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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **NEW SHANGHAI, LLC**	OTA Case No.: 250722805 CDTFA Case ID: 5-448-035

OPINION

Representing the Parties:

For Appellant: Harpoonam Aulakh, Representative

For Respondent: Mari Guzman, Attorney
Jason Parker, Chief of Headquarters Ops.
Chad Bacchus, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, New Shanghai, LLC (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 November 15, 2023.[1] The NOD is for tax of $90,853,[2] plus applicable interest, and a penalty of $35,957.20 for the period January 1, 2020, through December 31, 2022 (liability period).

Office of Tax Appeals (OTA) Panel Members Keith T. Long, Josh Lambert, and Josh Aldrich held an oral hearing for this matter in Sacramento, California, on May 19, 2026. At the conclusion of the oral hearing, the record was closed, and this matter was submitted for an Opinion on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

[1] The NOD was timely issued because on March 17, 2023, appellant signed a waiver of the otherwise applicable three-year statute of limitations for the period January 1, 2020, through December 31, 2022, which allowed CDTFA until January 31, 2024, to issue the NOD. (R&TC, §§ 6487(a), 6488.)

[2] There are two audit items: a sales tax audit item and a use tax audit item. Neither of the underlying audit items are in dispute. Only the sales tax audit item is discussed below since it relates to the imposition of the penalty imposed pursuant to R&TC section 6597.

ISSUES

1. Whether CDTFA properly imposed the 40 percent penalty pursuant to R&TC section 6597; and if so, whether appellant has shown that it is entitled to relief from the 40 percent penalty.
2. Whether appellant has established a basis for interest relief.

FACTUAL FINDINGS

1. Appellant, a limited liability company, operates a restaurant in Citrus Heights, California. Appellant offers dine-in seating, to-go sales, and sales via third party delivery services (i.e., Grubhub, DoorDash, and Uber Eats).
2. For the liability period, appellant reported total sales of $456,520, claimed sales tax reimbursement of $32,833 included in reported sales, resulting in total reported taxable sales of $423,687.
3. For audit, appellant provided its federal income tax returns (FITRs) for 2020, 2021, and 2022; point-of-sales quarterly summary reports (POS reports) for the liability period; POS detail reports for the second quarter of 2020 (2Q20), 3Q21, and 1Q22; Grubhub, DoorDash, and Uber Eats sales reports for the liability period; and bank statements for the liability period. CDTFA independently obtained appellant's Form 1099-K data for 2020 and 2021.[3]
4. CDTFA compared total sales reported on the sales and use tax returns (SUTRs) for 2020, 2021, and 2022 to the corresponding gross receipts, excluding sales tax reimbursement, reported on appellant's FITRs for the same period. CDTFA noted material differences in each year; that is $98,123, $317,601, and $294,965, respectively. CDTFA found that the material differences were due, in part, to appellant's failure to report its sales via third party delivery services. CDTFA concluded that appellant underreported its taxable sales, and that further investigation was warranted.
5. CDTFA examined appellant's POS reports for the liability period. The POS reports recorded $122,723 of sales tax reimbursement collected. CDTFA compared this amount to the sales tax reimbursement of $32,831 reported on its SUTR. CDTFA calculated sales tax reimbursement collected, but unremitted, of $89,892. CDTFA used the

[3] Form 1099-K is an IRS Form titled, "Payment Card and Third Party Network Transactions", which shows the monthly and annual amounts paid to a merchant by a bank, credit card company, or third party network, during a given time period. Form 1099-K includes payments made by any electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

unremitted amount to establish unreported taxable sales of $1,159,899 for the liability period.

6. From 1Q20 through 4Q22, unremitted sales tax reimbursement collected ranged from $1,825 to $3,640 per quarter.
7. Based on the POS reports, CDTFA found that appellant knowingly collected sales tax reimbursement from its customers, totaling $89,892, but failed to timely remit the collected amount during all quarters of the liability period.[4] CDTFA determined that unremitted sales tax reimbursement exceeded $1,000 per month for all quarters of the liability period, and that the unremitted sales tax reimbursement exceeded 5 percent of the total amount of the tax liability due. CDTFA imposed the 40 percent penalty pursuant to R&TC section 6597.
8. CDTFA issued the NOD.
9. Appellant timely petitioned the NOD, disputing the 40 percent penalty. Appellant later requested interest relief. Appellant submitted a Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest (CDTFA-735) signed under penalty of perjury.
10. On July 2, 2025, CDTFA issued its decision.
11. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether CDTFA properly imposed the 40 percent penalty pursuant to R&TC section 6597, and if so, whether appellant has established that relief of the penalty is warranted.

Any person who knowingly collects sales tax reimbursement and fails to timely remit it to the state is liable for a penalty of 40 percent of the amount not timely remitted if the failure to remit exceeds certain thresholds. (R&TC, § 6597(a)(1).) The penalty does not apply if the person's liability for unremitted sales 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 sales tax reimbursement was collected for the period in which tax was due, whichever is greater.[5] (R&TC, § 6597(a)(2)(A).) In order for OTA to sustain CDTFA's imposition of the 40 percent penalty, CDTFA must establish that: (1) appellant knowingly collected sales tax reimbursement from its customers; (2) appellant failed to timely remit the sales tax for which it collected the

[5] These threshold amounts were revised for determinations made on or after January 1, 2025. (R&TC, § 6597(d).)

reimbursement; and (3) the amount of sales tax collected but not remitted exceeds the applicable threshold. (R&TC, § 6597(a)(1)-(2).) The applicable standard of proof is by a preponderance of the evidence. (*Appeal of ISIF Madfish, Inc.*, 2019-OTA-292P.)

The law provides for relief of the 40 percent penalty if the taxpayer establishes that its actions were due to reasonable cause or circumstances beyond the taxpayer's control and occurred notwithstanding the taxpayer's exercise of ordinary care and the absence of their willful neglect. (R&TC, § 6597(a)(2)(B).) R&TC section 6597 provides six examples of reasonable cause, none of which are relevant to the facts of this appeal. Although R&TC section 6597 does not establish a procedure for requesting relief, CDTFA has a standard form available (CDTFA-735) on which such a request may be made. Appellant is required to request relief and prove a factual basis for the request. (*Appeal of Sundown Entertainment Group, Inc.*, 2026-OTA-225P.)

The evidence shows by a preponderance that, in every quarter of the liability period, appellant knowingly collected sales tax reimbursement and failed to timely remit the sales tax for which it collected reimbursement. Further, the unreported sales tax reimbursement exceeded the tax amounts due from third party delivery companies. Also, the evidence shows that the sales tax collected but not remitted exceeds the applicable threshold. Accordingly, OTA finds that CDTFA correctly imposed the 40 percent penalty pursuant to R&TC section 6597.

With respect to its request for relief of the 40 percent penalty, appellant submitted a signed CDTFA-735. Appellant argues that the 40 percent penalty should not apply because it did not intentionally fail to remit taxes. Instead, appellant argues that it was a newly established business and appellant's owner had limited experience regarding California sales and use tax compliance, particularly as it relates to third party delivery services. Appellant claims it was operating under impression that third party delivery services collect, report, and remit sales tax reimbursement. Appellant argues that this confusion is attributable to the fact that Uber Eats collects and remits sales tax reimbursement, but DoorDash and Grubhub do not. Appellant also claims the underreporting was due to human error, as appellant relied on their former bookkeeper and a friend to file taxes. In addition, appellant asserts that since discovering the issue, appellant has taken corrective measures, ensuring full compliance with all tax filing procedures moving forward.

While appellant argues that relief of the penalty is warranted, OTA does not find any grounds for relief under the non-exhaustive list established in statute. Further, while OTA may empathize with the possible confusion between third party delivery services, appellant's own records are clear that it collected sales tax reimbursement in excess of the sales tax related to

third party delivery services.[6] Therefore, OTA finds appellant's explanation and related arguments unconvincing. Moreover, apart from general assertions of inexperience, appellant has not specified why it failed to remit sales tax reimbursement that its own POS system clearly recorded as collected. In addition, ignorance of the law is not reasonable cause for the failure to comply with statutory requirements. (*Appeal of Cremel and Koeppel,* 2021-OTA-222P.) Thus, OTA finds that appellant has not shown that its failure to remit knowingly collected sales tax reimbursement was either due to reasonable cause or circumstances beyond its control and occurred notwithstanding its exercise of ordinary care and in the absence of willful neglect. Accordingly, OTA finds that appellant has not established a basis to relieve the 40 percent penalty.

Issue 2: Whether appellant has established a basis for interest relief.

The imposition of interest is mandatory. (R&TC, § 6482.) There is no statutory right to interest relief. (R&TC, § 6593.5.) The law allows CDTFA, in its discretion, to grant relief of all or any part of the interest imposed on a person under the Sales and Use Tax Law where the failure to pay the tax is due in whole or in part to an unreasonable error or delay by an employee of CDTFA acting in his or her official capacity. (R&TC, § 6593(a)(1).) Such a delay means, for example, an unreasonable failure to work on an appeal. (*Appeal of Micelle Laboratories Inc.*, 2020-OTA-290P.) An unreasonable error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (R&TC, § 6593.5(b).)

In reviewing CDTFA's decision to deny interest relief, OTA applies an abuse of discretion standard. (*Appeal of Micelle Laboratories Inc.*, *supra*; *Appeal of Eichler*, 2022-OTA-029P.) To show an abuse of discretion, appellant must establish that, in refusing to relieve interest, CDTFA exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Eichler*, *supra*.) Any person requesting interest relief must include a statement under penalty of perjury setting forth the facts on which the request is based. (R&TC, § 6593.5(c).)

Here, appellant satisfied the requirements in R&TC section 6593.5 by signing and submitting the CDTFA-735. However, appellant does not allege or prove any unreasonable

[6] Beginning April 1, 2021, Uber Eats elected to be a marketplace facilitator instead of a delivery network company and began collecting and reporting sales tax on sales. A marketplace facilitator that is registered with CDTFA and facilitates the retail sale of tangible personal property (TPP) by a marketplace seller is the retailer selling the TPP sold through its marketplace. (R&TC, § 6043.)

error or delay by CDTFA's employees acting in their official capacity. Accordingly, OTA finds that CDTFA did not abuse its discretion in denying appellant's request for interest relief.

HOLDINGS

1. The 40 percent penalty was properly imposed, and relief of the 40 percent penalty is not warranted.
2. Appellant is not entitled to relief of interest.

DISPOSITION

CDTFA's actions are sustained.

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Signed by:
Josh Lambert
CB1F7DA37031416...
Josh Lambert
Administrative Law Judge

Date Issued: 8/5/2026