BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
NEW SHANGHAI, LLC,) OTA NO. 250722805
)
APPELLANT.)
)
_________________________________)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, May 19, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 400 R Street, Sacramento, California, 95811, commencing at 9:20 a.m. and concluding at 9:52 a.m. on Tuesday, May 19, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ JOSH ALDRICH
Panel Members:	ALJ KEITH T. LONG ALJ JOSH LAMBERT
For the Appellant:	HARPOONAM AULAKH
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE DEPARTMENT MARI GUZMAN CHAD BACCHUS JASON PARKER

I N D E X

OPENING STATEMENT

	PAGE
By Ms. Aulakh	8
By Ms. Guzman	13

CLOSING STATEMENT

	PAGE
By Ms. Aulakh	23

Sacramento, California; Tuesday, May 19, 2026

9:20 a.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in the Appeal of New Shanghai, LLC, before the Office of Tax Appeals, which is OTA Case No. 250722805. Today's date is Tuesday, May 19th, 2026, and it's approximately 9:20 a.m. The hearing is being live-streamed on OTA's YouTube channel.

This hearing is being heard by a panel of three. My name is Josh Aldrich. I'm the lead Administrative Law Judge for purposes of conducting the hearing; and I'm joined by Administrative Law Judges Keith Long and Josh Lambert. We three are co-equal decision makers. As such, during the hearing, panel members may ask questions, or otherwise participate to ensure we have all the information needed to decide the appeal. After the conclusion of the hearing, we will deliberate and decide the issues presented.

As a reminder the Office of Tax Appeals is not a court. It is an independent appeals body. The panel does not engage in ex parte communications, and our opinion will be based off the parties' arguments, evidence, and relevant law. We've read the parties' submissions, and we are looking forward to hearing your arguments today.

Who is present for Appellant?

I'm sorry it's not -- thank you.

MS. AULAKH: Harpoonam Aulakh.

JUDGE ALDRICH: Okay. And for Respondent or CDTFA.

MS. GUZMAN: Mari Guzman.

MR. BACCHUS: Chad Bacchus, representing the Department, legal division.

JUDGE ALDRICH: Thank you.

MR. PARKER: Jason Parker, Chief of Headquarters Operations Bureau with CDTFA.

JUDGE ALDRICH: Thanks.

Welcome, everyone.

With respect to the issues, I have two basic issues: One, whether CDTFA properly imposed the 40 percent penalty and, if so, whether Appellant has shown that it is entitled to relief from the penalty; and issue two, whether Appellant has established a basis for interest relief.

Are these issue statements accurate, Ms. Aulakh?

MS. AULAKH: Yes.

JUDGE ALDRICH: And, Ms. Guzman?

MS. GUZMAN: Yes, they are.

JUDGE ALDRICH: Thank you.

With respect to exhibits, Respondent's exhibits are identified alphabetically as Exhibits A through E. During the prehearing conference, Appellant had no objection to admitting A through E into evidence.

Is that correct?

MS. AULAKH: Yes.

JUDGE ALDRICH: Okay. And on May 3rd, 2026, we received an exhibit, which was labeled Appellant's Exhibit A. We'll relabel that as Appellant's Exhibit 1. I had some questions about that.

So, could you tell me who prepared that? Was that you, Ms. Aulakh?

MS. AULAKH: Yes.

JUDGE ALDRICH: Okay. And were you offering that as additional argument, or do you want it to be considered evidence?

MS. AULAKH: So, it's like -- just like additional, you know.

JUDGE ALDRICH: Additional argument?

MS. AULAKH: Yes.

JUDGE ALDRICH: Okay.

MS. AULAKH: Yes.

JUDGE ALDRICH: So, we won't admit it into evidence, but we will consider it as part of your argument.

MS. AULAKH: Sure.

JUDGE ALDRICH: Okay. Now, I want to transition to our statements. I'm going to give both parties an overview. It's consistent with what we discussed during the prehearing conference and what I memorialized on our Minutes and Orders. But basically, the hearing will proceed with Appellant's opening presentation for approximately 15 minutes. CDTFA will present a combined opening and closing for approximately 20 minutes. We'll have a 5 to 10-minute period for rebuttal for Appellant, and we also may ask questions after the parties' presentations.

With respect to witnesses, the plan is not to call a witness; is that correct?

MS. AULAKH: Yes.

JUDGE ALDRICH: Okay. I just wanted to confirm. Are there any questions before we move over to opening presentations?

MS. AULAKH: No.

THE COURT: Okay. Then the floor is yours. You may proceed.

MS. AULAKH: Sure. Thank you.

PRESENTATION

MS. AULAKH: All right. On behalf of New Shanghai, LLC, we respectfully submit this appeal requesting relief from R&TC section 6597 penalty assessed in the amount of $35,957.20, along with the abatement of accrued interest from January 1st, 2020, to the present. The taxpayer does not dispute the underlying sales tax liability and fully acknowledge responsibility for the tax too. However, we respectfully request penalty and interest relief based on reasonable cause, good faith, and the specific circumstances surrounding this matter.

New Shanghai, LLC, was a newly established business during the audit period and was operated by an owner with limited experience regarding California sales and use tax compliance, particularly as it relates to third-party marketplace facilitators, such as DoorDash and Grubhub. The taxpayer was generally --

JUDGE ALDRICH: Ms. Aulakh.

MS. AULAKH: Yes.

JUDGE ALDRICH: I'm sorry to interject. Could you slow it down a little bit.

MS. AULAKH: Sure.

JUDGE ALDRICH: So, this is going to be transcribed after the fact. So it's really important for our hearing reporter that, you know, everything is nice and spaced out.

MS. AULAKH: Sure.

JUDGE ALDRICH: Okay.

MS. AULAKH: I'll just start over then.

JUDGE ALDRICH: That's fine.

MS. AULAKH: Sure. On behalf of New Shanghai, LLC, we respectfully submit this appeal requesting relief from the R&TC section 6597 penalty assessed in the amount of $35,957.20, along with the abatement of accrued interest from January 1st, 2020, to the present. The taxpayer does not dispute the underlying sales tax liability and fully acknowledges responsibility for the tax due. However, we respectfully request penalty and interest relief based on reasonable cause, good faith, and the specific circumstances surrounding this matter.

New Shanghai, LLC, was a newly established business during the audit period and was operated by an owner with limited experience regarding California sales and use tax compliance, particularly as it relates to a third-party marketplace facilitators such as DoorDash and Grubhub. The taxpayer was generally unaware that he remained responsible for ensuring proper reporting and remittance of sales tax obligations associated with certain third-party delivery platforms. This misunderstanding was further complicated by the fact that UberEATS remitted sales tax directly to the CDTFA, which reasonably contributed to confusion regarding the different tax treatment among marketplace facilitators.

Additionally, the taxpayer relied entirely on his prior accountant to properly prepare and file sales tax returns. The previous accountant never requested detailed information regarding third-party facilitator transactions, nor did they advise the taxpayer of any additional reporting obligations relating -- related to the DoorDash or Grubhub sales. As a result, the reporting errors were not due to willful neglect, fraud, or intentional disregard of California tax law, but rather stemmed from inexperience, reliance on a tax professional, and the complexity of marketplace facilitator regulations.

I began working with the taxpayer in 2024, at which point, these compliance issues were identified. Since then, corrective actions have been implemented to ensure accuracy -- accurate reporting, proper compliance procedures, and ongoing adherence to CDTFA requirements. The taxpayer has acted in good faith by acknowledging the liability and taking corrective measures. However, the substantial penalty assessment of over $35,000 creates an extraordinary financial burden that significantly impairs the taxpayer's ability to properly pay the actual tax liability and maintain business operations. We were, after 40 percent penalty under R&TC Section 6597, would allow the taxpayer to focus resources on satisfying the principal tax balance while remaining compliant going on for -- going forward.

Furthermore, we respectfully request consideration for interest relief from January 1st, 2020, forward, given the prolonged CDTFA administrative process and the circumstances that contributed to the delayed resolution of this matter. Given these facts, the taxpayer has demonstrated reasonable cause and exercised ordinary business care in attempt -- attempting to comply. We respectfully request the Office of Tax Appeals and CDTFA exercise their discretion to waive the R&TC section 6597 penalty of $35,957.20, abate applicable interest accrued from January 1st, 2020, to the present, and allow the taxpayer to resolve the underlying tax liability through payment arrangements while continue lawful business operations.

Thank you for your time and consideration.

JUDGE ALDRICH: Thank you.

Judge Lambert, did you have any questions for Appellant?

JUDGE LAMBERT: This is Judge Lambert. I have no questions at this time. Thanks.

JUDGE ALDRICH: And Judge Long?

JUDGE LONG: This is Judge Long. I do have a question regarding the audit. My understanding is that Appellant's position is that they were in the belief that

Grubhub was collecting the sales tax and then paying it directly to the State. The audit work papers schedule 12C shows that the sales tax reimbursement was being collected, right, and that's the basis of this penalty. Were those amounts, those full amounts being collected by the business, or is there any dispute that those amounts were collected?

MS. AULAKH: I mean, maybe like the taxpayer, like, made errors, but he's agreeing if he made errors on that. So, he's agreeing on that.

JUDGE LONG: Okay.

MS. AULAKH: So, even like the -- the third-party market facilitator, such as DoorDash, so he's agreeing to pay that amount, you know. But it's only the penalty amount he's -- wants to waive. So, he will make the arrangements. So, on the amounts he did not pay for them, for the DoorDash and Grubhub.

JUDGE LONG: Okay. Thank you.

MS. AULAKH: Yeah. Yeah.

JUDGE ALDRICH: Okay. Ms. Guzman.

PRESENTATION

MS. GUZMAN: Good morning. At issue in this case is: One, whether the department properly imposed a 40 percent penalty under Revenue & Taxation Code

Section 6597 for failing to timely remit tax reimbursement knowingly collected from customers, which we will refer to the UTC penalty; two, whether there is any basis to relieve the UTC penalty; and three, whether interest relief is warranted for interest that accrued from December 1st, 2023, through July 2nd, 2025.

Appellant New Shanghai, LLC, is a limited liability company that operates a Chinese restaurant in Citrus Heights, California. The Department conducted an audit examination of Appellant's business for the period January 1st, 2020, through December 31st, 2022, the liability period. The Department examined Appellant's point of sale reports for the liability period, which showed recorded sales tax reimbursement accrued of approximately $123,000. Comparing this amount to reported tax due for the liability period of approximately $33,000, the Department calculated unreported tax accrued of approximately $90,000. On November 15th, 2023, the Department timely issued a Notice of Determination to Appellant, Exhibit B, for approximately $91,000 in tax, plus accrued interest, and a UTC penalty of approximately $36,000. On December 5th, 2023, Appellant filed a timely petition for redetermination, Exhibit C, disputing only the UTC penalty.

We now turn to the first issue of whether the

Department properly imposed the UTC penalty for failing to timely remit tax reimbursement knowingly collected from its customers. Pursuant to Revenue & Taxation Code section 6597, any person who knowingly collects sales tax reimbursement and fails to timely remit that tax reimbursement to the Department is liable for a penalty of 40 percent of the amount not timely remitted. However, the penalty does not apply if the person's liability for unremitted 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 tax reimbursement was collected for the period in which the tax was due, whichever is greater.

Here, as explained in Exhibit D, pages 2038 and 2039, Appellant knowingly collected sales tax reimbursement from his customers in the amount of approximately $123,000 as evidenced by entries in its point of sale reports, but failed to remit approximately $90,000 of that amount to the Department. Based on this, the Department found that this unremitted tax reimbursement exceeded $1,000 per month for all quarters of the liability period, as well as exceeded 5 percent of the total amount of tax liability for which the sales tax reimbursement was collected for the period in which the tax was due; and Appellant does not dispute this.

Therefore, the UTC penalty properly applies in this case for all quarters of the liability period.

We now turn to the second issue, whether there's any basis to relieve the UTC penalty. Pursuant to Revenue & Taxation Code section 69 -- 6597, if a person's failure to make a timely remittance of sales tax reimbursement is due to reasonable cause or circumstances beyond that person's control, the person shall be relieved of the penalty. Here, Appellant contends that the UTC penalty should be relieved because it did not know it was required to report the third-party delivery sales on its sales and use tax returns. However, there is nothing in Revenue & Taxation Code section 6597 or any other provision in the sales and use tax law that relieves a taxpayer of liability based on ignorance of the law. Taxpayers are charged with knowledge of the law, and ignorance of the law is no defense.

Appellant also contends that the UTC penalty should be relieved because it relied on their -- on the managing member's friend to manage its books and records, and this friend incorrectly failed to report the third-party delivery sales during the liability period. Appellant's explanation shows that its failure to remit tax reimbursement collected was due to errors or lack of understanding by the person relied upon to manage its books and records.

Generally, such errors and understanding or experience do not constitute reasonable cause and circumstances beyond the person's control. Here, it is undisputed that a review of Appellant's own records would have disclosed the $90,000 in unremitted sales tax reimbursement. Thus, it is not beyond Appellant's control to review its own books and records and discover the unremitted sales tax reimbursement. For these reasons, Appellant has not established grounds to relieve the penalty.

We now turn to the final issue of whether relief of interest is warranted that accrued for the periods December 1, 2023, through July 2nd, 2025. Pursuant to Revenue & Taxation Code section 6482, the amount of a deficiency determination shall bear interest through the last day of the month following the quarterly period for which the amount or any portion thereof should have been remitted until the date of payment. The imposition of interest is mandatory, and the law provides for relief of interest only under very narrow circumstances, including an unreasonable error or delay by a Department employee acting in their official capacity.

Where a taxpayer requests interest relief due to an unreasonable error or delay by a Department employee, relief is appropriate only when no significant aspect of the error or delay can be attributed to an act or failure to act by the taxpayer. A person requesting such relief of interest must file a statement signed under penalty of perjury setting forth the factual basis for the request. OTA reviews the Department's decisions to deny interest relief on an abuse of discretion standard. To show an abuse of discretion, a taxpayer must establish that in refusing to relieve interest, the Department exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law.

Here, Appellant asserts interest relief is warranted for the periods December 1, 2023, through January 30th, 2025, because the Department caused an unreasonable delay in scheduling and holding of Appellant's appeals conference. On December 5th, 2023, Appellant filed its petition for redetermination. In response, the Sacramento office provided its recommendation on April 30th, 2024. The petition section then completed its summary analysis on July 30th, 2024. The appeal was then forwarded to the Appeals Bureau for scheduling of an appeals conference, which was held on January 30th, 2025. The evidence shows that between December 5th, 2023, and January 30th, 2025, the appeal was handled by three different sections or bureaus and that work was done within normal processing times with no unreasonable errors or delays; see Exhibit A, pages 16 through 18.

We also examined whether interest relief is warranted for the period January 30th, 2025, through July 2nd, 2025, due to unreasonable error or delay by the Department in issuing the Appeals Bureau decision. Between February 6th, 2025, and March 19th, 2025, the Appeals Bureau was gathering additional documents and information from Appellant and the Department. The Appeals Bureau considered the case ready to write on April 11th, 2025, with the decision being completed on July 2nd, 2025. The evidence shows that between January 30th, 2025, and July 2nd, 2025, the Appeals Bureau was actively working on this appeal and writing the decision within normal processing times with no unreasonable errors or delays; see Exhibit A, pages 16 through 18. Therefore, there is no evidence that interest accrued due to any unreasonable delay by the Department for the period December 1st, 2023, through July 2nd, 2025; and there is no basis upon which to relieve any interest.

Moreover, Appellant has not shown that the Department exercise its discretion arbitrarily, capriciously, or without sound basis in fact or law. Based on the law and evidence provided, the Department properly imposed the UTC penalty for failing to timely remit tax reimbursement knowingly collected from its customers, and there is no basis to relief this penalty. Furthermore, there is -- there is no basis upon which to relieve interest for the period December 1st, 2023, through July 2nd, 2025. Therefore, we ask that you deny Appellant's appeal.

Thank you.

JUDGE ALDRICH: Thank you. I do have a quick question. So, with respect to interest relief, the decision frames the period as December 1st, 2023, through January 30th, 2025. But in referencing the CDTFA 735, so the request for penalty relief and interest relief, the period requested was from 2020 forward. So, I was hoping somebody could respond.

MR. BACCHUS: Yes. The request for relief on the 735 does start with the January 1st, 2020, date. That is the date of the -- the beginning date of the audit liability. The audit we did, the Department did not begin the audit until April or May of 2023. So, any time period before that, there was nothing that the Department was doing. There could not have been any unreasonable error or delay on behalf of the Department during that time prior to. It is the Department's understanding that in -- in subsequent communications with Appellant after the appeals conference, that it was really the -- the scheduling, the time it took to schedule the appeals conference that was the period of delay.

But even if we were to look at the period of April or May of 2023 until when the audit was completed, and the NOD was issued in November of 2023, the Department would not -- would not find any unreasonable error or delay in those six or seven months that it took to complete the audit. That is a reasonable amount of time.

JUDGE ALDRICH: Thank you.

Judge Long, did you have any questions for either party?

JUDGE LONG: Yes, I did have a question with regard to the knowingly collected requirement for the penalty. It looks like from the decision that that's based just on the fact that it was recorded in the POS; is that correct?

MS. GUZMAN: Yes, that is correct.

JUDGE LONG: Okay. And then I'm looking at Exhibit D, and there's some emails in here. And it looks like during the audit, the taxpayer responded with respect to POS reports, things along the lines of, "I'm not sure how to do this and usually have my friend help me." That's May 30th. And then May 31st, 2023, "It's a really POS system. I can see if my friend can come help get the info."

Is there any dispute that taxpayer expressed difficultly using the POS system or lacked familiarity with the POS system or a lack of familiarity with the POS system, I should say?

MS. GUZMAN: The taxpayer is charged with knowledge of the law and how to process their system. And so, taxpayer should have known it collected when reading the POS reports and in discussing this with the person that they relied on to help them and process the POS reports. So, they -- they should know and be aware of what they are collecting.

JUDGE LONG: Okay. Thank you.

MR. PARKER: Judge Long, could I add something? Also, in Exhibit D there's the DoorDash statements and the Grubhub statements. On page 738 of Exhibit D it's the DoorDash statement that are all provided to the Appellant monthly, and on there it talks about the tax that was indicated on the monthly statement. And the tax line description says, "The tax on subtotal collected and passed on to you based on your store's location."

And then for Grubhub, I believe it's page 839, and you can see right on the main page, "Total payments to you pay directly to your bank." It has an amount. Then it says, "It includes $421.42 in taxes. You are responsible for paying to the proper taxing authority."

JUDGE LONG: Got it. Thank you.

JUDGE ALDRICH: Judge Lambert, did you have any questions for either party.

JUDGE LAMBERT: This is Judge Lambert. I have no questions. Thanks.

JUDGE ALDRICH: Okay. Ms. Aulakh, would you like an opportunity to respond or rebut anything that the Department has presented?

MS. AULAKH: Yes.

CLOSING STATEMENT

MS. AULAKH: So, I just want to say, you know, like when, like, anyone opens, like, a new business, they -- we, like, CDTFA assumes they know everything, you know. They should know the rules and regulations. But he is, like for example, this client he's a main chef. They're so busy that's why they hire accountants and bookkeepers, you know. They just like whatever reports they have they give it to them. They do not have even time to look at it. So that's even like I have several clients that -- yeah. Sorry.

JUDGE ALDRICH: Could you slow it down just a tad.

MS. AULAKH: Sure. Sure. Sure.

JUDGE ALDRICH: Sorry.

MS. AULAKH: So, I was saying -- so, the clients they're -- he's the main chef. He's so busy that even other times they do not have time to look at any of the paperwork. Whatever the information they have, they just pass it onto the accountants or the bookkeepers. I mean, if -- if they have time, then they would not hire anyone. So, they're, like, really busy. So, they just assume whatever the records they have, they give it to the accountants, and they think that they will just take it off, like, perfectly.

So -- so, even like from my -- my own example, I started my business in, like, January 1st, 2020. So, in the beginning there are, like, some -- you do make some mistakes, you know, because since it's the first time. So at least the -- if he's agreeing to make like, you know, pay, like, basic all unremitted tax, if he's agreeing to pay that to the CDTFA, at least the penalty for being considered for the first time he was a new in the business, so it should be waived. That's what I want to add.

JUDGE ALDRICH: Thank you.

MS. AULAKH: Yeah.

JUDGE ALDRICH: All right. I want to thank everyone for your time.

Before we conclude today's hearing, I want to clarify the status of the case. There are no further documents, evidence, or briefing to be submitted. Accordingly, the oral hearing record is closed as of today.

The matter is now submitted for decision, and the panel will issue a written opinion within 100 days from today's date, based on the information contained in the oral hearing record.

At this time the transcription of today's hearing is concluded. The hearing, as well as OTA's hearing calendar, has concluded for today.

Please end the live stream.

(Proceedings concluded at 9:52 a.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 24th day of June, 2026.

____

ERNALYN M. ALONZO
HEARING REPORTER