2026-OTA-194
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No.: 240616419
MASSIVE DOLLAR PLUS USA LLC,	)	CDTFA Case ID: 4-272-671
dba Premium Finance	)	
	)	

OPINION

Representing the Parties:

For Appellant: Shawn Zali, Representative

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

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Massive Dollar Plus USA LLC (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on August 12, 2022. The NOD is for tax of $1,522,545, plus applicable interest, and a penalty of $607,560.80 for the period October 1, 2018, through September 30, 2021 (liability period).

Office of Tax Appeals (OTA) Panel Members Sheriene Anne Ridenour, Suzanne B. Brown, and Natasha Ralston held a virtual oral hearing for this matter on October 8, 2025. 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, section 30209(b).

ISSUES

1. Whether an adjustment is warranted to the unreported taxable sales of $16,105,567.
2. Whether an adjustment is warranted to the unreported district taxes of $177,832.
3. Whether an adjustment is warranted to the unremitted excess tax reimbursement collected of $3,646.
4. Whether the 40 percent penalty pursuant to R&TC section 6597 was properly imposed and if so, whether the penalty should be relieved.

FACTUAL FINDINGS

1. Appellant is a California limited liability company that operates a used car dealership in Stanton, California.
2. During the liability period appellant filed sales and use tax returns (SUTRs) reporting total sales of $24,578,755.[1] Appellant claimed deductions of $4,931,652 for nontaxable sales for resale, which resulted in reported taxable sales of $19,647,103 for the liability period. Appellant also reported district taxes of $95,488 on its SUTRs for the liability period.
3. For audit, appellant provided dealer jackets containing information on its sales of vehicles for the first quarter of 2021 (1Q21) and federal income tax returns (FITRs) for 2018, 2019 and 2020. Respondent also obtained purchase records from auction houses which contained information of purchases appellant made from the auction houses. Respondent also obtained information from the Department of Motor Vehicles (DMV) about sales that appellant reported on report of sales (ROS) forms.[2] The data included vehicle identification numbers, buyer addresses, and other sales information. Respondent used this information to determine appellant's sales prices and the amount of taxes appellant collected.
4. Respondent concluded that appellant failed to provide documentation to support claimed exemptions or exclusions from tax. Using the aforementioned information, respondent computed audited taxable sales of $35,752,670. After subtracting appellant's reported taxable sales, respondent calculated unreported taxable sales of $16,105,567 ($35,752,670 - $19,647,103) for the liability period.
5. Using the audited taxable sales and DMV information, respondent calculated that appellant collected sales tax reimbursement (STR) from its customers, totaling $3,038,818, consisting of $2,592,069 in STR collected at the combined statewide rate of 7.25 percent; and $446,749 in STR collected at district tax rates based on registered addresses of the buyers.
6. Based on the DMV information, respondent computed that appellant collected $446,749 in district taxes but only reported $95,488 on its SUTRs. Respondent also used the DMV information to calculate that appellant had collected district taxes of $446,749. As

[1] Minor differences in this Opinion are due to rounding.

[2] With a few exceptions, none of which are in evidence here, licensed California dealers are required to file ROS forms for every retail sale. (See Veh. Code, § 4456.)

appellant only reported district taxes of $95,488, respondent computed district taxes of $173,414 on unreported taxable sales of $16,105,567, resulting in unreported district taxes of $177,832 ($446,749 - $95,488 - $173,414) for the liability period.

7. Based on its review of the available dealer jackets appellant provided, respondent computed that appellant collected STR of $532 for 1Q21, which it did not report to respondent. Respondent calculated an error rate of 0.24 percent, which respondent applied to reported taxable sales of $1,519,903 to determine excess STR of $3,646 for the liability period.
8. As noted above, respondent calculated that appellant collected STR of $3,038,803, which exceeded appellant's reported sales tax of $1,519,903, representing unremitted STR collected of $1,518,900 ($3,038,803 - $1,519,903) for the liability period. The unremitted STR of $1,518,900 averaged more than $1,000 per month and exceeded more than 5 percent of appellant's total STR collected in every quarter of the liability period. Therefore, respondent imposed the 40 percent penalty of $607,560.80 (40 percent × $1,518,900) pursuant to R&TC section 6597.
9. Respondent issued the aforementioned NOD on August 12, 2022.
10. Respondent issued its decision on May 22, 2024, which upheld the NOD.
11. Subsequently, appellant filed this timely appeal with OTA.

DISCUSSION

Issue 1: Whether an adjustment is warranted to the unreported taxable sales of $16,105,567.

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, the books and records appellant provided for audit were inadequate for sales and use tax audit purposes. Specifically, appellant failed to provide books and records such as deal jackets (other than those provided for 1Q21), vehicle sales invoices, sales journals and purchase journals, or sales tax worksheets used to prepare its SUTRs. Therefore, respondent used indirect audit methods to verify appellant's sales reported on its SUTRs. Respondent obtained appellant's purchase records from auction houses. In addition, respondent used DMV sales data and ROS data to calculate the unreported taxable sales of vehicles, which are reliable third-party sources of data. Respondent's audit method and the computed unreported taxable sales are reasonable and rational. Therefore, respondent has met its initial burden, and the burden of proof shifts to appellant to show errors in the audit.

Appellant argues that the audit is overstated because appellant provided supporting documentation to the auditor. Appellant also asserts that the audit fails to account for sales that were sold out of state or were returned to appellant. Appellant has provided no evidence to support its contentions that the audit is overstated. Thus, appellant has not met its burden of proving a different result is warranted. Accordingly, no adjustment is warranted.

Issue 2: Whether an adjustment is warranted to the unreported district taxes of $177,832.

Under the Sales and Use Tax Law (R&TC, § 6001 et seq.), California may impose sales tax or use tax at statewide rates. In addition, under both the Uniform Local Sales and Use Tax Law (R&TC, §§ 7200 et seq., including §§ 7202, 7203, and 7203.1) and the Transactions and Use Tax Law (R&TC, §§ 7251 et seq., including §§ 7251.1, 7261(a), 7262(a)), local jurisdictions may impose sales tax on the gross receipts from retail sales of tangible personal property within the jurisdiction or use taxes on the sales price of property sold for use, storage, or consumption within the jurisdiction (collectively, district taxes). A retailer engaged in business in a jurisdiction imposing the district tax is required to collect and remit the tax. (R&TC, §§ 7261(a), 7262(a); see also Cal. Code Regs., tit. 18, § 1827(a).)

Appellant has not identified any specific dispute regarding the unreported district taxes but generally states that appellant does not agree with the amount listed under appellant's account. Respondent has established that appellant had unreported district taxes of $177,832 for the liability period. Appellant operated one business location in Orange County. Respondent's determination of unreported district tax of $177,832 is reasonable and rational

because it is based on figures recorded by appellant. Therefore, the burden of proof shifts to appellant to establish a different result. As appellant has not provided any evidence to support any adjustments to the determination, appellant has not met its burden of proving a different result. Thus, no adjustment is warranted.

Issue 3: Whether an adjustment is warranted to the unremitted excess tax reimbursement collected of $3,646.

A retailer may collect STR from its customers on the sales price of tangible personal property sold at retail. (Civ. Code, § 1656.1(a).) This amount is not a sales tax imposed on the customer; instead, it is merely "reimbursement" for the sales tax imposed on the retailer. (*Ibid.*) There is no statutory requirement for the retailer to collect STR from its customer, and a retailer is liable for any applicable California sales tax regardless of whether it elects to do so. (Civ. Code, § 1656.1(a); R&TC, § 6051.) When an amount represented by a retailer to a customer as constituting STR 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 STR. (R&TC § 6901.5; Cal. Code Regs., tit. 18, § 1700(b)(1).) When respondent ascertains that a retailer has collected excess STR, the retailer will be afforded an opportunity to refund the excess tax collections to the customers from whom they were collected. In the event of failure or refusal of the retailer to make such refunds, the retailer must pay the excess STR to respondent. (R&TC § 6901.5; Cal. Code Regs., tit. 18, § 1700(b)(1).)

Appellant has not identified any specific dispute regarding unremitted STR but generally states that appellant does not agree with the amount listed under appellant's account.

Based on its review of the available dealer jackets appellant provided, respondent computed that appellant collected excess STR of $3,646 for the liability period. Respondent's determination of excess STR is based on appellant's own records and there is no evidence that appellant has refunded the excess STR to its customers. Thus, respondent's determination of unremitted excess STR is reasonable and rational. Therefore, the burden of proof shifts to appellant to establish a different result. As appellant has not provided any evidence to support any adjustments to the determination, appellant has not met its burden of proving a different result. Thus, no adjustment is warranted.

Issue 4: Whether the 40 percent penalty pursuant to R&TC section 6597 was properly imposed and if so, whether the penalty should be relieved.

Respondent applied a 40 percent penalty of $607,560 for the liability period. For determinations made before January 1, 2025, any person who knowingly collects STR and fails to timely remit that tax reimbursement to respondent is liable for a penalty of 40 percent of the amount not timely remitted. (Former R&TC, § 6597(a)(1).) The penalty does not apply if the person's liability for unremitted STR averages $1,000 or less per month or does not exceed 5 percent of the total amount of the tax liability for which the STR was collected for the period in which the tax was due, whichever is greater. (Former R&TC, § 6597(a)(2)(A).) If a person's failure to make a timely remittance of STR is due to a reasonable cause or circumstances beyond the person's control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the 40 percent penalty. (R&TC, § 6597(a)(2)(B).)

Here, based on a review of the available deal jackets, respondent found—and appellant does not dispute—that appellant collected STR on all its sales. Using appellant's audited taxable sales and DMV information, respondent computed unremitted STR collected of $1,518,900. Respondent concluded that appellant knowingly collected and failed to remit sales tax and that the unremitted STR exceeded an average of $1,000 per month and 5 percent of the total STR for each quarterly period in the audit. Thus, respondent found that the 40 percent penalty was applicable to each quarter in the liability period. OTA reviewed the evidentiary record as well as respondent's audit working papers and found no errors in respondent's computations with respect to the statutory thresholds of the 40 percent penalty. Thus, OTA finds that unremitted STR exceeded an average of $1,000 per month and 5 percent of the total STR for each quarter in the liability period. Thus, respondent properly imposed the 40 percent penalty.

On appeal, appellant has not described any facts and circumstances that would justify relief of the 40 percent penalty. Appellant has not explained why it failed to report substantial amounts of taxable sales or to remit collected STR that were clearly recorded in its own records. Thus, appellant has not shown that its failure to remit collected STR was due to reasonable cause or circumstances beyond its control and occurred notwithstanding its exercise of ordinary care in the absence of willful neglect. Accordingly, OTA finds that relief of the 40 percent penalty is not warranted.

HOLDINGS

1. No adjustment is warranted to the unreported taxable sales of $16,105,567.
2. No adjustment is warranted to the unreported district taxes of $177,832.
3. No adjustment is warranted to the unremitted excess tax reimbursement collected of $3,646.
4. The 40 percent penalty pursuant to R&TC section 6597 was properly imposed and should not be relieved.

DISPOSITION

Respondent's action denying appellant's petition is sustained.

Signed by:
Natasha Ralston
25F8FE08FF56478...

Natasha Ralston
Administrative Law Judge

We concur:

Signed by:
Suzanne B. Brown
47F45ABE89E34D0...

Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...

Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 12/4/2025