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2019 – OTA – 295
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 18042985
ERIC D. MCAFEE	CDTFA Acct. No. SR EH 102-388440
dba Mac Motorsports	CDTFA Case ID 948001
	Date Issued: October 21, 2019

OPINION

Representing the Parties:

For Appellant: Juan Guzman, CPA

For Respondent: Scott Lambert, Hearing Representative
Stephen Smith, Tax Counsel IV
Lisa Renati, Hearing Representative

For Office of Tax Appeals: Deborah Cumins,
Business Taxes Specialist III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Eric D. McAfee (appellant) appeals a Decision and Recommendation (D&R) issued by respondent California Department of Tax and Fee Administration (CDTFA) in response to appellant's timely petition for redetermination of a Notice of Determination (NOD), assessing additional tax of $104,468, plus interest, for the period May 1, 2013, through June 30, 2015.

Appellant waived the right to an oral hearing. Therefore, this matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to an additional allowance for bad debt losses.

FACTUAL FINDINGS

1. During the liability period, appellant, a sole proprietorship, operated a used car dealership in Fontana, California.

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2. Following an audit, CDTFA issued the above NOD, finding appellant had underreported taxable vehicles sales, but was entitled to partially offsetting deductions of $2,301 for bad debt losses incurred on repossessed vehicles, and $2,358 for tax-paid purchases of gasoline resold with vehicles.[1]
3. Appellant timely filed a petition for redetermination. During the appeals process before CDTFA, appellant conceded that taxable sales were underreported by the audited amount. In addition, the parties agreed appellant was entitled to an increased deduction for tax-paid purchases of gasoline resold, from $2,358 to $7,860.[2] However, CDTFA disagreed that appellant was entitled to a bad debt deduction larger than $2,301.
4. CDTFA issued its D&R, reflecting these conclusions. This timely appeal followed.

DISCUSSION

A taxpayer bears the burden of proving entitlement to a deduction or exemption, and must provide some credible evidence of that entitlement. (*Paine v. State Bd. of Equalization* (1982) 137 Cal.App.3d 438, 443.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

California imposes a sales tax on a retailer's gross receipts from the retail sale in this state of tangible personal property, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) All retailers are required to account for taxable sales on an accrual basis method of accounting. (Cal. Code Regs., tit. 18, § (Regulation) 1642(c).) Thus, for example, sales tax applies even if payment is not due until after the sale, or the purchaser finances the purchase of the property with the retailer. This can result in a retailer paying sales tax on taxable sales for which it never received payment from the purchaser. However, if the account receivable becomes uncollectible, R&TC section 6055 permits the retailer to take a bad debt deduction under certain circumstances.

R&TC section 6055(a) provides that a retailer is relieved from liability for sales tax, provided that the measure of tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer (or, if the retailer is not required to file an income tax return, the worthless amount is charged off in accordance with generally accepted

[1] It appears these deductions were not claimed on appellant's original returns, but rather were computed and allowed during the audit.

[2] This additional deduction of $5,502 reduced the tax liability in the NOD from $104,468 to $104,316.

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accounting principles). The deduction should be taken on the return filed for the period in which the amount was found worthless and charged off by the retailer. (Regulation 1642(a).)

On appeal, appellant contends the audited amount of bad debts should be increased, asserting "the total buyback amount was [at least] $182,684," and "[u]sing a 75% bad debt loss ratio results in a tax adjustment of approximately $11,000."[3] Appellant submitted a one-page schedule entitled "BUYBACKS," which identifies 21 vehicle sales organized by columns containing the following information: (1) the date sold; (2) the customer; (3) the year/make/model of the vehicle; (4) the vehicle identification number; (5) the third-party lender; and (6) the amount.[4]

However, this one-page schedule does not substantiate that appellant is entitled to an increased bad debt deduction. To support a bad debt deduction, retailers must maintain adequate and complete records showing the following: (1) date of the original sale; (2) name and address of the purchaser; (3) amount the purchaser contracted to pay; (4) amount on which the retailer paid tax; (5) the jurisdiction(s) where the local taxes and, when applicable, district taxes were allocated; (6) all payments or other credits applied to the account of the purchaser; (7) evidence that the uncollectible portion of gross receipts on which tax was paid has been charged off as a bad debt for income tax purposes (or, if not required to file a return, charged off in accordance with generally accepted accounting principles); and (8) the taxable percentage of the amount charged off as a bad debt properly allocable to the amount on which the retailer reported and paid tax. (Regulation 1642(e)(1)-(8).)

Here, appellant failed to provide adequate and complete records containing this information. Perhaps most importantly, appellant did not submit any federal or California income tax returns, and therefore, as a threshold matter, has not shown that any of the alleged

[3] Appellant has not provided support for these computations.

[4] It appears appellant produced this schedule for the first time on appeal to the Office of Tax Appeals. However, the information in that schedule does not have specific descriptions for us to determine whether it relates to the original sale of the vehicles, their repossession, or both.

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bad debts were charged off for income tax (or accounting) purposes.[5] Accordingly, appellant has not substantiated the existence (or even the computation) of the alleged uncollectible amounts.[6]

Finally, appellant indicates a willingness to agree to a reduced liability. However, to the extent appellant is seeking to compromise or settle the liability at issue, we do not have such authority.

HOLDING

Appellant is not entitled to an additional allowance for bad debt losses.

DISPOSITION

CDTFA's action is sustained, subject to its concession that appellant is entitled to an increased deduction for tax-paid purchases of gasoline resold, from $2,358 to $7,860.

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Kenneth Gast
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Nguyen Dang
Administrative Law Judge

[5] As another threshold matter, the record does not contain any information whether the vehicle sales were financed by appellant, or if by third-party lenders, the extent, if any, appellant was compensated for the sales.

[6] We note that, of the 21 vehicles listed in appellant's one-page schedule, 16 have dates (presumably relating to original sale, repossession, or both) that are after the liability period at issue and therefore cannot qualify for a bad debt deduction for this period, even if they were charged off for income or accounting purposes. The remaining five did occur during the liability period, but two of those appear to have already been included in the audited bad debt loss of $2,301, which was based on the repossession of three vehicles during the period at issue.