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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **JAMA AUTO HOUSE, INC.**	OTA Case No.: 250419245 CDTFA Case IDs: 3-836-153, 3-839-702

OPINION

Representing the Parties:

For Appellant: Mitchell Stradford, Representative

For Respondent: Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Mia Marasigan, Business Taxes Specialist

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6561 and 6901, Jama Auto House Inc. (appellant) appeals a Decision issued by respondent California Department of Tax and Fee Administration (CDTFA) partly denying appellant's timely petition for redetermination of a Notice of Determination (NOD)[1] issued on April 25, 2022, and a protective claim for refund.[2] The NOD is for tax of $39,645, plus applicable interest, and a negligence penalty of $3,964.53 for the period January 1, 2019, through December 31, 2020 (liability period). Pursuant to the Decision, CDTFA performed a reaudit, which reduced the determined tax to $24,324 and the negligence penalty to $2,432.32.

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).

ISSUE

Whether further reductions to the measure of unreported taxable sales are warranted.

[1] CDTFA based the determination on a Field Billing Order (FBO) examination. CDTFA uses an FBO examination to recommend an additional tax liability using procedures that are not as comprehensive as those used in a regular audit.

[2] A taxpayer will sometimes file a petition for redetermination and a claim for refund to protect its right to claim a refund or credit for overpayments discovered in an audit or that may be discovered during the taxpayer's appeal of the NOD. Such claims are frequently referred to as protective claims for refund.

FACTUAL FINDINGS

1. Appellant, a California corporation, operated a used car dealership in Hermosa Beach, California, selling used cars of various makes and models. Appellant was issued its seller's permit with an effective start date of January 1, 1983. Appellant's seller's permit was closed out with an effective end date of April 30, 2022. Appellant has not been previously audited.
2. On the quarterly sales and use tax returns (SUTRs), appellant reported total sales of $3,053,282 and claimed the following deductions: $465,032 for sales for resale, $411,290 for nontaxable labor sales, $77,150 for interstate and foreign commerce sales, and $645 for other deductions, resulting in reported taxable sales of $2,099,165 for the liability period. Appellant's reporting method was unknown.
3. CDTFA notified appellant that its sales appeared underreported based on a comparison of reported taxable sales and vehicle sales reported on the California Department of Motor Vehicles (DMV) repository reports.[3] As a result, CDTFA asked appellant to amend its SUTRs. Appellant did not respond or provide any books and records. Therefore, CDTFA obtained the DMV repository reports for the liability period.
4. CDTFA found the taxable sales of $2,205,779 reported on the DMV repository reports exceeded the taxable sales of $2,099,165 reported on the SUTRs by $106,614 for the liability period, which included credit differences measuring $186,690 for the second quarter of 2019 (2Q19) and $127,866 for 4Q19. CDTFA concluded that appellant correctly reported its taxable sales for 2Q19 and 4Q19. Because appellant was unable to explain either the credit or debit differences and did not provide any documentation, CDTFA computed unreported total taxable sales of $421,170 for the liability period.
5. CDTFA determined that a negligence penalty was warranted because appellant did not provide books and records when requested and failed to amend its SUTRs following

[3] The information obtained from the DMV included the Vehicle Identification Number (VIN), license plate number, year and make of the vehicle, vehicle registration date, and a two letter Vehicle License Fee (VLF) code designating a range of sale prices in $200 increments. CDTFA considered the registration date to have occurred shortly after the actual date of sale, and thus CDTFA used the vehicle registration date to group the vehicles into quarterly periods in which the vehicles were sold. CDTFA used the VLF code to assign the lowest estimated sale price in the $200 range designated by a particular code. For example, VLF code "AC" designates that the sale price of the vehicle was between $200 and $399, and CDTFA would assign a sale price of $200 for sales involving VLF "AC". (See CDTFA's Audit Manual, § 0607.37 (March 2016).) CDTFA's Audit Manual is an advisory publication providing direction to CDTFA staff administering the Sales and Use Tax Law and regulations. While CDTFA's Audit Manual may provide guidance to OTA, it does not constitute binding legal authority. (*Appeal of Micelle Laboratories, Inc.*, 2020-OTA-290P.)

notification that appellant's sales were potentially underreported based on a comparison of reported taxable sales and vehicle sales reported on the DMV repository reports.

6. CDTFA issued the NOD on April 25, 2022, which was based on a Field Billing Order (FBO) as described above, resulting in a tax liability of $39,645 plus applicable interest, and a 10 percent negligence penalty of $3,964.53,[4] for the liability period.
7. Appellant timely filed a petition for redetermination and a protective claim for refund. Appellant's filing contended that the determined liability was overstated due to exempt sales made in interstate and foreign commerce and also due to timing differences between the DMV registration date and the vehicle delivery date.
8. CDTFA held an appeals conference on June 12, 2024. Appellant did not appear at the appeals conference and did not provide any documentation to support its contentions.
9. Following the appeals conference, CDTFA obtained additional DMV information regarding sales that appellant reported to the DMV on the Retail Report of Sale, Report of Sales – Used Vehicle forms (DMV ROS data),[5] and the DMV repository reports.[6]
10. CDTFA removed two transactions registered to customers with out-of-state addresses found in the DMV ROS data. Further, CDTFA identified three transactions in the DMV repository reports that were registered to buyers with out-of-state addresses. However, the DMV ROS data disclosed that these vehicles were registered to California addresses. Therefore, CDTFA concluded the vehicles were sold to customers residing in California and thus were taxable transactions.
11. CDTFA combined the vehicle sales of $2,112,000 reported on the DMV repository reports and the vehicles sales of $2,526,442 reported on the DMV ROS data. CDTFA removed duplicate transactions to compile 132 taxable vehicle sales totaling $2,370,784.
12. CDTFA compared the taxable sales of $2,370,784 to reported taxable sales of $2,099,165 to compute unreported taxable sales of $271,619 for the liability period. CDTFA computed credit differences of $186,690 for 2Q19 and $52,327 for 4Q19 that it

[4] Appellant has not raised any dispute regarding the negligence penalty, and therefore this Opinion will not address it further.

[5] Assembly Bills 82 and 85 (Chapters 14 and 8, Statutes of 2020) required used car dealers to pay the DMV sales tax reimbursement at the time they submit the vehicle registration/transfer application beginning on January 1, 2021. CDTFA began receiving ROS reports from the DMV in addition to DMV repository reports during this time. The information recorded on both reports is similar with some minor differences.

[6] CDTFA noted a decrease in vehicle sales by $93,779, from $2,205,779 (from the original FBO) to $2,112,000 on the DMV repository reports.

determined to be timing differences.[7] CDTFA allowed the credit differences because it asserted that it was reasonable since reported taxable sales were compared to determined taxable sales for the liability period.

13. On October 8, 2024, CDTFA issued a Decision ordering a reaudit to allow the credit differences of $186,690 for 2Q19 and $52,327 for 4Q19, and to reduce the unreported taxable sales by $149,551 from $421,170 to $271,619 for the liability period, but otherwise denied the petition for redetermination and protective claim for refund.
14. CDTFA issued a revised FBO that reduced the measure of unreported taxable sales by $149,551, from $421,170 to $271,619, which reduced the determined tax to $24,324 and the negligence penalty to $2,432.32.
15. In a letter dated April 8, 2025, CDTFA notified appellant that the liability had been adjusted in accordance with the Decision.
16. Appellant timely appealed to OTA, contending only that the audit liability is overstated because appellant made exempt sales in interstate commerce.

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).)

R&TC section 6396 provides an exemption from sales tax when the property pursuant to the contract of sale is required to be shipped to a point outside this state by the retailer by means of facilities operated by the retailer or delivery by the retailer to a carrier, customs broker, or forwarding agent.[8] Sales tax applies when the property is delivered to the purchaser or its representative in this state, regardless of whether the intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so

[7] CDTFA computed credit differences of $186,690 (determined taxable sales of $274,085 – reported taxable sales of $460,775) for 2Q19 and $52,327 (determined taxable sales of $312,174 – reported taxable sales of $364,501) for 4Q19.

[8] If title transfers on delivery outside California, then sales tax is inapplicable because it is an out-of-state sale, and the applicable tax, if any, is use tax.

transported. (Cal. Code Regs., tit. 18, § 1620(a)(3)(A).) Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support the claimed exemption. (Cal. Code Regs., tit. 18, § 1620(a)(3)(D).) Any retailer seeking exemption bears the burden of proving that the statutory requirements have been satisfied. (*Appeal of AMG Care Collective*, 2020-OTA-173P.)

A taxpayer is required to maintain and make available for examination on request by CDTFA all records necessary to verify the accuracy of any return filed, or, if no return has been filed, to ascertain and determine the amount required to be paid. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) Such records include but are not limited to: (1) the normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question; (2) bills, receipts, invoices, cash register tapes, or other documents of original entry; and (3) schedules of 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, 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.) 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*.)

Upon CDTFA's examination, appellant did not provide any books or records for CDTFA's review such as federal income tax returns, business bank statements, sales journals, receipts, deal jackets,[9] bills of lading, merchandise purchase invoices, purchase journals, and sales tax worksheets. CDTFA found that appellant's vehicle sales reported to the DMV exceeded reported taxable sales. Furthermore, the DMV ROS data is evidence of appellant's taxable sales because that data is based on sales that appellant reported to the DMV on ROS forms. It is standard audit practice for auditors of used car dealerships to obtain DMV data. CDTFA's Compliance Policy and Procedures Manual (CPPM) and Audit Manual set forth and summarize CDTFA's policy and procedure, respectively, for a field auditor to obtain this information from the DMV and use it in an audit. (CPPM, § 645.120; CDTFA Audit Manual, § 0607.35.) OTA

[9] Car dealers routinely use deal jackets, which contain various documents related to a sale, including but not limited to the vehicle sales contract, vehicle purchase invoice, and the Report of Sales.

finds that using the DMV ROS data and DMV repository reports to compute appellant's taxable sales is a standard and generally accepted auditing procedure. (See *Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 612-613.) Accordingly, OTA finds that it was reasonable and rational for CDTFA to use the DMV data (DMV repository reports and DMV ROS data) to compute appellant's taxable sales. Based on the foregoing, OTA finds that CDTFA met its initial burden of demonstrating that its determination was reasonable and rational. Accordingly, the burden of proof shifts to appellant to establish that a different result is warranted.

Appellant contends that the determined taxable measure is overstated because appellant made exempt sales in interstate and foreign commerce. Here, appellant did not identify the alleged interstate and foreign commerce sales or provide any supporting documentation, such as sales contracts, bills of lading, Form CDTFA-447, *Statement Pursuant to Section 6247 of the CA Sales and Use Tax Law*, or Form CDTFA-448, *Statement of Delivery Outside CA*,[10] to refute the findings or to support a different result. Exemptions from tax are strictly construed against the taxpayer who has the burden of proving that the statutory requirements have been satisfied. (*Appeal of Snowflake Factory, LLC*, 2020-OTA-270P.) Thus, appellant failed to meet its burden of proving that adjustments are warranted for exempt sales in interstate and foreign commerce.

Appellant has not identified any errors in CDTFA's computations of unreported taxable sales or provided any records or evidence to support appellant's contentions from which a more accurate determination could be made. As such, OTA concludes no further adjustments are warranted.

[10] CDTFA accepts completed Forms CDTFA-447 and CDTFA-448 as evidence of out-of-state deliveries. Alternatively, car dealers may also provide as support, receipts for meals, lodging, fuel and transportation, and/or statements by delivering and receiving parties. (See CDTFA Audit Manual, § 0611.05.)

HOLDING

Further reductions to the measure of unreported taxable sales are not warranted.

DISPOSITION

CDTFA's action reducing the determined tax to $24,324 and the negligence penalty to $2,432.32 but otherwise denying the petition for redetermination and protective claim for refund are sustained.

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

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