

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)¹ 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,

¹ Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

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.

ISSUES²

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

² 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 €25,740.³ 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).⁴
- 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).⁵
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.

³ The euro sign (€) is the currency sign used for the euro.

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

⁵ 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).⁶
 - 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.

⁶ 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).⁷

- 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,⁸ 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.

⁷ 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.*)


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

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 has failed to establish that the CCRF should be relieved for reasonable cause.


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