OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 20127046
	CDTFA Case ID 145-033
E. HONARCHIAN,	
dba Eddie's Auto World	

OPINION

Representing the Parties:

For Appellant: E. Honarchian, Owner[1]

For Respondent: Jason Parker, Chief of Headquarters Operations

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

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, E. Honarchian (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[2] partially denying appellant's petition for redetermination of the Notice of Determination (NOD) dated February 16, 2016. The NOD is for a tax of $196,073.78, and applicable interest, for the period April 1, 2012, through March 31, 2015 (liability period).[3] As explained below, CDTFA subsequently performed a reaudit reducing the total measure of tax to $2,360,484, which resulted in a reduction to the determined tax.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Josh Aldrich, and Sara A. Hosey held an oral hearing for this matter in Fresno, California, on September 29, 2022. At the conclusion of the oral hearing, the record was held open for

[1] Attorney Frank J. Huerta filed a post-hearing brief on appellant's behalf.

[2] 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.

[3] The NOD was issued timely because appellant signed a waiver of limitations for the expiring periods, which allowed CDTFA until July 31, 2016, to issue the NOD for the liability period. (R&TC, §§ 6487, 6488.)

additional briefing. Upon completion of additional briefing, OTA closed the oral hearing record on September 22, 2023.

ISSUE

Are additional adjustments to the amount of unreported taxable sales warranted?

FACTUAL FINDINGS

1. Appellant, dba Eddie's Auto World, operated a used car dealership located in Fresno, California, during the liability period. In mid-2012, appellant obtained a Department of Motor Vehicle (DMV) dealer's license and began selling used cars. Appellant also provided smog services.
2. For the liability period, appellant reported on his sales and use tax returns (SUTRs) total sales of $2,053,644, claiming deductions of $455 for nontaxable sales for resale, $471,593 for nontaxable labor, and "other" representing nontaxable smog fees of $61,196. Appellant also reported purchases subject to use tax of $11,535 and sales of fixtures and equipment of $8,240; thus, appellant reported a taxable measure of $1,540,175.[4] Appellant's method for reporting sales on the SUTRs was unknown.
3. Upon audit, appellant provided federal income tax returns for 2012, 2013, and 2014. Appellant did not provide any other records such as sales journals, purchase journals, sales invoices, or merchandise purchase invoices for the liability period.[5]
4. CDTFA obtained Report of Sales (ROS) data[6] from the DMV for the liability period.

[4] The Transcript of Returns, audit schedule 414M, did not separately show the amounts for the sales of fixtures and equipment. CDTFA states deductions were claimed on appellant's SUTRs, and appellant has not disputed this.

[5] CDTFA reports that appellant later presented various deal jackets. Deal jackets are routinely used by car dealers, and each deal jacket contains the various documents related to a sale, including but not limited to the vehicle sales contract, vehicle purchase invoice, and the DMV Report of Sale. However, CDTFA could not determine whether the deal jackets were complete and reliable for audit purposes. None of the deal jackets provided show any audit errors.

[6] CDTFA reports that the sales information obtained from the DMV included the Vehicle Identification Number, license plate number, year and make of the vehicle, vehicle registration date, and a two-letter Vehicle License Fee (VLF) code designating a range of sales prices in $200 increments. CDTFA considered the registration date to have occurred shortly after the actual date of sale, and thus CDTFA used the vehicle registration date to group the vehicles into quarterly periods in which the vehicles were sold. CDTFA used the VLF code to assign the lowest estimated sales price in the $200 range designated by a particular code. For example, VLF code "AA" designates that the sales price of the vehicle was between $13,000 and $13,200, and CDTFA would assign a sales price of $13,000 for sales involving VLF "AA."

Using the ROS data, CDTFA compiled taxable vehicle sales of $3,875,899. Upon comparison to taxable vehicle sales of $1,528,640 reported on the SUTRs, CDTFA computed a difference of $2,347,259 for the liability period. For the period April 1, 2012, through December 31, 2012, the ROS sales were less than reported taxable sales by $25,625. CDTFA attributed the difference to taxable sales of parts related to smog services. Thus, CDTFA computed unreported taxable sales of $2,372,884 for the liability period.

5. CDTFA issued an NOD to appellant on February 16, 2016, with a tax liability of $196,073.78, plus applicable interest.
6. Appellant filed a timely petition for redetermination protesting the NOD in its entirety.
7. CDTFA held an appeals conference with appellant, and subsequently issued a Decision on June 10, 2020, that ordered a reaudit to delete a duplicate vehicle entry of $12,400 in the sales compiled from the ROS data, but otherwise denied the petition.
8. The reaudit resulted in audited taxable sales of $3,889,124 for the liability period. Thus, the reaudit reduced the determined measure of tax by $12,400 from $2,372,884 to $2,360,484, which is the amount in dispute.
9. Appellant timely appealed to OTA.

DISCUSSION

California imposes sales tax on a retailer's gross receipts from the retail sale of tangible personal property 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, 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 reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

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*.)

Taxpayers are required to maintain and make available for examination on request by CDTFA, or its authorized representative, 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 returns. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include but are not limited to: (a) the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; (b) bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account; and (c) schedules or working papers used in connection with the preparation of the tax returns. (Cal. Code Regs., tit. 18, § 1698(b)(1).)

Appellant failed to provide normal books of account, such as sales journals and purchase journals, or sales tax worksheets used in connection with preparation of the SUTRs. Thus, appellant's books and records provided for audit were inadequate for sales and use tax audit purposes. In the absence of reliable records, OTA finds the use of an indirect audit method to compute appellant's sales to be reasonable. CDTFA used DMV ROS data as the basis for its determination, which is a recognized and standard accounting procedure. (See *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613 [finding it was reasonable for the Board to use a recognized and standard accounting procedure for audit].) Moreover, the DMV ROS data is recorded and maintained by an independent government agency and is more reliable than potentially self-serving reporting by appellant. CDTFA's audit method and the results computed from the DMV ROS data are reasonable and rational. Therefore, CDTFA has met its initial burden, and the burden of proof shifts to appellant to show errors in the audit; and, more specifically, appellant must show errors in the DMV ROS data.

On appeal, appellant did not identify any specific sale from the DMV ROS data that appellant believes is erroneous or otherwise nontaxable. The sample deal jackets provided to CDTFA after the audit was completed do not show any errors in the DMV ROS data. Rather, appellants records appear to support an increase, rather than a decrease in the measure of tax.

After the hearing, OTA held the record open to allow appellant to address "which, if any, of the DMV records used at audit by CDTFA are inaccurate and [to] provide supporting invoices

or other documentation that reflect any alleged differences." With the post-hearing brief, appellant submitted a list of nine vehicle identification numbers (VINs) that appellant claims are duplicated in the DMV ROS data. Appellant did not include supporting documentation to support that claim. OTA's review of the evidentiary record shows that the duplicate VINs in the audit reports do not constitute duplicate entries. Instead, certain transactions appear to have been reported on more than one audit schedule, which are sorted differently and or used for different purposes. Appellant's unsupported assertion fails to meet the burden to show that a reduction to the measure of unreported taxable sales is warranted on the basis of duplicates.

Appellant further contends that the liability is incorrect and asserts that he owes no more than $50,000 tax. Appellant asserts that appellant's invoices are more reliable than the DMV ROS records used by CDTFA because the sales prices are estimated, while the invoices show the exact sales price. In a post-hearing brief, appellant "disputes" 73 vehicle sales transactions found in the DMV ROS data, and based thereon, requests an adjustment of $832,500, the total sales prices for the 73 vehicle sales.

Appellant has provided no documentation to support the claim that appellant owes no more than $50,000 in tax. With respect to appellant's testimony and statements that the sales invoices are more accurate than the DMV ROS records, OTA first notes that appellant provided no sales records for audit.[7] At the CDTFA conference, appellant asserted that CDTFA should have used appellant's actual records. In response, CDTFA asked appellant to provide 12 sales contracts for comparison to the DMV ROS records. Appellant provided 17 deal jackets, which CDTFA compared to the DMV ROS records. In its review, CDTFA found that for 9 transactions appellant charged a price in excess of the sales price estimated from DMV ROS records, which may be for taxable parts, or for taxable document processing and emission testing fees, which appellant charges his customers. For 12 of the vehicles, CDTFA estimated taxable processing and testing fees of $1,200. Appellant's sample records do not show any error in the DMV ROS data. On the other hand, appellant's own records appear to support an increase in the measure of unreported taxable sales rather than a decrease.

As noted above, CDTFA may use any information which is in its possession or may come into its possession. (R&TC, § 6481.) Here, appellant provided no sales records for audit,

[7] Appellant does not explain why, if the sales records are the best evidence of his vehicle sales, appellant did not submit them for audit.

and CDTFA obtained the DMV ROS data. In summary, CDTFA computed audited taxable sales based on the best available evidence. Appellant has not identified any errors in CDTFA's computation of audited taxable sales or provided new documentation or other evidence in support of his contentions from which a more accurate determination could be made. As appellant bears the burden of proof in this case, OTA must conclude that no adjustments are warranted.

HOLDING

Appellant has not shown that further adjustments to the measure of tax are warranted.

DISPOSITION

CDTFA's action in recommending that the determined measure be reduced to $2,360,484 as recommended in CDTFA's reaudit but otherwise denying the petition is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:
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Josh Aldrich
Administrative Law Judge

DocuSigned by:
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Sara A. Hosey
Administrative Law Judge

Date Issued: 11/17/2023