

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

In the Matter of the Appeal of: <b>SAII ENTERPRISES, LLC,</b> <b>dba Best Motors<sup>1</sup></b>	) ) ) ) )	OTA Case No.: 231014525 CDTFA Case ID: 3-526-635
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**OPINION**

Representing the Parties:

For Appellant:	Harpoonam Aulakh, Representative Bipin Kumar, Member
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For Respondent:	Jason Parker, Chief of Headquarters Ops. Nalan Samarawickrema, Hearing Representative Christopher Brooks, Attorney
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K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 6561, SAII Enterprises, LLC, dba Best Motors (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>2</sup> denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on January 13, 2022. The NOD is for tax of \$213,405, plus applicable interest, for the period February 2, 2016, through December 31, 2018 (liability period).<sup>3</sup>

Office of Tax Appeals (OTA) Panel Members Kim Wilson, Natasha Ralston, and Michael F. Geary held an oral hearing for this matter in Sacramento, California on July 22, 2025.

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<sup>1</sup> Appellant also operated a second location dba “Big Tires Company” and a third location dba “Glass 2 U / BK Recycling.” Only the dba for the first location “Best Motors” was identified on CDTFA’s Decision.

<sup>2</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>3</sup> The NOD was timely issued because on August 4, 2021, appellant signed the most recent in a series of waivers of the otherwise applicable three-year statute of limitations for the period February 2, 2016, through September 30, 2018, which allowed CDTFA until January 31, 2022, to issue an NOD. (R&TC, §§ 6487(a), 6488.) The NOD was also timely for the period October 1, 2018, through December 31, 2018, since it was issued before the statute of limitations expired for this period.

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, (Regulation) section 30209(b).

### ISSUE

Whether adjustments to the determination are warranted.

### FACTUAL FINDINGS

1. Appellant, a limited liability company, operated three businesses in Sacramento, California. Appellant held a seller's permit from February 2, 2016, through March 31, 2022. Best Motors operated as a used car dealership. Big Tires was a retailer of new and used tires and wheels, which also provided repair and installation services, smog checks, and maintenance services. Glass 2U provided window replacement, repair and installation services.
2. During the liability period, appellant reported on its Sales and Use Tax returns (SUTRs), gross sales of \$1,401,026, fixture and equipment sales of \$30,000, claimed deductions of \$857,055<sup>4</sup> resulting in reported taxable transactions of \$573,971.<sup>5</sup> Appellant's method for determining the sales amounts reported on its SUTRs was unknown. However, appellant stated that it obtained "demand of title"<sup>6</sup> requests from its customers of vehicles whereby the customer declared that payment of fees and the use tax would be made directly to the Department of Motor Vehicles (DMV) when the customer registered

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<sup>4</sup> Appellant claimed deductions of \$440,232 for nontaxable labor, \$1,507 for nontaxable tire disposal fees, and \$415,316 for demand of title sales.

<sup>5</sup> These amounts reflect reported sales and claimed deductions from amended SUTRs for 1Q17 and 2Q17. Taxable transactions include taxable sales and the sales of fixtures (\$543,971 + \$30,000).

<sup>6</sup> A "demand of title" is when a purchaser demands title for a vehicle which has been purchased free of any liens or encumbrances, the dealer is required to complete a used vehicle report of sale (ROS) in the usual manner. The used vehicle ROS number is entered on the back of the Certificate of Title and title is delivered to the purchaser including a smog certification, if applicable. In such "demand title" transactions, the dealer is required to obtain a Statement of Facts, REG-256, from the purchaser confirming their demand for and receipt of title indicating the reason for the demand. Most often the reasons given are "will be registered out-of-state" or "wish to personally take care of the transfer." In either case, delivery of vehicle in California will generally make this a taxable transaction for the dealer. The dealer is still considered the retailer of the vehicle and responsible for the sales tax, regardless of a "demand title" clause. (See R&TC, § 6203; CDTFA Audit Manual § 0607.32.) While CDTFA's audit and procedure manuals provide relevant information to the public and OTA may look to them for guidance, they are not law and do not have the force or effect of law. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

- the vehicle. Appellant either excluded its sales of vehicles from the SUTRs or reported the sales of vehicles and claimed an equivalent amount as a deduction.
3. For audit, appellant provided federal income tax returns (FITRs) for calendar years 2016 and 2017; deal jackets<sup>7</sup> for Best Motors for September 27, 2018, through October 13, 2018; bank statements for Best Motors for the liability period; bank statements for Big Tires for April 1, 2016, through December 31, 2017; and sales reports and invoice details for Big Tires for first quarter 2016 (1Q16), 3Q16 (except July 2016), and 4Q16.
  4. CDTFA compared total sales reported on SUTRs for 2016 and 2017 with gross receipts on FITRs noting gross receipts exceeded total sales by \$544,532 in 2016 and \$63,491 in 2017. CDTFA also calculated the markup factors<sup>8</sup> for each year resulting in 1.7425 for 2016, 1.7724 for 2017, and 1.7563 for the two years combined. CDTFA considered these markup factors to be reasonable.
  5. CDTFA obtained DMV electronic Report of Sales (ROS) data<sup>9</sup> and auction house data for Best Motors for the liability period. Using the DMV ROS data and auction house data, CDTFA computed vehicle sales of \$556,287 for 2016, \$493,794 for 2017, and \$558,070 for 2018.
  6. To verify if use tax was paid to DMV by appellant's customers, CDTFA obtained DMV use tax payment data from its Consumer Use Tax Section (CUTS) for Best Motors' 2017 sales. Using the DMV use tax payment data, CDTFA compiled taxable vehicle sales of \$129,700 where the purchaser paid use tax to DMV, taxable vehicle sales of \$262,501 where the purchaser did not pay the use tax to DMV, and nontaxable sales for resale of

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<sup>7</sup> Deal jackets are routinely used by car dealers, and each deal jacket contains the various documents related to the sale, including but not limited to the vehicle sales contract, DMV report of sale, and vehicle purchase invoice. (CDTFA Audit Manual § 0607.55.)

<sup>8</sup> "Markup factor" is the factor by which cost of goods sold is multiplied to determine total sales. The markup factor is calculated by dividing sales by the cost of goods sold. The markup factor is equal to the markup (the amount by which the cost of merchandise is increased to set the retail price) plus 100 percent.

<sup>9</sup> CDTFA reports that the sales information obtained from DMV included the Vehicle Identification Number, license plate number, year and make of the vehicle, vehicle registration date, and a two-letter Vehicle License Fee (VLF) code designating a range of sales prices in \$200 increments. CDTFA considered the registration date to have occurred shortly after the actual date of sale, and thus CDTFA used the vehicle registration date to group the vehicles into quarterly periods in which the vehicles were sold. CDTFA used the VLF code to assign the lowest estimated sales price in the \$200 range designated by a particular code. For example, VLF code "AA" designates that the sales price of the vehicle was between \$13,000 and \$13,199, and CDTFA would assign a sales price of \$13,000 for sales involving VLF "AA."

\$24,343, totaling \$416,544 ( $\$129,700 + \$262,501 + \$24,343$ ) for 2017. CDTFA concluded that the DMV use tax payment data more accurately reflected sales than estimated sales from the DMV ROS data and auction house data. CDTFA calculated transactions where the purchaser paid the use tax to DMV of 33.07 percent ( $\$129,700 \div \$392,201$ ), transactions where the purchaser did not pay the use tax to DMV of 66.93 percent ( $\$262,501 \div \$392,201$ ), taxable sales of 94.16 percent ( $\$392,201 \div \$416,544$ ), and nontaxable sales for resale of 5.84 percent ( $\$24,343 \div \$416,544$ ). CDTFA compared sales of \$445,895 per the DMV ROS data and auction house data for 2017 to sales of \$416,544 per the DMV use tax payment data and found that the sales per the DMV use tax payment data were less by \$29,351 ( $\$445,895 - \$416,544$ ). CDTFA calculated a variance of 6.58 percent ( $\$29,351 \div \$445,895$ ).

7. Thus, for 2016 and 2018, CDTFA reduced the DMV ROS data and auction house data by dividing vehicle sales per the DMV ROS data and auction house data by 100 percent plus 6.58 percent to compute audited vehicle sales of \$521,943 and \$523,616 for 2016 and 2018, respectively. CDTFA multiplied 2016 and 2018 audited total sales by the taxable sales ratio of 94.16 percent, then multiplied the result by the 66.93 percent ratio for transactions where the purchaser did not pay the use tax to DMV to compute audited taxable vehicle sales of \$328,921 and \$329,976 for 2016 and 2018, respectively. In total, CDTFA calculated taxable vehicle sales of \$921,398 ( $\$328,921 + \$262,501 + \$329,976$ ) for the liability period.
8. Appellant provided amended SUTRs for 2017. CDTFA noted that appellant only filed the amended SUTRs for 1Q17 and 2Q17 with CDTFA. CDTFA examined all the amended SUTRs and calculated adjusted total vehicle sales of \$375,825 for 2017 and \$1,034,755 for the liability period. CDTFA then reduced this result by taxable vehicle sales of \$202,661 reported on the amended SUTRs filed for 1Q17 and 2Q17<sup>10</sup> and computed unreported taxable vehicle sales of \$832,094 ( $\$1,034,755 - \$202,661$ ) for the liability period. (Audit item 1.) CDTFA also calculated adjusted taxable vehicle sales of \$1,608,150 ( $\$556,287 + \$493,794^{11} + \$558,070$ ) (rounded) for the liability period.

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<sup>10</sup> The taxable vehicle sales of \$202,661 reported on the amended SUTRs filed for 1Q17 and 2Q17 were originally claimed as demand of title transactions.

<sup>11</sup> DMV use tax payment data for 1Q17 of \$125,746 + 2Q17 of \$189,807 + 4Q17 of \$71,775 + taxable vehicle sales (demand of title transactions claimed as nontaxable labor) for 3Q17 of \$106,466.

9. Using bank statements for Best Motors appellant provided for the liability period, CDTFA compiled bank deposits from vehicle sales proceeds of \$1,981,154.<sup>12</sup> Upon comparison to audited vehicle sales based on DMV ROS and auction house data of \$1,608,150, CDTFA computed additional vehicle sales of \$373,004. CDTFA multiplied additional vehicle sales by 94.16 percent taxable sales ratio and the result by 66.93 percent ratio for transactions where purchaser did not pay the use tax to DMV to compute unreported taxable sales of \$235,062 for the liability period. (Audit item 2.)
10. CDTFA reduced the reported taxable measure of \$573,971 by the taxable vehicle sales reported on the amended 1Q17 and 2Q17 SUTRs of \$202,661, added sales of tires and parts of \$11,627 (reflected on the amended 4Q17 SUTR), and deducted the reported sales of fixtures and equipment of \$30,000 in 4Q17 to compute adjusted reported taxable sales of tires and parts of \$352,937 for the liability period.
11. Using the sales invoice details reports, CDTFA compiled recorded taxable sales of tires and parts of \$36,000 for February 2016 through March 2016, and \$32,858 for 4Q16. CDTFA compared recorded taxable sales of tires and parts to the corresponding taxable sales of tires and parts reported on the SUTRs and computed error ratios of 409.34 percent for February 2016 through March 2016, 109.01 percent for 4Q16, and 202.16 percent for both periods combined.
12. To the adjusted reported taxable sales of tires and parts, CDTFA applied the error ratios of 409.34 percent to 1Q16, 109.01 percent to 4Q16, and 202.16 percent to the remaining quarters and computed unreported taxable sales of tires and parts of \$713,498 and audited taxable sales of tires and parts of \$1,066,435 (\$352,937 + \$713,498). CDTFA added the sales of tires and parts from the amended SUTR for 4Q17 (not filed/reported) to unreported taxable sales of tires and parts of \$713,498 and in total, computed unreported taxable sales of tires and parts based on recorded sales of \$725,125 (\$713,498 + \$11,627) for the liability period. (Audit item 5.)
13. Using the Cost/Profit Analysis By Category reports for September 27, 2018, through October 13, 2018, CDTFA computed a tires and parts markup factor of 1.8311 ( $\$2,470.31 \text{ sales} \div \$1,349.09 \text{ purchases}$ ). CDTFA multiplied tires and parts purchases

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<sup>12</sup> Bank deposits are not gross receipts. (R&TC, § 6012(a).) However, where, as here, a retailer is engaged in the business of making retail sales of tangible personal property, the retailer's bank deposits, net of deposits from non-sale or nontaxable transactions, are evidence of gross receipts from the retail sale of tangible personal property, which CDTFA can use to determine audited taxable sales when sales cannot be accurately established using a direct approach because of a lack of adequate records.

- of \$542,373 for 2016 and 2017, as explained below, by the markup factor and computed audited taxable sales of \$993,139. Upon comparison to audited taxable sales of tires and parts based on recorded sales of \$654,952 ( $\$143,407 + \$511,545$ ), CDTFA computed additional unreported taxable sales based on the markup method of \$338,187 and error ratios of 33.16 percent for 2016, 56.81 percent for 2017, and 51.64 percent for both years combined.
14. CDTFA applied the error ratios of 33.16 percent for 2016, 56.81 percent for 2017, and the combined error ratio of 51.64 percent for 2018 to audited taxable sales of tires and parts based on recorded sales of \$1,066,435 and computed additional unreported taxable sales of tires and parts based on the markup method of \$550,653 for the liability period. (Audit item 4.)
  15. Using audited vehicle sales for 2016 and 2017, and the audited vehicle markup factor of 1.6353 ( $\$1,047,362 \text{ sales} \div \$640,463 \text{ purchases}$ ) computed from DMV ROS and auction house data, CDTFA calculated audited vehicle purchases of \$668,521 ( $\$1,093,232 \div 1.6353$ ). CDTFA deducted audited vehicle purchases from purchases appellant reported on its FITRs for 2016 and 2017 and computed audited tires and parts purchases of \$542,373 ( $\$1,210,894 - \$668,521$ ) for 2016 and 2017.
  16. Using the CalRecycle summary reports for 2016 and 2017, CDTFA compiled the number of recycled used tires of 630 for 1Q16 and 4Q16. CDTFA divided recycled used tires by the percentage of used tires disposed to total tires sold to compute 1,000 used tires available. CDTFA deducted the 630 used tires recycled to compute 370 used tires for sale. CDTFA subtracted 164 used tires replaced under warranty and recorded used tires sold of 29 to compute additional 177 ( $370 - 164 - 29$ ) used tires sold. CDTFA multiplied the additional 177 used tires sold by the average sales prices based on sales invoices for 1Q16 and 4Q16 to compute unreported used tire sales of \$10,665. Upon comparison to recorded taxable sales of tires and parts of \$68,858, CDTFA computed error ratios of 18.91 percent for 1Q16, 11.74 percent for 4Q16, and 15.49 percent for the two periods combined. CDTFA multiplied recorded taxable sales of tires and parts of \$1,066,435 by the error ratios of 18.91 percent for 1Q16, 11.74 percent for 4Q16, and 15.49 percent for the remaining quarters and computed unreported taxable used tire sales of \$165,191 for the liability period based on CalRecycle reports and sales invoices. (Audit item 6.)
  17. CDTFA's review disclosed that appellant was not reporting the cost of tires used for warranty replacements and subject to use tax. Using the warranty invoices, CDTFA

- compiled the cost of used tires of \$2,907 provided under warranty for 1Q16 and 4Q16. Upon comparison to recorded taxable sales of tires and parts of \$68,858, CDTFA computed error ratios of 6.22 percent for 1Q16, 2.03 percent for 4Q16, and 4.22 percent for the two periods combined. CDTFA multiplied recorded taxable sales of tires and parts of \$1,066,435 by the error ratios of 6.22 percent for 1Q16, 2.03 percent for 4Q16, and 4.22 percent for the remaining quarters and computed the cost of used tires consumed under optional warranties of \$45,019 for the liability period. (Audit item 8.)
18. Using the February 2016 through March 2016, and 4Q16 sales invoice details reports for Big Tires, CDTFA compiled recorded taxable sales of tires and parts of \$68,858, sales tax collected of \$5,853 for the two periods combined and a sales tax rate of 8.5 percent ( $\$5,853 \div \$68,858$ ). CDTFA noted that appellant reported on its 1Q16 and 4Q16 SUTRs taxable sales of \$22,789 and sales tax of \$1,824 and calculated a sales tax rate of 8 percent ( $\$1,824 \div \$22,789$ ), which was appropriate for appellant's location. CDTFA concluded that appellant had been collecting sales tax reimbursement at a higher rate than it was reporting on its SUTRs over the entire liability period. CDTFA calculated excess tax reimbursement of \$344 ( $\$5,853 - (\$68,858 \times 8 \text{ percent})$ ). CDTFA divided excess tax reimbursement by the tax rate of 8 percent in effect during the two periods and calculated the measure of excess tax reimbursement of \$4,295 (rounded). CDTFA divided the measure of excess tax reimbursement by reported taxable sales and computed error ratios of 31.76 percent for 1Q16, 13.04 percent for 4Q16, and 18.85 percent for the two periods combined. CDTFA multiplied reported taxable sales of tires and parts of \$352,937 for the liability period by the error ratios of 31.76 percent for 1Q16, 13.04 percent for 4Q16, and 18.85 percent for the remaining quarters and computed the measure of excess tax reimbursement of \$66,530 for the liability period. (Audit item 7.)
19. With its 2017 FITR, appellant filed IRS Form 4797, Sales of Business Property, relating to the sale of Big Tires' fixtures and equipment and reported the gross sales of fixtures and equipment was \$108,000 on November 6, 2017. However, appellant reported on its 4Q17 SUTR, \$30,000 for the sale of fixtures and equipment. Thus, CDTFA concluded appellant understated the sale on its SUTR and calculated unreported taxable sale of fixtures and equipment of \$78,000 for 4Q17. (Audit item 3.)
20. Appellant's sales were subject to the district taxes for Sacramento County. CDTFA noted that appellant failed to report any district taxes on sales of \$33,727 in the 3Q17. Thus, CDTFA established a separate deficiency measure of \$33,727 for unreported

- taxable sales subject to the 0.50 percent Sacramento County Transportation Authority (STAT) district tax for 3Q17. (Audit item 9.)
21. CDTFA issued an NOD to appellant on January 13, 2022, based on the aforementioned audit with a tax liability of \$213,405, plus applicable interest.
  22. Appellant filed a timely petition for redetermination disputing the NOD in its entirety.
  23. CDTFA held an appeals conference with appellant, and subsequently issued a Decision on September 11, 2023, denying the petition.
  24. Appellant timely appealed to OTA.

### 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, 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.) 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.*) To satisfy its burden of proof, a taxpayer must prove both: (1) that the tax assessment is incorrect; and (2) the proper amount of tax. (*Appeal of AMG Care Collective*, 2020-OTA-173P.)

Here, appellant's reporting method was unknown, and CDTFA's preliminary analysis found large unexplained sales differences between SUTRs and FITRs. Appellant initially provided limited books and records for audit. Appellant stated that it did not collect sales tax on its sales of vehicles because it obtained demand of title requests from its customers who took responsibility for paying use tax to DMV when registering the vehicle. However, appellant is the retailer of the vehicles and responsible for the sales tax because a demand of title request is not

a statutory exemption or exclusion of the sale from taxation. (R&TC, §§ 6012, 6051; See CDTFA Audit Manual (CDTFA's AM), § 0607.32.)<sup>13</sup> Thus, OTA finds that it was reasonable for CDTFA to question reported sales.

It is standard audit practice for auditors of used car dealerships to obtain DMV ROS data. CDTFA's Compliance Policy and Procedures Manual (CDTFA's CPPM) and CDTFA's AM set forth CDTFA's policy and procedure for a field auditor to obtain this information from DMV and use it in an audit. (CDTFA's CPPM, § 645.120; CDTFA's AM, § 0607.35.) CUTS may be contacted to resolve issues between the audit staff and the taxpayer as to whether the use tax was paid to DMV by a taxpayer on the purchase of a vehicle. (CDTFA's AM, § 0606.15.) OTA finds that using DMV ROS data and DMV use tax payment data to compute appellant's taxable sales are recognized and accepted auditing procedures. DMV ROS data and DMV use tax payment data, which were obtained from a third party (DMV), are evidence of appellant's sales and are reliable sources of data from which to establish audited sales.

CDTFA also performed a bank deposits analysis, which identified additional unreported taxable vehicle sales. The bank deposits analysis method is a recognized and accepted accounting procedure. (See *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613.) OTA finds that it was reasonable for CDTFA to utilize a combination of indirect audit methods as the basis for its determination of vehicle sales. Therefore, OTA concludes that CDTFA has established that its determination is reasonable and rational, and accordingly, the burden shifts to appellant to show errors in the audit.

Appellant states that it disagrees with the audit findings because "most of the audit liability is on the basis of the percentage of error." Appellant asserts that "the underreported tax liability is not more than \$57,000 approximately which could be due to the recorded versus reported differences per the bank deposits." Appellant states that it "borrowed huge amount of money as the business was not doing well during the audit period." Appellant asserts that the loans from family members were deposited into the bank account, but it could not provide proof because its computers were stolen during the audit period. Appellant provided bank statements and summaries noting non-sale deposit amounts.

While CDTFA computed various ratios in its calculation of audited vehicle sales, the audit liability is not simply based on an unsubstantiated percentage of error. CDTFA computed vehicle sales based on an examination of: 1) DMV ROS data, DMV use tax payment data, and

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<sup>13</sup> While CDTFA's audit and procedure manuals provide relevant information to the public and OTA may look to them for guidance, they are not law and do not have the force or effect of law. (*Appeal of Micelle Laboratories, Inc., supra.*)

auction house data; and 2) a bank deposits analysis. The ratios used in the bank deposits analysis were computed from a block test<sup>14</sup> of 2017 vehicle sales. There is no requirement under the law that CDTFA issue its determination on a census (actual) basis review of documentation. On the contrary, this would be unduly burdensome to taxpayers and CDTFA. CDTFA has established audit methods to efficiently determine the liability without the need to review every single document maintained by a taxpayer, and those methods are set forth in CDTFA's AM. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.) Other than the bank deposits allegedly for loans (which are addressed below), appellant has not identified any specific issue with CDTFA's computation of unreported taxable vehicle sales or provided any evidence to support an adjustment.

Appellant asserts that an allowance for non-sales revenue is warranted, and that the loans in question from family members were deposited into the bank account, but it could not provide proof because its computers were stolen during the audit period. Appellant did not identify the date of the theft, but for the agency-level appeal, appellant provided a copy of a police report dated June 27, 2017, in support of the theft at the Big Tires and Glass 2 U/BK Recycling location (Gerber Road). Best Motors is at a different address (Elsie Avenue) from where the theft took place, and appellant has not explained the lack of documentation for July 2017 through December 2018 after the alleged theft. Appellant has not provided documentation from the source of the alleged loans such as cancelled checks, receipts, or loan agreements or notes evidencing the loans and repayment. For appellant's agency-level appeal, appellant similarly contended that bank deposits were the best representation of sales during the liability period but failed to support alleged loans. During the agency-level appeal, appellant provided a schedule showing tax due of \$57,572 but did not provide any verifiable documentary evidence supporting adjustments to the bank deposits analysis. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Talavera, supra.*) As appellant bears the burden of proof in this case, OTA concludes that an adjustment to the measure of unreported taxable vehicle sales is not warranted for Audit items 1 and 2.

CDTFA's examination of appellant's 2017 FITR found appellant understated taxable sales of fixtures and equipment reported on the SUTR by \$78,000. Appellant asserts that goodwill is included in the amounts of the sales of fixtures and equipment. Appellant has not provided documentation or other evidence in support of its contentions from which a more

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<sup>14</sup> A block test is a generally accepted audit tool, which examines transactions from a representative portion of a liability period (i.e., a sample) and applies the findings to the liability period. It is typically used when complete records are not available for the entire liability period.

accurate determination could be made. Accordingly, OTA finds no basis to adjust the measure of unreported taxable sales of fixtures and equipment assessed as Audit item 3.

Appellant does not have a specific argument regarding tires and parts sales other than it disagrees with the audit findings because “most of the audit liability is on the basis of the percentage of error.”

There is no requirement under the law that CDTFA issue its determination on an actual basis review of documentation. (*Appeal of Micelle Laboratories, Inc., supra.*) CDTFA performed block tests of appellant’s records and the data it received from third parties which disclosed understatements with reported taxable sales of tires and parts. Appellant has not argued that the block tests were not representative of the liability period or identified any specific issue with CDTFA’s computation of unreported taxable sales of tires and parts. OTA’s review disclosed no errors in the computation of audited taxable sales of tires and parts.

Appellant cannot carry its burden simply by asking OTA to find unidentified errors in CDTFA’s determination. (See *Appeal of Amaya, supra.*) Appellant must point to an error in the determination and provide proof of the error. (*Ibid.*; see also *Appeal of AMG Care Collective, supra.*) Nor are unsupported assertions sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) Accordingly, OTA concludes that an adjustment to the measure of unreported taxable sales of tires and parts is not warranted for Audit items 4, 5, 6, and 8.

Appellant does not have a specific argument regarding excess tax reimbursement other than it disagrees with the audit findings because “most of the audit liability is on the basis of the percentage of error.”

When an amount represented by a retailer to a customer as constituting reimbursement for sales taxes due is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the retailer, the amount so paid is excess tax reimbursement. (R&TC, § 6901.5; Cal. Code Regs., tit. 18, § 1700(b)(1).) Excess tax reimbursement is charged when sales tax reimbursement is computed on a transaction which is not subject to tax, when sales tax reimbursement is computed on an amount in excess of the amount subject to tax, when sales tax reimbursement is computed using a rate higher than the rate imposed by law, and when mathematical or clerical errors result in an overstatement of the tax reimbursement on a billing. (Cal. Code Regs., tit. 18, § 1700(b)(1).) Unless the retailer refunds the excess tax collections to the customers who paid it, the retailer must pay the excess tax reimbursement to CDTFA. (R&TC, § 6901.5; Cal. Code Regs., tit. 18, § 1700(b)(1).)

Again, there is no requirement under the law that CDTFA issue its determination on an actual basis review of documentation. (*Appeal of Micelle Laboratories, Inc., supra.*) CDTFA performed block tests of appellant's records, which disclosed appellant collected excess tax reimbursement. Appellant has not argued that the block test was not representative of the liability period or identified any specific issue with CDTFA's computation of excess tax reimbursement. OTA's review disclosed no errors in the computation of excess tax reimbursement. Accordingly, OTA finds no basis to recommend any adjustments to the assessed excess tax reimbursement, Audit item 7.

Appellant has not identified any specific issue with the measure of tax for unreported taxable sales subject to district taxes. However, because appellant has not conceded to this issue, OTA will address it here.

California imposes a statewide combined state, local, and county tax rate, which consists of the Sales and Use Tax (R&TC, §§ 6051 et seq., 6201 et seq.) and the Bradley-Burns Uniform Local Sales and Use Tax (R&TC, §§ 7200-7212). In 1969, the legislature enacted the Transactions and Use Tax Law (R&TC, §§ 7251 et seq.), which, subject to certain requirements, allows local jurisdictions to impose a district tax at rates ranging generally from 0.125 to 2 percent of taxable transactions occurring within the jurisdiction. (R&TC, §§ 7251.1, 7261(a), 7262; Cal. Code. Regs., tit. 18, § 1827(a).) A retailer engaged in business in a jurisdiction imposing the district tax is required to collect the tax. (*Ibid.*)

Appellant's business was in a county imposing a district tax. Appellant reported STAT district taxes in each quarterly period during the liability period except 3Q17. OTA finds it was reasonable for CDTFA to conclude that appellant owed STAT district taxes for 3Q17, because appellant's business was located in Sacramento County and appellant allocated 100 percent of its sales to that county in all other reporting periods.

Appellant has not provided any evidence to support an adjustment to unreported taxable sales subject to district taxes. Appellant must point to an error in the determination and provide proof of the error. (See *Appeal of AMG Care Collective, supra.*) Accordingly, OTA finds no basis to adjust the measure of unreported taxable sales subject to district taxes for Audit item 9.

In summary, appellant has not provided any evidence to support adjustments to any of the audit items in the determination.

HOLDING

Adjustments to the determination are not warranted.

DISPOSITION

CDTFA's action denying appellant's petition for redetermination is sustained.

Signed by:  
*Kim Wilson*  
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Kim Wilson  
Hearing Officer

We concur:

Signed by:  
*Natasha Ralston*  
25F9FE08FF66478  
\_\_\_\_\_  
Natasha Ralston  
Administrative Law Judge

DocuSigned by:  
*Michael Geary*  
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Michael F. Geary  
Administrative Law Judge

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