

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

In the Matter of the Appeal of: )  
**INDIA OVEN, INC.** ) OTA Case No.: 220911466  
 ) CDTFA Case ID: 2-580-513  
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**OPINION**

Representing the Parties:

For Appellant: Tarlochan S. Sahiwal, Representative  
 Madeep Kaur, Representative  
 Gurdeep Singh, President  
 Sunny Sehgal, Secretary

For Respondent: Nalan Samarawickrema,  
 Hearing Representative  
 Jason Parker, Chief of Headquarters Ops.  
 Christopher Brooks, Attorney

For Office of Tax Appeals: Lisa Burke,  
 Business Taxes Specialist

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, India Oven, Inc. (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)<sup>1</sup> denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on February 2, 2021. The NOD is for tax of \$85,819, plus applicable interest, for the period January 1, 2017, through December 31, 2019 (liability period).<sup>2</sup> Subsequently respondent completed a reaudit, which resulted in a reduction of \$30,460 to the determined tax, from \$85,819 to \$55,359.

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<sup>1</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 respondent. (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>2</sup> The NOD was issued timely because, on December 30, 2020, appellant signed the last in a series of waivers of the otherwise applicable three-year statute of limitations, which extended until April 30, 2021, the time within which respondent could issue an NOD for the period January 1, 2017, through December 31, 2017. (R&TC, §§ 6487, 6488.)

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Keith T. Long, and Natasha Ralston held a virtual oral hearing for this matter on March 18, 2025. The record was closed at the conclusion of the oral hearing, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

### ISSUE

Whether further reductions to the audited understatement of reported taxable sales are warranted.

### FACTUAL FINDINGS

1. Appellant has operated a full-service restaurant specializing in Indian cuisine since January 1, 2015.
2. For the audit period, appellant reported total sales of \$1,363,526 and claimed a deduction of \$545,661 for exempt sales of food products, which resulted in reported taxable sales of \$817,865.
3. Appellant failed to provide any books and records for audit. Therefore, respondent relied on Form 1099-K (1099-K) data that it was able to obtain for the audit period.<sup>3</sup>
4. Respondent found that electronic payments of \$1,750,765 shown in the 1099-K data substantially exceeded appellant reported total sales, which respondent determined was strong evidence that appellant understated its reported sales.
5. Respondent used a credit-card-sales-ratio analysis to establish audited total sales. Respondent determined the average ratio of appellant's sales paid by electronic means (credit card sales) to its total sales (credit-card-sales ratio) and the average ratio of tips included in the electronic payments to total credit card sales (tip ratio). However, because appellant's business was severely impacted by the COVID-19 pandemic at the time the audit was conducted, respondent found that results of observation testing would not be representative of appellant's business operations during the audit period. Therefore, respondent relied on the average credit-card-sales ratio of 67.90 percent and the average tip ratio of 10.55 percent computed from observations conducted for audits of three similar restaurants.<sup>4</sup>

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<sup>3</sup> Form 1099-K is an Internal Revenue Service 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 electronic means, including, but not limited to, credit cards, debit cards, and PayPal.

<sup>4</sup> The three restaurants respondent used did not serve Indian food.

6. Respondent applied the tip ratio of 10.55 percent to credit card sales of \$1,750,765 from the 1099-K data to compute credit card sales of \$1,583,688, net of tips, and then divided that amount by the credit-card-sales ratio of 67.90 percent to establish audited total sales of \$2,332,269, including sales tax reimbursement. Adjustments to exclude sales tax reimbursement resulted in audited total sales of \$2,160,009. Based on its estimate that 70.00 percent of appellant's total sales were taxable sales, respondent multiplied audited total sales of \$2,160,009 by 70.00 percent to establish audited taxable sales of \$1,512,006, which exceeded appellant's reported taxable sales for the audit period by \$694,141.<sup>5</sup>
7. Respondent added disallowed claimed exempt sales of food products of \$381,963 to unreported taxable sales of \$694,141 to establish the audited taxable measure of \$1,076,104 that forms the basis of the NOD issued on February 2, 2021.
8. Appellant timely filed a petition for redetermination requesting additional time to provide records. According to appellant, it was unable to provide records during the audit process due to the poor health of its president.
9. During respondent's own appeals process, respondent realized that the measure for disallowed claimed exempt sales of food products duplicated the taxable measure already established based on the credit-card-sales-ratio analysis. To correct its error, respondent performed a reaudit deleting the measure for disallowed claimed exempt sales of food products, which resulted in a reduction of \$381,963 to the taxable measure, from \$1,076,104 to \$694,141, and a reduction to the determined tax, from \$85,819.00 to \$55,359.00.
10. In its Decision issued on August 25, 2022, respondent found that no further reduction to the audited understatement of reported taxable sales was warranted.
11. During this appeal, appellant provided documents including its federal income tax returns (FITRs) for 2017, 2018, and 2019. Respondent reviewed the documentation and concluded based on an analysis of book markups, credit card sales ratios, and rent ratios that the deficiency measure would increase from \$694,000 to approximately \$1,700,000. However, respondent did not assert an increase.

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<sup>5</sup> When respondent estimated that 70 percent of appellant's total sales were taxable sales, it estimated that 30 percent were exempt sales of food products. In so doing, respondent allowed \$699,680 as exempt sales of food products for the audit period, an amount that substantially exceeds appellant's claimed exempt sales of food products of \$545,661.

12. Respondent also audited appellant for the period January 2020 through December 2022 (second audit), the results of which are not in dispute in this appeal.<sup>6</sup>
13. 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 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.*)

Here, because appellant failed to provide any books and records for audit, the only documentation available as evidence of appellant's sales was the 1099-K information obtained by respondent. As noted above, the 1099-K information shows the amounts of electronic payments received by appellant that banks, credit card companies, and other third-party networks reported to the IRS. In the absence of any other verifiable information, respondent prepared a credit-card-sales-ratio analysis to verify the accuracy of appellant's reported sales. The credit-card-sales-ratio method is a standard and accepted audit procedure. (*Appeal of Amaya*, 2021-OTA-328P.) However, when respondent uses the credit-card-sales-ratio method, it typically conducts observation testing at a taxpayer's business location to compute an average credit-card-sales ratio and an average tip ratio.

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<sup>6</sup> The second audit is not in dispute in this appeal, but appellant makes arguments with respect to the second audit's findings.

Respondent used an average credit-card-sales ratio and an average tip ratio computed from audits of three similar businesses because, as respondent explains, the COVID-19 pandemic had impacted appellant's business at the time of the audit such that results of observation testing would not have been representative of appellant's business during the audit period (2017-2019). Appellant's documented credit card sales totaling \$1,750,765 for the audit period exceeded its reported total sales of \$1,363,526, which constitutes strong evidence that appellant's reported total sales were substantially understated. Respondent used a reasonable audit method to establish audited total sales and then reduced that amount by 30 percent to allow for exempt sales of food when calculating audited taxable sales, even in the absence of any documentation showing exempt sales. Notably, the amount respondent allowed for exempt sales of food for the audit period (\$699,680) substantially exceeds appellant's claimed exempt sales of food of \$545,661, and therefore, appears to benefit appellant. Given the extraordinary impact of the COVID-19 pandemic on restaurants in 2020, when the audit was conducted, it was reasonable for respondent to rely on the results of observation testing of similar businesses, performed prior to the COVID-19 pandemic, in its analysis to establish appellant's sales. Based on a finding that respondent used the best information available and a reasonable audit method to establish audited sales, OTA concludes that audited taxable sales are reasonable. Therefore, the burden shifts to appellant to provide documentation or other evidence to demonstrate that a reduction to the taxable measure is warranted.

Appellant claims, without evidence, that its reported taxable sales were accurate. Appellant asserts that it was unable to provide records at audit to support the accuracy of its reported amounts due to the continuing severe health issues of its president and a sudden death of a family member.<sup>7</sup> Appellant asserts that it is still unable to provide the records because they are no longer legible or do not exist.

Appellant also argues that the audit liability is overstated because the rental income from the banquet hall may not have been excluded from the audited taxable sales. In support, appellant provided copies of its FITRs for tax years 2017, 2018, and 2019. Appellant asserts that amounts listed on the FITRs as "other income" represents nontaxable banquet facility rentals, but appellant has not provided any source documentation or other documentation to corroborate this assertion. Respondent analyzed appellant's FITRs, with appellant's sales, other income, cost of goods sold, rental expenses, and credit card sales information. Respondent calculated book markups, credit card sales ratios and rent ratios for the audit

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<sup>7</sup> Appellant has provided no explanation as to why there is no person other than its president who could have provided appellant's records for examination.

period. Based on this analysis, respondent concluded that using the cost-plus markup method would increase the unreported taxable sales from approximately \$694,000 to approximately \$1.7 million dollars.

Respondent further asserts that comparisons between average purchases, sales, other income, wages, depreciation expenses, contract labor expenses, average book markups, and net income reported for the current audit period and the second audit period indicate that appellant's business activities were not consistent between the audit periods. Respondent also notes that it allowed exempt food sales of \$699,680 in the current audit but disallowed all claimed food sales for the second audit.

Appellant has failed to provide evidence to support its contentions that the audit liability mistakenly contains nontaxable banquet facility rentals in the taxable measure. Thus, there is no basis for any reductions.

At the hearing, appellant argued that respondent should apply the credit-card-sales ratio calculated during the second audit period to the liability at issue. Appellant asserts that the second audit is more accurate because appellant provided documentation for that audit which supported a higher credit-card-sales ratio, and that the auditor was able to observe the restaurant and determine that the credit-card-sales ratio was higher. Respondent asserts that the audit at issue took place prior to the COVID-19 pandemic and that the second audit took place during and after the COVID-19 pandemic. Respondent contends that appellant did not provide any source documentation to show that its business activities and business environment were the same during both audit periods.

OTA's Opinion must be based on the evidentiary record before it. (See Cal. Code Regs., tit., 18, § 30214(f).) The second audit is not at issue before OTA in this appeal.<sup>8</sup> With regard to the appeal before OTA, appellant has failed to identify any error in respondent's audit and has failed to provide documentation to support its contentions. In the absence of any documentation or other evidence from which a more accurate determination may be made, OTA concludes that no reduction to the amount of unreported taxable sales is warranted.

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<sup>8</sup> As noted in the introductory paragraph, this appeal arises from the respondent's denial of appellant's timely petition for redetermination of the NOD dated February 2, 2021. (Cal. Code Regs., tit., 18, § 30203(b).)

HOLDING

No further reductions to the audited understatement of reported taxable sales are warranted.

DISPOSITION

Respondent's action reducing the audited understatement of reported taxable sales from \$1,076,104 to \$694,141, but otherwise denying the petition is sustained.

Signed by:

*Natasha Ralston*

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Natasha Ralston  
Administrative Law Judge

We concur:

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*Keith T. Long*

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Keith T. Long  
Administrative Law Judge

DocuSigned by:

*Teresa A. Stanley*

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 5/20/2025