OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **PHO HANG**	OTA Case No.: 250522184 CDTFA Case ID: 3-171-902

OPINION

Representing the Parties:

For Appellant: Thien Nguyen, President

For Respondent: Jason Parker, Chief of Headquarters Ops.

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Pho Hang (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on September 9, 2021. The NOD is for tax of $63,729, plus applicable interest, and a negligence penalty of $6,372.85 for the period January 1, 2017, through December 31, 2019 (liability period).[2] Thereafter, CDTFA conducted a reaudit that reduced the tax by $35,181, from $63,729 to $28,548, and deleted the negligence penalty.

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).

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

[2] The NOD was timely issued because appellant signed a series of waivers extending the otherwise applicable three-year statute of limitations and allowing CDTFA until October 31, 2021, to issue an NOD. (See R&TC, §§ 6487(a), 6488.)

ISSUE[3]

Whether relief of interest is warranted.

FACTUAL FINDINGS

1. Appellant is a corporation that operates a Vietnamese restaurant in Roseville, California. This was appellant's first audit.
2. Upon audit, CDTFA found that reported gross receipts on appellant's federal income tax returns exceeded appellant's reported total sales on its sales and use tax returns, and also found that Form 1099-K (*Payment Card and Third-Party Network Transactions*) data reflected that appellant's credit card receipts exceeded reported total sales.[4] Due to these discrepancies, CDTFA concluded that it could not rely on the amounts reported on appellant's sales and use tax returns. Consequently, CDTFA utilized an alternative audit method (markup on cost of goods sold) to calculate appellant's unreported taxable sales totaling $826,633 for the liability period. CDTFA also added a negligence penalty.
3. In an audit report letter dated July 21, 2021, CDTFA notified appellant of the audit findings. CDTFA issued the September 9, 2021 NOD to appellant for tax of $63,729, plus applicable interest, and a negligence penalty of $6,372.85 for the liability period.
4. Appellant filed a timely petition for redetermination dated October 7, 2021.
5. CDTFA held an internal appeals conference on January 10, 2024. During the internal appeals process, appellant and CDTFA agreed that CDTFA would conduct a three-day observation test of the business as part of a reaudit. Appellant also agreed to provide additional books and records for the reaudit.
6. CDTFA issued the decision dated June 7, 2024, ordering the reaudit and also deleting the negligence penalty.
7. CDTFA conducted the reaudit, including a three-day observation test in November 2024. Based on additional information obtained during the reaudit, CDTFA reduced the measure of unreported taxable sales from $826,633 to $350,066, which reduced the tax by $35,181, from $63,729 to $28,548.

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[3] Although the Request for Appeal notes some disagreement with CDTFA's audit methods, it clarifies that this appeal disputes interest only, and identifies the dollar amount in dispute as $13,801.38, which is the amount of interest listed on the reaudit report letter. Thus, OTA understands appellant's appeal to OTA disputes only the interest, not the tax liability.

[4] Form 1099-K is an IRS form that reports the monthly and annual amounts a bank, credit card company, or third-party network paid to a merchant during a given time period. Form 1099-K records payments made by any electronic means, including but not limited to credit cards, debit cards, and third-party payment apps and networks.

8. CDTFA issued to appellant a reaudit report letter dated April 3, 2025, stating the final reaudit results, including tax of $28,548 ($63,729 - $35,181), plus interest totaling $13,801.38 as of April 30, 2025. In a May 13, 2025 letter to appellant, CDTFA notified appellant of its options to accept the reaudit results or appeal to OTA.
9. Appellant timely filed this appeal with OTA, listing $13,801.38 as the amount on appeal, and submitting a request for relief of interest, signed under penalty of perjury.
10. In its response to appellant's brief, CDTFA notes that it has granted appellant automatic relief of interest for the period March through June 2020 for delays attributable to COVID-19.

DISCUSSION

The imposition of interest is mandatory. (R&TC, § 6482.) There is no statutory right to interest relief. The law allows CDTFA, in its discretion, to grant relief of all or any part of the interest imposed on a person under the Sales and Use Tax Law where the failure to pay the tax is due in whole or in part to an unreasonable error or delay by an employee of CDTFA acting in his or her official capacity. (R&TC, §§ 20(a), 6593.5(a)(1).) Such a delay means, for example, an unreasonable failure to work on an appeal. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) The mere passage of time does not necessarily establish error or delay. (See *Appeal of Eichler*, 2022-OTA-029P.) In addition, an unreasonable error or delay shall be deemed to have occurred only if no 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).)

In reviewing CDTFA's decisions to deny interest relief, OTA applies an abuse of discretion standard. (*Appeal of Micelle Laboratories, Inc.*, *supra*; *Appeal of Eichler*, *supra*.) To show an abuse of discretion, appellant 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*, *supra*.) Any person requesting interest relief must file with CDTFA a statement under penalty of perjury setting forth the facts on which the request is based.[5] (R&TC, § 6593.5(c).)

[5] California Code of Regulations, title 18, section 1703 restates, without adding further clarification to, the requirements for interest relief within the meaning of R&TC section 6593.5. (See Cal. Code Regs., tit. 18, § 1703(b)(1)(E).)

Appellant does not allege or prove any unreasonable error or delay by CDTFA's employees acting in their official capacity.[6] Accordingly, OTA finds that CDTFA did not abuse its discretion in denying appellant's request for interest relief.

HOLDING

Appellant is not entitled to relief of interest.

DISPOSITION

CDTFA's action, which reduced the tax to $28,548, deleted the negligence penalty, and otherwise denied the petition for redetermination, is sustained.

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

Date Issued: 4/6/2026

[6] As noted above, CDTFA granted automatic relief of interest for the period March through June 2020 for delays attributable to COVID-19.