

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: <b>CARSMITH, INC.</b>	) OTA Case No. 18011929 ) CDTFA Case ID: 678224 ) CDTFA Acct. No. 100-434489 ) ) Date Issued: October 15, 2019 ) ) )
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**OPINION**

Representing the Parties:

For Appellant: Mark Francis, Representative

For Respondent: Jarrett Noble, Attorney  
Monica Silva, Attorney  
Lisa Renati, Representative

For Office of Tax Appeals: Josh Lambert, Tax Counsel

A. KWEE, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 6561, appellant Carsmith Inc. (Carsmith) timely appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA), on a petition for redetermination of a May 31, 2012, Notice of Determination (NOD). The NOD is for \$164,142.02 in tax plus accrued interest for January 1, 2008, through December 31, 2010.

Office of Tax Appeals (OTA) Administrative Law Judges Andrew J. Kwee, Sara A. Hosey, and Tommy Leung heard this appeal on August 27, 2019, in Sacramento, California. At the conclusion of the oral hearing, the record was closed, and this matter was submitted for decision.

**ISSUE**

Whether Carsmith should be liable for sales tax on its sales of vehicles at retail in California, when it did not collect any amounts for sales tax reimbursement from its customers, and the customers did not register the vehicles in this state.

FACTUAL FINDINGS

1. Carsmith is an in-state retailer of motor vehicles. CDTFA audited Carsmith for the period January 1, 2008, through December 31, 2010 (audit period), and determined that Carsmith underreported its taxable sales.
2. On May 31, 2012, CDTFA issued an NOD for the audit period, which Carsmith timely petitioned. CDTFA issued a decision, a supplemental decision, and a second supplemental decision on the petition (collectively, CDTFA’s decisions). CDTFA’s decisions deny, in part, Carsmith’s petition. This timely appeal followed.
3. By letter dated August 15, 2019, CDTFA clarified that, after accounting for the concessions set forth in CDTFA’s decisions, the remaining amount at issue is \$106,394.28 in tax, plus accrued interest of \$73,086.13 (as of August 15, 2019).
4. At the start of the oral hearing the parties agreed that the issue in this appeal primarily involves a legal, and not a factual, dispute. The parties also agreed on certain facts and stipulated that OTA may accept the following as agreed facts:

**“Statement of Agreed Facts . . . [¶]**

The parties agree that CDTFA correctly calculated the liability, that the transactions were subject to California sales tax, and that appellant [Carsmith] did not collect any amount for sales tax reimbursement from its customers on these transactions.

The parties agree that for the transactions at issue, either the purchasers drove the vehicles out of California on a one-trip permit issued by the California Department of Motor Vehicles and thereafter registered the vehicles outside this state, and/or appellant failed to otherwise provide documentation to establish that the sale was exempt or nontaxable in California.”

5. The admitted evidence for this appeal consists solely of CDTFA’s decisions and the NOD. Carsmith offered no evidence of its own.

DISCUSSION

California imposes sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt or excluded from taxation by statute. (Rev. & Tax. Code, § 6012.) Thus, absent an exemption, “sales tax applies when the property is delivered to the purchaser or the purchaser’s representative in this state, whether or

not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported.” (Cal. Code Regs., tit. 18, § 1620(a)(3)(A).) The law allows for an exemption from sales tax for sales in interstate commerce. (Rev. & Tax. Code, § 6352; Cal. Code Regs., tit. 18, § 1620(a)(3).) In order to qualify as an exempt sale in interstate commerce, the law provides:

Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer, or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

(Cal. Code Regs., tit. 18, § 1620(a)(3)(A).) “Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken” for all claimed exempt sales in interstate commerce. (Cal. Code Regs., tit. 18, § 1620(a)(3)(D).)

Carsmith concedes that the law is not on its side, and instead appeals “to common sense and reasonability.” Carsmith further contends that it met with Board of Equalization (board) members George Runner and Fiona Ma’s offices, who were sympathetic to its appeal, and that the board can and has used discretion in handling this matter before it was transferred to the OTA.<sup>1</sup> As one example, appellant contends that the board allowed the same type of transactions for a subsequent period. Carsmith further contends that it cannot afford to pay the liability, and it would be unfair to require it to pay this liability because it did not collect the sales tax from its customers. Finally, Carsmith contends this was all due to an honest misunderstanding of the law.

CDTFA contends that there was no subsequent audit. Instead, CDTFA contends that it made a No Opinion Warranted determination, that a subsequent audit was not warranted.<sup>2</sup>

With respect to Carsmith’s contention that it might have obtained a more favorable result before the board, we must emphasize that OTA is an administrative agency and we have no

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<sup>1</sup> Effective January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the board necessary or appropriate to conduct sales tax appeals. (Gov. Code, §§ 15600, 15672.)

<sup>2</sup> Neither party offered any evidence to support their contentions on what did or did not occur in any subsequent period. As such, we are unable to make any findings on this matter and do not address it further.

authority under the constitution to decline to enforce the provisions of Revenue and Taxation Code section 6051, which imposes sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state. (Cal. Const., Art. 3, § 3.5.) The parties agree that the disallowed sales do not meet the legal requirements to qualify as exempt sales in interstate commerce. Specifically, the parties agree that Carsmith delivered the vehicle directly to the purchaser in California, and/or Carsmith did not maintain any documentation to establish that the property was delivered to a carrier, customs broker, or forwarding agent for shipment outside this state. Therefore, the parties are correct that, absent granting a policy exception or equitable remedy for Carsmith, sales tax applies to these transactions.

The legislative power of this state is vested in the California Legislature, which consists of the Senate and Assembly. (Cal. Const., Art. 4, § 1.) OTA is bound to follow and enforce these laws and has no statutory or legal authority to exercise discretion or to make policy exceptions for individual taxpayers on a case-by-case basis.<sup>3</sup> As such, the law requires us to conclude that no adjustments are allowable under the facts of this case.

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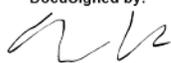
<sup>3</sup> As relevant, the California Legislature enacted Revenue and Taxation Code section 7093.6, which authorizes CDTFA to accept an Offer in Compromise (OIC) on qualifying final tax liabilities. The OIC program is administered by CDTFA. OTA has no jurisdiction over this program.

HOLDING

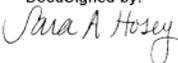
Carsmith failed to establish that any additional adjustments are allowable.

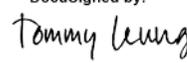
DISPOSITION

CDTFA's action in denying the petition for redetermination is sustained, and the NOD shall be redetermined as provided in CDTFA's decisions.

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Andrew J. Kwee  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Tommy Leung  
Administrative Law Judge