

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. ALCARAZ,
dba Tony’s Catering

) OTA Case No.: 230513353
) CDTFA Case ID: 3-699-499
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)
)

OPINION

Representing the Parties:

For Appellant: A. Alcaraz

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, A. Alcaraz, dba Tony's Catering (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 March 30, 2022.¹ The NOD is for tax of \$125,485, plus applicable interest, and a negligence penalty of \$12,548.48 for the period July 1, 2018, through June 30, 2021 (liability period).²

¹ CDTFA timely issued the NOD because on August 13, 2021, appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, which gave CDTFA until April 30, 2022, to issue the NOD for the period of July 1, 2018, through December 31, 2018. (See R&TC §§ 6487(a), 6488.)

² On appeal to the Office of Tax Appeals (OTA) appellant has not provided any argument or evidence with respect to the penalties and interest imposed. Therefore, (OTA) finds that they are not at issue and will not discuss them further.

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).³

ISSUES

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

FACTUAL FINDINGS

1. Appellant, a sole proprietor doing business as Tony's Catering, operates a food truck in Oxnard, California. Appellant obtained his seller's permit effective August 25, 2014. This is appellant's first audit.
2. Appellant is also the CEO and sole shareholder of Alcaraz Catering, Inc (Alcaraz), which also operates in Oxnard. Alcaraz operates 11 food trucks, a commissary, and a catering business. One of Alcaraz's food trucks is used by appellant for Tony's Catering.
3. As relevant here, CDTFA audited Alcaraz (Alcaraz audit) for the period January 1, 2018, through December 31, 2020.⁴ In the Alcaraz audit, CDTFA obtained Form 1099-K data to calculate a credit-card-sales ratio of 10.40 percent.⁵ Alcaraz had also previously been audited for the period January 1, 2012, through December 31, 2014.
4. During the liability period, appellant filed sales and use tax returns reporting total sales of \$253,921 and claiming deductions totaling \$65,604, which resulted in reported taxable

³ By letter dated December 18, 2025, appellant asserted that he had filed a bankruptcy petition with the United States Bankruptcy Court on April 14, 2025, which was discharged on July 28, 2025. However, OTA lacks jurisdiction to decide whether a proposed assessment was discharged in bankruptcy. (*Appeal of Savage*, 2020-OTA-328P.) Accordingly, OTA issues this Opinion based on the written record and the arguments therein.

⁴ Appellant and Alcaraz each simultaneously appealed the results of their respective audits. The audit of Alcaraz is addressed in a separate opinion.

⁵ 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.

sales of \$188,317. As relevant here, appellant's claimed deductions included \$50,785 for nontaxable sales of food products.⁶

5. For the audit, appellant provided federal income tax returns for 2018 through 2020. CDTFA also obtained Form 1099-K data for the third quarter of 2018 (3Q18) through 4Q20. Appellant did not provide any other books and records.
6. CDTFA compared the sales amounts reported on appellant's sales and use tax returns to the gross receipts reported on appellant's federal income tax returns and found immaterial differences for the period 2018 through 2020. CDTFA also compared the total sales excluding tax (ex-tax) to the cost of goods sold reported on appellant's federal income tax returns to calculate book markups of 86.86 percent for 2018, 92.98 percent for 2019, and 97.14 percent for 2020.⁷ CDTFA determined that these markups were low for this type of business.⁸
7. CDTFA used the 1099-K data to schedule appellant's credit card sales for the period 1Q18 through 4Q20, which totaled \$172,244 after reducing appellant's credit card sales by the sales tax rate. CDTFA subtracted appellant's ex-tax credit card sales from the ex-tax gross receipts reported on appellant's sales and use tax returns to compute cash sales of \$70,358. CDTFA used these amounts to calculate an overall credit card sales ratio of 72.50 percent, which CDTFA believed to be high for this type of business.⁹ CDTFA also noted that appellant's ex-tax credit card sales were greater than the gross receipts reported on appellant's sales and use tax returns for 2Q20.
8. To calculate the taxable measure, CDTFA applied the 10.40 percent credit-card-sales ratio from the Alcaraz audit to the credit card sales recorded in appellant's 1099-K data

⁶ Appellant also claimed deductions for nontaxable sales in interstate and foreign commerce and for sales tax included in gross receipts. Upon audit, CDTFA found that the claimed amounts for nontaxable sales in interstate and foreign commerce should have been included in appellant's claimed deduction for sales tax included in gross sales. However, amounts claimed for these deductions were not disallowed and are not in dispute.

⁷ "Markup" is the amount by which the cost of merchandise is increased to set the retail price. For example, if the retailer's cost is \$0.70 and it charges customers \$1.00, the markup is \$0.30. The formula for determining the markup percentage is $\text{markup amount} \div \text{cost}$. In this example, the markup percentage is 42.86 percent ($0.30 \div 0.70 = 0.42857$). A "book markup" (sometimes referred to as an "achieved markup") is one that is calculated from the retailer's records. Markup and gross profit margin are different. The gross profit is the sales price minus the cost. The formula for determining the gross profit margin is $\text{profit amount} \div \text{sales price}$. In the above example, the gross profit margin is 30 percent ($0.30 \div 1.00 = 0.30$).

⁸ CDTFA did not provide any information regarding the expected markup for this type of business.

⁹ The audit workpapers indicate that the credit card sales ratio is high for a food truck in Oxnard. However, CDTFA did not provide any reason for this conclusion.

- for the period 3Q18 through 4Q20 to project total sales of \$1,607,396. CDTFA reduced projected total sales by the sales tax rate to find audited taxable sales of \$1,491,781, which revealed an understatement of \$1,288,876 when compared to reported taxable sales for the period 3Q18 through 4Q20.
9. CDTFA calculated the average quarterly unreported taxable sales of \$127,057 for the period 3Q18 through 4Q20. Because no 1099-K data was available during the audit for the period 1Q21 through 2Q21, CDTFA applied the average unreported taxable sales of \$127,057 to 1Q21 and 2Q21.
 10. In total, CDTFA computed unreported taxable sales of \$1,542,990 (\$1,288,876 + \$127,057 + \$127,057).
 11. Appellant did not provide any support for its claimed nontaxable sales of food products. Therefore, CDTFA disallowed the claimed nontaxable sales of food products of \$54,834 in their entirety.
 12. On March 30, 2022, CDTFA issued the aforementioned NOD. Appellant filed a timely petition for redetermination disputing the NOD, which CDTFA denied.
 13. This timely appeal followed.
 14. On appeal, CDTFA obtained Form 1099-K information for 1Q21 and 2Q21. Using that data and the credit-card-sales-ratio, CDTFA calculated that total unreported taxable sales increased from \$1,593,775 to \$1,631,001. CDTFA does not propose to increase the amounts in the NOD.

DISCUSSION

Issue 1: Whether reductions 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 provided almost no books or records for the audit. CDTFA reviewed appellant's only documentation, the federal income tax returns for 2018 through 2020, and found immaterial reporting differences. However, CDTFA also used appellant's federal income tax returns to calculate appellant's book markup and found it to be low for this type of business.

CDTFA used the credit-card-sales ratio method to calculate audited taxable sales. The credit-card-sales ratio method is a standard audit procedure that is effective in establishing taxable sales because it relies on readily verifiable information: the amount of credit card receipts.¹⁰ CDTFA obtained appellant's 1099-K data and calculated a credit-card-sales ratio of 72.50 percent. CDTFA concluded that appellant's credit-card-sales ratio was high for this type of business. Additionally, appellant's credit card sales for 2Q20 exceeded reported taxable sales for that quarter. Thus, it was reasonable for CDTFA to conclude based on the audited book markup and credit-card-sales ratio to conclude that appellant failed to report all of its taxable sales.

When CDTFA cannot compute taxable sales, it is appropriate to use an indirect method to calculate the taxable measure. (See *Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.) To calculate the taxable measure, CDTFA applied the credit-card-sales ratio of 10.40 percent from the Alcaraz audit. Considering the near-complete lack of books and records, OTA finds that it was reasonable and rational to use the audited credit-card-sales ratio from a similar business operated by the same owner. Next, CDTFA reasonably and rationally calculated the average quarterly underreported taxable sales and applied that amount to quarters where no 1099-K data was available. Accordingly, the burden of proof shifts to appellant to show that a different result is warranted. (See *Appeal of Talavera*, *supra*.)

On appeal, appellant argues that the taxable measure is overstated. Appellant asserts that the credit-card-sales ratio from the Alcaraz audit overstates his taxable sales. Despite this contention, appellant has not provided any books, records, or other evidence to show that the

¹⁰ Credit card receipts, unlike cash, must be deposited into the bank. Therefore, those receipts can be readily compiled from bank statements and/or Form 1099-K data, which are forms filed with the Internal Revenue Service by the credit card processing companies, an objective source.

taxable measure should be reduced. Appellant has not met his burden of proof. Thus, OTA finds no adjustment to the measure of unreported taxable sales is warranted.

Issue 2: Whether adjustments to the measure of disallowed claimed nontaxable sales of food are warranted.

Although gross receipts from the sale of “food products” for human consumption are generally exempt from the sales tax, sales of hot food and sales of food served in a restaurant are subject to tax. (R&TC, § 6359(a), (d)(1), (d)(2), and (d)(7).) When more than 80 percent of a retailer’s gross receipts are from sales of food products, and over 80 percent of its retail sales of food are subject to tax, then cold food sold in a form suitable for consumption on the retailer’s premises is subject to tax even if it is purchased “to go.” (R&TC, § 6359(d)(6).) When a retailer’s sales fit within this provision, known as the “80/80 rule,” the retailer may avoid its application by keeping a separate accounting of its sales to-go of cold food in a form suitable for consumption on the retailer’s premises. Tax does not apply to sales of food products which are furnished in a form not suitable for consumption on the seller’s premises. (R&TC, § 6359(f); Cal. Code Regs., tit. 18, § 1603(c)(1)(A).) For purposes of the tax exemption, term “food products” does not include carbonated or effervescent bottled waters, spirituous, malt or vinous liquors, or carbonated beverages. (R&TC, § 6359(b)(3); Cal. Code Regs., tit. 18, § 1602(a)(2).)

When a right to an exemption from tax is involved, the taxpayer has the burden of proving their right to the exemption. (*H.J. Heinz Company v. State Bd. of Equalization* (1962) 209 Cal.App.2d 1, 4.) Any taxpayer seeking exemption from the tax must establish that right by the evidence specified by the relevant regulation. A mere allegation that sales are exempt is insufficient. (*Paine v. State Bd. of Equalization* (1982) 137 Cal.App.3d 328, 442.)


During the audit, appellant did not provide any books or records to show that he is entitled to a deduction for claimed nontaxable sales of food. As such, CDTFA disallowed the claimed deduction. Similarly, during this appeal, appellant has not provided any support for the contention that the measure of disallowed claimed nontaxable sales of food should be reduced. Appellant has not met his burden of proof.

HOLDINGS

1. Reductions to the measure of unreported taxable sales are not warranted.
2. Adjustments to the measure of disallowed claimed nontaxable sales of food are not warranted.

DISPOSITION

CDTFA's action is sustained.


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Keith T. Long
 Administrative Law Judge

We concur:
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Natasha Ralston
 Administrative Law Judge

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Teresa A. Stanley
 Administrative Law Judge

Date Issued: 3/11/2026