

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: <b>Y. HONG</b> <hr/>	) ) ) )	OTA Case No.: 241218398 CDTFA Case ID: 2-920-354
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**OPINION**

Representing the Parties:

For Appellant: Thomas R. Lamons, Attorney

For Respondent: Vanessa Bedford, Attorney

For Office of Tax Appeals: Oliver Pfof, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Y. Hong (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent). The decision denied appellant’s petition for redetermination of a June 22, 2021 Notice of Dual Determination (NODD).<sup>1</sup> The NODD is for tax of \$6,495.35, plus applicable interest, and penalties totaling \$491,049.90 for the period January 1, 2009, through September 30, 2014 (liability period) and reflects respondent’s determination that appellant is personally liable for the unpaid tax liabilities of Grand Motors, Inc. for the liability period pursuant to R&TC section 6829.

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

**ISSUE**

Is the NODD barred by the statute of limitations?

**FACTUAL FINDINGS<sup>2</sup>**

1. Appellant’s accountant executed an undated statement under penalty of perjury stating

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<sup>1</sup> Respondent issued a decision and two supplemental decisions, all to the same effect.

<sup>2</sup> The determined amount, including penalties and interest, is not in dispute. Consequently, these factual findings focus on circumstances relevant to the statute of limitations.

that on March 1, 2018, his office sent to appellant via email: a CDTF-65 (*Notice of Closeout*) form (Closeout Notice) to be filed with respondent, a Certificate of Dissolution of appellant's corporation to be filed with the Secretary of State, and a federal tax identification closing letter to be filed with the IRS. The statement also indicates that in April or early May of 2018, the accountant asked appellant to sign and submit a second Closeout Notice, apparently because the accountant was concerned that respondent may not have correctly processed the first one. There are two Closeout Notices attached to the statement. Both are dated January 31, 2018. One, which the accountant describes as the Closeout Notice mailed by appellant in late April or early May, bears a May 11, 2018 date stamp.

2. On July 1, 2024, appellant executed a declaration under penalty of perjury, which states that on March 26, 2018, he mailed a completed Closeout Notice to respondent and the Certificate of Dissolution to the Secretary of State; and in April or May 2018, he mailed another Closeout Notice to respondent.
3. On March 30, 2018, the Secretary of State stamped "Filed" on a Certificate of Dissolution signed by appellant.
4. On April 19, 2018, respondent staff made a note in its Automated Compliance Management System, which states that respondent received a completed Closeout Notice, signed by appellant on January 31, 2018, that had been mailed to respondent's customer service center.
5. Respondent issued the NODD on June 22, 2021.
6. Appellant filed a petition for redetermination disputing the NODD on grounds that it was issued after the statute of limitations expired.
7. The parties participated in an appeals conference as part of respondent's internal appeals process.
8. Respondent issued the decision denying the petition for redetermination.
9. Appellant timely filed this appeal with OTA.

#### DISCUSSION

An NODD issued under R&TC section 6829 must be mailed within three years after the last day of the calendar month following the quarterly period in which respondent obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, or within eight years after the last day of the calendar month following the quarterly period in which the corporation's business was terminated, dissolved, or abandoned,

whichever period expires earlier. (R&TC, § 6829(f); Cal. Code Regs., tit. 18, § 1702.5(c)(2).) If, prior to the beginning of the second quarter of 2018 (2Q18) on April 1, 2018,<sup>3</sup> respondent had actual knowledge that appellant's business was terminated, dissolved, or abandoned, then the NODD is barred by the statute of limitations.

Appellant argues that the burden of proving that the NODD was issued before expiration of the statute of limitations rests with respondent, and that respondent has failed to carry that burden by showing when it received the Closeout Notice mailed by appellant on March 26, 2018. He asserts that the Secretary of State's receipt, by March 30, 2018, of a document mailed at the same time on March 26, 2018, constitutes at least prima facie proof that respondent had actual knowledge of the termination, dissolution, or abandonment of the business of the corporation before the end of 1Q18.

Appellant is mistaken regarding the burden of proof. While R&TC section 6829(c) and Regulation section 1702.5(a) specifically state that respondent has the burden of proving the factual elements that warrant imposing liability on a corporate officer (for example) for the unpaid tax liabilities of the corporation, nothing in the statute or regulation indicates that respondent has the burden of proving that the NODD was filed within the three-year limitations period. Generally, an assertion that the statute of limitations bars an action is considered an affirmative defense that must be pleaded and proved by the party against whom the action is asserted. (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 581.) Nothing in the Sales and Use Tax Law warrants application of a different rule here. The burden of proving that the NODD was barred by the statute of limitations rests with appellant. (See Cal. Code Regs., tit. 18, § 30219(a).) The standard of proof is by a preponderance of evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

The U.S. Supreme Court considered the meaning of the term "actual knowledge" in *Intel Corp. Investment Policy Com., et al. v. Sulyma* (2020), 589 U.S. 178 (*Sulyma*). *Sulyma* states that use of the term "actual" to describe a type of knowledge signals that the person's knowledge must be more than "potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal." (*Sulyma, supra*, at p.185.) The question is not what respondent should have known or might have known; the question is what respondent did know. (See *Sulyma, supra*, at p. 186.)

The parties agree that respondent's earliest notice of the termination, dissolution, or abandonment of the business was through its receipt of a Closeout Notice. OTA notes that

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<sup>3</sup> March 31, 2018, was a Saturday.

mere receipt of a document in an envelope would not be sufficient to impart actual knowledge of the content of a document. For example, respondent is a large agency that probably receives a tremendous amount of mail each regular business day. Such a recipient cannot be deemed to immediately have actual knowledge of the content of a piece of mail simply because an envelope arrives in its post office box or mail distribution center. This will be a topic for later discussion in this Opinion. First, though, OTA will examine the evidence for proof that respondent received a Closeout Notice before the end of 1Q18.

Appellant states that his first attempt to notify respondent regarding the termination of his business was on March 26, 2018, when he first mailed a Closeout Notice to respondent. Appellant's proof that respondent had actual knowledge of the termination of appellant's business consists of his statement regarding that mailing and the concurrent mailing of the Certificate of Dissolution to the Secretary of State and a copy of the Certificate of Dissolution bearing a March 30, 2018 date stamp. In essence, appellant asserts that the Secretary of State's receipt of the certificate of Dissolution on March 30, 2018, the last regular workday of 1Q18, constitutes at least prima facie proof that respondent had actual knowledge of the termination of appellant's business before the end of that quarter. OTA finds this argument unpersuasive. While it is possible that an envelope mailed by appellant to respondent on March 26, 2018, may have reached respondent's post office box, or even its mail distribution center within four days, that possibility is not sufficient to support a finding that respondent had the requisite actual knowledge by the end of 1Q18. Therefore, OTA finds that the evidence is insufficient to support a finding that respondent had actual knowledge prior to the end of 1Q18 that appellant's business had been terminated, dissolved, or abandoned.

HOLDING


The NODD is not barred by the statute of limitations.

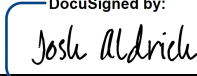
DISPOSITION

Respondent's action denying appellant's petition for redetermination is sustained.

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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 12/29/2025