the NOD.

*Liability periods 3, 4, & 5*

42. On August 31, 2018, CDTFA issued its decision, which denied K. Whiteman's petition for redetermination of the NODs.
43. K. Whiteman timely appealed to OTA.

*Liability periods 1-5*

44. On October 16, 2015, CDTFA issued a letter to K. Whiteman in response to 7 questions. The letter, in pertinent part, indicated as follows:
  - a. *Question 1*: "Are items that were gifted in the [United Kingdom] and then transported exempt from use tax?"
  - b. *Response 1*: When a gift is made and title to the gift transfers outside of California, it is exempt from California use tax. If items were gifted to you outside of California, the items would not be subject to use tax when you transported them to California since you did not purchase the items. If you are the person gifting the items, you are considered the consumer of the items. If the items are gifted outside of California, you would be regarded as having consumed

the property outside of California and use tax would not apply. In support, the response cites to California Code of Regulations, title 18, (Regulation) section 1670. The response also provides references to Sales and Use Tax (SUT) Annotations 280.0360 *Deposit of Gift in Mail* (07/18/50) and 280.0390 *Donations* (01/08/92).<sup>7</sup>

- c. *Question 2*: “If the item or items in question were in excess of \$14,000 will the individual be required to file amendments to their State and Federal returns?”
- d. *Response 2*: Explains that “If you owe use tax on the items in questions and did not pay California use tax directly to [CDTFA] or on your state income tax return, you may pay your use tax here,<sup>8</sup> if you are not already registered with [CDTFA].”
- e. *Question 3*: “The values the state is using included [value added tax (VAT)] and the Commission on the lots purchased from Bonhams, Christies, and Sotheby[’]s, some 30(percent) greater than the actual value. If the value is in fact the hammer price are the amounts overstated?”
- f. *Response 3*: The amount subject to use tax would include all amounts required to be paid in order to receive the items which would include any commissions paid to the auctioneer or any VAT. R&TC section 6011(a) defines “Sales price” in part. The response also references SUT Annotations as additional guidance: 290.0030 *Auction Sales – Buyer’s Premium* (03.16.88) and 570.1655 *Indian Tribal Tax* (04/05/05).
- g. *Question 4*: “Does the State have a duty to the individuals to accurately recover tax owed and not place undue burden on the taxpayer? The State[’]s complete files contained information such as duplicate entry fees and/or lack information on damaged and returned items.”
- h. *Response 4*: CDTFA has the duty to administer the Sales and Use Tax Law for the State of California. The response also cites to R&TC section 6202.

---

<sup>7</sup> SUT Annotations are digests of opinions written by CDTFA’s legal staff and evidence administrative interpretations made by CDTFA in the normal course of its administration of the Sales and Use Tax Law. (*Yamaha Corp of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 15.) Although SUT Annotations have substantial precedential effect within CDTFA, they are not binding upon taxpayers, OTA, or courts. (*Ibid.*)

<sup>8</sup> It appears that the underscored text included a hyperlink that is not present in the evidentiary record.



- i. *Question 5*: “Why does the state assign different account numbers for every entry, rather than having one clean account number assigned to an individual?”
- j. *Response 5*: Explains that taxpayers may register for a Consumer Use Tax (SU) account with CDTFA. An SU account allows you to report and pay tax on all your purchases subject to use tax on one account number.
- k. *Question 6*: “If, as part of the gift to another individual, the gift giver used his Federal Express account for shipping. What proof do you have that the recipient of the was the one that opened the box, rather than the shipper?”
- l. *Response 6*: CDTFA would not have any information as to who opens a box or gift when it enters California.
- m. *Question 7*: “Can you provide the law that the State of California has jurisdiction assess use tax on item bought outside the country?”
- n. *Response 7*: The R&TC imposes a use tax upon the storage, use, or other consumption in this state of TPP, not otherwise subject to the sales tax. The obligation to pay use tax is on the consumer. The response cites to R&TC sections 6201, 6016, 6246, 6008, and 6009. The response also cites to Regulation section 1685.
- o. The letter also states, “The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under [R&TC] section 6596.”

### DISCUSSION

#### Issue 1: Whether appellants are liable for use tax on the purchase and use of the imported TPP.

The storage, use, or other consumption in this state of TPP purchased from any retailer for storage, use, or other consumption in this state is subject to use tax, unless otherwise exempt or excluded. (R&TC, § 6201.) Generally, the person storing, using, or otherwise consuming TPP in this state is liable for the use tax. (R&TC, § 6202(a).) Storage and use do not include the keeping, retaining, or exercising any right or power over TPP for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. (R&TC, § 6009.1.) There is a rebuttable presumption that TPP shipped or brought into this state by the purchase is purchased for storage, use, or consumption in this state. (R&TC, § 6246.) If a purchaser enters

into a contract where the consideration is set forth in terms of foreign currency, tax is measured in U.S. dollars based on the conversion rate of the foreign currency to U.S. dollars on the date of the contract. (Cal. Code Regs., tit. 18, § 1654(d).)

Use or consumption includes making a gift of property to others. (Cal. Code Regs., tit. 18, § 1670(a).) A person who transfers property without receiving any consideration is the consumer of that property for purposes of application of the use tax. (*Ibid.*) The elements of a gift are as follows: (1) competency of a donor to contract; (2) a voluntary intent on the part of the donor to make a gift; (3) delivery, either actual or symbolic; (4) acceptance, either actual or implied; (5) the complete divestment of all control over the property by the donor; and (6) a lack of consideration for the gift. (*Yamaha Corp of America v. State Bd. of Equalization (Yamaha)* (1999) 73 Cal.App.4th 338, 358.)

If CDTFA is not satisfied with the amount of tax reported by a taxpayer, or in the case of a failure to file a return, 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, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, CDTFA used the entry summaries, invoices, or brokerage documents to establish the taxable measure based on the converted declared value of the TPP that was imported to the appellants' shared residence in California. Appellants, citing privacy concerns, refused to provide the supporting documents that CDTFA requested (e.g., travel itineraries, receipts for plane tickets, copies of passport stamps, or other documents to support that a gift had occurred). Using the available information, CDTFA determined the use tax measures and issued NODs to appellants for liability periods 1 – 5. Also, with respect to liability period 1, CDTFA made adjustments based on the Sotheby's information that it subsequently received. Since the imported TPP is rebuttably presumed for use in this state, OTA finds that CDTFA's decision to base the NODs on the available information is reasonable and rational. Thus, the burden of proof shifts to appellants.

Appellants' central argument is that the imported items were purchased as gifts. Moreover, appellants argue the imported items were consumed outside of California and not subject to use tax. Appellants continue to assert that no use tax is due on the imported items.

Appellants also argue that CDTFA "trolled for U.S. Customs data" and made errors interpreting the entry summaries, invoices, and shipping documents. Appellants claim that imposition of the use taxes, interest, and fees violate their due process rights. Appellants assert that they were "verbally bullied, literally bombarded with papers, assigned multiple account numbers, and forced to reply to unwarranted requests" by CDTFA employees.<sup>9</sup> Appellants claim that CDTFA has "built a literal house of cards using essentially three pieces of paper." Appellants also claim that some of the items (e.g., a clock) arrived damaged. Appellants reiterate their objections to providing supporting documentation based on privacy concerns.

CDTFA argues that there is no evidence that the items were gifted. Instead, CDTFA argues that the documentation supports a multi-year pattern of importing items for use at appellants shared residence. Furthermore, CDTFA argues that even if a gift were attempted by the appellants, there is no evidence that the fifth element in *Yamaha* (i.e., the complete divestment of all control over the property by the donor) has been met by appellants since the items were sent to appellants' shared residence.

First, OTA notes that it does not have the authority to address actual or alleged violations of due process at the agency (CDTFA) level. (Cal. Code Regs., tit. 18, § 30104(d).) As previously established, CDTFA met its initial burden. Thus, the burden of proof shifted to appellants. While appellants provided testimony in support of their position, appellants have not provided any supporting documentation to rebut the presumption in R&TC section 6246 or to overcome the burden that shifted to appellants. (See *Appeal of Talavera, supra.*) Therefore, OTA finds that appellants owe use tax on the imported items.

Issue 2: Whether any adjustment is warranted to the determined sales prices of the TPP.

Appellants argue that some items arrived damaged, were returned, or delivered to Nevada. Appellants also argue that the exchange rates used were inaccurate.

CDTFA argues that according to K. Whiteman's email exchange with Lawrence Fine Art Services on June 9, 2014, R. Perrillo arranged to have the marble mantel timepiece repaired, not

---

<sup>9</sup> There is no documentary evidence in the record that supports this argument.

returned. Nonetheless, the issue regarding use tax with respect to the marble mantel piece is moot since CDTFA adjusted the determination based on Sotheby's documentation which showed that Sotheby's had collected California sales tax on that sale. CDTFA also argues there is no evidence that any of the imported items were returned or delivered to points outside of California (e.g., Nevada). In support, CDTFA points to the address on the various entry summaries. Each address shows the imported items are destined for appellants' California residence address.

As noted above, OTA found that the burden of proof shifted to appellants. Appellants have not provided any documentation to show that adjustments are warranted based on damage, returns, or deliveries to Nevada. Furthermore, appellants have not provided any evidence to show that the exchange rates should be adjusted. Thus, OTA finds that appellants failed to meet their burden of proof regarding adjustments to the determined sales prices of TPP.

Issue 3: Whether appellants are entitled to relief based upon reasonable reliance of written advice.

If a taxpayer's failure to timely pay tax is due to reasonable reliance on written advice provided by CDTFA, the taxpayer may be relieved on the taxes, interest, and any penalties added thereto. (R&TC, § 6596(a).) OTA has statutory authority to decide an appeal involving a request for relief of taxes, interest, and penalties pursuant to R&TC section 6596. R&TC section 6596 imposes four general requirements in order to grant relief. First, the taxpayer must have requested written advice on the application of tax from CDTFA and the request must set forth the specific facts and circumstances of the activity or transaction for which the written advice is requested. (R&TC, § 6596(b)(1).) Second, CDTFA must have responded 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, as relevant here, in reasonable reliance on the written advice, the taxpayer must have failed to pay use tax on the storage, use, or other consumption in this state of TPP. (R&TC, § 6596(b)(3)(B).) Fourth, the liability for taxes must have occurred 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 taxes is based. (R&TC, § 6596(c).)

Even if use tax were owed, appellants contend that they relied upon oral advice and the October 16, 2015 letter (written advice). Appellants argue that they were told things verbally,

which were subsequently reneged upon. Appellants claim that there was an oral contract that bound them and CDTFA. Moreover, appellants argue that the October 16, 2015 letter supports their argument; and, therefore, OTA should find in their favor.

As a preliminary matter regarding the alleged oral advice, OTA notes that appellants have not provided legal authority for relief from tax based on reliance of oral advice. Appellants also have not substantiated the purported oral contract or oral advice with any documentation, circumstantial or otherwise. Thus, OTA finds that appellants are not entitled to relief based on reliance on oral advice.

Regarding the written advice analysis, appellants satisfied the requirement under R&TC section 6596(c) by submitting the signed CDTFA-735. As a preliminary matter, OTA notes that the October 16, 2015 letter expressly precludes relief based on this written advice. The letter clearly, and unequivocally states, “*The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under [R&TC] section 6596.*” (Emphasis added.) Thus, it appears CDTFA did not intend to provide specific written advice based on appellants' factual situation.

With respect to the additional elements of R&TC section 6596, the first element imposes a requirement of specificity of facts and circumstances of the transaction. Not only were CDTFA's responses general in nature, but appellants did not provide sufficient specificity regarding their transaction to comply with the R&TC section 6596(b)(1). For example, *Question 1* does not include specifics like appellants' shared residence; where both appellants were located when the purported gift occurred; or whether the purported gift occurred prior to delivery of the gifts to the shipper. In other words, a plain readings of appellants' questions and CDTFA's responses demonstrate generality over specificity. The third element requires appellants to have reasonably relied on the written advice. Here, however, the chronology of events renders such a reliance impossible because the first item at issue was imported on May 3, 2012, and the last item at issue was imported on April 28, 2015, whereas the letter was written on October 16, 2015. Since the activity or transactions occurred prior to the issuance of the letter, appellants could not have relied upon it. Based on the foregoing, OTA reiterates its finding that appellants are not entitled to relief based on reasonable reliance of written advice or the October 16, 2015 letter.

Issue 4: Whether interest relief is warranted.

The imposition of interest is mandatory. (R&TC, § 6482.) There is no statutory right to interest relief. (R&TC, § 6593.5.) 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 Michelle Laboratories, Inc.*, 2020-OTA-290P.) 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, 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).) Appellants bears the burden of proof to show interest relief is warranted. (Cal. Code Regs., tit. 18, § 30219.)

Here, R. Perrillo submitted a CDTFA-735 requesting relief from penalties, cost collection recovery fees, and interest. Appellants argue that interest is owed to them for the overpayment of use taxes that were not due. Appellant also argue that CDTFA created confusion by creating multiple use tax accounts, which caused delays. Here, appellants had the option to apply for a SU account to reduce the number of accounts and streamline use tax reporting when applicable. OTA notes that appellants have not demonstrated an unreasonable error or delay attributable to CDTFA. Instead, the delays are attributable to appellants' refusal to provide documentation. Thus, OTA finds that appellants are not entitled to interest relief.

Issue 5: Whether R. Perrillo is entitled to relief from the failure-to-file penalty.<sup>10</sup>

If any person fails to make a return, CDTFA will estimate the tax the person is required to pay and add a 10 percent penalty, commonly known as a failure-to-file penalty. (R&TC, § 6511.) The failure-to-file penalty may be relieved if the person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. (R&TC, § 6592(a).) A person seeking relief of a penalty under R&TC section 6592 must submit

---

<sup>10</sup> On January 27, 2016, CDTFA agreed to remove the failure-to-file penalty for liability period 1. Since this issue is moot OTA need not address it.

a signed statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief. (R&TC, § 6592(b).)

As noted above, R. Perrillo submitted a CDTFA-735 requesting relief from penalties. Here, it is undisputed that R. Perrillo failed to file a return for liability period 2. R. Perrillo disputes the failure-to-file penalty on the basis that the imported items of TPP were gifts to K. Whiteman and, thus, not subject to use tax. R. Perrillo also claims reliance on written and oral advice. These arguments were discussed and rejected above. Accordingly, OTA finds that R. Perrillo has failed to establish that the failure-to-file penalty should be relieved as to liability period 2.

Issue 6: Whether R. Perrillo is entitled to relief from the CCRF.

A CCRF shall be imposed on any person who fails to pay an amount of tax, interest, penalty, or other amount due and payable under the Sales and Use Tax Law. (R&TC, § 6833(a).) If a person's failure to pay any amount under the Sales and Use Tax Law is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the CCRF. (R&TC, § 6833(d)(1).) To be relieved of the CCRF, appellants must file a statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief. (R&TC, § 6833(d)(2).)


R. Perrillo requests relief from the CCRF for the June 18, 2015 NOD, liability period 2, based on the same arguments made under his request for relief under the failure-to-file penalty. CDTFA issued a *Demand for Immediate Payment* of the June 18, 2015 NOD. OTA notes that CDTFA issued the written letter to R. Perrillo and K. Whiteman on October 16, 2015, which is approximately three years after the items were imported. R. Perrillo has not provided any additional evidence that would demonstrate reasonable cause for relief of the CCRF. Thus, OTA finds R. Perrillo has not met his burden of proof to show that he should be relieved of the CCRF.

HOLDINGS

1. Appellants have failed to establish that use tax is inapplicable to their foreign purchases of TPP for shipment to California.
2. Appellants have failed to establish that adjustments are warranted to the determined sales prices of the imported TPP.
3. Appellants are not entitled to relief based on reasonable reliance of written advice.
4. Appellants have failed to establish entitlement to interest relief.
5. R. Perrillo has failed to establish that the failure-to-file penalty should be relieved.
6. R. Perrillo is not entitled to relief from the CCFR.

DISPOSITION


CDTFA’s action in denying appellants’ petition for redetermination is sustained.

DocuSigned by:  
  
 48745BB806914B4...

---


Josh Aldrich  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 DC88A60D8C3E442...

---

Keith T. Long  
 Administrative Law Judge

DocuSigned by:  
  
 CB1F7DA37831416...

---

Josh Lambert  
 Administrative Law Judge

Date Issued: 2/22/2023