

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

GREEN AUTOMOTIVE INC.,
dba Green Collision

) OTA Case No.: 240716682
) CDTFA Case ID: 4-729-088
)
)

OPINION

Representing the Parties:

For Appellant: Ramin Akhavan, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Green Automotive Inc. dba Green Collision (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 30, 2023.¹ The NOD is for tax of \$173,476, plus applicable interest, and a penalty of \$68,555.31² for the period July 1, 2018, through December 31, 2022 (liability period).

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

ISSUE

Whether any adjustment to the measure of unreported taxable sales is warranted.

¹ Generally, CDTFA must issue an NOD within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined, or three years after the return is filed, whichever period expires later. (R&TC, § 6487(a).) Here, appellant signed a series of waivers of the limitation period, which extended the time for CDTFA to timely issue an NOD for the period July 1, 2018, through December 31, 2019, to April 30, 2023. (See R&TC, § 6488.)

² CDTFA assessed a 40 percent penalty for failure to timely remit sales tax reimbursement that was knowingly collected. (See R&TC, § 6597.)

FACTUAL FINDINGS

1. Appellant, a California corporation, operated an auto body shop located in Pico Rivera, California. Appellant was issued a seller's permit with an effective start date of June 4, 2012.
2. For the liability period, appellant filed sales and use tax returns (SUTRs) reporting total sales of \$3,967,056 and claiming deductions for nontaxable labor of \$2,667,381, resulting in taxable sales of \$1,299,675.
3. CDTFA audited appellant for the liability period. Appellant provided the following documents for review: federal income tax returns (FITRs) for 2018, 2019, and 2020; income statements and balance sheets for July 2018 through June 2021; QuickBooks sales data for July 2018, through September 2022; bank statements for July 2018, through December 2020; sales invoices for the first quarter of 2020 (1Q20), 1Q21, and 2Q21; and a summary of invoices for 3Q19, 1Q20, 1Q21, 1Q22, and 2Q22.
4. CDTFA compared gross receipts reported on the FITRs for 2018, 2019, and 2020³ to total sales reported on the SUTRs for the same period. CDTFA found that gross receipts exceeded total sales for each year, totaling \$6,529,438 for the three years. Appellant asserted that the differences were related to income from towing services, storage fees, and sales to the U.S. government, which were excluded from the reported total sales on its SUTRs.
5. CDTFA compared taxable sales reported on the SUTRs to parts and paint supply purchases recorded in the income statements for the same period, and computed book markups⁴ of -8.64 percent for 3Q18 through 4Q18, -52.35 for 2019, -41.2 percent for 2020, -18.08 percent for 1Q21 through 2Q21, and -34.86 percent for the liability period. CDTFA noted that a negative markup indicates appellant was selling items for less than its cost. Thus, CDTFA determined that appellant's reported taxable sales were potentially understated and that further analysis was needed to verify appellant's sales.

³ CDTFA noted that gross receipts were consistent with sales recorded in the income statements and general ledgers.

⁴ A "markup" is the amount by which the cost of an item is increased to set the retail price. For example, if the retailer's cost is \$0.70 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 ($0.30 \div 0.70 = 0.4286$). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records.

6. CDTFA examined sales invoices for 1Q20 to verify sales recorded in QuickBooks data for 1Q20. CDTFA determined that sales tax reimbursement charges were properly recorded in the QuickBooks data and that the QuickBooks data was reliable.
7. Based on the QuickBooks data for July 2018 through September 2022, CDTFA established recorded sales tax reimbursement of \$292,828. Compared to reported sales tax reimbursement of \$127,558 for the same period, CDTFA found that appellant underreported sales tax reimbursement of \$165,270, or unreported taxable sales of \$1,612,387.⁵
8. Appellant did not provide QuickBooks data for 4Q22, so CDTFA examined the QuickBooks data for 1Q22 through 3Q22, and based on unreported taxable sales of \$365,267 and reported taxable sales of \$251,836, computed an error rate of 145.04 percent for reporting taxable sales for that period. CDTFA applied the 145.04 percent error rate to reported taxable sales of \$55,197 for 4Q22 and established unreported taxable sales of \$80,058.
9. CDTFA compared parts and paint supply purchases (recorded in the income statements)⁶ to audited taxable sales and computed audited markups of 17.49 percent for 3Q18 through 4Q18, 18.5 percent for 1029, 30.12 percent for 2020, -9.6 percent for 1Q21 through 2Q21, and an overall markup of 14.54 percent for 3Q18 through 2Q21. CDTFA determined that the audited markups were lower than expected but concluded that further verification was not warranted because the sales tax reimbursement recorded in the QuickBooks data was the best available evidence.
10. CDTFA determined that the audited measure of unreported taxable sales for the liability period (except 2Q21) met the thresholds for imposing the 40 percent penalty for failing to timely remit sales tax reimbursement that was knowingly collected pursuant to R&TC section 6597(a)(1). CDTFA imposed the 40 percent penalty.⁷
11. CDTFA issued appellant the March 30, 2023 NOD.
12. Appellant timely filed a petition for redetermination with CDTFA, disputing the tax liability. Appellant argued that, despite the QuickBooks data, it did not collect sales tax

⁵ The applicable sales tax rate was 10.25 percent for July 2018 through September 2022.

⁶ Appellant did not provide income statements for 3Q21 through 4Q22.

⁷ Appellant does not dispute the imposition of the 40 percent penalty. Therefore, it will not be discussed.

reimbursement for 229 sales transactions (of a total of 1,085 sales transactions) during the periods 3Q19, 1Q20, 1Q21, 1Q22, and 3Q21.

13. CDTFA held an appeals conference with appellant and issued a decision on June 12, 2024, denying appellant's petition.
14. 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 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, 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's preliminary testing of appellant's books and records revealed significant differences between total sales reported on its SUTRs and gross receipts reported on its FITRs, and negative book markups for the same period, which indicated that appellant potentially underreported its sales. Based on a review of the best available evidence, appellant's QuickBooks data, CDTFA found that appellant failed to report a significant amount of taxable sales and failed to timely remit sales tax reimbursement that it collected. Appellant's own books and records, including its QuickBooks data, is a credible and reliable source of information to establish audited taxable sales. Accordingly, CDTFA has met its initial burden to show that its determination was reasonable and rational. Thus, the burden of proof shifts to appellant to establish that an adjustment is warranted.

Appellant concedes the audited tax liability for 12 of the 17 quarters of the liability period, stating that the QuickBooks sales data approximately reflects its taxable sales during those quarters. Appellant argues that for the remaining five quarters (3Q19, 1Q20, 1Q21, 1Q22, and 3Q11), its QuickBooks data overstates its taxable sales, and that it did not collect sales tax reimbursement on 229 of the 1,085 transactions. However, appellant has not provided any verifiable evidence supporting its contention. Appellant's unsupported assertion, that its QuickBooks data used during the audit incorrectly recorded sales tax reimbursement collected, is insufficient to satisfy its burden of proof. Therefore, appellant has failed to establish that any adjustment CDTFA's determination is warranted.

HOLDING

An adjustment to the measure of unreported taxable sales is not warranted.

DISPOSITION

CDTFA's action in denying appellant's petition for redetermination is sustained.

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Steven Kim
Administrative Law Judge

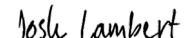
We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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Josh Lambert
Administrative Law Judge

Date Issued: 5/21/2025