

ISSUE³

Whether additional adjustments to the amount of unreported taxable sales are warranted.

FACTUAL FINDINGS

1. Appellant operated a cannabis dispensary business⁴ that sold marijuana flower, and some edibles infused with marijuana. The business was located in Los Angeles, California. Appellant's seller's permit had a start date of September 7, 2016.⁵
2. During the liability period, appellant was open seven days a week with varying hours: Wednesday through Sunday, 7:30 a.m. to 2:00 p.m.; Monday, 7:30 a.m. to 9:00 p.m.; and Tuesday 10:00 a.m. to 1:00 p.m. This averaged out to 17 hours a day.
3. For the liability period, appellant filed sales and use tax returns (SUTRs) reporting a total sales amount of \$16,574 and claiming deductions totaling \$5,368 for sales for resale (\$4,636) and sales tax included in total sales (\$732), which resulted in reported taxable sales of \$11,206. Appellant did not provide any books or records to complete the audit. Due to a lack of records provided for audit, respondent was not able to validate the reporting method used for reported sales on appellant's SUTRs and determined additional investigation was warranted.
4. Appellant did not provide any books or records to respondent to complete the audit. Respondent attempted to obtain books and records to complete the audit, but appellant failed to comply with respondent's attempts. Respondent's efforts to obtain books and records included: phone calls, formal demand letters, IDR letters (information document requests), and a subpoena. All attempts were met unanswered.

³ In this appeal to OTA, appellant has not contested the negligence penalty; therefore, OTA will not further address it.

⁴ The evidentiary record contains no evidence that appellant held a required license with the California Bureau of Cannabis Control (now the Department of Cannabis Control, herein referred to as BCC) to sell cannabis products in this state. (Bus. & Prof. Code, §§ 26012, 26037.5.) In 2021, after the liability period, the Department of Cannabis Control succeeded to, and was vested with, the duties, powers, and jurisdiction of the California Bureau of Cannabis Control. (Bus. & Prof. Code, § 26010.7.)

⁵ OTA notes the date of June 22, 2013, is listed in respondent's Report of Discussion of Audit Findings as the business's start date but this appears to be a typographical error as all other start date references in the documents list September 7, 2016. Additionally, this factual item is not being disputed, therefore, OTA does not discuss this further.

5. Based on the lack of books and records provided by appellant, respondent used the following: Weedmaps⁶ to obtain appellant's price listings;⁷) SUTRs; and observation tests totaling 12 hours of observations. These observation tests were spread over the course of nine months from June 2018 to March 2019 and totaled 5 observation test windows spanning 1 to 4 hours each. The dates and times of the observations are listed below:
- 06/13/18 Wednesday 1:25 p.m. - 2:25 p.m. (one hour)
 - 08/23/18 Thursday 3:00 p.m. - 5:00 p.m. (two hours)
 - 08/28/18 Tuesday 10:08 a.m. - 12:08 p.m. (two hours)
 - 02/25/19 Monday 9:10 a.m. - 12:30 p.m. (less 0:30) (three hours)
 - 03/01/19 Friday 9:45 a.m. - 1:45 p.m. (four hours)

From outside the business location, respondent counted each person entering the business as a purchaser. Based on these five observations, respondent calculated an average of 19.25 customers per hour.

6. Respondent applied the average selling price calculated, \$26.22, from the Weedmaps information to the number of customers per hour, 19.3, and the average hours open per day, 17 hours, to arrive at audited average daily sales of \$8,580.
7. Respondent calculated the days appellant were open during the liability period, for a total of 662, and multiplied that by the average daily sales of \$8,580 to arrive at audited taxable sales for the liability period of \$5,679,960.
8. Respondent compared, for the liability period, the audited taxable sales of \$5,679,960, to the reported taxable sales of \$11,206, to arrive at additional taxable sales of \$5,668,754 for the liability period.
9. On September 27, 2019, respondent timely issued an NOD to appellant.
10. Appellant filed a timely petition for redetermination dated October 11, 2019.
11. Respondent held an appeals conference with appellant on August 17, 2023. Subsequently, respondent issued a Decision on December 11, 2023, in which respondent determined that adjustments to the unreported taxable measure were warranted. In the Decision, respondent ordered a reaudit to reduce the taxable measure

⁶ Weedmaps (www.weedmaps.com) is a website that allows users to search for marijuana dispensaries by location. The website provides information about marijuana dispensaries, such as business location, business hours, menus, pricing, and customer reviews.

⁷ The documentation included with the audit workpapers shows that Weedmaps information was obtained on May 14, 2019.

to compensate for the limited number of observation days and hours, to compensate for the fact that the auditor could not explain how it determined whether a person entering the business made a purchase, and to compensate for the increase in the amount of customers per hour that likely occurred after the legalization of recreation cannabis is January 2018 respondent made the following adjustments: (1) a 35 percent reduction to the average customers per hour for the period September 17, 2017, through December 31, 2016; (2) a 30 percent reduction for January 1, 2017, through December 31, 2017; (3) and a 10 percent reduction for the period January 1, 2018 through June 30, 2018.

12. Based on the changes ordered in the Decision, respondent completed a reaudit to implement the adjustments. This resulted in a reduction in taxable measure of \$1,505,746, from \$5,668,754 to \$4,163,008, which reduced the tax by \$137,640, from \$519,959 to \$382,319.
13. Appellant timely appealed respondent's Decision to OTA.
14. While preparing for this appeal, respondent noted that there were some calculation errors in the reaudit. Respondent completed a second reaudit to correct those noted errors. The second reaudit resulted in further reducing the additional taxable sales by \$93,554, from \$4,163,008 to \$4,069,454, which reduced the tax from \$382,319 to \$373,858.

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 respondent is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, respondent 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, respondent has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once respondent has met its initial burden, the burden of proof shifts to the taxpayer to

establish that a result differing from respondent's determination is warranted. (*Ibid.*) That means that the taxpayer must prove both: (1) the tax assessment is incorrect, and (2) the correct amount of the tax. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Talavera*, *supra.*)

Here, appellant failed to maintain or provide any records to support reported amounts, as required by law. (R&TC, §§ 7053, 7054; Cal. Code Regs. tit. 18, § 1698(b)(1).) In the absence of supporting documentation from appellant, respondent computed an estimated liability based on three factors: (1) an estimated average purchase amount per patron based on respondent's experience with comparable businesses and information obtained via Weedmaps; (2) an estimated number of patrons per hour based on respondent's observations of appellant's business; and (3) the number of hours the business operated based on information provided to or obtained by respondent. In a different appeal involving a cannabis dispensary that failed to maintain or provide adequate records, OTA previously concluded that the above approach (three-factor method) was reasonable and rational. (*Appeal of AMG Care Collective*, *supra.*) As such, OTA finds that using this three-factor method to estimate taxable sales (based on patrons observed per hour, an average estimated selling price, and hours of operation) is a reasonable and rational method for purposes of meeting respondent's initial burden to establish underreported taxable sales by the cannabis dispensary in absence of available records.

The Observation Test

Appellant argues that the observation test, totaling 12 hours, is not representative of appellant's business and as a result, the audited taxable sales are overstated. Respondent conducted the observation because appellant failed to provide books and records despite respondent's numerous attempts to obtain the records. In light of these circumstances, respondent's decision to observe the business from outside, counting the number of patrons entering the dispensary, was reasonable. (*Appeal of AMG Care Collective*, *supra.*) However, respondent's observations require additional scrutiny as they totaled only 12 hours and did not cover all of appellant's business hours.

Appellant's business was open 119 hours per week, for an average of 17 hours per day. Respondent's observation test consisted of only 12 hours in observation testing, which is 10.08 percent⁸ of total open hours per week. However, there is no evidence in the record that indicates that customer traffic would have been unusually high during the observation testing times listed above. Further, OTA notes that these observations occurred over a 9-month period,

⁸ 12 hours in observation testing ÷ 119 hours business was open per week = 10.08 percent.

June 2018 through March 2019, and that the observations occurred during the week, and none were conducted on weekends or in the evenings which would generally be expected to have higher patron traffic.

Furthermore, respondent has made total adjustments of 35 percent to the 2016 period, 30 percent to the 2017 period and 20 percent to the 2018 to account for any deficiencies in the observation test. This is despite the fact that appellant has not provided any documentation for the audit. Respondent's adjustments specifically adjusted the entire liability by 10 percent to address the deficiency in the number of observations days, plus an additional 10 percent to account for non-purchasers (those patrons who entered but did not make a purchase), and made additional adjustment for the 2016 and 2017 periods, of 15 percent and 10 percent respectively, to account for the lower patron volume prior to the legalization of the sale and use of recreational marijuana. In summary, respondent's Decision ordered a total of 35 percent reduction to 2016 periods, a 30 percent reduction to 2017 periods, and a 20 percent reduction to 2018 periods. These adjustments directly address appellant's contention that the observation tests were insufficient. In addition, respondent made allowances for appellant's contentions regarding patron volume and purchasers versus non-purchasers. Additionally, appellant has provided no specific documentation on the number of patrons per hour that did not make a purchase. OTA finds that the allowances respondent made to account for the limited number of observation days and for patrons who did not make purchases are reasonable and rational. Therefore, in absence of supporting documentation, there is no basis to provide a greater allowance.

HOLDING

No further adjustments to the amount of unreported taxable sales.

DISPOSITION

Respondent's actions are sustained.

Signed by:
Natasha Ralston
25F8FE08FF56478...

Natasha Ralston
Administrative Law Judge

We concur:

Signed by:
Suzanne B. Brown
47E45ABE89E34D0

Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
K Long
DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

Date Issued: 9/23/2025