OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **COAST DENTAL SERVICES, INC.**	OTA Case No. 231114667 CDTFA Case ID: 1-947-037

OPINION

Representing the Parties:

For Appellant: Jon P. Skelton, Attorney

For Respondent: Amanda Jacobs, Attorney

For Office of Tax Appeals: Oliver Pfost, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Coast Dental Services, Inc. (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 February 26, 2020. The NOD is for tax of $957,275 plus applicable interest, and payments/credits of $11,960 for the period October 1, 2014, through September 30, 2018 (liability period).[2]

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, (Regulation) 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] The NOD was timely issued because appellant waived the otherwise applicable three-year statute of limitations by signing a series of waivers, allowing respondent until April 30, 2020 to issue the NOD for the liability period.

ISSUE

Whether the sale of appellant's fixed assets pursuant to several asset purchase agreements was an occasional sale exempt from sales tax under R&TC section 6367.

FACTUAL FINDINGS

1. Appellant owned and operated dental practices at various locations in California during the liability period. Appellant decided to cease operations in California.[3]
2. Between June 1, 2018, and September 17, 2018, appellant executed 25 separate asset purchase agreements (the Contracts) with 15 distinct buyers to sell its California-based dental practices and associated business assets.
3. Appellant held a seller's permit, issued by CDTFA, for the sale of tangible personal property.[4] On its sales and use tax return for the periods between the fourth quarter of 2014 (4Q14) and 2Q18, appellant did not report any taxable sales. For the 3Q18, appellant reported ex-tax purchases of $893,626 subject to use tax for the liability period, sales of $208,500 against which it also claimed deductions of nontaxable sales for resale of $208,500, sales of fixtures and equipment (fixed assets) totaling $11,157,933, and claimed a deduction for nontaxable sales of fixed assets of $10,873,164 as exempt occasional sales.
4. During the audit, appellant provided CDTFA with copies of the Contracts as well as other books and records. CDTFA determined the fixed assets identified in the Contracts, which appellant sold to the various buyers, were not held or used in the course of activities for which appellant's seller's permit was required. However, CDTFA determined the sales of fixed assets were a series of sales sufficient in number, scope, and character to constitute an activity for which appellant was required to hold a seller's permit.

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[3] It is unclear from the record exactly how many dental practices appellant owned and operated in the state before ceasing operations. Appellant states it had more than 20 different offices/locations in California. OTA was provided with 25 asset purchase agreements, some of which specifically identify a "practice location" being sold, along with the assets from that practice location. Some asset purchases agreements identify multiple practice locations being sold to the same buyer. Similarly, other asset purchase agreements do not identify the practice location but do identify the assets which were sold.

[4] Appellant's permit was required for is sales of electronic toothbrushes and other items sold to patients in the regular course of business.

5. For each Contract appellant received more than $400 in consideration.
6. CDTFA timely issued appellant a NOD for tax of $957,275 plus applicable interest, and a credit of $11,960.[5] The NOD was based on a CDTFA audit report which found a deficiency measure of $11,198,538, which included disallowed claimed exempt sales of fixed assets of $9,869,541. The calculation of the deficiency from the sale of fixed assets was determined by CDTFA on an actual basis from the Contracts.
7. CDTFA allowed appellant's sales of fixed assets under the first two of the Contracts to be treated as exempt occasional sales but determined the sales of fixed assets under the remaining 23 of the Contracts were not occasional sales and were subject to tax.
8. Appellant timely filed a petition for redetermination of the NOD, arguing the sales of the fixed assets under the Contracts constituted one occasional sale, which was exempt from tax. CDTFA denied appellant's petition for redetermination in an Appeals Bureau Decision.
9. Appellant timely filed this appeal from CDTFA's Appeals Bureau Decision.
10. On appeal, appellant only disputes the amount of the deficiency measure attributable to the sale of fixed assets, determined by CDTFA to be $9,869,541.

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property (TPP) 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.) "Sale" means and includes any transfer of title or possession, in any manner or by any means whatsoever, of TPP for a consideration. (R&TC, § 6006) 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.)

When a right to an exemption from tax is involved, the taxpayer has the burden of proving the right to the exemption. (*H.J. Heinz Company v. State Board of Equalization* (1962) 209 Cal.App.2d 1, 4.) Any taxpayer seeking exemption from the tax must establish that right

[5] CDTFA's calculation of this credit appears in error (credits of $3,362 (3Q16) and $2,140 (4Q16), along with overpayments of $6,001 and offsets of $557, total $12,060); however, because this credit is not in dispute, OTA does not address it further.

using the evidence specified by the authorizing statute or regulation.[6] A mere allegation that sales are exempt is insufficient to meet the burden of proof. (*Paine v. State Board of Equalization* (1982) 137 Cal.3d 438, 442.)

When a person sells a business which is required to hold a permit, tax applies to the gross receipts from the retail sale of tangible personal property (TPP) held or used by the business in the course of its activities requiring the holding of the seller's permit. (Cal. Code Regs., tit. 18, § 1595(b)(1).)

Occasional sales of TPP are generally exempt from sales and use taxes. (R&TC, § 6367.) As relevant here, an "occasional sale" is the sale of TPP not held or used by a seller in the course of activities for which it is required—or would be required—to hold a seller's permit, provided that the sale is not one of a series of sales sufficient in number, scope, and character to constitute an activity for which it is required—or would be required—to hold a seller's permit. (R&TC, § 6006.5(a); Cal. Code Regs., tit. 18, § 1595(a)(1).)

Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit regardless of whether the sales are at retail or are for resale. (Cal. Code Regs., tit. 18, § 1595(a)(1).) Each sale by the person during the 12-month period is included in determining whether that person is required to hold a seller's permit. (*Ibid.*) A "sale" means and includes any transfer of title or possession, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of TPP for a consideration. (R&TC, § 6006(a).) A sale of $400 or more is a "substantial" amount within the meaning of Regulation, section 1595(a)(1). (*Appeal of Pratt North Plaza Associates, et al.* (SBE Memo.) 1993 WL 658052.)

Regulation section 1595(a)(5) provides examples of sales which are exempt occasional sales. Regulation section 1595(a)(5)(A) states, in part, that if "the operator of [a] service enterprise makes more than two sales of substantial amounts of [TPP] used in the service enterprise [within a 12-month period], the first two sales are exempt occasional sales, but the operator is required to hold a [seller's] permit for the third and subsequent [sales for the same] 12 month period." In other words, if a sale would be exempt as an occasional sale but for being

[6] The courts have concluded that statutes granting exemption from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. The taxpayer has the burden of showing that they qualify for the exemption. An exemption will not be inferred from doubtful statutory language; the statute must be construed liberally in favor of the taxing authority, and strictly against the claimed exemption. (*Standard Oil Co. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 766.)

a sale in a series of sales sufficient in number, scope, and character to require a seller's permit, then the first two sales in the series are exempt occasional sales and the remaining sales are not exempt occasional sales, assuming the sales occurred in the same 12-month period.

CDTFA agrees that appellant's fixed assets were not held or used in the course of activities for which it held a seller's permit. CDTFA, however, argues that between June and September 2018, appellant engaged in the business of selling the fixed assets used in its dental practices, and owing to the number, scope, and character of this activity, appellant was required to hold a seller's permit. Consequently, CDTFA argues that while the first two of appellant's sales would constitute exempt occasional sales, each sale thereafter would necessitate appellant's holding of a seller's permit and the payment of sales tax thereon.

Appellant disagrees. Appellant contends its intention was to sell all the dental practices at the same time, but the size and scope of the business made it impossible for there to be a single buyer. Instead, appellant contends that the sales of the dental practices was one concerted effort, and that it was able to secure the sale of the business by simultaneously bringing multiple buyers "to the table" within a short period of time. Given the multiple buyers, appellant contends it was not feasible to have one contract and one closing date. In essence, appellant argues there was one sale of appellant's entire dental practice, the sale did not require the holding of a seller's permit, and the sale is an exempt occasional sale. Appellant cites to *Chemed Corp. v. State Board of Equalization* (1987) 192 Cal.App.3d 967 (*Chemed*) and *Glass-Tite Industries, Inc. v. State Board of Equalization* (1968) 266 Cal.App.2d 691 (*Glass-Tite*) in support of their argument that multiple contracts for the sale of property can nevertheless constitute a single sale of tangible personal property.

Appellant's reliance on *Chemed* is misplaced given that the question of whether multiple contracts can constitute a single sale was not addressed by the Court of Appeal, but the court below.[7] With regard to appellant's reliance on *Glass-Tite*, it is unclear how this case supports

[7] "The trial court found that five sales of equipment used at MDS-Ohio Valley Region dated November 1977 constituted as single sale and that another sale as insubstantial. The Board disagrees with this finding . . . we do not reach this issue." (*Chemed*, *supra*, 192 Cal.App.3d 967, 975.)

appellant's position.[8] Furthermore, the line of cases referenced there stand for the precedent that a sale may be taxable even though it is the final sale of the entire business and all of its property. (*Glass-Tite*, *supra*, 266 Cal.App.2d at p. 694.) Therefore, this case is also not instructive.

Nevertheless, the essential argument, that multiple contracts can constitute a single transaction and therefore a single sale while valid, does not establish appellant's right to relief here. Whether the transfer of title to or possession of multiple items of tangible personal property constitutes one or more sales is as much a question of contract law as it is one of tax law. (See *Beatrice Co. v. State Board of Equalization* (1993) 6 Cal.4th 767, 774.)[9] Multiple contracts relating to the same matter, between the same parties, and made as parts of substantially one transaction, are to be taken together. (Civ. Code, § 1642.) Even contracts that are not executed at the same time can be taken together as part of one transaction. (*Body-Steffner Co. v. Flotill Products* (1944) 63 Cal.App.2d 555, 560.) The parties' intent controls and that intent is ascertained objectively from the contract language.[10] (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54.) Key considerations include the interdependence of the contracts or their being contingent upon one another. (*Signal Companies, Inc. v. Harbor Ins. Co.* (1980) 27 Cal.3d 359, 370.) Another key consideration is whether the contracts have a purpose of attaining a preconceived objective, even if not executed by all the parties to the transaction. (*Goodman v. Severin* (1969) 274 Cal.App.2d 885, 895.) While coterminous execution of multiple contracts that make up a single transaction is not required (*Lynch v. Bank of America Nat. Trust & Sav. Ass'n* (1934) 2 Cal.App.2d 214), separate negotiation and execution is indicative of multiple transactions. (*Signal Companies, Inc.*, *supra*.)

While appellant argues the sales of the dental practices and associated business assets constituted "one sale" owing to its concerted effort and the infeasibility of having one contract,

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[8] The issue in *Glass-Tite* was not whether a series of sales occurred that would have required the holding of a seller's permit, but whether the property sold was held or used by the seller in the course of activities for which a seller's permit was required. It was undisputed that a single sale occurred. (*Glass-Tite*, *supra*, 266 Cal.App.2d at p. 692.) The case was nevertheless overturned by an amendment to R&TC section 6014. (See, e.g., CDTFA Business Taxes Law Guide Annotation 395.0670 (6/4/91).)

[9] See also *King v. St. Bd. of Equalization* (1972) 22 Cal.App.3d 1006, 1012-1013 [the definition of "sale" in the revenue and taxation code was designed to parallel the common law and commercial code definitions]; *Dell, Inc. v. Superior Court* (2008) 159 Cal.App.4th 911, 923-924 [determinations of the taxability of services bundled with tangible goods is whether the purchaser's true object was to obtain the service or the tangible goods].

[10] However, "[t]he use of extrinsic evidence to show [whether] several written instruments were intended to constitute a single contract does not involve a violation of the parol evidence rule." (*Meier v. Paul X. Smith Corp.* (1962) 205 Cal.App.2d 207, 219; See also *Brawthen v. H & R Block* (1972) 52 Cal.App.3d 131, 139.)

appellant speaks only to its intent, not to the intent of the several parties to 25 separate contracts. Appellant fails to show how the terms of the Contracts establish their interdependence or fulfill a common purpose among all the parties, not just appellant. Appellant fails to present evidence that the Contracts were negotiated as a single transaction among the parties, or present evidence that all the parties intended to create a single, integrated transaction. Appellant simply presents no evidence beyond the simple assertion that the multiple instruments represent a single transaction for the sale of their business.

When followed to its ultimate conclusion, appellant's argument is essentially that the Contracts should be treated as a single sale because appellant sold its entire business. Sale of a business, is not the standard for ascertaining whether there was an exemption from the sales tax for an occasional sale. (*U.S. Industries, Inc. v. State Board of Equalization* (1962) 198 Cal.App.2d 775.)

OTA finds the evidence here leads inexorably to the conclusion that appellant entered into 25 separate transactions, each constituting a sale of tangible personal property for a consideration and subject to sales tax in the absence of establishing an exemption thereto.[11] Appellant's 25 sales were for substantial amounts ($400 or more) and exceeded the three-sale threshold, which required appellant to hold a seller's permit for the sale of the dental practices and associated fixed assets. Since appellant was required to hold a seller's permit for those sales (i.e., the sales resulting from Contracts 3-25), the sales cannot be exempt occasional sales. According to the examples in Regulation section 1595(a)(5), the fixed assets under the first two asset purchase agreements are exempt occasional sales, while the fixed asset sales under the remaining asset purchase agreements, numbers 3 through 25, are not exempt occasional sales. (Cal. Code Regs., tit. 18, § 1595(a)(5)(A).)

In sum, OTA finds that appellant has not shown that the occasional sale exemption is applicable to the transactions at issue.

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[11] Among the 25 Contracts were 15 distinct buyers. While it is possible that one or more of those contracts were actually parts to a single transaction included in the taxable measure, beyond the mere fact that the buyers are the same, there is no evidence in the record to establish any of the Contracts might be considered interdependent, achieving a common objective, were negotiated coterminously, or otherwise intended by the parties to be a single, integrated transaction.

HOLDING

Appellant has failed to establish the sale of its fixed assets pursuant to the Contracts constituted a single transaction and therefore an occasional sale. Accordingly, OTA finds that the first two sales are exempt, while the remaining sales, Contracts 3 to 25, do not qualify as occasional sales exempt from sales tax under R&TC section 6367.[12]

DISPOSITION

CDTFA's action is sustained.

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

We concur:

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 1/31/2025

[12] In reaching this conclusion that these transactions do not qualify as an exempt occasional sale, this Opinion does not address whether (and/or to what extent) tax applies to the sale of fixed assets from all 25 dental practices within the meaning of Regulation section 1595(b)(1) on the basis that appellant was a permitized retailer registered with the board to sell TPP in the regular course of its dental practice business.