OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **B & F PARADISE, INC.,** **dba Star Motors**	OTA Case No.: 250522205 CDTFA Case ID: 4-591-214

OPINION

Representing the Parties:

For Appellant:	Javier Ramirez, Representative Tatyana Lirtsman, Representative Justin Howe, Representative
For Respondent:	Jason Parker, Chief of Headquarters Ops.

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, B & F Paradise, Inc. (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 January 19, 2023. The NOD is for tax of $196,662, plus applicable interest, and a negligence penalty of $19,666.22 for the period April 1, 2019, through March 31, 2022 (liability period).

Appellant waived the right to an oral hearing;[1] therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(a).

ISSUE[2]

Whether additional adjustments to the measure of unreported taxable sales are warranted.

[1] This appeal was originally scheduled for an oral hearing. However, appellant failed to submit the required Response to Notice of Oral Hearing, and the appeal was removed from the oral hearing calendar. (See Cal. Code Regs., tit. 18, § 30404(a).)

[2] Appellant does not assert any arguments regarding the imposition of the negligence penalty. Accordingly, OTA does not further address the negligence penalty.

FACTUAL FINDINGS

1. Appellant, a California corporation, operated a used car dealership located in Reseda, California, under a seller's permit effective from March 20, 2015, until close-out on August 14, 2023. Appellant also operated a used car dealership located in Canoga Park, California, from July 1, 2021, until October 29, 2021.
2. For the liability period, appellant reported total sales of $5,845,874 and claimed deductions of $3,667,906, resulting in reported taxable sales of $2,177,968.
3. Upon audit, appellant did not provide any books or records. Consequently, CDTFA obtained information about appellant's vehicles sales for the liability period from the Department of Motor Vehicles (DMV).[3] CDTFA also obtained auction house data for 2019 from the DMV. CDTFA used the Report of Sale (ROS) information from the DMV (DMV ROS data) to estimate the sales price for each vehicle then added smog and document fees of $105 per vehicle, computing audited taxable vehicle sales of $4,334,260. CDTFA compared the taxable audited vehicle sales with appellant's reported taxable sales and calculated unreported taxable sales of $2,172,912 for the liability period.[4]
4. CDTFA issued the January 19, 2023 NOD to appellant.
5. Appellant timely petitioned for redetermination.
6. CDTFA performed a reaudit to remove unreported taxable sales from January 2021 through March 2022,[5] reducing the measure of unreported taxable sales from $2,172,912 to $2,054,541.
7. During CDTFA's internal appeal process, appellant provided additional documentation regarding three transactions.[6] Subsequently, CDTFA further reduced the measure of unreported taxable sales from $2,054,541 to $1,981,471.

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[3] Vehicle dealers are required to report the sale of a vehicle to the DMV using a Report of Sale form. (Veh. Code, § 4456(a).)

[4] CDTFA calculated some credits for August 2021, December 2021, January 2022, and March 2022, but CDTFA did not allow these credits because appellant did not provide any records to support the credits.

[5] Beginning on January 1, 2021, retail used vehicle dealers were required to pay applicable sales tax directly to the DMV. (R&TC, § 6295.) CDTFA accepted appellant's reported taxable sales for the period January 1, 2021, through March 31, 2022.

[6] Two of the transactions were made before the liability period. For the third transaction, a typographical error in the selling price was corrected.

8. On January 29, 2025, CDTFA issued a Decision affirming its reaudit findings but otherwise denying the petition.
9. Appellant timely filed this appeal.

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

Taxpayers are required to maintain and make available for examination on request by CDTFA, or its authorized representative, all records necessary to determine the correct tax liability under the Sales and Use Tax Law and all records necessary for the proper completion of the sales and use tax returns. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include but are not limited to: (a) the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; (b) bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account; and (c) schedules or working papers used in connection with the preparation of the tax returns. (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 failed to provide its books and records for audit, and CDTFA was unable to verify appellant's sales as reported on its sales and use tax returns for the liability period using a direct audit method (i.e., compiling audited sales directly from appellant's records). In the absence of books and records, CDTFA used an indirect audit method to compute audited taxable sales from the DMV data, which is derived from ROS forms that appellant submitted to the DMV. Using DMV ROS data to compute appellant's taxable sales is a standard and generally accepted audit procedure. (See *Appeal of Amaya*, 2021-OTA-328P; see CDTFA's Audit Manual, § 0607.35;[7] see also *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613.) Additionally, CDTFA reduced the audited taxable sales measure to account for sales from January 1, 2021, through March 31, 2022, during which time appellant paid tax directly to the DMV. (See R&TC, § 6295.) Therefore, CDTFA's determination is reasonable and rational, and the burden shifts to appellant to show errors in the audit.

On appeal, appellant contends that most of the vehicles from which unreported taxable sales were calculated during the audit did not belong to appellant. However, appellant fails to identify any specific vehicles or any errors in the DMV ROS data. Moreover, appellant has not provided any evidence from which a more accurate determination of unreported taxable sales could be made. Appellant's unsupported assertion fails to meet the burden of proof to establish that any adjustments are warranted. (*Appeal of Talavera, supra.)* Accordingly, there is no basis for further adjustments.

[7] CDTFA's Audit Manual does not provide binding legal authority; however, OTA may look to it for guidance. (See *Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

HOLDING

Additional adjustments to the measure of unreported taxable sales are not warranted.

DISPOSITION

CDTFA’s action reducing the measure of unreported taxable sales to $1,981,471 but otherwise denying the petition for redetermination is sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
K Long
DC88A60D8C3F442...

Keith T. Long
Administrative Law Judge

Date Issued: 6/23/2026