

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No.: 231114783
SUPER GLORY DISTRIBUTION, INC.)	CDTFA Case ID's: 2-473-555, 2-469-781
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OPINION

Representing the Parties:

For Appellant:	Robert A. Robilotta, President
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For Respondent:	Courtney Daniels, Attorney
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For Office of Tax Appeals:	Daniel Cho, Attorney
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N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 30262, Super Glory Distribution, Inc. (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)¹ denying appellant's timely petitions for redetermination of two Notices of Determination (NODs) issued on December 8, 2020. The first NOD is for tax of \$157,869, plus applicable interest, for the period January 1, 2016, through March 31, 2017 (first liability period).² The second NOD is for tax of \$124,385, plus applicable interest, for the period April 1, 2017, through September 30, 2018 (second liability period).³

¹ Cigarette and tobacco product 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 The first NOD was timely issued because on April 1, 2020, appellant signed the most recent in a series of waivers of the otherwise applicable three-year statute of limitations for the period January 1, 2016, through March 31, 2017, which allowed respondent until February 26, 2021, to issue an NOD. (See R&TC, §§ 30207, 30208.)

³ The second NOD was timely issued because on February 28, 2020, appellant signed a waiver of the otherwise applicable three-year statute of limitations for the period April 1, 2017, through September 30, 2017, which allowed respondent until February 26, 2021, to issue an NOD. (See R&TC, §§ 30207, 30208.) However, the second NOD was not timely issued for the period October 1, 2017, through October 31, 2017, because respondent did not obtain a waiver for this period. According to respondent's audit working papers, there is no liability for this period. Therefore, respondent's failure to obtain a valid waiver does not impact the determined liability at issue in this appeal.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether any adjustments are warranted to the determined unreported taxable distributions of cigarettes.

FACTUAL FINDINGS

1. Appellant was a licensed cigarette distributor in California. Appellant purchased unstamped cigarettes from its vendors. Appellant would affix tax stamps to the cigarettes that it distributed to its California customers. Appellant also sold unstamped cigarettes to customers outside of California and transferred some unstamped cigarettes to a related entity in Nevada.
2. On audit, appellant provided the following books and records: purchase and sales summary worksheets, purchase invoices, sales invoices, and bills of lading. In addition, respondent obtained appellant's Nevada cigarette tax returns from the Nevada Department of Taxation. Through its own internal means, respondent also obtained information regarding appellant's out-of-state distributions of unstamped cigarettes and appellant's purchases of tax stamps from respondent. Respondent determined that appellant's books and records were sufficient for audit purposes.
3. Using appellant's purchase invoices, respondent determined that appellant purchased 52,811,000 sticks of unstamped cigarettes during the first liability period. Respondent also determined that appellant had a beginning inventory of 1,945,000⁴ cigarettes. As a result, respondent concluded that appellant had 54,756,000 (52,811,000 + 1,945,000) cigarettes available for distribution during the first liability period. Respondent reduced this amount by appellant's ending inventory of 4,859,600 cigarettes.⁵ Respondent also reduced the cigarettes available for distribution by appellant's exempt distributions in interstate commerce of 11,325,400 cigarettes. Based on the foregoing, respondent determined that appellant had distributed 38,571,000 cigarettes (54,756,000 – 4,859,600 – 11,325,400) during the first liability period. Respondent multiplied the

⁴ This amount is comprised of 1,676,400 of unstamped cigarettes and 268,600 of stamped cigarettes.

⁵ This amount is comprised of 3,060,600 of unstamped cigarettes and 1,799,000 of stamped cigarettes.

distributed cigarettes by the tax rate and concluded that appellant had a corresponding taxed owed of \$1,677,839.⁶

4. As previously stated, respondent obtained appellant's tax stamp purchase information through its own internal means. Based on this information, respondent determined that appellant had a tax stamp value of \$1,519,969⁷ for use during the first liability period. Respondent compared this figure to the audited tax owed amount for the first liability period, which resulted in a deficiency of \$157,869 (\$1,677,839 - \$1,519,969) in tax.
5. For the second liability period, respondent performed a similar audit of appellant's distributions of cigarettes. Respondent determined that appellant purchased 23,209,200 cigarettes during the second liability period. Respondent also determined that appellant had a beginning inventory of 4,859,600⁸ cigarettes. As a result, respondent concluded that appellant had 28,068,800 cigarettes available for distribution. Respondent then reduced this amount by appellant's ending inventory of 3,685,400 cigarettes and appellant's exempt distributions in interstate commerce of 7,704,300 cigarettes. Based on the foregoing, respondent determined that appellant had distributed 16,679,100 cigarettes (28,068,800 – 3,685,400 – 7,704,300) during the second liability period. Respondent multiplied the distributed cigarettes by the tax rate and concluded that appellant had a corresponding tax owed of \$2,393,451.
6. Respondent determined that appellant had a tax stamps value of \$2,269,066 for use during the second liability period. Respondent compared this amount to the audited tax owed for the second liability period, which resulted in a deficiency of \$124,385 (\$2,393,451 - \$2,269,066) in tax.
7. Based on the foregoing, respondent issued two NODs to appellant on December 8, 2020.
8. Appellant filed two timely petitions for redetermination.

⁶ According to respondent's internal records, appellant had a beginning tax stamp value of \$60,813, and appellant purchased tax stamps of \$1,566,000 during the first liability period. As a result, appellant had an accountable tax stamp value of \$1,626,813 for the first liability period. Respondent reduced this amount by appellant's reported ending tax stamp value of \$106,844, which resulted in the accountable tax stamp value of \$1,519,969 for the second liability period.

⁷ According to respondent's internal records, appellant had a beginning tax stamp value of \$60,813, and appellant purchased tax stamps of \$1,566,000 during the first liability period. As a result, appellant had an accountable tax stamp value of \$1,626,813 for the first liability period. Respondent reduced this amount by appellant's reported ending tax stamp value of \$106,844, which resulted in the accountable tax stamp value of \$1,519,969 for the second liability period.

⁸ This amount is comprised of 3,060,600 of unstamped cigarettes and 1,799,000 of stamped cigarettes.

9. Respondent issued a Decision on October 16, 2023, denying both petitions for redetermination.
10. This timely appeal followed.

DISCUSSION

The Cigarette and Tobacco Products Tax Law requires every person desiring to engage in the sale of cigarettes as a distributor to apply with respondent for a distributor's license. (R&TC, § 30140.) A distributor shall apply for and obtain a license for each place of business at which it engages in the business of distributing cigarettes. (*Ibid.*) Every distributor shall pay a tax upon his or her distribution of cigarettes based upon rates set by statute. (R&TC, §§ 30101, 30123, 30131.2(a).) "Distributor" includes every person who distributes cigarettes, or who sells or accepts orders for cigarettes which are to be transported from a point outside this state to a consumer within this state. (R&TC, § 30011.) The term "distribution" includes: (a) the sale of untaxed cigarettes in this state; (b) the use or consumption of untaxed cigarettes in this state; and (c) the placing in this state of untaxed cigarettes in a vending machine or in retail stock for purposes of selling these items to consumers. (R&TC, § 30008.) "Use or consumption" includes the exercise of any right or power over cigarettes incident to the ownership of the cigarettes, other than the sale of the cigarettes or the keeping or retention by a licensed distributor for the purpose of sale. (R&TC, § 30009.) Unless the contrary is established, it shall be presumed that all cigarettes acquired by a distributor are untaxed cigarettes, and that all cigarettes manufactured in this state or transported to this state, that are no longer in the possession of the distributor, have been distributed. (R&TC, § 30109.)

In the case of an appeal, respondent has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once respondent has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from respondent's determination is warranted. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, respondent used appellant's records (purchase invoices) and respondent's internal records to determine appellant's taxable distributions of cigarettes. After taking into account appellant's ending inventory and exempt distributions, respondent calculated a tax deficiency. Based on the foregoing, OTA finds that respondent's determination is both reasonable and rational. As a result, the burden of proof shifts to appellant to establish that a different result is warranted.

On appeal, appellant contends that it properly stamped all of its cigarettes prior to the sale of the cigarettes. Thus, appellant argues that it does not owe any additional taxes. In addition, appellant states that any differences in the amounts owed could be attributed to transfers between appellant and its related entity in Nevada. Appellant states that its employees might not have invoiced the transactions correctly. Lastly, appellant contends that it does not have any funds to pay any outstanding tax liability. Therefore, appellant believes that it does not owe any additional taxes.

While appellant argues that it properly stamped all of its cigarettes prior to the sale of such cigarettes, appellant has not provided any supporting documentation or evidence to establish that respondent's determination is erroneous. In addition, appellant alleges that the audit differences are related to transfers of cigarettes between appellant and its related entity in Nevada. However, respondent appears to have accounted for such transfers when it reduced the cigarettes available for distribution by the exempt distributions in interstate commerce of 11,325,400 and 7,704,300 for the first and second liability periods, respectively. Appellant has not provided any additional documentation to demonstrate that a greater amount of exempt distributions in interstate commerce is warranted. As previously stated, unsupported assertions are not sufficient to satisfy appellant's burden of proof. Therefore, appellants' arguments do not establish that any adjustments are warranted.

With respect to appellant's argument that it is unable to pay the liability, OTA's role in deciding this appeal is to determine the correct amount of tax.⁹ (*Appeal of Sheward*, 2022-OTA-228P.) Therefore, no adjustment is warranted based on this argument.

⁹ Upon conclusion of this appeal, appellant can contact respondent directly to inquire about programs available to resolve the unpaid liability.

HOLDING

No adjustments are warranted to the determined unreported taxable distributions of cigarettes.

DISPOSITION

Respondent's action denying the petitions for redetermination is sustained.

Signed by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

We concur:

Signed by:

Josh Lambert

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Josh Lambert
Administrative Law Judge

DocuSigned by:

Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 4/22/2025