

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No.: 231215021
BRUNDO, INC.)	CDTFA Case ID: 2-479-061
dba Brundo Market)	
)	
)	
)	

OPINION

Representing the Parties:

For Appellant:	Mitchell Stradford, Representative
For Respondent:	Pamela Bergin, Assistant Chief Counsel Mari Guzman, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, Brundo, Inc., dba Brundo Market (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)¹ denying appellant’s claim for refund for the period October 1, 2016, through December 31, 2018.

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).

ISSUE

Whether appellant is entitled to a refund or credit.

FACTUAL FINDINGS

1. Appellant, a California corporation, owns and operates an Ethiopian spice and cooking accessory store, as well as an e-commerce shop, in Oakland, California.

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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, “respondent” shall refer to the board.

2. Appellant's storefront is located next door to Café Colucci, Inc., dba Café Colucci,² an Ethiopian restaurant and appellant's related entity.
3. During the liability period, appellant reported taxable sales of \$424,584 on its sales and use tax returns (SUTRs).
4. Subsequently, appellant filed a timely claim for refund asserting that it erroneously reported taxable sales made by Café Colucci on its SUTRs for the fourth quarter of 2016 (4Q16) through 4Q18. Appellant's worksheets show that appellant's reported taxable sales ranged from \$25,039 to \$73,229 per quarter from 4Q16 to 4Q18, whereas its reported taxable sales were \$6,270 and \$4,589 for 1Q19 and 2Q19, respectively.
5. In support of its claim for refund, appellant submitted sample summary point-of-sale (POS)³ reports.
6. In January and February 2020, respondent sent appellant requests for information and documentation for a sales and use tax audit. On October 7, 2020, respondent issued a No Opinion Warranted letter, stating that no further review was necessary.
7. On April 15, 2021, respondent denied appellant's claim for refund.
8. Appellant requested an appeals conference with respondent. Respondent issued a Decision on June 20, 2023, denying appellant's claim for refund.
9. Appellant filed a request for reconsideration. Subsequently, respondent issued a Supplemental Decision continuing to deny appellant's claim for refund.
10. This timely appeal followed.
11. In response to OTA's additional briefing request for source documentation supporting its reported taxable sales, appellant stated that it was unable to retrieve any POS data, sales invoices, contracts, and cash register z-tapes,⁴ and no longer had access to its Form 1099-K data⁵ or merchant statements.

² Café Colucci filed a separate appeal with OTA.

³ A POS system typically includes one or more terminals, which are the modern equivalent of a cash register. Depending on the equipment and software, POS systems can generate reports that summarize sales activity for the period of time selected by the operator. These reports can include breakdowns of sales by type and amount, including product or service, credit or cash, and taxable or nontaxable. The sample POS records appellant provided do not contain a breakdown of the claimed overreported sales.

⁴ A cash register z-tape is a portion of the cash register tape that summarizes sales by category for a certain time period (e.g., a day or a shift).

⁵ 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

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).)

A taxpayer who claims a refund bears the burden of establishing its entitlement thereto. (*Honeywell, Inc. v. State Bd. of Equalization* (1982) 128 Cal.App.3d 739, 744-745.) Generally, the appellant bears the burden of proof as to all issues of fact. (Cal. Code Regs., tit., 18, § 30219(a).) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Talavera*, 2020-OTA-022P.) If respondent determines that any amount has been erroneously collected, it shall credit the excess amount collected or paid on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid, and the balance shall be refunded to the person, or his or her successors. (R&TC, § 6901(a).)

In support of its claim that it erroneously reported Café Colucci's taxable sales on its returns for 4Q16 through 4Q18, appellant relies on worksheets it prepared comparing Café Colucci's reported taxable sales with appellant's reported taxable sales for the same period. Specifically, appellant claims that from 4Q16 through 2Q19, Café Colucci reported \$1,853,462 in taxable sales, whereas appellant reported \$435,443 in taxable sales. Appellant's worksheets show that appellant's reported taxable sales ranged from \$25,039 to \$73,229 (averaging \$47,716) per quarter from 4Q16 to 4Q18, whereas its reported taxable sales were \$6,270 and \$4,589 for 1Q19 and 2Q19, respectively. According to appellant, the reported taxable sales from 1Q19 and 2Q19 averaging \$5,430 ($[\$6,270 + \$4,589] \div 2$) accurately reflect

third-party network. Form 1099-K includes payments made by electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

its true quarterly sales, and hence the average discrepancy between the \$47,716 and \$5,430 represents the portion of taxable sales that belongs to Café Colucci.

Despite appellant's claim that it overreported its taxable sales by including sales that belonged to Café Colucci, it has not provided substantiation for its claim. Appellant has only provided schedules and worksheets using its own reported taxable sales; notably, no audited taxable sales are available. Appellant admitted it is unable to provide any supporting source documentation such as complete POS data, sales invoices, cash register z-tapes, Form 1099-K data, or merchant statements. Without source documentation, appellant's reported taxable sales cannot be verified and its claimed overpayment cannot be ascertained. With only self-prepared schedules and worksheets, appellant has not met its burden of showing that it is more likely than not that it overpaid by a taxable measure of \$375,713.

As for appellant's claim that its reported taxable sales for 1Q19 and 2Q19 are more accurate than the audited understatement because respondent issued a No Opinion Warranted letter, this argument is misplaced. Respondent's letter specifically stated that "the auditor may not have examined all of your transactions and there may be transactions that you are not reporting correctly." Respondent's decision to not to perform a full audit does not necessarily mean that appellant's reported taxable sales are accurate. Because no full audit was performed for either period, and appellant has not provided any source documentation in support of what its correct taxable sales should be (i.e., \$5,430 per quarter as appellant claims), the record before OTA is insufficient to enable OTA to find that appellant's reported taxable sales for 4Q16 through 4Q18 are overstated. Therefore, appellant has not established that it is more likely than not entitled to a refund or credit.

HOLDING

Appellant has not established that it is entitled to a refund or credit.

DISPOSITION

Respondent's action denying appellant's claim for refund is sustained.

Signed by:

Natasha Ralston

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Natasha Ralston

Administrative Law Judge

We concur:

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

Steven Kim

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Steven Kim
Administrative Law Judge

Date Issued: 10/29/2025