

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 230112250
SARATOGA SPRINGS, INC.)	CDTFA Case IDs: 3-058-218, 3-574-799
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OPINION

Representing the Parties:

For Appellant:	Monika Miles, Representative John Huk, Representative
For Respondent:	Kevin B. Smith, Attorney Cary Huxsoll, Attorney Jason Parker, Chief of Headquarters Operations

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Saratoga Springs, Inc. (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)¹ denying appellant's petition for redetermination of a Notice of Determination (NOD) dated February 9, 2022. The NOD is for a tax of \$183,191, plus applicable interest, for the period January 1, 2018, through December 31, 2020 (liability period).²

Office of Tax Appeals (OTA) Administrative Law Judges Natasha Ralston, Greg Turner, and Josh Lambert held an oral hearing for this matter in Sacramento, California, on October 15, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an Opinion.

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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "respondent" shall refer to the board.

² Appellant also filed a timely claim for refund. The claim for refund is not before OTA because the payments were applied towards a liability assessed pursuant to an NOD, and the NOD is not yet final. (See R&TC § 6902, subd. (a)(1).)

ISSUE

Whether appellant has established a basis for relief of its sales and use tax liability herein pursuant to R&TC section 6596.

FACTUAL FINDINGS

The Current Audit of Appellant for the period January 1, 2018, through December 31, 2020

1. Appellant was incorporated in 1975, and until April of 2021, appellant's name was Saratoga Springs Picnic and Campgrounds, Inc.³ Appellant offers picnic, camping and long-term RV facilities, and operates a small gift shop selling food and miscellaneous merchandise. In addition, appellant offers an event venue for weddings, special events, and provides catering and other services for those events upon request.
2. For the liability period, appellant reported total gross sales of \$15,261,800, and claimed "other" deductions of \$6,082,166 for nontaxable rental income and facility fees and services, resulting in total reported taxable sales of \$9,179,634.⁴
3. Upon audit, appellant provided its federal income tax returns (FITRs) for 2018 and 2019, sales and use tax payable accounts, sales journals, sales invoices, electronic profit and loss statement (P&L), and related documents to respondent for review. The P&L categorized revenue income into four accounts: 1) camping and other long-term recreational vehicles and cabin rental revenue; 2) wedding revenue; 3) picnic and other entertainments revenue; and 4) store revenue. Respondent selected revenue accounts from the P&L and examined sales invoices on an actual basis. Based on this examination, respondent determined appellant did not charge tax on wedding facility fees and other related charges including banquet linen packages, dessert plates, forks, service fees, and credit card processing fees.
4. As a result, respondent disallowed claimed nontaxable: wedding rental charges of \$338,555; wedding facility fees of \$1,600,683; and miscellaneous wedding charges of \$52,339. In addition, respondent found unreported taxable credit card processing fees of \$43,876 for the liability period.

³ Appellant filed a name change with the California Secretary of State on April 27, 2021.

⁴ Appellant also reported purchases of \$28,952 subject to use tax, which are not at issue herein.

5. When respondent's auditor turned in the audit to the reviewer, the reviewer made the following comments,⁵ as relevant here:

Revenue Acct 547 – Wedding Miscellaneous Revenue: Was the same type of sales per this revenue account allowed as exempt erroneously in the prior audit, or under other prior wrong advice, so these transactions may qualify for a [R&TC] Section 6596 Relief in the current audit?

The reviewer made the same comments regarding account 541 (wedding facility charge revenue), and account 545 (wedding rental revenue).

6. Subsequently, respondent's audit department that conducted this audit (and the prior audit, as discussed below) initially determined that appellant did qualify for relief pursuant to R&TC section 6596.⁶ Specifically, comments in respondent Form 836-A, Report of Discussions Audit Findings, dated February 4, 2022, state:

We reviewed the prior audit work papers and related comments and initially felt that [R&TC section] 6596 would be warranted. We sought for a confirmation from the CDTFA Audit Support Unit (ASU) on whether our recommendation on the [R&TC] section 6596 relief was appropriate. Per ASU's response, taxpayer does not meet the requirements for relief. That is, the prior audit work papers and comments do not demonstrate evidence that the fee and charges in question were examined, either in sample or census (actual) review. Therefore, section 6596 relief is not applicable.

7. On February 9, 2022, respondent issued appellant the aforementioned NOD for \$183,191 in tax, plus accrued interest,⁷ for the liability period based on the additional taxable sales described above totaling \$2,035,452,⁸ as well as a tax- paid purchases resold credit measured by \$7,715.⁹
8. Appellant filed a timely petition for redetermination with respondent.

⁵ Respondent commonly refers to this as a "go-back" or a "Change Request." A go-back refers to comments by an auditor's reviewer that requires the auditor to make changes and resubmit the audit report back to the reviewer.

⁶ R&TC section 6596 provides that if a taxpayer's failure to timely pay the tax is due to reasonable reliance on written advice provided by respondent, the taxpayer may be relieved of the taxes, interest, and any penalties added thereto.

⁷ According to the NOD, payments/credits totaling \$184,681 were applied towards this liability, which paid the tax in full, but not the interest.

⁸ This amount consists of: \$338,555 + \$1,600,683 + \$52,339 + \$43,876; the \$1 discrepancy is due to rounding and is immaterial.

⁹ The tax-paid purchases resold credit is not in dispute.

9. Respondent issued a decision in this matter dated December 6, 2022, denying appellant's petition for redetermination.
10. This timely appeal followed.

The Prior Audit of Appellant for the period October 1, 2013, through September 30, 2016

11. For the previous audit, appellant claimed gross sales of \$9,042,041, ex-tax purchases of \$35,989 and non-taxable transactions of \$969,421, resulting in reported taxable sales of \$8,108,609.
12. When respondent's auditor turned in this audit to the reviewer, the reviewer sent it back to the auditor for corrections. The reviewer's comments regarding "Deductions" were as follows:

Verification comments state that no documentation was available for the claimed Food Products and Other deduction but no assessment was made in the areas as the tax differences between recorded and reported were assessed in the audit. However, the audit assessment was based on sales tax collected and reported differences. The sales with no tax charged would not be included in the assessment. Therefore, any unsupported claimed deductions should be disallowed and assessed separately in the audit. Please further investigate, make applicable adjustments and updated [sic] all related comments.

13. As relevant here, comments from respondent's final audit work papers include the following:¹⁰

CLASS OF BUSINESS

The taxpayer is a retailer of food and beverage sales and provides catering to weddings and special events. The taxpayer also provides facilities for the use as camping and day camping and long term RV site locations.

VERIFICATION OF AUDITED AMOUNTS AND FINDINGS

TYPES OF TRANSACTIONS

The taxpayer operates a multi-fact business which is comprised up of camp sites, day camping, catering of food for weddings and special events as well as a small store selling small amounts of food and drinks. Also, on site are site pads for long term RV residents. The business is located in a rural creek setting located outside of the town of Saratoga, CA. The taxpayer uses the FileMaker accounting system, to

¹⁰ These comments are quotes and do not include references for typographical or grammatical errors.

record their revenue. The amounts from the FileMaker reports are then transferred to a QuickBooks accounting system.

SOURCES OF DATA

Federal Income Tax Returns (FITR) Fiscal Years 2014-15

Revenue, by category Audit Period

Point of Sales reports Audit Period

Customer Invoices Audit Period

REPORTING METHOD

The taxpayer generates monthly sales reports from the FileMaker accounting system, which lists sales by revenue and cost center. These figures are then converted into a QuickBooks accounting program. Ex-tax gross sales amounts were reported and exemptions were claimed for "Nontaxable Sales of Food Products" and "Other." Due to the bookkeeper staff being let go and a new experienced bookkeeper taking over, the claimed exemptions could not be verified.

Prior to the start of the audit, the current bookkeeper started to do a partial self-audit on the business and differences were disclosed during this review. The current bookkeeper and the auditor discussed this issue and a more complete review of the total sales and taxable sales were then begun. This review included the review of the sales invoices, original customer invoices and the sales tax collected. Due to the type of business and their multiple sources of revenue both service related and taxable related, some revenue areas were accepted as reported due to the low probability of tax issues. The remaining revenue areas were further reviewed. The taxable sales were compared to the revenue and tax reports were used to complete the audit. The reports were generated by the new bookkeeper and verified by the corporate officers for accuracy.

TOTAL SALES

Total sales were reviewed, but could not be verified as correct due to the multi revenue centers. Therefore, total sales were not reviewed as the taxable sales area was reviewed in depth.

Per review of the revenue reports, this listed the annual revenue as Camping Revenue, Day Use Revenue, Wedding Revenue, Picnic Revenue, Store Revenue, Outside Services Revenue and Interest Earned. From this list of revenue centers, the auditor selected areas that would be areas of taxability for further review. From this review the sales tax differences and the paid bills exam were completed and the audit liability was noted.

SALES/USE TAX ACCRUAL ACCOUNT

The taxpayer was not able to provide the sales tax reports, completed by the prior bookkeeper. The current bookkeeper, needed to recreate the sales and sales tax reports. The audit was based on these new reports and verified by both the corporate officers and the auditor. The differences between recorded and reported sales tax was accessed in the audit, on an actual basis.

FOOD PRODUCTS

The taxpayer claims an exemption for the "Nontaxable Sales of Food Products." This claimed exemption appears to be claimed in error and should have been listed as exempt services.

Per review of the revenue reports, the exemption appears to be related to the revenue from the use of the camp grounds, for RV camping and the day camp. No assessment was made in this area as the tax differences between recorded and reported were assessed in the audit.

OTHER EXEMPTIONS

The taxpayer claims an exemption for the "Other". Due to the bookkeeper staff being replaced, no documentation for this exemption could be provided. Per review of the revenue reports these claimed exemptions appears to also be related to the services provided by the taxpayer related to charges for cabin rentals and cabin gas provided by the taxpayer. These two items were included in the customer's bill and any tax would have been assessed at the time of sale. No assessment was made in this area as the tax differences between recorded and reported were assessed in the audit.

14. As part of this appeal, appellant submitted numerous invoices, including a wedding invoice dated Saturday, June 14, 2014, with a "prepare date" of January 16, 2017. This invoice lists a facility fee for the wedding of \$2,000, as non-taxable. The prepare date of January 16, 2017, corresponds to the date this audit began, according to notes in the audit work papers, specifically schedule 414Z. The sample invoices clearly designate each line with a "Y" for yes, indicating that the item is taxable, or an "N" for no, indicating that the item is not taxable.

DISCUSSION

The law provides that if a taxpayer's failure to timely pay the tax is due to reasonable reliance on written advice provided by respondent, the taxpayer may be relieved of the taxes, interest, and any penalties added thereto. (R&TC, §§ 20, 6596(a).) OTA has statutory authority

to decide an appeal involving a request for relief of taxes, interest, and penalties pursuant to R&TC section 6596. (Gov. Code, § 15671(a)(6).)

R&TC section 6596 imposes four general requirements in order to grant relief, which are summarized, in pertinent part, as follows: First, the taxpayer must request written advice on the application of tax from respondent and the request must set forth the specific facts and circumstances of the activity or transactions for which the advice is requested. (R&TC, § 6596(b)(1).) Second, respondent must respond in writing, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax. (R&TC, § 6596(b)(2).) Third, the taxpayer must reasonably rely on the written advice. (R&TC, § 6596(b)(3).) Fourth, the liability for taxes must occur before respondent rescinds the advice or a change in law renders the advice no longer valid. (R&TC, § 6596(b)(4).)

Any person requesting relief of the taxes must file a statement under penalty of perjury setting forth the facts on which a request for relief of the taxes is based, as appellant has done in its appeal. (R&TC, § 6596(c).)

Appellant does not dispute respondent's audit calculations in this audit, nor in the prior audit. Rather, appellant's only contention is that it is entitled to relief of the current audit liability pursuant to R&TC section 6596, based upon the prior audit. The presentation of a person's books and records for examination by an auditor is deemed to be a written request if the prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review; such evidence will be considered "written advice from the Board." (Cal. Code Regs., tit. 18, § 1705(c).)

Respondent contends that there is no evidence of a written comment or comments wherein the issue in question was examined by the auditor, nor is there evidence that appellant was advised that wedding venue and related catering charges were not subject to tax. Respondent argues that the purported lack of evidence of written advice for these specific transactions means there can be no relief under R&TC section 6596.

In the current audit, respondent conducted a taxable sales audit and determined appellant did not charge tax on taxable wedding facility fees and other related charges in relation to the rental of appellant's facilities and the service of food and beverages for events. Upon review, respondent's audit department that conducted both the current and previous audits initially determined that appellant did qualify for relief in the current audit pursuant to R&TC section 6596; however, this was "over-ruled" by the audit support team located in a

different office. As a result, respondent assessed the liability at issue herein. For the previous audit, respondent determined that appellant was liable for tax measured by a sales tax accrual reconciliation report, which is based on a comparison between appellant's recorded (i.e., transaction on which sales tax reimbursement was collected by appellant) and reported sales.

As noted above, appellant was not assessed a liability for its taxable wedding revenue and related charges in the previous audit. To determine if the auditor examined wedding revenue and related taxable sales and services in either a sample or actual basis in the previous audit, which would mean that appellant is entitled to relief pursuant to R&TC 6596 for the current audit, OTA must look at the prior audit work papers and comments as a whole.¹¹ An examination in this context would include whether the auditor examined any wedding invoices in which taxable fees were not taxed, or labeled not taxable, or something similar. It would also include the examination of appellant's accounting records, specifically wedding revenue and related taxable sales and services that were not taxed nor charged sales tax reimbursement.

While examining the prior audit work papers, OTA first notes that the audit comments regarding sources of data, include: "Revenue, by category Audit Period," "Point of Sales reports Audit Period," and "Customer Invoices Audit Period." These comments state that the auditor looked at appellant's revenue categories for the audit period, as opposed to just one quarter, etc. Also listed in the audit comments, under Total Sales, comments state, "Per review of the revenue reports, this listed the annual revenue as Camping Revenue, Day Use Revenue, Wedding Revenue, Picnic Revenue, Store Revenue, Outside Services Revenue and Interest Earned." These comments, taken together, demonstrate that the auditor examined not just appellant's wedding revenue for the prior audit period, but all of appellant's revenue sources for the prior audit period. OTA finds that this is evidence that respondent examined the transactions at issue on at least a sample basis, if not an actual basis.

Next, as discussed above, the audit comments state that the auditor examined "Customer Invoices Audit Period." Again, this states that the auditor looked at appellant's customer invoices for the prior audit period, as opposed to just one quarter, or other abbreviated time period. Regarding appellant's reporting method, the audit comments state: "The current bookkeeper and the auditor discussed this issue and a more complete review of the total sales and taxable sales were then begun. This review included the review of the sales invoices, original customer invoices and the sales tax collected." These comments establish that the

¹¹ "Audit comments, schedules, and other writings prepared by [CDTFA] that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous." (See Cal. Code Regs., tit. 18, § 1705(c).)

auditor reviewed appellant's sales invoices, and the sales tax collected, or not collected, as the case may have been. The comments also state that the auditor made a "more" complete review of total sales, which would have included the claimed exempt wedding revenue that should have been taxable, even though the audit assessment was based on a sales tax accrual reconciliation report. Although the comments do not specifically state that "wedding" invoices were examined, appellant provided OTA with a wedding invoice that shows a prepare date that matches the date the auditor visited appellant's business to start the audit. Furthermore, the sample invoices include a "Y" for yes, indicating that the item is taxable, or an "N" for no, indicating that the item is not taxable on each line. Because the invoices expressly and clearly identify each line item as taxable or non-taxable, even a casual review by an auditor would, here at least, constitute an "examination." OTA finds that this is all evidence that the auditor examined wedding invoices on at least a sample basis.

In sum, OTA finds that respondent's previous audit contains written evidence demonstrating that the issue in question was examined, either in a sample or census (actual) review and, therefore, is "written advice from the Board." (Cal. Code Regs., tit. 18, § 1705(c).) Moreover, OTA finds that appellant reasonably relied on this "written advice" in the current audit. (R&TC, § 6596(b)(3).) Finally, respondent has not demonstrated that it rescinded the advice or there was any change in the law that rendered the advice no longer valid for the current audit. (R&TC, § 6596(b)(4).)


Based on the foregoing, OTA finds that appellant has established a basis for relief pursuant to R&TC section 6596.

HOLDING

Appellant has established a basis for relief of its sales and use tax liability herein pursuant to R&TC section 6596.

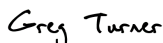
DISPOSITION

Respondent's action is reversed.


Signed by:


Natasha Ralston
Administrative Law Judge

We concur:

Signed by:


Greg Turner
Administrative Law Judge

Signed by:


Josh Lambert
Administrative Law Judge

Date Issued: 1/7/2025