OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. AYALA** **dba Dany's Auto Sales**	) OTA Case No. 21047676) CDTFA Case ID 070-087))))

OPINION

Representing the Parties:

For Appellant:	M. Ayala, Owner Grace White, Esq., Representative
For Respondent:	Jason Parker, Chief of Headquarters Operations
For Office of Tax Appeals:	Craig Okihara, Business Taxes Specialist III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, M. Ayala (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 October 12, 2017. The NOD is for tax of $68,506.91 and applicable interest, for the period July 1, 2014, through June 30, 2015 (liability period).[2]

Appellant waived the right to an oral hearing; therefore, we decide the matter based on the written record.

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[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 this Opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to BOE; and when this Opinion refers to acts or events that occurred on or after July 1, 2017, "CDTFA" shall refer to CDTFA.

[2] Appellant was audited for the period from July 1, 2014, through June 30, 2017. CDTFA issued the NOD to appellant prior to completion of the audit because appellant failed to provide a waiver to extend the statute of limitations for issuing an NOD. The remainder of the audit period, July 1, 2015, through June 30, 2017, is not at issue in this appeal.

ISSUE

Are additional adjustments to the amount of unreported taxable sales warranted?

FACTUAL FINDINGS

1.   Appellant, a sole proprietor doing business as Dany's Auto Sales, operated a used car dealership located in Los Angeles, California, during the liability period.

2.   For the liability period, appellant reported on his sales and use tax returns (SUTRs) total sales of $142,050 and claimed deductions of $3,460 for sales tax included, resulting in reported taxable sales of $138,590.

3.   Because appellant did not provide any books and records for the liability period, CDTFA used an indirect audit method to compute appellant's taxable sales.

4.   CDTFA obtained from the DMV electronic Report of Sales (ROS) data[3] for the liability period. Using the ROS data, CDTFA compiled taxable vehicle sales of $903,200. Upon comparison to taxable sales of $138,590 reported on the SUTRs, CDTFA computed unreported taxable sales of $764,610 for the liability period.

5.   CDTFA issued an NOD to appellant on October 12, 2017, with a tax liability of $68,506.91, plus applicable interest, for the liability period.

6.   Appellant filed a timely petition for redetermination, dated November 8, 2017, disputing the NOD in its entirety.

7.   CDTFA held an appeals conference with appellant, and subsequently issued a Decision on March 11, 2021, that denied appellant's petition. Appellant timely appealed to OTA.

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) For 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

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[3] The sales information obtained from the DMV included the Vehicle Identification Number, 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. CDTFA used the VLF code to assign the lowest estimated sales price in the $200 range. For example, VLF code "AA" designates that the sales price of the vehicle was between $13,000 and $13,200, and CDTFA assigned a sales price of $13,000 for sales involving VLF code "AA."

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, (Regulation) § 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 based on any information which is in its possession or may come into its possession. (R&TC, § 6481.) In the case of an 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. (*Ibid*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

Here, appellant failed to maintain or provide normal books of account, such as sales journals and purchase journals, sales tax worksheets used in connection with the preparation of the SUTRs, or source documentation such as deal jackets,[4] as required by R&TC sections 7053, 7054, and Regulation section 1698(b)(1). Thus, CDTFA was unable to verify sales reported on the SUTRs for the liability period using a direct audit method (that is, compiling audited sales directly from appellant's records). Under these circumstances, it was reasonable for CDTFA to question reported sales and use an indirect audit method to compute appellant's sales. CDTFA used DMV ROS data showing appellant's retail sales as the basis for its determination, which is a recognized and standard auditing procedure. (See CDTFA Audit Manual section 0607.35,[5] see also *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613.) The DMV ROS data contained the best information available to CDTFA from which to compute appellant's sales. Thus, we find that CDTFA has met its initial burden to show that its determination was reasonable and rational, and the burden of proof shifts to appellant to show errors in the audit.

Appellant states that he did not make the number of sales determined by the audit and suggests someone else might have been using his information (e.g., DMV vehicle dealer's license). Appellant has not identified any specific sale from the DMV ROS data that he believes to be erroneous or otherwise nontaxable. Moreover, appellant failed to provide any

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[4] 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 DMV ROS data.

[5] CDTFA's Audit Manual does not provide binding legal authority; however, OTA may look to it for guidance. (See *Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

documentation or other evidence to support his contention or to show actual sales for the liability period. The DMV ROS data is based on information that appellant reported to the DMV when he made a retail sale of a vehicle, and the audit data represents appellant's sales during the liability period. Appellant has not provided any evidence that he erroneously reported sales to the DMV. Thus, appellant has not established that a reduction to the measure of unreported taxable sales is warranted.

In summary, we find that CDTFA computed audited taxable sales based on the best-available evidence. Appellant has not identified any errors in CDTFA's computation of audited taxable sales or provided documentation or other evidence in support of his contentions from which a more accurate determination could be made. As appellant bears the burden of proof in this case, we must conclude that no adjustments are warranted.

HOLDING

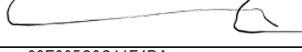No adjustment to the measure of tax is warranted.

DISPOSITION

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

DocuSigned by:

Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

Josh Lambert
Administrative Law Judge

DocuSigned by:

Andrew J. Kwee
Administrative Law Judge

Date Issued: 12/21/2021