OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MAGICSNOW SYSTEMS, LLC**	OTA Case No.: 240415805 CDTFA Case ID: 3-162-929

OPINION

Representing the Parties:

For Appellant: Mary Jo Dolson, CPA

For Respondent: Amanda Jacobs, Attorney

For Office of Tax Appeals: Corin Saxton, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, MagicSnow Systems, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on September 7, 2021. The NOD is for tax of $244,996, plus applicable interest, and a penalty of $24,499.59 for the period July 1, 2017, through June 30, 2020 (liability period).[2] CDTFA based the tax of $244,996 on a deficiency measure of $2,578,910, which CDTFA subsequently reduced to $1,604,203 following two reaudits.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

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[1] 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.

[2] Appellant filed its sales and use tax returns for the period July 1, 2017, through March 31, 2018, on September 6, 2018. An NOD is timely if issued within three years after the return is filed. (R&TC, § 6487(a).) Because September 6, 2021, was Labor Day, a state holiday, the last day to timely issue the NOD was extended to and including the next day that is not a holiday. (See Code Civ. Proc., §§ 10, 12a.) Therefore, the September 7, 2021 NOD was timely issued as to the entire liability period.

ISSUE

Whether additional adjustments to the measure of tax are warranted.

FACTUAL FINDINGS

1. Appellant, a California limited liability company located in Los Angeles, California, operates a business selling artificial snow and snow fluid, renting snow machines, and providing snow displays and shows. For snow machine rentals, the customer has control of the equipment and appellant is not involved in the use of the equipment. Appellant charges sales tax on the snow fluid that is sold as part of the rentals. For snow displays and shows, appellant is responsible for producing and planning the show, as well as managing the setup, operation, and disassembly of the equipment. Appellant does not charge sales tax on snow displays and shows.
2. For the liability period, appellant reported total sales of $2,587,433, and claimed deductions for labor of $1,046,671 and sales in interstate commerce of $1,532,239, resulting in reported taxable sales of $8,523.
3. CDTFA conducted an audit of appellant. Appellant did not provide any books and records. CDTFA disallowed appellant's claimed deductions totaling $2,578,910.
4. CDTFA issued appellant the September 7, 2021 NOD.
5. Appellant timely filed a petition for redetermination.
6. CDTFA issued appellant a decision ordering a reaudit to examine appellant's claimed deductions.
7. CDTFA conducted a reaudit. Appellant provided sales invoices and associated contracts, and a sales journal for the liability period. However, CDTFA discovered that appellant's total sales per sales invoices ($6,057,720) and total sales per sales journal ($7,423,029) far exceeded appellant's reported total sales per sales and use tax returns for the liability period ($2,587,433). Therefore, CDTFA considered appellant's sales invoices to be incomplete.
8. CDTFA examined the sales invoices and computed California taxable sales per sales invoices of $2,310,860.[3] CDTFA then examined the sales journal and computed California total sales per sales journal of $3,050,033, then compared this amount to the total California total sales per sales invoices of $2,355,229 to calculate additional

[3] CDTFA accepted invoices with shipping addresses outside of California as nontaxable sales in interstate commerce. CDTFA found California total sales per sales invoices of $2,355,229, and after adjusting for sales tax reimbursement, nontaxable shipping charges, and optional labor charges, CDTFA computed California taxable sales per sales invoices of $2,310,860.

California sales per sales journal of $694,804. CDTFA then applied the taxable sales percentage of 98.12 percent derived from its examination of the sales invoices[4] to compute additional California taxable sales per sales journal of $681,741. In total, CDTFA computed audited California taxable sales of $2,992,601 ($2,310,860 + $681,741), and after accounting for reported taxable sales of $8,523, CDTFA determined unreported taxable sales of $2,984,078, asserting an increase of $405,168 to the original deficiency measure of $2,578,910.

9. Appellant timely filed this appeal.

10. In its opening brief, appellant argues that adjustments are warranted because it is an "entertainment production company" and that its sales of "snow displays and shows" constitute nontaxable services.

11. In response, CDTFA conducted a second reaudit. Appellant submitted additional contracts. CDTFA reviewed appellant's contracts and determined that sales involving both snow and additional production (such as music and lighting) constitute nontaxable sales of services. CDTFA reduced the deficiency measure by $1,430,911 to adjust for these nontaxable sales of services. For sales involving only snow without additional production, CDTFA continued to treat these as taxable sales. CDTFA also determined that use tax applies to appellant's consumption of snow fluid used in its performance of service contracts in California, and CDTFA computed unreported purchases subject to use tax of $51,036. In sum, CDTFA reduced the deficiency measure by $1,379,875, from $2,984,078 to $1,604,203.

12. During this appeal, appellant submits 8 additional sales invoices for work performed for Universal Studios LLC (Universal), along with a preliminary project proposal, a link to a demo video, and sample photographs.

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

[4] CDTFA calculated that California taxable sales per sales invoices of $2,310,860 comprise 98.12 percent of the California total sales per sales invoices of $2,355,229.

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*.)

Persons engaged in the business of rendering service are consumers, not retailers, of the tangible personal property which they use incidentally in rendering the service. (Cal. Code Regs., tit. 18, § 1501.) If in addition to rendering service they regularly sell tangible personal property to consumers, they are retailers with respect to such sales. (*Ibid*.) The basic distinction in determining whether a particular transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true objects of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service. (*Ibid*.) If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. (*Ibid*.) When a transaction is regarded as a sale of tangible personal property, tax applies to the gross receipts from the furnishing thereof, without any deduction on account of the work, labor, skill, thought, time spent, or other expense of producing the property. (*Ibid*.; see *Appeal of Thomas Conglomerate*, 2021-OTA-030P.) A taxpayer bears the burden of proving entitlement to an exemption or exclusion and must provide some credible evidence of that entitlement. (*Appeal of Thomas Conglomerate*, *supra*.)

Here, appellant does not dispute CDTFA's audit methodology. Nor does appellant dispute that snow machine rentals and the sale/making of just snow are subject to sales tax. Instead, appellant argues that its snow displays and shows are full-service productions, not just the selling of snow, and thus should be considered nontaxable sales of services. Appellant asserts that it manages and develops the productions (such as theatrical lighting, music, and voiceovers) and that its employees are on site for every performance to operate the show and for any post-show cleanup.

During this appeal proceeding, CDTFA concedes that when appellant provided additional production (such as music and lighting) along with snow, the true object of such contracts was a service and thus not subject to tax. (See Cal. Code Regs., tit. 18, § 1501.) CDTFA continues to treat sales involving only snow without additional production as taxable sales.

Appellant asserts that additional adjustments are warranted based on the eight additional invoices to Universal (Universal invoices), which appellant asserts were for a snow performance including music and lighting. As such, appellant contends the Universal invoices should also be considered nontaxable sales of services.

The Universal invoices are a series of invoices for the lease, design, and installation of a custom snow effects system for Universal, as described by the preliminary project proposal. The preliminary project proposal states that appellant will "design a customized snow effects system that will deliver indoor snowfalls effects," and that "[t]he system will be designed to conceal mechanical operations and deliver regularly timed snowfall effects." The preliminary project proposal also states that appellant "will install and test the customized snow effects system and calibrate the volume, output and cycle frequency of the snowfall effect." Appellant's demo video, which is scored with background music, shows views around and inside The Wizarding World of Harry Potter retail stores, where snow can be seen falling. (See https://www.magicsnow.com/project/wizarding-world-harry-potter, last accessed 5/20/2026.) The caption to the demo video states that snow appears every 15 minutes, choreographed to music from the film. The sample photographs show snow falling inside the store.

However, there is no indication in the Universal invoices or the preliminary project proposal that appellant was responsible for providing any music, lighting, or other production elements beyond the snowfall itself and the equipment used to make the snow. The demo video does not show any changes to the store lighting, and while the video has background music, it is unclear whether appellant provided any music or whether any music is actually playing inside the store. The sample photographs also offer no indication that appellant provided any music or lighting. Based on the foregoing, appellant has not established that it provided additional production elements, such as music and lighting. Moreover, appellant was not responsible for operating the equipment during the snowfall. The Universal invoices and the preliminary project proposal refer to an "equipment lease" rather than any performance. The evidence does not establish that the real object sought by Universal was anything beyond the snowfall and the snow effects system. Rather, the evidence suggests that the true object of the additional sales to Universal was the lease of the snow machine along with the snow it created. A lease of tangible personal property is, absent certain exceptions, considered a taxable sale.

(See R&TC, § 6006(g); Cal. Code Regs., tit. 18, § 1660(b)(1).)[5] Furthermore, while appellant may have provided some labor in designing, customizing, and installing the snow effects system for Universal, tax applies to the entire charge for the lease (or sale) of the snow effects system, without any deduction for work, labor, skill, thought, time spent, or other expense of producing the snow effects system. (See Cal. Code Regs., tit. 18, § 1501.) Therefore, tax applies to the Universal invoices.

HOLDING

Additional adjustments to the measure of tax are not warranted.

DISPOSITION

CDTFA's action reducing the deficiency measure to $1,604,203[6] but otherwise denying appellant's petition for redetermination is sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
8A4294817A67463...
Andrew Wong
Administrative Law Judge

DocuSigned by:
Josh Aldrich
48745BB806914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 6/10/2026

[5] Certain leases of tangible personal property are not considered taxable sales, but appellant does not assert, and the evidence does not establish, that any exceptions are applicable here. (See R&TC, § 6006(g)(1)-(7); Cal. Code Regs., tit. 18, § 1660(b)(1)(A)-(G).)

[6] CDTFA increased the deficiency measure from $2,578,910 to $2,984,078 in the first reaudit, and decreased the deficiency measure from $2,984,078 to $1,604,203 in the second reaudit.