

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
THE VAPE LOUNGE, INC.,) OTA NO. 240415981
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, January 14, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 10:22 a.m. and concluding at 10:44 a.m. on
Tuesday, January 14, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ GREG TURNER

Panel Members: ALJ STEVEN KIM
ALJ JOSHUA LAMBERT

For the Appellant: MARINO YOUNAN
DANNY SEO

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

SUNNY PALEY
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

Department's Exhibits A-F were received into evidence at page 9.)

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1 California; Tuesday, January 14, 2025

2 10:22 a.m.

3
4 JUDGE TURNER: So we're going on the record now.

5 The case before us today is The Vape Lounge, Inc.
6 OTA's case number is 240415981. The date is January 14th.
7 The time is approximately 10:22 a.m. The hearing is being
8 held electronically in agreement with the parties.

9 I am, as I said, I'm the lead judge,
10 Judge Turner. And I am joined by my Co-Panelists
11 Judge Kim and Judge Aldrich. And they are equal
12 participants in today's hearing and deliberating and
13 ultimately, determining the outcome of this appeal.

14 If we could take a moment, please, for the
15 parties to introduce themselves. I'll start with the
16 Appellant, if you could please introduce yourself, your
17 role, and your relationship to the Appellant, Vape Lounge,
18 Inc.

19 MR. SEO: Hello. My name is Danny Seo. I'm the
20 CPA, and I'm helping my client for the audit procedure.
21 Then the -- yeah. That's it.

22 JUDGE TURNER: And Mr. Younan.

23 MR. YOUNAN: Hi. This is Mark Younan. I am the
24 father, and I'm helping my kids with the situation here.

25 JUDGE TURNER: Excellent.

1 For the Department.

2 MS. PALEY: Sunny Paley, attorney with CDTFA.

3 MR. BACCHUS: Chad Bacchus, an attorney with
4 CDTFA.

5 MR. PARKER: And Jason Parker, Chief of
6 Headquarters Operations Bureau, also with CDTFA.

7 JUDGE TURNER: Excellent.

8 So we held a prehearing conference on
9 December 16th, 2024, at about 10:30 a.m., which we
10 determined that there was a single issue to be discussed
11 today; and that the evidence for the record would be the
12 exhibits submitted by the Department, I think it's A
13 through F; and that there will be no testimony provided by
14 any witnesses.

15 The issue before us today as we had decided at
16 the appeals conference -- at the prehearing conference --
17 excuse me -- was whether the unremitted tax reimbursement
18 collected, the UTC penalty in section 6597 Rev & Tax Code
19 was properly imposed and, if so, whether the penalty
20 should be relieved. As we discussed, there was exhibits
21 submitted by the Department which consisted of the Appeals
22 Bureau decision, the audit work papers, and the history of
23 interaction of the Department's records.

24 With that, if there aren't any questions, I'm
25 going to start with Appellant's presentation. You have,

1 according to -- as we agreed to at the prehearing
2 conference, 15 minutes for your presentation. The
3 Department will have 15 minutes in reply, and there will
4 be 5 minutes left over for Appellant to respond.

5 If there aren't any additional questions, I'll
6 pass it off to you, the Appellant. You can begin.

7
8 PRESENTATION

9 MR. YOUNAN: Hi. Again, I'm Mr. Younan. Thank
10 you all for your service. Thank you for being here.

11 We have, like, a situation I stated last time.
12 One of my son, he was a Marine, and he was -- he came up,
13 and he's ringing up inventory items for the shop from the
14 warehouse -- because we do have a warehouse in the back --
15 as a sales tax item, retail, just for him to control the
16 inventory. And when I was asked for help, and I came in,
17 I told him no, this is wrong. Because Mike is like --
18 they're like -- one of them got their associate degree and
19 the other one is a UCSB graduate, and the other one was a
20 Marine. So they were not new in the business.

21 When I came in, I tried to help out and do
22 everything. So I stated to the CDTFA and I said, hey,
23 that was an honest mistake, and I showed them the record.
24 They were ringing up like \$7,000, \$15,000 like in transfer
25 inventory, but he counted as a sales tax. They came back

1 with an audit number. They adjusted it. I didn't have
2 time to go over that. We just want to put it behind us,
3 but that penalty, 40 percent, would be like a bad break
4 for us with all these new regulation and laws coming up
5 with our industry here. That really would like, if not,
6 put us out of business.

7 So we're asking you guys to work with us and save
8 us. That was done by honest mistake, if was any mistake
9 done. We willing to pay the -- whatever the CDTFA asked
10 for, but the penalty is kind of hefty.

11 MR. SEO: This is Danny Seo. As he -- as
12 Mr. Younan said that basically we agree the CDTFA's audit
13 results. We totally agree with the results, the
14 principle. Yeah. But as he said that there's a couple of
15 locations. There's a transfer, the inventory, between
16 those locations. I think there are some errors on the --
17 the POS system. So first time we handle -- I mean, the --
18 the employee handle those kind of inventories, there's
19 some mistake. That's actually honest mistake. There's no
20 intention to hide any sales tax or what.

21 So, basically, we accept those result -- audit
22 results. But as a first time, just we ask you to waive
23 the penalty, at least reduce some of the penalty to go on
24 the billing. There's a big chunk of the money to pay the
25 penalty, for there's a big burden. So just give us those

1 break.

2 That's it.

3 JUDGE TURNER: So in little bit of a lull. I
4 apologize. I didn't properly enter the documents from the
5 Department into the record. So without objection, I'm
6 going to enter into the record the Department's Exhibits A
7 through F that I generally described a few minutes ago.

8 (Department's Exhibits A-F were received into
9 evidence by the Administrative Law Judge.)

10 JUDGE TURNER: With that, I guess my question for
11 Appellant was, there isn't a dispute that the amounts for
12 sales tax were collected and not remitted. The question
13 is, just from your perspective is simply whether or not
14 there are circumstances to give relief for the penalty
15 that's been imposed. Do I understand that correctly?

16 MR. YOUNAN: Probably yes, but we don't believe,
17 like, we were not recording any sales tax. To our
18 knowledge, we just minus the one was ringed up as a retail
19 sales tax, but they were not retail, not sold to customer.
20 They were, like just inventory transfer. So when we
21 submitted the audit and the receipts and everything, the
22 auditor came back and adjusted the numbers.

23 We just took them for that. We didn't even go
24 back and audit it because we didn't have -- we didn't have
25 time, and we didn't want to go through this. We just want

1 to put it behind us. But we're here asking you that
2 penalty -- that 40 percent penalty, that would be a bad
3 break on us. And sometimes we don't believe we did or
4 anything.

5 JUDGE TURNER: Do either of my Panelists have any
6 questions of Appellant before we move on? No.

7 JUDGE KIM: Sorry. I did have --

8 JUDGE TURNER: Judge Kim.

9 JUDGE KIM: -- just one question. Can you -- can
10 you explain how the amount that you reported was
11 different -- the tax amount that you reported was
12 different from what was recorded on the sales overviews?

13 MR. YOUNAN: Yeah, the -- I'm not sure the
14 amount. But the way it was done -- we show you records of
15 that. We have a warehouse, and we also, like, supply our
16 shop from the warehouse. It's -- it's in the same
17 building. So my other son was ringing up the warehouse
18 items, bringing into the store as selling them to the
19 customers. All he wanted to do was track the inventory.
20 He didn't know any better. But he ring them up as a sales
21 tax item. He saw that it was, like, \$7,000 sale, \$12,000
22 sale, \$13,000. No individual would buy that much money.

23 So according to our calculation, we calculated
24 and submitted everything right. But when you guys redid
25 the audit, when we submitted the file to you and the

1 paperwork and you guys came back and adjusted the audit
2 for, like, \$6,000, \$7,000 in our favor, we just didn't go
3 back and audit you back. We just wanted to put it behind
4 us and move on.

5 So the only issue we have right now is that
6 40 percent penalty. It would be bad break for us with
7 this in today's economy, new -- I mean, I'm sorry -- laws
8 and regulation is really here. And we have a lot of
9 people employed by us. So -- and also, we have loans we
10 have to pay on this. So we're asking as a one-time
11 courtesy, the 40 percent penalty is really too much.

12 JUDGE KIM: Just to --

13 MR. YOUNAN: We call it like an honest mistake,
14 or like something was overlooked.

15 JUDGE KIM: Okay. So just to clarify what you're
16 saying is that you're accepting the audit findings, but
17 you're saying that, actually, those are not sales but they
18 were transfers?

19 MR. YOUNAN: Yes, transfers. Exactly.

20 MR. SEO: So CDTFA adjusted already those -- some
21 of the numbers. They verify that. So -- but that's not
22 all -- all of them because we couldn't do the audit again
23 to check it one by one again all the way. So we just --
24 that's fine. We just pay all the tax not paid it, but
25 somehow just we kindly ask to reduce the penalty for the

1 first time.

2 MR. YOUNAN: And also, like in our industry,
3 average ticket about \$15, \$20, give and take. No one
4 customer will come in and pay \$2,000, \$7,000, \$13,000
5 sale. All that was inventory transfer.

6 JUDGE KIM: Okay. So why are you unable to
7 verify that those were not sales?

8 MR. YOUNAN: No. No. We did verify them. We
9 showed you guys proof, and you guys adjusted the -- the
10 numbers our favor, like 6 or \$7,000. I don't recall
11 exactly.

12 JUDGE KIM: You mean CDTFA?

13 MR. YOUNAN: Because it's only common sense.
14 Say that again?

15 JUDGE KIM: You mean CDTFA?

16 MR. YOUNAN: Yes. CDTFA adjusted the --

17 MR. SEO: Adjusted. Yeah. They reduce the --
18 the total tax of liability, about 6 or 7 -- around 6 or
19 \$7,000 reduced it. They reduced already.

20 JUDGE KIM: Okay. But this -- I thought the
21 issue was unremitted tax, that tax reimbursement that was
22 collected. So --

23 JUDGE TURNER: Yeah, I think -- if I can
24 interject a little bit. I think that the Department will
25 respond. I think there's an adjustment that's been made

1 for transfers that --

2 MR. YOUNAN: Correct.

3 JUDGE TURNER: -- were not sales. And so that
4 actually has been taken out. It's not part of the
5 calculation for the imposition of penalty. I think that's
6 been adjusted by the Department, but maybe the Department
7 can address that in their comments.

8 JUDGE KIM: Okay. Thank you.

9 JUDGE TURNER: Any other questions yet? Okay.
10 We'll go on to the Department.

11 MS. PALEY: Thank you.

12

13 PRESENTATION

14 MS. PALEY: Good morning.

15 At issue for this appeal --

16 MR. SEO: Good morning.

17 MR. YOUNAN: Good morning.

18 MS. PALEY: Good morning.

19 At issue for this appeal, is whether the
20 unremitted tax reimbursement collected penalty, or UTC,
21 was properly imposed for fourth quarter 2016 through
22 fourth quarter 2017.

23 Appellant, a California corporation, is a
24 cigarette and tobacco retailer. They were selected for
25 audit for the period October 1st, 2016, to

1 September 30th, 2019. A Notice of Determination was
2 timely issued on December 27th, 2022, Exhibit C. As
3 stated in the 2023 Office of Tax Appeals precedential
4 opinion, Appeal of B. Senehi, doing business as Barefoot
5 Cafe, in order to impose the 40 percent penalty, pursuant
6 to Revenue & Taxation Code section 6597(a)(1), it must be
7 shown by a preponderance of the evidence that one,
8 Appellant knowingly collected sales tax reimbursement from
9 its customers; two, Appellant failed to timely remit the
10 sales tax for which it collected the reimbursement; and
11 three, the amount of sales tax collected but not remitted
12 exceeds the applicable threshold.

13 The penalty does not apply if the person's
14 liability for unremitted tax or tax reimbursement averages
15 a \$1,000 or less a month, or does not exceed the 5 percent
16 of the total amount of the tax liability for which the tax
17 or tax reimbursement was collected for the period in which
18 the tax was due, whichever is greater. If a person's
19 failure to make a timely remittance of sales tax
20 reimbursement is due to reasonable cause or circumstances
21 beyond the person's control and occurred regardless of
22 exercise of ordinary care and in the absence of willful
23 neglect, the person shall be relieved of the UTC penalty,
24 according to Revenue & Taxation Code
25 section 6597(a)(2)(B).

1 For these purposes, reasonable cause or
2 circumstances beyond the person's control that caused the
3 failure to timely remit includes but is not limited to:
4 The death or serious illness of the person or person's
5 next of kin; an emergency defined by Government Code
6 section 8558, a natural disaster or other catastrophe
7 directly effecting business operations; the Department's
8 failure to send returns or other information to the
9 correct address of record; the failure to timely remit
10 occurred only once over a three-year period, or once
11 during the period in which the person was in business,
12 whichever is shorter; or the person voluntarily corrected
13 errors in remitting tax or tax reimbursement collected
14 prior to being contacted by the Department regarding
15 possible errors or discrepancies. These are found at
16 Revenue & Taxation Code section 6597 subdivisions
17 (b) (1) (a) through (f).

18 Appellant contends that any failure to remit
19 sales tax it collected was unintentional and a result of
20 unsophisticated business practices. However, the
21 requirements for imposition of the penalty of 6597 are
22 still met. Specifically, the records that Appellant
23 provided show that it collected sales tax reimbursement on
24 all sales for the liability period. This is evidence that
25 Appellant knew it collected the sales tax, which it failed

1 to remit.

2 Appellant pilfered thousands of dollars of sales
3 tax that it collected for its own use. Even with the
4 reaudit adjustments, as shown in Exhibit F-2 and
5 Exhibit B, which has been discussed here today, that
6 reduced the aggregate deficiency by \$78,000, resulting in
7 a tax reduction of \$6,000 and reduction of the 40 percent
8 UTC penalty by approximately \$2,500. The 1,005 percent
9 thresholds are still met. As shown in the reaudit work
10 papers, specifically Exhibit F-2, worksheet 12-A-1,
11 page 11 of the reaudit document, the unremitted sales tax
12 reimbursement of \$21,765 averages more than a \$1,000 a
13 month during the UTC penalty period, and is more than
14 5 percent of the reported collected sales tax
15 reimbursement, specifically, between 33 and 40 percent for
16 those 5 quarters, fourth quarter 2016 to fourth quarter
17 2017.

18 As is required by law and precedent, the
19 Department has established by a preponderance of the
20 evidence, or more likely than not, that all requirements
21 for the imposition of the penalty have been met; and there
22 is no lawful basis due to reasonable cause or
23 circumstances beyond its control to relieve the penalty.
24 So based on the law and evidence, we ask the Panel to deny
25 this appeal.

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Thank you.

JUDGE TURNER: Questions to the Panel.

Mr. Aldrich, do you have a question?

JUDGE ALDRICH: Sure. You know, I'll direct this to Appellants. I'm not sure who can best answer this.

But, Mr. Younan, I believe you were talking about there was a warehouse. Did The Vape Lounge possess a wholesaler license or distributor license?

MR. YOUNAN: Yes.

JUDGE ALDRICH: Yes?

MR. YOUNAN: We have a wholesale license and distributor license.

JUDGE ALDRICH: Okay. And, at any point, did you submit a document called a CDTFA-735 which requests relief from penalties and interest?

MR. YOUNAN: I'm sorry. I didn't understand the question.

JUDGE ALDRICH: Do you know if Appellant, at any point in post-appeals process, submitted a CDTFA-735? It's a form that makes a request for relief of penalties and interest?

MR. YOUNAN: We asked for relief of penalties.

JUDGE ALDRICH: Okay.

MR. SEO: But we haven't filled out those forms yet.

1 MR. YOUNAN: We haven't filled them out.

2 MR. SEO: Yeah.

3 MR. YOUNAN: Okay.

4 JUDGE ALDRICH: Thank you. One second. All
5 right. Thank you.

6 I'm going to refer it back to Judge Turner.

7 JUDGE TURNER: Okay. So, Mr. Younan, you guys
8 have five minutes in reply to the Department's
9 presentation, and then we'll settle up with any additional
10 questions after that. So if you want to reply to the
11 Department's presentation, you have five minutes.

12

13 CLOSING STATEMENT

14 MR. YOUNAN: Yes. Thank you all again.

15 When I was called into this big mess, when I came
16 in, they had a bookkeeper in the house. And I had to let
17 go because I don't know if she was -- knew what she was
18 doing or not. She was filing all the sales tax, but we --
19 when I find out they were doing inventory transfer and
20 rang it up as a sales tax, we never collected any sales
21 tax on that. So, if anything, we have no intention of
22 whatsoever of not to report the full amount. If anything,
23 it was overlooked, or it was done by mistake or something.
24 After all, we use a cloud-based system. Everything is on
25 a cloud base. So there is nowhere for us to hide

1 anything.

2 We are asking for one-time courtesy. The
3 40 percent would be a bad break for us. When we submitted
4 our appeal and they redid the audit, they asked for a lot
5 of statements. I give it to them. They adjusted the
6 sales for like -- like she mentioned 60 or \$70,000. We
7 were credited \$6,000 on the amount. We did not go over
8 it. We just wanted to put it behind us and move on and
9 finish with this. So all we asking you right now just for
10 the penalties, so anything you guys could help. This
11 would be like a disaster for us if we have that penalty.

12 JUDGE TURNER: Understood.

13 Any additional questions from the Panel for
14 either the Appellant or the Department?

15 JUDGE ALDRICH: No questions. Thanks.

16 JUDGE TURNER: Okay. All right. So with that,
17 we have received your testimony and the documentary
18 evidence. At this time, we're prepared to close the
19 record.

20 The record will be closed. This case has been
21 submitted on January 14th, 2025. Thank you everyone for
22 participating today. The Judges will meet to deliberate
23 and decide your case. We'll issue a written opinion
24 within 100 days.

25 Today's hearing in the Appeal of The Vape Lounge,

1 Inc., is now concluded.

2 The record will be -- let's see. What else do we
3 have? I think this is our last appeal today. So the
4 hearing itself will be adjourned, and that concludes the
5 hearings for the calendar for today. If I'm not right,
6 someone from the Department can -- I mean, from OTA can
7 make sure I'm accurate on it. But otherwise our hearing
8 for today for this matter is closed.

9 (Proceedings adjourned at 10:44 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 29th day of January, 2025.

ERNALYN M. ALONZO
HEARING REPORTER