

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

In the Matter of the Consolidated Appeals of: )  
 )  
**CENTURY HOUSE AND GARDENS LLC,** )  
**dba Century House & Gardens** )  
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OTA Case Nos. 230814045, 230814046  
 CDTFA Case IDs: 391-305, 620-802  
 739-222, 734-967

**OPINION**

Representing the Parties:

For Appellant: Mitchell Stradford, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Corin Saxton, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) sections 6561 and 6901, Century House and Gardens LLC dba Century House & Garden (appellant) appeals two decisions issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant's timely petitions for redetermination of Notices of Determination (NODs) issued on August 15, 2018, and April 12, 2022. The August 15, 2018 NOD is for tax of \$46,800, plus applicable interest, and a negligence penalty of \$4,679.98 for the period April 1, 2014, through March 31, 2017 (first audit period).<sup>2</sup> The April 12, 2022 NOD is for a tax liability of \$35,633, plus applicable interest, and a negligence penalty of \$3,563.32 for

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

<sup>2</sup> CDTFA timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, the last of which was signed on October 4, 2021, which gave CDTFA until April 30, 2022, to issue the NOD for the period July 1, 2018, through December 31, 2018. (R&TC §§ 6487(a), 6488.)

the period July 1, 2018, through June 30, 2021 (second audit period).<sup>3</sup> CDTFA's decisions also denied timely claims for refund of alleged overpayments made during the two audit periods.<sup>4</sup>

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record.

### ISSUE

Whether adjustments are warranted to the audited understatements of reported taxable sales.<sup>5</sup>

### FACTUAL FINDINGS

1. Appellant, a California limited liability company, operates a venue rental business at a banquet facility in Fremont, California. Appellant obtained a seller's permit effective January 1, 2006. Appellant's business specializes in hosting events such as weddings, anniversaries, and corporate meetings. Appellant offers food sales and other event related services.<sup>6</sup>
2. On April 8, 2015, CDTFA completed an audit of appellant's business for the period April 1, 2011, through March 31, 2014 (prior audit period), which, following two reaudits, resulted in the application of an error ratio of 82.69 percent to appellant's reported taxable sales to calculate audited taxable sales.<sup>7</sup>
3. On May 3, 2017, CDTFA began an audit for the first audit period and on September 8, 2021, CDTFA began an audit for the second audit period.

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<sup>3</sup> CDTFA timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, the last of which was signed on June 8, 2018, which gave CDTFA until January 31, 2019, to issue the NOD for the period April 1, 2014, through September 30, 2015. (R&TC §§ 6487(a), 6488.)

<sup>4</sup> Appellant filed these claims for refund for the two audit periods; however, appellant does not contest CDTFA's denial of the claims for refund. Therefore, the Office of Tax Appeals will not consider these claims for refund.

<sup>5</sup> Appellant does not contest CDTFA's imposition of the negligence penalties for the two audit periods; thus, the Office of Tax Appeals will not consider the penalties further.

<sup>6</sup> Appellant sells food for consumption at its premises and to-go.

<sup>7</sup> The audit identified an error ratio of 84.80 percent, which CDTFA reduced to 82.69 percent in the second reaudit.

4. Upon audit, appellant provided bank statements and federal income tax returns (FITRs) for the first audit period, and, for the second audit period, appellant provided FITRs, bank statements, and hall rental contracts for the third quarter of 2019.<sup>8</sup>
5. For the first audit period, appellant reported total sales of \$728,613, and claimed a deduction of \$9,541 for sales tax included and a deduction of \$627,362 for “other.” For the second audit period, appellant reported total sales of \$589,308, and claimed a deduction of \$8,097 for sales tax included and a deduction of \$485,812 for “other.”
6. For both audit periods, CDTFA accepted appellant’s reported total sales and appellant’s claimed deductions for sales tax included; however, CDTFA did not accept appellant’s claimed deductions for “other” because appellant could not provide supporting documentation or explain its reporting method. CDTFA determined that appellant reported gross sales based on bank deposits and claimed a deduction for 82 percent of its sales as “other” on the basis that these sales were nontaxable rental charges. Given that appellant sold food, CDTFA questioned whether some of the claimed nontaxable rental charges were taxable because the charges were included in contracts in which appellant served food. CDTFA used the error ratio of 82.69 percent, as established in the prior audit, to estimate appellant’s taxable sales for the two audit periods at issue here because there was not much change in the business operations.
7. For the first audit period, CDTFA subtracted sales tax reimbursement of \$9,451 from appellant’s reported total sales of \$738,064 to which it then applied the error ratio of 82.69 percent to establish audited taxable sales. CDTFA compared audited taxable sales to reported taxable sales to establish a deficiency measure of \$501,239 for unreported taxable sales.
8. For the second audit period, CDTFA subtracted sales tax reimbursement of \$8,097 from appellant’s reported total sales of \$589,308 to which it then applied the error ratio of 82.69 percent to establish audited taxable sales. CDTFA compared audited taxable sales to reported taxable sales to establish a deficiency measure of \$385,205 for unreported taxable sales.

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<sup>8</sup> The hall rental contracts did not include food sales.

9. CDTFA issued the aforementioned NODs based on these audit results. Appellant filed timely petitions for redetermination, which CDTFA denied in decisions issued on August 4, 2023.
10. This timely appeal followed.

### DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state 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 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 questioned appellant's claimed deductions for "other" because appellant could not provide supporting documentation for these deductions and appellant could not explain how these deductions were calculated. Therefore, it was reasonable for CDTFA to further examine appellant's taxable sales using an indirect audit method. Given that CDTFA's analysis showed that business operations had not materially changed from the prior audit period, it was reasonable and rational for CDTFA to use the error ratio established in that audit to calculate audited taxable sales for the periods at issue here. Accordingly, the burden of proof shifts to appellant; that is, appellant must establish that adjustments are warranted.

On appeal, appellant argues that adjustments to the deficiency measure are warranted because the error ratio used to establish audited taxable sales is overstated. Here, however,

appellant has not provided any evidence in support of its assertion that adjustments are warranted, nor has appellant identified any errors in CDTFA’s audit methodology. Thus, appellant has not met its burden of proof.

HOLDING

Adjustments are not warranted to the audited understatements of reported taxable sales.

DISPOSITION

CDTFA’s actions in denying appellant’s petitions for redetermination and claims for refund are sustained.

DocuSigned by:  
*Kim Wilson*  
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Kim Wilson  
Business Taxes Specialist III

We concur:

DocuSigned by:  
*Susana Seyller*  
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For  
Suzanne B. Brown  
Administrative Law Judge

DocuSigned by:  
*Carol Williams*  
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For  
Andrew Wong  
Administrative Law Judge

Date Issued: 6/4/2024