

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: O. HASKAL))))))	OTA Case No. 230613524 CDTFA Case ID: 277-026
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OPINION

Representing the Parties:

For Appellant: Kevan McLaughlin, Representative

For Respondent: Sunny Paley, Attorney

For Office of Tax Appeals: Daniel Cho, Attorney

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, O. Haskal (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying in part appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on July 9, 2013.¹ The NOD is for tax of \$39,683.18, plus applicable interest, and penalties totaling \$7,927.65 for the period July 1, 2005, through March 31, 2007 (liability period). The NOD reflects CDTFA’s determination that appellant is personally liable for U.S. Trading, Inc.’s (UST’s) unpaid sales tax liabilities for the liability period per R&TC section 6829.² CDTFA’s decision ordered partial relief of interest but otherwise denied appellant’s petition for redetermination.

Appellant waived the right to an oral hearing, so this matter was submitted to the Office of Tax Appeals (OTA) for an Opinion based on the written record.

¹ The State Board of Equalization (BOE) formerly administered sales and use taxes. On July 1, 2017, BOE functions 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” refers to BOE.

² CDTFA timely issued the July 9, 2013 NOD to appellant because CDTFA mailed it within three years after the last day of the calendar month following the quarterly period in which CDTFA obtained actual knowledge of the termination of UST’s business. (See R&TC, § 6829(f).) UST informed CDTFA of the termination of its business on June 17, 2010, so CDTFA’s deadline to issue the NOD to appellant was July 31, 2013.

ISSUE

Whether additional relief of interest is warranted.³

FACTUAL FINDINGS

1. UST operated a retail store in California selling tangible personal property.
2. In 2007, CDTFA began an audit of UST's business. At the conclusion of the audit, CDTFA determined a tax liability of \$39,638.18. CDTFA also imposed a 10-percent negligence penalty of \$3,963.83.
3. On October 6, 2008, CDTFA issued a timely NOD to UST for tax of \$39,638.18, plus applicable interest, and a negligence penalty of \$3,963.83.
4. On October 10, 2008, UST filed a timely petition for redetermination with CDTFA but withdrew its petition from CDTFA's internal appeals process on January 26, 2010, before an appeals conference could take place.
5. On March 30, 2010, CDTFA issued a Notice of Redetermination that recommended no adjustments to UST's liabilities.
6. UST did not pay the liabilities within 30 days, and an additional 10-percent penalty of \$3,963.82 was added to them.⁴
7. On June 17, 2010, UST informed CDTFA that its business operations terminated as of February 10, 2010.
8. Subsequently, CDTFA determined that appellant was personally liable for UST unpaid liabilities pursuant to R&TC section 6829. Based on its determination, CDTFA issued the July 9, 2013 NOD to appellant.
9. On July 15, 2013, appellant submitted a timely petition for redetermination disputing the July 9, 2013 NOD in its entirety.
10. On February 7, 2014, CDTFA acknowledged receiving appellant's settlement proposal, and appellant entered settlement negotiations with CDTFA.

³ On appeal to OTA, appellant does not dispute CDTFA's determination that he is personally liable for UST's unpaid liabilities for the liability period. Appellant also does not dispute the amount of the underlying tax or penalties. In his request for appeal filed with OTA, appellant identifies inadequate interest relief as the sole issue for OTA's consideration. Accordingly, additional interest relief is the only issue before OTA.

⁴ R&TC section 6565 provides that a 10-percent penalty shall be added to a determination that has not been paid when it is due and payable. This is often referred to as a "finality penalty."

11. On February 18, 2015, having failed to reach a mutually agreeable settlement with appellant, CDTFA concluded settlement negotiations, closed appellant's settlement case, and returned the matter to CDTFA's internal appeals process.
12. On March 12, 2015, appellant verified the scheduled location of his appeals conference with CDTFA as well as his contact information.
13. On January 29, 2016, CDTFA notified appellant of the date of his appeals conference: March 16, 2016.
14. On February 5, 2016, CDTFA postponed the appeals conference at appellant's request.
15. On February 23, 2017, CDTFA acknowledged receiving appellant's request to pursue settlement again, and appellant re-entered settlement negotiations with CDTFA.
16. On March 17, 2022, having failed to reach a settlement with appellant, CDTFA again closed appellant's settlement case, and returned the matter to CDTFA's internal appeals process.
17. On August 17, 2022, CDTFA held an appeals conference with appellant.
18. On September 15, 2022, appellant filed a request for relief of interest based on unreasonable errors or delays by CDTFA employees.
19. By decision dated January 19, 2023, CDTFA concluded that appellant was personally liable for UST's unpaid liabilities for the liability period and that no adjustments to the tax and penalties were warranted. However, CDTFA examined its audit, settlement, and internal appeals processes and concluded that interest relief was warranted for the following two periods: (1) August 1, 2013, through December 31, 2013; and (2) March 1, 2018, through February 28, 2022.
20. This timely appeal followed.

DISCUSSION

The amount of CDTFA's determination, exclusive of penalties, shall bear interest from the last day of the month following the quarterly period for which the amount should have been paid to the date of payment. (R&TC, § 6482.) Interest may be relieved in only limited circumstances. As relevant here, CDTFA, in its discretion, may relieve interest where the failure to pay the tax was due in whole or in part to an unreasonable error or delay by a CDTFA employee acting in his or her official capacity. (R&TC, § 6593.5(a)(1).) A taxpayer seeking relief of interest must file with CDTFA a statement under penalty of perjury setting forth the

facts upon which the request for relief is based. (R&TC, § 6593.5(c).) When reviewing CDTFA's denial of a taxpayer's request for interest relief, OTA applies an abuse of discretion standard. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) 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*, 2022-OTA-029P.)

Here, appellant filed a request for relief of interest dated September 15, 2022.⁵ CDTFA examined its audit, settlement, and internal appeals processes and determined that there was unreasonable delay warranting interest relief for the following two time periods: (1) August 1, 2013, through December 31, 2013; and (2) March 1, 2018, through February 28, 2022. For the remaining time periods, CDTFA concluded that there were no unreasonable errors or delays by a CDTFA employee.

On appeal, appellant argues that he is entitled to additional interest relief. Specifically, appellant requests interest relief for the periods April 2015 through December 2015 and March 2017 through February 2018, as well for other unspecified periods.

Regarding the two specified periods, appellant has not explained why he is entitled to interest relief for them, merely contending that the entire process with CDTFA took too long. As previously stated, OTA applies an abuse of discretion standard when reviewing CDTFA's denial of a taxpayer's request for interest relief. In its January 19, 2023 decision, CDTFA explained that there was no delay from April 2015 through December 2015 because it generally took about 9 to 12 months to schedule an appeals conference. With respect to the March 2017 through February 2018 timeframe, appellant requested a second settlement review, and CDTFA concluded that a one-year timeframe in which to complete a settlement review was reasonable.

⁵ OTA notes that appellant's representative, not appellant, signed this request. Generally, these requests must be signed by the taxpayer or someone with personal knowledge of the facts being relied upon. It is unclear how appellant's representative could declare under penalty of perjury that there was an unreasonable error or delay since he only began representing appellant effective December 1, 2021, and was not present during the audit or the initial stages of CDTFA's internal appeals process. Nevertheless, CDTFA accepted appellant's request, and OTA will not disturb CDTFA's decision, which was in appellant's favor.

Appellant has not explained how CDTFA’s conclusions were an abuse of discretion.⁶ As a result, OTA concludes that CDTFA has not abused its discretion in its denial of interest relief for these time periods.

Appellant also indicated that he wanted additional interest relief for periods outside of the two periods specified above. However, appellant has not identified these periods let alone established how CDTFA abused its discretion in denying interest relief for them.


Based on the foregoing, OTA concludes that additional interest relief is not warranted.

HOLDING

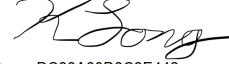
Additional relief of interest is not warranted.

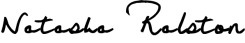
DISPOSITION

CDTFA’s action is sustained.

DocuSigned by:

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Andrew Wong
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

Signed by:

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Natasha Ralston
Administrative Law Judge

Date Issued: 11/4/2024

⁶ In his September 15, 2022 request for interest relief, appellant also contended that CDTFA did not timely issue the July 9, 2013 NOD to appellant pursuant to R&TC section 6829(f) because CDTFA knew as early as February 10, 2010 (rather than June 17, 2010) that appellant’s business had closed. In its January 19, 2023 decision, CDTFA concluded that appellant’s contention lacked evidentiary support. To the extent that appellant’s contention was also an argument for interest relief for the period February 10, 2010, through July 9, 2013, appellant also has not explained how CDTFA’s conclusion was an abuse of discretion.