

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

In the Matter of the Appeal of:  
**ALCARAZ CATERING, INC.**

) OTA Case No.: 230513348  
) CDTFA Case ID: 3-663-131  
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**OPINION**

Representing the Parties:

For Appellant: Antonio Alcaraz, President

For Respondent: Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Crystal Spratley, Business Taxes Specialist

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Alcaraz Catering, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant’s timely petition for redetermination of a Notice of Determination (NOD) issued on March 1, 2022.<sup>2</sup> The NOD is for tax of \$660,297, plus applicable interest, and penalties totaling \$66,029.73 for the period January 1, 2017, through December 31, 2020 (liability period).<sup>3</sup>

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).

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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 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>2</sup> CDTFA timely issued the NOD because on March 1, 2022, appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, which gave CDTFA until July 31, 2022, to issue the NOD for the period of January 1, 2017, through December 31, 2017. (See R&TC §§ 6487(b), 6488.) The NOD is also timely for the period 2018 through 2020 because appellant failed to file returns for those years, and CDTFA issued its determination within the applicable eight-year statute of limitations under R&TC section 6487(b).

<sup>3</sup> On appeal to OTA, appellant has not provided any argument or evidence with respect to the penalties and interest imposed. Therefore, the Office of Tax Appeals finds that they are not at issue and will not discuss them further.

### ISSUES

1. Whether adjustments to the measure of disallowed claimed nontaxable sales for resale are warranted.
2. Whether adjustments to the measure of unreported taxable sales are warranted.

### FACTUAL FINDINGS

1. Appellant, a corporation, operates 11 food trucks, a commissary, and a catering business in Oxnard, California. Appellant obtained a seller's permit effective January 1, 1999.
2. CDTFA previously audited appellant for the period January 1, 2012, through December 31, 2014. During the prior audit, CDTFA reviewed appellant's claimed nontaxable sales for resale and advised appellant of the requirement that it collect resale certificates from customers.
3. During the liability period, appellant filed sales and use tax returns for the 2017 tax year reporting total sales of \$1,363,316, and claiming nontaxable sales for resale of \$1,363,316, which resulted in zero reported taxable sales. Appellant did not file sales and use tax returns for the period 2018 through 2020.
4. Upon audit, appellant did not provide other books and records for the audit.<sup>4</sup> As a result, CDTFA found that appellant's claimed sales for resale were not supported. Therefore, CDTFA disallowed appellant's claimed sales for resale of \$1,363,316 for 2017 (audit item 1).
5. CDTFA obtained Form 1099-K data for appellant's business.<sup>5</sup> CDTFA scheduled appellant's Form 1099-K data and found recorded credit card sales of \$152,739 for 2017. CDTFA reduced appellant's credit card sales by the sales tax rate to compute credit card sales excluding tax (ex-tax) of \$141,753. CDTFA compared appellant's

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<sup>4</sup> According to CDTFA's Assignment Activity History, CDTFA attempted to contacted appellant or appellant's representative on multiple occasions, beginning on June 1, 2021, to request books and records. On January 25, 2022, near the conclusion of the audit, appellant provided bank statements for the years 2018 through 2020. CDTFA reviewed appellant's bank statements and found that they did not reflect any cash deposits. Based on this information, CDTFA concluded that appellant's bank statements were unreliable and declined to incorporate them into the audit.

<sup>5</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.

- ex-tax credit card sales of \$141,753 to the total sales reported on appellant's sales and use tax returns of \$1,363,316 to compute a credit card sales ratio of 10.40 percent.
6. CDTFA compiled appellant's Form 1099-K data for the period 2018 through 2020. After making reductions for the sales tax rate, appellant's Form 1099-K data revealed ex-tax credit card sales of \$229,295 for 2018, \$254,857 for 2019, and \$260,139 for 2020. CDTFA applied the 10.40 percent credit card sales ratio to compute taxable sales of \$2,204,760 for 2018, \$2,450,548 for 2019, and \$2,501,337 for 2020. In total, CDTFA found unreported taxable sales of \$7,156,645 (audit item 2.)
  7. On March 1, 2022, CDTFA issued the aforementioned NOD. In the NOD, CDTFA imposed tax of \$660,297.
  8. Appellant filed a timely petition for redetermination disputing the NOD. CDTFA held an appeals conference on September 22, 2022, and allowed appellant time to provide documentation to show that it made nontaxable sales for resale. Subsequently, appellant provided the following documents: information regarding the food trucks that appellant purported to lease; pictures of food trucks claimed to have been parked at appellant's business location; and 2017 bank statements.<sup>6</sup> After considering appellant's documentation, CDTFA issued a decision and supplemental decision denying appellant's petition.
  9. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether adjustments to the measure of disallowed claimed nontaxable sales for resale 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

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<sup>6</sup> An entry in CDTFA's assignment activity history indicates that on March 22, 2022, appellant also provided federal income tax returns for the period 2017 through 2022. According to CDTFA's decision, CDTFA reviewed the federal income tax returns and found them to be unreliable based on the lack of books and records to support the reported amounts. CDTFA also noted a \$680,563 difference between the total sales reported on its sales and use tax returns and the gross receipts reported on its federal income tax return for 2017.

reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

The retailer bears the burden of showing that a sale of tangible personal property is not a retail sale unless the retailer timely and in good faith obtains a resale certificate from the purchaser. (R&TC, § 6091; Cal. Code Regs., tit. 18, § 1668(a).) A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the tax. (Cal. Code Regs., tit. 18, § 1668(e).) If a seller fails to timely obtain a resale certificate in proper form, the seller will be relieved of liability for the tax only where the seller shows that the purchaser: (1) in fact resold the property and the property was not used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business; or (2) is holding the property sold for resale and has not made a taxable use of that property; or (3) consumed the property sold, and reported the tax due directly to CDTFA on its sales and use tax returns; or (4) consumed the property sold, and paid the tax due to CDTFA pursuant to an assessment or an audit. (*Ibid.*)

A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for the tax, including the use of “XYZ letters,” which are letters in an approved format sent to the seller’s customers inquiring as to the disposition of the property purchased. (Cal. Code Regs., tit. 18, § 1668(f)(1)-(3).) However, a response to an XYZ letters is not equivalent to a timely and valid resale certificate in proper form, and CDTFA is not required to relieve a seller from liability for tax based on a customer’s response to an XYZ letter. (Cal. Code Regs., tit. 18, § 1668(f)(3).) When there is no response to any XYZ letter, CDTFA should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of tax with respect to the questioned or unsupported transaction(s). (Cal Code Regs., tit. 18, § 1668(f)(4).)

Here, there is no dispute that appellant claimed nontaxable sales for resale of \$1,363,316 for the 2017 tax year. There is also no dispute that appellant failed to obtain resale certificates from its customers. As such, these sales are presumed subject to tax. (See R&TC, § 6091.)

On appeal, appellant asserts that it was not given the opportunity to provide XYZ letter responses to show that it made sales for resale. However, the record shows that CDTFA made several attempts over the course of a year to obtain records, including evidence of appellant’s claimed sales for resale. Despite these attempts, appellant did not provide any evidence to show that it made nontaxable sales. OTA finds no evidence that appellant was denied the opportunity to participate in the XYZ letter process or to otherwise submit XYZ letter responses.

Thus, OTA finds no merit in appellant's contention. Additionally, even if appellant did submit XYZ letter responses, they are not equivalent to a timely and valid resale certificate in proper form, and CDTFA is not required to relieve a seller from liability for tax based on a customer's response to an XYZ letter. (See Cal. Cod Regs., tit. 18, § 1668(f)(3).)

Similarly, appellant has not provided any evidence to OTA showing that it made sales of tangible personal property that were in fact resold. Appellant has not met its burden of proof. Thus, OTA finds no basis to reduce the measure of disallowed claimed nontaxable sales for resale.

Issue 2: Whether adjustments to the measure of unreported taxable sales 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.*)

Here, appellant did not provide books and records for the audit. As such, CDTFA was unable to verify appellant's reported taxable sales through a direct audit method. When CDTFA cannot compute taxable sales from appellant's records, it is appropriate to use an indirect method. (See *Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.) To calculate the audit measure, CDTFA compared the gross receipts recorded in appellant's federal income tax returns to the credit card sales recorded in appellant's Form 1099-K data to calculate a credit-card sales ratio. OTA has previously found that the credit-card sales ratio is a recognized and accepted audit method. (See *Appeal of Amaya*, 2021-OTA-328P.) Thus, given the near-

complete lack of books and records, OTA finds that it was reasonable and rational for CDTFA to use appellant's Form 1099-K data and 2017 sales and use tax returns to calculate a credit-card sales ratio and project appellant's taxable sales. Accordingly, the burden of proof shifts to appellant to show that a different result is warranted. (See *Appeal of Talavera, supra.*)

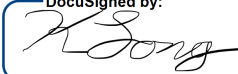
On appeal, appellant contends that the credit-card sales ratio is incorrect. Appellant contends that the gross receipts reported on its federal income tax returns include nontaxable sales such as catering services. Appellant appears to assert that excluding nontaxable sales would increase the credit-card sales ratio and decrease the measure of unreported taxable sales. However, appellant has not provided any evidence to show that the taxable measure should be reduced. Appellant's unsupported assertions are insufficient to meet its burden of proof. (See *Appeal of Talavera, supra.*) Accordingly, OTA finds that no adjustment to the measure of unreported taxable sales is warranted.

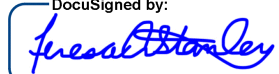
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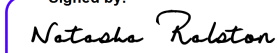
1. Appellant has not shown that adjustments are warranted to the measure of disallowed claimed nontaxable sales for resale.
2. Appellant has not shown that adjustments to the measure of unreported taxable sales are warranted.

DISPOSITION

CDTFA's action denying the petition is sustained.

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 Keith T. Long  
 Administrative Law Judge

We concur:  
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 Teresa A. Stanley  
 Administrative Law Judge

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 Natasha Ralston  
 Administrative Law Judge

Date Issued: 2/5/2026