OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **V. RODRIGUEZ,** **dba Generation West**	OTA Case No.: 240716649 CDTFA Case ID: 1-833-822

<u>OPINION</u>

Representing the Parties:

For Appellant: M. Rodriguez, Representative

For Respondent: Amanda Jacobs, Attorney
Cary Huxsoll, Attorney
Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6561, V. Rodriguez (appellant) appeals a Decision, as amended by two Supplemental Decisions, issued by respondent California Department of Tax and Fee Administration (CDTFA), which collectively denied, in part, appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on February 12, 2020.[1] The NOD was for tax of $357,498, plus applicable interest, for the period January 1, 2016, through June 30, 2019 (liability period).[2] CDTFA based the tax of $357,498 on disallowed claimed nontaxable sales of animal feed of $3,659,510. CDTFA's Decision ordered a reaudit that ultimately reduced the taxable measure by $141,428, from $3,659,510 to $3,518,082, and the tax liability by $13,816, from $357,498 to $343,683.

Office of Tax Appeals (OTA) Panel Members Andrew Wong, Kim Wilson, and Josh Aldrich held a virtual oral hearing for this matter on January 13, 2026. At the conclusion of the oral hearing, OTA closed the evidentiary record and the parties submitted this matter for an

[1] The State Board of Equalization (BOE) formerly administered sales and use taxes. On July 1, 2017, BOE administrative functions relevant to this case 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 BOE.

[2] CDTFA timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations and gave CDTFA until April 30, 2020, to issue the NOD. (See R&TC, §§ 6487(a), 6488.)

Opinion based on the oral hearing record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUES

1. Whether the amount of unreported taxable sales, which CDTFA based on disallowed claimed nontaxable sales of animal feed, should be further reduced.
2. Whether relief for reliance on CDTFA's advice is warranted under R&TC section 6596.

FACTUAL FINDINGS

1. Appellant, a sole proprietorship doing business as Generation West, operated a retail store selling animal feed and supplies in El Monte, California.
2. Appellant segregated his sales into 20 categories or "departments": (a) bits; (b) equine; (c) gift shop; (d) halters; (e) hats; (f) hoof products; (g) horse training; (h) livestock; (i) Mexican accessories; (j) pet; (k) pigeon supplies; (l) poultry supplies; (m) QuickBooks; (n) saddles; (o) spurs; (p) stable supplies; (q) system supplies; (r) tack; (s) veterinary supplies; and (t) whips.
3. For the liability period, appellant reported the following: total sales of $11,087,521; deductions totaling $5,470,349; and taxable sales of $5,617,172.
4. Total deductions of $5,470,349 consisted of the following: nontaxable food product sales of $4,809,539; nontaxable labor sales of $593,128; and sales for resale of $67,682. Appellant stated that nontaxable food product sales and nontaxable labor sales related to his sales of feed for food animals.
5. Appellant stated that he based his reported sales on point-of-sales (POS) sales reports, which he allegedly adjusted for duplicate sales receipts and below-cost sales of alfalfa. However, appellant did not provide any documentation substantiating these alleged adjustments.
6. For audit, appellant provided the following books and records: federal income tax returns for calendar years 2016, 2017, and 2018; bank statements for January 2016 through June 2019, as well as September 2019; purchase invoices for January 2016 through December 2018, as well as September 2019; POS sales data (QuickBooks) for January 2016 through December 2018, as well as September 2019; and animal life, feed, drugs and medicines exemption certificates for September 2019 sales. CDTFA

also independently obtained appellant's Form 1099-K merchant statements for 2016 through 2018 as well as September 2019.[3]

7. CDTFA performed preliminary analyses of these books and records, which disclosed potential underreporting.
   a. A comparison of reported total sales to reported cost of goods sold (COGS) resulted in low book markups (9.67 percent for 2016, 9.72 percent for 2017, and 8.44 percent for 2018).[4]
   b. An analysis of bank statements disclosed that bank deposits exceeded reported total sales by $2,286,931 for the liability period;[5] appellant could not explain why there was a difference.
   c. An analysis of POS sales data disclosed a recorded taxable sales ratio of 40.55 percent, which CDTFA considered low based on its experience auditing similar businesses in appellant's area.
   d. A comparison of recorded total sales (excluding sales tax reimbursement) from the POS sales data to total bank deposits from sales (excluding sales tax reimbursement) disclosed that the former exceeded the latter by $2,827,171 (rounded) for 2016 through 2018.
   e. A comparison of recorded total sales (excluding sales tax reimbursement) from the POS sales data to reported total sales (excluding sales tax reimbursement) disclosed that the former exceeded the latter by $5,114,103 for 2016 through 2018.

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[3] Form 1099-K (*Payment Card and Third Party Network Transactions*) is an IRS form that banks, credit card companies, and other third-party payment processors use to report payments made to merchants via electronic means (e.g., credit cards, debit cards, or online/electronic payment networks) during a given time period.

[4] "Markup" is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is $0.70 and it charges customers $1.00, the markup is $0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent (0.30 ÷ 0.70 = 0.4286). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records.

[5] Bank deposits are not gross receipts. (R&TC, § 6012(a).) However, where a retailer is engaged in the business of making retail sales of tangible personal property, the retailer's bank deposits, net of deposits from non-sales transactions, are evidence of gross receipts from the retail sale of tangible personal property. CDTFA can use this evidence to determine audited taxable sales when sales cannot be accurately established using a direct approach because of a lack of adequate records.

f. A comparison of recorded taxable sales from the POS sales data to reported taxable sales disclosed that the former exceeded the latter by $1,134,024 for 2016 through 2018.

g. A comparison of recorded sales tax reimbursement from the POS sales data to reported sales tax reimbursement disclosed that the former exceeded the latter by $105,683 for January 1, 2016, through December 31, 2018.

8. Because CDTFA's preliminary analyses identified potential underreporting of taxable sales and sales tax reimbursement, CDTFA decided to analyze recorded sales using a block test and selected the fourth quarter of 2018 (4Q18) as the test period.[6]

9. Using the 4Q18 POS sales data, CDTFA compiled recorded taxable sales of $532,982, nontaxable sales of $818,425, and total sales (excluding sales tax reimbursement) of $1,351,408 (rounded), and computed a taxable sales ratio of 39.44 percent. CDTFA noted that the livestock department had the majority of recorded total sales ($848,553 out of $1,351,408) and nontaxable sales ($656,468 out of $818,425). For each type of feed sold by and recorded for the livestock department, appellant estimated the percentage of sales between food animals (defined below) and nonfood animals. Based on a discussion with appellant, CDTFA estimated taxable sales of $710,153 and nontaxable sales of $138,401 for 4Q18. Using these estimates, CDTFA recomputed an estimated taxable sales ratio of 77.78 percent for 4Q18, which greatly exceeded the recorded taxable sales ratio of 39.44 percent.

10. Appellant objected to the estimated taxable sales ratio of 77.78 percent, stating that 4Q18 included duplicate sales. Based on its discussion with appellant, CDTFA selected September 2019 as a replacement test period because appellant had corrected the duplicate sales error by this time. Thus, CDTFA disregarded the 4Q18 test and performed a test of recorded exempt sales of feed for September 2019.

11. Using the September 2019 POS sales data, CDTFA compiled recorded taxable sales of $291,855, nontaxable sales of $85,489 ($32,933 livestock department + $52,556 poultry department), and total sales (excluding sales tax reimbursement) of $377,344, and computed a recorded taxable sales ratio of 77.34 percent ($291,855 ÷ $377,344).

[6] A block test is a generally accepted audit method that examines transactions from a representative portion of an audit period and applies the findings to the audit period. It is typically used when complete records are not available for the entire audit period. This method assumes that the differences disclosed in the test period, which are audited in detail, will occur in the same proportion in the rest of the audit period.

12. For each type of feed that appellant sold and recorded in the livestock department, CDTFA accepted small unit sales as exempt (i.e., two standard sacks of grain or less and/or four bales of hay or less per Regulation section 1587(d)(1)). CDTFA also accepted other sales as exempt if appellant retained a proper exemption certificate from the customer.[7] For the livestock department, CDTFA compiled taxable sales of $128,152 and nontaxable sales of $73,580. In total, CDTFA computed taxable sales of $251,207, and nontaxable sales of $126,136 ($73,580 livestock department + $52,556 poultry department). Thus, CDTFA recomputed a taxable sales ratio of 66.57 percent ($251,207 ÷ $377,344) for September 2019. CDTFA considered the taxable sales ratio for September 2019 to be representative of the liability period.
13. CDTFA compared credit card sales (including sales tax reimbursement) from Form 1099-K merchant statements to the corresponding total sales from the POS sales data and computed credit card sales ratios of 38.64 percent for September 2016, 38.94 percent for September 2017, 41.59 percent for September 2018, and 46.59 percent for September 2019, and an overall ratio of 41.53 percent for the four months combined.[8] CDTFA decided to accept the credit card sales ratio of 46.59 percent for September 2019 because appellant stated that it had corrected the duplicate sales errors by then.
14. CDTFA divided credit card sales of $7,126,573 (per Form 1099-K merchant statements for the period 2016 through 2018 and bank statements for 1Q19 through 2Q19) by the audited credit card sales ratio of 46.59 percent and computed estimated total sales of $15,296,358 for the liability period. CDTFA divided total sales of $15,296,358 by one plus the applicable sales tax rate to compute total sales (excluding sales tax reimbursement) of $13,935,229.
15. CDTFA multiplied audited total sales (excluding sales tax reimbursement) of $13,935,229 by the audited taxable sales ratio of 66.57 percent for September 2019 to compute audited taxable sales of $9,276,682. Upon comparison to reported taxable

[7] Appellant did not provide exemption certificates for all questioned sales but provided copies of various sales receipts that included the statement “Tax Exempt Regulation 1587 Customer Request” or “Customer Request Regulation 1587” to support the claimed exempt sales. Appellant claimed that he inquired at CDTFA’s West Covina office, which told him that this would be sufficient to support these types of sales. However, CDTFA could not verify that this occurred and found the statements on the sales receipts did not meet the requirements set forth in Regulation section 1587.

[8] CDTFA’s audit working papers accurately references “electronic payment” sales and sales ratios, which this Opinion more generically refers to as “credit card” sales and sales ratios.

sales of $5,617,172, CDTFA determined unreported taxable sales of $3,659,510 for the liability period.[9]

16. On December 18, 2019, CDTFA called and emailed appellant about preliminary audit working papers and options following the audit, including potential relief under R&TC section 6596 due to reliance on advice.
17. On February 11, 2020, CDTFA issued its audit report. On February 12, 2020, based on this audit, CDTFA issued the NOD to appellant.
18. Appellant filed a timely petition for redetermination, arguing that CDTFA did not properly inform him that he needed to obtain exemption certificates to support exempt sales and that he did not collect sales tax on the sales in question.
19. On February 25, 2021, CDTFA's Appeals Bureau held an appeals conference with the parties.
20. On April 4, 2022, CDTFA's Appeals Bureau issued a Decision, which ordered a reaudit to recalculate disallowed claimed nontaxable sales of animal feed based on additional allowed nontaxable sales during the test period; otherwise, CDTFA's Appeals Bureau denied appellant's petition for redetermination.
21. On May 23, 2022, CDTFA issued a reaudit report, which reduced the audited taxable sales ratio from 66.57 percent to 65.99 percent and the measure of unreported taxable sales by $141,428, from $3,659,510 to $3,518,082.
22. On September 2, 2022, appellant filed a First Request for Reconsideration, in which he reiterated arguments from the petition for redetermination and added a request for relief based on erroneous advice pursuant to R&TC section 6596.
23. On April 5, 2023, CDTFA's Appeals Bureau issued the First Supplemental Decision, which ordered the reduction CDTFA computed in the reaudit but otherwise denied the petition for redetermination.
24. On May 2, 2023, appellant filed a Second Request for Reconsideration, in which he reiterated his arguments from the First Request for Reconsideration and raised new contentions concerning alleged irregularities with CDTFA's forms. Specifically, appellant alleged that CDTFA requested that he backdate forms and provided copies of the allegedly backdated forms.
25. In August 2023, during an email exchange, CDTFA informed appellant that the Appeals Bureau conference holder who held the February 25, 2021 appeals conference with the

[9] CDTFA characterizes these unreported taxable sales as disallowed claimed nontaxable sales of animal feed.

parties and authored the Decision and First Supplemental Decision was no longer with CDTFA. The Appeals Bureau assigned a new conference holder to the case and offered appellant the option of having a new appeals conference with the new conference holder. Appellant asked, "Will the Newley [sic] assigned tax counsel be required to listen to the recorded appeals conference from February 25th, 2021?" CDTFA responded, "Appeals conferences are not recorded unless under specific circumstances. Do you know if your conference was recorded or not?" Appellant answered, "Yes, [the prior conference holder] acknowledged it was recorded." CDTFA responded, "Yes. The new conference holder will review/watch the original conference."

26. On February 20, 2024, CDTFA's Appeals Bureau issued the Second Supplemental Decision, in which CDTFA continued to grant the reduction computed in the reaudit but otherwise denied the petition for redetermination. Regarding CDTFA's alleged request to backdate forms, CDTFA rejected the allegation for three reasons: (1) discrepancies between the forms produced by appellant and those in CDTFA's Central Revenue Opportunity System (CROS);[10] (2) the lack of records substantiating any request to backdate forms; and (3) the allegation, even if true, provided no basis for an adjustment.
27. On March 19, 2024, appellant filed a Third Request for Reconsideration.
28. By letter to appellant dated April 2, 2024, CDTFA's Appeals Bureau declined to issue a Third Supplemental Decision, concluding that the Third Request for Reconsideration did not raise any new contentions or provide new evidence.
29. Appellant timely appealed to OTA.
30. On October 14, 2024, appellant requested from CDTFA a copy of an audio recording of the February 25, 2021 appeals conference. By letter dated November 13, 2024, CDTFA responded that it could not locate any record responsive to appellant's request.

DISCUSSION

Issue 1: Whether the amount of unreported taxable sales, which CDTFA based on disallowed claimed nontaxable sales of animal feed, should be further reduced.

California imposes upon all retailers a sales tax measured by the retailer's gross receipts from the retail sale of tangible personal property in this state, 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,

[10] CROS is CDTFA's online filing and payment system, which can track taxpayer correspondence with CDTFA.

it is presumed that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.)

Sales of the following are specifically exempt from taxation: feed for food animals or feed for any non-food animals that are to be sold in the regular course of business. (R&TC, § 6358(b); Cal. Code Regs., tit. 18, § 1587(b)(2)(A).) “Food animals” are any form of animal life of a kind the products of which ordinarily constitute food for human consumption (e.g., cattle, sheep, swine, baby chicks, hatching eggs, fish, bees, ostriches, and emus). (Cal. Code Regs., tit. 18, § 1587(a).) The term does not include any forms of animal life commonly kept as pets or companions (e.g., cats, dogs, horses, mink, and canaries). (*Ibid*.)

Feed sellers should secure feed exemption certificates with respect to sales of the following two types of feed: (1) feed customarily used to feed both food animals and non-food animals, which is purchased for food animals; and (2) all feed purchased for non-food animals being held for sale in the regular course of business. (Cal. Code Regs., tit. 18, § 1587(d)(1).) To constitute adequate support for exemptions claimed by sellers, exemption certificates should include the names, addresses, occupations, and seller’s permit number (if any) of the purchasers. (Cal. Code Regs., tit. 18, § 1587(d)(3).) In addition, the invoices for sales claimed as exempt should specify the names of the purchasers in order to relate them to exemption certificates. (*Ibid*.)

However, feed sellers need not secure feed exemption certificates with respect to sales of the following three types of feed: (1) feed ordinarily used only in the production of meat, dairy, or poultry products for human consumption; (2) feed customarily used either for food production or other purposes (feeding work stock) sold in small units (i.e., two standard sacks of grain or less and/or four bales of hay or less); or (3) feed specifically labeled by the manufacturer for food animals. (Cal. Code Regs., tit. 18, § 1587(d)(1).) Absent evidence to the contrary, it will be presumed that all three types of feed are to be used in producing meat, dairy, or poultry products for human consumption. (*Ibid*.)

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 tax returns or the amount of tax required to be paid to the state by any person, CDTFA may compute and determine the amount required to be paid on the basis of any information within its possession or that may come into its possession. (R&TC, § 6481.)

In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.)

If CDTFA's determination is not reasonable and rational, then the determination should be rejected. (*Appeal of Landeros*, 2024-OTA-655P.) If CDTFA's determination is reasonable and rational, then the determination is presumed correct, and the burden of overcoming this presumption is on the taxpayer. (*Ibid*.)

Generally, the appellant bears the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) The standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) That is, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Las Playas #10, Inc.*, *supra*.) To satisfy its burden of proof, a taxpayer must prove both that the tax assessment is incorrect and what the proper amount of tax should be. (*Appeal of AMG Care Collective*, *supra*.)

Here, CDTFA's preliminary analyses disclosed that recorded sales per bank deposits and the POS sales data each exceeded reported total sales by significant amounts ($2,286,931 and $5,114,103, respectively), indicating that reported sales were potentially understated. Appellant stated that recorded sales erroneously included duplicate sales but did not provide documentation to support the amount of reported sales; thus, CDTFA could not use a direct audit method (i.e., compiling audited sales directly from appellant's records) to verify reported sales for the liability period. Instead, for its determination, CDTFA used a block test along with the credit card sales ratio method, which are both recognized and accepted accounting procedures. (See *Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P (block test); *Appeal of Amaya*, 2021-OTA-328P (credit card sales ratio method).)

The credit card sales ratio method requires credit card sales data and a credit card sales ratio. (*Appeal of Amaya*, *supra*.) For credit card sales data, appellant independently acquired appellant's Form 1099-K data, which is based on third-party merchant processor reporting to the IRS. OTA finds that such third-party reporting to the IRS is a reliable source of data from which to establish audited sales. CDTFA based the credit card sales ratio of 46.59 percent that it applied in the audit on appellant's Form 1099-K merchant statements and POS sales data for September 2019. Although CDTFA calculated credit card sales ratios for three prior Septembers (2016-2018), appellant stated during the audit that books and record for the liability period inaccurately included duplicated sales whereas books and records for September 2019 did not. Because appellant's Form 1099-K merchant statements and POS sales data for September 2019 appear to be the most accurate data available for this audit, OTA finds that they constitute a reasonable source of information from which to formulate a credit card sales ratio. Therefore, OTA finds that CDTFA's use of the block test and the credit card sales ratio method and the resulting determination are reasonable and rational; accordingly, the burden shifts to appellant to show errors in the audit.

On appeal, appellant makes numerous arguments, each of which OTA will address in turn.

Alfalfa Arguments

First, appellant contends that "[t]he appeal's central issue and crucial purpose is the flawed and inflated results of the Test period of September 2019." Specifically, appellant argues that, during both the audit and CDTFA's internal appeals process, CDTFA incorrectly treated sales of alfalfa as taxable feed for nonfood animals in violation of CDTFA Publication 66 (*Tax Tips to the Agricultural Industry*), which stated, "Some feed, like alfalfa, can be used for either food or nonfood animals."

Regarding the audit, appellant disputes the audited taxable sales ratio of 66.57 percent, which CDTFA derived from the September 2019 block test. Regarding alfalfa specifically, appellant contends that the taxable sales ratio should be 50 percent because half of its alfalfa sales were for food animals and half of them were for nonfood animals. In support, appellant referenced a September 4, 2019 email to CDTFA in which he wrote, "I do not think [alfalfa's taxable sales ratio] is 85 percent. As with the other hay products[,] I Assume [sic] it may be 60/40 or 50/50." Appellant also contends that, compounding this defect, CDTFA did not execute a CDTFA-472 (*Audit Sampling Plan*) form (CDTFA-472 Form) until after CDTFA had completed the sampling.[11] Appellant asserts that this violated CDTFA's Audit Manual section 0405.23, which states, "This form also identifies special situations that might arise during a test and allows both the taxpayer and auditor to agree on how to handle them."[12] Appellant contends that this failure undermined the scope, method, and validity of the sample and the audit assessment.

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[11] CDTFA uses the CDTFA-472 Form to document the sampling method used in an audit. (CDTFA's Audit Manual § 0405.23.)

[12] CDTFA's Audit Manual section 0405.23 also states that the CDTFA-472 form "should be completed with assistance and input from the taxpayer, prior to the actual selection of the sample." However, it also states, "The information and methods documented in this form are not binding on either the taxpayer or [CDTFA] staff. The sampling plan can and should be continually evaluated (and changed, if necessary) based upon information obtained during the audit process." Section 0405.23 also states that where deviating from the sampling plan is required, CDTFA will fully explain and discuss the deviations with the taxpayer. Part E of the CDTFA-472 form echoes CDTFA's Audit Manual, stating, "The information and methods documented in this form are not binding on either the taxpayer/feepayer or CDTFA staff. This sampling plan may be modified if new or additional data is encountered. Should any deviation to this plan be required, it will be fully discussed with the taxpayer/feepayer."

Regarding CDTFA's internal appeals process, appellant alleges that CDTFA maintained its flawed position regarding alfalfa (i.e., it constituted taxable feed for nonfood animals) during the February 25, 2021 appeals conference, which violated CDTFA's Audit Manual section 1404.06.[13] Appellant also alleges that an audio recording of the appeals conference contains proof of misstatements by CDTFA's auditor and audit supervisor. Appellant further argues that CDTFA's auditor and audit supervisor evaded responding to appellant's request for written confirmation of the taxability of appellant's sales of feed for food animals.

Appellant alleges that, cumulatively, these errors constitute "discriminatory enforcement of sales tax applicability on feed for food animals." Appellant contends that, due to CDTFA's errors and violations, OTA should either nullify the September 2019 test period and have CDTFA perform a second reaudit or relieve appellant of its tax liability altogether. Appellant claims that CDTFA did not agree that alfalfa could be feed for food animals until 22 months after the appeals conference.

CDTFA responds that, regardless of any misstatement(s) it allegedly made during the appeals conference, the audit working papers show that CDTFA properly exempted from taxation all small unit sales of alfalfa as well as alfalfa sales supported by a proper exemption certificate.

Here, as of the date of this Opinion, the parties do not dispute that alfalfa constitutes feed for both food and nonfood animals and, thus, an exemption certificate (or equivalent) is required for sales greater than small units (two standard sacks of grain or less and/or four bales of hay or less) of feed. (See Cal. Code Regs., tit. 18, § 1587(d)(1).) In the audit's September 2019 sales test, for each type of feed that appellant sold and recorded in the livestock department, CDTFA accepted a sale as exempt (including sales of alfalfa) if appellant had a proper exemption certificate. In addition, CDTFA accepted all sales of feed (including alfalfa) in small units whether appellant maintained a proper exemption certificate or not. In its briefs, appellant acknowledged that revised audit working papers received on December 18, 2019, partially allowed exemptions for sales of small units. Upon review of the audit working papers, OTA finds that CDTFA not only allowed sales of alfalfa sold in small units but also when supported with a proper exemption certificate. Thus, OTA finds that for the audit CDTFA correctly treated alfalfa as feed for both food and nonfood animals.

Regarding appellant's assertion that the taxable sales ratio for alfalfa should be 50 percent because half of its alfalfa sales were for food animals, appellant has not

[13] CDTFA's Audit Manual section 1404.06 states that CDTFA must be well prepared to effectively present its case at the appeals conference.

substantiated this assertion. The September 4, 2019 email appellant cited in support only says that he “assumes” that the taxable sales ratio is either 60 percent or 50 percent, but appellant has not proven either of these ratios by documentation or other evidence during the audit, CDTFA’s internal appeals process, or this appeal before OTA. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Las Playas #10, Inc.*, *supra*.). Accordingly, OTA is not persuaded by this assertion.

Regarding appellant’s argument that the untimely execution of the CDTFA-472 Form violated CDTFA’s Audit Manual section 0405.23, the title page of CDTFA’s Audit Manual states that the manual is an advisory publication providing direction to CDTFA staff administering the Sales and Use Tax Law and regulations. CDTFA’s Audit Manual has no precedential value in an OTA appeal. (See *Appeal of Micelle Laboratories, Inc.*, *supra*.) Further, because CDTFA’s Audit Manual has not been adopted pursuant to a formal rulemaking process, OTA cannot enforce, attempt to enforce, or even utilize the manual or any rule, guideline, or standard of general application within it. (*Ibid*., citing Gov. Code, § 11340.5.) In other words, CDTFA’s Audit Manual section 0405.23 is not authoritative, and OTA does not have the authority to enforce it. Even if OTA had such authority, the information and methods documented in a CDTFA-472 Form are not binding on the parties.[14] Finally, appellant has failed to show how an untimely CDTFA-472 Form affects the validity of the audit determination. For these reasons, OTA finds no merit in appellant’s argument regarding CDTFA-472 Form.

Regarding CDTFA’s alleged “violation” of CDTFA’s Audit Manual section 1404.06 (which states that CDTFA must be well prepared to effectively present its case at the appeals conference), OTA reiterates that it lacks the authority to enforce CDTFA’s Audit Manual. Further, appellant has failed to show how CDTFA’s alleged lack of preparation and/or ineffective presentation of its case at an appeals conference with CDTFA’s Appeals Bureau invalidated the audit determination, which OTA found reasonable and rational. Accordingly, OTA finds appellant’s allegations that CDTFA violated Audit Manual section 1404.06 lacking in merit.

Regarding an alleged audio recording of the appeals conference, both the First Supplemental Decision and the Second Supplemental Decision already acknowledge that the auditor and audit supervisor erroneously asserted that alfalfa was suitable only for non-food animals during the agency-level appeals conference yet CDTFA ultimately allowed as exempt

[14] See footnote 12.

all sales of alfalfa in small units, as well as sales supported by exemption certificates.[15] Thus, OTA finds that the alleged appeals conference recording or the lack thereof is not determinative and does not establish whether CDTFA's ultimate determination was unreasonable or lacked any rational basis.

Regarding appellant's argument that CDTFA's auditor and audit supervisor evaded responding to appellant's request to provide written confirmation of the taxability of appellant's sales of feed for food animals, appellant has failed to show how this ultimately affected CDTFA's audit determination and appellant's tax liability.

In conclusion, appellant has not identified any of the sales in the September 2019 test that he believes were improperly disallowed. Appellant has not provided verifiable documentation (e.g., sales receipts, exemption certificates, or manufacturer's product labels) or analysis supporting additional exempt sales. Appellant bears the burden of proof. (See Cal. Code Regs., tit. 18, § 30219(a).) Appellant's complaints regarding how he was treated during CDTFA's audit and internal appeals process are insufficient to carry this burden of proof. To carry that burden and to prevail in this appeal, appellant must show through argument and evidence that a measure less than that determined by CDTFA is more accurate. (See *Appeal of AMG Care Collective*, *supra*.) Appellant has failed to do so. Accordingly, OTA finds no basis to recommend any further adjustments.

Retaliation Argument

Appellant asserts that CDTFA extended the original three-year audit period by an additional two quarters in retaliation for appellant asserting its right to an exemption for sales of small units of animal feed. In support, appellant points to three pages from the audit working papers, one of which states "Audit period was extended to 2Q-19." At the same time, appellant claims that CDTFA propagated the "lie" that appellant requested the extension of the audit period.

[15] The First Supplemental Decision states, "[W]ith respect to [CDTFA's] *erroneous* assertion during the audit that alfalfa is suitable only for non-food animals, as described in the Decision, [CDTFA] ultimately allowed as exempt all sales of alfalfa in small units, as well as all sales supported by exemption certificates in accordance with Regulation [section] 1587[d], which we found to be reasonable." (Italics added.) The First Supplemental Decision also states, "There is no longer any dispute from either party that alfalfa constitutes feed ordinarily used to feed both food and nonfood animals." The Second Supplemental Decision states, "[W]hile [CDTFA] *incorrectly* presented at the appeals conference that alfalfa is feed only for nonfood animals, that *mistaken* position at conference had no bearing on its audit findings for the test period, because in the audit [CDTFA] properly applied Regulation [section] 1587 to determine the taxability of [appellant's] alfalfa sales, not its erroneous position at conference." (Italics added.)

Here, OTA's review of the record does not disclose who requested extending the audit period by two quarters or whether such an extension was intended to harm appellant. A December 31, 2019 email from CDTFA to appellant states, "Per our discussion yesterday, the audit period was extended to 2Q-19." This echoes the passive language in the audit working paper excerpt provided by appellant and quoted above. Thus, the record does not indicate which of the parties (if not both) initiated extending the audit period. In any case, OTA is unaware of any restrictions on CDTFA's ability to modify or to extend the liability period beyond the originally selected three-year audit period except for the statute of limitations. And here, based on a review of the record, appellant properly waived and extended the applicable statute of limitations so that it did not bar CDTFA from timely issuing the NOD.[16] Accordingly, OTA finds that the evidentiary record does not support appellant's assertion of retaliation by CDTFA.

Feed Exemption Certificates Argument

Regarding feed exemption certificates, appellant states that he relied upon Publication 66 (*Tax Tips for the Agriculture Industry*) (July 2004), which he received during a 2004 visit to CDTFA's West Covina Office and provided an excerpt of the exemption certificate alternatives section. Publication 66 indicates that "[i]nstead of keeping separate exemptions certificates on file, retailers may wish to incorporate a facsimile into their actual invoices. The facsimile may be preprinted directly on the invoice or added with a rubber stamp as needed. In either case, the buyer should complete the required information at the time of the sales rather than filing a separate form. Retailers who use separate certificates should include on the invoices or receipt the name and address of the buyer as listed on the exemption certificate on file." Appellant claims that "[a]ll of my sales receipts of nontaxable feed during the audit period had the preprinted reference to Regulation [section]1587, satisfying the alternative to an exemption certificate. I have a customer database with customers' names and addresses on file as required." Further, appellant claims that "[w]hen a customer purchased feed for food animals and if we had their information in our customer database, we would include the pre-printed message pertaining to Regulation [section] 1587 exemption in the 'Bill To' section. If our customer was in our database and purchased their feed on the house 'account,' or if they placed an order over the phone for a will call, we would document the customer name in the 'Bill To' section. In either case, the sale was classified as nontaxable." Appellant alleges that, contrary to Publication 66, "if a paper exemption certificate is used[,] the auditor said I did not have to include the name or address on the receipts." Appellant contends that he used the

[16] See footnote 2.

same “format” for the sales as he had been using before the audit, which CDTFA accepted during the test period but rejected as it related to the liability period. Appellant provided reprinted copies of three sales receipts from January 2018 and two from September 2019. Appellant did not provide corresponding exemption certificates.

OTA examined the sales receipts and found the following: (1) one of the receipts did not include purchaser’s information (the sale was for alfalfa #1 and appellant charged sales tax reimbursement); (2) two of the receipts included the name and address of the purchaser in the “Bill to” area (both sales included alfalfa #1 and appellant did not charge sales tax reimbursement on either sale); and (3) two of the receipts had no customer information included in the “Bill To” area (the January 8, 2018 receipt (#752306) included the comment “Tax Exempt Regulation 1587 Customer Request” and the September 14, 2019 receipt (#892575) included a comment “Customer Request Regulation 1587”. For the last two receipts, both sales were for alfalfa #1 and appellant did not charge sales tax reimbursement on either sale. These sales receipts appear to represent appellant’s alternative to an exemption certificate, the validity of which was disputed by CDTFA for sales greater than small units of feed.

Regulation section 1587(d)(1) provides an example of an acceptable form for the feed exemption certificate.[17] To constitute adequate support for exemptions claimed by sellers, feed exemption certificates should include the names, addresses, occupations, and seller’s permit number (if any) of the purchasers. (Cal. Code Regs., tit. 18, § 1587(d)(3).) In addition, the invoices for sales claimed as exempt should specify the names of the purchasers in order to relate them to exemption certificates. (*Ibid*.) OTA notes that the suggested alternative to an exemption certificate described in Publication 66 states that a retailer may wish to incorporate a facsimile (i.e., a copy) of an exemption certificate into their actual invoices rather than keeping a separate form. Thus, the invoice should include all the required information necessary to support the exemption as required in Regulation section 1587(d)(1). OTA notes that the Decision included an excerpt from the October 2020 version of the publication, which included a similar explanation.

Here, appellant’s sales receipts did not include the required information necessary to support an exemption. Specifically, they failed to include either the purchaser’s name, address, occupation, and seller’s permit number (if any), or a facsimile (i.e., copy) of an exemption certificate. OTA finds that appellant’s reference to Regulation section 1587 on the sales receipt alone does not constitute a valid feed exemption certificate and it was reasonable for CDTFA to

[17] On its website, CDTFA also provides an exemption certificate form for sales of feed for both food animals and non-food animals: CDTFA-230-T Rev. 1 (2-18).

question such sales and disallow their claimed exemption if no other support was provided. Thus, OTA finds appellant's feed exemption certificate argument unpersuasive.

Overtaxing Customers Argument

Appellant claims that he overtaxed his customers from September 1, 2019, through December 1, 2021, due to CDTFA's erroneous claim that alfalfa is only for nonfood animals and requested a refund from CDTFA on behalf of his customers. Appellant claims that CDTFA's Decisions failed to address this issue.

CDTFA's Decisions may not have addressed this issue because this appeal concerns appellant's denied petition for redetermination with respect to the liability period of January 1, 2016, through June 30, 2019. This appeal does not involve a claim for refund for the period September 1, 2019, through December 1, 2021, which is *after* the liability period at issue. September 2019 is relevant to this appeal because it served as a test period during the audit; however, for that test period, OTA found that CDTFA properly allowed sales of alfalfa when supported with a proper exemption certificate or when sold in small units; and CDTFA found no over taxation of alfalfa during the September 2019 test period. Thus, OTA concludes that any claim for refund for the period September 1, 2019, through December 1, 2021, is not at issue here and beyond the scope of this appeal. Accordingly, OTA will not discuss this claim further.

Taxable Sales Quota Argument

Appellant asserts the following irregularity by CDTFA: in an email dated December 31, 2019, CDTFA allegedly required appellant to maintain a 66 percent taxable sales ratio (even though CDTFA allegedly expected a taxable ratio of 60 percent) by stating, "[P]lease keep in mind that taxable sales ratio should be at least 66%." Appellant contends that he maintained the improper taxable sales ratio until December 2021. Appellant also asserts that CDTFA told him that he could file for a refund if he overreported taxable sales but denied appellant's right to a refund due to "complexity."

This argument suffers from the same flaw as appellant's prior argument: the allegedly irregular events that took place after the liability period and/or the September 2019 test period are beyond the scope of this appeal. Accordingly, OTA will not discuss this assertion further.

Defamation Argument

Appellant alleges that CDTFA's Appeals Bureau allowed CDTFA to deliberately defame the character of appellant's representative during CDTFA's internal appeals process. Appellant alleges that this occurred after appellant alleged that CDTFA asked appellant to backdate various forms (e.g., waiver and power of attorney forms). During CDTFA's internal appeals process, appellant alleges that CDTFA implied that appellant had fabricated the CDTFA emails in which CDTFA had allegedly requested the backdating.

Here, OTA is not aware of any authority (including the Rules of Tax Appeals) that provides OTA with the jurisdiction to consider, address, or remedy any allegation of defamation by or against a taxpayer or governmental agency. Accordingly, OTA will not discuss appellant's allegation of defamation further.

False Information in CROS Argument

Appellant contends that the auditor for the subsequent audit shared emails that indicated that "false information was placed in CDTFA's CROS . . . This 'false talk' refers to inaccurate or misleading information, that has been entered into the CROS, which could potentially misrepresent the facts of the audit." Appellant specifically notes that the auditor for the subsequent audit refers to QuickBooks Financial software reports in the prior audit (i.e., the audit at issue here) but appellant states that he only operated QuickBooks Point of Sale Software.

OTA notes that the audit verification comments for the liability period at issue indicated that CDTFA obtained QuickBooks POS sales download, and various schedules in the audit working papers reference QuickBooks POS. Although CROS entries may have erroneously referred to QuickBooks Financial software, the audit working papers accurately list QuickBooks POS software as the source for appellant's recorded sales. Appellant's argument does not establish that CDTFA's ultimate determination was unreasonable or lacked any rational basis, and OTA finds this argument lacks merit.

Audio Recording Argument

Appellant contends that the "missing" audio recording of the February 25, 2021 appeals conference constitutes an irregularity by CDTFA. Specifically, appellant argues that, after a new conference holder was assigned, he chose not to have a new appeals conference because he assumed that the new conference holder would listen to a recording of the original February 25, 2021 appeals conference. Appellant asserts that, if there was no recording, then "it was [CDTFA's] responsibility to push my case toward Option 2, which would require a new appeals conference to take place."

OTA does not have jurisdiction to determine whether an appellant is entitled to a remedy on the basis that CDTFA failed to provide appellant the opportunity to discuss the appeal at an appeals conference. (Cal. Code Regs., tit. 18, § 30104(e)(2).) Accordingly, for lack of jurisdiction, OTA will not discuss this contention further.

Conclusion

Having found appellant's arguments either unpersuasive, beyond the scope of this appeal, or outside of OTA's purview, OTA concludes that the amount of unreported taxable sales, which CDTFA based on disallowed claimed nontaxable sales of animal feed, should not be further reduced.

Issue 2: Whether relief for reliance on CDTFA's advice is warranted under R&TC section 6596.

On December 18, 2019, CDTFA called and emailed appellant about preliminary audit results, working papers, and his options following the audit, including potential relief under R&TC section 6596 due to reliance on advice.

On appeal, appellant contends that CDTFA subsequently called him that same day and stated that relief under R&TC section 6596 was not an option. Appellant alleges that by doing this, CDTFA recklessly disregarded R&TC section 6596 and denied him his rights under that statute.

R&TC section 6596 provides that a person may be relieved of taxes, interest, and penalties where a person's failure to make a timely return or payment is due to the person's reasonable reliance on advice provided by CDTFA. (R&TC, § 6596(a).) However, R&TC section 6596 only authorizes such relief when there is reliance on written advice. (R&TC, § 6596(b)(2); Cal. Code Regs., tit. 18, § 1705(a)(1).)

Here, it is undisputed that CDTFA did not provide appellant with any written advice in response to his requests; accordingly, relief pursuant to R&TC section 6596 is unwarranted.

HOLDINGS

1. The amount of unreported taxable sales, which CDTFA based on disallowed claimed nontaxable sales of animal feed, should not be further reduced.
2. Relief pursuant to R&TC section 6596 is not warranted.

DISPOSITION

CDTFA's action in reducing the determined measure of tax to $3,518,082 and the tax to $343,683 but otherwise denying appellant's petition for redetermination is sustained.

DocuSigned by:
8A4294817A67463...
Andrew Wong
Administrative Law Judge

We concur:

Signed by:
Kim Wilson
4E8E740EDB984CD...
Kim Wilson
Hearing Officer

DocuSigned by:
Josh Aldrich
48745BB806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 4/10/2026