

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

In the Matter of the Appeal of:  <b>MJ ENTERPRISES GROUP LLC,</b> <b>dba MJ Auto Sales</b>	) ) ) ) ) )	OTA Case No.: 240817161 CDTFA Case ID: 3-861-476
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**OPINION**

Representing the Parties:

For Appellant:	Breshanda L. Butler, Member
For Respondent:	Jason Parker, Chief of Headquarters Ops.

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, MJ Enterprises Group LLC dba MJ Auto Sales (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying in part appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on May 16, 2022. The NOD is for tax of \$96,578 plus applicable interest for the period July 15, 2018, through August 31, 2021 (liability period).<sup>2</sup> CDTFA performed a reaudit and reduced the tax to \$83,981.

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).

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<sup>1</sup> 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.

<sup>2</sup> Appellant filed sales and use tax returns on an annual basis for the 2018-2019 and 2019-2020 fiscal years, with the annual period running from July 1 through June 30. For a taxpayer filing returns on an annual basis, a NOD is timely if issued within three years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined. (R&TC, § 6487(b).) Accordingly, CDTFA timely issued the NOD for the liability period.

### ISSUE

Whether appellant has demonstrated that further adjustments are warranted to the measure of unreported taxable sales.

### FACTUAL FINDINGS

1. Appellant, a California limited liability company, operates a used car dealership located in San Bernardino, California.
2. For the liability period, appellant reported total sales of \$107,641 and claimed deductions of \$81,741,<sup>3</sup> resulting in reported taxable sales of \$25,900. Appellant also reported purchases of \$21,455 subject to use tax, resulting in a total reported taxable measure of \$47,355.
3. CDTFA audited appellant for the liability period. Appellant did not provide any books or records. CDTFA obtained use tax data from its Consumer Use Tax Section, Department of Motor Vehicles (DMV) report of sales data (ROS data),<sup>4</sup> and auction house purchase data for 2018 and 2019.
4. Upon audit, appellant explained to CDTFA that it did not charge sales tax to its customers; instead, appellant structured deals so that its customers were responsible for paying use tax when registering vehicles with the DMV.<sup>5</sup> CDTFA examined the use tax data, and selecting the third quarter and fourth quarter of 2020 as a sample period, found that the customer-paid use tax only accounted for 26.57 percent of the total tax due for those sales. Based on the ROS data,<sup>6</sup> CDTFA estimated a total sales price of \$1,450,975; after accounting for the 26.57 percent of use tax paid by customers (\$385,522) and reported taxable sales (\$47,355), CDTFA established unreported taxable sales of \$1,018,098. Then, CDTFA compared ROS data to the auction house purchase data. Based on auction house purchases that had corresponding ROS data,

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<sup>3</sup> Appellant claimed deductions for sales for resale of \$72,941, smog certificates of \$2,600, storage of \$4,200, and towing of \$2,000.

<sup>4</sup> California licensed dealers must report retail sales of all used vehicles on the Report of Sale-Used Vehicle form. (DMV's Vehicle Industry Registration Procedures Manual, § 8.000.)

<sup>5</sup> California licensed dealers are responsible for collecting sales tax due on retail sales of vehicles sold by the dealer. (See R&TC, § 6051; DMV's Vehicle Industry Registration Procedures Manual, § 8.005.)

<sup>6</sup> CDTFA adjusted the ROS data to account for out-of-state sales, duplicate transactions, and unwinds. An "unwind" occurs when a vehicle is purchased and operated on a Report of Sale and then returned to the dealer (because credit was unavailable, the customer changed their mind, etc.) prior to completion of the transaction and issuance of the title.

CDTFA calculated a markup<sup>7</sup> of 25.69 percent. CDTFA found that 75 vehicles purchased from the auction house did not match any vehicles in the ROS data. CDTFA obtained additional DMV information (bills of sale or vehicle transfer and reassignment forms) showing that 36 vehicles were sold by appellant and 19 vehicles were sold by a different party or dismantled.<sup>8</sup> CDTFA did not find any records of sale after appellant purchased the vehicles from the auction house for 20 vehicles. For the 36 vehicles sold by appellant, CDTFA estimated the sales price using the recorded sale price and adjusting for any use tax paid by the customer; for the 20 vehicles with no records of sale, CDTFA estimated the sales price by applying the 25.69 percent markup to the auction house purchase price. Because auction house purchase data was only available for 2018 and 2019, CDTFA estimated unreported taxable sales, based on auction house purchase data, for the period January 1, 2020, through August 31, 2021, by using the monthly average of unreported taxable sales for 2018 and 2019. Based on auction house purchase data and the estimated monthly average, CDTFA established unreported taxable sales of \$139,051. In sum, CDTFA determined unreported taxable sales of \$1,157,149 for the liability period (\$1,018,098 based on ROS data + \$139,051 based on auction house purchase data).

5. CDTFA issued the NOD to appellant on May 16, 2022. Appellant timely filed a petition for redetermination disputing the NOD.
6. CDTFA performed a reaudit to expand the test period for its examination of use tax paid by appellant's customers. CDTFA added the first quarter of 2019 to the test period, which increased the percentage of use tax paid by customers from 26.57 percent to 37.07 percent. Consequently, CDTFA reduced the unreported taxable sales based on ROS data by \$152,355, from \$1,018,098 to \$865,743, resulting in total unreported taxable sales of \$1,004,794.
7. CDTFA issued a decision granting the adjustment from the reaudit but otherwise denying appellant's petition for redetermination.
8. Appellant timely filed this appeal.

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<sup>7</sup> "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 \$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 ( $0.30 \div 0.70 = 0.42857$ ).

<sup>8</sup> CDTFA removed these 19 vehicles from the audit.

## 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.*)

Upon audit, appellant did not provide any books or records for examination, and CDTFA could not verify appellant's reported taxable sales for the liability periods. CDTFA established the audited measure of unreported taxable sales based on the ROS data and auction house purchase data. In the context of a used car dealership audit, the use of auction house purchase data and the ROS data showing sales reported to the DMV is reasonable and rational because the data is verifiable and sourced from neutral third parties. The markup method is also a standard and accepted audit procedure for establishing taxable sales. (See *Appeal of Amaya*, 2021-OTA-328P.) CDTFA also adjusted the taxable measure for use tax paid by appellant's customers. Based on the foregoing, CDTFA's determination was reasonable and rational, and the burden is on appellant to prove that further adjustments are warranted.

Appellant asserts that it will provide additional documentation to substantiate further adjustments to the audited measure of unreported taxable sales.<sup>9</sup> However, appellant has not produced any such evidence. Appellant also appears to argue that its customers paid use tax directly to the DMV. However, CDTFA already accounted for use tax paid by appellant's

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<sup>9</sup> In appellant's opening brief to OTA, dated August 9, 2024, appellant states that 90 days from that date would be sufficient time for appellant to obtain this documentation. However, the administrative record shows no further submissions were received..

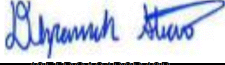
customers and adjusted the taxable measure accordingly. Moreover, as a retailer, appellant is responsible for collecting sales tax reimbursement from its customers. (See R&TC, § 6051.) Accordingly, appellant has failed to meet its burden of proof, and no further adjustments are warranted.

HOLDING


Appellant has not demonstrated that further adjustments are warranted to the measure of unreported taxable sales.


DISPOSITION

CDTFA's action is sustained.

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Steven Kim  
Administrative Law Judge

We concur:

Signed by:  
  
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Suzanne B. Brown  
Administrative Law Judge

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 7/29/2025