

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: SUPER STAR PLUS CORPORATION))))))	OTA Case No. 240616412 CDTFA Case IDs: 041-045, 041-046
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OPINION

Representing the Parties:

For Appellant:	Melisa A. Coates, Representative
For Respondent:	Jason Parker, Chief of Headquarters Ops.

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Super Star Plus Corporation (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)¹ on March 22, 2023, partly denying appellant’s timely petitions for redetermination of a Notice of Determination (NOD) dated October 21, 2016, for \$22,270 in tax, plus accrued interest, for the period July 1, 2013, through September 30, 2013, and an NOD dated July 28, 2016, for \$40,371.31 in tax, plus accrued interest, and a 10 percent negligence penalty of \$3,112.55 for the period from October 1, 2010, through December 31, 2014 (audit period).²

CDTFA’s decision ordered a reaudit based on an amended sales and use tax return (SUTR) filed for the third quarter of 2013 (3Q13), an adjustment to a 3Q13 tax shortage, and deletion of the negligence penalty, but otherwise denied appellant’s petition. Subsequently, CDTFA issued a letter dated October 11, 2023, indicating the results of the reaudit, which revised the tax to \$103,398, less credits of \$41,738 and payments of \$4,601.82, plus interest, for the audit period.

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 The July 28, 2016 NOD also included a credit of \$1,877 for a payment made on July 31, 2012, a credit of \$1,327 for a payment made on June 12, 2013, and a credit of \$1,102 for a payment made on July 22, 2013.

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 adjustments are warranted to unreported taxable sales.

FACTUAL FINDINGS

1. During the audit period, appellant operated a gasoline station with a mini-mart and tire shop in Sacramento.
2. Upon audit, appellant provided the following books and records: (1) federal income tax returns for 2011, 2012, and 2013; (2) gasoline purchase invoices for 4Q12, 3Q13, 4Q13, and 2014; (3) profit and loss (P&L) summaries for 2011 through 2013; (4) general ledger; (5) purchase invoices for 2013 and 2014; (6) bank statements for 2014; and (7) SUTR worksheets for 4Q10 through 2Q13 and 4Q13.
3. CDTFA obtained the following: (1) invoices from appellant's vendors for 4Q10, 2011, 2012, and 2013; (2) Oil Price Information Service average retail diesel fuel and gasoline selling prices for appellant's location for 4Q10 through 3Q13; and (3) average quarterly retail selling price of motor vehicle fuel sold for each grade of gasoline sold for California from the Department of Energy (DOE) for the audit period.
4. CDTFA determined that it could not rely on the SUTRs or records appellant provided because appellant did not maintain gasoline pump reports or cash register sales records, and because appellant did not separate its recorded diesel fuel sales from its recorded mini-mart sales. CDTFA calculated a .08 percent markup rate for mini-mart sales for 2011 through 2013 using the P&L summaries and determined that the markup rate was low.
5. CDTFA used the markup method to compute total taxable mini-mart sales for the audit period. CDTFA then applied statistics maintained by DOE to the sales invoices it obtained from appellant's gasoline and diesel fuel supplier, Ramos Oil Company, and appellant's reported taxable sales, to calculate total diesel fuel sales for the audit period.
6. CDTFA was unable to determine the proportion of appellant's reported taxable sales that were attributable to mini-mart sales as opposed to diesel fuel sales. As a result, CDTFA combined the total taxable sales that it determined for both items and subtracted reported taxable sales to calculate unreported taxable sales for the audit period.

7. CDTFA also applied statistics maintained by DOE to the sales invoices it obtained from Ramos Oil Company to calculate unreported taxable gasoline fuel sales for the audit period.
8. On July 28, 2016, CDTFA timely issued an NOD to appellant for \$40,371.31 in tax, plus accrued interest, and a 10 percent negligence penalty of \$3,112.55 for the audit period.³
9. CDTFA also calculated a tax shortage of \$22,270 based on a reporting error on appellant's 3Q13 SUTR. On October 21, 2016, CDTFA timely issued an NOD to appellant for \$22,270 in tax, plus accrued interest, for 3Q13.⁴
10. On February 2, 2017, appellant filed an amended SUTR for 3Q13, which it asserted would correct the computational errors and adjust the tax shortage to zero. CDTFA accepted the amended 3Q13 SUTR.
11. Appellant filed timely petitions for redetermination disputing the NODs.
12. On March 22, 2023, CDTFA issued a decision that ordered a reaudit to make adjustments to the 3Q13 tax shortage based on the amended SUTR, and to delete the negligence penalty.⁵ The decision otherwise denied appellant's petitions.
13. CDTFA reaudited appellant to incorporate the amended 3Q13 SUTR to recompute unreported taxable combined mini-mart and diesel fuel sales (audit item 1), unreported taxable gasoline sales (audit item 2), and taxable diesel fuel sales subject to an additional diesel tax rate (audit item 3).
14. CDTFA issued a letter dated October 11, 2023, indicating the results of the reaudit, which revised the tax to \$103,398, less credits of \$41,738 and payments of \$4,601.82, plus interest, for the audit period.⁶ The letter indicated that CDTFA determined revised unreported taxable sales to be \$904,772 (audit items 1 and 2) and the revised measure for additional tax on diesel sales to be \$438,123 (audit item 3). The letter stated that the \$22,270 tax shortage was reduced to zero and the negligence penalty was deleted.⁷

³ CDTFA timely issued the July 28, 2016 NOD because appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, the last of which was signed on January 13, 2016, which gave CDTFA until July 1, 2016, to issue the NOD for the period October 1, 2010, through December 31, 2014. (R&TC, §§ 6487(a), 6488.)

⁴ CDTFA excluded the tax shortage from the audit and issued a separate NOD for 3Q13.

⁵ CDTFA adjusted the October 21, 2016 NOD to zero and determined that a reaudit should be performed to account for the amended 3Q13 SUTR.

⁶ The letter describes a second and third reaudit. The results of the reaudits are reflected in the letter.

⁷ CDTFA also issued an options letter dated February 15, 2024, that described the revisions.

15. This timely appeal followed.

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

Appellant provided insufficient records, so CDTFA was unable to verify recorded taxable mini-mart sales or recorded taxable diesel fuel sales for the audit period. Appellant also comingled its reported diesel fuel sales and reported mini-mart sales, so CDTFA could not determine the proportion of recorded or reported taxable sales that were attributable to diesel fuel sales versus mini-mart sales. CDTFA used the records to calculate the markup rate for mini-mart sales and applied the markup rate to recorded mini-mart purchases for the audit period, resulting in audited taxable mini-mart sales for the audit period. The markup method is a standard and acceptable method of establishing taxable sales in a sales and use tax audit. (See *Appeal of Amaya*, 2021-OTA-328P.) CDTFA applied statistics maintained by DOE to the sales invoices CDTFA obtained from Ramos Oil Company and appellant's reported taxable sales to calculate diesel fuel sales for the audit period. CDTFA performed a similar analysis to determine unreported taxable gasoline sales. To determine unreported combined taxable mini-mart sales and diesel fuel sales, CDTFA combined audited taxable mini-mart sales with audited

taxable diesel fuel sales for the audit period, and subtracted reported combined taxable mini-mart and diesel fuel sales for the audit period. CDTFA’s determination is reasonable and rational, and therefore the burden shifts to appellant to show error.

Appellant contends that CDTFA’s calculations were made on an incorrect estimation and that, based on the total purchases made during the audit period, sales were not underreported by \$904,772 and \$438,123. However, appellant provides no evidence in support and does not specify any errors that were allegedly made by CDTFA. Therefore, appellant has not shown that an adjustment is warranted.

HOLDING

Adjustments are not warranted to unreported taxable sales.

DISPOSITION

CDTFA’s action in making adjustments based on the reaudit, including revisions based on the amended 3Q13 SUTR, reducing the 3Q13 tax shortage to zero, and deleting the negligence penalty, but otherwise denying the petitions, is sustained.

Signed by:

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Josh Lambert
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 11/12/2025