

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. HAMIDI
dba Price Auto Buyers

) OTA Case No.: 18073488
) CDTFA Account No.: 099-396196
) CDTFA Case IDs: 946923, 951993
)
)
)

OPINION

Representing the Parties:

For Appellant:

J. Hamidi

For Respondent:

Lisa Renati, Hearing Representative
Jason Parker, Chief, Hdqrs. Ops. Div.
Christopher Brooks, Tax Counsel IV

For Office of Tax Appeals:

Deborah Cumins,
Business Tax Specialist III

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6561 and 6901, J. Hamidi (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying the following: appellant’s timely petition for redetermination of the Notice of Determination (NOD), which assessed a tax liability of \$18,344 and applicable interest, for the period January 1, 2013, through December 31, 2014 (liability period); and appellant’s timely claims for refund.¹

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

ISSUE

Whether adjustments are warranted to the measure of tax.

¹ Appellant had been making payments of \$50 per month and had regularly filed claims for refund with those payments. The record, however, does not document all the claims for refund, and appellant alleges that he had paid \$1,450 as of September 27, 2018.

FACTUAL FINDINGS

1. Appellant operated as a used car dealer in Costa Mesa, California. During the liability period, appellant reported total sales of \$400,225, claimed nontaxable sales for resale of \$356,165, and reported taxable sales of \$44,060.
2. CDTFA obtained electronic Report of Sales data through an interagency agreement with the Department of Motor Vehicles (DMV). CDTFA noted differences between the sales appellant reported to DMV and the sales reported on sales and use tax returns (SUTRs). CDTFA determined that appellant had made taxable sales totaling \$229,300 that had not been reported on his SUTRs.
3. On February 25, 2016, CDTFA issued the NOD for a tax liability of \$18,344 and applicable interest.
4. On March 3, 2016, appellant filed a petition for redetermination.
5. In April 2016, appellant began making payments of \$50 per month and regularly filing claims for refund.²
6. On March 15, 2017, CDTFA issued a Decision and Recommendation (D&R) denying the petition for redetermination, but did not address the claims for refund.
7. On March 23, 2017, appellant filed a timely Request for Reconsideration, noting that one of the sales listed as unreported in the D&R had been reported on an SUTR.
8. On May 23, 2017, CDTFA issued a Supplemental Decision and Recommendation (SD&R), acknowledging that the D&R had erroneously listed a sale of \$19,600 as a sale that had not been reported. The SD&R, however, noted that the error in the D&R did not impact the understatement. Instead, the D&R had noted the correct understatement of reported taxable measure of \$229,300, but it had inadvertently listed the reported sale of \$19,600 as unreported. The SD&R clarified that the unreported amounts are sales of \$31,900, \$22,400, and \$175,000, which total \$229,300.³
9. The SD&R dated May 23, 2017, recommended denial of the petition for redetermination and denial of the claims for refund.
10. This timely appeal followed.

² See footnote 1, page 1.

³ We note that the total is also misstated in the SD&R, as \$229,400, rather than \$229,300. The tax liability at issue of \$18,344, however, is based on a measure of \$229,300.

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.) The retailer *may* collect sales tax reimbursement from the purchaser if the contract of sale so provides. (Cal. Code Regs., tit. 18, § 1700(a)(1); Civ. Code, § 1656.1(a) [emphasis added].) It is the retailer's responsibility to maintain complete and accurate records 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.)

In this case, CDTFA established that appellant made three unreported taxable sales totaling \$229,300 by comparing the sales reported to DMV and the sales reported on his SUTRs. Appellant's sales at issue were as follows: a Mercedes Benz to A. Hamid for \$31,900; a BMW to M. Hamidi for \$22,400; and a Bentley to Sebastian's at North Beach LLC for \$175,000. We, therefore, find CDTFA's determination to be reasonable and rational. Accordingly, the burden of proof now shifts to appellant to establish that an adjustment to the measure of tax is warranted.

Appellant states that he was misinformed, by other used car dealers, that he could sell a car to a family member without collecting tax. He asserts that he has always paid the sales tax for which he had collected sales tax reimbursement. Appellant is essentially arguing that he should not be required to pay the sales tax because he did not collect sales tax reimbursement.

As previously noted, the retailer *may* collect tax reimbursement from his customers. (Civ. Code, § 1656.1(a) [emphasis added].) The retailer's failure to collect reimbursement from

his customer, however, does not relieve a retailer of his liability for the sale tax due. Under R&TC section 6051, the retailer remains liable for the sales tax regardless of whether he has collected sales tax reimbursement from a customer. Thus, we find that no adjustment is warranted based on appellant's failure to collect sales tax reimbursement.

With respect to appellant's assertion that he received erroneous advice, R&TC section 6596 provides that a person may be relieved of any sales or use taxes imposed if the person's failure to make a timely return or payment was due to that person's reasonable reliance on written advice from CDTFA. Since appellant does not argue that he received any erroneous advice from CDTFA, either in writing or otherwise, we will not address it further.

It appears that appellant now understands that he received erroneous advice. We note, nevertheless, that there is an exemption from sales and use tax for sales of vehicles by the parent, grandparent, grandchild, child, spouse, by registered domestic partner of the purchaser, or by the brother or sister of the purchaser if both are under the age of 18 and are related by blood or adoption, where the seller is not engaged in the business of selling the type of property for which the exemption is claimed. (R&TC, § 6285(a); Cal. Code Regs., tit. 18, § 1610(b)(2)(A).) This exemption does not apply because appellant was engaged in the business of selling used cars. Also, there is no evidence that the purchasers of the vehicles were qualified family members for which the exemption applies.

Appellant also refers to the difficulties associated with paying the liability, stating that he is 78 years old, has major health issues, and has no source of income other than social security. While we sympathize with appellant's situation, inability to pay is not a basis for making an adjustment to the liability.

HOLDING

No adjustments are warranted to the measure of tax.

DISPOSITION

Sustain CDTFA’s supplemental decision to deny the petition for redetermination and deny the claims for refund.

DocuSigned by:
Josh Aldrich
48745BB808914B4
Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:
Andrew Wong
8A4294817A67463
Andrew Wong
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D
Daniel K. Cho
Administrative Law Judge

Date Issued: 6/24/2020