

HEARING
OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Franchise/

Income Tax Appeals Hearing of:

ABIRAMI BASKANRAPANDIAN,

OTA Case No. 18011966

Appellant.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MAY 28, 2019

10:00 A.M.

OFFICE OF TAX APPEALS
955 M. STREET, STE. 960
FRESNO, CALIFORNIA

Reported by Peter Petty

APPEARANCES

Panel Lead:

ALBERTO ROSAS, ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA
OFFICE OF TAX APPEALS
955 M. STREET, SUITE 960
FRESNO, CALIFORNIA

Panel Members:

JEFFREY ANGEJA, ADMINISTRATIVE LAW JUDGE

MICHAEL GEARY, ADMINISTRATIVE LAW JUDGE

For Appellant:

ABIRAMI BASKARAPANDIAN
S. "SAM" BASKARAPANDIAN

For Franchise Tax Board:

CHAD T. BACCHUS, TAX COUNSEL III
STATE OF CALIFORNIA

STEPHEN M. SMITH, TAX COUNSEL IV
STATE OF CALIFORNIA

KEVIN C. HANKS, CHIEF, HEADQUARTERS OPERATIONS BUREAU

EXHIBITS

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1 TUESDAY, MAY 28, 2019 - 10:00 A.M.

2 AJA ROSAS: Good morning. We are on the record in
3 the matter the appeal of Abirami Baskarapandian, OTA Case
4 Number 18011966.

5 This hearing is taking place in Sacramento,
6 California on May 28, 2019. The time is approximately
7 10:00 a.m.

8 The panel of Administrative Law Judges includes
9 Jeffery Angeja, Michael Geary, and me, Alberto Rosas. And
10 although I may be the lead ALJ for purposes of conducting
11 this hearing, I would like to point out that this panel, the
12 three of us, we are all equal participants and equal decision
13 makers.

14 We're going to start with the appearances from
15 everyone involved. Starting with to my left with the
16 taxpayer, if you could please state your name for the record.

17 MR. BASKARAPANDIAN: My name is S Baskarapandian.

18 THE APPELLANT: Abirami Baskarapandian.

19 MR. BACCHUS: Chad Bacchus.

20 MR. SMITH: Stephen Smith.

21 MR. HANKS: And Kevin Hanks with CDTFA.

22 ALJ ROSAS: Thank you. As everyone will note, we do
23 have a stenographer who is transcribing everything that's
24 being said. So I'd like to remind everyone to please speak
25 slowly, speak clearly, and also make sure you speak one at a

1 time and do not speak over one another.

2 Before we begin with testimony, I just want to go
3 over a few administrative matters. We did have a prehearing
4 conference earlier this month on May 7th. And that conference
5 resulted in several orders. One of them is that Appellant's
6 Exhibits 1 through 15 were admitted into evidence.
7 Respondent's Exhibits A through D, that's alpha through delta
8 were admitted into evidence.

9 (Exhibits admitted into evidence)

10 ALJ ROSAS: We also agreed that only two witnesses,
11 Abirami Baskarapandian and S Baskarapandian will testify at
12 today's hearing.

13 Additionally, we also discussed that the taxpayer has
14 the option of recording this hearing, if they so choose.

15 Is this an accurate summary of the orders from the
16 May 7th prehearing conference?

17 MR. BASKARAPANDIAN: Yes, sir.

18 THE APPELLANT: Yes, it is.

19 ALJ ROSAS: CDTFA?

20 MR. BACCHUS: Yes.

21 ALJ ROSAS: Thank you.

22 In addition, today, this morning, we held an in-
23 person prehearing conference and we discussed several
24 matters. One of them, Appellant's Exhibit 16 shall be
25 admitted into evidence. Respondent's Exhibit E, that's

1 Exhibit Echo, shall be admitted into evidence.

2 We also discussed the fact that CDTFA shall send the
3 Notice of Determination issued to Mr. G's Pizzaria,
4 Incorporated, dated October 22nd, 2012. CDTFA will send the
5 taxpayers and OTA a copy of that Notice of Determination
6 within two weeks. So by close of business on July 11th, 2019.

7 MR. BACCHUS: And actually, Judge, we do -- we ended
8 up getting a copy e-mailed over and we had a copy printed
9 out, so we have a copy here. I don't know if additional
10 copies can be made at this time to present to taxpayer or to
11 the panel.

12 ALJ ROSAS: Definitely. If we could make a copy of
13 that, that would be great.

14 So to taxpayers, the document that we were discussing
15 in our conference this morning, that Notice of Determination,
16 they have a copy. They will print copies and give you one.
17 And you'll look it over, if you have any questions, please
18 let us know. And if you don't have any objections, we will
19 also admit that into evidence.

20 In regards to Exhibit 16 and Exhibit E, are there any
21 objections or any questions regarding those exhibits?

22 MR. BASKARAPANDIAN: None.

23 ALJ ROSAS: Okay.

24 MR. BACCHUS: We do not.

25 ALJ ROSAS: I hereby admit Exhibit 16 and Exhibit E,

1 echo, into evidence.

2 (Exhibits admitted into evidence)

3 ALJ ROSAS: Mrs. Baskarapandian, in terms of your
4 wanting to record the hearing, just wanted to remind you that
5 the stenographer's transcript is the official record --

6 THE APPELLANT: Yes.

7 ALJ ROSAS: -- of this hearing. The official record
8 will not be your recording, just as it is not the video
9 recording. The official record is the transcript.

10 We're just going to go off the record and take a
11 brief moment while -- while we get those copies of the NOD.

12 (Off the record at 10:05 a.m.)

13 (On the record at 10:12 a.m.)

14 ALJ ROSAS: Mr. and Mrs. Baskarapandian, do you have
15 any questions regarding this document which I will identify
16 as Exhibit F, foxtrot?

17 THE APPELLANT: No, no questions.

18 MR. BASKARAPANDIAN: No questions.

19 ALJ ROSAS: Do you have any objections to our
20 admitted Exhibit F into evidence?

21 MR. BASKARAPANDIAN: No.

22 THE APPELANT: That's fine.

23 ALJ ROSAS: Exhibit F is hereby admitted into
24 evidence.

25 (Exhibit admitted into evidence)

1 ALJ ROSAS: Before we begin with the testimony, does
2 either party have any questions?

3 MR. BACCHUS: No.

4 ALJ ROSAS: Okay. Thank you. We will begin, as we
5 discussed, with Mrs. Baskarapandian.

6 If you can please rise. Raise your right hand.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give shall be the truth, the whole truth, and
9 nothing but the truth?

10 THE APPELLANT: Yes, it is.

11 (Appellant sworn in.)

12 ALJ ROSAS: Thank you. You may be seated.

13 And Mrs. Baskarapandian, my understanding is that
14 your testimony will consist of reading from a prepared
15 statement. Whenever you're ready, you may begin.

16 THE APPELLANT: Okay. Do I need to speak into the
17 mic?

18 ALJ ROSAS: That would be great. Thank you.

19 THE APPELLANT: Okay. Respected judges, my name is
20 Abirami Baskarapandian, owner of Universal Print Company and
21 CEO of Arusuval, Inc.

22 I'm standing today in front of the OTA judges because
23 of a Notice of Successor Liability given by CDTFA/BOE. I am
24 here to prove mainly two things, that Exhibit 1 and 12, pages
25 1 and 2 of BOE 65 is an invalid document and that the

1 successor liability does not apply to us at purchases.

2 Around February 2013, my husband S Baskarapandian,
3 Sam, lost his corporate job. The search to start a small
4 business was in our minds. Mr. G's Pizza was for a sale. It
5 was a microbusiness selling pizza and pasta running in a 900-
6 square-foot space. We approached Mr. Mehdy Gorgani and
7 discussion began. Since it was a small operation, we felt it
8 would be perfect for us for starters. So a person-to-person
9 deal was struck. Third-party and escrow companies were not
10 involved. It was brought -- it was bought totally on trust.

11 The assets moved to us on September 1, 2013 with all
12 the permits, new membership to renders, new accounts for
13 insurance, phones, and utilities. A new PO system and credit
14 card processor was put in. Nothing of Mr. Gorgani's account
15 was used. Just the equipment stayed the same. I didn't know
16 at that time that the pizza place was corporation Mr. G's
17 Pizzaria which I will use MGP from now on. And also didn't
18 know that I had to get a clearance from BOE for any
19 liabilities.

20 Actually, we walked into the BOE office in West
21 Covina sometime in September, I forget the date, to add the
22 name Mr. G's Pizzaria and Pasta to my already existing
23 Universal Print Company sellers permit. The personnel who
24 took our paperwork processed it and gave us the seller's
25 permit for Mr. G's Pizzaria and Pasta with my name on it. No

1 e-registration was done as per CDTFA, it was all done in the
2 West Covina office. So no chance of us to receive a pop up
3 screen with outstanding liabilities as per Elizabeth Reyes,
4 business taxes compliance specialist, and Vicky Chen-Lau,
5 business taxes specialist 1.

6 Then came the letter from BOE dated April 24, 2015
7 that I am responsible of the successor liability of MGP.
8 That is the moment we realized that Mr. G's Pizza was under a
9 corporation MGP. We appealed to Ms. Denise Riley, tax
10 counsel III. It was ignorance of the law that has brought me
11 to this position today. Ms. Denise Riley said in our first
12 meeting that ignorance of the law is not an excuse. So let's
13 get to the case.

14 There are a few documents required to be submitted
15 along with the BOE 65 in order to close up the seller's
16 permit. If you see Exhibit 1, BOE 65, page 1, it is an
17 incomplete form. No sale price is mentioned. No mention of
18 Mr. G's Pizza being sold to me. And most of all, there is no
19 signature and date. It is unclear who filled the form and
20 turned it in.

21 Secondly, let's look at Exhibit 12, page 12 -- 2 of
22 the same BOE 65 form. Again, it is incomplete. It is
23 unclear whether the BOE personnel at the counter collected
24 the necessary documents required and all the necessary
25 outstanding payments in order to close the permit. No

1 checkmarks were made on the form in regards to the documents
2 that were connected. If the form was mailed in, did the
3 staff reach out to request all required documents and
4 payments?

5 On this basis we can clearly see that an official
6 unsigned form automatically becomes invalid. Since it is
7 unclear if CDTFA/BOE requested from whomever turned in the
8 form to sign it, also if the final tax return was filed and
9 paid. I would like to ask CDTFA at this point if all of the
10 documents and payments were collected from MGP. If no proof
11 can be given, it can be decided that this specific BOE 65
12 form is invalid and hence the seller's permit is officially
13 not closed. This makes the -- the successor liability
14 invalid as to use tax liability still lies with MGP and its
15 officer Mr. Mehdy Gorgani. Negligence of the law by CDTFA
16 personnel should also not be excused.

17 Now I want to touch upon the purchase matter. With
18 MGP being a corporation, a purchase of asset does not make me
19 liable for successor liability. According to California law,
20 a successor entity or person is not liable for the debts,
21 acts, liabilities, or obligations of its predecessors except
22 the purchaser expressly agrees to assume such debts and
23 liabilities. Whether the transaction is really a
24 consolidation of a merger, the purchasing corporation is
25 merely a continuation of the selling corporation where the

1 transaction was fraudulently made in order to escape
2 liability for such debts.

3 It is clear from Item 1 that I was not aware of the
4 liabilities and hence no assumption. Item 2 it is not true
5 either at -- as it was neither a consolidation or a merger.
6 Item 3 does not apply as neither was I a corporation or any
7 officers from MGP became part of my sole proprietorship.
8 Item 4 is untrue. This makes me not the successor of MGP and
9 hence not responsible for the successor liability.

10 From the additional briefing CD sent by CDTFA, it is
11 clear that CDTFA didn't show any method of collecting
12 payments from MGP after October 2012. There are no
13 correspondence from CDTFA to MGP on this matter after 2012.
14 BOE/CDTFA Publication 74 states that the board will generally
15 only try to collect from a successor if unable to do so from
16 the seller. I would like to ask CDTFA if any and what
17 methods were used to collect the liability from MGP. Again,
18 if CDTFA has no proof, negligence of the law cannot be
19 excused.

20 In conclusion, I am neither the successor of MGP nor
21 did I purchase MGP business. Negligence of the law cannot be
22 excused as official documents were accepted and processed
23 with no signature and skeleton information on the BOE 65
24 form. Also an asset purchase from the corporation does not
25 make me liable for predecessor liability. On these two terms

1 I request that I be relieved of the successor liability.

2 Thank you for your time.

3 ALJ ROSAS: Thank you, Mrs. Baskarapandian.

4 Does CDTFA have any questions for this witness?

5 MR. BACCHUS: No.

6 ALJ ROSAS: I'm sorry?

7 MR. BACCHUS: No, we do not.

8 ALJ ROSAS: Thank you.

9 I will now turn it over to my copanelists.

10 Mr. Geary, do you have any questions?

11 ALJ GEARY: Maybe not the question -- well, it is a
12 question.

13 Are you aware that the person from whom the business
14 was purchased remains liable for the taxes also in addition
15 to you?

16 THE APPELLANT: I do realize that.

17 MR. GEARY: Okay. That's all I have. Thank you.

18 ALJ ROSAS: Thank you, Mr. Geary.

19 Mr. Angeja?

20 ALJ ANGEJA: No questions.

21 ALJ ROSAS: And as for me, I also do not have any
22 questions. But thank you very much for your time you're your
23 testimony.

24 THE APPELLANT: Thank you.

25 ALJ ROSAS: We will now move forward with

1 Mr. Baskarapandian's testimony.

2 Sir, if you would please rise and raise your right
3 hand.

4 Do you solemnly swear or affirm that the testimony
5 you're about to give shall be the truth, the whole truth, and
6 nothing but the truth?

7 MR. BASKARAPANDIAN: I do.

8 ALJ ROSAS: Thank you, sir, you may be seated.

9 (Witness sworn in)

10 ALJ ROSAS: Mr. Baskarapandian, it's my understanding
11 that your testimony will likewise consist of reading from a
12 prepared statement. You may begin your testimony whenever
13 you're ready.

14 MR. BASKARAPANDIAN: Thank you.

15 Respected honorable judges. We present our case in a
16 previous hearing before Denise Riley on a motion basis citing
17 our character as law-abiding citizens unaware of the proper
18 procedures involved in starting a business after being laid
19 off from a corporate career as an engineer.

20 We argued a purchase of assets was from Mr. Mehdy
21 Gorgani directly and not the corporation Mr. G's Pizzaria
22 with all the documents from our side to prove that. We
23 showed no intent or acted to circumvent any laws during this
24 process by duly following all procedures required to set up a
25 new seller's permit account. Ms. Denise Riley failed to

1 accept our line of argument and came to the conclusion that
2 we are liable and ignorance of the law was no excuse.

3 We were assisted by TAAP office in this appeal
4 process and the case was presented by what we consider a weak
5 argument. However, during the in-person appeal session, we
6 were presented for the first time with documents from CDTFA.
7 Close scrutiny of those documents now enables us to make a
8 stronger and more credible case for absolving us of this
9 liability.

10 While Ms. Denise Riley made her decision of our
11 ignorance of the law as not an excuse, we are now going to
12 present our case to you and show negligence of the law by
13 CDTFA and hold them to the same standard we were held to.

14 We intend to present in our final appeal only facts
15 and appropriate evidence, not emotion to plead our case.
16 CDTFA failed to follow the law as required by their own
17 publication and were negligent and sloppy in following
18 procedures for which they need to be held accountable. Form
19 65, filled out fraudulent by Mehdy Gorgani and incorrectly
20 accepted by CDTFA staff.

21 There is no legal corporate entity registered by
22 Mehdy Gorgani with the name Mr. G's Pizzaria, only Mr. G's
23 Pizzaria and Pasta and the California Secretary of State has
24 clearly returned his application when he wrongly used another
25 spelling of Mr. G's Pizzaria and Pasta.

1 On Question 3(e) of BOE 65 was not answered when it
2 clearly stated the purchase price must be listed. CDTFA
3 could not obtain that information from him and they called us
4 to get the bill of sale information from which they're
5 assigning liability to us.

6 Most importantly, this document is not signed. And
7 any document submitted by a corporation has to be signed by
8 an officer of the company with their title -- title listed.
9 Lack of this important signature makes it -- this
10 incomplete -- makes this complete document invalid. It
11 clearly shows Mehdy Gorgani was intending to defraud both
12 CDTFA and Ambirami Baskarapandian.

13 On the second page of CDTFA showed no diligence in
14 getting the required information before closing the seller's
15 permit.

16 Based on the above facts, we request you review this
17 BOE 65 document filed by Mehdy Gorgani and accepted
18 negligently by CDTFA to be an invalid document and hold Mehdy
19 Gorgani still responsible for this outstanding tax liability.

20 If you study this tax liability in depth, you'll find
21 CDTFA issued this to Mehdy Gorgani because of the fraud he
22 committed in the years before he sold the business assets to
23 us as an individual.

24 Mr. G's Pizzaria is a nonexistent legal entity in the
25 state of California. Combined with an incomplete unsigned

1 BOE Form 65 makes it an invalid application to close the
2 seller's permit submitted by Mehdy Gorgani. We believe this
3 is a strong argument and I've seen similar arguments made
4 before the court of law by citizens challenging the
5 government and vice versa.

6 Just to give examples that we came across. The most
7 expensive typo in legislative history in 1872, one misplaced
8 comma in a tariff law cost American taxpayers more than \$2
9 million or \$40 million in today's dollars. Lack of an Oxford
10 comma cost a Maine company millions of overtime dispute.
11 Appeals court decided with the drivers saying absence of a
12 comma produced enough uncertainty through in their favor for
13 reversing a lower court decision.

14 Olivia Jade Giannulli a USC admissions candidate
15 student trademark application for her beauty plan had been
16 rejected for pure punctuation.

17 Thank you.

18 ALJ ROSAS: Thank you very much, Mr. Baskarapandian.

19 Does CDTFA have any questions for this witness?

20 MR. BACCHUS: We do not.

21 ALJ ROSAS: Thank you. I will now turn it over to my
22 copanelists.

23 Mr. Geary, do you have any questions?

24 ALJ GEARY: No questions.

25 ALJ ROSAS: Mr. Angeja?

1 ALJ ANGEJA: No, thanks.

2 ALJ ROSAS: And as for me, I also do not have any
3 questions. But I want to thank both of you for your
4 testimony today. Thank you very much.

5 We will now proceed with CDTFA's legal argument.
6 CDTFA will have up to ten minutes. You may begin whenever
7 you're ready.

8 MR. BACCHUS: Thank you. Pursuant to Revenue and
9 Taxation Code Section 6811, if any person with a sales and
10 use tax liability sells their business, their successor is
11 required to withhold from the purchase price an amount
12 sufficient to cover the seller's liability until the seller
13 produces either a receipt from the Department showing the
14 amount has been paid or a certificate stating that no amount
15 is due.

16 Furthermore, under Revenue and Taxation Code Section
17 6812, if the purchaser of a business fails to withhold from
18 the purchase price as required, she becomes personally liable
19 for the payment of the amount required to be withheld by her
20 to the extent of the purchase price of business.

21 Regulation 1702 explains how a purchaser may be
22 released from the obligation to withhold an amount. She can
23 either obtain a certificate from CDTFA stating that no
24 amounts are due from the predecessor or she will be released
25 from the obligation to withhold if she makes a written

1 request to CDTFA for a tax clearance and CDTFA fails to
2 respond or does not respond in a timely manner. The
3 regulation also states that a purchaser of a business will be
4 held liable as a successor if she purchases substantially all
5 of the business.

6 Here Appellant and Mehdy Gorgani, who was Mr. G's
7 Pizzaria, Inc.'s sole corporate officer executed a bill of
8 sale, dated September 1st, 2013 which conveys the equipment,
9 operations, and goodwill of Mr. G's Pizzaria and Pasta
10 located at 2767 South Diamond Bar Boulevard, in Diamond Bar,
11 California. Appellant, her husband S Baskarapandian, and
12 Mehdy Gorgani also executed a purchase agreement signed and
13 dated August 28, 2013 which was for the business concern
14 known as Mr. G's Pizzaria and Pasta.

15 This purchase agreement sets forth the terms and
16 conditions of the lease of the business premises including
17 the amount of rent, equipment lease, utility charges, taxes,
18 and other miscellaneous items.

19 Mr. Gorgani filed a Notice of Closeout for Seller's
20 Permit form listing the closeout date of his seller's permit
21 as August 31st, 2013. And that Appellant was the purchaser of
22 the business. This is Form 65 that Appellant referenced in
23 her testimony.

24 On September 19th, 2013, Appellant added Mr. G's
25 Pizzaria as a sublocation on her existing sole proprietorship

1 seller's permit. Our understanding was that that was done
2 using the electronic registration. According to Appellant,
3 that was done in one of our field offices.

4 Appellant also states that the purchase price of
5 business was \$20,000, and that the value of the equipment was
6 \$5,000. Beginning in September of 2013, Appellant began
7 operating the same type of business as the predecessor at the
8 same business location using the same business name. And we
9 do note that the name of -- the spelling of pizzeria changed
10 from pizzeria with an "A" to pizzeria with an "E." So that
11 minor change was made but the name of the business continued
12 to be Mr. G's Pizzaria and Pasta.

13 Based on the foregoing, Appellant purchased
14 substantially all of the predecessor's business. There's no
15 dispute that Appellant did not withhold from the selling
16 price an amount sufficient to cover Mr. G's Pizzaria's tax
17 liabilities. Appellant also did not obtain a tax clearance
18 from the Department stating that no tax was due for Mr. G's
19 Pizzaria, Inc.

20 Accordingly, Appellant is liable as its successor for
21 Mr. G's Pizzaria's unpaid tax liabilities to the extent of
22 the purchase price which was \$20,000. Therefore this appeal
23 should be denied.

24 Thank you.

25 ALJ ROSAS: Thank you.

1 Mrs. Baskarapandian, you expressed an interest in
2 possibly taking a break before your closing argument. Do you
3 still need that break or can you just continue?

4 MR. BASKARAPANDIAN: Can you just give us like
5 three --

6 THE APPELLANT: Five minutes?

7 MR. BASKARAPANDIAN: Yeah, five -- less than five
8 minutes.

9 ALJ ROSAS: Certainly, not a problem.

10 THE APPELLANT: Okay.

11 ALJ ROSAS: We're off the record.

12 (Off the record at 10:32 a.m.)

13 (On the record at 10:35 a.m.)

14 ALJ ROSAS: Back on the record.

15 Mrs. Baskarapandian, are you ready to proceed with
16 your closing argument?

17 THE APPELLANT: Yes.

18 ALJ ROSAS: You will have up to ten minutes. You may
19 begin whenever you're ready.

20 THE APPELLANT: According -- sorry. According to the
21 Secretary of State document, Mr. Mehdy Gorgani had registered
22 the corporation with a specific name, Mr. G's Pizzaria and
23 Pasta. Everywhere else that CDTFA has produced paperwork for
24 us always as Mr. G's Pizzaria. The Secretary of State as
25 argument mentioned by Mr. Sam Baskarapandian said that they

1 had turned back one of his filing with the Secretary of State
2 because he had used a wrong spelling. Again -- sure, again a
3 wrong spelling with the whole "and pasta" word missing. So
4 who is this Mr. G's Pizzaria? We don't know.

5 Second point, I had asked CDTFA certain couple of
6 questions. The first one was what documents were collected
7 in order to close out the BOE 65 form? Because on page 2 of
8 the form, there is no mention of any forms that were
9 collected. If that is not collected, then again, the
10 seller's permit is invalid and it's not closed.

11 Also I had asked them what procedure they had used in
12 order to collect the money from Mr. G's Pizzaria as much as
13 possible because the last transaction that took place between
14 the CDTFA and MGP was a NOD or a letter sent to him on
15 October 22nd, 2012. As I know of, the next letter that came
16 to me was April 24th, 2015. So in that three years, I want to
17 know what CDTFA did to collect the payment from him. Did
18 they give him a court order? Did they want him to come and
19 do like a successor's liability if I -- when they sent me the
20 letter in October, I had to respond within 30 days in order
21 to be not -- be called to court. Was there a lawsuit on him?
22 I don't understand. They need to tell me what procedures
23 were followed. If nothing was followed and they just waited
24 for me to give a bill of sale to them and then just slap me
25 with the successor liability, they didn't do their job. So

1 those are the questions I have.

2 ALJ ROSAS: Thank you, Mrs. Bskarapandian.

3 THE APPELLANT: Uh-huh.

4 ALJ ROSAS: At this point I will turn it over to the
5 copanelists to see if either of them has any questions for
6 both sides.

7 Mr. Geary?

8 MR. GEARY: No questions.

9 ALJ ROSAS: Mr. Angeja?

10 ALJ ANGEJA: So I just want to clarify from my
11 understanding. Are you saying that allegedly incomplete Form
12 65 negates the sale completely? Or merely stops the CDTFA
13 from asserting a successor liability?

14 THE APPELLANT: It stops the liability because as per
15 the thing -- the Publication 74 it says that if the forms
16 are -- is not complete, the sale -- I mean the CDTFA will
17 reach out to the person --

18 ALJ ANGEJA: Okay.

19 THE APPELLANT: -- in order to collect the documents
20 to close it.

21 ALJ ANGEJA: So in other words, you're not saying
22 that the sale didn't occur --

23 MR. BASKARAPANDIAN: The sale occurred.

24 ALJ ANGEJA: -- you guys are admitting that --

25 THE APPELLANT: The sale occurred.

1 ALJ ANGEJA: Okay. And then a question for CDTFA.

2 That Form 65, I think it's been said, I just want to
3 make it abundantly clear in my head, that's a form that the
4 seller fills out not the buyer?

5 MR. BACCHUS: Correct. That is --

6 ALJ ANGEJA: And it's also not something that the
7 CDTFA fills out?

8 MR. BACCHUS: It is a form that the seller fills out
9 when they want to close their seller's permit.

10 ALJ ANGEJA: Okay. I don't have any further
11 questions.

12 ALJ ROSAS: Thank you.

13 I do have a few questions. Primarily,
14 Mrs. Baskarapandian, as part of your testimony, you raised a
15 few questions. So I'm going to take this opportunity to ask
16 CDTFA your questions, the questions that you raised.

17 You asked -- I'm sorry, you said: I will like to ask
18 CDTFA if all the documents and payments were collected from
19 MGP.

20 I'll turn that over to CDTFA.

21 MR. BACCHUS: To the extent of the documents referred
22 to in the Form 65 -- well, initially, Revenue Taxation Code
23 Section 7056 prohibits us to disclose any confidential
24 information about a taxpayer that's not party to this
25 proceeding. And so collection activities and what was

1 collected from that taxpayer, we're not at liberty to
2 disclose here. So I'm not exactly sure what we would be able
3 to answer.

4 ALJ GEARY: Can I ask -- are you saying that you
5 cannot tell us whether you've collected money?

6 MR. BACCHUS: We can give the amount of the
7 liability, we can't go into saying what payments -- who made
8 payments on behalf of -- right. We know, we can say that the
9 liability exceeds \$20,000. We can give the amount that
10 remains, the amount of liability that remains.

11 ALJ GEARY: Have you given that information to the
12 Appellant in this case how much remains of the initial
13 liability?

14 ALJ ROSAS: Wait. We should be asking whether
15 payments have reduced the liability below the amount --

16 MR. BACCHUS: Below 20,000 which --

17 ALJ ROSAS: -- [indiscernible] the year.

18 ALJ GEARY: Correct. Correct.

19 MR. BACCHUS: For which they have not.

20 ALJ GEARY: Okay.

21 MR. HANKS: If I could add one other comment, too,
22 and this actually speaks toward the Notice of Closeout.
23 Taxpayers are required to process the Notice of Closeout
24 form, the 65 form that we're looking at before us.

25 Occasionally, however, taxpayers won't notify us of their

1 closeout. This form doesn't get submitted to us, we actually
2 find through alternative means that a business is closed out.
3 When that occurs, we'll close out the account.

4 We may even be notified over the telephone, the
5 taxpayer might notify us of their intention to close out the
6 business, but frequently, taxpayers close their business,
7 there is no forms submitted. So to the extent that we
8 required additional information on this form, that isn't
9 accurate. The information that was presented here is more
10 than sufficient for us to -- to indicate within our records
11 that the account is closing out and that was the intention.

12 ALJ ROSAS: Thank you.

13 Mr. Geary, do you have any additional questions?

14 ALJ GEARY: That's all.

15 ALJ ROSAS: I have an additional question that was
16 posed by Mr. Baskarapandian as part of her testimony. She
17 said: I will like to ask the CDTFA what methods were used to
18 collect the liability from MGP?

19 MR. BACCHUS: That's confidential.

20 ALJ ROSAS: In terms of a follow-up to that, my
21 question to CDTFA whether they have attempted to collect the
22 liability from the predecessor.

23 MR. SMITH: That's also confidential. We have
24 introduced as evidence the Notice of Determination which was
25 for approximately \$56,000. You know, we can say that the

1 remaining liability is approximately \$36,000. Petitioner --
2 or Appellant can make inferences from that.

3 MR. BACCHUS: And just to clarify, the 36 --
4 approximately \$36,000 is tax. I think with penalties and
5 interest, it's closer to \$46,000.

6 ALJ ROSAS: One additional question and I'll ask this
7 for the benefit of the taxpayers because it is my
8 understanding based on the prehearing conferences there is a
9 cloud of confusion surrounding this.

10 So my question is, if we're dealing with successor
11 liability, is there anything you can tell the taxpayers
12 regarding the predecessor's liability that is not
13 confidential?

14 MR. SMITH: We've provided the other work papers.

15 ALJ ROSAS: Those are the -- just to clarify, those
16 are the audit work papers for the success -- I'm sorry, for
17 the predecessor, correct?

18 Personally, I do not have any additional questions.
19 But I'm going to ask my copanelists whether they have any
20 additional questions.

21 Mr. Geary?

22 ALJ GEARY: No questions.

23 ALJ ROSAS: Mr. Angeja?

24 ALJ ANGEJA: No.

25 ALJ ROSAS: That concludes this hearing.

1 MR. BASKARAPANDIAN: Okay.

2 ALJ ROSAS: I'm sorry?

3 MR. BASKARAPANDIAN: Can I make a closing statement
4 or?

5 ALJ ROSAS: What was that, sir?

6 MR. BASKARAPANDIAN: Can I make a closing statement
7 or that's -- it's only --

8 ALJ ROSAS: We already had closing statements, so.

9 MR. BASKARAPANDIAN: That's -- okay.

10 ALJ ROSAS: Thank you.

11 This concludes this hearing, OTA Case Number
12 18011966. The record in this matter is now closed. And the
13 matter is submitted as of today, June 28th, 2019.

14 This panel will send both parties our written
15 decision no later than 100 days from today.

16 Thank you all very much.

17 (Whereupon the proceedings were
18 adjourned at 9:56 a.m.)

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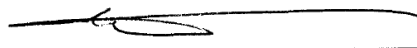
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REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 2019.



PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 2019.

A handwritten signature in black ink that reads "Jill Jacoby". The signature is written in a cursive, flowing style.

Jill Jacoby
Certified Transcriber
AAERT No. CERT**D-633