

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011966
ABIRAMI BASKARAPANDIAN) CDTFA Account No. 097-527676
dba Universal Print Company) CDTFA Case ID: 874807
)
) Date Issued: August 2, 2019
)

OPINION

Representing the Parties:

For Appellant: Abirami Baskarapandian

For Respondent: Pamela Bergin, Tax Counsel III

For Office of Tax Appeals (OTA): Josh Lambert, Tax Counsel

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 6561,¹ appellant Abirami Baskarapandian appeals respondent California Department of Tax and Fee Administration’s (CDTFA) denial of her petition for redetermination of CDTFA’s Notice of Successor Liability. This notice is for \$20,000 in tax, representing the unpaid liability of Mr. G’s Pizzeria, Inc. (Mr. G), for the period July 1, 2009, through December 31, 2013.²

OTA Administrative Law Judges Jeffrey G. Angeja, Michael F. Geary, and Alberto T. Rosas held an oral hearing for this matter in Sacramento, California, on May 28, 2019. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUE

Whether Baskarapandian is liable as a successor for Mr. G’s unpaid sales and use tax liabilities in the amount of \$20,000.

¹ Unless otherwise indicated, all section references are to the California Revenue and Taxation Code in effect for the year at issue.

² The Notice of Successor Liability reflects CDTFA’s determination that Baskarapandian is liable as a successor for Mr. G’s unpaid tax liability, up to the \$20,000 purchase price, in accordance with section 6812.

FACTUAL FINDINGS

1. Mr. G, a California corporation, operated a pizzeria restaurant located in Diamond Bar, California, beginning October 1, 2006.
2. On September 1, 2013, Mr. G's president and chief executive officer entered into a Bill of Sale with Baskarapandian for the sale, assignment, and transfer of Mr. G's "equipment, operations and goodwill" for \$20,000 (allocated as \$5,000 for equipment and \$15,000 for goodwill). Both Baskarapandian and Mr. G's president signed the Bill of Sale on September 1, 2013.
3. Mr. G's president also agreed to lease to Baskarapandian the commercial premises located in Diamond Bar, California.
4. Mr. G filed a Notice of Close-Out for Seller's Permit form with CDTFA; it indicated that Mr. G sold the business to Baskarapandian on August 31, 2013.
5. In September 2013, Baskarapandian added the business as a sub-location to an existing seller's permit she held as a sole proprietor, dba Universal Print Company.
6. Baskarapandian then reported sales for the business under her seller's permit through the fourth quarter of 2013.
7. On September 30, 2013, Baskarapandian formed a California corporation named Arusuvai, Inc. (Arusuvai). According to Baskarapandian, she subsequently transferred the business to Arusuvai. On December 27, 2013, Arusuvai obtained its own seller's permit, dba Mr. G's Pizzeria & Pasta, with an effective start date of January 1, 2014.
8. At the time it sold its business, Mr. G had unpaid sales and use tax liabilities in excess of \$20,000.
9. Baskarapandian failed to request a tax clearance from CDTFA prior to purchasing the business or to withhold from the purchase price an amount sufficient to satisfy Mr. G's unpaid sales and use tax liabilities. Therefore, CDTFA found Baskarapandian to be liable as Mr. G's successor for its unpaid tax liabilities, up to the purchase price of \$20,000, pursuant to sections 6811 and 6812.³
10. CDTFA issued a Notice of Successor Liability to Baskarapandian for \$20,000 in tax, which represented a portion of Mr. G's unpaid sales and use tax liabilities.

³ CDTFA did not assert any of the interest or penalties remaining due from Mr. G.

11. Baskarapandian filed a timely petition for reconsideration.
12. In its Decision and Recommendation, CDTFA concluded that Baskarapandian is liable for Mr. G's remaining unpaid tax liabilities in the amount of \$20,000, and thus, CDTFA denied her petition for reconsideration. This appeal followed.

DISCUSSION

If any person liable for any amount under the Sales and Use Tax Law sells his or her business or stock of goods or quits the business, his or her successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from CDTFA showing that the amount has been paid or a certificate (tax clearance) stating that no amount is due. (R&TC, § 6811.) A person who purchases a portion of a stock of goods may become liable as a successor where, for example, he or she purchases substantially all of the business or stock of goods. (Cal. Code Regs., tit. 18, § 1702(f).) The purchaser will be released from the obligation to withhold as required if he or she obtains a certificate from CDTFA stating that no taxes, interest, or penalties are due from the predecessor, or if he or she makes a written request to CDTFA for a certificate, and CDTFA does not timely issue the certificate or mail the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the clearance. (R&TC, § 6812(b), (c); Cal. Code Regs., tit. 18, § 1702(c).)

If the purchaser of a business or stock of goods fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price, valued in money. (R&TC, § 6812.) The liability of the successor or purchaser extends to amounts incurred in relation to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not yet determined against the predecessor, and includes taxes, applicable interest up to the date of payment of the taxes, and penalties. (R&TC, § 1702(b).)

The evidence shows that Baskarapandian purchased a business from Mr. G. The Bill of Sale dated September 1, 2013, states that she purchased Mr. G's "equipment, operations and goodwill" for \$20,000. Baskarapandian added the business to her seller's permit stating that the purchase/transfer occurred and that the start date was September 1, 2013. Mr. G's Notice of Close-Out indicated that it sold its business to Baskarapandian on August 31, 2013.

Baskarapandian leased the premises from Mr. G's president, and she began operating the

business immediately after her purchase. Therefore, based on the documentary evidence and the testimony, there is no doubt that Baskarapandian was Mr. G's successor.

As Mr. G's successor and the purchaser of the essential elements from Mr. G's business, Baskarapandian had a duty to withhold from the purchase price a sufficient amount to cover Mr. G's unpaid sales and use tax liabilities until Mr. G produced a receipt from CDTFA showing that its liabilities have been paid or a certificate stating that no amount is due, pursuant to section 6811. There is no dispute that Baskarapandian did not withhold from the purchase price any amount to satisfy Mr. G's unpaid tax liabilities. There is also no dispute that Baskarapandian failed to request a tax clearance from CDTFA prior to purchasing the business.

Although Baskarapandian concedes the foregoing facts, nevertheless she makes numerous arguments in support of her position that she should not be held liable as a successor. First, she contends that the Notice of Successor Liability should have been issued to Arusuvai and not her, as the business was subsequently transferred to Arusuvai. We disagree. On September 1, 2013, Baskarapandian, in her individual capacity, entered into the Bill of Sale to purchase the business. But Arusuvai was not formed until September 30, 2013. Moreover, Baskarapandian states that she did not transfer ownership of the business to Arusuvai until on or about January 1, 2014. Therefore, at the time of purchase, Baskarapandian—not Arusuvai—purchased the business. And Baskarapandian—not Arusuvai—failed to withhold the purchase payment as required. Therefore, as Mr. G's successor, Baskarapandian became personally liable for the payment of the amount required to be withheld, to the extent of the purchase price. (R&TC, § 6812.)

Second, Baskarapandian also argues that she was not aware that Mr. G had past-due sales and use tax liabilities in excess of \$20,000, that Mr. G's president acted in bad faith by misleading her into believing that Mr. G had no past-due debts, and that she was not aware of the requirement to withhold from the purchase price or to seek a tax clearance. However, although we find the witnesses' testimony credible, none of these arguments are relevant to a determination of successor liability under sections 6811 and 6812.

Third, Baskarapandian also argues that Mr. G's president completed the BOE Form 65 (Notice of Close-Out for Seller's Permit) incompletely and fraudulently, and that this "stops the liability." But based on the facts surrounding her purchase of Mr. G's business, she provides no legal authority to support her contention that an incomplete or fraudulent form would negate her

successor liability. Although there is no evidence that Mr. G’s president committed any acts of fraud, we do agree that the referenced BOE Form 65 is incomplete.⁴ However, notwithstanding this incomplete form, the form is immaterial. Even with the admission of this incomplete form into evidence, the remaining evidence establishes the following relevant facts: 1) at the time of Baskarapandian’s purchase of the business, Mr. G’s had sales and use tax liabilities in excess of \$20,000; 2) having purchased Mr. G’s business for \$20,000, Baskarapandian is Mr. G’s successor; and 3) she failed to request a tax clearance from CDTFA prior to purchasing the business or to withhold the \$20,000 purchase price in order to satisfy Mr. G’s unpaid tax liabilities. These facts are sufficient to establish successor liability.

HOLDING

Baskarapandian is liable for Mr. G’s unpaid sales and use tax liabilities, as its successor, to the extent of the \$20,000 purchase price.

DISPOSITION

We sustain CDTFA’s action in full.

DocuSigned by:
Alberto Rosas
2281E8D36B014D1...
Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
0D390BC3CCB14A9...
Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Michael Geary
1A9B52EF8BAC4C7...
Michael F. Geary
Administrative Law Judge

⁴ BOE Form 65 does not include the “selling price of fixtures and equipment” or the “total sales price.”