2026-OTA-327
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of: **EATON CORPORATION**	OTA Case Nos.: 221212041; 230312830 CDTFA Case IDs: 2-583-384, 1048617, 285-016, 872539, 285-017, 1052907, 285-018

OPINION

Representing the Parties:

For Appellant:	Tim Gustafson, Attorney
For Respondent:	Kevin Smith, Attorney Jarrett Noble, Attorney Jason Parker, Chief of Headquarter Ops.
For Office of Tax Appeals:	Daniel Cho, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6561 and 6901, Eaton Corporation (appellant) appeals two decisions issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying in part appellant's timely petitions for redetermination of two Notices of Determination (NODs). The first NOD,[2] issued on January 16, 2018, is for tax of $947,834.71, plus applicable interest, for the period January 1, 2011, through December 31, 2013 (liability period 1).[3] The second NOD,

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] Appellant filed a corresponding protective claim for refund of any sales or use tax overpaid during the periods covered by the first NOD. A taxpayer may sometimes file a petition for redetermination and a claim for refund to protect its right to claim a refund or credit for overpayment discovered in an audit or that may be discovered during the taxpayer's appeal of the NOD. Such claims are frequently referred to as protective claims for refund.

[3] The first NOD was timely issued because appellant signed a series of waivers of the otherwise applicable three-year statute of limitations, which allowed CDTFA until January 31, 2018, to issue an NOD. (R&TC, §§ 6487(a), 6488.)

issued on January 28, 2021, is for tax of $447,043, plus applicable interest, for the period January 1, 2014, through December 31, 2016 (liability period 2).[4]

The Office of Tax Appeals (OTA) consolidated the two appeals due to the similarity of the facts and issue in dispute. (See Cal. Code Regs., tit. 18, § 30212(a).) OTA Panel Members Steven Kim, Sheriene Anne Ridenour, and Kim Wilson held a virtual oral hearing for this matter on January 21, 2026. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUE

Whether appellant has established that it is entitled to relief of tax and interest based on reasonable reliance on written advice from CDTFA.

FACTUAL FINDINGS

1. Appellant, an Ohio corporation, manufactures, sells, installs, and maintains power management products. Appellant operates sales and service facilities at several California locations. As relevant here, appellant furnished and installed Uninterrupted Power Supply (UPS) systems, panelboards, switchgear, circuit breakers, and sensors for the United States government.
2. CDTFA conducted four audits that are relevant to this appeal: two prior audits, the audit for liability period 1, and the audit for liability period 2.

Prior Audit 1

3. Previously, CDTFA audited appellant for the period January 1, 2005, through December 31, 2007 (prior audit 1). CDTFA examined appellant's claimed exempt sales, including sales to the United States government. Based on sales invoices for a two-month sample period (December 2006 and July 2007), CDTFA determined that appellant made nontaxable sales of tangible personal property to the United States government, and that appellant did not owe any sales tax with respect with sales to the United States government.

[4] The second NOD was timely issued because appellant signed a series of waivers of the otherwise applicable three-year statute of limitations which allowed CDTFA until January 31, 2021, to issue an NOD. (R&TC, §§ 6487(a), 6488.)

Prior Audit 2

4. CDTFA also previously audited appellant for the period January 1, 2008, through December 31, 2010 (prior audit 2). As relevant here, regarding appellant's sales with the United States government, CDTFA followed the findings of the prior audit 1 and continued to accept all claimed exempt sales to the United States government as nontaxable sales. Thus, CDTFA excluded any invoices between appellant and the United States government during its examination of appellant's claimed exempt sales. CDTFA continued to determine that sales to the United States government were exempt sales of tangible personal property.

Current Audit for Liability Period 1.

5. For liability period 1, appellant reported gross sales of $929,943,785, purchases subject to use tax of $2,741,904, and claimed nontaxable sales for resale of $859,713,793, resulting in total reported taxable transactions of $72,971,896.

6. CDTFA audited appellant for liability period 1 (current audit 1). Appellant provided CDTFA with its sales data, specifically 347 sales invoices, which included transactions with the United States government. This time, CDTFA requested additional information regarding the transactions with the United States government. In response, appellant provided contracts with the United States government and cost information for the tangible personal property that was transferred to the United States government.

7. Based on its review of the information, CDTFA determined that appellant furnished and installed UPS systems onto United States government real property. CDTFA further determined that the UPS systems constituted fixtures pursuant to Regulation section 1521(a)(5). As a result, CDTFA concluded that appellant did not sell tangible personal property to the United States government with respect to any fixtures installed onto real property. Instead, CDTFA determined that appellant furnished and installed fixtures in the performance of a construction contract with the United States government, pursuant to Regulation section 1521(b)(1)(A), and that appellant owed use tax based on the cost of the fixtures. CDTFA continued to allow transactions as nontaxable sales for resale except where the invoice showed that appellant installed tangible personal property onto real property.

8. CDTFA issued the first NOD at issue to appellant based on current audit 1.[5]
9. Appellant filed a timely petition for redetermination disputing the first NOD.
10. On March 17, 2020, CDTFA issued a decision denying in part appellant's petition for redetermination. Specifically, CDTFA ordered a reaudit to reduce the measure of tax based on concessions that it made;[6] however, CDTFA denied appellant's request for relief of tax and interest based on appellant's purported reliance on erroneous written advice for prior audits 1 and 2.
11. Appellant filed a timely request for reconsideration continuing to argue that it is entitled to relief of a part of the taxes and interest pursuant to erroneous written advice from prior audits 1 and 2.
12. On February 8, 2023, CDTFA issued a supplemental decision continuing to deny appellant's request for relief of tax and interest.
13. Appellant timely filed this appeal.

<u>Current Audit for Liability Period 2.</u>

14. For liability period 2, appellant reported gross sales of $1,045,743,530, purchases subject to use tax of $1,308,128, and claimed nontaxable sales for resale of $970,129,882, resulting in reported total taxable transactions of $76,921,776.
15. CDTFA audited appellant for liability period 2 (current audit 2). Appellant provided the following books and records: electronic sales data; general ledger; sales contracts; sales invoices; purchase invoices; resale certificates; and construction-in-progress reports.
16. As relevant here, CDTFA examined appellant's claimed nontaxable sales for resale. CDTFA disallowed certain transactions which appellant erroneously recorded and reported as nontaxable sales for resale. CDTFA also disallowed appellant's claimed nontaxable sales to the United States government. Instead, CDTFA determined that

[5] The first NOD was based on an aggregate deficiency measure of $11,236,273, which was comprised of the following: (1) disallowed claimed nontaxable sales for resale based on stratified sample of $5,279,323; (2) disallowed claimed nontaxable sales for resale based on actual basis of $5,697,680; (3) unreported purchases of fixed assets subject to use tax of $420,523; (4) unreported purchases classified as expenses subject to use tax of $60,360; (5) unreported optional maintenance parts subject to district tax of $4,223; and (6) a credit measure of $221,613.

[6] CDTFA reduced the following deficiency measures: (1) unreported purchases related to contracts with the United States government by $1,393,027 from $3,544,181 to $2,151,154; (2) additional unreported purchases related to contracts with the United States government by $166,117 from $5,279,323 to $5,113,206; and (3) disallowed claimed nontaxable sales for resale by $180,003 from $2,153,499 to $1,973,496. Otherwise, CDTFA denied the petition for redetermination.

appellant furnished and installed fixtures in the performance of construction contracts for the United States government, pursuant to Regulation section 1521(b)(1)(A), and that appellant owed use tax based on the cost of the fixtures.

17. CDTFA issued the second NOD at issue to appellant based on the audit.[7]
18. Appellant filed a timely petition for redetermination disputing the second NOD in its entirety; however, during CDTFA's internal appeals process, appellant conceded to the liability except with respect to the disallowed claimed nontaxable sales to the United States government.
19. On October 27, 2022, CDTFA issued a decision denying appellant's petition for redetermination.
20. Appellant timely filed this appeal.

DISCUSSION

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

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

[7] The second NOD was based on an aggregate deficiency measure of $5,350,870, which was comprised of the following: (1) disallowed claimed nontaxable sales for resale of $4,977,696; (2) unreported purchases subject to district tax of $560,712; and (3) unreported purchases of fixed assets subject to use tax of $373,174. CDTFA determined that appellant was entitled to $9,643 of offsets for the partial manufacturing exemption, and the tax amount reflects that determination.

Sales tax does not apply to the sale of any tangible personal property to the United States, its unincorporated agencies and instrumentalities. (R&TC, § 6381(a).) The retailer bears the burden of establishing entitlement to any claimed exemption. (*Appeal of Owens-Brockway Glass Container, Inc.*, 2019-OTA-158P.) Except as otherwise provided by law, the burden is on the appellant to prove all issues of fact by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a), (b).)

Notwithstanding any other provision of law, tax applies to the sale of any tangible personal property to contractors purchasing such property either as the agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property in this state. (R&TC, § 6384.) United States construction contractors are consumers of materials and fixtures[8] which they furnish and install in the performance of contracts with the United States government. (Cal. Code Regs., tit. 18, § 1521(b)(1)(A).) Either the sales tax or the use tax applies with respect to sales of tangible personal property (including materials, fixtures, supplies, and equipment) to contractors for use in the performance of such contracts with the United States for the construction of improvements on or to real property in this state. (*Ibid.*)

In current audits 1 and 2, CDTFA determined that appellant furnished and installed materials and fixtures in the performance of contracts with the United States government. (See Cal. Code Regs., tit. 18, § 1521(b)(1)(A).) CDTFA examined appellant's sales invoices and contracts with the United States government, which included, as relevant here, charges for tangible personal property (materials and fixtures) and labor to install those materials and fixtures on realty in this state. Therefore, CDTFA found that appellant was a United States construction contractor and was liable for tax on its consumption of parts, materials, and fixtures used in the performance of such construction contracts. (See Cal. Code Regs., tit. 18, § 1521(b)(1)(A), (c)(6)(A).)

On appeal, appellant does not dispute that it sold tangible personal property to the United Stated government, that it performed labor installing materials and fixtures on realty in this state for the United States government, or that it owes use tax for its consumption of materials and fixtures used in the performance of construction contracts with the United States

[8] "Fixtures" means and includes items which are accessory to a building or other structure and do not lose their identity as accessories when installed, such as air conditioning units, electric generators, and transformers and switchgear. (Cal. Code Regs., tit. 18, § 1521(a)(5).)

government. Nor does appellant dispute the determined taxable measures.[9] Instead, appellant contends that it reasonably relied on erroneous written advice provided by CDTFA in prior audits 1 and 2—that all of its sales to the United States government were exempt from tax—when it failed to pay tax for its consumption of tangible personal property in the performance of construction contracts with the United States government in liability periods 1 and 2. Thus, appellant asserts that it is entitled to relief of tax and interest arising from such transactions.

If a taxpayer's failure to pay the tax is due to reasonable reliance on written advice provided by CDTFA, the taxpayer may be relieved of the taxes, interest, and any penalties. (R&TC, § 6596(a).) R&TC section 6596 imposes four general requirements to grant relief. First, the taxpayer must have requested written advice on the application of tax from CDTFA, and the request must set forth the specific facts and circumstances of the activity or transactions for which the advice is requested. (R&TC, § 6596(b)(1).) Second, CDTFA must have responded in writing, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax. (R&TC, § 6596(b)(2).) Third, in reasonable reliance on the written advice, the taxpayer must have failed to pay use tax on the storage, use, or other consumption in this state of tangible personal property. (R&TC, § (b)(3)(B).) Fourth, the liability for taxes must have occurred before CDTFA rescinds the advice or a change in law renders the advice no longer valid. (R&TC, § 6596(b)(4).)[10]

The presentation of a person's books and records for examination by an auditor is deemed to be a written request for the audit report for purposes of the first requirement. (Cal. Code Regs., tit. 18, § 1705(c).) If a prior audit report contains written evidence demonstrating that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered written advice from CDTFA. (Cal. Code Regs., tit. 18, § 1705(c).) Audit comments, schedules, and other writings prepared by CDTFA that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no tax amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous. (*Ibid*.)

Here, the issue in question is whether appellant was a United States construction contractor, that is, whether appellant furnished and installed materials and fixtures on realty in

[9] CDTFA reduced the taxable measure for liability period 1 in its reaudit. (See footnote 6, above.)

[10] A taxpayer must also file a statement under penalty of perjury setting forth the facts on which a request for relief of the taxes is based. (R&TC, § 6596(c).) Appellant filed such a statement, which meets this requirement.

this state in the performance of construction contracts with the United States government. (See Cal. Code Regs., tit. 18, § 1521(b)(1)(A).) One of the first steps to make this determination is to examine the transactions between appellant and the United States government. For the transactions in which appellant sold tangible personal property to the United States government without any installation services, appellant would not be a construction contractor. It is only in the instances where appellant furnished and installed a "fixture" (as defined by Regulation section 1521(a)(5)) for the United States government that appellant would be deemed a United States construction contractor. Therefore, if CDTFA had reviewed any information in the prior audits to establish whether appellant furnished and installed tangible personal property in the performance of construction contracts for the United States government, then CDTFA would have examined the issue in question.

In prior audit 1, CDTFA examined appellant's sales invoices involving the United States government for a two-month test period (December 2006 and July 2007). Based on these invoices, CDTFA concluded that appellant's transactions with the United States government were exempt sales of tangible personal property and not subject to tax. In prior audit 2, CDTFA did not review any invoices between appellant and the United States government and instead relied on its finding from prior audit 1, that all of appellant's sales to the United States government were exempt from tax, without further examination of appellant's sales to the United States government. CDTFA asserts that it did not review any sales invoices showing that appellant furnished and installed tangible personal property for the United States government. Therefore, CDTFA argues that it did not examine the issue in question in prior audits 1 and 2.

On appeal, appellant asserts that CDTFA examined sales invoices, labor invoices, and optional maintenance invoices, and that CDTFA knew the types of tangible personal property sold and the accompanying services performed by appellant. Specifically, appellant identifies five sales invoices for transactions involving the United States government, which CDTFA examined during prior audit 1: (1) three invoices show sales of only tangible personal property; (2) one invoice indicates it is for a progress payment per a contract but without further explanation; and (3) one invoice indicates it is for "SERVICE, LABOR AND MATERIAL" but without further explanation. Appellant also identifies several invoices CDTFA examined in prior audit 1 showing that appellant sold tangible personal property and provided installation services in the same transaction, although those invoices involved customers in the private sector, not the United States government. Appellant contends that the invoices, taken as a whole, establishes that CDTFA examined the issue in question when it determined in prior audit 1 that appellant’s sales to the United States government were exempt from tax.

Upon review of the invoices involving the United States government from prior audit 1, OTA finds there is no reference to any installation of tangible personal property or fixtures. There is no indication on the face of the invoices that appellant furnished and installed tangible personal property for the United States government. Also, it is undisputed that CDTFA did not review any contracts between appellant and the United States government. While the invoices involving private sector customers indicate appellant furnished and installed tangible personal property, none of these invoices were for sales to the United States government. Appellant referencing invoices demonstrating it performed some installation work on privately-owned real property as well as invoices demonstrating appellant had some sales transactions with the United States government does not establish that CDTFA examined the issue in question during prior audit 1. Instead, appellant must demonstrate that CDTFA examined a transaction with the United States government involving the furnishing and installation of tangible personal property. As a result, OTA finds that the provided invoices do not establish that CDTFA was aware appellant was furnishing and installing tangible personal property onto United States government real property, and therefore, CDTFA did not examine the issue in question in prior audit 1.

For prior audit 2, appellant asserts that it provided CDTFA sales invoices involving the furnishing and installation of tangible personal property for the United States government. Appellant also states that, during prior audit 2, CDTFA reviewed appellant’s purchases of maintenance parts consumed in the performance of maintenance contracts, including some involving the United States government. Appellant contends that CDTFA again examined the issue in question in prior audit 2 in determining that appellant’s sales to the United States government were exempt sales.

However, CDTFA did not review any invoices between appellant and the United States government during prior audit 2. CDTFA stated that the auditor accepted the findings in prior audit 1 regarding appellant’s sales to the United States government without any further examination. As a result, the auditor in prior audit 2 intentionally omitted any review of the sales invoices for prior audit 2. While CDTFA did review some transactions where appellant consumed parts in the performance of maintenance contracts with the United States government, whether repair work performed under a maintenance contract is subject to tax is a separate and distinct analysis under Regulation section 1546, and such analysis does not indicate that CDTFA examined the issue in question—whether appellant was a United States construction contractor under Regulation section 1521. Moreover, as appellant itself concedes, the issue in question involves sales to the United States government and not purchases that appellant consumed in performance of maintenance contracts. Therefore, OTA concludes that CDTFA did not examine the issue in question in prior audit 2. Accordingly, appellant has not met the requirements for relief under R&TC section 6596.

Appellant argues that it sold the same products that it sold to the United States government to other companies and provided installation for those companies. Appellant asserts that the auditors in prior audits 1 and 2 failed to examine whether appellant was a construction contractor despite having the information available to do so. Therefore, appellant appears to argue that if CDTFA had gone further in its examination, it would have determined appellant was a United States construction contractor. However, none of the invoices actually examined by CDTFA included the necessary information to suggest that appellant was acting as a United States construction contractor. If CDTFA examined any transaction where appellant furnished and installed tangible personal property for the United States government, such review would have been sufficient to alert CDTFA of the need for further examination. Nonetheless, relief pursuant to R&TC section 6596 is not available based on an audit where CDTFA "should have" caught an error but did not. (*Appeal of Salam and Perveen*, 2019-OTA-041P.) For R&TC section 6596 relief to apply, the issue in question must have been examined by CDTFA.

Lastly, appellant asserts that, under Regulation section 1698.5(b)(1), the purpose of CDTFA's audit is to efficiently determine whether a taxpayer correctly reported the amount of tax. Appellant argues that based on its reliance on CDTFA's audit findings in prior audits 1 and 2, it believed that it was reporting the correct amount of tax. However, other than R&TC section 6596, there is no provision in the Sales and Use Tax Law that would warrant any adjustments based on reliance on a prior audit.

HOLDING

Appellant has not established that it is entitled to relief of tax and interest based on reasonable reliance on written advice from CDTFA.

DISPOSITION

CDTFA's actions, reducing the measures in liability period 1 of unreported purchases related to contracts with the United States government to $2,151,154, additional unreported purchases related to contracts with the United States government to $5,113,206, and disallowed claimed nontaxable sales for resale to $1,973,496, but otherwise denying the petitions, are sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

Date Issued: 4/21/2026