OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18063359
	) CDTFA Account No. 100-271023
MIRIAM AMANDA ALVIZURES	) CDTFA Case ID 914610
dba AMERICA CENTRAL AUTO SALES	)
	) Date Issued: November 13, 2019
	)

OPINION

Representing the Parties:

For Appellant:	Juan Guzman, CPA
For Respondent:	Kevin Hanks, Chief Headquarters Operation Division
For Office of Tax Appeals:	Deborah Cumins, Business Taxes Specialist III

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Miriam Amanda Alvizures (appellant) appeals a decision 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). The NOD is for $290,560.81 of additional tax, a negligence penalty of $29,056.14, and applicable interest, for the period January 1, 2012, through December 31, 2014. In its decision, CDTFA reduced the tax from $290,560.81 to $290,121.36, and the negligence penalty from $29,056.14 to $29,012.26, and otherwise denied the petition.

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

ISSUE

Whether adjustments are warranted to the audited understatements of reported taxable sales.

FACTUAL FINDINGS

1. Appellant operated a used car dealership in Los Angeles, California, from September 1, 2003, through February 5, 2016.
2. During the audit period, appellant reported total sales of $3,602,491, claimed deductions for nontaxable sales for resale of $486,565 and nontaxable labor of $2,092,336, and reported taxable sales of $1,023,590.
3. For audit, appellant only provided federal income tax returns (FITR's) for 2012, 2013, and 2014. Appellant provided no sales and use tax return (SUTR) worksheets, vehicle deal jackets,[1] summary records (general ledger, sales journals or purchase journals), financial statements, or purchase invoices.
4. CDTFA found that the amounts of total sales reported on SUTR's substantially reconciled with the gross receipts reported on FITR's. It used the gross receipts and cost of goods sold information reported on the FITR's to compute achieved markups of about 17 percent for 2012 and 13 percent for 2013 and 2014. CDTFA stated that, based on its audit experience, it expected the markup for this business to be in the range of 30 to 40 percent. Due to the lack of records and the lower-than expected achieved markup, CDTFA concluded that further investigation was necessary.
5. CDTFA obtained appellant's electronic Report of Sale (ROS) data from the California Department of Motor Vehicles (DMV). CDTFA subsequently requested more data from DMV, including purchase information from appellant's suppliers (auction houses), and bill of sale information or vehicle transfer forms for 95 additional vehicles that it determined appellant sold (discussed further, below).
6. Using the ROS data, CDTFA scheduled sales that appellant had reported to DMV and estimated the selling prices.[2] Using the ROS data, CDTFA calculated taxable sales of $3,679,900 for the period January 1, 2012, through September 30, 2014. CDTFA used

[1] Deal jackets are routinely used by car dealers, and each jacket generally contains the various documents related to the sale, including documents regarding the vehicle purchase, the vehicle sales contract, and the Department of Motor Vehicles Report of Sale.

[2] The audit workpapers do not clarify how the selling prices were established. The comments on Schedule 12A state that the taxable sales "are actual figures from the Department of Motor Vehicles." Those comments refer the reader to Schedule 12A-2a for further details. On Schedule 12A-2a, the column with selling prices is titled "Est. Sales Price" (which seems to contradict the statement on 12A, that the selling prices are actual figures). However, the audited amount of total sales is not in dispute, and we have not further investigated this issue.

the selling prices and costs from the purchase information (from vehicle auctions) to compute markups of 35, 41, and 38 percent (rounded) for 2012, 2013, and 2014, respectively.[3]

7. CDTFA compared $3,679,900 with reported taxable sales of $952,263 for the period January 1, 2012, through September 30, 2014, to compute an understatement of $2,727,637. CDTFA segregated the sales by year, or partial year, and computed percentages of understatement of 172.34 percent for 2012, 336.94 for 2013, and 383.04 percent for the first three quarters of 2014. CDTFA applied those percentages of error to reported taxable sales for the relevant years to establish an understatement of $3,000,847 for unreported taxable sales based on the sales information obtained from DMV.

8. CDTFA compared the information about appellant's purchases from auction houses to the ROS information and found 95 vehicles purchased by appellant from the auctions that were not included in the ROS data. The total cost of those purchases was $312,100. CDTFA found that $60,350 of those purchases represented vehicles that appellant had sold for resale. For purchases totaling $89,250, CDTFA found no DMV history of the vehicles after the dates of appellant's purchases from the auction houses. CDTFA concluded that those vehicles either had been purchased for export or remained in appellant's inventory. Accordingly, CDTFA concluded that purchases totaling $162,500 ($312,100 - $60,350 - $89,250) had been sold at retail, and it used the bills of sale or vehicle transfer forms provided by DMV to compile total sales of $263,750 for unreported taxable sales based on vehicle transfer information from DMV, in addition to the sales compiled using the ROS data.[4] Based on reviewing the DMV information, CDTFA also determined that tax was not paid to DMV at the time the vehicles were resold at retail to the consumers or registered with DMV.

[3] CDTFA did not have costs for all of the purchases from auto auctions. For the period January 1, 2012, through September 30, 2014, the total of available purchase costs was $1,341,575, and the total of the selling prices for those vehicles was $1,867,800.

[4] For these sales, the markup is 62 percent ($263,750 - $162,500) ÷ $162,500. However, when these sales and purchase amounts are combined with the remaining transactions for which CDTFA had both purchase cost and selling price information, the total of available purchase costs is $1,504,075 ($1,341,575 + $162,500) and the total audited sales of those vehicles is $2,131,550 ($1,867,800 + $263,750). Using those figures, the audited markup is 41.7 percent ($2,131,550 – $1,504,075) ÷ $1,504,075.

9. On March 2, 2016, CDTFA issued an NOD for additional tax of $290,560.81, a negligence penalty of $29,056.14, and applicable interest.

10. On March 17, 2016, appellant filed a petition for redetermination, arguing that there were duplicated sales and that adjustments should be made for bad checks, repossession losses, and tax-paid purchases resold of gasoline. Appellant did not protest the negligence penalty.[5] Appellant provided no documentation to support her contentions regarding duplicated sales, bad checks, or repossession losses. Additionally, appellant claimed $0 in bad debts on her federal income tax returns for the three years at issue.

11. On March 13, 2018, CDTFA issued a Decision recommending a reduction of $11,713 for tax-paid purchases resold of gasoline, which was subject to sales tax at only 2.25 percent plus the Los Angeles County district taxes,[6] and otherwise denying the petition.[7]

12. This timely appeal followed.

DISCUSSION

California imposes a sales tax on a retailer's retail sales in this state of tangible personal property, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) All of a retailer's gross receipts are presumed subject to tax, unless the retailer can prove otherwise. (R&TC, § 6091.)

When CDTFA is not satisfied with the accuracy of the sales and use tax returns filed, it may base its determination of the tax due upon the facts contained in the returns or upon any information that comes within its possession. (R&TC, § 6481.) It is the taxpayer's responsibility to maintain and make available for examination on request all records necessary to determine the correct tax liability, including bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

[5] Appellant also did not mention the negligence penalty in her opening brief filed with the Office of Tax Appeals, and she did not reply to our November 21, 2018 letter in which we asked whether she protested the penalty. As such, we do not address it further.

[6] Effective July 1, 2010, the state excise tax increased from 17.3 cents per gallon to 35.3 cents per gallon, and the statewide sales and use tax rate on gasoline sales decreased from 8.25 percent to 2.25 percent, plus applicable district taxes. (R&TC, §§ 6357.7, 7360.)

[7] Thereafter, appellant filed a request for reconsideration (RFR), which CDTFA ultimately did not accept as a valid RFR because appellant failed to "perfect" the RFR.

When CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (See *Schuman Aviation Co. Ltd. v. U.S.* (D. Hawaii 2011) 816 F.Supp.2d 941, 950; *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 616.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (See *Riley B's, Inc.*, *supra*, at p. 616; see also *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Throughout the audit and appeals process, appellant provided no summary records (other than FITR's) or supporting documentation. Accordingly, we find that it was appropriate for CDTFA to utilize information from other sources. We further find that CDTFA's process of scheduling transactions from the ROS data and from the information regarding appellant's purchases from vehicle auctions is reasonable and rational. Consequently, we find that CDTFA has met its initial burden in establishing its determination is reasonable and based on the best available evidence, and thus the burden shifts to appellant to provide evidence from which a more accurate determination may be made, prove that CDTFA's determination is incorrect, and identify the proper amount of tax.

In her opening brief, appellant does not appear to protest the total amount of sales established by CDTFA. Instead, she argues that adjustments are warranted for "unwinds" (sales canceled by the purchaser for a full refund) of $227,800 and bad debts (including repossession losses) of $779,374.[8] As evidence, appellant submitted lists of vehicle identification numbers (VINs). For each VIN, appellant has listed a sale date and amount, with a purchaser name. On the next line, under the VIN, appellant has written "RE-SOLD" and has listed a second date, another sale amount, and another purchaser name. We infer that appellant is attempting to show

[8] Appellant begins her opening brief with the statement, "We would agree to the amount of $200,000." However, the purpose of this proceeding is to establish whether the available documentation and evidence support adjustments to the determined liability. The Office of Tax Appeals has no statutory authority to settle or compromise a tax liability.

that the vehicle was sold, then was either returned by the purchaser or repossessed, and then was sold a second time. However, appellant failed to provide corroborating evidence such as a sales journal, sales contracts, credit memos for unwinds, accounts receivable records with entries showing amounts due but unpaid, repossession documents, or any other evidence prepared contemporaneously with the transactions. Furthermore, we note that appellant claimed $0 in bad debts on her federal income tax returns for the three years at issue, and she has otherwise failed to show that she had legally charged off bad debts for income tax purposes. (See R&TC, § 6055(a).)

Moreover, on a separate page appellant simply states: "Please be advised per DMV records two vehicles were reposted with the wrong purchase price." Appellant then lists two VINs along with a selling price for each vehicle, purportedly from DMV records, and a lower selling price, which appellant states is correct. Appellant does not identify the source of the lower selling prices, nor does she provide a sales contract or entry in any type of summary record that would support either of the alleged lower selling prices.

In a letter dated November 21, 2018, we specifically asked appellant to provide documentation to support the buybacks (unwinds) and repossessions. Appellant did not reply to our letter. In light of the above, we find that the evidence does not support the claimed amounts of unwinds and bad debts or the lower selling prices for the two transactions. As a result, no adjustment is warranted to the audited understatements of reported taxable sales.

HOLDING

No adjustments are warranted to the audited understatements of reported taxable sales.

DISPOSITION

Sustain CDTFA's decision to make an adjustment for tax-paid purchases resold of gasoline of $11,713 and to otherwise deny the petition for redetermination.

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

DocuSigned by:
3CADA62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge