

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No.: 250319060
9 IRON GRILL, LLC)	CDTFA Case IDs: 5-567-978; 5-577-275
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OPINION

Representing the Parties:

For Appellant: Bret M. Bastrire, CPA

For Respondent: Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Nguyen Dang, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, 9 Iron Grill, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on January 17, 2024, and also denying a protective claim for refund.¹ The NOD is for tax of \$268,514, plus applicable interest, and penalties totaling \$98,452.57 for the period July 1, 2020, through June 30, 2023 (liability period).

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).

ISSUE²

Is appellant entitled to relief of the 40 percent penalty imposed for failing to remit the sales tax reimbursement collected from its customers (40 percent penalty)?

¹ The NOD was timely issued because on October 13, 2023, appellant’s representative signed a waiver extending the applicable three-year statute of limitations to January 31, 2024.

² The penalties consist of a 10 percent negligence penalty of \$2,984.17 for the period January 1, 2023, through June 30, 2023, and a 40 percent penalty of \$95,468.40 for the period July 1, 2020, through December 31, 2022. Appellant does not dispute the amount of unreported taxable sales or the imposition of the negligence penalty. Therefore, the amount at issue totals \$95,468.40.

FACTUAL FINDINGS

1. Appellant is a limited liability company that operates a full-service restaurant with a seller's permit effective January 1, 2019. Appellant generated substantial taxable receipts during the liability period and employed an in-house bookkeeper who maintained records of taxable sales.
2. Appellant's quarterly sales and use tax returns for the liability period were selected by CDTFA for audit. During the audit, appellant provided a copy of its general ledger for the period July 1, 2020, through December 31, 2022, which showed recorded taxable sales for this period of \$5,630,501 that were more than double the amount reported to CDTFA. Consequently, CDTFA determined that appellant had underreported its taxable sales for the entire liability period and that the underreporting was due to negligence.
3. CDTFA further discovered from a review of appellant's general ledger that appellant had failed to remit the sales tax reimbursement it had collected from its customers for the period July 1, 2020, through December 31, 2022, in an amount ranging from \$4,125 to \$16,202 per month and 26.07 percent to 75.47 percent of the total amount of sales tax reimbursement collected for each quarter.
4. CDTFA issued an NOD to appellant proposing to assess (among other things): (1) a 10 percent negligence penalty of \$2,984.17, computed on the tax deficiency for the period January 1, 2023, through June 30, 2023; and (2) a 40 percent penalty of \$95,468.40, computed on the unremitted sales tax reimbursement amount for the period July 1, 2020, through December 31, 2022.
5. Appellant timely petitioned the NOD, and in response, CDTFA issued a Decision affirming its NOD.
6. This timely appeal followed.

DISCUSSION

"[A]ny person who knowingly collects sales tax reimbursement . . . and who fails to timely remit that sales tax reimbursement . . . shall be liable for a penalty of 40 percent of the amount not timely remitted." (R&TC, § 6597(a)(1).) However, the 40 percent penalty shall not apply if the unremitted tax reimbursement averages \$1,000 per month or less or does not exceed 5 percent of the total amount of the tax liability for which tax reimbursement was

collected for the period in which the tax was due, whichever is greater. (Former R&TC, § 6597(a)(2)(A) [amended by Stats. 2024, ch. 499, eff. Jan. 1, 2025³].)

It is undisputed that the conditions for imposing the 40 percent penalty have been met. Appellant asks only that the 40 percent penalty be relieved on grounds that appellant's owner/operators were unsophisticated individuals who were unfamiliar with the requirements of the Sales and Use Tax Law, appellant relied on its bookkeeper to ensure that its tax obligations were met, and appellant has taken steps to prevent any future reporting/remittance errors.⁴

The 40 percent penalty may be relieved if a person's failure to make a timely remittance of sales tax reimbursement was due to reasonable cause or circumstances beyond the person's control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. (R&TC, § 6597(a)(2)(B).) Reasonable cause or circumstances beyond the person's control includes, but is not limited to, any of the following:

- (1) The occurrence of a death or serious illness of the person or the person's next of kin;
- (2) A state of emergency declared by the governor;
- (3) A natural disaster or other catastrophe directly affecting the person's business operations;
- (4) CDTFA's failure to send returns or other information to the correct address of record;
- (5) The failure to make a timely remittance occurred only once over a three-year period, or once during the period in which the person was engaged in business, whichever period is shorter; or
- (6) The person voluntarily corrected errors in remitting sales tax reimbursement that were made in previous reporting periods and remitted payment of the liability owed as a result of those errors prior to being contacted by CDTFA regarding possible errors or discrepancies.

(R&TC, § 6597(b)(1)(A)-(F).) Appellant bears the burden of establishing, by a preponderance of evidence, that relief of the penalty is warranted. (Cal. Code Regs., tit. 18, § 30219(a) & (b) [placing the burden of proof on the appellant as to all issues of fact].)

Neither appellant's ignorance of the law nor its decision to delegate its tax compliance responsibilities to its bookkeeper without any supervision constitute reasonable cause or

³ The amendments updated the thresholds in this section, effective January 1, 2025, to \$1,500 or less per month and 25 percent of the total tax liability, respectively. Appellant's underpayment of collected sales tax reimbursement also exceeds the updated thresholds.

⁴ Appellant also requests that OTA substitute the 10 percent negligence penalty for the 40 percent penalty. OTA, however, lacks the discretionary authority to abate the penalty in this manner.

circumstances beyond appellant’s control. The record shows that appellant operated a business which generated substantial taxable receipts and that it employed a bookkeeper who maintained a record of its taxable sales and the associated tax reimbursement collected. While determining the taxability of a transaction can at times be difficult, the reasonably accurate reporting of amounts recorded in one’s own books is not. Appellant’s decision not to review its own books and records to verify the accuracy of the amounts reported/remitted or to obtain the services of a competent tax professional, all while operating what appears to be a successful business, does not demonstrate reasonable cause. (See *Appeal of Finnish Line Motorsports, Inc.*, 2019-OTA-138P.) Indeed, appellant acknowledges that it “does understand and agree that it is [appellant’s] ultimate responsibility to oversee [its] staff and all compliance and has made every effort going forward to see that this is being done properly.” While these actions are commendable, it only further demonstrates that appellant’s failure to remit the tax reimbursement collected was not outside of its control and could have been prevented by the exercise of ordinary care.

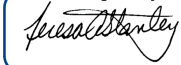
Appellant has therefore failed to establish that the requirements for relieving the 40 percent penalty have been met.

HOLDING

Appellant is not entitled to relief of the 40 percent penalty.


DISPOSITION

OTA sustains CDTFA’s action.

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

Signed by:

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 Suzanne B. Brown
 Administrative Law Judge

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 Steven Kim
 Administrative Law Judge

Date Issued: 2/9/2026