



Two New OTA Sales Tax Decisions- Part II: Responsible Person Liability for Corporate Sales Tax Debts¹

by Philipp Behrendt

The California Office of Tax Appeals (OTA) recently published two precedential sales tax pending decisions that, in practical terms, answered questions regarding personal liability, penalties, and interest abatements for unpaid sales tax. [Part I](#) focused on the [Appeal of Sundown Entertainment Group, Inc., 2026-OTA-225P](#). There, the OTA sustained a large sales tax determination after the normal three-year statute of limitations had expired, holding that the CDTFA established fraud, properly imposed the 40 percent penalty for knowingly failing to remit collected sales tax reimbursement, and did not abuse its discretion in denying further interest abatement.

Part II, here, focuses on [Appeal of Z. Sultana, 2026-OTA-204P](#), where the OTA sustained personal liability against an individual under Revenue and Taxation Code Section 6829 for a corporation's unpaid sales tax.

Both cases are designated "Pending Precedential," meaning that the OTA has selected them for precedential treatment and, after the public-comment period, may become binding guidance in future OTA appeals unless the OTA ultimately declines to designate them as precedential. Their Pending Precedential status indicates that there are cases practitioners handling sales and use tax matters should pay close attention to.

And both cases involve a familiar but important principle: once a retailer collects sales tax reimbursement from customers, California takes the failure to remit that money seriously. The cases also show how the OTA evaluates the evidentiary record in sales tax disputes. Internal records, point-of-sale reports, sales worksheets, bank deposits, tax returns, and the taxpayer's own filings can be enough to sustain both the underlying liability and the penalties that follow.

Sultana: Personal Liability for Corporate Sales Tax Debts

In *Sultana*, Ark & Associates, Inc. operated two men's clothing stores in San Jose. The appellant, Sultana, was the owner, sole officer, and director of Ark. The CDTFA audited Ark and found substantial discrepancies among the company's federal income tax returns, bank statements, daily sales worksheets, and sales and use tax returns. Ark's own sales worksheets recorded taxable sales of \$1,065,292, while Ark reported only \$277,677 in

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taxable sales on its sales and use tax returns, producing a deficiency measure of \$787,615. The CDTFA also found material differences between gross receipts reported on Ark's federal income tax returns and taxable sales reported on its sales tax returns, and between bank-statement sales and reported taxable sales. After Ark ceased business, the CDTFA asserted responsible person liability against Ark's owner, Sultana, who appealed to the OTA.

Sultana argued that the CDTFA failed to account for \$398,000 in nontaxable sales for resale. To support that position, the taxpayer produced a resale certificate dated April 1, 2014. The OTA rejected the argument. A resale certificate can relieve a seller of sales tax liability only if it is timely taken, in proper form, and in good faith from a purchaser engaged in the business of selling tangible personal property. See Cal. Rev. & Tax. Code § 6091; Cal. Code Regs. tit. 18, § 1668(a). Sultana failed to identify a single transaction covered by the resale certificate, did not provide a detailed listing of the alleged resale transactions, and admitted at the hearing that she had no evidence to support the allocation of the alleged resale sales among the audit periods. See [Transcripts](#), p. 29-30.

That part of the opinion is a useful reminder that a resale certificate is not a magic document. It must connect to actual transactions. Where the taxpayer cannot show that particular sales were made to the alleged reseller, or that the property was in fact purchased for resale, the statutory presumption that gross receipts are taxable remains controlling. See Cal. Rev. & Tax. Code § 6091. In sales tax audits, a resale certificate, while relevant, is not always sufficient. The CDTFA, and the tax code, still require the taxpayer to produce records connecting the certificate to actual sales.

The more significant part of *Sultana* is the responsible person holding. The CDTFA issued a Notice of Dual Determination to Sultana for \$72,500 in tax, plus interest and penalties, asserting that she was personally liable for Ark's unpaid sales tax liabilities under Revenue and Taxation Code Section 6829. Section 6829 imposes personal liability for unpaid sales tax owed by a corporation when four elements are met: (1) the business has terminated, dissolved, or been abandoned; (2) the corporation collected sales tax reimbursement and failed to remit it; (3) the person had control or supervision over filing returns or paying tax, or had a duty to act for the corporation in complying with the Sales and Use Tax Law; and (4) the person willfully failed to pay or cause payment of the taxes. See Cal. Rev. & Tax. Code § 6829(a), (c); Cal. Code Regs. tit. 18, § 1702.5(a), (b).

Sultana argued that she was essentially a passive participant. She described herself as a housewife and silent partner, contending that a store manager and bookkeeper handled the business and that she only signed documents when no one else was available. The OTA rejected that characterization. The record showed that she was not only Ark's owner, but also its president, and sole officer and that she: signed the seller's permit application; signed or



electronically filed sales and use tax returns; signed powers of attorney, email authorizations, and waivers; signed the petition for redetermination; prepared and signed federal income tax returns; discussed delinquent sales tax returns and payments with CDTFA; requested payment plans; and initiated electronic payments.

The hearing transcript further underscores the importance of the taxpayer's need for supporting evidence, as in this case, the record showed that Sultana submitted no exhibits, lodged no objection to CDTFA's exhibits, and relied principally on the assertion that she did not participate in the stores' daily operations. When the panel asked whether she was the only officer and owner, the representative acknowledged that public records identified her as president and, at least according to those records, owner. See [Transcripts](#), p. 10. That exchange matters because Section 6829 cases rarely turn on a taxpayer's description of her role in isolation. They turn on documents, especially contemporaneous records, such as: Secretary of State filings, seller's permit records, returns, waivers, powers of attorney, bank access, CDTFA communications, and payment history.

The OTA's analysis follows [Appeal of Treyzon, 2023-OTA-399P](#), an important responsible-person precedent under Section 6829. In *Treyzon*, the appellant argued that he was not responsible for the corporation's sales tax compliance because he was not initially an officer and because the company's CPA handled tax matters. The OTA rejected that defense, where the contemporaneous record showed that the appellant reviewed sales tax issues, communicated with tax professionals, dealt with CDTFA, addressed payment timing, and later became CFO without any meaningful reduction in his overall role. The OTA held that Section 6829 liability turns on actual control, supervision, and conduct, and that CDTFA generally must only prove the statutory elements by a preponderance of the evidence.

Treyzon is relevant in *Sultana* because the issue was not whether Sultana subjectively viewed herself as the person running the business but whether the record showed that she had control or supervision over filing returns or paying tax or had a duty to act for the corporation. This is important because, as the OTA emphasized, under Regulation Section 1702.5(b)(1), simply being an officer, member, manager, employee, director, shareholder, or partner of a business is not, in and of itself, sufficient to establish that the person is a "responsible person" but is evidence that someone may have such authority. Officer status is, however, evidence of broad implied and actual authority, even where day-to-day duties are delegated. As in *Treyzon*, the OTA looked to conduct such as signing returns, communicating with CDTFA, requesting payment arrangements, executing authorizations and waivers, and holding corporate offices.

The willfulness analysis was equally important. Citing Regulation Section 1702.5(b)(2), the OTA stated that willfulness requires (1) actual knowledge that the tax was due and unpaid,



(b) authority to pay or cause payment, and (c) the ability to pay. The failure may be willful even if it was not done with a bad purpose or motive. In *Sultana*, OTA found actual knowledge from Sultana's repeated involvement in Ark's sales tax filings and communications with CDTFA. OTA also found authority and ability to pay because Sultana had negotiated payment plans, initiated payments, and Ark had available funds, including more than \$1.1 million in credit card payments reported on Forms 1099-K, while also making rent and other payments.

Practitioner Takeaways

The decision reinforces several practical points for California sales tax controversies.

First, the OTA continues to focus on the taxpayer's own records. In both cases, the CDTFA prevailed because its determinations were based on business records – sales worksheets, POS reports, bank activity, federal returns, sales tax returns, and payment records. Once the CDTFA establishes that its methodology is reasonable and rational, the taxpayer must do more than challenge the audit in general terms. It must prove both that the determination is wrong and what the correct amount should be.

Second, the responsible person liability under Section 6829 turns on conduct, authority, and knowledge of the allegedly responsible person. A taxpayer cannot avoid liability merely by claiming that a bookkeeper, manager, or other employee handled the returns. If the individual signed returns, communicated with the CDTFA, negotiated payment plans, initiated payments, had authority over bank accounts, or held themselves out as responsible for compliance, the OTA may find responsible person status and willfulness.

Third, resale documentation must be transaction-specific. A resale certificate is helpful only if it is timely, valid, taken in good faith, and connected to actual resale transactions. A certificate unconnected to invoices, sales records, purchaser verification, or other transaction-level proof may not overcome the statutory presumption that gross receipts are taxable.

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