OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeals of: **R. CARMONA dba CARMONA'S COLLISION REPAIR and CARMONA'S COLLISION REPAIR, INC.**	OTA Case Nos. 18063322, 18063323 CDTFA Case IDs: 848833, 848835 CDTFA Account Nos. 99-734917, 102-357020

OPINION

Representing the Parties:

For Appellants:	Shahid Iqbal, CPA R. Carmona, Owner
For Respondent:	Lisa Renati, Hearing Representative Jason Parker, Hearing Representative Christopher Brooks, Attorney

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, R. Carmona dba Carmona's Collision Repair (RC) and Carmona's Collision Repair, Inc. (CCRI) appeal decisions issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant RC's petition of a Notice of Determination (NOD) dated September 16, 2014, and appellant CCRI's petition of an NOD also dated September 16, 2014. The NOD issued to RC is for $21,623.23 in tax, plus applicable interest, for the period October 1, 2008, through December 31, 2011. The NOD issued to CCRI is for $8,424.05 in tax, plus applicable interest, for the period January 1, 2012, through March 31, 2013.

The Office of Tax Appeals (OTA) consolidated these appeal matters, without objection from either party, because they involve substantially the same issues and facts. Administrative Law Judges Andrew J. Kwee, Jeffrey G. Angeja, and Suzanne B. Brown held an oral hearing for this matter in Cerritos, California, on January 24, 2020. At the conclusion of the hearing, OTA closed the record and this matter was submitted for decision.

[1] Sales taxes were formerly administered by the Board of Equalization (board). Effective July 1, 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) When this opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to its predecessor, the board.

ISSUE

Whether any adjustments are warranted to the liability as determined by CDTFA.

FACTUAL FINDINGS

1. Appellant RC operated an automobile collision repair shop as a sole proprietor, beginning July 5, 1995.
2. CDTFA obtained information through its Statewide Compliance and Outreach Program indicating that appellant RC was underreporting his taxable sales.
3. On or around September 6, 2011, CDTFA referred appellant RC's account to an auditor for investigation. On October 19, 2011, an auditor contacted appellant RC and requested a meeting to discuss his sales and use tax reporting.
4. On November 29, 2011, appellant RC met with CDTFA's auditor at the Irvine District Office, and he brought his Federal Income Tax Returns for 2008, 2009, and 2010 to the meeting. CDTFA informed appellant RC that it appeared he was underreporting taxable sales because he reported cost of goods sold of $161,722 for 2008, $154,344 for 2009, and $161,722 for 2009, but he only reported taxable sales of $53,000, $52,000, and $60,800 for those same tax years. The auditor also noted that, during these same tax years, appellant RC reported $454,649, $431,324, and $454,649, respectively, in gross receipts to the Internal Revenue Service (IRS) for this business.
5. On December 8, 2011, CDTFA met with appellant RC, this time at his business location. During the meeting, appellant RC stated that he purchased all parts without payment of tax by issuing a resale certificate, and that his markup on parts sales was between 20 to 30 percent. CDTFA also asked appellant RC to file amended Sales and Use Tax Returns to reflect the markup. The reported figures resulted in a negative markup of (-46.52) percent and indicated that appellant RC was selling the repair parts for only 53.48 percent of his cost to purchase them (i.e., at a loss).
6. On December 31, 2011, appellant RC ceased engaging in business as a sole proprietor and incorporated his business as CCRI, with a start date of January 1, 2012.
7. For the tax years at issue, appellants did not provide books and records to support reported taxable or total sales. Based on the auditor's review of the records, the auditor concluded that appellants estimated reported amounts for sales and use tax purposes.

Appellants did, however, maintain job folders for the repair jobs that the business performed. The job folders included information such as repair estimates (completed prior to performing the job), repair orders (completed after performing a job), some purchase invoices from appellants' suppliers, and receipts or handwritten notes indicating how much the customer paid for the repair job.

8. On reviewing appellants' records, CDTFA determined that for a sizeable portion of the job folders, appellants either failed to maintain a Repair Order, or if there was a Repair Order, appellants failed to include pricing information for the sale of repair parts. Additionally, some of the Repair Orders included a charge for "Sublet" repairs, which appellants erroneously treated as nontaxable labor charges in their entirety.

9. On May 23, 2013, CDTFA completed its Audit Working Papers and provided a copy to appellants. Thereafter, CDTFA met with appellants on May 28, 2013, and appellants disputed the audit findings. During the meeting, appellants contended that the correct markup is only 30 percent. CDTFA gave appellants additional time to provide information to support audit adjustments.

10. On October 31, 2013, CDTFA concluded the audit of appellant RC. The Audit Report disclosed underreported taxable sales of $260,145, based on a block test of the third quarter 2011 (3Q11). CDTFA also prepared audit Schedule 12C disclosing that, if CDTFA had applied a markup of 30 percent as requested by appellants, the underreported taxable measure would increase to $382,015.

11. On January 14, 2014, CDTFA concluded the audit of appellant CCRI. The Audit Report disclosed underreported taxable sales of $108,073, based on a block test of 4Q12.

12. CDTFA calculated the audit liabilities as follows. CDTFA determined audited total sales by accepting the amounts that appellants' records reflected the customers paid during the test periods. CDTFA determined a taxable ratio, based on accepting the ratio of taxable charges that appellants reported on the repair estimates. CDTFA applied the taxable ratio (46.27 percent for RC, and 45.61 percent for CCRI) to audited total sales to establish audited taxable sales. CDTFA did not use Repair Orders to determine the taxable ratio because CDTFA appellants' records were insufficient for these purposes.

13. CDTFA issued the NODs to appellants on September 16, 2014, for the liabilities disclosed by audit. Appellants timely petitioned the NODs.

14. On November 13, 2017, CDTFA issued a decision on each of appellants' petitions. For appellant RC, CDTFA performed a reaudit to reduce audited taxable sales identified in the 3Q11 block test by $418. For appellant CCRI, CDTFA performed a reaudit to reduce audited taxable sales identified in the 4Q12 block test by $725.17.
15. On January 30, 2018, CDTFA completed a reaudit report for appellant RC, which reduced underreported taxable sales to $257,033, and reduced the tax liability to $21,364.57.
16. On January 31, 2018, CDTFA completed a reaudit report for CCRI, which reduced underreported taxable sales to $104,642, and reduced the tax liability to $8,156.61.
17. These timely appeals followed.
18. During the oral hearing, appellant RC testified under oath that appellants did not maintain Repair Orders for repair jobs where the job total was less than $500. Mr. Carmona further testified that, during the audit with CDTFA, he handwrote additional information on the available Repair Orders in order to support the reported taxable selling price of parts. Specifically, appellant RC explained that he added appellants' cost price to purchase the repair parts on the top left of the Repair Orders under the heading "Part No & Description," and then multiplied this amount by appellants' alleged markup: 20 percent. Appellants contend that these amounts are their taxable selling price of repair parts.

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. (R&TC, §§ 6012, 6051.) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

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 *ibid*.; see also *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, CDTFA met its initial burden by establishing, via audit, a discrepancy between the available records and reported taxable sales. First, appellant RC's records indicated a negative markup, which would mean that he was selling repair parts for only 53.48 percent of his cost to purchase the repair parts. Second, appellants' records reflected that appellants treated all separately stated charges to its customers for repair jobs as 100 percent nontaxable labor when appellants hired a subcontractor to perform the repair work, even though repairpersons are retailers when the retail value of parts and materials is more than 10 percent of the total charge, or when a separate charge is made for the property. (Cal. Code. Regs., tit. 18, § 1546(b)(1).) Third, appellant CCRI reported total sales of $143,492 *for the entire audit period*, whereas it reported gross receipts of $546,779 *just for 2012* on its Federal Income Tax Return. Fourth, appellants failed to provide documentation to otherwise support reported amounts. Therefore, we find it was reasonable and rational for CDTFA to apply audit methods to determine total and taxable sales, and to thereafter establish audited total sales based on the total amount of receipts that appellants collected from their customers, and to establish the percentage of total sales that are taxable by using the ratio of taxable charges that appellants listed in the repair estimates.

Appellants contend that they did not sell all the parts listed in their repair estimates, and, as such, the taxable ratio as determined by CDTFA is overstated. Instead, appellants ask that the liability be calculated based on the Repair Orders. Nevertheless, appellants' witness testified under oath that appellants did not generate Repair Orders for all of their transactions, and admitted that appellants added pricing information to the Repair Orders after the start of the audit, in a section on the Repair Order that had previously been left blank on the copy signed by the customer, to reflect a flat 20-percent markup on part sales. Based on these facts, we do not believe the Repair Orders are the best available evidence to generate a taxable sales ratio.

Although the taxable ratios were generated from information on the Repair Estimates, appellants are not being charged tax on sales that did not occur. CDTFA applied the taxable ratios to audited total sales, which is based on the amount the customer paid to appellants. The taxable ratios generated by CDTFA are just a means to determine what percentage of total sales were, on average, taxable. Appellants' witness testified that appellants did not generate invoices (Repair Orders) for customers when the total sale was less than $500, and appellants admit that they did not include a breakdown of the selling prices for parts in the copy of the invoice provided to customers for many other transactions. Appellants cannot retroactively change the terms of a sale agreement years after the sale occurred by adding in alleged "selling prices" solely for audit purposes. Additionally, appellants have not established why CDTFA should exclude transactions under $500. Appellants have the burden of establishing error in CDTFA's determination, and we find that appellants failed to provide documentation upon which we can make a more reliable determination of the amount of the understatement.

HOLDING

Appellants failed to establish that any adjustments are warranted.

DISPOSITION

CDTFA's actions as set forth in CDTFA's decisions are sustained.

DocuSigned by:
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Andrew J. Kwee
Administrative Law Judge

We concur:

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

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

Date Issued: 2/24/2020