

ISSUE²

Whether any adjustments are warranted to the unpaid liabilities of CIGI.

FACTUAL FINDINGS

1. CIGI operated an automobile repair and smog check shop in San Bernardino, California. CIGI filed a sales and use tax return (return) for the first quarter of 2007 (1Q07), reporting a taxable measure of \$26,821, and sales tax due of \$2,079. CIGI did not remit any payment with this return.
2. CIGI did not file returns for 2Q07 and 3Q07. As a result, respondent estimated CIGI's sales and use tax liability for these two quarters by calculating a daily average of reported taxable sales for the periods 1Q07, 4Q06, 3Q06, 2Q06, 1Q06, and December 2005. Specifically, respondent determined an aggregate taxable sales measure of \$132,752 for those periods and divided the total by the number of days in those periods (488), which resulted in an estimated average daily taxable sales of \$272 ($\$132,752 \div 488$). Respondent then multiplied the number of days in 2Q07 by the average daily taxable sales to estimate 2Q07 taxable sales of \$24,752 ($\272×91 days) and a corresponding sales tax liability of \$1,982. Using the same methodology, respondent estimated CIGI's 3Q07 taxable sales of \$25,024 ($\272×92 days) and a sales tax liability of \$2,003.
3. On January 28, 2008, respondent issued an NOD to CIGI for \$3,985 in tax, plus applicable interest, and 10-percent failure-to-file penalties totaling \$398.50 for the period April 1, 2007, through September 30, 2007.
4. On April 18, 2008, respondent visited the business location and determined that business operations had terminated. Based on records obtained from Southern California Edison indicating that the business's electricity was shut off on October 10, 2007, respondent closed out CIGI's seller's permit effective October 10, 2007.
5. On January 11, 2010, respondent received CIGI's return for 4Q07 reporting taxable sales of \$2,680 and sales tax remittance of \$208. Respondent accepted CIGI's 4Q07 return.

² Appellant's opening brief did not contain any arguments or allegations that appellant was not personally liable for the unpaid liabilities of CIGI pursuant to R&TC section 6829, or that the penalties incurred by CIGI should be relieved. Instead, appellant appears to only be disputing the calculation of the underlying tax liability. Therefore, we only address the disputed issue related to the calculation of the unpaid liabilities of CIGI in this appeal.

6. On July 29, 2011, respondent issued a timely NOD to appellant pursuant to R&TC section 6829 for CIGI's unpaid tax liabilities of \$6,064, interest, and penalties for the liability period.
7. Appellant filed a timely petition for redetermination, and submitted amended returns for 1Q07, 2Q07, 3Q07, and 4Q07, reporting taxable sales of \$5,569, \$5,940, \$14,295, and \$4,844, respectively.
8. Respondent denied the petition in a December 17, 2014 decision.
9. 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).)

If respondent is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, respondent 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, respondent has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) 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. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellant's sole contention on appeal consists entirely of a statement from CIGI's accountant made via email to appellant's representative on June 14, 2014:

I prepared the Sales and Use Tax Return for the 1Q-07, and the 4Q-07, with estimated amounts. The 4Q-07, was made and includes the sales for the 2Q-07 and the 3Q-07. The name of the corporation is Comet Investment Group Inc and the account # is EH 100-664720.

I thought that by putting “final return” on the 4Q-07, it was going to take care of the prior two quarters. Because [appellant] was sick for the most part of 2006 and 2007, I estimated the amounts either from information given by the mechanic, or, by the experience I have with clients in the same type of business.

Here, the liabilities at issue are based on the unremitted sales tax reported on CIGI’s 1Q07 original return, and an NOD based on an estimate of CIGI’s sales and use tax liability for 2Q07 and 3Q07. With respect to the estimate, respondent used CIGI’s previously reported taxable sales to estimate an average daily taxable sales amount. Respondent then multiplied the total number of days in 2Q07 and 3Q07 by the average daily taxable sales to arrive at an estimated taxable sales amount for 2Q07 and 3Q07. We find the unremitted sales tax reported on CIGI’s 1Q07 original return and respondent’s estimate of CIGI’s taxable sales for 2Q07 and 3Q07 to constitute a reasonable and rational method of determining CIGI’s sales tax liability for the liability period. Therefore, respondent has met its initial burden of proof, and the burden of proof shifts to appellant to establish that a result differing from respondent’s determination is warranted.

Appellant’s explanation of CIGI’s reporting method is not supported by any evidence and is contradicted by the amounts CIGI reported in its amended returns.³ Furthermore, the statement provided by appellant also indicates that CIGI’s accountant merely estimated the total sales for CIGI. The accountant did not base CIGI’s reporting on any original source documentation that would result in a more accurate measure of tax. Thus, we find appellant has failed to meet her burden of proof.

³ While appellant asserts that the taxable sales of \$2,680 reported on CIGI’s original 4Q07 return included taxable sales for 2Q07, 3Q07, and 4Q07, the taxable sales reported on appellant’s amended returns for 2Q07, 3Q07, and 4Q07 total \$25,079.

HOLDING

Appellant has not shown that any adjustments are warranted to the unpaid liabilities of CIGI, as determined by respondent.

DISPOSITION

Respondent’s action denying appellant’s petition for redetermination is sustained.

DocuSigned by:

Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Kenneth Gast

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Kenneth Gast

Administrative Law Judge

DocuSigned by:

Suzanne B. Brown

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Suzanne B. Brown

Administrative Law Judge

Date Issued: 3/3/2021