OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A.G.N. CORPORATION**	OTA Case No. 220310030 CDTFA Case ID: 0-679-889

OPINION

Representing the Parties:

For Appellant:	Mohinder Nanda, President Amit Nanda, Vice President
For Respondent:	Ravinder Sharma, Hearing Representative Christoper Brooks, Attorney Jason Parker, Chief of Headquarters Ops.

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, A.G.N. Corporation (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying, in part, appellant's petition for redetermination (petition) of a Notice of Determination (NOD) issued on March 10, 2021. The NOD is for tax of $35,728, plus applicable interest, for the period July 1, 2017, through June 30, 2020 (audit period).[2] Subsequent to the issuance of the NOD, CDTFA performed two reaudits that reduced the tax by $5,530 (from $35,728 to $30,198).[3]

Office of Tax Appeals (OTA) Administrative Law Judges Lauren Katagihara, Suzanne B. Brown, and Natasha Ralston held an oral hearing for this matter in Cerritos, California, on May 16, 2024. After the hearing concluded, OTA held the record open for additional briefing. After the additional briefing period ended, OTA closed the record and this matter was submitted for an Opinion.

[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.)

[2] The NOD was timely issued because on September 30, 2020, appellant signed a waiver of the otherwise applicable three-year statute of limitations, which allowed CDTFA until April 30, 2021, to issue an NOD for the period July 1, 2017, through December 31, 2017. (See R&TC, §§ 6487(a), 6488.)

[3] The second reaudit supersedes the previous audits, and therefore, only the second reaudit is discussed herein.

ISSUES

1. Whether further adjustments to the measure of appellant's unreported taxable sales attributable to Cypress Midas Muffler (Midas) are warranted.
2. Whether a reduction to the measure of appellant's unreported taxable sales attributable to Sunrise Glass & Mirror (Sunrise) is warranted.

FACTUAL FINDINGS

1. Starting in June 1997, appellant operated two businesses: (1) Midas, an auto repair shop in Cypress, California; and (2) Sunrise, a business located in Los Alamitos, California, that furnishes glass doors and windows and also installs them in residential and commercial properties. On May 27, 2020, appellant sold Midas.
2. For the audit period, appellant reported total sales of $2,218,980. Appellant claimed deductions of $51,469 for sales that included sales tax reimbursement and $1,536,810 for nontaxable labor. As a result, appellant reported taxable sales of $630,701 for the audit period. Using the location of appellant's businesses and appellant's allocation of local tax, CDTFA calculated that, of appellant's $630,701 reported taxable sales, $272,027 was attributable to Midas, and the remaining $358,674 was attributable to Sunrise.
3. On May 18, 2020, CDTFA requested documents from appellant for the audit. Appellant subsequently provided its federal income tax returns (FITRs) for 2017 and 2018. With respect to Midas, appellant provided sales journals for the third quarter of 2018 (3Q18); a handwritten journal of daily sales invoices for August 2018; and 12 sales invoices (three from August 11, 2018, and nine from August 28, 2018). For Sunrise, appellant provided 20 sales invoices for lump-sum jobs in August and September 2019. Additionally, CDTFA obtained Form 1099-K data (which included information for both businesses) for the period January 2017 through May 2020.[4]
4. CDTFA noted that appellant did not provide records, such as purchase invoices or bank statements, to support its limited sales invoices or journals for either business. However, according to the audit working papers, appellant informed CDTFA that it made

[4] A Form 1099-K is an IRS form titled, "Payment Card and Third Party Network Transactions," which shows the monthly and annual amounts paid to a merchant by a bank, credit card company, or third party network during a given time period. Form 1099-K includes payments made by any electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

all its purchases using resale certificates,[5] and thus, did not pay sales tax reimbursement to its vendors.

MIDAS

5. For Midas, CDTFA prepared a credit card sales ratio analysis (also known as the credit card ratio method) to determine the accuracy of appellant's reporting. Using this analysis, CDTFA determined that for the period 3Q17 through 1Q20, appellant's sales for Midas amounted to $1,027,292.[6] CDTFA attributed 42.39 percent of this amount ($435,469) to nontaxable labor, and the remaining $591,823 to taxable sales of parts. CDTFA then subtracted the amount of reported taxable sales attributable to Midas ($264,839) from the audited taxable sales of $591,823 to calculate $326,984 in unreported taxable sales.[7]
6. To calculate the labor ratio of 42.39 percent, CDTFA used the 12 Midas sales invoices appellant provided. The sales invoices contained, in part, the following information: (1) the amount charged for parts; (2) the amount charged for labor; and (3) the amount of any discount provided on parts and/or labor. The subtotal (parts + labor – discount(s), if any) of the 12 sales invoices amounted to $9,712.69. The total labor charged in the 12 sales invoices, including discounts, amounted to $4,117.60. By dividing the total labor from the subtotal, CDTFA computed the 42.39 percent labor ratio.
7. To verify the nontaxable labor ratio, CDTFA examined the labor percentages reported by six other Midas businesses. The average labor percentages reported by the other businesses were 42.41 percent for 2017, 42.65 percent for 2018, and 44.47 percent for 2019. CDTFA therefore concluded that its 42.39 percent labor ratio was reasonable.

[5] See California Code of Regulations, title 18, section 1668.

[6] In its second reaudit, CDTFA accepted appellant's 2Q20 reported sales.

[7] The amount of reported sales includes CDTFA's adjustment for additional tax appellant paid on its sales and use tax returns.

SUNRISE

8. For Sunrise, CDTFA determined that appellant is a construction contractor, as that term is defined in California Code of Regulations, title 18, (Regulation) section 1521(a)(2).[8] Consequently, CDTFA determined that appellant was the consumer of any materials appellant used in furtherance of performing a construction contract, and thus, subject to use tax based on appellant's *purchase* price of the materials. In contrast, CDTFA determined that any materials appellant sold at retail (i.e., materials not used in furtherance of performing a construction contract), were subject to sales tax based upon appellant's *selling* price of the materials.[9]

9. Due to the absence of purchase records, CDTFA calculated appellant's purchases attributable to Sunrise by first looking at CDTFA's audited total sales for Midas. For 2018, CDTFA's audited total sales for Midas amounted to $359,073.[10] Appellant reported $761,742 in gross receipts for that same year. Therefore, CDTFA determined that 47.14 percent ($359,073 ÷ $761,742) of appellant's gross receipts were attributable to Midas, and the remaining 52.86 percent (100% - 47.14%) was attributable to Sunrise. Using these percentages, CDTFA split appellant's reported cost of goods sold (COGS) between the two businesses. On its FITRs, appellant reported COGS of $260,875 in 2017, and $235,785 in 2018. By apportioning 52.86 percent of those amounts to Sunrise, CDTFA calculated appellant's purchases for Sunrise were $137,899 ($260,875 × 52.86%) for 2017 and $124,636 ($235,785 × 52.86%) for 2018. On a quarterly basis, Sunrise's purchases were $34,475 for 2017 ($137,899 ÷ 4 quarters) and $31,159 for

[8] A construction contractor is a person who performs contracts to, as relevant here, erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property. (Cal. Code Regs., tit. 18, §1521.) Prior to the oral hearing, appellant conceded verbally and in writing to being a construction contractor. OTA confirmed this concession at the oral hearing and appellant did not object thereto. In its post-hearing brief, however, appellant indicated that it is not a construction contractor. Appellant incorrectly assumed that a construction contractor equates to a general contractor and noted that the latter operates under a different type of license than appellant. Appellant's argument appears to confuse the definition of "construction contractor" under the Sales and Use Tax Law and its applicable regulations (Cal. Code Regs., tit. 18, § 1521) with terminology regarding contracting licensing by the Contractors State License Board (see, e.g., Bus. & Prof. Code, §§ 7055, 7058, 7059; Cal. Code Regs., tit. 16, §§ 830, 832).

[9] Construction contractors can also be retailers with respect to fixtures that they furnish and install under a construction contract. (Cal. Code Regs., tit. 18, § 1521(b)(2)(B)1.) However, glass windows and doors are materials, not fixtures (Cal. Code Regs., tit. 18, § 1521, Appendix A) and there is no indication that, for the sales at issue, the materials were installed by appellant.

[10] As previously stated, appellant does not dispute CDTFA's use of the credit card ratio method to calculate the audited total sales. CDTFA's allocation of labor versus parts for the Midas sales has no effect on CDTFA's calculation of appellant's sales for Sunrise.

2018 ($124,636 ÷ 4 quarters), which averaged $32,817 per quarter. Appellant did not provide its FITRs for 2019 and 2020, so CDTFA assigned the quarterly average to appellant's purchases for 1Q19 through 2Q20.

10. CDTFA ultimately accepted appellant's 2018 reported amounts for Sunrise, so CDTFA's liability amount for Sunrise only incorporates 3Q17, 4Q17, and 1Q19 through 2Q20 (Sunrise's liability period).

11. Appellant's audited purchases for Sunrise's liability period amounted to $265,852. CDTFA's audit working papers state that appellant's Vice President estimated that 2 percent of Sunrise's transactions constituted retail sales (as opposed to construction contracts). CDTFA accepted appellant's estimate and attributed $5,317 ($265,852 × 2%) of appellant's purchases as goods sold at retail, and the remaining $260,535 as materials used by appellant in performance of its construction contracts.

12. Due to a lack of documentation, CDTFA was unable to determine appellant's markup on the goods Sunrise sold at retail.[11] CDTFA therefore adopted an 86.11 percent markup, which CDTFA calculated using appellant's 2018 COGS and sales of parts for Midas.[12] By adding the 86.11 percent markup, CDTFA calculated appellant's retail sales for Sunrise totaled $9,894 ($5,317 + 86.11%) for Sunrise's liability period.[13]

13. CDTFA's calculations resulted in an audited taxable measure of $270,429 for Sunrise's liability period (taxable cost of materials of $260,535 + taxable retail sales of $9,894). However, appellant only reported $211,891 for that same period, resulting in an unreported taxable measure of $58,539.

14. Consequently, CDTFA issued an NOD to appellant for tax of $35,728 plus applicable interest, which incorporated the liability for both Midas and Sunrise.

15. Appellant timely filed its petition. In support of its petition, appellant submitted 11 Summary Reports for Midas to CDTFA. The Summary Reports covered sporadic weeks (or in one instance, a single day) during the audit period, and reflected, among other things, appellant's charges for labor, parts, and total sales. CDTFA determined the Summary Reports were unreliable due to a lack of supporting documentation.

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[11] "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 $.70 and it charges customers $1.00, the markup is $0.30. The formula for determining the markup percentage is markup amount ÷ cost. In this example, the markup percentage is 42.86 percent (.30 ÷ .70 = 0.42857).

[12] A comparison of the audited parts sales for 2018 ($206,861) and audited COGS for that year ($111,149) revealed a markup of 86.11 percent (($206,861 - $111,149) ÷ $111,149) of Midas's COGS.

[13] Immaterial mathematical discrepancies within this Opinion are due to rounding.

16. This appeal followed.

17. Upon OTA's request for additional briefing after the oral hearing, CDTFA submitted documentation in support of its 86.11 percent markup of retail sales made by Sunrise. Specifically, CDTFA provided the markups accepted or calculated by CDTFA in the audits of two businesses similar to Sunrise but located in "Anaheim/Placentia" and Costa Mesa (both in California). These two audits revealed markups of 51.19 percent and 103.83 percent.

DISCUSSION

Issue 1: Whether further adjustments to the measure of appellant's unreported taxable sales attributable to Midas are warranted.

California imposes upon a retailer a sales tax measured by the retailer's gross receipts from the retail sales of all tangible personal property in this state unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, § 6051.) All of a retailer's gross receipts are presumed subject to tax unless the retailer can prove otherwise. (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).) Records must be preserved for a period of not less than four years unless CDTFA authorizes in writing their destruction within the lesser period. (Cal. Code Regs., tit. 18, § 1698(i).)

Regulation section 1546(b) states that if the retail value of parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairperson makes a separate charge for such property, the repairperson is the retailer and tax applies to the fair retail selling price of the property. In addition, Business and Professions Code section 9884.8 provides that for automotive repair dealers, service work and parts shall be listed separately on the invoice. As a result, automotive repair dealers will always be the retailer of any parts used in the repair of vehicles.

If CDTFA is not satisfied with the amount of tax reported by any person, CDTFA may determine the amount required to be paid based on any information within its possession or that 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 Amaya*, 2021-OTA-328P.) Upon such a showing, the burden of proof shifts to appellant to establish that a result differing from CDTFA'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, appellant 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.)

Appellant does not dispute that its sales of parts are taxable, CDTFA's use of the credit card ratio method, or CDTFA's estimation of its total sales. Instead, appellant disputes CDTFA's calculation of appellant's total taxable sales. Specifically, appellant disputes the 42.39 percent labor ratio adopted by CDTFA. Appellant argues that a labor ratio of 60 percent is more representative of its Midas sales.

In support of its asserted 60 percent labor ratio, appellant relies on its Summary Reports which reveal labor percentages ranging between 51.19 and 68.53 percent. Appellant also points to the fact that the Midas franchise required appellant to charge $120 per hour for labor and provide certain parts for free under a warranty program. Appellant further contends that CDTFA's comparison of its Midas business to other Midas franchises was unreasonable because, unlike other Midas franchises, appellant was restricted from selling tires under the terms of its lease.

Here, CDTFA used invoices provided by appellant to calculate the 42.39 percent labor ratio. Appellant's invoices specifically itemized the price for parts and labor, provided discounts, and the pre-tax total. If appellant was required to charge $120 per hour for labor, those rates would be reflected and accounted for in the invoices appellant provided. Furthermore, appellant did not provide other reliable documents (as discussed in further detail below) from which CDTFA could calculate or estimate appellant's labor ratio. Consequently, CDTFA's use of appellant's invoices to determine the labor ratio was reasonable and rational.

Appellant asserts that CDTFA's labor ratio is skewed because appellant had to provide its customers free parts. Such an argument would be relevant if CDTFA had used appellant's COGS to determine the audited taxable sales or the labor ratio, but CDTFA did not, so appellant's argument has no bearing on the calculated labor ratio. Moreover, by OTA's calculation, if CDTFA removes the discounts from the invoices in which appellant referenced a warranty, appellant's labor ratio would decrease, not increase.

Appellant's argument that its labor ratio was higher than that of tire-selling Midas franchises is not supported by any evidence. In any event, CDTFA calculated appellant's labor ratio using appellant's invoices and only looked to the other Midas franchises to confirm the reasonableness of the labor ratio reflected in appellant's invoices. Even if OTA disregards the labor ratio of tire-selling Midas franchises, CDTFA's calculated labor ratio would continue to be supported by appellant's invoices.

With respect to appellant's Summary Reports, CDTFA determined that the labor ratio therein is unreliable because the Summary Reports are not supported by documentation such as contemporaneous sales or purchase invoices. Moreover, the Summary Reports reveal inconsistencies that support a finding that appellant did not record all of its sales. For example, there are two Summary Reports in which appellant only recorded seven repair orders over a seven-day period (totaling only $2,358.26 and $898.62, before tax, for each week). In addition, the most comprehensive year within the audit period that the Summary Reports cover is 2018.[14] Using the data in the 2018 Summary Reports, OTA calculates an estimated $252,253.49 in total sales for the year.[15] However, the Form 1099-K data reveals appellant made $312,288 in credit card sales alone that year. For these reasons, OTA finds the Summary Reports to be unreliable and not indicative of appellant's labor ratio.

Appellant also asserts that it is unable to provide supporting documentation to support its contentions because it received notification of the impending audit while its sale of Midas was in escrow and the new owner has not been cooperative in sharing documents. Although OTA sympathizes with appellant's situation, appellant was required, pursuant to Regulation section 1698(i), to retain records for four years. OTA also notes that appellant had more than a week between being notified of the audit and the completion of its sale of Midas to obtain the documentation it was required to retain.

Based on the foregoing, appellant has not provided sufficient evidence to warrant an increase of the labor ratio to its asserted 60 percent. However, OTA's review of CDTFA's audit working papers reveals that an adjustment to the labor ratio is warranted. As stated above, CDTFA calculated appellant's labor ratio by dividing the sum of the total labor charged by the sum of the subtotals in the 12 sales invoices. Instead, CDTFA should have calculated the labor ratio for each of the 12 invoices separately and used those figures to determine an average labor ratio. CDTFA's method of calculating the labor ratio assumes that every job appellant performed had the same labor ratio. In contrast, using the average labor ratio results in a more accurate representation of appellant's labor ratio because it takes into account that labor ratios vary by job. (See also CDTFA's Audit Manual, § 0490.00 [an "average" or "arithmetic mean" is often intended as a representative quantity or a measure of the central tendency of a group of

[14] There are seven Summary Reports, covering approximately seven weeks within 2018.

[15] The seven Summary Reports reflect total sales (before tax) of $33,957.20, for a weekly average of $4,851.03 ($33,957.20 ÷ 7 weeks), and a yearly average of $252,253.49 ($4,851.03 × 52 weeks).

items].)[16] By OTA's calculation, appellant's average labor ratio is 45.52 percent, not 42.39 percent.[17] Consequently, OTA finds that further adjustments to the measure of appellant's unreported taxable sales attributable to Midas are warranted.

Issue 2: Whether a reduction to the measure of appellant's unreported taxable sales attributable to Sunrise is warranted.

California imposes a 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 from taxation by statute. (R&TC, § 6051.) All gross receipts are presumed subject to tax unless the retailer can prove otherwise. (R&TC, § 6091.) When sales tax does not apply, use tax is imposed on the purchaser's use in California of tangible personal property purchased for use in this state from a retailer, measured by the sales price (i.e., the price paid by the purchaser), unless the use is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6201, 6202, 6401.) A purchaser who issues a resale certificate is liable for use tax if the purchaser makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (Cal. Code Regs., tit. 18, § 1668(g).)

Regulation section 1521(a)(2) provides that a "construction contractor" is any person who, for itself, in conjunction with, or by or through others, agrees to perform and does perform a construction contract. As relevant here, a "construction contract" is a contract to erect, construct, alter, or repair any building or other structure or other improvement on or to real property. (Cal. Code Regs., tit. 18, § 1521(a)(1)(A)1.)

In general, construction contractors are consumers of the materials they furnish and install when they perform construction contracts, and either sales tax or use tax applies to the sale of materials to, or the use of materials by, the construction contractor. (Cal. Code Regs., tit. 18, § 1521(b)(2)(A)1.) "Materials" includes "construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the

[16] CDTFA's Audit Manual is an advisory publication providing direction to CDTFA staff administering the Sales and Use Tax Law and applicable regulations. OTA is not required to follow CDTFA's Audit Manual; however, OTA may look to CDTFA's Audit Manual for guidance when evaluating the reasonableness of CDTFA's determination. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

[17] One of the 12 invoices (Invoice No. 1013545) was a complimentary service provided by appellant. As there were no charges for either parts or labor, OTA did not include this invoice in its calculation.

real property." (Cal. Code Regs., tit. 18, § 1521(a)(4).) Glass, doors, and windows are all regarded as materials. (Cal. Code Regs., tit. 18, § 1521, Appendix A.)

If CDTFA is not satisfied with the amount of tax reported by any person, CDTFA may determine the amount required to be paid based on any information within its possession or that 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 Amaya*, *supra*.) Upon such a showing, the burden of proof shifts to appellant to establish that a result differing from CDTFA'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, appellant 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*, *supra*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

Although appellant has wavered as to whether Sunrise operates as a construction contractor,[18] the evidence supports a finding that Sunrise is indeed a construction contractor because it contracts to install glass doors and windows in residential and commercial properties. In any event, appellant has not made any arguments related to the measure of tax associated with its use of materials as a construction contractor. Appellant made several arguments pertaining to labor (versus parts) percentages for Sunrise, but neither appellant's labor charges nor labor percentage was a factor in calculating appellant's taxable measure with respect to Sunrise. For the transactions in which Sunrise performed a construction contract, CDTFA determined appellant's tax liability using appellant's *purchase* price. For Sunrise's retail sales (which did not include labor), the measure of tax is the *selling* price. As labor charges and labor percentages are irrelevant to the audit pertaining to Sunrise, OTA will not address appellant's arguments related thereto.

Appellant also argues that CDTFA's audited markup percentage of 86.11 for Sunrise is too high, and that its true markup was between 7 and 12 percent. As CDTFA only utilized the markup percentage to calculate the audited *retail* sales for Sunrise, the construction contracts are not in dispute.

Appellant does not dispute CDTFA's use of the markup method in the audit. (See *Appeal of Amaya*, *supra* [the markup method is a recognized and accepted accounting procedure].) Instead, as described above, appellant argues that the markup percentage CDTFA adopted was too high. Here, CDTFA adopted and applied the markup it calculated for Midas to Sunrise's retail sales, despite acknowledging that Midas and Sunrise are two completely

[18] See footnote 8, *ante*, page 4.

different types of businesses. CDTFA indicated that it adopted this approach due to appellant's lack of records. After the oral hearing, OTA requested that CDTFA disclose the markups used by businesses similar to Sunrise and, to the extent available, in or near Los Alamitos, California (where Sunrise is located). In response, CDTFA provided information for two glass and window businesses revealing markups of 51.19 percent and 103.83 percent, and asserts that because the 86.11 percent markup falls within this range, its markup percentage is supported.

As appellant points out, those businesses are approximately 15 miles away from Los Alamitos (in different directions) and have very different markup percentages. OTA agrees that, contrary to CDTFA's assertion, a markup cannot be found reasonable merely because it falls within a range that has more than a 50-point spread.

However, OTA notes that the adjustment to appellant's labor ratio as described in Issue 1 results in a decrease of CDTFA's audited markup percentage to 76 percent (($195,623 - $111,149) ÷ $111,149).[19] This markup percentage is very similar to the average of the two markup percentages calculated for the other glass and window businesses ((51.19% + 103.83%) ÷ 2 = 77.51%).

Based on the limited evidence presented here, using the average markup of the two glass and window businesses to gauge the reasonableness of the 76 percent markup is a rational approach because it accounts for both the large difference between the markups, and the potentially different markets of the glass and window businesses. As such, OTA finds that the adjusted 76 percent markup is properly supported by evidence.

Appellant argues that its markup is between 7 and 12 percent but, even upon request by OTA, appellant has not provided any evidence to prove its contention. Unsupported assertions are not sufficient to satisfy appellant's burden of proof. (See *Appeal of AMG Care Collective*, *supra*.) Consequently, OTA finds that an adjustment of appellant's markup for Sunrise's retail sales beyond 76 percent is not warranted.

[19] By increasing appellant's labor ratio for Midas to 45.52 percent, the audited amount for sales of parts in 2018 is reduced to $195,623. The COGS attributable to Midas for 2018 remains the same ($111,149).

HOLDINGS

1. Further adjustments to the measure of appellant's unreported taxable sales for Midas are warranted.
2. A reduction to the measure of appellant's unreported taxable sales attributable to Sunrise is warranted.

DISPOSITION

In addition to CDTFA's adjustments pursuant to its first and second reaudits, the 42.39 percent labor ratio for Midas should be increased to 45.52 percent, and the 86.11 percent markup on Sunrise's retail sales should be reduced to 76 percent. CDTFA's actions are otherwise sustained.

Signed by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Signed by:
Natasha Ralston
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Natasha Ralston
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Date Issued: 11/8/2024