DocuSign Envelope ID: D83FF459-3C38-42A1-AB02-FF4FCECFF980

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 20066267
	) CDTFA Case ID 037-025
CORONA AUTO MIX, INC.	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant:	Shawn Zali, Representative Ali Salman, Owner
For Respondent:	Nalan Samarawickrema, Hearing Representative Christopher Brooks, Tax Counsel IV Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Craig Okihara, Business Taxes Specialist III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Corona Auto Mix, Inc. (appellant) appeals a decision issued by the California Department of Tax and Fee Administration[1] (respondent) denying appellant's petition for redetermination of a Notice of Determination (NOD) dated September 15, 2016. The NOD is for $58,189.60 in tax, and applicable interest, for the period April 1, 2013, through September 30, 2015 (liability period).

Office of Tax Appeals Administrative Law Judges Daniel K. Cho, Andrew Wong, and Natasha Ralston held an electronic hearing for this matter on May 25, 2021. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

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

[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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to acts or events that occurred before July 1, 2017, "respondent" shall refer to BOE.

DocuSign Envelope ID: D83FF459-3C38-42A1-AB02-FF4FCECFF980

FACTUAL FINDINGS

1. Appellant operated a used car dealership in Corona, California.
2. During the liability period, appellant reported total sales of $3,197,030 and claimed deductions of $77,433 for nontaxable sales for resale, which resulted in taxable sales of $3,119,597 ($3,197,030 - $77,433).
3. Upon audit, appellant provided sales journals for the period April 1, 2013, through June 30, 2014, and bank statements for the 2014 calendar year. Appellant did not provide sales tax worksheets, deal jackets,[2] or purchase journals for the liability period. Respondent determined that appellant's books and records were not sufficient to verify appellant's reported taxable sales.
4. Respondent obtained electronic Report of Sales (ROS) data from the Department of Motor Vehicles (DMV) for the liability period.[3] Using the ROS data, respondent estimated taxable sales of $3,659,043 for the liability period. Upon comparison to appellant's reported taxable sales for the liability period, respondent determined unreported taxable sales of $538,196 ($3,659,043 - $3,120,847).[4]
5. Respondent also compared appellant's taxable sales recorded in its sales journals to the estimated taxable sales from the ROS data for the period April 1, 2013, through June 30, 2014, which disclosed sales of an additional 23 vehicles totaling $179,727 recorded in the sales journal but not found in the ROS data. Respondent concluded that these sales were not reported to the DMV and not included in the comparison of reported taxable sales to the ROS data. As a result, respondent established a separate measure of

[2] Deal jackets are routinely used by car dealers, and each deal jacket contains the various documents related to the sale, including but not limited to the vehicle sales contract, vehicle purchase invoice, and the Department of Motor Vehicle Report of Sale.

[3] Respondent states that the information obtained from the DMV included the Vehicle Identification Number (VIN), license plate number, year and make of the vehicle, vehicle registration date, and a two-letter Vehicle License Fee (VLF) code designating a range of sales prices in $200 increments. Respondent used the VLF code to estimate the sales price by using the lowest value in the $200 range designated by that particular code. For example, VLF code "AA" designates that the sales price of the vehicle was between $13,000 and $13,200, and respondent would estimate a sales price of $13,000 for vehicles with the VLF code "AA."

[4] Respondent erroneously used a reported taxable sales amount of $3,120,847 instead of appellant's actual reported taxable sales amount of $3,119,597, when comparing audited taxable sales to appellant's reported taxable sales. This resulted in a lower unreported taxable sales measure, which benefitted appellant. Respondent did not make any adjustments for this error because the error was minor and in appellant's favor.

unreported taxable sales of $179,727 that were not included in the ROS data during the liability period.

6. Respondent issued the NOD to appellant on September 15, 2016, with a tax liability of $58,189.60, plus applicable interest.
7. Appellant filed a timely petition for redetermination.
8. Respondent denied the petition for redetermination by Decision dated May 18, 2020.
9. This timely appeal followed.

DISCUSSION

California imposes sales tax on a retailer measured by the 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, § 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*.)

Here, respondent used information from the DMV and appellant's own records to estimate appellant's tax liability. These records were the best available records during the audit of the business. Thus, we find that respondent's determination is both reasonable and rational and that appellant has the burden of proof to establish a result differing from respondent's determination.

Appellant argues that it has supporting documentation to show that respondent's determination is overstated. Appellant explains that within the ROS data, 23 of the vehicles

DocuSign Envelope ID: D83FF459-3C38-42A1-AB02-FF4FCECFF980

were duplicate sales. In addition, appellant contends that nine of the vehicles at issue in this appeal were never sold and that appellant retained title to those vehicles. In support of these arguments, appellant's owner testified that he had the relevant documentation and could explain how appellant reported its taxable sales. However, appellant did not introduce any of these alleged records into the evidentiary record despite being given ample opportunity to do so.[5] Instead, respondent provided the only records in this appeal, and appellant has not indicated which exhibit or exhibits in the evidentiary record support its contentions. As previously stated, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Talavera*, *supra*.) Thus, we find that appellant has not met its burden of proof.

HOLDING

No adjustments are warranted to the determined measure of tax.

DISPOSITION

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

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

We concur:

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

DocuSigned by:
Natasha Ralston
25F8FE08EF56478...
Natasha Ralston
Administrative Law Judge

Date Issued: 7/6/2021

[5] Appellant stated at the hearing that it was difficult to make photocopies of the documents because of the physical characteristics of the documents. For example, the type of paper was too flimsy to be properly photocopied. As a result, appellant had requested that respondent examine the documentation at respondent's business, which appellant states respondent was unable to do because of COVID-19. We note that there is no provision in the Sales and Use Tax Law that would warrant an adjustment to a determination based on this argument. It is appellant's burden to produce the necessary documentation to show that respondent's determination is erroneous. Difficulty in making suitable photocopies of the documentation does not alter appellant's burden. Thus, we find this argument to be unpersuasive.