COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LOFA AUTO BODY, LLC **v.** **COMMISSIONER OF REVENUE**

Docket No. C348289

Promulgated:
April 7, 2026

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39, from the refusal of the Commissioner of Revenue ("appellee" or "Commissioner") to grant an abatement of sales tax assessed to Lofa Auto Body, LLC ("appellant") for the monthly tax periods ended October 31, 2017 through April 30, 2022 ("tax periods at issue").

Chairman DeFrancisco heard the appeal. Commissioners Good, Elliott, Metzer, and Bernier joined him in a decision in part for the appellant, granting an abatement of the double assessment of taxes imposed pursuant to G.L. c. 62C, § 28 ("§ 28,"), and in a decision in part for the appellee, upholding the sales-tax assessment.

These findings of fact and report are made at the requests of the appellant and the appellee pursuant to G.L. c. 58A, § 13 and 831 CMR 1.34.

Joseph Sano, Esq., for the appellant.

Jodi Meade, Esq., and *Timothy Stille,* Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

At all times relevant to the tax periods at issue, the appellant was a business located in Peabody that provided auto-body collision repairs, primarily to fleet vehicles of car rental companies. The appellant did not file sales tax returns with the appellee for the tax periods at issue. After an audit, the Commissioner issued to the appellant a Notice of Failure to Register and File dated June 24, 2022 ("NFF"), advising the appellant that it had not filed sales tax returns for the tax periods at issue. The NFF indicated that the appellant could explain and submit supporting documentation if it believed that no returns were due, and if it did not respond by July 24, 2022, a tax bill would be issued based on the best information available and a tax up to double the amount determined to be owed might be assessed. One month later, on July 21, 2022, the appellant filed returns for the monthly tax periods October 2017 through October 2018; the next day, on July 22, 2022, the appellant filed additional returns for the monthly tax periods November 2018 through May 2020; and on April 23, 2024 (almost two years later), the appellant filed returns for the remaining tax periods at issue. All returns listed gross sales of $0 and tax due of $0.

The Commissioner issued a Notice of Incorrect or Insufficient Return dated July 25, 2022 ("NIIR"), instructing the appellant to recompute its tax liability and submit the proper amounts due with the correct amended returns, and warning that if the appellant failed to respond by August 24, 2022, the Commissioner could calculate the tax due based on the best information available and might assess up to double the amount of the tax that the Commissioner determined to be due, pursuant to § 28. The appellant did not

provide new returns or additional information. After the Commissioner issued a Notice of Intent to Assess dated September 7, 2022, the appellant requested a pre-assessment conference with the Commissioner's Office of Appeals, which determined that the appellant failed to provide the necessary documentation to support its claims.

The Commissioner subsequently issued to the appellant a Notice of Assessment dated January 25, 2023, which included a double assessment under § 28 of what the Commissioner deemed to be the sales tax due, together with penalties and interest, for a total assessment of $118,734.81 for the tax periods at issue. On February 6, 2023, the appellant timely filed a post-assessment abatement application to which it attached "sample customer contracts for auto-body repair services and sample invoices for its purchases of auto parts." The Commissioner issued to the appellant a Notice of Abatement Determination dated March 13, 2023, denying its request for an abatement. On May 9, 2023, the appellant timely filed an appeal with the Board. Based on the above facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The issues presented in this appeal are: (1) whether the appellant demonstrated that its auto-body repair transactions were not subject to the sales tax, thus releasing the appellant from its obligation of collecting and remitting sales tax; and (2) whether the double-assessment under § 28 was proper.

The appellant presented its case through the testimony of its manager, Festus Karmah ("Mr. Karmah"), and the presentation of documents, which included auto-body repair service agreements with customers and invoices for parts that the appellant had purchased to fulfill its auto-body repair agreements.

Mr. Karmah testified that the appellant's business was generated primarily by contracts with owners of vehicle fleets, like Avis Rent-a-Car and Enterprise Rent-a-Car. He testified that the auto-body repair contracts with its customers called for the appellant to repair the vehicles based on an agreed hourly labor rate, plus the cost of parts and certain materials. According to Mr. Karmah, the appellant purchased parts and materials from its vendor, and it paid sales tax on these purchases. Mr. Karmah testified, and customer contracts entered into evidence corroborated, that the appellant did not charge its customers sales tax for the auto parts that were used to perform the repair work. When the appellant billed its customers for completed work, the bill reflected the total amount due without a separate statement of charges for labor, parts, or materials.

When asked to describe a typical transaction, Mr. Karmah testified that the appellant would purchase a replacement bumper from its vendor, the price of which would include the sales tax. That total cost was passed along to the customer, plus the cost of labor at $31 per hour, typically for four to five hours of work. Referencing a sample invoice entered into evidence, Mr. Karmah testified that the replacement bumper cost about $285 including tax, and the appellant billed the customer for about five hours of work at the $31 hourly rate. In this purportedly typical example, the reported cost of the property – the bumper – well exceeded ten percent of the total cost of the sum billed.

Mr. Karmah testified that, based on its accountant's advice, the appellant believed that it was not a vendor of tangible personal property, but a consumer of the property that it used in fulfilling auto-body repair contracts with its customers. Therefore, he testified, the appellant never furnished its vendor with a resale certificate and never collected sales taxes from its customers.

The appellee presented his case through the testimony of Anthony Azevedo ("Mr. Azevedo"), a supervisor in the Department of Revenue ("DOR") Filing Enforcement Bureau. According to Mr. Azevedo, after a visit with the appellant on June 23, 2022, the auditor attempted to work with the appellant to file sales tax returns, but he described the appellant as uncooperative and unresponsive to emails and phone calls. After the appellant failed to file the requested sales tax returns, the auditor determined that the appellant was liable for sales tax, basing this conclusion in part on Google and Facebook reviews describing the appellant's services. The appellee then calculated an estimated assessment for the appellant based on a comparable auto-body repair business in Peabody.

The appellee argued that the appellant was a vendor of tangible personal property and was thus required to charge its customers a sales tax on property transferred to the customers, which it did not do. The appellee further maintained that he correctly assessed the tax at double the amount determined to be due under § 28 because the appellant filed "0" sales tax returns, refused to amend its sales tax returns after receiving a NIIR, and did not submit sales tax returns for the tax periods June 2020 through April 2022 until nearly two years after the issuance of the NFF. The appellee further argued that the appellant's continuing refusal to respond to the appellee's request for documentation during discovery constituted willful conduct to evade or defeat taxes.

Based on the record in its entirety, the Board found and ruled that the appellant did not provide adequate evidence to demonstrate that it was not liable to collect and remit sales tax with respect to its auto-body repair charges for the tax periods at issue.

However, the Board also ruled that the appellant's actions did not justify the imposition of additional tax under § 28.

The appellant argued that it owed no sales tax. As Mr. Karmah testified, the appellant believed, based on advice from its accountant, that it was a service enterprise and a consumer of goods used in fulfilling its sales contracts, and thus not obligated to collect sales tax on those sales transactions. While the appellant may have been uncooperative, its actions, including filing sales tax returns reflecting $0 property sold and $0 in sales tax owed, were consistent with its stated position that it was not obligated to collect and remit sales tax. Nothing presented by the Commissioner derogated from the conclusion that the appellant was sincere in its beliefs and assertions regarding applicable law and the correctness of its returns as filed. The Board therefore found and ruled that the Commissioner's double-assessment of tax pursuant to § 28 was not proper.

The Board issued a Rule 33 Order for the parties to determine the amount of the assessment that was attributable to the sales tax due, excluding tax assessed pursuant to § 28. In response, the appellant proposed a $0 sales tax liability and failed, as during the course of the DOR audit, to provide documentation to substantiate the sum of its sales contracts. The Board therefore adopted the Commissioner's calculation of sales tax, which was based on his best estimate of the appellant's sales.

Accordingly, the Board issued a decision for the appellee in part, upholding the assessment of sales tax, and for the appellant in part, ordering abatement of $39,829.35 representing the § 28 double assessment, consistent with the appellee's calculation.

OPINION

Massachusetts imposes a tax on sales at retail by any vendor of tangible personal property for any purpose other than for resale in the regular course of business. G.L. c. 64H, § 2. Relevant to the present appeal are sales transactions in which a vendor provides a combination of tangible personal property and services, as the appellant offers repair services together with tangible personal property in the form of automobile parts. The taxation of these mixed transactions has been the focus of much litigation. *See, e.g.,* ***Houghton Mifflin Co. v. State Tax Commission***, 373 Mass. 772 (1977) (Supreme Judicial Court held that a transaction involving both provision of services and transfer of property was subject to sales tax where the consideration for the property was not separately stated on the invoice).

Consistent with the weight of relevant precedent, the Commissioner promulgated regulations at 830 CMR 64H.1.1, known as the Service Enterprises Regulation, to clarify the taxability of a sales transaction that involves the transfer of tangible personal property and the performance of a service. The regulation explicitly applies the sales tax to transactions undertaken by service enterprises, including "repairers of motor vehicles," when:

> 1. The transfer of tangible personal property occurs, and the charge for the property is stated separately from the charge for labor on the bill to the customer, whether or not the value of the property is inconsequential; or
>
> 2. The transfer of tangible personal property occurs, and the value of the property is not inconsequential in relation to the total charge, and the charge for the property is not separately stated on the bill to the customer.

830 CMR 64H.1.1(2)(b). The regulation defines "inconsequential" as "a value of less than ten percent of the total charge." 830 CMR 64H.1.1(1).

Mr. Karmah's testified to a typical transaction that included a bumper replacement and repair services. The transaction involved the provision of services and the transfer of property that was not inconsequential in relation to the total charge for the repairs, as the property transferred had a value of far more than ten percent of the total charge for the repair. Consistent with its depiction of a typical transaction, the appellant made no effort during the hearing before the Board to demonstrate that any of its repair transactions involved transfers of property that were inconsequential in relation to the total charges. Moreover, as the sample customer invoice reflected, and consistent with Mr. Karmeh's testimony, charges for labor and parts were not separately stated on the appellant's invoices. Thus, pursuant to 830 CMR 64H 1.1(2)(b)2, the evidence presented indicated that the full amount of the sales transactions at issue in this appeal was subject to sales tax. Had the appellant separately stated charges for property and labor, only the charges for property transferred would have been subject to tax. *See* 830 CMR 64H 1.1(2)(b)1; *see also* ***Dealers Choice Auto Body v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2003-249, 259.

"It shall be presumed that all gross receipts of a vendor from the sale of services or tangible personal property are from sales subject to sales tax until the contrary is established." G.L c. 64H, § 8(a). An assessment by the Commissioner is presumptively correct and the burden to establish the facts necessary to justify an abatement rests squarely with the taxpayer. *See* ***William Rodman & Sons, Inc. v. State Tax***

Commission, 373 Mass. 606, 610 (1977). Given the foregoing, the Board found and ruled that the appellant failed to meet this burden.

Though the Board upheld the appellee's assessment of sales tax, the Board rejected the assessment of double tax under § 28. As justification for the tax, the appellee credibly testified that the appellant was unresponsive to its requests for information and that it failed to keep, maintain, and furnish records of its business activities as required by G.L. c. 62C, § 25 and 830 CMR 62C.25.1. The appellee argued that the appellant's lack of cooperation and failure to provide documents substantiating its position, both at the audit stage and in discovery proceedings before the Board, constituted willful conduct that justified the imposition of the double-assessment tax under § 28.

Section 28 prescribes the circumstances when a double-assessment tax may be applied:

> If a person who has been notified by the commissioner that he has failed to file a return or has filed an incorrect or insufficient return refuses or neglects within thirty days after the date of such notification to file a ***proper return***, or if a person has filed a ***false or fraudulent return or has filed a return with a willful attempt in any manner to defeat or evade the tax***, the commissioner may determine the tax due, according to his best information and belief, and may assess the same at not more than double the amount so determined, which additional tax shall be in addition to the other penalties provided by this chapter. (emphasis added).

There are important distinctions between a "proper return" and a correct return, as well as between a "false or fraudulent return" and an incorrect return. Filing a return with which the Commissioner disagrees, even if it is incorrect, does not necessarily equate with failure to file a "proper return," nor does it necessarily constitute a "false or fraudulent return," particularly when the taxpayer has a sound reason based on professional advice to file that return. *See, e.g.,* ***Q Holdings Corp. v. Commissioner of Revenue***, Mass.

ATB Findings of Fact and Reports 1996-412, 420 (finding the taxpayer's failure to file a return was due to reasonable cause where the taxpayer had relied upon "a nationally recognized certified public accounting firm doing business in Massachusetts").

The Board found that the appellant's $0 sales tax returns were not "false or fraudulent" and did not constitute a failure to file a "proper return," nor were they filed with a "willful attempt in any manner to defeat or evade [sales] tax under § 28. Though incorrect, the appellant consistently maintained that it was a service enterprise and a consumer of goods used in fulfilling its repair contracts and was therefore not obligated to collect or remit sales tax on those transactions. The appellant may well have been uncooperative in the course of its dealings with the DOR. However, sales tax returns reflecting $0 of property sold and $0 in sales tax owed were consistent with its stated position that it was not obligated to collect and remit sales tax, a position that was supported by its accountant. The evidence of record did not undermine the conclusion that the appellant was sincere in assertions regarding applicable law. Thus, in the appellant's view, the returns as filed were correct. The Board therefore found and ruled that the Commissioner's double-assessment of tax pursuant to § 28 was not proper.

Having found and ruled that the evidence of record did not warrant invocation of § 28, the Board ordered abatement of the double-assessed tax. Because the appellant failed to provide any information to substantiate that amount, the Board adopted the Commissioner's calculation of $39,829.35.

Conclusion

The Board found and ruled that the appellant failed to meet its burden of establishing that any of the amounts of its repair contract charges during the tax periods at issue were not subject to sales tax. Indeed, the evidence established that the contested sums were so subject. However, the Board further found and ruled that the evidence presented did not indicate that the appellant had run afoul of § 28, and that the double assessment of tax was therefore not proper.

Accordingly, the Board granted a decision for the appellant, in part, ordering an abatement of $39,829.35 consisting of double-assessment taxes assessed pursuant to § 28, and for the appellee, in part, denying abatement of sales taxes on the appellant's repair-service contracts.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board