OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 19044592 CDTFA Case ID: 927277
FOUR CAFE LLC, **dba Four Cafe**	

OPINION

Representing the Parties:

For Appellant: Solis Cooperson, Attorney

For Respondent: Nalan Samarawickrema, Hearing Representative
Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Four Cafe LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's petition for redetermination of a timely Notice of Determination (NOD) dated October 15, 2015.[2] The NOD is for tax of $124,248.56, plus applicable interest, and a penalty of $12,424.82, for the period October 1, 2010, through December 31, 2013 (liability period).

Office of Tax Appeals (OTA) Administrative Law Judges Richard Tay, Josh Aldrich, and Keith T. Long held an oral hearing for this matter in Cerritos, California, on April 13, 2023. At the conclusion of the hearing, the record was held open for appellant to submit an interest relief request. Upon review of the interest relief request, CDTFA now concedes to relieve interest for

[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.

[2] After the oral hearing, appellants raised the question of the NOD's timeliness for the first time. Appellant asserts that on January 26, 2015, it signed a waiver of the applicable statute of limitations for the period October 1, 2010, through March 31, 2012. Appellant contends that the NOD was not issued until October 15, 2015, which is after the extended statute of limitations date, and therefore the NOD is not valid for the period October 1, 2010, through June 30, 2012. However, the record shows that appellant signed a subsequent waiver of the statute of limitations on June 22, 2015, which extended the statute of limitations for the relevant periods to October 31, 2015. CDTFA issued the NOD on October 15, 2015. As such, the NOD was timely.

the periods May 1, 2014, through July 31, 2014, December 1, 2016, through March 31, 2017, and November 1, 2017, through January 31, 2018. Interest relief remains at issue for additional periods. Thereafter, the record was closed, and this matter was submitted for an opinion.

ISSUES

1. Whether a reduction to the amount of unreported taxable sales is warranted.
2. Whether the negligence penalty was properly imposed.
3. Whether additional interest relief is warranted.

FACTUAL FINDINGS

1. Appellant operated a restaurant in Eagle Rock, California, from November 25, 2009, through December 31, 2013. During the liability period, appellant reported total sales of $2,032,696, and taxable sales of $1,974,449.
2. CDTFA issued an audit engagement letter to appellant on November 8, 2013, which requested books and records for audit and a response by November 15, 2013.
3. After initial contacts on November 20, 2013, and November 22, 2013, CDTFA met with appellant at appellant's business on December 5, 2013. Appellant could not provide a complete copy of its Point of Sales (POS) system data. According to CDTFA's Form 414-Z (*Assignment Activity History*), appellant explained that some of the POS data was unavailable because of a system crash.[3] CDTFA agreed to a second meeting with appellant on January 16, 2014.
4. On January 17, 2014, CDTFA contacted appellant to make an appointment to obtain POS data. At appellant's request, this appointment was made for February 5, 2014. At the appointment, appellant provided some of its books and records. CDTFA requested additional documentation, which it received on March 10, 2014.

[3] It is unclear when the POS system crashed. According to the Assignment Activity History, the POS data was lost in 2013. However, at the oral hearing appellant testified that it had used two POS systems during the liability period. Appellant explained that the first system was in use from 2010 until sometime in 2012, when it crashed. Appellant explained that, because of the crash, all of the first POS system data was lost.

5. On July 22, 2014, CDTFA contacted appellant to sign a waiver of the statute of limitations. Thereafter, CDTFA was in contact or attempted contact with appellant on the following dates: July 29, 2014, September 18, 2014, and September 26, 2014.
6. CDTFA faxed a copy of the audit workpapers to appellant on September 18, 2014.
7. For the audit, appellant did not provide a complete set of books and records. Instead, appellant provided: federal income tax returns for 2010, 2011, and 2012; merchant credit card statements for the liability period; bank statements for 2011 and the first quarter of 2013 (1Q13) through 3Q13; POS detail reports for August 30, 2013, through December 31, 2013; and profit and loss statements for the period 2010 through 2012. CDTFA also obtained federal Form 1099-K data for 2011 and 2013.[4]
8. Upon comparison, the gross receipts that appellant reported on its federal income tax returns exceeded the total sales that appellant reported on its sales and use tax returns by $546,618 for the period 2010 through 2012.
9. CDTFA compared appellant's reported taxable sales to the merchandise purchases that appellant recorded on its federal income tax returns and calculated book markups of 148.52 percent for 2010, 97.77 percent for 2011, and 102.28 percent.[5] CDTFA considered the calculated book markups to be lower than expected and an indication that appellant's reported taxable sales were understated.
10. CDTFA reviewed appellant's POS detail reports and compared appellant's recorded cash sales to appellant's recorded credit card sales. CDTFA calculated a credit card sales ratio of 77.14 percent. CDTFA also calculated an audited tip ratio of 7.48 percent.[6]

[4] Form 1099-K is an IRS Form titled, "Payment Card and Third-Party Network Transactions," which shows the monthly and annual amounts paid to a merchant by a bank, credit card company, or third-party network, during a given time period. Form 1099-K includes payments made by any electronic means, including but not limited to credit cards, debit cards, and PayPal.

[5] "Markup is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is $0.70 and it charges customers $1.00, the markup is $0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent (0.30 ÷ 0.70 = 0.42857). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records. Markup and gross profit margin are different. The gross profit is the sales price minus the cost. The formula for determining the gross profit margin is profit amount ÷ sales price. In the above example, the gross profit margin is 30.00 percent (0.30 ÷ 1.00 = 0.30).

[6] According to CDTFA, the tip ratio is lower than normal because at appellant's restaurant, customers would order food and pick up food at a counter; thus, there were no servers serving food to customers.

11. CDTFA used appellant's merchant credit card statements and federal Form 1099-K information to compile appellant's recorded credit card sales for the period January 1, 2011, through December 31, 2013. CDTFA computed credit card sales, reduced by tax and tip, of $2,439,964[7] and applied the 77.14 percent credit card sales ratio to project audited taxable sales of $3,163,128 (rounded). When compared to appellant's reported taxable sales, the audited taxable sales revealed unreported taxable sales of $1,303,805, for the period January 1, 2011, through December 31, 2013. This represents a 65.08 percent error ratio.

12. For 4Q10, CDTFA applied the 65.08 percent error rate to appellant's reported taxable sales to calculate unreported taxable sales of $74,924. In total, audited unreported taxable sales measured $1,378,729 ($1,303,805 + $74,924) for the liability period.

13. On September 26, 2014, CDTFA contacted appellant regarding the audit workpapers. Appellant's representative requested until the end of October 2014, to review the audit workpapers.

14. On December 4, 2014, and January 20, 2015, CDTFA contacted appellant. CDTFA met with appellant on January 26, 2015, to discuss the audit. Thereafter, CDTFA contacted appellant on February 11, 2015, and February 26, 2015.

15. CDTFA records state that it reviewed and continued to work on the audit during the period February 26, 2015, through May 29, 2015. On July 20, 2015, CDTFA issued a letter to appellant and requested a response within ten days. Appellant did not timely respond.

16. CDTFA contacted appellant on September 14, 2015. Appellant's representative stated that he did not have time to discuss the audit and needed at least a week to respond. CDTFA requested an additional waiver of the statute of limitations at this time. CDTFA attempted to contact appellant on October 1, 2015, and October 6, 2015. Appellant did not timely respond.

17. On October 15, 2015, CDTFA issued the aforementioned NOD for tax of $124,248.56, plus applicable interest. CDTFA also imposed a negligence penalty of $12,424.82 based

[7] Appellant's credit card sales reduced by tax and tip of $2,439,964 for the period January 1, 2011, through December 31, 2013, exceeds appellant's reported taxable sales for the liability period of $1,974,449 by $465,515.

on appellant's failure to keep adequate books and records and the amount of the understatement.

18. On November 3, 2015, appellant filed a timely petition for redetermination protesting the NOD. The petition for redetermination was acknowledged by CDTFA during December 2015.

19. During the period January 2016 through February 2018, appellant negotiated with CDTFA's Settlement and Taxpayer Services Bureau. CDTFA concedes that there were unreasonable delays and interest should be relieved for the period December 2016 through March 2017, and November 2017 through January 2018.

20. On March 28, 2018, CDTFA returned appellant's case to its inventory for the purpose of scheduling an appeals conference. On November 15, 2018, CDTFA held an appeals conference. The appeals conference holder allowed appellant to submit additional information until December 11, 2018.

21. On March 5, 2019, CDTFA issued its decision denying appellant's petition for redetermination.

22. On April 2, 2019, appellant filed this timely appeal. From April 2, 2019, through August 29, 2019, the appeal was actively involved in the briefing process.

23. From August 29, 2019, through January 2, 2020, the appeal was in review with OTA.

24. On February 2, 2023, OTA sent an oral hearing notice for an oral hearing scheduled on April 13, 2023. OTA held the oral hearing as scheduled. However, at the oral hearing appellant raised the issue of interest relief for the first time. As such, the appeal record was held open for appellant to provide a signed copy of CDTFA Form 735 to request interest relief.

25. On May 12, 2023, appellant provided a signed copy of Form 735. CDTFA and appellant filed additional briefs with respect to interest relief during the period May 12, 2023 through July 11, 2023. On July 20, 2023, OTA notified appellant and CDTFA that the appeal record was closed.

DISCUSSION

Issue 1: Whether a reduction to the amount of unreported taxable sales is warranted.

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) Although gross receipts from the sale of "food products" are generally exempt from the sales tax, sales of hot food and sales of food served in a restaurant are subject to tax. (R&TC, § 6359 (a), (d)(1), (d)(2), & (d)(7).) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts 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, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of 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, appellant did not provide a complete set of books and records for the audit. During the audit, CDTFA compared the sales that appellant reported on its sales and use tax returns to the gross receipts reported on appellant's federal income tax returns and found discrepancies that could not be explained. CDTFA also found differences between the amount of credit card sales deposited in appellant's bank account and the sales reported on appellant's sales and use tax returns. When CDTFA cannot compute taxable sales from appellant's records, it is appropriate to use an indirect approach to calculate the taxable measure. (See *Appeal of Amaya.*, 2021-OTA-328P.) To calculate appellant's taxable sales, CDTFA relied on appellant's merchant credit card services and Form 1099-K information to calculate a credit card sales ratio and project taxable sales for the period January 1, 2011, through December 31, 2013. CDTFA then calculated an error rate for that period, which it applied to 4Q10. The resulting audited taxable sales revealed

a deficiency measured by $1,378,729 for the liability period. OTA has previously found that the credit card sales ratio method is a recognized and accepted audit method. (*Appeal of Amaya*, *supra.*)

In light of the incomplete records and the discrepancies that could not be explained, it was reasonable and rational for CDTFA to use appellant's books and records in order to calculate a credit card sales ratio and error rate to calculate appellant's audited taxable sales. Accordingly, the burden shifts to appellant to show whether a reduction is warranted. (*Appeal of Talavera*, *supra.*)

On appeal, appellant argues that the audit measure should be reduced from $1,303,805.00 to $804,886.32. Appellant argues that the audit method does not account for the business's growth over time or expansion in size. Appellant also disputes the way that the credit card sales ratio was calculated. In support of its contentions that the measure of unreported taxable sales is overstated, appellant provides the following: 1) appellant's own bank deposit analysis for the year 2013; 2) bank statements and merchant bank statements for the period October 2010 through December 2013; 3) a Revel system POS sales report for the period September 2013 through October 2013; 4) Forms 1099-K for 2011 and 2012; 5) photos and floor plans documenting the business expansion; and 5) IRS audit information.

Appellant's bank deposit analysis is as follows. First, appellant scheduled alleged non-taxable deposits of $128,464.06, as well as cash and credit card deposits (or alleged total sales deposits) of $3,025,082.83 for the liability period. Appellant reduced the alleged total sales deposits by an asserted tip rate of 12.5 percent[8] and tax of 9.0 percent to calculate taxable sales deposits of $2,584,722.43. Appellant then increased this amount by 12.0 percent for a "cash allowance of taxable sales income"[9] of $194,609.89 to calculate asserted total taxable sales of $2,779,332.32 for the liability period. When compared to reported taxable sales, appellant's own bank deposit analysis reveals that appellant failed to report taxable sales measuring at least $804,886.32. As confirmed at the oral hearing, this amount is not in dispute.

[8] At the oral hearing, appellant provided testimony that the tip rate was 17.0 percent. This testimony conflicts with the asserted 12.5 percent tip rate from appellant's bank deposit analysis. However, this conflict does not affect the outcome of this case because appellant has not provided supporting evidence for either the asserted 12.5 percent tip ratio or the asserted 17.0 percent tip ratio.

[9] Appellant increased taxable sales by 12 percent in the months where it made no cash deposits. In months where appellant made cash deposits, the 12 percent allowance was reduced by the amount of the deposit.

In addition to the deficiency, there are several issues with appellant's bank deposit analysis. First, appellant asserts that it used merchant bank processing statements and its bank statements to schedule its credit card sales. However, there are several discrepancies between the amounts recorded on appellant's statements and the amounts recorded on appellant's analysis worksheet.[10] Thus, the bank deposit analysis appears inaccurate. Appellant also has not provided any supporting evidence for the asserted 12.5 percent tip ratio. Moreover, appellant's bank deposit analysis reveals that appellant made zero cash deposits for 15 months of the liability period. Appellant attempts to address this by applying a 12.0 percent "cash allowance," which increased taxable sales in each month. However, appellant offers no evidence to support this allowance. Appellant's unsupported assertions are insufficient to meet its burden of proof.

Appellant also argues that the 77.14 percent credit card sales ratio should not be used for periods before September 2013 because the business expanded after that date. However, the audit is based on a credit card sales ratio calculated from appellant's own books and records. CDTFA may use testing techniques in its audits. (*Paine v. State Board of Equalization* (1982) 137 Cal.App.3d 438.) Moreover, the credit card sales ratio accounts for fluctuation, or in this instance the expansion of appellant's business overtime. Here, quarterly audited taxable sales increase gradually from $169,402 in 1Q11 to $337,113 in 4Q13. The reason for the gradual increase in audited taxable sales is that appellant's credit card deposits gradually increased during the liability period. In other words, as appellant's business expanded, so did appellant's total sales.

By comparison, appellant's bank deposit analysis, asserts a credit card sales ratio of at least 88 percent (100 percent – 12 percent cash allowance) for the liability period, without evidentiary support. Appellant also has not provided any evidence that the credit card sales ratio was different prior to September 2013. Accordingly, OTA finds that CDTFA adequately accounted for the business's expansion. OTA also finds that no adjustments are warranted based on appellant's bank deposit analysis.

Finally, appellant asserts that it was audited by the IRS for 2011 and 2012, and that the IRS made findings of gross receipts which were much less that what CDTFA has computed.

[10] There are several differences between appellant's merchant bank deposit statements and bank deposit analysis. In some instances, appellant's bank deposit analysis shows more credit card deposits than are reflected in the merchant bank deposit statements. In other instances, appellants bank deposit analysis shows less credit card deposits than are reflected in the merchant bank deposit statements.

Appellant asserts that the IRS was more thorough than CDTFA, and that the IRS looked at cash flows and money that was actually deposited in the bank. In support, appellant provided a copy of federal Form 4549, *Income Tax Examination Changes* (Form 4549).

Here, the IRS audit and the audit performed by CDTFA are different. During the IRS audit, appellant's federal income tax returns were reviewed for income tax purposes, whereas during CDTFA's audit of appellant, CDTFA considered appellant's sales tax liability. According to the Form 4549, the IRS only increased appellant's gross receipts by $26,290.00 for 2011 and $53,845.31 for 2012. However, the difference between the federal determination and the determination made by CDTFA can be explained, in part, by the fact that appellant reported more income on its federal income tax returns than it reported on its sales and use tax returns. As discussed above, a comparison of gross receipts reported on appellant's federal income tax returns to total sales reported on appellant's sales and use tax returns revealed a difference of $181,391.00 for 2011 and $260,684.00 for 2012. When added to the federal increase, the differences between appellant's federal gross receipts and amounts that appellant reported on its sales and use tax return increase to $207,681.00 for 2011 and $314,529.00 for 2012. Rather than support appellant's contentions, the IRS audit is further evidence that appellant's federal income tax returns are unreliable and tend to show that appellant failed to report all of its taxable sales.

Further, CDTFA has authority to conduct its own audits. (R&TC, § 6481.) OTA finds that CDTFA is not obligated to rely on the results of an audit by another tax agency but may instead perform its own audit using appropriate means. In this case, CDTFA's audit method accounts for cash sales that were not deposited. In contrast, appellant has not shown that the IRS audit accounts for cash sales that were not deposited or is otherwise more accurate than the CDTFA audit.

Appellant has failed to provide sufficient documentation or other evidence from which a more accurate determination could be made. Accordingly, OTA concludes that appellant has failed to meet its burden of establishing that a reduction to the measure of unreported taxable sales is warranted.

Issue 2: Whether the negligence penalty was properly imposed.

R&TC section 6484 provides for the imposition of a 10 percent penalty if any part of the deficiency for which a deficiency determination is made was due to negligence or intentional disregard of the law or authorized rules and regulations. 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, is considered evidence of negligence and may result in the imposition of penalties. (Cal. Code Regs., tit. 18, § 1698(k).)

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

On appeal, appellant requests that the negligence penalty be relieved. Appellant does not provide any specific contentions to OTA. However, appellant previously asserted that relief should be granted because this was appellant's first audit.

Here, appellant did not provide a complete set of books and records for the audit. For example, appellant maintained a POS system, but was unable to provide a complete set of POS reports for the audit. Appellant failed to retain POS records upon switching from one system to the next. Although appellant asserts that the first POS system crashed, appellant also failed to provide complete sets of other substantiating documents. For example, appellant also failed to provide a complete set of bank statements for the audit. OTA finds appellant's failure to provide a complete set of books and records is evidence of negligence.

In addition, appellant failed to report taxable sales of $1,378,729. When compared to reported taxable sales of $2,032,696, appellant's unreported taxable sales represent an error rate of 67.8 percent. This substantial understatement is further evidence of negligence. In addition, appellant has not provided a nonnegligent explanation for the $546,618 difference between the gross receipts reported on its federal income tax returns and the total sales reported on its sales and use tax returns. Considering the foregoing, OTA finds that appellant's 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. Accordingly, OTA finds that the negligence penalty was properly imposed.

Issue 3: Whether additional interest relief is warranted.

There is no statutory right to interest relief. 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 employe of CDTFA acting in his or her official capacity. (R&TC, § 6593.5(a)(1).) Such an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (R&TC, § 6593.5(b).) Any person requesting interest relief must include a statement signed under penalty of perjury setting forth the facts on which the request is based. (R&TC, § 6593.5(c); *Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

OTA will not generally second-guess the standard timeframes determined by CDTFA for purposes of granting discretionary relief, and will instead defer to CDTFA's timeframes absent evidence of an abuse of discretion. (*Appeal of Eichler*, 2022-OTA-029P.) To show an abuse of discretion, a taxpayer 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.*)

On appeal, appellant requests interest relief beginning on the first day of the liability period, October 1, 2010, through the date of OTA's oral hearing on April 13, 2023. Appellant's arguments can be broadly divided into two subjects: the liability period and the COVID-19 period. Appellant asserts that interest should be relieved for the liability period. Appellant's argument is based on its assertion that the NOD was untimely. Next, appellant contends that interest relief should be granted during the period when in-person oral hearings were delayed by the COVID-19 pandemic. Of note, appellant does not provide any contentions with respect to the period January 1, 2014 (the day after the liability period) through February 7, 2020 (the date that OTA issued its first Notice of Oral Hearing to appellant).

In response to appellant's request for interest relief, CDTFA provided an analysis of the timeline of its audit and appeals process and concedes to relieve interest for 13 months, including the following periods: May 1, 2014, through July 31, 2014; December 1, 2016, through March 31, 2017; and November 1, 2017, through January 31, 2018.

Regarding the liability period, appellant asserts that the NOD was untimely with respect to the period October 1, 2010, through June 30, 2012. If appellant's assertion were correct, then the NOD would be unenforceable for this period. However, during the audit, appellant signed valid waivers of the statute of limitations for CDTFA to issue a determination. The

June 22, 2015 waiver extended the statute of limitations to October 31, 2015, which is after the NOD was issued. Accordingly, OTA finds no basis to relieve interest for the liability period.

As for the period January 1, 2014, through February 7, 2020, CDTFA concedes to relieve interest for 13 months. Appellant has not provided any argument or evidence that additional interest relief is warranted for this period. Upon review of the Assignment Activity History and related activity, discussed above, OTA does not find any additional delays attributable to CDTFA's acts or omissions. Thus, OTA finds no evidence that CDTFA has abused its discretion in denying the remaining periods that were eligible for interest relief.

Finally, appellant's appeal before OTA was pending at the time of the COVID-19 pandemic. OTA acknowledges that the COVID-19 pandemic presented additional challenges. However, there is no statutory authority for OTA to grant interest relief based on delays caused by the pandemic. While the foregoing is dispositive, OTA notes that during the period beginning March 25, 2020, appellant was consistently offered the opportunity to make either a telephonic or electronic appearance. Appellant declined to participate in an electronic hearing and at appellant's request, the oral hearing was deferred until it could be held in-person.[11]

[11] An in-person oral hearing date was first scheduled for October 11, 2022, which was postponed at appellant's request. The hearing was then rescheduled for April 2023, and held as scheduled. The record was held open so that appellant could submit a request for interest and related briefing. If the requisite authority existed, these delays would not be a basis for interest relief.

HOLDINGS

1. No reduction to the amount of unreported taxable sales is warranted.
2. The negligence penalty was properly imposed.
3. Other than the periods conceded by CDTFA, no additional interest relief is warranted.

DISPOSITION

Interest is relieved as conceded by CDTFA for the following periods: May 1, 2014, through July 31, 2014; December 1, 2016, through March 31, 2017; and November 1, 2017, through January 31, 2018. Otherwise, CDTFA's action in denying the petition for redetermination is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

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Richard Tay
Administrative Law Judge

Date Issued: 9/13/2023