OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19064955
	) CDTFA Account No. 97-637254
E. CAMBRONE	) CDTFA Case ID 1001211
	)
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	)

OPINION

Representing the Parties:

For Appellant: Graham Hoad, Representative

For Respondent: Jason Parker, Chief of Headquarters Operations

For Office of Tax Appeals: Lisa Burke, Business Taxes Specialist III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, E. Cambrone, dba MC Motors (appellant) appeals from a Decision issued by respondent California Department of Tax and Fee Administration denying, in part, appellant's petition for redetermination of the Notice of Determination (NOD) issued to him on February 28, 2017. The NOD is for tax of $340,451.22, plus accrued interest, for the period January 1, 2012, through March 31, 2015 (liability period).

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

ISSUE

Is appellant entitled to a reduction to the measure of underreported taxable sales?

FACTUAL FINDINGS

1. Appellant has operated a used car dealership since January 1, 2000, and was previously audited for the period April 1, 2000, through March 31, 2003.
2. During the liability period, appellant was licensed by the Department of Motor Vehicles (DMV) for retail sales only.

3. For the liability period, appellant reported total sales of $1,960,996, and claimed no deductions, resulting in reported taxable sales of $1,960,996.
4. For audit, appellant provided sales records contained in deal jackets,[1] but provided no other records for examination.[2] Respondent obtained electronic Report of Sale (ROS) records from the DMV for the liability period, DMV vehicle registration records, and purchase data from the auto auction houses in the area.
5. Registration information obtained from the DMV indicates total sales during the liability period of $4,094,600.
6. Information contained in the appellant's deal jackets indicates sales during the liability period totaled $4,185,720.
7. Using the vehicle identification numbers (VINs) shown in the DMV records, respondent removed identical transactions included in both the DMV data and appellant's sales records. For the transactions that were included only in the DMV data, and for which there was no exact sales price noted, respondent used the lowest possible estimate of the sales price.[3] The result was what respondent believed was a list of all sales, without duplicates, which totaled $5,875,420. Respondent removed additional suspected duplicates totaling $64,800, to calculate audited taxable sales of $5,810,620.[4]
8. The measure at issue is the difference between audited taxable sales and appellant's reported taxable sales: $3,849,624.
9. Appellant timely filed a petition for redetermination contending that the audited taxable measure is overstated due to two types of error: respondent's inclusion of duplicate transactions in the data used for the audit, and respondent's failure to properly account

[1] The term "deal jacket" generally refers to the folder maintained by automobile dealers that contain all documents that pertain to the purchase and/or sale of a vehicle.

[2] Such other records might have included federal income tax returns, financial statements, sales journals, and purchase journals.

[3] The DMV data showed the VIN, license plate number, year and make of vehicle, vehicle registration date, and a two-letter Vehicle License Fee (VLF) code designating a range of selling prices in $200 increments for each vehicle that appellant registered. Respondent used the lowest selling price in the range designated by the VLF code.

[4] We note that CDTFA audit schedule 12A-3 indicates respondent calculated audited taxable sales at $5,766,520, but it appears that schedule failed to include four sales for a total of $44,100.

for "returns" (rollbacks) and unwinds.[5] According to respondent's Decision, appellant identified 22 vehicles with selling prices totaling $292,398 that he argued were duplicated in the data, and 116 transactions[6] totaling $943,050 that he argued were voided due to rollbacks or unwinds. Respondent states that appellant did not provide supporting evidence to respondent and did not participate in the appeals conference.

10. In its Decision issued on May 23, 2019, respondent denied appellant's petition for redetermination in part. This appeal followed.

11. Appellant has not explained the details of his argument or filed any evidence with the Office of Tax Appeals.[7] Appellant failed to respond to our communications and, as a result, waived the right to an oral hearing.

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 respondent 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).)

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[5] According to section 5.060 of the DMV's *Vehicle Industry Registration Procedures Manual*, "[a]rollback is a transfer of ownership from the buyer back to the dealer. An unwind is when the retail customer (buyer) does not take possession of the vehicle and the vehicle does not leave the dealership, so the transaction is voided." (See https://www.dmv.ca.gov/portal/handbook/vehicle-industry-registration-procedures-manual-2/odometer-mileage-reporting/rollbacks-and-unwinds/ [as of July 1, 2020].)

[6] We count 115 transactions shown on schedule 12A-2: 159 total transactions less 44 claimed "duplicates," which actually represent only 22 alleged duplicates.

[7] Appellant filed a "Request for Appeal," which we accepted as an opening brief, but this document contained only a brief statement of appellant's contentions (discussed below) and included no detailed argument or evidence.

In the case of an appeal, respondent has a minimal, initial burden of producing evidence to show 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 respondent has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from respondent'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.)

The audit was straightforward. Appellant provided what was eventually found by respondent to be an incomplete set of deal jackets, which were not sufficient to support the accuracy of appellant's reported taxable sales. Respondent obtained additional sales information from the DMV. Respondent's position in this appeal is stated in its Decision and somewhat distilled in its September 24, 2019 brief. In essence, respondent asserts that appellant reported sales totaling $4,094,600 to the DMV, while his deal jackets establish sales of $4,185,720, and its comparison of the data from those two sources revealed taxable sales totaling $5,810,620, which, after deducting reported taxable sales, established underreported taxable sales of $3,849,624.

Appellant's only contentions shown in our record are contained in his initial filing dated June 24, 2019, which states that gross sales are overstated due to duplicate transactions and "returns/unwinds," that numerous transactions were recorded in error, and that the correct taxable measure is $2,794,043. The audit workpapers and respondent's Decision contain limited information that purports to identify the disputed transactions, but we have no other argument and no evidence from appellant.

Respondent's reliance on information obtained from the DMV was entirely reasonable. The audit workpapers show that respondent has removed probable duplicates and, while there have been no adjustments for rollbacks and unwinds, given the level of appellant's participation in respondent's appeal process and the absence of evidence to support additional adjustments, we find that the evidence shows a reasonable and rational basis for the determined deficiency. Therefore, the burden of proof shifts to appellant to establish that a reduction to the amount of audited taxable sales is warranted.

According to his initial filing, appellant disputes $1,055,581 of the $3,849,624 measure.[8] Regarding the 115 transactions that appellant allegedly argued were voided due to rollbacks or unwinds,[9] respondent states that appellant reported 59 of those vehicles sales to the DMV, though they did not appear in the deal jackets provided by appellant. The evidence indicates that the details for the remaining 56 sales, which appellant claims were voided, are shown in appellant's deal jackets, and there is nothing in the evidence to show that those vehicles were later sold to another party. The fact that appellant recorded all 115 transactions as taxable sales is persuasive evidence. Since we have no credible evidence of the alleged rollbacks or unwinds, we reject appellant's argument that they should not be included in the measure. In the absence of credible evidence to the contrary, we find that all 115 of these disputed transactions were correctly included in the taxable measure.

Regarding the 22 vehicles that appellant claims were duplicated in the data used to establish audited taxable sales, the evidence indicates that that respondent removed duplicate transactions when both transactions were recorded in the same period. Appellant provided two deal jackets for thirteen of the 22 vehicles, with different internal stock numbers, different information regarding where appellant had obtained the vehicle, different cost prices, and transaction dates that were many months apart, all indicating that appellant sold the cars more than once.[10] For most of the remaining nine vehicles, the DMV data shows that the reports submitted by appellant to the DMV indicate that he sold the vehicles more than once. Appellant has not attempted to refute this evidence. Consequently, we find no duplication in the audited taxable measure.

Based on the evidence, we find that appellant is not entitled to a reduction to the measure of underreported taxable sales.

[8] Appellant indicates the correct measure is $2,794,043.

[9] Appellant has not made this specific contention to us, but the record provides no reason to disbelieve respondent's statement that appellant so argued during respondent's appeal process.

[10] This is consistent with respondent's statement that it is not unusual for a used car dealer to sell the same vehicle more than once. For example, a used car dealer might sell a vehicle, later accept it as a trade-in, and sell the vehicle again, with sales tax due on both of the sales.

HOLDING

No reduction to the amount of underreported taxable sales of vehicles is warranted.

DISPOSITION

Respondent's action in denying the petition for redetermination is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

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

Date Issued: 8/19/2020