

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No.: 230513410
I. ALWAREETH,)	CDTFA Case ID: 163-057
dba Auto Salvage Plus)	
)	
)	
)	

OPINION

Representing the Parties:

For Appellant:	I. Alwareeth
For Respondent:	Jennifer Barry, Attorney Jarrett Noble, Attorney Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, I. Alwareeth, dba Auto Salvage Plus (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)¹ denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on July 20, 2017. The NOD holds appellant derivatively liable for the following liabilities of Auto Salvage Plus, LLC (ASP) for the period January 1, 2013, through December 31, 2015 (liability period):² tax of \$62,307.15 plus applicable interest, and a penalty of \$6,230.72.³ Prior to this appeal, CDTFA performed a reaudit, which reduced the tax liability by \$19,315, from \$62,307 to \$42,992.15. This also reduced accrued interest and the penalty amount.⁴

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 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.

² CDTFA concedes that the NOD was not timely with respect to the first quarter of 2013 (1Q13) through 1Q14. There is no dispute that the NOD was timely with respect to the remaining liability period.

³ The NOD included a finality penalty of \$6,230.72, which CDTFA imposed on ASP pursuant to R&TC section 6565 because ASP failed to pay the audit liability or file a timely petition for redetermination prior to ASP’s liability becoming final.

⁴ CDTFA now agrees to relieve the finality penalty conditioned on appellant paying any liability owed within 30 days of the conclusion of this appeal.

Office of Tax Appeals (OTA) Panel Members Keith T. Long, Suzanne B. Brown, and Sara A. Hosey held an oral hearing for this matter in Fresno, California, on April 22, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant is liable for ASP's unpaid liability as its predecessor for the period April 1, 2014, through December 31, 2015.
2. If so, whether reductions to ASP's audit liability are warranted.

FACTUAL FINDINGS

1. Appellant, a sole proprietor, operated an automotive and electronics business in various California locations. Appellant completed an application for a seller's permit as a sole proprietor, and CDTFA issued appellant's seller's permit effective December 8, 2006. On the seller's permit application, appellant listed the business name as Hash Global.⁵
2. In a September 15, 2010 fax, appellant stated, "My name is [appellant], the owner of hashglobal [sic]. I hereby authorize, my wife, [A.] Mohamed to close the account for this business name and open an account for our new company, Auto Salvage Plus." There is no indication that appellant's spouse ever contacted CDTFA to close the seller's permit. However, CDTFA changed the sole proprietorship's dba from Hash Global to Auto Salvage Plus, with the same seller's permit number.
3. On May 4, 2012, appellant filed a Limited Liability Company (LLC) Articles of Organization with the Secretary of State (SOS), forming ASP, an LLC. Subsequently, appellant filed statements of information identifying himself as an owner and the business's CEO. As of April 19, 2016, SOS information listed appellant as ASP's sole member.
4. ASP operated various businesses. As relevant to the liability period, ASP's businesses include a used car dealership doing business as Westcoast Auto Center and a tire store doing business as Westcoast Tires in Fresno, California, as well as a gas station with convenience store doing business as Merced Truck Stop in Merced, California.
5. During the liability period, ASP filed sales and use tax returns using appellant's seller's permit. On the returns, ASP reported total sales of \$5,310,116 and claimed deductions

⁵ The seller's permit lists appellant's dba as "Hash Global," but other documents, including a Fictitious Business Name Statement filed with the County Clerk of Fresno County and a Business License Certificate Issued by the City of Clovis, identify the business as Auto Salvage Plus.

- for nontaxable sales of \$2,704,293, which resulted in reported taxable sales of \$2,605,823. ASP claimed the following deductions: nontaxable sales for resale of \$2,536,404; nontaxable labor sales of \$149,766; and bad debt losses of \$18,123.
6. Notes included in CDTFA's audit assignment activity history on April 14, 2016, state that on that date, CDTFA became aware of the business's reorganization from a sole proprietorship to an LLC. Thereafter, CDTFA closed appellant's seller's permit and ASP obtained its own seller's permit.
 7. Upon audit, ASP provided sales worksheets, point of sale reports, Department of Motor Vehicles (DMV) reports of sale, and various purchase invoices. CDTFA also contacted ASP's fuel vendors and obtained tax prepayment data for gasoline and diesel fuel, as well as the DMV to obtain customer registration data.
 8. CDTFA obtained customer registration data from the DMV for vehicles sold by ASP during the liability period; that data disclosed taxable sales of \$2,231,641. CDTFA then scheduled taxable vehicle sales totaling \$1,771,947 that ASP recorded in its sales summaries. CDTFA subtracted ASP's recorded vehicle sales and the disallowed bad debt deduction of \$18,123 from audited taxable sales of \$2,231,641 to calculate unreported taxable vehicle sales of \$441,571 (audit item 1).
 9. During the audit, appellant argued that 16 of the vehicles included in audit item 1 were nontaxable sales for resale to Sharp Cars or Clovis Wholesale. The audit workpapers indicate that CDTFA attempted to verify this contention and found the following: DMV report of sale data listed appellant as the seller of each vehicle; Sharp Cars had terminated operations and could not be contacted; and Clovis Auto Trader denied purchasing vehicles from ASP. Because CDTFA could not verify appellant's contention, no allowance for nontaxable sales for resale was allowed.
 10. CDTFA reviewed the available books and records and found no support for the claimed bad debt deduction of \$18,123. Therefore, CDTFA disallowed the bad debt deduction in full (audit item 2).
 11. CDTFA reviewed ASP's sales and use tax returns for the first quarter of 2014 (1Q14) through 3Q14 and found that ASP did not report district tax on its sales in Fresno of \$920,490. Thus, CDTFA assessed district tax based on the unreported sales of \$920,490 (audit item 3).
 12. CDTFA used ASP's sales summaries to schedule ASP's tire and wheel sales and found that ASP inadvertently reported as taxable sales of tires and wheels, which were in fact

- nontaxable sales to other retailers, in the amount of \$142,741. Therefore, CDTFA established a credit of \$142,741 (audit item 4).
13. CDTFA compared ASP's sales summaries to ASP's sales and use tax returns and found that ASP failed to report recorded taxable sales of goods from the convenience store in the amount of \$99,710 for 2014 (audit item 5).
 14. CDTFA compared the sales of gasoline recorded in ASP's sales summaries to the sales recorded in ASP's fuel vendor data and found immaterial differences. ASP's vendor data showed that ASP prepaid tax to its vendors in the amount of \$7,279 during the period 4Q13 through 4Q14. CDTFA divided the prepayment amount by the applicable prepaid sales tax rate of \$0.07 per gallon for each quarter of 3Q13 through 4Q14 to calculate gasoline purchases of 106,422 gallons. CDTFA then applied the average retail price of gasoline from each quarter, less a one-tenth-cent price adjustment and the sales tax rate, to compute audited taxable gasoline sales of \$410,553. Because ASP did not report taxable gasoline sales, CDTFA calculated unreported taxable gasoline sales of \$410,553 (audit item 6).
 15. CDTFA compared the sales of diesel fuel recorded in ASP's sales summaries to the sales recorded in ASP's fuel vendor data and found immaterial differences. ASP's vendor data showed that ASP prepaid tax to its vendors in the amount of \$120,142 during the period 4Q13 through 4Q14. CDTFA divided the prepayment amount by the applicable prepaid sales tax rate of \$0.29 per gallon to calculate diesel purchases of 432,767 gallons. CDTFA then applied the average retail price of diesel from each quarter less a one-tenth-cent price adjustment and the sales tax rate to compute audited taxable diesel sales of \$1,501,164. Because ASP did not report taxable diesel fuel sales, CDTFA calculated unreported taxable diesel sales of \$1,501,164 (audit item 7).
 16. CDTFA then generated a credit for ASP of \$127,421 for the sales tax prepaid to its fuel vendors (audit item 8).
 17. On July 17, 2017, CDTFA issued the aforementioned NOD, holding appellant derivatively liable for ASP's liabilities as its predecessor. Appellant filed a timely petition for redetermination disputing the liability. CDTFA issued a decision finding that the NOD was not timely with respect to 1Q13 through 1Q14 and deleting appellant's derivative liability for these five quarters. Based on this, CDTFA ordered a reaudit to delete appellant's derivative liability for the period 1Q13 through 1Q14. Otherwise, CDTFA denied the petition for redetermination.

18. By letter dated May 8, 2023, CDTFA indicated that it performed a reaudit to exclude ASP's tax liability for the period 1Q13 through 1Q14.⁶
19. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant is liable for ASP's unpaid liability as its predecessor for the period April 1, 2014, through December 31, 2015.

Every person desiring to conduct business as a seller within this state must file an application for a seller's permit for each place of business. (R&TC, § 6066(a).) A seller's permit may be held only by persons actively engaged in the business of selling tangible personal property within this state, and any person not so engaged must surrender his or her permit to CDTFA for cancellation. (R&TC, § 6072; Cal. Code Regs. tit. 18, § 1699(f), (f)(1).) The permitholder has the burden of establishing that CDTFA received notice to cancel the permit. (Cal. Code Regs., tit. 18, § 1699(f)(2).)

A permitholder who fails to surrender its seller's permit upon transfer of the business is liable for any tax, interest, and penalty incurred by the transferee if the permitholder has actual or constructive knowledge that the transferee is using the permit in any manner, including filing sales and use tax returns under the permit number. (*Appeal of Pasatiempo Investments, Ltd.*, 2020-OTA-069P; R&TC, § 6071.1; Cal. Code Regs., tit. 18, § 1699(f)(2).) A predecessor's liability is limited to the quarter in which the business is transferred and the three subsequent quarters, unless, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor. (R&TC, § 6071.1(b); Cal. Code Regs., tit. 18, § 1699(f)(3).)

Here, there is no dispute that appellant opened the business as a sole proprietor and later reorganized, transferring the business to ASP, which appellant owned. There is also no dispute that ASP filed sales and use tax returns under appellant's seller's permit during the liability period.

On appeal, appellant asserts that he notified CDTFA of the business's conversion to an LLC beginning on March 18, 2015. However, appellant's contention conflicts with the administrative record. For example, the available evidence shows that in a September 15, 2010 fax to CDTFA, appellant authorized his spouse "to close the account for this business name and

⁶ During the audit and on appeal, appellant argued that he made nontaxable sales for resale of 16 vehicles. As relevant here, and as part of this reduction, CDTFA removed ASP's audited sales tax liability for the sale of 13 vehicles, which occurred during the period 1Q13 through 1Q14. Thus, these 13 vehicles are not at issue and OTA only addresses arguments with respect to the remaining 3 vehicles.

open an account for our new company, Auto Salvage Plus.” There is no indication in the fax that appellant formed an LLC as of 2010. There is also nothing in the record to show that appellant, or appellant’s spouse, actually closed appellant’s seller’s permit. Next, information obtained from the SOS indicates that appellant filed an LLC Articles of Organization forming ASP in May of 2012. There is no evidence that ASP applied for a seller’s permit or otherwise notified CDTFA of ASP’s formation during 2012. Indeed, there is no evidence that appellant informed CDTFA of ASP’s existence until the audit commenced in 2016. Thus, without further evidence, OTA cannot conclude that appellant informed CDTFA of the business’s conversion from a sole proprietorship to an LLC until at least April 14, 2016, when the audit commenced. Accordingly, OTA finds that appellant (the permitholder) has not established that CDTFA received notice to cancel his permit prior to the liability period.

Finally, at the time appellant transferred the business to ASP, appellant was ASP’s CEO and sole member, and managed ASP’s day-to-day operations. As such, OTA finds that appellant had actual and constructive knowledge that ASP was using his seller’s permit to file sales and use tax returns during the liability period, and that at the time of transfer, 80 percent or more of the real or ultimate ownership of the business remained with appellant, the predecessor. Therefore, OTA finds that the limitation on predecessor liability set forth in R&TC section 6071.1(a) does not apply here.

Based on the foregoing, OTA concludes that appellant is liable as a predecessor for ASP’s unpaid liability.

Issue 2: Whether reductions to ASP’s audit liability are warranted.

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.*)

For the audit, CDTFA used DMV records, as well as ASP's sales and use tax returns, sales summaries, and vendor data to calculate the taxable measure and found a deficiency based on the following: unreported taxable vehicle sales; disallowed claimed bad debt deductions; unreported Fresno district taxes; unreported convenience store sales; and unreported taxable sales of gasoline and diesel fuel. CDTFA also established a credit for nontaxable sales ASP reported as taxable sales. On appeal, appellant disputes the measure of unreported taxable vehicle sales, disallowed claimed bad debt deductions, and unreported taxable gasoline and diesel fuel sales.⁷ Each of these audit items is discussed below.

Audit Item 1: Unreported Taxable Vehicle Sales

To establish audit item 1, CDTFA compared sales records obtained from the DMV to the taxable sales recorded in ASP's sales summaries and found a difference of \$441,571. The use of DMV records to verify taxable sales is a recognized and accepted audit method. (See CDTFA's Audit Manual §§ 0606.10, 0607.15).⁸ During the audit, appellant argued that 16 vehicles included in the taxable measure were nontaxable sales for resale to either Sharp Cars or Clovis Auto Trader. However, appellant's claims could not be verified and the only available evidence (the DMV reports of sale) indicated that appellant sold the vehicles in question. Thus, it was reasonable for CDTFA to determine that appellant failed to report all of its taxable vehicle sales. Accordingly, the burden shifts to appellant to show that a reduction to the taxable measure is warranted.

On appeal, appellant continues to assert that ASP made nontaxable sales for resale. As noted above, OTA performed a reaudit, which removed 13 of the 16 disputed vehicles from ASP's liability. As to the remaining three vehicles, the burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless that seller timely and in good faith takes from the purchaser a certificate to the effect that the property is

⁷ On appeal, appellant has not raised any argument with respect to unreported Fresno district tax or unreported convenience store sales. Thus, these audit items are not in dispute and OTA will not discuss them further. Additionally, appellant states that he is unsure whether he received the credit for nontaxable sales reported as taxable sales. However, the record clearly indicates that CDTFA calculated and applied the credit, which reduced the deficiency measure.

⁸ According to its cover page, CDTFA's Audit Manual "is an advisory publication providing direction to CDTFA staff administering the Sales and Use Tax Law and Regulations."

purchased for resale (a resale certificate). (R&TC, §§ 6091, 6092; Cal. Code Regs., tit. 18, § 1668(a).) Despite appellant's contentions, appellant has not provided resale certificates or any other evidence to show that ASP made nontaxable sales for resale. Accordingly, appellant has not met his burden of proof.

Audit Item 2: Disallowed Bad Debt Deductions

During the audit, CDTFA found that appellant claimed bad debt deductions of \$18,123, which were not supported by documentation. As such, CDTFA disallowed the claimed deductions. On appeal, appellant asserts that it is entitled to bad debt deductions for cancelled sales.

The taxpayer bears the burden of establishing its entitlement to any claimed deduction or exemption. (*Appeal of Owens-Brockway Glass Container, Inc.*, 2019-OTA-158P.) A retailer is relieved from liability for the sales tax insofar as the measure of tax is represented by accounts found worthless and charged off for income tax purposes. (R&TC, § 6055(a); Cal. Code Regs., tit. 18, § 1642(a).) If the amount of an account found to be worthless and charged off is comprised in part of nontaxable receipts such as interest, insurance, repair, or installation labor and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only with respect to the unpaid amount upon which tax has been paid. (Cal. Code Regs., tit. 18, § 1642(b)(1).)

To support bad debts, retailers must maintain adequate records showing: (1) date of original sale; (2) the name and address of the purchaser; (3) the amount the purchaser contracted to pay; (4) the amount on which the retailer paid tax; (5) the jurisdiction where the local tax, and, when applicable, district taxes, were allocated; (6) all payments or other credits applied to the account of the purchaser; (7) evidence that the uncollectible portion of gross receipts on which tax was paid actually has been legally charged off as a bad debt for income tax purposes; and (8) the taxable percentage of the amount charged off as a bad debt properly allocable to the amount on which the retailer reported and paid tax. (Cal. Code Regs., tit. 18, § 1642(e).)

Here, appellant asserts that he is entitled to the claimed bad debt deductions. Appellant asserts that he provided documentation to CDTFA during the audit, which he contends was ignored. By comparison, CDTFA's audit workpapers indicate that appellant failed to provide supporting documentation. Nevertheless, appellant has not provided any evidence to OTA in support of a claimed bad debt deduction. Therefore, appellant has not met his burden of proof.

Audit Items 6 and 7 and 8: Unreported Taxable Sales of Gasoline and Diesel Fuel

Upon audit, CDTFA compared ASP's sales summaries to the fuel vendor data and found immaterial differences. However, appellant did not report taxable sales of gasoline and diesel fuel on his sales and use tax returns. To calculate the taxable measure, CDTFA reviewed the fuel vendor data and found that ASP made prepayments of tax on fuel purchases. CDTFA multiplied the prepayments of tax on fuel by the applicable tax rate to compute the number of gallons sold by appellant, which when multiplied by the average statewide selling price, less adjustments, resulted in the taxable measure. CDTFA then generated a credit for ASP's prepayments of tax, which reduced ASP's total tax liability. CDTFA's use of the fuel vendor data is rational, and the result is reasonable. Accordingly, the burden shifts to appellant to show that additional adjustments are warranted.

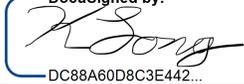
On appeal, appellant disputes the measure of unreported taxable sales of gasoline and diesel fuel. Appellant contends that a third party was collecting sales tax on ASP's behalf. However, as discussed above, the audit establishes a credit for prepayments made to the vendor. Appellant has not provided evidence that an additional credit is warranted. Accordingly, appellant has not met his burden of proof.

HOLDINGS

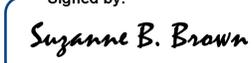
1. Appellant is liable for ASP’s unpaid liability as its predecessor for the period April 1, 2014, through December 31, 2015.
2. Reductions to ASP’s audit liability are not warranted.

DISPOSITION

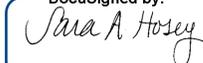
CDTFA’s action reducing the taxable measure to remove the period 1Q13 through 1Q14 due to the expiration of the statute of limitations but otherwise denying the petition for redetermination is sustained.

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 Keith T. Long
 Administrative Law Judge

We concur:
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 Suzanne B. Brown
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 6/12/2025