Docusign Envelope ID: EE4367EE-AAE7-89A1-814F-5B0C61349874

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MAXIMUM VAPOR INC.**	)	OTA Case No.: 251123801 CDTFA Case ID: 4-669-813

OPINION

Representing the Parties:

For Appellant: Mitchell Stradford, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Maximum Vapor Inc. (appellant) appeals a Decision issued by respondent California Department of Tax and Fee Administration (CDTFA) partially denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on February 14, 2023. The NOD is for tax of $109,770, plus applicable interest, and a negligence penalty of $10,977.03 for the period January 1, 2018, through December 31, 2020 (liability period).[1] In a subsequent reaudit, CDTFA reduced the tax to $88,477 and adjusted the interest and penalty accordingly.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Has appellant established that it is entitled to interest relief?

[1] The NOD was timely issued because appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, the last of which was signed on August 10, 2022, and gave CDTFA until April 30, 2023, to issue the NOD for the liability period. (See R&TC, §§ 6487(a), 6488.)

FACTUAL FINDINGS

1. Since April 2017, appellant has operated as a licensed tobacco products retailer.
2. On February 14, 2023, CDTFA issued the instant NOD to appellant. CDTFA based the NOD on its estimate of appellant's taxable sales using the credit card projection method.
3. On March 10, 2023, appellant filed a petition for redetermination.
4. Attached to the audit notes from CDTFA's Centralized Revenue Opportunity System (CROS) are the following entries:
    a. On December 28, 2020, CDTFA mailed an audit engagement letter to appellant.
    b. During 2021, CDTFA initially informally requested documents for the audit. CDTFA followed up with several calls to all phone numbers on file for appellant and either left messages regarding the status of the document request or could not do so because voicemail boxes were full. CDTFA also emailed appellant's listed Power of Attorneys (POAs) several times to inquire into the status of the requested information.
    c. CDTFA issued two Information Document Requests (IDRs), on April 1, 2021, and again on September 9, 2021, as appellant had not voluntarily provided any documents.
    d. During 2021, appellant requested three extensions but did not provide any requested documentation until October 27, 2021, and December 24, 2021, when appellant submitted partial documentation.
    e. On March 16, 2022, CDTFA reviewed the audit to date with appellant's POA, at which time the POA requested time to provide more information.
    f. From March 2022 through June 2022, CDTFA again attempted, on several occasions, to contact appellant regarding the status of the additional documentation.
    g. On June 9, 2022, CDTFA issued another IDR when appellant did not submit anything further.
    h. On August 10, 2022, CDTFA issued an IDR and a Formal Notice and Demand when appellant provided no further documents.
    i. On September 9, 2022, following CDTFA's additional unsuccessful attempts to reach appellant regarding the status of the requested information, appellant requested additional time.
    j. On September 13, 2022, appellant sent CDTFA a sales tax worksheet for 2020, and on October 3, 2022, requested a meeting with CDTFA.

k. CDTFA returned the audit to the field for adjustments. CDTFA sent the adjusted working papers to appellant on December 8, 2022, requesting a response by December 15, 2022.

l. On December 20, 2022, appellant contacted CDTFA and said the POA was no longer its representative and to email appellant's owner/officer directly.

m. On January 20, 2023, CDTFA emailed appellant an audit report letter, after which appellant requested a conference.

n. CDTFA set a conference for February 10, 2023, which appellant did not attend. Appellant did not answer calls to its phone numbers and/or its voicemail was full.

o. On March 8, 2023, appellant's new POA called regarding setting up a meeting and trying to get additional information from appellant.

p. CDTFA closed appellant's case on May 22, 2023, due to lack of response from appellant.

5. On July 6, 2023, CDTFA reopened appellant's case after receiving a phone call from appellant regarding the case's status. CDTFA believed that appellant's then-POA did not receive the audit report letter due to a delivery issue.

6. Between July 12, 2023, and September 9, 2023, CDTFA actively worked on the appeal, preparing a summary analysis in anticipation of the conference.

7. On October 23, 2023, CDTFA confirmed an appeals conference with appellant, and thereafter worked on preparing for the appeals conference from November 3, 2023, through March 8, 2024.

8. On March 8, 2024, CDTFA set the appeals conference for April 20, 2024.

9. Appellant requested postponement of the conference, which was rescheduled to May 16, 2024.

10. Post-conference, appellant requested to submit additional supporting documents. By December 5, 2024, appellant had not provided any additional documentation despite follow-up communications by CDTFA. CDTFA, therefore, closed its evidentiary process.

11. On February 28, 2025, CDTFA's Appeals Bureau issued a Decision denying appellant's petition for redetermination.

12. On March 29, 2025, appellant filed a Request for Reconsideration (RFR), disputing the taxable measure of $274,769 based on the credit card projection method.

13. On June 18, 2025, CDTFA's Appeals Bureau issued a Supplemental Decision, ordering the deletion of the taxable measure of $274,769 calculated using the credit card

projection method. Appellant confirmed that it did not dispute any other issues in the NOD.

14. On July 14, 2025, appellant filed a second RFR, along with a signed CDTFA-735 (*Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest*) form, requesting interest relief due to CDTFA's alleged unreasonable delay in processing the audit and appeal.

15. On November 4, 2025, CDTFA's Appeals Bureau issued a Second Supplemental Decision, denying appellant's second RFR.

16. On November 15, 2025, appellant filed this timely appeal.

DISCUSSION

The law provides that the amount of CDTFA's determination shall bear interest from the date the amount of tax, or any portion thereof, should have been reported, until the date of payment. (R&TC, § 30202.) There is no statutory right to interest relief. The law allows CDTFA, in its discretion, to grant relief of all or any part of the interest imposed on a person under the Cigarette and Tobacco Tax Law in certain circumstances including, as relevant here, where the failure to pay the tax was due in whole or in part to an unreasonable error or delay by an employee of CDTFA acting in its official capacity. (R&TC, § 30283.) 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, § 30283(b).) When reviewing CDTFA's denial of a taxpayer's request for interest relief, OTA applies an abuse of discretion standard. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) To show an abuse of discretion, a taxpayer 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*, 2022-OTA-029P.)

Here, appellant's CDTFA-735 form states, "[t]he period of four and a half years to complete an audit and hold an appeal constitutes an unreasonable delay. The unreasonable delay is due to CDTFA employees acting in their official capacity." This statement, while made under penalty of perjury, merely reiterates the legal requirements to establish interest relief, without setting forth specific facts supporting the request. That is, appellant fails to allege and show exactly which CDTFA employee(s) caused the delay, what specific steps or acts in performing the audit and/or appeals process took an unreasonable amount of time, and which specific portion(s) of the four and a half years was unreasonably long. Appellant's appeal letter is similarly vague, stating "[t]he delay in performing the audit and the appeal warrants interest relief which was denied by the CDTFA." Absent specific facts as to how CDTFA delayed, and at

what point in the audit and/or appeals process, appellant has not established that any CDTFA employee(s), acting in their official capacity, caused an unreasonable delay to warrant interest relief.

Nor has appellant shown that CDTFA, in denying appellant's request for interest relief in the Second Supplemental Decision, exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. On the contrary, the Second Supplemental Decision summarizes the evidence showing that, according to CDTFA's CROS:

- during 2021, CDTFA worked on appellant's audit continuously every month, wherein the audit staff issued IDRs, and appellant requested additional time to provide documentation;[2]
- during 2022, CDTFA requested additional documents on numerous occasions, and appellant was either unresponsive or requested more time to produce records;
- during 2023, following the issuance of the NOD, appellant filed its petition for redetermination in March, after which CDTFA prepared the case for an appeals conference;[3]
- during 2024, after appellant requested postponement, CDTFA held an appeals conference in May, after which appellant made multiple requests for additional time to provide post-conference documentation, which CDTFA granted until December, when the evidentiary process was closed; and
- during 2025, CDTFA issued the Decision in February, the Supplemental Decision in June, and the Second Supplemental Decision in November.

In denying appellant's request for interest relief, CDTFA fully analyzed the audit and appeals timeline using its CROS records and found that appellant's numerous requests for extensions to produce records, appellant's lack of responsiveness, and multiple changes in appellant's POAs significantly contributed to any delays.[4] Hence, OTA cannot conclude that CDTFA, in denying appellant's request for interest relief, exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. In short, appellant has not satisfied its

[2] CROS indicates that the lead auditor changed in June 2021, but the audit proceeded the same month without lapse.

[3] CDTFA states that it closed the case in May 2023 due to the lack of a conference request from appellant but reopened it in July "as there may have been delivery issues." As appellant failed to show that the "delivery issues" were attributable to a CDTFA employee acting in their official capacity, OTA declines to find that a two-month gap constitutes unreasonable delay for purposes of interest relief, and that CDTFA abused its discretion in failing to relieve interest for this period.

[4] Appellant changed its representative five times between January 2021 and March 8, 2026.

burden to show that CDTFA's denial was an abuse of discretion such that interest relief is warranted.

HOLDING

Appellant has not established that it is entitled to interest relief.

DISPOSITION

OTA sustains CDTFA's action denying appellant's second RFR for interest relief.

DocuSigned by:
0CC6C6ACCC6A44D...

Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

Signed by:
25F8FE08FF56478...

Natasha Ralston
Administrative Law Judge

Date Issued: 8/18/2026