

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
CAFE COLUCCI, INC.,
dba Café Colucci

) OTA Case No.: 240415942
) CDTFA Case IDs: 1-694-669; 2-199-200
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OPINION

Representing the Parties:

For Appellant: Mitchell Stradford, Attorney

For Respondent: Jason Parker, Chief of Headquarters Ops.

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Cafe Colucci, Inc., dba Cafe Colucci (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)¹ denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on June 19, 2020. The NOD is for tax of \$142,784, plus applicable interest, and a negligence penalty of \$14,278.36 for the period January 1, 2016, through September 30, 2019 (liability period). Subsequently, appellant provided additional information and respondent performed a reaudit which reduced the unreported taxable sales by \$241,937, from \$356,477 as determined, to \$114,540 for the period of January 1, 2019, through September 30, 2019.

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 credit for alleged overpayments of tax made by a related entity.²

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 does not dispute the reaudit findings. The related entity, Brundo, Inc., filed a separate appeal with OTA.

FACTUAL FINDINGS

1. Appellant, a California corporation, owns and operates an Ethiopian restaurant located in Oakland, California. Appellant's seller's permit indicated that it had a sublocation store next door, which sold Ethiopian spices, herbs, and cooking accessories. However, respondent discovered that the store next door was operated by a different business entity, Brundo, Inc., dba Brundo Market (Brundo). Brundo obtained a seller's permit effective January 1, 2016.
2. Respondent conducted an audit of appellant for the period January 1, 2016, through September 30, 2019.
3. On June 19, 2020, respondent issued an NOD to appellant based on the audit finding unreported taxable sales. Appellant filed a petition for redetermination disputing the NOD. Respondent held an appeals conference with appellant on September 12, 2023.
4. Subsequent to the appeals conference, respondent obtained Form 1099-K³ data for the period January 1, 2019, through September 30, 2019. Based on this information, respondent proposed to reduce the unreported taxable sales by \$241,937.
5. Appellant conceded to respondent's proposed adjustments and confirmed that there were no further disputes over the audited measure or the resulting tax, interest, and penalty.
6. Thereafter, respondent issued a Decision ordering a reaudit to reduce the unreported taxable sales by \$241,937 but otherwise denying appellant's petition for redetermination.
7. On April 19, 2024, appellant filed the instant 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).)

³ 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 third party network, during a given time period. Form 1099-K includes payments made by any electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

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.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) When respondent determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, respondent shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. (R&TC, § 6901(a).) The excess amount collected or paid shall be credited 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, administrators, or executors. (*Ibid.*)

Here, appellant does not dispute the audited measure. Instead, appellant contends that some of its taxable sales made during the liability period were erroneously reported on Brundo's sales and use tax returns. Therefore, appellant argues that it should receive a credit for overpayments made by Brundo. However, appellant's argument fails because appellant is not, nor does appellant claim to be, the person from whom the excess amount was collected or by whom it was paid. Although appellant may be an entity related to Brundo, appellant does not purport to be, nor does the evidence show, that it is Brundo's successor, administrator, or executor. Any refund or credit is to be given to the person who made the overpayment, or his or her successor, administrator, or executor. (R&TC, § 6901(a).) Hence, appellant is not entitled to a credit for any overpayments made by Brundo.

HOLDING

Appellant is not entitled to a credit for alleged overpayments of tax made by a related entity.

DISPOSITION

Respondent's action reducing unreported taxable sales by \$241,937 for the liability period but otherwise denying appellant's petition for redetermination 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