

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>NEWELL WINDOW FURNISHINGS, INC.</b>	) ) ) ) )	OTA Case No. 18124134 CDTFA Case ID 864434 CDTFA Account No. 99-682680
---	-----------------------	--

---

**OPINION**

Representing the Parties:

For Appellant:	Carley A. Roberts, Attorney Huy “Mike” Le, Attorney
For Respondent:	Chad Bacchus, Tax Counsel III Stephen Smith, Tax Counsel IV Kevin Hanks, Hearing Representative

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, appellant Newell Window Furnishings, Inc. (appellant) appeals a decision and supplemental decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant’s timely petition for redetermination of a Notice of Determination (NOD), for \$209,350.42 of additional tax, a negligence penalty of \$20,935.17, and applicable interest, for the period April 1, 2010, through September 30, 2012.<sup>2</sup>

Office of Tax Appeals (OTA) Administrative Law Judges Alberto T. Rosas, Suzanne B. Brown, and Jeffrey G. Angeja held an oral hearing for this matter in Sacramento, California, on November 19, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

---

<sup>1</sup> Sales taxes were formerly administered by the Board of Equalization (Board). Effective July 1, 2017, functions of the Board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) When referring to acts or events that occurred before July 1, 2017, the term “CDTFA” refers to CDTFA’s predecessor, the Board.

<sup>2</sup> In its April 18, 2018 Decision in this matter, CDTFA deleted the negligence penalty, so it is no longer at issue herein.

ISSUE

Whether appellant timely filed its appeal to OTA.

FACTUAL FINDINGS

1. On August 3, 2015, appellant submitted Form BOE-392, Power of Attorney (POA), to CDTFA to designate two individuals (Messrs. Gene Shaffer and James Levinson) as appellant's attorneys-in-fact in connection with the NOD issued by CDTFA.
2. On November 27, 2017, appellant executed form BOE-82 (Authorization for Electronic Transmission of Data) requesting that CDTFA provide information to appellant electronically. The form expressly indicates that the authorization shall remain in effect until rescinded in writing.
3. On April 18, 2018, via both email and U.S. Postal Service (USPS), CDTFA mailed its decision to appellant as well as to both of appellant's designated representatives.
4. On May 18, 2018, appellant timely submitted to CDTFA a Request for Reconsideration of the decision. On November 9, 2018, CDTFA issued its supplemental decision, which CDTFA mailed on that date to appellant and also to one of appellant's two designated representatives, via USPS, but not via email.
5. On December 21, 2018, appellant filed its appeal of the supplemental decision with OTA.
6. The jurisdictional issue regarding the timeliness of appellant's appeal has been bifurcated from the underlying substantive issue; accordingly, only the jurisdictional issue is addressed herein.<sup>3</sup>

DISCUSSION

On appeal, appellant contends that CDTFA failed to properly serve the supplemental decision because CDTFA did not send an electronic copy of the document and failed to send the document to one of the two designated representatives. Appellant further notes that California Code of Regulations, title 18, section 35002(i) defines "mail" to include email, thereby allowing CDTFA to provide effective service of its documents via email. Appellant then asserts that allowing CDTFA to ignore form BOE-82 and only serve a document via USPS renders superfluous the regulatory definition of "mail" that includes email. Next, appellant argues that

---

<sup>3</sup> If we find in appellant's favor on the jurisdictional issue, a new hearing and attendant briefing will be scheduled in connection with the underlying substantive issue.

OTA is the successor to the same equitable powers that the Board had (citing *Appeal of Winkenbach, et al.* (75-SBE-081) 1975 WL 3565), and that OTA should fashion an equitable remedy here.<sup>4</sup> Appellant also contends that OTA should equitably estop CDTFA from claiming that service of the supplemental decision was not required (and/or that the deadline by which to file the appeal be equitably tolled), because appellant relied to its detriment on the prior email service of the decision.

We first note that OTA's Emergency Regulations (Cal. Code Regs., tit. 18, § 30100 *et seq.*) were operative during the year 2018, and in light of CDTFA's mailing via USPS of the supplemental decision to appellant on November 9, 2018, we conclude that appellant had until December 9, 2018 to timely file its appeal with OTA. (Cal. Code Regs., tit. 18, § 30802(c).)<sup>5</sup> Appellant did not file its appeal until December 21, 2018, and therefore the appeal would be untimely, absent a finding that CDTFA's service of the supplemental decision was insufficient.

Next, any notice served by CDTFA must be served in the manner prescribed by R&TC section 6486. (Cal. Code Regs., tit. 18, § 35004.) In relevant part, R&TC section 6486 requires CDTFA to provide notice via USPS. CDTFA's regulations define "mail" to include mailing via USPS, as well as email when authorized by the taxpayer. (Cal. Code Regs., tit. 18, § 35002(i).) Accordingly, service via USPS will always be an authorized method of service, and a taxpayer's authorization for CDTFA to send information and notices via electronic means does not negate or invalidate CDTFA's service of a document via USPS. In other words, the regulation does not mandate that CDTFA use email for service; it is merely permissive.

Here, appellant's request for electronic transmission did not require CDTFA to provide service via email, nor did it preclude CDTFA from electing to provide service via USPS. Therefore, CDTFA's method of service of the supplemental decision in this matter via USPS, rather than via email, complies with R&TC section 6486, and is a valid method.

---

<sup>4</sup> OTA expresses no opinion regarding any equitable powers that the Board may or may not have exercised. We note that that OTA is an administrative agency created by statute (see Gov. Code, § 15672), and as such, OTA is not a court (Gov. Code, § 15672(b)), and lacks equity powers. Accordingly, we decline to further address this contention.

<sup>5</sup> In its opening brief, CDTFA relies upon OTA's currently operative regulations (Cal. Code Regs., tit. 18, § 30000 *et seq.*) and asserts that the deadline was December 19, 2018, because CDTFA mailed the supplemental decision to an out-of-state-location (see Cal. Code Regs., tit. 18, §§ 30203(b)(1); 30204(b).) However, as noted above, OTA's current regulations were not in effect during 2018, and thus there was no extension for out-of-state mailing.


However, our conclusion regarding the propriety of the method of service does not end our inquiry, because here, CDTFA failed to provide service of process to all of appellant's duly-authorized representatives. Appellant properly authorized two individuals as appellant's attorneys-in-fact. A taxpayer's designation of an attorney-in-fact essentially creates an address of record for the taxpayer. (See *Mulvania v. Commissioner* (9th Cir. 1985) 769 F.2d 1376, 1379, citing to *Expanding Envelope and Folder Corp. v. Shotz* (3rd Cir.1967) 385 F.2d 402, 404.) R&TC section 6486 requires CDTFA to mail its notices to taxpayers at their address of record, which here included the addresses of *both* attorneys-in-fact, as well as appellant's. But CDTFA failed to provide service to one of the two attorneys-in-fact. Therefore, CDTFA's service was defective, and it failed to comply with R&TC section 6486. As a result of the defective service, and appellant's prompt filing of its appeal (i.e., less than 30 days from the December 9, 2018 deadline), we conclude that appellant's appeal should be accepted as timely, and we need not address appellant's remaining arguments.

HOLDING

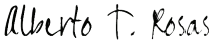
CDTFA failed to provide notice in accordance with R&TC section 6484, and therefore appellant’s appeal is accepted as timely.


DISPOSITION

Appellant’s appeal is accepted as timely. OTA will process appellant’s appeal on the merits, in accordance with OTA’s Rules for Tax Appeals. (Cal. Code Regs., tit. 18, § 30000 *et seq.*)

DocuSigned by:  
  
0D390BC3CCB14A9  
Jeffrey G. Angeja  
Administrative Law Judge

We concur:

DocuSigned by:  
  
2281E8D466014D1  
Alberto T. Rosas  
Administrative Law Judge

DocuSigned by:  
  
47F45ABE89E34D0  
Suzanne B. Brown  
Administrative Law Judge

Date mailed: 2/24/2020