

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

|                                 |   |                            |
|---------------------------------|---|----------------------------|
| In the Matter of the Appeal of: | ) | OTA Case No. 230413092     |
| <b>YOU FIX IT AUTO SALES,</b>   | ) | CDTFA Case ID: 003-603-808 |
|                                 | ) |                            |
| <b>dba Ur 1 Stop Auto Sales</b> | ) |                            |
|                                 | ) |                            |
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**OPINION**

Representing the Parties:

For Appellant: Robert Ruvalcaba, Manager

For Respondent: Amanda Jacobs, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, You Fix It Auto Sales (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant’s petition for redetermination of a Notice of Determination (NOD) dated February 4, 2022. The NOD is for tax of \$227,330, plus applicable interest, and a 40 percent penalty of \$90,931.60 for the period January 1, 2018, through December 31, 2020 (liability period).<sup>2</sup>

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

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<sup>1</sup> Sales and use 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.

<sup>2</sup> The NOD was timely issued because appellant signed a series of waivers of the otherwise applicable three-year statute of limitations, providing CDTFA until April 30, 2022, to issue an NOD for the period January 1, 2018, through December 31, 2018. (See R&TC, §§ 6487(a), 6488.)

ISSUE

Whether the 40 percent penalty under R&TC section 6597 was properly imposed.

FACTUAL FINDINGS

1. Appellant operated a used car dealership making retail sales of used vehicles in California.
2. Appellant was subject to a prior audit for the first quarter of 2015 (1Q15) through 4Q16, and CDTFA determined there were material differences totaling almost \$1.3 million between reported and recorded taxable sales per appellant's car dealer jackets.<sup>3</sup> CDTFA considered, but chose not to impose, the 40 percent penalty and imposed a negligence penalty instead.
3. Appellant separately stated tax reimbursement on its sales invoices, contracts, and other sales documents during the liability period. Appellant used spreadsheets to record its sales and used this information to prepare its sales and use tax returns (SUTRs).
4. For the liability period, appellant reported taxable sales of \$4,054,062.
5. During CDTFA's audit, appellant provided its car dealer jackets for April 1, 2020, through December 31, 2020. CDTFA obtained appellant's sales data from the California Department of Motor Vehicles (DMV) for January 1, 2018, through March 31, 2020.
6. CDTFA compared appellant's taxable sales per the DMV data with reported taxable sales per the SUTRs. CDTFA determined that appellant underreported taxable sales by \$2,064,157 for the period January 1, 2018, through March 31, 2020.
7. CDTFA also compared appellant's recorded taxable sales per the dealer jackets with reported taxable sales per the SUTRs and determined there was significant underreporting. CDTFA found that taxable sales were underreported by \$158,567 for 2Q20, \$255,019 for 3Q20, and \$52,760 for 4Q20, totaling \$466,346.
8. The difference between recorded tax reimbursement collected per the dealer jackets and DMV data and reported tax per the SUTRs for the liability period averaged \$6,315 per month and exceeded, on average, 42 percent of the total sales tax reimbursement collected every quarter.

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<sup>3</sup> Dealer jackets are envelopes utilized by used car dealers to record sales. Dealer jackets usually contain the purchase and sales documents, purchase invoices (e.g., for repair parts or upgrades), an odometer statement, the vehicle identification number, the vehicle stock number, and other records pertaining to the sale.

9. In total, CDTFA determined that appellant underreported taxable sales by \$2,530,502 for the liability period (i.e., \$2,064,157 + \$466,346).<sup>4</sup>
10. CDTFA issued the above-mentioned NOD and imposed a 40 percent penalty based on tax reimbursement knowingly collected but not timely remitted.
11. Appellant filed a timely petition for redetermination, disputing the penalty and submitted a request for relief of the penalty signed under penalty of perjury.
12. On March 14, 2023, CDTFA issued a Decision denying the petition for redetermination.
13. This timely appeal followed.

### DISCUSSION

Any person who knowingly collects sales tax reimbursement and fails to timely remit it to the state is liable for a penalty of 40 percent of the amount not timely remitted if the failure to remit exceeds certain thresholds. (R&TC, § 6597(a)(1).) The penalty does not apply if the person's liability for unremitted sales tax reimbursement averages \$1,000 or less per month or does not exceed 5 percent of the total amount of the tax liability for which the sales tax reimbursement was collected for the period in which the tax was due, whichever is greater. (R&TC, § 6597(a)(2)(A).) In order for OTA to sustain CDTFA's imposition of the 40 percent penalty, CDTFA must establish that: (1) appellant knowingly collected sales tax reimbursement from its customer(s); (2) appellant failed to timely remit the sales tax for which it collected the reimbursement to the state; and (3) the amount of sales tax collected but not remitted exceeds the applicable threshold. (R&TC, § 6597(a)(1)-(2).) The applicable standard of proof is by a preponderance of the evidence. (*Appeal of ISIF Madfish, Inc.*, 2019-OTA-292P.)

The law provides for relief of the 40 percent penalty if the taxpayer establishes that its actions were due to a reasonable cause or circumstances beyond the taxpayer's control and occurred notwithstanding the taxpayer's exercise of ordinary care and the absence of his or her willful neglect. (R&TC, § 6597(a)(2)(B).) R&TC section 6597(b)(1) provides that reasonable cause or circumstances beyond the person's control includes, as relevant to appellant's arguments, a natural disaster or other catastrophe directly affecting the business operations of the person that caused the person's failure to make a timely remittance.

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<sup>4</sup> An insubstantial difference of \$1 between this total and \$2,530,502 is the result of rounding in CDTFA's calculations.

The evidence shows that all requirements for imposition of the 40 percent penalty have been met under R&TC section 6597(a). Appellant separately stated tax reimbursement on its sales invoices, contracts, and other sales documents during the liability period and recorded sales tax amounts in its books and records. Therefore, appellant knowingly collected sales tax reimbursement from its customers. (See R&TC, § 6597(a)(1).) Appellant collected tax reimbursement from its customers but did not report the full amount of tax reimbursement to the state. Therefore, appellant failed to timely remit the sales tax for which it collected the reimbursement. (*Ibid.*) Finally, the difference between recorded tax reimbursement collected per the dealer jackets/DMV data and reported tax per the SUTRs for the liability period averaged \$6,315 per month and exceeded, on average, 42 percent of the total sales tax reimbursement collected every quarter. Therefore, the amount of sales tax collected but not remitted exceeds the applicable threshold. (See R&TC, § 6597(a)(2)(A).) Accordingly, CDTFA correctly imposed the penalty.

Appellant contends that it is entitled to relief from the penalty due to reasonable cause or circumstances beyond its control. Specifically, appellant contends that it should be relieved of the penalty due to the COVID-19 pandemic, which should be considered a natural disaster or catastrophe. Appellant asserts that the underreporting still occurred due to flaws in its safeguards and mistakes made by an employee as well as management. Appellant also asserts that it added protocols to prevent further underreporting, such as by hiring a finance manager and an outside accountant.

Appellant has not shown that it is entitled to relief of the penalty. Appellant does not provide evidence to support its contentions that the underreporting was due to flaws in its safeguards, mistakes by its employees and management, or the COVID-19 pandemic. The evidentiary record includes a school transcript indicating its finance manager signed up for accounting courses in 2021 and 2022, and a spreadsheet of recorded sales for January 2022. However, these documents do not show reasonable cause for the underreporting during the liability period, which was prior to 2021. And while appellant's actions are remedial in nature, appellant has not established how its difficult circumstances, or the COVID-19 pandemic, impacted its obligation to report and remit sales taxes despite appellant's exercise of ordinary care and the absence of its willful neglect. In addition, a prior audit put appellant on notice of the underreporting, but appellant continued to consistently and materially underreport taxable

sales during the current liability period. Appellant has not shown that the underreporting occurred due to circumstances beyond its control and notwithstanding its exercise of ordinary care. Accordingly, appellant has not shown that it is entitled to relief of the penalty.

HOLDING

The 40 percent penalty under R&TC section 6597 was properly imposed.

DISPOSITION

CDTFA’s imposition of the 40 percent penalty is sustained.

DocuSigned by:  
*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

We concur:

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*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*AW*  
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\_\_\_\_\_  
Andrew Wong  
Administrative Law Judge

Date Issued: 2/27/2024