

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
SOCCER STORES, INC. )  
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OTA Case No. 21067899  
CDTFA Case ID: 136-100

**OPINION**

Representing the Parties:

For Appellant: Farhad Saedifar, Owner  
Mehdi Kohani, Representative

For Respondent: Randy Suazo, Hearing Representative  
Christopher Brooks, Attorney  
Jason Parker, Chief of Headquarters Ops.

For the Office of Tax Appeals: Craig Okihara, Business Taxes Specialist III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Soccer Stores, Inc. (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent) denying appellant’s petition for redetermination of a Notice of Determination (NOD) dated April 12, 2018.<sup>1</sup> The NOD is for tax of \$176,217.92, plus applicable interest, and a negligence penalty of \$17,621.80 for the period January 1, 2014, through December 31, 2016 (liability period).<sup>2</sup> Respondent based the tax liability on unreported taxable sales of \$2,023,813, which respondent determined upon audit.

On October 10, 2023, Office of Tax Appeals (OTA) Administrative Law Judges Andrew Wong, Suzanne B. Brown, and Natasha Ralston held an oral hearing for this matter in Cerritos, California. At the conclusion of the oral hearing, the evidentiary record was closed, and this matter was submitted for an opinion.

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<sup>1</sup> The State Board of Equalization (BOE) formerly administered sales and use taxes. On July 1, 2017, BOE functions relevant to this case 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.

<sup>2</sup> Respondent timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations and extended respondent’s issuance deadline. (See R&TC, §§ 6487(a), 6488.)

ISSUE

Whether the amount of unreported taxable sales should be reduced.

FACTUAL FINDINGS

1. Appellant, a corporation, is a wholesaler and retailer of soccer sporting goods. Appellant's seller's permit had an effective start date of August 1, 1997. For either all or part of the liability period, appellant operated a retail store in Glendale, California (the Glendale location), and a retail store in Santa Ana, California (the Santa Ana location). The Santa Ana location closed with an effective date of December 31, 2015.<sup>3</sup>
2. Respondent previously audited appellant for the period July 1, 2008, through June 30, 2011, determining that appellant had made unreported taxable sales of \$12,718,973 for that period.
3. For the liability period at issue here, appellant reported/claimed the following on its sales and use tax returns (SUTRs): total sales of \$31,564,810; total deductions of \$28,363,914, which consisted of sales for resale of \$27,627,272, sales in interstate and foreign commerce of \$336,872, sales tax reimbursement included in reported total sales of \$279,072, and "other" deductions of \$120,698 representing nontaxable freight charges; and taxable sales of \$3,200,896. Appellant stated that daily sales totals for each store were recorded in monthly sales spreadsheets, which it used to prepare the quarterly SUTRs.
4. For the audit, appellant provided the following books and records: federal income tax returns (FITRs) for 2014 and 2015; incomplete QuickBooks profit and loss statements for the liability period; QuickBooks point-of-sale (POS) sales data for the Glendale location for the liability period; bank statements for the liability period; sales invoices for claimed interstate and foreign commerce sales for the third quarter of 2014 (3Q14); and resale certificates.
5. Respondent compared gross receipts reported on the FITRs for 2014 and 2015 to total sales reported on SUTRs filed for the corresponding period, and noted that gross receipts exceeded total sales by \$85,818 and \$105,610 in 2014 and 2015, respectively.

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<sup>3</sup> Although the close-out date for the Santa Ana location was December 31, 2015, appellant still reported sales from the first quarter of 2016 for that location.

Respondent concluded that these differences suggested that appellant may have understated reported sales.

6. Respondent compared total sales reported on the SUTRs to the corresponding cost of goods sold reported on the FITRs and computed SUTR book markups of 8.56 percent for 2014, 9.28 percent for 2015, and 8.88 percent for both years combined.<sup>4</sup> Based on its experience auditing similar businesses in appellant's area, respondent considered these book markups to be below the typical markups for this type of business. Respondent concluded that additional testing was warranted to verify reported taxable sales.
7. Respondent compiled \$31,275,052 in bank deposits from sales proceeds for the liability period.<sup>5</sup> Upon comparison to total sales (including sales tax reimbursement) of \$31,564,810 reported on the SUTRs, respondent found reported total sales exceeded bank deposits by \$289,758 for the liability period. Appellant did not provide documentation establishing the amount of cash sales proceeds it may have used to pay for merchandise purchases or operating expenses; thus, respondent concluded that it could not use a bank-deposits-analysis method to verify reported sales.
8. Using the POS sales data for the Glendale location for the liability period, respondent compiled recorded sales tax reimbursement of \$335,804 for the Glendale location. Then, for each quarter in the liability period, respondent computed the quarterly sales ratio for each location (i.e., the ratio/percentage of sales made by either the Glendale location or the Santa Ana location per quarter out of the total sales made by both locations for that same quarter) based on sales reported on the SUTRs. Using the recorded sales tax reimbursement of \$335,804 for the Glendale location and the quarterly sales ratios, respondent computed audited sales tax reimbursement of \$134,420 for the Santa Ana location for the liability period. In total, respondent calculated audited sales tax reimbursement of \$470,224 for both locations for the liability period. For each quarter in

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<sup>4</sup> "Markup" is the amount by which the cost of merchandise is increased to set the retail price. For example, if the 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 ( $0.30 \div 0.70 = 0.42857$ ). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records.

<sup>5</sup> Bank deposits are not gross receipts. (R&TC, § 6012(a).) However, where, as here, a retailer is engaged in the business of making retail sales of tangible personal property, the retailer's bank deposits, net of deposits from non-sale or nontaxable transactions, are evidence of gross receipts from the retail sale of tangible personal property that respondent can use to determine audited taxable sales.

the liability period, respondent divided sales tax reimbursement by the applicable sales tax rate (9 percent) to compute audited taxable sales of \$5,224,709 (\$3,731,154 for the Glendale location + \$1,493,555 for the Santa Ana location) for the liability period. Upon comparison to reported taxable sales of \$3,200,896 for the liability period, respondent computed unreported taxable sales of \$2,023,813.

9. Respondent performed a test of sales for resale claimed in third quarter 2016 (3Q16), found no errors, and concluded that no further testing of this deduction was warranted.
10. Respondent performed a test of sales in interstate and foreign commerce claimed in 3Q14, found no errors, and concluded that no further testing of this deduction was warranted.
11. Regarding the “other” deductions related to freight charges for nontaxable sales for resale, respondent traced claimed amounts to available QuickBooks profit and loss statements, found no errors, and concluded that no further testing of this deduction was warranted.
12. Based on the results of the audit, respondent issued the NOD to appellant on April 12, 2018.
13. Appellant filed a timely petition for redetermination protesting the NOD in its entirety. In its petition, appellant conceded that it did not have records to support its contentions.
14. Respondent held an appeals conference with appellant, and subsequently issued a decision denying appellant’s petition on May 20, 2021.
15. Appellant timely appealed to OTA.<sup>6</sup>

#### DISCUSSION

California imposes upon a retailer a sales tax measured by the retailer’s gross receipts from the retail sales of tangible personal property sold in this state, 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, it is presumed 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

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<sup>6</sup> On appeal to OTA, appellant has not disputed the negligence penalty, so OTA will not discuss it further.

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 any person, or if any person fails to make a return, respondent may compute and determine the amount required to be paid on the basis of any information within 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 Amaya*, 2021-OTA-328P.) If respondent carries its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from respondent's determination is warranted. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) 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. (*Ibid.*)

Here, appellant did not provide respondent with complete books and records for audit. Regarding the books and records that appellant did provide, respondent found unexplained differences between the gross receipts reported on the FITRs for 2014 and 2015 and total sales reported on the SUTRs filed for the corresponding period. A taxpayer must maintain and make available for examination on request by respondent all records necessary to determine the correct tax liability, including bills, receipts, invoices, or other documents of original entry supporting the entries in the books of account. (Cal. Code Regs., tit. 18, § 1698(b)(1)(B).) However, appellant did not provide POS sales data for the Santa Ana location. Using the POS sales data for only the Glendale location, respondent compiled recorded sales tax reimbursement of \$335,804, which exceeded reported sales tax reimbursement of \$279,072 for both locations for the liability period. Appellant's POS sales data is evidence of appellant's sales. Given the discrepancies just described, OTA finds that respondent's additional investigation of appellant's sales was warranted. Further, OTA finds that respondent's use of recorded sales tax reimbursement (sales tax accrual) to calculate audited taxable sales is reasonable and rational. After reviewing respondent's audit method and calculations for establishing audited taxable sales, OTA concludes that respondent has met its initial burden to show that its determination

was reasonable and rational. Accordingly, the burden of proof now shifts to appellant to show that a different result is warranted.

In its appeal brief, appellant contends that the audit method results are not representative of the liability period. Appellant asserts that the POS sales data for the Glendale location are not accurate, so the audited sales for the Santa Ana location (which are based on the Glendale location) are also erroneous. At the oral hearing, appellant further contends that the discrepancy between recorded and reported taxable sales resulted from mis-recording some nontaxable sales for resale as taxable retail sales. Appellant also alleges that it made POS sales data for the Santa Ana location available to respondent, but “[t]he auditor was never interested to stop by Santa Ana to look at the POS.” That is, appellant claims that it offered the auditor the opportunity to go to Santa Ana and look at the POS data there.

As noted above, recorded sales tax reimbursement of \$335,804 for only the Glendale location (based on POS sales data for that location) exceeded reported sales tax reimbursement of \$279,072 for both locations for the liability period. Appellant has not identified any specific errors in the POS sales data for the Glendale location. Appellant has also not provided any documentation or other evidence showing that its POS sales data is inaccurate or is otherwise unreliable. And although appellant claims that it made POS sales data for the Santa Ana location available to respondent during the audit, that data is not in the evidentiary record nor has appellant provided it upon appeal to OTA. Accordingly, OTA finds that appellant’s assertions on appeal are unsupported and insufficient to satisfy its burden of proving that a result differing from respondent’s determination is warranted.


In summary, OTA finds that respondent used the best available evidence to compute audited taxable sales. However, appellant has not identified any errors in respondent’s computation of audited taxable sales nor provided documentation or other evidence showing that its POS sales data is inaccurate or otherwise unreliable. Because appellant has not carried its burden of proof, OTA concludes that a reduction to the amount of unreported taxable sales is not warranted.

HOLDING


Appellant has not shown that the amount of unreported taxable sales should be reduced.

DISPOSITION

Respondent’s action in denying appellant’s petition for redetermination is sustained.

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Andrew Wong  
Administrative Law Judge

We concur:

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Suzanne B. Brown  
Administrative Law Judge

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Natasha Ralston  
Administrative Law Judge

Date Issued: 1/16/2024