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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No.: 250419240
	)	CDTFA Case ID: 5-596-784
NAPA VALLEY LIMONCELLO COMPANY, LLC, dba Napa Valley Distillery	)	

OPINION

Representing the Parties:

For Appellant:	Arthur Haroutiounian, Representative
For Respondent:	Ravinder Sharma, Hearing Representative Jarrett Noble, Attorney Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Corin Saxton, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Napa Valley Limoncello Company, LLC, dba Napa Valley Distillery (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on January 11, 2024. The NOD is for tax of $187,269, plus applicable interest, and a 40 percent penalty of $57,093.60 for knowingly collecting but failing to remit sales tax reimbursement (40 percent penalty) for the period April 1, 2019, through March 31, 2022 (liability period).[1] Following a reaudit, CDTFA reduced the tax liability for unremitted sales tax to $134,421, reduced the deficiency measure for unreported taxable sales to $477,091, and reduced the 40 percent penalty accordingly.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Andrew Wong, and Josh Aldrich held an oral hearing for this matter in Cerritos, California, on May 12, 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, section 30209(b).

[1] The NOD was issued timely as appellant signed waivers of the otherwise applicable three-year statute of limitations, extending the date to issue an NOD for April 1, 2019, through June 30, 2021, to September 9, 2024. (See R&TC, §§ 6487(b), 6488].)

ISSUES

1. Has appellant established that additional adjustments to the measure of unreported taxable sales are warranted?
2. Has appellant established that adjustments to the unremitted sales tax are warranted?
3. Did CDTFA properly impose the 40 percent penalty?

FACTUAL FINDINGS

1. Appellant, a limited liability company, operated a bar and distillery with two locations in Napa, California, during the liability period.
2. For the liability period, appellant reported gross receipts of $6,016,419 plus use tax of $3,670 for total receipts of $6,020,089. Appellant reported deductions for nontaxable sales for resale of $1,257,876, nontaxable food sales of $1,879,550, and "other" deductions of $440,735,[2] resulting in reported taxable sales of $2,441,928.
3. Appellant separately listed sales tax reimbursement on its sales invoices, and appellant recorded sales tax reimbursement in its point-of-sale (POS) systems.[3] Appellant's POS systems and POS sales reports provided a detailed breakdown of recorded taxable sales, nontaxable sales, and sales tax reimbursement collected from customers.
4. Upon audit, CDTFA found that appellant's recorded taxable sales exceeded reported taxable sales by $2,398,379 (recorded taxable sales of $4,840,307 – reported taxable sales of $2,441,928 = unreported taxable sales of $2,398,379).[4]
5. CDTFA also established a sales tax liability of $142,734 for the liability period, based on the difference between sales tax reimbursement recorded in appellant's POS systems and appellant's reported sales tax for the liability period.
6. After capitalizing appellant's unremitted sales tax reimbursement and removing this amount from the difference between recorded and reported taxable sales, CDTFA established a deficiency measure of $574,638[5] for unreported taxable sales.

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[2] "Other" deductions include janitorial, office expense, postage and shipping, supplies, tools, and salon and distillery décor.

[3] A POS system typically includes one or more terminals, which are the modern equivalent of a cash register. Depending on the equipment and software, POS systems can generate reports that summarize sales activity for the period selected by the operator. These reports can include breakdowns of sales by type and amount, including product or service, credit or cash, and taxable or nontaxable sales.

[4] Appellant did not collect sales tax reimbursement on some of its taxable sales.

[5] Some documents within OTA's evidentiary record round this figure up to $574,640.

7. On January 11, 2024, CDTFA issued a NOD to appellant based on the audit, which included tax of $187,269 plus a 40 percent penalty of $57,093.60.[6]
8. Appellant filed a timely petition for redetermination disputing the NOD.
9. In response to the petition for redetermination, CDTFA conducted a reaudit in which it reduced the tax liability for unremitted sales tax to $134,421, reduced the deficiency measure for unreported taxable sales to $477,091, and reduced the 40 percent penalty accordingly.
10. On March 12, 2025, CDTFA's Appeals Bureau issued its decision redetermining appellant's liability in accordance with the reaudit but otherwise denying the petition for redetermination.
11. This timely appeal followed.

DISCUSSION

Issue 1: Has appellant established that additional adjustments to the measure of unreported taxable sales are warranted?

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 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).)

A taxpayer is required to maintain and make available for examination on request by CDTFA all records necessary to verify the accuracy of any return filed, or, if no return has been filed, to ascertain and determine the amount required to be paid. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include but are not limited to: (1) the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; (2) bills, receipts, invoices, cash register tapes, or other documents of original entry; and (3) schedules of working papers used in connection with the preparation of the tax returns. (Cal. Code Regs., tit. 18, § 1698(b)(1).)

[6] CDTFA found that appellant's unremitted sales tax reimbursement exceeded the thresholds of $1,000 per month and 5 percent of the total tax collected, pursuant to former R&TC section 6597.

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, CDTFA may determine the amount required to be paid based on any information which is in its possession or 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 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*.)

Here, CDTFA used appellant's own POS records to determine that appellant underreported its taxable sales and collected sales tax reimbursement that it failed to remit to CDTFA. Thus, CDTFA established a taxable measure of unreported taxable sales of $477,091. CDTFA's determination, which was based on appellant's own records, is therefore reasonable and rational, and the burden of proof shifts to appellant to establish that further adjustments to the unreported taxable sales are warranted.

With respect to unreported taxable sales, appellant asserts that the COVID-19 pandemic resulted in confusion and losses, followed by fires that caused losses. Appellant requests that CDTFA "reduce some of the penalties and interest because [appellant has] been through four wildfires, COVID, and now a fire caused by a negligent driver." Such concessions by CDTFA "would allow [appellant] to at least stay in business."[7]

Appellant does not state any basis for reducing the measure of unreported taxable sales as calculated using appellant's own POS records. Moreover, CDTFA reduced the deficiency measure to $477,091 after determining it had made calculation errors. Appellant does not point to any specific errors in CDTFA's audit that would warrant further adjustments to the measure of unreported taxable sales.

Issue 2: Has appellant established that adjustments to the unremitted sales tax are warranted?

CDTFA obtained information from appellant's own records indicating that it collected, but did not remit, sales tax totaling $134,421. Furthermore, appellant did not refund the collected sales tax reimbursement to its customers. CDTFA's determination was therefore reasonable and rational, and the burden of proof shifts to appellant to show that it was in error.

Appellant does not dispute that it collected but did not transmit the sales tax to CDTFA. Instead, appellant states that its accountant at the time made a mistake and charged tax on nontaxable food sales. Appellant asserts that its former accountant set up the POS machine to

[7] To the extent that appellant seeks relief though programs offered by CDTFA, such as offers in compromise or an installment payment agreement, appellant may contact CDTFA directly to inquire about such options.

add sales tax to nontaxable food sales. Appellant contends that it wanted to reimburse those customers but could not. Appellant testified that it was in possession of the collected but unremitted taxes.

Although appellant may have mistakenly collected sales tax reimbursement on sales of nontaxable food items, the fact remains that appellant knowingly collected sales tax reimbursement but failed to remit that to CDTFA. (See R&TC, § 6597(a).) Moreover, appellant, as of the date of the hearing, had not yet remitted the collected sales tax reimbursement to CDTFA. Appellant, therefore, has not established that any adjustments to the amount of collected but unremitted sales tax is warranted.

Issue 3: Did CDTFA properly impose the 40 percent penalty?

For determinations made before January 1, 2025, any person who knowingly collects sales tax reimbursement and fails to timely remit that tax reimbursement to CDTFA is liable for a penalty of 40 percent of the amount not timely remitted. (Former R&TC, § 6597(a)(1).) 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.[8] (Former R&TC, § 6597(a)(2)(A).)

Appellant argues that it accidentally collected sales tax reimbursement due to POS system errors and that appellant was unaware the sales tax reimbursement was not remitted. Appellant asserts that it was unaware that sales tax had been charged on food products sold on a to-go basis or shipped to its customers and that appellant corrected the mistake upon being apprised of it during the audit.[9] Appellant's argument, however, is unconvincing as the POS reports accurately provided a detailed breakdown of taxable sales, nontaxable sales, and sales tax collected. Given that appellant separately stated sales tax on its invoices and recorded its sales tax reimbursement in its books and records, CDTFA has shown by a preponderance of

[8] For NODs issued on or after January 1, 2025, the 40 percent penalty shall not apply to any person whose liability for unremitted sales tax reimbursement averages $1,500 or less per month or does not exceed 25 percent of the total amount of tax liability for which the sales tax reimbursement was collected for the period in which tax was due, whichever is greater. (R&TC, § 6597(a)(2)(A).) Because the NOD at issue in this appeal was issued prior to January 1, 2025, the higher threshold amounts do not apply. (See R&TC, § 6597(d).)

[9] Appellant also requests relief of the penalty due to financial difficulties. Although relief of the 40 percent penalty is warranted where failure to timely remit the sales tax reimbursement is due to reasonable cause or circumstances beyond the person's control (R&TC § 6597(a)(2)(B)), an adverse financial situation does not constitute reasonable cause for purposes of penalty relief. (See *Appeal of Eichler*, 2022-OTA-029P.)

the evidence that appellant knowingly collected sales tax reimbursement. As it is undisputed that appellant failed to remit the sales tax reimbursement at issue and that the unremitted amounts meet the applicable thresholds,[10] OTA finds that CDTFA properly imposed the 40 percent penalty.

HOLDINGS

1. Appellant has not established that additional adjustments to the measure of unreported taxable sales are warranted.
2. Appellant has not established that adjustments to the unremitted sales tax are warranted.
3. CDTFA properly imposed the 40 percent penalty.

DISPOSITION

OTA sustains CDTFA's action modifying the amounts based on a reaudit but otherwise denying appellant's petition for determination.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
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Andrew Wong
Administrative Law Judge

DocuSigned by:
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Josh Aldrich
Administrative Law Judge

Date Issued: 7/29/2026

[10] In the reaudit, CDTFA deleted the 40 percent penalty for the first quarter of 2022 (1Q22) as the statutory thresholds for this quarter were not met. Accordingly, the penalty for 1Q22 is no longer at issue.