

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 21068101
J. ALVARADO)	CDTFA Case ID 714-342
dba Ramsey’s Body Shop Collision/Sales)	
_____)	

OPINION

Representing the Parties:

For Appellant: J. Alvarado, Appellant

For Respondent: Jason Parker, Chief of Headquarters
OperationsFor Office of Tax Appeals: Richard Zellmer
Business Taxes Specialist III

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, J. Alvarado dba Ramsey’s Body Shop Collision/Sales (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA),¹ partially denying appellant’s petition for redetermination of the Notice of Determination (NOD) for tax of \$17,155, plus applicable interest, for the period October 1, 2013, through September 30, 2016 (audit period).

In its decision, CDTFA reduced the deficiency measure from \$197,826 to \$186,826, which will result in a \$935 reduction to the tax, and denied the remainder of the petitioned amount.

This matter is being decided on the basis of the written record because appellant waived the right to an oral hearing.

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” refers to BOE; and when this Opinion refers to acts or events that occurred on or after July 1, 2017, “CDTFA” refers to CDTFA.

ISSUES

1. Whether any reduction to the measure of unreported taxable sales is warranted.
2. Whether any further reduction to the measure of disallowed sales for resale is warranted.

FACTUAL FINDINGS

1. During the audit period, appellant operated a used car dealership in Long Beach, California.²
2. CDTFA audited appellant for the period October 1, 2013, through September 30, 2016. For the audit period, appellant reported on his sales and use tax returns total sales of \$2,244,271, and claimed deductions of \$583,219 for nontaxable sales for resale, \$223,000 for exempt sales in interstate or foreign commerce, and \$113,460 for sales tax reimbursement included in reported total sales, resulting in reported taxable sales of \$1,324,592. Appellant recorded sales information from his vehicle deal jackets³ onto Excel spreadsheets, and those spreadsheets were used to prepare the sales and use tax returns.
3. Upon audit, appellant provided the following books and records for audit: Excel spreadsheets for the audit period; vehicle deal jackets for the audit period; federal income tax returns (FITRs) for 2013, 2014, and 2015; and profit and loss statements for the fourth quarter of 2013 (4Q13).
4. CDTFA obtained information from a local auto auction regarding vehicles that appellant purchased from that auction house for the period October 1, 2013, through December 31, 2015. CDTFA also obtained data maintained by the Department of Motor Vehicles (DMV) regarding sales that appellant reported to DMV on Reports of Sale documents. The DMV sales data included vehicle identification numbers, registration dates, and information that CDTFA could use to estimate appellant's sales prices of the

² Appellant's business operates under the name "Ramsey's Body Shop Collision/Sales." However, CDTFA observed the business and noted that there were no body shop operations, only used car sales.

³ Vehicle deal jackets (or dealer jackets) are envelopes utilized by used car dealers to record sales. Vehicle deal jackets usually contain the purchase and sales documents, invoices associated with repairs, delivery, and parts, an odometer statement, vehicle identification number, stock number, and other records pertaining to the sale.

vehicles.⁴ Finally, CDTFA obtained DMV registration records for certain specific sales of vehicles.

5. CDTFA noted that gross receipts reported on the FITRs exceeded total sales reported on the sales and use tax returns by \$171,632 in 2014, with no material difference in 2015.
6. CDTFA compared the information in appellant's vehicle jackets to the information on appellant's Excel spreadsheets, and found that sales from three of appellant's vehicle deal jackets were not recorded in those spreadsheets (and therefore were not reported on the sales and use tax returns). Using DMV registration records, CDTFA determined that two of those vehicles were sold to purchasers in California who were not vehicle dealers and who did not pay the tax to DMV on the purchase of the vehicles. The Bills of Sale that were included in the DMV registration records were used to establish selling prices of these two vehicles, totaling \$20,000. CDTFA found the \$20,000 to be unreported taxable sales.
7. CDTFA compared the information in the DMV sales data to the information in appellant's Excel spreadsheets and vehicle deal jackets, and found that there were nine vehicle sales recorded in the DMV sales data that were not recorded in appellant's spreadsheets or in appellant's vehicle deal jackets, and thus were not reported on appellant's sales and use tax returns. CDTFA examined DMV registration information for these nine vehicle sales, and found that they were all sold to persons in California who were not vehicle dealers, and those persons did not pay the tax to DMV at the time of registration. CDTFA deleted one of these vehicle sales in order to avoid duplication because that vehicle sale is included in the disallowed sales for resale, which is discussed below. Using the sales prices recorded in the DMV registration information, CDTFA calculated unreported taxable sales totaling \$69,500 for the remaining eight vehicles.
8. CDTFA compared appellant's vehicle purchases from the auto auction house to the vehicle sales identified in the vehicle deal jackets, Excel spreadsheets, and DMV sales data. CDTFA found three vehicles that were purchased from the auction house but were not listed in either the vehicle deal jackets, the spreadsheets, or the DMV sales data.

⁴ CDTFA estimates a vehicle's sale date by using the odometer reading date or transfer date reflected in the DMV sales data, and estimates a vehicle's sale price using its Vehicle License Fee (VLF) measure. A vehicle's VLF measure is determined by the VLF Code on the vehicle registration, and it is usually within \$199 of the actual selling price.

CDTFA examined DMV registration information for these three vehicles and found that they were purchased by persons in California who were not vehicle dealers, and who did not pay tax on the full purchase price. For one of these vehicles, CDTFA established the sales price at \$6,500, based on the Bill of Sale included in the DMV registration information. For the other two vehicles, CDTFA concluded that the sales prices on the Bills of Sale in the DMV registration information were unreliable because one showed the vehicle being sold at cost (\$11,000 sales price based on DMV registration and \$11,000 cost based on auction house data), and the other showed the vehicle being sold at a \$6,400 loss (purchase price of \$8,400 based on auction house data compared to sales price of \$2,000 per DMV registration information). For these two vehicles, CDTFA added an average markup of 17.15 percent⁵ to the cost of the vehicle to compute selling prices of \$12,886 ($\$11,000 \times 1.1715$) and \$9,840 ($\$8,400 \times 1.1715$). The purchaser of the second vehicle paid tax to DMV on the \$2,000 price; consequently, CDTFA reduced the \$9,840 selling price by \$2,000 to determine an unreported taxable sale measured by \$7,840. For the three vehicles in this category, CDTFA computed unreported taxable sales totaling \$27,226 ($\$6,500 + \$12,886 + \$7,840$).

9. To test the validity of the sales for resale that were recorded on appellant's Excel spreadsheets, CDTFA examined the DMV registration information for each of the vehicle sales that were claimed to be sales for resale. At the time of the original audit, CDTFA found 11 cases where the vehicles were purchased by persons in California who were not vehicle dealers. Appellant did not have resale certificates from these 11 persons, and appellant did not otherwise provide documentation to support an exempt or nontaxable status for these 11 sales. Therefore, CDTFA considered these 11 sales to be taxable. Based on the selling prices listed in the DMV registration information, CDTFA compiled taxable sales totaling \$102,100 for these 11 vehicles. From this amount, CDTFA subtracted \$21,000 to account for the sales tax that seven of these purchasers paid to DMV;⁶ as a result, CDTFA computed disallowed sales for resale of \$81,100.

⁵ CDTFA computed the 17.15 percent markup by comparing costs and selling prices of all the vehicles recorded in the vehicle deal jackets.

⁶ CDTFA calculated the \$21,000 amount by dividing the taxes that were paid by the purchasers by the applicable tax rate.

10. Thus, the audit determined an aggregate deficiency measure of \$197,826 (\$81,100 + \$20,000 + \$69,500 + \$27,226).
11. CDTFA issued an NOD to appellant on September 28, 2018, for tax of \$17,155.00, plus applicable interest, for the period October 1, 2013, through September 30, 2016, based on the aforementioned audit.
12. Appellant filed a timely petition for redetermination of the NOD. Thereafter, appellant provided CDTFA with documentation to support one disallowed sale for resale in the amount of \$11,000. Based on this documentation, CDTFA prepared a reaudit⁷ report recommending a reduction of \$11,000, from \$81,100 to \$70,100, to the measure for disallowed sales for resale. This represents an adjustment of \$935 in tax. Thus, the reaudit finds a total deficiency measure of \$186,826 (\$70,100 + \$20,000 + \$69,500 + \$27,226).
13. CDTFA held an appeals conference with appellant on November 17, 2020. In its Decision issued on May 17, 2021, CDTFA confirmed that the measure of tax for disallowed sales for resale should be reduced by \$11,000, and otherwise denied appellant's petition for redetermination.
14. Appellant filed this timely appeal with the Office of Tax Appeals (OTA).⁸

DISCUSSION

Issue 1: Whether any reduction to the measure of unreported taxable sales is warranted.

California imposes a sales tax on a retailer's retail sales in this state of tangible personal property, measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) A "retailer" includes every seller who makes any retail sale or sales of tangible personal property. (R&TC, § 6015(a)(1).) A "retail sale" is a sale for any purpose other than for resale. (R&TC, § 6007.) All of a retailer's gross receipts are presumed subject to tax, unless the retailer can prove otherwise. (R&TC, § 6091.)

⁷ CDTFA's audit work papers use both the terms "revised audit" and "reaudit" to refer to this examination. For ease of reference, we will follow the definition in CDTFA's Audit Manual and refer to it as a "reaudit" because it occurred after issuance of the NOD. (CDTFA Audit Manual, § 0702.10.)

⁸ CDTFA issued a billing statement dated June 20, 2019, which reflects payment(s) of \$1,000 applied to appellant's account. Appellant has not asserted, nor we do not have before us, a claim for refund. Thus, regardless of the outcome of this appeal, OTA lacks jurisdiction to order a refund for any amount in connection with this appeal. (R&TC, § 6902.)

The retailer must report and pay to CDTFA the sales tax due on the retailer's taxable sales. (R&TC, §§ 6451, 6452, 6454.) While the retailer may charge its customers sales tax reimbursement, if provided by the contract of sale, it is not required to do so (Civ. Code, § 1656.1(a); Cal. Code Regs., tit. 18, § 1700(a)), and liability for the sales tax remains on the retailer, not the customer (see R&TC, § 6051).

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.) 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.*)

This issue concerns CDTFA's determination of unreported taxable sales for 13 vehicles with a deficiency measure totaling \$116,726: (1) \$20,000 for differences between recorded and reported taxable sales of two vehicles; (2) \$69,500 for differences between DMV reports and reported taxable sales of eight vehicles; and (3) \$27,226 for unreported sales of three vehicles purchased from an auction house. Appellant's vehicle deal jackets and Excel spreadsheets are evidence of his sales, and therefore we find that it was appropriate for CDTFA to examine these records to determine sales. We also find that obtaining DMV sales information, DMV registration information, and information from auto auction houses are all standard and accepted procedures in an audit of a used car dealer. Consequently, it was reasonable and appropriate for CDTFA to use these sources to determine unrecorded taxable sales.

CDTFA used the Bills of Sale included in the DMV registration information to establish the selling prices for 11 of the 13 vehicles. Because the selling prices listed in the Bills of Sale for two of the 13 vehicles were at or below appellant's cost of the vehicles, combined with appellant's statement that some of his purchasers provided false information to DMV to reduce their tax liabilities, we find that it was reasonable for CDTFA to reject those selling prices. Furthermore, it was reasonable for CDTFA to compute a markup of 17.15 percent using cost and selling price information from appellant's vehicle deal jackets, and add that markup to the cost of the two vehicles in question to determine the selling prices of those two vehicles. We note that

the markup method is a standard and accepted audit procedure. (See *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613.) Finally, we conclude that it was reasonable for CDTFA to use the DMV registration information to determine the amounts of sales tax paid by the purchasers to DMV, and reduce the audited selling prices to account for the sales tax paid by the purchasers. Thus, CDTFA has met its initial burden to show that its determination was reasonable and rational. Therefore, the burden of proof shifts to appellant to show errors in the audit.

In the present appeal to OTA, appellant does not raise any arguments; however, we consider the contentions that appellant previously raised to CDTFA. Appellant did not dispute that he sold the 13 vehicles in question, nor that these 13 sales were taxable sales. Appellant contended that the 13 purchasers in question told appellant that they would pay the taxes directly to DMV, and appellant argued that he should not be held liable for the taxes that the purchasers failed to remit to DMV. Appellant asserted that some, or all, of the 13 purchasers in question gave DMV false information regarding the sales prices of the vehicles, resulting in the purchasers paying less tax than what was actually due on the sales price.

The Sales and Use Tax Law imposes liability for sales tax on the retailer, and not the purchaser, of tangible personal property sold at retail in this state. (R&TC, §§ 6051, 6091.) While a retailer may charge and collect sales tax reimbursement from the purchaser with respect to the retail sale of tangible personal property (Civ. Code, § 1656.1(a); Cal. Code Regs., tit. 18, § 1700(a)), it is still the retailer who bears the legal responsibility of remitting the sales tax to the state, and the retailer's failure to collect reimbursement from customers does not relieve the retailer of its liability for the sale tax due. (R&TC, § 6051; *Pacific Coast Engineering Co. v. State of California* (1952) 111 Cal.App.2d 31, 34.) Therefore, appellant's argument that his customers promised to pay the tax to DMV does not establish any basis for adjustment to appellant's sales tax liability.

Appellant has not shown that the tax amounts that his customers paid to DMV on the 13 vehicles in question here is greater than the amounts allowed in the audit. Likewise, appellant has not shown errors in any of the selling prices established by CDTFA for the 13 vehicles in question, or shown any other errors in the audit calculations.

In light of all of the above, we conclude that appellant has failed to provide any documentation or other evidence from which a more accurate determination could be made.

Accordingly, appellant has failed to meet his burden of establishing that a reduction to the measure of unreported taxable sales is warranted.

Issue 2: Whether any further reduction to the measure of disallowed sales for resale is warranted.

A retailer's gross receipts received from the sale of tangible personal property are presumed to be taxable until proven otherwise, unless the retailer timely takes in good faith a certificate from the purchaser to the effect that the property is being purchased for resale (resale certificate). (R&TC, § 6091; Cal. Code Regs., tit. 18, § 1668(a).) If the seller does not timely obtain a valid and complete resale certificate, the seller will be relieved of liability for the tax only where the seller shows that the property was: 1) in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business; 2) is being held for resale by the purchaser and has not been used for any purpose other than retention, demonstration, or display, while being held for sale in the regular course of business; or 3) was consumed by the purchaser and tax was reported by the purchaser directly to CDTFA on the purchaser's returns or in an audit of the purchaser. (Cal. Code Regs., tit. 18, § 1668(e).)

For the 10 disallowed sales for resale that are still at issue, appellant did not provide any resale certificates or other documentation to establish that these were sales for resale or that appellant is otherwise relieved of liability for the tax. Accordingly, the sales of these vehicles are presumed to be taxable. CDTFA acted reasonably in disallowing these 10 claimed sales for resale, and in offsetting the stated selling prices of these 10 vehicles by amounts of taxable sales that the purchasers reported and paid tax on to DMV. Thus, the burden of proof shifts to appellant to provide evidence to support adjustments to the audit.

As discussed above in Issue 1, appellant does not raise any arguments in the present appeal, but we consider the contentions he raised on appeal with CDTFA. Appellant contended that on the dates when the 10 sales in question were made, the purchasers informed appellant that they were in the business of selling cars, and each purchaser showed appellant its vehicle dealer license information.

Appellant has provided no evidence to show that he obtained vehicle dealer's license numbers, seller's permit numbers, or other information that would indicate that any of these purchasers were vehicle dealers purchasing for resale. Even if appellant could establish that one

or more of the purchasers in question verbally told appellant that the purchase was for resale, that would not be sufficient to relieve appellant of the liability for the tax because a resale certificate must be in writing.⁹ (Cal. Code Regs., tit. 18, § 1668(b)(1).) Absent a written resale certificate, appellant must provide other documentary evidence that the purchase was for resale. (Cal. Code Regs., tit. 18, § 1668(e).) Appellant has not done so.

Furthermore, 6 of the 10 purchasers in question paid tax to DMV on a portion of the purchase price of the vehicles, which is evidence that these purchases were not for resale.

Accordingly, appellant has failed to prove facts from which a more accurate determination can be made, and on that basis, we conclude that additional reductions to the measure of disallowed sales for resale are not warranted.


⁹To meet the requirements of a resale certificate, a document must contain all of the following essential elements: 1) the signature of the purchaser, purchaser's employee or authorized representative of the purchaser; 2) the name and address of the purchaser; 3) the number of the seller's permit held by the purchaser; 4) a statement that the property described in the document is purchased for resale; and 5) the date of execution of the document. (Cal. Code Regs., tit. 18, § 1668(b)(1).)

HOLDINGS


1. No reduction to the measure of unreported taxable sales is warranted.
2. No further reduction to the measure of disallowed sales for resale is warranted.

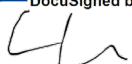
DISPOSITION

CDTFA’s action in reducing the measure of tax to \$186,826, and otherwise denying the petition, is sustained.

DocuSigned by:

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 Suzanne B. Brown
 Administrative Law Judge

We concur:

DocuSigned by:

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 Josh Lambert
 Administrative Law Judge

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 Andrew J. Kwee
 Administrative Law Judge

Date Issued: 3/23/2022