

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

In the Matter of the Appeal of: <b>SUNDOWN ENTERTAINMENT GROUP, INC.</b> <b>dba The Tropicale Restaurant &amp; Lounge</b>	) ) ) ) )	OTA Case No.: 231114672 CDTFA Case ID: 4-295-585
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**OPINION**

Representing the Parties:

For Appellant:	Jesse W. McClellan, Attorney Anita Kay, Attorney
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For Respondent:	Sunny Paley, Attorney Chad Bacchus, Attorney Jeanine Candelaria, Hearing Representative
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For Office of Tax Appeals:	Nguyen Dang, Attorney
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J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Sundown Entertainment Group, Inc. dba The Tropicale Restaurant & Lounge (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying in part appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on October 31, 2022. The NOD is for tax of \$1,377,782, plus applicable interest, and a 40 percent penalty of \$551,112.80 for failing to remit sales tax reimbursement collected (40 percent penalty) for the period January 1, 2011, through March 31, 2017 (liability period). CDTFA relieved five months of interest accrued during the eight-month period of November 2021 through July 2022.<sup>2</sup>

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<sup>1</sup> 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 CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, “CDTFA” shall refer to the board.

<sup>2</sup> Specifically, CDTFA agrees to the relief of interest for the following periods: (1) November 16, 2021, through December 13, 2021; (2) December 13, 2021, through January 13, 2022; (3) February 14, 2022, through April 29, 2022; and (4) May 3, 2022, through July 5, 2022. Excluding these periods, CDTFA did not provide additional interest relief for any other periods between April 1, 2017, through October 31, 2022.

Office of Tax Appeals (OTA) Panel Members Josh Lambert, Andrew Wong, and Steven Kim held a Virtual oral hearing for this matter on December 16, 2025.<sup>3</sup> At the conclusion of the oral hearing, the record was closed and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

### ISSUES

1. Whether the NOD was timely issued pursuant to R&TC section 6487.<sup>4</sup>
2. Whether adjustments are warranted to the measure of unreported sales tax reimbursement collected for the liability period.
3. Whether the 40 percent penalty pursuant to R&TC section 6597 was properly imposed, and if so, whether appellant has established that relief of the penalty is warranted.
4. Whether further interest relief is warranted pursuant to R&TC section 6593.5.

### FACTUAL FINDINGS

1. Appellant operated a restaurant in Palm Springs, California. Adjacent to the restaurant was a nightclub operated by The Copa Room Incorporated (The Copa Room).
2. Both appellant and The Copa Room were owned and actively managed by the same three individuals, who were officers in these corporations.<sup>5</sup>
3. During an audit of appellant, CDTFA discovered a substantial and unexplained discrepancy between appellant's reported and recorded taxable sales.
4. CDTFA initiated a fraud investigation of appellant's officers, appellant, and The Copa Room.
5. CDTFA executed a search warrant at various locations and seized records pertaining to appellant's business.

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<sup>3</sup> For purposes of the oral hearing, this matter was consolidated with the appeal of The Copa Room Incorporated, CDTFA case ID numbers 004-304-048 and 005-133-726, and OTA case number 231014594. Appellant requested, and OTA issued, a separate written opinion for each appeal.

<sup>4</sup> If it is determined that the NOD was untimely, then CDTFA's action is reversed and the remaining issues are moot.

<sup>5</sup> Appellant's officers were provided sales and use tax informational publications by CDTFA, such as when they applied for a seller's permit.

6. Among these records were appellant's monthly point of sale (POS) reports<sup>6</sup> for each quarter of the liability period. The POS reports included a summary of appellant's taxable sales and the tax reimbursement appellant collected. The POS reports also contained handwritten calculations and/or annotations showing that appellant's reported taxable sales were computed by reducing the recorded collected tax reimbursement by approximately 40 to 60 percent and then dividing that amount by the applicable tax rate.
7. The Riverside District Attorney filed a criminal complaint in California Superior Court charging appellant's chief executive officer (CEO) with three felony counts of tax evasion and three misdemeanor counts of making a false or fraudulent return.<sup>7</sup>
8. A preliminary hearing before a magistrate was held to determine whether there was probable cause to believe that appellant's CEO committed the alleged criminal offenses. The magistrate found insufficient cause to believe appellant's CEO guilty and dismissed all charges.
9. The court ordered that the evidence seized pursuant to the search warrant may be returned to the parties from which they were obtained and otherwise authorized their destruction.
10. Following the resolution of the criminal proceeding, CDTFA determined, based on a comparison of appellant's recorded and reported taxable sales, that appellant underreported its taxable sales for the liability period by \$15,500,919.<sup>8</sup>
11. CDTFA further determined that appellant failed to remit collected tax reimbursement in an amount sufficient to warrant imposition of a 40 percent penalty, and that the statute of limitations under R&TC section 6487(a) does not apply because appellant committed fraud.

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<sup>6</sup> A POS system typically includes one or more terminals, which are the modern equivalent of a cash register. Depending on the equipment and software, a POS system can generate reports that summarize sales activity for a period of time selected by the operator. These reports can include breakdowns of sales by amount and type, including product or service, credit or cash, and taxable or nontaxable.

<sup>7</sup> Specifically, the complaint charged three felony counts of tax evasion, pursuant to R&TC section 7153.5, for the periods April 1, 2014, through March 31, 2015, April 1, 2015, through March 31, 2016, and April 1, 2016, through March 31, 2017, and three misdemeanor counts of making a false or fraudulent return on March 31, 2015, March 31, 2016, and March 31, 2017, pursuant to R&TC section 7152. A sentencing enhancement for aggravated white-collar crime pursuant to Penal Code section 186.11(a)(2) was also added to the complaint.

<sup>8</sup> Appellant's POS system recorded \$28,975,666 in taxable sales for the liability period, but only reported \$13,474,747, resulting in a substantial understatement of \$15,500,919 and an error ratio of 115 percent. The "error ratio" is the percentage of unreported taxable sales to reported taxable sales.

12. On October 31, 2022, CDTFA issued an NOD to appellant for the liability period reflecting the above determinations.<sup>9</sup>
13. Appellant filed a timely petition for redetermination and submitted a CDTFA-735 (*Request for Relief from Penalty, Collection Cost Recovery Fee, And/Or Interest*) form (CDTFA-735 form), signed under penalty of perjury, asserting that there were unreasonable errors or delays by CDTFA employees and requesting relief for the period April 1, 2017, through October 31, 2022.
14. CDTFA issued a decision finding that appellant is entitled to interest relief for December 2021, January 2022, March 2022, April 2022, and May 2022, but otherwise denying the petition.
15. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether the NOD was timely issued pursuant to R&TC section 6487.

For taxpayers filing returns, except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be served within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. (R&TC, § 6487(a).) Accordingly, the NOD at issue will be barred by the three-year statute of limitations unless clear and convincing evidence establishes fraud in at least some portion of every reporting period that would otherwise be barred.<sup>10</sup> (R&TC, § 6487(a); *Appeal of Senehi*, 2023-OTA-446P.)

#### Fraud penalty not required under R&TC section 6487(a)

Appellant argues the NOD was untimely because imposition of a fraud penalty is required under R&TC section 6487(a) to avoid the three-year statute of limitations for issuing the NOD, and here, CDTFA did not impose a fraud penalty upon appellant. However, there is

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<sup>9</sup> In addition, CDTFA found fraud in the case of The Copa Room based on, for example, significant understatements of taxable sales, as well as handwritten notes on the POS reports reducing the amount of tax owed less than the amount collected.

<sup>10</sup> CDTFA mailed the NOD to appellant after the three-year limitation period for issuing a deficiency notice had expired for all quarters of the liability period. CDTFA did not obtain from appellant any waivers which would have extended the limitation period for issuing a deficiency notice. The NOD is therefore timely only for those quarters where CDTFA can establish that a portion of the deficiency is attributable to fraud.

no requirement in R&TC section 6487 that the fraud penalty under R&TC section 6485 must be imposed for the statute of limitations exception to apply. Rather, R&TC section 6487 states that “in the case of fraud, [or] intent to evade this part or authorized rules and regulations,” the three-year statute of limitations does not apply. (R&TC, § 6487(a).) Accordingly, the three-year limitation period specified in R&TC section 6487(a) does not apply where CDTFA has established fraud or intent to evade, regardless of whether a fraud penalty has been imposed.

Appellant asserts that by use of the term “shall,” R&TC section 6485 mandates that CDTFA impose the 25 percent fraud penalty where it is determined that a deficiency is due to fraud or an intent to evade the payment of tax. CDTFA’s determination not to impose the fraud penalty is based on its Audit Manual, which states that, when it is determined that the failure to remit the collected tax reimbursement was due to fraud, CDTFA may forego the imposition of the fraud penalty and impose only the 40 percent penalty.<sup>11</sup> (CDTFA’s Audit Manual, § 0511.10.)<sup>12</sup> As relevant here, R&TC section 6487(a) does not require the imposition of a fraud penalty or mention R&TC section 6485. Therefore, whether a fraud penalty under R&TC section 6485 was imposed has no bearing on the application of R&TC section 6487.

Res judicata and collateral estoppel are not applicable

Appellant asserts that the issue of appellant’s fraud was necessarily decided in the criminal proceeding, and that the doctrines of res judicata and collateral estoppel preclude CDTFA from relitigating this same issue before OTA. The doctrine of res judicata is an affirmative defense developed by the courts to bar repetitious suits on the same cause of action, and it is applicable to tax litigation. (*Appeal of Millennium Dental Technologies, Inc.*,

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<sup>11</sup> An agency’s decision not to enforce through civil process is a decision generally committed to an agency’s discretion. (See *Heckler v. Chaney* (1985) 470 U.S. 821, 831.) In addition, use of the term “shall” is ordinarily construed as mandatory language, though in determining whether the Legislature intended a statute to be mandatory or permissive, use in the statute of “may” or “shall” is not necessarily dispositive or conclusive, merely indicative. (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542.) Here, CDTFA could have imposed both penalties when the failure to remit the tax reimbursement collected was due to fraud, which would have been to appellant’s detriment.

<sup>12</sup> CDTFA’s Audit Manual is an advisory publication providing direction to CDTFA’s staff administering the Sales and Use Tax Law and Regulations. (CDTFA Audit Manual, Chapter 1, Title Page.) CDTFA’s Audit Manual has not been adopted pursuant to a formal rulemaking process. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) While CDTFA’s Audit Manual may provide guidance to OTA, it does not constitute binding legal authority. (*Appeal of Amaya*, 2021-OTA-328P.)

2019-OTA-178P.)<sup>13</sup> The effect of the doctrine of collateral estoppel is that any issue which has been determined by a court of competent jurisdiction is conclusively determined as to the parties and their privies, not only for the first action but also in subsequent actions, in which the same questions arise even though the cause of action may be different. (*Appeal of Eriane* (74-SBE-050) 1974 WL 2866.)

The doctrines of res judicata and collateral estoppel do not attach to orders dismissing criminal prosecutions following preliminary hearings. (See *People v. Uhlemann* (1973) 9 Cal.3d 662, 667-668; *People v. Prewitt* (1959) 52 Cal.2d 330, 339-340.) The magistrate's order of dismissal is not a decision on the merits since the court at a preliminary hearing determines only whether or not there is "sufficient cause" to believe that the defendant is guilty of a public offense, and the magistrate lacks the authority to determine the guilt or innocence of the defendant. (Pen. Code, §§ 866(b), 871, 872; *People v. Uhlemann, supra*, 9 Cal.3d at pp. 666-667; *People v. Wallace* (2004) 33. Cal.4th 738, 749). In addition, res judicata does not apply because the imposition of criminal and civil tax penalties resulting from a single factual situation are distinct causes of action.<sup>14</sup> (See *Helvering v. Mitchell* (1938) 303 U.S. 391, 397.) Therefore, res judicata and collateral estoppel do not apply.

#### CDTFA's evidence is admissible

Appellant argues that its POS reports and other business records used by CDTFA to support the fraud penalty were illegally obtained and are therefore inadmissible as evidence in this appeal. Appellant asserts that CDTFA was not entitled to make and retain copies of the documents seized during the execution of its search warrant because the court ordered that they be returned to the parties from which they were obtained, or otherwise that the documents be destroyed.

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<sup>13</sup> The application of res judicata depends upon the satisfaction of four elements: (1) the parties in each action must be identical (or at least be in privity); (2) a court of competent jurisdiction must have rendered the first judgment; (3) the prior action must have resulted in a final judgment on the merits; and (4) the same cause of action or claim must be involved in both suits (or, here, appeals). (*Appeal of Millennium Dental Technologies, Inc., supra*.)

<sup>14</sup> Furthermore, the criminal complaint filed against appellant's CEO did not include any charges relating to the period January 1, 2011, through March 31, 2014. (See R&TC, § 7176.) The liability period for this appeal is January 1, 2011, through March 31, 2017; therefore, res judicata would not apply from January 1, 2011, through March 31, 2014.

Subject to limited exceptions which are not pertinent here, in an OTA appeal there is no authority for excluding records seized pursuant to a valid search warrant.<sup>15</sup> (*Appeal of Ajay Beri Corporation*, 2024-OTA-385P.) As pertinent to this appeal, all relevant evidence is admissible. (Cal. Code Regs., tit. 18, § 30214(f)(1).) Furthermore, CDTFA may base its determination on any information in its possession.<sup>16</sup> (R&TC, § 6481.) In addition, the court order is permissive and states that the documents may be returned and authorizes their destruction but does not indicate that the documentation may not be relied upon in other proceedings, such as this appeal. Thus, there is no basis for concluding that CDTFA's evidence is inadmissible.

#### CDTFA has established fraud

Fraud is intentional wrongdoing on the part of the taxpayer with the specific intent to avoid a tax known to be due. (*Appeal of Delgado*, 2018-OTA-200P.) CDTFA bears the burden of establishing fraud or intent to evade by clear and convincing evidence.<sup>17</sup> (*Ibid.*) Fraud may be proved by direct or circumstantial evidence. (*Appeal of Ajay Beri Corporation, supra.*) Circumstantial evidence of fraud may include the understatement of income, inadequate records, failure to file tax returns, implausible or inconsistent explanations of behavior, concealment of assets, failure to cooperate with tax authorities, and lack of credibility in the taxpayer's testimony. (*Ibid.*) While the mere omission of reportable income is not in and of itself sufficient to warrant finding of fraud, repeated understatements in successive years, coupled with other circumstances showing intent to conceal or misstate taxable income, present a basis for a fraud finding. (*Ibid.*)

The record shows intent to evade payment of tax. By adding a charge for sales tax reimbursement to its sales, appellant must have known it was required to remit the entirety of this amount to CDTFA. Despite this knowledge, the handwritten calculations shown on appellant's POS reports indicate that prior to the payment deadline for each quarterly period, an individual acting on behalf of appellant reviewed the tax reimbursement collected, and that deliberate action was then taken to calculate and remit to CDTFA tax reimbursement that was

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<sup>15</sup> OTA will not admit evidence it finds to be privileged or any evidence when its probative value will be substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Cal. Code Regs., tit. 18, § 30214(f)(2) & (3).) Neither of these grounds is present here.

<sup>16</sup> An examination necessarily entails documenting, transcribing, or copying a taxpayer's records to support the findings of the audit. (See CDTFA's Audit Manual, § 0401.09.)

<sup>17</sup> Corporate fraud necessarily depends upon the fraudulent intent of the corporate officer. (*Federbush v. Commissioner* (1960) 34 T.C. 740, 749.)

anywhere from 40 to 60 percent less than the amount collected. This is evidence showing that appellant knowingly reported falsified information to avoid remitting tax reimbursement, and thus constitutes direct evidence of fraud.

Furthermore, appellant's officers were experienced in sales and use tax and in the bar and restaurant industry and were provided sales and use tax informational publications by CDTFA, such as when they applied for a seller's permit. Appellant's understatement of taxable sales is both significant and consistent over multiple periods. Appellant's POS system recorded \$28,975,666 in taxable sales for the liability period, but only reported \$13,474,747, resulting in a substantial understatement of \$15,500,919 and an error ratio of 115 percent.<sup>18</sup> Appellant provides no explanation for the understatement. Therefore, CDTFA has provided clear and convincing evidence that the deficiency for each quarter of the liability period was due to fraud. Appellant makes no attempt to defend its reporting method or to refute CDTFA's fraud determination. Accordingly, the NOD was timely issued.

Issue 2: Whether adjustments are warranted to the measure of unreported sales tax reimbursement collected for the liability period.

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a

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<sup>18</sup> In addition, there are also significant understatements of taxable sales for The Copa Room, as well as handwritten notes on the POS reports reducing the amount of tax owed less than the amount collected written by an individual acting on behalf of The Copa Room. Both appellant and The Copa Room were owned and actively managed by the same three individuals, who were officers in these corporations.

result differing from CDTFA's determination is warranted. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

CDTFA examined appellant's POS reports for recorded collected sales tax reimbursement and compared the results to reported collected sales tax reimbursement on appellant's sales and use tax returns, resulting in audited unreported sales tax reimbursement collected of \$1,377,782 for the liability period. CDTFA used appellant's own records to determine the taxable measure. Comparison and reconciliation of reported and recorded sales is an effective and reliable audit method. (See CDTFA's Audit Manual, § 0810.05.)

Accordingly, CDTFA's determination is reasonable and rational and the burden of proof shifts to appellant.

Appellant provides no arguments or evidence to show error in CDTFA's determination.<sup>19</sup> Therefore, appellant has not shown that any adjustments are warranted.

Issue 3: Whether the 40 percent penalty pursuant to R&TC section 6597 was properly imposed, and if so, whether appellant has established that relief of the penalty is warranted.

Any person who knowingly collects sales tax reimbursement and fails to timely remit it to the state is liable for a penalty of 40 percent of the amount not timely remitted if the failure to remit exceeds certain thresholds. (R&TC, § 6597(a)(1).) The penalty does not apply if the person's liability for unremitted sales tax reimbursement averages \$1,000 or less per month or does not exceed 5 percent of the total amount of the tax liability for which the sales tax reimbursement was collected for the period in which the tax was due, whichever is greater. (R&TC, § 6597(a)(2)(A).)<sup>20</sup> In order for OTA to sustain CDTFA's imposition of the 40 percent penalty, CDTFA must establish that: (1) appellant knowingly collected sales tax reimbursement from its customer(s); (2) appellant failed to timely remit the sales tax for which it collected the reimbursement; and (3) the amount of sales tax collected but not remitted exceeds the applicable threshold. (R&TC, § 6597(a)(1)-(2).) The applicable standard of proof is by a preponderance of the evidence. (*Appeal of ISIF Madfish, Inc.*, 2019-OTA-292P.)

The law provides for relief of the 40 percent penalty if the taxpayer establishes that its actions were due to a reasonable cause or circumstances beyond the taxpayer's control and

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<sup>19</sup> Appellant argues that CDTFA cannot impose the tax and penalties because the determination is barred by the statute of limitations and CDTFA has not proven fraud. However, OTA determined in Issue 1 that CDTFA has established fraud, and thus the determination is not barred by the statute of limitations.

<sup>20</sup> These threshold amounts were revised for determinations made on or after January 1, 2025. (R&TC, § 6597(d).)

occurred notwithstanding the taxpayer's exercise of ordinary care and the absence of their willful neglect. (R&TC, § 6597(a)(2)(B).) R&TC section 6597 provides six examples of reasonable cause, none of which is relevant to the facts under consideration. R&TC section 6597 does not establish a procedure for requesting relief. OTA interprets R&TC section 6597 to require the taxpayer or its designee to request relief and prove a factual basis for the request.

The evidence shows that, in every quarter within the period to which CDTFA applied the penalty, appellant knowingly collected sales tax reimbursement and failed to timely remit the sales tax for which it collected reimbursement. In Issue 1, OTA determined that prior to the payment deadline for each quarterly period, an individual acting on behalf of appellant reviewed the tax reimbursement collected, and that deliberate action was then taken to calculate and remit to CDTFA tax reimbursement that was anywhere from 40 to 60 percent less than the amount collected. In addition, the amount of sales tax reimbursement collected but not remitted exceeds the minimum thresholds set forth in R&TC section 6597(a)(2). Therefore, OTA finds that CDTFA correctly imposed the 40 percent penalty. Appellant does not argue, and the record does not show, that the penalty should be relieved.<sup>21</sup>

Issue 4: Whether further interest relief is warranted pursuant to R&TC section 6593.5.

CDTFA, in its discretion, may relieve all or any part of the interest imposed where the failure to pay tax is due in whole or in part to an unreasonable error or delay by a CDTFA employee acting in his or her official capacity. (R&TC, § 6593.5(a)(1).) However, interest shall not be relieved where a significant aspect of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (R&TC, § 6593.5(b).) OTA reviews CDTFA's decisions to deny interest relief on an abuse of discretion standard. (*Appeal of Micelle Laboratories Inc.*, 2020-OTA-290P.) To show an abuse of discretion, a taxpayer must establish that, in refusing to relieve interest, CDTFA exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Eichler*, 2022-OTA-029P.)

Appellant requested interest relief for the period April 1, 2017, through October 31, 2022, on grounds that CDTFA unreasonably delayed the issuance of the NOD in order to pursue what appellant describes as meritless criminal charges against appellant's CEO. CDTFA agreed to abate interest for five months following the resolution of the criminal proceeding, but otherwise denied appellant's request for relief. CDTFA states as the basis of its denial that from

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<sup>21</sup> Appellant argues that CDTFA cannot impose the penalty because the determination is barred by the statute of limitations and CDTFA has not proven fraud. However, OTA determined in Issue 1 that CDTFA has established fraud, and thus the determination is not barred by the statute of limitations.

July 14, 2017, through November 15, 2021, there was no unreasonable error or delay by any CDTFA employee because the criminal proceeding was pending outside of CDTFA's control, and CDTFA did not begin its audit until November 15, 2021. CDTFA also examined the audit activity history from November 15, 2021, through the issuance of the NOD, and concluded that (excepting the five months previously conceded) all tasks were performed within the standard timeframe for completion.

Appellant's dispute pertains not to the timeliness of the criminal proceeding, but to the propriety of CDTFA's decision to suspend the audit pending the outcome of the criminal proceeding. Appellant argues the magistrate's finding that the criminal charges were not supported by probable cause supports appellant's claim that it was unreasonably brought before the criminal court which caused undue delay.


Interest relief is not warranted because the decision to prosecute appellant's CEO was ultimately made by the Riverside District Attorney's Office. This action therefore does not constitute an unreasonable error or delay by CDTFA. Moreover, the results of a criminal investigation are relevant to any related civil action taken by CDTFA. (See, e.g. *Appeal of Ajay Beri Corporation, supra*; *Appeal of Sherwood* (65-SBE-046) 1965 WL 1383 [taxpayer's criminal conviction for tax evasion was of "considerable significance" in determining whether civil fraud penalty applies]; *Appeal of Delgado, supra* [restitution paid to CDTFA following a criminal tax conviction is credited against a taxpayer's civil tax liability].) CDTFA's action therefore does not constitute an unreasonable error or delay. Accordingly, appellant has not shown that CDTFA abused its discretion in failing to relieve interest for the remaining period at issue.

HOLDINGS

1. The NOD was timely issued pursuant to R&TC section 6487.
2. Adjustments are not warranted to the measure of unreported sales tax reimbursement collected for the liability period.
3. The 40 percent penalty pursuant to R&TC section 6597 was properly imposed, and appellant has not established that relief of the penalty is warranted.
4. Further interest relief is not warranted pursuant to R&TC section 6593.5.


DISPOSITION

CDTFA's action is sustained.

Signed by:  
  
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 Josh Lambert  
 Administrative Law Judge

We concur:

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 Andrew Wong  
 Administrative Law Judge

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 Steven Kim  
 Administrative Law Judge

Date Issued: 3/3/2026