

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

AMERICAN RENTAL & SALES CORP

) OTA Case No. 18032537
) CDTFA Account No. 100-433937
) CDTFA Case ID 791247
)
)
)

OPINION

Representing the Parties:

For Appellant:

Ziad Hamdon, Attorney

For Respondent:

Jason Parker, Chief of Headquarters
Operations

For Office of Tax Appeals:

Corin Saxton, Tax Counsel IV

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, American Rental & Sales Corp (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)¹ denying appellant’s petition for redetermination of the Notice of Determination (NOD) dated December 19, 2013. The NOD is for \$133,980 in tax, and applicable interest, for the period July 1, 2010, through March 31, 2013 (liability period).

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

ISSUE

Whether any additional adjustments are warranted to the determined measure of tax.

¹ Sales taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when referring to acts or events that occurred before July 1, 2017, “CDTFA” shall refer to BOE.

FACTUAL FINDINGS

1. Appellant operated a used car dealership in Santa Rosa, California during the liability period.
2. CDTFA audited appellant's business for the liability period. Through an interagency agreement, CDTFA obtained vehicle registration information from the California Department of Motor Vehicles (DMV) for vehicles sold by appellant. Using a conversion of a two-digit alpha code known as a vehicle license fee, CDTFA estimated the selling price of vehicles sold by appellant that were reported to the DMV. The vehicle license fee codes are established in \$200 increments based on the reported retail selling price of the vehicle. Accordingly, CDTFA converted the vehicle license fee code to the respective dollar values and used the lowest value to estimate appellant's retail sales of vehicles.
3. Based on the information from the DMV, CDTFA determined that appellant reported total vehicles sales of \$1,901,742 to the DMV. CDTFA compared this amount to appellant's total reported taxable sales of \$368,498 and established a deficiency measure of \$1,533,244 (\$1,901,742 - \$368,498).
4. On December 19, 2013, CDTFA issued the NOD to appellant for the liability period.
5. Appellant filed a timely petition for redetermination, and CDTFA issued a Decision dated February 28, 2018, which reduced the measure of unreported taxable sales by \$202,500, from \$1,533,244, to \$1,330,744. Specifically, the Decision concluded that the NOD was untimely as to the third quarter of 2010, which had a deficiency measure of \$172,700. In addition, CDTFA re-examined the information from the DMV and concluded that the reported vehicle sales were overstated by \$29,800.
6. This timely appeal followed.

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 used information obtained from the DMV to calculate appellant's estimated retail sales for the liability period. Specifically, CDTFA used the DMV's vehicle license fee codes to estimate appellant's retail sales for the liability period. CDTFA compared the estimated retail sales from the DMV information to appellant's reported sales for the liability period and determined a deficiency. Although appellant argues that the DMV information does not establish that appellant actually received any money or consideration for the alleged vehicle sales, the DMV vehicle license registration fee is computed based on the retail sales price of the vehicle that appellant reported to the DMV. Appellant concedes that it does not possess its documents to establish the retail sales price of the vehicles or the specific transactions that were cancelled, which are at issue in this appeal. Therefore, we find appellant's argument unpersuasive and that CDTFA's determination is both reasonable and rational. Accordingly, the burden of proof shifts to appellant to establish that a result different from CDTFA's determination is warranted.

On appeal, appellant contends that the DMV information does not account for rollbacks or cancelled sales.² Appellant estimated that approximately 25 percent of its sales were rollbacks and states that 106 of the listed vehicle transactions were cancelled sales. Appellant explains that the DMV's information would not account for rollbacks because the Report of Sales forms would be sent to the DMV for the rollback transaction, which would have been included in the vehicle registration information provided to CDTFA. However, as previously stated, appellant has the burden of demonstrating that an adjustment is warranted to the determined measure of tax.

Merely asserting that CDTFA's estimate could be overstated and then providing a counter estimate without any supporting documentation is not sufficient to meet appellant's burden of proof.

Similarly, with respect to appellant's argument regarding potential cancelled sales, appellant concedes that it does not have the necessary documentation to establish that a certain transaction was a cancelled sale. It is insufficient to argue that lack of certain documentation on CDTFA's part would establish that a transaction was a cancelled sale. There could be different explanations for the lack of Report of Sales forms for certain transactions, and we decline to speculate as to the reason for the lack of Report of Sales forms. Instead, the facts of this appeal establish that CDTFA received information from the DMV that certain vehicles were transferred from appellant, which indicated that appellant made retail sales of such vehicles. Thus, it is appellant's burden of proof to establish that certain transactions were cancelled, and appellant must provide evidence of the voided sales, which it has not done.

Based on the foregoing, we conclude that appellant has not met its burden of proof to establish that any of the remaining disputed transactions are nontaxable.

² A rollback is when a buyer returns a vehicle to the retailer after operating it on the customer copy of the retailer's Report of Sale. (See Cal. DMV Vehicle Industry Registration Procedures Manual (VIRP), § 11.150.) The Report of Sale cannot be voided when this occurs; all fees are due from the date of the sale and must be submitted promptly to the DMV. (*Ibid.*) A sale cancelled prior to the operation of the vehicle by the buyer is not a rollback, and the Report of Sale must be voided. (*Ibid.*) In that event, the retailer must mark all parts of a Report of Sale as "void" and retain all copies of the voided Report of Sale. (*Id.* at § 8.030.)

HOLDING

Appellant has not demonstrated that any further adjustments were warranted to the determined measure of tax.

DISPOSITION

CDTFA’s action to reduce the measure of tax as determined by the February 28, 2018 Decision but otherwise deny the petition for redetermination is sustained.

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

We concur:

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

DocuSigned by:
Andrew J. Kwee
3CAD7A62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

Date Issued: 9/9/2020