OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No.: 18032513
	CDTFA Case ID: 916094
G. ROBERTS,	
dba Maximum Sign Co.	

OPINION

Representing the Parties:

For Appellant: G. Roberts

For Respondent: Christopher Brooks, Tax Counsel IV
Randolph (Randy) Suazo, Hearing Representative

For Office of Tax Appeals: Deborah Cumins, Business Taxes Specialist III

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, G. Roberts, a sole proprietor doing business as Maximum Sign Co. (appellant) appeals a decision (Decision) issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's petition for redetermination of a Notice of Determination (NOD) dated August 7, 2015. The NOD is for $52,003.24 in tax, plus applicable interest, for the period January 1, 2011, through December 31, 2014 (liability period).

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

ISSUE

Whether appellant has established that any adjustments are warranted to the liability as determined by CDTFA.

FACTUAL FINDINGS

1. Appellant operates a retail store in the County of Riverside, California. Appellant is open for business six days a week and sells custom-printed signs, banners, apparel, and embroidery at her store. In addition, appellant furnishes and installs electric signs for customers at the customer's location, and makes sales of signs, banners, and other printed matter for purposes of resale.
2. By letter dated December 14, 2014, CDTFA notified appellant that her account was selected for an audit.
3. At the time of the audit, appellant had not filed a federal income tax return since 2007.
4. For the four-year liability period, appellant reported $39,322 in gross sales and, after deductions, $38,275 in taxable sales to CDTFA.
5. During the audit, CDTFA examined appellant's recorded gross sales, which totaled $667,484 for the liability period.[2]
6. CDTFA then compared appellant's recorded gross (total) sales to appellant's bank deposits of $766,407 to her business's bank account for the liability period and noted that appellant's bank deposits exceeded her recorded total sales.[3]
7. CDTFA accepted appellant's recorded nontaxable sales for resale of $4,443, nontaxable labor of $11,194, and reimbursed nontaxable expenses of $15,605. In addition, CDTFA multiplied appellant's recorded electric sign sales ($4,385) by 67 percent to determine allowable nontaxable installation labor of $2,937. (See Cal. Code Regs., tit. 18, § 1521(c)(12)(B).) Adding these deductions, CDTFA determined a total allowable deduction of $34,179 (i.e., $4,443 + $11,194 + $15,605). Thereafter, CDTFA established

[2] CDTFA obtained recorded total sales from appellant's Profit and Loss Statements. CDTFA reviewed sales invoices for July 2014 and compared them to the Profit and Loss Statements for July 2014 to verify that all invoiced sales were recorded in the Profit and Loss Statements.

[3] Appellant told CDTFA that her accounting software crashed, and she lost three months of sales data, which CDTFA contends explains, in part, why bank deposits exceed recorded total sales.

audited taxable sales of $633,305 (i.e., $667,484 in recorded total sales less $34,179 in allowed deductions).

8. Separately, CDTFA determined an additional underreporting based the differences between appellant's bank deposits and recorded sales. Here, CDTFA compiled bank deposits of $729,431, after excluding non-sales deposits of $36,976, such as transfers between accounts and personal loans, for the liability period. CDTFA compared bank deposits allocable to sales revenue to recorded total sales of $667,484 to compute a difference of $61,947, representing additional sales. CDTFA considered the difference to represent the missing sales data (see footnote 4). CDTFA determined the $61,947 in additional sales were taxable in the same ratio as appellant's recorded total sales and calculated additional taxable sales of $58,775.[4]

9. CDTFA then computed a difference between recorded and reported taxable sales of $594,580 ($633,305 - $38,725[5]), and added the additional taxable sales of $58,775, to determine underreported taxable sales of $653,355 for the liability period.

10. On August 7, 2015, CDTFA issued an NOD to appellant for the liability disclosed by audit, which appellant petitioned on August 28, 2015.

11. On February 8, 2018, CDTFA issued the Decision denying appellant's petition. This timely appeal followed.

DISCUSSION

California imposes 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, §§ 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

[4] The $34,179.00 allowance was 5.12 percent of recorded total sales of $667,484.00. Thus, CDTFA included a 5.12 percent allowance ($3,172.00) to determine additional taxable sales of $58,775.00 ($61,947.00 - $3,172.00).

[5] This amount erroneously includes the minimal amount of $70 of reported purchases subject to use tax, which reduces the audited understatement by that amount.

reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

If CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, 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, 6511.) 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, CDTFA met its initial burden by establishing, via audit, a discrepancy between appellant's recorded and reported taxable sales of approximately $600,000. Additionally, CDTFA established an additional discrepancy between appellant's bank deposits and recorded total sales. Furthermore, appellant acknowledged to CDTFA that she lost three months of sales data. Based on the large discrepancy between amounts reported to CDTFA and amounts recorded in her own records, in addition to the lost sales data, the Office of Tax Appeals (OTA) finds it was reasonable and rational for CDTFA to conclude that a substantial portion of the difference represents underreported taxable sales and to disregard appellant's reported taxable sales. Therefore, appellant has the burden of establishing error in CDTFA's determination.

Appellant contends that the audit is overstated because CDTFA's audit picked up non-sales revenue that was deposited into appellant's bank account. However, CDTFA excluded $36,976 in non-sales revenue in its analysis of appellant's bank accounts, based on documentation provided by appellant during the audit. On appeal, appellant submitted no new documentation to support any additional adjustments. Therefore, OTA has no basis to make any additional allowances for non-sales revenue included in the $58,775 of additional taxable sales that CDTFA calculated based on an analysis of appellant's bank deposits.

Appellant's only other contention is that an adjustment is warranted because she did not collect reimbursement for the sales tax from her customers. Nevertheless, pursuant to R&TC section 6051, sales tax applies to the retail sale of tangible personal property in this state regardless of whether the retailer charges or collects reimbursement for the tax from its customer. (*Appeal of Body Wise International, LLC*, 2022-OTA-340P.) As a matter of contract

between the parties, the retailer may collect reimbursement from its customer if the contract of sale so provides. (*Ibid*.)

There are very limited circumstances where a retailer may take a deduction due to an inability to collect tax or tax reimbursement from its customer. As relevant here, retailers may generally take a bad debt deduction for amounts reported as taxable and thereafter found worthless and charged off for income tax purposes.[6] (R&TC, §§ 6055(a), 6203.5(a).) Appellant has provided no documentation to support any bad debt. Furthermore, appellant did not file federal income tax returns during the liability period, so there is otherwise no evidence that she charged any debts off for income tax purposes. Therefore, OTA concludes that no further adjustments are allowable.

HOLDING

Appellant failed to establish any adjustment to the liability as determined by CDTFA.

DISPOSITION

Sustain CDTFA's Decision to deny the petition for redetermination.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Josh Lambert
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Josh Lambert
Administrative Law Judge

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

Date Issued: 2/13/2023

[6] In her appeals conference with CDTFA, appellant contended that she was entitled to a bad debt deduction.