2026-OTA-251
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **PRESS BOX, INC.,** **dba Press Box Sports Grill**	OTA Case No.: 230212554 CDTFA Case ID: 679-918

OPINION

Representing the Parties:

For Appellant: Thomas Miller, President

For Respondent: Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Press Box, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[1] CDTFA's decision denied appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on October 1, 2018. The NOD is for tax of $52,770, plus applicable interest, for the period April 1, 2014, through March 31, 2017 (liability period).[2] As relevant here, CDTFA based the tax in part on unreported taxable sales of $563,131.[3]

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record.

ISSUE

Whether the amount of unreported taxable sales should be reduced.

[1] The State Board of Equalization (board) formerly administered sales and use taxes. On July 1, 2017, administrative functions of the board relevant to this case transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events occurring before July 1, 2017, "CDTFA" refers to the board.

[2] CDTFA timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations and extended the NOD issuance deadline to October 31, 2018. (See R&TC, §§ 6487(a), 6488.)

[3] CDTFA also based the tax on self-consumed inventory of $18,000 subject to use tax, which appellant did not contest on appeal and is thus not at issue here.

FACTUAL FINDINGS

1. During the liability period, appellant operated three sports bars and grills in Fresno and Clovis, California.
2. For the liability period, appellant claimed no deductions and reported total and taxable sales of $4,319,778.
3. Upon audit, appellant provided the following books and records: point-of-sale (POS) sales reports for most of the liability period; monthly handwritten sales summaries for periods when the POS sales reports were unavailable; bank statements; merchant statements; and federal income tax returns (FITRs) for 2014, 2015, and 2016. CDTFA independently obtained Form 1099-K data regarding appellant for 2014, 2015, and 2016.[4]
4. CDTFA compared taxable sales recorded in the POS sales reports, sales summaries, and bank deposits with reported taxable sales and found the former exceeded the latter by $400,928.
5. CDTFA also compared gross receipts reported on the FITRs with reported sales and found the former exceeded the latter by $199,551 for 2014, $180,864 for 2015, and $291,010 for 2016. CDTFA then compared gross receipts reported on the FITRs with costs of goods sold reported on the FITRs and computed book markups of 164.76 percent for 2014, 143.77 percent for 2015, 181.53 percent for 2016, and 169.90 percent overall.[5] CDTFA found the book markups reasonable for appellant's type of business and thus accepted gross receipts reported on the FITRs as a proxy for recorded taxable sales.
6. CDTFA reconciled recorded and reported taxable sales and found no difference for the first quarter of 2017 (1Q17). However, after accounting for nontaxable admission charges recorded on the POS reports, CDTFA established audited taxable sales of $4,235,617 for the liability period (except 1Q17). Upon comparison to reported taxable sales of $3,672,486 for the liability period (except 1Q17), CDTFA determined unreported taxable sales of $563,131 for the liability period.
7. On October 1, 2018, CDTFA issued the NOD to appellant.

[4] Form 1099-K (*Payment Card and Third Party Network Transactions*) is an IRS form used by banks, credit card companies, and other third-party payment processors to report payments made to merchants via credit/debit cards or online/electronic payment networks.

[5] A "book markup" (sometimes referred to as an "achieved markup") is a markup calculated from a retailer's records.

8. On October 30, 2018, appellant timely petitioned CDTFA for redetermination.
9. By decision dated January 4, 2023, CDTFA denied appellant's petition.
10. Appellant timely appealed to OTA and requested (and received) several extensions to provide additional information and/or supporting documentation. Specifically, OTA granted appellant 30-day extensions on the following dates: March 23, 2023; May 2, 2023; and June 6, 2023. Thereafter, CDTFA accepted appellant's appeal for settlement consideration, so OTA held the appeal in abeyance until April 6, 2024. However, the parties could not reach a settlement, so by letter dated April 25, 2024, OTA granted appellant until May 27, 2024, to file a brief. OTA granted appellant another extension through July 19, 2024, and ultimately closed briefing on November 14, 2024. As of the date of this Opinion, appellant has not provided any additional information, documentation, or evidence.

DISCUSSION

California imposes upon all retailers a sales tax measured by the retailer's gross receipts from the retail sale of tangible personal property in this state, 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, it is presumed 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 tax returns or the amount of tax required to be paid to the state by any person, respondent may compute and determine the amount required to be paid on the basis of any information within its possession or that may come into its possession. (R&TC, §§ 6481.)

In the case of an appeal, respondent has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Las Playas #10*, 2021-OTA-204P.) If respondent's determination is not reasonable and rational, then the determination should be rejected. (*Appeal of Landeros*, 2024-OTA-655P.) If respondent's determination is reasonable and rational, then the determination is presumed correct. (*Ibid*.) The burden of overcoming this presumption is on the taxpayer. (*Ibid*.)

Generally, the appellant bears the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) The standard of proof is by a preponderance of the evidence. (Cal.

Code Regs., tit. 18, § 30219(b).) That is, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Las Playas #10*, Inc., *supra*.) To satisfy its burden of proof, a taxpayer must prove both that the tax assessment is incorrect and what the proper amount of tax should be. (*Appeal of AMG Care Collective*, *supra*.)

Here, CDTFA used the gross receipts appellant reported on its FITRs as a proxy for recorded taxable sales for the liability period. After accounting for nontaxable sales (i.e., admission charges) and reported taxable sales, CDTFA determined unreported taxable sales of $563,131 for the liability period. Because CDTFA utilized appellant's own reporting to the IRS and accounted for nontaxable and reported taxable sales, OTA finds CDTFA's audit method to be reasonable and rational, and the resulting determination is presumed correct. Accordingly, the burden shifts to appellant to show errors in the audit.

On appeal, appellant alleges that CDTFA's determination is wrong but fails to provide any argument or evidence explaining why. During the briefing period for this appeal, appellant asked for and received several extensions to the deadline for providing information to OTA. However, as of the date of this Opinion, appellant has provided none. Accordingly, OTA concludes that the amount of unreported taxable sales should not be reduced.

HOLDING

The amount of unreported taxable sales should not be reduced.

DISPOSITION

CDTFA's action denying appellant's petition for redetermination is sustained.

DocuSigned by:
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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:
Josh Aldrich
48745BB800914B4...
Josh Aldrich
Administrative Law Judge

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

Date Issued: 9/16/2025