OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. ANGULO & M. ANGULO** **dba MARQUIS AUTO SALES**	OTA Case No. 19054809 CDTFA Case ID: 940835 CDTFA Account No. 101-142687

OPINION

Representing the Parties:

For Appellant:	M. Angulo[1] M. Angulo Marvin Angulo, Business Manager
For Respondent:	Mariflor Jimenez, Hearing Representative Jason Parker, Hearing Representative Christopher Brooks, Attorney

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, M. Angulo (appellant-husband) and M. Angulo (appellant-wife),[2] doing business as Marquis Auto Sales (appellant), appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[3] denying appellant's petition of a Notice of Determination (NOD) dated February 11, 2016. The NOD is for $10,558.33 in tax, plus applicable interest, for the period July 1, 2012, through June 30, 2015 (liability period).

Administrative Law Judges Andrew J. Kwee, Teresa A. Stanley, and Suzanne B. Brown held an oral hearing for this matter in Fresno, California, on February 27, 2020. At the conclusion of the hearing, the record was closed, and this matter was submitted for a decision. On February 27, 2020, the Office of Tax Appeals (OTA) also heard a separate appeal from

[1] M. Angulo also goes by M. Sanchez.

[2] These individuals are technically partners, and not appellants; however, for ease of identification we refer to the partners in this business as appellant-husband, and appellant-wife, respectively.

[3] 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.

appellant for the period January 1, 2009, through December 31, 2011 (OTA Case No. 18093742). These appeal matters were not consolidated, and a separate written decision will be issued for each appeal matter.

ISSUE

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

FACTUAL FINDINGS

1. Appellant, a partnership, operated a used car dealership and auto repair facility in this state beginning October 1, 2008.[4]
2. On July 28, 2015, CDTFA notified appellant that its account was selected for an audit.
3. On September 9, 2015, CDTFA met with appellant to discuss the pending audit. Appellant provided dealer jackets and repair invoices for some transactions but was otherwise largely unable to provide records to support reported taxable sales, and a follow-up appointment was scheduled.
4. Appellant was unable to provide supporting documentation during follow-up appointments on September 17, September 30, and November 5, 2015.
5. CDTFA examined federal income tax returns for 2013 and 2014. During this time period, the business reported gross receipts of $807,811 for federal income tax purposes, and gross receipts of $550,408 for sales and use tax purposes. Based on the discrepancy, CDTFA determined that an additional examination was warranted.
6. CDTFA contacted the California Department of Motor Vehicles (DMV) and obtained a record of vehicle sales reported by appellant directly to the DMV. According to the DMV's records, during the liability period appellant reported vehicle sales of $848,945 to the DMV. In addition, based on a review of available dealer jackets maintained by appellant, CDTFA found that appellant recorded $94,151 in vehicle sales that it did not report to the DMV. Finally, based on available repair invoices maintained by appellant, CDTFA determined that appellant recorded $3,032 in taxable auto part sales. Based on

[4] Appellant reported the business as a husband and wife co-ownership to CDTFA. Under certain circumstances, a partnership for income tax purposes does not include a qualified joint venture conducted by a husband and wife who file a joint income tax return (more commonly referred to as a husband and wife co-ownership). (See Int.Rev. Code, § 761(f).) For sales and use tax purposes, irrespective of income tax treatment, both a "partnership" and a "joint venture" are considered a separate person. (R&TC, §§ 6005, 6015.)

the above, CDTFA calculated audited taxable sales of $946,128, which exceeded reported taxable sales of $754,168 by $191,960. CDTFA allowed a bad debt deduction of $62,457, and a tax paid purchases resold deduction of $5,039. After allowing both of the deductions, the underreported taxable measure as disclosed by audit was $124,466.[5]

7. On December 10, 2015, after discussing the liability disclosed by audit with appellant, CDTFA informed appellant that it would complete the audit using the available information if appellant failed to provide supporting documentation for any further adjustments within two weeks.
8. Appellant thereafter transferred the business to appellant-husband and appellant-wife's son,[6] who took over the business under a different seller's permit that he opened with an effective start date of December 21, 2015.
9. On February 11, 2016, CDTFA issued an NOD to appellant for the liability disclosed by audit.
10. During the oral hearing, appellant-husband testified that appellant had no additional documentation to support bad debts, and that bad debts were not claimed on federal income tax returns.

DISCUSSION

California imposes 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, §§ 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

[5] CDTFA's decision cites a January 22, 2016 audit report and states there are two audit items with a deficiency measure of $129,503. The January 22, 2016 audit report identifies three audit items. The $5,039 difference is the remaining audit item: a deduction for tax-paid purchases resold that was allowed in the audit.

[6] The exact date of the transfer is not contained in the record.

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 reported to CDTFA taxable vehicle sales of $754,168, which is substantially lower than the $848,945 in vehicle sales that appellant reported to the DMV. Second, per appellant's own dealer jackets, appellant recorded an additional $94,151 in vehicle sales which it failed to report to the DMV. Third, per appellant's own repair invoices, appellant recorded an additional $3,032 in auto part sales. Based on the large discrepancy between amounts reported to CDTFA and amounts reported to the DMV, as well as the sales recorded in appellant's records that it failed to report to the DMV, we find it was reasonable and rational for CDTFA to conclude the difference represents underreported taxable sales and to disregard appellant's reported taxable sales.

Appellant has the burden of establishing error in CDTFA's determination. Here, appellant contends that the audit is overstated because CDTFA picked up non-sales revenue that was deposited into appellant's bank account. However, the audit did not involve an analysis of appellant's bank deposits. In the instant appeal, the audit was based on differences between recorded and reported taxable sales per the dealer jackets and repair invoices, and differences between taxable sales reported to CDTFA versus amounts reported to the DMV. Therefore, there is no basis upon which we can conclude that CDTFA included non-sales revenue when examining appellant's bank deposits, because CDTFA did not examine appellant's bank deposits.[7]

[7] As relevant, we note that there is a separate appeal pending before OTA involving appellant, where CDTFA examined bank deposits.

Appellant further contends that an adjustment is warranted because it did not collect reimbursement for the sales tax from its customers. Nevertheless, pursuant to R&TC section 6051, sales tax applies to the retail sale of tangible personal property in this state regardless of whether the retailer charges or collects reimbursement for the tax from its customer. (R&TC, § 6051; see also *Pacific Coast Engineering Co. v. State of California* (1952) 111 Cal.App.2d 31, 34.) As a matter of contract between the parties, the retailer may collect reimbursement from its customer if the contract of sale so provides. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700.)

There are very limited circumstances where a retailer may take a deduction due to an inability to collect tax or tax reimbursement from its customer. As relevant here, retailers may generally take a bad debt deduction for amounts reported as taxable and thereafter found worthless and charged off for income tax purposes. (R&TC, §§ 6055(a), 6203.5(a).) The statute authorizing a bad debt deduction specifically provides that, in the case of accounts held by a lender, a retailer or lender that makes a proper election shall be entitled to a deduction of the tax that the retailer has previously reported and paid if certain conditions are met. (R&TC, § 6055(b)(1).) A "proper election" is met where the retailer that reported the tax and the lender prepare and retain an election, signed by both parties, designating which party is entitled to claim the deduction or refund. (R&TC, § 6055(b)(4).) Here, appellant provided two lists of alleged bad debts. All of the debt accounts were held by a lender: Lobel Financial. The first list does not include any dates to indicate when the property was sold or became uncollectible. Although the second list includes a "date open," a number of those dates fall outside the audit period at issue. In any event, appellant's documentation is insufficient to establish any deductible bad debts for a number of reasons, including: (1) the parties did not make a proper election specifying who may claim a bad debt deduction; (2) appellant did not charge off any of the debts for income tax purposes; and (3) appellant failed to provide any documentation to establish that any of the sales for the alleged bad debts were made or properly deductible during the audit period. Therefore, we conclude that no further adjustments are allowable.

HOLDING

Appellant failed to establish that any adjustments are warranted.

DISPOSITION

CDTFA's action as set forth in CDTFA's decision is sustained.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 4/23/2020