

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No.: 240315678
DE LARSHE CABINETRY, LLC,)	CDTFA Case ID: 3-694-453
dba L/G Wood Products)	
)	
)	

OPINION

Representing the Parties:

For Appellant: Victor J. Yoo, Attorney

For Respondent: Jason Parker, Chief of Headquarters Ops.

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, De Larshe Cabinetry, LLC, dba L/G Wood Products (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on March 9, 2022. The NOD is for tax of \$267,492, plus applicable interest, and penalties of \$26,749.23¹ for the period July 1, 2018, through June 30, 2021 (liability period).

Upon reaudit, CDTFA reduced the tax by \$11,801, from \$267,492 to \$255,691, and adjusted the failure-to-file penalty accordingly, from \$14,379.39 to \$13,199.27.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

¹ The penalties consist of a failure-to-file penalty of \$14,379.39 and a negligence penalty of \$12,369.84.

ISSUE²

Whether any further adjustments are warranted to the audited taxable measure.

FACTUAL FINDINGS

1. Appellant, a California limited liability company, is a retailer and manufacturer of kitchen cabinetry and other wood products, located in Pomona, California.
2. For the third quarter of 2018 (3Q18) through 2Q20, and 2Q21,³ appellant reported on its sales and use tax returns (SUTRs) \$4,923,384 of total sales and claimed \$3,123,900 of total deductions (consisting of \$1,895,698 of sales for resale, \$1,098,735 of out-of-state sales, and \$129,467 of shipping charges), resulting in \$1,799,484 of reported taxable sales.
3. CDTFA conducted an audit for the liability period.⁴ Appellant did not provide any books or records for the audit. CDTFA obtained appellant's federal income tax returns (FITRs) for 2018 and 2019, and appellant's Form 1099-K⁵ information for the period 3Q18 through 4Q20.⁶ CDTFA noted minor differences between gross receipts reported on appellant's FITRs and gross sales reported on its SUTRs. Thus, CDTFA accepted appellant's reported gross sales for 3Q18 through 2Q20, and 2Q21.
4. For 3Q18 through 2Q20, and 2Q21, CDTFA allowed 50 percent of appellant's claimed deductions, establishing \$947,852 of disallowed claimed sales for resale and \$549,368 of disallowed out-of-state sales for that period.⁷

² In its Request for Appeal, appellant indicates an appeal amount of \$268,890.27, which appears to consist of the reduced tax amount of \$255,691 and the reduced failure-to-file penalty amount of \$13,199.27. However, appellant did not present any specific arguments relating to the failure-to-file penalty. Moreover, appellant does not dispute the negligence penalty. Accordingly, OTA does not discuss the penalties.

³ Appellant did not file SUTRs for 3Q20, 4Q20, or 1Q21.

⁴ This audit was appellant's second audit. CDTFA previously audited appellant for the period January 1, 2016, through September 30, 2017, which determined a tax liability based on disallowed sales for resale and sales in interstate commerce and resulted in the imposition of a negligence penalty.

⁵ Form 1099-K, Payment Card and Third Party Network Transactions, is an IRS form that reports 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 records payments made by any electronic means, including, but not limited to, credit cards, debit cards, and third-party payment apps and networks.

⁶ At the time of the audit, Form 1099-K information was not available for 1Q21 or 2Q21.

5. Because appellant did not file SUTRs for 3Q20 through 1Q21, CDTFA estimated appellant's taxable sales for that period. CDTFA compared appellant's reported total sales for 3Q18 through 2Q20 (\$4,112,803) to sales reported on Form 1099-K for the same period (\$1,131,614) to derive a credit card sales ratio of 27.51 percent. CDTFA applied the credit card sales ratio to sales reported on Form 1099-K for 3Q20 through 1Q21,⁸ and projected \$2,536,028 of estimated total sales for 3Q20 through 1Q21. CDTFA allowed 50 percent of appellant's claimed deductions for sales for resale (\$488,185) and out-of-state sales (\$316,370) for 3Q20 through 1Q21, to establish \$1,731,474 of unreported taxable sales ($\$2,536,028 - \$488,185 - \$316,370$)⁹ for 3Q20 through 1Q21.
6. CDTFA issued the March 9, 2022 NOD. Appellant timely filed a petition for redetermination with CDTFA disputing the NOD.
7. CDTFA issued a decision dated August 2, 2023, ordering a reaudit to recompute unreported taxable sales for 1Q21 using newly available Form 1099-K information for that period, but otherwise denying the petition for redetermination.
8. CDTFA performed a reaudit, reducing the audited taxable measure from \$3,228,697 to \$3,086,585, and the tax deficiency from \$267,492 to \$255,691. CDTFA also reduced the failure-to-file penalty accordingly.
9. Appellant timely filed this appeal.

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

⁷ Although appellant did not provide any substantiation for its claimed deductions, CDTFA allowed 50 percent to be consistent with appellant's first audit. In the first audit, appellant also failed to provide substantiation for its claimed deductions, but CDTFA did not give an explanation for allowing 50 percent of claimed deductions for that period.

⁸ Because Form 1099-K information for 1Q21 was not available at the time of the audit, CDTFA used the same amount reported for 4Q20 (\$247,668).

⁹ The \$1 difference is due to rounding.

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, appellant did not provide any business records to CDTFA upon audit. Thus, CDTFA relied on information reported on appellant's FITRs and on Forms 1099-K issued to appellant. CDTFA accepted gross/total sales reported on appellant's SUTRs because the amounts were consistent with gross receipts reported on appellant's FITRs. To determine audited total sales for the periods during which appellant did not file SUTRs (3Q20, 4Q20, and 1Q21), CDTFA compared total sales reported on appellant's SUTRs (for 3Q18 through 2Q20) to total credit card sales reported on Forms 1099-K for the same period. CDTFA computed a credit card sales ratio, which it applied to credit card sales for the unreported periods (3Q20, 4Q20, and 1Q21) to establish audited total sales for those periods.¹⁰ When appellant does not provide complete books and records, CDTFA may use indirect audit methods to compute appellant's sales. (See *Appeal of Amaya*, 2021-OTA-328P.) The use of a credit card sales ratio is a recognized and accepted accounting procedure. (*Ibid.*) Therefore, OTA finds CDTFA's determination to be reasonable and rational, and the burden shifts to appellant to prove that a different amount is warranted. However, appellant has not provided any evidence to support its reported sales or to show that CDTFA's determination was incorrect.

Regarding the claimed deductions, appellant bears the burden of proving entitlement to an exemption or exclusion, and must provide some credible evidence of that entitlement. (*Appeal of Thomas Conglomerate*, 2021-OTA-030P.) The burden of proving that a sale of tangible personal property is a sale for resale (not retail) is upon the seller unless the seller timely and in good faith obtains a certificate from the purchaser stating that the property is

¹⁰ Because Form 1099-K information for 1Q21 was not available during the audit, CDTFA estimated appellant's credit card sales for that period using information from 4Q20. CDTFA later performed a reaudit using newly available Form 1099-K information for 1Q21, which reduced the audited taxable measure.

purchased for resale.¹¹ (Cal. Code Regs., tit. 18, § 1668(a).) Sales tax does not apply when the property, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer by means of facilities operated by the retailer or delivery the retailer to a carrier. (Cal. Code Regs., tit. 18, § 1620(a)(3)(B).) Bills of lading or other documentary evidence of the delivery of the property to a carrier for shipment outside this state must be retained by the retailer to support deduction for out-of-state sales. (Cal. Code Regs., tit. 18, § 1620(a)(3)(D).) Tax does not apply to “separately stated” charges for transportation of property (shipping charges) from the retailer’s place of business or other point from which shipment is made directly to the purchaser, provided the transportation is by common carrier.¹² (Cal. Code Regs., tit. 18, § 1628(a).) Thus, appellant bears the burden of providing complete and accurate records to support its reported amounts, including its claimed deductions for sales for resale, out-of-state sales, and transportation charges. (See R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, §§ 1698(b)(1); 1668(a); 1620(a)(3)(D).)

Here, appellant did not provide any documents to support its claimed deductions for sales for resale, out-of-state sales, or shipping charges, such as resale certificates, bills of lading, or sales contracts. Therefore, appellant has failed to satisfy its burden of proving its entitlement to the claimed deductions. CDTFA could have disallowed all of appellant’s claimed deductions for sales for resale, out-of-state sales, or shipping charges. To be consistent with a prior audit (in which CDTFA allowed 50 percent of appellant’s claimed deductions even though appellant did not provide any supporting documents), CDTFA also allowed 50 percent of appellant’s claimed deductions for the entire liability period.

Appellant generally contends that it “remitted an accurate amount of use/sales tax on sales made during” the liability period. Appellant asserts that it “has limited knowledge surrounding the basis for the tax adjustment . . . and is not aware of the basis for the proposed adjustments.” Appellant argues that it “has not been advised of the actual section(s) or subdivisions which control the assessment of the disputed taxes.”

However, there is ample evidence in the record showing that CDTFA explained to appellant the basis for the determined tax, including CDTFA’s decision, summary analysis, audit results letter, Report of Discussion of Audit Findings, and audit working papers. Furthermore,

¹¹ A resale certificate is timely if it is taken at any time before the seller bills the purchaser for the property, within the seller’s normal billing and payment cycle, or prior to delivery to the purchaser. (Cal. Code Regs., tit. 18, § 1668(a).)

¹² Transportation charges will be regarded as “separately stated” only if they are separately set forth in the contract for sale or in a document reflecting the contract, issued contemporaneously with the sale, such as the retailer’s invoice. (Cal. Code Regs., tit. 18, § 1628(a).)

appellant has not provided any books or records supporting its reported sales, or any documents to substantiate its claimed deductions. Accordingly, appellant has failed to demonstrate that further adjustments are warranted to the audited measure of taxable sales.

HOLDING

No further adjustment is warranted to the audited measure of taxable sales.

DISPOSITION

OTA sustains CDTFA's action, in reducing the determined tax from \$267,492 to \$255,691 and the failure-to-file penalty from \$14,379.39 to \$13,199.27 but otherwise denying appellant's petition for redetermination.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

Signed by:
Josh Lambert
CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:
Keith T. Long
D1C88AB008C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 2/12/2025