

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**PINE VALLEY, LLC**

) OTA Case No. 18124143  
) CDTFA Case ID 671038  
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**OPINION**

Representing the Parties:

For Appellant:

Ronson J. Shamoun, Attorney  
Chandara Diep, Attorney  
Christopher Engelmann, Attorney  
Brad Paladini, Attorney  
Alfred Atallah, Witness<sup>1</sup>

For Respondent:

Randy Suazo, Hearing Representative  
Christopher Brooks, Tax Counsel IV  
Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals:

Deborah Cumins, Business Taxes Specialist III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Pine Valley, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA),<sup>2</sup> which partly denied appellant’s petition for redetermination of a timely Notice of Determination (NOD) dated October 25, 2012.<sup>3</sup> The NOD was for tax of \$25,676.40, plus applicable interest, and a negligence penalty for the period of April 1, 2007, through March 31, 2010 (liability period). In the decision being appealed,

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<sup>1</sup> Mr. Atallah is a member of the family whose trust owns appellant Pine Valley, LLC.

<sup>2</sup> The State Board of Equalization (Board) formerly administered the sales and use taxes. On July 1, 2017, the Board’s administrative functions relevant to this case 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, all references to “CDTFA” refer to the Board.

<sup>3</sup> CDTFA timely issued the October 25, 2012 NOD because appellant waived the applicable three-year statute of limitations and consented to an extended deadline per R&TC section 6488.

CDTFA reduced the assessed tax liability from \$25,676.40 to \$18,164.28 and deleted the negligence penalty, but otherwise denied appellant’s petition.

Office of Tax Appeals (OTA) Administrative Law Judges Andrew Wong, Michael F. Geary, and Daniel K. Cho held an electronic oral hearing for this matter on June 29, 2022. At the conclusion of the hearing, OTA held the record open to allow the parties to submit additional materials and briefing. On August 31, 2022, OTA closed the record, and this matter was submitted for an opinion.

### ISSUE

Whether the audited understatement of reported gasoline sales should be further reduced.

### FACTUAL FINDINGS

1. Since May 1995, appellant has operated a retail gas station and mini mart in Pine Valley, California, a rural area of San Diego County. Appellant sells three grades of unleaded gasoline: regular; mid-grade; and premium.
2. During the liability period, appellant reported total sales of \$5,098,284, claimed total deductions of \$1,485,840, and reported taxable sales of \$3,612,444.
3. For audit, appellant provided the following books and records for the liability period: sales and use tax returns; a general journal; monthly profit/loss statements; bank statements; gasoline purchase invoices (except for September 2009); federal income tax returns for 2007, 2008, and 2009; and daily z-tapes for August 2007, July 2008, June 2009, November 2009, and December 2009.<sup>4</sup>
4. Based on appellant’s records, CDTFA determined that appellant purchased 894,899 gallons of gasoline for \$2,414,958 during the liability period. Compared to recorded gasoline sales of \$2,761,470 for the same period, CDTFA computed a book markup of 14.35 percent for gasoline.<sup>5</sup>

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<sup>4</sup> A z-tape is the part of a cash register tape that summarizes sales by category for a given time period. During the oral hearing, Mr. Atallah testified that appellant’s z-tapes recorded total daily gasoline sales but did not record the per-gallon retail sale price of gasoline.

<sup>5</sup> “Markup” is the amount by which the cost of tangible personal property being sold is increased to set the retail price. For example, if a retailer’s cost is \$0.70 and it charges customers \$1.00, the markup is \$0.30. The formula for determining the markup percentage is  $\text{markup amount} \div \text{cost}$ . In this example, the markup percentage is 42.86 percent ( $.30 \div .70 = 0.42857$ ). A “book markup” (sometimes referred to as an “achieved markup”) is one that is calculated from the retailer’s records.

5. CDTFA investigated further. At the hearing, CDTFA asserted that it had expected a higher markup based on its experience auditing similar businesses as well as on its knowledge of the area.<sup>6</sup>
6. Because appellant did not record the daily per-gallon retail selling prices of the gasoline it sold (or provide source documents from which CDTFA could establish them), CDTFA decided to establish audited sales of gasoline by multiplying the number of gallons of gasoline appellant purchased by the average per-gallon selling prices derived from third-party sources.
7. CDTFA first used the average quarterly per-gallon retail selling prices for the three grades of unleaded gasoline in the Los Angeles area as published by the Energy Information Administration (EIA) of the U.S. Department of Energy.
8. EIA is an independent statistical agency which surveys retail gasoline outlets across the United States each Monday and collects data regarding their self-serve, for-cash selling prices for the three grades of unleaded gasoline. EIA uses the data to compute volume-weighted average gasoline price estimates for various geographic regions, including the Los Angeles area. However, EIA does not isolate data or estimate gasoline prices for the San Diego area by itself.
9. CDTFA adjusted the EIA prices based on appellant-specific information obtained from the Oil Price Information Service (OPIS), which only gathers the selling price of regular unleaded gasoline.
10. OPIS is a company that prices refined oil products as they move along the supply chain from the refiner/producer to the end-user/consumer. OPIS tracked retail gasoline prices at 175,000 gasoline stations throughout the United States (as of 2012). The OPIS-tracked retail prices are site-specific and were updated daily based on credit card transactions processed through a credit card services company serving small-, medium-, and large-sized vehicle fleets. OPIS also collects prices directly from some large chain retailers. OPIS aggregates the retail gasoline prices into a sortable database and sells the information to subscribers, including CDTFA.

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<sup>6</sup> The audit working papers indicate that CDTFA's auditor did not visit appellant's gas station, but examined its location on a third-party mapping website (Google Maps), noting that the gas station was not immediately located off a main highway and there were no other gas stations nearby. During the hearing, Mr. Atallah testified that appellant's gas station was located about a mile from Interstate 8, on "Old Highway 80," and estimated that the three nearest gas stations were between seven to ten miles away.

11. Based on the EIA and OPIS information, CDTFA initially established an audited understatement of reported gasoline sales of \$192,166.<sup>7</sup>
12. On October 25, 2012, CDTFA issued to appellant an NOD for tax of \$25,676.40, applicable interest, and a negligence penalty.
13. On November 6, 2012, appellant filed a petition for redetermination.
14. Due to new information, CDTFA subsequently revised the audit.
15. Specifically, CDTFA adjusted the ratio of appellant's total gasoline sales from 75 percent regular grade, 10 percent mid-grade, and 15 percent premium grade to 82 percent, 8 percent, and 10 percent, respectively.
16. CDTFA applied the new ratio to the quarterly average retail selling prices for those grades of gasoline in the Los Angeles area (per EIA) to compute the quarterly volume-weighted average retail selling prices for those three grades of gasoline in the Los Angeles area.
17. CDTFA then compared appellant's average retail selling prices for regular unleaded gasoline for the first 11 quarters of the liability period (per OPIS) to the average retail selling prices for regular unleaded gasoline for the Los Angeles area for the same quarters (per EIA) and found that appellant's prices were on average 13.82 percent—or 42.93 cents—higher. (OPIS information for first quarter 2010 [1Q10] was unavailable.)
18. For each of the first 11 quarters of the liability period, CDTFA computed a price differential (in cents) between appellant's average retail selling prices for regular unleaded gasoline (per OPIS) and the average retail selling price for regular unleaded gasoline in the Los Angeles area (per EIA). For the remaining quarter, 1Q10, CDTFA used the average of the price differentials for the first 11 quarters, 42.93 cents.
19. For each quarter of the liability period, CDTFA added the corresponding price differential to the volume-weighted average retail selling price for all three grades of gasoline in the Los Angeles area (computed using information from EIA) to establish appellant's tax-included retail selling price for all grades of gasoline. CDTFA then reduced those selling prices by the amount of tax included. Finally, CDTFA multiplied

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<sup>7</sup> CDTFA also found an understatement of mini-mart sales of \$76,932 and unreported fixed asset purchases of \$53,285 subject to use tax. CDTFA later reduced the former to \$52,289 and deleted the latter. Neither of these audit items are at issue in this appeal.

- the audited retail selling prices (net of tax) by the number of gallons purchased in each quarter to establish audited sales of gasoline for the quarter.<sup>8</sup>
20. For the revised audit, CDTFA computed audited taxable gasoline sales of \$2,935,831 for the liability period, which exceeded reported gasoline sales of \$2,761,470 by \$174,365 (rounded).
  21. Using the audited taxable gasoline sales of \$2,935,831 and the audited cost of gasoline of \$2,414,958, CDTFA computed a markup of 21.57 percent. In the Report of Discussion of Audit Findings dated November 15, 2013, the District Principal Auditor wrote, “While I agree that this is a high markup, it is not totally unexpected. This taxpayer operates in a remote area of the county which supports a higher price for gasoline.”
  22. Per the revised audit, CDTFA reduced the audited understatement of reported gasoline sales from \$192,166 to \$174,365. CDTFA also subsequently deleted the negligence penalty.
  23. On November 2, 2015, CDTFA’s Appeals Bureau held an appeals conference.
  24. During CDTFA’s internal appeals process, appellant acquired from one of its customers nine sales receipts, each from a different day between December 15, 2008, and November 2, 2009, and provided those receipts to CDTFA.<sup>9</sup> These nine receipts were for gasoline sales to government employees paying with fleet credit cards, which required both the selling price of gasoline and the number of gallons purchased to be recorded on the receipts. CDTFA used the sales prices shown on five receipts in 2Q09 (the quarter with the most receipts) to compute an average selling price of \$2.971. For 2Q09, OPIS listed a quarterly average selling price of \$2.982 for appellant’s location. CDTFA concluded that the average of the gasoline sales prices recorded on the five receipts from

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<sup>8</sup> For example, for 2Q07, the volume-weighted average retail selling price for all three grades of gasoline in the Los Angeles area (developed from information published by EIA) was \$3.3466 per gallon. For that quarter, appellant’s average retail selling price for regular unleaded gasoline (per OPIS) was 31.28 cents higher. Therefore, for 2Q07, appellant’s audited tax-included retail selling price for all grades of gasoline was \$3.6594 (\$3.3466 + 0.3128) per gallon. Net of tax, the price was \$3.3962 per gallon. Thus, for 2Q07, audited sales of gasoline were \$305,359.13 (89,912 gallons purchased x \$3.3962 selling price per gallon).

<sup>9</sup> The nine receipts were from the following dates: December 15, 2008; January 19, 2009; February 3, 2009; April 3, 2009; May 3, 15, and 31, 2009; June 20, 2009; and November 2, 2009. During this appeal before OTA, appellant supplied four more sales receipts, which were from the following dates: March 10, 2009; August 29, 2009; October 16, 2009; and December 18, 2009.

- 2Q09 (\$2.971) supported the average quarterly sales price listed in the OPIS report for 2Q09 (\$2.982) and did not support lower selling prices than those used in the audit.
25. On March 16, 2016, CDTFA issued a decision that recommended redetermining the audited understatement of reported gasoline sales in accordance with the revised audit but otherwise denying appellant's petition.
26. This timely appeal followed.
27. At the oral hearing on June 29, 2022, Mr. Alfred Atallah testified that his family self-consumed between 30 and 50 gallons of gasoline per week on average.

### DISCUSSION

California imposes a sales tax on a retailer measured by the retailer's gross receipts from the retail sale of all tangible personal property sold 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.)

A taxpayer shall maintain and make available for examination by CDTFA all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax return. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include, but are not limited to, the following: normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account; and schedules or working papers used in connection with the preparation of tax returns. (Cal. Code Regs., tit. 18, § 1698(b)(1).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, CDTFA may compute and determine the amount required to be paid upon the basis of any information within its possession or that may come into its possession. (R&TC, § 6481.) Even when a taxpayer provides books and records that are comprehensive and internally consistent, CDTFA may still determine the amount of tax due based upon any available information. (*Appeal of Amaya*, 2021-OTA-328P.)

In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Amaya, supra.*) If CDTFA carries its

initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Amaya, supra.*) To satisfy the burden of proof, a taxpayer must prove two things: (1) the tax assessment is incorrect; and (2) the proper amount of tax. (*Appeal of AMG Care Collective, supra.*)

At the time of the audit, appellant provided no source documents, such as sales receipts, from which CDTFA could establish appellant's selling prices for gasoline. Gasoline is sold on a per-gallon basis for prices that fluctuate over time. OTA concludes that the average prudent businessperson operating a gasoline station would normally maintain some record of its per-gallon retail selling prices for gasoline on a regular basis (e.g., daily, whenever the price changes, etc.). Thus, OTA finds that appellant's records were incomplete, and there was insufficient information for CDTFA to verify appellant's reported gasoline sales by a direct audit method. As such, OTA concludes that it was appropriate for CDTFA to utilize an alternative audit approach.

Here, CDTFA established appellant's quarterly audited selling prices for gasoline by using information published by EIA then adjusting them pursuant to appellant-specific information listed by OPIS. The EIA information is gathered and published by a federal government agency. The OPIS information is location-specific, sourced daily from transactions processed by a fuel card company servicing various-sized vehicle fleets, and compiled and offered on a subscription basis by a commercial entity. OTA finds that EIA and OPIS are reasonable third-party information sources from which to formulate appellant's audited selling prices for gasoline. CDTFA then applied the audited selling prices to the number of gallons of gasoline appellant purchased during the liability period. OTA concludes that CDTFA has carried its minimal, initial burden and shown that its determination was reasonable and rational. The burden of proof now shifts to appellant to establish that a result differing from CDTFA's determination is warranted.

On appeal, appellant offers five contentions for why the audited understatement of reported gasoline sales should be further reduced. First, appellant argues that the books and

records it originally provided to CDTFA for audit were accurate, reliable, and thus sufficient, so there should not have been an audit liability. Second, appellant contends that the EIA information is inapplicable to appellant and inaccurate. Third, appellant contends that the OPIS information is also inaccurate. Fourth, appellant argues that, at the least, the audited understatement should be further reduced for appellant's self-consumption of gasoline. Fifth, appellant argues that the audited understatement should also be further reduced for shrinkage. OTA examines each contention below.

*Appellant-Provided Books and Records*

First, appellant argues that it provided all the books and records it was required to provide and that these were accurate, reliable, and consistent with the reported taxable gasoline sales, so no alternative indirect audit methods or additional sales tax liability were warranted. In support of the book markup of 14.35 percent for gasoline sold during the liability period, appellant provided profit and loss statements for 2010, 2011, and 2012 (which, apart from 1Q10, is after the liability period); these allegedly showed that appellant's average markup on gasoline for those years was 13.62 percent. Appellant adds that CDTFA initially selected it for another audit for the subsequent period of October 1, 2010, through March 31, 2013, but claims that, after appellant provided CDTFA with these profit and loss statements, CDTFA waived the audit, purportedly because these statements were sufficient proof of appellant's markup.<sup>10</sup> Appellant also asserts that a record of appellant's daily per-gallon retail selling prices for gasoline is not required.

As noted above, even when a taxpayer provides books and records that are comprehensive and internally consistent, CDTFA may still determine the amount of tax due based upon any available information. (*Appeal of Amaya, supra.*) Further, profit and loss statements are summary records, not source documents such as sales receipts or cash register tapes that show actual selling prices charged. Source documents are necessary to evaluate the accuracy of the summary records, and there was neither evidence nor argument that appellant

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<sup>10</sup> During CDTFA's internal appeals process, CDTFA analyzed appellant's claim and found that it did not perform a markup analysis on appellant's 2010, 2011, and 2012 profit and loss statements. Rather, CDTFA waived the subsequent audit for other reasons. Accordingly, OTA will not consider this claim further.



provided source documents for the liability period during the audit.<sup>11</sup> Accordingly, OTA is unpersuaded by appellant's assertion that the markup reflected by the profit and loss statements for 2010, 2011, and 2012 corroborates the book markup of 14.35 percent. Finally, regarding appellant's assertion that a record of appellant's daily per-gallon retail selling price for gasoline is not required, OTA concluded otherwise above, expecting that the average prudent businessperson operating a gasoline station would maintain such records. For these reasons, OTA is not persuaded by appellant's first argument on appeal.

*EIA Information: Inapplicable & Inaccurate*

Appellant's second argument on appeal concerns the EIA information. Appellant argues that CDTFA's use of it in the audit method is flawed for two reasons. First, appellant argues that the EIA's average quarterly gasoline selling prices for the three grades of gasoline is sourced from the Los Angeles area, which is an entirely different environment than Pine Valley (i.e., the Los Angeles market is more competitive and expensive), and thus not comparable. Second, appellant contends that EIA's pricing information is not accurate because it gathers that information on a weekly basis (i.e., every Monday morning) and is weighted towards the prices on Monday.

Regarding the first reason, appellant appears to misunderstand the audit method. CDTFA used selling prices for the three grades of gasoline in the Los Angeles area published by EIA, as well as appellant's sales ratios for each grade, to compute a volume-weighted average price per gallon for each quarter in the liability period. CDTFA went on to add a price differential based on OPIS information that was specific to appellant. Thus, CDTFA adjusted the EIA prices before using them in its audit. Further, CDTFA found that appellant's prices, for the first 11 quarters of the audit period, were 13.82 percent higher than the average prices in the Los Angeles area, as published by EIA. Thus, the available evidence contradicts appellant's opinion that the selling prices in Los Angeles are higher than the prices in Pine Valley.

Regarding the second reason, which concerns the accuracy of the EIA information, this information was derived from weekly Monday surveys of retail gasoline outlets from the Los Angeles area, and constitutes more extensive information than anything appellant has provided

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<sup>11</sup> During CDTFA's internal appeals process and this appeal before OTA, appellant provided sales receipts with the per-gallon retail selling prices of gasoline for 13 days during the liability period. See footnote 9, *ante*, page 5.

regarding its own gasoline sale prices during the liability period. Accordingly, OTA concludes that the EIA information constituted some of the best information available to CDTFA.

For these reasons, OTA concludes that appellant's second argument on appeal lacks merit.

*OPIS Information: Inaccurate*

Regarding the OPIS information, appellant argues that it too was inaccurate, contending that OPIS utilizes gas prices reported by fleet cards and large chain gas stations, such as Chevron and Exxon, while appellant's is an independent gas station, which typically does not voluntarily report to OPIS.

Appellant appears to misunderstand how OPIS gathers its pricing information. OPIS does not rely on voluntary reporting from independent gas stations such as appellant. Rather, OPIS collects site-specific per-gallon retail selling prices from a third-party credit card services company that processes fleet-card transactions associated with gasoline purchases made by various-sized vehicle fleets. The record verifies that appellant made such fleet-card sales to government employees during the liability period, and appellant was required to record both the selling price of gasoline as well as the number of gallons purchased on the sales receipts provided to this customer's employees. Appellant's OPIS-listed gasoline sales prices were based on such transactions. Furthermore, a CDTFA analysis during its internal appeals process showed that appellant's average per-gallon retail gasoline sales price based on receipts for five fleet-card transactions in 2Q09 (\$2.971) was similar to the OPIS-listed average quarterly selling price for appellant's location for 2Q09 (\$2.982)—a difference of 1.1 cents. Thus, based on the few source documents eventually provided by appellant, CDTFA computed a selling price nearly identical to appellant's selling price recorded by OPIS for 2Q09. This is evidence of the accuracy of the OPIS prices, which CDTFA used to establish audited selling prices. Accordingly, OTA is not persuaded by appellant's third argument on appeal.

*Self-Consumption Allowance*

Appellant's fourth argument on appeal is that CDTFA should reduce the audited cost of gasoline sold during the liability period because of a self-consumption allowance, which, in turn, would lower the audited understatement.

In response, CDTFA notes that, regardless of self-consumption, appellant would have first owed and prepaid sales tax on the cost of gasoline purchased from its suppliers; any self-consumption allowance would only lower appellant's tax liability by the sales tax owed on the difference between the cost of the self-consumed gasoline and the gross receipts from its sale.

During the hearing, Mr. Atallah testified that his family self-consumed between 30 and 50 gallons of gasoline per week. OTA finds Mr. Atallah's testimony credible in establishing self-consumption in general, but also vague and imprecise with regards to establishing a quantifiable amount of self-consumption during the liability period. Further, no specific amount of self-consumption (or even reasonable estimate) is supported by anything appearing in the record or provided upon appeal.<sup>12</sup> Accordingly, OTA concludes that appellant has not established a specific amount of self-consumption nor proven a more accurate tax liability amount.

### Shrinkage Allowance

For its fifth and final argument, appellant argues that a one percent adjustment should be made to the cost of gasoline sold due to shrinkage (including pilferage/theft, spillage, evaporation, etc.) per CDTFA's Audit Manual section 0407.10.

In response, CDTFA first notes that appellant has failed to quantify its request for a shrinkage allowance and has not offered any documents establishing the amount or frequency of gasoline losses. CDTFA also contends that if spillage occurred while appellant's suppliers were delivering gasoline into appellant's fuel tank, CDTFA would expect appellant's suppliers to reduce both the number of gallons delivered and the corresponding cost of the gasoline on appellant's purchase invoices. CDTFA further argues that if spillage occurred when appellant's customers were fueling their cars, then that spilled gasoline would have already been counted by the pump, sold to the customer, and subject to taxation.

CDTFA's Audit Manual section 0407.10 provides for a shrinkage allowance in the context of markup audit methods, stating, "When shrinkage is present, an amount of up to

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<sup>12</sup> CDTFA's Audit Manual section 0407.10 addresses self-consumption of merchandise in the context of markup audit methods and states, "If self-consumed quantities are not supported by the records, a reasonable estimate should be made with the assistance of the taxpayer." However, CDTFA did not utilize a markup method to establish the audited understatement of gasoline sales. Furthermore, CDTFA's Audit Manual summarizes its audit policies and procedures, but has no precedential value in an appeal before OTA. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) Accordingly, OTA concludes that CDTFA's Audit Manual provides no relevant guidance for applying a self-consumption allowance to this audit.

1 percent of the cost of these items may be allowed.” However, CDTFA’s Audit Manual summarizes CDTFA’s audit policies and procedures, but has no precedential value in an appeal before OTA. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) Furthermore, CDTFA did not utilize a markup method in determining the unreported amount of gasoline sales. Accordingly, OTA concludes that a one percent shrinkage allowance does not automatically apply here to this motor vehicle fuel sales audit.<sup>13</sup> Additionally, appellant has not shown that there was any shrinkage. Accordingly, OTA concludes that a shrinkage allowance is not warranted.

Summary

Based on the above, OTA concludes that appellant has failed to meet its burden of showing that the audited understatement of gasoline sales should be further reduced.

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<sup>13</sup> CDTFA’s Audit Manual sections 0430.00 and 0431.00 respectively address audits of motor vehicle fuel sales in general and motor vehicle fuel retailers specifically, and neither describe a policy of providing a one percent shrinkage allowance. OTA also notes that, for the liability period, appellant purchased 894,899 gallons of gasoline, one percent of which would be 8,949 gallons (rounded). Thus, for the liability period, appellant is essentially requesting a shrinkage allowance of 8,949 gallons of gasoline, which strikes OTA as an unreasonably excessive amount of pilferage/theft, spillage, and evaporation.

HOLDING


Appellant has not shown that the audited understatement of gasoline sales should be further reduced.


DISPOSITION

CDTFA’s action in reducing the assessed tax liability from \$25,676.40 to \$18,164.28 and deleting the negligence penalty, but otherwise denying appellant’s petition for redetermination, is sustained.

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Andrew Wong  
Administrative Law Judge

We concur:

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Michael F. Geary  
Administrative Law Judge

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Daniel K. Cho  
Administrative Law Judge

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