OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18093742
	) CDTFA Case ID 777642
THE PARTNERSHIP OF	) CDTFA Account No. 101-142687
M. ANGULO SANCHEZ AND	)
M. CISNEROS ANGULO	)
	)

OPINION

Representing the Parties:

For Appellant:	M. Angulo Sanchez M. Cisneros Angulo M. Angulo, Marquis Auto Sales Rep.
For Respondent:	Mariflor Jimenez, Hearing Representative Christopher Brooks, Tax Counsel IV Jason Parker, Chief of Headquarters Operations
For Office of Tax Appeals:	Deborah Cumins, Business Taxes Specialist III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, the partnership of M. Angulo Sanchez and M. Cisneros Angulo, doing business as Marquis Auto Sales (appellant), appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) in response to appellant's timely petition for redetermination of the Notice of Determination (NOD) for $85,130.96 of additional tax, a negligence penalty of $8,513.13, and applicable interest, for the period January 1, 2009, through December 31, 2011 (audit period). In its subsequent decision, CDTFA reduced the tax liability from $85,130.96 to $81,387.48, deleted the negligence penalty, and denied the remainder of the petitioned amount.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Josh Aldrich, 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 remained open to allow submission of additional documents. On May 14, 2020, the record was closed, and this matter

was submitted for decision. On February 27, 2020, OTA also heard a separate appeal from appellant for the period July 1, 2012, through June 30, 2015 (OTA Case No. 19054809). These appeal matters were not consolidated, and a separate written decision will be issued for each appeal matter.

ISSUE

Has appellant shown that adjustments are warranted to the audited understatement of reported taxable sales?

FACTUAL FINDINGS

1. Appellant is a used car dealership that operated in Tulare, California since October 1, 2008.
2. During the audit period, appellant reported total sales and taxable sales of $1,060,166 (claiming no deductions).
3. For audit, appellant provided federal income tax returns (FITRs) for 2009, 2010, and 2011, sales and use tax returns (SUTRs), bank statements, sales folders, and sales contracts. Although appellant stated that SUTRs were prepared using information in sales journals, it did not provide those journals because they were discarded after the SUTRs were prepared.
4. CDTFA found minimal differences between amounts reported on the SUTRs and the FITRs. Because appellant did not provide source documents, CDTFA conducted a bank deposit analysis.
5. CDTFA scheduled the deposits in appellant's two bank accounts and made adjustments for deposits not related to sales activity (e.g., federal tax refunds and refunds of bank fees) to establish business-related bank deposits of $3,901,453.[1] It reduced that amount by deposits from loans of $1,491,340 that CDTFA verified based on an examination of supporting documents, by reported taxable sales of $1,060,166, and by reported sales tax paid of $90,410 to establish unreported total sales of $1,259,537, which it multiplied by

[1] During the audit period, appellant utilized two bank accounts for the business: a Chase account and a Wells Fargo account. Unless otherwise indicated, subsequent references are to these business accounts.

81.33 percent[2] to establish unreported taxable sales of $1,024,381. The tax amount was measured by $923,124 (an understatement of reported taxable sales of $1,024,381, less an audited amount of unclaimed bad debts of $101,257).

6. On October 30, 2013, CDTFA issued the NOD showing a tax liability of $85,130.96, the negligence penalty of $8,513.13, and applicable interest.
7. Appellant filed a petition for redetermination, and CDTFA issued a decision recommending a reaudit and deleting the negligence penalty.
8. The reaudit reduced the audited understatement of reported taxable sales by $41,965, to $881,159, based on verification of additional non-taxable bank deposits.
9. This timely appeal followed.

DISCUSSION

California imposes sales tax measured by a retailer's gross receipts from the retail sale of tangible personal property, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) All gross receipts are presumed to be subject to the tax until the contrary is established. (R&TC, § 6091.) 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, 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.) On appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) 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. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant did not provide a sales journal or other summary record of sales. For audit, appellant provided FITRs, SUTRs, bank statements, and some sales folders and contracts. Although CDTFA found only minimal differences between the figures reported on the SUTRs

[2] CDTFA examined 48 sales contracts appellant had provided to support bad debts and computed a percentage of taxable to total sales of 81.33 percent.

and FITRs, the available records were not sufficiently complete to evaluate the accuracy of those documents. In the absence of complete records, it was appropriate for CDTFA to use an alternative audit approach, and the bank statements provided the best available information regarding appellant's gross receipts. Therefore, we find that CDTFA has met its initial burden and shown that its determination is reasonable and rational. Appellant thus has the burden of establishing that an adjustment is warranted.

To establish audited taxable sales, CDTFA reduced the total deposits into appellant's two business bank accounts by deposits unrelated to sales activity and by deposits from verified loans to appellant. Appellant contends that there should be further adjustments for additional deposits related to loans. On appeal, appellant attached copies of loan documents, checks, and evidence of at least one insurance payment.[3]

Appellant provided documents to CDTFA reflecting a revolving line of credit for $100,000 issued by Fresno Commercial Lenders. In the audit, CDTFA made an adjustment to bank deposits for loans from Fresno Commercial Lenders totaling $826,170. Appellant has not shown that additional adjustments are warranted for loans issued by Fresno Commercial Lenders. Appellant also submitted evidence of four loans[4] for which CDTFA has already made adjustments in the reaudit. We note that CDTFA made an adjustment so long as the purported loan amounts matched bank deposits made within 3 days of the loan. Since these adjustments have been made by CDTFA, we will not address those loans further.

In addition, appellant submitted documents to support loans from the following individuals, which have not been allowed as adjustments by CDTFA: a document showing a loan of $20,000 from E. Rojas; a document showing loans totaling $55,500 from L. Bovadillo; a document showing a loan of $20,000 from P. Villa Gomez; several documents showing loans totaling $710,000 from E. Nuño; and evidence of an insurance payment of $2,428.87 to A. Bazan and Marquis Auto Sales. Appellant had previously provided information regarding these loans and the insurance payment, and each is addressed in CDTFA's decision. In support of the loans,

[3] Appellant also submitted a document showing that appellant-husband's (M. Angulo Sanchez) parents refinanced their home in June 2008 (prior to the audit period). Appellant asserts that the proceeds of the refinanced mortgage were paid to it as a business loan. However, there is no evidence of deposits from the refinanced mortgage into the business accounts during the audit period.

[4] The four loans are loans of $7,000 and $5,600 from D. Lopez, a loan of $10,000 from E. Rojas, and a loan of $8,000 from J. Ramirez.

appellant testified that the audit was for a time period during a recession, and that the business went from selling 15 to 20 cars per month down to zero to two sales per month. Because of that decrease in sales, appellant asserted that he had to turn to friends and family for loans.

For the loans of $55,500 from L. Bovadillo, CDTFA explains that appellant previously provided a ledger sheet showing the loan dates. Only one of the loans was made during the audit period, on January 15, 2009. For that $8,000 loan, the $20,000 loan from E. Rojas, and the $20,000 loan from P. Villa Gomez, CDTFA concluded that appellant received these loans. However, CDTFA could not determine whether the loaned funds had been deposited in appellant's business bank account, rather than a personal bank account. For that reason, CDTFA did not allow adjustments against bank deposits unless there was a corresponding deposit of the loaned amount within three days of the date of the loan. CDTFA did not find evidence of deposits for these three loans and therefore did not make the adjustments.

During audit, CDTFA compared the purported loan documents with appellant's bank statements, and appellant provided copies of bank statements on appeal. With respect to the $8,000 loan from L. Bovadillo on January 15, 2009, we found deposits of $13,508.81 and $8,050.00 to the Wells Fargo bank account on January 20, 2009. Since those deposits were made only two business days after the loan,[5] we find that appellant has provided evidence that the loaned funds were deposited in the business bank account. Accordingly, we find that the audited understatement should be reduced by $8,000.

With respect to the $20,000 loan from E. Rojas on July 11, 2011, appellant provided a notarized loan document showing a $20,000 loan, and a cashier's check for $10,000, with a notation, "loan from E. Rojas." Appellant's bank statements show deposits of $14,000 on July 11, 2011, to the Wells Fargo bank account and $3,600 on July 14, 2011, to the Chase bank account. In addition, appellant listed E. Rojas as a creditor on a 2017 bankruptcy for an amount exceeding $20,000. We find that there is strong evidence that the loan amount was $20,000, and it is unlikely that one loan would be intended for both business and personal purposes. Also, since appellant provided a copy of one check for $10,000, it appears probable that E. Rojas issued more than one check that totaled $20,000, which could have been deposited at different times. Moreover, there is evidence of deposits into business bank accounts within the next few

[5] CDTFA matched deposits with loans made within 3 days of the purported loan. We interpret this to mean 3 business days. January 15, 2009 was a Thursday, and January 19 (Monday) was a holiday.

days totaling $17,600. While the matter is not free from doubt, we find it more likely than not that the $20,000 loan from E. Rojas in July 2011 represented funds used for business expenses. We note that CDTFA already made an adjustment of $10,000 for a loan from E. Rojas on July 11, 2011. We find an additional adjustment of $10,000 is warranted.

With respect to the $20,000 loan from P. Villa Gomez on July 10, 2010, appellant has provided a signed, but not notarized, loan document. The Wells Fargo bank statement for July 2010 shows business deposits of $10,700 on July 12, $5,720 on July 13, and $5,000 on July 14. These deposits, made within days of the loan date, total more than $20,000. Although appellant did not list P. Villa Gomez as a creditor, we do not have evidence to show whether or not appellant repaid this debt prior to the 2017 bankruptcy action. Again, while the matter is not free from doubt, we find that the evidence is sufficient to show that P. Villa Gomez more likely than not loaned $20,000 to appellant's business. We therefore find that an additional adjustment of $20,000 is warranted.

With respect to the documents showing loans of $710,000 from E. Nuño, CDTFA states that appellant previously provided nine contracts with E. Nuño that totaled $245,000. However, at the appeals conference, appellant stated that the actual loans were $100,000 and $150,000 and that some of the contracts were a summary of other contracts. CDTFA asserts that the audit staff spoke to E. Nuño, who said that he made loans totaling $10,000 to $15,000. E. Nuño also told CDTFA that he did not sign any of the loan agreements appellant had provided. Furthermore, appellant listed E. Nuño as a creditor for $150,000 in their bankruptcy action. The notation stated that the $150,000 was for "personal & consign." In the absence of clear, reliable evidence of the amount of any business loans, CDTFA recommended no adjustment for loans by E. Nuño. In light of the conflicting information provided by E. Nuño and appellant, and E. Nuño's assertion that he did not sign the loan agreements provided by appellant, we find that there is no reliable evidence to support loans by E. Nuño to appellant, and find no adjustment is warranted.

With regard to the document showing a payment to A. Bazan and Marquis Auto Sales, CDTFA disallowed check payments totaling $12,456, which included the payment to A. Bazan; appellant alleged that these payments were from insurance loss checks. The evidence shows appellant deposited $2,428.87 to a Chase bank account on January 3, 2011, which is the precise amount of the insurance payment to A. Bazan, which was dated December 29, 2010. Accordingly, we find that the understatement should be reduced by $2,428.87.

After the hearing, appellant provided additional documents, many of which were duplicates of already-submitted evidence. Appellant alleged that a $9,000 check from A. Renteria constituted a loan via a refinance of a Lincoln Navigator. Without evidence of a loan agreement, we find it more likely that the check was for the purchase of the vehicle.

Appellant also submitted documents showing that Lobel Financing did not initially pay the full contract price although appellant reported the sales tax on the full contract price. Therefore, it contends that it had bad debt losses when vehicles were taxed but not fully paid off. Appellant asserts that the difference should offset the gross receipts determined by the bank deposits. First, we note that in at least one of appellant's examples, CDTFA did credit appellant for a bad debt. Second, we note that the bank deposit method used in this appeal accounts only for actual cash or checks received. Therefore, the amounts that were never received by appellant were not included in the audited taxable measure and thus were not taxed.

HOLDING

Appellant has shown that additional adjustments are warranted for the $8,000 loan by L. Bovadillo, the $10,000 loan by E. Rojas, the $20,000 loan by P. Villa Gomez, and the $2,428.87 insurance payment for A. Bazan.

DISPOSITION

We reduce the audited understatement of reported taxable sales by $40,428.87 from $881,159, as established in the most recent reaudit by CDTFA, to $840,730 (rounded). We sustain CDTFA's decision to delete the negligence penalty and otherwise deny the petition.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

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

Date Issued: 7/8/2020