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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **BUTTAR ENTERPRISES, INC., dba Cigarettes & Cigars**	OTA Case No.: 231014527 CDTFA Case ID: 4-084--334

OPINION

Representing the Parties:

For Appellant: Indervir S. Randhawa, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Buttar Enterprises, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on July 19, 2022. The NOD is for tax of $24,821, plus applicable interest, and a penalty of $2,482.10 for the period April 1, 2019, through March 31, 2022 (liability period).

Appellant waived the right to an oral hearing;[1] 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 to the measure of unreported taxable sales are warranted.

[1] On August 7, 2025, the Office of Tax Appeals (OTA) issued a Notice of Oral Hearing notifying appellant that an appeals hearing had been scheduled for Tuesday, October 7, 2025, in Fresno, California. The notice required appellant to confirm its attendance at the oral hearing by August 22, 2025. The notice also advised appellant that the failure to respond would result in an Opinion based on the written record without an oral hearing. OTA did not receive a response to the Notice of Oral Hearing. Therefore, in accordance with California Code of Regulations, title 18, section 30404(a), appellant waived the right to an oral hearing.

FACTUAL FINDINGS

1. Appellant operates a smoke shop known as Cigarettes & Cigars in Porterville, California. Appellant obtained a seller's permit effective November 1, 2009. During the liability period, appellant filed sales and use tax returns claiming zero deductions, which resulted in reported total and taxable sales of $2,648,995.[2] CDTFA previously audited appellant for the period April 1, 2011, through March 31, 2014.
2. Appellant did not provide a complete set of books and records for the audit. Instead, appellant provided its 2019 federal income tax return, monthly profit and loss (P&L) statements for 2019,[3] purchase invoices for the second quarter of 2019 (2Q19) and tax summary statements. CDTFA also obtained appellant's 2020 federal income tax return and Form 1099-K, *Payment Card and Third Party Network Transactions* information.[4]
3. Upon audit, CDTFA compared the gross receipts that appellant reported on its federal income tax returns to the taxable sales reported on appellant's sales and use tax returns. For 2019, appellant's reported gross receipts exceeded reported taxable sales by $236,446. For 2020, appellant's reported gross receipts exceeded reported taxable sales by $325,222. CDTFA found that part of the difference was due to appellant's sale of lottery tickets, but that further investigation was warranted.
4. CDTFA used appellant's P&L statements to calculate appellant's book markup factors.[5] CDTFA compared the taxable, nontaxable, and total income recorded in appellant's P&L statements to the corresponding recorded cost of goods sold (COGS) and found an overall markup factor of 1.34, a taxable markup factor of 1.19, and a nontaxable markup

[2] According to its decision, CDTFA could not determine appellant's reporting method during the audit. During the agency-level appeals conference, appellant stated that it transcribes sales from z-tapes (the portion of the cash register tape that summarizes sales by category for a certain time period) into an Excel spreadsheet provided to an accountant, and the accountant computes taxable sales based on the sales tax reimbursement collected. However, in a letter dated July 18, 2022, CDTFA states that it appears that appellant relied on bank statements when preparing sales and use tax returns.

[3] The P&L statements are labeled April 2018 through December 2019. However, there is no indication from the record that appellant provided P&L statements for April 2018, through December 2018, which is outside of the liability period.

[4] Form 1099-K (Payment Card and Third-Party Network Transactions) is an IRS form used to report payments that merchants receive from customers through payment cards (i.e., credit card or debit cards) and/or third-party networks (e.g., PayPal).

[5] "Markup factor" is the factor by which cost of goods sold (COGS) is multiplied to determine total sales. The markup factor is calculated by dividing sales by the COGS. 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.

factor of 1.62. CDTFA noted that the taxable markup appeared reasonable for a business of this size, type, and location.

5. Next, CDTFA scheduled appellant's purchase invoices to compute total purchases of $248,027 during 2Q19, including: $0 of beer;[6] $247,286 of tobacco; $438 of carbonated soda; $140 of general merchandise; and $164 of newspapers. A comparison to the purchases recorded in appellant's P&L statements of $206,084 for the same period reveals that appellant failed to record purchases totaling $41,943, which represents an error rate of 20.35 percent. CDTFA then applied the 20.35 percent error rate to the taxable COGS recorded in appellant's P&L statements to find audited COGS of $956,787 for 2019.
6. Based on the discrepancies between the purchases recorded in appellant's P&L statements and appellant's purchase invoices, CDTFA determined the overall markup factor of 1.34, taxable markup factor of 1.19, and nontaxable markup factor of 1.62 were unreliable. Therefore, to compute the taxable measure, CDTFA decided to use the audited markup factor of 1.1154, which CDTFA had calculated during appellant's previous audit.
7. To calculate the taxable measure, CDTFA reduced appellant's audited COGS of $956,787 by 2 percent for pilferage and found adjusted audited taxable COGS of $937,651. Next, CDTFA multiplied the adjusted audited taxable COGS by the prior audit markup factor of 1.1154 resulting in audited taxable sales of $1,045,856 for 2019, which when compared to reported taxable sales for the same period represents a 10.13 percent error rate. CDTFA applied the 10.13 percent error rate to appellant's reported taxable sales for the liability period of $2,648,995 to compute audited taxable sales of $2,917,332, a difference of $268,337.
8. On July 19, 2022, CDTFA issued an NOD to appellant based on unreported taxable sales of $268,337.
9. Appellant filed a timely petition for redetermination. During CDTFA's internal appeals process, appellant provided additional documentation including monthly and daily cash register z-tapes for 2019, monthly z-tape sales summaries, bank statements, and business expense receipts. CDTFA considered appellant's submission and, regarding the z-tape information, found that the taxable measure would increase if CDTFA based

[6] The audit workpapers indicate that appellant's records were incomplete with respect to beer purchases but that any beer purchases were negligible.

its audit on appellant's submission. As a result, CDTFA declined to order adjustments based on appellant's submission of z-tapes.

10. 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*.)

Here, appellant did not provide a complete set of books and records for the audit. CDTFA compared appellant's federal income tax returns to appellant's sales and use tax returns and found discrepancies. Although CDTFA noted that some of the difference was the result of nontaxable lottery sales, CDTFA found that did not entirely explain the discrepancy between appellant's federal income tax returns and its sales and use tax returns. CDTFA also compared the purchases recorded in appellant's P&Ls and in appellant's purchase invoices for 2Q19 and found unrecorded purchases of $41,943. When compared to the sales recorded in appellant's P&Ls, appellant's unrecorded purchases represent an error rate of 20.35 percent. Thus, because appellant did not provide a complete set of books and records, it was appropriate to use an indirect approach to calculate the taxable measure. (See *Appeal of Amaya*, 2021-OTA-328P.)

To calculate the taxable measure, CDTFA used the markup method, a generally accepted sales tax auditing procedure. (See *Id.*) CDTFA compared the purchases recorded in

appellant's purchase invoices to those recorded in appellant's P&L statements for 2Q19 and found an error rate of 20.35 percent. CDTFA used the 20.35 percent error rate to compute audited COGS for the liability period and then applied the markup factor from appellant's prior audit to calculate audited taxable sales. Considering the incomplete books and records, and the discrepancies within the books that appellant provided, OTA finds that it was reasonable and rational for CDTFA to use appellant's purchase invoices and the markup factor from a prior audit to project appellant's audited taxable sales. Accordingly, the burden shifts to appellant to show whether a reduction is warranted. (See *Appeal of Talavera*, *supra*.)

On appeal, appellant asserts that it provided z-tapes to CDTFA during the audit. However, during its internal appeals process, CDTFA found that if a reaudit were performed based on appellant's z-tapes, then the taxable measure would increase. In other words, appellant benefits from the fact that CDTFA did not rely on appellant's z-tapes to calculate audited taxable sales. Appellant has not provided evidence to OTA showing otherwise. Accordingly, appellant has not met its burden of proving that a reduction is warranted with respect to this contention.

Next, appellant contends that differences between the sales recorded in appellant's federal income tax returns, sales and use tax returns, P&L statements, and purchase invoices are related to lottery ticket sales and expenses. Here, CDTFA did not use appellant's federal income tax returns to calculate the taxable measure. Instead, the comparison of appellant's federal income tax returns to its sales and use tax returns found differences in reporting that required further investigation.[7] Appellant also argues that the difference between the purchases recorded in its P&L statements and the purchase invoices were due to lottery ticket expenses. However, the schedule of appellant's purchase invoices did not include any lottery purchases. Instead, CDTFA scheduled the taxable purchases from appellant's purchase invoices, which were greater than the taxable purchases recorded in appellant's P&L statements. Thus, as discussed above, it was reasonable for CDTFA to reject the accuracy of appellant's P&L statements in projecting the taxable measure. Appellant has not provided any argument or evidence that CDTFA made errors in the calculations of the taxable measure, nor has appellant provided any evidence that the taxable measure should be reduced. Accordingly, appellant has not met its burden of proof.

[7] As discussed above, CDTFA found that a portion of the difference between appellant's federal income tax returns were the result of lottery sales. However, CDTFA did not accept that explanation for *all* of the difference.

HOLDING

Adjustments to the measure of unreported taxable sales are not warranted.

DISPOSITION

CDTFA's action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

Signed by:
4E8E740EDB984CD...
Kim Wilson
Hearing Officer

Signed by:
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

Date Issued: 11/20/2025