**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of:<br>**SKEWERS LEBANESE FOOD** | OTA Case No.: 240917430<br>CDTFA Case ID: 5-086-570 |

**OPINION**

Representing the Parties:

For Appellant: Anthony Almaz, Attorney
Jeff Almaz, President

For Respondent: Sunny Paley, Attorney
Chad Bacchus, Attorney
Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Oliver Pfost, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Skewers Lebanese Food (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for reconsideration of a Notice of Successor Liability (NOSL) issued on June 26, 2023.[1] The NOSL is for tax of $29,949.24, plus applicable interest, penalties totaling $5,348.50, and a collection cost recovery fee of $189.02, for the period April 9, 2019, through June 30, 2022. The NOSL reflects CDTFA's determination that appellant is liable as a successor for the unpaid sales and use tax liabilities of Terranea Foods, Inc. (Terranea Foods) pursuant to R&TC section 6812. On November 12, 2024, CDTFA granted appellant relief from the penalties totaling $5,348.50. On November 13, 2024, CDTFA notified appellant of an increase to the tax amount asserted in the NOSL by $5,348.50, from $29,949.24 to $35,297.74, to offset the cancellation of the penalties.

Office of Tax Appeals (OTA) Panel Members Kim Wilson, Suzanne B. Brown, and Steven Kim held a virtual oral hearing for this matter on January 13, 2026. At the conclusion of

[1] The June 26, 2023 NOSL was timely because it was issued within three years of June 8, 2022, the date when CDTFA received notice of appellant's purchase of the business or stock of goods based on appellant requesting a seller's permit for its new business. (See R&TC § 6814(a); Cal. Code Regs., tit. 18, § 1702(d)(1).)

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 appellant is liable as a successor for the unpaid sales tax liabilities of Terranea Foods.
2. Whether CDTFA properly adjusted the amount of the NOSL.

## FACTUAL FINDINGS

1. Appellant signed a lease agreement with Fainbarg I, L.P., for specific premises located in Huntington Beach. The lease agreement bears appellant's CEO's signature and a handwritten date of "6/15/2022." Previously, the premises were occupied by Terranea Foods doing business as Skewers Lebanese Street Food.
2. Appellant and Terranea Foods executed an Asset Purchase Agreement on June 24, 2022, for the business referred to as "Skewers Lebanese Street Food" located in Huntington Beach. The Asset Purchase Agreement stated, as relevant here, the following: (1) appellant was purchasing both the tangible and intangible assets of Skewers Lebanese Street Food for a purchase price of $40,000; (2) tangible assets included all fixtures and furniture, cooking equipment, refrigeration equipment, food and beverage inventory, and tables and chairs; (3) intangible assets included the name of the business, intellectual property, customer lists and database, goodwill, reputation and business relationships, the website, and telephone numbers; and (4) the purchase price included $1,500 for inventory, $8,000 for all other tangible assets, and $30,500 for intangible assets, including goodwill.
3. Appellant operated Skewers Lebanese Street Food under a seller's permit with an effective start date of July 1, 2022. Appellant closed the seller's permit effective June 30, 2024.
4. Terranea Foods had unpaid sales tax liabilities exceeding the purchase price of $40,000 when it executed the Asset Purchase Agreement with appellant.
5. Appellant did not obtain a tax clearance certificate from CDTFA, nor did appellant withhold amounts from the purchase price sufficient to cover Terranea Foods' unpaid sales tax liabilities.
6. On February 13, 2023, appellant and Terranea Foods signed a Termination Agreement. The Termination Agreement states that "it has come to the attention of [appellant] that [Terranea Foods] made material misrepresentations in the Asset Purchase Agreement,"

particularly regarding owing taxes. The Termination Agreement states that the Asset Purchase Agreement would be terminated, that appellant would return the purchased assets to Terranea Foods in a commercially reasonable time, and that Terranea Foods would return the purchase price to appellant.

7. Terranea Foods did not return the purchase price, and appellant continued to operate the business and did not return the assets.
8. On June 26, 2023, CDTFA issued the NOSL to appellant based on its determination that appellant was liable as a successor for the unpaid sales tax liabilities of Terranea Foods.
9. Appellant filed a timely petition for redetermination disputing the NOSL.
10. CDTFA held an appeals conference with appellant on January 10, 2024,[2] and issued a decision denying appellant's petition on August 12, 2024.
11. Appellant timely filed this appeal with OTA on September 11, 2024.
12. On September 18, 2024, appellant submitted a CDTFA-735 form to CDTFA, requesting relief from penalties and interest.
13. On September 24, 2024, CDTFA acknowledged appellant's request for reconsideration (RFR) dated September 18, 2024, but ultimately denied the RFR for being untimely since the deadline to submit the RFR was September 11, 2024.
14. On November 12, 2024, CDTFA issued a letter granting relief from penalties ($5,348.50) but not interest.[3]
15. On November 13, 2024, CDTFA notified appellant of an increase to the NOSL. Specifically, CDTFA increased the amount of tax by $5,348.50, from $29,949.24 to $35,297.74, to offset the cancellation of penalties in the amount of $5,348.50 assessed on the NOSL. The amount of interest and the collection cost recovery fee remained the same.

## DISCUSSION

### Issue 1: Whether appellant is liable as a successor for the unpaid sales tax liabilities of Terranea Foods.

California law provides that when a person with a sales tax liability sells his or her business or stock of goods, the successor must withhold from the purchase price an amount

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[2] CDTFA's Appeals Bureau Decision lists the date of the appeals conference as June 10, 2024. CDTFA later clarified the June 10, 2024 date was a typographical error, and the appeals conference was held on January 10, 2024.

[3] The denial of relief from interest is not in dispute.

sufficient to cover the tax liability of the former owner, unless the former owner provides a receipt or certificate from CDTFA showing the tax liability has been paid. (R&TC, § 6811.) If the purchaser fails to withhold payment, the purchaser becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price. (R&TC, § 6812(a).) The liability of the successor or purchaser extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner even though not then determined against him or her, which include taxes, interest, and penalties. (Cal. Code Regs., tit. 18, § 1702(b).)

The purchaser will be released from its obligation to withhold from the purchase price if he or she obtains a tax-clearance certificate from CDTFA stating that no taxes, interest, or penalties are due from the predecessor. (Cal. Code Regs., tit. 18, § 1702(c).) The purchaser will also be released if CDTFA fails to respond to a purchaser's written request for a tax-clearance certificate within 60 days of the date it received the written request, or within 60 days of the date the business was sold, or within 60 days of the date the former owner's records were made available for audit, whichever is later. (*Ibid*.)

It is undisputed that appellant failed to obtain a tax-clearance certificate from CDTFA, or withhold a sufficient amount of the purchase price to cover Terranea Foods' unpaid sales tax liabilities. Rather, appellant argues it did not purchase a business or stock of goods from Terranea Foods and therefore cannot be held personally liable as a successor for the unpaid sales tax liabilities of Terranea Foods. Appellant contends the Asset Purchase Agreement was intended to coax Terranea Foods into vacating the premises it occupied and was not for the purchase of the restaurant Skewers Lebanese Street Food.

In support of its argument, appellant offers a declaration signed by the CEO of Terranea Foods. In the declaration, the CEO of Terranea Foods states: (1) Terranea Foods failed to satisfy its lease obligations and the landlord sought to terminate the lease while negotiating a new lease with appellant; (2) appellant offered Terranea Foods $40,000 to leave the premises; (3) Terranea Foods insisted on executing an Asset Purchase Agreement; (4) the true purpose of the Asset Purchase Agreement was to relinquish all rights Terranea Foods had in the occupying property; and (5) Terranea Foods agreed to terminate the Asset Purchase Agreement but is unable to return the $40,000 payment to appellant. Appellant also provides the lease agreement signed by appellant's CEO for the premises in which the restaurant is located, and the Termination Agreement signed by the CEOs of appellant and Terranea Foods.

A contract, such as the Asset Purchase Agreement, must be interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, and a contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. (Civ. Code, §§ 1636, 1647.) The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity. (Civ. Code, § 1638.) When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. (Civ. Code, § 1639.) Extrinsic evidence is admissible to interpret a written contract, but not to give it a meaning to which it is not susceptible. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.)

At the hearing, appellant argued that it "never desired to purchase the goodwill or the business as its going concern of Terranea Foods. Rather, it sought to establish its own business, which is La Creperie." Appellant's CEO, Mr. J. Almaz was asked if he intended to operate the same business with a similar name, Skewers Lebanese Street Food. Mr. J. Almaz testified that he kept the concept until the date that he could transform the place and then open it as La Creperie.

Here, appellant and Terranea Foods reduced their contract to writing and therefore the intention of the parties is to be ascertained from the writing alone, if possible. The language of the Asset Purchase Agreement is clear on its face and does not manifest any purpose other than the purchase of the business Skewers Lebanese Street Food. In the contract, appellant agreed to pay Terranea Foods $40,000 for the business, including its tangible and intangible property. The contract does not contain any language indicating the purpose of the agreement was only to pay Terranea Foods to vacate or quit the premises, or that appellant did not intend to purchase the business.

As for the surrounding circumstances, appellant signed a lease for the premises in which the restaurant was located. Appellant subsequently operated Skewers Lebanese Street Food under a seller's permit from July 1, 2022, through June 30, 2024. Although appellant signed the Termination Agreement with Terranea Foods, appellant did not return the purchased assets to Terranea Foods and Terranea Foods did not return the purchase price of $40,000. Moreover, appellant continued to operate the business as Skewers Lebanese Street Food, from the time it first purchased the business until July 15, 2024, when it sold the business. The surrounding circumstances therefore support the interpretation that the intent of the parties at the time of contracting was for appellant to purchase, and Terranea Foods to sell, the restaurant Skewers Lebanese Street Food. Furthermore, even if, hypothetically, appellant's primary goal was to ensure a peaceful transition at the business premises, OTA finds that the evidence establishes that appellant nevertheless purchased the business, including tangible and intangible assets.

In sum, appellant purchased a business for $40,000 and became the successor for that business, which had unpaid sales tax liabilities. Appellant did not withhold a sufficient amount of the purchase price to cover the predecessor's unpaid tax liabilities, and appellant did not request or receive a tax-clearance certificate from CDTFA. Therefore, appellant is personally liable for Terranea Foods' sales tax liability, including interest and collection cost recovery fees, up to the purchase price of $40,000.

Issue 2: Whether CDTFA properly adjusted the amount of the NOSL.

If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price. (R&TC, § 6812(a).) The obligation of the successor shall be enforced by serving a NOSL on the person in the manner prescribed for service of a notice of a deficiency determination. (R&TC, § 6814(a).)

Here, appellant failed to withhold from the $40,000 purchase price an amount sufficient to cover the unpaid sales taxes of the business. As such, OTA concluded above that appellant is liable for the predecessor's unpaid tax liabilities to the extent of the purchase price ($40,000).

R&TC section 6563(a) states, in relevant part, that: "[t]he board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing." As a general rule, the claim for an increase must be asserted within three years of the date the first deficiency determination was issued, or within three years from the date records were made available to CDTFA for examination, whichever is later. (R&TC, § 6563(a)(2).) R&TC section 6564 states, "[t]he order or decision of the board upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof."

After filing this appeal with OTA, appellant submitted a CDTFA-735 form to CDTFA requesting relief from penalties and interest.[4] Prior to OTA's oral hearing in this matter, CDTFA granted relief from penalties totaling $5,348.50. CDTFA did not grant relief from interest or the collection cost recovery fee. On November 13, 2024, CDTFA increased the NOSL by increasing the amount of unpaid sales tax in the NOSL by $5,348.50, from $29,949.24 to $35,297.74, to offset the cancellation of penalties, resulting in a net increase of $0.00 in successor liability.

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[4] Taxpayers may be relieved of applicable penalties and interest in certain circumstances by filing with CDTFA a statement signed under penalty of perjury explaining why relief should be granted. (R&TC, §§ 6592, 6592.5.) At the time of appellant's request, a CDTFA-735 form may be used by taxpayers for this purpose.

Appellant does not contend that CDTFA's adjustment to the determination is improper because it was not asserted within three years of the first deficiency determination.[5] Instead, appellant argues the adjustment to the determination is improper because the increase occurred after CDTFA's determination was "final" and after "the hearing" as those words or phrases are meant in R&TC sections 6563(a) and 6564. Appellant contends the hearing occurred on June 10, 2024. Likewise, appellant contends CDTFA's determination became final on September 12, 2024, 30 days after CDTFA issued its August 12, 2024 decision. For these two reasons, appellant argues the November 13, 2024 increase to the unpaid sales tax in the NOSL is time-barred.

R&TC section 6563 was originally added to California's R&TC in 1941. The "board" referred to in R&TC section 6563 refers to the State Board of Equalization (BOE) which had, historically, administered sales and use taxes, and its elected five-member board heard and decided tax appeals. In 1961, BOE clarified that the word "hearing" referred to in R&TC section 6563 is the five-member board hearing on a petition for redetermination (or reconsideration), and not the preliminary hearing which may be held by BOE staff persons for the purpose of accommodating taxpayers at the most convenient location and reducing the controversy to the basic facts in issue. (CDTFA's Sales and Use Tax Annotation 465.0020 (1/5/61).)[6]

The Taxpayer Transparency and Fairness Act of 2017 transferred the administration of sales and use taxes to CDTFA and the hearing of tax appeals to OTA. (Gov. Code, §§ 15570, 15570.22, 15670, 15672.) Effective July 1, 2017, the references in the R&TC to "board" in the context of the administration of sales and use taxes refers to CDTFA, and in the context of tax appeals, to OTA. (R&TC, § 20(a),(b), and (d).)

Consequently, the reference to "board" in R&TC section 6563(a) refers to CDTFA. The reference to "hearing" in R&TC section 6563(a) refers to the oral hearing conducted by OTA, because, historically, "hearing" referred to the five-member board hearing on a petition for

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[5] The NOSL was issued on June 26, 2023, and the adjustment was asserted on November 13, 2024, well-within the three-year limitations period.

[6] Annotations are summaries of the conclusions reached in selected opinions of attorneys of the CDTFA's Legal Department and are intended to provide guidance regarding the interpretation of CDTFA statutes and regulations as applied by staff to specific factual situations. (Cal. Code Regs., tit. 18, § 35101(a)(1), (c)(2).) Annotations are not binding authority and do not have the force or effect of law. (Cal. Code Regs., tit. 18, § 35101(a)(1); *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.) However, OTA may give some consideration to annotations and will independently determine the appropriate weight to afford an annotation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 15; *Appeal of Martinez Steel Corporation*, *supra*.)

redetermination (or reconsideration), and not the preliminary hearing or "appeals conference" conducted by BOE (formerly) or CDTFA (currently) staff persons. (Gov. Code, § 15570.50, et. seq.) Thus, CDTFA may decrease or increase the amount of its determination before it becomes final, but the amount may be increased only if a claim for increase is asserted by CDTFA at or prior to OTA's oral hearing. Here, CDTFA's increase to the amount of unpaid sales tax occurred prior to the oral hearing with OTA, and it is therefore timely or proper in that respect.

CDTFA's determination was not final on September 12, 2024. Appellant's reliance on R&TC section 6564 is misplaced. Government Code section 15570.54 provides that if CDTFA denies a taxpayer their request for relief after an appeals conference, the taxpayer may request a hearing before OTA, provided OTA has jurisdiction over the dispute. (Gov. Code, § 15570.54; Cal. Code Regs., tit. 18, §§ 30103, 30104.) During OTA's review of an adverse decision on a timely petition, CDTFA's determination is not yet final as a matter of law. (*Appeal of East Coast Foods, Inc*., 2023-OTA-289P.) In this case, the adverse CDTFA action will not become final until 30 days after service upon appellant of notice of OTA's final decision in this appeal. (R&TC, § 6564.) Here, appellant requested and was provided an appeals conference with CDTFA, resulting in an adverse decision. Appellant subsequently filed a timely appeal of CDTFA's adverse decision to OTA, an act which holds CDTFA's determination in abeyance while undergoing OTA review. Therefore, CDTFA's determination was not final on September 12, 2024, and it is still not final during the pendency of the instant appeal with OTA. Accordingly, CDTFA's increase to the NOSL was timely asserted.

## HOLDINGS

1. Appellant is liable as successor for the unpaid sales tax liabilities of Terranea Foods.
2. CDTFA properly adjusted the amount of the NOSL.

## DISPOSITION

CDTFA's actions denying appellant's timely petition for reconsideration of successor liability, relieving the penalty of $5,348.50, and increasing the tax in the amount of $5,348.50 are sustained.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

Signed by:
Suzanne B. Brown
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Steven Kim
5DD7EF644397430...
Steven Kim
Administrative Law Judge

Date Issued: 3/27/2026